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UNIVERSITY OF LOUISVILLE

A HISTORY OF THE DANVILLE CONVENTIONS, 1784-1792

A Dissertation

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Of Master of Arts

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CHAPTER I

GENERAL CAUSES OF THE MOVEMENT FOR SEPARATION OF KENTUCKY FROM VIRGINIA

The admission of Kentucky into the American Union June 1, 1792, is significant in the history of the United States because Kentucky was the first state west of the Allegheny Mountains to be admitted. It was the fifteenth state to enter, being preceded by Vermont in 1791. Most of the new states, twenty-eight to be exact, have been formed out of preexisting territories. Kentucky did not follow this most common procedure. It is one of the five states which were formed by separation from other states. The separation from Virginia was dependent upon the consent of the mother state. In fact, three approvals were necessary before Kentucky could take her place as a member of the American Union - those of Kentucky, of Virginia, and of the Congress of the United States. These and various difficulties postponed admission until 1792.

The general causes of the movement for separation of Kentucky from Virginia include the following: 1) the general experience of the pioneers on the frontier; 2) immigration from the East; 3) the problem of ownership

of land; 4) the problem of distance from authority and the attending dangers and inconveniences; 5) the problem of trade outlets; and 6) the problem of defense from the Indians.

1) The general experience of the pioneers on the frontier from the beginning of settlement through the American Revolution had been such as to convince them that they could take care of themselves. The frontiersmen had to meet situations as they arose and propose the solution which seemed best at that time. Hence, they early learned to do for themselves, and anything which tended to retard this process was resented. In Kentucky the actual movement for separation from Virginia began to develop as early as 1780, when inadequate military supplies in the West made defense from Indian attacks impossible. The movement was well developed about 1785 when two conventions had convened to consider a practical approach to the problem of defense in the West.

2) Increased immigration from the East was another cause of the movement for separation. During the American Revolution the success of George Rogers Clark in driving the

British from the Ohio Valley seemed to promise safety to the West; and consequently a great wave of immigration from the East flowed into the trans-Allegheny region.

"The year 1779 and the succeeding brought upwards of¹ twenty thousand people to Kentucky." So rapid was the influx that the inconveniences of remote legislation and executive authority soon began to be felt. Because of the great distance from western to eastern Virginia, and the difficulties of communication due to almost impassable mountains, delegates sent to Richmond from Kentucky County soon lost touch with their constituents.² The division of Kentucky into three counties in 1780,³ and its organization into a judicial district in 1782⁴ did not satisfy the Kentuckians, nor did it lessen their determination to separate from the mother state and seek admission into the American Union.

1. Temple Bodley, Our First Great West (Louisville, 1938), Filson Club Publication, No.36, p.118 note

2. James R. Robertson, Petitions of the Early Inhabitants of Kentucky (Louisville, 1889), Filson Club Publication, No.27, p.80

3. William W. Hening, The Statutes of Virginia (Richmond, Va., 1819-23), Vol.10, p.315

4. Ibid. Vol.2, p.85

3) The problem of ownership of land was one of the more important reasons for Kentucky seeking separation from Virginia. Land was gold in early Kentucky history. Many were the disputes that grew out of conflicting claims to land. One source of trouble was the absence of agencies, close at hand, in which land claims might be registered. Part of the problem was solved by dividing the larger counties into smaller units, thus providing more county seats for the registering of land claims. Virginia also revised the colonial laws controlling the method of taking up land. The earliest land grants in Kentucky were made under royal authority, many of them under the King's Proclamation of 1763.⁵ All of these early grants were governed by laws of a very general nature. An act of 1748, in order to prevent land fraud, stipulated that "no lands within this colony shall pass from one to another unless the same be made by writing in the records of the general court, or in that county court where the land passed shall lie."⁶ Nevertheless, the general land laws of Virginia finally became so

5. Ibid. Vol.7, pp.663-669

6. Ibid. Vol.5, p.408

universally recognized as inadequate that special steps were taken during the latter days of the American Revolution to prepare a new land code. In May, 1779, the Virginia General Assembly passed a series of land laws which applied to all the western country including Kentucky. The first of these acts declared that "at the end of the war every of the said soldiers, sailors, and marines, shall be entitled to a grant of 100 acres of any unappropriated land within this commonwealth." This act further states that "every soldier who enlisted into the corps of volunteers commanded by Colonel George Rogers Clark and continued therein till the taking the several posts in the Illinois country, shall, at the end of the war, be entitled to a grant of 200 acres of any unappropriated lands within this commonwealth."⁷

Another act, adjusting and settling the titles of claimers to unpatented lands under the present and former government, previous to the establishment of the commonwealth's land office, said that all surveys made upon any of the western waters before January 1, 1778, were null and

7. Ibid. Vol. 10, pp. 23-27

void. However, all persons who, before January 1, 1778, "settled upon any unappropriated lands on the western waters, to which no other person hath any legal claim, shall be allowed for every family so settled, 400 acres of land....no family shall be entitled to the allowance granted to settlers by this act, unless they have made a crop of corn in that country, or resided there at least one year." Each such person was also given pre-emption right to purchase a thousand additional acres.⁸ This was done to discourage non-resident speculators.

The third of the 1779 land laws was "An Act for establishing a Land Office, and ascertaining the terms and manner of granting waste and unappropriated lands."⁹ These land laws finally resulted, in 1782, in the division of the western territory of Virginia into four judicial districts, one of which was the district of Kentucky. This, however, was necessary because of the growing need of judicial facilities for Kentucky.

In 1782 a petition sent to the General Assembly

8. Ibid. Vol. 10, pp. 35-50

9. Ibid. pp. 59-65

of Virginia said that the 1779 land act creating a land office had made it possible for anyone "to purchase without cultivating, as much lands as he or she should think proper, which has been very injurious to the inhabitants, and of but small advantage to the commonwealth, it has prevented sufficient immigration." The memorialists further stated that:

"The persons granted land by the act of the May session in eighty-one,¹⁰ in Consideration of their settling there since Seventy-nine, and for other causes, have been prevented from acquiring such Lands by an Inundation of Warrants...but there being great Quantities of Waste and unentered Lands yet in the other Counties in the District of Kentuckey which your Memorialists Conceives may be held in Reserve for the aforesaid settlers, as also for the Immediate Peopling of this Country...Your memorialists wish to have their Locations secured to them who came early into this Country, and many of them through illiteracy, and unable to ascertain the true meaning of the Law with the Troubles of Indians, have not Entered their Lands so special and precise as the Law Requires - many of whose Entries have been Reentered by others, which without the kind interposition of your House will produce Tedious Letigations."¹¹

Thus it was possible for the land speculators to make their

10. Ibid. pp.436,437

11. Robertson, op.cit., pp.62-64

claims before the new law was put into effect in Kentucky.

The people of Kentucky were also confused by the conflicting land claims of Virginia and the Continental Congress. Sir William Johnson, agent for the British Government, had, in 1768, negotiated a treaty at Fort Stanwix with the Six Nations Indians for a grant of land known as "Indiana." A colonizing company had been organized to petition the king for a grant of all of what is now West Virginia and Kentucky east of the Kentucky River for a colony to be known as "Vandalia." The king approved this grant, but the Revolution put an end to the land scheme.¹² The speculators then turned their attention to Congress, which, they declared, had succeeded the Crown as owner of western lands. They held that Virginia's land claims were without legal basis and that, consequently, her land grants were questionable. These assertions appealed to the landless in Kentucky who used them as the basis for agitation against the Virginia government in Kentucky and in favor of erecting a new state under authority from Congress.¹³

12. Bodley, Our First Great West, pp. 35-54

13. Temple Bodley, Introduction to William Littell, Political Transactions in and Concerning Kentucky (Louisville, 1926) Filson Club Publication, No. 31, p. IV

The discussion of the land question in Congress was prolonged and heated. When the thirteen colonies broke away from Great Britain seven of them had overlapping claims to western lands based on royal grants. These claims had been suspended by the King's Proclamation of 1763. However, after the American Revolution the colonies revived their claims. Virginia had the largest claim, which included the present Kentucky, West Virginia, and the territory north of the Ohio and east of the Mississippi. The ownership of such vast areas by a few states aroused ill-feeling among the ones which had no such claims. Maryland, a small state with no western lands, refused to ratify the Articles of Confederation until the landowning states agreed to surrender their claims to the new government. The Continental Congress urged the states to cede their western lands to the central government and promised that the territory so ceded would be erected into new states.

In 1780 Thomas Paine published a pamphlet entitled Public Good which gained wide circulation. He argued that Virginia did not own the western lands she claimed

that the grants of land made by her were void, and that no one could be sure that his property was his own. Paine attempted to prove his argument by citing the Proclamation of 1763, claiming that it limited Virginia's western lands by the Allegheny Mountains. He favored the erection of a new state in the West. Paine's pamphlet caused some to favor separation of Kentucky from Virginia and admission into the Federal Union. George Rogers Clark stated in 1780 that certain "partizans in these Cuntries are again Soliciting me to head them as (the)ir Governor General as all those from foreign States are for a new Government but my duty obliging me to Suppress all such proceedings I consequently shall loose the Interest of that party."¹⁴ A Kentucky petition dated August 27, 1782,¹⁵ asked that Congress admit Kentucky into the Federal Union, since the charter under which Virginia claimed the western country had been dissolved and the land had reverted to the crown and that the Revolution had diverted all crown property to the central government (Congress). With the achievement of

14. George Rogers Clark Papers, 1771-1781, Edited by J.A. James (Illinois Historical Collections, 1912, Springfield), Vol. VIII, p. 453; original letter in Filson Club Library

15. William E. Connelley and E.M. Coulter, History of Kentucky (The American Historical Society, 1922, New York), Vol. I, p. 224

American independence, ownership of all vacant lands devolved upon the United States to the exclusion of state claims. This struck at all land titles in the West. One Galloway, in Fayette County, and George Pomeroy, in Jefferson, argued that all the Virginia patents were void, and all her legislation and the proceedings of the land commission were nullities. Their following was the body of the landless and the land speculating. All landowners were alarmed. Galloway and Pomeroy were indicted under an ancient colonial statute of Virginia as "Divulgers of False News."¹⁶ Thus the early movement for a revolutionary separation from Virginia made no progress, but other problems raised the question of separation with the consent of the mother state.

New York, whose claims rested on Indian treaties of doubtful legality, was the first state to surrender her claims. The Virginia Assembly on January 2, 1781, passed a resolution offering to cede to Congress the region north of the Ohio River, provided she could retain the territory south of the river. This cession was refused. It was in

16. John Mason Brown, The Political Beginnings of Kentucky (Filson Club Publication No. 6, John P. Morton & Co., Louisville, 1889), p. 54

the region to be retained by Virginia that the Indiana and Vandalia promoters were looking for fortunes, and they had gained great influence in Congress.¹⁷ In 1783 Virginia again offered to cede its lands north of the Ohio on the same terms as before. This cession was accepted and gave to the Confederation a vast public domain. In 1784 Thomas Jefferson proposed a plan (which was never put into effect) for the formation of states in the West. This plan embraced Kentucky,¹⁸ but the new ordinance passed in 1787 applied only to the territory north and west of the Ohio.

4) The fourth reason for the movement for separation from Virginia was the distance from chief state authorities and the dangers and inconveniences in reaching them. The great distance from the State Capitol made communication with the state government slow, uncertain, and expensive. Land titles, trials, accounts, and claims were

17. Bodley, Our First Great West, p.179

18. Edward Channing, A History of the United States (Macmillan Company, 1905, New York), pp.537,538

difficult to look after. Many land titles were lost because of the difficulties in registering claims. Travel between Kentucky and Virginia was difficult and dangerous due to almost impassable mountains and hostile Indians. Immigrants entering Kentucky from Virginia and the Carolinas came through the Cumberland Gap. Those entering from Maryland and Pennsylvania came down the Ohio River. For many years, the "overland" route through the great wilderness was the only practicable way of return because of the adverse current of the Ohio.¹⁹

An instance of the difficulties of the people of Kentucky due to their distance from the state capitol is graphically told in a diary of the period written by George Rogers Clark in which he gives the details of a journey to Williamsburg for the purpose of securing five hundred pounds of powder for defense in the West. Clark and John Gabriel Jones were selected, at a general meeting at Harrodsburg, June 6, 1776, as delegates to the Virginia Legislature from Kentucky. The journey was made by land over

19. Thomas Speed, The Wilderness Road (Filson Club Publication No.2, John P. Norton & Co., Louisville, 1886), pp.22,23

the Wilderness Road. It was an extremely wet season, with mud or mountain most of the way, and constant danger from Indians. On the third day, Jones' horse gave out, and, since the country was so hilly, making it impossible for more than one person to ride on the one horse, the two men alternated. "The weather being rainy, our feet being wet for three or four days and nights without ever being dry, not daring to make a fire, we both got what hunters call 'scald feet.'"²⁰ Clark wrote long afterwards that, on this journey, he suffered more torment than he had ever done before or since. Thus powder was obtained for the protection of the western settlements of Virginia, but only after the endurance of hardships and the expenditure of precious time.

The dangers of the trip from eastern to western Virginia are well presented in the journal of William Calk, a Kentucky pioneer, who kept a day-to-day record of a trip he made from his plantation in Prince William County, in eastern Virginia, to Boone's fort on the Kentucky River

20. William H. English, Conquest of the Northwest (Bowen-Merrill Company, 1896, Indianapolis), Vol. I, pp. 458-460

The phraseology of this journal is crude and punctuation is almost entirely lacking. However, it gives a more exact idea of the route followed by the first trailblazers than is found in any other contemporary document. It sketches the hardships endured by the heroes of the Wilderness Road. On March 16, 1775, Calk says it "Snowd in the evening very hard and was very coald." On the 17th "the wind blows very hard." On the 23rd "we come to a turabel mountain that tried us almost to death to git over." On the 30th Calk's horse "got Scard Ran away threw down the saddlebags and broke three of our own powder goards."²¹ Thus the great distance and almost impassable mountains between eastern and western Virginia made transportation and communication difficult and dangerous, and created a feeling which led to the movement for separate statehood.

5) The need of outlets for trade was a serious economic problem. It was difficult, if not impossible, for eastern Virginia to understand the problems of her counties west of the mountains. The trade problem loomed large as a cause of separation. However, this problem did not

21. Lewis H. Kilpatrick, "The Journal of William Calk, Kentucky Pioneer," The Mississippi Valley Historical Review, March, 1921, Vol. VII, No. 4, pp. 365-367

develop until Kentucky raised enough produce for export. By the treaty of 1763 France had given all British subjects the right forever to the free navigation of the Mississippi River through Louisiana to the sea. Just before the treaty was made France had secretly made another treaty transferring to Spain western Louisiana, including New Orleans and the remaining area east of the Mississippi. When the colonies gained their independence, Spain claimed they had lost the right to use the river through her territory.²² Spanish statesmen early foresaw that Spain's western hemisphere possessions, especially Louisiana, would be endangered by a growing trans-Allegheny population. They therefore looked with extreme jealousy and fear upon the league of the thirteen young American republics. Throughout the Revolution, Spain, even after joining France in the war against Great Britain, refused to ally herself with the United States, or acknowledge their independence. With reference to them, her diplomacy was controlled by her desire to protect her Louisiana possessions by extending her dominion over the eastern part of the Mississippi Valley, and maintaining exclusive

22. Bodley, Our First Great West, p. 22

right to the navigation of the Mississippi River.²³ After the American Revolution, with the aid of France, Spain tried to get the Continental Congress to surrender to her the region between the Alleghenies and the Mississippi as far north as the Ohio. She failed in this, but, nevertheless, asserted her ownership of the lower Mississippi and forbade Americans to use it - arresting those who attempted to do so, and confiscating their cargoes.

Since the cost of transporting their products over the mountains to Atlantic seaports was greater than the price they could sell for there, Kentucky demanded that Congress force Spain to open the Mississippi to western trade. John Jay, later Confederation Secretary for Foreign Affairs, declared Kentucky had a treaty right to freely navigate the Mississippi. In 1780 he made a trip to Spain for the purpose of securing a loan for the struggling thirteen colonies. Don Diego Gardoqui proposed that Jay offer the navigation of the Mississippi as a consideration of the loan. Said Jay: ".... the inhabitants would not readily be convinced of the justice of being obligated either to live without foreign commodities, and lose the surplus of their productions, or be obliged to

23. Ibid. pp.123,124

transport both over rugged mountains and through an immense wilderness to and from the sea, when they daily saw a fine river flowing before their doors and offering to save them all the trouble and expense, and that without injury to Spain."²⁴

However, as Gouverneur Morris wrote John Jay, many northeasterners failed to appreciate the value to the colonies of freely navigating the Mississippi.²⁵ These negotiations between Spain and the United States concerning the navigation of the Mississippi continued after the treaty of peace was signed. The West was angered almost to the point of secession when the East offered to suspend this navigation right in exchange for other commercial advantages. A sectional dispute developed. It was the commercial North against the agricultural South. The Virginia legislature by a unanimous vote instructed her representatives in Congress to oppose the Jay proposals. The Southern states lined up solidly against the North. The vote resulted in seven states out of the thirteen standing in favor of the Jay pro-

24. Francis Wharton, The Revolutionary Diplomatic Correspondence of the United States (Washington, Government Printing Office, 1889), Vol. IV, p. 135

25. Jared Sparks, The Life of Gouverneur Morris (Boston, 1832, Gray), Vol. I, pp. 225, 226

posals; but as a vote of nine was required by the Articles of Federation for the passage of important legislation, it ended in failure. But the mischief was done, the proposals had been seriously considered by Congress, and this was almost as strong a provocation to the West as if the proposals had passed. James Wilkinson later secured trading privileges with the Spanish in New Orleans at great personal profit. A Spanish conspiracy to detach the West from the United States developed out of the problem of trade outlets, but due to honest and sincere leadership in Kentucky it failed.²⁶

6) The problem of defense from the Indians was the most direct cause of the movement for separation from Virginia. United States law and custom recognized Indian tribes' right to land and government, unless their territories were purchased from them. Kentucky had been purchased from the Cherokees by Richard Henderson and the Transylvania Land Company,²⁷ but it was also claimed by the Shawnees who lived north of the Ohio River. The Shawnees

26. Connelley and Coulter, op. cit., p. 268

27. William S. Lester, The Transylvania Colony (1935)

attacked the Kentucky settlements beginning in 1775. The Cherokees attacked mostly in Tennessee. During the Revolutionary War, the British encouraged Indian attacks in the West. George Rogers Clark's capture of Vincennes checked the Indian raids somewhat, but they continued until 1782. After this date Kentucky was never invaded, but there was always the danger.

By the end of 1777 so many people had fled, or been killed or wounded in Kentucky, that there were only three little forts left and barely 102 men and boys able to bear arms.²⁸ Clark realized that defensive warfare by a few pioneers against thousands of Indians was hopeless. He knew the British from their posts at Detroit, Vincennes, and Kaskaskia, were equipping the savages and sending them to war. He believed the only way to stop their raids would be to reduce these posts. Governor Patrick Henry of Virginia agreed and gave Clark \$1200 for expenses, and authorized him to raise 350 volunteers. France becoming America's ally against Great Britain helped Clark's cause in the West. His surprise capture of Kaskaskia resulted in the French populated settlement

28. Mann Butler, A History of the Commonwealth of Kentucky (Louisville, 1834, Wilcox, Dickerman & Co.) p.95

aligning themselves against the British. The Vincennes people, learning of Clark's capture of their brethren in western Illinois and the kind treatment and freedom they had received, and learning also that France had become America's ally, also threw off their British allegiance and acknowledged themselves citizens of Virginia.

When in 1778 Hamilton, the British commander, at Detroit learned the Americans were in possession of the Illinois towns and Vincennes, he resolved to retake the conquered territory. The French militia deserted the fort at Vincennes on learning of the coming of the British. Hamilton determined not to proceed against Clark at Kaskaskia until spring because "late rains have swelled the rivers." Clark resolved to take advantage of Hamilton's disarmed situation in Vincennes. His surprizing recapture of Vincennes lowered British prestige among the Indians. Many of the Indian tribes from the Ohio to the Great Lakes made peace and sought alliance with Clark, except the Shawnees of southern Ohio. A great westward flow of people followed these developments, especially to Kentucky. Clark next determined to capture Detroit and gain control of the Great Lakes. He received a

letter from Governor Henry saying that a reinforcement of 500 men had been sent him. If he waited for these troops to arrive, the enemy at Detroit would get strengthened. A council of Clark's men decided to wait for the troops, and Detroit was not attacked.²⁹ Clark's force was disbanded in 1780. Due to military problems arising everywhere, Clark never found it possible to attack Detroit. For years, consequently the British continued to encourage Indian resistance from that fort. "From what is now known from the British archives of conditions then existing at Detroit, it can hardly be doubted that Clark's plan... would have succeeded."³⁰

The Cherokee Wars (1776-1781) were a result of the urgings of the Shawnees and other northern Indian tribes that the Cherokees resist the continued encroachments on their lands. The Cherokees, weakened by the refusal of the Creeks to help them, were defeated by the Carolinas aided by Congress. They purchased peace from Georgia, the Carolinas, and Virginia in July, 1777, by extensive land

29. Bodley, Our First Great West, pp.99-119

30. Ibid. pp.119,120

cessions in the Carolinas. In 1779, the Cherokees allied themselves with the Northern Indians to aid Hamilton in his campaign against Clark. Some of Clark's forces were sent to destroy the Cherokee towns and they carried off great quantities of supplies placed there by the British. But the Cherokees reestablished themselves farther south and continued to worry Kentucky.³¹

The greatest battle of the Revolution in Kentucky was yet to be fought. In the fall of 1782, an Indian and British invasion of Kentucky was organized. Clark prepared to attack, whereupon most of the 1100 mustered Indians turned back. However, 300 Indians plus some rangers from Detroit crossed the Ohio River August 19, 1782. They attempted to take Bryan's Station by surprize but, failing in that began preparations for a siege. Runners warned the other stations but without waiting for Colonel Logan, the Kentuckians set out in pursuit of the Indians who had **unsussessfully** tried to storm the fort, and who had left a plainly marked trail, **the** purpose of which was to lure the pursuers into a trap.³² The resulting Battle

31. R.S. Cotterill, "The Cherokee Wars", Dictionary of American History, (1940), Vol. I, p. 353

32. Reuben T. Durrett, Bryant's Station (Filson Club Publication No. 12, John P. Morton & Co., Louisville, 1897), p. 227

of the Blue Licks (1782) was a most disastrous defeat for the Whites. It turned out to be the last battle of any consequence between the Kentucky settlers and the Indians.⁵³ But for a time the Kentuckians feared that this success of the British and the Indians would lead to renewed attacks which might destroy the settlements completely. Clark determined to put Kentucky in a state of defense and to carry the war into the Indian territory. An attempt to fortify the mouth of the Licking River failed. However an expedition to the north of the Ohio was fitted out during September and October (1782). The spirit of the people was high, but it was difficult to gather together the proper provisions and equipment due to the low state of Virginia's credit. Clark provided flour for this expedition by the exchange of 3,200 acres of his own land. By the early part of November he had collected two divisions of troops at the mouth of the Licking River composed of 1,050 men, all mounted, and eager to avenge the disaster at Blue Licks. After a march of six days, Chillicothe was reached, but the Indians made their escape before the whole army could give battle. Chillicothe and

33. Bennett H. Young, History of the Battle of Blue Licks
(Louisville, 1897, John P. Morton & Co.) preface

other villages of the Shawnees were destroyed. Logan destroyed a British trading post. The peace of 1783 meant nothing to the Indians, and, with the subsequent machinations of the British in the Northwest, least of all did it mean peace with the western settlers. Many campaigns were yet to be carried on against the Indians, and, in fact, their power was not broken completely until the end of the War of 1812, when Tecumseh and his Northwest Confederation were destroyed.³⁴

The movement for separation from Virginia began in November, 1784. In this year Colonel Benjamin Logan, military commander of Lincoln County, heard that the Cherokee Indians were planning a great invasion of the southern frontier of Kentucky, while another band was making ready a campaign against the northern settlements. This information reached some of the militia officers at Danville, the capital of the District of Kentucky, shortly after the general court had adjourned and while many of the prominent people were gathered. An informal meeting of Kentucky military officers was called by Colonel Logan to discuss measures of de-

34. Connelley and Coulter, op.cit., pp. 186, 187

fense. The only contemporary account of the discussions at this gathering is in a letter to Colonel Arthur Campbell from Ebenezer Brooks.³⁵ The letter says that Colonel William Fleming was elected chairman and Christopher Greenup, clerk. Ebenezer Brooks proposed a separate government for Kentucky. Colonel Logan favored surprising the Indians by offensive action. But since there was no declared state of war, the county lieutenant possessed no statutory authority to call out the men or take measures to equip and supply them. An executive or military act required the **sanctioning** of the Governor of Virginia at Williamsburg. The meeting found it impossible to take the offensive action suggested by Logan. The counter-attack upon the Cherokees could not be made. This November conference, called for a single military purpose broadened into a consideration of the general political situation. Not a ferry could be established, a village incorporated, or a necessary magisterial office created without the ruinous delay and cost attending a journey of petitioners to the eastern limits of Virginia. Although the rumor of Cherokee attacks was proved false, the meeting de-

35. Temple Bodley, History of Kentucky (Louisville, 1928, S.J. Clarke Co.), pp. 354-356

ecided to call a convention to meet "on the fourth Monday of next month (December) which may be an introduction to important events."³⁶

In 1783 when Congress received Virginia's cession of western territory, it appointed a commission to treat with the Indians for lands in the ceded territory. It also discharged all its Continental troops in the West save those at West Point and Pittsburgh. These two acts of Congress proved disastrous for the Kentucky people. The Indians became confident of their ability to maintain their ground, and decidedly more hostile. The immigrants to Kentucky found themselves in almost constant dread of Indian raids. Thus the disordered state of affairs in Kentucky, the ever-present danger from the Indians, and the serious inconvenience of government from the distant state capital at Williamsburg plainly called for a separate government for the District.

36. Williams Littell, Political Transactions in and Concerning Kentucky (Reprint, Filson Club Publication No.31), p.12

CHAPTER II

SPECIFIC CAUSES OF THE MOVEMENT FOR SEPARATION FROM VIRGINIA -
THE FIRST THREE CONVENTIONS

CHAPTER II
SPECIFIC CAUSES OF THE MOVEMENT FOR SEPARATION FROM
VIRGINIA - THE FIRST THREE CONVENTIONS

The purpose of the previous chapter was to set forth, in a general way, the fundamental causes of the movement for separation from Virginia. The present chapter is concerned with the more immediate causes of the separation movement as set down in the first three Kentucky conventions.

The purpose of the first three conventions was to consider the immediate problems of Kentucky as a part of Virginia, and to make some practical suggestions for the solution of these problems. A military necessity set off the movement for separation from Virginia. The Kentuckians were unable to provide for their own defense. The conventions were anxious that the will of the people should be clearly represented. The question of separating from the mother state was considered too serious to allow any doubts to exist as to what the Kentuckians wished. It was considered important, therefore, that the people of Kentucky be educated as far toward the point of unanimity as possible. During the first three conventions, the Kentuckians came to regard

their political privileges as of some importance in influencing their living. So cautious were their proceedings that it was not until the third convention that the Virginia Legislature was formally informed of the desire of the Kentuckians to separate from the Old Dominion. Interest in informing the public on the developments of the conventions resulted later in the founding of the first Kentucky newspaper.

The immediate causes of the calling of these three conventions were: the rumored Indian incursions; the increase in population and the fact that Virginia was unable to rule effectively and wisely so large a number of people so far away and separated by almost impassable mountains; the fact that it was necessary to get the permission of Richmond to do the most minute things; and the fact that Virginia could not possibly completely understand the problems of a part of her state so far away and with which it was so difficult to communicate.

Governor Don Esteban Miro, governor of Louisiana, issued a call for all Southern Indians to attend a conference at Pensacola in June, 1783. Miro said to the Indians, in open treaty, "Do not be afraid of the Americans. You, our

brothers the red men, are not without friends. The Americans have no king, and are nothing of themselves. They are like a man that is lost and wandering in the woods. If it had not been for the Spanish and French, the British would have subdued them long ago.¹ Governor Miro held another congress of Southern Indians at Pensacola in June, 1784. He told the Indians that:

"The King of Spain desires the friendship of all red nations, and looks upon them as his brothers. No other nation except Spain can now supply your wants. In a short time, the Spaniards expect to be at war with the Virginians, and we look upon the Indians as our allies to aid and assist us when called upon."²

These speeches indicate that the Spanish in Louisiana were attempting to stir up the Southern Indians against the Americans in the West. It is possible that Colonel Logan received notice of these Pensacola conferences and warned the Kentuckians accordingly. However, there is no direct evidence to prove that this was the case. In any case it appeared to

1. American State Papers, Indian Affairs, Vol. I, quoted in John P. Brown, Old Frontiers (Kingsport, Tenn., 1938, Southern Publishers, Inc.), pp. 121, 122
2. N.C. Colonial Records, 17:74-87, quoted in Brown, op. cit., p. 224

Logan that the threatened danger would best be averted by Kentucky striking the first blow, and that the Cherokees should be attacked before they were ready to take the war-path. But since there was no declared state of war, the county lieutenant possessed no authority to call out the militia. These powers had lapsed with the peace with Great Britain. There was no public machinery other than the meager authority of the county justices, limited as it was by the statutes erecting the counties. An executive or military act required the sanction of the Virginia governor.³ Therefore, it was impossible to take the action suggested by Logan. Whereupon, a conference was called in November, 1784, to take into consideration the military situation of the District of Kentucky. The result was an unanimous conviction that the time had come when Kentucky should be erected into a separate and independent state, and be incorporated into the Federal Union with a local government of its own. Thus was set in motion a movement of events and persons that was to give birth to ten Danville Conventions which were to result in separate statehood for Kentucky in

3. Humphrey Marshall, History of Kentucky (Frankfort, 1812, Henry Gore), p.225

June, 1792.

The First Convention, like all succeeding ones, met at Danville, to which newly established "station" the District Court had removed its sittings. The session lasted ten days (December 27, 1784 to January 5, 1785). William Fleming, an influential citizen, presided, and Thomas Todd, later a Justice of the Supreme Court of the United States, was clerk of this convention. The majority of the delegates were natives of Virginia and the procedure was in strict conformity with parliamentary law.

The convention resolved "that the remote distance of this territory from the government of Virginia subjects the inhabitants to a multitude of civil and political inconveniences that are increasing daily" and "that it be recommended to the inhabitants of this territory to seriously consider if it would not be advantageous to ask of our national government that this territory be created into a new state, confederated with the other states." Whereupon it was recommended that the inhabitants of the district elect a convention "whose object shall be to enquire if the proposed separation be really necessary, useful, and indis-

pensable."⁴ The convention felt that this step would not offend Virginia, since her constitution, adopted in 1776, provided for the establishment and government of new territories west of the Allegheny Mountains: "The western and northern extent of Virginia shall stand as fixed by the charter of James I, 1609, and by the public treaty of peace between the courts of Great Britain and France, 1763, unless by act of legislature one or more territories shall hereafter be laid off and governments established westward of the Allegheny Mountains."⁵

The delegates to the First Convention, being but representatives of their respective militia companies, chosen without formal warrant of law were careful not to transcend their special powers, and contented themselves with a recommendation that a convention be held in the spring of 1785 to consider the propriety of an application to the legislature of Virginia for an act establishing the State of Kentucky. It was resolved"that all the counties in this territory shall have an equal right to representation in the choice of their

4. William Fleming, "Minutes of the First Convention, held at Danville, in the Territory of Kentucky, December 27, 1784" Louisville Monthly Magazine, March, 1879, pp. 124, 125

5. Hening, op. cit., Vol. IX, p. 118

members according to the number of inhabitants of the different counties." It was "expressly and particularly enjoined upon the good people of Kentucky to select for members representing their counties men of the highest character and possessing the most varied ability and extensive knowledge."⁶

Fortunately the anticipated Indian invasion did not occur. However, the attention of the Kentuckians was called to the existing inconveniences of being governed by Virginia. During the four months from the adjournment of the First Convention until the election of the Second, the people of Kentucky were given an opportunity to discuss the specific question of statehood and to determine on representatives who would carry out their views. A movement was begun that was eventually to result in statehood.

The Second Convention met in May, 1785. Samuel McDowell (father of Dr. Ephraim McDowell) was elected president, and Thomas Todd was chosen clerk. This combination of officers was followed in the eight succeeding conventions. The Second Convention was composed of twenty-eight members chosen

6. William Fleming, op.cit., p.125

in the following proportion: twelve from Lincoln County, eight from Fayette, and eight from Jefferson. There were no important election contests. Other important members were: George Muter, Chief Justice of the District, a Virginian of Scottish origin, who later supported Patrick Henry in opposition to Virginia's ratification of the Federal Constitution; Christopher Greenup, later one of Kentucky's first two members of the United States House of Representatives, also elected Governor in 1804; James Speed, a Virginian of English descent, who was one of six brothers who served in the Revolutionary War; and James Garrard, later a governor.

This Second Convention unanimously passed resolutions calling for Kentucky's separation from Virginia and admission into the Confederation. Thereupon a petition was ordered to be prepared and sent to the Virginia Assembly praying for the state's consent, and also an address to the Kentucky people. However, they "determined not to proceed in a matter of such magnitude without a repeated appeal" to the people of Kentucky, and consequently, the election of another convention to meet the following August was recommended. It was resolved "that the election of deputies for the proposed convention ought

to be on the principles of equal representation" and "that the petition to the assembly for establishing this district into a state, and the several resolves of the former and present convention together with all other matters relative to the interest of the district be referred to the future convention, that such further measures may be taken thereon as they shall judge proper."⁷

The idea of equal representation in proportion to population represents a departure from the Virginia system of representation by counties regardless of population.

The address "To the General Assembly of Virginia", which was never delivered to that august body, was a plain appeal for separate statehood.

The address "To the Inhabitants of the District of Kentucky" stated that a convention should be authorized to assemble and adopt a constitution and form of government. The Virginia acts which were in force at the time of separation

7. Littell, op.cit., p.61

would continue in force until altered by Kentucky. The District was willing to assume its just share of the Virginia state debt. Finally the petitioners desired that Kentucky "Be taken into union with the United States."⁸

The address "To the Inhabitants of the District of Kentucky" said that several laws have passed the legislature of Virginia which "are particularly oppressive to the people of this district," and that "from our local situation, we are deprived of many benefits of government." The petition proceeded further to enumerate the grievances of the Kentuckians:

"We have no power to call out the militia. We can have no executive power in the district, either to enforce the execution of laws, or to grant pardons to objects of mercy. We are ignorant of the laws that are passed until a long time after they are enacted; and in many instances not until they have expired; by means whereof penalties may be inflicted for offenses never designed, and delinquents escape the punishment due to their crimes. We are subjected to prosecute suits in the High Court of Appeals at Richmond, under every disadvantage, for the want of evidence, want of friends, and want of money. Our money must necessarily be drawn from

8. Ibid. pp. 63, 64

us for the support of civil government. Nor is it possible for the inhabitants of this district, at so remote a distance from the seat of government, ever to derive equal benefits with the citizens in the eastern parts of the state; and this inconvenience must increase as our country becomes more populous. Our commercial interests can never correspond with, or be regulated by theirs, and in case of any invasion, the state of Virginia can afford us no adequate protection, in comparison with the advantages we might (if a separate state) derive from the Federal Union."⁹

The address related that the last Virginia Assembly passed an act putting the revenue law in force within the district, compelling the Kentuckians not only to pay a very considerable part of the tax for the support of civil government in Virginia, but also to pay another tax to support the Supreme Court and other offices in the district. The opinion of the Convention was that the additional expenses of statehood - of a governor, council, treasurer, and delegates to Congress - would be less than the expense of being a part of Virginia. Therefore, no additional taxation of the people would be necessary.⁹

9. Ibid., pp. 63, 64

At this time there was no printing press¹⁰ west of the Alleghenies. Therefore, in order to inform the people of the proceedings of the Second Convention, the clerk was directed to transmit to the office of each county court copies of the petition to the legislature of Virginia and the address to the people of the District, with directions to post them on the court-house doors, together with the time of holding the elections for the August convention. The elections were to be held at the court-house on the July court day of each county. Lincoln County was to elect ten members to the convention, Fayette eight, and Jefferson and Nelson six each. It was hoped that the interest of the people of Kentucky would be further aroused and that the August Convention would be even more representative of Kentucky opinion concerning separation from Virginia.

The Third Convention met August 8, 1785, to ratify the petition "to the General Assembly of Virginia." Twenty-six delegates attended. Among the leading members were George Muter and Harry Innes, who were appointed to take the

10. The first newspaper in Kentucky, The Kentucky Gazette, was established at Lexington by John Bradford in August, 1787.

Virginia petition to Richmond, and to use their influence in securing its passage. Another prominent member was James Wilkinson, a Marylander of English origin, who came to Kentucky in 1784 with the tide of immigration following the war, formerly an officer in the Continental Army, and a man of fine address, of great talent, and of untiring industry.¹¹ He had defeated Humphrey Marshall as delegate in the convention from Fayette County by an election trick, so it was said.¹²

The Third Convention followed its predecessor in declaring "that the situation of this district, upwards of five hundred miles from the seat of the present government with the intervention of a mountainous desert of two hundred miles, passed only at particular seasons, and never without danger from hostile nations of savages, precludes every idea of a connection on republican principles and originates many grievances."¹³ In even greater detail this new petition listed these grievances, stating that the con-

11. Connelley and Coulter, op.cit., p.231

12. Temple Bodley, Introduction to Littell's Political Transactions, p.xi

13. Littell, op.cit., pp.66,67

nection with Virginia made it impossible to appeal to executive authority in cases of emergency, and thereby "subjects the district to continued hostilities and deprivations of the savages."¹⁴ Condemned persons, worthy of pardon, were subjected to unnecessary imprisonment. Adequate representation in the Virginia legislature was difficult and precarious, as no person properly qualified, could be expected to undergo long, dangerous, expensive, and fatiguing journeys across the mountains. Many laws operated and expired before they reached the district. Sheriffs and clerks were unable to comply with many of their duties. The poor were unable to avail themselves of needed court services. Other grievances resulted from laws which were contrary to the fundamental principles of free government, such as the law for the establishment and support of the district court which obliged the Kentuckians to build their own court-house, jail and other buildings, by a special poll-tax imposed upon the inhabitants of the district, while several court officers were unpaid. The law which imposed a tax of five shillings per hundred acres on lands previously sold, and directed payment at Richmond, before the patent would be

14. Ibid. p.68

issued was considered to be "subversive of justice." Another objectionable law prohibited punishment of a savage who attacked Kentucky and escaped to the north of the Ohio.

The Third Convention, in the petition to the Virginia Assembly, quoted the Virginia Bill of Rights to support the general principles on which they stood; "that all men are born equally free and independent, and have certain natural, inherent and inalienable rights; among which are the enjoying and defending of life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining happiness and safety." It resolved to apply to the Virginia Assembly for an act to separate Kentucky from Virginia "forever" on "terms honorable to both and injurious to neither."¹⁵ This resolution was agreed to by all the members present. Having resolved for separation, the convention next turned its attention toward methods for carrying it out. This resulted in the preparation of two new addresses: one for the people of Kentucky and one for the legislature of Virginia. The purpose of the address to the inhabitants of the District of Kentucky

15. Ibid. p.68

was to keep the populace informed on and interested in the convention proceedings. The address to the General Assembly of Virginia outlined the exact mode of procedure of separation.

The address "to the honorable General Assembly of Virginia" did not recite in detail the causes for separation from Virginia. Briefly stating that "our sequestered situation from the seat of government precludes every idea of a connection on republican principles,"¹⁶ the convention prayed "that an act may pass at the ensuing session of assembly, declaring and acknowledging the sovereignty and independence of this district."¹⁶ The convention asked Virginia to agree "to a dismemberment of its parts, in order to secure the happiness of the whole."¹⁶ It felt that this action would carry further the blessings of the American Revolution: "We firmly rely that the Undiminished luster of that spark which kindled the flame of liberty, and guided the United States of America to peace and independence, will direct the honorable body to whom we appeal for redress of manifest grievances, to embrace the singular occasion reserved

16. Ibid. pp.69,70

for them by divine providence, to originate a precedent which which may liberalize the policy of nations and lead to the emancipation of enslaved millions."¹⁷ George Muter and Harry Innes accordingly delivered this address.

The address to the Kentucky people painted a picture of the coming destruction from impending Indian raids unless Kentucky did something about it. It reported that already "blood has been spilt" in the district. "These are causes sufficient to rouse our attention, that we may be prepared not only to defend but punish those who unprovoked offend us. We seem patiently to await the stroke of the tomahawk. Have we forgot the surprize of Bryan's station? Let us rouse from our lethargy, let us arm, associate, and embody." The commanding officers of the counties of the district were ordered to discipline the militia, make plans for the defense of the district, and plan to carry expeditions against the hostile nations of Indians.¹⁸ The convention assumed in the address to the people certain powers that approached full government responsibility. There is also evidenced a strain of growing

17. Ibid..p.70

18. Ibid. pp.71,72

impatience. Since the action of this convention was supposed to secure final results, there was no call issued for a new convention. It was assumed that the next assembly would be a sovereign convention, called by the authority of Virginia, whose duty it would be to provide a constitution for Kentucky.

These two addresses were written in a very ambitious style, characteristic of the pen of General Wilkinson. Humphrey Marshall accuses Wilkinson of a premeditated alliance with Spain. Says Marshall:

"In reviewing this address, the mind is unavoidably arrested by one idea which it suggests - 'that the situation of the country was irreconcilable to a connection with any community beyond the Appalachian Mountains - other than the Federal Union.' The inference seems to be invited that a connection on this side of those mountains was not of so inflexible a nature."¹⁹

Says John Brown, on the other hand,

"Whatever may have been his subsequent intrigues, it is absolutely certain that at that time Wilkinson had never met a Spanish official, or been within a thousand miles

19. Humphrey Marshall, op.cit., p.250

of the authorities of Louisiana....it was not until 1787 that he made his first commercial voyage to New Orleans, or had opportunity for intrigue."20

The writer is inclined to accept the interpretation of Brown that the address meant that the Third Convention considered the military and political situation in Kentucky sufficiently serious to warrant immediate action. The writer believes that at this time James Wilkinson had not yet met a Spanish official, but that he was feeling out the problems of the West, and planning how he could profitably engage himself. The address to the Kentuckians shows Wilkinson to be a clever propagandist. The fact that he did not make reference to Kentucky's admission into the Confederation is significant. This step would have spoiled his plans. He, himself, not the Confederation government, wanted to meddle in Kentucky's problems for his own personal profit and glorification. To Wilkinson independence and sovereignty meant that Kentucky would separate from Virginia but not seek admission to the Confederation. He would "take care of" Kentucky after she were "independent and sovereign."21

20. Brown, op.cit., p.71

21. Thomas M. Green, The Spanish Conspiracy (Cincinnati, 1891, Robert Clarke & Co.), p.62

CHAPTER III

STATEHOOD DEFERRED

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There seems to have been little opposition to making Kentucky a separate state. In view of the reported discontent of Kentuckians over their inability to trade at New Orleans, however, some feared Kentucky might separate from the United States. Washington wrote: "There are many ambitious and turbulent spirits among its inhabitants who, from the present difficulties in their intercourse with the Atlantic States, have turned their eyes to New Orleans, and may become riotous and ungovernable."¹ Writing to Thomas Jefferson from Mount Vernon, September 26, 1785, he said,

"I can say nothing decisively respecting the western settlement of this State. The inhabitants of Kentucky have held several conventions, and have resolved to apply for a separation; but what may be the final issue of it, is not for me to inform you. Opinions, as far as they have come to my knowledge, are diverse. I have uniformly given it as mine, to meet them upon their own ground, draw the best line, and make the best terms we can, and part good friends."²

1. The Writings of George Washington (Boston, 1835), Edited by Jared Sparks, Vol. IX, p. 180 (Letter to Henry Lee, July 26, 1786)

2. Ibid. Vol. IX, p. 134

Others also feared Kentucky's separation from the Confederation. In a letter written to Archibald Stuart from Paris, France, January 25, 1786, Thomas Jefferson said,

"I fear from an expression in your letter that the people of Kentucke think of separating not only from Virginia (in which they are right) but also from the Confederacy. I own I should think this a most calamitous event, and such an one as every good citizen on both sides should set himself against. Our present federal limits are not too large for good government, nor will the increase of votes in Congress produce any ill effect. On the contrary it will drown the little divisions at present existing there. Our Confederacy must be viewed as the nest from which all America, North and South, is to be peopled. We should take care too, not to think it for the interests of that great continent to press too soon on the Spaniards. Those countries cannot be in better hands. My fear is that they are too feeble to hold them till our population can be sufficiently advanced to gain it from them piece by piece. The navigation of the Mississippi we must have. This is all we are as yet ready to receive." 3

James Monroe, while not entertaining a pronounced antagonism to Kentucky statehood, believed that the admis-

3/ The Writings of Thomas Jefferson (1904), Edited by Paul Leicester Ford, Vol.V, pp.74,75

sion of western states should be restricted as much as possible. He was not actuated by any hostility to the West; but, rather, he feared the diminishing importance of Virginia as western states were admitted. Speaking of the Kentucky situation, he said: "My opinion is we could so model our regulations as to accomodate our government to their convenience, and unquestionably the more we diminish the State, the less consequence we will have in the Union."⁴ This opinion was expressed in August of 1785. Shortly thereafter Monroe made a visit to Kentucky. He later changed his views, and contemplated for a time casting his lot with the Kentuckians. Instead of believing that the separation of Kentucky from Virginia would lessen the latter's importance, he now thought that Kentucky should become a state, among other reasons, because, as a state, she would add her power to Virginia's influence in the Union.⁵

James Madison had warned that "no interval whatever

4. The Writings of James Monroe (New York, 1898-1903), Edited by S.M.Hamilton, Vol.I, p.107

5. F.J.Turner, "Western State-Making in the Revolutionary Era", American Historical Review, Vol.I, pp.262,263

should be suffered between the release of our hold on that country and its taking on itself the obligations of a member of the federal body. Should it be made a separate State without this precaution, it might possibly be tempted to remain so, as well with regard to the U.S. as to Virginia."⁶

It is perhaps significant that no mention of an intention to enter the Union was made in the address to Virginia which Wilkinson wrote and which Muter and Innes carried to Richmond.

In view of all these statements it is easy to understand why Virginia was willing to grant separation to Kentucky - she was anxious to keep Kentucky in the United States.

When George Muter and Harry Innes appeared before the Virginia Legislature at its winter session of 1785-6, they were accorded a favorable hearing. A bill was quickly passed for "the erection of the District of Kentucky into an Independent State" (January 10, 1786)⁷, more often referred to as

6. The Writings of James Madison (New York, 1884, R. Worthington, 770 Broadway) Vol. I, p. 157

7. Hening, op. cit., Vol. XII, pp. 37-40

the "First Enabling Act." This act specified that in the following August, on the respective court days of the counties within the district, five representatives should be elected by the free male inhabitants of each of the seven counties (Jefferson, Nelson, Fayette, Bourbon, Lincoln, Madison, Mercer). The act was to be read each day for five days, immediately preceding the election, at the door of the courthouse, or other convenient place, and two copies were to be posted at the place of election twenty days before the election, in order that the people might be very well informed on so important a matter. The duly elected representatives should be present, a president and other proper officers were to be chosen and proper rules of proceeding adopted. The purpose of this convention would be to determine whether or not it was the will of the people of the district to be erected into an independent state on the terms and conditions of the Act.

The act specified "that the boundary between the proposed state and the State of Virginia, shall remain the same as at present separates the district from the residue of the commonwealth." The future state "shall take upon itself

a just proportion of the public debt" of Virginia. "All private rights and interests in lands within the district, derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state." Lands owned by non-resident proprietors within the proposed state should not at any time before or after statehood be taxed higher than the lands of residents. Grants of land issued by the proposed state should not interfere with any land warrants issued from the land office of Virginia at any time in the past up to and including September 1, 1788. Virginia retained the right to claim all the unlocated lands within the said district, which stood appropriated by the laws of Virginia to individuals for military or other services. These lands were to remain subject to be disposed of by the Commonwealth of Virginia until September 1, 1788. After this date all lands remaining within the limits of the district were to be subject to the disposition of Kentucky. The navigation of the Ohio River was to be free to the citizens of the United States. If a dispute were to arise between Kentucky and Virginia concerning the meaning of the act, it should be settled by six commissioners.

It was further enacted that if the convention ap-

proved of Kentucky becoming a state on these terms, it should fix a day, prior to September 1, 1787, on which the authority of Virginia would cease. Whereupon the "First Enabling Act" would "become a solemn compact" between Kentucky and Virginia. However, before June 1, 1787, the Congress of the United States must assent to the erection of Kentucky into an independent state, must declare the authority of Virginia over Kentucky ended, and must agree to admit the proposed state into the Federal Union sometime between the date to be fixed by Kentucky and September 1, 1787. The act said that to prevent the development of a period of anarchy, the Fourth Convention must call another convention to meet sometime between June 1 and September 1, 1787, to establish a fundamental constitution of government.⁸

8. Littell, op.cit., pp.72-76

CHAPTER IV

INDIAN DANGERS

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By the terms of the Treaty of Paris following the War for American Independence, England was required to surrender the northwestern posts in her possessions south of the Great Lakes. However, fur-traders in Britain prevailed upon the government to retain these posts. The treaty also stipulated that no legal impediments should prevent the collection by British merchants of the debts due them from citizens of the United States. Virginia, however, passed a law¹ which prohibited the collection of these British debts. Whereupon, Britain used this violation of treaty as an excuse for retaining the western posts. Congress, under the Articles of Confederation, was unable to control the sovereign states, and consequently the northwestern posts were held until Jay's Treaty (1794)² had been ratified, more than ten years after the peace with Great Britain. The retention by Great Britain of these posts resulted in a continuation of the war in the

1. Hening, op.cit., Vol.2, p.76

2. Peter Porcupine, A Little Plain English, Addressed to the People of the United States, on the Treaty Negotiated With His Britannic Majesty (Philadelphia, Thomas Bradford, 1795)

West while the East enjoyed the fruits of the peace.

Early in 1784 nine commissioners were elected by Congress to treat with the Indians generally for the purpose of buying land in the West. However, it was difficult to assemble representatives from a great number of tribes scattered over a vast territory. After a time Congress realized the folly of attempting to hold this general treaty. Whereupon three commissioners were directed to treat with tribes north of the Ohio for lands there. The territory desired lay in the southeastern part of Ohio, about the mouth of the Muskingum River. It was claimed by the Shawnees. Therefore earnest efforts were made to get them to attend the treaty meeting. It was held in 1785, but the Shawnees refused to attend. Other tribes attended and granted to the United States a large part of the Shawnee country, of which they did not own an acre. Notwithstanding Congress regarded the Shawnee lands as duly ceded, ordered them surveyed, and provided for their sale. To get a better Indian title to the same lands, a treaty was finally drawn up with the Shawnees in January, 1786. The result was that the Shawnees acknowledged the United States as owners of nearly the whole southeastern quarter of Ohio, promised to give up their white prisoners,

to keep the peace, and, as security for the performance of their agreements, surrendered five of their leading men as hostages.³ They had no intention of keeping their promises, however. Twenty-three days later the hostages escaped, and soon afterward the Shawnees at large were joining the most powerful combination of north-western Indians since Pontiac's time, for the destruction of the whites in the Ohio Valley. It was known as the "Wabash Confederacy." Savage war had been breeding ever since the Indians learned that Great Britain had assumed to transfer them and their lands to the United States and that Congress was claiming the right to settle and dispose of them. By 1785 so many and destructive were the scattered Indian raids into Kentucky that the August convention of that year adopted resolutions calling upon the militia officers to "concert such plans as they may deem expedient... for carrying expeditions against the hostile nations of Indians."⁴

The particular expedition contemplated was against the Indians of the Wabash Confederacy; but as they lived out-

3. Bodley, History of Kentucky, p.372

4. Littell, op.cit., p.72 (Appendix No.V)

side of Virginia and in what had become national territory north of the Ohio, and as the government of Virginia had expressly forbidden such expeditions, these resolutions seemed to defy the authority of both the state and the United States. In 1786, however, Indian hostilities compelled the Kentucky people for self-preservation to carry such an expedition across the Ohio.

Meanwhile Governor Patrick Henry was greatly concerned about Kentucky's danger. He wrote Congress complaining that it was allowing its Indian subjects to slaughter the Kentucky people without making any real effort to stop them and demanded to know: "Will Congress defend and protect our Frontiers?"⁵ Realizing that little could be expected from Congress, Governor Henry directed the field officers of the various counties in Kentucky to concert measures for their own defense, taking as their guide the Sixth Article of Confederation. This Article reserved to each state the right to make war on the Indians provided "such state be actually invaded by enemies, or shall have received certain advice of a reso-

5. William W. Henry, Patrick Henry, Vol.III, p.363

lution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted."⁶

Before Governor Henry sent the county lieutenants authority for an expedition, the militia officers had made considerable progress in organizing one composed entirely of volunteers. Clark had consented to command them; but, when, under the governor's authority, this expedition of volunteers was abandoned for another to be made up of drafted men, Clark refused to command it. Under the militia law drafted men could not be lawfully carried out of the state without their consent. If taken across the Ohio into the enemy's country, they were not compelled to obey orders. Some twenty-five hundred men were expected to gather at Clarksville, opposite the Falls, but so many had avoided the draft that only about twelve hundred appeared. Discord and sulking prevailed. Some fifteen hundred war-mad Indians, however, were known to be gathered on the Wabash, only about a hundred and fifty miles northwest of Clarksville; and for the army to disband would invite de-

6. William Littell, The Statute Law of Kentucky (Frankfort, 1810, Johnson and Pleasants), Vol. II, p. 11

struction of homes and lives in Kentucky. Therefore General Clark waived his objections and took command. He at once sent Colonel Logan back to Kentucky to gather deserters, draft all the remaining militia, and attack the Shawnees in Ohio, in order to draw off their warriors from the Wabash.⁷ Whereupon Clark proceeded to Vincennes. The march to Vincennes was scarcely underway when disorder became manifest among certain officers and troops. A delay of eight days at Vincennes increased their disaffection, for the supplies which were being brought by boat had been delayed on account of the low water in the Wabash. With assurances from Clark that a further advance of a few days would bring them to the Wabash villages, the march was resumed. At the close of the third day two hundred troops mutinied, the report having been circulated that the supply of provisions would be exhausted before the Indian towns should be reached.⁸

Whereupon Clark, arriving at Vincennes, established a garrison of one hundred and fifty men. This force was thought to be sufficient to overawe the Indians, and it was hoped Kentucky would thus be free from further invasion.

7. Bodley, op.cit., pp.371-375

8. James A. James, The Life of George Rogers Clark (1928), p.355

Clark then proceeded to pave the way for negotiations with the tribes on the Wabash by a message to their chiefs. He said that if hostilities were continued, "we shall...take possession of your Lands and make a conquest of them Forever without showing you any mercy."⁹ This move was successful, and hostilities were postponed. Thus in spite of desertions and almost total disorganization of Clark's forces, the expedition against the Wabash tribes cannot be considered a total failure, since peace was restored for a period.

FOURTH CONVENTION, 1786: Notwithstanding, elections were held in August, 1786, in the counties in accordance with the act of separation. Interest in the general movement for separation was intensified. Three conventions had been held and more people had become informed on the separation question. Perhaps there was even a feeling of exasperation at the interminable delay that seemed to be pursuing the quest for statehood. In this movement General James Wilkinson first began to develop a popular leadership.¹⁰ He strove to ripen the public mind for an immediate declaration of independence without going

9. Draper MSS, 11J108, quoted in Ibid, p.357

10. Connelley and Coulter, op.cit., p.237

through the slow formalities of law. He was the first public man to make such a statement.¹¹ Nevertheless a few of the members convened at Danville on the day appointed in the Virginia Act, but so many of the members had marched with Clark and Logan, that a number sufficient to proceed to business could not be had. However, on September 26, the members present formed themselves into a committee and prepared a memorial to the legislature of Virginia, relating the reason that the convention could not proceed to business. The memorial requested that some alterations be made in the act of separation, and, after appointing John Marshall, afterwards to become the great chief justice, to present the memorial to the Virginia legislature in Richmond, the committee dissolved itself. In order to prevent the cessation of the powers delegated to the convention, and the consequent delay of separation, some members with Thomas Todd, the clerk, attended regularly and adjourned from day to day until sometime in January, 1787. It was not until that time that a quorum was obtained and business proceeded with. It was immediately voted, in the terms of the Act of Separation passed by Virginia, "That it was expedient for, and the will of the good people of the District to

11. Collins, History of Kentucky, Vol.I.,p.262

separate from the State of Virginia, and become an independent state."¹²

The proceedings of the Fourth Convention were interrupted by a letter which the president of the convention, Samuel McDowell, received from a member of the Virginia Legislature. This letter bore news of the repeal of the law under which the convention was then acting, and the calling of another convention to be held at the same place in September, 1787. The reasons assigned for this measure were: "That the time contemplated in the repealed act was not sufficient to enable Congress to determine on proper deliberation as to the propriety of admitting the proposed state into the Union; That twelve months had been given for purposes which could not now be complied with in that time; That the people of the district were represented as being much divided respecting the propriety of a separation."¹³ These divisions can be ascribed to James Wilkinson and the results of Clark's Wabash expedition. Wilkinson's radical procedure, his efforts to ripen the public mind for an immediate declaration of independence, without going through the slow formalities of law, provoked party divis-

12. Littell, op.cit., p.16

13. Ibid. p.17

ions - some agreed with him while others differed in various degrees. "Wilkinson was active and heated in the promulgation of his views. He announced himself a candidate for the convention, and it was given out in speeches made by Wilkinson himself, that he would, on the first day of the election, at Lexington, address the people, in order to persuade them to an immediate separation, without regard to the conditions imposed by the act of the assembly. Many were alarmed...; many who were in favor of separation itself, yet deemed the evils that might be for a time continued by awaiting the time designated, and pursuing the course pointed out by the general assembly, far less to be dreaded than the consequences of this revolutionary course which Wilkinson urged."¹⁴ Humphrey Marshall answered Wilkinson in debate. The two agreed on the propriety and the necessity of a separation. The time when this should take place, and whether independence and sovereignty should be assumed as an inherent right (Wilkinson) or be regulated by the law of the parent state (Marshall), became the particular subjects of controversy.

14. T.M.Green, op.cit., p.63

In a letter to Colonel Thomas Marshall, John Marshall said that "the act is not precisely such as I wished it to be, nor is it conformable to the resolutions of the committee before whom I appeared."¹⁶ Marshall said that those who passed the law reasoned that the power delegated to the Fourth Convention by the people of Kentucky, to decide upon a separation from Virginia, was limited in point of time to a decision to be made in such time that Congress might determine on the admission of Kentucky into the Union by June 1, 1787. John Marshall said "that you are very much divided among yourselves, [attributable to the Wilkinson activities]¹⁵ and there does not appear to be in the minority a disposition to submit it with temper to the decision of the majority, and (since) the measures of the convention, in consequence of a defect in the original law, would be liable to some objection, the most safe...plan is, to pass a law, in which the defects of the former act may be corrected, and which shall...call... a new convention...the decisions of which the disappointed can make no objection."¹⁶

Up to the Fourth Convention, the proceedings of the

15. Writer's brackets

16. Littell, op.cit., (Appendix No.7), p.76

separation question had been moderate and patient. But this most recent action of the Virginia Legislature, the passage of the Second Enabling Act, was not warmly received. The Kentuckians found themselves no further advanced than they had been a year before in their efforts to separate from Virginia. Moreover, the inconveniences which had precipitated the separation movement continued to become more serious. Thus the members of the Fourth Convention returned home in an unsatisfied attitude of mind.

THE MISSISSIPPI QUESTION: During March, 1787, word was received in Kentucky that John Jay, the Confederation Secretary for Foreign Affairs, had made a proposition to Don Gardoqui, the Spanish Minister in New York, to cede the navigation of the Mississippi River to Spain for twenty-five or thirty years, in exchange for some commercial advantages to be granted to the United States, but from which the people of the western country could never derive any benefit. It was evident to the already aroused Kentuckians that this measure intended to sacrifice the interests of the West to promote the prosperity of the East. This information was issued in a communication from a correspondence committee in the western part of Penn-

sylvania to the people of Kentucky. John Marshall in his letter to Thomas Marshall also mentions this new development in the East: "The negociation which has been opened with Spain, for ceding the navigation of the Mississippi - a negociation so dishonourable and injurious to America, so destructive of the natural rights of the western world, is warmly opposed by this country, and for this purpose the most pointed instructions are given to our delegates in Congress."¹⁷

As Bodley says: "When to all other causes of complaint on the part of the Kentuckians (their dire poverty; the desperate savage war they had endured for years after peace had come to their fellow-Americans east of the Alleghanies; the indifference to their danger on the part of their state and federal governments; and the closing of their only market outlet by the Spaniards) was added this...attempt of the northern majority in Congress to barter away their navigation right, who can wonder that the Kentuckians were wrathful; or that they demanded a prompt separation from Virginia and a state government of their own to look after their own interests; or if many of them hotly dencounced Congress; or if some talked of revolt from the

17. Ibid. (Appendix VIII) p.79

Confederation, and others feared that continued injustice might bring it about."¹⁸ Secession from the Union was hardly less demanded in New England, if the commercial treaty were defeated.

This information was received at Danville during the session of the Supreme Court for the District, where a considerable number of people were attending. The matter was taken into immediate consideration, and a committee was appointed to communicate the information to the people at large. This communication took the form of a circular letter directed to the different courts in the western country. This circular letter was dated March 29, 1787, and was signed by George Muter, Harry Innes, John Brown, and Benjamin Sebastian. It requested the inhabitants of the various counties in the District to elect five members in each county, to meet at Danville, in May, 1787, to consider the move of Congress, to prepare a remonstrance against the cession, and to take every step necessary to preserve the happiness of the West.¹⁹ Several of the elected members met at Danville in May, but, after conferring several days, adjourned without adopting any measures respect-

18. Bodley's Introduction to Littell's op.cit., p.xv

19. Ibid., p.78

ing the matter. The reason was that they learned that the Virginia Legislature had passed resolutions on the subject and had instructed their delegates in Congress to oppose the cession. If the other southern states took the same stand as Virginia, no such treaty could be ratified, because nine states were required for such action.

The resolutions passed by the Virginia House of Delegates, November, 1787, voiced the sentiments of the South and West concerning the navigation of the Mississippi. These resolutions read thus:

"Resolved unanimously, That the free use and navigation of the western streams and rivers of this commonwealth, and of the waters leading into the sea, do of right appertain to the citizens thereof, and ought to be considered as guaranteed to them by the laws of God and nature, as well as compact.

"Resolved unanimously, That every attempt in Congress, or elsewhere, to part away such right, ought to be considered as subversive of justice, good faith, and the great foundations of moral rectitude, and particularly of the principles which gave birth to the late revolution, as well as strongly repugnant to all confidence in the federal government, and destructive to its peace, safety, happiness, and duration.

"Resolved, That a committee ought to

be appointed, to prepare instructions to the delegates representing this state in Congress, to the foregoing import; and to move that honorable body to pass an act, acknowledging the right of this state, and that it transcends their power to cede or suspend them, and desiring the said delegates to lay before the general assembly, such transactions as here taken place respecting the cession of the western navigation."²⁰

The people of Kentucky were reassured by this action, but events of 1787 showed anew the necessity of separation on the part of Virginia, and they awaited the August, 1787, elections with the expectation that they would finally enter the Confederation as an independent state.

Clark's desperate struggle to hold Vincennes and the Illinois brought rebuke from Virginia. The evil days for George Rogers Clark began when Edmund Randolph replaced Patrick Henry as Governor of Virginia (December, 1786).

"It appeared from letters received from Thomas Marshall, by the Executive of Virginia, dated at Danville, Kentucky,

20. The Kentucky Gazette (Reproduced by the photostat process), Vol.I, Saturday, January 26, 1788

that General George Rogers Clark had undertaken, without authority, to raise recruits, nominate officers, and impress provisions in the District of Kentucky, for the defense of the Post at Vincennes, and had for this purpose, also seized the property of Spanish subjects, contrary to the laws of nations. Clark was at once notified that his conduct was not only disavowed by the Government of Virginia, but that their displeasure was incurred thereby, and that the Attorney General of Kentucky had been instructed to take steps to bring to punishment the offenders."²¹

Thus Governor Randolph wrote to Harry Innes, Attorney-General for the District of Kentucky: "We have reason to believe that the late hostilities, committed on the Indians, have roused their resentment. It is the duty of government to prevent and punish, if possible, all unjust violences. I beg leave, therefore, to urge you to institute the proper legal inquiries for vindicating the infractions of peace."²² Innes answered Governor Randolph's letter, saying: "___ how am I to proceed on this business from so vague a direction, I know not. In my official capacity I cannot do it, in a private capacity it

21. Calendar of Virginia State Papers, Vol.IV, p.322 note (To a letter from Harry Innes to Edmund Randolph, dated July 21, 1787, the editor of the above work, William P. Palmer, M.D., affixed this note)

22. Littell, op.cit., (Appendix No.X, May 1, 1787), p.80

would render me odious."²⁴ Innes told how the Indians were constantly menacing the safety of the Kentuckians, and that various expeditions were fitted out to head off these attacks. Innes intimated that he could not convict a people who were trying to protect themselves. He concluded his letter thus: "The Indians have been very troublesome on our frontiers, and still continue to molest us, from which circumstance I am decidedly of opinion that this western country will in a few years act for themselves and erect an independent government; for under the present system we cannot exert our strength, neither does Congress seem disposed to protect us, for we are informed that those very troops which Congress directed the several states to raise for the defense of the western country, are disbanded."²³ I have just dropped this hint to your excellency for matter of reflection. If some step is not taken for our protection a little time will prove the truth of the opinion."²⁴ Thus no action was taken.

23. Repeated efforts were made by General Henry Lee of Virginia to obtain a continental force of 700, or even 800 men, to protect the western frontier, but the states feared the growth of power in the central government that might result from such an action, and consequently Lee's efforts failed.

24. Littell, op.cit., (Appendix No. X), pp.81,82

Humphrey Marshall uses this letter to convict Innes of plotting with Wilkinson to bring about Kentucky's secession from the Union. However when this letter was written, Wilkinson was in New Orleans. As Temple Bodley says, Governor Randolph was the last man to whom Innes would have been likely to write a letter disclosing treasonable designs.

"The warning given the governor of the danger of revolt seems persuasive evidence that Innes hoped thereby to bestir Virginia and Congress to prevent such a revolt... Virginia having twice expressed her willingness, and the need being plain - Kentucky was morally, if not technically, justified in setting up an independent state government without waiting for the assent of a hostile northern majority in Congress. They argued that Kentucky would be more likely to be promptly admitted into the Union if it had a separate government than if it applied for admission while part of Virginia; that with a vote in Congress like any other state, it could secure protection of its rights." 25

THE KENTUCKY GAZETTE: On August 11, 1787, there appeared in Lexington a force which was destined to play an important

25. Temple Bodley in Introduction to Littell's Political Transactions, pp.xvii-xxi

part in the future discussions of the District. This was the printing press with its product, The Kentucke Gazette,²⁶ edited by John and Fielding Bradford. Efforts of the second convention to have a newspaper started were thus rewarded two years later, in time for it to play a part in shaping affairs for the fifth convention. The people took advantage of this opportunity to voice their views on current questions, and naturally the question of separation came in for much discussion. In the second issue appeared a long poem, a paraphrase of Hamlet's Soliloquy, beginning, "To sever or not to sever, that is the question---Whether 'tis nobler, in the mind to suffer the stings and arrows of keen disappointment, The gibes of politicians and of wits; or to retire from all the silly contest which keep ambitious mortals in a ferment, etc."²⁷ This was followed in the next issue by observations on both sides of the question. "A Farmer" said that: "As the most of us are farmers and unskilled in policy (altho' we are anxious to do for the best) we are able to give but a random guess at the propriety of a separation---we can see difficulties on both sides, and would wish to avoid the worst." He said he

26. With the exception of the Pittsburg Gazette, it was the first newspaper published west of the Allegheny Mountains

27. The Kentucky Gazette, August 25, 1787

would like to propose queries to the gentlemen on both sides of the question. He began by asking those who believed separation to be necessary:

"By what provable means can a new state support Government, defend itself from the savages, and pay its quota of the federal and state debt without a free trade of the river Mississippi?

"What provable prospects can a new state have of obtaining a trade down the Mississippi; and what profits can we derive from such a trade?

"Will not a separation lessen our importance in the opinion of the savages, and cause them to fall on us with greater vigour?

"What are the great evils we suffer from want of a new government; and how could a new state remedy those evils?"

To the opposition he put the following questions:

"How shall we defend ourselves against the savages under the present laws; and how shall we get paid for doing it?

"How can we pay the taxes now laid on land, tithes, horses, cattle, alienations, process, etc.?"

"How can we take any steps towards promoting and regulating a profitable trade down and up the rivers? And will the Assembly regulate such trade to our advantage?

"Is it not our true interest to become a manufacturing people now in our infancy; and what power have we to encourage Arts and Manufactures, and encourage luxury, without a new government?

"How can we encourage learning and science

in our present situation; and will not the next generation suffer greatly for want of it?

"Would not a government within the district have a tendency to correct the practices of the disorderly and licentious; and restrain the abuses of power practiced of late by some of those in authority?" 28

This farmer obviously favored separation yet was willing to hear both sides discussed. He raised some very pertinent questions which were given consideration in subsequent conventions.

Ten days before the fifth convention met, an article appeared in the Kentucke Gazette strongly urging opposition to the erection of a new state. The argument came from "An Inhabitant of Kentucky" that

"in case of a separation we should have a greater burgen of taxes than if we remained united. Our proportion of the national debt being fixed on us, in addition to the charges of a separate government, would make our tax greater than if we were only called on to pay the same debt, and a proportion of the charges for the Government of Virginia. Let us not be deceived with what is said as to the small number of officers that would be wanting and the small salaries they would require. Ambition would always carve out of-

28. The Kentucke Gazette, August 18, 1787

fices, and avarice would require large salaries?"²⁹

In this Fourth Kentucky Convention the separation question, for the first time, became national and even international in the scope of its importance. The problem of the west is brought to the attention of both the Virginia and the United States governments. The Fourth Convention met to consider the terms Virginia offered for separation. This was the first convention which was unable to muster a quorum and meet on the day specified. When it finally met its proceedings were sharply interrupted with the news that it was not a legal convention. The subsequent developments following the failure of the Fourth Convention are important in understanding the problems surrounding Kentucky's efforts to become a state.

THE FIFTH CONVENTION: Elections were held in August, 1787, in preparation for the fifth convention. The attitude of the voters and members was apparently affected by the recurrence of the Indian danger and the failure of either Congress or

29. The Kentucky Gazette, September 8, 1787

Virginia to afford protection.

As a consequence of increasing Indian hostilities in the north, the county lieutenants of Lincoln, Fayette and Jefferson met on May 17, 1787, and sent a memorial to Virginia. On June 5, 1787, the Virginia Legislature reported to Kentucky that the letters and papers received from the county lieutenants would be forwarded to Congress. Colonel Benjamin Logan was directed to immediately convene the commanding officers of the counties in the district and work out some system for defense; but, continued the communication, "cautiously avoiding offensive operations, and taking care that the troops which it may be necessary to embody, for carrying into execution any plan of defense that may be adopted, do on no occasion go without the limits of the state, except in the immediate pursuit of an invading enemy."³⁰

As early as 1780 the Kentuckians had learned that the only way to prevent an invasion from the Indians, was to

30. Littell, op.cit., pp.82, 83 (Appendix No.XI)

plan an offensive move against them; otherwise the Kentuckians would be at the mercy of the invading enemy. This "sit-and-wait" policy had not proved successful in the past.

On July 21, 1787, Virginia received an answer from Congress concerning the defense of the district. The answer was made in the form of two resolutions. The first resolution declared that the troops of the U.S. would be placed in such positions "as shall afford the most effective protection to the frontier inhabitants of Pennsylvania and Virginia from the incursions of the Indians."³¹ All the troops except those at the falls of the Ohio were stationed at such a distance from the settled parts of Kentucky as to be of no service to the people. The second resolution requested the executive of Virginia to order the militia of the district of Kentucky to hold themselves in readiness to unite with the federal troops in such operations as the officer commanding them may deem necessary for the protection of the frontiers, but the governor of Virginia added that Kentucky would have to

31. Ibid. (Appendix No.XII) p.83

have Virginia's permission to fulfil this act.³² This clause attached by Virginia spoiled any possible benefit Kentucky might have received from the Congressional resolutions.

The Fifth Convention met on September 17, 1787, and proceeded to business. The sessions of this convention were not marked by excitement or debate. It was unaimously resolved that Kentucky be erected into a separate and independent state on the terms specified in the two acts of the Virginia Assembly. The legislature of Virginia was requested to use its influence to have an inhabitant of the district chosen as one of her delegates in the Congress. This request was granted and John Brown (a member of the Virginia Legislature as senator from the counties of Kentucky) became a member of the Virginia delegation in the Continental Congress, specifically representing the District of Kentucky. (He was later the first senator from the state of Kentucky serving three consecutive terms.)

The Fifth Convention addressed itself to the United

32. Ibid. (Appendix No.XII) p.84

States Congress. It said that the desire to separate from Virginia "does not proceed from any impatience under the necessary restraints of her government, which we think wisely organized and well administered; but our remote situation from the seat of that government, and the many interjacent natural impediments, prevent our enjoying equal advantages with our eastern brethren, and preclude the idea of a connection on republican principles."³³ The communication asked that Congress ratify the compact between Virginia and Kentucky, and arrange to receive Kentucky into the union as a state. Congress was requested to act quickly in this matter because the Virginia Act granting Kentucky's separate statehood made the grant conditional on the assent being given before July 4, 1788. Also the states were then voting on the adoption of the new Federal Constitution, and if it were adopted by nine of them, the Continental Congress would cease to exist.

This convention requested that a convention be elect-

33. Ibid. (Appendix N.XIII) p.86

ed to draw up a constitution. It recommended that in the following April, on the respective court days of the counties, five representatives from each of the seven counties, should be elected by the free male inhabitants to continue in convention until December 31, 1788. In order that full opportunity might be given for exercising the right of suffrage, each of the officers in charge of the elections were instructed to keep the polls open for five days, and were to frequently read the resolutions from the court-house door. John Bradford was asked to publish the resolutions in the Kentucky Gazette six weeks successively, immediately preceding the time of holding the elections.

CONGRESS DELAYS AND POSTPONES: The Kentuckians felt that by having a delegate in Congress, their appeals might be more carefully considered. Therefore John Brown was elected. In New York, where Congress was in session, Brown lived with James Madison. Years later Madison said of Brown: "I owe it to Mr. Brown, with whom I was in intimate friendship when we were associates in public life, to observe that I always regarded him, whilst steadily attentive to the interests of his constituents, as duly impressed with the importance of the

Union, and anxious for its prosperity."³⁴ Indeed, Madison depended mainly on Brown to secure Kentucky votes in the Virginia Convention for adoption of the Federal Constitution; the adoption hung upon Virginia's action, and that in turn, upon the votes of the Kentucky delegates.³⁵

The special mission of John Brown, as the only Congressman from Kentucky was to get the earliest possible assent of Congress to Kentucky's prompt admission into the Confederation. When Congress convened, Brown immediately appeared to present the fifth convention's petition for admission into the Union. But the old Confederation government in all its parts had by this time fallen so completely into disrepute, that for months no quorum could be obtained. Brown presented his resolution on February 29, 1788,³⁶ but not until May 30, did Congress take any definite action. On March 4, 1788, Congress was resolved into a committee of the

34. Letters and Other Writings of James Madison, op.cit.,
 Vol.IV, p.365 (Madison to Mann Butler, October 11, 1834)

35. Bodley's Introduction to Littell, op.cit.,p.xxii

36. Journals of the Continental Congress, Vol.XXXIV, p.72

whole. Mr. Otis, who was elected to the chair, reported that the committee had considered the Kentucky question, but had not come to a resolution, and desired to have more time. This request was granted. On May 30, 1788, Congress again assembled. "According to an order of the day Congress was resolved into a committee of the whole on the petition in behalf of the inhabitants of the district of Kentucky, and a motion made thereon."³⁷ After some time the chairman (Mr. Otis again) reported that the committee considered the subject referred to them, but did not have time to act on it, and they desired leave to sit again. It was resolved that Congress on the following Monday resolve itself into a committee of the whole to proceed on this business. On June 2, 1788, Mr. Otis reported that the committee had agreed "that in their opinion it is expedient that the district of Kentucky be erected into an independent state."³⁸ They recommended that the question be referred to a committee consisting of a member from each state, to prepare and report an act for acceding to the independence of the district of Kentucky, and for receiving it into the Union as a member there-

37. Ibid. p.189

38. Ibid. p.194

of, in a mode conformable to the Articles of Confederation. The next day the report was accepted, and the committee was elected, composed of eleven members.³⁹ On July 2, 1788, John Brown made a motion for the purpose of ratifying and confirming the compact between Virginia and the district. Consideration of this motion became the order of the following day.⁴⁰ It read:

"Whereas it appears to Congress that the state of Virginia by two acts of the legislature thereof, (October 1785 and October 1786) hath entered into a solemn compact with...the district of Kentucky permitting the same to be erected into a separate and independent state to be admitted into Union with the United States as a federal member thereof upon certain terms and conditions in the said acts stipulated and it further appearing to Congress that the said district in convention assembled did in conformity to the said acts by certain resolutions entered into September 22, 1787, determine that it was expedient that the said district should be erected into an independent state on the terms and conditions specified in said acts and did present to Congress an address praying to be admitted into union with the United States as a federal member and Whereas it appears to Congress to be just and reasonable that the application of the said district of Ken-

39. Ibid. p.198

40. Ibid. p.287

tucky should be complied with:

"Resolved therefore that the United States in Congress Assembled do ratify and confirm the compact entered into between the state of Virginia and the district of Kentucky...and that the said district be admitted into union with the United States as an independent federal member on January 1, 1789, and be stiled the Commonwealth of Kentucky.⁴¹

"Resolved that Congress will release the state of Virginia from all federal obligations arising within the said district after January 1, 1789, and from such part of her quota of the continental debt as shall be apportioned to the said district whenever the same shall have been ascertained agreeably to the stipulations of the compact aforesaid.

"Resolved that the said district shall be admitted to a representation in Congress after January 1, 1789, provided from an accurate census it shall appear that the said district contains 60,000 inhabitants."⁴²

The Northwest Ordinance of 1787 said that states

41. (That is the body of people constituting a state or a politically organized community. Massachusetts, Pennsylvania, Virginia, and Kentucky are officially called commonwealths. The words state and commonwealth are used interchangeably in referring to Kentucky. The State of Virginia, in referring to Kentucky used the term "Commonwealth." The Federal government used the term "State.")

42. Ibid. pp. 287, 288

were to be admitted "whenever any of the said States shall have sixty thousand free inhabitants therein," and they were to come into the sisterhood "on an equal footing with the original States in all respects whatever."⁴³ The population requirement for statehood followed in the northwest may have influenced Brown. There is no evidence, however, that it did.

A motion was then made by Mr. Nathan Dane, Massachusetts, to postpone Mr. Brown's motion. Temple Bodley attributes the delay in the Continental Congress to the hesitation on the part of the northern states to admit another southern state into the Union which would destroy their majority vote in Congress.⁴⁴ However, the reasons given by Congress were:

"that nine states had adopted the Constitution of the United States___; and whereas a new confederacy is formed among the ratifying states,___ and that Virginia has become a member___. And whereas an Act of Congress in the present state of the government...severing a part of the said state from the other parts...may be attended

43. Ordinance of 1787, Article 5

44. Bodley's Introduction to Littell, op.cit., p.xxiv

with dangerous consequences, ___ Resolved that...the (Virginia) legislature and... the district...alter their Acts and resolutions...as to render them conformable to the provisions made in the said Constitution to the end that no impediment may be in the way of the speedy accomplishment of this important business."⁴⁵

This motion was passed July 3, 1788.

Thus Kentucky was again disappointed, even after having twice gone through all the formalities required by Virginia. She had no hope of better treatment from the new government. Westerners generally were suspicious of the effects of the Constitution.

45. Journals of the Continental Congress, Vol. XXXIV, pp. 289, 290

CHAPTER V

ADMISSION AT LAST

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THE SPANISH CONSPIRACY: Throughout his mission to the United States as ambassador from Spain, Diego de Cardoqui's main concern at New York was to establish personal relations with the members of Congress, and to set North and South, and East and West against each other. Cardoqui flattered himself, and assured his government that he had in a large measure formed and maintained a pronounced Spanish opinion in the Atlantic States and among the New England delegates adverse to the interests of the West,¹ and favorable to a stoppage of the river navigation.² The element of secrecy was absent from all these conferences. The delegates communicated and discussed them freely among themselves, and published them by their correspondence.³ To secure Spain's possessions from invasion, Cardoqui's aim was to prevent the growth of American

1. Cardoqui to Floridablanca, August 6, 1786, in Brown, op.cit., p.136
2. Cardoqui to Floridablanca, Secret Dispatch No.6, November 21, 1785, in Ibid. p.136
3. Ibid. p.138

power, by fostering sectional quarrels which might break up the Confederation. The chief means he used was the treaty proposed to John Jay. The idea of commerce with Spain's dominions was attractive to the North; the proposed closing of the Mississippi was unattractive to the South and West. The northeastern states feared that the admission of Kentucky would destroy their majority in Congress.⁴ John Brown was approached by Gardoqui with an offer to open the Mississippi to Kentucky - but he said that this privilege could never be extended to them while part of the United States, by reason of commercial treaties existing between that court and other powers of Europe.⁵

Brown had favored Kentucky organizing a state government without Virginia's consent,⁶ since it was so difficult to get Virginia, Kentucky, and Congress to agree upon identical terms. Then, too, with Kentucky independent of Virginia

4. Bodley's Introduction to Littell, op.cit., p.xxiv; Bodley, op.cit., p.433

5. Gardoqui to Floridablanca, July 25, 1788, in T.M.Green, op.cit., pp.160,161; Brown, op.cit., pp.146-148

6. Connelley and Coulter, op.cit., p.258; Green, op.cit., p.155

Congress would hardly have dared refuse its admission; for that may have resulted in an alliance with Great Britain or Spain. When Congress kept putting off Brown's motion for Kentucky's admission, and finally refused it, he attributed this defeat to the jealousy of the northern states.⁷ He said the eastern states would not assent to the admission of Kentucky unless Vermont or the province of Maine were brought forward at the same time.⁸

Brown communicated Gardoqui's overture confidentially; for public knowledge of it in Kentucky, coming after the news of Congress' refusal of Kentucky's admission, might have resulted in a demand for secession and acceptance of Spain's offer to open the Mississippi.⁹ The suggestion in letters to George Muter and Samuel McDowell that this information be treated as confidential indicated that Brown wished to avoid arousing a secession spirit in Kentucky. After having discussed Gardoqui's project with James Madison, Brown deemed it inexpedient

7. Bodley's Introduction to Littell, op.cit., p.xxxv

8. John Brown to George Muter, July 10, 1788, quoted in Ibid, pp. xxxi-xxxiii

9. Ibid, p.xxxvi

to make any further communication on the subject. Afterwards, in reply to an inquiry from a Kentucky historian, Madison wrote "that a knowledge of it in Kentucky, might, in the excitement there, be mischievously employed."¹⁰

During the ferment in the West, following Jay's proposed treaty, James Wilkinson saw an opportunity for personal profit. He planned to make a river trip down the Mississippi to New Orleans with a boat load of Kentucky products, deceive Estevan Miro, the Spanish Governor of Louisiana, and attempt to convert him to his plan. Wilkinson planned to offer the Spanish King his influence in Kentucky to detach it from the United States, and make it a friendly buffer state to protect Louisiana from the Northwest.¹¹ In pursuance of this plan, Wilkinson fitted out a fleet of boats. Before leaving, he instructed a confidential agent to warn Governor Miro that the arrest of so eminent an American as himself would result in war and Spain's loss of Louisiana. The result was that Wil-

10. James Madison to Mann Butler, October 11, 1834, in Ibid. ppxxxv

11. Bodley, History of Kentucky, p.378

kinson was not arrested; instead Miro gave him an attentive¹² hearing.

Wilkinson explained to Miro the restlessness of the Kentuckians under the neglect of Congress and Virginia, their need of the navigation of the Mississippi, and their intention to win it by invading Louisiana and driving out the Spaniards. He said that an army was being mobilized for this purpose at Vincennes. Wilkinson said his influence in Kentucky was great enough that with Miro's cooperation he could prevent this invasion, and to do so he was willing to expatriate himself and take an oath of allegiance to Spain. To satisfy Miro of his ability to accomplish what he proposed, Wilkinson showed that he had become the dominant military leader of the West supplanting Clark. Before leaving for New Orleans, he concocted apparent proofs to discredit his rival. This he did by making up forged papers and taking them and others apparently vouching for him to Miro.¹³ Miro immediately fell in with Wilkinson's scheme. Wilkinson said that in order to tempt Kentucky to secede from the Union and make a friendly treaty with Spain,

12. Bodley's Introduction to Littell's, op.cit., pp.xxxix-xi

13. Bodley, op.cit., p.379

he must be given an exclusive privilege of trading with New Orleans in Kentucky products. The probable motives of Wilkinson have been thus interpreted: "...to dangle before Miro the promise of Kentucky's secession from the United States and dependence on Spain, while he dangled before the Kentuckians the promise of an open market for their products at New Orleans; but all the time he would put off performance of both promises while his purse fattened on the profits he could make by buying the products of the Kentuckians on his own terms and selling them in New Orleans for several hundred percent advance."¹⁴

The government of Spain was especially pleased with Wilkinson's scheme; they foresaw that, if only Kentuckians used the lower Mississippi, the lands of Congress north of the Ohio, being denied any trade outlet, would become stagnant; emigration from the East would avoid those lands and go to Spain's ally, Kentucky; the Confederation, thus rendered unable to sell the public lands, upon which it relied for

14. Bodley's in Littell, op.cit., pp.xl,xli

financial restoration, would fall.¹⁵

Wilkinson wanted political disorder in the West - not efficient federal or state government. If he were to profit by his trade privilege, the controversy in Congress over the navigation must continue; the Kentuckians must be kept wrought up about its proposed surrender; to Miro they must be made to seem almost ready for secession from the Union.

"The whole plot was worked out with extraordinary skill...Its success was predicated upon the ignorance of Miro and others who were to be deceived; for Wilkinson knew that communication was then so slow, uncertain, and unreliable that occurrences in one part of the western country were often unknown in another part for weeks or months afterward, and east of the Alleghenies, or in New Orleans, were rarely known at all."¹⁶

With these schemes in mind, Wilkinson became a member of the Sixth Convention of July 28, 1788.

THE POLITICAL CLUB: During the time the Kentuckians were

15. Ibid. p.XLI

16. Bodley, op.cit.,p.379

preparing for their Sixth Convention, an organization called the Danville Political Club, which was organized in December, 1786, was playing an important part in formulating ideas into constitutional provisions. This club was so closely identified in its membership with the Fifth and successive conventions, that it can almost be called a secret caucus of those assemblies. This organization became a training school for the future statesmen of Kentucky. Its membership was very exclusive. This club discussed all problems concerning the welfare of Kentucky and the United States, constitutional and otherwise. The Danville Political Club and the Kentucky Gazette thus kept the Kentuckians informed on the moves of their conventions.

"The seriousness and business-like gravity of the club, and the practical character of the whole movement are seen in the first questions taken up for consideration. They were the all-absorbing topics of the day. At no time in the subsequent history of Kentucky have the people been more profoundly stirred than they were by the questions of 1786. There was urgent need for calm and dispassionate interchange of thought among the recognized leaders of the people. The benefit of the club in affording opportunity for consultation among these leaders can not be over-estimated. The conclusions reached...disclose intelligent thinking and sound judgement. The first question discussed by the club was...'Whether the immediate navi-

gation of the Mississippi River will contribute to the interests of this District or not?'. . . the club decided this question in the negative. . . The minutes do not disclose any reasons or arguments."¹⁷

In this year, 1788, the Kentucky frontiers were infested by the Indians; and while "its inoffensive citizens were bleeding under the tomahawk and scalping knife, murdered on the road to the interior counties, and butchered on their farms and in their houses, and could obtain no protection from their government; Congress, on the first day of September, resolved to give protection to the Cherokee Indians,¹⁸ the notorious robbers and murderers of the people of Kentucky."¹⁹ This measure made the Kentuckians more determined than ever to obtain a separation and thus the privilege of protecting themselves.

THE SIXTH CONVENTION: During the time that the business of the Fifth Convention was before Congress, the inhabitants of Kentucky felt sure that their appeals to Congress, by their

17. Thomas Speed, The Political Club, Danville, Kentucky, 1786-1790 (1894), pp.107, 108

18. Littell, op.cit., p.95

19. Ibid. p.29

representative, John Brown, would meet with success. They had been notified that the committee of the whole had decided in favor of separation, and that a committee had been appointed to draw up an act for admission into the Union. The Kentuckians regarded these steps as positive proof of the success of their efforts, and viewed all that was to come as mere formality. Elections were held in April, 1788, for a convention to form a constitution. The elected members assembled at the courthouse in Danville.²⁰ A quorum was not present until Tuesday, July 29. Mr. Thomas Todd was made clerk, and the Honorable Samuel McDowell was unanimously elected president. A Committee of Privileges and Elections was appointed to examine the Certificates of Elections from the different counties. Papers addressed to Samuel McDowell were read and it was discovered that Congress had postponed the admission of Kentucky. On Wednesday, July 30, a resolution was introduced declaring that the powers of this convention, so far as depends on the Acts of the Legislature of Virginia, were annulled by the resolutions of Congress. Another proposed resolution said, however, that it was the

20. (The Filson Club has photostatic reproductions of Thomas Todd's minutes of the Sixth, Seventh, Eighth, Ninth, and Tenth Conventions. These minutes do not include the debates. This volume is entitled: Journals of Conventions at Danville, Ky., 1788-1792 (Unpublished at present)

duty of the Convention, as representatives of the people, to frame a constitution of government for the district. Both resolutions were submitted to a committee of the whole convention. The result was a victory for the conservatives. The committee reported that since the present convention had no legal power, and since it was essential that the people of the district were interested in their own welfare, it recommended that each county "elect five representatives on the time of holding their courts in the month of October next to meet at Danville on the first Monday in November following to continue in office until the first day of January, 1790. And that they delegate to their said representatives full powers to take such measures for obtaining admission of the District as a separate and independent member of the United States of America, and the navigation of the River Mississippi as may appear most conducive to these important purposes; and also to form a Constitution of Government for the District."²¹ The elections were to last five days. The sheriffs were to hold the elections and make returns to the clerk of the Supreme Court. The sheriff was also to deliver to each elected representative a Certificate of his election. Magistrates were to act in the absence of the sheriffs. All free male inhabitants could

21. Journals of Conventions at Danville, op.cit., p.4

vote. A majority of elected members was to constitute a quorum. If the members would be unable to arrive on the first Monday in November, any three or more members could adjourn from day to day for five days. If a convention should not be formed at the end of the fifth day "they may then adjourn to any day they may think proper not exceeding one month."²² The resolutions of this convention were to be read on each day of the elections. The president of the convention was to request the printer of the Kentucky Gazette to publish the proceedings of Congress and the convention, and also the recommendations for electing another convention. The president was ordered to wait on John Brown when he returned to the district, thanking him for his faithful attention to the district's interest in Congress.

The sixth convention thus adjourned on July 31, 1788.

THE SEVENTH CONVENTION: The Sixth Convention had given the Seventh very wide and practically absolute powers, making it the supreme ruler of Kentucky for the next fourteen months. Various shades of opinion resulted from the resolution of

22. Ibid. p.5

the July, 1788, Convention delegating the Seventh "full powers to take such measures for obtaining admission of the district as a separate and independent member of the...

(Union)..., and the navigation of the ...Mississippi, as may appear most conducive to those important purposes."²³ There-

upon a warm controversy arose over both the legal right and the expediency of immediate separation from Virginia. One

faction contended that the only lawful way to procure separation was to apply again to Virginia and after procuring her

consent, apply to the Federal Congress when it should come into existence the next year.²⁴ The separatists contended

that if Kentucky remained part of Virginia it would take years for the District, the State, and the Federal Congress to agree

on identical terms and time of separation and admission. If Kentucky were an independent state, however, contended this

second school of thought, Congress would fear to refuse it prompt admission, lest it part with the United States and

form some connection with Great Britain or Spain. In that

case the public lands north of the Ohio, upon which the Federal Government relied for credit, would be rendered unsalable,

and probably the inhabitants there would follow Kentucky out

23. Ibid. p.4

24. Bodley, op.cit., p.438

of the Union.²⁵ The first group represented conservative opinion. It was opposed to illegal action. The later Federalist Party in Kentucky had its inception in this group. It included Ebenezer Brooks, Joseph Crockett, George Muter, and Thomas Marshall.²⁶ The second group represented an impatience with the delay in securing statehood. It stood for immediate action and included Wilkinson, Sebastian, Innes, Brown, and Wallace.²⁶

Ebenezer Brooks wrote a very length editorial in the September 13, 1788, issue of the Kentucky Gazette in which he presented the arguments against separation. He declared that Virginia had always "cheerfully granted" Kentucky's wishes. He said: "Revolutions in government are always dangerous, often fatal...In Republics, this danger is heightened by the degree of licenciousness with which that form of government is mixed."²⁷ He especially stressed the point that statehood could not possibly give the people better protection against the Indians, for the country north of the Ohio river, from whence the Ind-

25. Ibid. pp.438,439

26. Connelley and Coulter, op.cit., p.261

27. Kentucky Gazette, September 13, 1788

ian raids came, belonged to the United States Government, and, therefore, could not be invaded by Kentucky troops without permission. Moreover, a new state government would increase taxes.

George Muter submitted a long letter to the October 18, 1788 issue of the Kentucky Gazette which set the Kentuckians to thinking. He said that to form "a constitution of Government, and organize the same, before the consent of the Legislature of Virginia for that purpose is first obtained, will be contrary to the letter of the Act of Assembly entitled an act for punishing certain offences, and vesting the governor with certain powers."²⁸ This act said "that every person or persons who shall erect or establish any government separate from, or independent of the government of Virginia within the limits thereof, unless by act of the legislature for that purpose first obtained, or shall execute any office under such usurped government shall be guilty of high treason." Muter continued by saying that "the third section of the fourth article of the Federal Constitution (which has been

28. Kentucky Gazette, October 18, 1788

adopted in Virginia) declares that 'No new state shall be formed or erected within the jurisdiction of any other state; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.'²⁸ Muter showed in this argument the impossibility of the Seventh Convention legally taking any action other than by the method heretofore pursued, of seeking an enabling act from Virginia and permission from Congress to enter the Union.²⁸ The greatest effect of Muter's letter was to put the people on their guard, and crystallize their thoughts and ideas on the methods that should be pursued.

The November, 1788, Convention unanimously resolved to apply again to the Virginia Assembly for its consent to Kentucky's separation at a future date,²⁹ and adopted an address to the Assembly praying for this and begging the "friendly interposition of the parent state with the Congress of the United States for a speedy admission of the District into the Federal Union,"³⁰ and also "to urge that honorable body in the most express terms to take effectual measures for procuring to the

29. Journals of Conventions at Danville, p.11

30. Ibid. p.20

Inhabitants of this District the free Navigation of the River Mississippi, without which the situation of a large part of the community will be wretched and miserable, and may be the source of future evils."³⁰ As the Federal Congress would not be organized until the next year, no earlier application could be made to it for Kentucky's admission. However, it was resolved "that a decent and respectful address be prepared, requesting Congress to take immediate and effective measures for procuring the navigation of the river."

John Brown, who had returned to Kentucky and was a member of this convention, offered the following resolution, which is significant in view of the charge afterward made against him by Humphrey Marshall, that he was then conspiring with Gardoqui to detach Kentucky from the Union:

"Resolved, That it is the wish and interest of the good people of this District to separate from the State of Virginia and that the same be erected into an independent member of the Federal Union."³¹

The adoption of this resolution would have ruined Wilkinson's plan to make Miro think the convention favored Kentucky's secession from the Union, and action on it was post-

31. Ibid. p.12

poned.³² Two days later Wilkinson said that since "it is the...desire of this Convention, to pursue such measures as may promote the Interests...of their Constituents; but the...opinions which...divide the...people they represent, render it doubtful whether they can adopt any plan which will embrace the opinions of all."³³ He recommended, therefore, that " a committee be appointed to draft an address to the...people of the District...representing to them their true situation and solemnly calling on them to furnish the Convention at their next session with special instructions."³³

On the last day of the Convention, Wilkinson read his Memorial to the Spanish King. "Of course...he read only such parts as suited his own purpose;"³⁴ but that not even his enemies in the convention questioned his motive in sending his memorial to Madrid was shown when President McDowell resumed the chair and the convention adopted the following resolution:

32. Bodley, op.cit., pp.443,444

33. Journals of Conventions at Danville, pp.13,14

34. Bodley, op.cit., p.444

"Resolved That this Convention highly approve the Address presented by Gen'l. James Wilkinson to the Governor and Intenant of Louisiana, and that the President be requested to present him the thanks of the Convention for the regard which he therein manifested for the Interest of the Western Country."³⁵

Wilkinson had managed to make the minutes of the Convention a convincing record to prove to Miro his influence in Kentucky. His scheme was complete when the Convention "ordered, that the printer of the Kentucky Gazette be requested to publish the proceedings of this Convention."³⁶ The Gazette published the minutes and Wilkinson promptly sent a copy to Miro.³⁷

After the November Convention Wilkinson plunged deeply into the business of buying Kentucky products and selling them in New Orleans. However, his means were small and his debts many. He had come to Kentucky practically bankrupt. His coveted trade with New Orleans proved far less profitable than he expected and soon involved him deeper in debt. Besides in-

35. Journals of Conventions at Danville, p.20

36. Ibid. p.21

37. Bodley, op,cit., p.445

numerable difficulties and delays in hiring men, building boats, and buying produce on credit, his boats going down the river were exposed to many mishaps and their cargoes to injury and pillage; while having the proceeds of his sales in New Orleans brought back to Kentucky involved much expense, and required great care and secrecy to prevent loss. Within ten months after the November, 1788, Convention, Wilkinson was asking Miro for \$18,500, as the first installment of annual remittances for bribing many prominent Kentuckians to become his co-conspirators and pensioners of Spain. The Madrid government refused to comply with this suggestion.³⁸ From this time forth, although receiving yearly a pension from Spain and still professing to further its design to detach Kentucky from the Union, his political activities nearly ceased, and he again entered upon a military career.

THE EIGHTH CONVENTION: The recommendation by the November Convention that another one be called for August, 1789, was not followed, because shortly after the adjournment, news reached Kentucky that the Virginia Assembly on December 29, 1788, had passed a third act of separation,³⁹ and fixed another date for

38. Ibid. pp.445, 446

39. Hening, op.cit., Vol.XII, pp.788-791

another convention. This third act materially altered the second one, and greatly to the prejudice of the Kentucky people. It hampered Kentucky's control of its ungranted lands by the following clause:

"Saving and reserving to the officers and soldiers of Virginia...their rights to lands under the several donations of this commonwealth; who shall not be restrained or limited as to time in making their respective locations, or compleating their surveys by any thing in this act contained, nor by any act of the proposed state, without the future consent of the legislature of Virginia."⁴⁰

The Kentuckians protested that this clause would deprive their new state of its most valuable asset, by rendering it forever powerless to sell to advantage any of its many millions of acres of ungranted lands; since, without Virginia's consent to the sale, any purchaser and his heirs could be forever liable to lose them to claimants under her military donations.⁴¹ This new act also provided for another (eighth) convention to be held July 20, 1789, to decide again on the expediency of Kentucky's separation from Virginia.

The Eighth Convention passed the following resolut-

40. Littell, op.cit., p.108

41. Journals of Conventions at Danville, p.31

ions:

"Whereas it is the opinion of this convention, that the terms now offered by Virginia for the separation of the district of Kentucky from said State, are materially altered from those formerly offered and agreed to on both sides; and that the said alteration of the terms is injurious to, and inadmissable by the people of this district:

"Resolved, therefore, That a memorial be presented to the ensuing general assembly of the state of Virginia, requiring such alterations in the terms at present proposed to this district for a separation, as will make them equal to those formerly offered by Virginia, and agreed to on the part of the said district of Kentucky."42

The memorial was accordingly drawn up and forwarded to the Assembly. The leaders in Virginia lost no time in considering it, and, as soon as the forms of legislation could be gone through with, the final act of separation was passed on December 18, 1789.⁴³ This fourth act repealed the obnoxious clauses in the preceding one, but made still another condition hardly less unjust. This required the Kentuckians alone to bear the expense of the two expeditions of Clark and Logan in 1786. This act also authorized the people again to elect representatives to meet at Danville on July 26, ensuing, to deter-

42. Journals of Conventions at Danville, p.31

43. Hening, op.cit., Vol.XIII, pp.17-21

mine, a fifth time, the inclination of the people to separate from Virginia. If the convention approved the provisions of the "Fourth Enabling Act," they were to fix a day posterior to November 1, 1791, when the authority of Virginia would cease. However, before this date, the United States government had to assent to the erection of Kentucky into a state, had to release Virginia from all her federal obligations arising from Kentucky being a part of Virginia, and had to agree that Kentucky would immediately, after the day to be fixed after November 1, 1791, be admitted into the Federal Union. According to the act, the convention would have authority to take measures for the election and meeting of a convention with power to establish a fundamental constitution of government. This constitutional convention was to meet sometime between November 1, 1790, and the day fixed for the ceasing of the authority of Virginia.

Elections were held in conformity with the preceding act, the representatives chosen met at Danville, July 26, 1790, and on the third day decided on the expediency and propriety of a separation on the terms now offered by Virginia:

"Resolved, That it is expedient for, and

the will of the good people of the District of Kentucky that the same be erected into an independent state on the terms and conditions specified in an act of the Virginia Assembly passed the 18th day of December (1789) entitled an act concerning the erection of the District of Kentucky into an independent state."⁴⁴

This resolution passed by the narrow majority of twenty four to eighteen votes. By comparing the name of the voters⁴⁴ with

44. Journals of Conventions at Danville, p.95

The names of those who voted in the affirmative:

Bullitt	Jefferson
Thruston	Lincoln
Croughans	Jefferson
Caldwell	Nelson
Grundy	Nelson
Logan	Lincoln
Montgomery	Lincoln
Shelby	Lincoln
Davis	
Bowman	
Todd	Fayette
Mr. Pres.	Mercer
J.Marshall	Woodford
Rich. Young	Woodford
Grant	Bourbon
H.Marshall	Fayette
Garrard	Bourbon
Edwards	Bourbon
Shipp	Bourbon
G.Lewis	Nelson
Pickett	
Waring	Mason
Vancouver	
Davison	

negative:

Slaughter	
Thomas	
Hynes	Nelson
J.Lewis	Nelson
Sheperd	
Taylor	Jefferson
Lillord	
Froman	Mercer
Green	Lincoln
Bryans	
Irvine	Madison
Reynolds	
Talbolt	
Reid	
Hancock	
Allen	Fayette
Route	
Walker	Mercer

(Counties of some are unknown)

the counties they represented the writer is led to the conclusion that it is difficult to speak of this or that section being for or against separation from Virginia on the terms of the Fourth Enabling Act. In any one county or section the voting representatives are divided. Even in Fayette County, the heart of the Bluegrass, the vote was only nine to five in favor of separation. The opposition seems to have come mostly from the outlying counties, especially Nelson and Mercer. Sentiment for continuing as a part of Virginia had increased after the storm of the preceding year had blown over. A reaction had recently set in against separation on any terms.⁴⁵ The people had stopped talking about separation, to a great extent. Nathaniel Richardson in a letter to John Breckinridge, February 11, 1790, said, "Our Indian affairs seem to engage the attention of the common-people & a Separation that of the leading Men."⁴⁶ John Brown explains the opposition thus: "The voice of the minority was the last protest of unalterable attachment to their native Virginia."⁴⁷

A communication to the legislature of Virginia was

45. Connelley and Coulter, op.cit., p.278

46. Breckinridge MSS, (1790), quoted in IBid. p.278, note

47. Brown, op.cit., p.221

framed, informing the mother state that her legislation for separation had been accepted, and expressing the thanks of the people of Kentucky for all the care and interest shown by Virginia. The communication expressed the hope that that same friendly spirit would continue after separation.⁴⁸

A communication "To the President and the Honorable the Congress of the United States of America,"⁴⁹ was also adopted, asking a sanction of the compact entered into between the peoples and an admission of Kentucky into the Union, June 1, 1792. The memorial said that the Kentuckians were "warmly devoted to the American Union; that they have with great hazard and difficulty effected their present settlements; and that the population and strength of Kentucky are sufficient for statehood."⁵⁰ The memorial begged Congress to act before November 1, 1791. After providing for the election of delegates to a convention which they called to meet in April, 1792, and to which was committed the preparation of a state constitution for Kentucky, the Ninth Convention dissolved.

48. Journals of Kentucky Conventions, p.45

49. Ibid. p.50

50. Ibid. pp.51,52

CONGRESS APPROVES: On December 9, 1790, the Kentucky memorial
of July, 1790, was communicated to the United States Congress
for the first time.⁵¹ The admission of Kentucky was authorized
on February 4. Five days later the appeal of Vermont for state-
hood was received. New York, which had claimed this territory
since before the Revolution, now expressed its willingness to
recognition of the state under a constitution already in effect.⁵²
Vermont was admitted March 4, 1791,⁵³ less than a month after
applying to Congress.⁵⁴ Kentucky was admitted June 1, 1792,
almost a year and a half after making application. In consider-
ing the question of representation in Congress, the Congress ap-
proved an act, on February 25, 1791,⁵⁵ which said "that until
the representation of Congress shall be apportioned according
to an actual enumeration of the inhabitants of the United
States, the States of Kentucky and Vermont shall each be en-
titled to choose two representatives.⁵⁵ The writer inter-
prets these proceedings thus: the Northeastern States had en-

51. The Debates and Proceedings in the Congress of the United States, Washington (1834), Vol. II, pp. 2372, 2373

52. Ibid. p. 1798

53. Ibid. p. 2374

54. Ibid. pp. 2372, 2373

55. Ibid. p. 2375

joyed a majority in the Continental Congress and they were determined that the admission of another southern state should not destroy their position. Therefore Northeastern politicians brought Vermont forward. Evidence to support this interpretation may be found in a letter to George Muter from John Brown, dated July 10, 1788. Brown wrote thus:

"I expect you have heard the determination of Congress relative to the separation of Kentucky. It was not in my power to obtain a decision earlier than the 3rd instant. Great part of the winter and spring, there was not a representation of the states sufficient to proceed to this business, and after it was referred to a grand committee, they could not be prevailed upon to report, a majority of them being opposed to the measure. The eastern states would not, nor do I think they ever will assent to the admission of the district into the union, as an independent state, unless Vermont, or the province of Maine, is brought forward at the same time. The change which has taken place in the general government is made the ostensible objection to the measure; but the jealousy of the growing importance of the western country, and an unwillingness to add a vote to the southern interest, are the real causes of opposition; and I am inclined to believe that they will exist to a certain degree, even under the new government to which the application is referred by Congress."⁵⁶

56. Bodley's Introduction to Littell's op.cit., p.xxxi

The Northeasterners were unwilling to admit Kentucky until it could be arranged for a new northeastern state to come into the Union.

Against this interpretation, it may be argued that the admission of Kentucky was approved before that of Vermont. The Vermont government had been in actual existence since 1776. Therefore it could come in immediately after Congress acted. Kentucky could not come in, according to acts of Congress and of Virginia, until 1792, because of the necessity of having a constitution. We would need to know the inside story before saying which interpretation is correct.

CHAPTER VI

THE TENTH (CONSTITUTIONAL) CONVENTION, APRIL 2, 1792

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PRELIMINARY DISCUSSION: Sufficient time was given in the call of the Tenth, or Constitutional, Convention, for a thorough discussion of the principles of government by the people of Kentucky. The Kentuckians, therefore, had an opportunity to formulate their ideas on what they wanted to include in the First Kentucky Constitution. All available agencies and means of communication were used - informal discussion, formal debate in the Danville Political Club, and indirect conversation through the Kentucky Gazette.

The following questions arose concerning the organization of the state government and the government's attitude toward existing institutions: (1) Shall there be a one-house or a two-house legislature?, (2) How shall representation in the state legislature be apportioned?, (3) What shall Kentucky's attitude be toward the institution of slavery?, (4) Who may vote?

(1) Legislature. Perhaps no constitutional problem

came up for more thorough and prolonged discussion than the question as to whether or not the legislative power of Kentucky should be vested in one or two houses.¹ In several issues the Kentucky Gazette spoke against a two-branch legislature.² It was argued that a bicameral legislature would be unworkable, as one house would most certainly block the other in whatever legislation might be attempted; that one group of people out in the state would side with one house for a law and another group would side with the other house against the law, and that as a result the strife of the legislative chamber would be transferred broadcast over the state to the destruction of the public peace and tranquility.³ In the election of delegates, Bourbon County instructed her representatives to vote for a legislative body of one chamber, saying "that the legislative power of this state ought to be vested in a single house of representatives."⁴ The Danville Political Club favored the bicameral arrangement as shown in the minutes for July 7, 1787.⁵ This organization had made a

1. Connelley and Coulter, op.cit., p.281

2. The Kentucky Gazette (in the Filson Club, Louisville, Ky., Reproduced by the photostat process), October 15 and October 22, 1791

3. Ibid. October 22, 1791

4. Ibid. October 15, 1791

5. Speed, op.cit., p.139

Careful critical study of the Federal Constitution and was in favor of the organization of the legislative branch as set forth in that document.

(2) Representation. The question of the manner in which representation should be apportioned also came up for much discussion. The Virginia method of fixing representation by counties, regardless of population, did not appeal to the Kentuckians. They felt that this method did not represent the principles of equality and democracy. The Danville Political Club discussed this question and came to the conclusion that representation by numbers of inhabitants, not counties, ought to be preferred.⁶

(3) Slavery. The question of slavery also presented a problem. The religious elements of the population were adverse to a perpetuation of this institution. Emancipation parties were formed in many of the churches. The imprudence of the abolition preachers, in declaring against slavery, in the presence of the negroes, caused insubordination among the

6. Ibid. p.114

slaves, and thereby disturbed the peace of society.⁷

Seven of the forty-five men of the Convention were ministers, of whom three (Baily, Smith, and Garrard) were Baptists; three (Crawford, Swope, and Rice) were Presbyterians; one (Kavanaugh) was a Methodist. Although David Rice resigned his seat in the Convention before the final vote was taken, Harry Innes, elected to take his place, supported the emancipationists.⁸

(4) Suffrage. The Danville Political Club resolved that some qualifications other than merely freedom ought to be required for the suffrage. It does not appear whether property, or education, or both were deemed essential by the club.⁹

The man who contributed most to the First Kentucky

7. J. H. Spencer, A History of Kentucky Baptists (1769-1885) (J. R. Baumes, 1885, Cincinnati), Vol. I, p. 185

8. Asa Earl Martin, The Anti-Slavery Movement in Kentucky Prior to 1850 (Filson Club Publication No. 29) Standard Printing Co., Louisville, Ky., 1918, p. 17

9. Speed, Op. cit., p. 125. At this time in all the thirteen states property ownership or tax payment was required, excepting that in Pennsylvania and Rhode Island the eldest sons of freeholders could vote without being taxpayers. In Vermont, all law-abiding male citizens had the voting privilege.

Constitution was George Nicholas, who made his first appearance in Kentucky politics as a member of the Tenth Convention. He was thoroughly familiar with constitutions and constitutional practices. He had sustained debate against Patrick Henry and George Mason in the Virginia Convention that ratified the Constitution, and shared with James Madison the credit of carrying the vote to victory. The First Kentucky Constitution may be largely attributed to the work of Nicholas. Brown says: "He was the principal debater on the floor, and the principal draftsman in committee."¹⁰ Speed, however, refuses to give Nicholas all the credit, saying, "The constitution was the work of a convention, not of one man."¹¹ George Nicholas' ablest opponent in the Tenth Convention was the Reverend David Rice, his colleague from Mercer County, an eminent Presbyterian clergyman, who opposed slavery. Other leading members were Harry Innes, Benjamin Logan, Alexander S. Bullitt, Matthew Walton, Caleb Wallace, Robert Breckinridge, and Isaac Shelby. All, in fact, had been chosen for their ability and thorough knowledge of the needs of the Kentucky people. The greater portion of them had been in Kentucky from eight to twelve

10. Brown, op.cit., p.128

11. Speed, op.cit., p.162

years. Logan had been a tower of strength to the settlements from their beginning in 1775, a period of seventeen years. Nicholas came out in 1788, four years before the convention.

The Political Club appointed a committee to draft a form of government adapted to the needs of Kentucky as early as February 17, 1787. Probably this was revised ~~in~~ 1792. The convention was engaged upon its work only eighteen days, from April 2 to April 19, 1792. This would indicate that some persons had hitherto been engaged upon that important work and had laid the foundations. "The study of the Federal Constitution in the Political Club bore its natural fruits in the construction of the one of 1792 for Kentucky."¹²

II. THE SLAVERY QUESTION: Slavery was perhaps the most controversial question in the Constitutional Convention. This institution was introduced into Kentucky with the earliest settlers. While the majority of the pioneers were very poor and consequently non-slaveholders, there was, during the years following the Revolution, an influx of prosperous settlers,

12. Ibid. p.163

particularly from Virginia, who brought a number of slaves with them and engaged in the culture of tobacco on a considerable scale. It was not, however, until the Indian danger had been removed and frontier conditions in Kentucky had given place to commercial activity and to planting for profit as well as for subsistence that the number of Negroes materially increased. Their numerical strength cannot be definitely determined previous to 1790 when, according to the first federal census, they constituted 16.9 percent of the total population of Kentucky.

The leading slaveholding section in 1790 was the central part of the state, commonly known as the Blue Grass region. During the next three decades slaveholding extended eastward and south eastward to the mountainous district and quite generally over the western and southern parts of the state.

While the introduction of slavery into Kentucky was inevitable in view of the circumstances of settlement, conditions within the state were not particularly favorable to its

13. Martin, op.cit., p.7

development. Adjacent to the free states of the Old Northwest, Kentucky found herself in competition with the more economic system of free labor. The exhausting nature of tobacco culture was destined to render the planters keenly conscious of the handicaps under which their agriculture labored in comparison with the agriculture of the states beyond the Ohio.¹⁴ Conditions that had operated to bring about emancipation in Pennsylvania and the states to the northward soon exerted a similar influence in Kentucky and the result was an anti-slavery agitation which took the form of a movement for some plan of gradual and compensated emancipation.¹⁴ Immediate emancipationists and Garrisonian abolitionists were never numerous in Kentucky and the few existing there were almost entirely among the non-slaveholding class.

During the period of the Revolution and the early years of the Republic, sentiment in the country as a whole was unfriendly to the institution of slavery. It was regarded as inconsistent with Christian civilization and out of accord with the general principles of liberty for which the Colonists had contended. The feeling that it was injurious to so-

14. Ibid. p.10

ciety was in no sense dependent upon sectional lines. Its existence was lamented by such men as Washington, Jefferson, Monroe, Madison, Franklin, Hamilton, Jay, and Adams. There was a general regret that the institution had ever been planted in America and it was hoped that in time it would be abandoned.

While Kentucky remained an integral part of Virginia, there was little opportunity for a general expression of the sentiment of the people as to slavery; but upon one occasion their opinion was indirectly voiced in a debate before the Danville Political Club. At one of the meetings in 1788, the new federal constitution, which had recently been submitted to the states for ratification, was taken under consideration. Sentiment was unanimous against the clause relating to the importation of slaves because it deprived Congress of the power to prohibit the foreign slave trade before 1808. It was the opinion of the members that Congress ought to be given power to cut off the odious traffic at any time it should choose to do so.¹⁵ It is important to notice that the Political Club favored immediate abolition of the slave trade, not slavery itself. The exclusion of the slaves increased the value of

15. Speed, op.cit., p.151

those born here. A valuable part of the estate of nearly every member of the Club doubtless consisted of slaves.¹⁶ Their attitude toward slavery is not surprizing.

It was David Rice, the father of Presbyterianism in the West, who took the first conspicuous step toward securing the abolition of slavery in Kentucky.¹⁷ (Coming to Kentucky from Virginia in 1783, he became the first teacher in Transylvania Seminary.) On the eve of the meeting of the Convention of 1792 to frame a constitution for Kentucky as a state in the Union, he published, under the signature of "Philanthropes" a pamphlet entitled "Slavery, Inconsistent with Justice and God Policy."¹⁸ In this he spoke freely of the comparative unproductiveness of slave property. He undertook to answer objections that were commonly raised to emancipation, especially those drawn from the Scriptures, which were being used to justify slavery. In conclusion, he proposed that the coming convention should "resolve unconditionally to put an end to slavery

16. Bodley, History of Kentucky, op.cit., p.431

17. R.H.Bishop, Outline of the Church in Kentucky Containing Memoirs of David Rice, pp.114,385,417,95

18. Ibid. p.385 ff.give this pamphlet in full

in Kentucky."¹⁹ Not content with mere argument, he succeeded in being elected a delegate to the coming convention.

The Baptist attitude toward slavery is best expressed in a resolution of the Baptist General Committee in August, 1789:

"Resolved, That slavery is a violent deprivation of the rights of nature, and inconsistent with a Republican Government, and therefore recommend it to our brethern, to make use of every legal measure to extirpate this horrid evil from the land, and pray almighty God that our honorable legislature may have it in their power to proclaim the great jubilee, consistent with the principles of good policy."²⁰

Provisions regarding slavery were put before the convention for adoption. These deserve notice as showing the earliest expression of the Kentucky pioneer democracy on slavery. These were designed to make slavery as mild and as humane as possible. They nevertheless made it virtually perpetual because of the difficulty of amending the fundamental law, or of granting compensation.

19. Ibid. p.

20. Spencer, op.cit., p.183

The most remarkable clause of the slavery article conceded to the Legislature the power to emancipate slaves upon compensating the owners. The power of the Legislature to pass an emancipation law was only limited by the following provision:

"The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves emancipated."²¹

The emancipation sentiment displayed by this provision strongly contrasts with that prevailing a half century later, when southern slave owners were incensed by numerous abolitionists' demands for liberation of the slaves without compensation to the owners. The just principle here stated was the same repeatedly advocated by Abraham Lincoln, who justified his emancipation proclamation of 1863 only as a military necessity. Temple Bodley comments as follows:

"Unless justified by such an overwhelming public necessity, to deprive an owner of any of his lawful property, without fair compensation, is repugnant to every

21. Journals, op.cit., pp.81,82

sentiment of right or common honesty. If the public welfare requires that a citizen be deprived of his property, then the public should bear the loss, and not the individual owner."²²

Concerning the importation of slaves, the article provides that the Legislature:

"Shall have no power to prevent immigrants to this state, from bringing with them such persons as are deemed slaves by the laws of any one of the United States...; they shall have full power to prevent slaves from being brought into this state as merchandise; they shall have full power to prevent any slave being brought into this state from a foreign country."²²

Obviously the main reasons for the preceding provisions were to protect slave-owners within Kentucky and to exclude slave trade. Nearly every state prohibited slave imports - for social and economic reasons. Such laws served as a sort of protective tariff.

Humane sentiments were responsible for a provision that the legislature could:

22. Bodley, History of Kentucky, pp.490,491

"...pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity, to provide for their necessary clothes and provisions, to abstain from all injuries to them extending to life and limb and in case of their neglect or refusal to comply with the direction of such laws to have such slave or slaves sold [not to be freed]²³ for the benefit of their owner or owners."²²

Kentucky's position on slavery was, thus, advanced and enlightened.

The constitutional provision fixing slavery in the state was ably supported by Colonel George Nicholas. After a thorough discussion which lasted for a number of days, the question was put to a vote. A motion was made by Mr. Taylor of Mercer County and seconded by Mr. Smith of Bourbon County to expunge the Ninth Article of the Constitution respecting slavery, which was negatived and the yea's and nay's on the question were ordered to be entered on the Journals. This was the only case where the ayes and noes were recorded in the Journal. The result of the vote to expunge Article Nine was: yeas, sixteen; nays, twenty-six. The majority vote of Jefferson, Lincoln, Madison, Nelson, and Woodford Counties was

23. Writers' brackets and underlining

against expunging Article Nine; that of Bourbon, Fayette, Mason, and Mercer Counties was in favor of expunging Article Nine. Woodford, Fayette, Jefferson, and Mercer had the highest percentage of slaves to whites, while Mason, Nelson, Bourbon, Madison, and Lincoln Counties had the lowest percentage of slaves to whites. The following table represents the free and slave population in 1790 of each of the nine counties into which Kentucky was divided at that time and the votes cast in the constitutional convention two years later for and against slavery:

1790	Whites	Slaves	Slave Percent	Votes in Convention	
				Pro-Slave	Anti-Slave
Bourbon.....	6,929.....	908.....	13.....	2.....	3
Fayette....	14,626....	3,752....	25.....	2.....	3
Jefferson...3,857.....	903.....	24.....	2.....	0	
Lincoln.....5,446....	1,094....	18.....	3.....	2	
Madison.....5,035....	739.....	15.....	4.....	1	
Mason.....2,500....	229.....	9.....	2.....	3	
Mercer.....5,745....	1,339....	23.....	2.....	3	
Nelson.....10,032....	1,248....	12.....	4.....	1	
Woodford....6,963....	2,220....	32.....	5.....	0	
Total	61,333	12,430	20	26	16 ²⁵

24. Martin, op.cit., p.16

25. It is difficult to interpret the meaning of this vote. It is unlikely that the members of the convention from Fayette and other slave counties had seen so much of the evils and economic waste (as compared with the free system in the Old Northwest) of slavery, having such a large percentage of slaves to whites, that they were ready to take a stand against the continuance of the institution. Perhaps the delegates from Fayette County opposed the provision for emancipation as set forth in Article Nine. However, there is no evidence to support this interpretation.

Three of the delegates, Wallace of Woodford County, Walton of Nelson County, and Sebastian of Jefferson County, who were generally regarded, prior to the meeting of the convention, as emancipationists, supported the constitution as proposed by the committee. This change of attitude has been attributed by John Mason Brown and others to the influence of Nicholas,²⁶ although no evidence has been produced to support the contention.

III. FORM OF GOVERNMENT: The constitution-makers in the Tenth Convention provided that the powers of government be divided into three distinct departments - legislative, executive, and judicial. The legislative power was vested in a General Assembly consisting of a Senate and a House of Representatives. The Representatives were to be chosen annually by the qualified electors of each county on the first Tuesday in May. All free male citizens, twenty-one years and older, having resided in the state two years or the county in which they expected to vote one year, could vote. All elections were to be by ballot.²⁷ The elections

26. Brown, op.cit., p.230

27. Journals of Conventions, op.cit., p.91

could be continued for three days if necessary. Would-be representatives were to be at least twenty-four years of age, citizens of the state two years, and inhabitants of their respective counties for six months. Representatives were to be apportioned among the several counties according to the number of free males over twenty-one years of age. The number of representatives could never be less than forty nor more than one hundred. Counties hereafter erected could not be entitled to separate representation until a sufficient number of free male inhabitants above twenty-one years of age should reside within such counties.
28
ties.

However, democracy in Kentucky did not go unbridled. The governor, the senators, and the judges were removed from direct election by the people. The governor was to be elected by an electoral college. The electors had to be three-year residents of the state and not under twenty-seven years of age. The electors were enjoined to:

"elect without favour, affection, partiality or prejudice such person for governor, and such persons for senators as they in their judgement and conscience believe best qualified for the respective offices."²⁹

28. Journals of Conventions, op cit., pp.81,82

29. Ibid. pp.83,84

All persons qualified to vote for Representatives were to elect electors of the Senate and the governor. The number of Senators was fixed at eleven. For every additional four Representatives, one new Senator was to be added.³⁰ Thus the Senators were indirectly apportioned according to population. Until the number of counties should equal the number of Senators, at least one should be elected from each county; thereafter they were to be elected at large. Senators served a term of four years, one-fourth retiring at the end of each year. The method of choosing state Senators and the Governor had been proposed by the Danville Political Club four years before the convention adopted it.³¹ This was probably due to the fact that the Danville Political Club had studied the United States Constitution very carefully.

Each house was to choose its speaker and other officers.³² The Constitution did not provide for the election of a lieutenant-governor; but, instead, the speaker of the Senate

30. Ibid. p.83

31. Speed, op.cit., pp.147,148,163

32. Later when the first Legislature met on June 6, 1792, Alexander Scott Bullitt was chosen speaker for the Senate, and Robert Breckinridge, speaker for the House of Representatives.

succeeded to the governorship in case the governor were rendered incapable. The Senate was also to choose a speaker pro tempore to succeed the Speaker if and when he supplied in the absence of the governor. A majority of each house was to constitute a quorum. Senators and Representatives could not hold any other civil offices in the state. ³³ Nor could ministers of religion, members of Congress, or other persons holding offices of profit under the United States or Kentucky, except attorneys at law, justices of the peace, militia officers, and coroners, be members of either house. ³⁴ All bills for the raising of revenue were to originate in the House of Representatives.

The executive power was vested in a Governor, who was to be elected by an electoral college. He was to serve four years from the first day of June following his election. He was to be at least thirty years of age and a citizen of the state for two years. The governor was to be commander-in-chief of the army and navy and of the militia of the common-

33. Speed, op.cit., p.86

34. Ibid. p.87

wealth. He had the power to appoint, with the advice and consent of the Senate, all officers whose appointments were not otherwise provided for.³⁵ He had the power to grant reprieves and pardons. He was to inform the General Assembly, from time to time, of the state of the commonwealth, and to recommend to their consideration such measures as he might judge expedient. The constitution said that: "He shall take care that the laws be faithfully executed."³⁶ A two-thirds vote of both houses³⁷ was necessary to pass a bill over the governor's veto.

In impeachment proceedings, the House of Representatives was empowered to bring the charges; the Senate acted as the jury; and a two-thirds vote by the Senate was necessary to convict.³⁸

The judicial power was to be vested in one supreme court, to be called the Court of Appeals, and in such inferior courts as the legislature may, from time to time, see fit to establish.³⁹ The judges were appointed by the governor. The

35. Ibid. p.89

36. Ibid. p.90

37. Ibid. p.88

38. Ibid. pp.91,92

39. Ibid. p.92

Court of Appeals was to have original and final jurisdiction in all cases respecting the titles to land under the then present land laws of Virginia.

Sheriffs and coroners were to be elected by the people of each county.

The freemen of Kentucky were to be armed and disciplined for its defense, but conscientious objectors could pay an equivalent for personal service. The field and staff officers of the militia were to be appointed by the governor, except the battalion staff officers who were to be appointed by the field officers of each battalion. The officers of companies were to be chosen by the persons enrolled in the list of each company.

40

The Constitution specified that:

"All laws now in force in the State of Virginia, not inconsistent with this Constitution, which are of a general nature and not local to the eastern part of that state, shall be in force in this state until they shall be altered or repealed by the legislature."⁴¹

40. Ibid. p.95

41. Ibid. p.96

The compact with Virginia, that is, the Ninth Convention's acceptance of the "Fourth Enabling Act," was to be a part of the First Constitution.

The framers of the First Kentucky Constitution did not consider their work as permanent. It was to be an experiment in government. Anticipating that it might not suit the people in all of its parts, the Tenth Convention provided a special method of ascertaining the popular will after the document had been given a trial. It was provided that the people might take a vote on the advisability of calling a new constitutional convention in the election of 1797, and, that if the majority were in favor of a convention, then the electorate should vote in the following general elections of 1798, and if again the majority were favorable, the legislature should call a convention in 1799 to revise or remake the constitution. There was another method provided of remaking the Constitution whereby a majority of two-thirds of both houses of the legislature might call a constitutional convention without a vote of the people.⁴²

To summarize, the First Kentucky Constitution had

42. Ibid. p.99

some new and unusual features. It departed from the traditional eastern practice by requiring no religious test of any kind for office holding. Representation was to be based on population and not on counties as was the case in Virginia. Kentucky, (with Vermont), preceded the rest of the world a quarter of a century or more in granting a full and free suffrage to all white men regardless of the amount of property owned.

The United States House of Representatives in an address to Washington, November 10, 1792, characterized the Kentucky document:

"as particularly interesting since besides the immediate benefits resulting from it, it is another auspicious demonstration of the facility and success with which an enlightened people is capable of producing for their own safety and happiness."⁴³

Thus Kentucky took her place as a member of the Federal Union, June 1, 1792. The new government of the Commonwealth was formally inaugurated June 4, 1792, in Lexington, Kentucky. In the preceding May, Isaac Shelby had been elected as the first governor. In the annals of constitutional government Kentucky has no counterpart. For eight years she had labored through ten con-

43. J.D.Richardson, A Compilation of the Messages and Papers of the Presidents, 1789-1797 (1896-99), Vol.I, p.132

ventions, a record that has never been approximated from that day until the present by any American community in quest of statehood.

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