SAMUEL WHARTON AND THE INDIANS' RIGHTS TO SELL THEIR LAND: AN EIGHTEENTH-CENTURY VIEW

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The founding and establishing of European colonies in North America on a firm and lasting basis resulted from the occupation of lands loosely held by native Indian nations. The movement of white settlers inland from the seaboard necessarily occurred at the expense of the inhabitants possessing or at least using the land. The legality of such appropriations by whatever means — treaties, purchases, or simply "squatters' rights" — has been debated to this day. In pre-Revolutionary America, especially after 1763, the conflict between public and private interests in land ventures came to the fore. A major question involved the rights of Indians to relinquish areas under their control with or without the permission of the crown. Many colonials believed the tribes could voluntarily and legally sell their lands to individual Americans without approval of the British government. The immense amounts of undeveloped interior acreage attracted speculators who adhered to that viewpoint. The Whartons, prominent Quaker merchants of Philadelphia, particularly Samuel, became leading advocates for, and defenders of, the Indians' rights to dispose of their property as they saw fit upon their own authority.

The patriarch of the family, Joseph (1707-1776), often referred to as "the Grand Duke," acted mainly as an investor in various land deals, particularly in and around his native city. His sons, however, provided leadership as well as financial backing to several endeavors, including involvement in such cooperative efforts as the Illinois Company, the Indiana Company, and the Grand Ohio or Vandalia

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Company. Individually or in various combinations, they purchased tracts in such widely spread frontier regions as the Great Valley of Virginia, the Wyoming Valley of the east branch of the Susquehanna River, the Mohawk Valley area of New York, and Western Pennsylvania, some in the vicinity of Fort Pitt. The methods used to gain at least tentative title to the land varied with the circumstances and location. These included purchases from local owners, applications for grants from provincial governments, compensation for generous acts, and buying from the Indians.

The oldest son, Thomas (1731-1784), earnestly chased the elusive promise of profit in land. He frequently combined his efforts with those of brothers Joseph (1734-1816) and Charles (1744-1838). They made their main exertions in the Mohawk region in conjunction with lawyer Joseph Galloway, Governor Sir William Franklin of New Jersey, and George Croghan, a charming Irishman and deputy to Sir William Johnson, and in the Wyoming Valley of northeastern Pennsylvania. Another brother, Isaac (1745-1808), assisted in the latter fruitless enterprise. Thomas, Charles, and Joseph, Junior, became important members of the Great Ohio Company.2

Joseph's second son, Samuel (1732-1800), however, became the hinge pin around which rotated the speculative deals in the West. A charmer as well as an opportunist, he had early entered into a partnership with John Baynton, a fellow Quaker and Philadelphian, to form the trading firm Baynton and Wharton. Expansion caused at least in part by overly ambitious actions by both men caused them to seek new capital. The additional financing arrived with George Morgan, Baynton's son-in-law, the reorganization resulting in Baynton, Wharton and Morgan. Almost simultaneously the firm's market switched from the export-import of raw materials and finished goods to supplying British garrisons along the Mississippi River and to trading with Indians in the vast territory gained from the French in 1763, particularly in Illinois. The partners understood that the Proclamation Line of 1763, which severely limited white immigration and trading west of Allegheny Mountain, could hamper their activities but they optimistically perceived it as eliminating small and inefficient traders from competition.3

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2 Ibid., Chap. 4.
3 A need continues for a broad biography of Samuel Wharton, a most interesting if somewhat irritating man. See Wayne E. Stevens, "Samuel Wharton," in Allen Johnson et al., eds., Dictionary of American Biography, 20 vols. (New York, 1927-1936), 20:32-33. He has important roles in Max Savelle, George Morgan, Colony Builder (New York, 1932); Thomas
Land within Canada recently captured by British troops and ceded by France in the Treaty of Paris early attracted the attention of many colonials. Baynton and Wharton at first focused on two tracts bordering Lake Champlain and wished to form a coalition, including Benjamin Franklin, to develop them. The area offered great potential in good soil, timber, and fish, and they wanted Franklin to assist in obtaining a grant from the crown. Apparently nothing came from this effort, but they did not worry about it. The greater riches presented by the prairie country of Illinois diverted their thoughts to the west.

Urged on by Croghan, who wanted one-fourth of the profits, Wharton and his partners joined Robert Field and Robert Callendar of Lancaster to form the "grand Illinois Venture." Their first attempt to take goods west failed because of the depredations of the "Black Boys" at Sideling Hill. Other efforts could be completed only with the expenditure of much time, money, and energy. From Fort Pitt the goods had to be carried down the Ohio to the Mississippi and up that great river to Fort Chartres. The failure of the British commander there to honor an informal contract for a monopoly of trade hurt the company, and it was ultimately placed in the hands of trustees in 1767.

Land, not trade, however, presented the greatest potential. In March 1766 three Whartons (Samuel, Joseph, Senior, and Joseph, Junior) united with William Franklin, Croghan, Baynton, Morgan, Galloway, John Hughes, and Sir William Johnson to form the Illinois Company. Less than a month later Thomas Wharton and John Morgan, George's brother, added their names to an application for a grant from the crown of 1,400,000 acres in Illinois contingent upon the creation of a civil government there. The scheme collapsed at that time. Other colonial traders balked at the monopolistic aims of the Philadelphians. Moreover, the British ministers resolved to

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7 The company was revived in 1779, but the Whartons had no connection with the new organization.
enforce the Proclamation Line of 1763 and did not want a repetition of Pontiac's "Conspiracy."

Sometime during the tribulations of the Illinois Company, Samuel began to change directions as to legitimizing claims to western lands. Whereas he had favored obtaining grants under governmental grace or approval, he now leaned toward purchases of land from its native owners or at least those who claimed physical possession. His reasoning is obscure, but he may have been favorably influenced by his contacts with the Indians during several trips west of the mountains. He visited Fort Pitt in 1766, for instance, to witness one of the many peace treaties with the Iroquois, Delawares, and Shawnees. In addition, the reticence of the ministers in London concerning the Proclamation Line and white settlers disturbed him. Further, he was a Quaker and did share to some extent that sect's sympathy toward the natives. After all these considerations had been digested, he may have only envisioned the Indians' approval to be a shortcut to riches. Surely this last thought inspired his attachment to the fate of the "suffering traders."

Early in the first campaigns of the French and Indian War, the Indian allies of the French had destroyed in Western Pennsylvania and what is now eastern Ohio the property of several frontier merchants, among them Croghan and William Trent. Trent, a sometime partner of Croghan, had been very active in the West, had founded Brownsville, and had built a stockade near the forks of the Ohio. Then, in 1763, sundry Indian nations rallied around Pontiac, and the western traders, mostly at Logstown, again lost considerable amounts of goods, including some the property of Baynton, Wharton and Morgan. In 1764 the "suffering traders" appointed Croghan their emissary and sent him to Britain to obtain compensation from the government. Few listened to his pleas, and he returned in failure.

If the government refused to help, the "traders" and their sympathizers believed the Indians should recompense the "sufferers." Consequently, in February 1765 they asked Sir William Johnson to force the Six Nations to pay them £80,862:12:05 (New York currency) or its equivalent in land. Speculators soon supported the cause of the "traders," the leaders being Wharton and Trent, then a partner in Franks, Trent, Simons and Company. Most of the distressed men surrendered their financial interests to the speculators in hopes of at...
SAMUEL WHARTON.

Courtesy Historical Society of Pennsylvania
least partial payment when the Indians forfeited their lands. Johnson placed the request before the sachems at a meeting at Johnson Hall in April, disregarding the claims of the "sufferers" of 1754. They, he later said, had lost their property by acts of war. The native leaders agreed in principle to the grant but deferred further action. Samuel and his partners saw this only as a preliminary move; they were convinced of "the Justice of Our Application" for the Indians "making Recompense, for their Robberys." 

A serious obstacle to the course of negotiations remained, the Proclamation Line of 1763. Any land to be released lay to the westward of that line, and the proclamation specifically limited land purchases there to the royal government. Since Johnson had insisted on locating the grant there during the April meeting, the completion of the restitution bargainings required a modification of the boundary. The partners began pressuring Benjamin Franklin, then Pennsylvania's agent in London, to obtain ministerial concurrence on a revised line. They perhaps exaggerated the threat of renewal of border warfare, but the danger always existed. To forestall such a recurrence, they recommended that the government purchase for a price fair to both parties the land between the original line and a new one to be established. If peace was to be preserved, however, the new line had to be enforced and white movement and settlement strictly restricted. As an inducement for rapid action, the Indians had already agreed not to accept payment for the land to be deeded to the "suffering traders." The partners thus wanted to protect their own interests but realized that no endeavors in the west could be successful unless the needs of the Indian nations were also satisfied.

In September 1767 Wharton reiterated his plea. Emphasizing the menace of another Indian war, he urged Franklin to intensify his efforts toward purchase of land west of the Proclamation Line. As he said, "... [T]he Future Peace of those [middle] Colonies, actualy depends On the King's Orders being expeditiously transmitted, for the purchase of it." He underscored the uniqueness of the situation, for "Indians ... are not always in a Temper to dispose of a large

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9 Petition, Suffering Traders to Johnson, Feb. 1765, Wharton-Willing Col., HSP; [Samuel Wharton,] Plain Facts: Being an Examination into the Rights of Indian Nations (Philadelphia, 1781), Evans 17437, 54-64; T. Wharton to B. Franklin, Nov. 7, 1768, Leonard T. Beale Col., HSP; Baynton, Wharton and Morgan to B. Franklin, Aug. 28, 1766, Franklin Papers, 13:399-400. 10 Ibid., 13:397-400. Samuel probably wrote this letter. They added, with continuing hopes for success, that a civil government should be established in Illinois as soon as possible to counter French activities and preserve peace. Ibid., 400-2.
Part of their Country." He deplored the chance "That so fair an Opportunity should be lost. . . ." The British government had simply to confirm its good intentions. He added, "In short, They [the Indians] have remarked with great Sagacity, That we have Laws for the Controll of Our People And That if the Nation really meant to do Them Justice, They would either purchase the Land from Them Or else remove their Subjects from it." This time the Indians wanted action, not more promises, if a general peace would continue on the frontier.11

There is no doubt that a border area free from conflict would benefit Baynton, Wharton and Morgan and their associates. There is also no question that leaving the hunting grounds inviolate from white intrusion would eliminate trade competition in the west. Further, by stressing the possibilities of another expensive frontier war to an already overburdened government, Samuel hoped to expedite a response on the boundary problem. It is always difficult to determine the motives behind the position taken by a man as complicated as Wharton. That he quested for personal empires cannot be denied. Still, a sense of genuine rapport for the natives and their plight emerges, as noted later, from his writings. Pragmatism, practicality, and idealism formed an uncomfortable combination governing his intentions as well as his deeds.

The "sufferers" acted partially as a group, but some believed that their chances would improve if they coordinated their activities more closely. This resulted in the Indiana Company, the organizational details of which are sparse. A complicated system of shares based on the monetary value of each trader's losses was developed. Although some of the "traders" retained shares in the company, two main factions in effect assumed control: Wharton represented his family and their allies; Trent acted for the Gratz brothers of Philadelphia and Lancaster and their compatriots, particularly John Simon and David Franks, and those who held only a few shares. The stockholders distributed more than 80,000 shares in the company, with the Wharton group having close to a majority control. Samuel alone held 16,628 shares. Other major holders included Baynton (8,530), Morgan (5,400), and William Franklin (5,399). Trent retained in his name 7,427 shares, and, more important, as attorney in fact, he controlled

11 S. Wharton to B. Franklin, Sept. 30, 1767, ibid., 14:257-60. Coincidentally, the Whartons, Galloway, and others of the Assembly party used the danger of Indian attacks as another reason for a change in Pennsylvania's government to royal control. See, for example, [S. Wharton] to B. Franklin, May 27, 1765, ibid., 12:142.
the votes of the others in his bloc. His legal position also made him the company's spokesman. Croghan possessed 1,125 shares, but, despite his close connections with the Whartons and Franklin, his continuing financial difficulties forced him increasingly into the Gratzes' sphere of influence. The immediate purpose of the company was to represent the "traders" and the stockholders at the forthcoming conference at Fort Stanwix.

In January 1768 Johnson had received permission from London to purchase land from the Indians and thus establish a new demarcation line separating the two societies. He then put out a call for the chiefs on the one side and colonial officials on the other to gather at the New York fort (present Rome, New York) in the summer — later postponed until fall. The meeting which convened on October 24 became one of the most important if controversial in pre-Revolutionary America. It attracted such prominent political officers as Governor Franklin, Governor John Penn, and Chief Justice William Allen, as well as two members of the Pennsylvania Council, and Virginia's commissioner Thomas Walker, in addition to Trent, Croghan, and Samuel Wharton. The heads of all the western and northern Indian nations represented their subjects and interests. Unfortunately, much remains unknown about the proceedings since the participants conducted most of their business in secret. The matter of moving the proclamation line, however, took precedence after the opening rituals had been observed.

The discussions over the boundary consumed considerable time. One major concern of the tribes involved enforcement on the part of the colonials. What pressure Johnson, Croghan, and the representatives exerted on the chiefs is subject to conjecture, but by November 1 they agreed to the proposed changes, offering as a condition, "that no further attempts will be made on our lands, but that this line be considered as final. . . ." Another restriction limited hunting in the new area only to natives. A third required that villages east of the line, particularly those of the Mohawks, remain inviolate "now and

12 Byars, B. and M. Gratz, 90. In consideration of their official positions, both Croghan and Johnson at first kept their relationship with the company confidential. The changeover from "traders" to speculators from 1768 to 1776 can be seen in Table 4-1, Anderson, "Thomas Wharton," 165.

13 Plain Facts, 68, 71-76; Ray A. Billington, "The Fort Stanwix Treaty of 1768," New York History 25 (Apr. 1944) : 184-92, who mistakenly places Thomas Wharton at the conference. The delay in opening the meeting was in part due to Johnson's illness. Pressing business forced Penn and Allen to leave before the proceedings opened. Richard Peters and James Tilghman were the members of Pennsylvania's Council.
so long as the sun shines." They also wanted a line of communication with the British government so that grievances could be rapidly and justly handled. Wharton approvingly noted that the Indian answer included "Sentiments of Independancy, Justice and Firmness, that wou'd do honor to any civilized Chieftains. . . ." The new boundary agreed to on November 4, in the area of immediate concern, ran from Kittanning on the Allegheny River to Fort Pitt and followed the south bank of the Ohio to the mouth of the Tennessee River where it turned south.14

The line thus established created a furor when news of it reached England, the southern colonies, and such southeastern Indian nations as the Creeks and the Cherokees. The latter two factions had believed the junction of the Ohio and Kanawha rivers to be the western point of demarcation. Thus accusations flew freely that Johnson had sold out to satisfy his own interests and those of fellow speculators.15 Since Johnson and the sachems had conducted their negotiations in confidence, one cannot reconstruct their bargainings. Under the pressure of later political events in the relationship between Britain and her colonies, which affected the Indian nations as well, complaints and attempts to redress grievances in white-Indian connections arose. However, approximately a year after the signing of the treaty, Sir William informed Thomas Wharton:

As to any report of the Dissatisfaction of Some of the Indians concerning the Boundary[,] it is only a pretence. All the Indians who have a Just Title to the Lands ceded were present at the Treaty, & that is a greater Number than was [present?] on any other occasion, and they were well paid & satisfied. They had no promise from me of any meetings at Fort Pitt or elsewhere, neither was it practicable to satisfy all the Wants or Demands of every Nation who might for the Sake of Presents set up a Title wch. they dare not pretend to in the presence of the True Proprietors the Six Nations.16

One can surmise that a case can be made that the solution did satisfy the majority of the nations. A dividing line which followed a river line was more readily verified on the ground than the identification of a certain mountain. Moreover, white immigrants in some numbers had moved beyond the original line, and there was little

14 Plain Facts, 78-82; S. Wharton to B. Franklin, Dec. 2, 1768, Franklin Papers, 15:277. To the east in Pennsylvania it cleared for settlement the Wyoming Valley area and acknowledged the Penns' purchase of lands at the meeting for their sole use.
15 This, for example, is the thesis of Billington's article. For a concise defense of Johnson's actions, see Milton W. Hamilton, Sir William Johnson and the Indians (Albany, 1975), 31-32. Distance plus slowness in communications complicated coordination between Johnson and his cohorts in the south.
evidence that Britain could prevent further emigration. The tribes hoped that she would take a more positive stance to prevent excursions into the new prohibited area. Lastly, the Iroquois did continue to exercise sovereignty north of the Ohio, but it was becoming apparent that their hold was weakening.\(^{17}\)

Discussion on the grant to the “suffering traders” also proceeded harmoniously. Prior to the meeting, from June to September, Croghan, Trent, and Wharton had met with Sir William at New London, Connecticut (he had gone there for his health), to insure his support. His guarantee assured success at the general conference.\(^{18}\) Both Trent and Wharton spoke during the opening ceremonies, but, as with the boundary problem, further deliberations were held in confidence. The path toward agreement, however, was smoothed by mutual consent to abandon or “disavow” all previous claims or agreements pertaining to the land. This decision, in Wharton’s view, cancelled out Virginia’s “pretensions . . . to the lands westward of the Allegany Mountain.” As a result, in the opinion of the Indiana shareholders, an important and potent competitor had been eliminated. The settlement allocated the land which became known as Indiana to Trent as agent for the “suffering traders” of both periods, and thus to the shareholders in the Indiana Company. Its boundaries, which lay entirely within the present state of West Virginia, followed the “southerly side of the mouth of Little Kenhawa Creek, where it empties into the river Ohio, and running from thence south east to the Laurel Hill, thence along the Laurel Hill until it strikes the river Monogehela, . . . to the Southern boundary line of . . . Pennsylvania, thence westerly . . . to the river Ohio, thence down the said river . . . to the place of beginning.”\(^{19}\) The cession of Indiana, an area containing more than two million acres, would have been impossible without the alterations to the Proclamation Line.

The results pleased Wharton. He especially admired that so large a group of natives (he estimated 3,400 Indians, mostly males, present) had arrived at a difficult consensus so rapidly. He pointedly emphasized to Benjamin Franklin that at the large gathering “the Sachems


\(^{19}\) Plain Facts, 81-88, italics removed in boundary description. The Indians also sold tracts to individuals, the most important being in the Mohawk Valley and in the vicinity of Fort Pitt to Croghan. The fate of these deals is beyond the scope of this article, though the Whartons played a large role in the dispensation of the New York lands.
of all the different Tribes and all their *Warriors* . . . unanimously agreed to the Cession and Boundary and to the Conditions . . . [to] be made to the King.” The symbolism behind the sequence of signing also struck him, the cession to the “traders” being effected two days prior to the execution of what he called “the King’s Deed.” The Indians did this on their own initiative, he said, for they indicated “the One was an *Act of Justice* and the other was a *conditional Sale.*”

The phraseology employed particularly pleased the Indiana shareholders.

Sir William may have been cynically acknowledging an existent situation in his remarks to Thomas concerning the Indian attitude toward presents. As a part of the “conditional sale,” in the name of the king, Johnson gave huge quantities of merchandise and coins or medals to the tribes as part of the signing ceremonies. Wharton described “This large Present” as “the greatest Quantity of Indian Goods, and Dollars, I ever saw on such an occasion. . . .” It had required twenty boats to carry the presents to the fort. They formed an impressive backdrop as the parties signed the documents and spoke their farewell words.

After the Treaty of Fort Stanwix had been signed by the chiefs and the colonial officials, Wharton took time to sum up his reactions. He praised the performance of the English negotiators, crediting them with acting with great “Judgement and Candour” to bring about “solid satisfaction on the part of the Natives.” The latter had agreed to terms upon the belief that the crown would take timely steps to endorse the pacts. If so, the future appeared bright. “There is now,” Wharton wrote, “the fairest prospect, that these Colonies have ever had since the year 1749, to perpetuate the Blessings of an Indian Peace to their Posterity and of rendering our Commerce with the Natives much more beneficial to the Mother Country, than it Ever has been. . . .” Stabilization of commercial intercourse would particularly serve Britain. In his analysis, “every article used in that Trade,” with the exception of rum, was made there. The goods were exchanged for furs and skins, most of which, in turn, were shipped across the Atlantic. The financial returns would far exceed the cost of a bureaucracy to supervise the treaty provisions and the gifts presented.

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A lingering question hung over his conclusions. What would be the effect of a delay in ratifying the treaty? Any procrastination could result in "most unhappy Consequences." The natives, "a very jealous People," would consider a deferment "as disputing their undoubted Right to the Country, they have ceded and to their fixing the Terms and Conditions of their Sale." They would then conclude that "they have been treated as Children" by agents perhaps not sharing the complete confidence of their masters. "The Consequences will be so fatal and are so obvious" they appear without need of explanation. On the other hand, punctual approval of both voluntary cession and conditions would benefit traders and white settlers in the western portions of the middle colonies, for they "will not be dismayed by the Threats or Incursions of the Indians." 23

Wharton's report on the conference is the most concise statement available on his views. It illustrates several facets of his thinking on the whole question of Anglo-Indian relations. Though he defended strongly the cession of Indiana as a matter of justice to injured parties, he believed the entire proceedings benefited the Indians as well as the colonials. Further, the treaty was accomplished by willing sacrifice by the Indian nations who understood their rights and voluntarily relinquished what was traditionally theirs, the land. He demonstrated that the natives had voted for a peaceful solution to their border problems, and that responsibility for future conflicts rested on the shoulders of the British ministers. As speculators, Wharton, his family, and his associates would profit from a peaceful frontier. Yet, at least at that moment, he could perceive the grave issues and empathize with both sides.

The Indians had compensated the "traders" for their losses, and the speculators thought the land was legally theirs. A touch of doubt, however, remained, so the colonials doubly wanted to insure their gains by obtaining approval from the British government. A personal appeal by company representatives appeared to be the best solution. Thus they decided to send Wharton and Trent to England to argue their case. Of the two men, Wharton was the key with his pleasant personality and ingrained ability to associate easily with men of wealth and position. Some investors guaranteed Trent's and Wharton's expenses, but the main burden of supporting both men's families ultimately fell upon Thomas Wharton. All involved, particularly the backers of the venture, believed their aims could be accomplished

23 Ibid., 278-79,
within a short period of time. "Indeed," William Franklin said, "it is necessary to our Friend W's affairs that he should finish his Business in England in a short Time for those with whom he has left the Care of his Affairs find a good deal of Difficulty in keeping Matters quiet with some of his Creditors during his Absence." 24 Minds might have changed and subsistence removed if any of them had guessed that six years would pass before Trent returned and almost a decade before Samuel again saw Philadelphia.

Wharton arrived in England sometime after February 1769, and Trent a few months afterward. Several important colonials including Sir William Johnson, Governor Franklin, and John Reynell had given Wharton letters of introduction to English merchants and political figures, but, at least at first, he leaned on Benjamin Franklin, an old family friend. Joseph Wharton, Senior, had been one of the first members of Franklin's famed junto. Further, Samuel could make no legal moves until Trent, the attorney in fact, arrived. Regardless, a hostile government greeted him.

The British ministers, especially Lord Hillsborough, secretary of state for the American Department, believed Johnson had exceeded his instructions at Fort Stanwix. They also questioned the Indians' rights to dispose of such large tracts of land, being convinced that the Proclamation of 1763 had reserved that privilege to the king. Their anger at the treaty and the agents who formed it caused them to postpone any decision regarding its provisions. In May 1769 Hillsborough informed Johnson that no action would be taken at that time to ratify the treaty. One month later Wharton reported that the other members of the Privy Council considered Hillsborough "Mad" and forced him to rescind the letter. Further, perhaps because of their dislike for him, the councillors agreed to approve the new demarcation line. 25 Despite this decision, Wharton and Trent recoiled from what they feared to be a tenuous position and resolved not to press their appeals to the council. Moreover, they responded favorably to Franklin's advice not to apply "for a Confirmation," for it "would be attended with infinite Delay and Difficulty thro' the Chicane of Office." 26

26 B. Franklin to W. Franklin, July 14, 1773, Franklin Papers, 20:302-3. Apparently some of the "traders" had independently petitioned the king prior
Franklin also thought crown permission for the cession of Indiana to be unnecessary. Four years afterwards he expounded at length on his reasoning. He believed man had a "natural Right" to move from one "Society or State" to another or even to "form a new one." Once that happened, a person left the protection of the old society but remained friendly toward it. In the new country, the person either submitted to the government or found his own "Sovereignty" by purchasing land. "Freedom from that Sovereignty," in his opinion, was "the case [?] with respect [?] to Lands purchas'd of the Indian Nations in America." In that event, the purchasers had legal rights to introduce overall control by their old government or to "erect a new one of their own" if they could defend themselves. As a result, the "Government here had no Right to forbid their taking Grants from Indians of Property on which it had previously no Claim." 27

Franklin's ideas, then, may have determined the path traveled by Wharton and Trent. They became involved with Thomas Walpole, William Strahan, and other influential Englishmen in the "Walpole Associates" which by December 1769 evolved into the Grand Ohio Company. This fresh organization, in which Franklin held a full share, applied to the crown to purchase and then establish a new, independent colony inland of Virginia to be known as Vandalia, the boundaries of which closely matched those of the present state of West Virginia. Of necessity, Vandalia included Indiana within its borders although few investors in the latter — including the Whartons, the Franklins, and Galloway — were admitted into the new enterprise. This situation distressed many of Samuel's old associates, most importantly his partners Baynton and Morgan. By May 1773 the project neared fulfillment, even receiving approval by the king, but vacillation by court attorneys obstructed final confirmation until events of the American Revolution finished it forever. That Vandalia came so close to completion reflected favorably on Wharton's efforts in its behalf. "Mr. Wharton," Franklin wrote his son in 1771, "has been indefatigable, and I think scarce any one I know besides would have been equal to the task. . . ." 28 Details of the long, complicated, and engrossing

to this, but had withdrawn their appeal. See B. Franklin to S. Wharton and Trent, July 3, 1769, ibid., 16:169.

27 B. Franklin to W. Franklin, July 14, 1773, ibid., 20:303-4. His argument may have been improved by hindsight, but his advice probably followed a similar pattern in 1769. He also may have been influenced by the Yorke-Camden decision. See below, page 138.

28 B. Franklin to W. Franklin, April 20, 1771, ibid., 18:75-76.
endeavor to form Vandalia are beyond the scope of this article.29

Support for Vandalia, however, was not one-sided; many Indians cooperated with the investors to urge approval of the new colony. At one time, at a conference at Fort Pitt, natives complained to Croghan that an effective government had not yet been established "on the Ohio" as promised to them in 1772. They knew that their interests would be served if the lawless element present in all frontier societies could be curbed, the indiscriminate murdering of natives be prevented, and the culprits punished. Chief Guyasuta of the Senecas also supported Vandalia. He traveled extensively in the West, visiting Indian villages from Illinois to New York espousing Vandalia's cause. He promised Thomas Wharton that he would continue to do so at an upcoming conference at Johnson Hall.10

The eruption of armed conflict between Britain and her American colonies changed all promises for Vandalia. Samuel indicated that there was "little prospect of Harmony being speedily, if ever restored between this Kingdom and America." Chances became slight indeed that the crown's attorneys would sanction a new province, probably populated by settlers sympathetic to the rebellion. As a result, Wharton turned his thoughts to land already owned — Indiana. By this time, August 1775, Trent had returned to Philadelphia. Wharton asked his brother and Trent to approach some members of the Continental Congress and, with Franklin's backing, seek support for investors in Indian land. To attract their attention, he authorized Thomas to offer a one-half share in the company to each of eight delegates.31 Despite these bribes, which later got Thomas into deep trouble, he received little evidence of even curiosity on the part of the congressmen. The Virginia delegates, though, disputed every and all outside attempts to exploit their back country.

In the meantime, Trent visited Fort Pitt to revive participation by the "traders" there, but, by ignoring the interests of the shareholders in the east, he created considerable dissension. Regardless, the investors met on March 20, 1776, at the Indian Queen Tavern in Philadelphia and approved a new organization to sell land in Indiana.

29 See James Donald Anderson, "Vandalia: The First West Virginia?" West Virginia History 40 (Summer 1979): 375-92. Books cited in footnote 3 above all carry accounts of Vandalia. The approved boundaries ran southward along the Louisa (Kentucky) River, followed the Virginia-North Carolina border to the New River, northward to its junction with the Green Briar River, and then traced the border previously requested.

30 S. Wharton to T. Wharton, Oct. 5, 1774, Corr., Owen Jones Col., HSP; T. Wharton to S. Wharton, Sept. 23, 1774, T. Wharton Letterbook, 1773-1784, Wharton Papers, HSP.

31 S. Wharton to T. Wharton, Aug. 7, 1775, Corr., ibid.
They elected Joseph Galloway president and Thomas Wharton vice-president. To insure some internal peace, they ameliorated some of the differences between the company and the surviving original "sufferers" by allowing them 50 percent of their original shares. Further, having been informed by one of Virginia's delegates that that state's actions pertained to Transylvania, and upon the advice of Galloway, they decided to ignore Virginia's demands and proceed as planned. They sent Morgan to Fort Pitt to establish a land office and instructed him to sell tracts in Indiana. As far as Thomas Wharton was concerned, this action virtually marked an end to his role in the company.

When Trent refused to attend a general meeting in the fall (and he held the majority of the proxies of the shareholders), he rejected any offer to take an active interest in its affairs while still hoping to share in its profits from land sales.32

Not so, brother Samuel. In 1781 he published *Plain Facts* to justify his position on the Indians' rights to dispose of their landholdings.33 In a propaganda effort to support his and Franklin's application to Congress for approval of Indiana (and, with luck, Vandalia), he expounded at length to counter Virginia's claims to the same area.34 It is a strong book, for through legal documentation and narration it denied European rights to native lands while at the same time refuting Virginia's sovereignty in particular.

He summarized European pretensions to land in the Western Hemisphere, beginning logically with the Bull of Pope Alexander VI in 1493. Wharton's viewpoint can best be illustrated by such descriptive phrases as "Saint Peter's pretended successors" and "glaringly absurd . . . even in that superstitious age." The basis for proclaiming sovereignty over those lands by Spain and Portugal rested on the inhabitants being both infidels and heathens. In addition to basing claims on the rights of prior discovery, England also predicates her acquisitions on the same premises, but denied that the Pope enjoyed "an absolute dominion over the whole earth." Wharton believed that

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32 Lewis, *Indiana Co.*, 157-95; Indiana Co. Meeting Minutes, Mar. 20, 1776; T. Wharton's Book of Indiana Co. Deeds; T. Wharton to S. Wharton, Feb. 25, 1776; to Levy Andrew Levy, July 28, 1776; to Trent, Sept. 12, 1776; T. Wharton Letterbook, Wharton Papers, HSP. For a quick settlement, many of the original "sufferers" had agreed to future payments equal to 30 percent of the value of their lost goods.

33 He incorporated portions of pamphlets previously printed. All share the title *View of the Title to Indiana*. The first version, written in collaboration with Edward Bancroft, was reprinted with Benjamin Franklin's help at Philadelphia in 1775 (Evans 42983), and an enlarged edition in 1776 (Evans 15219). A condensed version appeared in Williamsburg in 1779 (Evans 43732).

34 *Plain Facts*, 159-62.
“the emotions of avarice, ambition, or religious pride” misled the Europeans to “usurp the possessions of unoffending nations” solely because the natives did not follow “religious doctrines of which they had never heard.” Ownership, however, relied not on religion nor state of civilized development but was instead “founded on the great natural law of self-preservation.”

To reinforce his judgment that no ruler could gain ownership only by divine right, Wharton quoted an extract from the legal decision made by Charles Yorke and Charles Pratt (Lord Camden), attorney general and solicitor general to the crown, in 1757 concerning the legality of the purchases by the East India Company of land in India. Briefly, the opinion stated that the company did not need the crown's approval to buy land from native rulers. The crown gained sovereignty anyway because the settlements were English and inhabited by Englishmen who were governed by English law, because their activities were based on charters issued by an English king. Wharton thought the concept of “the absolute right of Heathen Asiatics to their several territories” applied equally to support “the same right as vested in Heathen Americans.”

This argument became the crux of the posture assumed by other American speculators in western land as well as by Wharton. The similarity between this argument and the advice given by Benjamin Franklin to Wharton on his arrival in England is more than coincidence. Franklin was a friend of both Yorke and Camden, and they may well have discussed this point with him. However, the exact time frame in which the Yorke-Camden opinion influenced the speculators' maneuvers will probably never be known.

If the native leaders, then, held natural title to their lands, could their prerogatives be overwhelmed by another favorite European method, acquisition by right of prior discovery? Wharton declared this concept also to be invalid, basing his disclaimer on several French as well as British legal decisions. Uninhabited areas could be possessed in that manner, for there did not exist any previous owners. In America, however, that condition did not apply. The Indians, as “first occupants and possessors of the country,” held “the best and most unexceptional title to it.” The charter presented by Charles II to Rhode Island and Providence plantations in 1662 appeared to support his

35 Ibid., 1-3, 7, emphasis in original.
36 Ibid., 9, emphasis in original.
position. It decreed that the area of the colony was granted based on "purchase and consent of the said natives." This provided a precedent for the cession of the land to the "suffering traders" and the purchase by the crown of the area between the Proclamation Line of 1763 and the new line established at Fort Stanwix in 1768.

Wharton devoted the remainder of his work, excepting a description of the proceedings at Fort Stanwix, to a discussion of the legal claims of Virginia to the area encompassing both Indiana and Vandalia. The argument presented was lengthy, full of legalities, and weighted toward the side of the Indiana investors. He began his review with a treaty signed at Lancaster in 1744 by representatives of the Six Nations, Pennsylvania, Virginia, and Maryland. There the Indians asserted that the boundary separating Virginia and the natives' land began at the great mountains to the west (Allegheny Mountain?). This, according to the chiefs, was omitted from the treaty, and the Indians believed they had been deceived at Lancaster into acknowledging the charter borders of Virginia to their detriment. At later meetings — at Logstown, Fort Pitt, Lancaster, and other places—the natives maintained their claims of foul play. Wharton agreed and supported the Indian position of 1744 as the correct one. Thus any claims by Virginia to the lands on the Ohio River were based on trickery and deception. He concluded as a result of his analysis that Indiana rightfully belonged to the stockholders, and that Congress should confirm the Treaty of Fort Stanwix.

This simply involved a transfer of agreements of legal standing such as treaties accepted by one government by its successor. George Morgan also relied on this principle. While still angry at the Whartons over being omitted from the list of investors in Vandalia, he continued to hope for Indiana. As a spokesman for his fellow speculators, he petitioned Congress, as the arbitrator between the states, to approve the detachment of Indiana from Virginia. He based his argument on the approval of Vandalia (which of course included Indiana) by the crown prior to the Declaration of Independence by the United States. The proposition presented by Franklin and Wharton in 1781 followed a similar reasoning. They insisted that overall sovereignty had logically been transplanted from the crown to Congress. "The glorious revolution of these states was not made to destroy, but among other things, to protect private property. . . ."

38 Plain Facts, 10-20, quotations, emphasis in original, from pp. 10, 17. 39 Ibid., 28-38, passim. An important point was that Virginia's commissioner had signed the treaty at Fort Stanwix in 1768.
Congress had to make the decision; Virginia should not retain the right to judge a matter so severely affecting her own destiny.\textsuperscript{40}

Congress declined to act on the petitions. Wharton served as a delegate to Congress in 1782 and 1783, and he attempted to use his office to revive the land claims. Again reluctance by his fellow representatives to respond frustrated his efforts. The matter dragged on for years, brought back to life at times by other land companies interested in the West. The agreement by the states to relinquish their western land claims in order to enter the confederation effectively finished all dreams for private empires such as Vandalia and Indiana within the United States. It should be noted that the illusions faded very slowly.

Samuel Wharton sought to obtain large tracts of western lands for the profitable sales they would attract. At first he hoped to obtain the claims by a simple governmental grant. When that attempt failed, he sought land from the Indians as compensation for goods damaged or destroyed during Pontiac's uprising. To achieve this goal, he became convinced that the native nations had a legitimate right to dispose of their land. To effect the compensation, he pressured the British government through Sir William Johnson and Benjamin Franklin to purchase the land lying between the Proclamation Line of 1763 and a new boundary, the one established by the Treaty of Fort Stanwix of 1768.

After he and his fellow speculators gained Indiana from the Indians, he moved into a coalition to purchase from the crown a vast area in which to establish Vandalia, a new colony. They used as a base Indiana, but the remainder had also been obtained from the Indians as part of the "king's deed" of 1768. These and later attempts to revive the claims failed, but Wharton was consistent in his arguments for them. He maintained to the end that the original right to sell the land rested with the Indians, not with the agents for the crown.

The question of his motivation remains. An opportunist, he thirsted for riches to be gained from land sales. He also hoped to obtain political power by being appointed royal governor of the province of Vandalia. Yet, in addition, he believed that the redrawn demarcation line and the new colonies would benefit the Indians as well. Efficient government and effective law enforcement could control intrusions into the Indians' domains and punish violators. Thus, in his view, both sides would have profited from his efforts. Unfortunately, as neither the white man nor the Indian could have predicted, events overtook them, and Wharton's concepts never really were put to the test.

\textsuperscript{40} \textit{Ibid.}, 146-48, 159-62, emphasis in original.