

**The Marketplace of American Federalism:
Land Speculation across State Lines in the Early Republic**

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Dear MRSEAH participants:

Many thanks in advance for reading this work-in-progress. The following is an article manuscript based on one chapter of my first book project, *Speculation Nation: Land Mania in the Revolutionary American Republic*. The book investigates the political and financial culture of a frenzied land rush that swept the new republic in its first quarter-century. It argues that Americans of the founding era cast the seizure and sale of Native American land as a basis of revolutionary statebuilding, fueling a land market so unprecedented in intensity and scale that contemporaries and historians alike have dubbed it a “mania,” and rooting the new republic’s “empire of liberty” in speculative capitalism.

But I’d like this essay to make sense as a self-contained journal article. To that end, I’m especially interested in your feedback on how the argument, historiographical framing, structure, and prose work for a standalone piece. (Though our conversation will certainly inform my broader process of book revisions!)

Thanks again for your time; I look forward to meeting you all on the 28th.

Michael

“My dear Constable,” Alexander Macomb wrote on a December day in 1792, “this moment as it relates to Land, is the most interesting possible: the same opportunity will never again occur.” Land prices were booming. Macomb deemed it a “certainty” that land values would soon double again, “nay perhaps treble or quadruple.” Carpe diem, Macomb urged, and “you be will most assuredly enabled to enjoy Otium cum dignitate”—leisure with dignity—“all the rest of your days, provided always that you do not act the fool as I have done.”¹

Just a few years prior, Macomb had been one of New York’s most successful financiers. By turns affable, voracious, gullible, and spiteful, his temperament bore all the marks of the riskiest speculators. After making a fortune in military provisions and furs, he sank much of it into the 1791 purchase of four million acres in the northern reaches of New York at the rock-bottom price of 8¢ per acre—a coup so stunning that even that even the insatiable speculator William Cooper called it business at an “Extravagant” and “Monstrous” scale. Macomb had then “act[ed] the fool” by joining William Duer’s infamous attempt to corner the market in stocks and federal debt certificates in order to seize control of the Bank of New York. The scheme’s collapse in March 1792 sparked a panic that radiated outward, each failure undermining the accounts of another speculator, “like nine pins knocking one another down,” as Thomas Jefferson reported. Macomb was among them, and on April 11 he was arrested for debt.²

¹ Alexander Macomb to William Constable, Dec. 2, 1792, box 2, Constable-Pierrepont Papers, New York Public Library.

² William Cooper to Henry Drinker, Sept. 20, 1791, box 3, Henry Drinker Papers, Historical Society of Pennsylvania; Thomas Jefferson to Thomas Mann Randolph, Jr., April 19, 1792, *Papers of Thomas Jefferson, Digital Edition*, ed. Barbara B. Oberg and J. Jefferson Looney (Charlottesville, 2008). On the panic of 1792, see Robert F. Jones, “King of the Alley”: *William Duer, Politician, Entrepreneur, and Speculator, 1768-1799* (Philadelphia, 1992); Cathy Matson, “Public Vices, Private Benefit: William Duer and His Circle, 1776-1792,” in *New York and the Rise of American Capitalism: Economic Development and the Social and Political History of an American State, 1780-1870*, ed. William Pencak and Conrad Edick Wright (New York, 1989), 78-93; Scott Reynolds Nelson, *A Nation of Deadbeats: An Uncommon History of America’s Financial Disasters* (New York, 2012), 3-47. On Macomb’s Purchase, see Alfred F. Young, *The Democratic Republicans of New York: The Origins, 1763-1797* (Chapel Hill, 1967), 239-43.

In the city's New Gaol, Macomb suffered leisure without dignity. Anticipating the partition of his wealth under New York's insolvency law, he had fraudulently hidden his assets in the custody of friends and relatives.³ As spare time piled up around him, his letters to friends and partners swelled in length. The letters waxed philosophical, prescribed how his centrifugally flung assets should be managed, and offered financial advice that recipients must have deemed laughable, considering its source. After soaring to the exhilarating peak of American finance, Macomb was left to vicariously enjoy the liquidity of friends who had dodged the panic, including William Constable, his main partner in the New York purchase. Macomb's thoughts turned constantly to land speculation, which he hoped would relaunch his fortune once he emerged from insolvency. "[Y]ou . . . will say I am Land mad," he wrote, confessing that he felt "a kind of sincere passion that way."⁴

By December, Macomb was urging Constable to invest even more deeply in expropriated Native American lands. He instructed Constable to retain the New York tracts, despite a political fracas surrounding them.⁵ But he also began casting his eye across other regions ripe for speculation. Massachusetts was preparing to sell public lands in the district of Maine, for instance. Macomb had sent an agent to Boston, and had secured the aid of an insider who "promised to be our friend" in lobbying the state. But Macomb's competition had bribed his agent with a £1000 "douceur" that "got [him] to drop our interest." So much for Maine. Macomb then raised another possibility: Connecticut was preparing to sell two million acres of unceded Native land in the Ohio Country, the Western Reserve. Likewise, the federal government's

³ Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, Mass., 2002), 193-95, 235-38; Agnes Miller, "The Macomb House: Presidential Mansion," *Michigan History*, 37 (Dec. 1953), 383; James Ciment, "In Light of Failure: Bankruptcy, Insolvency, and Financial Failure in New York City, 1790-1860" (Ph.D. diss., City University of New York, 1992).

⁴ Alexander Macomb to William Constable, Sept. 25, 1792, box 2, Constable-Pierrepoint Papers.

⁵ In New York's gubernatorial election of 1792, Federalists accused incumbent George Clinton of corrupt involvement in the purchase; Macomb feared that if Clinton lost reelection, the grant would be revoked. Young, *Democratic Republicans of New York*, 240-43, 293-98.

Northwest Territory held promise. War with the Western Indian Confederacy had hitherto kept land values low there. But Macomb had learned that the U.S. intended to negotiate with the Confederacy the following spring. Peace meant opportunity, he knew; “the Consequence . . . will be, speculation in the lands in the Western territory,” since the region would be “settled with rapidity” following a treaty. “I am well convinced great things could be done in that Quarter.”⁶

New York, Maine and Massachusetts, Connecticut’s Ohio claims, and the Northwest Territory: Macomb’s field of vision swept across the northern half of the nation. He weighed opportunities and near misses, the advantages and disadvantages of investing at different prices and on different terms, in multiple jurisdictions with varying laws, leadership, political pressures, and political economies. Spun from the boredom of a prison on the New York Commons, Macomb’s letters reveal a simple truth that scholars often overlook: federalism structured economic life in the young republic, just as surely as it structured politics.

Small-*f* federalism was an evolving political outcome of the American Revolution, both before and after the creation of the U.S. Constitution. That document codified and sought to perfect federalism in the form of a written plan. But it did not *create* federalism. In fact, federalism was a governing principle at work—an ideology of government, in the recent words of one scholar—long before 1787.⁷ Decentralized government had been the major priority of the radical Whigs who sought and secured independence. In the decades after 1776, Americans endeavored to fashion that principle into a working political and constitutional system, first under the Articles of Confederation, and then through and under the 1787 Constitution. Then and

⁶ Alexander Macomb to William Constable, Dec. 2, Dec. 26, 1792, box 2, Constable–Pierrepoint Papers.

⁷ Alison LaCroix, *The Ideological Origins of American Federalism* (Cambridge, Mass., 2010).

ever since, federalism has entailed a creative and contested struggle to mediate among differing levels of governments, and to achieve the benefits of both local rule and larger polities.⁸

New studies from the perspectives of legal history and political science have deepened our understanding of why early Americans created the peculiar framework of American federalism and how it has evolved over time.⁹ But much of this recent scholarship seems all too disconnected from political economy and the messy world of economic life, largely overlooking their significance in the creation and experience of American federalism. Political historians, on the other hand, have long been attuned to the importance of economics in the Constitution's recalibration of American federalism—not only the problems of interstate commerce, minority property rights, and public finance that helped to precipitate the 1787 Convention, but also the political-economic debates, including debates about slavery, that occurred in Philadelphia that summer.¹⁰ Yet this literature's focus hews to the framing and ratification of the Constitution, not to the lived experience of federalism as it actually functioned. Meanwhile, historians who are reexamining the history of American capitalism and the nature and operation of the early American state have emphasized the significance of law, public policy, and governing institutions to economic development.¹¹ But most studies of the intersection of state and market in the early republic focus either on the national level or on individual states—rarely both.¹²

⁸ David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence, 2003); LaCroix, *Ideological Origins of American Federalism*; John M. Murrin, "The Invention of American Federalism," in *Essays on Liberty and Federalism: The Shaping of the U.S. Constitution*, ed. David E. Narrett and Joyce S. Goldberg (College Station, Texas, 1988), 20-47; Peter S. Onuf, *Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia, 1983).

⁹ Hendrickson, *Peace Pact*; LaCroix, *Ideological Origins of American Federalism*.

¹⁰ Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York, 2003); Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York, 2007); Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York, 2010); Cathy D. Matson and Peter S. Onuf, *A Union of Interests: Political and Economic Thought in Revolutionary America* (Lawrence, 1990); David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York, 2009); Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969).

¹¹ See Sven Beckert and Christine Desan, eds., *American Capitalism: New Histories* (New York, 2018), 1-32; Richard R. John, "The State Is Back In: What Now?," *Journal of the Early Republic*, 38 (Spring 2018), 105-18;

Focusing on large-scale speculation in claimed or expropriated Native American land, this article explores how federalism worked in action to structure a crucial sector of the new nation's economy. From the end of the Revolutionary War to the beginning of the nineteenth century, when the original thirteen states had sold most of the frontier lands they claimed and the Jefferson administration implemented a federal land-office system, the United States was swept by a wave of frenetic land speculation, unprecedented in its scale and intensity. Scrambling to profit off the supposedly inevitable rise in land values and the future expansion of an agrarian republic, ambitious capitalists bought tracts reaching into the millions of acres from state and national governments alike. Tracing their speculative ventures reveals that federalism both organized the land business and shaped its historical outcomes. Land speculators closely studied all levels of federalism's uneven landscape. For them, federalism was more than a constitutional arrangement whose political meanings remained in flux. It exacerbated the scope and fervency of the late eighteenth-century land business. Federalism formed the architecture of the market in which speculators sought to profit off the nation's settler-colonial future, and both informed and aided their strategies for doing so.

Federalism both divided and centralized governance, creating a system of dual sovereignty and a complex and ever-shifting legal landscape. When it came to the early national land business, though, the important aspect of federalism was neither centralization nor overlapping sovereignty, but rather division: the multiple and adjacent sovereignties that state and territorial boundaries delineated. Because of federalism, no fully national policy regulated either land sales or land ownership across the new nation. Instead, the several states and the

Dael A. Norwood, "What Counts?: Politics Economy, or Ways to Make Early America Add Up," *Journal of the Early Republic*, 36 (Winter 2016), 753-81; Andrew Shankman, "Toward a Social History of Federalism: The State and Capitalism To and From the American Revolution," *Journal of the Early Republic*, 37 (Winter 2017), 615-53.

¹² There are some exceptions to the way I characterize the historiography here. One example is Stephen Mihm, *A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States* (Cambridge, Mass., 2007).

national government claimed or controlled different regions of land, and were free to sell those lands and to regulate their ownership as they wished. The resulting legal and political patchwork provided not only better *opportunities* for land speculators to launch new investments but also important *tools* to further speculations in progress.

First, federalism pitted landed governments in competition with each other for purchasers. Speculators shopped across state lines to secure the best lands and terms they could. In doing so, they created a national market in lands. Federalism's divided governance, however, meant that that market was regulated *sub*-nationally, by individual states and, in the case of the Northwest and Southwest Territories, by the Confederation Congress and then the federal government. When U.S. governments jockeyed with each other to sell claimed or conquered lands, they effectively fashioned federalism into a competitive market structure. Driven by both the pressures of public finance and the political-economic goal of expanding their settler-colonial societies, governments competed with each other for speculators, who promised, in buying public lands, not only to boost public revenue but also to finance and manage settlement.

Such competition bestowed real benefits on speculators: lower prices, gentler payment plans, longer tax exemptions, and less onerous terms of sale. If a given government would not sufficiently encourage investment, federalism provided speculators with a range of alternatives. To be sure, federalism did not always work to speculators' advantage; sometimes speculators found that land policies and sales by distant governments could diminish the value of lands they already owned, and inhibit their ability to turn those tracts into profits. But on the whole, the competition that federalism engendered incentivized governments to sell land to speculators on easier terms. It therefore made land more attractive as an investment. Even if federalism did not always confer profit upon speculators, it did draw more people to invest in lands more intensely.

Second, in addition to enhancing opportunities for speculators who wished to purchase land from governments, federalism also furnished *tools* to facilitate investment in far-flung places and to improve prospects for profiting off tracts that speculators had already bought. In their attempts to influence state land-ownership policies, some speculators learned to highlight the examples of other governments, pressuring policymakers to keep up with the Joneses, as it were. Others turned the political and legal particularities of the states in which they speculated into sales pitches aimed at settlers or foreign investors. Still others made federalism itself a basis for diversifying a speculative portfolio in land, using its legal and political hodgepodge to mitigate—or at least to mask—the fearsome financial risks of land speculation. In the hands of land speculators, then, federalism could either highlight the advantages or temper the disadvantages of a given tract of land; it could make lands seem either unique or interchangeable. In either case, speculators made federalism a key tool of commodification. Ultimately, *all* land speculators trucked and schemed within the marketplace of American federalism.

Although American historians are reexamining the historical ties between the state and the market, they tend to overlook federalism's implications for the new nation's economy. As Alexander Macomb's sweeping eye suggests, however, those who speculated in expropriated lands couldn't afford to make the same mistake. The federal structure of the early American state both organized and intensified the land business. In tracing the ways land speculators understood, navigated, negotiated, and used federalism, this article seeks to open a new line of inquiry into the connections between American federalism and American capitalism.

Across the landscape of early republic federalism, state and national governments wrote land policies according to their separate political-economic circumstances and goals. They sold

land at different prices and different terms for manifold reasons: to settle it quickly, to maximize revenue, to pay a host of public creditors (including veterans), to appeal to constituents, or to enrich well-connected speculators. The stream of policies was rushed and complex. Ever-changing information about how governments shaped the land market flowed into speculators' hands from multiple directions, through newspapers, pamphlets, letters, and word of mouth.

For some speculators, such complexity proved too daunting. New York lawyer and large-scale land speculator Richard Harison, for example, declined an offer of valuable lands in neighboring Vermont for precisely this reason. "Dear bought experience," he wrote, "has taught me to decline any Purchase of real Property lying in another State. My great Distance from such Property and Ignorance of the Laws and Customs that prevail respecting it are the Reasons that govern me." Harrison balked at the legal complexity created by the new nation's patchwork federalist project. Interstate speculation forced speculators to grapple with federalism's legal heterogeneity. Learning another legal code was a steep curve—and it didn't help that state and territorial land policies were constantly changing. Moreover, speculation across state and territorial boundaries entailed problems of distance. Learning enough about faraway tracts to deal in them confidently forced speculators to place tremendous trust in agents and surveyors. Harison had tried managing a land scheme across state boundaries before, and deemed juggling jurisdictions and managing distant holdings too difficult to be any longer worth his while.¹³

But where some speculators, like Harison, saw trouble, others saw opportunity. For them, the challenges of speculation across boundaries represented merely the cost of obtaining land at the cheapest prices, on the best terms, or in the most eligible and promising locations. Many who dealt in lands scattered far across the U.S. didn't actually prove up to the task; their legal papers

¹³ Richard Harison to Roswell Hopkins, Aug. 14, 1802, bound vol. I, Richard Harison Papers, New-York Historical Society.

and correspondence swell with requests for information they felt deprived of, with fabricated information about regions they truly knew little of, and with litigious attempts to reclaim distant property they were liable to lose because they had neglected to keep up with tax policies. But knowledge and nerve allowed many other speculators to successfully “shop” across state and territorial boundaries. In doing so, they forged a national market in expropriated frontier land.

The career of an indefatigable New Englander named Peregrine Foster illuminates how speculation across federalism’s variegated landscape produced a national land market. Foster was a minor land speculator—and a mostly unsuccessful one, at that. Because he not only had little capital to start with but also was unwilling to finance land purchases through debt, he dealt in hundreds *and* thousands of acres rather than hundreds *of* thousands. But his ambitions were big, and he was a keen observer of the land market. He was also a stellar correspondent, loathe to mail a piece of paper that was not smothered in writing. The result is an especially rich correspondence, which reveals the clear speculative strategy Foster hoped to build around the opportunities federalism presented.¹⁴ In his early thirties, Foster moved from New England to the Ohio Valley, situating himself at the intersection of several different jurisdictions: Pennsylvania, Virginia, Kentucky, and two parts of the Northwest Territory—the portion still administered by the federal government, and the huge tract it had sold to the speculative Ohio Company. In planting himself at the abutting borders of several states and federal territories, Foster hoped that proximity to speculative lands, close attention to new policy developments, and the agility to choose among investment opportunities offered by different governments would allow him to overcome his lack of capital and aversion to debt. Like a weed between concrete slabs, Foster was ready to chase fertile ground up whatever cracking new opportunity presented itself to him.

¹⁴ Aversion to credit: Peregrine Foster to Dwight Foster, Oct. 27, 1794, box 1, Dwight Foster Papers, Massachusetts Historical Society. Writing habits: Peregrine Foster to Dwight Foster, June 8, 1796, box 2, Foster Papers. Foster often wrote in abbreviations, which I have silently corrected.

Peregrine Foster's first venture into the land business was as a member of the Ohio Company, the first land company to privatize and seek to profit off Congress's plans for the territory it claimed northwest of the Ohio River. Mostly comprised of Massachusetts veterans who had been officers in the Continental Army, the Company purchased 1.5 million acres of land from Congress in the summer of 1787. When Foster's older brother bought a share in the Company, he followed suit. More than that, he joined in the Company's first expedition to its tract, traveling west in the winter of 1787-88 with a party of forty-eight surveyors, mechanics, and laborers. This expeditionary force of American empire established the Company's threshold, the planned city of Marietta, where the Muskingum River empties into the Ohio. Foster returned home to Rhode Island to find that his wife had given birth to a daughter, whom they named Betsey Marietta.¹⁵

The journey whetted Foster's speculative appetite. He dabbled a bit in Vermont lands before setting his sights again westward, hatching what his brothers called "his Don Quixote Scheme of an immediate Removal to the Muskingum Country." In 1792, he traveled back towards the Ohio Company's purchase with his family in tow. But by that point, the U.S. was losing its war of conquest against the Northwest Indian Confederacy. With the Ohio Country mired in vicious warfare, the family settled temporarily in Morgantown, Virginia, instead. There, Foster fell deeper into land mania. "I know the Fortunes that were secured here in an early Day. Nothing is wanting but Judgment, Enterprise, & Property"—that is, capital—"to begin with." He

¹⁵ Archer Butler Hulbert, ed., *The Records of the Original Proceedings of the Ohio Company* (Marietta, Ohio, 1917), 24n41; Theodore Foster to Dwight Foster, Aug. 7, 1788, box 1, Foster Papers; Frederick Clifton Pierce, *Foster Genealogy* (Chicago, 1899), 227.

often wrote of his desire “to shift every ½ penny of Property I have” into land in Virginia, “& probably beyond the Ohio,” as well.¹⁶

As Foster’s comments suggest, he bore no special allegiance to the Ohio Company, but instead was willing to take advantage of whatever opportunities presented themselves from any of the jurisdictions that converged on the Ohio’s riverbanks. He closely monitored developments in the multiple governments that surrounded him, for new land policies inevitably stoked new energy into the market. He stayed abreast of the news, and he solicited his brothers—one a United States Senator, the other a Congressman—for inside information on forthcoming federal legislation. He gazed in multiple directions in search of a bargain that might launch him into a higher stratum of wealth—the one that would yield a large and easy return, which he hoped to leverage into bigger and bigger land ventures.

For one, Foster kept close track of Virginia land policy. In 1794, for instance, he learned that Virginia would throw back onto the market thousands of acres of public land that had been nominally purchased but never surveyed. The opportunity was great; one of Foster’s neighbors intended to amass 150,000 acres at less than 2¢ each. Lack of cash prevented him from emulating the strategy, but later that year Foster earned a half interest in 50,000 Kentucky acres by working as a land agent. Foster even secured an opportunity to shape Virginia land policy by getting elected to the House of Delegates in 1795. But at nearly the same moment, he soured on Virginia lands. The state’s public domain had been picked over; “there is no more vacant land to be found,” he reported, “nearly all is at Market.” He had also concluded that Virginia lands were

¹⁶ “Don Quixote Scheme”: Theodore Foster to Dwight Foster, Feb. 11-16, 1792, box 1, Foster Papers. On the Northwest Indian War, see Colin G. Calloway, *The Victory with No Name: The Native American Defeat of the First American Army* (New York, 2015); Susan Sleeper-Smith, *Indigenous Prosperity and American Conquest: Indian Women of the Ohio River Valley, 1690-1792* (Chapel Hill, 2018). Settling in Virginia: Julia Perkins Cutler, *The Founders of Ohio: Brief Sketches of the Forty-Eight Pioneers* (Cincinnati, 1888), 17; Peregrine Foster to Theodore Foster, June 11, 1792, box 1, Foster Papers. Land mania: Peregrine Foster to Dwight Foster, May 4, Sept. 22, 1794, box 1, and April 2, Nov. 30, 1795, box 2, Foster Papers.

poor in quality, and that the southern method of surveying by metes and bounds—individual surveyors delineating irregularly shaped tracts according to natural features—had left land titles so confused that one-third of the tracts would “never [be] found.” In 1796, therefore, he bid good riddance to the sorry state of “Land Speculation” in “the Virginia Rocks & Mountains.”¹⁷

Foster saw more enticing opportunities in the Northwest Territory, chasing success—like thousands of others in the 1790s—by shopping across the jurisdictions of a federated land market. The Territory’s attractions included Congress’s commitment to rectangular surveys, and the fact that titles in a region newly opened to speculation would be more secure than those in chaotic western Virginia.¹⁸ Congress had yet to decide when and how to sell the lands beyond the Ohio Company’s purchase, and Foster knew that those decisions would shape opportunities. He made it his business to acquire the best information. He closely tracked Congress’s developing plans to honor the land bounties issued to Continental soldiers during the Revolutionary War. Veterans had sold most bounty certificates to speculators during the economic depression of the 1780s. If Congress turned these latent promises into land patents, Foster believed it would open “a Door . . . for the best speculations on Land that has offered for many years.” Those like himself who were close enough to scout the best tracts could make immediate profits of 1250 to 2500%, Foster predicted. Moreover, in a dramatic turn from 1794 the U.S. scored a decisive victory against the Northwest Indian Confederacy at the Battle of

¹⁷ Unsurveyed tracts: “An Act giving further Time to the Owners of Entries on the Western Waters, to Survey the Same,” Oct. 12, 1792, VA 1792 Session, ch. 8; Peregrine Foster to Dwight Foster, Sept. 22, 1794, box 1, Foster Papers. 50,000 acres: Peregrine Foster to Dwight Foster, Dec. 17, 1794, box 1, and Jan. 3, 1795, box 2, Foster Papers. House of Delegates: Peregrine Foster to Dwight Foster, Feb. 4, May 13, 1795, box 2, Foster Papers. Getting out of Virginia lands: Peregrine Foster to Dwight Foster, April 30, Nov. 30, 1795, Feb. 24, 1796, box 2, Foster Papers.

¹⁸ See Gary D. Libecap and Dean Lueck, “The Demarcation of Land and the Role of Coordinating Property Institutions,” *Journal of Political Economy*, 119 (June 2011), 426-67; Malcolm J. Rohrbough, *The Land-Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (New York, 1968), 5-22; John Robert Van Atta, *Securing the West: Politics, Public Lands, and the Fate of the Old Republic, 1785-1850* (Baltimore, 2014), 45-67

Fallen Timbers, dispossessing several Ohio Indian nations and codifying its sovereignty over part of the region it claimed as the Northwest Territory in the 1795 Treaty of Greenville.

Congress began planning to sell land in this newly conquered public domain. With two brothers in Congress, Foster was equipped to stay one step ahead of competitors in acquiring and acting upon that information. He constantly pestered them for news. He also hatched a scheme to form a land company to buy 100,000 acres on the far western fringe of U.S. sovereignty directly from Congress, apparently seeking to replicate the Ohio Company's purchase on a smaller scale.¹⁹

Because his lack of capital stymied all these visionary plans, Foster also sought to profit off others' boundary-crossing speculative schemes. Many New Englanders had spoiled on the idea of the West, thanks to the Ohio Company's struggles: its cash-flow problems, the "poor broken & hilly" quality of the lands it claimed, the slow progress of its surveys, and Native peoples' powerful defense of their homelands during the Northwest Indian War. But some still wished to invest in Ohio, and Foster wanted to monetize his proximity to those lands. He proposed to serve as an agent and surveyor for investors back home, touting his "Judgment, Integrity, & Industry. I can survey with accuracy, plat with Elegance & tell as good a story of the Lands as any Body," he wrote. "What agents need have a better Recommendation to Land Jobbers."²⁰

Despite his willingness to invest "my Shirt off my Back," none of Foster's schemes ever amounted to much.²¹ But he read the land market with great acuity. He managed a constant stream of information about policy, land qualities, and patterns of migration. He scanned

¹⁹ Veterans' warrants: Peregrine Foster to Dwight Foster, Sept. 22, 1794, box 1, Foster Papers. Land law: Peregrine Foster to Dwight Foster, Jan. 21, March 4, April 30, 1795, and Jan. 27, 1796, box 2, Foster Papers. Land company: Peregrine Foster to Dwight Foster, Nov. 30, 1795, Jan. 13, Jan. 27, 1796, box 2, Foster Papers.

²⁰ New Englanders sour on Ohio: Peregrine Foster to Dwight Foster, Feb. 24, 1796, box 2, Foster Papers. Land agent: Peregrine Foster to Dwight Foster, Sept. 22, Oct. 27, 1794, box 1, Foster Papers.

²¹ Peregrine Foster to Dwight Foster, Dec. 18, Dec. 29, 1796, box 2, Foster Papers.

opportunities across the numerous jurisdictions that surrounded his location in the Ohio Valley. And he attempted to envision how the young nation was going to grow, doggedly seeking to speculate in that future. Foster's lack of capital and self-imposed abstention from buying on credit consistently undermined his designs. Nevertheless, the tremendous hopes he placed in his strategy demonstrate that state and territorial boundaries constrained neither capital nor ambition. Countless others found more success in speculating across federalism's heterogeneous legal and political landscape. In doing so, they created a national market in lands.

If the interstate speculations of Foster and legions of others built a national market in lands, then federalism served as the competitive structure of that market. Speculators and settlers, after all, were not the only actors in the early republic land business; governments also counted among its participants. For each actor in this teeming market, the goals and policies of other actors—governments, settlers, and speculators, down the road, one state over, or thousands of miles away—shaped prospects and strategies.

Competition across the federal political structure occurred in two dimensions. For one, speculators who had bought land and were trying to sell it at a profit competed with landed governments for purchasers (both secondary speculators and actual settlers). In buying lands, speculators' capital became fixed in place, putting them at the mercy of public policies that could shift streams of migration and cause land prices to fluctuate. Often, speculators found their profits undercut by democratic laws for the sale of public lands that suppressed land values across the market. In 1785, for example, Philadelphia merchant and land speculator Levi Hollingsworth desperately wanted to sell lands he had purchased in Virginia's Kentucky district to Europeans. But Hollingsworth's agent in England revealed that even across an ocean and a

chasm of asymmetrical knowledge about the American land market, Londoners knew how to prevent themselves from getting fleeced. The agent told Hollingsworth that the prices he sought were unrealistic. The state of Pennsylvania, he wrote, was advertising its own “back Lands” at four and a half shillings per acre. This price made Hollingsworth’s demand of four shillings per acre “appear high” for lands in Kentucky, “so farr from the centre of what is here called the United States.” Hollingsworth remained wary of government competition in the years to come. In 1787, Congress’s sales of Northwest Territory lands, including to the Ohio Company, saturated the speculative capacity of northeastern capital. Hollingsworth was unable to sell land to anyone, from Philadelphia to Boston. When Congress’s sales ground to a halt in 1788, however, Hollingsworth sought to seize the moment, informing potential buyers that “at present the land office for the sale of Lands on the western side of the Ohio is shut” and that they wouldn’t get a better deal than his.²² Peregrine Foster, too, worried endlessly about competition from federal land sales. While trying to sell 50,000 Virginia acres in 1795, Foster begged his brother to help offload the tract before Congress could act. “[I]f a Land Office is likely to be opened this session of Congress,” he anxiously wrote, “by all means effect a sale. . . . let them be put as low as 8d Pennsylvania money rather than not sell.”²³

But for all the competition that land speculators feared, government land sales could also boost their ventures. Take, for instance, the fluctuating value of Ohio Company shares. In 1787, original investors bought 1000-acre shares for \$1000. Shares tumbled in value during the early

²² Pennsylvania competition: Enoch Story to Levi Hollingsworth, July 19, 1785, box 27, Hollingsworth Family Papers, Historical Society of Pennsylvania; Norman B. Wilkinson, “Land Policy and Speculation in Pennsylvania, 1779-1800” (Ph.D. diss., University of Pennsylvania, 1958). Congressional competition: Solomon Meyers to Hollingsworth and Benjamin Wynkoop, Oct. 3, Oct. 11, Oct. 19, 1787, box 34, Hollingsworth Papers. Land office shut: Hollingsworth to Jacob Myer, Aug. 29, 1791, vol. 3, Hollingsworth Papers. For other instances of Hollingsworth worrying about Congressional competition, see letters to George Lewis, Nov. 12, 1791, Jan. 14, 1796, vol. 3, Hollingsworth Papers; Levi Hollingsworth to Robert McCulloch, Feb. 2, Feb. 24, 1795, vol. 3, Hollingsworth Papers; Levi Hollingsworth to Robert Barr, Feb. 24, 1796, vol. 3, Hollingsworth Papers.

²³ Peregrine Foster to Dwight Foster, Feb. 4, 1795, box 2, Foster Papers.

1790s due to slow surveys, mediocre land, and the Northwestern Confederacy's successful arrest of U.S. expansion. Even after the Treaty of Grenville, as late as November 1795, Peregrine Foster complained that Company shares were "not at this day worth the interest of the principal they cost us." Share prices started to rebound, however, in 1796, as Congress began preparing to open a land office for selling lands around the Company's tract at \$2 per acre. Company shares returned to their original value in 1797 and exceeded it in 1798. The federal government's decision to sell Northwest Territory lands not only set a high baseline price, but also augured waves of white settlement that would make lands in the whole region more desirable.²⁴ Levi Hollingsworth, too, breathed a sigh of relief when the terms of Congress's bill for the sale of lands in the Northwest Territory came into view. He noted that the price congress "fixed for the Publick lands"—combined with the 1795 Treaty of San Lorenzo, which granted western settlers the right to ship produce to market via the Mississippi River—"hath given a rise to the Lands" in nearby Kentucky and Virginia.²⁵

Governments and private speculators, then, were not just in competition with each other; public land policies could bolster private speculations, as well. The aggressive land speculator John Cleves Symmes, in fact, had summarized this contradictory dynamic in a letter to Hollingsworth some years before. In 1787, Symmes had just completed his term as a New Jersey delegate to Congress. He told Hollingsworth to expect competition from Congressional land sales "on the federal side" of the Ohio River, and chided him for asking too high a price for his Kentucky tracts. "The rage for emigration over the Ohio will be such that I expect the value of

²⁴ Ohio Company shares: *Articles of an Association by the name of the Ohio Company* (Worcester, 1786). Mediocre land: Peregrine Foster to Dwight Foster, Feb. 24, 1796, box 2, Foster Papers. Low share prices: Peregrine Foster to Dwight Foster, Nov. 30, 1795, box 2, Foster Papers. Federal land law: "An Act providing for the Sale of the Lands of the United States, in the territory northwest of the river Ohio," May 18, 1796, 1 Stat. 464; Van Atta, *Securing the West*, 59-66. Rebound: Peregrine Foster to Dwight Foster, Feb. 24, April 20, May 27, May 29, Sept. 15, Dec. 18, 1796, July 23, Oct. 26, 1797, Aug. 6, 1798, box 2, Foster Papers.

²⁵ Levi Hollingsworth to William Philips, March 5, 1796, vol. 3, Hollingsworth Papers.

lands on the south east side will sink for a while,” he warned, anticipating that with Congress’s establishment of a land office in the Northwest Territory, “a field will open that is unbounded.” Symmes predicted, however, that white settlement in the region would eventually make lands on either side of the river more desirable. Flourishing commerce and social institutions in both jurisdictions would, “in a few years,” “undoubtedly add a rising value” to lands in Kentucky, including Hollingsworth’s.²⁶

The fact that government polices across federalism’s competitive market structure could alternately help or hurt private speculation had drastic effects upon individual land speculators. Hence Hollingsworth’s and Foster’s assiduous attention to news from the legislative halls. The hundreds of land laws that rolled out of state and national legislatures during these decades made for a market of swirling complexity—one that speculators needed to carefully navigate and negotiate. Public policies’ effects on land prices meant that well- or ill-timed purchases and sales could either make fortunes or break them. Since the impacts were so divergent, though, this dimension of competition—between speculators and governments—seems to have been a net wash for the speculative land business.

By contrast, the second dimension of competition across federalism—*between* governments *for* speculators—had a clear effect on the land market as a whole. States and the national government indeed considered themselves in competition with each other: for the right to sell regions of land, for speculative purchasers, and for settlers.²⁷ Two impulses drove the sense of competition. First, governments wanted to maximize revenue from land sales, a pillar of

²⁶ John Cleves Symmes to Levi Hollingsworth and Dorsey Penticost, Sept. 6, 1787, box 34, Hollingsworth Papers.

²⁷ On territorial disputes between states in the 1780s, see Onuf, *Origins of the Federal Republic*. For examples of perceived competition among governments for land revenues and settlers, see: “An Act for vesting the estates of the late proprietaries of Pennsylvania in this commonwealth,” Nov. 27, 1779, 10 Pa.St.L. 33, ch. 874; William Grayson to George Washington, April 15, [c. 4–8] May, 1785; George Washington to William Grayson, April 25, 1785; and James Madison to George Washington, April 16, 1787, in *The Papers of George Washington, Digital Edition*, ed. Theodore J. Crackel (Charlottesville, 2008).

public finance that seemed crucial amid post-revolutionary anti-tax sentiment. Second, late eighteenth-century political economy held that people equaled labor, and labor made prosperity; land sales and settlement, then, would lay the foundation for a state's prosperity for generations to come. Governments jockeyed with each other to sell and settle huge tracts of public land in the 1780s and 90s, but speculators emerged as the true winners. Competition allowed them to pit governments against each other in the marketplace, driving down land prices, lengthening terms of credit, and easing conditions of sale. Investments in land became all the more irresistible as the market flooded with cheap public tracts, heightening the frenzy of speculators and states buying and selling across the landscape of American federalism.

The entangled history of the public lands of Massachusetts and the national government illustrates this point. The specter of each helped speculators obtain lands from the other on stellar terms. During its long campaign to buy a slice of the Northwest Territory, the Ohio Company often pressured Congress to speed and sweeten the sale by pointing to competition between the federal claims they coveted in Ohio and Massachusetts' public lands in Maine. As early as 1784, the Company's progenitors were goading Congress to sell them lands by threatening to turn "their views another way." Company organizer Rufus Putnam noted that Massachusetts was preparing to sell Maine lands in exchange for depreciated public securities, which would "undoubtedly operate much against the ohio scheme"—and, in turn, against Congress—"by greatly lessening the number" of investors he could bring to the table. Putnam's argument was instrumental, but the competition was real, and it shaped his strategy. Because Massachusetts was "forming the plan of settling" its Maine district, the Ohio Purchase threatened to "militate with the perticuler intrest" of that state "by dreaning her of Inhabitants." Putnam therefore could

not count on his own Congressional delegation for political help, forcing him to seek Washington's influence, instead.²⁸

Still lobbying Congress in March 1787, the Ohio Company's agent, Manasseh Cutler, continued fostering the sense of competition. With Congress on the brink of default and sorely in need of revenue, Cutler told one Congressman that the Company would pay no more than 50¢ per acre—the price at which Massachusetts and “several of the other states” were selling their own public lands. Congress had set a minimum price of \$1 per acre for Northwest Territory lands in 1785, and many New Englanders had hesitated to invest in the Ohio Company as a result. But Cutler felt confident that if the Company could buy lands from Congress “on terms as advantageous” as Massachusetts was offering others, then “our company would be immediately filled with valuable adventurers . . . for the spirit of emigration never ran higher . . . and the Ohio lands are held in the highest estimation.”²⁹

In the dramatic heat of his official negotiations that summer, Cutler repeatedly drew on federalism to remind the cash-strapped Congress that he and his fellow speculators could take their money elsewhere. Unless Congress would lower its price, lengthen its terms of credit, and grant a flexible installment plan, Cutler said, the Company would “prefer purchasing lands of some of the States, who would give incomparably better terms.” He threatened to walk away from the talks. This strategic brinksmanship “appeared to have the effect I wished,” Cutler later recalled. The Congressmen with whom he was negotiating “were mortified,” but promised to work up friendlier terms. Early the next morning, several delegates visited Cutler's lodgings. Their faces tight with “much anxiety,” they told him that Congress “had discovered a much more

²⁸ Rufus Putnam to George Washington, April 5, 1784, in *Papers of George Washington, Digital Edition*.

²⁹ Manasseh Cutler to Nathan Dane (draft), March 16, 1787, and Manasseh Cutler to Winthrop Sargent, March 16, 1787, in William Parker Cutler and Julia Perkins Cutler, *Life, Journals and Correspondence of Rev. Manasseh Cutler* (2 vols., Cincinnati, 1888), I, 192-95.

favorable disposition,” and believed the Ohio Company could “obtain conditions as reasonable as [he] desired.” Cutler reprised the strategy a few days later. Delivering an ultimatum with an “air of perfect indifference,” he bluntly told Congress that if his final offer was not accepted, “we must turn our attention to some other part of the country. New York, Connecticut, and Massachusetts would sell us lands at half a dollar, and give us exclusive privileges beyond what we had asked of Congress.” Later that day, Congress accepted the Company’s terms in their entirety.³⁰ In providing the Ohio Company with numerous other governments from which to purchase public lands, federalism had placed Congress the midst of a competitive market structure. By persistently reminding Congressmen of that fact, Cutler bent them to the Ohio Company’s will.

This chain of influence repeated itself in reverse when Massachusetts sought to sell its own public lands. Massachusetts’s legislature struggled throughout the 1780s to craft policies that would draw settlers to Maine, stem the tide of “emigration from this into other states,” and sell land to retire the commonwealth’s debt. But sales were slow. It didn’t help that the Ohio Company was working strenuously to move people and capital into the Northwest Territory. In 1787-88, glowing reports of the Ohio Country flowed from New England’s printing presses. Since “the other States so well as the USA” had “vast quantities of Lands for sale,” one Massachusetts politician wrote, it seemed “poor policy to postpone the sales of ours, until all the best purchasers are supplied, with the alotments of N York, Pensylvania & Foederal lands.” “[E]very State” across the federation, he complained, “out strips us in this business.”³¹

³⁰ *Journals and Correspondence of Manasseh Cutler*, I, 294-96, 303-04.

³¹ Policies to stem emigration: report of the Lincoln Co. lands committee, March 19, 1784, *Acts and Resolves of Massachusetts, 1782-83* (Boston, 1890), 895-97. Reports of Ohio: Manasseh Cutler, *An Explanation of the Map which delineates that part of the federal lands . . . ready for settlement* (Salem, Mass., 1787); *An Oration delivered at Marietta, July 4, 1788, by James M. Varnum* (Newport, R.I., 1788); Solomon Drown, *An Oration Delivered at Marietta* (Worcester, Mass., 1789); *Boston Gazette*, Dec. 31, 1787, Oct. 20, 1788; *Independent Chronicle*, June 5, June 26, Dec. 18, 1788; *Herald of Freedom*, April 17, 1789.

Faced with such competition, Massachusetts eased one by one the conditions it had placed upon sales of Maine land—high prices, public auctions, maximum limits on tract sizes, and firm requirements for quick settlement—reluctantly nudging its way from settler-oriented policies towards laws that would facilitate quicker sales to speculators. Many of these policy revisions occurred at the behest of Governor John Hancock, who was keenly aware of Massachusetts’s rivals in the national land market. In several speeches to the state legislature, Hancock suggested that the only way to make Maine lands competitive was by allowing speculators to buy large tracts on easy conditions. Selling lands for “a small consideration,” he believed, would “have a happy effect” by attracting speculators who could invest enough in developing the region to stoke settlement. Such a policy would “prevent those emigrations, which have for some years past been so frequent, encrease the number of our Citizens,” pay off some of the public debt, and “probably, in a short space of time, afford a resource for taxes far exceeding” the highest price the Commonwealth could expect by selling the lands to actual settlers now.³²

Speculators provided the final push in using the specter of competition among governments to hurl vast tracts of cheap Maine lands into the national market. In 1791, Henry Knox and William Duer sent an agent, Henry Jackson, to Boston to purchase anywhere from one to four million Maine acres. But the legislature’s lands committee balked at the proposal Jackson laid before them, discomfited by a speculative scheme so vast and hoping to raise more revenue than he was offering. Jackson, in turn, played the same card that Manasseh Cutler had used while negotiating with Congress. Unless they could purchase at the massive scale and miniscule price they wanted, the agent wrote, “the Gentlemen for whom I act will be desirous of turning their

³² *Boston Gazette*, March 3, 1788; Resolve of March 26, 1788, in *Acts and Resolves of Massachusetts, 1786-87* (Boston, 1893), 865-68; Hancock speech to the General Court, June 1, 1790, in *Acts and Resolves of Massachusetts, 1790-91* (Boston, 1895), 547-51.

attention to some other quarter.”³³ Constrained by the pressures of a competitive, federated market structure in lands, the legislature relented. Within two weeks, Jackson had contracted for Knox and Duer to purchase two million acres of Maine lands on excellent terms and at 10¢ per acre. They bought another million the next year.

The fact that states and the national government independently regulated their own slices of a national land market in the 1780s and 90s meant that federalism was not simply a political arrangement, but also an economic one—a competitive market structure that exacerbated the scale and intensity of speculation in expropriated land. States, hungry for purchasers, offered millions of acres for sale at astonishingly low prices. Speculators eagerly swooped in to profit off the rebound in land prices that they believed would inevitably follow.

Competition across the federal American union produced irresistible opportunities for land speculators, but federalism also armed speculators with important tools and methods. Federalism’s dappled legal and political landscape conferred diversity upon different tracts in the market: particular attributes that speculators could translate into a competitive edge, a sales pitch, for lands they had purchased and sought to sell at a profit. If a state or territory’s reputation, political circumstances, promise of economic prosperity, natural advantages, or legal culture made land within its jurisdiction uniquely desirable, land speculators highlighted those features to potential purchasers or investors. Speculators whose tracts suffered by such comparisons faced an obstacle that needed to be overcome on the path to profit. They found that federalism provided them with a multitude of political bodies to influence. In such lobbying efforts, many speculators were quick to call attention to the examples of other governments, pestering state and

³³ Henry Jackson to Samuel Phillips, June 13, 1791, Henry Knox Papers, Gilder Lehrman Institute of American History.

national policymakers to not allow their own policies to fall behind in promoting speculation and, they argued, settlement. Both cases demonstrate that speculators did not stop using federalism once they purchased a tract, but rather continued throughout their land ventures to navigate, negotiate, and mobilize the heterogeneity that federalism sought to preserve.

Land speculators' engagement with the uneven regulation of alien landownership in the early republic demonstrates this point. Alien land laws were a set of policies that determined when, where, and under what terms foreign subjects could own American land. Thanks to the United States' revolutionary experiment in federalism, these policies differed widely from state to state. Common-law precedent prohibited foreign landownership. And the wartime confiscation of Loyalist property had led some states to positively legislate against British ownership of American lands, in particular. Other states, meanwhile, wrote statutes *permitting* foreign landownership. The result was a legal patchwork; some states were more amenable to alien landholders than others.³⁴

Laws that sanctioned alien landownership were crucial to speculators' aims because they widened the field of potential purchasers, helping speculators to court foreign capitalists. Capital was scarce in the early republic, and the ability to sell land to foreigners was especially important for those who hoped to profit not by gradual retail sales to yeomen families but rather by quick wholesale to secondary speculators. Pro-alien laws could also be interpreted as evidence of the new nation's enlightened liberality—a sign of a promising political future worthy of investment. Where anti-alien policies existed, some politicians downplayed their significance, maintaining that they were “never enforced.” But few foreigners were willing to sink huge sums into

³⁴ On alien land laws: Charles Sullivan, “Alien Land Laws: A Re-Evaluation,” *Temple Law Quarterly*, 36 (Fall 1962), 15-53; Ellen Holmes Pearson, *Remaking Custom: Law and Identity in the Early American Republic* (Charlottesville, 2011), 86-88.

investments of questionable legality. For foreign land speculators, as for domestic ones, security of title was key.³⁵

Speculators could circumvent anti-alien laws through legal arrangements like trusteeship. But such legal maneuvers entailed significant trouble and expense. Take, for instance, Robert Morris's speculation in six million acres of unceded Haudenosaunee land, which New York claimed as the western reaches of the state. After purchasing the preemption rights (the government claim, exclusive of Indian title) to these lands in 1790-91, Morris quickly sold the easternmost 1.2 million acres at a quick and handsome profit to a group of foreign investors led by William Pulteney, one of Britain's wealthiest men. Just a few years later, Morris sold most of the remainder to a set of Dutch financiers who would later organize themselves into the Holland Land Company. Because New York prohibited alien landholding, however, both sets of Morris's purchasers had to adopt costly and intricate means to legally hold their new lands. Pulteney, for example, sent a Scotsman named Charles Williamson as his agent, instructing him to secure U.S. citizenship and hold the land until it was sold or the law changed. It took \$3,733 simply to move Williamson, his family, and their belongings from Britain to Baltimore, and for that cost he hadn't even made it to New York.³⁶ It was a complicated mess.

Speculators in states that smiled upon foreign landownership were therefore armed with a strong selling point. Philadelphia land speculator William Bingham, one of the early republic's

³⁵ Alexander Hamilton, remarks on the Jay Treaty, July 9-11, 1795, in *The Papers of Alexander Hamilton*, ed. Harold C. Syrett, 27 vols. (New York, 1961-1987), vol. 18, 427-28. On transatlantic land speculation, see François Furstenberg, *When the United States Spoke French: Five Refugees Who Shaped a Nation* (New York, 2014), 227-85.

³⁶ On speculation in Iroquoia, see Charles E. Brooks, *Frontier Settlement and Market Revolution: The Holland Land Purchase* (Ithaca, 1996); William Chazanof, *Joseph Ellicott and the Holland Land Company* (Syracuse, 1970); Barbara A. Chernow, "Robert Morris: Land Speculator, 1790-1801" (Ph.D. diss., Columbia University, 1974); Helen Cowan, *Charles Williamson: Genesee Promoter, Friend of Anglo-American Rapprochement* (Rochester, N.Y., 1941); Laurence M. Hauptman, *Conspiracy of Interests: Iroquois Dispossession and the Rise of New York State* (Syracuse, 1999); Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York, 2006).

leading financiers, understood this dynamic; the unevenness of state-level alien land laws was central to one of the largest land schemes he ever concocted. Eyeing Morris's windfall with a tinge of envy, Bingham launched a scheme that aimed to replicate Morris's success. He, too, would buy up a massive tract, and he, too, would quickly sell it to Europeans. But Bingham planned to locate his venture in Pennsylvania, which—unlike New York—had long allowed foreigners to own land. In early 1792, Pennsylvania opened a land office and put four million acres in the center of the state onto the market for as low as one shilling each. Bingham bought roughly 400,000 acres, and planned to amass up to a million. He purchased land warrants, which acknowledged that he had paid for the land, and quickly sent an agent to scout out the best tracts in one body before competitors had a chance to discover them. He hoped to sell the lands as soon as possible, before he would even need to repay the loans he used to purchase them.³⁷

“The essential Part of the Speculation,” Bingham later explained, was “to derive a Profit from the Acquisition of a very large Quantity of Lands, to be disposed of, to foreign Capitalists, who it was supposed, from the convulsed State of Europe, would be anxious to make Investments in American Lands, & thus realize their Funds.” Bingham predicted that “the legislative Encouragement held out by the State”—Pennsylvania's assent to alien landownership—would allow foreign investors to dodge the troubles of trusteeship, like those that had already slowed the work of the Pulteney purchase, therefore “induc[ing] a Preference, to be given to Purchases in Pennsylvania.” While courting two Dutch bankers as potential investors, Bingham drove the point hard. “[T]he Liberality of the State of Pennsylvania has held out vast advantages to foreigners in their Possession of Lands,” he wrote, allowing them to own property “on specifically the same Terms as Native Citizens.” The policy was good for investors,

³⁷ William Bingham to Willem and Jan Willink, Sept. 29, 1792, William Bingham Correspondence, Historical Society of Pennsylvania; William Bingham to John Adlum, May 12, May 25, June 10, June 12, 1792, Bingham Correspondence; William Bingham to Robert Gilmor, Dec. 9, 1792, Bingham Correspondence.

he argued. By expanding the range of potential purchasers, it “nearly doubles the Value of Lands.” Bingham also harped upon the United States’ relative political peace; the French Revolution and continental war portended waves of immigration—a chain of events, he knew, that would only increase the significance of alien land policies.³⁸

Above all, Bingham insisted that Pennsylvania was unique in its liberality. Alien landownership was “a Privilege,” he wrote, “an Indulgence which, altho’ founded on Policy, no other State has granted to Foreigners.” He hoped it would distinguish his lands amid a crowded market, rendering “a Preference in the Purchases of Lands in this State, glaringly Evident.” In other words, the crux of this speculative strategy lay not just in Pennsylvania’s stance on alien landownership, but also in the fact that many other states *did not* allow foreigners to own land. It lay, ultimately, in federalism. By leaving states free to regulate landownership as they pleased, federalism made some tracts more attractive to investors than others. “Nothing but an imaginary Line divides these Lands from those that Mr Morris purchased,” Bingham wrote to the Dutch capitalists. And yet that state boundary—and the differing land laws that fell on either side of it—made all the difference. Bingham saw this, and sought to capitalize upon it by making legal particularities central to the commodity he was pitching.³⁹

Speculators whose tracts sat on the worse side of such comparisons tried to convince the states in which they invested to improve their policies—that is, to homogenize laws across the union in a direction that suited them. Bingham’s fellow Philadelphian Levi Hollingsworth, for instance, yearned for Virginia to pass an alien land law to match Pennsylvania’s. In the 1780s, he

³⁸ William Bingham to Charles Hare, Aug. 16, 1802, box 1, William Temple Franklin–Charles Pemberton Fox Legal Records, American Philosophical Society; William Bingham to Wilhelm and Jan Willink, April 26, 1792, March 23, 1793, Bingham Correspondence; William Bingham to Robert Gilmor, May 10, 1793, Bingham Correspondence.

³⁹ William Bingham to Robert Gilmor, May 10, 1793, Bingham Correspondence; William Bingham to Wilhelm and Jan Willink, Sept. 29, Dec. 1792, Bingham Correspondence.

wanted to sell as many as 300,000 Virginia acres to Dutch investors. Middling Dutchmen, inspired in part by the American Revolution, were agitating for republican reforms, and in 1785 their unrest erupted into violence in the Patriot Rebellion. In 1786, Hollingsworth sought to capitalize on the situation by offering Virginia lands as a refuge for nervous Dutch wealth. Rather disingenuously, just a few months after Shays's Rebellion, he touted U.S. political stability, arguing that the American government had "much more energy than those of a more republican cast," which, he said, made "real property as secure as in most other Countries."⁴⁰

But in 1786, no Virginia law explicitly permitted non-citizens to hold land, which meant that the common-law precedent prohibiting it still pertained. Writing from Pennsylvania, where foreigners had been allowed to own land for a full decade, Hollingsworth expected Virginia to soon follow suit. Virginians, however, weren't so sure. They feared that alien landownership would undermine their decision seven years prior to confiscate Loyalists' land, including Lord Thomas Fairfax's five-million-acre patent in the north of the state. If Virginia's General Assembly was to abandon that seizure's logic and permit alien landownership, Hollingsworth's Richmond correspondents feared, it would sully "the Character of the Legislative Body," and "give room" for suspicions that "the value of the Lands"—and their usefulness to state coffers—"weigh^d more powerfully with them" than the patriotic motives they had burnished in confiscating Fairfax's grant. "The principle that an alien cannot hold land in our Government is so deeply rooted that the Eloquence of a Cicero would not shake it," one Virginian reported. Several others—including the land-office registrar and the attorney general—tried to persuade Hollingsworth that the commonwealth's anti-alien policies were gentle and rarely enforced. But

⁴⁰ R. R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800* (2 vols., Princeton, 1959), I, 323-40; Levi Hollingsworth to Enoch Story, Dec. 1786, vol. 2, Hollingsworth Papers.

such promises held little sway with European buyers, who, operating at such a distance, valued stability and security above all else. Hollingsworth, stymied, continued to lobby for years.⁴¹

Others had more success in influencing state legislatures to stop federalism from working against them. In 1798, Aaron Burr managed to usher an alien landownership bill through the New York State Assembly. Burr served in the Federalist-dominated Assembly only from 1798-1799, when New York's Republicans, Nancy Isenberg argues, were trying to broaden their appeal to include not just yeoman farmers but also mechanics and merchants. Burr was "an indispensable power broker" in this process.⁴² Authorizing alien landownership was part of this commercial agenda.

The Holland Land Company's agent, Théophile Cazenove, had been pursuing an alien land law since 1793. The claim to millions of acres of Haudenosaunee land in present-day New York, purchased from Robert Morris, represented the bulk of his employers' holdings. But the Company also owned a broad swath of land in Pennsylvania, Bingham's bastion of liberal policy, so it understood the benefits that accrued when states allowed foreigners to directly own U.S. lands. New York had not legislated on the subject—it had only named *specific* foreigners who could own lands, under strict conditions—so the general prohibition on alien landownership remained intact. Cazenove had first turned to Alexander Hamilton for help securing an alien land policy. But it was tough going. By 1796, Hamilton's efforts had yielded only a seven-year window for the Dutch financiers to become U.S. citizens, to sell their land to Americans, or to

⁴¹ Hollingsworth and Johnson to Levi Hollingsworth, May 13, May 20, May 28, June 17 (including enclosure: Edmund Randolph, "Queries which the Attorney's Opinion is requested on by the Land Companies of Philadelphia"), Dec. 9, 1786, boxes 30-32, Hollingsworth Papers. Hollingsworth was loath to relinquish his plans. See "A Plan for the Purchase Settlement & Improvement of Lands on the Waters of Ohio," in Hollingsworth to Enoch Story, Jan. 2, 1787, vol. 2, Hollingsworth Papers; Levi Hollingsworth to Jonathan Brown, Feb. 12, 1789, vol. 2, Hollingsworth Papers.

⁴² Nancy Isenberg, *Fallen Founder: The Life of Aaron Burr* (New York, 2007), 178-80. On this cohort of the Republican electoral coalition, see Joyce O. Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York, 1984).

forfeit it to the state. The Seneca Nation had not yet relinquished title to its homelands, however, and opening the region to white invasion and settlement would require a lengthy and expensive process of treaty negotiations. Seven years was hardly enough time. But New York Supreme Court judge Egbert Benson wrote to Hamilton that after “four successive Sessions” of “unceasing” efforts on the Company’s behalf, he entertained “not the most remote Expectation that the Dutch Gentlemen will have any further Privilege granted to them.” Hamilton knew that the legislative wheels required more grease. So in March 1797, he proposed a deal. If the Holland Land Company would invest \$250,000 in the cash-strapped Western Inland Lock Navigation Company, spearheaded by Hamilton’s father-in law, Philip Schuyler, then New York would extend the grace period to 1816.⁴³

Cazenove balked at the sum. Within a year, he turned to the Federalists’ opponents, from whom he eventually secured a much better deal. For a measly \$5500 “loan” from Cazenove, unlikely ever to be paid or demanded, Aaron Burr, who had partnered with the Dutch in their Pennsylvania purchases, managed to secure an alien landowners act in April 1798. Cazenove paid “legal fees” to several other lawyers and lawmakers—Republicans and Federalists, including Hamilton, alike—to smooth the Burr bill’s passage. The law created a three-year window during which foreigners could buy New York lands outright. In order to prevent U.S. citizens from becoming tenants of foreign landlords, it stipulated that foreigners could only sell

⁴³ Julius Goebel et al., eds., *The Law Practice of Alexander Hamilton: Documents and Commentary* (5 vols., New York, 1964-1981), III, 623-24, esp. n42 and n44; “An Act for the relief of William Willinck, Nicholaas Van Staphorst, Christian Van Eeghen, Hendrick Vollenhoven, Rutger Jan Schimmelpenninck and Pieter Stadnitski being aliens,” April 11, 1796, in *Laws of the State of New York, 1777-1801* (Weed, Parsons: 1886-1887), 19 Sess. 1796; Egbert Benson to Alexander Hamilton, Aug. 4, 1797, in *Law Practice of Alexander Hamilton*, ed. Goebel et al., III, 701-02; Isenberg, *Fallen Founder*, 181; *Laws of the State of New York*, March 17, 1797, 20 Sess. 1797. For Hamilton’s involvement with the Holland Land Company, see Goebel et al., eds., *Law Practice of Alexander Hamilton*, III, 617-82. Morris and Cazenove extracted a cession from the Senecas at the 1797 Treaty of Big Tree. Taylor, *Divided Ground*, 309-17.

land in fee simple, not lease it.⁴⁴ New York had finally joined Pennsylvania and liberalized its policy in favor of transatlantic land speculation, if only for a time. Jealous of the legal particularities some land speculators enjoyed, others pressured governments across the federal union to adopt homogenously speculator-friendly policies.

If federalism provided the framework in which speculators strived to convert land and influence into profit, it also informed the financial engineering of their schemes—in ways that rendered land into an increasingly abstract commodity. The most ambitious land tycoons built far-flung speculative portfolios, simultaneously owning land in Maine and Pennsylvania and Ohio, for example, perhaps with a share in Georgia’s infamous Yazoo scheme, too. At one point, William Bingham floated the idea of buying “all the Lands that are exposed to sale in the middle & Eastern States,” from Pennsylvania to Maine.⁴⁵ Such a strategy sought, in part, to exploit geographic distance. Investing in multiple regions of the republic could pace the rate at which a speculator would achieve profitable returns. Lands in northwestern Pennsylvania might experience earlier waves of migration, and therefore sell at a hefty profit a decade or two before lands in central Maine could be gainfully sold. But diversification across the federal union also aimed to benefit from the nation’s political fragmentation and legal heterogeneity. Stretching a speculative portfolio across multiple states and territories could help insulate a speculator from negative developments in any one polity. It could blunt the impact of one state’s anti-speculator tax policies, for example. When used as a basis for diversifying speculative landholdings,

⁴⁴ Mary-Jo Kline et al., eds., *Political Correspondence and Public Papers of Aaron Burr* (2 vols., Princeton, 1983), I, 338-39; “An Act to enable aliens to purchase and hold real estates within this State under certain restrictions,” April 2, 1798, *Laws of the State of New York*, 21 Sess. 1798, ch. 72.

⁴⁵ William Bingham to Wilhelm and Jan Willink, March 23, 1793, Bingham Correspondence.

federalism mitigated the financial risks of land speculation—or, at the very least, it *seemed* to do so. It thus both facilitated and justified investment in lands at a massive scale.

The North American Land Company (NALC), which one scholar has called “the largest land trust ever known in America,” is the most striking example of early republic land speculators using federalism to arrange diversified landholdings.⁴⁶ Founded in early 1795, the NALC claimed a capital stock comprising six million acres in six states, from Pennsylvania to Georgia. The scheme arose from desperation. Its founders—Robert Morris, John Nicholson, and James Greenleaf—had attempted to command a lion’s share of real estate in Washington, D.C., which by then had been planned but remained mostly unbuilt and uninhabited. But others’ interest in the future capital city was limp, and by late 1794, Morris, Nicholson, and Greenleaf were in a bind. Continental wars sparked by the French Revolution had scuttled their plans to secure European credit to meet their approaching payments for the D.C. lots. Morris, Nicholson, and Greenleaf conceived the NALC as a stopgap measure; it would use “backcountry” lands to attract European credit and keep their finances liquid until demand for D.C. real estate grew. The partners pooled the lands they owned and purchased more, amassing six million acres that had cost them nearly \$1.25 million. They planned to sell 30,000 two-hundred-acre shares to European investors at \$100 each. This plan would capitalize the company at \$3 million: 240% of the amount the partners had put into it. The company’s plan of association explained that a board of directors would use those funds to increase the lands’ value by surveying and improving them,

⁴⁶ Aaron M. Sakolski, *The Great American Land Bubble: The Amazing Story of Land-Grabbing, Speculations, and Booms from Colonial Days to the Present* (New York, 1932), 38. On the NALC, see Robert D. Arbuckle, *Pennsylvania Speculator and Patriot: The Entrepreneurial John Nicholson, 1757-1800* (University Park, Pa., 1975), 114-38, 165-84.

and promised that land sales would lavish at least a six percent annual dividend upon shareholders. “The profits will be great and certain,” the NALC insisted.⁴⁷

The NALC, then, represented a desperate attempt to salvage the fortunes of some of the most reckless speculators around. Most historians point to the NALC as evidence either of land speculators’ audacious duplicity, or of the degree to which American finance achieved new degrees of entanglement and abstraction in the 1790s.⁴⁸ And indeed, the NALC was duplicitous, entangled, and abstract. Morris, Nicholson, and Greenleaf were not only in debt to one another, but also guaranteed each other’s IOUs to people beyond their circle, throwing up a smoke screen of solvency. The partners’ entanglement is evident in the difficulty Morris and Nicholson had in trying to rid themselves of Greenleaf. After Greenleaf, the youngest partner, failed to secure loans he had promised from Dutch banks—and defaulted on notes that Morris and Nicholson had guaranteed—the two older partners decided they’d had enough. They bought out Greenleaf’s partnership in both the D.C. lots and the NALC, but the only thing they had to pay him with was collateral in the same ventures. They eliminated Greenleaf from the scheme’s management, but could not get rid of him as an investor. Meanwhile, Morris and Nicholson’s own cross-endorsed notes short-circuited the networks of credit in which they were enmeshed; by 1797 they were circulating well below face value, and themselves became objects of speculation.⁴⁹

These knotty financial interconnections testify to historians’ standard interpretation of the NALC as the pinnacle of early American financial daring, and reveal the precariousness of

⁴⁷ *Plan of Association of the North American Land Company* (Philadelphia, 1795), 19.

⁴⁸ Thomas Perkins Abernethy, *The South in the New Nation, 1789-1819* (Baton Rouge, 1961), 138-40; Arbuttle, *Pennsylvania Speculator and Patriot*, 165-84; Thomas Doerflinger, *A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia* (Chapel Hill, 1986), 326; Shaw Livermore, *Early American Land Companies: Their Influence on Corporate Development* (New York, 1939), 162-71; Mann, *Republic of Debtors*, 199-204; Charles Royster, *The Fabulous History of the Dismal Swamp Company: A Story of George Washington’s Times* (New York, 1999), 356-60, 372-77, 382-90; Sakolski, *Great American Land Bubble*, 47-50, 143-45.

⁴⁹ Mann, *Republic of Debtors*, 201, 325n61.

speculative finance in the 1790s. Yet the standard account focuses only on the financial aspects of the NALC's strategy. It overlooks the company's parallel use of federalism to surmount the potential pitfalls of such financial temerity. The NALC sought to create the appearance of low risk—and thus to attract investors and create a trickling cash flow for its land-rich proprietors—through its expansive reach across the national land market's multiplicity of regions, governments, and legalities.

Simply put, the NALC was designed to make investors believe it would be everywhere. When any corner of the U.S. became more desirable in the minds of prospective settlers, when any government passed speculator-friendly policies, or when land prices ticked up in a given region for any reason—strong crop yields, internal improvements, victories in dispossessing Indigenous peoples and quelling Native resistance to U.S. invasion—the NALC would be there to bask in the profits. Similarly, by owning so much land in so many different places, the NALC could blunt the effects of unfortunate developments at the state or territorial level. Would Pennsylvania finally insist that speculators heed its rule—long written into their deeds, and just as long ignored—that lands be settled quickly or forfeited? Would Virginia sell non-resident proprietors' lands for nonpayment of taxes? Would titles in Kentucky or Georgia prove faulty or fraudulent? Would tracts slip from the company's hands because it couldn't muster cash to complete a purchase contract? Would Native peoples successfully rebuff the expansion of U.S. sovereignty over Indian territories for which the NALC held preemption rights? The company's stock of land was large enough and scattered among enough different jurisdictions, the proprietors seemed to suggest, that other holdings would buoy the company's shareholders and proprietors alike past any such dangers. The NALC enlisted the political landscape of federalism to obscure the very real risks that threatened its unprecedented scheme.

Of course, the proprietors mentioned none of those risks outright. For besides an attempt at pooling both risk and potential, the NALC was also a gutsy and disingenuous publicity stunt. Although the company's real goal was simply to attract European capital to resuscitate Morris's and Nicholson's ailing fortunes, they professed that it was dedicated to improving and settling the lands it claimed. The company's published plan of association assured potential shareholders that the lands were "chosen or selected (in preference to other tracts) in consideration of the good quality of the soil, advantageous position, [and] certainty of title." An ecstatic 1796 defense of the company's integrity, published amid deep skepticism about the quality of its tracts and titles, included unbelievably rosy descriptions of the lands.⁵⁰ Moreover, the pamphlet suggested that reaping profit by owning shares in the NALC required neither the undignified market grubbing of a merchant or securities speculator nor the courtroom harangues of a lawyer. Instead, by acquiring NALC shares, investors would become members of a leisured patrician class, respectably aloof from both the drudgery and dependence of labor and the negative moral connotations of speculative finance. "The proprietor of the back-lands gives himself no other trouble about them than to pay the taxes, which are inconsiderable; as nature left them, so they lie, till circumstances give them a value," the company proclaimed. "The proprietor is then sought out by the settler . . . and receives from him a price which fully repays his original advance with great interest."⁵¹ In 1795 and 1796, Robert Morris sent a barrage of similarly optimistic letters to potential European investors. Meanwhile, company agents fanned out across

⁵⁰ *Plan of Association of the North American Land Company*, 3; *Observations on the North-American Land-Company, lately instituted in Philadelphia* (London, 1796), 42-48, 61-79, 105-49.

⁵¹ *Observations on the North-American Land-Company*, 17. This passage's vision of proprietorship hearkens back to what was, by the 1790s, a mostly archaic vision of leisured, disinterested, landed wealth that sought—and, precisely because of rampant speculation, increasingly failed—to ideologically distinguish itself from the marketplace. See Gordon S. Wood, *The Radicalism of the American Revolution* (New York, 1991): 210-12, 264-70.

Europe—to England, Ireland, Switzerland, Germany, and France—peddling similar pitches.⁵²

“The Lands are daily increasing in Value, there is no possibility of Loss,” Morris wrote one of them. “On the Contrary immense profits are certain.”⁵³

The bulk of these pitches was more or less untrue. Profits were far from certain. In reality, the company devoted little energy to developing its lands. Its primary goal was not, as the prospectus suggested in language engineered to appeal to patriarchal sensibilities, to help “the honest and industrious labourers of all countries, particularly of America” obtain “under its protection an independent livelihood, and the means of providing for their innocent offspring.” Rather, the company’s real purpose was to securitize land and convert it into liquid capital. If NALC agents in Europe proved unable to actually sell any shares, Morris instructed them to use the shares to secure loans. Moreover, company rhetoric notwithstanding, the risks were real indeed. Many of the company’s lands were poor in quality, and its titles were nowhere near as secure as the NALC insisted. Overlapping surveys, unpaid taxes, and unheeded settlement requirements threatened the loss of many tracts. Much of the 2.3 million Georgia acres the company claimed was caught up in the Yazoo land frauds—which had partially been motivated in the first place by Morris and Nicholson’s well-known, voracious appetite for land—and would be subject to legal wrangling among Georgia, speculators, and the U.S. government until a Supreme Court decision in 1810.⁵⁴

But the scale of the enterprise and the fact that lands were scattered across six states aimed to mask all these risks. Surely the NALC’s plans could not go awry in *every* state, and

⁵² Robert Morris to Wilhelm and Jan Willink, March 16, 1796, box 12, Robert Morris Papers, Library of Congress; Robert Morris to Bird, Savage, and Bird, March 20, 1795, box 11, Morris Papers; Robert Morris to Amyand & Osborne, May 7, 1795, box 11, Morris Papers. Arbuckle, *Pennsylvania Speculator and Patriot*, 169.

⁵³ Robert Morris to William Temple Franklin, Nov. 14, 1795, box 12, Morris Papers.

⁵⁴ *Observations on the North-American Land-Company*, 1; Royster, *Fabulous History of the Dismal Swamp Company*, 372-74; Arbuckle, *Pennsylvania Speculator and Patriot*, 171-80; *Fletcher v. Peck*, 10 U.S. 87 (1810).

surely the land in *some* states would prove quite profitable. This was the speculative magic of the NALC's use of federalism. Above all, the NALC attempted to turn the fact that they owned lands across numerous federated polities into a reassuring sense of mitigated risk. They tried to turn federalism into confidence.

In the process, the NALC became not only the most striking example of how speculators used federalism to diversify their holdings, but also the most extreme example of the ways speculation commodified land. The NALC detached investors' money from specific tracts of land. Late eighteenth-century land speculators typically bought actual acres with physical locations and boundaries thoroughly described in deeds. Speculators often understood these boundaries only dimly, but the idea was that the link between investment and the ownership of actual land should be as clear as possible. Not so with the NALC, which instead quantified ownership in measures of indistinct, unspecified, symbolic "acres," 200 of them to a share. Each share's acreage, in this case, did not signify a specific tract of land, but rather "represented" a denomination—a portion of abstract ownership in the company's vast holdings and its potential profits.⁵⁵ Diversifying across federalism's legal heterogeneity even helped the NALC overcome the problem of uneven state-level alien landholding policies. By vesting its lands in the hands of trustees and issuing representational shares, the NALC allowed "aliens, or foreigners, who have capitals" to "participat[e] in the benefits arising from the sale and increasing value of the lands, equally with" U.S. citizens.⁵⁶ The NALC also substituted spin and fabrication in place of actual knowledge about land. It disconnected lands from their histories, the true state of their titles, and the stability of the governments that enforced property rights and respective claims. It talked not of real things that gave value to land, like potential crop yields, but rather of an arbitrary

⁵⁵ *Plan of Association of the North American Land Company*, 7.

⁵⁶ *Observations on the North-American Land-Company*, 52.

estimated average price. Through these sleights of hand, the NALC tried to make all its landholdings—no matter their actual characteristics—glow with equal promise, and it ascribed the same null risk to all its lands, no matter their state.

In all these ways, the North American Land Company rendered land into a more abstract investment, and forged a precedent for its increasing commodification decades that followed. Federalism helped them do it. As a political system, federalism sought to accommodate local specificity. But the NALC used federalism for precisely the opposite purpose: to dissociate their landed capital from the very local nature of the various risks that plagued the actual tracts and titles they claimed. Thus the NALC transmuted a revolutionary political arrangement into a technology of commodification. Federalism helped make land fungible.⁵⁷

Unfortunately for Nicholson, Morris, and Greenleaf, others simply were not buying their spin—or their lands. European investors knew more and more what early Americans never quite learned: that U.S. lands were a dubious path to riches. In 1796, Morris tried to sustain the NALC's chimerical promises of profitability by paying the guaranteed dividend of \$6 per share out of his own pocket. Such legerdemain was easy to pull off; the company had not yet sold even 500 of its shares, so there were few dividends to actually dispense.⁵⁸ By 1797, however, Morris and Nicholson could pay neither their agents nor the next round of dividends. Creditors pressed from all directions, and financiers looking for a gamble could buy Morris and Nicholson's seemingly innumerable cross-endorsed notes for 12¢ on the dollar. Both went bankrupt and were

⁵⁷ On commodification, see Karl Marx, *Capital: A Critique of Political Economy, Volume 1*, trans. Ben Fowkes (New York, 1976), 125-77; Susan Strasser, ed., *Commodifying Everything: Relationships of the Market* (New York, 2003). On commodifying land, see Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Mass., 2005); Christopher Clark, "The Agrarian Context of American Capitalist Development," in *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary J. Kornblith (Chicago, 2012), 13-38. My thinking about the cultural and rhetorical work of commodification has been shaped by recent scholarship on the market culture of the slave trade: Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge, Mass., 2001); Stephanie E. Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora* (Cambridge, Mass., 2008).

⁵⁸ Royster, *Fabulous History of the Dismal Swamp Company*, 383.

imprisoned for debt in Philadelphia's Prune Street Jail by the end of the decade, at which point the NALC's board of managers purchased their shares in the company for 7¢ each.⁵⁹ Lawyers continued picking through the rubble of the NALC's implosion long into the nineteenth century.

But the NALC's fast and furious failure is less important here than what the company's design suggests about the way land speculators approached, utilized, and sought to profit off federalism. One of the Revolution's central political legacies also became one of the central strategies for the early republic's most notorious land speculators. Like many other speculators operating on smaller scales, the NALC used federalism as a basis for diversifying its investments—a tool that made disparate lands seem equivalent, that diminished (or at least concealed) risk, and that therefore helped lift land speculation to maniacal heights.

Land speculators sought to succeed within a national land market that was regulated sub-nationally. Congressional and, later, federal policies shaped the land market in the western territories, while states passed their own laws about land. Speculators built schemes that crossed political boundaries and stretched over the entirety of this variegated legal landscape, from Maine to Georgia. The interstate competition that resulted lent both irresistible opportunities and useful tools to those who speculated in claimed or conquered lands.

Federalism structured the land business in the young republic. But the inverse is also true: land speculation helped consolidate and clarify American federalism. Historians have long asked why the fractious confederation of states did not quickly splinter apart, but instead hung together well into the nineteenth century. Compelling answers have ranged from constructed ideas of American nationalism to the “specter” of disunion and endless war between sovereign

⁵⁹ Arbuckle, *Pennsylvania Speculator and Patriot*, 184.

republics.⁶⁰ Tracing land schemes across state lines suggests that the frenzied land speculation of the 1780s and 1790s—decades when the future of union seemed dubious—also helped hold the nation’s federal experiment together. Large-scale investment in distant lands gave American elites a self-interested, material reason to keep the states united. The innumerable deeds that recorded a citizen of one state’s ownership of land in another represented just as many ligaments binding the early American union together.

The litigiousness of the land business also raised new questions about how the federal system worked. As Kathryn Preyer has argued, the urgency of those questions and the interests whose fortunes hung in their balance provided a vantage from which the federal judiciary could assert its role as the ultimate referee of federalism’s many moving parts.⁶¹ Land speculation in the 1780s and 90s led to two landmark U.S. Supreme Court decisions in the early nineteenth century. One of them shored up the Supreme Court’s authority over state courts. The other decision both asserted the inviolability of legal contracts (thus strengthening white property rights in the young republic) *and* was the first case in which the Supreme Court struck down a state law.⁶² Just as federalism provided the context in which land speculators strove to succeed, so land speculation forced Americans to confront open questions about federalism’s function and its meanings.

⁶⁰ John M. Murrin, “A Roof without Walls: The Dilemma of American National Identity,” in *Beyond Confederation: Origins of the Constitution and American National Identity*, ed. Richard Beeman, Stephen Botein, and Edward C. Carter II (Chapel Hill, 1987): 333–48; David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill, 1995); Hendrickson, *Peace Pact*; Daniel C. Wewers, “The Specter of Disunion in the Early American Republic, 1783-1815” (Ph.D. diss., Harvard University, 2008).

⁶¹ Kathryn Turner Preyer, “Federalist Policy and the Judiciary Act of 1801,” in *Blackstone in America: Selected Essays of Kathryn Preyer*, ed. Mary Sarah Bilder, Maeva Marcus, and R. Kent Newmyer (New York, 2009), 10-38. On the federal judiciary’s functional importance to the federalist mechanism as a whole, see LaCroix, *Ideological Origins of American Federalism*, 175-213.

⁶² *Martin v. Hunter’s Lessee*, 14 U.S. 304 (1816); *Fletcher v. Peck*, 10 U.S. 87 (1810).