January 29, 2019

Dear NYU Legal History Workshop Participants,

I’m looking forward to joining you in a couple weeks. My working paper, “Land Companies and the First Federal Land System,” is attached.

Let me say a few words by way of context. The piece is the second chapter of my book project, tentatively entitled Federal Ground: Sovereignty, Property, and the Law in the U.S. Territories, 1783-1802. The book attempts to place in dialogue borderlands histories that have emphasized uncertainty, uneven authority, and competing power centers and historians who have been debating the comparative strength of the federal state, particularly in the early American West. It argues that the federal government came to have power in the West less through direct command than as claimants turned to nascent federal authority to resolve their disputes.

The book is divided into two parts: the first concerns property and federal lands, the second so-called “Indian Affairs” (although, as you’ll see, these are closely interconnected). This chapter is the middle of the three-chapter part about federal land. The preceding chapter looks at the proliferation of title tracing to the multiple systems of ownership that the federal government inherited in the territories, and the uncertainty and conflict it produced. The following chapter, entitled “The Rise of Federal Title,” explores how the federal government gained authority over property by adjudicating many of these quotidian disputes.

I’m very much looking forward to your feedback and comments as I continue to rework my manuscript.

Sincerely,

Gregory Ablavsky
Chapter Two: Land Companies and the First Federal Land System

In summer 1787, as the Constitutional Convention met in Philadelphia and the Continental Congress drafted the Northwest Ordinance in New York, the United States entered two enormous contracts to sell land in the Northwest Territory, quickly followed by a third, to entities known as the Ohio, Scioto, and Miami Companies. All told, these contracts promised to transfer title to 7.5 million acres of federal land in return for payments that would extinguish nearly $5 million in federal debt. These deals, one proponent boasted, “far exceeded any private contract ever made before in the United States”: a congressman stated that he had never known “so much attention” paid to a proposal, nor “more pressing to bring it to a close.” Yet less than a decade later, federal enthusiasm for land companies had soured. “[S]elling lands,” one congressman argued in 1796, “should always be kept in the hands of Government, and not in those of speculators.” Congress ultimately agreed, establishing a system of federally run land offices to sell the public domain directly.¹

Most histories of the federal public lands portray a steady march from the 1785 Land Ordinance to the federally run land offices established in 1800, with the sales to companies as an aberrant, and brief, detour. Yet these three sales arguably deserve to be denominated as the first true federal land system: as a consciously designed and executed policy, they represented a much fuller endeavor than the half-hearted sales of a few thousand acres under the earlier Land Ordinance. The history of how and why this experiment was deemed a failure demonstrates that the decision to create an expansive federally-run administrative apparatus to manage and sell land was neither foreordained nor unthinking, but the product of hard-won lessons drawn from

experience. It reveals, too, the largely obscured role of corporate power in the early history of American imperialism, one that links the United States to global histories of empire even as it underscores deep tensions over corporate and federal power in the early republic’s contested borderlands.2

In one sense, the federal government’s initial reliance on land companies to distribute public lands was more characteristic of the era’s governance than the elaborate administrative system that followed. Land companies were rife in the early republic. Freed from the restrictions that prerevolutionary predecessors like the Wabash, Illinois, and Henderson Companies had chafed against under the British rule, new companies quickly arose to seize renewed opportunities for enrichment from the chaotic titles of the West. Although few of them formally incorporated, most of these companies were governmentally sanctioned. In fact, many got their land from state legislatures: rather than opt for the system of individual distribution embraced by North Carolina and Virginia, most states, eager for cash, simply sold their vast and nebulous western land rights. Massachusetts, New York, Connecticut, and, as we shall see, especially Georgia—all sold huge tracts for sizable prospective payments.3

But there was more behind these transactions than financial exigency. Anglo-American legal thought had long understood corporations and joint-stock companies as entities established

2. Few of the broad-scale histories of the federal land system spend considerable time on the sales to the land companies: Paul Gates, for instance, discusses them in two pages, Gates, History of Public Land Law Development, 70-72, while Malcolm Rohrborough devotes a page and a half; Rohrborough, The Land Office Business, 11-12.

by the government to serve a public purpose. Offloading the cost and risk of colonization by giving land to companies had deep roots in European, and particularly British, imperial practice, as recent work has traced. Most of the states could trace their origins to such companies, and Anglo-Americans were well familiar with the behemoths like the British East India Company, whose expansive charter empowered it to exercise what historian Philip Stern has termed “corporate sovereignty.” At the time, too, ownership of property—particularly control over title to land and its distribution—served as a key “mode of public planning and governance,” in the words of Dirk Hartog. In creating companies that owned and effectively governed territory, early American governments were following well-worn precedent.4

In another sense, though, the federal sales to land companies were paradoxical. Although corporate power could aid governance, many at the time also regarded it as a threat. Existing scholarship has focused on opposition to finance and banks, which “anti-charter” advocates condemned for their monopolistic and elitist tendencies. Land companies faced a similar critique for engrossing public assets to serve their own enrichment,. But alongside this republican assault on corporate power ran a corresponding attack from the Federalists who ultimately came to populate much of the Washington Administration. Even though these officials invested extensively in lands, they also viewed these new land companies warily, for many of the same reasons as their British predecessors had: the companies challenged the Federalists’ vision of orderly, regulated western settlement under the guidance of federal supremacy. The companies’ often dubious and tangled claims to ownership promised to exacerbate, not simplify, the

uncertainty of title; their disdain for Native rights of ownership enshrined in federal law promised to alienate Native nations and prompt violence; and their assertions of authority over territory, claiming even the right to make laws and raise armies, began to look something like sovereignty. This chapter explores these tensions by recounting one particularly intense confrontation between the new federal government and a Georgia-authorized land company, the Tennessee Company, that unfolded in the Southwest Territory.5

The resolution of this paradox lay in the widespread aspiration that the Ohio, Scioto, and Miami Companies could tame this threat by binding land companies closely to federal aims. Although historians have noted how these companies represented a projection of federal power into the Ohio Valley, they have missed their arguably still grander aim to curb and channel the seeming anarchic impulses of land speculation. Their watchword was “System,” a term of art that implied particular commitments. For one, system was a means to secure peaceful coexistence with Native nations through a Federalist agenda of acknowledgment and purchase of Native property rights—an economic as well as humanitarian goal linked to land value. For another, system was meant quite literally: as a way to create clear ownership rights by distributing lands methodically, in sharp contrast to earlier unplanned and haphazard land practices.

That, at least, was the ideology that underlay the first federal land system. In practice,

“system” proved largely self-serving rhetoric. When the promise of remade Indian affairs collapsed, the companies felt that the federal government had opportunistically taken advantage of their hazarding of both financial and personal risk, without providing the support they believed implicit in the partnership. From the perspective of federal officials, the federally created land companies proved little different from the Tennessee Company, succumbing to the lure of inchoate and uncertain ownership. When these speculative gambles failed dramatically, these land companies, too, left property messes that fell to Congress to resolve, exacerbating rather than clarifying the tangle of title in the territories. After this first federal land system produced results very similar to the jumble of ownership predating federal control, it was abandoned.

A Wild Speculator

Zachariah Cox would later acquire a reputation as a “noted Georgia land speculator,” but, like many speculators, he began his career as a surveyor, on the Georgia frontier. Cox first became interested in western lands in 1785, when he sought to lead a group of Georgia settlers to the area of Muscle Shoals, known then as the “Bent” of the Tennessee.6

Located in present-day Alabama, the Bent was one of the most strategically significant locations in the Southeast. The southernmost point of the Tennessee River, the region’s most important waterway, it linked the region to Gulf of Mexico via a short portage. At the junction of Cherokee, Creek, and Chickasaw territory, the Bent had also long served as a center of trade and diplomacy among the three nations. These prospects for Indian and riverine commerce early

attracted would-be speculators. Formally within Georgia, the Bent’s location tied it to the Tennessee Country, exciting the interest of the ubiquitous William Blount, who with several prominent North Carolinians, finagled the Georgia legislature into a complicated, and abortive, 1783 land deal for the Shoals.7

Neither Blount’s nor Cox’s schemes succeeded, but in 1789, Georgia sold nearly all the western territory it claimed, located in present-day Mississippi and Alabama, to three land companies. One of them, the Tennessee Company, was Cox’s concoction; it purchased 3.5 million acres centered at the Bent, at a heavily discounted price of 1.3 cens per acre, to be paid within two years. The other companies received millions more acres at an equally good deal. The bargain price reflected significant doubts over whether Georgia owned the land it was selling: the federal government claimed title, too, and the resident Creek, Chickasaw, and Cherokee Nations had all had their property rights guaranteed under federal treaty. Georgia resolved this dilemma by requiring the land companies to extinguish Indian claims and keep the state “free from all charge and expences” from Indian affairs.8

These sales of dubiously owned land represented the first of the Yazoo sales—later decried as the “Yazoo fraud”—which would convulse early American politics, finance, and law for decades. Yet, in focusing on later maneuverings in courtrooms, historians have neglected the literal ground-level fight for control of the southeastern borderlands precipitated by Cox’s most immediate interest—actually settling his newly purchased land. Cox headquartered his efforts in the federally run Southwest Territory, located just north of the Tennessee’s Company’s tract.

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8. “[Virginia; South Carolina],” Georgia Gazette, December 31, 1789; Act of December 21, 1789, in [Laws], (Augusta, Ga.: Printed by John E. Smith, 1790), 27-28.
Advertising free land to any who would raise a crop at the Bent, Cox and thirty-one armed men traveled from the Territory to the Shoals in spring 1791. In a widely reprinted letter, Cox reported meeting with Piamingo, leader of the Chickasaws, as well as Cherokee representatives. Both supposedly assured Cox of their friendship, though other reports suggested that Cox had told the Natives only of plans to trade and kept silent about his planned settlement.  

Federal officials, too, were principally concerned with the implications of Georgia’s sale for the contested borderlands. Georgia’s sale, they believed, was a direct affront to exclusive federal authority over Indian affairs, with both Secretary of War Henry Knox and Secretary of State Thomas Jefferson concluding that the purported contracts were illegal. The federal government possessed the “only constitutional right” of negotiating with Indians, Knox reasoned, and so “the state of Georgia could not delegate to the companies . . . a right which they do not possess.” When Cox nonetheless sought to settle, President Washington reacted with alarm. “Notwithstanding the existing laws [and] solemn Treaties,” he angrily wrote, “agents for the Tennessee company are at this moment by public advertisements under the signature of a Zachariah Cox encouraging by offers of land, & other inducements, a settlement at the Mussle-Shoals.” Knox ordered William Blount, now governor of the Southwest Territory, to prevent the settlement “at all events.”

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Cox’s effort at settlement came at a tricky time for Blount, who was in the midst of negotiating what would become the Treaty of Holston with the Cherokees. Learning of Cox’s plan, the gathered Cherokees became “exasperated” and “Indigna[n]t,” complaining that Blount was “amus[ing] them with friendly Talk” even as the United States was contemplating an “open Violation” of earlier agreements. During their visit to Philadelphia early the next year, Bloody Fellow and other Cherokee leaders specifically demanded that the federal government prevent the Tennessee Company’s planned settlement.11

Cox’s plan similarly angered the Creeks. Cox dispatched an agent to try to “Cajole” the support of the influential Creek leader Alexander McGillivray with “the most profuse and wild promises he could invent,” in McGillivray’s telling. But McGillivray wanted nothing to do with “these wild Speculators”: “These fellows must think me as mercenary, base & unprincipled as themselves.” McGillivray saw profound danger in Cox’s proposal. “The Tennesee Companies Grant,” he observed, “includes every foot of our, the Cherokees & Chickasaw Hunting Grounds.”12

After failing to halt Cox in the Southwest Territory, Blount turned to Native jurisdiction to enforce federal policy. Reassuring the Cherokees that Cox “was acting without any Permission or Authority of the Supreme Government, & contrary to the Views of the Same,” the governor


reportedly encouraged Natives to “intercept” Cox’s party. McGillivray came to the same conclusion about the meaning of federal law. “This Measure of Messr. Cox I conceivd to be a flagrant Violation of the treaty [of New York], because Congress had pledgd themselves not to Countenance the Georgia Grants to the Yasou & Tennessee Companys,” McGillivray wrote, which “left me at liberty to act hostilely against them if they should presume to Settle the Countrys in question.” McGillivray sent a Creek force to destroy Cox’s settlement, but when they arrived at the Shoals, the Creeks found the site abandoned. Apprehensive of the dangers, Cox and his men had stayed only briefly to trade with local Chickasaws before heading back upriver. McGillivray posted guards in case Cox returned.13

Cox and his men retreated to the Southwest Territory, where his presence roiled the government. Blount ordered them bound to appear before the Superior Court of the Washington District on charges of violating the federal Trade and Intercourse Act, which prohibited private purchases of Native land. But the result was not what Blount wished: “[t]he Grand Jury would [not] find the bill against Cox and others,” he complained, lamenting that the decision “has given the Company a sort of triumph in the Eyes of ignorant People over Government.” Cox’s acquittal, another federal official bemoaned, led many territorial residents “to believe the laws cannot punish them for settling at the shoals.” As defiant Cox announced plans to renew his open violation of federal law by returning to the Shoals the following year, federal officials attempted to halt his efforts. Blount issued a proclamation barring Cox from the Southwest Territory and threatening that any “injudicious” citizens who joined him would be hauled “before the federal court.” Territorial judge David Campbell charged a grand jury that federal Indian treaties were the “supreme Law of the Land” and urged their strict observance. Distributed throughout the

Territory, Campbell’s charge reportedly “operated much to the disgrace of those Adventurers.”\(^\text{14}\)

Yet it was Native power and financial worries, not federal law, that ultimately doomed Cox’s 1792 plans. Cox and his men would be “mad . . . to attempt another Settlement,” one newspaper correspondent observed, without “a force sufficient to act in opposition to all the Southern Indian Tribes.” Meanwhile, Cox found himself unable to scrounge together the money needed to pay Georgia, which insisted that payment be made in hard currency rather than near-worthless state currency. “Your good friends the Muscle shoal Compy. have faild to make pay[men]t,” a gleeful and sarcastic correspondent informed William Blount.\(^\text{15}\)

The Laws of Smithland

Neither Cox nor was Georgia ready to foreswear such a lucrative scheme because of a few setbacks. In 1795, after Cox and like-minded associates liberally plied the state legislature with bribes, Georgia once again sold these lands to several companies, including nearly three million acres around the Shoals to the Tennessee Company for $60,000. Unlike the 1789 purchases, this land grab caused outrage in Georgia, prompting the election of a new legislature that not only repealed the sales but literally burned the earlier statute.\(^\text{16}\)

Repeal and controversy did not daunt Cox, who, in 1797, returned to Knoxville—now the capital of the newly admitted state of Tennessee—where he opened a store. He reportedly began buying up weapons and ammunition, including $1200 in cavalry swords, and gathering a private army. But he reassured every official curious about his mysterious behavior that his purposes


\(^{15}\) Holstonian to Mr. Claypoole, August 16, 1791; Ogg to Blount, April 16, 1792.

were lawful, informing Tennessee’s new governor and the state’s assembly that he “should not proceed until authorized by the laws of his country”; the arms, he insisted, would only be used “defensively.” Cox also called on Benjamin Hawkins, the federal Indian agent for the Southeast, to reiterate his obedience to federal law and request a license to trade with the Chickasaws.17

These proclamations of lawfulness, however, relied on expansive and self-serving legal interpretation. Cox believed he could legally construct a trading post at Muscle Shoals based on a Chickasaw grant to the federal government at the 1786 Treaty of Hopewell, even though he in no way represented the federal authority. The supposed lawfulness of Cox’s plan also depended on the support and influence of “well wisher[s]” like Tennessee’s newly elected congressman Andrew Jackson, who, Cox believed, would ensure that extinction of Indian title to Cox’s lands would “shortly take place.” “Government will find it a better policy to people a country with their own citizens,” Cox wrote the sympathetic Jackson, “than to reserve it as an asylum for savages.” Many Tennesseans agreed: Governor Sevier described the federal government’s “prevention of a settlement at or near the muscle shoals” as “a manifest injury done the whole western country.”18

Yet Native leaders and federal officials contested Cox’s claims of legality. The Chickasaws had already given Cox “notis” not to “make Attempt to Settel,” since he lacked “the consent of the Chickasaw Nation” they threatened to immediately “strike” any settlement. The

Cherokee National Council wrote to the President appealing for him to “fulfill his promises” by preventing Cox’s settlement. If that failed, Benjamin Hawkins reported that the Cherokee warriors “have their moccasins ready” to resist. Federal officials in the Adams Administration sided with the Native nations. “Tennessee and Cox have a good deal disturbed me,” Secretary of War James McHenry confided. McHenry believed that Cox’s plans, if carried out, would “menace[] the United States in an extensive Indian war.” Insisting on federal guarantees of Native lands, McHenry gave explicit orders not to allow Cox and his men to pass U.S. forts.¹⁹

In 1798, Cox seemed to take the first steps toward settlement, creating a town called Smithland at the confluence of the Tennessee and Ohio, apparently as a springboard toward settling the Shoals two hundred miles upriver. In Smithland, Cox began experimenting in private government, establishing his own courts—“tribunals . . . unknown to the nation,” in the words of one federal official. When a passing trader, Martin Wickliff, got into a fight with one of Cox’s men, Cox had him arrested for violating “the laws of Smithland.” Wickliff told Cox he “did not think Smithland had any right to make laws,” but Cox insisted that “every man has a right to make himself laws of his own house, and that the houses there were his.” Cox became particularly incensed when Wickliff threatened to involve the local army commander. “By God we are not to be threatened with the Federal Officers,” Cox thundered, before expelling Wickliff from the settlement.²⁰


Yet, despite what one official termed Cox’s “usurpation . . . of the rights of sovereignty,” federal officers were largely powerless to halt him. Smithland nominally lay in a remote corner of Kentucky, whose governor had sanctioned Cox’s settlement. There was some ambiguity about whether Smithland lay on Indian land, but, if the federal government did invoke the Trade and Intercourse Act to forcibly expel Cox, word had it that he intended to “defend the place as long as he had a man able to fire a gun.”

The stalemate persisted until July 1798, when Cox and a number of his men attempted to pass the nearby Fort Massac to continue down the Ohio. Although Cox claimed to be traveling to New Orleans, the fort’s commander suspected that Cox’s true intent was to “force a Settlement” at Muscle Shoals and threatened to fire on Cox if he attempted to pass. Cox ranted against this exercise of “military prerogative, ”which he regarded as a violation of a right of free navigation “guaranteed to every citizen by the constitution and laws of the United States.” The commander ultimately allowed Cox to pass with a few of his men if he submitted to military inspection. Cox complied—but secretly dispatched the rest of his men overland, rejoining him downriver. The convoy proceeded down the Mississippi to Natchez, capital of the newly created Mississippi Territory.

Cox awoke in Natchez surrounded by what he described as a “battalion of federal troops, with fixed bayonets.” He was then allegedly held in “close confinement” in nearby Fort Panmure without access to letters and visitors. Cox appealed to the territorial governor for the right of the writ of habeas corpus, guaranteed “by the federal constitution.” He received no answer; his pleas

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to territorial judges were similarly unavailing.\textsuperscript{23} Finally, a despairing Cox climbed over the fort wall. He fled first to New Orleans, then proceeded through Choctaw Country back to Tennessee, supposedly pursued by Indians offered a federal reward for his capture (this measure especially angered Cox, smacking of “savage or military prerogative” rather than “impartial laws”).

Arriving in Nashville, Cox was arrested on a federal warrant and brought before a federal judge. Although the U.S. Attorney opined that Cox’s actions amounted to treason, Cox was released after three month’s detention, evidently for lack of evidence.

Despite Cox’s ultimate vindication, his arrest represented the “end to this troublesome man’s career,” in one newspaper’s words. Cox lost control over the Tennessee Company, and Muscle Shoals remained Indian country until after the War of 1812. In 1803, Cox petitioned Congress, alleging that he had lost $9,000 in goods—merchandise, a boat, and a slave—during his arrest. Congress referred him to the courts for relief; there is no evidence he received any.

Cox moved to Virginia, where died in the 1830s.\textsuperscript{24}

Yet the controversy over the Yazoo sales persisted. Company deeds still floated around the Southwest Territory, regarded as “of little Value” by territorial citizens but ultimately snapped up by investors. After Georgia finally ceded its western lands—including the Shoals—in 1802, the federal government inherited responsibility for the state’s dubious land dealings. In the 1810 case of \textit{Fletcher v. Peck}, in a decision that implicated federalism, Indian affairs, and land policy, the U.S. Supreme Court ruled that Georgia’s 1796 repeal of the Yazoo land sale violated the Constitution’s Contract Clause. In 1814, a compelled Congress compensated purchasers,

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23. Cox, \textit{An Estimate of Commercial Advantages}, 36-42, 49-51, 62-70; Zachariah Cox to Winthrop Sargent, September 3, 1798, Reel 4, WSP; Zachariah Cox to Winthrop Sargent, September 20, 1798, Reel 4, WSP; Charles Lee to Timothy Pickering, September 11, 1798, Reel 4, WSP.

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including the latest shareholders of the Tennessee Company, with the promise of $5 million in proceeds from future federal land sales.25

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Cox’s abortive effort at settlement has long been only a minor footnote to the larger story of the Yazoo sales, a borderlands picaresque with little lasting impact. Yet this was not how it was read at the time. Without settling a foot of land at Muscle Shoals, Cox managed to convulse the Creek, Cherokee, and Chickasaw Nations, the Southwest Territory, and the Washington and Adams Administrations. This reaction reflected the perceived seriousness of his threat. For many, Cox’s schemes epitomized the danger that unregulated land speculations represented to the vision of an orderly settlement of the West under federal authority.

There were several reasons why officials denounced Cox’s plan as “inimical to the United States.” For one, Cox had little patience for the federal project to reconstruct Indian affairs based on negotiation, consent, and lawful authority. For him, as for an earlier generation of land speculators, Native nations only represented an obstacle: their leaders were to be cajoled or bribed into providing a fig leaf of legality to settlement, with the ultimate aim of removal and dispossession. Cox had little sense or care, as federal officials fretted, that his heedless actions could provoke Native power. This was ironic, since it was precisely this power—in the form of Creek, Cherokee, Chickasaw resistance implicitly sanctioned by the federal government—rather than Blount’s ineffectual legal efforts that proved the most effective barrier to Cox’s settlement26.

For another, Cox’s opportunistic machinations rested on the same dubious assertions of


uncertain title that federal officials had been eager to so displace. In asserting ownership based on Georgia’s contested claim, Cox had guaranteed what followed—an intricate, decades-long contest across multiple state legislatures and courts that ended up, unwelcome, before Congress and the Supreme Court. The ultimate cost of Cox’s recklessness was borne, literally, by the federal government, which was constrained to adjudicate among competing claimants and compensate for the weakness of Georgia’s title from its own funds.

Finally, the Tennessee Company demonstrated how readily claims of ownership bled into assertions of jurisdiction. Cox constantly protested his obedience to “any constituted authority derived from our government,” but his attitude toward the rule of federal law was loose and self-serving, skirting outright defiance. His Smithland experiment, with Cox’s claim that land ownership conveyed the power of legislation, underscored the danger that land companies would become their own fiefdoms claiming the rights of sovereignty. Cox’s efforts accordingly terrified federal officials who feared that such private governments, effectively immune from federal law, would thwart their efforts to firmly establish national authority in the West.

The Advantages of System

In 1783, even before the Revolution had officially ended, Congress received a petition from a group of Continental Army officers soliciting land in the Ohio Country, which they anticipated would become a “Colonney of the United States.” The petition’s drafter and prime mover, Brigadier General Rufus Putnam, was an engineer and surveyor from a middling family in central Massachusetts. Although the petition languished, Putnam was undeterred: three years later, gathering like-minded veterans from around New England, he drafted articles for the creation of a land company to be known as the Ohio Company.27

In broad strokes, the Ohio Company’s business model closely resembled that of the Tennessee Company and similar endeavors, trading government debt for government land. “The design of this association is to raise a fund in Continental Certificates,” read the articles’ first line, “for the sole purpose . . . of purchasing Lands in the Western territory (belonging to the United States).” These certificates, which the federal government had issued to fund the Revolution, were trading at a heavy discount, and within a year the Company had secured enough to approach the Continental Congress to negotiate a sale.28

The agent the Company dispatched to negotiate with Congress, a political neophyte minister named Manasseh Cutler, arrived in New York in the summer of 1787 and quickly insinuated himself with the nation’s political elite. By his account, Cutler helped draft the Northwest Ordinance, the law that established federal governance over the Northwest Territory: his (unspecified) proposed amendments, he boasted, “have all been made.” Securing the actual contract proved harder, requiring political horse-trading and haggling over price. Ultimately, the Ohio Company agreed to pay $1,000,000 in certificates in two installments—$500,000 up front, with an additional $500,000 due in seven years—for one and a half million acres of land. This nominal price of 66 cents per acre in certificates worked out, in specie, to eight cents per acre.29

Congress agreed to this deal for some of the same reasons Georgia’s legislature had accepted the Yazoo sale: it, too, was cash-strapped and eager to extinguish debt. Congress proved particularly keen when, to make up for a $143,000 shortfall in the Ohio Company’s

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29. “An Account of Dr. Cutler’s Work for the Ordinance of 1787” (July 13, 1787), Vol. 63, Manassah Cutler Papers, Special Collections, Northwestern University Library; “Indenture Between the Board of Treasury and the Agents of the Ohio Company ” October 27, 1787, in TP: Vol. II, 80-84; Gates, Public Land Law Development, 70.
downpayment, Cutler struck a side deal with the New York financier William Duer. In exchange for the needed money, Duer proposed establishing a second company to be “kept a profound secret” that would purchase five million acres along the Ohio River west of the Ohio Company’s purchase. There would be no downpayment, just six installments at 66 cents per acre. A skeptical Putnam insisted on keeping the two companies separate, and so Cutler and Duer—along with the Ohio Company’s secretary, Winthrop Sargent—entered on their own into a second contract with Congress for what became known as the Scioto Purchase. Yet the two formally distinct companies remained entangled: “Without connecting this Speculation,” Cutler observed, “similar terms & advantages could not have been obtained for the Ohio Company”—not only because Duer supplied needed capital but also because retiring nearly four million dollars in federal debt proved an enormous incentive for Congress.30

Yet the Ohio Company offered more than a simple financial transaction; it also represented an experiment, a promise to create a new kind of land company that, unlike endeavors like Cox’s, would further the federal government’s western vision rather than impede it. Cutler repeatedly stressed how the new settlement would be “Systematic.” The Company would divide its lands under a tightly regulated process in which it would sell 1500 shares, each entitled to one thousand clearly defined and surveyed acres. These lands would then be settled by veterans who were “strongly attached to the federal Government.” The Company, in short, would remake western property along the neat lines that Congress tried, and largely failed, to achieve through its abortive experience with the Land Ordinance of 1785, while also “exempt[ing] the United States from the greatest part of the expense” of survey and settlement.

30. “Indenture Between the Board of Treasury and Manassah Cutler and Winthrop Sargent,” October 27, 1787, in TP: Vol. II, 85-88; Rufus Putnam to Winthrop Sargent, October 8, 1787, Reel 2, WSP; “Securities Received from the Agents,” October 27, 1787, Reel 2, WSP; “An Account of Dr. Cutler’s Work for the Ordinance of 1787.”
This line of argument found a receptive audience with Congress’s negotiator, President of the Board of Treasury Samuel Osgood. “System had never before been attempted” in settling western lands, Osgood lamented to Cutler, notwithstanding “the advantages of System in a new Settlement.” Cutler’s vision that the Ohio Company could remake western land to serve federal interests led Osgood to proclaim the “plan . . . the best ever formed in Amer[ic]a.”

This promise of system extended to relations between the United States and the diverse Native peoples of the Ohio Country. Encapsulating the Federalist approach, the newly enacted Northwest Ordinance pledged the United States to the “utmost good faith . . . towards the Indians” and mandated the enactment of “laws founded in justice and humanity” to “preserv[e] peace and friendship with them.” The leaders of the new Ohio Company warmly embraced this policy and rhetoric of friendship. “I want to embrace them in the arms of Friendship,” Rufus Putnam wrote a missionary working among the Delawares to reassure him of the Company’s intentions. “I want to be made acquainted with them, I want to have them Introduced to our Settlement in a friendly manner I want them to live by us and with us if they please I want (if I may be permited to speak it) I want that we should do them good and not evil.”

Land and how it was settled was, to the Ohio Company leaders, the key to securing cross-cultural peace. Unlike Cox, they had no desire to settle land that Native nations still owned: Indian title to all the Company’s land had already been “extinguished” through a series of federal treaties. Native consent to land cessions was as important to Putnam as it was to Knox: “I wish the land may be purchased from them [the Indians] on the principle of Bargain and Sale,” he wrote, echoing Knox’s rhetoric, “and not wrested from them as a condition of giveing them

32. Rufus Putnam to [John Heckewelder], February 29, 1788, Box 1, Folder 9, Rufus Putnam Papers.
Company leaders were equally confident that the “New England Mode of Settlement” would facilitate cross-cultural cooperation. The Ohio Company settlers would be “Farmers or Mecannicks and not Hunters.” Unlike the “Big Knives”—a derogatory Native label for the refractory Virginian settlers along the Ohio readily repurposed by antagonistic Company officials—then, they had no need to invade Native lands and kill their game.33

Contract in hand, the New Englanders immediately began preparations for their latter-day errand into the wilderness to establish their “systematic” settlement. But even before they departed, the Ohio Company spawned imitators who approached Congress anxious to access federal title. These applicants were particularly eager to replicate the Scioto Company’s contract and secure land rights without any immediate downpayment. Despite multiple proposals, ultimately only one scheme came to fruition: the purchase of one million acres in the Northwest Territory by an entity known as the Miami Company.34

Unlike the Ohio Company and its elaborate governance structure, the Miami Company was largely the project of one man, John Cleves Symmes, a New Jersey representative in the Continental Congress. In early 1787, Symmes reconnoitered the Northwest Territory, and in August that year, days after the Ohio and Scioto Companies had inked their contracts, he asked Congress to buy one million acres under the same terms as the Scioto agreement. The land in question was located down the Ohio River from the Ohio Company purchase, between the Great Miami and Little Miami Rivers, just west of the Virginia Military District.35

33. Jonathan Heart to William Judd, July 8, 1787, Jonathan Heart Papers; Rufus Putnam to Heckinwilder [sic], February 27, 1788, Box 1, Folder 9, Rufus Putnam Papers.
34. Congress authorized the Board of Treasury to enter into contracts for the sale of lands to private companies, as long as the contracts were in excess of 1,000,000 acres. “Resolution of Congress: The Sale of Lands,” October 23, 1787, in TP: Vol. II, p. 78.
From the outset, Symmes never claimed the same public-mindedness constantly invoked by the Ohio Company’s promoters. He focused unabashedly on the land’s promise for his settlers—and for himself. Yet he also suggested that there were compelling business reasons why the federal government’s interest in regulated settlement might serve his own interests, too.

This approach was clear from how Symmes advertised his lands. In particular, to lure settlers, he sought to differentiate the Miami Company from property available across the Ohio River in Kentucky, where “titles of land are not easily ascertained [and] frequently very doubtful.” By contrast, he insisted, “title to the Miami lands will be clear and certain, and no possible doubt thereto can arise.” His survey would adhere even more strictly than the Ohio Company’s to the 1785 Land Ordinance’s rectangular grid. Moreover, to forestall speculators and absentee landholders—so “greatly detrimental” in Kentucky—Symmes decreed that purchasers have actual settlers and improvements on their parcels within two years. In short, as much out of pragmatism as principle, Symmes embraced the promise of clear title at odds with the chaotic scramble that marked earlier land grabs.36

Similarly, Symmes never saw himself as the agent and promoter of a new federal Indian policy the way that Putnam and other Ohio Company boosters did. Nonetheless, he, too, embraced the Washington Administration’s tropes of friendship, if only as a way to further differentiate his company’s properties from Kentucky lands. “[P]erhaps,” he slyly suggested, if the Kentuckians “would act as moderately towards [the Natives], they might live in as much safety as the people of this purchase.”37

Symmes’s commitment to self-interest, in short, did not make him equivalent to the reckless speculators like Cox who supposedly blithely ignored the public good. Rather, the

Miami Company, like the Ohio Company, promised in its own way to serve federal aims of clear title and peaceful settlement. In fact, Symmes’s efforts arguably represented an even bolder experiment than the project of the civic-minded New Englanders. Symmes did not represent a collection of veterans appealing to the national interest; he was a businessman who unabashedly sought to profit from his bargain. Yet even such a businessman, the Miami Company suggested, might, for reasons of enlightened self-interest, pursue policies that would channel land speculation away from chaos and toward system.

**Company Towns**

Rufus Putnam and forty-eight selected men reached the confluence of the Ohio and Muskingum Rivers, the center of the Company’s settlement, on April 7, 1788, and immediately began the process of surveying a new town the Company dubbed Marietta. While Putnam toiled, “Ohio fever” struck New England. “No property commands money like the Ohio Lands,” Cutler gleefully reported, as the craze extended to Nova Scotia and even the island of St. Croix. Some subscribers were wealthy and influential, such as Massachusetts Governor James Bowdoin; others, relatively humble, put down what they could. By May 1788, all shares had been subscribed, and traded at double their initial cost. There were skeptics, but Cutler dismissed them as afflicted by a “new disorder” of “Ohio-Phobia.” The disease’s venal and small-minded sufferers were quite unlike he Company’s patriotic proponents, working to “extend the American Empire--increase our internal wealth--& render us more respectable abroad.”

Cutler’s vision of harmony between the Ohio Company and national authority seemed to

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38. Solomon Drown to Rufus Putnam, September 3, 1790, Box 1, Folder 10, Rufus Putnam Papers; Manasseh Cutler to Rufus Putnam, April 21, 1788, Series II, Box 1, Folder 1, Manuscripts and Documents of the Ohio Company of Associates, Special Collections, Marietta College Library, Marietta, Ohio; “Treatise on the Ohio Phobia,” vol. 74, Manassah Cutler Papers.

For examples of the diverse subscribers to the Ohio Company, see Ledger “A” & Ledger “B,” Vols. 59-60, Manassah Cutler Papers.
be playing out in Marietta. Nearly all the territorial officials appointed under the new Northwest Ordinance were also Company officers: directors James Varnum and Samuel Parsons constituted two of the Northwest Territory’s three congressionally appointed federal judges (after Parsons’s early death, Rufus Putnam replaced him as judge), while Winthrop Sargent, the Company’s secretary, was also the Territory’s Secretary, its second executive. For the few federal officials without such a position, the Ohio Company quickly set about using the asset it had—land—to secure their support, donating parcels to the commander, officers, and soldiers stationed at Fort Harmar in Marietta, and even offering Secretary of War Henry Knox a share. The Company was especially eager to attach Arthur St. Clair, the Pennsylvanian who was the Territory’s new governor, making him a shareholder while gifting him a number of additional lots. Such gestures were “a little selfish,” one Company proprietor admitted, since they “wish[ed] [St. Clair] to make the Muskingum [i.e., Marietta] the seat of government, and place of his residence.” This proximity to power would, they anticipated, make the Company’s lands more valuable. In July 1788, St. Clair satisfied these hopes, as the Governor arrived in Marietta and gave a brief speech praising the Company for its commitment to “order.” “This is the birth-day of this Western World,” one proprietor rhapsodized, expressing the view that the Territory’s origins lay in the union of the Company’s settlement with constituted federal authority.39

Matters progressed less well in the Miami Company settlement, where Symmes created the ostensible town of “North Bend,” located downriver from Marietta on a curve along the Ohio River. Unlike the orderly settlement at the Ohio Company’s center, North Bend initially

consisted only of “one family . . . and a few stragling hunters.” And while Marietta had an entire federal fort, North Bend had to content itself with a handful of soldiers. There was nonetheless close overlap between the Miami Company and federal governance, too: after territorial judge James Varnum died, Symmes assumed his position as territorial judge. 40

Despite their differences, Marietta and North Bend were united in an important way: both were pockets of Anglo-American settlement surrounded by a complicated, multi-ethnic Native world. As a result, even though responsibility for managing Indian affairs ostensibly lay solely with the federal government alone, both towns assumed roles as centers of diplomacy and trade with surrounding Native communities. Early Marietta, for instance, quickly became a center of cross-cultural curiosity, exchange, and even seeming friendship. Rufus Putnam’s first meal in the town was a banquet attended by “Captain Pipe”—the Delaware chief Konieschquanoheel, the region’s most significant Native leader—and twenty other Delawares. When Putnam told Pipe of the Company’s “business,” Pipe reportedly proclaimed that his nation “should be happy to live by us.” Samuel Parsons similarly reported that the Delawares “profess a great Friendship for the Yankees who they distinguish from the Settlers on the Virginia Shore.” Soon, neighboring Wyandots and Delawares—“our Indian friends,” as Putnam dubbed them—were reportedly coming to Marietta “almost every day.” A particularly strong bond formed around Marietta’s public celebrations. When General Varnum died in January 1789, local Native leaders marched in his funeral cortege. Local Delawares also attended Marietta’s first July 4 celebration, where toasts were raised to Captain Pipe as well as Governor St. Clair and the new constitution.

Company proprietor John May, heading one of the tables, was bemused when one of the

40. William Kersey to Josiah Harmar, April 17, 1789, # 20, Vol. 10, JHP; “Journal of a Tour to the Ohio and Muskingum,” July 21, 1788; Josiah Harmar to John Cleves Symmes, Nov. 28, 1788, Letterbook D, Volume 28, JHP.
Delaware chiefs greeted him, “How do you do, brother Yankee.” He seated the Delaware man next to him and watched as he ate freely and tried to join in the toasts. “He labored with all his might to speak them,” May recorded, “but made very poor work of it.” May noted that he had shaken hands with most of the local Delawares since his arrival.41

North Bend offered similar stories. Symmes’s settlers first met their Native neighbors in spring 1789, when three surveyors encountered a Shawnee group. The frightened surveyors first tried to flee, and then prepared to fight. But, as one surveyor trained his rifle on a Shawnee, he was startled when the man lifted his hat, raised his hand in greeting, and called out, in English, that they were friends. Led to a nearby blockhouse, the Shawnees and their “unexpected . . . visit” reassured North Bend’s residents of their neighbors’ friendly intentions. Soon, Symmes reported, “the white and red people began to form a sociable neighborhood,” with “our hunters frequently taking shelter for the night at the Indians camps; and the Indians with their squaws spending whole days and nights at the blockhouse.”42

These invocations of tropes of friendly Indians—often relayed in letters sent back east, and sometimes published—served the purposes of both the Ohio and Miami Companies. Perceived amity with Natives was central to the land companies’ success in attracting settlers and investors. “The greatest present discouragement is the fear of Indians,” Cutler informed Putnam, instructing him to censor letters back to ensure that “first impressions” of Indians were positive. “Terreble Stories” of phantasmagorical attacks spread anyway, exacerbated by New Englanders conflated attacks in far-distant places. Such vague reports of Indians, “magnified . . . a thousand

41. Rufus Putnam to Thomas May, May 17, 1788, Series II, Box 1, Folder 1, Manuscripts and Documents of the Ohio Company of Associates; Samuel H Parsons to Unknown, July 16, 1788; Putnam to May, May 17, 1788; Rufus Putnam to Manasseh Cutler, May 16, 1788, Box 1, Folder 9, Rufus Putnam Papers; “Extracts from the Journal of Manassah Cutler,” pp. 22-23, Box 2, Marietta, Ohio Collection; “Copy From a Manuscript in the Hand Writing of Major Horace Nye (son of Ichabod) of Putnam Ohio prepared about 1847 for Dr. Hildreth,” Marietta, Ohio Collection; “Journal of a Journey,” 23, 25, 34.

42. Symmes to Dayton, May 18, 1788, 58-60.
fold,” constituted “our Principal Obstruction to Settlement.” Symmes confronted the same challenge: he even alleged that neighboring Kentuckians, their “jealousy & ill will” provoked by “the friendly manner we have with the Indians,” deliberately spread false stories that all settlers in the Miami Purchase had been tomahawked. “I fear I shall be nearly stripped of settlers and left with one dozen soldiers only,” Symmes lamented as the rumors dissuaded prospective purchasers.43

This tidy alignment between the business interests and self-conceptions of the New Englanders and Symmes on the one hand and the reported attitudes of Natives on the other suggest a certain amount of ventriloquism in these reports of amicable relations. Yet the Delawares, Wyandots, and Shawnees had their own reasons to pursue close relationships with the new arrivals. In particular, recognizing the blurred lines between the companies and federal authority, understood that ties with the new settlers promised their communities an opportunity to bolster their connections to the United States and secure access to trade goods. Prior to the New Englanders’ arrival, Captain Pipe had pursued a relationship with the federal soldiers stationed at Fort Harmar. The Shawnees near North Bend were even more explicit in their aims. They had, they later informed Symmes, held a council and resolved to send George, an Anglo-American they had taken prisoner a decade earlier, to meet their “new white brother’s”: it was George who had greeted the the surveyors in English. Soon afterward, a Shawnee chief Symmes called “Capt. Blackbeard” met Symmes in person and expressed his interest in a “free

43. Manasseh Cutler to Rufus Putnam, December 19, 1787, Box 1, Folder 7, Rufus Putnam Papers; Manasseh Cutler to Rufus Putnam, April 21, 1788, Series II, Box 1, Folder 1, Manuscripts and Documents of the Ohio Company of Associates; Minerva Nye to Mrs. Stone, Sept. 19, 1788, Box 2, Marietta, Ohio Collection; Elnathan Haskell to Winthrop Sargent, May 9, 1788, Reel 2, WSP; Samuel H Parsons to Unknown, July 16, 1788, Vol. 69, Manassah Cutler Papers; John Cleves Symmes to Jonathan Dayton, July 17, 1789, in C/JCS, 100-07; John Cleves Symmes to Jonathan Dayton, May 22, 1789, in C/JCS, pp. 96-97. U.S. army officers similarly reported that Symmes’s settlement suffered because of reports of Native threats. See Joseph Ashton to Josiah Harmar, June 26, 1789, #90, Vol. 10, JHP.
 intercourse with us” to “exchange their peltry for the articles which they much wanted.”

Blackbeard proceeded to suss out the relationship between Symmes and federal authority, pressing Symmes “how far I was supported by the United States, and whether the thirteen fires had sent me hither.” In response, Symmes unfurled an American flag, pointed to his federal military escort, and offered up his seal of commission, which Blackbeard examined closely. These symbols, paired with Symmes’s proclamations, evidently persuaded the Blackbeard of Symmes’s authority and intentions; the chief “appeared entirely satisfied of the friendship of Congelis (for so they pronounce Congress) towards the red people.” The Shawnees then took advantage of the trade goods promised by their new alliance: for the next four weeks, Blackbeard and his companions availed themselves of Symmes’s hospitality, before departing “in a most friendly manner.”

As narrated by men like Putnam and Symmes, events in Marietta and North Bend suggested a tidy alignment between the interests of Native leaders, federal officials, and the land companies: all sought create a new foundation for their relations based on the promise of peace and friendship. As implicit outposts of federal authority, the companies’ towns seemed to fulfill the aspiration that they could displace unregulated models of settlement and the violence they produced.

**No Weight with Government**

Tensions nonetheless existed below the seeming harmony between federal and company interests. Symmes, for instance, complained of inadequate federal aid, bewailing that visiting Shawnees “lived chiefly at my expense (nor was it a very small one, as they had whisky at their pleasure gratis.).” Not only did the federal government failed to reimburse him for these

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44. Symmes to Dayton, May 18, 1788, 74.
expenses, it could not even support the pittance of federal soldiers stationed at North Bend, whom Symmes fed from his own pocket, only for them to trade his food for liquor. “I have indeed lost sight of any succor from the United States,” Symmes complained.45

Relations between Natives and the new arrivals were also not as amicable as they seemed, marred by a deep undercurrent of suspicion. Their perceptions shaped by long-standing narratives of Native duplicity, Anglo-American settlers did not credit their neighbors’ apparent goodwill: John May thought them “a set of creatures not to be trusted.” “[N]ot withstanding [the Indians’] professed friendship,” one Marietta settler wrote, “there is a guard placed every night.” Symmes shared this distrust. “They are a subtil enemy,” he wrote of the Shawnees, “& all their boasted friendship may be only to learn our numbers, and what state of defence we are in.” There are hints, too, that some Native leaders were not as contented with the companies’ presence as they professed. When Captain Pipe first met Rufus Putnam, for instance, he told the Ohio Company leader that he “did not expect any people would come on to settle before the treaty [of Fort Harmar],” suggesting discontent about the federal government’s presumptuous appropriation of Delaware lands. Natives had good reason for their suspicions: notwithstanding his fear that the Shawnees were merely reconnoitering his settlement, it was Symmes who dispatched envoys to Native towns with the aim that, in the event of war, the army would have a guide into Indian country.46

Recasting Indian affairs, then, promised to be harder than the companies anticipated. Both Natives and non-Natives were well aware of the violence and bloodshed occurring elsewhere in the Ohio Country: Governor St. Clair deemed an Indian war “inevitable.” The New

45. Ibid; John Cleves Symmes to Jonathan Dayton, July 17, 1789, in CJCS, 100-07.
46. “Journal of a Journey,” p. 22; Rowena Tupper to Mrs Stone, Nov. 11, 1788, Box 2, Marietta, Ohio Collection; Arthur St. Clair to Secretary at War, Sept. 14, 1788, in TP: Vol. II, 156-59; Putnam to May, May 17, 1788; Symmes to Dayton, May 18, 1788, 92.
Englanders nonetheless displayed little anxiety about living in what threatened to become a war zone. They once again cited their system, believing their land policies mitigated the Indian threat: in particular, they emphasized “compact settlement” in contrast to the straggling settlements of the Kentuckians. “[T]he Indians themselves remark in their Towns, that we settle compactly & not in the scatterd manner in which the Frontiers have been generally Settled,” Samuel Parsons observed, “& no Attempt [to attack] can be made without meeting the whole force in the Settlement.”

Events soon tested Parsons’s proposition. At sunset on Sunday, January 2, 1791, a group of Wyandots and Delawares stopped in at Big Bottom, a collection of a little over twenty Ohio Company settlers located up Muskingum Creek from Marietta. Friendly with the Company settlers, the Natives conversed and dined with two of them, Francis and Isaac Choate. In the midst of talking, the Choates heard gunfire. The Natives told the alarmed Choates they were now their prisoners. Three other men from the settlement were also taken prisoner; two escaped to seek help. When a relief party of Ohio Company settlers arrived the next day, they discovered a grisly scene. The settlement’s other twelve settlers, confined in the blockhouse, had all been killed and the building burnt. Only charred, unidentifiable bodies remained.

“Our prospects are much changed,” wrote an alarmed Rufus Putnam on learning of the attack, which became known as the “Big Bottom Massacre.” “[I]n stead of peace and friendship with our Indian neighbours a horid Savage war Stairs us in the face.” In fact, as Big Bottom demonstrated, familiarity bred a particularly vicious and personal form of warfare. When a Native killed a “mulatto boy” in the middle of the Ohio River, in plain view of Marietta, one

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47. Meeting of Ohio Company [in Marietta], July 2-Aug. 14, 1788; Samuel H Parsons to Unknown, July 16, 1788.
Ohio Company settler thought he “recognize[d] the Indian, as one whom he had known aforetime.” Later in 1791, a scouting party—led by a man whose father had been killed by the Indians—shot a Native man. The party decapitated the Native and mounted his head on a pole, which was displayed in front of the garrison, while the body was brought to the river, “where it was literally Cutt up, & Boiled.” News of this brutality spread through Indian country; one Native remarked, “Oh white Man boil Indian.—No. Good.”

Actions like this have led one historian to identify the Big Bottom Massacre as the ideological origin of the policy of Indian Removal—the time when the idealistic New Englanders abandoned their humanitarian impulses and “bec[a]me Kentuckians.” It would be more accurate to describe it as the moment of the Ohio Company’s disillusionment with federal authority. Reexamining the federal treaties with the Delawares and Wyandots, Rufus Putnam discovered that many of the Company’s lands “were rather wrested then fairly purchased”: even at treaties where compensation was given, Putnam noted the tribal representation was “very partial” and many tribes “never consented to what was don.” In Putnam’s view, the Ohio Company settlers were victims the government’s failure to follow the promised land policy of “fair dealing” and secure true Native consent.

Ohio Company settlers’ faith in the federal government was further tested by its failure to fulfill its obligations to defend their settlement. Putnam had been confident that, in the event of war, Marietta would become the headquarters for federal soldiers. But, even as rumors abounded that an Indian army of two or three thousand would soon attack Marietta, nearly all the federal

49. Rufus Putnam to Unknown, Jan. 6, 1791, Box 1, Folder 10, Rufus Putnam Papers; “A Biographical Sketch of the Origen & Descent of Gen'l Benjamin Tupper Connected with his Military Life,” 65-76, 98.

soldiers moved downriver to Fort Washington, which was to be the staging ground for a planned expedition. With Marietta “defenceless,” Putnam appealed to Secretary of War Henry Knox and even President Washington for aid. Appealing to the implicit partnership between the Ohio Company and the federal government, Putnam insisted the interests of the “united States in general” were at stake. If the federal government effectively protected settlements established “under [its] authority,” then the public lands would “rapid[ly]” sell, “Sink[ing] many millions of . . . National Debt.” But if such protection was not forthcoming, “the consequence” was clear. Instead of orderly purchases, the lands would be “Seized on by privit adventurers who will pay little or no reguard to the laws of the United States or the rights of the natives.”

Federal officers responded to Putnam’s invocation of their shared interests by dispatching a single cannon. The message was clear: the Ohio Company would have to rely on its own resources to survive the war. Days after the attack at Big Bottom, the Company agreed to call out the militia under its authority and at its own expense, with the “highest confidence” that Congress would later “reimburse the necessary expense we shall be at in defending ourselves against the Common Enemy.” Meanwhile, Ohio Company settlers retreated to defensible stockades, while Native war parties destroyed houses and cattle they left behind. Settlers began abandoning the settlement in droves: nearly half of the initial forty-eight fled. “Our Settlement does not encrease,” one Marietta resident complained, “we are circumscribed within narrow Limits & are heartily tired of the Indian War, & with its present Management see no End to it.”

51. “Rufus Putnam’s Memorandum Book,” 113; Rufus Putnam to President Washington, February 28, 1791, in TP: Vol. II, 337; Rufus Putnam to Unknown, Jan. 6, 1791; Rufus Putnam to Henry Knox, March 8, 1791, Box 1, Folder 10, Rufus Putnam Papers.
52. “At a Special Meeting of the Agents & Proprietors of the Ohio Company on the 7th Day of January,” January 7, 1791, Reel 6, ASCP; “Names of the Men Hired [sic] by the Ohio Company . . . & Arrived at Marietta 7th of April 1788,” Box 1, Folder 9, Rufus Putnam Papers; Return Jonathan Meigs, Jr. to Nehemiah Hubbard, Jr., August 30, 1792, Northwest Territory Collection; David Zeigler to Directors of the Ohio Company, January 8, 1791, Series II, Box 1, Folder 2, Manuscripts and Documents of the Ohio Company of Associates.
Marietta’s loss was, ostensibly, Judge Symmes’s gain: Fort Washington, the new center for federal military operations, lay within the Miami Company’s tract. “Judge Sims's Settlement it is apprehend by many is building up at our expense,” complained one Marietta resident. “[W]e have discovered that some of our Great Men are going to move down”—including Governor St. Clair, who relocated to the nascent town of Losantiville surrounding the fort, which was soon renamed Cincinnati.53

Yet Cincinnati’s newfound prosperity caused its own tensions between federal interests and Symmes’s investments. Symmes had happily sold parcels in Cincinnati to eager purchasers on the ground that his original application to Congress had included all the land between the Great and Little Miami Rivers. Yet his formal contract with the Board of Treasury actually stopped twenty miles west of the Little Miami—excluding what became Cincinnati. All of Symmes’s purported sales in the town rested on invalid title.

Governor St. Clair was shocked to discover that Symmes had, in essence, created an entire town of intruders. “I could not conceive,” the incredulous St. Clair wrote, that “considerable Settlements . . . had been made, not only without authority, but directly in the face of it, and by a Person invested with high Office of a Judge of the Territory.” Symmes had transformed Cincinnati into precisely the kind of unauthorized settlement that the federal government was desperate to forestall—and had in fact sent soldiers to evict, as St. Clair reminded Symmes. Settlement, St. Clair lectured the judge, could only occur based on “a regular and proper authority . . . founded on an actual purchase or previous contract,” and not bare expectation. To protect future “unwary” purchasers and guard federal title, St. Clair issued an official proclamation barring further settlement and subjecting settlers around Fort Washington to

53. Griffin Greene to “Peter”, [1791]; Arthur St. Clair to John Cleves Symmes, Dec. 7, 1790, Reel 3, ASCP.
martial law. Symmes took deep umbrage at St. Clair’s “harsh sentences,” alleging that the governor’s actions “border[ed] hard” on “acts of tyranny.” St. Clair’s proclamations, Symmes told a colleague, “have convulsed these settlements beyond your conception.”

Ultimately, Congress, to clean up Symmes’s mess, retroactively granted him the land under Cincinnati, although it specifically excluded the land around Fort Washington. But, despite this seeming act of indulgence, as well as divergent fortunes of the Ohio and Miami Companies during the war, both Putnam and Symmes ended up similarly embittered against a federal government that they had originally envisioned as a partner and source of prosperity. Both felt that the government had taken advantage of them, offloading the risks of settlement while failing to fulfill its implicit promise of support. Putnam never forgave the federal government’s abandonment of Marietta at its moment of crisis. It was the Ohio Company, Putnam concluded, that ultimately paid for federal failure to follow its own Indian policy of land purchase: he bitterly recalled how, although the Company expended nearly $15,000 on the Indian war, Congress only repaid about $2600. Symmes, too, was angry about money. He later recalled how he had created a “respectable settlement” at his own expense, spending four thousand dollars supporting “starving emigrants” and paying “presents” to the Indians. Yet all these services to the nation, Symmes lamented, had “no weight with Government.”

The advent of the Northwest Indian War had tested the promise of the harmony between the companies and federal interests—and found it lacking. For Putnam, the federal government had failed to fulfill its implicit obligations to defend settlements made under its own authority;

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55. “Rufus Putnam’s Memorandum Book,” 117; Symmes to Dayton, August 15, 1791.
for Symmes, tyrannical federal officers attacked his claims to ownership.

But, if the leaders of the Ohio and Miami Companies had reason for frustration with the federal government, federal officials soon had cause for anger with them, too. Symmes’s Cincinnati speculation proved just a small taste of the complexities of ownership that both companies would create and force Congress to resolve.

**Naked Preemption**

The Ohio Company’s promise to support federal authority and remake relationships with Native nations was inseparable from its core purpose—recrafting how land was distributed. Under the Company’s elaborate scheme, each shareholder would receive a houselot in the new city of Marietta, located the two rivers’ confluence, and then receive individual plots of increasing size would then radiate outward from the town. Parcels would be assigned to individual shares by lot. “By this mode of Division,” one investor wrote, “the Proprietors will be enabled to make Settlement by previously forming a Sistem by which they will bind themselves to adhere to fixed Principals for that purpose.”

This “Sistem,” proponents believed, would tamp down on the excesses of land speculation. All shareholders would receive the same acreage and kinds of parcels, and, because parcels would be assigned randomly, no one could cherry-pick the most valuable lots. Theirs was a structured and egalitarian vision of land distribution, in opposition to the frantic grab for riches that generally characterized land speculation of the era.

That, at least, was the plan. “The Division of the land into Cities Towns . . . was a well digested System to read within the Town of Boston,” Captain Jonathan Heart of the American

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Regiment reported, “but . . . on putting the System into execution there were innumerable embarrassments.” In particular, system proved unable either to address the need for flexibility or to suppress opportunities to gamble on land value. As one investor complained of the Company, “Speculation was ushered in to their System at an early period.”

First there was a fight about the eight-acre lots that were to surround Marietta, which, Putnam discovered after arrival, were too hilly to be farmed. He opted the lay the lots along the Ohio and Muskingum Rivers instead, herby provoking the ire of newly arrived settlers, who discovered the lots they received were too far from Marietta to be safely farmed given the Native threat. The resulting discontent “very much disturbed the peace of the Society.” Danger of attack also led the Company to create “donation lands”: parcels of 100 acres withdrawn from each share that would be given for to new arrivals who would carry arms and ammunition and construct proper defenses. Yet this new policy, in Captain Heart’s words, “opened such doors for . . . speculation on speculation.”. Few claimants actually settled; most, “more anxious to fill their purses than increase the Settlement,” quickly resold the lands to “real settlers” for $50-$100. As for the few settlers who arrived, they were often entirely destitute, lacking animals, farm tools, furniture; half reportedly did not even own a pot. Even surveying provided a source for controversy, as hastily drawn lines containing “scandalous errors” had to be voided and redrawn, laying the groundwork for future litigation.

These repeated controversies caused widespread grumbling. “[M]ost of the transactions

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57. Jonathan Heart to William Judd, September 9, 1790, Jonathan Heart Papers; Benjamin Gilman to Josiah Harmar, Dec. 27, 1789, #125, Vol. 11, JHP.
of the Ohio Company,” one investor complained, “ha[ve] generally been conducted in a mode that reflects little Credit on the abilities or intentions of the various Managers.” Yet the fundamental challenge that confronted the Ohio Company was, at root, structural, stemming from its hybrid purpose—both to produce value for investors and to establish an actual settlement. The interests of the Marietta settlers and the so-called “non-resident proprietors”—shareholders who remained in New England—fundamentally diverged. Those who stayed behind fixated on returns, not stability or flexibility. Fearful of being short-changed, they were “monstriously suspicious” of any land proposals emanating from Marietta.59

These contentions over small-scale speculations found their echo in the grander dealings of the Ohio Company’s directors—especially the Scioto Company, the existence of which was quickly revealed. The “very great impropriety” of Cutler and Sargent’s gamble, regarded as a “dirty speculation,” caused “general . . . dissatisfaction” among the shareholders. Rumors spread that both Cutler and the Ohio Company’s treasurer had spent “every farthing” of the Ohio Company’s money on the Scioto Company instead.60

Although this particular attack was untrue, much of this criticism was well-taken. The Scioto Company turned out to be precisely the sort of risky and ill-conceived land speculation that the Ohio Company had sought to displace, one that relied on boosterism, questionable title, and paper promises to create overnight wealth from hoodwinked investors. The Scioto Company owned nothing; it held only a contract to purchase lands from the federal government in the future at a fixed price—“the naked preemption.” To secure the money for these future payments,

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59. Gilman to Harmar, Dec. 27, 1789; Richard Platt to Rufus Putnam, October 8, 1788, Folder 9, Rufus Putnam Papers.
60. Heart to Judd, Sept. 9, 1790; Richard Platt to Winthrop Sargent, November 13, 1788, Reel 2, WSP; Cutler to Putnam, Nov. 18, 1788; Joseph May to Winthrop Sargent, April 29, 1789, Reel 3, WSP; Ebenezer Hazard to Winthrop Sargent, August 19, 1788, Reel 2, WSP; Manasseh Cutler to Rufus Putnam, Aug. 23, 1791, Vol. 70, Manassah Cutler Papers; Manasseh Cutler, “Journal of a Tour to the Ohio and Muskingum,” July 21, 1788, Vol. 64, Manassah Cutler Papers.
the Company’s investors had to sell their contingent promise of title for immediate cash.61

The Company’s proprietors opted to market the lands in Europe, hoping to profit from the disorder of the French Revolution. Although enthusiastic, Cutler and Sargent contributed little to the venture, which quickly escaped their control even as it entangled them in a complicated financial web created by William Duer and his agents. On his own accord, the Scioto Company’s agent in France decided that the promise of future title was “too light and dangerous a ground to attempt retailing upon,” and so created a shell company that contracted with the Scioto Company for land that he could market as fee simple properties.62

As with the Ohio Company in New England, the promise of western lands caused something of a cultural sensation in France. In late 1790, 400 French settlers arrived to a settlement, grandly named “Gallipolis” in their honor, along the Ohio downriver from Marietta. The “town” in fact consisted of a few crude huts hastily constructed by Rufus Putnam. But the French settlers’ greatest shock was the discovery that “all the apparently legal Documents” shewn to “Seduc[e]” them with the “Solidity of the Titles” were frauds. The Scioto Company did not actually own any land it could sell. Even if it had, Gallipolis was located within the tract promised to the Ohio Company. Governor St. Clair bemoaned how little this endeavor corresponded with the repeated invocation of the national interest by Cutler, Putnam, and Sargent. The “interested speculation of a few men, pursued with too great avidity,” he feared, “would destroy American character abroad.”63

61. Joel Barlow to Benjamin Walker, December 21, 1790, Vol. 69, Manassah Cutler Papers.
The Gallipoli fiasco occurred just as the Ohio Company was confronting its own financial difficulties. The second installment of $500,000 for its lands, due in 1792, loomed, but the Company entirely lacked the funds to comply. Under the contract terms, if the Company failed to pay, they would forfeit the entire tract. The problem was an irony at the heart of the Company’s finances: although the Company was both reliant on, and an investment in, federal state-building, its ability to raise capital also depended on federal weakness, as manifested by the low price of federal certificates. The ratification of the Constitution—an event the Ohio Company settlers celebrated—undermined the company’s financial stability. As public confidence in the nation’s financial health rose, federal certificates’ value also rose, and this shift, “people . . . began to look upon securities better than western Land.”

Once again, the Scioto Company seemed to offer a potential solution. In February 1791, William Duer, Manasseh Cutler, and Winthrop Sargent met in New York to resolve the Gallipolis mess. With it clear to all that the Scioto Company would fail, the proprietors now vied to shed themselves of any responsibility for the French settlers. They finally agreed that Duer would pay for 148 Ohio Company shares that had been forfeited for lack of payment and that the French would be granted lands from the Ohio Company’s purchase.

This promise of payment secured, the next spring Cutler and Rufus Putnam traveled to Philadelphia to petition Congress. Their goal was to secure title to whatever lands they could based only on their initial downpayment and a few military bounty warrants they had cobbled together. To advance their claim, they harped on the services they had performed the nation by

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64. Cutler to Putnam, Nov. 18, 1788.
funding their own expenses during the war. Surely Congress’s goal could not have been “to raise the value of [Congress’] Land at the expence exertions and risk of others but to make an actual Settlement.” They concluded with a threat: unless Congress relieved settlers “from that state of suspence and uncertainty respecting their title,” they would no longer defend their lands but “immediately retreat to some place of greater security.”

The Ohio Company’s request passed through Congress nearly unopposed, an act Putnam attributed to “Providence” but also reflected the federal government’s desperate need for settlers in the midst of the Northwest Indian War. Ultimately, Congress granted the Company nearly one million acres for payments made, with the only controversy surrounding an additional grant of an 100,000 acres as compensation for the donation lands, which passed an evenly divided Senate along regional lines.

At the moment of the Company’s triumph, however, came news of disaster. All through 1791, Duer and the Scioto Company had failed to pay for the agreed 148 shares. As Putnam and Cutler negotiated in Philadelphia, Duer’s finances collapsed in spectacular fashion, destroying private fortunes “from Georgia to New Hampshire inclusive.” Duer was imprisoned, where he largely remained until his death seven years’ later, his debts unsatisfied. This collapse suddenly constricted the ties of debt that bound together the Ohio and Scioto Companies. In Philadelphia, Putnam was arrested, and had to pay off over $2,000 in Scioto debts to obtain release.

Duer’s collapse left the Gallipolis settlers abandoned. Unsurprisingly, their appeals to territorial authorities were unavailing: Territorial Secretary Winthrop Sargent—one of the Scioto

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67. “Rufus Putnam’s Memorandum Book,” 117; Act of April 21, 1792, Ch. 25, 1 Stat. 257. For the history of the bill’s passage in the House and Senate, see 3 Annals of Congress 123-26, 433, 486, 494, 540, 558 (1792).
68. Richard Platt to Winthrop Sargent, March 25, 1792, Reel 3, WSP; Jones, “The King of the Alley”; Richard Platt to Winthrop Sargent, May 10, 1792, Reel 3, WSP; J. Gilman to Winthrop Sargent, April 20, 1792, Reel 3, WSP.
Company directors—hotly denied being “in any degree accessory to your misfortunes.” The French settlers then appealed to Congress, which referred the matter to the Attorney General. He was not optimistic about the prospect for securing recovery through a lawsuit against the Ohio Company. An angry Senate instead demanded that the Company directors appear before it, threatening to rescind portions of the Company’s grant; demonstrating the deterioration of relations between the Company and the federal government, the directors ignored the directive. Finally, in 1795, Congress resolved the mess by simply granting the Gallipolis settlers 24,000 acres of federal land elsewhere in the Northwest Territory. But as for Gallipolis itself, its settlers were forced to purchase their town site from the Ohio Company for $1.25 per acre—nearly twice what the Ohio Company had paid Congress for the same land.69

With its title secured by Congress, the business affairs of the Ohio Company wound to a slow conclusion. After four years of surveying, the final division was made in 1796: each settler finally received 1173 acres dispersed in six lots. Shareholders even received a modest dividend of the funds the Company managed to rescue from the bankrupt Platt. With that, the Ohio Company largely dissolved.70

Measured against other land speculations, and compared with earlier abortive federal efforts to distribute land, the Ohio Company was arguably a success. Although Marietta never became the booming center it had augured to be, the Company had conveyed clear title, secured

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70. For land distributions, see “Ohio Company Land Records,” 1787-1796, pp. 182-222, Series I, Box 2, Folder 1, Manuscripts and Documents of the Ohio Company of Associates. On the dividends, see Benjamin Tallmadge to Rufus Putnam, October 1, 1796, Vol. 69, Manassah Cutler Papers; “Ledger ‘A’ of the Ohio Company” n.d., Vol. 59, Manassah Cutler Papers.
a modest return for its investors, and created a stable settlement—a notable achievement in a landscape littered with failed land schemes.

For those at the time, however, the Ohio Company felt like a failure. The Company was more than yet another land company; it was an experiment in a federal land system that could channel the rampant land speculation of the late eighteenth century to productive ends. Measured against this goal, the Company came up short. Its entanglement with the Scioto Company involved it in the same chancy, uncertain claims to ownership that “system” was intended to avoid. Resentful federal officials found themselves giving land away for free as they had to resolve, at public expense, the tangled knot created by the Company’s avarice. “[P]rejudices . . . against the Ohio Company” were felt “very strongly,” one visitor to Congress reported, because the Company was so “deeply implicated” in the Gallipolis mess. Many in Congress likely shared the disappointment of one embittered investor. “I should be glad to have done with the business,” he wrote, “And if wishing was not vanity; I should wish I had not never heard of the Ohio Company.”71

Endless Disputes

Like the Ohio Company, Symmes found that his embrace of system and actual settlement also struggled to tame more speculative approaches to land. When he first arrived, Symmes had been thronged by Kentuckians eager to settle. Yet, not only were these would-be settlers “very ungovernable and seditious,” they lacked both means and intent to pay. They “had no other views than speculation,” Symmes complained, and most quickly returned to Kentucky to resell their (still unpurchased) land rights to their neighbors. When they inevitably defaulted, the

71. “Rufus Putnam’s Memorandum Book,” 117; “Ohio Company, War Expense,” Vol. 74, Mannaseh Cutler Papers; Benjamin Tallmadge to Rufus Putnam, February 27, 1796, Series II, Box 1, Folder 4, Manuscripts and Documents of the Ohio Company of Associates; Edward Harris to William Parker, October 23, 1795, Box 1, Folder 7, Paul Fearing Papers, Marietta College Library.
Kentuckians “vented their spleen in abuses & calumnies” of Symmes. Other prospective buyers similarly contracted with Symmes for hundreds of thousands of acres and yet rarely paying. Large or small, few buyers viewed land as a source of steady and reliable gains; the possibility of reselling bare promises of future title a excited far more interest.72

Symmes, of course, was engaged in the same endeavor, just on a grander scale: he had agreed to pay Congress for the lands he contracted for, but, with so many purchasers defaulting, it was unlikely he could satisfy his contract, which stipulated an initial payment of $80,000 once the survey was complete. Ultimately, Symmes followed the same approach as the Ohio Company, coming hat in hand to Congress to ask for a grant of the land he had already paid for. With little opposition, Symmes secured a statute affirming his purchase, and in 1794, President Washington issued him a patent for the over 300,000 acres of land he had already paid for.73

Yet Symmes, unlike the Ohio Company, was not content with this resolution. Symmes’s success in gaining congressional endorsement evidently encouraged him to undertake still riskier speculation on bare promises of federal land. Here, Symmes seized on a complicated ambiguity that reflected early ignorance of the Ohio Country’s geography. Symmes’s original contract with Congress in 1788 had defined the boundaries of his tract, which the contract estimated to be about one million acres of land. As it turned out, the contract was wildly inaccurate. Surveying revealed that the Miami Company’s tract actually contained only 500,000 acres, of which Symmes owned only the 300,000 acres already granted. But Symmes’s self-serving interpretation was that the 1788 contract promised him, not a particular tract of land (as its text strongly suggested), but rather one million acres no matter where located, even if they were

72. Symmes to Dayton, May 18, 1789; John Cleves Symmes to Jonathan Dayton, Nov. 25, 1788, in CJCS, 48-53.
73. Jonathan Dayton to John Cleves Symmes, May 16, 1789, in CJCS, 213-18; Jonathan Dayton to John Cleves Symmes, August 15, 1789, in CJCS, 218-34.
outside his tract’s statutorily defined boundaries. All he had to do to obtain these additional seven hundred thousand acres, Symmes believed, was comply with the original agreement.74

Symmes accordingly set out to amass $82,000 for another installment. Everything hinged on making payment. “Money will be the best argument that can be r[a]ised,” Symmes stated, “though I had the logic and oratory of a Cicero, and the right of Adam to the soil.” Yet the same rise in securities that had doomed the Ohio Company hamstrung Symmes, and, as 1796 stretched into 1797, there was no prospect of payment. But Symmes was convinced that if he could just gather the money, he could force Congress’s acquiescence. “I have read so many cases in point,” Symmes stated, that “if we tender the Money, it is not in the power of Congress, constitutionally to take [the land] from us.” Desperate for capital and confident of ultimate success, Symmes continued selling land outside of his bounds of his patent—lands, in other words, he did not own—based only on the expectation that he would eventually receive them from Congress once he had actually made payment.75

Symmes’s freewheeling gamble with the public domain slowly attracted congressional attention. Albert Gallatin, a representative from western Pennsylvania with growing expertise on the public lands, took on the responsibility of mastering and explaining Symmes’s contract to Congress. He headed committees that in 1796 and again in 1797 investigated Symmes’s contract and concluded that he had no right to the lands he claimed. In 1798 Symmes watched in horror as Gallatin proposed declaring the lands outside Symmes’s patent forfeit; the bill became law the next year.76

75. John Cleves Symmes to Peyton Short, November 14, 1796, Folder 1, Short-Harrison-Symmes Papers; John Cleves Symmes to Peyton Short, April 28, 1797, Folder 1, Short-Harrison-Symmes Papers; John Cleves Symmes to Peyton Short, August 10, 1797, Folder 1, Short-Harrison-Symmes Papers.
76. “No. 23: Contract with John Cleves Symmes,” May 5, 1796, in American State Papers, Public Lands, 59-60; “No. 33: Contract with John Cleves Symmes,” February 9, 1797; John Cleves Symmes to Peyton Short,
As his house of cards began to collapse around him, Symmes turned to whatever sources of power he had. He helped secure the election of his son-in-law, William Henry Harrison, as the Northwest Territory’s delegate to Congress. He also turned to another source of authority—his position as a judge on the General Court, the Northwest Territory’s highest court.  

The overlap between corporate and federal authority in the territory had long made some uneasy. Years earlier, Governor St. Clair had pointed out that Territory’s main settlements lay on Miami and Ohio Company lands. The Companies’ management had “laid the foundation of endless disputes,” and yet two of the three judges of the territorial General Court—Symmes and Rufus Putnam—headed these companies. “Every land dispute will be traced to some transaction of one or other of those Gentlemen in those capacities,” St. Clair observed, “and they are to sit in Judgement upon them.” St. Clair feared “Biass.”

Now, St. Clair’s fears were seemingly being realized, as Symmes used his judicial authority to try to staunch lawsuits based on his dubious land sales. In one case, Symmes supposedly told some of purchasers of his lands that they should litigate their titles: if they lost below, they could appeal “into his Court, where they might be sure, he would not give Judgment against himself.” In another suit before the General Court, the plaintiff argued that Symmes should recuse himself because he was “directly interested” in the outcome: because the defendant had purchased the disputed land from Symmes, the judge would be legally liable if title proved defective. Insisting he had “no interest” in the suit, Symmes refused to recuse. But then, after presiding over much of the trial, Symmes suddenly reversed himself, “openly

April 22, 1798, Folder 1, Short-Harrison-Symmes Papers; Act of March 2, 1799, Ch. 34, 1 Stat. 728. For Gallatin’s role, see 6 Annals of Cong. 2247-48, 2367-38 (1797).

77. Unknown to Arthur St. Clair, November 1799, Reel 4, ASCP.
acknowledged that he was the person most interested in the event of the suit.” Stepping down from the bench, he reportedly walked across the courtroom to the bar, where he proceeded to “advocate[] [the case] for the defendant” to his (presumably astonished) fellow judges.79

Symmes also allegedly instructed his purchasers to turn to extrajudicial means to protect their title. When one disgruntled purchaser demanded back money he had paid for his land, Symmes refused. He urged the man instead to go home and “shoot or drown any person who might molest him”—an approach, Symmes claimed, had worked for squatters in Pennsylvania.80

The Miami Company continued to crumble around Symmes despite his extreme efforts. Besieged by lawsuits stripping him of tens of thousands of acres of land—he was arrested three times for debt in 1802 alone—Symmes slid toward penury. In a final appeal to Congress, Symmes stated that its statutes returning the disputed lands to the public domain were causing him “very great hardships, tending to the utter destruction . . . of his whole property.” But the Attorney General presented a lengthy report that determined that Symmes had no legal rights based on the contract—concluding, in fact, that Symmes owed the U.S. over $15,000 in compensation for his own breach. Symmes never paid this debt. He died penniless in North Bend, Ohio—the town he had created—in 1814.81

Symmes left behind a mess. As in the case of the Scioto Company, Symmes had used implicit congressional backing to spin an elaborate scheme of debt and dubious title, and, with Scioto, the costs of these reckless speculations ultimately fell on innocent purchasers and the federal government. Those who had purchased dubious title from Symmes—allegedly nearly

79. Arthur St. Clair to Secretary of State, December 2, 1799, Reel 4, ASCP.
80. “Deposition of James McCushen,” August 13, 1799, Box 7, Folder 5, ASCP; Arthur St. Clair to Secretary of State, July 15, 1799, Reel 4, ASCP.
2,000 settlers—bombarded Congress with petitions asserting that they would lose “their only support & means of subsistence.” Congress felt constrained to offer them the right of preemption—the first right of refusal to purchase their lands—which it had stubbornly denied other settlers. But Symmes’s purchasers did not regard the opportunity to repurchase, at two dollars per acre, lands that they had purchased for half that as munificence; Congress’s action instead produced “very great alarm.” Many could not exercise their preemptive rights because they had only verbal contracts with Symmes; others had no money to make the purchase. Of the roughly 100,000 acres purchased under the preemption statute, 30,000 were ultimately forfeit because the claimants lacked the downpayment necessary; much of the rest fell to speculators rather than actual purchasers.

**Government Its Own Speculator**

In 1796, after several years when the Northwest Indian War derailed discussions of federal lands, Congress once again considered how the public domain should be distributed. Some advocated for continuing to sell large tracts to take advantage of the “present moment of avidity to speculate in our lands,” and sought to defend speculators against the opprobrium heaped on them: “land,” one congressman argued, is “as fair an object of speculation as coffee.” But most disagreed, wishing that “an effectual check might be put on the rage of speculators, which seemed to have no bounds”; they were “induced to purchase only by a prospect of Profit.” Many were especially skeptical of any claim of public-mindedness by speculators. “[P]ersons whom

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82. “Report of Arthur St. Clair on Western Lands,” February 21, 1799, Senate Territorial Papers, M200, Reel 1; Arthur St. Clair to Joseph Parks, December 13, 1798, in SCP, 2:436-38; Israel Ludlow to Paul Fearing, January 8, 1802, Box 2, Folder 11, Paul Fearing Papers; Arthur St. Clair to Secretary of State, July 1799, in SCP, 2:443-45; Act of Mar. 2, 1799. When the initial statute proved inadequate—only three people had taken advantage of the statute by December 1800—Congress lengthened the terms and extended credit. Oliver Wolcott, “Statement of What Has Been Done, since the Establishment of the Present Government, Respecting the Lands of the United States in the Territory North-West of the Ohio,” Dec. 1800, Box 5, Folder 12, Oliver Wolcott Papers, Conn. Historical Soc’y, Hartford, Conn; “No. 55: Claimants Under John Cleves Symmes,” April 16, 1800, in American State Papers, Public Lands, 93-95.
we have supposed worthy of our confidence and esteem,” one opined, had been “publicly practicing the meanest and most disgraceful arts and tricks of swindling.”; the nation, he insisted, could not "suffer the execution of our land law to depend on the disinterestedness of an individual.” Congressman Albert Gallatin specifically invoked the purchases of the Ohio and Miami Companies to argue that the federal government should sell small tracts directly to individuals. “Government would be, in effect, its own speculator,” he argued, able to profit from rising land values directly.83

These debates suggest widespread disillusionment with the earlier experiment in selling to companies. That first federal land system had rested on a supposed symbiosis between speculators, who would gain legitimate title, and the federal government, which could transform its landed holdings into revenue without an elaborate bureaucracy. This system also promised to channel the disruptive power that title conferred in the early republic, exemplified by Cox’s Tennessee Company. Claiming dubious rights to millions of acres in the contested borderlands, companies like Cox’s attempted to translate ownership into jurisdiction and even “rights of sovereignty.” As federal officials’ panicked reactions demonstrate, such speculations challenged federal authority over westward expansion, disrupting relations with Native nations, creating chaotic fights over property, and unseating the supremacy of federal law. The Ohio and Miami Companies augured a different approach, one that employed “system” to bolster rather than undermine federal aims of peace, clarity, and order in the territories.

That was not how it turned out, as company and federal interests diverged. The sense of betrayal felt by Symmes and Putnam reflected the companies’ precarious authority: they may have dreamed of vast territorial control, but remained a far cry from the East India Company.

83. 5 Annals of Congress 337-55, 402-23 (1796).
(which faced intense scrutiny of its own in this era for challenge it posed Parliamentary supremacy). In practice, the power the Ohio and Miami Companies enjoyed was thin and highly dependent on the federal government. Company officials adjudicated disputes, but as federal rather than corporate officers, even if Symmes heavily blurred the two roles. They conducted their own diplomacy with Native nations, but, at the first sign of trouble, they demanded federal military protection. And the companies’ financial success, it turned out, rested not only on the state of federal finances but also on Congress’s willingness to rescue them from their own excesses. In contrast to Cox’s attitude of defiance, which brought its own costs, the partnership between the companies and federal authority subjected the companies to the whims and priorities of federal policymakers, leaving them deeply disillusioned.

Federal and company interests also diverged concerning ownership. Here, the Ohio and Miami Companies turned out to be little different from the Tennessee Company. Like everyone else involved in land in the early republic—from small Kentucky claimants to grand investors—Putnam and Symmes no less than Cox sought to secure quick returns by selling property that they did not yet own. Such gambles on contingencies and future promises of title were endemic to the era’s land practice: even Congress sold future rights to public lands based on the promise of future payment, the better to secure higher revenues. But while these features made land a potentially lucrative investment, they were fundamentally at odds with certainty and order; land speculation thrived on confusion. This uncertainty imposed costs that someone had to bear—almost always innocent purchasers, but also often the federal government, which felt morally (and in the case of the Tennessee Company, legally) obligated to tidy up the messes Cox, Symmes, and Putnam left behind.

At the end of the 1796 debate, Congress opted to create a system of land auctions, many
of them selling small parcels, and established a federal bureaucracy to survey and distribute the public domain. The federal government remained committed to using its power over title to try to shape policy—it continued to reserve lots for education and religion, pay its soldiers in land, and donate land to the states to subsidize internal improvements. But the federal government’s decision to establish a government-run land system stood in sharp contrast with approaches of many states, which subsidized a new generation with governmental support as they promised public goods if the government underwrote their own risky ventures. In fact, not for nearly another century would the federal government again give the public domain away to corporations claiming to promote the national interest, when Congress granted still more enormous portions of federal land to the railroads. The ensuing debacle dwarfed the contentions under the Ohio and Miami Companies and forced the government to relearn earlier lessons about the tensions between corporate and federal lessons.84

But in the 1790s, all that lay far in the future. The failure of the first federal land system left the government with the unresolved problem of the uncertainty of title in the territories. The ensuing years witnessed the decades-long process as often reluctant federal administrators, pressed by claimants, slowly labored to untangle this morass.