

Dear Colloquium Participants:

This paper is the fourth chapter of a book entitled *The Gentry, the Saints, and the Federal Republic: The Birth, Death, and Re-Birth of American Constitutional Federalism*. The book is a history of Anglo-American Federalism from the English Civil War through the fall of Prohibition in 1932 in the United States. The overall thesis of the book is that Anglo-American federalism is, for long historical periods measured in centuries, characterized by two competing notions of governmental decentralization. Under one conception, decentralization protects radical dissent from the *status quo*. Under another conception, federalism protects local dominance of a landowning class (possibly but not necessarily a numerical majority) from bureaucratic or financial elites by keeping power close to the rural networks of power and away from that metropolitan elite. The first conception is associated in the seventeenth and eighteenth centuries with a social group I call “the Saints.” The second conception is associated with a social group that I call “the Gentry.”

The book argues that these conceptions of local government survive their origins in English local government to characterize different regions of the United States. The Southern and, to a lesser extent, western, states tended to adopt a “gentry” conception, while the New England states tend towards a “saintly” conception. The conceptions, however, also transcend their historical origins. Saintly localism characterizes, for instance, now-secular college towns like Ann Arbor, Oberlin, or Ithaca (all areas initially populated by Saints during the Yankee Diaspora following the Second Great Awakening, whose descendants, with pleasing verbal symmetry, are now “woke”). Gentry localism characterizes the suburban stretches of the lower Midwest and South through Orange County California, where the descendants of the trans-Appalachian Scots-Irish made their deepest mark. These descendants’ protests against property taxes and Silicon Valley entrepreneurs as well as their suspicion of coastal elites echoes the old Democratic-Republican and Jacksonian protests against New England’s social reformers and mid-Atlantic bankers.

Chapter 4 develops the argument that the brand of American constitutional federalism dominant in the debates over the ratification of the Constitution originated in English rural squires’ opposition the financial revolution brought about by King William II’s wars against France. That opposition created a “Country Party ideology” that became one of the most important arguments of American colonists against their membership in the British Empire. The Anti-Federalists inherited this ideology as a weapon against a new national government with general powers as opposed to carefully circumscribed legislative powers.

## **Chapter 4: From Country Party to Federalism: The North American Gentry's Anti-Financier Case for Constitutionalizing Decentralization, 1694-1788**

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The saints' religious federalism was not the only brand of constitutionally protected decentralization emerging from the British Empire. Between the Glorious Revolution and the fall of Robert Walpole's Administration in 1742, a rich polemical literature grew up in England around the relationship between finance and the power of the gentry. This literature responded to a new perceived threat. This threat was posed by a financial revolution consisting of a combination of a permanent funded debt owned by private investors and administered by private banking corporations that was funded by excise taxes enforced by a centrally trained and appointed corps of professional bureaucrats. These two institutions— banking corporations (with their “monied men” investors) and excise bureaucracy — threatened the rural networks built around ownership of land on the gentry with a rival and more centralized network of financial relationships tied to commercial cities.

Against this threat of financial centralization, English gentry developed a “Country Party” rhetoric that blamed the financiers for corrupting traditional English institutions. In this chapter, I will argue that this Country party ideology was the single strongest influence on American constitutional federalism that emerged between 1786 and 1791. In particular, the idea that decentralization would safeguard American representative government from corruption by “stockjobbers” and “monied men” would eventually become an important animating spirit behind both the text of the enumeration of powers in Article I of the U.S. Constitution and that text's later interpretation by the Democratic-Republicans in the 1790s and Jacksonian Democrats from the 1830s through the 1850s.

This chapter will focus on two questions about the history preceding the creation of the American republic. First, how did an English ideology having nothing at all to do with federalism (at least, as that term was conventionally understood in the 18<sup>th</sup> century) become the

basis for American federalism? Second, how did these anomalous English origins affect the ultimate constitutional version of federalism adopted in the newly independent United States?

Consider the depth of the paradox posed by that first question. The rural squires of England, the most avid proponents of Country Party ideology, had no love whatsoever for federalism. They would have indeed associated the term “federalism” with the widely mocked and politically ineffective Holy Roman Empire of the Germans. Nor did those leaders of rural networks in England have much love for what modern American constitutional scholars are wont to call “the values of federalism.” They did not want local governments to serve as “laboratories of democracy,” because they disliked both laboratories (i.e., governmental innovation) and democracy. They preferred instead the traditional and decidedly non-experimental system for governing the rural areas of the counties of Merrie Old England described in Chapter 1: Justices of the Peace, sitting on the county’s Peace Commission, staffed by landed gentry and served by an array of lesser landowners -- constables, coroners, beadles, and other officers either appointed by JPs, chosen by lot, or elected by the hundreds from village notables. The squires who championed Country Party ideology also tended to be Church of England stalwarts who had no love for value pluralism or religious diversity. Indeed, they were known to provoke riots against Dissenting churches, which they associated with urban finance. Finally, those squires who hated finance had no interest whatsoever in any accommodation of a mobile citizens’ demands for governmental diversity. They disliked mobility of citizens, which they termed “vagrancy,” and preferred “settlement” of the rural poor in the particular parish of their birth, where “masterless men” would be safely confined to workhouses.

How did this essentially nostalgic and conservative ideology, completely antithetical to the “values of federalism” championed by the modern U.S. Supreme Court and legal scholars,

become the basis for a system of constitutionally decentralizing power to subnational units of government in the United States? I will argue below that Americans advanced the Country Party program with legal institutions they inherited from the British Empire – in particular, the chartered colony equipped with an assembly exercising legislative and especially taxing powers. This was a North American innovation: As explained in Chapter 2, English squires had generally disliked incorporated boroughs, in part because, in England, they tended to be dominated by Dissenters. The squires’ preferred form of government was purely executive – the Peace Commission, which carried out national statutes but enacted none of their own. In North America, however, the periphery of the Empire was equipped with chartered governments possessing legislative and taxing powers that become the vehicles for resistance to the financiers at the Metropolitan center (including London’s chartered corporations and imperial excise). The Country Party ideology, therefore, could best be advanced in North America by championing a form of government disliked or ignored by the people who invented that ideology in the British Islands.

Given such ideological antecedents, I will argue that it is no surprise that the champions of state governments’ authority against national power were completely indifferent to the so-called “values of federalism” that are typically urged today as justifications for constitutional limits on national government’s authority. Following closely the English squires’ Country Party script, Anti-Federalists who opposed the ratification of the U.S. Constitution said remarkably little about experimentation in democratic government, value pluralism, accommodation of citizens’ diverse tastes for different types of government, and so forth.

The Anti-Federalists’ master value was instead constraining the power of a financial elite – “natural aristocrats,” in their favorite phrase -- believed to be dominant in eastern seaboard

trading cities. Indeed, the backcountry and Southeast states where hostility towards central power was the strongest, a desire for local democracy and local government innovation was the weakest. Constitutionally limiting the national government's power was a means for safeguarding rural dominance over urban elites, not for fostering strong or innovative subnational governments.

### **English Opposition to Financial Modernity: Permanent Debt, National Bank, Stockjobbers, and Excisemen in Country Party Rhetoric**

To understand American constitutional federalism, one must begin with Country Party ideology. To understand Country Party ideology, one must begin with rural gentry's opposition to William III in the 1690s.

William III replaced James II in a 1689 coup for the purpose of waging war on Louis XIV's France. Wars cost money, and the much smaller British kingdoms could not hope to match French wealth without financial innovation. The Stuarts had never developed sophisticated borrowing operations, relying instead on impromptu devices like forced loans that discouraged lenders from developing a money market.<sup>1</sup> William, therefore, enlisted Charles Montagu, a rising MP and soon-to-be financial wizard to serve as Chancellor of the Exchequer and invent a new system of public finance. Montagu and his aristocratic allies (known by their detractors as the "Whig junto") fulfilled his assignment by bringing about a financial revolution.

Two institutions in this financial revolution posed a threat to gentry power by centralizing England's financial system. First, Montagu raised revenue through a permanent funded debt managed by a private corporation and held by private investors. Second, revenue to fund that debt was derived from excise taxes administered not by private landowners but instead by a

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<sup>1</sup> Robert Ashton, *The Crown and the Money Market, 1603-1640*, at 113 (1960).

professional corps of excisemen. Both institutions threatened the power of the gentry by undercutting the dependence of local fiscal management on networks of landowners, replacing those networks with a rival network of “monied men” who owned or sold governmental and private securities and “placemen” who were full-time governmental employees. The gentry’s opposition to this rival network inspired a new “Country Party” rhetoric that would be exported across the Atlantic to influence American attitudes towards federalism.

At the core of this new Country Party was opposition to a permanent funded debt. The debt was “permanent” in that the principal was re-paid over a long period of time, such that borrowers could hold it as a long-term, interest-earning investment. Because subscribers to the government’s debt were organized into the Bank of England, a private corporation chartered in 1694 with exclusive rights to receive governmental revenue and issue banknotes, governmental creditors had the organizational means to overcome collective action problems when lobbying to insure repayment.<sup>2</sup> By creating a network of relationships between subscribers, stockjobbers (*i.e.*, brokers), and the Bank, such debt created a political organization capable of insuring repayment of that debt: Repealing the Bank’s charter or otherwise undermining timely payments of interest over these stakeholders’ united objections was politically difficult, especially in a bicameral legislature with multiple opportunities to derail legislation.<sup>3</sup> Moreover, members of Parliament and Crown officials themselves might be stock subscribers: Through such ties of financial interest — corruption, to opponents of the new financial state— the network of financiers could reduce default risk and thus interest rates charged to the government.

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<sup>2</sup> Anne L. Murphy, *Demanding ‘Credible Commitment’: Public reactions to the Failures of the Early Financial Revolution*, 66 *ECON. HIST. REV.* 178, 191-92 (2013) (on subscriber reliance on and involvement with Bank of England’s lobbying).

<sup>3</sup> For a discussion of how the British system of party competition created confidence that the Crown would not renege on its debts and thereby lowered interest rates. see DAVID STASAVAGE, *PUBLIC DEBT AND THE BIRTH OF THE DEMOCRATIC STATE: FRANCE AND GREAT BRITAIN, 1688-1789* (2003). On the pamphlet literature from government creditors to persuade the government to maintain revenues for repayment, see Murphy, *supra*.

Investors took note, and the number of subscribers to Bank stock expanded rapidly, from 5,000 in 1694 to 40,000 by 1719.<sup>4</sup> Under Montagu's leadership, the long-term debt of England exploded from five million pounds to seventeen million pounds by 1698, enabling the Crown to pay for William's first round of French adventures at unusually low interest rates. This feat of borrowing more money at less cost than the substantially more populous nation of France made Montagu's permanently funded debt a “standing miracle in politics, which at once astonishes and over-awes the states of Europe.”<sup>5</sup>

Debt requires revenue, and excise taxes played a large role in supplying funds to secure the permanent debt. Although excise taxes on the sale of goods had been introduced by the Commonwealth government as early as the English Civil War,<sup>6</sup> Parliament in the 1690s expanded their use to cover a broader variety of goods — not only salt but also glass, leather, coal, malt, among other basics — dedicating revenues from specific taxes to pay particular issues of debt.<sup>7</sup> Excise taxes had the advantage of being easier to collect, because they were imposed on a small number of retailers in towns where goods were stored or traded rather than the entire population of landholders.<sup>8</sup> Because excise taxes were focused on fewer people in fewer areas, they were also amenable to scale economies in administration, so they were bureaucratized earlier than other English taxes.<sup>9</sup> Excisemen, unlike the officials who implemented land taxes, were full time and centrally managed bureaucrats, with regular salaries, pensions, and a hierarchical system of promotion.<sup>10</sup> During the 1690s, excise taxes yielded roughly a third of

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<sup>4</sup> Bruce Carruthers, *City of Capital* *supra* at 85.

<sup>5</sup> F.G.M. Dickson, *Financial Revolution in England*, at 16.

<sup>6</sup> Michael J. Braddick, *Popular Politics and Public Policy: The Excise Riot at Smithfield in February 1647 and Its Aftermath*, 34 *Hist. J.* 597 (1991).

<sup>7</sup> D'MARIS COFFMAN, *EXCISE TAXES AND THE ORIGINS OF PUBLIC DEBT* 4 (2013).

<sup>8</sup> P.K. O'Brien, *The Political Economy of British Taxation, 1660-1815*, 41 *ECON. HIST. REV.* 1 (1981)

<sup>9</sup> Edgar Kiser & Joshua Kane, *Revolution and State Structure: The Bureaucratization of Tax Administration in Early Modern England and France*, 107 *AM. J. SOC.* 183, 194-97 (2001).

<sup>10</sup> EDWARD HUGHES, *STUDIES IN ADMINISTRATION AND FINANCE* 162, 218-19 (1934).

England's revenue.<sup>11</sup>

The financial revolution was also a revolution in centralization of power. The system of debt and excise was, in effect, an attack on the decentralized administration of England's fiscal system in three distinct senses: The physical location, information about, and political control of the fiscal system was transferred from the countryside to London. This centralizing attack created in the minds of its gentry critics the risk of Parliament's corruption by unseen and uncontrollable financial experts — private banks and stockjobbers commanding an army of excisemen — whose specialized knowledge and inside connections would make them immune from Parliamentary control.

The physical relocation of power in the financial revolution was most dramatically visible transformation of English government. Markets for government securities and bank stock were necessarily located in a central city where information about prices and risks could be communicated quickly. Stock subscribers congregated in Exchange Alley, a street in London crowded with “stock-jobbers” (*i.e.*, brokers) doing business in coffee houses — typically, Jonathan's Coffee House — because that's where the tips and gossip were. Moreover, subscribers did not merely buy in, but also lived in or near to, London: They disproportionately consisted of merchants and professional men living in London and the “home counties” (*i.e.*, those counties abutting London) distant from rural areas where the mostly non-investing gentry lived.<sup>12</sup> It did not help the stock subscribers' popularity with often xenophobic Anglican squires that those subscribers were also disproportionately non-Anglican — French Huguenots, Dissenting protestants, or Jews — compared to the countryside population. Towns naturally

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<sup>11</sup> Coffman, *supra*, at 3.

<sup>12</sup> Bruce Carruthers, *City of Capital* at 85; Dickson, *Financial Revolution* at 254, 260, 273; W.A. Speck, *Eighteenth Century Attitudes Toward Business* in *THE REPRESENTATION OF BUSINESS IN ENGLISH LITERATURE* 9, 10 (Arthur Pollard ed. 2000).

harbored both more financiers and also more demographic diversity than the countryside, and the squires disliked the towns for both reasons.

With physical concentration in London came specialized knowledge about how financial markets worked. The confusion of country gentry when confronted by the new financial system was humorously captured by Daniel Defoe, a Country Party writer, in 1701, when he wrote (imitating the confused bluster of a red-faced, fox-hunting squire) that stock subscribers and brokers

“can ruin Men silently, undermine and impoverish by a sort of impenetrable artifice, like Poison that works at a distance, can wheedle men to ruin themselves, and Fiddle them out of their Money, by Strange and unheard of Engines of interests, Discounts, Transfers, Tallies, Debentures, Shares, Projects, and the Devil and all of figures and hard Names.”<sup>13</sup>

To a squire far from London, the factors affecting trading in governmental securities and Bank of England stock were opaque — “a sort of impenetrable artifice...of figures and hard names” — that cut the country gentlemen out of effective participation in or supervision of those London financial wizards.

The marketing of debt was not the only centralizing aspect of the financial revolution. Excise taxes were, compared to traditional English fiscal instruments, especially centralizing. Excise taxes competed with the land tax, another financing device created in 1692 to finance King William’s wars,<sup>14</sup> and the implementation of the land tax, especially after 1698, was entirely controlled by local landowners. After 1698, Parliament simply set a revenue quota for each county, allowing land tax commissions within the county apportion the obligation among hundreds and to appoint assessors to divide up each hundred’s quota among parishes.<sup>15</sup> Because

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<sup>13</sup> Daniel Defoe, *Villainy of Stockjobbers Detected* 22 (1701).

<sup>14</sup> J.V. Beckett, *Land Tax or Excise: The Levying of Taxation in 17<sup>th</sup> and 18<sup>th</sup> Century England*, 100 *ENG. HIST. REV.* 285, 287-95 (1985) (describing evolution of land tax from ad hoc assessments in 1689 to county quota system of 1698).

<sup>15</sup> *Id.* at 294-95;

the commissioners were appointed by Parliament, the Crown had little practical influence over their selection: The MPs from each county consulted with the local elite to fix the list.<sup>16</sup> The commissioners, in turn, appointed the assessors, who were unpaid local landowners — usually substantial farmers or other village notables.<sup>17</sup> Moreover, different counties had radically different systems for dividing up the land tax obligation.<sup>18</sup> Landowners' total control allowed them to use their power in rural law enforcement to do favors for each other and engage in creative reallocation and evasion to soften the taxes where they pinched.<sup>19</sup> The gentry's power to modify the tax was extraordinary, because national laws defining the tax provided virtually no procedures for its implementation: Each county could choose its own method for raising its quota of revenue.<sup>20</sup> In effect, the land tax system was part of the gentry-dominated administrative federalism that included the administration of criminal justice by JPs and constables, the administration of the Poor Laws by local overseers of the poor and vestrymen, and control of local policing through the militia.

The implementation of the excise tax, by contrast, was controlled from London, where the Court directed a peripatetic corps of professional excisemen to intrude on the financial doings in market towns and even private homes across England. From the time of the English Civil War, excise taxes could provoke riots, and excisemen were routinely lambasted in popular song and broadsides as meddling, even sexually menacing nuisances.<sup>21</sup> Land taxes were not beloved by the gentry, but the excise was truly hated. "I am not for saving our lands to enslave our

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<sup>16</sup> Colin Brooks, *Public Finance and Political Stability: The Administration of the Land Tax, 1688-1720*, 17 *HISTORICAL J.* 281, 293-94 (1974)

<sup>17</sup> *Id.* at 288-291.

<sup>18</sup> *Id.* at 286.

<sup>19</sup> Braddick, *supra*, at 601.

<sup>20</sup> R. DOUGLAS, *TAXATION IN BRITAIN SINCE 1660* 17 (1999); Beckett, *supra*, at 301.

<sup>21</sup> Braddick, *supra* 600-01.

persons by excise,” grumbled John Swynfen, an MP hostile to the Court.<sup>22</sup>

Fear of opaque financial arcana and a swarm of excisemen combined to provoke gentry suspicions that the new financial state was built on corruption of Parliament by the Court. Starting in the mid-1690s, the gentry launched a campaign against these financial networks, organizing a “Country” faction within the House of Commons to resist a “Court” faction dominated by the “Whig Junto.” Composed mostly but not exclusively of “Tory” (Anglican and traditionalist) landowners<sup>23</sup> and led by Robert Harley, a renegade Whig, the Country Party faction in Parliament tried to curb Crown power through variety of Harringtonian techniques. These included the rotation of MPs every three years (through the Triennial Act of 1694) and limits on the Crown's ability appoint MPs to executive office as “placemen” (through the clause in the Settlement Act of 1701 barring executive officers from serving in Parliament<sup>24</sup>). To localize finance and direct it towards a rural constituency, the Country faction also pressed for the authorization of a Land Bank with provincial branches and a mandate to offer low-interest mortgages to rural landowners.<sup>25</sup>

All of these measures were largely practical failures.<sup>26</sup> The Country Party efforts, however, inspired a much more lasting tool with which to fight the financiers -- a brand of rhetoric in a flood of pamphlets denouncing “paper aristocrats” or “fundlords” in the parlance of

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<sup>22</sup> Beckett, *supra*, at 300.

<sup>23</sup> On the general characteristics of Whigs and Tories following the 1688 Revolution, with Tories’ fundamentally differing from Whigs in the former’s greater solicitude for agrarian over manufacturing interests, see STEVEN PINCUS, *1688: THE FIRST MODERN REVOLUTION* (2009).

<sup>24</sup> 12 Wm. III, c. 2.

<sup>25</sup> Dennis A. Rubini *Politics and the Battle for the Banks, 1688-1697*, 85 *ENG. HIST. REV.* 693, 697 (1970).

<sup>26</sup> David Hayton, *The Country Party in the House of Commons, 1698-99: A Forecast of the Opposition to a Standing Army*, 6 *PARL. HIST.* 141 (1987). On the use of strategically timed elections to undermine the Triennial Act, see Derek Jarrett, *Britain 1688-1815*, at 111-114 (1965). The Settlement Act was triggered only by the failure of the Hanoverian succession, which never occurred. EDWARD PORRITT, *THE UNREFORMED HOUSE OF COMMONS: PARLIAMENTARY REPRESENTATION BEFORE 1832*, at 210 (1903).

eighteenth-century invective.<sup>27</sup> These polemics generally argued that for protection of “landed men” from “money’d men” on the ground that the Bank of England subverted the constitution by exercising excessive influence over Parliament.<sup>28</sup> “It is not in the Nature of such a Corporation to have any Consideration to the Publick Good, while they could venture to ruin the whole for the gratifying their Revenge, or suppressing a Rival,” inveighed one typical pamphlet.<sup>29</sup>

In attacking the Bank, Country Party rhetoric actually attacked the principle of co-existence of semi-sovereign law-making bodies that is the heart of federalism, recycling the old Stuart idea that an “imperio in imperium was a solecism in politics.” As explained in Chapter 3, this idea was employed by the Stuarts against autonomy for municipal and colonial corporations during the quo warranto fights over corporate charters during the 1670s and 1680s. Far from rejecting this attack on federalism, the Country Party rhetoric of the 1690s and early 18<sup>th</sup> century embraced it: As one Country Party pamphlet put the argument, conferring independent powers on a corporation was “a dangerous Solecism in Politicks,” because a sovereign state ought to “depend on [nothing] in this World beside it self.”<sup>30</sup>

Such Country invective was not economically sophisticated, and, until 1720, it initially did not have much practical purchase on English policy.<sup>31</sup> But then the South Sea Company

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<sup>27</sup> For examples of this rhetoric, see Jonathan Swift, *History of the last Four years* (1713) (“monied interest” opposed to “gentry of the kingdom”); Daniel Defoe, *Villainy of Stock-Jobbers Detected* (1701); Charles Davenant, *The True Picture of a Modern Whig* 26 (1701); Speech of Henry St. John in House of Commons, December 20<sup>th</sup>, 1710. For an account of the historiography on the Country faction of the 1690s, see David Hayton, *Moral Reform and Country Politics in the Late Seventeenth-Century House of Commons*, 128 *PAST & PRESENT* 48 (1990).

<sup>28</sup> Dennis A. Rubini, *Party and the Augustan Constitution, 1694-1716: Politics and the Power of the Executive*, 10 *ALBION: A QUARTERLY JOURNAL CONCERNED WITH BRITISH STUDIES* 193 (1978). For an account of the historiography on the Country faction of the 1690s, see David Hayton, *Moral Reform and Country Politics in the Late Seventeenth-Century House of Commons*, 128 *PAST & PRESENT* 48 (1990).

<sup>29</sup> *A Short View of the Apparent Dangers and Mischiefs from the Bank of England*, at 7-9 (1707).

<sup>30</sup> John Broughton, *Remarks upon the Bank of England...* (1705).

<sup>31</sup> As one commentator has noted, these Country denunciations of “stock-jobbing” were “remarkably uniform, indeed, monotonous in tone, and uninformative about how the market actually worked.” P.G.M. DICKSON, *THE FINANCIAL REVOLUTION IN ENGLAND* 33 (1967).

crashed in a scandal that shook England's government and changed constitutional rhetoric for a century.

Although created by the new Tory Parliament in 1711 to trade with Spanish colonies, the South Sea Company's chief value lay not in its trading privileges but in its acting as a vehicle for trading unredeemable annuities issued to governmental creditors for company stock.<sup>32</sup> Those "unredeemables" turned out to be one of Charles Montagu's bad bets, because the holders were not obliged to sell them back to the Crown even when market rates of interest dipped substantially below the percentages that England was pay to the annuitants. Based on the theory that stock value would appreciate enough to induce such a voluntary exchange of debt for stock, Parliament, in April of 1720, approved the Company's proposal to purchase £30 million in outstanding and mostly irredeemable debt in exchange for 5% annual payment from the government for seven years.<sup>33</sup>

This re-financing plan created perverse incentives for Company officers and directors to talk up the Company's share to induce annuitants to exchange reliable government debt for potentially volatile Company shares. The Company's directors succeeded in this task all too well, through bribery, puffery, and fraud. Despite efforts by an anti-Company MP to show with rational valuation methods that the Company's real value could not possibly cover the burden of the public debt being assumed,<sup>34</sup> the public entered into stock buying enthusiastically, bidding the share price up from £100 per share in April to over £1,000 by early August, whereupon it began a steep and relentless decline. In the ensuing collapse, thousands of shareholders were ruined and the economy of the British Empire, materially diminished.

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<sup>32</sup> BARRY COWARD, *THE STUART AGE: ENGLAND, 1603-1714*, at 454-55 (2014).

<sup>33</sup> The mechanics of the Company's proposal to redeem public debt through an exchange of debt for stock is outlined by Scott, *supra*, at 300-303.

<sup>34</sup> Archibald Hutcheson, *Some Calculations relating to the proposals of the South Sea Company...* (1720).

The South Sea scandal revived the old Country Party rhetoric from the 1690s, because the South Sea “Bubble” provided the perfect fable for the inequities of financial modernity. (That the South Sea Company’s crash was, in fact, a bubble remains debated but is supported by substantial evidence<sup>35</sup>). Pamphleteers used the fable to illustrate the incapacity of stock subscribers to protect themselves from the machinations of stockjobbers and banks. The problem was the stock subscribers’ inability to engage in disciplined collective action: Unlike the disciplined “parish deputys” in Harrington’s *Oceana* described in Chapter 1, the stock subscribers were a mere disorderly mob clamoring to buy or sell in Exchange Alley. Harrington described an array of county landowners who were literally drilled by their experience in local administration, especially in the militia, to become a well-informed and coordinated body of voters. By contrast, stock subscribers lacked any internal governance mechanism to prevent their own irrational euphoria and panic from affecting the value of their property. Feverishly competing to buy or sell based on the latest rumor, individual subscribers were the tools of people like Sir John Blunt, the Company’s chair, who was eagerly shorting the stock even as the directors were reassuring the public to stave off a general sale.<sup>36</sup>

The fable of the South Sea “Bubble” became part of Anglo-American political theory especially through one set of particularly effective pamphlets – the one hundred and forty-four essays writing by John Trenchard and Thomas Gordon under the name of “Cato.” Published

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<sup>35</sup>On bubbles in general and their relation to the South Sea Company’s crash, see CHARLES MACKAY, MEMOIRS OF EXTRAORDINARY POPULAR DELUSIONS AND THE MADNESS OF CROWDS (2<sup>nd</sup> ed. 1852, chapter 2, available at <http://www.econlib.org/library/Mackay/macEx2.html#Ch.2.%20The%20South-Sea%20Bubble> RICHARD DALE, THE FIRST CRASH: LESSONS FROM THE SOUTH SEA BUBBLE 159-70 (Princeton University Press, 2004) reviews the evidence and concludes that “there is overwhelming evidence to the effect that the South Sea boom represented an irrational bubble.” Whether the stock-buying public was irrationally seeking quick riches or simply deprived of information needed to make a rational assessment of the Company’s prospects is a question that Dale does not explore. On the latter theory, see Scott, at 306-07.

<sup>36</sup> For a general narrative history of the South Sea Company’s rise and fall, see LEWIS MELVILLE, THE SOUTH SEA BUBBLE (1921). On Blunt’s and the directors’ short selling, see *id.* at 112.

between late 1720 and 1723, *Cato's Letters* combined attacks on financiers with Harrington's theory of a land-based republic to create a general theory of what today political scientists would call "agency costs."

Put simply, Cato argued that, unlike landed property, the paper property marketed by stockjobbers undermined collective self-government. Cato recycled the Harringtonian idea that an equal distribution of landed property would not only insure political tranquility<sup>37</sup> but also be self-sustaining.<sup>38</sup> Ordinary real estate would insure that "the whole people, who are the publick, are the best judges, whether things go ill or well with the publick," because "[e]very ploughman" can assess his own personal prosperity and vote ("retrospectively," as modern political scientists would say) for or against the incumbent government based on that simple assessment.<sup>39</sup> This optimistic assessment, however, did not apply to the buyers and sellers of governmental or private securities: Stock subscribers, unlike that sober ploughman, were easily duped by stockjobbers.<sup>40</sup> The problem, moreover, was incurable.<sup>41</sup> Owners of stock simply lacked the same

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<sup>37</sup>"[T]he first principle of all power is property; and every man will have his share of it in proportion as he enjoys property, and makes use of that property, where violence does not interpose." No. 84, July 7<sup>th</sup>, 1721, in 3 JOHN TRENCHARD & THOMAS GORDON, *CATO'S LETTERS, OR ESSAYS ON LIBERTY, CIVIL AND RELIGIOUS, AND OTHER IMPORTANT SUBJECTS* 101 (edited and annotated by Ronald Hamowy, Liberty Fund, 1995)., available at <http://oll.libertyfund.org/title/1239>.

<sup>38</sup>*Id.* at 103. See also No. 85, July 14<sup>th</sup>, 1722, in *id.* at 106 ("An equality of estate will give an equality of power," Cato confidently asserts: So long as "[a]n agrarian law, or something equivalent to it" insures an equal distribution of land, "there is no hindering a popular form of government").

<sup>39</sup>No. 13, January 21<sup>st</sup>, 1721, in 1 *id.* at 88. The capacity of ordinary people for self-government is a constant theme of *Cato's Letters*. See, e.g., No. 22, March 25<sup>th</sup>, 1721, in 1 *id.* at 131 ("The Judgment of the People Generally Sound, Where Not Mised"); No. 24, April 8<sup>th</sup>, 1721, in 1 *id.* at 148 ("[T]here are not such mighty talents requisite for government, as some, who pretend to them without possessing them, would make us believe: Honest affections, and common qualifications, are sufficient..."); No. 38, July 22<sup>nd</sup>, 1721 ("Every ploughman knows a good government from a bad one, from the effects of it..."), in 2 *id.* at 27.

<sup>40</sup>No. 6, December 10<sup>th</sup>, 1720, in 1 *Cato's Letters* at 48 ("How easily the People are bubbled by the deceiver"); *Id.* at 48-49 ("[c]ommon sense could have told them, that credit is the most uncertain and most fluctuating thing in the world, especially when it is applied to stock-jobbing"); No. 47, October 7<sup>th</sup>, 1721, in 2 *id.* at 68 ("Thus, ordinarily reliable popular judgment was "corrupted and weighed down by the biases that passion, delusion, and interest" fostered by financiers"); No. 32, June 10<sup>th</sup>, 1721, in 1 *id.* at 190 (financiers are "imposters"); No. 6, December 10<sup>th</sup>, 1720, at 48. See also No. 4, November 26<sup>th</sup>, 1720, in 1 *id.* at 42 ("folly or distraction of the people..."); No. 3, November 19<sup>th</sup> 1720, in 1 *id.* 39 ("credulity of the people" led to the South Sea bubble).

<sup>41</sup>"No experience or suffering can cure the world of its credulity" where promises of easy future riches are concerned.

incentives for effective self-government that were enjoyed by the owners of land. The corruption of democracy by financiers being incurable, the only solution was simply to ban governmental dealings with financiers, private financial corporations, or even long-term debt.<sup>42</sup> As a safeguard against the government's incurring such indebtedness despite such imprecations, Cato defended the government's power to enforce criminal penalties on corrupting dealings in public debt retrospectively, even absent a statute outlawing such dealings.<sup>43</sup>

*Cato's Letters* transformed Country Party rhetoric by making opposition to governmental dealings with private joint-stock corporations a central theme of the gentry's theory of government. The influence of *Cato's Letters* was immense, reaching beyond England to her North American colonies, where Trenchard's and Gordon's collected essays became the single most popular version of Country Party rhetoric.<sup>44</sup>

Opposition to governmental debt and dealings with corporations, however, was not the only ingredient of Country Party ideology. During the 1730s, opposition to excise taxes also became an important element of Country rhetoric. After Robert Walpole was catapulted to leadership by his early opposition to the South Sea Company, a new anti-Walpole coalition arose that borrowed heavily from Cato's denunciations of private corporations and financiers. One part of that coalition were Whigs — "Patriot Whigs," they called themselves — who had formerly been Walpole's allies but defected over disagreements regarding war and commerce.<sup>45</sup> The other part of this anti-Walpole coalition were the same sort of Tory country gentlemen who, led by Robert Harley, had opposed centralized and bureaucratic power of the Court in the 1690s.

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<sup>42</sup> No. 10, January 3<sup>rd</sup>, 1721, in 1 *id.* 68 (declaring that "[i]t is a folly, and indeed an infatuation in any persons interested in the publick funds, to form any schemes for increasing those funds, or for continuing in them, any longer than is absolutely necessary to pay them their debts.")

<sup>43</sup> No. 11, January 7<sup>th</sup>, 1721, in 1 *id.* 75-78.

<sup>44</sup> On the influence of *Cato's Letters*, see BERNARD BAILYN, *IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 35-36 (1967).

<sup>45</sup> Steven Pincus, *Heart of the Declaration*; Amy Watson.

Now led by Bolingbroke, these Tories cooperated with the Patriot Whigs led by Walpole's former lieutenant, William Pulteney, both in Parliament and in the polemics of Bolingbroke's journal *The Craftsman*, a magazine that rocketed to extraordinary popularity in the 1730s.<sup>46</sup>

The Tory-Patriot Whig anti-Walpole coalition made opposition to the "general" excise tax a central plank in their political platform. In an effort to rationalize the British administrative state, Robert Walpole proposed a substantial expansion of excise taxes in 1733.<sup>47</sup> The proposal created a furor, triggering not only riots but also a massive public relations campaign denouncing excise taxes as a burden on the poor and an intrusion into the sanctity of the home. Walpole was soundly defeated and, upon entry into Westminster Palace, almost physically beaten. The *Craftsman* ran numerous essays denouncing excise taxes. Those essays crossed the Atlantic and, like *Cato's Letters*, became staple parts of Country rhetoric in the New World.

In particular, anti-excise rhetoric often involved fear of a centralized bureaucracy's bypassing landowners' traditional power over administration of the law in the countryside. This localistic rhetoric mostly came from Tories who had long complained that the excise tax deprived them of their prerogatives to govern. The Tory Parliamentary leader William Wyndham emphasized this land-based localism in a speech denouncing Walpole's excise proposal, sounding classic Harringtonian themes of balancing land ownership with entitlement to govern by noting that members of Parliament "generally [hold] a great Family-Interest in the

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<sup>46</sup> For a description of voting alliances between Patriot Whigs and Tories in Parliament, see Dan Bogart, *Political Party Representation and Electoral Politics in England and Wales, 1690–1747*, 40 *SOC. SCI. HIST.* 271 (2016). For an account of Pulteney's and Bolingbroke's Tory-"Patriot Whig" opposition to Walpole and the rhetoric of the *Craftsman* in denouncing the "great companies" and "stockjobbers," see ISAAC KRAMNICK, *BOLINGBROKE AND HIS CIRCLE: THE POLITICS OF NOSTALGIA IN THE AGE OF WALPOLE* 70-72 (1992); Amy Watson, \_\_\_\_\_. For samples of such rhetoric, see Bolingbroke, *Craftsman* #5, Dec. 14th, 1726; Bolingbroke, *Reflections on the Present State of the Nation* (1749) ("Method of funding and trade of stock-jobbing" created "great companies" that were "the pretended servants, but in many respects the real masters of every administration"); [William Pulteney], *Some Considerations on the National Debts, the Sinking Fund, and the State of Public Credit* . . . (London, 1729), and *An Enquiry into the Conduct of Our Domestick Affairs from the Year 1721 to the Present Time* (London, 1734).

<sup>47</sup> David Stasavage, *supra*, at \_\_\_\_.

several Counties, Cities and Boroughs they represent” but that “if this Scheme should take Effect, that Interest will soon be destroy'd,” because the excise tax would “transfer the whole [interest] to the Crown,” with the result that “the Power and Influence of the Crown will be so great in all Parts of the Nation, that no Man can depend upon the natural Interest he has in his Country for being a Member of this House.”<sup>48</sup> Although he did not specify how an excise tax would erode each MP’s “natural Interest,” country gentlemen’s usual complaints against the excise supplied the missing piece of the argument: Landowners’ title to real estate was also the basis for local office enabling each to do favors for their neighbors with respect to tax burdens and thereby cultivate “a great Family Interest” in local government. The excise tax and the excisemen who enforced it undercut this local power, thereby allowing the crown to dominate Parliament.<sup>49</sup>

English “country party” rhetoric, in sum, created a new ideology between 1720 and 1742 linking tax centralization, private corporations, stockjobbers, and a permanent debt to corruption. It was a reasonably successful ideology, defeating the 18<sup>th</sup> century’s most successful prime minister who had otherwise ruled supreme for twenty years.

Such polemics, however, posed a dilemma for the gentry: They seemed to rail haplessly against remorseless tides of financial modernity that were essential for the defense of an effective state. Modern states need armies and fleets, not to mention canals, roads, mines, factories, and a flexible medium of exchange, all of which required the sort of long-term indebtedness that Cato would forbid. To coax loans out of private pockets, the state must somehow provide assurance of re-payment. Those corrupting networks of subscribers, jobbers, and corporate officers

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<sup>48</sup> CHANDLER, 7 HISTORY AND PROCEEDINGS OF THE HOUSE OF COMMONS 346-350. I am indebted to Amy Watson for calling my attention to this speech.

<sup>49</sup> For a similar theory connecting excise taxes to erosion of landowners’ interest in the countryside, see

provide that assurance. If Harrington's ideal republic excludes such networks in order to preserve the power of the rural gentry, then so much the worse for that republic.

What gentry republicans needed, in short, was a constitutional system that could control but not destroy the financial revolution and the financial networks on which it depended. In North America, a new sort of constitutional federalism became that system.

### **The American Revolution as Backcountry Resistance to the Centralized Empire of Finance**

Country Party rhetoric found a welcoming home in America, because many Americans organized their local governments, economies, and politics in precisely the same way as the English gentry. Virginians, for instance, migrated primarily from Southwest England, adopting system of government in which county offices were held by great landowners who used their power to cultivate allies among lesser ones, just as the Anglican gentry did in Sussex, Surrey, Hampshire, or Dorset.<sup>50</sup> Like their English counterparts, American planters and merchants constituted a propertied interest remote from power in large trading towns like New York, Philadelphia, Boston, or Baltimore, let alone London. This American gentry was influential in their own counties as local magnates with a local "interest." Virginia planters, for instance, did not simply own slaves and real estate but also docks and commissary stores with which to market the goods for, and make loans to, smaller farmers.<sup>51</sup>

The colonies, in short, became the new "Country" confronting a corrupt "Court" in London. The difference between the American gentry and the English squirearchy, however, was that the former had a legislative body outside London -- colonial assemblies embedded in a system of imperial federalism -- with which to give legal force to their defense against financial

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<sup>50</sup> DAVID HACKETT FISHER, *ALBION'S SEED* *supra* at \_\_\_\_-\_\_\_\_.

<sup>51</sup> T.H. BREEN, *TOBACCO CULTURE: THE MENTALITY OF THE GREAT TIDEWATER PLANTERS ON THE EVE OF THE REVOLUTION* (1985).

insiders. By contrast, English Country opponents of metropolitan policies had no such subnational legislatures in either theory or practice: As explained in Chapter 1, neither Harrington's fictional fifty "tribes" nor their real-life counterparts of England's and Wales' fifty-one counties enjoyed broad taxing or legislative powers. Demanding that Walpole's 1742 excise be approved by English county governments, therefore, was a constitutional impossibility in England, whereas demanding that Parliament's excises be approved by colonial assemblies was a constitutional commonplace in British North America.

North Americans, in short, had constitutional tools at hand with which to implement a kind of legislative federalism to curb the power of the metropolitan center of the Empire. Moreover, the idea of enlisting this brand of imperial federalism against financiers was suggested by the very terms of Country rhetoric pitting a rural gentry against a "Court" at the metropolitan center. It was easy enough to see that the Crown and Parliament in London constituted that center. The colonists in North America were equally easy to analogize to the English "Country."

Events following the French-Indian War seemed to call for such a defense: To colonial Americans, they seemed to repeat in America with uncanny precision the policies against which English Country writers had protested in England. Reminiscent of the Whig Junto's opposition to a Land Bank in the 1690s, for instance, the Privy Council and Parliament opposed the colonial assemblies' efforts to set up publicly owned land banks to relieve a shortage of circulating medium. The land banks were authorized to issue notes secured by mortgages on land, the notes' value being assured by the colonial governments' acceptance of them for payment of taxes.<sup>52</sup> English merchants, however, were hostile to the idea because of its possibly inflationary

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<sup>52</sup>Theodore Thayer, *The Land-Bank System in the American Colonies*, 13 J. ECON. HIST. 152, 146-48 (1953); Elizabeth E. Dunn, 'Grasping at the Shadow': *The Massachusetts Currency Debate, 1690-1751*, 71 NEW ENGLAND Q. 54 (1998).

effects, and they lobbied Parliament to enact the Currency Act of 1764<sup>53</sup> banning such banks from issuing legal tender notes, which the Privy Council construed to include notes that could be tendered for tax payments.<sup>54</sup> Until Parliament relented in 1773 with a second statute, the Currency Act caused a shortage of circulating medium in the colonies that inspired bitter resentment.<sup>55</sup>

Likewise, Parliament's excise taxes on sugar, stamped paper, and, eventually, tea, all recalled with exquisite symmetry Walpole's hated 1742 excise. The Americans added only the idea that such taxes had to be approved by their colonial assemblies – a legal move foreclosed to the English opponents of excise, who lacked any such subnational legislative bodies. Following on the heels of the Currency Act, the Parliament also seemed to reenact the South Sea scandal with the passing of the Tea Act of 1773,<sup>56</sup> authorizing the East India Company to act as its own exporter by establishing branch houses in the colonies where the Company could sell tea directly to the colonists. The Act infuriated New England and mid-Atlantic merchants who regarded the competition from East India Company as a threat to their own importing and smuggling operations. Aside from this economic self-interest, however, opponents of the East India Company could draw on the fear of Crown-conferred corporate monopolies that drove Country opposition to both the Bank of England and the South Sea Company. Like the South Sea Company, the East India Company was a device by which the Parliament offered exclusive trading rights (for the East India Company, over trade with India) in exchange for millions of pounds of loans to the Crown, making the Company, in the words of a stockholder, “the great

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<sup>53</sup> 4 Geo. III, c. 34.

<sup>54</sup> Jack P. Greene & Richard M. Jellison, *The Currency Act of 1764 in Imperial-Colonial Relations, 1764-1776*, 18 WM. & MARY Q. 485 (1961).

<sup>55</sup> Green & Jellison, *The Currency Act of 1764*, at 507. By 1773, Parliament had allowed land bank notes to be used for payment of taxes in response to

<sup>56</sup> 13 Geo. III, c. 44.

money Engine of the State.”<sup>57</sup> By 1773, however, this relationship began to reverse itself, as the British government bailed out the increasingly financially beleaguered enterprise that had become deeply in debt to the Bank of England.<sup>58</sup> A part of this bailout, the Tea Act could be understood not merely as a burden on American merchants’ economic self-interest but also as foisting a corporate monopoly on the New World.<sup>59</sup> Fear of becoming economically subservient to such a monopoly fit perfectly with *Cato’s Letters*’ denunciations of “great companies” and their excessive influence in London.<sup>60</sup>

Unlike their English predecessors, America gentry republicans had the structure of imperial federalism to provide an antidote to such corruption by financiers. By limiting the power of the imperial government over colonial affairs, the British constitution also limited the corruption to which the Empire’s metropolitan center was prone. Perhaps in an effort to recruit English Country allies in Pennsylvania’s struggle with Parliament, John Dickinson urged the finance-constraining benefits of federalism as a reason to limit Parliamentary power over the colonies. “The attention of small states extends much more efficaciously and beneficially to every part of the territories, than that of the administration of a vast empire,” urged John Dickinson,<sup>61</sup> because the small states detect and ferret out the corruption that an inattentive or corrupted Parliament ignores or even fosters. In a six-page footnote, Dickinson, citing *Cato’s Letters*, offered a catalogue of the sort of financial misdeeds familiar from Country polemics --

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<sup>57</sup> HUGH V. BOWEN, *THE BUSINESS OF EMPIRE: THE EAST INDIA COMPANY AND IMPERIAL BRITAIN, 1756-1833*, at 30-33 (2007).

<sup>58</sup> *Id.*

<sup>59</sup> On the role of opposition to corporate monopolies to the ideology of the American Revolution, see BENJAMIN L. KARP, *DEFIANCE OF THE PATRIOTS* 17-21, 163; Arthur Meier Schlesinger, *The Uprising Against the East India Company*, 32 *POL. SCI. Q.* 60, 73 (“the fear of monopoly was the mainspring of American opposition”).

<sup>60</sup> *Monopolies and exclusive Companies, how pernicious to Trade*, No. 90, August 1722, in John Trenchard & Thomas Gordon, *Cato’s Letters, or Essays on Liberty, Civil and Religious, and Other Important Subjects* 101 (edited and annotated by Ronald Hamowy, Liberty Fund, 1995.), available at <http://oll.libertyfund.org/title/1239>.

<sup>61</sup> John Dickinson, *Essay on the Constitutional power of Great-Britain Over the Colonies in America* 21 note \* (1774)

trading on inside information of facts affecting the value of public securities or “[I]ending the crown at 8 per cent. Money which was raised at 5 or 6.”<sup>62</sup> Continuing the theme of the corrupting power of public finance, the Essay argued that the liberties of England itself would be subverted by an imperial victory over the Americans, because the “vast sums” that “must be raised” for such a victory would be used to bolster the power of the Crown<sup>63</sup> and public creditors.<sup>64</sup> Only by governing the empire as “a number of confederate republics,” Dickinson continued, could a “large empire” be saved from “verging into servitude.”<sup>65</sup> Analogizing the redemptive role of colonial resistance to Scotland’s defeat of the army of Charles I during the English Civil War,<sup>66</sup> Dickinson urged Englishmen to assist Americans in their resistance to Parliamentary taxation, declaring that “England must be saved in America.”<sup>67</sup>

Dickinson’s call for the redemption of the empire through provincial virtue was unique only in the specificity of its call for a confederate form to contain financiers’ corporate corruption. The idea that executive influence corrupted elections to the Parliament were a commonplace of American rhetoric on the eve of the Revolution.<sup>68</sup> The further idea that the provincials could help the imperial center cure such a corruption was also a common theme.<sup>69</sup> More specific than both of these generalized worries about centralization was the specific idea

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<sup>62</sup>*Id.* at 23, n.\*

<sup>63</sup>*Id.* at 58, note †

<sup>64</sup>*Id.* at 59-60, note ¶ to note †.

<sup>65</sup>*Id.* at 56, note †.

<sup>66</sup>*Id.* at 58, note †.

<sup>67</sup>*Id.* at 62, note †.

<sup>68</sup> See, e.g., Letter from Vienna, Pennsylvania Chronicle, vol. 7, Issue, 9, page 246 (March 15th 1773)( explaining that only “credulous persons” could “still entertain hopes of our recovering our rights by a new choice of representatives” to Parliament, because the Crown’s minister “never fails of procuring a great majority of such members to be returned, as he approves of” through “corrupt and unconstitutional methods” financed by “an immense sum of public money”).

<sup>69</sup> The British-American: Number VI, New York Journal, August 25, 1774 (“Was our sovereign, even now, to place a little more confidence in his American subjects, there are many amongst them whose knowledge of their country would enable, and whose affectionate loyalty to him would impel them, to point out constitutional modes of placing him in a very different situation from what a corrupt, selfish British aristocracy wish to see”).

that monopolistic corporations like the East India Company lurked behind the corruption of the executive.<sup>70</sup>

Imperial federalism, in short, was a new antidote to the old disease identified by Cato – the financiers’ domination of a government ostensibly accountable to the nation. As explained in Chapter 3, this polemical reliance on imperial federalism to limit Parliament’s power was practically confused, because none of the polemicists had any clear idea how to divide up taxing authority. The distinctions between “internal” and “external” taxation or taxation for revenue versus regulation all proved so flimsy that eventually the colonists opted for complete independence, exploding the federal regime that they had invoked against Parliament. Imperio in imperium indeed proved to be a solecism in the imperial politics of British North American finance. The effort to divide up power over finance to curb financiers’ power, however, became a central theme of the politics of the newly independent states.

### **Gentry Resistance to Centralized Finance under the Articles of Confederation**

The end of the British Empire did not end the idea that the virtue of the Country should redeem the nation. Instead, that idea was simply transposed. The Country became the backcountry, the areas of the United States more remote from international trade and finance, far from eastern seaboard cities or rivers leading to the Atlantic Coast. Arrayed against the backcountry gentry was a new “Court,” transposed from London to those large coastal cities like Philadelphia, Boston, New York, or Charleston as well as smaller towns with close connections to Atlantic trade and culture, where the owners of finance capital had their greatest influence.

Polarization of politics between the backcountry and North American commercial centers

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<sup>70</sup> For one widely circulated pamphlet’s account of how the corporate “creature” of the Parliament became Parliament’s and the executive’s master, see “Hampden,” *The Alarm* #2, explaining how the East India Company “forced venal Ministers to be regardless of the Ways and Means to support their Creatures,” because the Company’s [s]ecret sums” muted opposition in Parliament with “immense bribes from the Company, too numerous to mention.”

predated the Revolution, dividing all colonial assemblies, sometimes violently (as with the Regulator movement of the 1760s in the backcountry of the Carolinas).<sup>71</sup> Each side of these divisions pressed a different view of the unwritten imperial constitution. In the back-country, the rural gentry espoused a theory of what Dan Hulsebosch has called the “Marchland Constitution,” in which local residents were entitled to ownership of land to which they migrated and (often minimally) improved. The Marchland Constitution protected such title through possession with localistic devices like local town elections, jury trial, and the less formal but equally effective mechanism of the mob. Against the Marchland Constitution was the “constitution of chartered improvement” endorsed by the leaders of developed towns on the seaboard, in which investment was spurred by binding promises to corporate enterprisers.<sup>72</sup> Prior to the Revolution, the advocates of chartered improvement had the upper hand: The backcountry was more or less universally under-represented in the colonial legislatures. The backcountry, however, made dramatic gains in political power with the Revolution, participating in Committees of Correspondence, state constitutional conventions, and revolutionary politics generally where they had previously been excluded.<sup>73</sup>

Those gains did not eliminate the conflicts between Country and commercial center: The same old divisions, based on proximity to the trans-Atlantic world of culture and commerce, persisted, often with a sectional aspect of pitting eastern seaboard against western interior.<sup>74</sup> Moreover, these ideological and sectional factions squared off over the same dilemma of

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<sup>71</sup>For a summary of conflicts between back-country and commercial center, see RICHARD R. BEEMAN, *THE VARIETIES OF POLITICAL EXPERIENCE IN EIGHTEENTH CENTURY AMERICA* 157-203 (2004).

<sup>72</sup>DANIEL HULSEBOSCH, *CONSTITUTING EMPIRE: NEW YORK AND THE TRANSFORMATION OF CONSTITUTIONALISM IN THE ATLANTIC WORLD, 1664-1830*, at 96-104 (2005).

<sup>73</sup>Jackson T. Main, *Democratization of the Legislatures*, 23 *WM. & MARY Q.* 391 (1966).

<sup>74</sup>VAN BECK HALL, *POLITICS WITHOUT PARTIES: MASSACHUSETTS, 1780-1791*, at 7-12 (1972) (measuring distinction between commercial and back-country towns based on presence of inventory, specie, money at lent at interest, tonnage, lawyers, or newspapers and finding that eastern counties within states tended to have substantially higher ties to the larger Atlantic world of commerce than western counties).

sovereign debt that vexed Cato and the English republicans. On one hand, backcountry gentry were fearful that financiers and promoters of large capital investments would destroy landed independence by corrupting the legislative process. On the other hand, the nation plainly needed large-scale debt to wage war and build infrastructure.

In the political struggles of the 1780s during the Articles of Confederation, financiers regularly sought greater centralization of financial power by claiming broad authority for Congress to charter corporations. By contrast, the state assemblies of Pennsylvania and Rhode Island successfully resisted the broadest effort to create such a British financial revolution. Small wonder, then, that the backcountry gentry identified their interest in opposing this financial revolution with a weaker national government.

At the center of these 1780s political fights was Robert Morris, the Congress' Superintendent of Finance, appointed in early 1781 to stave off financial disaster in the wake of a string of military defeats dealt by the British to the American forces in the Southern states. From a gentry republican's point of view, Morris was a villain on which Central Casting could not improve. A successful shipper and merchant, Morris became rich in enterprises ranging from slave-trading to land speculation. Although he was ceaseless in behind-the-scenes political organizing, Morris lacked much formal education and left the theoretical and polemical defense of his financial projects to his younger protégés such as Alexander Hamilton (writing as "The Continentalist" in New York papers), Gouverneur Morris (writing as "An American" in the Philadelphia press), and James Wilson, Morris' Philadelphia lawyer (speaking in the Pennsylvania Assembly on behalf of Morris' plan). All were precisely the sorts of Anglophilic, enterprising, urbane lawyers or financiers located in major financial centers that gentry in the back-country detested. Morris publicly declared, "Admiring [the British], we should endeavor to

imitate them,”<sup>75</sup> and his plan was essentially an American version of the 1690s financial revolution. Derided by Morris’ supporters as “Country Wiseacres” and “scum,” western Pennsylvanians from the rural outback returned the contempt of their nemesis: In the words of one of Morris’ opponents, they “hated Mr. Morris personally.”<sup>76</sup>

Like Montagu in England of 1694, Morris seemed to be well-positioned to use wartime patriotism to ease the way toward a radically more centralized system of public finance. In early 1781, the war was going badly. The British had won a series of victories in the Deep South and threatened Virginia. Congress’ international borrowing capacity had collapsed, exhausted by lack of revenue-raising powers and military defeats. Hyperinflation had destroyed the value of Continental bills of credit, trading at roughly 100 paper dollars to one dollar in specie by 1781. Starting in 1780, Congress paid American officers and soldiers in interest bearing certificates that had begun to follow a similar course of depreciation, to the anger of the Army. Along with debts to European powers, commissary notes to contractors, and other *ad hoc* borrowing instruments, the United States had issued, in Morris’ rough estimate, “above thirty millions,”<sup>77</sup> without any source of revenue with which to retire the debt beyond congressional requisitions to state governments to tax their citizens.

To fund this immense debt, Morris proposed a nationally chartered but privately owned bank, a 5% impost on imports, and a sinking fund against which new debt could be issued. Initially, Congress acceded to all of Morris’ requests. The problem, however, was that, under the Articles of Confederation, Congress likely needed state consent for the most important measures. While conferring a national charter on the Bank of North America in May of 1781, Congress

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<sup>75</sup>Paper of Robert Morris, 1781-1784, at 43 (John Catanzariti ed. 1984).

<sup>76</sup> George David Rappaport, *Stability and Change in Revolutionary Pennsylvania: Banking, Politics, and Social Structure* at 185.

<sup>77</sup>Robert Morris, “On Public Credit (July 29<sup>th</sup>, 1782), in *id.* at 64.

could not bestow any exclusive banking privileges on the Bank: Instead, Congress requested that the Pennsylvania Assembly match the national charter with a state charter granting to the Bank a monopoly on joint-stock banking within the Pennsylvania.<sup>78</sup> The Pennsylvania Assembly initially obliged, creating what the Bank's critics would decry as a "monster" of monopoly. Congress also could not grant any stream of revenue to support national debt: To approve Morris' proposal of a 5% impost on imported goods, Congress needed the unanimous consent of all thirteen states. Between Spring of 1781 and Summer of 1782, the state legislatures seemed mostly willing to oblige Morris: All but Rhode Island approved the impost. (Morris proposed other taxes as well -- a land tax of a dollar per hundred acres, a poll tax of a dollar per head, and a tax on liquor, but these made little headway in the states).

Morris's intended use of the Bank and the impost, however, flew in the face of gentry republican's suspicion of financiers, because he intended to use them to create a permanent funded debt. The idea of such a permanent debt seemed to go far beyond the need to respond to an immediate military necessity to pay off current obligations. Moreover, Morris' defense of the proposal seemed specifically designed to create a political machine of creditors in imitation of Charles Montagu's financial revolution from the 1690s. Morris explicitly called for the creation of a political organization composed of bondholders, using "the Clamors of our Creditors to induce the several Legislatures to comply with the requisitions of Congress."<sup>79</sup> Morris' report to Congress, *On Public Credit*, reinforced the idea that "stockjobbers" would become a new force for influencing government, when the report declared that "domestic Loans" would "give

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<sup>78</sup> Not everyone agreed that the Confederation Congress lacked the power to charter a bank: James Wilson, Morris' lawyer, gamely argued that the Congress actually had such an implied power, anticipating an argument that he would later make during the debates in Philadelphia's convention for drafting a new U.S. Constitution. See JAMES WILSON, *CONSIDERATIONS ON THE BANK OF NORTH AMERICA* (1785).

<sup>79</sup> Preface to "On Public Credit" in *id.* at 49.

Stability to the Government, by combining together the Interests of moneyed Men for its Support.”<sup>80</sup> More ominously, Morris met in late December of 1782 with Continental Army officers traveling from Newburgh New York with complaints about the prospects of their being paid, urging them to join with other public creditors to pressure Congress.<sup>81</sup> The meeting seemed to fit the Country script from the “standing army controversy” of the 1690s of a cabal of public creditors -- “a paper aristocracy” – and army officers joining together to subvert republican government.

Aside from promoting a class of bondholders as a permanent interest group, Morris also discounted gentry objections to the governmental encouragement of speculation in public securities. Critics argued that speculators had frequently purchased Continental certificates at extreme discounts and stood to gain a windfall at public expense if the obligations were paid according to their face value. Brushing aside the idea that such speculators should receive only their purchase price, Morris declared that “[s]peculators always do least mischief when they are left most at Liberty” and that speculation “is precisely the thing which ought not to be prevented,” because original creditor who sold at a discount were “able to judge better of his own Business and Situation, than the Government can for him.”<sup>82</sup>

This *laissez-faire* defense of speculation seemed almost willfully to ignore the central concern of gentry republicans that soldiers, their widows, farmers, and other contractors did not sell securities in a market unaffected by the government. To the contrary, they were faced with crushing tax obligations that required liquidation of their paper immediately, before any

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<sup>80</sup> *Id.* at 59.

<sup>81</sup> Preface, in *id.* at 56; Richard H. Kohn, *The Inside History of the Newburgh Conspiracy: America and the Coup d'Etat*, 27 WM. & MARY Q. 188 (1970).

<sup>82</sup> “On Public Credit” in *id.* at 70.

appreciation based on improved outlook for funding could materialize.<sup>83</sup> Moreover, they frequently sold their depreciated paper at fire sale prices to buyers with inside information about the prospect for full funding.<sup>84</sup> Insiders also seemed to dominate the Bank of North America, which looked suspiciously like the great companies of England against which Country writers inveighed: Like those corporations, Morris' Bank would prove susceptible to favoring privileged customers, granting (for instance) liberal extensions for payments on \$100,000 in debts to James Wilson, Morris' lawyer and the Bank's major defender in the Pennsylvania Assembly.<sup>85</sup>

Morris expressed confidence that the Rhode Island legislature would eventually approve the 5% impost (declaring in July of 1782 that "this Revenue may be considered as already granted" in his report to Congress<sup>86</sup>). By late 1781, however, this confidence seemed misplaced. Part of the problem was that the military situation had improved since Morris' appointment, with the American victory at Yorktown in October of 1781 bringing the war to a slow negotiated settlement. The other headache for Morris, however, was that Country politics were firmly entrenched in Rhode Island, where a vigorous pamphlet literature denounced Morris' proposal in terms cribbed unmistakably from *Cato's Letters*. There were specific economic worries about such an impost's burdening the maritime trade of New England (worries that Alexander Hamilton, Morris' other young protégé, tried to rebut with a theory that, demand for imports being inelastic, consumers, not merchants, would bear the charge -- a defense that likely enraged the western farmers who would be those over-taxed consumers).

But much of the attacks were not framed in terms of any specific economic interest but

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<sup>83</sup> Woody Holton.

<sup>84</sup> NELSON, A NATION OF DEADBEATS at 11 (describing William Duer's purchasing state notes hours before the public announcement that the federal government would redeem them).

<sup>85</sup> GEORGE DAVID RAPPAPORT, STABILITY AND CHANGE IN REVOLUTIONARY PENNSYLVANIA: BANKING, POLITICS, AND SOCIAL STRUCTURE 201 (2010).

<sup>86</sup> *Id.* at 60.

rather focused on the theory that delegations of power to private financiers made government into an opaque business invisible to all but insiders. “The science of modern financiers will suit a land of slaves,” declared the anonymous author of *Thoughts on the Five Per Cent*, “but America I hope in God, will never consent to a scheme that opens the door for unperceptible draughts of money from their pockets.”<sup>87</sup> This worry about invisible financial operations mimicked almost perfectly Daniel Defoe’s denunciation of stockjobbers’ “impenetrable artifice” more than eighty years earlier: It was vintage Country Party rhetoric transposed to the New World. By November of 1782, Rhode Island had rejected the impost, and four southern states – Maryland, Virginia, North Carolina, and South Carolina, all of which lacked the commercial connections of Philadelphia – were sufficiently emboldened by Rhode Island’s stance to revoke their previous consent. The impost had been killed by Country rhetoric in the parts of North America where hostility to northeastern finance ran the strongest.

The Bank of North America was soon to follow. More than the impost, the states’ chartering of corporations presented starkly and repeatedly to Americans in the early republic the dilemma of sovereign debt. The charter awarded by a state legislature conferred monopolies on corporations to induce private investors’ large-scale investments in capital improvements like bridges, sluices, grist mills, tolls roads, or canals. For such inducements to be effective, the state legislature had to make a credible commitment to respect the charter’s privileges regardless of any change in its electors’ mind. Those commitments could strip the gentry of political control over the ostensible creation of the legislature. On the other hand, failure to make such commitments credible would deprive back-country residents of consumer credit and infrastructure like roads that could raise the value of their land.

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<sup>87</sup> Quoted in E. James Ferguson, *Political Economy, Public Liberty, and the Formation of the Constitution*, 40 WM. & MARY Q. 389, 404 (1983).

The battle over the repeal of Bank of North America's charter pitted these lemmas against each other. Robert Morris' allies in the "Republican" faction of the state assembly urged that repealing the charter would destroy vested contract rights, drying up investment in needed improvements and violating republican morality. Leading the fight for repeal was William Findley, a "pugnacious Scotch-Irishman from western Pennsylvania" who embodied the westerners' "middling aspirations, middling achievements, and middling resentments."<sup>88</sup> In a classic set piece of Country drama,<sup>89</sup> the "Constitutionalists" (so-called for their support for the state's populist 1776 constitution) charged that the Bank gave preferences in discounts to "their particular favorites"<sup>90</sup> (which was certainly true) and refused to accept the state's Loan Office notes designed by the Assembly to loosen credit during the 1784 downturn. Worst of all, the Bank was a "monopoly" destructive to "that equal liberty so dear to all men, who are not great men."<sup>91</sup> The westerners were not opposed to banking or credit on principle, but they had a different idea of how loans should be distributed. Morris envisioned the Bank as a means for pooling large amounts of capital for large-scale capital improvements like draining marshes and clearing forests. Complaining that such loans went to a few well-connected capitalists capable of undertaking major enterprises, Findley and his westerners instead demanded short-term consumer credit to enable farming families to acquire household conveniences, a lending policy regarded by Morris as squandering the nation's resources on economically unproductive "waste and Extravagance."<sup>92</sup>

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<sup>88</sup> Gordon S. Wood, *Interests and Disinterestedness in the Making of the Constitution*, in *BEYOND CONFEDERATION: ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY* 69, 94 (Richard Beeman, Stephen Boteihn, & Edward C. Carter II eds. 1987).

<sup>89</sup>The debate is available in *Debates and Proceedings of the General Assembly of Pennsylvania ....* (Mathew Carey ed. 1786). A summary of the debates is provided by GEORGE DAVID RAPPAPORT, *STABILITY AND CHANGE IN REVOLUTIONARY PENNSYLVANIA: BANKING, POLITICS, AND SOCIAL STRUCTURE* 179-97 (1996).

<sup>90</sup>George David Rappaport, *supra* note \_\_\_\_ at 182.

<sup>91</sup> *Id.* at 161.

<sup>92</sup> Robert Morris, *Report on Public Credit*, in *Papers* at 58. On Robert Morris' plan to pool capital with a

The battle between the Constitutionals and republicans was as inconclusive as the dilemma that divided them. In truth, there was no easy political or ideological solution to their disagreement, because, like all disputants on either side of a genuine dilemma, both sides were correct. The new republic needed long-term debt for large-scale projects, but such debt risked creating a privileged class of financial insiders who could corrupt politics to their advantage. Constitutionals won the first round, repealing the bank's charter on a straight party line vote. But the eastern and western forces in Pennsylvania were closely matched, and, in the 1786 election, the Republicans edged out the Constitutionals. Highlighting the electoral dilemma faced by gentry republicans, Robert Morris enlisted Tom Paine to write a pamphlet decrying the westerners' attack on the Bank's vested rights. Paine responded with an unabashed defense of corporate rights, describing the Bank as "produced by ... the enterprising spirit of patriotic individuals" and castigating attacks on the Bank's charter as unconstitutionally retroactive legislation inconsistent with "the true principles of republican government."<sup>93</sup>

Such solicitude for a corporate bank had an odd sound coming from a famous democratic radical, but Paine's advocacy reflected the ambiguous egalitarian credentials of gentry republicanism itself. The backcountry gentry's agenda was rooted in equality and independence based on ownership of real estate. Urban artisans in Philadelphia, however, were indifferent or even hostile to this agenda and looked with favor on the Republicans' plans for aggregating capital for investments beneficial to the city economy. Morris may have been a capitalist fat cat, but he consistently outpolled Findley's Constitutionals among city craftsmen.<sup>94</sup> Again, this

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permanently funded debt and its contrast with the westerners' view of consumer credit for households' consumption, see Janet A. Riesman, *Money, Credit, and Federalist Political Economy* in *BEYOND CONFEDERATION: ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY* at 128, 147-48 (Richard Beeman, Stephen Boteihn, & Edward C. Carter II eds. 1987).

<sup>93</sup> Thomas Paine, OLL at 121.

<sup>94</sup> CHARLES S. OLTON, *ARTISANS FOR INDEPENDENCE: PHILADELPHIA'S MECHANICS AND THE AMERICAN REVOLUTION* 90-107 (1975).

ambiguously egalitarian agenda of the western Constitutionalists imitated the equivocal egalitarianism of the English squires from whose rhetoric the frontiersmen borrowed so freely. Land-based equality was not egalitarianism writ large, and there was little love lost between western farmers and the landless urban artisans who became allies of Morris, Hamilton, Wilson, and the other champions of high finance.

In the second round, the Republicans took control of the Assembly and pressed for a repeal of the Bank charter's revocation. Again, the newspapers and pamphlets were filled with the contesting visions of republican government, each side stressing one side of the dilemma of sovereign debt. The second round of debates before packed galleries went to Morris and his Republicans: The Assembly re-instated the charter only a few months after having repealed it. The victory for the advocates of chartered improvement, however, was not total. The closeness of the contest in Pennsylvania, induced the victors to heed the warnings of moderates like Tench Coxe and make concessions to the westerners by trimming back on the Bank's powers.<sup>95</sup> Such concessions implicitly surrendered the constitutional principle defended by Paine that a charter was a binding contract changeable only on a judicial finding of "delinquency."

The battles in both Rhode Island and Pennsylvania legislatures, in sum, demonstrated that gentry republicans could compete effectively in state politics, even in states with large and powerful metropolitan centers. They could not always expect to win outright, because the dilemma of sovereign debt, like any true dilemma, made any uncompromising position politically untenable: Not only a handful elites but also substantial numbers of city dwellers and even rural advocates of investment were arrayed against them. The mechanisms of electoral democracy at the state level, however, seemed to lead to a fair fight. This experience critically

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<sup>95</sup> *Id.* at 216.

informed Anti-Federalist enthusiasm for state-level democracy in the battle that was about to ensue over the ratification of the U.S Constitution.

### **Scale and Democracy in the U.S. Constitution's ratification debates**

Fresh from such state-level fights, gentry republicans eyed suspiciously the proposed U.S. Constitution drafted in Philadelphia. The opposition to the proposed Constitution (confusingly dubbed “Anti-Federalists” by the Constitution’s supporters on the theory that the Constitution was “federal” in character) overlapped with the opposition to the Bank of North America, both in geography and ideology. Both Morris’ Constitutionalist opponents in Pennsylvania and the Anti-Federalist more generally were located further from centers of, and less deeply involved in, trans-Atlantic commerce and finance than the Constitution’s supporters (although the Constitution enjoyed some western support from frontier areas seeking more effective protection from Indian raids).<sup>96</sup> Like the Constitutionalist opponents of the bank of North America, the Anti-Federalists inveighed against “great men,” arguing that the new plan for a continental-scaled republic would be controlled by a metropolitan elite of “natural aristocrats” who would disempower persons farther from centers of commerce and finance.<sup>97</sup> Indeed, Findley himself, smarting from his defeat over the Bank of North America, was the leader of the Pennsylvanian Anti-Federalists. Part of this suspicion of the proposed Constitution was simply the *ad hominem* suspicion of the back-country gentry towards any plan favored by politicians notorious for supporting a permanent funded debt to expand private corporate enterprise. The

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<sup>96</sup> JACKSON MAIN, *POLITICAL PARTIES BEFORE THE CONSTITUTION* 358, 388 (1973) (noting that Anti-Federalists tended to be “agrarian-localist” rather than “commercial cosmopolitan” leaders). Donald Lutz notes that Main’s anti-cosmopolitan explanation for Anti-Federalist opposition to the Constitution cannot explain the Constitution’s support from the inhabitants in some frontier areas of the states. See Donald S. Lutz, *Federalist versus Antifederalist* in *POPULAR CONSENT AND POPULAR CONTROL: WHIG POLITICAL THEORY IN THE EARLY STATE CONSTITUTIONS* 171, 175-86 (1980).

<sup>97</sup> James H. Hutson, *Country, Court, and Constitution: Antifederalism and the Historians*, 38 WM. & MARY Q. 337, 340 (1981)

proposed Constitution had been drafted and promoted by Robert Morris' close allies, James Wilson, Gouverneur Morris, and Alexander Hamilton, the sort of metropolitan elites that, as "Agrippa," an opponent of the Constitution complained, "have never shown themselves capable of that generous system of policy which is founded in the affections of freemen."<sup>98</sup>

The Anti-Federalists, however, purported to set forth more than a merely *ad hominem* attack on the proposed Constitution based on its parentage: They also purported to offer a more general theory of scale and popular control. Under this theory, as republics increase in territory and population, they tend to lose their republican character, becoming dominated by elites using corruption to control the ostensibly representative legislature.

The Anti-Federalists had two obvious but ultimately unsatisfactory reasons for linking large scale and elitist power. First, the Anti-Federalists relied on an analogy between Congress and Parliament. As "Agrippa" stated, "when it was proposed by some theorist that we should be represented in Parliament, we uniformly declared that one legislature could not represent so many interests...."<sup>99</sup> Second, the Anti-Federalists relied heavily on "the celebrated Montesquieu," invoking his "small republic" theory set forth in his 1748 classic, *The Spirit of the Laws*. Montesquieu had stated that "[i]t is natural for a republic to have only a small territory," because, "[i]n an extensive republic the public good is sacrificed to a thousand private views; it is subordinate to exceptions, and depends on accidents." By contrast, according to Montesquieu, "[i]n a small [republic], the interest of the public is more obvious, better understood, and more within the reach of every citizen; abuses have less extent, and of course are less protected."<sup>100</sup>

Colonists of British North America had cited Montesquieu more frequently than any other author

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<sup>98</sup> "Agrippa," Letter XI, Mass. Gazette, January 8th, 1788

<sup>99</sup> Letter XI.

<sup>100</sup> CHARLES DE SECONDAT, BARON OF MONTESQUIEU, VIII THE SPIRIT OF THE LAWS BOOK chapter 16 (1748)(Thomas Nugent trans. 2<sup>nd</sup> ed. 1752).

outside the Bible,<sup>101</sup> so the opponents of the Constitution could feel that they were on safe ground in declaring that “the ablest writers on the subject” agreed that “no extensive empire can be governed upon republican principles.”<sup>102</sup>

Neither the analogy to Parliament nor the invocation of Montesquieu, however, was an overwhelmingly powerful argument against continental-scale democracy. Unlike Parliament, the proposed Congress would not straddle two constituencies separated by the Atlantic Ocean: Why then could Congress not represent Americans just as well as the English Parliament represented the English? Likewise, as Hamilton noted in *Federalist #9*, Montesquieu’s analysis of ancient city-states and Swiss cantons seemed wholly inapplicable to North American politics, because states like Pennsylvania and New York were already far too large in territory, population, and diversity of interests to meet Montesquieu’s definition of a “small” republic. Each member of the Pennsylvania and New York legislatures, after all, was elected by over 1,000 electors, and these electoral districts divided up a vast diversity of ethnic groups, social classes, occupations, and geographic sections. The notion that the constituents of Pennsylvania, in particular, formed some tightly knit and socially homogenous band of homespun republicans akin to ancient Spartans or Romans was risible in light of the vehement division between town and country, east and west, Quaker, German, and Scots-Irish, manifested by the fight over the Bank of North America.

What else besides the “celebrated Montesquieu” could the Anti-Federalists offer? If one reads Anti-Federalist arguments out of the context of Country Party ideology, they can appear to be little more than dogmatic assertions. Anti-Federalist writers, for instance, repeatedly assert

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<sup>101</sup>Donald S. Lutz, *The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought*, 78 AM. POL. SCI. REV. 189 (1984).

<sup>102</sup>“Agrippa,” Letter IV, Mass. Gazette, December 3<sup>rd</sup>, 1787 (Invoking “the ablest writers on the subject”).

that larger jurisdictions promote the power of the “natural aristocracy,” because the “democratical” part of the population would be unable to be elected from large electoral districts in a continental-scaled democracy.<sup>103</sup> (One witty Federalist critic mocked the repetitiveness of Anti-Federalist rhetoric by publishing a “recipe” for how to write an Anti-Federalist tract, advising would-be authors to use “WELL-BORN nine times—*Aristocracy* eighteen times —... *Great men*, six times”<sup>104</sup>). Read as an abstract proposition of political science, however, the claim that large size promotes elite power seems like mere hand-waving. The connection between constituency size and elites’ electoral power is, after all, a complex and empirically contingent matter, depending on the particulars of voter information and organization and the scale economies (or lack thereof) in communication. There are circumstances under which it is plausible to believe that the likelihood of a wealthier resident’s casting the deciding vote in an election increases with the size of the constituency. For instance, voters with lower incomes or educational attainment might be more quickly deterred by the longer odds of casting the decisive vote in an election in a larger constituency, because they lack the ideological motivation to vote that education confers.<sup>105</sup> Political participation aside from voting (for instance, showing up at public meetings or communicating with one’s representative) might also be easier in jurisdictions with fewer people competing for each representative’s attention: Some evidence suggests that participatory activities other than voting increases as the scale of jurisdictions decline.<sup>106</sup> There are, however, rival and equally plausible theories suggesting that, under different factual

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<sup>103</sup> See, e.g., “The Federal Farmer,” Letter VII, December 31<sup>st</sup>, 1787; “Brutus,” Letter III, November 11<sup>th</sup>, 1787.

<sup>104</sup> Quoted in SAUL CORNELL, *THE OTHER FOUNDERS* at 81.

<sup>105</sup> For one such theory, see Rainald Borek, *Jurisdiction Size, Political Participation, and the Allocation of Resources*, 113 *Pub. Choice* 251, 256-57, 260 (2002). The theory that an otherwise rationally ignorant voter might be motivated to take the trouble to vote because of ideological or other non-instrumental considerations has been set forth by numerous political scientists, including \_\_\_\_.

<sup>106</sup> J. ERIC OLIVER, *DEMOCRACY IN SUBURBIA* 63-65 (2001).

assumptions, the wealthy benefit from *reductions* in the size of voting constituencies.<sup>107</sup> If there are scale economies in communication, then it will be cheaper for voters to acquire information in a larger and more heterogeneous jurisdiction that can support a larger number of newspapers and interest groups.<sup>108</sup> On this view, one might infer that, partisan conflict being less likely in a smaller and more homogenous jurisdiction, reductions in the scale of government also increase the costs of acquiring political information and mobilizing the public.<sup>109</sup> To make matters more complex, size might affect the costs of politics in both directions simultaneously, by lowering the costs of showing up (because gaining access to representatives in smaller jurisdictions is less costly) but increasing the costs of acquiring information (because the press benefits from scale economies, and no one mobilizes the public to show up where there are few conflicting interest groups).

Putting aside general political theory, it was not obvious that small-scale constituencies always benefited elites in the Anti-Federalists' own political world. The representatives from New York's state legislative districts occupying the east bank of the Hudson River were, for instance, largely controlled by the magnates who owned the enormous manor lands on which large numbers of voters worked as tenants.<sup>110</sup> Increasing the size of such districts could hardly increase the power of the dynasties of Livingstons, Rennessears, and De Lanceys who handpicked their delegates to the state assembly, and it is possible that increasing district size might have fostered more competition among landed elites for voters' support.

How, then, can one explain the Anti-Federalists' repeated and confident assertions the

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<sup>107</sup>Pranab Bardhan, *Decentralization of Governance and Development*, 16 J. OF ECON. PERSP. 185 (2002).

<sup>108</sup>J.S. Mill, *Considerations on Representative Government* in 19 Collected Works of John Stuart Mill 542 (John M. Robson, ed. 1977), available at <http://oll.libertyfund.org/titles/234>

<sup>109</sup>GRANT MCCONNELL, *PRIVATE POWER AND AMERICAN DEMOCRACY* (1967); John Gerring & Dominic Zarecki, *Size and Democracy Revisited* (Working Paper 2012).

<sup>110</sup> Richard Beeman, *Varieties of Political Experience*....

“natural aristocracy will be elected” in the larger electoral districts of the proposed national Congress? To understand and appreciate Anti-Federalists’ polemics, one should not view them as abstract propositions of political science and instead read them for what they were – period-specific rhetoric about a battle between the landed and “monied” interests. In the eyes of the Anti-Federalists, the Constitution was being promoted by a financial and commercial interest closely connected the trans-Atlantic world. The Anti-Federalists assumed that large electoral districts and a large heterogeneous republic would benefit this interest – the “natural aristocracy,” in their phrase – because financiers and merchants belonged to networks rooted in liquid, mobile assets unmoored to any particular physical space. This relationship between size, democracy, finance, and land was well-stated by “Cornelius,” an anonymous Anti-Federalist pamphleteer. Elections under the Constitution would involve “competition between the landed and mercantile interests” in which the latter would beat the former, because “[t]he citizens in the seaport towns are numerous; they live compact; their interests are one; there is a constant connection and intercourse between them; they can, on any occasion, centre their votes where they please.” Already tied together by networks of newspapers, bills of exchange, relationships with English merchants and shipping firms, the “mercantile interests” in the seaport faced lower organizational costs in rallying their resources “where they please,” while “the landed interest,” according to “Cornelius,” are scattered far and wide” and “have but little intercourse and connection with each other” such that “carrying elections of this kind” -- that is, elections that transcend the jurisdiction in which the gentry’s real estate is located – “is intirely out of their way.”<sup>111</sup> Cornelius’ complaint was echoed repeatedly by other Anti-Federalist pamphleteers like “Brutus,” who argued that the natural aristocracy “constantly unite their efforts to procure men

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<sup>111</sup> Letter of “Cornelius,” Hampshire Chronicle, December II and 18, 1787, reprinted in Samuel Bannister Harding, 2 THE CONTEST OVER THE RATIFICATION OF THE CONSTITUTION 117, 123 (1896).

of their own rank to be elected ... concent[rating] all their force in every part of the state into one point, and by acting together, will most generally carry their election.”<sup>112</sup> Likewise, the “Federal Farmer” asserted that the natural aristocracy “associate more extensively” while the middling sort “are not so much used to combining great objects.”<sup>113</sup>

The “Federal Farmer” ought to have known. The pseudonymous author has been most plausibly identified as Melancton Smith, a Dutchess County landowner and merchant who commanded a regiment during the Revolutionary War and acquired substantial land from the confiscated estates of Loyalists.<sup>114</sup> Smith’s power was rooted in the political networks of Poughkeepsie and Dutchess County, where he served as County Sheriff as well as a member of a Revolutionary commission to inquire into the loyalties of neighbors to detect Tory propensities. While he had ties to New York City (where he moved after 1787), he commanded little support in the financier’s metropolis, losing the election as New York City’s delegate to New York’s state ratifying convention, even as he won as Poughkeepsie’s delegate. (The Federalists took New York City twenty to one).<sup>115</sup>

The Federalist leadership did not dispute the Anti-Federalists’ argument that the Constitution strengthened the influence of a cosmopolitan trans-Atlantic elite. Their argument in favor of the Constitution was the mirror image of the Anti-Federalists’ complaints, merely reversing the value signs. Madison agreed, for instance, that larger electoral districts would change the character of elections by promoting elections of “men who possess the most attractive merit and the most diffusive and established characters.” By “diffusive ... characters,” Madison

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<sup>112</sup> Brutus, Letter III.

<sup>113</sup> Federal Farmer, Letter VII.

<sup>114</sup> Robert Webking, *Melancton Smith and Letters from the Federal Farmer*, 44 *Wm. & Mary Q.* 510 (1987)

<sup>115</sup> Robin Brooks, *Alexander Hamilton, Melancton Smith, and the Ratification of the Constitution in New York*, 24 *WM. & MARY Q.* 346, 346-47 (1967).

meant reputations (paradigmatically, General George Washington's) diffused broadly through national networks of literary fame, military service, law, or commerce. Madison differed from the Federal Farmer only in commending rather than criticizing large districts for screening out persons whose names and deeds were not so "diffused." Madison's factual assumptions about "diffusive... characters" are essentially similar to the Federal Farmer's claim that larger districts would promote the election of persons who "associate more extensively" compared to the owners of "middling and small estates." Likewise, Madison's famous argument that demographic heterogeneity would temper majoritarian faction rested on the idea that different interests had different capacities to cooperate with each other. Some groups would find it "more difficult ... to discover their own strength, and to act in unison with each other" in a large republic with a variety of interests, but other groups, championing "enlightened views and virtuous sentiments," would be relatively unimpeded by the challenge of assembling a majority.

Madison does not explain how those public-spirited leaders are able to get anything done when the demagogues are stymied by multiple interests. It is not, however, a heroic inference that, in Madison's implicit view, owners of finance capital and other creditors would be more tightly united across vast distances in their pursuit of repayment according to norms of international credit than frontier populists were by their "improper or wicked project[s]" such as William Findley's proposal to re-negotiate the charter of the Bank of North America. The former were unified by ties of commerce and correspondence; the latter, divided by geographic section. Put another way, Madison concurred with "Cornelius" that financiers promoting "great and national objects" like a national market, powerful military, and costly infrastructure would be better able to "centre their votes where they please" in a large and heterogeneous republic than the gentry. Federalists simply regarded this differential ability as beneficial rather than

corrupting.

Both Anti-Federalists and Federalists, in sum, pressed for different versions of federalism as a means for preserving or diluting a system of rural, place-based government. For state-builders like Robert Morris, Alexander Hamilton, and James Madison, diluting the power of the gentry was necessary to promote long-term investments in infrastructure and defense. Networks of bondholders and financiers would supply a counterbalance to secure such investments from gentry's suspicion and even change of heart that would undermine confidence in re-payment. For Anti-Federalists like the Federal Farmer, such networks were corrupting, because they undermined the power of the rural yeomanry. By strictly limiting the powers of the central government over finance, the Articles of Confederation insured that these middling property owners would exercise the lion's share of power. By expanding the central governments' powers, the proposed Constitution replaced this source of stability and commonsense with enterprising financiers, their urbane lawyers, and their gullible investors.

The Anti-Federalists' constitutional theory of federalism, in other words, makes no sense unless read in the light of their commitment to a particular type of landowner rule and their fear of a particular type of agency costs that would disrupt that rule. As we shall see in the next chapter, those commitments and fears shaped not only the text of Article I but also the interpretation of that text during the 1790s.

## **Conclusion**

Suppose one agrees that American federalism, as understood on the eve of the U.S. Constitution's ratification, was a device to protect landowner sovereignty against the power of financiers. Suppose that one further agrees that this focus had its origins in Country Party ideology developed by the squirearchy of England.

What practical constitutional consequences follow from such a genealogy? Consider four implications of a theory of constitutional federalism rooted in Country Party ideology.

First, one would expect that interpretation of the constitutional limits on national power would be influenced by the purpose of those limits. National powers that seemed unthreatening to the rural gentry would pass unnoticed as unremarkable exercises of reasonably implied powers. No one really begrudged, for instance, Congress' implied power to set up territorial governments for the western territories. By contrast, national powers that seemed to strengthen the hand of financiers at the expense of the rural gentry would be regarded as especially suspect against which the Constitution should be strictly construed. As we shall see in the next chapter, this is precisely how the Democratic Republicans read the Necessary & Proper clause – as imposing special albeit unwritten limits on “great and important powers” like the power to charter a national bank.

Second, one would expect that proponents of limits on national power would not be especially focused on promoting value pluralism.. As explained in Chapter 3, the brand of imperial federalism promoted by New England Congregationalists during the 18<sup>th</sup> century was focused obsessively on protecting regional religious groups from domination by both the imperial center (i.e., Anglicans) and protecting Congregationalist establishments from encroachments by Quakers, Baptist, and any other local minorities invoking liberty of conscience as a limit on provincial power. By contrast, Country Party ideologues were not especially interested in promoting or protecting religious or cultural diversity. Their conception of the nation was essentially homogenous, with a mass of mostly rural networks confronting a small cabal of metropolitan elites (the “natural aristocrats” denounced by Anti-Federalists).

Third, one would expect that constitutional federalism might provide the rural gentry with a way to evade the dilemma of sovereign debt unavailable to English squires. English Country Party ideologues had no good answer to the problem of financial modernity: They could denounce modern financial institutions as inherently corrupting only at the cost of making themselves politically obsolete. By contrast, American Country Party ideologues could have their developmental cake and eat it, too. State governments could finance infrastructure like roads and, later, canals and railroads, using state-issued debt while foreclosing the national government from promoting a national class of financiers outside the rural gentry's control. State legislatures elected from smaller districts controlled by rural networks would be less vulnerable to the blandishments of national capitalists. Or, at least, this was the institutional theory on which Anti-Federalists and, later, Democratic-Republicans erected their theory of constitutional federalism. The extent to which this theory held emotional appeal and practical functionality would determine whether the Country Party brand of constitutional federalism had durability in the new republic.

Finally, Country Party ideology lent a sectional flavor to American federalism. It was naturally dominant in regions lacking major ports (Piedmonts, northern inland West, upland Southeast) where finance capital was scarce and resentment towards its northeastern suppliers, more intense. This regional pattern tended to pit the Southeast and West against the Northeast and Mid-Atlantic. The latter might attempt to dangle infrastructure in front of westerners to lure them out of their alliance with the South. To the extent that resentment over "colonizing" capital from northeastern cities was the dominant political issue, however, the West and South would form the natural home for one of two major political parties in the new republic. As we shall see, this alliance of resentfully under-capitalized regions would eventually become the foundation of

the First, Second, and Third Party systems in the United States. More importantly for the purposes of this book, this regional alliance would also become the basis for a durable system of constitutional federalism that helped anchor these party systems.

These predictions, however, get ahead of our story. For now, the important point is that English Country Party ideology played a critical role in defining the brand of American constitutional federalism defended by Anti-Federalists on the eve of the U.S. Constitution's adoption. In the next three chapters, we will explore whether and to what extent the actual text of the Constitution incorporated or side-stepped these concerns and, if that text was ambiguous, whether and how the post-enactment political battles of the 1790s filled in those ambiguities.