THESE UNITED STATES:  
A HISTORY OF THE FRACTURING OF AMERICA

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ABSTRACT

According to a dominant view of America’s Constitution, the Republic’s first century witnessed a transformation from a fragmented land of sovereign states to a unified nation of the people. This dissertation builds on emerging scholarship to offer a different account of this transformation and with it, a new conceptual framework for studying the origins and unraveling of the bonds of union along the Atlantic seaboard. Focusing on the nation-builders and reformers of the Massachusetts Bay, this dissertation charts a shift from a predominant language of an America of united sentiments, born of an old maritime Atlantic world, to a modern discourse premised on the rights and duties of co-equal states. Generations before the Constitution appeared in 1787, merchants of the Massachusetts Bay whose freighting ships navigated the coastline of intensely local ports in search of cargo constructed a spoken geography of America, derived from the daily work of carrying the produce of the plantations to the markets of the Atlantic. Though this coastal trading network of merchants that gave rise to this conception of America has long since disappeared from the scholarly map, it supplied one of the foundations upon which Whig revolutionaries in Boston began to construct a political union. Although the language of America and its citizens sustained and weathered the storms of revolution, beginning in the early 1800s, a confluence of factors began to erode the older networks of customary union upon which it was based, as a vast, kaleidoscopic continent of robust state jurisdictions emerged, raising new questions for the terms of partnership. As the leading elites of the Massachusetts Bay began to experiment with theories of a state’s sovereign duty of protection, a new generation of commercial lawyers developed arguments premised not on the equitable interests of America, but on the constitutional
rights of state citizens. By the 1830s, the Bay’s leading opponents of slavery who confronted a seemingly impenetrable partnership along the American coast borrowed from this emerging doctrine to strike aim at the corridor of union itself, laying the foundation for a political movement that rose to national power on the promise that in an America of bordered slavery, all states were created equal.
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INTRODUCTION

In the official journals of the making of the American Republic, a puzzle presents itself. Two scenes: fleeting moments, words spoken, transcribed in print. A hall in Philadelphia, during the drafting of the nation’s Constitution in 1787.\(^1\) The Senate Chamber in Washington, on the eve of the Civil War in 1861.\(^2\) Two statesmen, rising now to be heard. Both hail from the self-proclaimed metropolis of the continent, the Massachusetts Bay: one of the oldest settlements on the coast, the first to mobilize for revolution, the first to mobilize for civil war. Both are veteran politicians, each now confronted with the not unlikely possibility that the Republic they have worked to build has at last reached the edge of the precipice. And yet, as each begins to plead the case for union, they speak in two different languages that bear little resemblance to each other, each with an internal logic of its own, each emerging from a world now lost from view.

To a visitor observing these two scenes for the first time, the words the men utter may well sound foreign. In the hall of 1787—a time often remembered for its fragile union of sovereign states—Rufus King, the leading lawyer of Newburyport begins to speak of an America where the states are hushed, powerless, unseen.\(^3\) Meanwhile, in the hall in 1861—a time often remembered as the moment when the people of the North rose up to strike down slavery and states’ rights in the South—Henry Wilson, the leading senator from Boston begins to speak of an America that looks very different: a terrain

\(^1\) Rufus King, Notes in the Federal Convention of 1787, Box 2, Folder 1, Rufus King Papers, New York-Historical Society (hereafter cited as NYHS) (handwritten notes of Rufus King’s speech delivered in June of 1787); see also Max Farrand, ed., The Records of the Federal Convention (New Haven, CT: Yale University Press), 1:331 (transcript of King’s remarks).

\(^2\) Cong. Globe, 36 Cong., 2d Sess., 1089; 1090-91 (transcript of Senator Henry Wilson’s speech delivered in Congress on February 21, 1861).

\(^3\) King, Notes, Box 2, Folder 1, King Papers, (NYHS) (describing states as “deaf, dumb and impotent,” “subordinate corporations,” and “societies and not sovereigns.”)
defined not by sections, but by co-equal states, each jealous of its own rights.\textsuperscript{4} Two languages that, however seemingly disparate, would each have been entirely intelligible to those who assembled in the crowded rooms to listen to the speeches.

In the generations that have transpired since these constitutional discourses of a stateless America and a fractured polity of jurisdictions appeared in print, their origins have remained in relative obscurity. Owing in part to the prominence of a time-lapsed geography of America’s Constitution that moves as if tickertape across the long arc of the nineteenth century—from thirteen isolated colonies bound only by a distant sovereign, to two dueling sections of North and South, and then on to a triumphant nation—scholars have yet to systematically inquire why the idea of a stateless America carried such force in the sea-ports of the eighteenth-century Massachusetts Bay, much less why a discourse of jurisdictions gained prominence during the antebellum era.\textsuperscript{5}

The few explanations that we do have on hand provide a helpful starting point, but raise further questions. Accounts of the founding era that attribute the Federalist

\textsuperscript{4} Cong. Globe, 36 Cong., 2d Sess., 1089-91.

vision of a stateless America either to the crisis unleashed by the war or to the wistful hopes for the future provide useful reminders of the manifold challenges that confronted the drafters of the Constitution in 1787. But these explanations leave open the question as to why the same vision of a smoothly hewn America could exist even before the war began. At the same time, accounts that emphasize the primacy of state governments in the antebellum era helpfully underscore the commitment to federalism that could exist outside the confines of the place called the South. But these explanations, in turn, leave open the question as to how and why national institutions and structures of American citizenship emerged so quickly in the 1790s. And while explanations that frame the

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8 See Nathan Perl-Rosenthal, *Citizen Sailors: Becoming American in the Age of Revolution* (Cambridge, MA: Harvard University Press, 2015), 14-16 (describing the emergence in the late 1790s of a vast and
discourse of states’ rights as simply a cyclical part of the political culture are surely correct, here too, we are left with the deeper puzzle of why this language resonated and how it developed over time.\(^9\)

To begin to make sense of this puzzle, this dissertation sets out to explain how, why, and to what ends these forgotten dialects became the preferred language of choice for the spokespeople of the Massachusetts Bay who were determined to preserve the union. Using an interdisciplinary model of inquiry to identify the origins of these discourses, this dissertation argues that the phrases that washed ashore on the pages of political debate in 1787 and 1861 reveal a shift in the geography of partnership, and with it, a change in the way people constructed their language of persuasion. For this analysis reveals that the vision of a stateless America that the lawyer from Massachusetts invoked in 1787 traced its multiple roots not simply to the mere happenstance of war, nor to wistful visions of a future modeled off the British Empire, but straight back to the practices of commercial partnership as old as the project of colonization itself.

In particular, this analysis reveals that generations before the Constitution appeared in 1787, merchants of the Massachusetts Bay whose freighting ships navigated

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the coastline of intensely local ports in search of cargo constructed a spoken geography of America, derived not from any imagined political community, but from the daily work of carrying the produce of the southern plantations to the markets of the Atlantic. Commenced in the early 1600s, by the eve of the revolution, the work of navigating a path through the physical, economic, and legal challenges of the carrying trade had made it possible for men who followed the seas to speak of a unified entity called America, where the formal boundaries and institutions of the colonies receded from view, as a network of trading houses came to the foreground. Though this coastal corridor has long since disappeared from the scholarly map of America’s beginnings, its institutions, vocabulary, and logic of partnership supplied a crucial reservoir of ideas upon which Whig revolutionaries in Boston began to construct the template of political union.

Although this early language of America and its citizens sustained and weathered the storms of revolution, beginning in the early 1800s, a confluence of factors began to erode the older networks of customary union upon which it was based, as the rise of a domestic economy and a rapidly changing continent of robust state jurisdictions raised new questions for the terms of partnership. As the leading elites of the Massachusetts Bay began to experiment with theories of a state’s sovereign duty of protection, a new generation of commercial lawyers developed arguments premised not on the equitable interests of America, but on the long-forgotten rights of state citizens under Article IV of the Constitution. By the 1830s, the Bay’s leading opponents of slavery who confronted a seemingly impenetrable partnership along the American coast borrowed from this emerging doctrine of state citizens to strike aim at the corridor of union itself, laying the
foundation for a political movement that rose to national power on the logic that in an America of bordered slavery, all states were created equal.

By recovering this previously overlooked shift from a dominant discourse of an old America of interests to a modern vernacular of states, this dissertation helps to solve the puzzle of dialects that appears in archives. More broadly, however, it also contributes to ongoing efforts to re-imagine the story of America’s founding. First, by uncovering the ways in which architects of the Constitution drew upon an older conception of America, this work joins with others who have invited us to see the Constitution as something less than a transformative watershed moment. Instead, it adds further support for viewing the document as a hybrid of the old and the new, one that did not simply institutionalize a new modern science of politics, but that also reflected horizontal “habits of intercourse,” as Alexander Hamilton put it: habits that made it possible, in the uncertainties of revolution, to leave unanswered the basic question as to what constituted a united state.

More broadly, this analysis allows us to see the formation of the Constitution’s structures and principles of partnership in a different light. First, by excavating the long since forgotten corridor of commerce, this work allows us to see federalism not simply as a replication of the formal imperial hierarchies of center and periphery, but also as an

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12 For accounts tracing the emergence of American federalism as a vertical hierarchy modeled off of the British imperial structure, see Andrew C. McLaughlin, “The Background of American Federalism,” American Political Science Review 12 (1918): 215-240 (“...[T]he essential qualities of American federal organization were largely the product of the practices of the old British empire as it existed before 1764.”).
organic, emerging horizontal relationship of entities whose members shared a common language of a partnership of equals, each left to its own affairs under the nomenclature of America. This shift in perspective, in turn, allows us to see the ways in which the aspirational ideals of republican government could soften at the edges in practice, at a time when a Massachusetts senator whose ships sailed for the distant ports of the Carolinas could still speak of America as an organically linked body of united interests in 1789, even after the Constitution established the formal entities of the states.  

In addition to deepening our understanding of the origins of the Constitution, this dissertation also stakes out new sites of inquiry for analyzing its unraveling. By peering beneath the conventional categories of North and South that have long supplied the primary units of analysis, this dissertation helps us to better understand the often overlooked question as to why, when the men of Massachusetts marched into battle in 1861, they did so not simply as Americans, nor simply as Northerners, but also as citizens of the state. In particular, it allows us to analyze the contest over slavery not simply as one between center and periphery or between North and South, but also as an intricate...
contest between the multiple domains of power that fanned out across the continent and whose representatives assembled in Congress. In doing so, this work invites us to see the emergence of a state-centered discourse in the Massachusetts Bay not simply as the embodiment of an American commitment to localism, but rather, as an evolving language that traced its roots to an unprecedented proliferation of robust jurisdictions across the continent, at a time of inchoate political parities and rapidly changing national borders.

Part I of this introduction begins by surveying the field of American constitutional history to explain how and why the categories of analysis that political scientists first erected in the early 1900s have become a dominant part of the historiography, making it difficult to see the gradual shift from a much older language of America to a modern discourse of states. Part II then summarizes the defining features of this dissertation’s methodological approach, before outlining its key findings and chapter arguments.

*Mapping the Geography of America’s Constitution:*

*The Origins of a Categorical Approach*

On the eve of the twentieth century, when the founders of the field of American constitutional history published their first books, they took care to affix their professional credentials and institutional affiliations to their names. “Francis Amasa Walker, Ph.D., LL.D: President, Massachusetts Institute of Technology,” announced the title page of one of the first attempts by a professional statistician to chart the makings of the Constitution.16 “John W. Burgess, Ph.D., LL.D, Professor of History, Political Science, and International Law, Dean of the University Faculty of Political Science, Columbia
College,” announced the title page of another pivotal text, published a few years later in 1904. The inclusion of these credentials signaled the rise of a new era in the study of the Constitution: an era when leading professionals seized upon the new tools and theories of scientific inquiry to make sense of the document’s origins and development, while at the same time, creating categories of analysis that still define the field today.

The first step in constructing this new field of study involved organizing the vast stretches of space and time that predated the Civil War into discrete units. For scholars whose primary interest lay in the study of political institutions, the Constitution’s spatial geography was easy enough to map: thirteen separate colonial governments on one side of the Atlantic, orbiting around a distant supreme government on the other. “In the colonial era what existed on this side of the Atlantic was thirteen local governments,” John Burgess wrote in 1890. “The state was the motherland,” he continued, speaking with reference to the hub of the British Empire in London. Working from this map, it seemed obvious enough to some that the men who crafted the document in 1787 simply replicated the model of Parliament and its colonies to create a stacked federal structure of Congress and thirteen sovereign states. “Any one even slightly familiar with the American constitutional system,” observed one political scientist at the University of Chicago, “will see at once that to a very marked degree we have [in the structures of the British Empire] the distribution of powers characteristic of American federalism.”

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20 Ibid.
While the bordered political domains of 1787 supplied the spatial units of analysis for making sense of the origins of the Constitution, the sectional lines on the continent supplied the geography upon which to study its unraveling. At a time when at least one of the leading practitioners of the new political science could remember the Civil War through his memories of the battlefield and others had witnessed the attempts at post-war sectional reunification, this terrain of North and South seemed a logical point of departure. The “whole United States,” observed the historian William A. Dunning in 1898, consisted of a “South as well as a North.” Working from this terrain, these architects of the field of study allocated the states and their rights to the South, and the people to the North. Perhaps of most consequence, Burgess borrowed from the teachings of Hegelian philosophy to chronicle the triumphant ascent of the people of the North, said to have wielded the power of the nation to strike down the archaic debris of states and their rights in the South.

As Dunning and Burgess would have been the first to admit, their aim was not actually to recover the lived experiences or legal cultures of the individuals who drafted the Constitution and then subsequently brought its provisions to life in the courts of law and public opinion. Indeed, both Burgess and Dunning took care to avoid digging too deeply into the writings of Civil War-era statesmen, preferring the objectivity of the representative institutions of the people. As Burgess explained in an introduction, he had taken “sedulous care” to avoid reading any of the histories that emerged immediately

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after the war, lest they sully his view of the past. Dunning evidently agreed, advising a classmate to judge things not by the “petty…motives” of the politicians, but instead by the “great continental heart throbs of a mighty people.”

Despite the modest ambitions for its uses, this now familiar geography of thirteen colonies-turned-states into feuding sections has become a dominant framework of inquiry for the field of American constitutional history. At crucial moments of innovation over the past century, historians have ventured far from the field’s founding in the halls of political science to discover untapped archives of extraordinarily rich sources, using new methodologies from a diverse array of disciplines. And yet, even as this new scholarship has given rise to an increasingly intricate view of the shifting ideas, iterative processes, and range of peoples involved in creating and interpreting the Constitution, the founding categories have continued to define the field of study, leaving open the question as to what alternative geographies might exist beneath the labels.

A good example of the tenacity of these categories can be found in the first major moment of revision in the field, when a new generation of Progressive-era historians began to sketch out a profoundly influential theory of the founding. Working at a time when factory workers began to organize amidst the upheavals of an industrializing nation, these scholars added new contours to the neatly cabined entities of thirteen colonies, bringing in the complexities of the diverse classes of peoples along the Atlantic seaboard. In a book that would inform the architects of the New Deal, for example, Carl Becker invited readers to see America’s founding not simply as a transatlantic contest

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25 Burgess, The Middle Period, viii.
against a distant sovereign, but one that also inspired a homegrown contest between the few and the many.27 His colleague, Charles Beard, meanwhile, introduced readers to the Constitution’s origins not with a description of thirteen governments orbiting around London, but instead with a survey of economic interests along the coast.28

Set within this moment of possibility, graduate students who set out into the archives began to discern new patterns. Michael Kraus, for example, a doctoral student in the political science department at Columbia, followed Beard’s gaze towards the coast and caught sight of a curious pattern. Far from the formal separate spheres of thirteen colonies, Kraus reported, preliminary evidence suggested some kind of trading circuitry that wove through these thirteen separate spheres.29 At the same time, the historian James Randall returned to the legislative records in the National Archives to trace the story of the workings of the Constitution during the Civil War and noticed that beneath the labels of “North” and “nation,” leading politicians in Washington seemed to be curiously deferential to the states and their rights.30

Despite this fleeting glimpse into the interconnections that predated the written Constitution of 1787 and the concern for the states and their rights that marked its unraveling in 1861, the time-sequenced geography laid out in the field’s founding texts weathered this revisionist moment intact. At a time when the United States had stepped onto the global stage of World War I, the logic of a movement from states upwards to a

nation provided a satisfying account of the passage of time. As Randall explained of his
own era, “The railroad, the telegraph,” and “a thousand and one other changes” had
“broken down state barriers in fact and welded us in reality, if not in law, into one
mass.”
Perhaps persuaded by the inevitable progression of the nation, Randall made no
further attempt to explain the pattern of states discourse that he observed in the heart of
the federal government during the Civil War. Kraus’s dissertation, meanwhile, tracing the
connections between the colonies, became a footnote in historiographical essays,
consigned to the body of “unjustly neglected work.”

Of equal significance, this now familiar geography weathered the storms of the
second major era of innovation in American constitutional history. Beginning in the mid-
1960s, as the Civil Rights movement swept across college campuses, scholars of the
Constitution set out into the archives with a new set of questions about the document’s
origins and its subsequent reconstruction. Drawing upon tools of intellectual and social
history, scholars of this long revisionist generation sought to excavate the intricate ideas
of the founders and recover the voices of the powerless. In doing so, they illuminated in
exquisite detail the contours of political and constitutional thought that had long remained
in obscure shadow, while bringing far greater understanding to the procedural
mechanisms of constitutional change. Returning to the moment of origins, for example,
Bernard Bailyn and Gordon Wood shifted the field’s focus from institutions and interests
to the robust print literature of the era and its political debates.

33 Wood, *Creation of the American Revolution*, 3-83; Bailyn, *Ideological Origins*, 1-22; see also J.G.A.
Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*
endeavors, a different set of questions took root, as scholars sought to determine whether the Constitution marked a transformative moment in political thought, or merely a reworking of older ideals of classical republicanism.34

As these new debates shaped the research agenda for the study of the Constitution’s origins, historians of the unraveling and subsequent amending of the document in the post-Civil War era dealt a resounding blow to the racist pillars erected by the first generation of political scientists. Drawing inspiration from the emerging methodologies of social history, Eric Foner followed down the path first charted by W.E.B. Du Bois in 1901 and unearthed the central role that black Americans had played in the making of the newly reunited nation. In doing so, Foner’s work opened the door to a new set of questions in the study of Reconstruction, as scholars sought to understand the Constitution not simply through the isolated work of politicians in Congress, but also in relation to the aspirations and rights of the people.35

Owing in part to the vigor with which these practitioners of intellectual and social history attended to their craft and the importance of the questions they posed, by the eve of the twenty-first century, the categories of analysis set up in the early 1900s had become a fixture of America’s constitutional landscape, rather than an object of inquiry. Part of the reasons for this entrenchment stemmed from the increasing degree of specialization. At a time when it seemed to one observer that the history of early America had splintered into a “hundred directions at once,” with “no coordination among them,”

35 Foner, Reconstruction, 105, 127, xvi; Steve Hahn, A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration (Cambridge, MA: Harvard University Press, 2005); Ackerman, We The People, 198; Amar, America’s Constitution, 357-58.
new research that began to question the usefulness of the analytical categories remained in discrete journals, as dozens of silos of expertise appeared on the field of American history. Indeed, even within the narrow study of the Constitution itself, monographs and journal articles that traced the enduring relevance of states during the Civil War era remained rarely cited, to the point that one scholar even went so far as to republish an article thirty years later, in hopes of finding a broader audience.

Most recently, the emergence of a transatlantic perspective in the field of American constitutional history has led scholars to discern new connections across space, even as the conventional emphasis on a vertical hierarchy of center and periphery remains. Working at a time when information skirts across the globe in seconds, this scholarship seeks to situate the Constitution in a broader world defined not simply by ideas in motion, but also by shared networks of trade and diplomacy. Drawing inspiration

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Perhaps most notably, Daniel Hulsebosch has invited us to see the Constitution as part of a longer continuum of empire, revealing how the founders who looked westward in 1787 sought to overcome the same challenges that the British had confronted in managing a distant periphery from London.\footnote{Hulsebosch, \textit{Constituting Empire}, 12-24. For accounts emphasizing the international audience of America’s founding documents, see, e.g., Golove and Hulsebosch, “A Civilized Nation,” 935-36; David Armitage, \textit{The Declaration of Independence: A Global History} (Cambridge, MA: Harvard University Press, 2009).} In keeping with this shift in vantage point for the founding era, a new generation of the long nineteenth century have firmly placed America’s contest over slavery in the broader context of transatlantic networks of abolitionists and trade.\footnote{See, e.g., David Brion Davis, \textit{The Problem of Slavery in the Age of Revolution} (Ithaca, NY: Cornell University Press, 1975); David Brion Davis, \textit{Slavery and Human Progress} (New York: Oxford University Press, 1984); W. Caleb McDaniel, \textit{The Problem of Democracy in the Age of Slavery: Garrisonian Abolitionists & Transatlantic Reform} (Baton Rouge: Louisiana State University Press, 2013), 15; Manisha Sinha, \textit{The Slave’s Cause: A History of Abolition} (New Haven, CT: Yale University Press, 2016), 14-15 (placing the history of abolition in the United States in a transnational context).}

Although this transatlantic perspective has bolstered the formal analytical framework of peripheries and centers, within the past decade, a confluence of diverse lines of inquiry have led scholars to peer beneath the categorical units of space. Within the field of Early America, for example, legal historians have mapped the contours of a legal and constitutional culture that traversed the jurisdictional boundaries of the
colonies. At the same time, social historians have called for renewed efforts to recapture the spatial consciousness of early Americans, a task greatly aided by the work of James David Drake, who has traced the curious language of the continent of America to one rooted in intellectual trends and the imperial rivalries.

At the same time, historians of the Early Republic have begun to trace the particular mechanisms by which the panoply of states emerged as physical, cultural, and legal spaces within the continental landscape of America. These disparate strands of scholarship collectively hint at the possibility of understanding the “states” not as the inherited, static debris of the colonial era, but as a work of construction—no different than the emergence of any other governmental institution. Scholars of the political

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43 See, e.g., William Nelson, The Common Law in Colonial America: Volume II: The Middle Colonies and the Carolinas, 1660-1730 (New York: Oxford University Press, 2013), 58 (noting that “Hamilton had to learn nothing fundamentally new when crossing jurisdictional boundaries,” and tracing the development of a legal and constitutional culture shared across jurisdictional lines.)


45 James David Drake, The Nation’s Nature: How Continental Presumptions Gave Rise to the United States (Charlottesville: University of Virginia Press, 2011). My work agrees with Drake’s emphasis on the creation of a continental presumption, but offers a different account of its origins and significance. Whereas Drake traces the continental presumption to intellectual trends and imperial rivalries and finds that it became increasingly irrelevant, I trace the spoken geography of America to the workings of the commercial corridor, and show how and why it remained a crucial reservoir of ideas, practices, and institutions in the drafting of the formal documents of partnership and the construction of a federal administrative state.


economy of the Early Republic, for example, have noted and debated the proliferation of state-sponsored projects and grants of incorporation, while historians of the cultural construction of space have traced how and why these internal improvement projects contributed to a sense of bounded territoriality. Working along parallel tracts, legal historians have in turn underscored the robust exercise of state police powers in areas such as immigration.

A similar work of disaggregating the field’s inherited units of analysis has begun in the antebellum era, where historians from fields ranging from economics to literature have begun to question the utility of a sectional framework. Scholars who have mapped the economic circuitry of slavery, for example, have begun to point to the limitations of a

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formal analytical paradigm of North and South. At the same time, scholars have used increasingly sophisticated tools of digital analysis to map the construction of space, noting circuits of movement that lay beneath the cumbersome units of North and South.

Building on this collective effort now underway to delve beneath the inherited categories of the field of American constitutional history and instead uncover the particular mechanisms of constitutional formation and contestation, this dissertation seeks to explain how and why the language of an America of united sentiments emerged in the Massachusetts Bay and what, in turn, precipitated the curious ascent of a discourse of states. To do so, this dissertation borrows a set of analytical tools from two fields of study whose practitioners have long since developed strategies for working outside the formal institutional categories of political science.

Mapping America’s Constitution:
Methodologies and Findings

The chapters that follow present the findings of an archival investigation into the emergence and development of a constitutional discourse in the Massachusetts Bay, conducted using an interdisciplinary model of inquiry. In choosing to focus this investigation primarily on the Massachusetts Bay, I have sought to understand how and


52 See, e.g., Cameron Blevins, “Mining and Mapping the Production of Space: A View of the World from Houston” The Spatial History Project (Stanford: Stanford University, 2014), available online at the Spatial History Project.
why a spoken language of a stateless America could emerge in 1787, and how and why a subsequent language of states’ rights, duties, and citizens could begin to take root in its shadow. Although by no means representative, as the self-proclaimed metropolis of the continent and the site of the first mobilizations for both revolution and civil war, the Massachusetts Bay offers an opportunity to examine the multiple creations of a language of persuasion among people arguably among the most committed to the project of union. At the same time, the diversity of voices across the nineteenth-century—from merchants and lawyers to abolitionists and third-party reformers—affords a means through which to track how some of the most vocal critics of a union with slaveholders sought to be heard.

In constructing the archive of sources with which to make sense of the iterations of these emerging discourses, I have relied not only on methodological insights from the most recent scholarship situating the Constitution as an object created within a transatlantic empire, but also on a novel, multi-pronged methodological approach that combines the insights of scholars of colonial Latin America with those of scholars of contemporary law and society. In particular, in my attempts to reconstruct the geography of America as it would have appeared to the gentlemen of Boston who could envision an America without states, I have borrowed from the pioneering work of Carlos Sempat Assadourian, who first set out in 1982 to recover the spaces within colonial empires that existed beneath the formal political domains on a map.  

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In his 1982 economic history of colonial Mexico and Peru, a work that has yet to be published in English, Assadourian used archival records to track the movement of goods and peoples across the bordered lines established by the viceroyalties: movements, he discovered, that together forged a fully coherent space of their own. As a proposed conceptual model, Assadourian referred to this space as an “espacio económico,” one oriented around emerging urban centers. More recently, Vera Candiani has built on this tradition of inquiry by exploring the actual processes of the colonization of Mexico. In doing so, her work invites us to look beyond the conventional binary of periphery and metropolis, as well as the standard units of analysis of peoples and nations, and to instead explore the patterns of partnerships, interests, and power that lay beneath.

As a legal historian, I have paired this methodological approach with insights from scholars of law and society who have developed strategies for mapping the inner workings of jurisdictions that exist outside the purview of formal courts and legislatures. In particular, I have relied on the work of law and society scholars Sally Falk Moore and Stewart Macaulay, whose research provides a template for understanding the governing customary norms within particular spaces. In her 1973 article, for example, Moore suggested that scholars shift their gaze from legal institutions to the “semi-autonomous social field.” Likewise, in his 1963 study of the use of contract law, Macaulay set out to understand the place of contract law not by scouring the case reporters, but by interviewing businessmen and lawyers about their use of contracts.

55 Assadourian, El Sistema de la Económica Colonial, 319.
56 See, e.g., Candiani, Dreaming of Dry Land, 12.
Based on these braided lines of inquiry, I have constructed a conceptual starting point for America’s beginnings defined not by the inherited categories of thirteen colonies whose only bond was that of a distant Parliament, but by the evidence from the archives. Chapter One thus begins by returning to the Massachusetts Bay on the eve of the Revolution and exploring a crucial part of the constitutional terrain that has remained hidden from view: a now long forgotten corridor of commerce that spanned from Boston down to the Carolinas and led out to the markets of the Atlantic world. Drawing on records of the trading houses, this chapter shows how the daily work of constructing this corridor of trade not only shaped the culture of the seaports of the Massachusetts Bay, but also gave rise to a spoken geography of America: a place where multiple jurisdictions could co-exist under the umbrella label of the continent, as gentlemen of the trade constructed a vast network of trading houses, bound by the promises that theirs was a partnership of equals, each left to its own discretionary authority to pursue the best interests of the whole.

Chapters Two through Five next trace how and why this conception of an America of united sentiments, governed by internal norms and practices of the trade, remained alive and well during the upheavals of the war for independence. By following leaders of the revolutionary movement in Boston as they set out to coordinate a viable opposition against Parliament (Chapter Two), organize a war that could defeat one of the strongest navies in the world (Chapter Three), draft the formal written terms of partnership embodied in the Constitution (Chapter Four), and then put the fruits of their labor to work during the so-called age of the seas (Chapter Five), this section of the dissertation invites us to see how the deeply embedded institutional networks,
vocabulary, and etiquette of partnership along the American coastline offered a crucial, as
as yet, long forgotten sources of ideas and practices with which to forge the Republic.

By uncovering how and why architects of the Republic drew upon these commercial foundations, this opening section of the dissertation allows us to recover the indeterminacy and fluidity of the formal entities called “colonies” and “states,” at a time when people could speak of a colony’s right to a jury trial, or later, reduce states from the formal status of sovereigns into interests, to be balanced on the merchant’s scale of justice. At the same time, this section allows us to see how, in this fluid assemblage of porous entities between the public and private sphere, the familiar phrases and ideas that linked the trading houses for generations could migrate easily, indeed, almost as if by habit, from one setting to the next: be it in discussing the terms of partnership between the trading houses, between the towns, and in the end, between the states.

The remaining four chapters explore how and why, against the backdrop of an America of united interests, people in the sea-ports of Massachusetts began to experiment with and then adopt a discourse of states. Chapter Six begins by surveying the dramatic changes that unfolded across the rural landscape of Massachusetts at the dawn of the nineteenth century, before analyzing how and why a radical cohort of Federalist lawyers in Boston began to experiment with a discourse of the state. In doing so, it argues that lawyers, concerned by the waning political power of the metropolis and yet unable to mobilize the trading houses, seized upon the language of a state’s sovereign duty of protection as a means of both legitimizing and reigning in the potentially explosive doctrine of state action.
Chapter Seven then examines how the obscure category of state citizenship began to emerge as part of a new constitutional consensus in the late 1810s, at a time when merchants who once sailed for the ports of the globe carrying passports of American citizenship increasingly turned to a rising cadre of commercial lawyers to help them navigate the complexities of a domestic shipping economy. At a time of the unraveling of older mercantile networks of the Atlantic maritime world and a turn inwards to the continent, these lawyers dusted off long-forgotten provisions of the Constitution, translating the old America of interests into a new modern discourse of united states, while seizing upon the codified “habits of intercourse” in Article IV to insist on the right of safe passage across a bordered domain of states.

Chapters Eight and Nine conclude by showing how these preliminary foundations of a state duty of protection and the rights of state citizenship became the leading arguments for new generation of slavery’s opponents: beginning with the radical abolitionists of Boston in the 1830s, followed by the leaders of the newly emerging antislavery political parties. Chapter Eight examines how and why abolitionists who discovered the limits of the old language of Americans and their rights turned instead to the novel language of the state in an effort to be heard in the city’s halls of power.

By labeling the black men who worked the Boston-Charleston freighting ships and could be subject to imprisonment in Charleston not as Americans, but as citizens of Massachusetts, these abolitionists hoped to reframe the issue of slavery from one of the rights of a black man to that of the rights of a state, thereby triggering the state duty of protection and piercing the ancient corridor of commercial union. In doing so, as Chapter Nine argues, these abolitionists helped supply the foundations for an argument upon
which the organizers of a new political antislavery movement endeavored to build a viable third-party opposition: one premised on the constitutional logic that in an America of bordered slavery, all states were created equal.
AMERICAN COAST

On the eve of the American Revolution, the ships sailed each week from the Massachusetts Bay for the plantations of the southward, following a route as old as the project of empire itself. The ships sailed each week from the Massachusetts Bay for the plantations of the southward, following a route as old as the project of empire itself. Tall wooden freighting ships, built by hand in the shipyards along the river banks of the New England coast, where in the evenings, when the heat of the day had lessened, the carpenters came down to hammer iron bolts into the planks. The men worked without blueprints, following rules handed down over the generations.

Low hull, wide berths, extra caulking. Ships built from a thousand trees, on stocks wedged alongside each other, forming a line that could stretch a mile along the river banks at a time; ships designed specifically to carry flour and corn from the Chesapeake, tobacco from the James River, rice and indigo from the Carolinas: a treasure, someone later said, better than “the mines of Peru.”

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2 See Robert K. Cheney, Maritime History of the Merrimac: Shipbuilding (Newburyport, MA: Newburyport Press, 1964), 282 (describing the practice by which shipbuilders who specialized in hammering the bolts into wood waited until the evening to commence work).
4 For references to ships built specifically to carry the produce of the plantations, see Gerrish and Barrel to Chancey and Townsend (London: June 14, 1738), John Barrel Letter Book, New York Historical Society (hereafter cited as NYHS) (referring to ships built in Boston for the Carolina trade); [“Strangers & Others That Want to Buy…”], New-England Weekly Journal, Nov. 6, 1732 (offering for sale a “Sloop …about 60 or 70 Ton, of a Small draft of Water, fit for the North-Carolina Trade”); “To Be Sold,” Boston News-Letter, July 26, 1760; “[State of New-Hampshire],” Independent Chronicle, Nov. 15, 1781; [“Wanted on Hire, A Vessell [sic]…suitable for the Virginia or Carolina Trade,”], New-Hampshire Gazette, Nov. 9, 1770; see Kellie Michelle Vanhorn, “Eighteenth-Century Colonial American Merchant Ship Construction,” (Masters thesis, Texas A&M University, 2004), 73 (caulking as an indication of tobacco ship); Jonathan Elliot, ed., The Debates in the Several State Conventions as Recommended by the General Convention at Philadelphia
The ships that hauled out with the first winds left no trace on the swells of the ocean, unlike the iron railroads that later crossed the continent. With time, their routes that led down the coast and out across the Atlantic would disappear from the scholar’s map of America’s beginnings, leaving behind only a coast of thirteen domains, each said to be as jurisdictionally separate to the other as India from Ireland, all bound only by the tenuous link to a distant sovereign. By returning to the archival debris left behind by the ships and stored in the trading houses of the Massachusetts Bay, we can see that alongside the fragments of the coastline lay the workings of a commercial corridor with an internal logic of its own, one that has long since receded from collective view.

in 1787 (Philadelphia: J.B. Lippincott Co., 1836), 2:89 (observing, with reference to the anticipated benefits of the ratification of the United States Constitution, “I suppose the New England States have a treasure offered to them better than the mines of Peru; and it cannot be to the disadvantage of the Southern States.”).


In particular, an analysis of these records on the eve of Revolution—including maps and navigational charts, sailing orders and price currents, and the heaving leather-bound correspondence books of the merchants—suggests that by the eve of the Revolution, the work of carrying the produce of the plantations had given rise to a spoken geography of America, in which the bordered domains of the colonies could recede into the backdrop, as a network of trading houses and ports instead came to the foreground.⁷

Confronted with the vast multiple challenges of the carrying trade—including the perils of navigating the uncharted coastline that separated the barren lands of New England from the plantations to the southward, the economic uncertainties of distant markets, and the labyrinth of diverse rules and intensely local rules of the ports that could ensnare a ship for weeks—men of the Massachusetts Bay devised a portfolio of cartographic tools, business strategies, and institutional networks to ensure a safe and profitable passage for their ships. In doing so, they drew upon familiar customs of the trade to create a concept of a continental America defined not by the king’s bordered domains and formal institutions of colonial assemblies, but by the shipping routes that connected the trading houses of the American coast to the broader routes of the Atlantic.

⁷ In proposing a “spoken geography” I am offering an additional way of thinking about what Benedict Anderson has referred to as “imagined communities,” and which Cameron Blevins has most recently suggested as an “imagined geography.” By emphasizing the spoken nature of this, I hope to suggest how widespread the vernacular of an America of united sentiments had become in the quotidian organization of life. See, e.g., Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism (New York: Verso, 1983); Cameron Blevins, “Mining and Mapping the Production of Space: A View of the World from Houston,” (Stanford: Spatial History Project, 2014). For accounts emphasizing the ways in which cartography contributed to a consciousness of North America as a space to which this analysis of the carrying trade on the American coast contributes, see, e.g., Martin Brückner, The Geographic Revolution in Early America: Maps, Literacy, and National Identity (Chapel Hill: University of North Carolina Press, 1996); James David Drake, The Nation’s Nature: How Continental Presumptions Gave Rise to the United States (Charlottesville: University of Virginia Press, 2011). This chapter builds on this scholarship by illuminating the particular mechanisms in which a concept of an America—bound by particular trade networks and customs—emerged on the eve of the United States. While Drake sees the language of the continent as deriving from intellectual trends and imperial rivalries of the pre-revolutionary era that became increasingly irrelevant, I trace it to the workings of the commercial corridor of the carrying trade that remained afloat and weathered the storms of revolution.
world, bound by the customary law of merchants that promised theirs was a partnership of equals, each with discretionary authority to pursue the best interest of all.

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To the stranger arriving on the shores of the Massachusetts Bay for the first time in the 1760s, the corridor that connected the shipyards to the plantations announced itself in small ways, often unrecorded in the formal records of the colony. One could hear it in the way people spoke and the sounds that ricocheted out of the shipyards; see it in the shapes of the cupolas the men raised up on their roofs and the names of the trade they took to their graves; measure it in the records of the shipping news the editors compiled each week. Small traces of a corridor two centuries in the making, one that by then, supplied a logic to the day, shaping how people looked at the world and their place in it.

The coast that ran down to the southward might begin to make its appearance, for example, on the road that led out from Boston to the old shipping town of Newburyport, a town where ships were built and presidents would be made. A passenger in the stagecoach seeking a tour of the coast could find herself in the dim morning light in the company of a merchant from Portsmouth, and a captain newly returned from a freighting trip to the Carolinas, perhaps head back, eyes closed, feet up, smelling of the seas. As the sun came up over the bay, the town where aspiring statesmen came to learn the law

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8 For the methodological value of attending to the small quotidian details in material life, see Clifford Geertz, “Thick Description: Toward an Interpretive Theory of Culture,” in The Interpretation of Cultures: Selected Essays (New York: Basic Books, 1973), 3-30. For a useful account of the ways in which early Americans could articulate within a single place in towns informed by neighborhood affairs, colonial events, and imperial exchanges, see, e.g., T.H. Breen, “Interpreting New World Nationalism,” in Nationalism in the New World, 46; see also Laura F. Edwards, The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South (Chapel Hill: University of North Carolina Press, 2009), 14-15 (noting, with regards to towns in post-revolutionary Carolinas, that “localism did not denote a provincial outlook that took no cognizance of the outside world,” and finding that “the region’s elite was thoroughly embedded in the networks of the Atlantic world and wedded to its political and intellectual currents”).

announced itself by its church steeples, where the people had long since hauled up weather-vanes to record the ways of the winds that governed the ships, a menagerie of roosters and cogs and angels, turning over the prayers of the town.\(^\text{10}\)

When the winds came in strong off the coast, the captains could be seen making their way down across the square to the wharves, to where the ships lay waiting. The women who drew the curtains closed after they had gone were as familiar with the lines of latitude as the creases on their husbands’ foreheads, could likely tell you the direction of the winds without looking up from laying the linens out in the yard.\(^\text{11}\)

For as long as anyone could remember, the ships of the Massachusetts Bay had sailed out for the southward, born of the exigencies of the soil and the promise of a good trade. Generations earlier, when the first adventurers came over from London, they caught sight of a bay so broad its edges could only be seen on the map. In the first raw edges of the spring thaw, they looked to the soil of the New World that appeared to some to be a “desolate wilderness.”\(^\text{12}\) They scanned the hills to the west that appeared to some as if impenetrable mountains, and eventually they turned their gaze to the woods. A forest, deep and unending, that ran down to the water’s edge.\(^\text{13}\) A plan. They would build

\(^{10}\) For the prominence of weathervanes, including a depiction of a cod and rooster atop the church steeple, see Benjamin Johnston, Engraving, “A North-East View of the Town & Harbor of Newburyport,” (1774), in *Newburyport*, ed. John Hardy Wright (Charleston, SC: Arcadia Publishing, 1999), 36.

\(^{11}\) This generalization is based on the following compilation of sources: Frances Maria Lloyd Garrison, *Journal to Baltimore*, Oct. 1815, Garrison Family Papers, Houghton Library, Harvard University (a diary of a Newburyport woman whose husband worked as a captain on the Massachusetts-Virginia trading ships and who recited the latitudes and directions of the wind in her diary); Ann Bromfield to Francis C. Lee, Newburyport, Oct. 3, 1810, Francis Cabot Lowell Papers, Box 4, Massachusetts Historical Society (hereafter cited as MHS) (describing a ride to a friend’s house and recording the “bright sun & southwestern breeze”); Sarah Smith Emery, *Reminiscences of a Newburyport Nonagenarian* (Newburyport: William H. Huse, 1879), 7 (describing laying linens out on the grass to whiten, “as was usual at this season”).


\(^{13}\) “New England’s First Fruits,” (Boston: Sept. 26, 1642), in *Collections of the Massachusetts Historical Society* (Boston: Munroe and Francis, 1806), 1:248 (“We being much encouraged herein, by reason of the
a ship. There was rope to be made for the rigging, cloth to be sewn for the sails, bolts to be hammered into wood.

“We are in a way of building shippes,” the governor of the Massachusetts Bay reported in 1642.\(^\text{14}\) The “building of ships,” the lawmakers later declared, was “of great importance for the common good.”\(^\text{15}\) The builders of the Massachusetts Bay found a ready and willing partner to the southward, where the adventurers who had planted themselves along the creeks of the Chesapeake realized theirs was a soil so rich, there was more than they could possibly consume.\(^\text{16}\) “The Planters are carried with a great forwardness to seeke trade abroad, to which purpose we have now 7 or 8 pinnaces and Barques bound to New-England and the Northward,” the governor of the Virginia colony reported back to London in 1632.\(^\text{17}\) Within two years, a captain visiting from London reported that the James River had supplied “their zealous neighbours of New England tenne thousand bushels of corne for their release, besides good quantities of beeves, goats & hogs.”\(^\text{18}\)

Encouraged by these auspicious beginnings, the work of building the ships continued as the British Isles erupted into civil war. By the time the officials in London turned their gaze back to the continent in the late seventeenth century, they marveled aloud at the astonishing growth that had unfolded in their absence. Boston had become

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\(^\text{15}\) Acts to Promote the Building of Good Ships, Etc., 1641, in The Charters and General Laws of the Colony and Province of Massachusetts Bay (Boston: T.B. Wait, 1814), 189.
\(^\text{16}\) See Perry, The Formation of a Society, 147.
\(^\text{17}\) See Robert C. Johnson, “Virginia in 1632,” Virginia Magazine of History and Biography 65 (1957): 466 (quoting a “Letter from the Governor & Councell to the Lords” dated March 1631).
\(^\text{18}\) “Captain Thomas Yong’s Voyage to Virginia and Delaware Bay and River in 1634,” in Collections of the Massachusetts Historical Society (Boston: Massachusetts Historical Society, 1871), 4:110.
the “metropolis of the American plantations,” one observer noted in 1676,19 while another counted some three hundred vessels that traded to “ Barbadoes, Virginia, Madeira, Acadia.”20 Boston’s ascent, others continued, was nothing short of astonishing. Although she is “ one of the smallest and poorest tracts of land, and produces least of any of the other colonies for exportation,” one official reported in 1690, “ they build many ships and other vessels,…who bring home their produce and make Boston the store of all the plantation commodities.”21 Visitors recorded the produce as if a bountiful laundry list: “ wheat, rice, Indian Corn, Oats, Barley, Pease.”22 Accounts of the frenzied volume of ships continued apace, until when someone paused to count the numbers of vessels outside of Roanoke in 1732, nearly every other ship was built in New England.23

By then, the ship-owners spoke of the routes matter-of-factly, with an air that suggested the familiarity of habit. “ The West Indias, South Carolina, Cape Fear, Virginia and Greenland… these Places are the Ways by which we Generally Make our Remittance from New England,” one trader observed to his counterpart in London in 1738.24 “ Many of our ships go to Virginia, N° and S° Carolina,” the merchants of Boston reported in 1763, “ where they carry large quantities of rum and other northern produce to purchase

20 Quoted in William Babcock Weeden, Economic and Social History of New England, 1620-1789 (Boston: Houghton Mifflin, 1890), 245.
24 Gerrish and Barrel to Chancey and Townsend, London, June 14, 1738, John Barrel Letter Book, NYHS.
rice, tobacco, and naval stores and take in freight for Great Britain.”

The newspapers followed the formulaic descriptions. “Two thousand ships,” came the official tally in 1747 of Boston’s ships on the seas. Loaded “for Virginia, Carolina, West-Indies, and from thence freighted with Tobacco, Rice, Sugar & etc., all in return for...British Manufacturers.”

As the voyages became part of the familiar geography of the coast, the work of building ships became a point of pride, if not also veiled competition, with the Boston papers keeping track of the ships coming off the stocks. “We hear from Newbury,” a Boston paper reported in 1743, “That the good Work of Building goes on there with great Success, there having been 6 Ships lately launch’d which had been on Stocks but nine Months; and there are Ten more, the keels already laid, which ‘tis tho’t will be finish’d so as to launch in half that Time, by which it plainly appears, that the good People there are maliciously aspersed, as wanting Industry in their Business.”

By the eve of Revolution, the gentlemen of the trade who owned the ships and dispatched them down the coast and out to the maritime world had adopted a particular way of speaking about the continent: a way of conceptualizing America very different than that which appears now in our collective memory of the closing days of the colonial era. For theirs was a concept of America where the bordered domains of a king had long since receded into the background, as a continent of trading houses and ports instead came to the foreground, born not of any imagined political community, but of the daily practices of carrying the produce of the plantations to market. In their efforts to master

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26 “Mr. Fleet,” *Boston Evening-Post*, Mar. 2, 1747.
27 [“We hear from…”], *Boston Post-Boy*, Apr. 11, 1743.
the perilous physical, economic, and legal challenges of the coast, these architects of the corridor in the Massachusetts Bay had fashioned an America with an internal geography and logic of its own, bound by the customary laws of merchants.28

The records of the makings of this spoken geography of America appeared most conspicuously in the vast array of maps and charts that ships relied upon to chart a safe passage across the perils of the coast. From the earliest attempts to navigate a route from the barren lands of New England to the bounties south of the Chesapeake in the early 1600s, men had described a treacherous journey, one that few dared even to attempt. Past the safety of the harbor, the path to the southward lay strewn with obstacles. Submerged heaving rocks that could claw straight through the wooden belly of a ship.29 Howling winter storms that could leave nothing in their wakes but a piece of wood on the frozen shore.30 Past the James River, where the occasional lights the ship-owners put out in the storms disappeared, the shoals ran out so fast under the water they could stop a ship dead

28 On the widespread scope of the merchant networks, see, e.g., David Hancock, Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785 (New York: Cambridge University Press, 1995); see also Philip J. Stern, Corporate Sovereignty and the Early Modern Foundations of the British Empire in India (New York: Oxford University Press, 2011). To clarify: my point here is not that the networks of the coast were unique to the American coast, nor that these networks forged any kind of national identity as defined by common allegiance to a single political institution. To the contrary, these coastal networks were embedded within the broader transatlantic world of trade, while the label of America that emerged from the daily work of carrying the produce of the plantations was born not of any national identity, but out of the happenstance material challenges of navigation. This argument is thus compatible with scholars who have emphasized the absence of a national identity prior to the revolution, See, e.g., Kariann Akemi Yokota, Unbecoming British: How Revolutionary America Became a Postcolonial Nation (New York: Oxford University Press, 2011), while at the same time, consistent with accounts that have identified pre-revolutionary connections across jurisdictions. See, e.g., Jon Butler, Becoming America: The Revolution Before 1776 (Cambridge, MA: Harvard University Press, 2001).

29 See, e.g., “[“We hear that a Sloop…”], Boston Evening Post, Feb. 20, 1749 (describing how a ship, en route back to Boston from Annapolis, was thrashed ashore on the rocks due to a snow storm); “Providence, Dec. 19,” Providence Gazette, Dec. 19, 1767 (describing how a ship, en route from Providence to Boston “received much Damage, Part of her Keel being knocked off, her Sheathing tore away, and her Bottom greatly braised and chafed among the Rocks”).

30 See, e.g., “Letter from Maine: Claims of Seamen,” Sailor’s Magazine and Naval Journal 14 (1842): 173 (describing the frequency with which inhabitants of the state “are within hearing of the roar which every storm sends forth from our rock bound coast, and one who is accustomed many times in a winter to be waked by those sublime and terrific sounds, and the next morning to find that some crew were landed in distress, or dashed in pieces on the rocks…”); “Boston, Dec. 23” New-York Gazette, Jan. 13, 1752 (describing a “violent Snow Storm,” in which a ship was “drove on the Rocks near Pull-in-Point”).
in its tacks, keel sinking into the forgiving sands.\textsuperscript{31} Currents so powerful they could leave a vessel bound for Portsmouth drifting into the capes of Virginia,\textsuperscript{32} the men on board left to conclude that the currents were “the means of which All Bodies…are Compelled to alter their Course & submit to the motion impressed upon them by it.”\textsuperscript{33}

For those determined to master the physical obstacles of the coast, the first step involved mapping out the hazards. From the earliest forays down the coast, a portfolio of charts had begun to emerge, in which the bordered lines that separated one domain from another gave way to a smooth strip of land, defined by the physical landmarks that could guide a ship to safety. “These are the Lines that shew thy Face,” the first captain to survey the Massachusetts Bay wrote when he returned to shore in 1608, sketching out the sightlines of the compass that led a ship to safe harbor. “New England is that part of America in the Ocean Sea opposite to Noua Alybon,” he wrote, and there in his words, you could see the way the land must have appeared to him from under the shade of a full-sail on a July morning. “New France, off it, is Northward,” he continued, and you could perhaps see the captain nodding over his shoulder, into the distance. “Southwardes is Virginia and all the adjoyning Continent,”\textsuperscript{34} he continued, introducing his readers to a

\textsuperscript{31} See Francis Ross Holland, Jr., \textit{America’s Lighthouses} (Mineola, NY: Dover, 1988), 105 (describing the relative absence of lighthouses along the southern coast); Thomas Salmon, \textit{Modern History: Or, the Present State of All Nations} (London: J. Roberts, 1746), 3:618 ("When you are past the gulf stream, you throw the lead, and if you find the ground at twenty five leagues of the coast of Georgia or Carolina, these they call the banks, and the water shoals gradually to shore, till you come within two leagues, where the banks are so shoaly that they bar all further passage, excepting in the channels which lie between the bars.").

\textsuperscript{32} [“The following is an Extract of a Letter…”], \textit{Boston Post-Boy}, Aug. 27, 1750 (quoting a captain bound for Providence from Carolina as having “had but got very little to the Southward and aimed to bear away for Virginia, until meeting with a Calm in the Gulph Stream, it carried me so far to the Northward, that I fetch’d but in with your capes, where I met the Wind at W.S.W., and ordered the Vessel about to go to the Southward for Virginia”).

\textsuperscript{33} Stephen Richard Daybook, (ca. 1730), Stephen Richard Papers, NYHS.

\textsuperscript{34} John Smith, \textit{A Description of New England} (London: Humfrey Lownes, 1616), 21
single coast that seemed to have no beginning and no end, one that would make its first appearance in print in an atlas that situated the continent as part of a vast watery world.  

The manuals that offered guidance as to how to create such maps wasted little time in inventorying the relevant objects to be included. As the *Sea-Man’s Tutor* instructed its readers in 1659, the aim of creating such charts was to allow the captain to “know the way which he maketh, the place where he is, and the end of his journey.” What was needed, the manual continued, was a depiction of the coastal “Islands, Iselets, Banks, or Bars, Shoals, Rocks, and Flats,” or, to put it more briefly, a “lively picture of the earth and water.” When the first published charts began to appear in the early 1700s, they followed this same rubric. Not long after the boom of ship-building in the first decade of the 1700s, for example, a self-proclaimed “experienced and ingenious Sea-Commander,” named Cyprian Southack, who spent his days traversing the coastline “from Virginia, Pennysylvania, Connecticut, etc., between Massachusetts, Martha’s Vineyard, and Rhode Island,” began to collect subscriptions among the merchants of Boston for a new profile of the coast. Although the political borders had changed since his predecessor set out to survey the coast, the captain felt no compulsion to include the names of the provinces that ran down the interior.

“I have now finished my general Chart of the Sea-Coast,” Southack wrote when he was done. In his description of the relevant marks on the coast, he listed only that which could guide a man from place to place. As he reported to the colonial assembly, his

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36 Edward Wright, *The Sea-Mans Tutor* (London: Joseph Moxon, 1659), 38
37 Ibid.
chart spanned “from Cape Cancer to Sandy-Point of New-York, in North America, with the Harbours, Towns, Bays, Roads, Rocks, Sands, Fishing-Banks, Shoals,” a land where even the rocks and sands trumped the bordered domains of jurisdictions. Using the latest tools of navigation, the captain now added to new details to the list of relevant objects, announcing that his was a map that included the “Depths of Water, Latitudes, Bearings and Distances from Place to Place.”

By November of 1773, the navigation stores of Boston boasted any number of detailed charts like that of Captain Southack’s, offering ever more intricate views of the lines that showed America’s face. A visitor to Andrew Newell’s store in Boston, for example, might find any number of new constructions of space. Newly constructed Mercator charts depicting not simply the familiar imperial hub of London, but all points to the southward, including charts for “North-Carolina and South-Carolina,” as well as the broad Chesapeake Bay. New navigation guides, offering those who paged through them nine different silhouettes of the New England coastline, alongside sailing directions for Virginia and Maryland. Six different types of compasses, including pocket-sized ones for added convenience.

The creation of these navigational tools that helped forge a geography of America marked only the beginnings of the attempts to master the coast, at a time when knowledge traveled in spoken words. “Maps and Charts may give Strangers a confused Idea of the Geography of our Country, and of the Principal Inlets of Habours, Rivers,

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40 Ibid.
41 “Andrew Newell,” *Massachusetts Spy*, Nov. 11, 1773.
43 “Andrew Newell,” *Massachusetts Spy*, Nov. 11, 1773.
Creeks, Coves, Islands,” John Adams later wrote, “& but without skillful Pilots, the danger of Shipwreck will be 10 to one.”

Out on the seas, the captains trained the next generation of aspiring ship-owners. “Coasting along the Shore,” a captain tested his apprentice in the 1730s, “I see two Roadlands, the first bears from me NNW the second NNE3/4 Easterly then Standing away EBN 12/ N 16 the first bears from me WNW the Second NW BN1/4 Westerly: I demand the Bearing and Distance of the two headlands.”

Or again: “Suppose a ship Sailes NE 50 Leagues then Southeasterly 85 Lea and then forced back by foul weather 105 Lat to the place from whence she first sailed: I demand her Second Course and her last Course Back.” Or again: “Suppose a Merchant’s ship in Lat 45:30 N falls into the hands of pyrite who take away his Sea-Compass… I demand what Course he must shape to Speak with them.”

In the bays along the forested coastline, the winds that carried the leaky wooden ships had long since taken hold of people’s words. Just as surveyors began to create borders of private lands, so too did the coast establish a spoken geography of the continent. At a time when the winds and the seas could determine the fate of a man’s

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45 See Stephen Richard Daybook, NYHS.
46 Ibid.
47 Brückner, Geographic Revolution, 3, 11-13, 16-17 (describing geography as an “everyday discourse widely used by a socially diverse population of English-speakers living in colonial British America” and noting that geography, signs, symbols and rhetoric “became an everyday language.”). See also Margaret Beck Pritchard and Henry G. Taliaferro, Degrees of Latitude: Mapping Colonial America (New York: Harry N. Abrams, 2002); Thomas F. McIlwraith and Edward K. Muller, eds., North America: The Historical Geography of a Changing Continent (Lanham, MD: Rowman and Littlefield, 2001).
fortune, a family, perhaps even a town, the ships punctuated the organization of the day. Long after their masts disappeared into the horizon, for example, men and women followed the seas, scanning the skies for signs of foul weather. “Capt. Wyer sail’d yesterday since which we have had a few Hours of an Easterly Gale,” a ship-owner noted, puncturing his letters with exclamation marks when the weather turned.  

In the towns that depended on the movement along the coast, they spoke not of the South as a separate place, but of traveling to the “Southward,” not of the North as a separate place, but of traveling to the “Northward.” They spoke not simply of masters of slaves, but of masters of the seas, of men said to be “well acquainted on the Shore to the Southward of here.” When the two trees outside of New London harbor that had long guided captains past the “sundry Rocks and Shoals” came down in a howling storm, it made the newspapers. And when the coins first appeared in Boston with an “NE” carved at the center, people set aside the name of New England and called them instead “Nor’easters,” after the winter storms that could send a ship up into the mountains of the seas and down into the awful abyss. When the winds howled and the blizzards bore down, the compass-shaped cupolas that men raised up on their roofs blazed through the

49 “From the Newport Mercury,” *Boston Post-Boy*, Feb. 21, 1774 (noting that the coasters supplied Massachusetts Bay with “fire-wood and provisions, the support of life”); “Shipping News,” *Weekly Mercury*, Jan. 7-14, 1774 (describing the return of “several Coasters laden with Grains and other Provisions…”).

50 John Wood to Reynell and Coates, Newburyport, Dec. 9, 1771, Samuel Coates Papers, Box 1, NYHS.

51 J. Hitchborn to Rufus King, Boston, Jan. 4, 1786, Rufus King Papers, Box 1, NYHS.

52 Jackson and Bromfield to Henry and Thomas Bromfield, Newburyport, Dec. 21, 1768, Jonathan Jackson Letter Book, Lee Family Papers (microfilm), Reel 18, MHS.

53 “These are to Notify all Pilots,” *Boston Post-Boy*, Mar. 18, 1751.

night, eight panes of glass, carefully laid out on the shape of the compass rose, from which those who had mastered the seas could look out and survey the vast domain.  

Each week, the men who worked in the newspaper offices recorded the movements of the ships: laying out the comings and goings of ships for the southward, recording the most recent sighting. Each week those who hoped for a safe return scanned the papers, reading a language once intelligible, now lost to time. “Capt. George Robertson, from this Port for South-Carolina on the 13th ut. in Lat 40 000 N and Long. 65 OO W, lost his Mainmast in a hard Gale,” reported the Boston papers of a vessel lost to the Carolinas. “Capt. Reily of this Port bound to the Grenades, founded at sea, in lat. 24 30 long. 56, the Capt. and people were taken up by Capt. Eddy from Virginia…the schooner sunk in 2 hours after they left her.” Sometimes the listings of the lost ships appeared without any names at all: only the bare facts of a ship whose mast had been split to pieces en route from North Carolina to Lin, or the arrival of a haunting ghost ship, an “empty Sloop, with all her Sails standing, come on Shore…, nothing on Board but a bed.”  

The winds that carried the ships down the ragged coast of New England sounded across the full length of the coast. One could hear the same vernacular along the shattered creeks of the Chesapeake, echoing along the vast named and numbered fields of the peninsula that slowly gave way to the land where the beaches unfolded one after another and the tides came up and washed the knotted rows of rice and bathed the indigo that  

55 Millar, Buildings of Peter Harrison, 209-14.  
58 “Boston, January 24, 1774,” Boston Evening-Post, Jan. 24, 1774.  
59 “Shipping News,” Weekly Mercury, Jan. 7-14, 1734-35.
could bleed a blue sky of stars. The men and occasional women who had mastered the ways of the soil of the Carolinas followed the skies for signs of the arrival of the ships. “I with many others that hire boats, have for want of that convenience (as there is a large Crop of Rice made here this year) not been able to get it to Market to go by this fleet,” the owner of a rice plantation out of Charleston wrote in 1761. “I have been a good while out of town,” she continued, “and did not expect this ship...to sail this ten days and now find she only waits for a wind.”

At a time when the fate of the harvest hinged on securing a good and seaworthy ship to carry their produce to market, the people to the southward spoke of what one historian would later describe as an interconnected world of town and country, land and sea. Along the peninsula of the Chesapeake where the salty waters ran straight up to the backwoods of the plantations, men spoke of the value of their soil in relation to the seas. “Seventeen or eighteen feet on a high tide,” a planter told those interested in buying his plantation on the Chesapeake Bay in 1778, speaking in reference to the depth of the waters that lapped at the soils. A depth, he added, “which makes it convenient to trade to almost any part of the world;” a logic echoed in the papers of Boston, where a man who

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60 For examples of the naming of the fields, see Return Book: A List of Negroes, Stock, and Farming Utensils...on the Estate of Col. Edward Lloyd, in Lloyd Family Papers (microfilm), Reel 10, Maryland Historical Society (hereafter cited as MDHS). For descriptions of the 1,000-acre plantations on the Eastern Shore upon which this description is based, see Paul G.E. Clemens, “The Operation of an Eighteenth-Century Chesapeake Tobacco Plantation,” Agricultural History 49 (1975):523
62 Eliza Lucas Pinckney to George Morley, Aug. 31, 1760, in Pinckney Papers.
64 See “To be Sold, By the Subscriber, Living in Kent Maryland,” Pennsylvania Packet, Aug. 13, 1778.
put his house up for sale promised it was “near the Dock, well adapted for such as trade with Coasters.” 65

As the daily work of navigating the coast gave rise to a way of conceptualizing America as a single place, so too did the work of overcoming the economic challenges of the trade. In their efforts to chart a profitable voyage in the absence of reliable market information, men charted a vocabulary of American and its produce, nestled in an Atlantic world of continents and ports, bound by the logic of supply and demand. In the trading houses from which the ship-owners of the Massachusetts Bay dispatched their fleets, for example, the search for a market began each season with inquiries abroad: polite letters addressed both to London, the mandatory first port of call for all ships under British regulations, as well as the ports along the American coast.

“We should be glad of your Advice, when you write us—what articles The Produce of this Country would serve for an export,” a merchant in Newburyport wrote to his friend in London in 1768, underlining for emphasis the single economic space of America.66 The phrase was a convenient one, a handy abbreviation in an era when ships could carry any number of different types of produce: flour from the Delaware River, tobacco from the James River, indigo from the Carolinas,67 and when trading houses in Amsterdam could reply with a list of prices for the “Products of your Continent.”68 Indeed, long before any formal grant of independence, the phrase of “American

65 “To be Sold,” Boston Gazette, Feb. 27, 1753.
66 Jackson and Bromfield to William and John Ogle, Newburyport, Mar. 4, 1768, Lee Family Papers, Reel 18, MHS.
68 John de Neufville to Lathrop and Coit, Amsterdam, June 28, 1781, John de Neufville Papers, Box 1, NYHS.
produce,” appeared in the papers of New England,69 lingering on long afterwards. “Produce of America, imported into and exported from Charleston,” a table in the Boston papers read in 1788.70

The letters that arrived in reply to such inquires offered snapshots of the marketplace down the coast and out across the world: handwritten lists of commodities that in time gave way to formally printed tables on carefully folded letterhead.71 “We are starving for want of provisions,” came word from Charleston to Boston in 1766, “are much in want of your country produce—not one Potatoe yet from the northward.”72 “We have many Rhode Islander’s who come loaded with Rum and Small Truck of various kinds and carry back Rice,” another reported, before warning the following winter that Charleston “is glutted with all kinds of Northern commodities.”73

Once the demand for the produce of the continent had been mapped, the question of supply had to be taken into account, as men who specialized in carrying the commodities of the southward compiled detailed inventories of the soil and its yields, keeping note of the storms and the frosts that could destroy a ship, ruin a harvest. When the January rains came down over Charleston, the ship-owners of Boston knew how many hours the gale lasted (four), the direction from which the winds rose (S.E.), and the direction to which it changed (S.W.).74 When the price of rice in Charleston dropped, its

70 “General Exports from the Port of Charleston,” Boston Gazette, Mar. 24, 1788.
71 See John de Neufville to Jonathan Jackson, Amsterdam, Dec. 10, 1781, de Neufville Papers, Box 3, John de Neufville to Lathrop and Coit, Amsterdam, June 28, 1781, de Neufville Papers, Box 1, both in NYHS.
73 Thomas Smith to Isaac Smith, Charleston, SC, Jan. 31, 1763, Thomas Smith to Isaac Smith, Charleston, SC, Jan. 21, 1764, both in Smith-Carter Papers (microfilm), Reel 1, MHS.
74 “Charles-Town, in South-Carolina,” Boston Post-Boy, Mar. 18, 1751.
descent appeared in the Boston papers, along with details of “severe Storms to the Southward.” As the shipowners began to draft the proposed sailing orders, their letters linked together places that would be preserved in historical memory as separate, but that appeared in those days simply as part of a whole. “What ships we design for Carolina to sail from Boston in the Month of Sep. with a Cargo Suitable for the West Indias, where they may have a Chance for a Freight or secure a Freight in the Spring,” one merchant ruminated in 1738, as he began planning for the season. And when, much later, the gentlemen of Boston rose to shake the hand of the lawyer named Rufus King who had helped finalize the Constitution, they could recite the average yield of an acre of upland Carolina soil as well as that of the barren lands of New England.

And yet, no matter their best efforts to compile reliable information, the hard fact of distance meant that it was inevitably months old by the time the ships arrived in port. At a time when market information moved slower than the freighting ships, the owners developed a business model that left the precise routes to the discretion of the captain. In doing so, they produced a spoken geography that rested not on the names of nations, but on a fluid globe of continents and ports.

In the instructions, for example, the federated republics of Europe gave way to an interlinked maritime world of ports. A merchant starting out in the trade in the Massachusetts Bay could list in rapid-fire all the possible destinations where his ship carrying Baltimore flour could land in 1766: “Lisbon, Malaga, Alicant, Carthagina,

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75 See, e.g. “New York, Jan. 7 & 14,” Boston Evening Post, Jan. 21, 1765 (“New Rice is sold at Charleston, South Carolina, 50s. per hundred.”).
76 [“By the Papers…”], The Boston-Gazette, Boston, Jan. 14, 1765.
77 Gerrish and Barrel to Chancey and Townsend, London, June 14, 1738, John Barrel Letter Book, NYHS.
Barcelona, Seville, Genoa, Leghorn, or Naples,\textsuperscript{79} followed by an equally rapid listing of possible homeports: “Nantucket, Plymouth, Salem, Newbury Port, or Falmouth.”\textsuperscript{80} Others who could not be bothered to specify all the possible ports where a ship might land simply elected for a broad reference to the continent, substituting particular provinces for references to “parts” and “ways” and “places.”

“At the Port of Delivery,” one owner advised his master, “they will send you back to America either with Salt or with a Freight.”\textsuperscript{81} Letters referred to vessels “bound from your place anywhere this way,”\textsuperscript{82} and proposed suggestions for sending a “Vessel somewhere your Way for a Cargo of Flour & perhaps some Wheat.”\textsuperscript{83} There were hopes of importing “some Flour & Iron from your Place.”\textsuperscript{84} Promises of sending “encouragement in your way.”\textsuperscript{85} Introductions to a “captain of this Place.” Plans to send a ship “to that place.”\textsuperscript{86} Confidence of an “intercourse from this place to that place.”\textsuperscript{87} Queries if there were any voyages to “this Part of the World,”\textsuperscript{88} ships traveling “to any part of the Globe,”\textsuperscript{89} or vessels traveling to “this quarter of the world.”\textsuperscript{90}

In developing these shipping routes that traversed an America of quarters and parts and places, ship-owners confronted yet a third challenge: one as potentially destructive as the perilous seas or the empty markets. For beneath the broad label of

\textsuperscript{79} Henry Lloyd to Hugh Hall Wentworth, Boston, Feb. 14, 1766, Henry Lloyd Papers, Baker Library.
\textsuperscript{80} Henry Lloyd to Capt. Paschal Nelson Smith, Boston, May 3, 1766, Lloyd Papers, Baker Library.
\textsuperscript{81} Nathaniel Tracy to Samuel Tucker, Newburyport, June 30, 1784, Samuel Tucker Papers, Houghton Library, Harvard University.
\textsuperscript{82} Jackson and Bromfield to Isaac Sears, Newburyport, Nov. 6, 1767, Lee Family Papers, Reel 18, MHS.
\textsuperscript{83} Jackson, Tracy and Tracy to Richard Cary Jr., Newburyport, Feb. 11, 1774, Lee Family Papers, Reel 18, MHS.
\textsuperscript{84} Jonathon Jackson to Sam Smith and Son, Boston, Oct. 9, 1765, Lee Family Papers, Reel 18, MHS.
\textsuperscript{85} Jonathon Jackson to Sam Smith and Son, Boston, Oct. 12, 1765, Lee Family Papers, Reel 18, MHS.
\textsuperscript{87} Henry Lloyd to Hugh Hall Wentworth, Boston, Feb. 14, 1766, Lloyd Papers, Baker Library.
\textsuperscript{88} “Advertisement,” Providence Gazette, Feb. 13, 1768.
\textsuperscript{89} Samuel Hooper to Reynell and Coates, Newburyport, Apr. 25, 1775, Coates Papers, Box 1, NYHS.
\textsuperscript{90} Jackson and Bromfield to Henry Croger, July 31, 1769, Lee Family Papers, Reel 18, MHS.
America lay a labyrinth of multiple jurisdictions of laws and regulations that threatened to ensnare a ship in ports for weeks. Since the earliest days of the voyages down the coast, men who dispatched their ships in search of the produce of the plantations encountered the localism for which early America would be remembered. When the very first foreign ships arrived in Boston in 1635, for example, the governor invited all fifteen of the ship-masters up to his house for dinner. He laid out the rules of his port: instructions as to where they were permitted to drop anchor, whom they were to see when they first came ashore, and the time (sunset) that they all needed to be back on their boats: the first in a series of laws to govern the terms of access to the port.

The governor was by no means alone in establishing the terms of entry to the marketplaces of the coast. Beginning in the 1650s, for example, the council in New Amsterdam set the schedule for the local markets, setting both a weekly market day and an annual market. Merchants who arrived from Boston found themselves wandering the aisles, peering over curious scales bearing Dutch words and metrics. In Boston, the Court of Assistants began setting its own rules for the marketplace: determining the days when the markets would be open (Thursday, then Tuesday and Saturday), and the times the market closed (6 PM in the summer, dusk in the winter), while setting precise rules

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92 “[…],” *Boston News-Letter*, Nov. 5-13, 1730 (“Whereas in & by an Act of the Great and General Court or Assembly of the Province of the Massachusetts Bay…”).
95 John Noble, ed., *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, (Boston: County of Suffolk, 1904), 2:40.
as to what types of payment could be accepted for which goods and on what terms (beaver could only be paid for in cash; corn, but not flour, required a license).  

By the mid-eighteenth century, the rules of the separate ports remained a far cry from any universal, fixed set of rules that would enable a ship-owner to know ahead of time the local rules and unwritten customs and particular hierarchies of influence.  

“The Currencies in the Colonies have fluctuated and varied so much,” a fed up merchant wrote in 1761, “that they have differed greatly both as to Time and Place, seldom being the same in two difference Provinces at a Time, and often changing Value in the Same place.” Different ports set different requirements for how much produce needed to be in one barrel; while a judge could refer to a certain measurement for tobacco in a court case in Annapolis, and a merchant from the same port could quote a different measurement to his friend in London. Further compounding the difficulties, each port continued to adopt its own terms of calculating the price of entrance. Although Parliament passed a law at the opening of the seventeenth century setting down the rules as to how to calculate the amount of money each ship owed based on its cargo, in practice, officers continued to follow the old customs of their ports.

This multiplicity of the rules in each of the ports presented a challenge for ship-owners whose success rested on the speed with which they could move a cargo through

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97 See James Bleecker to Moses Hart, New York, Apr. 18, 1774, James Bleecker Papers, NYHS. (“As Indigo is always a cash article with us, and as I sell it on Commission, I am obliged to advance the money immediately when sold, it would not be convenient for me to wait longer than a month for the remittance.”).


100 Henry Lloyd to Nicholas Jones and Co., Boston, May 30, 1765, Lloyd Papers, Baker Library (“58 per Bushell is the standard for wheat by a Law of this Province,…yours falls short in that proportion…”).


port and move on to the market. “Dispatch,” one ship-owner explained to his nephew starting out in the trade in 1766, was “the Life of Business.” ⁵⁰³ It would do no good to violate the rules of the port or the marketplace. As one leading merchant would later advise a captain en route down to the Indies and back to the James River, “Be careful not to violate any Commercial Laws, and before you determine where to sell, be particular in your Enquiries with respect to Port, and other charges which vary so much as to become and Important consideration in determining the Port of Delivery.” ⁵⁰⁴

The solution that emerged to the dilemma of multiple jurisdictions was an old one, borrowed from ancient practices of trade that long predated the corridor. ⁵⁰⁵ To ensure an efficient passage down the coast and then out towards the markets, the ship-owners of Massachusetts Bay delegated the tedious task of mastering the rules of the local jurisdictions to agents who lived in the ports all down the coast, hired on commission and assured a fair share of the profits. ⁵⁰⁶ In place of mastering the intricate laws or trying to standardize them, the correspondence system allowed the ship-owners of Massachusetts Bay to not only outsource the intricacies of law to someone else, but also govern their affairs according to broad principles of equity and fair dealing. ⁵⁰⁷

Admission to this network of correspondents rested on tightly controlled terms, a circuitry that initially consisted of kin and close acquaintances and gradually expanded to include men vetted by existing members. ⁵⁰⁸ A ship-owner in Boston, for example, might

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⁵⁰³ Henry Lloyd to Paschal Nelson Smith, Boston, May 3, 1766, Lloyd Papers, Baker Library (“I recommend dispatch, which is the Life of Business…”).
⁵⁰⁴ Nathaniel Tracy to Samuel Tucker, Newburyport, June 30, 1784, Tucker Papers, Houghton Library.
⁵⁰⁷ Gerrish and Barrel to Chancey and Townsend, London, June 14, 1738, John Barrel Papers, NYHS.
⁵⁰⁸ Hatfield, Atlantic Virginia, 89.
recommend his “Friend & Relation” to another trading house in London, with hopes that “you will find him an agreeable Correspondent, & I wish your Connections may be long and Happy.” Another merchant might recommend his nephew to a correspondent, citing a “long Experience of his Uprightness & great Abilities for Business, as what I can heartily Recommend him to your Friendship & Correspondence.”

Under the correspondence system, a ship-owner intent on carrying the produce to market could arrange an entire transaction down the American coast without so much as mentioning the law at all. As one leading architect of the new Republic later put it, “‘Merchants of eminence will tell you, that they can trust their correspondents without law; but they cannot trust the laws of the state in which their correspondents live.’” The very best of the correspondents handled any number of tasks. A good correspondent could be trusted to track the harvests and prices, ensure that incoming shipments complied with the provincial laws of inspection, keep an eye out for possible exemptions from provincial duties, secure insurance rates with a good premium, and

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109 John Hancock to Devonshire and Reeve, Jan. 18, 1766, Hancock Family Papers, Baker Library.
110 John Hancock to John Barnard, Boston, Jan. 4, 1763, Hancock Family Papers, Baker Library.
111 John Hancock to John Barnard, Boston, Jan. 1, 1763, Hancock Family Papers, Baker Library.
112 Elliot, Debates, 2:457.
113 See, e.g., James Bleecker to John Cross, New York, Jan. 20, 1773, James Bleecker Papers, NYHS; Henry Lloyd to Nicholas Brown and Co., Boston, Mar. 18, 1765; Henry Lloyd to Hugh Hall Wentworth, Boston, Mar. 11, 1765 (forwarding an extract of a letter he received from South Carolina concerning the price for rice), both in Lloyd Papers, Baker Library.
114 Henry Lloyd to Nicholas Brown and Co., Boston, Mar. 18, 1765, Lloyd Papers, Baker Library (referring to the “Universal Custom here” of port inspections of oil and corresponding charges).
115 James Bleecker to John Cross, New York, Oct. 21, 1772, Bleecker Papers, NYHS; Jackson and Bromfield to Sam Smith and Son, Newburyport, June 17, 1767, Lee Family Papers, Reel 18, MHS (“...[D]o inform us if there be any duty or Charge on importing Molasses to your Province, and whether a Certificate from the Custom House here, that the King’s duty has been paid, will not excuse it from that Duty with you—as it is reported here it will not.”).
116 James Bleecker to John de Neufville and Son, n.p., ca. 1779 (“The States allow 7 percent interest”), Bleecker Papers, NYHS; Jackson and Bromfield to Thomas Bromfield, Newburyport, Feb. 16, 1769, Lee Family Papers, Reel 18, MHS (“[T]he general custom here is to allow the same time...for payment of the Premiums as allowed in the Policy for payment of the Loss...if this is not a Custom with your Insurance Officers, still if they would give us Time to pay the Premium...it would be of advantage to us.”).
keep up to date on the going metric units for weighing tobacco. They could scout out possible ways of avoiding Parliament’s rules for loading rice in the Carolinas for Lisbon and keep abreast of the decisions of admiralty courts in London and Dublin.

Diligent correspondents could also collect debts from suppliers and, if need be, begin the work of preparing the paperwork for a formal suit. A trusted correspondent could also provide necessary documents for submitting an insurance claim when things went wrong. When, for example, a farmer on the Delaware River sold bad flour to a merchant in Philadelphia, and the dockhands who loaded it in Philadelphia forgot to secure the barrels below deck, the recipient merchant in Newburyport appealed to the merchant in Philadelphia to secure the necessary papers for the insurance underwriters. In exchange, the merchant in Newburyport agreed to gather up the certificates from the town bakers to attest to the quality of the flour. “I will procure ‘em for you,” he wrote down to Philadelphia, “and am likewise obliged for your Information concerning the freight.”

The rules that governed this emerging network of united trading houses of America did not appear in any statute book or formal document, though versions would

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118 See Thomas Smith to Isaac Smith, Charlestown SC, Jan. 31, 1763, Smith-Carter Papers, Reel 1, MHS.


120 See Henry Lloyd to John Johnson, Boston, Mar. 2, 1765 (“In order to make it Authentic proof in our Courts the Several Articles should be Compared with the original Entries in your Book & to be Certified either by the Mayor of the City under the Seal of Mayoralty, or if by a Justice of the Peace, it should be Certified by the Mayor under his Seal that he is a Justice…”); Henry Lloyd to William Lilley, Boston, Mar. 2, 1765; Henry Lloyd to William Lilley, Boston, Mar. 2, 1765 (writing to collect debts due to John Johnson); Henry Lloyd to Jacob Frank, Boston, Mar. 2, 1765 (discussing his attempt to recover debts against “one James Flying of New Hampshire, who broke Jail is absconded”); Henry Lloyd to Thomas Lynch, Boston, Mar. 9, 1765 (detailing prospects of recovery from one of Lynch’s debtors); Henry Lloyd to Robert Murray, Boston, Mar. 11, 1765 (“I shall apply to Dean as soon as he arrives & make no doubt he will answer your demands without a suit.”); Henry Lloyd to Charles White, Boston, Mar. 14, 1765, (updating White on efforts to secure debt; recommending a lawyer “if finally recourse must be had to the Law”); Henry Lloyd to Robert Murray, Boston, Jan. 20, 1766, all in Lloyd Papers, Baker Library.

121 Jonathan Jackson to Sam Smith, Boston, June 12, 1766, Lee Family Papers, Reel 18, MHS.
later appear in treatises of commercial law drafted long afterwards. The correspondents instead followed a system of principles, unwritten customs that by then had become so intuitive that it appeared to some to operate on its own accord. As one Boston merchant put it in 1738, “Trade is like a watch. The least wheel arises putt, the whole Machine in disorder…when things are regular, one thing helps and the wheels continually going Round and Every one of the Concern have their Just Propoxion and must Naturally Produce an Intire Sattisfaction.”

The motor force that propelled these wheels of the trade forward consisted of a set of basic principles: a promise that theirs was a partnership of equals, constructed for mutual advantage, each party left to his own discretion to realize the best interest of all. One could hear the principles in the opening refrains of the letter-books. When, for example, one trader in Newburyport launched a partnership with a commission house in Philadelphia, he began his letter by announcing his hopes of starting a “Correspondence for our mutual benefit.” On the eve of Revolution, his neighbor repeated the call to Philadelphia, expressing hopes for a trade that “would be agreeable on both sides.”

During the first throes of war, a merchant scribbled a note to his friend in Charleston, introducing a fellow merchant in Portsmouth with hopes of “the beginning of a Correspondence mutually profitable & agreeable.” And on the eve of peace that would

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122 Gerrish and Barrel to Chancey and Townsend, London, June 14, 1738, John Barrel Letter Book, NYHS.
123 Jonathan Jackson to Sam Smith, Newburyport, Oct. 12, 1765, Lee Family Papers, Reel 18, MHS.
124 Little and Greenleaf to Reynell and Coates, Newburyport, Nov. 13, 1773, Coates Papers, Box 1, NYHS.
125 Jackson, Tracy and Tracy to Henry Crouch, Newburyport, Feb. 5, 1777, Jackson Letter Book, Lee Family Papers, Reel 18, MHS (referring to their friend Mr. John Emery, of Exeter in N. Hampshire, “being about to send a Brig to your place for a Cargo of Rice”).
give rise to the Constitution, a letter from Baltimore proclaimed hopes of inaugurating “some mercantile transactions…that may operate to our reciprocal advantage.”

As a corollary to this principle of reciprocal advantage lay the premise that each party would be left to his own discretion to pursue the best interest of the whole. “Gent.,” one merchant in Newburyport wrote to his agents in Philadelphia, “I will leave it to your discretion & as you would act for yourselves, act for me.”127 This principle of discretion stemmed in part from the broad expanse of water that made it impossible to be more specific. As one commission agent put it, a correspondent “cannot at that distance give his orders with such precision as they could wish, they must leave a great deal to my Prudence.”128 A harvest might arrive later than expected,129 rats in the ship’s hull might chew up the ship-owners’ orders;130 or as soon would be the case, London might close its ports to all incoming American ships.131

This broad grant of discretionary authority appeared alongside the governing assumption of uniform interests along the coast. In the exchange of letters, merchants spoke of interests that were both easily discernible and replicable across broad swaths of time and space. “I have acted for him,” one observed, “as I would in the same situation wish him to so for me.”132 “You may Depend on it, we shall on all Occasions Act what we think will be most for your Interest,” one merchant wrote to his agent in London.133 “I think I may venture to say no man here can better serve your Interest than myself,” he

127 Jonathan Jackson to Smith and Son, Newburyport, Nov. 15, 1765, Lee Family Papers, Reel 18, MHS.
128 William Lux to William Moleson, Baltimore, Feb. 9, 1767, William Lux Papers, NYHS.
129 Ibid.
130 John de Neufville to Sears and Smith, July 5, 1782, de Neufville Papers, in Box Labeled May 1 1781 to March 20, 1783, NYHS.
131 John de Neufville to Jonathan Jackson, Newburyport, Feb. 10, 1782, de Neufville Papers, Box 3, NYHS.
132 William Lux to William Moleson, Baltimore, Feb. 9, 1767, Lux Papers, NYHS.
133 John Hancock to Mathew Woodford, Boston, Aug. 4, 1763, Hancock Family Papers, MHS.
added.134 “I must intreat of you to interest yourself in this affair,” wrote one Boston merchant trying to collect a debt owed in Philadelphia, “& endeavor to get justice done me, that I may not be obliged to pursue the disagreeable tedious & uncertain steps of the Law to obtain my just rights.”135 When a Boston ship-owner dispatched his vessel laden with coal to London, for example, he could take comfort in knowing that even though his was the last vessel to arrive, there was someone on the ground to see that the voyage would come off successfully. “We shall…do every thing in our power,” the letter read, “to serve your interest.”136

In cases of inevitable disputes over commercial arrangements, merchants did what they could to steer clear of the formal court system, preferring instead to resolve difficulties between themselves, or when necessary, resort to institutions of their own. Given the high costs of finding a correspondent and the long-term nature of the partnerships,137 merchants were often loath to institute official proceedings over a single missed payment, trading rigid adherence to the terms of agreement for a more flexible partnership based on forbearance.138

“The merchant who has a good Customer who he knows will pay all Accts. well does not stop shipping Goods although a remittance may not be made so soon as he wishes,” one merchant recited.139 When, for example, the Newburyport ship-owner

134 John Hancock to Devonshire and Reeve, Boston, Jan. 18, 1766, Hancock Family Papers, MHS.
135 Henry Lloyd to Godfrey Malbone, Boston, Oct. 19, 1765, Lloyd Papers, Baker Library.
136 John Hancock to Bryson Birbeck, Boston, July 1, 1763, Hancock Family Papers, MHS.
137 William Lux to James Russell, Baltimore, July 20, 1765, Lux Papers, NYHS (“It is now 8 years since we began a Correspondence, which has subsisted during that period with mutual Confidence and I cannot tax my self with giving you any cause to suspect either my Attachment or Circumstances.”)
138 See Joshua Moffatt to Reynell and Coates, Portsmouth, June 1, 1772, Coates Papers, Box 1, NYHS.
139 Samuel Ward to Henry Ward, Philadelphia, Sept. 21, 1775, in Letters of Delegates to Congress, 1774-1789, ed. Paul Hubert Smith (Washington, DC: Library of Congress, 1976), 1:42 (using the principle to explain his continuance of the communication); see also Samuel Souther to Reynell and Coates, Newburyport, Oct. 28, 1771, Coates Papers, Box 1, NYHS.
Samuel Souther discovered that his correspondent in Baltimore had only sent ten barrels of flour, it was not cause to call off the relationship. “I am sorry my Order was not complyd with,” he wrote. “Notwithstanding I have shipt you ninety sides of sole Leather.” Another merchant, Jonathan Jackson, had let a correspondent’s debt lie for a year, but then warned that “our business will not allow ua to let any of it lay much longer—we should be glad to deal with you so as to answer both our purposes.”

Letters glistened with promises of future business if all went well, and threats of cancelled orders and ruined reputations if it did not. “I’m induced to make you this consignment,” wrote a young merchant in Boston to a potential agent in Charleston, South Carolina in the spring of 1735, “which if I’ve suitable incouragement, may serve but as a prelude to a following course of Trade.” While the promise of more business could keep men honest, so too could the threat of cancelled orders. “You have given us no Encouragement to consign you further orders into the same way,” a merchant warned his correspondent in London. Others explicitly invoked a threat to one’s reputation. When a ship arrived from Baltimore without the expected payment for goods, the same merchant appealed not to the courts of Maryland, but to the threat of cancelled orders. “If you mean to delay a Remittance to us…we shall set your Conduct as very ungenerous towards us….we hope you will be able to take off all Suspicions of dishonorable Conduct,” he warned.

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140 Samuel Souther to Reynell and Coates, Newburyport, Oct. 28, 1771, Coates Papers, Box 1, NYHS.
141 Jackson and Bromfield to Samuel Brooks, Newburyport, Nov. 17, 1769, Lee Family Papers, Reel 18, MHS.
143 Jackson and Bromfield to Peter Contencin, Newburyport, June 27, 1768, Lee Family Papers, Reel 18, MHS.
144 Jonathan Jackson to Josiah Bacon, Newburyport, Nov. 2, 1773, Lee Family Papers, Reel 18, MHS.
Against such charges, traders who shared a common understanding of the inevitable risks of the trade and unforeseen disasters appealed to the ship-owners’ sense of justice and a shared history. “I met with a very great loss this winter,” one merchant wrote to a friend to whom he owed a debt, detailing the woeful story of how he had bought a brig, only to learn the title had never transferred. “She was taken & Condemned in that vile arbitrary Court of Admiralty,” he wrote, appealing perhaps to a shared dislike of the king’s admiralty courts. “I shall endeavor to pay you as soon as possible,” he promised.145 Others invoked the length of their relationship. “It is now 8 years since we began a Correspondence,” wrote one merchant from Baltimore to his partner in Boston, “which has subsisted during that period with mutual Confidence & I cannot tax my self with giving you any cause to suspect either my Attachment or Circumstances.”146

When disputes along the coast could not be ignored for the interest of enduring union, men of the trading houses turned not to the formal courts, but institutions of their own creation. “In a Court Merchant you would be adjuged liable to pay,” one Newburyport merchant wrote to his correspondent in London.147 Determined to insulate their disputes from the cumbersome processes of the provincial courts, they began to forge special juries of merchants148 and arbitration panels,149 where they might submit

145 Joshua Moffatt to Reynell and Coates, Portsmouth, June 1, 1772, Coates Papers, Box 1, NYHS.
146 William Lux to James Russell, Baltimore, July 20, 1765, Lux Papers, NYHS
147 Jackson and Bromfield to Peter Contencin, Newburyport, June 27, 1768, Lee Family Papers, Reel 18, MHS; see also Jonathan Jackson to Josiah Bacon, Newburyport, Nov. 2, 1773, Lee Family Papers, Reel 18, MHS (“If you mean to delay a Remittance to us…we shall set do your Conduct as very ungenerous towards us…we hope you will be able to take off all Suspicions of dishonorable Conduct.”).
148 See Morton Horowitz, The Transformation of the American Law: 1780-1860 (Cambridge, MA: Harvard University Press, 1977), 145-57 (“[U]se of extrajudicial means of settlement through arbitration and reference was very widespread among commercial interests during the colonial period but remained essentially unregulated by courts.”); see also Henry Lloyd to Peter R. Livingston, Boston, Sept. 26, 1765, Baker Library.
disputes amongst themselves to the “decision of Merchants of Character.”¹⁵⁰ As early as 1701, for example, the merchants of Philadelphia secured a provincial law that guaranteed that all traders could bring their disputes to a jury comprised of “twelve merchants, masters of vessels or ship carpenters,”¹⁵¹ a law that soon appeared on notice as far to the southward as Savannah.¹⁵²

Arbitrations could be conducted quickly and swiftly, behind closed doors in the merchant’s coffeehouse. In Boston, for example, an arbitration among merchants could be held in the evenings after dinners, no mention of it in the papers to insult anyone’s reputation, no records save for those kept by the clerk.¹⁵³ “In the eve’ng was at an Arbitration between Mr Arnold Wells & young Mr Austin of Charleston,” one merchant wrote in his diary. “The Arbitrators were Mr Nicho Boylston, Mr Thomas Gray, and myself.”¹⁵⁴ The judgments that emerged from the coffeehouses of arbitration took on a binding quality not because of the fear of the violence of any organized state, but of a fear of being shut out from the circuitry of trade. “I propose to submit the Affair to the Arbitration of those three Gentlemen,” a merchant in Boston wrote, “for I have the highest Esteem of their Integrity & Judgment and shall never open my mouth if after a fair hearing before them they should think I have not an equitable right.”¹⁵⁵

¹⁵³ John Rowe, diary entries of Nov. 22 and Nov. 23. 1766, in The Letters and Diary of John Rowe, A Boston Merchant, 1759-1762; 1764-1779, ed. Anne Rowe Cunningham (Cambridge, MA: John Wilson and Son, 1895), 69.
¹⁵⁴ Ibid.
¹⁵⁵ Gerrish and Barrel to G. Coeburn, July 26, 1759, John Barrel Letter Book, NYHS.
In the last resort, merchants who brought their case to the provincial courts appealed to the “Custom and Usage of Merchants” as the rule of decision. In the leather-bound pleading books, aspiring lawyers recited the incidents in which a dispute might arise. A ship-owner in a town of Massachusetts, for example, who “was used and accustomed to carry Goods… for a reasonable Hire, from Port to Port,” loaded his vessel in the middle of December at Patuxent River with wheat, “bound for Boston in New England,” and yet, never delivered the shipment. “By means,” the lawyer wrote, “the said William by Law and by the Custom and Usages of Merchants, became obliged to pay the Plaintiff his Damages occasioned thereby.”

A simple phrase—“the Custom and Usages of Merchants”—but one that carried with it the weight of the past and the familiarity of the present: a phrase that could thread a needle through the labyrinth of multiple jurisdictions and the intense localism of the American coast. Theirs was a world of America fashioned not from the formal categories of the colonies, but from the daily rituals of commerce along the coast, recorded in the shipping charts, sailing orders, and leather-bound correspondence books of the trade. In time, the corridor would in time recede from scholarly view, leaving only thirteen fragmented colonies, out of which men would begin the work of fashioning a revolution.

UNITED SENTIMENTS OF AMERICA

When the delegates first assembled in Philadelphia in the autumn of 1774 for the first of what would in time become the Congress of the United States, they named themselves after the Continent.¹ Fifty-six gentlemen, hailing from towns that ran alongside the Atlantic seaboard stretching from the Massachusetts Bay to the Carolinas, and who now filed into a rented hall up from the city’s wharves. Merchants and planters, lawyers and radicals: men with very different views, but who shared a conception of the continent’s geographic corridors of commerce. They had assembled that September to decide on an appropriate response to the latest of Parliament’s legislative encroachments: the closing of the port of Boston, the self-proclaimed metropolis of America. By October, the delegates had agreed to cancel all incoming orders from London in a document that marked one of the first formal dissolutions of the commercial bonds of union with the British Empire.²

In the generations that have passed since the delegates signed their names to the so-called Continental Association, the source of their language and the terms of their partnership have remained on the margins of studies, overshadowed in part by the more formal Declaration of Independence and Articles of Confederation that emerged years later.³ Those who have offered explanations for this founding language of the continent

² Ibid., 1:280.
have emphasized different lineages.\(^4\) While some scholars have framed the language of continental America as a novel, if hopeful, aspiration precipitated by a common enemy in Britain,\(^5\) more recent work has attributed the language to an emerging science of geography and intellectual trends that predated the revolution,\(^6\) one carried forth by the rise of a circulating print literature.\(^7\)

This chapter contributes to this scholarship by analyzing the terms of the Continental Association against the decade of mobilization efforts that preceded it. Drawing on the records of merchant societies and town committees, as well as the correspondence of leading radicals in Boston, it argues that the language of an America of united sentiments that appeared in 1774 traced its roots not only to an emerging print culture, but also to the determined attempts to mobilize the networks and vocabulary of commercial partnership, at a time of inchoate political institutions along the American coast. As scholars have reminded us, the earliest opponents of Parliament’s trade legislation in the 1760s turned not only to the familiar hierarchies of imperial governance, but also to the mobilization of pre-existing horizontal trading networks.\(^8\)


\(^8\) On the politicization of existing trading connections, see, e.g., Jon Butler, *Becoming America: The Revolution Before 1776* (Cambridge, MA: Harvard University Press, 2001), 234-35; Thomas M.
In doing so, these merchants drew upon the now forgotten vocabulary and logic of a partnership of an America defined by a partnership of equals, bound by mutual advantage and each left to its own discretionary authority to pursue the best interest of the whole. By the early 1780s, at a time when the formal colonial assemblies could be dissolved at the whim of the royal governors, leading Whig radicals of Boston who sought to halt the usurpation of local authority by Parliament in turn built upon these established networks, using the same continental vocabulary and logic of a partnership in their private letters to influential gentlemen of the trade in strategic seaports. In doing so, these revolutionaries etched into the record a continent defined not only by formal imperial hierarchies of empire stretching from periphery back to the center in London, but also by the promise of the united sentiments of America. For at a time when it was possible to speak of merchants and towns and colonies as interchangeable, the indeterminate political entities along the American coast, often today remembered as

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rungs of an imperial hierarchy, blurred in practice—leaving unanswered the basic question as to what, in the end, constituted the novel entity of a united state.

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Two years and three hundred miles to the northward from the hall where the delegates filed into the Continental Congress of 1774, Samuel Adams—the man whose handwriting many of the delegates would have recognized from his letters—made his way into Faneuil Hall, where a crowd had gathered for what would appear in the newspapers as the formation of the Boston Town Committee of Correspondence.\(^\text{10}\) In the work of developing the committee of correspondence in an attempt to coordinate a viable opposition to Parliament, Adams and his fellow Whigs would draw not simply upon the familiar mechanisms of protest within the nestled hierarchies of empire, but also upon the institutional networks, vocabulary, and logic of the commercial corridor.\(^\text{11}\)

The events that had brought the men to assemble in Faneuil Hall would be remembered long afterwards. Earlier that autumn, word had arrived from London of the latest attempts by Parliament to reign in the colonial authorities: this time, an attempt to place the judges of the province on the direct payroll of the Parliament.\(^\text{12}\) For Adams and his colleagues, this shift in the royal salaries signaled simply one more piece of evidence of what they declared to be a determined effort on the part of Parliament to usurp the longstanding patterns of local governance. As Adams later explained it: “To what a State of infamy, shall we be reduc’d if our judges shall be prevail’d upon to be thus degraded

\(^{10}\) See Warner, *Protocols of Liberty*, 1-20; see also “Valerius Poplicola, *Boston Gazette*, Oct. 5 1772.

\(^{11}\) Ibid.

to *Hirelings*, and the *Body of the People* shall suffer their free constitution to be overturn’d and ruin’d.”\(^\text{13}\)

For at least half a century, visitors to Boston who returned to London brought with them stories of a town whose elites seemed to operate in a sphere of remarkable autonomy. “To speak truth,” one such visitor reported in 1725, “the cords that hold [the colonists of Massachusetts Bay] are so very slender.”\(^\text{14}\) As a report submitted to the Board of Trade in 1732 confirmed, the Massachusetts Bay was not “immediately under the Government of the Crown,”\(^\text{15}\) in a land where “the whole Power of the Crown is delegated to the People.”\(^\text{16}\) As Thomas Hutchinson reported to the governor of the Province of Massachusetts in a glib account of the “model of government among us,” by 1765,\(^\text{17}\) all decisions regarding commerce—such as the opening of the custom-houses and all matters of trade—rested not with the governor whom the Crown appointed, but with a society of merchants who assembled by the wharves.\(^\text{18}\) In Hutchinson’s telling, the Crown’s formal institutions of imperial rule functioned largely as a rubber stamp for the decisions of Boston’s leading gentlemen.\(^\text{19}\)

If the constitutional dilemma was easy enough for Adams and his colleagues to diagnose, the path forward was far less obvious. The most obvious solution, or at least,
that which would be remembered, lay in petitioning the Crown for redress. As one observer in London explained, “heretofore, whenever the Colonies thought themselves aggrieved by British Government, they applied for Redress by humble Petition, and it was usual to receive and consider their Petitions, and give them a reasonable answer.”

Indeed, for at least a decade, many of the men in the room had been involved in the work of drafting formal petitions to the Crown and appealing to their correspondents in London to lobby for their interests in Parliament.

Within a month of the meeting in Faneuil Hall, however, it became clear that the ordinary means of working through the petition process would be insufficient. Not long after submitting a request to Governor Hutchinson to convene the Colonial Assembly, Adams received a terse rejection from the executive. “The Royal Charter,” Hutchinson reminded the petitioners in explaining his refusal to convene the assembly, “reserves to the Governor full Power and Authority, from time to time, as he shall judge necessary, to adjoin, prorogue, and dissolve the General Assembly.” And as Hutchinson was equally quick to point out, there simply did not appear any grounds for an assembly to meet. “It did not appear to me necessary for those Purposes that the Assembly should meet,” the governor declared.

Unable to work through the institutional apparatus of the colonial assembly, Adams and his colleagues instead borrowed an idea that had long since been put to use among the leading merchants of the seaports. For well over a decade, men whose ships

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22 See Boston Town Committee, The Votes and Proceedings of the Freeholders and other Inhabitants of the Town of Boston, in Town Meeting Assembled (Boston: Edes and Gill, 1772), 42.
23 Ibid.
carried the produce of the plantation to the markets of the world had begun to forge what one observer in Boston that autumn of 1772 called a “Commercial Confederacy:” a partnership predicated not on the formal colonial assemblies in an imperial hierarchy, but on the established networks of trade that connected the ports and trading houses of America.24 Beginning in 1763, leading merchants in Boston organized a series of correspondence campaigns designed to coordinate a response to Parliament’s trade policies, including nonimportation agreements in response to the Stamp Act of 1765, and the series of duties instituted under the Townshend Acts of 1767. Although the successes and failures of these campaigns would later be recorded, the spoken language and logic would remain on the margins: a language that drew not on the hierarchies of empire, but from the correspondence books of the old American coast.25

Perhaps most noticeably, from the outset of the campaign, men who followed the seas spoke not in the formal vernacular of imperial hierarchies, but in the spoken geography of the corridor: a place defined by ports and trading houses. In an editorial that appeared in November of 1763, for example, a contributor to the Boston Evening-Post suggested that the gentlemen of the trade form a committee of correspondence to coordinate a more effective response to Parliament’s trade policies.26 “Is it not expedient that the merchants of this metropolis have a general meeting and choose a committee?”

25 For earlier studies of the nonimportation agreements see, e.g., Andrew Charles McLean, The Boston Merchants and the Non-Importation Movement (Cambridge, MA: J. Wilson, 1917), 166; Schlesinger, The Colonial Merchants, 59-75; Brown, Revolutionary Politics, 58; Warner, “The Invention of a Public Machine for Revolutionary Sentiment,” 150-52; Warner, Protocols of Liberty: Communication, Innovation, and the American Revolution (2013); Collins, “Committees of Correspondence,” 245-71. This chapter builds on this literature by analyzing the origins and impact of the continental language and internal workings of the “Commercial Confederacy,” and showcasing how the logic of partnership of the trade provided a foundation for the federal structure of the Continental Association at a time of tremendous indeterminacy of political institutions.
26 “To the Publishers of the Boston Evening-Post,” Boston Evening-Post, Nov. 28, 1763.
The editorial proposed, beginning with the organization units that had long since percolated to the surface of the American coast, with nary a mention of the colonial assembly.27 “That this committee write to some of the principle merchants in every maritime town in the province, advising to like measure?” The editorial continued. “And that this grand committee,” the editorial concluded, “open a correspondence with the principal merchants in all other sister colonies, endeavoring to promote a union, and coalition of all their councils?”28

This vision of a union among the principal merchants and councils of the coast came to life in the letters that the merchants of Boston began to draft in the opening years of dissent, as they embarked on the plan of organizing and broadcasting a correspondence with the principal merchants of America.29 From the outset of their campaign against the Stamp Act of 1765, for example, participating merchants in Boston were quick to seize upon the language of the continent as they boasted of their mobilizing efforts to their agents in London. Not unlike earlier requests for the demand in Europe for the “Produce of the Continent,” merchants who organized a nonimportation agreement to protest the additional duties owed in their shipping papers spoke of the “united Resolution of the Continent,”30 proclaiming that, when it came to buying stamped paper, “almost to a man throughout the Continent they are determined to oppose it.”31

These references to the continent appeared with an ease that suggested the force of habit among men whose ships carried the produce along the coast. “Till there be a repal of the Stamp Act,” wrote one Boston merchant to his correspondent in London, “or

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27 Ibid.
28 Ibid.
30 John Hancock to Barnard and Harrison (Boston: Jan. 25, 1766), Hancock Family Papers, MHS.
31 Ibid.
‘till the Affairs of America be more settled…we can’t give your House the least encouragement.”  

The language remained readily available when, the following year, Parliament finally conceded to repeal the stamp requirement and merchants in Trenton spoke of “universal joy thro’out the continent.” Within this continental geography, meanwhile, the relevant centers of decision-making remained not the colonial assemblies, but the seaports, as merchants spoke of “the trading towns in the province & other provinces.” Indeed, by the time Samuel Adams looked for a solution, one editor could conceive of the continent as simply a massive set of resources on the merchant’s scale: a country now “fully sensible of its Weight in the Scale of British Commerce.”

Beneath these rhetorical appeals to the continent, the actual machinery of drafting and enforcing the nonimportation agreements reflected the same principles of partnership that had long defined the corridor of commerce: principles that rested on the promise of mutual advantage, discretionary authority, and internal policing. When, for example, the merchants of Boston convened first in December of 1765 and later in 1768 to sign their names to a nonimportation agreement, they framed the act as one precipitated by a shared injury. In the 1765 agreement, for example, the merchants began by introducing themselves as merchants and traders “in the Province of the Massachusetts-Bay,” but quickly generalized up from the province into the category of the trade, emphasizing the “many Difficulties and Distresses we now labour under as a Trading People.”

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32 Henry Lloyd to Charles O’Neill (Boston: Nov. 23, 1765), Henry Lloyd Papers, NYHS.
33 “To Barlow Trecothick, Esq. and the Committee of Merchants trading to North America,” Boston Evening Post, Oct. 6, 1766.
34 Ibid.
35 See, e.g., The Whig Proselyte, Letter to the Editor, Boston Gazette, Oct. 5, 1772.
36 [“Boston, Dec. 12, At a Meeting of the Merchants…”], Massachusetts Gazette, Dec. 12, 1765.
In addition to emphasizing the mutual relief to be obtained from coordinated activity among the “Trading People,” the nonimportation agreements also borrowed from the customary principle of discretionary authority, leaving the details of dissolving their commercial connections to each individual trading house. “We will in our Separate Capacities inform our several Correspondents of the Reasons & point out to them the necessity of withholding our usual Orders,” the 1768 agreement read, inscribing into print the concept of an America of multiple domains, each left to its own discretion to dissolve relations with their correspondents across the Atlantic.\(^\text{37}\) At the same time, meanwhile, the agreements also contemplated an obligation on the part to recognize other agreements. In lieu of an attempt to create a uniform law of opposition down the coast, merchants who had long relied on the judgment of their agents agreed that any agreement “tending to the same Salutary Purpose,” would also be recognized as binding.\(^\text{38}\)

Enforcement of such agreements, meanwhile, rested on the same principles of the trade: beginning with an expectation of honor and personal reputation. Compliance with the agreements, the merchants in Boston declared in December of 1765, would rest on each man’s “Word of Honor.”\(^\text{39}\) Within this code of honor, and just as in the conventional expectation of fair dealing, members who were initially found to be in violation could receive a second chance. When, for example, members of the Boston merchant society handed down their verdict expelling a violator from the circuitry of trade in September of

\(^{37}\) John Rowe, *The Letters and Diary of John Rowe, A Boston Merchant, 1759-1762; 1764-1779*, ed. by Anne Rowe Cunningham (Boston: W.B. Clarke, 1903).

\(^{38}\) Ibid. For a similar emphasis that left the decision of canceling orders with the merchants, see, e.g., [“On Tuesday last…”], *Boston Evening-Post*, Dec. 9, 1765.

\(^{39}\) [“Boston, Dec. 12, At a Meeting of the Merchants…”], *Massachusetts Gazette*, Dec. 12, 1765.
1769, they took care to remind their audience that they had first reminded the offenders “of the Utility and Necessity of so salutary Measure.”\textsuperscript{40}

In keeping with the conventions of the corridor, penalties for non-compliance rested not with the formal courts of law, but in banishment from the intimate circuitry of the trade. “We hear the inhabitants of the town,” one paper reported, “are determined to cease all correspondence and dealings with them.”\textsuperscript{41} The same threats appeared in the town of Sudbury, where the merchants voted to withdraw “all commercial connection from them and their abettors,” who counteracted “the patriotick scheme of the body of Merchants in Boston and throughout North America.”\textsuperscript{42} The same logic appeared in New York, as merchants in November of 1769 exchanged a set of promises to exclude dwellers of Rhode-Island from the trade until they agreed to participate. “[A]s we value our reputations as honest Men and good Citizens,” one pledge announced, they would have no connection or intercourse with, directly or indirectly…any Person or Persons dwelling in the said Colony of Rhode-Island.”\textsuperscript{43}

Perhaps most strikingly, however, as mounting reports of violations of the nonimportation agreements began to appear, men determined to keep up the pressure began to invoke a single refrain: the “united Sentiments of America.” In the Boston papers in August of 1769, for example, the names of merchants whose ships were found to contain British goods appeared on a list of those who have “counteracted the united Sentiments of the Body of Merchants throughout NORTH-AMERICA.”\textsuperscript{44} Merchants who had been accused of violating the agreement used the same phrase in reply, seeking to

\begin{footnotes}
\item[^{40}]“Boston, July 26,” \textit{Georgia Gazette}, Sept. 20, 1769.
\item[^{41}]\textit{Id.}
\item[^{42}][“At a Meeting of the Inhabitants…”], \textit{Boston Evening-Post}, Mar. 9, 1770.
\item[^{43}][“New York, November 10.”], \textit{Boston Evening-Post}, Nov. 27, 1769.
\item[^{44}][“A List of the Names of those…,”] \textit{Boston Evening-Post}, Aug. 28, 1769.
\end{footnotes}
clear their names of having “imported Goods contrary to the….united Sentiments of the Merchants.”45 By 1770, the language had sounded as far to the southward as the Carolinas, where correspondents in Charleston a spoke of “the united Sentiments of ALL the friends of America,” a refrain echoed that same month in Boston, where merchants spoke of “the united Sentiments of the Merchants, Freeholders, and Inhabitants in every Colony.”46

This choice of words—the “united Sentiments of America”—would have resonated with the gentlemen of the trade who kept up to date on the enlightened treatises arriving from Europe. In the early 1760s, a work penned by a professor in Scotland named Adam Smith introduced readers to the possibility of a society that could be bound together not by laws, but by sentiments. In a treatise that arrived from Scotland at nearly precisely the same time as news of Parliament’s more aggressive revenue extraction, Smith outlined the possibility of a society held together not simply by laws, but sentiments—sentiments that could exist outside the positive dictates of states.48

As a historian who later discovered this hopeful world of commerce explained, “sentiments are the objective of economic striving, and they are also the adjunct of economic exchange,” a means of union that lay not on coercion and law, but on its lived practices in the daily realities of life: “the law as it is written and the law as it is enforced; the principles of those who govern and the way in which they are modified by the spirit of those who are governed.”50 As one contemporary reviewer assured prospective readers

45 [“Mr. Draper, Please…”], Boston News-Letter, Aug. 31, 1769.
46 Boston, February 5, 1770, Boston Evening-Post, Feb. 5, 1770.
49 Rothschild, Economic Sentiments, 9.
50 Ibid., 11.
of Smith’s treaties, the book would carry its readers “thro’ many entertaining Scenes of Common Life…the best Composition of the kind that every appeared.”

Applying the philosopher’s theory to the disparate string of towns along the coast, those who spoke of the united sentiments of the body of merchants of North America, may well have envisioned a future of a partnership rooted in the harmonious alignment of sentiments. As Smith had instructed his readers, the success of any flourishing society lay not only in the laws that bound people together, but on their willingness to supply mutual assistance to mutual injuries. “Where the necessary assistance is reciprocally afforded from love, from gratitude, from friendship and esteem, the society flourishes and is happy,” Smith assured his readers. Indeed, Smith continued, even if the assistance was offered not through mutual and love, society “will not necessarily be dissolved” and could still exist, as “among different merchants, from a sense of its utility.”

Propelled by this theoretical analysis of sentiments, and brought to life in the broadsheets and newspapers of Boston, the well-established networks, vocabulary, and logic internal to the “commercial confederacy” would thus have supplied a useful starting point for Samuel Adams and his colleagues, as they gathered in Fanueil Hall that November of 1772 to chart the next steps in halting Parliament’s seemingly determined efforts to usurp local power. Looking around the room of assembled men in Faneuil Hall that winter, most if not all, had some connection to the workings of the trade.

Although not a merchant himself, for example, Samuel Adams began his career as an apprentice in the trading house of Thomas Cushing, where he had learned the “art of correspondence,” in letters drafted at least as far south as the Chesapeake Bay, and was a

52 Smith, Theory of Moral Sentiments, 146-47,
regular presence in the merchant’s coffee houses.\textsuperscript{53} Benjamin Church, meanwhile, who took up the job of drafting the first letter, kept a shop where he sold imported cloths, silks, velvets, and calicoes.\textsuperscript{54} James Otis, meanwhile, counted himself one of the earliest members of the “Society for encouraging Trade and Commerce.”\textsuperscript{55} During the first controversies with Parliament, several of Boston’s leading merchants had retained Otis to represent their interests in challenging the constitutionality of the writs of assistance in 1761, marking the beginnings of a close friendship that prompted one later observer to remark that Otis “soon became incorporated with [the merchants].”\textsuperscript{56} William Dennie, meanwhile, who kept his ships down at the ports,\textsuperscript{57} had also served on the merchant societies, along with William Mollineux, now a fellow member of the town committee.\textsuperscript{58}

Well-versed in the customary norms of the trade, these founders of the Boston Town Committee of Correspondence thus had on hand a convenient template. In the letters dispatched along the coast, they drew upon the by-now familiar spoken geography of an America, citing its promises of a partnership of equals, bound by united sentiments. The first step in ensuring a successful partnership, as Adams no doubt well knew, lay in securing a correspondent. As such, Adams took care to send the formal letters drafted by the Town Committee of Correspondence under cover to his personal network of well-known gentleman of the trade: men of influence, to whom he appealed to help in organizing a town meeting, preparing the logistics of protest. “Pray use your influence

\textsuperscript{53} See, e.g., “To Be Sold at Mr. Cushing’s Warehouse,” \textit{Boston Evening-Post}, Nov. 12, 1744.
\textsuperscript{54} See, e.g., “To be Sold, By Benjamin Church,” \textit{Boston Gazette}, Sept. 28, 1772.
\textsuperscript{55} McClean, \textit{Boston Merchants}, 162.
\textsuperscript{56} See Schlesinger, \textit{Colonial Merchants}, 54 (quoting Peter Oliver’s remark that Otis “engrafted his self into the Body of Smugglers, and they embraced him so close, as a Lawyer, and an usefull Pleader for them, that he soon became incorporated with them.”).
\textsuperscript{57} See, e.g., “[Choice Bohea Tea...],” \textit{Boston Evening-Post}, Nov. 22, 1762 (ad for goods for sale at William Dennie’s store).
\textsuperscript{58} See, e.g., “[Boston, July 27...],” \textit{Virginia Gazette}, Aug. 24, 1769.
with Salem and other towns,” Adams wrote to Elbridge Gerry, one of the leading merchants of Marblehead.

In composing these letters to the Bay’s gentlemen of the trade, Adams drew not on formal instructions from a center to periphery, but rather, on the same principles that readers like Gerry would have recognized: a partnership bound by the promise of united sentiments, mutual advantage, and discretionary judgment. When he first introduced the plan to the merchant Gerry in November of 1772, for example, Adams took care to frame the plan as one that mapped directly on to that which coincided with the merchant’s own vision of how the mobilization ought to work. “…I think you will perceive a coincidence with your own judgment,” Adams wrote, before going on to quote Gerry’s earlier advice, as Adams endeavored to “return your own language.”

Rather than framing the proposed plan as a means of bundling up power to a central authority, Adams outlined a partnership that would rest on the principles of united sentiments. “When once it appears beyond contradiction, that we are united in sentiments, there will be a confidence in each other, and a plan of opposition will be easily formed, and executed with spirit,” Adams assured Gerry, framing the plan as one for a “union of sentiments.” Gerry, in turn, would no doubt have recognized the same logic from the letters that arrived from the trading houses. “We shall be ambitious to cultivate a Mutually Advantageous Correspondence,” a firm in Amsterdam wrote to a trading house in Boston years later, “that can only be insured by Establishing a Well Deserved Confidence, which it will be our Particular Study to Merit.”

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59 Samuel Adams to Elbridge Gerry, Boston, Nov. 5, 1772, Reel 4, Samuel Adams Papers, MHS.
60 Ibid.
61 John de Neufville to Stephen Hooper, Amsterdam: May 25, 1781, John de Neufville Papers, Box Labeled May 1, 1781 to March 20, 1783, New York Historical Society (hereafter cited as NYHS).
Theirs would be a correspondence of towns that would rest not on hierarchies between the people and their elected representatives, but on the promise of mutuality, and best efforts. “This Correspondence…may be of vast service to our mutual design,” Adams wrote when he began to draft his first letter to the gentlemen of Winchendom, using almost verbatim the same phraseology he would have used to launch a correspondence among the trading houses.\textsuperscript{62} The logic of mutuality was not always so explicit, but could be imbedded into the logic of the exchange of letters itself. “I will acquaint you with the proceedings of the town as they pass,” Adams wrote Gerry before laying out what he expected in exchange. “In the meantime, I wish your town would think it proper to have a meeting.”\textsuperscript{63} From Plymouth, one of the leading merchants James Warren wrote to promise his best efforts in assembling a town meeting. “One thing you may be assured of,” he wrote, “no assiduity in me shall be wanting.”\textsuperscript{64}

Just as in the case of the nonimportation agreements, the means of realizing the promises of these organizing efforts rested on trust: a respect not only for the integrity of a man’s word to do what he said, but his judgment in making the right decisions. As one fellow trader might recommend a friend’s son to another, so too now did a member of the town committee offer endorsements of a gentlemen whose “principles do him honor, and whose acquaintance will give you much pleasure.”\textsuperscript{65} Merchants, acting now in their roles as advisors to the correspondence network, were quick to apologize for questioning each other’s judgment. “Nothing could induce me to risk my private opinion on the measures of Boston by the great affection & respect I entertain towards it,” Gerry wrote

\textsuperscript{62} Boston Committee of Correspondence to Winchendom Committee of Correspondence, Boston, Apr. 6, 1774), in Minutes of the Committee of Correspondence, 10:791, NYPL (hereafter cited as MCC).
\textsuperscript{63} Samuel Adams to Elbridge Gerry, Boston, Oct. 28, 1772, Samuel Adams Papers, Reel 4, NYPL.
\textsuperscript{64} James Warren to Samuel Adams, Plymouth, Nov. 8, 1772, Samuel Adams Papers, Reel 4, NYPL.
\textsuperscript{65} Robert Henry Lee to Samuel Adams, Williamsburg, May 8, 1774, Samuel Adams Papers, Reel 4, NYPL.
apologetically in the early days of the movement. “I have reconsidered what I…wrote you touching the policy of a Congress,” came word from Adams’s correspondent in London in June of 1773, “and I am happy in retracting my opinion, upon a full conviction that you are wiser and better able to judge what is proper in this business than I can be.”

By relying on the judgment of their correspondents in establishing the fabric of union, men involved in forging the first mobilization of America thus spoke of the towns not as part of a bundling up of political power, but as places defined by the integrity and honor of the gentlemen of the trade. “The Town of Roxbury have appointed a Committee,” Adams wrote to a friend, before shifting from the unit of the town to the reputation of the gentlemen of influence. “Capt. Heath bids me expect that matters will go right on the adjournment,” Adams observed. “[O]n his zeal and integrity as well as good sense you know we may rely.” The same pattern appeared as Adams defined towns according to the reputation of the leading gentlemen of the trade. “I expect every moment to hear from Marblehead,” Adams began. “Col. Orne and Mr. Gerry are of the Committee,” he wrote, “two gentlemen whose good sense and integrity as well as firmness, I think may be much relied upon.”

As Adams’s letters suggested, the ease with which this spoken geography and logic of partnership could move among the various assemblage of organizational entities along the American coast stemmed, in part, from the porous nature of the institutions. Despite the seeming formality between town committees and merchant societies and even colonial assemblies, in practice, overlaps in membership and jurisdictional roles meant

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66 Elbridge Gerry to Samuel Adams, Marblehead, Nov. 18, 1772, Samuel Adams Papers, Reel 4, NYPL.
67 Arthur Lee to Samuel Adams, Temple, June 23, 1772, Samuel Adams Papers, Reel 4, NYPL.
68 Samuel Adams to James Warren, Boston, Nov. 27, 1772, Samuel Adams Papers, Reel 4, NYPL.
69 Samuel Adams to James Warren, Boston, Dec. 9, 1772, Samuel Adams Papers, Reel 4, NYPL.
that it could be difficult to tell the difference. Indeed, in one of the harbors along the
broad bay, the leading men elected to dispense with the fiction of separate committees
altogether, and instead delegated the responsibility for corresponding and deciding
measures to the merchants in town. The “Merchants would chose a Committee to consult
and agree upon the most proper Measures.”\textsuperscript{70} As they concluded, “It is proposed that this
Committee, joyn with the Merchants and Traders in the Sea Ports in this Province either
by Congress or Correspondence in such a plan as may be unanimously & uniformly come
into by all Traders.”\textsuperscript{71}

Nor was the overlap in membership the only dovetail; even the basic functions of
a society of merchants and a town committee and a colonial assembly could shade into
one another. When Adams spoke of the functions of the colonial assembly, for example,
he described it as a forum for hearing and resolving grievances. The aim, he wrote, was
“to inquire into Grievances and redress them, such that the joint wisdom of the province
may be employed in deliberating and determining on a matter so important and
 alarming.”\textsuperscript{72} When the members of the newly founded “Society for Encouraging Trade
and Commerce within the Province of Massachusetts Bay,” assembled and sketched out
the functions, they described the society’s functions in similar terms, announcing the
creation of a “Standing Committee,” that would assemble and “consult upon the affairs of
Trade, to take notice of anything which may be made for its advantage, and shall make
Report of the same to the General Meeting.”\textsuperscript{73}

\textsuperscript{70} Gloucester Committee of Correspondence to Boston Committee of Correspondence, Gloucester: May 24,
1774, \textit{MCC}, 10:802, NYPL.
\textsuperscript{71} Ibid.
\textsuperscript{72} Boston Committee of Correspondence, Circular, Boston, Nov. 20, 1772, Samuel Adams Papers, Reel 4,
NYPL.
\textsuperscript{73} Society for Encouraging Trade and Commerce within the Province of Massachusetts Bay, General Rules
Indeed, when the merchant John Rowe outlined the creation of a nonimportation agreement in March of 1768, he described the organization of the merchant society as a seamless extension from the colony. After noting the winds at the outset of his journal entry ("4 March Thursday. A fine Cld morning W NWest," he then described the dissolution of the colonial assembly and, in its place, the convening of the merchant society. “This day the Govr Prorogued the Assembly to the 13 April Spent the Day with the same Committee of Merchants,” he wrote. The same fluidity appeared in how people spoke of merchant societies in New York. When, for example, the merchants of New York began plans to organize a merchant society in 1768, they described their society as one whose jurisdictions would span from “adjusting disputes relative to trade and navigation, supporting industry, recommending such laws, and establishing such regulations, as may be found necessary for the benefit of the trade in general.”

In a world where the sharp borders between institutions blurred in practice, the entities remembered as stacked in a vertical hierarchy could morph into one another in the course of conversation, as cities appeared listed among colonies, colonies could be compared to merchants, and merchants could be compared to towns. By late December 1773, for example, when Adams began to draft his letters not simply to seaports within Massachusetts, one could hear the categories begin to collide in the frenzy of revolution. “Our Committee have on this occasion,” Adams wrote not long after the men hauled up the chests of tea from the icy harbor down by the wharves, “opened correspondence with the other New England Colonies, besides New York and Philadelphia,” and no-one

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75 Ibid.
76 Ibid.
seemed to care in that moment of would-be revolution that a town committee had opened a correspondence with a colony, and that a city was included on the list of colonies. 78

Those who received Adams letters replied in kind, labels shifting interchangeably in the midair of a sentence. “We hope the Merchants here, will come into the Plan,” a man in Portsmouth replied that January, before abruptly shifting from the merchants to the colonies, and expressing hopes that “other Colonies adopt it.” 79 When the gentlemen of the seaport of Gloucester, meanwhile, drafted their resolution of solidarity with Boston over the matter of the tea, they too performed a similar verbal acrobatics, moving mid-sentence from an expressed hope for an agreement among the “Colonies in this Continent” to hopes for an agreement among the “Principal Sea Ports in this Province.” 80

In Philadelphia, meanwhile, a writer who surveyed the exchange of letters down the seaboard described a movement involving “all the colonies from Boston to South Carolina,” and no-one seemed to notice that the town of Boston had been included as a colony of the continent, 81 at a time when a lawyer could describe the “whole City of Philadelphia” with reference to two gentlemen followed by three ampersands. 82

In the spoken geography of the coast, colonies could appear simply as the label plastered over the various assemblages of counties and peoples and associations. When, for example, the work of organizing first got underway a decade earlier, a writer for one of the papers in Wilmington, North Carolina, for example, began with a describing of all the activities of the counties, associations before stumbling, as if for convenience sake, on

78 Samuel Adams to James Warren, Boston, Dec. 28, 1773, Samuel Adams Papers, Reel 4, NYPL.
79 Portsmouth Committee of Correspondence to Boston Committee of Correspondence, Portsmouth, May 19, 1774, MCC, 10:799, NYPL.
80 Gloucester Committee of Correspondence to Boston Committee of Correspondence, Gloucester, May 24, 1774, MCC, 10:803, NYPL.
82 John Adams to Edward Biddle, Braintree, Dec. 12, 1774, in Letters of Delegates, 1:266.
the label of the state. “...[T]he People from the Several of the Counties round, assembled at Wilmington...appointed Officers to take the Command, compelled them to act, and entered into the following Association, which was signed by all the principal Gentlemen, Freeholders, and other Inhabitants of several Counties; viz., NORTH-CAROLINA.”

All down the coast that spring, newspaper articles appeared promoting an endless variety of united entities of America, be it the “united towns,” “united Efforts,” “united Wisdom,” “united Wishes,” while broadsheets appeared around Boston, proclaiming the “united Sentiments of the Body of Merchants of North America.” Set amidst the panoply of united entities, when at last, news arrived from London that Parliament had decided to punish the colonists for their destruction of tea by shutting down the port of Boston, it precipitated an open debate as to which of the motley assembly of entities ought to supply the unit for organizing a Congress of America.

The news of the closing of the port arrived in Boston on a May evening in 1774.

For weeks, the coffeehouses of Boston had sounded with predictions to how the British Parliament would respond to the destruction of property and defiance of the laws of the empire. And now the captain who handed over the piece of paper supplied the answer: a terse paragraph, drafted by the members of Parliament: beginning on the first day of June, no further ships would be allowed to enter or exit the port of Boston. An act, Adams declared to his friend in London, for which there was simply no precedent. “For flagrant

83 “Wilmington, Feb. 26,” Massachusetts Gazette, Mar. 27, 1766.
85 See Boston Gazette, Oct. 9, 1769; Massachusetts Gazette, Oct. 19, 1769; Boston Gazette, Dec. 11, 1769.
87 See, e.g., Samuel Adams to James Warren, Boston, Mar. 31, 1774 (“It will be wise for us to be ready for all events, that we may make the best improvements of them.”), Samuel Adams Papers, Reel 4, NYPL.
injustices and barbarity,” he wrote, “one might stand in vain among the Archives of Constantinople to find a match for it.”

The question that spring of 1774 hinged on what could, or should, be done in response. With the hindsight of two hundred years, the answer would seem obvious: convene a Congress of delegates selected from the colonial assemblies, part of the long-standing tradition of vertically bundling up of political power from the periphery to the center. But for men like Adams who had spent the past previous ten years of their life working within the porous political culture of the coast, at a time when the same customs of horizontal partnership could be grafted onto any number of different entities, the question as to what formal unit of organization ought to be at the basis of a gathering among the men of the American coast was by no means obvious—nor was its meaning apparent even after they had settled on the colonial assembly.

The idea for organizing some kind of convention of the coast had appeared shortly after Adams suggested an immediate shutting down of all commercial relations with London. As men who remembered the failed success of the strategy were quick to point out, any such agreement would require a more considered, more deliberative process: one that would be agreed upon collectively and by all parties. “Some persons who had suffered much by our late non-importation agreement [are] alarmed at the propose of immediately putting a stop to their Trade,” the governor of Pennsylvania reported to Adams. What was needed, he urged, was not simply more letters, but a face-
to-face conversation.91 “If you wish to agree in sentiments with us to so lead us on to something effectual,” he continued, “you must humor us in this measure.”92 The merchants of New York concurred, urging the need for a Congress “not only respecting your deplorable circumstances, but for the security of our common Rights.”93

As plans for the Congress got underway, a vast array of permutations began to arrive on Adams’s desk in Boston, revealing the enormous indeterminacy of institutions later preserved as reified building blocks of the American state. A letter from New York, for example, proposed a Congress of a “Committee from the principal Towns on the Continent.”94 A resolution from Newburyport, meanwhile, urged a “Congress of Merchants.”95 A committee in Hartford suggested the cumbersome “Conference of Committees of Correspondence,”96 while a friend suggested simply a “conference, between all concerned and immediately interested.”97

Just up the road in Providence, meanwhile, men spoke with confidence that there would soon be a “General Congress of the American States,”98 even before states existed, while in London, Adams’s good friend suggested a “Congress of the Colonies,” comprised of deputies selected not by the formal assemblies, but from private gentlemen.99 Indeed, such was the multitude of options upon which to build a Congress

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91 Ibid.
92 Ibid.
93 Isaac Low, Chairman of the Committee of Correspondence of New York, to the Committee of Correspondence of Boston, New York, May 23, 1774, Samuel Adams Papers, Reel 4, NYPL.
94 Isaac Leggs and Alex M Dougall to Boston Committee of Correspondence, New York, May 15, 1774, Adams Papers, Reel 4, NYPL.
95 Newburyport Committee of Correspondence to Boston Committee of Correspondence, Newburyport, June 4, 1774, NYPL.
96 See Samuel Adams to Silas Dean, Boston, May 18, 1774, Samuel Adams Papers, Reel 4, NYPL.
97 Silas Dean to Samuel Adams, Hartford, May 26, 1774, Samuel Adams Papers, Reel 4, NYPL.
98 Providence Committee of Correspondence, James Angell, Clerk, to the Boston Committee of Correspondence, Providence: May 17, 1774), Adams Papers, Reel 4, NYPL.
that Adams at first simply punted the question. “We are pleased with your readiness to meet with by Deputies, either of the General Assembly (or other Deputies) in a general Congress,” he wrote, and the question as to who appointed whom could be left for the time in parenthesis.  

In letters that ricocheted from one port to another that spring, gentlemen of the trade weighed the pros and cons of each of the various options. As Adams was quick to point out, a Congress of merchants would be far more efficient. “We highly approve of the plan of a Congress of American States,” he wrote in a reply to a proposal from New York that May, before adding a qualification: “But a congress of the Merchants, by deputies from among them, in every seaport town, to meet at a certain time & place nearly control with power to establish a plan for the whole would effectually do the business.” In a letter to Philadelphia, he urged the same argument. “We heartily concur with you in your proposal of a general Congress…of Deputies from the different Colonies,” Adams wrote. “But, Gentlemen, you must be convinced that this Proposal however salutary must be slow in its execution.” As he explained further, “Supposing this important measure [is] conducted with all the expedition possible, it must be many Months before it can be brought about.”

Against this line of arguments, opponents countered that a Congress of merchants would likely raise questions about the legitimacy of the movement—no less than the old

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100 Boston Committee of Correspondence to New York Committee of Correspondence, Boston, June 16, 1774, *MCC*, 10:817-18, NYPL.
101 Boston Committee of Correspondence to Providence Committee of Correspondence, Boston, May 21, 1774, *MCC*, 10:796, NYPL.
102 Ibid.
103 Boston Committee of Correspondence to New York Committee of Correspondence, Boston, June 17, 1774, *MCC*, 10:815-16, NYPL.
104 Boston Committee of Correspondence to New York Committee of Correspondence, Boston, May 30, 1774, *MCC*, 10:807, NYPL.
merchant committees that gave way to the town committee. From Philadelphia and the James River, Adams’s correspondents began to report that if the goal was to diffuse such concerns about legitimacy, their best option was to go through the existing colonial assemblies. “Deputies appointed by [the Assembly], seem to carry more weight and authority,” Adams’s correspondent wrote from Philadelphia in June, a view seconded by his correspondent in Williamsburg, who reported that his colleagues seemed unwilling to consider the merits of his proposal for a Congress once the royal governor dissolved the formal status of a colonial assembly and they became simply private men. “I did propose to the dissolved Members the plan of a Congress,” Robert Henry Lee confided to Adams, “but a distinction was set up between their then state, and when they were a House of Burgess.”

Evidently persuaded, Adams suggested a final compromise that June: “a political and commercial congress,” of delegates to be appointed by the colonies—leaving it to anyone’s best guess as to what, precisely, that meant in practice.

Out on the road that led down from Boston to Philadelphia for the first Congress that autumn, the formal label of the colonies that appeared on the written page gave way, dissolving into the lived circuitry of correspondence among the trading houses that had united the ports of America for generations. The ease with which the formal colonies began to recede could be traced in the journals that one of the delegates, a young lawyer named John Adams, kept as he traveled with his cousin Samuel down the coast. In his journal, the lawyer recorded a geography comprised of towns that announced themselves

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105 Boston Committee of Correspondence to Providence Committee of Correspondence, Boston, May 21, 1774, *MCC*, 10:796, NYPL.
106 Robert Henry Lee to Samuel Adams, Chantilly, June 23, 1774, Samuel Adams Papers, Reel 4, NYPL.
107 Boston Committee of Correspondence to Providence Committee of Correspondence, Boston, May 21, 1774, *MCC*, 10:796, NYPL.
not through their formal assemblies, but through the gentlemen of the trade, whose houses could still be mistaken for those of the state house.

In each town that the Boston delegation passed through that autumn en route to Philadelphia, the “gentlemen of the trade” came out to see them, their conversations studded with the statistics of the trade. When they came to the town at the edge of the Connecticut river, well-wishers lined the street and the bells tolled from the church at the center. Too hot to linger, broad smiles, limp handshakes, names soon to be forgotten. In the morning, bright humid sun, dark in the tavern, a visit from gentlemen “largely in trade, now willing to renounce all their trade,” offering assurances of their steadfast support for Boston, while boasting of their trade with the metropolis of New York.108 “There is a stream of provisions continually running from Connecticut,” the gentlemen mentioned, and the lawyer took note. “Thirty thousand bushels,”109 of flaxseed shipped direct to New York, he continued, and Adams, who had long since noted the way the people of the Connecticut River Valley traded with New York, took note.110

In New York, the Bostonians walked down past the wharves and came to the shipyard, where they looked up at the massive hull that appeared as if the carcass of a whale.111 Their guide rattled off the numbers of tons she could carry (eight hundred).112 At night, the lawyer recorded the comparisons between the two ports. “Vastly more regular and elegant,” he wrote of the streets of New York.113 “More grand, as well as neat,” he wrote of the houses.114 “The most splendid dinner I ever saw,”115 he wrote of

109 Ibid.
110 Adams, Works, 2:271.
111 Adams, Works, 2:346.
112 Ibid.
113 Ibid., 2:347.
114 Ibid.
the banquet, hosted by the invitation of the Committee of Correspondence, not in the offices of the province, but at the Merchant’s Exchange. At breakfast, a delicate reminder that Boston was by no means the only shipping harbor. “The York’s whole charge was between five and six thousand pounds,” their host had said one morning, pouring coffee from finely polished silver. “The Massachusetts,” countered the Bostonian shipper Thomas Cushing, “was about sixteen thousand, York currency.”

It was a respite, after New York, to be out on the road again, away from men who spoke too fast and too loud, who asked a question only to hear themselves talk. With each town, the lawyer recorded into the privacy of his journal a vision of the coast not as bordered domains, but as clusters of wealth, each to be weighted on the scales of influence. The further south they traveled, the more things began to look familiar. At the tavern at Trenton Ferry on the Delaware River, for example, four black walnut trees stood and afforded a circle of shade: the very same trees, the lawyer noted, that were hauled up to the northward to make Boston’s cabinets.

The delegates had chosen as their point of gathering for the first “continental Congress” the mid-point of the coast, the line demarcating the ships to the northward, the landed estates to the southward. “They have but few merchants,” Adams would later observe of Baltimore. “They are chiefly planters and farmers.” The tavern where they convened in Philadelphia the first night was filled with men who had followed the seas, and as Adams listened to their conversations, he took note of the talk of goods moving

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115 Ibid., 2:535.
116 Ibid.
117 Ibid., 2:352.
118 Ibid.
119 Ibid., 2:358. (“It seems that these trees are plenty in these southern Provinces; all the black-walnut Timber which is used by our cabinet makers in Boston is brought from the southern Provinces.”).
120 Ibid., 2:436.
down the port. There was Major Sullivan of New Hampshire, who could recite by memory the shipping schedule of the Portsmouth harbor.\textsuperscript{121} Roger Sherman, of Connecticut, who had bought goods from the New York merchants for twenty years.\textsuperscript{122} From Massachusetts, Thomas Cushing, whose ships hauled in from the southward with black eyed peas.\textsuperscript{123} Robert Treat Paine, a lawyer who had begun his career as a ship-owner, traversing the coast from Boston to the Carolinas.\textsuperscript{124} John Adams, though not himself in the shipping business, well-versed enough in the workings of the trade to know that the “law relating to naval Trade and Commerce” lay not in any formal law-books, but in the customs of the trade.\textsuperscript{125} When years earlier, for example, Adams determined to learn the laws of the trade, he had decided to “inquire of the next Master of a Ship that I see, what is a Bill of Lading.” The next day, he had conversed with “Capt. Thatcher about commercial affairs,” who had explained how the whole thing worked.\textsuperscript{126}

From Rhode Island, Stephen Hopkins, whose family had owned fleets of merchant ships since at least 1740, and of whom three of his four sons had become commanders of the seas.\textsuperscript{127} His arch rival, Samuel Ward, whose father kept up a “large commercial and agricultural interest at Newport,” and from whom, the papers said, he

\begin{enumerate}
  \item Ibid., 2:447.
  \item Ibid.
  \item See, e.g., “Good Coffee…” \textit{New England Weekly Journal}, Aug. 17, 1730; “To Be sold at Mr. Cushing’s Warehouse…good Maryland Pork…and good black Ey’d Pease,” \textit{Boston Evening-Post}, Nov. 12, 1744.
  \item See, e.g., Robert Treat Paine, Sea Journals, 1751-1754, Robert Treat Paine Papers (microfilm), Reel 11, MHS (journals with occasional sketches from round-trip voyages between Massachusetts and North Carolina in 1751, 1752, and 1753).
  \item Ibid.
  \item William Eaton Foster, \textit{Stephen Hopkins: A Rhode Island Statesman: A Study in the Political History of the Eighteenth Century} (Providence: Sidney S. Rider, 1884), 1:54-55; see also Frederick B. Wiener, “The Rhode Island Merchants and The Sugar Act,” \textit{New England Quarterly} 3 (1930): 464; see also [“We hear from Newport…”], \textit{Boston Evening-Post}, July 16, 1763 (describing reports of the return of Captain Rufus Hopkins from the West Indies for Providence and the storms he encountered).
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had “acquired an extensive knowledge of the duties of a merchant and a farmer.”

From Connecticut, Roger Sherman, who had bought goods from the New York merchants for twenty years, and Silas Deane, who kept a fleet of ships and who kept note of how many miles inland a river ran before the ships could sail no further.

The New York delegation, meanwhile, including James Duane, Phillip Livingston, and Isaac Low, all well-versed in the trade. Duane, for one, hailed from a longstanding family of merchants; his brothers had both followed the seas as a midshipman and captain within the British navy, while he had turned to the law. Livingston, meanwhile, counted himself among one of five brothers whose father had trained each to specialize in the trade, sprawling from Boston down to Albany and down to the West Indies, with a branch in London. Isaac Low, meanwhile, had served as the Chairman of the Committee of Merchants in New York.

From the southward, there was the planter and merchant Robert Henry Lee of Virginia, along with Thomas Johnson of Maryland, who had an “extensive knowledge of trade as well as law,” and Thomas Lynch, of Charleston, who knew and could recite the weight of rice and indigo down at Charleston harbor (“fifty thousand tierces of rice; twelve thousand weight of Indigo”) and the number of ships needed (“about three

129 Adams, Works, 2:447.
130 See, e.g. Silas Deane to Elizabeth Deane, June 6, 1775, in Letters of Delegates, 1:449.
134 Adams, Works, 2:396.
135 Ibid., 2:362
hundred,” he told the lawyer from Boston), and who observed that, “many gentlemen in this room, know how to bring in goods, sugars and others without paying duties.”

In keeping with the mercantile sentiment of the group, the organizers had selected as the most appropriate site for gathering private house not the state house of the colony that had long since receded from the day-to-day practices of commercial union, but a private hall up from the wharves. The hall seemed pleasant enough to the lawyer from Boston: a meeting room, a well-stocked library, a chamber off to the side, a hall for walking. Seats taken, windows open, and already in the small first procedural details of the assembly, the logic of the old American coast began to supply the basis for arranging the terms of what would emerge from the hall as the Continental Association: the first formal act of what would in time become the Congress of the United States.

The order of the roll call was easy enough. In a pattern that would be repeated across the century, the clerk began to read the names of the entities of America not by arranging them alphabetically, but by following the same routes of the ships that had moved from the northward to the southward for centuries: “New Hampshire, Rhode Island, Massachusetts, Connecticut,” and on down the coast, its gentlemen now in a single place. The business of naming things appeared as straightforward as the roll-call. Theirs was a “Continental Association, Agreed upon by the Grand American Continental Congress,” the document read, encapsulating phrases by then two centuries old.

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136 Ibid., 2:360.
137 Ibid., 2:394.
138 John Adams, diary entry of Sept. 4, 1774, in Letters of Delegates, 1:11.
139 James Duane, notes on debates of Sept. 5, 1774, in Letters of Delegates, 1:25.
140 JCC, 1:13.
141 “The Association, Agreed upon by the Grand American Continental Congress,” Oct. 20, 1774,
The terms of the association rested not on the hierarchies of an empire or the multiple formal layers of government, but on the same basic principles of the trade, beginning with the familiar promise that theirs was a partnership of equals, predicated on “mutual interest.” Just as in the case of the agreements of the trading houses, each member of the association would enjoy a discretionary authority to pursue the best interests of the whole. The agreement, the delegates agreed, would be “regulated in such…manner as most suitable to the circumstances of each colony, and to enable us of necessity to hold out longer without grieving one more than another.” Compliance, meanwhile, would rest not on the formal courts or colonial assemblies, but on the old customs of the corridor: the threat of exclusion from the circle of merchants.

To enforce the agreements, the delegates arrived to rely on local committees. As the final draft declared, “a committee would be chosen in every county, city and town, to attentively…observe the conduct of all persons touching this association.” Anyone found in violation of the agreement would be subject to the ultimate penalty of the coast: expulsion from the circuitry of the trade: a threat that could move in the same paragraph from expulsion of an individual to the expulsion of a colony. “We will have no trade, commerce, dealings or intercourse whatsoever, with any colony or province in North-America,” the document continued, extending the same logic of the trading house now to the colony, before promptly analogizing the said colonies back to individuals.

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142 James Duane, notes on debates of Sept. 7, 1774, in Letters of Delegates, 1:40.
143 Baltimore Committee of Correspondence to Boston Committee of Correspondence, Baltimore, June 3, 1774, Samuel Adams Papers, Reel 4, MHS.
144 Ibid., 1:79.
145 Ibid.
146 Ibid.
At a time when the colonial assemblies had long since receded into the backdrop of the most powerful trading circuitry of the American coast, the men charged with drafting the cover letter justifying this dissolution of commercial relations described the colonies not in their capacity as government institutions at the periphery of an imperial hub in London, but as individuals—no different from the men who stood in the committee room and lingered in the hallway. “The respective colonies are entitled….to the great and inestimable privilege of being tried by their peers,” one of the resolutions read, never mind that a colony could not be tried by its peers. “The respective colonies,” the resolutions continued, “have a right peaceably to assemble,” and once more, the distinction between the individuals and the colonies rights appeared to merge.147

Set amidst the familiar terms of partnership, the most significant obstacle that the delegates faced hinged not reconstructing the familiar terms of belonging, but on the unprecedented question as to how to divide the votes amongst themselves. From the very beginning of the debates, the idea of using the entity called a “colony” as the unit for determining the division of power along the coast had seemed absurd, if not downright insulting to some. The delegate from Virginia, for example, seemed particularly offended at the prospect of dividing power in such a way that would equate the enormous wealth of the land and the people of Virginia with that of the barren wedge of land called Rhode Island. “If such a disrespect should be put upon his Countrymen,” one delegate wrote of his remarks, “We should never see them at another Convention.”148

For men who had long followed the coastline, the most obvious means of delineating political power rested not on the arbitrary unit of the colonies as political

148 John Duane, notes on debates of Sept. 6, 1774, in Letters of Delegates, 1:31.
institutions, but on the relative weight that men had accrued within them. “All America is thrown into one mass,” declared the Virginian Patrick Henry, using the same unit of the continent that had sounded in the trading houses for generations.149 “Where are your landmarks, your boundaries of Colonies,” he continued, directing his questions to men who had long seen the coast disappear into a mess of trees and rocks, creeks and bays. Far better, he proposed than using the arbitrary lines of a king, then to begin with the familiar scale that weighed the parts of the continent: “that Part of N. America which was once Mass. Bay, and that Part which was once Virginia,”150 each to be measured “in proportion to its opulence & number of Inhabitants, its Exports & Imports.”151

Others, however, pointed out that even if one was going to use the colonies as the basis for calculating the allocation of political power in the room, it was by no means clear what criteria one ought to use, much less whether one could gather the necessary data to measure the weight of each colony. Everyone knew, of course, what types of produce appeared along the wharves and seaports, and could rattle off statistics of the bushels and barrels that waited down at the docks. “Mr Jay offers for New York Flaxseed, Iron, Oil, Furrs, Skinns, Potash & Lumber,” before being seconded by the Marylander Mr. Johnson, who recited that “Maryland exports Flaxseed very considerable…,” a sentiment in turn echoed by Col. Dyer who “on behalf of Connecticut offers the same as Mr. Jay from N. York,” before others followed suit: “Mr. Hooper up Twice on N. Carolina, Mr. Lynch, on the situation of S. Carolina.”152

149 Adams, Works, 2:368.
150 Ibid., 2:368.
As the questions continued to circle through the debates as to how best to divide up the terms of partnership, the delegates agreed to give each colony one vote: not because the colonies occupied any primordial, organic place on the coast, but simply because there was no other way to decide the question. “It was observ’d,” wrote one delegate in his journal, “that…the Delegates from the several Colonies were unprepared with Materials to settle that Equality. That was an Object that could not be answered.”  

In the absence of a better solution, the colonies would have to do, just as a temporary placeholder. “I cant see any Way of voting but by Colonies,” declared the owner of the wharves down in Charleston. “I agree with the Gentlemen, echoed a colonel. We are not at present provided with Materials to ascertain the importance of each Colony,” and in his words, the colony appeared not as a neat rung on the ladder of representative institutions, but as part of a merchant’s scale in the marketplace.

No one seemed to notice that under the new rule, the grand scale of the continent now tilted nine votes to the northward, four votes to the southward. For in those opening days of Congress, when it was possible to speak of a colony with a right to stand before a jury and merchant as the embodiment of a town, the delegates who shook hands and bid farewell had little time to ponder the intricacies of their decisions, knowing that they had effectively dissolved the bonds of commercial union with one of the most powerful navies in the world. Borrowing from the principles of partnership decades in the making, the delegates of the first Continental Congress had constructed a document that would later appear as a footnote in history, but that revealed the logic of a partnership of the old American coast. In forging the Continental Association, delegates had brought

154 Adams, Works, 2:368.
155 Ibid.
into print the basic principles of what one observer called a “Commercial Confederacy:” an America of united sentiments, at a time when it was possible to believe that the united sentiments of America and the united colonies of America were one and the same.
ARTICLES OF WAR

The war that began the following summer announced itself in different ways, recorded long afterwards by those who remembered the stillness that preceded the great battle against the British Empire began.¹ A back room in a farmhouse up from the Massachusetts bay on an afternoon in June, needle in hand suspended over cloth, listening to the cannon that sounded in the distant hills not unlike the beginnings of a thunderstorm.² The men came in early from the fields that day; the names of the dead came later.³ Down at the wharves, those who stood watch over the seas scanned the horizon, waiting for the ships that could spew forth a blaze of musket fire upon the shore.⁴ The war for independence had begun, a battle against the self-proclaimed “master of the sea.”⁵

Long afterwards, the war that began that summer would be remembered for its radical features: a war that rise to a particular new conception of belonging to a place called America, a time of invented traditions in the face of necessity and the collapsing debris of the empire.⁶ And to be sure, the records afforded ample evidence of a formal rupture of allegiance to an empire. For the first time, men who called themselves

² Emery, Reminiscences, 7.
³ Ibid.
⁶ For accounts emphasizing the revolutionary war as the origins of American citizenship, see, e.g., James H. Kettner, The Development of American Citizenship, 1608-1870 (Chapel Hill: University of North Carolina Press, 1978), 208 (noting that “The status of “American citizen” was the creation of the Revolution,” and emphasizing the voluntary nature of citizenship that lay with an individual’s free choice.); Douglas Bradburn, The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804 (Charlottesville: University of Virginia Press, 2009), 39 (arguing that “Americans were inventing traditions out of necessity and adapting their English patriotic ways to American need.”).
Americans had organized the creation of a single armed force to do battle with His Majesty’s Navy. They had drafted new, more formal terms of partnership, designed now for international audiences, proclaiming the creation of the novel entity of the United States, each state a sovereign domain, each to be left to its own affairs. Contemporary observers, meanwhile, declared the beginnings transformation from a land of subjects of the Crown to a land defined by voluntary citizens of a new Republic.

And yet, despite these changes in the formal institutional structures and labels of governance, the long line of yesterdays that preceded the moment of rupture cast an imprint of their own.7 For a return to the archival records suggests that the lawmakers at the helm of the Continental Congress who assembled in Philadelphia did not begin from scratch. Confronted with the enormous logistical and legitimacy challenges of organizing a rebellion, delegates in Philadelphia drew upon and reworked the older institutional networks, vocabulary and logic of the old America coast.

In the daily work of assembling an armed marine force that could do battle with one of the most powerful navies in the world, drafting the formal Articles of Confederation that could open the ports of Europe to the ships of America, and then assembling the diplomatic paperwork that could ensure safe passage for the ships of America across the Atlantic, the delegates in Congress turned not to the hierarchies of empire, but to the existing fleet of private trading houses. In doing so, they inscribed into the written paperwork of the new Republic a concept of American citizenship that rested not simply on the formal right of an individual to choose his citizenship, but also on the ancient reciprocal ideals of protection and allegiance as old as the project of empire itself.

From the earliest days of the war, the delegates of the Continental Congress who began the work of fashioning a rebellion against His Majesty’s Navy spent much of their days thinking about, and corresponding with, the circuitry of merchant houses of the old American coast. Confronted with the challenges of supplying a nascent army and mounting questions as to the broader ambitions of the war, gentlemen charged with the logistics of war turned to the business of contracting and licensing the private ships of the coast. In the work of doing so, they embedded a logic of partnership within the halls of Congress that moved easily from one entity to the next, creating a culture of federalism in the committee rooms in which all were recognized as equal partners, bound in mutual interest, each left to its own discretionary authority.

The challenges that precipitated the turn to the coast emerged even before the delegates assembled for the first committee meeting in the summer of 1775: challenges that ranged from the empty arsenals to the political and economic fall-out triggered by the loss of the largest buyer and carrier of southern produce in the world. To begin with, there was the difficulty that the primary theatre of war—the Massachusetts Bay—was almost entirely unable to sustain an army of its own. In the warehouses and arsenals, the shelves ran thick with dust and the huddled collection of old powder kegs appeared as if an afterthought: a silent cannon left over from the war of empires decades earlier. Efforts to round up supplies had proven fruitless. “I am sorry to tell you the Continent is not now so well furnished with powder as I expected much less as I wish,” reported Thomas
Johnston to his friend. Johnson to his friend.⁸ “We have some cannon but no engineers; no apparatus necessary for fortifying and what is worse very little powder of any kind.”⁹ Letters from Boston warned of what by then had become abundantly clear, citing “great fears of a Deficiency in the Article of Ammunition,”¹⁰ a complete lack of necessary powder.¹¹

The difficulty lay not only in the absence of gunpowder and engineers and cannons; but also in the long stretches of rock strewn fields outside of Boston. For as long as anyone could remember, the leading speakers of the Massachusetts Bay were quick to declare they were the only province unable to supply itself with the necessary articles of sustenance. To make matters worse, the vulnerabilities of the plot of land had become the central strategy of His Majesty’s officers. The enemy’s plan, as it appeared in an intercepted letter, lay in severing the metropolis of the American coast from the vital arteries of supply. According to the intercepted letter, the aim was to keep “New York from supplying the Massachusetts Army near Boston with flour.” Cut off from the southward, the letter continued, “the New Jersey and Pennsylvania people will not be able to transport provisions across the country, & the colony of Connecticut does not raise corn sufficient for the supply of herself and the Massachusetts Bay.”¹²

Beyond the logistical challenges of sustaining an army in the Massachusetts Bay, the severance of commercial ties with Great Britain had raised questions as to what, precisely, the gentlemen of the trade in Boston who had called so earnestly for a war sought to accomplish. “When we first came together,” John Adams confided to his wife during the first summer of the war, “I found a strong Jealousy of Us, from New England,

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and the Massachusetts in Particular…Our Sentiments were heard in Congress, with great Caution.”

The lingering suspicions persisted as the drumbeats of war continued. As one delegate from New England reported to his friend, he had heard rumors among the people to the southward that “if we prove Successful against the Ministerial Army here we shall after that make our way by force into any of the Southern Colonies as we please.”

It did not help matters that the enforcement of the Continental Association that the gentlemen of Boston had urged the previous summer had effectively ruined the prospects for the season’s harvest. Already reports had surfaced that the surplus of produce had led the planters of the southward to cast their gaze towards renewed partnership with London. “They are endeavours to persuade the Virginians to ship home their Tobacco,” came word from the Chesapeake in the summer of 1775. There were “ministerial emissaries to the southward” who were trying to create a division along the coast, came word from Charleston, and who found a willing audience. “The Reins are not in the hands of Towns Men as formerly,” one merchant warned from Charleston in early January. “I can perceive the Superiority which the Country people claim—they are most numerous, most wealthy & no Man is now supposed to be unequal to a Share in Government.”

In the emerging metropolises of New York and Philadelphia, meanwhile, there were continuing reports of trading houses who had violated the Continental Association: men who dispatched ships down the coast and out to the continent to make a fortune on

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15 Benjamin Church to Samuel Adams, Boston, Sept. 29, 1774, Samuel Adams Papers (microfilm), Reel 4, Manuscript and Archives Division, New York Public Library.
17 Ibid.
the only shipment of tobacco in the British Empire, before hauling back with the only shipment of lace handkerchiefs to be sold on the island of Manhattan. “There are some Persons in New York and Philadelphia,” John Adams confided to his wife, “to whom a ship is dearer than a City, and a few Barrells of flower, than a thousand Lives.” Even those who had complied with the Association, others warned, were become restless. Ten thousand people, delegate Silas Deane estimated, all dependent on the trade, all now left sitting idly by. “They cannot possibly long rest easy,” he warned, not “in their present destitute, distres’d Situation, their Ships rotting & their Families starving.”

To those who knew the ways of the American coast, the solution to these cascading challenges appeared obvious: contract the private trading houses to supply food to the armies, while licensing their ships to fight as vessels of war. As Elbridge Gerry, the leading merchant of Marblehead, explained it to Samuel Adams, the solution to the multiple challenges of sustaining a rebellion could be solved by enlisting the aid of the trading houses. “In each Colony,” Elbridge Gerry explained in December of 1774, “many Merchants are to be found who will immediately engage in Voyages to supply the country with articles to defend it, especially since most of the other avenues of trade are closed and closing, and the voyages (if not intercepted) will afford great profit.”

Gerry was by no means the only merchant to offer up the services of the private trading houses to carry out the work of rebellion on the high seas. One afternoon in July of 1776, for example, one of Philadelphia’s most prominent ship-owners invited John Adams, the lawyer, to come to his country estate for dinner. The merchant had built a fortune dispatching his ships against the French two decades earlier during the wars, and

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20 Elbridge Gerry to Samuel Adams, Marblehead, Dec. 19, 1774, in Samuel Adams Papers, Reel 4, NYPL.
had bullet scars on his forearms to prove it. Why not, he suggested, use the trading ships to attack the convoy ships of Britain and forge a path to the new markets of Europe?  

In the halls of assembly where the delegates from the diverse ports assembled and weighed their options, these proposals made good sense. Indeed, the very geography of the coast seemed to point towards the solution Gerry had suggested, as delegates from the northward surveyed the vast bounty of lands to the southward of Philadelphia: enough to feed an entire army. “The Prospect of Crops in all the southern Colonies never was exceeded,” Adams reported to his wife in mid-June, and when he saw the vast lands under the trees that reminded him of the cabinet in his office, Gerry’s proposal no doubt made good sense. His colleague from Connecticut, Silas Deane, meanwhile spent his Saturdays surveying the vast bounties that began at the mid-point of the continent, and like Adams, took note of the harvest, recording into his correspondence home the number of barrels of flour the coasters carried from the Delaware to Philadelphia.

In conversations in the committee rooms, meanwhile, men from the southward offered up their services for sustaining the army to the northward. The planters who kept the tobacco houses promised they could supply the ammunition. “Mr. Randolph… affirms to me that, every Planter almost in that Colony, has made it from Tobacco House Earth,” John Adams reported to his friend. “The old Gent. …is as sanguine and confident as you can conceive, that it is the Easiest Thing in the World to make it, and that the

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21 Ibid.
24 See, e.g., Silas Deane to Elizabeth Deane, June 6, 1775, in Letters of the Delegates, 4:448.
Tobacco Colonies alone are sufficient to supply the Continent forever.” The tar for rigging up the fleets, others offered, could be brought up to Boston from the Carolinas.

The proposal to use the trading houses to supply the necessary articles of war and launch an offensive against the British Navy may well have also offered a means of diffusing the lingering suspicions as to the intentions of the men of Boston. Already that summer, delegates had used the structuring of the army as a means of diffusing such concerns for the concentration of a military force in Boston. When, for example, it came time to appoint the general at the helm of the army assembling in Boston, the delegates agreed to appoint none other than a planter from Virginia to take the helm. “It takes away the fear,” explained one delegate from New London, “lest an Enterprising eastern New England Genl proving Successful, might with his victorious Army give law to the Southern & Western Gentry.”

Such that when, on a July afternoon during the first summer of fighting in 1775, the members of the committee charged with supplying the continental army began the work of coordinating the naval forces along the coast and supplying the beleaguered soldiers in Boston, they turned their collective gaze not to the work of responding to petitions from below, but to mobilizing the circuitry of the trade. In doing so, they brought the customs out from the leather-bound correspondence books of the trading houses and into the records of the gentlemen who assembled in Congress, supplying a default logic upon which to begin the work of formulating a political culture of the nascent national government.

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In the committee room where the delegates took their seats around the long table to draft up the first contracts for the trading houses, they began by rolling out the familiar sea-charts of the coast. The delegates took note of its contours, the old continent of America coming into view once more, not as a bordered terrain, but as a single entity, the same familiar sight from under full sail on a summer morning. “I have had to contemplate America so much,” John Adams wrote home that summer, “...since I had to study the Processes and Operations of war,” and by America he meant not the formal institutions of a nation, but the contours of its coast.\(^\text{29}\) He could only hope, he added, that someone would teach his children to look at the geography of America.\(^\text{30}\)

As the coast came into view in the committee rooms, so too did the intimate circuitry of trading houses down the ports, a move facilitated in part by the fact that many in the room owned vast fleets and estates of their own. During the meetings of the self-proclaimed secret committee, for example, the delegates began by issuing contracts for supplying the armies to the most dependable houses they could think of: each other.\(^\text{31}\) The committee members, in turn, often put forward the names of their brothers or close acquaintances for potential contracts. “Wish I could see You, or some other of my Connecticut Mercantile Friend, here, as it would be in my power to help them, & in theirs to serve the Country,” Silas Deane wrote to his friend,\(^\text{32}\) the first of many such invitations extended to his circle of correspondents.\(^\text{33}\) “Could you sound, and find out, the sentiments of those who have the power to help us,” Thomas Lynch wrote to the leading merchant of Charleston, “particularly of those who could send us necessaries, for war, and coarse

\(^{31}\) Secret Committee, Minutes of Proceedings, Sep. 27, 1775, in *Letters of the Delegates*, 2:73
goods, in exchange for our Productions. The Trade,” he assured his friend, “would be

In these letters that began to travel among the familiar circuitry of correspondence, the customary law of agency unfolded without commentary. Addressed to brothers and friends and close acquaintances in a network stretching from Boston down to Charleston, the committee members etched into the records an America of equal entities, each entrusted with discretion to manage his own affairs to the best interests of the whole. The move appeared without formality: simply a happenstance as delegates who drafted the contracts to a member of a state legislature might draft the same contracts to a friend in a private trading house. “You will please to be guided by your own Discretion,” Samuel Adams wrote to the man who governed the trading house in Baltimore and who had offered to ship flour from the plantations up to Boston, “either in taking that Method or in waiting for further Intelligence.”\footnote{Samuel Adams to Samuel Purvisance, Philadelphia, May 19, 1775, in \textit{Letters of the Delegates}, 2:361.}

The logic of such grants of discretion, the letters made clear, was to bridge the same coordination difficulties of time and space that had long plagued the workings of the American coast. “I send you the Inclos’d Memo., only for your Guide,” John Hancock wrote to Thomas Cushing—an old friend who had ascended to the governorship and kept a fleet down at the wharves. “You will Conform as Circumstances require,” he continued, carving out a place in which local circumstances could be taken into account.\footnote{John Hancock to Thomas Cushing, Philadelphia, Feb. 1, 1776, in \textit{Letters of the Delegates}, 3:183.} Others were even more explicit that the grant of discretion to the individual traders of the coast building the engines of war rested on their expertise. “As the Ship
Building business is out of my sphere,” one delegate began, “I am unwilling to nominate the Said overseers,” before handing over the business to his correspondent.37

This grant of discretionary authority to the trading houses contracted to supply the ships of war, in turn, carried with it a series of obligations, including an obligation of fair dealing and a duty of non-interference. “[D]o the best you can in all matters,” Hancock advised his correspondent, sounding just like the letters he and his friends had long drafted to the commission agents down the coast.38 “Do be a faithful Correspondent,” he implored later.39 Alongside this duty of fair dealing lay the old customary expectation of non-interference, as traders were expected to steer clear of another man’s trading routes.

“I wish in Answer to this you would send Me a brief Estimate of the Cargoes you may have shipped for Martineco and To whom Addressed,” Silas Deane wrote to his correspondent, Thomas Mumford. “My reasons are, a thought of adventuring that Way on the Public Acct., and should not be willing to interfere with any other.”40 The phrase was a common one in the trade, resting on the code of honor and mutual respect. When, for example, a Liverpool trader decided to open a new commission house, he took care to see that he did not encroach on any existing connections. “I have no wish improperly to interfere with any subsisting connexions my friends have formed during my retirement, and particularly the very respectable House of my Brother and late Partner.”41

As these contracts and networks of correspondence began to emanate out from Congress to the trading houses, reciting the same logic of discretionary authority and

39 Ibid.
non-interference, the same language began to move ever so subtly from the formal work of correspondence with the trading houses into the customs of men who assembled in Congress as representatives of the states. One could hear the shift, for example, in the way men who now considered the technical details of a united political entity of states draw upon the old logic of the discretionary authority of the trading houses.

When, for example, John Adams spoke of a coast of provinces, for example, he used the very same words that his colleagues used to describe the coast of trading houses. He sometimes wished, he explained, “that this Province Should be left to her own Discretion, with Respect to Government and Justice, as well as Defence.” As he explained in a separate letter, “If the colonies should assume governments separately, they should be left entirely to their own choice of forms.” Likewise, when Silas Deane, spoke of the colonies, he used the same language of deference that he had used to describe the trading house. “We…must leave the disbanding of any part to the Discretion of the Colony who must Judge for themselves therein,” he wrote, and the colony appeared as an individual with thoughts and judgments, no less than the men who governed the decisions to dispatch the ship from the trading houses.

And just as each colonial assembly would be left to its own discretion, so too did men who outlined a program of non-interference in the trade now extend its logic into the emerging, nascent customs of Congress and the colonies-turned-states. When, for example, men began to speak of the boundaries of power of the newly convened Congress, they used the same vernacular of non-interference that traders had used to map

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44 Silas Deane to Thomas Mumford, Philadelphia, June 12, 1775, in Letters of the Delegates, 1:481.
out their shipping routes. “The Congress will not interfere, either in Mode, or Time, agreeable to any Colony,” Silas Deane wrote to his correspondent back in Connecticut, echoing his earlier sentiment that in charting his shipping routes, he personally “should not be willing to interfere with any other.”

As between themselves, meanwhile, the gentlemen of Congress began to borrow the same phrases that had long governed the duties and rights of the trading houses to explain the relations between the states whose representatives now assembled in Congress. When, for example, the gentleman from Rhode Island offered a proposal to begin building an navy for the continent, the colonel from the Carolinas insisted that his proposal ought to be considered, “out of Respect to the Colony of R. Island who desired it.”  

And just as merchants insisted that the trading houses of the coast ought to receive equal footing in the insurance rates, so too did men now use the same language to insist that the colonies themselves be put on equal footing.

The principles that began to appear in the day-to-day conversations that unfolded in the Continental Congress soon took on a degree of formality: appearing in the formal terms of the Articles of Confederation. By the summer of 1776, it had become increasingly clear that the ships of the nascent United States would require a more formal set of paperwork to secure international recognition abroad than the flimsy Continental

46 Francis Lewis to John Alsop, Philadelphia, Nov. 30, 1775, in Letters of the Delegates, 3:416-17 (“[D]o not think it wd. Look well in us to require further securities than our Neighbours. We should be all upon an equal footing.”).
47 Samuel Ward to Henry Ward, Philadelphia, Dec. 12, 1775, in Letters of the Delegates, 2:481. (“If they could do in any foreign Port of Europe & he would export them on Acct. of the united Colonies upon the Same Comns allowed Clarke & Nightingale & the same Freight that we give others I could serve him.”).
Already, it had become necessary to open the ports of the southward to ships from abroad, in an attempt to placate the planters who warned of ruined tobacco. “The Restrictions on Trade have been so pressingly felt by the Merchants & Farmers in the southern Colonies,” a Salem merchant reported in June, “that it became necessary to adopt this Measure of opening the ports to quiet their Minds.”

There had been talk, some reported, of opening up new lines of direct trade with France. Already, some said the “Gentlemen of Virginia & Maryland,” hoped to form a “Contract for supplying the Farmers General of France with Tobacco.”

The difficulty, as the sea-captains who hauled out on the tobacco ships quickly discovered, was that in the absence of a British flag hauled up over the ship, there seemed to be no means of securing access to the foreign ports. “It is astonishing to think what pains the British Court has been to prevent every Nation in Europe from Supplying us with these Articles,” one merchant observed. “Several persons who have lately come from France, Spain, Portugal and Holland say every Port, every Town, and almost every public house has spies from England to watch the motions of the Merchants, so that scarcely any thing can be brought away even by a Circuitous Voyage.”

If the delegates of Congress hoped to prevail in their efforts to defeat the British Empire, they would need to find a means of securing a route to the vital markets of Europe. They would need, in other words, a more formal recognition of independence. As one merchant observed, “I have great reason to believe that France would readily

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49 Elbridge Gerry to John Wendell, Philadelphia, June 11, 1776, in Letters of the Delegates, 4:188.
listen to an application from the United States of America,” as opposed, presumably to simply an application from the United Sentiments of America. In the pursuit of this international recognition abroad, the delegates of the Continental Congress began the work of constructing the terms of the Articles of Confederation: a document that long afterwards would be preserved in historical memory as the work of strangers whose only bond was that of a distant sovereign, but who shared a common vernacular of the trade that had already begun to course through the daily customs of Congress.  

To begin with, the first two delegates to sketch out the central principles of the earliest drafts shared a common understanding of the coast. Benjamin Franklin, for example, the first person to begin to draft the Articles of Confederation in May of 1775, had begun his career in a counting house on the wharves of Philadelphia, where he had learned the “art of correspondence.” Indeed, Franklin had become the first person to formally inscribe the Gulf currents on the map of the American coast, based on his conversations with an old shipping captain from Nantucket, and had made a study of the storms along the seacoast. Silas Deane, meanwhile, who added a few modifications to the draft Franklin sketched out the following autumn, not only owned a vast fleet, but had been at the helm of the committee in issuing licenses to mobilize the trading houses.

52 Samuel Chase to Philip Schuyler, Philadelphia, August 9, 1776, in Letters of the Delegates, 2:44.
53 For conventional views emphasizing the weaknesses of the Articles of Confederation, see, e.g., John Fiske, The Critical Period of American History, 1783-1789 (Boston: Houghton, Mifflin, 1897); Andrew C. McLaughlin, The Confederation and the Constitution, 1783-1789 (New York: Harper and Brothers, 1905); Merrill Jensen, The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution 1774-1781 (Madison: University of Wisconsin Press, 1940), 175. For an accounting noting with surprise the degree of union that the Articles achieved, see, e.g., Gordon Wood, The Creation of the American Republic (Chapel Hill: University of North Carolina Press, 1998), 359 (“What is truly remarkable about the Confederation is the degree of union that was achieved.”).
In each of the drafts that began to appear, for example, men who had followed the seas could agree upon the broad principles of partnership. To begin with, despite differences in the particular phrasing, the drafters of the Articles could agree on the broad principle of mutuality: a phrase that had appeared not only in the treatises of foreign confederacies, but also in the daily work of the commercial corridor along the American coast. “The said United Colonies,” Franklin’s draft began, “hereby severally enter into a firm League of Friendship with each other…for their common and mutual and general welfare.”55 By November of 1775, when Silas Deane drafted up a similar plan, he struck out the extraneous phrases of “common” and “general” and returned into the same logic of mutuality that had long defined the basis of enduring partnerships within the commercial confederacy of America. “The Colonies on this Continent,” Deane began, using the geography of the coast once more, “…will enter into a mutual Confederation for the defence of their Liberties and immunities against all invaders.”56

Just as the gentlemen of the trade had spoken with assurances that each house would be left to its own affairs, so too now did the early drafters of the Articles inscribe the same principles of discretionary authority, albeit in subtly different variations. “Each Colony shall retain and enjoy as much of its present Laws, Rights and Customs, as it may think fit,”57 Franklin’s draft of 1775 read, describing a colony not as an inanimate institution, but as a thinking individual who enjoyed certain rights and could be trusted to exercise discretion. Deane offered a slight modification later that November, removing the language of a thinking Colony and references to formal laws and rights and customs,

56 Silas Deane, proposals to Congress, ca. Nov. 1775, in Letters of the Delegates, 2:418
57 Franklin, draft of the Articles of Confederation, in JCC, 2:195.
but preserving the basic principle of discretionary judgment within the borders of the territory. “Each Colony shall in every respect, retain its present mode of internal police & legislation,” Deane wrote, while adding an additional clause, reminiscent of the old principle of fair dealing, that each colony would be “bound to each other, for defending to the last extremity the privileges of the whole, & of each separately.”

When, the following summer of 1776, a committee assembled in Congress to begin the work of finalizing the drafts, they preserved these twin founding principles of mutuality and discretionary authority. “Each Colony,” the new draft read, “reserves to itself the sole and exclusive Regulation and Government of its internal police, in all matters that shall not interfere with the Articles of this Confederation,” a phrase of discretion that borrowed from the trade’s familiar language of non-interference. And yet now, alongside these twin principles, the committee added the first and only enumerated right of American citizenship: that of free passage across the bordered domains of the coast. “The Inhabitants of all the united Colonies shall enjoy all the Rights, Liberties, Privileges, Exemptions, & Immunities in Trade, Navigation, & Commerce in every Colony,” a draft put forward by John Dickson read, “and in going to & from the same, which the Natives of such Colony enjoy.” In the committee version, the delegates borrowed directly from the language of the trading houses of a world of parts and places, providing that “The Inhabitants of each Colony shall enjoy all the Rights, Liberties, Privileges, Immunities, and Advantages, in Trade, Navigation, and

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58 Silas Deane, proposals to Congress, ca. Nov. 1775, in Letters of the Delegates, 2:418
59 Committee, draft of the Articles of Confederation, in JCC, 5:675.
60 John Dickinson, draft of the Articles of Confederation, in Letters of the Delegates, 4:236.
Commerce in any other colony, and in going to and from the same from and to any Part of the World, which the Natives of Such Colony enjoy.”  

And yet, even as the principles of the coast offered a template upon which to inscribe an alternative to the experiences of a monarchical empire, the same questions that had plagued the Continental Association persisted, as the difficulties of translating the principles of a commercial partnership into a political entity erupted into debate. In their letters home, delegates returned time and again to the difficulties that the division of political votes and invoices presented. “Our Congress have now under Consideration a Confederation of the States,” Abraham Clark wrote to James Caldwell on August 1, 1776. “Two Articles give great trouble: the one for fixing the Quotas of the States towards the Public Expense, and the other whether Each State shall have a Single Vote or in proportion to the Sums they raise or the Numr of Inhabitants they contain.” Others concurred. “If a confederation should take place,” John Adams asked, “one great question is, how we shall vote.”

The basic principles for resolving the issue were clear enough: equity and justice. But as the days passed, it became increasingly clear that the principles could cut in either direction. “You say Representation ought to be as equal as possible,” Samuel Ward wrote to his brother. “Agreed,” he continued, “but what is to be represented—not the Individuals of a particular Community but several States, Colonies or Bodies corporate.” The principle of justice was even less useful. “You say Justice requires that the larger Colonies having a great number of Inhabitants & a greater Share of Property

61 See Committee, draft of the Articles of Confederation, in JCC, 5:676.
64 Ibid.
should have a proportionally greater Share of Representation,” Ward reasoned.65 But why, Ward asked, should a wealthy man, much less a wealthy colony, be entitled to more power? “Do not the numerous Family & Fortune of the one give him sufficient Weight & Influence, surely they do, he can have no Right to more.”66

The problem of dividing up the votes amongst themselves appeared almost as intractable as the challenge of dividing up the obligation to pay for the shared undertakings. Here too, the principle was clear enough: everyone could agree the burden of political partnership ought to be divided equally. But what constituted an equal burden? “Let us lay every Burden as equal on all the Shoulders that We Can,” Robert Henry Lee replied. “All must bear a proportional share of the Continental Expense.”67

When, for example, a proposal emerged to keep a record of all such shipments, the delegate from Virginia who had delivered a shipment of guns from the James River to Boston expressed his incredulity. “Is this the Way of giving Thanks,” he asked, prompting a quick apology from the delegate who suggested it.68

Further compounding the difficulty for those determined to secure the terms of agreement lay the lingering sense of distrust of the men of the Massachusetts Bay. “Inter nos,” John Hancock wrote to Cushing, “some here who are not very friendly to you & I (& our province you know who) begin publickly to Say that the Massachusetts Ships will be last finish’d, that they are in no forwardness.”69 The men to the southward, another delegate reported, felt that they had been asked to pay too much of the burdens of war, by being taxed on their property. “Most of the Southern Colonies are as uneasie as

65 Ibid.
66 Ibid.
68 Ibid.
[Maryland],” the delegate reported, “but don’t scold quite so hard.”70 Their resentment, it seemed, appeared targeted at the merchants of New England. “This Province have a fixed hatred of N.E. and every thing that belongs to it, but Money, and that is all the God they worship,” reported one delegate from Pennsylvania.71 “There seems to be Spirit in some of the Southern agst. the northern Colonies and all their Officers and Affairs,” reported another to his brother in August of 1776.72

Set amidst these seemingly insurmountable questions of the division of political power and the continuing sense of distrust, efforts to find some workable solution came to a rest in an uneasy compromise, put forward by a lawyer from North Carolina named Thomas Burke. In April of 1777, a full two years after Franklin had offered the first draft of the terms of partnership, the members of the Continental Congress attempted, once more, to try to finalize the document. Once more, they repeated the same familiar phrases; once more, they ran into the familiar question as to how to divide up the privileges and burdens of political power. And yet, on this particular April afternoon, the lawyer from North Carolina, who hailed originally from Ireland, offered a different formulation of one of the oldest phrases in the written documents: a phrase that would later come to be seen as synonymous with the Articles of Confederation, but that had appeared to many in the room as altogether foreign: the “sovereignty of the state.”73

As soon as Burke proposed the phrase to replace the provision that traced its roots back to the discretionary authority of the trading house, it seemed to him that no-one in the room had any idea what he was talking about. “This was at first so little understood,”

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70 William Williams to Oliver Wolcott, Philadelphia, Aug. 12, 1776, in Letters of Members, 1:47.
73 Thomas Burke to Richard Caswell, Philadelphia, Apr. 29, 1777, in Letters of Members, 2:345.
Burke reported to the governor of North Carolina, “that it was some time before it was seconded.” The opposition, he continued, came from “Mr. Wilson of Pennsylvannia, and Mr. R.H. Lee of Virginia. Burke offered no further details as to the basis of the opposition. But at a time when the war raged and the questions of payment and power remained unsettled, the delegates voted to accept the novel phrase, leaving for another time the debates as to the meaning of its terms.

For by that November of 1777, the delegates had settled on the final terms of partnership, creating a document that rested not on the embedded logic of centers and peripheries, but on the old practices of the coast, a document that would help open the ports of the world to the ships now hauling out laden with tobacco. And in those uncertain days of war, the question as to what constituted a sovereign state would remain on the margins, as the ships set sail for the ports of Europe, where the novel label of the states disappeared once more into the single wedge of land, and the old category of America and its peoples ascended once more into view.

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The phrase that that the novel phrase of the “United States” began to circulate in the trading houses along the coast of western Europe, men who had long followed the seas skipped over the phrase altogether. “The rising sun of America begins to dazzle already,” one of the leading merchant houses of Amsterdam wrote not long after a victory on the battlefield. Months earlier, when he congratulated a fellow trader on the good

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74 Ibid.
75 Ibid.
news, he spoke of the “independence of America;” the same phrase that sounded in the
toasts of Paris and the halls of Philadelphia, at a time when the states appeared as an
afterthought. It was only after looking over his letter that the Dutchman crossed out the
familiar phrase of the continent, replacing it with the United States.

On paper at least, the creation of the United States, as embodied in the Articles of
Confederation, signaled a distinct shift in the logic of partnership. In the law offices of
Newburport, men of the Massachusetts Bay began the work of drafting the terms of the
state constitution, borrowing from the existing structures. “It was solemnly agreed to
commence the State of M. Bay,” the lawyer Rufus King reported in 1778, “and further
resolved…that the form of Government of the Colony of the M. Bay should be the form
of Gov. for the State of the M. Bay, until a convenient opportunity of forming a
government.”

And yet, even amidst all the changes, down along the waterfront, there were
traces of the familiar, as men spoke of the new state legislature as no different than the
colonial assembly, and instead returned to the familiar work of transforming their
merchant ships into war ships, once more hauling out for the continent, where the novel
language of the states gave way to the old vernacular of America and its peoples. When,
for example, men toasted the creation of the new state legislature, they could find a place
for it within the existing ways of the coast. “The commercial & monied interest wd. be
more secure in the hands of the State Legislatures, than of the people at large,” observed

77 John de Neufville to Thomas Cumford, [Amsterdam], Feb. 4, 1780, de Neufville Papers, Letter Book
May 22, 1779 to Feb. 15, 1783, NYHS.
78 [“Newbern, N. Carolina, March 29,”] Maryland Journal, Apr. 17, 1776 (“The common toast among the
French…is, the independence of America”); “Philadelphia: July 4,” Independent Ledger, July 26, 1778
79 John de Neufville to Thomas Cumford, [Amsterdam]: Feb. 4, 1780, de Neufville Papers, Letter Book
May 22, 1779 to Feb. 15, 1783, NYHS.
80 Ibid.
81 Rufus King to Joshua [n.a.], Newburyport, Dec. 14, 1778, King Papers, Box 1, NYHS.
the Elbridge Gerry from Marblehead.\textsuperscript{82} Abroad, the traders in Europe described the states as akin to private individuals, nestled within the familiar coast. When, for example, John de Neufville, for example, began to draft letters proposing the beginning of a partnership between his house and the state legislature of Massachusetts, he reasoned that he could not contract with the public government of the United States, they would at least “have always business enough through every private State.”\textsuperscript{83}

In the trading houses, meanwhile, the ships of Massachusetts began to sail once more, as the odd phrase of the sovereignty of the state receded into the familiar circuitry of the old coast. As the politicians in Congress debated the division of political power between the states, for example, the letters arrived in the Massachusetts Bay from the southward, beckoning the ships down to take the produce of the plantations to market. “The trade with G.B. Being finally at an end,” one letter from Charleston began, “from whence we used to be furnished with shipping to take away our Produce, we are now greatly distressed for Vessels, and as I imagine there must be numbers with you laying up I think it would turn out to good acct to send a great many of different sizes.” The profits would be immense, he promised: soaring prices for “every article of Nward Produce.”\textsuperscript{84}

Those who reciprocated in kind and dispatched their ships down the coast and out to sea recited the same geography of a world of ports and places, bound together by the promise of mutual profit. Letters of introduction from one merchant to another returned to the familiar exchange of promises, with hopes of “the beginning of a Correspondence

\textsuperscript{82} Jonathan Elliot, ed., \textit{The Debates in the Several State Conventions as Recommended by the General Convention at Philadelphia in 1787} (Philadelphia: J.B. Lippincott Co., 1836), 5:169.
\textsuperscript{83} John de Neufville to Isaac Sears, Esq. and Paschal N. Smith, [Amsterdam], Feb. 10, 1780, John de Neufville Papers, Letter Book May 22, 1779 to Feb. 15, 1783, NYHS.
mutually profitable & agreeable.”\textsuperscript{85} Ship-owners once more began to queries, wondering whether to “send a Brig to your place for a Cargo of Rice,”\textsuperscript{86} or, again, to “send to Charleston to load Rice,”\textsuperscript{87} no need to mention the state. In the absence of parliament’s old trade restrictions, the ships could now, at least on paper, carry the produce of the plantations anywhere on the globe, and when men spoke of the possibilities, the world came into view, as they spoke of destinations to “any port in France & Spain or Holland.”\textsuperscript{88} Even the landmarks of the coast came more sharply into view. “Remember the Cape Anne Lights are down & place no dependence upon others,”\textsuperscript{89} one merchant advised his ships.\textsuperscript{90}

Out on the seas, meanwhile, men who sought to secure the protections of the American flag in hauling out to collect the provisions of Europe, turned not to the novel category of the state, but to the newly established Continental Congress of America. In lieu of the states remembered today as the primordial source of citizenship, these early claims based their claims on the old familiar continent of the American coast, linked to the trading houses for which they worked. “I am a Subject to the Continent of America,” a ship surgeon wrote in his petition to the diplomats stationed in Paris, seeking their aid in securing a ship home.\textsuperscript{91} “I was Borne in Newbery north ameraca,” came the letter from a ship carpenter imprisoned in Denan Prison, not unlike the letters that arrived in the Massachusetts Bay, listing Newbury Port and North America, no need to mention the

\textsuperscript{85} Jackson, Tracy and Tracy to Henry Crouch, Newburyport, Feb. 5, 1777, Lee Family Papers, Reel 18, MHS.
\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid.
\textsuperscript{88} Jackson, Tracy and Tracy to Surie Poncett and Son, Newburyport: Apr. 2, 1777, Lee Family Papers, Reel 18, MHS.
\textsuperscript{89} Jackson, Tracy and Tracy to James Tracy, Newburyport, Aug. 25, 1775, Lee Family Papers, Reel 18, MHS.
\textsuperscript{90} Ibid.
\textsuperscript{91} Thomas Barnes to John Adams, Paris, Aug. 25, 1778, in Letters of the Delegates, 6:395.
province.92 “Captain Peter Collas of Boston in America,” came another, a prisoner who hoped to secure the retrieval of his property in the customs office, and once more, felt no obligation to mention the state from which he hailed.93 “Pierce Power born in Dover in american,” came another.94

The basis for these claims to the protection of the nascent American flag rested not on any grant of admission to the body politic of the states, but to the services the mariner planned to offer the war effort. “I want to serve by transporting goods to the rising American states,” came a request from a ship-owner stranded in Paris for American passport, “and request a pass from London to Spain for this purpose.”95 Others specified the exact goods to be delivered in exchange for American papers. “To lessen the scarcity of salt in America and to benefit myself, I propose to send several cargoes of it from Portugal this coming winter,” sounded one request.96 Still others mentioned simply the intended route that would lead back to the continent. “We purchased [a vessel] with a Sole Inten to proceed to America,” came word from a Philadelphia merchant stranded in a town on the coast of France, who hoped for help in returning back across the ocean. “Time will prove our Sincerity for America and Service we are in Hopes of Rendering the Country,” came another request, announcing plans to “Sail for the Continent.”97

Others seeking the protections of American citizenship emphasized their membership not in the long invisible states, but in the trading houses for which they worked. “I am a native of Virginia,” wrote a man in a prison in Paris, before he switched

93 American Commissioners to Necker, Passi, Oct. 9, 1779, in Franklin Papers, 27:526.
96 Joseph Wharton, Jr. to the American Commissioners, Paris, Sept. 26, 1778, in Adams Papers, 7:82.
mid-sentence to base his claim for the protection of the American flag not on the state, but on the trading house where he had spent his time. “I am a native of Virginia,” he wrote, “but Sarved my time in Willing & Morriss’s Imploy out of Philadelphia.”

The prominence of these trading-house claims for American citizenship rested, in part, on the nature of the merchants who kept a close eye on their fleets. When, for example, Elbridge Gerry of Marblehead learned that one of his ships sailing “in the Service of the Colony,” as he put it, had been seized in Spain, he knew of the ship’s whereabouts long before the members of the colonial assembly, and indeed, was the one to inform that about its location. “I have heard of my Vessel in the Service of the Colony,” he reported to one of the members in the colonial assembly. “I saw a Letter from the Master to the Commander of a Ship arrived in this place,” he continued, before outlining the precise number of powder that she was carrying for the soldiers of Boston.

At the same time, however, the claims also rested on a much older theory of citizenship: one that linked protection to allegiance. As the lawyer Charles Sumner would later recall, “The duty of allegiance carries with it the correlative duty of protection on the part of the crown. This is feudal, at the same time that it finds its support in the principles of natural justice.” Tracing its beginnings to the age of the Roman Empire, the idea had traveled to the feudal England, and from there across the seas in the pamphlets of John Locke, where it sounded in sermons from the pulpit on Sabbath.

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100 See Charles Sumner to Robert C. Winthrop, Boston, Feb. 9, 1843, in Robert C. Winthrop Papers, MHS.
mornings, until it now reverberated across the high seas, kept afloat by the happenstance of war.\footnote{101}

Indeed, at a time when men could proclaim themselves to be subjects of Boston, North America, this novel category of “citizens of the United States” could fall easily back into the spoken customs of a “citizen of America.” As the letters from merchants expecting passages continued to arrive in the consulate office in Paris, the diplomats responded by issuing certificates, even in the same breadth as they advised the shipowners that the certificates of American citizenship were void.\footnote{102} As the requests continued to multiply, diplomats stationed abroad looked increasingly for some way of forging a more regular, more formal means of doing business. “Will it not be practicable for Congress, to prescribe some Mode of giving Registers to ships, Some mode of evidence to ascertain tye Property of Cargoes, by which it might be made to appear to the Cruisers and to Courts of Admiralty, that the Property belonged to Americans abroad.”\footnote{103}

As the numbers of petitions began to accumulate, the diplomats began the work of translating the trader’s vocabulary of a “citizen of America” into the more formal language of the United States. When, for example, a ship-owner from Philadelphia petitioned for the diplomats’ help in securing his seized vessel from the French officials, the commissioners reviewing his case began with the old vernacular. “Mr. Joy Castle of Philadelphia,” they wrote in the rough draft of their letter to the French officials, beginning of the port city from which he hailed, no need to mention the state.\footnote{104} “He is an...
American citizen,” they continued, speaking now in the vernacular of ports and continents. It was only later, in the final version, that the diplomats shifted from the customary language of an American citizen to “a Citizen of the United States,” not unlike the Dutchman who had crossed out America and replaced it with the United States.

For in those days of war, it was possible to speak of the Republic not as a composite of fragments, but as a single wedge of land, now coming into view on the horizon. “Upon the Receipt of this Letter, you will forthwith make Preparations…for a Voyage to America,” the diplomats advised citizens seeking to return home, no need to mention the states, simply reciting the old familiar phrase, invoking that vast continent of land that ran as far as the eye could see, their ships laden with the articles of war, sailing under the merchant flags of America, nary a star to be seen.

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105 Ibid.
UNION OF INTERESTS

When the last ships of war had descended to the bottom of the seas and the wood gave way to dust, the fragments remained. Scaps of paper. Odd shapes, different sizes. “Nothing spoken was to be published,” the men had promised each other, and the notes they took certainly gave no indication of any intended readership. Doodles and rhymes on the margins. Undated slips of paper with lists of names and “ayes” and “nays,” penned by men who had come to that hall in Philadelphia in the summer of 1787, for what would be remembered as the drafting of the nation’s constitution but what was, for those of the Massachusetts Bay who had dispatched their ships down the coast and out to the world, simply another meeting, another attempt to correct all that had gone so disastrously wrong.

The fragments from that summer have long since been numbered and stamped, transcribed into print, and laid down to rest in archival boxes. Those who spend their days reading the words of the dead have lifted the papers up, studied them under a desk-lamp, paged through their neatly typed transcriptions, searching for answers to any

4 See, e.g., King, notes of June 9, 1787, King Papers, Box 2, Folder 1, NYHS (scribbled doodles and the repeated phrase “bounds & grounds”).
number of questions deemed to be worthwhile.\(^6\) And amidst the archival debris, on a single sheet of paper dated June 18, 1787, an idea appears that is today most often associated with the march of Lincoln’s armies, but that would have made all the sense in the world to men who had long followed the seas. For there, in the scrawled handwriting of a lawyer from a shipping town of the Massachusetts Bay, a recorded vision of America appears, in which the bordered domains of sovereign states recede into the backdrop, leaving only a smoothly hewn wedge of land and its peoples. “They are deaf, dumb and impotent,” Rufus King wrote of the thirteen states of America. “Subordinate corporations,” he called them. “Societies and not Sovereigns,” he continued, etching into the record the old idea of an America of united societies.\(^7\)

As with most ideas handed down across time and space, explaining where this particular idea of an America of invisible states came from has proven difficult. It appeared in the notes with no accompanying translation: no guide with which to identify all the long rivers of the past that fed into it, much less the immediate twists and turns that precipitated its jolt into the supreme law of the land that summer.\(^8\) Those who have

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\(^7\) Farrand, \textit{Records}, 1:231.

caught sight of the vision King and his friends set out that summer of an America of “united societies” have searched in different places and returned with different explanations. Many, surveying the preceding decade of the 1780s, have attributed the view to a general Federalist antipathy towards the states following the crises unleashed by revolutionary war. More recently, scholars have invited us to broaden the temporal and spatial boundaries of 1787 and trace the inspiration for a supposed Federalist vision of an America defined by a strong centralized state back to the previous experience of the British Empire or models from abroad of the strong Europe.

And yet, an analysis of the debates in the context of the long overlooked records reveals an additional and now almost completely forgotten source of inspiration for King’s adamant insistence on an America where the states could be reduced to a land of united societies or associations: a vision that lay at the heart of the constitutional compromise. For these records reveal that the men from the Massachusetts Bay who assembled in Philadelphia and insisted on a geopolitical landscape where states could dissolve into interests were concerned not simply with securing a route to markets abroad and solving the nation’s problems of revenue and defense—though they no doubt were concerned by both. Instead, these records reveal a determined effort to preserve a right of

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privilege access to the southward, at a time when an uncertain peace had brought the return of British freighting ships back to the trading ports of the southern coast.

In particular, in an untold chapter of the origins of the Constitution, these records reveal that beginning in 1784, men of the Massachusetts Bay discovered that although they had triumphed on the battlefield, they had effectively been shut out of the ports not only abroad, but amidst the ports to the south of the Chesapeake. Confronted with the prospect of what one of King’s friends predicted would amount to commercial ruin, these merchants of Massachusetts assembled and began efforts to endow Congress with a power of regulating not only commerce with foreign nations, but also at home. Almost as soon as they presented the proposal, however, reports arrived from Charleston with the grounds of opposition. As members of the South Carolina legislature pointed out, under the existing rules dividing political power in Congress—the formal rule of state sovereignty that assigned one vote per state—the continental scale tilted nine votes to the northward, four votes to the southward, allowing the shippers of the northward to establish a monopoly in to the southward. Determined to overcome these charges, King and his colleagues in Congress turned not to the formal treatises of international law for a solution, but to the old geography of the coast: dissolving the states from the novel category of sovereigns entitled under the treatises of international law to formal equality of votes, back into an America of interests, to be balanced on the merchant’s scale of equity, alongside the bodies of the enslaved.

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When the war for independence came to an end with the scrawl of a signatures on the Treaty of Peace and the troubles began that would leave the merchants of the
Massachusetts Bay to wonder when and how it had all go so desperately wrong, there was at least the assurances that this, too, could be fixed with the precedents of the past. The gnawing sense that something had been lost in the victory of the battlefield occurred in different times and different ways, as men who ventured out across the seas found themselves shut out from the familiar wharves and coffee houses, left to sit alone in a rented room in London and wonder when and how it had all gone so desperately wrong.\(^\text{11}\)

The lawyer Rufus King, who had learned the ways of the law in the shipping port known the world over for its fleets, had likely heard about the difficulties from one of his friends, Jonathan Jackson, one of the largest ship-owners of Newburyport. Jackson lived in one of the fine houses along the Bay, at the end of a broad road of stately homes on High Street, shaded by canopied trees in the summer, with a peach orchard out back, and a fine view of the ocean below.\(^\text{12}\) Jackson had built the house for himself and his new wife just before the war. He had chosen the highest point in town, not far from where the fishermen once hung a lantern from an old tree to bring their ships home.\(^\text{13}\)

When the peace came, Jackson had been among the first to sail for London in 1784, to arrange meetings with the trading houses with hopes of starting back up in the

\(^{11}\) See e.g., *The Congressional Register*, ed. Thomas Lloyd (New York: Harrison and Purdy, 1788), 160 (quoting Ames Fisher of Massachusetts as declaring that “the present constitution was dictated by commercial necessity more than any other cause.”); Daniel Webster, “The Case of Gibbons and Ogden,” in *The Works of Daniel Webster*, ed. Edward Everett (Boston: Little, Brown, Co. 1858), 1:4.


\(^{13}\) See John H. Currier, *History of Newburyport, Mass. 1764-1905* (Newburyport, MA: John Currier, 1906), 142 (describing the history of a large oak on High Street that was known as “Beacon Oak,” in 1764, upon which mariners had attached a long pole, or staff that by the early 1800s had become worn and decayed).
“I have been here almost two months & have effected but little or nothing,” Jonathan Jackson wrote back to his neighbor in Newburyport.\textsuperscript{14} The winter rains came down and the city sky was low, and there was a stack of calling cards on his desk that no one was willing to take. “They are very cautious of the name of an American,”\textsuperscript{15} he continued. He could sense it, in the way he seemed to become invisible. “It is not so easy, I’ll assure you, to meet these folks as I imagined it would be.”\textsuperscript{16} Days passed, and still the foreboding sense of invisibility. “I don’t know how it is, but still I am not courted.”\textsuperscript{17}

Others in Jackson’s circle began to report similar experiences: smug customs officials in ports of London, asking exorbitant fees for entry. “A very large duty was paid to the king, the first instance we are told of any duty being ever paid, and that it is imposed upon us being Americans,” one trader recalled of the tobacco he had shipped to London from Virginia.\textsuperscript{18} “I, sir, since the war, have had commerce with six different nations of the globe,” another reported. “I have inquired in what estimation America is held; and if I may believe good, honest, credible men, I find this country held in the same light, by foreign nations, as a well-behaved negro is in a gentleman’s family.”\textsuperscript{19} It was downright humiliating. “The American merchant was formerly held in the highest repute in England,” one reported, but now: no longer.\textsuperscript{20} “It really appears the main object of the

\textsuperscript{14} Jonathan Jackson to N.A., London, June 9, 1784, Lee Family Papers, Reel 1, MHS.
\textsuperscript{15} Ibid.
\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
\textsuperscript{18} Codman and Smith to Callender and Henderson, Boston, Dec. 5, 1782, Codman and Smith Papers, Baker Library, Harvard Business School (“We are uncertain but our Ship Commerce may go to some part of Virginia from Havanna. If you should hear of her please to acquaint the Capt. …that you have Tobacco of ours & that we wish the ship to load with Tobacco for France.”); Codman and Smith to Harrison and Co., Boston, Dec. 20, 1782, Codman and Smith Papers, Baker Library.
\textsuperscript{19} Elliot, Debates, 2:35.
\textsuperscript{20} “For the Independent Chronicle,” Independent Chronicle, Sept. 1, 1785.
enemy to distress our Trade,” one Boston merchant observed seven long years into the war, to a man down in Baltimore who would later help draft the Constitution.21

The difficulty, however, lay not simply in the cold treatment in the ports of the Atlantic world—that much would be remembered long afterwards. Of equal concern, lay in the exclusion from the ports to the southward, where the fleets of British ships had returned after the war to claim a veritable monopoly. “Our tobacco, provisions, and every other article of staples are constantly shipping from us in British vessels,” one worried merchant observed in a letter republished in the New York newspapers.22 As the writer explained, “Our vessels are rotting away at the wharves for want of employ.”23 It appeared, the writer pointed out, that the British were attempting to lay claim to the carrying trade that of the American ships. “We see how anxious Britain is to engross our carrying trade to themselves; and for this purpose they are…trying by every possible means to annihilate our shipping.”24

Similar reports sounded down the coast. “Great-Britain is endeavoring, by every means in her power, to annihilate the carrying trade,” one observer reported in Providence. She was “depriving our ships of the privilege of carrying the produce of our own country,” while the “subjects of that nation are permitted to send their vessels to any part of the continent for bread, flour, tobacco, rice, &c, and to ship them from most of the States upon the same terms with our own subjects.”25 Everyone could see that the burden fell most squarely on the ship-owners. “Of all people,” wrote one observer in New York,

21 Codman and Smith to Thomas Fitzsimmons, Boston, May 30, 1782, Codman and Smith Papers, Baker Library.
23 Ibid.
24 Ibid.
“I pity the New-England States most. Their commerce is good for nothing on the present plan. Independence at present is no blessing to them in the way of trade; for from the regulations of Great-Britain they can have little or none of the carrying business.”

In the counting houses along the Massachusetts Bay, merchants who knew the value of the Carolina soil calculated the windfall of profits that the British ships earned upon each voyage, carrying the produce of the plantations back to London. “Three hundred thousand dollars,” one merchant later roared when Rufus King returned to Boston with a rough draft of the Constitution, speaking with enough enunciation that the secretary spelled out the full value in letters. “Three hundred thousand dollars. This is money which belongs to the New England States, because we can furnish the ships as well as, and much better, than the British.”

It was unfair, he reasoned, that a British ship should have the same right of access to the southern ports as a New England ship. “A vessel from Refeway or Halifax finds as hearty a welcome with its fish and whalebone at the southern ports as though built, navigated and freighted from Salem or Boston.” Indeed, in London, insurance firms raised the cost of insuring any ship with American papers, making it more difficult to find a cargo. “Several American ships are up for Boston,” came word from London, “and other parts of the United States, but are not so likely to obtain cargoes, while insurance on them is 5 and 6 per cent, and British bottoms are insured at 2 only.”

As the merchants began to take stock of the outcome of war and looked out over the barren lands, there was an emerging sense of anxiety among the seaports that they had drawn the short side of the

27 Elliot, Debates, 2:58.
28 Ibid.
continental stick. “Our sister states to the south produce immense quantities of rice, indigo and tobacco—articles much in demand, which forever secure to them wealth and importance,” one editorial reported, hinting at the vast resources to the southward.30

By February of 1785, as the merchants began to plan their orders for the first year of the peace, the stakes seemed clear enough from the newspapers: the ships simply could not compete against the British. It would only be a matter of time, one report worried, before we must “accept of their ships for our carriers, depriving us of being the carriers of our own produce.”31 As King put it flatly that winter, “Our commerce is almost ruined.”32 To be sure, despite the dismal predictions of commercial catastrophe, the statistics that emerged later suggested that the situation may not have been as dire as some predicted. In a table that appeared in November 1787, for example, the clerk reported that in the previous year alone, American ships had ousted British ships in carrying Charleston’s produce. Of the 947 vessels clearing out, the table reported, 735 were American, while only 148 were British; in tonnage, meanwhile, American ships carried 41,531 tons from Charleston, with only a paltry 16,787 tons carried by the British.33

And yet, even those who were optimistic for the future could agree that securing a more formal basis for the privileges of access to the southward would certainly be advantageous to the three eastern shipping states along the Massachusetts Bay. As one correspondent in Charleston predicted to his friend in New England of the written document of the Constitution, “It will be of infinite advantage to the eastern states; for the policy of the federal government will doubtless lead them to give a determined

30 “For Thomas’ Massachusetts Spy,” Massachusetts Spy, Nov. 24, 1785.
31 Ibid.
32 Rufus King to John Adams, New York, May 5, 1786, in Life and Correspondence, 1:172.
preference..., if not an exclusive privilege to the vessels of America, to the carrying of its own produce—should that be the case, we shall want annually, to export the produce of this State, from 20 to 25,000 tons of shipping, which, form the present situation of America, must be provided from the three Eastern States.”

The question, of course, was how anyone in the quiet shipping towns of New England could go about securing a place for the ships in distant ports some thousand miles away. “Demand new & better measures in Congress,” King’s friend Jonathan Jackson had advised from London, before he realized that the terms of partnership did not grant the new institution any such power when there had been no need. Grant Congress “full powers to regulate both internal and external commerce” another merchant recommended, when it became clear no such power existed.

From King’s perspective, the best means of vesting Congress with an additional power would be to reviving the old circuitry of correspondence that had once given rise to a united sentiments of America. As Rufus King explained to the lawyer John Adams, what was needed was a revival of the old uniformity in views that would secure a place for the ships of America in the ports to the southward. “Will not the spirit which dictated the non-importation agreement and which once pervaded these states again appear?”

King wrote to John Adams in November of 1785. “It still exists, and though it may have slept for a time, it can again be roused,” he wrote. And once roused, he continued, there would be stopping America’s ascent. “The…vain sophisms of Europeans…will not only direct but drive America into a system more advantageous than treatise and alliances with

34 “Portsmouth, February 8,” New Hampshire Spy, Feb. 8, 1788.
35 Jonathan Jackson to N.A., London, June 9, 1784, Lee Family Papers, Reel 1, MHS.
37 Rufus King to John Adams, New York, Nov. 2, 1785, in Life and Correspondence, 1:113.
all the world—a system which shall cause her to rely on her own ships & her own marines, and to exclude those of all other nations.”

This effort to secure a place for America’s ships in the continental ports began on a Friday evening in April 1785, when the “merchants of standing” assembled in Colonel Marston’s Long Room to decide on a course of action. It had been twenty years since the first call for the “united Sentiments of America,” sounded in the seaports during the crisis over the Stamp Act; ten since the first proposals from Newburyport for a “Congress of Merchants.” It was clear now, looking around the colonel’s table how porous the line between the old trading house and the novel state government remained. The man whom the attendees elected to moderate the discussion that evening was none other than the newly elected governor, while the reporter who jotted down notes from their proceedings declared the impromptu gathering of merchants to be a meeting of the “city senate.”

At least some who gathered around the table worried that the likelihood of success in securing a permanent route for their ships to the southern ports and out to the markets of the Atlantic world would be difficult, at best. “A very great uneasiness is discoverable among the merchants & traders generally through the States, from the disordered condition of Commerce,” King observed later that spring. Indeed, the previous summer, the merchants and planters of Virginia had launched a failed effort to grant Congress a limited authority to close the ports to certain British goods for a limited period of time. Despite their best lobbying efforts, however, only eight of the state legislatures had agreed to the plan. “What can be done?” King had asked. “Eight States

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38 Ibid.
39 “Boston, April 18,” Salem Gazette, Apr. 19, 1785.
40 Ibid.
41 Rufus King to Elbridge Gerry, New York, May 19, 1785, King Papers, Box 1, NYHS.
only have complied with the recommendation of last year for granting to Congress power to prohibit certain importations & exportations.”^42

What was needed, the ship-owners of the carrying trade agreed, was a power far greater than that which Virginia’s merchants had recommended: a grant of power to “regulate the internal as well as external commerce of all the States.”^43 The first order of business, if there was to be any hope of success that April of 1785 of securing such a power, was to revive the old circuitry of correspondence. The “greatest object of all,” the Boston newspapers reported, “was to adopt some plan of communicating to the merchants of other ports, and other states on the continent, the absolute necessity of uniting in one request to Congress, in behalf of commerce.”^44 They would begin with the easiest target: the merchants of New England. Jackson, for one, was confident that they would be successful. “I think among you all, what in your different Circles & by Gazette writing,” he wrote to a friend in Newburyport, “you may muster up N England.”^45

In the letters the men began to draft that April night, one could hear the same familiar spoken geography of the coast that had sounded for decades. In the letter addressed to the merchants of America, for example, the writer referred simply to the “merchants of the several sea-ports throughout the United States,” and once more there was no need to refer to the merchants as belonging to any of the old arcane colonies that had become states.^46 The writer described the continent not as a stacked hierarchy of governments radiating around a center, but as a single economic entity. “Happy are we…that the Resources of America…are fully competent to our independent and

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^42 Ibid.
^44 “Boston, April 18,” Salem Gazette, Apr. 19, 1785.
^45 Jonathan Jackson to N.A., London, June 9, 1784, Lee Family Papers, Reel 1, MHS.
comfortable Support,” the letter read, echoing the old merchant’s books that had long described America as a single source of produce, while warning not of the collapse of the United States, but of the “ruin of America.”

Within that private circuitry of commerce held together by mutual advantage and united interests, there was no place for the dictates of central authority to its peripheries. “We do not…presume to dictate what is best to be done in this critical situation of our affairs,” the merchants assured their correspondents. Instead, theirs would be a partnership that would rest on open conversation, negotiation, and a sense that justice had been served to each party. “[We] conceive it highly necessary to have a free communication of the sentiments of the mercantile interest,” their letter to the merchants of the coast concluded, while expressing hope that, “in consequence of this correspondence, some permanent and beneficial purposes may be effected.” In the letters addressed to the merchants of Massachusetts, meanwhile, the merchants defined the land not as a formal representative institutions, but as a composite of private interests. “We regard and connect the Sea-Ports of Massachusetts, as Members of the same Body,” the letter read, “whose Interests are, and always must be inseparable.”

The men who drafted the letters knew that words alone would not be sufficient to secure the coast. That same spring of 1785, a request appeared on the governor’s desk. Signed by the gentlemen of trade, the petition followed the old format from the provincial legislature, requesting that the governor use his influence with the state legislature to close the ports of Massachusetts to the British ships, in hopes of encouraging the southern

48 “[In consequence of the Votes and Resolutions…”], American Herald, May 23, 1785.
50 “To the Merchants of the Several Sea Ports of the United States: Circular, Boston, Apr. 22, 1785,” South-Carolina Gazette, June 28, 1785.
ports to do the same. The petition sounded in the same formula that merchants had long
used in their addresses to the royal governors as patrons of the trade, appealing to the
executive as a peer, “a Gentleman who cannot fail to sympathize with us at the gloomy
prospect of our declining trade.”

Indeed, the governor was happy to oblige. “The address of so respectable a body
as the mercantile part of this metropolis does me honor,” he replied. “I beg the favour of
your communications,” he continued, “and if I can assist in applying them to the revival
and enlargement of commerce, it will afford me the highest satisfaction.” True to his
assurances, by the time the weather had turned, the governor had signed a state law that
would close the ports along the Massachusetts Bay to all British ships. Down at the
wharves, the people watched as the few British ships that still remained in the harbor
hauled out with the first strong winds; one sailing down to Charleston, or so they said.

There was no reason to worry, the governor assured everyone. “We have a full
confidence,” the governor declared, “that the mutual friendship of the several States
towards each other…will be a sufficient pledge, that when measures…are taken by any
individual State, they will be adopted by all, so that no one State may be left to suffer…in
its own trade.”

At first, there seemed to be grounds to hope the governor was right in his
confidence of the old “mutual friends of the several States.” Merchants along the broad
bay of New England quickly set to work on a lobbying campaign of their own, easily

51 [“To the Foregoing Address…”], Essex Journal, June 15, 1785.
persuading the lawmakers of New Hampshire\textsuperscript{56} and Rhode Island to close up their ports,\textsuperscript{57} while merchants in Rhode Island “sent forward agents to Connecticut, to induce them to adopt similar acts.” Although no records remained of their conversations, their letters revealed the expectations of compliance. “We expect your state will adopt the navigation act,” one letter read, “as the only means to save our commerce, until Congress shall have the power of regulating trade, or British restrictions abated.”\textsuperscript{58}

Despite these auspicious beginnings, the men who traveled down to Charleston and Savannah to make the case for closing up the ports to the British ships began to describe the same sense of invisibility that Jackson had noted in the cold streets of London. “The emissaries from the New England states stationed in South-Carolina and Georgia are laboring with all their might to persuade those states to pass laws similar to the navigation acts of Massachusetts and New-Hampshire, excluding British vessels form their ports; but hitherto with little effect,” one merchant reported.\textsuperscript{59} It was easy enough to secure a hearing among the gentlemen of Charleston, but no one seemed particularly interesting in telling the British ships to leave. “The bills for empowering Congress to regulate their sovereign trade, have been introduced into their respective legislatures, but even these are cautious of passing without the mature consideration, having adjourned after their first or second reading.”\textsuperscript{60}

As one of King’s friends explained the situation, the planters down the coast simply had no inclination to grant an exclusive right of freighting to the New England ship-owner—not when the southern harbors were teeming with British traders who

\textsuperscript{57} See “Falmouth: November 26,” \textit{Falmouth Gazette}, Nov. 26, 1785.
\textsuperscript{60} Ibid.
offered cheap freights and a secure passage across the Atlantic back to the ports of London. “The moment it is proposed to make the Northern carriers for the Southern States,” Benjamin Lincoln observed, “they startle at the idea and immediately paint in their own minds fleets of ships from the Northern States blocking up their ports.” 61 “They will not,” he continued, “soon shut their ports against so valuable a purchaser as the British market.” 62 As the spring turned to summer, King began to read reports in the papers that seemed to corroborate his friend’s predictions. “It is frequently said, one essayist reported in a Pennsylvania paper, that if Congress is invested with a commercial power, the northern states will monopolize the carrying trade.” 63

The root of the problem, as men began to speculate, lay in the basic rules that governed the division of power along the coast. In March of 1786, as the crisis worsened, it became clear that the problem of union lay not in the remembered reluctance of southerners to give up their peculiar commitment to local self-government. Rather, the objection appeared in the records of the legislative debates in the South Carolina legislature was much more specific: resting with the exiting rules dividing power within the central government. 64 In early March of that year, the Boston papers reported the notes of the legislative debates down in Charleston, where one after another, the men who owned the landed estates began to question the basic division of power. A man named Calhoun, the merchants in Boston read, was “as much for vesting Congress with ample

61 Benjamin Lincoln to Rufus King, Hingham, MA, Feb. 11, 1786, King Papers, Box 1, NYHS.
62 Ibid.
64 [“The following Debate…”], Massachusetts Gazette, Mar. 20, 1786 ("If the nine northern states…should propose any question that might materially benefit themselves, it would be in their power to detriment the southern states.")
powers” as the last man. But he worried that the nine northern states would be able to work a detriment to the four southern states.  

As Calhoun explained during the course of the debates, “If the nine northern states…should propose any question that might materially benefit themselves, it would be in their power to detriment the southern states.” His friend Ralph Izard shared the same concerns about a northern monopoly. He “wished to know, if the northward States were to have the monopoly of our carrying trade; for if such a measure should be adopted, he was afraid that the value of our produce would be materially injured from the few in number of vessels that would take it.” Anyone who looked at map and saw the four yawning blocks of land to the south of the Chesapeake, the nine cramped blocks to the southward, would have to agree. Under the rules allocating one vote per state, the gentlemen to the northward enjoyed more than twice the power than the gentlemen to the southward, paving the way for the shippers to establish a monopoly over the ports.

In the Boston papers, pundits endeavored to rebut such concerns by recycling the old arguments of “mutual interest” that had long traveled the old circuitry between the trading houses. Granting the “United States assembled in Congress” a power to reserve that broad stretch of the American coast for American ships would “cement the northern and southern States as one people, united in friendship, harmony and mutual interest,” one editorial read. Using the old vernacular of the trade, the writer insisted that theirs would be a partnership that could advance the mutual interest of both the shipping states and the agricultural states. “That diversity of circumstances…might be rendered

65 [“The following Debate…”], Massachusetts Gazette, Mar. 20, 1786.
66 “Sketch of this Day’s Business…,” Charleston Evening Gazette, Feb. 8, 1786.
67 Ibid.
subservient to the mutual interest of the Northern and Southern states.”

Analogies began to appear in the papers, comparing the novel entities of the states to ships and trading houses. Absent a grant of power, “our republics, over-run with British [traders], will shortly be like a ship, whose bottom is eaten up with the worms.”

And yet, as the old arguments of mutual advantages and mutual interests sounded in the papers, it quickly became clear that all the rhetoric in the world would not be enough to preserve a place for the ships of the broad Massachusetts Bay in the ports to the southward of the Delaware River: not when the current rules of dividing up power granted nine votes to the northward, four votes to the southward. “The pens of the ablest writers and best men on the continent have been employed to show what a speedy alteration it would make for the better in the state of affairs here: but all in vain,” one observer remarked. In Philadelphia, the politicians who asked their clerks to track down all published laws of the statehouses concluded that two of the four southern legislature had refused to act: the legislatures of both South Carolina and Georgia had tabled any further discussion of acquiescing to Boston’s proposal to close their ports to British ships. In Savannah, meanwhile, a merchant assured planters that any reliance on the northern ships would be temporary. “We will get them from our northern friends for the present; he explained of the ships, “and learning the necessity of having them ourselves, we shall soon teach our countrymen the advantage of building them.”

As it became increasingly clear that no amount of letter-writing and rhetoric would be sufficient, momentum began to build along the seaports of Massachusetts for a

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73 “From the Georgia Gazette,” *South-Carolina Gazette*, Oct. 8, 1785.
fundamental reworking of the rules under the Articles of Confederation: a gathering, not unlike the old “Continental Association,” at which all of the multiplying difficulties could be resolved, including, more importantly, the awkward rules dividing up power with nine to the northward, four to the southward. As Jackson, King’s friend put it in a letter to a friend, in order to “manage the federal union, or rather, I would say, to manage our large family,” the most important reform lay “in dropping the distinction of separate sovereignties, by which reform an equal representation might now be introduced and always kept up.”

This proposal to drop the distinction of sovereigns found a welcome response among the men of the Massachusetts Bay tapped to represent the interests in the proposed Congress. King, for one, was confident that they would find a solution. As he saw it, the division was unwarranted. “Jealousies of an unwarrantable nature have been disseminated through the more Southern States,” he observed. With candid conversation, they would find a basis for resolution. “There is some ground, he predicted, to expect that several of the Southern States will do what is right on the subject of the commercial powers of congress.” And once more that summer, men would begin to make their way down from the Massachusetts Bay to the mid-point of the continent, where they would endeavor, once more, to inscribe into print an enduring logic of partnership to govern the old American coast.

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74 Jonathan Jackson to Richard Price, Boston, Aug. 8, 1785, in Massachusetts Historical Society, Letters to and from Richard Price, 1767-1790 (Cambridge: John Wilson and Son, 1903), 68.
75 Rufus King to John Adams, New York, May 5, 1786, in Life and Correspondence, 1:173.
76 Rufus King to John Adams, New York, Feb. 1, 1786, in Life and Correspondence, 1:148.
In the hall where the delegates met once more in Philadelphia for the Constitutional Convention in 1787, the sounds of the seas that bound the coast together appeared in the phrases uttered and recorded in the motley collection of notes. One could hear the coast come alive in the words of lawyers who spoke in “sea-phrases;” see it in the analogies the diplomats drew as they compared the assembled congressman to a group of gentlemen who co-owned a single vessel; glimpse its logic in the words of the statesman from Virginia named James Madison, who had confided to King that he had no other plan other than that of “investing Congress with full powers for the Regulation of Commerce, foreign or Domestic.” And over the course of the summer, the delegates from the Massachusetts Bay and their peers would set aside the novel claims of sovereignty and treatises of international law that entitled the states to equal votes, instead whittling the governments back into a coast of private interests to be balanced on the merchant’s equitable scale of justice.

From the opening days of the debates in June, the hastily sketched notes made clear that, they would conduct their negotiations within the familiar discourse of the old American coast. During the initial proposals for the plans of partnership, for example, the delegation from Virginia proposed a plan to do away with the former equality of suffrage in the Articles of Confederation and return instead to a division of power based on the rule of equity. “Resolved,” the Virginia Plan proposed, “that the equality of suffrage

77 Farrand, Records of the Federal Convention, 1:328.
79 See Rufus King to Jonathan Jackson, New York, Sept. 3, 1786, in Jackson Letter Book, Lee Family Papers, Reel 1, MHS (“Mr. Madison of Virginia has been here for some time past...He does not discover or propose any other Plan than that of investing Congress with full powers for the Regulation of Commerce, foreign or Domestic, but this power will run deep into the authorities of the individual States, and can never be well exercised with a federal judicial – the reform must necessarily be extensive.”).
established by the articles of confederation ought not to prevail in the national legislature, and that an equitable ratio of representation ought to be substituted.”\(^8^0\) As one planter from Charleston observed, in creating equitable ratio, the key criteria would be the relative wealth of the states. “Money is power,” the planter from Charleston declared, urging that “the States ought to have weight in the Govt in proportion to their wealth.”\(^8^1\)

As if sounding in a call and response in the debates that followed, the delegates of the Massachusetts Bay responded in kind. Setting aside the formal rules and political theories of representation, for example, Rufus King outlined a proposal that neatly aligned with Madison’s suggestion, framed in the language of striking a fair bargain. “He had always expected,” King began, “that as the Southern States are the richest, they would not league themselves with the Northn. unless some respect were paid to their superior wealth.”\(^8^2\) Given that the “Northn.” states hoped to secure preferential access to the ports, he continued, it was only fair that the “Southern States” would receive something in exchange.

“If the latter expect those preferential distinctions in Commerce, & other advantages which they will derive from the connexion,” King reasoned, “they must not expect to receive them without allowing some advantages in return.”\(^8^3\) As he spoke, King steered away from the novel vernacular of states and their rights, speaking instead in a language of parts and advantages, redolent with the old habits of the merchant’s geography of parts and places. “He was far from wishing to retain any unjust advantage whatever in one part of the Republic,” King continued, using the old phrases of the coast

\(^8^1\) Elliot, *Debates*, 5:178.
\(^8^2\) Rufus King, notes on the Convention, King Papers, Box 2, NYHS.
\(^8^3\) Ibid.
of “parts of the Republic” and their “advantages,” in lieu of the novel vocabulary of “states” and their treatise-based “rights.” “If justice was not the basis of the connection it would not be of long duration,” he concluded, again citing the basic principles that had kept the ships in motion for decades.

As the debates expanded from this crucial, foundational question of representation, the old dialect of the coast appeared in the casual notes of men who shared a common language of the trade. Alexander Hamilton, for example, a merchant from New York, sketched out his notes that he thought the primary objects of government to be “agriculture, commerce, and revenue,” before drawing a column and labeling it “View of America,” a phrase that echoed the old phrase of the “People of America.” Benjamin Franklin, meanwhile, mulled over the possibility of a continent where the bordered lines could be redrawn altogether. “It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practicable,” he announced.

When these delegates who knew the ways of the seas spoke of the states, they did so not as institutions with rights to be determined under the formal treatises of nations, but as societies or assemblies, interests or individuals. The estate owner from the Delaware River, for example, who could switch mid-sentence from states to parts, spoke of the “accidental lucky division of this country into distinct States,” and suggested the benefits of arriving at “mutual concession.” The planter from the James River, Colonel

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84 Farrand, Records of the Federal Convention, 1:329.
85 Ibid., 1:72.
86 Ibid., 1:71.
88 Farrand, Records of the Federal Convention, 1:489.
89 Ibid., 1:87.
Mason, who had no interest in being forced to ship his tobacco on a ship from Salem, spoke of ensuring equal justice from one end of the continent to the other. “It is impossible for one power to pervade the extreme parts of the U.S. so as to carry equal justice to them,” he explained in making the case for reserving the powers to the states.90

Set against this familiar discourse, the handful of delegates who arrived with arguments premised on the equal rights of the sovereign states sounded strange and discordant, as curious as the lawyer from North Carolina who first offered up the term of the sovereignty of the state. Their arguments rested not on the longstanding habits of intercourse and united sentiments, but on formal principles and textbooks. “A confederacy supposes sovereignty in the members composing it & sovereignty supposes equality,” William Patterson of New Jersey insisted, having been instructed by his legislature that under no circumstances was he to agree to giving up the equal division of power agreed upon in the Articles of Confederation.91 “Each State is sovereign, free, and indepent. etc. sovereignty includes Equality,” he continued, phrases repeated as if rote recitation.92 “The States are equal & must have equal Influence and equal votes—I will prove on first principles,” Patterson’s colleague, the lawyer Luther Martin of New Jersey echoed. “Every man out of society is equal, in freedom & every other quality of Man—Locke Locke, Vattell & Others prove this proposition.”93

To the lawyers in the room, there was nothing inherently wrong with the merit of these claims; the difficulty lay in the application to the old American coast. During the lengthy debates, for example, King wrote down a few words on the margins of his papers.

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90 Ibid., 1:155.
91 Ibid., 1:178.
92 Ibid., 1:186.
93 King, notes on the Convention, King Papers, Box 2, Folder 1, NYHS.
“The principles are right, but cannot be carried into effect,” he wrote, presumably in reference to the idea of a rule of equal states, one that would place nine votes to the northward, four to the southward. As King took pains to explain more fully, the label of sovereignty simply did not and could apply to the states. “The States were not ‘sovereigns’ in the sense contended for by some,” he repeated to his peers. “They did not possess the peculiar features of sovereignty,” King continued: they could not make war, nor peace, nor alliance, no treaties. All that was needed, King wrote down in his notes, was a new article “guarantying to each State the right of regulating its private & internal affairs in the manner of a subordinate corporation.”

King’s proposal to conceive of the states as private gentlemen allowed to regulate their own affairs carried with it the legitimacy of the past, and the striking endorsement of the present. All that summer, men familiar with the coast spoke of states as anything but sovereign governments with prescribed institutional duties and rights. “We are nation altho’ consisting of parts or States,” the planter who lived up the Delaware River said, words scribbled quickly on paper. The states could exist simply as corporations, Hamilton of New York suggested. When the question emerged as to the methods for voting in the lawmakers of the coast, the owner of a large estate in Charleston proposed to “divide the Continent into four Divisions,” a spoken geography echoed in Hamilton’s words, who spoke of men in the room who had been selected not by the

94 Ibid.
95 Farrand, Records of the Federal Convention, 1:323.
96 Ibid., 1:332.
97 Ibid., 1:199.
98 Ibid., 1:42.
99 Ibid., 1:299.
100 Ibid., 1:59.
states, but “from half the globe.”

To justify this conception of space, men turned to the practices of America that predated the accidental phrase of sovereignty. As King emphasized, theirs was an America that required no innovation, no experiment. “The system proposed to be adopted. . . is no crude and undigested plan. . . . It is no idle Experiment, no romantic Speculation.” His colleague from Philadelphia, James Wilson, concurred and recalled that at the outset of the war, they had existed as a single entity. “In the beginning of our troubles, congress themselves were as one state,” he observed during the debates. “We must remember the language with wh. We began the Revolution,” Wilson argued, “it was this, Virginia is no more, Massachusetts is no more— we are one in name, let us be one in Truth & Fact.” This was the language, Wilson insisted, that the people spoke. There simply was no grounds for believing that “the State Govts. & sovereignties were so much the idols of the people, nor a Nat. Govt. so obnoxious to them, as some supposed.”

By far the most explicit in urging a shift away from foreign examples and treatises was George Mason, a planter from the James River, who called for his colleagues to turn their gaze from the republics abroad to the practices at home. “The history of other nations has been minutely investigated, examples have been drawn from and arguments founded on the practice of countries very dissimilar to ours,” Mason declared. “The treaties, leagues and confederacies between different sovereign, independent powers have

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101 Ibid., 1:146.
102 Ibid., 1:323.
103 Ibid., 1:332.
104 Ibid., 1:170.
105 Ibid., 1:172.
106 Ibid., 1:185.
107 Ibid., 1:253.
been urged as proofs in support of the propriety and justice of the single and equal representation of each individual State in the American Union. If the different States in our Union always had been as now substantially and in reality distinct, sovereign and independent, this kind of reasoning would have great force; but if the premises on which it is founded are mere assumptions not founded on facts, or at best upon facts to be found only upon a paper of yesterday, no satisfactory conclusions can be drawn from them.”

The principles, not the formal words conceived in a fleeting afternoon, were the basis of enduring partnership. The fact that a piece of paper called them sovereign states, Pierce Butler of Charleston insisted, had no binding impact. The existence of the Union was perpetual, he wrote, “not the particular words which compose the Articles.”

By mid-June, when the delegates agreed to take the first votes on the proposed division of power, the fault-lines were clear. Every state to the southward of the James River voted against recognizing the states as sovereign and entitled to a vote in the Senate: a rule that would place nine to the northward, four to the southward and establish what men in Charleston had already predicted to be a monopoly over the vast bounties of the coast. The only state that supported them was Massachusetts, who agreed, as King explained, that some other basis was needed. At the same time, the hold-outs to the equitable division of power in the House appeared clear enough: as the small states of Delaware and New Jersey, along with New York, voted nay, refusing to give up the windfall of sovereignty.

As the roll call made clear that day, the arguments insisting on the equality of the states—however absurd they might seem when based on the textbook rules of sovereigns

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109 Ibid., 1:129.
110 Ibid., 1:195.
as equals—could not be avoided. From the beginning, those who insisted on the rights of sovereign states held the wildcard that could bring everything to a halt: walking out the door. The threat was hardly a fictional one: that June, a delegate from New Jersey and Maryland simply walked out, raising worries as to how to secure a partnership without the support of the entire American coast. If any agreement was to be made, it seemed to many, some settlement that granted the states at least some equal voice would be needed.

The compromise that began to emerge that June would come to be preserved in collective memories of the founding as the embodiment of the commitment to the old sovereignty of the state. But the particular features of this compromise suggested the old logic of the coast: an America based not on the formal treatises, but on the equities of the trade. Under the terms of the compromise, the gentlemen of the southward agreed to vest the men assembled in Congress with the power to regulate the coast: the long coveted commerce clause, appearing in Article I, Section 8. In vesting Congress with this power, they did so with the guarantee of additional voice in determining commercial policy: the power to initiate all “money bills” (i.e. bills governing the cost of entry to the ports) would be exclusively reserved to the House of Representatives, where votes would be divided up not according to the states, but according to the number of individuals of the bordered domains, calculated using a metric that would forever tip the scales in favor of the gentlemen to the southward: “three-fifths of all other persons.”

As men converged on this plan to create a more “equitable representation” over the terms of power in America, they justified its creation on a far bargain. As King explained it, the goal was to create equality between the two regions. “He had been ready to yield something in the proportion of representatives for the security of the South,”
King concluded. He had wanted to ensure that the two sides “were brought as near an equality as was possible,” he explained.\textsuperscript{111} His colleague, Caleb Strong, a lawyer who had earned the respect of a merchant in Savannah,\textsuperscript{112} offered the same justification for the grant of state equality: not on the status of sovereigns, but as a payment for their concessions over the control of the money bills in the House. “He thought the small States made a considerable concession in the article of money bills,” Strong reasoned, “and that they might naturally expect some concessions on the other side.”\textsuperscript{113}

Elbridge Gerry, the merchant from Marblehead, meanwhile, who spoke of the states as a source of protection for the trading houses, was even more emphatic that the creation of equal votes among the states bore no testament to their claims to sovereign status. In an article he circulated afterwards, Gerry insisted that this grant of formal equality among the Senate constituted a form of payment for the willingness of the smaller states to give up control over money bills in the House of Representatives—a concession that had in turn, placated those who spoke of an emerging northern monopoly in the ports along the southern coast. “The admission…of the smallest states to an equal representation in the Senate, never would have been agreed to by the committee, or by myself as a member of it, without the provision, ‘That all bills for raising and appropriating money…should originate in the house of representatives, and not be altered or amended by the senate,’” Gerry explained.\textsuperscript{114} Franklin concurred, observing that he

\begin{itemize}
\item \textsuperscript{111} Elliot, \textit{Debates}, 5:290.
\item \textsuperscript{112} American Historical Association, “Wm. Pierce on the Federal Convention of 1787,” \textit{American Historical Review} 3 (1898): 317.
\item \textsuperscript{113} Elliot, \textit{Debates}, 5:313.
\item \textsuperscript{114} “State of Facts,” \textit{Essex Journal}, Feb. 6, 1788.
\end{itemize}
“considered the two clauses, the originating of money bills and the equality of votes in the Senate, as essentially connected by the compromise which had been agreed to.”

To be sure, the compromise did not resolve the deep underlying questions as to how a continent premised on such powers would function: in part precisely because the document reflected not the formal teachings of international law, but the familiar logic of the coast. Indeed, as the work of promoting the document began that autumn in hopes of securing a swift ratification process, its leading advocates returning to the familiar principles. “The constitution which we now present,” General Washington declared, was not the work of any novel or modern political science, but rather “the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.”

In the newspapers, the statesmen who began to plead the case for the Constitution cited the same logic of intimately interwoven interests of the coast. “An unrestrained intercourse between the States themselves will advance the trade of each, by an interchange of their respective production,” Alexander Hamilton assured readers of his pamphlet, recalling the logic of the trading houses, before returning to the idea of a united Interests of America. “Their interests are intimately blended and interwoven,” he wrote of the two sides of the continent. James Madison, meanwhile, invoked the same principles, invoking the reciprocal trade of confederated States.” As he had argued

115 Elliot, Debates, 5:396.
during the debates, “The increase of the coasting trade, and of seamen would also be favorable to the S. States, by increasing his consumption of their produce.”

Indeed, when people later reflected on the work that the delegates accomplished that summer, they found an appropriate metaphor in the ships that traversed the corridor, and the ports where they came to call. When, for example, the members of the town committee in Boston mulled over how to best represent the newly ratified Constitution, they seized upon a symbol whose significance would make sense to everyone in town: a wooden ship to be pulled through the streets, offering the promise of many more voyages down the coast and out to the ports of the Atlantic world. And when the townspeople assembled for the procession, they raised a toast to the seas and spoke of the continents. “May the flag of American commerce be displayed in every quarter of the globe,” sounded one cry, echoed in turn by the hope that the “landholders of America soon experience the happy effects intended by the proposed Constitution,” as down at the harbors, the great wooden ships had once more began to sail, hauling out with the first winds for the southward, once more in search of the treasure “better than the mines of Peru.”

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121 “Order of the Procession,” *Independent Chronicle*, Feb. 14, 1788. For an example of a simply procession in Charleston in the summer of 1788, see, e.g., [“In the Grand Procession…”], *Boston Gazette*, July 16, 1788; see also Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York: Simon and Schuster, 2010), 120.
123 Elliot, *Debates*, 5:396; 2:89.
In the summer of 1790, a group of workmen followed the path down to the beach just to the southward of the James River. They carried shovels and sieves, good for laying the foundations of the first lighthouse of the new Republic. They were “seafaring people,” the appointed officer assured the newly appointed Secretary of the Treasury, whose department was overseeing the project. The seafaring people knew where the sand would give out on the dunes, a slide of fifty cart loads tumbling down in a single moment. They knew too, that the foundations of what would be remembered as the first lighthouse had in fact been laid decades earlier, long since hidden by the sands that swept up from the beach and would leave the appearance that theirs was a novel undertaking.

The finished lighthouse that appeared on Cape Henry two years later was only one of many projects that began to take root along the coast in the wake of the drafting of the United States Constitution. Within the space of a decade, the nascent federal government had exercised its new constitutional powers to construct a vast infrastructure along the coast: comprised not only of lighthouses that guided the ships down the coast, but also of customs houses where federal officers appeared at the first sight of the mast, busily engaged in the work of collecting revenue from the captains when the ships arrived in port and then issuing passports for their crew before they hauled out across the

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3 Thomas Newton, Jr. to Alexander Hamilton, Norfolk, July 11, 1790, in Hamilton Papers, 6:491-92.
4 See “Light-Houses,” Massachusetts Centinel, Feb. 3, 1790
Atlantic.\(^5\) Indeed, by 1806, the Massachusetts Custom House alone had issued thirteen thousand grants of American citizenship to men preparing for the seas.\(^6\)

Much later, scholars who caught sight of this frenzied activity along the waterfront would endeavor to make sense of it. Some would depict the work as an aberration, attributing it to a novel project launched by Federalists who derived their ideas from foreign nations, and in doing so, badly misjudged the importance of the state governments to their peers.\(^7\) Others would characterize the grants of American citizenship as inconsequential, at a time when one’s status and rights were said to have derived from the state governments,\(^8\) save for the sailors said to have urged the creation of a new national citizenship.\(^9\)


\(^7\) See e.g., Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (New York: Oxford University Press, 2009), 90 (“Because he was raised in the West Indies and came to the North American continent as a teenager, Hamilton had little of the emotional attachment to a particular colony or state that most of the other Founders had.”); see also Rao, *National Duties*, 94-95 (noting that Congress drew on “British antecedents” and borrowed from the “British model” to organize the customhouses and enforcement system). See also Gordon S. Wood, “Framing the Republic, 1760-1820” in *The Great Republic: A History of the American People, 1820-1920*, ed. Bernard Bailyn et. al. (Boston: Little, Brown and Co., 1977), 1:331.


\(^9\) Perl-Rosenthal, *Citizen Sailors*, 15-16 (arguing that American sailors “willingly participated in and even led the process of creating American national citizenship”).
And yet, while the architects of this new coastal infrastructure no doubt drew inspiration from many sources, the work that they began that summer was neither wholly novel nor imported from abroad—no more so, at least, than the work of erecting the foundations for a lighthouse at Cape Henry upon blocks of stone laid down decades earlier. For on a coast where the ships had by then sailed for nearly two centuries, the starting point for the new architects of the federal government lay not simply in borrowing untested models from abroad, but in building upon the existing institutions of the coast, while gradually incorporating and testing out changes. Far from experimenting with a novel category of state citizenship, the architects of the new federal government instead drew on the precedents of the past: both in structuring the terms of the first federal laws of 1789 that determined the terms of entry to the ports of America, as well as in constructing the administrative rules of enforcement. In doing so, these architects of the new republic began to rework the familiar language of American citizenship that had emerged in the years of war, placing the “citizen of the United States,” as the crucial status that unlocked the coveted access to the ports of the southward and abroad, an inchoate phrase kept afloat by the happenstance of a war in Europe, half a globe away.

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The work of reconstituting the corridor along the coast under the new Constitution unfolded in three phases. It began first with the assemblies of the ship carpenters and commercial interests of the Massachusetts Bay, who sought to realize the potential of the new powers vested in Congress not by turning to the state legislatures, but to the old circuitry of associations. As the petitions from these associations and private gentlemen accrued in Congress that summer of 1789, the delegates in turn began the work of
drafting the terms of legislation, drawing upon the phrases and pre-existing rules of the ports. By the end of the year, as the laws they crafted began to appear on the first statute books, the officers in the departments charged with enforcing the laws did so by first launching a survey designed to compile the existing practices of the old American coast.

Efforts to realize the latent power within the Constitution began in May of 1789, when the ship carpenters of Boston made their way to one of the town’s various assembly halls. Many may have come directly from the shipyards, where the work of building had begun shortly after the state ratified the Constitution. All that spring, there had been reports of growing demand abroad for the produce of the plantations. The harvest of France would not supply its people past “three weeks over and above the year,” came word from a planter returning home to his farm in August. The work of building continued apace, with twelve hundred yards a week of sail cloth turned out each week. “We hear from Boston that the three Ships set up in that town, soon after the ratification of the Constitution…are nearly completed,” one newspaper reported. “These ships are good Vessels as can be built, and are of a suitable burthen for the Southern Trade.”

Despite these auspicious beginnings, the carpenters who assembled in Boston that May evening of 1789 remained keenly aware of the vulnerability of the new terms of partnership. The further one traveled down the continent to the southward, the more the harbors seemed to explode into crowded riots of flags of the British Empire: a force that had been defeated on the battlefield, only to now blaze once more under the southern skies. “Southern commerce is almost exclusively in the hands of British merchants,”

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James Madison reported later that summer. 13 “[A]s long as their vessels are upon an equality with ours, they will naturally be inclined to give a preference to their own.” Already, too, there were reports of even more competition from abroad, as ship-owners in France began to instruct their captains to haul up from the West Indies, admonishing their fleets that now was the time to haul to the northward to the continent of America. 14

In the Boston newspapers, men spoke of the importance of securing a foothold in the southern ports. “It must be remembered,” admonished one observer, “that on the success of our ship-building, and our carrying trade, depends the importance of the northern States.” 15 As one of Boston’s politicians put it, “Gentlemen…should recollect that nature has denied us fertility, but she has placed along our shores an enexhaustible store.” 16 What was needed, many in Boston agreed, was to exercise the new powers of the Constitution. And to do so, the shippers of the metropolis would turn not to the novel state legislature, but to the old circuitry of correspondence.

“Every individual must be convinced of the propriety of our forming an ASSOCIATION,” the editorial announcing the creation of the ship-builders organization declared in May. 17 Drawing upon the same geography of a coast of sentiments, the organizers insisted that the association would help to forge a “union of sentiments among the several branches of trade and manufacturers thro’out the United States, in all their applications to the Federal Government.” 18 An association, the editorial continued, would provide a means of corresponding “with our brethren of the other States—more

13 1 Annals of Cong., 210 (1789).
15 “For the Centinel,” Massachusetts Centinel, May 13, 1789.
16 1 Annals of Cong., 210 (1789).
18 “For the Centinel, to the Tradesmen and Manufacturers…,” Massachusetts Centinel, Apr. 25, 1789.
particularly at this time, when congress are about making their national arrangements.”19
An association, moreover, would provide the best means of creating sound policy decisions. At a time when the state legislature remained largely removed from the day-to-day workings of the trade, the association claimed the legitimacy of expertise. “It is proper,” the editorial concluded, “that every information, on all subjects, should be given them through such a channel as they may depend on its authenticity.”20

As the shipwrights seized upon the logic of a coast of American sentiments and associations to press their case before Congress, so too did the ship-owners of the Massachusetts Bay skirt the state legislature, relying instead on personal networks of correspondence to make the case for preferred terms of access in the ports along the coast. As Christopher Gore, one of the members of the state legislature, explained to his colleagues in the House of Representatives in the spring of 1789, as an institution, the state legislature had no business interfering with the decision-making process that unfolded in the national council house. “The only mode in wch. the Legislature cou’d interfere,” he explained, was by calling a convention of the people.21 “The Houses had too much regard for the time and money of their constituents to spend either so wantonly, as considering such questions,” he reasoned when a request arrived petitioning the state house to lobby the men of Congress for a constitutional amendment.22

Adamant that the state legislature ought to remain just as his friend Rufus King had left it—deaf, dumb, and all but invisible—Gore and his colleagues in the state

19 Ibid.
20 Ibid.
21 Christopher Gore to Rufus King, Boston, June 7, 1789, in The Life and Correspondence of Rufus King, ed. Charles R. King (New York: G.P. Putnam’s Sons, 1894), 1:368 (hereafter cited as Life and Correspondence).
22 Ibid.
legislature instead turned to the familiar networks of private correspondence in an effort to be heard. At precisely the same time that Gore insisted there was no place for the state to interfere with the decisions of the federal officers, for example, he drafted a series of letters to his colleagues in Congress, requesting their “attention and influence,” in matters ranging from the appointment of judicial officers to, most crucially, the upcoming legislation that would determine the terms of entry to the southern ports. “I have written to Ames on the subject,” he wrote to King, who by then had taken up residence as a senator from New York. “Not that I think I cou’d throw any great light on the business, but lead his attention to an accurate weight of the advantages on both sides.”

This circuitry of letters that could skirt the formal procedures and rules of the state government afforded men like Gore an opportunity to speak freely: not in their capacity as lawmakers, but as private individuals, offering their sage advice to trusted confidants in Congress, at a time when the caliber of politicking seemed, at least to some, woefully disappointing. Gentlemen in Boston concerned for the preservation of their personal honor and reputation could safely confide their preferences and views in matters ranging from the choice of a judicial appointment to the terms of the new federal trade policy. “…[T]ho’ as a public man, I shou’d not be dissatisfied with their appointment,” Gore confided to King with regards to an upcoming appointment in August of 1789, “I do not know, that either wou’d gratify my wishes.”

As the date of the first assembly since the ratification of the Constitution neared, the letters described the promotion of business as part of the duties of Congress. “Our

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23 Christopher Gore to Rufus King, Boston, Apr. 1, 1792, in Life and Correspondence, 1:407
25 Christopher Gore to Rufus King, Boston, Aug. 22, 1789, in Life and Correspondence, 1:367.
shipwrights are very anxious that Congress shou’d promote their business,” Gore wrote to King again later that spring, never mind that, at least on paper, King represented the interests of another state. What was needed, Gore suggested, was for the delegates in Congress to turn their attention to the shipping interests, an issue “so important to the union, that too much exertion cannot be made to give it success.”

The fact that such requests could travel along the correspondence networks outside the formal machinery of the state legislature and executive made sense at a time when pundits described Congress not as the highest ring of a hierarchy of formal institutions, but as a forum where the various economic interests of agriculture and commerce from along the coast assembled to coordinate a policy that would be fair and equitable to both. On the eve of the first session of Congress following the ratification, for example, one observer in Philadelphia suggested that it might be helpful if each of the congressional seats in the hall boasted an icon of the leading economic staple of the state for which the delegate claimed to speak. “It might furnish them with useful hints,” the editorial suggested, pointing out that a similar practice existed in Britain’s Parliament. “In like manner,” the editorial continued, “the Delegates in Congress might have their seats wrought with some device, descriptive of the staples of their several States. Were such articles fixed in some conspicuous place, Congress might have a constant view of it, and be continually reminded of the duty they owe to their country.”

To the gentlemen who filed into Federal Hall that spring of 1789 and began to formulate the first official commercial laws of the republic, the idea of including depictions of rice and tobacco and flour on their seats would no doubt have seemed

26 Christopher Gore to Rufus King, Boston, Apr. 29, 1789, in Life and Correspondence, 1:361.
unnecessary. As all were well aware, the most pressing challenge before the Congress that spring lay in how it would exercise the newly vested constitutional powers of regulating the American coast to generate much needed revenue. The question, in particular, lay in settling the terms of entry to the ports along the seaboard: both in setting the amount of money that each ship-owner arriving from abroad would be required to pay upon arrival for particular goods in the cargo (ranging from boxes of nails and spikes, to gallons of Madeira wine and silk shoes) as well as the amount they would need to pay for the tonnage as a whole.28 By the end of the summer, the first two federal laws enacted under the Constitution (preceded only by law on the oaths of office) both centered on the terms of entry, laying down duties for foreign imports and tonnage as a whole.29

From the outset of the debates that spring of 1789 through to the drafting of these laws, the work of setting the price of admission—and, most controversially, deciding the terms of entry for American built ships as opposed to British ships—unfolded in the language of the old coast. The politicians who represented the great landed estates to the southward, for example, spoke of their states in the old vernacular of economic interests, while making clear that they had no intention of simply handing over the terms of access to the shipping magnates of the northward. In rebuttal, those committed to securing a privileged right of access for the ships of the Massachusetts Bay cited not only theories of political economy, but also stories of America’s commercial partnership that predated the Constitution, buttressed by statistics from the earlier regulatory regime, offered up as an empirical basis upon which to model a new federal policy.

29 An Act for Laying a Duty on Goods…into the United States, 1 Stat. 24 (1789)
The arguments against closing the ports to the British ships were clear enough. “More than half the produce of South-Carolina is now carried off by the ships of Great-Britain,” a representative from Charleston pointed out. The proposed duty on foreign ships, he continued, would no doubt benefit the shipowners of the Massachusetts Bay, but “would further operate to the discouragement of foreigners and the disadvantage of the Southern States, by preventing their ships from coming out on speculation with cargoes.” 30 Others concurred. “If the duty is laid so high as to prevent [the British] from coming amongst us to transport our produce, what is to become of our planters,” the gentleman from Charleston queried, before going on to answer the question for himself. “The profits of his labor must perish upon his hands, for want of the means requisite to convey them to a market.” 31

In responding to these concerns, the delegates who counted themselves among the cohort of statesmen who helped broker the Constitution drew upon the arguments and logic of the machinery of the old American coast. Fisher Ames of Massachusetts, for example, who insisted that the sole aim of the Constitution had been to remedy the woes of commerce, addressed his colleague not as the “gentleman from Georgia,” but as the “gentleman from the Southward.” 32 He quoted the “voice of the continent,” and referred to the “northern parts of the continent.” 33 His colleague, meanwhile, Thomas Fitzsimmons of Philadelphia, drew upon the same rhetoric to make the case for discriminating against British ships. In his speech, Fitzsimmons spoke not of the “commerce of the United States,” but in the old vernacular of “the commerce of

31 1 Annals of Cong., 254 (1789).
32 1 Annals of Cong., 195 (1789).
33 Ibid.
America,” before moving easily from the economic entity of the coast into a single citizenry of the continent.\(^\text{34}\) In Fitzsimmons’s telling, the fact of America’s commercial life before the war militated in favor of protection. “The citizens of America,” he began, “previous to the revolution, were possessed of shipping nearly enough to carry on their whole commerce; but during the war, they were not only deprived of the shipping, they before possessed, but the means of acquiring others also.”\(^\text{35}\)

To support these arguments predicated on America’s commercial past, delegates who sought to secure a privileged place for the ships of the American coast turned not only to the state legislatures for information as to how the system of duties worked prior to the Constitution, but also to the trading houses down at the wharves. “There are three sources from which we may gain information on the first question,” Elias Boudinot, a lawyer from Elizabeth, New Jersey observed.\(^\text{36}\) There were, of course, the “revenue laws of the different States.” Then, too, there were the “Executives of the States, stating the operation and production of the different revenue laws in the States respectively.” And wedged between the two, the “great body of merchants spread throughout the United States.” A group, Boudinot continued, that constituted a “very respectable and well informed body of our fellow-citizens,” and to whom “great deference ought to be paid to their communications.”\(^\text{37}\) As he explained, not only were the merchants “more immediately interested in the event of the proposed measure,” than others, they had an

\(^{34}\) 1 Annals of Cong., 195 (1789).
\(^{35}\) Ibid.
\(^{36}\) 1 Annals of Cong., 122 (1789).
\(^{37}\) 1 Annals of Congress, 123 (1789).
expectation of protection. “To this Government they look for protection and support,” Boudinot concluded, “and for such regulations are are beneficial to commerce.”38

In their efforts to such regulations, men went down to the trading houses and scanned through the old records for clues as to how the corridor of commerce worked in the past. “Having found the opposition to run hard yesterday against the impost,” one Congressman from Philadelphia named William Maclay confided in his diary, “I determined to go this morning among my Pennsylvania friends, [and] call on them for any information which they could give me in the way of their private letters, or otherwise.”39 Others cited the rules of the state legislature by way of explanation. As a merchant from Maryland pointed out during the debates, “the duty proposed was so moderate, that its operation would never injure the merchant. In the State of Maryland, the duty on tonnage was far greater than this…in other states, the tonnage still higher.”40

As they continued to debate the appropriate terms of entry, the statesmen negotiated against the backdrop of the vastness of the American coast and the memories of the almost comical inability of Parliament to collect its duties. “I trust it does not require much illustration,” one Congressman observed, “to prove to the satisfaction of the committee, that if you lay your duties too high, it will be a temptation to smuggling.”41 One had only to look down the vast stretch of land to see the impossibility of policing the ports effectively. “We know the situation of the different States,” he continued. “The coast disposed by its prodigious extent to favor every means of illicit trade. A cargo of rum could be landed in Jersey, and the whole, reshipped in small vessels, might soon be

38 Ibid.
40 1 Annals of Cong., 295 (1789).
41 1 Annals of Cong., 131 (1789).
brought into this city. If this should be the effect of our law, we have no other way to
correct the operation….But there would also be a danger of vessels running into creeks
and small inlets, for the purpose of landing their cargoes, as well as on the sea-shore.”

The vastness of the coast led some to question the utility of attempting what the
British Parliament had failed to accomplish. “Unless we establish custom-houses every
ten or twelve miles, like watch-towers along the sea-coasts,” one delegate reported, it
would be impossible to attempt to enforce the act. “In the state he represented,” he
explained, “it was next to impossible to collect the revenue, the country was so
intersected with navigable creeks and rivers.” Others committed to securing the
privileged terms of entry countered that even if enforcement proved a challenge, a lower
cost of entry for the ships of America would still promote the trade. As Fisher Ames of
Massachusetts observed, “The commerce of America, particularly the southern parts, had,
by the force of habit and English connexions, been setting strong upon the British
coasts.” Perhaps, he speculated, a “small duty on foreign manufacturers might induce,
from motives of interest as well as inclination, one fellow citizen to barter with, or buy of
another, what he had been long accustomed to take from strangers.”

In the end, the solution that the representatives arrived at that summer lay in a best
guess estimate of a terms of entry that would accommodate both the merchants’ interests
in securing a privileged pathway for their ships, as well as the planters’ interests in
keeping the ports open to as many freighting ships as possible. Just as in the debates over
the division of political power in the Constitution two years earlier, the compromise that

42 1 Annals of Cong., 133 (1789).
43 1 Annals of Cong., 202 (1789).
44 1 Annals of Cong., 164 (1789).
45 Ibid.
found its way into the formal print of law lay not in the formal instructions of political economy, but in the balancing of the equities. As James Madison explained when he considered the matter, arriving at a compromise required weighing the sentiments of the various parts of the Union. “It will be necessary, on the one hand, to weigh and regard the sentiments of the gentlemen from the different parts of the United States,” he explained, and there in his words one could hear the same logic that first sounded in reference to the Union of sentiments. And yet, he continued, “We must limit our consideration on this head, and notwithstanding all the deference and respect we pay to those sentiments, we must consider the general interest of the Union.”

Now, as Madison endeavored to find a compromise, he spoke of the benefits that a grant of protection would afford to all. “If America was to leave her ports perfectly free, and make no discrimination between vessels owned by her citizens and those owned by foreigners,” he explained, using the same continental language of the coast, “while other nations make this discrimination, it is obvious that such policy would go to exclude American shipping altogether from foreign ports, and she would be materially affected in one of her most important interests.” Moreover, he urged, offering a privileged route of access to the ships of the Massachusetts Bay would be only temporary, as the ports to the southward could soon build up their own fleets. “The difference in point of capacity in the several states to build ships, and furnish seamen, is much less than has generally been supposed,” Madison insisted. “From the extremity of the northern states until we reach South-Carolina, materials of all sorts for ship-building can be obtained in abundance from the bounty of nature; even Georgia abounds with materials of superior quality.”

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46 1 Annals of Cong., 116 (1789).
47 1 Annals of Cong., 267 (1789).
This vision of a balancing of the equities and a future of co-equal ports resonated at a time when men could still conceptualize America as a single, interlinked entity within the Atlantic world. Indeed, during the subsequent debates in September of 1789 as to where to establish the permanent location of Congress, Madison invited his colleagues to consider the question not with reference to a continental map that might fan out to the westward, but along the familiar axis of the coast. “If you draw a line perpendicular to the direction of the Atlantic coast,” Madison advised, “we shall find that it will run more equally through the Potowmack than through any other part of the union.” It “is not easy to describe by words,” he explained of the “geographical centre of America,” “but…will strike every eye that looks on a map.”

Propelled in part by such arguments and continental reasoning, by the middle of July of 1789, the members of the first Congress had arrived at a compromise for the terms of access to the ports along the Atlantic seaboard: one that established a set of fixed duties on every major good arriving from abroad, while granting preferred terms of entry to any American ship: a right of access premised not on one’s status as a citizen of the state, but as a citizen of the United States. For in a sleight of hand that would go unnoticed for centuries, the first federal recognition of the rights of national citizenship in the laws of the United States lay with the ship-owners, whose ships had prevailed in securing a coveted privileged access to the ports.

The members of Congress were by no means the only ones to look to the past practices of the coast to solve the challenge of building out an administrative state. When the newly drafted trade laws arrived on the desk of Alexander Hamilton, the thirty-four-

48 2 Reg. Deb. 371 (1789).
49 Ibid.
50 See, e.g., An Act Imposing Duties on Tonnage, 1 Stat. 27-28.
year-old merchant from New York charged with executing them into daily practice, his first step was to turn to the ways of the past. Indeed, although scholars would seek to explain Hamilton’s “nationality” by his foreign-birth that left him free from his colleagues’ remembered state-centricity, Hamilton’s strategy aligned with that of his peers in Congress. At a time when the merchants of Boston and Philadelphia in the Senate spoke in the old vernacular of the “commerce of America,” so too did Hamilton turn to a strategy of state building by reworking the old ways into formal regulations.

Perhaps most notably, one of Hamilton’s first acts that summer was to conduct a survey designed to capture the existing workings of the coast. The questions he posed focused on the way things were “commonly” done and things that were “customary.” “What number of Voyages do they commonly perform in a year; to and from your State, either directly or circuitously,” he asked of the ship vessels. “By what number of Seamen...are they commonly Navigated,” he inquired. “What is the customary pay, and subsistence of the Masters and Mariners employed in them,” he queried.

The letters that descended along the coast in reply detailed with exquisite care the way things had always been on the old American coast, bound in custom and oriented towards the continents of the globe. The officers spoke of the wood used in building the ships, the number of rowboats kept for guiding them home, all the while reciting the familiar freighting routes that led down the coast and out to the world. “Considerable Quantities of Tobacco, Shipped principally from Virginia in return for Merchandize

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53 Ibid.
furnished from hence,” came one reply, before going on to note that the “Rice from Carolina & Georgia frequently finds a Conveyance to Europe, thro the Medium of this Port, which from its great Intercourse with the southern States, receives considerable Quantities of their Produce in Exchange.”

As the replies accumulated in what would become the first paperwork of the federal government, these routes of the old coast came into view. “The larger Vessels…are generally employd in circuitous Voyage,” came word from one of the seaports along the Massachusetts Bay. “To the Southern States (commonly for freight) from thence to Europe…—this Circuit occupies from 10 to 12 Months,” the letter explained. The same broad contours of the routes arrived in a letter from Portsmouth, with reports of vessels that go “first to the southern States, where they generally obtain freight for Europe,” and ships that “have gone in Ballast for Carolina and Virginia and Load with Rice or Tobaco for Europe.” There were reports, too, of ships that no longer sailed to the southward, unable to compete with the British ships. “The preference given to British Vessels or the power of British Factors to engross Tobaco and other produce of those States renders those Voyages uncertain,” came word from Portsmouth of the southern circuitry, “and they are Seldom attempted at present.”

As the letters accumulated on the secretary’s desk, they provided a blueprint for what the secretary would refer to as a “continuance of arrangements” in that first foray

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57 Ibid.
60 Ibid.
into regulation of commerce.\textsuperscript{61} In the seemingly endless list of decisions that had to be made that autumn of 1789—ranging from who would clean the glass of the lighthouse lanterns to who would row the boat out to collect the coins from the arriving ships to the terms of employment and the form of contracts for new buildings—the starting point was the way things had always been.

Of the keepers of the light: “The President of the United States has been pleased to continue them in their present appointments.”\textsuperscript{62} Of the rowboats: “Should any have been in use under the State regulations, I desire they may be continued.”\textsuperscript{63} Of the models for new buildings: “Establishments [that] appear to have borne the test of repeated examination, and the trial of time,” should be the model.\textsuperscript{64} And of the new duties established by Congress: they seemed to be consistent with the merchants’ expectations. “The cheerfulness discovered by the merchants in general doing business at this Port in paying the established duties on merchandise evinces to me that the system is in general right and that the impost is not on the whole too high even for the first experiment.”\textsuperscript{65}

To be sure, this “continuance of arrangements” required something more than simply extending everything from the past into the future. To survive the passage into codified law, a custom had to be of some utility, even if its only value was that of appeasing the old mariners and merchants. As the secretary explained in one off-handed reference, the decisions of the new administrative state, at least with regards to personnel, ought to rest on “how far public considerations may cooperate with personal ones to

\textsuperscript{61} Alexander Hamilton to Benjamin Lincoln, Mar. 10, 1790, in Hamilton Papers, 5:297.
\textsuperscript{62} Benjamin Lincoln to Alexander Hamilton, Boston, Mar. 19, 1790, in Hamilton Papers, 5:307.
\textsuperscript{63} Treasury Department Circular to Collectors of Customs, Oct. 2, 1789, in Hamilton Papers, 5:419-21.
\textsuperscript{64} Alexander Hamilton to George Washington, Jan. 5, 1791, in Hamilton Papers, 7:413.
\textsuperscript{65} Benjamin Lincoln to Alexander Hamilton, Boston, Nov.-Dec. 1789, in Hamilton Papers, 7:580.
recommend a continuance of the arrangements,” or, formulated differently, whether the costs of deviating from that which was familiar to everyone would be worth the risk.66

Thus, for example, when someone happened to notice that on the first payroll of the United States bureaucracy, one of the keepers of the lights was a woman, it precipitated a correspondence as to whether the old practice ought to be continued.67 Likewise, when the keeper of the light at Plymouth requested funding to continue the custom of hauling up the flag, the secretary asked him to elaborate on the benefits of the custom. In a lengthy reply that quoted the “opinions of the merchants,” the keeper laid out his case, starting with the premise that the raising of the flags “shows a respect to Strangers which has been in practice Since the first Settlement of the Country."68

And in that prolonged moment of reconstituting the old institutions and logic of partnership, the familiar category of a place called America and its peoples would emerge as the central edifice upon which the terms to the access of the ports of the southward and abroad would rest. For at a time when men turned to that which was familiar, they constructed a portfolio of papers for the ships hauling out of the seas, one that rested not on the novel creation of the citizenship of the state, but on the old language of America, translated now into the formal category of a citizenship of the United States, kept afloat by the happenstance of a war half a continent away.69

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66 Alexander Hamilton to Benjamin Lincoln, Mar. 10, 1790, in Hamilton Papers, 6:297.
67 Benjamin Lincoln to Alexander Hamilton, Mar. 19, 1790, in Hamilton Papers, 6:307-08.
Before the founders of the field of American constitutional history divided the past into neat segments and periods oriented around the origins of the document in 1787, those who remembered the opening decade of the republic described it as the ending of an era, the triumphant pinnacle of the age of the seas. “Almost every flag but hers was swept from the ocean,” the lawyer Caleb Cushing reflected. “We had, in fact, as a nation, a kind of monopoly of this lucrative occupation.”70 Within the space of nine years, the eruption of a violent war between Britain and France had created a vacuum along the high seas of the Atlantic, as the ships of America ventured out under the proclaimed flag of neutrality, laden with the produce of the plantations and the new paperwork of the republic, as the new government issued over 35,000 grants of protection to “citizens of the United States of America,” a category kept afloat by the happenstance of war abroad.

Before the war erupted in Europe, it had seemed questionable if the newly constructed laws and rules of the coast would be enough to keep the British ships at bay and the American ships in motion. “You inquire if the Ship Carpenters are Employ’d,” one Thomas Crafts wrote in reply to John Adams’s queries in the spring of 1790. “I answer, thus they are wholly out Business as are most other Tradesmen, and I assure you the situation of this Town, is truly melancholy and Distressing. The sound of the Ax or the Hammer is hardly to be heard in any part of It.”71 Others concurred. “Business in Boston the Winter past has been dull by a general Complaint,” came word from John Hurd, who warned that “Our Ship Building Business seems to want a Stimulus from some Quarter.”72 Indeed, as one observer put it that spring to George Washington, “one

71 Thomas Crafts to John Adams, Boston, May 17, 1790, John Adams Papers, Letter Book, MHS.
72 John Hurd to John Adams, Boston, Apr. 17, 1790, John Adams Papers, Letter Book, MHS.
of the great benefits expected from the operation of the general Government was an
couragement to our own vessels,” and yet, none had materialized.  

By June of 1792, men who studied the ways of the seas declared the laws to be a
failure in securing a place for American ships in the southern ports. The current price of
admission to the southern ports, one paper declared, had all but failed to keep the British
merchants at bay. “Having purchased his cargo in America,” one editorial observed of the
British merchant, “he leaves us, and tells us, ‘I am going where you cannot come.”74 In
Norfolk, a ship-owner recommended closing the ports to the British altogether. “If the
carrying trade was secured to American subjects,” he wrote, “the profits thereon…are
sufficient to allure monied men to place their cash in Shipping.”75 Down along the
wharves of Charleston, meanwhile, captains wrote back to Boston that they had been
unable to find a freight. “Thomas Hopkins in the Sarah almost 3 months in Savannah not
yet taken up was here looking for freight he goes to Russia again this Season.”76

Against these inauspicious beginnings, news that a war had erupted in the spring
of 1793 between Britain and France signaled a life-line for the shipping interests of the
Massachusetts Bay. Under the laws of nations, a neutral ship could secure safe passage
across the Atlantic and into the ports of the war-torn continent. Almost immediately, the
printing presses of the trading towns began to churn out passports, papering the coast
with claims to American citizenship. As the newspapers explained, merchant ships
“sailing under the Sea Letters of the President and proper clearance of the Custom

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73 David Stuart to George Washington, June 2, 1790, in Washington Papers, 5:458-64; see also “A Sailor”
to George Washington, Georgetown, June 25, 1790, in Washington Papers, 5:555
74 “By Tuesday Evening’s Mail,” United States Chronicle, Dec. 20, 1792.
75 Niel Jamieson to Josiah Parker, Norfolk, June 18, 1790, Records of Ante-Bellum Southern Plantations,
Series M, Virginia Historical Society.
76 William Pickett to Moses Brown, Charleston, SC, Feb. 9, 1793, Brown Papers, Box 1, Baker Library.
Houses,” enjoyed a right to be reimbursed for any losses sustained from “any vexations or spoliations committed…in violation of the law of nations.” In Boston, the book stores sold blank passports, said to be absolutely necessary for every vessel bound on a foreign voyage.” In Philadelphia, meanwhile, merchants solicited proof from the customs houses that they were “citizens of America, owners of ships or cargoes.”

In a maritime world of continents and ports, these quickly accumulating stacks of papers that the sea-captains carried aboard the ships made no mention of the novel entities of the states. The “usual form” of the sea-letters, for example, simply labeled the holder as a “Citizen of the United States of America,” while requiring only “the Name, the Property and the Burthen of the Vessel, as also the Name and the Place of abode of the Master.” Likewise, the formal licenses of registration that allowed ships to move from one port along the American coast to the next without paying duties made no reference to the states. Instead, these forms simply inquired as to the “place” to which the vessel belongs (no need to specify the state), and the “port” of registration (again, no need to specify the state).

Forms reproduced in shipping manuals for invoices provided a blank space for people to wedge their names adjacent to the continent: “WE ______ (American) merchants,” while listing the names of American ships. Indeed, by 1795, one of the leading trading houses in Hamburg recommended that merchants include a stamp of citizenship on their invoices. “The most effectual means to remove every pretext of

81 An Act for Registering and Clearing Vessels, Regulating the Coasting Trade, 1 Stat. 55 (1789).
82 See Furlong, American Coast Pilot, 204.
Molestation from the Cruizers now infesting the seas,” the trading house advised, “seems to be the precaution, already adopted by some of my friends on your side, to indorse on the Invoice coming by the ship, a Declaration upon Oath, that the Goods are for your sole Account as Citizen of the united States.”83 As the trading house explained, at the very least, it would expedite a release in the event a ship was seized on the high seas.84

Just as in the days of revolution, the basis of these claims of citizenship rested not on any grant of formal citizenship from the state, but on one’s allegiance to the United States and employment in a trading house. Merchants who claimed the protections of the flag, for example, framed their claims based on the shipping routes that led back to America. “As it is our intention to order her...back to these States,” one request proclaimed, “We deem it necessary she should be furnished with such papers as will authorize her wearing the American flag, and protect her on the Seas and in port from insult and impositions.”85

Overseas, diplomats stationed in France and Britain handed out sea-letters with abandon, even in the absence of any official power to do so. “I have doubts of the strict right of any person out of America to grant these Passports,” one diplomat worried, but decided that he would issue them anyway. “As war has been declared,” he reasoned, “I thought it best to grant the Passports in the best manner I could—if the underwriters at Lloyd’s are satisfied with them, I have but little doubt but that they will be respected by the French.”86 In France, meanwhile, the governor advised his officers down at the wharves that it was much better to recognize a claim to American citizenship than refuse

83 Circular from Wm. H. Hagenau, Hamburg, May 21, 1795, Brown Papers, Box 1, Baker Library.
84 Ibid.
85 Ibid.
it. Thus, when a captain arrived from New Orleans, sailing under Spanish colors, and presented a registration saying the ship belonged to “citizens of the United States,” the governor advised that it would be better to grant the citizenship than to deny it. In London meanwhile, diplomats agreed to recognize a claim to American citizenship based not on the state from which the person hailed, but on the ship upon which they sailed, creating a presumption of citizenship for crewmen found aboard any ship whose masters could present the paperwork that the ships belonged to America.

As this formal paperwork of American citizenry proliferated along the coastline, down along the shipyards and ports of the Massachusetts Bay, the ships continued to follow the same logic and routes of the past, giving rise to an era of what some boasted to be an age of unprecedented prosperity, oriented around the wide open seas of the Atlantic world. New navigational charts emerged, detailing with exquisite intricacy the routes that led down from the ports of the Massachusetts Bay to the southward. In 1798, for example, a new publication entitled The American Coast Pilot appeared, boasting detailed routes and advice for navigating the contours of the coast. On the title page, the author capitalized the port city, placing the name of the state alongside it almost as if an apology, italicized and in parenthesis: NEWBURYPORT (Massachusetts).

It was not unusual during this heyday of the seas to receive an envelope from Copenhagen addressed simply to “Mr. Brown, Newbury Port, America,” or a sealed notary from a trading firm in Hamburg, addressed to “Newburry bord, in Nord

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90 Ibid.
Inside, the letters bore the same familiar logic of partnership that had sounded for decades, now spanning the full continent of Europe. A single merchant in Newburyport might receive a letter from Malaga proposing a “correspondence of reciprocal advantage,”92 after noting an “an opportunity for your continent” had arisen;93 a circular from Liverpool proposing a business that would prove “mutually advantageous;”94 a circular from Amsterdam announcing a new “commercial House in this city…for the purpose of our American friends,” and assuring the ship-owners that the “continuance of the war…gives us every reason to believe, that our market will continue to be the best in Europe for West India produce, Tobaccoes, Rice, etc.”95

The cascade of letters from abroad warned of the dangers that might befall American ships on pirate laden seas, speaking once more not of the citizens of the state and their legislatures, but of citizens of the continent, returning to the old language of America and its ships and peoples. From Lisbon, for example, came word that the court there had “finally determined to protect all American ships destined with Clearances from your Customhouses to any port in Portugal,” and there was no reason to distinguish between a ship built in Massachusetts or one built in New York.96 From Cadiz, meanwhile, came reports of pirates setting out from the North Atlantic coast, and warnings that their voracious search for plunder might “expose a great number of

91 Blacks Widow and Co. to Moses Brown, Copenhagen, June 11, 1792, addressed to “Newbury Port America.” Some addresses did include the state: see, e.g. Dom Terry and Co. to Moses Brown, Cadiz, July 26, 1792, all in Brown Papers, Baker Library. For the notary, see Bill of Sale for Goods, William Wyes, Jim Wood and Samuel Walton, July 16, 1800, in Brown Papers, Box 2, Baker Library.
92 Brauser and Co. to Moses Brown, Malaga, Nov. 5, 1794, Brown Papers, Box 1, Baker Library.
93 Griwequ’ec and Co. to Moses Brown, Malaga, Sept. 19, 1793, Brown Papers, Box 1, Baker Library.
94 Peter Waimright to Moses Brown, Liverpool, May 14, 1794, Brown Papers, Box 1, Baker Library.
95 Wilhem Lange and Slyvanus Bourne, Amsterdam, Feb. 1798, Brown Papers, Box 2, Baker Library.
American Citizens to perpetual Slavery.”97 From Amsterdam, meanwhile, came word that the British Parliament had agreed to stop “every American Vessel having French Products on Board—upon which amount insurance rose to 15.”98

And each season during those years of war, the ship-owners who reviewed the incoming correspondence returned to the familiar ritual of drafting their instructions to their captains. “You being Master of My Brig Polly now ready for sea your Orders are to sail the first wind for Wilmington in North Carolina,” the merchant Moses Brown of Newburyport wrote when the snows of January descended over the fishing boats laid up at the harbor in 1794, echoing as if a foghorn the words of those who had drafted orders thirty years before.99 “You Being Master of the Ship Ann,” he repeated, following the same familiar formula, “orders are to proceed to Sea the first fair wind & proceed to Charleston, South Carolina, and on your arrival there sell what small articles you have to sell & indeavor to get the best freight you can for some part of Europe.”100

And down along the wharves, as the captains hauled out now for the southward, they carried certificates premised on the status of “citizens of the United States and Resident Merchant of the Said City of______,” no need to mention the arbitrary state to which a ship belonged.101 When Moses Brown dispatched a ship laden with a cargo of hemp for St. Petersburg in 1796, for example, the invoice listed the seamen aboard as “Citizens of the United States of America.”102 When he shipped bread and a barrel of pork down to Norfolk, meanwhile, he followed the same logic that appeared on letters he

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98 J. Alstorphius to Moses Brown, Amsterdam, Nov. 24, 1793, Brown Papers, Box 2, Baker Library.
100 Moses Brown to Jos. Perkins, Newburyport, Mar. 4, 1794, Brown Papers, Box 2, Baker Library.
101 N.D. Certificate, in Brown Papers, Box 2, Baker Library.
102 Invoice of 16 Bundles, July 8, 1796, Brown Papers, Box 4, Baker Library.
received from abroad, once more listing his employees as “Citizens of the United States of America, & Residents of Newbury Port,” with no mention of Massachusetts. And when his captain loaded up the ship with salt in the ports of Lisbon, the invoice used the same phrase, “citizens of the United States of America,” a phrase that could unlock the coveted terms of access to the ports of the Atlantic world.

By the end of the decade, the formal phrase of a citizen of the United States had ascended into the daily paperwork of the coast. Preserved now in memory as a novel invention, the label instead bore the traces of the old phrase of America and its peoples, at a time when men built upon the foundations of the past to secure a safe passage for their ships: be it the lighthouses that guided the ships down the coast, or the rules of admission to the ports. Kept afloat by the happenstance of a distant war, there had been no need to theorize the scope of its protections, at a time when the routes across the Atlantic seemed to open wide to the old ships of the Massachusetts Bay, on the eve of a shift along the continental terrain so seismic some would later call it a revolution.

103 Invoice of Sundries, Mar. 17, 1797, Brown Papers, Box 4, Baker Library.
104 Invoice of Salt, June 7, 1800, Brown Papers, Box 4, Baker Library.
SOVEREIGNS

Far from the shores of the bay, in the frozen woods of Massachusetts on a January day in 1814, the river turned and came down over the rocks with a force powerful enough to splinter a wheel.1 The man who stood beside the Charles River gauged its flow, seeking to make sure it would not destroy the newly built wheels of his textile mill: one of the first to be constructed in the forests of the interior, a land now traversed by newly constructed canals and roads that linked the towns where the curl of smoke from the taverns could be seen rising in the quickly fading winter light.2 Having inspected the wheel, the mill-owner who had long since abandoned the seas made his way back down to the office, where he scanned the newspapers, looking for the report of an institution that had appeared to his father as no different than a society of gentlemen, but that now appeared in the Boston Commercial Gazette as the sovereign state of Massachusetts, announcing its verdict on the deeds of the officers of the national government.3

For weeks now, the mill-owner, Patrick Tracy Jackson, had been waiting for the legislature’s report. As one of the directors of the Massachusetts Bank, Jackson had filed a petition with the state the previous December, soliciting the legislature’s aid in recovering a shipment of money that had been seized in New York by the federal customs officer.4 Already, the bank directors had dispatched an agent to New York to

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1 See Patrick Tracy Jackson to Francis Lowell, Boston, Jan. 30, 1814, Francis Cabot Lowell Papers, Box 6 Massachusetts Historical Society (hereafter cited as MHS) (“I have been at Waltham all the time since you left us…I have got our Loom up & yesterday wove several yards by water.”).
4 Ibid.; see Patrick Tracy Jackson to Francis Lowell, Boston, Jan. 30, 1814, Lowell Papers, Box 6, MHS.
demand a return of their shipment. And now, in Boston’s leading newspaper, there appeared the much awaited reply from the legislature. Citing a sacred sovereign duty of protection, the legislature pronounced that the agent of the federal government in New York had violated the constitutional rights of the citizens of Massachusetts.⁵

To Jackson’s father, one of the old merchants of Newburyport, the report proclaiming a state’s sovereign duty to protect its citizens would no doubt have seemed strange.⁶ For generations, men who had dispatched their ships down the coast and out to the world had laid claim to the duty of protection afforded not by the state, but by the government of the continent, as proud citizens of America. And yet, at a time when the closing of the seas under the Embargo Act of 1813 and a lengthy war with Great Britain had prompted a new generation of entrepreneurs to turn inwards to harness the power that lay within the newly bounded territory of the Commonwealth, the turn to the state government for protection would have made all the sense in the world.

For a return to the records that preceded that moment in the woods suggests that long before a sovereign duty of protection appeared in print, a confluence of social, political, and economic factors had brought the place called Massachusetts into sharper visibility in the constitutional geography of the continent of America. No longer simply an entity that could be compared to an association of interests or a society of gentlemen or an individual entitled to a jury trial, by that winter of 1814, the state of Massachusetts appeared as a place of internal trade corridors and clearly demarcated territorial boundaries, a land populated by an increasingly robust electorate and governed by laws that now appeared in published court reporters and statute books.

⁵ Ibid.
In particular, as historians have long noted, owing in part to the growing demand for ships in Boston during the age of the seas, the opening decade of the Republic saw a proliferation of internal development projects, carried out under formal grants of incorporation issued by the state legislature. As these newly constructed internal corridors of transportation began to forge networks linking the interior to the metropolis of Boston, new debates emerged as to the relationship between the amorphous category of the people and the state legislature, at a time when increasingly contested elections saw the invention of party politics. Amidst growing calls for transparency in the state’s granting of corporate privileges, the laws of the state legislature and judiciary became inscribed in written texts, as grants of incorporation papered the newspapers alongside the shipping news, while newly standardized collections of state laws appeared in print.

Against this emerging landscape of a formally bounded territory and routinized political institutions, elites in Boston who were dismayed by the waning political and commercial power of the former metropolis of America began to theorize and debate the

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appropriate place of the state in the halls of Congress, seeking to harness the legislative power of the state without severing the commercial corridor of union upon which the new mills and ships depended. As they began to work through a doctrine of state sovereignty, a cohort of radical Federalist lawyers found a solution in an idea borrowed from the age of the seas: the higher, sacred duty of a sovereign to protect its citizens, now grafted onto the state legislature in Boston. By reframing a state right into a state duty of protection, these lawyers both legitimized the use of state action, while at the same time, tamed its potentially explosive impact, by funneling the exercise of state power from populist uprisings on the streets to remedies afforded by the courts and conventional halls.

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Long before the pronouncement of a state’s sovereign duty of protection appeared in the commercial papers of Boston that winter of 1814, a series of interrelated changes began to sweep through the plot of land called the Massachusetts Bay: changes that traced their roots to earlier developments, but that appeared with sharp relief in the new maps that depicted intricate web of canals and turnpikes in the territorially bounded space of the Commonwealth, along with the publication of the formal laws of the legislature and the courts, and the creation of new forms of political organizing that pressed at the boundaries of the older politics of personal reputation and honor.

The work of building the routes that fanned out from the metropolis of Boston into the interior began not long after the Constitution’s ratification promised a route down to the southward and out to the world. Fueled in part by the demand for raw resources needed to satisfy the ship-building boom along the Massachusetts Bay, entrepreneurs began to investigate new internal means of supplying the metropolis: not only with the
supplies needed to build an expansive fleet of merchant ships, but to accommodate the growing demands of an urban workforce. In 1792, for example, the annual consumption of fuel in Boston alone amounted to ninety thousand cords of wood.\textsuperscript{11} As one observer would later put it, “independence unleashed a demand for internal improvements, and in turn, for innovative and reliable sources of borrowed capital to finance them.”\textsuperscript{12}

Much later, the historians would tally up the astonishing number of formal charters granted by the state legislature during this time. Between 1790 and 1810, the number of grants of incorporation increased from zero to 857; more than three times the number of charters issued by the second closest legislature of New York.\textsuperscript{13} Within the first decade alone, the state legislature of Massachusetts had issued charters for seventy new townships,\textsuperscript{14} and nearly the equivalent for internal improvements.\textsuperscript{15} By 1800, ten corporations had begun work on building roads that could forge a path across rivers and up mountains, while work began on a canal that promised to link Boston’s shipyards to the seemingly endless forests of New Hampshire.\textsuperscript{16}

As this digging out of the interior began in earnest, the bordered domains of the Massachusetts Bay began to appear in newly drawn maps and spoken descriptions of its woodlands. Within five years after the first survey of the canal commenced, for example, the legislature appointed a committee to produce an official map of the Commonwealth.\textsuperscript{17}

Just as the first captains of America had explored the bays and coasts, so too now did

\textsuperscript{11} Thomas Coffin Armoy, \textit{Life of James Sullivan: With Selections from his Writings} (Boston: Phillips, 1859), 364.
\textsuperscript{14} Ibid., 416
\textsuperscript{15} Ibid., 417.
\textsuperscript{16} See Frederick James Wood, \textit{The Turnpikes of New England}, 57-76.
\textsuperscript{17} “Proceedings of the Legislature of Massachusetts,” \textit{Massachusetts Spy}, Mar. 1, 1797.
surveyors begin to venture further afield, in projects that could take months, even in some cases years, to complete.¹⁸ As the surveyors returned to their offices, they inscribed into the record detailed descriptions of a land that lay just beyond the familiar shores of the Massachusetts Bay: a land of meadows and stone walls, barns and sheds, quiet lanes and deep woods, linked not by the winds and the currents of the Atlantic, but by the rivers that sliced through the land and the corridors of transportation yet to be built.

In their reports, the surveyors spoke in the plural, bringing their readers out from the familiar fishing villages into a land of swamps and hills. “When we leave the swamp to cross the River-meadow,” one surveyor wrote in 1793, “it is necessary to steer for the most easterly part of the hill, on which Mr. Marshall, the trader’s house stands.”¹⁹

Visitors who followed in the surveyors’ footsteps returned with accounts that sounded not unlike those penned by explorers discovering a new land. “We move on, and hear the impetuous roar of the river on the right,” one visitor wrote after traveling to the town of South Hadley to observe work on the canals.²⁰ “The rude, uneven face of the lands around, and its wild, variegated production, are objects very friendly to impressions of the true sublime,” he declared, and one could hear in his words the sense of discovery.²¹

In these new spoken geographies of the interior, the metropolis of Boston took on a new dimension. Once nestled primarily within the maritime globe of continents and trading houses, the metropolis of the Bay now also appeared in the newspapers as connected to the interior lakes and emerging townships. When, for example, the proprietors of a new canal outlined its benefits to the shipping industry, they offered a

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²¹ Ibid.
short geography lesson that connected Boston directly back to a lake in New Hampshire. “The river Merrimack takes the waters of its principal branch from a lake in New Hampshire,” the proprietors wrote of the canal they intended to build connecting the Merrimack River to the Charles River. “This body of water,” they wrote “is one hundred and forty miles from Boston, in the interior part of the country.” To appreciate the necessity of a canal, the proprietors continued, all one had to do was to follow the Charles River up to the proposed canal that connected it to the Merrimack, and from there, back to its source in the interior, where the banks of the lake were “loaded with oaks and pine timber,…wood of all kinds, oak and pine timber for vessels and building.”

Proposals for similar ventures followed the same logic, outlining the benefits of connecting one place to the next. When, for example, a proposal appeared in 1803 for a canal that would cut across Cape Cod, the organizers of the endeavor emphasized that an inland corridor would bypass the difficulties of the old American coast altogether. “[N]ot only the dangerous shoals about Nantucket would be entirely avoided, and consequently many lives and vessels saved,” they insisted, “but also all our coasters bound to and from the southern provinces,” would have a shorter trip, “the consequence of which would not only be the lowering of the price of wheat, flour, corn, and all other kind of provisions from our southern neighbors, but also of rum, sugar, molasses, and other West India produce from the Islands.”

As the logic of the interior emerged in these proposals for new roads and canals, so too did the borders that separated the jurisdiction of Massachusetts from its neighboring states emerge more crisply in the written record. Indeed, by 1804, the state

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legislature appointed a committee to “consider what further powers are necessary to be given to the agents for settling the line between this State and Rhode-Island.”24 One could see this newly bounded conception of space in the work of a map-maker who, in the 1830s, looked over an old seventeenth-century map of New England and New York that offered no borders between the two jurisdictions. Not content to leave the land in the old geography of a continent of ports, the map-maker picked up his paint set and began to color in the blocks of land, painting Massachusetts blue, and New York yellow.25

The practical work of forging these new internal corridors in the interior of the Bay not only contributed to the emergence of a more crisply defined domain called the Commonwealth of Massachusetts; it also precipitated increasingly robust debates over the relationship between the institutional apparatus of the state legislature and the amorphous category of the people.26 Although the formal rules of general incorporation did not extend among the state constitutions until the 1840s, the opening decades of statehood saw a robust debate as to who, precisely, could harness the privileges of state authority. In the early 1780s, for example, when the merchants of Boston first turned to the state legislature for a grant of incorporation for their proposed bank, they modeled...
their request on the old colonial charters, in which gentlemen requested the aid of the Crown for their private endeavors.27

In presenting their claim to the legislature for a bank charter, these merchants framed their request not unlike much earlier requests to the colonial governors for their help in promoting the trade: as one of co-equal gentlemen who could expect and count upon the aid of their peers who held office in the governing bodies of the Massachusetts Bay. When the merchants drafted their request to the legislature for incorporation in the spring of 1784, for example, they introduced themselves not as citizens of the state or petitioners of the legislature, but as “A Number of Gentlemen:” men who had already launched a project on their own volition and now sought the aid of the legislature simply for “perfecting said Plan.”28 And when, in turn, the gentlemen of the legislature issued their reply granting the charter of incorporation for the “Bank of Boston,” they framed the deed as one designed to realize the expectation of the trading community.

In the preamble of their reply, for example, the lawmakers noted with some degree of ambivalence the possible benefit the bank might yield to the public, before emphasizing the clear benefit that the bank promised to yield for the trading community. “Whereas the establishment of a bank within this State will probably be of great public utility,” they observed with skepticism, the establishment will “be particularly beneficial to the trading part of the community.”29 Of equal significance, the lawmakers justified this early act of state incorporation not on the basis of any empirical findings of the need

for a bank, but on the expectation of the merchants. “Many persons under the expectation of an act of incorporation from the legislature of this Commonwealth, have accordingly subscribed thereto,” they noted.30 Indeed, even the name of the bank did not last long, as officials in Philadelphia referred to the Bank of Massachusetts as the “Bank of Boston,”31 while its leading subscribers quickly dissolved to form a branch of the national bank.32

By the early 1790s, these preferential grants of access had prompted some observers to cry foul, in a slow but steadily emerging debate as to the relationship between the state legislature and the means of acquiring and preserving wealth. In a pamphlet that first appeared in 1792, for example, James Sullivan—the state attorney general and a prominent lawyer in Boston—laid out a robust critique of the state’s issuance of privileges to the well-connected elites of the Massachusetts Bay. “There happens to be a rage in the present day,” he wrote, “for acquiring property by accident.”33 In Sullivan’s telling, the difficulty began when the legislature of Massachusetts took the “unprecedented” step of “giving a few men a corporate capacity to issue, regulate, and control the medium of commerce among a great trading people.”34

The creation of property acquired through the bank, Sullivan declared, had been one of pure accident: “It was an indulgence to a few men in the state, who happened to ask the legislature to grant it to them, without the proffer of any kind of reward. By means of this authority, the proprietors of that bank have had it in their power to govern the medium of commerce in and about the metropolis of the state.” They had established,

30 Ibid.
33 James Sullivan, The Path to Riches: An Inquiry into the Origin and Use of Money (Boston: P. Edes, 1792), i.
34 Id., 28.
he continued, “all the advantages which could be gathered from the most enormous monopolies.” As Sullivan laid out the basic strands of what would, in time, become a full-throttle debate over the banks in coming decades, members of a growing opposition in Boston to the Federalist-controlled legislature began to issue similar indictments.

“Will not the exclusive privilege granted to the corporation…enable the company to undersell and ruin every private citizen personally engaged in manufacturers,” one writer in the Argus queried in September of 1792. Drawing on the prospect of the French Revolution, the writer warned of the dangers of turning a blind eye to the “combination of rich men enjoying the particular patronage and protection of government.” “The government of Massachusetts,” one editorial in 1804 echoed, “is, in its essential principle, democratic.” At a time when people may still have wondered what the term meant, the writer paused to clarify. “Its proper definition is a Representative Democracy; a government of the people through the agency of elected and responsible officers.” And under this definition, the writer continued, the grant of any incorporation, constituted not the exercise of a Crown handing out favors to his lords, but the exercise of the people. “The People,” the writer declared, “have the whole sovereignty.”

Perhaps emboldened by this growing opposition that would culminate in an astonishing increase in electoral participation between 1798 and 1800, people seeking

35 Ibid., 28.
36 See, e.g., Wilentz, Rise of American Democracy, 210-17; 355-74; see also Hartog, Public Property and Private Power, 88-90.
37 “Miscellany: From the National Gazette…,” Argus, Sept. 11, 1792.
38 “[“To the Electors of the Commonwealth of Massachusetts,”], Democrat, Feb. 29, 1804.
39 Ibid.
40 “[“To the Electors of the Commonwealth of Massachusetts,”], Democrat, Feb. 29, 1804.
to build a new township or form a new church or erect a new bridge began to frame their claims for incorporation to the state legislature using words that revealed a subtle, but distinct, shift from the previous formulations. Whereas the merchants and bankers who had petitioned the state legislature in 1784 for a bank charter did so as “a number of gentlemen,” who not only expected the state’s aid in perfecting their plan, but offered to draft the legislation themselves, by the mid-1790s, the petitions arrived from individuals who now introduced themselves as “YOUR petitioners,” or simply as the “inhabitants.” In place of requests based on the expectations of the merchant elites, these petitions framed their appeals for a grant of state incorporation as either a remedy for existing inequities or disadvantages suffered by the people, or as a prescription for future benefits “to the Commonwealth at large, as well as to her Metropolis.”

Whereas the gentlemen of the trade once offered to draft the laws themselves, the petitions now emphasized the role the legislature would play in exercising its judgment and regulating the public infrastructure. “Your Honors will establish such rates and toll for the different kinds of lumber, as in your wisdom you may see cause” one petition read, a logic that appeared in another request seeking a grant of incorporation that would “relieve your Petitioners as you, in your wisdom, shall think fit.” In lieu of the old language that rested on the grant of a charter from a Crown to the lords, these petitions now emphasized the grant of incorporation as a legislative statute, referring, for example,

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43 “Petition of Noah Hooper,” Columbian Centinel, Apr. 12, 1797.
45 Ibid.
46 “Petition of Noah Hooper,” Columbian Centinel, Apr. 12, 1797.
47 Ibid.
to an “Act of Incorporation to build a Turnpike Road from Salem to Boston.”50 And whereas the name of the state could once slip between the space of “Boston, North America,” on an envelope arriving from abroad in a merchant’s trading house, it now appeared in capital letters as the “COMMONWEALTH OF MASSACHUSETTS.”51

As these petitions arrived from across the state, the legislature in turn took efforts to emphasize the neutral, formalized rules by which grants of incorporation were issued: be it by printing requests for proposals of construction work in the newspapers, inviting citizens to view submitted proposals, and holding public meetings prior to issuing a charter. When, for example, a petition arrived in 1792 requesting a charter to develop a canal, the legislature responded by publishing a general call in the newspaper, inviting applications from anyone interested in the business. “The Legislature, upon application being made to them, will authorize any person or persons, to make a canal.”52

The Secretary, meanwhile, was directed to publish the resolve for three weeks successively in the “Independent Newspaper,” and to “permit the said plan and the report of the committee to be examined, by any person or persons, that may apply to examine or view the same.”53 By 1805, meanwhile, the legislature passed an act that prohibited any charter to be granted until a committee from the state government had reviewed the proposed route, while at the same time, opening the court house door to any one who had a complaint concerning the condition of the new road.54

50 [“A Committee…”], Massachusetts Mercury, Jan. 23, 1801.
52 “Commonwealth of Massachusetts, March 8, 1792,” Independent Chronicle, Mar. 30, 1792.
53 Ibid.
Amidst this increasing emphasis on the formalization of procedures, the land fanning out from the Massachusetts Bay emerged not only as a physical, bounded space, but also as a coherent legal space, propelled in part by the astonishing leap in the number of practicing lawyers. In the first decade of the Republic alone, the number of attorneys in the Commonwealth of Massachusetts had doubled from nearly one hundred to two hundred practicing lawyers, before doubling again to nearly five hundred by 1810, as compared to a paltry fifteen in 1740.\textsuperscript{55} As the number of lawyers in the state multiplied, so too did the laws shift from the spoken decisions of judges and the sporadic heap of statutes into formal collections of statute books.

In the spring of 1804, for example, the legislature ordered that henceforth, all decisions of the Supreme Court of the state would be printed. Prior to that summer, the spoken decisions of the officials on the bench remained largely hidden from view, kept in the personal notebooks of the lawyers and judges.\textsuperscript{56} The clerk dispatched into the interior to begin the work of recording the cases found the task bewildering. “Having at no time practiced taking minutes of their decisions,” he wrote apologetically in the preface to the first case reporter that appeared in 1808, “he felt himself inadequate to the task.” As he pointed out, the court had been in continual motion: “The records, judges, and the counsel are, if the expression may be used, dispersed over the whole state.”\textsuperscript{57}

Beginning in 1806, meanwhile, the legislature began the first of a series of campaigns to recover and publish the old state laws that had emerged in the opening

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\textsuperscript{57} Ephraim Williams, \textit{Reports of Cases Argued and Determined in the Supreme Judicial Court in the Commonwealth of Massachusetts} (Boston: Tileston and Weld, 1808), 1:v.
decades of the Republic. The campaign began with an initial attempt to publish all the laws enacted between 1800 and 1805, before expanding to include all laws published between 1780 and 1800. By 1812, the legislature had become even more ambitious, appointing a committee to “collect the charters, and the public and general laws of the late Colony and Province of Massachusetts Bay.”

The work of compiling and recording these laws into a single set of volumes brought a sense of unity to the motley assemblage of stray notes, as the legislature endeavored to standardize the format of the statute books. In February of 1806, for example, the legislature passed a resolve directing that the laws of the Commonwealth be printed in a uniform size, before passing a resolve the subsequent year directing that a new edition of the statute laws between 1780 and 1800 be published in the same format as the first edition. Evidently not fully satisfied with the results, by 1812, the legislature issued yet more detailed instructions for how the legislative output of the state ought to appear on library shelves, specifying the page number for each volume (not less than 700), the size of the volume (royal octavo), as well as the start and end dates (May to May), and the necessity of including appropriate title pages and indices.

Nor, moreover, were these published texts destined for limited audiences. When, for example, the legislature ordered 10,000 copies of the Constitution of both the United States and the Commonwealth to be distributed in 1807, the legislature advised that the

58 Massachusetts General Court, “Resolve Distributing the Laws…” in Resolves of the General Court (Boston: Adams and Rhoades, 1807), 20 (hereafter cited as Resolves followed by year of publication).
59 Massachusetts General Court, “Resolve Appointing a Committee to Contract for Twelve Hundred copies of Statute Laws, from 1780 to 1800,” in Resolves (1807), 21.
60 Massachusetts General Court, “Resolve Appointing a Committee to Collect and Publish the Charters and General Laws of the Late Colony and Province,” in Resolves (1812), 299.
62 Massachusetts General Court, “Resolve Appointing a Committee,” in Resolves (1807), 21.
63 Massachusetts General Court, “Resolve Directing the Manner in which the Laws and Resolutions Shall be Printed in Future,” in Resolves (1812), 509.
documents be distributed “to the Inhabitants of the said Towns and plantations,” and “to be read, as a School Book.”64 And when the legislature began a project to publish the speeches of the governor in 1807, it also sought to contract an artist to depict the governor’s likeness, so that he might be recognized on the streets.65

With each new set of standardized statute books and increasingly detailed maps, the domain of Massachusetts that had once been compared to an individual with a right to a jury trial in 1774, or analogized to a composite of economic interests to be balanced on the merchant’s scale of justice in 1787, began to appear instead as a more formal entity: a territory with bordered domains, governed as a coherent legal space. Such that when the seas that lapped at the harbor began to close in around the continent with the advent of war with Great Britain, men who had long followed the seas and now looked in askance at the declining power of Boston would turn their gaze inwards and contemplate the power that lay within the interior. In doing so, they would attempt to harness the power of the newly visible state without rupturing the old corridor of union that led down to the southward, a union that promised to keep the wheels of the newly built mills turning cotton into thread.66

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On a February day in Washington in 1808, a lawyer named Timothy Pickering from the shipping port of Salem who had ascended to a seat in the Senate of the United States drafted a note to the governor of Massachusetts, asking for his help on a matter of utmost importance. The Congress of the United States, he wrote, was considering a plan

64 Massachusetts General Court, “Resolve Directing the Secretary…,” in Acts and Resolves Passed by the Commonwealth of Massachusetts: 1804-1806 (Boston: Young and Minns, 1898), 302.
breathtaking in its scope: a plan to shut down the entire shipping routes that led out to the
markets of the world. No one, the senator confided to the governor, had any idea
whatsoever of what they were doing in Washington. “In all the branches of Government,”
the senator reported, “commercial information is wanting; and in this ‘desert’ called a
city, that want cannot be supplied.” What was he needed, the senator requested, was the
“sense of the commercial States, clearly and emphatically, stated,” a resolution, perhaps,
expressing the sentiments of the state, to help enlighten the rest of the nation.

In the past, such requests had moved easily across the porous borders of the
colonies-turned-states, as gentlemen of the trade conversed easily across jurisdictional
lines. Indeed, the sixty-three-year-old senator, a Federalist well-versed in the working of
the old American coast, no doubt expected that his request would at least be forwarded to
the legislature, even if the governor stood on the opposite side of the political spectrum,
as a friend to President Jefferson and his cabinet. And yet, the response that arrived a few
weeks later in Washington, signed by a man who had built the first canal and counted
himself as the agent of the sovereign people of Massachusetts, made clear that the days of
the old American coast of societies and assemblies had most decidedly shifted.

“You will recollect,” Governor John Sullivan wrote to the senator, as if
commencing a civics class for a young child, “that the Senate and House of
Representatives of this Commonwealth are visible, organic bodies.” And as visible,
organic bodies, he continued, there were certain rules that now had to be followed—even
by powerful senators such as himself. “[T]he former has a President,” he wrote of the
state senate, “and the latter a Speaker; [and] both have Clerks. You will also recollect that

from the Hon. Timothy Pickering (Hartford, CT: Lincoln and Gleason, 1808), 10.
68 Ibid.
there is a Secretary chosen by the two Houses; that whatever is proper to be communicated to them, by you, may be communicated through one, or the other of these.” Under these rules, he concluded, he—as governor—had no authority to forward a letter from the Senator of the United States to the Legislature of Massachusetts. 69

This terse response from the governor, bristling with talk of formal rules and “visible, organic bodies,” encapsulated the sea change that had unfolded along the Massachusetts Bay during the opening decade of the nineteenth century—one that now presented a new question for Pickering and his colleagues as to how to proceed. Since losing political power in Washington eight years earlier, he and his fellow Federalists of the Massachusetts Bay had found themselves struggling to be heard in the new terrain. For nearly four years, they had experimented with the old familiar patterns of mobilization: using the same language of the American coast, appealing to the trading houses, and, as evidenced by the senator’s letter, attempting to move easily between the porous lines of the state institutions. That spring, however, Pickering and his friends would attempt a new strategy: one that would set aside the old trading houses who seemed unconcerned by the waning political power of Boston and instead attempt to harness the power that lay within the electorate of the state.

By then, the newspapers had kept a close tab on the repeated political failures of the Federalists, creating a paper trail that would allow later observers to trace the slow realization that theirs was a language of America and its interests that would no longer prevail on the newly emerging landscape of the Massachusetts Bay. The effort to organize some kind of action began in the fall of 1804, shortly after Jefferson’s Administration took the unprecedented step of acquiring the entire inner swath of the Massachusetts Bay.

69 John Sullivan to Timothy Pickering, in Letter from Pickering, 15.
North American continent. It was clear to anyone who looked at a map what the consequences of the Louisiana Purchase meant for the old division of power. Under the rule that assigned 3/5 of a vote to every slave, the acquisition of the rich soil of the Mississippi River Valley signaled a continental shift in the balance of power. As one observer had put it, “The purchase of Louisiana…will contribute to the number of its slaves, [and] destroy the…influence of the Eastern states in the National Government.”

From the outset, this tremendous shift in the continental balance of power had prompted internal debate among Massachusetts’ elites. Not long after the annexation, a member of the Federalist party in the state legislature named William Ely, for example, who hailed from a river town on the interior of Massachusetts, proposed what seemed to him to be a reasonable course of action. The solution, Ely suggested, was simple: organize a movement among the trading houses, assemble in convention, and revise the terms of partnership under the Constitution to fashion a more equitable balance of power.

To Pickering, Ely’s solution seemed sound enough, but insufficient. What was needed, he suggested, was not simply a revision of the Constitution, but a dissolution of the terms of partnership altogether, a return from the novel United States to the old America.

Despite their different views, both Ely and Pickering had hemmed closely to the standard practices for collective action in attempting to fix the dilemmas created by the Louisiana Purchase. In editorials and speeches, they pitched their proposals for constitutional reform in the familiar vernacular of an America of interests, while turning to the network of trading houses as the default mechanism of mobilization. In a pamphlet that began to circulate in October of 1804 in support of Ely’s proposal for a constitutional amendment, for example, an anonymous writer spoke in the dialect of the trading houses,

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70 “Proposed Amendment to the Constitution,” Philadelphia Gazette, June 18, 1804.
outlining an intervention that rested not on the rights of the sovereign states, but on the
duty of gentlemen to preserve the old equities of the coast, without treading upon the
working partnership of commerce.

At a time when those opposed to revising the terms of the Constitution spoke of
its provisions as essential parts of the ship—the rudder, a compass, a sail—,\textsuperscript{71} the writer
analogized his proposed reform to that of a ship pilot, who, upon sensing an upcoming
storm, exercised his duty of care to preserve the ancient rights of New England. “It
becomes the duty of those who foresee the danger,” the author declared, “to warn others
of its approach, and to attempt to confirm the confidence of the people in their best
friends.”\textsuperscript{72} The danger, he warned, lay not in any contest between center and periphery,
but in the contest between the Commonwealth of Virginia and Massachusetts. Drawing
on familiar analogies that compared states to towns, the writer compared Virginia’s
ability to create new states in the Mississippi River Valley to the ability of New England
to create towns in the interior of the state. “States can be multiplied at her pleasure,” he
wrote of Virginia, “with as much expedition as townships are incorporated in New
England, and stocked with voters more easily than we can stock our farms with cattle.”\textsuperscript{73}

At stake, the writer continued, was not the constitutional right of the sovereign
state of Massachusetts, but the “ancient rights of New England.”\textsuperscript{74} Ely’s proposed
revision of the division of political power, he continued, would do nothing more than
strengthen the old corridor of America. South Carolina and Georgia, he wrote “are deeply
interested in the advancement and protection of the commerce of the nation,” he wrote,

\textsuperscript{71} [“Massachusetts”], \textit{Independent Chronicle}, June 21, 1804.
\textsuperscript{74} Ibid.
invoking the familiar partnership. Their “growing staples will require new markets and extensive means of conveyance and defence,” he added, before urging the need for the “extremeties of the Union to cultivate a good understanding with each other.”

This rhetoric in favor of a constitutional amendment in 1804 sounded almost identical to that which Pickering had used earlier that year, as he began to draft a series of private letters to his correspondents, following the familiar circuitry of mobilization. To make the case for setting aside the terms of partnership of the novel entity of the United States and preserving the commerce of old America, Pickering and his colleagues spoke in metaphors and sea-phrases. In lieu of framing the act of protest or dissolution as a right of a sovereign state, for example, Pickering also spoke of the duties of a gentlemen to warn his peers of an incoming storm: no different from that of a pilot on a ship, looking out to the horizon on behalf of his peers. Carrying the metaphor forwarded, he spoke of the Constitution not as the supreme law of the land, but simply as a piece of paper, a charter party, he noted, to be folded and put in one’s pocket and set aside as needed.

Just as the pamphleteers had emphasized that a change in the written terms of the Constitution need not compromise the commercial corridor of union, so too now did Pickering make the case that dissolution could actually promote internal trade. The best way to think about it, he suggested to a friend, was two business partners. “It is not unusual for two friends, when disagreeing about the mode of conducting a common concern,” he observed to a friend in February of 1804, “to separate, and manage each in

75 Ibid.
76 Ibid.
his own way his separate interest, and thereby preserve a useful friendship, which without such separation would infallibly be destroyed.”

So too, he continued, would commercial relations along the coast remain, with or without the cumbersome United States. “If a separation were to take place,” he observed, “our mutual wants would render a friendly and commercial intercourse inevitable. The Southern States would require the naval protection of the Northern Union, and the products of the former would be important to the navigation and the commerce of the later.”

He developed the point still further the following month. “A friendly and commercial intercourse would be maintained with the States in the Southern confederacy,” he reasoned, even in the event of a dissolution of the Constitution. “Thus all the advantages which have been for a few years depending on the general Union would be continued to its respective portions, without the jealousies and enemies which now afflict both.”

Despite the fluency with which Pickering and his colleagues had spoken in this familiar discourse of an old America of interests, their efforts had failed to produce any noticeable outcomes. The problem, it seemed, was the ambivalence of the trading houses. No matter how strenuously Pickering and his friends warned his correspondents of the dangers of allowing Virginia to extend her reach across the westward continent, the merchant houses made clear they wanted no part in the campaign to revise, much less set aside, the terms of partnership that they had fought so hard to obtain. “Tell them from ME, at MY request, for God’s sake, to cease these conversations and threatenings about a

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82 Ibid.
separation of the Union,"\(^83\) wrote one of the leading merchants in New York. “Dismemberment of our empire will be a clear sacrifice of great positive advantages, without any counterbalancing good,” his father echoed in reply.\(^84\)

As one of Pickering’s friends explained it, no matter how much the acquisition of territorial land threatened the balance of political power, to the men of commerce, it presented only the prospect of opportunity. “There is… a large class of valuable men,” his friend explained, “whose business takes up the principal part of their attention, and who scarcely ever cast their eye toward the political horizon of their country; and they, of course, do not perceive the clouds that is gathering around it.”\(^85\) There simply was no sufficient danger, Pickering’s friend echoed, to warrant setting aside the entire terms of partnership. “A separation is now impracticable,” one of his friends replied, “because we do not feel the necessity or utility of it.”\(^86\)

In the commercial newspapers, meanwhile, editorials lambasted Ely’s proposal to revise the terms of partnership, framing it as a dangerous threat to commerce. “A few men from the interior who are ignorant of all the commercial connections between the northern and southern States will declaim with virulence against the present administration,” one commentator noted, “but are destitute of any accurate idea of the importance of a MERCANTILE UNION subsisting within them.”\(^87\) Speaking with barely contained derision, the writer advised the novice legislator to consult the original logic of the document, to “read the Debates in our State Convention.” As another observe

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\(^84\) Alexander Hamilton to Theodore Sedgwick, New York, July 10, 1804, in *Documents*, 365.
\(^85\) Theodore Lyman to Timothy Pickering (Boston: Feb. 29, 1804), in *Documents*, 350.
\(^86\) George Cabot to Timothy Pickering (Boston: Feb. 14, 1804), in *Documents*, 346.
\(^87\) [“The Federalists…”], *Independent Chronicle*, June 25, 1804.
insisted, before questioning these “wise and august framers of the Constitution.”

political dissenters would do well to check their facts. “Ask Mr. King,” one paper
admonished those in favor of amending the three-fifths clause, “who says this article was
adopted because it was the language of ALL AMERICA.”

Indeed, by the spring of 1808, it seemed to Pickering that the merchant’s
tolerance for the shift in political power knew no limit. That spring, for example, when
Pickering set out to seize upon the fact that the Congress of the United States had
effectively closed all of the shipping routes across the Atlantic under the Embargo Act,
he ran headlong into ambivalence among the merchants. In August of 1808, for example,
Pickering and his two close friends Harrison Gray Otis and Christopher Gore set out to
organize a town meeting in Boston to protest the embargo. Following the old model in
force during the Revolution, the lawyers appealed to the town selectmen for permission
to organize a town committee. Once assembled, they organized a town committee of
correspondence to engage with the other towns of Massachusetts. Following the well-trod
path of appeals to Congress, the lawyers then began work on a petition addressed to the
President of the United States, insisting that as citizens of the United States, it was both
“a duty, as well as a right, to avail themselves of every fair occasion” to petition Congress
to preserve maritime commerce.

Despite their compliance with the forms of protest, as observers were quick to
point out, a crucial voice was missing from their opposition: the trading houses. “It was
remarked,” a reporter who attended the 1808 town meeting later explained, “that not a

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89 [Massachusetts], Independent Chronicle, June 21, 1804.
91 Ibid.
merchant…or underwriter, took any share in the debate.”92 Whereas the merchants of Boston had once dominated the meetings to protest the closing of the ships in hopes of securing a route to the southward in 1787, they now declined to participate at all. Instead, it seemed to observers that the men at the helm of the Boston town meeting were now simply three lawyers, speaking as if by memorized script. “We did expect to receive some information on a subject so important to the commercial interest of the town, and from some source which might be depended on,” the reporter observed, “detached from the labored pleadings of three lawyers, long drilled in the employment of haranguing in a tumultuous caucus.”93

The ship-owners had no interest, it seemed, in jeopardizing the old commercial union of America. As one astute observer pointed out in 1809, the “mercantile gentlemen of the Atlantic States” had a keen interest in serving the planters. “As they are the medium through whose agency the surplus products of the planter are sent to a foreign market,” he observed, “so may they be said to be mutual aids to each other.”94 Indeed, in a single month before the first closure of the seas in 1808, for example, one trading house shipped $12,900 worth of cotton from Savannah and Charleston to Liverpool, on four different vessels.95

Indeed, in newly emerging trading routes that would be preserved in library archives simply as part of foreign commerce between Massachusetts Bay and Asia, merchants in the carrying trade found new markets for the produce of the plantations. During the brief interval between the Embargo of 1807 and the outbreak of war with

92 "Boston, August 12: Town Meeting." City Gazette, Aug. 29, 1808.
93 "Boston, August 12: Town Meeting." City Gazette, Aug. 29, 1808.
95 Nathan Appleton to Samuel Appleton, Boston, Nov. 10, 1804, Nathan Appleton Papers, Box 2, MHS.
Great Britain, for example, the Lowells had arranged for goods imported from India and China to be resold among the major southern ports. “Will any & what kind of India Goods sell in your place,” one merchant inquired of his correspondent in Charleston.97

Even the war with Great Britain could not halt the ships from descending down the coast and out to the world, as powerful merchants with connections in London simply applied for licenses to trade. “It is important,” one merchant advised his agent in London who had agreed to supply such licenses after the outbreak of war, “that the permission should be given for the Vessel to proceed with the license in ballast from one port to another of the United States for the purpose of loading, as the Vessels are generally owned at the Northwest & the Cargoes are raised in the Southern States.”98

To these merchants who looked over Pickering’s proposal to revise the terms of the Constitution upon which the ships of New England had won a right of access to the southern ports, the plan likely seemed wholly unnecessary, if not potentially dangerous. As one of congressman explained to his colleagues in 1809, in the absence of the Constitution, New England’s ships would be locked out of their privileged access to the southern ports. “The discriminating duties now in favor of the New England states would be turned against them, and…thus New England would be effectually excluded from carrying the bulky and heavy productions of the southern states.”99

96 Patrick Tracy Jackson to Harrod and Ogden, Boston, Dec. 15, 1810 (writing to his correspondent in New Orleans that, “I expect some goods from India in 2 or 3 months. Can I expect to find sale for any in yr market and what kinds would you recommend…”); Patrick Tracy Jackson to T. Gilman, Boston, Feb. 8, 1811 (same, to Charleston); Patrick Tracy Jackson to Harrod and Ogden, Boston, Feb. 18, 1811 (same to New Orleans); Patrick Tracy Jackson to B. and G. Williams, Boston, Apr. 18, 1811 (same to Baltimore); Patrick Tracy Jackson to TS Beale, Boston, May 24, 1811 (same to Wilmington), all in Lee Family Papers (microfilm), Reel 19, MHS.

97 Patrick Tracy Jackson to T. Gilman, Boston, Aug. 23, 1811, Lee Family Papers, Reel 19, MHS.

98 Frank Cabot Lowell to James Russell, Boston, Jan. 26, 1813, Lowell Papers, Box 9, MHS.

99 William Branch Giles, Mr. Giles’s Speech: Delivered in the Senate of the United States on Thursday, 24 November, 1808 (Salem, MA: Pool and Palfray, 1808).
The harsh reality, the congressman continued, was that the landowners of the great southern estates simply could care less if a British ship or a New England ship carried his cargo. “It is a matter of no consequence to the agriculturist, whether his produce is carried to market in a New England or Old England. The only interest he has in the transaction is the price of his produce,” he observed, prompting a quick reply from those in Massachusetts who assured their colleagues of their commitment to the Constitution. “They have no intention of abandoning the Union,” declared a majority of senators with reference to the people of New England during the first embargo.¹⁰⁰ They “are firmly and sincerely attached to the union of the States,” declared a majority of representatives in agreement.¹⁰¹

For politicians like Pickering who felt no such similar compulsion, this proclaimed commitment to the Union presented an obstacle. Shut out of the conventional mode of mobilizing the trading houses along the coast, that winter of 1808, Pickering and his colleagues began to contemplate the possibility of working through the state and its electorate. In a frenzied exchange of letters, they debated the propriety of using the state legislature as a vehicle of dissent. “It becomes of great importance,” Harrison Gray Otis wrote in mid-December of 1808, “whether any aid can be furnished by the legislatures of this session, and, if beneficial effects are to be expected from this quarter, the object should be defined and the means concerted.”¹⁰² It was clear enough that, under existing custom, a state legislature could use its power to instruct its representatives in Congress.¹⁰³ But could the legislature be used to greater ends? Could the voice of the

¹⁰⁰ The Patriotic Proceedings of the Legislature of Massachusetts (Boston: Joshua Cushing, 1809), 23.
¹⁰¹ Ibid, 30.
¹⁰² Harrison Gray Otis to Josiah Quincy, Boston, Dec. 15, 1808, in Documents, 374.
legislature, for example, be uttered to cast judgment on the nation? Could it be used to launch a movement of constitutional reform? The opportunities were overwhelming. “To ascertain the most useful course to be pursued on this occasion,” Gore reported in early January of 1809, “fills our minds with deep and anxious solicitude.”

In a series of letters, the lawyers hashed out all the possible activities that the state legislature could take, brushing off provisions in the Constitution that had remained on the sidelines for years. “Pray look into the Constitution, and particularly to the 10th article of the amendments,” Pickering advised Gore and Otis from Washington. “How are the powers reserved to the States respectively, or to the people, to be maintained, but by the respective States judging for themselves and putting their negative on the usurpations of the general government?” he queried. Perhaps, Pickering suggested, the state could use this reservoir of reserved power to publicize the wrongdoings of the administration from Virginia. “A strong and solemn address,” he advised, “stating…the evil conduct of our administration…ought to be prepared to be laid before our legislature.”

After meeting with the state electors in December, the lawyers were positively giddy at the untapped power they had witnessed in their conversations with the men who came in from the interior. “When the electors met, we had an opportunity of learning the sentiments of the people in all parts of the Commonwealth,” the lawyer Gore reported back to Pickering. The people were angry, he noted: they were ready to fight, a power, he observed, potentially explosive in its impact. “You may be assured we shall have no easy task to temper the zeal of our Representatives when they assemble,” Gore advised,

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104 Christopher Gore to Timothy Pickering, Boston, Dec. 20, 1808, in Documents, 374.
105 Timothy Pickering to Christopher Gore, Washington, DC, Jan. 8, 1809, in Documents, 377.
106 Ibid.
107 Christopher Gore to Timothy Pickering, Boston, Dec. 20, 1808, in Documents, 374.
writing with the sense of a someone who had stepped out of the law office and discovered, for the first time, the palpable sense of anger rippling across the countryside. “They see nothing but destruction of their property, and slavery of their persons, in the present course,” Gore reported.108

Out of this initial enthusiasm, the lawyers who found themselves unable to mobilize the trading houses and the people who found themselves just barely getting now turned to the age-old practice of petitioning the government. This time, however, they addressed their claims not to the familiar destination of Congress, but to the state of Massachusetts. All down the coast, in towns where people had long spoken of a place called America and its citizens, petitions began to appear, addressed to the members of the state legislature. In the words they put down in writing, one could hear the novelty of the event, the strangeness of shifting one’s gaze from that which was familiar and the questions that it raised. On a raw January morning in 1809, for example, when the members of the shipping town of Portland assembled in the courthouse to review their options, and someone suggested petitioning the state, the clerk reminded them they would need to discuss the open question of the “propriety of petitioning the Legislature of this Commonwealth.”109 As the governor declared that winter, “How far existing…evils, may be provided against…by any agency constitutionally confided to their State Legislature, are at the present moment, considerations of the most interesting nature.”110

As the petitions from the seaport towns and the interior began to accumulate in the state house in February, the representatives who introduced them ran headlong into questions as to what, precisely, they thought they were doing. State officials who

108 Ibid.
supported the Administration were quick to present the disasters that would befall America, were the state of Massachusetts to exercise its power to speak out on national affairs. Governor Levi Lincoln, for example, who counted himself as a friend to the Jefferson Administration, warned that such activity, if taken to its logical extreme, could dissolve the Union. “Should…Virginia, or could Massachusetts, any of her towns, or citizens, dictate measures to Congress,” he warned, “then indeed would one State have obtained a disastrous triumph over the United States; then we should have conquered the union; then we should have prostrated its Government, and have trampled under our feet the last reserve of national power.”

Others, including those who rebutted Pickering early on, pointed to more practical objections, warning that a division along state lines would subject the United States to foreign conquest. “They must fall a contemptible victim to foreign despots, or what is more likely, become the abject dependents of petty tyrants among themselves.” Others simply invoked the formal rules of the Constitution to protest any utterance on the part of the state. James Callender, for one, reported that regardless of the merits of the issue, as a state legislator, he simply had no authority to weigh in on the question of the Embargo Act. “I have neither the right nor the disposition to interfere in this matter. …The subject is not within our jurisdiction, and for this reason, ought not to be before us.”

Against this fortress of arguments, the lawyers who had gathered earlier to sketch out the plan of attack against what they spoke of the tyranny of Virginia mounted their defense. They did so using an idea so subtle it would be easy to miss, swept under the rug

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112 Massachusetts General Court, House of Representatives, Journal of the House of Representatives of the Commonwealth of Massachusetts (Boston: Benjamin Parks, 1808), 12.
113 Ibid., 11.
of generalities, but one that would reverberate for decades. For theirs was a defense that rested not on the still novel idea of the powers reserved to the state, nor on the foreign claims of the rights of the states under the law of nations, but something higher, more solemn: the universal duty of a sovereign to protect its citizens. Rooted in centuries of common-place understandings of governance and malleable enough to reign in would be rioters of the interior, the idea of a sovereign’s duty to protect its citizens offered a means of both legitimizing state action on the national stage, while at the same time, leaving it firmly to the lawmakers in power to determine how that duty ought to be fulfilled.

The idea of a state’s sovereign duty of protection first emerged as if by chance. In February of 1808, for example, an otherwise still unknown lawyer in the state legislature named Joseph Story cited the duty of a sovereign to justify the state legislature’s right to issue a resolution in favor of the Embargo Act. “Under circumstances of national exigency, an expression of approbating sentiment towards the national government, on the part of the individual States, becomes not only proper and expedient, but an important duty,” he argued.114 His colleague, John Quincy Adams, used the same logic the following month to argue that there might, in circumstances, be a duty on the part of the state to speak out on behalf of the people against the nation. “It is undoubtedly the right, and may often become the duty of a State Legislature, to address that of the Nation, with the expression of its wishes,” framing the duty as something higher than a right.115

As a concept worn smooth from use in petitions to Congress, the phrase of a sovereign duty now began to appear in the petitions to the state legislature. “We will apply to the Legislature of our own State,” one petition from Portland read, “and claim

114 Massachusetts General Court, Journal of the House of Representatives (1808), 91.
from them that security and protection, which we have sought in vain from the general government,”¹¹⁶ a sentiment echoed in Boston, where, as the captains hauled down the flag to signal the death of commerce, they spoke of a city that had been denied the equal protection of the law. “Boston is deprived of her rights, she is disfranchised—her port is shut, she is put out of the protection of the law, she is no longer permitted to seek from the ocean and from other ports, the necessaries of life,” the captains wrote.¹¹⁷ In memorials that appeared in the newspapers, the city’s fishermen drew upon the same language, “praying the Legislature to protect them in their unalienable rights.”¹¹⁸

In Hadley, meanwhile, the townspeople who gathered for an assembly spoke of Massachusetts as an independent state. They based their right to gather on the “State Constitution,” while proclaiming that the “Commonwealth of Massachusetts nevertheless is, and of right ought to be, a free sovereign and independent state.”¹¹⁹ In Haverhill, up the river at the office of the Merrimack Intelligencier, meanwhile, the newspaper editors published a copy of the Constitution of the United States, the Constitution of Massachusetts, the Bill of Rights, and all the Embargo Laws.¹²⁰ In Newburyport, the editor published and sold a pamphlet containing the state and federal constitution. “Tomorrow will be published, and for sale at this office—The Bill of Rights and Constitutions of Massachusetts; the Constitution of the United States, with the amendments; together with ALL the Embargo Laws, in a Pamphlet form.”¹²¹

¹¹⁷ “[To the Honourable...”], The Repertory, Feb. 7, 1809.
¹¹⁹ “Hadley Resolutions,” Repertory, Jan. 19, 1809.
¹²⁰ “View of the Whole Ground,” Merrimack Intelligencier, Feb. 4 1809.
Confronted with the potentially radical nature of these claims to Massachusetts as an independent state, by time the petitions arrived in Boston, lawmakers who sought to harness the power of the electorate reframed the question of one of a state’s right to a higher duty of protection. In a report published in early February of 1809, most likely drafted with the influence of the President of the House, Harrison Gray Otis, the state that had once appeared to Rufus King as deaf and dumb and reducible to economic interests now began to speak on the national stage.

In place of the old America coast defined by its ports on a globe of continents, the authors of this report now spoke instead of the formal institutional apparatus of the state legislature, comprised of representatives assembled from all across the newly mapped domain of Massachusetts. Citing the sovereignty of the people in opposition to the Embargo Act, the report began by detailing the petitions that together formed a single mass. “These numerous representations,” the report declared, “made as if by one consent from the different parts of one country, afford strong proof of the injustice and impolicy of these measures.”\textsuperscript{122} In lieu of references to a legislature that could be analogized to a society of gentlemen in Boston, the authors now framed it as a venue for the representatives of the people. “The members of the legislature,” the report declared, “having lately assembled from all quarters of the state, cannot require any new evidence of the grievances which are universally oppressing their fellow citizens.”\textsuperscript{123}

By invoking the duty of a sovereign to protect its citizens from this oppression, Otis and his colleagues found a means of taming the potential excesses of democracy: one that reframed the means of opposition from one of riots in the streets, to orderly

\textsuperscript{123} Ibid.
proceedings in the courts. As the report concluded, “It would be derogatory to the honor of the Commonwealth to presume that it is unable to protect its subjects against all violations of their rights, by peaceable and legal remedies.” All citizens, the report advised, were thus encouraged bring their grievances to the courts. “To them, every citizen, when aggrieved, ought to apply for redress.” By emphasizing these judicial remedies, the lawyers thus found a means of preserving the crucially needed corridor of union, while at the same time, legitimizing state action on the national stage. “As long as this state maintains its sovereignty and independence, all the citizens can find protection against outrage and injustice, in the strong arm of the state government.”

This report established the basic logic of state intervention, one that sounded in the petitions and resolves as war erupted with Great Britain. When the shipping routes down the coast closed once more in 1813 for the second Embargo Act, for example, the fishermen of Boston set aside the old appeals to Congress, and turned once more to the state, once more invoking the duty of protection. “We must add,” they wrote, “that we know not why our wise progenitors reserved any powers to the State Government, unless they were sometimes to be exercised for their safety and protection.”

In reply, the Federalist lawyers in the state legislature responded with the familiar logic, laying out in more detail the circumstances that warranted state action. “We spurn the idea that the free, sovereign, and independent State of Massachusetts is reduced to a mere municipal corporation without power to protect its people and to defend them from oppression, from whatever quarter it comes,” the report from the legislature declared,

124 Ibid.
125 Ibid.
126 Ibid.
before announcing the criteria for its intervention. “Whenever the national compact is violated, and the citizens of this State are oppressed by cruel and unauthorized laws, this legislature is bound to interpose its power, and wrest from the oppressor its victim.”

As the lawmakers in Boston began to respond to such petitions in ever growing numbers, they began to refine this broad rule of state intervention, carefully circumscribing the rules by which the legislature of the Massachusetts Bay would carry out its sovereign state duty of protection. Such that when a petition seeking the state’s intervention arrived in the State House that January of 1814 signed by none other than the leading directors of the Massachusetts Bank—including one of the founders of the new cotton mill up the Charles River—the legislature replied with a formal report that sounded not unlike that of a judge who, upon surveying a new set of facts, turned to the familiar rules of the duties and rights of a state to craft an opinion to hold the Union intact.

In the final report of the legislature that caught the attention of the mill-owner along the Charles River, the state lawmakers announced that the petition from the directors of the Massachusetts Bank had met the three-pronged test for state intervention. Applying this test to the scenario of a federal officer in New York who seized the property of the Massachusetts Bank, the state lawmakers easily concluded that this was one of “those extreme cases in which a sovereign state would feel itself bound to interfere from the urgency as well as magnitude of the wrong.” The bank, the report declared, was “duly incorporated under the authority of the state,” and was “owned by a

130 Ibid.
large number of its citizens.”

Given that the only available remedy for recovering the shipment would require appealing to a distant court, and given the enormous value of the seized property at stake, the state concluded that it had a solemn duty to convey its official protest to the president, one “expressive of the sensibility [that] the Legislature of Massachusetts feels as to this outrage on the rights of one of its corporations.”

This carefully delineated exercise of state power hinted at the broader realities of the American coast—realities that from the first attempts at organizing a political opposition in 1804 had made the prospect of severing commercial ties to the southward impossible. Within the first six months of the first embargo, for example, some five million dollars had shifted from commerce to manufacturing. In 1808, there were only 15 cotton mills in Massachusetts; the following year, the number had increased to 102 mills, with 31,000 spindles. As the cotton came off the loom, men in turn began establishing factories to make so-called negro-cloths: coarse woolen cloths that, until the War of 1812, the British ships had long supplied to the southern plantations.

Indeed, at precisely the same time that the Federalist-controlled state legislature carved out a carefully tailored rule of state action, they applied the same caution in responding to calls for a fundamental revision to the United States Constitution. Beginning in the summer 1814, as proposals for a convention to revise the Constitution’s division of power once more sounded within the private networks of correspondence, lawmakers in Boston agreed to appoint delegates for the convention, but took care to

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131 Ibid.
132 Ibid., 374.
133 K. Jack Bauer, A Maritime History of the United States: The Role of America’s Seas and Waterways (Charleston: University of South Carolina Press, 1989), 65; see also Patrick Tracy Jackson to Philip Robinson, Boston, Feb. 7, 1814, Lee Family Papers, Reel 19, MHS.
frame the act as one of those rare instances when “this legislature is bound to interpose its power, and wrest from the oppressor his victim.”135 The stated object, the legislature insisted, was to strengthen the terms of partnership: “to amend the Constitution, as to give vigor and duration to the union of the States,”136 by procuring “such amendments to be affected in the national constitution as may secure to them equal advantages.”137

Charged with these instructions, as the delegates made their way along the snowy roads of New England to Hartford in December of 1814 to draft resolutions calling for a constitutional amendment, the essential bonds of union would remain intact. In the leading Federalist papers, artists reached for the familiar imagery of the Constitution as a ship, comparing the state of Massachusetts to a great trading vessel, boasting flags of safe passage that bore the promise of the old commercial corridor of union. “Agriculture and Commerce,” one flag read in a drawing that appeared in the Boston Gazette. “Farmers and Seamen,” boasted another: words that inscribed into print the vestiges of a partnership as old as the first settlements along the coast.138 And when at last the fireworks sounded along the seaports that January, heralding the final defeat of the British Empire, men who had long followed the seas from the Massachusetts Bay set out once more for the southward, adjusting their compasses for a port at the base of a river so vast, some predicted it could become the new metropolis of the continent.

135 “Report of the Committee on the Memorial of the Town of Deerfield and Several Other Towns,” Niles’ Weekly Register, Mar. 5, 1814.
137 “Call of the Convention, October 17, 1814,” in State Documents on Federal Relations, 2:36.
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A thousand miles out of sight but not out of mind on the eve of the Missouri Compromise of 1820, the land ran for miles seemingly without end. The maps, available in the bookstores for fifteen dollars, sketched the way westward from the coast: routes that led out to the huddled townships at the mid-point of the continent, where the land came to an end and the Mississippi River began, cutting straight down the continent. Observed at the mid-point of the river, it was impossible to see where the river began, much less where it ended: the only commercial corridor that could rival the American coast, capable of carrying the produce from the richest soils of the interior down to the depot of New Orleans, a place some said, that could become the center of the globe.

In time, scholars would remember the cross-country migrations that began after the triumphant defeat of the British in the War of 1812 as a migration that gave rise to a free-soil North and a slave-holding South, both entangled over the place called the West and its territories. And no doubt, the wheels of westward settlement created a continental

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1 See, e.g., Robert Baird, *View of the Valley of the Mississippi, or The Emigrant’s and Traveller’s Guide to the West* (Philadelphia: H.S. Taner, 1834), 18-20 (describing the valley as a vast expanse of land that extended without sight of a mountain for 4,300,000 square miles).
4 Ibid. 20 (“The day will come when there will be a continued line of water communication from one end of this valley to the other, and abundant facilities of commercial intercourse among the hundreds of millions who will then people this vast and fertile region.”); See “Acte Pour Accorder a Robert R. Livingston and A Robert Fulton…,” in *A General Digest of the Acts of the Legislatures of the Late Territory of Louisiana* (New Orleans, LA, Bradford and Anderson, 1808-11), 3:338 (“Hereby vested with the sole and exclusive right and privilege to build, construct, make use, employ and navigate all and every species or kind of boats, vessels or water crafts which may be urged or impelled through the water by the force of fire or stream, in all creeks, rivers, bays and waters.”). For background on the privileges of access, see Thomas H. Cox, *Gibbons v. Ogden, Law, and Society in the Early Republic* (Athens: Ohio University Press, 2009).
5 For examples of the sectional landscape associated with 1820 and the push westward, see, e.g., Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (New York: Oxford University Press, 2007) (framing the continental setting as one of westward expansion and emphasizing the
rift that shaped how people spoke and looked at the world. In the towns along the Mississippi River Valley, for example, the winds mattered far less than along the old Atlantic coast, and soon enough, the familiar vernacular of an America of northward and southward gave way to the hardened sections of North and South. But for the elites of the Massachusetts Bay, the opening of the land signaled more than simply the creation of sections: it ushered in an entirely new way of speaking about the continent altogether.

At a time when the ships of the former metropolis sailed down from the Massachusetts Bay to the mouth of the Mississippi River to collect the produce from the continent before hauling homeward for the domestic markets and new factories of New England, the territorial expansion into the westward signaled the emergence of a discourse premised not simply on the sections, and most certainly not on the old language of America. Instead, at a time when the sea-changes of the early 1800s had led lawyers in Boston to adopt the language of the sovereign duties of a state, men who had once spoken of an America of interests to be balanced on the scales of equity now returned to paragraphs and words buried deep within a document that had remained largely on the margins of the daily workings of the trade: the Constitution of the United States.

Confronted with the rise of a domestic shipping economy that began to erode the older mercantile networks of the Atlantic maritime world, men who could no longer rely simply upon their commission agents, good names, and American passports to navigate the increasingly crowded coastline now turned to a rising cohort of commercial lawyers.

division between agriculture and commerce); Sean Wilentz, *The Rise of American Democracy* (New York: W.W. Norton, 2005), xxii (describing the emergence of two distinct American democracies: the “free-labor democracy of the North and the “slaveholders’ democracy of the South”) James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 7 (framing the greatest threat to American survival as a “sectional conflict between North and South over the future of Slavery,” and arguing that as slavery disappeared from the North, South of the Mason-Dixon line, “slavery became essential to the region’s economy and culture”).
In a series of cases brought before the Supreme Court at precisely the same time as the sectional settlement of 1820, these commercial lawyers dusted off provisions embedded within the original terms of partnership that no one had thought to cite in years. In doing so, they elevated into the written record a label of state citizenship that had long remained unused, put to work now in an attempt to secure the rights of free movement across a land defined not simply by North and South, but by a kaleidoscopic terrain of jurisdictions.

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The invitation from New Orleans arrived in the trader’s house in Boston on a winter day in 1820.6 “I wish you to make a trial of our market,” the gentleman in New Orleans proposed. “I think you will find your interest in it,” he continued.7 He had taken the liberty, he explained, of including a list of prices that men in New Orleans were willing to pay for goods of Northern manufacture, along with the prices of the commodities that they were willing to sell from the plantations along the Mississippi River Valley. He hoped, he concluded, that the information “may be of service to your friends.” And sure enough, on the back of the letter, the terms of partnership appeared in neat columns: the promise of a new market, a new extension of the old American coast.

The letter of invitation was by no means the first such proposal to arrive from the mouth of the Mississippi River. For years, the city at the base of the interior corridor of commerce had captured the imagination of Boston’s merchants. “New Orleans appears likely to become the great emporium and depot of the Western World,” a newspaper article had predicted five years earlier.8 Roll out the map, the article instructed, and one

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6 William G. Hewes to J.B. Richardson, New Orleans, Nov. 22, 1820, Jeffrey Richardson Papers, Box 2, Baker Library, Harvard Business School.
7 Ibid.
could see the proof of the proposition in the vast network of rivers that descended along
the continent to New Orleans. “The great waters of the Mississippi, Missouri, Ohio,
Alkinsaw, Illinois, and Red River,” the article listed, “together with the thousands of
tributary streams that discharge themselves into the before mentioned rivers, meander
through a vast space of territory favored with a genial climate for human industry and
happiness, and capable of yielding the productions of every Zone.”9

For the ship-owners in Boston, this proposed geography held out a possible
solution to the increasingly crowded corridor along the American coast. “Ship owners
had better set fire to their ships than send them here,” a trading house in Charleston
warned a ship owner in Boston in December of 1817, three years before the invitation
arrived from New Orleans.10 The markets were oversaturated: flooded with southern
produce, freights filled to the brim, with New York’s fleets loaded for Liverpool as
quickly as the cotton appeared on the docks. “Ships constantly coming into port,” came
the report from Charleston. “Our market exhibits but a sorry prospect for adventurers,” he
cautions, “it being overstocked with every direction in foreign and domestic goods.”11

For those in the Massachusetts Bay seeking an alternative destination for their
ships, the mechanisms of organizing a voyage to New Orleans were easy enough,
beginning with the familiar ritual of mapping the market.12 Commission agents who kept

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9 Ibid.
10 Bronson to J. Richardson, Charleston, SC, Dec. 4, 1816, Richardson Papers, Box 1, Baker Library.
11 Rose and Rogers to J. Richardson, Charleston, SC, Jan. 15, 1817, Richardson Papers, Box 2, Baker Library.
12 Patrick Tracy Jackson to Charles Harrod, Boston, Apr. 23, 1810 (“I wish you to dispose of all the Goods
you have of mine as soon as your market opens, fearing that some may be sent from Philadelphia or New
York. If you should ship me any sugar, let it be of good quality for retailing it is worth….”); Patrick Tracy
Jackson to Charles Harrod, Boston, May 31, 1810 (“Your favors of 28th ult. are rec’d and also the 51 Bales
of Cotton per N.O. Packet, this article is now rather dull here, but I hope to get 19 cents for it. I hope you
will be able to dispose of all my goods before you leave New Orleans, if you receive this in season. I wish
you to sell for the most you can obtain if possible, remit or bring the proceeds with you in Cotton or Bills,
an eye on the price fluctuations offered regular updates, from which one could cobble together a sense of the supply and demand. Prices “averaging beyond all precedence at this Season of the year,” came one report: six cents for tobacco, seven to nine for flour, a dollar fifty to a dollar and sixty-two cents for wheat.\(^{13}\) Cotton still low, no markets yet, twenty-five to thirty cents according to quality, came another report, with warnings that “sales at this season of the year are attended with much difficulty.”\(^{14}\)

Once the markets were mapped and the ships had been loaded with the wares of the new factories, the vessels hauled out from the Massachusetts Bay with the first good winds. A voyage of nineteen days, if the weather held, direct from the wharves of Boston to the heart of the continent,\(^ {15}\) a vast fleet of ships sailing with boxes stacked high with iron nails, to be “sold out of the vessel,” upon arrival in the port.\(^ {16}\) Solid, sturdy nails with which men would begin to drive wood planks together, slowly building up the barns and warehouses and jails of the Mississippi River Valley.

Once the ships cargo had been unloaded, the dockhands loaded up the cotton from the warehouses, and the ships hauled out once more for the northward, now carrying cargos that could elicit praise from the Boston traders. “I have the pleasure also to inform you that it was called the best cargo which has been brought from New Orleans,” wrote one merchant in Boston to his agent at the base of the river. “Should any more come from Mr. Fortier’s plantation, it will have the advantage of general prepossession in its

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\(^{13}\) William Wye to Moses Brown, New Orleans, Nov. 22, 1817, Moses Brown Papers, Box 2, Baker Library.

\(^{14}\) Ibid.

\(^{15}\) W. Hewes to J. Richardson, New Orleans, Nov. 22, 1820, Brown Papers, Box 2, Baker Library.

\(^{16}\) Ibid.
favor.”\textsuperscript{17} Send more cotton, others urged. “Our stock here is never very large,” one merchant wrote of the cotton supply to his partner in New Orleans in 1823, “& the consumption is constantly increasing as new spinning mills are every day erecting.”\textsuperscript{18}

From a casual glance at these exchanges that began to paper the coast, it might seem that the old American coast had simply extended itself, reaching past the peninsula and up into the Gulf of Mexico. But as those who set sail for the Mississippi quickly learned, theirs was a new landscape, defined not by a continent of globes and ports, but by an increasingly bordered terrain, where one’s name and reputation and paperwork of American citizenship were no longer enough to secure a route of entry.

The first indication that something had changed appeared years earlier, before the war. In 1795, when the lands that flanked the eastern side of the lower Mississippi River still belonged to the colonial charter of Georgia, men in Boston had formed a New-England Mississippi Land company to purchase the resource rich soil. As they later reminded Congress, “We paid immense sums of money, for the title.”\textsuperscript{19} Immense sums, they continued, that were no doubt “in many instances, double the price, for what we had known some of the most fertile tracts in the Union to be sold in a short time before.”\textsuperscript{20} As the land company began auctioning the plots to interested buyers in Boston, a notice arrived that their property had been seized by the legislature of Georgia and returned to the pooled treasury of the United States, on the grounds that the contract was invalid.\textsuperscript{21}

\textsuperscript{17} Jeremiah Lee to Commagere and Sons, Boston, Mar. 3, 1820, Jeremiah Lee Family Papers, Baker Library.
\textsuperscript{18} Jeremiah Lee to Commagere and Sons, Boston, Sept. 27, 1823, Lee Family Papers, Baker Library.
\textsuperscript{20} Ibid.
As the directors of the New England Mississippi Land Company later explained, the act of the state of Georgia was so astounding, so utterly preposterous, that they could only conclude there must have been a mistake. “The repealing act of Georgia rather produced surprise, than anxiety, when the news of it reached your memorialists. We believed, that the measure was so unprecedented, that the State would abandon it.”

And yet, not only had the legislature of Georgia refused to return the company’s property upon request, they had allowed the purchased lands to revert to the United States, where the House of Representatives in turn refused to hear their lawyer’s claims.

The news that the state legislature of Georgia had seized the property rights of a Massachusetts corporation constituted only the first of a series of troubling inter-state conflicts. In the summer of 1817, for example, the commercial papers in Boston began to follow the developing story of what they declared to be an action without precedent in the history of corporations. That summer, they reported, the legislature of New Hampshire had passed a law effectively expelling four of the leading judges of Vermont from their seats on a corporate board of trustees, on a college campus whose property holdings straddled both states. Long after remembered as simply a case of public versus private power, the editors in Boston who compiled the stories of the Dartmouth College case framed it instead as a scenario not unlike that which had happened in Georgia: a scenario wherein a state legislature had seized the property rights of an out-of-state resident.

“Every member of the Board of Trustees must be an inhabitant of New Hampshire, and the seats of the members who are not inhabitants of the state, viz., Messrs. Jacob, Marsh, Niles, and Paine, who reside in Vermont, are to become vacant on

22 Claim of the New England Mississippi Land Company, Jan. 29, 1822, in American State Papers, 8:879
23 10 Annals of Cong. 1601-13 (1800) (rejecting the motion to admit Mr. Story, by a vote of 76 to 28).
the passing of the act,”24 one Boston newspaper reported, quoting a draft version of the bill with astonishment. Nor were these trustees just any citizens of Vermont: of the listed names, three were high-ranking members of the bar, including the former state attorney general, a retired supreme court justice, and a current federal justice. When the governor of New Hampshire subsequently exercised his newfound authority to replace the four Vermonters from the board, the newspapers were quick to report that he chose all New Hampshire men to “replace of the four gentlemen belonging to Vermont.”25

This perceived encroachment of a state legislature on the property rights of out-of-state members of a corporation signaled only the beginnings of the difficulties emerging from the newly crystalizing continent of jurisdictions. Of more pressing concern lay the vast patchwork of laws that had begun to emanate out from the metropolis of New York at the base of a Hudson River, a port whose wharves made those of Boston appear as if child’s play,26 in a state whose planned Erie Canal would soon dwarf that of the flailing Merrimack Canal. Already, the ship-owners of Boston who followed the seas had begun to realize that they had not been the only ones to seek the patronage of the state and begin developing the land.

Most troublingly, during the summer of August 1810, two traders of New York had set out to secure a grant of exclusive privileges from the governments along the Mississippi River: privileges that would give them a monopoly over the terms of entry to

26 I thank Hendrik Hartog for sharing his crucial insight on the centrality of New York and the inter-state concerns that lay at the heart of Gibbons v. Ogden, 22 U.S. 1 (1824). Here I attempt to add to this point by situating Gibbons in a broader context of similar inter-state disputes that have not historically been recognized as such, including Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819) and Sturges v. Crowninshield, 17 U.S. 122 (1819), and tracing in which the ways in which these cases were argued in turn contributed to an entrenchment of state lines.
the vast tributaries of the Mississippi. “We have applied to the different governments bordering on the Mississippi for their protection and patronage,” they wrote from New York.\(^{27}\) By the following spring, the territorial legislature of Louisiana had granted their request, as the clerks in New Orleans recorded the makings of a territorial law that granted the two New Yorkers the exclusive right to “build, construct, make use, employ, or navigate” any ship propelled other than by the wind—a right that effectively handed over the terms of access to the only other competitor to the old American coast.\(^{28}\) To make matters worse, that same year of 1811, the legislature of New York drafted a law that effectively shielded all debtors from having to pay creditors out of state.\(^{29}\)

To be sure, the fact of bordered jurisdictions and positive laws papering the coast was by no means new. But whereas men could once count on their commission agents and personal influence to navigate the hierarchies of the ports, at a time when the ships of Massachusetts enjoyed a virtual monopoly, there was now a palpable sense that the days of the metropolis had come to an end. One could see the shift in the new 1819 map of the continent that appeared in the New York bookstores.\(^{30}\) Published in the midst of an unprecedented explosion of states at the center of the continent, the map did not even bother to include any portion New England.\(^{31}\) Instead, the map-maker chose to replace the entire upper corner of the continent where the Massachusetts Bay would ordinarily

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\(^{28}\) See “Acte Pour Accorder a Robert R. Livingston and a Robert Fulton,” in General Digest of the Acts, 3:338 (“…Hereby vested with the sole and exclusive right and privilege to build, construct, make use, employ and navigate all and every species or kind of boats, vessels or water crafts which may be urged or impelled through the water by the force of fire or stream, in all creeks, rivers, bays and waters.”).


\(^{30}\) Robinson, “A Map of Mexico” (1819)

\(^{31}\) See, e.g., “Dr. Robinson’s Map,” The National Advocate, May 27, 1819.
have appeared with simply a vast white space. Indeed, to judge solely from the map, one might be forgiven for thinking that the Mississippi River had replaced the old American coast altogether: by replacing New England with a white space, the river at the center of the continent took on the appearance of an undulating coastline of its own.  

The fact that the Massachusetts Bay could dissolve into a wedge of blank space on a continental map coincided with other changes, as the old, closed networks of the Atlantic world gave way to crowded routes flooded by increasing numbers of strangers. In the counting houses of Boston, for example, merchants began to require all strangers entering and leaving to list their names, signatures, and a true statement of affairs. In the letters that began to arrive in the seaports of Massachusetts Bay, meanwhile, correspondents from New York spoke with finality about new laws that prevented recovery of debts. “The laws of this State,” one letter began from an agent in New York, writing to a ship-owner in Boston whose vessels carried cotton to Liverpool, “do not allow attachment of property in any case for the benefit of the attaching creditor exclusively.” The difficulty, the agent continued, lay in the fact that the ship-owner lived not in the rising metropolis of New York that now controlled the terms of access to New Orleans, but in the old metropolis of Boston. “In this case, no attachment can be made even for general benefit of Creditors as you do not reside within the State.”

The ship-owners who began to try their luck in the courtrooms to recover outstanding debts from men in New York returned with stories of humiliation. At a time

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34 See, e.g., Bill of Lading, Boston, Jan. 23, 1816, Richardson Papers, Box 1, Baker Library.
35 D. Greene to Jeffrey Richardson, New York, Aug. 3, 1815, Richardson Papers, Box 1, Baker Library.
when one’s influence still hinged on self-respect, the laws of New York appeared to trump even the most private, intimate of agreements decided upon by gentlemen in a counting house in Boston. In 1818, for example, merchants in Boston learned that one of their own—a merchant whose name now appeared plastered in the new how-to-trade counting house manuals of Philadelphia—had been unable to recover the money he loaned to an acquaintance, simply because the unscrupulous debtor returned to New York, where he subsequently claimed the protection of the state’s insolvency laws.

Set in that uncertain terrain, in a town that would become known the world over for producing lawyers, the men whose ships sailed out in search of the produce of the plantations began to search for a more tenable solution, turning now not only to the old network of commission agents and networks of personal influence to secure safe passage for their ships, but to an emerging cadre of commercial lawyers: men who could perhaps clear a path for their ships across a newly emerging terrain of united states, a place that bore little resemblance to the old America of the seas.

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Not long after the fireworks erupted in a blaze of light over the seaports of New Orleans, signaling the final departure of the British fleets in 1815, the commercial lawyers of Boston had re-opened their doors for a new type of business. Polished and affable, many of the lawyers were trained at Harvard, where they had become well-versed in the laws of nations and the treatises of Blackstone, and capable of dropping a

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Latin sentence into the concluding phrase of an argument for special effect.\textsuperscript{38} Long familiar with the admiralty courts of the Atlantic world, they now listened as their disgruntled clients presented a new type of grievance, and as they listened, began to work through a new set of rules of commercial partnership: rules that shifted the constitutional consensus from the old age of the seas to the modern terrain of united states, in what one lawyer would proclaim to be the new “American constitutional law.”\textsuperscript{39}

The stories that their clients brought with them into the law offices bore little resemblance to the old days of the American coast. The stories differed in their details, but sounded in the same refrain: a state that was not one’s own seizing something of value: be it a seat on a corporate board, a private loan, a private deposit to a bank. Three gentlemen of Vermont, who had long served on the board of trustees of one of the leading colleges in New Hampshire, only to learn that the state legislature of New Hampshire and its governor planned to silence their votes on the board.\textsuperscript{40} The son of a merchant family of Boston who relocated to New York, where he loaned money to someone only to learn that under state law, there was no obligation to repay.\textsuperscript{41} A whole fleet of gentlemen in Salem, whose fleets and investments sailed for the Chesapeake Bay,


\textsuperscript{39} See, e.g., Bank of Augusta v. Earle, 10 U.S. 551 (1839).

\textsuperscript{40} Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819).

only to learn that the state legislature in Annapolis had imposed a tax on all out of state banks—including their recent deposits.42

The difficulty, as the lawyers listened to the aggrieved gentlemen—perhaps taking notes and assembling the facts and casting an eye over their bookshelves—was how best to structure an argument that would prevail in a court of law, and perhaps in the broader court of opinion. There were precedents by then, but none seemed to fully capture the dilemma that the gentlemen faced. The most obvious answer, or at least, the first one that presented itself to Daniel Webster, the lawyer who would become one of the most vocal advocates, was the ancient right of protection of one’s private property. A timeless, proud right, one that first sounded in the feudal lands of England among beleaguered barons protesting the deeds of a king: a right that had weathered and perhaps inspired the storms of revolution, something that everyone could recognize intuitively as unjust and unfair. But while it carried a certain weight about it, written in Latin and appearing in an ancient document, the right’s very vintage—born of a time of barons and kings—seemed ill-suited for gentlemen who now sought to challenge the deeds not of a king, but of a representative body of the people.

Then, too, alongside the ancient document and the English treatises, there was the relatively unfamiliar document outlining the original terms of partnership: The Constitution of the United States. The document had remained largely out of sight during the age of the seas, while its status and authority within the state courts remained dubious at best. Indeed, the room where the judges of the Supreme Court assembled after the war lay in a dimly lit, cramped room in the basement under the Capitol, only a modest

improvement from the tavern where they had previously assembled.\textsuperscript{43} For commercial lawyers of the trade like Daniel Webster, whose work had focused on how best to retrieve a seized ship from an admiralty court in Jamaica, or what law ought to govern in the occasional contract dispute that could not be resolved through arbitration, the document had seemed irrelevant at best.

Now, however, looking back over the first page of the document that listed the powers of the national government under Article I, there were obvious provisions that seemed to leap off the page as a possible solution to the gentlemen’s woes, premised on the national power of Congress to regulate commerce and perhaps, towards the end of the document, the rights of an individual citizen. But here too, the language resting on the powers of the American government and the rights of its citizens may well have already seemed anachronistic at a time when the continent had erupted into a patchwork of legislatures that each now claimed the legitimacy of the people.

Confronted with the reality of a quilted terrain of state governments, elite members of Boston’s bar instead began to develop a new strategy of persuasion. Drawing on the realities that unfolded outside the courthouse door, these lawyers began to emphasize the interstate nature of property in America, in an attempt to accentuate the asserted dangerous consequences of a constitutional rule that would allow one state legislature to seize property that belonged to people who lived outside the electorate of the state. In doing so, they reworked the old consensus of an America of interests into a modern regime of united states, in which the gentlemen of the trade derived their rights not simply from their status as property-holders, but as citizens of a particular state,

derived from the codified habits of intercourse in Article IV, granting each citizen of the state the right to trade in the markets of America and seek redress in federal court.

The work of building these arguments began with a trilogy of cases, argued between 1818 and 1819. According to Joseph Story, the former lawyer for the New England Mississippi Land Company who now served as a member of the United States Supreme Court, the cases would make for “probably the most interesting ever known.” And true to his expectations, the lawyers presented novel arguments that rested not simply on the sanctity of an individual’s right to property nor the primacy of the nation, but on a modern world of interstate property, in which any attempt by one state legislature to lay claim to the rights of out-of-state citizens jeopardized not only the pillars of domestic commerce, but the very principle of representative government.

One could hear the first tentative steps towards bringing this terrain of states into the old language of persuasion in arguments that Webster began to develop in the Dartmouth College case. As everyone in the room who read the Boston papers would recall, the dispute in question began when the state legislature of New Hampshire attempted to effectively expel four Vermon ters from the corporate governance board of Dartmouth College, to whom the state of Vermont was a key donor. In laying out the facts of the case, Webster took care to avoid any mention of these facts. Following the conventional script, he introduced his aggrieved clients not as citizens of any state, but as members of a corporation, and as such, entitled to the ancient rights of legal protection. “The privilege, then, of being a member of a corporation is such a privilege, liberty, or

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franchise, as has been the object of legal protection, from the time of Magna Charta to the present moment,” Webster declared.\(^{45}\)

And yet, at a time when such arguments based on ancient doctrine may well have sounded stilted to the politicians who stopped by to hear the case or might read his arguments in a pamphlet, Webster bookended them with a concern of imminent practical concern. In the only fact that Webster deemed worthy of citing, he pointed to the interstate nature of the corporation, as a means of underscoring the absurd consequences that would follow if one state were allowed to seize the property. “The State of Vermont,” he reminded the judges, “is a principal donor to Dartmouth College. The land given lie in that State.”\(^{46}\) If the legislature of New Hampshire could seize the private property of the trustees of Vermont, he queried, what would prevent the legislature of Vermont from seizing back the land? “What hinders Vermont,” he inquired, “from considering herself equally the representative of the public, and from resuming her grants, at her own pleasure?”\(^{47}\) Denying the primacy of one’s membership in a corporate body, Webster intimated, would lead to interstate collision.\(^{48}\)

The fact that the corporation’s property straddled across the state lines captured the attention of Justice Story. As the President of the Salem Merchant’s Bank and an overseer of the governing body of Harvard, Story was as well-versed in the porous nature of property across state lines as Webster, who had attended college at Dartmouth.\(^{49}\) Now, when faced with Webster’s argument, Story picked up on it: a harbinger of the potential


\(^{46}\) Ibid., “Argument in Dartmouth College Case,” 13.

\(^{47}\) Ibid.

\(^{48}\) Ibid.

weight of such arguments. In his opinion, Story cited the interstate nature of the corporation’s property as a reason why it made no sense to allow one state government to seize the property in a corporation whose land holdings could seep across state borders. “Could the Legislature of New Hampshire have seized the land given by the State of Vermont to the corporation and appropriated it to uses distinct from those intended, against the will of the Trustees?” Story queried, before answering with a resounding no.\(^{50}\)

Evidently encouraged that at least someone in the room had picked up on the argument, Webster and his colleagues began to elaborate on the point still further when they reconvened the following spring term for the remaining two cases involving the power of a state legislature in the commercial dealings of America. In the first of the two cases, lawyers challenging a state law of New York that discharged debtors of their obligation to pay framed the law as one whose reach necessarily extended far beyond the bordered domain of New York, to those who had no voice in the state government.

“A merchant has seldom all his creditors confined to one place or state,” the lawyer for the Boston shipping family who was seeking to recover its money from New York explained,\(^{51}\) echoing Webster’s earlier point that a college’s property holdings could not be confined to one state. This intricate web of loans, the lawyer continued, meant that the law of any one state would effectively apply to people all across the continent—regardless if they had any voice in electing the legislature. “It is impossible to maintain that this law of New York, or any other state bankrupt law, can be limited in its operation to the state where it is passed,” he reasoned.\(^{52}\)

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\(^{50}\) Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819)


\(^{52}\) Ibid.
By the time Webster and his two colleagues from the Baltimore and Virginia bar stepped before the court a few weeks later, they had developed this embryo of an argument into the primary basis of what would become one of the most talked about cases in the Supreme Court’s history. In a case that would long afterwards be studied almost exclusively as one that pitted the power of the national government against that of the state, Webster and his colleagues set out to challenge a Maryland state law that imposed a tax on a branch of the federal bank. No doubt inspired by the triumph of the earlier arguments, the trio of lawyers began not with the ancient rights of legal protection for property, much less with the supremacy of the nation, but with the hard fact that property in America knew no state borders, rendering it impossible to subject its absentee holders to the laws of any one state.

In a phrase that now must have begun to sound familiar to the justices of the Supreme Court, the lawyers who pitched their case in the basement of the Capitol building began by reminding them of a continent where property seeped easily across state borders. “The United States have, and must have, property locally existing in all the states,” Charles Pinckney argued, distilling the nation as an entity whose property knew no boundaries—not unlike the corporation in New Hampshire with land in Vermont, and not unlike the merchant in Boston with loans in New York. “The whole capital of the bank belonging to private stockholders,” he emphasized, “is drawn from every state in the Union,” inviting the justices to conceptualize the issue not as a hierarchy of nation and subordinate states, but of a fluid terrain of investments.53

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Working from this geography where the funds that a merchant in Salem deposited for safe-keeping in a bank could be taxed by the government of Maryland, Pinkney then lobbed one of the most enduring, legitimate claims of dissent known on the shores of America: taxation without representation. By labeling the aggrieved property-holders in the case not as members of a corporation entitled to a common law right of protection for property (as Webster had done the year before for the members of the boards of the trustees), but now as members of other states, Pinkney could build the case that under any principle of representative government, no state could be allowed to tax the property of a citizen of another state. “There is no… responsibility of the local legislature in Maryland,” Pinkney explained, “to the people of the other states of the Union.”\textsuperscript{54}

The argument of the injustice of taxing the property of a person who had no voice in the governance structure would have resonated with the judges and politicians who stopped in to hear the proceedings. It tapped into a familiar principle, one that had not only sounded through the halls of revolution, but reverberated through the treatises of international law that the justices would have been familiar with. As Justice Story would later explain long afterwards, the power of a government to inflict its will extended only to property and persons within its territory. “No state or nation can, by its laws, directly affect, or bind property out of its own territory, or persons not resident therein,” he later wrote, “whether they are natural born subjects or others.”\textsuperscript{55}

The implications were powerful, if not immediately intuitive. By classifying the aggrieved property-holders not simply in the old language of Americans, but now as non-residents and outsiders—i.e. citizens of another state with property that existed

\textsuperscript{54} Ibid.
everywhere—the state law could no longer stand under the basic logic of a representative government. As Story later explained, “It would be equivalent to a declaration, that the sovereignty over a territory was...concurrent with that of all nations; that each could legislate for all, and none for itself; and that all might establish rules, which none were bound to obey.” The result, he declared was too absurd to be dwelt upon.\textsuperscript{56}

With the foundations of the argument now firmly in place, affording a view of the continent not of a nation facing off against the states, but one of a single state against the states, it fell to Webster to lay out the disastrous consequences that would unfold if the people of the Chesapeake Bay could seize the private investments deposited by out-of-state citizens. “This is an attempt to expel the bank from the state,” he warned, before immediately conjuring an image of an expulsion of ships from a port.\textsuperscript{57} Invoking the memory of the British Empire, Webster warned that if a government on the Chesapeake Bay could tax out-of-state citizens without representation, so too could it impose a stamp tax on the ships. “What hinders her,” he asked of Maryland, “from imposing a stamp-tax also on...all other documents connected with imposts and navigation?” The consequences, he intimated, were nothing short of a collapse of the old corridor of commerce. “She can equally well shut up the custom-house.”\textsuperscript{58}

By the end of the term, the Court had invalidated all three state laws: allowing, at least on paper, out-of-state citizens to recover their debts in New York, retain their seats on corporate boards, and deposit their investments in distant banks. In lieu of the old America of interests, where gentlemen had moved across these jurisdictional lines as citizens of the continent, the strongest arguments to be placed before the court now rested

\textsuperscript{56} Ibid., 21.
\textsuperscript{57} M’Culloch v. Maryland, 4 U.S. 326 (1819).
\textsuperscript{58} M’Culloch v. Maryland, 4 U.S. 326 (1819).
on their formal status as a citizen of a state. The lawyers offered no reason as to why they pursued this strategy. But in the Capitol building where the lawyers pled their case before the Court in the dimly lit basement, the politicians who assembled in the legislative halls above them spoke of Congress not as an entity separate from the states, but as a composite of states, whose bordered domains had by then come dazzling into view over the debates of territorial admission.

Perhaps most notably, the daily work of admitting territories into the Union according to the terms of the Northwest Ordinance had sounded in a language very different than that of the original formation of the Constitution along the old Atlantic coast. 59 In the petitions that arrived from the lands along the Mississippi River, for example, the continent came into view not as a land of sentiments and associations, but in the formal language of states, as petitioners from across the Mississippi River Valley premised their case for admission into the Union not in the old language of sentiments, but on the rote statistics of people and resources.

“[T]heir numbers entitle them to the benefits and to the rank of a state government,” read the opening of a memorial signed by the citizens of Missouri Territory in 1817, before going on to cite the population of the territory (40,000) and a summary of its leading natural resources (woodlands, mines of lead and iron). 60 “The states must have large fronts upon the Mississippi,” the same memorial proclaimed, sketching out a new geography of commerce that ran not along the Atlantic coast, but down the center of the

59 See generally The Northwest Ordinance, 1 Stat. 50 (1787).
continent. Other memorials sounded in the same format. “Whereas by a census taken by the authority of the Legislature of this Territory,” one memorial from the citizens of Indiana Territory began, before turning once more to the statistics, “it appears from the returns that the number of free white inhabitants exceeds sixty thousand,” a number that entitled the territory to “go into a state government.”

On a continent that had seen the rise and fall of empires for centuries, men in Congress who reviewed these petitions and tallied up the electoral votes spoke of the continent not simply in sections, but as foreign jurisdictions. When, for example, news arrived that the territorial legislature at the center of the Mississippi River had voted to shut its borders to all black people once admitted as a state, men from New England compared the action to that of the Spanish or French empire. “The barrier is equal to an armed force, extending around the whole territory of the State,” Senator David Morril of New Hampshire observed. “If Missouri can do this,” he continued, “why not keep a standing army, enter into a treaty, coin money, and grant titles of nobility?” The closing of the borders, another senator pointed out, was tantamount to war. “England could not pass such a law against the people of France,” the senator from Rhode Island reasoned.

Indeed, when the lawyers returned to Washington in 1824 for the case of Gibbons v. Ogden to pry open the borders of the commercial corridor of union, they began with a terrain defined by a bordered domain of jurisdictions, comprised of citizens of the states. In place of the familiar landscape of North and South, Webster now presented the coast as a vertical stack of statutory laws that threatened to bring the ships

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61 Ibid., 323.
62 “Indiana Memorial,” Western American, Jan. 27, 1816.
63 37 Annals of Cong. 108 (1821).
64 37 Annals of Cong. 111 (1821).
65 37 Annals of Cong. 48 (1821).
to an abrupt halt. “By the law of New York,” he began, outlining the obstacles to entry that the state’s laws imposed upon the ships of the coast. “By the law of the neighboring State of Connecticut,” he continued, listing the state’s rules of entry. “By the law of New Jersey,” he repeated.\textsuperscript{66} The question, he pointed out, was not simply whether these states interfered with the power of Congress, but where, as between the states, one right began and the other ended. “If they should be declared to be valid and operative,” he asked of the laws of New York, “I hope somebody will point out where the State right stops, and on what grounds the acts of other States are to be held inoperative and void.”\textsuperscript{67}

Working from this geography of a bordered domain of states, Webster warned of the dangers that would befall the entire length of the commercial corridor, if the rising metropolis of New York were permitted to shut its ports. “The waters of New York are no more the subject of exclusive grants by that State, than the waters of other States are subjects of such grants by those other States,” he reminded the Court, laying out the ripple effect of such a rule, not unlike his earlier warnings of Vermont’s power to seize New Hampshire’s land. “Virginia may well exercise, over the entrance of the Chesapeake, all the power that New York can exercise over the bay of New York and the water of her shores,” he pointed out. Perhaps turning to Justice Story from Massachusetts, he warned that the Chesapeake could even shut its doors to Boston’s ships. “The Chesapeake, therefore, upon the principle of these laws, may be the subject of State monopoly; and so may the bay of Massachusetts.”\textsuperscript{68}

\textsuperscript{66} Gibbons v. Ogden, 6 U.S. 3 (1824).
\textsuperscript{67} Gibbons v. Ogden, 6 U.S. 3 (1824).
\textsuperscript{68} Massachusetts General Court, Joint Committee, \textit{Report on the Deliverance of Citizens, Liable To Be Sold as Slaves}, House Report 38 (1839), 32; Elkison v. Delieseline, 8 F. Cas. 493 (C.C.D.S.C. 1823), 366.
Under the weight of such arguments in 1824, the Supreme Court voted to strike down New York's laws granting the exclusive privileges, and with it, presumably, the laws of Louisiana offering a similar grant of privileges over the interior corridors of commerce. And yet, even as the edifice of state laws began to crumble, the bordered domains remained an integral spoken geography of the daily work of carrying the produce of the plantations to market. For although calls for a single set of laws governing commerce were in no short supply, the stubborn reality of state governments spewing out voluminous laws each year meant that in the actual day-to-day practices of trade, such calls were largely illusory. As Justice Story instructed the Suffolk bar in 1821, uniformity was neither feasible, nor necessarily desirable. “Nor do I know,” he told the lawyers of the Suffolk Bar, “that so far as domestic happiness and political convenience are concerned, a greater uniformity would in most respects be desirable.”

Instead, most practicing lawyers seeking to make a name for themselves and win a secure clientele among the ship-owners of Boston simply accepted the plurality of jurisdictions and began to fashion an inventory of all the different laws of the states, while developing a set of principles for dealing with their inevitable collision. In 1829, for example, the founders of a new legal periodical in Boston explained that the aim of their magazine of the trade was not to standardize the law, but to provide a forum in which professional lawyers could keep pace with the ever-increasing volume of intercourse between the states. “The frequent migrations and active commerce among the different states, and the consequent intermixture of the interests and affairs of the subjects of different jurisdictions, make it important, and indeed necessary, that the members of the profession in one state should have some knowledge of the legislation and legal

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administration in the others.”70 Pointing to the ease with which lawyers had learned about foreign jurisdictions abroad, he noted that mastery of different legal systems was by no means impossible. “Much of this knowledge, the editor observed, can be most conveniently and economically obtained through a periodical journal.”71

And true to his word, the first issue of the American Jurist included not only a plea for one of Boston’s leading bankruptcy lawyers for a single national statute, but a heavily annotated list of all the different bankruptcy laws in each of the states.72 If the merchants could navigate the bordered domains of the globe, so too could they exist within bordered domains of the states. “Such a work,” the magazine’s editor wrote of the efforts to compile the state laws, “may be no less useful and important as affording the means of information wanted by every practicing lawyer and liberal student, respecting the legal proceedings and publications of foreign countries.”73 Merchants, meanwhile, developed an intuitive sense of the laws. As one contributor to American Jurist observed, “The merchant…learns from experience, that debts are less secure in some states than in others…but that in all, he is put to serious…expense, if his debtor refuses to pay.”74

Perhaps most strikingly, at a time when the freighting routes that once led out across the Atlantic began to shift increasingly inwards, with domestic tonnage surpassing international tonnage for the first time in 1830, lawyers began to apply the familiar law of nations onto the continental terrain of states. Not long after the Court invalidated the first of the state laws regulating the private loans and investments of out-of-state citizens, for

70 “To the Public,” American Jurist and Law Magazine 1 (1829): iii.
71 Ibid.
72 Ellis G. Loring, “On a National Bankruptcy Law,” American Jurist and Law Magazine 1 (1829): 38 (“Some of our readers may perhaps like to see a more particular account of a few of these laws.”).
73 “To the Public,” American Jurist and Law Magazine 1 (1829): iii.
example, commercial lawyers began to search for a set of principles for resolving the inevitable disputes that erupted between the jurisdictions. In 1828, for example, a Boston lawyer who had set up an office in New Orleans published the first attempt to find some principled means of resolving such questions.

“If I do not mistake the matter,” Samuel Livermore observed in his treatise, “it is particularly important, in this country, to have established some fixed and correct principles for the determination of questions, which may be expected to arise from the various opposing laws of the several states.” Like the editors of the *American Jurist*, the solution that Livermore proposed was not to standardize the diverse laws of the states, but rather, to find some settled principles for settling the question as to which rules, as between two different jurisdictions, ought to govern. And just as the editors of a magazine found inspiration from abroad, so too did Livermore hope to find a solution to America’s emerging terrain of states in the writings of jurists who had studied the question as it related to Europe’s terrain of nations.

This effort to derive principles of international law and apply it to the continental terrain of states appeared with equal prominence in Story’s treatise on the conflicts of laws, published a few years after Livermore’s. Whereas twenty years earlier, Story as a novice lawyer had set out to create standardized forms for every trading house in the country, complete with a single set of rules on everything from how much a captain ought to pay a first mate to the proper weights and measures, now, with the wisdom of

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76 Ibid., 14.
77 Ibid., 11, 14.
experience, he offered a different solution. Like Livermore, Story drew directly from the
globe of different nations to the continent of different states. “To no part of the world,” he
observed of the “conflict of the laws of different nations….is it of more interest and
importance than to the United States.”79 And just as Livermore had combed through the
jurists who had studied the conflict of laws in Europe, so too now did Story. “My object,”
he explained, is to “gather from each of them what seemed most entitled to respect and
confidence,”80 as a means of elucidating phrases from the laws of nations that had
“already found their way into our juridical discussions, and are becoming daily more and
more important to be understood by American lawyers.”81

Indeed, by then, analogies describing the united states states to foreign nations
appeared not only in the halls of Congress and the treatises of law, but also in the
courtrooms. “The states are necessarily foreign to and independent of each other,” the
Supreme Court declared in 1827, when faced with a payment dispute involving a citizen
of Maryland, a citizen of New-York, and a merchant at New-Orleans.82 For as the ships
had continued to sail along the bordered domain of the continent, the lawyers of the
merchant fleet continued to frame the rights of their clients in the language of the states.

As Webster explained to the Supreme Court in 1839, as if having at long last
stumbled upon the secret provision at the heart of the founding terms of partnership,
“There is one provision in the Constitution, by which citizens of one State may trade in
another without hindrance or embarrassment.”83 One provision, he continued, by which it
became possible for any person to travel to another state and sue in the courts for redress.

80 Ibid., 11.
81 Ibid., 17-18.
83 Bank of Augusta v. Earle, 10 U.S. 551 (1839).
be it from Massachusetts to Alabama: a provision that rested not on the Bill of Rights of American citizens or the power of the national government, but on the old habits of intercourse, codified in Article IV of the Constitution. “This is American constitutional law,” Webster proclaimed triumphantly, an American constitutional law premised not on the equitable balancing of interests, but on the rights of a citizen of the state to travel from Massachusetts to Alabama for the purposes of the trade, an American constitutional law that would keep the ships of the Massachusetts Bay in motion along the coast.

For as the laws of the states impeding commerce came down and the sails on the ships came up, the corridor along the Atlantic coast came alive as never before. In a single year, 400,000 barrels of flour, 2,000,000 bushels of grain, and 160,000 bales of cotton arrived in Boston from Charleston alone. Soon, half of every pig butchered in the slaughterhouses of New Orleans would end up on a ship bound for Boston, while in exchange, the ships descended from the Massachusetts Bay bearing three and a half million pairs of boots and shoes: enough for every person who stepped off the auction block as property. And yet, even as the ships continued to sail along a continent where laws that impeded their routes down the coast could fall in the name of Union, a single

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84 Ibid.
85 Ibid.
86 Samuel Morrison, *Maritime History of Massachusetts, 1783-1860* (Boston: Houghton Mifflin, 1922), 297 (“In 1831, American tonnage engaged in coasting for the first time exceeded the registered tonnage in foreign trade, and the disproportion grew in spite of the railroads.”).
87 J. Hancock, *The Merchants and Trader’s Guide and Stranger’s Memorandum Book, For the Year of Our Lord 1836* (Boston: Hancock, 1836), 34.
set of laws would remain intact: laws enforced by a violence so brutal, an apathy so profound, that long after they at last came down, bodies would still sway from the trees.\textsuperscript{89}

CITIZENS OF THE STATE

In the town at the end of the Merrimack River where the founders now long dead but still revered once lived, there stood a brick church that looked out over the square.\(^1\) It was an unassuming church.\(^2\) In the evenings, you could sometimes see the captains and their wives through the open door, heads bowed, hands clasped, prayers to the Lord in Heaven. Above them, the same single weathervane, still waiting for the winds that would bring the men down to the wharves, down to the open seas.\(^3\) And behind the pulpit, at the end of an otherwise unremarkable day in 1830, four decades after Rufus King, the town’s best lawyer helped fashion the terms of partnership, the son of a sailor who worked the packet ship that once hauled out for the James River raised his voice to speak.\(^4\)

The captain’s son had no penchant for the seas that claimed his father and his brother, but a way with words; an eye for the way the right combination could slow the eye’s run across the page. He had come back home to the decaying town of Newburyport that autumn from Baltimore, where the judge who handed him over to the warden had concluded that this young man William Lloyd Garrison was aiming to be a martyr.\(^5\) He had returned with a story, and he told it using old words that in time would seem novel, but were then only sea-phrases, old words of America and its peoples that sounded long

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1 See “Dedication,” Newburyport Herald, Mar. 23, 1827 (describing the present church as “neat and well proportioned, brick edifice, in the Gothic style of architecture.”).
2 Ibid.
3 For the weathervane, see Newburyport Historical Commission, Historic Property Surveys: 14 Titcomb Street (Newburyport, MA: Newburyport Historical Commission, 1999) (including a photograph of the church featuring a weathervane, and noting that the “present appearance…corresponds to the reconstruction of the church in 1861”). For an earlier depiction of the prominence of weathervanes on Newburyport’s church steeples, see Benjamin Johnston, Engraving, “A North-East View of the Town & Harbor of Newburyport,” (1774), in Newburyport, ed. John Hardy Wright (Charleston, SC: Arcadia Publishing, 1999), 36.
4 For the text of the speech, see “General Summary,” Newburyport Herald, Sept. 28, 1830.
5 See Henry Elliot Shepherd, ed., History of Baltimore, Maryland from its Founding as a Town to the Current Year: 1729-1898 (Baltimore: S.B. Nelson, 1898), 87.
before the flag of the constellated stars appeared on the ships descending for the mouth of the Mississippi.

For he wanted his listeners to know that the people of that quiet New England town where the carpenters carved out ships wide enough to carry the weight of the plantations were as responsible for slavery as the traders who brought the men to stand up on the auction block. He wanted them to know that the captains and masters of the ships were as responsible for slavery as the landowners who brought the men and women back to the fields as property, at a time when the ships along the corridor of the coast carried more volume than all the routes that led out across the ocean combined. For this is what he told them: “We have all committed the act of oppression directly or indirectly; there is innocent blood upon our garments, there is stolen property in our houses; and every one of us has an account to settle with the present generation of blacks.”

At twenty-five years of age, the captain’s son had a plan for what he intended to do about the horrors that began down at the wharf’s edge. “We expect to conquer through the majesty of public opinion; our hope is on God, and on the moral power of the nation,” he declared, at a time when there was no reason yet to suspect that there was anything he could not accomplish. “As slavery in its origin was a national crime, so likewise is its removal a national duty,” he continued, speaking now of slavery born of an America before the states appeared on the coast, a sin whose wrongs required the atonement of a nation. “One State cannot meet it single-handed; one section of the country cannot

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6 See “General Summary,” Newburyport Herald, Sept. 28, 1830; see also Letter to the Editor, Newburyport Herald, Sept. 28, 1830.
7 Samuel Morrison, Maritime History of Massachusetts, 1783-1860 (Boston: Houghton Mifflin, 1922), 297 (“In 1831, American tonnage engaged in coasting for the first time exceeded the registered tonnage in foreign trade, and the disproportion grew in spite of the railroads.”).
8 “General Summary,” Newburyport Herald, Sept. 28, 1830
9 Ibid.
destroy it,” he continued, describing a system so old and so deep and so rooted in the soils people could not begin to see their way out of it.\textsuperscript{10} “The people, the whole people, must engage in the work,” he concluded, citing the duties of the “American people.”\textsuperscript{11}

The captain’s son left no explanation as to why he began his campaign that autumn of 1830 with talk of America and its peoples. In time, the language would be read as part of the rise of a progressive North, whose people looked to the national government to strike down the laws of slavery in the southern states. But for the men and women who assembled in the church that evening and who could remember the days of the American coast, the language that the captain’s son spoke belonged to a much older world, one revived that autumn by those who held out the distant hope that it could provide a means of mobilizing a nation to undo the wrongs of slavery.

For during the opening years of the 1830s, abolitionists based in Boston drew upon the old language of America and the equal rights of its citizens, in an attempt to launch a movement that would bring down the state laws that reduced a black person to property. They set out on the lecture circuits brimming with confidence in the power of moral persuasion, citing not only the fundamental rights of man but the constitutional rights of American citizens, only to come to the sobering realization of the limits of their words in a land where some questioned the difference between free soil and slave soil. By 1839, confronted with the prospects of a collapsing movement, these abolitionists began to experiment with a new set of arguments, drawing upon the novel language of the state and its citizens in an attempt to sever the very corridor of commercial union itself.

\textsuperscript{10} Ibid.
\textsuperscript{11} Ibid.
In a now largely forgotten turn of events, these abolitionists began to formulate the first formal protest to the police laws of the southern states upholding slavery: laws that allowed a sheriff in Charleston to stop any vessel arriving from out of state and arrest without charge and detain without warrant any black man found aboard. To do so, these beleaguered abolitionists set aside the old language of America and its peoples, instead labeling the black men who worked on the Boston-Charleston freighting ships as citizens of the state: a sleight of hand designed to reframe the issue of slavery from one of the rights of a black man to that of the rights of a state. In doing so, they succeeded in gaining the attention of the city’s leading elites, while laying the groundwork for a political movement that soon ascended into the nation’s council house, premised on the constitutional logic that in an America of bordered slavery, all states were created equal.

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Two years before the captain’s son stood at the pulpit that autumn evening in 1830, a pamphlet appeared that some said could light the country on fire, perhaps even ignite a revolution.\(^\text{12}\) Penned by a man named in Boston whose mother had fought her way free from slavery, for a brief moment, the pamphlet became one of the most prominent challenges to the institution of slavery, sounding not in the language of the lawyers down at the wharves who spoke of the states, but in the old vernacular of America, resting on the broken promises of the founding documents of the Republic.

“An appeal to the Coloured Citizens of the World, but in particular, to those of the United States of America,” the title page of the pamphlet read, signed by a man named

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\(^{12}\) See generally Peter P. Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* (University Park: Pennsylvania State University, 2000).
David Walker. “Colored Citizens of the United States:” a phrase that ran smack into the ugly refrain that sounded on the dirt roads of the plantations, “Well boy, who do you belong to.” “Colored Citizens of the United States:” a phrase that gave the lie to the nation’s founding promise of equality. “Why, I thought the Americans proclaimed to the world,” Walker wrote, “that they are a happy, enlightened, humane and Christian people, that all the inhabitants of the country enjoy equal rights!”

By the time Walker’s pamphlet began its ascent, a long line of men and women had raised up their voices and bodies to bring down the laws of slavery. Forty years earlier, for example, when the cannons sounded on Bunker Hill and governors spoke of arming the slaves to the southward, the black men and women along the seaports of the Massachusetts Bay gathered to compose petitions for freedom, reminding the state legislature that they “Cannot but express their Astonishment that It has Never Bin Considered that Every Principle form which Amarica has Acted in the Cours of their

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15 Walker, *Walker’s Appeal*, 82.
unhappy Dificultes with Great Briton Pleads Stronger than A thousand arguments in
favors of your petitioners, seeking freedom.”

Although their petitions had failed to produce any formal pronouncement from
the state legislature whose members worried aloud about the effect such a pronouncement
would have on the integrity of the Union, their words had laid the foundations of a long
tradition of mobilization, upon which Walker’s pamphlet now circulated with abandon.
There were reports in the Boston papers of black people “assuming to have some
extraordinary privileges in consequence of this incendiary pamphlet,” assembling on the
corner of Belknap Street to insist on their rights. There were reports, too, of men who
stepped aboard the ships that sailed each week for the southward, now carrying copies of
Walker’s pamphlets to Charleston, Savannah, New Orleans, where news of the pamphlet
sounded like the firing of a “shot into the midst of a flock of wild pigeons, giving way to
a fluttering from politicians across the states.”

Within a year of the pamphlet’s publication, men and women who sensed a
change in momentum organized the “American Convention for Promoting the Abolition
of Slavery.” By 1830, the reverend who encouraged Walker that his voice was one the
world needed to hear took his seat in Philadelphia for the first, “Convention of the People

18 “Legislature of Massachusetts to the Honorable American Congress,” June N.D., 1777, in Massachusetts
Historical Society, Proceedings of the Massachusetts Historical Society (Boston: Massachusetts Historical
Society, 1867), 332.
19 On the complex history of abolition in Massachusetts, see Emily Blanck, “Seventeen Eighty-Three: The
24-51; William O’Brien, “Did the Jennison Cases Outlaw Slavery in Massachusetts?,” William and Mary
and Negro Citizenship in Early Massachussets,” Journal of Negro History 53 (1968): 12; Elaine
MacEacheren, “Emancipation of Slavery in Massachusetts: A Reexamination 1770-1790,” Journal of
20 [“An affray…”], Rhode Island American, Sept. 24, 1830.
of Color." The Reverend Samuel Snowden had long ago made his way out of slavery and now preached to the sailors who worked the Charleston-Boston trading routes in metaphors of whales and threshers. At the convention, the reverend followed Walker’s gaze and cast his vote for reading the nation’s founding documents at every gathering. The Constitution, those assembled agreed, “guarantees in letter and spirit to every freeman born in this country, all the rights and immunities of citizenship.”

Back in Boston, the young writer by the name of Garrison, whom the founders of the movement hired to print an anti-slavery newspaper, followed the old language of America as if a script. “I address you as men—I address you as freemen—I address you as countrymen. You are the rational creatures of one common Creator; you derive from nature the inalienable right of liberty; you are Americans by birth, and entitled to all the benefits of a republican government,” read the first issue of the Liberator, appearing in January of 1831. The goal of the new newspaper, the first issue declared, was to “vindicate the rights of TWO MILLIONS of American Citizens,” a phrase that sounded not at all unlike the promise of Walker’s pamphlet.

The path towards securing the equal rights of free blacks, the editorial continued, lay not in armed violence, but in the halls of the Supreme Court. “I believe that the rights of the free colored persons need only to be vindicated before the U.S. Supreme Court, to

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24 Oliver Johnson, William Lloyd Garrison and His Times (Boston: B.B. Russell, 1881), 72 (quoting a sermon from Snowden in which he prayed that the Colonization Society may be “tormented as the whale is between the sword-fish and the thresher”).
26 Ibid.
27 “To the Free People of Color of the United States, No. 1,” Liberator, Jan. 15, 1831.
be obtained,” the opening issue declared. “Take the Constitution of your country in your hands,” the editorial advised, “go to the proper tribunal, and break those odious fetters with which you are now bound.”

Garrison, in turn, carried the language with him when he returned to Philadelphia in 1833, for the first meeting of the American Anti-Slavery Society. All men were “rational creatures of one common Creator,” Garrison wrote, in a city where it was possible to imagine they were beginning anew. All men, were “Americans by birth, and entitled to all the benefits of a Republican government,” he continued, two years before he would watch the sky pass overhead as they dragged his bound legs behind a wagon down Boston’s State Street.

The same language of America appeared in the forms that the society’s newly hired secretary began to prepare in the rented office in Manhattan. “The people of color ought at once to be emancipated and recognized as citizens,” the secretary wrote in the instructions sent to all agents in the field. “Their rights ought to be secured as such, equal in all respects to others, according to the cardinal principle laid down in the American Declaration of Independence,” and even then, the old phrase of an “American Declaration” could wash ashore on the page, taking the place of the “United States.”

There was reason enough to be optimistic in those early days of the movement. There was a sense in the air, that here and now marked the long awaited days of revolution, a time when even kings could fall. Reports arrived from across the Atlantic of

29 Ibid.
30 William Lloyd Garrison to Oliver Johnson, Feb. 5, 1874, in Garrison Letters, 6:294
31 “To the Free People of Color in the United States,” Liberator, Jan. 15, 1831.
32 Ibid.
34 Ibid.
a land in flames: a time when the Poles had found their path to liberation, the Greeks had bid farewell to the Ottomans, the South Americans had revolted from the Spaniards;\textsuperscript{35} a time when the good people of Edinburgh had risen up to demand the end of slavery in the British colonies,\textsuperscript{36} and the state politicians of Georgia had handed down a decision advising the governor to ignore the rulings of the United States Supreme Court.\textsuperscript{37} “These are the days of revolutions,” Garrison declared in the issue of October 1831, and there was as yet no reason to doubt that the pillars of America could not be remade.\textsuperscript{38} “Nations are born in a day,” he insisted. “The empires of the old world are in travail with liberty, and revolution is marching onward with an earthquake step.”\textsuperscript{39}

The plan, as it began to crystalize, was simple. The abolitionists would take to the back roads of America, deep into the interior, and bring the realities of the written laws of slavery to the people. “The cry of shame shall then be raised, and daily gather strength—a cry coming from every quarter of the land,” the reverend Samuel May predicted on July 3, 1831.\textsuperscript{40} The cry of shame would, in turn, move the American people to petition the legislature, who could abolish slavery by the lawful means of a constitutional amendment. “Our eyes have seen, our ears have heard, of the moral wonders wrought in our day by public opinion.” All that was needed, he continued, was to get out the word. “The same agent,” he declared of moral persuasion, “is competent to achieve the overthrow of slavery.”\textsuperscript{41}

\textsuperscript{35} “Revolutionary Movements,” \textit{Liberator}, Apr. 30, 1831.
\textsuperscript{37} “Nullification Nullified,” \textit{Liberator}, Jan. 8, 1831.
\textsuperscript{38} “Comments of Editors,” \textit{Liberator}, Oct. 8, 1831.
\textsuperscript{39} “Revolutionary Movements,” \textit{Liberator}, Apr. 30, 1831.
\textsuperscript{40} Samuel Joseph May, \textit{A Discourse on Slavery in the United States: Delivered in Brooklyn, July 3, 1831} (Boston: Garrison and Knapp, 1832).
\textsuperscript{41} Ibid.
Not long afterwards, letters began to appear in the *Liberator* office with editorials and speeches and notices of meetings.\(^{42}\) By August, eight months after the newspaper’s founding, a reverend from the city’s African Church declared the paper to be a means by which the silenced black community could publish their voices. It was, he described, of “great importance to us to have such a channel as the *Liberator*, through which we can transmit specimens of our views and feelings, together with our grievances and hopeful prospects, to each other, from one part of the of the Union to another…. Yea, through the *Liberator* we must not only tell them, but the whole earth, in the presence of heaven, that they have no authority to deprive us of our rights.”\(^{43}\) That same month, three of the leading black activists, J. Telem Achus Hilton, Robert Wood, and H.H. How, sent in a donation to the *Liberator*, along with a note, announcing that they saw the *Liberator* as a “channel of truth and political information; and they wish to signify their determination to support it, not by words alone, but in deed.”\(^{44}\)

The agents of the newly founded American Anti-Slavery Society who received commissions in the mail with instructions to communicate the moral wrongs of slavery packed their bags and set out for the countryside. The commissions—printed forms, laid out in neat typeface—were unequivocal as to the strategy to be employed. “Insist principally on the SIN OF SLAVERY, because our main hope is in the consciences of men, and it requires little logic to prove that it is always to do right.”\(^{45}\) There was no need to exaggerate the horrors, the instructions continued. Simply state the facts. “Be careful to

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\(^{45}\) Elizur Wright Jr. to Theodore Weld (Feb. 20, 1834), in *Weld Letters*, 1:126 (enclosing the commission).
use only facts that are well authenticated,” the instructions read, “and always state them with the precision of a witness under oath.”

They agents avoided the cities, following the roads that gave way to mud and led to towns where those who knew the weight of a plough would listen and be moved to change the world in the name of the American Republic. Twenty minutes, Theodore Weld, a lecturer on the Ohio circuit predicted: twenty minutes was enough to change a man’s mind, if one could just get him to sit him down and listen. “You must pitch your tent among a people,” Weld advised. “Bring a foreign source of influence into their midst, embed it in local relations, and you may electrify the whole mass.” Those who did not receive a commission on account of their sex spoke when they could and wrote with abandon.

Out on the roads, however, the limits of telling people about the rights of their enslaved brethren came glaringly into view. The best writer among them, Lydia Maria Child, soon discovered that any time the topic of slavery came up, her sister-in-law collapsed into the sofa and waited for someone to change the subject. When Child published a book referring to “Americans called Africans,” she received a stack of angry letters and canceled subscriptions to her magazine. When she next moved to the western

46 Ibid.
50 See, e.g., Lydia Maria Child to Louisa Loring, Apr. 8, 1837, Lydia Maria Child Papers, Schlesinger Library, Harvard University.
51 Lydia Maria Child to Caroline Weston, Aug. 13, 1838; Lydia Maria Child to Ellis Gray Loring (July 10, 1838), both in Child Papers, Schlesinger Library.
hills of Massachusetts in a failed attempt to grow sugar out of beets, Child learned that her neighbor, Mr. Napier, derived his vast fortune from trading bodies of the enslaved.\textsuperscript{53}

On Sundays, she watched as Mr. Napier walked down to the town church, where he stood before the children and told them that God had especially ordained Africans to perpetual slavery.\textsuperscript{54} At night, with the windows open, the Childs could hear him praying so loudly that Mr. Child picked up his accordion to drown out the “pious old liar’s voice.” “Come in and get your sun-bonnet,” Child had heard Mrs. Napier tell their granddaughter, “bye and bye they’ll take you for a little black girl.”\textsuperscript{55} When Child went down to the church to see about holding a meeting to insist on the equality of men, the priest had shaken his head.\textsuperscript{56} No, they didn’t want that sort of thing here. Of course “slavery was wrong in the abstract,” the priest said,\textsuperscript{57} but it would hardly sit well with Mr. Napier,\textsuperscript{58} who, Child soon learned, paid a third of the reverend’s salary.\textsuperscript{59}

The lecturers who followed the roads further afield encountered challenges of their own. In the towns along the rivers of the Ohio valley, where newly built steamboats destined for the land of slavery had begun to pass by with an ever-quickening wake,\textsuperscript{60} the lecturers described hopeful mass conversions, but encountered angry crowds and often rode out of town the next morning wearing damp jackets that smelled of rotten egg and

\textsuperscript{53} Lydia Maria Child to Caroline Weston, July 27, 1838, Child Papers, Schlesinger Library.
\textsuperscript{54} Ibid.
\textsuperscript{55} Ibid.
\textsuperscript{56} Lydia Maria Child to Theodore Weld, Dec. 18, 1838, in \textit{Weld Letters}, 2:726, 729.
\textsuperscript{57} Ibid.
\textsuperscript{58} Lydia Maria Child to Caroline Weston, July 27, 1838, Child Papers, Schlesinger Library.
\textsuperscript{59} Lydia Maria Child to Theodore Weld, Dec. 18, 1838, in \textit{Weld Letters}, 2:726, 729.
lamp oil. In Cincinnati, at the crossroads, the abolitionists reported that “every church door is closed to abolitionists.” It stemmed, they said, from “prejudice against the colored man,” and economic interest, a place whose commerce, they said, “in various ways, is intimately and extensively involved with the south.”

Along the newly settled coast of northern Maine, meanwhile, where the fishermen returned with cod that had a fair chance of ending up on a planter’s table in Charleston, men came with stones in their pockets to the meetinghouse where a black man was scheduled to speak. “If I must be stoned, be it so,” Charles Lenox Remond said, as he stood amidst the shattered window glass. “If they must walk over my prostrate and bleeding body, be it so; for while I lived, and a single slave clanks his chain upon the soil which gave me birth, I will exercise the prerogative of thinking and speaking in his behalf, though slaveholders, mobocrats, eggs, and brickbats multiply as fast and as thick as the locusts of Egypt.”

One could hear the growing sense of disillusionment in the voices of the men and women who set out on the road convinced of the prospects of revolution. “There was not principle enough among us to feel for the black man, deprived of all his rights,” Garrison declared in January of 1839, when the abolitionists assembled in Boston for their annual meeting. “Men take narrow and superficial views, centering in self, instead of standing firmly on those eternal principles, which embrace the rights and happiness of every human

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61 Theodore Weld to E. Wright Jr., Mar. 2, 1835, in Weld Letters, 1:205, 207; J.W. Alvord to Theodore Weld, Feb. 9, 1836, in Weld Letters, 1:259, 260 (“I have been trying to clean off this morning, but can’t get off the stink.”).
63 Ibid., 49.
64 Charles Lenox Remond to Austin Willey, Oct. 27, 1839, Advocate of Freedom, Nov. 2, 1839.
being,” the writer named Lydia Maria Child had declared a few weeks earlier. The vast majority of the so-called abolitionists were “mere passengers on a pleasure sail,” concluded Theodore Weld, the best speaker among them, who had begun to lose his voice and would cease lecturing altogether. And that winter of 1839, it seemed to many that if they were going to be heard, they would need to find another language of persuasion.

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In March of 1839, nearly a decade after the captain’s son called for a movement of the people, a report appeared on the clerk’s desk of the State House of the Commonwealth of Massachusetts. The report, signed by a reverend from Nantucket who had recently won a seat in the state legislature and counted himself a member of the abolitionist society of Boston, bore little resemblance to Walker’s pamphlet. To begin with, the report addressed itself not to the people of America, but to the lawmakers of the state. More curiously, the report solicited the aid of the state in protesting a seemingly obscure set of laws: laws that allowed a sheriff in Charleston to arrest and imprison any black man found on board one of the arriving freighting ships from Massachusetts. But perhaps most jarring of all, the report premised its challenge not on the old arguments of the rights of American citizens or the power of the national government, but instead, on the constitutional rights of state citizens under Article IV to travel freely along the coast—precisely the same provision that the commercial lawyers of Boston had used to challenge the laws of the states that impeded the movement of ships nearly two decades earlier.

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69 Compare, for example, Report on the Deliverance of Citizens, 5 (challenging the laws of the southern coast on the basis of Article IV); The Bank of Augusta v. Earle, 10 U.S. 551 (1839) (arguing that Article IV is American constitutional law); Gibbons v. Ogden, 6 U.S. 3 (1824) (suggesting, without citing, the
The man whose name appeared on the bottom of the report, a certain Reverend George Bradburn, left us with little direct evidence to explain how and why he formulated this argument using this language of state citizenship, in what would become the opening contest between the first state to secede from the Union and the first state to mobilize for war. In time, scholars who caught sight of his words would interpret it as evidence of the rise of an abolitionist movement of the people, coalescing in the North to strike down slavery and states’ rights in the South. But a closer look at the intricate context from which the report emerged and its passage through the state legislature suggests that the appeal to the state traced its roots not to any groundswell of abolitionist sentiment, but instead, to the harsh realities of America’s past, at a time of racism so entrenched some questioned the difference between free soil and slave soil.

The reverend whose name appeared on the report that spring of 1839 had arrived in Boston earlier that winter. He hailed from the island of Nantucket, where he had constitutional right of free movement); M’Culloch v. Maryland, 4 U.S. 326 (1819) (using the classification of out-of-state citizenship to strike down a state taxation law); Sturges v. Crowinshield, 27 U.S. 181 (1819) (same). See, e.g., Kurt Lash, The Fourteenth Amendment and the Privileges and Immunities of American Citizenship (New York: Cambridge University Press, 2014), 93 (characterizing Massachusetts’s decision to dispatch an agent to South Carolina as one intended to “investigate the imprisonment of free blacks”); Rebecca E. Zietlow, Enforcing Equality: Congress, the Constitution and the Protection of Individual Rights (New York: New York University Press 2006), 41-42 (noting the concerns of northern politicians that the laws deprived individuals of their “most basic human rights…solely due to the color of their skin”); Leslie Friedman Goldstein, “Triumph of Freedom After All: Prigg v. Pennsylvania Re-Examined,” Law and History Review 29 (2011):768 (referring in passing to Massachusetts’s challenge as one arising from concern over the mistreatment of free black sailors); Philip M. Hamer, “Great Britain, the United States, and the Negro Seamen Acts,” Journal of Southern History 1 (1935): 322 (characterizing Massachusetts’ challenge as one intended to protect the rights of free blacks at a time of federal inaction); Michael Schoepfner, “Navigating the Dangerous Atlantic: Racial Quarantines, Black Sailors, and United States Constitutionalism” (Ph.D. dissertation, University of Florida, 2010), 213, 220-21, 234-35 (attributing the challenge to the popularity of abolitionism in the North, federal inaction, and growing concern for the due process rights of free blacks).

See, e.g., Harriet Ann Jacobs, Incidents in the Life of a Slave Girl: Written by Herself (Boston: Thayer and Eldridge, 1861), 241 (describing her disillusionment with the concept of a free state); see also Frederick Douglass, “Narrative of the Life of Frederick Douglass.” In Frederick Douglass: The Narrative and Selected Writings Autobiographies, ed. Michael Meyer (New York: Random House, 1984), 111 (describing the sense of alienation upon arriving in an ostensibly free state); Henry Bibb, Narrative of the Life and Adventures of Henry Bibb, An American Slave, Written by Himself (New York: Henry Bibb, 1849) 62 (critiquing Ohio’s failure as a nominally free state to offer protection for African-Americans).
preached the word of God and the “ultimate salvation of mankind” to the increasingly few islanders who attended his services, in a meeting house with pews the color of straw and an island that oriented around the seas and the coast.\textsuperscript{72} Perhaps it was there on that “sea-girt land of light,” as he referred to it,\textsuperscript{73} that the reverend first began to grasp the magnitude of the horrors unfolding in the land of slavery. Later, he would remember that sometime in the mid-1830s, he began to subscribe to a new abolitionist newspaper, printed in Boston,\textsuperscript{74} fragmentary moments that had happened in places the reverend had never seen and would never visit and could try to imagine:\textsuperscript{75} moments that led some to wonder why the Lord himself had not yet broken the earth beneath their feet and let all those guilty of doing nothing descend to the fires below.\textsuperscript{76}

There is a wide gulf between feeling the world’s injustices and acting on them, however, and it was not until the reverend’s own world gave way—not until after he watched as they lowered the coffin of his first wife and later that of his daughter into the ground, not until after he closed the door to the meetinghouse where the villagers had long since ceased attending his services, not until he realized that he could no longer hear quite as clearly the sounds of the ocean below—it was not until then that the reverend

\textsuperscript{72} Frances H. Bradburn, \textit{A Memorial of George Bradburn} (Boston: Cupples, Upham, 1883), 3 (describing Bradburn’s role as pastor from 1827 to 1834 at the Universalist Methodist Church); Georgia Ann Snell, “A Brief History of Religion on Nantucket,” \textit{Historic Nantucket} 50 (2001): 19 (describing the physical appearance of the Universalist Meeting House and pews the color of “delicate straw”).

\textsuperscript{73} George Bradburn to Wendell Phillips, Aug. 3, 1842, Wendell Phillips Papers, Houghton Library, Harvard University.

\textsuperscript{74} George Bradburn to William Lloyd Garrison, Dec. 11, 1864, Boston Public Library Anti-Slavery Collection, Boston Public Library.


\textsuperscript{76} Charles Stewart to Theodore Weld, Mar. 26, 1831, in \textit{Weld Letters}, 1:43 (“Never have I found such burning cause for gratitude to God, as in the fact that while we continually guilty of it, he can refrain from fairly breaking up the world beneath our feet, and dashing us into sudden hell.”).
decided to do what few had done before: he would run for a seat in the state house, where he would do what he could for equal justice.77

And so out of this hazy past we know that sometime in early January 1839, the Reverend George Bradburn arrived in Boston to begin his first session as one of the first openly abolitionist politician in the Massachusetts state legislature. He rented a room at the Marlboro Hotel on Washington Street,78 where the landlord did not allow drink or tobacco at his table, but kept the chapel out back open to men and women of any color skin.79 At dinner, there were pitchers of water for guests who bowed their head for the blessings of Him above, in a city some called an “impregnable citadel in the power of the enemy.”80 In the evenings, he could see the string of lights that stretched across the wide bay of Boston,81 where the boats sailed each week for the ports of the enslaved.

One raw January morning a few weeks after the reverend arrived, the city’s abolitionists gathered for their seventh annual meeting in the chapel out back of the reverend’s hotel, one of the few places they could reliably rent.82 The reverend, if he attended, would have recognized the names as the speakers made their way up to the

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77 Bradburn, Memorial, 4 (chronicling a series of tragedies in the reverend’s life, including Bradburn’s loss of his first wife, followed by the death of his daughter, as well as the loss of his church and subsequently his hearing).
78 “Massachusetts Legislature,” Emancipator, Jan. 31, 1839.
80 Anne Marie Weston to Theodore Weld (Feb. 24, 1836), in Weld Letters, 1:267, 268.
81 John Marshall, A New Universal Gazetteer (New York: W.W. Reed, 1832), 114 (“The traveler who approaches the city on a dark evening, admires the brilliant and picturesque appearance of the lights upon the avenues, stretching in long lines across the wide bay”).
82 “Proceedings of the Massachusetts Anti-Slavery Society at the Seventh Annual Meeting,” in Seventh Annual Report of the Board of Managers of the Mass. Anti-Slavery Society (Boston: Isaac Knapp, 1839), i (“Boston is still in spirit pro-slavery. Of all her spacious meeting-houses and commodious halls, at the present time, not one can be obtained for the delivery of an anti-slavery lecture, except this beautiful and convenient chapel in which we are assembled.”).
pulpit, boots rumbling on the floor, sticks drumming on the pews.83 There was the thirty-four year old editor, William Lloyd Garrison, whose struggling newspaper chronicling the injustices of slavery had found its way to the reverend in Nantucket.84 And now, standing at the podium, the twenty-eight year old Wendell Phillips, the recent graduate from the law school in Cambridge, who had decided to do what he could for the cause,85 and who now laid out the arguments that the reverend would bring to the state legislature in challenging the laws of the southern states.

Setting aside the old language of America and its citizens, Phillips invited his audience to now shift their collective gaze to the duties of a sovereign state to protect its citizens, focusing in particular on the ships that descended the coast to the southern ports, where black men aboard the Massachusetts freighting ships could be hauled into slavery. “It was the boast of ancient Rome,” Phillips declared, “that she had thrown over her own citizens the shield of her own powerful protection. No matter what remote or barbarous land he might be found, as a Roman citizen he was sure of protection. Not so with Massachusetts: her citizens are seized in sister states and sold into slavery.”86 It now fell to Massachusetts to define her own course. “Let Massachusetts speak,” Phillips declared.

As those in the room who had been involved in the movement for some time knew, the argument that Phillips put forward that night traced its roots to the challenges that the abolitionists had confronted in pursuing a strategy of moral persuasion. Four years earlier, amidst growing hostilities towards the abolitionists in Boston,87 Garrison

84 Ibid. (describing the sound of boots and sticks and shouting).
86 Ibid.
87 “Massachusetts Anti-Slavery Society,” Emancipator, Jan. 31, 1839 (referring to a set of resolutions passed by gentlemen of Boston in 1835 as “expressive of their sympathy with the slaveholders of the
and his fellow leading members of the Massachusetts Anti-Slavery Society began to experiment with a new set of arguments, designed to target the central artery of commerce that had sustained the astonishing rise of slavery.

In May of 1835, for example, a few months before a gallows appeared before his front door, Garrison drafted a set of resolutions on behalf of the Massachusetts Anti-Slavery Society that protested the laws of the southern coastal states not as a violation of the rights of American citizens, but as “a bold infringement upon state rights.”\(^{88}\) A year later, Garrison presented the same argument to the state legislature and was even more explicit in his reasons for doing so. “I fear that moral considerations alone will not suffice, on the present occasion,” Garrison told the state lawmakers. By re-labeling the black men who worked the trading ships not as Americans, but as citizens of the state, Garrison could in turn reframe the issue of slavery from the morally bankrupt argument of the rights of man to the powerful rights of the state. “Where, then, he asked, are the rights of the citizens of this Commonwealth? Ay, sir, where our STATE RIGHTS?”\(^{89}\)

At the heart of this emerging set of arguments targeting the corridor of union lay two basic ideas that would have been immediately recognizable to those who happened to stop by the Marlboro Chapel that evening. The first idea rested on the by-now familiar duty of a sovereign to protect those who owed it allegiance—a duty that had been brought to life during the opposition to the Embargo Act back in 1807. The second idea rested on the more recent promise that in a Union of co-equal states, under Article IV of the Constitution, a citizen of one state had the right to travel freely across the continental

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borders—a constitutional right that the commercial lawyers of Boston had by then brought to life in the Supreme Court of the nation.90

As abolitionists began to develop these ideas to insist that the state legislature had a sovereign duty to protect the constitutional rights of its citizens, they depicted the state not as a composite of interests or sentiments, but as a modern, formal entity of the people. “What is a state?” the abolitionist John H. Browne asked in 1838, in an editorial that Garrison declared to be “well-worthy of careful perusal.”91 “It is the representative of the rights and powers of the citizens composing it.”92 Any abdication of this duty of protection, Browne continued, constituted not only an abdication of the right to rule, but an end to the Commonwealth itself. A state that did not protect its citizens, Browne warned, was nothing: “an artificial, insensate, soulless being, an abstraction, a mere ideal entity, and of itself, entitled to no respect.”93

Although such arguments warning of the end of the Commonwealth and its dissolution into a barren plot of land would later seem strange to readers accustomed to thinking of the rise of an abolitionist movement in a place called North, they carried a particular weight with audiences in Boston during the closing years of the 1830s. For beneath the familiar label of a “North” moving steadily towards a nation lay a kaleidoscopic continent, one that by the mid-1830s had witnessed colonies become states, states merge into republics, republics fracture back into states, empires dissolve into territories, territories emerge into states, and states divide into districts.

90 See, e.g., Bank of Augusta v. Earle, 10 U.S. 551 (1839).
92 Ibid.
93 “A Citizen, Mr. Calhoun and the Right of Petition,” Liberator, Apr. 27, 1838.
Set on that ever-shifting continent of uncertain borders, arguments warning of the doomed prospects for the ancient Commonwealth resonated with peculiar appeal. Since the earliest days of the Republic, concerns for the slow but steadily waning power of the old Commonwealth had rippled through the city’s pleasant estates and merchant houses. There was, to begin with, the considerable decline in the relative landmass of the place called Massachusetts. During the phase that historians would later refer to as territorial expansion, the land that once appeared as a colonial charter with no clearly discernible western limits had shrunk from five percent of the landmass of British America to less than half of one percent of the new Republic. Then, too, there was the long tradition of concerns for the waning political power of the metropolis, tracing back to 1814, when men in the legislature worried that the “voice of the New England States, whose interests are common, is lost in the national Council.”

In addition to these familiar concerns about the declining territorial size and political power of the Commonwealth, there were new doubts about the economic prospects for the plot of land with its rocky soil and stunted rivers. “Massachusetts must be intersected by canals, or the capital will suffer,” one pundit warned. Massachusetts would “not be found behind her sister states,” the governor had assured voters. In 1837,

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94 The original thirteen colonies spanned 341,756 square miles. At the time of the Treaty of Peace with Great Britain, the United States spanned 892,135 square miles. Of this total, Massachusetts claimed 10,555 square miles, along with the District of Maine (35,385 square miles), for a total of 5% of the landmass. By 1839, this figure had declined to just over half of one percent. For maps depicting this contraction, compare Carington Bowles, *North America and the West Indies: A New Map* (London: Carrington Bowles, 1763) and *Les États Unis de l’Amérique Septentrionale, avec le Canade et la Floride* (n.p., 178?).

95 Massachusetts General Court, Joint Committee, “Report and Resolves of the Committee of Both Houses, to whom was Referred the Memorials and Remonstrances from the Towns of Deerfield…and Beverely” (1814), rpt. in *Niles’ Weekly Register* 6 (1814), 4-8.


98 “Governor Davis’s Inaugural Speech,” *Newburyport Herald*, Jan. 24, 1834.
anxious lawmakers voted for the first time to assess the productivity and capacity of the Commonwealth’s soil. The reports were troubling. “Vast amounts of money are now sent out of the State for bread,” the state commissioner of agriculture warned in 1838. “Let the children of Massachusetts then love and honor their good old mother,” he pleaded. In the papers, merchants read alarming reports from Mississippi to Maine of the possibility of new trade routes that bypassed Boston altogether. “Why should not the State of Maine import her own goods?” an editorial had asked in 1839. “Why should our merchants go to Boston and New York for their foreign goods?”

Amidst these reports of the waning glory of the metropolis, the idea that the state legislature had both failed in its duty of protection and abdicated its right to equal recognition of its laws of freedom began to take hold—not only among the abolitionists, but also among the opposition party. In the heated partisan debates of Boston, critics of the Whig establishment readily seized upon the same arguments, pointing to the failure of Massachusetts’ state legislature to protect its citizens as proof positive that the state had all but dissolved into a plot of barren land on the rocky coast.

The same summer of 1836 that Garrison railed against the state legislature’s failure to protect its citizens in distant seaports, for example, Seth Whitmarsh, a leader of the opposition party in Boston who did not belong to any of the antislavery societies, published a scathing attack of the legislature’s failure to protect black citizens in distant

100 Colman, First Report, 54.
101 Ibid.
102 See e.g., “Prentiss of Mississippi,” Emancipator, Dec. 13, 1838 (quoting a Mississippi politician who announced that although the state was dependent upon Massachusetts for its ships, “she can, if she pleases, build her own ships and man them with her own sailors”).
ports to the southward. “It is a question,” his report read, “which involves the rights, liberties, and lives of our citizens, as also the sovereignty of the State.” A state that failed to exercise its duty of protection, Whitmarsh continued, would cease to exist. “If any of our sister States may thus trample on the lives and rights of our citizens,” he warned, “to what a state of degradation and servitude are we reduced!” He concluded with an ominous threat. “Let the legislature pause and reflect deeply on a subject of so deep, so vital importance to the sovereignty of this Commonwealth, if that sovereignty is to be preserved.” Delighted by this line of assault, Garrison in turn devoted a full page of the newspaper that had been established to “vindicate the rights of American citizens” to a reprint of this report premised on state sovereignty.

Such that by the time the reverend from Nantucket arrived in Boston in early 1839 to take his seat in the State House as one of the first abolitionists in the state legislature, he discovered a vast array of arguments predicted not on the category of America and its peoples, but on the state and its citizens. In sitting rooms across the city, the women who had begun their campaign against slavery by invoking the rights of Africans as Americans now began to thread their needles with gold thread and stitch the name of the sovereign state of Massachusetts into bags for sale. “Slavery was abolished in Massachusetts, by the adoption of the Bill of Rights as part of the Constitution, AD 1780,” proclaimed the purses that the women laid out for sale at the Anti-Slavery Fair in December of 1836.

And when, that February of 1839, the reverend set out to do what he could for the cause, he too set aside the old language of America, instead composing an argument that

105 Ibid. (emphasis added).
106 “An Appeal to the South,” Liberator, Apr. 9, 1836 (reprinting a petition asking the state legislature to protect the state citizens of Massachusetts).
challenged the corridor using the novel language of the state and its citizens. During the opening weeks of 1839, the reverend went down to the wharves, and spoke with the sailors of the stories that unfolded in prisons far away. He met with the reverend who had first encouraged Samuel Snowden to speak, scanned the old reports that had once been used to challenge the laws of the southern states. And when it came time to write, he followed the language suggested by Wendell Phillips at the meeting in Marlboro Chapel,\textsuperscript{108} invoking the sovereign duty of a state to protect the constitutional rights of its citizens to free movement across the bordered coastline of America.

The issue at stake, the reverend’s final report read, was “the rights of our citizens, as well as the dignity and honor of this ancient Commonwealth.”\textsuperscript{109} Just as the commercial lawyers down at the wharves had borrowed from the laws of nations to describe a bordered continent of a world within itself, so too now did the report use the same language to argue that a failure on the part of Massachusetts to act would constitute the equivalent of submission to a foreign power. “If a tithe of this injustice were inflicted upon our citizens by a foreign people,” the reverend’s report declared, “Massachusetts would be shaken from the centre to the circumference.”\textsuperscript{110}

The question that the report posed was not simply whether the laws subjecting a black man to imprisonment without charge were unjust, but whether the Commonwealth would assert her dignity and honor. “Must she quietly endure it all,” he asked, “merely


\textsuperscript{110} Ibid. at 34.
because it chances to be done by her own sister states?”\footnote{Ibid.} In crafting this language, the reverend moved decisively away from the old frame of an America of the people. Instead, he drew directly on a geography that had come to the foreground: a land of quilted jurisdictions, where it was possible to analogize states to foreign nations, proclaiming that Massachusetts owed to Louisiana nothing more than the “same consideration that would be due to Spain, or any other friendly power,” as one of the abolitionist lawyers had put it.

By late February, the reverend had finished drafting his report. Although he had been unable to find any one else in the legislature willing to sign it,\footnote{Bradburn, Memorial, at 5.} after two days of unrecorded debate in the House, he was able to persuade a majority to agree to at least pass a set of resolutions. The resolutions were brief and non-committal: a terse acknowledgment that it was indeed the paramount duty of the state to protect its citizens and that the laws did indeed violate the sacred principle of due process.\footnote{Massachusetts General Court, “Resolves Concerning Certain Laws of Other States which Affect the Rights of Citizens of Massachusetts,” Apr. 6, 1839, in Acts and Resolves Passed by the General Court of Massachusetts in the Year 1839 (Boston: Dutton and Wentworth, 1839), 105.} For the reverend, there may well have been reason enough to be optimistic. The resolutions marked a fissure, however minute, in the centuries old corridor of union that linked the shipyards of Boston to the southern plantations.\footnote{Bradburn, Memorial, at 5.} It was not until years later, however, that the reverend and his colleagues in the abolitionist society would discover that in an America founded on slavery, even the solemn sovereign duty of protection and the constitutional rights of state citizens had limits of their own.

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Three years after the reverend from Nantucket submitted his report calling upon the state to exercise its duty of protection, the state legislature of Massachusetts inaugurated efforts to challenge the laws of the southern states in the tribunal of the United States Supreme Court. In time, scholars who caught sight of this unprecedented act on the part of the state lawmakers would see the lawsuit as proof of a growing antislavery movement in the place called the North, framing Massachusetts as a proxy for the federal government, determined to protect the rights of free blacks. And no doubt, the abolitionists who first began to petition the state legislature for action may well have hoped that the lawsuit underway that spring of 1842 would usher in the beginnings of a movement premised on realizing the promise that all men were equal. But a return to the records reveals a more complex set of origins, rooted not in any groundswell of popular opposition in the North, but in an attempt to restore a constitutional rule of interstate equality, at a time when the balance of power on the continent had most decidedly shifted.

Charles Francis Adams, the man who drafted the resolutions authorizing a lawsuit to proceed against the laws of the southern states, did not count himself as one of the city’s abolitionists. Like many of his peers, although Adams believed in the vague

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115 For the series of reports, see Massachusetts General Court, “Resolves Relating to the Imprisonment of Citizens of this Commonwealth in other States,” Mar. 3, 1842, in *Acts and Resolves Passed by the Legislature of Massachusetts in the Year 1842* (Boston: Dutton and Wentworth, 1842), 568; Massachusetts General Court, “Resolves Relating to the Imprisonment of Citizens of this Commonwealth in other States,” Mar. 3, 1843, in *Acts and Resolves Passed by the Legislature of Massachusetts in the Year 1843* (Boston: Dutton and Wentworth, 1843), 81-82; Massachusetts General Court, Joint Special Committee, *Report and Resolves Relating to the imprisonment of Citizens of this Commonwealth in Other States*, House Report No. 48 (1843); Massachusetts General Court, “Resolve Concerning the imprisonment of Citizens of this Commonwealth in other States,” Mar. 16, 1844, (Boston: Dutton and Wentworth, 1844), 330.


117 Charles Francis Adams to Thomas Kinnicut, Mar. 31, 1843, Adams Family Papers, Reel 158, Massachusetts Historical Society.
promise of equality,\textsuperscript{118} he had not yet come around to believing that he had the right to interfere with the laws of other states governing slavery. As he put it, his mind could “not come down to the point” of being an “entire abolitionist.”\textsuperscript{119} Indeed, when he learned that he had been appointed to the committee charged with responding to the abolitionists’ petitions, he could not decide whether it was a compliment or an effort to ruin him.\textsuperscript{120}

If Adams was undecided about the propriety of questioning the laws of another state, the same could not be said about his views on the necessity of preserving some kind of political equality among the shifting domains of the coast. “New England will ere need sound heads and stout hearts,” his father had written home from Congress the previous April, “to save her from being made the football of the South.”\textsuperscript{121} New England, his father had observed on a visit home the following year, was “greatly reduced and daily declining in her influence as a component part of the Union.”\textsuperscript{122} And that February of 1842, a confluence of factors that threatened a decisive shift in the continental balance of power would lead Charles Francis Adams and his colleagues to organize a lawsuit challenging the very same laws that the reverend had brought to their attention in 1839—not with the stated aim of securing the equal rights of free blacks of the North, but of vindicating the co-equal standing of Massachusetts. In doing so, he would draw upon the reverend’s earlier arguments to argue that embedded within Article IV of the Constitution lay a rule of inter-state reciprocity, by which the state laws of freedom and slavery were equal.

\textsuperscript{118} “Massachusetts Legislature,” \textit{Boston Weekly Messenger}, Feb. 16, 1842.
\textsuperscript{120} Charles Francis Adams to John Quincy Adams, Mar. 4, 1842, Adams Family Papers, Reel 159, MHS; see also “The Legislature,” \textit{Hampshire Gazette}, Jan. 18, 1842.
\textsuperscript{121} John Quincy Adams to Charles Francis Adams, Apr. 7, 1841, Adams Family Papers, Reel 154, MHS.
\textsuperscript{122} John Quincy Adams, \textit{The New England Confederacy of 1643} (Boston: Little, Brown, 1843), 45-46.
This shift in the rules that would prompt Charles Francis Adams into action began far away from Boston, in what some then referred to as the Supreme Court room. In early February, a reporter from Boston tasked with covering the court watched as lawyers took their seats for what was then known as the Pennsylvania and Maryland controversy. Although historians would later study the controversy for what it would reveal about Justice Story’s view of the Constitution for those watching from Boston, its significance lay in a change in how controversies between the states would be decided.

For much of the previous half century, the state governments clustered across the country had relied on a slow-moving circuitry of diplomacy to solve the difficulties that arose when wagons following newly mapped roads or boats plying recently navigated rivers crossed over invisible state laws and brought the once stationary laws of slavery and liberty into conflict. While legislatures prepared resolutions, governors carried out the actual business of requesting and securing the release of whomever had crossed over state lines. In 1835, for example, family members of a free woman named Mary Smith who had been seized as a slave in Virginia requested that the governor of Massachusetts intervene in her release; the governor of Virginia, in turn, had been happy to oblige. In New York,
meanwhile, Governor William Seward had orchestrated a series of diplomatic exchanges with the governor of Louisiana to secure the release of free black men imprisoned in New Orleans. The Reverend Bradburn had likely followed this model as well, suggesting that the governor of Massachusetts help secure the “deliverance” of any imprisoned citizen.

Among its peculiar features, this ad-hoc system of conflict resolution rested on the fiction that all member states were equal negotiators, capable of securing enforcement of the rules laid out in Article IV that governed interstate obligations. As one judge observed from New Jersey in 1836, Article IV was best viewed as a set of international treaty stipulations embedded within the Constitution. “The stipulations respecting the rights of citizenship, and the delivery of persons fleeing from justices are in the nature of treaty stipulations,” he wrote, “resting for their fulfillment upon the enlightened patriotism and good faith of the several states.”

Set against this customary practice of interstate diplomacy, the decision by Pennsylvania and Maryland to take their dispute to the Supreme Court signaled a decisive shift from ad-hoc bargaining to a hardline rule: one that would inevitably leave one class of states—either the free states or slave states—with a unique set of Article IV obligations that the other class of states did not have. At issue in the dispute between Pennsylvania and Maryland was the reach of the fugitive slave clause of Article IV. The particular question before the court that February hinged on the extent to which a free

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131 John Quincy Adams to William H. Seward, Apr. 16, 1841, Adams Papers, Reel 154, MHS.
state—in this case, Pennsylvania—could exercise its police powers to protect those within its borders from the laws of slavery in the neighboring state of Maryland.

Even before the court reached its opinion, there was a sense that this first Article IV rule would cut in favor of the slave states. “The southern States are indebted to the justice and liberality of Pennsylvania for an opportunity of bringing these questions to a decision in the Supreme Court,” the governor of Maryland declared.132 “In Massachusetts, editors of the abolitionist press “tried very hard” to keep the public aware “that there is a controversy now pending between Maryland and Pennsylvania.”133 By the end of February, the Boston Emancipator and Republican warned that the lawyers for Pennsylvania had made a crucial mistake: rather than making the case about the obligations that a visitor from a slave state had to recognize the laws protecting liberty in a free state, the lawyers had framed the case as one of the obligation that the legislature of a free state had to recognize the laws of a slave state carried over into its borders.134

While the Supreme Court justices began to mull over the question the lawyers had presented, a second challenge to the Commonwealth was unfolding in Congress. In that hall that some called the nation’s council house, one could hear the fading out of Massachusetts in the weekly roll call of states.135 Since the beginning of the Republic, the speaker of the House had called for petitions beginning with the states of the Northeast and moving down the Atlantic coast.136 But ever since John Quincy Adams had refused

132 “Governor’s Message,” Easton Gazette, Jan. 9, 1841.
133 “Maryland,” Emancipator, Jan. 28, 1841.
134 “Editorial Correspondence,” Emancipator, Feb. 24, 1842.
135 John Quincy Adams to J.I. Bowditch and Wm. F. Channing, ca. Mar. 1843, Adams Family Papers, Reel 525, MHS.
136 Ibid.
to comply with the House rule barring the prohibition of petitions against slavery, the speaker had shifted the order, placing Massachusetts last in the roll call or not at all.\textsuperscript{137}

Then, towards the end of January, the members of the House of Representatives debated whether to censure the John Quincy Adams altogether. Those who were there to transcribe the events recalled how it had happened. The clerk called the “state of Massachusetts.”\textsuperscript{138} Adams, the “gentleman from Massachusetts” then introduced a petition, signed by fifty-four citizens of Massachusetts, requesting a dissolution of the United States.\textsuperscript{139} Later, after the Congressman from Virginia declared that he would censure the “gentleman from Massachusetts,” Adams began to prepare his defense. In the privacy of his journal, the congressman remembered as the nationalist and defender of freedom of speech noted that the rule prohibiting petitions against slavery was “oppressive on the free States and especially \textit{outrageous to the rights of States}.“\textsuperscript{140}

Confronted with news of the censure trial and the impending shift in the constitutional terrain, politicians in Boston quickly took steps to ensure that whatever the outcome in the Supreme Court or Congress, the Commonwealth could preserve its standing as a co-equal power. In Washington, for example, John Quincy Adams began to assemble records that would not only justify his decision to introduce a petition calling for dissolution, but also restore a rule of Article IV reciprocity. Rather than limiting himself to overtures to the First Amendment and Bill of Rights, Adams sought evidence to show that if South Carolina had failed to fulfill its obligations under Article IV to

\textsuperscript{137} Ibid.
\textsuperscript{138} Cong. Globe, 27th Cong., 2d Sess. 168 (1842).
\textsuperscript{140} John Quincy Adams, diary entry of Jan. 22, 1842, in \textit{Diaries of John Quincy Adams}. 
recognize Massachusetts’ laws of citizenship, then the citizens of Massachusetts were justified in submitting their petition for dissolution.\footnote{John Quincy Adams, diary entry of Jan. 22, 1842, in \textit{Diaries of John Quincy Adams}.} “This was my most effective and most irresistible topic of defense,” he later recalled.\footnote{John Quincy Adams to R.Y. Paine, Esq., Mar. 22, 1845, Adams Family Papers, Reel 154, MHS.}

In Boston, meanwhile, Charles Francis Adams began drafting a plan for a legal case that would provide a counter to the Pennsylvania and Maryland case, by creating an obligatory rule upon the slave states to recognize a free state’s laws of citizenship. Following the logic of the reverend’s report from 1839, Adams set aside readily available prior challenges to the laws of the South Carolina that authorized the imprisonment of any blacks found aboard a freighting ship\footnote{“Petitions for Sailor’s Rights,” \textit{Emancipator}, Mar. 4, 1842.} to narrowly frame the issue as one involving the “imprisonment of any citizen of Massachusetts…within the borders of other States of the Union.”\footnote{“Massachusetts Legislature,” \textit{Salem Register}, Mar. 3, 1842.} And rather than requesting Congress to intervene, Adams directed the governor to institute proceedings in federal court: the only forum where it would be possible to counter what would soon be known as the \textit{Prigg} case.\footnote{Ibid.}

That winter of 1842, the language of state citizenship became the official language of protest. One could hear it in the words of politicians who convened in the state house on the last day of February 1842, where men sat in their overcoats and hats while wood burned in the corner fireplaces.\footnote{See, e.g., George Boutwell, \textit{Sixty Years in Public Affairs} (New York: McClure, 1902), 1:71-72.} The newspaperman watching the politicians from the sidelines recorded a general agreement, all of them promising to “discharge all our constitutional obligations to the South, but at the same time to maintain our own rights with firmness,”\footnote{“Massachusetts Legislature,” \textit{Salem Register}, Mar. 3, 1842.} speaking that day not of the injustice to man, but of
preserving the dignity of the Commonwealth, insisting, just as the reverend from
Nantucket had advised four years earlier, “that it was becoming the high character of our
Commonwealth to take this matter under its special charge.” 148

One could hear the same language echo in gatherings far from the centers of
power, after news arrived that the Supreme Court had indeed invalidated Pennsylvania’s
law protecting those within its borders from slavery. In a schoolhouse one October
evening in Boston, people signed their names to a petition addressed to Congress.
Though they signed their names as American citizens, they called upon Massachusetts to
protect her citizens from the laws of Louisiana. 149 “Resolved,” the petition declared, “that
the voice of the Massachusetts legislature should be heard in the Congress of our nation,
demonstrating against the unconstitutional deprivation of her citizens.” “Resolved,” their
petition continued, “that the state ought to bring the case before the Supreme Court.” 150

By November, after a merchant from Virginia arrived in Boston looking for a
black man he claimed was his property under the laws of Virginia, 151 calls for
Massachusetts to fulfill her duty to protect her citizens or face subjugation began to
appear in bold lettering across the city’s newspapers. 152 “How long shall Massachusetts
be thus subjected to Virginia law,” an article read. 153 “The burning shame of the pity and

148 Ibid.
150 Ibid. (emphasis added).
151 See “James B. Gray, $50 Dollars Reward,” Norfolk Beacon, Oct. 15, 1842; Samuel May, Some Recollections of our Antislavery Conflict (Boston: Fields, Osgood, 1869), 307 (including a copy of Gray’s
note to the jailor, requesting him to hold “George Latimer, a negro slave belonging to me”).
152 See e.g., William E. Channing, “Duty of the Free States,” Latimer Journal, Nov. 14, 1842 (advising that
the free states are now bound to “protect that portion of their citizens exposed to the peril of being carried
into bondage”); “Great Meeting at Lyceum Hall,” Latimer Journal, Nov. 14, 1842 (arguing that the seizure
of citizens in Massachusetts without process of law is an act of war), “Our Triumph,” Latimer Journal,
Nov. 23, 1842 (asserting that “the Old Bay State has gained a most glorious yet bloodless victory. Mr. Gray
gone back to tell Virginia that henceforth in Massachusetts no jail will be opened at the slaveholder’s
bidding”), Latimer Papers, MHS.
contempt of Europe,” an article warned a few days later, “all will fall upon this Commonwealth.” In Congress, meanwhile, men whose words sounded across the country spoke in the language of state citizens.

That January of 1843, for example, Congressman Robert C. Winthrop looked over a petition from his colleagues in Boston who sought to ensure that the Supreme Court would remain open to the planned lawsuit. As was customary when addressing Congress, the petitioners introduced themselves as American citizens. When it came time to write his report, Winthrop translated this formulaic language of national citizenship back into state citizenship. In doing so, Winthrop made clear that the primary issue was the need to restore a rule of Article IV reciprocity. “If the police power of a [free] State cannot be permitted to divest a master of his constitutional right over his slave, as secured by one of these provisions,” he explained, referring to the Article IV case recently decided in Prigg, “as little can it be suffered to divest a free citizen of his constitutional right over himself, his own actions, and his own motions, as guaranteed by the other,” he wrote, referring to the state citizenship clause.

By mid-January of 1843, as news arrived in Boston that Georgia’s politicians had dispatched a new set of resolutions, declaring that they would never recognize

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154 “Latimer’s Case,” Latimer Journal, Nov. 18, 1842, Latimer Papers, MHS.
155 See [Unsigned – J. I. Bowditch?] to Robert C. Winthrop, [ca. 1842-1843] and Frank Dexter to J. Ingersoll Bowditch [ca. 1842-1843] (recommending, as a solution to the problem of the South Carolina laws, a law that would expand federal jurisdiction:), J.I. Bowditch Papers, MHS.
156 Winthrop received the memorial sometime in late December 1842. See Robert C. Winthrop to J. Ingersoll Bowditch, Dec. 21, 1842, J.I. Bowditch Papers, MHS.
158 Ibid.
Massachusetts’ laws of citizenship, members of the Massachusetts state senate agreed that an aggressive response was necessary. “It was high time that the Legislature [took a] strong stand upon this subject,” one of the city’s leading merchants declared. High time that the legislature “sp[eak] out in such terms as to convince the South that “this State, at least,” has determined that “the rights of her citizens” should be maintained and at all hazards.” Charles Francis Adams concurred. A few weeks later, when circulating his proposed plan to bring South Carolina into the Supreme Court room, Adams made clear that the issue was one of preserving the Commonwealth’s tenacious hold on power.

“It had not previously been the policy of Massachusetts,” Adams wrote, “to make complaint of the violation of her rights by other States.” Citing Georgia’s resolutions rather than any wrong done to free blacks, Adams declared that it had come down to a question of a state’s duty to protect its citizens. “One of two things must be settled,” Adams wrote. “The State must either sit down quietly upon the wrong, and determine to put up with it, for the sake of the general attachment it bears to the Union, or it must endeavor to do something more effective than has yet been attempted, for the protection of citizens who have a right to claim it.” By the following winter, a respected judge named Samuel Hoar had set out from Massachusetts Bay for Charleston, with instructions to bring the laws of South Carolina into the forum of the Supreme Court.

And yet, despite the nearly decade long anticipation, the case that might have inscribed into the Constitution a rule of Article IV formal equality between the states

161 Ibid. (emphasis added).
162 Massachusetts General Court, Joint Special Committee, Report and Resolves Relating to the imprisonment of Citizens of this Commonwealth in Other States, House Report No. 48 (1843), 1.
163 Ibid. at 2-3.
never happened. Within a week after Hoar arrived in Charleston to begin proceedings for the lawsuit, enraged lawmakers authorized the South Carolina governor to take all necessary measures to secure his immediate expulsion. For Charles Francis Adams, this astounding act warranted the dissolution of relations. Indeed, not long after news of Hoar’s expulsion arrived in Boston, Adams spent three hours on a rainy Saturday trying to persuade his colleagues in the state legislature that the citizens of Massachusetts were now “absolved from their obligations to [South Carolina].”\footnote{Charles Francis Adams, diary entry of Jan. 25, 1845, Adams Family Papers, Reel 65, MHS.}

Although Adams failed to persuade his colleagues, he drafted an official document that made clear that the issue at stake was not simply a contest between North and South, but a contest between the states. “The State of Massachusetts now addresses each of her Sister States of the North American Federal Union,”\footnote{Massachusetts General Court, Joint Special Committee, \textit{Report and Resolves Concerning the Treatment of Samuel Hoar by the State of South Carolina}, Senate Report No. 31 (1845), 3.} he began. “It is not … as ‘Citizens of the United States,’” Adams continued, “but because they are \textit{citizens of Massachusetts}, that this State claims the guarantee of the Constitution of the United States to protect her people against wrong in the harbors of South Carolina.”\footnote{Ibid. (emphasis added).}

As if sounding the refrain of soldier’s drum, Adams listed the wrongs done by South Carolina to the rights of Massachusetts. “Massachusetts thus arraigns South Carolina,” he wrote, for enacting laws “aggressive upon the rights of her sister States.”\footnote{Ibid., 2.} “Massachusetts denies [South Carolina’s] right …to arrogate to herself a right of jurisdiction over the ships of Massachusetts, or condemning her citizens without appeal.”\footnote{Ibid., 6.} Massachusetts, he closed, “will never relax in her demand of all the rights

\footnote{Ibid., 6.}
which belong to her as a State and a member of the Union.”\textsuperscript{169} Perhaps to illustrate the symbolic exclusion of the South Carolina from the circuitry of the union, Adams instructed the governor to send the report to every state except South Carolina, which he then included in a nineteenth-century equivalent of a carbon copy.\textsuperscript{170}

In a time of fracture, the report won the endorsement of statesmen remembered today as nationalists. John Quincy Adams, for example, found the declaration worthy of “high approbation.”\textsuperscript{171} Henry Wilson, who would later become the legislative architect of the Union Army\textsuperscript{172} declared it an “admirable State paper.”\textsuperscript{173} Justice Story, meanwhile, found the declaration rather too modest. “I wished it to be full of dignity, but full of spirit,” he wrote to his friend, “but it does not satisfy me. I find it somewhat too cold, and too courtly.”\textsuperscript{174} For in a city built on the ancient corridor of commerce that led down to the depots of the southward, the state’s sovereign duty of protection would reach no further than paper promises. “I do not know what I should propose as a substitute,” Justice Story observed of the decision by the Massachusetts legislature to let the matter lie. “Considering our position as a commercial state, it is a very difficult and delicate matter.”\textsuperscript{175} And so the ships would continue to sail for the southward, hauling out under the flag of bordered stars, carried forth along a coast where the language of America and its interests had given way to that of these united states: a language upon which men determined to be heard would launch a movement that could fracture the continent.

\textsuperscript{169} Ibid., 25.
\textsuperscript{170} Ibid., 2.
\textsuperscript{171} John Quincy Adams to Charles Francis Adams, Mar. 27, 1845, Adams Papers, Reel 154, MHS.
\textsuperscript{173} Henry Wilson, \textit{Rise and Fall of the Slave Power} (Boston: Houghton, Mifflin, 1872), 2:585.
\textsuperscript{175} Ibid.
When the men who were not yet soldiers gathered on the Boston Common under a grey October sky in 1861, the colonel who would lead them down the coast as far as Washington looked out over their faces. He spoke to them using words that had sounded in the seaports of the old metropolis of America for decades, from the time the first mills began to turn, to the days when the ships once more hauled out for the Mississippi River and the lawyers dusted off forgotten provisions in the Constitution, until at last even the people who cried foul at the horrors the ships turned into profit reached for a phrase they hoped would be heard. And now, standing on the eve of war, the colonel who would in time oversee the creation of the Union Army told the first soldiers of the Civil War that they went to battle not only as citizens of the nation, but as citizens of the state. “We go forth to do our duty,” Henry Wilson said that day in 1861. “We shall go feeling that we are citizens of the proud commonwealth of Massachusetts.”

The colonel’s language of the state has long since faded from the terrain of the Civil War that began that summer, a story still told primarily in units of political parties and sections of North and South. And while recent work has pointed to the ways in which

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abolitionists in the place called the North made use of the state legislatures, it has left unresolved the basic question of why, when men marched into battle, they spoke not simply of the North and its liberties, but of a place called Massachusetts and its citizens.

A return to the long line of yesterdays that preceded that moment in October of 1861 reveals the beginnings of an answer. For these records suggest that in the deeply uncertain terrain of the continent, the idea of using the state to chip away at slavery—first suggested by the beleaguered abolitionists in the 1830s and then seized upon by members of the Whig legislature to secure a rule of co-equality under the Constitution—had become the foundational unit of mobilization for slavery’s opponents who set out to gain control of the nation’s council house. At a time when no-one could predict where the borders of the nation would come to rest and when political parties seemed to ebb and flow, men determined to be heard seized upon the institutions, rhetoric, and rules of equality between the states. By the eve of war, the state now swept under the rug of the North had supplied a solution to the challenges of collective action: offering a sense of group identity that could provide a proxy for inchoate political parties, an institutional apparatus with which to be heard in the halls of national power, and, in the end, the doctrinal core of the constitutional logic of non-interference with slavery in the states where it existed.

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On an August day in 1845, not long after South Carolina expelled Massachusetts’s ambassador from its territory, Henry Wilson, the man who would help launch a new political movement to bring an end to slavery followed the path down to the

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4 Brooks, Liberty Power, 21-22 (describing how abolitionists sought to emphasize threats to “Northern civil liberties,” and used the state legislatures as a spring board into the national government.)
5 Massachusetts General Court, Joint Special Committee, Report and Resolves Concerning the Treatment of Samuel Hoar by the State of South Carolina, Senate Report No. 31 (1845), 25.
Charles River, down to the clearing in the pines where the abolitionists had gathered to commemorate the end of slavery in the West Indies. The day offered the prospects of a newfound optimism: picnic baskets arrayed out on the grassy banks of the river, “a clear sky, a bright sun, and a pleasant breeze,” the reporter observed. ⁶ Quite certainly, as he surveyed the scene of revelers and listened to the first speakers, Henry Wilson, then an otherwise unknown politician in the state legislature, realized that he was not the person whom the crowd had come to see.

The organizers of the event, skilled by then in the various arts of persuasion had hung banners from the trees. They had chosen as the day’s featured speaker the famous Captain Walker, a man who was “but a rough sailor,” newly returned from a prison down in Florida, with a branded hand to prove it. ⁷ As the organizers explained, the noble sea captain had suffered the wrath of the slaveholders after he had offered a place on his ship to men and women determined to escape the hell of slavery. As punishment, he had received a red iron, burned into his flesh: an evocative story, for which at least one man in the crowd said he had come “nearly fifty miles to see and hear Capt. Walker.” ⁸

Wilson, in contrast, may well have seemed dull in comparison: a novice politician, whose speech the reporter did not even bother to include in full, offering instead only an excerpt. And yet, in the brief paragraph of Wilson’s words that later appeared in the Liberatör, one could hear the same shift away from the old language of an America and its peoples towards the now modern discourse of states. “Massachusetts led in the Revolution,” Wilson began, embroidering upon the rhetoric that the

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⁶ See “Waltham Pic-Nic,” Liberatör, Aug. 8, 1845.
⁷ Ibid.
⁸ “Waltham Pic-Nic,” Liberatör, Aug. 8, 1845.
abolitionists had seized upon a decade earlier, “and she has a right to lead now in this great movement, in comparison with which the Revolution sinks into insignificance.”

The idea of building a movement upon the duties and rights of the states to which Wilson appealed that August day had by then received the endorsement not only of the abolitionists in Boston, but of established veteran politicians in Congress. Perhaps most noticeably, three years earlier, a lawyer from Ohio named Joshua Giddings began to sketch out the “Rights and Privileges of the Free States,” in a pamphlet that would travel across the roads fanning out from the Capitol, laying the groundwork for a movement predicated on the unit of the state. Giddings, like Wilson, counted himself as a member of the Whig party increasingly frustrated by the party’s seeming ambivalence, if not downright apathy, to the horrors of slavery unfolding to the southward.

As a commercial lawyer, Giddings was well familiar with the constitutional discourse of states that had swept through the legal profession in the early 1820s. In the course of his professional correspondence, for example, he had kept a wary eye on the overreach of New York’s laws in settling the rules of decision in the state of Ohio. As he explained to his good friend Benjamin Wade, “I think no one will contend that the Courts of New York can give authority to our Admr. to act as such in the State of Ohio.”

Giddings brought this conceptual mapping of the states with him when he made a bid for a seat in Congress, where a mentor had advised him that, “the State of Ohio has stood as high in the councils of the nation as any State in the Union.”

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9 Ibid.
10 See Joshua Giddings to L.W. Giddings, Washington, DC, Jan. 29, 1843; Joshua Giddings Papers (microfilm), LOC (describing a subscription paper with “many thousands seems submitted for.”)
11 Joshua Giddings to Benjamin Wade, Saratoga, May 22, 1835, Giddings Papers, LOC.
12 E. Whittlesy to Joshua Giddings, Cenfield, July 21, 1828, Giddings Papers, LOC.
It was there in Washington that Giddings first caught sight of the horrors of slavery, recording in his diary the moment that he would remember long afterwards, when, with the full sky of day overhead, he caught sight of a wagon lurching slowly through the streets of the Capitol, a line of black men, women, and children, shackled to the wagon, no-one saying anything at all. By the time he began to construct his arguments against these atrocities of slavery, he had learned the limits of arguments premised on the rights of man and the power of those premised on the rights of the states. “They are afraid of being called abolitionists in their Districts,” one of Giddings’s friends reported from Washington, by way of an explanation for the lack of support.

Indeed, when Congress voted to censure him for introducing resolutions to inquire into the slave trade, his good friend from Vermont observed that the censures were far more likely to attract the people’s attention than the horrors of the slave trade. “It will be worth one hundred thousand, yea, a million abolition lectures,” William Slade observed to Giddings. What was needed, it seemed to Giddings, was to begin to fashion a formal doctrine of the rights of free states, in which the aim was not to end slavery, but to insist on the rights of co-equal jurisdictions, borrowing from the principles of comity embedded within the laws of nations.

In a letter that Giddings kept, and perhaps never sent, to the man remembered as the exclusive architect of the doctrine of states rights, John C. Calhoun, he struggled to hash out the idea of co-equal rights of the states. “Have not the free states as clear, supreme,” he wrote, before stopping to cross out the word supreme, and then continuing, “and indisputable a right to be entirely free and,” he wrote, before once more stopping to

13 Joshua Giddings, diary entry of Jan. 30, 1839, Giddings Papers, LOC.
14 Seth Gates to Joshua Giddings, Washington, DC, Apr. 4, 1842, Giddings Papers, LOC.
15 William Slade to Joshua Giddings, Washington, DC, Mar. 26, 1842, Giddings Papers, LOC.
cross out the word free, and then continuing, “exempt from the expense and from what they deem the guilt and disgrace of slavery as that the Slave States have to continue and enjoy that situation?”

The pamphlet version of the same idea was much crisper, formalizing the familiar rule that if the southern states were going to enjoy the right of slavery, the northern states enjoyed the right of liberty. “The rights of the States on this subject,” he wrote in the pamphlet, “were mutual and perfectly reciprocal.”

Invoking the same logic that Justice Story had perhaps envisioned when he drafted his opinion in Prigg, Giddings now laid out a rule in the court of opinion that in an America of bordered slavery, all states would be equal. “The people of the Free States, therefore, secured to themselves the absolute right of remaining free from the guilt, the disgrace, and the expense of slavery, by withholding from the Federal Government all constitutional power in regard to that institution; while the Slave States secured to themselves an equal privilege to enjoy the benefits (as they supposed) resulting from a continuance of slavery.”

The language of co-equal states, Giddings continued, extended onto the co-equal rights of slaveholders and non-slaveholders, creating a moral equivalency. “Sir, I admit your legal right, under the laws of Virginia, to hold your fellow man in bondage,” he declared to a slaveholder. This recognition of the laws of Virginia in turn necessitated a co-equal recognition of the laws of Ohio. As Giddings explained, “But while I do this, I demand an equal respect for the rights and privileges of the people of my State. I will not

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degrade my State, by claiming less respect for her rights than I yield to others. Nor will I
came for myself less respect than I award to those around me.”

In articulating in print this rule of co-equal rights between the states, Giddings
provided the beleaguered abolitionists with a more formal set of arguments. By January
of 1843, the abolitionists and lawyers with whom Giddings corresponded in Boston
declared it to be the best argument they had yet seen. “Weld says that (the pamphlet), is
“a little the coolest piece of cut and thrust” he ever saw,” Giddings confined to his son.
“They all say it is beyond any thing they had thought of. David Lee Child says he had
never examined the subject so minutely as it is examined in the article, nor would he have
thought of it. Yet he is one of the first Lawyers in Massachusetts.”

Five thousand
copies, Giddings reported, had already been sold. “Pacifus,” he declared, using the name
of the pamphlet, “has taken a new Stand and has jumped ahead of everything else.”

The logic provided not only the abolitionists of Boston a more formal set of
arguments predicated on the rights of the states, but also the disillusioned members of the
Whig party in Boston who began to organize in the summer of 1845 to stage a protest to
the impending annexation of Texas. That June, Charles Francis Adams—still furious
about the incident with South Carolina—met with two colleagues in Boston to strategize
a plan of action. Seeking the advice and support of fellow party members, they drafted a
circular that rested explicitly on the rights and duties of the state. The letter began, for
example, by inquiring into the “duty of Massachusetts in her present position,” before

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19 Giddings, “Rights and Privileges,” 111.
20 Joshua Giddings to J. Addison Giddings, Washington DC, Jan. 26, 1843, Giddings Papers, LOC.
21 Joshua Giddings to J. Addison Giddings, Washington DC, Feb. 9, 1843, Giddings Papers, LOC.
framing the annexation of Texas as a question of states rights.  “In view of this proceeding of Congress,” the letter read, “we take it for granted that you agree with us that the constitution has been violated, that the reserved rights of the States and the People have been interfered with and subverted,” before concluding with a presumption “…that you feel the blow which has been aimed at the rights of the Free States.”

The replies to the circular sounded in the same vernacular of duties and rights. “What then, is the duty of Massachusetts? Plainly, as I think, to do what she has done before—assert her constitutional rights,” came one reply from Salem, Massachusetts. Others agreed with the diagnosis, emphasizing the state as the crucial unit upon which to launch the movement. “The only antagonist to cope with Congress is the Legislative bodies of the States, who should speak in an unequivocal voice” advised J.W. Miller,” a view seconded by William Allen in Northampton. “I think it will be necessary for the State to act in its organized capacity,” Allen wrote. “[T]he Governor should summon a meeting of the Legislature…, not only that the voice of Massachusetts as a State may reach Congress at the opening of the Session, but also that it may previously reach other free states, whose co-operation is most important.”

Indeed, whereas the old committees of correspondence had once spoken of colonies as interchangeable with towns and merchants, lawyers well-versed in the new constitutional consensus outlined the machinery of the formal state apparatus. One could see the formality in the recommendations offered by Samuel E. Sewall, a lawyer in

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22 JC Phillips, Charles Allen, and Charles Francis Adams, Circular, Boston, June 25, 1845, Adams Family Papers, Reel 532, MHS.
23 Ibid. (emphasis added).
24 J. Mann to J.C. Phillips et. al., Salem, July 28, 1845, Adams Family Papers, Reel 532, MHS.
25 J.W. Miller to J.C. Phillips et. al., Morristown, June 16, 1845, Adams Papers, Reel 532, MHS.
26 William Allen to J.C. Phillips et. al., Northampton, July 2, 1845, Adams Papers, Reel 532, MHS.
Boston, who recommended that “A State Committee might be appointed in the Chief town of each State,” after which this State Committee could appoint County Committees, and these County Committees, could, in turn, appoint town committees. “If the proper machinery is put in motion by the committee,” he advised with reference to the state, “these petitions would present a far greater array of names than any other subject that has been brought before Congress.”

At a time when it was difficult to predict where the nation’s borders would come to rest, the state afforded an anchor, a set of arguments upon which the young politician named Henry Wilson who began to speak to the abolitionists on the banks of the Charles River that August afternoon in 1845 could perhaps compete with a sailor and his branded hand. “Massachusetts must now, in this crisis, as in the Revolutionary struggle, take the lead,” Wilson told the audience that day at the abolitionist picnic, in what would become the first of a much broader corpus of arguments predicated on the duties and rights of the state. “It is true,” he observed that day, “that political interest and material prosperity have governed us.” It is true, he continued, that commerce depended on the plantations. But when it came to Massachusetts, he reminded his listeners, he would “rather see her wealth annihilated, her credit bankrupt, her commerce destroyed…than see her acting on behalf of slavery.”

By invoking the idea of Massachusetts as a place with a particular history that imposed upon its members a specific duty to act, Wilson and his colleagues in Boston began to build upon Giddings’s theoretical pamphlet, tethering the abstract idea of the duties and rights of a state to the soil of the barren land by the Massachusetts Bay. The

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27 Samuel E. Sewall to J.C. Phillips et. al., Boston, July 7, 1845, Adams Papers, Reel 532, MHS.
28 William Allen to J.C. Phillips et al, Northampton, July 2, 1845, Adams Papers, Reel 532, MHS.
29 “Waltham Pic-Nic,” Liberator, Aug. 8, 1845.
following February of 1846, for example, Wilson invoked the name of the state to justify breaking with the Whig establishment.\footnote{Elias Nason and Thomas Russell, \textit{The Life and Public Services of Henry Wilson} (Boston: B.B. Russell, 1876), 81.} “Let Massachusetts but do her duty,” he declared, “and other States will rally round her, and she will lead them on to the rescue of the constitution and the government from the slave-power.”\footnote{Ibid., 82.} Drawing on this storied past, Wilson emphasized the exceptional role of Massachusetts. “I desire that the historic pen,” he declared, “shall record the glorious fact, that there was one State, one free Commonwealth, that was faithful…to the teachings of the founders of the Republic.”\footnote{Ibid., 81.}

This argument predicated on the exceptional past and gloried future of Massachusetts appeared in the speeches and pamphlets that began to circulate in Boston in the closing years of the 1840s, as Wilson and small group of reformers in Boston began to sever the ties of political party. When, for example, his fellow Whigs who assembled in Philadelphia nominated none other than the Louisiana slaveholder Zachary Taylor to the presidency in 1848, Wilson and his fellow delegate from Massachusetts said no in the name of their state. “Massachusetts will spurn the bribe,” seethed his partner when the other politicians offered the state the chance to choose the vice-president.\footnote{Reunion of the Free Soilers (Boston: Albert J. Wright, 1877), 57.} “So help me God,” he roared, “I will do all I can to defeat the election of that candidate.”\footnote{Ibid., 63-64 (quoting resolutions adopted after Wilson’s speech).} After the national convention, the senator-to-be had returned home, to the old town hall of Worcester, where members once more invoked the state, proclaiming that, “Massachusetts wears no chains and spurns all bribes, that Massachusetts goes now and will ever go for Free Soil and Free Men…for a Free Land and a Free World.”\footnote{Ibid.}
As he continued to legitimize the break with the party establishment, Wilson returned not simply to the by-then familiar concept of the sovereign duty of a state to protect its peoples, but of the duty of the people to protect the state’s storied past. When, for example, Senator Daniel Webster cast his vote in favor of the legislative compromise that opened the newly conquered lands of Mexico to slavery, Wilson seized it as an opportunity to separate the leaders of the party from the electorate of Massachusetts. Massachusetts “stands firm, erect, unmoved,” Wilson declared. “She refuses to forsake her cherished principles and bow her head in the dust at the feet of the Slave Power,” he went on.  

For fifteen years, he continued, she had “expressed in language calm, firm and clear, her hostility to the existence and extension of human slavery in America.” And yet Webster had failed in his basic obligations of representation. He “shrank from duty.” He had voted “aye,” and in doing so, he had misrepresented the “sentiments of Massachusetts” and her cherished principles.  

By 1850, this now deeply embedded language of the state and its citizen exploded into the print culture. In the abolitionist festivals where men once spoke of America and its citizens, organizers now raised a toast to the state. “To the Commonwealth of Massachusetts,” began the chairman of an abolition festival that January of 1851. “May she again vindicate for herself the proud character she proclaimed as hers in 1642.” The following year, when a group formed a new Free Soil Party, they again invoked the name of the state. Whatever the name of the party, “Massachusetts,” they assured voters who

37 Ibid.
38 Ibid.
might have wondered about the dizzying array of parties, “has been kept in her old and proper attitude in opposition to the slave power.”\(^{40}\)

In Worcester,\(^{41}\) the language of state citizenship sounded in a sermon that could be heard through an open door of a church on a cloudless June afternoon of 1854. \(^{42}\) “May God help us so to redeem this oppressed and bleeding State,” the reverend declared, heads lowered, palms closed. \(^{43}\) “Bring this people back to that simple love of Liberty, without which it must die amidst its luxuries, like the sad nations of the elder world,” \(^{44}\) strong words, solemn hall. “If Massachusetts is merely a conquered province, then I wish to know it. Lower, Massachusetts, lower, kneel still lower.\(^{45}\) As the laws of slavery seemed to reach over the borders with the new Fugitive Slave Act of 1850,\(^{46}\) pundits warned that the long predicted collapse of the Commonwealth had finally come to pass.

“Massachusetts, once the proud, independent, free and brave old Commonwealth, respected abroad, revered at home, the pride of the nation, the beloved of her children, the foremost in all liberal and honorable enterprise, the pioneer in the sacred cause of freedom, and the earliest champion for personal liberty, how art thou fallen! What is thy reputation now?”\(^ {47}\) The Commonwealth, the editors of the Chronicle concluded, was a “disgrace, both at home and abroad,” and the “laughing-stock of the nation.”\(^ {48}\) “The whole military force of the State is at the service of...a slaveholder from Virginia,”

\(^{40}\) “Resolves,” Massachusetts Spy, July 7, 1852.

\(^{41}\) See, e.g., Henry Wilson, “Speech of Hon. Henry Wilson, at the People’s Convention, Worcester, July 20,” Norfolk Democrat, July 24, 1854 (referring to Worcester as the “heart of the old Commonwealth of Massachusetts”).


\(^{43}\) Higginson, Massachusetts in Mourning, 5.

\(^{44}\) Ibid.

\(^{45}\) Ibid.

\(^{46}\) Fugitive Slave Act of 1850, 9 U.S. Statutes at Large 462 (1850).

\(^{47}\) “An Immortality of Infamy,” Litchfield Republican, June 16, 1853.

\(^{48}\) Ibid.
Henry Thoreau wrote, “but not a soldier is offered to save a citizen of Massachusetts from being kidnapped.”\(^49\)

While this rhetoric of the state continued apace, Wilson and his colleagues began to make use of the institutional structures of the legislature, in an attempt to be heard on the national stage. As Wilson had explained hopefully in 1846, “Standing on the broad and elevated platform of equal rights, living out and illustrating her own great principles, (Massachusetts) will speak to her sister States with a thousand tongues.”\(^50\) As part of this effort to “speak to her Sister States with a thousand tongues,” Wilson and his colleagues seized upon the formal lines of correspondence that connected the state legislature to the nation’s council house. In formal instructions and private correspondence, the emerging leaders of the Free Soil party used these conduits to both mobilize support back home for the movement, while at the same time broadcasting their own views and actions to a wider audience and amplifying the power of the lone minority voice in the Senate.

One could see these conduits at work in one of the most famous acts of speaking for a state of all time: Senator Charles Sumner’s “Freedom National” speech, delivered on August of 1852 as a protest to the 1850 Fugitive Slave Act. When read against the conventional geography of North and South, nation versus states, Senator Sumner’s speech could well be interpreted as a straightforward example of a Northern politician who set out to use the powers of Congress to bring down the atrocity of slavery in the states of the South.\(^51\) But when read against the intricate terrain of states upon which Sumner set to work, the speech appears in greater complexity: not simply as a product of


\(^{50}\) Ibid., 126. (emphasis added).

party or section or nation, but one that emerged at a time when Congress appeared as a forum in which representatives of the states assembled together in one room.

The first indication that Senator Sumner was not speaking in an isolated sphere of the national legislature is found in the deluge of letters postmarked from Massachusetts that appeared in the senator’s mail that spring and summer. As the first senator elected on a platform explicitly dedicated to the cause of Free Soil, slavery’s opponents in Massachusetts had high hopes for their new representative. In letter after letter, leading abolitionists beseeched their national senator to speak out against slavery.\textsuperscript{52}

“You must not let the session close without speaking,” Wilson wrote Sumner in June. Wilson had very much hoped, he explained, that the senator would have spoken up in the Senate before the state Free Soil Convention, as it would have helped very much with mobilizing efforts. Now, Wilson warned, if the senator did not speak, the movement would suffer. “Nine tenths of our people,” he warned, would openly taunt Sumner if he did not speak.\textsuperscript{53} Two weeks later, Francis Bird, one of the state’s leading abolitionists and the governor’s right hand man, echoed the call. “Are not we going to have that speech soon?” he asked. “We are very patient, but we shall begin to grumble, bye & bye.”\textsuperscript{54}

Again, a few days later, James W. Stone, the organizer of the Free Soil Democratic Party who was seeking to change the political composition of the state, urged Sumner to act. “Now,” he admonished, “is the time to speak.” By August, when there was still no word from the senator, Wilson again took pen to paper. “Do not, for

\textsuperscript{52} W.H. Gibbs to Charles Sumner, Chicoppe, Apr. 19, 1852, Charles Sumner Papers (microfilm), Reel 9, Houghton Library, Harvard University (“We expect to see a speech from you kindly showing the slaveholder it is for his interest to give up his slaves.”); J.I. Bowditch to Charles Sumner, Boston: Apr. 23, 1852, Sumner Papers, Reel 9, MHS (observing that “Mr. Garrison introduced into the meeting a resolution in relation to your silence in the Senate, and condemning it as contrary to your profession.”).

\textsuperscript{53} Henry Wilson to Charles Sumner, Natick, June 19, 1852, Sumner Papers, Reel 9, Houghton Library.

\textsuperscript{54} Francis Bird to Charles Sumner, Boston, July 3, 1852, Sumner Papers, Reel 9, Houghton Library.
Heaven’s sake fail to speak, cost what it may of effort or trouble.” And once again, he cited the people of Massachusetts: “I tell you frankly that our people are in a state of disappointment and almost of despair. For months they have looked to have you speak.”

When Sumner finally worked up the courage to speak, he began by explaining that he spoke not on behalf of any party, but on behalf of his constituents, whose sentiments, he observed drily, were shared by only a few in the Senate. Then, in a striking elaboration of themes that had been circulating in Massachusetts for nearly a decade, Sumner laid out a detailed constitutional argument defending the right of a state to be free from unwarranted assumptions of power. “It is a Government of limited powers,” he announced. “It has no power which is not delegated.” Embroidering upon Giddings’s arguments, Sumner insisted that while the “nation within its wide orbit is supreme, the states move with equal supremacy in their own.” And in a speech that would be remembered as the launch of a movement for freedom, Sumner then singled out the Tenth Amendment’s protection of state rights. “Stronger words,” he said, “could not be employed to limit the power under the Constitution and to protect the people from assumptions of the National Government, particularly in derogation of freedom.”

Sumner was by no means the only anti-slavery senator to maintain a close correspondence with constituents and fellow collaborators back home. Senator Salmon Chase of Ohio, who arrived in the Senate two years before Sumner also kept in frequent touch with leading members of the anti-slavery movement in his home state. As one of

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55 Henry Wilson to Charles Sumner, Boston, Aug. 3, 1852, Sumner Papers, Reel 9, Houghton Library.
56 Charles Sumner, Freedom National, Slavery Sectional: Speech of Hon. Charles Sumner of Massachusetts... August 26, 1852 (Boston: Ticknor, Reed, and Fields, 1852), 4, 6.
57 Ibid., 29.
58 Sumner, Freedom National, 50.
59 Ibid., 29.
the first openly anti-slavery senators, Chase explicitly looked to his state government as a means of giving greater power to a lone voice in the national Senate. “The movements here and the movements in Ohio must exert reciprocal influence,” Chase wrote to his friend in Ohio in December of 1849.60 Two days later, Chase even went so far as to formulate and forward a set of draft state resolutions that he hoped the Ohio state legislature would pass. The resolutions, designed to remind listeners that his lone minority voice in the national legislature constituted a majority voice back home, declared that the Ohio state government “cordially approved” of the stance that Ohio’s national representatives had taken and pledged them their “earnest support.”61

Set in this terrain of jurisdictions assembled in Congress, the contests of the 1850s sounded not simply between two sections of North and South, but also in the more precise vernacular of an interstate contest for power. When, for example, the cane came down over Charles Sumner’s head on the floor of the Senate in 1852, observers spoke of it as a contest between South Carolina and Massachusetts. In his speech protesting the act, for example, Wilson returned to the exceptional history of Massachusetts, citing the commitment to liberty that “brought the humble men to the little green at Lexington, and to the bridge at Concord; which carried them up the slope at Bunker Hill; and which drove forth the British from Boston, never again to press the soil of Massachusetts.” And he spoke with utter conviction that in this contest, “Massachusetts is right…and that South Carolina and the Senator from South Carolina are wrong.”62

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One could hear the same emphasis on the contest emerging between the states in the arguments men put forward to justify the laws protecting the black citizens within their borders. In a pamphlet put forward by the legislature of Massachusetts in 1856, for example, lawmakers defended the newly enacted Personal Liberty Laws not by citing the old language of America and the rights of its people, but the language of a sovereign duty of a state to protect its citizens—the same duty that had sounded on the seaports of Massachusetts since the first continental turn inwards in the early 1800s. “The States are the peculiar, and except in a few specified cases…the sole guardians of the personal liberty of the people,” a member of the state legislature wrote that year. “This guardianship is a necessary incident to, as well as a sacred obligation resting upon every sovereign free State,” he continued, before returning to the specter of a government that, having abandoned its duty of protection, ceased to exist. “There can be no sovereignty,” he wrote, “without the power to protect this right.”

And when at last news arrived in Boston in early 1857 that the Supreme Court of the United States was planning to announce its decision on the question as to whether a black man was a citizen under the United States Constitution, people debated what the decision would mean for the rights of Massachusetts as a co-equal member of the Union. As the lawyer for Dred Scott had put it in his brief to the Supreme Court, the lower court judge himself had framed the question as one of a contest for power between the states. “The question is treated in the opinion of Judge Scott as if it were a controversy between Missouri and Illinois.” Others in Boston saw it through the same lens, slowly working

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63 Massachusetts General Court, House of Representatives, “Reports on the Subject of the Personal Liberty Act,” in Debates and Proceedings in the Massachusetts Legislature (Boston: Charles Hale, 1856), 383-84.
through the logic. As one contributor to the *Daily Atlas* put it, if a black man was a citizen of the free state of Illinois for the purposes of being able to access a federal court in the slave state of Missouri, then he would also be recognized as a citizen of the state under the Article IV clause, and the long hoped-for rule of interstate equality between free states and slave states would at last appear on the founding terms of partnership.\(^6^5\)

The writer did not elaborate as to what would happen if the Supreme Court reached a different decision. Perhaps there was no need to say what had already been said for twenty years. No need to say that in a world where Dred Scott was not a citizen of the state, the Commonwealth was no different than a plot of rocky land on the Atlantic coast.\(^6^6\) No need to predict the words that would begin to appear in Boston’s meetinghouses after the Court’s ruling that a black man would never be recognized as a citizen of the United States.\(^6^7\) Speaking in words that they hoped would resonate in the state legislature, members of the black community in Boston who gathered to draft a memorial declared the decision to be not only a violation of their rights as American citizens, but an assault on the very existence of the Commonwealth, whose sole basis for existence was the protection of its citizens.\(^6^8\) “If we are not citizens of Massachusetts,” they declared, “then the Commonwealth is without citizens.”\(^6^9\)

The words they spoke that winter night offered the hope of being heard among men: a powerful language, born out of the exigencies of persuasion in a world whose defining features have long since receded from view under broad labels of North and

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\(^6^6\) Massachusetts General Court, Joint Special Committee, *Report and Resolves Concerning the Treatment of Samuel Hoar by the State of South Carolina*, Senate Report No. 31 (1845), 25.
\(^6^8\) Ibid.
\(^6^9\) Ibid.
South. By linking the question of slavery to the fate of the old metropolis of America on a continent that had seen the rise and fall of empires for centuries, the statesmen who raised their voices against slavery had built a movement that could sweep the nation and perhaps drive the men of the southward to bid farewell to the Union.

A powerful language, to be sure, and yet, one that came at a cost. For in the halls of the nation’s council house in Washington where men gathered once more in the winter of 1860 for what some said would be the last Congress of the United States, the arguments that percolated through the debates in the wake of South Carolina’s secession hinged not on using the powers of the nation to secure the fundamental rights of man, but instead, on preserving and balancing the equal rights of the states. At a time when predictions began to sound as to what permutation of republics would emerge on the map now that the old American coast had ruptured at the seams, the leading voices of the Massachusetts Bay returned to the words that had sounded for half a century. “Jealous of her own rights, she will respect the rights of others,” said Henry Wilson to the crowded hall of the Senate, and there, in his words one could hear a vision for a future that bore little resemblance to that of the old America of interests: a vision for a fractured continent of states, where the struggle for the equal rights of men and women soon setting out on the roads heading northward, would be another long, tragic century in the making.

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CONCLUSION

After the generals had made their peace in the summer of 1865, reports of the killings began to arrive in the nation’s capitol.¹ Armed men, no longer soldiers, had set out on the back-roads of the former Confederacy and left black bodies strewn behind them. “About the first of June, six miles west of Bladen, a freedman was hung. His body is still hanging,” one report read.² And again: “On the night of the eleventh of May, a freedman named Alfred was taken from his bed by his master and others and was hung, and his body still hangs to the limb.”³ And again: “At Bladen Springs, a freedman was chained to a pine tree and burned to death.”⁴ And again: “At Clark county, about the first of June, a freedman was shot through the heart; his body lies unburied.”⁵ And again: “About the last of April, two women were caught near a certain plantation in Clark county and hung; their bodies are still suspended.”⁶

Those in Washington who looked up from the reports and called for a military intervention to stop the killings were met with rebuke. The war was over, their critics said. The days for the army had ended.⁷ There was nothing more that could be done, some said: nothing more for the men and the women on the fields far back deep in the woods where the “white people tell them that they were free during the war, but the war is now over,

² W.A. Poillon to Charles A. Miller, July 29, 1865, in Schurz Report, 74.
³ Ibid.
⁴ Ibid.
⁵ Ibid.
⁶ Ibid.
and they must go to work again as before.”

As the reports of violence continued to arrive, the congressmen determined to realize the hollow promise of freedom born of military necessity began to inscribe a promise into the Constitution: a promise that the men and women now running as fast as they could for whatever safe refuge they could find were both citizens of the nation and citizens of the state.

The long histories that lay behind these two terms that appeared in the final draft of the Fourteenth Amendment have long since receded from view. Today, the Amendment’s creation of a status of American citizenship appears most often as a novel invention of the late nineteenth century: a radical rupture with the past that came before it. The promise of belonging to a state, meanwhile hovers in obscurity: the perceived debris from the colonial era. As the long line of yesterdays that lay behind each of these phrases has receded further from view, so too has the Amendment itself ascended out from the violence that gave rise to it, rising so far from its moment of origins that when, on a spring day in Washington in 1978, members of the United States Supreme Court questioned whether there was any principled basis under its terms for distinguishing white

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9 U.S. Const. amend. XIV, § 2 (“All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”); Cong. Globe, 39th Cong., 1st Sess. 2890 (1866) (remarks of Sen. Jacob Howard, introducing the citizenship clause); see also William Nelson, The Fourteenth Amendment: From Political Principle to Judicial Doctrine (Cambridge, MA: Harvard University Press, 1988), 62 (“The Fourteenth Amendment must be understood as...a plan for securing the fruits both of the war and of the ...antislavery agitation preceding it.”).
people from black people for the purposes of scrutinizing a state law designed to ameliorate the vestiges of slavery, they could not conceive of any such basis.\textsuperscript{13}

This dissertation has attempted to join with other scholars in recovering the long histories that lay behind these twin phrases of belonging to a place called America and belonging to a place called a state: phrases that we have heard for so long they now seem as natural and inevitable as the shape of the nation on the map, but that emerged out of worlds whose intricacies have been lost under categories. It has endeavored to show that the phrase of belonging to a place called America was not wholly novel, but traced its work back to the days long before the Constitution, born of the exigencies of the daily work of carrying the produce of the plantations to the markets of the world, a phrase kept afloat by the ships that sailed out to across the Atlantic in the days of early republic.

At the same time, this dissertation has endeavored to show that the phrase of belonging to a state, preserved now in collective memory as the remnants of a colonial era that existed only in the slaveholding South, was neither primordial to the soil of the American coast, nor was its use confined to the plantations. Rather, the evidentiary analysis offered by this dissertation suggests that the language of the state that became a leading platform for mobilizing the men of Massachusetts Bay onto the battleground of the Civil War emerged not as a static construct of the colonial era, but as a series of contested responses to the questions raised by the collapse of the old Atlantic world of the seas and the waning political and commercial power of the metropolis of Boston. Set in a kaleidoscopic terrain of jurisdictions that lay beneath the labels of North and South, people began to reach for the state in an effort to be heard.

\textsuperscript{13} See Regents of the University of California v. Bakke 438 U.S. 296 (1978) (“There is no principled basis for deciding which groups would merit “heightened judicial solicitude” and which would not.”).
By beginning the work of recovering these lost histories, this dissertation has endeavored to provide a way out of the categories of thought that first appeared in the halls of political science during the height of legal formalism in the early 1900s. By using tools of inquiry borrowed from multiple disciplines, it has sought to build on an emerging scholarship that seeks to create new units of analysis: units of space and time that can allow us to explore the intricacies of a world where the ships of the Massachusetts Bay sailed each week for the southward, at a time when it was possible to believe that the united Sentiments of America and the united States of America were one and the same.
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