
To Coddle and Caress These Great Capitalists: Eastern Money, Frontier Populism, and the Politics of Market-Making in the American West

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IN 1875, CHARLES FRANCIS ADAMS JR., the scion of the illustrious Boston family, used the pages of the *North American Review* to reflect on radical Granger legislation that was gaining support throughout the western United States and authorizing state regulation of railroad freight rates. The situation in the West, he explained to his distinguished readers, was not unlike the one “brought about in India in the last century.” Whereas the shares of the East India Company had been held entirely in England, “the empire from which the company drew its income was in Hindostan.” The executives of the company, eager to satisfy their “distant” owners’ “incessant demand for dividends,” had shown too little regard for “the misery their exactions caused.” Similar tensions, Adams argued, existed in the case of the American railroad system. The roads’ owners “did not live in the West” and knew little about conditions there. Wishing to avoid “trouble in the next stockholders’ meeting” back east, managers extracted revenue from those properties in utter indifference to the western communities the roads actually served. There was, however, one key difference between the two cases. Being “of the same race” as the owners, Adams observed, American farmers were far more prone to “measures of retaliation” than their “Asiatic” counterparts. They did not “long submit . . . to the very appreciable ignoring of their rights.” Hence the immense public support for the Granger Laws—those “most wanton assaults upon property”—enjoyed in places such as Iowa, Wisconsin, and Illinois.¹

Only a few years earlier, the relationship between the two regions—the capital-saturated East and the capital-poor West—had seemed to be headed in a much

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¹ Charles F. Adams Jr., “The Granger Movement,” *North American Review* 120, no. 247 (1875): 394–424, here 398, 396, 399, 395.

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more propitious direction. Unlike other colonial relations, at least in Adams's analysis, this one began at the behest of the colonized. The "constant longing" of those men and women on the prairie, he wrote, was "railroads, more railroads." Their imaginations "thoroughly fired" with commercial possibilities, they "eagerly invited foreigners [i.e., men from outside the region] to build railroads for them." "Loaded with maps and plans and prospectuses, and stock and bonds and land grants," they made their way "into every money market of the world." They spared no inducements, incentives, or concessions to "tempt foreign capital." Only after a seemingly "inexhaustible stream" of investments poured in, financing railroads in great abundance (and great excess), did westerners realize that they had made an "improvident bargain." They awoke to the massive costs of this system of transportation, which they did not own, but for whose construction their freight charges were ultimately bound to pay. The "impetuous" farmers thus turned against their eastern benefactors, with their "anger blazed up," and became "deaf to reason, to law, or to considerations of remote [i.e., long-term] self-interest."² What might have seemed to some like a synergic relationship that benefited both sides had clearly soured, triggering a menacing wave of animosity and political unrest.

Adams's reflections on the connections between the financial resources of the East and railroad development in the vast expanses of the West foregrounded the key axis of American capitalism in the closing decades of the nineteenth century. As eastern money migrated across the continent to finance railroads (as well as mines, farms, stockyards, industry, construction, and a host of other ventures), it energized the absorption of the Great West into the economic orbit of the United States. This ready availability of the continent's bounty drove the emergence of enormous urban centers and the rise of large-scale manufacturing. It transformed the United States from its former position in the world economy as primarily an exporter of agricultural commodities—cotton, above all—into an industrial nation in its own right, increasingly organized around its own domestic market.³ Far from seamless or smooth, this momentous transition was accompanied by numerous political controversies and challenges that Adams's patrician perspective captured only partially and tendentially.

The integration of vast territories of what became the American West into the political economy of the United States was part and parcel of a much larger transformation that left virtually no corner of the globe untouched. Mobilizing to bring continental interiors under direct territorial management, capitalist development and its entwined political projects greatly intensified their domination of these areas.⁴ Global

² Ibid., 397, 400, 397, 398, 405.

³ On the transition from the Atlantic economy of earlier decades to continental industrialization, including a critique of the overdetermined nature of most accounts of this process, see James Livingston, *Pragmatism and the Political Economy of Cultural Revolution, 1850–1940* (Chapel Hill, N.C., 1994), 31–49; Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850–1896* (Cambridge, 2001); Richard Franklin Bensel, *The Political Economy of American Industrialization, 1877–1900* (Cambridge, 2000). For the broad economic contours of the process in the United States, see Edward B. Barbier, *Scarcity and Frontiers: How Economies Have Developed through Natural Resource Exploitation* (Cambridge, 2011), 394–402; Ronald Findlay and Kevin H. O'Rourke, *Power and Plenty: Trade, War, and the World Economy in the Second Millennium* (Princeton, N.J., 2007), 411–412; Gavin Wright, "The Origins of American Industrial Success, 1879–1940," *American Economic Review* 80, no. 4 (1990): 651–668, here 651.

⁴ This process has been much commented on. See Charles S. Maier, *Once within Borders: Territories of Power, Wealth, and Belonging since 1500* (Cambridge, Mass., 2016); Jürgen Osterhammel, *The Trans-*

histories of this era routinely invoke the western United States in the same breath as other peripheries that were pulled into the world economy. These studies evocatively mention the transcontinental Union Pacific Railroad alongside the trans-Andean Peruvian Central Railway, the prairies and mountains of North America alongside the Indian subcontinent, the Nile Valley, and the hinterlands of Latin America.⁵ But since the integration of these territories into the world market took place primarily within the formal borders of the American nation-state, not in colonial territories overseas, the embattled political history of the process has not been sufficiently scrutinized.⁶ The assumption that the American Civil War permanently eliminated regional fractures, producing an internally coherent and exceptionally stable political regime, lent resilience and credibility to the idea that the eventuality of a consolidated national market was never really in question. Rather than a contingent and

formation of the World: A Global History of the Nineteenth Century, trans. Patrick Camiller (Princeton, N.J., 2014); C. A. Bayly, *The Birth of the Modern World, 1780–1914: Global Connections and Comparisons* (Malden, Mass., 2004); Michael Geyer and Charles Bright, “World History in a Global Age,” *American Historical Review* 100, no. 4 (October 1995): 1034–1060; Sven Beckert, *Empire of Cotton: A Global History* (New York, 2014); David Harvey, *The New Imperialism* (Oxford, 2003); E. J. Hobsbawm, *The Age of Capital, 1848–1875* (New York, 1996); Hobsbawm, *The Age of Empire, 1875–1914* (New York, 1989).

⁵ For example, see Osterhammel, *The Transformation of the World*, chap. 7; Barbier, *Scarcity and Frontiers*, 368–428; Findlay and O’Rourke, *Power and Plenty*, 381–395; Jürgen Osterhammel, *Globalization: A Short History*, trans. Dona Geyer (Princeton, N.J., 2005), 68, 87–88; Hobsbawm, *The Age of Capital*, 55–56; Bayly, *The Birth of the Modern World*, 439–444; Charles S. Maier, “Consigning the Twentieth Century to History: Alternative Narratives for the Modern Era,” *American Historical Review* 105, no. 3 (June 2000): 807–831, here 814, 820.

⁶ At least not recently. The groundbreaking New Western History brought much-needed attention to Indian dispossession and environmental degradation but tended to neglect more prosaic questions about political economy. See most notably Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York, 1987); William Cronon, *Nature’s Metropolis: Chicago and the Great West* (New York, 1991); Richard White, “It’s Your Misfortune and None of My Own”: *A History of the American West* (Norman, Okla., 1991); Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York, 1985). These questions were the focus of earlier scholarship about the West, which, for all its major flaws, blind spots, and under-theorization, produced meticulous studies of what might be called the banal architecture of American empire, including issues such as territorial politics, military action, land policy, and foreign investment. See the work of Paul W. Gates, Allan G. Bogue, Howard R. Lamar, Earl S. Pomeroy, John D. Hicks, Carter Goodrich, William H. Goetzmann, Francis Paul Prucha, James C. Malin, E. Louis Peffer, Gene M. Gressley, Clark C. Spence, and Rodman W. Paul. Ironically, political economy has come back to western history via recent scholarship on Native Americans, which examines Indian politics as strategic historical actors that wielded immense coercive and commercial power in sophisticated ways. See Pekka Hämäläinen, *The Comanche Empire* (New Haven, Conn., 2008); Brian DeLay, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (New Haven, Conn., 2008). Both White and Limerick have lately come full circle to these age-old topics. See Richard White, *Railroaded: The Transcontinentals and the Making of Modern America* (New York, 2011); Patricia Nelson Limerick, *A Ditch in Time: The City, the West, and Water* (Golden, Colo., 2012).

The effort to problematize the nation-state from within ought to be an integral part of the postnational turn in historical scholarship. This turn has thus far mostly attracted attention to *transnational* interactions but left *subnational* questions relatively underexplored. See the by now canonical Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, Mass., 1998); Thomas Bender, ed., *Rethinking American History in a Global Age* (Berkeley, Calif., 2002). For a theoretical treatment of “scale” that draws on the sociological literature on globalization, see Neil Brenner, *New State Spaces: Urban Governance and the Rescaling of Statehood* (Oxford, 2006); Brenner, “Beyond State-Centrism? Space, Territoriality, and Geographical Scale in Globalization Studies,” *Theory and Society* 28, no. 1 (1999): 39–78. See also Henri Lefebvre, *The Production of Space* (Malden, Mass., 2011). Scholars writing about development in China have recently moved to fruitfully “disaggregate the nation.” For an overview, see Meg E. Rithmire, “China’s ‘New Regionalism’: Subnational Analysis in Chinese Political Economy,” *World Politics* 66, no. 1 (2014): 165–194.

contested project, its formation seemed like a foregone conclusion, and was thus not in need of historical explanation.⁷

In this vein, historians of business have taken for granted the continental scale of the modern U.S. economy. The literature about the inexorable rise of “managerial capitalism” has drawn its persuasive power and remarkably long shelf life from this assumption. Bracketing out questions about geography and power, this immensely influential scholarship has downplayed the significance of the financial system and instead cast American industrialization as an administrative transformation, bereft of meaningful politics or social contestation.⁸ The same methodological nationalism has characterized much of the study of American state formation. The notion that market activity would necessarily take place on a national scale has allowed many of its constitutive political underpinnings to fade into the backdrop. Instead of investigating the development of political institutions as fully constitutive of economic change and therefore closely intertwined with capitalist imperatives from the outset, much of the literature cast the growth of American government as a belated “response” to a fully realized process of industrialization.⁹ This approach has failed to capture many of the priorities that defined state formation as a historical process. It has rendered immaterial, or at the very least incomprehensible, large swaths of policy questions that animated American politics in this period.

The incorporation of the West into the economic orbit of the United States was nevertheless a contested and contradictory process, analogous in crucial ways to turbulent transitions in other peripheral regions in the world economy. It hinged on an uneasy relationship between financial networks that penetrated the deep interiors of North America and emergent state institutions that facilitated and regulated that

⁷ Charles Bright and Michael Geyer have cautioned against neglect of “the myriad sectional tensions and regional rebellions that undermined rickety states and strained the ligaments of constitutional structures” throughout the Western Hemisphere. Bright and Geyer, “Where in the World Is America? The History of the United States in the Global Age,” in Bender, *Rethinking American History in a Global Age*, 63–99, here 75. On the overstated notion of American political “stability” as a legacy of postwar notions of American exceptionalism, see Gregory P. Downs, “The Mexicanization of American Politics: The United States’ Transnational Path from Civil War to Stabilization,” *American Historical Review* 117, no. 2 (April 2012): 387–409. See also Rachel St. John, “The Unpredictable America of William Gwin: Expansion, Secession, and the Unstable Borders of Nineteenth-Century North America,” *Journal of the Civil War Era* 6, no. 1 (2016): 56–84. For a framework that emphasizes the persistent tensions between a relatively weak “center” of American empire and “centrifugal” forces—states, regions, and constituencies—threatening to pull out of its orbit, see Steven Hahn, “Slave Emancipation, Indian Peoples, and the Projects of a New American Nation-State,” *Journal of the Civil War Era* 3, no. 3 (2013): 307–330, here 311.

⁸ Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, Mass., 1977); Chandler, *Scale and Scope: The Dynamics of Industrial Capitalism* (Cambridge, Mass., 1994); Louis Galambos, “The Emerging Organizational Synthesis in Modern American History,” *Business History Review* 44, no. 3 (1970): 279–290.

⁹ The voluminous literature on “reform” has generally accepted the historical subjects’ view of the U.S. government in the nineteenth century as either absent, corrupt, or inadequate in some objective sense. See, most notably, Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York, 1955); Samuel P. Hays, *The Response to Industrialism, 1885–1914* (Chicago, 1957); Robert H. Wiebe, *The Search for Order, 1877–1920* (New York, 1967). For a useful critique of the more recent literature on American political development, particularly its difficulty in examining American institutions on their own terms, see William J. Novak, “The Myth of the ‘Weak’ American State,” *American Historical Review* 113, no. 3 (June 2008): 752–772; Novak, “Beyond Max Weber: The Need for a Democratic (Not Aristocratic) Theory of the Modern State,” *The Tocqueville Review/La Revue Tocqueville* 36, no. 1 (2015): 43–91. Recent correctives include Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton, N.J., 2015); Brian Balogh, *A Government out of Sight: The Mystery of National Authority in Nineteenth-Century America* (Cambridge, 2009).

movement. Among those who made deliberate efforts to redeploy capital toward new ventures in the trans-Mississippi West were members of the financial elite of Boston, the second-largest financial center in the United States. As the growth of the Boston-owned stockyards of Kansas City illustrates, these eastern financiers—like financiers elsewhere around the world at the time—had the capacity to reinvent major industries, establish new urban centers, set large populations in motion, and revolutionize the ecologies of entire regions.¹⁰ Such transformation accelerated the process of state formation in the West, turning federally controlled territories—Colorado, Montana, Wyoming, Idaho, the Dakotas, and Washington—into semi-sovereign states. As delegates in these territories gathered for constitutional conventions, they contended with key policy questions such as water rights, corporate regulation, and industrial relations.¹¹ Their conversations revolved thematically around issues of distribution, legibility, and space, altogether illuminating the problem of political jurisdiction in an interconnected economy.

The constitutional deliberations surrounding these issues generated a wide-ranging debate, not over whether market integration should proceed, but rather “on what terms, by whose rules, and with what payoffs,” to use Charles Bright and Michael Geyer’s broadly conceived appraisal of the politics of nineteenth-century globalization.¹² In this sense, these debates paralleled similarly charged contests in places such as Mexico, Argentina, India, Russia, and the Ottoman Empire over the formation of property rights regimes in an era of globally mobile capital.¹³ What set Ameri-

¹⁰ Small and favorably positioned groups of financiers from the Northeast in this period developed the “scarce talent . . . to mobilize capital.” See Lance E. Davis, “Capital Immobilities and Finance Capitalism: A Study of Economic Evolution in the United States, 1820–1920,” *Explorations in Entrepreneurial History* 1, no. 1 (1963): 88–105, here 88. See also P. J. Cain and A. G. Hopkins, *British Imperialism: Innovation and Expansion, 1688–1914* (London, 1993). The focus on these men dovetails well with Fernand Braudel’s much broader emphasis on the topmost layer in the hierarchy of global trade—actors situated at “the commanding heights”—as key agents in such large-scale economic transformations. Braudel, *Civilization and Capitalism, 15th–18th Century*, vol. 2: *The Wheels of Commerce*, trans. Siân Reynolds (New York, 1982), 381. See also Giovanni Arrighi, *The Long Twentieth Century: Money, Power, and the Origins of Our Times*, 2nd ed. (New York, 2010), 10. For the post-Chandlerian revival of finance as a topic of historical inquiry, see White, *Railroaded*; Julia C. Ott, *When Wall Street Met Main Street: The Quest for an Investors’ Democracy* (Cambridge, Mass., 2011); Louis Hyman, *Debtor Nation: The History of America in Red Ink* (Princeton, N.J., 2011); Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, Mass., 2012); Susie J. Pak, *Gentlemen Bankers: The World of J. P. Morgan* (Cambridge, Mass., 2013).

¹¹ The classic study on this topic remains John D. Hicks, *The Constitutions of the Northwest States* (Lincoln, Nebr., 1923). This piece is deeply indebted to Hicks, as well as to Amy Bridges’s more recent and comprehensive effort to grapple with this overshadowed dimension of American state formation. See Bridges, “Managing the Periphery in the Gilded Age: Writing Constitutions for the Western States,” *Studies in American Political Development* 22, no. 1 (2008): 32–58. State-level constitutionalism has gained increasing attention from legal scholars under the somewhat ahistorical rubric of “federalism.” See, for example, Christian G. Fritz, “The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West,” *Rutgers Law Journal* 25, no. 4 (1994): 945–998; Marsha L. Baum and Christian G. Fritz, “American Constitution-Making: The Neglected State Constitutional Sources,” *Hastings Constitutional Law Quarterly* 27, no. 2 (2000): 199–242; G. Alan Tarr, *Understanding State Constitutions* (Princeton, N.J., 1998); John J. Dinan, *The American State Constitutional Tradition* (Lawrence, Kans., 2006); Emily Zackin, *Looking for Rights in All the Wrong Places: Why State Constitutions Contain America’s Positive Rights* (Princeton, N.J., 2013). See also Gordon Morris Bakken, *Rocky Mountain Constitution Making, 1850–1912* (New York, 1987); David Alan Johnson, *Founding the Far West: California, Oregon, and Nevada, 1840–1890* (Berkeley, Calif., 1992).

¹² Bright and Geyer, “Where in the World Is America?,” 71.

¹³ The creation of political institutions in this age of global financial flows is a prominent theme in a range of scholarships on other peripheries. See, for example, Şevket Pamuk, *The Ottoman Empire and*

can debates apart from other cases was the direct participation of non-property-owning citizens in the constitution-writing process. Notwithstanding Adams's racial diagnosis of the westerners' unruly proclivities, their oppositional tendencies were rooted not in some biological or cultural predisposition, but in their political enfranchisement and leverage within government.¹⁴ Thus politically empowered, these delegates emphatically affirmed the primacy of state authorities over corporate interests. They analyzed property rights not as immutable or somehow natural, but as subject to negotiation. They considered laborers' efforts to mobilize in collective ways as desirable, and therefore deserving of government support. Their conversations envisioned a wide spectrum of possibilities for a capacious democratic state.

The vision of the state that emerges from these constitutional deliberations sheds light on the significance and meaning of late-nineteenth-century populism, a phenomenon that has long befuddled historians of the United States.¹⁵ It reframes populism as a key feature of American state formation in the context of fundamental conflict over the terms of market integration. It recasts American populists, not as reactive or reformist, but as proactive participants in the creation of a new political economy. It underscores in particular their tendency to open up for democratic political deliberation that which liberal political economists at the time insisted should be bracketed out as technical or apolitical. Despite their general sense of grievance against eastern capitalists, western constitution writers were clearly not "impetuous" or somehow

European Capitalism, 1820–1913: Trade, Investment, and Production (Cambridge, 1987); Jeremy Adelman, *Republic of Capital: Buenos Aires and the Legal Transformation of the Atlantic World* (Stanford, Calif., 1999); John Mason Hart, *Empire and Revolution: The Americans in Mexico since the Civil War* (Berkeley, Calif., 2002); Cyrus Veaser, "Concessions as a Modernizing Strategy in the Dominican Republic," *Business History Review* 83, no. 4 (2009): 731–758; Ritu Birla, *Stages of Capital: Law, Culture, and Market Governance in Late Colonial India* (Durham, N.C., 2009); Olivier Accominotti, Marc Flandreau, Riad Rezzik, and Frédéric Zumber, "Black Man's Burden, White Man's Welfare: Control, Devolution and Development in the British Empire, 1880–1914," *European Review of Economic History* 14, no. 1 (2010): 47–70; Ekaterina Pravilova, *A Public Empire: Property and the Quest for the Common Good in Imperial Russia* (Princeton, N.J., 2014); Alison Frank, "The Petroleum War of 1910: Standard Oil, Austria, and the Limits of the Multinational Corporation," *American Historical Review* 114, no. 1 (February 2009): 16–41. Historians of other peripheries have sometimes cast the United States too unproblematically as the obvious "other," thereby unwittingly contributing to notions of U.S. exceptionalism. See, for example, Adelman, *Republic of Capital*, 205.

¹⁴ Adams's association of political empowerment with "race" is an ironic mirror image of Adolph Reed Jr.'s recent emphasis on race as a political category, defined as "an especially durable kind of ascriptive civic status in the context of American capitalism and the political and ideological structures through which it is reproduced as a social order." Reed, "Unraveling the Relation of Race and Class in American Politics," *Political Power and Social Theory* 15 (2002): 265–274, here 266. The capacity of enfranchised citizens to set the terms of market exchange was precisely at stake in those conventions.

It deserves special emphasis that, regardless of Adams's evocative parallel between the West and India, delegates at constitutional conventions represented a settler population, which was integral to American empire and, as this article makes clear, certainly not indigenous to the region. More broadly on settler colonialism, see Aziz Rana, *The Two Faces of American Freedom* (Cambridge, Mass., 2010); James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783–1939* (Oxford, 2009).

¹⁵ On American populism, see most notably John Donald Hicks, *The Populist Revolt: A History of the Farmers' Alliance and the People's Party* (Minneapolis, 1931); Hofstadter, *The Age of Reform*; Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* (New York, 1976); Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850–1890* (New York, 1983); Charles Postel, *The Populist Vision* (Oxford, 2007). Postel has persuasively argued that modernity itself was not in question for American populists. My goal is to further pursue this line of interpretation and elaborate what precisely set the populist agenda apart from the reigning liberal orthodoxy of this and later periods.

reckless. Rather, they creatively and thoughtfully sought to translate economic priorities and ideological commitments into policy. The delegates at these conventions did not look back wistfully to a world without corporate power; nor were they shy about their desire to spur development, which required the interregional financial investment that corporations facilitated. Rather, they sought to structure the relationship with distant investors in ways that would harness eastern money in the service of their own particular vision of a balanced regional economy.¹⁶

The West's position as a periphery of the world economy, which made it dependent on eastern financial resources, proved to be an immensely powerful counter-factor to these populist aspirations. As they moved to codify their own vision in the legal foundations of the new states, constitution writers faced categorical demands from the representatives of eastern investors, demands they found difficult to disregard. Any deviation from prescribed policies, formulated according to the conventional wisdom back east, threatened to jeopardize their community's access to capital markets, with far-reaching economic consequences. Loath to cripple their prospects for development, the delegates tended to err on the side of caution. The final drafts, therefore, included meaningful achievements for the populist agenda but were nevertheless more deferential to the designs of eastern financiers than many participants had initially hoped. Overall, the contentious dialogue pitting financial power brokers from older cities on the Atlantic coast and their supporters against the populist challengers in the vast regions across the Mississippi defined the political economy of the West, and of North America more broadly, in those formative decades.

ADAMS'S ARTICLE ON THE GRANGER LAWS characterized the migration of financial resources to the West as a western endeavor. Appreciating the political power of narrative structure, Adams attributed business initiative to the plucky westerners who came east in search of capital for their less than judiciously conceived ventures. Their tendency to succumb to "irrational exuberance," to use modern-day parlance, accounted in his mind for the period's economic and political volatility. This trope conveniently concealed eastern financiers' own relentless efforts to find profitable channels for financial investment out west. In the aftermath of the Civil War, with older cotton-related manufacturing and commercial ventures no longer able to absorb additional savings, these efforts greatly accelerated. Interregional flows of capital were therefore driven first and foremost not by the entrepreneurial initiative of ambitious upstarts from the West, but by the imperatives of capital accumulation in the financial centers of the East. They were directed not by westerners knocking, hat in hand, on the doors of financial firms on Wall Street in New York, State Street in Boston, and Walnut Street in Philadelphia, but by affluent easterners' own unceasing journeying in the American West.¹⁷ These powerful men did not sit back and expect a

¹⁶ In essence, they resisted the thrust of the "great specialization" that gripped all world peripheries in this period. See Findlay and O'Rourke, *Power and Plenty*, 411–414.

¹⁷ The overshadowed ability of accumulated wealth, particularly inherited wealth, to perpetuate itself and even grow is a central theme in Thomas Piketty's much-discussed *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Cambridge, Mass., 2014). See also Elizabeth Blackmar, "Inheriting Property and Debt: From Family Security to Corporate Accumulation," in Michael Zakim and Gary J. Kornblith, eds., *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America* (Chicago,

modern corporate order to unfold; nor did they expect to realize their designs from the comfort of the business districts back home. They crossed the continent numerous times to observe development, gather information, and build networks of business connections. Only gradually, as a result of their incessant work, did western properties that had long been considered highly speculative and risky become more common avenues for investment and mainstays in the portfolios of moneyed eastern families.

Adams and his colleagues in Boston were a case in point. By the time he authored his article on the Grangers, Adams himself was no stranger to the landscapes of the West, having already made frequent trips to the region to study development and forge business connections. Better known at the time as a government bureaucrat, serving on the Massachusetts Railroad Commission, he nonetheless crossed the continent twice and sometimes three times a year, traversing staggering distances and turning up every spring and fall in places far and wide: Michigan, Illinois, Missouri, Kansas, and beyond, to Colorado, Oregon, Idaho, Washington, Texas, and California.¹⁸ These journeys allowed him to regularly check the condition of a wide range of properties—mining in Houghton and Marquette, real estate in Spokane and Portland, railroads in Omaha and Cheyenne, stockyards in St. Joseph and Denver—and to develop a detailed sense of economic change in all four corners of the continent. At times, Adams cruised in a private railroad car, enjoying breathtaking vistas, often in the company of other powerful financiers from Boston such as Nathaniel Thayer and Henry Lee Higginson. At other times, the Bostonian blueblood struggled through “mud knee-deep” across “unspeakably dreary and disagreeable” landscapes. In his personal notes, he ceaselessly complained about the “the tedium of [yet another] journey” to the West, which “I fairly detest.”¹⁹ But ultimately, no written source of information could supplant the power of firsthand knowledge, compelling him and his colleagues to bear the taxing hardships of the road.

In addition to scouring the continent in search of investment outlets and reliable information, Adams used these occasions to establish important bonds with eastern transplants who had made new homes for themselves in the emerging West and helped direct the flow of capital to the region. In Kansas City, which became a major focal point for investment from New England, Adams found a reliable right-hand man in Charles F. Morse, who had grown up modestly outside of Boston and attended Harvard’s Lawrence Scientific School. An ambitious individual, versed in eastern manners and armed with the trust of Boston’s money men, Morse enjoyed good prospects out

2011), 93–117. In the case of Bostonians such as Adams, these earlier investments were primarily in textile manufacturing, which was an integral part of the cotton economy of the pre-Civil War United States. I explore the transition away from cotton textiles in some detail in my *Brahmin Capitalism: Frontiers of Wealth and Populism in America’s First Gilded Age* (Cambridge, Mass., 2017).

¹⁸ Adams traveled regularly throughout the West between 1870 and 1890. See Charles Francis Adams II, “Diary,” vols. 4–20, Charles Francis Adams (1835–1915) Papers, Massachusetts Historical Society [hereafter MHS]. He traveled 18,000 miles over 72 days on one occasion, 20,000 over 100 days on another; see entries for July 25, 1885, and September 15, 1889. On Adams’s career in business, see Edward C. Kirkland, *Charles Francis Adams Jr., 1835–1915: The Patrician at Bay* (Cambridge, Mass., 1965); Paul C. Nagel, “A West That Failed: The Dream of Charles Francis Adams II,” *Western Historical Quarterly* 18, no. 4 (1987): 397–407.

¹⁹ Charles Francis Adams II, “Diary,” vol. 11, entry for March 25, 1876, and vol. 20, entry for March 27, 1888, Adams Papers, MHS.

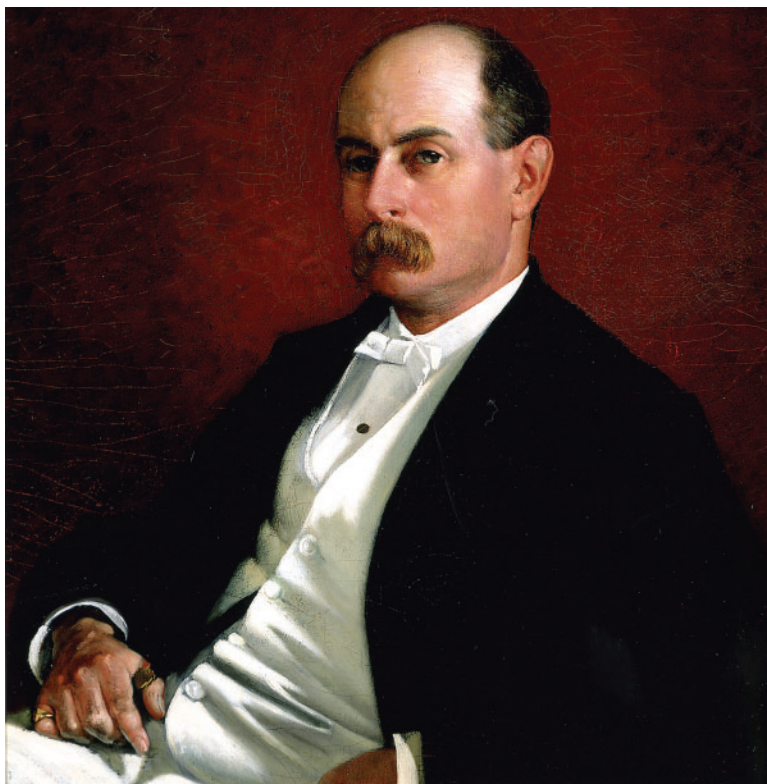


FIGURE 1: Portrait of Charles Francis Adams Jr. by Francis D. Millet, ca. 1876. Adams National Historical Park, Quincy, Massachusetts.

west, and not due to superior technical training or management skills. The Bostonians initially recruited Morse in 1872, summoning him to head to the mineral region of Michigan, where they had already amassed substantial holdings.²⁰ “We want someone up there, who is more akin to us than those head workmen & mining captains promoted, however good and able they may be,” Higginson wrote, courting his confidant with an effective form of flattery.²¹ Morse’s allegiances dramatically came into play several years later when, as the superintendent of the Atchison, Topeka and Santa Fe Railroad, he intrepidly upheld the company’s strict line against unions. During a labor dispute in 1878, when members of the Brotherhood of Locomotive Engineers—“strikers and hoodlums,” as he later referred to them—occupied the railroad yards, Morse called up two companies of the state militia to restore “normal conditions,” then summarily discharged two-thirds of his workforce.²² For his firmness of purpose, Morse was rewarded with a position as the general manager of the Kansas City Stock Yards Company, of which Adams was president.

²⁰ William Bryam Gates, *Michigan Copper and Boston Dollars: An Economic History of the Michigan Copper Mining Industry* (Cambridge, Mass., 1951).

²¹ Henry Lee Higginson to Charles F. Morse, July 20, 1872, Charles F. Morse Papers, MHS, Ms. N-561, box 2, folder 15, 1870–1875.

²² Charles F. Morse, Superintendent of Atchison, Topeka and Santa Fe Railroad, to “Engineers,” April 4, 1878, Charles F. Morse Papers, MHS, Ms. N-561, box 2, folder 16, 1876–1878. See also Morse, *A Sketch of My Life Written for My Children* (Cambridge, Mass., 1927), 40.

Morse's new position fruitfully entangled him in the meteoric rise of a regional urban center that was utterly transformed by massive infusions of capital from the East. The Kansas City Stock Yards Company, reorganized by Bostonian capitalists in 1876, made what had been a remote outpost into a gigantic hub for the livestock trade and the packing industry.²³ With Adams at the helm, the company purchased dozens of acres of land, rerouted the railroad tracks, built pens and loading docks, installed scales and sheds, and constructed a three-story exchange building, complete with company offices, two banks, rental space for several dozen commission merchants, a restaurant, a billiard hall, and a barbershop. The region's scattered and fluctuating cattle trade, conducted until then in makeshift fashion in railroad yards, became a gushing flow through a state-of-the-art facility.²⁴ Morse became involved in all aspects of the industry, working diligently to cement Kansas City's supremacy. He launched and became president of the Livestock Exchange, which standardized and regulated trade. He headed the Stock Yards Bank, which financed the commerce in livestock. He then inaugurated the Kansas City Fat Stock Show Association, which disseminated breeding and fattening techniques and established the city as a center of livestock knowhow.²⁵

This organizational foundation, bankrolled from the East, attracted the movement of cattle, hogs, and sheep in ever-increasing numbers, reaching millions within a few years.²⁶ Beyond profitable revenues from renting yardage, selling feed, and collecting fees from commission merchants, the yards generated a steady stream of traffic for railroads. By 1880, the Atchison, Topeka and Santa Fe (directed, managed, and owned almost entirely by Bostonians) became the undisputed leading carrier into the yards. The livestock trade "made the road a paying concern," one of the industry's chroniclers accurately observed. It anchored the road's rapid expansion from Chicago to the Gulf Coast, to the Pacific shore in California, and deep into Mexico, making it one of the great railroads in the United States.²⁷ Next came meatpacking, which was aggressively fostered by a set of incentives from Morse's Livestock Exchange—land, facilities, rail connections, and cash. The annual numbers were again staggering and quickly climbing.²⁸ The value of the product—almost \$40 million by 1890, \$73 million by century's end—accounted for 90 percent of the city's industrial output.²⁹ Finally, the growth of the city's leading industry created a rapid in-

²³ See Arthur M. Johnson and Barry E. Supple, *Boston Capitalists and Western Railroads: A Study in the Nineteenth-Century Railroad Investment Process* (Cambridge, Mass., 1967), 92. Bostonian investors chose Kansas City as a railroad hub (over the larger Leavenworth) because of its smaller and internally cohesive cohort of businessmen. See Charles N. Glaab, *Kansas City and the Railroads: Community Policy in the Growth of a Regional Metropolis* (Madison, Wis., 1962).

²⁴ Eva Lash Atkinson, "Kansas City's Livestock Trade and Packing Industry, 1870–1914: A Study in Regional Growth" (Ph.D. diss., University of Kansas, 1971), 283.

²⁵ Formed in 1883, 1884, and 1886, respectively. See Cuthbert Powell, *Twenty Years of Kansas City's Live Stock Trade and Traders* (Kansas City, Mo., 1893), 101, 107, 140.

²⁶ The numbers of cattle, hogs, and sheep grew from 175,000, 150,000, and 175,000, respectively, in 1875 to 1.5 million, 2.8 million, and 1.5 million in 1890. Atkinson, "Kansas City's Livestock Trade and Packing Industry," 328, 330.

²⁷ *Ibid.*, 344–345, 303.

²⁸ *Ibid.*, 355, 357. Kansas City remained behind Chicago (3.6 million head of cattle, 7.6 million hogs) but well ahead of St. Louis (0.6 and 1.3) and Omaha (0.6 and 1.4).

²⁹ Wilson J. Warren, *Tied to the Great Packing Machine: The Midwest and Meatpacking* (Iowa City, 2006), 207. See United States, Bureau of the Census, *Twelfth Census of the United States Taken in the Year 1900* (Washington, D.C., 1901), ccviii.

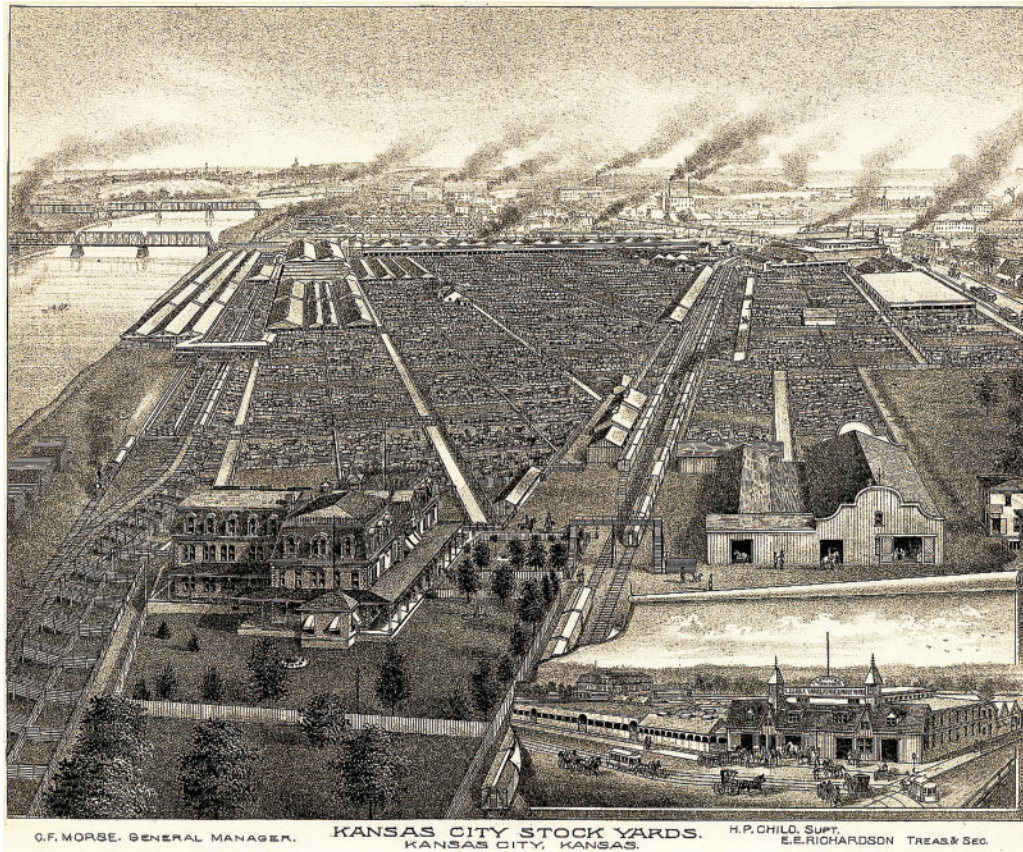


FIGURE 2: The Kansas City Stock Yards, Kansas City, Kansas. Charles Adams was president of the company from 1876 to 1902. From L. H. Everts & Co., *The Official State Atlas of Kansas, Compiled from Government Surveys, County Records and Personal Investigations* (Philadelphia, 1887), opp. 241. David Rumsey Map Collection, www.davidrumsey.com.

crease in population, from less than 10,000 at the end of the war to more than 160,000 by 1900, which opened up a range of opportunities in urban development that the Bostonians capitalized on. As Adams's main representative in Missouri, Morse spearheaded the development of the Metropolitan Street Railway Company and coordinated many land purchases for eastern investors. After retiring in old age to Boston, he explained that "these Boston people seemed to depend on my helping them out," which he was indeed in an excellent position to do.³⁰

Overall, these types of close relationships between eastern financiers and transplants such as Morse became part of the social infrastructure that facilitated the migration of capital to places like Chicago, Kansas City, St. Paul, and Denver. It was then left to local boosters—men who were short on social pedigree and transregional business connections but nonetheless staked their careers on the emerging system—to talk up their own city's special relationship with the East and leverage it to spur

³⁰ Morse, *A Sketch of My Life*, 62, 60. For documentation of Morse's collaborations with Adams in various real estate investments, see "CFA2 & JQA Kansas City Investments 1878–1887," Adams Family Office Papers, MHS. See also James R. Shortridge, *Kansas City and How It Grew, 1822–2011* (Lawrence, Kans., 2012), 77–80.

further development. “The whole Capital of New York and New England supports Chicago,” business advocates in Chicago liked to point out. “Though weak herself, Chicago has found abundant strength in her unity of interest with the wealthiest region of our country.”³¹ Boosters in Kansas City did not stay far behind, noting that their own city “suffers nothing in this respect by comparison with Chicago.” They highlighted their tight relations with “some of the wealthiest and most conservative capitalists in the country,” including Adams and Thayer.³² Further west, in Denver, members of the Chamber of Commerce similarly realized that this was a real moment of opportunity. Cognizant of the “utmost difficulty in finding profitable investments” in the East, they deduced that a “‘plethora of money’ must seek employment in the West where there [was] greater need, and naturally greater necessity for the payment of a higher rate of interest.” “All the Eastern capital for which reasonably safe and profitable employment can be found,” they confidently announced, “will be sent here for that purpose.”³³ This layered and hierarchical business network, which connected eastern bankers, their transplanted representatives, and the topmost leadership of western business communities, made it possible for money from the major financial centers on the Atlantic to flow to the emerging regions of the Great West. This financial axis propelled new industrial sectors into the core of American capitalism.

THE PENETRATION OF EASTERN CAPITAL INTO the Great West had implications that extended far beyond the realm of business, shaping American state formation in crucial ways. As the investment frontier moved more deeply into the region, western settlers, eager to position their communities in the emerging commercial system, began to clamor for their territories to gain political autonomy as semi-sovereign states.³⁴ The integration of a national market has often appeared to be logically and necessarily connected to the consolidation of a national authority, but in this context, it ener-

³¹ John S. Wright, *Chicago: Past, Present, Future* (Chicago, 1870), xv, quoted in Cronon, *Nature's Metropolis*, 82.

³² “Boston capital,” they announced, “is more closely identified with Kansas City than any other city in the United States.” See Theodore S. Case, *History of Kansas City, Missouri* (Syracuse, N.Y., 1888), 393, 394.

³³ *Second Annual Report of the Denver Chamber of Commerce and Board of Trade, Denver, Colorado* (Denver, Colo., 1885), 7.

³⁴ Howard R. Lamar's enduring insight that Western territories sought to “escape federal tyranny by entering the federal union, not by getting out of it” (as southern confederates had attempted to do) accurately captured the contradictory nature of Western statehood movements. Lamar, *Dakota Territory, 1861–1889: A Study of Frontier Politics* (New Haven, Conn., 1956), 243. These constitutional debates likewise reveal the complex ideological and doctrinal backdrop against which Supreme Court laissez-faire jurisprudence developed. Richard Bense's exploration of the federal “judicial construction of the national market” recognizes that, “[I]f to their own devices, the legislatures of the individual states would have erected significant barriers to the consolidation of the national market in the late nineteenth century,” but does not take the efforts of these legislatures, and their notable successes, seriously enough; *The Political Economy of American Industrialization*, 321. For a more thorough consideration of the possibilities, but with overwhelming emphasis on federal institutions, see Gerald Berk, *Alternative Tracks: The Constitution of American Industrial Order, 1865–1917* (Baltimore, 1994). See also Gary Gerstle, “The Resilient Power of the States across the Long Nineteenth Century: An Inquiry into a Pattern of American Governance,” in Lawrence Jacobs and Desmond King, eds., *The Unsustainable American State* (Oxford, 2009), 61–87; William J. Novak, “Law and the Social Control of American Capitalism,” *Emory Law Journal* 60, no. 2 (2010): 377–405.

gized a proliferation of subnational political units, each in charge of large areas of policy that the federal government had limited capacity and jurisdiction to attend to.³⁵ Instead of converging toward a seamless whole on the federal level, therefore, the drive of market integration accelerated a contradictory trajectory of political fragmentation. This process began in the 1860s, as southern secession and unchallenged Republican control of Congress prompted the rapid creation of U.S. territories, carving Dakota (1861) from parts of Minnesota and Nebraska; Colorado (1861) from Kansas; and Idaho (1863), Montana (1864), and Wyoming (1868) from Washington, which had itself at one point been part of Oregon.³⁶ In the 1870s and 1880s, settlers in those territories began to lobby for statehood. They expected each new state to charter corporations, create a legal regime and a system of courts, and regulate industrial relations, establishing a robust governance structure for development.

As in other locales around the world at the time, the relationship between the new states and corporate vehicles of financial investment raised a series of controversial questions. Such controversies raged most visibly as the settler population of western territories, seeking statehood, assembled elected representatives in constitutional conventions.³⁷ These gatherings resembled one another in tone and content and can thus be viewed together as part of a larger debate about the trajectory of the American political economy. This wide regional lens, rather than a discrete state-by-state treatment, also better captures the complex intellectual tenor of the conversations. In contrast to the federal constitutional convention, which brought together a cadre of affluent elites behind closed doors, western conventions assembled a heterogeneous mix of farmers, workers, miners, local lawyers, and small businessmen and were reported on daily in the press. Farmers and laborers voiced the grievances of the region's working population. They placed on the agenda a wide spectrum of policy ideas, beyond the scope of what was admissible in more polite circles back east. In the context of these western gatherings, however, these policy ideas had a broad base of support, even among more upwardly mobile and formally educated delegates. Many in attendance thus dissented from market dictates, reflecting pervasive sentiments among the settler population. They openly expressed hostility toward corporations that were controlled not by the local political authorities that had initially chartered them, but by "foreign" shareholders back east. They looked for ways to prioritize actual settlers over distant investors. Against the financiers' aspirations to shape policy with an integrated economy in mind, the conventions advanced democratic processes over financial imperatives and relative regional autonomy over the prerogatives of the national market.

³⁵ The federal government, of course, was not altogether absent from the region and flexed its long muscles to assert U.S. sovereignty, map the territory, survey natural resources, and make war against indigenous nations. See most notably White, *"It's Your Misfortune and None of My Own,"* and Steven Hahn, *A Nation without Borders: The United States and Its World in an Age of Civil Wars, 1830–1910* (New York, 2016).

³⁶ Eager for state institutions, settlers often formed self-proclaimed territorial governments in anticipation of federal legislation. The Denver area, for example, had no fewer than three different bodies claiming jurisdiction prior to the official establishment of Colorado Territory in February 1861. See Dale A. Oesterle and Richard B. Collins, *The Colorado State Constitution: A Reference Guide* (Westport, Conn., 2002), 3–4.

³⁷ The following territories gained statehood status in the years after the Civil War: Nebraska (1867), Colorado (1875), Montana (1888), North Dakota (1889), South Dakota (1889), Washington (1889), Idaho (1890), and Wyoming (1890).

The participants' distinctly regional outlook did not mean that the conversations were somehow parochial or insular. Having themselves moved between regions and between various western settlements, they developed a sophisticated and varied purview that was informed by their own migratory experience. Fully aware of a large economic transformation underway across the continent, they routinely drew comparisons between their own territories and other locales. They freely adopted provisions from the constitutions of other states and frequently invoked lessons learned in places such as Pennsylvania, Illinois, Wisconsin, California, and Nevada. The intersection of the delegates' diverse perspectives infused the deliberative process with a sense of possibility. The law, many reasoned, was not derived from immutable and unchanging abstract principles. Rather, it emerged from the everyday practices and collective wisdom of the settlers. William Stewart, a senator from Nevada who addressed several of the conventions, underscored that the law was "simply a system of principles to be applied to the facts as they are developed." Constitutional conventions should therefore readily welcome pragmatic innovation and a measure of jurisprudential pluralism, resting on "such application of the facts as they exist in the different localities as will inure to the greatest good of the people."³⁸ This view was shared by many of the delegates, who proceeded to shape policy not in accordance with any established doctrine, but with conditions on the ground in mind.

This approach flew in the face of legal orthodoxy at the time. Expert authorities urged the settlers to follow the federal model and write short and elegant constitutions that would outline a general legal framework. Thomas M. Cooley, chief justice of the Michigan Supreme Court and the era's most prominent scholar of constitutional law, spoke at several of the conventions and implored the delegates to confine themselves to fundamental principles. "Leave what properly belongs to the field of legislation, to the Legislature of the future," he pleaded.³⁹ Most participants, however, felt that in the absence of a detailed constitutional framework, state legislatures would be too vulnerable to corporate manipulation. The members of the Colorado convention, in a joint address to the people of the territory, explained that legislatures "have, in most cases, been found unequal to the task of preventing abuses and protecting the people from the grasping and monopolizing tendencies of railroads and other corporations."⁴⁰ Melville C. Brown, a Maine native who had migrated to Wyoming via California and Idaho, warned that any important policy issues left out of the constitution would permit corporations to shape legislation in their best interests. "As you have seen in the past men elected to our legislatures wearing the brass collars of the great railroad corporation," he cautioned, "you will see just such men wear the brass collars of the great monied mining corporations." The constitution,

³⁸ *Proceedings and Debates of the Constitutional Convention Held in the City of Helena, Montana, July 4th, 1889, August 17th, 1889* (Helena, Mont., 1921), 806.

³⁹ *Journal of the Constitutional Convention for North Dakota Held at Bismarck, Thursday, July 4 to Aug. 17, 1889, Together with the Enabling Act of Congress and the Proceedings of the Joint Commission Appointed for the Equitable Division of Territorial Property* (Bismarck, N.D., 1889), 67.

⁴⁰ "Probably no subject" in their deliberations, they explained, produced "more anxiety and concern than the troublesome and vexed question pertaining to corporations." *Proceedings of the Constitutional Convention Held in Denver December 20, 1875: To Frame a Constitution for the State of Colorado, Together with the Enabling Act Passed by the Congress of the United States and Approved March 3, 1875, the Address to the People Issued by the Convention, the Constitution as Adopted and the President's Proclamation* (Denver, Colo., 1907), 728.

therefore, should explicitly “limit the action of the legislature” with regard to some policy issues, placing them “forever beyond reach.”⁴¹ These apprehensions about corporate power encouraged the delegates at the conventions to author long constitutions that carefully delineated the authority of state governments, demanding direct state involvement in some spheres and firmly limiting it in others.

The question of water and its distribution called for particularly creative treatment. The common-law doctrine of riparian rights practiced in the East, which bestowed water rights to the owner of the adjacent land, was inadequate in the arid West, where sources of water were few and far between. If settlers were to enjoy wide access to water, water rights had to extend to non-riparians. The alternative doctrine of “prior appropriation,” giving ownership to the first mover who diverted water from its natural source, presented its own pitfalls and was similarly questioned. Charles Burritt, a Vermonter who had practiced law in Michigan before settling in Wyoming, declared that “[w]hen a man builds a ditch and takes out water he has not the right against his country and all the world to the use of that water as long as he pleases.”⁴² More threatening than individual users gaining disproportionate amounts of water was the fear that corporations, which had the financial resources to construct canals and ditches, would create water monopolies and subjugate the rest of the population. George W. Fox, who was raised in Ohio and had lived in Iowa and Montana before opening a hardware store in Laramie, pointed out that in the absence of countervailing legislation, “a corporation may organize a strong company to take out nearly all the water in a stream . . . , and . . . prevent the settlers . . . from obtaining water out of this canal.”⁴³

To address this challenge in a region where access to water could be provided only via heavy investment in infrastructure, several delegates voiced well-reasoned support for state ownership of water and water infrastructure. Alexander Burns, a Missourian prospector-turned-farmer who had settled in Montana, boldly proposed that “the legislature shall provide for the construction and maintenance of a system of irrigating canals and ditches in this state,” which would then “belong forever to the state, and remain under its direct control.”⁴⁴ Given that the new states lacked the resources to build this infrastructure, others proposed more realistic measures that would charter private companies to carry out the construction but would maintain that all water in the state was public property.⁴⁵ This approach granted corporations the right to charge regulated rates for delivery of water, but not to hoard and monopolize this precious resource. It also allowed the state to regulate how water would be distributed, attenuating the principle of “prior appropriation” with constitutional provisions restricting the allocation of water rights according to the principles of “beneficial use” and “sufficiency.” These provisions limited the right to water to the

⁴¹ *Journal and Debates of the Constitutional Convention of the State of Wyoming Begun at the City of Cheyenne on September 2, 1889, and Concluded September 30, 1889* (Cheyenne, Wyo., 1893), 668; Ichabod S. Bartlett, *History of Wyoming*, 3 vols. (Chicago, 1918), 3: 102–105.

⁴² *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 498; Marie H. Erwin, *Wyoming Historical Blue Book: A Legal and Political History of Wyoming, 1868–1943* (Denver, Colo., 1946), 642.

⁴³ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 295.

⁴⁴ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 61; “Capt. Alexander F. Burns,” in *Progressive Men of the State of Montana* (Chicago, 1900), 57–58.

⁴⁵ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 137; *The Journal of the Washington State Constitutional Convention, 1889* (Seattle, Wash., 1962), 203.



FIGURE 3: Members of the Wyoming Constitutional Convention on the steps of the Capitol Building, 1889. Wyoming's constitution made it the first state to enfranchise women and grant male and female citizens equal civil, political, and religious rights. Wyoming State Archives, Department of State Parks and Cultural Resources.

amount one put to actual use, and required that water be divided up in dry seasons to ensure each user an adequate amount. William H. Claggett, a Maryland-born lawyer who had practiced in Nevada and Montana before migrating to Idaho, clarified that these clauses aimed to promote a more “equitable distribution”—to serve “the greatest good to the greatest number, bearing in mind constantly the fact of the prior right of the first man as well as the necessities of the second.”⁴⁶

Some delegates thought that declaring water everywhere to be public property was too radical. Walter Cooper, a dealer in mining properties and real estate who was raised in Michigan and had arrived in Montana after spending time in Kansas and Colorado, protested that “if this amendment had emanated from that distinguished person, [the heterodox political economist] Henry George . . . I would not have been surprised.” Llewellyn Luce, a New Englander who had moved to Montana on behalf of the Department of the Interior, similarly argued for the commodification of water: “a right to use water,” he claimed, “is just as much property as is a horse, for instance, and it would be just about as consistent for us to declare in this

⁴⁶ *Proceedings and Debates of the Constitutional Convention of Idaho, 1889*, ed. and annotated by I. W. Hart, 2 vols. (Caldwell, Idaho, 1912), 2: 1181. “There may be in ordinary years enough water to supply all of the people that settle along a ditch or canal,” Claggett said in explaining the principle of “sufficiency,” “but when there comes a dry season, is one-half of the farms to be absolutely destroyed because the other man has an absolute priority, or is there to be an equitable distribution under such rules and regulations as may be provided by law?” (1162).

Constitution that every horse in the State should be the property of the State.”⁴⁷ Most delegates, however, agreed that a failure to depart from precedent on this issue would result in an intolerable situation that would be incompatible with republican institutions. Without the proper constitutional protections, Martin Maginnis, born in New York and raised in Minnesota, a miner who became the editor of the *Helena Daily*, foresaw that “[t]he men who hold the water . . . [would] practically own the country,” leading to “a system of landlordism in contrast with which the evils of all other systems of landlordism will be as nothing.”⁴⁸

Industrial relations in the new states similarly attracted the full attention of the conventions. Clear-eyed about the region’s large industries, railroads and mining in particular, delegates foresaw the intensification of class conflict. They anticipated, as Claggett explained in Idaho, that the “great development of the material resources” of their territories would bring about “problems of a very difficult nature relating to labor in its various forms of employment and various exactions that may be imposed upon it.”⁴⁹ The conventions thus discussed a long list of labor protections that placed the power of the state firmly behind workers. They considered clauses mandating government oversight of workers’ safety, eight-hour workdays, minimum age requirements, labor bureaus to study and publicize industrial conditions, employers’ liability for injuries, restrictions on the use of convict and contractual labor to compete with free labor, and a prohibition on the blacklisting of labor “agitators.”⁵⁰

Particularly controversial in this context were proposed bans on the use of armed Pinkerton detectives by management during strikes, an issue that was bound up in the question of workers’ right to organize. Peter Breen, who was born in Kansas and raised in Illinois before finding work as a locomotive fireman in Colorado, Idaho, and Montana, argued that this provision was absolutely urgent. “[W]e do not want any such class of men as makes up the standing armies in Chicago today to go to any part of the Union where they can be at the call of corporations,” he explained. These men “did not come as soldiers, or as officers of the law interested in the welfare of the Territory”; rather, “they came at the bidding of some corporation, that, for a monetary consideration, wishes to crush the manhood of the people of the Territory.”⁵¹ Others agreed that in a free society, workers should be able to organize without the threat of violence. No corporation, declared William T. Fields, a locomotive engineer who had arrived from Illinois, had “the right or power to employ armed bodies of men to shoot down people who assemble and congregate for the purposes of freedom.” This use of private militias created, in effect, “a despotic form of government” that kept workers in a state of “chattle slavery.”⁵²

⁴⁷ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 896; “Walter Cooper,” in *Progressive Men of the State of Montana*, 440–442; “Llewellyn Augustus Luce,” *ibid.*, 281–283. Luce had come to Montana on behalf of the federal government to negotiate with the Crow Indians for the Northern Pacific Railroad’s right of way.

⁴⁸ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 498.

⁴⁹ *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1373–1374.

⁵⁰ *The Journal of the Washington State Constitutional Convention*, 297–301; *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1372–1395; *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 196–217; *Journal of the Constitutional Convention for North Dakota*, 366–371.

⁵¹ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 130; “Peter Breen,” in *Progressive Men of the State of Montana*, 62.

⁵² *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 129, 146, 140.

Again, as with water, these types of restrictions on the prerogatives of corporate property prompted fierce opposition. Francis Sargent, who was making his way in the mining industry in Montana, announced that it represented “an abridgment of my rights and privileges, guaranteed to me by the [federal] Constitution, if I cannot, at my discretion, within the law, call upon the sixty millions of people within the United States, if necessary, to preserve my life and property.”⁵³ This line of reasoning gained little traction with the other delegates, who were far from eager to further militarize their region. Elliot Morgan, who had moved to Wyoming from his native Pennsylvania, where labor conflicts involving Pinkertons had already erupted, explained that the importation of “armed men . . . clothed with authority of law” was “one of the greatest outrages ever perpetrated upon any people.”⁵⁴ Even more conservative delegates like Luce agreed that government should protect private property, not private militias.⁵⁵

One common-law tradition to which the delegates held fast affirmed the supremacy of the state over chartered corporations. Martin N. Johnson, a farmer in North Dakota, explained that “railroads are *quasi* public institutions. [Their shareholders] don’t own their roads as we own our ox carts. They must run their roads in the interest of the public—they cannot stop these arteries of commerce, and deprive the husbandman of the fruits of his labor.” Citing the case of *Munn vs. Illinois*, Johnson reminded his fellow delegates that the United States Supreme Court itself had “settled that principle once [and] for all.”⁵⁶ This decision validated delegates’ efforts to endow state legislatures with far-reaching regulatory powers over corporations, including the right to set freight rates. It sanctioned constitutional provisions that repealed or altered existing corporate charters and declared railroads to be “public highways and common carriers,” prohibiting the practice of discriminatory rates that gave high-volume shippers and select cities favorable rates over other shippers and other locales.

The debate surrounding the rights and privileges of corporations in the new states became especially contentious as delegates sought to constrict the tax exemptions and subsidies that corporations sought and in some cases already enjoyed. Idaho judge John T. Morgan protested against the lax tax regime under the territorial authorities. A “vast amount of money [in the mining industry] has been taken out of this territory and almost no taxes have been paid upon it at all,” he argued. Mines were difficult to assess for a more conventional property tax, so he proposed a tax on the net proceeds of mining properties. Since the owners were “becoming wealthy” and using the money “to build up mansions and rich homes” back east, “in Boston and New York and other places,” he believed that they should “pay some little tribute to the government of the state.”⁵⁷ Others advocated strict limits on direct govern-

⁵³ *Ibid.*, 143.

⁵⁴ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 402; Erwin, *Wyoming Historical Blue Book*, 172.

⁵⁵ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 142. The Wyoming convention collectively heralded this “prohibiting of the importation of foreign police to usurp local authority” as one of its most important achievements. *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 119.

⁵⁶ *Journal of the Constitutional Convention for North Dakota*, 380.

⁵⁷ *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1708, 1709.

ment subsidies to corporations. Thomas C. Griffiths, a printer who had arrived in Washington via Illinois and Utah, carried favor with his proposal that “[n]o county, city or other municipal corporation shall give any subsidy or loan its credit in any way whatever for any purpose to any corporation, company, association or person.”⁵⁸ The representatives of the mining, stock-raising, and railroad industries maintained that tax incentives and public subsidies were absolutely necessary. Alfred Myers, a Montana stock grower who originally hailed from Illinois, explained that the construction of water infrastructure was not remunerative, making government subsidies “necessary, in order to induce people to invest money in this kind of speculation.”⁵⁹ Lycurgus Vineyard, a former superintendent of schools in Oregon, argued that if a tax on the proceeds of the territory’s “languishing” mines were to be added, “You might as well close them out, these enterprising mining men who are seeking to develop this industry.”⁶⁰

The notion that the region’s largest industries needed nurturing in their fledgling phase seemed plausible in the context of competition among states, where any extra costs threatened to put one’s own state at a disadvantage. Louis J. Palmer, a county attorney who was originally from Illinois, explained that taxing extracted minerals would “destroy” Wyoming’s mining interests, “for they cannot compete with the Colorado men, if you are going to put a tariff on coal.”⁶¹ Most delegates nonetheless objected to these special favors. If the corporations received tax relief, asked William Parberry, a Montana doctor and rancher who was born in Kentucky and raised on a farm in Missouri, then “why in the name of justice cannot a man who is trying to make a living by the sweat of his brow”?⁶² Alexander Mayhew, a dealer in mining claims who had come to Idaho by way of Kansas, Colorado, and Montana, similarly spoke against “sacrificing everything in this territory for the purpose of building up these corporations.” It was “a dangerous precedent,” he said, “to establish in this territory as we are now budding into statehood, to encourage the railroads in such manner.”⁶³ These sentiments lent support to forceful constitutional provisions that stripped legislatures of the authority to grant corporations special giveaways.

As the various conventions appeared intent on passing significant checks on the power of corporations in the new states, in a range of policy areas, it fell upon local compradors—men who had forged relationships with eastern financiers and were therefore attuned to the vitality of interregional investment—to articulate the forceful retort. And indeed, these stewards of eastern financial interests worked tirelessly to resist the conventions’ populist tide. They of course harbored no enmity against

⁵⁸ *The Journal of the Washington State Constitutional Convention*, 41.

⁵⁹ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 553.

⁶⁰ *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1716, 1715; Dennis C. Colson, *Idaho’s Constitution: The Tie That Binds* (Moscow, Idaho, 1991), 10.

⁶¹ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 684. Comparisons to other states at times supported the opposite conclusions, emboldening delegates to take a harder stand vis-à-vis corporate power. As Mayhew argued in Idaho, in anything relating to corporations, “it is best for us to follow some of the examples of other states” and “territories now forming” and adopt “such provisions in constitutions of this character, in order to protect the people against these institutions.” *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1069.

⁶² *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 569; “Dr. William Parberry,” in *Progressive Men of the State of Montana*, 1176–1178.

⁶³ *Proceedings and Debates of the Constitutional Convention of Idaho*, 1: 889; Colson, *Idaho’s Constitution*, 9.

state institutions per se. They fully agreed that economic development could not proceed without adequate government institutions and wise public policy. Indeed, they interpreted the entire statehood movement as an effective way to attract investment. Mark Hopkins, a Pennsylvanian who had spent time in Colorado and Utah before heading to Wyoming as the superintendent of the mines of the Union Pacific Railroad, said that he had “taken it for granted that one of the benefits to be derived from statehood” was the improved ability “to bring outside capital into this state, to develop the latent interests of this territory.” Frederick H. Harvey, a lawyer who was raised in Iowa and educated in New York before arriving in Wyoming, said similarly, “we are advocating statehood in order to bring in just as many corporations as we can possibly.”⁶⁴

What these spokesmen on behalf of finance mostly objected to was not robust government institutions as such, but the notion that economic policy was the province of democratic politics. Illinois-born Francis Henry, former clerk of the Territorial Supreme Court in Washington, explained that an elected railroad commission with rate-setting authority would be incompatible with liberal institutions. He rejected such a body as “discriminating, arbitrary and unjust in the extreme, and in violation of the fundamental principles of free government.”⁶⁵ The forging of government policies, these men posited, should ultimately be determined not by a popular vote, but by educated experts and in accordance with universal laws. They were dismissive of provisions such as state regulation of workers’ hours and public ownership of water, which threatened to endow what they considered to be ludicrous economic doctrines with firm legal standing. John W. Hoyt, an Ohioan who had previously served as the appointed governor of Wyoming Territory, argued that such policies were opposed to “the great economic law that has commanded the respect of all statesmen of every land.”⁶⁶ These “great” principles stood high above any policy that the people’s elected representatives could devise.

Regardless of the people’s preferences or ideological commitments, these defenders of corporate prerogatives proposed, the ultimate costs of ignoring the universal laws of political economy would forever outweigh the benefits. Any imposition on the rights of investors would be counterproductive, as it threatened to drive capital away and retard future development. This concern about alarming capital crystallized the key dilemma at the very core of those constitutional deliberations, one that came up time and again, in every state and around nearly every question of economic significance. With this dilemma at hand, the compradors dangled an alluring “carrot.” William A. Clark, a banker and speculator in mining, among the wealthiest men in Montana, shared with the convention what was well-known in elite business circles. Declining profit margins back east and in Europe, he explained—the “very low rate of interest” resulting from “the great accumulation of capital in foreign countries”—had created a real opportunity for the fledgling states to become the next focal points for massive investment. Instead of deterring them, wise legislation should “induce [these capitalists] to come here and build large smelting plants and large mills and

⁶⁴ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 691, 453; “Mark Hopkins,” in *Progressive Men of the State of Wyoming* (Chicago, 1903), 840–841.

⁶⁵ *The Journal of the Washington State Constitutional Convention*, 188 (quote), 475.

⁶⁶ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 672.

other enterprises of that kind.”⁶⁷ Hoyt similarly dazzled his fellow delegates in Wyoming. “We have extraordinary resources, thirty thousand square miles of coal, endless soda lakes, inexhaustible supplies of oil, mountains of iron that have not yet begun to be developed,” he waxed poetic. “What we want is capital, and shall we not keep out capital if we discourage capitalists? Shall we build a Chinese wall around Wyoming and prevent the investor from coming in to develop its resources?”⁶⁸ Instead of creating a heavy-handed regulatory apparatus, exacting taxes, and empowering labor, the top priority should be to forge an effective framework for money to pour in from the East and produce broad-based prosperity.

When participants seemed unmoved by these alluring prospects, doubting that wealth would trickle down to the general population, the same spokesmen pulled out the “stick.” Sounding the alarm, they warned that unfriendly policies toward investors would unquestionably derail the economic trajectory of states in which they were adopted. Railroad regulation, Francis Henry warned in Washington, would thwart “the investment of capital in the development of the resources of the state . . . paralyze the great enterprises of improvement which have already been commenced, and . . . prevent the inauguration of others now in contemplation.”⁶⁹ A tax on mine proceeds in Idaho, Vineyard announced, would deter capitalists, who would channel their money to other, friendlier locales. You could very well “tear down your advertisement to the world that you invite mining men and mine operators into this territory, and tell them that they need not apply.”⁷⁰ Similarly, Anthony C. Campbell, who had moved from Pennsylvania to Cheyenne as the U.S. attorney for the Territory of Wyoming, then served as the attorney for the Denver and Rio Grande Railroad Company and Standard Oil, explained that employers’ liability for injuries would prove ruinous, making it “impossible for any railroad company or any corporation to do business . . . without going into absolute bankruptcy.”⁷¹

Constitutional delegates responded to these confident arguments in mixed and contradictory ways. Some believed that these doomsday scenarios were vastly overblown. Others objected to corporate encroachment into the domain of political sovereignty, to corporations that would “come in and bind us hand and foot,” as Mayhew put it.⁷² Several speakers defiantly rejected the very notion that the state, as Charles Hartman, a lawyer who had come to Montana from Indiana, phrased it, had to “coddle and fondle and caress these great capitalists in order to get them to come out here and invest their money.”⁷³ Nonetheless, the threat of alarmed capital fleeing their states weakened the resolve of constitution writers on these issues. Not eager to confront powerful financial interests, many delegates conceded their territory’s position of weakness. Jack H. Beatty, an Ohioan by birth who had previously practiced law in Missouri and Utah, spoke as an insider when he plainly explained, “[Y]ou in-

⁶⁷ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 127; “William A. Clark,” in *Progressive Men of the State of Montana*, 1104–1109.

⁶⁸ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 672.

⁶⁹ *The Journal of the Washington State Constitutional Convention*, 189.

⁷⁰ *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1743.

⁷¹ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 443; Erwin, *Wyoming Historical Blue Book*, 632.

⁷² *Proceedings and Debates of the Constitutional Convention of Idaho*, 1: 888.

⁷³ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 677.

vite eastern capitalists to come in here and build railroads, and they will commence to look over your laws. The first thing they will find is that we have adopted stringent measures to operate their roads for them." Given "how timid capital is," this would prove disastrous.⁷⁴ Walter A. Burleigh, a lawyer from Maine, led the retreat in Montana: "we are not working for the nabobs of the east, we are not working for the lords of England; we are not working for the capitalists of New England," he reasoned, and yet "we do not want to hedge around the development of our resources by any such strict rules of conduct either moral or business."⁷⁵ As the deliberations proceeded, these concerns led to the elimination of some of the more restrictive provisions, making the constitutions less radical.⁷⁶

WHAT, IN MORE GENERAL TERMS, was at stake in these constitutional debates? Beyond the realm of any particular policy question, and beyond the scope of a contest among different interest groups, the conventions revealed conflict over three fundamental and deeply interrelated issues: distribution, legibility, and spatiality. On the most basic and obvious level, the contests were driven by an effort to determine how material resources would be distributed between employers and employees and between foreign investors and settlers. This was part of a general contest in this period among what Richard Bense has termed competing "claims on wealth."⁷⁷ Inherent in the constitution-writing process was the premise that the structure of state institutions, and their relationship to private interests, would ultimately determine how the material bounty of the land would be divided. Delegates were deeply worried about the emergence of a society that would be sharply polarized between rich and poor, a situ-

⁷⁴ *Proceedings and Debates of the Constitutional Convention of Idaho*, 1: 885.

⁷⁵ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 704.

⁷⁶ Newspaper coverage readily observed this dynamic. Commenting on the convention in Washington, the *Seattle Times* noted that "while the corporation article was being considered . . . there was great hue and cry raised about the necessity of giving encouragement to capital seeking investment in this state, and the specious plea was made and made often, that any restraint upon corporations would be an injury to capital. It was under this cloak that the corporation tools in the convention did their work, and endeavored, by exhibiting a tender interest in the welfare of capital, to defeat those clauses particularly obnoxious to their masters. They succeeded in pulling wool over the eyes of some of the delegates—perhaps because they did not particularly object to being deluded." "A Sensible Suggestion," *Seattle Times*, August 7, 1889. When delegates themselves failed to meet corporate expectations, outside lobbying occasionally came into play. After the delegates in Washington voted to create a powerful railroad commission, the territory's business groups snapped into action. In the days after the decision, they overwhelmed the convention with a barrage of petitions. The Boards of Trade of Yakima and Ellensburg moved first to cast the railroad commission as "inimical to the best interests of our state," particularly to the "speedy development of our resources by . . . foreign capital." The Boards of Trade of Spokane Falls, Aberdeen, Montsano, and Vancouver then joined the chorus with their own petitions to protect "the liberty of contract," calling for the new article to be "in letter, and spirit . . . entirely expunged," alongside any other article that would "tend to alarm and drive away the capital so greatly needed at this time." When the question was again brought before the convention several days later, a dozen of the delegates had changed their votes, and the commission initiative was struck down. See the "The Regulation of Corporations to Be Left for the Legislature," *Tacoma Morning Globe*, August 3, 1889. On the petitions from Yakima and Aberdeen, see *The Journal of the Washington State Constitutional Convention*, 192, 214. After winning thirty-nine votes in favor on August 3, 1889, the commission was brought up for another vote on August 6, losing by a vote of twenty-three to forty-seven. See "Whether or Not to Establish a Railroad Commission the Absorbing Topic" and "Kinnear's 'Section 21' Finally Succumbs," *Tacoma Morning Globe*, August 4 and 6, 1889.

⁷⁷ Bense, *The Political Economy of American Industrialization*, 15.

ation they deemed incompatible with a free society. It was with these concerns in mind that they promoted a legal code that prioritized “beneficial use” of resources like water and allocated them broadly according to principles such as “sufficiency.” The distribution of these resources was not to be governed by the ostensibly objective laws of supply and demand, but rather, as Montana Territory justice Hiram Knowles put it, according to “what was reasonable.”⁷⁸ The same distributional goals similarly motivated delegates to regulate the exploitative tendencies of the labor market, empower workers to mobilize collectively, and tax corporate property.

Delegates, however, were not concerned merely with how wealth would be divided, but much more fundamentally with how the modern political economy would be organized and governed. The different parties to the conversation were not just battling over the distribution of economic rewards; they thought of development in radically different terms. This came up during persistent skirmishes over the comprehensibility of the emerging state institutions, or their “legibility,” to apply James C. Scott’s apt term in a particularly broad way.⁷⁹ Corporate investors were not merely immensely affluent, and therefore a target of wealth redistribution; they were also absentee owners who shipped their capital across the continent. These capitalists wanted the property regime to be not only secure but also predictable and transparent, especially from afar. Local farmers had full confidence in an institutional framework governed by democratically elected officials who were answerable directly to the residents of their state. They wanted railroad freight rates and water rights to be allocated, as Maginnis put it in Montana, by “a tribunal that was near the people . . . [and] elected by the people.”⁸⁰ From an absentee investor’s perspective, this was a nonstarter. As Luce explained to his peers, “people do not let their money out from a distance. They will not bring it here or send it here to be controlled by County Commissioners” or other locally controlled bodies.⁸¹ A democratic process that appeared to be most reliable and accountable to the farmers in the region seemed ut-

⁷⁸ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 899. In Idaho, Mayhew similarly appealed to “reason,” arguing that “corporations should be in some measure checked, that is to say, to hold them within the bounds of reason.” *Proceedings and Debates of the Constitutional Convention of Idaho*, 1: 817. Ironically, it is precisely this embrace of “reason” that earned westerners’ rebuke from Adams for being “deaf to reason.”

⁷⁹ On “legibility” as a central problem in modern statecraft, see James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, Conn., 1998). Battles over legibility are the macro-level political analogue of the struggles for workers’ control of the production floor. See David Montgomery, *Workers’ Control in America: Studies in the History of Work, Technology, and Labor Struggles* (Cambridge, 1979); Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865–1925* (Cambridge, 1987).

⁸⁰ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 899.

⁸¹ *Ibid.*, 504. The issue of taxation, if administered by local assessors, introduced a similar element of “uncertainty.” As Beatty pointed out in Idaho, “If you put that kind of a tax on the mines, you give the eastern capitalist to understand that the surface ground of their mines is exactly in the power of the assessors of the state. How many eastern men are coming out here to invest their money in property that will be so uncertain as that?” Claggett likewise warned about the consequences of an absence of “a fixed and certain fiscal policy with regard to . . . taxation . . . if you simply leave the whole matter to be the football of the legislative session, there is never anybody who will ever know two years in advance as to what the laws with regard to mining property are going to be . . . [This] will be a terrible discouragement to the investment of capital.” *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1750, 1763. Elizabeth Sanders has emphasized the significance of social movements’ preference for legislative versus administrative state power run by experts. See Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877–1917* (Chicago, 1999), 387–389.

terly indecipherable to distant investors and their representatives. These investors viewed the democratic political process as an arbitrary infringement on the more predictable laws of political economy and the methodical workings of the private market.

As legal scholar David Schorr has shown in relation to Colorado, the entire legal notion of “beneficial use” resulted in what investors considered an illegible property regime that placed significant restrictions on the easy transfer and sale of water rights. Unlike rights based on the physical capacity of each ditch to carry water, which remained constant, rights based on use fluctuated with rainfall and the precise acreage of land under irrigation. These rights were also always set to expire due to the failure to put water to use. Investors under this system could not hold on to water rights while blocking bona fide settlers. Nor could they shift rights from one type of use to another. All transfers rested on the ability to demonstrate conclusively that the quantity of water passed over had indeed been used for a particular purpose by the seller prior to sale. Any precise measure of this amount required litigation in locally controlled state courts, which affirmed the scope of one’s entitlement on a case-by-case basis. To complicate things further, any given water stream had dozens of upstream and downstream users whose intertwined rights, which were not recorded in any central registry, could not be legally interfered with.⁸²

Needless to say, in reducing the clarity and certainty of property rights, this notion of “beneficial use” did not make for easy alienability of water. Crucially, this regime tended to privilege settlers over absentee investors. Local users, embedded in this dense thicket of arrangements, enjoyed a clear advantage over prospective buyers from outside the region, who had little chance to make sense of it, let alone navigate it.⁸³ Scholars, including Scott, have associated this type of illegibility with pre-modern or pre-capitalist modes of governance. This particular legal framework, however, developed through legal decisions in territorial courts and later codified in state constitutions, was not a vestige of an earlier age but a distinctly modern edifice, driven by the aspirations of western settlers for dynamic commercial development. It nevertheless introduced highly contextual standards that were relatively transparent for local actors while remaining opaque to eastern investors.

Finally, again transcending mere issues of distribution, the question of organizing space—what Richard White has labeled “spatial politics”—became a key theme in the constitutional debates.⁸⁴ The struggle to shape the emergent, and extremely unstable, geography of the modern political economy was central to the politics of the era overall. Westerners were not concerned about the volatility of the geography around them per se. Having themselves migrated time and time again, adroitly traversing across and within regions, they were quintessential modern actors who thrived in the flux of their dynamic environment. Unlike more elite investors and

⁸² David Schorr, *The Colorado Doctrine: Water Rights, Corporations, and Distributive Justice on the American Frontier* (New Haven, Conn., 2012), chap. 5. According to Schorr, the effort to create a clear registry of water rights in later years was invalidated by the state supreme court precisely for its violation of these established use rights. Beatty commented on this feature of “beneficial use” in Idaho. “[T]he main objection,” he explained, was that it made “all interests uncertain.” *Proceedings and Debates of the Constitutional Convention of Idaho*, 2: 1118.

⁸³ This disparity registered in lending companies’ reluctance, and even outright refusal, to accept water rights as collateral for credit. See Schorr, *The Colorado Doctrine*, 127–128.

⁸⁴ White, *Railroaded*, chap. 4.

commentators such as Adams, for whom instability and risk were constant sources of anxiety, western delegates did not appear to be obsessed with imposing a rationalized order on an ever-changing situation. They instead focused on the economic trajectory of the various states and their position in the broader geography of national and world markets. Preoccupied with fostering a measure of relative economic autonomy for the region, they pushed back against the centralizing tendencies of national corporations and worked to counterbalance them with local and regional manufacturing and trade. Breen reflected on this conflict: “When it comes to a question of corporations and the mechanics, laborers, and business men of the territory,” he said, “I think it is to the interest of the people of Montana that it shall be the corporations that will suffer.”⁸⁵ The ideal was not isolation from national and world commerce, but the emergence of overlapping markets of varying geographical scales, with commerce and industry pursued by a diverse array of businesses.⁸⁶

Quite explicitly, delegates were not content with their region’s peripheral status as a provider of raw materials, primarily minerals, which threatened to perpetually leave it in a dependent and vulnerable position. They were concerned about their long-term viability and sought to broaden the economic base of their respective states. As Knowles explained in Montana, hinting at the settlers’ own environmental sensibility, “The wealth that is created by mines passes away in the next fifty or one hundred years perhaps,” so it was important for the state to nurture a greater diversity of economic pursuits, in industry and agriculture, which would become a lasting source of well-being and prosperity: “if we can settle up our valleys with a thriving farm population we know that here will be permanent wealth . . . property that will remain the property of the country.”⁸⁷ Pro-corporate delegates played to these sentiments. They argued that heavy capital investment in mining would naturally have a multiplying effect and inevitably flow to other sectors. Clark optimistically proposed that “the expenditure of large sums of money” in mining would “result in the fostering and development of *other* great industries.”⁸⁸ Hoyt took that to be the main lesson from the experience of Colorado: “Why has Colorado become the great state she is? Because she has welcomed capital, she has not closed her gates, she has opened them wide, and Colorado today is a workshop. Colorado is alive with industry.”⁸⁹ The sense of urgency around regulating railroad and water corporations suggests that most delegates were not convinced. They associated unbridled corporate power—an unwise “opening of the gates”—with one-dimensional and ultimately unsustainable development.

The effort to endow the new states with capacious regulatory powers vis-à-vis the railroads, and especially in regard to freight rates, owed a lot to these concerns about long-term sustainable development. Many of the conventions took place in the aftermath of the Supreme Court’s decision in the *Wabash* case in 1886, which curtailed state-level authority to regulate interstate commerce.⁹⁰ In response, delegates fought

⁸⁵ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 709.

⁸⁶ George Miller’s classic study and Berk’s more recent one both engage this point. See George Hall Miller, *Railroads and the Granger Laws* (Madison, Wis., 1971); Berk, *Alternative Tracks*.

⁸⁷ *Proceedings and Debates of the Constitutional Convention . . . of . . . Montana*, 499.

⁸⁸ *Ibid.*, 127, emphasis added.

⁸⁹ *Journal and Debates of the Constitutional Convention of the State of Wyoming*, 672.

⁹⁰ *Wabash, St. Louis & Pacific Railway Company v. Illinois*, 118 U.S. 557 (1886).

to expand the definition of *intrastate* commerce and the scope of their jurisdiction over it. They required all corporations transacting business within their states to open offices and appoint representative agents within those states, which would be required to meet each state's regulatory and information disclosure requirements. Locally chartered railroad lines that were acquired by "foreign" corporations and integrated into larger railroad systems, they declared, would remain under the jurisdiction of state courts and thus subject to local regulation. Most crucially, long-and-short-haul clauses, which required that freight rates remain proportional to distance, prohibited railroads from shifting the costs of long-distance traffic, where profit margins were squeezed by competition, over to local traffic, where competition among railroads was limited and rates could more easily be raised.⁹¹ Low freight rates within states, relative to interstate commerce, protected regional manufacturers and discouraged importation of goods from national urban centers like New York and Chicago. This was not a backward-looking initiative, a doomed effort to resist the dynamic logic of modernity, but an attempt to facilitate the emergence of a more decentralized political-economic geography and countervail the tendency of low long-haul freight rates to build up a handful of mega-metropolises.⁹²

One of the most striking features of the constitutional struggles in the different states, despite their many similarities, was their indeterminacy, and therefore the heterogeneity of their outcomes. Access to large pools of capital and powerful networks of trust and information that spanned across long distances gave pro-finance forces immense leverage. Their power, however, remained far from absolute. The political pushback from farmers, workers, small businessmen, and other settlers scored meaningful victories, assimilating elements of their own vision into the political framework in the areas of tax policy, infrastructure, social services, government oversight, labor rights, and public control of natural resources. The final drafts of the constitutions, as adopted, were not a clear triumph for any particular interest. They bore the mark of the divides and disagreements that had surfaced during the writing process. They varied based on the conditions of different industries and economic sectors at the time of the convention and on the ability of the respective parties to mobilize and rally support.

⁹¹ See Constitution of the State of Idaho, Article XI, secs. 10, 14; Constitution of the State of Montana, Article XV, secs. 11, 15; Constitution of the State of Wyoming, Article X, "Railroads," sec. 8; Constitution of the State of Washington, Article XII, sec. 7; Constitution of the State of Colorado, Article XV, sec. 10; Constitution of the State of North Dakota, Article VII, secs. 136, 140.

⁹² The predominant interpretation of low long-haul freight rates as an expression of strict economic and thus apolitical terms, driven by the railroad's high fixed costs, dates back to Arthur T. Hadley, *Railroad Transportation: Its History and Its Laws* (New York, 1885). It has been most memorably and lucidly elaborated in Cronon, *Nature's Metropolis*, 81–93. Since these "laws" operated outside the purview of politics, Cronon concluded, Granger agitation (and populism more generally) could only be attributed to the ignorance of the farmers, who "did not fully understand" and "did not fully grasp" the unassailable "logic of capital" (139). Richard White has more recently questioned this view, noting that in fact "the ratio of variable to fixed costs was almost the reverse of what Hadley posited." The railroads, he concluded, "did not base their rates on the cost of service, which they were incapable of determining," but rather "set rates experimentally . . . according to what the traffic would bear." In other words, the structural imperative of railroads to prioritize long over short and medium haul has been vastly overstated. White, *Railroaded*, 331, 162. White owes much in this respect to Gerald Berk, *Louis D. Brandeis and the Making of Regulated Competition, 1900–1932* (Cambridge, 2009), 74–78; Gregory L. Thompson, "Misused Product Costing in the American Railroad Industry: Southern Pacific Passenger Service between the Wars," *Business History Review* 63, no. 3 (1989): 510–554.

In Idaho, for example, the constitution included a strong set of labor provisions outlawing the deployment of private police forces and the hiring out of convict labor. The constitution dictated the formation of a Bureau of Immigration, Labor and Statistics and set the length of the workday at eight hours for all government work. Mining interests, however, were powerful enough to eliminate the clauses that required regulation of safety in mines, held employers liable for workers' injury, and disallowed the blacklisting of labor leaders. They were also able to avoid a clause enforcing a tax on the net proceeds of mines.⁹³ Farmers in the state proved to be a more potent political force than industrial workers. The constitution thus subjected railroad corporations to assertive regulation, including government oversight of freight charges and prohibition of discriminatory rates. Tax breaks and other subsidies to private business interests were made illegal, tying the hands of overeager or pliable state legislators in their future dealings with corporations.⁹⁴ The constitution, furthermore, declared all waters appropriated for "sale, rental or distribution" to be for "public use, and subject to the regulations and control of the state." It prioritized agricultural over industrial uses of water, set firm limits on the transfer of water rights, and explicitly sanctioned the regulation of water rates. It did not, however, form a water commission to enforce these policies, leaving that to the discretion of the legislature.⁹⁵

Similar battles in Colorado, Montana, Wyoming, Washington, and North Dakota produced an uneven and unpredictable range of outcomes. The constitutions of Idaho, Montana, and Wyoming, for example, called for an eight-hour workday in all government works. That provision failed to pass in Colorado, Washington, and North Dakota.⁹⁶ The constitutions of Colorado, Wyoming, and Washington mandated strict regulation of safety in mines. Those of Idaho, Montana, and North Dakota did not.⁹⁷ Washington was the only one of the six states that failed to restrict child labor in mines. Where age limits were imposed, however, they varied from sixteen years in Montana and fourteen in Idaho and Wyoming to twelve in Colorado and North Dakota, which extended this restriction to underage work in factories and workshops.⁹⁸ All six constitutions declared railroads to be common carriers and prohibited undue discrimination between users and locales. However, the constitutions of Montana, Washington, Idaho, and North Dakota explicitly authorized state regulation of railroad freight and passenger rates. In Colorado and Wyoming, this clause was struck out.⁹⁹ The constitutions of Montana, Idaho, and Washington included explicit long-

⁹³ Idaho Constitution, Art. XIV, sec. 6; Art. XIII, sec. 3; Art. VIII, sec. 1; Art. XIII, sec. 2.

⁹⁴ *Ibid.*, Art. XI, secs. 5, 6; Art. XI, secs. 10, 14; Art. VII, secs. 2, 4, 8.

⁹⁵ *Ibid.*, Art. XV, sec. 1; Art. XV, sec. 3; Art. XV, sec. 4; Art. XV, sec. 2.

⁹⁶ *Ibid.*, Art. XIII, sec. 2; Montana Constitution, Art. XVIII, sec. 2; Wyoming Constitution, Art. XIX, sec. 1.

⁹⁷ Colorado Constitution, Art. XVI, secs. 2, 3; Wyoming Constitution, Art. IX, sec. 2; Washington Constitution, Art. II, sec. 35.

⁹⁸ Montana Constitution, Art. XVIII, sec. 3; Idaho Constitution, Art. XIII, sec. 4; Wyoming Constitution, Art. IX, sec. 3; Colorado Constitution, Art. XVI, sec. 2; North Dakota Constitution, Art. XVII, sec. 209. Wyoming's constitution prohibited all females from working in the mines. It did not, however, include a prohibition on blacklisting labor organizers, convict labor, and the formation of a labor bureau.

⁹⁹ Montana Constitution, Art. XV, sec. 5; Idaho Constitution, Art. XI, sec. 5; Washington Constitution, Art. XII, sec. 18; North Dakota Constitution, Art. VII, sec. 142. Following the struggle in Washington, the convention aborted the formation of a permanent regulatory body, stipulating merely that "a railroad and transportation commission *may* be established"; Washington Constitution, Art. XII, sec. 18.

and-short-haul clauses, requiring rates to correspond to distance, but those of Colorado, North Dakota, and Wyoming did not.¹⁰⁰ Colorado exempted mines from special taxation for ten years from adoption of the constitution. Wyoming and Montana mandated a tax on gross product from the onset of statehood. Idaho, Washington, and North Dakota left this tax entirely out of their final drafts.¹⁰¹ Lastly, all states reserved water for public uses, subject to “beneficial” appropriation. However, whereas the deliberations in Montana, Washington, and North Dakota whittled down the issue of water to a single obtuse clause, Colorado, Wyoming, and Idaho included more elaborate articles on this topic. Colorado and Wyoming established permanent state commissions to oversee the allocation of water. Colorado and Idaho prioritized domestic and agricultural over industrial uses. Idaho included a special clause subjecting prior appropriation to “reasonable limitations” in dry seasons. Colorado alone explicitly empowered its commissioners to establish “reasonable maximum rates.”¹⁰²

The tug of war between investors and populists, therefore, produced a variety of legal regimes, depending on the contingent progression of each constitutional convention. This is how issues of legibility and spatiality intersected. The comprehensibility of political institutions was not merely in contention within each individual state, but also in the overall cluster of western states, each with its own property rights regime (under the sovereignty of state courts), regulatory apparatus (controlled by elected state commissioners), and framework for industrial relations (mediated through a democratically elected legislature, courts of arbitration, and labor unions). Constitutional provisions had to be followed up by legislation in state assemblies and then implemented by local officials, which would leave the entire apparatus in a radically uncertain flux in years to come. The constitutional conventions, therefore, enacted an uneven regulatory landscape that national corporations would have struggled to traverse. In the absence of measures to the contrary by federal authorities over the next several decades, led by the unelected Supreme Court, the consolidation of the national market, rather than preordained or necessary, seemed more likely to derail and fracture.¹⁰³ Instead of culminating in a “flat world,” market integration produced a complex new geography, an institutional patchwork that was never fully transcended in the twentieth century.¹⁰⁴

HISTORIANS OF THE UNITED STATES have long debated the nature of western populism at the end of the nineteenth century. They have disagreed over whether populism, in its different political iterations, signaled the resilient (and often sinister) influence of

¹⁰⁰ Montana Constitution, Art. XV, secs. 5, 7; Idaho Constitution, Art. XI, secs. 5, 6; Wyoming Constitution, Art. X, sec. 7, and Art. XII, sec. 15; Washington Constitution, Art. XII, sec. 13; Colorado Constitution, Art. XV, sec. 4; North Dakota Constitution, Art. VII, sec. 142.

¹⁰¹ Colorado Constitution, Art. X, sec. 3; Wyoming Constitution, Art. XV, sec. 3; Montana Constitution, Art. XII, sec. 3.

¹⁰² Montana Constitution, Art. III, sec. 15; Washington Constitution, Art. XXI, sec. 1; North Dakota Constitution, Art. XVII, sec. 210; Idaho Constitution, Art. XV, secs. 1–6; Colorado Constitution, Art. XVI, secs. 5–8; Wyoming Constitution, Art. VIII, secs. 1–5.

¹⁰³ Bensel, *The Political Economy of American Industrialization*, 321.

¹⁰⁴ For the articulation of this metaphor in relation to modern-day globalization, see Thomas L. Friedman, *The World Is Flat: A Brief History of the Twenty-First Century* (New York, 2005).

outmoded pre-industrial ideas in modern American politics or rather the hopeful (at times almost utopian) grassroots origins of modern liberalism. Did it mark the last hurrah of an already superseded mode of nineteenth-century politics or the opening shots in the development of twentieth-century “Progressive” reform? Situated in the context of a deeply contested and contradictory global transformation—a trajectory that headed toward no logical or necessary point of culmination—populism defies both of these characterizations. Neither a rearguard nor a vanguard, populists did not position themselves in relation to the unfolding of a predetermined historical arc. Rather, they mobilized as active historical agents in a struggle to shape the emergence of the modern political economy. They drew on earlier ideas but freely innovated as they saw fit. In rallying around fundamental policy questions—property rights, government regulation, industrial relations, and, more broadly, the relationship between regions in the world economy—they grasped the contradictory, malleable, and relatively open-ended nature of global integration in this formative period.¹⁰⁵

American populists, therefore, belong properly alongside other grassroots movements around the world that remained skeptical of liberal institutions and sought to embed global capital in more accountable political frameworks. Their efforts, even those that were defeated, are analytically significant precisely for loosening the conceptual teleology of modernization templates that have done so much to depoliticize economic questions and obliterate alternative visions of development. Their battles, examined in a geographically broad framework of analysis, allow us to fully appreciate the constitutive role of local and regional politics in a seemingly inexorable structural transformation.¹⁰⁶ These efforts were not barren. They produced lasting pockets of local power and state-level autonomy within the federal structure of American politics. Historians of the United States in the twentieth century have begun to grapple with the implications of these structural wrinkles in what once appeared to be the unchallenged blanket authority of the federal government.¹⁰⁷ On a more global scale, historians are gradually uncovering the connections between worldwide economic integration in the late nineteenth century and growing nationalization and regionalization.¹⁰⁸ These lasting challenges to the centralization of power are more

¹⁰⁵ These dynamics bear out Geyer and Bright’s discerning analysis of how the history of globalization, rather than displacing local and regional histories, in fact reveals the full significance of all regions to world history “as actors and participants in the very processes being narrated”; “World History in a Global Age,” 1044–1045, quote from 1045.

¹⁰⁶ This affirms Gregory Downs’s insight that “historians may be able to fully understand domestic politics only through the lens of transnationalism, and the ironies of transnationalism only through domestic politics”; “The Mexicanization of American Politics,” 409.

¹⁰⁷ See Gerstle, “The Resilient Power of the States across the Long Nineteenth Century”; Kimberley S. Johnson, *Governing the American State: Congress and the New Federalism, 1877–1929* (Princeton, N.J., 2007); Thomas J. Sugrue, “All Politics Is Local: The Persistence of Localism in Twentieth-Century America,” in Meg Jacobs, William J. Novak, and Julian E. Zelizer, eds., *The Democratic Experiment: New Directions in American Political History* (Princeton, N.J., 2003), 301–326; Karen M. Tani, *States of Dependency: Welfare, Rights, and American Governance, 1935–1972* (New York, 2016); Tami J. Friedman, “Exploiting the North-South Differential: Corporate Power, Southern Politics, and the Decline of Organized Labor after World War II,” *Journal of American History* 95, no. 2 (2008): 323–348; Elizabeth Tandy Shermer, *Sunbelt Capitalism: Phoenix and the Transformation of American Politics* (Philadelphia, 2013).

¹⁰⁸ Vanessa Ogle, *The Global Transformation of Time, 1870–1950* (Cambridge, Mass., 2015); Sebastian Conrad, *Globalisation and the Nation in Imperial Germany* (Cambridge, 2010).

properly understood not as remnants of an earlier age, but as fully integral to the process of market-making itself. They did not slowly fade, but rather created an enduring spatial legacy, an inherently uneven terrain for future struggle.

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