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THE "MARKET" IN THE EARLY REPUBLIC

James A. Henretta

Markets are hot topics these days, both in the worlds created by contemporary policy-makers and in those re-created by historians of the early republic. Indeed, the “Market Revolution” threatens to supersede “The Age of Jackson,” “The Era of the Common Man,” and “The Industrial Revolution” as the leitmotif of an era.¹ But what was the specific character of the “market economy” that attained an increasingly important role in American life in the early nineteenth century? How did it operate? What particular rules, or even peculiarities, did it have? Beyond description lies theory. Can we place the market economy of the early republic within a spectrum of social systems?

“The greatest want of civilized society is a market” declared Henry Clay in 1824, as he laid out the principles of his American System. With a market in place, God himself would “conduct us into that path which leads to riches, to greatness, to glory.”² But as Clay discovered, many Senators—and many Americans—did not support his nationalist policies for expanding the emergent market economy. Both then and now, the “market” is not a fixed economic abstraction but the malleable product of political will.

Whose political will is a crucial question. In “The Anti-Capitalist Origins of the United States,” Michael Merrill argues that in the early republic Americans divided over two rival systems of political economy.³


One set of policies, favored by Alexander Hamilton and the Federalist party, would use the power of the state to assist “monied men,” merchants and financiers, to pursue a “capitalist” path of domestic commercial development through, for example, the chartering of banks. “Our monied capital has so much increased from the Introduction of Banks, & the Circulation of the Funds,” Philadelphia merchant William Bingham noted in 1791, “that the Necessity of Soliciting Credits [from England] will no longer exist, & the Means will be provided for putting in Motion every Specie of Industry.”

Alternatively, Thomas Jefferson, James Madison, and the Democratic-Republican party, favored what Merrill calls an “agrarian” model of commercial society. They would pursue economic development by favoring three groups of “producers”—export-oriented planters, yeoman farmers, and artisans—offering them incentives to produce a substantial surplus for sale in urban or foreign markets. This outcome was far from assured because many yeoman farm families preferred a “subsistence-plus” existence that did not commit them to full-scale participation in an unpredictable market economy.

Each set of policies had crucial implications for the “market”—in land, commercial exchange, money, and legal doctrine. Indeed, we might say that they would prescribe the rules under which that market, or portions of it, would operate.

Consider the conflicts over land in four strife-torn regions of the early republic: Maine, northeast Pennsylvania, the Hudson River Valley of New York, and Kentucky. In each of these states farmers—labeled by their supporters or detractors as “Liberty-Men,” “Wild Yankees,” “Anti-Renters,” or, simply, “Squatters”—claimed a God-given right to settle upon and improve the land, regardless of the legal claims of proprietors, grantees, manorial lords, or speculators. As early as 1786 Henry Knox warned George Washington that some people believed “the property of

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5 See Allan Kulikoff, “The American Revolution, Capitalism, and the Formation of the Yeoman Classes,” in Beyond the American Revolution: Explorations in the History of American Radicalism, ed. Alfred F. Young (DeKalb, IL, 1993), 105-06. Kulikoff distinguishes three theories of agricultural practice: capitalist farming that emphasized improvement, productivity, and the use of hired labor; “agrarian realism,” a term devised by Michael Merrill to describe men such as Jefferson and Madison, who advocated small-scale family-based farming directed for market sale; and “yeoman” production, a world dominated by subsistence-plus farmers who only sold their “surplus” on the market.
the United States, has been protected from confiscation of Britain by the joint exertions of all and therefore ought to be the common property of all.  

Such aspiring yeomen farmers contested the market-based system of allocating lands through the mechanism of prices. They wanted free distribution of land by the state or, failing that, a system of low "administered" prices set through the political process, which they could affect with their votes. The yeomanry usually got at least part of what they wanted. When Virginia's revolutionary legislature rejected the claim to much of Kentucky advanced by the North Carolina speculators organized in the Transylvania Company, it proceeded to give away much of the territory to influential Virginians, bestowing grants in excess of 100,000 acres to twenty-one individuals and partnerships. However, scores of land-hungry migrants and squatters balked at buying land from these speculators. They demanded free access to frontier tracts, meeting in an extra-legal assembly near Harrodsburg to claim title to land in Kentucky "by Preoccupancy, agreeable to the Entry Laws of Virginia." In 1779 the legislature responded to this agitation by enacting a complicated statute that gave "actual settlers" the right to purchase 400 acres at a below-market price; those who had made "improvements" could "preempt" an additional 1,000 acres. Consequently, land in Kentucky was distributed through both the "capitalist" and the "agrarian" systems of political economy. At the time of statehood non-resident speculators held title to much of the land, but at least half of the adult male residents owned some land, mostly in parcels of less than 500 acres.

Similar compromise outcomes between the two systems of political economy prevailed in Pennsylvania and Massachusetts. In 1801, Pennsylvania's Jeffersonian legislature appointed commissioners to settle a violent conflict in the northeast region of the state between proprietors holding Pennsylvania land-grants and "Wild Yankees" who held titles from the Susquehanna Company of Connecticut. Liberally interpreting a Compromise Act of 1799, the commissioners allowed Connecticut migrants to purchase up to 300 acres at the below-market price of thirty-

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two cents an acre, and used state funds to provide additional compensation to the Pennsylvania-based claimants. In Massachusetts, a Betterment Act of 1808 likewise sought a political solution to conflicts in the Maine district. The Act gave local juries in ejectment cases the authority to set the prices that Liberty-men and other settlers paid to absentee speculators, with the result that most settlers paid the below-market price of $2 to $3 per acre for their improved farmsteads.  

The Jeffersonians’ most conspicuous failure came in New York, where the manor lords of the Hudson River valley refused to sell farmsteads to Anti-Renters, insisting both that tenants sign long leases and then pay substantial sums when they sold or renewed them. Consequently, for another generation the counties near Albany were beset by rent strikes, “white Indian” violence, and political strife. Ultimately, even this longstanding conflict found a political resolution. Responding to a new Anti-Rent war during the early 1840s (and influenced by emergent classical-liberal principles of political economy), the delegates who wrote the New York Constitution of 1846 consciously undermined the pillars of the landlord system by restricting agricultural leases to twelve years and voiding “all fines, quarter sales or other like restraints upon alienation reserved in any grant of land.”

In fact, because so much American land was initially owned by the federal and state governments, politics was an integral part of the land market. The national government continually changed the minimum prices at which its land could be purchased at auction, and varied the minimum acreage and the terms of credit as well. These political decisions influenced not only the pace of movement to the frontier but also the price of privately-owned lands in the west and established farmsteads in the east.

In times of economic crisis, the impact of politics on government policy was especially striking. The tremendous boom in land sales after 1815, especially in the Cotton Belt, brought an equally spectacular increase in the debt owed by farmers and planters to the national government: no less than $23 million dollars by 1819. Even before the financial panic of that year, Congress responded to political pressure, enacting laws in 1818 and again in 1819 that postponed forfeiture for delinquent purchasers. And in 1820, when President Monroe suggested

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“a reasonable indulgence” to overextended settlers and speculators, Congress responded with an elaborate Relief Act. All owners—whether original subscribers or subsequent purchasers, resident farmers or absentee speculators—had the option of taking clear title to the already-paid portion of their property (and relinquishing title to the rest, without paying interest on the arrears) or keeping their entire claim, in which case they could pay it off in eight annual installments, again without interest. As a special incentive, owners who paid off the debt immediately in cash received a discount of no less than 37.5 percent.

The Relief Act commanded overwhelming support in Congress, which approved it by a vote of 36 to 5 in the Senate and 97 to 40 in the House. Defending the act’s lenient provisions, Senator Jesse B. Thomas of Illinois, chair of the Public Lands Committee, pointed out that when most of the debt was contracted the “price of produce of every description was more than 100% higher than at present.” But Representative Robert Allen of Tennessee rejected the principle of legislative interference with debt contracts, arguing that the Relief Act set a bad precedent for government fiscal policy and constituted a special privilege for public land debtors.10

In the long run, such political intervention altered the structure of American farming, “distorting” the optimum allocation of land through the market system. According to the cliometric analysis of Jeremy Atack and Fred Bateman, there were many more large farms in the North in 1860 than was economically rational (not only because influential men received large grants but also because yeoman parents purchased more land than they needed for farming in order to provide inheritances for their children). As Atack and Bateman put it,

public land policy, [by] discriminating in favor of larger farms by specifying minimum but not maximum purchases, resulted in a smaller agricultural surplus and less food available for export. . . . Overall, replacing one 121-160 acre farm with four 31-40 acre ones would have increased the marketable surplus by 42 percent in the West if all else remained the same.

Moreover, Atack and Bateman suggest, cultural factors such as “the lure of the land and the traditional dream of agrarian paradise” created too many farmers as well as oversized farms. “From the national economic perspective,” they conclude, “resources should have been reallocated

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from agriculture to alternative pursuits, more individuals should have
selected other occupations, and more should have invested their capital
elsewhere . . . but as of 1860 [these market signals] seem to have been
partially disregarded."

In addition to political pressure and cultural values, the habits and
institutions of the existing economic world inhibited the play of market
forces and delayed the emergence of a price-run exchange system. To
grasp the importance of "history" in affecting the pace of change,
consider the real-life experiences of two New England businesses.

In the late 1820s Dexter Whittemore, a storekeeper in Fitzwilliam,
New Hampshire, organized an outwork network to produce palm leaf
hats. Importing palm leaf from the West Indies, Whittemore had it split
into long strips in his shop and distributed to hundreds of workers, mostly
women and teenage girls from poorer farm families, who braided it into
hats. About 250 braiders worked for Whittemore in the late 1820s,
annually producing around 23,000 hats; by the 1850s, his ledgers listed
some 800 braiders, who made about 80,000 hats each year. An
archetypical aspiring merchant capitalist, Whittemore brought the outwork
system into the homes and lives of several thousand farm families.

Yet this extension of the market involvement of rural New England
families was—indeed, had to be—very gradual because their lives were
firmly imbedded in the existing subsistence-plus system. Even in the
1820s, most households in Fitzwilliam operated within a mature barter-
economy, providing a variety of farm goods (mostly butter, cheese, eggs)
to Whittemore and other merchants, and receiving in return various
imported foods, yarn and cloth, household goods, and farm tools. They
also used Whittemore as a local "banker," asking him to credit the value
of their farm produce to the accounts of other of his customers to whom
they were in debt.12 Whittemore thus played a dual role, serving

11 Jeremy Atack and Fred Bateman, To Their Own Soil: Agriculture in the Antebellum
North (Ames, IA, 1987), 217, 266.
12 Thomas Dublin, "Women and Outwork in a Nineteenth-Century New England
Town: Fitzwilliam, New Hampshire, 1830-1850," in The Countryside in the Age of
Capitalist Transformation, ed. Steven Hahn and Jonathan Prude (Chapel Hill, 1985), 51-
70. The world of these Fitzwilliam subsistence-plus farmers was very different from that
of the export-oriented planters in Fairfax County, Virginia; there, as early as 1760, a store
run by John Glassford and Company, a Glasgow mercantile house, had 387 customers, all
of whom were "cash" or staple-goods customers: 20 percent paid for goods with specie or
currency while 80 percent purchased on credit, paid for within the year with tobacco ready
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simultaneously as a representative of the trans-Atlantic capitalist market system and as the nexus of the town's barter-economy.

The hat-outwork system added a significant "cash" component to Whittemore's business but did not completely undermine the pre-existing exchange system. In 1830, credit for hat work appeared in 84 percent of Whittemore's accounts, amounting to about 48 percent of the total credits. However, 50 percent of his accounts listed third-party payments, which accounted for about 8 percent of the total credits, while another 27 percent of the credits came from barter transactions of farm goods or labor services. Thus, 35 percent of the gross receipts of this merchant capitalist in 1830 flowed from one part or another of the traditional exchange economy, while only 17 percent came in the form of cash or notes.

Twenty years later, Whittemore and his outworkers were more fully integrated into a cash economy. As before, hat credits were predominant, appearing in 83 percent of his accounts and comprising 45 percent of the credits. Third-party payments had diminished markedly in number, appearing in only 26 percent rather than 50 percent of the accounts, and they now amounted to only 4.5 percent of the credits. The value of bartered farm goods, homemade textiles, and labor services decreased as well, falling from 27 to 12 percent of the total. Consequently the subsistence-plus exchange economy now accounted for only 16.5 percent of Whittemore's receipts (down from 33 percent in 1830). Conversely, by 1850 cash payments and IOUs totalled 37 percent of his credits (up from 17 percent in 1830), raising the proportion of his gross receipts from the cash economy to 82 percent. The slow and halting transition from a barter-economy to a cash-based market system was nearly complete.\(^\text{13}\)

The story—and the chronology—was much the same in the book manufacturing business of Ebenezer and Dan Merriam in Brookfield, Massachusetts. During the 1820s, three-fourths of the books printed and bound in the Merriams' shop in Brookfield were carried by freight wagons to publishing houses in New York, Philadelphia, Albany, Boston and Worcester. In return, the Merriams received neither cash nor credit but other books which they had to sell or barter. Every year between 1818 and 1831, the Merriam brothers traded with 25 to 30 storekeepers in small settlements throughout southern New England (over the years, a total of 91 rural merchants in 26 towns), exchanging their own imprints

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\(^{13}\) Dublin, "Women and Outwork," 54-56.
and those of city publishers for store goods. They used some of these goods to feed and clothe their families and apprentices; the remainder were “recycled” into the local exchange economy, balancing out accounts with local suppliers and artisans.

Like the merchant capitalist Dexter Whittemore, the book manufacturing Merriams found themselves at the center of a complex barter-economy. They paid their journeyman primarily in kind—the rent of a small house, credits to his accounts at local stores, and no less than one-third of his “wages” in books, which he apparently had to peddle for himself if he wished for more than a literary “profit” from his labors. The Merriams also “sold” books at their office and took almost anything in return: rye, corn, veal, cheese, butter, pumpkins, onions, firewood, and lumber in goods; mercantile credits from shoemakers; and even a little cash, primarily from members of the professions: ministers, doctors, and lawyers.

The first major challenge to the Merriams’ barter-economy came in 1824. Papermaking firms, whose bills accounted for 33-45 percent of the total cost of a book-run, demanded payment either in bank notes or in specie or in the notes of few large New York and Philadelphia publishers—in short, in the negotiable instruments of a cash economy. Previously, the Merriams had never handled $200 in cash over the course of a year; now they had to come up annually with $800 to $1,500.

To meet the demands of the market, the Merriams engaged it more fully, adding a new line of business. They began to print law books for large city publishers—Carey and Lea of Philadelphia and Collins and Hannay of New York—and used most of the resulting cash or credit income to pay for paper. Whenever they were confronted by a cash-flow crisis, the Merriams also relied on the emergent market-in-money, tapping the funds of wealthy merchants and landlords in rural Massachusetts; no fewer than 15 times between 1804 and 1837, they mortgaged their office, houses, and lands.

With their cash needs covered by printing contracts and mortgage loans, the Merriams continued as before to participate in the regional barter system, exchanging books for goods and services. Only twenty years later, in 1845, did these book manufacturers turn decisively to the cash economy, and then (as in 1824) because they had no choice. City-based publishing firms would no longer accept books from the Brookfield enterprise in return for their own volumes, but instead (as one of the Merriams put it) “accumulated cash balances against us.” Needing cash from their customers, the Merriams could no longer participate in the
traditional rural barter system. In Brookfield, as in Fitzwilliam, cash money and market-exchange had become the measure of all things.

"Money is so very scarce and we must have some." The words of Roxanna Bowker Stowell, a poor southern New England hatbraider, might well be those of the two generations of Americans who lived through the transition to a cash economy. Money in the form of specie was always "very scarce" during these decades, while money in the form of paper—whether currency, bank paper, or mercantile notes—was often of suspect value. "Money," the very sinews of a market economy, was perhaps the most problematic of all commodities produced in the antebellum American economy.

Actually, most American money was not "commodity" money in its usual form of gold or silver, but "token" or artificial money, to use the nomenclature of Karl Polanyi. In early America, as in most early modern economies, commodity money (specie) was used in foreign trade, token money (paper) in domestic commerce. The land-bank paper currency used successfully in colonial Pennsylvania, as one scholar explains, was "simply a [domestic] means to a particular [foreign] end:" it "increased the productivity of [the] colony and thereby enhanced its capacity to export produce for specie." Token money was potentially inflationary money, for its quantity was politically determined. The vast emission of currency during the Revolutionary War and the consequent inflation convinced some Americans, and especially many creditors, that state-issued token money was dangerous. The pro-debtor policies of some state legislatures during the postwar recession drove home the point. In 1786 George Washington warned Henry Knox that the legislatures were apparently "determined to annihilate all debts public and private and have Agrarian Laws, which are easily effected by . . . paper Money." Consequently, the creditor-conscious delegates to the Philadelphia Convention included a clause in

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15 Quoted in Dublin, "Women and Outwork," 64.

the new federal Constitution prohibiting state-issued token money; states could not “coin money, emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any . . . law impairing the obligation of contracts. . . .”\textsuperscript{17}

This creditor-inspired measure may have retarded the American transition to a market economy by constricting the money supply. Most of the newly-chartered banks initially served export-oriented merchants or inland traders, lending them specie or credit on specie so that they could pay for imported goods or purchase bills of exchange for foreign trade. However, both the First Bank of the United States and state-chartered banks also accepted deposits and printed their own paper notes, which they loaned out at interest, thus providing a quasi-public substitute for state-issued paper money. Yet for the next two generations there were continual demands for more banks—and more token money—which suggests that the ban on state-issued currency created a significant financial problem.

The ban certainly did not end political struggles over monetary policy. If Federalists feared “agrarian” laws enacted by legislative majorities, early Jeffersonians shuddered at the concentrated economic power represented by Hamilton’s Bank of the United States, warning it would produce “a consolidated, energetic government supported by public creditors, speculators, and other insidious men lacking in public spirit of any kind.” To dilute the Bank’s influence and to make credit available to farmers and artisans, New York Jeffersonians issued state charters to institutions such as the Troy and Lansburg Farmers Bank (1801) and the Mechanics’ and Farmers’ Bank of Albany (1811). Such institutions quickly expanded the supply of token money because (as New York comptroller Azariah Flagg noted a few decades later) they often issued stock in return for notes of other banks, so that their own notes were hardly backed by specie at all. As the economist Matthew Carey observed, the result of this pyramid scheme was a “mercantile world . . . like the piles of bricks erected by playful children.—The fall of one produces the fall of others—either immediately or remotely.”\textsuperscript{18}

The magnitude of the problem became clear during the Panic of 1819. The number of state banks had increased from a few dozen in the 1790s, to 88 in 1811, to 246 by the end of 1815—when the face value of bank notes in circulation amounted to approximately $68 million, much of it of dubious soundness. To impose some order on this chaotic system (and to

\textsuperscript{17} Washington quoted in Reisman, “Federalist Political Economy,” 151; \textit{U.S. Constitution}, art. I, sec. 10.
\textsuperscript{18} The quotations are from Reisman, “Republican Revisions,” 13, 16-17.
profit in the process), enterprising money brokers in the large cities bought up the notes of distant banks at a discount, and then dispatched agents—the first "carpetbaggers"—to redeem the notes at par and in specie.\footnote{Rothbard, \textit{Panic of 1819}, 110.} Even as this rudimentary clearing system disciplined private banks through market coercion, in 1816 Congress chartered the Second Bank of the United States, directing it to contain the expansion of credit through the imposition of specie requirements.

At first the Second Bank merely contributed to the financial boom; by 1818, it had issued $23 million (in notes and demand deposits) on a specie reserve of $2.5 million. When the Second Bank finally implemented a deflationary policy in the summer of 1818, requiring state banks to pay their debts to it in specie, it set off a chain of bank failures and an abrupt contraction of the supply of credit. By 1821, those state banks that still were solvent had only $45 million in circulation and the court dockets of every state were crowded with thousands of cases, as creditors tried to save their own businesses by taking possession of the devalued property of their debtors. The financial system—indeed, the market economy itself—was in crisis. Since profits depended on prices, the substantial post-1815 decline in the price level threatened firms with bankruptcy and a massive destruction of capital.

The Constitution's prohibition of state-issued currency had yielded neither a stable standard of value nor an effective barrier to political manipulation. Indeed, it may have exacerbated both problems. Whatever the inflationary risks posed by state-issued currency before 1789, the legislature of each state had controlled the amount of paper money and could be held responsible for its value. A token-money system controlled by independent, privately-controlled banks was inherently less stable and less predictable. "To create money," a New York critic of speculative banking practices warned in pamphlet of 1815, was "to place the price of all property at the caprice and judgment of those [bankers] who wield power."\footnote{Quoted in Reisman, "Republican Revisions," 24.}

Moreover, the bank-charter system subjected the market economy to political control. Entrepreneurs and would-be bankers infiltrated the nascent party system, mobilizing community support for local banks and dispensing bribes to legislators (often in the form of bank stock) to win charters. To mollify public concern over the award of these special privileges, state governments imposed a wide variety of "social" burdens on banking corporations. A New Jersey law required banks in three cities
to pay an annual fee equal to one-half of one percent of their capital stock, while in 1836 the Pennsylvania government extracted $2.5 million for the common school fund from Nicholas Biddle in return for giving him a state charter for the (former) Second Bank of the United States. Other states required banks to purchase stock in manufacturing and transportation companies or carry a percentage of their loans as low-interest farm mortgages or offer generous terms of credit for contractors on canal and railroad projects. Whatever the means, the result was the same: higher costs for banks and therefore higher costs (in interest charges or risks of default) for borrowers and for the financial infrastructure of the emergent market economy.

To create a trustworthy yet flexible token-money supply Governor Martin Van Buren of New York drafted a plan for a Safety Fund. As passed in 1829 by the New York legislature, the act created a comptroller to inspect the books of banks chartered by the state, set up open procedures for advertising and selling the stock of new banks, and devised a pooled fund to pay the debts of failed banks. In an innovative attempt to limit the amount of token money, the act required banks to invest their assets "in safe public stock" (of transportation or manufacturing companies) so that the expansion of bank credit would not exceed the needs of the economic system. "The amount of that credit, which can be kept in use without creating a redundant circulation," explained Joshua Foreman, the financial architect of Van Buren's plan, "is exactly the amount necessary for the transaction of business and is regulated by the balance of the commodities in the market at the time."

This intellectual insight—linking the size of the money-supply to that of the market in commodities—and its attempted political implementation through the Safety Fund represented a giant step forward in the theory of a market economy. By linking the market value of an item with its intrinsic worth in a given economy, it sought to free the token money system from the caprice of public legislatures or private bankers. But it would take many decades, and many political battles (such as those among Greenbackers and "goldbugs" and advocates of "free-silver") before an economically rational market-in-money would come into existence.

During times of financial crisis all markets and contracts were exposed to legislative control. As prices plummeted in 1818, Massa-

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22 Quoted in Reisman, "Republican Revisions," 32.
Massachusetts and New York engaged in a "border war," using legal means to protect resident debtors at the expense of creditors in the other state. Similarly, following the Panic of 1819, most state governments in the trans-Appalachian West came to the aid of debtor-farmers. The Indiana legislature increased the amount of property a debtor could "exempt" from seizure in forced sales and stayed all executions for debt for one year, unless the creditor accepted at par the paper currency issued by a new state bank. Missouri, emulating Ohio and Pennsylvania, enacted a minimum appraisal law that required creditors to accept property at two thirds of its "official" value, as determined by three appraisers appointed by the local county court, effectively increasing the value of most debtors' assets. The Missouri legislation contained a "stay" requirement as well, stipulating that the creditor had to accept at par the certificates issued by a new loan office or wait thirty months before initiating a court suit.  

Similar minimum appraisal bills were rejected by substantial margins in New Jersey, New York, and Virginia. The Virginia legislature also narrowly defeated two stay bills, swayed in part by the Adam Smith-influenced logic of Representative William Selden: "Leave men alone to make their own contracts, and leave contracts alone when they are made." In those states where such relief measures passed, creditors promptly challenged them in the courts, usually with success. State courts in Missouri, Kentucky, Tennessee, and Vermont overturned as unconstitutional both stay and minimum appraisal laws. The United States Supreme Court likewise declared in favor of creditors, striking down in Sturges v. Crowninshield (1819) a New York bankruptcy law that granted relief to debtors for previously contracted debts. (But the Court allowed the relief legislation to govern the legal status of newly-made contracts.)

Legal rules also had to be devised to govern market transactions between merchants in different states. As early as 1801 the Massachusetts politician and legal theorist James Sullivan argued that "there ought to be one uniform rule throughout the nation on bills of exchange, promissory notes, insurance policies, and all personal contracts. These all arise from commerce," Sullivan astutely noted, "and the regulation of them is the regulation of commerce itself." Nearly a half-century later, there was still no uniformity. As the editor of Hunt's Merchants' Magazine lamented in 1846, "In a country like ours, composed of a federal government and

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23 Freyer, Producers versus Capitalists, 21; Rothbard, Panic of 1819, 61, and chap.1.
24 Selden quoted in Rothbard, Panic of 1819, 37. Despite various court rulings, state legislatures continued to pass stay and other debtor-relief laws; see Freyer, Producers versus Capitalists, 89.
some 29 distinct and interdependent sovereignties, it is a source of no little regret that there should be discordance in the fundamental laws of the several states. . . .”\textsuperscript{25}

The negotiability of mercantile bills of exchange constituted the central problem. As interstate trade in commodities expanded, merchants and manufacturers created a parallel trade in bills and notes to transmit the funds to pay for these goods. Most mercantile notes were payable in sixty or ninety days but, in the meantime, they passed from hand to hand. Thus, the bills of credit issued by New York publishers to the Merriams of Brookfield in return for their printing services were endorsed immediately by the Merriams and used to pay papermaking firms in western Massachusetts; eventually, after several more endorsements, the notes would be returned to New York for redemption. However, the value of such financial instruments always was uncertain. The notes could be counterfeit or fraudulently endorsed; in other cases the original purchaser or the issuing bank had gone bankrupt. In those situations a present holder of a note might be out of luck, or that person or company might have a legal claim against the last person who endorsed the note (and thus implicitly attested to its worth). Everything depended on law, which varied significantly from state to state.

The problem of establishing a rational and secure interstate credit system was not easily resolved. Recourse to the federal court system brought little relief, because Section 34 of the Judiciary Act of 1789 required federal judges to follow the laws of the state in which the legal action arose. During the first decades of the nineteenth century most federal judges conformed to this directive, especially in cases involving real estate. However, some jurists sought to break free of state law in commercial cases, invoking the concept of a general mercantile law independent of state sovereignty and jurisdictional authority.\textsuperscript{26}

In a political world obsessed with the issue of federal authority versus states’ rights, any such legal innovation promised to unleash a major constitutional struggle. As chief justice, John Marshall encouraged a national market economy both through his commerce clause decisions (such as \textit{Gibbons v. Ogden} [1824]) and his rulings in tax cases. For example, in \textit{Brown v. Maryland} (1827), Marshall devised an “original package” doctrine that limited a state from taxing goods imported from another state. Following the decision in \textit{Brown}, such goods could be taxed


\textsuperscript{26} \textit{Ibid.}, chap. 1.
only when they were broken into separate lots and distributed to retailers. But even Marshall shied away from establishing a federal commercial law. Burnt by the pre-1815 controversy over the Court's attempt to define a federal common law of crimes (which ended with the explicit repudiation of that initiative) the chief justice treated interstate financial cases with great circumspection. His Court supported lower court jurists who invoked general commercial rules (rather than state laws) in cases involving the negotiability of commercial notes but, even when he might have done so, Marshall refused to challenge the primacy of state laws established by Section 34 of the Judiciary Act. Consequently, in so far as a market economy depended on private credit sustained by firm legal rules, there was not one but many "markets" in the early American republic.

This situation changed only in 1842, when the principle of a federal commercial law was firmly articulated in the precedent-setting case of *Tyson v. Swift*. Writing for the Court, Justice Joseph Story, Marshall's closest judicial ally, upheld the dictum of the great English jurist Lord Mansfield that negotiable instruments were governed by a "general" commercial law, a ruling that favored both national standards and creditors' rights. As Story had argued in 1812 (in an unsuccessful earlier effort to declare a federal commercial law), the primacy of local law "set the citizens of the different states in array against each other, and enable a fraudulent debtor to retreat into another state, and there by a formal surrender of his property and a settled residence, to set at defiance the claims of all his absent and honest creditors." Recognizing the need for uniform commercial regulations, Roger B. Taney and his fellow Jacksonian judges endorsed Story's opinion, making the decision unanimous.

Anthropologists have devoted considerable effort to describing and defining the economic systems found in diverse societies. In general, they agree that economies fall into three broad categories: redistributive systems, such as those found among some native American peoples, that

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29 *Tyson* gave a creditor an absolute right of recovery against a debtor even when the debt consisted of a fraudulent note. Taney and his Jacksonian colleagues refused to extend *Tyson* so that federal commercial common law applied to cases involving citizens of the same state, reiterating the primacy of state law in such instances in the important case of *Watson v. Tarpley* (1856). *Ibid.*, 53-54.
encourage a periodic sharing of resources; barter systems, in which goods and labor are exchanged directly and which are therefore governed in part by personal relations and social reciprocity; and market systems, in which most transactions are impersonal and regulated by a sovereign system of prices.

Clearly the United States economy during the early republic was primarily a market-based, price-driven system. But, as this examination of land, exchange, money, and law has shown, that economy also included elements of an older barter economy that was imbedded in the social structure of many communities. This barter system persisted in part because of the immature state of American financial institutions and instruments: the country lacked a paper currency and did not have enough specie or sound bank paper to allow the rapid transition to a full-fledged market system. Finally, and most important, the emerging American economy was shaped in a multitude of significant ways by political (and often redistributive) decisions, such as the distribution of land at administered prices, the award of bank charters in return for social subsidies, and the choice of legal rules—in the Judiciary Act of 1789—that gave primacy to state law and inhibited the creation of efficient systems of interstate commercial transactions.

Consequently, the so-called "market revolution" of the early nineteenth century involved not only a conflict between rival "capitalist" and "agrarian" models of commercial society, as Merrill has argued, but an even more fundamental process of change that challenged existing cultural values, prompted political conflict, and required legal innovation. Until this transformation had taken place (and, with respect to political influence on the economy, this may never have occurred), non-economic factors played a significant role in defining the parameters of the American market system.