By the King.

A Proclamation for setling the Plantation of Virginia.

Hereas the Colonie of *Virginia*, Planted by the hands of Our most deare Father of blessed memory, for the propagation of Christian Religion, the increase of Trade, and the enlarging of his Royall Empire, hath not hitherto prospered so happily, as was hoped and desired, A great occasion whereof his late Majesty conceived to be, for that the government of that Colony was committed to the Company of Virginia, incorporated of a multitude of persons of severall dispositions, amongst whom the affaires of greatest moment were, and must be ruled by the greater number of Votes and Voyces; And therefore his late Majestie, out of His great Wisedome, and depth of Judgement, did desire to resume that popular government, and accordingly the Letters Patents of that Incorporation, were by his Highnesse direction in a Legall course questioned, and thereupon judicially repealed, and adiudged to bee voyde; whereon his Majesties aymie was onely, to reduce that government into such a right course, as might best agree

THE ATLANTIC IMPERIAL CONSTITUTION

CENTER AND PERIPHERY IN THE ENGLISH ATLANTIC WORLD

KEN MACMILLAN

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Softcover reprint of the hardcover 1st edition 2011 978-0-230-11174-5

First published in 2011 by PALGRAVE MACMILLAN® in the United States—a division of St. Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010

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ISBN 978-1-349-29406-0 ISBN 978-0-230-33967-5 (eBook)
DOI 10.1057/9780230339675

Library of Congress Cataloging-in-Publication Data

MacMillan, Ken.
The Atlantic imperial constitution : center and periphery in the English Atlantic world / Ken MacMillan.
p. cm.

1. Constitutional history—Great Britain. 2. Constitutional history—Great Britain—Colonies. 3. Great Britain—Colonies—America—Administration—History—17th century. 4. Central-local government relations—Great Britain—History—17th century. 5. Central-local government relations—America—History—17th century. 6. Great Britain—Politics and government—1603–1649. I. Title.

JN193.M34 2011
325'.341091821–dc22 2011014745

Design by Scribe Inc.

First edition: November 2011

For
William Paul MacMillan
November 17, 1938–October 24, 2010

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Preface

This book is, in some respects, a sequel to my last monograph, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006). That book considered how the English Crown and certain metropolitan and colonial agents working on its behalf expressed legal authority over the English Atlantic colonies. I demonstrated that using a number of different methods—such as writing promotional treatises, issuing colonial charters, building fortifications, drawing maps, and engaging in treaty negotiations—perpetual English sovereignty over certain parts of the Atlantic was asserted in ways that were intelligible to a European audience that was familiar with the Roman legal language of the *ius commune*. Drawing on core principles from this legal language, particularly the twin tenets of *animus* and *corpus*, England managed to gain supranational acquiescence and recognition for its right to possess those regions over which it could demonstrate both mental and physical claims. These methods and justifications, developed under Elizabeth and the early Stuarts, created the legal foundations of the British Empire and were repeatedly used as Britain expanded its influence across the globe.

After *Sovereignty and Possession* appeared, I was asked to contribute chapters to several collected volumes that investigated various aspects of the British Atlantic world. I used these opportunities to consider additional dimensions of central involvement in colonial affairs that could not be attended to in the earlier book. As my point of departure, I sought to contextualize the orthodox view that regular, central oversight in Anglo-Atlantic affairs began virtually *ex nihilo* in the Interregnum period with the Navigation Act of 1651 and was not consistent, coherent, or imperial until at least the mid-Restoration period. During the process of research and writing, I came to the conclusion that although central involvement in the Atlantic under the early Stuart monarchs was limited in comparison to domestic governance and future imperial oversight, this activity nonetheless created an incipient *Atlantic Imperial Constitution*. This constitution

was consistent with how the English Crown had historically governed its wider composite monarchy within its internal empire (Scotland, Ireland, Wales, and surrounding islands) and set precedents for how the overseas empire was later supervised from the center. That is, the important, if generally unintrusive, center-periphery relationship that emerged from the first few decades of these activities formed a constitutional model that helped to determine what later imperial relations should look like.

The central arguments of the present book have been shaped in several essays, though none are reprinted here: "Imperial Constitutions: Sovereignty and Law in the Atlantic," in *Britain's Oceanic Empire: British Expansion into the Atlantic and Indian Ocean Worlds, 1550–1850*, edited by Huw V. Bowen, Elizabeth Mancke, and John G. Reid (Cambridge: Cambridge University Press, 2012); "'Bound by Our Regal Office': Empire, Sovereignty, and the American Colonies in the Seventeenth Century," in *The American Colonies in the British Empire, 1607–1776*, edited by Stephen Foster (Oxford: Oxford University Press, 2012); and "Centers and Peripheries in English Maps of America, 1590–1685," in *Early American Cartographies*, edited by Martin Brückner (Chapel Hill, NC: University of North Carolina Press, 2011). I wish to thank Cambridge University Press for permission to use a revised version of my article "The Bermuda Company, the Privy Council, and the Wreck of the *San Antonio*, 1621–23," *Itinerario* 34 (2010): 45–64, in Chapter 2. The production of each of these essays from draft to publication resulted in comments from editors and anonymous referees, all of which improved the final products and, therefore, this book. Discussions with Trevor Burnard, Stephen Foster, Elizabeth Mancke (who also read the entire manuscript), John G. Reid, Christopher Tomlins, and several participants of the *British Asia and British Atlantic, 1500–1820: Two Worlds or One*? symposium held at the University of Sussex in July 2007 have been helpful. An anonymous reader at Palgrave Macmillan also made valuable comments.

This study has benefitted from funding provided by the Social Sciences and Humanities Research Council of Canada and teaching release time provided by the Calgary Institute for the Humanities. Research was conducted primarily at the National Archives in Kew (Richmond, Surrey, UK), which, as usual, provided the professional assistance that is essential for a transatlantic scholar with limited time available. Thanks to Phil Beard for travel companionship, to his wife Joanne for letting him out to play, and to Shannon Peever and Ellen Koning for their valuable services, which enabled me to complete the

manuscript. My wife, Luna, has become accustomed to my times away from home and family and has accepted these absences with her usual grace. During the time that I was researching and writing this book, our sons Owen and Lewis were born. They quickly became our privy councilors, laboring hard when petitions and appeals were put before them to determine, usually through proclamation, the course of action that would help strengthen our domestic constitution. Along the way, they have provided much reprieve from teaching and writing. This book is dedicated to my father, Bill MacMillan (1938–2010). In addition to spending more than forty years as an airman and soldier, dad was a voracious reader and talented amateur historian whose quickness of mind, even as cancer was slowly claiming his body, was a model of the inquiring spirit.

Conventions

In early modern England, the year began on Lady Day, March 25. To avoid confusion, throughout this book the year is taken to begin on January 1. This work relies heavily on original documentation in which the spelling of place and personal names is inconsistent. To ensure consistency, I have adopted either modern usage or the most common spelling used in the sources. In quotations from primary materials, spelling and punctuation have been modernized and abbreviations silently expanded. The original spelling of early modern book and tract titles has been retained in the notes to facilitate further reference. All manuscript references are to the National Archives of the United Kingdom, unless otherwise noted.

Abbreviations

APC	*Acts of the Privy Council of England, 1613–42*, 20 volumes (Burlington, Ontario, Canada: TannerRitchie, 2010; originally published in London: HMSO, 1921–60)
APCC	W. L. Grant, James Munro, and Almeric W. Fitzroy, eds., *Acts of the Privy Council of England, Colonial Series, Volume 1: 1613–1680* (Burlington, Ontario, Canada: TannerRitchie, 2005; originally published in Hereford: Anthony Brothers, 1908)
BL	British Library
CO	Colonial Office papers, TNA
CSPC	W. N. Sainsbury, ed., *Calendar of State Papers, Colonial Series, 1574–1660* (Burlington, Ontario, Canada: TannerRitchie, 2004; originally published in London: HMSO, 1890)
CSPD	Various editors, *Calendar of State Papers, Domestic Series, 1603–41*, 21 vols. (Burlington, Ontario, Canada: TannerRitchie, 2005–7; originally published in London: HMSO, 1857–82)
E	Exchequer papers, TNA
ODNB	*Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004)
PC	Privy Council Register, TNA
Proc. I	James F. Larkin and Paul L. Hughes, eds., *Stuart Royal Proclamations: Volume I: Royal Proclamations of King James I, 1603–1625* (Oxford: Clarendon Press, 1973)

Proc. II	James F. Larkin, ed., *Stuart Royal Proclamations, Volume II: Royal Proclamations of King Charles I, 1625–1649* (Oxford: Clarendon Press, 1983)
RVC	Susan Myra Kingsbury, ed., *Records of the Virginia Company*, 4 vols. (Washington, DC: U.S. Government Printing Office, 1906–34)
Sackville	A. P. Newton, "Lord Sackville's Papers Respecting Virginia, 1613–1631," *American Historical Review* 27 (1922): 493–538, 738–65
SP	State Papers, TNA
TNA	The National Archives of the United Kingdom, Kew, Richmond, Surrey

Introduction

When James VI of Scotland became James I of England in 1603, the empire he inherited included Ireland, Scotland, Wales, and a number of surrounding islands. Calais, England's last vestige of its medieval empire on the Continent, was lost to France in 1558. The famous Elizabethan voyages of Francis Drake, Martin Frobisher, Humphrey Gilbert, and Walter Ralegh, though fresh in the minds of English humanists and adventurers, had not resulted in any permanent settlements. Quite oppositely, the failure that accompanied most of these ventures served more to impede future efforts than to encourage them. Thus, by the end of Elizabeth's reign, England remained, in the words of the imperial proponent John Dee, an "islandish monarchy."[1] Some forty years later, on the eve of the English revolution, the Atlantic was populated by approximately fifty thousand English subjects. They lived in more than a dozen settlements in Bermuda, Newfoundland, the Caribbean islands, and several colonies along the eastern mainland of North America (including Virginia, Maryland, and several New England colonies).[2] The story of the success and failure of these various endeavors, and of the religious, political, demographic, and economic variety among the colonies of the English Atlantic world during their first few decades, is well known to students of Atlantic and American history.[3]

This book examines the relationship between the English central government and its Atlantic colonial peripheries under the early Stuarts, circa 1606–42.[4] It was the functional nature of this relationship during these early few decades of permanent settlement, I shall argue, that created an incipient *Atlantic imperial constitution* and established precedents for how the overseas empire was later supervised from the center. The term *Atlantic* refers to the English colonies planted in the vast territorial region of the Atlantic Ocean, principally those in the North Atlantic and the Caribbean. Although the constitution this book examines was not necessarily limited to the Atlantic, this study follows other scholars' focused use of this region over the past

two decades to provide useful physical, ideological, economic, and political parameters with which to frame the analysis.[5]

The constitution that I will be examining was *imperial* because it refers specifically to the authority and powers exercised by the executive branch of government known as the "Crown," which in England exclusively held *imperium*, the form of absolute sovereignty that allowed the king to oversee the territorial extent of his empire.[6] Despite the constitutional crises of the seventeenth century, the fact that England and its dependent territories were united under a single, sovereign, imperial authority was an essential characteristic of English empire building and state formation from the time of the "first English empire" in the twelfth century to the height of empire in the nineteenth century. This constitution was imperial in another sense, too, in that it was largely distinct from the English domestic constitution, which fundamentally involved the historical common law, Parliament, and legislation as guiding legal principles. Oppositely, as we shall see, the imperial constitution relied principally on the Crown and the legal mechanisms at its disposal to administer a wide territorial empire.[7]

Finally, in early modern England and its internal and external empire, a *constitution* was a system of laws, customs, policies, and conventions that helped to determine the powers and composition of the central government and the relationship of that institution with peripheral provincial or colonial bodies and with individual subjects. Importantly, unlike "the constitution" often spoken of in the context of the United States in the late eighteenth century, those extant and employed in the seventeenth century were not codified in documents, institutions, or sets of laws, but instead were fluid and organic, and based on a vast, though not infinite, range of ideas and legalities that collectively determined the source and application of legal authority. In this period, a constitution was articulated through a combination of written policy (particularly, with regard to the Atlantic, as embodied in colonial charters, royal proclamations, and other Crown directives) and unwritten immemorial custom (especially the historically acquired rights of freeborn Englishmen), together with the practice that accompanied this theory, which, in the context of this study, involved the extent to which the colonies were permitted to govern their own affairs and the nature and degree of Crown oversight exercised in the English Atlantic world.[8]

This study engages with a large body of scholarship that investigates two closely related arguments. The first argument is that although the early Stuart Crown in theory had ultimate authority in the colonies,

in practice it relinquished this authority to the trading companies, proprietors, and planter assemblies through chartered guarantees of autonomy and the subsequent decision not to become involved in colonial affairs. Variations on this argument maintain that the central authorities had little interest in the overseas empire, because the government had as yet developed no imperial ideology, expected little economic or political advantage to come of the incipient overseas enterprise, took a laissez-faire approach to trade, preferred a "weak-state" model of governance that required the peripheries to administer themselves (essentially adopting a policy later termed "wise and salutary neglect"), had limited fiscal or military ability to exert its authority across the vastness of the Atlantic Ocean, even if it wished to do so, and was obsessed with constitutional problems at home.[9] As one writer has argued, in a statement substantially mirrored by others, by 1642 the colonies were "much as they had always been, neglected outposts of an accidental empire."[10] Thus, with a few notable exceptions,[11] according to the current orthodoxy, the original center and periphery relationship—the Atlantic imperial constitution—was an attenuated one in which the king delegated key state functions to colonial bodies in exchange for the early Stuart central government electing not to become involved in these affairs, provided only that the colonies did not create laws or institutions that deviated fundamentally from English traditions.[12] In this climate of autonomy, the peripheries quickly developed self-regulatory mechanisms and unique "subcultures" that did not depend on or reflect those of the center, and thus became resistant when the central government did occasionally seek to become involved.[13]

This first argument has led to the second and, perhaps, more important one. This is the theory that because imperial control was not asserted, or was deliberately abandoned, at the outset of the English Atlantic enterprise, there was no constitutional basis for the central government (both Crown and Parliament) later to become involved in legislating, regulating, or overseeing colonial affairs. According to this argument, active central involvement in the Atlantic began in the 1650s, when the Interregnum government, in an effort to enforce acceptance of the new regime and bring about new national trade policies, woke to the concept of empire and began thinking in terms of a nascent imperial policy. This included, especially, the regulation of trade (as allegedly originated in the Navigation Act of 1651) and Oliver Cromwell's "Western Design," an imperial plan to increase English power in the Caribbean and reduce that of the Spanish, which ultimately led to the conquest of Jamaica.[14] As is abundantly

evident in the historiography—which is overwhelming for the period after 1660 as compared to the early Stuart age—a central commitment to the overseas empire continued after the Restoration with the development of various trade and plantation committees and by the mid-1670s had become, to use the words of Jack Greene, "vigorous and systematic."[15] Even then, given the central government's limited ability to exercise coercion, it needed to rely on the cooperation, or at least the acquiescence, of colonial assemblies and elites in order to enforce its will.

The putative "end of American independence," to quote Stephen Saunders Webb, has been attributed to the creation of an enduring plantation council in 1675 under the control of "imperial secretary" William Blathwayt, or to the suppression of Nathaniel Bacon's rebellion in Virginia in 1676, or to the creation of the Dominion of New England in 1685, or to the aftermath of the Glorious Revolution of 1688, which led, in 1696, to the imperially minded Board of Trade.[16] The board quickly established itself as an active regulatory body, taking stock of the empire as a theater of commerce and settlement, reviewing colonial legislation for elements repugnant to English sensibilities, and considering numerous petitions and appeals from the colonies. The crux of this argument, as it would later be expressed by American colonists and more recent historians, is that the extension of central control was illegitimate, since it was an innovation that was not part of the original Atlantic imperial constitution established at the outset of English Atlantic activities in the early seventeenth century. Colonists insisted on a return to their "old liberties and privileges," by which, it has been argued, they meant significant levels of autonomy from central intrusion, as allegedly guaranteed in the charters and confirmed through the limits of early Stuart oversight.[17] This theory not only would, of course, have significant impact on the turbulent relationship between center and periphery during much of the eighteenth century but would also signal the importance of a federated constitution that later characterized many former British overseas dominions, including the United States after 1788.[18]

In seeking to better understand and contextualize these widely debated issues, this study demonstrates some of the ways in which the early Stuart Crown was involved in English Atlantic affairs. It does so through the use of a variety of colonial records and state papers, the most important of these being the registers maintained by the clerks of the Privy Council, housed in the National Archives of the United Kingdom.[19] Though not unknown to historians of empire, these volumes have been remarkably underutilized. Instead, especially in

recent generations, scholars have tended to prefer either printed materials that offer autoptic descriptions of the colonial experience—such as the writings of William Bradford, Thomas Hariot, John Smith, and William Strachey—or the more accessible Colonial Office papers.[20] To be sure, extensive use of the council registers for the early Stuart period presents challenges for historians, which helps to explain their limited use. One challenge is that the volumes for the first decade of Stuart rule, 1603–12 (which includes the first half dozen years of permanent colonial activity), were destroyed by fire; thus the activities of the council for this period can only be surmised by examining the correspondence and memoranda of various senior officers of state extant in the National Archives and elsewhere.

In most cases, it is also impossible to know what discussions occurred while the council considered Atlantic affairs or which councilors supported a particular decision, as the register ultimately only records the final outcome of a pending matter, which sometimes took several months to complete and involved a wide variety of councilors and council sessions. The council often appears to act of one mind, when in all likelihood some colonial issues caused dissension among councilors, especially given that many of them were personally involved in Atlantic affairs. A related problem is that the clerks often only recorded orders that required action to be taken by some individual or group. When the council refused to hear a petition or when, after deliberation, it was denied and no subsequent action was required, the record either elides the matter entirely or fails to record the resolution of a pending matter. Although the latter might suggest that the council neglectfully let the matter drop without resolution, more often than not its decision was negative, such that no record was needed.

The council was also very secretive in its affairs, each privy councilor and clerk being required to swear an oath to "keep secret all matters committed and revealed unto [them] or that shall be treated of secretly in council."[21] The result of this requirement for secrecy is the presence of only a limited number of ancillary sources that explain conciliar decisions. In addition, by the early Stuart period, the council's duties were increasingly undertaken by committees, which had a policy of not inviting the clerks of the council or recording the minutes of their meetings. This was the case when, frequently during the early Stuart period and especially during Charles I's "personal rule," the members met as a "committee of the whole" council and when certain members assembled in various standing committees and temporary commissions. Few records survive, for example, of the meetings

of the Committee for Foreign Plantations, a body first created as a standing committee in 1634 to oversee colonial affairs.[22] The extant register shows only the matters passed to this committee and occasionally the committee's reports to the council in plenary, but none of the intervening discussions. The absence of minutes of the committee's meetings has encouraged one prominent early twentieth-century historian to suggest that the committee maintained a "phantom existence," a conclusion that I shall discuss later in this study.[23]

Despite their limitations, when reconciled with a broad range of state papers, royal proclamations, and Atlantic colonial records, the Privy Council registers offer a more complete picture of Crown involvement than historians have previously recognized. Although certain events of central involvement in colonial affairs are well known to students of Atlantic and imperial history, a great deal more of this involvement awaits closer study, which is the purpose of this book. Chapter 1 explains the historical rights and responsibilities of the early Stuart Crown in an imperial context and describes the wide-ranging roles of the principal body that exercised the king's executive powers in the empire, the Privy Council. This chapter argues that the charters (or letters patent) that brought the Atlantic colonies into existence, which were designed by Crown officials, articulated an incipient Atlantic imperial constitution that was somewhat different than historians have often alleged. Despite awarding significant privileges of self-governance to the colonies and preferring a limited role in imperial government, the Crown nonetheless retained oversight over its Atlantic peripheries, particularly when issues of sovereignty, royal prerogative, foreign affairs, lawmaking, allegiance, economy, and the needs of the state were involved. Subsequent chapters show how the Crown exercised its authority in the English Atlantic, which put the theory articulated in the charters into practice and resulted in an Atlantic imperial constitution by the end of the early Stuart period.

Using the example of Anglo-Spanish relations under James I, Chapter 2 demonstrates that, consistent with its obligations to other sovereign states, the Crown became involved in foreign affairs and dispute resolution when English Atlantic activities impacted upon other nations. This involvement included an investigation into the activities of Sir Walter Ralegh and Captain Roger North in the Amazon, which resulted in the execution of the former and the imprisonment of the latter. This chapter also examines an investigation conducted by the Bermuda Company into a Spanish shipwreck that occurred in that colony. Though little known to historians, this dispute exemplifies certain aspects of the Atlantic imperial constitution: central oversight

over issues important to the Crown, comingled with peripheral discretion to deal with internal affairs. Chapter 3 shows how the Crown's authority was exercised to authorize or deny the emigration of a variety of subjects, from convicted felons and vagrants to religious dissidents and those suitable for naval impressment. In determining the movement especially of nonvoluntary and nonconformist emigrants, the Crown helped give shape to the Atlantic and determine its future demographic composition. These actions also set precedents for the Crown's role in emigration after the Restoration.

Using the example of tobacco, the English Atlantic's first staple commodity, Chapter 4 examines the Crown's efforts to regulate certain aspects of the Atlantic economy. Its interventions included the development of a number of economic policies, such as the expectation that England should be the nexus of trade for the empire, that English shipping should be preferred over non-English means, and that the colonies would gain special trading privileges over foreign competitors. Each of these policies, which are more commonly associated with the navigation acts of the 1650s and 1660s, was in aid of financing the state and developing the ideology of mercantilism. Chapter 5 reveals that the Crown, particularly under Charles I, heard and determined hundreds of petitions and appeals that were received from Atlantic agents. Through the instrument of the petition, the Crown approved the transportation of certain prohibited goods to the colonies; became involved in important extracolonial disputes over Newfoundland, Barbados, and Maryland; and addressed numerous mundane civil and criminal matters over which it exercised superior judicial authority. This chapter challenges the notion that petitions and appeals were instruments that began to be used only in the late seventeenth century and were therefore an innovation that was not part of the original Atlantic imperial constitution.

Finally, Chapter 6 argues that once this Crown oversight became too burdensome for the council in plenary, both because of the increasing levels of supervision and because of the growing territory and population of the Atlantic, the king created a series of commissions and committees to handle these affairs. These Crown entities addressed important events such as the dissolution of the Virginia Company and the investigation into Massachusetts Bay, both of which resulted in the cancellation of charters, and took on more mundane issues, including emigration and petitions. The development of these bodies under the early Stuarts from temporary, largely nonconciliar entities with specific mandates to standing, conciliar committees with wide powers of oversight at their disposal serve as an index of the

seriousness with which the Crown increasingly approached Atlantic affairs under Charles I. As embodied especially in the Committee for Foreign Plantations, first appointed in 1634 and in operation until the end of the early Stuart period, the mandates and activities of these committees created precedents for how similar bodies were expected to operate in the Restoration period.

From the issuance of the charters to the Crown's subsequent and increasing degrees of oversight, the involvement of the executive branch of the English central government in the early seventeenth century framed the nature of the Atlantic imperial constitution. Though often providing oversight from the background and operating more reactively than proactively, the Crown's role with regard to its Atlantic empire was not absentminded, intermittent, or neglectful. Rather, under the early Stuarts, Crown intervention in Atlantic affairs reflected a historically based, ideologically principled, and broadly consistent system of imperial governance. As in largely self-governing domestic England and its empire closer to home, the Crown often found it expedient to compromise and negotiate on certain issues, and many of its decisions demanded the cooperation of local elites to be enforced, which was also an integral component of the Atlantic imperial (and English domestic) constitution.[24] The small population of the English Atlantic in the early seventeenth century and its physical distance from England, together with the restricted economic and political value of these colonies in their first few decades, and the expectation that the colonies would administer their own affairs, necessarily dictated limits to the degree of Crown involvement. Crown interventions nearly always involved the exercise of sovereign, prerogative, and imperial rights and responsibilities, which included making decisions according to the best interests of the state (the contemporary term was *propter commune utilitatem*) without becoming needlessly intrusive in the mundane internal affairs of the colonies that did not impact one or more of these roles.[25] Generally, when it came to the development of social, cultural, legal, administrative, and economic institutions in the colonies, the Crown saw fit to leave these matters to those on the ground, provided that they did not negatively impact royal *imperium*, the lives and liberties of subjects, or the present or future needs of the English state.

In essence, my argument is that peripheral English Atlantic activities and the colonies that emerged from them were never—and, consistent with contemporary ideas of sovereignty, could not have been—constitutionally guaranteed independence from the center. Instead, there were limits placed on colonial autonomy from the

outset, which ensured that the Crown's sovereign and imperial rights and obligations were respected by the colonies' administrators and inhabitants. Therefore the notion that there was an "end of American independence" in the Restoration age, the perception of which led to dissension in the eighteenth century, constitutes a flaw in our understanding of the early colonial period. Rather, it is only through a proper understanding of the relationship between center and periphery in the early Stuart period that we can hope to contextualize that which occurred after 1650. Importantly, the nature of the early Stuart Atlantic imperial constitution shows that neither the creation of various navigation acts to regulate the imperial economy after 1650, nor the powers of oversight that were conferred upon Restoration committees after 1660, nor the more active involvement of these bodies under the later Stuarts signaled innovative imperial policy. This oversight—though indisputably more "vigorous and systematic" than that which occurred in the early Stuart period—reflected existing or evolving practice that had been in place from the beginnings of English Atlantic expansion.

Chapter 1

The Crown and the Atlantic Charters

In the administration of state affairs, the early Stuarts relied on the participation of a wide array of officials throughout the realm. Lords lieutenant, judges, justices of the peace, sheriffs, coroners, constables, receivers, attorneys, wardens, and others, all ultimately acted in the name of the king and his government. Some of these officers held their positions directly by royal appointment, usually created through a commission. Some inherited their position from a deceased relative or held it by virtue of their rank in society. Others, like constables, were appointed by local communities and engaged in this work temporarily and sometimes begrudgingly. Still more officials gained position as the result of sophisticated patronage networks in which powerful nobles had the right to make appointments. Under James and Charles, it also became increasingly common for officials to purchase their offices from the king and, in some instances, to make annual payments to retain them. This was popular among the early Stuart monarchs because it regulated, to an extent, the amount of money flowing into the ever-impoverished royal coffers.[1]

The existence of these thousands of state officials, who operated with overlapping and ill-defined jurisdictions and came into their positions through various means, has suggested to historians that the early Stuart state lacked a strong centralized bureaucracy and that the preferred form of governance was a "weak-state" model that relied on local participation to be effective. Although the modern state was in the process of formation, this was not complete until the end of the seventeenth century, when war and empire demanded a shift to the "strong" fiscal–military state.[2] Not coincidentally, this is the same

time in which the center is seen to have begun to more actively oversee its imperial peripheries. To some extent, the argument that the early Stuart state was weak is certainly correct. Most officials were unpaid or received fees for their services rather than a salary from the state. This meant that they did not depend directly on the central government for their livelihood and could not be supervised too strictly for fear that they would not properly attend to their duties. Most also lived far away from the centers of power and authority, which enabled officials to operate semiautonomously, with limited oversight, and in a manner that was consistent with local rather than national concerns. The latter allowed for the use of discretion and paternalism, in which communal norms could be exercised despite more strict policies emanating from the center.[3]

This relationship demonstrates the efficacy of the center–periphery theory with regard to domestic England. To quote sociologist Edward Shils, "As we move from the center . . . in which authority is possessed . . . to the . . . periphery, over which authority is exercised, attachment to the central value system becomes attenuated." Moreover, "the further one moves territorially from the locus of authority, the less one appreciates authority."[4] In early Stuart England, the center was in the metropole of London and Westminster. The periphery moved steadily away from this core into the counties and palatinates; the geographically and ideologically distant north and west; the culturally and linguistically diverse domestic empire of Scotland, Ireland, Wales, and various seigneurial islands; and across the vast expanse of the Atlantic Ocean. In this direct context, the argument of Shils and others is that the further people or institutions resided from the center, the more independent and distinct they became, which meant that they were less willing to accept the authority of the central government. In part, this was because they knew that the center could exert little coercion over the geographically distant peripheries to force acceptance of central authority. Historians have generally argued that the physical expanse of the Atlantic Ocean exacerbated this tendency toward attenuation between center and periphery. That is, if the weak-state model in England made it challenging to keep domestic peripheral authorities in line and enforce policies emanating from the center, this problem was even more attenuated by the substantially greater distance the Atlantic colonies were from the central source of authority.[5]

However, although the weak-state model of government was generally preferred under the early Stuarts, and although the attenuation between center and periphery was often an issue of some concern to

the central authorities, there was nonetheless a locus of authority that created stability among, and conferred legitimacy upon, England's many officeholders. This centralized authority was the executive branch of government known as the Crown, embodied principally in the king, his Privy Council, and a small number of other officials who held residual executive power. This was the body that issued commissions, writs, proclamations, and instructions to officeholders with the expectation that these subordinate officials would recognize the legitimacy of the Crown and undertake their duties without resistance.[6] In theory, the Crown could exert its authority against particularly poor or recalcitrant officials by removing them from their positions or by having them arrested and investigated.[7] In practice, however, in a culture of voluntary and sometimes begrudging provincial office holding, this type of action could be used only rarely and in exceptional circumstances. Even during a time when the early Stuarts were relying on lords lieutenant in the provinces to help enforce their questionable fiscal policies, the central government rarely had sufficient coercive power and instead had to rely on the cooperation of peripheral elites. In matters of, for instance, poverty, dearth, disease, justice, religious conformity, military service, and financing the state—all of which significantly impacted early Stuart England—officials were encouraged to accept that central policies were formulated for the betterment of the nation and were asked to implement them in a spirit of cooperation with the central government.[8]

In the context of early Stuart Atlantic affairs, over which domestic state officials (and, for that matter, Parliament) often had limited or no authority, the Crown held imperial jurisdiction and ruled through a different set of prerogatives than it did in domestic England. Paradoxically, this gave the center even greater powers of oversight over its wider empire than it could otherwise exercise in the realm of England, both because there were far fewer officeholders in the Atlantic to implement (and impede) royal directives and because—especially in "conquered" realms like the Atlantic—the king was not limited by the traditions and institutions of common law in the same way that he was in England. This meant that the Privy Council was, at least in theory, a more powerful force in the empire than it was in the realm, even if its activities with regard to the former paled in comparison to those in the latter. At the same time, however, as in domestic England, the Crown needed to rely on the cooperation of peripheral Atlantic officials to recognize the legitimacy of the central, imperial government and to execute its proclamations and instructions accordingly. To this end, at the outset of English Atlantic expansion, the central

government issued colonial charters (more properly, letters patent) that explained the future relationship between Crown (the center) and colony (the periphery). It was these documents that ultimately created the theoretical model of the Atlantic imperial constitution and explained the legitimacy of and rationale for subsequent Crown oversight. This supervision took the form of issuing proclamations, reviewing petitions and complaints, determining matters of trade, altering charter privileges as the situation demanded, and occasionally taking the extreme action of recalling the charter because of repugnant colonial abuses or innovations that derogated from the king's sovereignty or the rights of the subjects who gave him their allegiance.

THE CROWN AND KING

To quote Ernst Kantorowicz, the Crown was "the embodiment of all sovereign rights—within the realm and without—of the whole body politic, [and] was superior to all its individual members, including the king." Although the king was the "guardian" of the Crown, it comprised a "composite body of king and magnates who together were said to be . . . the Crown," some of whom were represented by peripheral officeholders.[9] At the head of the Crown, though as Kantorowicz emphasized, not the entire institution, was the king himself: in the early Stuart period, James I (1603–25), and his second son Charles I (1625–49). Since the late-medieval period, the king had ruled through divine right and possessed *imperium*, or the powers of an independent sovereign monarch who recognized no higher earthly authority. This notion was powerfully articulated in England in the Act in Restraint of Appeals (1533), which upheld that according to "sundry old authentic histories and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, . . . governed by one supreme head and king, having the dignity and royal estate of the imperial Crown . . . , unto whom a body politic, . . . ought to bear, next to God, a natural and humble obedience."[10] By the early Stuart period, following events such as the incorporation of Wales into English politics, the Elizabethan conquest of Ireland, and the accession of the Scottish king James VI to the English throne as James I, this notion of expansive and independent *imperium* also extended to the Crown's imperial holdings.

The sovereign rights of an independent monarch were best articulated in 1576 by Jean Bodin. In a formulation of direct relevance to England—he explicitly mentioned the kings of England as exemplifying his brand of "absolute" and "indivisible" sovereignty—Bodin fully

expressed the rights of a king both within his territorial jurisdiction and in relation to sovereigns of equal status. While also demanding that kings conform to the laws of God and nature, so that they did not rule as tyrants, Bodin enumerated nine marks of sovereignty: power to give laws as "sole legislator," power of war and peace, right of final appeal, power to appoint and dismiss officers of state, power of taxation, power to pardon individuals and mitigate the severity of the law, power of life and death, power to issue coinage, and the exclusive right to receive oaths of allegiance.[11] Building on Bodin's formulation, the early Stuart monarchs took their rights of sovereignty and prerogative particularly seriously. Especially as embodied in James VI and I's *Trew Law of Free Monarchies* (1598), Bodin's ideas had major implications for the early Stuarts' relationship with Parliament during their reigns and has dominated the political historiography of the period.[12] As we shall see in this study, however, many of Bodin's marks of sovereignty were also expressed by the English Crown in an Atlantic context.

In medieval and early modern England, the king exercised his sovereignty using royal prerogatives that were established by natural laws, English medieval statute (especially that known as *Prerogativa Regis*), and historical custom. In the age of the Tudors and Stuarts, these prerogatives were discussed at length by leading lawyers and statesmen, such as Francis Bacon, Edward Coke, Thomas Egerton (Baron Ellesmere), Matthew Hale, and William Staunford. In addition to rehearsing the king's prerogative rights vis-à-vis Parliament and the common law (otherwise known as "ordinary" or "limited" prerogatives), these various authors also listed the king's exclusive (or "extraordinary" or "absolute") right to determine, for example, matters relating to foreign affairs that involved other sovereign monarchs; the prosecution of war and peace; the emigration of English subjects abroad and immigration of aliens seeking naturalization or denization; matters of trade, import, and export; and many other matters that impacted the English state, its economy, and its political and military power.[13] Throughout this book we shall see that the king's absolute royal prerogatives were routinely exercised in the English Atlantic world, particularly when they were being threatened by lesser authorities.

The central reason that the king's sovereignty and prerogatives continued to play a key role in Atlantic affairs was provided, though only by way of analogy, in Coke's argument in *Calvin's Case* (1608).[14] Although this case was argued before the high court justices to determine the rights of Scottish subjects to inherit land in England, its principal legacy has been to provide guidance as to the relationship

between the central imperial authority and its peripheral colonial bodies with regard to such matters as lawmaking, oversight, and allegiance. Drawing on a medieval legal formula that divided all land into one of two categories—*hereditas et questus*, or inherited and conquered—Coke argued that inherited lands, such as Scotland, which naturally devolved to the Crown upon accession of the king, were required to be governed according to the laws and constitutions already in operation in those lands.[15] Innovation could only be introduced by the assent of local authorities, usually in the form of a legislative assembly. Newly acquired lands, however, were classified as conquered because they were not anciently inherited and were acquired as the result of effort, though this did not necessarily mean that belligerence had to be involved in their acquisition.[16] Conquered Christian realms could continue to use their old laws and constitutions because, by virtue of their being founded on Christian principles, these laws were deemed to be reasonable, although the king, as conqueror, could reserve the right to change laws at his discretion. This was largely the constitutional model of England after the Norman Conquest, in which William I agreed to rule according to preconquest laws, and between England and Ireland after the Elizabethan reconquest.[17]

In contrast to both inherited and conquered Christian realms, where preexisting laws held some force, in conquered infidel realms the indigenous laws were deemed to be "not only against Christianity, but against the Law of God and of Nature."[18] Accordingly, these laws were extinguished immediately upon conquest and the king could impose an entirely new set of laws and constitutions upon them, ones that were consistent with Christian principles and natural law. It was with regard to Coke's position on infidel conquered realms that historians and legal scholars have seen an Atlantic context.[19] Although Coke did not specifically mention America in this decision, his legal formulation was easily extended to that region. Because conquered lands in the Atlantic either were inhabited by infidels or had no native presence, and thus no indigenous laws to expunge, such as in several Caribbean islands, it was up to the conqueror (i.e., the king, as subjects could conquer only in his name) to determine the laws and constitutions under which the territory would be governed. In the case of the Atlantic colonies, the king delegated the power to make such laws to the charter holders, expecting that they would make laws that were agreeable to English laws. By implication—although Coke was less explicit here, his silence to be filled by Matthew Hale in the mid-seventeenth century[20]—it was also necessary for the Crown to provide continuing supervision over the actions of its subjects to ensure that

the laws were created and applied in a manner that was consistent with nature and reason. Thus, among other things, Coke's formulation provided the legal framework that enabled the English Crown to determine, both through charter (and their important "divergence and repugnancy" clauses) and through subsequent oversight, the constitutional relationship between the center and periphery.

As also argued by Coke in *Calvin's Case*, another key reason that the king continued to have oversight throughout his entire empire was because there was "a dual and reciprocal tie" between the king and his subjects.[21] Not unlike the medieval feudal relationship between lords and vassals, the king, as the indivisible and divine right-holder of sovereignty, had the prerogative to demand perpetual homage and allegiance from his subjects. Those who failed to give these to the king could be subjected to such remedies as civil or criminal punishments, proactive steps taken to reacquire allegiance, or even the withdrawal of sovereignty itself, essentially sending them into exile. In exchange, subjects had the right to expect royal protection against the illegal or immoral actions of all aggressors, whether foreign or domestic, including, in theory (as Bodin implied), the king himself. In such cases, subjects could exercise their right to petition the king for redress of grievances. This could involve the king complaining to other princes on behalf of his subjects or using his superior judicial powers to override, through pardon, prerogative, or proclamation, actions against subjects, a process that was usually followed by some form of reparation and restitution. This notion of reciprocal sovereignty was not territorially static or, in the words of Coke, "within the predicament of *ubi* [location]."[22] It traveled with subjects of the monarch wherever they went, including Europe and the Americas. Thus, despite later claims of colonists and some historians, neither the king nor his subjects lost nor relinquished their reciprocal rights and responsibilities because of geographical distance or political, religious, or ideological attenuation. Nor did the king have to assert these rights and responsibilities in any written form—charters or otherwise—for them to be in force, as anybody who gave allegiance to the king automatically assented to them.

The Privy Council

One important body that represented the Crown—and the one on which this book focuses—was the small, select group of men who gave the king private advice and labored exclusively in his interests.[23] These men were the lords of the Privy Council, with an average of thirty

members during the early seventeenth century. The activities of this group were often referred to as acts of "king-in-council," because of the close working relationship between these two bodies, and because the council served as the administrative arm of the king, such that all its activities were deemed to be the will of the Crown. The members of the council were sworn in and their names recorded in the formal council register once each year, with additional members occasionally added as the need arose. Although the members of the council changed regularly, it typically included a core of senior administrators, including the archbishop of Canterbury, lord chancellor or keeper of the great seal, keeper of the privy seal, lord high admiral, lords chamberlain, steward, treasurer, chancellor of the Exchequer, and the two secretaries of state (for the "north" and "south," who respectively had domestic and foreign portfolios). Other councilors included the earl marshal (head of the army) and master of the ordinance, warden of the Cinque Ports, chief justice of the Court of King's Bench, attorney general, master of the Court of Wards and Liveries, master of the rolls, senior judge of the High Court of Admiralty, and several other lords and gentleman who were otherwise without office. A number of imperial representatives also sat in council, including the lord deputy of Ireland, chancellor of Scotland, and secretary of state for Scotland, who reported occasionally on the state of affairs in their regions of influence and were chiefly responsible for executing the orders of the council that impacted these parts of the empire.[24]

In the early Stuart period, the council met approximately twice per week, typically on Wednesdays and Fridays. Meetings were presided over by the lord president of the council, who was sometimes also one of the great officers of state, unless the king was present, in which case he presided. The council met in Whitehall Palace about 70 percent of the time, or wherever the king was presently residing, including Hampton Court, Greenwich, and Windsor. When the council was sitting as a court or considering requests for clemency, it would meet at the Star Chamber in Westminster Hall, adjoining the great courts of justice. The entire body of councilors rarely, if ever, met together. A core of leading administrators were usually present at all meetings, while the remainder of the members sat in if they happened to be at court, when their committees met or reported to the council in plenary, or when their particular expertise and position demanded their attendance.[25] In general, about a dozen councilors met each meeting and six formed a quorum, as that was usually the number required to sign orders in the name of the king-in-council.[26] The king himself was rarely present, although the register always indicated when he was

there (Charles I was a far more frequent visitor to council than was his father). Depending on their nature and purpose, orders in council were sealed with the great seal, privy seal, or signet, all of which communicated the exercise of Crown authority. The council was, in short, the administrative arm of the Crown and the practical source of sovereign authority for the English imperial state.

Though hardly ignored by historians, nearly all the historiography about the early Stuart Privy Council has been focused on the crisis of the ancient constitution, the extension of royal authority in England and the related abuse of the Star Chamber, and the council's troubled relationship with Parliament.[27] That which examines the involvement of the council in the Atlantic world almost exclusively addresses the period after the Restoration.[28] Two older, notable exceptions, however, deserve to be reintroduced into and reconciled with the current historiography. The first is Charles M. Andrews's dated, though still valuable 1908 study of "British" committees of trade and plantations from 1622 to 1675. Andrews began his book with a statement that is of key importance to this study, although its claims have escaped the sustained attention of historians, including Andrews himself:

> At the beginning of colonization the control of all matters relating to trade and plantations lay in the hands of the king and his council, forming the executive branch of government. Parliament had not yet begun to legislate for the colonies . . . Thus the Privy Council became the controlling factor in all matters that concerned the colonies and it acted in the main without reference or delegation to others . . . The councils of James I were called upon to deal with a wide variety of colonial business—letters, petitions, complaints and reports from private individuals, . . . from officials in England, . . . and colonial governments . . . To all these communications the council replied either by issuing orders which were always mandatory, or by sending letters which often contained information and advice as well as instructions.[29]

Despite this claim to the regular exercise of imperial authority by the king-in-council at the outset of Stuart colonial expansion—which was a clear statement of the functional nature of the Atlantic imperial constitution—Andrews then devoted only a few pages to describing this activity in the early seventeenth century, while the remainder of his book attended to the period after 1650.

The second exception is Joseph Henry Smith's *Appeals to the Privy Council from the American Plantations.* While also addressing primarily the later seventeenth century, Smith, and Julius Goebel, Jr.,

in his long essay that serves as the book's introduction, highlighted the important historical imperial role of the Privy Council (and its predecessor, the *magnum concilium*) from at least the mid-fourteenth century.[30] As Smith and Goebel explain, in a section that offers historical context to Andrews's formulation and to the present study, by the early Stuart period the council was responsible for initiating—through the Court of King's Bench—the king's "extraordinary" writs (*brevia mandatoria*), which extended beyond England into the wider empire. These prerogative writs, including those of *mandamus*, *certiorari*, *habeas corpus*, *scire facias*, and *quo warranto* (the instrument ultimately used to dissolve the Virginia and Massachusetts Bay companies), applied throughout the entirety of the monarch's dominions to command the actions of magistrates and subjects.[31] The council also enforced Crown decisions by means of official letters and instructions signed by a quorum of councilors. Through the attorneys and solicitors general, it drafted royal proclamations, which were the principal legal devices used to engage the royal prerogative and—particularly outside of the domestic realm—had the force of law (we shall see this device used frequently in relation to the Atlantic), and letters patent, the royal documents ultimately used to authorize the Atlantic colonies and establish the theoretical nature of the Atlantic imperial constitution.

The Privy Council's imperial responsibilities also extended to providing oversight to the appendage Council in the Marches of Wales and Council of the North (created under Henry VIII to administer English borderlands), approving Irish parliamentary legislation (under Poynings' Law, 1494), and receiving petitions from subjects throughout the composite monarchy of diverse political territories. The hearing of petitions and appeals by the Crown was a means of exercising the king's superior judicial powers, which were authorized by royal prerogative and required by the obligations of reciprocal sovereignty. With this authority, the council could compel the attendance of involved parties, compose commissions to review the complaint and recommend a course of action, order the defendant in the case to answer the complaint, and, when necessary, hear and determine the case itself.[32] Finally, the council had numerous foreign functions, including advising the king on matters of trade and diplomacy and, frequently, appointing its own members to lead treaty negotiations with other sovereign states or to investigate serious breaches of diplomatic protocol using less formal means. As we shall see, the early Stuart Privy Council invoked all these roles and responsibilities in the administration of the Atlantic imperial constitution. This

demonstrates historical continuity between the imperial constitution of the domestic empire closer to home and that used to administer the English Atlantic empire.

Residual Crown Authority and Parliament

Although the majority of Crown executive authority was vested in the king and his council, a number of other bodies held residual powers of the Crown. One such body was, perhaps surprisingly, the Court of King's Bench when it operated on behalf of the king's prerogative. Though traditionally thought of as an institution of the common law, and thus in conflict with the Privy Council and especially its Star Chamber during the early Stuart period, this court also possessed the power to issue prerogative writs, in which it operated as an extension of the Crown. As Paul Halliday has observed, "the authority of [the King's Bench] court and council flowed from the same fount: the prerogative."[33] The chief justice of the King's Bench was usually a member of the council, who offered critical legal advice during proceedings in the Star Chamber. Numerous seventeenth-century legalists, most notably Matthew Hale, recognized the right of the king to make suit in the King's Bench for alleged breaches of the prerogative, even if the matter occurred outside of England and was not founded on the common law nor issues of solely domestic relevance.[34] In the context of the Atlantic world, for example, the quashing of the Virginia and Massachusetts Bay Company charters through King's Bench *quo warranto* proceedings (a subject to which I shall return in Chapter 6) was an exercise of the court's authority to act on behalf of the Crown's prerogative rather than an exercise of common law. The relationship between the Crown and the King's Bench would, of course, begin to deteriorate in the events leading up to the English Revolution (such as the Five Knights' Case), which is why historians tend to see these bodies as antagonistic (and anachronistic) executive and judicial branches, though this was not generally the case in the early Stuart period.

The seventeenth-century English state also possessed an amorphous group of administrators and officials who held the ability to exercise executive power, and thus might collectively be deemed a final body of the Crown. These included a number of royal appointees who received and executed instructions from the council in the regular course of their affairs. The solicitor general, for example, who was rarely a member of the council, had various responsibilities toward the Crown and also assisted the attorney general, who was usually a member of the council, in the routine course of his duties. It was

these two officials who were responsible for drafting the charters that brought the colonies into existence. Others, such as officers of the admiralty and judges of the admiralty court (which were separate jurisdictions), together with overseers of customs and ports, and local sheriffs, justices of the peace, and mayors, were routinely expected to carry out executive orders in the name of the Crown, and were often warned about the consequences if they failed to comply. These orders generally came in the form of royal proclamations, letters and instructions sent from the council, and new commissions granted to officials whose positions were created specifically for the purpose of regulating and overseeing the affairs of the overseas empire.

The clerks of the council also possessed residual executive authority. They had the important business of maintaining the council's register, preparing orders that arose from conciliar decisions, receiving petitions, conducting investigations and enquiries as ordered by the council, issuing bonds to secure or release those arrested at the council's instruction, and commanding the attendance of certain councilors, petitioners, and witnesses. Most of these roles demanded a certain amount of delegated executive authority, which is why the holders of these offices were knights and substantial gentlemen of sober judgment and good reputation. A successful clerk had an excellent chance of gaining promotion. Of these, former clerks such as George Calvert—later secretary of state, Lord Baltimore, and grantee of colonies in Newfoundland and Maryland—stand out, as do Francis Cottington, Clement Edmondes, William Trumbull, and Ralph Winwood, all of whom became successful foreign ambassadors after their term as clerks of the council.[35]

One important state body that was not part of the Crown, nor of the early Stuart Atlantic imperial constitution was, as Andrews pointed out, the English Parliament. Although Parliament had significant domestic functions—traditionally, legislation and taxation—and in a well-known series of events fought for more extensive powers during the late Tudor and early Stuart period, it was not part of the executive branch of government. Nor did it, as a common law institution with purely domestic authority, have responsibilities beyond the territorial boundaries of England. In fact, on the one key occasion during the period addressed in this study when Parliament did seek to get involved in the Atlantic—the events leading up to the dissolution of the Virginia Company—the king issued a directive commanding that the matter was solely within the hearing of himself and his council.[36] Even stalwart proponents of the common law, such as Coke and Hale, recognized that Parliament had no jurisdiction in

the empire.[37] Interestingly, it was the general lack of parliamentary authority in Atlantic affairs that has led some historians to conclude that the metropolitan center initially had little administrative oversight in the colonies. This, in turn, has provided further support for the argument that the colonies were expected to operate in the absence of central control, and why they became resistant when such control was asserted after 1650.[38] Ultimately, this is a poor argument, as the involvement of Parliament, or the lack thereof, had little if anything to do with the issue of control from the center, because that responsibility fell, historically and constitutionally, on the shoulders of the Crown, which exclusively had imperial jurisdiction. In England, the Crown was the executive branch of government and the locus of authority for the composite monarchy of diverse political territories, which by the early seventeenth century also included the colonies in the Atlantic world.

Colonial Charters

The first task of the Crown in Atlantic affairs, and that which initially, if only theoretically, defined the Atlantic imperial constitution, involved the preparation and issuance of colonial charters, more correctly known as letters patent.[39] Under the early Stuarts, more than two dozen of these documents authorized the settlement of various parts of the English Atlantic world. These included settlements in the Amazon (1613, 1619), Bermuda (1615), Carolina (1629), Maryland (1632), Massachusetts Bay (1629), New England (1620),[40] Newfoundland (1610, 1623, 1637), Providence Island (1630), Virginia (1606, 1609, 1612), and various Caribbean islands (1625, 1627). The process of acquiring a charter began with individuals or corporations submitting petitions to the king-in-council. These petitions were reviewed and either allowed or disallowed, depending on the position put forth by the petitioners, the king's pleasure, and the current state of domestic and foreign policy. Once approved in principle, the charters were drafted by the attorney or solicitor general, who submitted them for review by the council, processed revisions, and ensured the instrument was engrossed, stamped with the Great Seal of England, and transcribed onto the patent rolls, which is presently where the best, if least accessible, versions of the charters survive.[41]

Historians have often regarded the charters as documents in which the Crown absentmindedly relinquished its sovereign powers to trading companies and proprietors.[42] This argument derives, in part, from the fact that the charters did not generally—or at least did not

explicitly—describe a future relationship between center and periphery, which has suggested to some scholars that the Crown intended to relinquish its sovereign authority in preference of a model of governance that did not place any burdens on the weak state. However, this argument reveals a poor reading of the charters and a limited understanding of contemporary notions of sovereignty and prerogative. By virtue of their mere existence, issued at the discretion of the Crown and stamped with the Great Seal of England, the letters patent were rife with imperial, sovereign, and prerogative force, and very much acts of central will. They were not an abandonment of imperial authority and sovereign responsibility by the Crown. Rather, they were affirmations of this authority by virtue of the Crown's ability to determine and devolve the privileges enumerated therein, to examine abuses of these privileges when it was deemed necessary, and—in the face of abuse that derogated the king's sovereignty or the fundamental rights of subjects—to alter the charter privileges, recall the charter itself and establish a new form of government, or even remove the offending subjects from the king's sovereign authority. All but the last of these occurred under the early Stuarts.

Accordingly, the preambles of all colonial charters clearly assert the Crown's continued imperial and sovereign authority. They all include a variant of the phrase "James, by the grace of God, King of England, Scotland, France and Ireland."[43] This passage invoked the imperial power of James I, not merely as King of England, but also as undisputed ruler of the larger composite monarchy over which *imperium* was asserted. This imperial power was intertwined with absolute sovereign authority by the inclusion of the passage "our especial grace, certain knowledge, and mere motion." These were personal traits bestowed by God on absolute sovereigns that designated the source of authority for these activities. This was the same authority that was assumed by Pope Alexander VI when he issued the bull *Inter Caetera* (which awarded Spain all new lands west of a line of demarcation) under his "*mera liberalitate, et ex certa scientia, ad de Apostolicae potestatis plenitudine*" (mere largess, certain science, and the fullness of our apostolic authority).[44] By drawing upon the same authority and phraseology for English patents, the Crown simultaneously emphasized its independent imperial status, ensured that the charters held the same legal authority as the papal bull and similar documents issued by the other European colonizing powers, and identified itself as the highest sovereign authority in the colonies.

Notwithstanding the presence of these phrases about sovereignty and imperial authority, perhaps the biggest issue for historians is that

the charters rarely asserted the Crown's continued oversight into Atlantic affairs—although the "blueprint" Virginia Company charter of April 1606 (possibly authored by Coke, who was attorney general until July 1606) did make such a provision[45]—which has signaled that the colonies were expected to operate autonomously, without central oversight. Instead, scholars have seen in various passages of the charters regarding lawmaking and law enforcement, certain guarantees of independence. Consistent with Coke's formulation in *Calvin's Case* regarding conquered infidel realms, the charters authorized their holders to "make, ordain, and establish all manner of orders, laws, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of the said colony." The colonists were also permitted to "abrogate, revoke, or change" laws "as they in their good discretion, shall think to be fittest for the good of the inhabitants there" and to "correct, punish, pardon, govern, and rule all such the subjects of us." Although the colonies could create laws that were consistent with "the nature and constitutions of the place and people there," and thus diverge from English traditions, these laws were always to be "consonant to reason, and be not repugnant or contrary, but as near as conveniently may be agreeable to the laws and statues, and rights of this our kingdom of England." Thus the charters granted legal powers to the colonies, building in the safeguard of the divergence and repugnancy principles, though without actually stating how these could be tested.[46] These were the "old liberties and privileges" that have been seen to be the original Atlantic imperial constitution.[47]

Despite future claims that guarantees of autonomy inhered in the charters by virtue of the absence of assertions of subsequent royal oversight, neither the Crown nor its administrative arm, the council, needed to assert this right and responsibility in these documents in order for it to be legitimate, as this was based on the historical, sovereign, prerogative, and imperial roles of the Crown. As E. R. Turner wrote in 1927—in a statement similar to that of C. M. Andrews, and one that the present study also advances—"With respect to . . . the more distant plantations and colonial possessions, the Privy Council of England was, under the king, the all-important organ of government and administration. These dominions were the king's possessions, and however local administration might accord with local privileges, charters, or agreements, all these domains continued to be under the supreme authority of the king, exercised for him largely by his Privy Council."[48] This was especially the case in territories that Coke classified as infidel conquered realms, which was true of the English

Atlantic colonies until the end of the seventeenth century.[49] In such territories, it was up the Crown to ensure that whatever laws were being constructed and applied as a result of the divergency principle were not repugnant to those in England and were consistent with the laws of God and nature, which demanded subsequent oversight beyond the issuance of the charters.[50]

To give just one example of the recognition of this continuing relationship in an Atlantic setting, in 1620 (and prior to active concerns leading to its dissolution) the Virginia Company produced its *Declaration of the State of the Colony and Affairs in Virginia*. In a section describing the structure of government and laws, the company, working in conjunction with its new legislative assembly, noted its intention to

> Reduce into a compendious and orderly form in writing, the laws of England proper for the use of that plantation, with addition of such other, as the nature of the place, the novelty of the colony, and other important circumstances should necessarily require: a course is likewise taken for the effecting of this work, yet so as to submit it first to his majesty's view and approbation, it being not fit that his majesty's subjects should be governed by any other laws, than such as receive the influence of their life from him.[51]

Consistent with both its chartered privileges and Coke's (and later Hale's) formulation regarding conquered infidel realms, the Virginia Company recognized that although the colonies had lawmaking powers and could create laws that diverged from English ones as the result of "the nature of the place [and] the novelty of the colony," all laws nonetheless ultimately derived from the Crown and needed its assent in order to remain law. Although there was no explicit requirement in either of the three charters issued to the Virginia Company for this level of Crown oversight, by virtue of the charters being issued by the English sovereign, this relationship was assumed. Here was a clear understanding that although the peripheries possessed substantial local agency, the Crown remained in a position of, to use Turner's words, "supreme authority." As Joseph Henry Smith has written with reference to the right of colonists to petition the Crown for grievances that occurred in the colonies, "it probably did not even occur to the granting authorities that a patent appeal reservation was necessary . . . [because] there was probably a consciousness that . . . the Crown retained supervisory jurisdiction."[52] The Virginia Company's plan to submit its laws to the Crown for its approval, despite the fact that this

was not an explicit requirement of the charters, demonstrates the correctness of Smith's argument in the wider context of center–periphery affairs.

Moreover, all the charters emphasized that the colonists had to retain their allegiance to the king of England. All English Atlantic subjects, whether born in England or the colonies, were to have "all the privileges of free denizens, and persons native of England, and within our allegiance in such like ample manner and form, as if they were born and personally resident within our said realm of England."[53] As Coke, Hale, and later writers such as John Locke and William Blackstone explained, in exchange for their allegiance, those living in the colonies retained basic rights to life, limb, health, reputation, property, and protection that all subjects enjoyed as part of their English subjecthood and as guaranteed by natural law.[54] These rights, to Blackstone "the birthright of every subject" and the unique marker of English identity since the Magna Carta, also included, for instance, due process, trial by jury, freedom from arbitrary imprisonment, freedom of association and locomotion, freedom from "honorable exile" (being forced from the king's dominions without a just sentence at law), and the right of petition and ultimate appeal to the supreme holder of *imperium* when any of these rights were negatively impacted. This ensured that colonial governors and assistants, no matter how wide their legal mandate, did not govern arbitrarily, injudiciously, or in a manner contrary to Christian or human reason (i.e., the laws of God and nature) and that the colonists, when their rights were so infringed, could gain legal remedy through the Crown in England. That is to say, by virtue of the doctrine of reciprocal sovereignty, continued Crown oversight was necessary in order to ensure that all subjects were able to gain access to the central authority for grievances committed against them by subordinates of the king. This right could only be denied if the Crown revoked its sovereign protection (which, though threatened in the charters if the colonists breached the law of nations, was never carried out) or if the colonists, with the approval of the Crown (or its unwillingness to continuing fighting for it), withdrew their allegiance, as ultimately happened in the late-eighteenth century.

Another crucial aspect of the Atlantic imperial constitution—and one that, perhaps for obvious reasons, was not articulated in the charters—was the responsibility of the Crown to act as a mediator in extracolonial matters. However much each colony had sufficient latitude to administer its own internal affairs, it had limited authority to deal with matters that transcended the physical boundaries of the colony itself. Certainly, in some issues, such as intercolonial trade

and migration, the Crown was happy to allow the colonies to make their own arrangements, as befitted subjects of the same state, and provided that these activities remained amicable.[55] In general, though, when it was necessary for colonies or colonial agents to engage in disputes with other English Atlantic entities, the imperial Crown was the superior judicial authority and was required to exercise this power in order to bring about resolution. In some cases, these extracolonial disputes involved parties on both sides of the Atlantic Ocean, when subjects on English soil were impacted by activities that occurred in the Atlantic theater. Here again, the Crown needed to intercede, so that the suits of both parties could be given fair consideration and satisfaction. Perhaps even more importantly, the Crown was responsible for adjudicating disputes between English subjects and those of other foreign states—issues of some merit and delicacy that could occasionally be delegated to colonial bodies but that more often required the intercession of the Crown. Throughout this book we shall see many examples of the Crown exercising its imperial authority to deal with extracolonial affairs.

CONCLUSION

Despite the wide distribution and exercise of power in early modern England and its empire, and the Crown's general desire for a weak-state model of government that enabled a small bureaucracy and court without overburdening the center with mundane administration, the king-in-council, and certain closely associated ancillary bodies remained in a position of supreme executive authority. Although the Crown was willing to delegate many administrative roles to inferior officials and provided only minimal supervision over matters of little interest to the state, it nonetheless retained close control over issues that involved sovereignty, prerogative, empire, and its responsibilities toward its subjects and the state. As certain well-known constitutional crises of the early seventeenth century demonstrated, the early Stuart Crown was resistant to the idea of sharing its executive authority in areas that would derogate from the king's *imperium*, whether domestically, with regard to its internal empire closer to home, or—as we shall see—its overseas empire across the Atlantic. *Imperium* was what gave the king his powers and enabled him to exercise them in the interests of his subjects and his realms. Relinquishing any of that authority to inferiors, assuming that such a thing was even allowable in Jean Bodin's theory of indivisible sovereignty, by extension

weakened not only the monarchy but also the entire imperial diaspora that operated under its auspices.

No matter how much distance separated subjects from Westminster—whether they lived across the Thames or across the Atlantic Ocean—the reach of the Privy Council, as the administrative arm of royal *imperium*, and always acting in the name of the king, naturally extended in order to protect the king's sovereignty, the rights of his subjects, and the needs of the state. This is why the charters emphasized the sovereign and imperial roles of the Crown, carefully enumerated the privileges that were being delegated (though not relinquished) to colonial authorities, and clarified that individual allegiance was not to be given to the body politic, nor to the charter holders or colonies themselves, but rather to the sole holder of *imperium*. By implication, because sovereignty was indivisible, the privileges awarded in the charters by the imperial authority could also be supervised from the center, or taken away or modified by that same body, particularly when the king's sovereignty or subjects' rights were being challenged as the result of excessive innovation or legal repugnancy. As several chapters of this study reveal, the ability of the Crown to revise the privileges granted in charters, to recall the charters outright, and to determine many other aspects of the center and periphery relationship demonstrates the continued power of the executive branch of government to provide oversight in the colonies regardless of any perception of colonial autonomy.

Chapter 2

Foreign Affairs

The Example of Spain

In the early Stuart period, exploration, trade, and settlement in the Atlantic world frequently brought English agents of empire into conflict with other colonizing powers. This is hardly surprising given the close proximity of European colonies to one another, the intense competition to gain a permanent foothold in the Atlantic, and the economic and political opportunities that this region could yield. When disputes arose among warring states, the issues of overlapping land claims, assaults on ships at sea, and attacks against colonists on land were resolved in the formal process of ceasing hostilities and engaging in peace negotiations. This process—which was usually undertaken by privy councilors functioning as peace commissioners—resulted in concessions such as redrawing territorial lines, making financial restitution, and determining future trading privileges and offensive and defensive alliances. Throughout the seventeenth and early eighteenth centuries, commissioners frequently met to negotiate peace with France and Spain over wartime assaults that occurred in the Atlantic, including eastern Canada, the Caribbean, the American colonies, and South America.[1]

When the parties were at peace, however, the diplomatic protocol in resolving foreign disputes was different. It normally involved a formal petition to the Crown, which then became responsible for ensuring that the allegations were thoroughly investigated and that the complainant was satisfied that the issue was taken seriously. The investigatory process usually involved one or more of three conciliar procedures. Sometimes the council took the lead in the investigation by establishing temporary commissions of its members, calling

witnesses, examining evidence, and making its recommendations to the king. At other times, especially when the issue involved allegations of piracy, privateering, or contraband trade, the council referred the matter to the jurisdiction of the High Court of Admiralty and then watched the ensuing proceedings with interest, even if it had little authority to interfere with the outcome. Alternatively, it could provide oversight while the defendants in the dispute conducted their own investigation and resolved the issue.

These methods of dispute resolution were consistent with contemporary diplomatic protocol. The early Stuart monarchs made perfectly clear in the charters their obligations to their foreign neighbors should any unjust action occur in the Atlantic theater in a time of peace: "We do hereby declare to all Christian kings," the Virginia Company patent of 1606 reads, "that if any person or persons . . . shall at any time or times hereafter rob or spoil by sea or by land or do any act of unjust and unlawful hostility to any the subjects of any king . . . being then in league or amity with us . . . and that upon just complaint . . . the said person . . . [shall] make full restitution or satisfaction of all such injuries done, so as the said princes . . . may hold themselves fully satisfied or contented."[2] It was ultimately the Crown's responsibility to ensure that this directive was followed when the English clashed with their foreign neighbors in the Atlantic, which occurred with the Dutch, French, and Spanish under the early Stuarts.[3]

The reign of James I was a sensitive time in Anglo-Spanish foreign policy.[4] England had emerged from the Treaty of London of 1604, which ended twenty years of conflict, with the restoration of certain trading privileges and the possibility of trade and settlement in the parts of America where the Spanish had no presence. Under this liberal interpretation of the treaty, the Virginia (1606), Newfoundland (1610), and Bermuda (1615) companies were established. The state's official attitude toward English activities in the Caribbean and South America, where the Spanish presence was more dominant and the treaty unspecific as to English rights, was more cautious. As early as 1605, Philip III of Spain had issued an edict enjoining all Iberians not to allow English trade in these regions, which soon resulted in the Spanish taking of the English ships *Castor and Pollux* and *Richard*, peacetime captures that involved significant diplomatic engagement.[5] Between 1605 and 1612, the Spanish ambassador in London routinely brought suit in the High Court of Admiralty for the cargoes brought into England as the result of contraband trading in Spanish-controlled regions of the Atlantic. These cases were often successfully litigated on Spain's behalf by their standing advocate in the Admiralty

court, Alberico Gentili, who also happened to be England's leading civilian lawyer in the late sixteenth and early seventeenth century.[6]

This tenuous Atlantic situation was complicated by the king's broader foreign policy toward Spain. By 1615, James I and the Duke of Buckingham were deeply invested in the "Spanish match," a plan to marry Charles, prince of Wales, to Maria, daughter of Philip III of Spain. This dynastic union would help to ensure peaceful relations between Protestant England and Catholic Europe, relieving the state of its confessional foreign policy and containing the vocal and powerful anti-Catholic forces at home. The marriage would also involve payment by the king of Spain of an impressive £500,000 dowry, much needed by an English king who routinely faced recalcitrant parliaments. A central figure in all this was Don Diego Sarmiento de Acuña, Count of Gondomar. As resident Spanish ambassador to England from 1613 to 1622, Gondomar was the chief architect of the Spanish match, was deeply involved in English politics, and held the possibility of an Anglo-Spanish treaty of alliance over the king.[7] He recognized the reality that James I had more to gain from a positive relationship with Spain than Spain had to lose if this relationship failed. His influence at the English court was, therefore, substantial. Given this accommodating foreign policy, the Crown had little tolerance for English Atlantic adventurers damaging what was, at least potentially, a politically and economically profitable relationship.

Amid these cautious Anglo-Spanish relations occurred several disputes resulting from English Atlantic activities between 1613 and 1623. During this time, possibly in an effort to relieve the English of their policy toward Spain, the Privy Council approved the Guiana voyages of Sir Walter Ralegh and Captain Roger North. These ill-fated affairs quickly caused friction with the Spanish Crown and resulted in the filing of formal complaints by Gondomar. The council investigated the ambassador's claims thoroughly and ultimately rendered decisions that were in the best interests of the continuing, positive relationship with Spain. This resulted in the official proscription of further activities in the Caribbean and South America until a major shift in Anglo-Spanish foreign policy emerged under Charles I. Coming on the heels of the Amazon episodes, a third conflict—and one little known to historians—involved the wreck of a ship of the Spanish treasure fleet near Bermuda. This event led to a complaint by Gondomar that Bermuda governor Nathaniel Butler and his colonists mistreated the Portuguese and Spanish castaways, stole their personal belongings, and plundered the ship of its munitions and cargo. Such acts were in direct contravention to legal and diplomatic protocol

when dealing with the subjects and shipwrecks of friendly nations. The role that the Crown assumed in these conflicts helped to determine not only the immediate future of English activities in the Atlantic but also the subsequent constitutional oversight of the Crown when the Atlantic activities of its subjects involved other foreign powers.

THE DEATH OF SIR WALTER RALEGH

In July 1613, the Privy Council directed Sir Francis Bacon, the solicitor general, to prepare letters patent that awarded Robert Harcourt a monopoly for trade and settlement in the Amazon region of South America.[8] This did not, of course, represent the first English activity in the region. English traders and privateers had operated in Trinidad and the Orinoco since the 1560s, and Sir Walter Ralegh had traveled to Guiana in 1595, shortly afterward penning the well-known *Discoverie of the Large, Rich and Bewtiful Empyre of Guiana*, a piece of anti-Spanish imperial propaganda.[9] Just before the Treaty of London was negotiated in 1604, Charles Leigh brought forty men to Guiana with a design to plunder the mythical Amazonian kingdom of El Dorado of its gold and riches. This plan exemplified that of Ralegh (by now a prisoner in the Tower of London under a stay of execution for treason), which saw this conquest as a key to financing a concerted attack against Spanish America and depriving the king of Spain of the wealth that enabled him to continue prosecuting a war against England. After the treaty was negotiated, these plans, though still very much agitated for by Ralegh and his circle, became a casualty of James's pacifist foreign policy and were only fitfully attempted thereafter. Harcourt himself settled a colony of thirty men in a region with little Spanish influence in 1609, where they continued to struggle with trade and planting when the 1613 patent was issued.[10] Thus, as the council's directive to Bacon pointed out, Harcourt had through "great travail and charge discovered that country and inhabited there by himself and his friends for the space of these three or four years last past and still holdeth the possession thereof without impeachment or interruption."[11] According to the English and certain supranational formulas for establishing sovereignty and possession in newfound lands, this meant that Harcourt could be issued a charter for settlement, with all the "limitations and privileges" as were also granted to Virginia in 1606 and Newfoundland in 1610.[12]

The Harcourt patent for Guiana was issued at a time when Anglo-Spanish relations were cooling off in the face of a growing anti-Spanish faction at court and when the death of Henry, prince of Wales, ended

for a short time the idea of a marriage alliance. In the previous few years the English ambassadors resident in Lisbon and Madrid had written to the council that Portugal and Spain were amassing an armada to remove the colonies of Virginia and Bermuda.[13] Although this armada never materialized, these warnings were enough to encourage James to flex his muscles in the Atlantic and reiterate his interpretation of the Treaty of London to trade and settle in parts of the Atlantic where the Spanish had no presence. The El Dorado region of the Amazon was a good place to do so, since the discovery of a rich mine—of which the Crown would take its due share—could make James's reluctant concessions to the Spanish redundant.[14] It was probably in this mindset that a revised Amazon scheme put forward by Ralegh was approved in 1616. Ralegh was released from the Tower for the express purpose of making "discovery of certain gold mines, for the lawful enriching of themselves and these our kingdoms."[15]

To remain true to the terms of the Treaty of London and protect his foreign policy, James (under the close watch of Gondomar) had Ralegh promise to stay far away from Spanish settlements, and cautioned him against "attempting any act of hostility, wrong, or violence whatsoever upon any of the territories, states, or subjects of any foreign princes, with whom we are at amity," of which Spain was the only state explicitly mentioned.[16] Ralegh's fleet departed England in early June 1617, with a total of ten ships and approximately six hundred men, and arrived in the Amazon toward the end of the year.[17] Almost immediately, Ralegh's force moved inland and razed the Spanish settlement of San Thomé. Ralegh himself was not part of this attack, which saw the death of his own son, and it is unclear whether Ralegh gave any verbal orders for the attack or whether the expedition's leader, Lawrence Keymis, contravened the fleet's commission on his own initiative. Either way, Ralegh, no favorite of the king or council, was the mission's commander and was to be held responsible for the actions of his crew. Keymis soon committed suicide and most of Ralegh's men—discovering their commander's plans to attack the Spanish treasure fleet to redeem his voyage—deserted him at Nevis, arriving back in England to relate the entire story a month before Ralegh's return.[18]

The reports of this misadventure were enough to cause James to issue a proclamation denouncing the sacking of San Thomé, an action exactly contrary to Ralegh's commission. Ralegh was charged with treason for having "maliciously broken and infringed the peace and amity which hath been so happily established and so long inviolably continued between us and the subjects of both our crowns."[19] Given

the numerous Spanish engagements against English ships trading in the Caribbean since the treaty was signed, James was surely well aware of the fiction imbedded within these words, but his foreign policy could allow no other formulation. The king was already being pressured by Gondomar, who formally petitioned the council for restitution on June 19, 1618. Gondomar demanded nothing less than the death of Ralegh, whom he hoped would be turned over to the Spaniards for punishment. James actually agreed to do so, although Philip III saw it as politically advantageous and a blow to the anti-Spanish faction at court for Ralegh to be punished in England instead. The lord admiral issued instructions for Ralegh's arrest, which was effected by Ralegh's cousin, Sir Lewis Stukley, near Plymouth.[20]

While en route to London, Ralegh penned an *Apology for the Voyage to Guiana*. In his defense, Ralegh blamed Keymis for the attack; insisted, contrary to the deserting captains' reports, that a gold mine did in fact exist and that the finding of it was his principal goal during his mission; and argued that Guiana had been an English territory since his discovery and taking possession of the region in 1595. Thus he claimed that he was merely clearing Spaniards out of English territory. This explanation was little different than the claim made in 1614 by the Virginia Company when it defended Sir Samuel Argall's razing of the French colony of Port Royal in Nova Scotia. Argall's actions, however, had not involved loss of life, nor were they explicitly contrary to a royal commission.[21] Perhaps not fully aware of the king's renewed commitment to positive Anglo-Spanish relations, Ralegh pointed out that the king, too, must have believed that this region was English or he would not have approved the voyage, and Gondomar must have accepted English rights or he would have protested before the voyage got under way. In 1613 this argument might have worked on James; in 1618, when negotiations for the Spanish match were back on course, it was foolhardy in the extreme.[22]

The *Apology* was likely presented to James during his annual progress to Salisbury. It appears to have had no positive effect and might in fact have hurt Ralegh's case, and Ralegh was directed to continue on to London for what the proclamation termed his "exemplary punishment." Unwilling to summarily punish Ralegh without the semblance of a trial (even though he could merely have restored the original death warrant without reference to the Amazon episode), the king ordered a commission of the council, including Bacon, now elevated to lord chancellor, Sir Julius Caesar, master of the rolls, and Sir Edward Coke, to review the case, which began its duties in August 1618. With Attorney General Sir Henry Yelverton and Solicitor General Sir

Thomas Coventry for the prosecution, the commission brought in for questioning several members of Ralegh's crew, who expressed the opinion that the finding of a gold mine had never been more than a subterfuge to attack the Spanish. This enabled the commission to conclude that even if Ralegh had not been present at San Thomé, he might be judged guilty of the actions committed there, as his intentions were always belligerent. The commission repeatedly interviewed Ralegh himself, and even placed a Crown spy (Sir Thomas Wilson, keeper of state papers) in the Tower to secure an unwitting confession from Ralegh.[23] The trial was a private proceeding—the king was unwilling to allow Ralegh to express his opinions from the *Apology* in open court—where the most damning evidence (allegedly confessed by Ralegh himself) was the revelation that Ralegh had secretly coordinated his Guiana mission with the French, thus having "violated the law of nations."[24] This was fortunate for James and the council, who could use this surreptitious act to their advantage by suggesting that the benign voyage originally approved by the king had always had, without their knowledge, belligerent and treasonous intentions.[25]

In order to avoid any criticisms by the anti-Spanish faction that the outcome of Ralegh's trial was preordained merely to uphold James's questionable foreign policy, or that it was the result of a secret trial, the commission, in a document written by Coke, merely recommended that the 1603 stay of execution be rescinded. Ralegh was brought before Sir Henry Montagu, lord chief justice of King's Bench, on October 28, 1618, where the original judgment against Ralegh was demanded by Yelverton. This was a pro forma decision: The king had already signed the death warrant, Montagu simply agreed to put it into effect, and Ralegh was executed the next morning. The king then issued a *Declaration of the Demeanour and Carriage of Sir Walter Ralegh*. Written by Bacon, who had headed the investigative commission, this document described the Ralegh affair in detail, highlighting his illicit meetings with the French and emphasizing that "his majesty's just and honourable proceedings . . . [were] not founded upon conjectures and likelihoods, but either upon confession of the party himself, or upon the examination of divers unsuspected witnesses."[26] This document was intended to demonstrate that, despite the secretive and conciliar nature of the proceedings, the actions of the king and council were undertaken with sufficient due process.

THE IMPRISONMENT OF CAPTAIN ROGER NORTH

Despite—or perhaps because of—the Ralegh fiasco, the supporters of an Amazon enterprise were not yet willing to give up on the region. This resulted, beginning in March 1619, in the efforts of Captain Roger North and several gentlemen to acquire a new patent for the formation of a joint-stock Amazon Company. This episode led to a series of events in which Gondomar and the Privy Council once again played center stage. Unlike the Ralegh episode, the case of North has been given little attention by historians, although it might be argued that it was a matter of greater importance to subsequent English Atlantic affairs and provides better instruction as to the manner in which the English center oversaw its overseas interests.[27] North had served with Ralegh during his ill-fated voyage, had testified against him in the ensuing investigation, and had managed to induce the investment of several prominent adventurers, many of whom were deeply unsatisfied with the resolution of the Ralegh affair, to settle in the region. These men petitioned the Privy Council for a charter, arguing that because Harcourt had not yet managed to settle a permanent plantation, his patent should be recalled.[28] The council ordered six of its members to examine the Harcourt patent; they soon referred the matter to two councilors with greater legal expertise—Coke, formerly attorney general and chief justice of Common Pleas and King's Bench, and Caesar, presently master of the rolls and formerly a judge in Admiralty, Chancery, and Requests. The examination was undertaken swiftly, and the council effected Coke and Caesar's recommendation that the Harcourt patent be recalled and a new one be issued to North by instructing Solicitor General Coventry to prepare the patent for the king's signature.[29]

As North outfitted ships for his departure in February and March 1620, the Spanish agent in England, Julian Sanchez de Ulloa—representing Gondomar during his absence of 1618–20—complained to the king-in-council. Sanchez reminded James of the recent Ralegh episode and suggested that North, too, despite claims of good intentions, would attack Spanish outposts in the Caribbean and South America upon his arrival there.[30] Secretary of State Sir George Calvert responded amicably that unlike Ralegh (a man "without honour or conscience"), North's "loyalty and integrity has never been in question or doubt." He assured Sanchez that North planned to settle a peaceful colony in a region far away from Spanish interests that had long been known to English and Irish explorers. Notwithstanding these assurances, however, Calvert informed Sanchez that the king found

North's proceedings "a little strange," and therefore ordered a halt to the voyage until Sanchez's suspicions could be allayed.[31] More than anything, this accommodation reflected James's foreign policy toward Spain rather than any deep concerns about North's preparations.

Roger North was made aware of the Spanish agent's concerns and prepared a defense of his actions, which was sent to Sanchez. He disavowed Ralegh's activities, pointing out that while Ralegh's ships had been equipped for war, his were equipped for building a plantation, which was reflected in the professions of the colonists: "druggists, dyers, smiths, house-carpenters, sawyers, . . . [and] merchants." Moreover, the adventurers were men of the highest quality, not petty pirates or shamed knights.[32] There was something to be said for this argument: While Ralegh's voyage involved a significant force of ten ships and several hundred men, North's more modest undertaking involved only two ships and a pinnace, hardly enough to undertake an offensive attack against an established Iberian settlement.

The matter of North's intentions was soon taken up by Gondomar, now back in England. He presented himself to the Privy Council, at which the king and (unusually) nearly the entire body of councilors were present, a packed house that perhaps demonstrates how important this issue was to the council. Gondomar argued that Philip III had "just title to the river of the Amazons, and the whole tract thereabouts." He requested enough time to receive from Spain some formal documentation of these claims. The council waffled on the issue, rehearsing the familiar argument that the Amazon Company's endeavor was "not a traffic new begun and erected, but upheld and continued by this voyage." Nonetheless, the council allowed Gondomar to present his concerns in writing, though it agreed to stay North's voyage for only a few weeks. This short time frame was because North had already provisioned his ships and sent them to Plymouth for departure. A delay was expensive and risked failure of the entire enterprise. This meant that Gondomar could not rely on a Spanish courier to return with evidence that could help his claim. During this time, the council planned to prepare its own "mature answer."[33]

What occurred next is the subject of debate. Either North believed that despite the stay the king secretly wanted the voyage to proceed, while disavowing any knowledge of it, or North deliberately contravened the king's orders, expecting the Crown to look the other way, or he believed that the stay order had expired and he was free to depart. Whichever is the case, North departed England without license in the first week of May 1620. Gondomar later informed Philip

III of James's anger (whether feigned or not is unclear) at North's unauthorized departure, suggesting that the king's "real enemies," presumably the vocal anti-Spanish faction, "had entangled him insensibly in things against your majesty from which afterwards he might have no escape."[34] In some respects, North's departure (like the revelation that Ralegh had conspired with the French) was a blessing. The king could now take decisive action against a disobedient subject without debating the issue of legal rights to the Amazon and the Crown's role in approving the voyage. Now at a critical time in the Spanish match, James could wash his hands of the Amazon Company.

The council took immediate action. On May 7, it issued letters to the lord deputy of Ireland and the lord high admiral instructing them to apprehend North if he arrived at any port under their jurisdiction. The admiralty was also to issue directions to all departing English ships that they were to command North to return to England should they encounter him on the high seas and they were not to provide North with any provisions that could help delay his return. On the same day, the council instructed one of its clerks, Sir Clement Edmondes, to visit the home of the Earl of Warwick and take physical possession of the Amazon Company charter, which the king had determined was to be surrendered and canceled. The council soon issued another letter to several named individuals who had provisioned North's ships that they should not offer any further assistance to his venture.[35] Within a week, the king issued a royal proclamation to the same effect as these various letters, emphasizing in this "public declaration" that North's actions were "disloyally precipitated," "contrary to our royal pleasure and commandment," and contrary to the instructions of the lord admiral, who "refused him leave to go." The king warned all loyal subjects against aiding and abetting or giving any comfort to North and commanded those who encountered North to return him to an English port, where the port officers would take custody of him in the king's name.[36] This proclamation was nothing more than a repetition of the orders privately issued by the council, suggesting that—framed very much in the language of the Ralegh proclamation of two years earlier—this redundant document was the king's effort to appease Gondomar that everything was being done to capture North and to prevent claims that the Crown was complicit in North's departure.

North returned to the port of Dartmouth in the first week of January 1621, after an eight month absence. He had planted a colony in South America and was planning to gather more financial support, resupply his ships, and return to his colony when the weather allowed. Instead, North was immediately arrested and committed to

the Tower, and the cargo of £7,000 worth of tobacco that he brought into England was placed under an embargo.[37] Like his reaction in the Ralegh affair, Gondomar's initial position was hostile. Although, unlike Ralegh, North had not attacked any Spanish colonies, Gondomar nonetheless wanted North to be punished to the fullest extent, which would send a clear message that the Caribbean and South America were Spanish territories and that all English activities in the region were illegal and would be handled with equal severity. This message would be even more powerful than that established with Ralegh's death. Ralegh's actions—piratical, treasonous, and contrary to the laws of war and peace—were easily determined to be illegal. North's "offence" against the Spanish, on the other hand, was merely an attempt at peaceful settlement and trade in a region long disputed. Though certainly worthy of a period of imprisonment and perhaps a hefty fine, neither North's unauthorized departure nor his activities in the Amazon—at best, a matter worthy of suit in the High Court of Admiralty—would normally have been enough to merit execution, and any such attempt would have seriously damaged James's relationship with the anti-Spanish faction.

James, therefore, sought a middle way. In exchange for Gondomar's support of a pardon for North and for setting aside a suit for the tobacco (which, though deemed contraband by Gondomar, had, after all, been purchased by North, not stolen), James would proscribe further English activities in the region, at least until a thorough review of English claims could be undertaken, during which time the Spanish were free to submit their own legal documents. In this spirit of compromise, North was released from the Tower on February 28, 1621.[38] North, however, perhaps well aware of the fate of his colonists should he not return with supplies, was not yet ready to give up on the Amazon. He soon petitioned Parliament for the right to at least provide some relief for the settlers he left behind. Never on good terms with his parliaments—and especially with the session of 1621—James quickly defended his prerogative right, rather than any right of Parliament, to determine the issues involved (foreign trade and foreign relations) and returned North to the Tower for five months in punishment for his contempt of the king's authority.[39] In the meantime, the tobacco North brought into England rotted in the Customs House, and even that was encumbered with legal suits from North's unpaid crew and the king's customs officers.[40]

Even though this affair ended unfavorably for North and the Amazon Company, the Privy Council does not appear to have been ready to abandon the region to Spain. In 1623 the council presented to

the king its "Brief motives to maintaining his right unto the River of Amazon and the coast of Guiana," a document of unknown authorship (probably Coke or Caesar). The author noted that the king's subjects had for many years found the country free from any Christian prince and, "with the fair leave and good liking of the native inhabitants," had been in continual residence in the Amazon since Harcourt's colony was planted in 1609. Gondomar's concerns about the North voyage were addressed, and the author pointed out that this was followed by a violent attempt by the Spaniards to remove all usurpers—English, Irish, and Dutch—from the region. This, plus the fact that the Dutch were shortly planning to settle in the Amazon, was all the more reason the English needed to press their legal rights without delay.[41]

Even this urgent plea, however, fell on the king's deaf ears. While positive relations with Spain existed, and as the Spanish match came to a head (Prince Charles and the Duke of Buckingham were presently in Spain completing the arrangements), James chose to honor his agreement with Gondomar, and any further English involvement in the Amazon had to await a new foreign policy. Fortunately for the Amazon investors, this soon came with a series of nearly simultaneous events: the death of Philip III of Spain, to be replaced by his son Philip IV, no fan of the idea of his sister marrying an English Protestant; the collapse of the marriage contract both because Charles refused to convert to Catholicism (a new requirement imposed by Philip IV and Maria) and because of his poor treatment while in Spain; the death of the pacifist James I, which brought the less acquiescent Charles I to the throne; and an Atlantic treaty alliance between England and the Netherlands, which further weakened England's relationship with Spain.[42] Literally within months of Charles's accession, the defunct Amazon Company revived its plans, this time with considerable success. North, Harcourt, Buckingham, and most of the Privy Council supported the creation of a new company, and with England and Spain now enemies in the entangled politics of the Thirty Years' War, Charles was happy to grant the request.[43]

THE WRECK OF THE *SAN ANTONIO*

In September 1621 Governor Nathaniel Butler of Bermuda was woken in the middle of the night to hear a report that one hundred Spaniards had landed on the west part of the islands. Bermuda had long been at risk because of its close proximity to the homebound route of the Spanish treasure fleet, so Butler understandably went on

the defensive. He ordered the manning of several forts and repaired to the landing area with twenty armed men, expecting to pick up additional strength along the way. Rather than find an invading enemy, Butler and his men found a group of Portuguese and Spanish men, women, and children, whose ship—the three hundred ton *San Antonio*[44]—had been separated from the treasure fleet by a bad storm and wrecked upon the rocks ten miles west of the islands. Saving what goods they could carry, most of the castaways made their way to Mangrove Bay at the north part of Somerset Island in a small cockboat. Others floated into the nearby Bermudian island of Ireland on a makeshift raft, including a pregnant woman of high quality who delivered a boy three days later. The ship's carpenter floated into Hog Bay on a plank of wood. A fourteen-year-old boy managed to cling to a chest for two days before he arrived ashore. In total, seventy people escaped the wreck and there was no loss of life.

According to Butler, the castaways were treated well during their ten-week stay in Bermuda. Although the "baser sort" of English colonists had robbed some of the castaways of money and clothes before Butler's arrival, the governor immediately saw to the restitution of the goods. At the request of the Spanish captain, Diego Ruiz de la Vega, Butler also ordered a search of the castaways, some of whom were accused of having robbed the ranking men and women before fleeing in the cockboat. The equivalent of £140 was recovered and given to Butler to serve as a "purse toward the general keeping of them during their abode" there. Butler then billeted the castaways among the people of the western part of Bermuda, charging four shillings per week for each person. The men and women of higher quality were conveyed to the town, where most of them lodged with the governor himself. Butler took special care to ensure that the day of the gunpowder plot (November 5) was observed with great solemnity, "that the Spaniards might take notice of it." When two ships, the *James* and the *Joseph*, arrived at Bermuda with colonists, munitions, and supplies, all but five of the castaways were sent to England. Captain Vega entered into a bond with Butler for £80 for the transportation of the castaways in the *James*, which was to take "most, and all the better sort of the strangers." Butler's share of the annual tobacco crop was to be held by the master of the *James* as collateral until the bond was discharged. At their departure, Butler reported, the Spaniards expressed their gratitude by making "a full and absolute deed of gift" in writing to the governor for whatever he could recover from the *San Antonio*. As the two transport ships departed, Butler ordered the forts to "speak loud . . . with their ordnance," which the governor hoped would be

interpreted both as a friendly farewell and as a sign of Bermuda's military strength should any Spaniards make an attempt upon the islands in the future.[45]

By the time they arrived in England in January 1622, some of the castaways had developed grievances. They petitioned Gondomar for restitution of the goods "stolen" by the Bermuda colonists and for the return of the five "captives" who remained in Bermuda. Gondomar's official interest in the *San Antonio* wreck was demonstrated in a long letter he wrote to Juan de Ciriza, the Spanish royal secretary, on January 23, 1622.[46] A formal complaint was sent both to the leaders of the Bermuda Company and to the Privy Council two weeks later. It alleged that the English colonists stole clothing, money, and goods from the castaways upon their arrival, leaving them with "not one penny left." Gondomar claimed that the English also took the cockboat from the castaways, refusing to allow them to return to the ship in order to save whatever goods that could be recovered. The result, Gondomar complained, was that a "great store of gold, silver, and merchandise to the value of more than 60,000 crowns" (about £15,000) were seized by the English, who also plundered the ship for its artillery. The ship's contents allegedly included 5,000 animal hides, 1,200 quintals of Brazil wood, 6,000 pounds of indigo, 30,000 pounds of tobacco, gold and silver to the value of £5,000, and 12 pieces of iron ordinance.[47] Gondomar claimed that everything was taken "without giving or restoring anything to the said Spaniards." He expected the company to "give order that satisfaction may be made presently for these losses" and that the five captives be set at liberty and sent to England "as speedily as may be." It was the acquisition of this complete restitution, and nothing less, that Gondomar hoped to report to his master, the king of Spain, when he wrote further of this incident.[48]

These were serious allegations. Gondomar's complaint implied that the English had committed breaches of the laws of the sea, of prize, and of shipwreck, by which wrecks and their cargo belonged to the original owners (who were not the castaways of the *San Antonio*) and could not be deeded away or plundered.[49] Although Gondomar did not go quite so far as to allege that the English had committed acts of piracy against the castaways, his accusations stopped just short. As early as the 1584 patent to Ralegh, provision had been made to allow the landing and good treatment of persons "in amity with us . . . or being driven by force of a tempest, or shipwreck," both of which were true of the *San Antonio* castaways.[50] These legalities, discussed at length in the late sixteenth and early seventeenth century (especially by Hugo

Grotius), were ones of which an experienced sailor and privateer such as Butler was surely aware.[51] In fact, Butler showed his intimate familiarity with the laws of shipwreck by claiming that because there were "divers live creatures" still aboard, the ship "could not be taken nor held as a wreck."[52] Butler was articulating an archaic rule of English common law in an attempt at obfuscation that shows that he was perfectly aware of the dubious legalities of any gift, written or otherwise, or of plundering the ship for ordnance and other commodities.[53] It was precisely the application of these various legal principles, and the obligations to other princes made explicit in the colonial charters, that Gondomar was hoping to accomplish through his complaint.

The company's reply was sent to Gondomar on February 9. Their account of the *San Antonio* wreck accorded largely with Butler's reporting. After expressing surprise at the "misinformation" Gondomar received from his countrymen, the company assured the ambassador that the English did not take anything from the *San Antonio*. Rather, they claimed, the ship had been "suddenly and violently beaten all to shivers" ten miles from the land and nothing of value was recovered except for two sakers (medium-sized cannon). The rest of the goods had floated away and perished in the sea, except for a small amount of tobacco, which had been driven ashore but was spoiled and worth nothing. The company claimed that all the "pillaging and rifling" had occurred among the castaways themselves, who had stolen money and goods from the officers while on the ship. Regarding the "mistermed captives," these five were denied transportation both because there was insufficient room on the ships and because they were sick with "infectious diseases" and were not fit to travel. They were in no way to be construed as hostages, nor was ransom demanded for them. If Gondomar so wished, the sakers would be brought to England and returned. The company requested that Gondomar pay the £80 bond for his countrymen to discharge Butler of his engagement, and provide additional payment for the return of the five castaways yet remaining in Bermuda. Finally, the authors of this response took the opportunity to remind Gondomar, who had three times referred to the company as a body of "merchants," that they were rather a "noble" group comprising "great peers . . . and knights and gentlemen of quality."[54] Thus, in addition to flatly denying all Gondomar's allegations and therefore refusing to make restitution, the company made a request for payment in order to settle the debts of the castaways, and implied (much as North had in his response to Sanchez) that the very quality of the Bermuda Company's officers meant that their actions were beyond dispute.

Still, there was a glaring problem in the response—that being the state of the wrecked ship as reported by Butler and the company. Butler, we have seen, had allegedly received a written "deed of gift" for the ship, and had used the subterfuge of suggesting that the ship was not legally a wreck in order to sustain the legality of this claim. The company, on the other hand, claimed that the ship had been beaten to shivers upon the rocks and that nothing else could be acquired from it. As demonstrated in a series of correspondence sent by Butler to Sergeant Major William Seymour of Somerset Tribe, and others, there is little doubt that the ship was more intact, and the salvage more substantial, than the company suggested. On March 13, 1622, Butler informed Seymour that the "Portugals" "made a deed of gift unto me (which I have to show) of all goods they left behind." This was followed by a gubernatorial proclamation ensuring that all goods found "either on the shore, or in the sea, or hauled out of the sea belonging . . . to the Portugal ship" be given immediately to the local bailiff for delivery to the governor, under threat of felony charges of theft and embezzlement for failure to do so. Upon orders from Butler, Seymour secured buoys to the ship to prevent drifting, and in the ensuing seven months some 23 voyages were made to the wreck. Each trip contained twenty men from Somerset Tribe, the northwest island in the group, who sometimes stayed on the ship for 10 or 12 days at a time, ultimately taking more than two sakers, though considerably less than the value of sixty thousand crowns alleged by Gondomar. According to Seymour, in an account written sometime after October 1622, the gang recovered ten pieces of iron ordnance, four anchors, six "murderers" (small breech-loaded cannon), a length of cable, five pieces of silver plate (elsewhere estimated as being worth £11), and a bag containing 162 pieces of eight (about £40).[55]

It is little wonder that Gondomar, faced with an easily disputable inconsistency (for the castaways could speak to the state of the ship), was unsatisfied. In his reply to the company of February 11, 1622, Gondomar noted that since "there cannot be agreement made by this their answer, he will procure the remedy by means which will seem unto him most convenient."[56] What he found "most convenient" was to get the Privy Council involved. He could have launched a suit in the civilian High Court of Admiralty, a tribunal that was certainly familiar to Gondomar and that had jurisdiction over—among many other legal issues—shipwreck, piracy, and plunder. That Gondomar chose not to follow this route, and resorted instead to the king and council, might be explained by his present relationship with James I. After the council's satisfactory handling of the Gondomar's complaints against

Ralegh and North, the ambassador had every reason to believe that a Crown investigation into the *San Antonio* affair would yield the same positive results.

Consistent, as we shall see in Chapter 5, with the way the council often handled petitions, it handed the investigation back to the Bermuda Company itself and provided oversight as the company and ambassador came to a satisfactory outcome. After all, the company was aware of the issues at hand, had access to the principals involved, and had a vested interest and legal obligation in reviewing the case and bringing about resolution. On February 19, 1622, the council sent a letter to the Bermuda Company explaining that Gondomar had personally appeared in the council chamber and showed himself to be "very earnest" in gaining satisfaction for the losses of the *San Antonio*. The council ordered the company to "take it into your serious consideration, and when you have well weighed and examined the particulars . . . to take such a course for restitution and satisfaction as may be answerable to the good friendship and correspondency between these two crowns."[57] This directive from the council made it clear to the Bermuda Company that it would have to take the matter of the Spanish wreck more seriously than it had when it offered a weak and easily disputable explanation of Butler's activities.

Within three days the company, possibly with the assistance of the council or Gondomar, drew up a list of ten "interrogatories," questions to be administered under oath to the masters, mariners, and English travelers on the *James* and the *Joseph*. "Do you know or have you credibly heard," began most questions, whether the English forcibly took the cockboat from the Spaniards, who were refused the use of it to save their goods? Did Governor Butler use the same cockboat to visit the wreck and take goods, and if so what was taken? Did the governor procure a deed of gift in writing for the goods and provisions? Did the governor take anything from the Spaniards, and if so, under what pretence? Were five Spaniards held back as pledges? Did any English colonists rob the Spaniards of their belongings, and if so, did the governor see to restitution? What was the governor's behavior toward the castaways? Did the cargo in the *James* and *Joseph* include any tobacco, hides, or other commodities belonging to the Spaniards? What have you now or at any time had in your possession belonging to the Spaniards? How did you come across these goods, where are they now, and to whom have they been sold or delivered? Finally, do you know what gold, silver, jewels, or other commodities were brought into England by the Spaniards, and have they sold any since they came to England?[58]

This was a well-constructed list of questions that got to the heart of the issues involved and showed the renewed seriousness with which the company, prompted by the Privy Council, proceeded in its investigation. No longer could the company hide behind an implausible description of events or resort to rhetoric and aristocratic bloodlines to solve this diplomatic dispute. Instead, hard evidence was to be gathered in the form of sworn depositions. The answers to these questions would help the council determine what had occurred in Bermuda, what type of restitution was necessary, and whether or not the Spaniards were, as Gondomar claimed, made destitute by the actions of Butler and his colonists. Between February 22 and March 1, eighteen individuals from the two ships and other involved parties were examined, each asked to answer the ten questions in order. The fact that the questions were to be administered to men in England, of course, meant that little of the story of the goings-on in Bermuda between September and November 1621 could be testified to except by secondhand reporting. Some of those examined, however, had been inhabitants of Bermuda during the time in question, including a lieutenant named Roger Lewellen, an "ancient" (ensign) named John Salmon, and a longtime resident of the islands, Henry Longe.[59]

It was these deponents who could speak to the first half-dozen questions with some degree of certainty and credibility. They claimed that the cockboat was not taken by Butler, but was instead given to him freely by the Spaniards, who never demanded to return to the wreck for the recovery of their goods. Roger Lewellen deposed that Butler went to the wreck and recovered the two sakers and some hides and clothes. Another recovery gang had found a bag containing one hundred dollars, about £25 in English currency, and possibly the same pieces of eight to which Seymour referred, which was allegedly used by Butler for the Spaniards' billeting. Others claimed that they had heard some cable, an anchor, and a silver basin had been recovered, all of which accords with Seymour's subsequent account. To the significant question of the deed gifting the *San Antonio* to Butler, the deponents were divided. One claimed that he asked Don Fernando de Vera, likely the ranking gentleman among the castaways, about the gift, but Vera knew nothing about it. Given that Vera told the deponent that he had six thousand pieces of eight (about £1,500) in the ship, it seems unlikely that he would have so willingly given up ownership should this money be recovered at some future time.[60] It also seems likely that an individual as prominent as Vera would have been involved in the preparation of such a deed. John Salmon, on the other hand, attested that the gift had indeed been made, but offered

no further testimony as to its circumstances. Lewellen, who has been in "continual residence with the governor" while in Bermuda, could not answer to the question of the gift at all.

Regarding the castaways left in Bermuda, Simon Day, master of the *Joseph*, claimed that three had voluntarily stayed behind, while the other two were so diseased that, despite Butler's urging, they were not allowed to board, out of fear of contagion. This evidence was confirmed by other deponents.[61] Henry Longe, however, suggested that two of those who stayed did so because they were very poor and of mean character and "nobody would undertake their passage" or pay for the price of their transport. As to whether any English colonists stole from the Spaniards, Day and Lewellen claimed that one Thomas Downing took a purse containing wedges of gold off the neck of Vera's wife, but that Butler commanded it be restored. Henry Mansell, a merchant of the *Joseph*, deposed that he was informed the Spaniards gave seven hundred dollars (about £175) to Butler for provisions, presumably the amount that was represented as £140 by Butler.[62] These deponents also upheld Butler's treatment of the Spaniards as beyond reproach: all were unanimous that Don Fernando, Captain Vega, ship pilot John Gomes, Scottish translator John of Spain, and others "confessed the governor's kindness" and would speak to vindicate Butler's character to Gondomar if it was blemished by a few disgruntled castaways. In sum, these examinations largely bore out Butler's account, though with one major exception: the dubious claims that the ship and its contents were deeded to him.

The testimony on the Spanish goods transported into England and then sold or otherwise distributed was more thorough because nearly all the deponents could speak to these issues. Several testified that 24 hogshead of tobacco (about twenty-four thousand pounds) were transported from Bermuda. Although it was clear that this was the annual crop from the islands, it was nonetheless inspected and dismissed. Lewellen testified that somewhere between four thousand and five thousand weight (pounds) of tobacco washed ashore from the wreck, but that much of it was spoiled by saltwater and thrown away. He deposed that he saw three or four rolls of Spanish tobacco (about three hundred to four hundred pounds) aboard the *James*, which was confirmed by Longe. Mansell, aboard the *Joseph*, agreed to take seven hundred weight of damaged Spanish tobacco to England and, if it could be sold, to return a portion to William Seymour, the sergeant major of Somerset Tribe. That tobacco was presently at the Customs House. As Lewellen and Longe were aboard the *James*, and Mansell the *Joseph*, this testimony revealed that up to one thousand

three hundred pounds of Spanish tobacco—about a quarter of what washed ashore, but, according to Gondomar, only about 5 percent of the ship's lading—made its way to England, though it was quite damaged. Mansell refused to take twenty rotting hides that had been recovered, but Longe claimed that a merchant aboard the *James* had brought them to England, paid customs, and sold some at Dartmouth for two shillings each. One William Canning also testified that he heard of a small barrel of indigo in the Customs House, which Mansell confirmed was thirty pounds in weight.[63] Mansell and Day further deposed that they had accepted an ingot of gold worth £20 as a surety for the repayment of eight guineas to transport 13 castaways in the *Joseph*, which they claimed was a rate far below the normal freight.[64] The ingot was turned over to the lord mayor of London, who was to keep custody of it until the debt was discharged, then return it to the Spaniards. It is clear, therefore, that contrary to the company's initial reply to Gondomar, some Spanish goods did arrive in England, and it would have been appropriate to restore these to Gondomar after taking a fee for the cost of transport and salvage.

The final question posed to the deponents was one of the more important. Did they know what gold, silver, jewels, or other commodities were brought into England by the castaways, and have the Spaniards sold any since they came to England? In his initial complaint, Gondomar had claimed that the castaways had "not a penny left, being robbed and spoiled" of "whatsoever they had saved and gotten to land."[65] Sending into England some ruined tobacco and hides pulled from the sea was a matter of small consequence, and easily resolved. Robbing hapless castaways, among whom were officers, gentlemen, and ladies of a friendly nation, was quite a bit more serious, as it raised the specter of piracy, incivility, and lawlessness. William Buggon, a custom's collector at Dartmouth, attested that the Spaniards who landed in the *James* "had plenty of gold and silver," while Henry Morgan, the ship's quartermaster, claimed that they "fared well, and paid . . . royally" for their board while in England.[66] Mansell and Longe deposed that they had heard the Spanish boatswain had sold £100 worth of gold to a London goldsmith, while a Cheapside goldsmith named John Stanley attested that he bought two ingots of gold from a Spaniard in the company of a "Scotchman" (John of Spain) for £45. Stanley claimed that other Spaniards offered to sell him gold chains, but they could not agree on a price.[67] Robert Elliott of London claimed that he saw the slave of several Spaniards (including Captain Vega) draw "handfuls of Spanish money" out of a bag that he estimated would have contained £200 if the coins were

only silver and not gold.[68] According to Longe, Don Fernando left the *James* when it put into Dover, "and his wife and one of their slaves carried money after them." Salmon claimed that Captain Vega and the pilot Gomes offered him a ring valued at £27 for the hire of a coach, but that the ring was returned because a coach was not available. However much error or exaggeration was involved in these testimonies, there is little evidence of collaboration, nor did a number of the deponents who spoke to this question have any stake in the affair. It is clear that at least some of the more affluent castaways did not arrive in England destitute.

On July 1622, some five months after the depositions were taken, the Bermuda Company informed the Privy Council that it had received word from the Spanish ambassador that he had "acknowledge[d] the speedy justice they had done him touching the recovery of such goods as were saved."[69] These goods, according to correspondence later sent from the Spanish ambassador to the council ("with thanks to the Bermuda Company" for its efforts), amounted to five hundred pounds of "perished tobacco" and thirty pounds of indigo.[70] This presumably represented that which had been in the Customs House at the time of the depositions, possibly less a fee claimed for salvage, transport, and customs, and was a pittance when compared to Gondomar's initial demand. Whether or not further restitution was made for the skins, sakers, and silver is unknown. It seems unlikely that the company would have willingly parted with money without additional corroboration, and the ambassador might not have seen these paltry items as matters of great importance, especially now that the more serious of the charges had been allayed. This correspondence also suggests that the ambassador was satisfied both with the Bermuda Company's administration of the interrogatories and with the truth of the evidence therein. The seemingly indisputable facts that the castaways were treated with respect and fairness in Bermuda and that the better sort of Spaniards arrived in England with plenty of gold and silver and lived "royally" deeply weakened the claims of the disgruntled castaways in whose interests Gondomar had initially acted. However the case proceeded beyond this point, Gondomar was no longer in a position to press any claims of outright robbery.

Before learning of the disposition of the case from the company, the Privy Council had already returned to the issue of the *San Antonio*, though only to write a pass for Captain Vega, the pilot Gomes, and their wives and slaves to depart from England and to take with them whatever goods belonged to them, possibly including the salty tobacco and rotting hides. Such a pass was needed for any individual

leaving England, especially if money, commodities, and ships were also being exported. (We have seen, for instance, that North's unlicensed departure was a cause for alarm.) It would have been up to the port captains or customs officers to ensure that none of what was being transported was prohibited by law or proclamation, such as certain foods, merchantable commodities, ordnance, and people (especially those attempting to flee justice).[71] Vega had not yet discharged his £80 bond to Butler, however, a fact that led to his detainment and, at the insistence of the council in May, a hearing of the case in the High Court of Admiralty, a court deemed appropriate because the issue had occurred in the colonies. There, the "strangers" were informed, the court would pass sentence and "they will answer the contrary to their perils." Within a month, however, the council learned that Butler would be shortly arriving back in England, as his term as governor was due to end in October.[72] The presence of both parties on English soil meant that the case no longer required extraterritorial jurisdiction and could be heard in any common law court that would take cognizance of it. [73] Like other aspects of this case, the resolution of Butler's suit against Vega is unknown. Assuming that Butler could have produced a written bond, there is every reason to believe that his suit would have been successful, and it is possible that Vega merely discharged the bond when faced with the threat of a lawsuit and continued residence in England until its conclusion.

One Spaniard who did successfully leave England in June 1622—never to return—was Count Gondomar himself, who was replaced as resident ambassador by Don Carole de Colombo. The departure of such a powerful ambassador as Gondomar did not mean that the case of the *San Antonio* was over. While it seems the ambassador was satisfied as to the restitution of the goods brought into England and the fair treatment of the Spaniards while in Bermuda, he had not yet given up on recovering more from the *San Antonio* itself. Based on the amount of product that arrived in England, or was actually seen by the deponents in Bermuda, there was still potentially a lot of be found in the wreck (not least of which were the equivalent of several thousand pounds sterling of gold and silver), now that it was clear it had not been "beaten all to shivers." This was also an indication that the ambassador, perhaps swayed both by points of law and the secondhand evidence that the ranking gentleman among the castaways (Vera) knew nothing of the deed of gift, gave little credence to Butler's claims that he was awarded the foundered ship and its goods. To investigate further the possibility of recovery, the ambassador sent a letter to the council in which he requested to send

"a man of his own" to Bermuda in order to determine what goods had been or could be salvaged. The council was against this idea, in part because, despite being friendly nations, there were still lingering concerns about espionage and surprise attacks. To appease the ambassador, however, the council instructed the company to have the matter looked into through a commission of men shortly scheduled to voyage to Bermuda.[74]

The "syndicators" of this commission were to include John Bernard, the governor-elect who was to replace Butler, the colony's new sheriff, two members of the clergy, and the secretary of the Bermuda colonial council, Roger Wood. In September 1622 these men were ordered by the company to "further enquire of this matter to satisfy the Spanish ambassador" by examining Butler and all other inhabitants according to the list of interrogatories administered previously. All Spanish goods discovered were to be sent to England, although (in a passage that would become important subsequently) the salvagers who "adventured their lives to save the said Spanish goods from perishing" were to be "reward[ed] . . . very well" for their efforts.[75] The five Spaniards remaining in the islands were also to be sent into England, their freight to be paid by the money they had earned while laboring in Bermuda.[76] The phrasing of this commission makes it clear that the deed of gift was now of null effect. Neither the Spanish ambassador, nor the council, nor the company recognized its legality, and any and all goods subsequently taken from the ship were to be returned to England and presented to the Spanish ambassador, provided that the latter was willing to pay for the cost of salvage, as was usual in the case of shipwreck. We have already seen, of course, that comparatively little was actually salvaged from the ship after the castaways departed, so the ambassador was due for a disappointment, though he could not have known this when he made the request. Shortly after the syndicators departed England for Bermuda in late September, Colombo wrote to the council complaining that he had not yet been informed of the names of those appointed to review the issue, which served to remind the council that the matter was still of some concern to the Spanish government.[77]

Eight days before the syndicators arrived in Bermuda, Butler secretly left for Virginia in a ship sent from England for that purpose.[78] There, he gathered the information that was later to appear in his famous "Unmasked Face of Our Colony in Virginia," one of the serious indictments of the Virginia colony and company that would lead the council to initiate a major investigation and ultimately dissolve the Virginia Company (while leaving the Bermuda Company

intact).[79] The circumstances of Butler's early departure are unclear. In May 1623 the Virginia Company, stung by Butler's attacks, claimed that the cause of his leaving Bermuda and the diversionary tactic of going on the offensive against Virginia was his "fear that a commission would be awarded . . . for the examining of his proceeding about the late Spanish wreck there so much complained of."[80] Given that Butler's actions with regard to the *San Antonio* were well spoken of by both English and Spaniards, there is little reason to believe that Butler had much to worry about from the syndicators. Even if the deed of gift—which probably did exist and, regardless of its legality, would have at least protected Butler from severe repercussions—was defunct and resulted in the requirement to restore the goods recovered, surely Bermuda would have easily survived the loss of the ordnance and other sundries should these be sent to England. There is no evidence that Butler and the colonists acted surreptitiously to hide money or goods taken from the *San Antonio* or its castaways and no reason to think that the syndicators would have determined otherwise. Instead, Butler's early departure was a political move motivated by the warring factions of the Virginia Company, and had nothing to do with the *San Antonio* investigation.[81]

The syndicators posed the interrogatories to several inhabitants of Bermuda as two groups, one of which included Sergeant Major Seymour, on January 9 and 15, 1623. Little new is to be learned from these depositions, which reaffirm the reports of those also resident in Bermuda at the time of the *San Antonio* incident—Lewellen, Salmon, and Longe. They confirmed that the governor did not board the ship until he had received the deed of gift and that he treated the castaways "with all civility and courtesy." Butler did accept some jewels and a gold chain from the wealthier Spaniards, but only because the supply magazine would not accept these as payment and the governor had used his own credit to get necessary clothing and other sundries for the castaways. Other deponents saw various items that had not previously been mentioned—a chest containing a silver-plated turtle shell and some silverware, a few suits of clothes, a ring, a half pound of pearls, and gold toothpicks—most of which were delivered to Butler but were not seen again. The depositions were weak on timelines, and it is difficult to determine whether these various goods were collected around the time of the shipwreck or as part of the recovery process undertaken after the Spaniards had departed. It is also unknown whether some of these goods were restored to the Spaniards while they resided in Bermuda or were kept by Butler either as payment for board and magazine items or as booty associated with his deed

of gift. Edward Brangman testified that he saw a chest with some silver plate being put aboard Butler's ship upon his departure, but it was unknown whether this was part of the Spanish goods or sundries of Butler's own household, as, of course, he would take his personal belongings at his leaving, especially plate, linen, and clothes.[82] Butler, of course, was not in Bermuda to be deposed, and no subsequent deposition of him appears to have taken place.[83]

The depositions taken in Bermuda, William Seymour's correspondence with Butler regarding the wreck, and some ancillary documents were sent as a complete package to the company sometime after March 1623. After their arrival in England, each document was copied by a clerk and then endorsed "*vera copia teste*" (certified true copy) by the Bermuda Company secretary, Edward Collingwood. While the originals very likely remained with the company and ultimately perished with the rest of the company records, these true copies were sent to the Privy Council and presumably shown to Columbo in order to bring the case to conclusion. These documents largely supported Butler's and the original deposers' stories, showed what was recovered and demonstrated that nothing else was recoverable, and showed the impracticality of making additional restitution of the comparatively small amount of goods recovered, since the cost of salvage plus transport would have been greater than the value of the recovered items. The case seems to have been put to rest by the middle of 1623 and all the documents associated with the *San Antonio* investigation that were in the custody of the council were later deposited into state papers.

Conclusion

In the three cases examined in this chapter, the Crown became involved when it was prompted into action by the Spanish ambassador. Each case involved legitimate diplomatic disputes between friendly sovereign nations, which demanded due attention to protocol and a thorough examination of events. Whether or not James was aware of Sir Walter Ralegh's belligerent intentions, Ralegh's actions were clearly illegal and explicitly contrary both to the law of nations and to the instructions he received from, and promises he made to, the Crown regarding engagement with Spaniards or their outposts in America. Even if Ralegh's defensive claim that he was merely clearing squatting Spaniards off English territory was supportable, the correct diplomatic protocol during peacetime should have involved the Crown lodging a formal complaint with Philip III and seeking resolution

through the recourse of supranational law. It is hardly surprising that the Crown quickly disavowed Ralegh's behavior and reinstated his death sentence, an action of comparatively little consequence to James I that appeased the Spanish ambassador and showed the Crown's continuing commitment to friendly relations and diplomacy.

Captain Roger North, acting on behalf of the Amazon Company, appears to have had more benign intentions, but coming on the heels of the Ralegh fiasco, Gondomar's concerns about English activity in Spanish-controlled territory of South America were serious enough to merit careful Crown attention. In this case, the Crown's role involved putting a hold on the privileges granted in the charter until the matter could be properly investigated. The ensuing investigation was, perhaps to James's relief, rendered unnecessary by North's subsequent actions, which were quickly denounced in a royal proclamation. In the negotiations with Gondomar that followed, James agreed to prevent future English activity in the regions controlled by Spain, a definite if short-lived victory for Gondomar.

The Crown's role in the *San Antonio* investigation was more relaxed, providing oversight (to use Kenneth Andrews's words) "from behind."[84] This was principally because, unlike in the Amazon affairs, there was an established company body that could undertake the investigation, thereby relieving the king and council of this onerous duty. The Crown got involved at three stages. First, when it came to believe that the investigation was not being taken seriously, to the detriment of its sovereign and prerogative obligations toward maintaining positive foreign relations, it commanded a more complete review of the case. Second, when the investigation moved toward completion, the council gained knowledge of its resolution, but pushed the company to further its investigation in Bermuda in order to ensure that the Spanish ambassador was completely satisfied. Finally, there is evidence to suggest that once the investigation was completed, the council was informed of its outcome and passed this information to the Spanish ambassador. If the Bermuda Company had—after the council's prompting—refused to investigate the matter of the *San Antonio* properly, the council would have either taken the investigation on itself by creating a royal commission (as it had in the Ralegh and North affairs) or turned it over to the High Court of Admiralty, a jurisdiction that was used for similar events of both the recent past and near future, usually at the expense of considerable time, money, and effort for all parties.

Each of these cases demonstrates that when it came to affairs with other foreign powers, the Crown retained ultimate authority and

exercised its prerogative and sovereign rights, particularly when reasons of state so demanded. True, the cases examined here took place during a time when the English Crown was being unusually acquiescent to its foreign neighbors, in this instance Spain, which no doubt affected the outcomes beyond an objective review of the evidence and the rules of diplomatic protocol. In another time and place (such as under James's predecessor and successor), Ralegh's actions—like Francis Drake's during his circumnavigation of 1577–80—might have been quietly applauded, North's deliberately overlooked, and Butler's barely noticed. This shows that the role played by the Crown in relation to its Atlantic peripheries was closely related to the current political climate in England and to the state of foreign affairs. So long as James I was acquiescent to Spain, he was not willing to allow Atlantic affairs to jeopardize his foreign policy, although he was clearly forced to navigate a careful middle way in order to avoid repercussions from the vocal anti-Spanish faction at court. When the accession of Charles I and the onset of war saw a major shift in Anglo-Spanish foreign relations, English activities in the Amazon were allowed to proceed, as were, beginning in 1625, plans to expand the English Atlantic enterprise into the Caribbean, Providence Island, and Carolina. All these new colonies were close to regions that indisputably had a significant Spanish presence but that the new policy toward Spain and the thinning of the latter's resources as the result of war encouraged the Crown to overlook in the interests of England.[85] However much the Crown was willing to allow the colonies, trading companies, and adventurers autonomy in their internal affairs, the Atlantic imperial constitution ensured that the king and council would remain supreme in the politics and legalities of foreign affairs.

Chapter 3

Emigration and the Shaping of the English Atlantic World

The shape and character of the English Atlantic world were determined in large part by the men, women, and children who emigrated there. This is especially true of those who emigrated in the first half of the seventeenth century, as these were the colonists who created the legal, cultural, and social institutions that would endure in English Atlantic settlements throughout their colonial history. These emigrants included knights, gentlemen, and ladies of quality taking advantage of chartered privileges, land grants, and investments; farmers and tradespeople looking for a new life in a new land; merchants seeking new commodities and markets; and a large number of young male unskilled laborers escaping poverty and dearth while seeking what they were denied in England—adventure, employment, and land. Some emigrants, especially those to New England and Providence Island, were religious malcontents and missionaries, although this was a smaller number than we have traditionally been led to believe. Still others were field workers and servants, who contracted out their labor for a fixed number of years in exchange for promises of land and betterment thereafter, should they be lucky enough to survive the hardships of their indenture. Although the majority of emigrants went voluntarily, an unknown number were forced across the Atlantic. These included disadvantaged vagrants, women, and children, who were gathered from the streets of London, provincial towns, and the bowels of the Bridewell "hospitals." They arrived as servants, apprentices, indentured workers, and marriage prospects. Atlantic emigration also involved convicted felons, who accepted transportation and indenture in lieu of death. As Alison Games has remarked, the emigration

of these multifarious travelers "secured England's precarious Atlantic empire in New England, the Chesapeake, and the Caribbean."[1]

Whether voluntary or forced, all these emigrants required approval from the English Crown before their departure. Since the medieval period, it was standard protocol for anyone leaving the realm, including the king's subjects and aliens presently in the country (recall the license given by the Privy Council to Captain Vega and the alarm at Captain North's unauthorized departure, discussed in the last chapter), to apply to the Crown for a license to depart.[2] By the age of the Stuarts, the need for each subject leaving the country to acquire a license was primarily out of concern that those with military experience or skilled trades would seek employment with foreign princes, especially Catholic ones. For practical reasons, soldiers in English employ, and mariners and merchants whose trade demanded frequent travel, were usually exempted from this requirement, or at least were given an enduring license, loosely overseen by port officials, that covered numerous departures and returns.

Soon after the Virginia Company charter was issued, James I renewed these restrictions through royal proclamations. In August 1606 the king commanded that no woman, or child under the age of 21, could depart the realm unless they received license from either the king or six or more privy councilors. Recognizing that this duty would be too burdensome for the council, the king also established a commission of "persons of trust" in each major English port, who would issue licenses on behalf of the Crown. The punishment for port officials and ship captains who breached this proclamation was, respectively, loss of their office and forfeiture of their ships and tackle.[3] The reason that this proclamation was issued is not entirely clear. It might have had something to do with concerns that too many young people were passing to the Continent for employment or military service, or because of the possibility that women and children would be kidnapped and "spirited" out of England against their wishes.[4]

The following year another royal proclamation expanded the earlier one by prohibiting the departure (except for the traditional exemptions) of "all manner of persons being natural born subjects of this realm, or any of the dominions of the same, of what estate or degree soever they be" without the permission of four or more councilors, of whom the domestic secretary of state needed to be one. Consistent with his sovereign privilege to secure the allegiance of all subjects, in this proclamation the king reserved the right to control departures out of the realm primarily in order to ensure that those departing remembered their "principal duty and allegiance . . . [to] their natural

liege lord."[5] The issue of allegiance, one to which we shall return in this chapter, was a very important aspect of this proclamation. James wished to ensure that anyone departing from the realm (and returning to it as well[6]), recognized the ties of sovereignty under which they were bound as subjects, even when they were no longer on English soil.[7] This helped to ensure that emigrants did not attempt to throw off the ties of sovereignty that bound king and subject in a historical, reciprocal relationship, and then either live in the absence of sovereign authority (which ran contrary to natural law) or swear allegiance to another ruler.

At least initially, the need to acquire individual licenses was excused in the case of Atlantic migration. In 1604 the adventurers to Guiana petitioned the king and council to grant "the king's protection and free passage to those who will come and settle there."[8] Subsequently the Crown-authorized royal charters granted broad privileges to, in the words of the New England charter, "transport . . . towards the said plantation . . . all such and so many of our loving subjects that will . . . live under our allegiance, as shall willingly accompany" the patentees.[9] This clause relieved the Crown and its officials in the admiralty and port towns of the burdensome task of issuing thousands of licenses to Atlantic emigrants. The Crown did, however, also assert its right, to quote the Massachusetts Bay charter of 1629, to deny the emigration of those subjects "especially . . . restrained by us."[10] This passage was intended to refuse emigration to those seeking to flee justice, although—as we shall see in this chapter—it would later be applied to those offering unfair competition to the chartered companies, as well as to individuals suitable for military impressment, and to religious and political malcontents seeking to flee the policies of Charles I and Archbishop William Laud.[11]

Despite the charter privileges, and the Crown's general desire not to become overly intrusive in the matter of Atlantic emigration, many actual and potential emigrants were nonetheless impacted by the intercessions of the Crown, which collectively helped to shape the population of the English Atlantic before and after 1640. In a society that was under agricultural and economic strain (caused by frequent crop failures between 1590 and 1620 and the collapse of the textile industry in the early seventeenth century) and that was perceived to be overpopulated (the nation's population had grown by 40 percent between 1580 and 1640), the Crown proved very willing to promote the emigration of those of its subjects who could help promote the success of its Atlantic colonies, especially if this movement of people could offer a much-needed safety valve at home. At the same time,

the Crown was hesitant to allow the transportation of other subjects, when the needs of state so demanded. It proved particularly interested in watching over the emigration of two groups. The first was England's disadvantaged subjects, including vagrants and criminals, the numbers of whom had increased dramatically, especially in cities during the Elizabethan and early Stuart periods. The second group of emigrants who were watched closely by the Crown were its disaffected subjects, primarily religious malcontents who refused to swear allegiance to the king and church during the decade of the Great Migration. To prevent this affront to the king's sovereignty, the proclamation of 1607 was reissued in 1630 with stricter language, and the charter privileges for mass, unlicensed emigration were revoked, to be replaced by the requirement for special, individual licensing by the king and council. This stronger oversight, in turn, propelled the creation of certain Crown bodies—especially the Committee for Foreign Plantations in 1634—and other mechanisms of central control that would endure long after the early Stuart period.

Transporting the Vagrant Poor

In the first year of his reign, James I issued a proclamation "for the due and speedy execution of the statute against rogues, vagabonds, idle, and dissolute persons." Referring specifically to a parliamentary act passed in 1598 to deal with vagrants and the idle (or undeserving) poor, which ultimately led to the Elizabethan Poor Act of 1601, the king ordered that all law officers of the realm—justices of the peace, mayors, bailiffs, and constables—make application to the council to have all such "incorrigible or dangerous" individuals banished to "parts beyond the seas." The locations for banishment were listed as "the Newfound Land, the East and West Indies, France, Germany, Spain, and the Low Countries."[12] The first few of these locations would have been especially severe, as there was then no permanent English presence in these regions, no likely means of returning to England, and, in the absence of any colonial structure in these unknown wildernesses, only modest chances for survival upon landing. This was only one of a number of early Stuart proclamations intended to deal with the rising problem of "masterless men," most of which involved criminalizing this activity, authorizing newly appointed "provost marshals" to effect arrests, and prescribing a period of imprisonment in the houses of correction or other forms of punishment appropriate to deal with what was perceived to be the great scourge of early modern English society.[13] It was within the context of ridding England—and especially the

metropolis—of these undesirables that the Crown became involved in forced emigration across the Atlantic.[14]

The practice of transporting England's poor across the Atlantic began with the forced emigration of vagrant children. In 1618 the city of London was persuaded by the Virginia Company to send one hundred children from the "overflowing multitude." Another one hundred were sent in 1619 at the urging of James I, who disapproved of children following the annual progress of the royal court seeking alms. Unless they were sent to work in Virginia, "they will never be reclaimed from their idle life of vagabonds."[15] These children were gathered from the streets, almshouses, and Bridewells, the latter being the "hospitals" created in the mid-sixteenth century to deal with the problem of England's poor, ostensibly through the process of reformation and training in practical skills.[16] In order to be useful—rather than a burden—to the colony, the children were to be 12 years of age or older and of both sexes, in order to supply the colony with "prentices or servants" and also field laborers and, perhaps of greater significance at a time when the colony was attempting to turn the earlier military venture into a farming and family-oriented operation, future marriage prospects.[17] The latter involved clearing the Bridewells of young women, to which end a number of "corrupt" women were sent to Virginia from 1618 to 1620.[18]

In 1620, in an attempt to regularize the practice of transporting England's poor and give it executive force, the Virginia Company informed the Privy Council of the city of London's desire to transport another one hundred children "from their superfluous multitude" to Virginia. These were "ill-disposed children, who under severe masters in Virginia may be brought to goodness, and of whom the city is especially to be disburdened." The council's assistance was being sought because many children proved unwilling to go and the city lacked the executive authority to force them. It thus sought the intercession of a "higher authority" to force them against their will.[19] Happy to throw the weight of its authority to this enterprise, which would serve the realm by helping to rid England of the most egregious of its vagrant problems, the council ordered that the children "be sent to Virginia, there to be bound apprentices for certain years." The city of London was to arrange a levy of £500 in order to pay for the apparel and transportation of the children. The council also gave legal immunity to the city should if gather those "unwilling to be carried thither," and to the Virginia Company should there be complaints that it "carr[ied] out these persons against their wills." Those children who proved

particularly obstinate were to suffer imprisonment or whatever other punishment the city or company felt was required.[20]

Once the Crown demonstrated its willingness to allow this practice, other children were also forced to emigrate. In 1625 "six poor boys went to Virginia" at the expense of the town of Winchester, three more were sent from Devonshire, and the London port register of 1635 records that five boys were gathered for transportation in that year.[21] Others, undoubtedly, were placed onto ships without so much as a listing in any register, such as the fifty vagrants who were bound as apprentices and shipped to Virginia and Barbados in 1632.[22] The alternative was that these children would have become dependents of their parish, a most unwelcome idea. Even worse, they might turn into adult "rogues, vagabonds, idle, and dissolute persons," the detritus of seventeenth-century English society. However, in Virginia they were to be "educated and brought up in some good trade and profession whereby they may be enabled to get their living and maintain themselves when they shall attain their several ages of four and twenty years or be out of their apprenticeships." Upon reaching majority, each man would be allotted between 25 and 50 acres of land at a reasonable rent, a cow, corn for planting, forty shillings for clothing, weapons for defense, and tools appropriate to their profession, whether tradesmen, farmers, or husbandmen.[23]

If this scheme was implemented in this fashion, surely this was an improvement on the lives these destitute children would have lived in England. It would also provide the Atlantic colonies—for Virginia was not the only colony to receive the poor—with a source of ready, young, and vigorous labor to undertake backbreaking tasks such as clearing forests, draining marshes and fens, planting hedges and fences, and cultivating arable lands, all of which were essential to the successful colonization of America.[24] Ultimately the scheme proved unworkable. It was expensive and administratively challenging, and the children rarely arrived with enough money, clothing, or physical strength to work (the latter caused, in part, by a three-month voyage plagued with sickness and malnutrition), all of which—quite opposite to the Crown's and company's intentions—placed a further burden on the already strained colonies.

The Crown's broader view of the potential for transporting the poor across the Atlantic may be seen in its consideration of a scheme recommended by Captain John Baily in 1623, when the Virginia Company was under close investigation and the Crown was in the process of determining not only its fate but also that of the entire Atlantic empire.[25] Baily recommended that the king make a public

plantation in the region of Virginia, where three thousand poor men, women, and children could be sent. Each emigrant would be given twenty acres of land and sufficient food for one year, after which—through the process of building houses, cultivating the land, and producing cash crops—they would become self-sufficient and help both to finance the colony and to enrich the Crown. To Baily, the advantages of this plan were several: the prisons would be emptied, the king would appear benevolent by respiting many lives, those who went would gain enough relief to set them on a path to improvement, and England would finally be rid of its social wretches. This enterprise was to be funded by English and Welsh subjects. Baily calculated that in the trial stage of the project, to be undertaken in London and surrounding counties, some six hundred thousand households would contribute one penny per head, which would bring in £15,000 per year (at an average of six people per household), a figure that would rise to £600,000 per year when the entire nation contributed.[26]

In order to determine the sustainability of this benevolent project, Secretary of State Sir Edward Conway requested the advice of Sir Thomas Smith, the former treasurer of the Virginia Company, and others who were experienced in these matters. After conferring with Baily, Smith and the others reported that while they believed that a public plantation to the south of the present Virginia settlements was "good and commendable," they very much doubted that such a large sum "can easily be levied." They also pointed out that similar schemes in the past, such as the Crown-authorized (and ultimately terminated) Virginia lottery and the forced gathering of money in churches for former plantations, had not worked out particularly well and had drained the kingdom of money for little gain.[27] Although there was a certain pragmatic reality to Smith's response to Baily's scheme, this also needs to be seen within the context of the Virginia Company, a protocapitalist enterprise in which private investment and stock dividends was the preferred model (even if the Virginia Company had yet to pay anything to its investors). In the end, the king and council appear to have accepted Smith's assessment that the scheme, though commendable, was not sustainable.

The fact, however, that the Crown gave sober consideration to the idea of a publicly funded Atlantic plantation scheme shows its continuing commitment to the success of the Atlantic enterprise, particularly now (by 1623) that it was aware that the former system of trading company administration was not likely to continue as the model of expansion. The Crown needed to consider ideas that would prove beneficial to the empire and royal *imperium* (both of which, as

we shall see in Chapter 6, were deemed to be in jeopardy under the Virginia Company's administration) without overburdening the central government with mundane administrative duties. Even if Baily's scheme worked according to plan, the Crown would have been forced to provide a great deal of oversight, placing strain on the king-in-council, not to mention a number of other ancillary Crown bodies, such as judicial officers, port officials, and the treasury. Ultimately, of course, the use of proprietorships would become the new model of colonial administration after 1623. Proprietorships would characterize the new plantations in Newfoundland, Maryland, the abortive New Albion and Carolina plantations, the Caribbean, and those that would be created in the early Restoration period. In contrast to Baily's scheme, the value of proprietorships lay in the fact that royal intrusion could remain minimal while simultaneously ensuring that the proprietary "vice regents," who held powers equal to those in the English palatinates, would remain constitutionally responsible to the Crown and more responsive than were the trading companies to the orders and oversight of the Privy Council.[28] Despite these setbacks, a few years later Baily was still trying to get his scheme afloat, with little success.[29]

Transporting Criminals

Somewhat more controversial than the forced emigration of England's vagrant population was the transportation of its criminals. A good deal has been written about convict transportation to America, especially that which occurred after the passage of the Transportation Act in 1718, which led to the formation of what has been termed the "criminal Atlantic."[30] However, transportation of felons across the Atlantic began more than a century earlier.[31] In his *Discourse of Western Planting* (1584), Richard Hakluyt lamented about the "idle persons" of the realm who "fall to pilfering and thieving and other lewdness, whereby all the prisons of the land are daily pestered and stuffed full of them, where either they pitifully pine away, or else at length are miserably hanged." Hakluyt recommended that Sir Walter Ralegh's future colony would benefit from the forced transportation of these "petty thieves," who could earn their liberty by participating for "certain years" in the laborious tasks of clearing land, building houses, and planting crops.[32]

Although the failure of Ralegh's enterprises did not allow the realization of this plan, it was resurrected shortly after the charter for Virginia was issued. Writing in 1606, the Spanish ambassador resident

in London, Don Pedro de Zuñiga, informed his king that Sir John Popham, chief justice of King's Bench and a leader in the Virginia enterprise, suggested that its chief purpose was to "drive out from [England] thieves and traitors."[33] This plan was reinforced in Robert Johnson's *Nova Britannia* (1609), which argued that the Atlantic was a perfect place to transport those whose "lewd and naughty practices" would otherwise require the building of more prisons.[34] In 1611 Sir Thomas Dale, governor of Virginia and author of the famous and draconian *Lawes Divine, Moral and Martial*, wrote to the Earl of Salisbury (lord treasurer and the senior bureaucrat in the realm) asking that he consider "banish[ing] hither all offenders condemned to die out of common gaols." This action "would be a ready way to furnish us with men," and, Dale reminded Salisbury, "not always with the worst kind of men," particularly when considering the comparatively minor crimes of most felons and the "disordered, profane, and riotous" men who presently made up the colony.[35]

Although Dale's request initially appears to have been ignored, the king issued a commission in January 1615 to several senior members of the Privy Council. Recognizing the "severity of our laws punishing offenders in felonies to death," and desiring that "some other speedy remedy be added for ease unto our people," the king directed that "lesser offenders adjudged by law to die . . . might live and yield a profitable service to the commonwealth in parts abroad where it shall be found fit to employ them." He authorized any six privy councilors, of whom two had to be the lord chancellor, lord treasurer, lord chief justice, and secretary of state, to issue a stay of execution and transportation order to any individual convicted of any felony except murder, rape, witchcraft, or burglary. In early modern English criminal law, all felonies with the exception of petty larceny (the theft of goods valued at under 12 pence) were capital, and thus could result in death by hanging. The most serious of these crimes—arson, highway robbery, treason, and the other exemptions noted in the king's commission—were committed *vi et armis* (literally, by force of arms, but practically, in the presence of violence) and with *mens rea* (criminal intent), which meant that offenders were considered serious malefactors and were not entitled to mitigation. Barring significant levels of interference from powerful patrons, their death was certain. The majority of felonies, however, involved the nonviolent theft of goods, accidental homicide, or lesser sexual offenses and were eligible for benefit of clergy, the principal form of mercy used in English criminal courts. Under a legal fiction that derived from the medieval age, a male convict who could show basic literacy (by reciting Psalm 51 at an

allocution delivered before sentencing) was either freed from criminal punishment or awarded a lesser sentence.[36] The reprieve granted by James I in his commission was voluntary transportation of minor felons in lieu of death.

As James's commission made clear, however, not everybody convicted of clergyable crimes was entitled to be transported across the Atlantic. All such individuals had to be of sufficient "strength of body or other abilities" that would make them valuable to the colonies, their fitness for overseas service to be certified by the judge who tried the case.[37] This clause suggests that although, in theory, transportation was a means of introducing leniency into a sanguinary criminal code and give "ease" to the more redeemable of his fallen subjects, in practice the king's clemency only extended to those individuals who could prove valuable in helping to shape the Atlantic colonies. The king does not appear to have seen the colonies as a mere dumping ground, and those who were weak of body or possessed no skills of artifice were not eligible for reprieve. Two days after the commission was issued, the council produced an open warrant to the same effect as the king's commission, adding (in a clause later to be emulated in the 1718 Transportation Act) "that if any of the said offenders shall refuse to go, or yielding to go, shall afterwards come back, and return from those placed where they are, or shall be sent or employed, before the time limited by us . . . to be fully expired, that then the said reprieval shall no longer stand nor be of any force, but the said offender . . . shall thenceforth be subject to the execution of the law for the offence whereof he was first convicted."[38] These commissions and warrants represented the first major effort to send felons from the realm of England into foreign parts, where their hard labor would be valued and perhaps their criminal tendencies reformed through, to quote a Jacobean proclamation of 1617, "severity of punishment."[39]

Under these various commissions and proclamations, or in respites given directly from the king, approximately one hundred fifty male and female convicts were transported across the Atlantic between 1615 and 1640.[40] To be sure, in comparison to the overall number of emigrants to the Atlantic colonies under the early Stuarts (roughly fifty thousand), this was a small number, but to colonies that could only survive with the infusion of lesser men and women working extremely hard labor, initially through the system of indentured servitude, it was not an entirely insignificant one. More importantly, it was symbolic of the practice that would later form the "criminal Atlantic." These felons principally came from gaols in the southeast of England, particularly Middlesex County, including many from London's Newgate

and Marshalsea. Most were sent to Virginia, although some were transported to Bermuda, Barbados, St. Kitts, and St. Lucia. During the first few years of convict transportation, the felons were delivered by sheriffs or gaolers into the custody of Thomas Smith of the Virginia Company, who was responsible for their transportation across the Atlantic and their indenture after they arrived. In April 1620 the council ordered Smith to select twenty individuals—"either all women, or ten men and ten women as you shall best approve"—from a large group of potential reprievals for transportation, preferably to Bermuda, in order to aid in the development of that colony.[41] After 1620, and especially after the early political troubles and dissolution of the Virginia Company, transportees were delivered either to private petitioners, who requested the reprievals and assumed the financial responsibilities of transport, or to ship captains who were responsible for the felons until they crossed the Atlantic, where they would then be sold into indenture, the latter of which became the common practice in the eighteenth century.

These felons were mostly thieves whose crimes were not particularly heinous. James Wharton, transported in 1622, had been convicted of cutpursing, a serious but nonviolent crime against property.[42] John Throckmorton stole a hat worth six shillings and was reprieved on the condition of transportation after his grandmother petitioned the council for mercy.[43] John Carter was convicted of stealing a horse (the most common offense of the early transportees) and petitioned the council for reprieval and a warrant for transportation. After receiving word from the mayor of London about the petitioner and his case, the council granted his request, noting in its warrant that "it was doubtful upon the evidence whether the horse was stolen or not."[44] A manslaughterer (though not a murderer) named Stephen Rogers was reprieved in 1619 because he was a carpenter whose skills were very much in demand in Virginia.[45] In 1635 Henry Robinson, convicted in the High Court of Admiralty for piracy, was reprieved and sent to Virginia, certainly one of the more serious offenses committed among the transportees; presumably the circumstances of Robinson's case suggested that the judge should recommend him for leniency.[46] Women, too, requested and were granted transportation, such as Elizabeth Cotterell, a prisoner in Marshalsea for unspecified crimes.[47]

Lest we believe that this procedure was merely pro forma, it is worth noting that on occasion the council could not be persuaded to grant a reprieve and transportation warrant. In 1618, when the friends of a highwayman named Henry Read sought his release on the condition of transportation, the council refused the request on the

grounds that Read was a violent offender and could not be suffered to live in any of the king's dominions.[48] Other certified felons were probably refused transportation on similar grounds, but as was often the case, the council register tends only to record successful petitioners. When the king's commission was next renewed in 1621, arson and highway robbery were added to the list of excluded crimes, probably at the recommendation of the council based on its experiences in reviewing these types of cases.

Although popular with both the Crown and some colonial backers in England, not everyone was happy with the use of convict transportation. Some felons refused to go, preferring to be hanged as free men in England than to live as virtual slaves in the wilderness of America.[49] In a letter written to his patron in England in 1620, Governor Butler complained of the prisoners recently sent to Bermuda: "You have thrust upon me this year ten Newgaters. It is verily thought they infected the ship, and so have been the occasion of the loss of many an honest man's life . . . So that I am persuaded it may prove a very inlarged scandal. As for the benefit accruing to me by them, it is rather a burthen, for no man will hire them; nor have I any ground to place them on, and if I had they know not how to work."[50] Nor was this just the view of a disgruntled colonial governor struggling to make a colony successful. In his 1625 essay "Of Plantations," Francis Bacon claimed that "it is a shameful and unblessed thing to take the scum of people, and wicked condemned men to be the people with whom you plant. And not only so but it spoileth the plantation. For they will ever live like rogues, and not fall to work, but be lazy, and do mischief, and spend victuals, and be quickly weary." Bacon strongly supported the cause of empire, particularly its economic benefits and its promotion of the English quest for greatness, but he believed that an empire of prosperity and liberty could only be built by those with noble intentions and experienced planters, rather than by greedy capitalists and convicted thieves.[51]

Ultimately, despite some dissenting opinions, for the Crown the benefits of criminal transportation vastly outweighed the detriments. The Crown gained some financial enrichment, practically assisted in populating the Atlantic with laborers who could be worked nearly to death without drawing any attention to this abuse, and at the same time appeared merciful toward its offending, but not unredeemable, subjects. Once the sending of convicts to America became a common means of populating the English Atlantic, the practice was given further sanction in royal colonial charters. For example, the patent issued to Sir Edmund Plowden for New Albion in 1634—an ultimately

unsuccessful venture—permitted the recruitment and transportation of all sorts of migrants, including "convicts" and "vagabonds."[52] Although this practice under the early Stuarts was but a shadow of what was to follow, it was a system that would endure in the Atlantic until the colonists refused to take any more of England's felonious miscreants in 1776.[53]

Voluntary Emigration and Crown Restrictions

In addition to the role it played in the forced emigration of vagrants and criminals, the Crown also lent its support to a number of voluntary emigration schemes. Even though colonization was intended to be a private enterprise that did not overburden the English state, this did not mean that the Crown was unwilling to aid patentees in their goals of planting a successful colony if this would help to strengthen the Atlantic empire without draining Crown coffers or straining the limited mechanisms of the weak state. In 1620, for instance, the Privy Council recommended that Captain Richard Whitbourne's manuscript on the advantages of planting in Newfoundland—which had been submitted to the king for his approval—be printed and that copies be sent to the entire English episcopal bench, so that it could "be distributed to the several parishes of the kingdom" for the "further advancement of the said plantation, to give encouragement to such as shall be willing to adventure therein."[54] It was shortly thereafter that Newfoundland was settled—after the collapse of the Newfoundland Company—under the auspices of patrons such as Henry Cary (Viscount Falkland), Sir George Calvert (Baron Baltimore), and Sir William Vaughan. Further support for Newfoundland emigration supported by the Crown was offered by Robert Hayman in 1630. Like Baily, Hayman hoped that the Crown would see the advantage of "send[ing] people to . . . possess" Newfoundland for the good of the nation.[55]

Three years later the council for New England petitioned the king for letters to be sent to the lord lieutenants of the English shires to recruit individuals, families, and "persons of quality" for emigration to New England. Although the king was pleased to recommend the emigration of any interested subject, he once again proved particularly interested in sending the nation's "poorer sort of people" across the Atlantic. This initiative would "afford a world of employment to many thousands of our nation," who "starve for want of it," and would also "disburden the commonwealth of a multitude of poor that are likely

daily to increase to the infinite trouble and prejudice of the public state."[56] A similar letter was procured from the king by the Council of New England in 1632, on the eve of the Great Migration, during which the population of the English Atlantic went from roughly ten thousand to more than fifty thousand in a single decade, and ensured the future success of the English Atlantic enterprise.[57]

Toward the end of the early Stuart period, the Crown also became involved in voluntary migration when it came to learn that certain subjects, who had already emigrated to an Atlantic destination, were being prevented from departing the colonies in search of other Atlantic opportunities, a phenomenon known as "repeat migration."[58] For many struggling colonies, especially the labor-intensive plantations in the Caribbean and Virginia, losing colonists could have serious consequences, such that by the mid-1630s local assemblies were taking legislative steps to prevent repeat migration. Notwithstanding its desire to ensure the success of individual plantations and to stay out of mundane colonial politics, the Crown had greater obligations toward its subjects. In 1641 it issued a proclamation claiming that this form of restraint—though perhaps perfectly practical—resulted in "our subjects [being] deprived not only of that due liberty of free subjects which we are graciously pleased to allow them, but also of those opportunities of advancing their estates, which in other parts of our dominions might possibly occur unto them." Making special reference to the governments of the Caribbean colonies, the king ordered that all subjects who were free of "debt, service, or otherwise" (for those still under indenture, apprenticeship, or a similar contract were not free to leave) were permitted to migrate "out of the several islands and places of their residence" without being subjected to any form of local restraint.[59]

This proclamation serves as a good example of the Crown's ability to quash colonial legislation that was determined to be "repugnant" to English law or sensibilities. It ensured that the natural rights to liberty and property incident to the person of the king's subjects—which the Crown was obliged to protect through the ties of reciprocal sovereignty and which were guaranteed in the colonial charters—were not being infringed by subordinate colonial bodies. The proclamation also demonstrated the Crown's continuing concern for its emigrated subjects, who, despite no longer being resident in England or the British Isles, nonetheless still gave allegiance to the king and were entitled to be protected by his sovereign and prerogative authority.

As much as the Crown was willing to assist in the voluntary emigration of its subjects, there were also occasions when it was necessary to

restrict this practice. One such occasion arose during the war against the Spanish beginning in 1625, when the English military required manpower. By the early seventeenth century, impressment into military service had become the common means by which English forces were populated in wartime. Press gangs moved among port towns seeking able-bodied men between the ages of 18 and 55, preferably, though not necessarily, those with experience as mariners. Recruits who accepted the "king's shilling"—often transacted through surreptitious means, such as dropping the coin into a tankard of beer—were deemed to have contracted themselves into the king's service.[60] This placed every passenger and crew bound for America in jeopardy of impressment and thus served as a potential impediment to Atlantic expansion. As in its dealings with the Amazon and Bermuda affairs discussed in Chapter 2, the king and council had to balance the present needs of the state and foreign affairs with those of the incipient Atlantic enterprise.

On the last day of February 1625, the Privy Council received word that a number of ships bound for Newfoundland were planning to depart their ports earlier than usual (the fleet normally departed around March 25) in order to avoid a possible press. The council ordered England's vice admirals and port officers to prevent the ships from leaving until April.[61] Then, on March 18, the council devised the anticipated impressment orders. With regard to the Newfoundland fleet, the council instructed that while commercial fishing may proceed, and that each ship was not to be deprived of its master, boatswain, and boat mate in order to facilitate this, the king was otherwise to be "first served with able and sufficient men" for military service.[62] Two days later, in a strongly worded royal proclamation, the king commanded "that no mariner, or seafaring man, should absent, hide, or withdraw himself from our service, or prests, and that all such persons having our prest money given or tendered unto them, should dutifully and reverently receive the same, and repair aboard our ships . . . and thenceforth continue in our service." Those who refused to be pressed, or who deserted thereafter, were to be deemed "malefactors in a very high degree" and "incur the uttermost severity of our laws."[63] There could be no doubt that the king's need for qualified mariners superseded the needs of the Newfoundland fisheries and the Atlantic colonies. Another letter was soon sent to the vice admirals, reminding them that, with only a few exceptions, ships were not to depart until "the press be fully and effectually performed."[64]

Despite these needs of the state, the Crown remained sympathetic to the English Atlantic enterprise, particularly with regard to Virginia,

since May 1625 a Crown-controlled entity that the king had taken into his special care. In October, the council had been made aware of "the present misery and wants of that colony" and soon authorized several ships to depart England without fear of impressment, "for the better encouragement of the planters in that work of plantation."[65] Over the next several years a number of additional ships and individuals were licensed by the council or admiralty for travel, "without molestation of imprest," to Bermuda, Virginia, New England, and various locations in the Caribbean.[66] In 1627 Captain Combe of Southampton petitioned the council, citing that he was responsible "for the maintenance of the plantation of St. Christophers" and requested a warrant "for the quiet and peaceable enjoying of his seafaring men appointed for the voyage."[67] The next year the council intervened when two ships bound for St. Christophers and Virginia with goods and passengers were detained at port as a result of the impressment orders.[68] As late as 1638, ships were being similarly detained, leading to frequent petitions to the council for its intervention. In several instances the warrants ordered "any . . . men imprest to be forthwith discharged."[69] Had the Crown not granted these various petitions, the impressment could have resulted in "the utter ruin" of these Atlantic colonies. However, in the interests of the state and to ensure that emigrants were not transporting themselves across the Atlantic to escape the impressment orders, ship captains were required to name each of their passengers and to swear "that the only intent of their voyage . . . is to carry passengers and goods" to the colonies.[70]

Another occasion when the Crown prevented travel across the Atlantic was when such activity encroached on the privileges granted in the colonial charters. In addition to the provisions allowing trading companies and proprietors to populate their colonies with English subjects, most charters also prohibited the emigration of any English or British subject except by permission of the grantees. For example, the New England Company charter of 1620 prohibited the emigration of "every such person or persons whatsoever, as shall enterprise or attempt . . . [to trade or settle] within the limits and precincts of the said colony and plantations, and not being allowed by the said Council [of New England] to be adventurers or planters of the said colony."[71] The purpose of these clauses was to ensure that those who ventured their money and lives to make a colony or trading enterprise successful did not have to compete with interlopers who had no direct interest in the colony and who might refuse to submit to the colonial authorities. In 1621 the council sent letters to the mayors of several port towns reminding them that those destined to New England

needed the permission of the company, and warning that anybody who acted contrary to the charter should expect "punishment as is fit to be inflicted upon those that shall contempt his majesty's royal authority."[72] The following year, after reviewing a petition of the company that, notwithstanding the earlier directive, interlopers continued to emigrate, the council became more aggressive. It prepared a proclamation for the king's signature to the effect that "none of our subjects whatsoever, (not adventurers, inhabiters, or planters in New England) presume from henceforth to frequent those coasts . . . otherwise than by the licence of the said Council [for New England], or according to the orders established by our Privy Council for the relief or ease . . . of the colony in Virginia."[73]

A more complex set of procedures was followed in 1631–32, when the Company of Adventurers to Canada, headed by Sir William Alexander and Captain David Kirke, petitioned the king with a complaint that several ships were bound to the St. Lawrence with settlers and merchants, contrary to their chartered privileges. The king, fearing that those who "have been at great charges in settling and maintaining a colony . . . in those bounds" were in jeopardy of failure by the actions of such interlopers, in February 1631 ordered the council to command a stay of the ships until the matter could be thoroughly investigated.[74] Several of the accused merchants and mariners—John Baker, Captain Eustace Man, James Ricroft, and Henry West—were remanded into custody pending the outcome of the case, ultimately suffering several months of confinement. In November Sir Henry Martin, a judge of the High Court of Admiralty and a man regularly commissioned by the Crown to review cases involving the high seas, was instructed to depose these men and return the examinations to the council so that "their lordships may finally order and determine the cause." More accused interlopers were soon rounded up and added to Martin's deposition list, and the commodities they brought from Canada ("to the great damage of the petitioners"), together with their ships, were seized by order of the council.[75]

As directed, Martin took affidavits from the company and testimony from those accused, although several refused to testify, and their contempt of the Crown's authority was noted by the council. In July 1632, with much testimony and paperwork now in hand, the council finally reviewed the entire cause of action and, not surprisingly, found in favor of the Company of Adventurers. The council instructed the attorney general to "inform himself what damage the Adventurers have sustained by the aforesaid interloping, and what profit and benefit the other parties have made . . . by their trading there" and to

determine the necessary amount of "reparation or restitution he shall think fit . . . which they are to perform without farther dispute or delay." We do not know the precise amount of restitution determined by the attorney general for each of the accused, but there is reason to believe that it was substantial. Eustace Man refused to pay his £200 restitution and Maurice Thompson refused to pay 400 marks (about £265), resulting in both men being placed in Marshalsea prison.[76] As Man and Thompson represented only two of at least eight interlopers, the implication is that the entire restitution totaled some thousands of pounds. This case—a year and half in length and occupying many hours of the Crown's time—serves as a good example of the considerable efforts sometimes undertaken by the Crown on behalf of its Atlantic patentees and petitioners.

NEW ENGLAND EMIGRATION AND PROCEDURAL CHANGE

Without question, the Crown's most proactive involvement in Atlantic emigration—and that best known to historians—involved its concerns that disaffected individuals were departing the realm without taking the oaths of allegiance and supremacy. Most of the colonial charters contained a clause that required the trading companies to administer, in the words of the New England charter, "the oaths of allegiance and supremacy . . . to all and every person and persons, which shall . . . go or pass to the said colony in New-England."[77] These oaths, formulated in the Tudor age, attested that their swearers would remain loyal to the king and recognize that the king was the supreme governor of the Church of England. The purpose of these oaths, which were traditionally administered to officeholders, ranking individuals, and men of majority, was primarily to ensure that subjects would not remove themselves from the king's sovereignty, place themselves into the service or subjecthood of another king, or recognize the superiority of the Roman Catholic pope in matters of religion.

The oath of allegiance sworn by travelers to Virginia in 1607, for example, certified that

> I, M_____ do utterly testify and declare in my conscience that the king's highness [is] the only supreme governor of Great Britain and of all the colony of _____ and all other his highness's dominions and countries, as well in all spiritual . . . things . . . as temporal. And that no foreign person, prelate, state, or potentate hath or ought to have any . . . superiority, preeminence, or authority . . . within these

> realms. And therefore I do utterly renounce . . . foreign jurisdiction, powers, superiorities, and authorities, and do promise henceforth I shall bear faith and true allegiance to the king's highness. . . . And to my power shall assist and defend all jurisdiction, preeminence, authority granted and belonging to the king's highness, and united and annexed to his imperial Crown so help me God.[78]

Following the departure of the first fleet to Virginia, all other Atlantic travelers were also expected to take this oath, though occasionally the wording was slightly modified in ways that did not impact the purpose of the document.

The second oath, that of supremacy, was primarily targeted toward Catholics: "I . . . do truly and sincerely acknowledge . . . that the pope neither of himself, nor by any authority of the Church or See of Rome, . . . hath any power or authority to depose the king or to dispose any of his majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him in his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty."[79] By the late 1620s, however, in a series of now rather famous episodes involving Parliament and certain dissenting voices, such as John Pym and Oliver St. John, concerns that Englishmen recognize the king as the head of the Church of England also extended to religious nonconformists (puritans), who disapproved of Anglican hierarchy, ceremony, and liturgy, not to mention Charles I's increasingly autocratic ways and his reliance on the Arminian Archbishop of Canterbury William Laud.

With these issues in mind, in 1630 the king, now in the period of his personal rule and seeking to shore up his reign, and influenced by Laud, reissued the proclamation earlier issued by his father forbidding anyone to leave the realm without license. As discussed earlier, the Crown had usually overlooked the requirement for licenses in the first two decades of Atlantic emigration because the charters bestowed wide powers for recruitment and transportation and because the Crown did not want to assume the burden of licensing thousands of emigrants. There were, of course, some exceptions, as we saw in Chapter 2 in the case of Captain Roger North, who was imprisoned because of his departure out of the realm without license. But generally emigrants traveling across the Atlantic did not require individual licenses. Now the king found it necessary to restrict the liberal practice authorized in the charters, in effect quashing through executive authority the relevant clauses in these documents. The proclamation ordered that each passenger would now require a license to depart,

and all emigrants—men, women, and children—were to swear the oaths of supremacy and allegiance before departing. In order to help curb the departure of religious malcontents, the commissioners who were appointed by the Crown to administer the oaths were also to determine "the true cause or causes of their going over," and to refuse those who were departing merely for religious reasons.[80] This proclamation was put into use in 1633, when the Crown received word that the predominantly Catholic passengers of two ships—the *Ark* and the *Dove*, destined for the Maryland plantation of Cecil Calvert, the new Lord Baltimore—though licensed for travel, had not taken the oaths. The council ordered that the ships be forced back to port while it investigated the issue, shortly thereafter discovering that the passengers had, in fact, sworn allegiance to the king, and that Baltimore had been framed by his enemies. The ships were then allowed to depart.[81]

The council soon turned its sights on the travelers to New England, particularly those destined for Massachusetts Bay. In February 1634, while New England and Massachusetts were already under investigation (see Chapter 6), the council received word that some two hundred forty men, many of whom could not "endure the ceremonies of the Church" of England, were shortly due to depart in nine ships, with an additional six hundred more malcontents also planning to emigrate. The council ordered an immediate stay of the ships and commanded that a "fit person" attend the council and demonstrate that the terms of the proclamation had been applied.[82] In the meantime, it promulgated an order that expressed concern for "the frequent transportation of great numbers of his majesty's subjects out of this kingdom to the plantation called New England (whom divers persons know to be ill affected and discontented, as well with the civil as ecclesiastical government)." Concerned that the plantation would be "ruined" by such a "scandal," the council ordered all ships destined for New England to be detained and reiterated its demand that "several masters and freighters" attend with a list of passengers.[83]

When they appeared before the council at the end of February, the ship captains were each required to enter into a £100 bond that they would observe four articles. They agreed to punish severely any person who blasphemed the name of God, to say twice daily prayers from the *Book of Common Prayer* aboard ship during the voyage, to refuse to transport any individual who was not certified as having taken the oaths of supremacy and allegiance, and to report the names of everyone they transported. With these articles duly sworn to by the ship captains, the broad stay was lifted, although it was still necessary for each master to petition the council to attest that the terms were

followed before their bond was returned, licenses were granted, and the ships were free to depart.[84] The planters of Massachusetts Bay were unhappy with this new protocol. Toward the end of 1634 they petitioned the king, alleging that the "general restraint . . . against all his majesty's people bound for New England until an oath taken by them" breached their charter privilege of "liberty to transport as many of his majesty's people as are willing to go to New England, except such persons as should be restrained by special name."[85] This was the first significant occasion when the colonies resorted to the language of the charters to defend their rights vis-à-vis the king. The petition appears to have had little effect; the king clearly saw it within his prerogative to revoke the charter privilege without conferring with the patent holders. By the time this petition was delivered, the king had already created the standing conciliar Committee for Foreign Plantations in April 1634. Headed by the powerful Archbishop Laud, this committee might have emerged directly from concerns that the emigration of subjects and the activities going on in the colonies required closer and more regular oversight.[86]

By 1635, the task of ensuring that the oaths of supremacy and allegiance were sworn before departure fell to the two hundred or so officers of English ports. These officials were required to administer the oaths, certify that each passenger had a testimonial from a minister regarding his or her religious conformity, record all departures to foreign plantations in a register, and provide a twice-yearly account of this activity to the Committee for Foreign Plantations.[87] One passenger reported this procedure in his journal: "This day there came aboard the ship two of the searchers, and viewed a list of all our names, ministered the oath of allegiance to all at full age, viewed our certificates from the ministers in the parishes from whence we came, approved well thereof, and gave us tickets, that is licences under their hands and seals to pass the seas."[88] The most enduring legacy of this practice is the existence of the London Port Register of 1635. Discussed in detail by Alison Games, this manuscript volume records the transportation of 4,878 individuals bound for the Atlantic colonies, most of whom were recorded as having taken the oaths.[89] A number of individual licenses also exist, such as that of Henry Henrye, a 29-year-old tanner bound for St. Christophers.[90]

This practice shifted again in 1638. In a royal proclamation, Charles I directed that all passengers to New England had to first receive a "special" license from the king himself, or from "the lords, and others of his Privy Council, as by his majesty's special commission now are or shall be appointed for the business of foreign plantations."[91]

Thereafter, the council, through the administration of the Committee for Foreign Plantations, became particularly interventionist in emigration, going so far as to provide port officers with bulk licenses that listed the precise number of individuals authorized for emigration in each ship.[92] This stricter practice accompanied the effort of the Crown to rein in the Massachusetts Bay colony, a matter that had come to a head in 1637. Sir Ferdinando Gorges, by July 1637 *de jure* governor general of New England (including Massachusetts Bay; see Chapter 6), petitioned the council requesting that the proclamation only be enforced against those "factiously or schismatically inclined" passengers destined for the Bay colony.[93]

The council, however, does not appear to have been willing to distinguish between different types of colonists, nor to give special privileges in this regard to any of the Atlantic settlements after 1638. Instead, all passengers destined for Atlantic colonies were to receive special licenses, swear the oaths of allegiance and supremacy, and wait for their certificates to be presented to the clerk of the council before departing.[94] In addition to petitions for those departing for Massachusetts Bay, petitions were heard for ships bound for several other New England colonies, and also Bermuda, the Caribbean, Newfoundland, and Virginia. While it is certainly possible that many passengers managed to evade these new rules, either by securing the aid of ship captains or by counting on port officers who were lazy or willing to accept bribes, there can be little doubt that the Crown increasingly took the emigration of its subjects, and its rights to demand their allegiance, seriously. Importantly, the practice of licensing travel that became prevalent in the late 1630s continued to occur with very similar methods during the Interregnum and subsequently under the Restoration government.[95]

CONCLUSION

Emigration from England to the Atlantic colonies was primarily a matter for the trading companies and proprietors, who received charters in which they were granted the privilege of recruiting and sending subjects from the realm. Under this authority, tens of thousands of emigrants left England and crossed the Atlantic. This investigation of Crown involvement in Atlantic emigration demonstrates, however, that after the issuance of the charters, the Crown did not simply relinquish its historical and sovereign rights and responsibilities toward the emigration of its subjects. Instead, it considered a number of emigration schemes that were seen to benefit both England and the

colonies. These included, principally, the transportation of vagabonds, poor children, and convicted felons. As these individuals were involuntary transportees, the responsibility to authorize their movement across the ocean fell squarely on the sovereign and prerogative rights of the Crown. This body also sent letters and directives throughout England recommending that its subjects consider emigration. It also gave thought to a publicly funded colony that would simultaneously rid England of, and raise up from poverty, thousands of disadvantaged subjects. Each of these efforts was intended to benefit England's Atlantic enterprise, its domestic social situation, and the livelihood of its subjects, which serves as another good example of how intertwined national and imperial affairs could become.

On the whole, of course, the Crown's interventions in the forced and voluntary emigration of its subjects was limited (or at least is immensely difficult to estimate) in comparison to the overall Atlantic emigration project and to that which would follow after the Restoration.[96] This has signaled to some historians a lack of Crown interest in—or its inability to control—the demographic development of the Atlantic empire. However, we should not interpret the Crown's efforts as being unimportant merely because they affected a comparatively small number of individuals. As colonies such as Virginia struggled in their first few decades to keep their population strong enough to sustain themselves in the face of repeated hardships, the influx of these lesser men, women, and children, as Peter Linebaugh and Marcus Rediker have pointed out, was much needed and might even have provided the life's blood that allowed for survival.[97] Bermuda, too, the defensive nexus of the northern Atlantic colonies, despite the criticisms of Nathaniel Butler about convict transportation, was desperate for regular infusions of manpower, as were the labor-intensive sugar and tobacco colonies of Barbados and others in the Caribbean.[98] As one Barbados plantation agent reminded his patron in 1636, "a plantation . . . is worth nothing unless the[re] be good store of hands upon it," without which "there is no way to live."[99] This comment could just as easily have been uttered by colonists in any English Atlantic settlement. Eventually many of these colonies turned to African slavery in order to get enough laborers for their plantations. By 1620, African slaves were to be found in Virginia, Bermuda, and Barbados, though this small number—Virginia had only 23 Africans in 1625—still needed to be supplemented by massive amounts of white labor throughout the early Stuart period. The Crown was generally happy to provide whatever assistance it could in order to help ensure

that this stream of labor continued, especially that which could be provided by its disadvantaged and potentially dangerous subjects.

Both despite and because of the privileges granted in the colonial charters, the Crown could not always be acquiescent to unfettered movement across the Atlantic. When reasons of state so demanded, as in times of war, emigration needed to be slowed and checked so that England could defeat its foreign foes. Under Elizabeth, Sir Walter Ralegh's plans to resettle Roanoke and to settle Guiana in the 1590s were both scuttled because of the need to keep soldiers and mariners in England during the Anglo-Spanish War.[100] This was also the case under the early Stuarts during their times of belligerence with France and Spain and while England was involved in the Thirty Years' War (circa 1625–29) and in further belligerency that continued until the end of the early Stuart period. The Crown became the most involved in emigration when its rights and responsibilities, or the rights of its subjects, were being threatened by various Atlantic agents. It protected charter privileges by denying the emigration or interloping of subjects who went without the approval of the patent holders, while simultaneously revising other privileges when the Crown came to believe that their inappropriate application derogated from the king's sovereignty. This latter situation came into sharp relief for the Crown when, at the same time that it was investigating abuses of the New England and Massachusetts Bay charter privileges, it received word that subjects were departing the realm without giving the king his due allegiance. A virtual flood of royal documentation quickly followed, showing that the Crown was perfectly willing and able to assert its executive authority when the situation so demanded.

Perhaps the most salient point of this investigation is that the Crown clearly did not think of the charters as contractual documents whose terms either were immutable or could only be modified through mutual agreement between center and periphery, which has been a central plank in the constitutionalist argument from the late-seventeenth century to the present. Instead, the Crown proved to have both the means—through proclamations, commissions, and warrants—and the historical, sovereign authority—as determined by its medieval rights to control emigration and compel the allegiance of its subjects—to alter charter privileges when needed, even if its ability to enforce such policies was not always as strong as it might have been. Nor did it have to take extreme legal measures, such as recalling the charters through *quo warranto* proceedings and reissuing them with the revised provisions, in order for these alterations to take effect. Instead, the mere issuance of proclamations or executive orders was

sufficient to revise charter privileges until a change in circumstances dictated that they could be reinstated. This puts into question any claim that the language of the charters codified an original imperial constitution or that the Crown relinquished its authority to the patentees in the course of issuing these documents. Like the domestic constitution of early modern England, the Atlantic imperial constitution was determined by historical practice and the active exercise of sovereignty rather than any written document that was fixed in time.

Chapter 4

Tobacco and the Economy of Empire

As the elder and younger Richard Hakluyts pointed out in the age of Elizabeth, one of the central purposes of Atlantic expansion was the production of commodities that would make England and its monarchy wealthy enough to rival the great European powers. The current import system made the island nation too dependent on other markets and deprived England of gold and silver while simultaneously enriching its Catholic foes. This was an economic situation that, it was hoped, territorial expansion could resolve. The Hakluyts envisioned that in addition to producing surplus merchantable commodities suitable for export to Europe, the land in North America would also be capable of producing grapes, olives, oranges, lemons, figs, raisins, cloves, silk, and other exotic items that could not be cultivated in domestic England because of its northern latitude. This would ensure that many of England's luxury imports—including manufactured products, such as wine and oil—could be produced and traded within the English empire rather than having to be purchased from imperial and Catholic competitors in France, Portugal, and Spain.[1] Early autoptic writing about North America by Arthur Barlowe and Thomas Hariot, produced in the 1580s and written for a body of would-be humanist investors, reported that the soil was ripe for precisely the kind of economic imperialism anticipated by the Hakluyts and other Elizabethan promoters of empire.[2]

Once the English colonists arrived in America in 1607 and began cultivating the land, however, it was not long before they realized that the climate wherein they settled—though on a similar latitude to southern Europe and northern Africa—was not suitable to grow

the various exotic commodities listed by the Hakluyts.[3] This meant that the colonists had to look to other merchantable commodities that had a better chance of success or risk the failure of the entire Atlantic enterprise. The solution famously came in 1612, when the Virginia planter John Rolfe began experimenting with the cultivation of a Spanish strain of tobacco that was sweeter and smoother than the acrid leaf that the American natives produced. Tobacco had been consumed in England since the mid-Elizabethan period, when mariners associated with John Hawkins and Francis Drake acquired it from the Spanish colonies during their Caribbean exploits. Its popularity grew quickly among English elites and merchants soon saw to its importation from the Spanish colonies in order to satisfy the habits of their wealthier clientele. Thus, by the time Rolfe began transporting his tobacco into England in 1614, a select market was already addicted to the product.[4]

Although it fulfilled the requirement of finding a merchantable commodity in the New World, for a number of reasons the development of tobacco as an Atlantic staple product was not popular among certain groups in England. In the first place, James I despised the weed. In his famous *A Counter-Blaste to Tobacco* (1604), James derided the supposed medicinal qualities of tobacco, argued instead that it was harmful to the human body, likened its use to barbarism and incivility, and criticized its consumption as an "inconsiderate and childish affection of novelty."[5] Later, Charles I criticized the colony of Virginia as being "wholly built upon smoke." He commanded the Privy Council to encourage the growth of other commodities, out of concern that the "land . . . is almost worn out" through excessive tobacco cultivation, and that the settlers should be more interested in establishing a self-sufficient colony than making themselves rich on such a useless product as tobacco.[6] Both monarchs also knew that tobacco could be grown in England, which meant that its growth in the colonies seemed a dreadful waste of a unique climate. Even senior officers of the Virginia and Bermuda companies complained about the planters' reliance on tobacco. In June 1622, at the same time that the companies were being offered a monopoly on tobacco by the Crown, Sir Edwin Sandys condemned "this deceivable weed tobacco, which served neither for necessity nor for ornament to the life of a man, but was founded only on humor, which might soon vanish into smoke and come to nothing."[7]

The assumption of both the Crown and the company was that tobacco was subject to the whims of novelty, and when the English lost interest in the product, the Virginia colony would collapse. The

product also placed Virginia at risk because monoculture, rather than the preferred model of mixed agriculture, could never provide for self-sufficiency, which would perpetually make the colony dependent on England and other colonies and nations.[8] Nor, if tobacco drew all the planters' energy, could industry—such as the manufacture of salt, bricks, glass, iron, and ships, all desired by the company—get under way, which would further retard the colony's already sluggish growth.[9] In spite of these many hesitations, it was soon realized that the future of the Atlantic enterprise, at least in the short term, depended on tobacco as the principal merchantable commodity. By 1621 some seventy-five thousand pounds of colonial tobacco had been produced, a figure that rose to more than five hundred thousand pounds by 1625, and to more than one million by 1640.[10] This commodity thus ensured the success of several Atlantic colonies—including Virginia, Bermuda, Maryland, and certain islands in the Caribbean—until other products could be experimented with and produced. It would be after 1640 that the importance of tobacco was overtaken by cotton and sugar, both commodities of sufficient value and exoticism—as they could not be produced in England—to realize the desires of the Hakluyts.[11]

The key to the success of the colonial tobacco trade involved gaining favorable terms from the early Stuart Crown with regard to the importation and sale of this product and the payment of duties to the king. The workings of this system, and the tendency of Elizabeth and the early Stuarts to prefer monopolies over free trade, was not initially very advantageous to the Atlantic colonies, which also had to compete with tobacco being grown in England and imported from the Spanish empire. If the Crown was too greedy, exacted high duties, imposed restrictive monopolies on English Atlantic tobacco, and allowed the unfettered sale of noncolonial tobacco, the colonial enterprise would fail and the Crown would lose trade revenue, not to mention its incipient overseas enterprise and whatever political strength that empire conferred. If the Crown was too lenient and gave the Atlantic tobacco traders terms that were overly generous, the colonies might have thrived in the short term, but the Crown would have remained impoverished, lost its control on trade (a coveted royal prerogative), and perhaps jeopardized the entire imperial economy because flooding England with tobacco could result in market saturation, devaluation, and further financial difficulties for the Atlantic colonies.

For the early Stuart Crown, there was more at stake than practical matters of the health risks of tobacco smoking, customs revenue,

and market saturation. The quest for European greatness and independence through economic imperialism was not a desire only of the Hakluyts and other optimistic Elizabethan humanists and propagandists. Many Jacobean merchants, investors, and commentators, including some closely associated with the Crown, such as Francis Bacon, also saw trade and empire as closely related in what is now known as the economic ideology of "mercantilism."[12] This ideology suggested that a strong imperial economy, which needed to be controlled from the center in order to be effective, would improve both the wealth and power of the nation and simultaneously deny these to other nations, thereby aiding in the development of the early modern nation-state, foreign policy, and diplomatic relations. As historians have frequently commented, state formation and empire building were associated concepts, and a strong mercantilist ideology was the principal means of bringing the two together.[13] For reasons of state, therefore, the Crown needed to be involved in the formation of imperial economic policies.

Accordingly, a number of key policies were conceived and implemented by the early Stuarts in their efforts to regulate the tobacco trade. These policies included the expectation that tobacco had first to land in England before being redistributed throughout Europe, which would enrich the Crown and ensure that the imperial center was the nexus of trade. After several failed experiments with monopolies, the policy of free trade, whereby tobacco could be sold at the discretion of the planter and merchant, was introduced. The colonies also initially gained the right to be the sole importers of tobacco, in order to protect the colonial trade by ensuring that it did not have to compete with foreign tobacco. Later, when smuggling made that policy impractical, a new policy developed whereby English colonies gained favored trading status and were subject to considerably smaller duties than non-English commodities. Another policy that developed under the early Stuarts, though largely in the context of the fisheries, was that commodities from English colonies should be carried in "English bottoms" rather than in the ships of other nations, and that colonies should be supplied by English resources rather than by competitors. Each of these policies was reintroduced during the Interregnum and Restoration, especially as embodied in various trade and navigation acts passed in the second half of the seventeenth century, and would be enduring characteristics of the empire until the mid-nineteenth century.

Customs and Monopolies

Tobacco, like most imports of the time, was subject to customs (or more accurately, poundage, a parliamentary subsidy) and impositions, the former being an ancient revenue-gathering device intended to fund the routine operation of the court and the latter being a newer and unpopular form of levy on luxury goods devised by Elizabeth and continued by the early Stuarts.[14] At the beginning of the Atlantic enterprise, Virginia and Bermuda were shielded against the exactions of customs and impositions. In their third charter of 1612, the Virginia Company was awarded the privilege of "passing and returning to and from [Virginia], without paying or yielding any subsidy, custom, or imposition, either inward or outward, or any other duty . . . for the space of seven years."[15] This clause and a similar one appearing in the Bermuda charter of 1615 were intended to allow the colonies sufficient time to develop their economy and make effective use of their investors' capital without being impoverished by taxes. But just as Virginia's economy was beginning to show signs of improvement with the importation of tobacco into England in large quantities, that privilege was due to expire—in 1619 for the Virginia Company and 1622 for the Bermuda Company.

In December 1617, in anticipation of the expiration of this important clause in its charter, the Virginia Company petitioned the king for an extension on its customs-free privilege, in hopes that the Crown would recognize the need for the company to continue developing its shaky economy without fear of collapse because of duties. In rendering its decision on this matter, the council was motivated by various factors, not the least of which was the king's dislike for tobacco and his general unwillingness to allow massive, unrestricted quantities of the weed to spread throughout the English nation and possibly saturate the market to the point where tobacco would quickly cease to be the savior of any colony. The council also had to consider that the state was in financial distress. Since James's accession, Parliament had shown itself recalcitrant toward granting subsidies, such that the impoverished and indebted Crown needed to access whatever revenues were available independent of the legislature. With all these issues in mind, the council informed the company that the duties-free privilege in its charter, though initially created "as a special favor to that company in regard of their charge and industry in the settling of that plantation," was "not to be further continued, or expected, after the expiration of their said grant."[16]

Consequently, in March 1619 the Virginia Company was obliged to begin paying duties to the Crown for its tobacco imports. According to the terms of its second charter of 1609, the Virginia Company was to pay the standard subsidy of 5 percent of the theoretical selling value of tobacco in England, as determined by the *Book of Rates*, which, by the time this clause came into operation, was the edition of 1612. The present value for tobacco was six shillings and eight pence for leaf tobacco and ten shillings for roll tobacco. The company was, therefore, to be assessed 5 percent of these figures, respectively, four pence and six pence per pound, the latter being by far the most common because most tobacco was delivered in rolls. The present imposition on tobacco was one shilling and six pence per pound, regardless of whether it was leaf or roll.[17] Although the company was exempt from paying impost fees in 1619, all other tobacco entering England, such as that from the Spanish and Portuguese empires, was imposted. Thus, although the English Atlantic colonies were required to pay only the six pence subsidy for roll tobacco, this was still only one-quarter of what merchants paid for Spanish and Brazilian tobacco (two shillings). In theory, this should have given the English colonies highly favorable terms when it came to importing and selling their tobacco.

The Virginia Company's problems with tobacco duties began in June 1619. This was only a few months after the duties-free privilege expired and the first time tobacco had been imported from Virginia since the expiration. When twenty thousand pounds of Virginia tobacco arrived in England, the king's royal collector of tobacco duties, Abraham Jacob, detained it at the Customs House because, although the company was willing to pay its 5 percent subsidy, it refused to pay an additional six pence impost demanded by Jacob. The company petitioned the Privy Council, arguing that its tobacco was free from impositions. It also took this opportunity to offer its opinion that the subsidy should actually have been only three pence per pound, because the assessment was based on the rate of foreign tobacco (the only type known in 1612) rather than on colonial tobacco, which fetched less than half (indeed, barely one-quarter) of the better-quality Iberian variety.[18] The issue was referred to Attorney General Henry Yelverton, probably because his advice was needed to determine the validity of the 1609 charter clause that allowed for freedom from impositions. Yelverton concluded that the company did not have to pay impositions, but that the rate of six pence was the proper assessment according to the *Book of Rates* and any lesser amount—that is, the three pence desired by the company—would require a special

dispensation from the king, which he does not appear to have granted. The council dispatched a letter to Jacob ordering him to release the tobacco after the sum of six pence per pound (£500) was paid.[19]

Just as this matter was coming to a resolution, Jacob offered the Crown a contract wherein he would "farm" tobacco at an annual rent of £8,000.[20] Under James I, this involved the farming-out or private collection of customs, impositions, and fees for garbling and searching, the latter two involving the inspection of imported goods for quality and weight and exported goods for prohibited items. Farmers contracted with the Crown for individual items and paid an annual rent that was periodically adjusted to account for new yields and market forces. Once the farmer's rent and the salaries to his employees were paid, he kept the remainder of what was collected as profit (although all impositions, which the farmer was also responsible to collect, were remitted to the Exchequer). This process simultaneously allowed the state to remain small—because the customs officers were private businessmen, rather than officers of the Crown—and brought a reasonably predictable stream of revenue into royal coffers, while also partially shielding the Crown from weakening markets and royal officers who were reluctant tax collectors.[21] Jacob proposed that he collect, in addition to the six pence subsidy, an impost fee of one shilling and six pence for foreign tobacco (the current rate) and six pence for tobacco coming from Virginia and Bermuda, even though Jacob was perfectly aware that those companies were, according to the terms of their charters, supposed to be exempt from impost and that a decision had recently been rendered in this matter. He also failed to mention that the Bermuda colony was free of all duties for a further three years. Jacob's contract would also entitle him to deduct from his annual rent any discount granted by the Crown for lower customs rates, thus protecting him should the king ultimately decide to reduce the subsidy for the Virginia and Bermuda companies.[22]

Jacob's proposal required that the king issue a proclamation prohibiting the growth of tobacco in England and Wales. This would ensure that all tobacco being consumed in England would be imported, and thus subject to duties. This meant that Jacob would receive his maximum entitlement without internal competition and that the king's rent on the tobacco farm could remain at a high level, as it was determined and adjusted by the amount of tobacco that was imported into England. The proposed contract entitled Jacob to subtract from his rent any losses he was deemed to have incurred from the illegal production and distribution of English tobacco, which gave the king more incentive to ensure that this clause was enforced. The

king likely would have been willing to issue a proclamation prohibiting domestic tobacco growth without this added pressure. Only a few months earlier, the council sent a letter to the justices of the peace in Middlesex county prohibiting tobacco cultivation near London or Westminster, preferring that food be grown instead.[23]

On December 30, 1619, while Jacob's proposal for the tobacco farm was still being considered by the Crown, the king issued a "Proclamation to restrain the planting of tobacco in England and Wales," in which he cited many reasons why the growth of domestic tobacco was being prohibited by royal decree. Rehearsing his now-familiar argument about the health issues associated with the excessive use of tobacco, the king averred that English tobacco was "more crude, poisonous, and dangerous for the bodies and healths of our subjects than that that comes from hotter climates," stating that English land was to be used for "roots and herbs, fit for victual and sustenance." He also stated that Virginia and Bermuda received "much comfort" by the importation of tobacco into England, trade that would be "choked and overthrown" by domestic competition, although he made it clear that this was to be an "interim" solution while the colonies developed "more solid commodities." The task of ensuring that no English tobacco was grown was, as usual, placed in the hands of various government and municipal officials, such as mayors and justices of the peace, who were to bring malefactors to the Court of Star Chamber for punishment.[24] Even though this proclamation was designed to ensure that the farmer and the Crown benefited from the duties levied on all tobacco being consumed in England, it also clearly worked to the advantage of the Virginia Company, which, while still having to compete with superior Spanish and Brazilian tobacco, did not have to contend with domestic tobacco that could be sold cheaply because there were no duties attached.

The Crown then made a curious offer, which was presented to the Virginia Company at a meeting in January 1620. Lionel Cranfield, of the treasury office, and closely associated with the Virginia enterprise, offered the precise terms of Jacob's proposed contract to the company, although it is unclear whether the company knew that it had a competitor. That is, if the company would agree to pay 12 pence on tobacco (instead of their present six pence) and an annual rent of £8,000 per year, it could reap the profits of the tobacco farm and, in the interests of ensuring the success of the farm and of colonial tobacco, the king would continue to prohibit all locally grown tobacco for five years. After some deliberation, the company determined that it could not assume the farm because it simply did not

have the capital to pay the rent, but it did agree to pay the 12 pence in exchange for the local prohibition. This agreement might have been because, as Wesley Frank Craven has suggested, the company knew that the king could, if he so wished, merely raise the rated price for tobacco to a level necessary to generate the desired revenue, which could subsequently place them in a worse position.[25] When presenting this decision to Cranfield, the company clarified that its agreement was for a three pence subsidy and a nine pence impost rather than an equal division. This was done to ensure that if the Crown defaulted on the agreement and permitted locally grown tobacco—or after the five years expired—the company would return to its impost-free status and pay only the three pence subsidy. Although Cranfield was satisfied on the grounds that the substance of the agreement remained the same, the company nonetheless requested that the clerk of the council keep a record of the agreement should the "true meaning thereof" need to be demonstrated later.[26]

The Virginia Company's problems with tobacco were hardly at an end. The Crown soon received a competing offer for the tobacco farm from Sir Thomas Roe and his associates, merchants who—unlike Jacob—had considerable experience in the tobacco trade. Roe was seeking not just the customs farm but also a monopoly on tobacco importation and domestic sale, which was to include up to fifty-five thousand pounds of Virginia and Bermuda tobacco. The terms of the contract enabled the monopolists to purchase and sell all tobacco at "reasonable prices," though not necessarily at the value sought by the companies and merchants. As rent, Roe offered £6,000 for the farm, less than Jacob had offered, but a figure that better accorded with the customs yield of 1619. He also proposed an additional £10,000 for the monopoly in the first year and, should the agreement prove fruitful for both parties, £14,000 for each of the remaining six years of the contract. Finally, Roe requested a patent for garbling, to ensure that the tobacco being purchased was, in fact, of good merchantable quality.[27] After some debate in the council chamber, which involved hearing objections to the monopoly (possibly from Count Gondomar and the Virginia Company), Roe was offered his contract. For an impoverished Crown, the offer was simply too good to pass up.[28] This decision was followed by another royal proclamation. In the interests of "restraining the disordered traffique" in tobacco, the monopoly had been passed to "able persons that may manage the same without inconvenience," and negligent officials and malefactors were warned of their failure to comply.[29]

Naturally, the companies were dissatisfied with the Crown's decision to accept Roe's monopoly contract. Although the total customs duties remained fixed at 12 pence, the monopoly placed both the Virginia and Bermuda companies at the whim of the monopolists, who could arbitrarily set low purchase prices, and even refuse to accept their tobacco outright, merely by objecting to its quality, because Roe also held garbling privileges that entitled him to determine if the tobacco was merchantable. Together with the Bermuda Company, the two colonies were already outproducing the fifty-five thousand pounds of Roe's contract, which meant either that colonial tobacco production had to be reduced at precisely the time when it was beginning to generate profit or that the surplus product would have to be otherwise vented. After some discussion, it was determined to pass the dubious privilege of sending the fifty-five thousand pounds of tobacco entirely to the Bermuda Company.[30] All Virginia tobacco would be sent directly to the Netherlands, where the market was strong and the customs duties considerably smaller. To this end, the company created a committee to determine the best means of setting up a factory in Middleburg, and contracted for a duty of a halfpenny a pound, a pittance when compared to the English duties.[31] When this plan came to the attention of the Privy Council, Virginia Company officials were asked for an explanation. They impertinently claimed they had "liberty and freedom . . . to carry their commodities to the best market" and that the council did not "have the power to dispose of the goods of private planters in Virginia."[32]

When the Privy Council sat to deliberate on this answer on October 24, 1621, it found the company to be entirely contemptuous of the king's authority and soon formulated a response that would later become a key element of imperial economic policy:

> Whereas the king's most excellent majesty, . . . was graciously pleased for the better encouragement and furtherance of the undertakers therein to grant unto them sundry very large immunities and privileges, as not doubting but that they would . . . firmly incorporate that plantation unto this Commonwealth and be most beneficial to the same, which will best be done if the commodities brought from thence were appropriate unto his majesty's subjects and not communicated to foreign countries but by way of trade and commerce from hence only. Forasmuch as their lordships having been informed that the said undertakers have for private respects settled their . . . [tobacco] to be brought from Virginia in a foreign country, which course in no wise is to be suffered, neither in policy nor for the honor of the state (that being but a colony derived from hence) as also for that it may be a loss unto his majesty in

> his customs . . . Their lordships for these and sundry other reasons of state, . . . thought fit and accordingly ordered that from henceforth all tobacco and other commodities whatsoever to be brought and traded from the foresaid plantation shall not be carried into any foreign parts until the same have been first landed here and his majesty's customs paid.[33]

This policy was entirely consistent with the emerging ideology of mercantilism, whereby the economy of empire was determined by reasons of state. Plantations had been created to be "beneficial" to the commonwealth and give "honor" to the state, which demanded a restrictive policy. In this case the need for customs revenue, the expectation that colonial commodities would first be made available to subjects for their use before those of other nations, and the desire of the center to be the nexus of imperial trade trumped the individual, protocapitalist desires of the colonies.

The Tobacco Contract

The requirement to send all colonial tobacco into England was a bitter pill for the Virginia and Bermuda companies to swallow because they were thereafter obliged to pay 12 pence on every pound produced in those colonies, whether or not it was ultimately to be sold in England. In the minds of company officials, if the tobacco monopoly continued and all tobacco had to land in England for payment of duties, their entire enterprise would surely fail.[34] At this point, likely owing to some parliamentary influences, the Crown made a major concession that recognized the difficulties the colonies faced because of the monopoly.[35] In September, Roe's monopoly contract was not renewed and a few months later the farm was granted to Abraham Jacob under largely the same terms he had previously offered.[36] Although this provided no relief in terms of customs duties—as the Crown did not retract its order of October 1621, nor alter the agreement of the company to pay 12 pence—it at least enabled the company to retail its tobacco in a manner and at a price of its own choosing rather than having to sell it to the monopolists at their chosen price. In giving up the tobacco monopoly, however, the Crown also lost a large annual rent, some £14,000 per year that it needed to recover.

It was possibly for this reason that in June 1622, Cranfield, now lord treasurer, proposed that the Virginia and Bermuda companies take up the entire tobacco monopoly themselves, including the Spanish and Brazilian trade. This would enable the companies to control

the sale of their own tobacco, while also limiting the amount of foreign tobacco on the market, thus ensuring that colonial tobacco could be sold at a good price.[37] With the recent proclamation canceling the Virginia lottery, the key device used by the company to generate revenue, this monopoly was precisely what was needed to keep the company from insolvency.[38] Company officials and the Crown then set about determining the precise terms of the tobacco contract, which were ratified by the "Great and General Quarter Court" of the Virginia Company on July 3, 1622, and by the parallel assembly of the Bermuda Company one week later. Once approved in principle, the draft was sent to Cranfield, who heard arguments for and against the tobacco contract and made his own revisions, which were accepted by both companies in a court of November 27, 1622.

Under the contract, the two companies would form a subsidiary joint-stock to manage the monopoly on the sole importation of tobacco into England and Ireland. These imports were to include everything that was produced by the English colonies and up to forty thousand pounds of Spanish tobacco per year for the first two years, and then none of the Spanish variety thereafter. This clause—which the companies, who had no interest whatsoever in importing Spanish tobacco, begrudgingly accepted—ensured that once the colonies could produce a sufficient yield, they would become the sole importer of tobacco into England, thus choking out the Spanish competition and forcing the English market to accept the colonial weed whether it liked it or not. The companies would still remit the standard subsidy of six pence to the customs farmer, which could not be respited because Jacob had a contract, but would not be liable for any impositions, which was within the king's ability to determine. In exchange for the monopoly, the Crown initially wanted an annual rent of £20,000, but the companies demurred on the grounds that they could not anticipate the market. It was ultimately agreed that the companies would remit to the Exchequer one-third of the total received from the sale of the tobacco, less the king's share of the costs associated with getting the tobacco from port to market. This included his portion (one-third) of the cost of storing the tobacco in London and transporting it throughout the realm, and the salaries of all officers, factors, and agents who managed the business of the monopoly.[39] Lord Cavendish, a strong supporter of the contract, calculated that the king's profit would amount to about £24,000 per year.[40] These were very rough figures that did not take into account some of the king's financial responsibilities toward the joint-stock, so that the king's profit would likely have been closer to the £20,000 initially desired by Cranfield,

a figure satisfactory to the Crown. The Privy Council was advised of the contract's terms on February 3, 1623, and soon gave its consent.[41]

Within two months, however, the contract was dead and the Crown began its investigation into the Virginia Company that would lead to its dissolution a year later, a topic to which I shall return in Chapter 6. With regard to the tobacco contract, the controversy had in fact been raging within the companies since the November vote, and the Crown was brought into the dispute mere days after the council gave its consent. A complaint was submitted to Cranfield (now Earl of Middlesex) and the council by a "merchant party" faction led by Robert Rich, Earl of Warwick, the largest shareholder in the Bermuda Company and one of the largest in the Virginia Company, and his cousin Sir Nathaniel Rich. Other partisans who joined Warwick's cause were Thomas Smith, Robert Johnson, and Samuel Wrote, all of whom had previously been scorned by Edwin Sandys, the Earl of Southampton, and other members of the "gentry party."[42]

The complaint alleged that although the contract should have been entered into only by the "joint consent" of the shareholders, most of them were absent during the crucial November vote, such that only one in ten agreed to the contract. Many of those who were present were coerced by Sandys and his supporters into submitting to the contract, even though they found the terms generally unfavorable. This was because there were insufficient guarantees that their tobacco would be purchased by the subsidiary joint-stock at fair rates (the central concern over the Roe monopoly) or that the planters' profits (and the king's) would be properly accounted for and returned to them. Furthermore, the "democratic" ways of the companies—with each shareholder getting an equal vote regardless of the number of shares owned—meant that a majority of small shareholders, who had little at stake in the tobacco contract, could decide issues that affected greater shareholders, such as the men associated with the Warwick faction, who actually controlled a majority of shares.[43] "It were a dangerous precedent," the complaint alleges, "and never heard of that plurality of voices should conclude the goods of other men without their consent." Choosing their words carefully, the petitioners prayed that the king would not "allow the good subject to be dispossessed of his goods without his consent."[44]

The complainants also claimed that during the same meeting the shareholders became aware for the first time of the exorbitant salaries that the officers of the subsidiary joint-stock would earn. Some £2,500 was allocated to salaries, £500 of which would go to the director, who was then revealed to be Sandys, and another £400 to the

deputy and treasurer, John Ferrar.[45] Given that some of these officers also received salaries from the Virginia and Bermuda companies (thus earning "double salary"), this was high compensation, especially when both companies were approaching bankruptcy. The petitioners did not fail to mention that, according to the terms of the contract, the king was also responsible for one-third of the salaries, which meant that he would also lose out to these bloated compensation packages. In short, the Warwick party claimed that the monopoly contract was a subterfuge whereby Sandys and his friends were pursuing individual gain over the common good of the colonies, something that was repugnant to company leaders affiliated with the dissenting faction.[46] The detractors saw the contract as a medium for Sandys, who was "unfit to manage these affairs," to return to preeminence in the Virginia and Bermuda enterprises, from which he had fallen after failing to retain the treasurership of the parent company and to secure the governorship of the sister company a few years previous.

The Sandys party was given the opportunity to respond to these allegations in writing. It cast similar aspersions against the Warwick party: it claimed that there were no electoral irregularities, that all officers of the subsidiary were duly nominated and elected, and that their "rewards by way of salary" were justified because of their great responsibilities. With regard to the issues of accountability, the respondents suggested that the prices for tobacco would be determined by common consent rather than at the sole determination of the senior officers, and that the officers would take an oath certifying their responsibility in "keeping, preserving, selling and accompting for the goods; as also in making the payments at such time as they shall grow due."[47] But the Sandys rebuttal seems to have been little more than a formality that, as we shall see in Chapter 5, was consistent with how the Privy Council handled petitions of this nature. It seemed impossible for the contract to work given the dissension within the companies. More importantly, Warwick, and especially Nathaniel Rich in another document, had demonstrated that the contract was fundamentally flawed and, if allowed to stand, could lead to the ruin of both plantations and, consequently, the Crown. Not only would planters and shareholders fail to reap any profits from their labors, but the cost of sending new emigrants to the colonies would rise dramatically because of the costs associated with running the contract, thus impeding the growth of Virginia and Bermuda at a time of demographic crisis, the Virginia Massacre of 1622 then being of very recent memory.

The entire issue was heard by Middlesex and the council in late February and early March 1623, and the council took its time deliberating on the future of the tobacco contract. On the one hand, this matter had to be dealt with like any other petition; the council was responsible for evaluating the allegations of both sides and arriving at a just decision that was in the best interests of the parties and the state. On the other hand, the Crown had to attend to its responsibilities both to its emergent empire and to the subjects of the realm who lived, or planned to live, there. It also had to consider how Crown finances and the economy of empire would be impacted; this was not merely a matter of the Crown getting some fast revenue while the colonies circled the drain. Ultimately, it was determined that, in agreement with the Warwick faction, the contact had been entered into "without the consent or privity" of the key shareholders and that the tobacco monopoly "would tend to the utter overthrow and subversion of the said plantations." Accordingly, the council ordered "that the contract aforesaid concerning tobacco should forthwith be dissolved."[48] With the tobacco contract dead and a pall hanging over the Virginia Company, the Crown needed to determine the next course of action regarding the tobacco trade, which still had the potential to be profitable, further the goals of mercantilism, and ensure the survival of Virginia and Bermuda in whatever their new incarnation would look like.

With these issues in mind, the lord treasurer consulted with various customs collectors and comptrollers, including Abraham Jacob and Sir John Wolstenholme—a Virginia Company investor and supporter of the Warwick party—from which three recommendations emerged. First, in keeping with the council's previous orders, all tobacco from Virginia and Bermuda must be brought to England for duties before selling it. Consistent with the prevailing policy, this would ensure that the farmers and the king profited from colonial tobacco regardless of where it was ultimately vented and London would remain the trade nexus of the empire. A conciliar order reiterating the earlier policy—which the Warwick party had revealed was not being followed by the Virginia Company—was thus dispatched to the colonies in March.[49] Second, the customs officials proposed that a standard duty of 12 pence per pound be levied. It was assumed that within two or three years, four hundred thousand pounds of colonial tobacco would be imported, which (together with the rent from the customs farm) amounted to £20,000 per year coming to the Crown. This made up for what the king lost as a result of the cancellation of the two monopoly contracts. Third, each planter, adventurer, or merchant could dispose

of his own tobacco as he saw fit, provided that it first landed in England for customs. This free trade provision ensured that the central concern of the companies and colonies about the monopolies—the ability of the monopolists to keep purchase prices low rather than allowing owners to control their own trade—would not continue.[50]

The council explained the new policy to the companies at the end of April 1623. It noted that the king had lowered the duty to three pence customs and six pence impositions, which, in fact, was something Jacob had offered without cost to the Crown because he ultimately expected to earn greater profits if the colonial tobacco trade was able to operate unencumbered by monopolists. The Virginia Assembly, while thanking the king for his generosity in reducing the duties—as the planters had been paying 12 pence since 1620 and the better terms of the tobacco contract had never come into effect—asked that the total collection be returned to the original 5 percent subsidy, or six pence, though this request seems to have gone no further, as it would have cost the Crown a great deal of impost revenue.[51] Indeed, as soon as Charles I came to the throne in March 1625, he returned the duties to 12 pence by increasing the impost. The company could scarcely object, considering that it had accepted this precise agreement in 1620 and demanded that the clerk of the council record it for posterity. Importantly, in another major policy decision, the Crown also granted the companies the right to be the sole importers of tobacco into England.[52] This provision meant that the colonies would no longer have to compete with Spanish and Brazilian tobacco, which ensured a ready market for the inferior colonial variety. Backed by the advice of Parliament, in September 1624, with a reissue in March 1625, a proclamation was issued forbidding the importation or sale of tobacco that "was not of the proper growth of the plantations of Virginia and the Somer Islands."[53] It also repeated the injunction against the domestic growth of tobacco, a measure that met with limited success over the remainder of the early Stuart period.[54]

The Tobacco Trade under Charles I

On May 24, 1625, a mere 11 days after Virginia officially became a Crown colony, the Privy Council issued instructions to the Virginia Assembly reiterating the terms of the colonial tobacco trade as they had developed since 1621, including the new policy that each planter "shall be at liberty to utter and sell, all such quantities of tobacco, as they have brought over of the growth of the foresaid plantations." A similar set of instructions was sent to the Bermuda planters a week

later.[55] A few months after that, in a directive issued to the royal governor of Virginia that explained the new constitution of the colony following the dissolution, it was reinforced that "neither shall any man have power to force any contracts upon them for their commodities, but they shall have free trade and liberty to make the best of their own labours."[56] By this policy, according to Robert Brenner, "after 1625, free trade became the rule in American commerce."[57] This statement is perhaps premature, given that very early in his reign Charles I considered whether, in the interests of the state and the king's revenue stream, another monopoly contract should be considered. To this end, several new projects were suggested and given serious attention by the council and a trade commission that was established by the king between 1625 and 1628.[58]

The most significant of these projects were those of Edward Ditchfield and William Anys, the latter of which would see the king himself as the monopolist, purchasing all colonial tobacco at fixed prices and retailing it through various commissioners appointed for that purpose. This plan would also see limits on the amount of colonial tobacco that could be imported (two hundred fifty thousand pounds per year), to prevent market saturation and devaluation. There was, not surprisingly, a great deal of resistance to such a plan. The colonies saw any attempt at another monopoly as a breach of the new free trade policy. Anys's plan to put tobacco, and thus the colonies, more firmly "in the power of the state," though consistent with the emergent ideology of mercantilism, was no more acceptable to Virginia and Bermuda than putting their future in the hands of private monopolists. The new royal governor George Yeardley, on behalf of the Virginia Council and Assembly, cautiously requested that the king confirm their previous privileges regarding free trade and sole importation, which Charles seems to have had no interest in doing.

Later, Virginians indicated a willingness to accept the king's monopoly, though with revised terms: The king was to pay a handsome sum for the tobacco and either accept the entire crop produced by the colonies (approaching some one million pounds) or accept half that amount and allow the remainder to be exported directly into non-English markets. Neither provision was favorable to the Crown, which remained concerned about the overabundance of the tobacco and strict about its policy that all commodities should pass through England. In fact, the outrageous terms set out by the colonists demonstrated that they had no interest in a contract at all, which "hath been hitherto a thing so much feared and the very name of it rather a terror and discouragement to the whole colony, than any way by

us wished or assented unto." The colonies also had the backing of Parliament, which had passed an act against granting monopolies in 1624. Whether or not this act was legally binding on the king with regard to foreign imports was debatable, but at any rate it confirmed Parliament's and the public's general dislike of monopolies. The idea of another monopoly, even one personally held by the king, was abandoned by 1628.[59]

Some aspects of Anys's project were pursued, such as the recognition that there was still a large English market for Spanish tobacco, which was presently being served by illegal smuggling. As a result, in breaking with the earlier privilege of the sole importation of colonial tobacco, the king issued a proclamation in February 1627 recognizing that the "difference between Spanish or foreign tobacco, and tobacco of the plantations of Virginia, and of our own dominions, is such that our subjects can hardly be induced totally to forsake the Spanish tobacco, . . . [which] is secretly, and by stealth brought in great quantities." In order to restrict this practice and increase his customs and impositions, Charles allowed the annual importation into England of fifty thousand pounds of Spanish tobacco, which was to be handled by four London merchants, headed by Philip Burlamachi, who contracted for the privilege. In fact, the importation of Spanish and Brazilian tobacco typically exceeded sixty thousand pounds per year throughout Charles's reign, roughly 15 percent of all tobacco arriving in England.[60] As a compromise to the colonies because they had to compete once again with Spanish tobacco, the Crown lowered the duties on colonial tobacco to eight pence, while that for Spanish tobacco remained three times higher, at two shillings.[61] A month after this proclamation was issued, another followed that required all tobacco to arrive at the port of London, where the king's commissioners would inspect it for contraband and certify its origin by applying one of three seals—one each for Virginia and Bermuda, and another for the new English Caribbean colonies and Spanish tobacco. When this policy quickly proved unworkable, another proclamation of August 1627 required that all tobacco imports be accompanied by "his majesty's special license."[62] This policy also met with resistance and the strict provision for licensing was soon lifted in preference of the free trade model.

Another key issue regarding tobacco under Charles was his regular desire to reduce colonial dependence on the product. In 1625 the council reminded the Virginia government that the colonists should not rely exclusively on tobacco: "whereas now they employ their whole industry in excessive planting thereof, neglecting other things,

they shall likewise use their best endeavors to bring all other commodities of that country to perfection, as corn, wine, silk, cotton" and other commodities.[63] In the 1626 instructions to Yeardley, the same concern was expressed: "whereas your tobacco falleth every day more and more to a baser price, we require you to use your best endeavors to cause the people there to apply themselves to the raising of more staple commodities, as likewise to the impaling of gardens and orchards."[64] These instructions were repeated to Captain Harvey when he became governor in 1628 and William Berkeley when he assumed the post in 1641.[65] The concern here was twofold. First, the colonies were not growing enough commodities to be self-sufficient (which is why the governors were instructed to ensure there was enough "store of corn, as there may be a whole year's provision beforehand"), thus placing demands on the mother country for vital resources. Second, a problem that constantly concerned the Crown was that the increase in tobacco growth and sales would ultimately devalue the product to the point where it would no longer prove a merchantable commodity and would once again place the tobacco colonies at risk of failure.

In 1631, in yet another "Proclamation concerning tobacco," the king informed his Atlantic subjects that their colonies "were in apparent danger to be utterly ruined" because the nation was "exhausted" by the tobacco trade. Much of the proclamation repeated the injunctions of earlier ones—including the prohibition of local growth and the import of Spanish tobacco except by the king's special commission—but there were also new provisions. The principal one was that all tobacco coming from the colonies had to be "well ordered and made up," because so much of the recent tobacco had been "unserviceable" and "corrupt," which had led both to the devaluation of the product and to the increased desire for Spanish tobacco. It was now to be the responsibility of the colonial governor to certify that the tobacco being sent was of good merchantable quality.[66] This proclamation was sent to Harvey in Virginia, together with express instructions that he and his council consider setting limitations on the amount of tobacco each planter could cultivate, while ordering that other merchantable "fruits" be planted instead.[67] It is instructive here that the Crown did not seek, at this point, to limit growth through stricter economic policies, such as restricting the amount of the product coming into England, which would have breached the emergent free trade principle. Although the Crown demanded that all tobacco be of good sale quality, it relied on the peripheries to self-regulate, perhaps with the knowledge that such actions would produce better results than ultimately unenforceable policies emanating from the center.

Despite the Crown's increasing reluctance to encourage the growth of colonial tobacco, it nonetheless recognized that this commodity was presently crucial to colonial success, and that its devaluation was crippling the colonial economy. Accordingly, in 1632 the council issued a warrant to the attorney general for preparation of a bill that would be sent to the colonies:

> His majesty having taking into his princely care the estate of the plantations of his subjects in Virginia, Somer Islands, St. Christophers, Caribee Islands, and other places (for the present) subsisting on tobacco . . . is graciously pleased to mitigate and abate a great part of the duties . . . to be received. . . . [A]ll tobacco of the growth of Virginia and the Somer Islands . . . shall pay 2d [two pence] per lb. subsidy and 2d per lb. impost, . . . and all tobacco from St. Christophers, the Caribee Islands and other plantations, 3d per lb. subsidy and 3d per lb. impost. . . . [U]pon condition that all the tobacco . . . from thence transported, be immediately brought from those places and plantations into this kingdom and duly entered in some of his majesty's customs houses. . . . [I]f any merchant or other shall ship any of the said tobacco . . . out of this kingdom again, within a year after the first importation thereof, in this case the impost aforesaid, to be repaid to him and them as his majesty's subjects, that shall so transport the same.[68]

This warrant gave the colonies extremely preferential terms regarding the importation of tobacco, instituting an incipient policy that would last until the nineteenth century. First, the duties were now the lowest they had been since the expiration of the duties-free clause in 1619, half of which were to be returned to the merchants if they exported the tobacco out of England within one year. Second, the warrant clarified that the rate for foreign tobacco would remain according to the *Book of Rates* (two shillings), six times that of Virginia and Bermuda tobacco, and three times that of the Caribbean colonies, whose product (being like in quality to Spanish tobacco) sold for more in England. Third, all tobacco arriving in England in foreign ships would pay an additional 25 percent premium (two shillings and six pence), giving early form to an "English bottoms" policy wherein the use of English shipping was given special treatment. Consistent with the desires of the Hakluyts under Elizabeth, the expectation was that goods produced in the English colonies should ultimately be used to the benefit of English subjects, merchants, shippers, and the nation, and that the commodities of other nations, though not strictly prohibited by this warrant, would be considerably more expensive to import and sell.

This new policy was motivated by a number of factors, including a concern that the colonies could only survive with the "princely care" of the Crown, which these provisions helped to ensure, the ever-present concern about devaluation, and the fact that so much tobacco was arriving in England that the Crown was still making a great deal of money even with reduced duties. It was also prompted by numerous instances in which the Crown became aware of colonial tobacco landing in English ports with the intention to depart without unlading their cargo and paying customs. To prevent this, letters were dispatched to the realm's vice admirals, who were ordered to stay all such vessels, ensure their cargo was landed and examined, and in some cases to sequester the ship and take its captain into custody to answer for contempt.[69] Reducing the duties for colonial tobacco and then rebating the impost if the product was soon to leave the country gave ship captains and merchants more incentive to conform to the law. Notwithstanding the bill of 1632, tobacco continued to be exported directly from the colonies to foreign nations, particularly to the Netherlands. This prompted the Crown, in 1634, to instruct the colonial governors to take a bond from "the master, owner, or owners of any ship bound for the plantations . . . to return direct to the port of London, and there unload his whole freight of tobacco." Soon afterward, letters were directed to each colonial governor "marveling" at his neglect of the importation policy and holding him personally responsible for whatever duties failed to be paid as a result.[70]

In order to control both the volume and movement of tobacco—since the colonies had demonstrated an inability or unwillingness to do so, despite instructions to the contrary—the king soon began thinking once again of a monopoly along the Anys line, whereby he would determine both the "price and quantity" of colonial tobacco, especially that being produced in Virginia, because the Caribbean colonies had already begun weaning themselves of the weed.[71] The Virginia Assembly strongly objected to any suggestion of another monopoly, citing the policy of free trade, and it has been suggested that this renewed attempt at royal monopoly was partly responsible for the mutiny against Governor Harvey, as the Crown's representative, in 1635, which will be discussed further in Chapter 5.[72]

Nonetheless, the king persisted, seeking opinions about how a new tobacco contract could proceed—which were duly given by the then restored Harvey and the future colonial treasurer, Jerome Hawley—and on April 22, 1637, the Virginia Assembly was instructed to meet in order to come to terms.[73] Noting "how little that our colony hath advanced in so many years," the king asked the assembly to consider

how much tobacco would be sent yearly to England, the price per pound, and what provisions would be made for both lessening the quantity of tobacco in Virginia and producing commodities that would serve better for self-sufficiency and mercantile purposes. The king warned that if the assembly did not see fit to regulate these matters itself, then the Privy Council would take the matter into its own consideration and render a decision for the good of the state and the colony, likely one involving either a forced monopoly or increased impositions.[74] This directive provides good insight into the practical workings of the Atlantic imperial constitution. While the center knew that it had the authority to implement trade policy for the betterment of its subjects and had demonstrated this through several policy statements since 1620, it also gave the periphery, and particularly its representative assembly—whose existence and powers were implicitly recognized by the Crown's instruction—the opportunity to consider the matter, rather than arbitrarily imposing a new policy. This was possibly because the Crown recognized the importance of the colonies regulating their own affairs based on their unique circumstances, or because it knew that ultimately it had little coercive strength and the colonies—like the provinces in domestic England—would be more receptive to change if they perceived it was brought about through mutual negotiation and compromise between center and periphery rather than a directive issued from the Crown.

The Virginia Assembly duly met, debated the issues raised by the king for a month, and ultimately provided an answer that represented a middle-ground solution. While reminding the Crown of the "free benefit and use of our commodity" (i.e., of free trade and free planting), which had brought prosperity to the colony since 1625, it also promised not to neglect "the planting store of corn, the propagating [of] gardens and orchards, and the breeding of cattle, hogs, and poultry." Though refusing to give serious consideration to a monopoly, the assembly subsequently issued an act that regulated the quality and quantity of tobacco to be grown in the colony, thereby dealing with the central abuses that the Crown had identified as needing correction.[75] Thus the Crown's concerns were met halfway, through negotiation between center and periphery. In the 1641 instructions to William Berkeley, the Crown reminded the governor and Virginia Council of its agreement to reduce the amount of tobacco growth and produce more staple commodities, and further ordered that "the course commanded by his majesty in his letter of the 22th of April in the 13th year of his reign [1637] . . . be duly observed."[76] Although, especially during the operation of the Long Parliament, the Crown

clearly lacked the power to enforce this letter, it expected that the royal officials in the colony, and the legislative assembly, would recognize the need to conform to royal instructions for their own good and that of the state.

In the same directive, Berkeley was also reminded of another policy that had developed during Charles's reign. Berkeley was to "strictly and resolvedly forbid all trade or trucking for any merchandize whatsoever with any ship other than his majesty's subjects that shall either purposely or casually come to any of the plantations."[77] That is, it was expected that all trade within the colony—including all goods coming into Virginia and all goods leaving that colony—would be transacted through English merchants and ships, for the economic benefit of the English state, its merchants, and its dependents, rather than those of strangers, and particularly the Netherlands, which had become the world's leading shipping nation.[78] This policy had, in fact, begun in 1626 in the context of the Newfoundland and New England fisheries. These industries had become accustomed to employing the vessels of other nations, especially those of the Dutch, to transport their commodities across the Atlantic because they charged lower rates than English merchants. The Privy Council determined that this policy was unacceptable, in part because English merchants were denied business, because these ships would not land in England, where customs would be paid—and the nexus of trade reside—and because, in contravention of the emerging mercantilist ideology of empire, other nations were being enriched, rather than impoverished, by the fruits of the English empire. The council thus declared that "the preservation of shipping and navigation, and the supporting and encouragement of merchants by the excluding of strangers from shipping and transporting our commodities in their bottoms is very considerable, in reason of state." Henceforth, no English commodity was to be "transported in any stranger's bottoms, but in English bottoms only."[79] This policy would become very important in the economy of empire thereafter.

Conclusion: The Navigation Acts

The early Stuart Crown thus took various steps, both reactive and proactive, to strengthen domestic and colonial economies through the regulation of tobacco, the first Atlantic merchantable commodity, and to bring about the development of the ideology of mercantilism, which would give strength and vitality to the English and later British empire for centuries. Various programs were experimented with, particularly those of private and royal monopolies, before the Crown

finally settled—though never firmly, and largely through a process of negotiation with merchants and the colonies—on a general policy of free trade. This system, which largely emerged out of the lengthy conciliar investigation into the Warwick–Sandys affair (see also Chapter 6), was mutually beneficial to the planters and merchants, who could vend their tobacco at prices and in means of their own choosing, and to the Crown, who continued to reap the benefits of customs and impositions on this product. The latter, however, was cautious of market saturation and devaluation, particularly of a commodity as transient and temporary as tobacco was believed to be. The Crown endeavored to diversify the Atlantic economy so that it was based on a system of mixed agriculture and industry, in order to ensure that the colonies became self-sufficient and produced commodities that would reap a better profit and reduce the risk of market, and therefore colonial, collapse.

In addition to the development of an inchoate free trade policy and demonstrating concerns about devaluation, through the regulation of tobacco the early Stuarts established that England was to be the entrepôt of trade and that commodities exported from the colonies had first to land in England for the payment of duties before reexportation, preferably in English ships. In aid of this expectation, Charles I awarded the colonies highly favorable trading privileges, wherein the products of the English empire were allowed sole importation over foreign commodities, then (when smuggling and the desire for Spanish tobacco made that policy unfeasible) were subject to considerably lower duties than their alien competitors. These policies ensured that the commodities of empire would find a market within England and beyond, while either excluding foreigners or making it more difficult for them to compete. As the Hakluyts recommended, the commodities of the English empire were, first and foremost, to benefit the English nation and its efforts to realize both state formation and empire building, or as one historian has termed it, "empire-state-building."[80]

These early Stuart economic imperial policies were hardly perfect in their development, nor were they always produced with an eye toward establishing long-term trade practices. Rather, these policies were, by and large, consistent with early Stuart efforts to improve revenue streams, tighten its control on the economy through contracts and monopolies, and relieve the Crown of the shackles of Parliament, which it did through trade, because this was still a royal prerogative that Parliament had very little ability to challenge (though it would famously do so in 1625 when authorizing the new king to collect poundage for only one year instead of for life). The extensive use of the

prerogative can be seen in the fact that the proclamation was the most common instrument used when promulgating these new policies. Furthermore, these policies were sometimes developed impetuously, involved retraction and revision as the result of new information and changing circumstances, and often required negotiation between the center and periphery in order to be enforced. The latter was particularly evident in the various efforts of the Crown to involve itself in the economic affairs of the Virginia Company and, once that dissolved, the colony through instructions to the royal governor and planter assembly. These instructions and policies were often met with resistance out of the perception that the Crown and colony were seeking different ends, the former being interested in maximizing its revenues and controlling economic matters possibly to the detriment of commercial development, and the latter being interested in maximizing its profits and seeking free trade, sometimes without a lot of consideration about the future of the colony or its inhabitants. Enforcement by the weak state, though attempted, was virtually impossible, as geographical distance and limited mechanisms of coercion allowed these policies to be evaded, sometimes quite blatantly. Threats of fines, sequestration of commodities or ships, and trial in the Star Chamber were, in the end, insufficient to deter policy breakers.

Perhaps it is because these economic policies were consistent with other "absolutist" Stuart fiscal and governmental practices, were not always developed with fundamental economic principles in mind, and were not readily enforceable that historians have argued that the development of colonial trade policy lay not in the early Stuart period, but rather "some decades and a revolution in the future." For one recent historian, it took until the Commonwealth period (some historians pushing this into the Restoration period) and the various navigation acts for a "bold new trade policy" to emerge that was "innovative" and "unprecedented."[81] Though traditionally seen as a significant liberal innovation from restrictive Stuart economic policies—which were based on monopolies, privileged companies, and the financial creativity of Crown servants such as Middlesex—the various trade, navigation, and staple acts produced in the second half of the seventeenth century need to be understood as a continuation of the policies developed under the early Stuarts.

Under the "blueprint" Navigation Act of 1651, for example—which, like the early Stuart methods, was a revenue-gathering device as much as a regulatory device—free trade for all planters and merchants was guaranteed, provided that for the "welfare and safety of this Commonwealth . . . no goods or commodities whatsoever of the

growth, production, or manufacture of . . . English plantations . . . shall be imported or brought into this Commonwealth of England, or . . . [any] territories to this Commonwealth belonging . . . in any other ship . . . but only in such as do truly and without fraud belong only to the people of this Commonwealth or the plantations thereof."[82] That is, all goods produced in the colonies were to be transported only in English-owned and manned ships, which included those built in America or crewed by English Atlantic subjects. Additionally, any European or foreign commodities being imported into England had to be transported using English shipping or in vessels belonging to the nation that produced the commodity, thus choking out the Dutch maritime trade. Consistent with mercantilist principles, this system was designed to benefit merchants, planters, shipbuilders, and sailors of the English nation, while simultaneously denying these advantages to strangers, particularly the Dutch.

The acts of 1660 and 1663 closed a loophole in the 1651 act by forcing all "enumerated" staple products, such as tobacco, sugar, and indigo, to move through domestic English ports, so that customs duties could be paid and the mother country could be the trade nexus of the empire. (Other goods, of less value or perishable, such as wheat and fish, were exempt from this requirement.) As under Charles I, colonial governors were commanded to take oaths from planters and merchants that they would abide by these rules, and they were warned of their removal for failure to comply. When English commodities arrived in English ships with at least three-quarter English crews, the duties were lower than those published in the *Book of Rates.* If the crew was insufficiently English, no relief was provided, while strangers arriving in England with wares produced in their own country were subjected to twice the published rates. Should these products be imported into and then exported from England by English merchants, they could recover most of the duties. These policies served as an added incentive for the colonies to follow the law and vend their wares in England and its dependent territories at prices that benefited English subjects, furthering the goals of economic imperialism. Additionally, all supplies or goods transported to the colonies also had to be shipped through England and transported in English-owned and operated ships.[83] The 1663 legislation also took the opportunity to renew the prohibition against growing tobacco in England, and set out harsher penalties for the failure to comply. A final act of 1696 consolidated these earlier pieces of legislation and remained largely in force until 1849.

These acts can be (and usually are) seen as the embodiments of successful revolutionary movements and the efforts of Parliament to gain control of trade and prerogatives from avaricious monarchs. As this chapter has demonstrated, however, each of the major policies set out in these pieces of legislation, though somewhat more refined, wider in scope, and more rigidly enforced than their early Stuart counterparts, was developed and implemented under James I and Charles I as they sought to regulate the Virginia and Bermuda tobacco trade and the movement of goods to and from the colonies. Certainly, by virtue of being acts of Parliament, rather than royal proclamations, these pieces of legislation represented a shift in the constitutional role of Parliament in the economy of empire. After its hard-fought battle between 1610 and 1660 to gain a say in Crown financing and other matters traditionally within the king's prerogative, Parliament's entrance into imperial trade policy was novel, although (rather famously) the Atlantic colonies would find it difficult to recognize the authority of Parliament to legislate for them. They were acquiescent to the new trade legislation because, for the most part, it was beneficial to them, at least in the early stages. In addition, these acts were consistent with the political and financial issues that faced the Commonwealth and Restoration states, including the onset of war with the Dutch over the issues of trade and shipping, and agreements with the restored Charles II regarding his finances. Despite their contemporary, "revolutionary" relevance and their significantly wider mercantilist scope than earlier policies encompassed, these acts were clearly neither innovative nor unprecedented, but rather were based on policies articulated in the first half of the seventeenth century.

Chapter 5

Petitions and Executive Authority

In early modern England, the Crown was both too busy with routine administration and too bureaucratically small to be proactive in the needs of its individual subjects. Instead, subjects had to bring an issue to the attention of the Crown, with hopes that the king or Privy Council would find it to be of sufficient merit and award some sort of satisfaction. The most common method used to bring the Crown to action was by submitting a petition. The right of subjects to petition the king on nearly any issue—requests for charters, pleas for assistance, appeals from inferior courts, or redresses of grievance—was guaranteed by natural law and the ancient constitution and was closely associated with the doctrine of reciprocal sovereignty. Functioning through his Privy Council, the king was the fount of all justice and the ultimate source of equity and authority within a complex and sometimes unfair legal system.[1] In order to access this special authority, subjects frequently resorted to the petition, and there is evidence to suggest that the council took its role with respect to a wide range of domestic and imperial suitors seriously.[2] As the Privy Council register shows, petitions were the most frequent item on the council's already full agenda and were usually heard as the first order of business of each meeting.

Although there was no fixed procedure for filing a petition to the Crown, a general system seems to have been in place by the early Stuart period. Typically petitioners (or their patrons, agents, or attorneys) presented themselves to the clerk of the council, to a senior officer of state, or, more rarely, to the king himself, who would determine whether the issue should be heard by the council. It was necessary for

the petitioner to demonstrate a legitimate issue that the council could actually hear and determine. Sometimes a fee was expected to be paid in order for the matter to be heard, especially if there were warrants or other documents to prepare and serve, although poor petitioners were often exempted from payment. Depending on the nature of the petition, and especially if the case had already been pled before the king, the council could begin its investigation based on a written submission or royal directive without calling the petitioner into its presence to hear the suit. This was especially the case if the petitioner was not presently in England—as was, of course, true of many Atlantic petitions. Otherwise, the petitioner or the agent would be instructed to be present in the outer council chamber on the appointed day to be heard.

Kneeling in front of the board (i.e., at the head of the table used during meetings), hat in hand, the petitioner would quickly present the issue to the council, sometimes also offering documentation that would become part of the council's official record of the matter. During this presentation, members of the council could ask questions in order to understand the issues involved. When the council was finished examining the petitioner, he would be instructed to retire and wait—for hours, days, weeks, or months—until the council considered the proper course of action and arrived at a decision. Sometimes a petition was summarily denied, often without giving a reason and leaving no further record in the register. At other times, it was summarily approved, also with little or no indication as to why. If a court or other legal body originally heard or had jurisdiction over a case that was now under appeal, the council might order a rehearing or a stay of proceedings pending movement of the case to a different court, such as the equitable Court of Requests—the poor man's Chancery—or its own Star Chamber. Or, acting with the executive authority of the Crown, it might simply quash the original verdict and issue its own. On occasion the council would order both parties to undergo arbitration, with hopes that the case would come to a friendly end without the council having to render a decision.

When more information was required, the council instructed its own members to conduct enquiries (recall the investigation into the Harcourt patent in 1619), established a temporary commission for this purpose (such as that created to place Ralegh on trial), ordered the case to be reviewed by a subordinate officer of the Crown (for instance, Sir Henry Martin's investigation into interloping in Canada), or directed other parties in the dispute to investigate and report back (such as in the *San Antonio* episode). When necessary, the clerk,

solicitor general, or another Crown official would be instructed to take depositions, issue arrest warrants or recognizances, collect bonds or sequester property and goods to ensure the appearance of parties, and subpoena witnesses, who would give testimony to the council in plenary, to the temporary commission, or to whomever else had been ordered to hear the case. When a decision was eventually rendered, and especially if it was favorable to the petitioner, the clerk would inform the petitioner of the outcome, draw up warrants or orders for the council's signature and have these delivered to the appropriate bodies, and, if the matter was of some wider significance to the realm, communicate with the attorney or solicitor general to have a royal proclamation prepared for the king's approval.[3]

Under the early Stuarts, and especially under Charles I, the Crown received literally hundreds of petitions involving Atlantic affairs in which it was asked to hear the suit and determine the proper course of action. We have already seen numerous examples of such petitions in previous chapters. When, for example, the council considered founding a new colony or emigration or financial scheme, awarded a reprieve to a convict on condition of transportation, issued licenses to depart notwithstanding the impressment orders, or refused the emigration of those who wished to settle or trade without the permission of the respective trading companies, the process was begun with a petition that was heard and determined in the council chamber. Even Gondomar's complaints against Ralegh, North, and Butler were officially received as petitions, and we have seen the efforts the council expended solving these diplomatic crises. Although, as with many other aspects of the Atlantic imperial constitution, the Crown was generally happy to allow the colonial assemblies, courts, and proprietors to handle their own internal affairs with minimal central intervention, on occasion these colonial bodies needed to be prompted into action. At other times, the colonies had no jurisdiction to address the issues under petition, such as when extracolonial affairs or issues directly related to the royal prerogative or allegiance to the Crown were involved. This meant that despite the small population of the Atlantic, the physical distance of the colonies from England, and the Crown's preference that the colonies deal with local matters, the recourse of Atlantic agents to the king and council by way of petition was a routine occurrence.

Although the council received many different types of requests from Atlantic suitors, these petitions generally took three forms. Many petitioners requested special dispensations from the council because certain commodities that were essential to the Atlantic enterprise were

prohibited from being transported outside of England. Other petitions involved disputes between colonies or between certain Atlantic agents and trading companies, matters that required a superior judicial authority than the colonies themselves possessed. The Crown also received a number of petitions regarding mundane civil and criminal matters in which its assistance was sought in the enforcement of wills, contracts, and other disputes, and to review convictions and sentences. As with the increasing concerns over the emigration of the king's subjects, the sheer amount of work that Atlantic petitions involved helped to propel the creation of the Committee for Foreign Plantations in 1634. After its creation, petitions from all three categories were passed to this subconciliar body for its review and recommendations, allowing the council in plenary to be spared such a burdensome task. The hearing and determining of petitions was one of the early Stuart Crown's lesser-known and more routine roles in relation to the Atlantic, but it was nonetheless an important sovereign and prerogative responsibility that the Crown took seriously.

Transporting Prohibited Goods

Throughout the early Stuart period, and especially during the reign of Charles I, a number of commodities were prohibited by proclamation from being transported outside of the British Isles. In general, these prohibitions were intended to restrict merchants from selling certain commodities in foreign markets at times when these products could be better used for the benefit of English subjects or the state, or when they might end up in the hands of the king's enemies. Prohibitions against the transportation of corn (broadly defined as grain of all kinds) and related products (such as beer, meal, and flour) were made as a result of agricultural dearth, a problem of some severity in the early seventeenth century. Certain commodities were also prohibited from exportation when they were otherwise needed to support and equip soldiers and mariners at home and abroad during times of war, which characterized England during much of the period from 1625 to 1640. These included all sorts of victuals (such as meat, butter, and corn), leather, hides, wool, wine, and any raw materials or finished products of the same, such as sheep, yarn, cheese, shoes, and alum and fuller's earth (both used as part of the cloth finishing process). Large ordnance, shot, gunpowder, and their raw materials—iron oar, iron bar, and saltpeter, for instance—were also under a general prohibition, out of concern for national security and to ensure that these weapons and accoutrements were available when needed.[4]

The responsibility to ensure that the prohibitions were followed and that those transporting forbidden goods had a license from the king or council fell to the king's "customers, comptrollers, searchers, and other ministers of our ports, and the farmers of our customs and subsidies." These individuals either were direct appointees of the Crown or, like the customs farmers, paid the king a fee for the right to collect customs on certain commodities, a privilege that could be taken away should the farmers prove unwilling to follow royal directives. As a measure of the importance that the Crown placed on protecting these commodities, the duty to prevent illegal shipping also fell to all "sheriffs, justices of peace, mayors, bailiffs, constables, and others our officers," who were ordered to watch closely over these goods and report malefactors to a "public officer dwelling near to the port." Failure to do so could result in loss of office and "such punishments as are due to them that neglect our royal commandment."[5]

Many of these prohibited items, however, were essential to the development of the Atlantic colonies. In his *Discourse of Western Planting* (1584), Richard Hakluyt listed a number of commodities that were necessary to be transported, "without . . . which the voyage is maimed." These items included beef, butter, and cheese; beer, wine and cider; and wheat, rye, barley, and oats. The latter products were to be used both as food until a crop could be sown and for cultivating the earth, to "renew . . . [the] victual at the planting places." Each of these items was at certain times listed as a prohibited good. Hakluyt also provided a list of artisans and others who were needed to make the colony successful, including shoemakers, tailors, gunpowder makers, and soldiers. These tradespeople and military men would need access to products such as leather, wool, and weaponry, all at times prohibited, in order to undertake their employment.[6] The colonial charters recognized the importance of these commodities to the Atlantic enterprise and initially authorized the patentees free license to export from England whatever they needed to make their colony viable, usually without paying customs duties for the first seven years. The Virginia charter of 1606, for example, authorized the unfettered (and customs free) transportation of "goods, chattels, armor, munition, and furniture, needful to be used by them, for their said apparel, food, defence, or otherwise in respect of the said plantations, out of our realm of England."[7] The New England and Massachusetts Bay charters made the same grant, also allowing the exportation of "beasts, cattle, horses, [and] mares," while the Maryland charter of 1632 made specific mention of "grain of what sort soever."[8]

The Maryland charter, however, also limited the goods for exportation to those items that were "not prohibited to be transported out of the said kingdom," an injunction that seems to have been less relevant when the Virginia and New England charters were issued but that present circumstances (agricultural dearth, a textile crisis, and war with France and Spain) demanded. Based on the number of petitions submitted to the council to secure special licenses after about 1628, it would appear that at some point the free privileges granted in the earlier charters were revoked, or at least were temporarily suspended during these times of national emergency. After this time, in order for Atlantic agents to load these prohibited items onto their ships and transport them across the seas, they required special licenses from the Privy Council or an ancillary executive body (such as the lord treasurer or master of the ordnance) and were required to show these to the "searchers of prohibited goods" at their port of departure. This serves as another good example of how the language of the charters could be overturned by executive order should the need arise.

One reason for this limitation, perhaps, can be found in the New England charter: "if any person . . . shall transport any monies, goods, or merchandizes out of any of our kingdoms, with a pretence or purpose to . . . dispose of the same within the . . . colony, and yet nevertheless being at sea . . . shall carry the same into any foreign country with a purpose there to sell and dispose thereof, then all the goods and chattels of the said person . . . so offending . . . together with the ship or vessel wherein such transportation was made, shall be forfeited to us."[9] This passage suggests that the Crown was not so much concerned that prohibited items would end up in the colonies—which, after all, were part of English dominions, and the planters were the king's subjects—but that they would, by subterfuge, end up in the hands of foreign nations, which would doubly deprive English subjects of their use and place certain commodities into enemy hands.

Thus, in order to transport necessary but prohibited items across the Atlantic Ocean, ship captains, merchants, and colonists required the permission of the king or Privy Council, a process that was begun by submitting a petition. In 1620, in one of the earliest of such petitions, the Newfoundland Company asked the king for the right to transport iron ore and associated materials—prohibited commodities because of their general scarcity in England and because of their value in casting ordnance—for the purposes of erecting an iron works on the island and producing iron bar. This activity would allow the colony to make use of the lumber it was clearing to prepare the land for cultivation and to "set on work the whole year, whereas the fishing lasted

but for three months," and thereby make Newfoundland sustainable beyond its fisheries. The council eventually approved the request, but not without securing a report about the viability of this project. This report indicated that, "for want of wood," England would soon be unable to produce sufficient amounts of iron bar, which would force it to import iron or finished products from the Continent. The council was well aware that iron bar was essential for the production of many items, not the least weaponry, and that—consistent with the ideology of mercantilism—it was better for this material to be transported into England from one of its Atlantic colonies than to import it from foreign realms. However, before the council granted the petition, it demanded assurances that the ironworks would not make any form of ordnance, lest contraband materials make their way into enemy hands. Before granting the petition, therefore, the council ordered one of its clerks to secure a substantial bond of £2,000 as surety that the colony would not "cast . . . any kind of ordnance whatsoever."[10] Ultimately the Newfoundland Company was shortly thereafter dissolved, which meant that no ironworks was built.

Because of the general prohibition against sending ordnance, shot, and powder outside of England, or of casting it in the colonies, the council was frequently petitioned for licenses to transport these items. For a number of reasons, the king and council recognized the need for Atlantic colonies to be defended with sufficient armament. A show of military force was a strong message of sovereign occupation that communicated an intention to remain in the territory. More practically, colonies in the early Stuart Atlantic world also encountered belligerent threats from the French, Spanish, and indigenous populations, the latter especially during the Anglo-Powhatan Wars after 1614 (culminating in the Virginia Massacre of 1622) and the Pequot Wars after 1630.[11] No English colony in the Atlantic could remain viable without the ability of the colonists to defend themselves when the need arose. The transportation of heavy weaponry and their accoutrements was, therefore, crucial. In 1622, shortly after the Virginia Massacre, the Virginia Company petitioned the Crown for "certain old cast arms" housed in the Tower, in aid of their defense.[12] A series of conciliar orders followed after 1625, when the masters of the ordnance were ordered to deliver, at the request of various petitioners, barrels of powder—a commodity under tight protection, now that war was afoot—and in some cases a proportional amount of shot and muskets, to various Atlantic agents for transport to Virginia, Bermuda, and the Caribbean.[13]

Occasionally, as in an order issued in 1631 on behalf of adventurers to South America, the council was quite specific as to the ordnance that could be transported: "four culverin[s], four demi-culverin[s], twelve saker[s], twelve minions[s], . . . four saker-cuts, and four minion-cuts." The warrant instructed "all such persons whom it may concern" that they were not to hinder the "buying, putting on shipboard, or . . . transport" of this ordnance, provided they were "not exceeding the number nor the several sorts before specified in this our warrant." However, before the ships containing this ordnance were allowed to depart, the council required "good security . . . that they shall not be otherwise employed than for the said ships and plantation."[14] Here, again, the suggestion is that the Crown was perfectly willing to assist in the Atlantic colonies, but feared that certain commodities would make their way into enemy territories. As a general rule, the transportation of powder, shot, and ordnance was permitted under the provision that the Atlantic agents pay for these items in ready money (for this was not a gift of the king, even if it was his sovereignty that the colonies were defending) and that the transportation of such quantities not prove "inconvenient for his majesty's service."[15] That is, although the defense of the Atlantic colonies was important, this project should not place England's war effort or its domestic security at risk.

Weapons and their accoutrements were not the only items protected by the Crown. A great deal more petitions to transport prohibited goods followed in the reign of Charles I, when the list of prohibitions became lengthier as the result of war. At the beginning of 1625, the council issued a warrant to the lord high admiral to prevent fish recently arrived from Newfoundland from being sent out of the country, because "his majesty will very shortly have great occasion to make provision of victuals, for divers important services of his own"—which turned out to be early forays into war with the French and Iberians—"whereof a great part is likely to be transported into Spain and Portugal and his majesty's provisions thereby disappointed except [by] some speedy order." The next week, when Sir Allan Apsley, lieutenant of the Tower, reported that he was sufficiently victualed, the council allowed the remainder of the fish, which was in jeopardy of perishing, to be transported as the merchants saw fit, though presumably not to the Iberian countries.[16] This incident signaled the beginning of a more restrictive policy toward the exportation of foodstuffs.

In 1628, some planters in Newfoundland petitioned the council for the right to purchase and transport 14 lasts of wheat (at one hundred

pounds per last) and "the like quantity of malt for the relief of those of that plantation." [17] This request, and similar ones originating from planters and merchants in Bermuda, Canada, Massachusetts Bay, New England, St. Christophers, and Virginia, was approved by the council, which (presumably through its clerk) duly issued the appropriate licenses to be shown to port officials.[18] In addition to authorizing the transportation of grain and corn, which were the most common items requested, and the items most frequently under prohibition, other licenses permitted the carrying of, for instance, "seventy dozen of shoes," "forty dozen of candles," "twenty quarters of peas," "twenty hogsheads of meal" (at two hundred forty liters per hogshead), and "three firkins of butter" (at 56 pounds or forty liters per firkin), all items (or their raw materials, such as leather and tallow) presently under prohibition.[19] Some licenses did not provide precise amounts, but instead ordered, in the case of a license for St. Christophers, the transportation of enough "victuals, beer, and other provisions necessary to serve for 50 men . . . for a whole year." A request from the Adventurers of Canada resulted in the authorization of enough meal and clothing for two hundred men, although this request was suspended until the petitioners gave "good security" that they would not transport the goods to "any other parts, nor for any other purpose."[20] As with the explicit requirement in the New England charter, and the bond collected from the Newfoundland Company in 1620, the council was clearly concerned that prohibited items would wind up in foreign territories. The council also took pains in its licenses to inform the petitioners and port officers that these documents were not to be seen in any ways as general licenses. Rather, each license did not "extend further than the present occasion . . . for this one voyage."[21]

At times, the council found it necessary to investigate attempts to transport prohibited commodities across the Atlantic without license. In 1631, one Mr. Bennet, a merchant, became the subject of suspicion because he had purchased "three hundreth quarters of meal," but had failed to have this product "delivered in open market" for domestic sale. The council therefore commanded the attendance of Bennet, who admitted that "his intention was to send it into Virginia for the supply and furnishing of the plantation there." The attorney general was ordered to examine Bennet and other witnesses in order to determine whether he should be punished for his failure to secure a license, and whether to allow the meal to be sent into Virginia notwithstanding the prohibition.[22] Seven years later, the council directed the sheriffs and justices of Dorset and Hampshire to inquire into certain affairs of the New England Company. The council had been

informed of "great and secret abuses," whereby merchants sought to "underhand provide and secretly transport extraordinary quantities of wheat, beans, butter, beer, cheese, bacon, and the like provision, to the great prejudice of the poor thereabouts." Any such commodities being transported were to be stayed until a license was procured from the council.[23] Ultimately we do not know the outcome of either of these investigations, but both serve as good examples of the council's attempts to ensure that the prohibition orders were followed.

One of the reasons the Crown proved hesitant to allow unfettered transportation of these prohibited goods, in contravention of the privileges granted in many of the original colonial charters, was because—as we saw in Chapter 4—it expected the colonies to produce sufficient foodstuffs for their own colonists through the process of cultivation. Equipping the first fleet destined for new colonies with a variety of commodities that would assist the colonists in establishing their plantations was one thing. Continuing to license the transportation of goods that were in short supply in England for colonies that were several years old and should have been self-sufficient, at least in terms of food production for local consumption, was quite another. In 1625, for example, the council sent a letter to the Virginia colony noting that although two ships were, "upon the persuasion of . . . the lord high treasurer," presently transporting into that colony various "munition, apparel, and other provisions," the Virginians were, nonetheless, expected "to bring all other commodities of that country to perfection, as corn, wine, silk, cotton, salt, salt-fish, flax, hemp, indigo, woad, . . . and the like," a matter that they were to pursue with "alacrity."[24] In the council's 1626 instructions to the first royal governor of Virginia, Sir George Yeardley, a similar injunction can be found: "We require you to use your best endeavor to cause the people there to apply themselves to the raising of more staple commodities . . . whereby the store of the country may be advanced in abundance."[25] To a Crown that faced regular food shortages and was literally forced to feed an army, this was a much better use of cultivated land than the excessive planting of tobacco, something that, we have seen, neither of the early Stuart monarchs particularly welcomed. Also in 1626, the council approved a request by Sir Walter Earle and others to transport twenty head of cattle to New England, so that "tillage might be furthered, and the planters enabled by this means . . . to subsist of themselves, without transportation of victuals, out of this kingdom."[26] The danger of allowing the uninhibited movement of foodstuffs across the Atlantic was that the colonies would not have sufficient incentive to produce their own crops.

It was possibly for this reason that by the end of the early Stuart period, when many of the colonies had been in existence for more than a decade, the council became increasingly concerned with the supplies being sent across the Atlantic. Although the council initially gave special licenses for only certain prohibited goods, by 1639—at the same time that bulk licenses were being issued for emigration—it began licensing complete lists of items that could be transported to the various Atlantic colonies. For example, the first bulk license, issued in 1639 for transport to Newfoundland, authorized the shipping of the following:

- 23 butts containing 39 quarters of wheat
- 15 butts and two puncheons cont[aining] 28 quarters of malt
- 5 puncheons and one hogshead cont[aining] 59 bushels of peas
- 2 puncheons and 2 hogsheads cont[aining] 39 bushels of oatmeal
- 2 hogsheads cont[aining] 600 weight of cheese
- 2 roundlets cont[aining] 27 gallons of sweet oil
- 4 half firkins of ordinary soap
- 1 roundlet of castle soap
- 3 firkins of butter
- 1 roundlet cont[aining] 2 bushels of mustard seeds
- 2 boxes cont[aining] 26 dozen of candles
- 2 hogsheads of wine vinegar
- 2 firkins of small nails[27]

Twenty-four such lists exist for 1640 alone for commodities to be sent to colonies in Canada, the American mainland, and the Caribbean. In addition to the items listed, these bulk licenses permitted the transportation of shot, powder, muskets, iron tools, pewter, "strong waters" (distilled wine), a variety of clothing (boots, shoes, shirts, stockings, drawers, and hats), linen and woolen cloth, tallow and suet (for making candles), and bacon and pork.[28] These were presumably not exhaustive lists of the commodities that were being placed aboard transatlantic ships—for the colonies would also need basic farming implements and a host of other necessities, as described by Hakluyt and others—but rather represented the items that were presently under some sort of prohibition and demanded special licenses in order for the searchers in port to allow their departure. The production of these lists also demonstrated an increasing degree of Crown oversight of the products being exported to the colonies, an increase in activity that has also been shown to exist in other areas of the Atlantic imperial constitution, such as emigration, trade, and the handling of overseas

affairs by conciliar committee, a topic to which I shall return in the next chapter.

DISPUTE RESOLUTION

Another series of Atlantic petitions submitted to the Crown in the early Stuart period involved disputes between different colonies or colonial agents. These were matters that required the adjudication of an executive authority higher than the Atlantic colonies themselves. In comparison to the relatively routine tasks of authorizing the transportation of prohibited goods, which was not particularly onerous on the Crown, these extracolonial disputes often required an extensive process to bring these matters to conclusion. These disputes involved the Crown giving careful attention to the claims of petitioners, determining the precise issues to be resolved, and then reviewing the language and intent of the colonial charters in order to determine the cause, a method that was not unlike that which would be used had the case been heard in an English common law court.

One dispute of this nature involved arguments over the traditional rights of English merchants and fishermen to operate in Newfoundland and the Grand Banks despite the territory itself being granted to the Newfoundland Company (1610), various proprietors in the 1620s, and later to Sir David Kirke and his associates (1637). In the fall of 1618, a number of fishermen from the western ports of England petitioned the king to address grievances that had occurred in Newfoundland during the fishing season. Supported in their complaint by the lord lieutenant of county Devon, to whom the initial grievance was presented, the petitioners alleged that the Newfoundland colonists took the best fishing spots for themselves; stole salt and other provisions, and broke down temporary wharfs (stages) and drying racks (flakes) when these were left ashore for the following season; refused to allow the fishermen to capture shorebirds for bait; charged fees for the use of the seashores; and, perhaps most damning of all, harbored pirates in their colony and allowed a general state of lawlessness.[29] The privy councilors, "well understanding the singular importance of that Newfoundland fishing unto the western parts of this kingdom, . . . and a great maintenance to an infinite number of his majesty's subjects," were "pleased to take the . . . said grievances into their honorable care and consideration." In order to inform itself of the particulars of the suit, the council appointed a commission of five men. Consisting of senior councilors such as the secretary of state, the chancellor of the Exchequer, and Sir Edward Coke, this commission

was authorized to call before it both parties in the dispute and report its findings to the council in plenary.[30]

The Newfoundland Company's reply to the petition was submitted to the commission toward the end of 1618. They admitted to taking the best harbors for themselves, arguing that the "chargeable maintenance" of the colony entitled them to do so, whereas the "uncertain comers hither" were not responsible for keeping the colony all year and thus should not be at such an advantage. They utterly disclaimed any knowledge of theft committed by their colonists or of fees being charged, and stated that if the fishermen were being denied the use of shorebirds for bait, orders would be issued to the contrary. They admitted that there were many pirates in Newfoundland, which was "almost to the overthrow of their colony," but that many of these pirates came from the parts of England where the petitioners lived. It was these pirates who were stealing and encouraging lawlessness, and the respondents took this opportunity to petition the king once again (for this matter had also come up in 1613) for some definitive action to prevent so many pirates from operating in the region.[31]

Finally, the company noted that it had issued orders to all fishermen, "published in his majesty's name, which they have not obeyed."[32] These orders, written by the colony's first governor, John Guy, in 1611, were attached to the response. Issued out of concern that "those persons that use the trade of fishing in these parts," both "strangers and subjects," were party to "many disorders, abuses, and bad customs," the orders described these abuses and set out penalties when they were committed. For example, a five pound fine accompanied each occasion when a ballast was thrown into the harbor instead of being brought to shore for disposal, where it would not cause damage to a ship.[33] Though practical, these orders would have been difficult to enforce by the Newfoundland Company, even assuming it had the authority to do so.

The western petitioners were given the opportunity to respond to the company's answer, which they did using sound legal argumentation. Although they contested the company's representation of the petitioners as the troublemakers, their main issues were the privileges assumed by the planters to control the fisheries. First, they challenged any idea that the charter of 1610—a copy of which they provided with their response—gave any special rights to the colonists to choose the best fishing spots, correctly citing that all fishermen were granted all "benefits whatsoever in as large and ample manner as they in former times have used and enjoyed." Using the company's own brand of logic, the petitioners argued that they should have been entitled to

greater privileges than the planters, as the former had first discovered and long made use of the Grand Banks, whereas the latter had only recently begun such activities. That is, in the style of key proponents of England's ancient constitution at the time, they claimed that historical custom and usage trumped recent innovation. Second, the petitioners, "knowing better how to manage the affairs of fishing there than those of the said plantation," questioned any right of the colonists to issue orders for the seasonal fishery, which they perceived was not in any way within the jurisdiction of the colony or its charter.[34]

After considering all the evidence put before it, the Privy Council found the petitioners' arguments to be more persuasive. On December 13 it commanded the Newfoundland Company to observe the clause in its charter that guaranteed ancient rights to all fishermen, vaguely reminding the planters of the punishment that would be inflicted by the council if they continued to upset the commercially valuable fisheries.[35] Notwithstanding this decision, a few months later—and a few weeks before the seasonal fleet was due to sail—the council sent a letter to the mayors of six western ports instructing them to direct the masters of all fishing vessels bound for Newfoundland to "forbear all acts of hostility and such other disorders as heretofore have been committed there." They were also to "entertain all friendly amity and correspondence with those of the plantation," and the ship captains were reminded that a careful reckoning would be taken of any acts to the contrary.[36] As it turned out, shortly after this correspondence the Newfoundland Company was forced to liquidate its investments and divide the island into various plots, soon to be purchased by proprietors such as William Vaughan, Henry Cary, and George Calvert, who were not especially interested in competing for the fisheries.[37]

When another petition was submitted by the western fishermen in 1633, alleging largely the same abuses of a decade and a half earlier, this time committed by Sir David Kirke during his early forays in Newfoundland, the council appointed the attorney general, William Noye, to prepare a report.[38] Confident that the king had to give some laws to regulate the Newfoundland fisheries, Noye ultimately produced the document now known as the first "Western Charter," which was based on John Guy's orders of 1611 and "ancient custom."[39] The charter prohibited the weighing of ballasts; the destruction or stealing of salt, nets, flakes, stages, and other materials of the fishing trade; the disfiguring of ships (by changing their marks to defraud owners); and the setting up of taverns to sell alcohol, which led to disorder. It also required the fishermen to meet on Sundays for worship according to the *Book of Common Prayer*. Most importantly, it appointed

the master of the first ship to enter the harbor after March 25 (the first day of the new year and the traditional start of the season) to be the admiral for that year. This "fish admiral" was to publicly proclaim the "Western Charter" each year and to assemble a court to deal with minor infractions. Major infractions were to be handled by the mayors and vice admirals of the port towns and felonies were to be tried at the English assizes as if the crimes occurred in England.[40] This charter—modified and reissued in 1661 and 1671 and enacted as statute in 1699—would form the basis for regulating the Atlantic fisheries for more than a century.[41]

The Crown was also required to intervene in disputes between chartered entities; perhaps the two best examples involve arguments over the rightful possessor of Barbados and parts of the Chesapeake. By 1625 Barbados was nominally under the ownership of Captain Thomas Warner, who had been issued a royal commission granting him various Caribbean islands.[42] The colonization of Barbados, however, had begun not by Warner, but by the wealthy financier Sir William Courteen and his associates, who dispatched eighty planters there in 1627. Although the planters quickly claimed the island in the name of Charles I and established five plantations, they operated without the authority of Warner and thus, legally, were squatters. Early in 1627, perhaps in an effort to maintain the privileges granted in his commission, Warner passed his rights to James Hay, Earl of Carlisle, an early Stuart diplomat and courtier, with the result that on July 2, 1627, Charles I issued letters patent to Carlisle for various islands in the Caribbean "within 20 degrees of the equinoctial [equator] on the northside." In addition to this geographical reference, the grant listed as Carlisle's possessions the "Caribee Islands" in the Lesser Antilles, including Antigua, Montserrat, Grenada, St. Kitts, St. Lucia, "Barbadoes," "and others." [43]

In response to the issuance of Carlisle's charter, and in order to establish Courteen's dubious claim to the island, Philip Herbert, Earl of Pembroke and Montgomery, a former privy councilor and a former member of the Virginia Company, arranged for a patent to be issued in his name to be held in trust for Courteen. This grant, made on February 25, 1628, awarded Montgomery certain named islands "situate[d] between the 8th and 30th degree of the northern latitude," including Trinidad and Tobago, and "Barbudos."[44] Thus both grants appear to have awarded the same island—"Barbadoes" to Carlisle and "Barbudos" to Montgomery and Courteen. Montgomery would later claim that Barbadoes was not located in the "Caribee Islands," but instead was closer to Trinidad and Tobago and was thus

part of Montgomery's grant. He argued that even though "Barbadoes" was explicitly mentioned in Carlisle's grant, it in fact awarded "Barbuda," an island located at the northern edge of the Lesser Antilles. Concerned about protecting his holdings—which were presently under the occupation of Courteen's planters—Carlisle requested and received a second patent on April 7, 1628, which clearly awarded possession of "Barbadas alias Barabades alias Barbudos alias Barbadus."

Under the authority of this second patent, Carlisle dispatched Captain Charles Wolverton to be governor of Barbados. He arrived with documents attesting to Carlisle's proprietorship and a letter instructing the squatters to accept Wolverton's authority. By September 1628, Wolverton had managed to induce most of the squatters to accept Carlisle's rights, though several refused to do so and dispatched a letter to Montgomery seeking his assistance. Instead of petitioning the Crown, Montgomery and Courteen responded by sending an armed expeditionary force to Barbados under the command of Captain Henry Powell. It was at this point that the Crown was drawn into the fray. Carlisle petitioned the king to write a letter to Wolverton affirming his rights. The letter was duly sent in February 1629. The king outlined the controversy between Carlisle and Montgomery and instructed the governor to receive Powell with goodwill but to advise him that the governance of the island, until the question of possession was answered, would remain under the first grantee, Carlisle. To reinforce this command, the king gave Wolverton permission to treat those who "break this our royal will and command" with the appropriate punishment and to inform the king of their contempt so that he might also "prosecute against them." By the time the letter arrived, however, Powell had already displayed Montgomery's charter to the planters, secured the ousting of Wolverton, established himself as governor, and deported Carlisle's governor back to England.

The king, meanwhile, had referred the entire matter to Lord Keeper Thomas Coventry—a lawyer and formerly solicitor and attorney general—for investigation.[45] Had the king's charters granted land in England, this rather mundane dispute would have been solved by lawyers in one of the common law courts, which would have heard arguments from parties and witnesses on both sides and reviewed the relevant documentation. However, because the dispute involved nondomestic lands, the case had to come before the king-in-council. According to his report, delivered to the king in April 1629, Coventry was asked to answer two questions. First, was the island of Barbados part of the "Caribee Islands"? If so, Carlisle's grant might have been sufficient, in and of itself, to prove ownership of Barbados, since the

charter awarded the entire "Caribee Islands" and only listed several of the islands out of convenience. Coventry interviewed four "seamen of great note"—Sir Thomas Button, Sir John Watts, Sir Michael Geerts, and Captain Pennington—and "some others of inferior ranks." These men testified that by virtue of the difficulty of getting to Barbados from the other islands in the Lesser Antilles—for such navigation required the use of a ship and compass, whereas the remainder of the islands could be travelled "from shore to shore in canoes"—it was not part of the Caribee Islands. (Barbados is approximately fifty miles from St. Vincent, its closest neighbor, whereas the remainder of the islands in the Lesser Antilles are within twenty miles of their nearest neighbor.) This position supported the claim of Montgomery and Courteen and was a mark against Carlisle.[46]

The second question was whether, even if it was not part of the Caribbean Islands, Barbados was intended to be passed to Carlisle, in which case the issue of its geographical location might be moot? To answer this question, Coventry returned to the phrasing of the Caribbean grant awarded to Warner in 1625, since it was Warner's claim that had passed to Carlisle in 1627. Warner and others testified that it was, in fact, Barbados that they had desired and secured in their original grant, and that they had no interest in Barbuda. Two agents who had worked for Carlisle while his patent was in preparation—and who had provided the attorney general a "map of the islands" during this process, which they also produced for Coventry—testified that Carlisle had desired Barbados, not Barbuda. Coventry admitted that there was some dispute over the veracity of this testimony, most notably by the lord chamberlain, who was a privy councilor, and other supporters of Montgomery. Given the vested interest of the witnesses in Carlisle's success in winning the suit and the fact that the testimony was not taken as sworn depositions, Coventry understood their reluctance. However, he concluded that the sheer weight of evidence led him to believe that the claim of Carlisle, as opposed to that of Montgomery, was "very strong," a position that the king ultimately supported.[47] The dispute came to an end when the king sent a letter to Barbados informing the colonists that Carlisle's title was to stand and Montgomery's men were to submit to Carlisle's governance or face the repercussions outlined in earlier dispatches.[48]

A similar, though ultimately much more complex and time-consuming controversy arose a few years later when the Crown was petitioned to review the geographical boundaries of Cecil Calvert, Lord Baltimore's, colony of Maryland. In his 1632 patent for Maryland, Baltimore was granted title to the portion of Chesapeake

Bay south of New England and north of two geographical reference points, Watkin's Point in the east of the bay and, "by the shortest line" across the bay, the mouth of the Potomac River (which is roughly the present-day southern Virginia–Maryland border), and "all islands and inlets within the limits aforesaid." In May 1633, as Baltimore was assembling his first fleet, members of the Virginia council submitted a petition to the Privy Council. It challenged Baltimore's patent on a number of grounds, including concerns over Baltimore's Catholicism, his proprietary tenure, the deterioration of Virginia trade that would result from this grant, and most importantly, the territorial overlap with Virginia's present settlement and its original (though by now dissolved) chartered rights.[49] Before hearing the suit, the council ordered Baltimore to meet with several adventurers from Virginia to "confer together and endeavor amongst themselves to accommodate the points in difference arising between them." They were to "set down the same so agreed on," which would not force the council to waste its time on matters not in dispute, and "likewise such points, wherein they shall differ, together with their exceptions and reasons, and to present the same to the Board, at their next sitting." On the date set for the hearing, June 28, Baltimore and the petitioners were also to bring with them "a map of the said plantation, upon view whereof, their lordships may better discern, how the portion granted to the Lord Baltimore is limited and bounded."[50]

This is a good example of the council's handling of certain petitions. Rather than devote state resources to conducting an investigation into a largely private matter that did not much concern the Crown, it referred these issues back to the parties involved, expecting, first, that the parties might "accommodate their controversy in a friendly manner if it might be," or, second, to receive detailed briefs of the case in order to render a decision. Thus when the council met on the appointed date, it would have enough information to determine the suit. On July 3, 1633, having "heard and maturely considered the said propositions, answers, and reasons, and whatsoever was alleged," the council decided in favor of Baltimore, who was to retain his patent in its present form, including its defined boundaries. It further ordered that both parties should have free trade between them and should "sincerely entertain all good correspondence and assist each other on all occasions in such manner as becometh fellow subjects and members of the same state."[51] By way of reinforcing this decision, the king dispatched a letter to the Virginia council on July 12 in which he restated the decision and pointed out that they were to treat Baltimore with the "courtesy and respect that belongs to a person of

his rank and quality." The king also reminded Governor John Harvey that, in its infancy, the Maryland plantation might require the "friendly help and assistance" of the Virginia colony, which in the interests of the state they were to provide.[52] This command from the king was received with some bitterness in Virginia; not only was the petition lost, but the colony was to help Baltimore succeed, possibly at the Virginia colony's own peril.

The central problem with the council's decision was that Kent Island, a large island located in a part of the Chesapeake seemingly within Baltimore's claim, had been settled in 1631 by William Claiborne and his business associates, who had planted approximately one hundred men and used the island as a base to trade with the Susquehannock natives. The king had granted Claiborne the exclusive right to trade "near or about those parts of America for which there is not already a patent granted to others for the sole trade."[53] Together with a Scottish commission issued by William Alexander, the Earl of Stirling, and the Virginia colony's original chartered boundaries, Claiborne used the king's commission to settle Kent Island. As a longtime Virginia resident and secretary of state for the Virginia council, Claiborne was a prominent and powerful individual who was not willing to accept the Crown's decision—which did not specifically mention Kent Island—without a fight. It is not surprising, then, that another petition followed in November 1633 presented by Claiborne and his associates. They argued that they had "been at a very great charge in . . . settling upon . . . the Island of Kent within the great bay . . . in Virginia, which being comprehended within the limits of the Lord Baltimore's patent obtained . . . since the petitioners . . . settled there." Given that this island was not vacant when Baltimore's grant was issued, Claiborne requested that the island remain part of the Virginia colony, that he be entitled to keep title to the island, and that Baltimore be instructed to settle in some other space within his grant.[54]

This petition seems to have been ignored by the council and does not appear in its register, possibly because the councilors felt that the matter had been determined in July and did not deserve to be revisited. But there remained the question of whether Claiborne had to clear his planters off Kent Island or whether he was allowed to continue holding the island, though recognizing that Baltimore held ultimate governance over it. In the opinion of the Virginia council—and especially of Claiborne and his fellow councilor, Samuel Mathews, the wealthiest planter in Virginia, and no friend of Harvey—they did not have to give up rights to any territory that was within the bounds

of the original Virginia charter and that was settled before Baltimore received his patent, both of which were true of Kent Island.[55] Baltimore's charter, after all, had awarded him the territory that was "uncultivated," which was not true of Kent Island, given the presence of Claiborne's post there. Baltimore later complained to Secretary of State Francis Windebank that Claiborne's "malicious behavior" (stirring up the Susquehannock to rise against Baltimore) was a threat to his plantation. [56] Complicating the situation, at least from Claiborne's perspective, was that Harvey followed the king's instructions to lend a hand to Baltimore, offering boats, supplies, and other necessities that the Virginia colony could scarcely afford to lose. In a letter sent to Harvey, Windebank acknowledged the governor's support and encouraged it to continue, pointed out Baltimore's concerns about Claiborne's surreptitious behavior, and reminded the governor (and, through him, the Virginia council) that "it is the duty of good subjects to obey and not to dispute their sovereign's commandment," an injunction soon repeated by the king.[57]

Claiborne remained dissatisfied, in part because the issue of Kent Island was still unresolved and also because he had become aware of a plot of Baltimore's agents (Baltimore himself never traveled to America) to violently remove his associates from the island. He thus petitioned the king again, in October 1634, requesting some action that would ensure the security of his plantation.[58] The king finally responded in Claiborne's favor, dispatching a letter to Harvey, Baltimore, and other "lieutenants" in America commending Claiborne's plantation on Kent Island, protecting the "fruits of their labors," and forbidding the Marylanders to commit any acts of violence.[59] It was around this time, however, that the Marylanders made a strategic error by murdering three Kent Islanders, in direct contravention of the king's orders, which, it was later claimed, Harvey had tacitly accepted by lending further support to the Marylanders after this illegal event. Framing Harvey as a man treasonous to the king's authority and, perhaps even worse, a Catholic sympathizer, the Virginia council—never on good terms with the governor—became embroiled in a coup and forced Harvey to return to England in 1635 to answer for his contempt. Under the auspices of the attorney general, Harvey stood for his actions in Star Chamber, in the presence of the king, where he acquitted himself well and successfully showed that a number of others on the council, and especially Samuel Mathews, had been the trouble. Although this event marked a series of problems that would plague Harvey's governorship for his last few years in that office (he was replaced in 1639), Harvey was allowed to return to Virginia to

resume his duties, and the malefactors (though not Claiborne, who was not party to the "mutiny") were shipped to England for a hearing.[60] Meanwhile, Harvey sequestered the property of his enemies in Virginia pending the outcome of their trial, sparking a host of petitions for its return in 1637–38.[61]

Matters cooled for a few years thereafter, resurfacing in 1638 when Baltimore received word that Claiborne was, once again, seeking the king's permission to have his trade commission reinstated, including his title to Kent Island. Baltimore complained that Claiborne had resorted to "piracy and murder" and should in no way be rewarded for this behavior by the king. The issue was referred to the Committee for Foreign Plantations—which was not in existence during the earlier episodes—which settled the case once and for all. Citing the council's decision of July 3, 1633, Kent Island was formally recognized as part of Baltimore's proprietorship, though they reserved judgment on any alleged illegal acts to the ordinary course of justice. Subsequent correspondence between the king and Baltimore commanded, nonetheless, that the planters on Kent Island should remain in possession of their holdings, even though the island was no longer Claiborne's.[62] This decision was typical of the king's equitable jurisdiction; although Kent Island was Baltimore's by charter, this did not mean that he should seek to disturb successful planters who had occupied and improved their land for, by this time, seven years, an act that conferred a virtually unassailable right of possession in English law. Though this settled the matter under Charles I, Claiborne and others continued to agitate for greater rights to Kent Island until the Restoration period.

Ordinary Petitions

During the reign of James I, petitions from or regarding affairs that occurred in the colonies themselves were rare. The few colonies in existence were in their infancy and their small populations, geographical distances from Westminster, and limited mechanisms of law and government meant that few subjects could or needed to exercise their right to petition the Crown for grievances. This changed in the reign of Charles I, as the Atlantic population—numbering about two thousand at the end of James's reign—reached ten thousand by the early 1630s and fifty thousand by 1640. With the colonies more numerous and better established, the Crown starting receiving a number of "ordinary" petitions regarding various civil and criminal matters that impacted the Atlantic. As distinct from "petitions of right," which involved subjects petitioning the king for wrongs allegedly

committed by him or his government, ordinary petitions involved matters between and among subjects of the king, in which the king had no personal interest. These ordinary petitions addressed issues that, in England, would have been brought to suit or appeal in the English common law courts. However, as with matters in the empire closer to home, these courts had limited authority to hear Atlantic cases because they lacked overseas jurisdiction, which meant that the king was the first line of petition or appeal.[63] As a result, dozens of petitions were initiated by humble suitors, living either in England or across the Atlantic, who hoped to gain satisfaction for matters that had occurred in the colonies.

A number of these petitions involved suitors in England seeking to secure Atlantic estates that had passed to them from deceased relatives but that for one reason or another were being withheld or misused. Because these affairs involved transatlantic parties, these petitions required the intervention of a body superior to the colonial authority, the king-in-council. One petition of 1626, for example, was submitted by Thomas Powell, the elder brother of Captain Nathaniel Powell, who was murdered by natives in Virginia in 1623.[64] The petitioner claimed that one William Powell, of no relation to the family, had established himself as the deceased's executor, collected debts in the name of Nathaniel's estate, and lived from the proceeds. This estate had since passed to Edward Blayney, a Virginia planter, the new husband of William's widow. Thomas, having successfully sued in "the prerogative court" (one of the probate courts run by the nation's two archbishops) to be recognized as Nathaniel's true executor and heir, thus petitioned the council for an investigation into the affair and the restoration of his brother's Virginia estate, which he wished to divide among himself and his siblings.[65] An order was sent to the Virginia council with instructions to "take effectual order that right and justice may be done to the petitioner."[66]

The Powell affair was typical of many petitions submitted to the council. In August 1626 the council was petitioned to help secure the payment of £200 owed by the Virginia plantation to the estate of Thomas Puntis, the former Virginia governor. Sir George Yeardley—the present governor—was ordered to examine witnesses in Virginia, gather all particulars of the estate, and send "true copies of the examination and depositions of all such witnesses" to the council for review. By April 1627 the investigation had been completed and Yeardley reported that the matter had been resolved to the satisfaction of Puntis's executor, Sir Thomas Merry.[67] On the orders of the council, Virginia governors and their councils also lent assistance to George

Lisle, who had been left some cattle—or perhaps simply "chattels"—in Virginia; to Elizabeth Barwick, the widow and executrix of Thomas Barwick, who died six years earlier, though the petitioner had yet to receive any residue of his estate; and to Thomas Covell, who sought the restoration of his Virginia estate, which had been claimed by the new husband of his factor's widow. They also aided John Perse, who was owed a large bond by his brother, recently deceased in Virginia, and wished to be recompensed from the latter's estate; George Sandys, who complained that the Virginia council had usurped his tenants and servants and damaged his property; and the daughters and executrices of the former governor, Sir Thomas Gates, who desired satisfaction for the considerable estate (some £2,000 ventured into the Virginia enterprise plus "much goods and chattel") he left behind in Virginia, a matter that ultimately took seven years to resolve.[68]

In these various petitions the council was not so much concerned with the internal goings-on in Virginia, which it assumed local courts, assemblies, and the governor and council could deal with, but rather with petitioners living in England who were somehow impacted by the Virginia colony.[69] These cases were not always handled with the care that the council expected. Sometimes the council found it necessary to reprimand the governor and council in Virginia for their neglect, issuing further orders that due diligence and attention be given.[70] This shows the challenges faced by the central government when dealing with its outlying peripheries, though this was not merely a problem between England and its Atlantic colonies; gaining the ready assistance of subordinate officials in domestic England was often equally challenging. Sometimes, however, the council found opportunity to congratulate the Virginia governor and council for a job well done, recognizing the "great care and caution" exercised in reviewing a matter.[71] In the case of Lawrence Evans, for instance, the Virginia council appears to have operated quite efficiently. Evans petitioned the council alleging that a Virginia resident named Francis Poythres, his factor, had embezzled goods amounting to £1,850.[72] When the case came to the attention of the Virginia council, it appointed a committee of four men to investigate. The committee's report, completed nine months after the council's initial order, disputed Evans's claims, citing that through various testimony they were able to ascertain that Poythres had acted appropriately and was, in fact, still owed his commission from Evans.[73]

One of the better documented series of ordinary petitions submitted to the Privy Council involved John Woodall, an adventurer and estate owner in Virginia. This case was used in a brief article published

in 1935 as being illustrative of "the ultimate court to which the disappointed litigant [in the colonies] might have recourse," that is, the Privy Council, and as a singular example "sufficient to show the supervision over the Old Dominion by the Mother country three hundred years ago."[74] In a petition of March 1630, Woodall complained that he had purchased an estate of land and cattle from Sir Samuel Argall, but that this was being withheld from him by several members of the Virginia council, who were "both parties and judges in the cause." Woodall's inability to gain satisfaction from local authorities meant that his case had to be taken to the king. The council castigated the Virginia council for its "partial and dilatory proceedings," averred that "the administration of justice" ought not be "interrupted or prejudiced out of private respect or interests," and commanded that they "expedite justice, with all lawful favor." It appears that the council's order was powerful enough for Woodall to receive his estate, although his problems were not over. In 1634 he petitioned the council again, this time complaining that the managers of his Virginia estate were seeking to "convert [it] to their own use." The Virginia council was directed to review the case, do that which was "fit and just," and report back to the council when all was resolved. Woodall was given relief, although the council was required to intervene again in 1636, when it learned through yet another petition that Woodall ("the poor man") had yet to receive an accounting of his estate from his servants. In 1638 Woodall finally expressed his appreciation for the many efforts of the Virginia council, and the council was quick to relay its own appreciation that the petitioner's case was "take[n] very well at your hands."[75]

Another set of petitions from 1637 and 1638 further illustrates the Crown's continuing responsibility for its subjects, no matter where they resided. Ambrose Harmar, a resident of Virginia, petitioned the king to gain custody over Benoni Buck, the idiot son of the deceased minister Richard Buck. Recognizing that Harmar had been the son's overseer for 13 years, the king approved the petition and referred the case to his Court of Wards to put it into effect. This feudal court had historically determined who would be responsible for the upbringing of orphaned heirs, and of the administration of their estates, until they reached an age where they could administer their own affairs. During the period of wardship, the administrator was entitled to the fruits of the estate, which, given the long-term mental deficiency of Benoni Buck, meant that it could be a lucrative position for Harmar. Although both the king and court found in favor of Harmar and awarded him the wardship of Buck, he was forced to petition

the king again when the Virginia governor had taken it upon himself to determine the future of Buck and denied Harmar the use of the land and chattels that had passed through Buck's father. It is possible that Governor Harvey, who was given the responsibility of certifying the "idiotism" of Buck, seeing money to be made, used his position and the king's representative in Virginia to keep custody of the estate himself. After consulting the attorney general, the council declared "that the custody of any idiot in Virginia belongeth to his majesty," in the same way that such a subject would be treated in England, and could thus be disposed of however the king saw fit, without interference from inferior jurisdictions. The council thus ordered that Buck and his estate be restored to Harmer, "whereof you may not fail."[76] This seemingly innocuous case demonstrates the continuing responsibilities of reciprocal sovereignty, which applied even when subjects no longer resided in England, and illustrates that the king's lieutenants in the colonies, however much they felt they possessed autonomy of action, remained in a position of subordination in relation to the Crown.

Toward the end of the Stuart period, the council was also involved in appeals from Virginia's criminal jurisdiction. In 1639, for example, the council was asked to review the case of Thomas Phillips. Convicted by a Virginia court for uttering scandalous words, Phillips had suffered imprisonment and corporal punishment before being banished from the plantation. The petitioner requested that the banishment component of his sentence be vacated by the king, as his wife and children remained on his estate in Virginia and suffered greatly by his absence. Exercising its right to mitigate the severity of criminal sentences, the council gave order that the petition be granted, "on condition that [Phillips] give bond for his good behavior in the future" (generally known as a recognizance), and instructed the governor and council in Virginia to effect this decision.[77] A similar order was issued toward the end of the same year, when Anthony Panton, a rector in Virginia, petitioned the king to void a criminal sentence that "directed his banishment from the colony upon pain of death if he return." Panton, one of many dissenting voices that ultimately led to the replacement of the much-reviled Governor Harvey in Virginia, felt that he was unjustly censured for speaking out against the governor's regime. The council ordered that the sentence be suspended pending a rehearing of the case by the new governor, Sir Francis Wyatt, which was not to include the involvement of Harvey. Should Wyatt find Panton innocent (which he did), the petitioner was to be restored to his parish (which he was).[78] Although it is usually asserted that appeals to the

Crown from colonial bodies had their beginnings in the late seventeenth century, these two cases clearly demonstrate that precedents had been set under Charles I.[79]

Although the vast majority of ordinary petitions submitted to the Crown involved the royal colony of Virginia—after all, it was the oldest of the colonies and the largest until 1635, before being demographically overtaken by Massachusetts Bay and Barbados in the final years of the Great Migration—the king's reach extended into the other colonies as well.[80] Even though Barbados was a proprietary colony under the vice regal powers of the heirs of the Earl of Carlisle, this did not mean that the king's authority could not be exercised there. In 1636, for example, following a petition submitted by the creditors of the deceased Captain William Birch, the governor of Barbados was ordered to sequester Birch's property until he received subsequent instruction. This came nearly a year later, after Birch's creditors and his widow came to terms.[81] The Barbados governor was later instructed to examine the petition of William Courteen, whose agent in Barbados, Captain Henry Powell, had recently died. The petitioner alleged that Powell's executors had taken possession of land and property owned by Courteen. The Crown expected justice to be done, so that "others may not be discouraged hereafter (by such persons as they employ) to further and advance plantations."[82] In January 1640 a petition was submitted by the inhabitants of Barbados, who disputed the king's support for the appointment of Sergeant Major Huncks to be the new governor, preferring their own candidate and current governor, Lieutenant General Henry Hawley. The king ordered Hawley to return to England to appear before the council and for Hawley's attorneys to deliver a bond of £20,000 to the clerk of the council to ensure his attendance. If such bond was not delivered within ten days of the receipt of the king's order, then Hawley was to be returned to England as a prisoner and his property and chattels in Barbados were to be sequestered until the council ruled. Ultimately the latter is what occurred, and it took almost exactly a year for the council to complete its investigation and authorize Governor Huncks to restore Hawley's estate.[83]

Other than Virginia and Barbados, the only colony to have a population exceeding one thousand by 1640—and thus likely to have a population large enough to see the ordinary petition in action—was Massachusetts Bay. Here, rather famously, we find clear evidence of a colonial body denying its colonists the privilege of submitting petitions to the Crown. In 1637 John Wheelright, sentenced by a juryless court—a practice repugnant to English legal tradition—to

banishment for sedition and contempt associated with his opposition to John Winthrop's bid for governor, threatened an appeal to the king. He was informed that an appeal was not allowed, as the colony's charter authorized it to determine all matters, civil and criminal, without resort to the king.[84] That charter physically resided in the colony itself, as the company's officers had deliberately chosen in 1630 to carry the document (and thus the company) across the Atlantic Ocean. This act of removing the royal charter from England, one unprecedented in English history, made it virtually impossible for the Crown to command the presence of company officers when issues such as petitions arose. It was episodes such as these that eventually caused the Committee for Foreign Plantations to look closely into the colony with an eye to revoking its charter, a subject to which I will return in the next chapter.[85]

Conclusion

As with the emigration of its subjects across the Atlantic Ocean, the Crown was generally happy to allow colonial bodies to deal with their internal affairs through local courts and the ordinary course of justice. These courts and systems of justice were founded on principles of English common law, and each colony was given the chartered privilege of setting up courts to hear a wide range of civil and criminal offenses, provided only that its administration of the law did not diverge from the English model so dramatically that it would seem repugnant to the sensibilities and liberties of freeborn subjects. Recent work has demonstrated, in fact, that the colonial courts began to function routinely and effectively by the end of each colony's first generation.[86] As a result of the routine administration of law and justice in the Atlantic colonies, few of the petitions deriving from Atlantic affairs were based solely on internal colonial matters. There were, however, enough petitions stemming directly from local matters—such as the examples of Ambrose Harmar and Anthony Panton—to demonstrate that the king retained superior judicial authority when the colonial bodies failed to act appropriately.

In general, the vast majority of the Atlantic-oriented petitions involved either extracolonial matters, in which no single colony had jurisdiction, or the Crown's prerogative rights, both of which required seeking assistance directly from the king-in-council. The nature and handling of these petitions further emphasizes the way in which the constitution that functioned between center and periphery was both transatlantic and imperial, as it recognized the executive authority

of the sole holder of *imperium* to bridge the massive gap across the Atlantic Ocean. At least when it came to petitions, this transatlantic relationship does not seem to have been particularly antagonistic. With the exception of Massachusetts Bay and its rather famous refusal to recognize Crown authority, there is little evidence to suggest that colonial bodies felt that their jurisdiction was being infringed upon as the result of petitions to the king or that the Crown did not possess the authority to investigate and determine these matters. The Crown's orders for review of certain petitions, if not always handled with the utmost efficiency, were nonetheless effected in a way that reflected an understanding that the colonial governors and proprietors were lieutenants of the king and were expected to defer to his authority. Even during the heated Claiborne–Baltimore dispute, each party's repeated resort to the king by way of petition in order to gain satisfaction for their respective concerns demonstrates that, even when the Crown's decision was not popular, it was ultimately respected and recognized to be the superior authority.

This chapter once again reveals that chartered privileges could be suspended, revised, or revoked by executive order of the supreme imperial authority, without recourse to negotiation from both "contractual" bodies. That being said, there is little indication that the Crown used its prerogative right to hear petitions as a means of restricting the chartered privileges of the colonies any more than absolutely necessary. In the case of prohibiting the transportation of certain goods, as with the emigration of religious discontents, it was deemed necessary for the liberal privileges granted in the charters to be modified (though never explicitly revoked) by prerogative order as a result of exigencies that could not have been foreseen when most of the charters were written. Regarding prohibited goods, these exigencies involved agricultural dearth, economic strain, and war. On the other hand, the Crown did routinely draw upon the language of the charters when it came to extracolonial dispute resolution. In the cases of the Newfoundland fisheries, the Carlisle–Montgomery dispute over Barbados, and the Claiborne–Baltimore dispute over Maryland, the council resorted to the specific text and intentions of the charters in order to render its decisions. This demonstrates the continuing value of these documents, and their terms of reference, when it came to resolving disputes. Even then, there was room for compromise, as when Kent Island, clearly within Baltimore's domain and thus recognized as such, was nonetheless to remain undisturbed with regard to its planters, and when Montgomery's chartered grant of "Barbu-

dos" was vacated, in both cases effectively, though not explicitly (since there were no reissues), changing the terms of the charter.

Here, again, we find that the charters, though important agreements in which the Crown delegated certain powers and privileges to peripheral authorities, were not codified, immutable documents that placed autonomous powers in the hands of the colonial administrators. Rather, changing circumstances could reflect changes in interpretation and application, in much the same way that the Crown's commission to domestic authorities could be revised or revoked through subsequent executive order. Especially in the case of the colonies, over which the king possessed more oversight than in England itself—for the latter also involved application of common law, not just prerogative and equity—he could to make changes as he saw fit, provided that these were reasonable, which usually meant consistent with natural law and the needs of the state. It was only in the most egregious circumstances, such as the events leading up to the dissolution of the Virginia Company and the recalcitrance of Massachusetts Bay, that the Crown deemed it necessary to void a charter altogether (in each case, through King's Bench *quo warranto* proceedings) rather than modify its terms as the need arose.

Chapter 6

Commissions and Committees for Foreign Plantations

As the workload of the Crown increased under the early Stuarts, the Privy Council began to delegate many of its duties by referring various matters to commissions and committees made up of state and private officials. These bodies were distinguished by their permanency, mandate, and membership. Commissions, though they might exist for years, were temporary, created to resolve specific matters that came to the attention of the government, contained predominantly nonconciliar members who had expertise in the issues at hand, and offered recommendations to the Crown. Commissions had been used intermittently since the inception of the council under the early Tudors and continued to be used by the early Stuarts. Committees, on the other hand, were standing bodies, had specific portfolios that involved a range of issues within their purview, and were typically dominated by privy councilors, which meant that they sometimes had executive as well as advisory functions.[1] In what appears to have been the first major creation of such committees, the council register of 1617 lists 12 distinct committees to oversee matters relating to Ireland, the royal household, the navy, fortifications and ordnance, and customs and impositions, plus a number of lesser matters.[2] In the ensuing years, new lists of committees were recorded, adding such portfolios as the church, army, militia, the order of knighthood, the poor, war, trade, and foreign affairs.[3] These were all issues that demanded the attention of the executive branch of government that previously would have been addressed in regular meetings of the council.

Most committees contained a membership of between 5 and 15 individuals, though some, like the committee for "gifts, grants, and

other things," had only 2 members. Several senior councilors—such as the chancellor, treasurer, lord privy seal, chamberlain, chancellor of the Exchequer, master of the rolls, lord high admiral, and chief justice of King's Bench—appeared on multiple committees.[4] The standing committee tasked to handle "grievances in general" had as its membership the entirety of the "king's learned council," which saw the rise of what later became known as the "committee of the whole." Much like the procedure involved in hearing and determining petitions, commissions and committees were authorized to conduct investigations, gather depositions, and issue warrants in the name of the Crown in order to compel the attendance of witnesses. When appropriate, they reported to the council in plenary, which then arrived at decisions based on the recommendations of the commissions and committees and saw to their implementation. Unlike commissions, which were purely investigatory and advisory, committees often had sufficient executive power—because they comprised a quorum of councilors—that they could exercise their authority without reference to the plenary body.

For the Crown, there were many advantages to the commission and committee system. The main one, of course, was to relieve the council of matters that could capably be handled by smaller groups. This allowed the council to multitask its activities (as multiple commissions and committees could meet simultaneously[5]) and ensured that the council's meetings could be devoted to occasional matters that could be dealt with summarily, or to serious ones that were not appropriate to pass to a subordinate body. Another advantage was that the commissions and committees were allowed to seek the assistance of whomever they saw fit, such as individuals with specific areas of expertise, who were permitted to attend meetings either temporarily or on a more permanent basis. Such active participation by an individual who was not a member of the council would not have been permitted during regular meetings of council. Likewise, the use of these bodies meant that the development of policy and recommendations could be handled by those with knowledge and experience, bringing greater consistency to the council's actions, whereas previously decisions often had an ad hoc nature to them. Finally, unlike regular sittings of council, meetings of these various groups, including the committee of the whole, were not usually attended by a clerk (though a member might record minutes, some of which have survived[6]) and had no formal rules of procedure, such that a veil of secrecy surrounded their activities.

The first "royal" committee contemplated for Stuart Atlantic affairs was described in the Virginia charter of 1606. In addition to a company council for each of the two colonies established by the grant (the London Company and Plymouth Company), a royal council was to be "established here in England, which shall . . . consist of thirteen persons, . . . appointed by us, . . . and shall, from time to time, have the superior managing and direction, only of . . . the government, . . . of the said several colonies."[7] Although this was, in theory, a body appointed by the king, the initial 13 members were, in fact, men closely associated with the Virginia enterprise, such as Sir Thomas Smith, rather than Crown representatives. When the second charter was issued in 1609, it allowed for vacant positions to be determined by the shareholders through election, which would characterize the Virginia and Bermuda companies until the dissolution of the former.[8] The nature and composition of these early councils suggests that, following the trend established by Elizabeth I, the Crown wished to delegate most matters of colonial government to private enterprise; in this case to the joint-stock companies that were supposed to benefit from these activities. Until such time as the Crown came to believe that private adventurers were incapable of administering mundane imperial affairs, or were infringing on the rights of subjects—matters that came to a head between 1623 and 1635—it conformed to the preferred weak-state model.

Commissions that could truly be deemed Crown entities with direct interests in Atlantic affairs began to be created in 1615, when the king commissioned several councilors to consider pleas for transportation across the seas. Others were used to place Sir Walter Ralegh on trial and to inquire into the dispute over the Newfoundland fisheries, as discussed in previous chapters.[9] An ultimately much more important commission was created in 1623 to examine the state of the Virginia and Bermuda companies in the aftermath of the collapse of the tobacco contract and other allegations of mismanagement. Once the recommendations of this commission and its immediate successors brought about the dissolution of the Virginia Company, additional bodies were created to help determine the future of Virginia, New England, and the Atlantic enterprise in general. The development of oversight of the Atlantic colonies by committee under the early Stuarts culminated in the appointment of the standing body of privy councilors known as the "Committee for Foreign Plantations," first created in 1634. This committee soon became involved in Atlantic emigration, petitions, and an investigation into Massachusetts Bay. More vitally, the instructions that accompanied the creation of this

body demonstrated a higher degree of Crown interest in Atlantic affairs than hitherto and created precedents for how similar committees were expected to operate after 1670. The development of these various advisory and executive bodies under the early Stuarts reveals that the origins of central oversight of the peripheries by committees answering to the Privy Council—which became the central feature of the Atlantic imperial constitution in the Restoration period and for a century thereafter—unquestionably lies in this period.

THE ROYAL COMMISSIONS FOR VIRGINIA

The dispute between the Warwick and Sandys factions over the tobacco contract, which raged from November 1622 to March 1623 and was discussed in Chapter 4, brought into sharp relief a number of other issues about the Virginia and Bermuda companies and their management of colonial affairs that had already come to the council's attention. In June 1622 John Bargrave submitted a petition to the king with allegations that, during their time as leaders of the Virginia Company, Thomas Smith, Robert Johnson, and others later associated with the Warwick faction had established a subsidiary magazine, whose monopolistic actions had cost Bargrave some £6,600 because he was denied the right to exercise a patent he had allegedly received to carry out free trade and planting without company interference. More seriously, given the king's responsibilities toward his subjects, Bargrave stated that Smith had exercised "tyrannical government" and imposed a set of sanguinary laws, the result of which was that "many poor people in Virginia were deprived of their lives and goods and many were brought into condemnation and slavery." As was typical, the council appointed a commission of four of its own members to hear the suit and gave the defendants the opportunity to respond to the allegations in writing. In January 1623 the commission reported to the council that Bargrave's case was very weak and that Smith had successfully denied all the charges. Bargrave's complaint was ultimately dismissed—with the urging of the king—as little more than an attempt to blemish the reputation of Smith and Johnson, and the petitioner was ordered to "forbear from troubling any farther his Majesty or the Board with this cause." Nonetheless, this entire matter had utilized language that resonated with the Crown and showed that, even if Smith's actions were justified, certain aspects of the company administration might need to be examined more thoroughly.[10]

A far more damning piece of evidence, this time criticizing the government of Sandys and Southampton, was Nathaniel Butler's famous

"Unmasked Face of Our Colony in Virginia." As we saw in Chapter 2, Butler left his gubernatorial post in Bermuda prematurely and traveled to Virginia for the purpose of examining the colony on behalf of his patrons, the cousins Warwick and Nathaniel Rich, whose friendship had already caused him a great deal of consternation with Lord Cavendish and the Bermuda court. It is hardly surprising, then, that Butler's report was a scathing indictment of the state of the colony, and prone to exaggeration. But as his time in Virginia—the winter of 1622—had also coincided closely with restructuring in the aftermath of the massacre of March 1622, of which the council was well aware, there is little doubt that the colony was in serious disarray. Butler alleged that the plantation was seated in marshland, that the few pieces of ordnance were so poorly placed and serviced that a small force arriving in the Chesapeake could raze the entire colony, that the dead were left under hedges unburied, and that there was no temporary lodging for new arrivals, who inexplicably came in the middle of winter, the most unseasonable time of year. The colonists lived in houses that were worse than the "meanest cottages in England," and were so "improvidently and scatteringly . . . seated" that the natives could easily murder every colonist, as indeed they had nearly done in recent months. There was little food available, and that which was brought in was sold at exorbitant prices, while the natives had killed off most of the livestock and the colonists remained enamored of tobacco and had "little thought or looked for anything else." As a result of these imprudent measures, only about two thousand of the more than ten thousand emigrants remained alive, and barely so. Perhaps the most damning criticism involved the exercise of laws; whereas "his majesty's gracious letters patent" dictated that laws were to be "as near as possibly may be" to "the excellent laws and customs of England," Butler found that the colonists either were ignorant of English laws or had chosen to deviate from them in a "wilful and intended" manner.[11]

Although it is unclear when Butler's "Unmasked Face" was presented to the Crown, the company was asked to prepare a response in April 1623. It addressed Butler's report clause by clause, occasionally correcting errors (only 6,000 had emigrated and 2,500 remained alive), but more often offering excuses and blaming the administration of the Smith years rather than refuting the allegations themselves.[12] The problem for the company, of course, was that despite the bias and vitriol evident in the "Unmasked Face," much of what Butler wrote was incontestable. Even positive autoptic reports of Virginia, such as Edward Waterhouse's "Declaration of the State of the Colony and Affairs in Virginia," written toward the end of 1622 and

largely supportive of the present company administration, were easily countered and demonstrated that, whatever the future of the trading companies, the colony itself desperately needed help if it was going to survive, a fact confirmed by a great deal of extant private correspondence.[13]

With the thrust and parry of accusations since the spring of 1622—interspersed with the debacle of the tobacco contract—the Crown needed only a direct complaint against the company in order to be drawn into the fray. This came in April 1623, when Robert Johnson, supported by Nathaniel Rich, who would go on to prepare an extremely detailed case for the Warwick faction, submitted a petition to the king rehearsing the now-familiar arguments about mismanagement and requesting that a commission be appointed to undertake a thorough investigation into the affairs of the company and colony.[14] The council called leaders of both parties into its presence on April 17, 1623, where, amid much heated debate, they were informed of the king's pleasure in creating this commission. It was to include men of

> known sufficiency and sincerity who shall be thereby authorized to examine by oath and otherwise by all lawful means and ways to make inquiry of the true estate of the plantations both of Virginia and the Somer Islands, with all incidents thereunto belonging from the very beginning of those plantations unto this present time, as also what monies have since that time been collected for those plantations, how . . . procured, and expended . . . And to inquire and search into all abuses and grievances concerning the former particulars, and of all wrongs and injuries done to any of the adventurers or planters, and the grounds and causes thereof, and to propound after what sort the same may be better managed. And likewise to inquire, who they be that prey upon the inhabitants and planters, by selling and bartering commodities or victuals at excessive and undue rates.

This wide-ranging commission serves as an index of the seriousness with which the Crown proceeded. This was not merely an issue of mismanagement of a trading company and the disappointment of some of its major shareholders, but rather a royal commission created to investigate the entire activities of this Atlantic enterprise since its inception. Perhaps because Johnson's petition was the cause of this commission's creation, or because the king clearly favored Smith and not Sandys, there is also a bias in this commission toward examining the specific abuses identified by Rich and Butler. The council issued

a strict prohibition against any faction corresponding with the colonies about the investigation. Instead, the companies were to meet and agree to the text of a letter to be sent to each governor instructing the colonists to "live together in concord and unity" until such time as the commission had completed its work. These letters were duly written, revised by the council, and dispatched in the king's name on April 28.[15]

The names of the commissioners were determined on April 18 and their appointment confirmed two weeks later. The commission was to be chaired by Sir William Jones, a justice of the Court of Common Pleas and an active servant of the Crown in the 1620s and 1630s, who was also a member of the Privy Council's standing committee for Ireland, which meant that he had some knowledge of colonial affairs. The other members of the commission were also knights of the realm: Nicholas Fortescue, Henry Bourchier, Henry Spiller, Francis Gofton, Richard Sutton, and William Pitt. Most of these men have since fallen into obscurity; Fortescue was on numerous previous commissions and committees (of Ireland, the navy, and piracy) and was an official in the Exchequer's office.[16] Given the financial issues involved, the other commissioners may also have had ties with the Exchequer. Any four of these men—who thus constituted a quorum—were entitled to "view . . . and consider of all . . . charters, letters patent, proclamations, commissions, and all other acts, orders, and directions made or set down by us or our Privy Council or by the Company or Council for Virginia, warrants, records, books, accounts, entries, and other notes and writing whatsoever . . . as well thereby as by examination of any witness or witnesses . . . [to] inform yourselves whether the said [charters, etcetera] . . . have been observed, performed, and kept." In addition to examining money matters, the commissioners were to consider any "laws, orders, or constitutions" that had been made contrary to the laws of England and determine "what misgovernment, misemployment, abuses, defaults, negligences, corruptions, deceits, frauds, and grievances" had been committed to the hindrance of colonial development and prosperity. Finally, they were to arrive at recommendations "for the better managing, ordering, disposing, and establishing of the said colonies or plantations . . . for reformation and prevention of all misgovernment . . . hereafter."[17]

With orders in hand, the Jones commission immediately set about its task, directing that all the documents listed in the orders be delivered to the clerk of the council, an instruction that required further orders of council before it was followed.[18] Early in the investigation the commission secured the house arrest of Cavendish, Sandys,

and the Ferrar brothers on suspicion of contempt for its authority, an indication of the kind of power such bodies could wield. Each of these men would be released within a few days, which suggests that this was merely a mechanism to quiet the Sandys faction and, once again, shows the favor shown to the Warwick party in this affair.[19] The commission undertook extensive inquiries on both sides of the Atlantic—with a contingent headed by John Harvey involved in the investigation in Virginia itself[20]—and although it would continue its activities for some time, by mid-July 1623 it had made its most important recommendation. This was that the charter for the Virginia Company (though not the Bermuda Company, which remained intact throughout this affair) should be recalled in preference of a new charter that would remove the government of the colony from the hands of the company and place it firmly into those of the Crown. In the revised charter, the company would retain the management of all matters of trade and settlement, but would defer all matters of state to a royal council in England and a royal governor in Virginia.[21]

In pursuing these recommendations, the council asked the attorney general, Thomas Coventry, to determine the procedure necessary to recall the patent and issue another. A few days later Coventry and the solicitor general, Robert Heath, rendered their opinion that the patent could be annulled on the grounds of "the apparent abuses and miscarriage in the plantation and government." They suggested that rather than take a lengthy legal route to recall the patent—by initiating a suit of *quo warranto* in the Court of King's Bench—the Crown should invite the company to voluntarily give up its charter and accept its failure with regard to colonial governance. They also recommended that these plans not proceed until the future of the colony had been determined, so that this could be revealed to the company along with the request for surrender.[22] The council then appointed a commission of its own members to "frame and set down in writing such orders as they conceive to be fittest for the regulating of all things in Virginia, and for the ordering of the government." The privy councilors assigned to this commission were Viscount Grandison and Lords Carew and Chichester. These men had all served in Ireland, sat on the standing committees for Ireland and the army, and had held the post of master of the ordnance. Their appointment suggests that, as opposed to Jones's commission, which was primarily oriented toward issues concerning the Exchequer, the Grandison commission was more attuned to colonial defenses—which were by all accounts in dismal shape—and matters of colonial administration and royal sovereignty.[23]

In October 1623 the company was called before the council, with the three members of the Grandison commission present, and the plans were revealed. The new charter, not unlike the provisions in the first charter of 1606, would see the king's appointment of a royal council of 13 members resident in England, while a subordinate council in Virginia would be appointed by the Crown on advice of the royal council. In nearly every other respect, the old privileges were to continue. The company was given some time to consider whether to surrender its charter. It was also informed that the king was determined to this course of action and would take whatever steps were necessary to recall the charter. Notwithstanding this threat, the company equivocated for a few weeks. A vote was then held to consider the surrender, and more than 85 percent of the shareholders present (the entire Warwick faction being absent) refused to give up their charter or the privileges contained therein.[24] The Crown now had no choice but to seek a prerogative writ of *quo warranto* at King's Bench, which was issued on November 4. This ancient writ was used to revoke English charters and commissions, particularly when subjects tried to usurp liberties and privileges or interfere with the exercise of royal power. It was issued by King's Bench because that court—whose medieval origins of *coram rege* meant that the king was figuratively present at all proceedings—exclusively possessed the power to issue prerogative writs both within England and throughout the empire, in which instance it operated as an extension of the Crown rather than the common law.[25]

The suit was begun at the end of the month, but was postponed twice, finally being heard on April 11, 1624, with Coventry pleading for the Crown. He argued that the company's mismanagement, its breaches of charter privileges, and the responsibility of the king toward his subjects required that the charter be recalled. Considering all of its failures, financial and otherwise, the Virginia Company could offer little of substance in rebuttal.[26] As the judges considered the case, the company brought some of the central issues to Parliament, together with renewed complaints of Bargrave and others, hoping for its intercession against the ongoing royal action. This prompted the king to address a letter to the speaker of the House of Commons to be read to the members. Not wishing to renew "those discords, and contentions, which have been amongst" the company, the king explained that he had taken the business of Virginia and Bermuda into his own care "and will make it our own work to settle the quiet and welfare of those plantations." The house was commanded to let the issue drop, which it promptly did, though not without some grumbles

about the king's autocratic ways.[27] On May 24 the court rendered its decision on the *quo warranto* in the king's favor, and the charter was immediately declared void.

With the issue of the charter now satisfactorily resolved, the council set about implementing the recommendations of the Grandison commission, which was now headed by Henry Montagu, Viscount Mandeville, lord president of the council.[28] Other additions to the membership included the treasurer, both secretaries, the chancellor of the Exchequer, the attorney and solicitor generals, plus some former company partisans, such as Thomas Smith, Robert Johnson, and John Wolstenholme. A quorum was 6 of the 16 members, provided that 2 were privy councilors.[29] The composition of this commission makes it clear that the king took his new role as head of the royal colony seriously. This was a large commission comprising several senior officers of the realm, including the treasurer and president of the council. This meant that this body had enough executive power to ensure that its policies would be implemented quickly, without much discussion in the plenary conciliar sessions.

One of the chief purposes of the Mandeville commission was to help determine the future of the colony, including the form that a new charter should take. They secured the creation of a subcommission of three members of the Sandys faction—possibly an indication that Charles I was more sympathetic to Sandys than was his father—which in April 1625 produced for the Mandeville commission a large document entitled the "Discourse of the Old Company." Perhaps misreading the intentions of the king, in this document Sandys and his supporters offered yet another lengthy list of excuses for their conduct, blaming others for whatever mismanagement had occurred. They recommended that the king recharter the company as it had previously existed, become a principal investor so as to become a leading shareholder in the enterprise, or have the patent confirmed by Parliament, which would reduce the king's ability to proceed by *quo warranto* in the future.[30] None of these three provisions was acceptable to the king, perhaps explaining why, at least in the short term, he abandoned the idea of issuing a new charter, preferring to keep colonial matters—as recommended by Francis Bacon in 1625—directly within the purview of the Crown.[31]

This decision to proceed without a new charter was explained in a royal proclamation of May 13, 1625:

> Now lest the apprehension of former personal differences, which have heretofore happened . . . distract the minds of the planters and adventurers . . .

> we have thought fit to declare . . . to all our loving subjects, and to the whole world, that we hold those territories of Virginia and the Somer Islands, as also that of New England, where our colonies are already planted . . . to be part of our royal empire, descended upon us and undoubtedly belonging and appertaining unto us. And that we hold our self as well bound by our regal office, to protect, maintain, and support the same, . . . as any other part of our dominions. And that our full resolution is, to the end that there may be one uniform course of government, in, and through all our whole monarchy, that the government of the colony of Virginia shall immediately depend upon our self, and not be committed to any company or corporation, to whom it may be proper to trust matters of trade and commerce, but cannot be fit or safe to communicate the ordering of state affairs, be they of never so mean consequence . . . We are resolved . . . to establish a council consisting of a few persons of understanding and quality, to whom we will give trust for the immediate care of the affairs of that colony, and who shall be answerable to us for their proceedings, and in matters of greater moment, shall be subordinate and attendant unto our Privy Council here.[32]

A new charter issued to Virginia would merely lead to further "personal differences," whereas a body answering directly to the Privy Council—such as the Mandeville commission, were it to be turned into a permanent committee—would not be troubled in this way. State affairs were never of such "mean consequence" that they could be determined by trading companies that had little interest in, or knowledge of, the needs of the wider empire, which was instead to be administered through "one uniform course of government" by the Crown.

Although the principal purpose of this proclamation was to explain Virginia's new existence as a Crown colony, it also had significantly wider implications. A mere seven weeks into his reign, Charles took this opportunity to assert "to all our loving subjects, and to the whole world" his prerogative right to rule through his "regal office" over the entire "royal empire." The three colonies named in the proclamation—Virginia, Bermuda, and New England—represented the only permanent settlements in America "already planted," as Newfoundland, despite various experiments, was not yet settled, and the Caribbean grants would not be made until after this proclamation was issued. Thus none of the existing colonies was free from the terms of this proclamation and, by implication, none of the future colonies would be either. Although the Bermuda and New England companies were allowed to continue as chartered entities, it was clear that the

Crown was claiming authority over their important affairs of state and wanted to clear the path of resistance. This is, perhaps, why the king choose after 1625 (though with certain notable exceptions) to issue proprietary charters rather than ones to trading companies. By virtue of their superior tenure—proprietors held their land by "knight service *in capite*" as immediate tenants of the Crown (*ut de corona*) or as palatine lords—the patentees were lieutenants of the king and were expected to answer to conciliar orders promptly.[33] This proclamation was, therefore, a critical document in the development of the Atlantic imperial constitution under the early Stuarts. By virtue of being a proclamation, this was a published document, rather than a letter directed solely to the Virginia colony, that articulated the nature of Crown oversight that had been practiced since at least 1620 and was to continue not only throughout the remainder of the early Stuart period but also during the Interregnum and Restoration.

The Committee for Foreign Plantations

Despite the plans of Charles I to retain executive control over the colonies through the use of a body closely associated with the council, the Mandeville commission ceased to function shortly after the proclamation of 1625 was issued. Its task had been to advise the Crown on the future of Virginia, which means that its mandate effectively ended when Charles issued the proclamation. When, as we have seen in earlier chapters, petitions and matters of emigration came to the attention of the council, these were often handled during regular sittings. So, too, were the conciliar instructions issued to the new royal governors in Virginia, the ongoing correspondence between these two bodies, and petitions regarding the colony, all of which increased dramatically after 1625.[34] But it is also clear that from 1625 onward, the Crown found the business of Virginia, and later New England and some other colonies, to be increasingly burdensome. It was likely the desire for less regular conciliar oversight over the Atlantic plantations that would, over the ensuing decade, lead to the rise of a standing foreign plantations committee.

In 1631, perhaps in an effort to relieve the council of its duties toward Virginia, a commission was created "to advise upon some course for establishing the advancement of the plantation of Virginia." It comprised 23 persons, both state officials, such as the queen's lord chamberlain, Edward Sackville, fourth Earl of Dorset; Secretary of State Sir John Coke; Attorney General Heath; and others with experience in colonial affairs, such as Thomas Roe, John Wolstenholme, and

Nicholas and John Ferrar. The membership of the Dorset commission demonstrates that it was interested both in the future role of the Crown in governing the colony and in the economic state of Virginia and its dependence on tobacco cultivation, a matter that—as we saw in Chapter 4—was of some concern to the king.[35] The commission nonetheless handled a series of other issues confronting Virginia at this time, including an investigation into the dispute involving the former deputy governor, Dr. John Pott, who was maliciously punished and banished by Governor Harvey in 1629 and would subsequently be one of the instigators of the mutiny against the Virginia governor in 1635.[36] In November 1631 the commissioners completed their duties by advising the king, in essence, to implement the recommendations of the 1623 Jones commission, which involved issuing a new company charter, but with the reservation of state affairs to the Crown.[37] This charter was never issued, perhaps because of the king's desire to retain closer control over the colonies and perhaps because many inhabitants in the colony no longer wished to be associated with a trading company.[38]

The next step in the process toward a permanent body was the creation of a commission appointed to examine alleged abuses in New England and Massachusetts Bay. In December 1632 the council received a petition from Christopher Gardiner, Ferdinando Gorges, John Mason, Thomas Morton, and Philip Ratcliffe (the latter two having been severely punished and then banished from Massachusetts Bay and sent back to England) complaining about serious infringements to their personal liberties and to the chartered privileges previously given to the New England Company, of which the Massachusetts Bay Company was an offshoot.[39] The council heard these petitions and a "relation" prepared by Gardiner and "upon long debate of the whole carriage of the plantations of that country," a large commission made up entirely of councilors was created. It was headed by the archbishop of York and contained, among the remaining 11 members, the treasurer, privy seal, chamberlain, earl marshal, and the two principal secretaries, John Coke and Francis Windebank. This was, clearly, a very senior commission whose membership allowed it to issue orders in council without much consultation with the other members of the board. Like the Jones commission of 1623, it was ordered to "examine how the patents for the said plantations have been granted," to call any witnesses or parties necessary to inform themselves of the state of New England, and to arrive at recommendations in order to arrive at a decision on the petition.[40]

This commission, however, ran into a problem early on, essentially halting its activities within a month. Because, unusually, the Massachusetts Bay Company did not reside in England—the charter and its patentees having traveled to America—it was nearly impossible to call respondents to answer to the petition. Some interviews were held with the petitioners and a few respondents, but the commission reported to the council that a thorough investigation was going to take "a long expense of time." From what little it managed to learn about the colony, the commission believed that there were "hopes so great that the country would prove both beneficial to this kingdom, and profitable to the particular adventurers." Notwithstanding allegations of abuse, the commission suggested that any attempt to vacate the charter at this juncture would hinder the development of a promising enterprise. It therefore cautiously advised maintaining the status quo until further information could be obtained.[41] It is evident, however, that the complaints about Massachusetts Bay were not cast aside. One year later, in December 1633, this commission, which like all commissions had been established as a temporary body, was reappointed as a permanent "Committee for New England." This committee, which like all conciliar committees was enrolled into the council register, has the distinction of being the first standing conciliar body created specifically for transatlantic affairs. At its head was William Laud, archbishop of Canterbury and by now the king's senior advisor, in place of the archbishop of York, who had chaired the New England commission.[42]

Laud's position on this committee might explain why, on April 28, 1634, it was replaced by the broader "Committee for Foreign Plantations," whose initial membership was nearly identical to the New England committee. It included Laud as chair and 12 other privy councilors, including the archbishop of York, lord keeper, treasurer, privy seal, earl marshal, and both secretaries of state. A quorum was five members and the committee was to meet on Wednesday mornings.[43] There are several reasons why this committee and its immediate predecessor were created at this time. In the first place, the council had been receiving an increasing number of petitions from the plantations, including ones for emigration, freedom from impressment, the shipping of prohibited goods, and other matters discussed in previous chapters. This made the handling of Atlantic affairs increasingly onerous for the council in plenary, which like many other issues of importance to the council could be delegated to a subordinate body of its own members. Second, the council had also recently become aware (in February 1634) of the concerns over religious malcontents traveling across the Atlantic without having taken the oath of allegiance, as

discussed in Chapter 3. This was a matter of concern not merely in New England and Massachusetts Bay but in Maryland, Providence Island, and other colonies as well. A committee with a broader mandate to control all foreign plantations, rather than one for only New England, was therefore necessary. With mounting colonial business coming before the council, the creation of a standing committee in 1634 finally realized the king's goals—articulated in the proclamation of 1625—to "establish a council consisting of a few persons of understanding and quality, to whom we will give trust for the immediate care of the affairs" of the Atlantic enterprise.

The instructions that accompanied the creation of this committee conferred a considerably more exhaustive set of powers than any previous plantation commission had held. The king had "constituted" this committee "to provide a remedy for the tranquility and quietness of those people" who had planted colonies "of the English nation." The committee was to have power "for the government and safeguard of the said colonies," including the authority to "make laws, constitutions, and ordinances pertaining either to the public state of those colonies or to the private profit of them," to "revoke and abrogate" laws passed in the colonies, and to punish violators by imposing penalties. It was to watch over how the colonies acted "against and towards foreign princes and their people, or how they shall bear themselves toward us and our subjects." The committee held the power to "remove and dispose the governors or rulers of those colonies for cause which to you shall seem lawful and others in their stead to constitute," and to "require an accompt [account] of their rule and government." They were to appoint judges and magistrates, establish courts both civil and ecclesiastical, and determine church policy. They could "hear and determine . . . all manner of complaints either against these colonies or their rulers or government," and had broad authority to compel the attendance of witnesses in order to resolve disputes. They were to take special caution against anyone found to be provoking rebellion or withdrawing allegiance and were authorized to examine all charters, patents, orders, and actions to ensure that no "privileges, liberties, or prerogatives hurtful to us or our Crown or to foreign princes have been prejudicially suffered or granted." Finally, the decision of five or more members of the committee was deemed to be equivalent to "royal assent," which meant that this committee could formulate policy and implement it without reference to the entire council.[44]

The powers bestowed on this committee were a great deal more expansive than any other plantation commission or committee had

been awarded, a fact that—in light of the preferred weak-state model of government and the generally unobtrusive methods of Crown oversight used to date—requires some consideration. There can be no doubt that this document was intended to state the authority of the center to exercise its *imperium* over the periphery when it needed to do so. Like the proclamation of 1625, this document communicated the Crown's belief that it had absolute and indivisible sovereign and prerogative rights with regard to its entire empire, including the colonial peripheries founded by English subjects. When any situation arose that infringed on the sovereignty of the Crown or the liberties of subjects, the committee was authorized to do whatever was necessary to ensure that no such "prejudice" existed. Furthermore, the king was in his period of personal rule, which meant putting a stop to all forms of dissent and repugnant governmental practices as quickly and decisively as possible, something that, in theory, this committee was empowered to do without recourse to other bodies. At the same time, however, it is evident that the vast majority of the powers granted to the commission were never exercised. In its seven years of existence, the committee did not remove a governor, establish a court, or abrogate colonial laws, though we shall see that it did make a serious effort to revoke a charter. The general unwillingness of the committee to exercise the fullest range of its powers has prompted historians to declare that the committee, though a body rife with royal authority, was both "impotent" and "inconspicuous," and had a "phantom existence."[45]

This assessment, however, fails to appreciate the work undertaken by the Laud committee, and by subcommittees comprising a smaller number of its members. From the time of its creation in 1634 until its dissolution in 1641, the majority of Atlantic issues that came to the attention of the king or the Privy Council were passed to this committee for review, recommendation, and sometimes final decision. In July 1634, for example, the committee received a petition from William Button, who requested that a letter be sent to Governor Harvey instructing that land tenures granted before the cancellation of the charter remain in force. On advice from the committee, the council quickly issued the order, also granting Button a large parcel of land for his services to the plantation.[46] Several other petitions were heard and determined by the committee in ensuing years. These included one from the Earl of Carlisle involving a civil matter that the king moved from the jurisdiction of King's Bench to the committee; one from Ferdinando Gorges and John Mason over a financial dispute; one involving the criminal conviction of Anthony Panton;

and another from John Woodall—the latter two petitions having been discussed in Chapter 5.[47] Another petition, submitted directly to the "Lords Commissioners for the Plantations in America" by the planters of New England, requested relief from the encroachment of French and Dutch settlers.[48]

In 1635 the committee considered a request from Captain Roger North for another Amazon patent, and granted the petition "upon condition that he and the company submit to ecclesiastical and civil government," that is, the oversight of the committee acting in the name of the king.[49] In the same year, the committee heard the case involving John Harvey's ousting as governor before the issue was referred to the council in plenary.[50] Shortly thereafter it became involved in a series of petitions associated with Harvey's revenge against his enemies, which involved the sequestration of their property in Virginia. After this matter was brought to the attention of the council in plenary, it ordered that the goods be restored until such time as the charges were heard, although the committee continued to hear petitions from Harvey and his enemies about these issues.[51] The king also instructed the committee, in 1637, to determine once and for all the Claiborne–Baltimore dispute and ensure that no charters were issued that infringed on Baltimore's rights or privileges.[52] At this same time, the committee was examining petitions associated with Atlantic emigration and issuing individual licenses as required by the proclamation of 1638.[53] Finally, by 1640 it had become involved in matters of trade, hearing a petition from Virginia—which involved further engagement with Maryland—over the growth and sale of tobacco.[54]

This activity was, as we have seen in previous chapters, consistent with the type of Crown involvement that had been ongoing since at least 1620. Though generally nonintrusive in the routine affairs of the colonies, neither was it "inconspicuous" nor was the committee "impotent" and its existence a mere "phantom." Rather, the committee deliberated on many issues, called witnesses and heard testimony and expert opinion, and rendered decisions that were put into effect by the council and colonial governors. This is precisely the type of action that would have been taken by the council in plenary, before the committee was created, to handle such matters as foreign affairs, emigration, the economy, and petitions. Moreover, the committee was truly "Atlantic" in its operation; whether through petition, emigration, or trade policies, every English Atlantic colony was, at some time or another, impacted by the decisions of the Committee for Foreign Plantations.

It is also clear, however, that the committee did not exercise its powers as completely as its orders permitted. This was likely because, despite the strong central and imperial language of the orders, there was no real intention to provide such a powerful degree of Crown oversight for the majority of colonial affairs. These orders were more about ensuring that the committee had the authority to act decisively in the face of serious breaches of royal *imperium* rather than how it planned to administer the overseas empire on a routine basis. Executing the orders more rigorously than necessary would have been a significant shift from the weak-state model, even under an "absolutist" like Charles I. Nor would it have reflected the Atlantic imperial constitution that was described in the colonial charters and had been developing before 1634, which was generally unobtrusive unless matters of sovereignty, prerogative, the rights of subjects, and the needs of the state were involved. When the committee was recommissioned in 1636, although the majority of the powers remained the same, including the ability to review and revoke repugnant laws, it was to govern "all persons, within colonies and plantations beyond the seas, according to the laws and constitutions there."[55] This revised clause recognized, as the earlier instructions had not, that the colonies were allowed to diverge from English laws and customs based on local circumstances, though it still expected that these did not derogate from the liberties of the subject.

Taken as a whole, it seems probable that the aggressive orders in the commission of 1634 were in direct reaction to the challenges to royal authority presently coming from Massachusetts Bay. These issues had been ongoing since 1632, and it is possible that the 1633 Committee for New England drafted the orders for the Committee for Foreign Plantations with full knowledge that these wide powers would be required specifically—and, initially, exclusively—to address the earlier allegations of abuse in Massachusetts Bay. Indeed, the efforts of the committee to investigate the Massachusetts Bay colony and then seek to vacate its charter represents the one occasion when the committee truly exercised the broad powers granted in its commission.

A copy of the orders to the committee was sent to Massachusetts Bay and arrived in September 1634. It so alarmed the colonists that John Endicott cut St. George's Cross from the ensign planted at Salem, an act that, though condemned by many in the colony as rebellious to the king, was nonetheless recognized as one committed "out of tenderness of conscience." Shortly thereafter, Thomas Morton, one of the 1632 petitioners—who had been placed in the stocks and been forced to witness his house being burned to the ground before being

expelled from the colony—sent a letter to a friend in Massachusetts proclaiming that the committee's principal purpose was to bring that colony to heel.[56] Anticipating the arrival of a royal army, defenses were strengthened, militia bands formed and drilled, and the colonists were commanded to swear allegiance to the colony over the king.[57] In April 1635 the New England Company voluntarily surrendered its charter to the Crown so that the committee would not have to contend with the Council of New England as it worked to bring the Massachusetts Bay colony to heel.[58] This was an act of comparatively little consequence for the New England Company, because most of the land granted therein had already been redistributed and subsequent grants would create the various colonies that would comprise several parts of that region: Connecticut, New Hampshire, and Rhode Island.[59]

The following month, the committee recommended recalling the charter and, finding that the document was not in England, proceeded against the company by obtaining a writ of *quo warranto* from the Court of King's Bench. Gorges was assigned the task of serving the writ upon the company, an act that would normally have involved taking a carriage across London but that in this case required a voyage across the Atlantic Ocean. Ultimately the writ was not served, which put into question the legitimacy of the ensuing proceedings. Morton, a skilled lawyer, was assigned to prosecute the suit at King's Bench, a task he was certainly eager to undertake. This was a clear indication that the 1632 petition of Gorges, Morton, and the others had resonated strongly with the council; if their cause had initially been largely ignored, it was now supported at the highest levels of government. Owing to the number of original patentees and the presence of only a small number of them in England, the case was heard through several law terms from October 1635 to May 1637. Most of the patentees failed to appear, of course, and were outlawed by the court. The final judgment ordered that "the liberties and franchises of such corporations should be seized into the king's hands."[60] The Massachusetts Bay Company was thus dissolved, in the same manner as the Virginia Company had come to an end a dozen years earlier. On the same day that the judgment was issued, the council ordered the attorney general to seize the physical charter and present it to either the council or the committee. This was no simple task, as the charter resided thousands of miles away, and there remained some question—more so by the Massachusetts Bay colony than the Crown—about whether the judgment could be put into effect until such time as the charter was recovered.[61]

Assuming that the charter was vacated regardless of the inability of the government to secure it, the king prepared a document "manifesting our royal pleasure for the establishing of a general government in our territory of New England." This manifesto read much like the proclamation of 1625: Having "understood and been credibly informed of the many inconveniences and mischiefs that have grown and are like more and more to arise amongst our subjects, already planted in the parts of New England by reason of the several opinions, differing humors, and many other differences . . . we take the whole managing thereof into our own hands and apply thereunto our immediate power and authority." The directive awarded Ferdinando Gorges the position of royal governor-general for all of New England, who had the sole privilege of determining future emigrants.[62] The problem was that the Massachusetts Bay government and its settlers were not so easily displaced, and enforcing this manifesto would have required a great deal more coercive ability than the king—presently under significant financial strain and experiencing war and constitutional crises at home—could provide. The responsibility for ensuring conformity to these instructions fell to Gorges, though his advanced age (he was 72 in 1637), pecuniary problems, the recent death of his chief ally, John Mason, and the loss of his ship, all meant that this would be an impossible task. In 1641 Gorges petitioned the committee to allow his nephew, Luttrell, to assume his role in America, but the whole issue would soon become moot with the onset of civil war.[63]

Conclusion: Restoration Committees

The early Stuart period thus saw the creation of various commissions and committees to oversee Atlantic affairs. Like their sixteenth-century antecedents, these entities were originally intended to be temporary bodies that considered specific issues that came to the attention of the overburdened Privy Council. These included commissions to consider the emigration of criminals, the actions of Ralegh in the Amazon, and disputes between Atlantic agents. The first major commission that marked the beginning of a new development was that leading ultimately to the dissolution of the Virginia Company. After this dissolution and the king's proclamation of 1625, in which he made clear his plans to more closely oversee the entire empire, these bodies evolved to become permanent committees with the powers of the Crown at their disposal. Despite the substantial powers granted to them, however, especially to the Committee for Foreign Plantations, these commissions and committees undertook their tasks in a manner

that reflected the Atlantic imperial constitution that had developed over the previous two decades. Even as trading companies began to disappear in preference of proprietorships, mundane colonial affairs were still to be handled, primarily, by local authorities and courts, who were more familiar with the situations at hand and could relieve the Crown of the burden of proactive imperial government.

Royal commissions and committees became increasingly concerned with alleged deviations from English laws and culture, abrogations of the king's sovereignty, and derogations of the Crown's rights and responsibilities toward subjects of the realm, whose protection was guaranteed by the ties of reciprocal sovereignty. The king and his council could not sit idly by while the Virginia colonists lived and died in squalor, under sanguinary laws, and in constant fear of native attack because of disorganization and nonexistent defenses, especially when they gained knowledge that company administrators could do nothing because of petty quarrelling and looming bankruptcy. It could not allow "democratical" forms of government to determine the property of subjects—the fundamental right to protection of property being among the most important of the Crown's responsibilities toward its subjects—particularly when that system was being abused by factions for their personal benefit. Nor could the Crown watch disinterestedly while Massachusetts Bay destroyed the property and liberties of its inhabitants, exiled subjects from their homes without due process, withdrew allegiance from the king, and established repugnant forms of government and laws that deviated from English traditions. The incremental powers awarded to the various bodies created by the king between 1623 and 1636 reflected the increasing desire to be involved in colonial matters that directly prejudiced the king's *imperium* and his relationship with his subjects.

Perhaps most importantly, these commissions and committees also provided precedents for how similar bodies should operate in the future. Indeed, the best way to evaluate the historical value of the various commissions and committees created under the early Stuarts to investigate and oversee Atlantic affairs is to examine, briefly, the instructions issued to similar bodies thereafter. Laud's committee dissolved when its leader was imprisoned in 1641 and the king was soon forced to engage in warfare against parliamentary radicals. During the war, concerns about the Atlantic colonies were handled by Parliament, and specifically by a commission appointed on November 24, 1643, to control plantation affairs. Its membership included a number of men formerly associated with Atlantic activities, especially its leader, the Earl of Warwick, and some well-known radical

members of Parliament, such as Oliver Cromwell and John Pym. The Warwick commission had "power and authority to provide for, order, and dispose all things which they shall from time to time find most fit and advantageous to the well governing, securing, and strengthening, and preserving" of "all those islands and other plantations inhabited, planted, or belonging to any of his majesty's the king of England's subjects." They could compel the attendance of any inhabitants of the plantations presently in England, examine all colonial records and books, and appoint and remove governors and officers.[64] Although the powers granted to this commission were less extensive than those granted to the Laud committee in 1634, they were still comprehensive and reflected those of its predecessor. When the war ended, a new "Special Committee for Plantations" was created by the Interregnum Council of State, thereby returning this work to the executive branch of government. This committee heard and determined petitions from all the Atlantic colonies, authorized the transportation of emigrants and felons across the ocean, and regulated various aspects of the tobacco trade, including renewing the prohibition against growing tobacco in England.[65] In short, the committee undertook precisely the types of tasks that would have fallen under the jurisdiction of its 1634 predecessor and, before that, the council in plenary.

After the Restoration in 1660, petitions began to flood into the council from the Atlantic colonies, which demanded that a plantation committee be appointed a mere six weeks after the king landed at Dover. This committee was to meet twice per week—"every Monday and Thursday at three of the clock in the afternoon"—and was authorized "to receive, hear, examine, and deliberate upon any petitions, propositions, memorials, or other addresses which shall be presented or brought in by any person or persons concerning the plantations, as well in the continent as islands [i.e., the Caribbean] of America, and from time to time make their report to this board of their proceedings."[66] Within six months this body had already handled a great deal of business and was recommissioned as the Council for Foreign Plantations, to include a large membership of 48. Among the councilors were Edward Hyde, lord chancellor; the Earl of Southampton, lord treasurer; the Earl of Manchester, lord chamberlain; and half a dozen others. The remainder of the council comprised men who—like some of the members of the early Stuart commissions—had vast experience in matters of colonial affairs. By virtue of being a "council" rather than a "committee," this body technically had a separate existence from the Privy Council, although a number of councilors were

members, and the plantation council was still expected to report its activities to the Crown.

The instructions issued to the Council for Foreign Plantations bear considerable resemblance to those issued to the Laud committee of 1634. The council could demand from colonial governors "an exact accompt of the state of their affairs, of the nature and constitution of their laws and government and in what model and frame they move and are disposed." It was to ensure that there was "a more certain civil and uniform [way] of government . . . for the better ordering and distributing of public justice." It could "advise, order, settle, and dispose of all matters relating to the good government, improvement, and management of our foreign plantations," and to do so by calling into their presence whomever they felt could provide information that would lead to the betterment of the colonies and their government. It was also ordered to ensure that emigrants moved across the Atlantic only with the authority of the plantations council, and that instructions regarding the establishing of church policy be formulated.[67] In order to execute its vast commission, the plantations council divided itself into various subcommittees, who reported to the plenary body, which in turn reported to the Privy Council.[68] This plantations council remained active from 1660 to 1665, after which its activities were reabsorbed back into the Privy Council for another five years.

In 1670 another Council for Foreign Plantations was created, accompanied by yet another set of instructions. These gave all the powers awarded in 1660, but added others that gave it greater authority. First, the council was authorized to examine all charters and grants and determine whether any clauses "have been neglected, and ourself prejudiced." Second, it was "not to permit any of our loving subjects to be oppressed by any of the governors of our said colonies contrary to the laws that are in force, . . . so you are as carefully to examine, send for and require a copy of all such laws, and have been at any time made, and do stand yet unrepealed within any of our said plantations, that if any of the said laws be found inconvenient or contrary to the laws of this land, or to the honor and justice of our government, all such laws may be immediately nullified."[69] With the addition of these two key clauses in the instructions of 1670, the Council for Foreign Plantations had nearly the exact same powers that were conferred on its 1634 counterpart, even though, as we have seen, the majority of those powers were not exercised by the earlier body. These instructions would be largely repeated when the Council for Trade and the Council for Foreign Plantations were merged in 1672, which then provided the language of the instructions for the enduring Committee

of Trade and Foreign Plantations when it was commissioned in 1675, and with a somewhat modified structure in 1696.

Although historians tend to see the creation of these various Restoration committees and councils of plantations as a major shift in the method of central control over the peripheries—as the "end of American independence"[70]—in fact there was little that was new in the instructions given to or work undertaken by these later entities. To be sure, the plantation councils, especially after 1675, were considerably more active in imperial administration than had been the case under the early Stuarts, and they sought to bring greater uniformity to the empire.[71] The main reason for this expansion of oversight, however, lies not in the creation of innovative committees with wider mandates than earlier bodies, nor in new ideologies of mercantilism or imperialism, but rather in the significantly larger number of colonies and subjects that comprised the English Atlantic world. Under Cromwell and his "Western Design," Jamaica was conquered from the Spanish and had become an English possession.[72] During the Restoration, Charles II issued proprietary charters for the settlement of Carolina, Delaware, New Jersey, New York, and Pennsylvania. In 1663 Barbados passed from proprietary to royal control. Finally, in 1684 both Bermuda and Massachusetts Bay (in a second revocation of its charter) became royal colonies.[73] Not unlike the vacating of the Virginia and Massachusetts Bay charters under Charles I, and the concerns noted in the instructions to the plantations committee of 1634, the later activities were designed to eliminate chartered groups (including many in England itself) whose privileges interfered with the exercise of royal power.[74]

This massive expansion of the Atlantic enterprise under the later Stuarts demanded more organization and oversight than was needed under earlier monarchs. This demand was met by capable imperial administrators such as William Blathwayt, who headed the plantation council from 1675 to 1696.[75] Among other tasks, such as finally bringing Massachusetts Bay under royal jurisdiction, Blathwayt saw to the amassing, between approximately 1675 and 1685, of 48 manuscript and printed maps of the English overseas empire, a collection known to historians as the *Blathwayt Atlas*.[76] With a much larger empire in its portfolio, the Blathwayt committee used this atlas, among many other tools at their disposal, such as the Navigation Acts, to bring conformity to the administration of a considerably larger territorial and demographic empire than had existed under the early Stuarts. This more systematic oversight inaugurated a shift, also seen in domestic England, from the weak-state to the strong-state model

of government in which the peripheries were more strictly controlled from the center. This shift was brought on partly by the expansion of empire and its potential to improve the nation, but more immediately by the development of the fiscal–military state as a result of various belligerent conflicts in the late seventeenth century.[77] For reasons of state, therefore, it was necessary for the government to exert its authority in matters of foreign affairs, economy, the movement of people and goods, and the extent to which the colonies could be constitutionally allowed to administer their own affairs. These were all matters that—though in more incipient form—confronted the central government under James I and Charles I.

Conclusion

We have seen throughout this book that many English Atlantic issues came to the attention of the early Stuart Crown—the king, Privy Council, and associated bodies—which was required to determine policies, procedures, petitions, and proclamations in order to protect the full range of its sovereignty, the liberties of the subjects who were entitled to its protection, and the present needs of the state. This was not a straightforward process; the newness of many of these activities, despite learning much in Ireland over the previous several generations, required that the Crown learn from a period of trial and error.[1] Some of its actions with regard to the Atlantic were impetuous and contradictory and appear to the modern eye—especially through the lens of subsequent imperial oversight—to indicate either an unwillingness or an incapacity to provide central oversight over the colonial peripheries. As demonstrated in various chapters, the Crown vacillated back and forth as it determined how best to administer an empire across the seas, while also seeking to sustain, in contrast to the royal colonial empires of France and Spain, the preferred weak-state model of government, which permitted colonial autonomy in situations of little interest to the central authorities.[2] The Crown sometimes found it necessary to retract and revise charter privileges when it realized that they were inconsistent with the needs of the state, which changed according to various circumstances, or derogated from the king's sovereignty in ways that could not have been foreseen when the charters were first issued.

The Crown also needed to learn how to promote and balance colonial and state affairs. Under the early Stuarts, the English state was suffering agricultural, demographic, economic, social, and military strife, which encouraged the Crown to become involved in emigration as well as regulation of the movement of food, weaponry, mercantile commodities, and their raw materials. Owing to its increasing importance on the imperial stage, the English state was also in the process of becoming more global and diplomatic, thus demanding the Crown's intervention when foreign affairs were involved. There

were also serious ongoing national constitutional and religious issues in which loyalty to the Crown and the national church became a matter of great concern and provided the impetus for the development of numerous proclamations and, ultimately, a permanent plantations committee. Finally, the Crown had to determine how to incorporate the Atlantic enterprise into the English commonwealth at a time when state formation and empire building were merging into a shared ideology. In aid of this development, after the dissolution of the Virginia Company, Charles I made a stronger commitment to administering the English Atlantic empire than had his father. This effort was exemplified not only in the important proclamation of 1625 but also in the increase in active overseas governance following its issue, such as in the hearing of petitions and the regulation of emigration. Around the same time, however, the Crown turned predominantly to proprietary charters, hoping that these would allow for the weak-state model while offering better political mechanisms than the "popular" methods used by trading companies. This system, initiated under the early Stuarts, continued into the Restoration and characterized many of the Atlantic colonies planted after 1660.

With all these issues in play, the complexities of which the English state had never needed to confront before, the early Stuart Crown nonetheless managed to construct a definable, enduring, and bifurcated Atlantic imperial constitution. On the one hand, this constitution reflected the sovereign rights and responsibilities of the Crown toward the protection of itself, its subjects, and the present needs of the state. Its involvement in foreign affairs, nonvoluntary emigration, concerns about allegiance, overseeing extracolonial disputes, protecting the national economy and royal revenue through new regulatory policies, and concerning itself with various abuses charged against the Virginia and Massachusetts Bay companies offer the best examples of this protection. The instructions issued to the plantations committee in 1634, though not generally put into use, clearly demonstrate the concern of the king that his sovereignty and the rights of the subjects who lived under his protection not be "prejudiced" by peripheral deviation or chartered privileges that could be interpreted as allowing independence from Crown oversight. The two charter revocations that occurred in this period (even if one of them was not legally secured) were in aid of restoring both the Crown's *imperium* and the rights of subjects from abuses that occurred as a result of excessive deviation from English traditions. These included the exercise of popular government, misprision of justice, and infringements of the fundamental

rights of subjects, including their life, liberty, locomotion, property, and redress of grievances, all matters that the Crown took seriously.

On the other hand, the Crown respected—as much as was possible consistent with protecting its *imperium*, the rights of its subjects, and the needs of the state—the privileges granted to the colonial bodies that allowed Atlantic entities to handle their internal affairs in a manner that reflected local concerns and cultures. In their first years of existence, most of the colonies had already developed sufficient legal and administrative mechanisms to govern themselves. As authorized in their charters, the colonies developed courts, councils, and assemblies that reflected, though did not necessarily mirror, English models. The presence of these active bodies meant that the Crown's interventions did not have to be overbearing, which is one of the reasons why the Crown's actions were often reactive rather than proactive. Until such time as the colonies or their legal and administrative bodies demonstrated themselves to be unable or unwilling to deal with certain situations that arose in the Atlantic theater, which usually came to the Crown's attention through the process of petitions and subsequent investigations, the king-in-council was happy to conform to the preferred constitutional model that enabled—though, for reasons of sovereignty and subjecthood, did not guarantee—wide colonial autonomy. The common perception that the Crown's actions were negligent and fitful because they were usually reactive rather than proactive fails to recognize the bifurcated nature of the Atlantic imperial constitution.

One way to assess this model of the early Stuart Atlantic imperial constitution is to consider the reaction of the peripheries to its application. Here, there is little evidence to suggest that the peripheries in the early colonial period resented the nature and degree of central oversight that was exercised over the English Atlantic world. Although certain bodies did not welcome the thought of the Crown interfering in their affairs—the Massachusetts Bay Company providing by far the most extreme example of this recalcitrance—there are otherwise few indications that they found these interventions to be contrary to their chartered privileges or beyond the sovereign authority of the Crown. Few in the sparsely populated regions of the English Atlantic, or Atlantic agents residing in England, questioned the ultimate authority of the Crown to oversee its empire. After all, the king's imprimatur was present both on the charters that brought the colonies into existence and frequently in the names of the colonies or their various settlements. In the absence of the supracolonial, federated government structure that would later characterize the United States, the

Crown was still the locus of authority in the English Atlantic world. Particularly in the areas of dispute resolution, extracolonial matters, and the restoration of infringed liberties, colonial subjects generally understood and frequently accessed the ties of reciprocal sovereignty that bound the king and colonists together.

Certainly many of the Crown's decisions with regard to the Atlantic were unpopular. The resolution of the Ralegh affair, the Baltimore–Claiborne dispute, and the stricter requirements about emigration, the oath of allegiance, the regulation of tobacco, and the creation of a permanent plantations committee all gave Atlantic agents cause for consternation and complaint, and sometimes led to breaches of proclamations and other executive orders as a form of protest. Despite some grumblings, however, these interventions were begrudgingly accepted as being within the Crown's purview. Even events such as the thrusting out of John Harvey in Virginia and the removal of the St. George's Cross from the ensign in Massachusetts, which signaled dissatisfaction with the Crown's occasional heavy-handedness—though Harvey's enemies would claim they were protecting the king's interests and Endicott's act was criticized by the Massachusetts government out of fear that it would be deemed rebellious to the king—were consistent with the forms of protest exercised in domestic England under the Tudors and early Stuarts and did not represent serious challenges to the Crown's authority, nor demands for independence.[3] Although the center and periphery theory upholds the belief that geographical and ideological distance weakened the relationship between Crown and colony, the degree of attenuation was less than has been believed.

It is true, of course, that the early Stuart Crown's involvement paled in comparison both to its oversight of the English domestic peripheries and to future imperial oversight, which is how these efforts are usually (and negatively) viewed. But this analogy is flawed. The proper question is whether the Crown's actions were consistent with contemporary notions of sovereignty and prerogative, with the way it had historically governed its empire closer to home, with the preferred method of center and periphery relations exercised in domestic England, and with the present needs of the state—economically, politically, and internationally? To each of these issues, with a few exceptions as the Crown's learning curve improved, the answer is in the affirmative. When called to action as the result of petitions or other mechanisms that brought issues to its attention, the Crown proved both willing and able to do its job. It heard causes—even quite mundane ones—with efficiency and thoroughness; encouraged parties in disputes to resolve their differences amicably and oversaw

that process; referred serious issues to experts and acted upon their recommendations; issued instructions to colonial governors and bodies that were expected to be followed, or at least taken under serious consideration; saw matters through to their logical conclusion, which sometimes took years and expended many hours of the Crown's time; and sought the promotion of colonial prosperity even when certain Atlantic agents were hesitant to do so. There are no obvious instances when the Crown, once an issue was brought to its attention, failed to act in a manner that was consistent with the bifurcated Atlantic imperial constitution.

If these efforts seem limited in comparison to domestic and future imperial oversight, we must take into account the population of the English Atlantic as compared to that of England at this time. In 1630, not even one in five hundred English subjects resided in the Atlantic colonies. Ten years later, as the result of the Great Migration, that figure had risen to about one in one hundred. By the end of the century, when historians have observed a significant increase in the degree of Crown oversight, roughly one in twenty English subjects lived across the Atlantic Ocean. Faced with this demographic information, coupled with the increasing economic and political value of these colonies, should we expect early Stuart Atlantic oversight to have occupied a significantly disproportionate amount of the Crown's valuable time? Yet, per capita, the interventions of the central government in the affairs of the Atlantic peripheries under the early Stuarts likely exceeded those in domestic England. When one considers how often some thousands of people accessed or were directly impacted by the Crown in an Atlantic context—through charters, proclamations, petitions, instructions, letters, licenses, monopolies, and other royal instruments—versus how rarely several million accessed it domestically, the involvement of the central government in these activities becomes accentuated rather than attenuated. This accentuation was partly because many of the Crown's actions with regard to the English Atlantic involved matters that, at home, would have been dealt with in a myriad of common law courts and by local officeholders and would only have come to the attention of the Crown as a final appeal mechanism. In the Atlantic colonies, however, the common law courts, Parliament, and many domestic officers of state had no jurisdiction, which demanded the Crown's involvement much earlier in the process. The corollary to this argument is that despite physical and ideological distance, the relationship between center and periphery in the English Atlantic world was, paradoxically, stronger than it was in domestic England.

Certainly many of these interventions demanded negotiation between Crown and colony and, despite the theoretical power of the Crown to compel conformity to its commands, could not easily be enforced if the Atlantic agents proved unwilling. But as historians have informed us, this was little different than the center and periphery relationship between the Crown and the various counties in England and the Crown and its colonies, until the former became uncharacteristically—and, to the colonists, unconstitutionally—coercive in the 1760s.[4] A constitutional model that relied on negotiation rather than coercion was, in fact, quite advantageous in the preferred weak-state model of government. Because of the process of negotiation, the colonial peripheries often perceived that they had the ability to govern their own development while viewing the Crown as a benevolent body that had the interests of the Atlantic enterprise at heart.[5] A Crown that, to use a modern construct, encouraged, advised, and warned was far more desirable than one that coerced, commanded, and controlled. In aid of protecting itself, its subjects, and the state, the Crown did occasionally find it necessary to exercise its authority in ways that did not involve negotiation between center and periphery, such as when restrictions were placed on emigration. But it clearly preferred to coordinate the Atlantic enterprise through negotiation and mutual agreement, as evidenced by the frequency with which the Crown encouraged Atlantic agents to resolve their own disputes before rendering a decision. Negotiation, then, was a strength, rather than a weakness, of the Atlantic imperial constitution.

Most importantly, perhaps, to modern scholars, the fundamental framework of the Atlantic imperial constitution that emerged by 1642 created clear precedents in terms of foreign affairs, emigration, economy, the hearing of petitions and appeals, the review of laws for repugnancy (which were provided for in 1634, even if they were not utilized), and the development of administration by committees answering to the Privy Council. Even if these aspects of Crown oversight sometimes remained inchoate under the early Stuarts, they were all developed at this time and became central characteristics of imperial relations in the Interregnum and Restoration periods. When subsequent imperial oversight became more active and systematic, this was less the outcome of significant innovation from the early Stuart period, or the awakening of imperial and mercantilist sensibilities, than the result of changes that forced the evolution of existing practices. When the Restoration Crown did become involved in what have been considered to be signal events leading to the loss of independence, such as finally bringing Massachusetts Bay to heel, creating the Dominion

of New England, placing the proprietaries under closer Crown control, legislating enduring economic policies through the navigation acts, and—beginning in the New York charter of 1664—reserving the right of appeal and review of laws to the Crown, these were merely magnified reflections of early Stuart practices adapted to new fiscal, demographic, and "cosmopolitan" circumstances.[6] Through example and experiment, the lessons learned and precedents established during the phase of early Stuart Atlantic oversight enabled the success of Restoration bodies to provide greater degrees of oversight.

Thus there is a significant degree of continuity in the Atlantic imperial constitution from at least 1613, when the historical record allows reasonably thorough analysis, until at least the end of the Stuart age in 1714. Active Crown oversight of the overseas empire did not begin *ex nihilo* in the Interregnum, nor was there a defining "end of American independence" in the Restoration age. Instead, as the various Crown interventions discussed throughout this book demonstrate, there were limits placed on colonial autonomy from the outset of Atlantic activities, first as articulated theoretically in the colonial charters, and then as put into operation in the practical functioning of the Atlantic imperial constitution. At no time did the Crown relinquish its authority to colonial bodies, or even communicate through charters or otherwise the notion that the colonies had complete autonomy. This means that there could not have been a loss of independence thereafter, as one could not lose what one did not have in the first place. The "old liberties and privileges" that the colonies experienced in the early Stuart period were the twin tenets of the bifurcated Atlantic imperial constitution: broad local autonomy that permitted the colonies to develop and govern themselves according to unique frontier requirements, but subject to the oversight of the king-in-council, which confined itself to matters of direct interest to the central government, principally involving sovereignty, allegiance, the liberties of subjects, extracolonial affairs that were beyond the purview of a single colony, and the broader needs of the state. This was the constitutional model—headed by the Crown, though not a particularly overbearing one—that certain key writers, such as John Adams, Samuel Adams, Richard Bland, Landon Carter, Stephen Hopkins, and numerous pseudonymous writers such as "Brittanus Americanus" of Boston, wished to see restored in the events leading up to revolution.[7]

This constitutional model would only see major innovation with the rise of parliamentary involvement in the eighteenth century, first casually under the early Hanovers because of the Walpolean policy of "salutary neglect" (the decision not to enforce legislation affecting

America), then much more aggressively with the legislative activities following the French and Indian War in 1763. This change was inaugurated by the important Proclamation of 1763, which effectively took many mundane issues of settlement out of the hands of the colonies and placed them under the control of royal government officials. By this time the Board of Trade, hitherto a committee that answered to the king-in-council, had come to answer to the cabinet and exercise its powers in the name of king-in-parliament. It was this new imperial constitution that emerged after 1763 that Adams and others in the colonies openly criticized, not its historical counterpart that had developed since the early Stuart period.[8] These events later resulted in the Renunciation Act of 1778, the abolishment of the Board of Trade in 1782, and the reenvisioning of an enduring imperial constitution embodied in the India Act of 1784. These later developments would define center–periphery relations throughout the remainder of the British Empire's existence.[9]

Notes

Introduction

1. John Dee, *General and rare memorials pertayning to the perfect arte of navigation* (London, 1577), sig. ε.iiii. For a brief overview of Elizabethan adventures, see Ken MacMillan, "Exploration, Trade and Empire," in *The Elizabethan World*, ed. Susan Doran and Norman Jones (London: Routledge, 2010), chap. 37.
2. On the demography of the Stuart Atlantic, see Alison Games, *Migration and the Origins of the English Atlantic World* (Cambridge, MA: Harvard University Press, 1999), p. 4; and Carla Gardina Pestana, *The English Atlantic in an Age of Revolution, 1640–1661* (Cambridge, MA: Harvard University Press, 2004), app. 1.
3. It is not my purpose in this book to offer a survey of English Atlantic history in the early colonial period, which has been carefully done over the past several generations. See Charles M. Andrews, *The Colonial Period of American History, Volume I: The Settlements* (New Haven, CT: Yale University Press, 1934); Kenneth R. Andrews, *Trade, Plunder, and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480–1630* (Cambridge: Cambridge University Press, 1984); Nicholas Canny, ed., *The Oxford History of the British Empire, Volume 1*: *The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century* (Oxford: Oxford University Press, 1998); Karen Kupperman, *The Jamestown Project* (Cambridge, MA: Belknap Press, 2007); David B. Quinn and A. N. Ryan, *England's Sea Empire, 1550–1642* (London: George Allen & Unwin, 1983); and L. H. Roper, *The English Empire in America, 1602–1658: Beyond Jamestown* (London: Pickering & Chatto, 2009).
4. The idea of center and periphery as a model of analysis will be discussed further in chapter 1. This theory has been examined with direct relevance to the subject of colonial history (using "core" and "periphery") in Immanuel Wallerstein, *The Modern World System*, 3 vols. (New York: Academic Press, 1976–89), and especially in Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (Athens, GA: University of Georgia Press, 1986); and Greene, *Negotiated Authorities: Essays*

in Colonial Political and Constitutional History (Charlottesville, VA: University of Virginia Press, 1994).

5. On Atlantic scholarship, see, generally, Trevor Burnard, ed., *Oxford Bibliographies Online: Atlantic History* (New York: Oxford University Press, 2010), especially Burnard, "British Atlantic World," and Ken MacMillan, "Tudor and Stuart Britain in the Wider World, 1485–1685." See also the essays in David Armitage and Michael J. Braddick, eds., *The British Atlantic World, 1500–1800*, 2nd ed. (New York: Palgrave Macmillan, 2009), especially part I. There are, of course, some inherent weaknesses in this form of analysis, about which see Armitage and Braddick, *British Atlantic World*, part V.
6. See, in addition to the discussion in chapter 1, David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), chap. 2; R. R. Davies, *The First English Empire: Power and Identities in the British Isles 1093–1343* (Oxford: Oxford University Press, 2000); Julius Goebel, Jr., "The Matrix of Empire," in Joseph Henry Smith, *Appeals to the Privy Council from the American Plantations* (New York: Columbia University Press, 1950); and A. F. M. Madden, "1066, 1776 and All That: The Relevance of English Medieval Experience of 'Empire' to Later Imperial Constitutional Issues," in *Perspectives of Empire: Essays Presented to Gerald S. Graham*, ed. John E. Flint and Glyndwr Williams (London: Longman, 1973), pp. 9–26. On the Crown, see chapter 1 in this book. This "imperial" jurisdiction was distinct from merely "metropolitan" oversight, a term often used to discuss the view from London as separate from that of the colonies. On the use of "metropolitan" in this context, see, for example, Michael Leroy Oberg, *Dominion and Civility: English Imperialism and Native America, 1585–1685* (Ithaca, NY: Cornell University Press, 1999).
7. Armitage, *Ideological Origins*, pp. 22, 31–36; Davies, *First English Empire*, chap. 1; Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006), pp. 21–25. There is, however, an important point to be made: Early Stuart imperial oversight should not be interpreted as a firmly ideological approach to imperial governance from the outset, an argument that is reminiscent of century-old scholarship. See, for example, Wesley Frank Craven, "Historical Study of the British Empire," *Journal of Modern History* 6 (1934): 40–69. Although these activities were imperial, in the sense that they involved the exercise of authority by an independent, sovereign body that headed a composite monarchy, they should not be viewed as synonymous with how ideological terms such as "imperialism" would be used in later centuries. On this distinction, see Armitage, *Ideological Origins*, chap. 1.
8. On the definition of constitution in England, see, for example, Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to*

English Political Thought, 1603–42 (University Park, PA: Pennsylvania State University Press, 1992), chaps. 1–2; Anne Lyon, *Constitutional History of the United Kingdom* (London: Routledge-Cavendish, 2003), introduction; and J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987). Regarding an Atlantic constitution, see Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004); Daniel Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830* (Chapel Hill: University of North Carolina Press, 2005) and "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *Law and History Review* 21 (2003): 439–82; and John Phillip Reid, *Constitutional History of the American Revolution*, abridged ed. (Madison, WI: University of Wisconsin Press, 1995).

9. Andrews, *Trade, Plunder, and Settlement*, especially the introduction and chap. 14; John C. Appleby, "Introductions: British Perspectives," in *Calendar of State Papers, Colonial Series, America and the West Indies, 1574–1739* (CD-ROM), ed. Karen Ordahl Kupperman, John C. Appleby, and Mandy Banton (Kew: National Archives, 2000); Robert Bliss, *Revolution and Empire: English Politics and the American Colonies in the Seventeenth Century* (Manchester: Manchester University Press, 1990), especially chap. 2; Warren M. Billings, *A Little Parliament: The Virginia General Assembly in the Seventeenth Century* (Richmond, VA: Library of Virginia, 2004), chap. 1; Michael Braddick, "The English Government, War, Trade, and Settlement, 1625–1688," in Canny, *Origins of Empire*; and Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge: Cambridge University Press, 2000), chap. 9; J. H. Elliott, "Atlantic History: A Circumnavigation," in Armitage and Braddick, *British Atlantic World*, pp. 264–65. On the notion of weak versus strong state governance, see John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (Cambridge, MA: Harvard University Press, 1988). On salutary neglect, see Edmund Burke, "Speech on Conciliation with America," in *The Writings and Speeches of Edmund Burke, Vol. III: Party, Parliament, and the American War, 1774–1780*, ed. W. M. Elofson (Oxford: Oxford University Press, 1996), p. 118; on the use of this term to refer to the period under examination, see Brendan McConville, *The King's Three Faces: The Rise and Fall of Royal America, 1688–1776* (Chapel Hill: University of North Carolina Press, 2006), p. 23.
10. Bliss, *Revolution and Empire*, p. 17. See also Andrews, *Trade, Plunder, and Settlement*, pp. 13–16; Braddick, *State Formation*, pp. 410–11; and Roper, *English Empire in America*, pp. 131–32.

11. The major exception to this orthodoxy is that recent historians have recognized the role of the Crown in supranational (later known as international) affairs, a subject to which I shall return in chapter 2. See, for example, MacMillan, *Sovereignty and Possession*, and especially the work of Elizabeth Mancke: "Negotiating an Empire: Britain and Its Overseas Peripheries, c. 1550–1780," in *Negotiated Empires: Centers and Peripheries in the Americas, 1500–1820*, ed. Christine Daniels and Michael V. Kennedy (New York: Routledge, 2002); Mancke, "Empire and State," in Armitage and Braddick, *British Atlantic World*; and Mancke, "Chartered Enterprises and the Evolution of the British Atlantic World," in *The Creation of the British Atlantic World*, ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005).
12. On "repugnancy and divergence," see Bilder, *Transatlantic Constitution*.
13. On the development of "subcultures" as the result of salutary neglect, see McConville, *King's Three Faces*, pp. 22–29.
14. Pestana, *English Atlantic in an Age of Revolution*, p. 161 and chaps. 5–6. See also Braddick, *State Formation*, pp. 411–17; Carla Gardina Pestana, "English Character and the Fiasco of the Western Design," *Early American Studies* 3 (2005): 1–31.
15. Greene, *Peripheries and Center*, p. 13 and chap. 1; Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge: Cambridge University Press, 2011), pp. 1-18; J. M. Sosin, *English America and the Restoration Monarchy of Charles II: Transatlantic Politics, Commerce, and Kinship* (Lincoln: University of Nebraska Press, 1980); Sosin, *English America and the Revolution of 1688: Royal Administration and the Structure of Provincial Government* (Lincoln: University of Nebraska Press, 1982); Sosin, *English America and Imperial Inconstancy: The Rise of Provincial Autonomy, 1696–1715* (Lincoln: University of Nebraska Press, 1985); and Ian K. Steele, "The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689–1784," in *The Oxford History of the British Empire, Vol. 2: The Eighteenth Century*, ed. P. J. Marshall (Oxford: Oxford University Press, 1998).
16. Especially Stephen Saunders Webb, *1676: The End of American Independence* (Cambridge, MA: Harvard University Press, 1984); Webb, "William Blathwayt, Imperial Fixer: From Popish Plot to Glorious Revolution," *William and Mary Quarterly*, Third Series, 25 (1968): 3–21; Webb, "William Blathwayt, Imperial Fixer: Muddling Through to Empire, 1689–1717," *William and Mary Quarterly*, Third Series, 26 (1969): 373–415. See also the work of J. M. Sosin previously cited.
17. Quoted in Greene, *Peripheries and Center*, p. 13. See also Jack P. Greene, "Law and the Origins of the American Revolution," in *The Cambridge History of Law in America*, ed. Michael Grossberg and

Christopher Tomlins, 3 vols. (Cambridge: Cambridge University Press, 2008), vol. I, chap. 13.

18. This subject is vast and cannot be dealt with in any detail here. See Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967); Stephen Conway, *The British Isles and the War of American Independence* (Oxford: Oxford University Press, 2000); the essays by Stephen Conway, Peter Marshall, and John Shy in Marshall, *The Eighteenth Century*; Eliga Gould, *The Persistence of Empire: British Political Culture in the Age of the American Revolution* (Chapel Hill: University of North Carolina Press, 2000), chap. 4; Greene, *Peripheries and Center*, chap. 2; Alison L. LaCroix, *The Ideological Origins of American Federalism* (Cambridge, MA: Harvard University Press, 2010); McConville, *King's Three Faces*; the essays by Peter Onuf and Elizabeth Mancke in Jack P. Greene, ed., *Exclusionary Empire: English Liberty Overseas, 1600–1900* (Cambridge: Cambridge University Press, 2010); J. M. Sosin, *Whitehall and the Wilderness: The Middle West in British Colonial Policy, 1760–1775* (Lincoln: University of Nebraska Press, 1961); and Sosin, *Agents and Merchants: British Colonial Policy and the Origins of the American Revolution, 1763–1775* (Lincoln: University of Nebraska Press, 1965).
19. The registers are PC 2/27–53. These registers are best known to historians through their printed version, W. L. Grant, James Munro, and Almeric W. Fitzroy, eds., *Acts of the Privy Council of England, Colonial Series, Volume 1: 1613–1680* (Burlington, Ontario, Canada: TannerRitchie, 2005; originally published in Hereford: Anthony Brothers[0], 1908). This volume contains extracts from the originals. As its editors readily admit, this work is the result of many editorial decisions and often does not contain complete transcriptions of the originals (*APCC*, pp. ix–x). Therefore this study draws not from the printed volume, but from the 27 manuscript registers themselves.
20. Earlier historians have made better use of this material, such as Andrews, *Colonial Period of American History*, but this usage has declined dramatically in the past half century. On the more recent preference for printed materials, see, for example, Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500–1625* (Cambridge: Cambridge University Press, 2003). This is particularly evident in the recent trend toward "autoptic" history, or seeking to understand the development of colonial society from an eyewitness perspective; for example, Karen Ordahl Kupperman, *Indians and English: Facing Off in Early America* (Ithaca, NY: Cornell University Press, 2000); and Kupperman, *The Jamestown Project*. The Colonial Office papers of relevance to this study are, especially, CO 1/1–10.
21. The oaths of the councilors and clerks will be found at the beginning of each council register. The quotation, which reads exactly the same in both oaths, comes from PC 2/27, fol. 2.

22. Lists showing the membership of this committee can be found in E. R. Turner, *The Privy Council of England in the Seventeenth and Eighteenth Centuries, 1603–1784*, 2 vols. (Baltimore: Johns Hopkins University Press, 1928), vol. II, pp. 223–28, which is gathered from various places in the register.
23. H. E. Egerton, "The Seventeenth and Eighteenth Century Privy Council in Its Relations with the Colonies," *Journal of Comparative Legislation and International Law*, Third Series, 7 (1925): 4. See also Charles M. Andrews, *British Committees, Commissions, and Councils of Trade and Plantations, 1622–1675* (Baltimore: Johns Hopkins University Press, 1908), pp. 14–20. For a similar assessment that refers to these early subconciliar groups as "mayfly committees," see Braddick, *State Formation*, p. 411.
24. On the importance of negotiation and compromise between center and periphery in early modern England, see Braddick, *State Formation*; and Greene, *Peripheries and Center*; on overseas empires, see Daniels and Kennedy, *Negotiated Empires.*
25. See Armitage, *Ideological Origins of the British Empire*, chaps. 4, 6; Fitzmaurice, *Humanism and America*, chap. 6; and Maurizio Viroli, *From Politics to Reasons of State: The Acquisition and Transformation of the Language of Politics 1250–1600* (Cambridge: Cambridge University Press, 1992).

CHAPTER 1

1. For an excellent discussion on the composition of the early modern state, see Michael J. Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge: Cambridge University Press, 2000), part I; and Braddick, "The English Government, War, Trade, and Settlement, 1625–1688," in *The Oxford History of the British Empire, Vol. 1: The Origins of Empire: English Overseas Activity to the Close of the Seventeenth Century*, ed. Nicholas Canny (Oxford: Oxford University Press, 1998). On the attainment and variety of offices, see Mark Kishlansky, *A Monarchy Transformed: Britain, 1603–1714* (London: Penguin, 1996), chap. 2.
2. On the weak versus strong state, see John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (Cambridge, MA: Harvard University Press, 1990).
3. On discretion and the importance of local concerns, see Braddick, *State Formation*, part II; Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1987); and Keith Wrightson, *English Society, 1580–1680* (London: Hutchinson, 1982).

4. Edward Shils, *Center and Periphery: Essays in Macrosociology* (Chicago: University of Chicago Press, 1975), pp. 3–16, quotations at p. 10.
5. Christine Daniels and Michael V. Kennedy, eds., *Negotiated Empires: Centers and Peripheries in the Americas, 1500–1820* (New York: Routledge, 2002); and Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (Athens, GA: University of Georgia Press, 1986).
6. On the subject of legitimacy and resistance, see Braddick, *State Formation*, chap. 2; and Alison Wall, *Power and Protest in England, 1525–1640* (London: Edward Arnold, 2000).
7. See, for example, Alison Wall, "'The Greatest Disgrace': The Making and Unmaking of JPs in Elizabethan and Jacobean England," *English Historical Review* 119 (2004): 312–32.
8. Braddick, *State Formation*, chaps. 1 and 5; Kishlansky, *Monarchy Transformed*, chaps. 2–4; Anthony Fletcher, *Reform in the Provinces: The Government of Stuart England* (New Haven, CT: Yale University Press, 1986).
9. Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Political Theology* (Princeton, NJ: Princeton University Press, 1957), especially chap. 7, quotation on p. 381. See also George Garnett, "The Origins of the Crown," *Proceedings of the British Academy* 89 (1996): 171–214.
10. 24 Henry VIII, c. 12. On *imperium* in England, see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), chap. 2; Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006), pp. 18–25; Joyce Lee Malcolm, "Doing No Wrong: Law, Liberty, and the Constraint of Kings," *Journal of British Studies* 38 (1999): 161–86; and Johann Sommerville, "English and European Political Ideas in the Early Seventeenth Century: Revisionism and the Case of Absolutism," *Journal of British Studies* 35 (1996): 168–94. See also Sir Thomas Smith, *De Republica Anglorum*, ed. Mary Dewar (Cambridge: Cambridge University Press, 1982), pp. 53–56.
11. Jean Bodin, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, ed. and trans. Julian H. Franklin (Cambridge: Cambridge University Press, 1992). See also Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973). By "sole legislator," Bodin did not envision an autocratic sovereign, but rather an individual whose assent was required for all laws, which was true in England, as royal assent was required for bills to become acts, including those authorizing taxation.
12. The literature on England's constitutional struggles in the early seventeenth century is expansive and well known to many scholars.

These issues are represented especially in the work of Richard Cust, Christopher Hill, John Morill, John Pocock, and Conrad Russell. For overviews of the issues involved, see, for example, Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1602–42* (University Park, PA: Pennsylvania State University Press, 1992); Kishlansky, *Monarchy Transformed*; and James S. Hart, Jr., *The Rule of Law, 1603–1660: Crowns, Courts, and Judges* (London: Longman, 2003).

13. On *Prerogativa Regis* and its uses in Tudor England, see Margaret McGlynn, *The Royal Prerogative and the Learning of the Inns of Court* (Cambridge: Cambridge University Press, 2003). The best articulations of the prerogative are William Staunford, *An Exposicion of the Kinges Prerogative* (London: Richard Tottell, 1567), which was reprinted at least six times in the late Elizabethan and early Stuart period, and the unfinished manuscript of Matthew Hale, *The Prerogatives of the King*, edited by D. E. C. Yale (London: Selden Society, 1976). On those of Bacon, Coke, and Egerton, and on the distinction between "ordinary/limited" and "extraordinary/absolute" prerogatives, see MacMillan, *Sovereignty and Possession*, pp. 29–30; and Burgess, *Politics of the Ancient Constitution*, pp. 139–62. The best contemporary case discussing the plural prerogative was Bates's Case (1606, 145 English Reports 267).
14. The case will be found in Steve Sheppard, ed., *The Selected Writings of Sir Edward Coke*, 3 vols. (Indianapolis, IN: Liberty Fund, 2003), vol. I, pp. 166–232, with the most relevant sections for this discussion on pp. 199–207.
15. The medieval distinction between inherited and conquered land derived from Glanvill's treatise on the common law. See G. D. G. Hall, ed., *The Treatise of the Laws and Customs of the Realm of England Commonly Called Glanvill* (London: Nelson, 1965), pp. 70–74; F. Pollock and F. W. Maitland, *The History of English Law Before the Time of Edward I* (Cambridge: Cambridge University Press, 1968), p. 308. Opposite to the belligerence usually attached to the term conquest today, Glanvill and other writers allowed that conquered lands could be acquired in benign ways, such as through settlement or marriage.
16. On the possibilities of benign as opposed to belligerent conquest, and on the various definitions of conquest that circulated in the early modern period, see Ken MacMillan, "Benign and Benevolent Conquest?: The Ideology of Elizabethan Atlantic Expansion Revisited," *Early American Studies* 9 (2011): 32–72.
17. On Ireland, see Hans Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (Cambridge: Cambridge University Press, 1985).
18. Sheppard, *Selected Writings of Sir Edward Coke*, p. 207.

19. Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004), pp. 35–38; Daniel Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *Law and History Review* 21 (2003): 439–82, at 461–63; Gavin Loughton, "Calvin's Case and the Origins of the Rule Governing 'Conquest' in English Law," *Australian Journal of Legal History* 8 (2004): 143–80; Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing British America, 1580–1865* (Cambridge: Cambridge University Press, 2010), pp. 82–89; Craig Yirush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675-1775* (Cambridge: Cambridge University Press, 2011), chap. 1.
20. Hale, *Prerogatives of the King*, pp. 42–43; MacMillan, *Sovereignty and Possession*, pp. 35–38.
21. Hulsebosch, "Ancient Constitution," pp. 455–57; David M. Jones, "Sir Edward Coke and the Interpretation of Lawful Allegiance in Seventeenth-Century England," in *Law, Liberty, and Parliament: Selected Essays on the Writings of Sir Edward Coke*, ed. Allen D. Boyer (Indianapolis, IN: Liberty Fund 2004).
22. Mark L. Thompson, "'The Predicament of Ubi': Locating Authority and National Identity in the Seventeenth-Century English Atlantic," in *The Creation of the British Atlantic World*, ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005), especially pp. 72–73.
23. The classic discussion of the development and role of the Privy Council is G. R. Elton, *The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII* (Cambridge: Cambridge University Press, 1959). A useful series of articles, though dated, is John P. Dawson, "The Privy Council and Private Law in the Tudor and Stuart Period," *Michigan Law Review* 48 (1950): 393–428, 627–56; and A. F. Pollard, "Council, Star Chamber, and the Privy Council under the Tudors," *English Historical Review* 37 (1922): 337–60, 516–39; 38 (1923): 42–60. For the role of the council within the state, see Braddick, *State Formation*, chap. 1. Possibly the best work on the subject remains E. R. Turner, *The Privy Council of England in the Seventeenth and Eighteenth Centuries, 1603–1784*, 2 vols. (Baltimore: Johns Hopkins University Press, 1927–28), especially vol. I, pp. 1–193.
24. This information, and that which immediately follows, is based on Turner, *Privy Council*, vol. I, and on a close reading of the Privy Council register from 1613–40, PC 2/27–53. The first pages of each register record the council's membership at that time, while additional names were added or deleted from time to time throughout the volumes. The list of members present for each meeting (the "board") was recorded at the opening of the meeting.

25. The council was, in theory, if not always in practice, democratic in its operation. When a cause was under consideration, each councilor was entitled to speak his piece, starting with the lesser members and ending with the senior officers of state. This hierarchical protocol was designed so as not to intimidate or direct the opinion of lesser-ranked councilors. When all debate had ended—and if there appeared to be division among the councilors—the lord president called for a vote, again starting with the junior member present, and the matter was determined by majority.
26. Depending on the situation, the king appointed a quorum ranging from four to eight members, often specifically naming the individuals who could hear certain issues, although six members was the common number for issues that did not demand special commissions or warrants.
27. See, e.g., Richard Cust, "Charles I, the Privy Council and the Parliament of 1628," *Transactions of the Royal Historical Society*, Sixth Series, 2 (1992): 25–50; Derek Hirst, "The Privy Council and the Problems of Enforcement in the 1620s," *Journal of British Studies* 18 (1976): 46–66.
28. Evidence of the loss of interest in this topic is clear from the fact that all of the following works were written before 1970 and almost nothing has been written since. H. E. Egerton, "The Seventeenth and Eighteenth Century Privy Council in Its Relations with the Colonies," *Journal of Comparative Legislation and International Law*, Third Series, 7 (1925): 1–16; Leonard S. Goodman, "Mandamus in the Colonies: The Rise of the Superintending Power of American Courts," *American Journal of Legal History* 2 (1958): 1–34; Dudley Odell McGovney, "The British Origins of Judicial Review of Legislation," *University of Pennsylvania Law Review* 93 (1944): 1–49; McGovney, "The British Privy Council's Power to Restrain the Legislatures of Colonial America: Power to Disallow Statutes: Power to Veto," *University of Pennsylvania Law Review* 94 (1945): 59–93; Herbert L. Osgood, "England and the Colonies," *Political Science Quarterly* 2 (1887): 440–69; E. E. Rich, "The First Earl of Shaftesbury's Colonial Policy," *Transactions of the Royal Historical Society*, Fifth Series, 7 (1957): 47–70; Clayton Roberts, "Privy Council Schemes and Ministerial Responsibility in Later Stuart England," *American Historical Review* 64 (1959): 564–82; Arthur Meier Schlesinger, "Colonial Appeals to the Privy Council," *Political Science Quarterly* 28 (1913): 279–97; Erwin C. Surrency, "Revision of Colonial Laws," *American Journal of Legal History* 9 (1965): 189–202; Edward Raymond Turner, "Committees of the Privy Council, 1688–1760," *English Historical Review* 31 (1916): 545–72.
29. Charles M. Andrews, *British Committees, Commissions, and Councils of Trade and Plantations, 1622–1675* (Baltimore: Johns Hopkins University Press, 1908), pp. 10–11.

30. Joseph Henry Smith, *Appeals to the Privy Council from the American Plantations* (New York: Columbia University Press, 1950; repr. 1965), especially the introduction by Julius Goebel, Jr., and pp. 12–45. See also Madden, "1066, 1776, and All That"; and, for context, Armitage, *Ideological Origins*, chap. 2.
31. On the efficacy of these writs throughout the empire, see also L. S. Goodman, "Mandamus in the Colonies," *American Journal of Legal History* 1 (1957): 308–35 and 2 (1958): 1–34, 129–47; and Paul D. Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA: Harvard University Press, 2010), especially pp. 34–35 and chap. 8.
32. Smith, *Appeals to the Privy Council*, especially chap. 3. See also Mary Sarah Bilder, "The Origin of the Appeal in America," *Hastings Law Journal* 48 (1997): 913–68; and Schlesinger, "Colonial Appeals to the Privy Council."
33. Halliday, *Habeas Corpus*, pp. 23–28. As Halliday explains, "In its medieval origins, the King's Bench was distinguished from the Common Bench—the court of Common Pleas—by the fact that the king sat there with his justices . . . It stood to reason that enacting that interest when he no longer sat in court himself should become the function of the court claiming to be so close to his person that it was the king himself" (p. 75).
34. Sir Matthew Hale, *The History of the Common Law of England*, ed. Charles M. Gray (Chicago: University of Chicago Press, 1971), p. 120; and Hale, *Prerogatives of the King*, chap. 3.
35. The extreme pressures on the clerks demanded that they cycle into the council in monthly intervals and that they be assisted from time to time by several "clerks extraordinary," men of lesser gentry status. See J. Vernon Jensen, "The Staff of the Jacobean Privy Council," *Huntington Library Quarterly* 40 (1976): 11–44.
36. Parliamentary involvement in certain Atlantic affairs is detailed in Leo Francis Stock, ed., *Proceedings and Debates of the British Parliaments Respecting North America, vol. 1: 1542–1688* (Washington, DC: Carnegie Institution of Washington, 1924). Most of this involvement regarded matters of trade that impacted England domestically, such as the ability of English fishermen to carry out their trade in America for the benefit of the nation. For evidence that the king took matters of North America into his own hands, see, for example, ibid., pp. 67–68.
37. MacMillan, *Sovereignty and Possession*, pp. 33–38. See also Hulsebosch, "Ancient Constitution."
38. There is, of course, a whiggishness to this interpretation, in that it upholds a belief that state authority exercised in the absence of parliamentary involvement was illegitimate. There is also the question of what Coke, in *Calvin's Case*, meant when he argued that in inherited and Christian conquered realms the king needed to alter laws through Parliament. The question was whether Coke was referring to the national

"Parliament" or to local "parliaments." For engagement with these ideas, see Barbara A. Black, "The Constitution of Empire: The Case of the Colonists," *University of Pennsylvania Law Review* 124 (1975–76): 1157–211; Charles H. McIlwain, *American Revolution: A Constitutional Interpretation* (New York: Macmillan, 1923); John Phillip Reid, *Constitutional History of the American Revolution*, 3 vols. (Madison, WI: University of Wisconsin Press, 1986–88); Robert Schuyler, *Parliament and the British Empire* (New York: Columbia University Press, 1929); Ian K. Steele, "The British Parliament and the Atlantic Colonies to 1760: New Approaches to Enduring Questions," in *Parliament and the Atlantic Empire*, ed. Philip Lawson (Edinburgh: Edinburgh University Press, 1995). For primary materials, see Stock, *Proceedings and Debates of the British Parliaments*, especially pp. 8–100.

39. Although historians and contemporaries have tended to synonymize the terms, these documents were not technically the same. Whereas charters were usually perpetual and of stronger legal force (they were differently sealed and usually written in Latin), patents were usually issued for a period of years (typically seven) and were more casual and vernacular in their language. See Mary Sarah Bilder, "English Settlement and Local Governance," in *The Cambridge History of Law in America*, ed. Michael Grossberg and Christopher Tomlins, 3 vols. (Cambridge: Cambridge University Press, 2008), vol. I, chap. 3. For a fuller discussion of the colonial letters patent, see MacMillan, *Sovereignty and Possession*, chap. 3; MacMillan, "'Bound by our Regal Office': Empire, Sovereignty, and the American Colonies in the Seventeenth Century," in *The American Colonies in the British Empire, 1607–1776*, ed. Stephen Foster (Oxford: Oxford University Press, forthcoming, 2012); and MacMillan, "Imperial Constitutions: Sovereignty and Law in the Atlantic," in *Britain's Oceanic Empire: British Expansion into the Atlantic and Indian Ocean Worlds, 1550–1850*, ed. H. V. Bowen, E. Mancke, and J. G. Reid (Cambridge: Cambridge University Press, forthcoming, 2012), chap. 2.
40. In 1635 the New England Company voluntarily surrendered its charter in exchange for a series of charters that divided the territory into New Hampshire, Connecticut, Rhode Island, and so on (see Chapter 6).
41. The patent rolls are located in the Chancery series C 66. Faithful copies, with minor variants, are to be found in what were formerly known as the Colonial Entry Books, now spread out through the CO series in TNA (CO 5/723, 5/902, 5/1354, 29/1, 38/1, 124/1, 195/1). These charters are also widely available on the Internet, especially the Yale Law School Avalon Project (http://avalon.law.yale.edu), the source most frequently used in this book because of its ease of access. On the preparation of charters, see MacMillan, *Sovereignty and Possession*, pp. 80–86.

42. The argument that the overseas empire was not an act of central will—that it was created "in a fit of absence of mind"—derives from historiographical engagement with J. R. Seeley, *The Expansion of England* (London: Macmillan & Co., 1883), quotation at p. 8.
43. English overlordship of France derived from the claims of Edward III. Although long in desuetude, these claims were not abandoned until the Peace of Westphalia in 1648. For context, see David Green, "Lordship and Principality: Colonial Policy in Ireland and Aquitaine in the 1360s," *Journal of British Studies* 47 (2008): 3–29.
44. Frances G. Davenport, ed. *European Treaties Bearing on the History of the United States and Its Dependencies*, 4 vols. (Gloucester, MA: Peter Smith, 1967), vol. I, p. 62.
45. The Virginia Company charter of 1606 directed the patentees to subject themselves to the "full power and authority" of the Privy Council, while the proprietary charters routinely instructed the patentees to "behave themselves in all things as we by our instructions and directions signed with our royal hand . . . shall think most convenient"; see MacMillan, *Sovereignty and Possession*, pp. 93, 98.
46. On repugnancy and divergence, and their role in developing the "transatlantic constitution," see Bilder, *Transatlantic Constitution*, especially chaps. 2–4.
47. Quoted in Greene, *Peripheries and Center*, p. 13.
48. Turner, *Privy Council*, vol. I, p. 148.
49. At the end of the seventeenth century, a third category of land acquisition, the settlement of unoccupied lands, was added to Coke's typology. Building on recent formulations by John Locke in *Two Treatises of Government* (1690), in *Blankard v. Galdy* (1653, 91 English Reports 356), Chief Justice of King's Bench John Holt argued that in the case of lands that were uninhabited newfound lands, English colonists brought the laws of England with them. This notion was sometimes retroactively applied to the early Stuart settlements, although Coke's formulation was more commonly accepted in the early seventeenth century.
50. On the contemporary importance of the laws of God and nature, see MacMillan, *Sovereignty and Possession*, pp. 41–47.
51. Council for Virginia, *A Declaration of the State of the Colonie and Affaires in Virginia* (London, 1620), p. 8.
52. Smith, *Appeals to the Privy Council*, p. 42.
53. Charter to Sir Humphrey Gilbert, 1578, Yale Law School Avalon Project, http://avalon.law.yale.edu/16th_century/humfrey.asp.
54. Jones, "Sir Edward Coke and the Interpretation of Lawful Allegiance"; Thompson, "'The Predicament of Ubi'"; William Blackstone, *Commentaries on the Laws of England, Vol. I: Of the Rights of Persons* (Chicago: University of Chicago Press, 1979), pp. 104–41. See also Elizabeth Mancke, "The Languages of Liberty in British North America, 1607–1776," in *Exclusionary Empire: English Liberty Overseas,*

1600–1900, ed. Jack P. Greene (Cambridge: Cambridge University Press, 2010).

55. For examples of intercolonial relations at this time, see April Lee Hatfield, *Atlantic Virginia: Intercolonial Relations in the Seventeenth Century* (Philadelphia: University of Pennsylvania Press, 2004).

CHAPTER 2

1. See the treaties with the French in 1629 and 1632 and with the Spanish in 1604, 1630, 1648, and 1667, and the various treaties of Utrecht of 1713, all in Frances G. Davenport, ed., *European Treaties Bearing on the History of the United States and its Dependencies*, 4 vols. (Gloucester, MA: Peter Smith, 1967). See also Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006), chap. 6; and Elizabeth Mancke, "Empire and State," in *The British Atlantic World, 1500–1800*, 2nd ed., ed. David Armitage and Michael J. Braddick (London: Palgrave Macmillan, 2009).
2. Charter to the Virginia Company, 1606, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/va01.asp. On the importance of this passage, see MacMillan, *Sovereignty and Possession*, pp. 117–18; and Elizabeth Mancke, "Chartered Enterprises and the Evolution of the British Atlantic World," in *The Creation of the British Atlantic World*, ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005).
3. Although this chapter focuses on Anglo-Spanish disputes, the council was also involved in numerous engagements with the French and Dutch. I have discussed the major French conflicts during the early Stuart period in MacMillan, *Sovereignty and Possession*, pp. 194–201. These included Sir Samuel Argall's taking of Port Royal in 1613, the attempted settlement of New Scotland by Sir William Alexander in 1624, and the activities of David and Thomas Kirke and other merchants trading in Canada from 1629 to 1632, all activities that occurred during peacetime. The Anglo-Dutch disputes focused on the East Indies, which included the colonial conferences in London in 1613 and The Hague in 1615. The minutes of these conferences can be found at BL Additional 48155, fols. 1–38; SP 84/71, SP 113/36, fols. 224–43; CO 77/1/32. For context, see Joel D. Benson, *Cooperation to Competition: English Perspective and Policy on Anglo-Dutch Economic Relations During the Reign of James I* (New York: Peter Lang, 1990). Anglo-Dutch conflicts in the Atlantic under the early Stuarts were limited, but see CO 1/6, nos. 44, 62, and 82, which involved Dutch activities in New England.
4. G. M. D. Howat, *Stuart and Cromwellian Foreign Policy* (London: A&C Black, 1974); S. L. Adams, "Spain or the Netherlands?: The

Dilemmas of Early Stuart Foreign Policy," in *Before the English Civil War: Essays on Early Stuart Politics and Government*, ed. H. Tomlinson (London: St. Martin's Press, 1984), pp. 79–101; and Thomas Cogswell, *The Blessed Revolution: English Politics and the Coming of War, 1621–1624* (Cambridge: Cambridge University Press, 1989). On Philip III's efforts at diplomacy, see Paul Allen, *Philip III and the Pax Hispanica, 1599–1621: The Failure of Grand Strategy* (New Haven, CT: Yale University Press, 2000).

5. On these and other Anglo-Spanish conflicts in the Atlantic, see K. R. Andrews, "Caribbean Rivalry and the Anglo-Spanish Peace of 1604," *History* 59 (1974): 1–17; Andrews, *Trade, Plunder, and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480–1630* (Cambridge: Cambridge University Press, 1984), chap. 13; Joyce Lorimer, "The Failure of the English Guiana Ventures 1595–1667 and James I's Foreign Policy," *Journal of Imperial and Commonwealth History* 21 (1993): 1–30; Lorimer, "The English Contraband Tobacco Trade from Trinidad and Guiana, 1590–1617," in *The Westward Enterprise: English Activities in Ireland, the Atlantic, and America, 1480–1650*, ed. K. R. Andrews, N. Canny, and P. E. H. Hair (Liverpool: Liverpool University Press, 1978), pp. 124–50; MacMillan, *Sovereignty and Possession*, pp. 180–92; and David B. Quinn, "James I and the Beginnings of Empire in America," *Journal of Imperial and Commonwealth History* 2 (1974): 135–52.
6. On the cases litigated, see Gentili, *Hispanicae Advocationis Libri Duo*, introduced by Frank Frost Abbott, 2 vols. (New York: Oxford University Press, 1921). On other Admiralty cases that involved the colonies in America, see, for example, R. G. Marsden, "The High Court of Admiralty in Relation to National History, Commerce and the Colonisation of America, 1550–1650," *Transactions of the Royal Historical Society*, New Series, 16 (1902): 69–96, especially pp. 87–96.
7. See the biography of Gondomar in Alexander Brown, *The Genesis of the United States*, 2 vols. (New York: Houghton, Mifflin and Co., 1891), vol. II, pp. 899–901. On Gondomar, his influence at court, and the relevant historiography, see Charles H. Carter, "Gondomar: Ambassador to James I," *Historical Journal* 7 (1964): 189–208; Albert J. Loomie, "Gondomar's Selection of English Officers in 1622," *English Historical Review* 88 (1973): 574–81; and Brennan C. Pursell, "James I, Gondomar and the Dissolution of the Parliament of 1621," *History* 85 (2000): 428–45. Gondomar was absent from England between June 1618 and March 1620, during which time his secretary, Julian Sanchez de Ulloa, represented his interests in London.
8. PC 2/27, fol. 43v. The region of principal interest to the English was near the coast of present-day Venezuela and Guyana; see the maps, pp. xvi–xxv.

9. On the importance of this treatise, see Joyce Lorimer, ed., *Sir Walter Ralegh's Discoverie of Guiana* (London: Ashgate, 2006), xvii–xcvii; and Benjamin Schmidt, ed., *The Discovery of Guiana by Sir Walter Ralegh: With Related Documents* (Boston: Bedford/St. Martin's, 2008), part 1.
10. Lorimer, "Failure of the English Guiana Ventures," pp. 4–5, 16–18; and Lorimer, ed., *English and Irish Settlement on the River Amazon, 1550-1646* (London: Hakluyt Society, 1989), pp. 1–59, 127–89.
11. PC 2/27, fol. 43v.
12. On the development and legalities of these formulas, see MacMillan, *Sovereignty and Possession*.
13. MacMillan, *Sovereignty and Possession*, pp. 131–33.
14. Lorimer, "Failure of the English Guiana Ventures," pp. 20–21.
15. *Proc. I*, p. 391.
16. *Proc. I*, p. 392; see also SP 14/97, no. 98. On Gondomar's close watch, see SP 14/90, no. 122, and Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), pp. 82–83.
17. SP 14/95, no. 22.
18. This well-known event is recounted in V. T. Harlow, *Ralegh's Last Voyage* (London: Argonaut Press, 1932), chap. 1. For a balance to Harlow's sometimes skewed analysis, see J. A. Williamson, *English Colonies in Guiana and on the Amazon, 1604–1668* (Oxford: Clarendon Press, 1923), pp. 74–79. For Ralegh's own account, see SP 14/96, no. 70 and SP 14/98, no. 48.
19. *Proc. I*, p. 392.
20. On Ralegh's arrest, see PC 2/29, fols. 474–75, 494.
21. MacMillan, *Sovereignty and Possession*, pp. 195–96. For primary material, see PC 2/27, fols. 116r, 121; SP 103/9, fols. 273–74; and BL Cotton Otho E.VIII, fols. 252–53. Port Royal was ceded back to France under the terms of the Treaty of St. Germain-en-Laye (1632).
22. The apology is in Harlow, *Ralegh's Last Voyage*, chap. 7; SP 14/98, no. 88.
23. Details on Wilson's actions and his report are at SP 14/99–100, passim.
24. On Ralegh's collaboration with the French, see PC 2/29, fols. 520–21.
25. On treason and its relationship to sovereignty, see Benton, *A Search for Sovereignty*, chap. 2.
26. Much of the documentation on this trial, mostly deriving from SP 14/99–103, is in Harlow, *Ralegh's Last Voyage*, chap. 6, with the *Declaration* quotation at p. 355. The council's proceedings on this case, which demonstrate the active involvement of Yelverton and Coventry, may be found in BL Lansdowne MS 142, fol. 396–97.
27. See the brief treatments in Lorimer, "Failure of the English Guiana Ventures," pp. 22–23; and Lorimer, *English and Irish Settlement*, pp. 64–68, and the primary documents at pp. 190–232, to which my discussion is indebted.

28. Although it was not always so stated in the letters patent, English patentees were usually given a seven-year period to accomplish the goals of the patent before it expired. Technically, Harcourt's patent would not have expired until July 1620, which meant that it would have to be canceled for North's petition to succeed.
29. PC 2/30, fols. 124, 131, 133, 158, 218. The notes of Coke and Caesar are at BL Lansdowne MS 160, fol. 109.
30. SP 94/20, fol. 309.
31. Lorimer, *English and Irish Settlement*, pp. 199–201, from Archivo General Simancas [AGS] Estado 2600/71.
32. Lorimer, *English and Irish Settlement*, pp. 201–3, from AGS Estado 2600/73.
33. PC 2/30, fol. 469.
34. Lorimer, *English and Irish Settlement*, p. 211, from AGS Estado 2601, fols. 16–20.
35. PC 2/30, fols. 487–88; *CSP Addendum*, item 111, vol. 9, p. 59.
36. *Proc. I*, pp. 476–78.
37. PC 2/30, fol. 502. The value of the cargo is given at SP 14/123, no. 40.
38. PC 2/30, fols. 661, 685; Lorimer, *English and Irish Settlement*, pp. 217–19, from AGS Estado 7031, lib. 374, fols. 27–58.
39. Lorimer, *English and Irish Settlement*, pp. 219–22; PC 2/31, fols. 30, 100.
40. On the dispute over the tobacco, see PC 2/31, fols. 102, 109, 144, 148, 166.
41. CO 1/2, no. 18.
42. On the collapse of the Spanish match and the events leading to war, see Cosgwell, *Blessed Revolution*, parts 2 and 3. On the alliance between England and the Netherlands, see Paul E. Kopperman, "Ambivalent Allies: Anglo-Dutch Relations and the Struggle Against the Spanish Empire in the Caribbean, 1621–1641," *Journal of Caribbean History* 21 (1987): 55–77, especially pp. 55–56.
43. Lorimer, *English and Irish Settlement*, pp. 85–88; CO 1/4, nos. 3–8, 28–29; SP 16/24, no. 20; SP 16/54, no. 18.
44. The *San Antonio* is also referred to in the sources as *Sancta Antonio*, *Sancta Antonius*, and *St. Anthony*, although *San Antonio* will be used consistently throughout this book.
45. This account is based on John Smith, *The Generall Historie of Virginia, New-England, and the Summer Islands*, 5 vols. (London, 1624), vol. V, pp. 196–98, also printed in J. H. Lefroy, ed., *Memorials of the Discovery and Early Settlement of the Bermudas or Somers Islands, 1515–1685* (London: Longmans, Greene, and Co., 1877), pp. 156–60; Nathaniel Butler, *The History of the Bermudaes or Summer Islands*, ed. J. H. Lefroy (London: Hakluyt Society, 1882),

pp. 265–75; and the testimony of several Bermuda residents at TNA CO 1/2, no. 10(ii).

46. Brown, *Genesis of the United States*, vol. II, pp. 899–901.
47. This list is provided at *CSPC, Addendum (1574–1677)*, item 120, vol. 9, p. 62, which is extracted from the State Papers Foreign (Spain), SP 94. Assuming that Gondomar was referring to English coinage (as there was no "crown" in the Spanish monetary system), 60,000 crowns equaled £15,000, a reasonable figure given the subsequent list. An English crown, valued at 5 shillings, was of nearly the same value as the Spanish dollar, better known in Spain as the *real de a ocho* and in England as the "piece of eight." A quintal was a common unit used for certain commodities; it was the equivalent of a hundredweight, or one hundred pounds. Thus Gondomar reported 120,000 pounds of Brazilian wood were lost.
48. CO 1/2, no. 2.
49. The laws of shipwreck are ancient, and are discussed at length in Justinian, *Corpus Iuris Civilis*, ed. and trans. S. P. Scott, 17 vols. (Cincinnati, OH: Central Trust, 1932). This was the foundational text of European civil law that contained the *Institutes*, *Digest*, *Codes*, and *Novels*. See *Digest* (book) 41/(chapter) 1/(section) 44, 41/2/13, 41/2/21(1), 47/9/1(5), 47/9/3, 48/7/1, 48/8/3(4). The appropriation of anything from a shipwrecked vessel, including items cast upon the water or shore, or floating to shore (flotsam and jetsam), was considered felony theft. Owners were typically given one year and one day to make a claim on any recovered items—Gondomar being well within this time frame.
50. Charter to Sir Walter Ralegh, 1584, Yale Law School Avalon Project, http://avalon.law.yale.edu/16th_century/raleigh.asp.
51. See, for example, Alberico Gentili, *De Iure Belli Libri Tres*, ed. John C. Rolfe (New York: Oceana, 1964); and the many works of Hugo Grotius: *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis, IN: Liberty Fund, 2004); *De Iure Praedae Commentarius*, trans. G. L. Williams and W. H. Zeydel, 2 vols. (Oxford: Clarendon Press, 1950); *De Iure Belli et Pacis Libri Tres*, ed. F. W. Kelsey, 2 vols. (Oxford: Oxford University Press, 1925). The relevance of these works to colonial legal discourse is demonstrated in Richard Tuck, *The Laws of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999).
52. Butler, *History of the Bermudaes*, p. 275.
53. The rule is *wreckum maris non adjudicetur ubi homo, catus vel canis vivus evadit a navi* [a ship is not considered a wreck as long as a man, cat or dog remained on board]. This notion derived from Fleta, *Commentarius Iuris Anglicani* (c. 1290), book 1, chap. 44, and was employed in Edward Coke, *The Second Part of the Institutes of the Laws of England* (London, 1797), chap. 4. Coke framed the issue somewhat

differently: "It is agreed that where a man, or a dog, or a cat escape quickly, that such ship shall be adjudged a wreck" (p. 165).

54. CO 1/2, no. 2(i).
55. This information is based on letters between Butler, Seymour, and others relating to the *San Antonio*, at CO 1/2, no. 11, on Seymour's claims in a demand for payment in January 1623, at CO 1/2, no. 13; and in a deposition at CO 1/2/10(ii). Incomplete versions of some of this material will be found in Lefroy, *Memorials*, pp. 248–55.
56. CO 1/2, no. 2(ii).
57. PC 2/31, fol. 252.
58. CO 1/2, no. 3.
59. CO 1/2, no. 3(vi, xiii, xviii).
60. CO 1/2, no. 3(iii).
61. CO 1/2, no. 3(v).
62. CO 1/2, no. 3(vii).
63. CO 1/2, no. 3(iv).
64. Piecing together various parts of this story, the cost of transport was set at about £1/10s for each of the fifty or so individuals who traveled in the *James* (which represented the £80 bond between Butler and Vega), though this amount might have varied according to a person's status, and £1/1s (or 1 guinea) for each of eight individuals in the *Joseph*. The *Joseph* allegedly also took six destitute individuals for free. Day claimed that the fee of one guinea per person for the *Joseph* was "half freight" of what would normally be charged, while Henry Mansell implied that if the passengers had been English, they would have been charged nearer £5 each. CO 1/2, no. 3(v, vii).
65. CO 1/2, no. 2.
66. CO 1/2, no. 3(ii, xiv).
67. CO 1/2, no. 3(ix).
68. CO 1/2, no. 3(xi).
69. PC 2/31, fol. 431; CO 5/1354, fol. 207r.
70. *CSPC Addenda*, item 120.
71. I shall return to this subject in Chapters 3 and 5. On the operation of ports and licensing for travel, see Alison Games, *Migration and the Origins of the English Atlantic World* (Cambridge, MA: Harvard University Press, 1999), chaps. 1–2.
72. Butler's three-year term was coming to a natural end. The Bermuda Company charter of 1615 provided for terms of this length, with extensions possible only under exigent circumstances. Thus the election of the next governor in February 1622 was according to established protocols and was not prompted by the *San Antonio* or any other incident. See Lefroy, *Memorials*, p. 92.
73. PC 2/31, fols. 271, 352, 378. On the admiralty court and extraterritorial jurisdiction, see Kelly A. De Luca, "Beyond the Sea: Extraterritorial Jurisdiction and English Law, c. 1575–c. 1640," (PhD dissertation,

Columbia University, 2008), chap. 3. Although the contract was engaged outside of England, a common law court could take jurisdiction of the case through the use of the "Bill of Middlesex," a legal fiction that allowed any case to be brought before King's Bench as if the contract had been engaged in Middlesex County. As De Luca demonstrates, this instrument was routinely used to wrest cases from the High Court of Admiralty during the early modern period, which litigants preferred because bringing a suit at common law was less expensive.

74. PC 2/31, fol. 431.
75. Recovery gangs, also known as wreckers or salvagers, were hired by the ship's owners, and entered into an engagement for between 10 and 25 percent of the value of the goods salvaged, depending on various factors; in particular, whether the recovered items were *wreccum maris* (material washed ashore) or *adventurae maris* (material still at sea). The recovery of the latter, of course, required considerably more risk, effort, and skill, and was better remunerated. The use of the word "adventured" in the syndicators' commission was not accidental; it referred explicitly to the goods recovered from the ship itself.
76. CO 1/2, no. 10.
77. *CSPC Addenda*, item 120. This item is dated by the editors of the calendar as February 1622, but when reconciled with PC 2/31, fol. 431, and with careful reading of the document itself, it should be dated closer to October 1622.
78. The date of Butler's departure and a confirmation that it was unexpected is at CO 1/2, no. 19(i). In CO 1/2, no. 19(ii), will be found a declaration of the company giving instruction for selecting a "resident governor" should the position become vacant for whatever reason before a replacement can be sent from England.
79. This document is at SP 16/526, no. 98, with the company's response located at CO 1/2, no. 20(i–ii). See Chapter 6 in this book.
80. *RVC*, vol. II, pp. 407–8.
81. Butler's departure and indictment of the Virginia colony are discussed in Wesley F. Craven, "Introduction to the History of Bermuda: VI," *William and Mary Quarterly*, Second Series, 18 (1938): 40–63, which also demonstrates great respect for Butler's strong governorship.
82. CO 1/2, no. 10(ii, iii).
83. Indeed, Butler appears to have escaped this incident unscathed. By 1624 he was back in London and was later employed in the English navy and as the governor of Providence Island. See Ken MacMillan, "The Bermuda Company, the Privy Council, and the Wreck of the *San Antonio*, 1621–23," *Itinerario* 34 (2010): 45–64, at p. 57.
84. Andrews, *Trade, Plunder, and Settlement*, p. 339.
85. The various proposals and plans for these new enterprises are amply represented in CO 1/3–4. See also Andrews, *Trade, Plunder, and Settlement*, chap. 13; John C. Appleby, "An Association for the West

Indies?: English Plans for a West India Company, 1621–29," *Journal of Imperial and Commonwealth History* 15 (1987): 213–41; Paul E. Kopperman, "Profile of Failure: The Carolana Project, 1629–40," *The North Carolina Historical Review* 59 (1982): 1–20; Karen Kupperman, *Providence Island, 1630–41: The Other Puritan Colony* (Cambridge: Cambridge University Press, 1993).

CHAPTER 3

1. Alison Games, *Migration and the Origins of the English Atlantic World* (Cambridge, MA: Harvard University Press, 1999), quotation at p. 4. Other seventeenth-century migration studies, which provide context to the ensuing discussion, include Robert Charles Anderson, *The Great Migration Begins: Immigrants to New England, 1620–1633* (Boston: New England Historical Genealogical Society, 1995); Virginia DeJohn Anderson, *New England's Generations: The Great Migration and the Formation of Society and Culture in the Seventeenth Century* (New York: Cambridge University Press, 1991); Bernard Bailyn, *Voyagers to the West: A Passage in the People of America on the Eve of the Revolution* (New York: Alfred A. Knopf, 1986); David Cressy, *Coming Over: Migration and Communication Between England and New England in the Seventeenth Century* (Cambridge: Cambridge University Press, 1987); David Hackett Fischer and James C. Kelly, *Bound Away: Virginia and the Westward Movement* (Charlottesville, VA: University of Virginia Press, 2000); Alison Games, "Migration," in *The British Atlantic World, 1500–1800*, ed. David Armitage and Michael J. Braddick (London: Palgrave Macmillan, 2009), pp. 33–52; James P. Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill, NC: University of North Carolina Press 1994); Anthony Salerno, "The Social Background of Seventeenth-Century Emigration of America," *Journal of British Studies* 19 (1979): 31–52; David Souden, "'Rogues, Whores and Vagabonds'? Indentured Servant Emigrants to North America, and the Case of Mid-Seventeenth-Century Bristol," *Social History* 3 (1978): 23–41; Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing British America, 1580–1865* (Cambridge: Cambridge University Press, 2010), especially chaps. 1 and 2.
2. Cressy, *Coming Over*, chap. 5; Games, *Migration and the Origins of the English Atlantic World*, chap. 1; Tomlins, *Freedom Bound*, chap. 1. The medieval procedure was established under Edward I toward the end of the thirteenth century and was legislated under Richard II circa 1383.
3. *Proc. I*, pp. 147–48.
4. On this practice, see Charles M. Andrews, *The Colonial Period of American History*, 4 vols. (New Haven, CT: Yale University Press 1934), vol. I, pp. 62–63; and Peter Linebaugh and Marcus Rediker, *The*

Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic (London: Verso, 2000), chap. 2.

5. *Proc. I*, pp. 158–60.
6. In April 1608 the king issued "A Proclamation commanding the Oath of Allegiance to be tendered to all the Kings Majesties Subjects coming from beyond the Seas," in *Proc. I*, pp. 184–85.
7. On allegiance and the idea that it was not territorially static, see David M. Jones, "Sir Edward Coke and the Interpretation of Lawful Allegiance in Seventeenth-Century England," in *Law, Liberty, and Parliament: Selected Essays on the Writings of Sir Edward Coke*, ed. Allen D. Boyer (Indianapolis, IN: Liberty Fund, 2004); and Mark L. Thompson, "'The Predicament of Ubi': Locating Authority and National Identity in the Seventeenth-Century English Atlantic," in *The Creation of the British Atlantic World*, ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005).
8. SP 14/8, no. 87.
9. Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/mass01.asp.
10. Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/mass03.asp. See a similar instruction in the Maryland charter of 1632: "except such to whom it shall be expressly forbidden" (http://avalon.law.yale.edu/17th_century/ma01.asp).
11. On the issue of escaping justice, see, for example, the council's 1618 warrant to Lord De La Ware of the Virginia colony, instructing him to refuse the transportation of one Henry Sherley, who had escaped from debtor's prison and, it was believed, would "attempt to transport himself . . . into Virginia" (PC 2/29, fol. 295).
12. *Proc. I*, pp. 51–53.
13. *Proc. I*, pp. 360–62.
14. In a perfectly apt phrase, Linebaugh and Rediker have termed this process the "expropriation of the peasantry" (*Many-Headed Hydra*, p. 49).
15. Andrews, *Colonial Period in American History*, pp. 134–35; SP 14/103, no. 33; see also "Vagabonds, &c. to leave the Court," in *Proc. I*, p. 408.
16. On the Bridewell project, see William G. Hinkle, *A History of Bridewell Prison, 1553–1700* (London: Edwin Mellen, 2006).
17. *RVC*, I, pp. 256, 270–71.
18. *RVC*, I, pp. 256, 269–71, 293, 300, 424, 431, 514–15, 538, 566; *RVC*, II, pp. 90, 368; David R. Ransome, "Wives for Virginia, 1621," *William and Mary Quarterly*, Third Series, 48 (1991): 3–18. Ransome also demonstrates, however, that the women sent after 1621 were more likely to be of gentry stock.
19. SP 14/112, no. 26; *RVC*, III, p. 259.
20. PC 2/30, p. 400–401; *RVC*, I, pp. 304–6.

21. Andrews, *Colonial Period of American History*, p. 62n; Robert Hume, *Early Child Immigrants to Virginia, 1618–1642* (Baltimore: Magna Carta Book Co., 1986), pp. 40–41; Robert C. Johnson, "The Transportation of Vagrant Children from London to Virginia, 1618–1622," in *Early Stuart Studies*, ed. Howard F. Reinmuth (Minneapolis: University of Minnesota Press, 1970).
22. See, e.g. SP 16/224, no. 65.
23. *RVC*, I, pp. 305–7. For an excellent overview of the labor needs of Virginia and, by extension, all the Atlantic colonies, see Edmund S. Morgan, "The First American Boom: Virginia 1681 to 1630," *William and Mary Quarterly*, Third Series, 28 (1971): 169–98.
24. On these practices, see especially William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England*, rev. ed. (New York: Hill and Wang, 2003); and Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492–1640* (New York: Cambridge University Press, 1995), chap. 1. On this work being undertaken by "expropriated" labor, see Linebaugh and Rediker, *Many-Headed Hydra*, chap. 2.
25. This was presumably the same Captain Baily who, along with Captain Roger North and others, abandoned Sir Walter Ralegh upon learning of his plans to attack the Spanish treasure fleet. See Chapter 2 (this book) and, on the council's dealings with Baily on this issue, PC 2/29, fols. 231–88 passim.
26. SP 14/189, no. 36. It is useful to compare Baily's scheme with the plans outlined in Richard Eburne, *A Plaine Pathway to Plantations* (London, 1624). Although this text was written by a clergyman largely for senior officials in the church to induce emigration, many of the same ideas as Baily's are present, showing that a number of people were thinking about the future of England's Atlantic enterprise at this time.
27. SP 14/149, no. 16; CO 1/2, no. 51; *RVC*, IV, p. 294. On the Virginia lottery, see Robert C. Johnson, "The Lotteries of the Virginia Company, 1612–1621," *Virginia Magazine of History and Biography* 74 (1966): 259–92; Emily Rose, "The End of the Gamble: The Termination of the Virginia Lotteries in March 1621," *Parliamentary History* 27 (2008): 175–97; and "Suppressing the lottery for Virginia," in *Proc. I*, pp. 500–502. The council's involvement in this scheme will be found at, for example, PC 2/27, fol. 273r, and PC 2/31, fol. 11. On another money-gathering scheme, see, for example, James I's letter directed to two archbishops in 1623, requesting that they undertake a collection for the education of the children in Virginia (CO 1/2, no. 37).
28. On the transition from trading company administration to proprietorships, and the obligations to the Crown, see MacMillan, *Sovereignty and Possession*, pp. 96–98.
29. CO 1/2, no. 53.

30. A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718–1775* (Oxford: Oxford University Press, 1990) and Gwenda Morgan and Peter Rushton, *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic* (New York: Palgrave Macmillan, 2004).
31. There are some brief treatments of this topic, although the vast majority of the material addresses the period after 1650. J. D. Butler, "British Convicts Shipped to American Colonies," *American Historical Review* 2 (1896): 12–33, at pp. 16–17; A. E. Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607–1776* (Gloucester, MA: Peter Smith, 1965), pp. 89–94; A. E. Smith, "The Transportation of Convicts to the American Colonies in the Seventeenth Century," *American Historical Review* 39 (1934): 232–49, at pp. 233–36; and Peter Wilson Coldham, *Emigrants in Chains: A Social History of Forced Emigration to the Americas, 1607–1776* (Baltimore: Genealogical Publishing Co., 1992), pp. 41–47.
32. Richard Hakluyt, "The Discourse of Western Planting," in *The Original Writings and Correspondence of the Two Richard Hakluyts*, ed. E. G. R. Taylor (London: Hakluyt Society, 1935), p. 234.
33. Alexander Brown, *The Genesis of the United States*, 2 vols. (Boston: Houghton Mifflin, 1890), vol. I, p. 46. For a similar assessment by Zuñiga's successor, Don Alonso de Velasco, see ibid., 456.
34. Robert Johnson, *Nova Britannia* (London, 1609).
35. CO 1/1, no. 26. On the *Lawes Divine, Moral and Martial* (1611), see the recent discussion in William E. Nelson, *The Common Law in Colonial America, Vol. 1: The Chesapeake and New England, 1607–1660* (Oxford: Oxford University Press, 2008), pp. 14–18.
36. On the subject of punishment, pardon, and mercy, see, for example, Douglas Hay, "Property, Authority, and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. D. Hay, P. Linebaugh, and E. P. Thompson (London: Allen Lane, 1975), pp. 17–63; Cynthia B. Herrup, "Law and Morality in Seventeenth-Century England," *Past and Present* 106 (1985): 102–23; and K. J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge: Cambridge University Press, 2003). On the importance of violence and criminal intent, see Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth Century England* (Cambridge: Cambridge University Press, 1984).
37. CO 66/2043, quoted in Smith, *Colonists in Bondage*, pp. 92–93. Several certifications of fitness are present in SP 14; see *CSPD* 1611–18, p. 545; *CSPD* 1619–23, pp. 111, 213.
38. See the open warrant issued in 1617, PC 2/28, fols. 601–2. Between 1617 and 1633, the king's commission and the council's subsequent open warrants were reissued six times, usually when the death or removal of a named commissioner so demanded. Several of these

commissions are mentioned in *CSPD* 1619–23, pp. 306–7, 439; SP 14/232, no. 97.

39. *Proc. I*, p. 378. Convict transportation was, in part, a replacement of the practice of abjuration of the realm, which fell into desuetude in the sixteenth century; in order to continue to demonstrate mercy toward their subjects, Elizabeth I and the early Stuarts sought another option. See K. J. Kesselring, "Abjuration and its Demise: The Changing Face of Royal Justice in the Tudor Period," *Canadian Journal of History* 34 (1999): 345–58.
40. Although an exact number is likely impossible to determine, this information is based on a count of those reprieved and committed for transportation, as identified throughout the Privy Council Register, Colonial Office papers, and State Papers. It is generally confirmed in Smith, "Transportation of Convicts," p. 236.
41. PC 2/30, fol. 476.
42. PC 2/31, fol. 465.
43. SP 14/98, no. 28.
44. CO 1/2, no. 12; SP 14/133, no. 10; PC 2/31, fol. 516.
45. Peter Wilson Coldman, ed., *English Convicts in Colonial America, vol. 1: Middlesex, 1617–1775* (New Orleans, LA: Polyanthos, 1974), p. 229.
46. CO 1/8, no. 93.
47. CO 1/9, no. 125.
48. Fischer and Kelly, *Bound Away*, p. 54.
49. Coldham, *Emigrants in Chains*, pp. 41–42.
50. Vernon A. Ives, ed., *The Rich Papers: Letters from Bermuda, 1615–1646: Eyewitness Accounts Sent by the Early Colonists to Sir Nathaniel Rich* (Toronto: University of Toronto Press, 1984), p. 194.
51. Francis Bacon, "On Plantations," in *The Essays or Counsels Civil and Moral*, ed. Brian Vickers (Oxford: Oxford University Press, 1999), p. 78. On Bacon's imperialism, see Michelle Tolman Clarke, "Uprooting Nebuchadnezzar's Tree: Francis Bacon's Criticism of Machiavelli's Imperialism," *Political Research Quarterly* 61 (2008): 367–78. On the quest for greatness (or *grandezza*) through colonization, see Andrew Fitzmaurice, "The Commercial Ideology of Colonization in Jacobean England: Robert Johnson, Giovanni Botero, and the Pursuit of Greatness," *William and Mary Quarterly*, Third Series, 64 (2007): 791–820.
52. On this venture, see E. C. Carter and C. Lewis, "Sir Edmund Plowden and the New Albion Charter, 1632–1785," *Pennsylvania Magazine of History and Biography* 83 (1959): 150–79; and L. H. Roper, "New Albion: Anatomy of an English Colonisation Failure, 1632–1659," *Itinerario* 32 (2008): 39–57.
53. The central difference between transportation before and after the act of 1718 was that prior to the act, judges were required to give a death sentence and then recommend that the Crown remit the sentence to

transportation, whereas after the act they could sentence a convict to transportation without resort to the Crown.

54. PC 2/30, fols. 425, 578; PC 2/31, fol. 76. Whitbourne's treatise, *A Discourse and Discovery of New-found-land* is printed in Gillian T. Cell, ed., *Newfoundland Discovered: English Attempts at Colonisation, 1610–30* (London: Hakluyt Society, 1982).
55. Robert Hayman, "A Proposition of Profitt and Honor Proposed to my Dread and Gratious Soveraigne Lord King Charles," BL Egerton MS 2541, fols. 162–9, quotation at fol. 168r.
56. CO 1/2, no. 52.
57. Andrews, *Colonial Period of American History*, p. 135n; *CSPC*, p. 156; Games, *Migration and the Origins of the English Atlantic World*, p. 4.
58. On this, see Games, "Migration," pp. 45–48; and Games, *Migration and the Origins of the English Atlantic World*, pp. 200–201.
59. Quoted in Games, *Migration and the Origins of the English Atlantic World*, pp. 200–201.
60. Although the subject of military impressments has almost exclusively addressed the eighteenth century, the practice began much earlier. On impressment in general, and the argument that any able-bodied man (and not just experienced seamen) could be impressed, see Nicholas Rogers, *Press Gang: Naval Impressment and Its Opponents in Georgian Britain* (London: Continuum, 2008).
61. PC 2/32, fols. 677–78.
62. PC 2/32, fols. 698–702, quotation at fol. 701.
63. *Proc. I*, pp. 634–36, quotation at p. 634; and a similar proclamation issued 11 days later, in *Proc. II*, pp. 6–8.
64. PC 2/32, fols. 709, 712.
65. PC 2/33, fols. 158, 184v, 389r; PC 2/36, fols. 80r, 140r.
66. PC 2/38, fols. 385, 418; PC 2/39, fols. 352, 416–17; PC 2/40, fol. 88; SP 16/107, no. 75; SP 16/110, no. 24.
67. CO 1/4, no. 26.
68. SP 16/110/24; CO 1/4, no. 58; CO 1/9, nos. 13–14, 46, 56–58.
69. See, e.g., CO 1/9, no. 83.
70. See, e.g., CO 1/4, no. 13.
71. "Charter of New England [1620]," Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/mass01.asp.
72. PC 2/31, fols. 148–9.
73. *Proc. I*, pp. 555–57, quotation at p. 557. The petition is at PC 2/31, fol. 498.
74. CO 1/6, nos. 4–6.
75. PC 2/41, fols. 191–92, 210, 247. On Martin's frequent employment, see the indexes to APC for the years 1629–32.
76. PC 2/41, fols. 352, 361; PC 2/42, fols. 33, 52, 167–68. An English mark was 160 pence, or two-thirds of a pound. On Maurice Thompson, a man involved in many overseas mercantile adventures in the

Atlantic, see Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653* (Princeton, NJ: Princeton University Press, 1993), chap. 4 and p. 123, n. 30, on Canada interloping.

77. Charter of New England, 1620, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/mass01.asp.
78. *RVC*, III, p. 4. The blank lines were to be filled in with the traveler's name and colonial destination.
79. *RVC*, III, pp. 4–5.
80. Charles I, *A Proclamation Against Travellers without Licences* (London, 1630).
81. CO 1/6, no. 84; PC 2/43, fol. 291. See also John D. Krugler, *English and Catholic: The Lords Baltimore in the Seventeenth Century* (Baltimore: Johns Hopkins University Press, 2004), pp. 200–201.
82. *CSPC*, p. 174; PC 2/43, fols. 488, 501.
83. PC 2/43, fols. 503–4.
84. PC 2/43, fol. 519; PC 2/44, fols. 336–37, 401–402.
85. CO 1/8, fols. 112–14.
86. On the creation of this committee and its relationship to the "emigration of Puritans," see Charles M. Andrews, *British Committees, Commissions, and Councils of Trade and Plantations, 1622–1675* (Baltimore: Johns Hopkins University Press, 1908), pp. 16–17. See also Chapter 6 in this book.
87. The proclamation citing these new policies is at *Proc. II*, pp. 462–64. A number of these certifications, petitions to the council, and orders from the commissioners exist, for example, CO 1/8, no. 67; CO 1/9, no. 78; CO 1/10, no. 21. See also Cressy, *Coming Over*, pp. 134–36.
88. Quoted in Cressy, *Coming Over*, p. 136.
89. Games, *Migration and the Origins of the English Atlantic World*, p. 21. The register is at E 157/20. The destination of these 4,878 passengers were 2,009 to Virginia, 1,169 to New England, 983 to Barbados, 423 to St. Kitts, 218 to Bermuda, and 76 to Providence Island. In some cases these travelers were bound for other locations; for instance, a ship destined for Virginia might first land at Maryland to disembark some of its passengers. Another register from 1634–35 can be found in BL Additional 24516, fols. 115–47.
90. E 157/19; E 157/25.
91. *Proc. II*, p. 610. See a similar proclamation in *Proc. II*, pp. 555–56.
92. Many example of these licenses exist. See *CSPC*, pp. 261–323 passim; *APCC*, pp. 227–95 passim.
93. CO 1/9, no. 115.
94. On this procedure, see, for example, PC 2/49, fol. 341; see also CO 1/9, no. 2, for the council's unwillingness to distinguish between religious and other emigrants.
95. Cressy, *Coming Over*, pp. 137–43.

96. Linebaugh and Rediker have estimated that "many . . . thousands" of felons and idle men, women, and children were ultimately "expropriated" out of England, although it is very difficult to arrive at an accurate figure (*Many-Headed Hydra*, pp. 56–60).
97. Games, "Migration," pp. 39–40; Linebaugh and Rediker, *Many-Headed Hydra*, pp. 57–60; L. H. Roper, *The English Empire in America, 1602–1608: Beyond Jamestown* (London: Pickering & Chatto, 2009), p. 80.
98. On Bermuda's defensive capabilities and strategic importance in the Atlantic, see Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006), pp. 140–41.
99. Quoted in Games, "Migration," p. 40.
100. Ken MacMillan, "Exploration, Trade and Empire," in *The Elizabethan World*, ed. Susan Doran and Norman Jones (London: Routledge, 2010), pp. 659–60.

CHAPTER 4

1. Richard Hakluyt the elder, "Notes on Colonisation," in *The Original Writings and Correspondence of the Two Richard Hakluyts*, ed. E. G. R. Taylor (London: Hakluyt Society, 1935), pp. 117–20; Richard Hakluyt the younger, "Discourse of Western Planting," ibid., pp. 218–35. On Hakluyt in general, see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), chap. 3; and Peter Mancall, *Hakluyt's Promise: An Elizabethan's Obsession for an English America* (New Haven, CT: Yale University Press, 2007).
2. "Arthur Barlow's Discourse of the First Voyage," in *The Roanoke Voyages*, ed. David B. Quinn, 2 vols. (London: Hakluyt Society, 1955), vol. I, pp. 106–9; and "Thomas Hariot, *A Briefe and True Report*," ibid., pp. 325–37.
3. The discrepancy can be accounted for by the fact that eastern North America experiences a continental climate, whereas western Europe has an oceanic climate. See, especially, Karen Ordahl Kupperman, "The Puzzle of the American Climate in the Early Colonial Period," *American Historical Review* 87 (1982): 1262–89; and Kupperman, *The Jamestown Project* (Cambridge, MA: Belknap Press, 2007), pp. 158–63.
4. The subject of early Virginia's experiments with tobacco is well known. See, generally, Charles M. Andrews, *The Colonial Period of American History, I: The Settlements* (New Haven, CT: Yale University Press, 1934), pp. 126–27; and James Horn, *A Land As God Made It: Jamestown and the Birth of America* (New York: Basic Books, 2005), pp. 232–33, 246–47. On tobacco as a viable staple product, see Stephen J. Hornsby, *British Atlantic, American Frontier: Spaces of Power in Early*

Modern British America (Hanover, NH: University Press of New England, 2005), pp. 88–97.

5. James I, *A Counter-Blast to Tobacco* (London, 1604). On the contemporary debate over tobacco's supposed medicinal qualities, see David Harley, "The Beginnings of the Tobacco Controversy: Puritanism, James I, and the Royal Physicians," *Bulletin of the History of Medicine* 67 (1993): 28–50.
6. CO 1/4, no. 32; PC 2/38, fol. 268. See also Neville Williams, "England's Tobacco Trade in the Reign of Charles I," *Virginia Magazine of History and Biography* 65 (1957): 403–49.
7. *RVC*, II, p. 36.
8. *RVC*, I, pp. 266–67, 329; *RVC*, II, 315–520 passim. Andrews, *Colonial Period of American History*, pp. 151–53; Horn, *A Land As God Made It*, p. 234; James Horn, "Tobacco Colonies: The Shaping of English Society in the Seventeenth-Century Chesapeake," and Nuala Zahedieh, "Overseas Expansion and Trade in the Seventeenth Century," in *The Oxford History of the British Empire: Vol. 1, The Origins of Empire: English Overseas Activity to the Close of the Seventeenth Century*, ed. Nicholas Canny (Oxford: Oxford University Press, 1998); Nuala Zahedieh, "Economy," in *The British Atlantic World, 1500–1800*, 2nd ed., ed. David Armitage and Michael J. Braddick (New York: Palgrave Macmillan, 2009), pp. 57–58.
9. For example, in 1620, the company sent "men skilful for setting up staple commodities," among whom they listed masters of ironworks, saltworks, sawmills, and the breeding of silk worms (*RVC*, III, p. 239). See also the company's *Declaration of the State of the Colony and Affairs in Virginia*, in which it rehearsed its plans to improve industry (*RVC*, III, pp. 308–9).
10. Alvin Rabushka, *Taxation in Colonial America* (Princeton, NJ: Princeton University Press, 2008), chap. 9; Williams, "England's Tobacco Trade," pp. 414, 419–20; BL Egerton MS 2395, fols. 376–84; Sackville, p. 526. The Sackville papers are materials compiled by Lionel Cranfield, Earl of Middlesex, lord treasurer from 1621 to 1624. Cranfield took the papers with him when he left office and they later came into the custody of Sir Richard Sackville, who married Cranfield's daughter.
11. See Hornsby, *British Atlantic, American Frontier*, chap. 2; and Zahedieh, "Economy" and "Overseas Expansion and Trade in the Seventeenth Century."
12. Francis Bacon, "Of Plantations," in *The Essays or Counsels Civil and Moral*, ed. Brian Vickers (Oxford: Oxford University Press, 1999), pp. 78–80. On mercantilism and its association with the state, see John J. McCusker and Russell R. Menard, *The Economy of British America, 1607–1789* (Chapel Hill, NC: University of North Carolina Press 1985), chap. 2; and Jacob Viner, "Power Versus Plenty as Objectives of

Foreign Policy in the Seventeenth and Eighteenth Centuries," in *Theories of Empire, 1450–1800*, ed. David Armitage (Aldershot, Hampshire, UK: Ashgate, 1998), pp. 277–309.

13. Armitage, *Ideological Origins of the British Empire*; Michael J. Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge: Cambridge University Press, 2000); Andrew Fitzmaurice, "The Civic Solution to the Crisis of English Colonization, 1609–25," *Historical Journal* 42 (1999): 25–51; Fitzmaurice, "The Commercial Ideology of Colonization in Jacobean England: Robert Johnson, Giovanni Botero, and the Pursuit of Greatness," *William and Mary Quarterly*, Third Series, 64 (2007): 791–820; Elizabeth Mancke, "Empire and State," in *The British Atlantic World, 1500–1800*, ed. David Armitage and Michael J. Braddick (New York: Palgrave Macmillan, 2009), pp. 175–95.
14. Poundage was termed a "subsidy" because it was granted by Parliament at the beginning of each monarch's reign. The legality of the king collecting impositions to regulate the economy was determined in Bates Case (1606), after which it became a regular device of early Stuart financing. Both poundage and impositions were major topics of discussion during the early Stuart parliaments. See Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653* (Princeton, NJ: Princeton University Press 1993), chap. 5; and Williams, "England's Tobacco Trade," pp. 404–405.
15. Charter to the Virginia Company, 1612, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/va03.asp.
16. PC 2/29, fol. 201.
17. Sackville, p. 523, n. 102; PC 2/30, fol. 358; James I, *The rates of marchandizes as they are set down in the Book of Rates* (London, 1612), sig. L3.
18. *RVC*, I, pp. 245, 272, 281–84.
19. Sackville, p. 523, n. 102; PC 2/30, fol. 358.
20. Sackville, pp. 523–24. The total customs and imposition for tobacco for 1619 was approximately £5,000, a figure that was expected to rise because of the Virginia and Bermuda 5 percent subsidy and the increasing importation of tobacco; thus Jacob calculated that £8,000, less a fee of £150 for his collection (his present salary in that position), should produce a profit.
21. Michael Braddick, *The Nerves of State: Taxation and the Financing of the English State, 1558–1714* (Manchester: Manchester University Press, 1996), chap. 3; Braddick, *State Formation in Early Modern England*, pp. 234–53.
22. Sackville, pp. 523–24.
23. PC 2/30, fols. 289–90.
24. *Proc. I*, pp. 457–60.

25. Wesley Frank Craven, *The Dissolution of the Virginia Company: The Failure of a Colonial Experiment* (Gloucester, MA: Peter Smith, 1932). Other aspects of the ensuing discussion are indebted to Craven, though his discussion focuses on the company rather than the Crown.
26. *RVC*, I, pp. 290–92.
27. Sackville, pp. 525–26.
28. PC 2/30, fols. 471, 475.
29. *Proc. I*, pp. 481–84; PC 2/31, fols. 113–14, 117.
30. Andrews has suggested that this was Sandys's way of punishing the sister company for not electing him to the directorship the previous year (Andrews, *Colonial Period of American History*, p. 158.)
31. *RVC*, I, pp. 405–6, 422.
32. *RVC*, I, pp. 527–33.
33. PC 2/31, fol. 173.
34. *RVC*, II, pp. 322–23.
35. Leo Francis Stock, *Proceedings and Debates of the British Parliaments Respecting North America, vol. 1, 1542–1688* (Washington, DC: Carnegie Institution of Washington, 1966), pp. 30–40.
36. Sackville, p. 528, 530–31.
37. Many documents relating to the tobacco contract, which are not necessary to discuss in detail, are in Sackville. Other documents can be found throughout *RVC*, II, especially pp. 81–88, which includes Cranfield's offer of the monopoly and a draft of the contract, and pp. 147–56, the meeting of November 27.
38. *Proc. I*, pp. 500–502; Emily Rose, "The End of the Gamble: The Termination of the Virginia Lotteries in March 1621," *Parliamentary History* 27 (2008): 175–97.
39. Sackville, pp. 742–45.
40. Sackville, pp. 746–47.
41. PC 2/31, fol. 583.
42. On the importance of the Riches in both companies and the distinction between the "merchant" and "gentry" parties, see Brenner, *Merchants and Revolution*, pp. 99–102.
43. The minutes of the November 27 meeting records 78 present, but adds that there were "divers others" (*RVC*, II, p. 147), an inexact figure. According to Theodore K. Rabb, the Virginia Company, by 1621, had more than one thousand six hundred shareholders, although not all of these would have resided in London. Generally the small number of voters at the meeting confirms the allegation in the complaint. Rabb, *Enterprise and Empire: Merchant and Gentry Investment in the Expansion of England, 1575–1630* (Cambridge, MA: Harvard University Press, 1967), pp. 30 and appendix.
44. Sackville, pp. 754–59; CO 1/3, no. 10; *RVC*, IV, pp. 53–56; Craven, *Dissolution of the Virginia Company*, pp. 243–46.

45. *RVC*, II, pp. 151–54. On the complaints over salary, see *RVC*, IV, pp. 19–53 passim.
46. Fitzmaurice, "Commercial Ideology of Colonization in Jacobean England," pp. 806–7.
47. Sackville, pp. 759–62.
48. CO 1/2, no. 21; PC 2/31, fols. 668–69, 674; *RVC*, II, pp. 295–400.
49. PC 2/31, fol. 618.
50. *RVC*, II, pp. 297–98.
51. CO 1/3, no. 4.
52. PC 2/31, fol. 674.
53. *Proc. I*, pp. 600–605, 626–32; CO 1/3, nos. 1, 4, 31–32; Stock, *Proceedings and Debates*, pp. 70–73; SP 14/155, no. 55; SP 14/169, nos. 5–7.
54. Historians have often pointed to the limited success of the Crown to enforce this prohibition, which again points to the problems of the "weak-state" model and the need for negotiation between center and periphery. However, the fact that the Crown subsequently issued multiple orders regarding the prohibition says something about its continuing interest in the matter. See PC 2/34, fol. 87v; PC 2/35, fol. 255v; PC 2/36, fol. 54r; PC 2/38, fol. 484; PC 2/41, fols. 121–22; PC 2/44, fols. 19–20; PC 2/45, fols. 27–28; PC 2/47, fol. 185; PC 2/49, fol. 308; PC 2/50, fol. 564.
55. PC 2/33, fols. 53, 62v.
56. PC 2/33, fol. 147; CO 1/3, no. 47.
57. Brenner, *Merchants and Revolution*, p. 105.
58. See, e.g., the plans for a new tobacco contract in 1625 compared with that of 1622 in BL Egerton 2978, fols. 10–11.
59. Thomas Cogswell, "'In the Power of the State': Mr. Anys's Project and the Tobacco Colonies, 1626–1628," *English Historical Review* 123 (2008): 35–64; and Williams, "England's Tobacco Trade"; CO 1/4, nos. 20–22, 44–46.
60. *Proc. II*, pp. 131–36; Cogswell, "In the Power of the State," pp. 42–53. Williams, "England's Tobacco Trade," pp. 408–9.
61. PC 2/38, fol. 374; Williams, "England's Tobacco Trade," p. 405.
62. *Proc. II*, pp. 140–41, 162–65; Cogswell, "In the Power of the State," pp. 42–53; Williams, "England's Tobacco Trade," p. 420.
63. PC 2/33, fol. 147; CO 1/3, no. 47.
64. PC 2/33, fol. 304r.
65. PC 2/38, fols. 373–77; CO 5/1354, fols. 224–42.
66. *Proc. II*, pp. 307–10.
67. CO 1/6, no. 3.
68. PC 2/41, fols. 408–11.
69. PC 2/40, fols. 393, 446–47, 451; PC 2/41, fols. 103, 206, 502–3.
70. PC 2/44, fols. 86, 98.
71. CO 1/9, no. 20.

72. CO 1/8, no. 28; and Cogswell, "In the Power of the State," pp. 63–64. On the mutiny against Harvey, see Chapter 5.
73. CO 1/9, nos. 17–18.
74. CO 1/9, no. 47.
75. CO 1/9, nos. 89, 96; PC 2/49, fol. 26. On this entire incident, see L. H. Roper, "Charles I, Virginia, and the Idea of Atlantic History," *Itinerario* 30 (2006): 33–53.
76. CO 5/1354, fol. 238r.
77. CO 5/1354, fol. 241r; CO 1/9, no. 47.
78. On the Dutch in the Chesapeake in general, see April Lee Hatfield, "Dutch and New Netherland Merchants in the Seventeenth-Century English Chesapeake," in *The Atlantic Economy During the Seventeenth and Eighteenth Centuries: Organization, Operation, Practice, and Personnel*, ed. Peter Coclanis (Columbia, SC: University of South Carolina Press, 2005), pp. 205–28.
79. PC 2/34, fol. 160; see also PC 2/36, fol. 73r.
80. David Armitage, "Three Concepts of Atlantic History," in *The British Atlantic World, 1500–1800*, ed. David Armitage and Michael J. Braddick (New York: Palgrave Macmillan, 2009), p. 22.
81. Robert Bliss, *Revolution and Empire: English Politics and the American Colonies in the Seventeenth Century* (Manchester: Manchester University Press, 1990), pp. 20 (quotation), 58–60; Carla Gardina Pestana, *The English Atlantic in the Age of Revolution, 1640–1661* (Cambridge, MA: Harvard University Press, 2004), chap. 5, quotations at pp. 157, 161, 171; Nuala Zahedieh, *The Capital and the Colonies: London and the Atlantic Economy, 1660–1700* (Cambridge: Cambridge University Press, 2010); Zahedieh, "Economy"; Thomas C. Barrow, *Trade and Empire: The British Customs Service in Colonial America* (Cambridge, MA: Harvard University Press, 1967); George L. Beer, *The Old Colonial System, 1660–1754, Part I: The Establishment of the System, 1660–1688* (New York: Macmillan, 1912).
82. C. H. Firth and R. S. Rait, eds., *Acts and Ordinances of the Interregnum, 1642–1660* (London: HMSO, 1911), vol. II, pp. 559–62.
83. 12 Car. II, c. 18; 15 Car. II, c. 7; Bliss, *Revolution and Empire*, chaps. 3 and 5; Lawrence A. Harper, *The English Navigation Laws: A Seventeenth Century Experiment in Social Engineering* (New York: Columbia University Press, 1939); Pestana, *English Atlantic in an Age of Revolution*, pp. 171–72; Zahedieh, "Overseas Expansion and Trade in the Seventeenth Century," pp. 405–6; and Zahedieh, "Economy," pp. 54–56.

CHAPTER 5

1. On the relationship between prerogative and petition, see William Staunford, *An exposicion of the kinges prerogatiue* (London, 1568), pp. 72–76; and Matthew Hale, *The Prerogatives of the King*, ed. D. E. C. Yale (London: Selden Society, 1976), chap. 17.
2. For an excellent discussion of the council's overall role in hearing and determining the petitions of its various suitors, see John P. Dawson, "The Privy Council and Private Law in the Tudor and Stuart Periods," *Michigan Law Review* 48 (1950): 393–428, 627–56. With reference to the empire, see Joseph Henry Smith, *Appeals to the Privy Council from the American Plantations* (New York: Columbia University Press, 1950). For a preliminary discussion of the council's role with regard to Atlantic petitions, see H. E. Egerton, "The Seventeenth and Eighteenth Century Privy Council in Its Relations with the Colonies," *Journal of Comparative Legislation and International Law*, Third Series, 7 (1925): 1–16.
3. On the process of petitions, see Dawson, "Privy Council and Private Law"; E. R. Turner, *The Privy Council of England in the Seventeenth and Eighteenth Centuries*, 2 vols. (Baltimore: Johns Hopkins University Press, 1927), vol. I, chap. 5; J. Vernon Jensen, "The Staff of the Jacobean Privy Council," *Huntington Library Quarterly* 40 (1976): 11–44; and the treatises of Sir Edward Coke and Sir Julius Caesar at SP 16/8, nos. 77–81.
4. There exist approximately two dozen early Stuart proclamations that prohibit the transportation of these various goods, although such prohibitions could also be made by warrant through the Sign Manual (i.e., by the king's signature). See *Proc. I*, pp. 85, 127, 141, 144, 147, 219, 227, 229, 237; *Proc. II*, nos. 33, 57, 74, 98, 112, 141, 146, 63, 198, 287.
5. *Proc. I*, pp. 187, 286. In this period, customs duties were collected by private "farmers," who paid the king a fixed fee in exchange for the right to collect duties, an arrangement that ensured a steady income into Crown coffers.
6. Richard Hakluyt, "Discourse of Western Planting, 1584," in *The Original Writings and Correspondence of the Two Richard Hakluyts*, ed. E. G. R. Taylor, 2 vols. (London: Hakluyt Society, 1935), vol. II, pp. 320–24.
7. Charter to the Virginia Company, 1606, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/va01.asp.
8. Charter to the New England Company, 1620, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/mass01.asp; Charter to the Massachusetts Bay Company, 1629, http://avalon.law.yale.edu/17th_century/mass03.asp; Charter to Cecil

Calvert, Lord Baltimore, for Maryland, 1632, http://avalon.law.yale.edu/17th_century/ma01.asp.

9. Charter to the New England Company, 1620, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/mass01.asp.
10. PC 2/30, fols. 477, 482; CO 1/1, no. 50.
11. See Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006), chap. 4.
12. CO 1/2, no. 9. The complete list of arms sent and other ancillary material can be found in Sackville, pp. 503–5.
13. *CSPC*, pp. 85, 108; PC 2/32, fols. 455, 474; PC 2/33, fol. 300v; PC 2/34, fols. 69v, 102v; PC 2/40, fol. 283; PC 2/44, fol. 245; PC 2/50, fol. 394.
14. PC 2/41, fol. 116.
15. PC 2/51, fols. 380–81.
16. PC 2/32, fols. 556–57.
17. PC 2/39, fol. 106.
18. Port officials, in turn, kept lengthy lists of items being exported to America, although many of these are no longer extant. See, for example, E 190/34–44, the lists compiled by the searchers of goods for ships bound to New England, 1637–40. Some of these have been transcribed in Norman C. P. Tyack, "English Exports to New England, 1632–40: Some Records in the Port Books," *New England Historical and Genealogical Register* 135 (1981): 213–38.
19. PC 2/39, fol. 712; PC 2/40, fols, 118, 337–38, 377, 382; PC 2/48, fol. 171; PC 2/50, fols. 611–12. Though not specifically on the prohibited lists, candles of poor quality (as opposed to higher quality ones made of beeswax) were made of tallow (fat and suet) and thus would be placed under a general victuals prohibition.
20. PC 2/40, fol. 551; PC 2/47, fols. 301–2.
21. PC 2/48, fol. 171.
22. PC 2/41, fols. 246–47. A quarter was 28 pounds, or one-quarter of a hundredweight.
23. PC 2/49, fol. 99.
24. PC 2/33, fol. 147v.
25. PC 2/33, fol. 304r. This instruction was later repeated to Captain John Harvey when he became governor in 1628; PC 2/38, fol. 376.
26. PC 2/33, fol. 254r.
27. PC 2/50, fol. 432. A butt was 480 liters (or two hogsheads); a bushel was a dry measure of 32 quarts; a puncheon was 318 liters; and a roundlet was 159 liters (or half a puncheon).
28. PC 2/51, fols. 17–18, 59–60, 212–13, 249–53, 262, 323; PC 2/52, fols. 428–31, 509–10, 714–15.
29. CO 1/1, no. 39. Although this document is dated as "Dec?", the Privy Council first began discussing the matter on November 4 (PC 2/30,

fols. 10–11), suggesting that the petition was submitted in September or October. For context, see Ralph Greenlee Lounsbury, *The British Fishery at Newfoundland 1634–1764* (New Haven: Yale University Press, 1934); and Gillian T. Cell, *English Enterprise in Newfoundland 1577–1660* (Toronto: University of Toronto Press, 1969).

30. PC 2/30, fols. 10–11. On the importance of the western fisheries to England and the Atlantic economy, see, for example, Stephen J. Hornsby, *British Atlantic, American Frontier: Spaces of Power in Early Modern British America* (Hanover, NH: University Press of New England, 2005), pp. 28–37; and David Harris Sacks, *The Widening Gate: Bristol and the Atlantic Economy, 1450–1700* (Berkeley, CA: University of California Press, 1991).
31. On the Privy Council's earlier dealings with Newfoundland pirates, see PC 2/27, fols. 41v, 47r. In July 1613 the council authorized the lord high admiral to "take up as many ships and other vessels furnished and provided in such a manner as may be sufficient for the apprehension and taking of all such pirates." The council also authorized a man-of-war ship to guard Newfoundland during the fishing season, its costs to be collected from the fishing fleet. In March 1620, as a last effort to prevent piracy in Newfoundland before the company's demise, it petitioned the king to empower John Mason, the present governor of Newfoundland, as the king's lieutenant, to patrol the waters and capture pirates, and to provide him with two ships (at the cost of the fishing fleet). See CO 1/1, no. 54.
32. CO 1/1, no. 40.
33. CO 1/1, no. 40(i).
34. CO 1/4, no. 41.
35. PC 2/30, fol. 58.
36. PC 2/30, fol. 453.
37. On the fate of the Newfoundland Company, see Peter Pope, *Fish into Wine: The Newfoundland Plantation in the Seventeenth Century* (Chapel Hill, NC: University of North Carolina Press, 2004), chap. 2.
38. CO 1/6, no. 1.
39. CO 1/6, no. 2.
40. PC 2/43, fols. 451–55.
41. On the "fish admirals," see Pope, *Fish into Wine*; and Jerry Bannister, *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699–1832* (Toronto: University of Toronto Press, 2003), especially chap. 2.
42. PC 2/33, fol. 103.
43. CO 1/4, no. 30. For context, see Vincent T. Harlow, *A History of Barbados, 1625–1685* (New York: Negro Universities Press, 1926), pp. 3–9; Larry Gragg, *Englishmen Transplanted: The English Colonization of Barbados, 1627–1660* (Oxford: Oxford University Press, 2003);

and especially Gary Puckrein, "Did Sir William Courteen Really Own Barbados?," *Huntington Library Quarterly* 44 (1982): 135–49.

44. CO 1/4, no. 39; CO 29/1, fols. 2–7v.
45. CO 1/5, no. 1.
46. CO 1/5, no. 11; SP 9/208, no. 34.
47. CO 1/5, no. 11.
48. CO 1/5, no. 13.
49. CO 1/6, no. 59.
50. PC 2/43, fols. 118–19; CO 1/6, no. 76.
51. PC 2/43, fols. 139–40; CO 1/6, no. 76.
52. CO 1/6, no. 79.
53. CO 1/8, no. 32(i). On Claiborne, generally, see John C. Appleby's entry in *ODNB*. On the Kent Island project, see Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653* (Princeton, NJ: Princeton University Press, 1993), pp. 120–24, 140–45.
54. CO 1/6, no. 87.
55. CO 1/8, nos. 3–4.
56. CO 1/8, no. 25.
57. CO 1/8, nos. 26–27.
58. CO 1/8, no. 32.
59. CO 1/8, no. 34.
60. On this series of events, see especially CO 1/8, nos. 37, 64, 84; and *CSPC*, p. 216 (notes regarding Harvey's meeting with the Privy Council). See also J. Mills Thornton III, "The Thrusting out of Governor Harvey: A Seventeenth-Century Rebellion," *Virginia Magazine of History and Biography* 76 (1968): 11–26.
61. PC 2/47, fol. 452; PC 2/48, fol. 230; PC 2/50, fol. 572; CO 1/9, nos. 53, 67–68.
62. CO 1/9, nos. 87, 94, 117, 120. On the whole affair, see, generally, L. H. Roper, *The English Empire in America, 1602–1658: Beyond Jamestown* (London: Pickering & Chatto, 2009), pp. 109–14, 121–24; and Wilcolm E. Washburn, *Virginia Under Charles I and Cromwell, 1625–1660* (Williamsburg, VA: Virginia 350th Anniversary Celebration Corp., 1957; reprinted by Project Gutenberg eBook, 2009), available at http://www.gutenberg.org/files/29348/29348-h/29348-h.htm.
63. Daniel Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *Law and History Review* 21 (2003): 439–82. Speaking in Parliament in 1628, Coke stated, "The common law meddles with nothing that is done beyond the seas" (ibid., p. 439). See also Smith, *Appeals to the Privy Council*, chap. 1. The 1612 Virginia charter authorized the courts of Chancery and Common Pleas to hear suits regarding the failure of adventurers to pay their agreed sum, as both parties (the adventurer and the Virginia Company) resided in England, but otherwise the charters are silent on

the issue of English courts having jurisdiction in transatlantic affairs, likely for the reason Coke provides.

64. The year of Powell's death is given in CO 1/2, no. 17; see also *RVC*, III, pp. 555, 569.
65. Until 1858, the Prerogative Courts of Canterbury (handling the south of England) and York (handling the north) probated (or "proved") all wills and dealt with disputes over wills. Its records are now held in the National Archives of the United Kingdom, Kew, Richmond, Surrey, in the probate (PROB) series.
66. PC 2/34, fol. 5; CO 1/4, no. 12. Aspects of this case, and the transfer of land to Edward "Blayney," are mentioned in R. B. McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia*, 2nd ed. (Richmond, VA: Colonial Press/Everett Waddey Co., 1979), pp. 65–66.
67. PC 2/34, fol. 82; CO 1/3, no. 41; CO 1/4, no. 22.
68. PC 2/34, fol. 98v; PC 2/36, fol. 72v; PC 2/39, fol. 385; PC 2/38, fol. 529; PC 2/42, fols. 314–15; PC 2/43, fols. 134–35; PC 2/48, fols. 231–32; PC 2/49, fols. 357, 572–73; PC 2/50, fol. 558; CO 1/4, no. 12; SP 16/368, no. 91. A number of petitions read "cattle," and indeed might have referred to livestock, but this term was also commonly used to refer to all moveable goods, or "chattels," from which the present-day term "cattle" derives.
69. Indeed, the court system in Virginia had already become quite effective. See William E. Nelson, *The Common Law in Colonial America, Volume 1: The Chesapeake and New England, 1607–1660* (Oxford: Oxford University Press, 2008), chaps. 1–2; and, for primary material, McIlwaine, *Minutes of the Council*.
70. See, e.g., PC 2/43, fol. 135.
71. See, e.g., PC 2/50, fols. 324, 558; CO 1/10, no. 20.
72. PC 2/48, fol. 220; PC 2/49, fol. 357; CO 1/9, no. 64.
73. CO 1/10, no. 15(i–iii).
74. William Renwick Riddell, "Early Virginia in the Privy Council and Star Chamber," *Virginia Law Review* 21 (1935): 451–54. On Woodall, see the biography by John H. Appleby in *ODNB*.
75. PC 2/41, fols. 71–72; PC 2/44, fol. 84; PC 2/46, fol. 283; PC 2/48, fol. 307; PC 2/49, fol. 358; CO 1/9, no. 16. Other materials about the Woodall matter, including the Virginia Company's handling of the case, can be found in Sackville, pp. 499–502, 514–19.
76. PC 2/49, fol. 344; CO 1/9, no. 52(i–iii).
77. PC 2/50, fol. 690.
78. PC 2/51, fols. 191–92. On Panton and his complaints against Harvey and the colonial secretary Richard Kemp, see CO 1/10, nos. 9, 32, 33, 64, 66; on the events regarding Harvey's ouster, see CO 1/8, nos. 61, 65, 74. For a good summary of the events surrounding Harvey's period as governor, see Washburn, *Virginia Under Charles I*.

79. See, e.g., Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004); Smith, *Appeals to the Privy Council*.
80. On the population of the Atlantic colonies in 1640, see Carla Gardina Pestana, *The English Atlantic in an Age of Revolution, 1640–1661* (Cambridge, MA: Harvard University Press, 2004), pp. 229–34. Pestana records that of the 22 Atlantic colonies that existed in 1640, only 9 had populations exceeding one thousand, and the majority of those made their demographic gains only after 1635. More than thirty thousand of the roughly fifty-one thousand English Atlantic settlers in 1640 lived in Barbados, Massachusetts, and Virginia.
81. PC 2/46, fol. 224; PC 2/48, fol. 319.
82. PC 2/49, fol. 55.
83. CO 1/10, nos. 47, 83; PC 2/51, fols. 244–45; PC 2/53, fol. 79.
84. Smith, *Appeals to the Privy Council*, p. 45.
85. On the "recalcitrance" of Massachusetts Bay generally, see Smith, *Appeals to the Privy Council*, pp. 45–51; and Charles M. Andrews, *The Colonial Period of American History, Volume I: The Settlements* (New Haven, CT: Yale University Press, 1934), chap. 18.
86. The literature on the subject of the extension of common law to America is extensive, but see Bilder, *The Transatlantic Constitution*; Warren Billings, "The Transfer of English Law to Virginia, 1606–1650," in *The Westward Enterprise: English Activities in Ireland, the Atlantic, and America, 1480–1650*, ed. K. R. Andrews, Nicholas P. Canny, and P. E. H. Hair (Detroit: Wayne State University Press, 1979); Nelson, *The Common Law in Colonial America*; and William M. Offutt, "The Atlantic Rules: The Legalistic Turn in Colonial British America," in *The Creation of the British Atlantic World*, ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005).

CHAPTER 6

1. E. R. Turner, *The Privy Council of England in the Seventeenth and Eighteenth Centuries, 1603–1784*, 2 vols. (Baltimore: Johns Hopkins University Press, 1928), vol. II, pp. 179–80. Although this distinction between commissions and committees was fairly standard, there were exceptions, and the sources sometimes refer to these bodies interchangeably. In this chapter I will conform to the definitions provided in this paragraph.
2. PC 2/28, fols. 617–18; Turner, *Privy Council*, vol. II, pp. 211–22. Recall that the Privy Council registers for the period 1603–13 are not extant, so it is possible that committees were in use before this time, although there is little supporting evidence.
3. PC 2/31, fol. 3.

4. PC 2/31, fol. 3. In 1617 the chancellor, treasurer, and chancellor of the Exchequer were each on six committees; the lord privy seal, master of the rolls, and chief justice were on five; and the admiral and chamberlain were on four.
5. In some cases, the register recorded the days certain committees were to meet. For example, the committee for "Revenue, Plantation Recusants, and settling the Courts of Justice" and the "Committee for the Admiralty" met on Thursday afternoons; that of "New Patents [and] Monopolies" met on Monday afternoons; that of "Trained Bands" met on Tuesday afternoons; and the first "Committee for Foreign Plantations" and the "Committee for Ireland" met on Wednesday mornings. Some committees simply met as required, partly because key councilors sat on multiple committees. See Turner, *Privy Council*, vol. II, chap. 23.
6. Committee minutes from the commissioners for trade, appointed by Charles I in 1625 to consider the project of William Anys (see Chapter 4), for example, exist almost verbatim, though this is quite rare. See Thomas Cogswell, "'In the Power of the State': Mr. Anys's Project and the Tobacco Colonies, 1626–1628," *English Historical Review* 123 (2008): 38.
7. Charter to the Virginia Company, 1606, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/va01.asp.
8. Charter to the Virginia Company, 1609, Yale Law School Avalon Project, http://avalon.law.yale.edu/17th_century/va02.asp.
9. For a brief overview of plantation committees in general, see Charles M. Andrews, *British Committees, Commissions, and Councils of Trade and Plantations, 1622–1675* (Baltimore: Johns Hopkins University Press, 1908).
10. Bargrave's action was ongoing for two years and many documents have survived. See PC 2/31, fols. 439, 509, 518, 564 (quotation), 580; CO 1/2, nos. 4–4(ii), 7–7(i), 8; CO 1/3, nos. 11–12; SP 14/131, no. 38; *RVC*, III, pp. 517–24 (quotation on p. 517), 645–46; *RVC*, IV, pp. 81–85. On the whole affair, see Wesley Frank Craven, *Dissolution of the Virginia Company: The Failure of a Colonial Experiment* (Gloucester, MA: Peter Smith, 1932), pp. 277–83. This volume remains the best account of the dissolution of the Virginia Company and my discussion is indebted to Craven's analysis.
11. CO 1/2, nos. 20–20(ii); *RVC*, II, pp. 374–76. On the council's knowledge of the massacre, see PC 2/31, fols. 449–50.
12. *RVC*, II, pp. 381–85.
13. *RVC*, III, pp. 541–71; and Johnson's response at *RVC*, IV, pp. 130–51. Craven, *Dissolution of the Virginia Company*, pp. 256–57.
14. *RVC*, IV, pp. 85–87.
15. PC 2/31, fols. 668–69, 675. A draft of this commission, which is part of Johnson's petition, is in *RVC*, IV, pp. 85–87.

16. On Jones and Fortescue, see their entries in *ODNB*.
17. *RVC*, IV, pp. 575–80.
18. *RVC*, IV, p. 123; PC 2/31, fol. 714.
19. CO 5/1354, fols. 205–6.
20. On the appointment of Harvey and the others, see PC 2/32, fol. 137; and CO 5/1354, fol. 205v. On their work in Virginia in 1623 and 1624, and the opposition from the planters and assembly, see CO 1/3, nos. 6–8; *RVC*, IV, pp. 461–580.
21. The staff of the Jones commission was paid in full by the Exchequer on July 19, suggesting that the council saw this body's role as largely completed, although in the lead up to the *quo warranto* suit, its inquiry was resumed by order of council in October. PC 2/32, fols. 72, 123.
22. SP 14/148, no. 19; SP 14/149, no. 76; SP 14/150, no. 31; CO 1/2, no. 43.
23. PC 2/32, fol. 76. On the council's concern over the defenses of Virginia, see Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006), pp. 144–46.
24. PC 2/32, fols. 123, 126, 131; CO 1/2, no. 45–48; *RVC*, II, pp. 469–75.
25. See Catherine Patterson, "Quo Warranto and Borough Corporations in Early Stuart England: Royal Prerogative and Local Privileges in the Central Courts," *English Historical Review* 120 (2005): 879–906; Paul D. Halliday, *Dismembering the Body Politic: Partisan Politics in England's Towns, 1650–1730* (Cambridge: Cambridge University Press, 1998), chap. 6; Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA: Belknap Press, 2010), pp. 23–28.
26. On the entire *quo warranto* proceeding, see *RVC*, IV, pp. 295–398. Such postponements were not unusual, especially in cases of this magnitude; the courts typically sat for only 24 weeks per year during the four law terms and the respondents needed time to prepare their case, easily accounting for the 6-month gap between writ and hearing.
27. CO 1/3, nos. 11–12; SP 14/153, nos. 71, 74; SP 14/164, no. 46; Leo Francis Stock, *Proceedings and Debates of the British Parliaments Respecting North America, Volume 1: 1542–1688* (Washington, DC: Carnegie Institution of Washington, 1966), 68.
28. SP 14/169, no. 14; CO 1/3, nos. 17–17(i). Chichester remained on the committee, but Grandison and Carew had recently been appointed to the standing committee for war, whose workload was considerable, rendering it impossible for them to continue on the Virginia commission.
29. PC 2/32, fols. 342, 345.
30. PC 2/33, fol. 16r; *RVC*, IV, pp. 519–51.

31. Francis Bacon, "Of Plantations," in *The Essays or Counsels Civil and Moral*, ed. Brian Vickers (Oxford: Oxford University Press, 1999), pp. 78–80.
32. *Proc. II*, pp. 26–29.
33. MacMillan, *Sovereignty and Possession*, pp. 90, 96–99.
34. The instructions to successive royal governors George Yeardley and John Harvey, which have been mentioned in previous chapters, were issued by the plenary council, though it is possible that they were framed by a subconciliar entity. Evidence of the dramatic increase in correspondence between the council and Virginia after 1625 can be found throughout PC 2/33–50, and is compiled in CO 5/1354, the "Colonial Entry Book" for Virginia.
35. CO 1/6, no. 14.
36. CO 1/6, nos. 18–22; Charles E. Horton, Jr., and Charles E. Horton, "Dr. John Pott: America's First Physician-Governor and Revolutionary," *Bulletin of the New York Academy of Medicine* 59 (1983): 678–85.
37. CO 1/6, no. 30.
38. Many Virginians were quite happy with the company's demise and as late as 1641 were petitioning the king not to revive it in any capacity. See Warren M. Billings, *A Little Parliament: The Virginia General Assembly in the Seventeenth Century* (Richmond, VA: Library of Virginia, 2004), pp. 25–26; CO 5/1354, fol. 242.
39. On these disputes, see Charles M. Andrews, *The Colonial Period of American History, Volume I: The Settlements* (New Haven, CT: Yale University Press, 1934), chaps. 17–19.
40. PC 2/42, fols. 346–47.
41. PC 2/42, fol. 384.
42. PC 2/43, fol. 1.
43. PC 2/44, fol. 1.
44. Two copies of these orders survive, which vary slightly in language, though not in any meaningful way; CO 1/8, nos. 12–13.
45. Andrews, *British Committees*, p. 17; H. E. Egerton, "The Seventeenth and Eighteenth Century Privy Council in Its Relations with the Colonies," *Journal of Comparative Legislation and International Law*, Third Series, 7 (1925): 4.
46. CO 1/8, no. 23; CO 5/1354, fol. 211.
47. CO 1/8, nos. 49–49(ix), 76; CO 1/9, no. 122; CO 1/10, nos. 11–11(i), 18, 29–33; PC 2/49, fols. 508; *CSPC*, pp. 282–83.
48. On foreign encroachment, see William Bradford, *Of Plymouth Plantation*, ed. Charles Deane (Boston: Little, Brown & Co., 1856), book II, petition at p. 328.
49. CO 1/8, no. 51.
50. CO 1/8, no. 74.
51. CO 1/9, nos. 53–53(i), 121; CO 1/10, nos. 6, 8, 10, 26.
52. CO 1/9, nos. 55, 94.

53. CO 1/10, nos. 1–2; PC 2/50, fols. 551–52.
54. PC 2/52, fols. 680(a–d).
55. *CSPC*, p. 232.
56. On Morton and other events in Massachusetts Bay, see Michael Leroy Oberg, *Dominion and Civility: English Imperialism and Native America, 1585–1685* (Ithaca, NY: Cornell University Press, 1999), chap. 6 and pp. 92–94.
57. On these events, see Andrews, *Colonial Period of American History*, pp. 413–18.
58. Details of the surrender can be found at CO 1/8, nos. 58–59, 66; *CSPC*, pp. 205–6.
59. Some of these charters can be found in CO 5/902, fols. 109–42.
60. CO 1/9, no. 50.
61. CO 1/9, no. 49.
62. CO 1/9, no. 60.
63. CO 1/10, no. 93.
64. Andrews, *British Committees*, pp. 21–23.
65. CO 1/12, no. 8; *CSPC*, pp. 338, 340, 410, 453, 465, 477.
66. PC 2/54, fol. 63; CO 1/15, no. 15. On the Restoration committees in general, see Ralph Paul Bieber, "The British Plantation Councils of 1670–1674," *English Historical Review* 40 (1925): 93–106; E. E. Rich, "The First Earl of Shaftesbury's Colonial Policy," *Transactions of the Royal Historical Society*, Fifth Series, 7 (1957): 47–70; Edward Raymond Turner, "Committees of the Privy Council, 1688–1760," *English Historical Review* 31 (1916): 545–72.
67. The complete instructions can be found at CO 1/14, no. 59(i); they are partially reprinted in Andrews, *British Committees*, pp. 69–70.
68. Andrews, *British Committees*, pp. 76–79.
69. These instructions are printed in their entirety in Andrews, *British Committees*, pp. 117–24.
70. Stephen Saunders Webb, *1676: The End of American Independence* (New York: Alfred A Knopf, 1984).
71. See, especially, Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (New York: W. W. Norton, 1986), pp. 13–16.
72. Carla Gardina Pestana, "English Character and the Fiasco of the Western Design," *Early American Studies* 3 (2005): 1–31.
73. The Massachusetts Bay revocation was finally accomplished not through *quo warranto*, but rather through a writ of *scire facias* that ordered the company to answer several charges. When the writ was ignored, the charter was vacated. On Bermuda, see Richard S. Dunn, "The Downfall of the Bermuda Company: A Restoration Farce," *William and Mary Quarterly*, Third Series, 20 (1963): 487–512.
74. On the reversion of colonies to Crown control, generally, see Bliss, *Revolution and Empire: English Politics and the American Colonies in the*

Seventeenth Century (Manchester: Manchester University Press, 1990), chaps. 5–8; J. M. Sosin, *English America and the Restoration Monarchy of Charles II: Transatlantic Politics, Commerce, and Kinship* (Lincoln, NE: University of Nebraska Press, 1980); Sosin, *English America and the Revolution of 1688: Royal Administration and the Structure of Provincial Government* (Lincoln, NE: University of Nebraska Press, 1982); Sosin, *English America and Imperial Inconstancy: The Rise of Provincial Autonomy, 1696–1715* (Lincoln, NE: University of Nebraska Press, 1985); Ian K. Steele, "The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689–1784," in *The Oxford History of the British Empire, Volume 2: The Eighteenth Century*, ed. P. J. Marshall (Oxford: Oxford University Press, 1998).

75. Stephen Saunders Webb, "William Blathwayt, Imperial Fixer: From Popish Plot to Glorious Revolution," *William and Mary Quarterly*, Third Series, 26 (1968): 3–21; and Webb, "William Blathwayt, Imperial Fixer: Muddling Through to Empire, 1689–1717," *William and Mary Quarterly*, Third Series, 26 (1969): 373–415.
76. The atlas was retained by Blathwayt when he left the secretaryship in 1696 and is now in the John Carter Brown Library. See Jeannette Black, "The Blathwayt Atlas: Maps Used by British Colonial Administrators in the Time of Charles II," *Imago Mundi* 22 (1968): 20–29; Black, *The Blathwayt Atlas*, 2 vols. (Providence, RI: Brown University Press, 1970–75); and Ken MacMillan, "Centers and Peripheries in English Maps of America, 1590–1685," in *Early American Cartographies*, ed. Martin Brückner (Chapel Hill, NC: University of North Carolina Press, 2011), pp. 87–89.
77. John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (New York: Alfred A. Knopf, 1989).

CONCLUSION

1. Historians have often commented that Ireland provided a model of colonization that facilitated later Atlantic successes. There is certainly some merit to this argument, although these activities were in many respects quite different from one another. See, especially, Nicholas Canny, *The Elizabethan Conquest of Ireland: A Pattern Established, 1565–76* (Sussex: Harvester Press, 1976); and Hans S. Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (Cambridge: Cambridge University Press, 1985). Karen Kupperman, for example, in *The Jamestown Project* (Cambridge, MA: Belknap Press, 2007), especially chap. 6, has demonstrated that Ireland could not provide all the lessons the English needed to learn to be successful in America.
2. On French and Spanish imperial ideologies, see Philip P. Boucher, *Les Nouvelles France: France in America, 1500–1815, An Imperial*

Perspective (Providence, RI: John Carter Brown Library, 1989); W. J. Eccles, *France in America*, rev. ed. (Markham, Ontario, Canada: Fitzhenry & Whiteside, 1990); J. H. Elliott, *Imperial Spain 1496–1716* (New York: St. Martin's Press, 1964); Elliott, *Empires of the Atlantic World: Britain and Spain in America, 1492–1830* (New Haven, CT: Yale University Press, 2006), part II; Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France c. 1500–c. 1800* (New Haven, CT: Yale University Press, 1995); Richard J. Ross, "Legal Communications and Imperial Governance: British North America and Spanish America Compared," in *The Cambridge History of Law in America*, ed. Michael Grossberg and Christopher Tomlins, 3 vols. (Cambridge: Cambridge University Press, 2008), vol. I, chap. 4. See also the relevant entries by Jane Landers, Allyson M. Poska, and Marie-Jeanne Rossignol in Trevor Burnard, ed., *Oxford Bibliographies Online: Atlantic History* (New York: Oxford University Press, 2010).

3. See, for example, Paul Slack, ed., *Rebellion, Popular Protest, and the Social Order in Early Modern England* (Cambridge: Cambridge University Press, 1994); K. J. Kesselring, *The North Rebellion of 1569: Faith, Politics, and Protest in Elizabethan England* (New York: Palgrave Macmillan, 2007).
4. See, for example, Michael J. Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge: Cambridge University Press, 2000), especially parts I and V.
5. The idea that the monarch outwardly appears benevolent while inwardly is driven, above all, by reasons of the state derives, of course, from Machiavelli. This notion has also been applied to the English criminal justice system, in which the law provides for more severe punishment than is usually carried out, a mechanism that was intended to convince the populace that the Crown was benevolent and merciful rather than malevolent and vengeful, which encouraged commoners to accept the legal and social system and recognize the right of elites and the king to rule. See, for example, Douglas Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. Douglas Hay et al. (London: Allen Lane, 1975); Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1987); K. J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge: Cambridge University Press, 2003).
6. On the role of cosmopolitanism, see Alison Games, *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560–1660* (Oxford: Oxford University Press, 2008). Games argues that as English travelers moved throughout Europe and the world in the century covered by her book, it became necessary for the Crown to gain "a new attitude toward overseas holdings" (p. 292).

7. See, especially, Jack Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (Athens, GA: University of Georgia Press, 1986), chap. 5; Greene, *The Constitutional Origins of the American Revolution* (Cambridge: Cambridge University Press, 2011); Brendan McConville, *The King's Three Faces: The Rise and Fall of Royal America, 1688–1776* (Chapel Hill, NC: University of North Carolina Press 2006); and James Muldoon, "Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America," in *The Many Legalities of Early America*, ed. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill, NC: University of North Carolina Press, 2001). Each of these authors demonstrates the appeal that key American writers made to the king, preferring a return of an imperial constitution headed by the king-in-council rather than the king-in-parliament. Revolutionary activity only began in earnest when it was determined that the king no longer had the prerogative power to restore the original imperial constitution.
8. These events are beyond the scope of my discussion, and are not without their historians. See, generally, Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Belknap Press, 1967); Eliga Gould, *The Persistence of Empire: British Political Culture in the Age of the American Revolution* (Chapel Hill, NC: University of North Carolina Press 2000); Jack P. Greene, *Negotiated Authorities: Essays in Colonial Political and Constitutional History* (Charlottesville, VA: University of Virginia Press, 1994); Greene, *Peripheries and Center*; Greene, *Constitutional Origins*; Elizabeth Mancke, *The Fault Lines of Empire: Political Differentiation in Massachusetts and Nova Scotia, ca. 1760–1830* (New York: Routledge, 2005); McConville, *King's Three Faces*; Charles H. McIlwain, *American Revolution: A Constitutional Interpretation* (New York: Macmillan, 1923); John Phillip Reid, *Constitutional History of the American Revolution*, 3 vols. (Madison, WI: University of Wisconsin Press, 1986–88); Robert L. Schuyler, *Parliament and the British Empire* (New York: Columbia University Press, 1929).
9. On the development of these various imperial constitutions, see also Ken MacMillan, "Imperial Constitutions: Sovereignty and Law in the Atlantic," in *Britain's Oceanic Empire: British Expansion into the Atlantic and Indian Ocean Worlds, 1550–1850*, ed. H. V. Bowen, E. Mancke, and J. G. Reid (Cambridge: Cambridge University Press, 2012).

Bibliography

Manuscript Sources

British Library

Additional MSS 24516, 48155
Cotton MS Otho E.VIII
Egerton MSS 2395, 2541, 2978
Lansdowne MSS 142, 160

The National Archives of the United Kingdom

C 66, Chancery: Patent Rolls
CO 1/1–15, Colonial Office: American and the West Indies, 1574–1640
CO 5/723, Colonial Office: Maryland
CO 5/902, Colonial Office: New England
CO 5/1354, Colonial Office: Virginia
CO 29/1, Colonial Office: Barbados
CO 38/1, Colonial Office: Bermuda
CO 124/1–2, Colonial Office: Providence Island
CO 195/1, Colonial Office: Newfoundland
E 157/19–25, Exchequer: Registers of Licences to Pass Beyond the Seas
E 190/34–44, Exchequer: Port Books
PC 2/27–50, Privy Council: Registers
SP 14, State Papers, Domestic: James I
SP 16, State Papers, Domestic: Charles I

Printed Primary Sources

Acts of the Privy Council of England, 1613–42, 20 vols. London: HMSO, 1921–60; reprinted Burlington, Ontario, Canada: TannerRitchie, 2010.

Bacon, Francis. *The Essays or Counsels Civil and Moral*, edited by Brian Vickers. Oxford: Oxford University Press, 1999.

Black, Jeannette. *The Blathwayt Atlas*. 2 vols. Providence, RI: Brown University Press, 1970–75.

Blackstone, William. *Commentaries on the Laws of England, Volume I: Of the Rights of Persons*. Chicago: University of Chicago Press, 1979.

Bodin, Jean. *On Sovereignty: Four Chapters from The Six Books of the Commonwealth*, edited and translated by Julian H. Franklin. Cambridge: Cambridge University Press, 1992.

Bradford, William. *Of Plymouth Plantation*, edited by Charles Deane. Boston: Houghton, Mifflin, & Co., 1856.

Burke, Edmund. "Speech on Conciliation with America." *The Writings and Speeches of Edmund Burke, Volume III: Party, Parliament, and the American War, 1774–1780*, edited by W. M. Elofson. Oxford: Oxford University Press, 1996.

Butler, Nathaniel. *The History of the Bermudaes or Summer Islands*, edited by J. H. Lefroy. London: Hakluyt Society, 1882.

Calendar of State Papers, Domestic Series, 1603–41. 21 vols. London: HMSO, 1857–82; reprinted Burlington, Ontario, Canada: TannerRitchie, 2005–7.

Cell, Gillian T., ed. *Newfoundland Discovered: English Attempts at Colonisation, 1610–30*. London: Hakluyt Society, 1982.

Charles I. *A Proclamation Against Travellers without Licences*. London, 1630.

Coke, Edward. *The Second Part of the Institutes of the Laws of England*. London, 1797.

Coldham, Peter Wilson, ed. *English Convicts in Colonial America, Volume 1: Middlesex, 1617–1775*. New Orleans: Polyanthos, 1974.

Council of Virginia. *A Declaration of the State of the Colonie and Affaires in Virginia*. London, 1620.

Davenport, Frances G., ed. *European Treaties Bearing on the History of the United States and Its Dependencies*. Gloucester, MA: Peter Smith, 1967.

Dee, John. *General and rare memorials pertayning to the perfect arte of navigation*. London, 1577.

Eburne, Richard. *A Plaine Pathway to Plantations*. London, 1624.

Firth, C. H., and R. S. Rait, eds. *Acts and Ordinances of the Interregnum, 1642–1660*. London: HMSO, 1911.

Gentili, Alberico. *De Jure Belli Libri Tres*, edited by John C. Rolfe. New York: Oceana, 1964.

———. *Hispanicae Advocationis Libri Duo*, introduced by Frank Frost Abbott. 2 vols. New York: Oxford University Press, 1921.

Grant, W. L., James Munro, and Almeric W. Fitzroy, eds. *Acts of the Privy Council of England, Colonial Series, Volume 1: 1613–1680*. Hereford: Anthony Brothers, 1908; reprinted Burlington, Ontario, Canada: TannerRitchie, 2005.

Grotius, Hugo. *De Jure Belli et Pacis Libri Tres*, edited by F. W. Kelsey. 2 vols. Oxford: Clarendon Press, 1925.

———. *De Jure Praedae Commentarius*, translated G. L. Williams and W. H. Zeydel. 2 vols. Oxford: Clarendon Press, 1950.

———. *The Free Sea*, edited by David Armitage, translated by Richard Hakluyt. Indianapolis, IN: Liberty Fund, 2004.

Hakluyt, Richard. *The Original Writings and Correspondence of the Two Richard Hakluyts*, edited by E. G. R. Taylor. 2 vols. London: Hakluyt Society, 1935.

Hale, Matthew. *The History of the Common Law of England*, edited by Charles M. Gray. Chicago: University of Chicago Press, 1971.

———. *The Prerogatives of the King*, edited by D. E. C. Yale. London: Selden Society, 1976.

Hall, G. D. G., ed. *The Treatise of the Laws and Customs of the Realm of England Commonly Called Glanvill*. London: Nelson, 1965.

Ives, Vernon A, ed. *The Rich Papers: Letters from Bermuda, 1615–1646*. Toronto: University of Toronto Press, 1984.

James I. *A Counter-Blast to Tobacco*. London, 1604.

———. *The rates of marchandizes as they are set down in the Book of Rates*. London, 1612.

Johnson, Robert. *Nova Britannia*. London: Samuel Macham, 1609.

Justinian. *Corpus Juris Civilis*, edited and translated by S. P. Scott. 17 vols. Cincinnati, OH: Central Trust Co., 1932.

Kingsbury, Susan Myra, ed. *Records of the Virginia Company*, 4 vols. Washington, DC: U.S. Government Printing Office, 1906–34.

Larkin, James F., ed. *Stuart Royal Proclamations, Volume II: Royal Proclamations of King Charles I, 1625–1649*. Oxford: Oxford University Press, 1983.

Larkin, James F., and Paul L. Hughes, eds. *Stuart Royal Proclamations, Volume I: Royal Proclamations of King James I, 1603–1625*. Oxford: Oxford University Press, 1973.

Lefroy, J. H., ed. *Memorials of the Discovery and Early Settlement of the Bermudas or Somer Islands, 1515–1685*. London: Longmans, Green, and Co., 1877.

Lorimer, Joyce. *Sir Walter Ralegh's Discoverie of Guiana*. London: Ashgate, 2006.

McIlwaine, R. B., ed. *Minutes of the Council and General Court of Colonial Virginia*. Richmond, VA: Virginia State Library, 1979.

Newton, A. P., ed. "Lord Sackville's Papers Respecting Virginia, 1613–1631, I." *American Historical Review* 27 (1922): 493–538.

———. "Lord Sackville's Papers Respecting Virginia, 1613–1631, II." *American Historical Review* 27 (1922): 738–65.

Oxford Dictionary of National Biography. Oxford: Oxford University Press, 2004.

Quinn, David B., ed. *The Roanoke Voyages*. 2 vols. London: Hakluyt Society, 1955.

Sainsbury, W. N., ed. *Calendar of State Papers, Colonial Series, 1574–1660*. London: HMSO, 1890; reprinted Burlington, Ontario, Canada: TannerRitchie, 2004.

Sheppard, Steve, ed. *The Selected Writings of Sir Edward Coke*, vol. 1. Indianapolis, IN: Liberty Fund, 2003.

Smith, John. *The Generall Historie of Virginia, New-England, and the Summer Islands*. London, 1624.

Smith, Thomas. *De Republica Anglorum*, edited by Mary Dewar. Cambridge: Cambridge University Press, 1982.

Staunford, William. *An Exposicion of the Kinges Prerogative*. London, 1567.

Stock, Leo Francis, ed. *Proceedings and Debates of the British Parliaments Respecting North America, Volume 1: 1542–1688*. Washington, DC: Carnegie Institution of Washington, 1924.

Yale Law School Avalon Law Project. http://avalon.law.yale.edu.

SECONDARY SOURCES

Adams, S. L. "Spain or the Netherlands?: The Dilemmas of Early Stuart Foreign Policy." In *Before the English Civil War: Essays on Early Stuart Politics and Government*, edited by H. Tomlinson. New York: St. Martin's Press, 1984.

Allen, Paul. *Philip III and the Pax Hispanica, 1599–1621: The Failure of Grand Strategy*. New Haven, CT: Yale University Press 2000.

Anderson, Robert Charles. *The Great Migration Begins: Immigrants to New England, 1620–1633*. Boston: New England Historic Genealogical Society, 1995.

Anderson, Virginia DeJohn. *New England's Generations: The Great Migration and the Formation of Society and Culture in the Seventeenth Century*. New York: Cambridge University Press, 1991.

Andrews, Charles M. *British Committees, Commissions, and Councils of Trade and Plantations, 1622–1675*. Baltimore: Johns Hopkins University Press, 1908.

———. *The Colonial Period of American History, Volume I: The Settlements*. New Haven, CT: Yale University Press 1934.

Andrews, Kenneth R. "Caribbean Rivalry and the Anglo-Spanish Peace of 1604." *History* 59 (1974): 1–17.

———. *Trade, Plunder, and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480–1630*. Cambridge: Cambridge University Press, 1984.

Appleby, John C. "An Association for the West Indies?: English Plans for a West India Company, 1621–29." *Journal of Imperial and Commonwealth History* 15 (1987): 213–41.

———. "Introductions: British Perspectives." In *Calendar of State Papers, Colonial Series, America and the West Indies, 1574–1739*, CD-ROM, edited by Karen Ordahl Kupperman, John C. Appleby, and Mandy Banton. London, 2000.

Armitage, David. *The Ideological Origins of the British Empire*. Cambridge: Cambridge University Press, 2000.

———. "Three Concepts of Atlantic History." In *The British Atlantic World, 1500–1800*, 2nd ed., edited by David Armitage and Michael J. Braddick. New York: Palgrave Macmillan, 2009.

Armitage, David, and Michael J. Braddick, eds. *The British Atlantic World, 1500–1800*, 2nd ed. New York: Palgrave Macmillan, 2009.

Aylmer, G. E. *The King's Servants: The Civil Service of Charles I, 1625–1642.* London: Routledge, 1961.

Bailyn, Bernard. *The Ideological Origins of the American Revolution.* Cambridge, MA: Harvard University Press, 1967.

———. *Voyagers to the West: A Passage in the People of America on the Eve of the Revolution.* New York: Alfred A. Knopf, 1986.

Bannister, Jerry. *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699–1832.* Toronto: University of Toronto Press, 2003.

Barrow, Thomas C. *Trade and Empire: The British Customs Service in Colonial America.* Cambridge, MA: Harvard University Press, 1967.

Beer, George L. *The Old Colonial System, 1660–1754, Part I: The Establishment of the System, 1660–1688.* New York: Peter Smith, 1912.

Benson, Joel D. *Cooperation to Competition: English Perspective and Policy on Anglo-Dutch Economic Relations During the Reign of James I.* New York: Peter Lang, 1990.

Benton, Lauren. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900.* Cambridge: Cambridge University Press, 2010.

Bilder, Mary Sarah. "English Settlement and Local Governance." In *The Cambridge History of Law in America, Volume 1: Early America (1580–1815)*, edited by Michael Grossberg and Christopher Tomlins. Cambridge: Cambridge University Press, 2008.

———. "The Origin of the Appeal in America." *Hastings Law Journal* 48 (1997): 913–68.

———. *The Transatlantic Constitution: Colonial Legal Culture and the Empire.* Cambridge, MA: Harvard University Press, 2004.

Billings, Warren M. *A Little Parliament: The Virginia General Assembly in the Seventeenth Century.* Richmond, VA: Library of Virginia, 2004.

———. "The Transfer of English Law to Virginia, 1606–1650." In *The Westward Enterprise: English Activities in Ireland, the Atlantic, and America, 1480–1650*, edited by K. R. Andrews, N. P. Canny, and P. E. H. Hair. Liverpool: Liverpool University Press, 1979.

Black, Barbara A. "The Constitution of Empire: The Case of the Colonists." *University of Pennsylvania Law Review* 124 (1975–76): 1157–211.

Black, Jeannette "The Blathwayt Atlas: Maps Used by British Colonial Administrators in the Time of Charles II." *Imago Mundi* 22 (1968): 20–29.

Bliss, Robert. *Revolution and Empire: English Politics and the American Colonies in the Seventeenth Century.* Manchester: Manchester University Press, 1990.

Boucher, Philip P. *Les Nouvelles Frances: France in America, 1500–1815, An Imperial Perspective*. Providence, RI: John Carter Brown Library, 1989.

Braddick, Michael. "The English Government, War, Trade, and Settlement, 1625–1688." In *The Oxford History of the British Empire, Volume 1: The Origins of Empire: English Overseas Activity to the Close of the Seventeenth Century*, edited by Nicholas Canny. Oxford: Oxford University Press, 1998.

———. *The Nerves of State: Taxation and the Financing of the English State, 1558–1714*. Manchester: Manchester University Press, 1996.

———. *State Formation in Early Modern England, c. 1550–1700*. Cambridge: Cambridge University Press, 2000.

Brenner, Robert. *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653*. Princeton, NJ: Princeton University Press 1992.

Brewer, John. *The Sinews of Power: War, Money, and the English State, 1688–1783*. New York: Alfred A. Knopf, 1989.

Brown, Alexander. *The Genesis of the United States*. 2 vols. London: Houghton, Mifflin and Co., 1891.

Burgess, Glenn. *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1602–42*. University Park, PA: Pennsylvania State University Press, 1992.

Burnard, Trevor, ed. *Oxford Bibliographies Online: Atlantic History*. New York: Oxford University Press, 2010.

Butler, J. D. "British Convicts Shipped to American Colonies." *American Historical Review* 2 (1896): 12–33.

Canny, Nicholas. *The Elizabethan Conquest of Ireland: A Pattern Established, 1565–76*. Sussex: Harvester Press, 1976.

———, ed. *The Oxford History of the British Empire, Volume 1: The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century*. Oxford: Oxford University Press, 1998.

Carter, Charles H. "Gondomar: Ambassador to James I." *Historical Journal* 7 (1964): 189–208.

Carter, E. C., and C. Lewis, "Sir Edmund Plowden and the New Albion Charter, 1632–1785." *Pennsylvania Magazine of History and Biography* 83 (1959): 150–79.

Cell, Gillian T. *English Enterprise in Newfoundland 1577–1660*. Toronto: University of Toronto Press, 1969.

Clarke, Michelle Tolman. "Uprooting Nebuchadnezzar's Tree: Francis Bacon's Criticism of Machiavelli's Imperialism." *Political Research Quarterly* 61 (2008): 367–78.

Cogswell, Thomas. *The Blessed Revolution: English Politics and the Coming of War, 1621–1624*. Cambridge: Cambridge University Press, 1989.

Cogswell, Thomas. "'In the Power of the State': Mr. Anys's Project and the Tobacco Colonies, 1626–1628." *English Historical Review* 123 (2008): 35–64.

Coldham, Peter Wilson. *Emigrants in Chains: A Social History of Forced Emigration to the Americas, 1607–1776*. Baltimore, MD: Genealogical Publishing, 1992.

Conway, Stephen. *The British Isles and the War of American Independence*. Oxford: Oxford University Press, 2000.

Craven, Wesley Frank. *The Dissolution of the Virginia Company: The Failure of a Colonial Experiment*. Gloucester, MA: Peter Smith, 1932.

———. "Introduction to the History of Bermuda: VI, *William and Mary Quarterly*, Second Series, 18 (1938): 13–63.

———. "Historical Study of the British Empire." *Journal of Modern History* 6 (1934): 40–69.

Cressy, David. *Coming Over: Migration and Communication Between England and New England in the Seventeenth Century*. Cambridge: Cambridge University Press, 1987.

Cronon, William. *Changes in the Land: Indians, Colonists, and the Ecology of New England*, rev. ed. New York: Hill and Wang, 2003.

Cust, Richard. "Charles I, the Privy Council and the Parliament of 1628." *Transactions of the Royal Historical Society*, Sixth Series, 2 (1992): 25–50.

Daniels, Christine, and Michael V. Kennedy, eds. *Negotiated Empires: Centers and Peripheries in the Americas, 1500–1820*. New York: Routledge, 2002.

Davies, R. R. *The First English Empire: Power and Identities in the British Isles 1093–1343*. Oxford: Oxford University Press, 2000.

Dawson, John P. "The Privy Council and Private Law in the Tudor and Stuart Period." *Michigan Law Review* 48 (1950): 393–428, 627–56.

De Luca, Kelly A. "Beyond the Sea: Extraterritorial Jurisdiction and English Law, c. 1575–c. 1640." PhD dissertation, Columbia University, 2008.

Dunn, Richard S. "The Downfall of the Bermuda Company: A Restoration Farce." *William and Mary Quarterly*, Third Series, 20 (1963): 487–512.

Eccles, W. J. *France in America*, rev. ed. Markham, Ontario, Canada: Fitzhenry and Whiteside, 1990.

Egerton, H. E. "The Seventeenth and Eighteenth Century Privy Council in Its Relations with the Colonies." *Journal of Comparative Legislation and International Law*, Third Series, 7 (1925): 1–16.

Ekirch, A. Roger. *Bound for America: The Transportation of British Convicts to the Colonies, 1718–1775*. Oxford: Oxford University Press, 1990.

Elliott, J. H. "Atlantic History: A Circumnavigation." In *The British Atlantic World, 1500–1800*, 2nd ed., edited by David Armitage and Michael J. Braddick. New York: Palgrave Macmillan, 2009.

———. *Empires of the Atlantic World: Britain and Spain in America, 1492–1830*. New Haven, CT: Yale University Press 2006.

———. *Imperial Spain 1496–1716*. New York: St. Martin's Press, 1964.

Elton, G. R. *The Tudor Revolution in Government*. Cambridge: Cambridge University Press, 1959.

Fischer, David Hackett, and James C. Kelly. *Bound Away: Virginia and the Westward Movement*. Charlottesville, VA: University of Virginia Press, 2000.

Fitzmaurice, Andrew. "The Civic Solution to the Crisis of English Colonization, 1609–25." *Historical Journal* 42 (1999): 25–51.

———. "The Commercial Ideology of Colonization in Jacobean England: Robert Johnson, Giovanni Botero, and the Pursuit of Greatness." *William and Mary Quarterly*, Third Series, 64 (2007): 791–820.

———. *Humanism and America: An Intellectual History of English Colonisation, 1500–1625*. Cambridge: Cambridge University Press, 2003.

Fletcher, Anthony. *Reform in the Provinces: The Government of Stuart England*. New Haven, CT: Yale University Press, 1986.

Franklin, Julian. *Jean Bodin and the Rise of Absolutist Theory*. Cambridge: Cambridge University Press, 1973.

Games, Alison. "Migration." In *The British Atlantic World, 1500–1800*, 2nd ed., edited by David Armitage and Michael J. Braddick. New York: Palgrave Macmillan, 2009.

———. *Migration and the Origins of the English Atlantic World*. Cambridge, MA: Harvard University Press, 1999.

———. *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560–1660*. Oxford: Oxford University Press, 2008.

Garnett, George. "The Origins of the Crown." In *The History of the Common Law: Centenary Essays on "Pollock and Maitland"*, edited by John Hudson. Oxford: Oxford University Press, 1996.

Goebel, Julius, Jr. "The Matrix of Empire." In *Appeals to the Privy Council from the American Plantations* by Joseph Henry Smith. New York: Columbia University Press, 1950.

Goodman, Leonard S. "Mandamus in the Colonies: The Rise of the Superintending Power of American Courts." *American Journal of Legal History* 1 (1957): 308–35; 2 (1958): 1–34.

Gould, Eliga. *The Persistence of Empire: British Political Culture in the Age of the American Revolution*. Chapel Hill, NC: University of North Carolina Press, 2000.

Gragg, Larry. *Englishmen Transplanted: The English Colonization of Barbados, 1627–1660*. Oxford: Oxford University Press, 2003.

Green, David. "Lordship and Principality: Colonial Policy in Ireland and Aquitaine in the 1360s." *Journal of British Studies* 47 (2008): 3–29.

Greene, Jack P. *The Constitutional Origins of the American Revolution*. Cambridge: Cambridge University Press, 2011.

———, ed. *Exclusionary Empire: English Liberty Overseas, 1600–1900*. Cambridge: Cambridge University Press, 2010.

———. "Law and the Origins of the American Revolution." In *The Cambridge History of Law in America, Volume 1: Early America (1580–1815)*, edited by Michael Grossberg and Christopher Tomlins. Cambridge: Cambridge University Press, 2008.

———. *Negotiated Authorities: Essays in Colonial Political and Constitutional History*. Charlottesville, VA: University of Virginia Press, 1994.

———. *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788*. Athens, GA: University of Georgia Press, 1986.

———. "Transatlantic Colonization and the Redefinition of Empire in the Early Modern Era: The British-American Experience." In *Negotiated Empires: Centers and Peripheries in the America, 1500–1820*, edited by Christine Daniels and Michael V. Kennedy. New York: Routledge, 2002.

Halliday, Paul D. *Dismembering the Body Politic: Partisan Politics in England's Towns, 1650–1730*. Cambridge: Cambridge University Press, 1998.

———. *Habeas Corpus: From England to Empire*. Cambridge, MA: Belknap Press, 2010.

Harley, David. "The Beginnings of the Tobacco Controversy: Puritanism, James I, and the Royal Physicians." *Bulletin of the History of Medicine* 67 (1993): 28–50.

Harlow, Vincent T. *A History of Barbados, 1625–1685*. New York: Negro Universities Press, 1926.

———. *Ralegh's Last Voyage*. London: Argonaut Press, 1932.

Harper, Lawrence A. *The English Navigation Laws: A Seventeenth Century Experiment in Social Engineering*. New York: Columbia University Press, 1939.

Hart, James S. Jr. *The Rule of Law, 1603–1660: Crowns, Courts and Judges*. Harlow: Pearson, Longman, 2003.

Hatfield, April Lee. *Atlantic Virginia: Intercolonial Relations in the Seventeenth Century*. Philadelphia: University of Pennsylvania Press, 2004.

———. "Dutch and New Netherland Merchants in the Seventeenth-Century English Chesapeake." In *The Atlantic Economy during the Seventeenth and Eighteenth Centuries: Organization, Operation, Practice, and Personnel*, edited by Peter Coclanis. Columbia, SC: University of South Carolina Press, 2005.

Hay, Douglas. "Property, Authority, and the Criminal Law." In *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, edited by D. Hay, P. Linebaugh, and E. P. Thompson. London: Pantheon, 1975.

Herrup, Cynthia B. *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England*. Cambridge: Cambridge University Press, 1987.

———. "Law and Morality in Seventeenth-Century England." *Past and Present* 106 (1985): 102–23.

Hinkle, William G. *A History of Bridewell Prison, 1553–1700*. London: Edwin Mellen, 2006.

Hirst, Derek. "The Privy Council and the Problems of Enforcement in the 1620s." *Journal of British Studies* 18 (1976): 46–66.

Horn, James. *A Land as God Made It: Jamestown and the Birth of America*. New York: Basic Books, 2005.

———. "Tobacco Colonies: The Shaping of English Society in the Seventeenth-Century Chesapeake." In *The Oxford History of the British Empire, Volume 1: The Origins of Empire: English Overseas Activity to the Close of the Seventeenth Century*, edited by Nicholas Canny. Oxford: Oxford University Press, 1998.

Horn, James P. *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake*. Chapel Hill, NC: University of North Carolina Press, 1994.

Hornsby, Stephen J. *British Atlantic, American Frontier: Spaces of Power in Early Modern British America*. Hanover, NH: University Press of New England, 2005.

Horton, Charles E. "Dr. John Pott: America's First Physician-Governor and Revolutionary." *Bulletin of the New York Academy of Medicine* 59 (1983): 678–85.

Howat, G. M. D. *Stuart and Cromwellian Foreign Policy*. London: A&C Black, 1974.

Hulsebosch, Daniel. "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence." *Law and History Review* 21 (2003): 439–82.

———. *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830*. Chapel Hill, NC: University of North Carolina Press, 2005.

Hume, Robert. *Early Child Immigrants to Virginia, 1618–1642*. Baltimore: Magna Carta Book Co., 1986.

Jensen, J. Vernon. "The Staff of the Jacobean Privy Council." *Huntington Library Quarterly* 40 (1976): 11–44.

Johnson, Robert C. "The Lotteries of the Virginia Company, 1612–1621." *Virginia Magazine of History and Biography* 74 (1966): 259–92.

———. "The Transportation of Vagrant Children from London to Virginia, 1618–1622." In *Early Stuart Studies: Essays in Honor of D. H. Willson*, edited by Howard S. Reinmuth. Minneapolis, MN: University of Minnesota Press, 1970.

Jones, David M. "Sir Edward Coke and the Interpretation of Lawful Allegiance in Seventeenth-Century England." In *Law, Liberty, and Parliament: Selected Essays on the Writings of Sir Edward Coke*, edited by Allen D. Boyer. Indianapolis, IN: Liberty Fund, 2004.

Kantorowicz, Ernst H. *The King's Two Bodies: A Study in Political Theology*. Princeton, NJ: Princeton University Press, 1957.

Kesselring, K. J. *Mercy and Authority in the Tudor State*. Cambridge: Cambridge University Press, 2003.

———. *The North Rebellion of 1569: Faith, Politics, and Protest in Elizabethan England*. New York: Palgrave Macmillan, 2007.

Kishlansky, Mark. *A Monarchy Transformed: Britain, 1603–1714*. London: Penguin, 1996.

Kopperman, Paul E. "Ambivalent Allies: Anglo-Dutch Relations and the Struggle Against the Spanish Empire in the Caribbean, 1621–1641." *Journal of Caribbean History* 21 (1987): 55–77.

———. "Profile of Failure: The Carolana Project, 1629–40." *North Carolina Historical Review* 59 (1982): 1–20.

Krugler, John D. *English and Catholic: The Lords Baltimore in the Seventeenth Century*. Baltimore: Johns Hopkins University Press, 2004.

Kupperman, Karen Ordahl. *Indians and English: Facing Off in Early America*. Ithaca, NY: Cornell University Press, 2000.

———. *The Jamestown Project*. Cambridge, MA: Belknap Press, 2007.

———. "The Puzzle of the American Climate in the Early Colonial Period." *American Historical Review* 87 (1982): 1262–89.

LaCroix, Alison L. *The Ideological Origins of American Federalism*. Cambridge, MA: Harvard University Press, 2010.

Linebaugh, Peter, and Marcus Rediker. *The Many-Headed Hydra: Sailors, Slaves, Commoners and the Hidden History of the Revolutionary Atlantic*. London: Verso, 2000.

Loomie, Albert J. "Gondomar's Selection of English Officers in 1622." *English Historical Review* 88 (1973): 574–81.

Lorimer, Joyce, ed. *English and Irish Settlement on the River Amazon, 1550–1646*. London: Hakluyt Society, 1989.

———. "The English Contraband Tobacco Trade from Trinidad and Guiana, 1590–1617." In *The Westward Enterprise: English Activities in Ireland, the Atlantic, and America, 1480–1650*, edited by K. R. Andrews, N. P. Canny, and P. E. H. Hair. Liverpool: Liverpool University Press, 1978.

———. "The Failure of the English Guiana Ventures 1595–1667 and James I's Foreign Policy." *Journal of Imperial and Commonwealth History* 21 (1993): 1–30.

Loughton, Gavin. "Calvin's Case and the Origins of the Rule Governing 'Conquest' in English Law." *Australian Journal of Legal History* 8 (2004): 143–80.

Lounsbury, Ralph Greenlee. *The British Fishery at Newfoundland 1634–1764*. New Haven, CT: Yale University Press, 1934.

Lyon, Anne. *Constitutional History of the United Kingdom*. London: Routledge-Cavendish, 2003.

MacMillan, Ken. "Benign and Benevolent Conquest?: The Ideology of Elizabethan Atlantic Expansion Revisited." *Early American Studies* 9 (2011): 32–72.

———. "The Bermuda Company, the Privy Council, and the Wreck of the *San Antonio*, 1621–23." *Itinerario* 34 (2010): 45–64.

———. "'Bound by our Regal Office': Empire, Sovereignty, and the American Colonies in the Seventeenth Century." In *The American Colonies in the British Empire, 1607–1776*, edited by Stephen Foster. Oxford: Oxford University Press, 2012.

———. "Centers and Peripheries in English Maps of America, 1590–1685." In *Early American Cartographies*, edited by Martin Brückner. Chapel Hill, NC: University of North Carolina Press, 2011.

———. "Exploration, Trade and Empire." In *The Elizabethan World*, edited by Susan Doran and Norman Jones. London: Routledge, 2010.

———. "Imperial Constitutions: Sovereignty and Law in the Atlantic." In *Britain's Oceanic Empire: British Expansion into the Atlantic and Indian Ocean Worlds, 1550–1850*, edited by H. V. Bowen, E. Mancke, and J. G. Reid. Cambridge: Cambridge University Press, 2012.

———. *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640*. Cambridge: Cambridge University Press, 2006.

———. "Tudor and Stuart Britain in the Wider World, 1485–1685." In *Oxford Bibliographies Online: Atlantic History*, edited by Trevor Burnard. New York: Oxford University Press, 2010.

Madden, A. F. M. "1066, 1776 and All That: The Relevance of English Medieval Experience of 'Empire' to Later Imperial Constitutional Issues." In *Perspectives of Empire: Essays Presented to Gerald S. Graham*, edited by John E. Flint and Glyndwr Williams. London: Longman, 1973.

Malcolm, Joyce Lee. "Doing No Wrong: Law, Liberty, and the Constraint of Kings." *Journal of British Studies* 38 (1999): 161–86.

Mancall, Peter. *Hakluyt's Promise: An Elizabethan's Obsession for an English America*. New Haven, CT: Yale University Press, 2007.

Mancke, Elizabeth. "Chartered Enterprises and the Evolution of the British Atlantic World." In *The Creation of the British Atlantic World*, edited by Elizabeth Mancke and Carole Shammas. Baltimore: Johns Hopkins University Press, 2005.

———. "Empire and State." In *The British Atlantic World, 1500–1800*, 2nd ed., edited by David Armitage and Michael J. Braddick. New York: Palgrave Macmillan, 2009.

———. *The Fault Lines of Empire: Political Differentiation in Massachusetts and Nova Scotia, ca. 1760–1830*. New York: Routledge, 2005.

———. "Negotiating an Empire: Britain and Its Overseas Peripheries, c. 1550–1780." In *Negotiated Empires: Centers and Peripheries in the America, 1500–1820*, edited by Christine Daniels and Michael V. Kennedy. New York: Routledge, 2002.

Marsden, R. G. "The High Court of Admiralty in Relation to National History, Commerce and the Colonisation of America, 1550–1650." *Transactions of the Royal Historical Society*, New Series, 16 (1902): 69–96.

McConville, Brendan. *The King's Three Faces: The Rise and Fall of Royal America, 1688–1776*. Chapel Hill, NC: University of North Carolina Press, 2006.

McCusker, John J., and Russell R. Menard, *The Economy of British America, 1607–1789*. Chapel Hill, NC: University of North Carolina Press, 1985.

McGlynn, Margaret. *The Royal Prerogative and the Learning of the Inns of Court*. Cambridge: Cambridge University Press, 2003.

McGovney, Dudley Odell. "The British Origins of Judicial Review of Legislation." *University of Pennsylvania Law Review* 93 (1944): 1–49.

———. "The British Privy Council's Power to Restrain the Legislatures of Colonial America: Power to Disallow Statutes: Power to Veto." *University of Pennsylvania Law Review* 94 (1945): 59–93.

McIlwain, Charles H. *American Revolution: A Constitutional Interpretation*. Ithaca, NY: Cornell University Press, 1923.

Morgan, Edmund S. "The First American Boom: Virginia 1681 to 1630." *William and Mary Quarterly*, Third Series, 28 (1971): 169–98.

Morgan, Gwenda, and Peter Rushton, *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic*. New York: Palgrave Macmillan, 2004.

Muldoon, James. "Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America." In *The Many Legalities of Early America*, edited by Christopher L. Tomlins and Bruce H. Mann. Chapel Hill, NC: University of North Carolina Press, 2001.

Nelson, William E. *The Common Law in Colonial America, Volume 1: The Chesapeake and New England, 1607–1660*. Oxford: Oxford University Press, 2008.

Oberg, Michael Leroy. *Dominion and Civility: English Imperialism and Native America, 1585–1685*. Ithaca, NY: Cornell University Press, 1999.

Offutt, William M. "The Atlantic Rules: The Legalistic Turn in Colonial British America." In *The Creation of the British Atlantic World*, edited by Elizabeth Mancke and Carole Shammas. Baltimore: Johns Hopkins University Press, 2005.

Osgood, Herbert L. "England and the Colonies." *Political Science Quarterly* 2 (1887): 440–69.

Pagden, Anthony. *Lords of All the World: Ideologies of Empire in Spain, Britain, and France c. 1500–c. 1800*. New Haven, CT: Yale University Press, 1995.

Patterson, Catherine. "Quo Warranto and Borough Corporations in Early Stuart England: Royal Prerogative and Local Privileges in the Central Courts." *English Historical Review* 120 (2005): 879–906.

Pawlisch, Hans. *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism*. Cambridge: Cambridge University Press, 1985.

Pestana, Carla Gardina. *The English Atlantic in an Age of Revolution, 1640–1661*. Cambridge, MA: Harvard University Press, 2004.

———. "English Character and the Fiasco of the Western Design." *Early American Studies* 3 (2005): 1–31.

Pocock, J. G. A. *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect*. Cambridge: Cambridge University Press, 1987.

Pollard, A. F. "Council, Star Chamber, and the Privy Council under the Tudors." *English Historical Review* 37 (1922): 337–60, 516–39; 38 (1923): 42–60.

Pollock, F., and F. W. Maitland. *The History of England Law Before the Time of Edward I*. Cambridge: Cambridge University Press, 1968.

Pope, Peter. *Fish into Wine: The Newfoundland Plantation in the Seventeenth Century*. Chapel Hill, NC: University of North Carolina Press, 2004.

Puckrein, Gary. "Did Sir William Courteen Really Own Barbados?" *Huntington Library Quarterly* 44 (1982): 135–49.

Pursell, Brennan C. "James I, Gondomar and the Dissolution of the Parliament of 1621." *History* 85 (2000): 428–45.

Quinn, David B. "James I and the Beginnings of Empire in America." *Journal of Imperial and Commonwealth History* 2 (1974): 135–52.

Quinn, David B., and A. N. Ryan. *England's Sea Empire, 1550–1642*. London: George Allen & Unwin, 1983.

Rabb, Theodore K. *Enterprise and Empire: Merchant and Gentry Investment in the Expansion of England, 1575–1630*. Cambridge, MA: Harvard University Press, 1967.

Ransome, David R. "Wives for Virginia, 1621." *William and Mary Quarterly*, Third Series, 48 (1991): 3–18.

Reid, John Phillip. *Constitutional History of the American Revolution*, abridged ed. Madison, WI: University of Wisconsin Press, 1995.

Rich, E. E. "The First Earl of Shaftesbury's Colonial Policy." *Transactions of the Royal Historical Society*, Fifth Series, 7 (1957): 47–70.

Riddell, William Renwick. "Early Virginia in the Privy Council and Star Chamber." *Virginia Law Review* 21 (1935): 451–54.

Roberts, Clayton. "Privy Council Schemes and Ministerial Responsibility in Later Stuart England." *American Historical Review* 64 (1959): 564–82.

Rogers, Nicholas. *Press Gang: Naval Impressment and Its Opponents in Georgian Britain*. London: Continuum, 2008.

Roper, L. H. "Charles I, Virginia, and the Idea of Atlantic History." *Itinerario* 30 (2006): 33–53.

———. *The English Empire in America, 1602–1658: Beyond Jamestown*. London: Pickering & Chatto, 2009.

———. "New Albion: Anatomy of an English Colonisation Failure, 1632–1659." *Itinerario* 32 (2008): 39–57.

Rose, Emily. "The End of the Gamble: The Termination of the Virginia Lotteries in March 1621." *Parliamentary History* 27 (2008): 175–97.

Ross, Richard J. "Legal Communications and Imperial Governance: British North America and Spanish America Compared." In *The Cambridge History of Law in America, Volume 1: Early America (1580–1815)*, edited by Michael Grossberg and Christopher Tomlins. Cambridge: Cambridge University Press, 2008.

Sacks, David Harris. *The Widening Gate: Bristol and the Atlantic Economy, 1450–1700*. Berkeley: University of California Press, 1991.

Salerno, Anthony. "The Social Background of Seventeenth-Century Emigration of America." *Journal of British Studies* 19 (1979): 31–52.

Schlesinger, Arthur Meier. "Colonial Appeals to the Privy Council." *Political Science Quarterly* 28 (1913): 279–97.

Schmidt, Benjamin. "Introduction." In *The Discovery of Guiana by Sir Walter Ralegh: With Related Documents*, edited by Benjamin Schmidt. Boston: Bedford/St. Martin's, 2008.

Schuyler, Robert. *Parliament and the British Empire*. New York: Columbia University Press, 1929.

Seed, Patricia. *Ceremonies of Possession in Europe's Conquest of the New World, 1492–1640*. Cambridge: Cambridge University Press, 1995.

Seeley, J. R. *The Expansion of England*. London: Macmillan, 1883.

Shils, Edward. *Center and Periphery: Essays in Macrosociology*. Chicago: University of Chicago Press, 1975.

Slack, Paul, ed. *Rebellion, Popular Protest, and the Social Order in Early Modern England*. Cambridge: Cambridge University Press, 1994.

Smith, A. E. *Colonists in Bondage: White Servitude and Convict Labor in America, 1607–1776*. Gloucester, MA: Peter Smith, 1965.

———. "The Transportation of Convicts to the American Colonies in the Seventeenth Century." *American Historical Review* 39 (1934): 232–49.

Sommerville, Johann. "English and European Political Ideas in the Early Seventeenth Century: Revisionism and the Case of Absolutism." *Journal of British Studies* 35 (1996): 168–94.

Sosin, J. M. *Agents and Merchants: British Colonial Policy and the Origins of the American Revolution, 1763–1775*. Lincoln, NE: University of Nebraska Press, 1965.

———. *English America and Imperial Inconstancy: The Rise of Provincial Autonomy, 1696–1715*. Lincoln, NE: University of Nebraska Press, 1985.

———. *English America and the Restoration Monarchy of Charles II: Transatlantic Politics, Commerce, and Kinship*. Lincoln, NE: University of Nebraska Press, 1980.

———. *English America and the Revolution of 1688: Royal Administration and the Structure of Provincial Government*. Lincoln, NE: University of Nebraska Press, 1982.

———. *Whitehall and the Wilderness: The Middle West in British Colonial Policy, 1760–1775*. Lincoln, NE: University of Nebraska Press, 1961.

Souden, David. "'Rogues, Whores and Vagabonds'? Indentured Servant Emigrants to North America, and the Case of Mid-Seventeenth-Century Bristol." *Social History* 3 (1978): 23–41.

Steele, Ian K. "The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689–1784." In *The Oxford History of the British Empire, Volume 2: The Eighteenth Century*, edited by P. J. Marshall. Oxford: Oxford University Press, 1998.

———. "The British Parliament and the Atlantic Colonies to 1760: New Approaches to Enduring Questions." In *Parliament and the Atlantic*

Empire, edited by Philip Lawson. Edinburgh: Edinburgh University Press, 1995.

Surrency, Erwin C. "Revision of Colonial Laws." *American Journal of Legal History* 9 (1965): 189–202.

Thompson, Mark L. "'The Predicament of Ubi': Locating Authority and National Identity in the Seventeenth-Century English Atlantic." In *The Creation of the British Atlantic World*, edited by Elizabeth Mancke and Carole Shammas. Baltimore: Johns Hopkins University Press, 2005.

Thornton, J. Mills, III. "The Thrusting out of Governor Harvey: A Seventeenth-Century Rebellion." *Virginia Magazine of History and Biography* 76 (1968): 11–26.

Tomlins, Christopher. *Freedom Bound: Law, Labor, and Civic Identity in Colonizing British America, 1580–1865*. Cambridge: Cambridge University Press, 2010.

Turner, E. R. *The Privy Council of England in the Seventeenth and Eighteenth Centuries, 1603–1784*. 2 vols. Baltimore: Johns Hopkins University Press, 1928.

Turner, Edward Raymond. "Committees of the Privy Council, 1688–1760." *English Historical Review* 31 (1916): 545–72.

Tyack, Norman C. P. "English Exports to New England, 1632–40: Some Records in the Port Books." *New England Historical and Genealogical Register* 135 (1981): 213–38.

Viner, Jacob. "Power Versus Plenty as Objectives of Foreign Policy in the Seventeenth and Eighteenth Centuries." In *Theories of Empire, 1450–1800*, edited by David Armitage. Aldershot: Ashgate, 1998.

Viroli, Maurizio. *From Politics to Reasons of State: The Acquisition and Transformation of the Language of Politics 1250–1600*. Cambridge: Cambridge University Press, 1992.

Wall, Alison. "'The Greatest Disgrace': The Making and Unmaking of JPs in Elizabethan and Jacobean England." *English Historical Review* 119 (2004): 312–32.

Wall, Alison. *Power and Protest in England, 1525–1640*. London: Edward Arnold, 2000.

Wallerstein, Immanuel. *The Modern World System*. 3 vols. New York: Academic Press, 1976–89.

Washburn, Wilcolm E. *Virginia Under Charles I and Cromwell, 1625–1660*. Williamsburg, VA: Virginia 350th Anniversary Celebration Corp., 1957; reprinted as e-Book 2009, available at http://www.gutenberg.org/files/29348/29348-h/29348-h.htm.

Webb, Stephen Saunders. *1676: The End of American Independence*. Cambridge, MA: Harvard University Press, 1984.

———. "William Blathwayt, Imperial Fixer: From Popish Plot to Glorious Revolution." *William and Mary Quarterly*, Third Series, 25 (1968): 3–21.

———. "William Blathwayt, Imperial Fixer: Muddling Through to Empire, 1689–1717." *William and Mary Quarterly*, Third Series, 26 (1969): 373–415.

Williams, Neville. "England's Tobacco Trade in the Reign of Charles I." *Virginia Magazine of History and Biography* 65 (1957): 403–49.

Williamson, J. A. *English Colonies in Guiana and on the Amazon, 1604–1668*. Oxford: Clarendon Press, 1923.

Wrightson, Keith. *English Society, 1580–1680*. London: Routledge, 1982.

Yirush, Craig. *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675–1775*. Cambridge: Cambridge University Press, 2011.

Zahedieh, Nuala. *The Capital and the Colonies: London and the Atlantic Economy, 1660–1700* Cambridge: Cambridge University Press, 2010.

———. "Economy." In *The British Atlantic World, 1500–1800*, 2nd ed., edited by David Armitage and Michael J. Braddick. New York: Palgrave Macmillan, 2009.

———. "Overseas Expansion and Trade in the Seventeenth Century." In *The Oxford History of the British Empire, Volume 1: The Origins of Empire: English Overseas Activity to the Close of the Seventeenth Century*, edited by Nicholas Canny. Oxford: Oxford University Press, 1998.

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