

**INHERITING EMPIRE: ROYAL PROCLAMATIONS, PARLIAMENTARY
LEGISLATION, AND IMPERIAL INTEGRATION IN BRITISH
NORTH AMERICA AND INDIA, 1760–1793**

by

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Abstract

This work is a connected history examining British sovereignty in the ceded provinces of Canada and Bengal as being heavily inherited from prior French and South Asian imperial polities. It analyzes both the connected legacies and divergencies of inherited sovereignties as they relate to British Crown–Indigenous relations, the emergence of American Revolutionary ideology, the constitutional development of the Canadian settler-state, and the evolution of British rule in India. Britain’s military and diplomatic success in the Seven Years’ War (1754/6–1763) expanded British global imperial dominion considerably. In North America, French sovereignty in Canada and its adjacent interior spaces was transferred to Britain via the Articles of Capitulation of Montreal (1760) and the Treaty of Paris (1763), first of which required the protection of Indigenous lands and the maintenance of French property in the ceded territories. In India, meanwhile, the British East India Company’s major victories at Plassey (1757) and Buxar (1764) resulted in the Company’s receipt of the *diwani*, or imperial revenue, of Bengal in the Treaty of Allahabad (1765), making the Company the de facto sovereign of that province and the inheritor of much of the Mughal emperor’s diplomatic and king-making powers. Prior scholarship has interpreted these cessions and treaties primarily as transfers of territory and property. However, an analysis of the correspondence and preparatory documentation behind the development of postwar imperial policies and expressed via royal proclamations, orders-in-council, governors’ instructions, and Acts of Parliament reveals imperial authorities’ understanding of such agreements as transfers of sovereign relations between peoples, by which the Crown was legally bound to honour the customary rights of and its own inherited responsibilities toward conquered and non-subject protected populations. While such additions to the

constitution of empire drew opposition from commercial interests and settler subjects who charged the Ministry with corruption and arbitrary government—charges that have persisted into modern historiography—this work highlights the significance of postwar British imperial policy as an imperial domestication of inherited sovereignties in Canada and India, exposing the defined period as critically important to our understanding of the development of the imperial constitution by highlighting the significance of international relations to processes of constitution making vis-à-vis the incorporation of non-British settler populations and non-European conquered and non-conquered protected peoples into the empire.

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This project also benefitted from a productive and enjoyable stay at the David Library of the American Revolution in Washington Crossing, Pennsylvania, from mid-August through early September of 2018, where the East India materials present in the Library's microfilmed editions of various British imperial papers provided an invaluable resource. While the movement of the David Library to the American Philosophical Society in Philadelphia will surely make its collections more accessible to scholars, the Feinstone Residence and its twenty-four-hour Library entry offered a truly unique experience. Additional travel support during the summer of 2018 was received from the UNB School of Graduate Studies, for the procurement of which, thanks are due to Dr. Erin Morton of the Department of History. A visit to the William L. Clements Library at the University of Michigan in Ann Arbor in June of 2019 was also made possible by

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A debt of professional gratitude is owed to a number of individuals who helped to shape my academic journey. Mark G. Spencer piqued my interest in colonial and Revolutionary era American history when I was an undergraduate at Brock University, supervised my Master's project on loyalist constitutional thought at that same institution, and has provided more letters of recommendation over the years than I'm sure either of us would like to count. Dr. Daniel Samson pointed me toward Dr. Mancke's work and suggested UNB when I was a Master's graduate applying to Doctoral programs. Carey Watt oversaw my initial forays into South Asian history, read many early chapter drafts, and offered detailed and useful feedback on the manuscript during its later stages. Elizabeth Mancke believed in this project from its inception, encouraged me to think critically and make important connections across my broad and sometimes eclectic fields of interest, and offered continued financial support during the extended final stretch of this project's completion. Elizabeth's dedication to her students is unrivaled and I am greatly appreciative of her academic supervision as a source of much of this work's conceptual rigor.

On a more personal note, my ability to pursue doctoral studies would never have been possible if not for the tremendous support of my parents, Bob and Shirley. And last but certainly not least, the very generous affections of my partner Stephanie served as constant source of inspiration and as a vital reminder of the significance of life beyond the academy. It is to her that this work is dedicated.

Preface

Some prefatory remarks about this project's origins and development are in order so as to expound upon what may be considered by some to be this study's somewhat unconventional method and style. After completing a Master's project on the constitutional thought of the American loyalist William Smith of New York (1728–1793) during the summer of 2013, I arrived in Fredericton to begin Doctoral studies in early August of 2014. I had been extremely fascinated by Smith during my Master's work—the complexity of his personal and political life, his Enlightenment era reading patterns, his extensive diaries, his 1757 *History of New-York*, and his series of plans for colonial union that anticipated many features of both American and Canadian federalism. My Master's paper was temporally focused on the 1760s and had only scratched the surface of the depth of Smith's thinking. I felt that Leslie Upton's biography of Smith, though quite good, retained many features of “great man” history.¹ My Doctoral project, by contrast, would be a comprehensive political biography of Smith that delved deep into his political thought, would contextualize his writing within loyalist constitutional thinking more broadly, and would highlight his significance in the transfer of colonial political ideas to post-Revolutionary British North America as a cornerstone of the constitutional development of the Canadian settler-state. Biographical history was highly fashionable at the time. *A Sailor's Hope* was superb.² Michael Cross's *Biography of Robert Baldwin: The Morning-Star of Memory* was widely acclaimed.³ And in the years after I

¹ L. F. S. Upton, *The Loyal Whig: William Smith of New York and Quebec* (Toronto: University of Toronto Press, 1969).

² Rusty Bittermann, *A Sailor's Hope: The Life and Times of William Cooper: Agrarian Radical in an Age of Revolutions* (Montreal and Kingston: McGill-Queen's University Press, 2010).

³ Michael S. Cross, *A Biography of Robert Baldwin: The Morning-Star of Memory* (Toronto: Oxford University Press, 2012).

left Brock, Mark Spencer undertook a biographical study of the Maryland planter and judge, John Beale Bordley (1727–1804), and Danny Samson has since done extensive work on the diary of the Nova Scotian farmer and printer, James Barry (1822–1906).⁴

I settled into my new home in the Maritimes, dividing most of my waking hours between the Harriet Irving Library and the then-notorious Alden Nowlan House as I worked through reading fields in Atlantic history, early modern English/British political thought, and early modern South Asia.⁵ Atlantic history was inescapable (“we are all Atlanticists now”) and it had only very recently gone transoceanic with the publication of *Britain’s Oceanic Empire* two years prior.⁶ Carey Watt, who I was working with on India, was a student of Chris Bayly, and had lent me materials on world history. I still intended to write on Smith, but as fields gave way to primary research, I began to see eighteenth-century British North America and India speaking to each other far more than I had anticipated. In fact, I very quickly identified that the colonial constitutional crisis

⁴ See Mark G. Spencer, *John Beale Bordley’s Necessaries: An American Enlightenment Pamphlet in its Historical Context* (Philadelphia: American Philosophical Society, 2020); Daniel Samson, “‘Damn TORYISM Say I’: Dissent, Print Culture, and Anti-Confederation Thought in James Barry’s Diary,” *Acadiensis* 46, no. 1 (2017): 177–190; Daniel Samson, “Weather and Emotion in James Barry’s Diary, 1849–1906,” NiCHE, April 4, 2018, <https://niche-canada.org/2018/04/04/weather-and-emotion-in-james-barrys-diary-1849-1906>; Daniel Samson, “James Barry’s Transatlantic World of Books and Ideas,” *Acadiensis Blog*, June 28, 2019, <https://acadiensis.wordpress.com/2019/06/28/james-barrys-transatlantic-world-of-books-and-ideas>; Daniel Samson, “James Barry’s Aesthetic Word,” *Rural Colonial Nova Scotia*, January 7, 2020, <https://danieljosephsamson.com/uncategorized/james-barrys-aesthetic-world>; and Daniel Samson, “Fashioning a Modern Man: James Barry of Six Mile Brook” (W. Stewart MacNutt Memorial Lecture, University of New Brunswick, Fredericton, March 16, 2023).

⁵ In relation to the Alden Nowlan House, I would be remiss if I failed to acknowledge the social and intellectual comradery of, respectively, Saran Croos, Engineering and Computer Science Librarian at UNB Fredericton, and Dr. Colm Kelly, Associate Professor of Sociology at St. Thomas University. My reading field in early modern English/British political thought was directed by Dr. Joanne Wright, Professor of Political Science and former Dean of Arts at UNB Fredericton.

⁶ David Armitage, “Three Concepts of Atlantic History,” in *The British Atlantic World, 1500–1800*, ed. David Armitage and Michael J. Braddick, 2nd ed. (New York, 2009), 13; H. V. Bowen, Elizabeth Mancke, and John G. Reid, eds., *Britain’s Oceanic Empire: Atlantic and Indian Ocean Worlds, c. 1550–1850* (Cambridge: Cambridge University Press, 2012).

out of which the American Revolution had arisen was a manifestation of much larger, mid-eighteenth-century imperial constitutional shifts. Indeed, Smith's observations that the empire had entered into "a new, adventitious state" was as true on a transoceanic scale as it was on an Atlantic one.⁷ The American Revolution appeared to me as a product of this transition in mid-century British global imperial constitutional governance more than it was the primary mover for late eighteenth and early nineteenth-century imperial developments. This was not reflected in the existing literature, where the persistence of a British North America, for instance, was regularly explained away as a reactionary idiosyncrasy rather than as a model of empire existing on its own historical continuum and connected to forces other than those of Anglo-settler colonialism. Peter Marshall's *The Making and Unmaking of Empires* appeared to me to do little more than to reinforce the longstanding orthodoxy of a post-Revolutionary transition in British imperialism from America to India,⁸ an argument that I felt failed to capture the evidentiary complexity of the primary materials I was examining, wherein imperial officials and policymakers were regularly and actively considering both spheres of empire interrelatedly.

The arrival of Jonathan Eacott's *Selling Empire* in 2016 was a major turning point in this line of thinking,⁹ confirming what was for me the obvious interconnectedness between British America and India that far predated any apparent "swing to the east." I decided to reframe my work as a comparative analysis of

⁷ Robert M. Calhoun, ed., "William Smith Jr.'s Alternative to the American Revolution," *William and Mary Quarterly*, 3rd ser., 22, no. 1 (January 1965): 107.

⁸ P. J. Marshall, *The Making and Unmaking of Empires: Britain, India, and America, c. 1750–1783* (Oxford: Oxford University Press, 2005).

⁹ Jonathan Eacott, *Selling Empire: India in the Making of Britain and America, 1600–1830* (Chapel Hill: University of North Carolina Press, 2016).

constitutional change between British North America and India during the American Revolutionary era, that is, from 1765 (the beginning of the Stamp Act crisis) to 1791 (a date that I had determined upon due to the passage of the Constitutional Act, but one which Americans mark for the ratification of the Bill of Rights). Still, the American Revolution was setting the paradigm. Yet the primary sources I was working on continued to point in another direction. The Sugar Act, Stamp Act, and Townshend duties may have spurred colonial debates over taxation, legislation, and representation, but they were ultimately linked to problems of imperial revenue caused by the acquisition of new territories in India and America. Viewed in this light, events at Plassey, Quebec, Montreal, Niagara, Buxar, and Allahabad appeared to be intimately connected to those at Boston, Lexington, Concord, Bunker Hill, Philadelphia, New York, and Yorktown. Even American Revolutionary language began to present differently. Colonial references to popery, French tyranny, Indian savagery, and Asiatic despotism became accentuated and were elevated above mere rhetoric. Many British Americans appeared to be genuinely appalled at the changing composition of the empire following the Seven Years' War.

After American colonists won their independence from Britain in 1783, the British global territorial empire that remained was composed largely of dominions that had only recently been acquired from other sovereigns, the terms of which conquests and cessions had left in place many of constitutional, jurisdictional, social, and diplomatic features of the prior regimes. The Capitulation of Montreal, the Royal Proclamation, and the Quebec Act appeared as far greater forces in the history of both the North American continent and of the British empire globally than Americentric and Anglocentric readings of these documents had previously demonstrated. Imperial

officials at home and abroad wrote at length of India's "ancient constitution" and sought to reform British governance in Bengal to reflect the "original principles" of the pre-conquest regime. Robert Travers writes of British rule in Bengal as a form of legal inheritance,¹⁰ and I became convinced of the applicability of the concept of inheritance to British imperial constitutional developments in post-Seven Years' War North America and India more generally. I formulated my thesis of an "inherited empire," a postwar British empire that was heavily constitutionally indebted to the French regime and French-Indigenous relations in North America, and to Mughal imperialism and post-Mughal regional and provincial successor states in India. My periodization would run from the French surrender of Canada in 1760 to the Permanent Settlement of Bengal in 1793, the latter being the point at which I identified British language of inheritance beginning to transmute from authentic efforts at governing according to ancient customs to subterfuge for the onset of Anglicization. This process was paralleled in the Canadas, as the influx of "late loyalists" to British North America fuelled Anglo-settler efforts to conclude more extortionate treaties with Indigenous peoples and to alter many of the inherited constitutional features of French Canada.¹¹

But how would I present such a complex and multifaceted argument? Efforts to position myself against existing scholarship continually pulled me back into the vortex of the American Revolution. I wanted to write a new imperial history that focused on the peripheries of empire—on the St. Lawrence River Valley, the Ohio country, the Bay of Bengal, and the Gangetic plain—on their relationships to each other and to the

¹⁰ Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal* (Cambridge: Cambridge University Press, 2008).

¹¹ For "late loyalists," see Alan Taylor, "Late Loyalists: Northern Reflection of the Early American Republic," *Journal of the Early Republic* 27, no. 1 (Spring 2007): 1–34.

metropolitan centre. It was still very much a history of elite politics, of diplomacy, treaties, military events, and imperial politics. Yet it was one in which non-British actors—French military officials, North American Indigenous leaders, Mughal emperors, and Indian *nawabs*—were major players. I decided simply to let the sources tell the story. I would construct two parallel narratives, one focussed on North America and the other on India. My inclination to write narrative history came as second nature. I grew up in the Niagara region of southern Ontario, the borderland of Alan Taylor's *Divided Ground* and *Civil War of 1812*.¹² As a young adult, Taylor provided my first exposure to professional historical writing. I deeply admired his narrative style and his ability to be accessible and popular at the same time that his scholarship indicated a consummate research ethic. I aspired to write a Tayloresque narrative history, in which the primary materials would determine the course of my study and I would synthesize secondary literatures along the way so as to make connections across spatial, temporal, and topical chasms; to push the narrative forward; and to provide broader historical and scholarly context. I was employing narrative not only as a practical compositional tool but also as an historical method, and it quickly became a core component of the argument itself. I reached back into the historical constitutional antecedents, highlighting non-British, non-settler, and non-Western histories, without the inclusion of which the argument would have been invalidated by a simple question: the inheritance of what exactly? As the narratives began to take form, it was clear that what I was writing was more than a formulaic comparative study of the two spheres of empire. It was a connected history, rather, in which the two narratives regularly intersected, cross-

¹² Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Vintage, 2007); Taylor, *The Civil War of 1812: American Citizens, British Subjects, Irish Rebels, and Indian Allies* (New York: Alfred A. Knopf, 2010).

referenced each other, and at times were interwoven.

The composition of two parallel, synthetic narratives tracing constitutional developments in British North America and India is in and of itself a novel and original scholarly contribution. There remain tremendously few published, professional historical monographs that deal with North America and India in the second half of the eighteenth-century in a single-authored, single-volume work despite their obvious imperial connection. I have departed from those very few works by making greater or different synthetizations of time and space; by highlighting greater interconnectedness, explicating different points of comparison, and employing different methodologies; and by making an additional series of original observations and arguments. Not least of those arguments is the decentring of revolutionary, Anglo-settler violence as a normative form of early modern political change and instead articulating a framework through a broader interpretive lens wherein the American Revolution is seen as a reactionary political movement predicated on archaic, seventeenth-century English constitutional principles that were fundamentally incompatible with Britain's increasingly cosmopolitan mid-to-late eighteenth-century empire. French Canadians, North American Indigenous leaders, and South Asian elites appear now as major drivers of constitutional change in the late decades of the modern empire that was not yet fully afflicted by emerging orientalism, British paramountcy, and Anglo-settler dominance.

This study does not claim to be nor can it be—due to the very real limitations of space, time, and funding—exhaustive, comprehensive, or all encompassing. It is not a definitive history of British North America and India during this period and it should not be read as though were intended to be such. As with any work of this scope, many difficult decisions were made surrounding what materials to include and what to lay

aside for future projects. Analyses of the Covenant Chain alliance, the Two Row Wampum agreement, the Peace and Friendship Treaties, and a closer look at treaty-making in Upper Canada during the 1780s and '90s are to be included in a forthcoming journal article on Crown–Indigenous relations. That same article will also include a more detailed discussion of French–Indigenous relations during the early establishment of New France. Moreover, while early research efforts involved readings on the Hudson’s Bay Company (HBC), and while the HBC provides a valuable opportunity for comparison with the East India Company as a chartered enterprise conducting trade and diplomacy with non-Europeans, the Crown and Parliament’s non-interest in acquiring HBC revenues, territorial control, or administrative responsibilities during the period in question renders the Hudson’s Bay Company of less immediate interest to the present study. Indeed, the Proclamation, the Quebec Act, and Dorchester’s recommendations for boundaries of the province of Upper Canada are all drafted so as to not infringe on HBC chartered rights or territories.

Furthermore, this study includes no traditional-style literature review. Firstly, there is not a body of scholarship that engages in analyzing the patterns of change in imperial governance in late eighteenth-century Canada and Bengal. Secondly, although a useful pedagogical tool for junior graduate students making their initial surveys of research fields, earmarking dozens of pages of valued space for the obsequious provision of a litany of existing works only to then remark on why prior scholarship has been wrong on some point or other of interpretive minutiae was agreed upon to be unproductive. It was decided that this project would instead be held to the contemporary professional standards of published monographs such as Eacott’s *Selling Empire*, wherein much of the historiographical discussion is explicated in footnotes, and Travers’

Ideology and Empire and Philip Stern's *The Company-State*, which feature introductory chapters that are highly contextual in their employment of documentary evidence and primary source materials.¹³ I have, nevertheless, engaged with the relevant literature where necessary, the breadth of which scholarship, it should be appreciated, is not insignificant. I recognize that a greater engagement with post-colonialist literature, particularly in relation to South Asia, would be of importance to improving elements of this project in potential future iterations.

In the meantime, however, two pieces of wisdom passed down from senior academics and social acquaintances come to mind: “projects are never truly finished, they’re merely submitted,” and “there are two types of PhDs: those that are done and those that are not.”¹⁴ This one, I can finally say, is done.

¹³ Eacott, *Selling Empire*; Travers, *Ideology and Empire*; Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011). Even purpose-written historiographical journal articles are increasingly employing non-historiographically chronological narrative methods in order to make spatial and temporal arguments. An excellent example is Jerry Bannister's “Atlantic Canada in an Atlantic World? Northeastern North America during the Long 18th Century,” *Acadiensis* 43, no. 2 (Summer 2014): 3–30.

¹⁴ The former comes from Dr. Carmela Patrias, now Professor Emeritus of History at Brock University, while the latter was related to me by the former Minister of Finance for New Brunswick and former Member of the Board of Directors of the Bank of Canada, Norm Betts of the UNB Faculty of Business Administration.

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A Note on the Text

This study uses “Canada” to refer to the French province of Canada in the St. Lawrence River Valley, and uses “Canadians” to refer to French subjects residing in the immediate province of Canada and those extending themselves inland from the St. Lawrence into the adjacent interior regions of New France. Although renamed “Quebec” by the British in 1763, and greatly expanded by the Quebec Act in 1774, it remained commonplace among eighteenth-century Britons and British Americans to continue to refer to the province of Quebec as “Canada” even after it had become a British dominion, and to continue to call its French-speaking inhabitants “Canadians” even after they had become British subjects.

In keeping with eighteenth-century usages, this study also employs “India” and “Indian” when referring to the Indian subcontinent, its peoples, polities, languages, cultures, traditions, etc. While “South Asia” is the current, politically neutral nomenclature for the region comprised primarily of the modern states of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Bhutan, and depending on one’s definition, Afghanistan, “India” is more historically appropriate.¹⁵ I have nevertheless used “South Asia” and “South Asian” at times geographically, for variety, or in instances where “Indian” or “Indians” might otherwise confuse readers as to North American Indigenous peoples. Through much of the early modern period, Europeans also referred to South and Southeast Asia collectively as “the East Indies.”

English-language primary source quotations have been edited to reflect

¹⁵ “India,” as historically used by the British, is also more geographically elastic, and can include Burma (modern-day Myanmar) and territories in the Malay Peninsula, which were part of British India until 1935. See Sugata Bose and Ayesha Jalal, *Modern South Asia: History, Culture, Political Economy*, 2nd ed. (New York: Routledge, 2005), 3.

modernized spelling, capitalization, proper noun usages, and in some cases punctuation. Translations of French-language and other primary source quotations are mine save for instances in which English translations have been cited.

All references are to page numbers unless otherwise indicated.

1

Introduction

On August 24, 1759, the commanding French officer at Quebec, the Marquis de Montcalm, penned a letter to Versailles. For the last month or so, a British force of roughly four thousand regulars had been encamped downriver from the fortress, and Montcalm had serious reservations about his ability to fight off the attacking force and hold the colonial French capital. “The colony is lost,” the outnumbered lieutenant general had written earlier that month, “unless peace comes, I can see nothing that can save it.”¹ Resigned to what he believed was surely his defeat, Montcalm took stock of the geopolitical significance of the loss of the city and fortress of Quebec and the impending British conquest of the entire province of Canada. “I console myself that [in] the loss of this colony, this defeat will one day be of more service to my country than a victory,” he wrote. “The conqueror, in aggrandizing himself, will find a tomb even in that.”² Montcalm’s words proved prophetic: he was defeated and died outside the walls of Quebec the following month. A year later, the Marquis de Vaudreuil surrendered Canada, and with it the *pays d’en haut*, or upper country, to an invading British force led by Major General Jeffery Amherst. France formally ceded its claims to New France to Great Britain in the Treaty of Paris that ended the Seven Years’ War in February of 1763. For the next roughly twenty years, Britain struggled to integrate Canada, its vast interior dependencies, and wartime acquisitions elsewhere in the world into its new and expanding global empire.

The metaphoric “tomb” in which Montcalm anticipated the British would find

¹ W. J. Eccles, *Essays on New France* (Toronto: Oxford University Press, 1987), 127.

² Dan Snow, *Death or Victory: The Battle of Quebec and the Birth of an Empire* (Toronto: Penguin, 2011), 426.

themselves after having acquired New France was owing to the features of French sovereignty in Canada and of French relations with North American Indigenous peoples that the terms of the French surrender in 1760 obliged the British to inherit. The Articles of Capitulation of Montreal, by which the entirety of Canada and its interior dependencies was surrendered to Britain in September of 1760, featured provisions for the free exercise of Roman Catholicism, the preservation of French property, and the protection of Indigenous lands.

The British had also made significant gains in South Asia during the Seven Years' War, defeating the French and their allies in southern India in a series of regional conflicts known as the Carnatic Wars (1746–63), during which the British East India Company acquired de facto sovereignty over Bengal in the Treaty of Allahabad that ended the war in that province in 1765. At Allahabad, the Mughal emperor Shah Alam II (r. 1760–1806) invested the Company with the office of *diwan*, or collector of the imperial revenue of Bengal, beginning a process whereby the Company would become the predominant civil and administrative authority in Bengal in the shorter term, and setting in motion a longer-term process whereby British interests would begin expanding into the Indian subcontinent to become sovereign over much of South Asia by the mid-nineteenth century. In India, too, British officials found themselves operating within established agreements outlining their responsibilities toward conquered peoples and drawing on longstanding imperial and constitutional traditions to legitimate their rule.

The French cession of Canada and the Mughal grant of the *diwani* constituted Britain's two greatest acquisitions coming out of the Seven Years' War, both in terms of territory and governance of non-British populations. While Britain had earlier acquired territories inhabited by non-British subjects in Jamaica in 1655, New Netherland in

1674, and Acadia in 1713, and while Britain held coastal enclaves in India in Bombay (Mumbai), Madras (Chennai), and Calcutta (Kolkata), it had largely avoided the constitutional quandary of the governance of non-British Europeans and non-European peoples as subjects and protected populations. The acquisition of jurisdictional authority in Canada and Bengal, and the recognition of sovereign claims vis-à-vis other European systems now engendered multiple constitutional challenges for British authorities and policymakers.

This study explores the constitutional effects of Britain's acquisition of three foreign dominions during the Seven Years' War (1754/6–1763)—namely the French province of Canada, the continental interior of New France, and the semi-autonomous Mughal province of Bengal in India—upon British imperial governance during the roughly thirty years between the fall of New France in 1760 and the onset of the French Revolutionary and Napoleonic Wars (1792–1815). While Britain acquired other territories as a result of the Seven Years' War, including East and West Florida, the Ceded Islands in the Caribbean, and Senegambia in Africa, this work focuses on the impact of the acquisition of Canada, the upper country, and Bengal, which together changed the imperial constitution.

This study began as an analysis of the imperial constitutional changes deriving from the acquisition of Canada, but in working through the prolific documentary record surviving from the era, the references to imperial officials working on Canadian and North American issues in close association to India were striking, indicating that eighteenth-century imperial officials did not see the differences between North America and India in the highly racialized terms that emerged in the nineteenth century. I began reconstructing the parallels and intersections between Canada and Bengal and analyzing

them in light of the constitutional developments in the British empire between the 1760s and '90s. Indigenous peoples and Canadian settlers currently have differing opinions about the legal and jurisdictional implications of those constitutional developments. The eighteenth-century parallels from Bengal, therefore, are important by offering a fresh perspective that can deepen our understanding of the global context out of which such developments emerged. As I studied the eighteenth-century history of India, I came to appreciate that various political and religious groups in South Asia had historical understandings of their position within British dominions and their relationship to the British Crown that were not entirely dissimilar to those of Indigenous peoples and French Canadians in North America during roughly the same period. In the nineteenth century, British officials found it useful to downplay the constitutional obligations that had been agreed upon in the eighteenth century. In those parts of British North America that eventually became Canada, by contrast, many such obligations became constitutionally entrenched so as to persist in various iterations into the present day.

Although this study's analysis and documentation is stronger for North America than for India, it is my intention that scholars of India will reconsider the importance of the constitutional parallels and intersections that this study highlights. This work does not endeavour to make any radical intervention into the constitutional history of Bengal or India. However, understanding late eighteenth-century constitutional changes within a broader transoceanic imperial context is a valuable contribution to South Asian history and British imperial and constitutional history in its own right. Rather than a comprehensive and equivalent comparative case study, British activities in Bengal and India offer critical contemporary context for constitutional developments in North America and Canada that highlight the significance and enduring legacy of late

eighteenth-century debates surrounding the tensions between royal, ministerial, and parliamentary imperial authority, and the contested relationships between the Crown, Parliament, settler-colonial interests, and chartered commercial enterprises.

The findings of this work show that the terms and conditions under which Britain acquired dominions in Canada and India, and which were reflected in postwar policies intending to integrate new peoples and territories into the empire, resulted in a fundamental restructuring of British imperial governance. The constitutional arrangements of ceded dominions were internalized and domesticated by the imperial centre and refracted back out into the constitution of the empire in the form of prerogative powers, statute law, and constitutional precedent. One of the major consequences of these new acquisitions to the empire was the enlargement of British ministerial authority over external imperial dominions. While the Revolutionary Settlement of 1688–89 had resulted in the curtailment of royal authority domestically, the establishment of parliamentary supremacy within Britain, and the emergence of the imperial Parliament in relation to settler colonies, Britain's acquisitions in the Seven Years' War required the expansion of the sovereignty of the king-in-council in ceded dominions over which Parliament did not have jurisdiction due to the terms of peace and cession. In the years following the war, British ministers, cabinet members, and their undersecretaries processed masses of information on the recent acquisitions, produced a plethora of analyses and preparatory documents, advised the king-in-council, and drafted imperial legislation for passage by the king-in-Parliament only after the king-in-council had provided formative ordinances or else had passed on its prerogative to do so.³ As

³ As Brian Slattery, *The Land Rights of Indigenous Canadian Peoples, as Affected by the Crown's Acquisition of Their Territories* (Saskatoon: University of Saskatchewan, 1979), 11,

servants of the Crown, it was incumbent upon the Ministry (referring both to the cabinet of government ministers and the chief executive Crown officials comprising the Privy Council) to uphold the king's agreements with other sovereigns and to respect the established rights of the inhabitants of the king's new dominions as enshrined in treaties, articles of capitulations, and various other diplomatic mechanisms of transfers of power. In the instances of the Crown's acquisitions in the Seven Years' War, however, the resulting policies were regularly and vociferously opposed by settler-colonial and imperial commercial interests and a series of whiggish parliamentary oppositions, who took issue with expanding ministerial authority and the revitalization of seemingly archaic prerogative powers as they related to transferred and acquired sovereignty. These interests preferred instead to view the acquisition of new territories as the product of absolute conquests and the new dominions as open to private commercial exploitation under the purview of parliamentary or colonial rather than ministerial oversight.

The tendency among scholars has been overwhelmingly to read such transfers of sovereignty as primarily transfers of territory.⁴ While spatial ideations of sovereignty

outlines, "in territories acquired by conquest, cession or annexation, the Crown initially holds full prerogative powers of legislation ... subject to the [post facto] overriding legislative authority of Parliament." This is contrasted with a settler colony, where "the Crown has no greater prerogative powers of legislation ... than it possesses in the mother country, and so may not legislate there apart from Parliament."

⁴ S. Max Edelson, *The New Map of Empire: How Britain Imagined America before Independence* (Cambridge, MA: Harvard University Press, 2017), for instance, interprets British projects to cartographically catalogue its conquests in North America following the Seven Years' War as an expression of imperial authorities' desire "to command geographical space" in preparation for "intensive, regulated," and centralized colonization (2, 4–5). Edelson's work represents a "spatial history of empire," which sees postwar British mapmaking as a vital component in metropolitan efforts to exert power "across vast reaches of space" and as a fundamental refiguration to the empiricist "the totalizing schemes" of modern states (6–7, 11). Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2018), examines the British conquest of Canada and its legacies only insofar as they contribute to later processes of Indigenous dispossession and settler-colonial property formation in British North America (381–386, 397–

served the purposes of the emissaries of European monarchs seeking to divide the extra-European world among themselves at peace tables in Europe,⁵ territorial definitions of

405). Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), meanwhile, although eschewing contiguous landed territory to focus instead on “anomalies of empire,” including “corridors and enclaves” ranging from riverine regions to coastal littorals to island chains, still views European imperial sovereignty as primarily being projected onto geographical space and ultimately attached to land, reinforcing the longstanding narrative of the “progressive rationalization of space,” culminating in the emergence of “territorial sovereignty as a key attribute of statehood” (11, 36). The presupposition that sovereignty is first and foremost a territorial phenomenon, whereby a state or polity’s “geographical boundaries define the scope of membership” and act as a fixed, although changeable, “container” for society, has been identified by political scientists as a conceptual problem known as “the territorial trap.” See John Agnew, “The Territorial Trap: The Geographical Assumptions of International Relations Theory,” *Review of International Political Economy* 1, no. 1 (Spring 1994): 53–80.

⁵ Ongoing calls from Indigenous groups and associated activists in Canada during the summer and fall of 2022 for both the papacy and the new monarch of the United Kingdom, Charles III, to renounce the Doctrine of Discovery suggests that it is generally held among non-specialists that Europeans divided the extra-European world according to that “doctrine.” The Doctrine of Discovery, however, is United States domestic law developed by US Supreme Court Justice John Marshall in the case of *Johnson v. M’Intosh* (1823), and is thus anachronistic for the purposes of this study. Although the Judicial Committee of the Privy Council cited *Johnson v. M’Intosh* at length in the case of *St. Catharines Milling and Lumber Co. v. R.* (1888), in *Calder v. British Columbia* (1973), the Supreme Court of Canada recognized that Indigenous land title predates European discovery. In *Tsilhqot’in Nation v. British Columbia* (2014), moreover, the Supreme Court further confirmed that “the doctrine of *terra nullius* never applied in Canada.”

Nor did the papacy ever promote a “doctrine of discovery.” The Alexandrine Bulls of Donation (1493) and Treaty of Tordesillas were modifications of the earlier Treaty of Alcáçovas (1479) and the related bull *Aeterni regis* (1481), by which Portugal and Castille agreed to divide rather than war over the Macaronesia islands situated off the Atlantic coasts of Africa and Iberia. Europeans were unaware of the existence of the Americas as continental land masses at the time of these bulls and treaties. The Spanish and Portuguese insistence that such documents had granted them exclusive rights of transit in the Atlantic and beyond was subsequently strongly challenged by the French, English, and Dutch.

While Robert J. Miller et al., *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford: Oxford University Press, 2010), argues for the existence of the Doctrine of Discovery, Canadian legal scholar Kent McNeil, in “The Doctrine of Discovery Reconsidered: Reflecting on Discovering Indigenous Lands,” *Osgoode Hall Law Journal* 53, no. 2 (2016): 707, demonstrates that “it is not apparent that such a rule was ever part of the European law of nations.” See also Blake A. Watson, “John Marshall and Indian Land Rights: A Historical Rejoinder to the Claim of ‘Universal Recognition’ of the Doctrine of Discovery,” *Seton Hall Law Review* 36, no. 2 (2006): 481–550.

Notwithstanding the Vatican’s entirely symbolic renunciation of the Doctrine of Discovery in late March of 2023, it remains unclear precisely how to implement Call to Action 45(i) of the Truth and Reconciliation Commission of Canada, demanding the repudiation of the concepts of the Doctrine of Discovery and *terra nullius*, since these are not law in Canada. See the Vatican’s Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human

sovereignty were far from the norm globally or among non-Europeans, for whom sovereignty was instead understood principally in terms of relationships between and among peoples.⁶ As this study demonstrates, it was the transfer of sovereign relations more than the transfer of territorial claims that defined British policies directed at the inhabitants of its ceded dominions, as imperial authorities worked to protect inherited rights and relationships and to honour the Crown's acquired sovereign obligations to the peoples whose territories were being transferred. The incorporation of new territories and peoples and their corresponding constitutions, legal traditions, and sovereign customs into the empire resulted in an imperial constitution that had shifted from one that during the late seventeenth and early eighteenth centuries had trended toward synthesizing legal and constitutional anomalies into the common law,⁷ to an imperial constitution that had become increasingly composite in its legal foundations as a result of the addition of a series of multilayered and asymmetrical sovereign relations existing among conquered subjects, such as Canadians, and non-subject protected peoples and

Development on the "Doctrine of Discovery," Holy See Press Office, March 30, 2023, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html>.

⁶ Notably, the French surrender of Canada during the Capitulation of Montreal was territorially vague, as was its provision for the protection of Indigenous lands, the latter of which was intended to extend rather broadly to those groups who were commercially and militarily connected to the French in Canada. It was only during the peace negotiations in Europe that the French cession was territorially defined. Nor did the Treaty of Allahabad include any explicit territorial definitions beyond generally listing the provinces and additional jurisdictions to which revenue rights were being transferred, jurisdictions which were presumably customarily rather than statically spatially defined. See the Treaty of Allahabad, August 12, 1765, in *A Collection of Treaties and Engagements with the Native Princes and States of Asia* (London, 1812), 43–49. Prior to roughly the Permanent Settlement of 1793, it was only by growing its Indian land holdings by various smaller-scale transfers that the East India Company had begun to systematize its territorial revenues according to European forms of landed property.

⁷ See, for instance, William M. Offutt, "The Atlantic Rules: The Legalistic Turn in Colonial British America," in *The Creation of the British Atlantic*, ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005), 160–181.

the Crown.⁸ These additive elements to the imperial constitution were mistakenly believed by many “old” imperial actors, namely colonial landed interests and other chartered and commercial bodies, to have replaced a prior imperial constitution that served their interests for a “new” one that appeared to undermine the seventeenth-century English propertied rights upon which the “old” empire had been built. These actors saw conquest as a seizure of property from one group by another, erasing prior rights and usages and giving the conquering group *carte blanche* to utilize the territory in question according to their own notions of property.

As the British experience in Acadia in the 1750s had borne out, however, policies based on the fiction of absolute conquest were more likely to create hostile populations of new subjects than they were to secure acquired territories.⁹ Yet political expediency only partially explains the British predisposition to honour the existing constitutional arrangements of preceding sovereigns. It was a principle of English common law that “articles of capitulation ... and treaties of peace ... are sacred and inviolate,” and that “the laws of a conquered country continue in force until they are altered by the conqueror,” as Lord Chief Justice the Earl of Mansfield ruled in *Campbell v. Hall* in 1774.¹⁰ The common law made no distinction between conquest by force of arms and cession by treaty. In either instance, “*conquest*” signified “no more than [the]

⁸ For composite polities, see J. H. Elliot, “A Europe of Composite Monarchies,” *Past and Present*, no. 137 (November 1992): 48–71; and H. G. Koenigsberger, “Composite States, Representative Institutions and the American Revolution,” *Historical Research* 62, no. 148 (1989): 135–153.

⁹ As John Grenier’s work demonstrates, the modern notion of total conquest and unconditional surrender is largely the legacy of Anglo-American settler wars of erasure against Indigenous peoples on the colonial frontier and the French in Nova Scotia/Acadia. See Grenier, *The First Way of War: American War Making on the Frontier, 1607–1814* (New York: Cambridge University Press, 2005); and Grenier, *The Far Reaches of Empire: War in Nova Scotia, 1710–1760* (Norman: University of Oklahoma Press, 2008).

¹⁰ Lord Mansfield’s Judgment in *Campbell v. Hall*, 1774, *DCHC*, 1:526.

acquisition” of a foreign dominion by the Crown.¹¹ Early modern international law, moreover, as articulated in the work of Hugo Grotius, for instance, dictated that conquered peoples be left “their own laws [and] customs.”¹² Conquered dominions did not immediately become subject to British domestic law, but instead fell within the Crown’s prerogative to make laws for its new dominions, until which moment all “ancient customs” remained in place, as British law officers Charles Yorke and William de Grey expounded in 1766.¹³ The initial constitutions of post-conquest Canada and Bengal were therefore heavily inherited from prior sovereigns, resulting in a tremendous degree of social, political, and legal continuity in the transition between regimes, and which dramatically altered the British imperial constitution of the late eighteenth century. Hitherto predominantly “Protestant, commercial, maritime, and free,”¹⁴ the British empire following the Seven Years’ War featured vast swathes of terrestrial space inhabited by large populations of non-Britons, non-Protestants, and non-Europeans living under “ancient” constitutions bearing none of the traditional hallmarks of British liberty. In acquired dominions such as Canada and Bengal, therefore, the constitution was less exclusively as a series of conventional restrictions on executive office and prerogative powers, as many segments of Britons and British Americans primarily understood the eighteenth-century constitution to function, and more positively as a

¹¹ William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford: Clarendon Press, 1765–69), 2:48.

¹² Hugo Grotius, *On the Laws of War and Peace*, ed. Stephen C. Neff (Cambridge: Cambridge University Press, 2012), 407.

¹³ Report of the Attorney and Solicitor General Regarding the Government of Quebec, April 14, 1766, *DCHC*, 1:255. As Slattery, *Land Rights*, 11, explains, the Crown “may alter any existing laws or abrogate them entirely and introduce new ones However in the absence of such acts the original laws of the place remain in force, except to the extent that they are unconscionable or inconsistent with the change of sovereignty itself.”

¹⁴ David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), 8.

series of evolving negotiated relationships between the sovereign and its constituents.

The American Revolution and Britain's loss of thirteen of its mainland settler colonies in 1783 intensified this transition in the demographic and constitutional composition of the empire and is regularly interpreted as the point of demarcation between the "first" and "second" British empires.¹⁵ Whereas the "first" British empire had been one of mercantile ventures centring largely on the agrarian pales and plantation colonies of the British Atlantic world,¹⁶ the "second" British empire is commonly characterized by a "swing to the east," whereby the "old" American empire was eclipsed by a "new" Indian one featuring more coercive central imperial policy and novel systems of authoritarian sub-imperial governance.¹⁷ This particular argument is strongly

¹⁵ P. J. Marshall, "The First and Second British Empires: A Question of Demarcation," *History* 49, no. 165 (1964): 13–23. Scholarship that finds the origins of American independence in the results of the Seven Years' War in North America is vast and need not be recounted here in full. Relevant examples include Lawrence Henry Gipson, "The American Revolution as an Aftermath of the Great War for the Empire, 1754–1763," *Political Science Quarterly* 65, no. 1 (March 1950): 86–104; Jack P. Greene, "The Seven Years' War and the American Revolution: The Causal Relationship Reconsidered," *Journal of Imperial and Commonwealth History* 8, no. 2 (1980): 85–105; John Shy, "The American Colonies in War and Revolution, 1748–1783," *OHBE*, 2:300–324; and Jack P. Greene, "1759: The Perils of Success," in *Revisiting 1759: The Conquest of Canada in Historical Perspective*, ed. Phillip Buckner and John G. Reid (Toronto: University of Toronto Press, 2012), 95–114.

¹⁶ George Louis Beer, *The Origins of the British Colonial System, 1578–1660* (New York: Macmillan, 1908); George Louis Beer, *The Old Colonial System, 1660–1754*, 2 vols. (New York: Macmillan, 1912); George Louis Beer, *British Colonial Policy, 1754–1765* (New York: Macmillan, 1907); P. J. Marshall, "The First British Empire," *OHBE*, 5:43–53; David Armitage and Michael J. Braddick, eds., *The British Atlantic World, 1500–1800*, 2nd ed. (New York: Palgrave Macmillan, 2009).

¹⁷ Vincent T. Harlow, *The Founding of the Second British Empire, 1763–1793*, 2 vols. (London: Longmans, 1952–64); P. J. Marshall, *The Making and Unmaking of Empires: Britain, India, and America, c. 1750–1783* (Oxford: Oxford University Press, 2005); H. V. Bowen, "British Conceptions of Global Empire, 1756–83," *Journal of Imperial and Commonwealth History* 26, no. 3 (1998): 20–21; P. J. Marshall, *"A Free, Though Conquering People": Eighteenth-Century Britain and its Empire* (Aldershot, UK: Ashgate, 2003); C. A. Bayly, *Imperial Meridian: The British Empire and the World, 1780–1830* (London: Longman, 1989); C. A. Bayly, "The Second British Empire," *OHBE*, 5:54–72; Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011), 202; Christian R. Burset, "Quebec, Bengal, and the Rise of Authoritarian Legal Pluralism," in *Entangling the Quebec Act: Transnational Contexts, Meanings, and Legacies in North America*

predicated on the perspective of settlers with landed estates and commercial interests, who felt that new policies were coercive or authoritarian because they hindered their ability to easily appropriate property. Scholarship emphasizing this division between phases of empire has also tended to interpret the corresponding centralization of imperial authority and strengthening of sub-imperial executive offices as a response to the exigencies of the American and French Revolutionary Wars, a trend that persisted well beyond Napoleon's defeat at Waterloo in 1815 and provided for the emergence what C. A. Bayly has called the "overseas despotisms" of the nineteenth century: "a form of aristocratic military government supporting a viceregal autocracy [and] a well-developed imperial style which emphasised hierarchy and racial subordination."¹⁸ As David Armitage writes, however, "aetiology is not simply teleology in reverse."¹⁹ To view the imperial constitutional transformations of the late eighteenth century primarily in light of nineteenth-century developments is to obscure the origins of such constitutional arrangements in Britain's inheritance of the imperial sovereignties of Canada and Bengal in the wake of its acquisition of those provinces thirty to forty years prior. In both British North America and India, the two most substantial of Britain's terrestrial imperial dominions immediately following the loss of the thirteen colonies, Britain inherited provincial constitutions with strong executives according to very particular social, political and historical circumstances, and which evolved into early British governor generalships that only much later became the sub-imperial viceroalties of the nineteenth century.

and the British Empire, ed. Ollivier Hubert and François Furstenberg (Montreal and Kingston: McGill-Queen's University Press, 2020), 131–162.

¹⁸ Bayly, *Imperial Meridian*, 8–9.

¹⁹ Armitage, *Ideological Origins*, 5.

In North America, Britain acquired the socially paternalistic military governorship of New France, the seat of which was at Quebec in the province of Canada. The French Crown in Canada had provided amply for the welfare of its Canadian subjects and Canadian feudal relations carried with them a complexity of social obligations. At the apex of Canada's ordered colonial hierarchy was the governor general of New France, the commander-in-chief and from 1663 the king's viceroy in North America. The governor general possessed sovereign jurisdiction over external French affairs in North America and was the head of the government of Canada, consisting primarily of the Sovereign (later Superior) Council, an executive council and court of high judicature presided over by the civil office of the intendant. Ideations of royal paternalism were extended to French Crown–Indigenous diplomacy via the governor general's external jurisdiction as the king's viceroy. Although the French Crown claimed dominion (that is, the territorial claim to exclusive diplomatic and commercial jurisdiction against competing European powers) over much of the continental interior, North American Indigenous peoples were not French subjects, and the French Crown was not sovereign on Indigenous land. French imperial dominion was extended into the continental interior by the acknowledgement and inclusion of Indigenous sovereignties into the French imperial project. French authorities cultivated symbiotic relationships of cultural accommodation and mutual commercial, diplomatic, and military alliance with Indigenous peoples, who in turn recognized the French Crown and viceroy as Onontio, a fictive kinship metaphor denoting the Crown's ceremonial "fatherhood" over the Franco-Indigenous alliance that was composed primarily of the Algonquian-speaking peoples of the Great Lakes region and the Ohio country, but which also included the Huron-Wendat and breakaway Haudenosaunee groups.

The Capitulation of Montreal in 1760 and France's formal cession of the North American interior space known as the *pays d'en haut*, or upper country, to the British in the Treaty of Paris in 1763 effectively transferred the French Crown's Indigenous personification as Onontio to the Crown of Great Britain. Although postwar austerity and settler-colonial predations initially impeded British imperial authorities' ability to act as Onontio, resulting in Pontiac's War through the spring and summer of 1763, the Crown formally acknowledged its inherited status as Onontio in the Royal Proclamation of October 7, 1763, which confirmed British recognition of existing Indigenous land title, declared any and all unceded and unsold Indigenous lands as falling under the Crown's protection, and intended to contain settler-colonial expansion to the east of the Appalachian Mountains. The Proclamation, however, also created uncertainties regarding the constitution of the province of Canada. By guaranteeing the benefits of English common law and an elected house of assembly to British settlers to ceded dominions, the Proclamation proved incompatible with the Crown's responsibility for the protection of French property. Only six years earlier, the first session of the Nova Scotia Assembly had begun a process of legally extinguishing Acadian land rights,²⁰ and Canadians and British imperial officials alike feared that an elected assembly of Anglo-American settlers to the new British province of Quebec would be similarly vindictive. The retention of the civil laws of Canada was essential to the protection of Canadian property, and after more than a decade of the hybrid practice of both English and Canadian property law, the Quebec Act of 1774 established the laws of Canada as the final arbiter in disputed cases relating to property and civil rights, and allowed for the

²⁰ Elizabeth Mancke, "Decorous Dispossession: Legally Extinguishing Acadian Landholding Rights," *Borealia*, July 30, 2019, <https://earlycanadianhistory.ca/2019/07/30/decorous-dispossession-legally-extinguishing-acadian-landholding-rights>.

alienation of property in the province according to either Canadian civil law or English common law.

The Quebec Act voided the Proclamation as far as it related to the civil governance in Canada. In lieu of a house of assembly, the Quebec Act outlined that the province would be administered by a governor and legislative council that would provide structural continuity with the conciliar government of the French regime. The Quebec Act, however, did not nullify the Proclamation as it related to Crown–Indigenous relations—it did not void or alter any land rights either within the province or in any adjacent dominions. By redrawing the boundaries of the province to extend to the confluence of the Ohio and Mississippi Rivers, rather, the Quebec Act sought to recreate what British officials understood to be the “ancient limits” of Canada, maintaining Indigenous lands under Crown protection and placing the interior Indigenous reserve created by the Proclamation within the exclusive diplomatic jurisdiction of the British governor at Quebec. The Quebec Act, therefore, represented a significant effort on the part of British policymakers to enshrine the Crown’s inheritance of French sovereignty in Canada into Britain’s imperial constitution, a central feature of which was the Crown’s realization of its role among Indigenous peoples as Ontario in the governing institutions of post-conquest Canada. While the British commander-in-chief in the thirteen American colonies proved willing to abandon Indigenous interests to settler-colonial advancement in 1772, a succession of governors of Quebec remained steadfast in their adherence to the terms of the Royal Proclamation and continued to support upper and Ohio country Indigenous groups with arms and munitions in their struggle against Anglo-American expansion through the 1770s and ’80s, eventually facilitating the resettlement of displaced Indigenous groups within British territory

following the metropolitan government's surrender of the trans-Appalachian west to the United States in 1783.

Similar processes of inheritance were at work in British dominions in India through roughly the same period. Although a private trading company, the English (and after 1707, British) East India Company (EIC) was chartered with privileges to conduct warfare and diplomacy on the Crown's behalf and acted in an internal sovereign capacity within its trading factories and settlements abroad. The Mughals were the nominal rulers of much of the subcontinent at the time of the onset of EIC diplomacy in India. A Turko-Mongol dynasty of Central Asian origins, the Mughals established a state across northern India during the sixteenth century that built significantly upon the conquered Delhi sultanate (1206–1526). From northern India, the emperor Akbar (r. 1556–1605) and his successors expanded their empire east to Bengal and south into Rajputana and the Deccan plateau.²¹ Akbar's strategy of expansion was to absorb Hindu Rajput kings into the imperial elite through military alliances and royal intermarriage while allowing for the retention of internal Rajput sovereignty. Akbar and his successors incorporated conquered kingdoms and sultanates into the empire jurisdictionally intact as new provinces with varying degrees of internal autonomy. When central imperial authority waned in the late seventeenth and early eighteenth centuries, many provinces broke away into regional successor states that conducted independent diplomacy with Europeans. European trading companies took full advantage of this process of Mughal decentralization to expand their influence, and European involvement in the regional dynastic wars of the mid-eighteenth century turned those conflicts into Indian theatres of

²¹ "Rajputana" is an historical region that is roughly analogous to the modern Indian state of Rajasthan.

European wars that were ongoing globally.

Having defeated the French in the Carnatic in 1761, EIC military officials witnessed firsthand the utility of having a centralized military-executive office in India that mirrored that of their opponent, the French Governor General Joseph François Dupleix. Yet charges of corruption from EIC detractors at home occasioned reluctance to further empower Company officials in India, militarily or otherwise. Such concerns were exacerbated in 1757 when EIC officials in Bengal became involved in a coup to replace the *nawab* of Bengal with a British client. The *nawabs* of northeastern Indian provinces, such as Bengal and Awadh, were provincial rulers who in previous decades had combined civil, fiscal, and military offices to establish semiautonomous states whose connection to the imperial centre consisted of little more than tribute payments to the emperor in return for his affirmation of their rule. As a result of the coup in Bengal and the emperor Shah Alam's surrender at the Battle of Buxar in 1764, the EIC's receipt of the *diwani* of Bengal in return for a fixed payment to the emperor made the Company the de facto sovereign of that province. The Company's emergence from the Bengal War (1756–65) as the preeminent military-fiscal power in northern India, upon which the emperor himself now relied for military protection and financial subsistence, resulted in the onset of the Company's de facto inheritance of much of the emperor's diplomatic and king-making powers in his capacity as *padshah* ("great king"), or *shahenshah* ("king of kings").²²

²² For the British military-fiscal state in India, see David Washbrook, "Progress and Problems: South Asian Economic and Social History, c. 1720–1860," *Modern Asian Studies* 22, no. 1 (1988): 89; C. A. Bayly, "The British Military-Fiscal State and Indigenous Resistance: India, 1750–1820," in *An Imperial State at War: Britain from 1689 to 1815*, ed. Lawrence Stone (London: Routledge, 1994), 322–354; and Tirthankar Roy, "Rethinking the Origins of British India: State Formation and Military-Fiscal Undertakings in an Eighteenth-Century World

The dramatic increase in the Company's powers abroad invited significant public scrutiny of the EIC by Britons at home, emphasizing the conflicts of interests inherent in a private trading company administering civil governance in jurisdictions it was its commercial purpose to exploit. While state intervention into EIC affairs began in 1767 as an attempt to acquire for the British treasury a share of the Company's *diwani* revenues, a financial crisis in 1772, brought on by the overestimation of the value of the *diwani* and a glut in EIC imports into Britain, inaugurated a legislative program for the reform of Company governance. In addition to rescuing the Company from insolvency, the Regulating Act of 1773 and its surrounding legislation elevated the office of the governor of Bengal to a governor generalship with diplomatic authority and war-making powers over the Company's presidencies at Madras and Bombay. The Regulating Act also created a Supreme Court at Fort William in Calcutta that was staffed by Crown appointees, and successive governors general established British courts, both civil and criminal, for cases involving non-Britons, positioning British jurists as the inheritors of the Mughal legal tradition of imperial mediation between Hindu and Muslim law. A further East India Act in 1784 limited the Company's exclusive jurisdiction to purely commercial affairs by providing Crown oversight of the civil and military government and territorial revenues of all three British presidencies in the form of a Board of Control made up of Privy Councillors. An additional Act in 1786 combined the offices of governor general and commander-in-chief in the person of the Crown-appointed Charles Cornwallis, the former commander of British forces in the southern theatre of the American Revolutionary War (1775–1783). Cornwallis was invested with expanded

Region," *Modern Asian Studies* 47, no. 4 (July 2013): 1125–1156. For the British military-fiscal state more generally, see John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (Cambridge, MA: Harvard University Press, 1990).

gubernatorial powers and completed a program of land reform in Bengal in 1793 intending to correct Company abuses in revenue collection and restore the province's land revenue system to something approximating British thinkers' understanding of Bengal's "ancient constitution."

To significant although varying degrees, the aforementioned policies were the products of British re-imaginings of the "ancient" customs and constitutions of conquered peoples that in practice had functioned somewhat differently than British imperial officials understood. The Superior Council of New France, for instance, which British officials invoked as the predecessor to the legislative council created by the Quebec Act, had long ceased to function as an executive-legislative body by the time of the conquest, and was instead primarily a judicial council. Cornwallis's revenue settlement for Bengal, moreover, was developed out of an historical revision of the Mughal constitution that sought to create parallel points of reference to English feudalism. In other instances, meanwhile, British innovations on the existing forms and customs of conquered peoples were less intentionally revisionist and more improvisational, representing pragmatic solutions to problems of imperial integration as they were articulated in the British imperial idiom. Company "corruption" in Bengal was most readily identified in the Company's tax farming system, and so reforming the province's land revenue assessments presented a tangible policy option to limit damages under the appearances of a return to older organizing principles. In North America, British American colonists conceptualized the trans-Appalachian interior primarily in terms of territory: territory disputed with France and territory inhabited by Indigenous peoples, both of which colonial landed interests sought access to. When France ceded these interior territories in the Treaty of Paris, the British Crown became Ontario to the

Indigenous groups inhabiting them. The Proclamation's declaration of the protection of Indigenous lands and the closure of the trans-Appalachian west to colonial settlement, therefore, typified a very British understanding of the responsibilities of Onontio as he had appeared from the British American perspective: as limiting colonial expansion westwards. In this sense, efforts among British imperial officials to comprehend their roles as the inheritors of the customs of prior sovereigns often resembled the process of "creative misunderstanding" that defined earlier French-Indigenous relations in the *pays d'en haut*. And in this regard, so, too, were the years immediately following the conquest of Canada ones of conflict and tumult in the upper country, as Indigenous groups and British officials worked to arrive at a mutual understanding of each other's rights and responsibilities under the new regime of British "fatherhood."²³

While such instances of negotiated accommodation and historical revisionism introduced innovations and novel complexities into the local constitutions and diplomatic relations of acquired provinces, British policymakers understood their legitimacy as rulers of ceded and conquered dominions as resting heavily on continuity between regimes. A central feature of many of the policies that integrated new dominions into the empire was an effort to maintain or restore the jurisdictional, constitutional, or legal arrangements of prior sovereigns.²⁴ While the customary rights of peoples in ceded territories were often protected by conditions of surrender and

²³ Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, 2nd ed. (Cambridge: Cambridge University Press, 2011).

²⁴ Prime minister Frederick North, for instance, expressly stated that his reasoning for the Quebec Act's placement of the south coast of Labrador under the jurisdiction of the government of Quebec, thereby reversing the Proclamation's establishment of the region as an "open and free fishery," was to secure the ecologically delicate seal and sea cow fishery of the Côte-Nord to the Canadian fishermen to whom it traditionally belonged. J. Wright, ed., *Debates of the House of Commons in the Year 1774, on the Bill for Making More Effectual Provision for the Government of the Province of Quebec* (London, 1839), 199.

international treaties of cession, metropolitan officials utilized British constitutional mechanisms to ensure the observance of such rights in actual imperial governance and to domesticate such inherited sovereignties into the imperial constitution. The royal prerogative, in the form of royal proclamations, orders-in-council, gubernatorial instructions, and the ordinances of provincial governors, defined the initial boundaries of new provinces, restricted the jurisdictions of the governors of existing neighbouring colonies, defined the Crown's relationship to non-subjects residing within British dominions, and provided the foundations of British law and governance in new provinces. Acts of Parliament, meanwhile, regulated imperial commerce and made law affecting the property of "old subjects" (i.e., natural-born or naturalized settler subjects of primarily British origins), confirmed or restored the rights and customs of new subjects on which the prerogative had been unclear or silent, and outlined the constitutional apparatuses of new jurisdictions as they were formally integrated into the British imperial polity.

Scholarship by Hannah Weiss Muller has demonstrated how Britain's acquisition of foreign dominions during the Seven Years' War fundamentally redefined conceptions of British subjecthood for the period that followed.²⁵ Yet the addition of the Canadian upper country and Bengal as British dominions also created new juridical categories of non-subjects living under Crown protection, namely, peoples residing in British territory and under British dominion who were not British subjects in the European sense of the

²⁵ Hannah Weiss Muller, "Bonds of Belonging: Subjecthood and the British Empire," *Journal of British Studies* 53, no. 1 (January 2014): 29–58; Hannah Weiss Muller, *Subjects and Sovereigns: Bonds of Belonging in the Eighteenth-Century British Empire* (New York: Oxford University Press, 2017); Hannah Weiss Muller, "'As may consist with their Allegiance to His Majesty': Redefining Loyal Subjects in 1774," in Hubert and Furstenberg, eds., *Entangling the Quebec Act*, 47–73.

term. These included peoples who were in league with Britain, the Crown, or British interests, either as allies, auxiliaries, subsidiaries, or trading partners, and were internally self-governing and autonomous while the Crown mediated their external relations, diplomacy, and dealings with other Europeans and external sovereign powers. North American Indigenous groups were the first of these “protected” peoples, as outlined in the Royal Proclamation, the emergence of which status was a major legacy of the French cession of the *pays d'en haut* and the British inheritance of French–Indigenous relations. The Crown claimed “Sovereignty” and “Dominion” over such territory, but only insofar as it related to the Crown’s “Protection” of Indigenous lands vis-à-vis other Europeans. Indigenous title persisted, and British–Indigenous relations were carried out exclusively via the royal prerogative.²⁶ The status of South Asians, although complicated by the highly commercial nature of South Asian–European relations and the cosmopolitan composition of South Asian trading centres,²⁷ was nevertheless similar. While the Supreme Court in Bengal established by the Regulating Act was designed as a court of high judicature to hear cases either between or against British subjects or any others in the employment or service of the EIC, lower level courts were creations of the royal prerogative via gubernatorial ordinance, and were staffed with Hindu and Muslim legal scholars to ensure the continuity and proper administration of local custom, demonstrating the special status of South Asians residing in British dominions beyond the settled limits of the Company’s urban centres and adjacent territorial holdings.

Recognition of the rights of peoples in ceded territories in prerogative powers

²⁶ Significantly, an effort to reform Indigenous relations by an Act of Parliament in 1764 was aborted and the plan was later appended to instructions to the governor of Quebec in 1775. See *NYCD* 7:637–641; Daniel K. Richter, *Trade, Land, Power: The Struggle for Eastern North America* (Philadelphia: University of Pennsylvania Press, 2013), ch. 9; *DCHC*, 2:614–620.

²⁷ See Muller, *Subjects and Sovereigns*, ch. 5.

and ministerial initiatives that reflected Britain's inheritance of the responsibilities of prior sovereigns or which acknowledged the protected status of non-subject groups drew intense criticism from the traditional propertied interests of the prewar empire. EIC officials and their supporters challenged ministerial efforts to regulate Company finances, reduce real and imagined corruption, and reform Company governance as a universal attack on chartered property rights. Colonial landed interests flouted the Proclamation's halt on westward expansion and simply would not abide by the Crown's arbitration of Indigenous land acquisition by royal treaty when private purchase had long been colonial custom. The Tea Act of 1773, by which the Ministry sought to generate revenue from a surplus of EIC tea in order to ease the Company's insolvency crisis and allow for the Company's continued operation under new government regulations, was violently opposed by colonial consumers on the basis of its imposition of a Company monopoly on the colonial tea market. Finally, British Americans detested the Quebec Act for its establishment of Roman Catholicism and a provincial government devoid of representative institutions existing on the thirteen colonies' northern doorstep, as well as for its appendage of the Great Lakes–Ohio–upper Mississippi region to the province of Quebec as an Indigenous space closed to colonial settlement. Colonial resistance to such measures was often expressed in terms of francophobia, creeping popery, concerns of arbitrary government, trepidations that the metropolitan government had become corrupted by "Asiatic despotism," or fears of a ministerial conspiracy to "enslave" the colonies. While it is tempting to read such charges as exaggerated rhetoric, the language employed by colonial opponents of the metropolitan initiatives of the interwar period reveals colonial anxieties that British Americans were losing their traditional place of imperial privilege as settler subjects at the expense of the Crown's increased

preoccupation with the administration and protection of formerly alien peoples, including especially French Canadians and Indigenous peoples, both of whom had been the colonists' longstanding enemies.

The metropolitan government's willingness to offend colonial interests was not capricious, as the colonists supposed, but rather reflected the extent to which imperial officials, administrators, and policymakers considered articles of capitulation and international treaties as constitutionally binding. The seriousness with which the Crown sought to honour the responsibilities of prior sovereigns in the wake of its conquests exposes an underappreciated feature of early modern international relations: that treaties can cede laws and constitutions and that conquest was regarded as a form of entailment of laws, constitutions, rights, and responsibilities from one sovereign to another. This basic premise has been obscured by a reading of the period that looks to the American Revolution and American independence not only as the inevitable conclusion to the history of the first British empire, but as defining political events in the extra-European world's eventual transition to modernity, a metanarrative which is itself a legacy of the American experience and privileges revolutionary violence and ideological endeavours "to begin the world anew" as the benchmark of a nation's arrival at political modernity.²⁸ The late eighteenth and early nineteenth centuries were as much an age of constitutions as they were of revolutions, however, and political violence was itself an

²⁸ R. R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America, 1760–1800*, 2 vols. (Princeton, NJ: Princeton University Press, 1959–64); E. J. Hobsbawm, *The Age of Revolution, 1789–1848* (New York: New American Library, 1962); Bernard Bailyn, *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York: Alfred A. Knopf, 2003); David Armitage, *The Declaration of Independence: A Global History* (Cambridge, MA: Harvard University Press, 2007); David Armitage and Sanjay Subrahmanyam, eds., *The Age of Revolutions in Global Context, c. 1760–1840* (New York: Palgrave Macmillan, 2010).

extreme form of constitutional transformation, representing but one course of early modern colonial state formation among many.²⁹ In fact, when viewed as the exception to the norm of measured constitutional initiatives for participatory governance in British overseas dominions both before and since, American Revolutionary ideology, as this study highlights, appears highly reactionary, arising in opposition to metropolitan efforts to come to terms with an expanded, increasingly multiethnic and multiracial composite imperial polity, and seeking to restore an idealized, ethnically and racially homogenous prewar empire of unrestrained settlement and lightly regulated commerce.

Many of the imperial constitutional developments against which American Revolutionary and early republican ideology were framed are, by contrast, formative elements in the constitutional evolution of the British North American dominions that comprise the modern Canadian state. Section 25(a) of the Canadian Charter of Rights and Freedoms (1982) guarantees Indigenous peoples those rights that are recognized in the Royal Proclamation, while the Truth and Reconciliation Commission of Canada (2008–2015) cites the Proclamation and its Indigenous ratification in the Treaties of Niagara (1764) as the foundational compact of a bilateral relationship between Indigenous peoples and the Crown upon which all subsequent British North American treaties are built, and upon which depends the very legal and political legitimacy of the Canadian settler-state.³⁰ Additionally, while the Quebec Act has been the subject of

²⁹ Elizabeth Mancke, “The Age of Constitutionalism and the New Political History,” *Canadian Historical Review* 100, no. 4 (December 2019): 620–637; Jeremy Adelman, “An Age of Imperial Revolutions,” *American Historical Review* 113, no. 2 (April 2008): 319–340.

³⁰ Canadian Charter of Rights and Freedoms, § 25(a), Part 1 of the Constitution Act (1982), being Schedule B to the Canada Act 1982 (UK), c. 11; *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Truth and Reconciliation Committee of Canada, 2015), 196–199.

much national mythologizing by Anglophone and Francophone Canadians alike,³¹ there can be little question that it provided the constitutional basis for the eventual integration of the variegated provincial jurisdictions of British North America into a single supranational Canadian state. When between 1776 and 1783 a critical mass of elite colonial interests opted out of Britain's new, global empire of inherited sovereignties and constitutional integration, many British Americans who opposed colonial independence and the constitutional assimilationism of American republicanism relocated to the province of Quebec, where they created new communities seeking to have English law and British American representative government within their own federative layer of a composite British North American constitution. In 1791, in conjunction with an order-in-council to partition the province of Quebec into the new provinces of Upper and Lower Canada, the Constitutional Act outlined the retention of French civil law and seignorial land tenure in Lower Canada, while it gave Upper Canada English common law and freehold land tenure under the administration of a lieutenant governor subject to the overriding jurisdiction of the governor at Quebec, who since 1786 was also commander-in-chief. The Act further granted separate houses of assembly to each province and reformed provincial legislative councils to serve as an independent check on the executive.

The persistence of colonial representative institutions in post-Revolutionary British North America, and their coexistence alongside institutions of inherited French sovereignty and the Crown's continued support and protection of Indigenous groups, suggests a much softer transition between the first and second British empires than

³¹ The complex historiography surrounding the Quebec Act has been discussed at length throughout Hubert and Furstenberg, eds., *Entangling the Quebec Act*.

previous scholarship has presumed. Representative government was not immediately eclipsed by authoritarian sub-imperial consular regimes after 1783. Rather, despite the shortcomings of the Constitutional Act that would become apparent by the 1830s, representative government experienced a brief period of expansion in British North America, as it was extended to both loyalist settler subjects and conquered French Canadians alike. The scope and powers of colonial executives were indeed expanded in India and America during this period, as civil and military offices were combined and raised to governor generalships. However, such expansion occurred in parallel with the proliferation of multilayered regimes of sub-imperial governance and asymmetrical regimes of provincial governance over which governors general were tasked with exercising the Crown's mediating influence. The roughly simultaneous development of British governor generalships in North America and India in the 1770s and '80s reflects the interrelatedness of the constitutional development of Britain's Indian and North American dominions, exposing a contemporary metropolitan vantage point that speaks to a less rigid conceptual divide between East and West than previous scholarship has appreciated. Cabinet members and their undersecretaries often worked on projects relating to North America and India at the same time, legislation effecting both spheres of empire was regularly before Parliament during the same session, and correspondence to and from one imperial arena frequently referred to military and political events taking place in another.

The transoceanic and at times global approach of this study broadly contextual rather than formally comparative in its objective of recreating contemporary conversations surrounding mid-to-late eighteenth-century British global imperial

expansion. In this regard, this project is an endeavour in “new imperial history,”³² seeking not only to analyze the negotiated relations of a series of imperial peripheries with the British imperial metropole,³³ but also to consider imperial peripheries in light of their influence on each other.³⁴ The result of this effort is what has variously been called connected history, entangled history, or *histoire croisée*, bringing together in this

³² “New imperial history” is concerned with questions raised by subaltern and postcolonial history regarding non-elite and non-Western pasts as they relate to concepts of empire in the field of eighteenth-century British studies. See Kathleen Wilson, ed., *A New Imperial History: Culture, Identity and Modernity in Britain and the Empire, 1660–1840* (Cambridge: Cambridge University Press, 2004). New imperial history is also methodologically influenced by the overlap of imperial and world history exemplified in the work of C. A. Bayly, including *Imperial Meridian: The Birth of the Modern World, 1780–1914* (Malden, MA: Blackwell, 2004); *Remaking the Modern World, 1900–2015: Global Connections and Comparisons* (Hoboken, NJ: Wiley Blackwell, 2018). For imperial history as world history, see Antoinette Burton, “Imperial by Design: Field Models in C. A. Bayly’s *Remaking the Modern World*,” *Journal of Asian Studies* 78, no. 4 (November 2019): 849–858. For postcolonial and subaltern history in Indian history, see Ranajit Guha and Gayatri Chakravorty Spivak, eds., *Selected Subaltern Studies* (Oxford: Oxford University Press, 1988); Dipesh Chakrabarty, “Postcoloniality and the Artifice of History: Who Speaks for ‘Indian’ Pasts?” *Representations*, no. 37 (Winter 1992): 1–26; Ranajit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* (Delhi: Oxford University Press, 1983); Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India* (Delhi: Oxford University Press, 1997); and, more generally, Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton, NJ: Princeton University Press, 2007).

³³ For the significance of periphery–metropolitan relations in an Anglo-American colonial context, see Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (New York: W. W. Norton, 1990); and *Negotiated Authorities: Essays in Colonial and Political Constitutional History* (Charlottesville: University Press of Virginia, 1994). For the same in the early modern Americas more generally, see Christine Daniels and Michael V. Kennedy, eds., *Negotiated Empires: Centres and Peripheries in the Americas, 1500–1820* (New York: Routledge, 2002).

³⁴ The interconnectedness of transoceanic British imperial constitutionalism explored in this study expands on Robert Travers’ concept of “imperial ricochets.” See Travers, “Constitutions, Contact Zones, and Imperial Ricochets: Sovereignty and Law in British Asia,” in *Britain’s Oceanic Empire: Atlantic and Indian Ocean Worlds, c. 1550–1850*, ed. H. V. Bowen, Elizabeth Mancke, and John G. Reid (Cambridge: Cambridge University Press, 2012), 126–129. Travers’ idea “imperial ricochets” is itself borrowed from Bayly, *Birth of the Modern World*, 86, where Bayly analyzes the Revolutionary era as one of globally “converging revolutions,” whereby “the force of events ricocheted around the globe.” Whereas Travers highlights a few poignant examples of imperial ricochets travelling from East to West, this work finds imperial ricochets moving multilaterally between nodes of empire in India, North America, and the imperial centre in Britain. Rather than straight periphery–centre and centre–periphery relations, this work exposes periphery–centre–periphery, centre–periphery–periphery, and periphery–periphery–centre relations.

instance elements of North American Indigenous history, the history of French Canada, Indian history and the history of the Mughal empire, colonial and Revolutionary era American history, and British political and imperial history.³⁵ The documentary record, including state papers ranging from official correspondence to Privy Council minutes, makes clear the interconnectedness of the various spatial, temporal, and thematic fields of this study, demonstrating a sensitivity among British imperial officials to the prior histories of the peoples of Britain's new postwar dominions, and through which one can see the legacy of such histories informing British approaches to imperial governance across these two spheres of empire. While the respect for existing traditions is usually a silent feature of enacting legislation and royal ordinances themselves, an informed understanding and explicit acknowledgement of local histories permeates the writings of officials on the ground, regularly factoring into the decision making of imperial authorities and featuring extensively in the correspondence, expert opinions, and preparatory documentation offered in the lead up to a particular policy's implementation.³⁶

³⁵ For connected/entangled history, or *histoire croisée*, see Sanjay Subrahmanyam, "Connected Histories: Notes towards a Reconfiguration of Early Modern Eurasia," *Modern Asian Studies* 31, no. 3 (July 1997): 735–762; Sanjay Subrahmanyam, *Mughals and Franks* (New Delhi: Oxford University Press, 2005); Sanjay Subrahmanyam, *From Tagus to the Ganges* (New Delhi: Oxford University Press, 2005); Michael Werner and Bénédicte Zimmermann, "Beyond Comparison: *Histoire Croisée* and the Challenge of Reflexivity," *History and Theory* 45, no. 2 (February 2006): 30–50; Eliga H. Gould, "Entangled Histories, Entangled Worlds: The English-Speaking Atlantic as a Spanish Periphery," *American Historical Review* 112, no. 3 (June 2007): 764–786; Sanjay Subrahmanyam, "Holding the World in Balance: The Connected Histories of the Iberian Overseas Empires, 1500–1640," *American Historical Review* 112, no. 5 (December 2007): 1359–1385; Eliga H. Gould, "Entangled Atlantic Histories: A Response from the Anglo-American Periphery," *American Historical Review* 112, no. 5 (December 2007): 1415–1422; and Hubert and Furstenberg, eds., *Entangling the Quebec Act*.

³⁶ The significance of correspondence and *travaux préparatoires* in revealing the deeper intentions of policymakers beyond the surface language of public documents is noted by Francis Bacon, who writes that "letters of state affairs, written in the order of time, by those that manage them ... afford the best materials for *civil history*," as "they contain more of natural sense ... and

This work is organized into nine chapters spanning three centuries. The first two chapters provide brief histories of New France and Mughal India, circa 1500–1760, and explore the historical background of British interests and involvement in Canada and Bengal culminating in the conquests of the mid-eighteenth century. The subsequent seven chapters focus on the second half of the eighteenth century, the British acquisition of extensive territories in North America and India, and the challenges of governing such territories, particularly in light of the obligations and commitments made to the French and Mughals in treaty negotiations and, by extension, to the peoples living in those territories at the time that the responsibilities of governance were transferred to Britain. In reconstructing features of continuity between imperial regimes, this study employs a narrative style that allows for the development of a richness of detail that brings to life the interconnected nature of various theatres of empire in the mid-to-late eighteenth-century British administrative mind.³⁷ In connecting so many disparate fields of study, the narrative is both highly synthetic and episodic, at times making broad spatial and temporal sweeps in order to chart imperial trajectories and move between spheres of empire, and regularly zooming in to examine local, regional, and thematic focuses as they contribute to the project’s larger story along the way.

The first two chapters reach back into the sixteenth and seventeenth centuries to

ripeness” than, say, orations or other “occasional discourses.” *The Philosophical Works of Francis Bacon*, ed. Peter Shaw, 3 vols. (London, 1733), 1:55–56. The parliamentary debates on the Quebec Act furnish a useful exception to this rule, however, as the Thirteenth Parliament’s standing order excluding of members of the public into the House of Commons and the belief that the proceedings would go unpublished resulted in members speaking more forthrightly on the issue.

³⁷ My compositional method of writing narrative history is significantly influenced by the work of Alan Taylor, including his books *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Vintage, 2007); *The Civil War of 1812: American Citizens, British Subjects, Irish Rebels, and Indian Allies* (New York: Alfred A. Knopf, 2010); and *American Colonies* (New York: Viking, 2001).

explicate the deep history of French–Indigenous relations in North America, the historical origins of the constitution of Canada, and the complexity of the Mughal imperial constitution and the constitution of Bengal. These chapters provide historical context for the legal, political, social, and economic antecedents to many of the themes and episodes that follow. Chapter 2 explores early French encounters with Indigenous groups in the St. Lawrence region as a model for subsequent French–Indigenous relations, describes the expansion of French influence and the development of French–Indigenous relations as they reached into the continental interior, and examines the interplay between socially paternalistic elements of the colonial Canadian constitution and the royal paternalism that defined the Franco-Algonquian alliance of the *pays d'en haut*. It then contrasts methods of French imperial expansion with those of colonial English America and traces the growth of both systems to their clash in the Ohio country in the 1750s, resulting in war between France and Britain in North America and Britain's victory at Quebec in 1759. Chapter 3 begins with a brief history of the entry of Europeans into the Indian Ocean trading world, recounts the EIC's origins and early commercial ventures, and details some the early experiences of English diplomats at the Mughal court. It then shifts focus to Central Asia and the South Asian mainland to provide a history of the Mughal state and its expansion across the Indian subcontinent with an emphasis on Mughal political institutions and imperial organization. These two narratives converge during the early eighteenth century, when Mughal decentralization and movements for regional autonomy created the conditions for the commercial, diplomatic, and military expansion of rival European interests in India via their interference in the dynastic politics of regional successor states, a process that culminated in the EIC's victory over the *nawab* of Bengal at Plassey in 1757.

Chapter 4 surveys British–Indigenous relations following the Capitulation of Montreal (1760) and the Treaty of Paris (1763), and examines how British officials’ inheritance of French–Indigenous diplomacy informed the drafting of the Royal Proclamation in 1763 and the passage of the Quebec Act in 1774. Chapter 5 briefly explores British discussions surrounding the constitution of Canada in the wake of the conquest and examines the parliamentary debate surrounding those sections of the Quebec Act that laid out the new British constitution for the province in 1774. Chapter 6 traces events in Bengal and northern India leading up to the Treaty of Allahabad in 1765 and provides a brief history of British Company–state relations in order to contextualize domestic British political disputes over Company affairs from the mid-1760s onwards. It then outlines the factors contributing to the EIC financial crisis of 1772, resulting in the passage of East India Company Loan Act and the Tea Act in 1773. Chapter 7 continues with an analysis of the Tea Act’s reception in the American colonies, before exploring broader colonial opposition to the British government’s legislative program of 1773–74 and documenting references to the Quebec Act and other features of postwar British imperial policy deployed by the Continental Congress during the lead up to the Declaration of Independence in 1776. It then follows Congress’s failed efforts to conquer Canada during the early phases of the Revolutionary War before turning westward to emphasize the war on the frontier as one of Indigenous dispossession and land acquisition culminating in the Treaty of Paris of 1783.

Chapter 8 begins by looking at British perceptions of EIC “corruption” and offers an analysis of the domestic political implementation of the Regulating Act of 1773 before returning to India to chart the continued expansion of Company influence on the subcontinent amid the shifting global diplomatic landscape of the period of the

American and French Revolutionary Wars. Chapter 9 highlights the Indigenous reception of the Treaty of Paris of 1783, sheds light on the significance of Governor of Quebec Frederick Haldimand's commitment to the continued protection of Indigenous groups following the treaty's conclusion and follows efforts to reform the constitution of Canada to accommodate loyalist settler populations, resulting in the partition of the province of Quebec and the formation of Upper Canada in 1791. Chapter 10, finally, explores British intellectual interest in India's "ancient constitution," and follows the expansion of the British military-executive in India in the form of the governor general of Bengal and that office's corresponding programs for political, legal, and social reform culminating in the Permanent Settlement of 1793.

The purpose of this study is to "bring together what [was once] conventional to keep apart," to paraphrase P. J. Marshall.³⁸ It seeks to emphasize contemporary frames of military and political reference in which international relations and domestic constitutional developments were significantly intertwined. The importance of international agreements is generally accepted among scholars of early Canadian constitutionalism, and especially among historians working on Atlantic Canada, where the Treaties of Utrecht (1713) and Aix-la-Chapelle (1748) and the Peace and Friendship Treaties (1725–79) are formative to the complexities of British, French, and Indigenous relations that have so profoundly shaped the region's past.³⁹ Yet even recent scholarship

³⁸ Marshall, *Making and Unmaking of Empires*, 1.

³⁹ For British, French, and Indigenous relations in Atlantic Canada during the period of the imperial wars of the seventeenth and eighteenth centuries, see Stephen E. Patterson, "Indian–White Relations in Nova Scotia, 1749–61: A Study in Political Interaction," *Acadiensis* 23, no. 1 (Autumn 1993): 23–59; Geoffrey Plank, *An Unsettled Conquest: The British Campaign Against the Peoples of Acadia* (Philadelphia: University of Pennsylvania Press, 2001); Emerson W. Baker and John G. Reid, "Amerindian Power in the Early Modern Northeast: A Reappraisal," *William and Mary Quarterly*, 3rd ser., 61, no. 1 (January 2004): 77–106; John G. Reid, "Pax

that has moved beyond revolutions and republicanism as the primary source of modern constitutions and instead examines the broader interplay between warfare and constitution making has ignored international relations and continues to privilege insular, exclusionary, and primarily written “paper constitutions,” which although “protean and volatile” and applied variously across time and space, have tended toward the marginalization of heterogeneous populations.⁴⁰ Canada’s constitution, by contrast, is very much the product of early modern international relations and is uniquely derived from eighteenth-century British efforts at the imperial integration of non-homogenous populations. While the Canadian constitution appears unusual to twenty-first-century observers in that many of its component elements have resisted attempts at creating a more homogenized, “conventional” constitution, its composite and fluid nature is in fact normative when interpreted in the context of the international agreements regulating the transfers of sovereignty following the Seven Years’ War and their preservation in eighteenth-century British imperial constitution making in North America and India.⁴¹

Britannica or *Pax Indigena*? Planter Nova Scotia (1760–1782) and Competing Strategies of Pacification,” *Canadian Historical Review* 85, no. 4 (December 2004): 669–692; John G. Reid et al., *The ‘Conquest’ of Acadia, 1710: Imperial, Colonial, and Aboriginal Constructions* (Toronto: University of Toronto Press, 2004); Stephen E. Patterson, “Eighteenth-Century Treaties: The Mi’kmaq, Maliseet, and Passamaquoddy Experience,” *Native Studies Review* 18, no. 1 (2009): 25–52; John G. Reid, “Empire, the Maritime Colonies, and the Supplanting of Mi’kma’ki/Wulstukwik, 1780–1820,” *Acadiensis* 38, no. 2 (Summer/Autum 2009): 78–97; Jerry Bannister, “Atlantic Canada in an Atlantic World? Northeastern North America during the Long 18th Century,” *Acadiensis* 43, no. 2 (Summer 2014): 3–30; Jeffers Lennox, *Homelands and Empires: Indigenous Spaces, Imperial Fictions, and Competition for Territory in Northeastern North America, 1690–1763* (Toronto: University of Toronto Press, 2017); and Gregory Kennedy, “A Path Not Taken: The Middle Ground and the Wolastoq/Saint John River, 1640–1690,” *Journal of New Brunswick Studies/Revue d’études sur le Nouveau-Brunswick* 14, no. 1 (2022): 99–117.

⁴⁰ Linda Colley, *The Gun, the Ship, and the Pen: Warfare, Constitutions, and the Making of the Modern World* (New York: Liveright, 2021), 9–10.

⁴¹ The Canadian constitution, therefore, appears to be derivative in its genesis in “incomplete conquests,” as Peter H. Russell, *Canada’s Odyssey: A Country Based on Incomplete Conquests* (Toronto: University of Toronto Press, 2017), contends, only insofar as such conquests are

Positioning the constitutional development of British North America in a transoceanic imperial perspective allows us to better appreciate the Canadian constitution as an artefact of a certain set of eighteenth-century cultural sensibilities regarding empire, conquest, and constitutionalism that were not altogether as different from non-British and non-European views on these matters as they would become in the nineteenth century.⁴²

By analyzing British constitutional developments following two “big” wars and multiple “small[er] wars” in North America and India,⁴³ this study not only demonstrates how wars influenced constitution making because of transfers of sovereignty and inherited constitutional traditions, but also how wars triggered additional constitutional change because of demographic and social upheaval, as in revolutionary era British North America, and how continued warfare further expanded British imperial dominion to bring sub-imperial jurisdictions into contact with potentially hostile polities,

juxtaposed against the apparently “normative” total conquests and emulsifying constitutional traditions of the American Revolutionary experience and its legacy and against the homogenous national constitutions of global nineteenth and twentieth centuries. See also Elizabeth Mancke, “An Odyssey or a Contract: Conquests, Cessions, Constitutions and History,” *Borealia*, September 17, 2018, <https://earlycanadianhistory.ca/2018/09/17/an-odyssey-or-a-contract-conquests-cessions-constitutions-and-history>.

⁴² Layered sovereignty, in particular, has a deep history and an especially strong tradition in India. Of “relations between regional peoples and the sovereign power” in pre-independence India, Ayesha Jalal writes the following: “A web of economic and social linkages had survived periods of imperial consolidation, crisis and collapse, to bind the subcontinent into a loosely layered framework of interdependence. Despite a long history of creatively accommodating multiple levels of sovereignty,” it was only during the twentieth century that “the renegotiation of the terms for sharing power in an independent India saw the privileging of a rigid and monolithic conception of territorial sovereignty based on a singular and homogenizing idea of the ‘nation’.” “South Asia,” *Encyclopedia of Nationalism* (Academic Press, 2000), 2, <https://ajalal01.pages.tufts.edu/Articles/encyclopedia.nationalism.pdf>. So, too, did the administration of New France feature asymmetrical and multilayered composite jurisdictions: the province of Canada was made up of three districts with their own governors at Montreal, Trois-Rivières, and Quebec, the latter of whom was the governor general of New France, who additionally held nominal authority over the governors of the provinces of Acadia and Louisiana.

⁴³ For “small wars,” see Lauren Benton, “On Small Wars: Legalities of Violence in European Empires” (Trevelyan Lectures, Cambridge University, February 9–10, 16–17, 2022).

prompting supplemental constitutional innovations and increasing militarization, as in India. Tracing constitutional transformations across this period makes apparent the shift between the close connection of British North America and India during the late eighteenth-century era of imperial constitution making, and the emergence of the nineteenth-century conceptual divide between these two spheres of empire that came to define modern British imperialism. It was only when British relations with the American settler republic finally stabilized in 1815, and after defeating the Maratha challenge to Britain's growing presence in India in 1818, that changes in British approaches to inherited empire beginning in the 1790s intensified, ultimately resulting in the cultural and political orientalism and more aggressive imperial expansion of the nineteenth-century Indian empire, and the Indigenous dispossession and Anglo-settler dominance of nineteenth-century British North America and, eventually, twentieth-century Canada.

Canada, the Upper Country, and the Seven Years' War in North America to 1760

Britain's most significant territorial acquisition in the Seven Years' War followed from its conquest of the French province of Canada in 1760 and from France's formal cession of Canada and its vast interior dependencies in the Treaty of Paris of 1763. The conquest of Canada and the cession of France's territorial claims east of the Mississippi River transferred to Britain not only the sovereignty of Canada and the rights and responsibilities of the French Crown to its Canadian subjects, but also the longstanding diplomatic relationship existing between the French Crown in Canada and the Indigenous peoples inhabiting French-claimed territories throughout the continent. In much of the territory in question there existed relationships of mutual accommodation between Indigenous peoples and French subjects resting largely on the interconnected activities of both groups in the North American fur trade. In the province of Canada, which the French initially established as a commercial enterprise in the late sixteenth and early seventeenth centuries, French Crown officials conducted formal diplomacy with Indigenous groups (namely the Huron-Wendat and various Algonquian-speaking peoples who were in opposition to the Haudenosaunee) primarily to negotiate commercial access, while the right to settle vacant lands was acquired only secondarily. The intersection of French and Indigenous networks of trade and diplomacy drew French and Canadian traders into the North American interior during the seventeenth century, where the French Crown entered into alliances of mutual economic benefit and military cooperation with the mostly Algonquian-speaking peoples who controlled the fur trade further west, allowing French imperial influence in America to reach from the

St. Lawrence River Valley into the Great Lakes and upper Mississippi drainage basins. The emergent Franco-Algonquian alliance of the *pays d'en haut*, or upper country, as this region was known, was predicated largely on mutual accommodation and creative misunderstandings, whereby highly personal connections were forged between French voyageurs and local Indigenous peoples, resulting in Canadian men becoming interconnected into Indigenous kinship networks.

Occupying the highest diplomatic stratum of Franco-Algonquian kinship networks was the figurehead of Onontio, a title of Haudenosaunee origins meaning “Great Mountain” that was used by both Haudenosaunee and Algonquian-speaking peoples to refer to the governor general of New France. As the Indigenous personification of the French Crown of North America, Onontio was the ceremonial father of the Franco-Algonquian alliance and was symbolically responsible for mediating between conflicting interests and ensuring the regular supply of favourably priced trade items into the interior. In return, Onontio relied on Indigenous warriors to support French military efforts. Onontio also provided Indigenous groups with a singular and constant source of French royal authority with whom to conduct diplomacy, a stark contrast to the shifting and overlapping jurisdictions of royal officials and civil authorities in the English colonies to the south and east of Canada and the upper country, respectively.¹

¹ Many Indigenous groups had advocated for more centralized English/British Crown control over Indigenous relations beginning in the mid-seventeenth century. At various times between the 1640s and mid-1760s, Narragansett, Mashpee, Nipmuck, Mohegan, Haudenosaunee, Cherokee, and Creek representatives sought to bypass colonial officials by petitioning the Crown directly and travelling to London to present cases regarding colonial violations of land and trade agreements. See Paul Grant-Costa and Elizabeth Mancke, “Anglo-Amerindian Commercial Relations,” in *Britain’s Oceanic Empire: Atlantic and Indian Ocean Worlds, c. 1550–1850*, ed. H. V. Bowen, Elizabeth Mancke, and John G. Reid (Cambridge: Cambridge University Press,

Onontio's paternalistic relationship to the Indigenous allies and military auxiliaries of New France was an extension of the French colonial state's active role in Canadian social policy, a key feature of which was the French Crown's stated responsibility for its Canadian subjects' safety and welfare. French agrarian settlement was initially largely confined to the St. Lawrence Valley,² a zone that had been depopulated in the late sixteenth century and was situated between Indigenous power systems—the Algonquian–Wendat system lying to the northwest and that of the Haudenosaunee to the south. Whereas French subjects residing in Canada and at the limited settled posts of the upper country fell within the Crown's imperium, referring to a monarch's "right to be the highest authority over its subjects,"³ French diplomatic claims to territorial dominion over significant portions of the continental interior, by

2012), 383, 387–388, 398–399; and Craig Yirush, "'Chief Princes and Owners of All': Native American Appeals to the Crown in the Early Modern British Atlantic," in *Native Claims: Indigenous Law against Empire, 1500–1920*, ed. Saliha Belmessous (Oxford: Oxford University Press, 2011), 129–151.

² However, a sizeable landed agrarian community emerged in the Illinois country in the eighteenth century populated by the *métis* families of Canadian fur traders and their Indigenous wives. On the Illinois country, see Clarence Walworth Alvord, *The Illinois Country, 1673–1818* (Springfield: Illinois Centennial Commission, 1920); Natalia Maree Belting, *Kaskaskia Under the French Regime* (Urbana: University of Illinois Press, 1948); Winstanley Briggs, "Les Pays des Illinois," *William and Mary Quarterly*, 3rd ser., 47, no. 1 (January 1990): 30–56; Carl J. Ekberg, *French Roots in the Illinois Country: The Mississippi Frontier in Colonial Times* (Urbana: University of Illinois Press, 2000); and Robert Michael Morrissey, *Empire by Collaboration: Indians, Colonists, and Governments in Colonial Illinois Country* (Philadelphia: University of Pennsylvania Press, 2015).

³ Elizabeth Mancke, "Sites of Sovereignty: The Body of the Subject and the Creation of the British Empire" (Symposium on Comparative Early Modern Legal History, Newberry Library, Chicago, April 8, 2016), 12, 18. Imperium is often contrasted with dominium, denoting a monarch's territorial claims, which were made primarily "vis-à-vis other Europeans" rather than against non-Europeans. See 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), 236; Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006), 6; and Elizabeth Mancke, "Empire and State," in *The British Atlantic World, 1500–1800*, ed. David Armitage and Michael J. Braddick, 2nd ed. (New York, 2009), 198. It should be noted, however, that the distinction between imperium and dominium was imperfectly understood even among contemporaries and varied according to the imperial project in question.

contrast, merely excluded competing Europeans from conducting commerce and diplomacy in such regions rather than serving to claim such lands for settlement. Indigenous peoples remained sovereign over their homelands.⁴ It was by the inclusion and integration of Indigenous sovereignties into broader-level alliance systems that the French imperial project was able to extend deep into the continental interior.

French–Indigenous relationships of interdependence differed significantly from relations between Indigenous peoples and colonists in English America, where for the most part, agricultural settlement took primacy over commerce with Indigenous groups, whom settlers viewed as obstacles to landed agrarian expansion. English colonial ambitions relied upon the cultivation and agricultural “improvement” of land as the primary means of legitimizing claims of dominion, a feature of English imperialism in North America that lent itself to the emergence of a settler culture that prioritized land acquisition and the removal of Indigenous populations. These contrasting systems of imperial expansion converged in the Ohio country in the mid-eighteenth century, igniting a conflict between the French and British that culminated in Britain’s capture of Quebec in 1759, an event which set the stage for the surrender of the entirety of Canada and the upper country the following year and the eventual cession of New France to Britain in the Treaty of Paris in 1763. The French Crown’s transfer of its sovereignty in Canada to the Crown of Great Britain added a complexity of sovereign relations to the British empire in North America that many subjects of the “old” British American colonies viewed as antithetical to the social and political customs of the traditional imperial interests they had developed over the previous two centuries. Royal paternalism

⁴ See Brian Slattery, *The Land Rights of Indigenous Canadian Peoples, as Affected by the Crown’s Acquisition of Their Territories* (Saskatoon: University of Saskatchewan, 1979), 87.

and a socially active and, as British Americans perceived, absolutist and non-representative French Catholic colonial state in Canada contrasted sharply with British American participatory government and the relative social non-interference of colonial representative governmental institutions. French and Indigenous practices of mutual accommodation and commercial and military alliance diverged significantly from the overwhelming British American impetus toward Indigenous removal and land seizure. The integration of the inherited sovereignty of these French imperial forms into the British imperial constitution would emerge as a major source of tension between British American colonists and the metropolitan government in the decades following the Seven Years' War. Colonists would have preferred for British imperial authorities to treat the conquest of Canada as unconditional in its removal of French and Indigenous obstructions to westward colonial expansion, but the terms of the surrender, which were binding in international law, precluded any metropolitan consideration of that course of action.

I

The earliest European ventures to North America were commercial and exploratory in nature. They were intellectually driven by a desire to find a direct maritime route to Asia and were economically motivated by Western Europeans' need to supplement traditional supply chains of spices and other goods from South, Southeast, and East Asia that the Ottoman conquest of Byzantium had disrupted during the fifteenth century. Initial European ventures to North America were undertaken by navigators from the Italian republics of Florence, Venice, and Genoa that dominated the trade and finance of the Mediterranean world through which northern and western Europeans acquired Asian

commodities. By the late fifteenth century, Ottoman expansion under Sultan Mehmed II (r. 1444–1481) had complicated conditions for Italian merchants at trading centres in the Near East, who were facing increased Mediterranean commercial competition from Portuguese and Castilian interests who had begun voyaging westward into the Atlantic Ocean in an effort to harvest marine protein. Around the same time, Western European innovations in shipbuilding and maritime technology made Iberian navigators increasingly willing to sail further south and west along Atlantic routes than they had previously done, and the Portuguese opening of a maritime route to Asia around the Cape of Good Hope in 1488 presented a significant challenge to Northern Italians' control over Eastern commerce.⁵

Close interactions between Portuguese and English fishing interests through the late fifteenth century facilitated an exchange of knowledge that allowed both groups to venture increasingly further into the North Atlantic in search of new fishing grounds. After working aboard Portuguese ships in the North Atlantic during the 1470s and '80s, and having been fascinated by the Florentine Paolo Toscanelli's 1474 map situating the kingdoms of Cathay (China) and Cipango (Japan) at the western edge of the Atlantic Ocean, the Genoan navigator Christopher Columbus set out in August of 1492 with three ships and a commission from King Ferdinand and Queen Isabella of Spain to reach Asia not "by land to the eastward, as had been customary, but ... by way of the west,

⁵ A. H. Lyber, "The Ottoman Turks and the Routes of Oriental Trade," *English Historical Review* 30, no. 120 (October 1915): 581–582; David B. Quinn, *North America from Earliest Discovery to First Settlements: The Norse Voyages to 1612* (New York: Harper Colophon, 1978), ch. 4.

whither up to this day, we do not know for certain that anyone has gone.”⁶ Upon making landfall in the Caribbean on mid-October, Columbus believed he had arrived in maritime Asia and that the Chinese mainland lay nearby. Intending to travel to Quinsay (modern-day Hangzhou) as an envoy to the Great Khan, Columbus was more than a century too late to arrive in Yuan dynasty China, and had instead landed in the Americas that lay between Western Europe and East Asia. As Columbus travelled throughout the lands he had encountered, he continuously remarked upon his objective of finding a country rich in spices, and he brought many samples back with him to Europe, none of which, however, proved to be the specimens of the Asian world that he believed them to be.

Columbus’s failure to discover any new source of spices across the Atlantic did little to deter navigators sailing in the employ of other European monarchs from making similar voyages of discovery. Columbus had found gold, which was taken as a good indication that he was in Asia, a part of the world that Europeans imagined as rich in precious metals.⁷ In May of 1497, John Cabot, a Genoan with Venetian citizenship and commercial experience in the Eastern Mediterranean spice trade, departed England with

⁶ Quinn, *North America from Earliest Discovery*, ch. 3; *The Journal of Christopher Columbus during his First Voyage, 1492–93*, ed. Clements R. Markham (Farnham, UK: Ashgate, 2010), 16.

⁷ The inclusion of certain documentary evidence from these early voyages of exploration is intended to demonstrate both how early European navigators were confused as to their arrival in a region of world that was hitherto unknown to them, believing it to be Asia, and how even after the emergence of knowledge of the Americas as interposing continents, the European imagination continued to make little conceptual distinction between newly-explored regions in Asia and the Americas. This is highlighted by Jonathan Eacott, who asks readers to consider “America the India” as well as “India the place.” For Europeans in the fifteenth, sixteenth, and seventeenth centuries, Asia, and more particularly India, were places rich in spices and other exotic produce and were potential sources of wealth and luxury commodities. In this sense, there were “Indias everywhere” throughout the extra-European world that simply needed “discovering.” Jonathan Eacott, *Selling Empire: India in the Making of Britain and America, 1600–1830* (Chapel Hill: University of North Carolina Press, 2016), 1, 17.

letters patent from Henry VII “for the discovery of new and unknown lands.”⁸ Cabot sighted Newfoundland in June, which he annexed to the English Crown, and later that summer, a Venetian merchant residing in London wrote home of Cabot’s voyage that “that Venetian of ours who went with a small ship from Bristol to find new islands has come back and says he has discovered mainland 700 leagues away, which is the country of the Grand Khan.” The Duke of Milan’s agent to the Court of St. James reported similarly in December that Cabot had taken for England “a portion of Asia without a stroke of his sword.”⁹

The case that the voyages of Columbus, Cabot, and others had not reached Asia was articulated clearly by French sources. Upon his return to France from an expedition that had explored the North American coastline from Cape Fear to Cape Breton in 1524, the Florentine navigator Giovanni da Verrazzano wrote to his patron Francis I that it had been his “intention ... to reach Cathay in the far reaches of Asia.” Yet Verrazzano’s navigation of the coastline confirmed his hypothesis that the theory of an Atlantic Ocean reaching to Asia “uninterrupted by land” was highly erroneous. Rather, by calculating that the landmass he and his predecessors had encountered stretched much farther north and south than did the combined latitudes of Europe and Africa, Verrazzano concluded that the land in question was a continent currently unknown to Europeans.¹⁰

Verrazzano’s voyage is also significant in that it set the tone for a relationship between

⁸ Letters Patent of Henry VII, March 5, 1496, in Albert Bushnell Hart and Edward Channing, eds., *Documents Describing the Voyage of John Cabot in 1497* (New York, 1893), 4.

⁹ H. P. Biggar, ed., *The Precursors of Jacques Cartier, 1497–1534: A Collection of Documents Relating to the Early History of the Dominion of Canada* (Ottawa: Government Printing Bureau, 1911), 14, 19.

¹⁰ Il Capitano Giovanni da Verrazzano, fiorentino di Normandia alla Serenissima corona di Francia, 8 luglio 1524, *Collections of the New-York Historical Society*, 2nd ser., vol. 1 (New York, 1841), 65.

the French Crown and North American Indigenous peoples that was to be much different from that of other European monarchies. Compared to Columbus, who expressed open derision toward the Taíno he encountered on Guanahani in 1492,¹¹ Verrazzano's writing is marked by a frank curiosity about the peoples he encountered, highlighting French interests in new lands and peoples for the purpose of trade.

Voyages by Jacques Cartier a decade later introduced greater complexity into emerging French–Indigenous relations. After navigating around Newfoundland in May of 1534 and south through the Strait of Belle Isle into Gulf of St. Lawrence in June without engaging with any Indigenous groups, Cartier's first encounter with a Mi'gmaq trading party in Chaleur Bay resulted in Cartier and his crew giving cannon fire to keep the group from approaching.¹² When Cartier's expedition finally established nonviolent relations with a group of St. Lawrence Iroquoians in Gaspésie later that month, the French erected a thirty-foot cross to symbolize their claiming the land for the king of France. The response from St. Lawrence Iroquoian leaders was a mix of confusion and irritation: the Iroquoian *agouhanna* Donnacona, “made us a long harangue,” according to Cartier, and “pointed to the land all around about, as if he wished to say that all this region belonged to him, and that we ought not to have set up this cross without his permission.”¹³ Although Cartier made no claim to France's sovereignty over the peoples he encountered, planting a cross represented the French Crown's assertion of dominion over the lands in question, a claim Cartier went to great lengths to enhance by emphasizing the parallels of latitude and similarities in climate between France and the

¹¹ Columbus's *Journal* makes continued mention of the tractability of the Taíno and their fitness for servitude and slavery. See Markham, ed., *Journal of Christopher Columbus*, passim.

¹² H. P. Biggar, ed., *The Voyages of Jacques Cartier* (Ottawa: F. A. Acland, 1924), 49–51.

¹³ Biggar, ed., *Voyages of Jacques Cartier*, 64–65.

region he encountered, implying that the latter was a natural extension of the former.¹⁴

While the voyages of Verrazzano and Cartier were possessed of minor elements of Catholic evangelicalism, early French–Indigenous relations rested largely on commercial activity and a regular and formalized diplomacy. By the time Cartier arrived in the Gulf of St. Lawrence in the 1530s, Indigenous peoples in northeastern North America were accustomed to the seasonal visitations of European fishing vessels that afforded both parties the opportunity to exchange goods. Although Verrazzano had observed gold among the Indigenous peoples he encountered further south and Cartier searched endlessly for the fabled kingdom of Saguenay, which legend had it was the source of many precious metals, New France did not become a source of wealth in gold and silver as Mexico and Peru had been for the Spanish. The region’s cool northern climate dictated instead that Europeans’ trade with Indigenous peoples for beaver pelts and a variety of other animal skins presented the best economic prospects for the French in North America. The successful acquisition of furs and access to the peoples from whom they were acquired were best maintained by amicable diplomatic relations with the Indigenous groups who controlled routes into the interior. Essential to such relations was the French acknowledgement of Indigenous political sovereignty, which is glimpsed in Cartier’s description of Donnacona’s successor as the “lord and governor of the country,”¹⁵ a deliberate choice of words implying real political authority beyond the figurative usage of the title of “king” employed in other contemporary European sources describing American Indigenous leaders.

French acknowledgement of Indigenous sovereignty was further reflected in the

¹⁴ *Ibid.*, 85.

¹⁵ *Ibid.*, 252.

French acceptance of the language of equitable amicability employed by Indigenous groups in formal diplomacy with the French Crown. During a *tabagie* with Montagnais and Algonquin groups at Tadoussac in 1603, for instance, Samuel de Champlain recorded how the Montagnais sachem Anadabijou accepted a formal alliance with the French by lauding Henri IV as “a great friend,” and proclaiming that “there was no nation in the world for which they would wish more good than the French.” The stipulations of such an alliance, however, required the French to assist Algonquian groups to “make war on their enemies (who are the *Irocois*),” in exchange for which only then would they be “content that his said Majesty would populate their land.”¹⁶ The Franco-Algonquian alliance was ratified when on an expedition up the Richelieu River in July of 1609, Champlain and his men fired upon a Mohawk war party, killing some fifteen and taking a dozen more prisoner in an impressive display of firepower that demonstrated to Champlain’s Algonquian guides the potential significance of an enduring French alliance as an advantage over their Haudenosaunee enemies.¹⁷

Early French relations with Algonquian peoples were largely shaped by the virtual disappearance of Iroquoian peoples from the St. Lawrence Valley in the years between the voyages of Cartier and Champlain. By the time Champlain established a settlement at Quebec near the abandoned Iroquoian site of Stadacona in 1608, the riverbanks of the St. Lawrence were nearly deserted of their Indigenous inhabitants, and the peoples and villages noted by Cartier were no more. While Marcel Trudel posits that

¹⁶ Conrad E. Heidenreich and K. Janet Ritch, eds., *Samuel de Champlain before 1604: Des Sauvages and Other Documents Related to the Period* (Toronto: Champlain Society, 2010), 256–259. A *tabagie* is a ceremonial feast featuring the ritualized smoking of tobacco from which its name derives.

¹⁷ Marcel Trudel, *The Beginnings of New France, 1524–1663*, trans. Patricia Claxton (Toronto: McClelland and Stewart, 1973), 95–96.

the valley's emptying was due to shifting Iroquoian migratory patterns, Bruce Trigger more convincingly demonstrates the region's depopulation to be the result of a combination of pathogens left behind by earlier contact with Europeans and ongoing warfare among surrounding Innu, Algonquin, and Haudenosaunee groups.¹⁸ In the latter instance, it was the very wars between Algonquian and Iroquoian peoples into which the French were being pulled that also left the St. Lawrence open for French settlement.

The establishment of European-style settlements in the St. Lawrence was no easy task. Harsh winters that froze the river for many months annually left colonists isolated and unable to replenish supplies. Scurvy frequently beset early settlers and it took many years to adapt European agricultural techniques to the region's climate and geography. For many decades following the founding of Quebec, New France struggled with low population growth, leaving much of the colony's demographic and economic energies to be directed toward the fur trade. While many different types of furs were traded in New France prior to the 1580s, beaver pelts came to dominate the market during the early seventeenth century. Beaver pelts best suited for the felting of hats that were popular among the contemporary European elite were those that had been trapped by Indigenous hunters in the winter and worn next to the body for fifteen to eighteen months, causing the long hairs to fall off and leaving behind a smooth pelt of short-barbed hair. Whether demand followed supply or vice versa is unclear; however, enough profits were being made in furs that in 1581, a Breton syndicate organized a commercial shipment of furs

¹⁸ Ibid., 71–72; Bruce G. Trigger and William R. Swagerty, "Entertaining Strangers: North America in the Sixteenth Century," in *The Cambridge History of the Native Peoples of the Americas*, vol. 1, *North America*, ed. Bruce G. Trigger and Wilcomb E. Washburn (Cambridge: Cambridge University Press, 1996), pt. 1, 366; Bruce G. Trigger, *Natives and Newcomers: Canada's "Heroic Age" Reconsidered* (1985; repr., Montreal: McGill-Queen's University Press, 2002), 146.

from New France that sold at Paris the following year at a fourteenfold profit. The Englishman Richard Hakluyt saw a consignment of furs from Canada in that same city in two years later valued at some 15,000 livres.¹⁹ Even through a period of early structural instability as the fur trade monopoly was transferred from a group of associates from Rouen and St. Malo to the Sieurs de Caën in 1620 and then to the Crown in 1627, the trade continued to expand. The trading depot of Montreal was established in 1642 upriver from Quebec at Hochelaga near the Lachine Rapids. With the collapse of the Crown monopoly of the Compagnie des Cent-Associés in 1645, the trade itself was handed over to a group of Canadian habitants *en communauté*, with the Company's financing henceforth limited to administrative affairs.²⁰

As the seventeenth century wore on, French traders were travelling increasingly further into the interior to source furs between the annual shipments that Indigenous groups brought to market at Montreal. Canadians' loss of their closest trading partners following the Haudenosaunee dispersal of the Wendat in 1649 required more regular ventures by Canadians into the *pays d'en haut*, or upper country, which lay beyond Montreal. The safest route for Canadian traders to access the interior was to follow the Ottawa River west into the territory of the Anishinaabe, who controlled the nexus of trade between Canada, the upper Great Lakes, and the fur-rich northwest. From the Anishinaabe heartland to the north of Lakes Huron and Superior, Canadian voyageurs could then travel further west through Lake Superior, or southwest via Lake Michigan into the upper reaches of the Mississippi. Canadian access to the North American interior was facilitated by the relatively low-lying and easily navigable Great Lakes–St.

¹⁹ Trigger, *Natives and Newcomers*, 135–136, 139–140.

²⁰ Trudel, *Beginnings of New France*.

Lawrence drainage basin, and the white birch that grows in abundance north of roughly the forty-third parallel provided a singular resource in canoe manufacturing. Adopting Indigenous technology, Canadian traders were outfitted with exceptionally light and highly manoeuvrable loadbearing watercraft unmatched by any in North America,²¹ allowing voyageurs to cover vast distances on two- to three-year circuits from Montreal. Such mobility maintained upper country traders in their attachment to Montreal and Quebec, providing the socially aware voyageur with the opportunity to utilize his standing on the frontier to advance in status relative to the colonial centre.

The Canadian social order was unique among colonial European societies in North America in that it was distinguished by a “military-aristocratic ethos that was all-pervasive ... combined with a status-ordered class system that was, to a remarkable extent, an open one.”²² Underpopulation made landed settlement easily attainable for those willing to undertake the task, and in many instances, landholding was the end result of a successful career in either the fur trade or the military, both of which were at times intimately linked. In 1685, in an effort to stimulate an underperforming Canadian economy, Louis XIV issued a royal edict allowing the Canadian aristocracy to engage in commerce without tarnishing one’s noble status, resulting in a substantial levelling of social gradations in New France and permitting, in turn, Canadian merchants and entrepreneurs entrance into the upper echelons of Canadian society. “Thus a Canadian of humble origins could make his fortune in the fur trade, acquire a seigneurie, have his sons, if not himself, commissioned in the *troupes de le marine*, and hope that one day

²¹ W. J. Eccles, “New France and the Western Frontier,” *Essays on New France* (Toronto: Oxford University Press, 1987), 51–52.

²² *Ibid.*, 56.

he, or his sons, would be ennobled for [their] valiant service.”²³

The acquisition of a seigneurie brought with it social responsibilities to a seigneur's tenants, or *censitaires*, and military service was central to notions of seigneurial *oblige*. The Canadian militia was organized along parish lines, with seigneurs often serving as officers of units made up of the entire adult male population of their parish. Indeed, many seigneurs were themselves French officers who opted to settle in Canada at the end of their enlistments. Outside of active service, pursuit of the fur trade and reliance on Indigenous geographical knowledge and transportation technology schooled Canadians in survival and mobility in the North American wilderness and familiarized them with Indigenous methods of warfare. Not only were Canadians “well trained and disciplined, but they are used to arms from their infancy among the Indians,” as one British observer later commented, and could “fight without pay, maintain themselves in the woods without charges, march without baggage, and support themselves without stores and magazines.” From a later British perspective, Canadians were “to a man soldiers.”²⁴

The end goal of both military service and personal enrichment in the fur trade was the advancement of one's social standing and that of one's family. There was “merely one rung on the Canadian social ladder,” W. J. Eccles writes. “The ultimate goal was entry into the ranks of the noblesse.” “More than wealth, men wished to bequeath to their sons a higher social status and a name distinguished for military valour, some great achievement, or the holding of high office.” “A good name is better than

²³ W. J. Eccles, *The Canadian Frontier, 1534–1760*, rev. ed. (Albuquerque: University of New Mexico Press, 1983), 100.

²⁴ John Mitchell, *The Contest in America Between Great Britain and France, with its Consequences and Importance* (London, 1757), 137–138; *DCHC*, 1:211.

gold,” wrote Madame de Contrecoeur in 1755.²⁵ Once one had established his family as one of social repute, he was required to conduct himself in a manner befitting of his social rank and to maintain a material lifestyle comparable to those of his peers. Parsimony was discouraged among the Canadian elite as a sign of ill refinement, and seigneurs and Canadian officials were expected to demonstrate their status through a combination of material ostentation, public contributions, and the patronage of those below them, resulting in a socioeconomic culture whereby elites were “distinguished by their debts rather than their assets.” Canadians, therefore, “began with a system of ranks founded on cultural tradition and they adjusted their economic behaviour to their rank. In this way economics conformed to, rather than determined, social status,” as Peter N. Moogk explains.²⁶ Even Canadians of more modest means were possessed of *un amour du bien-être* that was largely unknown among their social equivalents elsewhere in North America, or even France for that matter. During his travels in North America in 1748–51, the Swedish botanist Peter Kalm was significantly impressed with Canadian manners and hospitality. “The common man in Canada is more civilized and clever than in any other place of the world that I have visited,” Kalm recorded. The Jesuit historian Pierre de Charlevoix additionally noted a purity of language among Canadians, writing that “nowhere is our language spoken more purely and without an accent than it is here.”²⁷

²⁵ Eccles, *Canadian Frontier*, 98; Fernand Grenier, ed., *Papiers Contrecoeur et autres documents concernant le conflit Anglo-Français sur l’Ohio de 1745 à 1756* (Québec: Presses Universitaires Laval, 1952), 349.

²⁶ Peter N. Moogk, “Rank in New France: Reconstructing a Society from Notarial Documents,” *Histoire sociale/Social History* 8, no. 15 (May 1975): 39, 48.

²⁷ Adolph B. Benson, ed., *Peter Kalm’s Travels in North America*, 2 vols. (1937; repr., New York: Dover, 1964), 2:558; Pierre de Charlevoix, *Histoire et description generale de la Nouvelle France*, 3 vols. (Paris, 1744), 3:79.

In a society that prided itself on its social graces, subtleties of social rank were reinforced by a culture of social deference, violations of which constituted a threat to the social order itself. Slander and insult, for instance, were treated with a seriousness that appeared to outsiders to be all out of proportion to the injury such offenses caused.²⁸ The very stability of Canadian society was understood to rest upon the preservation of the social order, and so care for one's reputation was placed ahead of that of one's person or property, since the success of the latter relied intimately upon the maintenance of the former. "Everything must relate to this essential article," wrote one eighteenth-century French legal theorist, "to the very laws of property; everything must be aimed to ensure that no offense disturbs public tranquility."²⁹

Canada was not without violent crime, yet the crime rate in the colony was extremely low, owing largely to the absence of dire poverty. Custom and law required families to contribute to the maintenance of relatives in financial need and individuals without family ties could turn to any number of Canadian social institutions, including a variety of hospitals, poorhouses, and asylums, mostly all of which were funded by the Church. The colonial state, moreover, was highly active in regulating both labour and food prices, ensuring a baseline affordability of living for those able to work.³⁰ The colonial state's activity in the province's social realm flowed from the imperial reforms implemented by Louis XIV and his first minister Jean-Baptiste Colbert upon the transfer of New France from the Cent-Associés to the Crown in 1663. By such reforms, Louis

²⁸ Peter N. Moogk, " 'Thieving Buggers' and 'Stupid Sluts': Insults and Popular Culture in New France," *William and Mary Quarterly*, 3rd ser., 36, no. 4 (October 1979): 529.

²⁹ François Dareau, *Traité des injures dans l'ordre judiciaire* (Paris, 1775), ix.

³⁰ W. J. Eccles, *France in America*, rev. ed. (Markham, ON: Fitzhenry and Whiteside, 1990), 136–137; Eccles, "The Role of the Church in New France," and "Social Welfare Measures and Policies in New France," *Essays*, 26–49.

XIV and Colbert intended to codify a hierarchical order of royal paternalism whereby the Crown considered itself responsible for the welfare of “all of his subjects in Canada from first to last as if they were his own children.”³¹

In terms of the colony’s constitution of government, the 1663 reforms established that all high-ranking Canadian officials be appointed by the Crown via the Minister of the Marine. The government of New France was headed by a dual executive of a governor general, who was commander-in-chief and the king’s viceroy in North America, and an intendant, who was the chief civil officer. The government of Canada also featured a significant conciliar element: the Sovereign Council of New France, originally composed of the governor, the bishop of Quebec, and five additional members chosen by the former two. Although the edict creating the council made no provision that the intendant have a seat, he nevertheless attended in his capacity as the province’s third highest-ranking official behind the governor, who presided over its meetings, and the bishop. In 1675, Louis XIV and Colbert modified the council to include seven councillors appointed by royal commission rather than by the favour of the governor, and to formally include the intendant among the council, over which he, not the governor, would henceforth preside. In its early history, the Sovereign Council functioned as an executive and legislative body, but by the early eighteenth century it became known as the Superior Council and had come to serve almost exclusively as a high court.³² There was a limited degree of representative government in the colony in

³¹ Mémoire du roi pour servir d’instruction à Talon, 27 mars 1665, *Rapport de l’Archiviste de la province de Québec pour 1930–1931* (Québec: Rédempti Paradis, 1931), 9.

³² W. B. Munro, “The Office of the Intendant of New France: A Study in French Colonial Policy,” *American Historical Review* 12, no. 1 (October 1906): 15–38; Raymond du Bois Cahall, *The Sovereign Council of New France: A Study in Canadian Constitutional History* (New York: AMS Press, 1967).

the form of popularly elected syndics, which voiced the concerns of habitants on mostly local issues. The constitution of Canada, therefore, was one in which authority flowed from the Crown downwards to the various offices of the colonial state and, finally, to the king's subjects.

II

The royal paternalism that served as the organizing principle of the social and political constitution of Canada was also extended to French–Indigenous relations. The French Crown made no pretensions to being sovereign on Indigenous land and Indigenous peoples were not French subjects, although they were able to become so through conversion to Christianity, which some groups willingly undertook. Instead, Indigenous peoples residing in French-claimed territory and in alliance with the French Crown were considered as under the Crown's "protection" while retaining their own independent sovereignty.³³ The French Crown, nevertheless, did claim dominion over its North American territories vis-à-vis contending European powers by virtue of an active and ongoing diplomacy with a number of strategically located Indigenous groups. Such claims to dominion were meant to exclude subjects of other European monarchs from settling or carrying on trade with the Indigenous inhabitants of French-claimed regions.³⁴ That Indigenous peoples remained sovereign was never in question: Indigenous groups retained title to those lands lying outside the seigneuries of New France and French–Indigenous diplomacy proceeded on a nation-to-nation basis. The

³³ See Gilles Havard, "'Protection' and 'Unequal Alliance': The French Conception of Sovereignty over Indians in New France," in *French and Indians in the Heart of North America, 1630–1815*, ed. Robert Englebort and Guillaume Teasdale (East Lansing: Michigan State University Press, 2013), 113–137.

³⁴ Eccles, "Sovereignty Association, 1500–1783," *Essays*, 160.

French Crown claimed to serve as the figurehead of Franco-Indigenous alliances, representing the interests of its Indigenous allies in its dealings with Europeans. On the ground, however, Canadians who ventured into the upper country remained commercial partners and military allies inhabiting enclaves and outposts as guests in Indigenous peoples' lands.

Many Canadian men saw the Indigenous world of the upper country as an opportunity to lead a life vastly different from the one available to them within the confines of settled Canada. Such men set out into the interior as independent traders who lived intimately among Indigenous peoples and adopted various facets of Indigenous cultures. The allure of upper country life to adventurous young men was significant cause for concern among Canadian officials who worried for the agricultural, demographic, and moral development of the colony. In 1688, Governor General the Marquis de Denonville listed the many difficulties posed by the attraction of the upper country to Canadian men:

it depopulates the country of good men, renders them unmanageable, impossible to discipline, debauched. It makes of them, and their families, nobles wearing the sword and lace, all gentlemen and ladies. They will no longer consider working on the land, and that combined with the fact that the settlements are scattered results in the children of this country being raised like Indians and as undisciplined as them.³⁵

The relative affluence to be had in the upper country for those with fortitude combined with the perceived freedom of Indigenous ways of life, drew Canadian men into the interior at a rate which the colonial state struggled to contain. For those who “prefer to breathe the air of freedom” and enjoyed “a wandering life,” the upper country

³⁵ Eccles, “New France and the Western Frontier,” *ibid.*, 54.

offered endless “charms.”³⁶ Many Canadians amassed small fortunes in the interior trade, allowing them to embrace an Indigenous moral economy that held in contempt those who stored up worldly goods and instead elevated those who spent their wealth on good living for themselves and their dependents.³⁷ Voyageurs were described by one observer in 1757 as “not very economical ... loving instead freedom, independence, and praise, and knowing how to appear favourably.”³⁸

Marital unions between Canadian men and Indigenous women interconnected French traders into Indigenous kinship networks in such a way that was essential to the functioning of upper country commerce. Such unions eased diplomacy; provided social access, material aid, and military protection for both parties at various locales; and ensured that the balance of trade between interconnected groups remained mutually beneficial. Most Algonquian peoples were exogamous and matrilocal, meaning that although women selected marital partners from outside of one’s immediate social-familial group, husbands were brought into the families and kinship networks of their wives, thus creating bonds of dependence and mutual obligation between the family line of a woman’s father or brother and that of her husband. By marrying Algonquian women, therefore, French men became integrated into upper country Algonquian kinship networks, making Algonquian women the primarily cultural intermediaries between the two groups and resulting in significant politicization of sexual unions between Canadian men and high-ranking Indigenous women.³⁹

³⁶ Charlevoix, *Histoire et description de la Nouvelle France*, 3:173.

³⁷ Eccles, *Canadian Frontier*, 91.

³⁸ Relation de Mr. Poulariès envoyée à Mr. le marquis de Montcalm, 1757, *Rapport de l’Archiviste de la province de Québec pour 1931–1932* (Québec: Rédempti Paradis, 1932), 67.

³⁹ Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815*, 2nd ed. (Cambridge: Cambridge University Press, 2011), 62–69; Michael

French and Algonquian intermarriage did much to shape the upper country into what Richard White has termed the “middle ground.” Because neither Indigenous groups nor French newcomers could completely dominate each other, both groups were forced to engage in “mutual accommodation,” whereby congruencies between both cultures were highlighted in order to arrive at a common understanding. More often than not, however, such congruencies were more disparate than either side was able to effectively communicate, resulting in what White describes as “creative, and often expedient, misunderstandings,” by which assumptions of comprehension of certain facets of the opposite culture were made based on parallel points of reference with one’s own. Rather than simple acculturation of certain elements of one culture into the other, what took place in the upper country was instead a subtle bleeding of each culture into the other so that after a time it was not always clear “whether a particular practice or way of doing things was [exclusively] French or Indian.”⁴⁰ Identifiably French and identifiably Indigenous cultural forms and material culture continued to exist, and the acculturation of each by the other in many aspects led to various degrees of *métissage* that were sometimes easily discernable.⁴¹ But where both cultures met face to face on the middle grounds of trade, warfare, diplomacy, and intimate relations, there existed a process of constant cultural negotiation and redefinition that resulted in ongoing cultural invention, one of the products of which was the unique diplomatic relationship that existed between the Algonquian peoples of the upper country and the French Crown in

A. McDonnell, *Masters of Empire: Great Lakes Indians and the Making of America* (New York: Hill and Wang, 2015), 94; Susan Sleeper-Smith, *Indian Women and French Men: Rethinking Cultural Encounter in the Western Great Lakes* (Amherst: University of Massachusetts Press, 2001).

⁴⁰ White, *Middle Ground*, xxvi, 50.

⁴¹ See, for instance, Sophie White, *Wild Frenchmen and Frenchified Indians: Material Culture and Race in Colonial Louisiana* (Philadelphia: University of Pennsylvania Press, 2012).

the form of its viceroy, the governor general.

The upper country that Canadians ventured into in large numbers in the latter half of the seventeenth century was one that had been reshaped considerably by Indigenous warfare between roughly the 1630s and 1660s. With the decided advantage of firearms supplied by the Dutch at Fort Orange (later Albany), the Haudenosaunee had defeated and dispersed their western Iroquoian-speaking neighbours the Wenro in 1638, the Wendat in 1649, the Neutrals in 1651, and the Erie in 1656. Although the Haudenosaunee incorporated some survivors as captives to replace their dead, many fled westward as refugees into Algonquian lands, leaving a vast depopulated area stretching from the eastern end of Lake Erie, west to Lake Michigan, north to Georgian Bay, and south to the Ohio River. North and west of the Wabash River, dispossessed Iroquoian peoples settled among the Anishinaabe, Miami, Illini, and various other Algonquian-speaking peoples. Renewed Haudenosaunee excursions into the upper country in the 1680s forced Wendat and other refugee groups into local alliances of mutual defence against the Haudenosaunee with their Algonquian host nations, which were further amalgamated into the already-existing alliance western Algonquian peoples had forged with the French according to the geopolitics of the fur trade. This integrated Franco-Algonquian alliance was neither the forceful construct of French interests nor the desperate gambit of a dependant Indigenous population, but was rather “an initially precarious construction whose maintenance [was] as essential to Canadian as to Algonquian survival.”⁴²

At the head of the Franco-Algonquian alliance stood Onontio, the Indigenous

⁴² Kathryn Magee Labelle, *Dispersed but Not Destroyed: A History of the Seventeenth-Century Wendat People* (Vancouver: UBC Press, 2013); White, *Middle Ground*, 11–14ff, 30–33.

personification of the governor general of New France. Believed to be a Mohawk translation of the name of the former Governor Charles de Montmagny (governed 1636–48) meaning “Great Mountain,” the title of Onontio was applied to all subsequent French governors by Iroquoian- and Algonquian-speaking peoples alike. Onontio’s status among Algonquian groups was that of an augmented chief and brought with it the responsibilities of gift giving, the mediation of disputes between the member nations of the alliance and between them and French subjects, and the protection of Indigenous allies’ interests in European diplomacy. Onontio served as the ceremonial “father” of the Algonquian peoples of the upper country in their capacity as French allies and was seen not as a conqueror or ruler, but as a conduit of goods and influence. A fictive kin relation and a construct of the mutual misunderstandings that defined the middle ground, Onontio reflected Algonquian notions of paternal authority whereby fathers compelled obedience not by force but by respect earned through wisdom, compassion, and generosity. Onontio also conformed to Indigenous gender roles whereby men controlled external relations and women controlled internal governance. Onontio was the French male figurehead through which external relations with Indigenous groups could reach back to Quebec and, by extension, France. At the same time, the paternal role of Onontio appealed to the patriarchal elements of French culture. Onontio, therefore, regulated French–Indigenous trade and provided certain necessary goods and supplies to Algonquian peoples, in return for which Algonquian warriors responded when called upon by Onontio to defend the interests of the alliance against encroachments by the Haudenosaunee and, increasingly, their new allies the English.⁴³

⁴³ White, *Middle Ground*, 36, 112, 129, 142, 180, 182–183; Eccles, *Canadian Frontier*, 201n15; McDonnell, *Masters of Empire*, 93–94.

After an English naval expedition seized the Dutch colony of New Netherland in 1664, England's military acquisition of the colony by the Treaty of Breda in 1667 was challenged by the Dutch in the Third Anglo-Dutch War (1672–74), and was confirmed again by the Treaty of Westminster in 1674. The diversion of Dutch resources to the defence of New Netherland during the wars with the English had weakened the Haudenosaunee relative to the French and Algonquians through the 1660s and '70s and was a major contributor to the strengthening of the Franco-Algonquian alliance during this period. Under the leadership of Edmund Andros, the first administration of the English colony of New York was quick to secure an alliance with the Haudenosaunee, premised on the maintenance of a secure market at Albany that would provide an alternative outlet for Iroquoian groups south of Lake Ontario and the St. Lawrence River who were averse to trade with the French at Montreal. The weakening of the Haudenosaunee position through the 1690s forced the Haudenosaunee to broker a peace with the French and Algonquians at Montreal in 1701, which lessened violent conflict between the two groups even as France and Britain became embroiled in Queen Anne's War from 1702 to 1713.⁴⁴ Article 15 of the Treaty of Utrecht between France and Britain that ended the War of the Spanish Succession in 1713 further eased relations between the Franco-Algonquian alliance and the Haudenosaunee by prohibiting French subjects from giving the latter any further "indorum, hindrance or molestation" and requiring British subjects to "behave themselves peaceably" toward the subjects and allies of France. Both French and British subjects in North America, moreover, would henceforth "enjoy full liberty of going and coming on account of trade," and Indigenous

⁴⁴ Daniel K. Richter, *Trade, Land, Power: The Struggle for Eastern North America* (Philadelphia: University of Pennsylvania Press, 2013), 88–90.

groups were guaranteed “the same liberty” to “resort, as they please, to the British and French colonies, for promoting trade on one side, and the other, without any molestation or hindrance, either on the part of the British subjects, or of the French.”⁴⁵ The opening of free trade between French and British traders and Indigenous groups by international treaty, however, occurred just as the fur trade was beginning to decline. Although the fur trade was temporarily revitalized following the Treaty of Utrecht, changing fashions, a glutted European market, and increased North American competition had combined to lessen the value of furs so that by the turn of the eighteenth century, even the Canadian fur trade, which was bolstered significantly by the politics of the Franco-Algonquian alliance, was worth a mere fraction of what it cost the Crown to maintain. The upper country fur trade nevertheless persisted into the eighteenth century as a geopolitical tool with a political and diplomatic significance that was “far in excess of its economic value.”⁴⁶

With threat of the Haudenosaunee mitigated by their strategic neutrality between the French and English, the refugee groups of the upper Great Lakes region began moving back into depopulated lands to the east. During the opening decades of the eighteenth century, a group of Anishinaabeg known as the Mississauga settled along the northern shores of Lakes Ontario and the Erie in the traditional hunting lands of the Wendat and Neutrals. The Wendat and their traditional neighbours the Tionontati, meanwhile, established communities in the Detroit River area in traditional Odawa

⁴⁵ *Treaty of Peace and Friendship ... Concluded at Utrecht* (London, 1713), 74–75.

⁴⁶ White, *Middle Ground*, 127; Eccles, “The Fur Trade and Eighteenth-Century Imperialism,” *Essays*, 82. See also Catherine M. Desbarats, “The Cost of Early Canada’s Native Alliances: Reality and Scarcity’s Rhetoric,” *William and Mary Quarterly*, 3rd ser., 52, no. 4 (October 1995): 609–630; and Desbarats, “France in North America: The Net Burden of Empire during the First Half of the Eighteenth Century,” *French History* 11, no. 1 (March 1997): 1–28.

territory, where they became known collectively as the Wyandot. Most groups, however, migrated to the region lying to the south of Lake Erie known as the Ohio country, a roughly 700-kilometre stretch of the Ohio Valley and its connecting watersheds running from the Allegheny River in the east to about the western edge of Lake Erie and the Miami River in the west. These groups included Wyandot moving east from their new settlements along the Detroit, Odawa hunters travelling through the area for easier access to new trading posts erected by the French and English at Niagara and Oswego, respectively, and fragments of various other French-allied refugee groups seeking more permanent settlements. Indigenous groups also moved into the Ohio country from the east. Between the 1720s and '40s, the Lenape were pushed west by settler expansion in the British province of Pennsylvania. Breakaway Haudenosaunee groups (mostly Seneca), seeking a haven from what they felt was the domineering influence of the Mohawk in the Iroquois Confederacy, also settled in the Ohio country, where they became major political brokers known as Mingos. While the *pays d'en haut* as a broader region had always been multiethnic, the defining feature of the Ohio country was a multiethnicity that permeated down to the village level, so that any number of different peoples could be found living in single communities, a practice the French believed served to shield settlements from attacks from either side of conflicts between eastern and western nations.⁴⁷

Although the French were initially ambivalent about the repopulation of the Ohio country, the “Ohio Indians,” as they were known among Euro-Americans, because of their diversity of origins and variation of former political orientations, were beholden to

⁴⁷ White, *Middle Ground*, 146, 150, 186–188; Elizabeth Mancke, “The Ohio Country and Indigenous Geopolitics in Early Modern North America, 1500–1760,” *Ohio Valley History* 18, no. 1 (Spring 2018): 13, 19–21.

no European power and pursued a diplomatic strategy of cultivating French or, alternatively, British support as it suited their interests. These independent, multiethnic Indigenous polities of the Ohio country were referred to by French officials as “Indian republics,” implying all of the pejorative connotations that republicanism invoked in early eighteenth-century European political thought. Existing outside of the traditional alliance with Onontio, and opening themselves up to dealings with the English, the Ohio Indian republics “shattered [the] existing political arrangements” of the upper country and earned the distrust of both French officials and traditional Algonquian chiefs. The Ohio republics tended to be governed by younger men who had previously been marginal figures in upper country politics. While Onontio’s alliance with traditional Algonquian political leaders relied on cultural brokers on both sides acting in mutual self-interest, the Ohio Indians appeared to be led by what the French labeled as *étourdi*, believed to be narrow-minded and reckless village leaders who seemingly revelled in their newfound ability to play the English off against the French with little thought given to longer-term consequences.⁴⁸ Such a situation was difficult to avoid due to the voluntary nature of both Algonquian political structures and those structures’ relation to Onontio. “Among these Indians there is only voluntary subordination,” wrote Louis Antoine de Bougainville. “Each person is free to do as he pleases. The village chiefs and the war chiefs can have influence, but they do not have [complete] authority, still their influence over the young men depends upon how much they exert it, and upon their attention to keeping their kettles full, so to say.”⁴⁹ When neither the traditional chiefs nor the French could fill the increasingly deep kettles of the Indian republics, Ohio Indians

⁴⁸ White, *Middle Ground*, 186, 189, 202.

⁴⁹ Edward P. Hamilton, trans. and ed., *Adventure in the Wilderness: The American Journals of Louis Antoine de Bougainville, 1756–1760* (Norman: University of Oklahoma Press, 1964), 134.

turned to the English to do so. Anglo-American relations with Indigenous peoples, however, and British American ambitions in the Ohio country in particular, were markedly different than those of the French in Canada and the upper country.

III

After it had become clear that Cabot had neither reached nor conquered Asia, as some in Europe had speculated, and that the landmass in question was a separate continent, the English shifted their objectives in North America from reconnaissance to settlement. The letters patent granted by Elizabeth I to Walter Raleigh in 1584, for instance, included instructions “to build and fortify,” as well as to “subdue,” any “such remote, heathen, and barbarous lands, countries, and territories not actually possessed of any Christian prince nor inhabited by Christian people.” Raleigh and his associates were to “have, hold, occupy, and enjoy ... all the soil of all such lands, countries, and territories so to be discovered and possessed” in fee simple, and such title was to extend to the associates’ “heirs and assignees forever with all prerogatives, commodities, jurisdictions, and royalties, privileges, franchises, and pre-eminences” granted therein.⁵⁰ Such universal claims to the ownership of discovered lands by English explorers was much different from French and Iberian colonial projects, which were founded on institutions of “social ascription and place-specific property rights,” as was seigneurial tenure in New France. English rights, by contrast, were attached to the bodies of subjects and moved with them as they travelled through and inhabited whatever lands they

⁵⁰ David B. Quinn, ed., *The Roanoke Voyages, 1584–1590: Documents to Illustrate the English Voyages to North America under the Patent Granted to Walter Raleigh in 1584*, 2 vols. (Farnham, UK: Ashgate, 2010), 1:82–84.

encountered.⁵¹ Because English ventures of the late sixteenth and early seventeenth centuries had sought out lands previously visited by navigators sailing in the employ of other European monarchs, English claims to dominion in North America could not rely upon discovery alone, and instead required English subjects to actually inhabit lands not settled by other Europeans. To secure English dominion against Europeans with potentially overlapping territorial claims, therefore, English settlers were invested with rights of land ownership that effectively made their persons vehicles of English sovereignty, capable of extending the Crown's dominion by harvesting resources, erecting structures or fortifications, and cultivating the soil.

Instructions from the Virginia Company council to Governor Thomas Gates in 1609 reflected the transition in English colonial objectives from commerce to landed settlement. The aims of the Virginia venture were first and foremost to seek out "riches" and to provide the Company with "a return of commodity" by the discovery of a royal mine or else by "trade with the Natives." In the event that these primary objectives proved futile, the venture was to maintain itself by the "labour of [its] own men."⁵² The individual chosen to lead English exploratory excursions in Virginia was John Smith of Lincolnshire, a former mercenary in the Thirteen Years' War (1593–1606) fought between the Ottomans and Habsburgs in the Eastern Mediterranean. Smith was unable to locate the source of any precious metals in the Chesapeake Bay area and he quickly deduced that very little commodities of any value according to European standards could be obtained from trade with the region's Indigenous inhabitants. What Virginia did

⁵¹ Elizabeth Mancke, "Sites of Sovereignty: The Body of the Subject and the Creation of the British Empire" (Symposium on Comparative Early Modern Legal History, Newberry Library, Chicago, April 8, 2016), quote on 2.

⁵² Susan Myra Kingsbury, ed., *The Records of the Virginia Company of London*, 4 vols. (Washington, DC: Government Printing Office, 1906–35), 3:15–16, 22.

possess in abundance, though, was arable and well-situated land. Virginia, Smith wrote, “is a country that may have the prerogative over the most pleasant places of Europe, Asia, Africa, or America.” “The mildness of the air, the fertility of the soil, and the situation of the rivers are so propitious to the nature and use of man as no place is more convenient for pleasure, profit, and man’s sustenance.” The land need only “be amended by [the] good husbandry” of an “industrious people” to be transformed into a flourishing agricultural colony.⁵³

Smith’s emphasis on the future “good husbandry” of Virginian farmlands implied that the lands in question were currently uncultivated. In Virginia, Smith wrote, the English had “chanced in a land, even as God made it. Where we found only an idle, improvident, scattered people, ignorant ... and careless of anything but from hand to mouth.”⁵⁴ What Smith and others failed to acknowledge, however, was that North American Indigenous peoples did cultivate land, practicing mixed horticulture and various forms of forestry and animal husbandry, albeit in ways that were underappreciated by Europeans. Because North American Indigenous peoples did not cultivate land on a scale that yielded the land’s full potential according to Western European standards, Anglo-Americans considered Indigenous peoples not as “landworkers but hunters; not settlers but wanderers,” as one British source later put it, devoid of “any idea of property in land, of that property which arises from a man’s mixing his labour with it.”⁵⁵ English settlers’ seizure of Indigenous peoples’ seemingly under-utilized lands, therefore, was justified by the Roman legal concept of *res nullius*,

⁵³ John Smith, *A Map of Virginia, With a Description of the Countrey, the Commodities, People, Government and Religion* (Oxford, 1612), 2, 10, 18.

⁵⁴ *Ibid.*, 77.

⁵⁵ Thomas Pownall, *The Administration of the Colonies*, 2nd ed. (London, 1765), 157.

which “maintained that all ‘empty things,’ including unoccupied lands, remained the common property of all mankind until they were put to some, generally agricultural, use.”⁵⁶ *Res nullius*, coupled with allusions to Indigenous peoples’ status as non-Christians and therefore lacking the rights of property derived from God’s grace,⁵⁷ provided English settlers with a legal framework within which to free their consciences from any guilt that may have arisen from the seizure of Indigenous peoples’ lands and the corresponding destruction of Indigenous communities.

Indigenous resistance to the English seizure of American lands only incensed the newcomers to intensify their assaults. Such was the case after the events of March 1622, when in retaliation for the murder of one of his people, the Powhatan *weroance* Opechanacanough ordered the coordinated massacre of settlers at various sites throughout the colony, resulting in a death toll of 347, more than a fifth of the population of Virginia at the time. For the next decade, the Virginia settlers waged total war against the Powhatan and extended a state of “perpetual enmity” to all Indigenous groups who threatened English settlements.⁵⁸ “Our first work is expulsion of the savages,” Governor Francis Wyatt wrote after the massacre, “for it is infinitely better to have no heathen among us, who at best were but thorns in our sides, than to be at peace and league with them.”⁵⁹ Wyatt’s language of “extirpating the savages” and “winning

⁵⁶ 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), 76.

⁵⁷ Anthony Pagden, “The Struggle for Legitimacy and the Image of Empire in the Atlantic to c. 1700,” *OHBE*, 1:40.

⁵⁸ Alden T. Vaughan, “‘Expulsion of the Salvages’: English Policy and the Virginia Massacre of 1622,” *William and Mary Quarterly*, 3rd ser., 35, no.1 (January 1978): 75–77; Wesley Frank Craven, “Indian Policy in Early Virginia,” *William and Mary Quarterly*, 3rd ser., 1, no. 1 (January 1944): 73–74.

⁵⁹ “Letter of Sir Francis Wyatt, Governor of Virginia, 1621–1626,” *William and Mary Quarterly*, 2nd ser., 6, no. 2 (April 1926): 118–119.

the forest” would be reflective of Virginians’ attitude toward Indigenous peoples for the next century and a half as the colony expanded into the interior. Although the Anglo-Powhatan Wars concluded in 1646 with an agreement to limit English settlement to the middle and lower Virginia peninsulas, the colony’s population doubled twice between 1650 and 1673, leaving the 1646 agreement powerless to stem the tide of settlement, which during the second half of the century expanded north and west from the James and York River estuaries into the upper reaches of the Rappahannock and Potomac Rivers.

The tobacco boom of the mid-seventeenth century drove much of Virginia’s population growth and appetite for land, albeit at the expense of food cultivation. Planters seeking virgin soils along inland waterways encouraged the ongoing cultivation of frontier space, whereby “new lands were opened up by planters living in contiguous areas that themselves had been frontier settlements [only] a few years earlier,” a process which “pushed back local Indian populations [in order to open] up thousands of acres for tobacco cultivation.”⁶⁰ By the turn of the eighteenth century, under sanction of the third Virginia Company charter, which enlarged the colony’s limits to vaguely include “all that space and circuit of land lying from the sea coast . . . up into the land from sea to sea west and north-west,”⁶¹ Virginians were pouring westward across the fall line into the Piedmont and the foothills of the Blue Ridge Mountains with little sign of halting expansion at the obstruction of any particular topographical feature.

North of the Chesapeake, meanwhile, the proprietary colony of Pennsylvania

⁶⁰ James Horn, “Tobacco Colonies: The Shaping of English Society in the Seventeenth-Century Chesapeake,” *OHBE*, 1:179–180.

⁶¹ Third Charter of Virginia, March 12, 1611, Avalon Project, Lillian Goodman Law Library, Yale Law School, https://avalon.law.yale.edu/17th_century/va03.asp.

emerged as a major consumer of Indigenous lands by the late seventeenth century. Established by William Penn and the Society of Friends in 1681, Pennsylvania quickly became an agrarian colony of single-family farms of diverse European origins engaged in the production of grain primarily for export.⁶² Despite Penn's rhetorical gestures of goodwill toward the Lenape and his insistence that the colony's proprietary government formally purchase Indigenous lands before parcelling them out for settlement, following his death in 1718, Penn's three sons privately deeded themselves thousands of acres of non-purchased lands. Even in cases where title to unpurchased lands was obtained retroactively, there remained the issue of whether or not Indigenous peoples could knowingly deed away static possession of lands beyond their own conception of shared systems of land and water tenure.⁶³ While it would have been clear to Indigenous groups early on that English settlers intended to stay on the lands they acquired, the nature of commercial transactions between Europeans and Indigenous peoples involved significant "discourses of erasure" on both ends, whereby the cultural values and physical functions of objects of commerce were altered as they passed from one owner to another, the objects' previous uses and meaning being erased in the process. Commercial practices of erasure were especially prevalent in English conceptions of property ownership. The transfer of real property from one owner to another was thought to expunge previous uses (or perceived misuses) of land and begin a new tenure of proper use and improvement. When English Americans purchased lands from Indigenous peoples, prior claims were thought to be "extinguished," and Indigenous groups were considered to have forfeited those usufructuary rights that they often

⁶² Ned C. Landsman, "The Middle Colonies: New Opportunities for Settlement, 1660–1700," *OHBE*, 1:361–362.

⁶³ Richter, *Trade, Land, Power*, 135–154, 157–158.

believed they had retained and had consented merely to share.⁶⁴ The colonial frontier allowed for such processes of erasure to be repeated seemingly ad infinitum as English settlement crept ceaselessly westward.

The colonial land market also allowed for failed estates and unimproved lands both on and behind the frontier to be erased by their sale to new owners. The defining feature of English proto-capitalism was a competitive market in the productive optimization of the agricultural output of land.⁶⁵ In cases where one's estate had foundered, therefore, or if one believed that they could better prosper elsewhere or would benefit from additional landholdings, one was able either to liquidate their current estate and relocate to new lands or else to reinvest the profits of their estate into expanding it. Thus, when a debtor wrote to the Virginian landholder George Washington in 1767 that he was unable to pay back the initial £700 Washington had loaned him and required an additional £500 in order to discharge further debts, the solution seemed obvious enough. Since any further loans "would afford but temporary relief," Washington suggested that his client sell off his estate and move westward into the backcountry, "where numbers resort to, and where an enterprising man with very little money may lay the foundation of a noble estate ... for himself and [his] posterity." There a man could acquire "as much land as in the course of twenty years would sell for five times your present estate," the method by which "the greatest estates we have in this colony were made," "by taking up and purchasing at very low rates the rich back lands,

⁶⁴ Grant-Costa and Mancke, "Anglo-Amerindian Commercial Relations," 374–376. It was by this social and political process of transaction and erasure that land in English America was commodified. For exchange as the source of a commodity's value, see Arjun Appadurai, ed., *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge: Cambridge University Press, 1986).

⁶⁵ See Ellen Meiksins Wood, *The Origin of Capitalism: A Longer View* (2002; repr., Delhi: Aakar, 2013), ch. 5.

which were thought nothing of in those days, but are now the most valuable lands we possess.”⁶⁶

Although various expressions of noblesse characterized the material standard of living of Virginia’s eastern elite, the colony’s frontier population tended to comprise nuclear families living in semi-seclusion on homesteads that were often quite distant from even their closest neighbours.⁶⁷ Such rusticity convinced many in Britain of the degenerative effects of frontier life, which was supposed to have turned colonists into “infidels” who “abandoned their native manners and religion and fell into “a state of ignorance and barbarism.”⁶⁸ Such notions of the barbarity of backcountry settlers were largely a product of the metropolitan imagination; the Virginia frontier was home to its own class of elites who were in regular contact with the colonial capital on which they relied for commercial titles, land deeds, and the administration of justice.⁶⁹ Nevertheless, there did occur on the frontier a general “loosening of the bonds of community and traditional conceptions of civility,” which grew out of settlers’ sense of their freedom from social constraints and the novelty and impermanence of their situation. Although frontier society was not completely egalitarian, backcountry elites did possess a narrower margin of wealth and exercised less coercive power over other settlers than

⁶⁶ Washington to John Posey, June 24, 1767, in W. W. Abbot et al., eds., *The Papers of George Washington*, Colonial Series, 10 vols. (Charlottesville: University Press of Virginia, 1983–95), 8:1–3.

⁶⁷ David Freeman Hawke, *Everyday Life in Early America* (1988; repr., New York: Perennial, 2003), 31.

⁶⁸ John Ewer, *A Sermon Preached Before the Society for the Propagation of the Gospel in Foreign Parts* (London, 1767), 6–7; James Macsparran, *America Dissected, Being a Full and True Account of All the American Colonies* (Dublin, 1753), 10.

⁶⁹ Albert H. Tillson Jr., *Gentry and Common Folk: Political Culture on a Virginia Frontier, 1740–1789* (Lexington: University Press of Kentucky, 1991), ch. 2.

was the case with their eastern counterparts.⁷⁰ The precariousness of backcountry living, coupled with settlers' distance from and the relative weakness of English colonial state institutions, engendered among frontier settlers a heightened sense of independence and an often militant political individualism.⁷¹

IV

With ready-developed markets in land speculation and frontier spaces adjacent to the Ohio country, Pennsylvania and Virginia were the colonies from which most projects to extend Anglo-American settlement into the trans-Appalachian west were launched. As early as 1686, the physician Daniel Coxe drafted a Pennsylvania deed for 100,000 acres of land stretching from the upper Schuylkill and Susquehanna Rivers to Lake Erie. The deed, however, ultimately went unexecuted by William Penn.⁷² It was eventually under the guise of the free trade that had been opened by the Treaty of Utrecht that Pennsylvanians and Virginians began making more regular incursions into trans-Appalachian lands. By the 1720s, the Pennsylvania merchant James Logan was dominating the Susquehanna trade by financing shipments of liquor and cloth on credit to frontier traders who bartered with Indigenous groups for what the French called *menues pelleteries* (deerskins and lower quality furs trapped in more temperate climates), acquiring a network of debtors and a position of influence in the colony's Indigenous relations. Following Logan, George Croghan became Pennsylvania's agent to the Ohio Indians in the early 1740s. From his frontier home at Logstown, Croghan

⁷⁰ Richard R. Beeman, *The Varieties of Political Experience in Eighteenth-Century America* (Philadelphia: University of Pennsylvania Press, 2004), 158, 165.

⁷¹ Jack P. Greene, *The Intellectual Construction of America: Exceptionalism and Identity from 1492 to 1800* (Chapel Hill: University of North Carolina Press, 1993), 112.

⁷² Albright G. Zimmerman, ed., "Daniel Coxe and the New Mediterranean Sea Company," *Pennsylvania Magazine of History and Biography* 76, no. 1 (January 1952): 86–96.

enlarged Pennsylvanians' trading circuit deep into the Ohio country, reaching as far as Pickawillany on the Miami River. Pennsylvania traders took advantage of interruptions in the French supply of goods into the interior during the War of the Austrian Succession (1740–48), and for a time, the Ohio Indians were decidedly in favour of trade with British Americans.⁷³

Virginians' interest in the Ohio country was on the rise by the late 1740s as well. In November of 1747, Lieutenant Governor of Virginia William Gooch petitioned the Board of Trade on behalf of the members of the recently-organized Ohio Company of Virginia for a grant of half a million acres of land in the Ohio Valley. Gooch recognized that since the lands in question “lie upon some of the chief branches of the Mississippi,” “such grant might possibly give some umbrage to the French.” The Board nevertheless approved the grant with the rationale that “all due encouragement ought to be given to extending the British settlements beyond the Great Mountains [Appalachians].”⁷⁴ Two years later the Company built a fortified storehouse near the northern reaches of the Potomac, and in 1750, Marylander Christopher Gist was hired to make a survey of a vast swath of territory stretching west to the Falls of the Ohio. Gist was instructed to “find a large quantity of good level land” that he thought would best suit the Company's grant, though he made sure “to set my compass privately ... for I understood it was dangerous to let a compass be seen among these Indians.”⁷⁵ On the tail end of his two-year expedition, Gist negotiated with the Mingo leader Tanaghrisson for the construction of a

⁷³ Eric Hinderaker, *Elusive Empires: Constructing Colonialism in the Ohio Valley, 1673–1800* (Cambridge: Cambridge University Press, 1997), 22–25, 40–42, 135.

⁷⁴ Norman Ward Caldwell, *The French in the Mississippi Valley, 1740–1750* (1941; repr., Philadelphia: Porcupine Press, 1974), 96n44.

⁷⁵ Lois Mulkearn, ed., *George Mercer Papers Relating to the Ohio Company of Virginia* (Pittsburgh: University of Pittsburgh Press, 1954), 7, 9.

second storehouse at the confluence of the Allegheny and Monongahela Rivers near the headwaters of the Ohio.⁷⁶

The governor general of New France, the Comte de la Galissonnière, responded to British American incursions into the Ohio Valley with a show of force. In the summer of 1749, Galissonnière sent a military detachment under the command of Pierre-Joseph Céloron de Blainville on a tour of the area, during which time he and his party buried a series of lead plates at various sites “as a monument,” their inscriptions read, “to the renewal of the possession that we have taken of the said Ohio River and of all those that fall into it, and of all the lands on both coasts as far as the sources of the said rivers.” Céloron and his expedition were taunted by the region’s Indigenous inhabitants along the way, by which he concluded that such groups were “very badly disposed toward the French.”⁷⁷ Following Céloron’s expedition, the French continued an ongoing project of fort construction, pushing into the Ohio country with the erection of Forts Presque Isle and Le Boeuf in 1753, and Forts Machault and Dusquesne in 1754, thus militarizing the Venango Path, the portage between the Great Lakes and the Ohio–Mississippi watersheds that ran from Lake Erie to the Forks of the Ohio.⁷⁸ However, a French military alliance could not be forced upon the Ohio Indians, who were content to deal with British Americans in an independent capacity free from the influence of external forces.⁷⁹

With tensions mounting, Virginians obtained permission from Whitehall to use

⁷⁶ Fred Anderson, *Crucible of War: The Seven Years’ War and the Fate of Empire in British North America, 1754–1766* (New York: Vintage, 2001), 27–28.

⁷⁷ NYCD, 6:611; White, *Middle Ground*, 207–208.

⁷⁸ Eccles, *Canadian Frontier*, 160–163.

⁷⁹ Eric Hinderaker, “Declaring Independence: The Ohio Indians and the Seven Years’ War,” in *Cultures in Conflict: The Seven Years’ War in North America*, ed. Warren R. Hofstra (Lanham, MD: Rowman and Littlefield, 2007), 113.

force if necessary to repel French encroachments into the Ohio Valley.⁸⁰ Under this premise, Lieutenant Governor of Virginia Robert Dinwiddie sent the twenty-one-year-old George Washington into the Ohio country in the fall of 1753 for a parley with the French commandant at Fort Le Boeuf, Jacques Legardeur de Saint-Pierre. Dinwiddie tasked Washington with scouting out “the numbers and force of the French on the Ohio,” and carried a letter from the lieutenant governor requesting safe passage for himself and his party “agreeable to the law of nations.”⁸¹ After recruiting Tanaghrisson as his guide at Logstown, Washington met with Philippe-Thomas de Joncaire at Venango, who expressed that it was France’s “absolute design to take possession of the Ohio” by rights of La Salle’s exploration of the river in 1699. Upon arriving at Fort Le Boeuf in early December, Washington presented Dinwiddie’s letter to Saint-Pierre requesting the Canadians’ “peaceable departure” from “the lands upon the River Ohio,” which “are so notoriously known to be the property of the Crown of Great Britain.” Saint-Pierre’s answer was a curt dismissal of any obligation on his part as an officer of the French Crown to obey the summons of an English colonial official, to which he added a simple statement of fact that it was not within his purview to debate the merits of either crown’s claims to the territory in question.⁸² Washington departed but returned in the spring with a contingent of Virginia militia and clashed with a French scouting party at Great Meadows near the Youghiogeny River on May 28, 1754, during which encounter Tanaghrisson killed the French emissary the Sieur de Jumonville. Reinforced at Fort Duquesne by French regulars, Canadian militia, and Indigenous auxiliaries, the

⁸⁰ Anderson, *Crucible of War*, 34–38.

⁸¹ Commission, Instructions, and Passport from Robert Dinwiddie, October 30, 1753, Abbot et al., eds., *Washington Papers*, 1:60–62.

⁸² *The Journal of Major George Washington* (Williamsburg, 1754), 13–14, 25–27.

Sieur de Villiers attacked the Virginians' hastily-built Fort Necessity in early July, forcing Washington's surrender before allowing his force to retreat.⁸³

De Villiers' showing against Washington combined with a recent return to favourable trade and a new policy of active conciliation on the part of Governor General of New France the Marquis de la Jonqui re, significantly easing relations between Onontio and the Indian republics and opening the possibility of a provisional military alliance between the Ohio Indians and the French in what appeared to be a looming conflict.⁸⁴ When news of the skirmishing in the American backcountry reached London in September of 1754, the British moved to send infantry regiments to America, and Versailles prepared to shore up Canadian defences for the following spring.⁸⁵ What ensued was an undeclared state of war between France and Britain that in 1756 finally reignited tensions in Europe that had been held over from the War of the Austrian Succession.

In renewing war with France, Britain's aims in the Seven Years' War were multifold. War hawks in Parliament and the Ministry wanted to stifle France's economic recovery following the previous war and believed that a decisive victory over France would eliminate that nation as Britain's major competitor in global commerce. In North America, in particular, diverse colonial and imperial interests were temporarily united in their efforts to remove France from the North American interior, making the capture of Quebec and the conquest of Canada Britain's primary objective in the American theatre of the war.

⁸³ Ron Chernow, *Washington: A Life* (New York: Penguin, 2011), 41–43, 47–48; Anderson, *Crucible of War*, 5–7, 50–65.

⁸⁴ Eccles, *Canadian Frontier*, 165; White, *Middle Ground*, 209–211.

⁸⁵ Anderson, *Crucible of War*, 67–71.

While there had been many British and colonial attempts to take Quebec during the wars of the seventeenth and early eighteenth centuries, very few had managed to capture much less hold the colonial capital. With colonial and imperial interests united in “both heart and hand in subduing of Canada and reducing it to the obedience of the Crown of Great Britain,” it now seemed possible that France might be driven from the continent so that British Americans could become “masters of the best part of North America,” as one New Englander had previously envisioned.⁸⁶ Yet aside from early success against the French in Acadia, Britain initially struggled to conduct an effective inland campaign on the continent during the early part of the war. British Americans were still yet ill-suited to frontier-style warfare and were “more familiar with the axe and plow, than with the musket and canoe paddle.”⁸⁷ British and colonial forces were unable to penetrate into the lower St. Lawrence via the Lake Champlain corridor for most of the war, and it was not until Edward Boscawen and Jeffery Amherst captured Louisbourg in the summer of 1758 that British forces broke France’s control of the Gulf of St. Lawrence and were presented with the opportunity of finally striking at Quebec.

In late June of 1759, roughly four thousand British troops under the command of James Wolfe landed on Île d’Orléans in the St. Lawrence River and dug in for a three-month siege of Quebec. Unable to draw the French out of the heavily fortified citadel, a frustrated Wolfe gave to razing the surrounding countryside for weeks before planning a desperate attack that he hoped would entice the French into a pitched battle on the Plains of Abraham adjacent to the fortress. Early on the morning of September 13, Wolfe landed with a party of men at L’Anse-au-Foulon about a mile and a half above Quebec,

⁸⁶ *An Account of the French Settlements in America* (Boston, 1746), 4, 17.

⁸⁷ Eccles, *Canadian Frontier*, 173.

easily overrunning that location and making way for the bulk of British forces to ascend the heights upriver. By daybreak, the British force was assembled on the plains awaiting the reaction of the French commander the Marquis de Montcalm. With the British force facing Quebec's weaker west end, Montcalm was forced to take Wolfe's bait. In the ensuing set-piece battle, the disorganized force of French regulars, Canadian militia, and Indigenous auxiliaries stood little chance against the patience and composure of Wolfe's seasoned redcoats. In less than fifteen minutes, the British won the field and sent the French retreating into the citadel and across the St. Charles River in a battle that left both sides' commanding officers mortally wounded. The French finally surrendered Quebec to the British five days later on September 18.⁸⁸

The British capture of Quebec was significant in that the French were ultimately unable to regain the colonial capital. It would take another year for British forces to complete their conquest of Canada, and although Britons both at home and in the colonies would celebrate the reduction of Quebec as a major victory in their mutual struggle to defeat New France, the terms of the French surrender the following year, both as it related to British–Indigenous relations and to the eventual British governance of the province of Canada, would open a major gulf between British imperial and American colonial interests that would reshape the relationship between the colonies and the metropole for the next fifteen years. The transfer of the sovereignty of New France to the British Crown would also significantly alter the contours and composition of

⁸⁸ For the Battle of Quebec, see Anderson, *Crucible of War*, 344–368; Dan Snow, *Death or Victory: The Battle of Quebec and the Birth of the British Empire* (Toronto: Penguin, 2011); Eccles, *Essays*, 125 – 133; and Stephen Brumwell, “‘One more card to play’: Revisiting Wolfe's Final Stratagem at Quebec,” in *Revisiting 1759: The Conquest of Canada in Historical Perspective*, ed. Phillip Buckner and John G. Reid (Toronto: University of Toronto Press, 2012), 19–43.

Britain's imperial dominions by introducing into the empire a substantial population of former French subjects and their long-established connections with geopolitically important Indigenous populations spread across a vast interior country. The incorporation of both populations and the fusion of their legal and political customs into Britain's imperial constitution would have profound effects on British imperial governance lasting well beyond the eighteenth century.

The conflict between France and Britain in the Ohio country that escalated into the Seven Years' War in North America was a clash between two fundamentally divergent imperial systems. Whereas in the French system the metropole projected institutions of ascription predicated on allegiance, reciprocity, and social responsibility onto its peripheries, the English system was predominantly commercial and featured only formulaic, largely rhetorical ascriptions of loyalty that were increasingly ambiguous in relation to their distance from the imperial centre. While the French system of reciprocity and responsibility translated relatively effectively into Franco-Indigenous diplomacy, Anglo-American landed commerce was most effectively expanded by warfare against Indigenous peoples and other seemingly obstructionist groups, such as French subjects, against whom unconditional surrender functioned as a form of erasure. Although the British defeated France in the ensuing conflict, high-ranking British military and civilian officials were deeply attuned to ideas of allegiance, responsibility, and reciprocity that still functioned in the command structure of the British army and in ministers' relation to the king and court. British imperial officials were thus receptive to the transfer of such relations as conditions of the surrender of New France. American colonists, on the other hand, were not. The British American view of the metropolitan

inheritance of such obligations toward conquered French subjects and their Indigenous allies as backward inhibitors to economic development would inform much of the colonial opposition to the metropolitan initiatives of the postwar period and contribute significantly to the imperial rupture of the 1770s.

So, too, would British Americans and other imperial commercial interests reject the transfer of similar forms of reciprocity and responsibility in India, where the Crown's gradual inheritance of such obligations would draw criticism that British governance in India had taken on features of "Asiatic despotism" that were seeping into the British Atlantic world, threatening to corrupt both the home government and its administration of the colonies. In order to establish the forms and features of imperial governance in India that the British came to inherit and to set the stage for the domestic and transatlantic debates surrounding Britain's acquisition of sovereignty in Bengal, the following chapter turns to India to examine the origins and imperial structure of the Mughal empire, the interplay between Indian and European imperial systems in terms of inter-European relations in the Indian Ocean world, Indian dynastic and regional politics, and the convergence of European and Indian interests in wars of the mid-eighteenth century and onwards by which Britain acquired features of regional and imperial sovereignty in India.

The Mughal Empire and the British East India Company in South Asia to 1763

In 1826, the East India Company official and historian John Malcolm reflected on Britain's rise to dominance in India: "That a small island in the Atlantic should have conquered and held the vast continent of India as a subject province" was truly remarkable. Even more astonishing was

that this great conquest was made, not by the collective force of the nation, but by a company of merchants, who, originally vested with a charter of exclusive commerce, and with the privilege and right to protect their property by arms, were in a few years ... hurried into the possession of royal power; and actually found themselves called upon to act in the character of sovereigns over extended kingdoms before they had ceased to be the mercantile directors of petty factories.¹

Malcolm was right to comment on the apparent happenstance of Company expansion in India. The Company's rise from its seventeenth-century origins as a newly organized and untested commercial venture struggling to make inroads into a vast empire of unimaginable wealth to the commercial and administrative behemoth that reached across the Indian Ocean and controlled much of the subcontinent by the time of Malcolm's writing was extraordinary. While it may have seemed to nineteenth-century observers as though Britain had conquered India "in a fit of absence of mind," to borrow J. R. Seeley's phrase,² modern scholarship has since demonstrated how the reality of the Company's need to defend its commerce and the diplomatic expectations that the Company actively demonstrate its military ability engendered a cyclical process whereby military and diplomatic expansion yielded growing land revenues that required

¹ John Malcolm, *The Political History of India, from 1784 to 1823*, 2 vols. (London, 1826), 1:1–2.

² J. R. Seeley, *The Expansion of England: Two Courses of Lectures* (London, 1883), 8.

additional military and diplomatic protection and financed increasing militarization, thus resulting in further expansion.³

A significant motivating factor driving this process of Company militarization and expansion from its earliest years was commercial competition with other European interests. The Portuguese, as the first Europeans to access the maritime commerce of the Indian Ocean world, had an early advantage over their European counterparts in directing and regulating the region's trade through a system of naval force and military coercion. The edifice of the Portuguese Estado da Índia initially proved a difficult challenge for the Dutch and English East India companies to overcome. Both England and the Netherlands, however, had well-developed domestic capital markets and corporate financing structures that were able to outcompete Portuguese state funding over the long run. During the early decades of the seventeenth century, the Dutch and English were mostly concerned with competing for market share in the spice trade of maritime Southeast Asia. Competition with the Dutch East India Company (Vereenigde Oostindische Compagnie, or VOC) in Southeast Asia divided the attentions of the English East India Company (EIC) as it struggled to position itself in the Indian Ocean world. Having commissioned a series of diplomatic missions to the mainland of the Indian subcontinent during the late 1600s and through the 1610s, and seeking to increase its purchasing power via the country trade existing between Indian Ocean ports, the EIC's defeat of the Portuguese at Hormuz in 1622 intensified its attentions in western India and the Arabian Sea, a process which drew resources away from Southeast Asia

³ I. Bruce Watson, "Fortifications and the 'Idea' of Force in Early English East India Company Relations with India," *Past and Present*, no. 88 (August 1980): 70–87; P. J. Marshall, "British Expansion in India in the Eighteenth Century: A Historical Revision," *History* 60, no. 198 (1975): 28–43.

and opened the Company up to Dutch attack at Amboyna in 1623, effectively pushing the English out of the Spice Islands.

The EIC's cultivation of a domestic English market for South Asian textiles further spurred the increase in Company trading factories in India through the seventeenth and into the eighteenth centuries. As the Company established itself more firmly in India, it encountered a relative openness compared to other regions in Asia during the same period. Unlike the unified shogunate of Tokugawa Japan and the highly centralized empire of the late Ming and early Qing dynasties of China, India was a region of a great diversity of peoples, cultures, languages, polities, and religions, where foreigners were welcome and able to travel freely inland.

This diversity was reflected in the organizing principles of the Mughal empire of the sixteenth and seventeenth centuries. The early Mughal state had expanded southeast from Kabul in modern-day Afghanistan to superimpose itself over the Delhi sultanate of northern India in 1526, before expanding significantly through the seventeenth century to encompass much of the Indian subcontinent by 1707. The policy of the early Mughals was to incorporate conquered kingdoms and sultanates into the empire wholesale as new provinces. Conquered royalty often retained their internal sovereignty and were regularly integrated into the Mughal nobility, becoming some of the empire's highest ranking administrative and military officials. During the reign of the emperor Akbar (r. 1556–1605), this process of incorporating a patchwork of composite constituent polities had transformed the rather precarious Mughal kingdom into an empire capable of rapid territorial expansion. Over time, however, this same process resulted in significant imperial decentralization, as the proliferation of provincial governments of ever greater distance from the imperial capital required a localization of administrative function that

eventually allowed for imperial officials to establish themselves as semi-autonomous regional rulers.

Nineteenth-century British imperial actors and early twentieth-century historians of India viewed the waning of the power of the person of the emperor and the Mughal court during the early eighteenth century as indicating a period of imperial fragmentation, societal and political decline, and even anarchy. More recent historiography, however, has emphasized the decades following the death of the emperor Aurangzeb in 1707 as ones of regional social, political, and economic dynamism, whereby it was the very success of the Mughals' devolution of imperial authority that allowed for the rise of various social groups—Muslim and Hindu military and administrative officials, and Hindu and other non-Muslim merchants and bankers—into positions of political power. The EIC sought to expand its commercial reach into regional successor states through more aggressive diplomacy with rulers whose ties to the emperor had loosened. Indeed, it was the economic buoyancy of regional markets that such devolution had engendered that attracted the Company to such locales in the first place.⁴

Competition with the French East India Company (Compagnie des Indes Orientales) also pulled the EIC deeper into regional politics. As a late arrival to Indian commerce and diplomacy, the financially disadvantaged French Company attempted to counter British influence via alliances with challengers to regional thrones, further drawing the EIC into provincial politics, as a series of regional dynastic wars became the Indian theatres of the Anglo-French wars of the early eighteenth century. Britain's

⁴ Sugata Bose and Ayesha Jalal, *Modern South Asia: History, Culture, Political Economy*, 2nd ed. (New York: Routledge, 2005), ch. 5; Barbara D. Metcalf and Thomas R. Metcalf, *A Concise History of Modern India*, 3rd ed. (Cambridge: Cambridge University Press, 2012), ch. 2.

victory in the Carnatic region of southeastern India in 1761 both reduced the French Company to its prewar trading factories and established the precedent of the British installing client rulers on regional thrones. After its victory in the Carnatic, the EIC redeployed its growing army of Indian mercenaries to Bengal, where strained diplomacy over the Company's efforts to expand its trading privileges had pulled British officials into a coup to remove the *nawab* in 1757, resulting in the installation of a British client as *nawab* and the emergence of the EIC as a major military and diplomatic force in northeastern India.

I

Britain's establishment of a landed empire in India in the eighteenth century was the long-term product of England's entry into the trading world of the Indian Ocean in the early decades of the seventeenth century. By the time the Portuguese navigator Bartolomeu Dias rounded the Cape of Good Hope in 1488, the Indian Ocean had for roughly a millennium been an arena of trade networks stretching from East Africa and the Red Sea in the west to Southeast Asia and the South China Sea in the east.⁵ The Portuguese became the first Europeans to reach the Indian subcontinent via the Cape route when Vasco da Gama anchored off Calicut on India's western coast on May 20, 1498. Although da Gama had insisted to the *zamorin* of Calicut that he was an ambassador to his court rather than a merchant, da Gama and his crew arrived with samples of Portuguese merchandise that failed to impress the *zamorin* and sold for low prices at the local market. Da Gama departed for Portugal in late August bearing a letter from the *zamorin* to King Manuel I (r. 1495–1521) informing him of Calicut's wealth in

⁵ Om Prakash, *European Commercial Enterprise in Pre-Colonial India* (Cambridge: Cambridge University Press, 1998), 8.

“cinnamon, cloves, ginger, pepper, and precious stones,” in exchange for which he desired “gold, silver, coral, and scarlet cloth.”⁶ Through the early sixteenth century, the Portuguese emerged as major commercial players in the Indian Ocean world, establishing trading factories on India’s Malabar Coast, where they mostly traded West African gold for pepper and other spices, and on Sri Lanka, where they acquired cinnamon. By the 1530s, additional Portuguese trading factories were established in Gujarat and at Hugli in Bengal.⁷

Portuguese commercial activity in India was highly centralized and relied to a considerable degree upon force to establish and maintain itself. Indeed, most Portuguese factories were at coastal sites that had been seized by naval force and were fortified before being developed into commercial centres. With its organizational infrastructure provided by the Portuguese crown, the Estado da Índia was administered by a viceroy at Goa who held considerable military and diplomatic authority that was closely tied to Portuguese objectives of monopolizing the shipment of spices to Europe and regulating Indian Ocean commerce by naval force. All commercial vessels plying the Indian Ocean were required to obtain a *cartaz*, or passport, from Portuguese authorities certifying a ship’s crew, merchandise, and munitions and ensuring that protection costs were paid before sailing. *Cartaz* payments made up a significant portion of Portuguese revenues, and any ship caught sailing without a *cartaz* was liable to seizure and its crew subject to execution or enslavement.⁸ While scholars debate the degree to which the Portuguese

⁶ Glenn J. Ames, trans. and ed., *Em nome de Deus: The Journal of the First Voyage of Vasco da Gama, 1497–1499* (Leiden: Brill, 2009), 94.

⁷ Prakash, *European Commercial Enterprise*, 27, 30; M. N. Pearson, *The Portuguese in India* (Cambridge: Cambridge University Press, 1990), 31.

⁸ A. R. Disney, *A History of Portugal and the Portuguese Empire: From Beginnings to 1807*, vol. 2, *The Portuguese Empire* (Cambridge: Cambridge University Press, 2009), chs. 19–21;

successfully monopolized the spice trade beyond simply providing an alternative route to commerce that had traditionally moved overland to Europe, the opening of the Cape route lessened the mental and monetary distance between European consumers and Asian spice merchants by circumventing the complex network of middle merchants across Eurasia and driving prices down.⁹ Although Portugal's share of the European pepper market hovered around seventy-five percent for most of the sixteenth century, the want of a domestic market in liquid capital and the high costs of policing Indian Ocean commerce and maintaining its monopoly made the Estado da Índia highly vulnerable to competition.¹⁰ Such competition came from the East India trading companies established in England and the Netherlands in 1600 and 1602, respectively.

English merchants had been active in the Eastern Mediterranean spice trade as early as the 1570s, and in 1581, Elizabeth I chartered the Levant Company, giving it exclusive English trading rights in the region. Headquartered at Aleppo, the Levant Company acquired Indian commodities, including, pepper, spices, silk, and cottons, from merchants working the overland routes to the Red Sea and the Persian Gulf. Knowing that such merchandise could be bought at cheaper rates at their source, however, overland contact with Persia and India was made by Ralph Fitch in the 1580s, before an English naval expedition was organized to explore the Cape route in 1591. That expedition, led by James Lancaster, reached India in May of 1592 and continued onto the Malay Peninsula in June, pillaging numerous vessels along the way and finally

Prakash, *European Commercial Enterprise*, 23–27; Pearson, *Portuguese in India*, 30–31, 37–38. See also Malyn Newitt, *A History of Portuguese Overseas Expansion, 1400–1668* (London: Routledge 2005).

⁹ Kevin H. O'Rourke and Jeffrey G. Williamson, "Did Vasco da Gama Matter for European Markets?" *Economic History Review*, 2nd ser., 62, no. 3 (August 2009): 677–678.

¹⁰ Prakash, *European Commercial Enterprise*, 28–29, 48; Pearson, *Portuguese in India*, 43.

returning to England in May of 1597.¹¹ Before Lancaster returned, the Dutch sent an expedition in 1595–97, and a second English voyage was undertaken in 1596. A series of fleets also left the Netherlands in 1598. The Dutch voyages were particularly successful. In 1599, eight Dutch ships reached the Spice Islands of Southeast Asia and returned to the Netherlands with cargo that sold at a four hundred percent profit.¹²

Early English and Dutch commercial practice had been to raise capital for each individual voyage and then liquidate a voyage's stock upon a fleet's return. Investment in any one expedition was managerially challenging and high risk due to the large vessels, crews, and cargoes needed for the voyages and the hazards of shipwreck and piracy. To offset risks and administrative costs, therefore, English financiers began to pool capital into semi-permanent joint-stock ventures, which allowed for multi-year and multi-voyage investments that diffused risk and provided more stable returns to investors from the cumulative profits of a series of voyages.¹³ English and Dutch merchants also determined that natural market fluctuations could be mitigated by controlling supply, and so domestic monopolies on each nation's trade to the East Indies were established to further stabilize returns to shareholders. On December 31, 1600, a group of English investors with a joint stock of over £68,000 received a charter from Elizabeth I granting them exclusive privileges to all English trade east of the Cape of

¹¹ P. J. Marshall, "The English in Asia to 1700," *OHBE*, 1:267; Jonathan Eacott, *Selling Empire: India in the Making of Britain and America, 1600–1830* (Chapel Hill: University of North Carolina Press, 2016), 17–18; Arnold Wright, *Early English Adventurers in the East* (London: Andrew Melrose, 1917), 24–28.

¹² M. C. Ricklefs, *A History of Modern Indonesia since c. 1200*, 4th ed. (Stanford: Stanford University Press, 2008), 29.

¹³ Jan de Vries and Ad van der Woude, *The First Modern Economy: Success, Failure, and Perseverance of the Dutch Economy, 1500–1815* (Cambridge: Cambridge University Press, 1997), 385; Michael J. Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge: Cambridge University Press, 2004), 398–399.

Good Hope, an example that was followed in the Netherlands with the establishment of the VOC two years later.

Much of the capital and early leadership of the EIC came from Levant Company merchants who identified the necessity of replicating Dutch voyages to the Spice Islands to maintain a national interest in the European pepper trade. “This trading to the Indies have clean overthrown our dealings to Aleppo,” one Levant Company merchant remarked upon learning of the success of the Dutch fleet of 1599.¹⁴ The establishment of the EIC, therefore, was primarily “an attempt to separate [England’s] spice trade from the main body of the Levant trade and to drive it by a new route.”¹⁵ The first expedition of EIC ships departed in 1601, landing at Aceh in northern Sumatra, where they traded for pepper, and then at Banten on the western end of Java, where they acquired more pepper and established a trading factory. A second English voyage set out for Banten in 1604 and traded for cloves on the islands of Tidore and Ternate.¹⁶

The fundamental challenge faced by English merchants on early ventures to the East, however, was that there was virtually no demand in tropical Southeast Asia for the sorts of heavy cloths and woollens that were England’s chief exports. This lack marketable goods to trade in Southeast Asia significantly limited English merchants’ capacity to acquire spices, and they were instead forced to purchase their cargoes with bullion, mostly silver. Bullion made up seventy percent of the total export value of the Company’s first voyage, and in its first twenty-three years, it exported more than £750,000 worth of bullion, more than twice the £350,000 worth of goods it shipped east.

¹⁴ William Foster, ed., *The Travels of John Sanderson in the Levant, 1584–1602* (Farnham, UK: Ashgate, 2010), 190.

¹⁵ K. N. Chaudhuri, *The English East India Company: The Study of an Early Joint-Stock Company, 1600–1640* (New York: Augustus M. Kelley, 1965), 11–12.

¹⁶ Wright, *Early English Adventurers*, 39–52, 66–67.

The Company's reliance on bullion as its chief source of purchasing power drew heavy criticism from contemporaries who argued that the export of precious metals was a drain on the English domestic economy. As a partial solution, Company ships began stopping at ports in the Red Sea and on the Indian coastline to buy lighter textiles, which fetched higher prices farther east. Not only did this "carrying" or "country trade" between Asian ports allow Company merchants to maximize their capital, but it also proved to be a significant source of profit in and of itself and served to diversify Company imports to England, which were previously "dangerously dependent on pepper and spices."¹⁷ In an effort to tap into this inter-Asian trade, the Company began to invest in permanent trading factories on the Indian subcontinent, becoming drawn into Mughal imperial and Indian dynastic politics in the process.

II

English ships first sailed directly for the Indian subcontinent on the Company's third voyage. In August of 1608, the *Hector*, captained by William Hawkins, anchored at Surat in the province of Gujarat on India's west coast. Hawkins carried a letter from King James I to the "Great Mogul," the emperor Jahangir (r. 1605–1627), requesting permission for the Company to trade at Mughal ports. After navigating local customs officers and surviving intrigues by the Portuguese, Hawkins arrived at the Mughal capital at Agra in April of 1609. Hawkins marvelled at the breadth and splendour of the Mughal emperor's dominions, noting that the length of "his country is two years' travel with caravan." He recorded in detail the emperor's wealth in gold, silver, and jewels: "this king is thought to be the greatest emperor of the East, for wealth, land, and force of

¹⁷ Chaudhuri, *English East India Company*, 13, 111–112; Marshall, "English in Asia," 269.

men.”¹⁸ Yet for all of its outward glory at the time of Hawkins’ arrival, the Mughal dynasty had risen from rather modest origins only three generations before.

The Mughal dynasty was founded in 1526 by Zahir-ud-din Muhammad, known to posterity as Babur (r. 1526–1530). A descendent of the Turco-Mongol conqueror Timur on his father’s side and of Genghis Khan on his mother’s side, Babur had inherited his father’s kingdom in the Fergana Valley in Central Asia in 1494 at the age of eleven. After a series of failed attempts at occupying the regional capital at Samarkand, Babur was pushed out of the area by a proliferation of warring Timurid lineages. After two decades of roaming through war-torn Turkestan, Babur resolved to look eastward beyond the Hindu Kush Mountains to northern India as a viable country in which to establish a new kingdom. From his seat at Kabul, Babur launched an attack on the Afghan Lodi dynasty that then ruled the Delhi sultanate. Babur captured Lahore in 1520, defeated Ibrahim Lodi at Panipat in April of 1526, occupied Delhi, and finally seized the throne at Agra.¹⁹ Babur was immediately struck by the agricultural and commercial productivity of northern India. “Hindustan is a vast and populous kingdom and a productive realm,” Babur later wrote in his memoirs. “It is a large country with lots of gold and money.” While Babur’s conquest of northern India realized his ambitions of establishing his own kingdom, he quickly found himself homesick and a foreigner in an alien country. “The cities and provinces of Hindustan are all unpleasant,” Babur wrote. The cities, he found, all looked more or less alike, with poor infrastructure and few pleasantries. “Hindustan is a place of little charm,” Babur ultimately concluded.

¹⁸ Clements R. Markham, ed., *The Hawkins’ Voyages during the Reigns of Henry VIII, Queen Elizabeth, and James I* (Farnham, UK: Ashgate, 2010), 420–423, 426.

¹⁹ Stephen F. Dale, *The Muslim Empires of the Ottomans, Safavids, and Mughals* (Cambridge: Cambridge University Press, 2010), 71–72.

“There is no beauty in its people, no graceful social intercourse, no poetic talent or understanding, no etiquette, nobility, or manliness.”²⁰

Babur had no plans to rule Hindustan from Agra and he fully intended to remove himself to Kabul once he consolidated his conquest. Babur’s designated his Afghan dominions as *khalisa*, or crown lands, whose administration and revenue were under the immediate supervision of himself and his sons.²¹ Babur died in 1530 before he could expand his Indian kingdom into Bihar in the east or beyond Gwalior in the south, and his son and successor Humayun (r. 1530–1540) struggled to maintain his father’s conquests against a Lodi insurgency that drove him from India in 1540. It took Humayun thirteen years to reclaim Kabul and another two to capture Delhi before his own death in 1556. Humayun’s successor, his younger son Akbar, ascended to the throne at the age of fourteen. During the regency of the military commander Bairam Khan, Mughal forces defeated the Sur in the Punjab, took Ajmer in Rajputana, and annexed Jaunpur to the east of Agra. Upon his maturation to the throne in 1660, Akbar launched a campaign against the kingdom of Malwa in west-central India, seized the last remaining Lodi bastion at Chunar in the east, and defeated the ancient kingdom of Gondwana in central India, all in addition to suppressing a series of internal rebellions.²²

One commonality among the early Mughals was the challenge of subduing local populations and neutralizing polities of such density, diversity, and historical continuity as they encountered in India. Even as Mughal expansion pushed eastwards, there remained behind an internal frontier of pockets of insurgency and areas of remoteness

²⁰ Wheeler M. Thackston, trans. and ed., *The Baburnama: Memoirs of Babur, Prince and Emperor* (New York: Modern Library, 2002), 330, 334–335, 352–353.

²¹ Dale, *Muslim Empires*, 73–76.

²² John F. Richards, *The Mughal Empire* (1993; repr., Cambridge: Cambridge University Press, 2001), 13–19.

within which Mughal rule was unable to penetrate. Babur wrote of the “innumerable peoples, tribes, districts, and provinces” of the Himalayan foothills for which “no one can give any real information,” and of forest-dwelling peoples who “hole up and obstinately refuse to pay tribute.”²³ Akbar also struggled to integrate his increasingly distant and disparate conquests into the realm. He continued Babur’s practice of *mulkgirliq*, or “kingdom seizing,” whereby local and regional kings were eliminated by force of arms and their dominions were absorbed by the Mughals with their boundaries and internal divisions unaltered. Mughal officials were then given estates in conquered countries and sent out as imperial governors and administrators. There was little guarantee that these officials would rule justly or even maintain fealty to the Mughal court, as the revolts of the governors of Malwa, Awadh, and Kabul in the 1560s demonstrated.²⁴ A partial solution presented itself when Rajput kings began negotiating entry into the Mughal nobility by offering their daughters for marriage to the emperor. Such political and dynastic manoeuvring saved many kingdoms from military destruction, ensured the continuity of internal Rajput sovereignty, and provided prominent Hindu families with access to the imperial court. For Akbar’s part, these dynastic intermarriages secured his sovereignty in Rajputana over a potentially hostile non-Muslim population, freed him from having to provide an administrative apparatus down to the most local levels of Rajput society, and provided a check against the excesses of provinces’ Mughal-appointed governors.²⁵

²³ Thackston, trans. and ed., *Baburnama*, 333, 335. Babur’s mention of hill- and forest-dwelling peoples is here interpreted as referring to *Adivasi*, the modern term applied to the indigenous tribes of the Indian subcontinent of pre-Indo-Aryan and pre-Dravidian origins.

²⁴ Dale, *Muslim Empires*, 73; Richards, *Mughal Empire*, 17–19.

²⁵ Richards, *Mughal Empire*, 19–24; Dale, *Muslim Empires*, 98–100; Metcalf and Metcalf, *Concise History*, 17.

In 1571, in a move meant to inaugurate a new era of Mughal stability, Akbar moved his capital twenty-six miles east from Agra to Fatehpur Sikri, an ideal location from which to launch a campaign of expansion into Gujarat on the Arabian Sea. Although the Mughals were to remain a terrestrial power, there was wealth to be gained from the customs revenues of the region's ports, and the conquest of Gujarat would prove significant in connecting the Mughals to the European commercial empires of the Indian Ocean world through the ports of Dui, Daman, Surat, and Bombay. After taking Gujarat in 1572–73, Akbar turned to extend his empire from sea to sea by conquering Bihar and Bengal in the east. Ruled by a series of Turkic and Afghan royal houses since its breakaway from Delhi in the fourteenth century, Bengal was governed by the Pashtun Karrani dynasty at the time of Akbar's invasions in the 1570s. After years of battle, Duad Khan Karrani was finally defeated by the Mughal general Khan Jahan I at Rajmahal in July of 1576, although a succession of Mughal governors struggled to pacify the region before Raja Man Singh I finally established a regular system of Mughal administration in the province in the 1590s.²⁶

Akbar learned much from the challenges of incorporating new conquests into his empire, most particularly, the importance of bringing local elites into imperial structures of governance and the significant benefits of the toleration of local social, political, and religious customs. The Mughals expected the British to honour such practices when the EIC became *diwan* of Bengal two centuries later. Because Babur and his successors had been pushed out their family's ancestral kingdom in Central Asia, the Mughals' persistence as a Turco-Mongol dynasty depended upon seizing the established kingdoms of others. That the Mughals' best prospect for conquest was across the Gangetic plain of

²⁶ Richards, *Mughal Empire*, 32–34.

northern India, a region that had long been organized into an integrated polity capable of withstanding multiple generations of dynastic upheaval, provided the Mughals with a solid foundation upon which to establish an extended empire in India that would later capture the interests of European political observers. The early Mughal practice of *mulkgirliq*, along with Akbar's strategy of integrating non-Muslim elite into the Mughal nobility, became defining features of Mughal imperial expansion. By absorbing existing polities into the Mughal state as sub-imperial units, Akbar created an integrated empire made up of many diverse components and capable of extensive expansion, a system that he would continue to refine during the imperial reforms of the later years of his reign.

III

When Babur invaded northern India in 1526, the region was organized into a polity known as the Delhi sultanate, which had been in more or less continual existence for over three centuries. Founded by the Turkic Mamluks in 1206, the Delhi sultanate was ruled by a succession of Turkic and Afghan dynasties and stretched at various times from Peshwar in the northwest, to Bengal in the east, and even south into the Deccan plateau under the Khaljis and Tughlaqs between the late thirteenth and early fifteenth centuries. The early dynasties of the Delhi sultanate were "aggressively Muslim," acknowledging the Abbasid *caliph* as the leader of the Muslim world and drawing on Persian models of kingship. As time drew on, however, the sultans of Delhi began to forge a new identity, which although still Muslim, incorporated many features Hindu cultural and political traditions and embraced Indic languages to become distinctly Indian. While each dynasty "made concerted efforts to centralize state power," Ira M. Lapidus writes, "none ... achieved absolute political control," and each remained

“merely senior in a political society composed of numerous local Muslim and Hindu lords.”²⁷

The predominantly non-Muslim subjects of the Delhi sultanate were designated as *zimmi*, or protected peoples, and were left to their own internal laws and political customs.²⁸ According to Islamic jurisprudence, *zimmi* were subject to *jizya*, a tax levied on non-Muslims as payment in return for military protection and civil governance. Some rulers took the legal theory behind the *jizya* more seriously than others, and it was neither consistently collected by all dynasties nor uniformly applied across all regions—at various times it took the form of a poll tax, a land tax, or a loosely-defined collective tribute.²⁹ In matters of private law, civil suits were generally adjudicated according to the law of the interested parties’ faith or ethnicity, deferring to that of the defendant in cases between individuals of different legal traditions. Public law, by contrast, specifically criminal and tax law, adhered to the legal code of the ruling Muslim dynasty. The legal tradition of the Delhi sultanate was generally the flexible Hanafi School of the sultans’ Turkic and Afghan homelands, although administrative law and tax codes were regularly developed by each dynasty independently of any standardized tradition.³⁰ The Delhi sultanate had been reduced significantly in size over a century and a half, and it was the fractured remains of the sultanate and its successor kingdoms that

²⁷ Ira M. Lapidus, *A History of Islamic Societies*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 356–358.

²⁸ Metcalf and Metcalf, *Concise History*, 6.

²⁹ Blain Auer, “Regulating Diversity within the Empire: The Legal Concept of *Zimmi* and the Collection of *Jizya* under the Sultans of Delhi, 1200–1400,” in *Law Addressing Diversity: Pre-Modern Europe and India in Comparison, 13th–18th Centuries*, ed. Thomas Ertl and Gijs Kruijtzer (Berlin: De Gruyter Oldenbourg, 2017), 48. For a definition of the *jizya* in a Quranic context, see M. A. S. Abdel Haleem, trans., *The Qur’an* (2005; repr., Oxford: Oxford University Press, 2016), 118, note e.

³⁰ Metcalf and Metcalf, *Concise History*, 6.

were seized by the Mughals in the sixteenth century and served as a blueprint for a composite empire in the centuries that followed.

The Mughals continued, and in many ways expanded upon, the Delhi sultanate's policies of religious toleration and cultural pluralism. Akbar abolished the *jizya* in 1564 and incorporated local Indian Muslim and non-Muslim elites into the Mughal nobility on a scale that was unprecedented by any prior Indian dynasty, with Hindus making up nearly a quarter of his aristocracy.³¹ Akbar also inaugurated the *subah*, or province, system of dividing his empire into regional administrative units. The first *subahs* were the original northern Indian districts of the Delhi sultanate, but as the empire expanded, many ceded and conquered territories that had been sultanates or kingdoms in their own right were integrated wholesale as new Mughal *subahs*. Each *subah* was administered by a *subadar*, or governor, who was usually a high-ranking noble from the imperial court.³² Akbar awarded noble rank, or *mansab*, according to a decimal system that represented the number of cavalry each noble could theoretically supply to the imperial army if needed. *Mansabdars* of various ranks were sent out as imperial officials and were frequently rotated to avoid their becoming locally entrenched. Less wealthy *mansabdars* who were capable civil administrators were often granted *jagirs*, or non-hereditary land grants from which they could derive cash income to sustain their *mansabdari* status. Local kings within a *subah* were regularly brought into the nobility by being granted a *mansab* and being allowed to retain internal sovereignty within their kingdoms, which were designated as *watan*, or homeland, *jagirs*, in return for which they pledged military

³¹ Ibid., 18; Bose and Jalal, *Modern South Asia*, 30; Lapidus, *History of Islamic Societies*, 369.

³² U. N. Day, *The Mughal Government, A.D. 1556–1707* (New Delhi: Munshiram Manoharlal, 1970), 67–75.

allegiance to the emperor.³³

In addition to imperial expansion and aristocratic reform, Akbar's reign was also marked by a strengthening of royal authority. Expansion necessitated a bureaucratization of the empire and a transition from government exclusively by the royal household in the old Turkic fashion to imperial administration by an increasingly Indian nobility. The person of the emperor remained the ultimate source of political authority and was in theory the absolute sovereign power throughout the entirety of his dominions. To strengthen the fiction of the absolute sovereignty of the emperor at the same time as the empire expanded and imperial administration was decentralized, Akbar emphasised ties of personal allegiance and the connection of imperial office to the royal household. Although reduced in his capacity for direct governance, Akbar personally granted offices of state by symbolically absorbing imperial officeholders into the royal household. By such means were nobility appointed to govern "areas beyond the [immediate] patriarchal dominion" of the emperor according to their outward displays of loyalty and their ability to serve the imperial family into which they had been incorporated.³⁴ Akbar combined Turko-Mongol theories of kingship with more cosmopolitan elements of Persian monarchical tradition and local Indian practices to forge an imperial style that reflected an ongoing process of Indo-Islamic cultural synthesis. Since Babur, the Mughals had styled themselves as *padshahs*, or "great kings." The breadth of Akbar's conquests and his incorporation of so many *rajās*, *amirs*, and various other regional kings and local rulers into the Mughal nobility allowed his

³³ Bose and Jalal, *Modern South Asia*, 30; Metcalf and Metcalf, *Concise History*, 20; Dale, *Muslim Empires*, 100; Day, *Mughal Government*, 91–96.

³⁴ Stephen P. Blake, "The Patrimonial-Bureaucratic Empire of the Mughals," *Journal of Asian Studies* 39, no. 1 (November 1979): 77–94.

successors to augment their status as *padshah* by claiming the exalted Persian title of *shahenshah*, or “king of kings.”³⁵

Akbar’s son and successor Jahangir, whose regnal name meant “World Conqueror,” was the first Mughal emperor able to enjoy the fruits of imperial expansion and rest relatively secure in his status as *shahenshah*. Militarily, Jahangir’s reign was marked by the consolidation of conquests in Mewar and the Punjab, by campaigns on the northeastern frontier in Assam, and by the continuation of southward expansion into the Deccan that was begun during the twilight of Akbar’s reign. Jahangir was less personally involved in military affairs than his predecessors had been, preferring instead to direct his energies inward toward courtly life at Agra, where he concentrated on the enrichment of imperial culture and patronage of the arts and sciences to the extent that one historian has described the Mughal empire under Jahangir was nothing short of a “culture state.”³⁶

IV

It was at the court of Jahangir that the Englishman William Hawkins arrived in 1609. Although customs officials at Surat had seized the Company’s presents for the emperor, leaving Hawkins to appear at court with nothing but the “slight present” of cloth, which was “not esteemed by the emperor,” Jahangir nevertheless took a liking to Hawkins.³⁷ Hawkins’ knowledge of Turkish impressed Jahangir, as the Mughals’ ancestral Chagatai

³⁵ Ram Prasad Tripathi, “The Turko-Mongol Theory of Kingship,” in *The Mughal State, 1526–1750*, ed. Muzaffar Alam and Sanjay Subrahmanyam (New Delhi: Oxford University Press, 2002), 115–125; Day, *Mughal Government*, 6–7; Metcalf and Metcalf, *Concise History*, 29.

³⁶ Richards, *Mughal Empire*, 94–106; Bamber Gascoigne, *The Great Moghuls* (1971; repr., London: Constable, 1998), 125–126; Beni Prasad, *History of Jahangir* (Allahabad: Deccan Press, 1940), 79.

³⁷ Markham, ed., *Hawkins’ Voyages*, 399–400.

Turkish remained the private language of the royal family amidst a court which otherwise functioned in Persian.³⁸ Hawkins' ability to converse colloquially with the emperor gave him near-instant preferment, and Jahangir invited Hawkins to a private audience upon their first meeting. The two spoke for some time and Jahangir set Hawkins up with lodgings and a liaison to the court, requesting that they be in daily conference. For weeks Hawkins was present at court every day, often sitting in on Jahangir's mid-afternoon public audiences and regularly attending his evening courts, which began around dinnertime as official meetings of state and became less formal councils as the night wore on. Jahangir became so fond of Hawkins that he made him a *mansabdar* of 400 horse with a salary equivalent to £3,200, and gave him the title of "English Khan" and a Christian wife from the royal harem.³⁹ Jahangir's personal fondness for Hawkins could not alter the geopolitical reality of Portugal's dominance of Indian Ocean commerce, however, and Portuguese Jesuits at court colluded with a group of high-ranking nobles jealous of Hawkins' access to the emperor to block Jahangir's issuance of a license for English trade at Surat. Hawkins' enemies gouged him of his salary, forced him from his residence, and after nearly three years of friendship with the emperor, Hawkins found himself denied entry to the palace. He departed Agra in November of 1611 and died at sea sometime during the summer of 1613.⁴⁰

What Hawkins may or may not have known as he departed India was that his countryman Thomas Best had struck a decisive blow against a Portuguese fleet off the coast of Gujarat in October of 1612, forcing Jahangir to finally concede to an English

³⁸ Michael H. Fisher, "Diplomacy in India, 1526–1858," in *Britain's Oceanic Empire: Atlantic and Indian Ocean Worlds, c. 1550–1850*, ed. H. V. Bowen, Elizabeth Mancke, and John G. Reid (Cambridge: Cambridge University Press, 2012), 252.

³⁹ Markham, ed., *Hawkins' Voyage*, 400–404, 436–437; Gascoigne, *Great Moghuls*, 147.

⁴⁰ Wright, *Early English Adventurers*, 90.

factory at Surat in January of the following year. Jahangir's *firman*, or decree, to the EIC was limited in its scope, however, and there was a turnover of administrative personnel in Gujarat before the Company was able to take it up. It was only after drawn-out negotiations between Jahangir and the English diplomat Thomas Roe between 1615 and 1618 that a renewed *firman* from the emperor provided the Company with an opportunity to finally establish itself at Surat. Roe successfully negotiated for the security of English merchants and their property from harassment and seizure by Mughal officials, freedom of payment from Mughal customs duties, and cooperation with the *subadar* of Gujarat in the event of a Portuguese attack.⁴¹

Despite the diplomatic missions of Hawkins and Roe to the Mughal court in India, trade to maritime Southeast Asia for spices rather than to coastal India remained the Company's top priority through the 1620s. Since their earliest voyages at the turn of the seventeenth century, the Company had been in constant competition with the Dutch over market share in the spice trade. Early Dutch strategy had been to beat English ships to a particular island to buy up its entire spice supply or else cut a deal with the local ruler for exclusive trading rights. After a few years of regular contact, however, Southeast Asian merchants learned that they could command better prices by controlling supply and playing English and Dutch competition to their own advantage. Dutch naval strategy then shifted to restricting English access to the Spice Islands altogether. After failed negotiations between Westminster and The Hague in 1611 and further conflict in 1618–20, the Dutch agreed to split the pepper trade and give a further one third of the trade of the Spice Islands to the EIC if the English would contribute to the cost of mutual defence against the Portuguese. This agreement was short lived, however, and a final

⁴¹ Ibid., chs. 8–11.

round of hostilities culminated in the Dutch execution of ten EIC employees and an additional eleven non-Company affiliates at Amboyna in February of 1623. The Amboyna Massacre, as the English called it, marked the onset of the decline in English trade to the Malay Archipelago, as well as it figured in Anglo-Dutch diplomacy in Europe for another half century.⁴²

The Company's shift away from the Southeast Asian spice trade came as English commercial energies in the Indian Ocean basin became increasingly focused on the further development of its existing trade connections on the western Indian mainland and around the Persian Gulf and Arabian and Red Seas. Following Jahangir's 1618 *firman*, the Company established trading factories inland at Agra and Lahore, which were vibrant markets in luxury wares, and at the Red Sea port of Mocha, where Company merchants sold goods from further east for specie, which was used to relieve some of the burden of domestic English silver exports. The most valuable commodities the Company acquired in western India during the early seventeenth century, however, were indigo and saltpetre, which were grown and processed in Gujarat, the Punjab, and the Sindh. The indigo trade, in particular, facilitated the growth of the Company's factory at Surat, and the increase in English traffic between Surat and Red Sea ports incited another bout of conflict with the Portuguese in 1619. The Safavid Shah of Persia, Abbas I (r. 1588–1629), welcomed English intervention against the Portuguese, who had long restricted commerce in the Persian Gulf, and in 1622, a combined English and Persian force captured the Portuguese stronghold at Hormuz, effectively toppling

⁴² Ibid., chs. 12–15; Kenneth R. Andrews, *Trade, Plunder and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480–1630* (Cambridge: Cambridge University Press, 1984), 265–270; Marshall, “English in Asia,” 271.

Portuguese naval dominance in the western Indian Ocean.⁴³ The loss of Portuguese naval superiority left that nation with little means to counterbalance seventeenth-century Northern European advances in maritime technology, including the development of increasingly sophisticated mechanical devices and gear systems, which made the English and Dutch far more attractive trading partners and military allies to the already technologically sophisticated commercial and manufacturing cultures of South and East Asia.⁴⁴

The Company's focus on trade with Persia following its success at Hormuz had only a limited impact on English consumption patterns and was ultimately short lived. Persian silks continued to reach Europe primarily through Mediterranean trade routes and had to compete with silks of European production, which were often protected by import tariffs on those from the East. The contraction of the Company's Red Sea routes, moreover, anticipated a crisis of trade in northwestern India. The Company's traffic in indigo from Surat was already declining in volume and profitability relative to the much cheaper indigo grown in Spanish America when the famine of 1630–32 struck Gujarat and crippled production. Although the Company continued to purchase low-value indigo in bulk to serve as ballast for ships carrying lightweight textile shipments, the Company's commercial activity in the regions surrounding the Arabian Sea never fully recovered. In 1661, the Company closed its outlying factories at Mocha, Basra, Agra, and Ahmedabad, and for a time even considered abandoning Surat. The Surat factory continued as the Company's main entrepot for the various goods of northern India;

⁴³ Andrews, *Trade, Plunder and Settlement*, 270–276; Chaudhuri, *English East India Company*, 176–177; Marshall, “English in Asia,” 272–273; Wright, *Early English Adventurers*, ch. 16.

⁴⁴ Pearson, *Portuguese in India*, 59–60, 133–134.

however, it never became the source of high-value goods its founders envisioned. Even Bombay, which the English acquired from Portugal in 1661 as part of the dowry of Catherine of Braganza in her marriage to Charles II, took well over a century to become a port of any major significance.⁴⁵ Once again, Company energies had to be redirected toward new regional commercial opportunities.

On India's east coast, the Company had established a trading factory at Masulipatam in the kingdom of Golconda as early as 1611. There, beyond Mughal dominion, territory for a trading factory could be acquired on a permanent basis without the renewal process that was required of a Mughal *firman* with the ascension of each new emperor. Masulipatam was established chiefly to supply textiles for the Company's spice trade. The unrivalled quality and cheap production costs of Indian cotton made that product a profitable item of commerce in its own right, and eastern India was quickly discovered to be a favourable region for Company purchasing. In 1626, therefore, the Company established a second factory specifically for the procurement of Indian cottons at Duraspatam, a process that brought Company officials into negotiations with the Vijayanagara king Venkata III (r. 1632–1642), who granted the Company rights to an additional site on the Coromandel Coast where Fort St. George was constructed in 1644. Free from Mughal interference, the town of Madras that developed around Fort St. George would become the Company's principal settlement in India during the later seventeenth century, attracting a diversity of Indian merchants and artisans, and

⁴⁵ Chaudhuri, *English East India Company*, 176–188, 197, 204; K. N. Chaudhuri, *The Trading World of Asia and the English East India Company, 1660–1760* (Cambridge: Cambridge University Press, 1978), 47–49, 329–334, 343–344; Anne Mattson, "Indigo in the Early Modern World," James Ford Bell Collection, University of Minnesota Libraries, Minneapolis, <https://www.lib.umn.edu/bell/tradeproducts/indigo>; Wright, *Early English Adventurers*, 262–263.

reorienting English trade eastwards across the Bay of Bengal, where the textile trade drove regional commerce.⁴⁶

English consumers had purchased Indian textiles from Portuguese merchants as early as the mid-sixteenth century, the arrival of which coincided and gave further impetus to a transition in English interior décor away from the austerity of the late Middle Ages and early Tudor period and toward the more furnished and decorative styles that would come to define early modern British aesthetics. By the turn of the seventeenth-century, most of the English aristocracy and commercial elite counted at least one tapestry, linen, or piece of clothing of Eastern origin among their possessions, the most popular designs being florals,⁴⁷ a tradition which can be traced to the early Mughals' interest in the Indian landscape. Babur had commented at length on the flora and fauna of northern India in his memoirs, and Jahangir was particularly enamoured with Indian wildlife. In response to Babur's lament at the lack of fine gardens in India, the Mughals constructed elaborate gardens in their imperial cities rivalling those of Persia and Central Asia.⁴⁸ The Mughals' fascination with wildlife and botany was reflected in their art, architecture, and décor: floral designs covered their walls, were carved and inlaid into their buildings, and lent vibrancy to the garments that draped their bodies. The early modern subjects of European monarchs that were in contact with Mughal India, therefore, acculturated Mughal-style floral patterns as a display of wealth and status and as a demonstration of cosmopolitanism.

⁴⁶ Marshall, "English in Asia," 273–274; Wright, *Early English Adventurers*, 263; Chaudhuri, *Trading World of Asia*, 51–52, 237–238; Chaudhuri, *English East India Company*, 197–198.

⁴⁷ Beverly Lemire, "Domesticating the Exotic: Floral Culture and the East India Calico Trade with England, c. 1600–1800," *Textile* 1, no. 1 (March 2003): 67–69.

⁴⁸ Thackston, trans. and ed., *Baburnama*, 335–350; Gascoigne, *Great Moghuls*, 24–25, 37–38, 42–44, 131–134, 170; Catherine Asher, "India: The Mughals, 1526–1858," in *The Great Empires of Asia*, ed. Jim Masselos (Berkeley: University of California Press, 2010), 183.

By the time English merchants began conducting their own trade in India, floral textiles were already firmly established as items of English domestic consumption.⁴⁹ Initial Company imports were slow, however, and English consumers continued to acquire Indian textiles from Iberian sources through the opening years of the seventeenth century. But by 1613, Indian cottons were among the Company's most regular items of sale, numbering 5,000 pieces that year and increasing within a decade to between 100,000 and 200,000 pieces annually. The main types of Indian textiles that the Company imported to England included plain white calicoes, single-coloured cottons, printed chintzes, and various other painted fabrics.⁵⁰ By the end of the seventeenth century, Indian fabrics were among the most widely consumed imported commodities in England, to the point that one observer remarked in 1699 that "few think themselves well dressed till they are made up in calicoes, both men and women, calico shirts, neckcloths, cuffs, pocket handkerchiefs for the former, head dresses ... hoods, sleeves, aprons, gowns, petticoats, and what not for the latter, besides India stockings for both sexes."⁵¹ The low cost of high-quality Indian textiles relative to comparable domestic and other imported fabrics allowed a broad spectrum of English consumers access to light, washable, and fashionable materials for clothing and décor as a new alternative to drab and heavy English woollens and more expensive European silks, linens, and embroidered items.⁵²

Problems with cost efficiency on the Coromandel Coast in the 1630s led the Company to seek out yet another source of production in Bengal. English merchants

⁴⁹ Lemire, "Domesticating the Exotic," 68.

⁵⁰ Chaudhuri, *English East India Company*, 192–193ff, 199.

⁵¹ John Cary, *A Discourse Concerning the East-India Trade, Shewing how it is Unprofitable to the Kingdom of England* (London, 1699), 4–5.

⁵² Marshall, "English in Asia," 275.

were somewhat familiar with Bengal from minor expeditions into its surrounding areas in the 1630s and '40s, and from the Company's own short-lived factories in neighbouring Orissa.⁵³ Access to Bengal, however, posed a challenge. English merchants had initially reached Bengal via overland routes through northern India, and the Company's deep-water ships were unable to navigate the uncharted, shallow waters and the ever-shifting shoals of the Bengal delta. Yet the Company realized the region's extensive system of inland waterways as a locational advantage that promised low transportation costs and higher profit margins. Production was distributed widely throughout the region and goods from far inland could simply be floated downstream to trading factories for repackaging and shipment at a cost that rendered even the finest Bengal fabrics as profitable as cheaper textiles from elsewhere in the subcontinent. Bengali cottons were unsurpassed in quality, and the Company was especially drawn to the exceptionally fine muslin of Dacca, a delicate and nearly transparent cotton, the properties of which were attributed to the superiority of the region's raw cotton owing to the delta's rich alluvial soils. Whereas Dutch interests in Bengal were mostly concerned with the acquisition of textiles for barter in the spice trade, the EIC identified the potential for enormous profits to be derived from the exportation of textiles directly to Europe.⁵⁴ The Company's first factory in Bengal was established at Hugli in 1651, for which a *firman* was received post hoc from the Mughal prince and governor of Bengal, Shah Shuja, in 1658. Hugli was still a considerable distance inland, however, and the Company desired an additional factory closer to the coast for repackaging and loading goods onto oceangoing vessels for shipment to England.

⁵³ Chaudhuri, *English East India Company*, 198; Wright, *Early English Adventurers*, 257–276; Prakash, *European Commercial Enterprise*, 132–133.

⁵⁴ Chaudhuri, *Trading World of Asia*, 52, 241–242, 247–250.

The establishment of an additional and hopefully permanent English settlement in Bengal proved to be a source of much tension between the Company and Mughal officials. For starters, the EIC's seizure of a local vessel in 1661 as security against a debt did little to endear the Company to Shah Shuja's successor, Mir Jumla II. Neither did Company servant William Hedges' insistence in 1682 that an additional factory in Bengal be free from customs duties make negotiating with the later administration of Shaista Khan any easier. While the Company had initially traded duty-free at Hugli in exchange for a mere £300 tribute to local authorities, it was now asking for a guaranteed tax exemption for its new factory in perpetuity. Personally, Shaista Khan had no qualms with the Company's insistence on free trade in Bengal. But Mughal fiscal officials opposed such a concession to the Company as an undermining of imperial authority in the province and reminded Shaista Khan of the importance of Bengal's revenue to funding campaigns of expansion in Assam and elsewhere. In an effort to reach an agreement with the English, Shaista Khan requested a *firman* from the emperor for the Company's terms, which all parties knew would not be granted.⁵⁵ The failure of Hedges' negotiations with Shaista Khan left many in London convinced that the only way to gain a permanent foothold in Bengal on favourable terms was by military conquest. "No good was to be done with these people without compulsion," Hedges recorded in his diary, and he recommended interrupting Mughal pilgrims on *hajj* to Mecca as a means of conveying the Company's earnestness. "If the Company thought fit to bestir themselves in this manner," Hedges wrote, "it would questionless produce like effect, and till they quarrel with this government ... it can never be expected that their trade should prosper

⁵⁵ Prakash, *European Commercial Enterprise*, 133–134; Jon Wilson, *India Conquered: Britain's Raj and the Chaos of Empire* (London: Simon and Schuster, 2016), 28–29, 39, 42–43; Wright, *Early English Adventurers*, 277.

in India, especially in these parts.”⁵⁶

Company officials generally agreed that a show of military strength would force a concession from the emperor on the status of the EIC’s presence in Bengal. The Company’s strategy was to seize and fortify the Bengali port of Chittagong, the only site believed to be able to withstand a Mughal attack. However, the fleet that sailed from London in January of 1686 mistakenly landed at Hugli, where in October, Mughal forces overran the English factory and sent the factors fleeing their stocks. When an attempt led by Company agent Job Charnock to recapture Hugli failed, Charnock and his men retreated to an isolated site some fifty miles downriver called Sutanati, from which place Charnock intended to sue for peace. Company officials elsewhere had no such end to hostilities in mind, and though defeated in Bengal, the Company shifted its focus to blockading Mughal ships in the Arabian Sea. The interception of Mughal *hajj* ships in 1688 finally forced the emperor to offer the English favourable terms, as Hedges had insisted it would. Before a peace was concluded, however, Company reinforcements under William Heath burnt Baleshwar in Orissa, provoking Mughal reprisals against the English across the subcontinent, ultimately leading to the Company’s surrender in 1690. Only after surrendering was the Company formally invited to return to Bengal, and in August of 1690, Charnock returned to Sutanati, where he set out to build and fortify the new factory that would become Fort St. William, around which would eventually develop the town of Calcutta.⁵⁷

⁵⁶ R. Barlow and Henry Yule, eds., *The Diary of William Hedges*, 3 vols. (London, 1887–9), 1:164–165.

⁵⁷ Wilson, *India Conquered*, 45–50, 52–53.

V

The persistence of English activity in Bengal despite tensions with the local provincial administration, and the subsequent development of Fort St. William into the Company's regional stronghold in the early eighteenth century were made possible by the increasing preoccupations of the Mughal court with succession crises, challenges to the imperial throne, and movements for regional autonomy. Regional insurrection was nothing new to the Mughals. Both Hawkins and Roe had commented on the ever-present state of localized rebellion throughout the empire during the seventeenth century, Roe even going to far as to describe Jahangir's reign as "uncertain" in a letter to the king in 1615.⁵⁸ However, the threat of provincial rebellions and frontier oppositional movements heightened through the seventeenth-century, and many such ventures became increasingly connected to palace coups.

Attempted coups, especially those aiming to overthrow an acknowledged heir upon an emperor's death, was a regular feature of Mughal rule. Jahangir's eldest son, Khusrau, attempted to usurp his father for the throne upon Akbar's death in 1605, and Jahangir's fourth son, Khurram, led a rebellion against his father in the 1620s, during which he utilized rebel forces from Golconda in the eastern Deccan and forged an alliance with the Ahmadnagar sultanate that was then engaged in a campaign against Mughal forces in Malwa in west-central India. When Jahangir finally died in 1627, Prince Khurram returned to court and was proclaimed emperor Shah Jahan in January of 1628. When Shah Jahan died in 1658, an all-out war of succession took place between the heir apparent, Dara Shukoh, and his three brothers, each of whom raised armies in

⁵⁸ Markham, ed., *Hawkins' Voyages*, 434–435; William Foster, ed., *The Embassy of Sir Thomas Roe to the Court of the Great Mogul, 1615–1619*, 2 vols. (London, 1899), 1:120.

the provinces of which they were governors. Shah Jahan's third son, Aurangzeb, emerged from the war victorious, crowned himself at Delhi in June of 1659, and moved to eliminate his brothers. Although Aurangzeb and his brothers were all working from a base of regional support, it was mutually understood that the victor would inherit their father's empire wholesale—partition was out of the question.⁵⁹

Aurangzeb's reign (1658–1707), though marked by continued imperial expansion, also featured significant regional challenges to Mughal authority. In the western Deccan sultanate of Bijapur, the Maratha leader Shivaji Bhonsale emerged as a major opponent to Mughal expansion in southern India. Plundering treasure and levying taxes to fund his endeavours, Shivaji was crowned *chhatrapati*, or emperor, according to Vedic tradition in 1674, from which time onwards the Marathas engaged in persistent state of insurrection against the Mughals in the Deccan. Much of Shivaji's appeal among non-Muslims was his conscious branding of the Maratha opposition as a Hindu revitalization movement that sought to push back against the Muslim orthodoxy of the imperial policy of Aurangzeb. While Aurangzeb's successors had avoided meddling in the religious lives of their non-Muslim subjects, Aurangzeb was a devotee of the Naqshbandi tradition of Sunni Sufism and sought to make Islam a central tenet of his rule. He favoured the formal implementation of *sharia* and reintroduced the *jizya* in 1679 after it lay uncollected for well over a century. The latter policy did much to rally non-Muslims throughout the south to the Maratha cause, and organized Maratha resistance to the Mughal presence in the Deccan continued unabated even following Shivaji's death in 1680, to the extent that Aurangzeb decided to leave Delhi the following year and establish a mobile imperial capital from which he could personally

⁵⁹ Richards, *Mughal Empire*, 94–95, 112–118, 158–162.

oversee the campaigns in the Deccan.⁶⁰

Aurangzeb aimed the full might of the empire's military at what he hoped would be a final and complete conquest of the Deccan, annexing Bijapur in 1685, defeating Golconda in 1687, and scoring a temporary defeat of the Marathas by capturing and executing Shivaji's son and successor, Shambhaji, in 1689. Bijapur and Golconda were made into *subahs* and Mughal administrators replaced those prior kingdoms' ruling elite. Yet Aurangzeb's triple victory, which increased the empire's landmass by more than a quarter, failed to herald an era of lasting peace. Before Aurangzeb could return to Delhi, pockets of Maratha resistance sprang back up and bogged the emperor down in the Deccan until his death in 1707.⁶¹ Although Aurangzeb left behind an empire that had incorporated the full extent of the pre-Mughal Muslim kingdoms of India, it was one that was afflicted by the insurrection of non-Muslims and the emergence of significant regional challenges to central imperial authority.

Imperial authority was further strained by a fiscal crisis at the Mughal court during the opening decades of the eighteenth century. In their attempts to placate increasingly discontented non-Muslim elements of the imperial elite, Aurangzeb's successors Bahadur Shah (r. 1707–1712) and Jahandar Shah (r. 1712–1713) granted progressively inflated imperial ranks, and it became commonplace that *jagirs* were assessed on paper at rates far exceeding their true value. Land-value inflation coupled with a shortage of revenues flowing into the imperial centre resulting in an underfunded military and a reduction in the emperor's credibility among the nobility. Unable to look to Delhi for military or financial support, high-ranking Mughal nobility and imperial

⁶⁰ Ibid., 171–177, 205–220.

⁶¹ Ibid., 220–227.

officials were left to cultivate autonomous military and diplomatic influence. The emperor Farrukhsiyar (r. 1713–1719) was forced to acknowledge this devolution of imperial authority when he invested the Deccan governor Husain Ali Khan with an imperial seal in 1715, permitting him to appoint and dismiss officers and to assign *jagirs* at his own discretion.⁶²

In other instances, imperial authority was not so much delegated to provincial officials as autonomous powers simply accrued to them as ties between the court and provinces weakened. Such was the case in the *subahs* of Awadh and Bengal, where the devolution of imperial power resulted in the emergence of semi-autonomous polities in both provinces. In Awadh, lying to the east of the Agra *subah*, the transition to provincial autonomy was gradual. Saadat Khan, a high-ranking Shia noble with an impressive record of imperial service but a strained relationship with the emperor Muhammad Shah (r. 1719–1748), was initially appointed *subadar* of Awadh as a demotion from that of the capital region of Agra in 1722. Saadat Khan spent the first years of his administration in Awadh suppressing the rebellion of a group of local rajas. After appointing his own provincial officials independently of the emperor, by the turn of the 1730s, he was in complete control of the internal administration of his *subah* to the extent that the office of the *diwan*, the collector of the imperial revenue, was abolished and replaced by his own revenue officer. More importantly, Saadat Khan stopped the payment of Awadh's revenues to the imperial treasury despite a significant increase in provincial income during his time in office.⁶³

Bengal, on the other hand, continued its transfer of imperial revenues to Delhi

⁶² Ibid., 263, 267, 269.

⁶³ Richard B. Barnett, *North India Between Empires: Awadh, the Mughals, and the British, 1720–1801* (Berkeley: University of California Press, 1980), 25–28, 33.

during the early eighteenth century, even as its administration became more autonomous. There the governor Murshid Quli Khan added to his portfolio the office of *diwan*, combining the two to become *nawab*, the de facto sovereign of Bengal, the surplus of whose revenues was offered up to the emperor as tribute rather than demanded as taxation. The *nawab* of Bengal's autonomy was affirmed during a succession crisis in 1740, when Alivardi Khan invaded Bengal from neighbouring Bihar, seized the throne by force, and was confirmed in his office by the emperor in return for payment to Delhi. Alivardi Khan proceeded to appoint his own deputy governors for the surrounding *subahs* of Bihar and Orissa and the eastern district of Bengal, to fill the offices of local revenue officials, and to raise his own army.⁶⁴

The devolution of the Mughal empire into regional states and semi-autonomous provincial polities during the early eighteenth century presented an opportunity for European interests, particularly those of the British and the French, to expand their own spheres of influence in India. In the southeast, the British capitalized on the disarray brought about by the waning of Mughal power in the Golconda *subah* and the emergence of the breakaway state of Arcot by expanding and fortifying their factory at Madras during the opening decades of the eighteenth century. As a coastal enclave, Madras could be constantly resupplied by sea, giving the *nawab* of the Carnatic, Saadatullah Khan I (r. 1710–1732), little hope pushing the British off the site. In 1719, therefore, the *nawab* invited the French at nearby Pondicherry to harass the British up the coast. Although the *nawab*'s plan faltered for lack of French vigour in attacking

⁶⁴ Richards, *Mughal Empire*, 263, 276–277; P. J. Marshall, *Bengal: The British Bridgehead: Eastern India, 1740–1828* (Cambridge: Cambridge University Press, 1987), 49–51.

Madras during peacetime,⁶⁵ it set the precedent of the *nawabs* of the Carnatic playing the French and British off against each other to further their own dynastic ambitions, turning the Carnatic region of southern India into a key theatre of conflict in the global imperial wars fought between France and Britain during the mid-eighteenth century.

Unlike in North America, where France had been a leader in early exploratory and colonizing ventures, French merchants became involved in Indian Ocean commerce only after its viability had been firmly established by their Dutch and English counterparts. The French East India Company, formed by Louis XIV and Jean-Baptiste Colbert in 1664 as part of the same round of imperial reforms that reorganized the administration of New France, established its main trading factory at Pondicherry in the Carnatic in 1674, followed by a second factory at Chandernagore in Bengal in 1674, and additional factories at Mahé on the Malabar Coast and at Yanam near Madras in the 1720s. Struggling to turn a profit due to protective tariffs on Indian goods at home, the first French Company was liquidated in 1684 and a second one was set up the following year, but it, too, failed to make its investors money, causing most of its backers to withdraw from the enterprise and leaving the its assets nearly entirely in the hands of the state for the remainder of its existence. While the French Company succeeded in growing its share of textile imports relative to the other European companies, its disinclination to pursue an inter-Asian trade and its heavy reliance on specie exports put it at a disadvantage relative to the English and the Dutch. Possessed of a less well-developed domestic market of currency exchange than its competitors, the French Company during the early eighteenth century found itself haemorrhaging specie and heavily indebted to Indian suppliers in return for only moderately profitable import

⁶⁵ Wilson, *India Conquered*, 63–65.

cargoes.⁶⁶ Unable to compete commercially with the British, the French instead sought to curb British expansion by exploiting Indian dynastic rivalries and cultivating alliances with regional rulers in opposition to British commercial and diplomatic interests.

French Company policy in India in the 1740s and '50s was directed by the governor and commandant general of French India at Pondicherry, Joseph François Dupleix. Dupleix intended to expand French influence in the Carnatic by harbouring Chanda Sahib, an usurper to the current *nawab*, Anwaruddin Khan. Anwaruddin Khan had succeeded Saadatullah Khan I as *nawab* in 1744 and wasted no time in writing to the British at Madras for support in full knowledge of the state of war existing between France and Britain as a result of the War of the Austrian Succession in Europe. In the conflict that ensued, Dupleix captured Madras in September of 1746 and offered the fortress to the *nazim* of the neighbouring state of Hyderabad in an effort to further expand French influence in the region. The treaty of Aix-la-Chapelle returned Madras to the British in 1749, however, and in the year following the peace, Chanda Sahib defeated Anwaruddin Khan, becoming *nawab* and ceding to the French those territories in the Carnatic that Dupleix had previously sought to acquire. Dupleix's next move was to lend his army to the cause of Muzaffar Jung, aspirant to the throne of Hyderabad. Emerging victorious in his struggle in 1750 thanks to French assistance, Muzaffar Jung paid the French handsomely in riches and grants to establish additional forts in the region. Hemmed in at Madras and unable to trade inland to French-allied Hyderabad and Arcot, the EIC temporarily withdrew its investments in the Carnatic region, transferring

⁶⁶ Prakash, *European Commercial Enterprise*, 79–80, 252–253; Philippe Haudrère, “The French India Company and its Trade in the Eighteenth Century,” in *Merchants, Companies, and Trade: Europe and Asia in the Early Modern Era*, ed. Sushil Chaudhury and Michel Morineau (Cambridge: Cambridge University Press, 1999), 202–211.

three and a quarter million Arcot rupees and twenty chests of silver to Fort William in Bengal.⁶⁷

Aware of the immense payoff of a successful alliance with the British against Chanda Sahib, Muhammad Ali Khan, heir to the slain Anwaruddin Khan, enlisted the help of the twenty-five-year-old EIC army captain Robert Clive to retake Arcot. Clive and a force of 500 easily took the dilapidated fort at Arcot in November of 1751, and Muhammad Ali Khan was installed as the rightful *nawab* shortly thereafter. Dupleix and Chanda Sahib struck back with an attack on Trichinopoly, but Chanda Sahib was captured by Clive and handed over to the raja of neighbouring Tanjore, who beheaded him.⁶⁸ With the British-backed Muhammad Ali Khan secure as *nawab*, the French Company holding onto its territorial gains, and much of the region too devastated by recent warfare to return a revenue to any of the parties involved, the French and British agreed to a cessation of hostilities in the Carnatic in late 1754. The ceasefire in the south, however, came just as France and Britain were beginning on the path to a renewed state of war in North America, however, and when that conflict finally broke out on a global scale in 1756, the main theatre of war in India shifted to Bengal.

VI

Maratha raiding into Bengal through the 1740s had caused the EIC to strengthen its fortifications at Calcutta, rousing the suspicions of the *nawab*, Alivardi Khan (r. 1740–1756). Yet Alivardi Khan had no desire for his country to become the site of the devastating violence that had raged in the Carnatic, and so he cautioned against the war

⁶⁷ Lawrence Henry Gipson, *The British Empire before the American Revolution*, vol. 5, *The Great Lakes Frontier, Canada, the West India, India, 1748–1754* (1942; repr., New York: Alfred A. Knopf, 1967), 272–277, 281–285.

⁶⁸ *Ibid.*, 287–289. Cf. Wilson, *India Conquered*, 87–89.

hawks in his court who advocated for an assault against one or another of the increasingly-militarized French and British companies. Alivardi Khan's death in 1756 marked the end of the period of peace between the *nawab* and the companies. Alivardi Khan was succeeded by his adopted heir, Siraj-ud-daula, of whom it was popularly predicted that when Siraj-ud-daula acceded to the throne of Bengal, Europeans "would possess themselves of all the shores of India." Siraj-ud-daula and EIC officials immediately got off on the wrong foot when rumours circulated that the latter were conspiring with one of the rivals to the *nawab*'s throne. Tensions were further exacerbated when the French convinced the *nawab* that the British fortifications at Calcutta were erected with the intention of launching an attack on the *nawab* rather than the French. The British refused to dismantle their fortifications, however, and Siraj-ud-daula became determined to push them off the site. In May of 1756, the *nawab* took the British factory at Kasimbazar before marching on an unprepared Fort William and occupying Calcutta on June 20. When news of Siraj-ud-daula's seizure of Calcutta reached Clive, he became convinced that the recapture of Fort William was vitally important to maintaining the Company's military reputation among Indian powers. Commissioned to lead an expedition against Siraj-ud-daula, Clive sailed for Bengal in October.⁶⁹

After being pushed off course to Burma, Clive and his force finally landed in Bengal at Fulda in late December before easily retaking Fort William in early January of 1757. Then for ten days between January 9 and 19, the British razed Hugli upriver from Calcutta in an effort to deprive the *nawab*'s army of the town's supplies. Half-hearted

⁶⁹ Wilson, *India Conquered*, 90–95; Michael Edwardes, *The Battle of Plassey and the Conquest of Bengal* (London: B. T. Batsford, 1963), 22–25, 30–32, 35–60, ch. 10.

peace overtures from Siraj-ud-daula in February were arbitrated by the French, with whom Britain had not officially been at war since May, leaving Clive and the Select Committee at Fort William suspicious of an alliance between the two. After delaying until mid-March for the arrival of more troops from Bombay and Madras, Clive led a combined British and Indian force against the French factory at Chandernagore in a siege that lasted until March 23. Opposition elements in the *nawab*'s court capitalized on the opportunity provided by the Company's show of unrivalled force to orchestrate the overthrow of Siraj-ud-daula, whose impolitic hostility toward the British had isolated the province's powerful merchant interests, including the Jagat Seths of Murshidabad, Bengal's leading banking family and purportedly the wealthiest money-lending house in the world at the time.⁷⁰

In the spring of 1757, the Jagat Seths and others in the *nawab*'s court hatched a plan to replace Siraj-ud-daula with a *nawab* more inclined toward peace and commerce. While the British were not initially invited by the Jagat Seths to partake in the plot for fear that the EIC would come to dominate any peace settlement that it helped to secure, the reality of the strength of British arms made the Company an asset too valuable to ignore. In early May, the conspirators approached Company officials with an offer of 100 *lakh* rupees, or roughly £1 million, and permanent land rights to Calcutta if they could defeat Siraj-ud-daula and install one of his leading ministers, Mir Jafar, as *nawab*. Clive accepted and sent a declaration of war to Siraj-ud-daula. The two armies met on the morning of June 23 just outside of the town of Plassey on the eastern bank of the Hooghly River. Although Siraj-ud-daula's force greatly outnumbered that of Clive, the movement to dethrone Siraj-ud-daula was supported by significant elements of the

⁷⁰ Edwardes, *Battle of Plassey*, chs. 11–13; Marshall, *Bengal*, 76–77.

nawab's military, and at a crucial moment in the battle, a large portion of the *nawab*'s army stood down, ensuring a British victory. By the early evening, the British had taken the field with minimal casualties and sent Siraj-ud-daula fleeing. At a council the following morning Clive saluted Mir Jafar as *nawab*, and the two traveled to Murshidabad, where Mir Jafar was enthroned and presented with tribute from Clive. Siraj-ud-daula was captured at Rajmahal in Orissa and was returned to Murshidabad, where he was executed at the palace on July 2.⁷¹

Upon their entry into Murshidabad, however, it appeared to British officials that the *nawab*'s treasury was much lower than expected. The 140 *lakhs* it held were not enough to cover the full sum of Mir Jafar's agreement with the British, which had increased during the course of the campaign, and Clive had to meet with the Jagat Seths to arrange proper payment to all those involved in Siraj-ud-daula's overthrow. In return for financing the coup, the Jagat Seths became major power brokers under the new regime, and Clive insisted that Mir Jafar consult them "on all occasions," as Alivardi Khan had done. Clive also made sure to replace all of Alivardi Khan's imperial officers to their old posts in order to produce the appearance of continuity with the *nawabi* prior to the administration of Siraj-ud-daula. Indeed, British interests generally understood the events in Bengal to be a return to an earlier status quo, including a restoration of the Company's "ancient rights and immunities" acquired by the *firman*s of the seventeenth and early eighteenth centuries that had been undermined by Siraj-ud-daula.⁷² "The general idea at this time entertained by the servants of the Company," wrote one contemporary, "was, that the Battle of Plassey did only restore us to the same situation

⁷¹ Wilson, *India Conquered*, 99–103; Edwardes, *Battle of Plassey*, 122–157.

⁷² Michael Edwardes, *Plassey: The Founding of an Empire* (London: Hamish Hamilton, 1969), 147–148; Marshall, *Bengal*, 78–79.

we were in before the capture of Calcutta: the *subah* was conceived to be as independent as ever, and the English returned into their commercial character.”⁷³

One of the immediate results of the events at Plassey, however, was that with Mir Jafar on the throne and the EIC exercising unrivalled influence over the *nawab*, the British were free to unilaterally expel French forces from Bengal at the peace table. After additional decisive victories over the French in the Carnatic between 1757 and 1758, the British effectively exhausted the French Company’s capacity to conduct war and eliminated the French threat to British interests in the Bay of Bengal. When the Treaty of Paris formally ended the Seven Years’ War in February of 1763, all those forts and trading factories which the French and British companies had taken from each other during the course of the war were restored to their possessors as of 1749, and both parties agreed to “renounce all demands and pretensions of satisfaction with which they might charge each other, or their Indian allies, for the depredations or pillage committed on the one side or on the other.” Even more significant was that the treaty confirmed British clients as the rulers of the Carnatic and the Deccan and barred the French from erecting fortifications or stationing troops “in any part of the dominions of the *subah* of Bengal.”⁷⁴ France’s presence in Bengal would henceforth be strictly commercial in nature, and the province was to become a sphere of exclusively British political and diplomatic influence.

The Battle of Plassey was but one episode in a series of mid-century events that shifted power dynamics across northern India. Afghan and Maratha warring over Delhi had recently sent the Mughal emperor fleeing eastwards to Awadh, where a failed attempt to

⁷³ Luke Scrafton, *Observations on Mr. Vansittart’s Narrative* (London, 1766), 2.

⁷⁴ *DCHC*, 1:118.

challenge the EIC in Bengal in 1764 would produce a settlement between the two parties the following year that saw the emperor's already-diminishing influence further reduced, creating the conditions for the Company to emerge as the dominant power broker in northeastern India over the next decade. The reverberations of the Battle of Plassey into the wider British world were perhaps more significant. For the first time, India came to the foreground of the British literary and political imagination as more than an abstracted site of wealth and commerce, but rather as a very real place of political and military events. Plassey marked the beginning of an era in which India featured more prominently in British domestic politics beyond the previously limited metropolitan concerns with internal Company affairs, and in which Britons came to perceive of the Company's Indian dominions, and Bengal in particular, as integral components of an emerging global British empire.⁷⁵

In competing with the French in the Carnatic, the EIC had been forced to adopt the diplomatic strategy of cultivating alliances with regional leaders, a system that effectively expanded British political influence without direct military conquest. Company officials would subsequently put those relationships to significant use in the establishment of subsidiary alliances across the subcontinent in the decades that followed. The French had also demonstrated the advantage of a centralized military-executive to conducting warfare across vast regions and diverse sub-imperial jurisdictions. Although the British did not formally inherit French imperial constitutional

⁷⁵ For domestic British reactions to news of events in India in relation to British military success elsewhere in the world during the Seven Years' War, see H. V. Bowen, "British Conceptions of Global Empire, 1756–83," *Journal of Imperial and Commonwealth History* 26, no. 3 (1998): 1–27. For earlier representations of India in English print and political culture, cf. Jonathan Eacott, *Selling Empire: India in the Making of Britain and America, 1600–1830* (Chapel Hill: University of North Carolina Press, 2016), ch. 1.

forms in India, Clive and others took careful notice of the utility of Duplex's mandate as governor general and of the respect the office garnered from Indian rulers. Moreover, as the EIC became increasingly embroiled in Indian regional and imperial politics, Company officials in India and other British observers of political and constitutional affairs began to look to the Mughal empire, the history of its expansion and methods of provincial governance, and the current role of the emperor in relation to semi-autonomous regional polities to discern an evolving model of layered imperial sovereignty.

Yet it was in North America following the transfer of French sovereignty in Canada that Britain directly inherited the French constitutional tradition of a military-executive viceroy presiding over asymmetrically layered sub-imperial provincial jurisdictions in close alliance with non-Europeans. The terms of the British inheritance of French sovereignty in North America transformed British Crown relations with Indigenous peoples in the interior and informed metropolitan approaches to the constitution of the settled province of Canada. The reality of that inheritance of sovereignty, however, would have to be worked out by British officials on the ground before being reflected in formal imperial policy. These on-the-ground strategies and official policies would have significant implications for relations between the metropolitan government and the settler-colonial interests of the "old" British American colonies.

The British Conquest of Canada, The Treaty of Paris, and the Search for Onontio, 1760–1774

While Montcalm had doubted in early 1759 whether he would be able to maintain military control over all of Canada from his position at Quebec, the relative ease with which the colonial French capital fell came as a great surprise to the British high command. Although the French sent a rallying force to Quebec under the Chevalier de Lévis in April of 1760 and won a victory on the Plains of Abraham nearly identical to Wolfe's of the previous fall, Lévis failed to retake the citadel before British supply ships arrived on the St. Lawrence in early May. To cut French lines of communication and supply between Canada and the interior and finally bring the war in North America to a close, the British launched a three-pronged attack into the upper St. Lawrence Valley in July of 1760, which converged on Montreal in early September. Coordinating the assault, Major General Jeffery Amherst, commander-in-chief of the British forces in North America, encamped outside of Montreal on the evening of September 7 and recorded in his diary that he refused the request of the governor general of New France, the Marquis de Vaudreuil, for a ceasefire. "I was come to take Canada," Amherst logged as his reply to Vaudreuil, "and I did not intend to take anything less."¹ Amherst made it clear that he would accept nothing short of the surrender of the entire province, and the two spent the night hashing out the terms of the surrender, which were finalized around daybreak the following morning.

Key features of the Articles of Capitulation of Montreal signed between Amherst and Vaudreuil on September 8, 1760, were items ensuring that the paperwork necessary

¹ Robert J. Andrews, ed., *The Journals of Jeffery Amherst, 1757–1763*, vol. 1, *The Daily and Personal Journals* (East Lansing: Michigan State University Press, 2015), 243.

for the governance of the province be transferred to British authorities.² Among such documents were charts and maps of Canada that British officers hoped would define the extent of the North American interior under the province's jurisdiction. The question of the interior limits of the province of Canada was significant not only in terms of how the potential cession of French territory would be defined in a future definitive peace treaty, it was also intimately linked to another vital article of the Capitulation regarding Indigenous relations. Article 40 of the Capitulation of Montreal, agreed to by Amherst and Vaudreuil, stated that "the savages or Indian allies of his Most Christian Majesty, shall be maintained in the lands they inhabit; if they choose to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his Most Christian Majesty."³ Some scholars have read this article to apply only to Indigenous peoples living on specific grants of land immediately within the province of Canada.⁴ Yet the text of Article 40 indicates no restriction in its application, geographical or otherwise. Canadian legal scholar Brian Slattery, moreover, has inferred from Article 37's protection of French property "in the whole extent of the colony of Canada," that the Articles of Capitulation of Montreal "would appear to apply in their terms to the entirety of the territories over which France asserted title as part of Canada," and that Article 40 likewise applies to "all lands ... actually inhabited" by Indigenous

² Articles of Capitulation of Montreal, September 8, 1760, *DCHC*, 1:10–14.

³ *Ibid.*, 1:33.

⁴ See, for instance, Henri Brun, "Les droits des Indiens sur le territoire du Québec," *Cahiers de droit* 10, no. 3 (1969): 440–441; and also Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2018), 398–399, who contends that Article 40 was "redundant," as those Indigenous groups to whom the article applied, namely, the Seven Nations of Canada (the Oswegatchie, Akwesasne, Kahnawake, and Kanesatake Iroquois; the Odanak and Wôlinak Abenaki; and the Wendake Huron), had already concluded a separate peace with the British at Oswegatchie to the west of Montreal the week before. For the Treaty of Oswegatchie, see Alain Beaulieu, "Les garanties d'un traité disparu: les traité d'Owsegatchie, 30 août 1760," *Revue juridique Thémis* 34, no. 2 (2000): 369–408.

peoples living within the dominion of the king of France.⁵ Article 40 of the Capitulation of Montreal, therefore, ensured the protection of Indigenous lands throughout the full extent of the interior dependencies of the province of Canada as it was defined at the time of the surrender and later confirmed by its cession in the Treaty of Paris.

The acceptance of this condition of the French surrender put British imperial authorities at tremendous odds with Anglo-American landed interests, the latter of which believed that the British conquest of Canada should be total and that the defeat of New France necessarily translated into the opening of the trans-Appalachian west to colonial settlement. Imperial officials also struggled to come to terms with their inheritance of French–Indigenous diplomacy, as postwar austerity and Amherst’s failure to cultivate the goodwill of Indigenous groups by and large undermined the efforts of Indian agents working to establish the British as the new “fathers” of the extended kinship networks that held together upper country alliance systems. Yet warfare by upper country Indigenous groups against British forts and colonial frontier settlements through the summer of 1763 made clear the importance of honouring the customs of the former Franco-Algonquian alliance, and the Royal Proclamation issued that fall formally established the Crown’s relationship with Indigenous peoples as one predicated on the Crown’s protection of Indigenous lands. However, the Proclamation’s establishment of the trans-Appalachian west as an Indigenous reserve caused colonial interests to perceive of the region as a proverbial no man’s land, existing beyond the reach of colonial authorities and primed for settlement. When British American settlers flooded trans-Appalachian regions through the 1760s and early ’70s in violation of the

⁵ *DCHC*, 1:19; Brian Slattery, *The Land Rights of Indigenous Canadian Peoples, as Affected by the Crown’s Acquisition of Their Territories* (Saskatoon: University of Saskatchewan, 1979), 173.

Proclamation, imperial officials reannexed the ceded interior north of the Ohio River to Canada in the Quebec Act of 1774, thereby restoring upper country Indigenous relations to their traditional jurisdiction under the governor of Quebec.

I

The terms of the cession of Canada were one of the earliest points of negotiation in the peace talks between France and Great Britain. That “the reduction of all Canada was of the utmost importance to the security of [Britain’s North American] colonies” and was a primary objective in the war in North America was acknowledged by George III in his 1761 speech from the throne. It was therefore imperative “that the whole [of Canada] will be clearly and fully ceded to us,” a memorandum circulated among the Ministry in early 1761 read. Yet French and British diplomats disagreed regarding the territory to be included in the cession. In early June of 1761, the French envoy to the Court of St. James’s, François de Bussy, vaguely referred to “the limits of Louisiana” as being “determined by the water flowing to the coasts of either [province].” In France’s first official peace overture later that month, the Duc de Choiseul was somewhat less ambiguous in his suggestion of “a fixation of the boundaries of Canada at the Ohio.” Secretary of State for the Southern Department William Pitt replied via the British envoy at Calais, Hans Stanley, that Britain would only accept a wholesale French cession, not one that was “mutilated or dismembered.” Pitt found Choiseul’s “fixation of new limits to Canada towards the Ohio” to be “captious and insidious, thrown out in hopes, if agreed to, to shorten thereby the extent of Canada, and to lengthen the boundaries of Louisiana, and in the view to establish, what must not be admitted, namely, that all, which is not Canada, is Louisiana.” “The king will never depart from the total and entire

cession, on the part of France, without new limits, or any exception whatever, of all Canada and its dependencies,” Pitt informed Stanley.⁶

Although Bussy acknowledged that “the boundary between Louisiana and Canada have never been well distinguished,” he maintained through late June that “the most useful, equitable, and convenient rule is to determine the boundaries of Louisiana by watershed.” Such a method represented a generous revision of Louisiana’s boundary, however, for Bussy noted that the Ohio country was always considered a dependency of Canada despite that river draining into the Mississippi. Bussy insisted that it was France’s aim in the peace to “explicitly stipulate” that the Ohio and Wabash Rivers were dependencies of Louisiana so as to keep the region out of British hands and therefore block British colonial expansion from Pennsylvania and Virginia. Stanley nevertheless held firm “that Canada, as the province is determined by their [France’s] geographers, and historians, as well as by the respective civil, and military departments, shall be ceded undismembered and entire to Great Britain,” causing Bussy to complain of “the difficulties that will be made to us on the boundary of Louisiana.” When Versailles provided Bussy with an essay on the Canada–Louisiana boundary in mid-July reiterating the Ohio country’s connection to Louisiana, Pitt was unconvinced. Pitt knew that the Ohio country was culturally and diplomatically connected to Canada rather than Louisiana, and he issued an ultimatum later that month echoing previous statements that Britain would accept nothing short of the cession of the entirety of Canada and its dependencies without any of the novel qualifications emanating from Versailles.⁷

France finally agreed in early August “to cede Canada to England in its most

⁶ Theodore Calvin Pease, ed., *Anglo-French Boundary Disputes in the West, 1749–1763* (Springfield: Illinois State Historical Library, 1936), 289–290, 300, 306, 309–311.

⁷ *Ibid.*, 315, 317–318, 335f.

extensive form,” although one further French dispatch proposed dividing Canada and Louisiana by a line running from the western end of Lake Erie to the southeast end of Lake Huron. British prime minister the Duke of Newcastle noted, however, that these were not the “ancient limits” of Canada—the ancient limits were “more extensive.” Among the primary causal factors of the war in North America was the French claim that the Ohio country was a dependency of Canada, and Britain would not entertain French attempts to now “claim it as Louisiana,” as Newcastle wrote. Newcastle, moreover, referenced a communiqué issued to the British ministry by the Duc de Mirepoix during the lead up to the war explicitly stating that the French “regard the Ohio River as a dependency of Canada.” The Mirepoix communiqué did much to discredit the later French position and was supplemented by a further piece of evidence provided by Pitt: a map of Canada that Vaudreuil transferred to Amherst at the surrender of Montreal. “Canada,” according to this map,

And according to the line of its boundaries traced by the Marquis de Vaudreuil himself, when the governor general, by capitulation, gave up the said province to the British General the Chevalier Amherst, includes on one side, Lakes Huron, Michigan, and Superior; and the said line, drawn from Red Lake, includes in a torturous course, the Wabash River as far as its junction with the Ohio, and thence extends along and includes the latter river, as far as its confluence with the Mississippi.⁸

When Choiseul and Vaudreuil tried to downplay the geographical significance of the map in the Mirepoix communiqué, claiming that the description of the limits of the province of Canada included in the document had been rejected by Vaudreuil at the time of the conquest,⁹ the British ministry inquired further into the discussion surrounding the provincial boundary that took place during the capitulation of Montreal.

⁸ *Ibid.*, 227, 342, 353, 366, 372–373, 385.

⁹ See *ibid.*, 388, 398–399.

The British officer to whom Vaudreuil outlined the province's limits was the francophone lieutenant colonel Frederick Haldimand. Amherst wrote Haldimand in early November of 1762 asking for "the exact transactions that passed" between him and Vaudreuil. "About five or six days" after entering Montreal, Haldimand replied, he met with Vaudreuil to see "if he had not some plans, memoirs, or instructive maps regarding Canada." Although Vaudreuil initially denied having any, "having lost them all at Quebec," Vaudreuil informed Haldimand a few days later "that he had found a couple of maps," including "a large, handmade map of North America." Haldimand therefore paid a visit to Vaudreuil before the latter's departure from Montreal in order to examine the map and learn "the extent of his province." Haldimand opened the map and began tracing the outlines of the province with a red pencil, to which Vaudreuil made no reply. Marking the Illinois to its confluence with the Mississippi, Haldimand was interrupted by Vaudreuil who told him to "take all the north," upon which instance Haldimand carried the line up the Mississippi and north to Red Lake "without the slightest objection on his part." Haldimand then returned to the confluence of the Illinois and the Mississippi and followed the Mississippi south to its junction with the Ohio and stopped. Vaudreuil made no objections, even though, as Haldimand wrote, "this line being drawn by these various contours could not be done in an instant, giving him plenty of time to object." Haldimand did "not doubt for an instance" that Vaudreuil consented to "this line being the true boundary of Canada."¹⁰ French claims that the limits of the province were in dispute at the time of the British conquest of Canada had proven dubious. The upper reaches of the Ohio River over which Britain and France had gone to war were considered as a dependency of Canada—they were surrendered to the British at

¹⁰ Ibid., 401–408.

Montreal in 1760 and would therefore be included in any formal cession of the province at the peace table.

While French and British commissioners negotiated behind closed doors, much debate took place in the imperial and provincial capitals over what aims either side should pursue in peace. Unbeknownst to the public that the cession of Canada was more or less a *fait accompli* and that all that remained to be determined was the course of its boundaries, much of the discussion in England, France, and America was nevertheless concerned with whether or not Britain should keep Canada in the peace or if France should seek to recover it. For much of the eighteenth century, Canada had been a financial drain on France, bringing in only 1.8 or so million livres worth of furs annually and costing many times that amount each year to administer.¹¹ France, Voltaire gibed in *Candide*, had spent in the American theatre of the Seven Years' War "far more than the whole of Canada is worth," and he saw little value in expending so much energy and resources for "a few acres of snow in Canada." Knowing France's difficult position in the peace, Voltaire wrote to the Marquis de Chauvelin quite literally begging him to "forever rid the ministry of France of Canada. If you lose it, you lose almost nothing; if you keep it, it will only be an eternal cause of war and humiliation. Consider that the English are at least fifty to one in North America."¹²

Voltaire had assumed that given the choice Britain would not keep Canada.¹³ Yet British and American commentators were advocating for the retention of the province

¹¹ William R. Nester, *The French and Indian War and the Conquest of New France* (Norman: University of Oklahoma Press, 2014), 365.

¹² Voltaire, *Candide, ou l'optimisme* (London, 1759), 209–210; Theodore Besterman et al., eds., *The Complete Works of Voltaire: Correspondence and Related Documents*, 51 vols. (Oxford: Voltaire Foundation, 1968–77), 22:198, 276.

¹³ See *ibid.*, 21:324: "The English will not keep Canada."

from as early as 1760. Scottish clergyman John Douglas argued that Britain should retain all of her North American conquests, and Canada especially. “The war having begun, principally, with a view to do ourselves justice in North America,” Douglas wrote, “the regulation of matters, on that continent, ought to be, and no doubt, will be, the capital article . . . in the coming treaty.” The return of Canada to France would merely “lay the foundation of another war.” Were Canada to revert to a French province, even with restricted limits, France would soon resume “the plan of extending its boundaries, at the expense of the English.” “We can never consent to leave the French any footing in Canada,” Douglas declared. “If we do not exclude them, absolutely and entirely from that country; we shall soon find we have done nothing.” The confirmation of Britain’s conquest of Canada, according to Douglas, was therefore “the sine qua non of the peace, as being the only method of guarding our *invaluable* possessions there” from the perpetual “usurpations and encroachments” of France in North America.¹⁴

Benjamin Franklin agreed that the retention of Canada was essential for the security of Britain’s mainland North American colonies and went a step further in arguing that the acquisition of Canada and its interior dependencies was ultimately beneficial for the stability of Britain’s entire Atlantic empire. To those concerned that the removal of the French presence in Canada would leave Britain’s settler colonies unchecked in their longing for economic self-sufficiency, Franklin responded that British American expansion across the Appalachians and into the interior would ease such tensions. While it was true that the opening of the trans-Appalachian west “will tend to the increase of the British subjects faster than if they had been confined within

¹⁴ John Douglas, *A Letter Addressed to Two Great Men, on the Prospect of Peace* (London, 1760), 28, 30–31, 34.

the mountains,” population increase on the eastern seaboard alone would much sooner result in a population density comparable to that of Great Britain. A high density of colonists contained in coastal British America, Franklin pointed out, would inevitably run out of farmland and look to transition to manufacturing, which would then threaten British domestic industries. By contrast, “a people spread through the whole tract of country on this side the Mississippi, and secured by Canada in our hands,” Franklin wrote, “would probably for some centuries find employment in agriculture, and thereby free us at home effectually from our fears of American manufactures.”¹⁵ The retention of Canada and its adjacent interior, according to Franklin, would therefore preserve the American colonies’ agricultural function within the empire, thus putting off for a few generations at least an imperial rupture arising from a conflict of economic interests.

Others disregarded altogether economic and geopolitical arguments for the utility of retaining Canada and instead presumed Britain’s right to the province as inherent in its conquest. For the Boston minister Samuel Cooper, the conquest of Canada, “that American Carthage,” was nothing short of divine ordination, an act of God “designed to awaken in us a more than common sense of his supreme uncontrollable dominion.” “The power of Canada is broken,” Cooper rejoiced, “its capital is reduced; and the British banners float triumphant upon the walls of Quebec.” “How pleasing a prospect does now present itself to us!” he continued:

What fair hopes have we of being completely delivered from that enemy, that has so often interrupted our tranquility, and checked our growth! What scenes of happiness are we ready to figure to ourselves, from the hope of enjoying, in this good land, all the blessings of an undisturbed and lasting peace! From the hope of seeing our towns enlarged; our commerce increased; and our settlements extending themselves with security on every side, and changing a wilderness into

¹⁵ Benjamin Franklin, *The Interest of Great Britain Considered, with Regard to her Colonies, and the Acquisitions of Canada and Guadeloupe* (London, 1760), 17.

a fruitful field!

The Catholic menace of New France irreversibly defeated, British Americans were now free to expand their Protestant empire to the extent of God's providence, and Cooper anticipated nothing but "the happiness of posterity, to whom we are like to transmit this fair inheritance, with improvements, and a security, unknown to our fathers."¹⁶

Massachusetts clergyman Thomas Barnard similarly celebrated "the exultation of Great Britain to the summit of earthly grandeur and glory," and heralded the defeat of New France as the commencement of "the era of our quiet enjoyment of those liberties, which our fathers purchased with the toil of their whole lives, their treasure, their blood." For Barnard, the conquest of Canada marked the culmination of the colonies' generations-long struggle for security against the French and their Indigenous allies. "Safe from the enemy of the wilderness, safe from the gripping hand of arbitrary sway and cruel superstition," British Americans could now direct their energies at the pursuit of prosperity and the development of those finer arts that marked a free and enlightened people. "Here shall be the late founded seat of peace and freedom," Barnard wrote of the continent that now lay open to the northwest of the British colonies. "Here shall be a perennial source of her strength and riches. Here shall arts and sciences, the companions of tranquility, flourish." And so, too, would Canadians be free to enjoy this new era of peace and prosperity, for "here shall her new subjects and their posterity, bless the day, when their imagined enemies' victories proved to them the beginning of the most

¹⁶ Samuel Cooper, *A Sermon Preached upon Occasion of the Success of His Majesty's Arms in the Reduction of Quebec* (Boston, 1759), ix, 13–14, 39, 46–47.

valuable freedom.”¹⁷

Canada and its adjacent interior were perceived by many colonists as the vital first acquisitions that would establish British Americans as the rightful inheritors to the western advance of Euro-American civilization. “This vast continent may be justly called the new world,” wrote Robert Kirkwood, a Scottish Highlander who had fought at Quebec, “there being land enough to contain all the people in Europe, and part of Asia, and if there was people to be spared to inhabit it, would become a more formidable world than was ever conquered by an Alexander.” Especially ideal for agricultural settlement was the upper Ohio River Valley. “The country upon the banks [of the Ohio], is esteemed the best soil in the world,” Kirkland noted, “and in particular is so free from stones that a plow may be driven for twenty miles, without meeting one.” Kirkland could not help but remark that “it is a pity this tract is not occupied by Europeans, as it is of so excellent a quality, that small trouble would be rewarded with immense wealth.” “The country is fertile and level and capable of being made as fine a settlement as any I have seen in America,” echoed Indian agent George Croghan, writing from the newly-completed Fort Pitt at the Forks of the Ohio in 1761. The Ohio country was, in short, “one of the finest countries in the universe,” according to Kirkwood, and one that “might be peopled with ease and advantage to [its] possessors.”¹⁸ That British dominion over the trans-Appalachian interior was to be secured by treaty was widely expected to provide British Americans with the freedom to finally settle the much-coveted lands of the Ohio country over which they believed the recent war had been fought.

¹⁷ Thomas Barnard, *A Sermon Preached Before His Excellency Francis Bernard* (1763), in Richard D. Brown, ed., *Major Problems in the Era of the American Revolution, 1760–1791: Documents and Essays*, 2nd ed. (Boston: Wadsworth, 2000), 77–78.

¹⁸ Robert Kirkwood, *The Memoirs and Adventures of Robert Kirk, Late of the Royal Highland Regiment* (Limerick, 1770), 70, 93–94; *WJP*, 3:302.

II

The cession of Canada was finally formalized after many months of deliberation culminating in the definitive treaty of peace signed between France, Britain, and Spain at Paris on February 10, 1763. Article 4 of the treaty ceded to Britain “in full right, Canada, with all its dependencies,” including all the islands and coastlines of the Gulf of St. Lawrence. More significantly, the article also included:

in general, everything that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty, or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, lands, islands, places, coasts, and their inhabitants, so that the Most Christian King cedes and makes over the whole to the said King, and to the Crown of Great Britain, and that in the most ample manner and form without restriction, and without any liberty to depart from the said cession and guarantee under any pretence, or to disturb Great Britain in the possessions abovementioned.¹⁹

The treaty’s language of ceding Canada and its dependencies with the “full rights” of “sovereignty, property, and possession” previously enjoyed by the French Crown effectively transferred French dominion over those territories included in the cession to the Crown of Great Britain. Article 7, moreover, defined the cession as everything east of the Mississippi from its source to the coast, save for the town of New Orleans, which along with territories to the west of the Mississippi were to remain in French hands—although Louisiana west of the Mississippi, including New Orleans, had already been secretly ceded to Spain by the Treaty of Fontainebleu in November of 1762.²⁰

News of the formal termination of the war arrived on the frontier in early February of 1763, and although Amherst initially thought “the cession made by the French Crown” to be “of very little consequence” to the Indigenous peoples inhabiting

¹⁹ *DCHC*, 1:115–117.

²⁰ William R. Shepherd, “The Cession of Louisiana to Spain,” *Political Science Quarterly* 19, no. 3 (September 1904): 439–458.

those lands, word quickly reached British officials that the Ohio Indians were particularly distressed upon learning of France's defeat in the war and the removal of a counterbalance to British influence in the interior. A notice from Amherst in May announcing the conclusion of peace generated expressions of anger and confusion among the Ohio groups.²¹ Simeon Ecuyer relayed to Amherst that news of the "reduction of Canada" fell upon those groups around Fort Pitt like "a clap of thunder," driving some "almost ... to despair," added Croghan. Many Indigenous leaders could not understand by what right Britain's capture of Canada translated into its reception from France of so large a tract of the American interior that had not been part of the conquest. "The success of His Majesty's arms, this campaign, in different parts, gives rise to an opinion generally received in the army that we have conquered the continent," Croghan wrote to Superintendent of Indian Affairs Sir William Johnson. "It is true we may say we have beat the French, but we have nothing to boast from the war with the Natives." Croghan described to Amherst the groups around Detroit as "uneasy in their minds since they heard so much of North America is ceded to Great Britain," while those in the vicinity of Fort Pitt seemed "somewhat dissatisfied since they heard it." Indigenous peoples throughout the upper country were generally of the opinion that "the French had no right to give away their country," recorded Croghan, "as they say they were never conquered by any nation."²² Indian agent Alexander McKee reported similar

²¹ Amherst to Croghan, January 21, May 10, 1763, Croghan to Amherst, February 6, 1763, Amherst Papers (microfilm), Loyalist Collection, Harriet Irving Library, University of New Brunswick, Fredericton, WO 34/38, 437, 34/39, 651, 34/41, 179; Amherst Order, May 4, 1763, Bouquet Papers (microfilm), Loyalist Collection, Harriet Irving Library, University of New Brunswick, Fredericton, BL Add. MS 21634, fol. 239.

²² Ecuyer to Amherst, March 11, 1763, Croghan to Henry Bouquet, March 19, 1763, Bouquet Papers, BL Add. MS 21649, fols. 76, 87; *WJP*, 10:134; Croghan to Amherst, April 30, 1763, Amherst Papers, WO 34/39, 665.

confusion among the Indigenous communities he visited in the Virginia backcountry, who feared that “the English would soon be too great a people in this country.” The commanding officer at Fort Pitt, Henry Bouquet, moreover, remarked that the “uneasiness” Indigenous groups felt “at the cessions made in their country by France” was primarily the result of “fears for their lands.”²³

Such fears were well founded, for the cession of Canada and the promise of the opening of the western interior that came with it spurred a proliferation in colonial land speculation. The Ohio Company of Virginia sent George Mercer to Britain in July of 1763 to present its request that the Company be allowed to start issuing land grants to Virginian veterans of the recent war. A group of Pennsylvania merchants also petitioned the Board of Trade in December to take up western lands as compensation for those traders who were bankrupted by damages incurred during the conflict. A number of Virginians and Marylanders who were already involved in the Ohio Company hedged their bets by forming a second company hoping to obtain 2.5 million acres of land between the Ohio, Wabash, and Mississippi River Valleys. A group of Philadelphians led by Benjamin Franklin, meanwhile, attempted to revive Daniel Coxe’s unexecuted seventeenth-century deed to the lands below Lake Erie, and land speculators in New York envisioned their own colony sprawling from the Ohio and into the Wabash and Illinois River Valleys and beyond. A pamphlet associated with individuals surrounding the Earl of Bute was even published in Edinburgh around the same time suggesting partitioning the Ohio country between Pennsylvania and Virginia and organizing the country between the Wabash and Mississippi into a new colony to be called

²³ McKee to Croghan, April 12, 1763, Bouquet to Amherst, May 19, 1763, Amherst Papers, WO 34/40, 476, 481.

“Charlotina,” after the queen.²⁴

Despite the diversity of colonial and metropolitan groups seeking to settle the Ohio country, those colonists most eager for western expansion were Virginians, to the extent that the colonial government itself was not above peddling its influence on behalf of its inhabitants’ land projects. In the summer of 1760, the Ohio Company, several of whose members were “of His Majesty’s council in Virginia,” had written to Henry Bouquet at Fort Pitt, the diplomatic gateway to the trans-Appalachian west, attempting to bribe the colonel with membership in the Company, carrying with it a share of 25,000 acres out of the Company’s grant, if he would allow the Company to take up lands along the Ohio. Bouquet responded by reminding the Company’s correspondent that colonial interests had no right to the lands in question. George Mercer, nevertheless, wrote Bouquet back re-extending the offer and further mentioning that there was a considerable sum in the Company’s treasury that was to be divided among shareholders up upon the Company’s dissolution. Bouquet again refused to budge, and in order to dissuade immediate settlement and make clear that the colonies had no title to western lands, he issued an order from Fort Pitt in the fall of 1761 forbidding British subjects from settling west of the Alleghenies without leave from the commander-in-chief on

²⁴ Clarence Walworth Alvord, *The Mississippi Valley in British Politics: A Study of the Trade, Land Speculation, and Experiments in Imperialism Culminating in the American Revolution*, 2 vols. (Cleveland: Arthur H. Clark, 1917), 1:94–99; Kenneth P. Bailey, *The Ohio Company of Virginia and the Westward Movement, 1748–1792: A Chapter in the History of the Colonial Frontier* (Glendale, CA: Arthur H. Clark, 1939), 253–256; Memorials of the Merchants of the Province of Pennsylvania to the Earl of Halifax and to the Board of Trade, December 12, 1763, Colonial Office Records (microfilm), Loyalist Collection, Harriet Irving Library, University of New Brunswick, Fredericton, CO 5/65, 325–300; *The Expediency of Securing our American Colonies by Settling the Country Adjoining the River Mississippi, and the Country upon the Ohio, Considered* (Edinburgh, 1763), 13–14.

pain of seizure of their property and trial by court martial.²⁵ When Lieutenant Governor of Virginia Francis Fauquier challenged Bouquet's order, asking him "to make known to me your intentions in publishing the said [order]," as it seemed "to tend to obstruct the settling the lands," Amherst supported Bouquet but instructed him to supply Fauquier with a "fully satisfactory" answer as to his intentions.²⁶

Bouquet replied to Amherst that he thought Fauquier's complaint "entirely groundless," and that he was under no obligation to explain himself to a colonial lieutenant governor whose authority was limited to his colony's internal civil affairs and bore no relation to the Crown's acquisitions of Indigenous lands. "I know of no legal title people can have to settle Indian lands, but must be derived from the powers lodged by the Crown in the commander-in-chief," Bouquet wrote. Bouquet also clarified that his order was especially meant to obstruct the Ohio Company, that "favourite scheme of Virginia," and that the threat of court martial was meant to deter families from relocating to the country in what would surely be their ruin at the hands of the Ohio Indians. Bouquet assured Amherst that he was "divested of all motive of ambition, and without private views of interest" in the country. To Fauquier, Bouquet replied that his order, rather than "intending to invalidate *the just rights* of any person," was meant to secure land rights more generally, and that any Virginians possessing such rights by royal patent were free to present such documents to Amherst for permission to take up their grant. As for the issue of court martials, Bouquet explained that anyone who removed themselves to western lands fell beyond the jurisdiction of their home colony, and "that

²⁵ Thomas Cresap to Bouquet, July 24, 1760, Bouquet to Cresap, September 12, 1760, Mercer to Bouquet, December 27, 1760, Bouquet Order, October 30, 1761, Bouquet Papers, BL Add. MSS 21645, fols. 163, 340–341, 21653, fol. 24, 21655, fol. 201.

²⁶ Fauquier to Bouquet, January 17, 1762, Amherst to Bouquet, February 28, 1762, Amherst Papers, WO 34/37, 203, 34/41, 103.

people living out of the settlements, and at such places where there is no form of civil judicature in force ... can be tried by the martial law, agreeable to the articles of war.”²⁷

There were, however, British Americans who had already settled western lands at the time of Bouquet’s order. Earlier that summer, settlers from Connecticut along the Susquehanna River in the northwest Ridge-and-Valley region of the Appalachians had attracted the attention of British military officials who feared that the inevitable clashes between Connecticuters and Indigenous peoples would reverberate out into the Ohio country at large. The following summer, Amherst wrote to Johnson that he had exchanged letters with Governors Thomas Fitch and James Hamilton of Connecticut and Pennsylvania, respectively, “regarding the lands on the Susquehanna River, claimed by the Connecticut people,” and that both were working to put “a stop to any further proceeding in this affair.” Yet despite warnings from both governors, settlement on the Susquehanna continued into the fall of 1762, and there was little British officials could do to protect the settlers from incurring the wrath of local Indigenous groups. If the Connecticut families remained “rash enough ... to settle on the lands in dispute,” Amherst wrote, “they must blame themselves if the consequences prove fatal to them.” Hamilton was concerned that the Connecticut settlers threatened “a new Indian war” on the Pennsylvania frontier, and he was suspicious that Fitch himself was “covertly” involved in the project, as he was doing little to stop its proceeding. Amherst could find no indication that Fitch or the Connecticut government were connected to the settlement; it appeared to him to be “the assertions of a lawless set of people who seem to be flying in the face of power.” Hamilton maintained in a letter to William Johnson that Fitch was

²⁷ Bouquet to Amherst, April 1, 1762, Bouquet to Fauquier, February 8, 1762, Amherst Papers, WO 34/40, 299–301, 303–304.

involved in the project, however, and once more expressed his concerns that the undertaking would result in “a great deal of bloodshed, and a new Indian war, the consequences whereof, we all have so much reason to dread.”²⁸

Amherst also wrote to Johnson, relaying that Fitch had received authorization from Whitehall “to exert every legal authority over the people in his government, and employ his utmost influence to prevent the prosecution of any such settlement” until the issue could be put before cabinet. In the meantime, Amherst berated Fitch, who in turn assured the commander-in-chief that he had forwarded orders to halt settlement and that the directors of the project had complied. Yet Croghan reported the persistence of settlements of “New England people” on the Susquehanna as late as June of 1763. That such settlement had not been assented to by the Crown made little difference to Indigenous groups caught between a profusion of private interests, colonial civilian governments, and royal officials. Croghan surmised that Indigenous peoples’ perceived jealousies “of His Majesty’s growing power in their country” made such groups apprehensive of Britain’s military presence on the frontier. “How they may behave,” Croghan warned, “I can’t pretend to say.” “This country was given by God to the Indians,” one Wyandot leader reminded British officials at a conference held at Detroit, and it was now the British Crown’s responsibility by virtue of its inheritance of Franco-Indigenous diplomatic ties to “preserve it for our joint use.”²⁹

²⁸ *WJP*, 3:904, 10:473, 551–552; Hamilton to Amherst, October 17, 1762, Amherst to Hamilton, October 24, 1762, Amherst Papers, WO 34/32, 215, 34/33, 347–348.

²⁹ *WJP*, 4:84, 10:204; Amherst to Fitch, April 10, May 4, 1763, Fitch to Amherst, June 24, 1763, Amherst Papers, WO 34/28, 201–202, 397–399; Croghan to Bouquet, March 19, June 8, 1763, Bouquet Papers, BL Add. MS 21649, fols. 87–88, 152.

III

Upon his capture of Montreal, Amherst had received authorization from Pitt to take whatever measures he might “judge expedient to be further done for effectually maintaining the possession, and securing the quiet of the important acquisitions you have added to His Majesty’s dominions in that country.”³⁰ With Canada defeated, Amherst’s two major concerns were to secure the Crown’s dominion over its conquest and to ensure His Majesty’s Indigenous allies were “maintained in the lands they inhabit” in accordance with the Articles of Capitulation of Montreal. Amherst’s chief liaison in the latter task was William Johnson. An Irishman who had moved to the New York frontier in the 1730s, Johnson quickly gained significant influence as the British agent to the Haudenosaunee. Johnson learned the Mohawk language, entered into a conjugal relationship with Mohawk leader Molly Brant, and was made a Mohawk sachem, all the while acquiring real estate in the Mohawk Valley amounting to 50,000 acres. Following his distinguished service leading Haudenosaunee forces in the intercolonial wars of the 1740s and ’50s, Johnson was rewarded with a baronetcy and continued to grow his landholdings by another 30,000 acres.³¹ Johnson’s status as agent to the Haudenosaunee had been aggrandized by his being made “sole Superintendent of Affairs of the Six Nations, and other Northern Indians” in early 1756, bringing with it the rank of colonel and a supplemented salary.³²

The Kentish Amherst, however, was leery of the Irish colonial who seemed to

³⁰ Gertrude Selwyn Kimball, ed., *Correspondence of William Pitt When Secretary of State with Colonial Governors and Military and Naval Commissioners in America*, 2 vols. (1906; repr., New York: Kraus, 1969), 2:345–346.

³¹ Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Vintage, 2007), 3–4.

³² *NYCD*, 7:76.

straddle settler and Indigenous worlds so effortlessly, and he was annoyed by Johnson's insistence upon receiving backpay befitting his rank as "colonel of the Confederate Indians, a claim he has made for some time past," and one to which Amherst was hesitant to lend further legitimacy. Although Amherst had gratefully acknowledged Johnson's "unwearied pains" in keeping "His Majesty's faithful Indian allies" engaged as a vital component of the St. Lawrence campaign, Amherst found himself continually having to deny Johnson the large sums of public monies the latter required to maintain his personal status among the Haudenosaunee, thus straining the relationship between the two men to the extent that at one point Amherst told Johnson that he would "dispense with my writing to you, unless on matters requiring your immediate cognizance." Amherst regarded Johnson's personal ties with the Haudenosaunee as too close for comfort, and he was skeptical of "the little dependence that can be made on Indian promises."³³

Amherst had made it clear to colonial governors, Indian agents, and Indigenous leaders alike that the protection of Indigenous lands was a key feature of his mandate as commander-in-chief. "His Majesty had not sent me to deprive any of them [Indigenous peoples] of their land and property," Amherst wrote to Deputy Governor Hamilton of Pennsylvania, "but on the contrary to protect and defend their lives and properties." Such protection was conditional, however. Amherst would "ensure them the free and uninterrupted enjoyment of their own" only so long as Indigenous groups "shall behave and demean themselves in every respect as good neighbours and allies." "So long as they adhered to His [Majesty's] interest, and by their behaviour gave proofs of the sincerity of their attachment to His royal person and cause, I should defend and maintain

³³ Kimball, ed., *Correspondence of William Pitt*, 2:332, 405; *WJP*, 3:136, 195.

them in their just rights, and give them all the aid and assistance they might be liable to.” Any Indigenous groups willing to “render themselves of any use or service to us,” Amherst informed Johnson, “shall most punctually meet with the reward due to their merit.” But should any Indigenous groups “swerve from these rules” and commit any “acts of hostility against His Majesty’s subjects,” Amherst vowed to “look upon and treat them as enemies” and “retaliate upon them ... tenfold.” Amherst guaranteed that justice would be carried out both ways, for “if any of His Majesty’s subjects under my command, should kill or injure any of our Indian brethren, they shall, upon due proof thereof, receive equal punishment.” Amherst hoped that the equitable application of justice on the frontier and his goodwill toward those Indigenous groups who were well disposed toward the Crown would convince other groups who were traditionally averse to a British presence in the interior that they would “be more happy under the protection of the king, than when the French were masters of the country.”³⁴

Yet Johnson continued to forward reports of the Ohio Indians’ anxieties that the British were manoeuvring “to dispossess them of their country, which seems to be the only jealousy they entertain of us.” In response, Amherst reassured Indigenous leaders of his commitment to observing land rights: “the Indians may be assured I will protect them in their lands,” he wrote to Johnson. “Whether they dispose of them or not, is entirely at their own option, I shall never force them to dispose of any, but will secure them in what they have.”³⁵

As British military officials began to more fully comprehend their role as the primary conduits of European diplomacy to the Indigenous peoples of the interior,

³⁴ *WJP*, 3:136, 205, 10:274.

³⁵ *WJP*, 3:138, 506; A Sketch of Amherst’s Speech to the Western Indians, April 1760, Bouquet Papers, BL Add. MS 21653, fol. 8.

however, it became increasingly apparent that their responsibilities extended beyond merely keeping trans-Appalachian regions free from colonial settlement; it also fell upon British officials to maintain the diplomatic customs practiced during the prior French alliance, including that of gift giving.³⁶ Britain's victory over France and the formal cession of Canada had replaced the French Crown with that of Great Britain as the formerly French-allied Indigenous peoples' ceremonial father figure. "Your [French] fathers are become English subjects," Croghan proclaimed at a conference at Detroit, and Indigenous groups were "therefore desired to look upon them as such and not to think of them a separate people." British officials understood themselves to occupy the top stratum of an expanded Euro-Indigenous diplomatic kinship network in the interior, whereby Indigenous groups' former French fathers had now become brothers and cousins, at the head of which system sat the British king, "now your father and my master," as Croghan put it.³⁷

In the climate of postwar austerity, however, British Crown officials struggled to procure the funds necessary to maintain a commercial and diplomatic relationship with their new Indigenous allies consistent with what the French had provided before them. Johnson regularly found himself paying out of pocket to conduct his business as Indian Superintendent, and his appeals to superior officials were met with little support. Amherst had written to Johnson on one occasion, for instance, "that our military chest is again at present, so low" that he could not discharge a warrant Johnson requested for expenses and that Johnson would have to obtain provisions on his own credit. Although

³⁶ For an anthropological introduction to gift giving, see Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*, trans. Ian Cunnison (1954; repr., New York: Norton, 1967).

³⁷ *WJP*, 10:199.

Secretary of State for the Southern Department Lord Egremont had assured Bouquet in late 1761 that “strong recommendations will be made to Parliament in their session next year to grant a proper recompensation for such expenses” as were daily being incurred on the frontier, no one on the ground harboured any illusions that funds from Whitehall would be quickly forthcoming.³⁸ Already operating on a limited budget, Amherst was now tasked with the responsibility of even further reducing Crown expenditures in America, which he intended to do by halting the diplomatic practice of gift giving as a prerequisite to the Crown’s maintenance of Indigenous alliances.

Amherst did not purposely withhold necessities from Indigenous groups: he was more than willing to send out provisions to those communities struck by disease and struggling with crop failures, or to send materials to those who “may be in want of clothing.” He was, however, “averse ... to purchasing the good behaviour of Indians, by presents.” “Services must be rewarded,” Amherst wrote to Johnson, “it has ever been a maxim with me; but as to purchasing the good behaviour either of Indians, or any others, is what I do not understand; when men of what race soever behave ill, they must be punished but not bribed.” Amherst especially did not understand why the Crown should supply necessities to Indigenous communities who, he believed, were otherwise capable of subsistence by hunting and trade, for it was his experience that “the more they get the more they ask, and yet are never satisfied.” He therefore thought it “much better to avoid all presents in the future, since that will oblige them to supply themselves by barter,” and to prevent Indigenous groups’ growing “remiss in their hunting,” both of which would “keep them more constantly employed by means of which they will have less time to

³⁸ *WJP*, 3:199, 331–332; Earl of Egremont to Bouquet, December 12, 1761, Bouquet Papers, BL Add. MS 21647, fol. 286.

concert, or carry into execution any schemes prejudicial to His Majesty's interests," "for so long as their minds are intent on business they will not have leisure to hatch mischief."³⁹

Bouquet, who had long struggled to adequately supply presents to those Indigenous groups whose networks of diplomacy ran through Fort Pitt, supported Amherst's move to lessen Indigenous dependence on British gift giving, which had reached what he thought were excessive levels during the final campaigns of the war, and he sent Croghan orders to "put an end to that useless consumption." "Those that the necessity of the service will oblige you to feed, should be reduced to the same allowance as the soldiers," Bouquet told Croghan. "This was at all times the custom of the French and I do not see why we should give them more provisions than they were used to receive." "We must be brothers and friends" to the Crown's Indigenous allies, Bouquet wrote, "but not slaves." Johnson also wrote to Croghan in early 1762 with instructions to "make use of all the economy which the good of the service will in any wise admit of making no charges to Indian expenses which do not properly belong to that department." Croghan in turn forwarded instructions to Indian agent Thomas Hutchins of the Western Division out of Fort Pitt "to be as frugal as possible," and "to make no presents to any Indians," save for the usual "twist of tobacco" and the other small "trifles" that Amherst allowed to continue to be exchanged as customary tokens of greetings.⁴⁰ At Pittsburgh, Hugh Mercer welcomed news of the weaning of presents to Indigenous groups. "We can now talk to our new allies in a proper style," he boasted to Deputy Governor William

³⁹ *WJP*, 3:206–207, 345, 515, 581–582, 594.

⁴⁰ Bouquet to Croghan, August 10, 1759, Instructions from Croghan to Thomas Hutchins, October 25, 1761, Instructions from Johnson to Croghan, 1762, Donald Campbell to Bouquet, October 27, 1762, Bouquet Papers, MSS 21648, fol. 413, 21655, fols. 78, 172, 174.

Denny of Pennsylvania, “as their services are not necessary, though the consistency of our plan of bringing them entirely over to the British interest ought to be preserved by treating them with a great kindness, but suffering none of their insults.”⁴¹

Amherst’s commission as commander-in-chief had given him the latitude to “inform [himself] from time to time, of the nature and value of the presents” offered “for the inviting and engaging the Indian tribes for our alliance and interest,” and he considered himself as acting within his commission to reduce expenditures on Indigenous affairs beyond those most essential services according to the fiscal conditions he faced. In his efforts to reduce Crown expenditures, Amherst was not wont to consider “the Indians as of more consequence than they really are,” and he was uninterested in buying allegiance or negotiating the terms of what he believed was the submission due to a superior power.⁴² Those officials experienced in Indigenous diplomacy, however, knew that it would be nearly impossible to break with the tradition of gift giving if the Crown was to establish amicable relations with the Indigenous groups inhabiting the ceded territories. Croghan, in particular, thought it foolish of Amherst to presume that he could conduct Indigenous affairs “without some considerable expense.” Upon reviewing his accounts for 1761, for instance, Croghan found that presents made up “not one third” of his expenses, and those given were largely in prisoner exchanges. Indigenous affairs “will always be attended with an expense,” Croghan vented to Bouquet. “From the long time you have commanded here

⁴¹ Sylvester K. Stevens and Donald H. Kent, eds., *Wilderness Chronicles of Northwestern Pennsylvania* (Harrisburg: Pennsylvania Historical Commission, 1941), 166.

⁴² Instructions for Major General Amherst, September 18, 1758, Amherst Family Papers (microfilm), Loyalist Collection, Harriet Irving Library, University of New Brunswick, Fredericton, KCO U1350, O20/8; Amherst to Bouquet, June 7, 1763, Amherst Papers, WO 34/41, 115.

you must be acquainted what kind of people they [Indigenous peoples] are, and that their necessities oblige them to be mercenary and none so much so as their chiefs who seldom or ever hunt,” he wrote, “which makes it impossible to transact any business with them without making them some presents at certain times.” Croghan understood the need to reduce costs, and he pledged to do everything in his “power to promote the good of His Majesty’s Indian interest and with as much frugality as the nature of the service would admit,” but he warned of the very real dangers of breaking diplomatic precedent: “the British and French colonies since the first settling America have adopted the Indian customs and manners by indulging them in treaties and renewing friendships [by] making them large presents, which I fear won’t be so easy to break them of as the general [Amherst] may imagine.”⁴³

Johnson also saw the risk inherent in Amherst’s policy and reminded him of the longstanding custom and diplomatic prudence of gift giving as a prerequisite for the maintenance of Indigenous allegiance. “The French (who certainly were very clever in extending their Indian alliances) did it [gave presents] at a very great expense, and reaped the benefit of it.” To show Indigenous groups “a little generosity, and friendship,” Johnson wrote, would “thereby show them it is their interest to keep well with us.” Johnson even clarified in a dispatch to Egremont the importance of the continuity of diplomatic custom between the French and British regimes. The French, Johnson wrote,

spared no labour, or expense to gain their friendship and esteem, *which alone enabled them to support the war in these parts so long* whilst we, as either not thinking of them of sufficient consequence, or that we had not so much occasion for their assistance not only fell infinitely short of the enemy in our presents etc.

⁴³ Croghan to Bouquet, March 27, 1762, December 10, 1762, Bouquet Papers, BL Add. MSS 21648, fol. 475, 21655, fol. 177.

to the Indians, but have of late I am apprehensive been rather premature in our sudden retrenchment of some necessary expenses, to which they have been always accustomed, and which on due consideration I flatter myself your Lordship will be of opinion they should be gradually weaned from, rather than totally deprived of, as that cannot fail increasing their jealousy and adding fuel to their discontent.

Johnson explained that it was therefore paramount “that we should for a time (at least) continue to show them some countenance, and not withdraw our hands at a time which will confirm their mistrusts,” and asked Egremont that he “be enabled to give them some presents as formerly, gradually lessening the value thereof.”⁴⁴

Amherst nevertheless held fast to his policy of eliminating gift giving, and as he began to hear rumours of anti-British sentiments spreading among the western nations, he also sought to keep Indigenous groups “scarce of ammunition,” for fear of a potential uprising. Such a course of action merely heightened tensions, however, as many groups relied on British powder and lead for hunting (and therefore sustenance) and warfare with rival groups. The “expectations” of Indigenous groups in the Ohio country in particular “was great from us,” Croghan explained to Bouquet, but “the general’s frugality in lessening the expense of presents” was taken as a “design of revenging what has past.” Croghan observed the Ohio Indians to be a people “who never forget nor forgive,” and they believed British officials would “act on the same principles” and were therefore “convinced” of a British “desire to make war on them” in retaliation for past quarrels. Croghan feared such uneasiness was edging Indigenous groups toward “a general Indian war with us.” “The Indians are a very jealous people,” he wrote, “rash and inconsiderate and never consider consequences though it must end in their ruin.”

⁴⁴ *WJP*, 10:244–245, 461–462, 464–465.

How current tensions might end, Croghan wondered, only “the Lord knows.”⁴⁵

To a significant degree, the degenerated postwar material conditions of the Ohio and upper countries were not entirely Amherst’s fault. Amherst’s approach to Indigenous affairs was part of a much wider British imperial fiscal policy in America in the years following the conclusion of the war. “Amherst’s decision to eliminate presents and to rely on trade as the sole mechanism for the exchange of goods between Indians and whites,” as Richard White explains, “was only the means of implementing the new financial stringency.”⁴⁶ Even had Amherst heeded the advice of Croghan and Johnson with regard to gifts, he would have been extremely hard pressed to do so, as research by Harry Kelsey indicates that Britain’s inland supply lines were tremendously weak following the conquest of Canada, and British officials lacked a detailed knowledge of the landscape west of Lake Ontario and the headwaters of the Ohio River. When Amherst initiated a shipbuilding program to gain control of the Great Lakes, for instance, crews constructed vessels with draughts too deep to pass the swift and shallow rapids at the source of the Niagara River at Lake Erie or to navigate the sandbars of Lake St. Clair. British military personnel had a difficult enough time even reaching Detroit and Michilimackinac let alone supplying those posts, suggesting that it would have been near impossible to maintain regular lines of supply to the western nations as the French had done.⁴⁷ Even so, Croghan described Indigenous groups’ disappointment “in their expectations of presents as usual ... which at present make them look on His Majesty’s

⁴⁵ *WJP*, 3:515; Croghan to Bouquet, December 10, 1762, Bouquet Papers, BL Add. MS 21648, fols. 473–474.

⁴⁶ Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815*, 2nd ed. (Cambridge: Cambridge University Press, 2011), 259.

⁴⁷ Harry Kelsey, “The Amherst Plan: A Factor in the Pontiac Uprising,” *Ontario History* 65 (1973): 149–158.

trespass with a jealous eye,” and Johnson warned of the backlash that was sure to come should British officials continue to “neglect that interest which we have hitherto been at so much pains and expense in improving.”⁴⁸

Amherst, meanwhile, remained unconcerned about the prospect of an Indigenous uprising in the west and was convinced of Indigenous groups’ “incapacity of attempting anything serious.” “I am sorry to find, that you are apprehensive, that the Indians are brewing something privately amongst them,” Amherst wrote to Johnson upon learning of stirrings among Indigenous groups in the Detroit area during the summer of 1761. “If it is mischief, it will fall on their own heads, with a powerful and heavy hand; and I am hopeful they are not so blind, as not to see the protection they enjoy from the king.” Amherst trusted “that they may not contrive their own ruin.” Johnson assured Amherst that on his upcoming trip to Detroit he would do everything in his ability to “put a stop to [the discontented groups’] evil intentions,” and he reported on various other groups’ “invariable attachment to us,” and their being “a good deal out of temper with them [the Detroit Indians] on that account.” If certain groups were “rash enough to venture upon any ill designs,” Amherst cautioned Johnson, “I have it in my power not only to frustrate them, but to punish the delinquents with entire destruction, which I am firmly resolved on, whenever any of them give me cause; but I am hopeful they never will.”⁴⁹ Amherst also dismissed intelligence that the French remaining in the upper Great Lakes region were “endeavouring to poison the minds of several of the western nations of Indians in prejudice of His Majesty’s subjects.” Amherst considered such reports as “wild incomprehensible” rumours, “mere *bugbears*,” and he refused to believe that the western

⁴⁸ Croghan to Bouquet, November 25, 1762, Bouquet Papers, BL Add. MS 21648, fol. 456; *WJP*, 3:275.

⁴⁹ *WJP*, 3:421, 510–511, 514.

nations could be “so blind to their own interest as to attempt any mischief in those parts.” When such rumours failed to dissipate with time, however, Amherst became increasingly concerned with what by the spring of 1762 he was referring to as “the Indian plot.” Amherst directed Johnson to do his best “to discover the ring leaders of this treacherous design and put an effectual stop to its execution,” giving him freedom to take “such measures as you judge proper for totally suppressing every part of the Indians’ intentions,” and he trusted Johnson to impress upon those discontented groups the “right way of thinking” so as to “put an effectual stop to its [the plot’s] execution,” which although it “might in the meantime interrupt the public tranquility,” would “in the end bring certain destruction on those who contrived it.”⁵⁰

Amherst remained largely ignorant of the combination of factors that were forcing many Indigenous groups to seriously consider coordinated violence as a means of putting pressure on British officials to honour longstanding diplomatic custom. In addition to Amherst’s elimination of gift giving, both Amherst and Johnson mistakenly focused their attention on Detroit at the nexus of western trade, and the preferential treatment given to that post did much to alienate the more influential Anishinaabeg at Michilimackinac.⁵¹ The Anishinaabeg were “much dissatisfied” with the lack of goods flowing into Michilimackinac, and Anishinaabe leaders facetiously remarked that they were “much obliged to Sir William Johnson for taking so much notice of us as to send [the low-ranking Thomas Hutchins] to visit our country.” Amherst was apparently so unaware of this slight against the Michilimackinac Anishinaabeg that he wrote that they

⁵⁰ Instructions from Croghan to McKee, October 5, 1762, Amherst Papers, WO 34/39, 603–604; *WJP*, 3:505, 670, 741, 744, 920, 10:406, 439, 648.

⁵¹ Michael A. McDonnell, *Masters of Empire: Great Lakes Indians and the Making of America* (New York: Hill and Wang, 2015), 199–204.

“to all appearance, seem pleased with the change of their neighbours,” although they did “complain, as usual, of their great poverty.” Johnson was also deluded that “the western Indians [are so] extremely well disposed towards the English,” and he wrote to Amherst “that matters are settled on so stable a foundation there, that unless greatly irritated thereto they will never break the peace established with them.”⁵²

British military officials were also unaware of the cultural and spiritual revival then taking place among Indigenous groups of the trans-Appalachian west. Sometime before the winter of 1762, a Lenape prophet named Neolin had Indigenized fundamentalist tenets of Quakerism and Moravianism into an anti-white ideology that called upon Indigenous peoples to forsake European goods and commercial connections and reform themselves into peoples capable of living beyond the pale of European influence. After spreading westward from Lenape communities along the Ohio River, Neolin’s teachings were picked up by the Odawa *ogimaa* known as Pontiac and transformed into an explicitly anti-British “ideology of revolt.” Pontiac politicized Neolin’s message by merging existing strands of Nativist revivalism with Algonquian sentiments of discontent with British rule and nostalgia for the prewar French alliance, the product of which was a widespread longing for the return of Onontio to the politics of the interior. Pontiac’s message had a broad appeal among the western nations and was given additional support by the French who issued a series of war belts from Illinois and Montreal that circulated alongside belts from the Odawa at Detroit and the Seneca of the Genesee River Valley in New York calling for a war against the British and the

⁵² Charles A. Hanna, ed., *The Wilderness Trail: or The Ventures and Adventures of the Pennsylvania Traders on the Allegheny Path*, 2 vols. (New York: G. P. Putnam’s Sons, 1911), 2:363; *WJP*, 3:559, 645.

restoration of the French alliance.⁵³ It was clear to Croghan by the turn of 1763 that “something was intended against us,” the movement’s leaders were simply “not yet united so as to attempt putting it in execution.”⁵⁴

An attack was finally made on May 9, 1763, when Pontiac and his forces laid siege to Detroit, killing or wounding twenty British soldiers and traders and taking another fifteen captive. Over the course of the next few weeks, Pontiac’s contingent captured a series of British convoys moving west, and their success rallied additional groups to their cause. By the end of the following month, there had been Indigenous attacks on British posts throughout the entire interior, and multiethnic war parties destroyed frontier settlements and harassed British supply lines from Lake Ontario and the Monongahela River in the east to Green Bay in the west.⁵⁵ Though “more general” than Amherst “had once apprehended,” the war was not total, as there were some Indigenous groups that resisted joining. The Waganawkezee Odawa at Michilimackinac, in an effort to make clear to British officials their position of geopolitical significance, intervened on behalf of the British against the revolting Ojibwe there, and Indian agents to the Ohio country worked with various groups who “provided intelligence, made peace overtures, and offered assistance.” Johnson, meanwhile, used what leverage he had as Superintendent to persuade Haudenosaunee, Cherokee, and Catawba groups to stand

⁵³ White, *Middle Ground*, 275–285; Charles E. Hunter, “The Delaware Nativist Revival of the Mid-Eighteenth Century,” *Ethnohistory* 18, no. 1 (Winter 1971): 40–46; Fred Anderson, *Crucible of War: The Seven Years’ War and the Fate of Empire in British North America, 1754–1766* (New York: Vintage, 2001), 537.

⁵⁴ Croghan to Bouquet, January 8, 1763, Bouquet Papers, BL Add. MS 21649, fol. 5.

⁵⁵ McDonnell, *Masters of Empire*, 213–215; White, *Middle Ground*, 287; Anderson, *Crucible of War*, 538–541.

against or at least stay out of the primarily Algonquian-led movement.⁵⁶ At its height, the uprising engulfed nearly the entirety of the Ohio country and much of the upper country, as one by one every fort from the south shore of Lake Erie to the Forks of the Ohio, “all that had been purchased with so much blood and treasure” during the late war, as one contemporary wrote,⁵⁷ fell to Indigenous warriors.

Amherst was paralyzed in his response to the crisis by his wait for war-weary reinforcements to arrive from the Caribbean, leaving him little choice but to try to stave off Indigenous forces with the limited resources he had at his disposal. Amherst was hell-bent on retaining as many posts as possible regardless of how untenable certain positions had become. “The abandoning of any posts, at a time when the Indians are committing hostilities, must be attended with the worst of consequences,” Amherst wrote to Bouquet. “Such a step would give the Indians room to imagine themselves more formidable than they really are,” he continued, in which case “it would be much better we never attempted to take [any] post[s] in what *they* call their country, if, upon every alarm, we abandon them.” Despite Johnson’s efforts to enlist warriors from Iroquoians groups to combat the uprising, Amherst preferred to exhaust all options independent of any further Indigenous involvement, explaining to Johnson that “our security must depend on our own superiority and not to their [Indigenous peoples’] friendship, or generosity.”⁵⁸

Amherst was not wholly without reason in his reluctance to recruit Indigenous

⁵⁶ Amherst to Bouquet, June 12, 1763, Amherst Papers, WO 34/41, 191; McDonnell, *Masters of Empire*, 219–223; Colin G. Calloway, *The Scratch of a Pen: 1763 and the Transformation of North America* (New York: Oxford University Press, 2006), 73; *NYCD*, 7:524–525.

⁵⁷ William Smith, *An Historical Account of the Expedition Against the Ohio Indians, in the Year 1764* (Philadelphia, 1765), iii.

⁵⁸ Amherst to Bouquet, June 19, 1763, Amherst Papers, WO 34/41, 201; *WJP*, 4:151.

warriors, however, for the uprising was at times particularly ruthless and the allegiance of particular groups was not always easily discerned. At Detroit, for instance, Pontiac had seized British army officer Donald Campbell under the pretence of a truce before brutally torturing and killing him in retaliation for the death of an Ojibwe chief's son in an earlier British sortie. While Pontiac's actions drew criticism from some other Algonquian groups who had initially sympathized with the war's aims, amidst such confusion and obscured intelligence, it was nearly impossible for British officials to know which groups or individuals they could trust.⁵⁹ Amherst wrote Johnson of "the contemptible figure they must make in our eyes, by violating the most solemn promises of friendship, without the least provocation on our side," and he contemplated the "certain and inevitable ruin [of] the whole race of the Indians, that are so rash as to be concerned, and persevere in this perfidious behaviour." Algonquian warriors were little more than "merciless villains," Amherst wrote, "and we soon shall be in a way to take ample satisfaction for such base and treacherous proceedings." "Indeed no punishment we are capable of inflicting can atone for the loss of these innocent people, who have fallen by the hands of these bloody miscreants."⁶⁰

Amherst sent what little reinforcements he had west to Niagara, Fort Pitt, and Detroit, and he approved of subordinate officials' making "a quick retaliation" in response to any "barbarities" they encountered. With no "desire to enter into any negotiations with the tribes engaged in the present insurrection," Amherst hoped "to hear of *no prisoners*" taken by those sent out to combat the uprising. Amherst informed Johnson of his intentions that "those perfidious villains who have thus attacked our

⁵⁹ White, *Middle Ground*, 288; Calloway, *Scratch of a Pen*, 86.

⁶⁰ *WJP*, 4:149, 10:689; Amherst to James Dalyell, June 22, 1763, Amherst Papers, WO 34/38, 467.

posts, shall most certainly, in the end, pay dear for their temerity,” and he remained confident that the war, though it “might be attended with the loss of our inferior posts, and a few of our people *at first*,” would “inevitably occasion such measures to be taken as would bring about the total extirpation of those Indian nations.”⁶¹ Bouquet agreed that by virtue of ongoing warfare against their supposed allies (the British), such Indigenous groups were no longer subject to the laws of conventional warfare, and that extreme measures ought to be taken “to extirpate that vermin from a country they have forfeited, and with it all claims to the rights of humanity.” “I would rather choose the liberty to kill any savage that may come in our way,” Bouquet wrote to Amherst, “than to be perpetually doubtful whether they are friends or foes.” Even Croghan, who was perhaps most perceptive as to the causes of the uprising, agreed that the perpetrators ought to be “all put to death.”⁶²

In formulating methods for suppressing the uprising under limited resources, Amherst contemplated biological warfare as a means of reducing Indigenous groups’ capacity to conduct war. When Bouquet reported to Amherst in late June of 1763 that smallpox had broken out at Fort Pitt, Amherst wondered whether it could “not be contrived to send the *smallpox* among those disaffected Indians? We must on this occasion, use every stratagem in our power to reduce them.” Bouquet replied that he would “try to inoculate the [Indians] with some blankets that may fall in their hands,” and Amherst approved. “All your directions will be observed,” Bouquet responded in

⁶¹ Amherst to Dalyell, June 19, 1763, Amherst to Bouquet, June 29, 1763, Amherst to Croghan August 7, 1763, Amherst Papers, WO 34/38, 465, 497, 34/41, 215; *WJP*, 4:166–167, 10:733.

⁶² Bouquet to Amherst, June 25, 1763, Croghan to Bouquet June 18, 1763, Bouquet Papers, BL Add. MSS 21634, fol. 304, 21649, fol. 182.

late July.⁶³ Yet there is limited evidence that either Amherst or Bouquet were responsible for the deliberate transfer of smallpox to Indigenous groups during the summer of 1763. There exists among Bouquet's papers an invoice endorsed by Governor of Montreal Thomas Gage to be discharged by Bouquet for expenses drawn on the Crown at Fort Pitt by the trading firm Trent, Levy, and Company, which includes two blankets and both a silk and linen handkerchief at the value of £2.13s.6d "from people in the hospital to convey the smallpox to the Indians." The journal of the trader William Trent, moreover, features an entry on June 24, two weeks before Amherst's postscript, in which Trent writes that "out of our regard to them [the Indians] we gave them two blankets and a handkerchief out of the smallpox hospital. I hope it will have the desired effect," suggesting that Trent had acted independently of Amherst and Bouquet's later discussion. Philip Ranlet also demonstrates that those Indigenous leaders to whom Trent had given the infected garments were still alive and unaffected by disease as late as the fall, and others can be found in the historical record long after 1763. Trent's efforts, Ranlet writes, were "likely a total failure."⁶⁴

Nevertheless, Indigenous peoples and Europeans alike battled a host of diseases,

⁶³ Bouquet to Amherst, June 23, July 13, 26, 1763, Amherst to Bouquet, undated postscript (likely July 7, 1763), Bouquet Papers, BL Add. MS 21634, fols. 295, 243, 322, 333; Amherst to Bouquet, July 16, 1763, Amherst Papers, WO 34/41, 229.

⁶⁴ Anderson, *Crucible of War*, 543; Copy of Accounts of Trent, Levy, and Company against the Crown, October 12, 1763, Bouquet Papers, BL Add. MS 21654, fol. 182; A. T. Volwiler, ed., "William Trent's Journal at Fort Pitt, 1763," *Mississippi Valley Historical Review* 11, no. 3 (December 1924): 400; Philip Ranlet, "The British, the Indians, and Smallpox: What Actually Happened at Fort Pitt in 1763?" *Pennsylvania History* 67, no. 3 (Summer 2000): 427–441. See also Bernhard Knollenberg, "General Amherst and Germ Warfare," *Mississippi Valley Historical Review* 41, no. 3 (December 1954): 489–494; Matthew C. Ward, "The Microbes of War: The British Army and Epidemic Disease among the Ohio Indians, 1758–1765," in *The Sixty Years' War for the Great Lakes, 1754–1814*, ed. David Curtis Skaggs and Larry L. Nelson (East Lansing: Michigan State University Press, 2001), 63–78; and Elizabeth A. Fenn, "Biological Warfare in Eighteenth-Century North America: Beyond Jeffery Amherst," *Journal of American History* 87, no. 4 (March 2000): 1552–1580.

including influenza, typhus, and smallpox, through much of the summer of 1763, and Andrew Lewis of the Virginia militia recorded the persistence of outbreaks of disease on the frontier well into the following year. The Algonquian-led war began to falter coincidentally. By the late summer of 1763, the French in Illinois were cutting aid to those groups still fighting and some Indigenous groups began to break ranks and sue for their own peace. Bouquet scored a decisive victory against Indigenous forces at Bushy Run on August 5–6, of which he wrote to Amherst that “our brave men disdained so much to touch the dead body of the vanquished enemy that scarce a scalp was taken,” suggesting a sickly state among the Indigenous warriors still in the field.⁶⁵ The conclusion of a formal peace took another two years, however, as Croghan opened negotiations with Pontiac in early 1765, before Pontiac himself travelled to conferences with Croghan and Johnson that summer, finally declaring in August that “the war is all over.” Tensions between Indigenous peoples and settlers on the Pennsylvania frontier, however, remained high through the peace negotiations.⁶⁶

IV

In the short term, the uprising of 1763 had been a disaster for all groups involved, for “in breaking our pipe of peace, we hurt our own heads very much,” as one Kickapoo leader put it in July of 1765. Although Algonquian-led, the war represented a broader “pan-Indian effort to roll back English advances and restore an older equilibrium.” To a certain degree this had been achieved: Ohio and upper country Indigenous groups had not been reduced to British subjecthood and the uprising had forced British officials to

⁶⁵ Lewis to Bouquet, September 10, 1763, Bouquet Papers, BL Add. MS 21650, fol. 490; White, *Middle Ground*, 288; Bouquet to Amherst, August 6, 1763, Amherst Papers, WO 34/40, 651.

⁶⁶ *WJP*, 11:577, 839, 899–901; *NYCD*, 7:783; Calloway, *Scratch of a Pen*, 76–79.

acknowledge the necessity of adopting the diplomatic customs of the prior Franco-Algonquian alliance. In the fall of 1763, the Board of Trade allocated an additional £1,000 “to conciliate the Indian tribes.”⁶⁷ The war also made apparent the need for definitive Crown policy for the regulation of colonial land development, including the limitation of settler expansion and the restriction of the jurisdictions of colonial governors. That the French cession “yielded to us the dominion, but not the property of those lands” west of the Appalachians was well understood by British imperial officials. It was therefore recognized by the Crown “that the exorbitant grants of lands which governors and others have heretofore made, greatly to the benefit of themselves, but very much to the prejudice of the interests of the Crown and of the people in general have long been the subject of great complaint.” That colonial encroachment onto Indigenous lands had been one of the major causes of the war was widely acknowledged, and Johnson in particular outlined instances as they related to the colony of New York in a dispatch to the Board of Trade in November of 1763. The best means by which to satisfy “the Indians on the subject of their uneasiness, particularly concerning their lands,” Johnson suggested, was “that a certain line should be run at the back of the northern colonies, beyond which no settlement should be made.”⁶⁸

Similar measures had already been attempted in late 1761, when the Board prepared an order-in-council forbidding colonial governors “to pass grants of or encourage settlements upon any lands within the said colonies which may interfere with the Indians bordering thereon.” Private and colonial actors, however, had ignored these instructions during the intervening years to a great detriment to imperial interests and

⁶⁷ *WJP*, 11:848; McDonnell, *Masters of Empire*, 161; *NYCD*, 7:546–547.

⁶⁸ *NYCD*, 7:473–474, 560, 578; *WJP*, 4:276.

Indigenous diplomacy. By the time the Algonquian war was in full swing during the summer of 1763, the Board of Trade and the Privy Council were already drafting a proclamation to be issued by the Crown intending to resolve the issue of land encroachment. In a report to the Privy Council in early June, the Board had recommended that “strict directions . . . be given to your Majesty’s several governors of your ancient colonies for preventing their making any new grants of lands beyond certain fixed limits to be laid down by instructions for that purpose.” Such limits would lend the Crown’s “immediate protection, to the Indian tribes for their hunting grounds; where no settlement by planting is intended.” The Board therefore submitted to the Privy Council “the general proposition of leaving a large tract of country round the Great Lakes as an Indian country, open to trade, but not to grants and settlements.” In August, the Board further emphasized the necessity of permitting “no grants of land nor any settlement to be made within certain fixed bounds,” to which the Privy Council agreed in September to “prohibit private purchases of lands from Indians.”⁶⁹

These features of British–Indigenous land policy that had filtered up over the previous two years from Indian agents and military officers in North America to imperial officials in Whitehall were key elements of the Royal Proclamation of October 7, 1763, which formalized the Crown’s protection of Indigenous lands against the predations of colonial settlement. The Proclamation declared that those “several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are reserved to them, or any of them, as their hunting grounds.” As such, no governor of any of Britain’s newly-acquired

⁶⁹ *NYCD*, 7:477; *DCHC*, 1:139–140, 152, 154.

territories was permitted to “grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions.” Nor were the governors of any of the old British American colonies to “grant warrants of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean ... or upon any lands whatever, which, not having been ceded to or purchased by us as aforesaid, are reserved to the said Indians, or any of them.” All unceded and unsold lands, within both new and old colonies and to the west of the Appalachian ridgeline, were therefore placed under the “sovereignty, protection, and dominion” of the British Crown “for the use of the said Indians,” and were to be closed off from “any purchases or settlements whatever” without “especial leave” from the Crown.⁷⁰

The Proclamation of 1763 represented a significant effort on the part of British policymakers to rectify a major source of tension that had contributed to the Indigenous uprising of the previous months, namely, the westward expansion of colonial settlement. The Proclamation’s articulation of the Crown’s protection of Indigenous lands, and particularly the lands of those Indigenous groups inhabiting the territories appended to the historical French province of Canada, also signified the British Crown’s formal acknowledgement of its inherited diplomatic role among Indigenous peoples via its assumption of the sovereignty of the French Crown in Canada by the Treaty of Paris. The Proclamation did not result in the immediate return of Onontio to Indigenous diplomacy in the North American interior, however. Amherst continued to plan retaliatory attacks against those groups involved in the war even as the uprising was waning, until he was finally recalled to England in November of 1763. Those nations

⁷⁰ *DCHC*, 1:166–167.

who had “so unjustly and treacherously commenced hostilities,” Amherst wrote, should first be “sufficiently punished” for their “depredations” before normal diplomacy could resume. For Amherst, it was “madness, to the highest degree, ever to bestow favours” on those who had carried out a war against their supposed benefactors. Amherst was resolute that “presents should be given only to those who remain our firm friends.”⁷¹ Meanwhile, rumours continued to circulate throughout Indigenous communities in the interior of the return of the French in North America, indicating a continued longing for the reappearance of Onontio that was manifested in Indigenous groups’ display of French symbols and cultural forms that sought to appropriate the “power” and “spirit” of the French Crown.⁷²

Although the Proclamation established a formal legal and constitutional connection between the Indigenous inhabitants of the North American interior and the British Crown, western Indigenous groups persisted in their symbolic attachment to their old French “father” so long as a British incarnation of Onontio failed to materialize. While British imperial officials had succeeded in recognizing the vital link between the Crown and those Indigenous groups over whom it had inherited its role as protector, the source of Crown diplomacy with the western nations had not returned to its traditional seat at Quebec. Rather, the Proclamation had effectively severed the North American interior from the former French capital by demarcating the bounds of the new British province of Quebec by a line running from the south end of Lake Nipissing and crossing the St. Lawrence River at the forty-fifth parallel. Egremont had earlier expressed the king’s concern at the “great inconveniencies” that would arise from leaving the interior

⁷¹ *WJP*, 4:193, 10:857–856, 911.

⁷² Gregory Evans Dowd, “The French King Wakes Up in Detroit: ‘Pontiac’s War’ in Rumor and History,” *Ethnohistory* 37, no. 3 (Summer 1990): 265–266.

beyond the jurisdiction of the governor of Quebec, as it “might, in time to come, furnish matter of dispute” between the colonies who “might take possession thereof, as derelict lands.” The Board of Trade, however, had insisted that British dominion over the trans-Appalachian west existed not by virtue of the French cession, but was instead a result of the Crown’s longstanding alliance with the Haudenosaunee, who asserted proprietorship over “the lakes and circumjacent territory” via their claim to have conquered the region in the seventeenth century. The Board also noted that since the interior was held “by means of the garrisons at the different posts and forts in that country,” the placement of such territory under the jurisdiction of the governor of Quebec would necessitate making him commander-in-chief as well, an idea of which the Board was “apprehensive” due to the “constant and inextricable disputes [which] would arise” between him and the governors of old colonies. Egremont’s successor, the Earl of Halifax, replied to the Board that upon further consideration, His Majesty was “pleased to lay aside the idea of including within the government of Canada, or of any established colony, the lands which are to be reserved, for the present, for the use of the Indians.”⁷³

Despite the Proclamation’s establishment of the Crown’s protection of Indigenous lands, its severance of Indigenous interior spaces from their traditional diplomatic linkages to Quebec made the colonial Indian Superintendents, who reported to the Board of Trade rather than directly to the Crown, the chief conduits of British–Indigenous relations for the time being. The result was that Indigenous policy in the northern colonies was significantly shaped by Johnson, who overwhelmingly favoured Haudenosaunee interests at the expense of the Crown’s inherited Algonquian allies. The Board of Trade sought to further consolidate the influence of the Superintendents with

⁷³ *DCHC*, 1:147–148, 151–154, 164.

its proposed “Plan for the future Management of Indian Affairs” in 1764, which attempted to bar the commander-in-chief from holding treaty councils or even corresponding with Indigenous groups unless through the office of the Superintendent. The plan also demonstrated a mixture of poor ethnographic knowledge and Haudenosaunee favouritism in its efforts to create a hierarchical system of elected Indigenous representatives along ethnic and clan lines, resulting in “principle chiefs” of “whole tribe[s]” selected to exercise “property in such lands” that could only be sold or ceded through the Superintendent.⁷⁴ Such a system would have put Algonquian and Algonquian-allied peoples—who often lived in multiethnic communities and whose place-specific leadership structures did not always run parallel to ethnic and clan hierarchies—at a significant diplomatic disadvantage, potentially allowing for the sale or cession of lands by groups other than those who actually inhabited them.

The Board’s plan for the election of Indigenous representatives was also partially predicated on the mistaken idea that the Algonquian and Algonquian-allied peoples of the interior, by virtue of an imprecise combination of their supposed conquest by the Haudenosaunee and their defeat in the late uprising, had become British subjects. When British colonel John Bradstreet was sent to Detroit to hold a peace council with the western nations in September of 1764, for instance, Bradstreet took exception to Indigenous leaders’ “use of the word brothers instead of subjects and children of the king of England.” Bradstreet “told them nobody were to be admitted into the aforementioned submission and articles of peace, but such as acknowledge themselves subjects and children of the king of England.” Johnson knew that any Indigenous

⁷⁴ Daniel K. Richter, *Trade, Land, Power: The Struggle for Eastern North America* (Philadelphia: University of Pennsylvania Press, 2013), 193–195.

acknowledgement of subjecthood was surely unintentional, and he suspected that the inferences to such in Bradstreet's treaty arose "from the ignorance of the interpreter or from some other mistake." Iroquoian and Algonquian languages had no words approximating even "the most distant idea of subjection" in the European sense of the term, Johnson explained to the Board of Trade, and "should it be fully explained to them," it "could answer no purpose whatsoever" other than "infinite harm" to British-Indigenous relations. "They desire to be considered as allies and friends," Johnson clarified as he walked back Bradstreet's erroneous claims late into 1764.⁷⁵ Britain's military response to the Algonquian war had not been one of conquest and did not result in the reduction of western Indigenous peoples to a state of British subjecthood. Bradstreet's attempt to procure Indigenous acknowledgement of the pretence of British sovereignty over the western nations was likely motivated by his own ambitions to see Detroit properly subjugated and have himself appointed governor at that post.⁷⁶

What exactly western Indigenous leaders agreed to at Bradstreet's Detroit conference, however, can be discerned by the treaty's dual usage of the terms "subjects and children." While western Indigenous leaders would have never acceded to subjecthood as Bradstreet intended it, their ceremonial acknowledgement of themselves as British "children" signalled an Indigenous ratification of the alliance with their new English "father" according to the Proclamation's articles of British "protection" in the same vein as the western nations had been "children" under the "protection" of the

⁷⁵ *WJP*, 4:532–533, 616, 11: 394–396; *NYCD*, 7:561, 674.

⁷⁶ White, *Middle Ground*, 291–294; William G. Godfrey, *Pursuit of Profit and Preferment in Colonial North America: John Bradstreet's Quest* (Waterloo, ON: Wilfred Laurier University Press, 1982), 196, 205–207.

French Crown prior to the cession of Canada.⁷⁷ The Proclamation's crucial provision that the transfer of Indigenous lands by sale or cession could be made only on behalf of the Crown was also confirmed by the 1764 treaties, particularly those concluded at Niagara between May and August of that year, at which Johnson was presented with peace calumets from representatives of various western Indigenous groups spanning the full breadth of the Ohio and upper countries. Emissaries from the Haudenosaunee were also on hand to observe the proceedings. Symbolic declarations were made of the British having "cleared the sky throughout this country, and smoothed the waters of the lakes, so that all is calm," and Johnson made clear to those present that the French were "a conquered people, now our [British] subjects," implying firmly that Algonquian and similarly-allied peoples' French father had been succeeded by the British Crown.⁷⁸

The Niagara conferences resulted in two treaties, one with the Wyandot of Detroit and the other with the Seneca of the Genesee River. Johnson's treaty with the Wyandot established "a firm and absolute peace ... between the English and them," and "admitted" the Wyandot, second only to the Odawa as the dominant force in the former French alliance, "into the chain of friendship and alliance with his Britannic Majesty." The treaty also secured for the British free navigation of the Detroit River and acknowledged the Crown's "right to all the lands" on either side of the river to Lake St. Clair "in as full and ample manner as the same was ever claimed or enjoyed by the French." The Wyandot, moreover, were to commit "such a number of their warriors as may appear necessary for the protection thereof, or the annoyance of the enemy." The Genesee Seneca, on the other hand, who had been the chief instigators of the uprising in

⁷⁷ White, *Middle Ground*, 306.

⁷⁸ *WJP*, 11:202–203, 262–276, 278–324.

the east, had little choice but to sign a more compromising peace. That treaty received the Seneca back into “the covenant, or old agreement, between the English and them,” referring to the traditional Anglo-Iroquoian alliance with which their involvement in the Algonquian-led war had demonstrated their palpable discontent. The Seneca also ceded to the Crown all the lands within four miles of breadth on either side of the Niagara River in its entire course from Lake Erie to Lake Ontario. When Johnson was given “the islands between the great falls and the rapids” as a gift from the Seneca as “proof of their regard and of their knowledge of the trouble he has had with them from time to time,” he “made a tender of the whole” of that gift to the Crown in observance of the Proclamation, to which he assured the Board of Trade that he had “paid all due regard” in his negotiations.⁷⁹ The Niagara peace conferences and their resultant treaties were an affirmation of the Crown’s exclusive right to acquire Indigenous lands as established by the Proclamation, as well as they were a formal acknowledgement of the inheritance of the French alliance with the Indigenous groups of the upper country by the British Crown.

V

Political stability in the interior was short lived. Entrenched as he was in internal Haudenosaunee politics, Johnson struggled to adequately comprehend Algonquian diplomacy and politics on its own terms, regularly causing offence when he preferred to deal merely with clan chiefs in the Iroquoian fashion, seemingly unaware of the greater diplomatic importance of multiethnic village chiefs among upper country groups.

⁷⁹ *NYCD*, 7:599, 650–653. See also John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,” in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*, ed. Michael Asch (Vancouver: UBC Press, 1997), 155–72.

Neither Johnson nor the Proclamation, moreover, could stop the flow of settlers westwards across the Appalachians, resulting in the rapid destabilization of Crown–Indigenous relations through the late 1760s. In stark contrast to Canadian voyageurs, who had taken to Indigenous cultural practices and interconnected themselves into Indigenous kinship networks, “British settlers did not believe that their lives depended on good relations with Indians, nor did they seek refuge among them.”⁸⁰ Whereas Canadian voyageurs had been “men of ability and influence,” Johnson saw British Americans moving into the colonial backcountry as a “low people” of “low character,” “the very dregs” of colonial society, as he put it. Gage agreed, describing British Americans in the trans-Appalachian west as “a set of people, who for the most part, are near as wild as the country they go in, or the people they deal with, and by far more vicious and wicked.”⁸¹ Many backcountry settlers, and especially those on the Pennsylvania frontier, moved into the Ohio country not only as “opportunistic squatters,” but as avowed “Indian-haters,” according to Eric Hinderaker. Such individuals had often been directly involved or else closely affected by the recent uprising and had become “hardened by the experience of [Indigenous warfare] and organized for self-defense.”⁸² These settlers were not only bound to come into violent contact with Indigenous peoples who were eager to keep colonial encroachment at bay, but in many cases, they actively sought out violence in an effort to justify the suppression of Indigenous land claims. “It grieves me,” Benjamin Franklin wrote to

⁸⁰ See White, *Middle Ground*, 310–322.

⁸¹ *NYCD*, 7:961, 965; Gage to Shelburne, February 27, 1767, in Clarence Edwin Carter, ed., *The Correspondence of General Thomas Gage, 1763–1775*, 2 vols. (1931–33; repr., Hamden, CT: Archon, 1969), 1:124.

⁸² Eric Hinderaker, *Elusive Empires: Constructing Colonialism in the Ohio Valley, 1673–1800* (Cambridge: Cambridge University Press, 1997), 162.

Johnson, “to hear that our frontier people are yet greater barbarians than the Indians, and continue to murder them in time of peace.”⁸³

Neither the Proclamation line nor its earlier manifestation in Bouquet’s 1761 order had been respected by backcountry settlers, and the volume and remoteness of colonists living between the Appalachians and the east bank of the Ohio River presented British officials with a significant challenge in enforcing those regulations. As something of a more “permanent resolution” to what was becoming an increasingly provisional expedient in the Proclamation line, Johnson negotiated the Treaty of Fort Stanwix with the Haudenosaunee in the fall of 1768. With little chance of curbing settlement across the Proclamation line, Johnson believed it was in the Crown’s best interest to acquire the lands between the Appalachians and the Ohio River in an attempt to legitimate the squatting of those who “were daily settling without any title at all, and contrary to His Majesty’s orders.”⁸⁴ Privately, however, both Gage and Johnson had no illusions that the cession by the Haudenosaunee under the guise of the confederacy’s suzerainty over the Lenape and Shawnee would do much to solve the problem of illicit settlement. “As for the boundaries in general,” Gage wrote to Johnson in the spring of 1769,

if they would be inviolably preserved, and duly observed by the provinces, it is certainly a most useful work, as it would be the surest means to prevent cavils and disputes, and finally, open ruptures between us and several Indian nations. But I must confess from my experience in many of the provinces, I am fully convinced that the boundary lines will never be observed.

Johnson agreed that “whatever laws are made will fail in the execution,” and both were

⁸³ Franklin to Johnson, September 12, 1766, in Leonard W. Labaree et al., eds. *The Papers of Benjamin Franklin* (New Haven, CT: Yale University Press, 1959–), 13:416. See also White, *Middle Ground*, 343–351.

⁸⁴ White, *Middle Ground*, 351–353; *NYCD*, 8:118–137, 316.

of the opinion that backcountry settlers' willingness to "push" royally established boundary lines was undoubtedly owing to the "too much encouragement" they received from their colonial assemblies to do so.⁸⁵

As royal authority eroded on the frontier through the early 1770s, the eastern Ohio region became a space of colonial settlement. Most settlers, Gage wrote, "are already almost out of the reach of law and government; neither the endeavours of government, or fear of Indians has kept them properly within bounds," they were quite simply "too numerous, too lawless and licentious ever to be restrained."⁸⁶ To the Reverend David McClure, a New Hampshire missionary to the Ohio country Lenape, backcountry Virginians in particular appeared to be little more than "white savages," who felt "themselves beyond the arm of government, and freed from the restraining influences of religion."⁸⁷ Having little respect for civil authority in the colonies from which they set out, backcountry settlers held a special disregard for royal officials, who appeared especially impotent on the frontier. "When without a king," one settler to the southern Ohio Valley wrote, "[one] doeth according to the freedom of his own will."⁸⁸ The "licentious spirit" of backcountry settlers, Johnson observed, had produced a pointed "malevolence and disregard to all treaties."⁸⁹ Forsaking all hope in British military officials' ability to mediate between increasingly hostile parties, Gage ordered Fort Pitt abandoned in August of 1772, resulting in armed confrontation between Virginians and Pennsylvanians over the Monongahela River area, a surge in violent

⁸⁵ *WJP*, 7:225, 12:709–710, 715.

⁸⁶ Gage to the Earl of Hillsborough, November 10, 1770, Carter, ed., *Gage Correspondence*, 1:277; *WJP*, 12:710.

⁸⁷ Franklin B. Dexter, ed., *Diary of David McClure, 1748–1820* (New York, 1899), 53, 93.

⁸⁸ Quoted in Hinderaker, *Elusive Empires*, 194.

⁸⁹ *NYCD*, 8:225.

clashes between settlers and Indigenous groups throughout the Ohio country, and finally, all-out war between Virginians and the Shawnee and Mingo through the summer and fall of 1774. By 1774, there were as many as 50,000 settlers living west of the Appalachians.⁹⁰

Johnson's passing in July of 1774 left an additional void in royal authority on the northern frontier, and although the Haudenosaunee favoured Johnson's nephew, Guy, to succeed his uncle as Northern Superintendent,⁹¹ the younger Johnson lacked connections and influence among the more distant western nations of the upper country. Such groups were now limited in their formal contact with British officials to the remaining posts at Detroit and Michilimackinac. With Detroit being viewed with suspicion by British military personnel as the epicentre of the late uprising, the Anishinaabeg at Michilimackinac stood to gain significantly by strengthening their relationship with the Crown. While British officials in the late '60s and early '70s were beginning to take the Crown's inherited status as Onontio more seriously, the open encroachment of colonial settlement and the ensuing breakdown of royal authority on the eastern seaboard meant that Onontio's revival now depended on Indigenous sources of authority further west for legitimation. Capitalizing on the power vacuum caused by the collapse of Euro-Indigenous diplomacy in the Ohio country, the Odawa at Michilimackinac strengthened existing kinship networks and expanded their influence farther south and west than they had done in the past, as well as they shored up their power in regions to the northeast of the Great Lakes. Johnson had believed this to be the workings of "a new system of politics" in the upper country; however, it was more so a return to the politics of the pre-

⁹⁰ Hinderaker, *Elusive Empires*, 170–174; White, *Middle Ground*, 340, 351–365.

⁹¹ Taylor, *Divided Ground*, 70–73.

conquest years. British officials had largely idealized the Franco-Algonquian alliance as a straightforward bilateral arrangement whereby the simple bestowal of gifts upon the western nations obliged them to the service of the French. As British officials were quickly learning, however, the reality was that the alliance leaned on certain key groups who then bolstered Onontio's influence as an extension of their own power.⁹² Governor of Quebec Guy Carleton understood this, and with Guy Johnson's influence limited to the Haudenosaunee, Carleton set about to rebuilding Onontio's relations with the western nations from his traditional seat at the former French capital.

Carleton's first set of instructions as governor in 1768 had given him authority to send out envoys to the upper country for the purpose of "promising and assuring" western Indigenous groups "of protection and friendship on our part and delivering them such presents as shall be sent to you for that purpose." Carleton's instructions, moreover, required him to inform himself "with the greatest exactness" of Indigenous groups' manners and customs so as "to use the best means you can for conciliating their affections and uniting them to our government."⁹³ Carleton drew on French intelligence and employed Canadian expertise and experience in establishing diplomacy with the western nations. Although Carleton had many British troops at his disposal who were "very ready to undertake and explore any part of this continent," they were universally "unacquainted with the country, [and with] the Indian language[s] and manners." It therefore became necessary that the British "avail ourselves of the knowledge of the Canadians, who are well acquainted with the country, the language and manners of the Natives," as Carleton wrote to Southern Secretary the Earl of Shelburne in early 1768.

⁹² McDonnell, *Masters of Empire*, 240–252; *NYCD*, 7:957.

⁹³ *DCHC*, 1:319–320.

Critically, Carleton also knew that the French alliance had depended not upon “force,” “but on discretion,” “address,” and mutual “gratitude,” and he acknowledged that Indigenous groups remained “a free people who had independent lands.” Upper country groups were “no more than ... friends and allies” to the British, and British dominion over the interior had not reduced the western nations to subjecthood or “submission.” What posts the British held were occupied “not by conquest, but by favour,” for “the country was still theirs [Indigenous peoples].”⁹⁴

With the weakening of the Northern Superintendency after Johnson’s death and the anarchic state of the trans-Appalachian frontier as a result of settler intrusions, Carleton became a major advocate for placing western Indigenous relations under the jurisdiction of the governor at Quebec according to historical French custom. While the Board of Trade had initially rejected the idea of annexing the trans-Appalachian west to the province of Quebec during the drafting of the Proclamation, the deterioration of civil governance in the “old” settler colonies through the late ’60s and early ’70s caused metropolitan officials to contemplate the benefits of placing the upper country back within the jurisdiction of the governor of Quebec as it had been during the French regime. As such, the extension of the limits of the province of Quebec to include the continental interior as far as the confluence of the Ohio and Mississippi Rivers was considered as a policy option that would give greater “force and effect to the power and authority of the Crown within it [the interior].” That jurisdictional extension became a key feature of an emerging piece of legislation regarding Quebec that Secretary of State

⁹⁴ Carleton to Shelburne, March 2, 1768, in Reuben Gold Thwaites, ed., *Collections of the State Historical Society of Wisconsin*, 21 vols. (Madison: State Historical Society of Wisconsin, 1854–1915), 18:288–291.

the Earl of Dartmouth believed was “an essential and very useful part of the bill.”⁹⁵

The Quebec bill’s boundary clause stirred significant opposition as it made its way through Parliament during the spring and early summer of 1774. Thomas Townshend spoke against the bill’s extension of the province as representing the Ministry’s having “given up to Canada almost all that country which was the subject of dispute, for which we went to war. We went to war calling it the province of Virginia,” Townshend told the House of Commons, but now the Ministry was implying that “it was only a pretext for going to war; that you knew then, you know now, that it was part of the province of Canada.” John Dunning also opposed the bill’s adding to Canada that “which it was the struggle of this country to say, was not Canada.” Members of the government, however, reminded the House that the interior had been ceded to Britain by France as a dependency of Canada, and “whatever the Proclamation may have done, it certainly did not repeal the definitive treaty.”⁹⁶

In his testimony before the House in early June, Carleton made the best case for the bill’s proposed extension of the province’s boundaries into the interior. Although the Proclamation had defined the province of Quebec as limited to the settled seigneuries of the French province of Canada, Carleton clarified that the upper country, too, “was reckoned, under the French government, as part of the province Canada: the posts were sent from thence, and relieved from thence.” Carleton additionally spoke “from information” that “that tract of country [could] be [most] easily managed by the legislative council and governor resident at Quebec,” “the greatest concern” of which

⁹⁵ *DCHC*, 1:542–543, 554.

⁹⁶ J. Wright, ed., *Debates of the House of Commons in the Year 1774, on the Bill for Making More Effectual Provision for the Government of the Province of Quebec* (London, 1839), 4, 16, 24–26, 63.

“was the management of the savages.” Such management was along diplomatic lines only, he explained: there were “a great many tribes of Indians who think that neither we, nor France, or any European power have any title to that country; nor do they acknowledge themselves to be their subjects.” “The Indians look upon their own ground as free,” Carleton stated. “They look upon [such lands] as their own hunting grounds.”⁹⁷ The restoration of the province of Quebec to the “ancient limits” of Canada, therefore, was explicitly intended to protect Indigenous lands against settler-colonial expansion. “I think one great advantage of the extension of territory is this,” Solicitor General Alexander Wedderburn told the House during the bill’s second reading, “that they [American colonists] will have little temptation to stretch themselves northward [and westward]. I would not say, ‘cross the Ohio, you will find the utopia of some great and mighty empire.’ I would say, ‘this is the border, beyond which, for the advantage of the whole empire, you shall not extend yourselves.’”⁹⁸

The Quebec Act, which passed the House on June 13, 1774, redefined the province’s boundary against the British American colonies by a line running along the height of land between those waters which empty themselves into the St. Lawrence and those which fall into the Atlantic Ocean ending at the east bank of the Connecticut River at forty-five degrees latitude. From there the boundary ran directly west through Lake Champlain to the St. Lawrence River, along the east bank of the St. Lawrence to Lake Ontario, through the middle of Lake Ontario and the Niagara River, and then along the southeast bank of Lake Erie until it intersected with the northern boundary of Pennsylvania, from which point it struck a course directly south until it hit the Ohio

⁹⁷ Ibid., 143–145.

⁹⁸ Ibid., 10, 58.

River. The boundary then followed the west bank of the Ohio to its confluence with the Mississippi, and then ran northwest up the middle of the Mississippi to the southern boundary of those lands granted to the Hudson's Bay Company, "provided always that nothing herein contained, relative to the boundary of the province of Quebec, shall in anywise affect the boundaries of any other colony." The Quebec Act, moreover, did not "extend, or be construed to extend, to make void, or to vary or alter any right, title, or possession, derived under any grant, conveyance, or otherwise howsoever, of or to any lands within the said province ... but that the same shall remain and be in force, and have effect, as if this Act had never been made."⁹⁹

By redrawing the boundaries of the province of Quebec to include the upper country, the Quebec Act reconstituted under British government the old French province of Canada and its interior dependencies extending into the Great Lakes and upper Ohio and Mississippi regions as they had been ceded in the Treaty of Paris. The Quebec Act did not void or alter the Proclamation's provisions relating to the Crown's protection of Indigenous peoples or their lands, all of which, the Act implied, were to remain in effect.¹⁰⁰ Additionally, the Act stipulated that the province would be administered by a governor and legislative council with no provision for an elected house of assembly, and Carleton's 1775 instructions pursuant to the Act prevented him from granting any lands "in the interior country" beyond the "fixed and ascertained" limits of the existing upper

⁹⁹ *DCHC*, 1:570–571.

¹⁰⁰ Cf. Alain Beaulieu, "The Quebec Act and the Indigenous Land Issue in Canada," in *Entangling the Quebec Act: Transnational Contexts, Meanings, and Legacies in North America and the British Empire*, ed. Ollivier Hubert and François Furstenberg (Montreal and Kingston: McGill-Queen's University Press, 2020), 339, where it's asserted that the Quebec Act "abolished the Royal Proclamation." This is, as the preceding passage from the Act itself demonstrates, quite simply wrong. The Quebec Act "revoked, annulled, and made void" only those provisions in the Proclamation relating to the civil governance of the province of Quebec. *DCHC*, 1:572.

country posts.¹⁰¹

The Quebec Act's annexation of the reserved Indigenous lands of the trans-Appalachian Ohio country to the province of Quebec transferred primary responsibility over Crown–Indigenous relations as laid out in the Proclamation to the jurisdiction of the governor of Quebec, marking the onset of the return of Onontio to upper country politics. The Proclamation, while firmly establishing British Crown sovereignty over the trans-Appalachian west vis-à-vis both the “old” British colonies and contending European powers, did so within the French tradition of extending royal protection both to Indigenous groups residing in reserved territories beyond the jurisdiction of colonial governments and to those groups inhabiting unceded lands within established colonies themselves. The Proclamation did not make Indigenous peoples British subjects. Rather, the Proclamation's establishment of Crown protection over Indigenous territories implied that Indigenous peoples remained sovereign over their own internal affairs and retained existing title to their lands, thus creating a layer of independent Indigenous sovereignty in North America, which although falling under the Crown's dominion internationally, was external to Crown sovereignty in Britain's settler colonies. Colonial interests by and large did not recognize the Crown's sovereignty in the interior to be separate from that in the colonies. British Americans generally believed that the defeat of New France should be treated as absolute and as an erasure of prior French acknowledgment and protection of Indigenous sovereignty, therefore permitting the postwar acceleration of settler-colonial expansion. Indeed, many colonists had hoped the Proclamation's injunction against trans-Appalachian settlement would be temporary, or

¹⁰¹ *DCHC*, 1:574, 2:607.

that the sheer volume of settlers in violation of it would force the Ministry to reverse or at least revise its policy. The Treaty of Fort Stanwix negotiated by colonial authorities in 1767 pushed the line of colonial settlement westward, to the banks of the Ohio River, so as to correct for illicit squatting and as an attempt to force the Ministry's hand.

But with the Crown already having clearly exercised its prerogative to establish its dominion to the interior and declare its protection of Indigenous title, and with royal authority eroding on the eastern seaboard through the late '60s and early '70s, imperial authorities determined that the Indigenous reserve created by the Proclamation could be additionally protected by its annexation to the province of Quebec. The inclusion of such provision in an Act of Parliament had the added benefit of being more firmly binding on the settler colonies by implementing a freeze on colonial limits via the creation of new boundaries for an expanded province of Quebec running through the lower Great Lakes and along the Ohio River. The Quebec Act, therefore, sought to halt colonial expansion at the Ohio, the lands beyond which were to remain reserved to Indigenous groups under Crown protection. In so doing, the act's boundary clause significantly exacerbated existing tensions between colonists and the metropolitan government regarding western expansion. These tensions were further aggravated by the act's constitutional provisions for the province's systems of law and government as it related to former French subjects, new British settlers, and the province's proximity to the British American colonies.

**The Province of Quebec, the Constitution of Canada,
and the Quebec Act, 1760–1774**

Scholarship on the Quebec Act has only recently begun to explore in greater detail the politics of the act's boundary provisions and its implications for Indigenous peoples.¹ Even still, much of the English-language work on the Quebec Act continues the longstanding trend of interpreting its genesis, passing, and reception through sectarian and ecclesiastical lenses, focusing on its effects on the Catholic establishment in Canada, the responses of British and American Protestants to the act's preservation of Catholicism in a British province, or the act's liberalizing effects on British domestic politics, resulting in the Relief Acts of 1778 and 1791 and the eventual toleration of Catholicism in Britain.² Others, meanwhile, have emphasized the Quebec Act as a

¹ See Jeffers Lennox, "Seeing Red: The Quebec Act and Its Geographic Implications," in *Entangling the Quebec Act: Transnational Contexts, Meanings, and Legacies in North America and the British Empire*, ed. Ollivier Hubert and François Furstenberg (Montreal and Kingston: McGill-Queen's University Press, 2020), 267–303; Kristofer Ray, "'Our Concerns with Indians are now greatly extended': Cherokees, Westward Indians, and Interpreting the Quebec Act from the Ohio Valley, 1763–1774," *ibid.*, 304–334; and Alain Beaulieu, "The Quebec Act and the Indigenous Land Issue in Canada," *ibid.*, 335–352.

² Charles Henry Metzger, *The Quebec Act: A Primary Cause of the American Revolution* (New York: United States Catholic Historical Society, 1936); A. L. Burt, *The Old Province of Quebec*, 2 vols. (1933; repr., Toronto: McClelland and Stewart, 1972), chs. 8–9; Philip Lawson, "'The Irishman's Prize': Views of Quebec from the British Press, 1760–1774," *Historical Journal* 28, no. 3 (September 1985): 575–596; Philip Lawson, *The Imperial Challenge: Quebec and Britain in the Age of the American Revolution* (Montreal and Kingston: McGill-Queen's University Press, 1989); Philip Lawson, "A Perspective on British History and the Treatment of Quebec," *Journal of Historical Sociology* 3, no. 3 (September 1990): 253–271; Philip Lawson, "'Sapped by Corruption': British Governance of Quebec and the Breakdown of Anglo-American Relations on the Eve of Revolution," *Canadian Review of American Studies* 22, no. 3 (Winter 1991): 301–323; Karen Stanbridge, "Quebec and the Irish Catholic Relief Act of 1778: An Institutional Approach," *Journal of Historical Sociology* 16, no. 3 (September 2003): 375–404; Karen Stanbridge, *Toleration and State Institutions: British Policy Toward Catholics in Eighteenth-Century Ireland and Quebec* (Lanham, MD: Lexington, 2003); Aaron Willis, "Rethinking Ireland and Assimilation: Quebec, Collaboration, and the Heterogeneous Empire," in Hubert and Furstenberg, eds., *Entangling the Quebec Act*, 165–194; Luca Codignola, "London's Role in the Connection between the Holy See and North America, 1745–1812," *ibid.*, 195–231; Brad A. Jones, "A 'Fit Instrument': The Quebec Act and the Outbreak of Rebellion in Two British

formative moment in the extension of membership in the British empire to non-Britons who were permitted to retain their laws and customs, closely related to which scholarship are readings of the Quebec Act that see it as laying the foundation for a binational Canadian settler-state—and indeed this study is in general agreement with both lines of thinking about the act’s significance in that regard at an official policy level.³ Yet as studies by Donald Fyson and Michel Morin demonstrate, the Quebec Act was but one event in a process of legal assimilation and mutual adaptation that had been ongoing since the beginning of British administration in Canada following the province’s conquest in 1760, and scholars should be hesitant to overemphasize the Act as a singular, “seminal moment” in the foundation of French Canada.⁴

Atlantic Port Cities,” *ibid.*, 232–264. Mark R. Anderson, “The Quebec Act, Two Fights, and Relative Subjecthood,” *Borealia*, June 20, 2022, <https://earlycanadianhistory.ca/2022/06/20/the-quebec-act-two-fights-and-relative-subjecthood>, explores how the Quebec Act negated the influence of the province’s emerging Jewish merchant community that was heavily interconnected into Anglo-Protestant commercial networks. For the British Catholic Relief Acts, see 18 Geo. 3, c. 60; and 31 Geo. 3, c. 32.

³ Burt, *Old Province*, ch. 9; Hilda M. Neatby, *The Administration of Justice under the Quebec Act* (Minneapolis: University of Minnesota Press, 1937); Hilda Neatby, *Quebec: The Revolutionary Age, 1760–1791* (Toronto: McClelland and Stewart, 1966), ch. 9; Reginald Coupland, *The Quebec Act: A Study in Statesmanship* (Oxford: Clarendon Press, 1968); Peter Marshall, “The Incorporation of Quebec in the British Empire, 1763–1774,” in *Of Mother Country and Plantations: Proceedings of the Twenty-Seventh Conference in Early American History*, ed. Virginia Bever Platt and David Curtis Skaggs (Bowling Green, OH: Bowling Green State University Press, 1971), 43–70; Hilda Neatby, *The Quebec Act: Protest and Policy* (Scarborough, ON: Prentice-Hall, 1972); David Milobar, “Quebec Reform, the British Constitution, and the Atlantic Empire, 1774–1775,” *Parliamentary History* 14, no. 1 (February 1995): 65–88; Hannah Weiss Muller, “‘As may consist with their Allegiance to His Majesty’: Redefining Loyal Subjects in 1774,” in Hubert and Furstenberg, eds., *Entangling the Quebec Act*, 47–73.

⁴ Donald Fyson, “The Conquered and the Conqueror: The Mutual Adaptation of the *Canadiens* and the British in Quebec, 1759–1775,” in *Revisiting 1759: The Conquest of Canada in Historical Perspective*, ed. Phillip Buckner and John G. Reid (Toronto: University of Toronto Press, 2012), 190–217; Michel Morin, “The Discovery and Assimilation of British Constitutional Law Principles in Quebec, 1764–1774,” *Dalhousie Law Journal* 36, no. 2 (Fall 2013): 581–616; Donald Fyson, “The Quebec Act and the *Canadiens*: The Myth of the Seminal Moment,” in Hubert and Furstenberg, eds., *Entangling the Quebec Act*, 74–100; Michel Morin, “Choosing between French and English Law: The Legal Origins of the Quebec Act,” *ibid.*, 101–130.

Scholarship that interprets the Quebec Act as a benchmark in British imperial legal pluralism also misses some of the nuances of the act's imperial constitutional significance.⁵ While the Act's confirmation of the use of French civil law in the British province of Quebec may have established the precedent of a broader and more legally pluralistic British empire according to the definition of legal pluralism "as a situation in which two or more legal systems coexist in the same social field,"⁶ such pluralism was jurisdictionally limited. Although the passage of the Quebec Act was roughly contemporaneous with the organization of British courts of Muslim and Hindu law in Bengal, civil suits in, say, New York or Charleston could no more be determined according to the laws of Canada than those in London or Edinburgh could be settled

⁵ See Christian R. Burset, "Quebec, Bengal, and the Rise of Authoritarian Legal Pluralism," in Hubert and Furstenberg, eds., *Entangling the Quebec Act*, 131–162. In sharp contrast to the above-cited chapters by Fyson, Burset argues that the Quebec Act "was constructed by metropolitan politics," and was an instrument of what he calls "*mandatory legal pluralism*—a legal regime that (1) establishes hard boundaries between legal systems, so that litigants have little choice about what law applies; and (2) is state-centred (rather than emerging informally)." This study takes significant issue with Burset's reading of the Act, which sees the Quebec Act as an initiative of what he calls "authoritarian Whigs," including Mansfield and Wedderburn (and presumably North), who sought to restrict non-Britons' access to the common law as a means of preserving exclusionary British liberty. This chapter, by contrast, interprets the Quebec Act as the work of North's Tory administration and its moderate aforementioned Whig law officers, who had little problem envisioning an inclusionary empire of composite, sub-imperial jurisdictions, and who were comfortable passing an Act of Parliament for Quebec that confirmed rather than overrode the royal prerogative in Canada. Heather Welland, "Commercial Interest and Political Allegiance: The Origins of the Quebec Act," in Buckner and Reid, eds., *Revisiting 1759*, 166–189, on the other hand, sees the Quebec Act primarily as an endeavour in political economy, whereby "neo-Tories" sought to retain Canada as a "captive market" that was "politically and economically dependent on the [imperial] metropolis." Stephen Conway, "The Consequences of the Conquest: Quebec and British Politics, 1760–1774," *ibid.*, 141–165, meanwhile, insists that British policymakers turned to the "Minorcan model" of the toleration and adaptive governance embodied in Quebec Act only reluctantly after the "Irish model" of forcible rule proved untenable. I disagree with Burset, Welland, and Conway's reading of the Quebec Act as a belated, opportunistic, and ideologically-driven top-down measure, and see it instead as an active acknowledgment of the Crown's de facto and de jure inheritance of French sovereignty in Canada as a result of the Capitulation of Montreal and the Treaty of Paris.

⁶ Sally Engle Merry, "Legal Pluralism," *Law and Society Review* 22, no. 5 (1988): 870. See also Lauren Benton and Richard J. Ross, eds., *Legal Pluralism and Empires, 1500–1850* (New York: New York University Press, 2013).

according to *sharia*. Rather, more than it was an experiment in legal pluralism, the Quebec Act's provisions for the continued establishment of Roman Catholicism in the province and its confirmation of the laws of Canada as the final arbiter in matters of civil law established Quebec as a unique imperial jurisdiction that was distinct from Britain's other American settler colonies. The extension of the province's boundaries to include the North American interior that was traditionally within the jurisdiction of the governor general of New France, and which henceforth was to be administered by the British governor and council at Quebec with a mandate far exceeding the scope and powers of their colonial American counterparts, shaped the province into a novel sub-imperial jurisdiction existing on an asymmetrical parallel to the metropolitan government by which Canadian laws and customs were preserved and through which the British Crown could conduct inherited diplomatic relations with the French Crown's former Indigenous allies. This was a direct legacy of the agreed-upon terms of the transfer of French sovereignty in Canada to the British Crown by the Articles of Capitulation of Montreal and the Treaty of Paris, which both the Ministry and imperial officials on the ground in Canada sought to honour in the implementation of formal imperial policy for Quebec by an Act of Parliament in 1774.

Parliamentary and colonial debates surrounding the formulation and passage of the Quebec Act expose a fundamental divergence in British and colonial perceptions of the late eighteenth-century British empire. English overseas expansion had been primarily commercial since its onset in the late fifteenth century. This prioritization of commercial expansion resulted in an empire that by the early eighteenth century was trending toward greater legal uniformity to remove barriers to commerce and facilitate greater mobility for subjects and the unimpeded movement of property. Increased legal

uniformity throughout the empire resulted in the gradual erosion of jurisdictional anomalies and the elimination of constitutionally composite British overseas dominions. The Capitulation of Montreal and France's surrender and formal cession of Canada to Britain, however, were acts of dynastic diplomacy—they were compacts made between princes and their representatives that transferred sovereign obligations in the manner of the older Continental European tradition of composite monarchies. Formally educated and professionalized British military and civil officials understood this composite dynastic system and were instinctively operating within it, as evidenced by their willingness to accept accommodational diplomatic agreements and implement constitutional arrangements of legal and jurisdictional diversity. British Americans and metropolitan commercial interests who benefitted most from legal and jurisdictional uniformity, by contrast, wished for imperial policies effecting ceded territories to reflect the fiction of absolute conquest so as to allow for the expansion of commerce unencumbered by sovereign obligations to new subjects or protected populations.⁷ Amherst's acceptance of Vaudreuil's terms at Montreal in September of 1760 was anathema to this commercially oriented conception of homogenous empire that was prevalent in British Atlantic constitutional thought at mid-century. The thought and policies of Amherst, Carleton, and the North administration, therefore, tapped into an older Eurasian dynastic politics of accommodation that the French had employed in their diplomacy with Indigenous peoples in North America and which, as Chapter 3 has

⁷ Benjamin Franklin, for instance, famously insisted that the Ministry focus on the American settler colonies, where the rapid population growth of white subjects of predominately British and European ancestry would prove more socially, culturally, and commercially valuable to Britain in the long run. See Trevor Burnard, "Placing British Settlement in the Americas in Comparative Perspective," in *Britain's Oceanic Empire: Atlantic and Indian Ocean Worlds, c. 1550–1850*, ed. H. V. Bowen, Elizabeth Mancke, and John G. Reid (Cambridge: Cambridge University Press, 2012), 407–432.

shown, remained integral to South Asian diplomacy. The Quebec Act marked a major transition in British imperial policy toward an integrated, composite empire. The transatlantic debates over the Quebec Act highlight the clash between the commercial settler empire of constitutional uniformity and the inherited composite empire of constitutional accommodation.

The Capitulation of Montreal in September of 1760 marked the culminating event in Britain's military conquest of Canada, the finality of which was made apparent in the weeks that followed when Canadian militia throughout the province laid down their arms in submission to British authorities and swore oaths of loyalty to George II.⁸ Although Canadians' connection to their former sovereign was severed, they had secured terms of surrender that ensured the security of their property and freedom of religion. The Articles of Capitulation of Quebec of the previous year guaranteed "that the inhabitants shall be preserved in the possession of their houses, goods, effects, and privileges," and granted Canadians "free exercise of the Roman religion."⁹ Those of Montreal, however, had an air of finality about them, as Vaudreuil pushed for more generous concessions from Amherst than the French had done at Quebec. Although Amherst conceded to the free exercise of Roman Catholicism and the protection of the persons and properties of the province's priests, parishes, missionaries, and monastic orders, he could not agree to the item that the king of France continue to name the bishop of the province over which he was no longer sovereign. The Articles of Capitulation of Montreal also included more detailed items with regards to Canadian

⁸ Daniel John Beattie, "General Jeffery Amherst and the Conquest of Canada, 1758–1760" (PhD diss., Duke University, 1975), 220.

⁹ *DCHC*, 1:5–6.

property than had those of Quebec, with Amherst granting that

the Canadians as well in the towns as in the country, the French settled or trading in the whole extent of the colony of Canada, and all other persons whatsoever, shall preserve the entire peaceable property and possessions of the goods, noble and ignoble, moveable and immoveable, merchandizes, furs and other effects....

Amherst was less clear in his response to Vaudreuil's condition that "the French and Canadians shall continue to be governed according to the custom of Paris, and the laws and usages established for this country," responding only with a vague reference to his reply to a preceding article that "they become subjects of the king."¹⁰

By the time Vaudreuil capitulated to Amherst at Montreal in 1760, however, the British had already been governing at Quebec for roughly a year, during which period the military governor of Quebec, James Murray, had promised Canadians free use of their "laws and customs" provided they were "not inimical to the king's service."¹¹ Although not without challenges, Murray's governorship of the entire province following the surrender of Montreal was generally marked by clemency and inclusion. Locals were appointed to provincial and municipal administrative positions and French went unchallenged as "the language of the country."¹² As far as Catholicism was concerned, Murray observed Canadians to be "extremely tenacious" in their religion, and remarked in his report to Secretary of State the Earl of Egremont that nothing would "contribute so much to make them staunch subjects to His Majesty as the new government giving them every reason to imagine no alteration is to be attempted in that point."¹³ Similar practices were extended to the rest of the province by the military rule

¹⁰ Ibid., 1:32–34.

¹¹ Neatby, *Quebec*, 21; Arthur G. Doughty, ed. *Report of the Public Archives for the Year 1918* (Ottawa: J. de Labroquerie Taché, 1920), 9.

¹² Neatby, *Quebec*, 20.

¹³ *DCHC*, 1:71.

proclaimed by Amherst, which provided for the filling of vacancies “by signing commissions in favour of those who have lately enjoyed such posts under His Most Christian Majesty [Louis XV of France].” Murray and Amherst had also established a system of military courts based on the existing French model that allowed for the hearing of “all complaints, or matters of civil or criminal interest.”¹⁴

Yet questions surrounding the province’s legal system and constitution of government proved somewhat vexing to British authorities and policymakers. In 1763, the Royal Proclamation, in order to “contribute to the speedy settling our said new governments,” of which the new British province of Quebec was one, expressed the Crown’s “paternal care, for the security of the liberties and properties of those who are and shall become inhabitants thereof” by giving

express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate government.

Governors of the new provinces were “given power,” the Proclamation continued,

with the consent of our said councils, and the representatives of the people so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies.

Finally, until such a time as assemblies could be summoned, “all persons inhabiting in or resorting to our said colonies may confide in our royal protection for the enjoyment and the benefit of the laws of our realm of England.”¹⁵ The Proclamation’s promise of the

¹⁴ Ibid., 1:40, 44–46.

¹⁵ Ibid., 1:165.

benefit and protection of English law had worked to attract to the province what Murray counted the following October as two hundred British Americans, mostly merchants and tavern keepers from New Hampshire, Massachusetts, and New York, split roughly evenly between Quebec and Montreal. These settlers arrived in the province with the understanding that, in addition to the Proclamation's guarantees of English laws, as British subjects they carried the rights and liberties of Englishmen with them "on their backs."¹⁶

Murray and others had assumed that the province of Quebec would eventually have the usual British colonial representative government of a governor, council, and assembly. In the meantime, however, since there were not yet enough British Protestants inhabiting the colony to constitute an assembly, following the transition from military rule to civil governance in August of 1764, Murray formed a "Crown colony government," consisting of an appointed council with executive and limited legislative powers much in the style of the former French province's Superior Council.¹⁷ This measure was approved by Whitehall as a temporary requisite. In a survey submitted to the Southern Department in 1763, the Board of Trade approved of the provisional administration of Canada by a governor and council, "as by this means the administration of justice and of commerce will be less embarrassed." The Board did, however, anticipate the day when "the number of British inhabitants and new settlers" was "very considerably increased," and was of the opinion, therefore, "that the power of

¹⁶ Burt, *Old Province*, 1:91–93. For more on the corporeal attachment of English rights and liberties to the bodies of British subjects, see Elizabeth Mancke, "Sites of Sovereignty: The Body of the Subject and the Creation of the British Empire" (Symposium on Comparative Early Modern Legal History, Newberry Library, Chicago, April 8, 2016).

¹⁷ Neatby, *Quebec*, 31–33. Crown colony governments had regularly been established in British American colonies in their infant stages of development, before they had acquired the social and political infrastructure necessary for representative government.

calling assemblies should be inserted in the first commissions” of the British governors following the Proclamation. Consequently, Murray’s 1763 instructions included the “full power and authority ... to summon and call general assemblies of the freeholders and planters, within your government, in such manner as you in your direction shall judge most proper.”¹⁸ Murray ultimately judged that the state and circumstances of the province did not permit the summoning of an assembly. As the governor at Trois-Rivières, Ralph Burton, had put it in 1762, the only article of the administration of the province that appeared “worthy of adoption” at the moment was “the king’s rights and privileges.”¹⁹ Until a constitutional settlement was reached in London, Canada would continue to be governed accordingly.

Numerous military officers and legal authorities opined on the challenges of determining what legal system should be in place in Quebec. Amherst’s successor as commander-in-chief, former governor of Montreal, Thomas Gage, was unsure. “I am not ashamed to own myself at a loss in a matter which has puzzled those, who should be more knowing in these affairs,” Gage wrote to Advocate General Charles Gould. “The Canadians alleged their laws were not changed; the British subjects, that they were to be tried by English laws only, and were not subject to the Canadian laws, though in Canada.” Gage was sufficiently versed in British and international law to know “that in conquered countries, the laws of such countries subsist till it shall please the conqueror to give them new laws.”²⁰ It was precisely such legal continuity between the French and British regimes that led the province’s new British American merchant community to so

¹⁸ *DCHC*, 1:143, 156, 175.

¹⁹ *Ibid.*, 1:84–85.

²⁰ Thomas Gage to Charles Gould, April 10, 1764, *Colonial America*, Adam Matthew Digital, <http://www.colonialamerica.amdigital.co.uk>, CO 5/65, pt. 3, 613–614.

detest Murray. Through 1764–65, tensions mounted between Murray and Canada’s Anglo-merchant population over the former’s refusal to convene an assembly or to at least give British Americans a majority on his council. “The few British traders, who are out of humour because I could not make them magistrates, nor allow them to oppress the new subjects continue to display all the malice and envy which the most bitter rancour can dictate,” Murray wrote in early 1765.²¹

Murray remained steadfast in his insistence that the present state and circumstances of the province did not permit him to call an assembly, however, as Catholics were barred from holding elected office under English law by the Test Acts, and there were so few Protestants currently in the province that were they to form an assembly, it would surely have been “the most exclusive and vindictive representative body known to the British constitution.”²² Canadians, Murray insisted, were content with the structure of the new British regime and had no objections to his governance as captain general and governor-in-chief. “The Canadians are to a man soldiers,” Murray wrote, “and will naturally conceive that he who commands the troops, should govern them; I am convinced at least it will be easier for a soldier to introduce and make palatable to them our laws, and customs, than it can be for a man degraded from *the profession of arms*.”²³ Given the martial nature of Canadian society and the importance of Quebec as “a place of arms,” secretary to the President of the Board of Trade Maurice Morgann also thought it “proper to imitate the policy of the French” in terms of the

²¹ Murray to the Board of Trade, March 2, 1765, Shelburne MSS, William L. Clements Library, University of Michigan, Ann Arbor, 64:217.

²² Lawson, *Imperial Challenge*, 40. Murray, for instance, described the province’s Protestant merchants as “licentious fanatics,” for whom “little, very little,” would content them “but the expulsion of the Canadians.” *DCHC*, 1:231.

²³ *DCHC*, 1:211.

province's structure of governance and administration.²⁴ Repeated petitions from the province's Anglo-merchant community to the Board of Trade and the Crown calling for the dismissal of Murray and the establishment of representative government, however, finally resulted in Murray's recall in October 1765.²⁵

In 1766, Attorney General Charles York and Solicitor General William de Grey confirmed as much in their 1766 report on the civil government of Quebec, writing that “there is not a *maxim* of the *common law* more certain than that a conquered people retain their ancient customs till the conqueror shall declare new laws.”²⁶ Indeed, their opinion confirmed what British military officers already knew, but many British Americans did not, namely, that accommodating conquered peoples through legal pluralism did not violate common law principles and that honouring legal customs was required by common law. The Proclamation did not fit the bill of introducing new laws into the province because it was not a legal code and it was not explicitly directed at Canada; it neither expressly repealed nor replaced any of the laws of the province. No reasonable observer, York and de Grey maintained, could presume the Proclamation reflected the royal intention “at once to abolish all the usages and customs of Canada, with the rough hand of a conqueror rather than with the true spirit of the lawful sovereign.” Rather, “wise conquerors having provided for the security of their dominion, proceed gently and indulge their conquered subjects in all local customs.” “It is the more material that this policy be pursued in Canada,” York and de Grey concluded, “because

²⁴ Maurice Morgan, *On American Commerce and Government in Newly Acquired Territories*, c. 1767, Shelburne MSS, 85:32.

²⁵ Yvan Lamonde, *The Social History of Ideas in Quebec, 1760–1896*, trans. Phyllis Aronoff and Howard Scott (Montreal and Kingston: McGill-Queen's University Press, 2013), 8–10; Burt Old, ch. 6. For various petitions and memorials, see *DCHC*, 1:232–236, 417–418, 493–502, 512–522.

²⁶ *DCHC*, 1:255.

it is a great and ancient colony long settled and much cultivated, by French subjects.”²⁷

As such, Gage recognized that the British regime in Canada relied on the persistence of French law for its legitimacy until a new system was decided upon and put into effect by the Crown and Ministry.

The French legal system upon which Canadian law had been based was the so-called “custom of Paris.” A combination of various regional French legal customs originating in the northern three-fifths or so of France known as the *pays de coutume*, or the “country of custom,” the custom of Paris grew out of Frankish and Norman legal customs regulating private law. Only gradually, beginning in the thirteenth century and reaching its completion around the turn of the sixteenth century, were the various regional customs standardized into a coherent body of laws. This custom, which had been approved of and elaborated upon by legal experts in Paris during the reigns of Charles VIII (1483–1498) and Louis XII (1498–1515) had won out over the other customs of France “partly in virtue of its intrinsic superiority ... and partly because it formed the groundwork of the legal system in use at the national centre.”²⁸ Although for the sake of uniformity it had been unlawful to introduce any other custom into the province, the Canadian legal system had gradually taken on its own character due to its relative distance from metropolitan legal culture, as Canadian jurists sometimes departed from the custom of Paris as a matter of pragmatism. In some instances, the Sovereign Council had pocketed certain royal ordinances they thought imprudent introduce into Canadian law, and *règlements* promulgated by colonial authorities and the judgements

²⁷ Ibid., 1:252, 255.

²⁸ William Bennett Munro, “The Custom of Paris in the New World,” in *Rechtswissenschaftliche Beiträge: Juristische Festgabe des Auslandes zu Josef Kohlers 60*, ed. Fritz Berolzheimer (Stuttgart: Ferdinand Enke, 1909), 132–148.

of Canadian courts also worked to lend the province's legal system a distinct though not completely foreign character. Following Canada's transition to a royal colony in 1663, its government by governor, intendant, and council mirrored that of a French *généralité*, which was roughly analogous to a province, with the Sovereign Council functioning very similarly to a regional *parlement*. Canada's long seasonal isolation from the imperial centre, moreover, accorded Canadian administrators considerable latitude to govern within the scope of royal privilege.²⁹ Murray understood his regime as functioning within the purview of Canadian law, and his administration featured only minor variations on the previous French model.

A change in government from that of George Grenville to that of the Marquess of Rockingham two weeks after Murray sailed for Britain saw longstanding Canadian constitutional questions figure more prominently at the highest levels of imperial administration. Aided by the documentation relating to the province that had been amassed by his predecessor the Earl of Hillsborough, Rockingham's First Lord of Trade the Earl of Dartmouth began conceptualizing remedial policy for Canada, it having become clear to him and others involved in the project that the surest constitutional settlement for the province would be one legislated by Parliament.³⁰ Although Rockingham's administration was short lived, he and Dartmouth succeeded in replacing Murray with Guy Carleton, as well as appointing for the province a new chief justice, William Hey, and a new attorney general, Francis Maseres. While Carleton was technically only lieutenant governor until Murray formally relinquished his commission

²⁹ W. B. Munro, "The Office of Intendant in New France: A Study in French Colonial Policy," *American Historical Review* 12, no. 1 (October 1906): 15–38; W. P. M. Kennedy, *The Constitution of Canada: An Introduction to its Development and Law* (1922; repr., Toronto: Oxford University Press, 2014), 12–13.

³⁰ Lawson, *Imperial Challenge*, ch. 4.

two years later, Carleton possessed the full authority of governor-in-chief and enjoyed the unity of military command and civil government that had eluded Murray, who, although captain general, had been passed over for command of the province's troops in favour of his junior, Ralph Burton. While the province's Anglo-Protestants had high hopes for the new administration, like Murray before him, the military-minded Carleton got along better with French seigneurs than he did with English merchants, and he, Hey, and Maseres had no intentions of upending the province's socio-political order with the introduction of British American-style representative institutions.³¹

In a pamphlet published in London in 1766, Attorney General Maseres laid out for public consideration the new administration's legal rationale on the issue of an elected assembly. Although Maseres himself looked forward to the day when the province's "new settlers ... may equal or exceed the number of the French," he nevertheless thought the establishment of an assembly "premature" owing to the extreme imbalance in population between French and English subjects, and he believed it "a measure which probably will not for some years to come be found expedient." Were the minority English subjects to constitute an assembly, Maseres wrote, it would surely become "an instrument ... of domineering over the ... French." By the same token, if the French majority were allowed "so great a degree of power" as a legislative assembly afforded, then they would likely oppress the province's English inhabitants in turn. Even more important, though, was that the Canadians themselves did not want an assembly, but were "contented to be protected in the enjoyment of their religion, liberties, and properties, under the administration of His Majesty's governor and council. "If, to give a proper stability to this mode of government," Maseres continued, "it [conciliar

³¹ Burt, *Old Province*, ch. 7; Neatby, *Quebec*, ch. 7.

government] is carried on by authority of Parliament, and is properly superintended, as no doubt it will be, by the wisdom of His Majesty's Privy Council, they will think themselves extremely happy under it." It was only "some of the six hundred English adventurers," Maseres concluded, and mainly those who were "ambitious of displaying their parts and eloquence in the characters of leading assemblymen" at home and in the neighbouring colonies, who truly desired the establishment of a Canadian house of representatives.³²

Carleton sent his own similar assessment home through official channels.

Writing to Secretary of State the Earl of Shelburne in late 1767 and early 1768, Carleton reminded the Ministry that the inhabitants of Canada were, for the most part,

not a migration of Britons who brought with them the laws of England, but a populous and long established colony, reduced by the king's arms, to submit to his dominion, on *certain conditions*: that their laws and customs were widely different from those of England, but founded on natural justice and equity ... [and] that their honours, property, and profits, as well as the king's dues, in a great measure depended upon them

The province's established civil constitution as inherited from the French was a reflection of its social order, Carleton maintained, the superimposition of British constitutional structures upon which would be sure to alienate a great number of Britain's new Canadian subjects who were otherwise at ease, or at least quietly reserved, about their change of sovereign. "This system of laws," Carleton wrote, "established subordination, from the first to the lowest, which preserved the internal harmony they enjoyed until our arrival, and secured obedience to the supreme seat of government from a very distant province. All this arrangement, in one hour, we overturned," he wrote in reference to the Proclamation's misguided attempt to establish English law. Carleton

³² *DCHC*, 1:258, 261–262, 266–268.

believed British laws to be “ill adapted to the genius of the Canadians, to the situation of the province, and to the interests of Great Britain [in Canada].” Though Carleton harboured “no objection to assemblies in general, yet such was the peculiar situation of Canada” that he “could hit off no plan that was not liable to many inconveniencies, and some danger.” Carleton felt secure in his administration by governor and council under French civil law as the most suitable system of government “according to [Canadians’] own customs, which time immemorial, has been regarded by them and their ancestors, as law and equity.” Carleton also noted the extent to which Canadians’ aversion to an assembly was informed by the ongoing conflict between the assemblies of the old British mainland colonies and the metropolitan government. “The better sort of Canadians fear nothing more than popular assemblies,” he wrote,

which, they conceive, tend only to render the people refractory and insolent. Inquiring what they thought of them, they said, they understood some of our colonies had fallen under the king’s displeasure, owing to the misconduct of their assemblies, and that they should think themselves unhappy, if a like misfortune befell them.³³

In their report to the Privy Council the following year, Carleton and Chief Justice Hey emphasized the constitutional continuity of executive and legislative authority from the governor, intendant, and Sovereign Council of the French regime into Britain’s administration of the province, writing that “to the almost unlimited power of the French governor and intendant, has succeeded the authority of Your Majesty’s governor, with a council of twelve to assist and advise in matters of state, under those limitations and restrictions, which Your Majesty has been pleased to direct.”³⁴

The Canada file made it no further than the cabinet table for more than seven

³³ *Ibid.*, 1:288–289; 294–296.

³⁴ W. P. M. Kennedy and Gustave Lanctot, eds., *Reports on the Laws of Quebec, 1767–1770* (Ottawa: F. A. Acland, 1931), 59.

years following the Proclamation, however, during which time the metropolitan government had experienced the instability of three short-lived administrations before Frederick North formed what would become a more lasting government in January of 1770. Over the next two years, North and Dartmouth turned to Britain's chief law officers for a series of reports out of which they intended to form legislation outlining a new Canadian constitution. Solicitor General Alexander Wedderburn opened his analysis of the government of Canada with the assertion that "no other right can be founded on conquest but that of regulating the political and civil government of the country, leading to the individuals enjoyment of their property, and of all privileges not inconsistent with the security of the conquest." Wedderburn recounted the nature of government under the French regime and articulated Canadians' expressed "desire to return to a pure military government, which they had found to be less oppressive" than the potentially destabilizing effects of British representative government. Wedderburn then inquired into the establishment of a legislative assembly in the province. Contrary to others who supposed that a Canadian assembly would only be composed out of the province's Anglo-Protestant population, Wedderburn reasoned that any equitable Canadian representative body would have to include French Catholics as well. The formation of this sort of mixed assembly, Wedderburn demonstrated, presented novel challenges. Firstly, an assembly that included Canadians "would be an inexhaustible source of dissension and opposition between them, and the British subjects," and in all likelihood would be unable to pass legislation of any useful significance. More important, perhaps, was the fact that there was no socio-cultural underpinning to the idea of popular representative political institutions in the province, which ran quite contrary to the special emphasis placed by Canadians on social rank and hierarchy. "To admit

every Canadian proprietor of land would be disgusting and injurious to all the men of condition,” Wedderburn wrote, “who are accustomed to feel a very considerable difference between the seignior and the censier, though both are alike proprietors of the land.” “It seems, therefore, totally inexpedient at present to form an assembly in Canada,” Wedderburn advised. Since “the power to make laws could not with safety be entrusted to the governor alone; it must, therefore, be vested in a council,” as such was more in line with Canadian traditions of executive and conciliar government. “Canada is not in the condition of a new settled country, where the invention of a legislator may exercise itself in forming systems,” Wedderburn concluded. “It has been long inhabited by men attached to their own customs, which are become part of their nature.”³⁵

By the spring of 1773, North was confident enough in his majority in the Commons to formulate legislation for the constitution of Canada. North had collected the mass of paperwork on Canada from the Lord Chancellor’s office in August, and by November, colonial undersecretaries John Pownall and William Knox were at work drafting a bill.³⁶ The first draft of the Quebec bill, as it was called, read that “whereas the state and condition of the said province of Quebec has not hitherto been, is not now, nor is likely for some time to be such as to admit of a lower house of assembly or house of representatives being convened,” it was therefore

lawful for the governor or commander-in-chief of the said province of Quebec, for the time being, by and with the *advice and* consent of the council of the said

³⁵ *DCHC*, 1:425–426, 430. Attorney General Edward Thurlow agreed. “It should be remembered,” Thurlow wrote in his report, “that the scheme of government and laws for Canada, was conceived by a wise court in a cool moment, untainted with private passion or public prejudice. The principles of humanity and the views of state combined to suggest that plan which might serve to build a flourishing colony upon. That plan was improved, from time to time, by the wisdom and experience of succeeding times, and not left to become obsolete and unfit for the progressive state of the province.” *Ibid.*, 1:444.

³⁶ Lawson, *Imperial Challenge*, 124.

province for the time being, or the majority thereof to make constitute and ordain laws, statutes and ordinances, for the public peace, welfare and good government of the said province, and of the people and inhabitants thereof, in all cases whatsoever.³⁷

The bill's second draft, drawn up by Wedderburn, in addition to reiterating the first draft's provision for the establishment of a legislative council, expanded its language to state that the king's Canadian subjects "may have hold and enjoy their property, laws, customs, and usages, in as large ample and beneficial manner, as if the said Proclamation ... had not been made, and as may consist with their allegiance to His Majesty and subjection to the Crown and Parliament of Great Britain."³⁸ A third and more developed draft of the bill was finally introduced into the House of Lords by Dartmouth on May 2, 1774, where it passed unopposed on May 17 before being sent down to the House of Commons for debate and amendment the following week.³⁹

When the Commons floor opened for debate during the bill's second reading on May 26, prominent Whig members such as the future Viscount Sydney, Thomas Townshend; the former solicitor general, John Dunning; Isaac Barré; Charles James Fox; Edmund Burke; and the serjeant-at-law, John Glynn, rose in opposition. The bill was defended by North, Wedderburn, Thurlow, Carleton, Hey, and Maseres, the latter three of which had been called from Quebec for examination before the House. Townshend led the charge against the proposed legislation, remarking that the bill was "oppressive to the English subject" in its retention of Canadian law and civil government. Townshend suggested that it would "be better, by degrees, to show [Canadians] the advantage of the English law, and mix it with their own," and was

³⁷ *DCHC*, 1:535.

³⁸ *Ibid.*, 1:538–539.

³⁹ *Ibid.*, 1:543–554; Lawson, *Imperial Challenge*, 130–131.

critical of what he saw as the government's attempts to take "from the English subject his benefit of the law of England." North, however, defended the bill on the grounds "that the best way to establish the happiness of the inhabitants is to give them their own laws, as far as relates to their own possessions. Their possessions were marked out to them at the time of the treaty," he told the House, and so "to give them those possessions without giving them laws to maintain those possessions, would not be very wise." North argued that a house of assembly would be far more oppressive than the current Crown colony government, as the latter aligned more with traditional Canadian forms of provincial administration, and that the current bill merely sought to formalize what was already the de facto government of Canada. "The bulk of the inhabitants are Roman Catholics," North stated,

and to subject them to an assembly composed of a few British subjects would be a great hardship. Being, therefore, under the necessity of not appointing an assembly, this [government by governor and council] is the only legislature you can give the Canadians, and it is the one under which they live at present.

"The governor and council," North continued, "really have been the legislature [of Canada] ever since our conquest of it, and it is now put under some regulation." He added that "all the other colonies have been governed by a governor and council" at some point, and so it was "not, therefore, so totally anomalous."⁴⁰

In his defence of the bill, Thurlow described Britain's conquest of Canada as merely a legal "change of sovereignty"; it transferred the sovereignty of Canada from the Crown of France to that of Great Britain, and in doing so it added a new country and a new people to the British empire. It did not, however, give Britain a unlimited "right to

⁴⁰ J. Wright, ed., *Debates of the House of Commons in the Year 1774, on the Bill for Making More Effectual Provision for the Government of the Province of Quebec* (London, 1839), 2–3, 7, 10–11.

[the] goods and chattels” of that country and people. Both the common law and the law of nations permitted Britain “to change those laws only which relate to the French sovereignty, and in their place substitute laws which should relate to the new sovereign.” Such laws were surely liable to correction “by the joint interposition of the king, Lords, and Commons,” which was the very purpose of settling the province’s constitution by an Act of Parliament, but that such a process allowed for the complete upending of the existing Canadian constitution as was being argued for by the opposition was egregious. The Quebec bill, Thurlow contended, was the best solution to the constitutional dilemma created by Britain’s conquest of Canada and which the Proclamation further confounded. The Proclamation, Thurlow explained, had taken “no care of the constitution of Canada,” nor was it within the British constitutional tradition to import wholesale British laws into so large a conquered country that was long settled by a foreign people. Although, as Glynn argued, the Canadian constitution certainly risked arbitrary government in the hands of an incompetent governor, the Ministry countered that to establish in Canada a governmental structure bearing no reflection of the province’s social constitution, as the Proclamation had laid out, was no less arbitrary. Barré, who had been wounded taking Quebec in 1759, disingenuously commented that Canadians themselves had taken “a liking to assemblies” and desired one as much “as any other colony on the continent.”⁴¹

The experienced testimonies of Carleton, Hey, and Maseres overturned fallacies such as Barré’s. Carleton thought it best to preserve Canadians in their civil laws, for “the essential laws of England, in deciding matters of property, they have not the least idea of.” Canadians greatly hoped “that their laws and customs may be continued,”

⁴¹ Ibid., 28–31, 40, 48–49.

Carleton explained, “because they know what they are,” they “understand the French law from education, from the customs and usages of the place.” Such was also the case as it related to the province’s constitution of government. Canadians, according to Carleton, were “certainly not” “desirous of having assemblies in the province,” and the establishment of an elected assembly composed entirely “of the old British subjects now resident there” would surely “give them great offence.” Carleton had “no doubt” that Canadians would “greatly prefer a government by the governor and legislative council” to that by an elected assembly, as the latter was not “conformable to their ancient customs.” When asked of Canadians’ perception of British American representative institutions, Carleton responded that “they told me assemblies had drawn upon the other colonies so much distress, had occasioned such riots and confusion, that they wished never to have one of any kind whatever.” More generally, though, Canadians thought of an assembly “as not being conformable to their ancient [civil] customs.” Canadians were quite simply “very much attached to their ancient customs” and wanted nothing more than “to have their ancient usages restored.” “The form of government which came nearest to their ancient usages would be most agreeable to them,” Carleton concluded, and he believed that the bill currently before the House represented “the best form [of government] advisable to give in the present state of the colony.” Hey agreed with Carleton on the inapplicability of an assembly to the Canadian constitution, but for different reasons, remarking that if the Crown “chooses to call a house of assembly, I have no doubt they [Canadians] will compose it; but they would not know what to do when they came there, nor have they any idea of the advantages of such an assembly,” for “they do not understand them; and what they do not understand, they cannot be said to dislike.” An assembly, therefore, would serve only to the advantage of the province’s

English inhabitants who were experienced in British representative institutions.⁴²

Maseres concurred with Carleton's assessment of Canadians' attachment to their own laws. When asked about the sentiments of Canadians concerning the Proclamation's potential interposition of the laws of England, Maseres answered that "a great many were very uneasy upon the apprehension of a sudden change of the laws respecting family descent." Canadians, he told the House, "would not be happy without the restoration of some of their family customs, as tenures of land, the mode of conveying, marriages, descent, and dower." Maseres therefore reasoned that although the province's "criminal law must be that of the conqueror," "in point of justice, His Majesty ought to keep up all the ancient and civil laws of the Canadians." Hey further testified that the province's justices were already admitting Canadian laws and customs indiscriminately, and that he thought that the property of even English merchants "might be more easily recovered" under the bill in question. Hey answered that Canadians seemed "perfectly satisfied with the English criminal law," and he expressed that as chief justice he "was willing to allow [Canadians] the whole law with respect to their tenures, with respect to the alienation, descent, and mode of conveying or incumbering their real property." What was most important to Hey was the "quieting and securing [of Canadians'] possessions according to their own notions of property." Any legal system that was effective to that end "should not reasonably have been objected to by either British or Canadians" living in Quebec.⁴³

A significant objection raised by opposition members during the debates on the Canada bill was that the establishment of French civil law in the province would deprive

⁴² *Ibid.*, 105–106, 108–110, 118, 160–161.

⁴³ *Ibid.*, 123–126, 151–158.

British Americans residing in the province of their right to trial by jury. This concern arose largely from members' misunderstanding that the Proclamation had successfully introduced English law, that English law and legal procedure currently prevailed in the province, and that the proposed bill intended to overturn such practices and reintroduce French laws and legal procedure that had lapsed since the conquest. As modern scholarship has shown, however, the period following Britain's acquisition of the province in 1760 was generally marked by the mutual adaptation of French Canadians to English criminal law and court proceedings and of British administrators to French civil law and legal practices. While there were certainly British Americans in Canada who "clamoured for the full and exclusive introduction of English civil law," English Canadians were more than willing to employ French forms of notation for the transference of property, for the mortgaging of debt, and in hiring contracts.⁴⁴ French Canadians, meanwhile, were hardly ignorant of their new rights as British subjects. A limited but healthy debate had been had in the colony over the Stamp Act in 1765, and both French- and English-speaking Canadians alike expressed their condemnation at the disturbances over the Stamp Act that had taken place in the British American colonies to the south. Canadians had even expressed "their most profound reverence to the legislative authority of the British Parliament" in an address to Carleton in September of 1766 regarding the Declaratory Act.⁴⁵

Nor were French Canadians uninterested in the workings of English law. With the establishment of civil governance in the province in 1764 and the attempt to establish English law in Canada under the Proclamation, Canadians had access to two

⁴⁴ Fyson, "Conquered and the Conqueror," 205, 207–208.

⁴⁵ W. B. Kerr, "The Stamp Act in Quebec," *English Historical Review* 47, no. 188 (October 1932): 648–651; Morin, "Discovery and Assimilation of British Constitutional Law," 595–597.

courts for the trial of civil suits: a court of common pleas for cases valued at more than £10, with the option of appeal to a court of King's Bench in suits of at least £20. While cases brought before the King's Bench were determined according to the laws of England, those heard in the court of common pleas were to be determined "agreeable to equity" with "regard" only to the laws of England "as far as the circumstances and present situation of things will admit."⁴⁶ Cases before the court of common pleas were therefore regularly decided according to Canadian law as a matter of "equity," and French- and English-speaking Canadians were equally fluid in their choice of which court they sought to access depending upon the nature of their case and its expected outcome.⁴⁷

While some interpreted the Proclamation as establishing English law in the territories acquired by Britain in the Treaty of Paris, as far as the Proclamation applied to the province of Quebec, it was never the intention of the policymakers involved in the document's drafting to abolish the laws of Canada. Hillsborough, who sat on the Board of Trade in 1763 and became president of that body within the last month leading up to the Proclamation's pronouncement, had made that point clear to Carleton in 1768. "Whatever the legal sense conveyed by the words of that Proclamation may be," Hillsborough explained, "it never entered into our idea to overturn the laws and customs of Canada, with regard to property, but that justice should be administered agreeably to them, according to the modes of administering justice in the courts of judicature in this kingdom." It was only those "weak, ignorant, and interested men," who "were sent over to carry the Proclamation into execution, who expounded it in the most absurd manner,

⁴⁶ *DCHC*, 1:205–207.

⁴⁷ Morin, "Discovery and Assimilation of British Constitutional Law," 601–602; Fyson, "Conquered and the Conqueror," 208–209.

oppressive and cruel to the last degree to the subjects, and entirely contrary to the royal intention.”⁴⁸ What was envisioned, then, was a sort of hybrid system of civil laws, whereby those of Canada and England would exist parallel to each other in order to protect both French and English forms of property with both being adjudicated according to English procedure.

Neither would it be the case that by confirming the maintenance of Canadian civil law that those English common law principles that had been introduced into the province in the years since the conquest would be eliminated. While the third draft of the Canada bill had stipulated that “in all matters of controversy relative to the property and civil rights of any of His Majesty’s subjects whether Canadian or English, resort shall be had to the laws of Canada and not the laws of England for the decision of the same,” the fourth draft, which was introduced to the Commons in late May, had revised the same clause to remove its negation of recourse to English law and inserted language allowing for the “laws and customs of Canada” to be “varied or altered by” ordinances passed by the provincial government, presumably with the introduction of some features of English law in mind. Both drafts, moreover, allowed for the alienation of all forms of property according to whichever “law, usage, or custom heretofore or now prevailing in the province, to the contrary hereof in any-wise notwithstanding.”⁴⁹ “In a general plan of government, it is not possible to enter into a detail of what is proper, or what is improper, in Canada,” North explained to the House. The legal features of the bill were therefore intended only to provide “a general basis” from which the province’s government and legal authorities “were to take their departure.” It was fully expected

⁴⁸ *DCHC*, 1:297.

⁴⁹ *Ibid.*, 1:545, 558.

that the civil laws of Canada, both as they were currently practiced in the colony and as they were further established by the current bill, would continue “to be amended and altered as occasions shall arise, and as the circumstances of the colony shall require.”⁵⁰

After days of parliamentary committees sitting to work over clauses dealing with the revocation of the former ordinances, the exercise of Roman Catholicism, and the issue of trial by jury, the House finally arrived at the article establishing the province’s legislative council. Opposition members raised concerns as to the size and composition of the council, to which North replied that the bill’s language clearly provided for the establishment of a quorum, and there was no question that the council would feature French Canadians and British Americans alike. On June 10, Townshend motioned for the insertion of a clause “for making temporary that part of the bill, which relates to the legislative council.” North pointed out, however, that the bill included no provision for perpetuity and he freely admitted that when the day came that the province’s constitution had stabilized itself and Canadians were “in a condition” to take “the government into their own hands,” then Parliament could very well grant the province a legislative assembly. In the meantime, the province’s council was not absolute in its legislative capacity, but was “already very much limited” by Canadian constitutional precedent. The opposition could muster few votes against the bill, and on Monday, June 13, it passed the House by a vote of fifty-six to twenty and was returned to the cabinet in a form very close to what would be its final language. The bill received royal assent nine days later on June 22, 1774, and was to take effect on May 1, 1775.⁵¹

The Quebec Act as it became law “revoked, annulled, and made void” those

⁵⁰ Wright, ed., *Debates*, 11–12.

⁵¹ *Ibid.*, 240–241, 290, 292, 296.

sections of the Proclamation as they related “to the civil government of the said province of Quebec, and the powers and authorities given to the governor and civil officers of the said province, by the grants and commissions issued in consequence thereof,” which had “been found, upon experience, to be inapplicable to the state and circumstances of the said province.” The Act granted Canadians “free exercise of the religion of the Church of Rome, subject to the king’s supremacy,” and allowed the Canadian clergy to “hold receive, and enjoy, their accustomed dues and rights, with respect to such persons only as shall profess the said religion,” “provided, nevertheless,” that the Crown could also “make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy.” In order to permit French Catholics to hold public office, moreover, the Act required Canadians simply to take an oath of allegiance to the king in lieu of the Oath of Supremacy required by the Test Acts. The Quebec Act also recognized that Canadians had previously enjoyed “an established form of constitution and system of laws, by which their persons and property had been protected, governed, and ordered for a long series of years, from the first establishment of the said province of Canada.” To maintain Canadians in the protection and enjoyment of their persons and property, the Act stipulated “that all His Majesty’s Canadian subjects” were to

hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights, in as large, ample, and beneficial manner, as if the said Proclamation, commissions, ordinances, and other Acts and instruments, had not been made, and as may consist with their allegiance to His Majesty, and subjection to the Crown and Parliament of Great Britain.

“In all matters of controversy, relative to property and civil rights,” therefore, the Act provided that “resort shall be had to the laws of Canada, as the rule of the decision of the

same,” and that all further “causes ... instituted in any of the courts of justice ... shall, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada,” until such were “varied or altered” by provincial ordinances. Inhabitants of the province of Quebec were free to alienate their property according to either Canadian or English law, and such provisions for Canadian civil law were not to “extend, or be construed to extend, to any lands that have been granted ... or shall hereafter be granted ... to be holden in free and common socage.” Finally, as it was “at present inexpedient to call an assembly,” the Act outlined the appointment of “a council for the affairs of the province of Quebec” of between seventeen and twenty-three members having the “power and authority to make ordinances for the peace, welfare, and good government, of the said province, with the consent of His Majesty’s governor.”⁵²

The Quebec Act’s formal settlement of questions surrounding the Canadian constitution by creating a British provincial jurisdiction featuring established Catholicism, French civil law, and non-representative conciliar government was a *de jure* acknowledgment on the part of the North administration of the Crown’s inheritance of French sovereignty in Canada via the Articles of Capitulation of Montreal and the Treaty of Paris. To a significant degree, these key features of the Quebec Act represented substantial constitutional continuity with the prior French regime and merely confirmed what had already been the governing practice of British imperial authorities on the ground following the conquest. Only the most ardent of British and American whigs perceived of the conditions of the French surrender as non-binding and sought to overturn the laws

⁵² *DCHC*, 1:571–576.

and customs of Canada. For the most part, British administrators understood the legal implications of the conditionality of the conquest and saw themselves as governing within the purview of the royal prerogative, a prerogative that descended from the French Crown to that of Great Britain, the conventions of which could not, according to common law and early modern international law, arbitrarily be upended. Yet because it dealt with a settler population, primarily the Crown's new Canadian subjects, but also indirectly British Americans, it was recognized that the province's constitution would be most firmly established by an Act of imperial Parliament.

The Quebec Act did not, however, override the prerogative as it related to the Crown's inherited Indigenous relations. Rather, in its extension of the province's boundaries to encompass the Ohio and upper Mississippi drainage basins, the preservation of Canadian laws, government, and religion in the expanded British province of Quebec provided a significant deterrent to Anglo-colonial expansion into the province's interior, therefore further securing the Crown's protection of the interior Indigenous reserve established by the Royal Proclamation of 1763. For those Anglo-Americans already residing at Quebec and Montreal, by contrast, the act's provisions for the non-exclusivity of English law and for the continuity of non-representative governance constituted major grievances. The act's combination of established Roman Catholicism, French civil law, and an enhanced colonial executive, all existing in a province on the old settler colonies' northern doorstep, also generated significant opposition among British Americans, who feared that the Act portended the eventual application of arbitrary government in their own colonies. For many British Americans with already heightened sensitivities to ministerial overreach as a result of the imperial dispute that had been ongoing between the colonies and the metropolitan government

since the mid-1760s, the Quebec Act appeared as symptomatic of the metropolitan government's corruption not only by French tyranny as a result of the conquest of Canada and the Crown's maintenance of French laws and customs in that province, but also by "Asiatic" forms of despotism that were believed to be seeping into the imperial centre in the wake of the Company's contemporary territorial acquisitions in India.

**The East India Company and the Imperial Constitution:
Revolution and Reform, 1759–1773**

In early January of 1759, Robert Clive wrote to Secretary of State for the Southern Department, William Pitt, of the East India Company's victory at Plassey eighteen months prior, describing it as nothing short of a "great revolution" producing "vast advantages gained to the Company" in Bengal. Although thoroughly pleased with Britain's "successes in these parts," Clive believed that "much more may yet in time be done, if the Company will exert themselves in the manner the importance of their present possessions and future prospects deserves." Clive stressed "the expediency of sending out and keeping up constantly such a force as will enable them to embrace the first opportunity of further aggrandizing themselves," and he was confident of "such an opportunity [as] will soon offer." The occasion for further aggrandizement in Bengal to which Clive referred was for "the Company to take [the province's] sovereignty upon themselves." Since Clive saw no immediate "likelihood of the Company's providing us with a sufficient force to support properly so considerable an employ, and which would open a way for securing the subahship [i.e., the governorship] for ourselves," he instead identified the acquisition of the office of the *diwan*, or imperial revenue collector, as a means by which the Company could secure its hold on the province.¹ Pitt appreciated the "practicability" of Clive's proposal but was skeptical of the plan's long-term prospects. Pitt thought it unlikely that Clive "would be succeeded by persons equal to the task," and he was especially concerned that the acquisition of such a sizeable revenue by either

¹ Clive to Pitt, January 7, 1759, in *The Politics of the British Annexation of India, 1757–1857*, ed. Michael H. Fisher (1993; repr., New Delhi: Oxford University Press, 1999), 60–62.

the Company or the Crown “would endanger our liberties.”²

Pitt was not the only Briton who held such concerns. The Company’s eventual receipt of the *diwani*, or imperial revenue, of Bengal by the Treaty of Allahabad in 1765 would have profound impacts on British domestic and imperial politics and cause many in Britain and America to rethink the nature of British liberties. In the short term, the Company’s acquisition of the *diwani* raised significant questions regarding Company sovereignty in India that revived longstanding debates regarding the relationship between the Company and the British state. While many at home believed that *diwani* revenues would be easily transmitted to Britain to relieve the national debt, which Pitt’s determination to win the Seven Years’ War at all costs had swollen to unprecedented levels, few appreciated the complexity of the role into which the Company had been drawn in Bengal. The Company’s military and diplomatic influence had expanded dramatically during the Carnatic and Bengal Wars, bringing with it the acquisition of certain vestiges of provincial and imperial sovereign authority in Bengal and northern India that had come at a great military-fiscal cost that Company leadership had both commercial incentives and a political and diplomatic responsibility to maintain. Despite the consequences of the war for British state finances, as a foreign commercial entity and an emerging sovereign power in India, Company elites abroad were inclined to prioritize Asian rather than domestic British affairs and sought to utilize *diwani* revenues to expand the Company’s purchasing power further east. Leadership in Britain, meanwhile, struggled to balance the Company’s military and political responsibilities in India with commercial expansion in Asia and financial profitability at home, an equilibrium that was further complicated by British domestic politics and state finances

² John Malcolm, *The Life of Robert, Lord Clive*, 3 vols. (London, 1836), 2:125–127.

and the government's desire to secure a portion of the *diwani* for the Exchequer, all of which engendered debates over Crown versus Company sovereignty in India.

In the longer term, the acquisition of the *diwani* and the interplay between questions of sovereignty in India and the finances of empire would have a considerable impact on British imperial politics. The Company's difficulty in balancing its newfound political and diplomatic obligations in India with its traditional commercial role in Britain became apparent in the early 1770s. Declining profits occasioned by an oversupply of imports (especially tea), stagnant consumer demand, and artificially inflated rates of dividend payments to Company stockholders created a credit crisis that severely destabilized the British financial market. Forced to intervene with "bailout" legislation, the North administration sought to vent the Company's overstock of tea to the American colonies as a partial solution to the crisis and as a deterrent to colonial tea smuggling. The Tea Act's retention of an earlier duty on tea that had been significantly opposed in the colonies, however, elevated tensions existing among colonists in their ongoing dispute with the metropolitan government over the constitution of the empire. Additionally, the Tea Act's close association with the East India Company Loan Act and its imposition of a de facto Company monopoly on tea imports to the colonies furnished colonial radicals with supposed evidence of a conspiracy between the Ministry and Company to force British Americans to finance the Company's bailout, therefore reducing colonists to a state of disenfranchised consumers of the fruits of Britain's recent imperial expansion. The Tea Act's reception among American colonists as a watershed in their relationship with the British ministry demonstrates a volatility among colonists to shifts in broader imperial policies seeking to stabilize British rule in new dominions in India and elsewhere. Colonists perceived of these policies as infringing on

older settler-colonial interests and their expectations for the expansion of colonial liberties in the wake of Britain's victories in the Seven Years' War.

I

As much as Clive and other Company officials in Bengal initially characterized Mir Jafar's instalment as *nawab* in 1757 as a return to an earlier status quo, certain features of the Company's arrangement with Mir Jafar represented an innovation in the Company's presence in Bengal that far outstripped prior British commercial and military activity in India. For starters, the Company acquired permanent land rights to Calcutta and its surrounding territory, which included *zamindari* rights to the revenues of the Twenty-Four Parganas to the south of the city. The installation of a permanent Company resident at the *nawab*'s court at Murshidabad, moreover, kept Company officials informed of court politics and ensured that Mir Jafar, although nominally independent, was tightly bound by Company influence. The Company had become "an active party in Bengal politics," and Clive henceforth pursued a policy of balancing Mir Jafar with "a party in his own court to be a continual check upon him."³ Clive's victory at Plassey also occasioned an alteration in the British government of Bengal when the instructions sent by the Court of Directors in London outlining a rotating governorship of four of the province's council were overruled by the Select Committee at Bengal in favour of the sole governorship of Clive as a more effective means of constituting executive office. The Committee justified its decision by noting that "the *nawab* and others of this kingdom ... have at all times been accustomed to the government of a single person."

³ P. J. Marshall, *Bengal: The British Bridgehead: Eastern India, 1740–1828* (Cambridge: Cambridge University Press, 1987), 80–82; Luke Scrafton, *Reflections on the Government of Indostan, with a Short Sketch of the History of Bengal*, 2nd ed. (London, 1770), 99.

Company Directors confirmed Clive's mandate as military governor of Bengal in November of 1758 when news of the Company's victory at Plassey finally reached London.⁴

While the Company seemed at least temporarily secure in its dominance in Bengal, EIC officials were highly attuned to the instability the late wars had occasioned across much of the subcontinent. As the Company spent the first half of the eighteenth century preoccupied with affairs in southern India and Bengal, the power of the Mughal court had greatly diminished. Although the emperor remained the chief kingmaker in northern India and aspirants to regional thrones still sought to secure their dominion by royal confirmation, the emperor's own immediate realm had been reduced to a kingdom in the Delhi region.⁵ Through the 1750s, internecine conflict among officials at Delhi eroded much of the power of the person of the emperor, emboldening the grand vizier, Imad-ul-Mulk, who had emerged victorious in one such conflict, to kill the emperor Alamgir II (r. 1754–1759) in November of 1759. Fearing a similar fate, Alamgir's heir, Ali Gauhar, had fled to Bihar the previous May, where he gained the support of the region's major *zamindars* and forged an alliance with the *nawab* of Awadh, Shuja-ud-Daula. Ali Gauhar sought to march against the British in Bengal in order to reassert Mughal rule in the province and expand his powerbase in hopes of retaking the throne at Delhi. Mir Jafar's forces repelled Ali Gauhar at Patna, however, and Clive pursued him to the Bengal–Awadh border near the end of the year. Upon learning of his father's death shortly thereafter, Ali Gauhar proclaimed himself emperor Shah Alam, or “king of

⁴ Michael Edwardes, *Plassey: The Founding of an Empire* (London: Hamish Hamilton, 1969), 163–164, 166.

⁵ Percival Spear, *Twilight of the Mughuls: Studies in Late Mughul Delhi* (Cambridge: Cambridge University Press, 1951), 8–9.

the world,” in October of 1760, with Shuja-ud-daula as his *wazir*, or first minister.⁶ As a reward for his services, meanwhile, Mir Jafar granted Clive the *jagir* of a district in the Twenty-Four Parganas valued at £27,000 per year.⁷

After Clive departed for England in 1760, Mir Jafar began to fall behind on his payments of the vast sum of 280 *lakhs*, or roughly £3 million, he owed the Company, on top of which had been added an additional 1.1 *lakh* per month for use of EIC troops. Because Clive had assured the Company Directors that payments from the *nawab* would be sufficient to cover the Company’s military and trading expenses in Bengal, the Company had stopped sending out bullion from London, creating a shortfall in the British money supply in the province. Clive, moreover, had overestimated both the holdings of *nawab*’s treasury and the value of the *diwani*, and it quickly became apparent that Mir Jafar would not be able to deliver on his financial obligations. Bengal remained the Company’s main commercial centre in India, and as exports increased following the Company’s success at Plassey, it was expected that surpluses generated in Bengal would finance the expansion of EIC trade elsewhere in Asia, particularly in China, where the Company sought to increase its tea purchases.

The Company’s most stable form of income in Bengal, meanwhile, had become its *zamindari* revenues from the Twenty-Four Parganas, and thus if the Company could

⁶ Ibid., 13–14; Richard B. Barnett, *North India Between Empires: Awadh, the Mughals, and the British, 1720–1801* (Berkeley: University of California Press, 1980), 49–51; Marshall, *Bengal*, 82.

⁷ Edwardes, *Plassey*, 170–171; Bruce Lenman and Philip Lawson, “Robert Clive, the ‘Black Jagir’, and British Politics,” *Historical Journal* 26, no. 4 (December 1983): 812. Clive’s leadership had long commanded the respect of his counterparts in India, earning him the title of Sabut Jang, or “firm in war.” Clive’s *jagir* was an acknowledgment of his elite martial status in India, being valued at the theoretical revenue assignment of a Mughal commander of 5,000 horse and 6,000 foot. See Abdul Majed Khan, *The Transition in Bengal, 1756–1775: A Study of Saiyid Muhammad Reza Khan* (Cambridge: Cambridge University Press, 1969), 4–5.

expand its *zamindari* holdings, it would increase the Company's cash flow significantly. EIC officials thus set their sights on the valuable *zamindari* of Burdwan to the northwest of Calcutta and the districts of Midnapur in the province's far west and Chittagong in the east.⁸ When Mir Jafar resisted the idea of parcelling out additional territory to the Company, EIC officials turned to his son-in-law Mir Qasim, who agreed to grant the Company the *zamindaris* it desired if he was installed as *nawab*, forcing Mir Jafar to abdicate in October of 1760. Mir Qasim quickly turned out to be less compliant than the Company expected, however. Although Mir Qasim willingly left lower Bengal to the British, he set about establishing himself as an independent *nawab* in upper Bengal by dismissing the Company resident at his court, which he intended to move to Monghyr in Bihar. On the surface, EIC officials were largely indifferent to Mir Qasim's desire to carve out an independent *nawabi*; they did not, however, wish to see the erosion of Company influence in the region that had been built up with great expense over the previous years. As a check on Mir Qasim, the British opened lines of communication with the emperor Shah Alam, who continued to threaten Bihar, prompting Shuja-ud-daula, who was determined to keep the emperor independent of the British, to offer Shah Alam asylum in Awadh in early 1761.⁹

Tensions between Mir Qasim and the Company rose steadily between 1761 and '63. Although the *nawab* granted the Company the right to export goods duty-free from Bengal, EIC servants were notorious in their abuse of such privileges, using duty-free passes to conduct their own private trade in-country—and with devastating effect for the market share of Indian traders. In an effort to neutralize Company privileges, in March

⁸ Edwardes, *Plassey*, 178–179; Marshall, *Bengal*, 83–85.

⁹ Marshall, *Bengal*, 84–86; Edwardes, *Plassey*, 179–183; Barnett, *North India Between Empires*, 52.

of 1763, Mir Qasim ordered that all internal trade be made duty-free and that customs rates for all European and Indian merchants trading in and out of the province be equalized. Mir Qasim also detained and executed the Jagat Seths, who appeared posed to finance another coup on the Company's behalf. At the same time, EIC officials learned that Mir Qasim was negotiating an alliance with Shuja-ud-daula of Awadh to strike against the Company at Patna in Bihar. The Company declared war on Mir Qasim in early July of 1763, and reinstated Mir Jafar as *nawab* four days later. Shuja-ud-daula acknowledged Mir Jafar as *nawab* in an effort to placate the British in hopes that the Company would finance the emperor Shah Alam, whom he was still harbouring. The Company, however, was unwilling to support Shuja-ud-daula so long as he was also harbouring Mir Qasim. In retaliation, a combined army of the forces of Shuja-ud-daula, Mir Qasim, and Shah Alam crossed into neighbouring Bihar in April of 1764. After a series of minor clashes throughout the region that summer, the campaign reached a swift climax at Buxar in eastern Bihar in the fall, where British general Hector Munro scored a narrow victory over the triumvirate on October 22, 1764, causing Mir Qasim to flee.¹⁰

Shah Alam had opened talks with the British months before Buxar, during which he agreed to endorse Mir Jafar as *nawab* and to return to Delhi if the Company would support his campaign.¹¹ The Company also considered toppling Shuja-ud-daula giving Awadh to Shah Alam on the condition that he cede Benares, a significant commercial and cultural centre and a centre of opium production. Shuja-ud-daula eventually surrendered to the Company when the Marathas threatened his regime, and in late May of 1764, EIC forces under the command of Brigadier General John Carnac drove the

¹⁰ Edwardes, *Plassey*, 184–192; Barnett, *North India Between Empires*, 60–66.

¹¹ Barnett, *North India Between Empires*, 61.

Marathas from Awadh.¹² Clive, meanwhile, returned to Bengal in 1764 just as Carnac concluded his campaign. Upon learning that Clive had sailed for India early in the previous year, the British governor at Trois-Rivières, Frederick Haldimand, remarked to the commander-in-chief of the British forces in North America, Thomas Gage at New York, that “Lord Clive goes there again to plunder more nabobs [nawabs].”¹³ However, Clive’s work in India in 1764–65 would be far more diplomatic than the two generals in America had imagined.

Clive’s first task upon his arrival in Bengal was reining in the council, which after the passing of Mir Jafar in February of 1765 had installed Mir Jafar’s son Najim-ud-daula as *nawab* under extremely extortionate terms. Clive, eager to settle terms with Shah Alam, travelled to the emperor’s camp at Allahabad in Awadh in late June to negotiate a treaty. Shah Alam had initially wanted the British to assist him in retaking Delhi from warring Afghans, Sikhs, and Marathas. Clive knew that to return the emperor to the throne at Delhi, however, would require militarily neutralizing the entirety of northern India along the way, “a scheme so extravagantly ambitious and absurd” that it lay well beyond the Company’s fiscal and military capacity for the time being.¹⁴ Instead, the treaty finalized at Allahabad between Clive and Shah Alam on August 12, 1765, established the emperor at Kora and Allahabad in Awadh, in return for which security and protection Shah Alam bestowed upon the Company the office of *diwan* of Bengal. The Company’s taking over the *diwani* ensured the emperor’s annual receipt of 26 *lakhs* in tribute from Bengal, a substantial improvement over the highly irregular tribute he

¹² Edwardes, *Plassey*, 191–192.

¹³ Haldimand to Gage, June 6, 1764, Gage MSS, William L. Clements Library, University of Michigan, Ann Arbor, American Series, vol. 19.

¹⁴ Edwardes, *Plassey*, 193–196; Spear, *Twilight of the Mughuls*, 18–19.

had received from the province during its recent turmoil. On the other hand, the *diwani* gave the Company a position of formal authority in Bengal that was ostensibly still one degree removed from the direct administration of the province, and was thus less likely to draw the ire of the Company's European and Indian enemies.¹⁵ The Treaty of Allahabad also secured for the Company a war indemnity of 50 *lakhs* from Shuja-ud-daula for his opposition to the Company in Bihar and allowed the British to trade duty-free in Awadh, both in addition to rendering Shuja-ud-daula a subsidiary ally of the EIC by requiring him to contribute to the mutual defence of both Awadh and Bihar.¹⁶

Although the Treaty of Allahabad left the *nawab* as the nominal sovereign of Bengal, there was little question that the EIC was now the province's primary political force. The *nawab* retained authority over the internal administration of law and justice in Bengal; he did so, however, at the Company's behest and on a fixed allowance for his court and ministers. The Company again exerted its influence at court through its resident, and as a military power, the *nawab*'s forces were to act in concert with EIC interests.¹⁷ The treaty also established the Company's diplomatic supremacy across the northeast of the subcontinent. The Company now controlled the emperor Shah Alam, who would endorse the EIC so long as Company officials continued to hold out the promise of his eventual return to Delhi. Company letters to Indian rulers, moreover, were now signed in the emperor's name. British governor of Fort William John Spencer wrote to Munro in late 1764 that

to avoid giving any umbrage or jealousy of our power to the king or nobles of the empire, we would have everything done under the sanction of his [the emperor's] authority, and that we may appear as holding our acquisitions from him, and

¹⁵ Edwardes, *Plassey*, 196–197; Marshall, *Bengal*, 89–90.

¹⁶ Barnett, *North India Between Empires*, 73.

¹⁷ Marshall, *Bengal*, 90–93.

acting in the war under his authority in supporting his rights, and not he holding these rights from us.¹⁸

Clive summed up the Company's position of dominance in northeast India before the House of Commons in 1769, when he described the emperor as "de jure Mogul, de facto nobody at all," and the *nawab* as "de jure *nawab*, de facto the East India Company's most humble servant."¹⁹

That the EIC had acquired a place of power in Bengal that was unprecedented among European interests in India was apparent. As the Company, the Ministry, and Parliament were discovering, however, the transfer of power in Bengal was more complicated than Clive implied. By the Treaty of Allahabad, the EIC had inherited a limited form of de jure provincial sovereignty in Bengal in the office of the *diwan*. Yet the Company's political dominance over the nominally sovereign *nawab* combined with its military supremacy in Bengal to elevate it into a position of de facto regional supremacy to which even the emperor was forced to concede. The Company's acquisition of this latter form of regional authority created the conditions for the reduction of the emperor to a state of British clientage and Company's gradual assumption of the emperor's remaining functional imperial sovereignty as *shahenshah*, or "king of kings." The complexity of these overlapping sovereignties was further confounded by disputes in Britain over *diwani* rights. While the Company maintained that the *diwani* was a proprietary grant from the emperor that it received within the purview of its charters, the British government insisted that the *diwani*, as a spoil of conquest, belonged to the state. As a matter of state finances and chartered property, the

¹⁸ Quoted in Barnett, *North India Between Empires*, 70.

¹⁹ J. Wright, ed., *Sir Henry Cavendish's Debates of the House of Commons*, vol. 1, *May 10, 1768–May 3, 1770* (London, 1841), 261

diwani disputes were played out largely in Parliament. The legislation that came out of the East India debates, however, would begin a process of the transfer of Company sovereignty and governance in India to the Crown and Ministry.

II

Negotiations between the British government and EIC officials regarding the proprietary significance of the *diwani* and related questions about Company sovereignty in India occurred within the context of a long and complicated history of Company–state relations. From its earliest inception, the EIC had been more than a mere trading company. Chartered in 1600 as a “body corporate and politic,”²⁰ the EIC was a corporation possessed of its own internal governing capacity, which as Philip J. Stern writes, was “both subject and resistant to other [external] forms of political power.” The EIC was “a form of political community and polity.” Its “charters and patents provided for a range of ... political rights” to be exercised by the Company in its General Court at home and at its factories in Asia that were otherwise normally reserved to the Crown. These rights included but were not limited to the power “to constitute governors and governments abroad, to make war and peace on non-Europeans, to plant and fortify, to make law, to coin money, and so on.”²¹ Seventeenth-century EIC supporters maintained that the sovereign and diplomatic functions that the Company performed abroad were essential to its ability to conduct commerce on behalf of the Crown with a multitude of Eastern nations “with which His Majesty hath no alliance, nor can have any by reason of

²⁰ *Charters Granted to the East-India Company* (London, 1773), 6.

²¹ Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011), 7, 10, 42.

their distance, or barbarity, or non-communication with the princes of Christendom.”²² This was especially the case in India, where “there are above 100 kings and rajas ... governing with absolute power in their own dominions; and as many ports and places of trade.” The English monarch could not be expected to personally appoint emissaries furnished with suitable presents to such numerous and diverse princes of whom one could have little knowledge before having assessed the political landscape on the ground. Only the Company could marshal the resources to do so, for “the Company’s agents in India,” Company governor Josiah Child wrote, “do many times find cause to send embassies, instructions, and splendid trains of attendance and presents, before the Committee in England know of it.”²³ In this capacity, the EIC occupied a layer of sovereignty existing beneath the Crown at home yet extending outward on a parallel between the English Crown and the princes of Asia, relying on the grace of the person of the monarch for its chartered existence, while at the same time acting as his or her representative to those Eastern courts with which no English diplomatic connections existed. It was the Company’s role in Asia, as one 1687 dispatch to Madras read, “to defend or offend or enlarge the English dominion and unite the strength of our nation under one entire and absolute command subject to us as we are and ever shall be most dutiful to our own sovereign.” At the same time, however, the Company acknowledged that “His Majesty has been pleased by his royal charters and during his royal will and pleasure to form us into the condition of a sovereign state in India.”²⁴

During the Restoration, the EIC had been a close political ally of the monarchy.

²² Josiah Child, *A New Discourse of Trade, wherein is Recommended Several Weighty Points relating to Companies of Merchants* (London, 1694), 102–103.

²³ Josiah Child, *A Treatise wherein is Demonstrated, that the East-India Trade is the Most National of All Foreign Trades* (London, 1681), 36.

²⁴ Quoted in Stern, *Company-State*, 61, 83.

Some of the Company's earliest shipments of tea to England, for example, were presents sent to Charles II and his court. Between 1660 and 1684, the Company gave Charles II over £324,000 in gifts and loans, including 10,000 ounces of silver plate in 1660 as a conciliatory gesture for the Company's previous relationship with the Commonwealth. The Duke of York, later King James II, moreover, had personally purchased £3,000 in EIC stock in 1684, and received an additional £7,000 as king in 1687 in lieu of the 10,000 guineas the Company had given annually to Charles II. James II managed to sell his EIC shares before fleeing England in 1688, and in 1690, the Court of Committees transferred his account to William and Mary. Monarchical investment in the Company was neither indicative of any royal influence over internal EIC governance nor did Company presents signal any formal institutional connection between the Company and the Crown. Instead, both Charles's annual gift and James's shares were given to strengthen the monarch's interest in the welfare of the Company, which in turn relied on Crown support in European diplomacy and in its dealings with Parliament.²⁵

A major issue over which the Company clashed with Parliament during the Restoration era was that of interlopers. In the case of the EIC, interlopers were English subjects who traded east of the Cape of Good Hope without Company license or who otherwise travelled to or resided in South, Southeast, or East Asia without Company permission. Interlopers threatened English interests in Asia not only because they took up market share and siphoned profits away from the Company, but perhaps more significantly, because they regularly sought to establish their own commercial relationships with lower-level Asian officials and powerbrokers, often complicating

²⁵ Ibid., 46, 59, 144, 155. For more on Company loans and gifts to the Crown, see K. N. Chaudhuri, *The Trading World of Asia and the East India Company, 1660–1760* (Cambridge: Cambridge University Press, 1978), 415–416, 426.

higher-level EIC diplomacy and damaging the Company's reputation in the process.

Interlopers, the Bombay council noted in 1687, made the English appear as "a people in the eyes of all these Eastern princes without government."²⁶

Interloping presented a major challenge to both the Company's monopoly at home and its diplomatic capacity abroad. In 1682, when the Admiralty seized a ship on the Thames being outfitted by Thomas Sandys for an unauthorized voyage to the East, Sandys appealed to the Chancery on the basis that the common law secured for English subjects the freedom of commerce, that monopolies were illegal, and the Company's charter was therefore void. Sandys' case was forwarded to the King's Bench, where Company lawyers insisted that the EIC was not a monopoly. Rather, the Company had created and maintained the financial, diplomatic, and commercial infrastructure of England's East Indian trade, without which such direct maritime commerce with Asia would not exist. It was by virtue of providing these services that the Company held exclusive English privileges over such commercial routes. Monopolies, the Company's argument ran, served private interests, while the Company's exclusivity of trade served the interests of the nation at large. The EIC, after all, was more than a simple group of private merchants. It was a corporation made up of a cross-section of both elite and non-elite English society, "a mixed assembly of noblemen, gentlemen, and merchants," as well as "all others" who held stock in the Company and reaped "equal benefit thereby."²⁷

Although the King's Bench ruled in favour of the Company in the Sandys case,

²⁶ Quoted in Stern, *Company-State*, 45.

²⁷ *Ibid.*, 44–48; Josiah Child, *A Discourse concerning Trade, and that in Particular of the East-Indies* (London, 1689), 1; Robert Ferguson, *The East-India Trade a Most Profitable Trade to the Kingdom, and Best Secured and Improved in a Company, and a Joint-Stock* (London, 1677), 25..

interloping continued unabated through the 1680s and '90s, finding key supporters among parliamentary Whigs who opposed the apparent marriage of royal prerogative and private interest that they claimed lay at the heart of the Company's constitution. Attacks on the Company's chartered privileges as a form of royal tyranny provided a convenient rhetorical device linking Stuart absolutism with Asiatic despotism, and interlopers became influential enough as a lobbying interest to organize a "New" East India Company created by an Act of Parliament in 1697.²⁸ The two companies quarrelled bitterly for three years until William III finally agreed to arbitrate a merger in 1700, a process that was not finally completed until 1709. The "Old" Company became the largest shareholder in the "New" one, however, ensuring that Old Company interests would dominate the new United Company. The merger, however, forced the Company to widen its membership to include former competitors and critics and to widen its appeal to encompass the broader British financial market created by the Act of Union of 1707. The merger also established the precedent of parliamentary intervention into EIC affairs that would become a central feature of the relationship between the Company and the British state moving forward.²⁹

While the creation of a United Company resolved some of the conflict between the two companies at home, tensions in Asia remained high between established Old Company officials and New Company employees who continued to be seen as little more than former interlopers and upstarts. New Company personnel proved especially

²⁸ Stern, *Company-State*, 148, 156; 9 Will. 3, c. 44. For the New Company's 1698 charter, see P. J. Marshall, *Problems of Empire: Britain and India, 1757–1813* (London: George Allen and Unwin, 1968), 193–196. William III demonstrated his preference for the New Company when he used his customary present of £10,000 from the Old Company to buy stock in the New. Stern, *Company-State*, 155–156.

²⁹ Stern, *Company-State*, 162–163; P. J. Marshall, "The English in Asia to 1700," *OHBE*, 1:282–283.

irksome to their Old Company counterparts in their continued disregard for royal authority. John Pitt, for instance, caused a rift in the Madras council in 1700 when he refused to salute the royal standard at Fort St. George. At Bombay and Surat, moreover, where Old and New Company councils had been combined, there were ongoing disputes over diplomatic policy and the order of precedence of Crown-commissioned naval officers who took up residence in the Bombay Presidency.³⁰ Many New Company personnel construed the merger as legitimizing their interloping pasts, thus opening the floodgates for the expansion of private trading by Company employees in India. The relegation of interlopers from an external threat to an internal nuisance, nevertheless, allowed EIC officials to direct more energy toward relations with Indian powers through which the Company could expand its influence.

The establishment of the United Company coincided with the end of the reign of Aurangzeb (r. 1658–1707) and the proliferation of regional sub-polities throughout Mughal dominions. No longer preoccupied with fending off competing Britons, the EIC redirected its growing maritime strength toward the consolidation and expansion of its territorial possessions, particularly in Madras and Bengal. The combination of the Old Company's traditional connection to the Crown and the New Company's close alliance with Parliament, moreover, created a United Company that was closely linked to the emerging British military-fiscal state, the martial and naval resources of which the Company increasingly utilized in its Indian wars of expansion. Cooperation between the EIC and the British state contributed significantly to the Company's military success in southeast India and Bengal during the Carnatic Wars. Yet the contribution of British Crown forces to the Company's military victories during these conflicts raised the legal

³⁰ Stern, *Company-State*, 164–168.

and constitutional question of to whom the spoils of war belonged. In a legal opinion from the summer of 1757, before news of the events at Plassey arrived in London, Attorney General Charles Pratt and Solicitor General Charles Yorke determined that Britain's war with France in India and the Company's embroilments with Indian powers were separate conflicts. Conquests made of French possessions were therefore property of the Crown, while those made from Indian princes belonged to the Company.³¹ Although seemingly straightforward, the Pratt-Yorke opinion proved insufficiently nuanced to apply in India itself, where most of the Company's major victories were achieved with the assistance of British army troops and the Royal Navy and were scored against Indian forces in various form of alliance with the French East India Company.

Clive himself acknowledged the contribution of British forces to EIC success, writing to Pitt in 1759 that further Crown support would be required to maintain British supremacy in Bengal once the Company's conquest of the province was completed. "So large a sovereignty may possibly be an object too extensive for a mercantile company," he wrote, "and it is to be feared they are not themselves able, without the nation's assistance, to maintain so wide a dominion." Clive also suggested that the revenues acquired in Bengal would be at the Crown's disposal, inviting Pitt

to judge, whether an income of yearly two millions sterling, with the possession of three provinces abounding in the most valuable productions of nature and of art, be an object deserving the public attention; and whether it be worth the nation's while to take the proper measures to secure such an acquisition—an acquisition which, under management of so able and disinterested a minister, would prove a source of immense wealth to the kingdom.

Such revenues, Clive added, "might in time be appropriated in part as a fund towards diminishing the heavy load of debt under which we at present labour [i.e., the national

³¹ Ibid., 197–198; Lucy S. Sutherland, *The East India Company in Eighteenth-Century Politics* (1952; repr., Oxford: Clarendon Press, 1962), 78–79.

debt].”³² Clive suspected that with the Company as *diwan* the revenue collection system in Bengal would remain the same as it had been during Mughal rule, with surplus revenues beyond those required to defray the costs of administration simply being transmitted to London rather than Delhi.³³ A further ruling by Yorke in June of 1761 confirmed that acquisitions made in India fell immediately within the royal prerogative by right of conquest, and that until the king transferred such property to the Company, the territories and revenues of such came under the administration of the king and his ministers.³⁴

The question of the Crown’s right to the spoils of the Company’s Indian conquests took on greater significance following the acquisition of the *diwani* in 1765. With the fall of Grenville’s administration in July of 1765 and the Rockingham administration’s subsequent repeal of Grenville’s program of colonial taxation, an alternative source of imperial revenue was required to contribute to the costs of the administration and defence of the empire.³⁵ The prospect of the Crown acquiring a share of the Company’s *diwani* revenues became increasingly attractive to postwar British ministries faced with the twin problems of increased imperial expenditures and a mounting national debt. When the ministry headed by former Secretary of State William Pitt, the newly-ennobled Earl of Chatham, took office in the summer of 1766, one of Chatham’s primary objectives was to secure a portion of the *diwani* to the Exchequer.

³² Clive to Pitt, January 7, 1759, Fisher, ed., *Politics of the British Annexation*, 62–63; H. V. Bowen, *Revenue and Reform: The Indian Problem in British Politics, 1757–1773* (Cambridge: Cambridge University Press, 1991), 22.

³³ Marshall, *Problems of Empire*, 18–19.

³⁴ See Stern, *Company-State*, 198, 211.

³⁵ Grenville himself acknowledged the need for an external imperial revenue, lest Britons at home would be required to “double tax themselves to take off our taxes.” Grenville to Robert Nugent, June 21, 1766, Grenville Papers (microfilm), David Library of the American Revolution, Washington Crossing, Pennsylvania, BL Add. MS 42084, fol. 46.

Chatham launched a parliamentary inquiry into the Company's affairs in Bengal in late November of 1766 with the intention of reaching a conclusion as to the Crown's right to the revenues of the Company's conquests. Chatham had no designs on the administration of Bengal, which would remain with the Company, but sought only the arrangement of a fixed annual payment by the EIC to the Treasury. The ensuing inquiry had fallen apart by the summer of the following year without any firm legal resolution on the issue of the Crown's right to such revenues, however, and Chatham and his government proved unable to circumvent oppositional accusations that the inquiry was little more than a veiled attack on the Company's chartered privileges.³⁶ The inquiry's main result was a temporary agreement for the Company's payment of £400,000 annually to the Exchequer for two years. "The said territorial acquisitions and revenues, lately obtained in the East Indies," were otherwise to "remain in possession of the said United Company, and their successors, during the said term of two years."³⁷

A greater success than this temporary financial arrangement was the inquiry's regulation of Company dividends. From the early 1750s onwards, Company profits had been distributed to stockholders in the form of regular dividend payments of between seven and ten percent.³⁸ News of the Company's acquisition of the *diwani* had caused a jump in the price of EIC stock from £165 per £100 in January of 1766, to £214 that July, before hitting £273 in early 1767. The total amount of Company stock traded in 1766, moreover, exceeded £4 million, a nominal value of more than three times the amount of

³⁶ Bowen, *Revenue and Reform*, 48–53, 57–66; Philip Lawson, "Parliament and the First East India Inquiry, 1767," *Parliamentary History* 1, no. 1 (December 1982): 99–112.

³⁷ 7 Geo. 3, c. 57.

³⁸ H. V. Bowen, *The Business of Empire: The East India Company and Imperial Britain, 1756–1833* (Cambridge: Cambridge University Press, 2007), 31. Earlier dividends had been sporadic and varied greatly in their rates of payment. See Chaudhuri, *Trading World of Asia*, 416–423, 449, 451.

the previous year.³⁹ “When the first news arrived of our acquisitions in Bengal,” one pamphleteer later recalled, “so sudden an increase of wealth naturally drew the attention of every enterprising man, who, having little to lose, thought his engagements could not possibly be too large in a stock where there appeared a certainty of gaining much.”⁴⁰ In May of 1767, in an effort to capitalize on public overconfidence in EIC stock, and in a direct affront to the Ministry, which was then working on a bill to permanently set the Company dividend at ten percent, the Directors paid out a dividend at the inflated rate of 12.5 percent. The 1767 dividend inclined an overwhelming majority in the House of Commons to vote in favour of the Ministry’s regulatory bill, which passed in late May, but not before Company proprietors were able to cash in on the trading frenzy, and with the caveat that the Company dividend would be fixed at ten percent for a single year only.⁴¹

The inquiry was less effective at reforming internal Company governance as it related to the more prominent issue of the “splitting,” or collusive transfer, of EIC stock. From early in the Company’s history, large blocks of shares had been concentrated in the hands of an elite and exclusive group of proprietors. By 1691, roughly seventy percent of Company stock was held in blocks of £2,000 or more, with some Directors individually holding stock amounting to £50,000 and upwards.⁴² Even as EIC stock became more widely held during the early eighteenth century, Company ledgers for 1723–28 show only forty-seven persons holding £10,000 of stock or more and a mere

³⁹ Bowen, *Revenue and Reform*, 50–51; Bowen, *Business of Empire*, 57–58; Sutherland, *East India Company*, 141.

⁴⁰ *A Letter to the Proprietors of East-India Stock, Containing a Brief Relation of the Negotiations with Government, from the Year 1767, to the Present Time* (London, 1769), 1.

⁴¹ See 7 Geo. 3, c. 49, which was extended for an additional year by 8 Geo. 3, c. 11.

⁴² Marshall, “English in Asia,” 282.

eight proprietors holding at least £20,000.⁴³ Because the Company's charter gave each stockholder only a single vote in the General Court regardless of the value of one's holdings, the practice had developed of splitting large blocks of shares into units of £500 (the minimum holding required to cast a vote), which were then doled out to individuals who would vote with the interest of the stock's true owner. By splitting stock, Company elites were able to mobilize the full weight of their holdings to influence EIC policy.

Deputy Chairman of the Company Laurence Sullivan described the practice in 1763:

There is no voting by proxy and every proprietor at a contested election swears the stock is his own. Therefore a man who has £1000 stock and lends a second half of it for a qualification, a note of hand is given for the sum it amounts to and he pays it back hereafter, gaining or losing the difference of the market price; others again cast the sum it amounts to at the present price, gives his note and takes the stock outright, selling him again £500 stock as the price may prove.⁴⁴

For elite investors, the long-term profits to be gained by the election of a favourable Board of Directors far outweighed the potential short-term loss of value incurred by splitting. The best the Ministry could do to combat splitting was a bill requiring stockholders to be in possession of stock for at least six months before being "deemed qualified to vote, or be admitted to give any vote or votes, in any general court of any such company," a regulation that was easily circumvented by organizing splits six months before the Company's annual elections in April.⁴⁵

The legislation resulting from the Chatham inquiry had little more than a fleeting effect on EIC affairs, and no clear resolution was reached on the question of the Company's sovereign authority in Bengal. Although the annual payment of £400,000 by

⁴³ Sutherland, *East India Company*, 42.

⁴⁴ Quoted in Sutherland, *East India Company*, 103. See also *ibid.*, 25; and Bowen, *Business of Empire*, 58–60.

⁴⁵ 7 Geo. 3, c. 48; Bowen, *Business of Empire*, 69–70.

the Company to the Exchequer was extended for another five years in 1769,⁴⁶ Chatham's settlement was an impermanent solution that the Board of Directors agreed to in order to quell ministerial indignation at the Company's recent growth in power. Chatham insisted from the outset that the question of British sovereignty in India "cannot (upon any colourable pretence) be in the Company," and pointed to the Company's 1698 charter, which reserved "to the Crown the sovereign right and dominion over all forts, factories, and plantations" and granted to the Company only "the government of all forts, factories, and plantations, which shall be possessed by the Company in India."⁴⁷

Company supporters, however, continued to reference the Pratt-Yorke opinion, which as H. V. Bowen explains, differentiated

between territories and possessions taken from Indians by conquest, and those procured by the Company through treaty or grant. In the former instance, the Crown obtained sovereignty and actual possession of the land, but in the latter case it only acquired sovereignty over the Company's acquisitions as "English settlements"; possession of the land itself was vested in the Company.⁴⁸

EIC authorities maintained that while the Crown was indeed sovereign over the Company's Indian possessions as English settlements, it had no claim to the territorial revenues of such, which were held by the Company as proprietaries granted by the Mughal emperor. The Company "held their possessions in India," the Scottish historian David Macpherson later wrote, "not as an absolute property, but as a farm granted to them by the Great Mogul, and, according to the constitution of the empire, subject to an

⁴⁶ 9 Geo. 3, c. 24.

⁴⁷ Chatham to the Duke of Grafton, January 10, 1767, William R. Anson, ed., *Autobiography and Political Correspondence of August Henry, Third Duke of Grafton* (London, 1898), 112; Marshall, *Problems of Empire*, 196.

⁴⁸ H. V. Bowen, "A Question of Sovereignty? The Bengal Land Revenue Issue, 1765–67," *Journal of Imperial and Commonwealth History* 16, no. 2 (January 1988): 162.

annual rent.” Rent was paid to the emperor for the maintenance of the Company’s proprietary rights according to Mughal feudal custom, and the Company regularly “paid large sums to the government for the parliamentary renewal of their charters,” which gave them “an undoubted right to every possible advantage they might obtain, consistent with the powers vested in them by those charters.”⁴⁹ The acquisition of the *diwani* was simply one such advantage gained by the Company in its relations with Indian powers within the purview of its charters. The Company had become dominant in Bengal as a result of its war with Siraj-ud-daula, but it had also “gone to elaborate lengths to acknowledge Shah Alam’s sovereignty. The *diwani* had not been extorted from the emperor under the terms of an imposed peace settlement.” Rather, the emperor willingly granted it for the reason that his own interests were better served by receiving a regular income from Bengal from the Company than from an unruly *nawab*. The Company had not forcefully taken for itself any sovereign power; the *nawab* remained the sole legal and civil authority in the province.⁵⁰ Framed this way, the Company’s assumption of the *diwani* was not the malign seizure of power that EIC detractors alleged it to be, but neither would the *diwani* prove as profitable as Company supporters ardently wished.

III

The Company’s argument that its custody of the *diwani* was a proprietary grant of the Mughal emperor, the revenues of which were the Company’s exclusive property within the legal bounds of its charters, proved sufficient in establishing the Company’s right to its procurement of the *diwani* against the ambitions of the Crown and Ministry through

⁴⁹ David Macpherson, *The History of the European Commerce with India* (London, 1812), 192–193.

⁵⁰ Bowen, “Question of Sovereignty,” 164–165.

the late 1760s. Yet the question of Crown versus Company sovereignty remained unsettled, and a return to the dispute over *diwani* rights became a major point of contention during the opening years of the decade that followed. Member of Parliament Thomas Walpole expressed doubts about the Company's ability to effectively collect and dispose of the *diwani* in a letter to Chatham as early as 1766. Walpole saw the internal structure of the Company itself, particularly the transience of domestic EIC leadership, as a significant hindrance to its effective management of foreign revenues. "The annual choice of Directors may very well serve the temporary purposes of trade, which is always fluctuating, and the circumstances of which they must rather follow than direct," Walpole wrote, "but such a floating and uncertain authority can never be equivalent to a steady system of government over distant countries." "The present constitution, therefore, of the Company seems very inadequate to their situation," Walpole concluded, "and whether it can be so framed as to give it proper energy is beyond my conception. If not, it is absolutely necessary government should take the charge of that which is too unwieldy for a subordinate body of merchants."⁵¹ That the government would be required to absorb the administration of the Company's foreign possessions seemed somewhat implausible in 1766. Within a few short years, however, the Company found itself in a crisis that turned Walpole's hypothetical musings into a realistic solution to the Company's challenge of balancing its foreign and domestic responsibilities.

British analysts, in both the Company and the government, believed that the *diwani* would net the Company a balance of somewhere between £2 and 3 million

⁵¹ Walpole to Pitt, September 9, 1766, William Stanhope Taylor and John Henry Pringle, eds., *The Correspondence of William Pitt, Earl of Chatham*, 4 vols. (London, 1838–40), 3:61–62.

annually.⁵² The public generally expected that such revenues would be transmitted to Britain as basic cash payments made in Bengal that the Company would then send home to be added to the Company's reserves for redistribution as dividend payments, through which shareholders could turn a profit by trading EIC stock as it inevitably rose in value. Company Directors did little to dispel such misconceptions even though they knew that additional revenues gained from the *diwani* would be used primarily to finance the expansion of the Company's trade elsewhere in Asia and that the value of the *diwani* would be transferred to Britain in the form of increased imports. Investors also failed to appreciate that the costs of the Company's military expenditures in Bengal had more than doubled during the course of the recent war, rising from £346,413 in 1762/3 to over £886,090 in 1765/6. Such costs continued to increase to over £1 million in 1770/1. Little could be done to keep Britons from overinvesting in Company stock to the point of "bulling" the British financial market to dangerously high levels by the late 1760s.⁵³

The first serious dip in Company stock values occurred in May of 1769, when news arrived in London that the new sultan of Mysore, Hyder Ali, had pushed up the Carnatic and was descending upon the EIC at Madras. British authorities also feared that France's recent amassing of naval forces at Mauritius signalled its willingness to assist Hyder Ali in his campaign against the Company. News of threats to the Company's security in India resulted in a drop in the price of EIC stock from between £250 and 270, where it had hovered for some time, to below £240 in June of 1769 for the first time in years. This initial dip in the price of Company stock was not substantial enough to ripple out into the rest of the market, but it did nearly bankrupt a number of prominent

⁵² Bowen, *Revenue and Reform*, 51.

⁵³ Sutherland, *East India Company in Eighteenth-Century Politics*, 138–139; Bowen, *Revenue and Reform*, 56n30, 117.

speculators whose losses had to be covered by large payouts from high-ranking patrons and creditors.⁵⁴

In the meantime, Company leadership was pleased with the steady increase in EIC imports to Britain into the early 1770s. The total value of Company imports from Bengal alone had shot up from £276,722 in 1764/5, to £658,341 in 1768/9 and £904,853 in 1770/1. Imports from China, such as raw silk and tea, which were purchased using *diwani* revenues, also increased during these years. Company imports of tea more than doubled from over 4.4 million pounds in 1768, to more than 10 million pounds in 1770, before peaking at nearly 13 million pounds in 1772.⁵⁵ Yet an increase in the volume of tea imported into Britain meant little for Company revenues without corresponding growth in consumer demand. While British tea consumption had skyrocketed in the first half of the eighteenth century relative to seventeenth-century levels,⁵⁶ the full potential of EIC tea sales in Britain were hampered by a twenty-five percent duty on Company sales and a shilling per pound inland duty on all tea sold in Britain. No additional duties existed at the time on tea re-exported to the American colonies, however, and so the Company sought to increase the transshipment of tea from Britain to the colonies as an alternative outlet. In April of 1767, the Company had successfully negotiated with Chancellor of the Exchequer Thomas Townshend for the removal of the inland duty and a full drawback on the twenty-five percent duty for all Company tea re-exported to America. Tea sales boomed, rising domestically from around 3.7 million pounds in 1767 to over 6.6 million pounds the following year, while export sales increased from 430,000

⁵⁴ Sutherland, *East India Company in Eighteenth-Century Politics*, 190–192f.

⁵⁵ Bowen, *Revenue and Reform*, 107–108.

⁵⁶ See Roy Moxham, *A Brief History of Tea*, rev. ed. (London: Robinson, 2009); 19, 22; Chaudhuri, *Trading World of Asia*, 386–388; and Benjamin Woods Labaree, *The Boston Tea Party* (New York: Oxford University Press, 1964), 334.

pounds to nearly 1.3 million pounds during the same period.⁵⁷

This spike in EIC tea sales hid a looming crisis for Company finances. In 1766/7, during its first full year as *diwan*, the Company collected over £1.8 million in revenue from Bengal and Bihar, combining with its *zamindar* revenues from Burdwan, Chittagong, Midnapur, and the Twenty-Four Parganas for a net total of £2.55 million. The 1766/7 total was the closest the Company's combined territorial revenues ever came to the projected £2–3 million annual value of the *diwani*. The collected amounts decreased every year after that, dropping to £1.26 million from Bengal and Bihar and just over £2 million in total for the year 1770/1.⁵⁸ Although Company exports from Bengal to Britain increased during the late 1760s, the declining value of its territorial revenues diminished the Directors' hopes that the *diwani* alone would finance the expansion of the Company's East Asian trade, forcing an increase in bullion shipments from London to over £300,000 in 1770/1 for only the second time in fifteen years.⁵⁹

On the surface, this spur from London appeared to have the desired effect. The total value of Company imports increased from roughly £900,000 in 1763/4 to well over £1.5 million in 1768/9, with Chinese and Bengali goods accounting for a combined eighty-two percent of the latter figure. Within one year between 1768 and 1769, the Company added eleven new ships to its fleet and increased its total cargo tonnage by over 10,000 tons. This expansion in trade volume was reflected in an increase in income

⁵⁷ Bowen, *Revenue and Reform*, 109–110; 7 Geo. 3, c. 56.

⁵⁸ Bowen, *Revenue and Reform*, 103–104. Part of this shortfall in projected revenues can be attributed to the severe economic downturn experienced in eastern India from the 1740s onwards. See S. Bhattacharya and B. Chaudhuri, "Eastern India," in *The Cambridge Economic History of India*, ed. Tapan Raychaudhuri, Ifran Habib, and Dharma Kumar, 2 vols. (1982–83; repr., Cambridge: Cambridge University Press, 1987–89), 2:295–296. The Company had based its projections on the revenues collected in Bengal during the more prosperous decades of the late seventeenth and early eighteenth centuries.

⁵⁹ Bowen, *Revenue and Reform*, 111.

generated from the sale of goods at the Company's biannual auctions, which rose from about £2.5 million to about £3.5 million between 1764/5 and 1769/70, resulting in an increase in the balance of trade in the Company's favour by nearly £1.2 million during those same years. But a favourable balance of trade did not necessarily translate into easy profits. The Company continued to struggle to retail its increased imports, and the value of EIC goods sitting unsold in its London warehouses swelled from a little over £1 million in 1763 to nearly £3.3 million in 1772. Despite the absence of an increase in sales to mirror the increase in the volume of goods imported, the Company dividend was raised back to its pre-inquiry rate of 12.5 percent in 1771, equalling a payout to stockholders of more than £800,000 above the average payout of the regulated rate of dividend—this on top of the £400,000 a year the Company owed to the Treasury. Even though the Company's surplus in its annual balance of payments had increased from £445,979 in 1765/6 to over £1 million in 1770/1, therefore, the Company was haemorrhaging cash to the extent that a deficit just shy of £2 million was calculated in early 1773. Contrary to the expectations of both EIC officials and the nation at large, "the Company had incurred a net financial loss as a result of its assumption of the *diwani*."⁶⁰

In addition to the nearly £3.3 million in goods remaining unsold in 1772, the Company's annual income from sales dropped by over £300,000 between 1769 and 1771, indicating a recession in East Indian trade and leaving the Company employing an excess of over 26,000 tons of shipping in goods that could not be sold, a figure representing nearly half the total tonnage of the Company's fleet. Most of the unsold imports were tea. Between 1768 and 1772, over 44 million pounds of tea was imported

⁶⁰ Ibid., 116–118.

from China to Britain. Tea sales experienced no significant growth during these years, however. While the terms of Townshend's 1767 duty resulted in the reduction of the price of Company tea from 2s.9d. to 2s.1d. per pound, spurring a threefold increase in tea exports between 1767 and 1769, this growth was short lived, and exports declined by roughly 300,000 pounds between 1769 and 1772, as colonists boycotted British tea in response to the Townshend duties.⁶¹

Much of the Company's inability to increase tea sales in Britain and maintain exports to the colonies can be attributed to the stiff competition EIC tea faced in the form of tea smuggled from Continental Europe. Although imported EIC tea was the only tea that could be legally landed on British shores, the various taxes and duties placed on Company tea had long made smuggled French and, especially, Dutch tea a cheaper alternative for British consumers on both sides of the Atlantic. For starters, the Company's system of selling its tea at auction had the effect of artificially inflating the price of EIC product to whatever exorbitant sum was offered by the highest-bidding wholesale purchaser, resulting in wholesale prices well over three shillings per pound between 1761 and 1766. This compared unfavourably to the Dutch wholesale price of 1s.10d. in 1767, for instance. Smuggled Dutch tea was made even more affordable by the lack of any import duties on Dutch East India Company tea in the Netherlands, which, by the time the shilling per pound inland duty was added to the British wholesale price, provided smugglers with a difference of nearly three shillings per pound between the two products within which a handsome profit could be turned. The advantageous pricing of smuggled tea relative to EIC product ensured that illicit importation was widespread. Contemporaries figured that at least half of all the tea consumed in Britain

⁶¹ Ibid., 121.

during the 1760s and '70s was contraband and that tea smuggling as an industry was worth some £3 million annually.⁶²

British Americans were especially notorious tea smugglers. Benjamin Woods Labaree calculates that as much as three-quarters of all tea consumed in the mainland American colonies was imported illicitly. While the Townshend indemnity on Company tea re-exported to America had dropped the price of tea for colonial consumers and provided a temporary boost to legal importation, the result was a net loss for the Treasury of roughly nine pence per pound on exported tea. In an effort to recoup some of the government's losses, as well as to make "a more certain and adequate provision for defraying the charge of the administration of justice, and the support of civil governance" in the colonies, Townshend utilized the Ministry's recent settlement with the Company to place an import duty of three pence per pound on EIC tea landing at colonial ports.⁶³

British Americans were vocally critical of the Townshend Revenue Act within which the duty on tea was included. The colonies' dispute with the metropolitan government had evolved from opposition to parliamentary intrusion into matters of internal colonial jurisdiction during the Stamp Act crisis in 1765 to criticism of external imperial regulations that were taxing on American colonists during the Townshend duties crisis in 1767. A central feature of both phases of colonial opposition, however, was discussion of the difference between "internal" taxes imposed on the colonies for the stated purpose of raising an revenue, and "external" taxes, or duties placed on goods

⁶² Labaree, *Boston Tea Party*, 6, 332–333; Peter D. G. Thomas, *The Townshend Duties Crisis: The Second Phase of the American Revolution, 1767–1773* (Oxford: Clarendon Press, 1987), 18; Moxham, *Brief History*, 23.

⁶³ Labaree, *Boston Tea Party*, 7, 18, 20–21; Thomas, *Townshend Duties Crisis*, 18–20; 7 Geo. 3, c. 46.

imported into the colonies for the regulation of trade and from which revenue was generated only incidentally. In 1765, Marylander Daniel Dulany identified “a clear and necessary distinction between an Act imposing a tax for *the single purpose of revenue*, and those Acts which have been made for the regulation of trade, and have produced some revenue *in consequence of their effect* and operation as *regulations of trade*.” “The authority of the mother country to regulate the trade of the colonies” was “unquestionable,” according to Dulany, “and, if an *incidental revenue*, should be produced by such *regulations*,” those regulations were not “unwarrantable.” It was instead the “right to impose an internal tax on the colonies ... *for the single purpose of revenue*” that the colonists “denied.”⁶⁴ Benjamin Franklin confirmed such sentiments among British Americans when he testified before the House of Commons in 1766, and Townshend thought he had been conscious of the distinction between internal and external taxation when he formulated his revenue bill during late 1766 and early '67.⁶⁵

Townshend’s Revenue Act was nevertheless opposed by British Americans, among whom popular opinion was rapidly shifting to the idea that any and all duties levied by Parliament on the colonies were unconstitutional. John Dickinson of Delaware and Pennsylvania was at the forefront of this critical development of colonial imperial constitutional thought. Customs and import duties laid upon the colonies “*with intention to raise a revenue from us only*, are as much *taxes* upon us, as those imposed by the Stamp Act,” Dickinson argued in his widely read *Letters from a Farmer in Pennsylvania* (1767–68). The “language is clear and important,” Dickinson wrote, expressing the

⁶⁴ Daniel Dulany, *Considerations on the Propriety of Imposing Taxes in the British Colonies, for the Purpose of Raising a Revenue, by Act of Parliament*, 2nd ed. (Annapolis, 1765), 34.

⁶⁵ See *The Examination of Doctor Benjamin Franklin, before an August Assembly, Relating to the Repeal of the Stamp-Act* (Philadelphia, 1766); and Thomas, *Townshend Duties Crisis*, 22.

distinction between taxation for the sole purpose of generating revenue, and customs duties, or “impositions,” for the regulation of trade. “A ‘tax’ means an imposition to raise money,” he explained.

Such persons therefore speak of *internal* and *external* “taxes,” I pray pardon me, if I object to that expression, as applied to the privileges and interests of these colonies. There may be *internal* and *external* impositions, founded on *different principles*, and having *different tendencies*; every “tax” being an imposition, though every imposition is not a “tax.” But *all taxes* are founded on the *same principle*; and have the *same tendency* [i.e., the generation of revenue].⁶⁶

Opposition to Townshend’s Revenue Act initially spread through the colonies slowly. Resistance in the form of nonimportation of British goods by merchants in Boston and New York occurred in fits and starts between late 1767 and early ’69 before Philadelphia merchants finally joined in March of 1769. Tea, as the main article of Townshend’s revenue program, quickly became the prime target of the colonial nonimportation movement, and by early 1770, the legal importation of British tea into major colonial ports had fallen dramatically. After receiving over 350,000 pounds of tea under the Company’s indemnity in 1768, imports into New York dropped to 17,000 pounds in 1769, before bottoming out at only 147 pounds in 1770. Philadelphia, meanwhile, went from importing 112,000 pounds in 1769 to a mere 65 pounds the following year. In total, Company exports to the colonies fell from nearly 900,000 pounds in 1767, to barely over 100,000 pounds in 1770. Although smuggling continued unabated, the nonimportation movement “resulted in the virtual disappearance of dutied tea” from most major colonial markets by 1770. The sharp increase in EIC tea imports to Britain and the steep decline in exports to the colonies combined to result in the piling up of unsold tea in Company warehouses on an enormous scale. While the amount of

⁶⁶ Paul Leicester Ford, ed., *The Political Writings of John Dickinson, 1764–1774* (1895; repr., New York: Da Capo Press, 1970), 317, 332.

unsold tea initially fell from 13.5 million pounds in 1767 to 8.8 million pounds in 1768 as a result of the Company indemnity, the colonial boycott resulted in that figure more than doubling to 17.7 million pounds in 1772, a quantity equalling over £2 million and over sixty percent of the total value of unsold EIC goods.⁶⁷

Despite fierce colonial opposition, the duty on tea remained in place even after the other duties included in Townshend's Revenue Act were repealed in early 1770 by Townshend's successor as Chancellor of the Exchequer, Frederick North. Although the Company had benefitted from the drawback it received on exported tea under its indemnity, it now found itself having to compensate the government for the loss in revenue resulting from the drawback on the duties of unsold tea. By 1772, this sum was just under £300,000.⁶⁸ Repeated attempts by the Ministry to alleviate the Company of the full weight of its tea debts were to no avail,⁶⁹ and by August of 1773, the Company's unpaid debts to the Treasury tallied over £1.2 million. The Company's outstanding debt was due largely to stagnant EIC sales against increased imports, which in turn created a liquidity shortage requiring the Company to take out further loans from the Bank of England to pay down its debt to the Treasury. At the same time, the Company continued paying dividends to stockholders at 6.25 percent, a rate that although much reduced from the previous decade, was still unsustainable in light of the Company's decimated profits. The Directors nevertheless feared that too low a drop in the dividend rate would shake investors' confidence in Company stock and risk bearing the entire London financial market. In July of 1773, the Bank of England finally began limiting advances to the Company, forcing it to lower its rate of dividend to six percent in order to be alleviated

⁶⁷ Labaree, *Boston Tea Party*, 21–24, 31–32, 36; Bowen, *Revenue and Reform*, 122.

⁶⁸ Bowen, *Revenue and Reform*, 123.

⁶⁹ See 12 Geo. 3, c. 7; 12 Geo. 3, c. 60; and Bowen, *Revenue and Reform*, 123–125.

from its annual £400,000 payment to the Treasury according to the terms of the 1769 legislation. Consequently, the price of EIC stock dropped dramatically, falling below £150 in April of 1773 for the first time since the end of the Seven Years' War.⁷⁰

The Company's financial difficulties were both a symptom and a contributor to the much broader credit crisis that shook Britain and the Netherlands in 1772 and '73. The crisis began in early June of 1772, when Alexander Fordyce of the London banking house Neal, James, Fordyce, and Down had shorted a large quantity of EIC stock using customer deposits to cover his position to the tune of £300,000 before fleeing to France to avoid repayment. On June 8, Neal, James, Fordyce, and Down ceased trading and declared bankruptcy, causing a ripple of panic to spread through London and Edinburgh, as investors, fearing the similar misuse of their funds, began calling in debts and requesting cash withdrawals. Few institutions had any significant liquidity on hand, however, and by the end of the month, twenty firms in England and Scotland had ceased operations.⁷¹ One such venture was Douglas, Heron, and Company, commonly known as the Ayr Bank due to the location of its head office in Ayr, Scotland. The Ayr Bank was very closely connected to Neal, James, Fordyce, and Down, upon whom it relied for access to credit on the London market, and it in turn, through an elaborate system of bills of exchange, was itself responsible for the issuance of roughly two-thirds of all the capital in Scotland. When the Ayr Bank exceeded its own credit limit, it began raising money through increasingly dubious networks of bills of credit drawn from London. Once Neal, James, Fordyce, and Down went under and panic reached Scotland, the firm

⁷⁰ Labaree, *Boston Tea Party*, 61–63; Bowen, *Revenue and Reform*, 125–130; Bowen, *Business of Empire*, 55, 58.

⁷¹ Bowen, *Revenue and Reform*, 126–127.

proved unable to meet cash demands and suspended payments on June 25, 1772.⁷²

The Company's default on its debts to the Treasury appeared to contemporaries as the climax of a yearlong banking crisis from which not even Britain's largest financial institutions were insulated. The Company also provided the link by which a financial crisis originating in Britain spread to Continental Europe. A number of prominent Dutch banking houses with significant holdings in EIC shares also suffered as a result of their overconfidence in Company stock, and since many British bankers drew extensively on Dutch credit, further defaults were communicated back across the North Sea in a seemingly exponential cycle.⁷³ The severity of the crisis required Parliament to convene in early in November of 1773 in order to inquire into "the embarrassed state of Company affairs," as one London newspaper read.⁷⁴ When the House finally sat, prime minister Frederick North formed a Secret Committee made up of thirteen members of his caucus for the consideration of the "maintenance of the credit and prosperity of the East India Company" in order to "make such provision for the common benefit and security of all the various interests concerned, as you shall find best adapted to the exigencies of the case."⁷⁵

Based on the Secret Committee's findings, North calculated that the Company's indebtedness would rise to over £1.3 million by September of 1774, and so the Ministry began working with the Directors to arrive at an agreement whereby the government could advance a similar sum to the Company on the condition that the Company

⁷² Henry Hamilton, "The Failure of the Ayr Bank, 1772," *Economic History Review*, 2nd ser., 8, no. 3 (1956): 409, 411–412.

⁷³ Lucy Sutherland, *Politics and Finance in the Eighteenth Century*, ed. Aubrey Newman (London: Hambledon Press, 1984), 448–449.

⁷⁴ Edward Hughes, ed., "Lord North's Correspondence, 1773," *English Historical Review* 62, no. 243 (April 1947): 223; *London Evening Post*, October 15, 1773.

⁷⁵ Quoted in Sutherland, *East India Company*, 238.

dividend would remain fixed at six percent as long as the loan remained outstanding so as to avoid proprietors' pocketing public funds via inflated dividend payments. North's terms also included securing for the Crown the right to regulate EIC governance both at home and abroad based on his firm assertion that the Company "could acquire nothing by conquest but for the state." The Ministry, North believed, was in turn duty-bound to intervene in Company affairs for the financial welfare of the nation at large. Although North hinted at the Crown's right to the Company's territorial revenues, he agreed to leave Indian revenues in the possession of the Company for another six years due to the structural impracticalities he foresaw in the Crown's management of such a distant revenue stream should he succeed in acquiring it. Once the settlement between the Company and the Ministry was hashed out behind closed doors, North introduced a bill to the House of Commons, which formed into a committee of the whole to consider the issue in late April of 1773.⁷⁶

The resulting loan bill met with some resistance upon its introduction to the House when a faction of EIC leadership attempted to renege on the settlement by submitting a petition to the Commons in mid-June to withdraw the Company's request for financial assistance. The petition had the effect of throwing the bill back into committee at the last minute, where it was further amended to drop the agreed upon term of an additional six years of the Company's ownership of its Indian revenues, leaving the issue of the Crown's right once again unresolved. Although North was displeased with this final concession, it was decided that the swift passage of the bill and the Company's acceptance of the government's loan with its corresponding regulations was of more immediate concern to averting Company bankruptcy and national financial

⁷⁶ Bowen, *Revenue and Reform*, 159–164.

disaster. The bill passed the Commons easily on June 19, 1773, was pushed through the House of Lords within a week, and was given royal assent on July 1.⁷⁷ The East India Company Loan Act advanced the Company a sum of £1.4 million from the Exchequer “for the preservation of the said United Company,” stipulating that the funds were to be used mainly for the Company to pay its outstanding customs duties and discharge its debts to the Bank of England. The loan would be advanced at the rate of four percent interest and the Company dividend would not exceed six percent until the repayment of the entirety of the £1.4 million was completed. The Loan Act also made the Company liable to a fifteen percent per annum penalty should it prove unable to meet its yearly £400,000 payment to the government according to the 1767 and ’69 legislation.

Although North had laid aside the issue of the Crown’s claim to a right in the Company’s land revenues, as long as the present loan remained unpaid, the composite surplus of any and all of the Company’s territorial revenues after the defrayment of its charges and expenses would be applied exclusively to the reduction of the Company’s bonded debt.⁷⁸

Although the Loan Act indemnified the Company from all losses incurred by “the deficiencies of the duties upon tea,” the Company was still sitting on nearly 18 million pounds of surplus tea in its London warehouses, which its inability to sell was a major contributor to the financial crisis in the first place. Many in both the Company and the government favoured the idea of selling the Company’s surplus tea on the Continent, where it was argued that even if the EIC sold its product at a loss, it could undersell Dutch tea and relieve the Company of the costs of storage, product deterioration, and

⁷⁷ *Ibid.*, 183–186.

⁷⁸ 13 Geo. 3, c. 64.

interest on the capital invested. One pamphleteer even calculated that as long as the Company could offload 11.5 million pounds of tea at the current London price, it stood to make over £1.4 million, enough to return to a state of financial solvency. The Ministry decided against this course of action, however, as it was expected that the majority of tea exported to the Continent would simply be re-smuggled into Britain at a net loss to the Company's domestic sales. As an alternative, the Ministry once again looked to the American colonies as an outlet for excess Company tea. North introduced a bill into the Commons on April 26, 1773, outlining a new policy for the shipment of tea to the colonies, and after very little debate, it passed the House without a division and became law on May 10.⁷⁹ The Tea Act provided for a full Company drawback on the import duties on all tea regularly exported to the colonies and allowed the Company to ship its surplus tea duty-free directly to the colonies without sale at auction in London.⁸⁰ The Tea Act, however, did not remove the Townshend duty of three pence per pound on tea exported to the colonies, which the Ministry retained in hopes of recovering some of the revenue lost by EIC drawbacks. It was further believed that even with the duty in place, surplus Company tea, now much reduced in price, could outcompete smuggled Dutch product.

North ultimately failed to anticipate the severity of the resistance the Tea Act would meet in the colonies, where the its close association with the Company's bailout would give rise to suspicions of collusion between the Ministry and the Company and lend credence to colonial ideations of a ministerial conspiracy to reduce British Americans to economic "slavery." The Tea Act, and the Ministry's heavy-handed response to colonial

⁷⁹ Labaree, *Boston Tea Party*, 67–73; Bowen, *Revenue and Reform*, 151–153, 163–164.

⁸⁰ 13 Geo. 3, c. 44.

opposition to that legislation in the form of the “Intolerable Acts” of the following year, would convince many colonists that the imperial centre had become thoroughly corrupted by the acquisition of its “new” Indian empire (an emerging concern among Britons themselves), of which tea now appeared as a material example of the degenerative effects of the influx of Eastern commodities on British political culture. When the Intolerable Acts were followed closely by the Quebec Act in the spring of 1774, there remained little doubt in the minds of many British Americans that settler interests had been eclipsed by those of non-Britons and that the metropolitan government had succumbed to some combination of French and Asiatic despotism. It was this fixation on the Ministry’s and ultimately the Crown’s “corruption” that would inform much of the language American colonists used to justify their break with the metropolitan government in 1776.

**The “Intolerable Acts,” the American Revolutionary War,
and the Second Treaty of Paris, 1773–1783**

The Tea Act faced fierce resistance from British Americans who sought to avoid becoming subject to what amounted to an East India Company monopoly on colonial tea imports, and the Act contributed to a major shift in the colonial resistance movement from opposition focused on the metropolitan government’s efforts to generate revenue from the colonies, either by direct taxation or external customs duties, to a more general opposition to parliamentary authority in the colonies altogether. When radicals in Massachusetts resisted the unloading of Company tea at the port of Boston in late 1773, the Ministry responded the following spring with the “Intolerable Acts,” as they became known in the colonies. The close temporal association between punitive legislation directed at Massachusetts in response to the Boston Tea Party and news of the passage of the Quebec Act in May of 1774 further roused colonial distrust of the metropolitan government, fuelling rhetorical charges of ministerial corruption and arbitrary imperial governance that was heavily utilized by political actors advocating for colonial independence. The contemporaneousness of the colonial reception of the EIC and Quebec legislation and the Ministry’s response to the emergence of open colonial rebellion demonstrates the interconnectedness of the North American and Indian spheres of empire and the significant extent to which the inherited responsibilities and complexities of administration in Canada and Bengal altered imperial governance. In doing so, such governmental and imperial constitutional shifts upended American colonists’ perceptions their place in the empire.

The legacy of the American Revolution has long cast early justifications for

colonial rebellion, including the numerous statements of causation issued by the Continental Congress, as the products of grassroots opposition to British imperial policy. Yet a closer analysis of the emergence of American Revolutionary ideology, especially in light of constant references to ministerial overreach in the form of the 1773–74 legislation (chief among which the colonists always listed as the Quebec Act), exposes how colonial opposition was driven by an elitist settler ideology that was reactionary in its rejection of the postwar domestication of the negotiated imperial settlements that took place in Canada and Bengal, and was conservative in its desire to return to a prewar model of empire that privileged settler expansion. It therefore became a point of major importance to the Continental Congress that Canada be absorbed into the Revolutionary cause, either peacefully to allow for the incorporation of the province of Quebec into the machinery of settler expansion, or by military annexation to allow for the absolute conquest of the province that had been thwarted by the terms of Vaudreuil's capitulation to Amherst in 1760. When Canadians rejected the Congress's overtures between 1774 and '76 and the Continental Army failed to capture Quebec at the end of 1775, the war shifted to the middle and southern colonies. There the Continental Army fought a war against the British on the eastern seaboard, while the Congress and many state governments fought a war of Indigenous dispossession on the northern and western frontier in lieu of Americans' abandoned hopes of acquiring the continental interior by annexing or conquering Canada.

I

The North administration passed the Tea Act to solve the problem of the oversupply of EIC tea, which had contributed significantly to the British financial crisis of 1772–73.

As with the Townshend duties, British Americans opposed the Tea Act on the principle the metropolitan government intended to generate revenue from the colonies by way of parliamentary legislation to which colonists did not consent. The Tea Act also engendered new concerns in the colonies. The act's provision for the Company to ship tea directly to the colonies without first being auctioned in London to independent merchants drew criticism from colonial opponents, who viewed the Act as a form of monopoly. The Tea Act's connection to the East India Loan Act, moreover, was interpreted as evidence of collusion between the Ministry and the Company to force British Americans to pay for the Company's bailout, appearing to confirm colonial suspicions of the existence of a "deliberate [ministerial] conspiracy to destroy the balance of the constitution and eliminate [colonial] freedom."¹ "Tea is now of such importance that our very liberties depend on receiving it, or not receiving it," one Pennsylvania writer expressed. "The baneful chests [of EIC tea] contain in them a slow poison," wrote Philadelphian Benjamin Rush, "something worse than death—the seeds of slavery."² John Dickinson, who had led the opposition to the Townshend duties in the colonial press, criticized what appeared to be the North administration's close relationship with the Company, writing in November of 1773 of the Tea Act's establishment of "*a monopoly* for the East India Company, who have espoused the cause of the Ministry; and hope to repair their broken fortunes by the ruin of American freedom and liberty." British Americans, Dickinson wrote, were "to be given up to the disposal of the East India Company, who have now the assurance to step forth in aid of

¹ Bernard Bailyn, *The Ideological Origins of the American Revolution*, 2nd ed. (Cambridge, MA: Harvard University Press, 1992), 144.

² Both quoted in Benjamin Woods Labaree, *The Boston Tea Party* (New York: Oxford University, 1964), 100.

the minister [North], to execute his plan for enslaving America.”³

When news arrived in London in late January of 1774 that Massachusetts radicals had dumped some 92,000 pounds of Company tea into Boston Harbor the month before, the British cabinet was already decided upon “all the main principles” of what would become the Quebec Act; all that remained was for the finer details of the bill to be worked out in Parliament.⁴ Yet the seemingly coincidental timing of the Ministry’s work on the Quebec bill and the arrival of news of the situation in Boston caused some in Britain and America to view the Ministry’s policy of enlarging the boundaries of the province of Quebec to restrict colonial expansion as a punitive measure against recent colonial sedition. Parliament’s passage of legislation directed at Boston between March and May of 1774, during the same parliamentary session that the Quebec bill was before the House, and the spread of knowledge of both pieces of legislation in the colonies at roughly the same time during the summer of 1774 confirmed in colonists’ minds the linkage of the Quebec Act to the Ministry’s heavy-handedness against Massachusetts.⁵

In his capacity as colonial agent for New York, Edmund Burke informed the New York Committee of Correspondence in early August of 1774 of the Quebec bill’s boundary clause being drafted in the context of the legislation affecting Boston and Massachusetts. The latter pieces of legislation, Burke wrote,

³ John Dickinson, *Two Letters on the Tea Tax* (1773), in *The Political Writings of John Dickinson, 1764–1774*, ed. Paul Leicester Ford (1895; repr., New York: Da Capo Press, 1970), 459.

⁴ Peter D. G. Thomas, *Tea Party to Independence: The Third Phase of the American Revolution, 1773–1776* (Oxford: Clarendon Press, 1991), 26, 114; Alfred LeRoy Burt, *The Old Province of Quebec*, 2 vols. (1933; repr., Toronto: McClellan and Stewart, 1972), 1:169.

⁵ The Massachusetts legislation included the Boston Port Act (14 Geo. 3, c. 19), the Administration of Justice Act (14 Geo. 3, c. 39), the Massachusetts Government Act (14 Geo. 3, c. 45), and the Quartering Act (14 Geo. 3, c. 54). For more on the Massachusetts Acts and their closeness to the Quebec Act, see Townshend, *Tea Party*, chs. 4–6; and David Ammerman, *In the Common Cause: American Response to the Coercive Acts of 1774* (Charlottesville: University Press of Virginia, 1974), 5–11.

had been from the beginning defended on their absolute necessity, not only for the purpose of bringing that refractory town and province into proper order, but for holding out an example of terror to the other colonies, in some of which (as it was said) a disposition of the same or similar excess had been marked very strongly. This unhappy disposition in the colonies was, by friends of the coercive measures, attributed to the pride and presumption arising from the rapid population of these colonies ... [and from their] enormous extent.

Burke continued to relate “that any growth of the colonies which might make them grow out of the reach of the authority of this kingdom” was “considered as useless and even mischievous” by those in the Ministry who determined that the “prerogative was to be strengthened as much as possible,” and that “the tractable disposition of some provinces” would be used as “a check upon the turbulent manners, and a balance to the less manageable plan of government in the others.” A central feature of this policy would be “that no more lands should be located in America,” and that the colonies should be restrained “from spreading into the back country.”⁶

British and American critics of the North administration were correct in their assessment of the Quebec Act’s boundary extension as intended to block colonial expansion. Solicitor General Alexander Wedderburn had admitted as much to the House during the debates on the bill, when he stated that “in the grant of lands, we ought to confine the inhabitants to keep them, according to the ancient policy of the country, along the line of the sea and river.” Burke, however, who had worked with the Ministry on the bill’s boundary clause, had warned that “Americans will dislike it.” Thomas Townshend, moreover, agreed that the province’s extended boundaries, combined with its retention of Catholicism and French laws and forms of government, “will make the

⁶ Burke to the Gentlemen of the Committee at New York, August 2, 1774, in Ross J. S. Hoffman, *Edmund Burke: New York Agent, With his Letters to the New York Assembly and Intimate Correspondence with Charles O’Hara, 1761–1776* (Philadelphia: American Philosophical Society, 1956), 254–255.

Canadians the detestation of the English colonies.”⁷ “To change the government of a people, without their consent, is the highest and most arbitrary act of sovereignty,” wrote Jonathan Shipley, a British opponent of the Massachusetts Government Act. When British Americans viewed the Quebec Act’s lack of provision for an assembly in light of the Massachusetts legislation’s abrogation of the colony’s charter and the expansion of royal appointment to offices for which the charter had required election, it appeared “plainly that it would be very pleasing to the Ministry to deprive Americans totally of the right of representation.”⁸ Given the context of its arrival on the heels of the Massachusetts legislation, the Quebec Act drew the ire of colonists “from one end of this continent to the other,” who considered it “the greatest departure from the English constitution of any ever yet attempted; and fear[ed] that it’s meant and intended to keep the body of inhabitants of that province as auxiliaries, to reduce both the laws and people of every other colony.”⁹

The North administration’s legislative program of 1774 had the effect of galvanizing popular colonial opinion against the British government and made the Boston Tea Party retroactively appear as the “catalyst [in] the sequence of events wherein the colonies moved from resistance to revolution.”¹⁰ Virginians were particularly vocal in their conviction that the Massachusetts and Quebec Acts were indicators that “a determined system is formed and pressed for reducing the inhabitants

⁷ J. Wright, ed., *Debates of the House of Commons in the Year 1774, on the Bill for Making More Effectual Provision for the Government of the Province of Quebec* (London, 1839), 58, 235, 237.

⁸ Jonathan Shipley, *A Speech, Intended to Have Been Spoken on the Bill for Altering the Charters of the Colony of Massachusetts’s Bay* (London, 1774), 25; Richard Frothingham, *The Life and Times of Joseph Warren* (Boston, 1865), 340.

⁹ Quoted in Ammerman, *Common Cause*, 12.

¹⁰ Thomas, *Tea Party*, 24–25.

of British America to slavery,” as an extra-parliamentary meeting of the dismissed House of Burgesses declared at a tavern in Williamsburg in late May of 1774.¹¹ Two months later, Thomas Jefferson, in his *Summary View of the Rights of British America*, similarly accused the British government of “a deliberate, systematical plan of reducing us to slavery.” And in early August, the new Association of Virginia Burgesses circulated to the Committees of Correspondence of the other colonies the proposition of the meeting of a Continental Congress.¹² When the First Continental Congress was convened in Philadelphia in early September, Virginia delegate Richard Henry Lee received a letter from his brother William in London describing “a settled plan” within the British government “to subvert the liberties and constitution of this country, as well as that of America.” “Under this direction, the several Acts against Boston, the Massachusetts Bay, and Quebec Act, have passed the last sessions.” “Open war is intended against you,” Lee warned his brother, “as the first blow is struck by the Ministry, and every tie of allegiance is broken by the Quebec Act.” “The principles of this Act are abominable beyond expression,” Lee wrote, believing the Quebec Act revealed a “ministerial plan openly avowed, to make use of the Canadians to enslave all America.”¹³

While the delegates to the Continental Congress received regular news from London, officials in Britain knew little of the Congress’s proceedings. When word finally did arrive from the colonies in late October, it concerned the Congress’s adoption of the resolutions of the convention of Suffolk County, Massachusetts, of the previous

¹¹ *Ibid.*, 127.

¹² Merrill D. Peterson, ed., *The Portable Thomas Jefferson* (New York: Penguin, 1977), 9; Thomas, *Tea Party*, 127.

¹³ William Lee to Richard Henry Lee, September 10, 1774, in Washington Chauncey Ford, ed., *Letters of William Lee, 1766–1783*, 3 vols. (Brooklyn, 1891), 1:87–91.

month, denouncing “the late Acts of the British Parliament” “as the attempts of a wicked administration to enslave America.” The Suffolk resolves declared “that the late Act of Parliament for establishing the Roman Catholic religion and the French laws in that extensive country, now called Canada, is dangerous in an extreme degree to the Protestant religion and to the civil rights and liberties of all America.”¹⁴ In exile in London where he regularly met with British cabinet members, former Governor of Massachusetts Thomas Hutchinson tried to convince correspondents in Massachusetts of their mistaken interpretation of the administration’s recent legislation, including the Quebec Act:

I have more than a hundred times, in New England, heard the Ministry spoke of as a set of men combining to deprive the colonies of their liberties, and to introduce an arbitrary and despotic government, and sometimes it had been said popery. I verily believe there was never an administration with less views of that sort, or more disposed to concede every claim of the colonies, which can consist of their continuing united to the kingdom.¹⁵

The musings of an unpopular royal official such as Hutchinson carried little weight in the colonies during the fall of 1774, however, and delegates to the Congress continued to include the Quebec Act among the colonies’ primary grievances through to the end of their first session in late October.

During a debate on the Quebec Act on October 17, New York delegate James Duane noted that the general opinion of those at the Congress was that the Act was “dangerous from the religion and arbitrary constitution which it establishes,” “from its excessive magnitude,” and “from the supposed and probable motives which gave birth to

¹⁴ Thomas, *Tea Party*, 155–159; Washington Chauncey Ford et al., eds., *Journals of the Continental Congress, 1774–1789*, 34 vols. (Washington, DC: Government Printing Office, 1904–37), 1:33–35.

¹⁵ Peter Orlando Hutchinson, ed., *The Diary and Letters of His Excellency Thomas Hutchinson*, 2 vols. (London, 1883–86), 1:284.

it.” John Adams’s notes for his speech on the Act included bullet points listing “proof of depth of abilities, and wickedness of heart,” “prerogative to give any government to a conquered people,” “Romish religion,” “feudal government,” and the “union of feudal law and Romish superstition.” “Danger to us all,” Adams’s notes concluded, “a house on fire.” Duane formally recorded the Congress’s three main complaints against the act:

1. The establishment of the Roman [Catholic] religion.
- 2d. The institution of an arbitrary government.
- 3d. The extension of the colony by excessive limits.¹⁶

The First Continental Congress concluded the following week after drafting a petition to the king expressing British Americans’ “apprehension of being degraded into a state of servitude” by recent parliamentary legislation, including that

for extending the limits of Quebec, abolishing the English and restoring the French laws, whereby great numbers of British freemen are subjected to the latter, and establishing an absolute government and the Roman Catholic religion throughout those vast regions, that border on the westerly and northerly boundaries of the free Protestant English settlements.¹⁷

Congress’s petition arrived in London in mid-November, and although Colonial Secretary the Earl of Dartmouth relayed to Benjamin Franklin that the king “had been pleased to receive it graciously,” it took until after the Christmas recess for the document to make it to Parliament. When the petition was finally introduced to Parliament, Franklin recorded in disappointment that “it came down among a great heap of” papers, “the last in the list and laid upon the table with them, undistinguished by any particular

¹⁶ Edmund C. Burnett, ed., *Letters of the Members of the Continental Congress*, 8 vols. (Washington, DC: Carnegie Institution, 1921–36), 1:75, 77; L. H. Butterfield, ed., *Diary and Autobiography of John Adams*, 4 vols. (Cambridge, MA: Harvard University Press, 1961), 2:154.

¹⁷ Petition to the King, October 26, 1774, Ford et al., eds., *Journals*, 1:117–118.

recommendation of it to the notice of either house.”¹⁸ The Ministry instead spent the winter of 1774–75 organizing reinforcements for the commander-in-chief and military Governor of Massachusetts, Thomas Gage, including three generals and an additional 3,500 troops to supplement his force of four regiments. In response, the Massachusetts Committee of Safety began a collection of arms and munitions to be stored at various locations around the province, including at Concord roughly twenty miles west of Boston. When Gage attempted to march on Concord to seize the weapons cache in mid-April, his force was intercepted by New England militia at Lexington, resulting in the first open confrontation between British and colonial troops on April 9, 1775.¹⁹

When the Second Continental Congress convened the following month, a committee led by Dickinson drafted what became known as the Olive Branch Petition, a last-ditch effort at reconciliation.²⁰ Adams, however, believed war with Britain was inevitable, later writing of the events at Lexington and Concord “that the die was cast, the Rubicon passed,” and he, Lee, and Samuel Adams quietly prepared for a movement in the Congress for colonial independence.²¹ In early July, the Congress issued a Declaration of the Causes and Necessity of Taking Up Arms, which cited the Quebec Act’s “erecting in a neighbouring province, acquired by the joint arms of Great Britain and America, a despotism dangerous to our very existence,” as one of the many examples of Parliament’s desire “to effect their cruel and impolitic purpose of enslaving these colonies by violence.” The Privy Council countered by preparing a royal

¹⁸ Franklin to Charles Thomson, February 5, 1775, in Leonard W. Labaree et al., eds. *The Papers of Benjamin Franklin* (New Haven, CT: Yale University Press, 1959–), 21:475–476.

¹⁹ Thomas, *Tea Party*, 176–181, 224–228.

²⁰ Petition to the King, July 8, 1775, Ford et al., eds., *Journals*, 2:158–161.

²¹ John Adams to Abigail Adams, April 30, 1775, Butterfield, ed., *Adams Diary*, 3:314; Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763–1789*, rev. ed. (New York: Oxford University Press, 2005), 285.

proclamation, signed by the king in late August, formally declaring the colonies in a state of rebellion. The proclamation was followed by the king's throne speech at the opening of Parliament in October of 1775, wherein George III insisted that the rebellion in the colonies was the product of a "desperate conspiracy" incited by certain "authors and promoters" "for the purpose of establishing an independent empire." The ensuing session of Parliament included the passage of legislation in December prohibiting British commerce with the thirteen rebelling colonies.²² The king's official pronouncements of colonial rebellion and his support of the Prohibitory Act resulted in pushing popular colonial opinion from opposition merely to Parliament and the Ministry, to open and avowed detestation of the authority of the person of the British monarch. John Adams believed the Prohibitory Act effectively rendered the colonies independent, writing that by that act, "king, Lords, and Commons have united in surrendering this country, and that I think forever. It is a complete dismemberment of the British empire. It throws thirteen colonies out of the royal protection, levels all distinctions and makes us independent in spite of all our supplications and entreaties."²³

Popular colonial opinion became better acclimated to the idea of independence following the publication of Thomas Paine's seminal pamphlet *Common Sense* in January of 1776, a scathing attack on not only the British government in the colonies, but on the institution of monarchy more generally. "A thirst for absolute power is the natural disease of monarchy," Paine diagnosed, and monarchical constitutional forms were, in his view, little more than "popery of government." In assessing the current state

²² Merrill Jensen, ed., *English Historical Documents*, vol. 9, *American Colonial Documents to 1776* (London: Eyre and Spottiswoode, 1955), 843–844, 850–853.

²³ Adams to Horatio Gates, March 23, 1776, in Robert J. Taylor et al., eds., *Papers of John Adams*, 20 vols. (Cambridge, MA: Harvard University Press, 1977–), 4:59.

of the colonial dispute, Paine concluded that “reconciliation is *now* a fallacious dream.” With open war having been the reality for nearly a year, the time for half measures, such as “the repeal of the Acts,” Paine declared, had passed, and indeed such incremental gains were hardly worth spilling blood in the first place. As Paine saw it, the only solution that could ensure British Americans’ security against future abuses was the “final separation” of the colonies and the “independency of this continent” from Great Britain, an event which he and many others believed “sooner or later must arrive.”²⁴ Observers on both sides of the dispute noted the significance of *Common Sense*. Although loyalist Governor of New Jersey William Franklin maintained that independence was, in its origins, the work of “some artful, designing men,” he nevertheless recorded in late March that “the minds of a great number of the people have been much changed in that respect since the publication of a most inflammatory pamphlet in which that horrid measure is strongly and artfully recommended.”²⁵ Writing from Cambridge, Massachusetts, in early April of 1776, commander-in-chief of the Continental Army George Washington, remarked that “by private letters which I have lately received from Virginia, I find *Common Sense* is evoking a powerful change there in the minds of many men.”²⁶

The greater acceptance among British Americans of the idea of independence allowed the Adams–Lee junto to finally present formal resolutions regarding colonial separation to the Congress in the spring of 1776. On May 15, the Congress published a

²⁴ Thomas Paine, *Common Sense; Addressed to the Inhabitants of America*, 2nd ed. (Philadelphia, 1776), 13, 23, 43–44, 46.

²⁵ Quoted in Thomas, *Tea Party*, 327.

²⁶ Washington to Joseph Reed, April 1, 1776, in Philander D. Chase et al., eds., *The Papers of George Washington*, Revolutionary War Series, 27 vols. (Charlottesville: University Press of Virginia, 1985–), 4:11.

resolution taken five days earlier calling upon those colonies “where no government sufficient to the exigencies of their affairs have hitherto been established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general.”²⁷ Adams wrote to his wife Abigail two days later of the significance of the resolution as acknowledging the de facto state of colonial independence and providing for the establishment of provincial revolutionary governments: “Great Britain has at last driven America to the last step, a complete separation from her, a total absolute independence, not only of her Parliament but of her Crown, for such is the amount of the resolve of the 15th.”²⁸ On the same day that the Congress published its resolution sanctioning the disestablishment of colonial governments, the Virginia Convention resolved to instruct its Congressional delegates “to propose to that respectable body to declare the united colonies free and independent states, absolved from all allegiance to, or dependence upon, the Crown or Parliament of Great Britain.” The Virginia resolutions were laid before the Congress on May 27, and on June 7, Lee presented the Congress with a resolution for its own consideration, “that these united colonies are, and of right ought to be, free and independent states, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved.”²⁹ While the Congress postponed a vote on the resolution to allow for delegates to receive new instructions from their constituents, on June 10, a committee of Adams, Franklin, Jefferson, Roger Sherman of Connecticut, and

²⁷ Virginia Resolution, May 15, 1776, Jensen, ed., *Documents*, 854.

²⁸ John to Abigail Adams, May 17, 1776, in L. H. Butterfield et al., eds., *Adams Family Correspondence*, 14 vols. (Cambridge: Harvard University Press, 1963–), 1:410.

²⁹ Lee Resolution, June 7, 1776, Jensen, ed., *Documents*, 867.

Robert R. Livingston of New York “was appointed to prepare a declaration of independence” “in case the Congress agreed thereto.”³⁰

The committee selected Jefferson to draft the declaration, and over the course of the next seventeen days, he prepared and the committee revised a summation of the grievances that impelled the Congress to declare independence. The final draft of the declaration, presented to the Congress on June 28, decried “the history of the present King of Great Britain” as one “of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states.” Among the “long train of abuses and usurpations” listed as evidence of “a design to reduce [British Americans] under an absolute despotism,” were such “acts of pretended legislation” as that “for abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries so as it render it at once an example and fit instrument for introducing the same absolute rule into these colonies.” The declaration further accused the Crown of endeavouring “to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.”³¹ When the Congress sat again on July 1, it formed itself into a committee of the whole to reconsider the motion for independence, and after nine hours of debate, “the motion was carried in the affirmative.” On July 4, the committee of the whole agreed to the contents of the declaration and ordered that it “be authenticated and printed.”³²

³⁰ Jensen, ed., *Documents*, 872; Ford et al., eds., *Journals*, 5:428–429.

³¹ Declaration of Independence, Jensen, ed., *Documents*, 878–879.

³² Jefferson’s Notes on the Debates and Proceedings of the Virginia Resolution of Independence, Jensen, ed., *Documents*, 872; Ford et al., eds., *Journals*, 5:516.

II

Reports of the Congress's adoption of the Declaration of Independence reached British general William Howe at his encampment on Staten Island in New York Bay on July 8. By the time the text of the Declaration was published in London on August 10, the "half a war" of which Adams had complained in March was on the verge of becoming full blown.³³ Across the harbour on Manhattan Island, Washington, with only a small force of inexperienced troops at his disposal, was still intent on fighting a purely "defensive" war, and was determined to take no immediate action until he received news of the fate of an American expedition to Canada that had left in the fall of 1775.³⁴

The incorporation of Canada into the colonial cause had from the start of the rebellion been identified as a vital symbolic assertion of American liberty against the arbitrary imperial governance that, according to many colonists, the Quebec Act represented. In September of 1774, Gage had written Carleton, recently returned to Quebec from London, where he had given testimony before the House of Commons as to the sound policy of the act, with a warning of the impending conflict. Preparing for "the worst, from the apparent disposition of the people here [Boston]," Gage requested two regiments of reinforcements from Canada. Carleton replied that the regiments were being prepared, boasted of Canadians' "gratitude, and fidelity to the king, and to his government," and expressed his conviction that such "fidelity and zeal might be depended on." Carleton then enclosed both his and Gage's dispatches in a letter to Dartmouth in which his own optimism regarding the Quebec Act obscured the gravity of

³³ Thomas, *Tea Party*, 329–330; Adams to Gates, March 23, 1776, Taylor et al., eds., *Adams Papers*, 4:59.

³⁴ Washington to John Hancock, September 8, 1776, Chase et al., ed., *Washington Papers*, 6:249; Middlekauff, *Glorious Cause*, 346.

Gage's position in neighbouring New England. "I have had the satisfaction of finding His Majesty's Canadian subjects impressed with the strongest sense of the king's great goodness toward them in the late Act of regulation for the government of this province," Carleton wrote. "All ranks of people amongst them vied with each other in testifying their gratitude and respect, and the desire they have by every mark of duty and submission to prove themselves not undeserving of the treatment they have met with."³⁵

Likely distracted by the domestic and logistical demands of his return to Canada with his new wife Maria Howard, the daughter of the Earl of Effingham, whom he had married during his stay in England, and whose own experiences in France had attached her to the interests of the Canadian noblesse, Carleton overemphasized the consensus among the inhabitants of Canada regarding their objections to the colonial rebellion.³⁶ Dartmouth, although pleased with the Quebec Act's favourable reception among French Canadians, noted Carleton's silence "as to the sentiments of His Majesty's natural born subjects in Canada respecting the late act," and wondered whether British Americans residing in the province "entertain the same opinion of it." Although "the more respectable part of the English residing at this place ... wish to see universal harmony and a dutiful submission to government continue to be the characteristic of the inhabitants of this province," Carleton conceded that there were those inhabitants "of a more turbulent turn," who had "caught the fire from some of the colonists settled among them," and who were in agreement with many of the sentiments of the American Congress. Carleton also reported rumours "that letters of importance had been received

³⁵ *DCHC*, 2:583–584.

³⁶ A. L. Burt, *The Old Province of Quebec*. 2 vols. (1933; repr., Toronto: McClelland and Stewart, 1972), 1:182; A. G. Bradley, *Guy Carleton, Lord Dorchester* (1907; repr., Toronto: University of Toronto Press, 1966), 75–77; Hilda Neatby, *Quebec: The Revolutionary Age, 1760–1791* (Toronto: McClelland and Stewart, 1966), 142.

from the general Congress,” and confirmed that the English inhabitants of Montreal had held “several town meetings,” where “grievances were publicly talked of, and various ways for obtaining redress proposed.” Carleton surmised that the greater part of the inhabitants of Canada felt “uneasiness at these proceedings” and disregarded “such meetings and nocturnal cabals,” which sought to “disturb the minds of the people by false and seditious reports” intended “to throw this province into the same disorders that reign in other parts of this continent.”³⁷ Such associations continued nonetheless.

Carleton’s intelligence that letters from the Congress had been received in Canada was indeed correct, but his order in November of 1774 that “all persons from Boston” entering the province were to be “searched for letters, and strictly examined,” came too late.³⁸ In late October, the Congress had drafted a letter “To the Inhabitants of the Province of Quebec,” lamenting the Ministry’s withholding from Canadians “the irrevocable rights” “of a free English constitution” to which they were “justly entitled” by both their conquest by Britain and the Royal Proclamation of 1763. The Congress took aim at the Quebec Act as one of the primary “despotic caprices” of “a profligate,” “cruel,” and “insolent Ministry,” seeking to establish a form of absolutism in Canada akin to “the despots of Asia or Africa.” The Congress therefore invited Canadians to elect delegates to send to its next session and to join the colonies in their “righteous contest” against Britain, so as to become the “unalterable friends” of British America rather than its “inveterate enemies.”³⁹

Because the Canadian committees took “uncommon pains to keep their whole proceedings from my knowledge,” Carleton was unaware of the magnitude of the

³⁷ *DCHC*, 2:585–588.

³⁸ *Ibid.*, 2:588.

³⁹ Ford et al., eds., *Journals*, 1:106, 108–109, 111–112.

rumoured letter until a French translation printed by Fleury Mesplet at Philadelphia began circulating in the province sometime in mid-November.⁴⁰ In December of 1775, moreover, the Massachusetts Provincial Congress formed a committee of correspondence with Canada, and in February of 1775, committee member John Brown set out for Canada on a mission to gauge Canadian sentiment for the colonial cause and to stir up anti-British ferment. Although the Canadian Anglo-merchant community initially received Brown with enthusiasm, he found Canadians on the whole lukewarm at best and generally apathetic to the plight of the Congress.⁴¹

Whatever revolutionary sentiment Brown found lacking among Canadians, the limited dissension provoked by the Congress's address was more than Carleton was willing to tolerate. Writing to Gage in early February of 1775, the leisurely ease which had marked Carleton's correspondence of the previous fall was replaced by a reserved anxiousness brought on by the governor's awareness of the efforts of those "who seem resolved to force their country into rebellion." Carleton decided against any sudden militarization of the province that might

give an appearance of truth to the language of our sons of sedition, at this very moment busily employed instilling into their [Canadians'] minds that the [Quebec] Act was passed merely to serve the present purposes of government, and in the full intention of ruling over them with all the despotism of their ancient masters.⁴²

Carleton's heightened concern proved to be well founded, for the one productive outcome of Brown's mission was his observation on his way back down Lake Champlain to Massachusetts of the advantageous position of Forts Ticonderoga and

⁴⁰ *DCHC*, 2:287; *Lettre adressée aux habitants de la province de Quebec* (Philadelphia, 1774); Neatby, *Quebec*, 144.

⁴¹ William Lincoln, ed., *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775* (Boston, 1838), 59; Burt, *Old Province*, 1:186–187; Neatby, *Quebec*, 144.

⁴² *DCHC*, 2:660–661.

Crown Point for launching an invasion of Canada. Congress took no immediate action, however, as Ethan Allan and the Green Mountain Boys of Vermont were able to expel British forces from the region in mid-May of 1775 with the assistance of Benedict Arnold, who was under commission from the Massachusetts provincial congress to seize the forts' arms and munitions for the New England militia. When news of the capture of the forts reached Quebec, Carleton was already preparing to send troops to the region in an effort to draw some colonial militia away from Gage at Boston. In order to be closer to the theatre of war, Carleton moved his operational base from Quebec to Montreal, not coincidentally where radical activities were surfacing with greater regularity.⁴³

On the morning of May 1, 1775, the day that the Quebec Act came into force, Montrealers awoke to the statue of George III in the Place d'Armes defaced and adorned with a rosary of potatoes and a wooden cross bearing the inscription, "Behold, the pope of Canada." Similar graffiti appeared around town through the spring, one expressing the terse message, "He who thinks dangerously follows the right path," signed simply, "Baston."⁴⁴ *Les Bastonnais*, as Canadians called both New Englanders and British Americans more generally, persisted in their efforts to persuade Canadians to follow the "right path," with a second letter from the Continental Congress appearing in Canada near the end of May. This second letter, drafted by New Yorker John Jay and addressed now "To the Oppressed Inhabitants of Canada," was excessive in its rhetoric and falsely insisted that Americans had no designs to invade Canada. In it, the Congress apologized for taking Ticonderoga and Crown Point as a matter "of self-preservation," and assured

⁴³ Burt, *Old Province*, 1:189–191; Middlekauff, *Glorious Cause*, 281–283; Ray Raphael, *A People's History of the American Revolution: How Common People Shaped the Fight for Independence* (New York: Perennial, 2002), 38.

⁴⁴ Burt, *Old Province*, 1:188–189; Neatby, *Quebec*, 144.

Canadians that it would “pursue no measures whatever, but such as friendship and a regard for our mutual safety and interest.” At the same time, the letter included the veiled threat of “the disagreeable necessity of treating you as enemies” should Canadians refuse to join the Congress in its war.⁴⁵ Bishop of Quebec Jean-Olivier Briand was not so wide of the mark when he told Canadians only earlier that month to “close your ears” to American sedition and prepare “to defend our borders and possessions.” In the meantime, Carleton called out the Canadian militia and moved to strengthen Fort Saint-Jean on the Richelieu River north of Ticonderoga so as to block a potential invasion into the province. Carleton struggled to raise volunteers in any significant numbers, however, a difficulty he believed was due to “the minds of the people [being] poisoned by the same hypocrisy and lies practised with so much success in the other provinces, and which their emissaries and friends have spread abroad with great art and diligence.”⁴⁶

Although the Congress had resolved on June 1 “that no expedition or incursion ought to be undertaken or made, by any colony, or body of colonists, against or into Canada,” the decision was reversed by the end of the month. Under the premise that Carleton was “preparing to invade these colonies,” the Congress authorized Major General Philip Schuyler of New York “that if it will not be disagreeable to the Canadians, he do immediately take possession of St. Johns [Fort Saint-Jean], Montreal, and any other parts of the country, and pursue any other measures in Canada, which may

⁴⁵ Ford et al., eds., *Journals*, 2:68–70.

⁴⁶ Yvan Lamonde, *The Social History of Ideas in Quebec, 1760–1896*, trans. Phyllis Aronoff and Howard Scott (Montreal and Kingston: McGill-Queen’s University Press, 2013), 14; Burt, *Old Province*, 1:191–192; *DCHC*, 2:665.

have a tendency to promote the peace and security of these colonies.”⁴⁷ Congress’s about-face on the question of the invasion of Canada was only partially a reaction to Carleton’s strengthening of Fort Saint-Jean. Instead, it was the opinion of many delegates to the Congress that the conquest of Canada by Continental Army forces would be a key feature of the Congressional war effort not only to remove British forces from the colonies’ northern border, but more importantly in the longer term, to prevent the reversion of Canada to France in the event that the Congress failed to secure international support and a long, drawn-out and costly war resulted in Britain’s abandonment of the province to its former sovereign.⁴⁸

Struggling with ill health, Schuyler opted to direct operations from his home in Albany, and field command was passed to Brigadier General Richard Montgomery, who had extensive knowledge of the Lake Champlain region from his experience in the Seven Years’ War. In early September of 1775, Montgomery established his force on Île-aux-Noix on the Richelieu River just twelve miles south of the British at Fort Saint-Jean. After nearly two weeks of skirmishing, Montgomery laid siege to the fort, which the British surrendered in early November. With nothing to stop Montgomery from advancing on Montreal, Carleton evacuated that town for Quebec on November 11, only narrowly avoiding capture at Sorel, before the Continental Army marched on an undefended Montreal two days later. With Montreal behind him, Montgomery pursued Carleton down the St. Lawrence at the same time that a second force under the command of Benedict Arnold set out from Massachusetts to advance on Quebec through the wilderness of the Kennebec and Chaudière Rivers. Nearly half of Arnold’s force

⁴⁷ Ford et al., eds., *Journals*, 2:75, 109–110.

⁴⁸ See Jensen, ed., *Documents*, 870, 875–876; and Burt, *Old Province*, 1:164–165.

perished along the way, and he arrived at Quebec on November 14 with barely six hundred men to add to the mere five hundred who arrived with Montgomery on December 2. After a very loose siege of four weeks, Montgomery and Arnold attempted an assault on the fortress during a blizzard during the early hours of the morning of December 31, which was easily repelled and resulted in Montgomery's death and a wounded Arnold's retreat. Ravaged by smallpox, the dilapidated American force remained outside the walls of Quebec until May of 1776, when British reinforcements arrived and forced an American withdrawal to Ticonderoga in mid-June.⁴⁹

Carleton's performance as military commander during the invasion of Canada was somewhat unspectacular, and the province's defence owed more Quebec's advantageous location and American disaster than it did to superior British leadership. While certain elements of the Canadian population came to the aid of the British in defending the province against Continental Army forces, there were also those, both French and English, who actively assisted the rebel American invasion, including the regiment of Canadian volunteers raised near Chambly by former New Yorker James Livingston. Yet the overwhelming majority of Canadians were uninvolved in the Canadian campaign and remained passively neutral if not outright indifferent to the ideological appeals of either side. Carleton and his administration chalked up such inaction to a combination of Canadian ignorance and Catholic hostility to the British regime. In September of 1775, before the invasion, Lieutenant Governor Theophilus Cramahé had written to Dartmouth of the inability of "the Canadian peasantry" to comprehend even the slightest "sense of their duty" to their British protectors. After the

⁴⁹ Burt, *Old Province*, 1:193–217; Middlekauff, *Glorious Cause*, 309–313; Neatby, *Quebec*, 150–153.

invasion, Chief Justice William Hey wrote to the Lord High Chancellor Earl Bathurst of “the backwardness of the Canadians” during the whole affair, which had given him “an idea of the real character of the Canadians very different from what I used to entertain,” namely, that their “obedience” and “submission to government” was feigned out of fear and uncertainty during the initial post-conquest years. Hey became convinced that Canadians’ true colours were those of an “ungenerous [and] disobedient people” prone to “extreme ignorance and credulity.”⁵⁰ Perhaps more likely was that Canadians were confident in the strength of their location and had observed of the weakness of the American force. A final Congressional address to Canadians in January of 1776, pleading with them to recognize “that your liberty, your honour and your happiness are essentially and necessarily connected with the unhappy contest, which we have been forced into for the defence of our dearest privileges,” was largely ignored.⁵¹

III

Insofar as the invasion of Canada was the first major offensive operation undertaken by Continental Army forces, its failure confirmed for Washington the prudence of his strategy of conducting a defensive war. Following the American evacuation of Quebec, Carleton had trailed Continental Army forces back up the St. Lawrence to the Richelieu River and south to Lake Champlain. Passed over for commander-in-chief in September of 1775 in favour of William Howe, Carleton was now further outranked by John Burgoyne, who had arrived at the head of British reinforcements and took command of Carleton’s northern force in early 1777. That spring, Burgoyne adopted Carleton’s longstanding plan to push south into New York in an attempt to sever New England

⁵⁰ *DCHC*, 2:667–669.

⁵¹ Ford et al., eds., *Journals*, 4:85–86.

from middle colonies, where it was believed reconciliation with Britain was more widely preferred to independence.⁵² While Burgoyne and his army set out in late June of 1777 bursting with confidence, poor communication from the imperial centre gave Howe, who was busy planning an attack on Philadelphia, no indication of the objective of the northern army, leaving Burgoyne alone to march his force right into the hands of Continental Army general Horatio Gates at Saratoga. Outnumbered and out-positioned by an American force of greater numbers and discipline than that which had invaded Canada two years before, Burgoyne humiliatingly surrendered his army wholesale to Gates on October 17.⁵³ The neutralization of the British army in the north resulted in a shift in the main theatre of war to the middle and southern colonies, where Washington utilized French support gained following the American victory at Saratoga to finally force the surrender of British general Charles Cornwallis at Yorktown, Virginia, in October of 1781.

The defeat of British forces on both fronts fundamentally altered the nature of the war by freeing up rebel forces to redirect their energies westward to conduct a war of Indigenous dispossession, a process that had begun with patriot incursions into Haudenosaunee territory on the New York frontier during the Saratoga campaign. The Haudenosaunee had initially tried to steer a neutral course in the conflict between Britain and the colonies, but clashes with colonial militia in early 1776 divided the Confederacy over whether the maintenance of an alliance with the Crown would preserve Haudenosaunee sovereignty or whether the Confederacy's interests would be better served by siding with the New York state government, which pledged to recognize

⁵² Burt, *Old Province*, 1:217–221; Neatby, *Quebec*, 153–155; *DCHC*, 2:669.

⁵³ Middlekauff, *Glorious Cause*, 373–391; Burt, *Old Province*, 1:221–223.

Haudenosaunee land title. The Confederacy divided roughly along the lines of the Mohawk and Cayuga, and to a lesser degree the Onondaga and Seneca, maintaining their connections with the British, while the Oneida sided with New York. After Haudenosaunee warriors clashed with each other at Oriskany in August of 1777, the council fire at Onondaga was extinguished and the Confederacy entered into a state of civil war.⁵⁴ While there were no major engagements between British and American forces in Iroquoia following the Battle of Saratoga, the Haudenosaunee became the target of a campaign by the Continental Army beginning with an assault on the Haudenosaunee capital at Onondaga by Goose Van Schaick in April of 1779. Van Schaick's attack on the Onondaga was followed by a three-pronged offensive into Haudenosaunee territory by John Sullivan, James Clinton, and Daniel Broadhead between early August and late September. Originally conceived by Washington to be a sweep through Iroquoia with the intention of descending on the British at Niagara, the campaign's objectives were quickly modified to aim at the direct reduction of the Confederacy in order to facilitate the seizure of Haudenosaunee lands. Sullivan's expedition alone resulted in the destruction of sixty Haudenosaunee towns and the widespread devastation of the region's crops, orchards, livestock, and fish and game populations. Sullivan boasted in his official report to Congress that there was "not a single town left in the country of the Five Nations." Between 3,000 and 5,000 Haudenosaunee at various times sought refuge behind British lines at Niagara through

⁵⁴ Barbara Alice Mann, *George Washington's War on Native America* (Westport, CT: Praeger, 2005), 10–15; Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Vintage, 2007), 83–86, 91–93, 96–97; Raphael, *People's History*, 244–254; Robert McCluer Calhoun, *The Loyalists in Revolutionary America, 1760–1781* (New York: Harcourt Brace Jovanovich, 1973), ch. 38.

the fall and winter of 1779–80.⁵⁵

That the chief aim of the Continental Army's 1779 campaign in Iroquoia was the annihilation of the region's Indigenous inhabitants was made abundantly clear by Washington's instructions to Sullivan, which identified the expedition's target not as the British at Niagara, but rather "the hostile tribes of the Six Nations of Indians." Washington listed as Sullivan's "immediate objects ... the total destruction and devastation of their settlements," as well as the "ruin [of] their crops now in the ground" and the prevention of their "planting more." Sullivan was "to lay waste all the settlements around ... in the most effectual manner, that the country may not be merely overrun but destroyed." Soldiers involved in the campaign understood their objective as being "to extirpate those hellhounds from off the face of the earth," and not only to destroy enemy Haudenosaunee combatants, but to "totally extirpate the race." Washington ordered Sullivan to "not by any means listen to any overture of peace before the total ruin of their settlements is effected."⁵⁶ When the campaign had concluded, Washington wrote to President of the Continental Congress Samuel Huntington congratulating that body on Sullivan's "having completed so effectually the destruction of the whole of the towns and settlements, of the hostile Indians, in so short a time."⁵⁷ Sullivan's expedition was accompanied by a team of surveyors who, despite being targets for Haudenosaunee marksmen, made some of the first ever surveys of the Confederacy's territory. Retaliatory raids by Haudenosaunee and loyalist militia through

⁵⁵ Mann, *Washington's War*, chs. 2–4; Raphael, *People's History*, 254–257; Taylor, *Divided Ground*, 97–99; Frederick Cook, ed., *Journals of the Military Expedition of Major General John Sullivan Against the Six Nations of Indians in 1779* (Auburn, NY, 1887), 303.

⁵⁶ Washington to Sullivan, May 31, 1779, Chase et al., eds., *Washington Papers*, 20:716–717; Mann, *Washington's War*, 52.

⁵⁷ Washington to Huntington, October 9, 1779, Chase et al., eds., *Washington Papers*, 22:687.

1780 gained many defectors from American-allied Haudenosaunee groups and temporarily dislodged patriot militia from various pockets of the region, but ultimately failed to regain permanent control of Haudenosaunee homelands.⁵⁸

Whereas military conquest cleared the way for colonial settlement in Iroquoia, in trans-Appalachian regions further south, Americans justified military assaults against Indigenous groups by existing tensions borne out of the westward encroachment of settler communities. Following Virginia's war against the Shawnee in 1774, settlers capitalized on the conflict with Britain to circumvent the "base proceedings of a detestable, wicked and corrupt Ministry to prevent any more counties to be laid off." Supported by the Virginia state government, settlers had been pouring into the lower Ohio Valley, and in 1776, the new Virginia House of Delegates made the state's claim to the region official. By 1780, more than 20,000 settlers resided in Virginia's Kentucky County.⁵⁹ Settler advancement exacerbated existing tensions with the region's Shawnee, Mingo, and Lenape inhabitants, who raided the Kentucky settlements between 1776 and 1778. Other Lenape groups sought the protection of an alliance with the Congress as a means of securing their lands in defiance of the Haudenosaunee who had ceded them at Fort Stanwix in 1768. Congress, however, offered little material support to those Indigenous groups who refused to take up the hatchet against British-allied Ohio Indians. Nor was the Congress able to stop the indiscriminate killing of Indigenous peoples by backcountry settlers and state militia, the latter of which regularly used the

⁵⁸ Mann, *Washington's War*, 109; Taylor, *Divided Ground*, 100–102.

⁵⁹ Eric Hinderaker, *Elusive Empires: Constructing Colonialism in the Ohio Valley, 1673–1800* (Cambridge: Cambridge University Press, 1997), 201–202, 206.

hostility of some Indigenous groups to justify the slaughter of others.⁶⁰

After various incursions into the Ohio Valley by state militia between 1777 and 1779, in late 1780, Washington commissioned Virginia militia officer George Rogers Clark to carry out an assault on Detroit. Washington, meanwhile, sent instructions to Broadhead at Fort Pitt “to foment differences” among nearby Indigenous groups in order to assist Clarke’s expedition to divide and conquer the Ohio Indians. A personal feud between the Pennsylvanian Broadhead and the Virginian Clark led Broadhead to siphon off backcountry recruits for raids on Lenape villages, ultimately thwarting Clark’s Detroit campaign for want of men. With what limited troops Clark did have, he attempted to employ to destroy a series of multiethnic Indigenous communities along the Miami Rivers, but his force was chased out of the region in late August before they could take a single town.⁶¹

Although Congress’s war with the British in the east was winding down following Cornwallis’s surrender at Yorktown in October of 1781, the settlers’ war against Indigenous groups in the west continued unabated through to the end of 1782, as Kentucky and Pennsylvania militia units undertook raids as far into the Ohio country as the Sandusky River. In one raid, Pennsylvania militiamen massacred over a hundred Lenape at the Moravian village of Gnadenhutten in March of 1782. Another expedition in late May was intended “to exterminate the whole Wyandot tribe,” but was pushed back in early June. Clark continued to plan an invasion to seize the entire Ohio country for Virginia even after Washington ordered the cession of hostilities in the west in late

⁶⁰ Ibid., 207–212; Raphael, *People’s History*, 263–277; Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815*, 2nd ed. (Cambridge: Cambridge University Press, 2011), 382–386.

⁶¹ Mann, *Washington’s War*, ch. 5.

September of 1782 in anticipation of a coming peace. Clark, nevertheless, made one final push into the region in November with little strategic objective beyond burning a series of Indigenous villages.⁶²

Similar to the Continental Army's campaign against the Haudenosaunee, Pennsylvania and Virginia militias sought to conduct a war of extermination against Ohio Indigenous groups. Settlers from both states took advantage of the war with Britain to brand Ohio Indians as enemies, destroy their communities, and seize as much of the region as possible before the peace with Britain was signed. That the removal of the Ohio Indians from their lands was the chief objective of the Pennsylvania and Virginia campaigns of the final years of the war was widely acknowledged by contemporaries. Backcountry settlers, as one Moravian missionary recalled, "concluded that 'when they killed the Indians, the country would be theirs; and the sooner this was done, the better'." Another missionary later wrote that settlers "represented the Indians as Canaanites, who without mercy ought to be destroyed from the face of the earth, and considered America as the land of promise given to the Christians." So, too, were Ohio Indians conscious that settlers would "go on in this way, until they have extirpated us entirely, and have the *whole* of our land," as one Ohio Lenape leader put it.⁶³

Washington had openly endorsed the Ohio campaigns, ordering them to halt only when peace was imminent, and even then he did so only to avoid the country falling into the

⁶² Ibid., ch. 6; Arent Schuyler DePeyster to Alexander McKee, August 19, 1782, *Collections and Researches of the Pioneer Society of the State of Michigan*, 40 vols. (Lansing: Michigan Pioneer and Historical Society, 1877–1929), 10:631.

⁶³ John Heckewelder, *A Narrative of the Mission of the United Brethren among the Delaware and Mohegan Indians, from its Commencement, in the Year 1740, to the Close of the Year 1808* (Philadelphia, 1820), 318, 382–383; George Henry Loskiel, *History of the Mission of the United Brethren among the Indians in North America*, trans. Christian Ignatius La Trobe, 3 vols. (London, 1794), 3:176.

hands of the Pennsylvania and Virginia state governments rather than reverting to the Congress.⁶⁴ Washington's direction of Sullivan's expedition against the Haudenosaunee and his complicity in the Ohio campaigns of the early 1780s solidified his status among Iroquoian and Algonquian peoples as Conotcarious, meaning "town destroyer" or "devourer of villages," a title given to Washington's great-grandfather by the Piscatawa in the late 1670s, and one which was passed down to Washington by the Ohio Indians in the 1750s.⁶⁵

Conotcarious stood in stark contrast to Onontio. Upper country Indigenous groups had done their best to avoid involvement in the settler colonies' war with the British, and Indigenous attachment to the British cause tended to wax and wane to the extent that the war moved west.⁶⁶ The war on the eastern seaboard spared few British troops for the western posts, and Carleton's concern with the defence of Canada drew his attention away from his role as Onontio during the initial years of the conflict. Twice passed over as commander-in-chief, Carleton tendered his resignation as governor of Quebec, which was accepted in July of 1777, and he was replaced the following June by the former governor of Trois-Rivières, Frederick Haldimand.⁶⁷ Haldimand was significantly more active as Onontio during the latter half of the war than Carleton had been before him, doling out £100,000 worth of presents between Niagara, Detroit, and

⁶⁴ Mann, *Washington's War*, 179.

⁶⁵ Ron Chernow, *Washington: A Life* (New York: Penguin, 2011), 4, 34. Washington embraced the title and regularly referred to himself as such in relation to Indigenous peoples. See, for instance, Washington to Andrew Montour, October 10, 1755, in W. W. Abbott et al., eds., *The Papers of George Washington*, Colonial Series, 10 vols. (Charlottesville: University Press of Virginia, 1983–95), 2:98.

⁶⁶ White, *Middle Ground*, 398–399.

⁶⁷ Burt, *Old Province*, 1:220–221, 243; Neatby, *Quebec*, 162.

Michilimackinac in 1781 alone, compared to Carleton's £500 in total in 1775.⁶⁸

Haldimand's presents were conveyed to the western posts through Canadian *métis* who served as intermediary "chiefs" to western Algonquian groups in emulation of the old French alliance. While Ohio Indians conducted their own military operations against settlers and state militia in the west, Onontio aided upper country Indigenous peoples in the defence of their lands by expanding gift-giving networks via the intermediary alliance chiefs and, in turn, through British-allied Algonquian groups themselves.⁶⁹

British and Indigenous efforts to defend the upper country were considerably successful. Despite the forays of some militia across the Ohio River, few settlers risked squatting deep into the Ohio country, and neither Pennsylvania, Virginia, nor the Continental Congress were in possession of any significant territory west of the Ohio at the war's end. Clark had taken Kaskaskia and Vincennes in the Illinois country for Virginia in 1778 and 1779, respectively. However, these posts were more so strategically given up by the British than they were captured by the superiority of Clark's force, and in any event, the British retook Vincennes within a matter of months.⁷⁰ Wrangling over two posts in the Illinois country hardly equated to an American conquest of the Ohio region, and after already experiencing the transfer of unconquered lands from one European power to another at the end of the Seven Years' War, Indigenous groups were adamant that they "be remembered" in the impending

⁶⁸ Taylor, *Divided Ground*, 102.

⁶⁹ White, *Middle Ground*, 402–407. The extent to which the new British–Indigenous alliance in the upper and Ohio countries continued to rely on Canadian knowledge, personnel, and expertise during the American Revolutionary War can be gleaned by the French-language source *Description de la Rivière de Susquehanna, et du Pays qui la borde, par ordre du Board of War*, May 1778, Cornwallis Papers (microfilm), David Library of the American Revolution, Washington Crossing, Pennsylvania, PRO 30/11/1, fols. 74–95.

⁷⁰ Mann, *Washington's War*, 114–115.

peace treaty.⁷¹

The administration of the Earl of Shelburne, formed with the mandate of quickly ending the war following the collapse of the North administration in early 1782, disregarded the Crown's obligation to protect western Indigenous groups in the haste with which it conceded to a treaty with the United States between late 1782 and the fall of 1783. Since 1778, American diplomats had been advocating for the reduction of the province of Quebec to the limits described in the Royal Proclamation as an essential condition of peace. When formal talks opened in Paris in the spring of 1782, Franklin maintained this demand, which the British cabinet was willing to accept as late as the end of August before the issue of resettling frontier loyalists arose. With little dispute from either side, therefore, a boundary was agreed upon in the preliminary peace in November which ran from the forty-fifth parallel between New York and Quebec; down the middle of the St. Lawrence, Lake Ontario, the Niagara River, and Lake Erie; up the middle of the Detroit River and Lake St. Clair; across the middle of Lakes Huron and Superior; and then westwards along whichever parallel was discovered to strike the Mississippi from the northwestern point of the Lake of the Woods. This boundary was adhered to in the final treaty of peace, signed at Paris on September 3, 1783.⁷² The Treaty of Paris that ended the American Revolutionary War acknowledged the thirteen rebelling colonies as independent states, and ceded to the new United States those lands south of the Great Lakes, including the Ohio cs

ountry and river valley, which had been coveted by colonial landed interests for the better part of the last century, and the posts at Niagara, Detroit, and Michilimakinac,

⁷¹ At a Council held at Lower Sandusky, April 19, 1783, *Michigan Pioneer Society Collections*, 11:355.

⁷² Burt, *Old Province*, 2:52–53; Middlekauff, *Glorious Cause*, 590–595; *DCHC*, 2:727.

all of which were located on the ceded side of their respective waterways.

The boundary provisions of the Treaty of Paris of 1783 represented an unequivocal abandonment of upper country and Ohio Indigenous groups by the British ministry and a surrendering of their lands to the new American settler republic. As Onontio, however, Haldimand could not resign himself to the evacuation of the upper country posts and the neglect of the Crown's Indigenous allies for whom those locations served as commercial and diplomatic centres. The Crown would continue to support western Indigenous peoples with arms and munitions via the interior posts, and Haldimand would undertake to resettle displaced Indigenous groups within British territory on lands acquired by the Crown according to the prescriptions of the Royal Proclamation. A few select regions of the interior of the province of Quebec would also attract loyalist settlers fleeing the revolutionary violence of their home states. In the instances of loyalist settler communities, the Crown would also legally acquire lands from local Indigenous groups by way of mutually agreed upon treaties within the legal parameters of the Proclamation—a significant divergence from the squatting, settler violence, and mutual warfare that characterized the western expansion of the United States through the same period. For a brief moment during the 1780s and early '90s, the province of Quebec would exist as a dominion within which French Canadians, British American loyalists, and a diversity of Indigenous groups would reside in relative peace, representing a sort of link between the “old” empire of settler subjects and the “new” one of conquered non-Britons and non-European and non-subject protected populations.

**Continued Company Reform and British India during
the Revolutionary Era, 1773–1784**

Colonial charges of ministerial corruption surrounding the Tea Act—which along with opposition to the Quebec Act, contributed significantly to the coalescence of American Revolutionary ideology—paralleled similar apprehensions expressed at the corruption of Britain’s social and political fabric by “Asiatic despotism” in the wake of the Company’s expansion in Bengal. Such fears were the culmination of more than a century of suspicion of the supposed degenerative effects of “Asiatic” influence on English social and material culture. The EIC financial crisis of 1772–73 had exposed widespread Company corruption and mismanagement and demonstrated the logical inconsistency of a private trading company doubling as a sovereign power over the very markets it sought to exploit. North’s Regulating Act, passed in combination with the East India Loan Act, was intended to rectify some of the shortcomings of Company civil governance in India. In addition to establishing a Crown-appointed judiciary in Bengal to clamp down on corruption and abuses of Company power, the Regulating Act authorized the appointment of Warren Hastings as governor general in Bengal, who was to better coordinate military and diplomatic strategy across the subcontinent and stem some of the tide of unwieldy EIC expansion. As the complexity of Company alliance systems and the spread of the Revolutionary War to India drew the Company into increased military conflict, however, the practical need for military-executive office combined with renewed criticism of Company conduct to force another round of East India legislation resulting in ever greater parliamentary and ministerial influence over EIC governance in India. Such legislation initiated the shift in British sovereignty in

India from the Company to the Crown through the establishment of the Board of Control for East India Affairs in 1784.

I

Early English conceptions of Asiatic despotism developed out of English encounters with the Ottoman empire in the eastern Mediterranean trading world through which Levant Company merchants acquired Eastern commodities prior to the East India Company's more prolific use of the maritime Cape route to the Indian Ocean in the seventeenth century. English Protestants who travelled to the Near East during and sixteenth and seventeenth centuries abhorred the luxuriousness of the Ottoman court and viewed the Ottomans as the successors to the "Asiatic" decadence of the Eastern cultures that were believed to have corrupted ancient Greece and Rome centuries earlier. In an effort to fit contemporary Eastern cultures into seventeenth-century English political ideology, moreover, English writers emphasized similarities between diverse Asian religious practises—Islamic ones in particular—and the Catholic rights and rituals of France and Spain. The opulence that was witnessed by Englishmen at the Mughal court far outstripped those of the Ottomans, leading many in late seventeenth-century England to fear that "Asiatic" ostentation in dress and décor was being transmitted home in the form of EIC textile imports featuring Mughal patterns and designs. Especially unnerving to English policymakers was that delicate Indian fabrics were perfectly suited to the heavily pleated French designs that were then permeating English fashion, and critics went to great lengths to associate Indian textiles with French frivolity.¹

These concerns surfaced at a time when parliamentary Whig opponents of the

¹ Jonathan Eacott, *Selling Empire: India in the Making of Britain and America, 1600–1830* (Chapel Hill: University of North Carolina Press, 2016), 17–19, 37, 59, 67.

Old Company were highlighting the Company's close relationship with the Stuarts, further reinforcing the rhetorical connection between Jacobite francophilia and Asiatic tyranny. Although Mughal florals became thoroughly domesticated in Britain in the first half of the eighteenth century, a series of restrictions on textile imports ensured that those Indian fabrics that Britons consumed were at least printed domestically.² At the same time, concerns arose over increased tea consumption in Britain, centring largely on the idea that tea drinking had an effeminizing effect on genteel men. Due to perceived differences in the physical constitutions of men and women according to humoral theory, and because much of the social and material culture surrounding tea consumption was seen as feminine in nature, early eighteenth-century Britons considered tea to be "generally more serviceable to the fair sex than to men," and many critics feared the introduction of feminized social norms into British courtly and aristocratic culture as an indication of the emasculation of British high society.³

British reactions to the introduction of both tea and Indian textiles into domestic consumer culture were driven by concerns that the influx of material wealth and perceived "Asiatic" opulence was effeminizing and degenerative. Such concerns were intensified by evidence that EIC officials readily indulged in Indian consumption habits while abroad and frequently brought Eastern cultural elements with them when they returned home. Company operatives in India had quickly learned that they were expected to display the magnificence of their own monarch if they were to be taken

² 11 & 12 W. 3, c. 3; 7 Geo. 1, Stat. 1, c. 7, c. 21 § 9. See also Jonathan P. Eacott, "Making an Imperial Compromise: The Calico Acts, the Atlantic Colonies, and the Structure of Empire," *William and Mary Quarterly*, 3rd ser., 69, no. 4 (October 2012): 731–762.

³ Thomas Short, *A Dissertation upon Tea, Explaining its Nature and Properties* (London, 1730), 61; Denys Forrest, *Tea for the British: The Social and Economic History of a Famous Trade* (London: Chatto and Windus, 1973), 52–53; Paul Chrystal, *Tea: A Very British Beverage* (Gloucestershire: Amberley, 2014), 24.

seriously by Mughal dignitaries. While much of the Company's ostentation in India bore the hallmarks of traditional English royal pageantry, Company elites proved more than willing to employ Indian signifiers of status, including the use of umbrellas, palanquins, and hookahs, and the adoption of ornate elements of Mughal dress.⁴ The embrace of South Asian material culture by EIC factors in India alarmed critics, who believed such items to be markers of the sumptuousness, excess, and inactivity that Britons believed were the defining characteristics of not only the Indian elite, but of South Asian economies and governments more generally. British proponents of mercantilism were disparaging of Indian patterns of consumption that removed vast quantities of wealth and resources from both global and domestic circulation. Indians appeared to Europeans to have a proclivity for hoarding jewels and precious metals, making Mughal India "a kind of gulf, into which all the riches of the world are thrown, and from which nothing of them ever comes out again."⁵

The imperial court and the person of the emperor were identified as the "centrifugal point for the country's noncirculating wealth," due to the emperor's accumulation of vast riches, which appeared to Europeans to be employed for little more than the emperor's own amusement and personal pleasure, a stark contrast to "the careful deployment of splendour that was thought to lead to the political self-realization of mature and sophisticated European courts."⁶ The non-circulation of immense

⁴ Nandi Bhattacharya, *Reading the Splendid Body: Gender and Consumerism in Eighteenth-Century British Writing on India* (Newark: University of Delaware Press, 1998), 40–42; Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011), 29–30, 201–203; Eacott, *Selling Empire*, 199.

⁵ De La Créquinière, *The Agreement of the Customs of the East-Indians, with those of the Jews, and other Ancient People* (London, 1705), 9.

⁶ Bhattacharya, *Reading the Splendid Body*, 29–30; Eacott, *Selling Empire*, 38–39.

quantities of material wealth witnessed in India was interpreted as a reflection of non-vitality and corruption in the Mughal political body. That Company elite in India had taken to drinking arrack and smoking hookahs in the South Asian fashion, and that both intoxicating products were making their way into British Atlantic culture was, to concerned Britons, evidence of the debasement of British virtue by “Asiatic” habits.⁷

No trope better exemplified the feared degradation of British political culture as a result of indulgence in Indian customs than that of the nabob. An English corruption of the Hindustani word *nawab*, a word of Persian and Arabic origin referring to a royal delegate or deputy, the term “nabob” came to denote British men who, either as Company servants or interlopers, made private fortunes in India (often illicitly in the country trade and sometimes through extortion) and returned home to Britain to live as nouveaux riches. Often typified by their profligate spending, flamboyant dress, and retention of Indian cultural practices, nabobs personified Britons’ worst fears about the saturation of the British public sphere by “Asiatic” degeneracy.⁸ British poet Richard Clarke described nabobs in 1773:

Now sunk in vice, indignant thought I own!
An hireling group in this great realm has grown
High lords o’er millions, whose worn hands supply
Their pride, their pomp, and feast of luxury.
I feel my bosom rise at this sad thought,
By public wealth the public’s foes are bought:
While all is motion, life is sweat and toil,
That lazy drones may banquet on the spoil.⁹

After returning home to build lavish estates in the English countryside, many such men

⁷ Eacott, *Selling Empire*, 44, 137–139, 199–200, 232.

⁸ Ibid., 201–202; Christina Smylitopoulos, “Portrait of a Nabob: Graphic Satire, Portraiture, and the Anglo-Indian in the Late Eighteenth Century,” *Revue d’art canadienne/Canadian Art Review* 37, no. 1 (2012): 10–25.

⁹ Richard Clarke, *The Nabob: or, Asiatic Plunderers* (London, 1773), 38.

took up seats in the House of Commons, giving rise to fears that British political institutions were being corrupted not only by a culture of Asiatic despotism, but by an East Indian interest in Parliament. “The riches of Asia have been poured in upon us,” the Earl of Chatham told the House of Lords in January of 1770, “and have brought with them not only Asiatic luxury, but, I fear, Asiatic principles of government.”¹⁰ But while many Britons who had spent time in India undoubtedly returned with their tastes in dress and décor supplemented by South Asian influences, few exhibited the excessive self-indulgence of the archetypal nabob; most “blended easily back into [British] society.” Modern scholarship has demonstrated that eighteenth-century fears of the infiltration of British political institutions by nabobs was greatly over-exaggerated and historians have found no evidence of any coherent East Indian “interest” in Parliament or of any discernable parliamentary voting patterns by EIC stockholders.¹¹

Rather, Company abuses in India were far more readily apparent than the imagined corruption of nabobs at home. While Clive and Chatham had envisioned that revenues from Bengal would provide relief from the rising national debt, reports that began filtering back home of EIC officials using their positions of authority to siphon off local sources of wealth or of the widespread practice of skimming off Company profits appalled informed Britons. During a parliamentary inquiry into Company affairs in

¹⁰ William Stanhope Taylor and John Henry Pringle, eds., *The Correspondence of William Pitt, Earl of Chatham*, 4 vols. (London, 1838–40), 3:405.

¹¹ Eacott, *Selling Empire*, 201; H. V. Bowen, *Revenue and Reform: The Indian Problem in British Politics, 1757–1773* (Cambridge: Cambridge University Press, 1991), 31–33; P. J. Marshall, *Problems of Empire: Britain and India, 1757–1813* (London: George Allen and Unwin, 1968), 37; Philip Lawson and Jim Phillips, “‘Our Execrable Banditti’: Perceptions of Nabobs in Mid-Eighteenth Century Britain,” *Albion* 16, no. 3 (Autumn 1984): 225–241. Many families of rather modest means did, however, send their sons into Company service in order to earn enough money to establish comfortable households in England. See P. J. Marshall, *East Indian Fortunes: The British in Bengal in the Eighteenth Century* (Oxford: Clarendon Press, 1976).

December of 1772, for instance, it was discovered that Francis Sykes, the Company's former resident at the court of the *nawab* of Bengal and a member of the House of Commons, had embezzled an entire year's worth of a local tax he collected on the Company's behalf worth about £6,000.¹² Such abuses across a broad spectrum would, Britons feared, compound to lessen the volume of licit wealth the Company extracted from Bengal and thereby diminish the utility of the Company's Indian conquests to the national interest. "In proportion as a subordinate territory is well or ill governed," one contemporary pamphlet read, "in such proportion exactly will it be productive and beneficial to the superior state."¹³ That the Company had only escaped financial ruin with public funds, when in theory it had access to more than enough capital to remain not only solvent but highly profitable, confirmed Britons' anxieties about what appeared to be the reprobate state of Company governance.

The 1772–73 financial crisis laid bare the tremendous conflict of interest inherent in a commercial enterprise taking on the responsibilities of governance on such a large scale. Although Company officials publicly maintained that they desired neither conquest nor power but strictly commerce, there could be no contention with the reality of Thomas Pownall's observation in 1773 "that the merchant is now become sovereign."¹⁴ While few since the era of the Glorious Revolution had questioned the Company's sovereignty over its own internal governance and its fortifications and presidency towns in India, the Company's new and expanded role as *de facto* sovereign of a vast province of foreign subjects highlighted the paradox of the Company's

¹² Marshall, *Problems of Empire*, 145–146.

¹³ *Thoughts on Improving the Government of the British Territorial Possessions in the East Indies* (London, 1780), 19.

¹⁴ Thomas Pownall, *The Right, Interest, and Duty, of the State, as Concerned in the Affairs of the East Indies* (London, 1773), 8.

exploitation of the very populace for whose welfare it was now responsible.

“Notwithstanding therefore the farce of treaties, with the fiction of a *nawab*,” as Pownall argued, the Company was the actual sovereign of Bengal as observed by the following:

that *nawab* after *nawab* has been driven from the seat of government; that the new creatures of the East India Company are seated on the *musnud*, or throne, by the servants and deputies of the Company; that the sovereigns of the country are content to receive their government from the hands of the Company; that they govern under the protection, command, and by direction, of the Company; by officers and ministers named by, and holding their offices by the will and pleasure of the Company; that the Company is in full receipt and possession, and hath the sole distribution and revenues of the country; that they pay the officers and ministers, the *nawabs*, nay, even the Mogul himself, what the Company estimates, rates, and judges to be proper; that the Company is absolute landlord, and proprietor of the lands for ever; that it directs what military forces should be deemed proper, and allots what part of that should be put under the orders of the *nawab* or Mogul, and what shall remain under its own immediate command.¹⁵

The Company, therefore, was “no longer considered as mere merchants, they were now thought the umpires of Indostan,” who through “many unexpected contingencies,” had been converted from “an incorporated society of private traders into a cabinet of Asiatic princes.”¹⁶

Scottish economist Adam Smith poignantly articulated the tensions between sovereign and commercial interests in *The Wealth of Nations* (1776). “In almost all countries,” Smith wrote, “the revenue of the sovereign is drawn from that of the people. The greater the revenue of the people, therefore, the greater the annual produce of their land and labour, the more they can afford to the sovereign. It is in [the sovereign’s] interest, therefore, to increase as much as possible that annual produce.” This idea was especially pertinent in the case in Bengal, where the sovereign’s revenue was derived

¹⁵ Ibid., 38–39.

¹⁶ Luke Scrafton, *Reflections on the Government of Indostan, with a Short Sketch of the History of Bengal*, 2nd ed. (London, 1770), 120; John Entick et al., *The Present State of the British Empire*, 4 vols. (London, 1774), 4:533.

nearly exclusively from land rent. “A company of merchants,” on the other hand, “are, it seems, incapable of considering themselves as sovereigns, even after they have become such,” for “trade ... they still consider as their principle business, and by a strange absurdity, regard the character of the sovereign as but an appendix to that of the merchant; as something which ought to be made subservient to it.” A trading company’s “mercantile habits draw them in this manner, almost necessarily,” Smith explained, “though perhaps insensibly, to prefer, upon all ordinary occasions, the little and transitory profit of the monopolist to the great and permanent revenue of the sovereign.” “As sovereigns,” Smith concluded, the Company’s interests should have been “exactly the same with that of the country which they govern. As merchants,” however, the Company’s interest was “directly opposite to that interest.”¹⁷

State intervention into EIC affairs in the form of North’s bailout provided the Ministry with an opportunity to correct aspects of Company governance and governmental structures that contemporaries believed contributed to abuses of power both at home and abroad. North made clear from the opening of the 1772 parliamentary session that the government would only advance the Company its £1.4 million loan on the condition that the Company accept a ministerial program for the regulation of EIC governance. For starters, it was widely acknowledged that an overhaul of the Company’s system of judicature in India was needed. While the British presidencies each had their own civil courts of relatively high judicature, the localized nature of each meant that even upon appeal to a presidency’s council, rulings were rather arbitrary and often without reference to English statute law, if not the common law altogether, easily

¹⁷ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 2nd ed., 2 vols. (London, 1778), 2:252–254.

allowing for corruption among Company employees in each locale to go unchecked by any external superior authority. Although the chartering of Calcutta, Bombay, and Madras as municipalities in the early eighteenth century and the establishment of mayor's courts in each with appeal to the king-in-council resulted in greater legal uniformity, there remained inconsistencies between each and "anomalies between judicial functions and practises in India and those in Britain." Legislation passed in 1770 attempted to remedy the problem of irregular adjudication in India by referring cases of "oppression" between British subjects in India to the King's Bench in England and bringing criminal penalties in the presidencies in line with those handed down for similar offences in Britain.¹⁸

Yet the 1770 Act did little to address the issue of administering justice to EIC servants who perpetrated crimes against India's native inhabitants. Company Director and Member of Parliament Laurence Sullivan introduced a bill to the House in April of 1772 to establish a Supreme Court at Calcutta, which in addition to being a court of appeal for British municipal courts in India, would determine cases brought against British subjects by Indians. Sullivan's bill faced criticism from Attorney General Edward Thurlow, who objected to its provision that the Company would nominate the court's judges rather than have them appointed by the Crown, as EIC judges would be inherently biased in favour of the Company and against the interests of Indians. Others questioned the prudence of attempting to apply English law in a setting so distant and dissimilar from Britain as India. One popular notion held that although most Indian polities were indeed poorly ruled despotisms, lower-level Indian institutions and particularly the administration of justice were in fact quite sound. There was concern,

¹⁸ Stern, *Company-State*, 23–26, 210; Bowen, *Revenue and Reform*, 93–94f; 10 Geo. 3, c. 47.

therefore, that any meddling too far into provincial administration or local legal customs would only serve to further corrupt India's "internal constitutional polity." "If the administration of justice, and the executive power following it," Pownall wrote, "doth or ever shall interfere with, and cross upon the fundamental laws of the nation, it will tear up all law by the roots, and under the cruel delusion of justice plant the most wicked of all despotism in the extreme."¹⁹ Too heavy a hand in reforming the administration of justice in the British presidencies, it was feared, would result in a greater despotism than that of India's native constitutional polity.

As an alternative, Governor of Bengal Warren Hastings suggested that the Bengal mayor's court and court of appeals be abolished, that the council "act as common justices of the peace," and that a Supreme Court be created with justices appointed by the Crown. Although the House of Commons rejected Hastings' proposal, his recommendation had the effect of placing questions of judicial and governmental reform in India more immediately on the parliamentary agenda. On May 3, 1773, North presented the House with an outline of his plan for Company reform featuring the key item "that there must be some superiority lodged in one of their presidents in India in certain cases over others." Similar to Hastings's recommendations, and those of Clive before him, North proposed that the governor of Bengal should hold a "superintending power" over the presidencies of Madras and Bombay, and that he be furnished with a council of "extraordinary powers." Concerning the administration of justice, North's proposals included the establishment of a Supreme Court at Fort William, staffed with justices appointed by the Crown with "jurisdiction civil and criminal" over "all His

¹⁹ Bowen, *Revenue and Reform*, 99–100; Marshall, *Problems of Empire*, 60f, 180–181.

Majesty's British subjects within the provinces of Bengal.”²⁰

The utility of a British governor general in India to standardize and coordinate civil and military governance across the three disparate presidencies was first identified by Clive in 1756 after observing the benefit of such an office to the recent French war effort.²¹ While Clive himself hoped to become governor general before his career in India reached its conclusion, British policymakers were reluctant to further empower Clive, as it was feared that he had already been corrupted by his close relations with Indian powerbrokers, as exemplified in his personal receipt of a *jagir*. Significant efforts had been made to strip Clive of his *jagir* upon his brief return to Britain in 1763, and there had been significant opposition to Clive's holding the offices of governor of Bengal and commander-in-chief in India concurrently between May of 1765 and January of 1767.²² Clive had been held up as a sort of arch-nabob for his personal enrichment during his service in India. Clive, however, understood his receipt of the *jagir* as a reward for honourable service in Bengal, not unlike being granted a peerage at home. He also emphasized his restraint in not seizing greater entitlements upon his victory: “had I only taken the advantageous opportunities that presented themselves, by my being commander in chief,” he wrote, “and at the head of a victorious army, and what by the custom of that country I was entitled to, the *jagir* itself, great as it is, would have been an

²⁰ Bowen, *Revenue and Reform*, 164–167; Lucy S. Sutherland, *The East India Company in Eighteenth-Century Politics* (1952; repr., Oxford: Clarendon Press, 1962), 254.

²¹ Michael Edwardes, *Plassey: The Founding of an Empire* (London: Hamish Hamilton, 1969), 98.

²² Sutherland, *East India Company in Eighteenth-Century Politics*, 83, 111ff; Bruce Lenman and Philip Lawson, “Robert Clive, the ‘Black Jagir’, and British Politics,” *Historical Journal* 26, no. 4 (December 1983): 812–819, 824.

object scarce worth my consideration.”²³ Although by 1773 Clive’s reputation in Britain had been destroyed by those critical of his *jagir*, North remained convinced of the necessity of raising the governorship of Bengal to that of a governor general for the entirety of British India, and he was decided upon promoting Hastings to the position.²⁴ Hastings, a pupil of Clive and in many ways his successor, was convinced by his own experience as governor of Bengal of the benefits that would follow from having a centralized British executive in India.²⁵

North’s resolutions for governmental and judicial reforms directed at India were formulated into a bill that passed through first and second readings in the House in mid-to-late May of 1773. Opposition was eventually raised on the grounds that the bill was “subversive of the [Company’s] charter rights” and tended “to destroy the liberties of the subject from an immense addition of power it must give to the influence of the Crown.” The bill in question provided for Crown-appointed Supreme Court justices, effectively giving the Ministry “full and absolute power over the possessions of the Company,” as the opposition argued. As was the case with much of the imperial legislation passed in 1773–74, however, the opposition could not marshal nearly enough votes to block the bill’s passage. North’s Regulating Act passed the House on June 19, 1773, by a vote of 74 to 17 and was given royal assent two days later on June 21.²⁶ The Regulating Act provided for a governor general to be based at Fort William in Bengal and stipulated “that the whole civil and military government of the said presidency, and also the ordering, management, and government of all the territorial acquisitions and revenues”

²³ Bhattacharya, *Reading the Splendid Body*, 92; Robert Clive, *A Letter to the Proprietors of the East India Stock* (London, 1764), 18–19.

²⁴ Bowen *Revenue and Reform*, 166–167.

²⁵ Patrick Turnbull, *Warren Hastings* (London: New English Library, 1975), 52.

²⁶ Bowen, *Revenue and Reform*, 175–176ff, 182–183, 186.

in Bengal, Bihar, and Orissa would henceforth be vested in the office of the governor general and a council of four. The governor general and council were to have a “superintending” power over the presidencies of Bombay, Madras, and Bencoolen in Sumatra, none of which were permitted to make war or conclude treaties of peace “without the consent and approbation” of the governor general and his council, thus effectively transferring to the Crown a critical aspect of diplomacy and international relations that had been a Company power since its chartering in 1600. The Act appointed Hastings and the council by name for a term of five years from their arrival at Fort William, after which time subsequent appointments would be made by the Court of Directors. The Regulating Act also established a Supreme Court at Fort William consisting of a chief justice and three other judges to be appointed by the Crown. The Supreme Court was to act as a high court of appeal for cases between British subjects in Bengal, was empowered to determine all suits brought against EIC servants by those not in Company employment, and could hear suits brought by British subjects against Indians in Company employ in Bengal. Finally, the Act provided for handsome salaries for the governor general, council, and Supreme Court justices in lieu of any “fees of office, perquisites, emoluments, or advantages,” the acceptance of which was expressly forbidden. This provision was an attempt to make royal officeholders in India immune to the financial influence of the Company, local Indian rulers, or merchant interests. To forestall further corruption, Company employees more generally were also forbidden from accepting any “present, gift, gratuity, donation, or reward” from any country power.²⁷

In combination with and as a condition for passing the East India Loan Act, the

²⁷ 13 Geo. 3, c. 63.

Regulating Act was the first major governmental intrusion into Company affairs since the merger and creation of the United Company in 1709. While Chatham's inquiry of 1767 achieved only minor and temporary regulations of the Company's domestic finances, the Regulating Act introduced significant changes to Company governance in India. North's program for reforming Company governance was necessarily implemented via parliamentary legislation because of its close association with corresponding financial legislation, and because it effectively altered the Company's external governing structure as laid out in its charters, which were held of the king-in-Parliament since the United Company merger following the Glorious Revolution. The Regulating Act's provisions, however, were the product of negotiations between the Ministry and the Company's Court of Directors, and they empowered the king-in-council to make appointments to key positions of authority in India. As a pragmatic compromise made in order to pass his East India bills, North laid aside the issue of the Crown's immediate right to the Company's conquests. The Regulating Act, however, made clear the Crown's overriding sovereignty over the Company's external government, and the act's royal appointment of Supreme Court justices and its ministerial nomination of Hastings as governor general represented a formative statutory precedent in the establishment of the authority of the king-in-council over British government in India via the creation of a centralized executive. Nevertheless, the office of the governor general would face significant challenges in India before the further expansion of executive authority, and with it the increased of the role of the Crown and Ministry in Indian government, would be accepted by imperial officials both at home and abroad. The Regulating Act, therefore, expanded the powers of Parliament and, especially, the king-in-council, over both the Company and British imperial

administration in India more generally.

II

As the British state became more active in passing legislation effecting Indian affairs at home, the Company's military and political influence in India continued to expand. In the aftermath of the Battle of Buxar (1764) and the Treaty of Allahabad (1765), Shuja-ud-daula of Awadh had turned his defeat around by paying his war debt to the British two months early and in *sicca* rupees (rupees stamped in the current year), yielding the Company a bonus of £11,500 and inaugurating a period of amicable relations between the two. As a result, Shuja-ud-daula, although under Company influence as a subsidiary military ally, retained a significant degree of internal political autonomy and undertook an intensive program of military reform, expansion of public works, and cultivation of the arts after decades of neglect.²⁸ The arrangement between Shuja-ud-daula and the Company requiring payment from the *nawab* for stationing EIC troops in Awadh pressured Shuja-ud-daula to expand his revenue base west into the Maratha-controlled district of Etawah and north into Rohilkhand. In June of 1772, Shuja-ud-daula extorted a treaty from the Rohillas obliging the payment of forty *lakhs* to the Awadh treasury, which, when unpaid, was used by Shuja-ud-daula as a pretext for the annexation of Rohilkhand. After Awadh and Company forces decimated Rohilkhand and reduced the Rohillas to vassals of Shuja-ud-daula, rumours circulated back to Calcutta of atrocities committed during the campaign, including the slaughter of women and children, which although condemned by Hastings, would plague the governor for the rest of his career

²⁸ Richard B. Barnett, *North India Between Empires: Awadh, the Mughals, and the British, 1720–1801* (Berkeley: University of California Press, 1980), 76–78ff.

and further bolster the charges of misgovernment made by Company opponents.²⁹

Although official Company policy was not to conduct any offensive war against country powers, Hastings had assented to Shuja-ud-daula's deployment of Company troops against the Rohillas as a means of shoring up Awadh's frontier against the Marathas.³⁰ The expansion of Awadh into Etawah and Rohilkhand, therefore, pushed Maratha limits back from British-controlled territories and made both regions suzerainties to Awadh in order to satisfy the revenue demands of Shuja-ud-daula's subsidiary alliance to the Company. The Rohilla War (1773–4) was an early example of what scholars have conceptualized as the "turbulent frontier," a phenomenon whereby the Company, in order to secure the borders of its own spheres of influence, became engaged in the diplomatic and military affairs of its neighbouring subsidiary allies and their neighbouring rivals, resulting in a pattern of concentric annexations that drove British territorial expansion in India well into the nineteenth century.³¹

The variety of frontier alliances emanating from each of the three British presidencies combined to create a complex web across the whole of the subcontinent, whereby in some instances one presidency was allied with one people or polity, while another presidency was fighting against that same people or polity as a result of a different set of alliances. Such was the intricacy of the Company's entanglements with the Marathas. Maratha pressures on the Mughal kingdom around Delhi put them at odds with the Bengal Presidency, which took its *diwani* rights from and in turn lent its support

²⁹ Ibid., 93; Turnbull, *Hastings*, 66–69.

³⁰ Turnbull, *Hastings*, 66; Keith Feiling, *Warren Hastings* (London: Macmillan, 1954), 114.

³¹ See John S. Galbraith, "The 'Turbulent Frontier' as a Factor in British Expansion," *Comparative Studies in Society and History* 2, no. 2 (January 1960): 150–168; and Michael H. Fisher, ed., *The Politics of the British Annexation of India, 1757–1857* (1993; repr., New Delhi: Oxford University Press, 1999).

to the emperor. Yet the security of Delhi was of little immediate consequence to the presidencies at Bombay or Madras. At Bombay, the Company negotiated with the Marathas for the reacquisition of Salsette Island and the port of Bassein, both of which had been seized by the Marathas in 1739. At Madras, meanwhile, the Company entered into a triple alliance with the Marathas and the *nawab* of the Carnatic against the alliance of the *nizam* of Hyderabad and the sultan Hyder Ali of Mysore.³²

The son of a Mughal military administrator in the Deccan, Hyder Ali gained his reputation as a military leader during the Carnatic Wars before becoming the ruler of the regional successor state of Mysore in 1760–61.³³ Through the 1760s, Hyder Ali began expanding the Mysore, first westward, threatening British factories on the Malabar Coast, and then northward, piquing tensions with both Hyderabad and the Marathas. In late 1766, the *nazim* of Hyderabad, Asaf Jah II, invited British support in a war of containment against Hyder Ali in order to draw the Company's energies away from its own expansion in Northern Circars, which bordered on the *nizam*'s territory.³⁴ Much of that war saw Hyder Ali on the offensive, pushing his army deep into Arcot in a manoeuvre that climaxed in his army marching on Madras and forcing the British to sue for peace in late March–early April of 1769. Hyder Ali insisted that the treaty include a clause requiring the Company's military assistance in the event that Mysore was attacked by its enemies, a device which he hoped to leverage to enlist EIC support for his upcoming campaign against the Marathas. The Madras Presidency, however, was

³² Feiling, *Hastings*, 108.

³³ Irfan Habib, ed., *Confronting Colonialism: Resistance and Modernisation under Haidar Ali and Tipu Sultan* (London: Anthem Press, 2002), xix–xxi.

³⁴ Sugata Bose and Ayesha Jalal, *Modern South Asia: History, Culture, Political Economy*, 2nd ed. (New York: Routledge, 2005), 48; James Grant, Political Survey of the Northern Circars, 1784, Cornwallis Papers (microfilm), David Library of the American Revolution, Washington Crossing, Pennsylvania, PRO 30/11/57, fols. 162–163.

unconcerned with the Marathas at the moment, and ultimately refused to support Hyder Ali's war in 1771. Rather, it was the Bombay Presidency that was drawn into conflict with the Marathas in 1775, when in an effort to extract territorial concessions from the Marathas, the British at Bombay became embroiled in a Maratha succession crisis.³⁵

The First Anglo-Maratha War (1775–82) presented significant challenges to Hastings' administration as governor general under the Regulating Act. For starters, the Bombay Presidency negotiated an alliance with rival factions in the Maratha court without first consulting Hastings and the council at Calcutta. Next, with tensions rising between Britain and France over France's covert support of the rebelling American colonies in the form of arms funnelled through the shell company of Roderigue Hortalez since roughly the spring of 1776, the arrival of the French emissary the Chevalier de Saint-Lubin at the Maratha court at Poona in 1777 caused Hastings to suspect the French were using Britain's preoccupation with the American war as an opportunity to revive their territorial ambitions in India. In a council meeting in early 1778, Hastings expressed his concern that a Franco-Maratha alliance threatened to "dramatically" alter the status quo in India by giving France a considerable footing on the subcontinent from which "all the native powers of Indostan united will lie at their mercy."³⁶ Having "established an alliance with one of the most considerable of the native powers," Hastings believed the French had secured sufficient land-based support to enable them to mount an assault on Bengal, and he therefore planned to "check" the formation of a

³⁵ For Maratha politics leading up to and into the war with the British, see Stewart Gordon, *The Marathas, 1600–1818* (Cambridge: Cambridge University Press, 1993), 154–164ff.

³⁶ Turnbull, *Hastings*, 111–114.

Franco-Maratha alliance “in its first growth” by a pre-emptive attack on the Marathas.³⁷

The Company’s war against the Marathas was met with significant opposition from the Bengal council. Councillor Philip Francis thought that any provocation of the Marathas “might either give real umbrage to the French, or furnish them with a plausible pretence to accuse us of disturbing the peace of India.”³⁸ When news of General John Burgoyne’s defeat at Saratoga and France’s formal entry into the American war reached Bengal during the summer of 1778, however, Hastings became convinced that if “British arms and influence have suffered so severe a check in the West, it is the more incumbent on those who are charged with the interests of Great Britain in the East, to exert themselves for the retrieval of the national loss.”³⁹ Hastings, therefore, sent a force of six battalions to march overland from Bengal across northern India to reinforce Bombay, overrunning Gujarat and capturing Ahmedabad in early 1780, and taking Gwalior Fort in August, before forcing the Marathas to the peace table the following year.⁴⁰ Peace was concluded at Salbai near Gwalior in May of 1782, of which Bengal councillor John Macpherson wrote to North that until the Treaty of Salbai, he had “never found our ground completely firm since my arrival in India.” Macpherson also surmised that the Company’s success against the Marathas would deter France from colluding with other Indian powers and contribute to forcing a peace in Europe and America.⁴¹ Following peace with the Marathas, the Company continued its war against the French, now allied

³⁷ Hastings to North, April 21, 1778, North Papers (microfilm), David Library of the American Revolution, Washington Crossing, Pennsylvania, BL Add. MS 61865, fol. 17; Turnbull, *Hastings*, 115; Feiling, *Hastings*, 194–195.

³⁸ Francis to North, February 27, 1779, North Papers, BL Add. MS 61865, fols. 117–118.

³⁹ At a Council at Fort William, June 22, 1778, *ibid.*, fols. 99, 105.

⁴⁰ See Hastings’ Draft of a Letter to the President and Council of Bombay, March 23, 1778, and his Draft of Instructions to Col. Leslie, April 6, 1778, *ibid.*, fols. 21–26; Turnbull, *Hastings*, 124–126f.

⁴¹ Macpherson to North, February 23, 1782, North Papers, BL Add. MS 61865, fols. 157–158.

with Hyder Ali and his successor, Tipu Sultan, resulting in the Treaty of Mangalore that concluded the Second Anglo-Mysore War early 1784, and which quelled tensions in southern India for roughly the next decade.

III

One of the many ideological effects of the Company's wars in India between the late 1760s and the early '80s was the proliferation of British criticism of Company expansion and its associated corruption. Hastings had come under substantial fire from the Bengal council for pursuing what his opponents perceived to be offensive wars of expansion. The Company's temporary evasion of many of the regional checks to its expanding spheres of influence in the form of client states and subsidiary alliances gave occasion for EIC critics in Britain to open a new round of attacks on the Company's conduct and governing structure. If *The Craftsman* could write in 1726, thirty-one years before the Battle of Plassey, that "the East India Company have several *governments* in their disposal, of much *greater value* than any in His Majesty's gift," then similar statements must have resonated even greater among Company opponents by in the 1780s.⁴²

Poet William Cowper, for instance, was highly critical of the Company's involvement in recent wars resulting in the expansion of its territorial dominion and political influence:

The potentates of this country [India] they dash in pieces like a potter's vessel, as often as they please, making the happiness of thirty millions of mankind a consideration subordinate to that of their own emolument, oppressing them as often as it may serve a lucrative purpose, and in no instance, that I have ever heard, consulting their interest or advantage.⁴³

One anonymous Company employee, moreover, wrote to North of the "shameful

⁴² *The Craftsman*, 14 vols. (London, 1731–37), 1:67.

⁴³ Marshall, *Problems of Empire*, 150–151.

abuses” by which EIC servants exploited their positions of power for personal enrichment, including smuggling contraband, pre-purchasing prime lots for private resale, skimming the Company’s stocks of goods, and overloading vessels resulting in shipwreck and significant loss of life—all in addition to the “mercenary disposal of writerships,” which were little more than a veneer for an individual to enter into private trade. “The natives,” North was informed, were extremely alert to such “duplicity” and, consequently, “have lost all confidence in the government established by the Company.”⁴⁴ Both writers advocated for additional state regulation of Company governance as a means of correcting these real and perceived abuses. The anonymous writer identified the Company’s Court of Directors in London as “the source of the mismanagements here, as far as venality and ignorance at home could be supposed to communicate their baneful influence at this distance,” and believed further “reformation” of Company institutions was of “the absolute necessity.” Cowper agreed:

That government therefore is bound to interfere, and to unking these tyrants, is to me self-evident. And if having subjugated so much of this miserable world, it is therefore necessary that we must keep possession of it. It appears to me a duty so binding upon the legislature to rescue it from the hands of those usurpers, that I should think a curse, and a bitter one, must follow the neglect of it.⁴⁵

The Regulating Act, although necessary and effective in the short term, had by the late 1770s proven ineffective both at home and abroad. Hampered by a dearth of executive function, Hastings’ administration in Bengal had been marred by partisan gridlock within the council, while the staggered elections of the Court of Directors resulted in a divided electorate that was unable either to recall Hastings at the conclusion of his five-year term or decide upon his successor. North knew that the settlement

⁴⁴ To North, November 25, 1777, North Papers, BL Add. MS 61866, fols. 90–91, 93.

⁴⁵ *Ibid.*, fols. 90–92; Marshall, *Problems of Empire*, 151.

reached in 1773 was a temporary expedient, and indeed much of his restraint in not pushing for more stringent reforms was a deliberate strategy by which he sought to “prepare the ground for a more permanent and sweeping reorganization when the Company’s charter came up for renewal in 1780.”⁴⁶ After renewing the Regulating Act for an additional year each in both 1779 and 1780, a further extension of the provisions of all previous East India bills, including a ten-year renewal of the Company’s charter, was passed in July of 1781, into which North and Secretary of the Treasury John Robinson succeeded in inserting a clause allowing the Ministry to peruse all incoming Company dispatches and to view and amend all outgoing orders.⁴⁷

North’s administration fell in early 1782 before any further reforms could be made, but with the American war nearing its conclusion, East Indian affairs quickly became the primary vehicle for opposition assaults on a series of weak coalition ministries. In the meantime, Henry Dundas, a former member of North’s caucus, outlined a policy of non-expansion in India, non-interference in Indian domestic politics, and strict adherence to existing treaties. Quick turnovers in ministries prevented Dundas’s resolutions from being formed into a bill until early 1783. When Dundas finally introduced a bill to the House, it proposed that all appointments to gubernatorial or conciliar posts in any of the Company’s presidencies or settlements be made on recommendation from the Ministry, and although the bill included the proviso that any governmental recommendation might be countered by the Court of Directors, such commissions would ultimately be signed off by a Secretary of State.⁴⁸ As an outsider to

⁴⁶ Sutherland, *East India Company*, 269, 274, 298–310, 322.

⁴⁷ 19 Geo. 3, c. 61; 20 Geo. 3, c. 56; 21 Geo. 3, c. 65.

⁴⁸ Sutherland, *East India Company*, 361, 365–370, 383–393; Marshall, *Problems of Empire*, 120–125, 155–156.

the administration of Charles Fox, Dundas's bill was defeated and superseded by a bill drafted by Fox and Edmund Burke that intended to place Company appointments within the jurisdiction of Parliament rather than the Ministry. Although this bill passed the House in early December of 1783, Fox's bill was struck down in the House of Lords on December 17, as it represented an egregious front to the royal prerogative. The next day, the king dismissed Fox and invited the younger William Pitt to form a government.⁴⁹

While Dundas continued fashioning his resolutions into a workable piece of legislation, which it appeared would carry the support of the Company Directors who were eager to move past the "late violent attempt" of the Fox bill, Pitt suffered a vote of non-confidence in the House. Rather than resign, however, in an innovative use of parliamentary procedure, Pitt advised the king to dissolve Parliament and call a general election, from which he emerged in July of 1784 with an overwhelming majority and a clear mandate to implement Dundas's reforms.⁵⁰ On the question of civil governance and military affairs in India, Pitt and the Directors reached an agreement that the Company would henceforth be "bound to conform to His Majesty's pleasure," while at the same time Pitt sought to ensure that the Company's trade and internal finance be tightly regulated but not obstructed.⁵¹ Pitt's bill, as it later became law, provided for Crown oversight of Company affairs through the creation of a Board of Commissioners for the Affairs of India comprised of six Privy Councillors, two of whom would necessarily be a Secretary of State and the Chancellor of the Exchequer. The Board of Control, as it was to be known, would "be fully authorised and empowered ... to

⁴⁹ Marshall, *Problems of Empire*, 39–42, 126–128; Sutherland, *East India Company*, 393–405.

⁵⁰ Sutherland, *East India Company*, 406–411ff; Marshall, *Problems of Empire*, 42.

⁵¹ A. Aspinall, ed., *The Later Correspondence of George III*, 5 vols. (Cambridge: Cambridge University Press, 1962–70), 1:19–20; Marshall, *Problems of Empire*, 42–43.

superintend, direct, and control, all acts, operations, and concerns, which in any wise relate to the civil or military government or revenues of the British territorial possessions in the East Indies.” To facilitate its work, the Board would have full access to Company papers, and the approbation of the Board by the signatures of at least three commissioners would be required for all outgoing dispatches relating to civil governance, military affairs, or territorial revenues. The Board would also be able to communicate “orders or instructions” to the Directors for transmission to India. Any directive given to the Company that the Directors felt overstepped the Board’s superintending authority over the areas abovementioned could be appealed to the king-in-council, “which decision shall be final and conclusive.” Pitt’s bill passed through Parliament easily and commenced on August 13, 1784.⁵²

While North’s East India Loan and Regulating Acts established the precedent of the British government regulating Company finances at home and making adjustments to Company governance in India, Pitt’s East India Act imposed unprecedented Crown authority over British civil, military, and diplomatic affairs in India. Whereas parliamentary Whigs such as Burke and Fox would have had the Crown’s external authority in India exercised via Parliament and associated committees, Pitt and Dundas understood that as conquests by international treaty, the Company’s expanded dominion in Bengal, as well as its other territorial acquisitions and annexations and its ongoing diplomatic relations with Indian sovereigns, were within the jurisdiction of the king-in-council. The creation of the Board of Control, staffed by Privy Councillors, was therefore a tacit acknowledgement of the sovereignty of the Crown—namely, that of the

⁵² 24 Geo. 3, c. 25.

Crown-in-council rather than the Crown-in-Parliament—over the Company’s Indian conquests. This beginning of the transfer of imperial sovereignty in British India to the Crown would inaugurate a legislative program that would continue over roughly the next century whereby the Company was gradually reduced first to a purely commercial and eventually purely administrative body, while Crown sovereignty in India was increasingly expanded, initially informally through imperial administrative function before become formalized during the second half of the nineteenth century.

**Postwar Crown–Indigenous Relations, Loyalist Refugees,
and the Constitutional Act of 1791**

The administration of the younger William Pitt, in addition to passing the 1784 East India Act to remedy the structural weaknesses and private corruption that had afflicted Company governance in India, had a stabilizing effect on British North American affairs following the volatility of the two short-lived, Whig-leaning coalition administrations of Shelburne and Fox that were responsible for, respectively, the negotiation and conclusion of the Treaty of Paris that ended the American Revolutionary War in 1783. Despite Shelburne's abandonment of the Crown's Indigenous allies in the Treaty of Paris, at Quebec, Haldimand in his role as Onontio refused to cut diplomatic ties with upper country groups who now fell within American territory. Former prime minister Frederick North, one of the architects of the Quebec Act and now Home Secretary in Fox's coalition government, endorsed this position, and Governor of Quebec Frederick Haldimand utilized the treaty-making process laid out in the Royal Proclamation to acquire Indigenous territory in what remained of the interior of the province of Quebec for the settlement of Indigenous groups that had been displaced by the new American boundary. Postwar Crown–Indigenous relations threatened to be disrupted by the inflow of British American loyalists into the province of Quebec. Once again, however, the Proclamation was employed to negotiate Indigenous land cessions for the creation of districts of loyalist settlement. When loyalist communities expressed their desire for representative government and English law, it became clear to imperial thinkers that any such representative institutions should be balanced by an enhanced British North American executive capable of effectively maintaining Indigenous relations and

providing for centralized defence against American expansionism.

In April of 1786, in the same month that Charles Cornwallis sailed for India with newly-enhanced powers as Warren Hasting's successor as governor general of Bengal, Guy Carleton was appointed governor-in-chief of British North America. While in India the utility of a centralized executive was observed from French practice but was not constitutionally linked to it, in Canada, the office of the British governor of Quebec was directly constitutionally descended from that of the governor general of New France. But whereas in India the office of the governor general was amassing unprecedented civil authority that would soon elevate it above its council, the presence of considerable settler populations in Canada stymied a parallel occurrence in British North America. When the operational costs of the administration of Canada exceeded the revenues generated by the Quebec Act's associated legislation, the Quebec Revenue Act,¹ which was itself a continuation of a series of import duties carried over from the pre-conquest French regime, the Ministry, now hampered in its powers of colonial taxation by the Taxation of the Colonies Act of 1778,² began theorizing the best means by which to give Canadians representative institutions with powers of taxation necessary to generate an internal revenue. In 1791, in conjunction with an order-in-council partitioning the province of Quebec into the new, predominately Anglo-loyalist province of Upper Canada and the French-majority province of Lower Canada, the Constitutional Act established houses of assembly in each and granted Upper Canadians English law and land tenure, while retaining French civil law in the Lower province. The Constitutional Act also provided for improved bicameralism in the Canadas, with each province

¹ 14 Geo. 3, c. 88.

² 18 Geo. 3, c. 12.

featuring a dual upper house of both an executive and legislative council serving as a bridge and counterbalance between the legislature and governors, the latter of which included a lieutenant governor for Upper Canada whose office was separate from but subordinate to the governor-in-chief at Quebec. The governor-in-chief was also theoretically superior to the now lieutenant governors of New Brunswick, Prince Edward Island, Nova Scotia, and Cape Breton, the latter of which would be annexed to Nova Scotia in 1820. To a great extent, in appointing a governor general to reside at Quebec, the British had reconstructed much of the jurisdictional structure of New France, while at the same time anticipating the need for greater coordination among the remaining North American colonies.

I

News of the preliminary peace between Britain and the United States in 1783 shocked Indigenous peoples and British imperial officials in Canada and the upper country alike. The Indian agent at Niagara, Allan Maclean, reported to Haldimand that although Indigenous groups there were “pleased with the peace,” they appeared “to be very anxious and uneasy” at having “heard of certain pretended boundaries, to which they can never agree if true.” Many Indigenous leaders, according to Maclean, simply could not believe the terms of the peace with regard to the boundary, which transferred to the United States British dominion over substantial swathes of Indigenous territory that the Crown had pledged to safeguard according to the Royal Proclamation of 1763. “They told me they could never believe that our king could pretend to cede to America what was not his own to give.” Maclean wrote that “the Indians were a free people subject to no power upon the earth, that they were faithful allies of the king of England, but not his

subjects—that he had no right whatever to grant away to the states of America, their rights or properties without a manifest breach of all justice and equity.”³ Haldimand relayed to London Indigenous discontent with the cession when he wrote to North in late November of 1783 that Indigenous peoples “have, as enlightened ideas of the nature and obligations of treaties as the most civilized nations have, and know that no infringement of the treaty in 1768 [at Fort Stanwix] ... can be binding upon them without their express concurrence and consent.”⁴

Haldimand himself was no less dismayed at the terms of the “infamous treaty,” by which he believed that the Ministry had “betrayed” the Crown’s Indigenous allies. In his capacity as Onontio, Haldimand therefore had no intention of abandoning upper country Indigenous nations, whom he maintained it was in the Crown’s “interest, humanity and gratitude” to continue to support. Given the vagueness of the treaty, which only outlined the boundary between the United States and British North America and made no explicit mention of the British evacuation of the interior posts, Haldimand sought to retain those places until the United States government could ensure that settlers would not violate the Fort Stanwix treaty line. When the Confederation Congress sent the Baron Von Steuben to Chambly in August of 1783 to discuss the British surrender of the western posts, Haldimand provided Von Steuben with a lavish visit, distracting the major general from the issue of the interior and buying himself time to inform the British cabinet that he was not prepared to evacuate the upper country posts,

³ Mclean to Haldimand, May 18, 1783, in Charles M. Johnston, ed., *The Valley of the Six Nations: A Collection of Documents on the Indian Lands of the Grand River* (Toronto: Champlain Society, 1964), 35–36. See also Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Vintage, 2007), 112–113.

⁴ Quoted in Colin G. Calloway, *Crown and Calumet: British–Indian Relations, 1783–1815* (Norman: University of Oklahoma Press, 1987), 9.

as he believed it would only incite further settler–Indigenous conflict. “It would certainly be better for both nations and the most likely means to prevent jealousies and quarrels,” Haldimand wrote,

that the intermediate country between the limits assigned to Canada by the provisional treaty and those established as formerly mentioned by that in the year 1768 should be considered entirely as belonging to the Indians, and that the subjects neither of Great Britain nor of the American states should be allowed to settle within them, but that the subjects of each should have liberty to trade where they please.

In April of 1784, the new administration of the younger William Pitt determined that since Americans had violated the articles of the treaty relating to loyalist property, the British would be in no hurry to relinquish the western posts.⁵

On the New York frontier, meanwhile, in hopes of luring the Haudenosaunee away from Niagara, and thus lessening the utility of the British retention of that post, the Confederation Congress and the state government invited displaced Haudenosaunee to return to their homelands, all the while knowing that such lands would eventually be swallowed up by settler expansion. Conceiving of themselves as independent peoples occupying the country lying between the limits of the State of New York at the Fort Stanwix line and the Treaty of Paris boundary of British North America at Lake Ontario and the Niagara River, many Haudenosaunee were eager to return to Iroquoia. While Haldimand recognized the benefit of maintaining the Haudenosaunee as a buffer against New York’s encroachment on Niagara, he knew what awaited them in their homeland and determined that the Mohawk in particular were powerful enough allies to provide

⁵ Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815*, 2nd ed. (Cambridge: Cambridge University Press, 2011), 408–410; A. L. Burt, *The Old Province of Quebec*, 2 vols. (1933; repr., Toronto: McClelland and Stewart, 1972), 2:56–62; Taylor, *Divided Ground*, 112–115.

for their resettlement within British territory.⁶

North endorsed this policy. “These people are justly entitled to our peculiar attention,” he wrote to Haldimand in August of 1783, “and it would be far from either generous or just in us, after our cession of their territories and hunting grounds, to forsake them.” As Home Secretary, North therefore informed Haldimand “that the king allows you to make those offers to them [the Haudenosaunee], or to any other nations of the friendly Indians, who may be desirous of withdrawing themselves from the United States, and occupying any lands which you may allot to them within the province of Quebec.”⁷ In May of 1784, Haldimand negotiated the cession from the Mississauga of more than half a million acres of land six miles wide on either side of the Grand River to the north of Lake Erie. The Crown paid £1,180 for the cession, which the Mississauga considered less as a sale and more as a gift that they hoped would elevate their status with Ontario. Roughly 450 Mohawk relocated to the Grand River tract by 1785, along with nearly 1400 or so other Haudenosaunee and Algonquian peoples.⁸ While the Grand River Haudenosaunee were to remain “brothers” rather than “children” of Ontario, they had nevertheless become dependents of the British Crown, from whom they derived title to their new lands and upon whom they now relied for financial relief. By 1790, those Haudenosaunee who opted to return to Iroquoia were outnumbered by New Yorkers by more than ten to one.⁹

⁶ Taylor, *Divided Ground*, 115–120, 133–134.

⁷ North to Haldimand, August 8, 1783, Johnston, ed., *Valley of the Six Nations*, 42.

⁸ Peter Marshall, “First Americans and Last Loyalists: An Indian Dilemma in War and Peace,” in *Red, White and True Blue: The Loyalists in the Revolution*, ed. Esmond Wright (New York: AMS Press, 1976), 45–46; Taylor, *Divided Ground*, 121, 123, 130–131.

⁹ Taylor, *Divided Ground*, 134.

II

The province of Quebec also became a destination for settler populations who were displaced by the war, including significant numbers of British American loyalists fleeing the political culture of terroristic violence that had emerged in the revolutionary United States. After finally securing appointment as commander-in-chief, Guy Carleton arrived in New York City in May of 1782 to take up the headquarters of his predecessor, Henry Clinton. As the city longest held by the British military during the war, New York had become a centre of refuge for loyalists fleeing harassment and political persecution in their home states, causing the city's civilian population to more than double between 1777 and 1781. Refugees who flocked to the city included both freed and runaway slaves, neutral colonists seeking to avoid the Continental Army draft or fleeing homes that had been destroyed by the war, and avowed loyalists from throughout the United States of a wide array of socioeconomic statuses.¹⁰ While New York had been a centre of high tory loyalism among the city's Anglican clergy, most loyalists were political whigs who opposed parliamentary taxation in principle if not in practice and desired to see the colonies and the mother country reach some sort of mutual accommodation.¹¹ Many loyalists were exceedingly "cosmopolitan in their understanding of the integral relationship between colonial and imperial commerce," as Ruma Chopra writes, and they abhorred the idea of severing an imperial connection that had provided the colonies with a significant degree of political freedom and economic affluence. Such individuals

¹⁰ Ruma Chopra, *Unnatural Rebellion: Loyalists in New York City during the Revolution* (Charlottesville: University of Virginia Press, 2013), chs. 1–3, 6.

¹¹ See Janice Potter, *The Liberty We Seek: Loyalist Ideology in Colonial New York and Massachusetts* (Cambridge, MA: Harvard University Press, 1983); and William Allen Benton, *Whig-Loyalism: An Aspect of Political Ideology in the American Revolutionary Era* (Rutherford, NJ: Fairleigh Dickinson University Press, 1969).

believed that the existence of any American polities independent of the “benevolent empire” would inevitably lead to mobocracy, as evidenced by the way in which patriot leaders mobilized the colonial underclass to incite popular violence in pursuit of revolutionary ideals.¹² “Whatever its occasional excesses,” Ann Condon writes, loyalists were generally of the opinion that

the British government ... restrained by its own internal traditions and constitutional procedure, seemed a much less likely threat to American liberty than the tendencies toward mob rule, enforced conformity, and brutalization which were so pervasive within the individual colonies.¹³

One prominent loyalist, William Smith, chief justice of New York and a provincial councillor, was particularly adamant that the colonies’ long-term social, economic, and political stability depended upon their connection to the empire. The son of the New York attorney general of the same name, Smith was of a family of longstanding English Dissenters who had fought as parliamentarians during the English Civil War before moving to America in the early eighteenth century.¹⁴ After studying at Yale, Smith articulated in his father’s law office along with William Livingston of the New York landowning family, with whom he became close friends and into whose family he married in 1752. That same year, Smith and Livingston became active in New York politics as young whigs who opposed the colony’s Anglican tory party that had formed around Lieutenant Governor Cadwallader Colden. Along with their colleague John Morin Scott, Smith and Livingston published the periodical *The Independent Reflector*

¹² Chopra, *Unnatural Rebellion*, 2–5.

¹³ Ann Gorman Condon, “Marching to a Different Drummer: The Political Philosophy of the American Loyalists,” in Wright, ed., *Red, White and True Blue*, 6.

¹⁴ Maturin L. Delafield, “William Smith: Judge of the Supreme Court of the Province of New York,” *Magazine of American History* 6, no. 4 (April 1881): 264–265; Adam Nadeau, “Smith, William (1679–1769),” in *The Bloomsbury Encyclopedia of the American Enlightenment*, ed. Mark G. Spencer, 2 vols. (New York: Bloomsbury Academic, 2015), 2:979–980.

for a year from November of 1752 to November of 1753. Similar to the many English whig periodicals of the late seventeenth and early eighteenth centuries, *The Independent Reflector* championed the “improvement” of provincial infrastructure, education, and manners, and espoused a “liberal anticlericalism.”¹⁵ Smith, a leading voice in New York’s opposition to the Sugar Act in 1764, drew up the New York assembly’s formal petition against the Act to the House of Commons in October of 1764. In it, Smith acknowledged “the authority of the Parliament of Great Britain, to model the trade of the whole empire, so as to subserve the interest of her own.” “But a freedom to drive all kinds of traffic in a subordination to, and not inconsistent with, the British trade; and an exemption from all duties in such a course of commerce,” Smith “humbly claimed ... as the most essential of all the rights to which they are entitled, as colonists from, and connected, in the common bond of liberty, with the un-enslaved sons of Great Britain.”¹⁶

Smith did not, however, share in the suspicions held by many of his contemporaries that there was a deliberate ministerial plot afoot to enslave the colonies. Rather, Smith believed that colonial whigs’ appeals to seventeenth-century English rights, though valid in theory and useful as rhetoric, missed the mark of the real source of the imperial crisis. While “the litigants on both sides” of the conflict flew “to the constitution, for arguments in support of tenets, *diametrically* opposite to each other,” all seemed to be “insensible” that “the empire,” as a result of Britain’s recent conquests, had “acquired a *new, adventitious state*. And the question therefore is not, what the constitution was, or is, but what, present circumstances considered, it ought to be.” One

¹⁵ L. F. S. Upton, *The Loyal Whig: William Smith of New York and Quebec* (Toronto: University of Toronto Press, 1969), chs. 2–3; Milton M. Klein, ed., *The Independent Reflector* (Cambridge, MA: Harvard University Press, 1963).

¹⁶ Edmund S. Morgan, ed., *Prologue to Revolution, Sources and Documents on the Stamp Act Crisis, 1764–1766* (Chapel Hill: University of North Carolina Press, 1959), 11–12.

of the greatest strengths of the British constitution, according to Smith, was its malleability, and he was hopeful that “the constitution (be it what it will) ought to bend, and *sooner* or *later* will bend,” even if it took “an appeal to the lord of hosts by battle” to do so.¹⁷ Smith insisted that the solution to the imperial crisis of the 1760s and ’70s lay in the establishment of “a *regular American constitution*,” which he envisioned as being composed of a viceregal executive, a Crown-appointed council, and a parliament of members from all of Britain’s North American colonies, including Quebec, Nova Scotia, and the Floridas.¹⁸ Smith held fast to his plan for reconciliation, and even after the outbreak of war and the Continental Congress’s issuance of the Declaration of Independence he refused to publicly declare his support for either side of the dispute. Privately, however, Smith deplored the logical incoherence that existed between patriots’ appeals to liberty and property and their simultaneous endorsement of the violence of urban mobs and extrajudicial provincial committees. When Smith was finally summoned to appear before the New York Commissioners for Conspiracies in July of 1778, he refused to swear an oath to the State of New York. Smith retired behind British lines in New York City that August.¹⁹

During Smith’s time of refuge in New York City, he and Guy Carleton became close associates. Within a short time of Carleton’s arrival in 1782, he informed Smith “that the king had instructed his commissaries at Paris, where a congress is holding, to

¹⁷ Robert M. Calhoun, ed., “William Smith Jr.’s Alternative to the American Revolution,” *William and Mary Quarterly*, 3rd ser., 22, no. 1 (January 1965): 112–113; William H. W. Sabine, ed., *Historical Memoirs from 16 March 1763 to 25 July 1778 of William Smith*, 2 vols. (1956–58; repr., New York: Arno Press, 1969), 1:272. See also Robert McCluer Calhoun, *The Loyalists in Revolutionary America, 1760–1781* (New York: Harcourt Brace Jovanovich, 1973), ch. 8.

¹⁸ The American Whig, no. 5, *New-York Gazette*, April 11, 1768; Calhoun, ed., “William Smith’s Alternative,” 114–115.

¹⁹ Upton, *Loyal Whig*, chs. 8–9.

agree to the independency of the colonies, but to make it a preliminary that the persons and property, real and personal, of his loyal subjects be secured.”²⁰ News of a ceasefire and tentative peace agreement arrived in New York in late March of 1783, and Carleton announced the provisional treaty in early April.²¹ The final treaty, signed September 3, 1783, acknowledged the colonies as “free, sovereign, and independent states,” with the Crown relinquishing “all claims to the government, propriety, and territorial rights of the same, and every part thereof.” Two articles dealt with loyalist property: one in which it was “agreed that the Congress shall recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British subjects,” and another stating “that there shall be no future confiscations made, nor any prosecutions commenced against any person or persons, for or by reason of the part which he or they may have taken in the present war.”²² Both articles were violated by the New York legislature, which resold confiscated loyalist estates amounting to more than £3.6 million.²³ Smith had maintained close contacts among New York revolutionaries who safeguarded his estate, but with the Continental Army entering the city in late November, it became unsafe for Smith to remain any longer. He departed New York with Carleton in early December of 1783 aboard the *Ceres* destined for London.²⁴

Like many loyalists in exile in England, Smith’s two years in London were unpleasant. Smith’s claim for compensation for losses incurred during the war was

²⁰ William H. W. Sabine, ed., *Historical Memoirs from 26 August 1778 to 12 November 1783 of William Smith* (New York: Arno Press, 1971), 541.

²¹ Upton, *Loyal Whig*, 140–141; Chopra, *Unnatural Rebellion*, 209.

²² *DCHC*, 2:727–729.

²³ Chopra, *Unnatural Rebellion*, 210.

²⁴ Upton, *Loyal Whig*, 144.

refused and he was unable to collect his unpaid salary as councillor and chief justice.

Smith lived on credit and left his income of £60 a year from his American estate for his wife and family in New York.²⁵ Throughout his exile, however, Smith kept his ear to the ground concerning events in America and remained convinced that the experiment with independence would eventually fail for want of stable government. In mid-December of 1783, he informed one London correspondent that the “Congressional cause” had “become *odious*” among the people, and that over 7.8 million Spanish dollars borrowed by Congress remained unpaid due to the central government’s inability to levy taxes.²⁶ Smith observed that the collapse of the thirteen new American republics was imminent unless they could unite under a centralized government possessed of greater authority than Congress currently exercised. More importantly, he believed that the establishment of a stable and effective form of British constitutional government in Britain’s remaining North American colonies would soon be the “envy” of the United States.²⁷

Smith looked to the province of Quebec as the seat of a revived British empire in North America. The Quebec Act had already established the sort of strong executive that Smith viewed as central to constitutional stability and had been lacking in the old colonies during the years of the imperial crisis. If the executive established by the Quebec Act could be further balanced by a representative legislature, allowing the province to receive “the benefits and constitution pledged to Canada by the Crown, and hitherto only suspended, and wisely suspended, for the very reason now operating for the fulfillment of that promise,” Smith envisioned that Canada would become a

²⁵ *Ibid.*, 147–149.

²⁶ Smith, December 20, 1783, North Papers (microfilm), David Library of the American Revolution, Washington Crossing, Pennsylvania, BL Add. MS 61863, fols. 146–147.

²⁷ Upton, *Loyal Whig*, 142, 153.

formidable “temptation to the Americans,” attracting settlers by the thousands and “placing them under a liberal government, admitting all, whether French or English, to office, honour and popular suffrage and trust.” An essential component to Smith’s plan for the revitalization of British constitutional government in North America was the appointment of a governor entrusted with powers of “access, council and cooperation” sufficient “to quicken it into activity.”²⁸ Smith had long seen Carleton as the British imperial official best suited to fill a viceregal office in North America.²⁹ Carleton’s wrangling with the Ministry over his request for a peerage during 1784–85, however, presented a major obstacle to Smith’s plan. As long as Carleton had enemies at Whitehall, the Ministry would continue to favour the retention of Haldimand as governor of Quebec within the purview of that office’s current mandate.³⁰

III

Haldimand had been an effective wartime governor. He had maintained the status quo under the Quebec Act and kept the province secure through the latter part of the war—although both internal and external threats largely subsided during his administration. Haldimand was ill-suited to peacetime governance, however. His military-hierarchical outlook caused him to perceive of any interest contrary to those of his own and of his inner administrative circle as little more than insubordination, and he interpreted the Quebec Act more as a narrow charter of gubernatorial supremacy than as a framework

²⁸ Oscar Zeichner, ed., “William Smith’s ‘Observations on America’,” *New York History* 23, no. 3 (July 1942): 337–340.

²⁹ See, for instance, Sabine, ed., *Historical Memoirs 1778 to 1783*, 541.

³⁰ Upton, *Loyal Whig*, 151–153, 156–157.

for the further development of civil government.³¹ As the war reached its conclusion, the clamour for provincial constitutional reform increased significantly. While petitioning by the province's Anglo-merchant community for the repeal of the Quebec Act and the establishment of representative government had continued unabated through the war, Haldimand maintained that those who favoured an elected assembly did so only out of their own "republican" predispositions.³² Quebec councillor High Finlay wrote to Undersecretary of State of the Home Department Evan Nepean in late October of 1784 that there was little support among French Canadians for an elected legislature, and that, in any event, literacy was not widespread enough in the province to provide for a sufficiently informed electorate.³³ Many French Canadians did indeed oppose the establishment of a house of assembly, citing the province's financial strains and their own fears that an assembly would be dominated by the English minority as reasons against summoning a lower house with powers of taxation.³⁴ There was, however, increasing support from a new vocal minority of French Canadians who had come to favour the establishment of an assembly. Largely merchants and other urban professionals, these Canadians had enjoyed British liberties under the new regime and, as British subjects, desired "the same rights and privileges as the English."³⁵

The influx into the province of loyalists fleeing the revolutionary United States quickly added to the clamour of Canadians, both old and new, for British-style representative government. Having experienced the destruction of their liberties by the

³¹ Burt, *Old Province*, chs. 12–13, Hilda Neatby, *Quebec: The Revolutionary Age, 1760–1791* (Toronto: McClelland and Stewart, 1966), chs. 12–13.

³² *DCHC*, 2:737. For examples of petitions, see *ibid.*, 2:694–696, 742–752.

³³ *Ibid.*, 2:739–740.

³⁴ *Ibid.*, 2:754–766.

³⁵ Yvan Lamonde, *The Social History of Ideas in Quebec, 1760–1896*, trans. Phyllis Aronoff and Howard Scott (Montreal and Kingston: McGill-Queen's University Press, 2013), 17–18.

licentiousness that had overtaken their home colonies during the war, loyalists who relocated to the province of Quebec desired to create new communities predicated on English law and British constitutionalism. There had been a slow but steady trickle of loyalist refugees overland into Quebec from about 1779 onwards, totalling a little over 3,000 by late 1783. Only 2,000 or so ultimately decided to remain within the immediate limits of the old French colony of Canada. Other loyalists, mainly former inhabitants of the frontier regions of New York and Pennsylvania, but also some from Connecticut and New Jersey, settled along the upper reaches of the St. Lawrence River and around the Bay of Quinte on the northeast of Lake Ontario. While many of these early loyalist settlers were English speakers who had fought for the Crown during the war, others were ethnic or linguistic minorities, such as Dutch and Germans, who no longer felt safe in their former home colonies, which had become repressively Anglo-dominant. The roughly 6,000 settlers who fled the United States for Canada during the early postwar years settled to the north of the lower Great Lakes on lands purchased by Haldimand from the Mississauga in two large tracts: one along the north shore of Lake Ontario from Cataraqui to the Trent River in October of 1783, and the other to the west of the Niagara River at its mouth at Lake Ontario in May of the following year.³⁶

Falling within the jurisdiction of the province of Quebec according to the Quebec Act, Haldimand had set up the new loyalist townships as seigneuries, the result of which was that loyalist settlers were legally tenants rather than owners of their lands.³⁷ In April of 1785, the former Indian Superintendent John Johnson, who had led the settlement of

³⁶ Burt, *Old Province*, 2:78–80; Maya Jasanoff, *Liberty's Exiles: American Loyalists and the Revolutionary World* (New York: Alfred A. Knopf, 2011), 354; Taylor, *Divided Ground*, 129; Gerald M. Craig, *Upper Canada: The Formative Years, 1784–1841* (1963; repr., Toronto: Oxford University Press, 2013), 5.

³⁷ Craig, *Upper Canada*, 5; Burt, *Old Province*, 2:101–102.

some of the first townships, petitioned the Crown that there was “a general discontent” among loyalist settlers who had “sacrificed their estates and properties in support of Your Majesty’s laws and government” only to become “subject ... to the rigorous rules, homages and reservations of the French laws and customs, which are so different from the mild tenures to which they had ever been accustomed, and which continue to be enjoyed by the rest of Your Majesty’s subjects.” In order that loyalist settlers may enjoy the “blessings of British laws and of the British government,” while not disturbing Canadians in the practice of their own laws and customs, Johnson therefore proposed the creation of a new district encompassing all the loyalist settlements west of Point Boudet on Lake St. Francis in the St. Lawrence River to be governed by a lieutenant governor and council which would be “distinct from ... but subordinate to” the governor and council at Quebec. “The establishment of a liberal system of tenure, law, and government in this new settlement,” Johnson wrote, would serve to “counteract” the United States by drawing those Americans whose “ancient predilection in favour of the British government [and] their dislike of the republican government they now live under ... would be strongly induced to remove to this new colony.”³⁸

Haldimand, on the other hand, believed that the loyalists had “suffered too much by committees and houses of assembly, to have retained any prepossession in favour of that mode of government,” and he maintained “that they have no reluctance to live under the constitution established by law for this country.”³⁹ Increasingly out of touch with the province’s changing political climate and having learned of the Ministry’s plans to replace him as governor, Haldimand tendered his resignation in the summer of 1784 and

³⁸ *DCHC*, 2:773–776.

³⁹ *Ibid.*, 2:738.

was granted leave from Canada that fall.⁴⁰ In the meantime, Haldimand's interim successor, Henry Hamilton, tried to keep the province's petitioners at bay until a "provision by law [could] be made to conciliate these people, and if possible prevent complaint by anticipating their grievances." Hamilton also expressed concern that among those British inhabitants in Quebec who preferred the continuation of Canada's "ancient government," there existed a faction of individuals who were convinced that only "a military system along with an adherence to the maxims of a military government can retain the people of this colony in their allegiance." In contrast to this extremist faction, Hamilton made it clear to the Ministry that "Canada is no longer what it was at the conquest," and he believed that it was time "that the Canadians should participate with the old subjects in all the advantages of the English constitution."⁴¹

In London, Smith perused many of the Canadian and loyalist petitions as he worked on a plan for the constitutional reform of the province of Quebec. While Smith believed that the province should be granted an assembly, he did not see the wholesale repeal of the Quebec Act as necessary to do so. Rather, Smith deduced that only those articles relating to the legislative council and its powers ought to be repealed and replaced by new legislation. More importantly, Smith maintained that the introduction of representative institutions into the province should be counterbalanced by a strengthening of executive powers to include those of the royal prerogative in order to allow for a more efficient government that did not depend upon constant recourse to

⁴⁰ Burt, *Old Province*, 2:123–124; Neatby, *Quebec*, 192.

⁴¹ *DCHC*, 2:778–779.

Whitehall.⁴² In September of 1785, Smith composed an outline of the “Powers to the Governor General,” which included the concurrent holding of the office of commander-in-chief of British North America, the power of making treaties, the sole “authority for the management of Indian affairs,” the regulation of inland commerce, the exclusive power to dispose of Crown lands, and the requirement that the governor general’s approbation be “necessary in any great branch of the executive department” of all British North American provinces, as well as he should be consulted “upon the more important points of legislation” of each.⁴³ Smith encouraged Carleton to settle his grievances with the Ministry so that the two of them could return to Canada to implement his plan for reform, which Carleton finally did, accepting the office of governor-in-chief of Quebec, Nova Scotia, and New Brunswick on April 26, 1786. Smith was appointed chief justice of Quebec in early July, and the two sailed for Canada in late August.⁴⁴

Carleton arrived at Quebec in mid-October of 1786 with an extensive set of instructions listed among his personal papers. Generally, Carleton was to assess “the real state of the opinion of the people in general, with respect to the applications that have been made to alter the present constitution of Quebec, and whether the old subjects wish any and what alteration.” Carleton was also “to give opinion whether there should be any division of the province and where the division is to be made.”⁴⁵ Among the more specific features of his instructions, Carleton’s mandate as governor-in-chief fell short of the powers Smith had envisioned for a governor general. Carleton was indeed governor-

⁴² Burt, *Old Province*, 2:139–140; L. F. S. Upton, ed., *The Diary and Selected Papers of Chief Justice William Smith, 1784–1793*, 2 vols. (Toronto: Champlain Society, 1963–65), 1:xxxv–xxxvi; Upton, *Loyal Whig*, 156.

⁴³ Upton ed., *Diary*, 2:189–190.

⁴⁴ Upton, *Loyal Whig*, 159–161.

⁴⁵ *DCHC*, 2:812.

in-chief of Quebec, Nova Scotia, and New Brunswick, with the governors of the latter two provinces being reduced on paper to lieutenant governors, and he was given the latitude to relocate to any province to govern in person if he saw fit.⁴⁶ Carleton never assumed the government of either of the Maritime provinces, however, and the lieutenant governors of both continued to act as full governors, carrying on their own independent correspondence with Whitehall.⁴⁷ Carleton's new administration remained focused on the province of Quebec, and was mostly consumed by the question of whether "it may be necessary in any instance, to depart from the present established system of government as settled by the [Quebec Act]."⁴⁸

While Carleton had acted as the guarantor of the rights of French Canadians during his previous administration as governor of Quebec, in his capacity as commander-in-chief at the conclusion of the war, he had been the primary advocate for loyalists in their dealings with the metropolitan government. He now found himself in the difficult position of having to delicately balance his obligations to both groups. For starters, Carleton believed that "all burdens on land which serve to excite animosities against the Crown should be taken off." Carleton advised the cabinet in 1788 that land grants made to loyalist settlers *en seigneurie* be converted to free and common socage. Any precedent for the conversion of seigneurial title to freehold, however, was sure to be opposed by the old Canadian elite on the basis that it would erode the social responsibilities inherent in the property relations between siegneurs and tenants. Stalemate within the Quebec council on the issue of granting future lands in free and common socage ensured that any policy on the issue would have to come from

⁴⁶ See *ibid.*, 2:810–811, 813–814.

⁴⁷ Burt, *Old Province*, 144.

⁴⁸ *DCHC*, 2:814.

London.⁴⁹ Carleton had always been of the opinion that the Quebec Act was “no more than the foundation of future establishments.”⁵⁰ Now that the time had come to determine those future establishments, however, Carleton found himself “at a loss for any plan likely to give satisfaction, to a people so circumstanced as we are at present.” The arrival of loyalist settlers certainly added “a strong inclination” toward the establishment of an assembly, “so that it is more than probable the desire ... will annually increase.” Yet there was such “a diversity of opinions ... concerning the laws and a house of assembly,” and there existed no easy division of the “English party” between the upper and lower parts of the province so as to make a simple partition an all-encompassing solution.⁵¹ “An early decision of the business of Canada at home is much to be wished,” Carleton wrote to the Home Secretary Thomas Townshend, Baron Sydney, late in the summer of 1788.⁵²

Questions regarding the administration of Canada that had been neglected by a series of British governments during and immediately following the American war were, by the late 1780s, gaining the attention of the British government. Sydney informed Carleton that the topic of Canada had been before Parliament in May, and that it was “in contemplation” by the Ministry “to propose to Parliament a division of the province” at the ancient limits of the French seigneuries of Canada, beyond which point loyalists’ requests for English laws and land tenure and British government would be granted.⁵³ Carleton replied that a partition was “by no means advisable at present,” as “it appears to

⁴⁹ Craig, *Upper Canada*, 9–11; Burt, *Old Province*, 2:108, 179–182; Upton, *Loyal Whig*, 188–189, 197–198.

⁵⁰ *DCHC*, 2:661.

⁵¹ *Ibid.*, 2:946–947.

⁵² Quoted in Burt, *Old Province*, 2:194.

⁵³ *DCHC*, 2:954–957.

me, that the western settlements are as yet unprepared for any organization, superior to that of a county.” Neither did Carleton believe it expedient that the upper part of the province be granted representative institutions due to “the inconveniencies and charges of assembling” representatives from districts so distant and isolated from each other. “Should a division of the province ... be determined by the wisdom of His Majesty’s councils,” however, Carleton saw “no reason, why the inhabitants of those western districts should not have an assembly, as soon as it may be organized without detriment to their private affairs, nor against their having so much of the English system of laws, as may suit their local situation, and condition.” In the event of such a decision, Carleton suggested a partition line running from the northwest corner of Lake St. Francis in the St. Lawrence River, northwest and north around the seigneuries of Longueuil and Vaudreuil to the Ottawa River, and then following the Ottawa to Lake Témiscaming, from whence it would skirt the southern boundary of the Hudson’s Bay Company grant to include “all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.”⁵⁴ Carleton’s non-committal report allowed Sydney to stall the issue until he resigned in June of 1789 and was replaced by William Grenville the following month.⁵⁵

Grenville’s interest in Canada sprang from his concern with the problem of the province’s internal revenue. Without an assembly to levy taxes, Quebec was costing the home government roughly £100,000 a year, and Parliament could formulate no law to generate an internal revenue in the province owing to the Taxation of the Colonies Act passed in 1778 as a belated response to the colonial taxation crisis of the 1760s. As such,

⁵⁴ *Ibid.*, 2:959–960.

⁵⁵ Burt, *Old Province*, 2:197.

Grenville perceived of Quebec's need for an assembly as imperative, as the limited funds collected by the Quebec Revenue Act, which left in place those former French duties on imported wine and spirits, covered only a fraction of the provincial government's operating costs. After pouring over a mass of materials on Canada during the prorogation of Parliament beginning in August of 1789, Grenville drafted a detailed analysis of the Canadian constitution, which was sent off for Carleton's assessment in late October.⁵⁶ Grenville's report was exhaustive, summarizing the arguments for and against reform in every area of the province's administration, from government and finance to law and land tenure. Concerning Canadians' apprehensions of an assembly with powers of taxation, Grenville surmised that they would most assuredly prefer to be taxed by a body elected from among themselves rather than one appointed for them by Whitehall. Given that the erection of a single assembly for the entire province would "give a considerable, and immediate preponderance to" either the French majority or the English minority depending on that body's method of composition, Grenville concluded that "the natural mode of removing this objection" was "the separation of the province into two districts, having distinct legislatures, in which, the separate interest of the old, and new subjects might preponderate, according to the respective portion of population, and of wealth." A partition of Quebec into two new provinces, Upper and Lower Canada, would, Grenville wrote, "perhaps enable the government of this country to gratify the wishes of all descriptions of persons in Canada, and to provide for the essential object of taxation above stated."⁵⁷

Grenville saw the division of Canada as essential to any program of provincial

⁵⁶ Craig, *Upper Canada*, 13–14; Burt, *Old Province*, 2:197, 200.

⁵⁷ *DCHC*, 2:974–976.

reform, as “the influx of British settlers, and the rapid progress of the British commerce” in the province would only continue to increase the “weight and influence” of those very interests which were most “dissatisfied with the present form of government.” It was therefore good “policy to make these concessions at a time when they may be received as a matter of favour, and when it is in our power to regulate and direct the manner of applying them, rather than to wait until they shall be extorted from us by a necessity which shall neither leave us any discretion in the form, nor any merit in the substance of what we give.”⁵⁸

In order to counterbalance the introduction of a democratic element into the constitutions of the two new provinces, moreover, Grenville proposed the establishment of reformed legislative councils. Whereas the legislative and executive councils of the old American colonies had essentially been “one and the same body” of members largely beholden to their assemblies, and whereas the legislative council of the Quebec Act was for all intents and purposes a tool of the governor, Grenville envisioned the establishment of independent upper houses that would “operate as a check, both on the misconduct of governors, and on the democratical spirit” of the assemblies. Grenville thus outlined legislative councils composed of members appointed for life and receiving no salary who were therefore independent of their province’s legislative assembly and not reliant upon public monies for the maintenance of their offices. The legislative councils would also be “constitutionally distinct” from the executive councils, which would be made up of a mixture of members from both houses at the governor’s pleasure as a sort of provincial privy council. Grenville sent a draft bill for the division of the province for Carleton’s recommendation, outlining his plan for the establishment “of the

⁵⁸ *Ibid.*, 2:969, 977.

legislative council, and house of assembly of such provinces respectively, to make laws, for the peace, welfare, and good government thereof.”⁵⁹

Heavy weather delayed both Carleton’s reception of Grenville’s dispatches and the governor’s reply, which although written in early February of 1791, did not reach London until the end of April, too late in the parliamentary session for a bill to appear before the House.⁶⁰ Carleton maintained the partition line he had described in his previous correspondence, and he insisted that the bill vaguely word the southwest boundaries of Upper Canada so as not to concede the surrender of the interior posts while at the same time avoiding giving “umbrage to the United States.” Carleton agreed that legislative councillors should be “men of property ... talents, integrity, and a firm attachment to the unity of the empire,” but he suggested that the Crown avoid distinguishing such men with any hereditary marks of honour, for “the fluctuating state of property in these provinces” would “expose all hereditary honours to fall into disregard.” Finally, Carleton reiterated his recommendation for the conversion of Upper Canadian land tenures into free and common socage.⁶¹

Smith also weighed in on Grenville’s bill, finding the constitutional reforms contained therein to be significant improvements over “the old model of our colonial governments; for even those called royal provinces, to distinguish them from the proprietary and chartered republics of the Stuart kings, had essential faults, and the same general tendency.” Smith, however, found Grenville’s plan lacking in “the expected establishment to put what remains to Great Britain of her ancient dominions in North America under one general direction, for the united interest and safety of every branch

⁵⁹ *Ibid.*, 2:978, 992–993.

⁶⁰ Burt, *Old Province*, 2:200–201.

⁶¹ *DCHC*, 2:1002–1004.

of the empire.” Although he thought that Grenville’s bill “will most assuredly lay a foundation for two spacious, populous and flourishing provinces,” Smith believed that that such prosperity may very well prove “to be their ruin,” as had been the case in the old colonies, which had “outgrown” their infant governments and were left unchecked by any centralized colonial authority. Smith therefore submitted to be forwarded to Grenville a plan for the appointment of a governor general and the establishment of a legislative council and general assembly “for all His Majesty’s dominions” in North America.⁶²

Grenville gave little thought to Carleton and Smith’s recommendations, however. Although he agreed that the issue of the boundary of Upper Canada with the United States posed some “difficulty” and hinted that the question would perhaps “be fixed by His Majesty,” Grenville avoided the inclusion of any article to alter the commercial law of Canada, long a major source of discontent among Anglophone merchants, and he hesitated to take action on the conversion of seigneurial tenure into free and common socage. As for Smith’s plan for “the formation of a general legislative government for all the king’s provinces in America,” Grenville thought “it liable to considerable objection.”⁶³ The bill that Pitt introduced into the Commons on Grenville’s behalf in early March of 1791, therefore, owed little to Carleton and even less to Smith. Neither was the bill much improved by its passage through Parliament, as the debates which began in early April quickly veered off into a showdown between Burke and Fox on the revolution in France, with Fox questioning the aristocratic character of the proposed Canadian upper houses and Burke retorting with accusations of republicanism.

⁶² *Ibid.*, 2:1018–1024.

⁶³ *Ibid.*, 2:1025–1027.

Nevertheless, the bill easily made it to the Lords in late May, where its author, the new Baron Grenville, bolstered its passage. The Constitutional Act, or Canada Act as its contemporaries colloquially called it, was given royal assent on June 19, 1791.⁶⁴

The Constitutional Act expressed the king's "intention" to divide the province of Quebec into Upper and Lower Canada but did not, however, indicate either the partition line or the boundaries of the new upper province. The Act outlined the establishment of an elected assembly in each province and provided for the appointment of a legislative council for each by the governor in the case of Lower Canada and the lieutenant governor in Upper Canada. Although the Act allowed for the conferment of hereditary title upon councillors at the Crown's pleasure, this mechanism would ultimately go unused. The governor or lieutenant governor of each province had full authority to give or withhold royal assent to any law passed by their assembly or legislative council, or else to send it home for review by the king-in-council. "All laws, statutes, and ordinances" currently in place were to remain so "as if this Act had not been made, and as if the said province of Quebec had not been divided," except for those laws or statutes that were expressly repealed or altered by the Act itself. The Constitutional Act also allowed for Upper Canadian landholders to apply for new grants converting their holdings to free and common socage and stipulated that all future land grants in the province would be granted in the same. Finally, the Act reiterated the Taxation of the Colonies Act's injunction against parliamentary taxation of the new provinces but confirmed Parliament's right to impose duties for the regulation of commerce between them and any other British dominion or foreign state, as well as between the two

⁶⁴ Burt, *Old Province*, 2:203–204; Neatby, *Quebec*, 260; Craig, *Upper Canada*, 15–17, 278n35; Jasanoff, *Liberty's Exiles*, 397n76.

provinces themselves, provided “that the net produce of all [such] duties ... be applied to and for the use of each of the said provinces respectively.” The date of commencement for the Act was to be subject to an order-in-council and would be no later than December 31, 1791. The issuing of the first writs of summons for elections in each province was to be no later than the same date of the following year.⁶⁵ The formal division of the province of Quebec was finally made by an order-in-council of August 24, 1791, and Grenville’s successor as Home Secretary, Henry Dundas, dispatched a copy of the Constitutional Act to Carleton in mid-September.⁶⁶

The Constitutional Act of 1791 shaped the Canadas into a model of decentralized imperial representative government that was a significant counterpoint to the methodical centralization of power in the office of the governor general that was taking place in British India during the same period. At the same time that the king-in-council was taking on a greater role in Indian government, the Ministry sought to relieve itself of the financial burden of the administration of Canada. While the Quebec Act laid the foundation for the creation of a centralized British North American military-executive and provided for the preservation of French legal and governmental customs in Canada, the influx of loyalist refugees into the province of Quebec following the Revolutionary War necessitated the introduction of English law and land tenure in a new, Anglo-dominant Upper Canada, a process that impelled the metropolitan government toward granting French Canadians representative government within the purview of the laws of Canada the Lower province. The governor of Quebec had indeed been elevated to the office of governor-in-chief of British North America; this new office, however, lacked

⁶⁵ *DCHC*, 2:1031–1051.

⁶⁶ Burt, *Old Province*, 2:205; *DCHC*, 2:1028–1030.

the full prerogative powers envisioned by Smith and Carleton and was checked by a new, complex form of British colonial bicameralism. Although nominally the governor-in-chief was to exercise prerogative powers as far as it related to Crown–Indigenous diplomacy, the function of Indigenous relations in the old upper country was delegated to the lieutenant governor of Upper Canada, and the full weight of governor-in-chief’s military office would go largely unused until the outbreak of war with the United States in 1812.

In combination with Carleton’s 1786 commission as governor-in-chief and the Crown’s partition of the Quebec into Upper and Lower Canada in 1791, the Constitutional Act created the basis for the development of a supranational Canadian state made up of component settler provinces and Indigenous territories all existing within an integrated sub-imperial dominion presided over by Onontio from his seat at Quebec. While Canada under the Quebec Act had existed on a parallel to the Crown that was distinct from that of Britain’s old American settler colonies, the Constitutional Act amalgamated British North American imperial governance by partitioning the province of Quebec into two separate provinces of constitutional equivalency within which French and English subjects could each enjoy different laws, rights, and customs. This settler binationalism combined with the existence of autonomous Indigenous populations within the Canadas to form a sort of overlap of the constitutional features of both the “old” Anglo-settler empire and the “new” empire of non-British subjects and non-European protected peoples. But whereas Indigenous peoples’ relationship with the Crown under the Quebec Act had circumvented settler institutions and ran directly through Onontio, the Constitutional Act’s prioritization of settler constitutional forms and its creation of an additional subordinate layer of executive office in the lieutenant

governor of Upper Canada distanced upper country Indigenous groups from their traditional source of royal protection at Quebec and created the conditions for the eventual absorption of Indigenous relations by Upper Canadian settler institutions in the nineteenth century.

India's "Ancient Constitution" and the Permanent Settlement of 1793

During the 1780s and early '90s, British imperial constitutional forms in India began to diverge significantly from those in North America. Following the Seven Years' War, imperial governance in both theatres of empire reflected the heavily inherited nature of British sovereignty in the conquered dominions of Canada and Bengal. The exigencies of the Revolutionary War and the unanticipated realities of that war's conclusion substantially altered British imperial constitutionalism. In North America the migrations of loyalist settler populations into the province of Quebec created new demands for representative government, resulting in the partition of the province and the introduction of intricately balanced settler constitutional forms that threatened to obscure the role of the governor-in-chief and with it the Crown's inherited responsibilities toward its Indigenous allies. In India, meanwhile, the absence of any major settler populations, the complex nature of Indian diplomacy, and the ongoing state of frontier warfare on the peripheries of British possessions facilitated the creation of a centralized military-executive office that was invested with royal authority. Although the office of the governor general in India owed much to both French precedent and Indian traditions of strong regional and imperial executives, by the turn of the 1790s, the office had expanded greatly from that of its earlier incarnation as it outstripped the checks of its council and took on novel powers that allowed it to reach deeper into Indian life.

With its statutory origins in the Regulating Act of 1773, the office of the governor general in India was conceived as a centralized, superintending power meant to direct British military and diplomatic policy across the Company's three disparate

presidencies. That the governor general was based at Fort William in Bengal also denoted that province's increased importance as the centre of British India following the transfer of the *diwani* to the EIC by the Treaty of Allahabad in 1765. Yet from its very inception, the office of the governor general was understood by its first occupant, Warren Hastings, to represent the Crown in India as an instrument of prerogative power. Hastings was sensitive to the inherited nature of British authority in India, and his own personal interest in Indian history and culture aligned with his mandate to strengthen British administration in India while maintaining existing Indian legal customs and traditions, and to provide continuity with Indian political institutions. Hastings and his contemporaries' understanding of Indian law, history, and government drew on the scholarship of Company employees and British philologists who were in the ongoing process of acquiring formative knowledge of Indian languages and texts. Concepts of Asiatic despotism provided a significant interpretive lens for British imperial thinkers and policymakers, however, and despite earlier ideological framings of Company expansion as a check against regional despotisms, the idea that despotism was the natural governing form among Indian peoples and should therefore be reflected in British imperial institutions in India became commonplace.

British imperial governance in India was a despotism in the sense that it was hierarchically organized, functionally autocratic, and rested on the inheritance of supposedly despotic Indian legal and constitutional traditions. At the same time, however, it was "a despotism of law," wherein Indian subjects could access English law in their commercial dealings with the Company at Calcutta, and under which existed "a dual system of Hindu and Muslim civil law, and Muslim criminal law, administered by a

network of [British] state courts ... modeled on the summary forms of Mughal justice.”¹

This dual system of law was a creation of the royal prerogative via a series of legal reforms by the governor general in the 1770s and '80s, and reflected both the Crown's inherited responsibilities for the maintenance of Indian forms of law in Britain's acquired dominions and its role as the mediator of different forms of local and regional custom as the emerging successor to the imperial sovereignty of the Mughals. The “despotism” of British royal office was also seen as a necessary means of curbing private corruption and Company abuses of power in India and further standardizing governance across the presidencies. To those ends, the Board of Control increased the power of the governor general to override the council, have greater authority over military affairs and diplomacy, and to improve the administration of the Company's land revenues. The latter point became a special area of focus for Governor General Charles Cornwallis, who sought to reform the system of land revenue assessments in Bengal and thereby stabilize Company revenue collections with an eye to improving the province's agricultural infrastructure. In attempting to reform the province's land revenue system according to the precepts of Bengal's “ancient constitution” as a Mughal dominion, however, Cornwallis's Permanent Settlement of 1793 relied on problematic interpretations of Indian history that equated Mughal feudal institutions with those of pre-modern England, marking a transition toward orientalist constructions of Indian history and government according to shifting British imperial objectives.

¹ Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 2000); Robert Travers, “Contested Despotism: Problems of Liberty in British India,” in *Exclusionary Empire: English Liberty Overseas, 1600–1900*, ed. Jack P. Greene (Cambridge: Cambridge University Press, 2010), 204.

I

The expansion of Crown authority over British dominions in India, both through the office of the governor general in Bengal and through the ministerial Board of Control in Britain, was legitimated by exponents of the policies of the administrations of North and Pitt by appeals to India's "ancient constitution" by those shaping such policies during the administrations of North and Pitt. Whereas British expansion in India was rhetorically framed as a necessary check on Asiatic despotism,² when questions arose regarding the means by which British dominion in South Asia could be "perpetually" established, despotism as a governmental form was increasingly invoked as a viable and appropriate solution to the problem of Britain's acquired governance of long-established Indian polities. Heavily influenced by Montesquieuian notions of the climatic genesis of the animating principles of various forms of government, many Britons held that English law could not be easily applied to the "dramatically different" climates and corresponding "social environments" of South Asia. Despotism, they believed, was the natural and "organic product of [hot] 'Asiatic' climates." Although offensive to the constitutions of the peoples of northwestern Europe, Asiatic despotism was possessed of its own systemic rationale that was set in motion, according to Montesquieu, "when circumstances" arising "from the climate, the religion, and the situation of the genius of

² See Robert Travers, "Ideology and British Expansion in Bengal, 1757–72," *Journal of Imperial and Commonwealth History* 33, no. 1 (January 2005): 8–9. The concept of Asiatic despotism has existed in Western thought since antiquity. Aristotle argued that Asians lacked *thymos*, or "spiritedness," which made Europeans capable of self-rule, the absence of which among Asians made them fit only to be "ruled and enslaved." Carnes Lord, trans., *Aristotle's Politics*, 2nd ed. (Chicago: University of Chicago Press, 2013), 199. During the late eighteenth century, despotism as a core feature of Asian societies became central to emerging European concepts of orientalism, defined in a nineteenth- and twentieth-century context by Edward W. Said, *Orientalism* (New York: Vintage, 1979), 2–3, as both an imaginative and academic "style of thought based upon an ontological and epistemological distinction made between" East and West, and as a Western discourse of power "for dominating, restructuring, and having authority over" the East.

the people, force it to follow some order and to suffer some rule.” Despotism, therefore, came to be embraced by British imperial thinkers during roughly the last quarter of the eighteenth century as a “cultural necessity” peculiar to South Asian governance, the “worst excesses” of which could be tempered by “British supervision or even English legal remedy.”³

The loose consensus that some degree of despotism should be reflected in British imperial governance in India was arrived at by way of Britons’ keen interest in the historical constitutions of the subcontinent. Among observers of Indian government were many “British enthusiasts for the ancient Mughal constitution,” who lauded the religious tolerance of the early Mughals and looked to Akbar’s imperial system of layered sovereignty as exemplary of the successful integration of a great complexity of cultural, ethnic, and religious subgroups into a composite imperial polity. Despots the Mughals may have been, but they were “regulated” despots who were “limited by the traditions of Islamic law [legally flexible Sufism in particular] and by the need to tolerate and incorporate Hindu property holders” into the imperial elite. There was no question that the Mughals were “legitimate sovereigns,” and many observers agreed with Company servant Luke Scrafton that prior to about the 1730s, “there was scarce a better administered government in the world,” “nor [was] there a part of the world,

³ Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal* (Cambridge: Cambridge University Press, 2008), 49–50; Montesquieu, *The Spirit of the Laws*, trans. and ed. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (1989; repr., Cambridge: Cambridge University Press, 2011), 119. In his translation of a Mughal era Persian-language history of India, Company army officer Alexander Dow, for instance, insisted that “the despotic form of government” might not be “so terrible in its nature, as men born in free countries are apt to imagine,” as “the uncommon abilities of most of the [Mughal] princes, with the mild and humane character of all, rendered Hindostan the most flourishing empire in the world for two complete centuries.” Alexander Dow, trans., *The History of Hindostan*, 3rd ed., 3 vols. (London, 1792), 3:xii.

where arts and agriculture [had] been more cultivated, of which the vast plenty and variety of manufactories, and rich merchants, were proofs sufficient.”⁴ For all the qualities of the early Mughals, however, European observers believed that the later emperors had been corrupted by the immense wealth and splendour of their empire. Overtaken by depravity and self-indulgence, the narrative went, fear rather than loyalty became the binding element of Mughal political culture, typifying the Montesquieuan hypothesis that a despotic state is usually ruined “by internal vice if accidental causes do not prevent its principle from becoming corrupt,” for “once the principles of the government are corrupted,” even “the best laws become bad and turn against the state.”⁵

It was this internal political corruption which, in British eyes, had resulted in the imperial fragmentation and regionalization movements of the early eighteenth century. To Britons for whom the Mughal empire signified the high-water mark of integrated empire in India, the regional successors to the Mughals (who were often also threats to the EIC) were viewed as illegitimate and tyrannical usurpers. “In this view, the worst excesses of despotism followed only from the decline of the centralized power of the emperor.”⁶ Many proponents of Company expansion advanced this thesis of the illegitimacy of late-Mughal regional successor states as justification for British encroachments on Indian regional polities, especially in Bengal, where the *nawab*’s repeated renegeing on the Company’s imperial *firman* appeared as arbitrary and intended to undermine the legal basis of the Company’s presence in the province. By impinging

⁴ Travers, *Ideology and Empire*, 26; Travers, “Ideology and Expansion,” 14, 25n55; Luke Scafton, *Reflections on the Government of Indostan, with a Short Sketch of the History of Bengal*, 2nd ed. (London, 1770), 25–26.

⁵ Travers, *Ideology and Empire*, 51; Montesquieu, *Spirit of the Laws*, 119.

⁶ Travers, *Ideology and Expansion*, 50, 63–64; Travers, “Ideology and Expansion,” 14. For contemporary examples of this line of thinking, see William Watts, *Memoirs of the Revolution in Bengal* (London, 1760), 9; and Dow, trans., *History*, 3:xliv–xlvi.

on the fundamental English liberty of freedom of commerce, the *nawab*'s obstruction of the private trade of Company servants led Britons to arrive at the conclusion that it was necessary that the *nawab* be stripped of his functional powers in order to preserve the Company's legitimate privileges derived from the emperor. In order "to remain a free people in a land of despotism, it seemed, it was necessary to become conquerors."⁷

Intimately linked to the notion that the Company's acquisition of political power in Bengal was necessary to protect British liberties from their erosion at the hands of the *nawab* was the idea "that Bengal had been best governed under the old constitution of the Mughals."⁸ Whatever the perceived failings of the Mughal emperors personally, the Mughal imperial constitution demonstrated "remarkable endurance" as a "cultural system," persisting long after the waning of the emperor's real power.⁹ As a result, Hastings made it a key feature of his administration to restore, as far as reasonably possible, "the ancient constitution of the province" to its "original principles."¹⁰ Councillor Philip Francis agreed. "To recover the country, we ought to revert, as far as possible, to its ancient political system," he wrote to North in 1775.¹¹ When the Company finally resolved to "stand forth as *diwan*, and by the agency of their own servants to take upon themselves the entire care and administration of the revenues" of Bengal, thereby becoming the province's chief administrative authority, Company officials came to "regard their government as a form of inheritance from the Mughal

⁷ Travers, "Ideology and Expansion," 13.

⁸ *Ibid.*, 15.

⁹ Travers, *Ideology and Empire*, 19; Richard M. Eaton, *The Rise of Islam and the Bengal Frontier, 1204–1760* (Berkeley: University of California Press, 1993), 311–12.

¹⁰ Hastings to Lord Mansfield, March 21, 1774, in G. R. Gleig, ed., *Memoirs of the Life of Warren Hastings*, 3 vols. (London, 1841), 1:401.

¹¹ Quoted in Sophia Weitzman, *Warren Hastings and Philip Francis* (Manchester: Manchester University Press, 1929), 242.

empire.”¹²

With the Company “standing forth” as *diwan* and positioning itself as the inheritor of Mughal imperial sovereignty in northern India, Hastings moved to shore up British authority by abandoning Company practices of power sharing with regional Indian rulers, informing EIC chairman George Colebrooke in March of 1773 that “every intermediate power is removed, and the sovereignty of this country wholly and absolutely vested in the Company.”¹³ The expansion of Company sovereignty in northern India necessarily came at the expense of the chief intermediary power in the region, the emperor himself, to whom Hastings had stopped paying tribute in late 1772.¹⁴ “The sovereign of Great Britain is now an Asiatic potentate,” EIC employee William Bolts wrote that same year.¹⁵ Hastings, however, did not envision the Company’s new role in India, replete with the authority of the British Crown, to be one of a regional *nawab*. As the pre-eminent military power in northern India and the inheritor of the emperor’s king-making power, Hastings envisioned the Company as occupying the top strata of imperial authority in northern India, and it was his intention that the emerging British imperial regime would be reflective of an older, “benevolent era of ordered Mughal sovereignty.”¹⁶

Central to the Mughal system of ordered sovereignty, and the defining feature of the emperor’s status as *padshah* (“great king”) and *shahenshah* (“king of kings”), was

¹² President and Council at Fort William, August 28, 1771, in Bisheshwar Prasad, ed., *Fort William–India House Correspondence*, vol. 6, 1770–1772 (Delhi: National Archives of India, 1960), 123; Travers, “Ideology and Expansion,” 20.

¹³ Hastings to Colebrooke, March 7, 1773, Gleig, ed., *Memoirs*, 1:293.

¹⁴ Travers, “Ideology and Expansion,” 17–18; M. E. Monckton Jones, *Warren Hastings in Bengal, 1772–1774* (Oxford: Clarendon Press, 1918), 168–169.

¹⁵ William Bolts, *Considerations on Indian Affairs; Particularly Respecting the Present State of Bengal and its Dependencies*, 3 vols. (London, 1772), 1:221.

¹⁶ Travers, “Ideology and Expansion,” 20.

the Mughal practice of leaving “Indian princes in possession of their respective sovereignties,” so that the Mughal empire appeared to British writers as composed of several layers of “distinct sovereignties.”¹⁷ This complex system of layered sovereignty was perhaps most easily discerned in Mughal legal practice, whereby “no innovations” were made to local laws or legal customs when the Mughals conquered a non-Muslim jurisdiction, “so that the old Gentoo [Hindu] laws still prevailed,” as Scrafton observed.¹⁸ Hastings saw the Crown-regulated Company as the steward of India’s ancient constitution and was committed to its preservation via the continuation of the Mughal practice of non-interference in local legal custom. While Company army officer Alexander Dow argued that for British interests to best “secure their conquests” in India, “the laws of England, in so far as they do not oppose prejudices and usages which cannot be relinquished by the natives, should prevail,”¹⁹ Hastings was of a different mind. Hastings believed that the British were “bound both by justice and policy to preserve” the “welfare” of the autochthonous populations of Indian peoples residing within British jurisdictions. He was therefore in favour of a sort of hybrid legal system, whereby “the ruling principle in our government” would be “to make their laws sit as light on them as possible, and to share with them the privileges of our own constitution, where they are capable of partaking of them consistently with their other rights and the welfare of the state.” Whereas Dow would have made English law the bedrock of British government in India, Hastings recognized the utility of leaving Hindu and Muslim laws in place at the local level and applying English legal and constitutional principles only to

¹⁷ Robert Orme, *A History of the Military Transactions of the British in Indostan* (London, 1763), 6, 24.

¹⁸ Scrafton, *Reflections*, 24. See also Travers, *Ideology and Empire*, 23.

¹⁹ Dow, trans., *History*, 3:lxxxii, ci.

the higher echelons of British administration in India. In this, Hastings was working within the Mughal tradition of legal devolution, and he intended to govern “according to the legal forms of Mogul government.”²⁰

In order to “recur to the original principles” of what British thinkers understood to be “the constitutional terms of judicature already established in this province,”²¹ Hastings implemented a program of sweeping legal reforms in Bengal beginning in May of 1772. Hastings’ reforms introduced two significant innovations into the British legal system in Bengal. First, he introduced the English legal tradition of distinguishing between civil law and criminal law. Second, he relocated all central law courts from the *nawab*’s capital at Murshidabad to the British capital at Calcutta. In place of the jurisdictionally overlapping courts of the *nawab*, Hastings’ plan created two courts of appeal at Calcutta, one civil and one criminal.²² Otherwise, “in all suits regarding inheritance, marriage, case law and all other religious usages or institutions, the laws of the Koran with respect to Mahometans, and those of the Shaster with respect to Gentoos [Hindus] shall be invariably adhered to.”²³ In an effort to promote British knowledge of the principles of Hindu and Muslim law, Hastings also commissioned the compilation of a series of Hindu law codes to be translated into English, and he made significant efforts to revive the circulation of the Hanafi Sunni legal texts that had enjoyed widespread usage under the later Mughals.²⁴

²⁰ Quoted in Travers, *Ideology and Empire*, 105–106.

²¹ Copy of a Letter from the Committee of Circuit to the Council at Fort William, August 15, 1772, in *Reports from Committees of the House of Commons*, vol. 4, *East Indies, 1772, 1773* (London, 1804), 346.

²² Travers, *Ideology and Empire*, 117–118.

²³ *Reports from Committees of the House of Commons*, 350.

²⁴ Travers, *Ideology and Empire*, 124–125. For the English-language Hindu law code commissioned by Hastings, see Nathaniel Brassy Halhed, trans., *A Code of Gentoow Laws, or,*

Writing to Lord Chief Justice the Earl of Mansfield in early 1774, Hastings exalted both the antiquity of Hindu law and the judiciousness of the Mughals in allowing non-Muslim subjects the retention of their customs. Hindus, Hastings wrote,

have been in possession of laws, which have continued unchanged, from the remotest antiquity. The professors [Brahmins] of these laws, who are spread over the whole empire of Hindostan, speak the same language, which is unknown to the rest of the people, and receive public endowments and benefaction from every state and people, besides a degree of personal respect amounting almost to idolatry, in return for the benefits which are supposed to be derived from their studies. The consequence of these professors has suffered little diminution from the introduction of the Mahomedan government, which has generally left their privileges untouched, and suffered the people to remain in quiet possession of the institutes which time and religion had rendered familiar to their understandings and sacred to their affections.

“With respect to the Mahometan law,” Hastings added, “which is the guide of at least one fourth of the natives of this province, your Lordship need not be told that this is as comprehensive, and as well defined, as that of most states in Europe.” Hastings’ appeals to the virtues inherent in each system underlined his defence of his own system of restorative legal reform against contrary misconceptions that Indian peoples “were governed by no other principle of justice than the arbitrary wills, or unrestricted judgements, of their temporary rulers.” “You will not deem it necessary,” Hastings wrote to Mansfield, “that I should urge any argument in defence of [Indians’] right to possess those benefits [of their own laws] under a British and Christian administration which the bigotry of the Mahomedan government has never denied them.” Simply put,

Ordinations of the Pundits, from a Persian Translation, made from the Original, written in the Shanscrit Language (London, 1776). Halhed had learned Persian at Oxford from his close associate, the philologist and founder of the Asiatic Society of Bengal, William Jones. Halhed was also influential in publishing *A Grammar of the Bengal Language* (Hoogly, 1778), with the typeface for Bengali designed under the supervision of Charles Wilkins, who undertook the first ever translation of Sanskrit directly into English during his work on the *Bhagavad Gita* under Hastings’ patronage in the 1780s.

“it would be a grievance to deprive the people of the protection of their own laws.”²⁵

Hastings worked to draw parallels of the British as “tolerant” and “enlightened” conquerors of India similar to the Mughals. Yet Hastings and those around him held a simplified understanding of what the legal constitution of India looked like prior to the advent of the British, the Mughals, or even Islam. For starters, there had never existed any single, “unified Hindu law.” India’s non-Muslims practiced a great diversity of customary law according to ethnicity, religious tradition, caste, and locale. As such, although Mughal legal magistrates were “careful not to disturb Hindu law and custom in cases pertaining to Hindus,” it had been necessary that some standard, uniform jurisprudence be applied across the whole Mughal empire. In cases where local laws were found to be silent on certain issues, or when Brahmins or caste heads could not reach a consensus, cases were sent to imperial magistrates to be decided according to Islamic practice. This did not “mean that Mughal governments routinely imposed the tenets of Islamic law on non-Muslims,” but it does indicate the status of Islamic law as the supreme superintending legal system.²⁶ Hastings envisioned a similar status for English law and British legal officials. While English law would only be used in presidency courts in cases either between or brought against British subjects or Company servants, Hastings intended for British jurists to become the chief legal intermediaries between Indian populations within the Company’s dominions. To this end, in 1776, Hastings established a new high court, the *sadr diwani adalat*, comprised of the Bengal council and Supreme Court justices sitting together with the assistance of leading Muslim and Hindu jurists as the highest court of appeal for civil cases involving

²⁵ Hastings to Mansfield, March 21, 1774, Gleig, ed., *Memoirs*, 1:399–400, 403.

²⁶ Travers, *Ideology and Empire*, 120–123.

non-Britons.²⁷

The effects of Hastings' legal reforms on both Indian jurisprudence and British governance in South Asia proved far reaching. As Robert Travers points out, Britons' eclectic gathering of Indian legal texts and judicial positions "tended eventually to privilege certain classical or scriptural versions of Hindu and Muslim law over more diverse forms of royal and customary law existing in pre-colonial India," resulting in the British creation of monolithic "Muslim" and "Hindu" legal systems and the longer-term erasure of more localized legal traditions. The development of Muslim and Hindu "personal laws" and the origins of Britons' "fundamentally 'theocratic' view of Indian society" can also be found in Hastings' reforms of the 1770s. By positioning British legal and imperial authorities as "arbiters between Muslim and Hindu, and eventually, as arbiters of what both the Muslim and Hindu law would entail," Hastings strengthened the legitimacy of British Crown sovereignty India and created the conditions for his own "alluring justifications for a masterful colonial executive." Not only did Hastings' legal reforms allow members of the Bengal council to sit as adjudicators in the *sadr diwani sadalat*, they also gave Hastings, as governor general, in tandem with the council and Supreme Court justices, the power to "control and govern" all inferior criminal courts.²⁸

In addition to positioning the British judicial executive as the chief intermediary between Indian sources of law, Hastings and his ministerial supporters identified the utility of strengthening the powers of his executive office over both the other presidency

²⁷ Ibid., 188–189. This was similar to the Mughal practice of Muslim judges, or *qazis*, depending upon the recommendations of local authorities in the formulation of legal decisions according to local custom. S. A. A. Rizvi, *The Wonder That Was India*, vol. 2, *A Survey of the History and Culture of the Indian Sub-Continent from the Coming of the Muslims to the British Conquest, 1200–1700* (1987; repr., New Delhi: Rupa, 2000), 188.

²⁸ Travers, *Ideology and Empire*, 107, 119, 122, 189.

governments and the Bengal council. While the Regulating Act had elevated the governor of Bengal to a governor generalship with military and diplomatic authority over the governors and councils of Bombay, Madras, and Bencoolen, Bombay authorities had continued to act without Hastings' assent in their dealings with the Marathas, and Madras authorities were inclined to call on Fort William only in times of fiscal or military need. Hastings interpreted his commission as governor general as being "under the auspices of my sovereign," and intended to exercise his office with the full weight of royal authority.²⁹ As Neil Sen argues, Hastings' reforms were almost unvaryingly developed with a mind to legitimizing British Crown sovereignty in India and asserting royal sovereignty over the other presidencies and their governments, which much to his frustration, had continued to be internally run as though they were insulated Company possessions.³⁰

Hastings and his supporters in the ministries of both North and Pitt maintained that the expansion of executive authority was the most effective means by which Crown sovereignty in India could be bolstered as a check against the close association of commercial actors and Company-appointed civil officeholders, whose decision making was driven primarily by motives of personal enrichment. Henry Dundas's 1783 bill had proposed adding to the governor general's commission the office of captain general to emphasize the former's superior military rank above all British officials in India short of the commander-in-chief. The governor general's mandate would include executive authority over "the whole civil and military government of the said presidency of Fort William in Bengal, and also the ordering, management, and government of all the said

²⁹ Hastings to North, December 4, 1774, Gleig, ed., *Memoirs*, 1:472.

³⁰ Neil Sen, "Warren Hastings and British Sovereign Authority in Bengal, 1774–80," *Journal of Imperial and Commonwealth History* 25, no. 1 (January 1997): 59–81.

territorial acquisitions and revenue, and the superintendence and control, as well internal and external, over the respective governors, presidents, and councils of all the other presidencies.” Dundas’s bill also included a lengthy clause further explaining the governor general’s “superintending and controlling” powers over the other presidencies, stipulating that any and all measures approved by the governor general would require written confirmation by him and the Bengal council under an official “seal for India” before any such measures could be executed by a subordinate presidency. In order to lend the governor general more influence over the council at Fort William, Dundas’s bill featured an article describing “an elaborate procedure” whereby the governor general could “overrule his colleagues on issues ‘essentially conducive to the safety of the state, the welfare of the Company, and the preservation of the territorial acquisitions in India’ .”³¹

That Dundas’s first bill was defeated by Burke and Fox, who sought not only to curb but to actively roll back executive power in India, was not surprising. Fox’s second India bill of 1783, for instance, would have severely reduced the governor general’s military and diplomatic capacity by requiring all military decisions to be assented to by a majority of the Bengal council and by removing Fort William’s supremacy over the other presidencies. Fox’s bill would have also had all military and diplomatic policy sent to Westminster for approval by the bill’s committee of extra-parliamentary commissioners, leaving British governance in India in a state of virtual paralysis due to the extraordinary distance and communicative lag between Britain and South Asia.³² Instead, the utility of strengthening executive authority in India was widely

³¹ Marshall, *Problems of Empire* 121–122.

³² *Ibid.*, 163–164.

acknowledged among those with actual imperial administrative experience as the most viable solution to the challenges of governing dominions so remotely located from the imperial centre. “The power given to the governor general, however it may now be misplaced, is the only chance of saving this country,” as Charles Cornwallis wrote.³³ Pitt’s India Act, therefore, enhanced Fort William’s “power and authority to superintend, control, and direct the several presidencies” by including an article requiring the presidency governments “to obey such orders and directions of the said governor general and council in all cases whatsoever, except only” when they were in receipt of order or instructions directly “repugnant” to those of Fort William at the time at which the governor general’s orders were transmitted. Pitt’s Act also reduced the number of Bengal councillors from five to four so as to incline toward a more balanced cabinet, as well as it gave the governor general “two voices, or the casting vote,” in the event of an equal division.³⁴

II

A more significant strengthening of executive authority came in the form of Pitt’s lesser-known second East India Act in 1786, which was drawn up with Cornwallis’s appointment as Hastings’ successor as governor general specifically in mind. Pitt’s second Act allowed presidency governors to fill vacant council seats and repealed the provision made in Pitt’s first Act allowing the commanders-in-chief of each presidency to sit on their respective councils and instead allowed the offices of governor and commander-in-chief to be held concurrently. Pitt’s second Act also invested the

³³ Cornwallis to the Duke of York, November 10, 1786, in Charles Ross, ed., *Correspondence of Charles, First Marquis Cornwallis*, 2nd ed., 3 vols. (London, 1859), 1:236.

³⁴ 24 Geo. 3, c. 25.

governor general with broad discretionary powers and the ability to override the council on issues relating to “the safety or tranquility of the British possessions in India, or any part thereof,” including especially military affairs, on which the governor general and his subordinate governors could now make decisions without immediate conciliar approval.³⁵ With Pitt’s second East India Act in force, Cornwallis was appointed both governor general and commander-in-chief of the British forces in India and departed England in late April of 1786 carrying Company dispatches for Bengal, which he had been given “permission to open and peruse” at his pleasure.³⁶

Despite the long history of tensions between civil and military powers in British India, Cornwallis’s arrival was met with optimism by many administrators in the three presidencies and their hinterlands.³⁷ Acting Governor General of Bengal John Macpherson wrote ahead to Cornwallis upon his arrival at Madras in late July expressing his confidence that Cornwallis’s administration would better “establish our tenure of India so as to add to the wealth and real force of the empire while the nations who had fallen under our dominion are made happy in the enjoyment of peace, industry, and the protection of a government kind to their prejudices, and liberal to their rights.” Macpherson was hopeful that Cornwallis was invested “with efficient power to govern the country.” Cornwallis had been appointed at a very “fortunate hour,” Macpherson wrote, when “the nations of these provinces are in peace and in industry,” “and the prospect for your country in Asia may, under your auspices, now be said to promise the

³⁵ 26 Geo. 3, c. 16.

³⁶ Thomas Morton to Cornwallis, April 29, 1786, Cornwallis Papers, PRO 30/11/8, fol. 45.

³⁷ See G. J. Bryant, “Civil–Military Relations in Early British India, 1750–85,” *Journal of the Society for Army Historical Research* 83 (Summer 2005): 131–151.

clearest day.”³⁸

After arriving at Fort William on September 12, 1786, Cornwallis wasted little time in getting to work on a program of military and civil reform. In the first instance, Cornwallis arrived in Bengal bearing a dispatch from the adjutant general’s office outlining changes to be made to general officers’ uniforms in order to bring the design of those in India more in line with those worn by British officers in Europe and elsewhere, an order that quite literally introduced an imperial uniformity to the appearance of British officers in India.³⁹ To resolve the longstanding issue of currency shortage in Bengal, Cornwallis implemented a plan for a new mint at Calcutta, which the British agent to the *nawab* advised “would be of great advantage to the city in general ... as well as in its consequences be productive of advantages to the Company.”⁴⁰ Although the presidencies had struck their own coins for local circulation since the mid-seventeenth century, the rupees Cornwallis sought to mint at Calcutta adhered to Mughal standards of weight and fineness and were struck in the name of Shah Alam II bearing the frozen *sicca* of the nineteenth year of the emperor’s reign, a significant gesture that sought to legitimate British rule in the Company’s limited but growing dominions by demonstrating its inheritance of Mughal imperial sovereignty.⁴¹

The minting of *sicca* rupees by the British at Calcutta rather than the *nawab*’s mint at Murshidabad was a critical step in Cornwallis’s broader policy of stripping the

³⁸ Macpherson to Cornwallis, July 22, 1786, Cornwallis Papers, PRO 30/11/8, fols. 35–36.

³⁹ See the document outlining a Great Uniform, for General Officers, as Ordered by His Majesty, May 20, 1786, *ibid.*, fol. 41.

⁴⁰ Robert Percival Pott to Macpherson, January 20, 1786, Cornwallis Papers, *ibid.*, fol. 92. For currency shortage, see Travers, *Ideology and Empire*, 80, 110–111.

⁴¹ For the 1792 Calcutta *sicca* rupee, see “1 Rupee - Shah Alam II,” Numista, accessed November 26, 2021, <https://en.numista.com/catalogue/pieces72880.html>. For earlier Company coins, see Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in Europe* (Oxford: Oxford University Press, 2011), 34–36.

nawab and the *nizamat* of all the remaining vestiges of their authority. Between 1790 and 1793, Cornwallis reinforced the British criminal court (*sadr nizamat adalat*), instituted circuit courts staffed by British judges, and reduced Muslim law officers to expounding their opinions in writing for British judges to review when formulating their decisions. When a dissenting member of the council challenged Cornwallis on the legality of his changes to Bengal's criminal law institutions, Cornwallis was supported by the Company's law officers and by the Ministry, which authorized his promulgations post facto in an Act of Parliament which "confirmed the existing legislation and authorized the governor general to make a regular code affecting the persons, rights and property of the native inhabitants."⁴²

In addition to his program of legal reforms, Cornwallis inquired into the establishment of a "permanent settlement" for Bengal's land revenue system. British authorities were in general agreement that the revenue collection system they had inherited in the Treaty of Allahabad was grossly corrupt. It was estimated in 1767 that the actual value of the land revenues of Bengal were as much as three or four times the amount that made it into government coffers annually and that the vast majority of the value of the province's revenues was retained by the *zamindars* who collected them.⁴³ Although historically *zamindaris* had been hereditary Mughal feudatories indicating an intermediary rank between local and imperial authorities, the proliferation of Mughal networks of agricultural revenue flows in the late sixteenth century led to the redefinition of *zamindars* as "a quasi-official service class" of rural tax collectors. With the waning of centralized imperial authority in the late seventeenth and early eighteenth

⁴² Travers, *Ideology and Empire*, 234–236; 37 Geo. 3, c. 142, § 8.

⁴³ Travers, *Ideology and Empire*, 71–72.

centuries, however, *zamindaris* had come to resemble petty fiefdoms more than fiscal-administrative units.⁴⁴

While there were some *zamindaris* in western Bengal that existed coterminously with the kingdoms of local rajas, most of Bengal's *zamindaris* were creations of the *nawabs*, and were therefore viewed by British officials as institutions of regional innovations that usurped imperial authority rather than as a legitimate level of sub-provincial governance. The expansion of an elite few *zamindars* by a combination of force and financial superiority mean that many *zamindaris* had evolved into inordinate lordships, so that by the 1760s, well over half of the land tax in the province was paid by a small coterie of only the fifteen largest *zamindars*.⁴⁵ In an effort to break up large *zamindaris* and allow land revenues to be assessed more accurately, Hastings had attempted to create a free market in *zamindaris* by a policy of "farming out" *zamindari* rights to the highest bidders on five-year terms.⁴⁶ The unintended result of Hastings' farming system, however, was that larger *zamindars* remained at an advantage in bidding for and continuing to grow their holdings. Smaller *zamindars*, meanwhile, were forced to bid at rates above what they were realistically able to collect, resulting in a high rate of turnover among lower-level *zamindars* and a loss of revenue for the Company from *zamindars* who were inclined to liquidate what revenues they did collect

⁴⁴ John F. Richards, *The Mughal Empire* (1993; repr., Cambridge: Cambridge University Press, 2001), 79–80, 82–83, 294–296. See also U. N. Day, *The Mughal Government, A.D. 1556–1707* (New Delhi: Munshiram Manoharlal, 1970), 91–92, 137–139.

⁴⁵ Travers, *Ideology and Empire*, 27, 70; P. J. Marshall, *Bengal: The British Bridgehead: Eastern India, 1740–1828* (Cambridge: Cambridge University Press, 1987), 54–55. An example of a *zamindari* of relatively recent origin that had expanded to a great extent was that of Dinajpur. See Travers, *Ideology and Empire*, 93–94ff.

⁴⁶ Travers, *Ideology and Empire*, 72, 111–112; Ranajit Guha, *A Rule of Property for Bengal: An Essay on the Idea of a Permanent Settlement* (1963; repr., Durham, NC: Duke University Press, 1996), 7.

before declaring a loss to the government. Hastings' bidding system created a transitory class of tax farmers resulting in high rates of absentee landlordism and the emergence of a market for land speculation that had not previously existed in Bengal. This in turn removed incentives to improve *zamindaris* and develop local infrastructure, and instead led many *zamindars* to turn to farming plantation-style cash crops in hopes of turning quick profits.⁴⁷

The shortcomings of the farming system were apparent even to Hastings, who in March of 1775, with the assistance of Councillor Richard Barwell, devised a new revenue plan centred on the idea that *zamindaris* should be made hereditary and be fixed in area and value based on the median of the previous three years' collections. Hastings' plan was countered by that produced the following year by his rival, Councillor Philip Francis, who argued for a permanent freeze on rates of taxation.⁴⁸ Francis's system was based on his own revisionist interpretation of the Mughal constitution. Many British writers followed the thinking of the seventeenth-century French physician to the Mughal court François Bernier, who noted that there appeared to be no legal concept of property ownership in the Mughal empire and that all lands belonged to the emperor and were held in his right.⁴⁹ Francis insisted that such a notion was misconceived. "The Company, I believe," Francis told the council in early 1776, "had conceived an early, but erroneous, opinion that, by the constitution of the Mogul empire, the governing power was proprietor of the soil." Francis, by contrast, imagined that "actual rights of landed

⁴⁷ Guha, *Rule of Property*, passim. There also existed the problem of bribery and corruption of public officials by *zamindars* seeking ownership of under-assessed and therefore more immediately profitable lands.

⁴⁸ Travers, *Ideology and Empire*, 164–166.

⁴⁹ *Ibid.*, 53, 131. See, for instance, Watts, *Memoirs*, 6: "the whole country belongs to him [the emperor]"; and Dow, trans., *History*, 3:lxxxiv: "no real property exists."

property, in some sense analogous to those in Britain, existed within the constitution of the Mughal empire,” and that Bengal’s *zamindars* were roughly equivalent to the English landed gentry. Francis therefore sought to implement a system whereby *zamindars* would become “master[s] of the land,” holding their *zamindaris* in something corresponding to fee simple in exchange for a fixed annual payment to the Company.⁵⁰

Neither Hastings’ nor Francis’s plans were implemented while the two remained political enemies during their time in Bengal, and after the expiration of the five-year farming system, *zamindari* assessments returned to the prior system of temporary one-year settlements until a new program could be devised.⁵¹ Plans for saleable *zamindari* property and fixed rates of taxation made their way into both Dundas’s and Fox’s bills.⁵² But while Dundas’s and Fox’s bills made explicit provision for fixed revenue payments, Pitt’s Act stipulated only that the land revenue question “be forthwith inquired into and fully investigated,” and that the British governments in India decide upon “settling and establishing, upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which their [*zamindars*’] respective tributes, rents, and services, shall be in future rendered and paid to the said United Company.”⁵³ The weakness of Pitt’s Act on the land settlement question ensured continued stalemate on the issue within the Bengal council in the time between Hastings’ resignation in 1785 and Cornwallis’s arrival in 1786. Yet the wording of Pitt’s Act also gave considerable latitude for Cornwallis to implement a formidable land tax

⁵⁰ Philip Francis, *Original Minutes of the Governor-General and Council of Fort William on the Settlement and Collection of the Revenues of Bengal with a Plan of Settlement* (London, 1782), 23, 61; Travers, *Ideology and Empire*, 166–167.

⁵¹ Travers, *Ideology and Empire*, 177.

⁵² See Marshall, *Problems of Empire*, 158–160, 164–166.

⁵³ 24 Geo. 3, c. 25.

policy, for which he and his administration began collecting materials in early 1787 with the intention of concluding a settlement as soon as possible.⁵⁴

Cornwallis envisioned his settlement as a restoration of the Mughal feudal system that had degenerated under the rule of the *nawabs* and the early custodianship of the Company. Although undoubtedly influenced by Francis's revisionist view of *zamindars* as the landed aristocracy of Bengal, Cornwallis accepted this historical fiction less as a result of his own scholarly conviction and more due to his desire to arrive at a pragmatic solution to the land revenue question that would encourage agricultural improvement and the reinvestment of Bengal's mercantile capital into the land.⁵⁵ Cornwallis, moreover, believed that a permanent settlement with fixed hereditaments would transform *zamindars* into a provincial aristocracy who would become invaluable supporters of the British administration of the province at the local level. Cornwallis wrote to the Directors in 1789 that

independent of all other considerations, I can assure you that it [a permanent settlement] will be of the utmost importance for promoting the solid interests of the Company, and that the principle landowners and traders in the interior parts of the country should be restored to such circumstances as enable them to support their families with decency, and to give a liberal education to their children according to the customs of their respective castes and religions—that a regular gradation of ranks may be supported, which is nowhere more necessary than in this country for preserving order in civil society.⁵⁶

The Permanent Settlement of Bengal was proclaimed by Cornwallis in March of 1793, fixing in perpetuity the province's land revenue at the rate collected in the year 1789–90 and making *zamindars* hereditary proprietors of their estates.⁵⁷ In addition to

⁵⁴ Guha, *Rule of Property*, 171–181.

⁵⁵ *Ibid.*, 182–185. Cornwallis was particularly concerned with incentivizing the cultivation of wastelands and the construction of irrigation works.

⁵⁶ Cornwallis to the Court of Directors, August 2, 1789, Ross, ed., *Correspondence*, 1:554.

⁵⁷ Marshall, *Bengal*, 122–124.

stabilizing the collection of land revenues and rectifying problems surrounding land and revenue assessments in Bengal, the Permanent Settlement lent substantial legitimacy to British governance in Bengal by appealing to feudal elements of the Mughal imperial constitution. In this regard, the Permanent Settlement was the culminating act in roughly three decades of British historical reconstructions of the Mughal constitution. At the same time, however, by reimagining *zamindars* as analogous to the English landed gentry and subject to a fixed and regular land tax, Cornwallis brought British thinking on the Mughal constitution more “into line with the British state itself,”⁵⁸ marking a significant departure from earlier efforts by British thinkers and Company officials to come to terms with the reality of Indian politics and pointing instead toward the British creation of that reality.

The intellectual underpinnings of the Permanent Settlement were such that although it imposed a distinctly British construction on Bengal, it did so under the auspices of a return to the province’s “ancient constitution.” As such, the Permanent Settlement represented a significant innovation in imperial governance, whereby the imperial domestication of inherited sovereignty in an imperial periphery served as a point of reflection for the superimposition of domestic English social forms onto a non-British population. The Permanent Settlement, therefore, was a landmark in the evolution of British orientalism in India. It was the product of a reading of Indian history, of the Mughal constitution, and of the constitution of Bengal that had passed through the British imperial consciousness and had been formulated into a policy that reflected what the constitution of Bengal was and ought to be according to British frames of reference.

⁵⁸ Travers, *Ideology and Empire*, 242.

The Permanent Settlement set the stage for the development of British rule in India over the next century or so whereby appeals to India's ancient constitution and efforts to govern according to Indian customs and cultural forms would be hollowed out to provide little more than the veneer for a colonial rule that increasingly reflected British imperial objectives to reshape the subcontinent in Britons' own imagine of India's past.

Epilogue and Conclusion

The Permanent Settlement of Bengal marked the beginning of the end of many of the features of Britain's inherited postwar empire in India. The erosion of the Company's civil power in India and the transference of British sovereignty in India to the Crown would continue with a series of East India Company Charter Acts beginning in 1793, the first of which solidified the office of the governor general as a Crown appointment, expanded gubernatorial powers, and established that the Company's "acquisition of sovereignty" in India was "on behalf of the Crown and not in its own right."¹ An 1813 Act restricted the Company's commercial monopoly to tea and opium, and formally transferred the sovereignty of British dominions in India to the Crown.² Finally, an 1833 Act elevated the governor general and council of Bengal to the "governor general and council of India," with executive and legislative powers over all of British India, as well as it ended the Company's commercial activities, thus relegating it to a purely civil administrative body.³

Despite these legislated checks on Company authority, British territorial dominion expanded considerably through the post-Settlement period via military conquest and political annexation, not to mention indirect rule. The Company, and later the Crown, conducted a second war with the Rohillas in 1794, third and fourth wars with French-allied Mysore in 1790–92 and 1798–99, second and third wars with the Marathas in 1802–5 and 1817–18, a war in Nepal in 1814–16, two wars in Burma in 1824–26 and 1852–53, and two wars against the Sikhs in 1845–46 and 1848–49, all of which resulted

¹ 33 Geo. 3, c. 52.

² 53 Geo. 3, c. 155.

³ 3 & 4 Will. 4, c. 85.

in significant territorial acquisitions. Beginning in 1792 following the end of the Third Mysore War, the Bombay Presidency annexed the Malabar Coast, which it administered until the region was transferred to the Madras Presidency in 1800. After nearly forty years as a British client, the *nawab* of the Carnatic was divested of his nominal power when the Company took over the full administration of his dominions in 1801. The *nawab* of Awadh also ceded half of his dominion to the Company in 1801, with remaining territories being annexed by the Crown in 1856. The Company's victories over the Marathas in the early nineteenth century yielded over 130,000 square miles of territory, while the wars in the northeast resulted in Britain gaining territory in Assam and Burma. Wars with the Sikhs lead to annexations in the Sindh and the Punjab during the 1840s and '50s. During the administration of governor general the Earl of Dalhousie (1848–1856), the Company's annexations totalled a quarter of a million square miles. By 1857, more than sixty percent of the territory of the Indian subcontinent and over three-quarters of its population was under direct British rule.⁴

This century-long and dramatic expansion in British territorial dominion and intensification of British political influence in India following the Battle of Plassey (1757) created significant social frictions and political tensions, thereby fostering resentments toward British rule that permeated deep into Indian society and ultimately found release in the Rebellion of 1857. Spreading across much of northern India, the Rebellion reached into pockets of central India and took roughly a year and a half for the British to suppress with great loss of Indian life. Politically, the Rebellion came to centre around the reluctant eighty-one-year-old Mughal emperor Bahadur Shah II (r. 1837–

⁴ Michael H. Fisher, ed., *The Politics of the British Annexation of India, 1757–1857* (1993; repr., New Delhi: Oxford University Press, 1999).

1857), who had been living as a virtual prisoner of the British at Delhi before the rebels proclaimed him emperor of Hindustan in May of 1857. When the British finally retook Delhi in September of 1857, they captured Bahadur Shah at Humayun's tomb, and summarily executed three of his heirs. Bahadur Shah was then tried and found guilty of aiding and abetting the Rebellion, assuming the sovereignty of India, and making war against the British government before being sentenced to exile in Burma.

The Rebellion forced a final piece of parliamentary legislation addressing the unresolved issue of the Company's abuse of its military power and what were clearly major defects in its administration. The Government of India Act of 1858 transferred the remaining vestiges of the Company's administrative and military functions to the Crown. British India would henceforth be governed in the name of the person of the monarch through the new India Office headed by the Secretary of State for India. On the ground, the governor general was further elevated to the Viceroy of India.⁵ In conjunction with the Government of India Act, Queen Victoria issued a proclamation in late 1858 assuming the government of India, confirming the Crown's recognition of all treaties existing between Indian polities and the Company, and halting the "extension of our present territorial possessions" and the "encroachment on those of others." Significantly, the proclamation also declared the Crown to be "bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects,"⁶ formally declaring the Crown's responsibility for the protection of its Indian

⁵ 21 & 22 Vict., c. 106. The East India Company was finally disestablished by the East India Stock Dividend Redemption Act of 1873 (36 & 37 Vict., c. 17), which by one final dividend payment and the commutation or redemption of its stock, liquidated the Company on June 1, 1874.

⁶ Proclamation by the Queen in Council, to the Princes, Chiefs, and People of India, November 1, 1858, BL MSS Eur. D620, Moving Here Catalogue, The National Archives,

subjects and putting Indians on an equal footing, theoretically at least, with subjects elsewhere in the empire.

The period between the end of the Maratha Wars in 1818 and the Government of India Act in 1858 was one of stark contrast between, on the one hand, violent conquest, military and bureaucratic expansion, the ossification of caste and religious divisions, state-imposed Anglicization, and an ever-increasing squeeze on the South Asian peasantry; and, on the other hand, the proliferation of missionary work, humanitarian initiatives, infrastructure development, the “discovery” of India’s deep history, and a revitalization of traditional sources of authority. British rule in India continued to rely heavily on inherited sources of imperial sovereignty. However, unlike the earlier efforts of officials such as Clive and Hastings, who variously emphasized tangible continuities of Indian military, diplomatic, political, and legal customs into the British regime, British appeals to Indian “traditionalism” through the nineteenth century were significantly marred by shifting orientalist perspectives and fabricated traditions that portrayed Indian society and culture as static and backwards.⁷ No longer would Britons and Indians be *bhai bhai* (“friends” or “brothers”). British rule in India would henceforth be marred by social and racial divisions that served to subordinate Indians to British imperial hegemony.

Such orientalist processes were especially discernable in the evolution of the so-called “princely states.” Princely states were autonomous or semiautonomous regional, sub-regional, and micro polities that developed out of a variety of pre-Mughal polities, sub-imperial Mughal jurisdictional types, post-Mughal successor states, and British

<https://webarchive.nationalarchives.gov.uk/ukgwa/20131105185849/http://www.movinghere.org.uk/search/catalogue.asp?sequence=22&resourcetypeID=2&recordID=77016>.

⁷ D. A. Washbrook, “India, 1818–1860: The Two Faces of Colonialism,” *OHBE*, 3:395–421.

client polities and subsidiary allies. Princely states multiplied seemingly exponentially during the nineteenth century, numbering somewhere between five and six hundred depending on one's definition and ranging from entire provinces covering as much as 80,000 square miles with populations in the millions to village-level principalities with only a few thousand residents. Princely states covered roughly forty percent of the subcontinent at the time of Indian independence in 1947 and British authorities relied heavily on princely states to control, via indirect rule, most of the remaining regions that had not been directly annexed. Many princely states were inventions of the British era. Princes were created, replaced, and hereditary lines shuffled according to British interests; conquered Muslim sultanates were handed over to Hindu rajas; *zamindars*, *jagirs*, and the breakaway nobility of British rivals were elevated to princely status. "Residual Indian kings ... developed royal styles which emphasized the antiquity of their origins and permanence of their authority to degrees never seen before." All the while, the British practice of the Doctrine of Lapse dictated that the princely status of any ruler declared incompetent or dying without a male heir would be abolished and his dominion would be annexed.⁸

The Doctrine of Lapse had been a significant contributing factor to the Rebellion of 1857. In her proclamation the following year, Victoria pledged that the Crown would "respect the rights, dignity, and honour of native princes as our own,"⁹ effectively fossilizing the map of princely India over which the British Crown presided by occupying the imperial strata of *shahenshah*, or "king of kings." With the Company

⁸ Barbara N. Ramusack, *The Indian Princes and Their States* (Cambridge: Cambridge University Press, 2004); Robin Jeffrey, ed., *People, Princes and Paramount Power: Society and Politics in the Indian Princely States* (Delhi: Oxford University Press, 1978); Washbrook, "Two Faces of Colonialism," 397.

⁹ Cited above, note 6.

removed from its position of sovereignty in India and the last Mughal emperor Bahadur Shah dying in exile in 1862, Victoria took for herself the title *Kaisar-i-Hind*, or Empress of India, under the Royal Titles Act of 1876,¹⁰ finally explicitly recognizing the Crown's inheritance of the imperial sovereignty of India. In the wake of the Rebellion and the Government of India Act, the first viceroy of India, the Earl of Canning, undertook an extensive tour, hosting a series of *darbars* in emulation of the Mughal court, during which the Crown would confer special titles, honours, and material rewards on Indian princes and nobility according to British perceptions of the idioms of South Asian royalty. Following the Royal Titles Act, an "imperial assemblage" was held at Delhi in 1877, formally declaring Victoria empress and conspicuously placing the Crown's "authority upon the ancient throne of the Mughals," as one organizer expressed. In 1903, Viceroy of India Lord Curzon organized a second imperial *darbar* at Delhi declaring Edward VII emperor following his ascension to the British throne two years earlier, and George V personally attended a final *darbar* in December of 1911, during which time he declared Delhi, the imperial capital of the Mughals since the reign of Shah Jahan, the new capital of the British Raj. The Delhi *darbars* marked a new era of empire in India under the auspices of the symbolic ritualism of political continuity heavily overlaid with European royal and aristocratic cultural devices.¹¹

While the Company's presidencies in India had been vital components of Britain's eighteenth-century global empire, during the nineteenth century, British India became an empire unto itself. Yet many constitutional relics of pre-Crown rule in India

¹⁰ 39 & 40 Vict., c. 10.

¹¹ Bernard S. Cohn, "Representing Authority in Victorian India," in *The Invention of Tradition*, ed. Eric Hobsbawm and Terence Ranger (Cambridge: Cambridge University Press, 1983), 165–209.

continued into the nineteenth and twentieth-century British Raj. In 1773, the French custom of layering local or regional imperial jurisdictions under the authority of a governor general—practiced both in New France in North America and the French settlements in India, and an ambition of Robert Clive’s since the 1750s—was adopted by the Regulating Act’s elevation of the governor of Bengal to the governor general over the presidencies. The jurisdictions of the Bombay, Madras, and Bengal presidencies were expanded significantly during the nineteenth century, with the latter comprising most of northern India by the time of the Rebellion. Additionally, many new provinces had been established during the nineteenth-century annexations that were either given their own governor, were administered by a lieutenant governor under the authority of a provincial or presidency governor, or in the case of isolated enclave districts, were administered by a staff provided at the governor general’s pleasure that was not subject to any presidency regulations. This complexity of multilayered and multi-symmetrical component jurisdictions coloured the map of Britain’s Indian empire red in the mid-to-late nineteenth century. It owed much to the composite empire of the eighteenth century and to early modern notions of imperial integration that sought constitutional solutions to the administration of diverse jurisdictions that had been acquired by various means across expansive space and time.

Britain’s inheritance of Mughal imperial constitutional forms also endured into the modern period in the form of the Crown’s relation with princely states. Perhaps nowhere in India was continuity between the Mughal and British empires seen as vividly as in Rajputana, where twenty-three Rajput states, including Jaipur (the historical kingdom of Amber) and Udaipur (Mewar), remained autonomous polities under the British suzerainty of the Rajputana Agency (1817–1948). They continued a major legacy

of Akbar's policy of allowing for the retention of the autonomy and internal jurisdictional integrity of Rajput kingdoms upon their integration into Mughal provinces in the sixteenth century. While a diversity of jurisdictional types characterized the nineteenth-century British empire in India, centralizing forces became increasingly powerful around the turn of the twentieth century. Non-regulated districts were folded into provinces, Bengal was partitioned in 1905 and then partially reunited in 1912, and many smaller provinces underwent amalgamation so that just prior to Indian independence in 1947, British India consisted of just seventeen large provinces.

Not only were provincial jurisdictions amalgamated in the early twentieth century, but British officials also became predisposed to consolidate regional blocks according to the perceived religious polarities of Islam and Hinduism, thus setting the stage for the partition of India into the Hindu-majority Dominion of India and the Muslim-majority, bifurcated Dominion of Pakistan in the Indian Independence Act of 1947.¹² The Crown's "Indian Empire" had previously constituted both Britain's Indian dominions and the princely states that existed under British protection.¹³ While many princely states were indeed British creations and many others had been erased by the Doctrine of Lapse, some, such as Hyderabad and Mysore, had their origins in the Mughal and immediate post-Mughal period, and others, such as those in Rajputana, had historical origins reaching as deep into the past as the twelfth and thirteenth centuries. The Indian Independence Act, however, stipulated that the future of the princely states would be determined following the transfer of self-governance to the dominions of India and Pakistan in 1948, upon which instance began a process of absorption of princely

¹² 10 & 11 Geo. 6, c. 30.

¹³ See 52 and 53 Vict., c. 63, § 18.

states by India and Pakistan through a combination of accession and annexation.¹⁴ The ratification of the Constitution of India in late 1949 and the transformation of India from a dominion to a republic occasioned the annexation of the remaining princely states during the early 1950s and the integration of these and future annexations into new and existing provinces according to the States Reorganization Act of 1956, including France's cession of its colonial enclaves in 1956, and the military invasion and annexation of Portuguese India in 1961. The 26th Amendment to the Indian Constitution in 1971 finally withdrew recognition of Indian princes as rulers and abolished their related privileges and privy purse payments. Although a federal republic of tremendous cultural, linguistic, and historical political diversity, modern India was to be considerably constitutionally homogenous and sealed off from its historically connected territories in the republics of Bangladesh and Pakistan on its eastern and western borders, respectively.

Britain's inherited empire in North America, meanwhile, was much shorter-lived and had no period of the sort of "invented traditions" that characterized British rule in India through the nineteenth century. Although the Ministry had unequivocally abandoned western Indigenous nations to the new United States in the Treaty of Paris in 1783, the Jay Treaty negotiated between Great Britain and the United States in 1794 allowed for British subjects, American citizens, and Indigenous groups residing in either British or American territory to "freely pass and repass by land, or inland navigation,

¹⁴ When the *nizam* of Hyderabad, Asaf Jah VII, resisted accession into the Dominion of India, for instance, the Indian Armed Forces invaded and militarily annexed the state in September of 1947.

into the respective territories of the two parties.”¹⁵ While this article would have lasting utility for the Haudenosaunee and other eastern Indigenous groups who had been divided by the American Revolution or whose homelands straddled the new British–American boundary, the position of western nations between Onontio and Conotcarious remained uncertain. In an effort to discourage squatting and put an end to the anarchic settler–Indigenous violence that continued to consume the Ohio and Illinois countries following the Revolutionary War, the Confederation Congress’s Northwest Ordinance of 1787 organized those interior regions of the province of Quebec that now fell within the United States into a federally administered territory to be legally settled and incorporated into the Union as a series of new states.¹⁶ After being sworn in as president under the new Constitution in 1789, George Washington sought to exercise American sovereignty in the region more directly and took over the states’ ongoing war against the newly-formed Northwestern Indian Confederacy, culminating in a United States victory at the Battle of Fallen Timbers in 1794 and the Treaty of Greenville the following year, creating a boundary line southwest of Lake Erie, the territory south and east of which would become open to settlement.¹⁷

Although both Governor General Guy Carleton and Lieutenant Governor of Upper Canada John Graves Simcoe had insisted to their American counterparts that they had no intention of disturbing Britain’s peace with the United States, both had worked to undermine American influence among the Northwestern Confederacy. While the Jay

¹⁵ Jay Treaty, November 19, 1794, Avalon Project, Lillian Goodman Law Library, Yale Law School, https://avalon.law.yale.edu/18th_century/jay.asp.

¹⁶ Northwest Ordinance, July 13, 1787, *ibid.*, https://avalon.law.yale.edu/18th_century/nworder.asp.

¹⁷ Treaty of Greenville, August 3, 1795, *ibid.*, https://avalon.law.yale.edu/18th_century/greenvil.asp.

Treaty required Britain to withdraw from upper country posts falling inside American territory, its provision for the free movement of Britons and Indigenous peoples across the border allowed Onontio to continue to supply his western allies with ease. When the United States undertook a program of aggressive expansion into the Northwest Territory following the Treaty of Greenville in 1795, the fractured Northwestern Confederacy was rekindled into a pan-Indian revival led by the Shawnee prophet Tenskwatawa and his brother, the warrior Tecumseh. Britain's support of the new western Indigenous confederacy combined with diplomatic tensions with the United States on the Atlantic seaboard to ignite renewed war in 1812, the conclusion of which in 1814 restored all military possessions to the status quo ante bellum, forcing Britain to finally concede to American sovereignty to Indigenous lands in the Northwest Territory and resulting in Britain's definitive withdrawal of support for Indigenous peoples residing in American territory.¹⁸

Onontio's support for his Indigenous allies in British territory also began to wane following the War of 1812, as the Reform movement, the beginnings of responsible government, and the increased pressure from British North American settler interests for expansion resulted in the Crown becoming a functionary of the emerging Canadian settler-state. While the Crown in Canada would still refer to Indigenous peoples as its "red children" through the nineteenth century, and while Victoria was known among Indigenous peoples as the Great White Mother Across the Sea, such language had become for settlers less symbolic of royal benevolence and for Indigenous peoples

¹⁸ Treaty of Ghent, December 24, 1814, *ibid.*, https://avalon.law.yale.edu/19th_century/ghent.asp.

increasingly racially charged and demeaning.¹⁹ “All that nonsense about the Great White Father is long gone,” Assembly of First Nations national chief Georges Erasmus would later put it. “It’s a puff of wind from another time.”²⁰

The Royal Proclamation of 1763 had established the Crown’s relationship with Indigenous peoples as one of royal protection over internally sovereign nations, making North American Indigenous peoples the first such British protectorates. British protectorates would proliferate across the globe during the next two and a half centuries, ranging from Britain’s informal protectorate over the Kingdom of Hawaii established by George Vancouver in 1794 to the British Mediterranean protectorates of Malta and the Ionian Islands in the early nineteenth century; the Southeast Asian and Oceanian protectorates of the later nineteenth century; and the Himalayan, Indian Ocean, Persian Gulf, Arabian, Egyptian, and sub-Saharan African protectorates of the late nineteenth and early twentieth centuries. As the nineteenth century wore on, however, protected status “became little more than a prelude to intrusive and intimate colonialisms,”²¹ serving to validate British meddling in internal affairs, colonial and imperial warfare, and the acquisition of territory and resources.

North American Indigenous peoples were among the first to experience this shift

¹⁹ Sarah Carter, “‘Your Great Mother Across the Salt Sea’: Prairie First Nations, the British Monarchy and the Vice Regal Connection to 1900,” *Manitoba History*, no. 48 (Autumn 2004/Winter 2005): 34–48; J. R. Miller, “Victoria’s ‘Red Children’: The ‘Great White Queen Mother’ and Native–Newcomer Relations in Canada,” *Native Studies Review* 17, no. 1 (July 2008): 1–23. On shifting ideas of “fatherhood” in Crown–Indigenous relations and differences between settler and Indigenous understandings of the concept, see also Mark D. Walters, “‘Your Sovereign and Our Father’: The Imperial Crown and the Idea of Legal-Ethnohistory,” in *Law and Politics in British Colonial Thought: Transpositions of Empire*, ed. Shaunnagh Dorsett and Ian Hunter (New York: Palgrave Macmillan, 2010), 91–108.

²⁰ Geoffrey York, *The Dispossessed: Life and Death in Native Canada* (Toronto: Lester and Orpen Dennys, 1989), 261.

²¹ Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge, MA: Harvard University Press, 2016), 88.

in British discourses of protection when in 1796, the Haudenosaunee were blocked from privately selling land in the Grand River Valley not on the grounds that they needed to first alienate the lands in question to the Crown, as one would expect according to the Proclamation, but because metropolitan notions of protection had evolved to no longer consider Indigenous groups as sovereign peoples under the Crown's protection. While the Mohawk leader Joseph Brant insisted that the Haudenosaunee were "a free and independent nation" living under "His Majesty's immediate protection," Upper Canadian officials thought it inconvenient to have "so large an extrajudicial territory across [the] centre" of the now "flourishing" colony, reflecting a new way of thinking that saw Indigenous peoples as sort of second-class subjects rather than sovereign, protected allies.²² This transition away from the mutual alliance and cooperation that defined Crown–Indigenous relations during much of the second half of the eighteenth century was driven by the dual factors of the arrival of "late loyalists" to Upper Canada who were less ideologically committed to British constitutionalism and more interested in the wide availability of affordable land, and the removal of the United States as a security threat to British North America following the War of 1812, which reduced the geopolitical significance of Indigenous peoples from the metropolitan government's perspective and therefore created a political vacuum in Crown–Indigenous relations that allowed for the more coercive land treaty negotiations of the early nineteenth century.²³

Post-conquest British efforts to maintain the laws and customs of Canada were

²² Ibid., 85–86; Robert S. Allen, *His Majesty's Indian Allies: British Indian Policy in the Defence of Canada, 1774–1815* (Toronto: Dundurn Press, 1992), 94.

²³ Alan Taylor, "The Late Loyalists: Northern Reflections on the Early American Republic," *Journal of the Early Republic* 27, no. 1 (Spring 2007): 1–34; Peter H. Russell, *Canada's Odyssey: A Country Based on Incomplete Conquests* (Toronto: University of Toronto Press, 2017), ch. 5. See also J. R. Miller, *Skyscrapers Hide the Heavens: A History of Indian–White Relations*, 3rd ed. (Toronto: University of Toronto Press, 2001), chs. 4–5.

also undermined during the early nineteenth century. Many late eighteenth-century British jurists had been thoroughly confused as to the sources of Canadian law, mistakenly believing that the origins of the laws of Canada in the custom of Paris had connected the French colonial legal system to the Roman tradition of codified law.²⁴ Although some aspects of French colonial law had been lightly filtered through Roman civil law via French municipal law in the form of royal ordinances, in their attempt to understand and further codify the laws of Canada, British legal authorities erroneously introduced novel elements of Roman law into Canadian legal custom during the post-conquest period, often relying on contemporary French legal commentaries that were heavily influenced by Enlightenment era French republicanism.²⁵ This error was greatly intensified through the early-to-mid nineteenth century to the extent that the 1866 Civil Code of Lower Canada anachronistically borrowed many provisions wholesale from the Napoleonic Code, “more as a recension of the Code Napoléon than as a revision and codification of what had [actually] been the civil jurisprudence of the province prior to

²⁴ Contrary to late eighteenth- and early nineteenth-century British popular belief, the custom of Paris was not, in its origins, a codified system of Roman law. Roman law in France was mostly confined to the southern portion of the country, the *pays de droit écrit*, or “country of written law,” where the use of codified law long outlived the Roman provinces of Transalpine and Aquitaine Gaul. William Bennett Munro, “The Custom of Paris in the New World,” in *Rechtswissenschaftliche Beiträge: Juristische Festgabe des Auslandes zu Josef Kohlers 60*, ed. Fritz Berolzheimer (Stuttgart: Ferdinand Enke, 1909), 132–133.

²⁵ Products of the post-conquest British effort to codify Canadian law include *An Abstract of Those Parts of the Custom of the Viscounty and Provostship of Paris, which were Received and Practised in the Province of Quebec, in the Time of the French Government* (London, 1772); *The Sequel of the Abstract of Those Parts of the Custom of the Viscounty and Provostship of Paris, which were Received and Practised in the Province of Quebec, in the Time of the French Government* (London, 1773); *An Abstract of the Loix de Police; or, Public Regulations for the Establishment of Peace and Good Order, that were in Force in the Province of Quebec, in the Time of the French Government* (London, 1772); and *An Abstract of the Several Royal Edicts and Declarations, and Provincial Regulations and Ordinances, that were in Force in the Province of Quebec in the Time of the French Government; and of the Commissions of the Several Governours-General and Intendants of the Said Province, during the Same Period* (London, 1772).

1857.”²⁶ The British codification of French civil law marked a transitional period from the communitarian feudalism of the ancien régime of colonial French Canada to the individualist, free market liberalism of the nineteenth-century English-speaking world.²⁷

At the same time, this invented tradition of codified Lower Canadian law masked the erosion of broader French Canadian civic values and traditions. The gradual alignment of the seigneurial elite with the Lower Canadian Anglo-American merchant class created an oligarchy known as the Château Clique, which by dominating the province’s legislative and executive councils and effectively controlling the governor’s veto rendered powerless the French-majority assembly. After decades of Reform efforts being blocked by the elite of both Upper and Lower Canada, republican-inspired rebellions broke out in both provinces late in the fall of 1837, with that in Lower Canada taking on a French nationalist tone, garnering widespread public support, and persisting for the better part of a year. In the rebellion’s aftermath, Governor General and High Commissioner for British North America the Earl of Durham famously diagnosed the cause of the political instability in the Canadas as “two nations warring in the bosom of a single state,” which so long “as the present state of things is allowed to last, the actual inhabitants of these provinces have no security of person or property, no enjoyment of what they possess, no stimulus to industry.”²⁸ Durham’s proposed solution was the consolidation of the two provinces into a single polity with “none but a decidedly English legislature” so as to facilitate the greater assimilation of French Canadians into

²⁶ Munro, “Custom of Paris,” 148.

²⁷ See Murray Greenwood, “Lower Canada (Quebec): Transformation of Civil Law, from Higher Morality to Autonomous Will, 1774–1866,” *Manitoba Law Journal* 23 (1995): 132–182.

²⁸ Durham, *Report on the Affairs of British North America* (Montreal, 1839), 4, 7.

what would become the dominant Anglo-Canadian culture.²⁹ Durham's recommendations became law when the British North America Act of 1840 abolished the legislatures of Upper and Lower Canada, replacing them with a single bicameral legislature in which both provinces of the United Canadas held an equal number of seats despite the smaller Anglophone population of the former province of Upper Canada.³⁰

The assimilationist policy of the *Durham Report* was a far cry from the accommodationist objectives of the Quebec Act and pointed toward a nineteenth-century empire that valued jurisdictional uniformity and Anglo dominance within its component dominions. While responsible government made British settler dominions roughly constitutionally analogous to the home realm, it also ensured that non-Britons were treated as second-class subjects. If the whole empire had become Britain, so to speak, then non-Britons became an aberration, a social problem, and an obstacle to “good governance.” Non-British Europeans were to be assimilated, non-Europeans were to become expendable military labour, and North American Indigenous peoples were to be denied their basic humanity. While Victoria's 1858 proclamation declared the equality of Britain's subjects in India with those elsewhere, such “equality” brought with it the deployment of the Indian Army abroad in the service British imperial objectives in Asia, the Middle East, and Africa in conflicts with other non-Europeans, and exploitation as forced migratory and indentured labourers forming the basis of a modern slavery that persists into the twenty-first century. The Indigenous peoples of British

²⁹ *Ibid.*, 110.

³⁰ 3 & 4 Vict., c. 35. Significantly, however, much of the legislation passed by the new assembly applied to either Upper or Lower Canada, with only some legislation applying to both provinces. See the legislation for the United Canadas in the British North America Legislative Database, 1758–1867, Atlantic Canada Studies Centre and Centre for Digital Scholarship, University of New Brunswick, <https://bnald.lib.unb.ca>.

North America, meanwhile, despite the Crown's avowed protection of their lands according to the Royal Proclamation, would be systematically dispossessed and subjected to the cultural genocide of the Parliament of Canada's 1876 Indian Act and its associated residential school system.

Yet whereas in modern India the historical complexity of multilayered and religiously plural jurisdictional polities has been largely obscured by geopolitical tensions between the two constitutionally homogenous and increasingly religiously and ethnically exclusive federal republics of India and Pakistan,³¹ in modern Canada, many of the inherited constitutional features of early modern North America have undergone revitalization in the late twentieth and early twenty-first centuries. Quebec's special status in Confederation, Francophone Quebecers' emergence from the Quiet Revolution of the 1960s–80s as *maîtres chez nous*, and the coalescence of sovereignty association through the 1980s and '90s were all major constitutional legacies of the Quebec Act's establishment of Quebec as a unique provincial jurisdiction in British North America. Indigenous peoples, meanwhile, although skeptical of a final break with the British Crown with whom they had entered into treaties, became significant players in the process of the patriation of the Constitution of Canada in 1982, securing the enshrinement of existing treaty rights in Section 35 of the new constitution and the inclusion of specific reference to the Royal Proclamation in Section 25(a) of the

³¹ While Pakistan became an Islamic republic early in its history in 1956, India, although ostensibly a secular republic, has recently excluded Muslim migrants and refugees from Bangladesh, Pakistan, and Afghanistan (as well as other refugee groups from Sri Lanka and China) from citizenship eligibility according to the Citizenship Amendment Act of 2019. The Government of India is also actively working to undermine the continued existence of Sarnaism, or traditional nature worship, by categorizing *Adivasis* as Hindus in official public documents. See Sheikh Saliq, "India's Tribes Seek Official Religion Status for Belief System," *The Diplomat*, November 23, 2022, <https://thediplomat.com/2022/11/indias-tribes-seek-official-religion-status-for-belief-system>.

Canadian Charter of Rights and Freedoms.³² The recognition of treaty rights in the Constitution Act of 1982 has given Indigenous peoples the legal resources necessary to pursue litigation against the Governments of Canada and Ontario for the fulfillment of historic treaty obligations, and indeed the Royal Proclamation continues to serve as the basis for assessing the legal validity of the transfer of land title by historical treaties and determining whether unfair and inadequate historical compensation needs to be compensated for in modern land claims settlements.³³

The eighteenth-century legacy of layered, inherited sovereignty and protected polities and peoples, laid out and reinforced in the integrative imperial legislation and proclamations of the post-Seven Years' War period, became a significant contributor to the constitutional evolution of the decolonized empire of the later twentieth century. The British Commonwealth and, since the London Declaration following India's independence in 1949, the Commonwealth of Nations, exists as a global community of "free and equal" sovereign nations in asymmetrical relations to the British monarch—some as independent constitutional monarchies with a nationalized Crown as their head of state (i.e., Canada), others as either presidential (i.e., Kenya) or Westminster-style parliamentary republics with their own heads of state (i.e., India), or others still as elected (i.e., Malaysia) or hereditary (i.e., Tonga) constitutional monarchies, or absolute monarchies (i.e., Brunei) with their own royal houses—over all of which the British monarch symbolically presides as Head of the Commonwealth. The Commonwealth and the monarch's role as its symbolic head are an enduring legacy of the eighteenth-century

³² Russell, *Canada's Odyssey*, 375–378, 386–387.

³³ See, for instance, *Madawaska Maliseet First Nation v. Her Majesty the Queen in Right of Canada* (2017 SCTC 5).

empire and the Crown's history of cultivating a wide range of asymmetrical relationships with settler, subject, and protected populations and sovereigns.

The legacy of the mediatory role of the governors general of Bengal and British North America in the period between their late eighteenth-century inception and their development into the sub-imperial viceroyalties of the nineteenth century expose the post-conquest British regimes in Quebec and Bengal as useful historical models for a twenty-first-century Canadian state struggling to come to terms with its colonial past. Stripped of its dated language of condescending and gendered royal paternalism, greater appreciation of Onontio's status as gift giver and a mediator of settler–Indigenous disputes can add tremendous symbolic and ceremonial weight to Crown–Indigenous relations by placing nation-to-nation dialogue within a *longue durée* historical framework stretching back to a point in time when the Crown took seriously its responsibilities to North American Indigenous peoples and honoured its inherited obligations to conquered and non-conquered subjects and protected populations. Understanding the eighteenth-century origins of the Canadian constitution within a global imperial framework is therefore tantamount to comprehending the origins of the treaty-making process in British North America by lending greater historical context to the early history of Crown–Indigenous relations. With many land claims negotiations in Canada and Ontario resting so heavily on the research and analysis of late eighteenth and early nineteenth-century materials for claims relating to treaties located in what is now southern Ontario, the expansion of our knowledge of the nature and functions of the historical Crown in a broader imperial setting is valuable as ever.

Recognition of the Crown as the protector of Indigenous populations in British North America is once again finding wide discussion outside of exclusively legal circles

on a level that has not been experienced since and perhaps even eclipses that which took place surrounding the Constitution Act of 1982 and its aftermath through the '80s and '90s. In a recent landmark study of Canadian legal history, Philip Girard, Jim Phillips, and R. Blake Brown, highlight Indigenous legal traditions as one of the three pillars of Canadian law and emphasize the Royal Proclamation, the Quebec Act, and the Constitutional Act as foundational constitutional mechanisms whereby the Crown became the guarantor of and mediator between the rights and privileges of Indigenous, French, and British inhabitants of Britain's North American dominions. "For settler populations, the Crown represented, however imperfectly in practice, the harmonization of disparate interests in the name of the public welfare and good government, while for Indigenous peoples it was the link symbolizing the relationship between them and settler polities."³⁴ Girard, Phillips, and Brown see that link weakening in the nineteenth century. The constitution of British North America had followed a "two track" model through the late eighteenth century whereby Indigenous relations were carried under the royal prerogative according to the Proclamation and the settler constitution functioned according to statute law as laid out in the Quebec and Constitutional Acts. Around the mid-nineteenth century, however, the Crown began "to divest itself of responsibility for Indigenous peoples," as responsible government forced the Crown to succumb to settler institutions that began to "legislate aggressively with a view to transforming Indigenous societies" as part of a broader process of Indigenous land removal.³⁵

Yet the strength and continued vitality of the Proclamation has provided First Nations in twenty-first-century Canada with a legal avenue to reclaim unextinguished

³⁴ Philip Girard, Jim Phillips, and R. Blake Brown, *A History of Law in Canada*, vol. 1, *Beginnings to 1866* (Toronto: University of Toronto Press, 2018), 13, 15.

³⁵ *Ibid.*, 23, 201.

title and seek restitution for the Crown's historical breach of its fiduciary duty. In this sense, it holds true that "the unifying fiction of the Crown" allows for "a diversity of customs and rights under law in a way that the rational scheme and abstract principles of republican democracy [do] not," or at least not to the same extent.³⁶ However, the Proclamation's broader imperial historical context still remains improperly understood. Girard, Phillips, and Brown describe the Proclamation as being "hastily put together" and "meant to be merely a prologue to a parliamentary statute that would reiterate its main points."³⁷ This might appear to be the case on the surface until one appreciates that the proposed legislation to which the authors refer was never passed by the British Parliament and was instead appended to Guy Carleton's first set of gubernatorial instructions under the Quebec Act in 1775.³⁸ The Proclamation's provisions did not need confirmation by statutory law as it already held "the force of a statute."³⁹

Similarly important regarding the expansion of the royal prerogative as a regulatory check on commercial enterprise and as source of protection for vulnerable populations during the late eighteenth-century empire are the circumstances surrounding the passage of the 1784 East India Act. While the first attempt at establishing a regulatory body for Company governance in India sought to create that body by parliamentary committee, the failure of Fox's bill and its widespread opposition serving as a catalyst for the collapse of the Fox-North coalition was a reflection of George III's

³⁶ *Ibid.*, 13.

³⁷ *Ibid.*, 199.

³⁸ See above p. 22, note 26; and p. 180.

³⁹ "There is a well-established common law principle that instruments issued under the royal prerogative in British colonial possessions lacking representative legislative assemblies have the force of statutes in these areas." David W. Elliott, "Aboriginal Title," in *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada*, ed. Bradford W. Morse (Ottawa: Carleton University Press, 1991), 52. Those areas of the Proclamation dealing with Indigenous peoples were neither repealed by the Quebec Act nor any subsequent British or Canadian statute.

significant displeasure with the Fifteenth Parliament's attempted infringement on the royal prerogative.⁴⁰ That Fox's bill was superseded by an Act of Parliament outlining the creation of a Board of Control composed of Crown-appointed Privy Councillors is telling. Although an Act of Parliament was required to regulate the affairs of the East India Company, which held its charter from Parliament since the United Company merger at the turn of the century, it was recognized in a series of East India Acts during the 1770s and '80s that those offices in India responsible for diplomacy and the administration of justice were within the royal prerogative. In the contexts of both North America and India, the Crown retained control over external imperial affairs as they related to non-settlers and non-British subjects.

Overlooking this vital feature of the royal prerogative as having the ability to expand in its capacity to form integrative relationships with diverse subject and protected constituent populations on a separate parallel from potentially predatory commercial and legislative bodies, scholars continue to equate this late eighteenth-century growth in executive office with authoritarianism. Girard, Phillips, and Brown identify this shift as being that of the emergence of a "strong governor" model, whereby the "weak" executive office of the seventeenth-century colonies that by and large formed the American republic was replaced with a "strong" executive that commands the military and is paid by, accountable to, and for all intents and purposes is an embodiment of the Crown.⁴¹ Again, this is explained in reference to the American Revolution, because of which ideological and military threat, "Britain was inclined to reproduce the more authoritarian elements of the old French constitution than to spread

⁴⁰ See above p. 311.

⁴¹ Girard, Phillips, and Brown, *History of Law in Canada*, 193.

the ‘blessings of liberty’ to its new subjects.”⁴² This standard reading of the period neglects much of the evidence presented in this work, which demonstrates that these supposedly “authoritarian elements of the old French constitution” did not need “reproducing.” Rather, they survived the British conquest of Canada in the form of the inherited legal and constitutional features of New France that Britain was forced to inherit by articles of capitulation and international treaty, and which Britain was bound to honour according to both common law and the early modern law of nations. So, too, does this notion of an “authoritarian turn” invert the chronology, presented in Chapter 7, which illustrates that the American Revolution was a reaction to the expansion of British imperial executive office that predated revolutionary forces and was a result, instead, of the acquisition of new dominions, such as Canada and Bengal, rather than vice versa.

Even more recent work that explores the significance of new dominions, namely Bengal, on the postwar development of the British imperial constitution, remains mired in ideology. James M. Vaughn, for instance, interprets the imperial reforms of the post-Seven Years’ War era as the beginning of a shift toward an “illiberal imperialism,” whereby the British metropolitan government “countenanced the creation of an autocratic garrison empire in South Asia” and “attempted to establish such a rule for itself in North America.” “While the Crown ruled through Parliament in Britain and royal governors ruled in cooperation with colonial leaders in councils and elected assemblies in British America, the Company’s territorial empire in India was a bureaucratic and military despotism,” the defining characteristics of which was that the Company’s administration in Bengal was “autocratic, military-driven, [and] revenue-extracting.” The metropolitan government, according to Vaughn, attempted to mirror the

⁴² Ibid., 183.

Company's "autocratic and extractive state" in Britain's Atlantic dominions by "directly taxing the colonies" and "greatly strengthen[ing] the power of the imperial executive." In an argument that closely parallels that of rhetoric deployed by the eighteenth-century leaders of the colonial independence movement, Vaughn insists that there was a "metropolitan political impulse" that Britain's overseas peripheries were "to be governed by "a militarized imperium largely paid for by revenues extracted from local subjects via taxation (without representation)."⁴³ Yet, significantly, Vaughn's argument ignores the passage of the Taxation of the Colonies Act of 1778, which, in a significant metropolitan concession of a primary point of dispute contributing to Revolutionary crisis, barred Parliament from imposing any duties, taxes, or assessments in the colonies for the purpose of raising a revenue. As Chapter 9 demonstrates, the Taxation of the Colonies Act was a major contributor to constitutional reform in Britain's remaining North American dominions following the Revolutionary War, as metropolitan officials sought to give the province of Quebec (soon divided into Upper and Lower Canada) legislatures with powers of taxation that the imperial Parliament could no longer exercise in the colonies.⁴⁴ Although passed too late to change the course of the Revolutionary War, the Taxation of the Colonies Act became a cornerstone of the post-Revolutionary imperial constitution and remained on the books until well into the second half of the twentieth century.

An analysis of imperial constitutional change that contextualizes late eighteenth-century British imperial policy within transnational and transoceanic frameworks

⁴³ James M. Vaughn, "The Ideological Origins of Illiberal Imperialism: Metropolitan Politics and the Post-1763 Transformation of the British Empire," in *Envisioning Empire: The New British World from 1763 to 1773*, ed. Robert A. Olwell and James M. Vaughn (London: Bloomsbury Academic, 2020), 28–29, 49.

⁴⁴ See above pp. 334–335, 339.

highlights overlooked nuances and works to challenge dogmatic narratives that have become embedded in national and regional literatures and histories. Far from old and outdated, renewed interest in imperial history is connecting scholars of empire to global histories and literatures that reflect “postmodern sensibilities about hybridity, malleability, flexibility, border-crossing, globality, and interdisciplinarity.”⁴⁵ By exploring British North American constitutional developments against the global backdrop of British imperial activities in South Asia, this study contributes to the growing body of recent literature that has delved into British East India Company history from the variety of perspectives presented by “British, European, Atlantic, and world history” in order to raise new questions that reflect political discourse in twenty-first-century Canada, as well as to engage with the “new concerns” of scholars in British studies and new imperial history surrounding “border-crossing, globalization, and comparative, regional, and transnational history.”⁴⁶

⁴⁵ Philip J. Stern, “History and Historiography of the East India Company: Past, Present, and Future!” *History Compass* 7, no. 4 (July 2009): 1160.

⁴⁶ *Ibid.*, 1148.

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Abbreviations

- DCHC* *Documents Relating to the Constitutional History of Canada, 1759–1791*. Edited by Adam Shortt and Arthur G. Doughty. 2nd ed. 2 vols. Ottawa: J. de L. Taché, 1918.
- NYCD* *Documents Relative to the Colonial History of the State of New-York*. Edited by E. B. O’Callaghan. 14 vols. Albany, 1853–87.
- OHBE* *The Oxford History of the British Empire*. Edited by Wm. Roger Louis et al. 5 vols. Oxford: Oxford University Press, 1998–99.
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Curriculum Vitae

Degrees

Master of Arts in History, *Brock University* (2013)

- Major Research Paper: “ ‘A New, Adventitious State’: William Smith of New York (1728–1793) and the Imperial Constitution”

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Publications

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“Eastern Luxury, Asiatic Despotism, and Colonial Reactions to the Imperial Policy of Frederick North, 1772–74.” 26th Annual Meeting of the Omohundro Institute of Early American History and Culture, Virtual, June 18, 2021.

“‘Their ancient usages restored’: Civil Law and the Endurance of French Viceregalism in Quebec and the Upper Country, 1763–1774.” 24th Annual Meeting of the Omohundro Institute of Early American History and Culture, College of William and Mary, June 16, 2018.

“Commerce, Race, and Agriculture in Mainland North America during the Age of European Exploration.” 18th Annual University of Maine/University of New Brunswick International Graduate Student Conference, University of New Brunswick, October 28, 2017.

“‘The lucrative vices of men of trade’: Commerce, Rhetoric, and History in Thomas Hobbes’s *Behemoth*.” 5th Annual Meeting of the Atlantic Medieval and Early Modern Group, University of New Brunswick, October 14, 2017.

“The Quebec Act and Property Law in British North America.” 21st Atlantic Canada Studies Conference, Mount Allison University, May 6, 2016.

“‘For Liberty & the Constitution’: Chief Justice William Smith (1728–1793) and the Revolutionary Atlantic.” 93rd Annual Meeting of the Canadian Historical Association, Brock University, May 26, 2014.

“‘For Liberty & the Constitution’: William Smith of New York’s Alternative to the American Revolution.” Master’s Level Graduate Research Conference, The College at Brockport, State University of New York, April 20, 2013.

“The Ideological Origins of the War of 1812.” Crossing Borders Conference, Brock University, March 15, 2013.

Academic Awards

- Joseph-Armand Bombardier Canada Graduate Scholarship (CGS) – Doctoral, Social Sciences and Humanities Research Council of Canada (SSHRC) (2015)
- Top-Tier Graduate Funding Award, UNB (2014)
- Graduate Scholarship, New Brunswick Innovation Foundation (2015)
- CGS Michael Smith Foreign Study Supplement, SSHRC (2018)
- Residential Fellowship, David Library of the American Revolution (2018)
- Henry Harvey Stuart Fund Travel Award, UNB (2018)
- Distinguished Graduate Student Award – History, Brock University (2013)
- David C. Murray and Elizabeth Surtees Post-Graduate Scholarship in the History of Niagara, Niagara Historical Society (2013)
- Frank and Amy Wills Memorial Award, Brock University (2012)