

Agents of Empire:  
English Imperial Governance and the  
Making of American Political Institutions

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# Chapter 1

## Introduction

American government is defined—some might say constrained—by its institutions. If we wish to know how the government might accomplish specific policy ends, why it often fails to accomplish them, how its application of coercive force on the people can be restrained, we look to these institutions. If we wish to know how public opinion is channeled in affecting public policy, we look to these institutions. Some of the most important ones—mass parties, a large administrative bureaucracy—were not anticipated at America’s founding. But equally clearly, some of our major institutional structures—such as federalism, separation of powers, and “checks and balances”—were.

Throughout their lifespan in America these institutions have changed the world’s standard for orderly, popularly responsive government on a mass scale. They offer one paradigm of how to ensure liberty and protect citizens from arbitrary public action. And they underwrote America’s growth into an economic and military superpower. We can accept this and still acknowledge the defects of these institutions for democracy and internal stability. The US often fails to distribute prosperity and security justly among its residents, sometimes grotesquely so. We can do better, but a country could certainly do worse and many have. So it is useful to know how we got here.

What is the wellspring of these institutions? The US Constitution is an obvious candidate. The Constitution and related literature, such as the debates from the constitutional convention and the Federalist Papers, present unusual examples (especially for the time) of conscious, forward-looking design of political institutions. To answer why the US has the institutions it does, these documents are good places to start. But they are not good places to stop. The US in 1787 was not an institutional blank slate. Much of what the framers of the Constitution achieved was to borrow, reconfigure, and re-theorize their institutional inheritance from the British empire (Wood 1969; Kernell 2003; Robertson 2013). Given that so few of the institutional structures in the Constitution were invented for the occasion, it is natural to ask why they were first deployed, and how they evolved, under British administration of the territory that became the United States.

These are the questions I address in this book. My argument is that America’s foundational institutions emerged from problems of British governance in the New World—more specifically, the crown’s strategic response to them. These problems arose because the British<sup>1</sup> imperial state<sup>2</sup> was not unitary. Governing an empire requires delegation, and the British empire was no exception. This delegation included authority to claim territory in the monarch’s name, organize a colonial economy, export people and supplies out of England, import goods and resources into England, and govern the monarch’s subjects.

All of this authority radiated ultimately from the crown (Keith 1930). How it was exercised affected what, if anything, the crown and the state would gain from colonization. Therefore, the actors exercising this authority were, at least formally, the crown’s *agents*.

It did not escape the crown’s notice that the agents to which it delegated might not always act in its best interest (Roper and Van Ruymbeke 2007, 10). They might wish to encroach on territory that would embroil the crown in international disputes (MacMillan 2011). They might prefer free trade with other nations where the crown preferred all produce to go to England (Barrow 1967). They might use their political authority within colonies to dominate other colonists economically and capture the rents for themselves, even at the risk of the stability and security of a colony (Morgan 1975). Moreover, the crown’s information about both the economic potential and internal politics of colonies was severely limited, especially at the outset of the colonial era (Games 2009).

The mixture of conflicting interests and information asymmetries in the non-unitary state<sup>3</sup> generated, in the language of political economy, a principal-agent problem. In the

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<sup>1</sup>The state of Great Britain came into being in 1707 with the Acts of Union between England and Scotland. Before that date, colonies were established under the crown of England; thus the empire was “English.” After 1707, the empire under the crown’s authority could be designated “British.” I will often switch between the two labels without much risk of confusion.

<sup>2</sup>I use the phrase “imperial state” to connote the institutional system for managing an empire, and a state’s “empire” to connote a system of extraction outside of that state’s own physical boundaries that is at least theoretically under the command of the state. While historians have long debated exactly when England obtained a self-consciousness as an imperial power (e.g., Pagden 1995; Armitage 2000), or when (if ever) it attained sufficient real control to justify the term (e.g., Andrews 1934; Bliss 1990), these debates are not immediately relevant to my usage, as will become clearer below.

<sup>3</sup>My focus on the role of the non-unitary state ascribes an independent, causal role to state structure

pages below I adapt a principal-agent perspective<sup>4</sup> to analyze the strategic dilemmas of English imperial governance in the New World. I cast the English crown as the principal.<sup>5</sup> This may seem surprising; there is a common belief that English law (and institutions) migrated with the colonists, and there was nothing the crown or anyone else could do about it (cf. Hulsebosch 2003, 470; Keith 1930, 9-10; McNeil 1989, 135; MacMillan 2006, 32). In fact, the crown held extensive formal power over colonial and imperial institutions: only the crown could issue the letters patent and governors' commissions that specified these institutions. At the outset of colonization, the monarch's unilateral prerogative was particularly expansive. In principle, the monarch could govern entirely through prerogative institutions, "without local consent and with or without the metropolitan Parliament" (Hulsebosch 2005, 26). In short, the monarch had capacious power over the first colonial institutions; the question was how to use it.<sup>6</sup>

Royal authority over institutional structure does not mean that the crown exercised day-to-day control itself. It does mean that, if the crown delegated extensive control, we should seek to understand why—and how. This dovetails with one of the central theoretical points from principal-agent models of institutions: the institutional structure in which agents operate affects their incentives to promote their principal's interests. Therefore, we should expect principals to use their authority over institutional structure

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in the ongoing evolution of state institutions. In this way, it shares a theoretical focus with other state-centric work on political development, including the generative work of Skowronek (1982), Evans et al. (1985), and Carpenter (2001), despite a different methodological focus.

<sup>4</sup>See Laffont and Martimort (2002) for an extended treatment of principal-agent theory; Bolton and Dewatripont (2005) for a wide range of applications including organizational economics; and Gailmard (2014) for an informal overview with applications to internal government accountability.

<sup>5</sup>I generally take the crown as a unitary actor. In fact, the crown consisted of the monarch—an actual, individual person—and its advisors, ministers, and bureaucrats. The crown's most senior advisors comprised the Privy Council. So even within the institution of the crown, the monarch faced agency problems. I consider these issues only tangentially, but in principle it could be interesting to give them a sustained treatment.

<sup>6</sup>Despite its assumption of formal power for the principal, a principal-agent perspective does not presume that the principal can find a way to achieve its most preferred arrangement. On the contrary, the perspective is interesting precisely because it explains how principals may fall far short of achieving their most preferred arrangement, or even a satisfactory one. That is a fair summary of the crown's position in the New World empire. My view is that a compelling account is one that explains this position strategically, rather than assuming it.



to provide beneficial incentives to agents (e.g, Jensen and Meckling 1976; McCubbins et al. 1987). The institutions of the British empire structured the nature, extent, and oversight of authority delegated from the crown to colonizing agents. *Colonial* institutions (internal to each colony) and *imperial* institutions (between colonies and the crown) affected that control and channeled that oversight. If the crown wished to maximize its own gain from the empire, it follows that it should have implemented institutions to manage these principal-agent problems.<sup>7</sup>

In the early colonies, the crown used its formal power to implement a consistent—if highly decentralized—institutional structure across a group of mutually independent colonies.<sup>8</sup> There were two major attributes of this structure. First was *internal colonial autonomy* with respect to the crown. Colonizers were guaranteed long-term and near-complete control over their internal operations, and obliged to share only a small amount of economic output with the crown. Second was *independence of legislatures* from governors within colonies. Either an appointed colonial council or elected assembly was to share the power to legislate and tax within the colony; colonizers were not to be autocrats. The crown provided for these structures in royal letters patent, which were binding on the crown in English courts. The principal-agent perspective explains what these structures did for the crown: internal autonomy provided strong incentives for colonizers to incur great costs to figure out how to make money in the New World; legislative independence provided a check on extractive colonial executives that the crown—armed with a weak bureaucracy at the time—could not provide itself.

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<sup>7</sup>This theoretical perspective builds on Levi (1988), who argued that all rulers are interested in revenue extraction, so variation in state structures comes from variation in their constraints, not their motives. I extend this argument to the case of early modern colonization. On this model, in all colonies the crown was interested in whatever extraction was possible. The key constraints in my analysis are *incentive constraints* the crown faced with its colonizers. These constraints both structured the first English institutions, and generated social and political structures that further constrained the crown's freedom of institutional choice.

<sup>8</sup>Importantly for comparison to prevailing arguments about English colonial institutions (e.g. Acemoglu et al. 2001), this institutional structure did not vary much as a function of colonial factor endowments or settler mortality.

Over time, the crown wished to exert greater control over colonial political economies, but encountered significant complications. First, early colonial institutions generated entrenched interests that resisted reform, such as a large merchant-planter class across colonies. Second, ostensibly separate institutions within colonies interacted with each other to create what I call *self-reinforcing bundles* of institutions. Self-reinforcement arose because the crown's attempts to layer a new imperial hierarchy on old colonial institutions generated additional agency problems with royal agents. It made bundles of colonial institutions more durable than any of their individual components, and stymied control by the crown.<sup>9</sup> For these reasons, the crown's *political* (real) power was less than its *legal* (formal) power in the established empire.<sup>10</sup> This mismatch resulted in persistent colonial autonomy and powerful, independent legislatures that lasted through the colonial period. These institutions in turn directly affected the US Constitution: the separation of powers between executive and legislature, and the assumption of states as independent units of political life, flowed immediately from colonial dynamics.

The substantive payoff of the principal-agent perspective is to understand (*i*) why English colonies were governed in this way, and (*ii*) how their early structures interacted with agency problems in the imperial hierarchy to inhibit control later on. To explain more, it is useful to start with an overview of the first British empire and its institutions. Then I give a more detailed overview of my argument.

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<sup>9</sup>Thus self-reinforcing bundles of institutions are one route to institutional path dependence (North 1981; North 1990; Pierson 2000). Related concepts are deployed by Greif (2006) on economic institutions; Acemoglu and Robinson (2008) on institutional persistence; Besley and Persson (2011) on development clusters; and Filippov et al. (2004), Defigueiredo and Weingast (2005), Bednar (2008), and Broschek (2013) on federalism.

<sup>10</sup>See Aghion and Tirole (1997) on the distinction between formal and real authority in organizations.

## 1.1 Historical Overview: The English Empire, English Colonies, and Their Institutions

Examining a more or less consolidated British empire in the New World after the French and Indian War, one finds a chain of relatively populous political societies in eastern North America and several Caribbean islands with well-articulated governmental institutions and economic structures based on agricultural production and trade. There were also established modes of oversight and regulation of the colonial political economies by the central state, bureaucracies (and very occasionally Parliament itself) in Britain to devise these regulations, and agents of the metropole on the ground in the colonial periphery to implement them. All colonies had elective assemblies answerable to property-owning colonists. Almost all had governors chosen and instructed by the crown. Colonial assemblies could initiate legislation, but in most it had to be approved by royal governors and also by the imperial ministry in England. Colonists had considerable autonomy over their production and trade, though the navigation system required external trade to be carried on British ships and, for the most valuable products, funneled first through England to pay customs duties. British writers and officials thought of their empire as one of seaborne trade, not of extractive domination, and thus fully compatible with the liberty of its white, free subjects—in contrast to the corrupting empires of their continental rivals and of antiquity (Armitage 2000). At least this might be called the “official” view of the empire’s governance, and it had been in place since the 1690s (Webb 1979).

Despite this coherence, any attempt to find an *ex ante* plan by the English state to create such an imperial structure would be in vain. It is universally recognized among historians that there was no singular act of state will behind this empire (Beer 1908; Andrews 1984; Bliss 1990; Roper 2017). Instead, the English empire emerged out of decentralized commercial ventures by private English merchants inflected with a more or

less martial character (Andrews 1984; Webb 1979). Without stretching the concept too much, we could recognize these commercial overseas ventures as public-private partnerships. Private merchants exercised power delegated by the state, such as the right to claim territory in the name of the crown, subdivide land and grant it as property, govern the monarch's subjects, and move people and goods in and out of England.

## **The Crown's Legal Authority**

None of these rights could be legally obtained except by explicit grant of the crown (Bliss 1990, 23; MacMillan 2006). Therefore, private actors and merchants lobbied the crown and its ministers, often bringing them on as leading figures in overseas ventures, essentially offering political support and financial returns in exchange for delegations of state power. The crown also stood to benefit from customs revenue on overseas produce vended in England and imports of strategically important resources, so its financial and security interests supported the delegation of state power to help the ventures succeed.

Royal authority was formally delegated to colonizing agents through the legal instrument of letters patent, a device akin to a contract between the legal sovereign and an agent. By this arrangement, the merchant-mariners that initiated New World colonization were literally government contractors, and this colonization was, in a sense, an early modern forerunner of government contracting out for services.<sup>11</sup>

By exercising state powers in pursuit of private gain, the contractors simultaneously drew the English state into the governance of overseas ventures. State power, if misused by private contractors, would waste opportunities for gain, create colonial unrest the

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<sup>11</sup>Strictly speaking, colonial charters and patents were different from contracts. Contracts involved (then as now) a process of offer-acceptance-consideration between legal equals. Charters and patents were grants of royal largesse to subjects, not agreements among equals. Nevertheless, colonial charters and patents included crucial contractual elements of mutual acceptance, duration specified *ex ante*, stipulated terms enforceable by a third-party court, and potential revocation of the patent holder's rights if terms were violated. These are the crucial elements required to invoke the conceptual apparatus of principal-agent theory. Therefore, I refer to colonial charters and patents in this sense as colonial "contracts," and apologize in advance for any offense this causes to legal historians.

monarch had to address, or worst of all, entangle the state in conflict with other European colonizers. No state protective of its wealth and security, which England certainly was, could leave private traders entirely to their own devices. Where the contractors sought to expand their profit by exercising state power—for example, by governing the monarch’s subjects—the state’s interest followed. Managing colonizers’ use of state power required the crown to spell out institutions of colonial and imperial government. This, rather than any centralized design to achieve benefits to the state or people of England through colonization, was how the English crown got involved in colonial governance. The state in 1600 did not have any policy of establishing large political societies or territorial holdings overseas (Andrews 1984, 356-7).

The crown had not only the incentive, but the legal authority to structure colonial contracting in its interest. Justice Matthew Hale summarized several decades of English jurisprudence on this point in *Prerogatives of the King*. Of overseas dominions, Hale held:

For the course and manner of their acquisition...the king issued a commission to seize such and such continents...in the name of the king...[T]hese are acquired to the king in right of the crown of England and are parcel of the *dominions* though not the *realm* of England...[U]pon the conquest English laws are not settled there...[T]he English planters carry along with them those English liberties that are incident to their persons (quoted in MacMillan 2006).

Hale made a subtle but key distinction between the *realm* and the *dominion* of England. The “realm of England” was the nation-state of England proper. Here the monarch was bound to observe common law and the “ancient constitution”—a legal corpus including the right of Parliamentary consultation on taxation and major state decisions. By contrast, the “dominion of England” included lands in the monarch’s personal possession outside of physical boundaries of England itself. Here, England’s “ancient constitution” did not bind the monarch. However, English colonists from the realm did have specific

rights even in the king's dominion: those "incident to their persons," such as the right of colonists not to be arbitrarily deprived of life, liberty, or property—rights held by the subjects of any lawful monarch, not specific to the English constitution. Importantly for the crown's power in colonization, these were substantive rights with no specific institutions prescribed to underwrite them or remedies in case of their violation (MacMillan 2006, 33).<sup>12</sup>

English law also clarified the powers of the English Parliament in directing early New World settlement: there were none, except what the monarch chose to share with it. Conquered colonies were claimed and held under the monarch's prerogative, a zone of discretion that lay outside the authority of the Lords and Commons. The monarch could exercise its prerogative in consultation with Parliament or not, and Parliament did sometimes legislate for overseas dominions with the monarch's approval. But the Commons and Lords could not force the monarch to accept any provision for their settlement that it did not wish to accept. This is obvious not least because the monarch was, in the early 17th century, *part* of Parliament; Parliament could not legislate without the monarch's assent (Black 1976, 1202, 1210).<sup>13</sup>

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<sup>12</sup>The key English court case on colonization was *Calvin's Case* (1608), particularly the *obiter dicta* by Justice Edward Coke. Coke and subsequent English jurists recognized certain *substantive* rights of English colonists, but not rights to any specific *institutions* that the crown had to construct to safeguard those rights. Moreover, Coke held that in "conquered colonies" (which, in the cases's schema, included all of the New World), the crown had complete control over the colonial constitution. See Black (1976), Hulsebosch (2005), and MacMillan (2006) for extensive discussions of *Calvin's Case* and its implications for colonization.

<sup>13</sup>The authority of Parliament, or more specifically the authority of the House of Commons, over the colonies is a knotty problem that covered the key legal dispute in the American Revolution, a dispute that has continued in historiography to the present day (e.g. Nelson 2014). Part of that dispute is how one reckons the changing authority of Parliament after the Revolution of 1688, which made Parliamentary supremacy a reality and royal assent a formality. Most of this dispute is tangential to the question of the monarch's authority over the earliest colonial institutions. See Black (1976), McIlwain (1923), Schuyler (1929).

## Contractual Imperialism

English overseas activity in the 16th century focused primarily on Asia, which everyone knew was the real money-maker (Andrews 1984, 356). Searching for a northwest passage, English mariners such as Sir Francis Drake and Sir Humphrey Gilbert hit North America and found it a useful staging point for privateering raids against the Spanish fleet. Pamphleteers imagined numerous sources of wealth and argued that England could organize a North American empire to rival that of Catholic Spain in South America. Inspired by his half-brother Gilbert, Sir Walter Raleigh secured an English patent for a massive segment of North America, imagining himself as a feudal lord over eastern seaboard. The embryonic colony of Roanoke in contemporary North Carolina, which Raleigh organized and financed but never saw in person, was the closest he got to success. Roanoke hobbled on for a few years, but disappeared in mysterious circumstances. Nevertheless, based on Raleigh's example, English interest in North America gradually shifted to forming bases for privateering, mineral prospecting, and territorial settlement (Roper 2017).

Picking up where these excursions left off, in 1606 King James I authorized two companies in "Virginia," which at the time meant the huge swath of the eastern seaboard from present-day Georgia to Maine that Raleigh had named for Queen Elizabeth I. Two separate companies, the "London Company" and the "Plymouth Company," were each granted half. The London Company landed in the Chesapeake Bay region in 1607 and named their first settlement Jamestown.<sup>14</sup> No one knew how to actually make money there, let alone build a stable polity.

The Jamestown settlement is momentous because it turned out to be the first English New World settlement to last. In 1607 it was just another overseas company, neither the

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<sup>14</sup>This left the Plymouth Company with the northern colony, but it never established a successful settlement itself. It did authorize the Popham or Sagadahoc Colony in New England, which failed after 14 months. But the Plymouth Company and its successor, the Council of New England, rented land to the Pilgrims for the Plymouth Colony in 1620, and the much larger group of Puritans for the Massachusetts Bay Colony in 1629.

most prominent nor best financed. It was different from prior trading companies in that it was not entering an established trading economy or a cosmopolitan political society; previous New World ventures especially by Raleigh, Gilbert, and others had revealed this (Horn 2008; Games 2009). Still, Virginia was designed to make a profit for its employee-colonists and its shareholders to enjoy in England. Its government was rudimentary and repressive, and its economy, such as it was, initially aimed at mineral extraction. Through a series of diplomatic missteps and conflicts with local Powhatans, the colony found itself almost annihilated several times over the next 15 years. It experimented with several widely divergent schemes of internal government and economic regulation through the 1610s before figuring out how to grow a strain of tobacco palatable to the English consumer. This generated a tobacco boom that rapidly turned Virginia into a tobacco monoculture (Horn 1998).

After trial and error in Virginia, colonial patents tended to follow a common pattern with similar terms across multiple colonies. I refer to the policy of shaping colonies through ex ante patents as *contractual imperialism*, and it had several major components. First, patents granted long term control to the colony's organizers in exchange for symbolic rents.<sup>15</sup> They specified no direction or review of economic operations and granted extensive authority over internal colonial policy. Second, they all incorporated a form of output sharing with crown, specifying shares to the crown from various mineral deposits and shares of agricultural output vended in England in terms of customs revenue. Third, almost all patents required some kind of independent council or assembly to consult on policy decisions of the patent holders—a balance of governmental powers within each colony. Fourth, on external affairs, all patents recognized colonists' right of self-protection, but enjoined them not to start any conflicts with other Europeans. These delegations were broad but not absolute; when and if patent recipients violated the terms,

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<sup>15</sup>For instance, the Barbados patent specified that the proprietor had to furnish the monarch a white horse to ride whenever they should visit the island, though they never did in this era.



the crown could sue for patent revocation in English court.

Contractual imperialism structured the economies and politics of early colonies. Under this structure colonizers searched for and identified the resource endowments they could exploit in Europe. It also produced a strong merchant-planter class, given that settler- and slave-agriculture was the most profitable mode of operation across the colonies, and it produced the first colonial legislatures. Besides Virginia, several other colonies were also established under this model, including Barbados and the Leeward Islands in 1628, Massachusetts Bay in 1629, and Maryland in 1632. In all cases of contractual imperialism, the crown was relatively hands-off in colonial government and operations. Its primary tool of control over these ventures was the contract itself. The crown safeguarded its interests through the contract terms, and through the decision to grant a contract at all (MacMillan 2006).<sup>16</sup>

## **Regulatory Imperialism**

From 1640 to 1660, England underwent seismic shifts in the structure of both its politics and its state. Conflicts between King Charles I and Parliament erupted in the English Civil War in 1642. The parliamentary faction prevailed in 1649, executed the king, and proclaimed a republican government led by Oliver Cromwell. As Cromwell's republican commonwealth shifted to an autocratic protectorate in the 1650s, English elites decided the cure for royal conflict was worse than the disease, and invited Charles I's son to accede to the throne, which he did in 1660 as King Charles II. However, during the Interregnum, relations between the metropole and established colonies did not fundamentally change (Bliss 1990, 48-51). Cromwell's government emphasized stability over change and preferred to work with existing local authorities.

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<sup>16</sup>The crown also developed some central institutions for imperial coordination and oversight as early as the 1620s (cf. MacMillan 2011). While their formal powers were extensive, they were all short lived and their focus generally sporadic. Thus, these committees did not fundamentally disturb the primacy or autonomy of decentralized, private contractors within the empire.

With the Restoration of the monarchy in 1660, imperial governance was, at first, also characterized by continuity rather than sharp changes (Bliss 1990, chapter 2). King Charles II eased into his imperial role by utilizing the model of contractual imperialism to govern existing colonies and establish new ones. He quickly granted royal charters to the colonies of Connecticut and Rhode Island almost identical to the ones they had self-drafted in the 1630s.<sup>17</sup> For newly established or conquered colonies, such as Carolina, New York, New Jersey, and Pennsylvania, Charles II relied on the traditional form of proprietary grants rather than the Virginia model of direct royal rule. In the face of unremitting recalcitrance from Massachusetts Bay toward any imperial regulation, he remonstrated with the colony's leaders for years rather than trying to change its structure.

However, through the 1670s to 1680s, the crown became more assertive in imperial governance. Given their ongoing conflict with the English Parliament, the later Stuart kings (Charles II and James II) perceived both security and financial interests in the New World that it believed could be met by applying more stringent control, verging into autocracy (Bliss 1990). To achieve their interests, they attempted a rapid shift to direct government by the crown. First, the crown attempted to restrain or cancel assembly privileges in several colonies—most notably Jamaica, Virginia, New York, and all the colonies of New England. Second, the crown attempted to reform colonial boundaries and institutions to suit the empire's interests. Starting in 1685, King James II aggregated the separate colonies of Connecticut, Massachusetts Bay, New Hampshire, New Jersey, New York, Plymouth, and Rhode Island colonies into the single Dominion of New England, with a royal governor holding vice-regal powers, a new direct tax system, and no assembly to participate in lawmaking.

Both moves generated strong resistance and even open rebellion in the colonies. The crown discovered it could not sustain its autocratic turn: its real political power stopped

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<sup>17</sup>New Haven, which harbored some of Charles I's regicides, had no hope of returning to Charles II's good graces, and was folded into Connecticut.

short of its formal legal power. The merchant-planter power generated by contractual imperialism and necessary to make it work limited the crown's freedom of institutional choice. When James II was replaced by King William III and Queen Mary II in the Revolution of 1688 (the "glorious revolution"), the new monarchs agreed to reinstate most of the old colonial boundaries and political forms and drop the autocratic approach of their predecessors.

Despite the failure of its rapid autocratic turn, the crown did not give up its effort to assert direct control over the colonies. For their part, while colonial merchant-planter elites resisted the most autocratic policies, few sought to fully subvert the crown's authority. The privileged position of colonial elites enabled them to exert power over other colonists, for instance, by claiming a share of the output they generated in export trade, or by controlling accepted modes of religious practice. Political institutions were necessary to preserve that power (Acemoglu et al. 2010). Recognizing the crown's legitimate authority allowed colonial elites to claim and perpetuate their own power under its delegations (Bliss 1990, 30-43). Thus, a negotiated compromise emerged between center and periphery (Greene 1986), which I refer to as *regulatory imperialism*.

Regulatory imperialism had three core tenets. First, the crown recalled or sued for the patent of almost every colony in the New World, replacing indirect government through contractors with direct royal government across the empire. This meant that most governors were selected by and served at the pleasure of the crown; and that colonial institutions were formally declared by the crown in the governor's commission. While this piecemeal approach to patent resumption took decades, it was ultimately fairly successful. By the end of the colonial period, only Connecticut and Rhode Island retained their original charters, and even these colonies were subject to imperial regulation through court cases (Bilder 2004).

Second, the crown and Parliament developed the *navigation system* to regulate colonial trade (Barrow 1967). Through a sequence of Navigation Acts from 1651 to 1696, this

system formally restricted colonial trade to English- or colonial-owned ships, and required the most valuable colonial outputs to pass through England and pay customs duties before any possible re-export. This was real rent extraction, if only it could be enforced. But enforcement was weak throughout the 17th century. The crown's response was to create, first, a new administrative bureaucracy, the Royal Customs Service, on the ground in each colony's major ports, with personnel, procedures, and responsibilities spelled out in intricate detail; and second, a crown-controlled court system in the colonies, the Vice-Admiralty Courts—staffed by royal appointees rather than colonial judges—to try cases under the Navigation Acts. Thus, for the first time, the crown created and deployed a uniform system of royally-staffed administrative and judicial institutions across all the colonies. In theory, this enforcement process drew the colonies into an imperial system that was designed to funnel benefits to the metropole (Pincus 2012).

Finally, while the crown abandoned its earlier frontal attack on colonial assemblies, it sought to control them through two channels, both flowing through an imperial ministry in England. Experiments with central oversight committees converged on a body called the Lords Commissioners of Trade and Foreign Plantations, more commonly known as the Board of Trade, in 1696. First, the Board of Trade maintained vigorous correspondence with royal governors, issue detailed instructions about how they should handle their assemblies, and reviewed their performance. Second, the Board reviewed nearly every piece of legislation passed by a colonial assembly and signed by the governor. Most colonial charters, and every gubernatorial commission from the crown that superseded them, empowered assemblies to pass laws “not repugnant to the laws of England.” This innocuous language provided a seam for imperial oversight (Bilder 2004). The Board of Trade and Privy Council determined whether colonial legislation met this standard, and if it did not, the law in question was immediately and prospectively void.

By 1700, a regulatory imperialism was in place that would last until the American Revolution. In individual colonies independent of each other, the governor served as the head

of government and local agent of the crown. The locally elected assembly representing colonial merchant-planters passed laws subject to the royal governor's veto, and approved laws were reviewed by the Board of Trade in London for consistency with English law and imperial policy. Colonial trade was theoretically funneled through England under the Navigation Acts, which were enforced in the colonies by royally appointed bureaucrats in the Customs Service and overseen by royally appointed judges in the Vice Admiralty Courts.

Yet colonial institutions remained contested and dynamic under regulatory imperialism. Like contractual imperialism, it too was based on a non-unitary imperial state. Its institutions simply created new agency problems—between the crown and its royal governors—through which the merchant-planter elite pursued their interests. Regulatory imperialism was designed to restrain both colonial autonomy and legislative independence, but in fact restrained neither. Legislative review was unable to fully subordinate colonial legislation to imperial policy; colonies maintained *de facto* autonomy for the whole colonial period. And, far from restraining the independence of colonial assemblies as they were instructed to do, royal governors conceded to assembly demands for greater and greater power over colonial policy and administration. By the last phase of the colonial period, there was scarcely any area of colonial government in which colonial assemblies did not assert their control (Greene 1963).

## **1.2 The Argument Summarized: The Principal-Agent Perspective on Institutional Development**

Colonial autonomy and legislative independence had momentous consequences for colonial political development (Greene 1986; Mancke 2005), the emergence of revolutionary sentiment in North America (Bailyn 1979), and the institutional structure of the new United

States (Wood 1969). These important institutions require explanation. First, why would a strategic crown govern by a contractual imperialism that established these institutions? Second, why did they persist—why was the crown, despite its potent formal powers and occasionally strong interest, unable to restrain them under regulatory imperialism? These are the central, specific questions addressed in this book.

Here is a one-paragraph summary of my answers. First, the crown faced particular principal-agent problems in establishing self-sustaining, money-making colonies through colonial contractors. Contractual imperialism was a solution to those problems.<sup>18</sup> Colonial autonomy enshrined in patents provided strong incentives for colonizers to identify profitable modes of production despite immense costs.<sup>19</sup> Legislative independence reduced incentives of colonial elites to despoil colonial settlers, thereby mitigating economic and security risks to the crown. Second, the legal and social-economic structures of contractual imperialism limited the crown’s political latitude to impose direct rule when it finally wished to do so. Therefore, the crown pivoted to regulatory imperialism to control the colonies. Third, the institutions of regulatory imperialism generated several new agency problems between the crown and its agents in the colonies, particularly royal governors. Governors capitalized on the crown’s limited information to sidestep royal demands for control, which bolstered the power of colonial legislatures. Colonial autonomy and legislative independence were thereby fused in a self-reinforcing bundle of institutions. Each of these institutions reinforced the other, so that they remained durable as a bundle. Figure 1.1 provides a graphical overview of the argument.

Here is a longer version of how I develop my argument chapter by chapter. **Part I** focuses on contractual imperialism. Because the problem is to explain the emergence of specific institutions from a blank slate, my approach is to identify relatively consistent

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<sup>18</sup>This part of my argument is similar in spirit to Leeson (2007) and Allen (2011) who also analyze early modern institutional structures as response to incentive problems.

<sup>19</sup>That is, patents provided legal commitment for colonizers to enjoy rents they identified, and in turn incentives to acquire costly information. In this sense they functioned similarly to modern patents in intellectual property; see Scotchmer (2006) for an incentive-theoretic treatment.

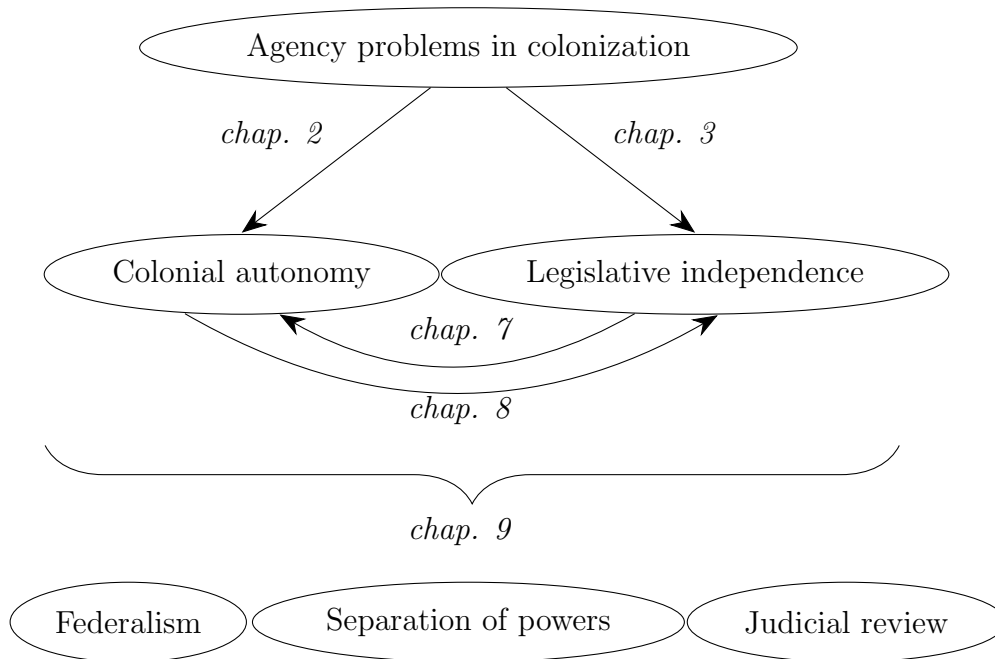


Figure 1.1: Schematic depiction of the argument. *Institutional establishment* is analyzed formally in Part I. *Self-reinforcement* is analyzed formally in Part II.

attributes of English colonial patents, and to build simple but (hopefully) realistic formal models of agency problems in colonization that produce those attributes in equilibrium.<sup>20</sup>

**Chapter 2** considers the establishment of *colonial autonomy*: the ability of colony government to make consequential policy decisions irrespective of royal will.<sup>21</sup> For the first colonies, this autonomy was freely granted by the crown and underwritten by colonial patents. I argue that autonomy and several other consistent patent terms arose from an incentive problem between the crown and its colonizers on several dimensions: to identify profitable modes of production in a land where no one knew the resource endowments; to produce output from those endowments in the face of great costs; and to minimize the crown’s diplomatic risks. The crown also needed to provide these incentives with minimal financial outlay, which it could not afford. I develop a formal model of contracting in this

<sup>20</sup>For additional discussion of this approach to modeling in historical political economy see Gailmard (2023).

<sup>21</sup>This definition is adapted from Carpenter (2001) on *bureaucratic autonomy*.

environment where optimal contract terms closely match the actual patents: long-term duration with no administrative control by the crown, extensive delegation of control to agents, and commitment of most colonial output to agents. In particular, long-term grants of internal autonomy to colonies arose not from the endowments the colonizers found, but as an incentive to identify and exploit those endowments.

In **chapter 3**, I examine patent terms for internal governance within colonies, specifically *legislative independence*—a colonial legislature separate from, not an agency of or subordinate to, the colonial executive. Like colonial autonomy, legislative independence was freely granted by the crown and stipulated in almost all patents; it was not the result of pressure from colonizers, let alone colonists. Thus it is necessary to understand the crown’s positive incentive to incorporate this institution proactively. I argue that transferring formal power from the crown to colonial elites created significant threats to colonial development. Colonial elites—such as proprietors, their governors, and their allies—had both the incentive and the power to extract rents for themselves from settlers. Experience showed they might do so even if it threatened the colony’s stability or undermined settlers’ incentives to produce marketable output. With limited tools of oversight through the mid-1600s, the crown could not easily restrain this rent extraction itself. However, an independent legislature could act as a check on this rent extraction. Thus, by creating a balance of political power between the executive and legislature within a colony, the crown could overcome its own limited control on the ground, stabilize the colony, and safeguard the flow of output and customs revenue.

Colonial autonomy and legislative independence were the backbone of contractual imperialism.<sup>22</sup> **Chapter 4** presents qualitative evidence on the development of the first English settler colonies under this model of colonization. I argue that contractual imperialism was effective at providing incentives for colonizers to identify the most profitable

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<sup>22</sup>They are also examples of delegation and separation of legislative power, so this argument highlights a different strategic path these structures in the US than in Europe (cf. Cox 2023).



modes of production they could find, even at great cost, and to remake their economies rapidly in the face of new information about resources. It also successfully provided strong incentives for high operational effort in colonial production. Yet contractual imperialism had important defects as well. It was not suited to coordination of economic activity across colonies; did not supply mechanisms to confine colonial output to England; and generated such strong incentives to control colonies that it often invited factional struggles that undermined smooth operations.

Contractual imperialism was successful enough that, by the 1670s, many colonies had stable modes of economic production: the problem of discovering profitable resource endowments had passed. Meanwhile, due to changes in English domestic politics, colonial customs revenues was more important than ever to the crown. Simultaneously, the capacity of the crown to oversee and intervene was growing. Therefore, the crown took an increasingly assertive, even autocratic stance toward imperial governance. **Part II** considers the development of institutions for hierarchical control of the colonial political economy by the metropole, culminating in what I call regulatory imperialism. My approach in this part is to build stylized models of the institutions of imperial regulation, and investigate how well they control key agency problems with imperial agents in equilibrium.

**Chapter 5** examines the crown's attempt to assert unilateral, direct government over the colonies. This control took several forms. One was to rescind or buy out the charters and patents of contractual imperialism, such that by 1700 most colonies were constituted and administered under direct royal authority. Another approach was to reshape colonial boundaries, aggregating distinct colonies into unitary administrative districts. A third approach was to reform internal colonial institutions: in the 1670s-1680s, the crown attempted to reduce the power of colonial assemblies or eliminate them altogether. However, the crown's reforms met with resistance in every case, and ultimately only partially reformed the empire. The crown's earlier delegations created merchant-planter power cen-

ters within each colony that limited the crown's political power, irrespective of its formal, legal power; thus, they constrained the prospects for institutional reform.

When the crown's autocratic maneuvers failed, it pivoted to an alternative model of control—regulatory imperialism—in the 1690s. Regulatory imperialism was established by the crown using its legal power to “layer” new institutions on top of the existing ones it did not have the political power to uproot (cf. Schickler 2001; Thelen 2004). In **chapter 6** I focus on the economic side, regulation under the Navigation Acts. These acts provided the policy framework for imperial rent extraction. They also created a massive extension of the English state directly to the colonies, through the Royal Customs Service for administration and the Vice Admiralty Courts for adjudication. I argue that the structure of these institutions embodied serious attempts to solve agency problems in imperial regulation, but these attempts were undermined in practice by spotty implementation. Thus, the navigation system sustained the continuing political power of the colonial merchant-planter class.

I turn to political regulation in **chapter 7**. Starting in 1696, the Board of Trade in London reviewed legislation from royal colonies for consistency with English law and imperial policy, nullifying those laws that it deemed inconsistent. In this way the crown acquiesced to the existence of assemblies that colonists vigorously defended, but introduced a mechanism to control colonial legislation. I argue that legislative review conferred real control upon the state—directly, by eliminating some undesirable legislation, and indirectly, by changing the bargaining dynamic between colonial assemblies and royal governors. However, this control was inherently limited: it relied on auditing after legislation was passed, and invited attempts to circumvent it. Therefore, independent colonial legislatures sustained colonial autonomy over internal policy decisions, irrespective of imperial restrictions.

**Chapter 8** considers how colonial assemblies bargained with governors to expand their control over colonial revenues and administration. Assemblies sustained this control de-

spite the crown's explicit and sometimes vigorous attempts to restrain it through colonial governors. I argue that assemblies had strong incentives to expand their powers because of colonial autonomy. For their part, governors exploited the crown's uncertainty about colonial politics to concede powers to the assembly, thus allowing harmonious administration while concealing their concessions from the crown. This resulted in the growth of assembly power that the crown, despite its potent legal prerogatives, was powerless to stop.

The models in chapters 7 and 8 show how colonial autonomy and legislative independence formed a *self-reinforcing bundle of institutions* under regulatory imperialism. Colonial autonomy provided strong incentives for assemblies to maintain independence and expand their power with respect to governors, while assembly independence bolstered colonial autonomy under legislative review. Self-reinforcement is important because it shows how this bundle of institutions persisted and expanded over time under colonial administration: it means that the bundle was stronger than either of its component parts. Thus, my analysis explicitly theorizes the process of institutional reproduction (Collier and Munck 2022).<sup>23</sup>

Finally, **chapter 9** considers the legacies of colonial autonomy and legislative independence for the new United States. Certainly, these institutions were important as models and archetypes that inspired American constitution making. But they were more significant than that: they also presented bargaining constraints that affected the constitutional structures it was possible to build in the US. Colonies maintained autonomy not only from the crown, but with respect to each other. Autonomy was the outside option available to every colony as elites bargained over constitution terms in 1787. Some of the American polity's most important institutions—including power sharing between the federal and state governments, and malapportionment in the federal legislature—emerged due to the

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<sup>23</sup>Institutional reproduction is a key feature lacking in many studies of persistence in historical political economy (HPE) to date (Abad and Maurer 2021; Acharya et al. 2023), which limits their ability to understand institutional development.

bargaining constraint that mutual colonial autonomy imposed on America constitution makers (cf. Riker 1964; Edling 2003).

## 1.3 The Stakes of the Argument

This book has important implications for three distinct areas of scholarship: the development of New World institutions; indirect and direct rule; and the interpretation of some of America’s core political institutions.

### Institution Formation in the New World

The American-centric question of how the US got its particular institutions is closely related to the comparative question of institutional development in general. While little scholarship in political science or political economy focuses specifically on the British empire in the future US, a substantial body of work provides various explanations for New World institutions and development under European colonization. This includes the British colonies as a special case.

**Endowment Determinism.** A common approach in political economy traces colonial institutions to resource endowments, human geographies, and physical environments encountered in colonization (e.g., Sokoloff and Engerman 2000; Acemoglu et al. 2001; Dell 2010; Arias and Girod 2011; Engerman and Sokoloff 2011; Acemoglu and Robinson 2013). I call this *endowment determinism*. One variant holds that English colonists in North America, unlike their Caribbean counterparts, focused on long-term settlement (e.g., due to lower disease burdens), and therefore brought “inclusive” institutions with them from England (Acemoglu et al. 2001).<sup>24</sup> Another variant holds that the open western frontier

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<sup>24</sup>“Inclusive institutions” are those that constrain arbitrary action by the government, particularly the executive.

and sparse Native American populations of North American colonies made it impossible to reproduce repressive feudal structures there, so the colonizers had no choice but to offer personal and political freedoms to colonists, such as assemblies to consult in colonial legislation (Acemoglu and Robinson 2013).

There is no doubt that human and physical geographies powerfully influenced colonial institutions and variation across New World empires. At the same time, to understand institutional development in the English New World, endowment determinism is not sufficient. First, England's early New World colonies began with strikingly similar institutional structures in their patents, regardless of their specific endowments or the openness of their frontiers. The patents for Barbados and Maryland, issued only 3 years apart, both required the proprietors to consult with planters on internal taxes—the basis of elective assemblies in both colonies (established within a few years of each other). Second, the French colony of New France implemented a semi-feudal, seigneurial structure with no elective assembly for over a century, despite substantially similar geography and endowments to northern English colonies. Thus we see cases of different endowments but similar initial institutions, and similar endowments but different initial institutions.

A key factor missing from endowment determinism is the role of the crown and its problem of imperial governance. The crown relied on agents to extract gains from the New World; agents needed incentives to act in the crown's interest; and institutions provided these incentives (an argument developed in part I of this book). In English colonies, colonial autonomy was not the result of factor endowments and geography; it was built into colonies before anyone knew their endowments—as an incentive to identify them in the first place. Independent colonial legislatures were not the result of an open frontier or any other pressure from colonists; they were built into patents—as a check on extractive colonial elites. These problems were fairly consistent across English New World colonies at the time of settlement (when their endowments were poorly known, so could not much

affect initial institutions), and thus so were the institutions.<sup>25</sup>

Foregrounding the problem of extraction in a non-unitary imperial state blurs the distinction between the English and Spanish New World empires, and between the institutional foundations of their successor states. Not only was the English empire as extractive as it could be, but in practice the Spanish may not have been so extractive as commonly depicted (Grafe and Irigoien 2012). Moreover, the Spanish Empire, like the English, was not unitary. Thus Spanish colonial government was replete with checks and balances in response to imperial agency problems (Franco-Vivanco 2021; Guardado 2022) and other limits on the power of colonial agents (Garfias and Sellars 2020, 2021, 2022). In both empires, the crown implemented checks and balances to indirectly control imperial agents they could not directly control themselves.<sup>26</sup> Both empires had repressive institutions for the non-white (African or Native American) populations throughout the territory they claimed; both had legal restraints on arbitrary executive action—inclusive institutions—for their white, European subjects. The difference is simply that in English colonies, colonial checks on imperial agents tended to come from independent legislatures. In Spanish colonies they tended to come from colonial courts and mutual oversight by royal appointees (Parry 1966). For reasons neither understood nor intended by colonizers, assemblies turned out to be better than courts and bureaucrats for future democratic and therefore economic development.<sup>27</sup>

In addition, my analysis explicitly connects colonial institutions to the bargaining process in post-colonial US state building. After independence, colonial institutions furnished the status quo or outside option for elites from every state as they negotiated the new national government's powers and structure. Thus, I attempt not to make simply an

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<sup>25</sup>The most repressive may have been New York, where in contrast to most colonies, the original English patent prescribed no independent legislature; cf. chapter 3.

<sup>26</sup>So, the path to assemblies in North America was clearly different than that in Europe (Levi 1988; Stasavage 2010, 2016), but still dependent on European models.

<sup>27</sup>Viewed in this light, the clear link between colonial and metropolitan institutions in each empire (cf. Lee and Paine 2023) was not about exporting inclusive vs. extractive institutions, but about using institutions familiar to each crown to solve similar problems of controlling delegated authority.

assertion of institutional stickiness, but to understand the strategic process that grafted colonial legacies into the post-colonial American state.

**Colonial Archetypes.** Endowment determinism is part of a larger body of work that attempts to characterize the archetype colonial model of various European colonizers for purpose of explaining the “deep roots” of contemporary development. Lange et al. (2006) depict England as following a “liberal model” eschewing “hierarchical relations” with its colonies (1416; cf. Mahoney 2010). Paine (2019) shows that among early colonies, only British ones tended to have elective assemblies; he argues this was part of a British approach to colonization. Gerring et al. (2022) argue that all European colonizers were more likely to implement liberal institutions when the racial makeup of colonies was sufficiently white and European.

A problem for archetype models is that the English model changed significantly over time.<sup>28</sup> It is difficult to find an archetype of English imperial governance that applies throughout American colonial history without committing the fallacy of retrospective determinism. A major development in the English New World was the crown’s attempt first to unilaterally dismantle colonial institutions, then to reform them for hierarchical control (covered in part II of this book). The crown never shared a commitment to liberal institutions per se, and neither colonial geography nor colonial racial homogeneity stopped its attempts to repress and control them. Of course the crown’s attempt at control largely failed. To understand America’s institutional inheritance, that is what we need to explain.

All that said, it is true that most British post-colonial states settled by white Europeans (“neo-Britains”) have had a strong elective legislature since their colonial period (Paine 2019). And none of the others followed America’s particular path to it. Doesn’t this mean that the key factor for institution formation is simply white-British origins?

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<sup>28</sup>Paine (2019) does consider evolution of assemblies in English colonies, but not in terms of the relation between colonies and metropole.

If the British crown could not suppress assemblies in Victoria, weren't they inevitable in Virginia? If so, isn't the path dependency argument in this book essentially "overfitting" the model? No, because the issue is not solely about assemblies. A key to understanding American institutional development is the *bundle* of elective legislatures and decentralized autonomy. While many "neo-Britains" share certain institutional features,<sup>29</sup> they have different versions of this bundle.<sup>30</sup> America's particular version was present not only at its creation, but before it under imperial governance. Correspondingly, America's particular path through imperial administration is a good explanation of its bundle, but its English origin alone is not.

## Direct and Indirect Rule

Contractual imperialism was how the crown implemented *indirect rule*, a particularly clear definition of which is that a colonizing state "control[s] territories through intermediaries rather than imposing a monopoly of violence directly" (Naseemullah and Staniland 2016, 13). The first English colonies certainly fit this description; the contractors were the intermediaries. And, as in many other cases of indirect rule, the intermediary institutions remained durable, outlasting the empire but linking it to the present-day politics of the former colony.

Yet the comparative literature on indirect rule rarely considers the English New World, perhaps because there were no "precolonial institutions integrated into the colonial state" (Müller-Crepon 2020, 710). Most studies of indirect rule analyze cases of exogenous local leadership that has already consolidated customary authority over an exogenous subject population; the decision of a hierarchical ruling state is then to rule through this existing

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<sup>29</sup>Most obviously, an elective legislature, at least partially common law legal system, and some type of federalism.

<sup>30</sup>For example, while the US Constitution reserves all residual powers to the states or the people, Canada's Constitution Act of 1867 (sections 91-92) reserves residual powers to the federal government. The interpretation of those sections in subsequent American and Canadian jurisprudence is an important subject, but beyond the scope of this book.



intermediary or replace it with the ruling state's own agents. By contrast, in English colonization, the state endogenously created a local political society, local institutions, and local intermediaries; then ruled through them. The English New World case is clearly an exception to the pioneering argument of Gerring et al. (2011), who argued that indirect rule is imposed when "stateness" already exists in new colonies so that imperial states capitalize on existing political order.

The challenge of the English New World case is to understand why indirect rule was imposed there, despite missing the usual preconditions identified in the literature. Contractual imperialism answers this question. The key factor was the ignorance of everyone involved, both central state and intermediaries, about resource endowments and feasible economic structures in the New World. As I show in chapter 2, this accounts for the state's grant of internal autonomy and long-term control to its contracting agents. This factor is missing in most other cases of indirect rule: places where local potentates and customary institutions predated colonization are precisely cases where someone involved knew how to produce output in the colony. Thus, the incentive problems that would have attended English direct rule in North America were absent in other cases. This explains why the preconditions for indirect rule were different.

Further, the self-reinforcing property of colonial institutions explains how they resisted the imposition of direct rule under regulatory imperialism. This is why, even when the English crown did attempt formal direct rule, key institutions of indirect rule remained potent instruments of the merchant-planters in colonies. This contrasts with the Spanish Empire, where the transition to direct rule, while uneven over space and time, was more complete in cases where it occurred (Garfias and Sellars 2021). English colonies under indirect rule all developed a strong class of merchant-planter elites who used assemblies to coordinate action against direct rule. Spanish colonies under indirect rule had neither this degree of unity in their elite class nor this institution to coordinate them. So the imposition of direct rule in English colonies was uniformly weaker.

## **America's Inherited Institutions**

An important implication of my analysis is about how to understand the origins of some of America's core institutions. But there are headwinds. In the view of many American colonists, later Americans, and scholars, the fundamental cause of American institutions was the transplantation of English culture (Huntington 1966; but see Stasavage 2020, 226). The transplantation thesis holds that England's New World colonies began by importing a version of English society. This included a robust political culture of executive constraints and legislative representation. It was only natural that English colonists in America would bring their expectation of personal and political freedom with them. This natural inclination was supported by both the small-scale farming of English colonies and the supposed governance void left by the indifferent crown. In short, America inherited a "liberal tradition" (Hartz 1955).

It is indeed beyond question that the social basis of English colonial polities had a profound effect on their political development—and the agency of colonial merchant-planters is an important part of my argument. What this does not answer is *how* this agency mattered and *why* it led to this specific bundle of institutions. To answer those questions, a story of straightforward transplantation of English political institutions to America does not hold up. If there is one point that political science can make definitively about the translation of collective values into political institutions, it is that people do not always get what they want. Institutions often serve elites well and masses poorly. While some institutions coordinate effective public demands on the state, that coordination can be broken by the establishment of a new political society with new institutions—which is exactly what was established in English colonies.

Creating institutions in a society of any complexity invites contestation. Some will always seek to dominate others for their own gain. While some colonists must have seen migration as part of "a deep and widespread process of individual self-empowerment"

(Greene 2013, 48), many others simply sought to improve upon the bare material existence of middle-class England. This must have been true for the thousands who migrated to Virginia while it was governed under martial law, or who claimed almost every arable plot of land in Barbados before an assembly ever sat. Above them all were colonial elites, many of whom sought “self-empowerment” in the narrowest pecuniary sense, and a crown who sought to gain as much as possible from the whole enterprise.

The institutions that the empire bequeathed to the United States were forged amid the contestation of these parties, and the principal-agent perspective changes the figure and ground in depictions of this struggle. Viewed as a strategic actor structuring incentives for others, the crown shifts from the inert background to a prime mover in early American institutional development. This emphasizes that America’s past was imperial, not simply colonial. Even the earliest institutions originated from the attempts of the English crown to promote its interests from empire. Colonial autonomy looks different as a response to colonial agency problems than as an inherent condition of an already-free people in a vast wilderness. Legislative independence and separation of powers look different in view of their benefits to the crown of limiting rent extraction by colonial elites. Institutions to check legislative action, such as judicial review, look different in light of their original function to assert metropolitan authority.

This suggests implications for evaluating both American institutions and the British empire. Despite their imperial origins, these structures then became the normative benchmark and raw materials for American institution builders. The irony is that the institutional linchpins of liberty in the US arose from attempts by an extractive crown to control its agents from the imperial center. What scholars sometimes take as paradigm cases of “inclusive” institutions were designed in the first instance as “extractive” ones. In some sense this means that whether an institution is “inclusive” or “extractive” inheres not simply in its structure, but in the uses to which it is put and by whom. That institutions are rooted in imperial extraction does not make them per se suspect. On the other hand,

## *Agents of Empire*

this does not imply that imperialism was a socially constructive force, even in this specific case. We are investigating only a small subset of its institutions—those that survived a revolution and redesign. It is natural to suppose that those institutions have qualities that separate them from the ones that were discarded instantly.

Overall, the analysis shows that some of the core institutions in American government were inherited, not founded. This includes federalism with decentralized sovereignty, bicameralism with malapportionment, apportionment of electoral votes, and geographically based legislative districts. Their design in empire reflected the crown's attempts—only partially successful—to steer agency relations in the imperial state. Their continuance from empire to republic reflected strategic constraints in a power sharing process among regional elites.

These, at least, are the points I attempt to make in the pages below.