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Drawing and Redrawing the Line: The Pre-Revolutionary Origins of Federal Ideas of Sovereignty

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January 1773 found the town of Boston mired deep in political discontent. Since the passage of the Sugar and Stamp Acts nearly a decade before, a cycle of metropolitan discipline, colonial challenge, and increased (and increasingly incredulous) assertions of power from British authorities had become wearyingly familiar to observers on both sides of the ocean. The memory of the Boston Massacre of March 5, 1770, lingered in the minds of townspeople, as did the bitter recollection of the Townshend Acts of 1767, which had levied new taxes on imported goods, including paper, tea, glass, paint, and lead. The acts had been repealed in 1770, save for the duty on tea, an ominous reminder of the transoceanic scope of Parliament's power to tax. More recently, the *Gaspée* affair of June 1772—in which Rhode Islanders had lured aground a British revenue cutter sent to enforce imperial customs regulations, captured the crew, and burned the ship—remained a catchword in mounting political rhetoric thanks to British officials' announcement that the perpetrators, if found, would be tried in England.

Fueling colonists' indignation at what they regarded as the ever-increasing reach of the regulatory arms of Westminster and Whitehall, imperial administrators had issued a pair of decrees in 1772 that altered decades-old practices by ordering that the salaries of colonial governors, judges, and other law officials would thenceforth be paid directly by the Crown rather than by the colonies. Fearing that such a change in the source of colonial officials' salaries would lead to a similar shift in those officials' loyalties, colonists—led by their local assemblies—had begun to consider resistance. In addition to preparing petitions to the king that enumerated their grievances and requested relief, Massachusetts colonial leaders in November 1772 organized a committee of correspondence to allow for communication among the colony's towns and with other colonies. A few months later, the Virginia House of Burgesses would follow suit, launching an intercolonial resistance network.

Against this background of increased tension between metropole and colonies, January 1773 might strike observers, then and now, as hardly the most propitious moment for an imperial official to initiate a public debate regarding the constitutional basis of the British Empire. Yet a desire for such a debate simmered near the surface of everyday life in the Massachusetts capital. Ever since the Stamp Act crisis of 1765, the question of the extent of Parliament's power to regulate the colonies—most notably, in the form of taxes—had formed the subtext of everyday political discussion along the Eastern Seaboard. To be sure, the Boston newspapers that January featured the usual advertisements for imported wares

such as chocolate, "choice West India RUM," Irish linens, "new Raisins & Currants," and "Teneriffe and Madeira WINES." By the end of the first week of the year, however, a new political debate had begun a slow burn in the upper chambers of the Province House. Soon reports of this great controversy began to fill the columns alongside the merchants' solicitations. Within three months, this debate would whip Bostonians and their fellows in the rest of Massachusetts into a frenzy, pulling the entire colonial government into a vitriolic debate on the constitutional underpinnings of the empire. The conflict would help to end the career of Governor Thomas Hutchinson, finishing the work of destruction that the Stamp Act mobs had begun eight years earlier. And, most important for the story of federalism, the political conflict of early 1773 would highlight the growing divergence between the colonists' and their imperial cousins' conceptions of sovereignty.

The debate between Hutchinson and the Massachusetts colonial assembly, or General Court, unfolded between January 6 and March 6, 1773, in a series of widely publicized speeches and responses between Hutchinson and the General Court, the latter acting sometimes in its collective capacity and sometimes in its component parts of upper (Council) and lower (House of Representatives) houses. These three months provide a glimpse into a moment of significant crisis in prewar America. That crisis was both political, inasmuch as it concerned contemporary arrangements of power and regulation, and constitutional, inasmuch as it concerned the structure of imperial governance itself.

At the heart of the controversy lay the question of sovereignty: that is, the question, "What is the highest authority to which an individual owes duties and from which an individual can demand fulfillment of rights?" Both Hutchinson and the General Court sought to identify the "final and absolute political authority in the political community" such that "no final and absolute authority exists elsewhere."[1] As each side of the debate articulated its vision of the scope of parliamentary power and the concomitant scope of the colonial assemblies' power, allegiances hardened and visions of sovereignty began to diverge.[2] While Hutchinson hewed to a unitary view of sovereignty possessed exclusively by Parliament, the members of the General Court struggled to construct a workable scheme by which sovereignty could be apportioned between Westminster and the colonies. When, by 1774, this scheme proved elusive, the colonists applied their fledgling conception of divisible sovereignty to their efforts to promote union among the colonies.

The debate between Hutchinson and the General Court brought together some of the most theoretically sophisticated minds of the day in a public dispute over the nature of government power, a dispute that would expose a widening schism between the British imperial view of sovereignty and the colonial view. Spokesmen for the British Empire took their cues from developments in domestic political theory, which by the late eighteenth century increasingly insisted that sovereignty was both indivisible and possessed by Parliament alone. The great debate of 1773 thus illustrates an important break with the metropolitan conception of authority and an early instance in which colonists began to grope toward a conception of multilayered sovereignty in reaction to the theory of unitary sovereignty that they saw gaining ground among British officials.[3] This multilayered sovereignty, in turn, would provide a crucial theoretical underpinning for the development of American federalism.[4]

The Boston debates of 1773 should be understood as continuing this long history of confrontation while also signaling a new urgency in the tone of the debate—a shift from a state of relatively regular, if unsettling, dissent and discussion to a heightened atmosphere of strife in which first principles of government and constitution seemed to contemporaries to require redefinition and reexamination. John Phillip Reid, in an essay on the debate, refers to the addresses that each of the three sides delivered as "legal briefs" submitted on "the one occasion when the constitutional controversy was joined." For this reason, Reid notes, "these briefs may well be the most important legal documents of the prerevolutionary era."[5]

In their detail, their comprehensiveness, and—perhaps most important—their origin as speeches delivered in the context of an actual debate, the addresses offer valuable insight into the developing schism between imperial and colonial visions of the nature of British sovereignty. The debates served, on one side, as a rehearsal of post–Glorious Revolution British political theory and, on the other side, as a debut for creole constitutional notions that pointed toward a new understanding of the nature of authority within a composite political entity. In this way, the standoff between governor and assembly in Massachusetts helps to illuminate the path of colonial constitutional thought from the oppositional mode of the 1760s to the more daring and experimental (and, quite possibly, opportunistic and illegal) assertions of the possibility of divided sovereignty that would characterize the period between 1774 and 1787.

* * *

Having served as lieutenant governor of Massachusetts Bay Colony since 1758, Thomas Hutchinson became acting governor in August 1769 and governor in March 1771. In keeping with the antagonistic relationship that he had developed with the people of Boston throughout his service as chief justice of the colony's Superior Court and then as lieutenant governor, Hutchinson immediately became a lightning rod for the increasingly voluble critics of the imperial administration. As Bernard Bailyn, Hutchinson's leading biographer, puts it, "He was embroiled in argument with the opposition from almost the first day of his acting governorship."[6]

By late December 1772, confrontation between the governor and the assembly appeared imminent. When the Boston town meeting, led by Samuel Adams, formed a committee of correspondence to caucus with other towns on the issue of the Crown's assumption of the salaries of royal officials, Hutchinson attempted to stanch radical sentiment by exercising his prerogative to "prorogue," or suspend, that session of the General Court. Despite the General Court's hiatus, however, dissent continued to brew. Faced with continued intransigence, Hutchinson determined to shift strategy from muting to engaging the assembly. In a December 22 letter to William Legge, 2nd Earl of Dartmouth and secretary of state for the colonies, Hutchinson wrote, "I am sorry that I am obliged to acquaint your Lordship with the extravagant principles on Government which are still avowed not only by the Writers in News papers but by the Inhabitants of Towns who assemble together." Having in an earlier letter dismissed the town meeting's activities as "irregular," the governor now contemplated a frontal assault on what he viewed as the rabble-rousing General Court. "I am brought to a necessity of requiring the Assembly to be more explicit in declaring how far they approve or disapprove of such proceedings and what sense they have of their dependence upon the Supreme Authority of the B[ritish] isles and Dominions than they have ever yet been."[7] Explicit declarations such as these would require open, public debate.

Two weeks later, on January 6, 1773, the General Court convened in a special emergency session called by the governor. Opening the debate, Hutchinson presented a forceful case for the supremacy of metropolitan rule. Adhering to post–Glorious Revolution, Whig-influenced political theory, he took as his premise the notion that the paramount authority of the British government was vested in Parliament, by which he meant the unified political entity of king, Lords, and Commons—a political version of the Holy Trinity in which three seemingly distinct entities operated as one.[8]

Dismissing claims that the colonial assemblies possessed any powers apart from those granted to them by Parliament, Hutchinson embraced the view that was at that time becoming orthodoxy among many British political theorists: sovereignty must be undivided and indivisible within any given state.[9] Hutchinson based this argument on a twofold vision of the empire that saw the colonies as British satellites and Parliament as the center of British imperial power. Power could be delegated from the central government to agents such as royal governors, but such delegations were only temporary; power could not truly be shared. "In sovereignty there are no gradations," Samuel Johnson would write in 1775, echoing Blackstone's *Commentaries*, published a decade earlier. Instead, Johnson insisted that every society must contain "some power or other, from which there is no appeal, which admits no restrictions, which pervades the whole mass of the community."[10] Hutchinson's January 6 speech to both houses of the General Court expressed the same conviction that civil society required a single, supreme, unlimited, rule-making and -enforcing power.

Despite his lack of formal legal training, Hutchinson began with a narrow reading of the provision of the colonial charter that had established a provincial legislature. "The General Court has, by Charter, full Power to make such Laws as are not repugnant to the Laws of England," Hutchinson stated. Finding no specific statement in the charter denominating the colonial legislature the "*sole* Power" governing the province, he argued that the General Court's lawmaking power was supplemental to, not exclusive of, the legislative authority of Parliament. "Surely then this is by Charter a Reserve of Power and Authority to Parliament … and, consequently, is a Limitation of the Power given to the General Court," he concluded.[11]

This line of argument illustrates the zero-sum nature of the debate for Hutchinson. In order to make his case for the complete supremacy of Parliament, he believed that he had to prove the total subordination of the General Court. Any limit on the power of the colonial assembly—especially if that limit stemmed from the province's founding charter—would, he hoped, dispose of all challenges to the broad sweep of metropolitan power. Absent an express grant of sole power or sovereignty to the colonial assembly, Hutchinson argued that any claim of independent legislative power by colonial legislators must fail.

Besides focusing on the charter, Hutchinson emphasized the spatial aspect of the original colonists' migration to Massachusetts Bay. In an intricate argument that members of

the House of Representatives would later turn against him, he appeared to contend that the baggage brought by the first English colonists to the New World had not included the entire bundle of English rights, but that it did incorporate the full array of English duties. Of the impossibility of the wholesale transfer of English rights to the colonies, Hutchinson had this to say:

> They who claim Exemption from Acts of Parliament by Virtue of their Rights as Englishmen, should consider that it is impossible the Rights of English Subjects should be the same, in every Respect, in all Parts of the Dominions. It is one of their Rights as English Subjects to be governed by Laws made by Persons in whose Election they have, from Time to Time, a Voice – They remove from the Kingdom where, perhaps, they were in the full Exercise of this Right to the Plantations where it cannot be exercised or where the Exercise of it would be of no Benefit to them.[12]

In other words, when the original seventeenth-century colonists quit England for Massachusetts Bay, they relinquished some of their rights as English subjects. In his apparent zeal to win the whole argument with this first oratorical gambit, however, Hutchinson may have overstretched. His next sentence paired this denial of English rights to the colonists with a reaffirmation of English power over the colonists.

> Does it follow that the Government, by their Removal from one Part of the Dominions to another, loses it's Authority over that Part to which they remove, and that they are freed from the Subjection they were under before; or do they expect that Government should relinquish its Authority because they cannot enjoy this particular Right? Will it not rather be said that, by this their voluntary Removal, they have relinquished for a Time at least, one of the Rights of an English Subject which they might if they pleased have continued to enjoy and may again enjoy whensoever they return to the Place where it can be exercised?[13]

According to Hutchinson, then, while English *rights* might not weather the transatlantic voyage, English *authority* could be salted away and then produced, as good as new, on colonial shores. The early colonists had left behind their homeland and some quantum of the rights granted to them by their government, but this relocation most certainly had not removed them beyond the reach of the long arm of English—now British—authority. Hutchinson's argument thus mixed elements of Roman law's emphasis on personality with medieval law's emphasis on territoriality.[14] The colonists were British persons living in a portion, albeit remote, of the British dominions. This British personhood bound them to follow British law. Yet the remoteness of their territorial location somehow excused British authorities from granting them the full array of British rights. And, as had not been the case when they emigrated in 1630 (a prior condition that Hutchinson's steadfastly Whig, Westminster-centric theory refused to acknowledge), British authority now resided in Parliament.

At this point, the published accounts of the January 6 session convey the sense that Hutchinson had reached the climax of his polemic. The colonial assemblies existed at the pleasure of metropolitan authorities, he argued. Imperial officials, Hutchinson among them, had never envisioned the colonial governments as anything more than "subordinate Powers," corporations "formed within the Kingdom" with the limited brief of "mak[ing] and execut[ing] such Bylaws as are for their immediate Use and Benefit."[15] The governor then summed up his vision of sovereignty in a statement that would ring in his own ears and the ears of his fellow colonists for years to come. "I know of no Line that can be drawn between the supreme Authority of Parliament and the total Independence of the Colonies," Hutchinson declared. "It is impossible there should be two independent Legislatures in one and the same State, for although there may be but one Head, the King, yet the two Legislative Bodies will make two Governments as distinct as the Kingdoms of England and Scotland before the Union."[16]

The governor thus made his case clear: despite their recent pretensions to power, the colonial assemblies were nothing more than the creatures of the supreme assembly housed along the Thames. Hutchinson, like Dr. Johnson, viewed sovereignty as containing no gradations; the power pervading the whole mass of the British Atlantic community emanated from the center and tolerated no provincial competition. No line could be drawn between imperial and colonial power because, simply put, colonial power had no independent

existence. No line could be drawn because, according to eighteenth-century British political theory, parliamentary power had to be absolute and plenary in order to fulfill its ancient constitutional mandate.[17] No line could be drawn because to delineate sovereignty was to deny sovereignty.

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With his pronouncement in the Council Chamber, Hutchinson declared his allegiance to a vision of sovereignty that had emerged over the course of two centuries of English political conflict. Sovereignty was, by the eighteenth century, a highly contested and fraught concept. The issue of sovereignty—its nature and its location—had lain at the heart of much of the constitutional struggle that had gripped England since the sixteenth century. The early modern definition of English sovereignty typically hearkened back to the Act in Restraint of Appeals of 1533, according to which England was denominated an "empire," meaning—in the words of J. G. A. Pocock—a political entity "exercising a final and unappealable jurisdiction over itself in both church and state."[18] A state that possessed "sovereignty," then, was a state complete in itself, over which no other state (ecclesiastical or political) could claim authority.

With the establishment of a notion of sovereignty as a species of final dominion over the state that precluded interference from any putatively higher power, the next inquiry was where in the structure of government that dominion ought to be lodged. Conflict over this issue underlay the English Civil War and the Glorious Revolution, two watershed constitutional moments that continued to exert tremendous influence on the minds of eighteenth-century Britons, both at home and in the colonies. In 1642, Parliament's declaration of a theory of its own sovereignty helped to spark war but nevertheless laid the foundation for the theory of parliamentary sovereignty that would gain currency while continuing to cause strife over the subsequent decades.[19] By the latter half of the eighteenth century, some commentators viewed parliamentary sovereignty as an accepted part of British constitutional theory. Citing Sir Edward Coke, Blackstone observed, "The power and jurisdiction of parliament … is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds."[20]

Blackstone's *Commentaries on the Laws of England*, published between 1765 and 1769, aimed to enshrine the unitary vision of sovereignty in late-eighteenth-century British legal thought.[21] Blackstone inveighed against the concept of *imperium in imperio*, by which he meant multiple sources of authority sharing the same political space. At the time of the Hutchinson-General Court debate, political theorists routinely denounced the notion of *imperium in imperio*, variously translated as "an empire within an empire" or "dominion within dominion," as a "solecism."[22] The specter of *imperium in imperio* principle appealed to the early modern desire for clear rules according to which governments ought to be constructed. It provided an analytical framework by which to assess the success (or, more often, the failure) of any given political arrangement.

Yet this orthodox principle of sovereignty had only recently become established, having begun as the centerpiece of anti-Stuart, Parliamentarian ideology during the Civil War of the 1640s and cementing its place as the fundament of Whig—and therefore English—constitutionalism in the Glorious Revolution of 1688–1689.[23] By the nineteenth century, British theorists of government viewed parliamentary sovereignty as integral to the nation's political and constitutional structure. In 1773, however, the unitary vision of sovereignty still required assertion and argument by such luminaries as Blackstone to establish its hegemony after the turmoil and uncertainty of the past century and a half.

But there was another way of looking at sovereignty—a Continental view that acknowledged certain systems of divided authority as legitimate, or at least plausible, governmental structures. Beginning with the work of Hugo Grotius in the early seventeenth century, and continuing with the writing of Samuel von Pufendorf in the later seventeenth century and Emer de Vattel in the middle of the eighteenth century, European thinkers had offered an alternative to this all-or-nothing, unitary vision of sovereignty.[24] Using the natural-law concept of *fœdera*—that is, treaties or positive agreements among political entities—these theorists presented an alternative to the English (later British) belief that multiple sovereignties always spelled solecism and disaster.[25] Instead, they argued that leagues, compacts, and confederations could be viable modes of political cooperation among sovereign bodies.

Throughout both Europe and America, this Continental notion of divisible sovereignty had been bumping up against the common law vision of unitary sovereignty throughout the middle decades of the eighteenth century. Despite the insistence of Blackstone, Johnson, and others that a single sovereign power must be acknowledged to "pervade the whole mass of the community," and—perhaps more important—their insistence that this was not an argumentative

but a descriptive claim about the essence of the common law, the truth was that the nature of sovereignty was a contested, not a settled, issue in Anglo-American constitutional thought during this period.

Even before Hutchinson invited the General Court to parley, some colonists in Massachusetts and beyond had the tools to assess Parliament's claims of unlimited authority in light of these alternative theories of sovereignty. For example, Vattel's *Droit des gens* (*Law of Nations*) of 1758 was translated and published in an English edition in 1759. This version was followed in 1775 by an edition that was published in Amsterdam and distributed by Benjamin Franklin to the Library Company of Philadelphia, Harvard College, and the Library of Congress.[26] Richard Bland, writing in 1766, included a citation to Vattel in his *Inquiry Into the Rights of the British Colonies*.[27] George Washington's library contained a copy of Grotius's *Rights of War and Peace* in its English translation of 1738.[28]

Indeed, the House of Representatives cited both Grotius and Pufendorf during the course of the debate with Hutchinson. The House answer of March 6 deployed both theorists against the governor's assertion that the colonies constituted part of the realm.[29] "We beg Leave, upon what your Excellency has observed of the Colony becoming Part of the State, to subjoin the Opinions of several learned Civilians," the House stated.

> Colonies, says Puffendorf, are settled in different Methods. For either the Colony *continues a Part* of the Common Wealth it was [sent] out from; or else is obliged to pay a dutiful Regard to the Mother Common Wealth, and so to be in Readiness to defend and vindicate its Honor, and so is *united by a Sort of unequal Confederacy*; or lastly *is erected into a separate Common Wealth and assumes the same Rights*, with the State it descended from.

Immediately following this passage (which the House noted came from "a very able Lawyer in this Country"), the answer cited Grotius for a similar proposition. "King Tullius, as quoted by the same learned Author from Grotius, says, 'We look upon it to be neither Truth nor Justice that Mother Cities ought of Necessity and *by the Law of Nature to rule over the Colonies*.'"[30] Hutchinson parried the reference with his own interpretation. "Your Attempt to shew that new discovered Countries do not become Part of the State, from the Authority of Puffendorff &c., will fail," he replied. "[T]he Instance given by him of a Colony erected into a separate Common Wealth plainly appears by the Context to be by the Leave or Consent of the Parent State."[31]

As this exchange demonstrates, European theory was present in the Boston debates. The Grotian vision of the law of nations emphasized what Edward Keene terms an "extra-European order" of colonial and imperial systems based on "the principle that sovereignty should be divided across national and territorial boundaries."[32] Pufendorf's *Law of Nature and Nations* (1672) offered a similar vision of nonunitary authority based on his study of the German Empire. By the middle of the seventeenth century, the empire had been reduced essentially to an elective monarchy. Centralized sovereignty, if it had ever existed, had been replaced by satellite princes, each husbanding his own store of authority over his own territory. Notably, each of the member states (*Reichsständen*) possessed the power to negotiate its own foreign alliances. In the words of German historian Hagen Schulze, "[F]ragmentation was the abiding constitutional principle of the Holy Roman Empire, a structure without its own statehood, organization or power."[33]

For Pufendorf, German fragmentation was an invitation to revise the traditional Aristotelian categories of political bodies (monarch, aristocracy, democracy) to take into account the real—if unharmonious—structure of the empire.[34] Generalizing from the specifics of the empire and certain classical leagues of states, Pufendorf developed a new category: the "system of states" in which "several States are joined to each other, each by a perpetual League or Alliance" pursuant to which the states agree that "they shall not exercise some Part of that Sovereignty there specified, without the general Consent of each other." Sovereign powers that did not implicate the common interest, however, were left to each member state. "[T]hese Unions submit only some certain Parts of the Sovereignty to mutual Direction," Pufendorf noted, recommending that "the particular States reserve to themselves all those Branches of the supreme Authority, the Management of which can have little or no Influence (at least directly) on the Affairs of the rest."[35] In contrast to a unitary theory of sovereignty, therefore, Pufendorf's conception allowed for the possibility that political authority might cross jurisdictional boundaries and, on occasion, be shared among multiple states tied together in a single system.

* * *

Hutchinson's speech fanned controversy among Bostonians as they awaited the responses of the Council and the House of Representatives. The town's newspapers were quick to address the debate. Most newspapers printed lengthy extracts of Hutchinson's speech, as well as letters and other commentary that folded the speech into the ongoing print discussion concerning the scope of parliamentary authority. For example, in addition to carrying the latest installment of John Adams's essays on the question of royal officials' discretion to remove colonial judges, the *Boston-Gazette and Country Journal* of January 11, 1773, printed a letter in which "An Elector" responded to the governor's speech. After quoting Hutchinson's statement that he knew of no line that could be drawn between the supreme authority of Parliament and the total independence of the colonies, An Elector requested clarification: "And, pray! what then? Which is the Conclusion,— *therefore* the Parliament have not the intended Authority? or, *therefore* the Colonies are independent of that Parliament?"[36]

While newspapers throughout the colonies debated the consequences of Hutchinson's remarks, the members of the Council and House of Representatives considered their responses. Each house designated a committee to craft written replies to be delivered to Hutchinson.[37] Slightly more than two weeks after Hutchinson's address to the General Court, the two houses delivered their answers, the Council on January 25 and the House on January 26. Each answer had received unanimous approval in its respective house, as the *Boston-Gazette* gleefully noted.[38]

The Council's answer took up Hutchinson's theme of lawmaking supremacy but resisted his conclusion by invoking traditional imperatives of limited governmental authority. Citing Magna Carta, the Council argued that Hutchinson's phrase "supreme authority" actually translated into "unlimited authority" and then charged that this was an untenable proposition according to the ancient, fundamental law of England, which held that no authority could legitimately claim to be unlimited.[39] "[I]f Supreme Authority includes unlimited Authority, the Subjects of it are emphatically Slaves," the Council argued. Moreover, the Council objected to Hutchinson's use of the term *supremacy*, contending that the word was a term of art with specific, nonterrestrial meaning. "Supreme or unlimited Authority can with Fitness belong only to the Sovereign of the Universe. … But with Truth this can be said of no other Authority whatever."[40] After thus chiding Hutchinson for confusing mere political power with divine dominion, the Council moved on to consider the limits that must necessarily attach to the former species of authority.

As these claims suggest, Anglo-Americans in the 1770s did not consider the terms *sovereignty* and *supremacy* to be necessarily synonymous.[41] In general, the idea of sovereignty in this period can be seen as an ill-defined concept relating to the legitimate source of "right," as opposed to mere "power," within a given polity.[42] Supremacy, in contrast, was a more relative term that dealt with the question whether a particular lawmaking body was the final authority within its jurisdiction.[43]

Whatever difference existed between sovereignty and supremacy did not matter greatly as long as the British nation and the British Empire were viewed as coterminous.[44] And this was precisely the view of British officials. From the standpoint of imperial administrators, because Parliament was domestically sovereign, it was imperially supreme.[45] Sovereignty and supremacy therefore *were* synonymous for imperial spokesmen, which allowed them to make the type of sweeping claims that Hutchinson's speech asserted. The colonial opposition, however, sought to break this equivalence between rule over nation and rule over far-flung colonies, especially in the wake of the Stamp Act crisis of 1765. Still desirous of remaining British in the larger sense, they accepted Parliament's authority over them, but only to the extent that the authority did not trench on that of their local assemblies.

The willingness of the American whigs to contemplate a system in which colonists lived under two layers of legislative authority suggests that Adams and his peers had begun to abandon the concept of supremacy, with its all-or-nothing emphasis on a single dominant power. They were also beginning to reject the Blackstonian concept of indivisible sovereignty, insofar as they acknowledged only a limited authority of Parliament to regulate trade but reserved the other legislative powers for the colonial assemblies. Although Adams and his fellow colonists might have agreed with Hutchinson that the colonies were part of Britain (whether empire, realm, or dominions was a separate issue), they disagreed with the governor's assertion that no line could be drawn between submission and independence. Parliament's authority over England, Scotland, and Wales could and must, they argued, be distinguished from its authority over America.

The House's answer to Hutchinson displayed this more aggressive tone. The answer, which numbered twenty-six pages when it was published in pamphlet form, met Hutchinson's brief for parliamentary authority with a point-by-point rebuttal of his theory of the empire. The House's critique comprised several lines of argument, but two of the most significant targets were Hutchinson's interpretation of the

original Massachusetts charter and his larger theory of sovereignty.

The House began its investigation into the colony's early history by disputing one of Hutchinson's key premises: his claim that because the charter had not contained an express grant of "sole power" to the colonial assembly, it had therefore reserved the bulk of the legislative power to Parliament, which in turn obligated the colonial assembly to pass only such acts as were not repugnant to the laws of England. In Hutchinson's view, therefore, the colonial assembly was entirely the creature of Parliament. House members challenged this hierarchy by offering their own construction of the charter based on seventeenth-century political theory. At the time of the English arrival in America, the House reply contended, the prevailing theory held that the new colonial lands belonged to the king's dominions, not to the kingdom. They therefore possessed a special legal status that placed them under Crown authority alone. "[T]he Right of disposing of the Lands was in the Opinion of those Times vested solely in the Crown," the House stated.[46]

The chain of argument proceeded thus: if the colonies were under the exclusive control of the Crown at the time of the charter, then they were at that time not part of the realm; if they were not part of the realm then, they could not now be part of the kingdom of Great Britain; if they were not now part of the kingdom of Great Britain, they were not now under the control of Parliament. "If then the Colonies were not annexed to the Realm, at the Time when their Charters were granted, they never could be afterwards, without their own special Consent, which has never since been had, or even asked," the House stated. "If they are not now annexed to the Realm, they are not a Part of the Kingdom, and consequently not subject to the Legislative Authority of the Kingdom."[47] The House thus refused to take a historicizing view of the original text, insisting instead that the constitution of 1629 and the constitution of 1773 were one and the same.

This argument made historical sense: the Massachusetts Bay Company had obtained its charter from Charles I in 1629, sixty years before the Glorious Revolution had supplanted royal prerogative with parliamentary sovereignty as the basis of English government. At the time of the charter's drafting, therefore, English constitutional theory placed the king at the top of the ladder of sovereignty. Hutchinson's argument, in contrast, read the parliamentary sovereignty of his own, post-1688 period backward based on the assumption that the revolution settlement had applied retroactively and for all time.[48] Hutchinson's approach might have been good Whig orthodoxy, but the House's answer charged that it was not good history.

By challenging Hutchinson's interpretation of the charter, the House attacked imperial officials' equivalence between parliamentary sovereignty at home and supremacy over the colonial assemblies. Just as the Council had invoked Magna Carta as a talisman of the ancient constitution against overweening parliamentary power, the House sought refuge in the traditional, pre-1688 vision of Crown prerogative. The Massachusetts colonial legislature therefore invoked what John Phillip Reid terms the "authority of custom," which openly challenged Parliament's authority both at home and in the far reaches of the empire.[49]

Was this argument in favor of Crown rule purely instrumental? Perhaps; after all, England had fought a savage civil war over the very issue of Crown prerogative versus parliamentary sovereignty. Yet members of the colonial opposition routinely pledged loyalty to the king during this debate, adhering to what scholars have variously termed the theory of dominion status or the "doctrine of allegiance" that emphasized membership in a loosely defined association with the monarch alone rather than membership in the British nation.[50] As the eminent Scots-American jurist James Wilson would put it in 1774, "[A]ll the different members of the British empire are distinct states, independent of each other, but connected together under the same sovereign in right of the same crown."[51] Adams made a similar distinction between the kingdom of Britain and the dominion of the king: "We are within the dominion, rule, or government of the King of Great Britain," he acknowledged; however, he added, "[W]e are not … a part of the British kingdom, realm, or state."[52] Although they chose different terms, Wilson and Adams endorsed what Randolph Adams terms the "commonwealth of nations" view of empire, which held that the colonies were independent states, "that their sole connection with Great Britain lay in the crown; that the parliament at Westminster was but one of many co-equal legislatures, analogous, for example, to the General Court of Massachusetts Bay."[53] Rather than a choice for the Crown, such arguments should be seen as a choice against Parliament: the colonists sought to place their own legislatures directly under royal authority by cutting Parliament out of the hierarchy altogether.[54]

The central role played by James Wilson, who emigrated from Scotland to America in 1765 at the age of twenty-three, in developing the doctrine of allegiance was not a coincidence. For Wilson and other colonists who argued that the colonists owed loyalty to the king alone, the example of Scotland

provided a rich trove of legal arguments. The union of crowns of 1603, in which James VI of Scotland also became James I of England, "united the kingdoms only to the extent that it gave them 'one Head or Sovereign'; it did not unite them in one body politic."[55] By 1707, when the Act of Union formally dissolved both the English and the Scottish parliaments and brought England and Scotland into a new entity called the British Parliament, English subjects—and, after 1607, American colonists—had lived through more than a century's worth of debates about the practical meaning of sovereignty and the many varieties of Pufendorfian "systems of states" that could join two polities.[56]

The transformation from what David Armitage terms the "composite monarchy" of England to the "multiple kingdom" of Great Britain caused observers throughout Anglo-America to consider seriously the possibility of multilevel political and legal authorities besides the old feudal arrangements.[57] Moreover, because the era of the Anglo-Scottish unions coincided with the era of English colonization in North America, political thinkers on both sides of the ocean frequently drew analogies between the status of Scotland and that of the colonies. (Recall Hutchinson's January 6 statement that he "knew of no line" that could be drawn between parliamentary supremacy and colonial independence that would not create "two Governments as distinct as the Kingdoms of England and Scotland before the Union.") In this way, as Armitage notes, the same ideology that accompanied the melding of the multiple kingdom at home drove the expansion of the empire overseas. Thus, "British state-building and British empire-building" were "continuous with one another in their origins as in their outcomes."[58]

This ideological connection between state- and empire-building informed many participants in the debate between Hutchinson and the General Court. While Wilson's experience as a Scot helped to shape his entire political outlook, Adams explicitly used the Scottish case to bolster his arguments against parliamentary authority.[59] In particular, Adams focused on the period following the union of crowns but before the Act of Union, which he believed provided useful precedents for the situation of the colonies in the 1760s and early 1770s. Just as Scotland had shared a king but not a legislature with England between 1603 and 1707, Adams contended, the American colonies should be seen as owing allegiance to George III but not to Parliament. Just as Scotland had maintained its sovereignty until it had formally merged with England in 1707, the colonies remained sovereign in 1774. In each case, one state had contracted its own arrangement with a sovereign who just happened to be the sovereign of another state—a fact that did not affect the relationship between the sovereign and the first state, which existed independent of the sovereign's relationship with any other state. "Distinct states may be united under one king. … Massachusetts is a realm, New York is a realm, Pennsylvania another realm, to all intents and purposes, as much as Ireland is, or England or Scotland ever were," Adams wrote in his *Novanglus* letters. "The King of Great Britain is the sovereign of all these realms."[60] Should Britain and the colonies mutually determine that a complete union was desirable, the full formalities of annexation—notably, consent, in the form of legislative acts on each side—would be required.[61]

Another key element of the House's response was its depiction of Hutchinson's argument as relying on outmoded and inconsistent theories of authority. In his January 6 address, Hutchinson had offered a twofold argument: first, the colonists were British subjects for purposes of their obligations to Parliament, but not British subjects for purposes of the rights that they might demand from Parliament; second, the colonists were not physically situated within the realm for purposes of rights, but they were physically within the realm for purposes of obligations. Although by "their voluntary Removal, they have relinquished for a Time at least, one of the Rights of an English Subject" (i.e., fewer rights *because* of removal from the kingdom), it did not follow "that the Government, by their Removal from one Part of the Dominions to another, loses it's Authority over that Part to which they remove" (i.e., the same obligations *despite* removal from the kingdom), the governor had asserted. *The Speeches of His Excellency Governor Hutchinson, 9-10.* This formulation was premised on a blend of Roman and medieval precedents, which decreed that either the nationality or the domicile of a person, respectively, governed the choice of law to be applied to that person. According to Hutchinson's reasoning, then, neither principles of personality nor territoriality could aid the colonists in their attempt to escape parliamentary authority.

The House challenged both the premise and the conclusion of Hutchinson's jurisdictional interpretation. Rejecting what they viewed as the governor's grab-bag approach to determining which law governed the colonies, the House members reiterated one of their fundamental arguments: the colonies had never been part of the realm; therefore, Parliament never had had—and, absent colonial consent, never would have— plenary authority over the colonies. Placing great weight on the claim that the colonies had never been within the realm, the House

argument thus relied on the territorial principle of law. By crossing the ocean and establishing colonies in America—colonies formed pursuant to royal authority alone—the earliest settlers had removed themselves from the realm and, therefore, removed themselves from the ambit of parliamentary power. Parliament's authority was "constitutionally confined within the Limits of the Realm and the Nation collectively, of which alone it is the Representing and Legislative Assembly," the House reasoned. "[I]f that Part of the King's Dominions to which they removed was not then a Part of the Realm, and was never annexed to it, the Parliament lost no Authority over it, having never had such Authority; and the Emigrants were consequently freed from the Subjection they were under before their Removal."[62] In short, the House argued, domicile mattered more than nationality for purposes of authority.

For purposes of rights, the House offered a winding and delicate argument that skated quite close to Hutchinson's reasoning, albeit with the opposite outcome. Although the burdens of English nationality had not accompanied the early colonists on their voyage to the New World, some of their English rights had made the trip, pursuant to a grant from the king. Most significant of these rights was the right of representation in Parliament. "They never did relinquish the Right to be governed by Laws made by Persons in whose Election they had a Voice," the House stated. "The King stipulated with them … that they should be as free as those who were to abide within the Realm."[63] According to the House, then, the territorial principle controlled in determining that the colonies were not included in the realm, but a special, affirmative stipulation by the king—under whose exclusive authority the colonies continued—allowed the colonists to claim English rights.[64]

In this way, the House argued, its vision of colonial duties and rights was, both logically and practically, more coherent than Hutchinson's vision. "We cannot help observing, that your Excellency's Manner of Reasoning on this Point, seems to us to render the most valuable Clauses in our Charter unintelligible," the response noted. "As if Persons going from the Realm of England to inhabit in America, should hold and exercise there a certain Right of English Subjects; but in Order to exercise it in such Manner as to be of any Benefit to them, they must *not inhabit* there, but return to the Place where alone it can be exercised."[65]

As this statement highlights, Hutchinson's allowance of English duties but not English rights to the colonists was incompatible with his insistence that the colonists continued within the realm despite their relocation to America. Parliamentary sovereignty purported to envelop both Britain and the colonies in the same mantle of English law based on the continuity of the realm, in both its political and its legal capacities, across the ocean. Yet here we find the royal governor of Massachusetts claiming, as the House response pointed out, that a colonist who wished to enforce his rights—which would presumably have become dormant during his stay in the colonies—would first have to return to Britain in order to reclaim them. Such a state of affairs did not speak well for the universal aspirations of the British Empire, at least as those aspirations were articulated in Hutchinson's assertion that no line could be drawn between complete parliamentary authority and complete colonial independence.

Indeed, the House draftsmen offered an alternative version of the line-drawing metaphor. Obviously struck by Hutchinson's pronouncement, the House members adapted it for their own purposes: "[I]ndeed it is difficult, if possible, to draw a Line of Distinction between the universal Authority of Parliament over the Colonies, and no Authority at all," the response observed.[66] The blandness of the statement belied its radical divergence from Hutchinson's imperial orthodoxy. Drawing lines remained difficult, but suddenly it was possible. Rather than pointing to the vast political boundary that encompassed Britain and its dependencies and then concluding that the lines of law and constitution must necessarily follow the lines of might and rule, the colonial opposition attempted to separate political lines from constitutional ones. Even John Adams agreed that the colonies were part of the British nation. But Adams, Wilson, and their contemporaries in the General Court did not view this political authority as necessarily decisive of final, legal authority. Instead of accepting Hutchinson's all-or-nothing, totalizing vision of imperial structure, the colonists sought to adapt what had originally been an ad hoc structure of royal charter and local assembly into a newly conceived vision of Britishness. In so doing, they were—albeit unknowingly—laying the groundwork for a novel understanding of divisible sovereignty and, eventually, federalism.

Yet one must keep in mind that the 1773 debates were significant because they marked the beginning of a transition, not because they witnessed the completion of that transition. Despite the slowly shifting meaning of the term *sovereignty*, the members of the House feared—or at least pretended to fear—the unnatural creature of the *imperium in imperio* sufficiently to deploy it against Hutchinson in their reply of January 26. To bolster their claim that the original charters

had placed the colonies under the exclusive control of the king, the members of the House committee reinterpreted the *imperium in imperio* principle as precluding Parliament from exerting its power over the colonies. "[T]o suppose a Parliamentary Authority over the Colonies under such Charters, would necessarily induce that Solecism in Politics, *Imperium in Imperio*," the House answer contended. Premising their argument upon the existence and authority of the assemblies from the earliest moments of colonial settlement, the House members demurred to Hutchinson's claims, using his own argument to conclude "that the Colonies were by their Charters made distinct States from the Mother Country."[67]

Throughout the debate, then, both sides employed the *imperium in imperio* argument. Hutchinson relied on it to underpin his claim that the colonial assemblies did not possess legislative sovereignty; the members of the General Court, for their part, relied on it for their challenge to parliamentary authority. Both sides espoused the underlying principle that multiple sovereigns could not exist within the same political entity. Yet while Hutchinson took this principle to mean that the sovereignty of Parliament at home must translate into its supremacy abroad, the members of the General Court used it to build a novel argument for the sovereignty of the colonial assemblies based on a reconfiguration of the lines of authority between Britain and America. And, the House added, if such line-drawing proved beyond the capacities of the royal governor, Massachusetts—in concert with the other colonies—was prepared to essay it.

Despite colonists' speculations that Hutchinson lacked the support of colonial administrators, correspondence between the governor and Lord Dartmouth demonstrates that Hutchinson had at least initiated the debate with his superiors' blessing. Shortly after receiving Hutchinson's letters of December 30 and January 7, Dartmouth wrote a reply, dated March 3, in which he temporized somewhat but ultimately agreed with Hutchinson's plan to broach the subject of parliamentary authority. Unrest among the towns of Massachusetts had "made it necessary that you should call upon the Council and House of Representatives to be explicit with regard to their sentiments of those proceedings and of the doctrines they adopt," Dartmouth wrote, adding that reports of open opposition to metropolitan control "made it incumbent upon you to speak out upon the occasion." After a carefully phrased caveat ("But how far it was or was not expedient to enter so fully in your speech into an exposition of your own opinion in respect to the principles of the constitution of the colony I am not able to judge"), Dartmouth ended his letter with a measured endorsement of Hutchinson's plan: "whatever the effect of that speech may be, it was certainly justified in the intention and I hope it will have the consequence to remove those prejudices which the artificers of faction" had attempted to foist upon the minds of the colonial opposition.[68]

Hutchinson, meanwhile, was planning his rejoinder to the two houses' answers to his initial speech. With each party having aired its position, the subsequent round of statements predictably became more vitriolic, demonstrating not movement toward concord but rather growing entrenchment. "I shall at the close of the Session give both the Council & House a full reply & shew them from undeniable Authority what was their Constitution at the beginning and what it still continues to be and what must be the fatal consequences of departing from it," Hutchinson wrote to Dartmouth on February 1.[69] The determination of the House and, to a lesser extent, the Council to challenge imperial orthodoxy by asserting that the lines of sovereignty could be redrawn had raised the stakes of the debate for all parties.

Hutchinson addressed the General Court twice more before proroguing the legislative session on March 6; between his two speeches, each house issued a response. The issue of sovereignty dominated the remainder of the discussion. In his February 16 speech to both houses, Hutchinson first addressed the Council before directing the bulk of his comments to the House. As his comments to the Council suggest, his "drawing a line" phrasing had again returned to haunt him. The Council's "[a]ttempts to draw a Line as the Limits of the Supreme Authority in Government, by distinguishing some natural Rights as more peculiarly exempt from such Authority than the rest, rather tend to evince the Impracticability of drawing such a Line," Hutchinson stated.[70] The governor thus stuck to his original observation that the sovereignty of Parliament was complete and indivisible. Addressing the House, Hutchinson noted that Massachusetts Bay Colony was "holden as feudatory of the Imperial Crown of England."[71] Thus, the colony was "subject to one supreme legislative power"—Parliament—along with the rest of the one entire dominion of the British Empire.[72]

Just over a week after Hutchinson's second speech, the Council issued what would be its final salvo; the House followed with its answer five days later. Previously, the House had produced the fierier response. Here, however, the Council struck directly at the heart of the issue: whether two coordinate authorities, in this case Parliament and the

colonial assemblies, could ever exist within the same polity. The Council based its argument on Hutchinson's previous statement, uttered as part of his initial address on January 6, that "although from the Nature of Government there must be one Supreme Authority over the whole, yet this Constitution will admit of Subordinate Powers with Legislative and Executive Authority, greater or less, according to Local and other Circumstances." The Council heartily endorsed this assertion. "This is very true," the Council noted, adding that allowing for the existence of subordinate as well as supreme powers implied that "the Supreme Power has no rightful Authority to take away or diminish" the authority of the subordinate power. The supreme power lacked such authority to police the subordinate power because, the Council argued, the subordinate power was constituted independently of the supreme power. If the subordinate power were not independently constituted, then it would not need to be denominated a subordinate power; instead, it would be a subset of the supreme power. But this was not the case. Each power had its own grant of authority and its own zone of responsibility. Therefore, the Council observed, "[T]he two Powers are not incompatible, and do subsist together, each restraining its Acts to their Constitutional Objects." Ibid., 86-87. The constitutional objects of each power were distinct, and they were defined by their subject matter.

In other words, the colonists might consider consenting to Parliament's supremacy if that supremacy was accompanied by an independent acknowledgment of the colonial assemblies' subordinate authority. Such an arrangement would keep the two levels of legislative authority separate by assigning to each a specific array of responsibilities: Parliament would supervise, regulate, and legislate for the entire British Empire, including America; the colonial legislatures, meanwhile, would oversee all matters that did not relate to the empire as a whole.

This arrangement tracked the distinction between internal and external affairs that observers such as Richard Bland, Daniel Dulany, Thomas Pownall, and others had articulated since the Stamp Act debates had raised the issue of the scope of parliament's authority over the colonies.[73] In the context of the 1773 debates, however, the Council's delineation between superior and subordinate powers moved beyond the specific issue of taxation and toward the theoretical problem of *imperium in imperio* as well as the practical difficulty of having two legislatures operating over the same territory. Without necessarily intending it, the members of the Council had taken a crucial step toward articulating a new vision of sovereignty. This reconception permitted sovereignty to be divided—not simply along the territorial lines that early modern thinkers such as Thomas Hobbes and Jean Bodin had posited, but along substantive, subject-matter-defined lines. Parliament would regulate matters relating to the empire as a whole, while the colonial assemblies would have authority over all other matters. The Council's proposal, then, rebutted Hutchinson's claim that no line could be drawn between complete parliamentary sovereignty and complete colonial independence. Instead, the Council suggested that Parliament and the General Court might operate along parallel, not overlapping, planes.

In a broader sense, the proposal laid the foundation for American federalism's parallel arrangement of national and state legislatures. Hutchinson's equivalence between political and legal boundaries based on territory would begin to give way to legal boundaries based on subject matter: in 1773, imperial versus colonial matters; sixteen years later, national versus state matters. Such an arrangement would satisfy Blackstone's maxim that "there is and must be in all [governments] a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside" by granting the aforementioned supreme authority to a specific arm of government depending on the particular substantive issues at stake.[74] No *imperium in imperio* would result—and there would be no need for recourse to the type of unitary, monolithic sovereign enshrined in the British constitution.

As these debates illustrate, a transformation in the understanding of sovereignty itself preceded—or, at minimum, accompanied—American discussions of a revesting of sovereignty in the people. The essence of the General Court's break with imperial constitutional theory was its members' insistence that the ultimate source of political authority could be *divided*, rather than that it could be shifted wholesale to reside, still unitary, in a different location within the political community.

* * *

To his credit as a servant of the empire, Hutchinson resisted to the end the Council's reformulation of sovereignty. On March 6, he delivered the final installment in the great debate with the General Court. The Council's distinction between supreme and subordinate powers was specious, he insisted, citing the "Inconsistency" of "supposing a *subordinate* Power without a Power *superior* to it." Adhering to the Blackstonian idea of sovereignty, the governor refused even to

consider the possibility that authority could be divided along subject-matter, as opposed to territorial, lines. "[I]f you are still of Opinion that two Jurisdictions, each of them having a Share in the Supreme Power, are compatible in the same State, it can be to no Purpose to Reason or Argue upon the other Parts of your Message," Hutchinson asserted. "It is essential to the Being of Government that a Power should always exist which no other Power within such Government can have Right to withstand or controul."[75] And, as had been the case since 1688, when the English nation "*returned* to a just Sense of the Supremacy of Parliament," that uncontrollable, supreme power resided at Westminster.[76] Having made his last stand, the governor, in the words of one pamphlet, "was pleas'd to put an End to the Session."[77]

By the spring of 1773, Hutchinson seems to have realized that the debate with the General Court had strayed far beyond the bounds of whatever initial approval his plan had received from imperial administrators. Significantly, his correspondence with Lord Dartmouth became increasingly strained. Since taking office as secretary of state for the colonies in 1772, Dartmouth had followed a policy of conciliation in his dealings with the colonies.[78] Faced with a royal governor whose zealous advocacy of the official government position had clearly ignited the simmering colonial opposition, Dartmouth appears to have reconsidered the limited approval of Hutchinson's plan that his own March 3 letter had conveyed. News of Whitehall's increasing disapproval, as well as the firestorm of public commentary that the debate had sparked, seems to have begun to affect Hutchinson at around the time of his March 6 speech to the General Court. A marked decline in the quality of his handwriting, in addition to his self-exculpatory letters to correspondents besides Dartmouth, suggests the governor's anxiety. Yet he continued to alternate between ringing affirmations and defensive justifications of his own conduct. On March 10, he wrote to an unknown correspondent that the "contagion" that had begun in the town meeting "seems to have been stopped by my speech to the Assembly and the consequent Proceedings there."[79] By April 25, however, a letter to Dartmouth contained the following apologia: "If I could, consistent with my duty to the King, have avoided any controversy with the Assembly upon Constitutional Points, it would have been most agreable to me. … It affords me relief that the propriety of the measure appears to His Majesty and that he is pleased to approve of it."[80]

Hutchinson's fears were well founded. By June of 1773, his imperial superiors had moved to sacrifice him in the hope of stanching the flow of unrest in Massachusetts. In letters dated April 10 and June 2, Dartmouth essentially ordered Hutchinson to halt the debate before he caused more damage to the delicate imperial arrangement. Before the first of these letters arrived in Boston, Hutchinson had already drafted a *historia calamitatum* to Dartmouth in which he explained—again—his reasons for initiating the debate and attempted to portray a stoic resignation both to the constitutional debacle and to the blame that had already begun to attach to him. Hutchinson reiterated his conviction of the supremacy of Parliament: "My Sentiments of the Relation between the Kingdom & its Colonies have been the same ever since I have been capable of conceptions of the nature of Government," he wrote. "From the remote situation of the Colonies I always supposed a different and more extensive Legislative Power to be necessary for a Colony than for a Corporation in England, a Supreme controuling Power nevertheless remaining in the Legislative Authority of the whole Dominion." He reminded Dartmouth that he himself had opposed the Stamp Act and had instead argued for parliamentary "forbearance" from exercising its power. And then he offered what was essentially his resignation, citing the need for a governor "of greater abilities" to stand against the "Principles of Independency" on the march in Massachusetts.[81]

The arrival of Dartmouth's April 10 letter changed Hutchinson's mind, however. He scrapped his tormented apologia and instead sent a crisply worded response to his superior. "It gives me pain that any step which I have taken, with the most sincere intention to promote His Majesty's Service, should be judged to have a contrary effect," Hutchinson wrote. "[A]s far as I shall know His Majestys pleasure upon any point whatsoever I will, as I have hitherto done[,] endeavour strictly to conform to it."[82] He did not mention resignation to Dartmouth until June 26, when he asked permission to visit England in order to seek an alternative post.[83] Nearly a year later, on June 1, 1774, Hutchinson departed for England, leaving Massachusetts to the military governorship of General Thomas Gage. That day, Hutchinson's son-in-law Peter Oliver, Jr., who remained in Boston, noted in his diary, "Nothing but mobs and riots all this summer."[84]

* * *

On the same day that Hutchinson departed for England, where he would spend the rest of his life, the first of five parliamentary acts that dramatically asserted

Parliament's authority to legislate for the colonies took effect.[85] Derided by colonists as the Intolerable Acts, these laws (also known as the Coercive Acts) comprised the Boston Port Bill, which shut down the transport of goods through the city's harbor; the Massachusetts Government Act, which replaced the colony's charter government with a military regime under Gage; the Administration of Justice Act, which permitted British officials charged with capital offenses to be tried in England or another colony; a new version of the 1765 Quartering Act, which ordered the colonies to house British troops in occupied American houses and taverns; and the Quebec Act, which granted the land between the Ohio and Mississippi rivers to Quebec rather than the colonies.[86] As John Phillip Reid puts it, the Coercive Acts represented the first time that Americans "were confronted by the ultimate constitutional issue of executed parliamentary sovereignty."[87]

To be sure, the passage of the Declaratory Act in 1766 had asserted Parliament's "full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of *America* … in all cases whatsoever," but Parliament's subsequent exercises of authority over the colonies had been confined to taxation (e.g., the Townshend Acts and the Tea Acts). The passage of the Coercive Acts signaled that Parliament intended to enforce the full sweep of its lawmaking authority over the colonies. Despite Hutchinson's sad downfall and retreat, imperial policy remained as the governor had described it: Parliament's sovereignty in the colonies was just as complete and indivisible as its sovereignty at home.

The competing ideologies articulated by the parties to the Hutchinson-General Court debate demonstrate the collision between the Blackstonian vision of sovereignty as indivisible and unitary and the colonists' increasingly federal vision in which divided authority was not a solecism but a foundational principle.[88] In order to escape the snares of the *imperium in imperio* principle, American colonists in the 1760s and 1770s reconceived that principle. "The key doctrine of federalism could survive criticism only to the extent that it could somehow be distinguished from the ancient belief that *imperium in imperio* was an illogical and unresolvable solecism," Bernard Bailyn states. "So [Americans] reexamined that old formula, took it apart, and showed, not its falsity, but its irrelevance in the American situation."[89] They did this by breaking away from the early modern conception of sovereignty as lodged exclusively in a single supreme authority. If governmental authority could be divided among several parallel institutions, it could therefore be tied to subject-specific objects. In this way, as Bailyn puts it, "The two governments would intersect only where they exercised *concurrent* powers, and *concurrence* is not the repugnance that lay at the heart of the ancient precept."[90]

What scholars have not adequately recognized, however, is the significance of the debates between Hutchinson and the General Court in, first, establishing the respective sides of the sovereignty argument and, second, in providing a forum for colonial innovation. The post-1773 forays of a few individuals into this novel conception of sovereignty speak in language strikingly similar to that used by the General Court. Writing in 1774, John Dickinson adopted the metaphor of line-drawing that Hutchinson had first employed and that both houses of the General Court had then adapted for their own use.

> The authority of parliament has within these few years been a question much agitated, and great difficulty, we understand, has occurred in tracing the line between the rights of the mother country and those of the colonies. … Whatever difficulty may occur in tracing the line, yet we contend that by the laws of God and by the laws of the constitution a line there must be beyond which her authority cannot extend. … We assert, a line there must be, and shall now proceed, with great deference to the judgment of others, to trace that line. …[91]

As in his widely circulated *Letters of a Farmer in Pennsylvania* of 1768, Dickinson then proceeded to draw a line between regulating trade and legislating for the colonies' internal affairs. The former, he contended, was permissible; the latter was not. Dickinson thus emphasized a subject-matter distinction separating the areas that a legislature might permissibly oversee and those that it might not.

James Iredell invoked a similar substantive vision of the scope of lawmaking authority, arguing in 1774 that the i*mperium in imperio* principle was "not at all applicable to our case, though it has been so vainly and confidently relied on," because the emerging system of federalism relied on "several *distinct and independent legislatures*, each engaged within a *separate* scale, and employed about *different* objects."[92] For both Dickinson and Iredell, then, the objects of the law determined which authority could legitimately pursue it.

Hutchinson had refused to grant such a distinction, arguing that Parliament's sovereignty at home translated into full authority over the colonies because the colonies, like the

British Isles, were part of the realm. In other words, Hutchinson understood legislative authority as coterminous with territorial boundaries, while Dickinson, Wilson, and the members of the General Court permitted legislative authority to be segmented according to the boundaries of subject matter.[93] Hutchinson might have scored a temporary victory for the empire in 1773 (albeit at the immense personal cost of his own career), but the substantive inquiry proposed by the General Court and embraced by Dickinson lived to fight—and win—another day. In 1787, Alexander Hamilton would describe the powers of the proposed federal government as similarly bounded by subject matter, not by territory: "[T]he laws of the confederacy, as to the *enumerated* and *legitimate* objects of its jurisdiction, will become the SUPREME LAW of the land."[94] The enumerated, legitimate objects of an authority's jurisdiction, not the reach of its might over a given piece of territory, would determine whether its laws or those of a concurrent authority would apply.

The arguments of the Council and House of Representatives in January 1773 signaled the beginning of a formal turn away from the British imperial constitution as that constitution had been defined by metropolitan theorists. Rather than tying sovereignty to territory, the members of the General Court and their successors tied sovereignty to its particular substantive objects; rather than insisting on sovereignty as monolithic and unitary, the colonial opposition viewed it as divisible into parallel and non-overlapping repositories. From the earliest disputes of the 1760s concerning the scope of Parliament's authority, colonists and some imperial officials had attempted to draw lines limiting that authority; every time, imperial administrators had refused to consider that lines could be drawn, let alone the specific lines that the colonists proposed.

The debates of early 1773 signified an important transition in Anglo-Americans' thinking about sovereignty, a moment of divergence between imperial and colonial theory, and an illustration of a key conceptual breakthrough that helped to bring about the development of federalism. Whether the General Court or Hutchinson—or neither—had the better constitutional arguments at the time is less relevant for the story of the intellectual history of federalism than the following two facts: first, each side was deeply committed to its particular constitutional vision; second, one can clearly see here elements of the political-theoretical moves that would enable the General Court and their successors to develop a domestic version of Pufendorf's system of states.

Federalism required a belief that lines could be drawn between sources of authority. Imperial officials, citing the increasingly powerful theory of parliamentary supremacy, argued that such delineations were impossible. The General Court suggested, however, that not only could lines be drawn around sovereign authorities; they could be drawn according to novel, subject-matter-specific principles. Despite their tendentious origins, arguments such as these would in subsequent years provide the foundation for the American federal experiment. The Constitutional Convention delegates' enumeration of the powers of the national government, and their accompanying reservation of powers to the states, expanded on the Massachusetts General Court members' assertion, fourteen years earlier, that sovereignty could be apportioned among authorities—and preserved against competing claims—according to the substantive ends toward which that sovereignty was directed.

Occasional Papers from
The University of Chicago Law School

No. 1 Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999), 11, quoting F. H. Hinsley, *Sovereignty*, 2d ed. (Cambridge: Cambridge University Press, 1986). Krasner terms this "domestic sovereignty," in contrast to three other species of sovereignty (Westphalian, international legal, and interdependence). The leading contemporary exponent of this view was, of course, Sir William Blackstone, who argued, "[T]here is and must be in all [governments] a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside." See William Blackstone, *Commentaries on the Laws of England* (1765–69; reprint with an introduction by Stanley N. Katz, Chicago: University of Chicago Press, 1979), 1:49.

No. 2 On the provincial assemblies and the decades-long history of institutional conflict within the colonial governments, see Evarts B. Greene, *The Provincial Governor in the English Colonies of North America* (Cambridge, MA: Harvard University Press, 1898); Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689–1776* (New York: W. W. Norton & Co., 1963); Michael G. Kammen, *Deputyes and Libertyes* (New York: Knopf, 1968); Leonard Woods Labaree, *Royal Government in America: A*

Study of the British Colonial System Before 1783 (New Haven: Yale University Press, 1930); Herbert Osgood, *The American Colonies in the Eighteenth Century* (New York: Columbia University Press, 1924).

No. 3 On the broader context of changing ideas of authority and state power in the eighteenth-century British Atlantic world, see Peter N. Miller, *Defining the Common Good: Empire, Religion and Philosophy in Eighteenth-Century Britain* (Cambridge: Cambridge University Press, 1994).

No. 4 Antagonism between colonial assemblies and governors was common throughout the eighteenth century, arising out of institutional competition for power at a provincial level as well as the friction between the governor's (and sometimes the council's) status as imperial agents and the assembly's role as imperial subjects. See, e.g., Christine A. Desan, "The Constitutional Commitment to Legislative Adjudication in the Early American Tradition," *Harvard Law Review* 111 (1998): 1381–1503.

No. 5 John Phillip Reid, "The Ordeal by Law of Thomas Hutchinson," in *Law in the American Revolution and the Revolution in the Law*, ed. Hendrik Hartog (New York: New York University Press, 1981), 33–34. The debates are reprinted in their entirety in John Phillip Reid, ed., *The Briefs of the American Revolution: Constitutional Arguments Between Thomas Hutchinson, Governor of Massachusetts Bay, and James Bowdoin for the Council and John Adams for the House of Representatives* (New York: New York University Press, 1981).

No. 6 Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge, MA: Harvard University Press, Belknap Press, 1974), 196.

No. 7 Thomas Hutchinson to Lord Dartmouth, December 22, 1772. Hutchinson Correspondence 1741–74, Harvard University Library (microfilm, Massachusetts Archives). Hereafter cited as Hutchinson Correspondence.

No. 8 In a 1775 draft of what he termed a "vindication" of his conduct, Hutchinson called "the King, Lords, and Commons" the "sole bond which kept the several parts of the Empire together." Thomas Hutchinson, *The Diary and Letters of His Excellency Thomas Hutchinson, Esq.*, ed. Peter Orlando Hutchinson (1884–86; reprint, New York: Burt Franklin, 1971), 1:577.

On the consequences of the Glorious Revolution for metropolitan and colonial political theory, see Jack P. Greene, "The Glorious Revolution and the British Empire, 1688–1783," in *The Revolution of 1688–1689: Changing Perspectives*, ed. Lois G. Schwoerer (Cambridge: Cambridge Univ. Press, 1992); David S. Lovejoy, *The Glorious Revolution in America* (Middletown, CT: Wesleyan University Press, 1987); Jack M. Sosin, *English America and the Revolution of 1688: Royal Administration and the Structure of Provincial Government* (Lincoln: University of Nebraska Press, 1982).

No. 9 In particular, "the British had developed since the Glorious Revolution the constitutional doctrine of the sovereign legislature of king-in-parliament as the ultimate, absolute and irresistible authority in the state." H. T. Dickinson, "Britain's Imperial Sovereignty," in *Britain and the American Revolution*, ed. H. T. Dickinson (London: Longman, 1998), 81.

No. 10 Samuel Johnson, *Taxation No Tyranny: An Answer to the Resolutions and Address of the American Congress*, 4th ed. (London: T. Cadell, 1775), 24.

No. 11 *The Speeches of His Excellency Governor Hutchinson, to the General Assembly of the Massachusetts-Bay … With the Answers of His Majesty's Council and the House of Representatives …* (Boston: Edes and Gill, 1773), 8. On the meaning of repugnancy in the British Empire, see Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004).

No. 12 *The Speeches of His Excellency Governor Hutchinson*, 9.

No. 13 Ibid., 9–10.

No. 14 See, e.g., Simeon L. Guterman, *The Principle of the Personality of Law in the Germanic Kingdoms of Western Europe From the Fifth to the Eleventh Century* (New York: P. Lang, 1990); Guterman, *From Personality to Territorial Law: Aspects of the History and Structure of the Western Legal-Constitutional Tradition* (Metuchen, NJ: Scarecrow Press, 1972); Walter Ullmann, *Law and Jurisdiction in the Middle Ages* (London: Variorum Reprints, 1988).

No. 15 *The Speeches of His Excellency Governor Hutchinson*, 5.

No. 16 Ibid., 11.

No. 17 On the rise of the theory of parliamentary sovereignty, see J. G. A. Pocock, *The Ancient*

Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century; A Reissue With a Retrospect (New York: W. W. Norton & Co., 1987) (especially the conclusion to part 1, titled "1688 in the History of Historiography").

No. 18 Act in Restraint of Appeals, 1533, 24 Hen. 8, c. 12; J. G. A. Pocock, "A Discourse of Sovereignty: Observations on the Work in Progress," in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993), 381.

No. 19 See Michael Mendle, "Parliamentary Sovereignty: A Very English Absolutism," in *Political Discourse in Early Modern Britain*, ed. Phillipson and Skinner, 97.

No. 20 Blackstone, *Commentaries on the Laws of England*, 1:156–57.

No. 21 Cf. Morton J. Horwitz, "Why is Anglo-American Jurisprudence Unhistorical?" *Oxford Journal of Legal Studies* 17 (1997): 555. ("Blackstone … needed to reconcile the waning seventeenth century Whig tradition of fundamental law with the gradually unfolding recognition during the second half of the eighteenth century of the reality of parliamentary supremacy").

No. 22 Bernard Bailyn refers to the "ancient belief that *imperium in imperio* was an illogical and unresolvable solecism." Bernard Bailyn, *The Ideological Origins of the American Revolution*, enlarged ed. (Cambridge, MA: Harvard University Press, Belknap Press, 1992), 358.

No. 23 See Bailyn, *Ideological Origins*, 198–202. The combination of parliamentary sovereignty with empire yielded a situation following the Seven Years' War that Bailyn describes as "anomalous": "extreme decentralization of authority within an empire presumably ruled by a single, absolute, undivided sovereign" (204).

No. 24 See Patrick Thomas Riley, "Historical Development of the Theory of Federalism, 16th–19th Centuries" (Ph.D. diss., Harvard University, 1968), 119–90; Peter S. Onuf and Nicholas Onuf, Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776–1814 (Madison: Madison House, 1993), 65–66.

No. 25 See Richard Tuck, introduction to *The Rights of War and Peace*, by Hugo Grotius (Indianapolis: Liberty Fund, 2005), 1:xxxiii; see also Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism, and Order in World Politics* (Cambridge: Cambridge University Press, 2002), 3 (discussing Grotius's views of "divisible sovereignty" and arguing that these ideas both informed and grew out of European colonialism and imperialism).

No. 26 David Armitage, *The Declaration of Independence: A Global History* (Cambridge, MA: Harvard University Press, 2007), 41. Armitage notes that Franklin informed the volume's editor in December 1775 that the book "has been continually in the hands of our congress, now sitting."

No. 27 Richard Bland, *An Inquiry Into the Rights of the British Colonies* (Williamsburg, 1766; reprinted Richmond: Appeals Press, Inc., 1922), 9 (misidentifying the title of Vattel's work as *Law of Nature*).

No. 28 Tuck, introduction to *The Rights of War and Peace*, 1:xi.

No. 29 The question of the precise legal status of the colonies and the distinctions between membership in kingdom, realm, and dominion (the last distinguishable between the dominions of England and those of the king himself) is treated in Joseph Henry Smith, *Appeals to the Privy Council From the American Plantations* (New York: Octagon Books, 1965) (especially chapter 8, "The Privy Council and the Extension of English Law").

No. 30 *The Speeches of His Excellency Governor Hutchinson*, 96–97 (debates of March 6, 1773) (emphasis to "united by a Sort of unequal Confederacy" added).

No. 31 Ibid., 121–22.

No. 32 Keene, *Beyond the Anarchical Society*, xi.

No. 33 Hagen Schulze, foreword to *German Federalism: Past, Present, Future*, ed. Maiken Umbach (Basingstoke, Hampshire: Palgrave, 2002), viii.

No. 34 See Peter Schröder, "The Constitution of the Holy Roman Empire After 1648: Samuel Pufendorf's Assessment in His Monzambano," *The Historical Journal* 42 (1999): 961–83.

No. 35 Samuel von Pufendorf, *The Law of Nature and Nations: or, a General System of the most Important Principles of Morality, Jurisprudence, and Politics*, trans. Basil Kennet, 5th ed. (London: 1749; first ed. [Latin] 1672), vol. II, bk. VII, ch. V, §§ XVI, XVIII, 681–83.

No. 36 "An Elector," *Boston-Gazette and Country Journal*, January 11, 1773.

No. 37 After selecting members Samuel Adams and Joseph Hawley to lead the opposition, House managers also drafted rising Boston lawyer John Adams to aid in drafting a rebuttal to Hutchinson. Bailyn, *The Ordeal of Thomas Hutchinson*, 208.

No. 38 *Boston-Gazette and Country Journal*, February 1, 1773.

No. 39 *The Speeches of His Excellency Governor Hutchinson*, 18.

No. 40 Ibid., 18–19.

No. 41 See John Phillip Reid, *The Authority to Legislate*, vol. 3 of *Constitutional History of the American Revolution* (Madison: University of Wisconsin Press, 1991), 8, 82 ("[T]he concept of 'supremacy' was more a topic of dispute than an element of definition. It was used as much to argue about constitutionalism as to explain it.").

No. 42 Ibid., 85.

No. 43 Ibid., 83 (discussing the relative nature of the term *supreme*).

No. 44 On the relationship between nation and empire in this period, see Eliga Gould, *The Persistence of Empire: British Political Culture in the Age of the American Revolution* (Chapel Hill: University of North Carolina Press, 2000).

No. 45 Cf. Randolph G. Adams, *Political Ideas of the American Revolution: Britannic-American Contributions to the Problem of Imperial Organization*, 1765 to 1775, 3d ed. (New York: Barnes & Noble, 1958), 120, 175 (noting that John Adams's *Novanglus* letters made this distinction between the dual nature of Parliament as both an imperial and a national legislature).

No. 46 *The Speeches of His Excellency Governor Hutchinson*, 38.

No. 47 Ibid., 40. Parliament's own Navigation Act of 1660 endorsed the theory of the king's dominions, characterizing the colonies as "'Lands, Islands Plantations or Territories to his Maiesty belonging or in his possession.'" Quoted in Smith, *Appeals to the Privy Council*, 470. As Smith's discussion makes clear, the House's use of this history was somewhat opportunistic, for the status of English law in the colonies was the subject of much confusion as late as 1700. Ibid., 473-75.

No. 48 Cf. Bailyn, *Ideological Origins*, 201. Daniel Hulsebosch notes that the colonists cited royal prerogative "just as such rhetoric was becoming anachronistic in England." Nevertheless, that principle, not the notion of parliamentary sovereignty, "was their mainstay throughout the colonial period." Daniel W. Hulsebosch, "*Imperia in Imperio*": The Multiple Constitutions of Empire in New York, 1750–1777," *Law and History Review* 16 (1998): 328–29.

No. 49 John Philip Reid, *Constitutional History of the American Revolution*, abridged ed. (Madison: University of Wisconsin Press, 1995), 5.

No. 50 See Charles Page Smith, James Wilson: *Founding Father*, 1742–1798 (Chapel Hill: University of North Carolina Press, 1956), 58 (noting that James Wilson may "be credited with formulating the idea of dominion status six years ahead of [John Adams] and some seventy years ahead of the British Foreign Office"); Adams, *Political Ideas of the American Revolution*, 116–17 ("doctrine of allegiance").

No. 51 "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament," in *The Works of James Wilson*, ed. Robert Green McCloskey (Cambridge, MA: Harvard University Press, Belknap Press, 1967), 2:745.

No. 52 "Novanglus No. VII," in *The Works of John Adams, Second President of the United States*, ed. Charles Francis Adams (Boston: Charles C. Little and James Brown, 1851), 4:107. See also "Novanglus No. 11" and "Novanglus No. 7," in same work, 159, 106 ("I say we are not a part of the British empire; because the British government is not an empire. … It is a limited monarchy. … [T]he British constitution is nothing more nor less than a republic, in which the king is first magistrate.").

No. 53 Adams, *Political Ideas of the American Revolution*, 44.

No. 54 This move to establish something more like a commonwealth system, according to which the colonies would be subject to the Crown alone, gained momentum in 1774. See Thomas Jefferson, *A Summary View of the Rights of British America* (1774); see also John Cartwright, *American Independence the Glory and Interest of Great Britain* (1774); Joseph Galloway, *A Plan of a Proposed Union* (1774).

No. 55 Brian P. Levack, *The Formation of the British State: England, Scotland, and the Union*, 1603–1707 (Oxford: Clarendon Press, 1987), 1.

No. 56 On the resonance of the Scottish union debates for the American struggle with Britain, see Ned C. Landsman, “The Provinces and the Empire: Scotland, the American Colonies and the Development of British Provincial Identity,” in *An Imperial State at War*, ed. Lawrence Stone (London: Routledge, 1994); Ned Landsman, “The Legacy of British Union for the North American Colonies: Provincial Elites and the Problem of Imperial Union,” in A *Union for Empire: Political Thought and the British Union of 1707*, ed. John Robertson (Cambridge: Cambridge University Press, 1995); and John Robertson, “Empire and Union: Two Concepts of the Early Modern European Political Order,” in ibid.

No. 57 David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), 20.

No. 58 Ibid., 60.

No. 59 On the influence of Wilson’s Scottish background on his political thought, see Mark David Hall, T*he Political and Legal Philosophy of James Wilson*, 1742–1798 (Columbia: University of Missouri Press, 1997), 68–72; McCloskey, introduction to *The Works of James Wilson*, 1:14–16.

No. 60 “Novanglus No. VII” and “Novanglus No. VIII,” in *The Works of John Adams*, 4:113, 123.

No. 61 “Novanglus No. VIII,” in *The Works of John Adams*, 4:124.

No. 62 Ibid., 45.

No. 63 Ibid., 45–46.

No. 64 Making such a claim required a certain delicacy, for few colonists wanted to be seen as apologists for unfettered royal prerogative. Cf. “An Old Friend,” *Boston-Gazette and Country Journal*, February 8, 1773 (“Let it ever be remembered, That the Rights of the Prince are the *Gift of the People.*—He can have no legal Prerogative but what they give him—Therefore Charters, or no Charters, the People have a Right to all their natural Rights which they have not given away.”).

No. 65 *The Speeches of His Excellency Governor Hutchinson*, 46.

No. 66 Ibid., 35.

No. 67 Ibid., 39, 56.

No. 68 Dartmouth to Hutchinson, March 3, 1773, *Documents of the American Revolution*, 1770–1783, ed. K. G. Davies, Colonial Office Series (Dublin: Irish University Press, 1974), 6:94–95.

No. 69 Hutchinson to Dartmouth, Hutchinson Correspondence, February 1, 1773. The manuscript of this letter shows that Hutchinson originally wrote “give both the House &” but then crossed out “House &” so that the final version read “give both the Council & House a full reply.”

No. 70 *The Speeches of His Excellency Governor Hutchinson*, 61.

No. 71 Ibid., 73.

No. 72 Ibid.

No. 73 See, e.g., Adams’s argument in “Novanglus No. VII”: “We are a part of the British dominions, that is, of the King of Great Britain, and it is our interest and duty to continue so. It is equally our interest and duty to continue subject to the authority of parliament, in the regulation of trade, as long as she shall leave us to govern our internal policy . . . and no longer.” “Novanglus No. VII,” in *The Works of John Adams*, 4:120–21. See also Bailyn, *Ideological Origins*, 215.

No. 74 Blackstone, *Commentaries on the Laws of England*, 1:49.

No. 75 *The Speeches of His Excellency Governor Hutchinson*, 115.

No. 76 Ibid., 124 (emphasis added).

No. 77 Ibid., 114.

No. 78 Bailyn, *The Ordeal of Thomas Hutchinson*, 212.

No. 79 Hutchinson to unknown correspondent, Hutchinson Correspondence, March 10, 1773.

No. 80 Hutchinson to Dartmouth, Hutchinson Correspondence, April 25, 1773.

No. 81. Hutchinson to Dartmouth, Hutchinson Correspondence, June 1773 (unsent).

No. 82 Hutchinson to Dartmouth, Hutchinson Correspondence, June 12, 1773.

No. 83 Hutchinson to Dartmouth, Hutchinson Correspondence, June 26, 1773.

No. 84 Hutchinson, *The Diary and Letters of His Excellency Thomas Hutchinson, Esq.*, 151.

No. 85 Bailyn, *The Ordeal of Thomas Hutchinson*, 273.

No. 86 14 Geo. 3, c. 19, 39, 45, 54.

No. 87 Reid, *The Authority to Legislate*, 309.

No. 88 Cf. Andrew C. McLaughlin, *The Foundations of American Constitutionalism* (New York: New York University Press, 1932), 135–36 ("[I]t may seem best to speak of the federal state, not as one characterized by the distribution of sovereignty itself, but characterized by the distribution of sovereign powers.").

No. 89 Bailyn, *Ideological Origins*, 358.

No. 90 Ibid.

No. 91 John Dickinson, "An Essay on the Constitutional Power of Great Britain Over the Colonies in America," in *Pennsylvania Archives*, ed. John B. Linn and William H. Egle, 2d ser. (Harrisburg: B. F. Meyers, 1875), 3:565, 569.

No. 92 James Iredell, "To the Inhabitants of Great Britain," in *Life and Correspondence of James Iredell, One of the Associate Justices of the Supreme Court of the United States*, ed. Griffith J. McRee (New York: D. Appleton and Co., 1857), 1:219.

No. 93 This distinction between subject-matter and territorial bases of sovereignty is conceptually similar to Daniel Hulsebosch's distinction between "jurisdictional" and "jurisprudential" visions of law. Daniel J. Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence,". [Alexander Hamilton], "

No. 94 [Alexander Hamilton], "The Federalist No. 27," in *The Federalist*, ed. Jacob E. Cooke (Middletown, CT: Wesleyan University Press, 1961), 174

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