

# PARTING COMPANIES: THE GLORIOUS REVOLUTION, COMPANY POWER, AND IMPERIAL MERCANTILISM\*

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**ABSTRACT.** *This article revisits the late seventeenth-century histories of two of England's most successful overseas trading monopolies, the East India and Royal African Companies. It offers the first full account of the various enforcement powers and strategies that both companies developed and stresses their unity of purpose in the seventeenth century. It assesses the complex effects that the 'Glorious Revolution' had on these powers and strategies, unearthing much new material about the case law for monopoly enforcement in this critical period and revising existing accounts that continue to assert the Revolution's exclusively deregulating effects and that miss crucial subtleties in the case law and related alterations in company behaviour. It asks why the two companies parted company as legal and political entities and offers an explanation that connects the fortunes of both monopoly companies to their public profile and differing constituencies in the English empire and the varying non-European political contexts in which they operated.*

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In September 1708, England's two East India Companies united under the terms of an award made by the lord treasurer, Sidney Godolphin. Coming as it did after over a decade of concentrated political and commercial rivalry in

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London and in Asia between them, Godolphin's conspicuous part in the unification (as well as the company's loans to the government) confirmed the company's willing subordination to the interest of the British state. The state and Godolphin would show less interest in its other large-scale overseas trading corporation, the Royal African Company. Just a few weeks after Godolphin's award, he offered the following indictment: 'The African Company has been managed from a great many years by a pack of knaves . . . who have cheated all their adventurers.' Godolphin objected to the company's 'present foundation which is in my opinion a very rotten one'.<sup>1</sup> Since the Glorious Revolution, the Royal African Company, like its East Indian counterpart, had been subject to prolonged legal, constitutional, and public-parliamentary assaults on its charter right to monopolize access to specific arenas of overseas trade. For the East India Company, the Godolphin award that brought this political interrogation to an end heralded a new period of stability and financial and commercial consolidation. For the Royal African Company, the interrogation led to financial collapse and commercial impotence, while the resulting greatly expanded transatlantic slave trade proceeded with little state oversight.

Why then did the Glorious Revolution deal such different outcomes to the two companies? To answer that question, this article offers the first comparison of their late seventeenth- and early eighteenth-century legal and political histories. Both had enjoyed close relationships with Kings Charles II and James II as they energetically used their prerogative to help the companies enforce their monopolies. Neither company's enforcement powers proved entirely reliable during the second half of the seventeenth century, but both companies proved themselves largely able to satisfy the interests of their shareholders.<sup>2</sup> Both companies' monopolies proved controversial in similar ways: as inhibitors of economic opportunity, as price fixers, and as despotic intruders into politics. Contemporaries believed, correctly in our view, that their successes in the seventeenth century owed much to the shared legal and broader constitutional supports provided for them by the royal prerogative. This is evidenced by the fact that their opponents bitterly fought such authority. The article offers the first full account of the later seventeenth-century struggle over the monopolies' enforcement powers. It then explores the Glorious Revolution's dramatically different implications for the companies by concentrating first on the courtroom tests each monopoly faced and then comparing the companies' differing political environments both in England and abroad.

<sup>1</sup> 'Lord Godolphin to the duchess of Marlborough, 25 October 1708', in Henry L Snyder, ed., *The Marlborough–Godolphin correspondence* (2 vols., Oxford, 1975), I, p. 1139.

<sup>2</sup> William Robert Scott, *The constitution and finance of English, Scottish, and Irish joint stock monopoly companies to 1720* (3 vols., Cambridge, 1910–12), II, p. 21; Nuala Zahedieh, 'Regulation, rent-seeking and the Glorious Revolution in the English Atlantic economy', *Economic History Review*, 63 (2010), p. 876.

Recent work on the companies has focused on the parliamentary deliberations about the two companies' charters from 1689 onwards. This article challenges historians' views that the courts unstintingly supported the parliamentary opposition to monopolistic charters. The 1690 decision by the Court of King's Bench in *Nightingale v. Bridges* is said to have destroyed the Royal African Company's monopoly over the trade with Africa, including the slave trade.<sup>3</sup> In their opinion, it reversed the 1685 decision in *East India Company v. Sandys*, and 'ended Royal authority to enforce prerogative grants of exclusive economic privilege'.<sup>4</sup> In reality, court decisions after 1689 did not end the foreign trade monopolies. Instead, they were costly but by no means decisive skirmishes in the broader political war between the monopolies and their rivals that had existed since the time of the Civil War. Powerful enforcement means remained available after 1689, including damages actions, requiring suspected interlopers to post costly bonds before leaving England, and expensive customs proceedings. The monopolies continued to use those tools and (in the East India Company's case) to authorize new seizures into the mid-1690s, with support from King William III.<sup>5</sup> Once ratified by parliament, these enforcement powers would continue to aid the East India Company as its monopoly endured. They would become much less relevant to the African Company once interloping slave traders persuaded parliament largely to deregulate that trade.

This article's focus on the changing constitutional vitality of enforcement powers for overseas trading companies also shows that the seventeenth-century struggle over the monopolies forms an important chapter in the history of the law of property affected with a public interest. During it, English society reassessed different forms of property interests (and related civil rights such as jury trial) as they came into conflict in England and abroad, and struggled to define why and in what circumstances they should be protected. But our primary interest here is in understanding how and why the state resolved these conflicts in the interest of empire. The article shows that at the centre of the explanation for their strikingly divergent histories after 1688 must be the political structures of the two companies' trades overseas as well as the very different political forces which targeted their respective monopolies from the 1690s onwards. Notably, the East India Company had succeeded by 1689 in creating an embryonic English territorial government that could project

<sup>3</sup> *Nightingale & Al' v. Bridges*, 90 *English Reports (Eng. Rep.)* 1160, 90 *Eng. Rep.* 680, 89 *Eng. Rep.* 496, *Cases temp Eyre*, Middle Temple Library (MTL) MS 15, p. 61.

<sup>4</sup> Steve Pincus, *1688: the first modern revolution* (New Haven, CT, 2009), p. 385; W. Darrell Stump, 'An economic consequence of 1688', *Albion*, 6 (1974), pp. 26–35 (quotation at p. 28).

<sup>5</sup> For studies of the struggle over the East India Company and Royal African Company monopolies in parliament, see Henry Horwitz, 'The East India trade, the politicians, and the constitution: 1689–1702', *Journal of British Studies*, 17 (1978), pp. 1–18; James Bohun, 'Protecting prerogative: William III and the East India trade debate, 1689–1698', *Past Imperfect*, 2 (1993), pp. 63–86; and William A. Pettigrew, 'Free to enslave: politics and the escalation of Britain's transatlantic slave trade, 1688–1714', *William and Mary Quarterly*, 64 (2007), pp. 3–38.

English power and its monopoly control abroad and provide military supplies at home, while the African Company had not been able to do so.<sup>6</sup>

As such, this comparative history of the two companies at a critical juncture demonstrates that the Glorious Revolution was modern primarily because it placed the interests of the English state above the ideologies that supported and challenged the place of overseas trading companies in English society.<sup>7</sup> The Revolution represented the full flowering of English nationally sponsored mercantilist enterprises as a direct adjunct to the dynamic Williamite expansion of English military power. In one case, the Revolution markedly broadened and strengthened the foundation for English state-protected trade in slaves; in the other, it ratified the state-protected monopoly of trade with Asia. But in both cases, the principal end sought was the expansion of English imperial power abroad, particularly through colonization and access to cheap raw materials and exploitable commoditized labour.

## I

Charles II established the Royal African Company in 1672. The Royal African Company charter granted it the right to enforce its monopoly by seizing and forfeiting violators' ships and goods, like the East India Company's charter of 1600.<sup>8</sup> But the African Company's charter also contained several important additional powers. First, it permitted the company to create its own courts using company personnel and judges it chose to hear forfeitures and other commercial proceedings. There was no appeal from these courts, unlike the admiralty courts.<sup>9</sup> And it permitted the company to enforce its monopoly by requiring customs officials to prohibit the importation to England and the

<sup>6</sup> An excellent treatment of the East India Company's conception of itself as an extension of the English government is Philip J. Stern, *The company-state: corporate sovereignty & the early modern foundations of the British empire in India* (Oxford, 2012).

<sup>7</sup> So our conception of the modernity of the Glorious Revolution partly agrees with Steven Pincus's account. The Revolution was modern in compounding the centralization and bureaucratization of political authority of the state, but not modern in terms of an ideological break with the past. See Pincus, *1688*, p. 9.

<sup>8</sup> Half of any forfeiture's proceeds went to the crown. But under the East India Company's charter prior to 1683, such forfeitures could only have been enforced through royal admiralty courts. Accordingly, there were important checks on its use of the forfeiture power. Admiralty court decisions could be appealed to a court that by the mid-seventeenth century included some common law judges. William S. Holdsworth, *A history of English law* (17 vols., London, 1903–72), I, pp. 547–9. Admiralty's jurisdiction was also statutorily limited and could be contested in the common law courts. If it was improperly exercised, that abuse could be made the subject of a damages action that included heavy penalties for violations. John H. Baker, *An introduction to English legal history (IELH)* (4th edn, London, 2002), p. 123 n. 31. Admiralty courts proceeded under the civil law, not common law, which meant, inter alia, that they did not ordinarily use juries. *Ibid.*, pp. 123–4.

<sup>9</sup> See n. 8. This same broadened authority was granted to the East India Company by letters patent in 1683. Stern, *Company-state*, pp. 59–60.

exportation to Africa of any goods whose sale would be in violation of the monopoly.<sup>10</sup>

As is well known, both the East India Company and the Royal African Company monopolies were porous; both had limited success in enforcing their monopolies.<sup>11</sup> Prosperous, politically well-connected English interlopers persistently sought to trade in violation of the monopolies, and were relatively successful. This was not surprising, because the interlopers had important allies – foreign trading companies; African, Asian, and West Indian officials who wanted to profit from trade; and customers, including disgruntled plantation owners in the West Indies who wanted more slaves at lower prices. The companies were still periodically successful in seizing interlopers' ships despite such alliances. And although interloping interests could refer to common law arguments, which viewed English property rights as internationally portable, they had little success in challenging the legality or constitutional validity of the monopolies' enforcement powers in public during the 1670s, though occasionally successful colonial resistance did occur, as in the 1676 *St George* case.<sup>12</sup> Interlopers sometimes complained to parliament and to the privy council seeking redress, but without avail before 1688.<sup>13</sup>

By the late 1670s, however, the Royal African Company's seizure authority had become sufficiently controversial that it sought legal advice from leading London lawyers regarding the validity of its charter powers. These attorneys were Thomas Turnor and Thomas Corbett (who in turn consulted Sir John Maynard, and reported that he agreed with them). They concluded that the charter was valid, and that the forfeiture authority it conferred was valid as well. The extensive opinions of Turnor and Corbett rested primarily on the idea

<sup>10</sup> K. G. Davies, *The Royal African Company* (London, 1957), pp. 97–9.

<sup>11</sup> *Ibid.*, pp. 113–17; Stern, *Company-state*, pp. 44–60; Zahedieh, 'Regulation', pp. 874–6.

<sup>12</sup> For the view that many English property and legal rights such as jury trial in essence 'travelled with' English merchants overseas, in the sense that they would be protected by English courts against potentially tortious acts such as ship seizures made abroad or violations of due process, see Sir John Maynard's arguments in *Skinner v. East India Company*, T. B. Howell, ed., *A complete collection of state trials ... from the earliest period to the year 1783 with notes and other illustrations: compiled by T. B. Howell ... and continued from the year 1783 to the present time: by Thomas Jones Howell (State trials)* (33 vols., London, 1809–26), vi, pp. 710–70, and the opinion of the judges in that case; and Lincoln's Inn Library, Maynard MSS, No. 42. In *Skinner*, however, parliament reached an impasse and the issue was not resolved. English common law courts had previously exercised jurisdiction over claims arising abroad using the legal fiction that the events at issue had occurred in England. Baker, *IELH*, pp. 122–4. In the *St George* case, when the African Company petitioned the crown in 1682 for reversal of the obviously flawed 1676 *St George* court decision in which Jamaican courts had upheld the colony's brazen effort to evade the admiralty's jurisdiction by conducting a trial regarding an African Company seizure that violated well-established English legal principles, its petition appears to have fallen on deaf ears. See The National Archives, Treasury Series 70 (T70), vol. 169, fos. 7a–7b; The National Archives, Colonial Office Series, vol. 138/3; Zahedieh, 'Regulation', p. 876 n. 65.

<sup>13</sup> For these attempts see Edward Littleton, *The groans of the plantations* (London, 1689), p. 6; and Roger Coke, *Reflections upon the East-Indy and Royal African Companies with animadversions, concerning the naturalization of foreigners* (London, 1695), p. 10.

that foreign trade could be governed by the prerogative because in their view English traders abroad were subject to the king's authority to make foreign law under the conquest rule of *Calvin's Case*.<sup>14</sup> Corbett's opinion supported the company's right to prosecute interloping merchants as 'Rebeles to the King's Authority', quoting John Selden's 1635 tract *Mare Clausum* as a supportive authority. Corbett added that its vice-admiralty courts were legal because they would be located outside England where

the King alone may give to any Countreyes conquered by him, what Lawes he pleaseth which are not contrary to the Lawes of Nature, or to natural reason and also may prescribe a way, manner, or course of Proceeding and Tryalls, different from ye course of our common Lawes of this Land, but cannot doe soe in England.

Thomas Turnor added that the common law could not operate in Africa: 'because the Common Law cannot run where Writs cannot be executed, and Writs cannot be executed in this Territory for want of Sherrifs, and other like Officers, And none but ye King can constitute a Sherrif'. Turnor contended that 'the superinduction of ye Common Law into conqerred Countries is a Ray or Emanation of ye King's own free and spontaneous Grace and Favour vouchsaf'd anon to his own very English Subjects ... and no Right or Duty'.<sup>15</sup> Here were three respected lawyers validating the company's forfeiture power by relying on long-standing precedent that they thought permitted the crown to deny the overseas application of the English common law in conquered countries.

Despite this informal support for the Royal African Company's authority, it and the East India Company knew that interlopers (and possibly the courts) disagreed. Interloping merchants began to broaden their assault on the African Company. The first parliamentary petition against the company appeared in 1678.<sup>16</sup> To limit such complaints and to decrease their enforcement costs, the monopolies developed a powerful new enforcement tool that relied on admiralty power but did not require forfeitures. Upon learning that a ship in London was being loaded for a voyage that would violate its monopoly, that company would obtain an admiralty order preventing the ship from sailing until the owner posted a bond forfeitable if the voyage violated the monopoly.

Both companies used this enforcement strategy repeatedly. Its use resulted in jurisdictional fights between the admiralty and the common law courts,

<sup>14</sup> The 'conquest rule' announced by Sir Edward Coke in his influential 1608 report of *Calvin's case, State trials*, II, p. 559, 77 *Eng. Rep.* 377 (1608), concerned what laws would govern in conquered foreign dominions of the crown, and when and if such laws could be altered by the king without the consent of parliament. The legal opinions discussed here assume that the case's principles would apply to English traders operating abroad, but that is by no means clear from Coke's report itself. For an outstanding analysis of the case see Daniel J. Hulsebosch, 'The ancient constitution and the expanding empire: Sir Edward Coke's British jurisprudence', *Law and History Review*, 21 (2003), pp. 439–82.

<sup>15</sup> Opinion of Thos. Turnor, Gray's Inn, 12 Dec. 1677; Opinion of Thos. Corbett, 1677 (?) including brief summary of oral opinion of Sir John Maynard, The National Archives, State Papers Series (SP), vol. 398, fos. 110–19. <sup>16</sup> SP 29/442, fo. 172 [Jan.?, 1678].

which led, on at least one occasion, to a prohibition order blocking an admiralty proceeding.<sup>17</sup> In an important 1683/4 case, however, the king's bench court refused to issue a prohibition against an admiralty arrest of an interloper's ship made at the behest of the East India Company; the major judges of England upheld its decision.<sup>18</sup> At this time, the court of chancery also deliberately blocked interlopers' efforts to raise issues through discovery that would permit them to challenge the Royal African Company monopoly.<sup>19</sup> Throughout the 1680s, the Royal African Company and East India Company continued to enforce their grants through seizures made abroad and use of admiralty authority in London. In these circumstances, it was only a matter of time before the East India Company would have to test the authority of its charter and forfeiture power (and, in effect, that of the African Company as well) against common law principles. In an early phase of the contest, Lord Keeper Sir Francis North disparaged the Company's forfeiture authority as the 'weakest clause in the patent', and strongly implied it would have been better to leave it out of a company enforcement action altogether.<sup>20</sup>

Not surprisingly, when the East India Company took interloper Thomas Sandys to the common law courts to obtain a determination of the validity of its charter, it did so in a way designed to shield its forfeiture authority from attack. It deliberately sought only damages from Sandys if its charter was upheld. After lengthy argument by several of the most prominent lawyers in England including John Holt, George Treby, and Henry Pollexfen, the court of king's bench upheld both the East India Company's charter and its right to damages to enforce it. The court squarely rejected the argument that Englishmen had a common law right to engage in free trade that took precedence over the king's interest in controlling foreign affairs.<sup>21</sup>

But the East India Company's victory had important adverse implications for the monopolies that must have been apparent to knowledgeable observers. Even Chief Justice Jeffreys, a strong monarchist who ruled in favour of the East India Company, concluded that although its forfeiture and imprisonment

<sup>17</sup> For examples for the Royal African Company use, see T70/169, pp. 7b–8, 20. For a case in which a prohibition was granted, see *East India Co. v. Turkey Co.*, reprinted in D. E. C. Yale, ed., *Lord Nottingham's chancery cases*, II, Publications of the Selden Society, vol. 79 (1961), p. 882 (Case 1110) (June 33 Car. 2 (1681)).

<sup>18</sup> *Sands v. Exton (a/k/a Sandys and the East-India Company)*, Skinner 91, 90 *Eng. Rep.* 43, T. Raymond 44, 83 *Eng. Rep.* 255, 2 Shower K.B. 302, 89 *Eng. Rep.* 953. The East India Company's action was the subject of a successful tort claim in the 1690s in *Sands v. Child* (below, text at n. 60). We thank Dr Michael R. T. Macnair for this reference.

<sup>19</sup> [*Brooks v. Bradley*], reprinted in Yale, ed., *Lord Nottingham's chancery cases*, p. 919 (Case 1152) (Jan. 34 Car. 2 (1682/3)); same case, 2 Ch. Cas. 95 (1682).

<sup>20</sup> *East India Company v. Sandys*, 23 *Eng. Rep.* 362 (1682).

<sup>21</sup> *East India Co. v. Sandys*, *State trials*, x, p. 371. The court's upholding of the India Company charter was also a victory for the Royal African Company, since by 1683 the monopolies had essentially the same powers and thus their charters had essentially the same strengths and weaknesses. For further discussion of *Sandys*, see Pincus, 1688, pp. 375–8; and Stern, *Company-state*, pp. 46–58, *passim*.

powers were not then at issue, 'surely it would be hard to maintain all' such powers in the charter, and 'therefore plaintiff's [East India Company's] counsel have avoided those questions by bringing this action'.<sup>22</sup> In awarding the India Company a victory, in other words, the chief justice chose to send a blunt message about the limits of its authority.<sup>23</sup>

The India Company nonetheless used its victory in *Sandys* to bring numerous enforcement actions for damages against separate traders.<sup>24</sup> By April 1685, forty-five individuals, including Jeffrey Nightingale, the African interloper, had petitioned the king to pardon their trading in violation of the East India Company charter, and the Royal African Company took comfort in the court's judgement.<sup>25</sup> But in one enforcement action, the lord keeper also expressed grave doubts about the validity of the East India Company's seizure powers, saying 'clauses to restrain trade under forfeitures have been adjudged void about twenty times'.<sup>26</sup>

So by the late 1680s, the monopoly rights of crown-chartered trading monopolies like the East India and Royal African Companies had been upheld despite a strenuous, well-financed challenge. They had also developed a panoply of enforcement strategies: actions in royal admiralty courts requiring interloping merchants to post bonds, customs proceedings, and vice-admiralty company courts. These techniques received the blessing of influential lawyers, and the courts themselves supported some of them, though significant doubts were cast on others. These enforcement tools relying on crown authority and military force provided the underpinning that established sustained English commercial activity in Africa and Asia. In these disputes, however, interloping merchants developed important common law arguments to contest the companies' legal powers – especially the contention that common law rights, including jury trials, existed wherever in the world English traders operated and were not negated by the primacy of prerogative law overseas. These common law arguments would receive a further hearing after the Glorious Revolution of 1689.

## II

After 1688, the political and legal conflict between the interlopers and the monopolies in both the African and Indian trades escalated sharply. Common

<sup>22</sup> *East India Co. v. Sandys, State trials*, x, p. 520.

<sup>23</sup> Scholars have equated the striking down of one method of monopoly enforcement with the striking down of the monopoly as a whole. This article stresses the multiple enforcement methods the overseas trading companies enjoyed. See Pincus, 1688, p. 386.

<sup>24</sup> British Library, London, India Office Records (IOR), H/23.

<sup>25</sup> For the African Company's comfort at the court's outcome see 'Minutes of the General Court', 14 Jan. 1685, T70/101, fo. 19.

<sup>26</sup> *East India Company v. Evans et al.*, 23 *Eng. Rep.* 486, 1 Vern. 306 (1685). The Company's damages theory in such actions was that separate traders should be compelled to contribute to the cost of maintaining its Indian establishment.

law courts would narrow the companies' enforcement options, but court decisions fell short of undermining all of their charter powers. Through a collaborative legal strategy, the two companies sustained enough of their legal authority to achieve parliamentary charter settlements.

By mid-1689, petitions had been filed and impeachment proceedings were pending in the House of Commons against admiralty and East India Company officials based on that company's seizures.<sup>27</sup> The monopolies were now also in a position of having to defend their powers to new judges, many of whom had been influential in forging the Revolution Settlement. Most prominent among them was Sir John Holt, who became chief justice of the court of king's bench. Holt had defended the East India Company's charter only a few years previously. Taking these changed circumstances into account, when the India Company faced its first seizure challenge before Holt, it followed a shrewd legal strategy.<sup>28</sup>

In spring 1689, in *Beake v. Terrell*, plaintiff challenged the India Company's seizure of a ship in the East Indies using a company court.<sup>29</sup> The defendant first pled that the entire case was outside the king's bench jurisdiction because it fell squarely within the admiralty jurisdiction. But according to one case report, that pleading failed 'because the Common Law courts have a concurrent jurisdiction with the Admiralty, and the plaintiff hath his election'.<sup>30</sup> The defendant then pleaded specially that 'he was the King's servant, and captain and governor of such a man of war'; that 'he seised the ship mentioned in the declaration as a prize', and that he seized it 'super altum mare, within the jurisdiction of the Admiralty', after which an admiralty court in Swally 'gave sentence against the ship as a prize.' The court then ruled on the legal sufficiency of the pleadings.

Chief Justice Holt held that the defendant must plead a cause of forfeiture before the ship could be taken as a prize, and that he needed to plead 'to whom the Court of Admiralty did belong' (i.e., whether it was a foreign court, a company court, or a crown court). Holt indicated that English common law courts would defer to actions by foreign admiralty courts, strongly implying that they would not defer to English admiralty courts. According to one report, he also stated: 'the subsequent going to the Admiralty cannot justify the first illegal caption'. Since the defendant's plea did not meet these requirements, it was insufficient.<sup>31</sup>

In *Beake*, through artful pleading the East India Company had offered Holt the opportunity to sustain its seizure without specifically endorsing or needing to justify it simply by disclaiming jurisdiction, thus deferring to royal authority.

<sup>27</sup> See 'Papers relating to the charge of high misdemeanour ... against Pepys ... and ... Child', Catalogue of Rawlinson MSS A (1842), Bodleian Library, Oxford, Sub. 170, item No. 52.

<sup>28</sup> See *Beak v. Tyhrwit*, 87 *Eng. Rep.* 124 (1688), which involved a similar defence.

<sup>29</sup> 90 *Eng. Rep.* 379; 90 *Eng. Rep.* 411; 90 *Eng. Rep.* 623; 90 *Eng. Rep.* 924 (1689).

<sup>30</sup> 90 *Eng. Rep.* 379 (1 W&M).

<sup>31</sup> 90 *Eng. Rep.* 924.

Holt's decision rejected that gambit and affirmatively declared that the court would review the legality of seizures, at least those affected using East India company courts. More important, it would require the East India Company to put its charter in issue to sustain a seizure as well. Quite probably because the East India Company did not want to test the validity of its charter, it declined to defend the case further.<sup>32</sup>

At the same time as *Beake v. Terrell*, the Royal African Company was also forced to account for its vice-admiralty forfeiture power before Holt's court. *Nightingale v. Bridges* was the earliest post-Revolution challenge to the African Company's monopoly, and was decided shortly after *Beake*. Plaintiffs Jeffrey Nightingale (also an interloper in the India trade) and others challenged the seizure of a ship by the African Company using a company court.<sup>33</sup> The company was represented in the first phase of the case by prominent attorneys, Sir John Somers, solicitor general and a staunch whig, and Sir George Treby, attorney general (who had represented Sandys against the East India Company). Their original strategy was diametrically opposed to the East India Company's strategy in *Beake*. They sought a clear ruling from the court on the legal validity of the African Company's charter and its seizure powers.<sup>34</sup>

To do this, they 'importuned' the court to make its decision based on a procedure referred to as a 'special verdict'. Under that procedure, a jury would first be required to determine the facts of the controversy, but the court would then rule separately on their legal significance (including the charter's validity). But the company then dramatically changed its strategy in the middle of the case.<sup>35</sup> After the jury in *Nightingale* had returned their factual verdict, the defendants declined to appear in court to argue its legal significance.<sup>36</sup> This gave the court no alternative but to rule for the plaintiff, but to do so, the law required it first to conclude that the plaintiff had a valid legal claim. From the reports of the court's decision, it is virtually impossible to say with certainty what the court thought made Nightingale's claim a valid one.

<sup>32</sup> After *Beake* obtained a judgement against it for damages, the East India Company authorized settlement of *Beake's* claim in late 1690. IOR/B40 Court of Committees minutes, 19 Dec. 1690 (fos. 38–9). Sir Benjamin Bathurst, also an African Company official, was named as the Indian Company negotiator.

<sup>33</sup> *Nightingale & Al' v. Bridges*, 90 *Eng. Rep.* 1160, 90 *Eng. Rep.* 680, 89 *Eng. Rep.* 496; *Cases temp Eyre*, MTL MS 15, p. 61. *Nightingale* began in late 1689; although there is some conflict in the dating of various reports, judgement appears to have been given in mid-1690.

<sup>34</sup> Although there is no documentary evidence on this point, there is a strong possibility that they adopted this frontal strategy because they thought that Holt would favour the African Company, since he had represented the India Company in *Sandys*.

<sup>35</sup> Stump and Pincus read what Nightingale's attorney, Bartholomew Shower, proposed to say (if the company had defended its position) and the nineteenth-century summary of the case into Holt's judgement (the precise details of which are not known). See Stump, 'An economic consequence of 1688', pp. 31–2; and Pincus, 1688, pp. 385–6.

<sup>36</sup> They did attack the jury verdict as inconsistent with the original pleadings, but this seems to have been largely a delaying action.

One thing we can be confident of, however, is that the court did not think that its decision invalidated the Royal African Company's charter as a whole. After all, the plaintiff's lawyer Sir Bartholomew Shower said in his own detailed account of his argument in the case that he was not challenging the charter itself.<sup>37</sup> Other evidence confirms this. A recently discovered unpublished report of *Nightingale* says that the special verdict was intended to determine the 'validity of the Charter of the African Company for seizing [ships] and goods trading there without the leave of the Company'.<sup>38</sup> This confirms Shower's statement – that the plaintiff did not challenge the charter *in toto*, but only the African Company's forfeiture authority. The report continues, saying that 'the Plaintiff's Counsel did wave' that point and 'would not argue being so clearly against Law'.<sup>39</sup> In the event, because the defendant subsequently challenged only specific pleadings in the case in an attempt to limit its liability for damages, the court did not need to decide the validity of prerogative forfeiture authority generally.

Whether *Nightingale* held that all prerogative forfeitures (including those through the admiralty), or only those effected through company courts, were unlawful, remains uncertain. The case itself did not raise that broader issue, since it concerned only company court forfeiture. The most that can be said with certainty is that *Nightingale* did decide that English common law protected the property of English foreign traders against prerogative company court seizures, and did not decide that the Royal African Company charter was invalid.<sup>40</sup>

The evidence suggests that the earlier decision in *Beake* explains the African Company's dramatic change in strategy. The two companies had overlapping officials and stockholders, so they were each well aware of litigation challenging the charters of either monopoly. There is clear evidence of co-ordination between them on important matters such as taxation during this period.<sup>41</sup> *Beake* had already demonstrated clearly that Holt's court would not uphold company court seizures. Like the East India Company, the African Company

<sup>37</sup> 1 Show. K. B. 137, 89 *Eng. Rep.* 497.

<sup>38</sup> *Cases temp Eyre*, MTL MS No. 15, p. 61. This report is dated Trinity Term, 2 W&M., indicating that *Nightingale* continued through mid-1690.

<sup>39</sup> *Ibid.* This statement is confusing for two reasons. First, if anyone were going to waive the issue of validity of the Royal African Company's forfeiture authority, one would expect it to be the defendant, not the plaintiff. The report may merely garble Shower's concession that he was not challenging the validity of the monopoly itself, only its forfeiture authority. Second, it is not clear whether the statement that the forfeiture authority was 'so clearly against Law' was Shower's contention, or the reporter's editorial comment.

<sup>40</sup> But other contemporary decisions show that this reasoning applied only to traders, not to English subjects living abroad. See *Blankard v. Galdy*, 87 *Eng. Rep.* 359 (1693); *Dutton v. Howell*, 1 *Eng. Rep.* 17 (1694), where courts held that English law did not apply in various colonies.

<sup>41</sup> As mentioned, Sir Benjamin Bathurst, the EIC's negotiator in the *Beake* case, was also a major RAC official and stockholder. Other examples could be given, including Sir Thomas Cooke, George Bohun (Bathurst's nephew), and Sir William Hodges.

had no desire to put its charter in issue to defend a seizure that had also occurred through a company court, so defendants declined to argue the special verdict.<sup>42</sup>

Ultimately, Holt's judgement forced the company to pay £4,300 damages plus £2 3 s 4 d costs to *Nightingale*. However, it is mistaken to view settlement of such seizure claims by either monopoly as total losses for them as some historians have, because the substantial seizure efforts by the companies during the 1670s and 1680s had clearly deterred some competition and maintained profits while they had Stuart support.<sup>43</sup> More importantly, even after *Nightingale*, both the African and East Indian Companies continued to enforce their monopolies. Of the two, the African chose less aggressive but still effective methods.

First, the African Company instructed colonial representatives to use customs laws rather than its charter powers to effect seizures of interlopers' ships and goods.<sup>44</sup> It wrote to Nathaniel Johnson, governor of Antigua, in February 1689 commending him on his report of the seizure and condemnation of 'sixty Negroes' in Montserrat, adding that it hoped that this example would discourage interlopers from seeking to smuggle slaves into any of the Leeward Islands. It reminded Johnson that 'Governors make use of' the Acts of Navigation to 'seise Interloping Negroes for their neglect in making due entries of their Ships which ways of seizure we like best being more advantageous to the Government of the Plantations [which receive reward money] and to us makes the same effect (by discouraging the interloping trade)'. It also recommended that colonial officials prosecute the master and owner of ships who made false customs entries since that would violate its charter.<sup>45</sup>

But concern about its charter's validity had tempered the Royal African Company's position by late 1689. As it explained to its Jamaica factors, Charles Penhallow and Walter Ruding,

Should any Interloping Ships come to your Island we would have you Endeavour to have them & their Cargoes Seized by the Custome house officers . . . we had rather loose our Claime to any Part [of the reward money] than be lyable to have the powers in our Charter tryed at this time.<sup>46</sup>

By March 1690, after the initial ruling against it in *Nightingale*, the African Company instructed its colonial agents not to pursue charter seizures.

<sup>42</sup> Instead, probably as a delaying tactic, they sued out a writ of error to the Exchequer Chamber, appealing the King's Bench verdict, but it does not appear that that appeal was pursued. See *Fowles v. Bridges*, 89 *Eng. Rep.* 527 (1690), where the company sought to resist enforcement of the judgement against it based on its appeal, and lost.

<sup>43</sup> Davies, *Royal African Company*, p. 124.

<sup>44</sup> T70/57 (n.p.), Royal African Company to Christopher Robinson, Virginia, 14 Feb. 1688/9?

<sup>45</sup> T70/57 (n.p.), Royal African Company to Nathaniel Johnson, 26 Feb. 1689.

<sup>46</sup> T70/57 (n.p.), Royal African Company to Penhallow and Ruding, 17 Dec. 1689.

The company told them that it desired continued enforcement under the customs laws: 'In some places Negroes . . . have been seized and condemned for the use of their Majesty which in some measure answers our ends of discouraging such traders.'<sup>47</sup>

Second, the Royal African Company agreed to provide licences for a fee to interlopers who agreed to respect its monopoly. While historian Kenneth Davies saw the declining premium charged for such licences in the 1690s as a sign of the end of the monopoly, in reality each paid licence represented a decision by a separate trader that it was more efficient to pay for it than to try to violate the monopoly. The declining premium for licences – which went from a high of 40 per cent in the 1680s, when royal support was at its peak, to 15 per cent in the 1690s, when the parliamentary debate was at its height, reflected the fact that its monopoly had been weakened in court and in parliament. But the continuing licence payments also represented recognition by separate traders that they had not found a way to invalidate the monopoly. And the Indian Company's far more aggressive enforcement actions even after losing separate trader lawsuits suggest that even the seizure concessions made by the African Company were far more reflective of the weaknesses of its specific political base and finances than they were of any adverse effects on the monopolies from the first round of court decisions.<sup>48</sup>

The final nail in the coffin for the crown's prerogative forfeiture authority came in 1696. In *Dockwray v. Dickenson*, plaintiff William Dockwra recovered damages due to an African Company seizure that was allegedly based directly on an order of Charles II in the 1670s.<sup>49</sup> Chief Justice Holt held that the king's seizure order was illegal, and that anyone who operated under an unlawful royal order accepted the risk of liability. That clearly implied that future East India or African Company seizures under William III's authority would also be held unlawful.

By the late 1690s, then, Holt and the courts took the view that English common law protections for property rights against prerogative seizure powers should apply to Englishmen trading abroad. Extending these protections weakened monopoly enforcement, indirectly supporting free trade. The court's eradication of the African Company's forfeiture power represented a blow to the enforceability of the company's monopoly. More so than *Nightingale v. Bridges*, *Dockwray v. Dickenson* encouraged interloping in the slave trade.<sup>50</sup> In 1689, no interlopers embarked on slave trading voyages (though the company

<sup>47</sup> T70/57 (n.p.) Royal African Company to Parsons, 10 Mar. 1690.

<sup>48</sup> Davies, *Royal African Company*, pp. 125–6.

<sup>49</sup> 90 *Eng. Rep.* 1060, 90 *Eng. Rep.* 532.

<sup>50</sup> In 1689, Holt and the other major judges of England had explicitly endorsed the position that slaves would be considered as merchandize in international trade. For discussion of Holt's decisions and the evolution of the law on the legality of slavery in England itself, see George Van Cleve, 'Somerset's case and its antecedents in imperial perspective', *Law and History Review*, 24 (2006), pp. 601–45, at pp. 616–18.

assembled twenty-one cargoes bound for Africa). In 1690, only one did (the company made seven voyages in 1690). By 1697, once the implications of the *Dockwray* decision had become clear to watchful observers, independent slave traders embarked on nineteen slave trading voyages (compared with eight by the company).<sup>51</sup> Striking down a powerful enforcement mechanism of the Royal African Company's monopoly resulted in a dramatic increase in the scale of transatlantic human trafficking. Ironically, the *Dockwray* decision meant that courts accepted that when engaged in foreign trading, including the slave trade, '*English-Men . . . carry the Rights of such along with them*' at the same time that they were deciding that colonial subjects, often also English natives, lacked such rights, and that slaves could be treated as property in international trade.<sup>52</sup> These legal principles formed an integral part of the pluralist legal structure on which the horrors of African slavery in the Americas were founded. In expanding the protection of traders' property, they offered common law legitimacy to the slave trade nearly a century before the common law would provide a rallying cry for the trade's abolition.

### III

The prerogative charters' weakened legal standing by the mid-1690s had led both companies to intensify their efforts to buttress their charters through statutory endorsement. The East India Company was better able to sustain the blow inflicted on its forfeiture powers because it successfully courted the influence and protection of the new monarch, King William III. The Royal African Company had attempted to curry such royal favour by gifting shares. As a matter of course, instructions to colonial governors during the reign of William III continued to include the expectation that they would assist in supporting the Royal African Company's monopoly. Governors rarely followed these orders. Although he sought its military assistance, King William would not use his power to support the African Company's monopoly. By the reign of Queen Anne, the monarchy overtly shunned the African Company's requests for protection.<sup>53</sup>

The king's favour for the East India Company by contrast was conspicuous and enabled that company to augment its weakened enforcement powers

<sup>51</sup> See the estimates in *The trans-Atlantic slave trade database (voyages data set)*, 'Estimates' spreadsheet (2010), [www.slavevoyages.org/tast/database/download.faces#extended](http://www.slavevoyages.org/tast/database/download.faces#extended). This invaluable data source makes no claim to be comprehensive.

<sup>52</sup> W. A. [William Atwood], *An apology for the East India Company: with an account of some large prerogatives of the crown of England, anciently exercised and allowed of in our law, in relation to trade and foreign parts* (London, 1690), p. 33; n. 40, above.

<sup>53</sup> For the African Company's gift to William III of company shares worth £1,000, see Minutes of the General Court, 16 Jan. 1689, T70/101, fo. 23. For its gift to Queen Anne and her subsequent refusal to 'meddle' in the affairs of the African Company, see Minutes of the Court of Assistants, 8 June 1714, T70/89, n.p.; Davies, *Royal African Company*, p. 119; T70/61, 'Instruction to Captain John Hosea, 17 December, 1689', fo. 87.

with the continued potency of the post-Revolution monarchy. By early 1692, the East India Company believed that it would receive confirmation from the crown that its existing charter was legally valid. Even before receiving confirmation, it issued new seizure commissions specifically for English ships. Its instructions to Captain William Freake of 12 January 1692 explicitly authorized seizure of 'all English interlopers & all other English ships and Vessells whatsoever . . . sailing or trading in India without our Pass or Licence'.<sup>54</sup> Then on 29 February 1692, the East India Company's governor reported to the court of committees:

That on Thursday night last . . . [T]he Lords of the Cabinet-Councill were pleased to acquaint them That his Majestie had taken the opinion of all the Judges touching the Company's Charter, who had declared that the Same was good in Law, and that the Company had a right to the East India Trade . . . Yet that his Majestie was desirous to know, What the Company had to offer towards their Settlement.<sup>55</sup>

The essence of the Glorious Revolution is seen in this minute: William III sought financial recompense in exchange for his constitutional support. Contributions to his war against Louis XIV could provide constitutional protection for the East India Company. In extended negotiations with the company, William's support for the charter was explicitly used as leverage, especially with regards to its supplying of materiel. For example, the East India Company negotiated with William over such fundamentally important issues as whether and at what specific price and credit terms the company would supply the crown with large quantities of imported saltpetre, a critical war material, to use in his war with France.<sup>56</sup>

From the company's perspective, confirmation by the judges constituted crown authorization to resume its enforcement operations using its former methods. Unlike the African Company, it had never revoked its prior seizure commissions, so far as is known. The same day that the governor's report was made to the court of committees, the company began issuing additional new seizure commissions to its captains. On 29 February 1692, it issued a commission to Captain William Wildey of the ship *Modena* and other captains to seize English interlopers.<sup>57</sup>

Similarly, with the assistance of William III's officials, the East India Company continued in the 1690s to prohibit ships from leaving England unless they first posted bonds forfeitable if they violated the monopoly. In the most notorious incident of this kind, in 1693, an admiralty official issued an order blocking the interloper ship *Redbridge* from leaving London. This resulted in the passage of a resolution (proposed by the India and African interloper and merchant grandee, Gilbert Heathcote) by the House of Commons asserting that all British subjects had a right to leave England to trade. But contrary to the view sometimes taken that that resolution reversed the *Sandys* decision, it had

<sup>54</sup> IOR/E/3/92, fo. 91.

<sup>55</sup> IOR/B/40, fo. 103.

<sup>56</sup> See, e.g., IOR/B/40, fos. 159–60.

<sup>57</sup> IOR/E/3/92, fo. 112.

no legal effect. The House of Lords did not support it, and William III did not acquiesce to the House's position.<sup>58</sup>

This parliamentary resolution was to have more political effect on the Royal African Company than it did on the East India Company because the former lacked the support of the monarchy. Independent slave traders interpreted this resolution as evidence of parliamentary countenance for an entirely deregulated trade.<sup>59</sup> This was a legal fiction. But from this point on, the African Company nevertheless staked its future on its ability to achieve a statute to support its monopoly. It had to pursue this strategy, unlike the East India Company, without crown support. All the African Company's lobbying opponents had to do to sustain a deregulated slave trade was block the company's attempts.

Despite courtroom qualifications to the crown prerogative to support its monopoly companies' enforcement mechanisms, the crown helped the East India Company to continue to defend its monopoly. William III and the East India Company were undeterred from their aggressive enforcement policy even when the East India Company lost a 1693 court action that challenged the admiralty's power to block the exit of interloper ships until they gave bond. That case, *Sands v. Child*, held that the Admiralty had exceeded its statutory authority when it demanded bonds from ships in England that would be forfeitable if the ship violated a monopoly's rights, and awarded substantial damages against the East India Company on that basis.<sup>60</sup> But the decision failed to persuade William III to end his support for the company's seizure powers. When he issued a new charter to the East India Company in 1693 and made final revisions to it in 1694, the new charter did not in any way limit the enforcement authority that the East India Company had exercised under its earlier charters. Its issuance occurred despite the persistent efforts of the separate traders to have the charter blocked or modified both in parliament and in the privy council. The Royal African Company, on the other hand, continued to face legacy actions for its Stuart-era seizures.

Within two years of *Dockway v. Dickenson*, the East India and the Royal African Company had entered into parliamentary settlements that restructured their charters. In 1696, a bidding war had broken out between different trader factions seeking control of the East India Company. In the consequent India Company parliamentary restructuring, stockholding was required to be expanded substantially to permit interlopers to buy into the company. But parliament preserved the company's monopoly and accepted that the East India Company needed effective means to enforce it. Once the East India Company's opponents were able to force the company to let them invest, it was in their interest for it to maintain its monopoly and to have strong enforcement

<sup>58</sup> Stern, *Company-state*, p. 154.

<sup>59</sup> *Considerations relating to the African bill* (London, 1698), p. 3.

<sup>60</sup> 90 *Eng. Rep.* 1160, 83 *Eng. Rep.* 725, 90 *Eng. Rep.* 436, 90 *Eng. Rep.* 148, 90 *Eng. Rep.* 774.

powers for it. Gaining a share of the rich monopoly's profits was the real object of attacks on the India Company's enforcement actions by the dominant faction of interlopers, not any pretextual concern for free competition or property rights.

In sharp contrast, the Royal African Company monopoly was restructured through what amounted to a compulsory licensing scheme that permitted greatly expanded competition in the slave trade and dramatically expanded the slave trade as a result. The Trade to Africa Act of 1698 provided statutory endorsement for the African Company, but also legitimized independent slave trading. The Act stipulated that independent slave traders would pay a 10 per cent duty on the value of their exports to Africa. Bearing in mind the legal restrictions on the company's enforcement powers in *Nightingale* and in *Dockwray* and taking into account the African interlopers' repeated efforts to deregulate the African trade completely, this statute confirms the continued, albeit limited, political capital of the African Company.

Taken together, these two divergent parliamentary resolutions to the legal disputes about the companies' monopolies in the 1690s confirm that the Glorious Revolution was no crusade against monopoly or for free trade. The two constitutional sides of the Revolution – prerogative and statute – could enhance the unreformed, pre-Revolution prerogative as champions of overseas trading monopolies. The courts provided some assistance to the interlopers by supporting their common law right to be free from prerogative seizure of their property, and hence indirectly their ability to trade in violation of the monopolies. But the monopolies retained considerable enforcement powers for much of the period until the fundamental decisions about what form of economic organization would most strongly enhance national revenue and military power were made by the king and parliament. By 1708, the interloping East India merchants had formed their own company and then united with the old company with the enthusiastic blessing of the state. By 1712, the provisions of the Trade to Africa Act had expired and fully independent British slave trading received the blessing of public opinion.<sup>61</sup>

#### IV

What explains these differing outcomes for the Indian and African trades? Since their formal enforcement powers, as this article has shown, rose and fell together, an answer cannot be found in the legal disputes both companies endured before or after 1688. The profound difference in parliament's treatment of competition with the African and East India Companies appears

<sup>61</sup> The catastrophic failure of the statutory South Sea Company as a rival prop for the state's finances to the East India Company and as an alternative slave trading monopoly to the Royal African Company confirms the extent to which the East India Company had cemented its position in state finance and how much the lobbying opponents of the African Company had ensured free and open access to the growing market in transatlantic human trafficking.

more to be the result of two intersecting factors: the contrasting public profile of the two companies, and the different political and economic circumstances the two companies encountered overseas. We conclude this article with some exploratory comparisons of these differing circumstances.

After the Glorious Revolution, parliamentary deliberation became central to the way the state regulated the national economy. This ensured that the public's perception of the two trades influenced their respective fortunes as monopolies. Both monopolies derived an important part of their public justification from the understanding that they provided the English state with a means of imposing its interests on what seventeenth-century culture believed to be barbarian foreign states.<sup>62</sup> But whether a monopoly company was viewed as an effective vessel for the state's coercive power depended on whether or not the company was in a position to develop durable commercial relationships in its overseas trading arena. Here, the East India Company outperformed its African sibling. Public scrutiny of the Royal African Company from the 1690s onwards forced that company to justify its traditional monopoly argument before a political constituency that was rising in influence and assertiveness: that representing the American plantations and Atlantic trade. With growing power, the beneficiaries of a largely deregulated British Atlantic economy rejected the traditional conception of a monopoly company as a vessel for state power and suggested instead that the rules of trade ought to satisfy 'national' criteria: that is, the more people who could enjoy access to the trade the better.

The African and East India companies faced overseas trading environments that presented many of the same commercial challenges. Both companies concentrated their endeavours on manipulating the supply curves of local trading goods: primarily textiles and spices from India and slaves from Africa. Neither company could consistently use its trading monopoly to impose prices on the African and Indian merchants they dealt with. Faced with small and often warring states at the coastal peripheries they operated in and always beset by rival European trading companies and interlopers, both companies struggled to obtain the commercial advantages their monopolies were designed to achieve during the seventeenth or early eighteenth centuries.<sup>63</sup>

<sup>62</sup> See Charles Davenant, *Reflections upon the constitution and management of the African trade, etc.*, in Charles Whitworth, ed., *The political and commercial works of that celebrated writer Charles D'Avenant, LL.D. . . .*, v (London, 1771), pp. 133–4. For Davenant's advocacy for the East India Company see Charles Davenant, *Memorial concerning the coyn* (London, 1695).

<sup>63</sup> The literature on both companies makes constant references to their respective officials trying and failing to impose prices and use their monopoly power. See (for the African Company) John Thornton, *Africa and Africans in the making of the modern world* (Cambridge, 1992), p. 65; and Davies, *Royal African Company*, p. 235; and (for the East India Company) K. N. Chaudhuri, *The trading world of Asia and the English East India Company, 1660–1760* (Cambridge, 1978), p. 16.

A clear difference in the politics of their local trade existed, however.<sup>64</sup> This prevented the Royal African Company from implementing what was basically the same commercial strategy as the East India Company: to build and then use forts and the threat of force to commandeer trading and then local revenue concessions to supplement uncertain income from trade. In the West African case, many small states operated in a dynamic equilibrium that sustained the slave trade as perpetual war helped to improve the supply of slaves. This equilibrium meant that there was no incentive for each African polity to develop lasting commercial alliances with the many rival European companies and growing numbers of independent traders who swarmed along the African coast during this period.

The East India Company in contrast proved adept at establishing durable alliances and territorial footholds in India. The existence of a single centralizing empire on the Indian subcontinent – the Mughal empire – at times threatened the company but, on the whole, assisted its position. The East India Company learned to prioritize commercial arenas more distant from the Mughal state's extractive impulses; shifting operations in the course of the seventeenth century away from the Mughal's commercial centre at Surat and towards peripheral ports like Madras and Bombay. These ports would become quasi-independent commercial city-states, which allowed the East India Company to concentrate local trading populations to sustain its supply of trade goods and then build a resource for local revenue raising. These local merchants often allied with the English to protect themselves from the Mughal empire. The pioneering example of this strategy was that followed at Madras. The East India Company received the right to develop a fort and then a town at the Coromandel Coast from local, non-Mughal rulers. As war continued, local merchants valued the commercial safe haven that the English town provided.<sup>65</sup>

A comparison between Madras and the Royal African Company's principal trading station at Cape Coast is instructive. Without a dominant state power to appeal to, defend against, or negotiate with (such as the Mughal empire) the Royal African Company could not achieve lasting alliances with any local West African polities. Without such an alliance, its expensive forts would represent a cost disadvantage rather than the useful commercial infrastructure they were designed to be. Independent traders could trade without these cost disadvantages and could respond to rapidly changing commercial conditions on the coast faster than the companies. The two town's population levels in this period

<sup>64</sup> This is a vast and complex subject and we can add little to it here other than what can be illuminated by some preliminary but strongly suggestive comparisons between the two company's overseas trading environments.

<sup>65</sup> M. N. Pearson, 'Merchants and states', in James D. Tracy, ed., *The political economy of merchant empires* (Cambridge, 1991), pp. 52–6. See also Sinnappah Arasaratnam, *Merchants, companies, and commerce on the Coromandel coast, 1560–1740* (Oxford, 1986), pp. 65, 83; Chaudhuri, *The trading world of Asia*, p. 51; I. B. Watson, *Foundation for empire: English private trade in India, 1659–1760* (New Delhi, 1980), p. 58.

confirm the different reception the two companies received. The African Company could not attract local population to its settlement. While Madras increased in size from a few thousand to almost one hundred thousand from the mid-seventeenth century to the early eighteenth, Cape Coast remained a small town of a few thousand throughout the seventeenth and eighteenth centuries. Nor could the African Company build a local resource of taxation or establish a hinterland of plantations (as they sought to do). This costly development failure proved a huge boon to African interlopers.<sup>66</sup>

Unlike the East India Company, the Royal African Company had to manage two contrasting overseas trading contexts simultaneously: the East Atlantic African context and the West Atlantic American. Enforcing its monopoly as well as its commercial interests proved as difficult in British America as it did on the West coast of Africa. The company's difficulties in Africa and its marked unpopularity in America would both become liabilities for it in parliament. The African Company built its public case in parliament with reference to the need for coercive monopoly power in Africa. The company lost state support and failed to gather public support because of the public, political interventions against it by an impressive transatlantic phalanx of interests sympathetic to an unregulated Atlantic trade. The Royal African Company faced continued opposition from English colonists who wanted more slaves at cheaper prices; and they in turn had the support of influential British creditors who needed profitable plantations to recoup their investments.

The parliamentary opposition to the two companies overlapped in important ways. Some of the same merchants attacked the charters of both companies simultaneously. Both anti-company lobbies operated like fluid coalitions whose membership and political strategies altered throughout the long fought anti-monopoly campaigns in the late seventeenth and early eighteenth centuries. There were important differences of emphasis in the two campaigns, however. At times, these differences reflected the contrasting features of the two trades. As one opponent of the Royal African Company put it, noting the unification of the two East Indian Companies in 1708, monopolistic organization of overseas trade made strategic sense for the Indian trade but not for the African:

The Reason for doing the one [monopolizing the East India trade], is the true Reason for not doing the other [the African trade]; because the Exports to India being Bullion, and the Imports from thence consisting of such Commodities as very much interfere with the Manufactures of Great Britain, therefore such a Trade ought to be confined to but one Exporter and one Importer . . . But in the African

<sup>66</sup> Davies, *Royal African Company*, pp. 235, 260, 279. For the African Company's inability (and European inability in general) to develop territorial holdings at the expense of local African polities in the seventeenth and eighteenth centuries, see David Eltis, *The rise of African slavery in the Americas* (Cambridge, 2000), p. 149. For a specific and sustained attempt to do so, see the career of the Royal African Company's leading official at Cape Coast, Sir Dalby Thomas: David Henige, "'Companies are always ungrateful': James Phipps of Cape Coast, a victim of the African trade", *African Economic History*, 9 (1980), p. 29.

Trade, the Exports consisting of the Woollen and other Manufactures of Great Britain, and the Imports consisting of Gold, Elephants Teeth, and Hands absolutely necessary for raising the Productions of our Plantations, of much more Advantage to us than Gold or Silver, 'tis better, doubtless, to open such a Trade to ten thousand Exporters and Importers, than confine it to one Person or Company exclusive.<sup>67</sup>

It was therefore easier to pitch political opposition to the Royal African Company as a national cause célèbre. Overall, broad and vociferous opposition to the African Company's monopoly channelled the widespread belief that the company proposed to limit access to necessities and restrict the sale of English staples. Opposition to the East India Company, however, was itself limited in breadth by the perception that it exported and imported precious luxuries. A greater percentage of the anti-African opinion therefore cited the need for a totally deregulated trade. Some Indian interlopers developed a free trade argument, but once the English state had authorized the formation of two rival companies in the mid-1690s, the possibility of a free trade to India did not inspire many petitions. Instead, Indian interlopers more often fixated on forming a new company or on compelling the existing company to allow them to buy into it, or reform the structure of the company from joint stock to a regulated company.<sup>68</sup> These positions were less likely to ignite the passions of large numbers of disinterested parliamentary petitioners, since they promised continued higher prices.<sup>69</sup> The campaign to liberate the slave trade from the African Company's monopoly proved to be broader-based than the forces antagonistic to the old East India Company's monopoly. Independent traders to Africa enjoyed persistent petitioning support from trading, manufacturing, planting, and civic interests in literally dozens of English towns and American colonies. No such spontaneous alliance of provincial and colonial interests assembled to assault the East India Company on behalf of the popular principle of free trade.

To match its easier means of acting as a company-state in India, the East India Company's lobbying strategy sought to privilege cultivating the countenance of the state rather than public opinion. That support was best secured either through bribery or by providing loans to the government during wartime (both of which the East India Company engaged in, and both of which its opponents either clearly engaged in or probably engaged in as well). The still powerful monarchy of William III desperately craved financial support for the war against Louis XIV, and the East India Company and its rivals proposed to assist him. They also understood the lucrative potential of extending future government loans.

<sup>67</sup> *The case of the separate traders to Africa* . . . [London? 1709?], p. 3.

<sup>68</sup> Stern, *Company-state*, pp. 145, 148. Some also objected to the personal slights the company had meted out to them.

<sup>69</sup> For a rare example, see 'A petition of the clothiers, and woollen manufacturers, in the county of Gloucester', 7 Feb. 1696, in *Journals of the House of Commons* (London, 1803), XI, p. 433.

The intercession of William III did the most to save the East India Company monopoly. This appeared to some to threaten the spirit of the constitutional settlement of 1689. Some observers were disgusted after a Revolution celebrating the constitutional supremacy of parliament allowed the new king to bully parliament into sustaining a monopoly over English trade with India.<sup>70</sup> The deregulation of the slave trade and the escalation of American slavery, however, appeared to champion the constitutional primacy of parliament.

This comparison of the conjoined legal status of the Royal African and East India Companies in the final quarter of the seventeenth century and their divergent fortunes from the early eighteenth century illustrates the Janus-faced repercussions of the Glorious Revolution for commercial monopolies. The Revolution allowed a public parliamentary platform for slave traders to destroy the African Company's monopoly over the slave trade. But it also encouraged the new king to seek the profits and strategic commodities of Indian trade to buttress the imperial state's finances and military might. The constitutional reforms broadly associated with the Glorious Revolution then did not either exclusively encourage the liberalization of the English economy or solely foster greater protectionism as various historians have argued. The Glorious Revolution was, at heart, a large-scale transaction *d'état*, which involved the selling of constitutional privileges for the cost of fighting a religious war. The African Company's monopoly was dissolved by the loss of these privileges and the East India Company's was upheld by the necessities of war. Both monopolies were also subject to the policy choices of non-Europeans (and those based in America). Their shared legal powers and strategies belie the different relationships both companies were able to secure with state sovereignty at home and abroad. The East India Company was able to graft itself to the British state and to operate as a state overseas. The African Company became divorced from the British state and failed to develop much sovereignty in its overseas markets. The slave trade, as a result, accelerated as it supplied the labour-hungry decentred market of the Atlantic world.<sup>71</sup>

<sup>70</sup> A staunch anti-monopolist, Roger Coke resented the use of statute to support an East India Company he believed reversed some of the constitutional reforms of the Glorious Revolution. See Roger Coke, *An apology for the English nation: viz that it is as much the interest for the English nation, that the trades to the East Indies and Africk, should be free as that to Spain* [London, 1697?], p. 2.

<sup>71</sup> For the long-held and still prominent tradition that the Glorious Revolution liberated overseas trade, see above, and William James Ashley, *Surveys historic and economic* (London, 1900), pp. 270–303; Robert Ekelund and Robert Tollison, *Politicised economies* (Texas, TX, 1997); Christopher Hill, *The century of Revolution: 1603–1714* (London, 1961); Hilton Root, *The fountain of privilege: political foundations of markets in old regime France and England* (London, 1994), pp. 158–9; and most recently, Pincus, 1688, pp. 386, 397. For those who see the rise of protectionism and the survival of 'rent seeking', see, for example, Edwin Cannan, ed., Adam Smith, *An inquiry into the nature and causes of the wealth of nations* (Chicago, 1977), II, pp. 154–8, 264–79; Ralph Davis, 'The rise of protection in England', *Economic History Review*, 19 (1966), p. 306; and Zahedieh, 'Regulation', pp. 889–90.