Political economy is usually understood to be about the state’s relationship to the economy. It is my impression that the majority of recent studies in political economy explore and articulate the agency of states in shaping economies. The purpose of these works, on some level, is to denaturalize economies—that is, to demonstrate that economies are formed by historically specific systems of power, and often to demonstrate that human agency can be found at the bottom of it all.

My own manuscript, like many of these others, investigates the institutions and human-driven processes that create what is generally termed “the economy.”¹ However, within the broad initiative of denaturalizing (and demystifying!) the economy, my manuscript does not take the state as its starting point. Instead, it starts with marine insurance, usually understood to lie within the economic realm. Since insurance involves the accumulation of capital and its deployment in the support of long-distance trade, it is usually studied as a harbinger of capitalism. My project, by contrast, views marine insurance as a form of governance, which exerted considerable control over commercial (and thus over political) affairs from the early modern Atlantic through the early American republic and beyond.

Marine insurers were not states, but marine insurance can nonetheless be understood as a form of governance because it controlled merchant behavior. (As most marine insurance outfits were led by merchants, marine insurance can even be understood as a form of merchant self-

¹ As my forthcoming review essay in Enterprise and Society (Fall 2015) argues: however discontent historians may be with the deceptively naturalizing term “economy” itself, they continue to find it indispensable.
governance.) Merchants looked to their insurers to determine whether, where, and when they should take specific goods to specific destinations. Insurers, of course, employed no physical force, but they nonetheless wielded formidable authority over commercial actors, thanks to their financial clout, their incomparable information resources, and often their political influence.

The history of marine insurance thus tells a story that is absolutely critical to understanding the political economy of any state with commercial aspirations in the Atlantic age. But where, exactly, were insurers situated vis-à-vis the state? If we look at marine insurers through the eyes of the state, we might see them as a wealthy industry, and characterize their enduring resistance to government regulation as a problem of regulatory capture. (Such a framework is employed by Brian Murphy in his brilliant new study of the corporations of early New York.\(^2\)) By contrast, I view insurance as a system of governance that was in constant conversation with the governance of states but not wholly subordinated to this governance. Governments, in their attempts to regulate insurance, adopted the ideas, customs, and laws of commercial exchange itself. At the same time, insurers adapted their own rules to reflect the decisions of states. The systems were conceptually distinct, but they evolved together. This is a political economy that merits careful investigation, as the following case study demonstrates.

**Case Study: The Persistence and Evolution of *Lex Mercatoria***

In the early modern world, marine insurance was a principal topic of the sprawling body of laws, customs, and best practices known as *lex mercatoria*, the law of merchants. In the mid-eighteenth-century, the English jurist William Murray (Lord Mansfield) famously made an attempt to reconcile *lex mercatoria* with English common law.\(^3\) Mansfield declared victory in 1765, proclaiming, “the law of merchants and the law of the land is the same.”\(^4\) Most historians

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\(^3\) Lowry, “Lord Mansfield and the Law-merchant,” 606. Another round of reform efforts took place under the Chief Justiceship of John Holt at the turn of the eighteenth century. This set of reforms allowed merchants to obtain common-law enforcement for the decisions of their private arbitrations. In Carruthers, this is identified as a major turning point in the uniting of mercantile law with English law. Carruthers, *City of Capital*, 129, 13. Second quote from Lowry, 608. As chief justice of the King’s Bench, Mansfield trained a set of jurors to serve on complex commercial cases, and molded their verdicts into a workable set of Common Law precedents. Prior to Mansfield’s endeavor, judges had given mercantile cases to juries to decide “according to [their] individual circumstances … “All the evidence was thrown together and left to the jury, with no legal principle to provide guidance for future litigants. As a result, there was no general consensus as to how to deal with these disputes. The courts’ decisions were often inconsistent with the established usages of merchants.” Norman S. Poser, *Lord Mansfield: Justice in the Age of Reason* (Montreal: McGill-Queen’s University Press, 2013), 226-27.

have taken Mansfield at his word, though they have disagreed about whether this signified a victory for the merchants or for the state.\(^5\) (American legal historians have identified a parallel process in the nineteenth century, about which I am similarly skeptical.\(^6\))

An insurance dispute from the 1780s shows that the merger between common law and *lex mercatoria* was by no means complete.\(^7\) In an Exeter insurance office during the American Revolutionary War, John Duntze underwrote £200 on a certain property. Another underwriter, Charles Baring, reinsured Duntze for the same amount—that is, he promised to reimburse Duntze if Duntze had to make a payout.\(^8\) As it happened, the property was lost, and Duntze paid the merchant he had insured. However, when Duntze turned to his own insurer, Baring, to recover *his* loss, Baring refused, arguing (truthfully) that reinsurance was illegal under British law, and that Baring was thus not bound to pay Duntze’s claim. Duntze declared himself shocked, and published his entire correspondence with Baring to warn the “public” (“the Merchants, Underwriters, Brokers, and all persons concerned in making insurances”) about Baring’s duplicity. Essentially, Duntze accused Baring of making an insurance under the rules of *lex mercatoria* but then running to *British* law to excuse himself from paying the claim.

In a rebuttal pamphlet, Baring pointed to one critical fact Duntze had omitted: it was Duntze who had first broken the terms of the mercantile contract. Baring had reinsured Duntze only because Duntze had vouched that the insured property was neutral (i.e., that it did not belong to anyone whose nation was currently at war), but after the property’s loss, Duntze could not prove this was the case.\(^9\) It was Duntze, then, who was in violation of the insurance practices dictated by *lex mercatoria* (though Baring did not use exactly these terms).\(^10\)

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\(^8\) Charles Baring and John Duntze were both wool merchants and political rivals in the Exeter region; in 1768, Duntze had prevailed over Baring in an electoral contest in nearby Tiverton. See W. G. Hoskins, *Industry, Trade and People in Exeter, 1688-1800: With Special Reference to the Serge Industry* (Manchester: Published for the University College of the South-West of England by the Manchester University Press, 1935), 46. Duntze, 5-6.

\(^9\) Baring, 2-3, 8.

\(^10\) Ibid., 4.
What this episode demonstrates is that a great portion of mercantile affairs, post-Mansfield, was still conducted according to *lex mercatoria*. Merchants might decide, at certain moments, to refer matters to private arbitrators (drawn from the experienced mercantile community) or to the state. Moreover, the brief Duntze-Baring pamphlet war itself functioned as a piece of *lex mercatoria*. It was addressed to a broader community of merchants. It explained the expectations held by these two insurers, it described what procedures they had followed and upon what point their contract had broken down, and it detailed the moment when each insurer thought it appropriate to transfer their dispute to British law. The pamphlet war set precedents in *lex mercatoria*, just as the verdicts of Lord Mansfield’s juries set precedents in common law. By the late eighteenth century, then, Mansfield might claim that he had made the law-merchant part of common law, but common law was also still feeding into *lex mercatoria*. Taken in its entirety, the pamphlet war between Baring and Duntze shows why marine insurance must be understood as a form of governance distinct from, though interpenetrated with, state governance mechanisms, through the 1780s and beyond.

**My Political Economy Problems**

I close with a confession of the political economy problems that I have found at the heart of my project. I hope these will be of interest to others, and I would be delighted if anyone would like to help me solve them:

- Can a more capacious definition of governance, with inspiration drawn from early modern scholarship, find a place in the capitalism discourse of the latter eighteenth and the nineteenth century?
- Can a political economy story with strong emphasis on the history of institutions and systems also allow for human agency?
- If insurance is a mechanism of merchant self-governance in the Atlantic World, what is its geography? What is its topography? Is this a story of centers, of world systems? My manuscript focuses on the negotiation between insurers (and through them, merchants) and the American state, but this story could have a number of other centers: Is this an American story, an Atlantic story, an oceanic story, a world story? And when can my story possibly end?