

---

---

# THE STAMP ACT AND THE POLITICAL ORIGINS OF AMERICAN LEGAL AND ECONOMIC INSTITUTIONS

JUSTIN DURIVAGE & CLAIRE PRIEST\*

*The American colonial protest against Parliament's Stamp Act was a landmark event in the history of the Founding Era, propelling the colonies toward independence. To date, scholars have focused on colonists' constitutional objections to the Stamp Act. Yet, the Stamp Act taxed legal and institutional services and, as this Article describes, the opposition to the Stamp Act also focused on defending low-cost institutions that served local communities. It examines the arguments for and against the Stamp Act as revealing two distinct visions of the role for institutions in economic growth. It suggests that American independence affirmed colonists' commitment to low-cost locally managed institutions within their developing economy.*

## INTRODUCTION

The British Parliament's enactment of the Stamp Act of 1765 is widely acknowledged as a starting point for the acceleration of tensions that led to the Declaration of Independence in 1776.<sup>1</sup> In the dominant

---

\* Acting Assistant Professor, Stanford University, Department of History and Simeon E. Baldwin Professor, Yale Law School. We appreciate the comments of Owen Fiss, Daniel Klerman, Naomi Lamoreaux, James Livesey, Daniel Markovits, Nicholas Parrillo, Steven Pincus, and Carol Rose. We thank the participants in Yale's Center for Historical Enquiry and the Social Sciences; SELA (Seminario en Latinoamérica de Teoría Constitucional y Política), in Lima, Peru, and the participants at the Yale University, Mellon Foundation, Dundee University, and Scottish Centre for Global History conference on Finance, Communication and Coordination in Eighteenth-Century Empires.

1. See, e.g., BRENDAN MCCONVILLE, *THE KING'S THREE FACES: THE RISE & FALL OF ROYAL AMERICA, 1688–1776*, at 249 (2006); EDMUND S. MORGAN, *THE BIRTH OF THE REPUBLIC, 1763–89*, at 18–28 (3d ed. 1992); GORDON S. WOOD, *THE AMERICAN REVOLUTION* 29–37 (2003).

scholarly accounts of the Revolution, the colonial opposition to the Stamp Act centered almost exclusively on ideological and constitutional objections to “taxation without representation.” That is, individual colonists and colonial legislatures rose up against the Act because it violated fundamental constitutional rights by imposing an internal tax when colonists were not directly represented in Parliament.<sup>2</sup>

The scholarship to date, however, has largely overlooked that the Stamp Act taxed particular kinds of colonial activities, namely, official legal documents produced in the day-to-day workings of colonial institutions, as well as newspapers. Thus, unlike taxes that Parliament had levied in the past, such as duties on imported goods that Parliament had imposed since the Navigation Act of 1660, the 1765 Stamp Act raised the cost to colonists of *obtaining land grants, securing and publicizing property rights* (such as title deeds and mortgages in land and slaves), *obtaining and enforcing credit agreements*, and *publicizing and advertising in newspapers*. To prominent participants in business and government, each of these activities was foundational to the operation and growth of the colonial economy. The colonists opposing the Stamp Act defended the

---

2. MORGAN, *supra* note 1, at 23–28; WOOD, *supra* note 1, at 38–44; BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 94–104 (1967); EDMUND S. MORGAN & HELEN M. MORGAN, *THE STAMP ACT CRISIS: PROLOGUE TO REVOLUTION*, 54–121 (1995). The most prominent colonial responses to the Stamp Act, of course, followed this line of argument. The Virginia House of Burgesses, for example, published a set of resolutions in response to the Stamp Act, which stated, “That the Taxation of the People by themselves, or by Persons chosen by themselves to represent them . . . is the only Security against a burthensome Taxation and the distinguishing Characteristick of *British* Freedom, without which the ancient Constitution cannot exist.” *THE RESOLUTIONS AS PRINTED IN THE JOURNAL OF THE HOUSE OF BURGESSES, in PROLOGUE TO REVOLUTION: SOURCES AND DOCUMENTS ON THE STAMP ACT CRISIS, 1764–1766* at 47, 48 (Edmund S. Morgan ed., 1959) [hereinafter *PROLOGUE TO REVOLUTION*]. Similarly, The Pennsylvania Resolves of 1765 stated, “That it is the inherent Birth-right, and indubitable Privilege, of every *British* Subject, to be taxed only by his own Consent, or that of his legal Representatives, in Conjunction with his Majesty, or his Substitutes.” *THE PENNSYLVANIA RESOLVES, SEPTEMBER 21, 1765, reprinted in PROLOGUE TO REVOLUTION, supra*, at 51, 51. The Stamp Act Congress similarly stated in its declaration of October 1765, “That it is inseparably essential to the Freedom of a People, and the undoubted Right of *Englishmen*, that no Taxes be imposed on them, but with their own Consent, given personally, or by their Representatives.” *THE DECLARATION OF THE STAMP ACT CONGRESS, reprinted in PROLOGUE TO REVOLUTION, supra*, at 62, 62–63. For other central historical works emphasizing the constitutional origins of the Stamp Act and the American Revolution, see H. T. Dickinson, *Britain’s Imperial Sovereignty: The Ideological Case Against the American Colonies, in BRITAIN AND THE AMERICAN REVOLUTION* 64, 65–81 (H. T. Dickinson ed., 1998); JACK P. GREENE, *PERIPHERIES AND CENTER: CONSTITUTIONAL DEVELOPMENT IN THE EXTENDED POLITIES OF THE BRITISH EMPIRE AND THE UNITED STATES, 1607–1788*, at 80–81 (1986); J. G. A. POCOCK, *VIRTUE, COMMERCE, AND HISTORY: ESSAYS ON POLITICAL THOUGHT AND HISTORY, CHIEFLY IN THE EIGHTEENTH CENTURY* 80–86 (1985); JOHN PHILLIP REID, *CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION: ABRIDGED EDITION*, at xv–xvi, 26–30 (1995); and P. D. G. THOMAS, *BRITISH POLITICS AND THE STAMP ACT CRISIS: THE FIRST PHASE OF THE AMERICAN REVOLUTION 1763–1767*, at 33 (1975).

centrality of low-cost institutional services that protected property rights and that transmitted information about property and credit. More broadly, they objected to the principle that a distant central authority had the capacity to impose costs on internal, local institutions.

In contrast, the proponents of the Stamp Act believed that the additional taxes levied on institutional services were reasonable and that the social and institutional consequences of the Act would be a net positive for the British Empire. They advanced a particular theory of colonial economic development, which argued that the low costs of colonial institutions encouraged land speculation and excessive litigation and undermined the economic prospects of the British Empire. To that end, they saw little harm, and much benefit, in raising fees.

Thus, the fierce opposition to the Stamp Act—which set the stage for the broader Revolutionary movement—reflected more than an ideological and constitutional opposition to the structure of Parliament and British Imperial law. Colonial protestors defended the achievement of the colonial legislatures and localities in creating an institutional framework that they believed represented the interests of participants in the colonial economy. The opposition to the Stamp Act, in part, derived from an assessment of how increasing the cost of legal and institutional services would affect colonial economic activities. In an influential pamphlet, the Maryland lawyer David Dulany, for example, emphasized that the Stamp Act would “produce in each Colony, a greater or less Sum, not in Proportion to its Wealth, but to the Multiplicity of Juridical Forms, the Quantity of vacant Land, the Frequency of transferring Landed Property, the Extent of Paper Negotiations, the Scarcity of Money, and the Number of Debtors.”<sup>3</sup>

Not without reason, English advocates of the Act accused the colonial elite of permitting excessively large land grants in frontier areas for the purpose of land speculation. English Stamp Act advocates were convinced that the low-cost land conveyancing offered by colonial institutions encouraged the colonial elite to betray the longstanding English imperial policy of allocating land in relatively small parcels to immigrants and others who demonstrated an ability to cultivate.<sup>4</sup> In contrast, opponents of the Stamp Act emphasized that taxes would discourage the settling of western land by forcing poor settlers to engage the Crown and to bear the

---

3. DANIEL DULANY, *CONSIDERATIONS ON THE PROPRIETY OF IMPOSING TAXES IN THE BRITISH COLONIES, FOR THE PURPOSE OF RAISING A REVENUE, BY ACT OF PARLIAMENT 24* (New York, John Holt, 1765).

4. *See infra* text accompanying notes 62–67.

expenses of patenting and surveying the lands. The First Congress of the American Colonies (consisting of delegates from nine North American colonies) held a meeting in New York City on October 7–25, 1765 in response to the Stamp Act. This “Stamp Act Congress” wrote a petition in 1766 to the House of Commons emphasizing that the small scale of landowning in the colonies was precisely the reason why low-cost institutional mechanisms for land conveyancing were essential. It stated “[t]hat from the Nature of *American Business*, the Multiplicity of Suits and Papers used in Matters of small Value, in a Country where Freeholds are so minutely divided, and Property so Frequently transferr’d, a Stamp Duty must ever be very Burthensome and Unequal.”<sup>5</sup> Understanding this more nuanced history of the Stamp Act controversy reveals that the movement for Independence was, in part, a movement for local control over institutions that secured property rights and promoted economic growth.

The relation of the American Revolution’s Stamp Act crisis to American institutional history, though largely absent in historical scholarship, has immediate relevance today. For many decades, scholars and political commentators have focused on institutional foundations as a central determinant in countries’ economic and political well-being.<sup>6</sup> A

---

5. THE PETITION TO THE HOUSE OF COMMONS, *reprinted in* PROLOGUE TO REVOLUTION, *supra* note 2, at 66, 68.

6. The origin of this field of inquiry is most prominently associated with the work of Douglass C. North in Douglass C. North & Barry R. Weingast, *Constitution and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 J. ECON. HIST. 803 (1989), and DOUGLASS C. NORTH, *STRUCTURE AND CHANGE IN ECONOMIC HISTORY* (1981). For more recent scholarship in this field, see Daron Acemoglu, Simon Johnson & James A. Robinson, *Institutions as a Fundamental Cause of Long-Run Growth*, in *HANDBOOK OF ECONOMIC GROWTH* 385, 387 (Philippe Aghion & Steven N. Durlauf eds., 2005); DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2012); Stanley L. Engerman & Kenneth L. Sokoloff, *Factor Endowments, Institutions, and Differential Paths of Growth Among New World Economies*, in *HOW LATIN AMERICA FELL BEHIND: ESSAYS ON THE ECONOMIC HISTORIES OF BRAZIL AND MEXICO, 1800–1914*, at 260 (Stephen H. Haber ed., 1997); DAVID S. LANDES, *THE WEALTH AND POVERTY OF NATIONS: WHY SOME ARE SO RICH AND SOME SO POOR* (1999); DOUGLASS C. NORTH, JOHN JOSEPH WALLIS & BARRY R. WEINGAST, *VIOLENCE AND SOCIAL ORDERS: A CONCEPTUAL FRAMEWORK FOR INTERPRETING RECORDED HUMAN HISTORY* (2013); Carol M. Rose, *What Government Can Do for Property (and Vice Versa)*, in *THE FUNDAMENTAL INTERRELATIONSHIPS BETWEEN GOVERNMENT AND PROPERTY* 209 (Nicholas Mercuro & Warren J. Samuels eds., 1999); Daron Acemoglu, Simon Johnson & James A. Robinson, *The Colonial Origins of Comparative Development: An Empirical Investigation*, 91 AM. ECON. REV. 1369 (2001) (linking economic growth to the effect of mortality rates on institutional development); Daron Acemoglu & James A. Robinson, *Persistence of Power, Elites, and Institutions*, 98 AM. ECON. REV. 267 (2008); Abhijit Banerjee & Lakshmi Iyer, *History, Institutions, and Economic Performance: The Legacy of Colonial Land Tenure Systems in India*, 95 AM. ECON. REV. 1190 (2005); Dan Bogart & Gary Richardson, *Making Property Productive: Reorganizing Rights to Real and Equitable Estates in Britain, 1660–1830*, 13 EUR. REV. ECON. HIST. 3 (2009); Stanley L. Engerman & Kenneth L. Sokoloff, *The Evolution of Suffrage Institutions in the New World*, 65 J. ECON. HIST. 891 (2005); Henning Hillmann, *Economic Institutions*

recent prominent example of this body of work, James A. Robinson's and Daron Acemoglu's *Why Nations Fail*, attributes the differential between thriving economies and poor economies to institutional foundations.<sup>7</sup> In their account, countries with inclusive political institutions tend to foster local institutions that promote widespread economic growth. They contrast these countries with those whose political systems and institutional structures serve the narrow interests of elites to the detriment of broader growth. To date, the literature on institutions and economic growth has overlooked the example of Founding Era America. The Stamp Act crisis was the breaking point in a longer history in which colonists protested the imposition of fees and costs that they viewed as serving the interests of an elite of imperial authorities at the expense of the local economy.<sup>8</sup> Even more specifically, Hernando de Soto's *The Mystery of Capital* attributes national wealth disparities to the existence of well-functioning and low-cost institutions that grant and record title, protect property rights, and enforce credit agreements.<sup>9</sup> A central section of de Soto's book documents the extraordinary costs, both in time and money, of using local institutions in locations from Peru to Egypt, Haiti, and the Philippines to obtain title and mortgages and to establish legal businesses.<sup>10</sup> To de Soto, these fees and costs are barriers to the use of institutions and lead to "dead capital": assets with inherent value that cannot be realized because they are excluded from

---

*and the State: Insights from Economic History*, 39 ANN. REV. SOC. 251 (2013); Daniel M. Klerman, *Jurisdictional Competition and the Evolution of the Common Law*, 74 U. CHI. L. REV. 1179 (2007); Daniel M. Klerman et al., *Legal Origin or Colonial History?*, 3 J. LEGAL ANALYSIS 379 (2011); Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *The Economic Consequences of Legal Origins*, 46 J. ECON. LIT. 285 (2008); Kenneth L. Sokoloff & Stanley L. Engerman, *History Lessons: Institutions, Factor Endowments, and Paths of Development in the New World*, 14 J. ECON. PERSP. 217 (2000); and Kenneth L. Sokoloff & B. Zorina Khan, *The Democratization of Invention During Early Industrialization: Evidence from the United States, 1790–1846*, 50 J. ECON. HIST. 363 (1990).

7. ACEMOGLU & ROBINSON, *supra* note 6.

8. Of course slaves and women were excluded from the system. Indeed, the institutions colonial lawmakers developed to support credit markets and the economy also laid the foundation for the slave system of labor. Colonial law innovated by defining slaves as property. Slaves quickly became a central form of collateral in many areas. Colonial institutions made it easy for colonists to record slave title and slave-backed mortgages, to lease slaves, and to use slaves to satisfy debts by means of publicly-financed auctions and transfers. See Claire Priest, *Creating an American Property Law: Alienability and its Limits in American History*, 120 HARV. L. REV. 385, 416–37 (2006). See also RICHARD HOLCOMBE KILBOURNE, JR., DEBT, INVESTMENT, SLAVES: CREDIT RELATIONS IN EAST FELICIANA PARISH, LOUISIANA, 1825–1885, at 5 (1995); THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860, at 66 (1996).

9. HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE (2000).

10. *Id.* at 18–28.

credit and other market transactions.<sup>11</sup> As de Soto and others have found, additional costs imposed on land title registration leads market participants to convey land informally to avoid the fees and inconveniences, thereby making land records incomplete and inaccurate and raising the cost of credit.<sup>12</sup>

Similarly, the Stamp Act's taxation of land conveyances and official legal documents threatened to disrupt the functioning of local colonial institutions, to suppress the recordation of land conveyances and mortgages, and to reduce litigation on the basis of credit transactions. To the extent that local institutions' central role is to publicize information about property rights and to process credit claims, those functions are impaired by excessive costs imposed on the participants. The Stamp Act crisis serves as a landmark effort to defend local institutions from excessive and inequitable taxation by an unrepresentative government to protect the relatively well-functioning colonial land and credit markets.

However important, the constitutional argument surrounding the Stamp Act crisis—taxation without representation—was only one component of colonists' protests. Colonial opponents of the Stamp Act abhorred the concept of English Parliamentary regulation of the fees and costs imposed on services performed by local institutions. They emphasized that colonial institutions were foundational to the economy and should be regulated exclusively by local representative legislatures.

Part I examines the local colonial institutions and their role in the economy. Part II describes the Stamp Act and the vision of the colonial economy and its institutions Stamp Act supporters in England advanced. It

---

11. *Id.* at 11. For scholarship advancing de Soto's ideas, see Mehnaz Safavian, Heywood Fleisig & Jevgenijs Steinbuks, *Unlocking Dead Capital: How Reforming Collateral Laws Improves Access to Finance*, WORLD BANK (Mar. 2006), [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/307Safavian\\_Fleisig\\_Steinbuks.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/307Safavian_Fleisig_Steinbuks.pdf); Heywood Fleisig, *Secured Transactions: The Power of Collateral*, 33 FIN. & DEV. 44 (1996); and Heywood Fleisig, Mehnaz Safavian & Nuria de la Peña, REFORMING COLLATERAL LAWS TO EXPAND ACCESS TO FINANCE (World Bank 2006).

12. Around the world today, many policies are enacted or costs are imposed on citizens that are reminiscent of those the Stamp Act opponents challenged. With regard to registering title to land, for example, the World Bank Group has published data on the number of procedures, time, and cost of registering title in 189 countries, noting that formal title leads to increases in property values and improves an individual's chance of obtaining credit. See *Registering Property: Why It Matters*, DOING BUS.: WORLD BANK GROUP (June 2014), <http://www.doingbusiness.org/data/exploretopics/registering-property>. In Nigeria, which ranks 185 out of 189, individuals wishing to register title to land face a 69.6-day process and a cost of 18.6 percent of the land value. In Syria, the process takes only nineteen days, but costs 27.8 percent of the land value. Other countries, like Georgia and Belarus (ranking first and third, respectively), have reformed their land registration system and now the same process takes two and four days and costs 0.1 percent and 0 percent of the land value, respectively. *Id.*

---

---

gives a brief history of the 1754 Pistole Crisis in Virginia, an earlier conflict between imperial authorities and the colonists over the fees and costs of institutions. Part III describes the Stamp Act opponents' arguments as they related to institutions and the economy.

#### I. THE ROLE OF INSTITUTIONS IN THE COLONIAL ECONOMY

A central achievement of the American colonial institutions that emerged from the mid-seventeenth century to the enactment of the Stamp Act in 1765 was to serve local colonial communities by offering a means of recording land titles, executing land conveyances and mortgages, and resolving debt-related litigation. The Stamp Act directly taxed the legal documents produced by the courts and land record offices in these proceedings. Moreover, the Stamp Act taxed newspapers, which colonists relied upon heavily to market goods and insurance, to announce auctions and foreclosures, and to publish enacted colonial laws. Thus, it is not surprising that while designing the Stamp Act, Thomas Whatley, Britain's Secretary of the Treasury, asked Jared Ingersoll, Connecticut's future stamp distributor, to provide "information of the several methods of transfer, Law process &c made Use of in the Colony."<sup>13</sup> Ingersoll believed that Parliament would keep fees low when its members learned how heavily colonists used their institutions.<sup>14</sup> In a February 11, 1765 letter to Thomas Fitch, Ingersoll wrote:

I very well knew the information I must give would operate strongly in our favour, as the number of our Law Suits, Deeds, . . . & in short almost all the Objects of the intended taxation & Dutys are so very numerous in the Colony that the knowledge of them would tend to the imposing a Duty so much the Lower as the Objects were more in Number.<sup>15</sup>

Events proved Ingersoll wrong, but his sentiments suggest the broad awareness among colonists that the Stamp Act was a tax on their institutions.

#### A. COLONIAL COURTS AND LAND RECORDS

The ability to buy, sell, and mortgage land was a pillar of the colonial economy. The economy was largely based on agriculture, and land reflected a principal store of wealth. Alice Hanson Jones's study of probate records at the time of the American Revolution reveals that land reflected

---

13. JARED INGERSOLL TO THOMAS FITCH, FEBRUARY 11, 1765, in Prologue to Revolution, *supra* note 2, at 29, 34.

14. *Id.*

15. *Id.*

81.1 percent of wealth in New England, 68.5 percent in the mid-Atlantic region, and 48.6 percent of wealth in the South (with slaves constituting 35.6 percent).<sup>16</sup> Granting land was a central prerogative of the crown that was delegated to the royal governors, the crown-appointed imperial heads of state.<sup>17</sup> Throughout the colonial era, there were repeated conflicts between the governors and colonists over the fees the governors imposed for obtaining original patents for land. To the governors, the fees on land patents issued by their offices were a source of revenue. In contrast, the colonists opposing the governors asserted that the Crown's policy should be to grant titles at a low expense to encourage immigration and settlement and to raise land prices.<sup>18</sup>

Land titles and conveyances were recorded in local court records or special land records. By the early eighteenth century, each colony hosted courts of common pleas that were held in local counties quarterly on a rotating basis.<sup>19</sup> At the common pleas sessions, for a fee, clerks of the court recorded titles and conveyances (sales and mortgages) of land and slaves. They recorded and entered into probate the wills of individuals who died. They recorded debt litigation based on various forms of debts or mortgage bonds.<sup>20</sup> Each of these institutional services secured property rights and conveyed important market information to interested members of the community.

Litigation, particularly based on debts, played a central role within the colonial economy. Where today, routine market transactions take place by

---

16. ALICE HANSON JONES, *WEALTH OF A NATION TO BE* 98 & tbl.4.5 (1980). *See also* MARC EGNAL, *NEW WORLD ECONOMIES: THE GROWTH OF THE THIRTEEN COLONIES AND EARLY CANADA* 15 tbl.1.2 (1998).

17. During the Pistole Fee Crisis, discussed *infra* Part II.C, a pamphlet supporting the Governor of Virginia expressed the prerogative in this way:

[T]he King has an absolute property in all the Lands in this Colony, not already granted out; that, it is an unavoidable Consequence therefore, that He may dispose of them upon what Terms he pleases; that the Governor, as his Substitute, may, with his Majesty's leave, make what Reservations he shall judge convenient; the Governor may take any fee with his Majesty's leave . . . .

William Murray (Lord Mansfield), Attorney General for the Governor, Transcript of Hearing before the Privy Council (June 18, 1754), in *The Case of the Pistole Fee: The Report of a Hearing on the Pistole Fee Dispute Before the Privy Council, June 18, 1754* (Jack P. Greene ed.), 66 VA. MAG. HIST. & BIOGRAPHY 399, 407–08 (1958) [hereinafter *The Case of the Pistole Fee*].

18. *See infra* note 90 and accompanying text.

19. *See, e.g.*, WILLIAM E. NELSON, *DISPUTE AND CONFLICT RESOLUTION IN PLYMOUTH COUNTY, MASSACHUSETTS, 1725–1825*, at 23–24 (1981); A.G. ROEBER, *FAITHFUL MAGISTRATES AND REPUBLICAN LAWYERS: CREATORS OF VIRGINIA LEGAL CULTURE, 1680–1810*, at 39–43 (1981).

20. A vast number of such colonial records survive today, and several collections have been published. *See, e.g.*, 1–10 PLYMOUTH COURT RECORDS, 1686–1859 (David Thomas Konig ed., 1978–1980); LANCASTER COUNTY, PENNSYLVANIA, *LAND RECORDS, 1729–1750, AND LAND WARRANTS, 1710–1742* (Marsha Martin ed., 1998).

means of cash and credit cards, in the colonial era, market transactions involved debts on book accounts and promissory notes (analogous to a check) or, for larger transactions, by sealed bonds.<sup>21</sup> Individuals also frequently took out lines of credit with merchants and shopkeepers, satisfying the debts later through crop harvests or other goods.<sup>22</sup>

Litigation was essential to the credit system. Bringing a lawsuit on a debt established a creditor's priority to the debtor's assets. Debts were satisfied in the order in which creditors requested the court to issue writs of execution empowering the sheriff to physically seize the debtors' assets.<sup>23</sup> Word that one creditor was bringing a debt action against a debtor would, of course, be highly relevant to all of that debtor's other creditors. Debt records provided a priority list of creditors' claims against defaulting members of the community.<sup>24</sup>

Mortgages extended on the basis of land and slave property were another essential source of credit.<sup>25</sup> G.B. Warden's study found that 3,617 mortgages were recorded in Boston between 1692 and 1775 with a total value of £94,380.<sup>26</sup> Russell Menard's study of mortgages of land and slaves in eighteenth century South Carolina found that by means of mortgages, capital flowed "from the city and mercantile fortunes toward the country and plantation development."<sup>27</sup>

Colonial probate courts recorded and probated the execution of wills. Recording and probating wills had immediate credit market implications: when an individual died, probating the will gave the opportunity for creditors of the deceased to step forward and establish a claim against the

---

21. See, e.g., CORNELIA HUGHES DAYTON, *WOMEN BEFORE THE BAR: GENDER, LAW & SOCIETY IN CONNECTICUT, 1639–1789*, 77–79 (1995); BRUCE H. MANN, *NEIGHBORS AND STRANGERS: LAW AND COMMUNITY IN EARLY CONNECTICUT* 11–46 (1987); Claire Priest, *Currency Policies and Legal Development in Colonial New England*, 110 *YALE L.J.* 1303, 1327–31 (2001).

22. See JACOB M. PRICE, *CAPITAL AND CREDIT IN BRITISH OVERSEAS TRADE: THE VIEW FROM THE CHESAPEAKE, 1700–1776* (1980); JAMES H. SOLTOW, *THE ECONOMIC ROLE OF WILLIAMSBURG* 128–55 (1965).

23. MANN, *supra* note 21, at 40; DAYTON, *supra* note 21, at 91, 99; Claire Priest, *Colonial Courts and Secured Credit: Early American Commercial Litigation and Shays' Rebellion*, 108 *YALE L.J.* 2413, 2421 (1999).

24. Priest, *supra* note 23, at 2444.

25. Edward Countryman, *The Uses of Capital in Revolutionary America: The Case of the New York Loyalist Merchants*, 49 *WM. & MARY Q.* 3, 19 n.47 (1992); Russell R. Menard, *Financing the Lowcountry Export Boom: Capital and Growth in Early South Carolina*, 51 *WM. & MARY Q.* 659, 667 (1994); G.B. Warden, *The Distribution of Property in Boston, 1692–1775*, 10 *PERSP. AM. HIST.* 81, 87–98 (1976).

26. Warden, *supra* note 25, at 81. Boston mortgages stated a one-year term but Warden found that they were typically paid off in six to eight years. *Id.* at 96.

27. Menard, *supra* note 25, at 670.

assets of the deceased.<sup>28</sup> Formally transferring ownership over land, slaves, and other assets to creditors, widows, heirs, and devisees instantly affected the recipient's wealth and creditworthiness.

The official production of court records at the quarterly court sessions provided a venue for the broader transmission of information throughout a community through word of mouth. Court days were highly popular events attended by most market participants.<sup>29</sup> Entire communities would converge at the location of the court sessions to hear about the court business of the day. At court day, individuals would personally observe or immediately hear about land conveyances, mortgages, the probate of wills, and lawsuits based on debts. As A.G. Roeber describes, court days were an essential time to discover "who was recovering against whom and what their own roles might be at any given moment."<sup>30</sup> The role of institutions was therefore twofold: to actually create a formal record of the legal actions related to property status and to provide a forum where the entire community became informed of property-related status changes.

#### B. POPULAR INTEREST IN LOW FEES

Over the eighteenth century, the representative colonial legislatures assumed authority over local, colonial institutions.<sup>31</sup> Colonial legislatures frequently enacted into law extensive schedules of fees documenting every institutional service and how much each would cost.<sup>32</sup> The level of the fees,

---

28. 2 WILLIAM BLACKSTONE, COMMENTARIES \*311.

29. ROEBER, *supra* note 19, at 73–95; E. Lee Shepard, "This Being Court Day," *Courthouses and Community Life in Rural Virginia*, 103 VA. MAG. HIST. & BIOGRAPHY 459 (1995).

30. ROEBER, *supra* note 19, at 85.

31. The best description is still represented in, JACK P. GREENE, *THE QUEST FOR POWER: THE LOWER HOUSES OF ASSEMBLY IN THE SOUTHERN ROYAL COLONIES, 1689–1776* (1963).

32. The fee laws of Massachusetts illustrate colonial legislatures' assertion of control over fee levels. *See, e.g.*, 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF MASSACHUSETTS BAY 84–88 (Boston, Wright & Potter 1869) (1692 fee schedule); 3 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF MASSACHUSETTS BAY 13–18 (Boston, Wright 1878) [hereinafter 3 ACTS AND RESOLVES OF MASSACHUSETTS]; 3 ACTS AND RESOLVES OF MASSACHUSETTS, *supra*, at 101–07 (1743 fee schedule); 3 ACTS AND RESOLVES OF MASSACHUSETTS, *supra*, at 176–81 (1744 fee schedule); 3 ACTS AND RESOLVES OF MASSACHUSETTS, *supra*, at 328–33 (1747 fee schedule); 3 ACTS AND RESOLVES OF MASSACHUSETTS, *supra*, at 525–31 (1751 fee schedule); 3 ACTS AND RESOLVES OF MASSACHUSETTS, *supra*, at 656–66 (1753 fee schedule); 3 ACTS AND RESOLVES OF MASSACHUSETTS, *supra*, at 1032–38 (1757 fee schedule); 5 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF MASSACHUSETTS BAY 486–95 (Boston, Wright & Potter 1886) (1776 fee schedule) [hereinafter 5 ACTS AND RESOLVES OF MASSACHUSETTS]; 5 ACTS AND RESOLVES OF MASSACHUSETTS, *supra*, at 761–70 (1778 fee schedule); 1782–1783 Mass. Acts 10–24 (1782 fee schedule); 1784–1785 Mass. Acts 458–62 (1785 fee schedule); 1786–1787 Mass. Acts 226–38 (1786 fee schedule). *See also* ROBERT J. TAYLOR, *WESTERN MASSACHUSETTS IN THE REVOLUTION* 31 (1954) (describing fee schedule revisions).

of course, had a direct impact on all who relied on the institutions. There were *ex ante* and *ex post* effects of fees for institutional services. The fees levied to record titles and mortgages were direct costs paid by those acquiring land and lenders and borrowers. *Ex ante* (before the individual used the service), the level of fees would impact an individual's decision whether or not, for example, to record a land conveyance. The statutory fee level influenced the total amount of land and slave sales and mortgages recorded in an economy in which land and slaves were primary assets.

In contrast, court fees on litigation also posed an *ex post* problem for debtors and creditors. In the colonial era, court fees were imposed on the party losing the litigation. Court fees on debt litigation operated as taxes on debtors who were already unable to repay their debts (thus, taking away from the assets available to creditors as well).<sup>33</sup> During times of widespread economic recession, the volume of litigation ballooned, increasing the total amounts extracted for the payment of fees.<sup>34</sup> Thus, it is not surprising that fees for institutional services were a contested political issue in the colonies.

The Stamp Act also taxed newspapers. In the colonial economy, individuals relied on newspapers to market goods, offer land or slaves for sale or auction, and to publicize that moveable property, such as slaves or cattle, had run away or gotten lost. According to the statutory law, court-sponsored foreclosure auctions of debtors' assets (such as land and slaves) were publicized in the newspaper. Moreover, the published news itself reported essential information related to market conditions. Thus, in addition to its impact on political speech, the price of newspapers had a direct impact on market participants.

## II. THE STAMP ACT AS POLITICAL ECONOMIC REFORM

Both supporters and opponents of the Stamp Act understood that it was a measure to deliberately use taxation to change colonial institutions and to shift the trajectory of the North American economy. In contrast to tariffs, the principal imperial revenue source, the Stamp Act imposed taxes on legal and commercial transactions occurring within the colonies. For its supporters, the Stamp Act promised to restrain runaway land speculation and litigation, and to make the colonies more readily governed by Britain. For its opponents, by taxing the paper on which a variety of legal and

---

33. See Benjamin Franklin's and other's comments on this effect of the Stamp Act, *infra* text accompanying notes 102–104.

34. Priest, *supra* note 23, at 2444–47.

commercial documents were printed, the Stamp Act effectively taxed transactions and information, the lifeblood of the colonial economy.

#### A. WHAT THE STAMP ACT TAXED

Examining the specific provisions of the Stamp Act itself helps make clear its broad implications for the colonial legal system and economy. The attached Appendix shows that the Stamp Act was not a single tax, but rather a collection of fifty-four different duties on a wide variety of documents and legal instruments. The Stamp Act charged three pence per sheet on “any Copy of any Petition, Bill, Answer, Claim, Plea, Replication, Rejoinder, Demurrer, or other Pleading in any such Court.”<sup>35</sup> It levied one shilling per page for “any Monition, Libel, Answer, Allegation, Inventory, or Renunciation” as well as for affidavits, bail documents, interrogatory depositions, rules, orders, and court warrants.<sup>36</sup> Bonds, which were used to secure the payments of debts, were likewise obliged to be printed on stamped paper.

Significantly for an economy dependent on the acquisition and development of land, the Act levied a substantial tax on land grants, the surveying of land, and the registering of land in colonial registries. Notarial acts, letters of attorney, procurations, mortgages, releases, and other legal instruments not specifically mentioned were all charged at two shillings and three pence per page.<sup>37</sup> Warrants, deeds, and grants were all to be taxed. The tax was progressive in the sense that it targeted large land transactions, imposing a two shillings, six pence tax on every 320 acres.<sup>38</sup> For smaller land transactions, however, the Stamp Act was still onerous. A modest 200 acre plot in Virginia, worth about six pounds Virginia currency, would have required stamps on the grant, the warrant to survey the land, and the registration of the land. This amounted to three shillings, three pence sterling, or five shillings, three pence Virginia currency,

---

35. Duties in America (Stamp) Act, 5 Geo. 3, c. 12, (1765).

36. *Id.* Robert Taylor reports that, in 1781, Northampton paid master tradesmen forty-five pence (33.74 pence Sterling) per day for summer labor and, in 1782, paid twenty-eight pence (20.99 pence Sterling) and twenty-one pence (15.75 pence Sterling) per day for unskilled labor in the summer and fall, respectively. *See* TAYLOR, *supra* note 32, at 195 n.56. According to Taylor, these wages are similar to those paid by other towns. *Id.* In the 1780s Sterling values were calculated according to the par exchange rate: £133 7s. 6d Massachusetts money equals £100 English Sterling. JOHN J. MCCUSKER, MONEY AND EXCHANGE IN EUROPE AND AMERICA, 1600–1775, at 120 (1978).

37. Duties in America (Stamp) Act.

38. *Id.*

slightly more than 4 percent of the purchase price.<sup>39</sup> For land speculators, like investors of the Mississippi Company, who sought 2.5 million acres (an area slightly smaller than Los Angeles County) for free in exchange for surveying the land and retailing it to settlers, the Stamp Act would have significantly increased their costs. The Company would have paid the equivalent of about £1,500 Virginia currency as well as the cost of acquiring survey warrants for the individual tracts, which might have amounted to another £750. In addition to this, the Stamp Act would have increased the legal costs of surveying the land, which was already notoriously prone to expensive litigation.<sup>40</sup>

Licenses to practice law were likewise taxed at a rate of ten pounds sterling,<sup>41</sup> a significant sum in a world in which the average Philadelphia ship captain earned around four pounds sterling per month.<sup>42</sup> Ships' commissions and their bills of lading, required in order to clear customs, were taxed. Licenses for retailing wine and spirits came under the Act. In addition to taxing legal services and transactions, the Act also taxed information and civil society, levying revenue from pamphlets, newspapers, and newspaper advertisements. With stamp taxes, ordinary colonists would find it more expensive to petition the government, and even to drink and gamble.<sup>43</sup>

Crucially, all of these duties had to be paid in the "Sterling Money of Great Britain," valued at "Five Shillings and Six Pence the Ounce in Silver," currency that was extremely scarce in colonial America.<sup>44</sup> In 1764,

---

39. *Id.* The Mississippi Company in Virginia proposed to sell land for three pounds per one hundred acres. See CHARLES ROYSTER, *THE FABULOUS HISTORY OF THE DISMAL SWAMP COMPANY: A STORY OF GEORGE WASHINGTON'S TIMES* 71 (1999).

40. Mississippi Land Company's Memorial to the King, in 7 *THE PAPERS OF GEORGE WASHINGTON: COLONIAL SERIES* 242, 242–50 (W.W. Abbot & Dorothy Twohig eds. 1990). The price of stamps was calculated by dividing 2.5 million by 320, multiplying the total by 2 shillings, 6 pence, and then applying the Stamp Act's 4 percent discount on stamp purchases exceeding £5. The total was then converted into Virginia currency. *Duties in America (Stamp) Act*. For the conversion rate between Sterling and Virginia currency, see MCCUSKER, *supra* note 36, at 211.

41. *Duties in America (Stamp) Act*.

42. GARY NASH, *THE URBAN CRUCIBLE: THE NORTHERN SEAPORTS AND THE ORIGINS OF THE AMERICAN REVOLUTION* 208 (abridged ed. 1986). The average sea captain in Philadelphia earned about seven pounds per month in Pennsylvania currency, *id.*, or just over four pounds Sterling. This calculation is based on the average exchange rate for Pennsylvania currency in 1765, which was 1.699 pounds Sterling for one pound Pennsylvania currency. MCCUSKER, *supra* note 36, at 186.

43. The Stamp Act taxed playing cards and dice. *Duties in America (Stamp) Act*. Stamp duties were frequently used in the eighteenth century to curb the circulation of potentially subversive ideas. For example, French Revolutionaries used stamp taxes to circumscribe political debate. See HUGH GOUGH, *THE NEWSPAPER PRESS IN THE FRENCH REVOLUTION* 125–28, 141–42 (1988) (discussing the powers exercised by the Minister of Police to curb perceived threats to political stability).

44. *Duties in America (Stamp) Act*.

Parliament enacted a law banning the issuance of paper money throughout the American colonies, which reduced the volume of colonial money in circulation and further raised the value of Sterling.<sup>45</sup> Colonists repeatedly complained that they were entirely incapable of paying the Stamp tax due to the shortage of hard currency in the colonies.<sup>46</sup>

The Stamp Act's cost depended on the amount of paper consumed. This seems an elementary point, but it meant that the Act offered a disincentive not only for litigation, but also for various aspects of the legal process that affected economic agreements and property rights more generally, especially for less wealthy colonists. As the legal disputes dragged on, the amount of stamped paper and the duty increased as well, a particular burden on those with fewer financial resources at their disposal. Moreover, as mentioned, due to the high volume of debt litigation occurring during times of economic recession, the Stamp Act represented an excessive tax on poor debtors. Taken together, these duties reflect an extractive policy program for colonial North America.

#### B. THE STAMP ACT ADVOCATES' ECONOMIC VISION

Parliament enacted the Stamp Act in a broad effort to reform both Britain and its empire. Following the accession of George III, Britain was governed by ministries that embraced the fiscal and economic logic of austerity, that is, reducing spending while increasing colonial revenue. Led first by John Stuart, Third Earl of Bute, and then George Grenville, First Lord of the Treasury, these administrations used their influence in Parliament to pass new taxes and to increase the enforcement of old ones. These taxes were necessary, these ministers and their economic advisors argued, because Britain was no longer able to bear the cost of the numerous wars that had taken place over the course of the eighteenth century. In the

---

45. Currency Act, 4 Geo. 3, c. 34 (1764). At the time of its passage, 160 Virginia pounds equaled about 100 pounds sterling. MCCUSKER, *supra* note 36, at 211.

46. See, e.g., *The Humble Address of the General Assembly of Said Colony*, N.Y. GAZETTE, Dec. 2, 1765, at 1; *Resolutions of the Importers of European Goods*, Philadelphia, PA. GAZETTE, Nov. 14, 1765; The Address of the Council and House of Representatives of the Massachusetts Bay to Governor Bernard in the Governor's Letter (Nov. 10, 1764) (unpublished manuscript) (on file with Huntington Library, Stamp Act Correspondence, Stowe Manuscript 264, folder 156); Letter from James & Drinker to David Barclay & Sons (Nov. 16, 1763) (on file with the Historical Society of Pennsylvania, James & Drinker Letter Book, Collection 176, vol. 13, p. 198); Letter from John Temple, Surveyor Gen. of the Customs of the N. Dist. in Bos., to George Grenville, First Lord of Treasury (Dec. 9, 1764) (on file with Huntington Library, Stowe Grenville Papers, box 23, fol. 29); Letter from Chauncey Whittelsey, Minister at Newtown, Conn. to Ezra Stiles, Minister of the Second Congregational Church of Newport, R.I. (Apr. 16, 1765) (on file with Beinecke Rare Book and Manuscript Library, Ezra Stiles Papers, correspondence, folder 486).

wake of the Seven Years' War, Britain had contracted a debt of more than £130 million, making it one of the most heavily indebted and highly taxed nations in Europe.<sup>47</sup> The Grenville ministry was convinced that the government had no choice but to pursue both fiscal austerity and social reform to preserve Britain's power and social stability.

Upon taking office, Grenville described "a Commercial nation . . . exhausted of its wealth and Inhabitants, loaded with debts and taxes, the landed Interest distressed, and more peculiarly groaning under the weight of every additional Supply."<sup>48</sup> Grenville and his supporters were particularly alarmed by Britain's high rate of domestic taxation. Taxes on landed wealth weighed on all parts of the economy, including commerce and manufacturing.<sup>49</sup> Thomas Whately, the Junior Secretary of Treasury and a confidant of Grenville's, complained that "the Price both of Labour and Materials was enhanced by the Number and the Weight of the new Taxes."<sup>50</sup> Moreover, the increase of the national debt oppressed "[b]oth public and private Credit" by raising interest rates and crowding out private investment and threatened Britain's prosperity.<sup>51</sup> Higher interest rates, like elevated land taxes, raised prices and wages. The higher cost of labor meant that commercial rivals could "undersell us at Foreign Markets, and even become competitors at our own."<sup>52</sup> Even worse, the colonies threatened to compete with British manufactures. Despite the relatively high wages paid in the colonies, the ministry's leaders argued that British manufacturing was particularly vulnerable to being undersold by colonial competitors and that the mother urgently needed to bring its colonies under tighter economic control.<sup>53</sup>

The Grenville ministry's response was to advocate and implement a program of fiscal austerity that entailed not only significant concessions to France in negotiating an end to the Seven Years' War but also new taxes on

---

47. B.R. MITCHELL, *BRITISH HISTORICAL STATISTICS* 601 (1988).

48. Letter from George Grenville, First Lord of the Treasury, to George III (June 30, 1763) (on file with Huntington Library, Stowe Papers 7, George Grenville Letterbook, vol. 1).

49. See Letter from George Grenville, Member of Parliament, to Augustus Hervey (Sept. 28, 1766), Letter from George Grenville, Member of Parliament to George Chalmers (Oct. 5, 1766), and Letter from George Grenville, Member of Parliament, to Armine Woodhouse (Oct. 10, 1767) (all on file with Huntington Library, Stowe Papers 7, Grenville Letterbook, vol. 2).

50. THOMAS WHATELY, *CONSIDERATIONS ON THE TRADE AND FINANCES OF THIS KINGDOM: AND ON THE MEASURES OF ADMINISTRATION, WITH RESPECT TO THOSE GREAT NATIONAL OBJECTS SINCE THE CONCLUSION OF THE PEACE* 3 (1766).

51. *Id.*

52. *Id.*

53. Memorandum from Charles Jenkinson on Taxing the American Colonies 133–34 (before July 1765) (on file with British Library, Liverpool Papers, Additional Manuscript 38,339).

cider, the Customs Act of 1763, and the Revenue Act, which aimed to increase revenue collection from sugar. Such efforts to raise funds and reduce the fiscal burdens of empire, while controversial, were the product of a distinct vision of both political economy and of empire. Thomas Whately, George Grenville, and Charles Jenkinson—the Stamp Act’s most prominent advocates—were all strongly committed to a vision of economic and imperial reform that reined in the colonial economy and taxed existing institutions. Their position won out over a competing vision, which was to promote colonial economic development and expansion, to increase colonial consumption of exports from England, and to secure revenue for the crown through greater colonial import tariffs.<sup>54</sup>

The Stamp Act was part of this broader project of economic and imperial austerity and it was designed to rein in a colonial society whose disorder and insubordination seemingly threatened the viability of both the British economy and the British Empire as a whole.<sup>55</sup> As early as 1742, Pennsylvania’s governor, Sir William Keith, proposed stamp duties as a means of putting “an entire stop to all those Complaints and disputes, daily arising between the people of the Colonies, and their Respective Governours” and of reducing the “immoderate Quantity of Paper Bills Struck in many of the colonies to the discouragement of fair trade.”<sup>56</sup> In the fight against “licentiousness,” taxation was a powerful weapon of moral and economic reform. As Grenville observed when discussing the Stamp Act a few years after its passage, “all Taxes ought to be, [and] many are Checks upon vice [and] Luxury or Regulations of different kinds as well as sources of Revenue.”<sup>57</sup> Even before passing the Stamp Act, Grenville followed the advice of Henry McCulloh, one of the Stamp Act’s principal architects of taxing the colonies, and supported the passage of strict laws

---

54. Grenville’s economic vision is elaborated in Justin duRivage, *Taxing Empire: Political Economy and the Ideological Origins of the American Revolution, 1747–1776*, at 139–82 (June 2013) (unpublished Ph.D. dissertation, Yale University) (on file with Yale University).

55. See, e.g., GEORGE GRENVILLE & THOMAS WHATELY, *THE REGULATIONS LATELY MADE CONCERNING THE COLONIES, AND THE TAXES IMPOSED UPON THEM, CONSIDERED* 94 (London, J. Wilkie 1765); Letter from George Grenville, Member of Parliament, to Armine Woodhouse, Member of Parliament (July 3, 1768) (on file with Huntington Library, Stowe Papers 7, George Grenville Letterbook, vol. 2).

56. William Keith, *Reasons Humbly Offered in Support of a Proposal Lately Made to Extend the Duties on Stamp Paper and Parchment all Over the British Plantations* 376–77 (Dec. 17, 1742) (on file with British Library, Newcastle Papers, Additional Manuscript 33,028).

57. Letter from George Grenville, Member of Parliament, to William Knox, Provost Marshall of Ga. (Aug. 15 1768) (on file with Huntington Library, Stowe Papers 7, George Grenville Letterbook, vol. 2) [hereinafter Letter from George Grenville to William Knox].

regulating trade throughout the empire.<sup>58</sup> Both Massachusetts's governor, Francis Bernard, and Georgia's agent to Parliament, William Knox, complained that there was an excessive spirit of liberty in the colonies. Bernard, for example, noted that it had led the colonies to be "deficient in the support of their Governments, both as to sufficiency and independency."<sup>59</sup> For both men, the problem was that executive authority, and thus metropolitan authority, was too weak. They defended the royal prerogative and urged Parliament to flex its muscles. Bernard pressed Britain to reduce the number of colonial governments and create a colonial civil list that would strengthen the hand of the governors. And although he believed that the colonists ought to pay for their own defense, Bernard recommended that Parliament dictate to the assemblies how much they would have to spend on defense.<sup>60</sup> For his part, Knox proposed that the salaries of both crown officials and revenue officers in the colonies be put under control of the crown and their salaries be paid out of a general fund of colonial quitrents.<sup>61</sup>

The regulations the Stamp Act placed on the colonies would reduce land speculation by raising the cost of buying and selling real property, discourage litigation by taxing most legal papers, and curb colonial civil society by raising the cost of newspapers that fanned the flames of political opposition. It was designed, Grenville explained, "to discourage by a high Duty the Grant of large Quantities of Land to one Person."<sup>62</sup> Grenville's deputy, Whately, also asserted that the Stamp Act would serve as "some Check to those enormous Grants and Conveyances, which are so detrimental to the Colonies."<sup>63</sup> This is not surprising. Authoritarian

---

58. See An Act for the better securing and further Improvement, of the Revenues of Customs, Excise, Inland and Salt Duties, 5 Geo. 3, c. 43; An Act for more effectually securing and encouraging the Trade of His Majesty's American Dominions, 5 Geo. 3, c. 45; Henry McCulloh, *General Thoughts with Respect to Such Regulations as are Humbly Conceived to be Necessary in America and in the Islands in the West Indies Lately Ceded to us by France (1764)* (on file with Huntington Library, Stowe Grenville Collection, box 12, folder 28).

59. Francis Bernard, *Principles of Law and Policy Applied to the British Colonies in America 194 (1764)* (unpublished manuscript) (on file with British Library, Liverpool Papers, Additional Manuscript 38,342). See also William Knox, *Hints Respecting the Civil Establishments in the American Colonies* 20, 23 (Feb. 25, 1763) (on file with British Library, Liverpool Papers, Additional Manuscript 38,335) ("The colonists however consider themselves as entitled to a greater measure of liberty than is enjoyed by the people of England, because of their quitting their native country, to make settlements for the advantage of Great Britain in the wilds of America.").

60. Bernard, *supra* note 59, at 195.

61. Knox, *supra* note 59, at 21, 23.

62. Letter from George Grenville to William Knox, *supra* note 57.

63. Letter from Thomas Whately, Junior Sec'y of Treasury, to John Temple, Surveyor Gen. of the Customs of the N. Dist. in Bos. 12 (Feb. 9, 1765) (on file with Huntington Library, Stowe Grenville Papers, Stamp Act letter book, box 13, folder 6). See also Thomas Whately, Copy of Mr. Secretary

imperial reformers in Britain had long expressed concern that colonial settlement and expansion needed to be restrained lest the colonies challenge Britain's economic supremacy within the empire. As Charles Jenkinson explained to Richard Wotters in a January 1765 letter, "the Increase of Our Colonies is certainly what we wish but They must increase in such a manner as will keep them useful To the mother country."<sup>64</sup> The English peer Richard Grosvenor, First Earl Grosvenor, a supporter of the Stamp Act who would later protest its repeal, likewise expressed concern about the "profligacy" and demographic growth of the colonies. He concluded that the best check on American growth was "confining our Settlements in America within proper Limits."<sup>65</sup> Keeping the colonies useful to Britain meant checking the scramble for vast tracts of the American interior, a scramble that led to conflict with Native Americans and that ultimately threatened Britain's economic control over its own empire.<sup>66</sup> Using taxation to limit the acquisition of huge amounts of North American land was nominally egalitarian, but, in reality, it served to discourage territorial expansion and development while still leaving poor settlers with a significant tax burden.<sup>67</sup>

---

Whately's General Plan for an American Bill Approved in Conference Before All the Lords of the Treasury 312–13 (Dec. 17, 1764) (unpublished manuscript) (on file with British Library, Hardwicke Papers, Additional Manuscript 35,910) [hereinafter Copy of Mr. Secretary Whately's General Plan].

64. Letter from Charles Jenkinson, Senior Sec'y of Treasury, to Richard Wolters (Jan. 18, 1765) (on file with British Library, Liverpool Papers, Additional Manuscript, 38,304, folder 114). *See also* Letter from William Alexander, Styled Sixth Earl of Stirling to William Petty, Second Earl of Shelburne (Aug. 6, 1763) (on file with British Library, Bowood Papers, Additional Manuscript, 88,906/3/1, folder 50) (offering a similar perspective).

65. Lord Grosvenor, Hints Respecting the Settlement of Our American Provinces 14–15 (Feb. 25, 1763) (unpublished manuscript) (on file with British Library, Liverpool Papers, Additional Manuscript 38,335). On Grosvenor's opposition to the Stamp Act's repeal, see PROTEST AGAINST THE BILL TO REPEAL THE AMERICAN STAMP ACT, LAST SESSION 16 (Paris, J.W. 1766).

66. On western expansion and Native American relations, see Knox, *supra* note 59, at 27–28.

67. This was a long-standing goal of authoritarian colonial reform. *See, e.g.*, Thomas C. Barrow, *Archibald Cummings' Plan for a Colonial Revenue, 1722*, 36 NEW ENGLAND Q. 383 (1963). On land speculation and British politics, see generally CLARENCE WALWORTH ALVORD, *THE MISSISSIPPI VALLEY IN BRITISH POLITICS: A STUDY OF THE TRADE, LAND SPECULATION, AND EXPERIMENTS IN IMPERIALISM CULMINATING, IN THE AMERICAN REVOLUTION* (1916) (showing the possibilities—and the political conflicts produced—by the British Empire's acquisition of land west of the Appalachians); MARC EGNAL, *A MIGHTY EMPIRE: THE ORIGINS OF THE AMERICAN REVOLUTION* (1988) (arguing that American Revolution was the outcome of Americans' stymied expansionist ambitions); JACK M. SOSIN, *WHITEHALL AND THE WILDERNESS: THE MIDDLE WEST IN BRITISH COLONIAL POLICY, 1760–1775* (1961) (explaining imperial officials' objections to colonial territorial expansion and land speculation); and Cameron B. Strang, *The Mason-Dixon and Proclamation Lines: Land Surveying and Native Americans in Pennsylvania's Borderlands*, 136 PA. MAG. HIST. & BIOGRAPHY 5 (2012) (showing the ways in which Native American and British political concerns were intimately connected with the politics of colonial territorial expansion).

The Stamp Act also promised to reduce the volume of litigation. Indeed, in drafting the Act, Whately observed “the great Number of Law Suits in most of the Colonies” and the vast potential source of revenue that they offered.<sup>68</sup> In 1768, George Grenville was more explicit about the goals of the Stamp Act when he explained to William Knox that it had been intended as a way “to discourage a Spirit of unnecessary Litigation.”<sup>69</sup> The Stamp Act served as a sin tax on litigation, one whose steep taxes on the legal market would make Americans think twice before taking their grievances to court.

Both supporters and opponents of the Stamp Act recognized that its taxes, particularly those on legal and commercial transactions, would disproportionately affect the economies of the less wealthy northern colonies over the wealthier southern ones. Legal institutional services such as the recording of land grants, mortgages on land and slaves, and debt litigation played a central role throughout all of the colonies. But the impact of the taxes were proportionately higher, of course, where the values of the underlying assets were lower. An additional fee for recording a mortgage on a high-valued slave, for example, would have had less of an impact than the same fee imposed for debt litigation used to call in a small debt. English supporters of the Stamp Act were aware of the differential impact. Indeed, Thomas Whately, Britain’s Junior Secretary of Treasury, made it very clear in a spring 1764 letter to his friend and Connecticut’s future stamp distributor, Jared Ingersoll, that the Stamp Act was “preferable to a Tax upon Negroes, which would effect [sic] the Southern much more than the Northern Colonies.”<sup>70</sup> And as the Maryland lawyer Daniel Dulany observed in an influential pamphlet attacking the Stamp Act, “[a] larger Sum will be extracted from a Tobacco Colony than from Jamaica; and it will not only be higher in one of the poorest Colonies, and the least able to bear it, than in the richest.”<sup>71</sup> Whately acknowledged that the higher value of West Indian land meant that the Stamp Act’s much higher tax on large land sales would be much more heavily felt in the northern colonies, where land owners were not only less wealthy, but land transactions were larger and the value of land lower.

---

68. Letter I: From T[homas] W[hately], Junior Sec’y of Treasury to J.I. (Spring 1764), in MR. INGERSOLL’S LETTERS RELATING TO THE STAMP-ACT 1, 4 (New Haven, Samuel Green 1766) [hereinafter Letter from Thomas Whately to Jared Ingersoll].

69. Letter from George Grenville to William Knox, *supra* note 57.

70. Letter from Thomas Whately to Jared Ingersoll, *supra* note 68, at 4.

71. DULANY, *supra* note 3, at 24–25.

In response to these concerns, the Stamp Act taxed land transactions in the West Indian sugar colonies at a higher rate than on the mainland.<sup>72</sup> As the Appendix shows, stamps for land conveyances in the Caribbean (denoted as “all other parts of America”) were twice as expensive as in North America. However, West Indian land was both less plentiful and more valuable, which helps explain the perception that the tax fell most heavily on the relatively poorer, but more mercantile, northern colonies. Despite Whately’s protests to the contrary, there is considerable evidence that the Stamp Act’s architects and advocates intended these disproportionate effects. They believed that parliamentary taxation of the colonies offered a means of implementing much needed institutional reforms, which were more necessary in the northern colonies than in the southern ones.

Grenville and his supporters designed the Stamp Act as a means of protecting imperial officials. The Act would free governors from having to negotiate with colonial legislatures for funds and thereby strengthen executive authority. Both Georgia’s agent to Parliament, William Knox, and Massachusetts’s governor, Francis Bernard, urged policymakers in London to provide governors with sources of revenue that could not be held hostage by truculent colonial assemblies.<sup>73</sup> Like the new duties on imperial trade and improved customs enforcement, the Stamp Act promised to make Britain’s colonies more governable.<sup>74</sup>

The Stamp Act also promised to shift the balance of power from the public to their leaders by transforming colonial communication, particularly public petitioning and the newspaper press. Cheap political print, which exploded in the colonies and throughout the British Empire, was a longstanding source of popular political opposition.<sup>75</sup> By taxing both

---

72. See Copy of Mr. Secretary Whately’s General Plan, *supra* note 63, at 312–13; Duties in America (Stamp) Act, 5 Geo. 3, c. 12 (1765).

73. Bernard, *supra* note 59, at 195; Knox, *supra* note 59, at 21, 23. On Knox, his views on imperial reform, and his political career, see LELAND J. BELLOT, WILLIAM KNOX: THE LIFE AND THOUGHT OF AN EIGHTEENTH-CENTURY IMPERIALIST (1977); FRANKLIN B. WICKWIRE, BRITISH SUBMINISTERS AND COLONIAL AMERICA 1763–1783, at 42–44 (1966); Jack P. Greene, *William Knox’s Explanation for the American Revolution*, 30 WM. & MARY Q. 293 (1973); and Rena Vassar, *William Knox’s Defense of Slavery (1768)*, 114 PROC. AM. PHIL. SOC’Y 310 (1970).

74. On disorder and disobedience in the colonies, see Bernard, *supra* note 59, at 199. See also Knox, *supra* note 59, at 20, 23 (offering a similar perspective).

75. Although colonists were themselves not always the best defenders of a free press, newspapers and pamphlets nonetheless played an important role in creating a contentious colonial political culture. See, e.g., LEONARD W. LEVY, EMERGENCE OF A FREE PRESS (1985); ROBERT D. SPECTOR, POLITICAL CONTROVERSY: A STUDY IN EIGHTEENTH-CENTURY PROPAGANDA (1992); MICHAEL WARNER, THE LETTERS OF THE REPUBLIC: PUBLICATION AND THE PUBLIC SPHERE IN EIGHTEENTH-CENTURY AMERICA (1990); Paul S. Boyer, *Borrowed Rhetoric: The Massachusetts*

newspapers and pamphlets, as well as the advertisements that made them profitable, the Stamp Act promised to make mobilizing public opinion against the government much more difficult. It would likewise make petitioning, in which groups of citizens presented public officials with community grievances, more expensive and less common. When combined with the army of British troops that the Stamp Act helped pay for, it promised to radically transform the power dynamic between the colonial public and their imperial governors.

### C. A PRECEDENT OF THE STAMP ACT: THE PISTOLE CRISIS

The balance of power between representative assemblies and the crown-appointed governors and their appointed Councils was a central and constant struggle in the political world of colonial America. As mentioned, by the early to mid-eighteenth century, colonial legislatures had assumed control over local institutions and the fees they charged. Nonetheless, the colonial governors often attempted to extend the boundaries of their spheres of influence in areas under the authority of the executive. The Pistole Crisis of 1754 was a defining experience setting the stage for Virginians' reaction to the Stamp Act. Beginning in the early seventeenth century, the House of Burgesses, the Virginia legislature, controlled the fees levied for many institutional services. By the early eighteenth century, the House of Burgesses had expanded the scope of its authority over appointments and fees for different services, including land surveying.<sup>76</sup> Although royal instructions typically authorized Virginia governors to set fees with only their appointed Council's consent (that is, without legislative approval), no governor chose to exercise this power until the 1750s, with one exception: Governor Francis Howard, Lord Howard of Effingham, in the 1680s—like the Stamp Act of 1765—imposed a fee of two hundred pounds of tobacco for fixing the public seal on land patents and probated wills and other official documents, as well as thirty pounds of tobacco for recording land surveys.<sup>77</sup> The House of Burgesses became enraged and appealed to the Privy Council that Howard's actions exceeded the scope of his authority. In September 1689, the Privy Council ruled that Howard's

---

*Excise Controversy of 1754*, 21 WM. & MARY Q. 328 (1964); Alison Olson, *The Pamphlet War Over the Paxton Boys*, 123 PA. MAG. HIST. & BIOGRAPHY 31 (1999); Alison Olson, *The Zenger Case Revisited: Satire, Seditious and Political Debate in Eighteenth Century America*, 35 EARLY AM. LITERATURE 223 (2000).

76. See GREENE, *supra* note 31, at 158–59; *The Case of the Pistole Fee*, *supra* note 17; Glenn Curtis Smith, *The Affair of the Pistole Fee, Virginia, 1752–55*, 48 VA. MAG. HIST. & BIOGRAPHY 209, 209–10 (1940).

77. GREENE, *supra* note 31, at 159.

fees were illegal because he had not sought the consent of the Virginia Council before imposing them.<sup>78</sup>

The Virginia legislature thereafter maintained control over institutional fees until 1752 when, upon his arrival in Virginia, Governor Dinwiddie with the consent of his Council, assessed a fee of one “pistole,” (a Spanish coin worth 16s 10d English Sterling, or £1 2s 6d Virginia money at the time) on land patents issued by his office with the royal seal. Dinwiddie quickly submitted the issue of the fee’s legality to the Board of Trade, which gave its approval. Virginians were enraged. The opposition focused on the fact that the fee was a tax imposed without the legislature’s consent. As William Stith, a member of the Burgesses, wrote to the Bishop of London in April 1753, “[t]his Attempt to lay Taxes upon the People WITHOUT Law was certainly AGAINST Law, [and] an evident Invasion of Property.”<sup>79</sup> The opponents of the fee championed the slogan “*Liberty & Property and no Pistole*”<sup>80</sup> and reported to their friends in London that the Governor’s fee gave “very general Disgust [and] Alarms to the whole Country.”<sup>81</sup> They petitioned the Privy Council, which held a hearing on the legality of the fee in June of 1754.<sup>82</sup>

Like the Stamp Act controversy two decades later, the Pistole Crisis centered on how the cost of institutional services related to a broader theory of economic growth. Quite notably, William Murray (Lord Mansfield), who advocated on behalf of Governor Dinwiddie before the Privy Council, distinguished the pistole fee from the illegal fee imposed by Governor Howard in the 1680s because Howard’s fee taxed basic institutional services, unlike Dinwiddie’s fee on land patents.<sup>83</sup> According to Murray, Howard’s fee had been unlawful, in part because it was imposed on “Probate of Wills, letters of administration, and various other things; which, your Lordships observe, were matters of Right, which the Subject

---

78. *Id.*; 2 ACTS OF THE PRIVY COUNCIL OF ENGLAND, COLONIAL SERIES 142–43 (W.L. Grant, James Munro & Almeric W. Fitzroy eds. 1910).

79. *The Case of the Pistole Fee*, *supra* note 17, at 401 (quoting a letter from William Stith to the Bishop of London).

80. *Id.* at 400. William Stith, president of the College of William and Mary and chaplain of the House of Burgesses, introduced this slogan while toasting the group of Burgesses members opposing the fee. *Id.*

81. *Id.* at 400 n.13.

82. Transcripts of the hearing before the Privy Council are reprinted in their entirety in, *The Case of the Pistole Fee*, *supra* note 17, at 406–22.

83. See Alexander Hume Campbell, for the Governor, Transcript of Hearing before the Privy Council (June 18, 1754), in *The Case of the Pistole Fee*, *supra* note 17, at 409, 410 (discussing the differences between the pistole fee and Howard’s fee).

was obliged, was compelled to comply with.”<sup>84</sup> In contrast, the pistole fee was “a matter of Discretion; if the Subject does not incline to ask for a Patent, he is not compelled to take one out.”<sup>85</sup> It is notable that Murray referred to institutional services as matters of “Right,” with the inference that only local representative bodies could legally set their costs.<sup>86</sup>

Dinwiddie’s advocates, including Alexander Hume Campbell, characterized the opponents of the fee as “Land Jobbers, a Species of Men, who, in accumulating Estates, pay no regard to the publick Welfare.”<sup>87</sup> Indeed, Campbell continued, “[s]o inordinate and boundless is their Lust of acquiring Lands, that unless some effectual means are used to restrain it, it must in time produce the total destruction of that Colony.”<sup>88</sup> In contrast, the House of Burgesses protested that the fee was “an Infringement on the Rights of the People, and a Discouragement from taking up Lands, and thereby . . . the settling the Frontiers of this Country, and the Increase of his Majesty’s Revenue of Quitrents.”<sup>89</sup> The Virginians repeatedly emphasized the need for inexpensive patenting of lands to encourage immigration. According to Robert Henley, who represented the House of Burgesses:

A small Expence in taking up Lands is an Encouragement to Protestants to settle there from all parts of Europe; from Germany in particular; but can it be Imagined that any European will settle there, if the Governor proves this Arbitrary, if they find themselves Subject to the extravagant demand of a Governor?<sup>90</sup>

---

84. William Murray (Lord Mansfield), Attorney General for the Governor, Transcript of Hearing before the Privy Council, in *The Case of the Pistole Fee*, *supra* note 17, at 409. Murray’s testimony is reprinted in *id.* at 406–09.

85. *Id.* at 409.

86. Murray changed his interpretation in 1765: he defended the Stamp Act as a purely discretionary tax.

87. Alexander Hume Campbell, for the Governor, Transcript of Hearing before the Privy Council (June 18, 1754), in *The Case of the Pistole Fee*, *supra* note 17, at 410.

88. *Id.* Lord Mansfield similarly emphasized that:

It has long been the Custom in that Colony to make Application to the proper Officer, to take up great quantities of Land, more than the Takers up ever intended to Cultivate; merely, with a design to keep out other Tenants; Which your Lordships must be convinced to be the Case, when you are informed, that in one Day, there were granted out no less than One Million four hundred thousand acres.

William Murray (Lord Mansfield), Attorney General for the Governor, Transcript of Hearing before the Privy Council, in *The Case of the Pistole Fee*, *supra* note 17, at 407.

89. *The Case of the Pistole Fee*, *supra* note 17, at 401 (alteration in original) (internal quotation marks omitted).

90. Robert Henley, for the Assembly, Transcript of Hearing before the Privy Council (June 18, 1754), in *The Case of the Pistole Fee*, *supra* note 17, at 412, 414. Henley also emphasized that:

This demand of the Governor is made in a very extraordinary Manner, in Contempt of the Authority of this Board, and is an Infringement of an Order made by your Lordships’ Predecessors. It is not to be wondered at that a free People, living in a remote Country under so mild a Government, as that of his present Majesty’s, should be alarmed at such an unusual,

The Privy Council ultimately ruled in favor of Dinwiddie, although it carved large exemptions from the pistole fee for plots of land under 100 acres (presumably those immigrants would be likely to patent), and for lands for which patents were requested before Dinwiddie was appointed. The controversy foreshadowed both the constitutional arguments and arguments over the structure of the Virginia land policy that would reappear in the Stamp Act crisis.

### III. OPPOSITION TO THE STAMP ACT AND THE DEFENSE OF COLONIAL INSTITUTIONS

While supporters of the Stamp Act believed that it would bring much needed institutional reform to Britain's colonies, radical colonists opposing the Act and their English supporters insisted that it spelled the end of colonial liberty and prosperity. A large part of their argument hinged on the notion that arbitrary taxation by an unrepresentative Parliament was both unconstitutional and foretold the end of secure property rights. If British legislators could take colonial property whenever it suited them, colonists would have little incentive to develop their economy. Although this was the crux of the radical argument against the Stamp Act, critics of the bill also attacked its specific provisions for their inequitable effects on the colonies. They took particular umbrage at the way the Stamp Act raised the cost of economic transactions, legal services, and transmission of information. They criticized the bill for placing a heavy burden on debtors and for threatening newspapers that were a critical source of information. In a world in which North Americans were perpetually short on currency, particularly the hard and sterling currency necessary to pay the Stamp Act duties, and in which the instruments of credit that provided desperately needed liquidity were themselves taxed, the Stamp Act seemed not just unconstitutional but downright violent.<sup>91</sup>

Precisely in line with theories attributing the economic growth of nations to the existence of representative institutions and relative poverty to countries where elites extract wealth for their own benefit, the colonists viewed the Stamp Act as shifting the political base of power from

---

such an oppressive Demand. This my Lords at best is not a very desireable Country; what Lands are now to be taken up are much less so than those already granted, they are at a great distance from Navigable Rivers, detached as it were from those already inhabited; if it was not Convenient to settle a demand of this nature several Years ago, wou'd it be convenient to do it now when this Colony is attacked by a powerfull Enemy? The very Danger the Grantees must necessarily be exposed to; the very trouble in Surveying their Lands, is greater than the Lands now taken up are worth, tho' there were no additional Expence.

*Id.* at 412.

91. See sources cited *supra* note 46.

representative assemblies to an elite of imperial officials loyal to the crown.<sup>92</sup> John Adams's landmark essay, *A Dissertation on the Canon and the Feudal Law*, emphasizes that "it seems very manifest from the S[tamp] A[ct] itself, that a design is form'd . . . to introduce the inequalities and dependencies of the feudal system, by taking from the poorer sort of people all their little subsistence, and conferring it on a set of stamp officers, distributors and their deputies."<sup>93</sup>

To Adams, the Stamp Act was nothing less than an effort to introduce feudal political society, which was based on taxes and incidents on land conveyances, into America. Adams also emphasized the impact the Act would have on the broader colonial economy. At a Braintree town meeting in 1765, he remarked that:

the duties are so numerous and so high and the *embarrassments to Business* in this infant Sparcely Settled Country so great that it would be totally impossible for the people to Subsist under it even if we had no Controversy at[] all about the Right and authority of imposing it Considering the present Scarcity of money.<sup>94</sup>

To Adams, the Stamp Act

would *dreign the Country of Cash, Strip multitudes of the Poorer people of all their property and Reduce them to absolute beggary. And what the Consequence would be of so Sudden a Shock and Such a Convulsive Change in the whole Course of our business and Subsistance, to the peace of the Province We tremble to consider.*<sup>95</sup>

American opponents of the Stamp Act and their radical Whig allies in Britain repeatedly argued that it was not only unconstitutional but that its very unconstitutionality threatened property rights that were absolutely necessary for economic prosperity. As Thomas Fitch, the elected governor of Connecticut explained, the Stamp Act made colonial "Liberties and Properties precarious," which could only have "that unhappy Effect of causing the Colonies to languish and decrease."<sup>96</sup> Fitch asked, "[W]hat Encouragement hath the Merchant to expose his Interest to Chances and

---

92. For the most prominent example in the current scholarship on institutions, see ACEMOGLU & ROBINSON, *supra* note 6.

93. John Adams, *A Dissertation on the Canon and the Feudal Law* (1765), in 1 PAPERS OF JOHN ADAMS 123, 128 (Robert J. Taylor ed., 1977).

94. John Adams, *Instructions Adopted by the Braintree Town Meeting* (Sept. 24, 1765), in 1 PAPERS OF JOHN ADAMS, *supra* note 93, at 137, 137 (emphasis added).

95. *Id.* at 138 (emphasis added).

96. THOMAS FITCH, REASONS WHY THE BRITISH COLONIES, IN AMERICA, SHOULD NOT BE CHARGED WITH INTERNAL TAXES, BY AUTHORITY OF PARLIAMENT; HUMBLY OFFERED, FOR CONSIDERATION, IN BEHALF OF THE COLONY OF CONNECTICUT 22 (New Haven, B. Mecom 1764).

Dangers, the Farmer, the Mechanic and the common Labourer to weary themselves in their fatiguing toilsome Employments,” if their property “may be taken from them, and in such Ways and Manner as they have heretofore been led to think are inconsistent with their essential Rights and Liberties?”<sup>97</sup> Secure property rights, the kind that came with colonial self-government, would, on the other hand, “tend to invigorate, enliven and encourage the People, and keep up in them a Spirit of Industry in all Kinds of Dealing and Business.”<sup>98</sup> Radical colonists were convinced that confidence in secure property rights was absolutely necessary for investment and productivity.

While those opposed to the Stamp Act worried that it threatened colonial property rights in general, they also expressed serious concern that it would undermine colonial legal institutions that adjudicated those rights. In an influential pamphlet, the Boston lawyer and Son of Liberty, James Otis, predicted that bail bonds would rise from fifteen shillings sterling a ream to 100 pounds, insurance policies would go from two pounds to 190, and probate fees would triple.<sup>99</sup> As described above, Daniel Dulany observed that the tax would “produce in each Colony, a greater or less sum, not in proportion to its wealth, but to the multiplicity of juridical forms, the quantity of vacant land, the frequency of transferring landed property, the extent of paper negotiations, the scarcity of money, and the number of debtors.”<sup>100</sup> For the Stamp Act’s staunchest opponents, it was a tax not only on the colonies, but also on their legal system. It threatened not only to price the poor and indebted out of the legal market, but also to make it more difficult and more expensive to adjudicate property rights.

In arguing against the Stamp Act, radicals on both sides of the Atlantic maintained that a tax that targeted legal transactions rather than wealth would prove particularly damaging to the colonies’ industrious middle class and those struggling to reach the middle class. Otis, for example, argued, “The burden of the stamp act will certainly fall chiefly on the middling, more necessitous, and labouring people.”<sup>101</sup> Like other radicals, Otis based his argument on the fact that the Stamp Act would raise the cost of legal defenses, particularly those of debtors who had been sued for recovery of debts. Benjamin Franklin similarly told Parliament that:

---

97. *Id.* at 23.

98. *Id.* at 22.

99. JAMES OTIS, CONSIDERATIONS ON BEHALF OF THE COLONISTS. IN A LETTER TO A NOBLE LORD 33 (London, J. Almon 1765).

100. DULANY, *supra* note 3, at 24.

101. OTIS, *supra* note 99, at 32.

[t]he greatest part of the money must arise from law suits for the recovery of debts, and be paid by the lower sort of people, who were too poor easily to pay their debts. It is therefore a heavy tax on the poor, and a tax upon them for being poor.<sup>102</sup>

Indeed, he rejected the argument made by supporters of the Stamp Act that it would reduce the number of lawsuits in the colony, insisting that because the costs of litigation “all fall upon the debtor, and are to be paid by him,” the Stamp Act offered “no discouragement to the creditor to bring his action.”<sup>103</sup> Dulany was likewise convinced that most of the stamp revenue would “be drawn from the poorest individuals in the poorest colonies, from mortgagors, obligors, and defendants.”<sup>104</sup> Nor was this view limited to American opponents of the Act. The London Quaker John Fothergill, whose writings circulated on both sides of the Atlantic, argued that the northern colonies were overwhelmingly made up of “low and middling People, the sure Support of any Country” and that they would bear the brunt of the new taxes.<sup>105</sup> The Stamp Act’s inequity was problematic not only because it was unjust, harming the poor and the vulnerable, but also because it fell directly on the legal institutions on which laboring and mercantile people depended to earn their living. While the Stamp Act’s supporters saw it as a powerful means of regulating licentiousness and political opposition, its opponents insisted that it represented the end of a free press and a grievous tax on the circulation of information. Indeed, the Act was such a threat to publishers that on December 9, 1765, the *New York Gazette* reprinted the New Jersey legislature’s declaration that the law was an infringement on the liberty of the press.<sup>106</sup> The New York printer James Parker described its effect on the American printing industry as a “killing Frost” in an August 1765 letter.<sup>107</sup> The Stamp Act was particularly damaging to printers because it taxed not only newspapers and pamphlets, but also the advertisements that helped to defray the cost of printing. It brought the cost of a pamphlet, like Dulany’s *Considerations on the Propriety of Imposing Taxes in the British Colonies*,

---

102. THE EXAMINATION OF DOCTOR BENJAMIN FRANKLIN, BEFORE AN AUGUST ASSEMBLY, RELATING TO THE REPEAL OF THE STAMP-ACT, &C 10 (Hall & Sellers 1766).

103. *Id.*

104. DULANY, *supra* note 3, at 24.

105. JOHN FOTHERGILL, CONSIDERATIONS RELATIVE TO THE NORTH AMERICAN COLONIES 41 (London, Henry Kent 1765).

106. *Extracts of the Minutes of the Assembly, held at Burlington, New Jersey, November 30, 1765*, N.Y. GAZETTE, Dec. 9, 1765, at 2.

107. Letter from James Parker, Printer, to Benjamin Franklin, Colonial Agent for Pa. (Aug. 8, 1765), in 12 THE PAPERS OF BENJAMIN FRANKLIN 227, 230 (Leonard W. Labaree et al. eds. 1968) [hereinafter FRANKLIN PAPERS].

from two shillings, six pence, Maryland currency, to four shillings, three pence, an increase of more than 50 percent.<sup>108</sup> For that reason, it was clear to Benjamin Franklin that the Stamp Act would “affect the Printers more than anybody.”<sup>109</sup> He was convinced that the “Sterling Halfpenny Stamp on every Half sheet of a Newspaper, and Two shillings Sterling on every Advertisement” would likely eliminate half of all advertisements and newspapers along with them.<sup>110</sup> Such concerns were more than rhetorical. Franklin’s former partner David Hall reported losing 500 customers even after the repeal of the Stamp Act.<sup>111</sup> While the Act’s opponents were particularly alarmed by the severe damage that it threatened to both civil society and the printing industry, they also worried about its effects on the cost of information. Fothergill observed that prior to the Stamp Act, “an American could advertise the Loss of a Cow, a Horse, or a Hog, and sometimes things of less Value, at a little Expense.”<sup>112</sup> The Stamp Act spelled the end of all this easy and cheap circulation of information. “The Price of circulating Intelligence will become too expensive,” Fothergill warned, “and thus the poor American, who needs it most, has it least in his Power to recover his Substance, through this easy and effectual Means.”<sup>113</sup> The Quaker minister attacked the Stamp Act for raising the price of information that mattered in people’s everyday lives, but its effects on the much wider variety of useful and commercial information carried through newspapers was clear enough. And the effects threatened to reverberate far beyond the printing industry to the broader economy.

---

108. See DANIEL DULANY, CONSIDERATIONS ON THE PROPRIETY OF IMPOSING TAXES IN THE BRITISH COLONIES, FOR THE PURPOSE OF RAISING A REVENUE, BY ACT OF PARLIAMENT (Annapolis, Jonas Green 2d. ed. 1765). The pamphlet was fifty-five pages long and printed in octavo, which means each leaf of the pamphlet was one-eighth of a sheet of printing paper and thus produced sixteen pages. The Stamp Act taxed pamphlets that used more than “one whole sheet, and not exceeding six sheets in octavo, or in a lesser page,” as Dulany’s did, at a rate of “of one shilling for every sheet of any kind of paper which shall be contained in one printed copy thereof.” Duties in America (Stamp) Act, 5 Geo. 3, c. 12 (1765). This allows for a calculation of the additional cost imposed by the Stamp Act. Because the pamphlet was priced in Maryland Currency but the Stamp Act was paid in Sterling, the price increase was calculated by converting the duty, one shilling sterling, into Maryland currency, which was exchanged at a rate of 1.9 in 1765. For the conversion to Maryland currency, see MCCUSKER, *supra* note 36, at 199.

109. Letter from Benjamin Franklin, Colonial Agent for Pa., to David Hall, Printer and Publisher of Pa. Gazette (Feb. 14, 1765), in 12 FRANKLIN PAPERS, *supra* note 107, at 65, 65–66.

110. *Id.* at 66. See also Letter from David Hall, Printer and Publisher of the Pa. Gazette, to William Strahan, Printer and Publisher of London Chronicle (Sept. 19, 1765) (on file with American Philosophical Society, Phila., Pa., David Hall Papers, Mss.B.H142.2).

111. Letter from David Hall, Printer and Publisher of the Pa. Gazette, to Benjamin Franklin, Colonial Agent for Pa. (Oct. 14, 1765) (on file with American Philosophical Society, Phila., Pa., David Hall Papers, Mss.B.H142.2).

112. FOTHERGILL, *supra* note 105, at 21 (emphasis omitted).

113. *Id.*

Both supporters and opponents of the Stamp Act believed that their preferred policy outcomes were institutionally efficient. Advocates of the Stamp Act argued strongly that the colonial economy was dangerously under-regulated, suffering from excessive speculation and litigation. They were convinced that Britain's imperial state needed to raise new revenue in order to defray the costs of war and public debt and to provide a strong, guiding hand for colonial economic development. The Stamp Act, by providing money for a stronger imperial government in the colonies and by raising the cost of certain harmful economic activities, offered a path to a sustainable model of colonial growth. Indeed, many of the Stamp Act's supporters saw those reforms as protection against the collapse of both the British economy and the British Empire. To their opponents, this was not just foolhardy, but malevolent. The Stamp Act offered abundant evidence that Parliamentary taxation would serve the economic interests of those who were represented—British taxpayers—at the expense of those who were not—American colonists. It threatened the security of property and did so in a way that struck at the heart of the colonies' burgeoning commercial economy. Raising the cost of credit, of litigation, and of information was not only inequitable, it promised economic ruin.

#### CONCLUSION

The Stamp Act promised to raise the cost of legal and land transactions in the colonies and to reduce the ability of newspapers to challenge governmental authority. It was based on the notion, integral to authoritarian imperial thinking, that imperial subjects ought to accept the judgments of the metropolitan elite, even if such judgments meant that their economic development would be held back in the interest of the parent state. On the other hand, had the Stamp Act survived the opposition in the colonies, it seems likely that the effects of the Act would have stopped short of the total ruin predicted by its antagonists. Nevertheless, the colonies' fate would have been like those other dependent outposts of the British Empire in the nineteenth century, in which both capital and political life were dominated by metropolitan elites. Ultimately, much of this disagreement boiled down to contrasting visions of the relationship between institutions and economic growth. And yet, as sharp as the disagreement was, both its supporters and opponents agreed that the Stamp Act mattered for colonial institutions and that those institutions had profound implications for the economy of the colonies and the wider British Empire.

Political conflicts over institutional costs did not end with the Stamp Act's repeal or even with American independence; they became part of the legal culture of post-Revolutionary society. Shays's Rebellion, for example, focused on the fees and costs of legal institutions as well as on rates of taxation. In 1784, the Massachusetts legislature imposed a tax in specie to pay its share of the Revolutionary War debts. A liquidity crisis ensued that caused many creditors to call in their debts through debt litigation in the courthouses. The level of court fees imposed on debtors became a central issue.<sup>114</sup> The Massachusetts legislature lowered the cost of institutional services in a statute enacted in July 1786, which expressed the principle that it was the legislature's duty to provide "speedy" decisions "attended with as little expence to the citizens of this Commonwealth, as the nature of things will admit."<sup>115</sup> Nonetheless, in August 1786, Daniel Shays's rebellion in West Massachusetts suspended debt collection and the imposition of fees by forcibly closed several courthouses. In response to the public outrage, in November 1786, the General Court enacted "An Act for Rendering Processes in Law Less Expensive" that offered inexpensive debt litigation and placated its antagonists.<sup>116</sup>

The Stamp Act's impact on institutions, and the arguments that emerged in opposition to the Act, are important for our understanding of the Founding Era. They reveal that the Independence movement was concerned with far more than constitutional arguments about the structure of the empire and representation. The Stamp Act's opponents defended what even their antagonists acknowledged were essential institutional services. Their mobilization against the Stamp Act and Parliamentary taxation of Britain's North American colonies shows that the legitimacy of taxation itself rests on the ways in which it constitutes the relationship between the state and the economy. For colonial and British radicals opposing the Stamp Act, taxation could only be legitimate if it served the public good, respecting the ability of colonists to pay the tax as well as the legal institutions that shaped their economy and society. Indeed, the Stamp Act's assault on the colonial legal and economic institutions was conclusive proof that "taxation without representation" would have dire economic and social consequences. A government accountable to its constituents was the only way of assuring that both taxation and institutions served the public interests of the colonies rather than private interests in

---

114. See LEONARD L. RICHARDS, SHAYS'S REBELLION: THE AMERICAN REVOLUTION'S FINAL BATTLE 51-52 (2002); TAYLOR, *supra* note 32, at 129-30.

115. 1786-1787 Mass. Acts 55-57.

116. 1786-1787 Mass. Acts 105-11.

England. Indeed, it was that respect, far more than the actual rate of taxation, that mattered for colonial radicals, who willingly raised their own taxes to higher levels than they had ever known in defense of taxation with representation. The lasting legacy of the Founding Era was an aspiration for local institutions that catered to a broad constituency by defining, protecting, and publicizing property rights, by encouraging the extension of credit, and by offering services at a low cost.

## APPENDIX

| <i>Stamped Document</i>  | <i>Amount Charged (per sheet of stamped paper, unless otherwise noted)</i> |
|--|--|
| On all declarations, pleas, replications, rejoinders, demurrers, etc. in courts of law   | 3 pence  |
| Special bail and appearances, in the said courts   | 2 shillings  |
| Petitions, bills, answers, claims, pleas, replications, rejoinders, demurrers, etc. in courts of chancery or equity                                  | 1 shilling, 6 pence  |
| Copies of petitions, bills etc. in the said courts   | 3 pence  |
| Monitions, libels, answers, allegations, inventories, or renunciations etc. in courts exercising ecclesiastical jurisdiction                         | 1 shilling   |
| Copies of wills, monitions, etc. in the said courts  | 6 pence  |
| Donations, presentation, collations, institutions, registers, entries, testimonials, certificates of degrees   | 2 pounds   |
| Monitions, Libels, Claim, Answer, Allegations, Informations, Letters of Request, Executions, Renunciations, Inventories, etc. in courts of admiralty | 1 shilling   |
| Copies of any such monitions, libels, etc.   | 6 pence  |

---

---

|   |              |
|---|--------------|
| Appeals, writs of error and dower, ad quod damnum, certiorari, statute merchant, certificates, exemplifications of records or proceedings in any of the courts (except appeals, etc. from proceedings before a single justice)  | 10 shilling  |
| Writs of covenant, or entry, attachments etc. in any of the said courts   | 5 shillings  |
| Judgments, decrees, sentences, dismissals records of nisi prius or postea, in any of the courts   | 4 shillings  |
| Affidavits, common bail or appearance, interrogatory depositions, rules, orders, warrants of court, dedimus protestatem, capias, subpoenas, summonses, compulsory citations, commission, recognizance, or any other writ, process, or mandate, issuing out of, or returnable in any court (except warrants etc. relating to criminal matters) | 1 shilling   |
| Licenses, appointments, admissions of counselors, solicitors etc. to practice in any court  | £10          |
| Bills of lading, cockets, clearances  | 4 pence      |
| Letters of mark, commissions for private ships of war   | 20 shillings |
| Grants, appointments, admissions to public beneficial offices etc of 20 pounds per annum value, or upwards (army, navy, judges, and justices of peace excepted)   | 10 shillings |

---

---

---

|   |                     |
|---|---------------------|
| Grants of liberties, privileges, or franchises, under the seal of any of the colonies, or sign manual of any governor, etc. or any exemplifications | £6 per sheet        |
| Licenses for retailing spirituous liquors   | 20 shillings        |
| Licenses for retailing wine only  | £4                  |
| Licenses for retailing wine, where a license has been granted for retailing spirituous liquors  | £3                  |
| Probates of wills, letters of administration, or guardianship etc. (on the continent of North America and in Bermuda and the Bahamas)               | 5 shillings         |
| Probates, letters of administration or guardianship (in all other parts of America)   | 10 shillings        |
| Bonds for any sum not exceeding 10 pounds (on the continent of North America and in Bermuda and the Bahamas)  | 6 pence             |
| Bonds for any sum above £10 and not exceeding £20 within the said places  | 1 shilling          |
| Bonds for any sum above £20 and not exceeding £40 within the same places  | 1 shilling, 6 pence |
| Warrants for surveying or setting out any lands, not exceeding 100 acres  | 6 pence             |

---

---

---

|  |                      |
|--|----------------------|
| Warrants for surveying or setting out lands above 100 acres, and not exceeding 200   | 1 shilling           |
| Warrants for surveying or setting out any lands above 200 acres, and not exceeding 320   | 1 shilling, 6 pence  |
| Original grants or deeds, mesne conveyances etc. of lands not exceeding 100 acres (on the continent of North America and in Bermuda and the Bahamas) | 1 shilling, 6 pence  |
| Original grants etc. of lands above 100 acres, and not exceeding 200, within the said places   | 2 shillings          |
| Original grants etc. of lands above 200 acres, and not exceeding 320, and in proportion for every other 320 acres, in the said places                | 2 shillings, 6 pence |
| Original grants etc. of lands not exceeding 100 acres (in all other parts of America)  | 3 shillings          |
| Original grants etc. of lands above 100 acres, and not exceeding 200, within the same parts  | 4 shillings          |
| Original grants etc. of lands above 200 acres, and not exceeding 320, and in proportion for every other 320 acres, in the said parts                 | 5 shillings          |

---

---

---

---

|   |                      |
|---|----------------------|
| Grants, appoints, or admissions to any public beneficial office, not before charged, above £20 per annum value, or exemplifications thereof (army, navy, and justices of the peaces, excepted) (on the continent of North America and in Bermuda and the Bahamas)   | £4                   |
| Grants or admissions etc. to any such officers (in all other parts of America)  | £6                   |
| Indentures, leases, conveyances, contracts, stipulations, bills of sale, charter parties, protests, articles of apprenticeship or covenant (except for the hire of servants, and other matters before charged)  | 2 shillings, 6 pence |
| Warrants for auditing public accounts, beneficial warrants, orders, grants, certificates, under public seal, or sign manual of a governor etc. not before charged; passports, surrenders of offices, policies of assurance (warrants for the navy or army, and grants of offices under £20 per annum value, excepted) | 5 shillings          |
| Notarial acts, bonds, deeds, letters of attorney, procuration, mortgage, release, or obligatory instrument, not charged before  | 2 shillings, 3 pence |
| Registers, entries, or enrollments of grants, deeds etc. before charged   | 3 pence              |
| Registers, entries, or enrollments of grants, deeds etc. not before charged   | 2 shillings          |

---

|  |   |
|--|---|
| Duties payable upon cards  | 1 shilling per pack   |
| Duties payable upon dice   | 10 shillings per pair   |
| Pamphlets and newspapers of one half sheet or less   | 1 half penny per printed copy                                     |
| Pamphlets and newspapers greater than half but not exceeding a whole sheet   | 1 pence per printed copy  |
| Pamphlets and newspapers larger than 1 whole sheet and not exceeding 6, in octavo, or under; or not exceeding 12 sheets in quarto, of 20 sheets in folio | 1 shilling per sheet for one printed copy                         |
| For every advertisement in any gazette or other paper  | 2 shillings   |
| For every almanac etc. to serve for 1 year and printed on one side of 1 sheet only   | 2 pence   |
| For every other almanac etc. for 1 year  | 4 pence   |
| For every almanac to serve for several years   | Duties to the same amount respectively for each year              |
| On instruments, proceedings etc. aforesaid, engrossed, written, or printed, in any other than the English language                                       | Double the amount of the respective duties before charged thereon |
| On fees paid with clerks or apprentices learning a profession, trade, or employment, not exceeding £50   | 6 pence for every 20 shillings so paid                            |
| For sums exceeding £50   | 1 shilling for every 20 shillings exceeding £50                   |

