The Politics of Imperial Trade:
A study of the Colonial Debts Act of 1732

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Word count: 30000

ABSTRACT

This thesis explores the background, genesis, passage, and impact of the Colonial Debts Act of 1732. By turning land, real estate, and, crucially, slaves into assets in the recovery of colonial debts, the act bound all of the British colonies in North America and the West Indies under a common regulatory framework. Although this represented a sweeping change in the functioning of imperial trade, the treatment of the act has been unevenly served by historians. Previous studies have prioritised the act's long-term legal and economic effects in the British Atlantic World; however, hitherto, the political dimension has been eschewed or overlooked in favour of more contentious, yet comparatively less successful measures like the Molasses Act of 1733 and Sir Robert Walpole's failed excise scheme. This study necessarily tells the legislative story of the Colonial Debts Act in order to shed light on its wider political significance for colonial-metropolitan relations. While the act has been interpreted as a victory for metropolitan interests, a reassessment of the political dimension reveals that the colonial debt issue not only represented a moment of greater co-operation between the metropole and the colonies, but also a mutual recognition of a common problem amongst the colonies themselves. This paper argues that it took an issue as pervasive as slavery to bring forth this colonial-metropolitan alignment, and it goes on to suggest that the altered legal status of slaves from real to chattel property served to further entrench the distinction of empire from the mother country.

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LIST OF ABBREVIATIONS

BL	British Library
BLOU	Bodleian Library, Oxford University
C	Court of Chancery Records
CJ	Journals of the House of Commons
CO	Colonial Office Papers (Board of Trade)
CSP (Col)	Calendar of State Papers, Colonial Series (America and West Indies)
CUL	Cambridge University Library
HC	House of Commons
Hening, *Statutes at large*	*The statutes at large; being a collection of all the laws of Virginia,* ed. W.W. Hening (13 vols, Charlottesville, VA, 1969).
HL	House of Lords
Labaree, *Royal Instructions*	*Royal Instructions to British Colonial Governors, 1670-1776*, ed. L.W. Labaree (2 vols, London, 1935).
LCTP	Lord Commissioners of Trade and Plantations
LJ	Journals of the House of Lords
Stamp, *Journal of the Commissioners*	*Journal of the Commissioners for Trade and Plantations,* ed. A.E. Stamp (London, 1928).
Stock, *Proceedings*	*Proceedings and Debates of the British Parliaments Respecting North America,* ed. L.F. Stock (5 vols, Washington, D.C., 1937).
TNA	The National Archives
WMQ	The William and Mary Quarterly

ACKNOWLEDGEMENTS

Like the passage of the Colonial Debts Act, the completion of this thesis would not have been possible without the support and energy of a few exceptional people. To draw a further analogy, over the course of this enterprise I have acquired a substantial list of debts (of gratitude) that I should like to record here.

I am heavily indebted to Perry Gauci, who has served as the *ne plus ultra* of supervisors. I can still vividly remember meeting him, by chance, as a prospective postgraduate student on a visit to Oxford. He kindly gave me a tour of Lincoln College – the place I would later have the privilege of calling my home. I should have known that this incident would set in motion a fruitful supervisorship some months later. Without Perry's enthusiasm, recommendations, and tireless reading of my drafts, this project would not have come together. His myriad analogies for historical writing, particularly those of the musical variety, have made our meetings all the more enjoyable.

There are a number of individuals I wish to thank at University College London (the institution where I completed my undergraduate historical studies) for kindling my interest in eighteenth-century Britain and its empire, particularly Margot Finn, Julian Hoppit, and Stephen Conway – the man who introduced me to the subject. I look forward to returning to my alma mater on future occasions having recently been elected as a Postgraduate Member of the Royal Historical Society.

Equally as important as individuals are the institutions within which they operate. My research for this study would not have been collected without the dedication and assistance of countless librarians at the Parliamentary Archives, the National Archives, the British Library, the London Metropolitan Archives, the Institute of Historical Research and, of course, the Bodleian Library.

Studying in a city steeped in history like Oxford is a unique experience. I am especially grateful to the generosity of Lincoln College, whose various grants have helped to defray the costs incurred in my research. In addition to financial support, Lincoln's surroundings have made for the ideal setting to pursue graduate study, most notably the library housed in All Saints Church (a stunning feat of early eighteenth-century architecture) and the MCR. The College is also home to the Graduate Seminar in British History, 1680-1850. My regular attendance has brought me into contact with many interesting scholars and researchers,

whose work have enriched my understanding of wider historical themes and opened up new lines of inquiry.

Those closest to me in Oxford and beyond have tolerated my absorption in the world of the eighteenth-century with remarkably good humour and patience. My girlfriend, who I first encountered in the aforementioned library during Noughth week of Michaelmas term 2017, has encouraged me in all of my pursuits these last two years. As a newly qualified teacher of English Literature, her detail-oriented eye has been invaluable in the editing of this work. Any mistakes or omissions that remain are therefore my own.

Above all, I will always be grateful for the perennial support of my parents and my grandmother. It is to those three special people, who personify selflessness and sacrifice, that this study is dedicated. Regular trips to museums and places of historical significance during my childhood laid the foundation for a fascination with the past and my love of history.

June 2019

FOREWORD

This thesis was first submitted in June 2019. A year on, its relevance has been thrown into sharp relief by recent events. I therefore felt it appropriate to pen a foreword to place my research within the context of current debates about the United Kingdom's historical association with empire and slavery.

On 7 June 2020, the statue of Edward Colston was toppled and thrown into Bristol Harbour by a group of Black Lives Matter protesters following the death of George Floyd in Minneapolis. Colston was a merchant and one-time MP for Bristol who derived an enormous personal wealth from his involvement in the transatlantic slave trade. Indeed, he served as a board member and ultimately Deputy Governor of the Royal African Company, the company that once held a monopoly over the British slave trade. The statue that was hauled from its plinth was erected in 1895 to commemorate Colston's philanthropic work in Bristol. However, no mention was made – either upon the statute's unveiling or on the plaque that accompanied it – of Colston's role as a slave trader and how he amassed his fortune.

Although people may disagree about Colston's statue and the manner of its disposal in Bristol Harbour, the events have undoubtedly sparked a – much needed – national conversation about this country's history of slavery, and how we educate ourselves about it. Two days after the events in Bristol, a statue of Robert Milligan, a Scottish merchant and slave owner, was removed from West India Quay by the London Borough of Tower Hamlets. The Mayor of London subsequently called for a review of all of London's statues and street names, recommending that any with a connection to slavery be taken down. Other statues associated with British imperialism have also become the subject of public censure, most notably Oriel College, Oxford's statue of Cecil Rhodes, the man whom arguably the world's most prestigious scholarship is named after.

There are others better placed to discuss statues and how we memorialise the past, but nuance is certainly needed to avoid the debate descending into a culture war. An equally significant – and connected – debate though, is how we learn and think about this country's imperial history and the legacy of slavery. The events of the last few weeks have revealed the extent of glaring lacunae in our national historical education. Figures like Edward Colston and Robert Milligan have hitherto been able to remain stood on their plinths without

many of us having the slightest inkling of why they put were there and what they really did during their lives.

We need to do more to confront our colonial past, particularly by reforming our school curricula to teach students about the empire. It is a sorry truth that the first time I studied the British Empire in any depth was during my first year as an undergraduate at University College London. If the Department for Education's aim is truly to set a national history curriculum that helps students 'know and understand…how Britain has influenced and been influenced by the wider world', then we must be taught about our overseas empire and its domestic legacy – warts and all. As the United Kingdom charts a new course on the world stage after 47 years of membership of the European Union, now is the opportune moment to confront this vastly neglected area of British and global history.

Just possessing an understanding of inglorious acts committed during four centuries of British imperialism will not suffice though; we also need to understand how the empire worked at a political level, and the processes that sustained institutions like slavery. Merchants and traders like Edward Colston and Robert Milligan are ubiquitous in Britain's story of empire; however, not enough is actually understood about how they conducted their affairs. This thesis explores the intersection of law, commerce, and politics through the Colonial Debts Act of 1732: a piece of legislation that, *inter alia*, settled the legal status of slaves as chattel property throughout the British Empire for the purposes of debt recovery. This sweeping law was the product of lobbying efforts from a variety of mercantile groups, all united in their shared interest in greasing the wheels of the transatlantic slave trade.

It has never been more apposite, in the context of growing public interest in Britain's historic association with slavery, to forensically examine how different merchants and traders wielded political influence in Westminster to secure measures that, above all else, benefitted their respective commercial activities. As the recent Legacies of British Slave Ownership project at University College London has shown, slavery impinged on domestic Britain in manifold ways. The study of imperial lawmaking in the early eighteenth-century, by systematically tracing an Act of Parliament from its background and genesis to its passage and impact, can further enrich our understanding of the role slavery played in British imperialism. I hope that my research can serve as a meaningful contribution to the current debate about the United Kingdom's imperial legacy.

June 2020

INTRODUCTION

Only a small number of commercial measures in the seventeenth-century and eighteenth-century sought to, and succeeded in, binding the British North American colonies and West Indies together under a common regulatory framework: the Colonial Debts Act of 1732 sits among them. The Colonial Debts Act of 1732, or the Credit Act, as it has been styled by some historians, therefore makes for a particularly applicable optic through which to analyse the nature of imperial lawmaking in the early eighteenth-century British Empire.

Brought about principally by the lobbying activities of merchants in London and Bristol, the act dramatically altered the protections available to British creditors in the recovery of their debts in the colonies. Slaves, land, real estates and other forms of hereditaments thenceforth became legal assets in the satisfaction of those debts, representing a sweeping and unprecedented development in the functioning of imperial trade. This paper sets out to investigate this critical moment in the legislative history of empire – both from the perspective of the legislators in Westminster and the governed in the British Atlantic – in order to assess the significance of the 1730s in the development of relations between the British metropolitan state and the peripheral colonies.

This early period has received considerably less historiographical attention than the late eighteenth-century. Greater concentration has been given to decades that witnessed extended periods of conflict between the British Parliament and the colonies, most notably the 1760s and 1770s.[1] Accordingly, issues of lesser conflict have been treated as either circumstantial or even overlooked altogether. Previous research of mine sought to address this omission by considering the role of paper currency regulation in the coming of the American Revolution – an area of conflict that has long been overshadowed by the ubiquitous issue of parliamentary taxation. This paper is cast in a similar mould, seeking to uncover moments where, although the irascibility of colonial opposition towards parliamentary measures might be less visible, it can still be heard. That being said, the identification of conflict is neither the sole pursuit of this endeavour, nor the expected result of doing it; moments of co-operation and successful colonial-metropolitan alignment can be equally as revealing as moments of conflict. Here, I hope to provide a more nuanced

[1] Although there are many studies of the revolutionary period, see, for example, P.D.G. Thomas, *British Politics and the Stamp Act Crisis: The First Phase of the American Revolution, 1763-1767* (Oxford, 1975); *Britain and the American Revolution*, ed. H.T. Dickinson (London, 1998); R. Middlekauff, *The Glorious Cause: The American Revolution, 1763 – 1789* (Oxford, 2005).

account of relations between the metropole and the colonial periphery during a formative period in British imperial history.

My research into the Colonial Debts Act is situated within a longstanding scholarly discussion about the priority of colonial affairs under the governance of Prime Minister Sir Robert Walpole and his Secretary of State, the Duke of Newcastle. The term 'salutary neglect', first coined by Edmund Burke in an address to the House of Commons in 1775, has been used to characterise the administration of the colonies under the authority of these two figures.[2] James Henretta's study of the Duke of Newcastle was seminal in sparking a debate about whether salutary neglect – a supposed indifference towards colonial affairs – was unconscious or the deliberate design of government policy.[3] The salutary neglect model has perpetuated a conception that the Walpole government lacked a comprehensive programme of colonial administration. Despite the longevity of this conception, some historians have suggested that the early eighteenth-century has been overlooked in its significance.

David Armitage and Eliga Gould have both been instrumental in contributing to our understanding of the engagement with empire in the early eighteenth-century.[4] Armitage has traced the gradual emergence of an 'ideology' of empire that, by the 1740s, depicted itself in contradistinction to contemporary imperial rivals like the French and the Spanish. This ideology was founded upon a popular understanding of the British Empire as 'protestant, commercial, maritime and free'.[5] In his work on the popular support of the British government's colonial policies, Gould has illuminated the importance of empire within metropolitan political culture during the Whig period of political dominance.[6] Linda Colley, too, has suggested that an engagement with empire has its origins in the earlier decades, with an increasing amount of material being produced and consumed on the subject

[2] See, 'Speech on Conciliation with America' (1775), in E. Burke, *Pre-Revolutionary Writings*, ed. I. Harris (Cambridge, 1993), pp. 206-269.
[3] J.A. Henretta, *Salutary Neglect; Colonial Administration under the Duke of Newcastle* (Princeton, NJ, 1972).
[4] D. Armitage, *The Ideological Origins of the British Empire* (Cambridge, 2000); E.H. Gould, *The Persistence of Empire: British Political Culture in the Age of the American Revolution* (Chapel Hill, NC, 2000).
[5] Armitage, *The Ideological Origins*, p. 173; Jack Greene has also argued that the American colonies contributed towards the creation of a British image as a free people within a free empire based on commerce. See, J.P. Greene, 'Empire and Identity from the Glorious Revolution to the American Revolution', in *The Oxford History of the British Empire. Vol. 2: The Eighteenth Century*, ed. P.J. Marshall (Oxford, 1998), pp.208-230; J.P. Greene, *Evaluating empire and confronting colonialism in eighteenth-century Britain* (Cambridge, 2013).
[6] Gould, *The Persistence of Empire*, pp. 1-34.

of empire.[7] The 'new' imperial history school – of which Kathleen Wilson has played the central role – has examined myriad printed sources from pamphlets, treatises, and newspaper articles to poems, plays, and novels to reveal the ways in which empire permeated through domestic society.[8] Wilson has made the most persistent claims about a widespread public interest in empire throughout Hanoverian Britain.[9] The core theme of this literature has been to underline the growing metropolitan embrace of overseas empire from the 1730s, or as Peter Marshall has put it, the ways in which Britain developed into a 'nation defined by empire'.[10]

The focus of this paper is not about popular ideas of empire, but such considerations are undoubtedly an important feature of understanding the role played by London in the development of imperial governance. Although there was a conspicuous absence of government legislation directed towards the colonies during the early decades of the eighteenth-century, an investigation of the Colonial Debts Act and other contemporary measures indicates that efforts were made to formulate new programmes of colonial administration during the 1730s. Other inter-connected colonial issues manifested themselves in legislative processes in the same decade, such as the Molasses Act of 1733 and Walpole's failed excise scheme. The studies of Paul Langford and Jacob Price on the excise affair perceptively analyse the inner political and administrative dimension of a moment of parliamentary crisis.[11] Where Walpole's attempt to impose excise measures on wine and tobacco failed, and the Molasses Act faced staunch opposition in the North American colonies, the Colonial Debts Act can be seen as a comparative success story. By situating the act within a broader setting of metropolitan activity directed towards the colonies, we can conceptualise a more nuanced understanding of this particular period rather than relying on the unsatisfactory salutary neglect model. My research suggests that whilst

[7] L. Colley, *Britons: Forging the Nation, 1707-1837* (New Haven, CT, 1992).
[8] *A New Imperial History: Culture, Identity and Modernity in Britain and the Empire, 1660 – 1840*, ed. K. Wilson (Cambridge, 2004).
[9] See, K. Wilson, 'Empire of Virtue: The imperial project and Hanoverian culture c.1720-1785', in *An Imperial State at War: Britain from 1689 to 1815*, ed. L. Stone (London, 1994); K. Wilson, *The Sense of the People: Politics, Culture, and Imperialism in England, 1715-1785* (Cambridge, 1995); K. Wilson, *The Island Race: Englishness, Empire and Gender in the Eighteenth Century* (Abingdon, 2003).
[10] P.J. Marshall, *'A Free though Conquering People': Eighteenth-century Britain and its Empire* (London, 2013). For a challenge to the centrality of empire thesis, see, B. Harris, '"American Idols": Empire, War and the Middling Ranks in Mid-Eighteenth-Century Britain', *Past & Present*, 150/1 (1996), pp. 111-141.
[11] P. Langford, *The Excise Crisis: Society and Politics in the Age of Walpole* (Oxford, 1975); J.M. Price, 'The excise affair revisited: the administrative and colonial dimensions of a parliamentary crisis', in *England's Rise to Greatness, 1660-1763*, ed. S.B. Baxter (Berkeley, CA, 1983), pp. 257-321.

the tensions during the early eighteenth-century are far less combustible than later decades, what can be seen certainly constituted something more than neglect.

Despite the comprehensive nature of the legislation, a negligible amount of scholarship has been directly written about the Colonial Debts Act. Economic historians such as Richard Sheridan and James Rawley have fleetingly invoked the act as part of their explanation for the rise of the transatlantic slave trade in the eighteenth-century.[12] Other historians, writing some time ago, have analysed the act solely in terms of its relationship with Virginia. In an article published in 1906, St. George Leakin Sioussat tentatively suggested a connection between the Virginia Tobacco Inspection Act of 1730, the Colonial Debts Act, and the excise crisis.[13] In his PhD thesis completed in 1964, John Hemphill made references to the effects of the act on the Virginian commercial system.[14] However, hitherto, no one has treated the act as a completely independent subject of inquiry. Clare Priest has come the closest, having produced an insightful article in the *Harvard Law Review* about the legal history of land in the colonies and the incorporation of the act into American property law after the formal creation of the United States.[15] Although her legal historical approach provides useful contextual analysis, the weight of her study lies in the period after the passage of the legislation. Consequently, very little is actually understood about how the Colonial Debts Act came into being and its political development from a merchants' petition to an imperial statute.

In that vein, my research is situated within a growing field of historical scholarship that concerns colonial and metropolitan organisational structures in the administration of the eighteenth-century British Empire. Andrew Beaumont's recent study of the Earl of Halifax's premiership of the Board of Trade in the 1740s and 1750s provides a suitable point of departure.[16] By challenging the view that Britain's principal attitude was one of indifference and complacency in this period, Beaumont raises questions about the role of those directly charged with governing the colonies. This same principle is herein applied to

[12] See, R.B. Sheridan, *Sugar and Slavery: An Economic History of the British West Indies* (Barbados, 1974); J.A. Rawley, *London: Metropolis of the Slave Trade* (Columbia, MO, 2003); J.A. Rawley, *The Transatlantic Slave Trade: a history,* ed. J.A. Rawley and S.D. Behrendt (Lincoln, NE, 2005).
[13] St.G.L. Leakin, 'Virginia and the English Commercial System, 1730-1733', *The annual report of the American Historical Association*, 1/1 (1906), pp. 71-97.
[14] J.M. Hemphill, 'Virginia and the English Commercial System, 1689-1733' (Ph.D. thesis, Princeton University, 1964).
[15] C. Priest, 'Creating an American Property Law: Alienability and its Limits in American History', *Harvard Law Review*, 120/2 (2006), pp. 385-459.
[16] A.D.M. Beaumont, *Colonial America and the Earl of Halifax, 1748-1761* (Oxford, 2014).

the 1730s by focussing not only on the government in London, but also the governors and government bodies overseeing colonial affairs. At a broader level, Jack Greene's concept of 'negotiated authorities' between the imperial centre and the westward peripheries can be usefully applied to the development of transatlantic political entities.[17]

My working method seeks to build on the contributions of scholars interested in how lobbying groups influenced government policy, most notably Alison Olson. Her comprehensive survey of the representation of North American interests in London provides a model framework for examining how lobbying groups played a role in 'making the empire work'.[18] On the West Indian side, Perry Gauci, Andrew O'Shaughnessy, and Christopher Brown have all added considerably to our understanding of the early successes of the powerful West India lobby in this period.[19] Equally percipient, William Pettigrew's recent study of the Royal Africa Company has observed the ways in which individual slave traders used parliamentary sovereignty to break the monopoly on the slave trade in the early eighteenth-century.[20] My study of the Colonial Debts Act hopes to answer an important question about whether government regulation in the eighteenth-century was the result of policies generated by the executive, or the response to demands from interests beyond government. Its focus on an imperial statute can reveal how lobbying groups engaged with the political process, and the strategic means they used to secure legislative ends.

The nature of imperial legislation has been the subject of more recent scholarship. Published in 2017, Julian Hoppit's *Britain's Political Economies* has considered the relationship between Parliament and the development of economic life in Britain throughout the long eighteenth-century.[21] Through several hundred case studies of statutes related to economic activity, Hoppit has made general observations about how specific economic interests used legislative authority to secure regulatory advantages. Although noting certain

[17] J.P. Greene, *Negotiated Authorities: essays in colonial, political and constitutional history* (Charlottesville, VA, 1994).
[18] A.G. Olson, *Making the Empire Work: London and American Interest Groups, 1690-1790* (Cambridge, MA, 1992).
[19] A.J. O'Shaughnessy, 'The Formation of a Commercial Lobby: The West India Interest, British Colonial Policy and the American Revolution', *The Historical Journal*, 40/1 (1997), pp. 71-95; C.L. Brown, 'The Politics of Slavery', in *The British Atlantic World*, *1500-1800* ed. D. Armitage and M. Braddick (Basingstoke, 2002), pp. 214-232; P. Gauci, 'Learning the Ropes of the Sand: The West India Lobby, 1714-60', in *Regulating the British Economy, 1660-1850*, ed. P. Gauci (Farnham, 2011).
[20] W.A. Pettigrew, *Freedom's Debt: the Royal African Company and the politics of the Atlantic slave trade, 1672-1752* (Chapel Hill, NA, 2013).
[21] J. Hoppit, *Britain's Political Economies: Parliament and Economic Life, 1660 – 1800* (Cambridge, 2017); For a recent analysis of legislation generated in the colonies themselves, see, A. Graham, 'Legislatures, Legislation and Legislating in the British Atlantic, 1692-1800', *Parliamentary History*, 37/3 (2018).

imperial measures, Hoppit's real locus of study was economic legislation in metropolitan Britain. By looking at an Act of Parliament that affected both the British North American colonies and the West Indies, my examination of the Colonial Debts Act is therefore placed within the broader historiography of the British Atlantic world. The 'Atlantic world' – as a regional space within a broader imperial setting – has been conceptualised in the work of Bernard Bailyn, David Armitage, and Michael Braddick.[22] Making use of these approaches, Daniel Hulsebosch and Mary Sarah Bilder have explored the constitutional dimension of evolving legal cultures in the British colonial world.[23] Given how the Colonial Debts Act bound together all of British North American and West Indies colonies together, my research lends itself to a similarly expansive Atlantic focus.

The pan-colonial nature of the act makes for an especially interesting case study to analyse eighteenth-century imperial lawmaking. Existing models like 'mercantilism' and the 'fiscal-military state' already exist for explaining how political power was wielded to influence imperial economic developments.[24] However, these models insufficiently capture the full richness of how the empire worked during this period. Through critical engagement with the Colonial Debts Act, this paper argues that the British metropolitan state played a more decisive role in regulating colonial affairs in the 1730s than has hitherto been recognised. It did so neither out of political expediency, nor ministerial initiative, but through a concerted effort by forces inside and outside of Parliament, and, in turn, within the colonies themselves. In terms of structure and organisation, this paper adopts a chronological approach in order to tell the act's political story through a moving picture of four distinct phases, from its background and genesis to its passage and impact.

The background section delineates the contours of debt recovery practices in England and the British colonial world from the seventeenth-century to 1732, placing particular emphasis on the slave-driven, plantation-based economies of Virginia, Maryland, South

[22] *The British Atlantic World*, ed. D. Armitage and M. Braddick (Basingstoke, 2002); B. Bailyn, *Atlantic History: Concepts and Contours* (Cambridge, MA, 2005); *Atlantic History: A Critical Appraisal*, J.P. Greene and P.D. Morgan (Oxford, 2008).
[23] D.J. Hulsebosch, *Constituting Empire: New York and the transformation of constitutionalism in the Atlantic world, 1664-1830* (Chapel Hill, NC, 2005); M.S. Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA, 2008).
[24] J. Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (Cambridge, MA, 1990); S. Pincus, 'Rethinking mercantilism: political economy, the British Empire, and the Atlantic World in the seventeenth and eighteenth centuries,' *WMQ*, 69/1 (2012), pp. 3-34; *The British Fiscal-Military States, 1660-c.1783,* ed. A. Graham and P. Walsh (London, 2016).

Carolina, and Jamaica.[25] Virginia and Maryland are discussed in relation to one another, rather than separately, as their legal systems developed in parallel with the rise of tobacco cultivation in the Chesapeake region. Although the bespoke legal cultures of other colonies are acknowledged, the four aforementioned colonies are selected because of the relationship they bore to the slave trade – something that all of the mercantile lobbying groups in London and Bristol were involved in, one way or another, directly or indirectly. In order to understand the syncopation of colonial legal cultures, a variety of statutes relating to debts are analysed alongside a comprehensive body of secondary literature with specialist focus on particular colonies.[26] Whilst the concentration of this paper remains the political story of the Colonial Debts Act, these preliminary observations are needed to understand the significance of why a single law was instituted to regulate debt recovery practices in all of Britain's overseas possessions.

The genesis section looks to identify why there was a perceived need for parliamentary regulation in the late 1720s and early 1730s, how this need was articulated, and by whom. It makes use of a variety of official state papers and the journals of the Board of Trade. By tracing references to colonial debts in these volumes, we can determine the moment when merchants first articulated grievances about debt recovery, and which individuals, in particular, were involved in the process of seeking regulatory advantage. The principal mercantile lobbyists included: Micajah Perry, a tobacco trader and the MP for the City of London; Humphrey Morice, a slave trader, an MP, and the former Governor of the Bank of England; and Richard Harris, a prominent slave trader and political spokesman. They each had different colonial interests, whether in the tobacco trade or the sugar trade; however, the issue that connected them to each other was the transatlantic slave trade. A number of secondary studies have helpfully placed these individuals within a broader commercial context. In his extensive study of the Atlantic tobacco trade, Jacob Price came across the Perry family and subsequently produced a rich biography of Perry and Lane, arguably the most important London firm trading to the Chesapeake region in the early eighteenth-century.[27] Analogously, James Rawley and William Pettigrew have written about the

[25] In outlining the existing debt laws in England, the background section draws primarily on, W. Blackstone, *Commentaries on the Laws of England*, (4 vols, London, 1765-1770); J.H. Baker, *An Introduction to English Legal History* (4th ed., London, 2002).
[26] The selected works are too voluminous to list but they support my analysis of bespoke legal-cultural practices in North America and the West Indies.
[27] J.M. Price, *Perry of London: a family and a firm on the seaborne frontier, 1615-1753* (Cambridge, MA, 1992).

enterprising activities of Humphrey Morice and Richard Harris over the same period.[28] Although the success of slavery proved the necessary variable in the advance of their common cause, the unique experiences and skills of these merchants merit considerable exploration in order to understand how they successfully worked together to facilitate the passage of pan-colonial legislation.

The passage section carefully follows the legislative course of the Colonial Debts Act from the merchants' petition in August 1731 to the enactment of the act in April 1732. The political story is told using two principal source bases: the official papers of the Board of Trade, and the journals of the House of Commons and the House of Lords. Leonard Labaree's *Royal Instructions* also contain valuable correspondence sent to and from governors tasked with the administration of the colonies. Although we know that the merchants succeeded in securing the regulatory advantage they sought after, it is important to consider how far their original demands were consummated in the final version of the bill. An essential document in this analysis, therefore, is the Public Act of 1732, formally titled 'An Act for the more easy Recovery of Debts in His Majesty's Plantations and Colonies in America'.[29] A detailed analysis of the legislation itself is necessary to understand how sectional interests shaped its development, and to recognise the significance of the procedural and substantive legal mechanisms that it established.

The impact section explores the immediate political reaction in the colonies after the enforcement of Colonial Debts Act. By analysing references to the act in colonial correspondence from pamphlet literature and journals to minutes of councils and assemblies, it makes reasoned inferences about the extent of opposition to the new measure. A survey of private and public correspondence, as well as a study of later debt laws passed in the colonies reveals that, unlike other contemporary measures such as the Molasses Act of 1733, acceptance and compliance were common features of colonial conduct. Such acquiescence underscores the significance of the conjuncture of the Colonial Debts Act in the development of empire. An analysis of any piece of legislation though would be incomplete without looking a little distance ahead. This final section, therefore, is positioned

[28] J.A. Rawley, 'Foremost Slave Merchant of His Time,' in *De La Traite a L'Esclavage*, ed. S. Daget (Nantes, 1988); J.A. Rawley, 'Richard Harris: Slave Trader Spokesman', *Albion: A Quarterly Journal Concerned with British Studies*, 23/3 (1991), pp. 439-458; Pettigrew, *Freedom's Debt*.
[29] 5 George II, c.27, 'An Act for more easy Recovery of Debts in His Majesty's Plantations and Colonies in America', HL/PO/PU/1/1731/5G2n10.

to analyse the longer-term political significance of the Colonial Debts Act on the nature of colonial-metropolitan relations.

I. BACKGROUND

A. The use and growth of credit in Britain and the colonies

The governance of the early eighteenth-century British Empire took place within the context of a distinct period in British political history, both by virtue of the changing hand of monarchical power from the Stuarts to the Georgians, and the ascendancy of the Whigs in Westminster. The period between the accession of George I in 1714 and the Anglo-Spanish War of Jenkins' War in 1739 – part of the wider conflict of the War of the Austrian Succession – has been treated favourably by historians with respect to the functioning of colonial-metropolitan relations.[30] Indeed, it has been characterised as a time of 'peace and prosperity, of social and economic integration of [an] Atlantic Empire of interdependent economies, of shared tastes for British consumer goods, and of a sense of Imperial community'.[31]

The immediate post-1713 period was an especially buoyant one for British trade and commerce, not least because Britain was not engaged in any major land or naval conflict. One contributory factor to economic growth was the lucrative *asiento* contract issued by the Spanish Crown, which gave British slave traders permission to sell slaves in Spanish America.[32] This right was granted to the British as part of the terms of the Treaty of Utrecht in 1713 – the peace treaty that ended the War of the Spanish Succession. Ostensibly, a major catalyst in the instigation of the 1739 Anglo-Spanish War of Jenkins' Ear was a reactionary impulse to ensure that the Spanish would not renege on their promise. Nicholas Rogers has argued that merchants involved in the slave trade used their influence, both in and out of Parliament, to press for pre-emptive aggression against the Spanish to protect British trading interests in the West Indies.[33]

Early eighteenth-century politics carried a general acceptance that the elected colonial assemblies had a necessary role to play in the formation of local legislation and taxation. During this period, however, Parliament started to become more visibly the arbiter of imperial affairs, making direct interventions in the colonies beyond the traditional limits of

[30] J. Olson, *The Historical Dictionary of the British Empire* (Westport, CT, 1996), pp. 1121-22.
[31] I.K. Steele, 'The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689-1784', in *The Oxford History of the British Empire. Vol. 2: The Eighteenth Century*, ed. P.J. Marshall (Oxford, 1998), p. 114.
[32] R. Blackburn, *The Making of New World Slavery* (London, 1997), pp. 141-2.
[33] N. Rogers, *Whigs and Cities: Popular Politics in the Age of Walpole and Pitt* (Oxford, 1989), p. 404.

gubernatorial power.[34] A seminal piece of legislation, the Declaratory Act, passed in 1720, asserted the legislative authority of Parliament over the Irish Parliament in Dublin.[35] Whilst no such legislation was passed binding the colonies until 1766, the presence of the Declaratory Act on the statute book reinvigorated a doctrine of parliamentary supremacy not expressed since the abnormal Rump Parliament of 1649. Imperial administrators began to interpret this new authority as extending to the Atlantic colonies and, consequently, the early decades of the century witnessed a higher level of legislative output than the period that had preceded it. Between 1714 and 1739, Parliament passed twenty-nine acts relating to colonial trade, customs, and piracy – all of which applied to specific colonies, with the exception of the pan-colonial Colonial Debts Act.[36]

Among the core imperial issues debated in Parliament throughout the first British Empire, few featured more prominently than overseas trade.[37] Recent research by Julian Hoppit has revealed the extent of general economic legislative output with an imperial dimension over the long eighteenth-century. From 1660 to 1800, of the economic acts directed at the particular parts of the empire, an average of 68 percent of them related to external trade. [38] Over the same period, the figure stood slighter lower in North America at 63 percent, but considerably higher in the West Indies at 81 percent.[39] These figures suggest that central to parliamentary interest in the empire was the contribution made by enhanced imperial trade to Britain's political economy. The incremental development of an imperial legislative framework facilitated the emergence of what has been characterised as a 'cult of commerce' between the colonies and the metropole.[40] Indeed, a shared reverence of trade was beginning to emerge as colonial-metropolitan relations were strengthened in the early decades of the eighteenth-century.

[34] L.W. Labaree, *Royal Government in America: a study of the British colonial system before 1783* (New Haven, CT, 1930), p. 226. Gubernatorial connotes the administration of colonial governors, who were either appointed directly by the Crown or authorised to govern a proprietary colony.
[35] 6 George I, c.5., 'An Act for the better securing the dependency of the Kingdom of Ireland on the Crown of Great Britain (1720),' in Steele, 'The Anointed, the Appointed, and the Elected', pp. 115-116.
[36] Ibid.
[37] The first British Empire is considered to have ended with the American War of Independence and the subsequent Treaty of Paris in 1783, see, B. Simms, *Three Victories and a defeat: The Rise and Fall of the First British Empire* (London, 2007).
[38] Hoppit, *Britain's Political Economies*, p. 125.
[39] Ibid.
[40] This term is from, Colley, *Britons,* p. 56; See, also, N. Koehn, *The Power of Commerce: Economy and Governance in the First British Empire* (Ithaca, NY, 1994).

Deeply embedded within this early commercial culture was a mutual recognition of the importance of credit to facilitate imperial trade. Credit was an essential cog in the wheel of the imperial trading system and, by extension, the British economic model. The eighteenth-century British economy rested on an extensive network of credit, within which all demographic groups, from the landed gentry and merchants to shopkeepers and ordinary labourers, were greatly implicated.[41] Daniel Defoe recognised this in a pamphlet published in 1730, not long before the passage of the Colonial Debts Act. Defoe perceptively saw the lines of trade and credit that tied the domestic economy together, pointing out that smaller shopkeepers were supplied on credit by larger dealers, who, in turn, were supplied on credit by metropolitan 'Wholesale Men'. He wrote:

> These Wholesale Men in London are indeed the support of the whole Trade, they give Credit to the Country Tradesmen and even to the Merchants themselves; so that both Home Trade and Foreign Trade is in a great measure carried upon their Stocks'.[42]

A similar stratification of credit existed in the colonial context. John McCusker and Russell Menard have identified three types of credit in the eighteenth-century British imperial economy: international credit, book credit, and promissory notes.[43] On the one hand, larger colonial importers relied on credit from British suppliers. On the other hand, smaller colonial tradesmen, typically those in rural locations, received credit from larger importers in the port cities. Finally, consumers throughout the colonies received credit from all retailers.[44] For the purpose of this paper, a discussion of international credit extended by British suppliers to colonial merchants is the principal focus.

The access to metropolitan credit in Great Britain greatly facilitated colonial exchange and payments.[45] Most of this credit was transferred in the form of mercantile credit.[46] This form emerged in the seventeenth-century as the English answer to capital shortage and high interest rates. In a pamphlet published in 1668, Sir Josiah Child, a future Governor of the Britain East India Company, argued that the Dutch's comparative trading advantage lay in

[41] J. Innes, *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford, 2009), p. 228.
[42] D. Defoe, *A Brief State of the Inland or Home Trade of England* (London, 1730), pp. 21-22.
[43] *The Economy of British America, 1607 – 1789*, ed. J.J. McCusker and R. Menard (Chapel Hill, NC, 1985), pp. 80-82.
[44] Ibid.
[45] See, J.M. Price, *Capital and Credit in British Overseas Trade: the view from the Chesapeake, 1700-1776*, (Cambridge, MA, 1980).
[46] M. Egnal, *New World Economies: The Growth of the Thirteen Colonies and Early Canada* (Oxford, 1998), pp. 12-20.

the fact that the English had to pay 6 percent interest and the Dutch only 3 percent.[47] The English solution to this comparative trading disadvantage was a generalised system of easily available credit. British merchants shipped goods to merchants in the colonies on credit, often with terms of several months, or even a year, before demanding payment or charging interest.[48] Both the duration of credit and its rate of interest determined how long colonial merchants could extend credit to their own customers and the level of markup. Increasingly, colonial merchants sold their goods on commission, whereby those goods remained the property of the British merchant until they were sold. Afterwards, the colonial merchant remitted the money they had made, less their commission fee, to the British merchant. This system was symptomatic of the incipient interconnectedness of the colonial and domestic British economies, even before the turn of the eighteenth-century.

There were significant regional differences in the commercial relationships between colonial and British merchants. A particularly idiosyncratic system was found in Virginia – the colony that had been trading with the mother country longer than any other. Virginia's so-called 'consignment system' established a bespoke credit arrangement between planters and 'factors' – middlemen who received and sold goods on commission based on colonial demand for particular products.[49] Good relations with British merchants were important for commercial success because it offered both planters and factors access to the supplies of credit necessary to maintain their businesses.[50] Virginia, Maryland, and other southern colonies on the mainland could readily secure credit because they produced highly desirable cash crops. By contrast, colonial merchants in New England were unable to rely on credit to the same extent. With the need to fill their ships, leading merchants in Boston like Thomas Hancock, the uncle of John Hancock, are known to have smuggled and traded with other imperial powers in direct contravention of the imperial navigation system because they often lacked goods desired by British merchants.[51]

B. The recovery of debts under English law

Like any financial mechanism, the use of credit could only function properly where debts were honoured. Indebtedness and insolvency were common features of business life in the eighteenth-century. Julian Hoppit has comprehensively explored business failure over the

[47] J. Child, *Brief Observations concerning Trade and Interest of Money* (London, 1668), pp. 13-15.
[48] E.J. Perkins, *American Public Finance and Financial Services, 1700-1815 (*Columbus, OH, 1994), p. 65.
[49] R.P. Thomson, 'The Merchant in Virginia, 1700-1775' (Ph.D. thesis, University of Wisconsin, 1955), p. 28.
[50] Ibid, p. 211.
[51] W.T. Baxter, *The House of Hancock: Business in Boston, 1724-1775* (Cambridge, MA, 1945) pp. 46-47.

period with reference to England, distinguishing between indebtedness outside and within the law.[52] In the eighteenth-century, business failure dealt with outside the law rested on the debtor 'recognising [their] insolvency and convincing ... [their] creditors of it.[53] At the insolvency stage, creditors would typically allow a debtor to continue operating in the hope that they could be repaid once fortunes had changed. Indebtedness, therefore, could be handled unofficially by either a formalised agreement known as a 'letter of license', or by a creditor keeping a close eye on a debtor via a 'deed of inspection'.[54] In both cases, only when the creditor thought the debtor had failed would they close down the debtor's business and realise their assets. The most common way this was achieved was through assignments known as 'compositions', whereby a debtor's assets were assigned to one or more of the creditors who acted as trustees for them all.[55] They would proceed to collect the debtor's estate, sell it, and distribute the proceeds in proportion to the debts owed to various creditors.[56] In short, composition served as an unofficial bankruptcy proceeding: the administration of debts remained in the hands of the creditor, rather than a disinterested administrator.

Legal procedures regulating indebtedness in eighteenth-century England were important inasmuch as they were intended to sustain confidence in the system of credit.[57] The foundations of the legal process were laid down in the middle ages when the courts began to supply a service to creditors in the recovery of their debts. In Hanoverian England, any creditor who was owed 40 shillings or more could initiate the process.[58] The discretionary powers of a creditor over a debtor were considerable and the feature of many contemporary critics. Creditors could order debtors to attend a hearing of a lawsuit before the courts, either by a summons or by having them arrested and held to bail.[59] At the trial stage, if the debts were found to be justified then the court could proceed 'in execution' of the debtor, either against their property, which required a sheriff to seize their chattel; or against their body, which required them to be detained in prison.[60]

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[52] J. Hoppit, *Risk and failure in English business, 1700-1800* (Cambridge, 1987), pp. 29-41.
[53] Ibid, p. 29.
[54] Ibid.
[55] Ibid.
[56] B. Montagu, *A summary of the law of compositions with creditors* (London, 1823), p. 29.
[57] For the system of credit in England, see, for example, B.L. Anderson, 'Money and the Structure of Credit', *Business History*, 11/1 (1970), pp. 85-101; M. Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge, 2003).
[58] Innes, *Inferior Politics*, p. 229.
[59] Ibid.
[60] Ibid.

What distinguished the court process from unofficial debt proceedings like the composition system was, above all, costs. Creditors seeking to force the seizure of a debtor's assets suffered significant costs by having to obtain either a judgment in a common law court or a foreclosure decree in the Court of Chancery. Moreover, the Court of Chancery typically gave landed inheritance preferential treatment over the satisfaction of debts in its proceedings.[61] Claire Priest has demonstrated the ways in which legal restrictions were placed on a creditor's ability to seize land in the recovery of their debts. These restrictions served to 'stabilise the landed class by protecting real property holdings from the risk associated with accumulated unsecured debt'.[62] If credit was extended without security – the promise of the debtor to allow a levy against land – unsecured creditors faced the prospect that landowning debtors might die before repayment of their debts, in which case the only recourse was to realise the debtor's chattel property.

Unsecured creditors who had obtained judgments against debtors were limited to four 'writs of execution'. A brief summary of those writs is necessary to make later comparisons between English and colonial law. First, the writ of *fieri facias* gave a sheriff authority to seize the debtor's goods and chattels, sell them, and distribute the proceeds.[63] Second, the writ of *levari facias* gave a sheriff authority to sell the debtor's goods and chattels in line with *fieri facias*, but additionally gave the creditor a lien on the future earnings of the debtor's real property until the debt was satisfied.[64] Third, the writ of *elegit* gave a sheriff the authority to appraise a debtor's goods and chattels. If the debtor's chattel property failed to satisfy their debts then a writ of *elegit* granted the creditor a limited possessory interest in the debtor's real property for the requisite number of years before full repayment.[65] Fourth and finally, the writ of *capias ad satisfaciendum* gave a sheriff authority to seize the body of the debtor; however, the creditor could not seize the debtor's land while they were in prison. The purpose of this writ was to encourage the debtor's family to clear their debts allowing for their release. Notably, in each of the aforementioned writs, remedies were provided to creditors without comprising a landowner's freehold interest in their land and the inheritance of their heirs. This structure suggests that, in England, stability in real property ownership was upheld to procure value in land ownership. By contrast, property

[61] Priest, 'Creating an American Property Law', p. 388.
[62] Ibid.
[63] Baker, *An Introduction*, p.66; Blackstone, *Commentaries*, vol. 3, p. 417.
[64] Blackstone, *Commentaries*, vol. 3, pp. 417-418.
[65] Ibid, pp. 418-419.

status in the colonies was socially and legally distinguishable from England, and it would be the Colonial Debts Act that wholly removed traditional English protections of land.

C. General debt recovery practices in the colonies

With variegated methods for regulating the recovery of debts throughout the colonies, colonial merchants could not have extended credit to their customers without British merchants being prepared to wait for their payments. In the years preceding the Colonial Debts Act's passage the debt issue was debated in tandem with a whole host of colonial issues, particularly those related to trade such as the shortage of available specie, the impact of duties, and the depredations of other European powers in the Atlantic. Debt, therefore, formed part of a broader colonial-metropolitan assessment of the efficacy of trade. In metropolitan Britain, debt had become an increasingly centralised issue, one that ceased to be treated as a series of issues between disparate colonies using different remedial practices. The colonial debt issue generated significant interest from public figures in Westminster, their corresponding senior authorities in the colonies, and private traders with colonial interests. The most important question that needs to be asked though is: why then? Why did the debate around, and treatment of, the colonial debt issue become so centralised in the 1720s and 1730s? There are two principal contextual frameworks that provide an explanation to that question: place and people. The first of those contexts is treated in the remaining paragraphs of this background section.

The story of the Colonial Debts Act of 1732 must be located within a geographic setting; or in this case, a series of settings. By adopting a 'circum-Atlantic' approach, the development of debt law throughout the British North American colonies and West Indies can be explored through a comparative lens.[66] The charters and patents that bestowed legislative authority upon the colonies generally carried certain foundational provisos. These provisos either prohibited colonial legislatures from making laws that were deemed 'repugnant to' the laws of England or required that any laws passed were 'not contrary to but as near as conveniently may be made agreeable to the Laws, Statutes & Government of this Our Realm of England'.[67] With respect to English protections of real property from a creditor's claim, many colonies maintained adherence to this protection in their earliest

[66] The term 'circum-Atlantic' was first coined in, J. Roach, *Cities of the Dead: Circum-Atlantic Performance* (New York City, NY, 1996). The term has been applied to studies of the eighteenth-century British Empire, see, for example, D. Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785* (Cambridge, 1995); A.J. O'Shaughnessy, *An Empire Divided: The American Revolution and the British Caribbean* (Philadelphia, PA, 2000).
[67] Bilder, *The Transatlantic Constitution*, p. 40.

laws.[68] For example, in the accordance with the writ of *elegit*, a 1647 Connecticut law held that a creditor could take possession of a debtor's land only until their debts were recovered.[69] Additionally, New York's 1683 Charter of Liberties assured its inhabitants that lands would be characterised not as chattel property, but as 'an estate of inheritance', as held under English law.[70] The Charter held that the courts in New York had no authority to 'grant out any Execcon or other writt whereby any mans Land may be sold…without the owners Consent'.[71]

Some colonial legislatures, however, enacted laws that departed from English legal traditions. This was most distinguishable in the West Indies: the part of Britain's empire with the highest proportion of slaves to white settlers. Indeed, Richard Pares has described the nature of property law in the West Indies before 1732 as 'a whirl of divergence between islands and of tergiversation in the same island, out of which one example at least everything can be found'.[72] Barbados, as early as 1656, treated land and slaves as the legal equivalent to chattel property in the recovery of debts.[73] Thereafter, the Barbados legislature changed its direction on several occasions. In 1668, a law was passed that declared slaves to be real estate and made both slaves and land exempt from the claims of unsecured creditors.[74] Subsequently, a 1672 law ensured that although slaves would be treated as chattel, land would be protected from unsecured claims.[75] Further alterations to the law were made by the Barbados legislature throughout the late seventeenth-century. Contemporaneously on the mainland, a 1675 Massachusetts law permitted a creditor to seize an individual's freehold interest in land to satisfy an unsecured debt.[76] Massachusetts practices modified English law in two important respects: firstly, it allowed a creditor to force a seizure of debtor's interest in land; secondly, it gave unsecured creditors priority over heirs in the distribution of a deceased's real property. [77]

[68] Priest, 'Creating an American Property Law', p. 408.
[69] 'Code of Laws (1650)', in *Public Records of the Colony of Connecticut*, eds. C.J. Hoadly and J.H. Trumbull (Hartford, CT, 1850), vol 1. p. 509.
[70] *The Colonial Laws of New York*, eds. A.J. Northrup, W.H. Johnson, and C.Z. Lincoln (Albany, NY, 1896), vol. 1, p.111.
[71] Ibid.
[72] R. Pares, *Merchants and Planters* (Cambridge, 1960), p. 58.
[73] *Laws of Barbados*, (London, 1875), vol. 1. p. 37.
[74] Pares, *Merchants and Planters*, p. 58.
[75] Ibid.
[76] 'General Court Enactment (1675)', in *Records of the Governor and Company of the Massachusetts Bay in New England*, ed. N.B. Shurtleff (Boston, MA, 1854), vol. 5. p. 29.
[77] Priest, 'Creating an American Property Law', p. 415.

Other New England and Middle colonies enacted similarly divergent laws before 1732. A New Jersey law of 1682 made land liable for unsecured debts where a debtor's personal estate was insufficient to satisfy the debts.[78] In 1702, Connecticut went further and made lands completely liable for debts.[79] Whereas, New Hampshire adopted legislation in 1718 that transformed lands, but not houses, into assets in the recovery of debts.[80] These practices contrasted with a 1705 Pennsylvania statute, which instead established a minimum debt amount that a creditor could seize from a debtor's real property.[81] The ambiguity and volatility of these debt recovery practices illustrate the bespoke nature of each legal culture in the North American and West Indian colonies before the introduction of pan-colonial legislation.

Although the Colonial Debts Act bound all of British America and the British West Indies under a single common regulatory framework, there are particular locations that merit special attention in this study. Virginia, Maryland, South Carolina, and Jamaica are four colonies that not only operated under their own distinctive remedial regimes, but also became the subject of considerable discussion about debt in the years directly preceding the act. All of these colonies had been developing plantation-based economies from the cash crops they yielded: tobacco, rice, and sugar respectively. By the 1720s all three of these crops had become enumerated commodities under the Navigation Acts, which required that they be imported into Britain and taxed before re-exportation.[82] Tobacco was first enumerated by an Order in Council of 1621, and then officially by the Navigation Act of 1660 – the legislation that also enumerated sugar. It was an Act of Parliament in 1705 that enumerated rice and molasses.[83] The purpose of enumeration was nominally to support the metropolitan demand for these sought-after commodities, but really it sought to increase taxation revenue and keep profitable imperial goods from falling into the hands of Dutch and French traders. All four colonies attracted British mercantile activity from the value of the crops produced there, and their economies were supported by the widespread extension

[78] 'The Acts and Laws of the General Free Assembly (1682)', in *The Grants, Concessions, and Original Constitutions of the Province of New Jersey*, eds. A. Leaming and J. Spicer (Philadelphia, PA, 1881), pp. 442, 447.
[79] 'Executions Act', in Acts and *Laws of His Majesties Colony of Connecticut in New England* (Boston, MA, 1702), p. 32.
[80] 'An Act for Making of Lands and Tenements Liable to the Payment of Debts (1718)', in *Acts and Laws of His Majesty's Province of New Hampshire in New England* (Portsmouth, NH, 1761), p. 84.
[81] 'An Act for Taking Lands in Execution for Payment of Debts (1705)', in *Laws of the Commonwealth of Pennsylvania*, eds. J. Bioren and M. Carey (Philadelphia, PA, 1803), vol. 1, pp. 57-58.
[82] For a helpful survey of the navigation system, see, L. Sawers, 'The Navigation Acts revisited', *Economic History Review*, 45/2 (1992), pp. 262-284.
[83] A. Rabushka, *Taxation in Colonial America* (Princeton, NJ, 2008) p. 313.

of credit. Consequently, we need to look closely at the existing methods of debt recovery before 1732 in order to understand why those particular colonies became the target of lobbying by British merchants. What each colony had in common was the widespread use of slave labour, and a close investigation of their early legal cultures reveals the extent to which debates around the legal status of slaves ran in tandem with questions of creditor-debtor relations.

D. Existing methods of debt recovery in Virginia and Maryland

Virginia, the oldest of England's North American colonies, had continued to develop its substantive law relating to debt recovery since its establishment as a Crown colony in 1624. In an effort to attract settlers and capital, the Virginia legislature made a conscious effort to champion private property and facilitate the collection of debts. Analogously, Maryland, founded as a proprietary colony in 1632 by the Catholic George Calvert, recognised the need to expand into new land in the Chesapeake region. With the passage of the Navigation Act of 1660, it had become clear that Virginia's economy, like that of Maryland, depended upon the successful production and marketing of tobacco – a commodity that produced large tax revenues for the Crown and vast profits for British merchants. Virginia and Maryland both understood that it would not be possible to borrow unless creditors were confident that they would be repaid. As a consequence, the collection of debts soon became a staple feature of their legal systems.[84]

In the immediate aftermath of the Restoration, as William Nelson has maintained, the collection of debts in Virginia became the most important category of judicial jurisdiction.[85] Indeed, the creation of Virginia's first major debt laws in 1661 and 1663 provided the colony with an initial framework for debt recovery, though their coverage was geared towards protecting internal provincial creditors rather than international creditors. Before the presence of these laws on the colony's statute book, the main function of the law was to confer power on investors and moneylenders with informal regulations such as requiring public notice from anyone leaving the colony and identifying assets that might be used to repay debts.[86] The judiciary of Maryland also decided that they had to assist creditors because, as the colony's provincial court explained, a creditor could not be left 'remediless

[84] W.E. Nelson, 'Law and the Structure of Power in Colonial Virginia', *Valparaiso University Law Review*, 48/3 (2014), p. 758.
[85] W.E. Nelson, *The Common Law in Colonial America: The Chesapeake and New England, 1607-1660*, (Oxford, 2008), vol. 1, p. 122.
[86] Ibid, p. 123.

in the recovery of a just debt, which neither law nor equity can or will permit'.[87] Equally, Maryland felt it was vital that no debtor be excused from the payment of their debts, as 'any design of keeping creditors out of their debts would be to the great discouragement of trade in this Province'.[88]

While Virginia and Maryland's early laws established certain principles and expectations, debt collection proved to be more challenging in reality. By the 1670s, 'proceedings' to collect debts had become 'so tedious that it had[d] been to the ruin of many times both plaintiff and defendant and also [was] a great discouragement to any person to seek for his right at law'.[89] One procedure that facilitated debt collection in Virginia was confession of judgment – a system that had developed in Maryland from the 1650s.[90] This procedure involved a debtor appearing in court, acknowledging their debt, and the creditor collecting a judgment. The confession system did not provide for an effectual process of debt recovery as it relied on the premise that a debtor would actually show up.

By the end of the seventeenth-century, with the proliferation of tobacco production, a growing danger for a British business concentrating their efforts on the consignments of planters in Virginia and Maryland was the accumulation of mounting debt. There were, however, variations in the levels of consignment. Smaller planters in the Chesapeake focussed more on selling their produce locally then through the consignment system. It was estimated by William Byrd II that in 1700 around four or five hundred Virginia planters were consigned.[91] The middling planters tended to be given especially short credit expectations by the merchant houses in Britain, and their bills of exchange in the recovery of debts were often refused.[92] More importantly though, it was the larger planters, whose trade the creditor firms were especially keen on attracting, that required the highest amount of credit. Consequently, the largest planters in the Chesapeake were often seriously debt prone. An idea of the volume of credit that some British merchants extended can be found in the details of lawsuits. For example, John Lloyd, a successful planter in Richmond County, was involved in a lawsuit with Perry & Lane of London when his debts doubled

[87] '*Quigley v. Delaroche* [1676]', cited in Ibid, p. 122.
[88] '*England v. Slye* [1680/81]', cited in Ibid, p. 123..
[89] 'Information of the Governor [1673]', cited in Ibid.
[90] Ibid., p. 122.
[91] Price, *Perry of London*, p. 66.
[92] Ibid.

from approximately £1,000 in 1694 to £1,957 in 1715.[93]

The protections available to creditors were not much further advanced until 1705, when the Virginian House of Burgesses passed a law that outlined procedures under which sheriffs could seize either the 'goods and chattels' or 'the body' of a debtor to satisfy debts.[94] Incidentally, the statute of 1705 passed in the same year as a law that defined slaves in Virginia as property.[95] As a consequence, many creditors argued that slaves too should be liable in the satisfaction of their debts. The Virginia legislature vacillated between treating slaves as chattels, which rendered it easier for creditors to seize them in debt proceedings, and real property, which made their seizure more difficult.[96] At first, in 1705, the legislature declared slaves to be real estate, the legal equivalent of real property.[97] However, slave owners developed a clever system whereby they bequeathed their slaves with less than fee simple titles, which lowered their ownership status in real property terms and effectively prevented them from seizure.[98]

In response, the House of Burgesses changed its mind on the legal status of slaves in February 1728. It declared slaves to be chattels unless their owner took specific measures to annex them to a tract of land, whereby they passed down with the land.[99] The 1728 statute tried to resolve the tension between keeping slaves together on plantations and the remedial claims of creditors. It made clear that 'to bind the property of slaves, so that they may not be liable to the payment of debts, must lessen, and in process of time, may destroy the credit of the country.'[100] The statute thus gave executors and administrators the authority to sell slaves, but only when there was insufficient 'personal estates' to recover debts.[101] It would be this principle that would be turned into universal imperial law by Parliament four years later under the terms of the Colonial Debts Act of 1732.[102] It is worth noting here that the

[93] '*Lloyd v Perry* [1716]', TNA, C11/967, f. 14. See, also, 'Willis v Perry (1718)', TNA, C11/2287, f. 75. Around 1708, John Lloyd transferred 117 slaves and cattle to Micajah Perry Sr. and Francis Willis – another one of his creditors.
[94] Hening, *Statutes at large*, vol. 3, p. 385.
[95] Ibid., pp. 333-335.
[96] 'Freehold' is the common ownership of 'real property', which includes all possessory interests in land held for indeterminate periods of time, such as life estates. 'Chattel' property includes all moveable possessions, such as livestock, as well as possessory interests held in land for specifically determined period of time, such as leases.
[97] Hening, *Statutes at large*, vol. 4, pp. 222-223, 225.
[98] Nelson, 'Law and the Structure of Power in Colonial Virginia', p. 855.
[99] Ibid.
[100] Hening, *Statutes at large*, vol.4, pp. 225-226.
[101] Ibid., p. 224.
[102] Hening, *Statutes at large*, vol. 5, pp. 432-436.

solution to the colonial debt issue was to be found in the colonies themselves, which significantly changes our understanding of the act. It would later take a political process in the metropole to bring about a universal imperial statute based on the principle of Virginia's 1728 solution.

E. Existing methods of debt recovery in South Carolina

Slavery, too, defined South Carolina's early relationship with debt, but with some key digressions. Before recognition of slaves as chattel, the colony experimented with different legal methods. First settled in 1651, but not officially recognised until Restoration, South Carolina experienced a turbulent beginning to its status as a colony.[103] British power was not fully consummated until the end of the seventeenth-century, and it was a settler population from Barbados that shaped the colony's initial character. Between 1670 and 1690, about half of the white settlers who emigrated to South Carolina came from Barbados.[104] They mostly settled in Goose Creek, a settlement just outside of Charleston. The majority of these white settlers were from the small-planter and freemen classes. Historians have classified small planters as individuals owning at least ten acres of land but less than twenty slaves, and freemen as individuals owning less than ten acres.[105]

The Barbadians had a strong preference for African slave labour after the success of labour-intensive sugar production in Barbados. They were therefore responsible for introducing the institution of slavery into South Carolina. One of the major concerns for white settlers hoping to establish plantations in South Carolina was the threat of runaway slaves. This problem was intensified with news of slave rebellions taking place in Barbados, Jamaica, and the Leeward Islands between 1685 and 1688.[106] These troubling events were set against the Glorious Revolution in England and rebellious actions in North America, particularly in Massachusetts with popular uprisings in Boston.[107] In response to these threats, including fear of a French invasion, Governor Colleton circumvented the South Carolina Assembly and declared martial law in 1690.[108] This resulted in the colony breaking

[103] W.G. Edgar, *South Carolina: A History* (Colombo, SC, 1998), pp. 12-15.
[104] T.J. Little, 'The South Carolina Slave Laws Reconsidered, 1670-1700', *The South Carolina Historical Magazine*, 94/2 (1993), p. 88.
[105] J.P. Greene, 'Colonial South Carolina and the Caribbean Connection', *The South Carolina Historical Magazine*, 88/4 (1987), p. 197.
[106] R.S. Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713* (Chapel Hill, NC, 2000), pp. 256-261.
[107] Little, 'The South Carolina Slave Laws Reconsidered', p. 97.
[108] M.E. Sirmans, *Colonial South Carolina: A Political History, 1663-1763* (Chapel Hill, NC, 2012), pp. 45-49.

out into open insurrection and Colleton being overthrown.

Once the colony regained stability, the Goose Creek planters began to establish political influence. Consequently, a broad piece of slave-related legislation was passed on 7 February 1691.[109] Modelled on the slave codes of Barbados, this new law expressed an increasing apprehension among South Carolina slave owners. Given that all of the Barbadian laws rested on the assumption that slaves were property, the new law declared that 'as to payment of debts, [slaves] shall be deemed and taken as all other goods and chattels ... and all negroes and slaves shall be accounted as freehold in all other cases whatsoever, and descend accordingly'.[110] In other words, slaves were to be defined as freehold property and subjected to the laws of inheritance. The legal status of slaves as freehold property was a common feature of slavery in the British West Indies, but more rare in mainland North America.[111] As freehold property, slaves held a higher legal status than they did as chattel because they were attached to a landed estate like serfdom. Owners only held the right to slave's services rather than absolute ownership. Such a condition was unfounded in English law, and thus a uniquely colonial development.[112]

Although the new slave law of 1691 codified the freehold status of slaves in South Carolina, its core concern was not so much to facilitate creditor-debtor relations as to regularise the slavery system in light of the foregoing turbulence in the 1680s.[113] As Elsa Goveia has pointed out, what was of central importance to slave owners was that the law 'made clear that the slave was property and subject to police regulations'.[114] If South Carolina's first slave code in 1691 was mostly about control, then later laws were about the role of slavery in the colony's trade. After the return to stable conditions, the colony began to thrive with the introduction of rice in the 1690s. Bringing together cultivation techniques from Europe and Africa, it was found that South Carolina was an especially good place to produce rice.[115] With the demand for a large labour force to produce the crop, the South

[109] 'Act for the Better Ordering of Slaves (1691)', in *Statutes at large of South Carolina*, ed. D.J. McCord, vol. 2 (Columbia, SC, 1840), pp. 49-50.
[110] Ibid., p. 343.
[111] M.E. Sirmans, 'The Legal Status of the Slave in South Carolina, 1670-1740', *The Journal of Southern History*, 28/4 (1962), pp. 464-465.
[112] Blackstone, *Commentaries,* vol. 2, chs. 7, 24.
[113] Sirmans, 'The Legal Status of the Slave in South Carolina,', pp. 464-465.
[114] E. Goveia, *The West Indian slave laws in the Eighteenth Century* (Barbados, 1970), p. 82.
[115] H. David, *Trade, Politics, and Revolution: South Carolina and Britain's Atlantic Commerce, 1730-1790* (Columbia, SC, 2018), p. xv.

Carolina Assembly passed a comprehensive new slave bill in 1696.[116]

The law held that all negroes 'which at any time heretofore have been bought and Sold are hereby made and declared they and their Children Slaves to all Intents and purposes'.[117] Although a rather nebulous legal delimitation, the 1696 statute encouraged slave owners to begin treating their slaves as chattels, even if it did not explicitly codify them as such. The legal form used by South Carolinians in the sale of their slaves provides additional insight into this practice. Slaves were transferred from one owner to the other by way of indenture, whereas land was sold by lease.[118] There were, however, no further developments with respect to the legal status of slaves before 1732. What these early laws suggest is that slaves became chattel by custom rather than by law. With the proliferation of slave ownership, South Carolina's enslaved black population outnumbered the colony's white settlers by 1710 and rice cultivation soared.[119] However, British creditors investing in the colony still faced risks in the absence of any legal confirmation of slaves as chattel. Indeed, such relief would not be guaranteed until the Colonial Debts Act.

F. Existing methods of debt recovery in Jamaica

We turn our attention further south now to the Caribbean Sea to explore the manner with which debts were treated in Jamaica, the only West Indian colony targeted by the petitioners, and once again a colony that took a unique path in its treatment of debts, particularly with respect to the legal status of slaves. First captured from the Spanish in 1655, Jamaica was not formally in British possession until the Treaty of Madrid in 1670. By removing the pressing need for defence against foreign attacks, this settlement served as an incentive to begin planting. With further protections granted by the Crown in the support of the colony, supplies of slaves began to steadily rise in the late seventeenth-century.[120] As a result, the sugar monoculture and plantation-based system precipitously spread across the island, lessening its dependence on privateers for protection and funds.

How slave property and land should be treated was a question of paramount importance for Jamaica as it established the character of its economy and society. Unlike South

[116] P. Wood, *Black Majority: Negroes in South Carolina from 1670 through the Stono Rebellion* (New York City, NY, 1975), pp. 36-37.
[117] Governor Archdale's Laws ff. 60-66, cited in Sirmans, *Colonial South Carolina*, p. 65.
[118] Sirmans, 'The Legal Status of the Slave in South Carolina', p. 468.
[119] J.H. Tuten, *Lowcountry Time and Tide: The Fall of the South Carolina Rice Kingdom* (Columbia, SC, 2012), p. 12.
[120] For slave trade imports into Jamaica, see, Sheridan, *Sugar and Slavery*, pp. 502-503.

Carolina, there were no pre-existing ideas imported from elsewhere in the empire. Instead, Jamaicans resolved the issue by trying to mirror aspects of the English legal model. The island's first general debt law in 1681 prevented the seizure of land in a marshal's recovery proceedings.[121] In 1696, the Jamaican legislature passed a statute confirming the classification of slaves as real property by drawing on common law rules of inheritance.[122] Jamaicans preferred a system where slaves descended in value to their heirs, rather than being treated as chattel. This decision meant that slaves, as defined as real property, could be exempt from the claims of creditors. One explanation for why West Indian colonies favoured the retention of English inheritance laws is that the owners of profitable plantations could reduce short-term risk and allow landowners to establish longer-term enterprises. That said, as Claire Priest has shown, Jamaicans also recognised the importance of protecting creditors to maintain a healthy flow of credit. It appears that planters, particularly those that sat as Assembly members, were happy to facilitate the alienability of slaves when they needed credit.[123]

An important aspect of Jamaican inheritance laws was the role of escheat – a common law doctrine by which the real property of a deceased tenant without heirs was returned to the lord from whom the tenant held it.[124] In relation to the legal status of slaves, the classification of slaves as real estate was also important because it meant that slaves were escheatable. This system deviated from English practice in which only real estate classified as a form of land could be escheated.[125] This system offered a unique legal position for both British creditors and Jamaican planters. It meant that either slaves would be attached to land and seized, or they would descend to heirs along with the land that they worked.[126] Lee Wilson's analysis of extant escheat lists reveal that Jamaicans took great advantage of this system to escheat both slaves and land.[127] The lists show that in 1703 only one example of a slave escheat existed on the island. In 1709, however, three out of six escheats were claims

[121] 'Act for Establishing and Directing Marshal Proceedings (1681)', *Acts of Assembly, Passed in the Island of Jamaica: from 1681, to 1737, inclusive* (Kingston, 1787), vol. 1, pp. 86-90.
[122] 'An Act for the better Order and Government of Slaves (1696)', cited in L.B. Wilson, 'A "Manifest Violation" of the Rights of Englishmen: Rights Talk and the Law of Property in Early Eighteenth-Century Jamaica,' *Law and History Review*, 33/3 (2015) p. 553.
[123] Priest, 'Creating an American Property Law,' pp. 417-418.
[124] Wilson, 'A "Manifest Violation", pp. 548-549.
[125] Ibid., p. 554.
[126] Ibid., p. 568.
[127] Ibid.

to slaves; and by 1712, seventeen out of thirty escheats involved slave property.[128] These lists offer tangible evidence of how Jamaica transitioned from a society with slaves to a slave-based society, and they demonstrate how the law played its part in that process.

Although the escheat-based system offered flexibility in its treatment of slaves, as the colony grew in prosperity the Jamaican legislature established procedural obstacles that rendered debt recovery more challenging. In 1711, the common law courts of Jamaica were instructed not to 'intermeddle with or determine any actions whatsoever, where Titles of land or Negroes are concerned.'[129] Creditors, therefore, had to seek relief for their claims on the island's Supreme Court. Such a provision was both more costly and more difficult to bring remote planters before the court. Prompted by a complaint from merchants to Jamaica, in 1715, the Board of Trade instructed Lord Archibald Hamilton, the Governor of Jamaica, to persuade the Jamaican legislature to make land 'extendable' in the recovery of debts.[130] The instruction described the lack of relief as 'a great prejudice to creditors and discredit of trade'.[131] Despite this instruction, the Jamaican legislature continued to frustrate the claims of creditors. In 1728, they passed a legal tender law that obliged creditors 'to accept … the produce of the Island in payment of their debts'.[132] This law required creditors to accept the colony's goods – hardly their preferred choice of relief – at a specified rate that often fell below than the market rate. Thereafter, the position of creditors trading to Jamaica remained unchanged until 1732.

In the cases of Virginia, Maryland, South Carolina, and Jamaica, the centrality of slavery in their respective societies and systems of trade presented a distinct parallelism on the debt issue. A close analysis of existing colonial remedial practices before 1732 adds weight to William Pettigrew's core thesis that slavery was shaped by more than just economic forces. Indeed, the use of political and legal measures emerged as core contributors to the rise of the transatlantic trade across the British Atlantic world. The colonial laws outlined thus far reveal an important feature of imperial debt regulation before the passage of the Colonial Debts Act: the authority of lawmaking was vested in colonial

[128] 'A Dockett of the Judgements upon Escheats which were affirmed for Queen in May Grand Court', 1709, TNA, CO137/8, f. 252; 'An Account of Escheats with Observations thereupon', 22 Nov. 1712), TNA, CO137/10, ff. 94-98.
[129] 'An Act for Regulating Fees (1711)', Jamaica, *Acts of Assembly, 1681-1737*, vol. 1, pp. 86-90.
[130] 'Get Act Making Jamaica Lands Extendable (1715)', in Labaree, *Royal Instructions*, vol. 1, p. 339.
[131] Ibid.
[132] 'Letter from Governor Hunter to the Council of Trade and Plantations', 3 Aug. 1728, CSP (Col), vol. 36, 1728-29, no. 344.

legislatures and courts. Although the Board of Trade and the Privy Council modified some colonial laws, Parliament did not legislate in the arena of colonial debts until sufficient pressure was applied by lobbying forces. In this instance, widespread slavery in the colonies proved to be the new variable that necessitated parliamentary action, and, as the next section of this paper makes clear, it took the common force of experienced and skilled British merchants to secure legislative change in the metropole.

II. GENESIS

A. Micajah Perry: The colonial connection

With the existing debt laws now established within a set of principal geographical settings, we now examine the genesis of the Colonial Debts Act, commencing with the second of the aforementioned contextual frameworks: people. It has been widely accepted by historians that mercantile lobbying in 1731 was responsible for securing parliamentary legislation; however, no systematic exploration has been made into the leading individuals involved in this process, and the relation they had to each other. This section, therefore, adds a biographical dimension to the story of the act, exploring the commercial lives of three prominent merchants of their day: Micajah Perry, Humphrey Morice, and Richard Harris. It takes the story up to their collective petitioning of the King in August 1731 – the culmination of their co-ordinated efforts outside of Parliament. Through a close investigation of their lives, it is argued that the political success of the act would not have been possible without the experiences and skills that they each offered.

The central character in this story was Micajah Perry, a man uniquely positioned to influence colonial questions with strong colonial ties through his family's firm, Perry and Lane, which had been successfully trading in tobacco from the Chesapeake region since the early seventeenth-century. Born in 1694, the son of Richard Perry, a tobacco merchant, and Sarah Perry, herself the daughter of a merchant, Micajah hailed from a distinguished enterprising bloodline.[133] Perry's grandfather, Micaiah Perry, had been one of England's most successful tobacco merchants, and he served for a time as a colonial agent for Virginia. More significant for this study though, Micaiah was a masterful lobbyist, leading numerous political efforts in the early decades of the eighteenth-century, despite never holding public office. The issue of colonial debts was one of his greatest grievances about the state of imperial trade. Between 1716 and 1718, the Virginia merchants of London, led by Micaiah, obtained a Crown disallowance of a Virginia statute of 1663.[134] This law, cited in an earlier section, rendered it near impossible for a British creditor to use local courts in Virginia to collect from their debtor.[135]

[133] See, E. Donnan, 'An Eighteenth-Century English Merchant: Micajah Perry', *Journal of Economic and Business History*, 4/1 (1931), pp. 70-98.
[134] Price, *Perry of London*, p.63.
[135] Labaree, *Royal Instructions*, vol. 1, p. 338.

At the age of twenty-six, Micajah and his brother Philip inherited the family business after his father and grandfather died in 1720 and 1721 respectively.[136] When Robert Carter, a Virginia Councillor and later Governor of the colony, first learned of their passing, he described it is as 'a great loss in the Virginia trade' and wrote that 'the grandson [Micajah] hath not a head calculated to [get] through such a multitude of business with that dexterity that they have hitherto done'.[137] Carter's remarks set the tone for an uneasy relationship between him and Micajah, which would only get worse.

Upon taking control of the family business, Micajah made some immediate changes to its business model. Under Micaiah Perry's premiership, Perry and Lane used a wide variety of trading methods in the tobacco trade. As a commission house, it conducted business for both planters and merchants in the colonies, but it also traded as its own enterprise through stores and factors. It avoided unnecessary shipping risks and delays by chartering limited space on many different vessels.[138] After immediately changing the name to Perry & Co, Micajah simplified operations through the elimination of stores and factors, the reduction of correspondence with merchants, and the distribution of a limited number of the company's own ships instead of chartering partial freight on other vessels.[139] Much to Perry's frustration, the firm began to lose money because, without the aid of trustworthy agents along the Chesapeake's waterways, his ships' captains could be detained while searching for cargoes and later return to England with limited freight.

This loss of business was exacerbated by a general downturn in the tobacco trade. Jacob Price has estimated that the firm's commission earnings in 1731 stood at only 20 percent of those in 1697.[140] By 1732, the firm was importing only 36 percent of what it had been in 1719, and only 26 percent of what it had been in 1697.[141] As a consequence, Perry & Co. fell from first to fourth place in the London tobacco import trade. Between 1729 and 1731, tobacco merchants John Hyde, John Hanbury, and Joseph Adams all outcompeted Perry & Co. in terms of tobacco importation.[142] Falling tobacco prices were caused by production rising at a rate much faster than demand. Underlying this rise in production was

[136] Price, *Perry of London*, p.63.
[137] 'R. Carter to J. Carter', 3 Mar. 1721, *Letters of Robert Carter 1720-1727: The Commercial Interests of a Virginia Gentleman*, ed. L.B. Wright (San Marino, CA, 1940), pp. 84-85.
[138] Price, *Perry of London*, pp. 32-51
[139] Ibid. p. 65.
[140] Ibid, p. 79.
[141] Ibid.
[142] Tobacco trading statistics in CUL, Cholmondeley (Houghton) papers, MSS. 29/12, 29/23, f. 3.

the growth in the rural population of the Chesapeake over the period, both in terms of white settlers and black slaves. The higher prices of 1713-1725 had enabled planters to purchase more slaves, contributing to the problem of overproduction.[143]

Another explanation for Perry's business downturn was the manner with which he antagonised many of the larger planters and aggressively sued for sums he was owed. In need of stable cash flow, and in the absence of good business conditions, Perry began to take the issue of debt recovery as seriously as his grandfather had done. Moreover, he started to develop a curiosity in the trades of other colonies in the West Indies and the Carolinas – an interest that would help him broker a future friendship with Richard Harris, Humphrey Morice, and other slave traders.[144]

As his business declined throughout the 1720s (see Table 1), Perry was pulled in a very different direction – away from business and towards political pursuits. In June 1727, he became a liveryman and an 'assistant' of the Haberdashers' Company, whilst also announcing his candidacy for Parliament as a pro-ministerial candidate for the City of London. Perry was subsequently elected in November 1727, and this was soon followed by his selection as Master of the Haberdashers' Company in December and as Alderman for the Aldgate ward in February 1728.[145] Having firmly established his credentials as a representative of mercantile interest, Perry devoted his political efforts to commercial and colonial questions – none more powerfully championed than his support for creditors' relief in the colonies.

Table 1: The Tobacco Imports of Perry & Co., 1697-1732

Year	Hogsheads	Pounds Weight
1697	10,496	4,723,200 (est.)
1719	-	3,419,000 (est.)
1729	1,656	1,293,435
1730	1,598	1,191,906
1731	1,836	1,435,277
1732	1,506	1,219,683

Source: Price, *Perry of London*, p. 78.

[143] *US Bureau of the Census, Historical Statistics, Colonial Times to 1970* (Washington, D.C., 1975), vol. 2, pp. 1168-69; Virginia Slave-Trade Statistics 1698-1775, eds. W. Minchinton, C. King, and P. Waite (Richmond, VA, 1984).
[144] Price, *Perry of London*, p. 64.
[145] Ibid, p. 74.

B. Humphrey Morice: The seasoned trader and financier

The involvement of Humphrey Morice, the former Governor of the Bank of the England, in the pursuit of debt legislation added serious political and commercial clout to the merchants' cause. Born in 1671, Morice lost both his parents as a child and was raised by his cousin, Sir Nicholas Morice – a Tory politician from a long line of successful statesmen.[146] Humphrey inherited his father's sugar trading business at the age of eighteen, carrying out extensive trade with Holland, Africa, the West Indies, and North America.[147] By the early eighteenth-century, Morice had become deeply involved in the African trade. Between 1702 and 1712, he consigned cargoes to Africa with a total value of £5720.[148] This was a period in which the Royal African Company was facing difficulties having lost its monopoly in 1698.[149] In consequence, many private London merchants benefited from the loosening of the company's stranglehold on the slave trade.

For many years, Morice actively resisted the company's struggle to regain its monopoly and supported the side of free trade. When the Board of Trade undertook a major inquiry concerning the African trade in 1708, Morice and others offered a series of criticisms of the company. In 1709, at the height of the Africa trade dispute, Sir Nicholas Morice produced an assessment of the cause of the Royal African Company's downfall in a letter penned to Humphrey. Sir Nicholas wrote of 'the frauds and cheats of their factors … and that the planters in the several lands of America were without justice and common honesty, and never willingly paid a just debt, so that a companie came to great losses by their means'.[150] As this letter made clear, one of the key factors contributing to the difficulties of the company was the issue of recovering debts in the colonies, denoting once more the connection between slavery and debt.

By the 1710s, Morice had become the leader of the separate traders' parliamentary campaign, providing him with valuable experience in the art of commercial politics. The separate traders' political activities took many forms: petitioning, composing reports, and appearing before the Board of Trade. These tactics mirrored those later employed by the

[146] *The History of Parliament: The House of Commons, 1715-1754*, ed. R. Sedgwick (New York City, NY, 1970), vol. 2, p. 277.
[147] Rawley, 'Humphry Morice: foremost London slave merchant of his time', p 270.
[148] K.G. Davies, *The Royal African Company* (London, 1957), pp. 372-73.
[149] Sheridan, *Sugar and Slavery*, p. 102; For a detailed analysis of the Royal African Company's rise and fall, see, W. Pettigrew, *Freedom's Debt*.
[150] Cited in Pettigrew, *Freedom's Debt*, p. 16.

three leading merchants seeking a regulatory solution to the colonial debt question. Like Perry, Morice recognised the importance of a seat in Parliament to have access to the levers of state power in the advance of particular causes. In 1713, he was elected as the MP for Newport, where he remained until 1722.[151] Morice's parliamentary career was marked by a close friendship with Sir Robert Walpole, the man who became Prime Minister in 1721. Morice gained favourability with the ministry by regularly voting in support of ministerial business.

Outside of politics, Morice had huge success in the African trade in the 1720s. By 1726, he owned seven ships employed in the slave trade. These ships were capable of carrying 2500 slaves, which translated as 9.4 percent of London's total slave transport capacity.[152] Only Richard Harris, whose seven vessels carried 8.2% of the city's capacity, rivalled Morice's pre-eminence in the London slave trade. Morice's outspoken support of the expansion of trade earned him widespread support in the City of London. As a result, in 1727, he secured one of the most coveted political positions: Governor of the Bank of England. Morice had thereby risen to the zenith of commercial politics, exemplifying his unique status as both a trader and a politician. Despite this meteoric rise, Morice abused his position as Governor from 1727 to 1729, embezzling funds into a trust fund for his daughter.[153] This fall from grace proved difficult to take and, in order to forestall the discovery of his frauds, he committed suicide in November 1731.[154]

C. Richard Harris: The political spokesman

Equally as well-rehearsed in the art of commercial politics was Richard Harris: a man who never held political office but played a leading role in the development of the London slave trade. Little is known about Harris's ancestry, but it is noted that he was in St Kitts for a period of time during his youth in the 1690s.[155] There he grew to understand the perils associated with the West Indian trades. After returning to London in the early eighteenth-century and establishing himself as a merchant, he dispatched the second highest valuation

[151] *The History of Parliament: The House of Commons, 1690-1715*, eds. E. Cruickshanks, S. Handley, and D.W. Hayton (Cambridge, 2002).
[152] J.A. Rawley, 'Foremost Slave Merchant of His Time,' in *De La Traite a L'Esclavage*, ed. S. Daget (Nantes, 1988), p. 271.
[153] Pettigrew, *Freedom's Debt*, p. 159.
[154] Ibid.
[155] See Rawley, 'Richard Harris'.

of cargoes to Africa among London merchants from 1702 to 1712.[156] In this period, he made consignments to Africa with a total value of £25,121 – second only to Robert Heysham.[157]

The English slave trade grew prodigiously in the first two decades of the eighteenth-century. With the end to the Royal African Company's monopoly and the subsequent boom in international demand for slaves in the Americas, individual merchants were pouring into London to engage in the trade. James Rawley has highlighted the prolific role played by London in the transatlantic slave in this period compared with emerging rival cities like Bristol and Liverpool. Between 1696 and 1729, England accounted for nearly one-half of all slaves exported from West Africa, and London alone accounted for two-thirds of all slaves delivered by English ships.[158]

Encouraged by his experience of the slave trade in St Kitts, Harris developed an early interest in Jamaica. In 1709, concerned about wartime security in Jamaica, he advised the Board of Trade for the first time. He proposed, 'what seems absolutely necessary, especially for Jamaica, is to remove the French from among our settlements in America'.[159] Further appearances would lead to Harris securing the status as the Board's go-to-man in ascertaining the views of individual London traders. As a result, Harris became well accustomed to political process. Like Morice, his political activities focussed mainly on combatting the Royal African Company's tireless efforts to recover its monopoly and the increasing tendency of colonial legislatures to impose duties on the importation of slaves. Regular political activity gave Harris exposure to major commercial figures like Morice, Robert Heysham, and Francis Chamberlayne, all of which held a seat a Parliament and represented specific mercantile interests.

These men were drawn together in an effort to curtail the Royal African Company's pressure on Parliament in the 1720s. The company initiated several petitions in 1724 complaining that competition had driven up the price of slaves. In order to secure government support for a protectionist measure, the company threatened to abandon their forts in West Africa. The combined force of Harris, Morice, Chamberlayne, and a fellow London merchant, Randolph Knipe, all resisted the company in strong opinion and issued a

[156] Ibid, p. 439.
[157] K.G. Davies, *The Royal African Company* (London, 1957), pp. 372-73.
[158] Rawley, 'Richard Harris', p. 439.
[159] Ibid, p. 445.

collective representation. They argued that the separate traders were 'unanimously of [the] opinion that it will be for the service of the public and the benefit of the plantations and colonys in America that the trade to Africa should remaine free & open'.[160] Both Harris and Morice attended a hearing before the Board of Trade on this issue, and after Harris had read his observations in response to the company's memorial, the government decided to maintain free trade.[161] The experience of lobbying together had a lasting effect on Harris and Morice. By the late 1720s, they owned and operated ships together, explaining why they worked so readily together on the colonial debt issue.[162] They also became close personal contacts, regularly going foxhunting together at Morice's estate in Chiswick.[163]

Even contemporaries commended Harris for the political leadership he provided for the separate slave trading community. A pamphleteer in 1728 recognised the importance of his knowledge when he wrote, 'Mr Richard Harris, a Merchant…than whom no Body understands this [slave] trade better, or is more to be credited'.[164] Harris, a trader without any official political responsibility, wielded considerable influence in shaping imperial slave trading policy. He enjoyed the esteem of London merchants and the Board of Trade, and he testified frequently on policy issues. At his death in 1734, as James Rawley has concluded, Harris had 'exerted more influence over British slave trade policy than any other person in the first three decades of the eighteenth-century'.[165] Indeed, his numerous political achievements merit his title as 'an unacknowledged legislator for the transatlantic slave trade'.[166]

D. Why then? The mercantile demand for parliamentary regulation

As we have seen, colonial debts had long been a sensitive issue for British merchants with trading interests in North America and the West Indies. Having established who would play the leading role in pushing for regulation, we must now trace the development of a collective activism on the colonial debt issue. Although there were earlier efforts from particular merchants with interests in Jamaica and Virginia to improve the protections available to creditors, it is noticeable that, before the late 1720s, mercantile lobbies protested

[160] Cited in Ibid., pp. 448-449.
[161] Stamp, *Journals of the Commissioners*, 1726, p. 232.
[162] Rawley, *London: Metropolis of the Slave Trade*, pp. 80-81.
[163] Ibid.
[164] Cited in Rawley, 'Richard Harris', p. 441.
[165] Rawley, *London,* p. 43.
[166] Ibid.

independently of one another. The question that arises is why the late 1720s and early 1730s resulted in a co-ordinated petitioning effort from lobbying groups who typically focussed on specific commercial questions. The final paragraphs of this section seek to answer that question in the context of particular colonies and the contemporary economic conditions.

The starting point in explicating the development of a co-ordinated front is 1728 – the year that the Virginia legislature altered the legal status of slaves to make them chattel property. This change came about when William Gooch, the newly appointed Governor of Virginia in 1727, was instructed to ask the legislature for a law 'whereby the creditors of persons becoming bankrupt in Great Britain and having estates in our…[overseas] provinces' may collect their debts.[167] The Virginians initially thought such a change unnecessary given their pre-existing debt-related statute of 1705. The 1728 law responded directly to this older statute, transforming the legal status of slaves from a form of real property to chattel property. Although the recognition of slaves as tangible assets in the recovery of debts satisfied British merchants, the law also contained provisions that enabled planters to annex slaves to tracts of land, which prevented their seizure.[168]

While the tobacco merchants were in direct confrontation with the Virginia legislature, Humphrey Morice and Richard Harris were first raising the issue of colonial debts to the Board of Trade in connection with slave import duties. In a meeting on 10 June 1729, Morice and Harris were joined by other London merchants trading to the Leeward Islands, their solicitor John Sharpe, the agents for St. Kitts and Antigua, and Thomas Pitt, the Earl of Londonderry and late Governor of the Leeward islands. On behalf of the merchants, Sharpe articulated their opposition to two new duties in St. Kitts and Antigua. In support of their case, he made two main arguments. The first concerned the financial burden of the duties, 'whereby not only the trade and navigation of this kingdom, but also the property of the subject is greatly affected'.[169] The second related to the remedial concerns of British merchants trading to the Leeward islands, 'who [had] great debts due to them in those islands payable in sugar'.[170] Both of Sharpe's arguments rested on the connection between the impact of duties and the abilities of planters to repay their debts.

[167] Labaree, *Royal Instructions*, vol. 1, p. 338.
[168] Hening, *Statutes at large*, vol. 4, pp. 225-226.
[169] Stamp*, Journals of the Commissioners*, 1729, p. 43.
[170] Ibid.

Table 2: Number of slaves imported in Virginia, 1726-1732
(number of vessels in parenthesis)

Year	Number	
1726	2,548	(25)
1727	3,616	(23)
1728	211	(1)
1729	10	(3)
1730	286	(3)
1731	184	(8)
1732	1,287	(12)

Source: Virginia Slave-Trade Statistics, 1698-1775, pp. xix-xv.

The imposition of duties on slaves proved a universally unpopular development amongst Britain's slave trading communities. On 14 December 1730, the Society of Merchant Venturers in Bristol appointed a committee to consider the issue of slave duties in conjunction with merchants from London and Liverpool.[171] At the slave trading end of mercantile activity, this marked an important juncture in the mobilisation of manifold slave traders in opposition to colonial measures. The question of debt recovery was, at this stage, still viewed as an ancillary concern, lower in the order of precedence to the immediate economic impact of slave duties on wider trade.

In early 1731, the colonial debt issue notably resurfaced when the tobacco merchants of London, once again led by Perry, complained to the Board of Trade about the Virginia statute of 1705. This law had instituted time limits within which lawsuits had to be brought for sums related to book debts.[172] In addition to this procedural obstacle, the amorphous treatment of slave property in Virginia irked the merchants. Wider economic conditions certainly contributed to their interest in slavery, the labour force that the cultivation of tobacco relied upon. From 1728 to 1731, the period within which the colonial debt issue was being raised, tobacco prices were considerably lower than in previous years.[173] Over the same period, the level of slave imports into Virginia nosedived (see Table 2). Across the four years only 507 slaves were imported compared with 3,616 in 1727 alone. Although Perry was not directly involved in the slave trade to the same extent as Harris and Morice,

[171] *Politics and the Port of Bristol in the Eighteenth Century: The Petitions of the Society of Merchant Venturers*, *1698 – 1803*, ed. W.E. Minchinton (Bristol, 1963), p. 35.
[172] Price, *Perry of London*, p. 81.
[173] Price, *Perry of London*, p. 79.

such a remarkable fall in commercial activity would have been a great cause of concern about the health of the Virginian economy. Recognising the importance that slave traders placed on the smooth running of the transatlantic slave system, Perry saw an opportunity to resolve two issues: the legal status of slaves (in relation to debts) and the slave trade at large.

The number of slaves being imported into the West Indies also fell in the late 1720s, and slave traders from London, Bristol, and Liverpool attributed this to the imposition of crippling slave duties. Jamaica, in particular, suffered from a sharp fall in slave imports, though by no means to the same extent as Virginia (see Table 3). Slave imports into Jamaica fell from 11,703 in 1726 to 5,350 two years later, before rising to 10,079 in 1731. Perry therefore joined together with slave merchants from London like Morice and Harris, as well as those in Bristol, to complain about their respective concerns: the recovery of debts and the duties imposed on slaves. Initially though, the Bristol merchants acted independently in their lobbying efforts. On 23 February 1731, the Bristol merchant society agreed to address a petition to Parliament concerning the recovery of debts in the colonies. This petition noted that Bristol traders lie 'under very great difficultys in obtaining their debts', whilst also being subject to 'dutyes and impositions which are laid by Assemblies without any previous notice'.[174] It was presented to the House of Commons on the 2 March 1731 but did not receive any parliamentary attention, presumably because only a small number of merchants signed the petition; and those that did were unknown in Westminster.[175]

Table 3: Number of slaves imported in Jamaica, 1726-1732
(number of vessels in parenthesis)

Years	Imports	Exports	Number retained
1726	11,703	4,112	7,591
1727	3,876	1,555	2,321
1728	5,350	986	4,364
1729	10,499	4,820	5,679
1730	10,104	5,222	4,882
1731	10,079	5,708	4,371
1732	13,552	5,288	8,264

Source: Sheridan, *Sugar and Slavery*, pp. 501-502.

[174] *Politics and the Port of Bristol*, ed. W.E. Minchinton, p. 35.
[175] CJ, vol. XXI, p. 656; Stock, *Proceedings*, vol. 4, pp. 89-90.

As a consequence of persistent complaints from the Virginia merchants from January to May, the Crown took the decision to disallow the Virginia act of 1705 in June 1731 on the grounds that it was contrary to an English statute of 1624.[176] This disallowance was not without its problems though, as there were certain non-controversial clauses in the Virginia act of 1705 that were also disallowed. One of which included a procedure whereby a British creditor could prove their debts in Virginian courts by transmitting a certificate sworn before two magistrates in the place where they resided.[177] Frustrated by the subsequent failure of the Virginia legislature to re-enact this clause, which was both desirable and had been recommended by William Gooch, Perry gathered momentum in his efforts to garner mercantile support for a petition he intended to present to the Crown. As the descendent of an extraordinarily well-connected tobacco trader and lobbyist, Perry knew that petitioning the Crown would direct him to the Board of Trade: the political channel through which he, Morice, and Harris had previous dealings with.[178] Contrastingly, the petition of Bristol merchants most likely got caught up in the deluge of parliamentary business, though its presence would later signal the commonality of the problem to Parliament.

By 10 July 1731, news of the gathering of petition signatures had reached Virginia. 'I must confess I was somewhat startled … when I considered … how long and happily the British subjects have traded to America', wrote Governor William Gooch.[179] Gooch expressed great concern about the proposal of making lands in the colonies extendable in the recovery of debts.[180] The merchants' proposed remedial measure had undoubtedly evolved out of a perceived need to realise a colonial debtor's personal estate by preventing any attachments to land. British merchants believed that not only should land be extendable in the colonies, but also that slaves should be deemed chattel for the recovery of debts. This opinion was further reinforced by enforcement problems in colonies like South Carolina, which, according to Governor Johnson, had experienced four years without Courts of Justice 'for want of a jury' from 1727 to 1731.[181] Violence and misconduct was ubiquitous in South Carolina, particularly when it concerned the recovery of debts in country districts.

[176] Ibid.
[177] Ibid.
[178] A.G. Olson, 'The Virginia Merchants of London: A Study in Eighteenth Century Interest Group Politics', *The William and Mary Quarterly*, 40/3 (1983), pp. 363-388.
[179] Governor Gooch to the Council of Trade and Plantations', 10 July. 1731, CSP (Col), vol. 38, 1731, no. 289.
[180] CSP (Col), vol. 38, 1731, no. 289.
[181] 'Governor Johnson to the Council of Trade and Plantations', 14 Nov. 1731, CSP (Col), vol. 38, 1731, no. 488.

In a letter written in August 1731, Thomas Lowndes, a member of a well-connected South Carolinian family, described the quarrelsome nature of the colony. Outside of Charleston, when a marshal tried to issue a writ of *capias*, frequently slaves were 'let loose upon him' by their Masters, but 'all complaints [were] to no purpose, for legal proof [could] not be made that it was by their master's order'.[182]

Indeed, it was August 1731 where the culmination of mercantile efforts resulted in a series of petitioning tactics, with their final one proving to be the most successful. If Virginians were angry at the rumoured debt law proposals, slave traders were indignant about a new duty of fifteen shillings on the importation of slaves passed by the Jamaica Assembly in February 1731.[183] On 11 August 1731, various signatories of earlier petitions were requested to attend a meeting before the Board of Trade. Of the separate London, Bristol, and Liverpool petitioners, leading figures like Micajah Perry, Richard Harris, and John Scrope, the MP for Bristol were present in this meeting.[184] A day later, however, on 12 August 1731, the merchants played their trump card: a petition signed by twenty-nine merchants, and some several months in the making.

E. Merchants' petition of August 1731

The merchants' petition of August 1731, as it is henceforth titled, established a general set of common grievances about the challenges with the recovery of debts in the colonies. The merchants articulated their position based on two inhibitory aspects of imperial trade, as they saw it. The first concerned the insufficient remedies available for the recovery of debts owed to them by inhabitants in the colonies. They argued:

> That the Merchants Trading to the said Colonys and Plantations have great Sums of money due to them from the Inhabitants and as the laws now stand in some of the said Colonys and Plantations, your Majesty's subjects residing in Great Britain are left without any remedy for the recovery of their just Debts, or have such remedy only as is very partiall and precarious, whereby they are like to be considerable Sufferers in their property and are greatly discouraged in their Trade to America.[185]

[182] Thomas Lowndes to the Council of Trade and Plantations', 14 Dec. 1731, CSP (Col), vol. 38, 1731, no. 548.
[183] Rawley, 'Richard Harris', p. 452.
[184] Stamp, *Journal of the Commissioners*, 1731, p. 228.
[185] 'The humble Petition of severall Merchants of the City of London in behalf of themselves and others Trading His Majesty's Colonys and Plantations in America', Aug. 1731, TNA, CO323/9, f. 70.

The second concerned the rate of duties that the merchants were expected to pay on the exportation of their goods, or conversely upon importation into the colonies. It was this issue that connected the interests of metropolitan merchants trading to Virginia and Jamaica. It was maintained:

> That in severall of the said Colonys and Plantations greater and higher Dutys and Impositions are laid on the Ships of Goods belonging to your Petitioners and other persons residing in this Kingdom than are laid on the Goods and Ships of persons inhabiting the said Colonys and Plantations to the great discouragement of the navigation of Great Britain.[186]

Tobacco merchants like Perry needed assurance that debts could be satisfied in the context of falling tobacco prices and the business problems this caused. Conversely, for the slave traders operating in the West Indies, the duties imposed on the importation of slaves were eating into their profits. Individuals like Harris and Morice were committed to the maintenance of the free trade of slaves and combatting colonial slave duty laws. They clearly saw measures like the proposed colonial debt law as a means to encouraging the slave trade. The combined strength of these two lobbying groups, as the following section explores, proved immensely powerful in directing parliamentary attention towards the issue of colonial debt, and, more broadly, the functioning of imperial trade.

[186] TNA, CO323/9, f. 70.

III. PASSAGE

A. From petition to policy: August 1731 to November 1731

A forensic examination of the political process that brought about the Colonial Debts Act is a necessary procedure to study the nature of colonial-metropolitan relations at this particular time. The political dimension also allows us to view the dynamics at work between actors on both the metropolitan and the colonial side of imperial affairs. This section necessarily explores these developments by closely following the course of the legislation, from its origins as a petition sent to the King in August 1731, to its appearance on the statute book in April 1732. This nine-month period represented the final stage in a colonial-metropolitan tension on the debt recovery problem dating back decades, but most intensely from 1728.

The merchants' petition was received at Hampton Court on 12 August 1731 and immediately redirected by the Privy Council for consideration by the Board of Trade. Upon its receipt on 24 August 1731, the Plantation Office labelled the petition as a matter concerning 'great sums due … from the inhabitants [of the colonies]'.[187] The Board immediately wrote to Micajah Perry, Humphrey Morice, and Richard Harris, as the lead signatories of the petition, requesting that '[they], or any other of the Gentlemen concerned in the petition … will lay before the Board by [the] first opportunity an account as may be of the facts complain'd of'.[188] Specifically, the Board wanted to see evidence of the 'several acts and the Colonys…whereby the Plantations favour themselves in prejudice of this Kingdom'.[189] The Board set out the procedural timeline noting that after a thorough inspection of the evidence, and comparison with their own records, they would appoint a day for a hearing whereby the petitioners could seek their relief.

Prior to any response by the merchants, John Tymms, a factor merchant originally from Jamaica, composed a letter to Humphrey Morice about the 'uncertainties and difficulties … we must still labour under … to our unspeakable loss'.[190] Tymms had been a regular correspondent of Sir Nicholas Morice and Humphrey about matters related to the slave trade in Jamaica in the 1720s. Tymms' letter suggests that Humphrey Morice had earlier informed him – and no doubt others – of the intention of British merchants to put together a petition,

[187] 'At the Court at Hampton Court', 12 Aug. 1731, TNA, CO323/9, f. 69.
[188] 'Letter to Mr Morice, Mr Perry, and Mr Harris', 1 Sep. 1731, TNA, CO324/11, ff. 246-247.
[189] Ibid.
[190] 'Letter from Mr John Tymms Merchant in Jamaica (now in London) to Humphrey Morice', 13 Sep. 1731, TNA, CO323/9, f. 76.

not least because Tymms himself became a signatory when he moved to London. The letter clarified the desire of Jamaican merchants to see a law subjecting real and personal property to the claims of creditors. Tymms also noted that 'negroes are frequently driven away into the woods or mountains out of the Marschall's way'.[191] It is implied here that while a slave may have been a legitimate asset class in the minds of a local merchant, the ubiquitous problem of runaway slaves rendered them insufficient to be used alone in the recovery of debts. His final complaint about the fluctuating nature of colonial exchange rates mirrored the merchants' general economic grievances about the state of imperial trade. He argued that 'so long as any person or persons have it in their power to alter the value of our currency, no man can be sure to receive ten shillings in the pound for his debt'.[192] Tymms' call for more comprehensive remedial provisions would have certainly been used by Morice to provide the Board of Trade with evidence of a colonial acknowledgement of the debt problem.

In September 1731, the merchants prepared a detailed list of particular facts and instances in support of the grievances articulated in their petition. On 8 October 1731, this list was sent to the Board of Trade and signed by Micajah Perry, Humphrey Morice, Richard Harris, and five other key merchants trading from the City of London: John Maynard, William Dawkins, Sam Haswell, Sam Bradley, and William Hunt. These individuals were all directly involved in either the tobacco trade or the slave trade, though more the latter. In their reply, the petitioners claimed to be sending 'an account of as many facts as do at present occur to us, with some particular cases annexed to them as proofs of those Facts and References to some of the Laws of those Countries.'[193] These were deposited as public papers to the Board of Trade, which were received on 23 October 1731 and read on 16 November 1731. In support of their case, the merchants noted a number of instances in which creditors were unable to collect their debts in Jamaica, Virginia, and Maryland.

The particulars began by targeting Jamaica – a clear influence of the role played by Morice, Harris, and other slave traders in the organisation of the list. The merchants contested that 'lands and houses are not liable to pay debts in Jamaica and some other

[191] TNA, CO323/9, f. 76.
[192] TNA, CO323/9, f. 76; For colonial currency and exchange rates, see, L.V., Brock, 'The currency of the American colonies, 1700-1764: a study in colonial finance and imperial relations' (Ph.D. thesis, University of Virginia, 1941).
[193] 'Particular Facts and Instances of the Merchants trading to his Majesty's Colonies and Plantations in America in support of their Petition to his Majesty', 8 Oct. 1731, TNA, CO323/9, f. 74.

colonies, though by the Laws of England estates in the Plantations are deemed chattel'.[194] Indeed, this had been an on-going issue on the island of Jamaica, which began with a royal instruction trying to overturn a 1681 law in order to make land 'extendable in the recovery of debts.[195] Such a law was not forthcoming from the Jamaican Assembly, despite repeated instructions to different Governors. The petitioners recognised this defiance and cited a royal instruction that had been transmitted to Lord Archibald Hamilton, the former Governor of Jamaica, asking him 'to recommend to the Assembly the passing of a law for remedying that inconveniency…for the more easy recovery of debts'.[196] It is subsequently stated that Hamilton recommended a law to this effect on several occasions, as well as the Duke of Portland, another former Governor; and the present Governor, Robert Hunter.

The second particular concerned debt recovery in Virginia – the other major colony targeted by the merchants. The petitioners listed the 1705 law passed in Virginia, which 'declar[ed] how long judgments, bonds, and accounts shall be in force'.[197] They noted that, as part of the statute of 1705, there was a method prescribed for the recovery of debts, and although it contained certain clauses that received the disapprobation of the Crown, it was hoped that the methods for debt recovery would be re-enacted. The petitioners contended that the Virginia Assembly refused to do this, enclosing copies of Minutes of Council and Assembly from 1730 that were deposited at the Board of Trade. In relation to the Virginian remedial system, they attached two examples of early laws that attempted to regulate the process of debt recovery, but were designed – in their eyes – in a deliberately prohibitive manner. The first was an act of 1661 where 'the priority of the payment of debts is given to the creditors who are inhabitants of that Province [colonists in Virginia]'.[198] The second was an act of 1663 where debts owed to 'non-residents' were 'not pleadable, unless for goods imported'.[199] By citing these acts, the merchants hoped to stress the prejudiced manner with which colonial legislatures drew distinctions between creditors in the colonies and international creditors.

The list of particulars requested by the Board of Trade also afforded the merchants with an opportunity to present their case about the second of their core concerns: the heavy

[194] TNA, CO323/9, f. 74.
[195] Labaree, *Royal Instructions*, p. 339.
[196] TNA, CO323/9, f. 74.
[197] TNA, CO323/9, f. 74.
[198] TNA, CO323/9, f. 74.
[199] TNA, CO323/9, f. 74.

duties on the importation of goods into the colonies. Once again, they traced the source of their objections back to the seventeenth-century where local Virginians were made exempt from the colony's duties. Referring to a law more recently passed by the Virginia Assembly, the petitioners noted that an act of 1730 laid a duty of three shillings on all liquors imported by British merchants, but only 'half that duty on persons residing in the said Province'.[200] The mention of these duties pointed to an apparent disparity of treatment by colonial legislatures.

Alongside broad complaints about Jamaican and Virginia laws, the merchants also used the example of Maryland – a colony that, as we have seen, had comparable economic features to Virginia. They argued that Maryland was also a colony where egregious duties had been levied on their trade. Of particular significance is their mention of an act that imposed a duty of 20 shillings per head on slaves and Irish indentured servants, 'neither of which are to be paid, if imported in vessels belonging to inhabitants of the said Province'.[201] The focus on the slave duties painted an impression of imperial trade with slavery at the centre. The petitioners ensured they achieved this impression by connecting the North American and West Indian commercial experiences. For instance, they cited the recently instituted Jamaica duty of February 1731 that levied a duty of fifteen shilling per head for the importation of all slaves, and thirty shillings per head for the exportation of them.[202] By doing so, the petitioners invoked not only their 'common interests' in slavery, as Christopher Brown has conceptualised, but also their common experience throughout the Atlantic world.[203]

The petitioners concluded their list of particulars with an instruction issued by the Crown in 1730, which requested that 'Real as well as personal Estates in all the British Colonies and Plantations … be made liable to the payment of Debts'.[204] They claimed that, although the instruction was only sent to the Governor of Jamaica, its direction ought to have universally application to all Governors in the colonies. For them, the instruction was evidence of the Crown's desire that 'no duties should be imposed by Assemblies, whereby the trade and shipping of this Kingdom [Great Britain] can be anyways affected'.[205] In the

[200] TNA, CO323/9, f. 74.
[201] TNA, CO323/9, f. 74.
[202] TNA, CO323/9, f. 74.
[203] Brown, 'The Politics of Slavery', p. 218.
[204] TNA, CO/323/9, f. 75.
[205] TNA, CO/323/9, f. 75.

selected section of the instruction, the petitioners noted that Governors are required 'not to give [their] consent … to any Bill or Bills in the Assembly … of unusual and extraordinary nature and importance, wherein our prerogative, or the Property of our Subjects may be prejudiced … or the Trade and Shipping of this kingdom any way affected'.[206] Although seemingly lacking commercial specificity, these assertions intended to stress that Governors in the colonies should not consent to colonial laws that impact external trade, that is to say imperial trade. The distinction between internal and external trade was still blurred in the minds of many colonial assemblies during this period; however, commercial issues that inhibited debt recovery, like duties, were becoming a more centralised feature of metropolitan discussion.

B. Negotiation with the Board of Trade: November 1731 to February 1732

In response to the London merchants' petition, and the subsequent list of particulars, the Privy Council asked the Board of Trade to review the merchants' concerns and to advise the Crown on how to proceed. By this stage, the news of the petition had reached the colonies. Virginia, the colony that had been in a battle with Micajah Perry since 1728, was the first to mount a significant opposition to the grievances outlined by the London and Bristol merchants. On 5 November 1731, the Council of Virginia sent representation to the Board of Trade having received news of the petition from Isham Randolph, their agent. In a similar fashion to the merchants, the Council, comprising of eminent Virginians like Robert and John Carter, drafted a full list of its reasons 'against every part of the petition'.[207] The petition was described as one prepared by 'sundry merchants' that desire that 'lands here [in Virginia] may be made liable to the satis[faction] of all kinds of debts'.[208]

The Council articulated their opposition to the petition by invoking their constitutional rights. They wrote that an Act of Parliament 'in such indefinite terms' would 'deprive them of the most valuable privilege granted them by the Crown as an encouragement to their first settlement'.[209] The Council clearly felt that the merchants were attempting to usurp the role of the Crown, the executive authority they deemed as sovereign in all matters relating to the regulation of trade and commerce in the empire. They commented that 'the merchants who

[206] TNA, CO/323/9, f. 75.
[207] 'Representation of Council of Virginia in the Council of Trade and Plantations', 5 Nov. 1731, CSP (Col), vol. 38, 1731, no. 473.
[208] CSP (Col), vol. 38, 1731, no. 473.
[209] CSP (Col), vol. 38, 1731, no. 473.

have thus the happiness to be much nearer the throne than the planters are … should so far distrust His Majesty's paternal care in this particular as to petition for an act of Parliament to relieve them'.[210] Outraged that the merchants attempted to influence the Crown through their petitioning, the Council of Virginia appealed to their understanding of imperial superintendence. In their conception, there was a difference between a piece of legislation passed by Parliament, a body that lacked the local knowledge of the colonies; and the passing of laws by a Royal instruction, which benefited from the advice of the Privy Council. By suggesting that the merchants 'distrust[ed]' the King's 'paternal care', the Council of Virginia declared their unwavering support of the Crown in matters of imperial superintendence – a role they were not prepared to assign to Parliament, particularly when it was being influenced by mercantile interests.

On the particular question of lands being made liable in the recovery of debts, the Council protested that this 'would make too severe a distinction between His Majesty's royal subjects here [Virginia], and those in Great Britain', and 'so partial a distinction must necessarily tend to create uneasiness in the minds of a loyal people'.[211] This was pictured as an injustice on two accounts. Firstly, it plainly treated colonial subjects differently to British subjects, forcing them down a path of legal and social distinction. Secondly, the proposed change provided for no resolution to planters' debts, who were often owed money by the factors involved in colonial trade.

The Council also protested the reduction of an appeal sum from £300 to £100. However, it is not known where the Council received this figure from, as neither the particular grievances listed by the merchants' petition made no mention of it, nor did it feature as part of negotiated terms of the parliamentary bill. Nonetheless, the Council objected to this reduction on the grounds that it would be a 'very great injustice' and amount to oppression by 'sacrificing the poor to the rich'.[212] They argued this case on the practical grounds that a planter brought before an appeal 'has the misfortune of living … a great distance from the fountain of Justice'.[213] The Council stressed that the travel costs incurred by an ordinary colonial planter would be so great that a trifling figure of £100 would not justify such an expense being incurred. On a broader constitutional level, their obsequious use of the term

[210] CSP (Col), vol. 38, 1731, no. 473.
[211] CSP (Col), vol. 38, 1731, no. 473.
[212] CSP (Col), vol. 38, 1731, no. 473.
[213] CSP (Col), vol. 38, 1731, no. 473.

'fountain of Justice' is suggestive of their recognition of the role played by the English legal system in the functioning of imperial affairs.

The second half of the Council's objection list was centred on the proposed sugar duty bill that was being debated in Parliament alongside the colonial debt question. Both issues were being taken forward in Parliament by merchants, which reinforced Virginia's view that not only were merchants tightening their grip on the levers of legislative power, but also that Parliament was making further encroachments into the commercial life of the colonies. The proposed aim of the sugar bill – the measure that would become the Molasses Act of 1733 – was to the raise a prohibitive duty on the importation of sugar and molasses from non-British islands in the Caribbean. This was intended to encourage British colonies to favour the importation of domestic sugar rather than from the French or Spanish, which, by the 1720s, had become significantly cheaper. If the bill passed, the Virginians feared that it would grant the sugar colonies 'the power to exact what prices they please for their own commodities, and to depretiate those on the Continent; besides enhancing the price of sugars sold to the British merchants'.[214] The price of sugar is framed in contradistinction to the price of tobacco, that '[has] been continually declining for divers years past'.[215] Determined to protect the valuable role they played in the triangular trade, the Council also notified the Board of Trade of their intention to send their agent Isham Randolph over to London to make an appeal in a hearing before the Board.

As the dispute between the petitioners and Virginia rumbled on, Humphrey Morice, a leading figure in galvanising the efforts of the petitioners, committed suicide on 16 November 1731. Coincidentally, on the same day, a letter drafted by Morice was read by the Board of Trade. This letter contained instances, where, as the law stood, 'merchants [were] left without remedy for the recovery of their just debts'.[216] It would later be taken as primary evidence in the Board's acquiescence to the merchants' demands, representing Morice's importance in shaping the character of the imperial legislation, even after his death.

In addition to the on-going negotiation between the merchant petitioners, the Virginians, and the Board of Trade, the issue of colonial debts was brought to the Board's

[214] CSP (Col), vol. 38, 1731, no. 473.
[215] CSP (Col), vol. 38, 1731, no. 473.
[216] Stamp, *Journal of the Commissioners*, 1731, pp. 245-246.

attention by Thomas Lowndes. Although he wrote the letter on 13 August 1731, it was not received by the Board of Trade until 15 December 1731. Lowndes described the insufficient manner of the South Carolinian remedial system recovery with its reliance on summons, which was essentially an order to appear before a Judge or Magistrate.[217] He noted that in 1726, 'after the merchants had given the planters very large credit, the planters in a very tumultuous manner got (by an act of Assembly) the summons superseded'.[218] In direct response to a letter supporting the supersession drafted by Robert Johnson, the Governor of South Carolina, Lowndes wrote of the letter's 'fallacious' nature. Like many merchants, Lowndes felt that the ability to bring debtors to court was impeded by the distance of rural planters to the main judicial centre in Charlestown. Furthermore, in a personal critique of Governor Johnson's loyalties, Lowndes contended that 'Mr Johnson is afraid of doing anything that may disoblige the planters, especially at this juncture … [as] his appointment … [had only been] granted for one year.'[219] This letter provides a fitting example of how colonial governors often had to contend with the conflicting demands of both merchants and planters.

As a consequence of the debate surrounding the summons issue in South Carolina, a memorial of merchants trading to the colony was prepared and sent to the Board of Trade on 14 January 1732. This memorial was highly significant as it was separate from the main petition, but reinforced the same issues about the deficiencies of colonial remedial systems. The merchants began by citing the restoration of the summons in the colony – a result of 'the great number of negro slaves in that province and the small number of planters'.[220] It is notable here how slavery shaped the growth of the colony's trade. The merchants further requested that 'commerce may be put upon a more equal foot between the British merchant and the planter' and that 'they have some reasonable hopes of recovering debts fairly and justly contracted'.[221] The memorial was signed by a total of ten merchants, all exclusively trading to South Carolina. Although seemingly detached from the primary discussion between the petitioner merchants and the Board of Trade, what this correspondence from South Carolina shows is a wider and deeper debate about the colonial debt issue, far beyond

[217] CSP (Col), vol. 38, 1731, no. 548.
[218] CSP (Col), vol. 38, 1731, no. 548.
[219] CSP (Col), vol. 38, 1731, no. 548.
[220] 'Memorial of Merchants trading to South Carolina to the Council of Trade and Plantations', 14 Jan. 1731, CSP (Col), vol. 39, 1732, no. 17.
[221] CSP (Col), vol. 39, 1732, no. 17.

that which Jacob Price claimed only extended to Virginia and Jamaica.[222] In fact, supportive testimony from South Carolina demanding a solution to the colonial debt issue almost certainly prompted the Board of Trade in the direction of support for a pan-colonial piece of legislation with general application.

As the Board of Trade was preparing to lay before the House its opinion on the merits of the merchants' petition, 'a bill for recovering debts owing to His Majesty's subjects trading to the British Plantations' had been drafted by Mr Wood, acting as the Solicitor to the merchants. In the draft dated 17 January 1732, the stated purpose of its authorship is 'for want of effectual power of recovering debts' and to prevent the discouragement of trade 'by reason [of] the duties and impositions laid on the goods and ships of British merchants'.[223] The draft further requested that 'lands, houses and negroes' be made liable in the payment of debts and Britons engaged in trade with the colonies be exempt from 'greater duties, taxes, or customs … than what are paid by the natives'.[224]

A few days later, on 20 January 1732, the first instance of correspondence from Isham Randolph on behalf of Virginia reached the Board of Trade. In upholding the practices of Virginia Assembly related to debt recovery, Randolph contested that the merchants were wrongly complaining about the actions of the Virginia Assembly, who had simply been following royal instructions given to them by the Crown. By invoking the role of royal instructions, Randolph wished to emphasise the Virginian conception of how imperial governance worked, with the Crown at its centre, not Parliament. Additionally, Randolph requested further time to be able to look into the specific laws cited by the merchants in their petition.

The next day, on 21 January 1732, the Board of Trade wrote to the Privy Council to provide an initial update that they were in the process of considering the petition and that they had 'discoursed with the petitioners'.[225] Before turning to each grievance respectively, they noted that they 'conceive that suitors lie under difficulties, both as to the manner of making legal proof of their debts in the Courts of Justice … and likewise as to the execution

[222] Price, 'The Excise Affair Revisited', p. 279.
[223] 'Draft of a bill recovering debts owing to His Majesty's subjects trading to the British Plantations', 17 Jan. 1731, TNA, CO323/9, ff. 87-88.
[224] TNA, CO323/9, ff. 87-88.
[225] 'Council of Trade and Plantations to the King. Report in obedience to Order of 12 Aug', 21 Jan. 1732, CSP (Col), vol. 39, 1732, no. 36.

of the law'.[226] The grievances were effectively arranged into two categories: substantive, as outlined above, and procedural. The procedural grievances were described as arising from 'expenses and difficulty of sending proper persons from Great Britain to give personal evidence in the Courts of Justice of the Plantations'.[227] The substantive grievances were treated in an equally sympathetic manner, supporting the notion that colonies like Jamaica should not exempt their houses, lands, tenements, hereditaments, and slaves from the claims of creditors. Although the Board had not comprehensively considered each of the laws cited by the merchants at this stage, they continued to propose as a point of principle that 'all the Governors of [His] Majesty's Colonies, should be strictly forbidden, upon pain of your Majesty's highest displeasure, to give their assent for the future, to any laws wherein the natives or inhabitants of the respective Colonies under their Government are put on a more advantagious footing than those of Great Britain'.[228]

C. Legislative success: February 1732 to April 1732

In February 1732, the legislative process commenced as the Commons and the Lords began to consider the relevant documentation. On 9 February 1732, in an official address of the House of Commons to the King, the Duke of Newcastle stated that 'he will be graciously pleased to give directions' that the merchants' petition and the report of the Lords Commissioners of Trade be laid before the House.[229] Two days later, Micajah Perry presented to the House a new draft Bill 'for the more easy Recovery of Debts in his Majesty's Plantations and Colonies abroad', which was ordered to be read a second time.[230]

On 15 February 1732, the Board of Trade's report was heard. Having collected evidence from every colony cited by the merchants, the Board emphasised the problems confronting creditors during the execution process of recovering their debts. Those that remained on the colonial statute books are portrayed as 'probably thought reasonable at the time when they were enacted', but they no longer served their purpose.[231] The Board noted that it found 'the present state of the British Colonies detrimental to the trade and navigation

[226] CSP (Col), vol. 39, 1732, no. 36.
[227] CSP (Col), vol. 39, 1732, no. 36.
[228] CSP (Col), vol. 39, 1732, no. 36.
[229] 'Address of the House of Commons to the King', 9 Feb. 1732, TNA, CO323/9, f. 96.
[230] CJ, vol. 21, p. 836.
[231] 'Representation of the Commissioners for Trade and Plantations to the House of Commons', 15 Feb. 1732, TNA, CSP (Col), vol. 39, 1732, no. 87.

and manufactures of Great Britain'.[232] In such a broad survey of colonial treatment of the debt issue, the Board concluded the disparity amongst the colonies on this important commercial question needed resolution in the form of new remedial practices. Upon receiving this green light, Micajah Perry and John Scrope made further adjustments to the bill.[233] It is worth noting that these two men, the Members of Parliament for the City of London and the City of Bristol respectively, represented major mercantile interests. The fact that they were responsible for the drafting of the bill indicates how firmly that merchants had a grasp on the legislative process.

In the immediate weeks that followed, the passage of the legislation gathered steam. Perry and Scrope carried out their instruction to complete the bill, and it was first presented to the House on 10 March 1732, where it was resolved that it should be read for a second time on the next sitting.[234] The bill was read a second time on 11 March 1732 and committed there to a long list of MPs, among which included seasoned parliamentarians like Sir William Yonge and Sir Nathaniel Curzon, prominent members of the Board of Trade like Paul Docminique, all of the merchants of the House, and all the 'Gentlemen of the Long Robe' (the members of the legal profession).[235] Two days later, Scrope updated the House that a Committee of the Whole House had gone through the bill and made several amendments.[236] An engrossed bill was subsequently passed with extraordinary speed on 15 March 1732 by the House of Commons with the title 'An Act for the more easy Recovery of Debts in his Majesty's Plantations and Colonies in America'.[237]

On the same day, the bill entered the Lords, carried there by John Scrope to 'desire their concurrence'.[238] On 20 March 1732, all of the papers were laid before the Lords, including: the Board of Trade report; royal instructions to the Governor of Jamaica directing him to 'recommend to the Assembly the passing a law for the more easy Recovery of Debts'; the journal of the Assembly of Virginia from June 1730 'relating to a Clause proposed for the proving of Debts, by persons living out of that Colony'; and the 1705 Virginia statute.[239]

[232] TNA, CSP (Col), vol. 39, 1732, no. 87.
[233] CJ, vol. 21, p. 816.
[234] CJ, vol. 21, p. 836.
[235] CJ, vol. 21, p. 839.
[236] CJ, vol. 21, pp. 844.
[237] CJ, vol. 21, p. 847.
[238] LJ, vol. 24, p. 48; CJ, vol. 21, p. 847.
[239] LJ, vol. 24, p. 56; Stamp, *Journal of the Commissioners*, 1732, p. 287.

These documents were representative of the initial particulars listed by the merchants in their August 1731 petition.

The timing of the bill's arrival in the Lords coincided with the completion of the Board of Trade's report on 21 March 1732. This document was then laid before the Lords directly by one of the members of the Board, Sir Orlando Bridgeman MP. Interestingly, it was not sent through the Secretary of State, the Duke of Newcastle, even though it had been prepared in obedience with an Order of Council forwarded by him after an address from the House to the King.[240] Reports were typically forwarded to the House of Lords through the Earl of Westmoreland, the President of the Board. Now playing a role in the debate on the subject of the proposed law known as the 'Recovery of Debts in America Bill', the Lords requested testimony of several specialist witnesses from, or with significant experience of, the colonies for the proceedings of a Committee of the whole House.[241] Jacob Price's claims about the limits of colonial involvement in the legislative process are once again thrown in sharp relief by the activities of those involved in the parliamentary inquiry.[242]

A group of colonial experts were sworn in as witnesses and examined before the Committee, including: Isham Randolph; Henry Armstead, a Virginian citizen who would later succeed Robert Carter on the Council of Virginia; James Bradley; Peter Day; and Henry Lascelles. Why these particular men were chosen by the parliamentary inquiry is unknown, but each had involvement with the colonies, whether as either traders or political officials. Both James Bradley and Peter Day were prominent British merchants. Like Micajah Perry, James Bradley was a London merchant trading to Virginia. He had extensive dealings with Robert Carter about matters related to the tobacco trade.[243] Peter Day was an alderman and a member of the growing Bristol slave trading community with ties to Jamaica. There are records available showing his involvement in the trade in the early 1730s.[244] Both traders provided testimony in support of a legislative solution to the colonial debt issue. The involvement of these individuals in the political process is testament to its pan-colonial nature. Although Alison Olson is right about the 1730s constituting a time when 'lobbies tried to influence the government … on questions that directly affected their

[240] Stamp, *Journal of the Commissioners*, 1732, p. 277.
[241] LJ, vol. 24, p. 59.
[242] Price, 'The Excise Affair Revisited', p. 279.
[243] See, *Letters of Robert Carter 1720-1727,* ed. L.B. Wright.
[244] *Bristol, Africa, and the Eighteenth Century Slave Trade to America: The Years of Ascendancy, 1730-1745*, ed. D. Richardson (Bristol, 1987), vol 2., p. 29.

own interests', but she does not realise the full importance of this particular moment.[245] The parliamentary inquiry on the debt issue illustrates the co-ordination of lobbying groups in direct dealings with the Board of Trade and Parliament. Not only did this juncture represent the acceptance of interest group lobbying as part of the political process, but also the necessity of it in handling imperial affairs.

Henry Lascelles, a major plantation owner in Barbados, was a particularly interesting figure in the inquiry because he bore relation neither to Virginia nor to Jamaica.[246] Lascelles argued that creditor rights needed strengthening in the face of growing trade between the colonies and the metropole.[247] Although he was English born, Lascelles represented a merchant with deep knowledge of the economies of the British West Indies. In 1712, at the age of twenty-two, Lascelles first travelled to Barbados and settled there with his older brother Daniel.[248] There the two expanded a family-managed enterprise that had been operating since 1648, concentrating on sugar production and the supply of slaves to the island. In 1714, Henry acquired the powerful position of Collector of Customs for Barbados. This influential and lucrative post remained in family hands for the next three decades. Henry was in charge of collecting duties on Barbados colonial exports – usually at the rate of 4.5 per cent – and remitting the money to the British Treasury in London.[249] Upon the death of his eldest brother George in 1729, Henry returned to London and developed a successful business as a moneylender to both sides of the Atlantic.[250] Such experience with extending credit to colonial merchants and knowledge of the economy of the British West Indies served as valuable evidence for being taken seriously by the parliamentary committee.

The only member of this specialist committee that opposed the proposals was Isham Randolph, but despite his best efforts, he failed to convince Parliament to back down. On the 22 March 1732, after consultation with the merchants and agents, the Lords slightly amended the wording of the bill by adding the words 'near to which' with respect to English courts where accounts could be proven.[251] Those amendments were carried into the

[245] Olson, *Making the Empire Work*, p. 124.
[246] S.D. Smith, *Slavery, Family, and Gentry Capitalism in the British Atlantic: The world of the Lascelles, 1648-1834* (Cambridge, 2006), p. 166.
[247] Stock, *Proceedings*, vol. 4, p. 160.
[248] A. Nicholson, *The Gentry: Stories of the English* (London, 2011), p. 216.
[249] Ibid., p. 220.
[250] Ibid, p. 223-227.
[251] LJ, vol. 24, p. 62.

Commons the next day and thereby accepted.[252] The bill was subsequently passed granted Royal ascent on 3 April 1732.[253] In an accelerated period of eight months then, what began as a petition of sundry merchants trading to Virginia and Jamaica, became the government policy of debt recovery in the British North American and West Indian colonies. Although numerous scholars have noted the significance of the Colonial Debts Act, neither has a focus been placed on its passage until this study, nor has a detailed analysis been conducted about the statutory provisions it instituted.

D. The text of the Colonial Debts Act

The Colonial Debts Act treated imperial possessions in North America and the West Indies with sweeping generality. The preamble cast no geographical specification; it applied to all 'British Plantations in America'.[254] Beyond the collective pieces of legislation that made up the imperial navigation system of the seventeenth and eighteenth-centuries, no piece of legislation before 1732 had been passed with such broad application. Given the pan-colonial nature of the act, this rendered its procedural and substantive provisions all the more impactful in laying down the future terms of creditor-debtor relations in the first British Empire.

A major aspect of the act was the first procedural provision that permitted British merchants to prove their debts and obtain judgments against colonial debtors in courts at home. From the 29 September 1732, any suit being brought forth by a British inhabitant 'in any Court of Law or Equity in any of the … Plantations' could be proven instead in 'Great Britain, where, or near to which the person … shall reside'. In short, any British litigant suing in colonial courts for debts owed to them could attest to their accounts in Britain.[255] The law allowed for this under the provision that the litigant 'verif[ied] or prove[d] any Matter or Thing by Affidavit or Affidavits in Writing upon Oath.'[256] In the event that the litigants were Quakers, then the law provided for their proof of debts instead by 'solemn Affirmation'.[257] The transfer of powers to domestic courts sought to address the issue of inefficiency in recovering debts, by making it much easier for a creditor to instigate civil proceedings against a debtor.

[252] CJ, vol. 21, p. 859.
[253] CJ, vol. 21, p. 875; LJ, vol. 24, p. 79.
[254] HL/PO/PU/1/1731/5G2n10, f. 219.
[255] Price, 'The Excise Affair Revisited', p. 279.
[256] HL/PO/PU/1/1731/5G2n10, f. 219.
[257] HL/PO/PU/1/1731/5G2n10, f. 219.

The act also granted the powers to a 'Mayor or Chief Magistrate' to certify and transmit the issuance of the affidavits. This could be carried out in any 'City, Borough, or Town Corporate' near where the litigant resided. It was further enacted that in all suits brought on behalf of the Crown, that the incumbent monarch and their heirs could prove their accounts and examine their witnesses in the same manner as British creditors. The final procedural provision of the act set out the manner with which false oath or affirmation would be treated, with 'the same Penalties…and Forfeitures as by the Laws and Statutes' as under English law.[258] The purpose of the procedural section of the Colonial Debts Act then was to bring the process of colonial debt litigation in alignment with the workings of the English courts. However, as we shall now see, divergence was the feature of the substantive side of the act rather than alignment.

The stated purpose of the Colonial Debts Act was to 'retrieve[e] the Credit formerly given…to the Native and Inhabitants of the…Plantations'. It described the 'great difficulties' that 'his Majesty's subjects' lie under 'for want of more early Methods of proving, recovering, and levying Debts due to them'. However, with such inconveniences remedied, the act would serve to 'advance the Trade of this kingdom'. Substantively, the statute made sure that colonial legislatures were unable to prevent debt collection efforts advanced by British merchants through the application of English real property law. In doing so, it transformed all forms of property as satisfactory in the recovery of debts. To this end, from 29 September 1732, all 'Houses, Lands, Negroes, and other Hereditaments and real Estates' were made liable as tangible assets for 'all just Debts, Duties and Demands, of what Nature or Kind soever'. The act therefore followed the initial recommendations made by the Board of Trade. The first recommended that British litigants in colonial courts should be able to prove their accounts by taking an oath before any Mayor or Chief Magistrate in Britain. The second recommended that the lands, houses, hereditaments, and slaves of debtors should become liable in the satisfaction of their debts.

Despite the claim made within the statute that such measures would bring the treatment of debt recovery 'in like Manner as … are by the Law of England', it radically departed from the English legal system in two principal ways. Firstly, it gave British merchants new forms of security that they could use to recover their debts in the context of trade with any

[258] HL/PO/PU/1/1731/5G2n10, f. 219.

one of the colonies in North America or the West Indies. Where previously merchants had to navigate the changing nature of debt recovery legislation variously passed by different colonial legislatures, the Colonial Debts Act overrode such legislation and created a universal system. The second departure saw the transfer of different forms of property from real property status to chattel property status. This transfer allowed for the creation of an entirely different colonial property law, whereby certain forms of property were no longer attached to the land, but rather to the individual owner as a form of moveable asset.

There are, however, two ways in which this provision directly related to legal decisions in England that had come before it. Firstly, its classification of viable assets in the recovery of debts broadened the 1691 Statute of Fraudulent Devices, which had outlawed certain practices of debtors trying to repay their debts with improper assets.[259] Initially, the remedies of the 1691 statute had applied solely to secured creditors. Under its terms, either attempts by a deceased debtor to devise land that they had guaranteed as security or attempts by the heirs or devisees to transfer land were held to be fraudulent. The Colonial Debts Act therefore not only widened the protections available to creditors, but it also extended the application of that relief to both secured and unsecured creditors. Secondly, the provisions of the act bore a striking resemblance to a landmark legal opinion issued in 1729 about the nature of slavery. This opinion was known as the 'Yorke-Talbot opinion' because of its authors: Sir Philip Yorke, the Attorney General of England Wales; and Charles Talbot, the Solicitor-General.[260] The opinion was sought after by slave traders looking to legitimise the imperial system of slave ownership. Yorke-Talbot's conclusion was that a slave's status did not alter upon arrival in England. It therefore justified the uniformity of an 'imperial' status of slavery throughout the British Empire. It has been argued by George Van Cleve that the Yorke-Talbot opinion served as the 'legislative analogue' for the Colonial Debts Act.[261] Nevertheless, the opinion crucially did not define the property status of slaves, allowing the colonies to maintain local differences in their laws of slavery. Contrastingly, the universal manner with which the Colonial Debts treated slaves as chattel property served as a wholesale change in the legal status of slaves in the colonies. This change, in addition to its

[259] 3 & 4 W & M., c. 14, 'An Act for Relief of Creditors Against Fraudulent Devises (1691),' cited in Priest, 'Creating an American Property Law', p. 404.
[260] See, T. Glasson, "'Baptism does not bestow Freedom": Missionary Anglicanism' Slavery, and the Yorke-Talbot, 1701-1730', *WMQ*, 67/2 (2010), pp. 279-318.
[261] G.W. Van Cleve, *A Slaveholder's Union: Slavery, Politics, and the Constitution in the Early American Republic* (Chicago, IL, 2010), p. 21.

immediate impact, unequivocally furthered the long-term distinction of the colonies from metropolitan Britain.

IV: IMPACT

A. 'If it had stopt there it would not have alarm'd us in the manner it has done': The immediate political reaction in the colonies

Thus far, we have analysed two of the three critical stages in the story of the Colonial Debts Act: its genesis and its passage. However, in order to arrive at a full perspective on the political significance of this piece of legislation, we need to acknowledge a third stage: its impact. This fourth and final section of the paper analyses this impact by looking closely, in turn, at the immediate political reaction in the colonies, the new law at work, and the act's long-term importance. Where the previous two sections have shed light on the legislative journey of the act, this section serves as an afterword, assessing not only how it was received, but also placing it within a broader context of eighteenth-century colonial-metropolitan relations. It is argued that only by acknowledging the impact of the Colonial Debts Act can we understand how it fits into the broader picture of the 1730s, and how it can be seen to have had an influence on later developments.

The Colonial Debts Act dramatically altered the laws regulating the recovery of debts within the vast majority of the British colonies in North America and the West Indies. The act markedly refashioned the legal status of certain forms of property in Rhode Island, Virginia, Maryland, North Carolina, South Carolina, the newly chartered Georgia, and several islands in the West Indies.[262] Only a few colonies in New England had already developed similar laws before its enactment.[263] In Connecticut, for instance, the act was seen as simply formalising the existing practice. It caused little surprise when news first arrived that 'Estates of Inheritance should [thenceforth] be chargeable with Debts, as well and in the same manner as Chattels'.[264] In October 1732, Joseph Talcott, the Governor of Connecticut, wrote to Francis Wilks, the agent for the colony, that the courts in Connecticut would be 'blameless in reassuming our former Rules, in putting the Administrator … in the room and stead of the deceased Debtor, to alienate his lands, for the payment of just debts'.[265]

[262] Priest, 'Creating an American Property Law', p. 425.
[263] However, New Hampshire enacted a law in 1718 preventing the seizure of houses during a debtor's lifetime. See, 'An Act for Making of lands and tenements Liable to the Payment of Debts (1718)', in *Acts and Laws of His Majesty's Province of New Hampshire in New England*, p. 84.
[264] 'Letter from Governor Joseph Talcott to Francis Wilks', Oct. 1732, in *Collections of the Connecticut Historical Society*, vol. 4., pp. 260-261.
[265] Ibid.

Of all the colonies, it is unsurprising that the first instance of opposition came from Virginia. After all, Virginia had conceived of itself – and others had conceived of it – as the principal target in the merchants' push for regulatory relief on the debt issue. Alongside the representation already submitted to the Board of Trade by the Council of Virginia calling for the Board of Trade not to endorse the merchants' proposals, there were two notable instances of immediate opposition upon the act's enactment. Both came from senior members of the Council of Virginia, and indeed two of the original signatories of the representation transmitted in November 1731. Robert Carter, now the President of the Council, posited the first outspoken critique of the new law on 10 July 1732. In a letter penned to Micajah Perry, one of his regular correspondents, Carter wrote of the 'Severe act of Parliament … wearing the title, for the better Recovery of Debts'. He further bemoaned:

> If it had stopt there it would not have alarm'd us in the manner it has done but what with that and the prodigious Oppressions we labour under in other Respects it has rais'd so general a fury in the Assembly that hath carryed them into measures which I heartily wish from getting out of one extreme, we may not be involv'd in another the Particular you will hear enough of from other pens.[266]

This passage suggests that the Virginia legislatures had reluctantly come to terms with the provisions of the Colonial Debts Act, notwithstanding their initial opposition to it. That being said, further legislative encroachments in the months that followed indelibly preoccupied their concerns, most notably the sugar duty bill on the importation of foreign molasses. In the eyes of Virginians, these encroachments could not so much be attributed to parliamentary action as to a sustained period of mercantile activity. The letter disdainfully concluded that 'the general cyre' of Virginians would rather 'releye on the mercy of our Prince than … be subjected to the tyranny of the merchants who are daily encreasing their Oppressions upon us'.[267]

In an even more vehemently worded piece of correspondence to Bristol merchant Thomas Lloyd, a fellow Council member, John Custis, described the new law as 'cruell and unjust'.[268] He began by articulating his opposition to the measure along constitutional lines. The act of 'subjecting our Lands for book debts', expressed Custis, 'is contrary to ye Laws

[266] 'Letters from Robert Carter to Micajah Perry', 10 July. 1732, quoted in Hemphill, 'Virginia and the English Commercial System', p. 228.
[267] Ibid.
[268] 'Letter from John Custis to Thomas Lloyd (1732)', quoted in Hemphill, 'Virginia and the English Commercial System, p. 230.

of our Mother Country, which cannot touch reall estate without a Specialty'.[269] In consonance with the 1731 representation, which had conveyed Virginians' unabated reverence for the British constitution, he further added that 'as wee are Brittish Subjects wee might reasonably expect Brittish liberty … [and] wee desire nothing else than to bee subject to ye Laws of our Mother Country but wee have great reason to think you aim at our possessions'.[270] At the height of his indignation, Custis conjectured a scenario where Virginia planters would cease their involvement with British merchants as a consequence of the Colonial Debts Act. Directed at British merchants like Lloyd, he posited 'you may flatter your selves to bee gainers by that act you will find [that] you have so incensed ye Country; that you will force [them] as soon as convenient to have nothing to do with you.'[271]

These charges against the legislation, however, appear to stand in isolation with one another. There is no further evidence of immediate hostility towards the new measure from Virginia beyond the aforementioned writings, which were both written during the Council's session between 1 July 1732 and 5 September 1732. Unlike the passage phase of the legislation, there was no concerted effort formulated by the colony's representative bodies to oppose the measure. Neither was pressure applied on the Board of Trade, nor was Isham Randolph sent in to argue the colony's case. This absence of opposition is the likely consequence of two potential explanations: either Virginians had reluctantly given up their assault on the measure, as suggested by Robert Carter's letter; or, more plausibly, they were more immediately distressed with the outcome of additional parliamentary measures like the sugar duty bill. In addition, Carter himself died on 4 August 1732, meaning that the Council had lost its most well-connected member, and its strongest advocate against metropolitan measures.

Contrary to the claims advanced by Jacob Price and Clare Priest, more immediate opposition to the Colonial Debts Act was mounted than just from the Virginians.[272] Indeed, in January 1733, unified representation from the President, Council, and Assembly of Barbados was sent to the Board of Trade. This was read and agreed to by the General Assembly of Barbados *nemine contradicente*. In challenging the universal application of the new law, the Barbadians contested that the merchants' petition was founded upon a

[269] Ibid.; A 'specialty' is a debt created under seal, thus constituting a secured form of debt.
[270] Ibid.
[271] Ibid.
[272] For examples of these claims, see, Price, 'The Excise Affair Revisited', p. 279; Priest, 'Creating an American Property Law', p. 426.

'want of Justice in regard to creditors in Maryland and some other Colonys', yet 'this island [Barbados] was nowise mentioned in the petition or representation'.[273] They added that 'ample provision had [already] been made in that island for the security of creditors', and the 'laws with regard to creditors are much more favourable than even those of Great Britain'.[274] Rather than objection purely on grounds of principle or constitutional jurisdiction like Virginia, the Barbadians anchored their sentiments in their own experience – something they felt that Parliament had overlooked in the creation of the new law, and they held instead that their own debt regulation already made sufficient provisions for creditors.

Warnings about the practical and financial consequences of the act were also put forward by the Barbadian General Assembly. The law would 'soon compleat the ruin of the inhabitants (who are already sinking under many and great misfortunes and calamitys) and will … be of very great prejudice to the creditors themselves'.[275] Such 'misfortunes and calamitys' were a reference to the broader economic conditions under which Barbadians felt they suffered during this period.[276] On an individual level, the General Assembly warned of the act's implications for the future of imperial creditor-debtor relations. The representation asserted that:

> It will enable any one crafty or malicious creditor not only to ruin his debtor; but to cheat all the other creditors of the same debtor of their just debts; for there being but a very small currency of cash in this island, the best sugar-work-plantation … and such creditor may thereby for a trifling debt become master of the best sugar-work-plantation in this island, while all the younger creditors of the unhappy debtor this stript of his estate will go unpaid.[277]

Amongst their broader assertion that the new law would be prejudiced against smaller creditors, the Barbadians expressed a clear concern about the dispossession of land – which to them meant the potential seizure of their lucrative plantations – as part of the act's provisions. With nothing held back, the representation ended with a dim view that 'the said

[273] 'Representation of the President, Council, and Assembly of Barbados to the Council of Trade and Plantations', 18 Jan. 1733, TNA, CO28/23, ff. 87-88.
[274] TNA, CO28/23, ff. 87-88.
[275] TNA, CO28/23, f. 89.
[276] For a closer analysis of contemporary economic circumstances, see, Smith, *Slavery, Family and Gentry Capitalism*.
[277] TNA, CO28/23, f. 89.

act will destroy all future credit in the said island'.[278] This statement was by far the strongest example of any colony's collective disapprobation towards the new imperial statute.

After January 1733, however, there is no evidence that representatives from any colony appealed to the Board of Trade, or even directly to Parliament. The absence of prolonged opposition across the colonies tells an interesting story, indeed one that is suggestive of a successful colonial-metropolitan alignment on the debt issue. Beyond the final protestation articulated by the Barbadians concerning the potential misuse of the remedial system by unscrupulous creditors, the Colonial Debts Act was never resisted on economic grounds. Given the extensive nature of the debt recovery provisions now available to creditors, it is extraordinary that more arguments akin to that of the Barbadians were not advanced. However, the silence of the records here point to a demonstrable recognition of a common problem across the colonies. It supports the view of Alison Olson that the early decades of the eighteenth-century witnessed a 'high point of London and American interest group co-operation'.[279]

Although some colonies, like those in New England, had already implemented the remedial measures stipulated in the act, others were operating at their own rhythm, or 'on different Footings'.[280] What the Colonial Debts Act offered, albeit in a sweeping fashion, was a solution to a common colonial problem, especially one felt in the southern colonies on the mainland and in the West Indies. Colonial planters, increasingly dependent on slave labour, needed credit to maintain and expand their commercial operations, and British merchants needed greater assurance that they could recover the debts they were owed. The issue that actually caused the most offence to the colonies, particularly Virginia, was the way in which Parliament moved so readily in favour of the merchants' demands. From a Virginian perspective, the act rode roughshod over century-old constitutional practices that limited parliamentary intervention in local political and economic affairs – a tension that would be thrown into even sharper relief in the decades to follow.

It is equally telling that no colonial representation was ever transmitted directly to Parliament, which, after the Glorious Revolution of 1688-1689, became the ultimate arbiter

[278] TNA, CO28/23, f. 90.
[279] Olson, *Making the Empire Work*, pp. 108-125.
[280] Jonathan Blenham, a distinguished Barbadian lawyer, offered this description of colonial development in a 1742 pamphlet on imperial legislation. See, J. Blenman, *Remarks on Several Acts of Parliament Relating More Especially to the Colonies Abroad* (London, 1742), p. 1-2.

of economic affairs. An avoidance of Parliament reflected an asymmetrical understanding of imperial superintendence. From the colonial perspective, especially that of Virginia, the role of financial superintendence of empire was assigned to the Crown. Such a conception explains why appeals were made to the Board of Trade, which was essentially an appendage of the Privy Council – the formal body of advisors to the sovereign. Although the Board increasingly functioned as a filter between economic petitioners and political channels with respect to colonial affairs, it lacked the formal regulatory powers of Parliament. From the metropolitan perspective, Parliament came to be viewed by different interest groups as an invaluable space for securing regulatory advantages. As the study of the Colonial Debts Act illustrates, by the 1730s, through a growing self-recognition of its role in imperial governance on the one hand, and greater co-ordination from lobbying groups on the other, Parliament came to be conceived by metropolitan society – and came to conceive of itself – as the lawful authority in regulating colonial affairs. A year later, the Molasses Act of 1733, a victory for the powerful 'West-India lobby' was another example, albeit of a different nature, of how interest group forces '[made] the empire work'.[281]

B. Towards new imperial creditor-debtor relations

How can the impact of a piece of legislation be measured? Arguably no way is more suitable of achieving such a measurement than by observing how the new law worked in practice. We therefore turn here to a closer inspection of how the Colonial Debts Act was integrated into existing debt recovery practices in British North America and the West Indies. A comprehensive coverage of the act's effects is not the intention here; other historians like Simon Smith and Clare Priest have so ably explored the act's legal and economic effects, both in the short-term and the long-term.[282] One aspect that has been under-examined, however, is the act's significance for the ideological dimension of colonial-metropolitan relations. It is this question that preoccupies the closing part of this section.

[281] Gauci, 'Learning the ropes of the sand', p. 107; Olson, *Making the Empire Work*.
[282] For the economic effects of the Colonial Debts Act, see, Price, Credit in the Slave Trade and Plantation Economies', pp. 310-323; Sheridan, Sugar and Slavery, pp. 288-294; S.D. Smith, 'Merchant and Planters Revisited', *Economic History Review*, 55/3 (2002), pp. 454-457; Smith, Slavery, Family, and Gentry Capitalism in the British Atlantic, pp. 165-170. For the application of the new law in the United States and Canada, see, K. Pearlston, 'For the more easy recovery of debts in his Majesty's Plantations: Credit and Conflict in Upper Canada, 1788-1809' (L.L.M thesis, University of British Columbia, 1999); Priest, 'Creating an American Law', pp. 439-456.

Table 4: Estimated slave imports into American territories, 1701-1780 (in thousands)

Region and country	1701-20	1721-40	1741-60	1761-1780
British North America	19.8	50.4	100.4	85.8
British Caribbean	160.1	198.7	267.4	335.3
French Caribbean	166.1	191.1	297.8	335.8
Dutch Caribbean	120.0	80.0	80.0	100.0
Spanish America	90.4	90.4	90.4	121.9
Brazil	292.7	312.4	354.5	325.9
Total	855.1	926.3	1,197.2	1,309.7
Annual average	42.8	46.3	59.9	65.5

Source: P.D., Curtin, *The Atlantic Slave Trade: A Census* (Madison, WI, 1969), p. 216.

Some historians like Richard Pares have been sceptical about the degree to which the new debt legislation was enforced in the colonies.[283] Generally though, it is accepted that its provisions became common practice throughout the British Atlantic world. Furthermore, the altered legal status of slaves clearly facilitated the growth of the British slave trade, which, by 1740, had outstripped the French trade (see Table 4). In spite of its initial indignation, as we have seen above, even Virginia reluctantly complied with the provisions of the act. Moreover, in 1738, the Virginia General Court issued a judgment that held that land could be 'sold as goods taken on [fieri facias]', that is to say, land could be sold as chattel property.[284] This ruling is the first recorded instance where the court complied with this particular provision of the Colonial Debts Act. Nonetheless, in the 1740s, the courts took a different approach by solely applying the act to debts owed to British creditors, as opposed to internal creditors in the colony. This difference was confirmed in a 1748 statute that diverged from the act with consideration to intra-colonial debts; however, Virginia's treatment here was alone amongst the colonies.[285] The terms of this statute would hardly have irked British merchants, but its deviance marked another juncture in Virginia's longstanding challenge to metropolitan authority – something that would become further pronounced as the century went on.

[283] Pares, *Merchants and Planters*, p. 167.
[284] '*Harrison v. Halley* [1739]', cited in Priest 'Creating an American Property Law', p. 247.
[285] 'An Act Declaring the Law Concerning Executions and for Relief of Insolvent Debtors (1748)', Hening, *Statutes at large*, vol. 4., p. 526.

Jamaica also enacted additional measures after the passage of the Colonial Debts Act to smoothen the functioning of creditor-debtor relations in the colony. In 1739, the Jamaica Assembly passed a law that responded directly to the act.[286] It stated:

> [Whereas] by an act of parliament … entitled, 'An act for the more easy recovery of debts in his majesty's plantations and colonies in America', creditors in the colonies are secured [in] their debts in a more ample manner than when interest was established in this island at [ten percent per year.[287]

Consequently, the interest rate on all 'mortgages, bonds, and other specialties' was thereby reduced to 'eight pounds for the forbearance of one hundred pounds for a year'.[288] This twenty percent decrease in the interest rate was clearly designed to facilitate the credit available for productive investment in Jamaica. It also indicates that while Jamaicans believed that the Colonial Debts Act 'secured [creditors'] debts in a more ample manner', statutes needed to be accompanied by other monetary measures to give creditors maximum confidence in the ability of the colonists to make repayments.

By the end of the 1730s, however, there were still wider practices carried out in particular colonies that limited the effectiveness of debt recovery. For instance, in 1738, Henry McCullough, a member of the Board, wrote of the monetary practices in Virginia, South Carolina, and North Carolina in a memorial submitted on behalf of the Board of Trade to the King. McCullough noted that 'the people in all these colonies and particularly in South Carolina have been so far from endeavouring to support the credit of their current bills that they have committed great abuses in often depreciating their currency with the view of discharging their debts more easily to merchants in England'.[289]

In the context of these concerns raised by members of the Board of Trade, certain colonies continued to make stronger provisions for more effectual methods for the recovery of debts, and by extension maintained the framework set out in 1732. For example, in 1751, Jamaica passed a law 'for making good and wholesome provisions for raising and establishing the credit of this island'.[290] This act made it lawful – in cases concerning the

[286] 'An Act for the Reducing the Interest of Money on All Future Contracts, and for the Advancing the Credit of Bills of Exchange (1739)', in *Laws of Jamaica* (Jamaica, 1792), vol. 1, p. 262.
[287] Ibid.
[288] Ibid.
[289] CO 323/10/121-122.
[290] *The Laws of Jamaica* (Jamaica, 1792), vol. 1., pp. 372-379.

Supreme Court of Jamaica – for the plaintiff, in the execution and administration of debt recovery, to issue a 'writ for the sale of the defendant's lands'.[291] A few years later, in 1757, Samuel Martin, the Secretary to the Treasury, wrote of Antigua that 'not one of the British colonies can boast so good Laws for the speedy and effectual recovery of debts; or is justice more impartially administered in any part of the Globe'.[292] Martin's appraisal reflected a change in colonial attitudes towards the benefits of debt recovery for the overall benefit of the Atlantic trading system. It also suggests that the colonies, especially those in the West Indies, came to perceive of themselves as in competition with one another for devising the most efficient methods of debt recovery to facilitate wider imperial trade. This sense of competition further established the favourability and legitimacy of the act.

Beyond its immediate legal and economic implications, the Colonial Debts Act had a much wider and deeper impact on colonial society. By making land and slaves viable assets for the purposes of the debt satisfaction in every British Atlantic colony, Parliament inadvertently moved colonial society away from the traditions of the landed English ruling class. English law in the eighteenth-century could be characterised by a strong preference for the maintenance of landed estates bound up in the inter-generational family settlement. As J.H. Baker has explained, land 'outlives its inhabitants, is immune from destruction by man, and therefore provides a suitably firm base for institutions of government and wealth.[293] Central to this preference was the incontestable doctrine of primogeniture: the system that saw estates passed down to the eldest male heir. This made sure that the land remained in a single concentrated parcel in order to prevent any divisibility.

By removing these traditional English protections of land, as George Van Cleve has argued, the Colonial Debts Act created 'a hybrid form of property valid throughout the empire'.[294] The act not only allowed land to exist as real property in various legal forms, but it also permitted the seizure of land as a form of personal chattel.[295] Such a difference between English law and colonial law in the treatment of land and property – the acme of British notions of economic, social, and political capital – further entrenched a view of the colonies as distinct in character from the mother country. This would later be confirmed in *Somerset v. Stewart* [1772] when Lord Mansfield, invoking the terms of the Colonial Debts

[291] Ibid.
[292] Quoted in Sheridan, *Sugar and Slavery*, p. 289.
[293] Baker, *An Introduction*, p. 223.
[294] Van Cleve, *A Slaveholder's Union*, p. 21.
[295] This was only permitted in England from 1833, over a century after the passage of the Colonial Debts Act.

Act, ruled that chattel slavery was unsupported by the common law.[296] If slavery could not exist on English soil then it was a uniquely 'imperial' practice – something done in the colonies, but not in Britain.

C. The long-term importance of the Colonial Debts Act

What role did the Colonial Debts Act play in the long-term political relationship between the colonies and Great Britain? By virtue of its pan-colonial nature and how it bound every colony together under a common regulatory framework, the act served as an important precedent for later measures of comparable generality. As Westminster increasingly assumed the role as the ultimate arbiter of economic affairs in the later decades of the seventeenth-century and early decades of the eighteenth-century, measures like the Colonial Debts Act emboldened Parliament's view that it possessed the necessary powers to regulate colonial affairs. Britons came to view parliamentary oversight of colonial legislation as economically advantageous in both the interests of the colonies and the metropole. When the colonists began to display increasing hostility towards parliamentary regulation and taxation in the imperial crises years of the 1760s and 1770s, an important question emerged about how to interpret pan-colonial measures like the Colonial Debts Act as a precedent for greater levels of imperial legislation.

In 1774, William Knox, the Under Secretary of State for the Colonies and a key proposer of colonial policies, tried to convince the colonists that parliamentary regulation was in their interest.[297] He did so by depicting the Colonial Debts Act as the principal source of economic development in the colonies. According to Knox, the economy of colonial North America grew at a faster rate than those of the colonies of other contemporary imperial powers because of 'the superior credit given to the planters by the English merchants'.[298] Subsequently, when asked about why the colonists received better credit from English merchants, Knox answered that it was because the Colonial Debts Act 'follow[ed] the merchant's property, and secures it for them in the deepest recesses of the

[296] See, G.W. Van Cleve, 'Somerset's Case and its Antecedents in Imperial Perspective', *Law and History Review*, 24/3 (2006), pp. 601-646.
[297] The positions of Secretary and Under-Secretary of State for the Colonies were created in 1768 in response to increasing tensions in colonial-metropolitan relations. For William Knox's colonial policies and opinions, see, J.P. Greene, 'William Knox's Explanation for the American Revolution', *WMQ*, 30/1 (1973), pp. 293-306.
[298] Ibid, p. 293.

wood'.[299] Such an assertion reflected the perceived necessity for comprehensive creditor protections in imperial trade. If left to their own devices, however, the colonial legislatures were likely to start modifying the laws to 'injure their British creditors'.[300] In an attempt to appraise the act's benefits for both colonial debtors and British creditors, Knox declared that it 'may truly be called the Palladium of Colony credit, and the English merchants' grand security'.[301] Although he was almost certainly the most outspoken supporter of the act's provisions, Knox's assertions were symptomatic of a wider metropolitan view that parliamentary regulation was necessary for the more effectual superintendence of empire.

On the colonial side, prominent revolutionary leaders came to view the Colonial Debts Act as a key juncture in the constitutional relationship between Britain and the colonies. Alexander Hamilton later reflected upon the act as an exercise of parliamentary authority that exceeded the natural limits of its legislative jurisdiction over the colonies. In the first treatise he drafted in the early 1780s about American state law, Hamilton commented that the act was 'one of the Highest Acts of Legislature that one Country could exercise over another'.[302] Like other contemporary revolutionary leaders, Hamilton intended to underline the lamentable nature of legislation like the Colonial Debts Act, which empowered Parliament to later enact more offensive measures like the Stamp Act of 1765. Interestingly though, his description of the act as 'one of the Highest Acts of Legislature' reveals how issues like debt recovery served as an important matter of concern during the early American Republic. Indeed, all of the provisions of the Colonial Debts Act were maintained and incorporated into American property law after American Independence, which further gave rise to the legitimacy of slavery – a practice not outlawed in the United States until the Thirteenth Amendment in 1865.

By contrast, in the British context, there was one final twist in the story before the abolition of slavery in 1833. At the very end of the eighteenth-century, the salient feature of the act that allowed for slaves to be deemed chattel in the settling of debts was removed. In the context of growing anti-slavery sentiments, a more humanitarian approach towards human bondage was ostensibly called for in the British Parliament. What was regarded as

[299] W. Knox, *The Interest of the Merchants and Manufacturers of Great Britain, In the Present Contest with the Colonies, Stated and Considered* (Boston, 1775), p. 35.
[300] Ibid, p. 37.
[301] Ibid, p. 38.
[302] A. Hamilton, 'Practical Proceedings in the Supreme Court of the State of New York' (1782), in *The Law Practice of Alexander Hamilton,* ed. J. Goebel (1964), vol. 1., p. 97.

favourable to the creditor was equally seen by some as deplorable to the slave. Bryan Edwards, the MP for Grampound, spoke of the hardships that slaves were subjected to under the provisions of the Colonial Debts Act, 'being sold by creditors, and made subject in the course of administration by executors, to the payment of all debts both of simple contract and specialty'.[303] In 1797, Edwards, an outspoken supporter of the slave trade with interests in Jamaica and a perennial adversary of William Wilberforce, successfully pushed through a bill in Parliament that repealed the provision that made slaves chattels in the payment of debts.[304] Whilst this might appear a counterintuitive action for a slave trader, Edwards justified his position by proclaiming, 'let the negroes be attached to the land, and sold with it'.[305] It is erroneous to think the horrors of the slave auction motivated legal change; this assertion reveals the true intention. Rather than any humanitarian endeavour, Edwards sought to protect slave owners' interests by attaching slaves to land, and thus preventing them from seizure in the recovery of debts. The Act of 1797, therefore, renegotiated specific provisions of the act, but maintained its overall process. The removal of the Colonial Debts Act's most notorious provision from law illustrates how slavery was still a live issue with respect to imperial trade and, ultimately, it would take until 1833 with the abolition of slavery before the issue reached its denouement.

[303] B. Edwards, *The History, Civil and Commercial of the British Colonies in the West Indies* (London, 1794), vol. 2, pp. 140-2.
[304] 37 Geo. III, c. 119, 'An Act to repeal so much of an Act, made in the fifth year of the Reign of His late Majesty King George the Second, intituled, An Act for the more easy Recovery of Debts in His Majestys Plantations and Colonies in America, as make Negroes Chattels for the Payment of Debts (1797)', 19 July. 1797, in *The Parliamentary History of England: from the earliest period to the year 1803* (London, 1816), vol. 33, pp. 831-4;
[305] Edwards, *The History*, pp. 367-368.

CONCLUSION

The Colonial Debts Act was a measure of real political significance for colonial-metropolitan relations, not only in its immediate setting of the 1730s, but also in later decades. It was unique in how it successfully bound all of the colonies in British North America and the West Indies together under a common framework: a feat unsurpassed by any other measure in the first British Empire, save the loosely enforced Navigation Acts. Such a generality of application is something that typically would be expected of the imperial crises years in the 1760s and 1770s. Nevertheless, the fact that it appeared when it did on the British statute book reveals a great deal about the nature of imperial lawmaking in the early eighteenth-century. This earlier period has rightly received greater historiographical attention in recent years; however, few studies get to the heart of the political dynamics at work in the manner of those concerning later decades. Consequently, a forensic assessment of an imperial measure as sweeping and far-reaching as the Colonial Debts Act can enrich our understanding of the politics of imperial trade in the 1730s.

Although the 'salutary neglect' model for characterising colonial-metropolitan relations before the Seven Years' War has been rightly challenged by the recent scholarship of Andrew Beaumont on the administration of the Earl of Halifax in the 1740s and 1750s, the study of the Colonial Debts Act and the other imperial measures that surrounded it allows us to move the story back even further. Indeed, the act came about at an especially peculiar juncture in the development of colonial-metropolitan relations. Given the sweeping remedial provisions that it introduced for the functioning of imperial trade, it is unsurprising that the act has long been viewed as a measure emanating from the metropole. What a closer inspection of the act elucidates, however, is the commonality of commercial problems that affected both the colonies and the metropole. With an increasing reliance on credit to facilitate growth on the one hand, and the need to tighten the system of debt recovery on the other, a common problem was identified, albeit somewhat grudgingly by some of the colonies. Underlying the growth of an 'empire of goods' lay the institution of slavery that made possible the incipient plantation-based system of the southern colonies on the mainland and in the West Indies.[306]

[306] T.H. Breen, 'An Empire of Goods: The Anglicization of Colonial America, 1690-1776', *Journal of British Studies* (1986), pp. 467-499.

Where a disaggregation in remedial regimes existed before 1732, the growing colonial demand for credit to fuel the slave-driven, plantation-based economies of the British Atlantic world offered a common variable that had not existed before. An increasingly inter-connected Atlantic economy based on a triangular trade between North America, the West Indies, and metropolitan Britain meant that the syncopation of colonial legal frameworks regulating debt recovery put a strain on the broader imperial system of commerce. With the general exception of the colonies in New England, what every other colony had in common was the widespread ownership and usage of slaves, and it took precisely an issue as pervasive as slavery to cement an alignment in debt recovery practices. Although Jacob Price and Richard Sheridan have pointed out how the nascent transatlantic slave trade put strains on the imperial trading system, and thus necessitated the need for reform, their analyses have not gone far enough in explicating the symbiosis between the economic and political dimensions of the story. The need for a common solution to the debt issue was understood and generally accepted by the colonies, and though that solution was to be found in Virginia, it took the agency and dynamism of British merchants to utilise the levers of state power in order to bring about legislative change.

The context of empire provided British merchants trading to the colonies with an unparalleled position. They were able to put forward their views and interests to the Crown and Parliament, both from the inside and the outside, as politicians and as petitioners. The study of the Colonial Debts Act builds on the contributions of Alison Olson and Perry Gauci, whose studies have illuminated the role of mercantile lobbies in the regulatory process of the early eighteenth-century. The act had its origins as much in the recognition of a common problem in the colonies, as in the recognition of a common cause among prominent merchants. If debt recovery served as the common problem, then the slave trade served as the common cause. Among those with interests in the transatlantic slave trade, none were more important than Humphrey Morice and Richard Harris in this period. Their knowledge of the slave trade was matched only by Micajah Perry's knowledge of the tobacco trade. The successful enterprise of all three individuals was dependent on the practice of slavery in the colonies, and without this common variable, a coalescence of interest would not have materialised. The Colonial Debts Act was not only about the politics of imperial trade then, but also the politics of slavery. Few measures in the eighteenth-century speak so directly to

the political history of slavery: a field less well served than the social, economic, and cultural history of slavery, as Christopher Brown has identified.[307]

By closely monitoring the activities of these merchants, it enables us to better understand how imperial governance in the 1730s operated at a political level. The empire worked as much through people as through process. Micajah Perry, Humphrey Morice, and Richard Harris were no ordinary merchants. They personified particular colonial interests and provided complimentary leadership in the political process. Their convergence over slavery was no coincidence; it occurred at a critical point in the late 1720s with new fiscal pressures and trading opportunities. That being said, the lobbying of powerful metropolitan interest groups, though an increasing feature in the development of imperial legislation, only tells us one side of the story. While ministers in London came to acknowledge the legitimacy of lobbying as part of the political process, the colonists, too, recognised the benefits of interaction with the metropole. Lobbyists, metropolitan and colonial alike, found that their greatest strength came not from political pressure, but from their access to information that the government needed.[308] By the 1730s, the state had developed clear ways of handling imperial economic affairs through the Board of Trade.[309] Accordingly, the Board increasingly acted as a filter system through which petitioners were directed to political channels, and it became the principal mediator in the 'negotiation of authority' between colonial and metropolitan interests.[310] With unparalleled knowledge of their respective trades, merchants indirectly represented the colonies in matters related to imperial trade alongside the direct colonial representatives called in for consultation.

This 'representation' of the colonists, despite never being official in Westminster, was crucial to keeping them content within the early eighteenth-century empire. By accepting the role played by London in commercial affairs, the colonies could use their connections to men like Perry, Morice, and Harris to directly influence policy. The Colonial Debts Act was a remarkably unique piece of legislation though, especially contrasted with other contemporary measures like the Molasses Act of 1733 and Walpole's excise proposals; one proved deeply unpopular in the North American colonies, and the other failed altogether.

[307] Brown, 'The Politics of Slavery', p. 214.
[308] Olson, *Making the Empire Work*, p. 124.
[309] For Parliament's growing efficiency in dealing with mercantile-related issues, see, P. Gauci, *The Politics of Trade: The Overseas Merchant in State and Society, 1660-1720* (Oxford, 2001).
[310] Greene, *Negotiated Authorities*. For the interaction between the Board of Trade and colonial interest groups see, A. Olson, 'The Board of Trade and London-American Interest Groups in the Eighteenth Century', *Journal of Imperial and Commonwealth History*, 8/2 (1980), pp. 33-50.

The Molasses Act can truly be seen as a metropolitan measure. It was secured by the lobbying of a group of merchants interested, above all, in preserving the success of the British West Indies over rival plantations. The prohibitive duty that it levied on the importation of foreign sugars was viewed in parts of North America as an example of Parliament favouring the interests of one part of the empire over the other. By contrast, Walpole's excise proposals never had the political support or skill needed to successfully navigate through Parliament. What sets the Colonial Debts Act aside then, not just in the 1730s, but the eighteenth-century more broadly, is that there was both the recognition of a common problem in the colonies, and the necessary political actors to secure its passage in the metropole.

The opposition mounted against the Colonial Debts Act had little to do with trade or slavery. Instead, it concerned the encroachments of parliamentary authority on the internal workings of colonial law and society – something further intensified by the aforementioned surrounding policies, which gave the impression that the act was the thin edge of a long wedge. The act wrested directly from the hands of colonial legislatures the power to determine what categories of assets could be used to protect creditors. The authority of colonial legislatures to determine internal financial matters had been enshrined in constitutional practices dating back to the foundation of the colonies.[311] Each colony's charter, whether royal or proprietary, set out the boundaries of legislative power granted to the representative institutions of those colonies. By bringing all of the Atlantic colonies together under one framework, the Colonial Debts Act represented a *de facto*, if not *de jure*, supremacy of Parliament in imperial matters. Even though they accepted the necessity for granting creditors greater access to debt relief, the colonies were developing their own political sensibilities and a discourse to defend their interests. Many colonies were closely studying the constitutional developments of the metropole, such that the opposition of Virginia – the oldest and most idiosyncratic colony – demonstrated remarkable prescience in conceptualising the act as a precedent for later parliamentary interventions.

Ultimately, the Colonial Debts Act reflected the unique context of British imperialism and imperial governance in the eighteenth-century. In only affecting debt recovery practices in the colonies, and not in Britain, the act transformed local practice – which could be

[311] For colonial legislative practices and constitutional theories of representation, see, for example, J.P. Reid, *Constitutional History of the American Revolution* (3 vols, Madison, WI, 1991); J.P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge, 2010).

enforced or overturned by legislation – into an imperial system. By altering the legal status of land and slaves to make them chattels in the recovery of debts, the act set the colonies down a path of legal, economic, and ideological distinction. Few other imperial measures, if any at all, can be seen to have so greatly affected both colonial practices, and, more significantly, colonial mindsets. The passage of the act in the 1730s was equally significant in constituting a moment of successful pan-colonial co-operation. This paper, therefore, opens up a broader set of observations and questions for future scholarship. Its focus on commonality invites further studies of both common impasse and common alignment in colonial-metropolitan relations. Through a 'circum-Atlantic' approach to imperial questions, we can better understand the forces that brought about common problems in the empire, and the processes that delivered common solutions.

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