

***Credit Nation* and the Reconfiguration of Early American and Imperial History**

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Claire Priest's *Credit Nation* is a remarkably innovative piece of scholarship. In this book Priest demonstrates that anyone seriously interested in the emergence of "capitalism" in America needs to start by studying the law and its institutions in the colonial era. It was in the colonial era, Priest shows, that a distinctive version of property law emerged, one that in the vast majority of situations prioritized credit and liquidity over the security of property. "The ease of access to credit" established in the colonial era, Priest argues, "was key to the explosive growth of capitalism in nineteenth-century America."¹ Certainly, as she shows, the passage of the Debt Recovery Act of 1732 was followed by a period "of great colonial economic expansion, driven by credit" in the 1740s.²

While my colleagues have emphasized Priest's seminal contributions with respect to legal and economic history, I wanted to draw attention to the profound implications of Priest's work for colonial and imperial history. In essence, I am suggesting appendixes to Chapter 9 that would interpret the significance of Priest's findings for still more audiences.

First, by highlighting the seminal importance of Parliament's Debt Recovery Act (1732) and the priority that British governmental institutions at all levels placed on the importance of debt recovery for British merchants, and credit for the emerging colonial economies, Priest demonstrates the wrong-headedness of the myth of salutary neglect. It was, she says by the by, "an important counterpoint" to this interpretation of early American history.³ British politicians in the era before the Seven Years War were hardly indifferent to colonial development. They not only cared deeply about the profits to be made, and the customs to be gathered from the American colonies, but they passed major pieces of legislation that fundamentally structured everyday life in the colonies. American landholding patterns among free whites were much more equal than those

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1. CLAIRE PRIEST, *CREDIT NATION: PROPERTY LAWS AND INSTITUTIONS IN EARLY AMERICA* 6 (2021).

2. *Id.* at 86.

3. *Id.* at 156.

in England because “granting land to petitioners in small parcels . . . was a pillar of British colonial regulation that was surprisingly consistent throughout the colonial era.”⁴ By including slaves as collateral for debt recovery in 1732, Parliament definitively placed its thumb on the scale in favor of slavery in the American colonies. Similarly, by insisting that the “advanc[ing of] the Trade of this Kingdom” depended on the “retriev[ing of] the Credit” in the colonies, Parliament made clear its commitment to a credit-based imperial economy.⁵ In many ways, the imperial Parliament paved the way for the growth of the colonial/imperial state. By insisting on the importance of credit and institutions that made it possible to recover debts, Parliament required the expansion of colonial courts. It was hardly surprising, given the force of Priest’s arguments, for example, that Governor John Wentworth of New Hampshire thought that in order to expand New Hampshire’s commerce, it was essential that the province expand the number of counties, and thus county courts.⁶ Imperial state formation, rather than salutary neglect, shaped the colonial period of American history. And the British imperial state, perhaps unlike some of its rivals, governed through monetary policy, economic policy, and statute at the parliamentary and provincial level. If Priest is right, early American historians, as much as legal and economic historians, need to take more seriously the history of the British Empire in the seventeenth and eighteenth centuries.

Second, Priest has demonstrated the importance of slavery in the emergence of Anglo-American capitalism. This is hardly a new argument and is indeed fashionable once again. But what is striking about Priest’s claim is that slavery mattered less for the commodities that slaves produced (or the kinds of consumption they facilitated, as is Inikori’s view) than for the credit relations their commodification enabled.⁷ For this, of course, the Earl of Hardwicke (the author of both the Debt Recovery Act and the Molasses Act) was doubly responsible. The implications are profound. It was the possibility of debt recovery in slaves that did much to lubricate

4. *Id.* at 25.

5. *Id.* at 79.

6. For evidence on these points, see Tiraana Bains, Al Zuercher Reichardt, & Steve Pincus, *Thinking the Empire Whole*, 16 *HIST. AUSTL.* 610 (2019); Steve Pincus & James Robinson, *Wars and State-Making Reconsidered: The Rise of the Developmental State*, *ANNALES. HISTOIRE, 71 SCIENCES SOCIALES - ENGLISH EDITION* 9 (2016); Steve Pincus, *Dartmouth College and Patriot State Building*, in *DARTMOUTH AND THE WORLD: RELIGION AND POLITICAL ECONOMY CIRCA 1769*, at 39 (Henry C. Clark ed., 2022); Letter from Sir John Wentworth, Governor, New Hampshire, to Charles Watson-Wentworth, 2d Marquess of Rockingham, (Sept. 1, 1765), in Derek H. Watson, *John Wentworth’s Description of the American Colonies in 1765*, 27 *HIST. N.H.* 148 (1972); Sir John Wentworth, Governor, New Hampshire, to Barlow Trecothick & Stephen Apthorp (May 23, 1768) (on file with the Nova Scotia Archives, RG 1/55); Journal of the House (Aug. 22, 1767), in 7 *DOCUMENTS AND RECORDS RELATING TO THE PROVINCE OF NEW HAMPSHIRE* 130, 203, 208, 228 (Nathaniel Bouton ed., Nashua, Orren C. Moore 1873).

7. See, for example, PRIEST, *supra* note 1, at 6-7. For Inikori’s view, see JOSEPH INIKORI, *AFRICANS AND THE INDUSTRIAL REVOLUTION* (2002).

American and imperial markets. But, at the same time, because credit did not depend solely on slaves, capitalism was contingently, not ineluctably, connected to slavery. It could be argued that the Debt Recovery Act initiated a vicious cycle in both the American South and the West Indies. This explains why the British, just as tied to commerce as the Americans by the late eighteenth century, were able to repeal the slavery elements of the Debt Recovery Act in 1797.⁸ Priest's story about slavery and capitalism has much more in common with Eric Williams's perspective than it does with the new histories of capitalism.⁹ For Priest, labor, land, and exploitation are far more important drivers of slavery than race and culture.

Third, Priest compels us to reconceptualize the causes of the American Revolution. The Revolution, Priest shows, did not mark a transition from a pre-capitalist to a capitalist society, a move from a republican to a liberal polity. Instead, markets and commercial relations very much defined colonial America.¹⁰ Priest suggests the American colonies were already—in large part because of British imperial legislative activity—moving in a commercial republican direction in the 1730s. What changed, instead, was the emergence of a new kind of British imperial state led by the likes of William Knox. That imperial state was happy to restrict the credit-based, liquid economy that the Debt Recovery Act had helped create by passing the Stamp Act and other restrictive measures.¹¹ Priest's story, then, is a revolution sparked not by the creation of the British Imperial State in the aftermath of the Seven Years' War, but rather a British imperial state that had radically changed its strategies of imperial governance. The American Revolution was a revolution in favor of credit. But it was also a revolution in favor of a return to the credit-bolstering imperial state of the 1730s, 1740s, and 1750s. It is a story of continuity in one sense—the founders did not foster radical innovation. In another sense, Priest's is a story of the founders embracing the radical and egalitarian (with respect to white folks) implications of the innovative Debt Recovery Act of 1732. They wanted a state that would actively expand credit. They revolted when, suddenly in the 1760s, the British imperial state began to take actions to restrict credit.

Fourth, Priest forces us to reckon with regional differences in colonial America. Already in 1732, “[t]he Virginians—seemingly alone among the

8. PRIEST, *supra* note 1, at 151.

9. ERIC WILLIAMS, *CAPITALISM AND SLAVERY* (1994). For new history of capitalism, see for example: *SLAVERY'S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT* (Sven Beckert & Seth Rockman eds., 2017).

10. On this, Priest's views differ from many. Classically, she is in dialogue with GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* (reprt. 1993); and JAMES HENRETTA, *THE ORIGINS OF AMERICAN CAPITALISM: COLLECTED ESSAYS* (1991).

11. PRIEST, *supra* note 1, at 88-89, 122-23. Thomas Hancock's letter books in the Baker Library demonstrates the extent to which colonial merchants worked transatlantically to mitigate the harm done to the credit economy by Knox, Mandeville, and George Grenville. Thomas Hancock Letter Book (Business), 1750-1762 (on file with the Baker Library Special Collection, Harvard Business School).

colonists—were immediately hostile” to the Debt Recovery Act.¹² By 1748, Virginians were resisting its implementation. Virginia diverged from the colonial path laid out in the Debt Recovery Act. And, of course, as Priest shows, Virginia was one of the few colonies not to extend the Debt Recovery Act after independence.¹³ Priest is not the first to highlight regional differences in early American history—indeed highlighting those regional differences was once the norm in early American historiography—but what is unusual in her account is that it was Virginia which diverged, not New England. New England, in Priest’s story, emerges as the region most closely following the credit regime laid out in the British Debt Recovery Act.¹⁴ New England was not exceptional. It neither developed a political economic path so distinctive from the imperial state as to require revolution or so idiosyncratic as to require rejection by the other newly independent states.¹⁵

Fifth, Priest implicitly makes a large contribution to the emerging literature on the histories of empires. That literature has been focused on the persistence of empires—on the fact that empires have been comparatively long-lasting—and explaining the transition from empires to nation-states. Much of that literature emphasizes that empires last longest when the ties connecting the center to the periphery remain vertical and top-down.¹⁶ Priest demonstrates that the development by colonial legislatures and the imperial Parliament of ground-level credit institutions were intended to, and did in fact, connect British merchants with American commercial actors.¹⁷ The British empire created deep horizontal connections among commercial actors. Did this cause the breakdown of the British empire in America? Priest does not, as far as I can tell, take a position on that. But she makes it possible to ask the question.

Sixth, Priest’s book asks us to reconceptualize the British imperial state. Priest constantly refers to the “federal system of the British colonial regime.”¹⁸ This is an unusual formulation. She is right to use it. What Priest has demonstrated is that while land and inheritance law, like so many things in the British empire, were slow to change in England, institutional developments happened much more quickly in America. Barbados, West New Jersey, as well as Massachusetts and the rest of New England, adopted a “much more credit-friendly approach” to landholding than was true for

12. PRIEST, *supra* note 1, at 80.

13. *Id.* at 137.

14. *Id.* at 129-43.

15. This story is in tension with a long tradition of scholarship that highlighted the specificity of New England developments. For the most recent and innovative account, see MARK PETERSON, *THE CITY-STATE OF BOSTON: THE RISE AND FALL OF AN ATLANTIC POWER, 1630-1865* (2019).

16. See, for example, KAREN BARKEY, *EMPIRE OF DIFFERENCE* (2008).

17. PRIEST, *supra* note 1, at 29-37.

18. PRIEST, *supra* note 1, at 61. *See also id.* at 7, 129.

England in the seventeenth century.¹⁹ Examples of federalizing approaches to laws and institutions could be multiplied. Such an approach existed in the Indian presidencies, Scotland, and Ireland as well. State actors at the provincial level often implemented the most profound institutional changes in the British Empire. That they were provincial rather than central actors made them no less agents of the state.

This federal approach did not, of course, mean ceding all state activity to localities—far from it. In terms of state activity, England was once again the exception within the empire. Bogart and Richardson showed that turnpike building required enabling laws in England because of deference to stakeholders in English localities.²⁰ In Scotland, Ireland, India, and North America by contrast, the British imperial state just built roads (rather than pass enabling acts). Unsurprisingly, by the middle of the eighteenth century, many commentators resisted describing the imperial state as one with unified (Hobbesian or Bodinian) sovereignty.²¹ Indeed, the single most widely read political economist of the eighteenth century, Malachy Postlethwayt, described the British empire in confederal terms. In *The Universal Dictionary*, he outlined a proposal for “a special council of commerce to consist of experienced merchants, or such who have been long engaged in the concerns of trade and colonies.” The Council would be “properly elected by the principal trading cities and towns of Great Britain and Ireland.” It would also include “deputies from our colonies in America, the interest of those colonies being intimately interwoven with that of England.” The Council would “sit every week in London throughout the year” and would gather information “relating to the colonies and all branches of commerce and manufactures.” The Council would then advise Parliament on commercial and imperial policy. But it was clear that, in Postlethwayt’s formulation, this representative council from across the Empire would in fact be the true policymaking body. Parliament, armed with information from this confederal council, would “with far more ease,

19. *Id.* at 61.

20. Dan Bogart & Gary Richardson, *Property Rights and Parliament in Industrializing Britain*, 54 J. L. & ECON. 241, 246-47 (2011).

21. STEVE PINCUS, *THE HEART OF THE DECLARATION* 141 (2016); JOSEPH ADDISON, *REMARKS ON THE SEVERAL PARTS OF ITALY* 283-84 (London, J. & R. Tonson & S. Draper 1753); 1 *THE HISTORY OF THE PELOPONNESIAN WAR, TRANSLATED FROM THE GREEK OF THUCYDIDES* 124-25 (William Smith trans., London, John Watts 1753); 3 PHILIP YORKE & CHARLES YORKE, *ATHENIAN LETTERS* 92 (London, James Bettenham 1743); 1 CADWALLADER COLDEN, *THE HISTORY OF THE FIVE NATIONS OF CANADA* 1 (London, Lockyer Davis, J. Wren & J. Ward 3d ed. 1755). This tract was serialized in the British press: LEEDS INTELLIGENCER (Aug. 27, 1754). It was also widely praised. For one example: 1 ELLIS HUSKE, *THE PRESENT STATE OF NORTH AMERICA* 26 (London, R. & J. Dodley 1755); 1 CHARLES-LOUIS DE SECONDAT, *BARON DE MONTESQUIEU, THE SPIRIT OF THE LAWS* 183-84 (London, J. Nourse & P. Vaillant 1750). For other British printings in the period, see *id.* (Dublin, G. & A. Ewing & G. Faulkner 1751); *id.* (Mr. Nugent trans., London, J. Nourse & P. Vaillant 2d ed. 1752). For the importance of Montesquieu’s thinking on confederations in America, see David Golove, *The New Confederationism*, 55 STAN. L. REV. 1705-06 (2003). While Vaillant mostly specialized in printing drama, Nourse in England and Faulkner in Ireland were known for printing Patriot tracts.

and less liability of deceit and imposition have the true and genuine state of all branches of trade laid before them.” The Council would deliver Parliament “the truth” which would lead to more efficient policy. Parliament, in effect, would simply implement the policy recommendations of this fact-gathering body.²²

It would be really useful to extend Priest’s legal historical lens and think hard about the relationship between the federalism of the British empire and, for example, the terms of the British alternative to the Albany Plan or its relationship to the American federalism that emerged in the 1780s.²³

Seventh, Priest compels us to think hard about the fashionable paradigm of “settler colonialism.” Settler colonialism, in the view of scholars who follow the terminology and formulation of the influential Australian anthropologist Patrick Wolfe, highlights the specific strategies pursued by colonial societies in which immigrant settlers form the majority. Settlers in these societies, we are told, position themselves in opposition both to the imperial governors and the indigenous possessors of the land. But they do so with a specific set of political economic assumptions. “The primary object of settler-colonization,” Wolfe writes, “is the land itself rather than the surplus value to be derived from mixing [] labour with it.”²⁴ There can be no question that Priest’s is a story that emphasizes the importance of land to American colonists.²⁵ But Priest suggests that land is hardly the most important thing in shaping the economy and culture of American settler society. Instead, that culture is shaped by how easy it is to convey land, to mortgage the land, and to borrow against land holdings. Priest shows us that there is a world of difference between a settler society in which property is not hard to buy and sell or seize for payment of a debt and one in which it is very difficult to do all of those things. For Priest it was the state—whether the colonial governments, the ground-level institutions, or the imperial Parliament—that made all the difference.²⁶ Priest’s differences from the advocates of the settler colonial theory could not be more stark. “The state” in settler colonial settings, says Lorenzo Veracini, “is minimal.”²⁷ Settler colonies often assert sovereign claims on behalf of the empire, says Lisa Ford, but “the real content of their claims . . . was local, territorial control

22. MALACHY POSTLETHWAYT, *THE UNIVERSAL DICTIONARY OF TRADE AND COMMERCE* 873 (London, John & Paul Knapton 1751).

23. See Steve Pincus, *Confederal Union and Empire: Placing the Albany Plan (1754) in Imperial Context*, in *SCOTLAND AND THE WIDER WORLD* 167 (2022).

24. PATRICK WOLFE, *SETTLER COLONIALISM AND THE TRANSFORMATION OF ANTHROPOLOGY* 163 (1999).

25. Nonetheless, labor is just as important to her story from the outset. PRIEST, *supra* note 1, at 2. Slaves are both a source of labor and an asset in Priest’s account, putting her at odds with the settler colonialism literature.

26. *Id.* at 3-4.

27. LORENZO VERACINI, *SETTLER COLONIALISM: A THEORETICAL OVERVIEW* 142 (2010).

over the process of indigenous dispossession.”²⁸ In Priest’s story, by contrast, the move to create a credit-suffused society, the Debt Recovery Act, was an action by the imperial state motivated in the first instance by a desire to make it easier for British North American merchants to recover their debts.²⁹ The unintended consequence, perhaps, was, in some instances, to accelerate indigenous dispossession.

For all of these and many other virtues of Priest’s book, her work has also provoked some questions.

First, I was left wondering why the outcomes that Priest describes for the colonies that eventually became the United States did not equally hold for all of British America. The Debt Recovery Act of 1732 did not just apply to the twelve colonies that would eventually join the union (Georgia was not yet a colony) but for all of British America. In fact, the petitions that in the first instance led to the act came from Jamaica. Why did the British West Indies not become an equally impressive economic dynamo in the late nineteenth and twentieth centuries? Why did the West Indies in general, and Jamaica in particular, suffer an economic downturn in the aftermath of the Debt Recovery Act? Why did Canada and Nova Scotia not develop more robust slave cultures if the Debt Recovery Act provided incentives to use slaves in a credit economy?

Second, I was yearning for a bit more detail about changes in property law in England over the course of the eighteenth century. Blackstone, after all, famously claimed that the revolution of 1688 ended feudalism and feudal law in England and loosened the rules of landholding that feudal law entailed.³⁰ These questions are provoked, perhaps, because when it comes to discussing British/English politics and society, Priest retains a Namierite interpretation.³¹ This interpretation has long since been rejected by most British and imperial historians.³² So, Priest says (using Namierite language)

28. LISA FORD, *SETTLER SOVEREIGNTY: JURISDICTION AND INDIGENOUS PEOPLE IN AMERICA AND AUSTRALIA, 1788-1836*, at 4 (2010).

29. PRIEST, *supra* note 1, at 74-75.

30. 2 WILLIAM BLACKSTONE, *COMMENTARIES* *76-77.

31. Priest cites Namier approvingly at PRIEST, *supra* note 1, at 59. See LEWIS NAMIER, *THE STRUCTURE OF POLITICS AT THE ACCESSION OF GEORGE III* (2d ed. 1957).

32. JOHN BREWER, *PARTY IDEOLOGY AND POPULAR POLITICS AT THE ACCESSION OF GEORGE III* (1976); JAMES E. BRADLEY, *POPULAR POLITICS AND THE AMERICAN REVOLUTION IN ENGLAND* (1986); PAUL MONOD, *JACOBITISM AND THE ENGLISH PEOPLE, 1688-1788* (1989); KATHLEEN WILSON, *THE SENSE OF THE PEOPLE: POLITICS, CULTURE, AND IMPERIALISM IN ENGLAND, 1715-1785* (1995); NICHOLAS ROGERS, *WHIGS AND CITIES: POPULAR POLITICS IN THE AGE OF WALPOLE AND PITT* (1989); SARAH KINKEL, *DISCIPLINING THE EMPIRE: POLITICS, GOVERNANCE, AND THE RISE OF THE BRITISH NAVY* (2018); BRENDAN SIMMS, *THREE VICTORIES AND A DEFEAT: THE RISE AND FALL OF THE FIRST BRITISH EMPIRE* (2007); MAX SJORNSBERG, *THE PERSISTENCE OF PARTY* (2021); JAMES M. VAUGHN, *THE POLITICS OF EMPIRE AT THE ACCESSION OF GEORGE III: THE EAST INDIA COMPANY AND THE CRISIS AND TRANSFORMATION OF BRITAIN’S IMPERIAL STATE* (2019); JUSTIN DU RIVAGE, *REVOLUTION AGAINST EMPIRE 14* (2017); STEVE PINCUS, *THE HEART OF THE DECLARATION* (2016); WILLIAM DERINGER, *CALCULATED VALUES: FINANCE, POLITICS AND THE QUANTITATIVE AGE* (2018); Abigail L. Swingen, *Security, Stability, and Credit: The Hanoverian Succession and the Politics of the Financial Revolution*, in *THE HANOVERIAN SUCCESSION IN GREAT BRITAIN AND ITS EMPIRE* (Brent S.

that “authorities in London” were all convinced that “the colonies’ role was to generate revenue for the Crown.”³³ Yet many scholars have shown there was a vibrant debate both in policy circles and in the public at large as to whether colonies were supposed to generate revenue for the crown or improve the overall prosperity of the British empire. Similarly, we are told that “in the British colonial framework, the role of the colonies was to improve the Mother Country’s balance of trade.”³⁴ Again, much recent literature has disputed the hegemony of this point of view.

The larger point is to take more seriously Priest’s argument that the imperial state mattered and that its decisions about credit decisively effected colonial economic and institutional development. If that is the case, one wants to know what were the legal, institutional, and economic changes that underpinned the ideological dissonance about the purpose of colonies in Britain. What were the causes of the radical transformation of British imperial policy that Priest describes in her wonderful discussion of the Stamp Act crisis? In short, Priest gives us a picture in which property in land is much more secure in Britain than in America (especially after 1732). There is much truth to that. And yet, those who read deeply in British sources know that Tory landowners were convinced throughout the period that Whig legislation was making their property rights less secure. The Whig and Patriot response was not to deny the claim, but to argue that creating a more equal society was beneficial. Were these polemicists onto something? We await, for example, an exhaustive study of Chancery cases, now made a bit easier by the late Henry Horwitz’s cataloguing of the masters’ exhibits.³⁵ Preliminary work suggests there is reason to doubt the old saw that Chancery, throughout the eighteenth century, promoted dynastic preservation. And did the decline of the landed interest substantially transform the nature of British imperial policy? Recent work by James Vaughn suggests that it might have done.³⁶

Finally, I, like Professor Hulsebosch, yearned for more politics. There are glimpses throughout the book about conflicts—most spectacularly in Priest’s discussion of the debates about the fee tail in Virginia.³⁷ And there is much about colonial and Parliamentary legislative activity. But I yearned to hear more about the ideas, parties, and passions that shaped these

Sirota & Allan I. MacInnes eds., 2019); AMY WATSON, *PATRIOTS BEFORE REVOLUTION: THE GROWTH OF POLITICAL INSTABILITY IN THE BRITISH ATLANTIC 1714-1763* (forthcoming); CHRISTIAN BURSET, *AN EMPIRE OF LAWS: LEGAL PLURALISM IN THE EIGHTEENTH-CENTURY BRITISH EMPIRE* (forthcoming); HEATHER WELLAND, *POLITICAL ECONOMY AND IMPERIAL GOVERNANCE IN EIGHTEENTH-CENTURY BRITAIN* (2021).

33. PRIEST, *supra* note 1, at 23.

34. *Id.* at 31.

35. HENRY HORWITZ, *CHANCERY EQUITY RECORDS AND PROCEEDINGS, 1600-1800: A GUIDE TO DOCUMENTS IN THE PUBLIC RECORD OFFICE* (1995).

36. VAUGHN, *supra* note 32.

37. PRIEST, *supra* note 1, at 137-41, 143-45.

struggles. I wanted to figure out why Virginia's largest land owner, Robert King Carter, wanted property rights to be less secure.³⁸ Why was he more interested in the interests of the creditor than the debtor who owned land? I wanted to know why British politicians were once credit friendly and then credit averse. I wanted to know why merchants trading to North America and the West Indies had such a powerful influence on making policy in the 1730s but, apparently, much diminished influence in policymaking circles in the 1760s and 1770s. I wanted to know why the Jamaica Assembly that placed the most severe restrictions on slave owning in British imperial history in 1728 were also so averse to laws favoring creditors.³⁹ Elsewhere in the narrative, pro-slavery and friendliness to securing landed property in the family seemed to go hand in hand.

Quibbles aside, Priest's book is a magnificent achievement. In some ways, the parsimony of the argument, the laser focus on the tension between overly secure property rights and expanding credit markets, allows Priest to draw out a story that we had all missed: the transformative significance of the Debt Recovery Act and the subsequent importance of credit in the early American economy. Like all really important historical scholarship, Priest's book forces us to ask new sets of questions and to operate within new parameters.

38. *Id.* at 69, 76, 81.

39. *Id.* at 78.