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Conceiving Confiscation in the American Revolution

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The American Revolution was a massively confiscatory event. Yet the revolutionaries were obsessed with understanding all aspects of their project in legal terms—and seeing their common cause as lawful. This article analyzes the debates within several states over the legal justifications for general confiscation—class-wide expropriation without individualized judicial process—to recapture how legislators conceptualized the taking of property from political enemies. A consensus emerged in the middle of the war that the states could do so, but it met the persistent argument that general confiscation threatened the very possibility of republican government. Foregrounding the *lawyering* involved when legislators debated and selected among the competing justifications demonstrates that legal thought and maneuvering were not confined to early American courtrooms. Legal culture provided the menu for almost every strategy for pursuing independence and contained principles and historical examples for evaluating their effects. In a world where every public choice began within legal culture, law was a resource for change and possibility that opened up rather than limited decisions made in another domain. It also conveyed standards that the revolutionaries drew upon to legitimate independence, at home and abroad. Revolutionary legality was partly reflexive, and absolutely essential.