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THE REPEAL OF THE STAMP ACT.

THE passage of the Stamp Act by the British Parliament, on March 4, 1765, was but a part of the policy inaugurated by the Grenville ministry of raising a revenue from the colonies. This the prime minister, George Grenville, proposed to accomplish in three ways: first, by the renewal of old and the imposition of new duties; secondly, by the prevention of smuggling, and the enforcement of the Acts of Trade, thus greatly increasing the customs dues; thirdly, by an internal tax on all legal and commercial papers. The revenue thus raised was to be used for the maintenance of a standing army in America, to protect the territory acquired in the war with France. This expense was felt to be more than the taxpayers of England, already heavily burdened, could bear. The first two of these measures were, in spite of a certain amount of grumbling by the colonists, successfully enforced, but the failure of the attempt to levy an internal colonial tax is well known. Indeed the Stamp Act had barely been put in force when it was repealed, for although the bill was passed in March, 1765, it did not take effect until November 1, and was repealed on March 20 of the following year.

For this sudden change of policy four reasons may be given: first, the change of ministry; secondly, the influence in Parliament of several important men, as, for example, Pitt, Lord Camden, Burke, and Benjamin Franklin; thirdly, the resistance of the colonists to the act; and fourthly, the protests of the merchants and traders of England.

I. *The change of ministry.* — The fall of the Grenville ministry, which occurred in May, 1764, was by no means an unexpected event. Grenville had always been personally obnoxious to George III, who was continually intriguing with Pitt to form a new ministry. The king was also influenced against his minister by his Scotch favourite, Lord Bute, who had been disappointed in his expectation of finding in Grenville a convenient tool. But the

immediate cause of Grenville's fall was his bungling of the Regency Bill in his attempt to prevent the princess dowager's becoming regent. This change of ministry had an important influence upon the repeal of the Stamp Act. With Grenville in power, the repeal might never have taken place, for later in Parliament he advocated the enforcement of the act even by arms.

The new ministry was composed largely of the "New Whigs," with the Marquis of Rockingham at its head, and General Conway as one of the secretaries of state. Although by no means brilliant or homogeneous, it certainly stood for broader ideas of personal liberty and for a more liberal trade policy. Grenville's administration had undoubtedly been characterized, as Walpole says, by "arbitrary measures," as for instance the famous General Warrants Bill. After his fall, the raising of a revenue was no longer the chief aim, nor did the Navigation Acts continue to be the "idol" of the ministers. A new spirit of conciliation is seen in the colonial despatches of Secretary Conway, in which the governors are advised to endeavour "by lenient and persuasive methods . . . to restore peace and tranquillity."¹ But unfortunately, as Mr. Whatley wrote to Grenville, the ministers "are undetermined about the measures to be taken . . . if the tumult continues."² They were, in fact, in a most difficult position. They hesitated to repeal the act, as the abandonment of a tax because of opposition to it would be a dangerous precedent, and the abandonment of this tax would seem a denial of a prerogative of Parliament — the right to legislate for the colonies. On the other hand, they feared that its enforcement would mean the continuation of anarchy in America and great commercial and financial loss to England. Even when the disorders in America had convinced the ministry of the impossibility of an enforcement of the act, they were not unanimous. The question then arose: Shall the act be totally repealed or merely modified in its most objectionable points? The result of these conflicting considerations was an unfortunate hesitation. The Parliament did not assemble until December 17, and it separated for the Christmas recess without transacting any business, except issuing writs to fill up

¹ Colonial Pamphlets, 1762-1765.

² Grenville Papers, iii, 100

vacancies. Even during this interval "the ministry found no regular or consistent plan of operation and mutual support."¹

When at last the ministry did decide upon a total and immediate repeal, it had to make head, as Dr. Moffatt, an American, wrote to another American, "against a sea of hindrances and opposition from many quarters felt, known and unseen."² It had to face not only open opposition in Parliament, but the secret opposition of the king and his party.

And lest mankind [writes Horace Walpole] should misapprehend the part the favourite intended to take on the Stamp Act, Lord Denbigh, his standard-bearer, and Augustus Hervey asked . . . leave to resign their places, as they purposed to vote against the repeal. The farce was carried on by the king . . . his Majesty told them, that they were at liberty to vote against him and keep their places. This was, in effect, ordering his servants to oppose his ministers.³

Besides "the king's friends," the Bedford and Grenville factions opposed the repeal and were for taking "violent measures,"⁴ as Lord Chesterfield wrote to his son. The ministry, however, maintained with firmness its decision to secure a total repeal and not a modification of the act, and this in its turn modified the "violent measures" of the opposition. The latter, abandoning a futile attempt to obtain the enforcement of the act as it stood, now advocated its modification and then its strict enforcement in its modified form. Thus George Grenville, the leader of the opposition in the lower house, moved on January 5, that the words "explain and amend" be substituted for "repeal";⁵ while the Duke of Bedford, an opposition leader in the House of Lords, about the same time informed the king that

should his Majesty be inclined to pursue the modification, instead of the total repeal of the Stamp Act which his ministers intend to propose to Parliament, the Duke of Bedford will be happy to receive his Majesty's commands for attending him.⁶

¹ Parliamentary History, xvi, 90, 91, foot-note. ² Grenville Papers, iii, 237.

³ Walpole Memoirs, ii, 183.

⁴ Parliamentary History, xvi, 89.

⁵ Memoirs of Rockingham, i, 275.

⁶ Bedford, Correspondence, edited by Lord John Russel, iii, 329, foot-note.

This is an excellent example of the intrigues against which the ministry had to contend.

II. *The support of the repeal by influential men in Parliament.*

— While the new ministry had to face a powerful opposition, it found on the other hand an unexpected ally in Mr. Pitt, and an unlooked-for strength in its follower, Edmund Burke. Mr. Pitt's attitude towards the act had not hitherto been known, and so far the ministry had looked in vain to him for support and advice. Now, however, he came forward as the strongest champion for repeal, and a most important one, as he was the popular hero of the day, and his name, as Walpole says, made "a sort of party."¹ Burke was at this time almost unknown, and the influence he exerted for the repeal was merely that of eloquence, but eloquence great enough to receive the praise of Pitt² and an "address of thanks" from seventy-seven merchants.³ Probably equal in influence to the support of Pitt was the testimony of Benjamin Franklin. His examination in the House of Commons doubtless dispelled many popular illusions regarding the colonies, as for instance their fabulous wealth, and gave convincing proof of their determination to resist the act to the bitter end. It gave the house the rare but exceedingly valuable opportunity of viewing their own colonial legislation from the American standpoint. The support of Lord Camden in the House of Lords was probably not unexpected, since he owed his seat to the Rockingham ministry; but it was very valuable, as he was one of the foremost lawyers of his day, and exceedingly popular because of his acquittal of Wilkes, while he was chief justice. The importance of his able advocacy of the repeal in the upper house becomes apparent when one remembers that Lord Mansfield, who had hitherto monopolized the leadership of that house, spoke against the bill.

What, however, were the considerations that constrained a vacillating ministry to propose to Parliament the repeal of the Stamp Act? These were undoubtedly the opposition of the colonists and the protests of the British merchants.

¹ Walpole, *Letters to Sir Horace Mann*, i, 277.

² *Parliamentary History*, xvi, 108, foot-note.

³ *Correspondence of Burke*, edited by Fitzwilliam, i, 194.

III. *The opposition in America.* — Before the passage of the Stamp Act in March, 1765, the grievances of the colonists were mainly economic, and the full significance of such a measure as the proposed act does not seem to have been generally realized until the autumn of 1764. In April, 1764, the Grenville ministry had passed an act imposing heavy duties on foreign sugar, wine, coffee, silk, and other goods imported into the colonies. These were the chief articles of colonial commerce, and the requirement that the duties should be paid in bullion made the burden heavier, as money was extremely scarce in the colonies. Besides this, the famous Molasses Act of George II, which had placed almost prohibitory duties on foreign rum and molasses, was made perpetual. This act had been passed to force New England to abandon her trade with the prosperous French and Dutch West Indies, and to bring her lumber and horses to the thriftless English West Indies alone. The strict enforcement of this act would have deprived New England to a great extent of its most lucrative trade, and of its one source of bullion with which to pay for English manufactured goods; fortunately the act had remained mere paper legislation. But now the rates were so lowered as to transform an almost prohibitory duty into one for revenue, and the law was rigidly enforced by the officers of the British ships stationed along the coast. This brought especial distress upon New England, but the new duties affected all the colonies in a greater or less degree.

These new duties were commonly considered as taxes, and the distinction between internal and external taxation — later so strongly emphasized — was not yet generally made. Proof of this is found in the instructions of the colonial agents, and in the petitions and resolutions of the colonial assemblies. For instance, Hutchinson, the historian of New England, would seem to imply that before the passage of the act of 1764 the Massachusetts assembly drew a distinction between a duty imposed for mere trade regulation and one for revenue, and regarded the latter as a tax. According to his account, the proposition of the Massachusetts agent Bollan, that the colony should apply for a reduction of the sugar duty, was rejected by the assembly because "it was not advisable to apply for the reduction of the duty in order to the

payment of it, but rather that the act . . . should be revived as a prohibition.”¹ Moreover, when in January, 1764, this same assembly drew up a protest against the proposed renewal of the Sugar Act, “in which the authority of Parliament to impose the duty was not denied,” “the opposers of the address in the house laboured for the assertion of an exclusive right to impose taxes and duties on inhabitants in all cases whatsoever.”² Likewise, the town of Boston in the instructions to its representatives, in May of that year, acknowledged its submission to all just and necessary regulations of trade; but, on the other hand, it declared: “There is no room for delay . . . These unexpected proceedings may be preparatory to more extensive taxation; for if our trade may be taxed, why not our lands and everything we possess?”³ Again in the next month, in the instructions drawn up by the Massachusetts assembly, under the guidance of Otis, for their London agent, the question is raised:

Can it be possible that duties and taxes shall be assessed without the voice or consent of an American parliament? . . . Prohibitions of trade are neither equitable nor just, but the power of taxing is the great barrier of British liberty.

Here again the distinction that is drawn is between duties imposed for trade regulation and those imposed for revenue. Resolutions were also adopted by this same assembly, protesting against “the Imposition of Duties and Taxes by the Parliament of Great Britain, upon a people who are not represented in the House of Commons.”⁵ It likewise sent circular letters to the other colonial assemblies asking their coöperation to “obtain a Repeal of the Sugar Acts and . . . to prevent a Stamp Act”⁶ — making no difference between the two.

In the Rhode Island assembly also no distinction between the two forms of taxation seems to have been made: in its instructions to the committee appointed to confer with the other colonies,

¹ Hutchinson, *History of Massachusetts Bay Colony*, i, 108, 109.

² *Ibid.*, i, 114, 115.

³ *Ibid.*, i, 107.

⁴ *Ibid.*, i, 112.

⁵ *Proceedings in Parliament and in Massachusetts* (pamphlets published, 1774),

p. 5.

Votes of the Assembly of Pennsylvania, 1758-1767, p. 355.

the Sugar and Duty Acts and the proposed Stamp Act are grouped together without any discrimination.¹ In October of that same year, the New York assembly sent the following manifesto to the House of Lords:

The authority of the parliament of Great Britain to model the trade of the whole empire, so as to subserve the interest of her own, we are ready to recognize . . . ; but the freedom to drive all kinds of traffic, in subordination to and not inconsistent with the British trade, and an exemption from all duties in such a course of commerce, is humbly claimed by the colonies as the most essential of all the rights to which they are entitled. . . . For, since all impositions, whether they be internal taxes, or duties paid for what we consume, equally diminish the estates upon which they are charged, what avails it to any people by which of them they are impoverished?²

In that same month the North Carolina assembly stated in its address to the governor: "We observe our commerce . . . burthened with new taxes . . . against what we esteem our inherent right and exclusive privilege of imposing our own taxes."³

Not only the resolutions of the assemblies, but also the writings of the prominent politicians and statesmen show that until the autumn of 1764 the distinction between the two forms of taxation was not commonly made. For example, Governor Bernard, in that summer, in his scheme of American polity, declared that Parliament's power both to impose port duties and to levy internal taxes was not to be disputed.⁴ James Otis, in his attack on Bernard's scheme, agreed with him that "There is no foundation for distinction between external and internal taxes; if parliament may tax our trade, they may lay stamps, land-taxes, tithes and so on indefinitely."⁵ This opinion was reiterated by Thomas Hutchinson in a letter to the secretary of the chancellor of the Exchequer. "Nor are the privileges of the people," he wrote, "less affected by duties laid for the sake of the money arising from them than by an internal tax."⁶ Beside Otis, another emi-

¹ Colonial Records of Rhode Island, vi, 403.

² Bancroft, *History of the United States* (ed. of 1885), iii, 90.

³ Colonial Records of North Carolina, vi, 1261.

⁴ Bancroft, iii, 79.

⁵ *Ibid.*, iii, 82.

⁶ *Ibid.*, iii, 85.

nent young lawyer of Boston, Oxenbridge Thatcher, published in September a pamphlet, in which he declared that the late Duty Act imposed a "tax" upon the colonies without their consent.¹ That the word "duty" in these resolutions and pamphlets did not mean an internal tax, is shown by the testimony of Franklin before the House of Commons that "by taxes they [the colonists] mean internal taxes; by duties they mean customs."²

Although the colonists regarded these duties as taxes, they paid them without any great opposition, because the act of 1764 was, on the whole, in accord with the double fiscal system under which they had always labored. From the very beginning of their history, all forms of internal taxation were a part of their several departments of finance, while colonial trade regulations and customs dues were under the control of the British exchequer. When, however, in the autumn of 1764, "the centre of gravity shifted from the measure that had . . . to the measure that might become a law,"³ it was quite natural that they should consider the proposed Stamp Act a violation of the former financial policy. As a consequence, they began to distinguish consciously, as before they had distinguished unconsciously, between the two forms of taxation.

But even after the autumn of 1764 this distinction was not accepted by all the American colonists. James Otis, just before the passage of the Stamp Act, acknowledged that "no less certain is it that the Parliament of Great Britain has a just and equitable right . . . to impose taxes on the colonies, internal and external, on lands as well as on trade."⁴ Nor was any such distinction made in Dickinson's pamphlet, *The Late Regulations respecting the British Colonies*, printed in 1765, where the same argument was used against the Stamp Act and the Acts of Trade, *viz.* their economic effect.⁵ Even Franklin, who in his testimony before the House of Commons laid great emphasis upon the distinction,

¹ The Sentiments of a British American, in Palfrey, History of New England, v, 280.

² Parliamentary History, xvi, 159.

³ Tyler, History of the Literature of the Revolution, p. 61.

⁴ A Vindication of the British Colonies, p. 21.

⁵ Pennsylvania Historical Society Publications, xiii, p. 67.

seemed to admit, later, that precedents were against the Americans. In 1766, he wrote:

The Parliament, it is acknowledged, have made many oppressive laws relating to America, which have passed without opposition, partly through the inattention [of the colonists] to the full extent of their rights, while employed in labour to procure the necessaries of life. But that is a wicked guardian . . . who first takes advantage of weakness incident to minority . . . and, when the pupil comes of age, urges these very impositions as precedents to justify continuing them and adding others.¹

Strikingly similar is the statement of Richard Bland of Virginia in the same year:

But whether the Act of 25 Charles II, or any of the other acts, have been complained of as infringements of the rights of the colonies or not, is immaterial; for, if a man of superior strength takes my coat from me, that cannot give him a right to my cloak.²

Although opposition was expressed against the act of 1764, it was not until after the actual passage of the Stamp Act that breaches of the peace occurred. At the same time the tone of the assemblies became much bolder: the colonies of Virginia and Massachusetts passed their famous resolutions. Non-importation agreements were drawn up by the merchants of New York and Pennsylvania. Finally the culmination of legal resistance was reached in the Stamp Act Congress of October, 1765. But even during these days of excitement, when the words "right" and "privilege" were on every one's lips, the economic grievances were not entirely forgotten. Even in the resolutions of the Stamp Act Congress, the trade restrictions were placed among the complaints. Indeed, in the remonstrances and resolutions these restrictions were almost invariably placed side by side with the Stamp Act as a burden on the colonists, although not as one that so nearly touched their rights. Another proof of the influ-

¹ Observations on "A Letter from a Merchant to his Nephew in America." Works of Benjamin Franklin, edited by Jared Sparks, p. 238.

² An Enquiry into the Rights of the British Colonies, p. 19.

ence of the economic grievances is given in a letter of Mr. Whatley to Mr. Grenville, October 17, 1765. "The rage of the people," he writes, "seems not to be confined to the Stamp Act; the officers of the customs are also the object of it."¹ And in June, 1766, Secretary Richmond wrote to Governor Sharpe of Maryland, that not only had the repeal of the Stamp Act been granted to the colonists, but that also "those Grievances in Trade, which seemed to be the first and chief object of their uneasiness, have been taken into consideration."² So likewise the pamphlet *True Interest of America* stated: "Though the Stamp Duty has been the ostensible cause of the late riots, yet that in reality is but a small part of their grievances." A summary of these "grievances" was given by Franklin in his testimony before the House of Commons. The antagonism of the colonies to Parliament, he testified, was due

to a concurrence of causes: the restraints lately laid on their trade, by which the bringing in of foreign gold and silver into the colonies was prevented; the prohibition of making paper money among themselves; and then demanding a new and heavy tax by stamps; taking away, at the same time, trials by juries, and refusing to hear our humble petitions.³

The influence of one of these causes, "taking away trials by juries," has probably not been sufficiently emphasized. This privilege had been restricted by the Duty Act of 1764 and by the Stamp Act, as all cases arising under these acts were to be tried by the admiralty courts. The same was of course true of all breaches of the Acts of Trade. The colonists considered the extension of the powers of the admiralty courts as an "infringement of their natural rights as Englishmen," as early as they did parliamentary taxation. Proof of this is found as early as 1764, in the resolutions of the Massachusetts assembly,⁴ in a petition of Rhode Island to the king,⁵ and also in the writings of such men

¹ Grenville Papers, iii, 100.

² Correspondence of Governor Sharpe, iii, 312.

³ Parliamentary History, xvi, 141, 142.

⁴ Proceedings in Parliament and Massachusetts, p. 5.

⁵ Colonial Records of Rhode Island, vi, 415.

as Oxenbridge Thatcher,¹ Stephen Hopkins,² Daniel Dulany³ and Samuel Adams.⁴ Also in the resolutions regarding the Stamp Act Congress, in the following year, the legislatures of Maryland, Rhode Island and South Carolina stated this grievance as a violation of their rights. In the resolutions of the Stamp Act Congress the extension of the powers of the admiralty courts is pronounced as dangerous to their liberty as the tax itself. In the petitions also of this congress to the king and to the two houses of Parliament, the two "invaluable" and "essential" rights that they plead for are "the rights of taxing ourselves, and trial by our peers."⁵ But just as in the distinction between internal and external taxation, one can find an economic as well as a political cause for this devotion to trial by jury. Jury trial had been the chief method of obstructing any attempted enforcement of the Acts of Trade by English officials, for the juries had persistently brought in verdicts unfavorable to the king. One has only to read the reports of Edward Randolph to be convinced — even after allowance has been made for his prejudice — how jealously the jurors guarded the pockets of the colonists.

In last analysis, the fundamental cause of the revolt in America was the peace of 1763, which freed the colonies from all fear of a French invasion. As long as this danger existed, they felt their dependence upon the mother country, and consequently were forced to remain loyal and obedient. Now that the danger was removed, they no longer felt the need of assistance, especially as they were making great strides towards economic and commercial independence. As Franklin put it, America had grown out of its youth into its manhood. The saying of the Grenville party at this time, "obedience and protection are reciprocal," was true in more than one sense. Legally no possible fault can be found with the Stamp Act, but practically it proved a failure because it came too late. If it had been imposed ten years earlier its fate

¹ Tyler, *Literature of the American Revolution*, p. 54. ² *Ibid.*, pp. 63, 64.

³ *The Rights of the Colonists Examined*, pp. 101-104.

⁴ Charles Francis Adams, *Life and Works of John Adams*, i, 66, 67; iii, 466, 467.

⁵ *Authentick Account of the Proceedings of the Congress held at New York, 1765.*

would probably have been very different, and Grenville would have been saved a great deal of abuse.

There is ample proof that the revolt in America caused serious alarm in England. Mr. Whatley's statement regarding the Virginia resolutions is true of all the proceedings: "They are such," he wrote to Mr. Grenville, "as in my opinion cannot escape the notice of Parliament."¹ Indeed in the debates in Parliament the uneasiness aroused by the disturbed condition of the colonies is clearly shown.

IV. *The protests of the English merchants.* — The hostility of the British manufacturers, merchants and workmen and the decrease of British trade were probably even more influential in effecting the repeal than the disturbances in America. Among the laboring classes, at least, there was much restlessness. This was shown in the great opposition to the cider tax, and in the riot after the prohibition of Italian silks. The people were suffering from the heavy taxes and business depression resulting from the recent war. To this was now added the falling off of one of their most lucrative branches of trade, that with America; for the policy of Grenville reacted disastrously upon the mother country. In the trade between the colonies and England, the former had been forced to pay partly in bullion, as they imported more manufactured goods than they exported raw materials. They had hitherto been able to get this bullion from the foreign West Indies, for with these the balance of trade was in their favor. But now this source of supply was cut off by the strict enforcement of the Acts of Trade, while the money market was still further tightened by the paper money acts, and by the demand that the new duties should be paid in bullion. Having no money to pay for manufactured goods, and being already in debt to the English merchants, the colonists were forced to retrench expenses, and to use homespun and other home-made articles. This meant of course the loss of many customers to the British merchants and traders.

The passage of the Stamp Act greatly increased these evils, by causing the colonists to determine, as a matter of principle, not

¹ Grenville Papers, iii, 198.

to trade at all with Great Britain. Non-importation agreements were thus drawn up by the merchants of New York and Philadelphia, and the latter even bound themselves not to pay debts owing to England.¹ According to Walpole:

The weapon with which the colonies armed themselves to most advantage, was the refusal of paying the debts they owed to our merchants at home, for goods and wares exported to the American provinces. These debts involved the . . . great trading towns in a common cause with the Americans [The ministers] were threatened . . . with insurrections in the trading towns at home, who loudly demanded a repeal of the bill, on which depended the payment of what was due to them, and the hopes of reëstablishing so beneficial a commerce.²

As is always the case, the "hard times" were felt especially by the laboring class. John Wentworth wrote to America "that the Marquis of Rockingham told him . . . that he knew there were already ten thousand workmen discharged from business in consequence of the advices from America."³ Moreover, according to the *Annual Register*,

A resolution began to be talked of, of stopping the exportation of tobacco from Virginia and South Carolina to Great Britain; by which, considering the great quantities of that article reëxported from Great Britain, and the immense sum so imperceptibly raised by what she herself consumed of it, her trade and especially her revenue could not fail of being considerably affected.⁴

Meanwhile the colonies were applying themselves so diligently to their home manufactures, "that many now began to be convinced of what they had till then thought impossible, that the colonies would soon supply themselves with every necessary of life."⁵ England was thus not only temporarily deprived of her colonial trade, but her future trade was likewise menaced by this growing industrial independence of the colonists.

¹ New York Colonial Manuscripts, Brodhead, vii, 799, 800. *Annual Register*, 1765, p. 55.

² Walpole Memoirs, ii, 153. See also McPherson, *Annals of Commerce*, iii, 211.

³ *Life and Works of John Adams*, i, 175.

⁴ *Annual Register*, 1765, p. 56.

⁵ *Ibid.*

The inexpediency of the enforcement of this act was recognized in England. For example, Lord Chesterfield wrote to his son:

Our trade to America brings in, *communibus annis*, two millions a year; and the Stamp Duty is but estimated at £100,000 a year, which I would by no means bring into the stock of the Exchequer at the loss or even the risk of a million a year to the national stock.¹

The merchants and manufacturers showed their disapproval by deluging the House of Commons with petitions. These were sent by the merchants of London, Bristol, Liverpool, Halifax, Leeds, Lancaster, Manchester, Leicester, Bradford, Frome, Birmingham, Coventry, Macclesfield, Wolverhampton, Stourbridge, Dudley, Minehead, Taunton, Witney, Newcastle upon Tyne, Glasgow, Chippenham, and Nottingham — “all containing much the same complaint . . . and concluding with the same prayer,” that the Stamp Act be repealed.² The popular feeling in London in regard to the act is shown by the fact that “at a great assembly, on a motion being made for petitioning his Majesty to enforce the American Stamp Act, *etc.*, it passed in the negative by more than two to one.”³

That these petitions made an impression upon the House of Commons is proved by the questions asked Franklin concerning the effects of the act upon trade, and also by the frequent reference made in the debates to the decreased commerce. The opposition of the traders would naturally have influence with a Whig Parliament, as it was the policy of that party to ally itself with the mercantile classes.

This brings us to the arguments advanced within and without Parliament for and against the repeal. These may be divided into two main groups: first, arguments based on theories of government, according to which the Stamp Act was pronounced legal or illegal, right or wrong; secondly, arguments based upon expediency.

In arguing for repeal, both Camden and Pitt confined them-

¹ Parliamentary History, xvi, 89, foot-note.

² *Ibid.*, xvi, 133-136; Annual Register, 1766, pp. 35, 36.

³ Annual Register, 1766, p. 62.

selves almost entirely to the political and legal side of the question; and the arguments of each were practically the same. Pitt defined his own position, when at the opening of his speech he said: "I will only speak to one point, . . . I mean to the right."¹ The first of their arguments was that Parliament had no right to levy an internal tax upon the colonies, because the colonies were not represented in that body. "Taxation and representation," Lord Camden declared, "are inseparable." "As to the distinction," he continued, "of a virtual representation, it is so absurd as not to deserve an answer."² Pitt, likewise, while acknowledging the right of Parliament to legislate for the colonies, drew a sharp distinction between legislation and taxation. "Taxation," he declared, "is no part of the governing or legislative power. The taxes are a voluntary gift and grant of the Commons alone."³ Both, however, acknowledged the right of Parliament to regulate colonial trade, as they considered that there was "a plain distinction between taxes levied for the purpose of raising a revenue, and duties imposed for the regulation of trade," although the latter might incidentally yield revenue.³ They admitted that no colonial charter⁴ conferred any right of exclusive taxation, but they based their assertion "on the common rights of Englishmen as declared by Magna Charta and the Petition of Right." They based it, further, upon the natural rights of man, and upon the law of nature which inseparably bound together taxation and representation. "God hath joined them, no British parliament can separate them."⁵

The ministry, on the other hand, and their chief supporters in the lower house, Conway and Burke, pressed the repeal solely on the ground of expediency. Their advocacy of the Declaratory Act, which asserted the supremacy of Parliament over the colonies, proves that they did not condemn the Stamp Act on constitutional grounds. Indeed the great cause of their hesitation in bringing forward the repeal bill, was fear of impairing the preroga-

¹ Parliamentary History, xvi, 99.

² *Ibid.*, xvi, 178, 180.

³ *Ibid.*, xv, 99, 105.

⁴ The Maryland Charter constituted an exception; see section xx. Cf. also Mereness, Maryland, pp. 478, 480.

⁵ Parliamentary History, xvi, 178.

tive of Parliament. According to the testimony of Mr. Trail, an American, the opinion of Mr. Conway was that "the Stamp Act must be repealed, that there was some difficulty about coming off with honour, and that America would boast that she had conquered Britain."¹ Rockingham told him that the repeal of the act was necessary because "of such confusions as would be caused by enforcing it."¹ The policy of the ministry therefore was to uphold the doctrine of parliamentary control, while repealing the obnoxious act itself — a plan which, according to Burke, "without giving up the British authority, quieted the empire."² "I assure you," Burke wrote to his constituents of Bristol, "that if ever one man lived, more zealous than another for the supremacy of Parliament, . . . it was myself."³ Thus, though Burke's speech was warmly commended by Pitt, the two were, as regards their principles, almost diametrically opposed. The one supported, the other opposed the Declaratory Act. The one was eminently practical in his arguments, and based his appeal on commercial policy; the other was strongly philosophic and theoretical, and founded his opinion on the natural and inalienable rights of man. "Mere speculation"⁴ was as abhorrent to Burke, as it was dear to the Great Commoner.

Unfortunately the speeches made by Burke in 1766 against the Stamp Act have not been recorded, but his position is clearly indicated in his "Speech on American Taxation," in which he reviewed the parliamentary debates and defended the Rockingham administration, with whose policy he declared himself to be completely in sympathy. This policy was a total repeal, based "on principles of policy, of equity and of commerce." It therefore "differed fundamentally" from the policies of both the opposition and of Pitt, but "preserved the object of both." The ministers "preserved the authority . . . the equity of Great Britain. They made the Declaratory Act, they repealed the Stamp Act."

Burke, unlike Pitt, made no distinction between internal and external taxes, but considered that the authority of Parliament

¹ *Life and Works of John Adams*, ii, 175.

² *Memoirs of the Marquis of Rockingham*, edited by Albemarle, i, 319.

³ *Burke, Correspondence*, edited by Fitzwilliam, i, 46.

⁴ *Ibid.*, i, 39.

extended over one as much as over the other. The Duty Act of 1764 and the Stamp Act of 1765 were therefore equally within the competence of Parliament, but they were equally inconsistent with the established commercial policy of the empire.

That policy was, from the beginning, purely commercial, and the commercial system was wholly restrictive. It was a system of a monopoly . . . from the year 1660 to . . . 1764. . . . I venture to say, that during the whole period, a parliamentary revenue from thence was never once in contemplation.

This monopoly he considered justifiable, because the colonies "were indemnified for it by a pecuniary compensation," as it was by means of British capital that "they were enabled to proceed with their fisheries, *etc.*" The act of 1764, however,

began the second period of the policy of this country with regard to the colonies; by which the scheme of a regular plantation parliamentary revenue was adopted . . . , a revenue not substituted in the place of, but superadded to, a monopoly. . . . Whether you were right or wrong in establishing the colonies on the principles of commercial monopoly, rather than on that of revenue, is at this day a problem of mere speculation. You cannot have both. To join together the restraints of an universal internal and external monopoly with an universal internal and external taxation, is . . . perfect uncompensated slavery.¹

Midway between Pitt and Burke, stood Benjamin Franklin. With Pitt and Camden, he defended the rights of the colonies, and claimed the same privileges and advanced practically the same arguments as they. With Pitt, he attacked the justice of the act, in that it laid a heavier burden upon the colonists than they could bear, and forced them to share the expenses of a war undertaken primarily for the preservation of the British Indian trade; a trade in which the Americans had no interest. Like Pitt, Franklin claimed that the colonists had already contributed their share of the expenses, in the part they had taken in the war. Franklin also maintained that the tax fell more heavily on the poor farmer than on the rich trader, but that in either case there

¹ Burke, *Speech on American Taxation*, 2d ed., printed in London, 1775, by J. Dodsley, pp. 38, 39, 41, 50, 51, 44, 66.

was not enough bullion to pay it. On the other hand, he laid stress upon the practical objections to the act. He showed how disastrous had been its effects upon trade, and he pointed out that America, through the non-importation agreements and the consequent impetus to her manufactures, was becoming every day more independent industrially. He also testified to the utter impossibility of ever collecting any internal tax, however small, "unless by force of arms."¹

Franklin made one assertion which was made by no Englishman, and which was rather startling in its significance. "The colonies," he asserted, "are not supposed to be within the realm."² Probably from policy the full meaning of this theory was not shown in his testimony before the House of Commons; but later in the same year, in his comments upon the minority report of the House of Lords, he denied the right of Parliament to tax the colonies, not only because they were not represented in that body, but also because they were entirely without its domain. To the king alone they were subordinate, both in questions of legislation and of taxation. He wrote:

I likewise protest . . . against your Declaratory Bill, that the Parliament of Great Britain has not, never had, and of right never can have, without consent . . . power to make laws of sufficient force to bind the subjects in America in any case whatever, and particularly in taxation, . . . as the Americans are without the realm. . . . Their only bond of union is the King . . . America is not part of the dominions of England, but of the King's dominions. England is a dominion itself and has no dominions.³

Somewhat the same idea is expressed in another pamphlet of this year, 1766. *An Enquiry into the Rights of the British Colonies* by Richard Bland.

It is evident [Bland declared] that the colonists . . . long before the first act of navigation . . . were respected as a distinct state, independent as to their internal government of the original kingdom, but

¹ Parliamentary History, xvi, 140.

² *Ibid.*, xvi, 156.

³ Letters and Miscellaneous Papers of Benjamin Franklin, edited by Jared Sparks, pp. 225, 231, 254.

united with her as to their external policy in the closest and most intimate League and Amity.

The author would here seem to imply that the relations between England and her colonies were those of two equal and independent countries, bound together by a friendly commercial treaty. "May not the king," Bland inquired, "have prerogatives which he has a right to exercise without the consent of Parliament?"¹ Could he not therefore grant colonial charters without Parliament's consent? Joseph Hawley, likewise, in the Massachusetts assembly of the same year declared: "The Parliament of Great Britain has no right to legislate for us."²

These extreme views were by no means generally accepted by the colonists at this time. All the other opinions of Franklin, however, were representative: his arguments were the arguments employed by his fellow-countrymen. Though they laid particular stress upon their rights, they did not neglect the practical side, nor fail to appeal to the self-interest of England by demonstrating the decrease in her American trade. As it was put in *An Essay on the Trade of the Northern Colonies with Great Britain*, the colonies can be made to yield the greatest commercial advantage to England by being permitted to acquire the greatest commercial prosperity for themselves. The essential condition of such prosperity is freedom.³ This was certainly in England the most influential of all their arguments. But it was their practical demonstrations rather than their theoretical writings, that had weight. The most convincing arguments were their refusal to use the stamp paper, their mob violence, their non-importation agreements, their repudiation of English debts, and particularly the proof of their growing economic as well as political independence of the mother country.

In the British Parliament itself, it was the practical demonstration of the inexpediency of the act by Conway and Burke and not the assertion of the rights of the colonies by Pitt that won the day. As Governor Sharpe of Maryland wrote to Lord Baltimore: "I

¹ *An Enquiry into the Rights of the British Colonies*, pp. 16, 19.

² Hosmer, *Life of Samuel Adams*, p. 96.

³ Tyler, *History of the Literature of the Revolution*, p. 58.

find by several Letters . . . that it [the Stamp Act] is at length repealed, not on the principles contended for by the colonies but purely out of regard to the Commercial Interests of Great Britain."¹ Franklin likewise testified that if the act were repealed the colonists would probably think that this was done "from a conviction of its inexpediency."² That this was so is distinctly stated in the *Annual Register*.

Those who contended for the repeal were divided in opinion as to the right of taxation; the more numerous body, of whom were the ministry, insisted that the legislature of Great Britain had an undoubted right to tax the colonies, but relied on the inexpediency of the present tax. . . . Those who denied the right of taxation were not so numerous.³

Pitt's influence was indeed great, but it was rather among the masses of the people, not represented in Parliament, than in Parliament itself, where, according to Walpole, "his followers [were] exceeding few."⁴ His doctrines were not only rejected but were considered actually dangerous even by some supporters of the repeal. In Lord Hardwick's opinion, they were "absurd and pernicious."⁵ Moreover the almost unanimous passage of the Declaratory Act proves that Pitt's theories were not accepted, and that therefore his arguments could not have been the compelling motive for repeal. Indeed, according to Sir George Savile, "the Act would certainly not have been repealed if men's minds had not been in some measure satisfied with the Declaration of Rights."⁶

Outside of Parliament also, there seems to have been little doubt as to the right of Parliament to tax the colonies; all the British pamphlets take the legality of the act for granted. Even the two staunch supporters of the rights of the Americans, Pitt and Camden, did not despise using the argument of "inexpediency." "But, my lords," Lord Camden said in closing, "even supposing the Americans have no exclusive right to tax themselves, I maintain it would be good policy to give it them. . . .

¹ Correspondence of Governor Sharpe, iii, 304.

² Parliamentary History, xvi, 151.

³ Annual Register, 1766, 37.

⁴ Walpole, Letters to Sir Horace Mann, i, 277.

⁵ Memoirs of Rockingham, i, 277.

⁶ *Ibid.*, i, 305. See also Letter of Albemarle, *ibid.*, p. 285.

America feels she can do better without us than we without her.”¹ “You could not subsist,” declared Pitt, “and be a people with that defalcation of imports.”²

The great argument for the repeal, therefore, was the inexpediency of the act, and its chief object the restoration of quiet and harmony in order that the colonial trade might be saved. This was the primary motive, and not the fear of the political independence of the colonies. This is proven by facts already noticed; the emphasis laid upon the effects of the act on trade both in the pamphlets, in the debates, and in the examination of Franklin; and secondly the great influence of the merchants in obtaining the repeal. For instance, according to Burke, “Barlow Trecothick, . . . a member for London and a merchant in the American trade” was “the principal instrument” in securing the repeal.³ “I perceive,” wrote Governor Sharpe, “that the Commercial Interest of Great Britain, and not the claims or clamours of the colonies, has been urged as the sole or at least the most proper Reason to be given for the Repeal.”⁴ Indeed the preamble of the repeal puts this beyond all doubt, by stating that “the continuance of the former acts would be attended with many inconveniences, and may be productive of consequences greatly detrimental to the commercial interests of these kingdoms.”⁵ Thus “by relieving America,” they aimed “to save the trade of Great Britain.”⁶

But in spite of the strength of these arguments, the repeal bill was by no means rushed through Parliament as the act itself had been. On the contrary it met an able resistance. Burke characterized it as “one of the ablest, and . . . not the most scrupulous oppositions that perhaps ever was in the House.”⁷ George Grenville exerted all his forces to save his “darling act,” as Walpole terms it; and two strong leaders were secured by the opposition in the upper house in Lord Chancellor Northington and Lord Mansfield. In the House of Lords the opposition was especially strong because of the combined efforts of the Bedford and

¹ Parliamentary History, xvi, 170.

² Walpole Memoirs, ii, 217.

³ Memoirs of Rockingham, i, p. 319.

⁴ Correspondence of Governor Sharpe, iii, 306. ⁵ Annual Register, 1766, 194.

⁶ Chatham Correspondence, ii, 375, Geo. Onslow to Pitt.

⁷ Burke, Speech on American Taxation, 2d ed., p. 62.

Temple factions and of "the king's friends." Consequently on both the second and third readings of the bill, minority reports were drawn up by the Lords.

In the opposition the chief advocate of the rights of Parliament was Lord Mansfield. "It is out of the question," he declared, "whether it is or is not expedient to repeal this act. . . . The law is made, and the question is, whether you had a right to make it." He did not base his argument upon any theory of "virtual representation," for such representation he did not claim even for Englishmen at home. In his opinion, "the notion now taken up, that every subject must be represented by deputy, if he does not vote in parliament himself, is merely ideal." Representation by election first arose merely "by the favour of the crown." "As to the sound," he continued, "which has been thrown out, that no money can be raised without consent, the direct contrary is the truth; for if any number of people should agree to raise money for the King, it is unconstitutional." Consent is unnecessary, he maintained, because the British Parliament does not represent Englishmen as individuals, but

the whole British empire, and has authority to bind every part and every subject without the least distinction, whether such subjects have a right to vote or not, or whether the law binds places within the realm or without.¹

This legislative power of the British Parliament precluded any exclusive right of taxation by the colonies. And, as Soame Jenyns wrote, no charter²

ever pretended to grant such a privilege to any colony in America, and had they granted it, it could have had no force, . . . their charter being derived from the crown, and no charter from the crown can possibly supersede the right of the whole legislature.³

The distinction between external and internal taxes was likewise declared fallacious by Lord Mansfield,⁴ and indeed by all the

¹ Parliamentary History, xvi, 172-174.

² The Maryland charter was overlooked; *cf. supra*, p. 266, v. 4.

³ The Objections to the Taxation of Our American Colonies, p. 9.

⁴ Parliamentary History, xvi, 101, 176.

members of the opposition. Lord Temple especially "was Jo-cose upon the distinction of an Internal Taxation: what, says he, whilst the Stamp Act operates upon the Merchant shall we call it a Commercial Regulation, when upon the Law a Legal Regulation, and so on" ¹ It was moreover stated with some truth by Lord Lyttleton that "the Americans themselves make no distinction between external and internal taxes." ²

Other members of the opposition, maintaining the theory which Lord Mansfield rejected, argued that Parliament had the right to tax the colonies, because the colonies were "virtually" represented in Parliament, as were the non-voters of England.

There can be no doubt but that the inhabitants of the colonies are as much represented in parliament as the greatest part of the people of England are, among nine millions of whom there are eight who have no votes in electing members of parliament. . . . A member of parliament chosen for any borough represents not only the constituents and inhabitants of that particular place, but he represents . . . the commons of the land, and the inhabitants of all the colonies and dominions of Great Britain, and is in duty . . . bound to take care of their interests. ³

All the British pamphleteers advanced this new theory of universal as opposed to local representation, and derived from it the virtual representation of the colonists. ⁴

Having thus established the legality of the Stamp Act, the opposition, in the second place, defended its justice. "Ungrateful people of America!" exclaimed Mr. Grenville: "Bounties have been extended to them . . . while you yourselves were loaded with an enormous debt." ⁵ The war, it was argued, had been undertaken primarily for the defence of the colonies, and they had profited the most by its results. It was therefore but just that they should at least bear the expense of their own army, es-

¹ Hammersly to Sharpe, in Correspondence of Governor Sharpe, iii, 27.

² Parliamentary History, xvi, 167.

³ *Ibid.*, xvi, 201.

⁴ See Soame Jenyns, *The Objections to the Taxation of Our American Colonies*, pp. 4, 5; A Letter from a Gentleman at Halifax, Tyler, *op. cit.* p. 71; Letters from a Merchant in London, Private Letters and MSS. Papers of Franklin, ed. by Sparks, p. 240.

⁵ Parliamentary History, xvi, 102.

pecially as England was heavily burdened with debt, while they were almost entirely free from debt. "Protection and obedience are reciprocal" was their answer to "no taxation without representation." A parliamentary tax, it was asserted, was the only method of obtaining the necessary aid. Soame Jenyns asked, with good cause:

Have their Assemblies shown so much Obedience to the Orders of the Crown that we could reasonably expect that they would immediately tax themselves on the arbitrary command of a minister? . . . and should we not receive Votes, Speeches . . . Petitions . . . in abundance, instead of Taxes? ¹

In the third place, the opposition took up the question of the expediency of the enforcement of the act, though, as the *Annual Register* stated: "So many instances of the inexpediency of the Stamp duty had already occurred, that the question was scarcely controvertible."² However, they maintained that the abrogation of this important right of Parliament would in the end have more disastrous results than the present financial loss. The repeal would stamp with approval the revolt and treasonable utterances in the colonies, and encourage them to repudiate all the acts of Parliament, particularly those relating to trade. As William Knox, the ex-agent for Georgia, put it, the result of the repeal in the colonies would be "addresses of thanks and measures of rebellion."³ Moreover they declared that the enforcement of the act had by no means been proved impossible, as no vigorous or prompt measures had been taken by the ministry. Undoubtedly it had been a mistake to give the colonies, in 1764, a year's warning in which to consider encroachments. But the responsibility for this error rested with the Grenville and not the Rockingham ministry, though, on the other hand, it must be acknowledged that Grenville's motive, in so doing, was of the best. He wished to give the colonies time to consider the matter, and to suggest another tax if this one was displeasing to them.

However, the arguments advanced against the repeal, and even

¹ The Objections to the Taxation of Our American Colonies, pp. 13, 14

² Annual Register, 1766, p. 44.

³ New York Colonial Manuscripts, Brodhead, vii, p. 803, foot-note.

the royal opposition, did not prevent its passage in the lower house, February 24, by a vote of 275 to 167. It was then carried to the House of Lords by over two hundred members of the lower house. "An instance of such a number going up with a single bill, has not been known in the memory of the oldest man." But as we have seen, in spite "of the *éclat* with which it was introduced into the upper house," the bill met with "a strong opposition there." Finally it passed its third reading, March 17, by a majority of 34, and three days after it received the royal assent. "An event that caused more universal joy throughout the British dominions, than perhaps any other that can be remembered."¹ The repeal was accompanied by the Declaratory Act,

which in the preamble reflects on the American provincial legislatures for assuming, against law, the exclusive right of imposing taxes upon his Majesty's subjects in the colonies, and declares the Americans subordinate to . . . the crown and parliament of Great Britain.²

However, Benjamin Franklin prophesied truly before the House of Commons that "the resolutions of right will give them [the colonies] very little concern, if they are never attempted to be carried into practice."³ The repeal was received in America with universal rejoicing. The attitude of the colonists seems to have been eminently practical.

From first to last the issue seems to have been economic, and the act was apparently proposed, passed, resisted, and repealed on commercial and economic grounds. Political theories were invoked, at every stage, in support of the conflicting economic interests, but none of these theories exercised decisive influence. The act was passed, not primarily to establish a closer connection between the mother country and her colonies, but to get a colonial revenue. It was resisted, not because of any theory of representation, but because the colonists were now economically strong enough to protest. It was repealed because their resistance affected disastrously the British colonial trade.

BRYN MAWR COLLEGE.

HELEN HENRY HODGE.

¹ Annual Register, 1766, pp. 72, 46, 77.

² McPherson, Annals of Commerce, iii, 443. ³ Parliamentary History, xvi, 145.