

## Erskine May, Vol. III, Chapter XVII, pp. 338-356

### The American Revolution

#### The Old Colonial System

[338] IT has been the destiny of the Anglo-Saxon race to spread through every quarter of the globe their courage and endurance, their vigorous industry, and their love of freedom. Wherever they have founded colonies they have borne with them the laws and institutions of England, as their birthright, so far as they were applicable to an infant settlement.(1) In territories acquired by conquest or cession, the existing laws and customs of the people were respected, until they were qualified to share the franchises of Englishmen. Some of these,—held only as garrisons,—others peopled with races hostile to our rule, or unfitted for freedom,—were necessarily governed upon different principles. But in quitting the soil of England to settle new colonies, Englishmen never renounced her freedom. Such being the noble principle of English [339]colonisation, circumstances favoured the early development of colonial liberties. The Puritans, who founded the New England colonies, having fled from the oppression of Charles I., carried with them a stern love of civil liberty, and established republican institutions.(2) The persecuted Catholics who settled Maryland, and the proscribed Quakers who took refuge in Pennsylvania, were little less democratic. Other colonies founded in America and the West Indies, in the seventeenth century, merely for the purposes of trade and cultivation, adopted institutions,—less democratic, indeed, but founded on principles of freedom and self-government. Whether established as proprietary colonies, or under charters held direct from the Crown, the colonists were equally free.

The English constitution was generally the type of these colonial governments. The governor was the viceroy of the crown: the legislative council, or upper chamber, appointed by the governor, assumed the place of the House of Lords; and the representative assembly, chosen by the people, was the express image of the House of Commons. This miniature Parliament, complete in all its parts, made laws for the internal government of the colony. The governor assembled, prorogued, and dissolved it; and signified his assent [340] or dissent to every act agreed to by the chambers: the Upper House mimicked the dignity of the House of Peers;(3) and the Lower House insisted on the privileges of the Commons, especially that of originating all taxes and grants of money, for the public service. The elections were also conducted after the fashion of the mother country. Other laws and institutions were imitated not less faithfully. Jamaica, for example, maintained a court of king's bench, a court of common pleas, a court of exchequer, a court of chancery, a court of admiralty, and a court of probate. It had grand and petty juries, justices of the peace, courts of quarter-sessions, vestries, a coroner, and constables.

Every colony was a little state, complete in its legislature, its judicature, and its executive administration. But, at the same time, it acknowledged the sovereignty of the mother country, the prerogatives of the crown, and the legislative supremacy of Parliament. The assent of the king, or his representative, was required to give validity to acts of the colonial legislature: his veto annulled them;(4) while the Imperial Parliament was able to [341] bind the colony by its acts, and to supersede all local legislation. Every colonial judicature was also subject to an appeal to the king in council, at Westminster. The dependence of the colonies however, was little felt in their internal government. They were secured from interference by the remoteness of the mother country,(5) and the ignorance, indifference, and preoccupation of her rulers. In matters of imperial concern, England imposed her own policy: but otherwise left them free.

Asking no aid of her, they escaped her domination. All their expenditure, civil and military, was defrayed by taxes raised by themselves. They provided for their own defence against the Indians, and the enemies of England. During the seven years' war, the American colonies maintained a force of 25,000 men, at a cost of several millions. In the words of Franklin, 'they were governed, at the expense to Great Britain, of only a little pen, ink and paper: they were led by a thread.'(6)

## **Commercial Policy**

But little as the mother country concerned herself in the political government of her colonies, she evinced a jealous vigilance in regard to their commerce. Commercial monopoly, indeed, was the first principle in the colonial policy of England, as well as of the other maritime states of Europe. She suffered no other country but herself to supply their wants: she appropriated many of their exports; [342] and, for the sake of her own manufacturers, insisted that their produce should be sent to her in a raw, or unmanufactured state. By the Navigation Acts, their produce could only be exported to England in English ships.(7) This policy was avowedly maintained for the benefit of the mother country,—for the encouragement of her commerce, her shipping, and manufactures,—to which the interests of the colonies were sacrificed. But, in compensation for this monopoly, she gave a preference to the produce of her own colonies, by protective and prohibitory duties upon foreign commodities. In claiming a monopoly of their markets, she, at the same time, gave them a reciprocal monopoly of her own. In some cases she encouraged the production of their staples by bounties. A commercial policy so artificial as this,—the creature of laws striving against nature,—marked the dependence of the colonies, crippled their industry, fomented discontents, and even provoked war with foreign states. But it was a policy common to every European government, until enlightened by economical science; and commercial advantages were, for upwards of a century, nearly the sole benefit which England recognised in the possession of her colonies.

## **Absence of Taxation**

In all ages, taxes and tribute had been characteristic incidents of a dependency. The subject provinces of Asiatic monarchies, in ancient and modern times, had been [343] despoiled by the rapacity of satraps and pashas, and the greed of the central government. The Greek colonies, which resembled those of England more than any other dependencies of antiquity, were forced to send contributions to the treasury of the parent state. Carthage exacted tribute from her subject towns and territories. The Roman provinces 'paid tribute unto Caesar.' In modern times, Spain received tribute from her European dependencies, and a revenue from the gold and silver mines of her American colonies. It was also the policy of France, Holland, and Portugal to derive a revenue from their settlements.

But England, satisfied with the colonial trade, by which her subjects, at home, were enriched, imposed upon them alone all the burthens of the state.(8) Her costly wars, the interest of her increasing debt, her naval and military establishments,—adequate for the defence of a widespread empire,—were all maintained by the dominant country herself. James II. would have levied taxes upon the colonists of Massachusetts: but was assured by Sir William Jones that he could no more 'levy money without their consent in an assembly, than they could discharge themselves from their allegiance.' Fifty years later, the shrewd instinct of Sir Robert Walpole revolted against a [344] similar attempt.(9) But at length, in an evil hour, it was resolved by George III. and his minister Mr. Grenville, that the American colonies should be required to contribute to the general revenues of the government. This new principle was apparently recommended by many considerations of justice and expediency. Much of the national debt had been incurred in defence of the colonies, and in wars for the common cause of the whole empire. Other states had been accustomed to enrich themselves by the taxation of their dependencies; and why was England alone to abstain from so natural a source of

revenue? If the colonies were to be exempt from the common burthens of the empire, why should England care to defend them in war, or incur charges for them in time of peace? The benefits of the connexion were reciprocal; why, then, should the burthens be all on one side? Nor, assuming the equity of imperial taxation, did it seem beyond the competence of Parliament to establish it. The omnipotence of Parliament was a favourite theory of lawyers; and for a century and a half, the force of British statutes had been acknowledged without question, in every matter concerning the government of the colonies.

No charters exempted colonists from the sovereignty of the parent state, in matters of taxation; [345] nor were there wanting precedents, in which they had submitted to imperial imposts without remonstrance. In carrying out a restrictive commercial policy, Parliament had passed numerous acts providing for the levy of colonial import and export duties. Such duties, from their very nature, were unproductive,—imposing restraints upon trade, and offering encouragements to smuggling. They were designed for commercial regulation rather than revenue: but were collected by the king's officers, and payable into the exchequer. The state had further levied postage duties within the colonies.

But these considerations were outweighed by reasons on the other side. Granting that the war expenditure of the mother country had been increased by reason of her colonies, who was responsible for European wars and costly armaments? Not the colonies, which had no voice in the government: but their English rulers, who held in their hands the destinies of the empire. And if the English treasury had suffered, in defence of the colonies,—the colonists had taxed themselves heavily for protection against the foes of the mother country, with whom they had no quarrel. But, apart from the equity of the claim, was it properly within the jurisdiction of Parliament to enforce it? The [346] colonists might be induced to grant a contribution: but could Parliament constitutionally impose a tax, without their consent? True, that this imperial legislature could make laws for the government of the colonies: but taxation formed a marked exception to general legislation. According to the principles, traditions, and usage of the constitution, taxes were granted by the people, through their representatives. This privilege had been recognised for centuries, in the parent state; and the colonists had cherished it with traditional veneration, in the country of their adoption. They had taxed themselves, for local objects, through their own representatives: they had responded to requisitions from the crown for money: but never until now, had it been sought to tax them directly, for imperial purposes, by the authority of Parliament.

A statesman imbued with the free spirit of our constitution could not have failed to recognise these overruling principles. He would have seen, that if it were fit that the colonies should contribute to the imperial treasury, it was for the crown to demand their contributions through the governors; and for the colonial legislatures to grant them. But neither the king nor his minister were alive to these principles. The one was too conscious of kingly power, to measure nicely the rights of his subjects; and the other was blinded by a pedantic reverence for the authority of Parliament.

## **The Stamp Act**

In 1764, an act was passed, with little discussion, [347] imposing customs' duties upon several articles imported into the American colonies,—the produce of these duties being reserved for the defence of the colonies themselves.<sup>(10)</sup> At the same time, the Commons passed a resolution, that 'it may be proper to charge certain stamp duties' in America, as the foundation of future legislation. The colonists, accustomed to perpetual interference with their trade, did not dispute the right of the mother country to tax their imports: but they resolved to evade the impost, as far as possible, by the encouragement of native manufactures. The threatened Stamp Act, however, they immediately denounced as an invasion of the rights of Englishmen, who could not be taxed otherwise than by their representatives. But, deaf to their remonstrances, Mr. Grenville, in the next session, persisted in his stamp bill. It attracted little

notice in this country: the people could bear with complacency the taxation of others; and never was there a Parliament more indifferent to constitutional principles, and popular rights. The colonists, however, and their agents in this country, remonstrated against the proposal.

Their opinion had been invited by ministers; and that it might be expressed, a year's delay had been agreed upon. Yet when they petitioned against [348] the bill, the Commons refused to entertain their petitions, under a rule, by no means binding on their discretion, which excluded petitions against a tax proposed for the service of the year.<sup>(11)</sup> An arbitrary temper and narrow pedantry prevailed over justice and sound policy. Unrepresented communities were to be taxed,—even without a hearing. The bill was passed with little opposition:<sup>(12)</sup> but the colonists combined to resist its execution. Mr. Pitt had been ill in bed when the Stamp Act was passed: but no sooner were the discontents in America brought into discussion, than he condemned taxation without representation; and counselled the immediate repeal of the obnoxious Act. 'When in this House,' he said, 'we give and grant, we grant what is our own. But in an American tax, what do we do? We, Your Majesty's Commons for Great Britain, give and grant to Your Majesty—what? Our own property? No: we give and grant to Your Majesty the property of Your Majesty's Commons of America.' At the same time, he proposed to save the honour of England by an act declaratory of the general legislative authority of Parliament over the colonies. Lord Rockingham, who had succeeded Mr. Grenville, alarmed by the unanimity and violence of the colonists, readily caught at Mr. Pitt's [349] suggestion. The Stamp Act was repealed, notwithstanding the obstinate resistance of the king and his friends, and of Mr. Grenville and the supporters of the late ministry. Mr. Pitt had desired expressly to except from the declaratory act the right of taxation, without the consent of the colonists: but the crown lawyers and Lord Mansfield denied the distinction between legislation and the imposition of taxes, which that great constitutional statesman had forcibly pointed out; and the bill was introduced without that exception. In the House of Lords, Lord Camden, the only sound constitutional lawyer of his age, supported with remarkable power the views of Mr. Pitt: but the bill was passed in its original shape, and maintained the unqualified right of England to make laws for the colonies. In the same session some of the import duties imposed in 1764 were also repealed, and others modified. The colonists were appeased by these concessions; and little regarded the abstract terms of the declaratory act. They were, indeed, encouraged in a spirit of independence, by their triumph over the English Parliament: but their loyalty was as yet unshaken.

### **The Townshend Duties**

The error of Mr. Grenville had scarcely been [350] repaired, when an act of political fatuity caused an irreparable breach between the mother country and her colonies. Lord Chatham, by his timely intervention, had saved England her colonies; and now his ill-omened administration was destined to lose them. His witty and accomplished, but volatile and incapable Chancellor of the Exchequer, Mr. Charles Townshend, having lost half a million of his ways and means, by an adverse vote of the Commons on the land tax,<sup>(13)</sup> ventured, with incredible levity, to repeat the disastrous experiment of colonial taxation. The Americans, to strengthen their own case against the Stamp Act, had drawn a distinction between internal and external taxation,—a distinction plausible and ingenious, in the hands of so dexterous a master of political fence as Dr. Franklin, but substantially without foundation. Both kinds of taxes were equally paid by the colonists themselves—and if it was their birthright to be taxed by none but representatives of their own, this doctrine clearly comprehended customs, no less than excise. But, misled by the supposed distinction which the Americans themselves had raised, Mr. Townshend proposed a variety of small colonial customs' duties,—on glass, on paper, on painters' colours, and lastly, on tea. The estimated produce of these paltry taxes amounted to no more than £40,000. Lord Chatham would have scornfully put aside a scheme, at once so contemptible and impolitic, and so plainly in violation of the principles for which he had [351] himself recently contended: but he lay stricken and helpless, while his rash

lieutenant was rushing headlong into danger. Lord Camden would have arrested the measure in the Cabinet; but standing alone, in a disorganised ministry, he accepted under protest a scheme, which none of his colleagues approved. However rash the financier, however weak the compliance of ministers, Parliament fully shared the fatal responsibility of this measure. It was passed with approbation, and nearly in silence. Mr. Townshend did not survive to see the mischief he had done: but his colleagues had soon to deplore their error. The colonists resisted the import duties, as they had resisted the Stamp Act; and, a second time, ministers were forced to recede from their false position. But their retreat was effected awkwardly, and with a bad grace. They yielded to the colonists, so far as to give up the general scheme of import duties: but persisted in continuing the duties upon tea.

### **The Boston Tea Party**

This miserable remnant of the import duties was not calculated to afford a revenue exceeding £12,000; and its actual proceeds were reduced to £300 by smuggling, and the determination of the colonists not to consume an article to which the obnoxious impost was attached. The insignificance of the tax, while it left ministers without justification for continuing such a cause of [352] irritation, went far to secure the acquiescence of the colonists. But their discontents,—met without temper or moderation,—were suddenly inflamed by a new measure, which only indirectly concerned them. To assist the half-bankrupt East India Company, in the sale of their teas, a drawback was given them, of the whole English duty, on shipments to the American plantations. By this concession to the East India Company, the colonists, exempted from the English duty, in fact received their teas at a lower rate than when there was no colonial tax. The Company were also empowered to ship their teas direct from their own warehouses. A sudden stimulus was thus given to the export of the very article, which alone caused irritation and dissension. The colonists saw, or affected to see, in this measure, an artful contrivance for encouraging the consumption of taxed tea, and facilitating the further extension of colonial taxation. It was met by a daring outrage. The first tea-ships which reached Boston were boarded by men disguised as Mohawk Indians, and their cargoes cast into the sea. This being the crowning act of a series of provocations and insults, by which the colonists, and especially the people of Boston, had testified their resentment against the Stamp Act, the import duties, and other recent measures, the government at home regarded it with just indignation. Every one agreed [353] that the rioters deserved punishment; and that reparation was due to the East India Company. But the punishment inflicted by Parliament, at the instance of Lord North, was such as to provoke revolt. Instead of demanding compensation, and attaching penalties to its refusal, the flourishing port of Boston was summarily closed: no ship could lade or unlade at its quays: the trade and industry of its inhabitants were placed under an interdict. The ruin of the city was decreed: no penitence could avert its doom: but when the punishment had been suffered, and the atonement made: when Boston, humbled and contrite, had kissed the rod; and when reparation had been made to the East India Company, the king in council might, as an act of grace, remove the fatal ban. (14) It was a deed of vengeance, fitter for the rude arbitrament of an eastern prince, than for the temperate equity of a free state.

Nor was this the only act of repression. The republican constitution of Massachusetts, cherished by the descendants of the pilgrim fathers, was superseded. The council, hitherto elective, was to be nominated by the crown; and the appointment of judges, magistrates, and sheriffs, was transferred from the council to the governor. And so much was the administration of justice suspected, that by another act, accused persons [354] might be sent for trial to any other colony, or even to England. Troops were also despatched to overawe the turbulent people of Massachusetts.

## Resistance and Conciliation

The colonists, however, far from being intimidated by the rigours of the mother country, associated to resist them. Nor was Massachusetts left alone in its troubles. A congress of delegates from twelve of the colonies was assembled at Philadelphia, by whom the recent measures were condemned, as a violation of the rights of Englishmen. It was further agreed to suspend all imports from, and all exports to, Great Britain and her dependencies, unless the grievances of the colonies were redressed. Other threatening measures were adopted, which proved too plainly that the stubborn spirit of the colonists was not to be overcome. In the words of Lord Chatham, 'the spirit which now resisted taxation in America, was the same spirit which formerly opposed loans, benevolences, and ship-money in England.'(15)

In vain Lord Chatham,—appearing after his long prostration,—proffered a measure of conciliation, repealing the obnoxious acts, and explicitly renouncing imperial taxation: but requiring from the colonies the grant of a revenue to the king. Such a measure might even yet have saved the colonies: but it was contemptuously rejected by the Lords, on the first reading. (16)

[355] Lord North himself soon afterwards framed a conciliatory proposition, promising that, if the colonists should make provision for their own defence, and for the civil government, no imperial tax should be levied. His resolution was agreed to: but, in the present temper of the colonists, its conditions were impracticable. Mr. Burke also proposed other resolutions, similar to the scheme of Lord Chatham, which were rejected by a large majority.

## Outbreak of the Civil War

The Americans were already ripe for rebellion, when an unhappy collision occurred at Lexington, between the royal troops and the colonial militia. Blood was shed; and the people flew to arms. The war of independence was commenced. Its sad history and issue are but too well known. In vain Congress addressed a petition to the king, for redress and conciliation. It received no answer. In vain Lord Chatham devoted the last energies of his wasting life(17) to effect a reconciliation, without renouncing the sovereignty of England. In vain the British Parliament,—humbling itself before its rebellious subjects,—repealed the American tea duty, and renounced its claims to [356] imperial taxation.(18) In vain were parliamentary commissioners empowered to suspend the acts of which the colonists complained,—to concede every demand but that of independence,—and almost to sue for peace.(19) It was too late to stay the civil war. Disasters and defeat befell the British arms, on American soil; and, at length, the independence of the colonies was recognised.(20)

Such were the disastrous consequences of a misunderstanding of the rights and pretensions of colonial communities, who had carried with them the laws and franchises of Englishmen. And here closes the first period in the constitutional history of the colonies.

### Footnotes.

1. Blackstone's Comm., i. 107. Lord Mansfield's Judgment *Campbell v. Hall*; Howell's St. Tr., xx. 289; Clark's Colonial Law, 9, 139, 181, etc.; Sir G. C. Lewis on the Government of Dependencies, 189-203, 308; Mills' Colonial Constitutions, 18.
2. In three of their colonies the council was elective; in Connecticut and Rhode Island the colonists also chose their governor.—Adam Smith, book iv. ch. 7. But the king's approval of the governor was reserved by 7 and 8 Will III. c. 22.
3. In 1858 a quarrel arose between the two Houses in Newfoundland, in consequence of the Upper House insisting upon receiving the Lower House at a conference, sitting and covered,—an assumption of dignity which was resented by the latter. The governor having failed to accommodate the difference, prorogued the Parliament before the supplies were granted. In the next session these disputes were amicably arranged.

Message of Council, April 23rd, 1858, and reply of House of Assembly; Private Correspondence of Sir A. Bannerman.

4. In Connecticut and Rhode Island, neither the crown nor the governor were able to negative laws passed by the Assemblies.
5. 'Three thousand miles of ocean lie between you and them,' said Mr. Burke. 'No contrivance can prevent the effect of this distance in weakening government.' Adam Smith observed: 'Their situation has placed them less in the view and less in the power of the mother country.'—Book iv. ch. 7.
6. Evidence before the Commons, 1766: Parl. Hist., xvi. 139-141.
7. The first Navigation Act was passed in 1651, during the Commonwealth; Merivale, 75, 84, 89; Adam Smith, book iv. ch. 7.
8. 'The English colonists have never yet contributed anything towards the defence of the mother country, or towards the support of its civil government.'—Adam Smith, book iv. ch. 7.
9. Walpole's Mem., ii. 70. 'I have Old England set against me.' he said,—by the excise scheme,—'do you think I will have New England likewise?'—Coxe's Life, i. 123.
10. 4 Geo. III. c. 15. Mr. Bancroft regards a measure, introduced by Mr. Townshend in the previous session for lowering some of the prohibitory duties, and making them productive, as the commencement of the plan for the taxation of America; but that measure merely dealt with existing duties. It was not until 1764 that any new issue was raised with the colonies.—Hist. of American Revolution, ii. 102.
11. This monstrous rule, or usage, which set at naught the right of petition on the most important matters of public concern, dates from the Revolution; and was not relinquished until 1842.—Hatsell, Prec., iii. 226; May's Proceedings and Usage of Parliament, 6th ed., 516.
12. Parl. Hist., xvi. 34. 'We might as well have hindered the sun's setting,' wrote Franklin.—Bancroft, ii. 281.
13. Supra, Vol. II. 101.
14. Boston Port Act 1774; 14 Geo. III. c. 19. Parl. Hist., xvii. 1159-1189; Chatham Corr., iv. 342; Rockingham Mem., ii. 238-243; Bancroft's Hist., iii. 565, et seq.
15. Speech, Jan. 20th, 1777.—Parl. Hist., xviii. 154, n.
16. Feb. 1st, 1775.—Parl. Hist., xviii. 198.
17. Lord Chatham was completely secluded from political and social life from the spring of 1767 to the spring of 1769; and again, from the spring of 1775 to the spring of 1777.
18. 28 Geo. III. c. 12; Parl. Hist., xix. 762; Ann. Reg., 1778, 133.
19. 28 Geo. III. c. 13.
20. No part of English history has received more copious illustration than the revolt of the American colonies. In addition to the general histories of England, the following may be consulted: Franklin's Works, Sparks' Life of Washington, Marshall's Life of Washington, Randolph's Mem. of Jefferson, Chalmers' Political Annals, Dr. Gordon's History of the American Revolution, Grahame's History of the United States, Stedman's History, Bancroft's History of the American Revolution.

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