

**AMERICANS' UNWILLINGNESS TO PAY TAXES BEFORE THE AMERICAN
REVOLUTION: AN UNCOMFORTABLE LEGACY**

Richard A. Westin
Professor, University of Kentucky Law School

"Like mothers, taxes are often misunderstood, but seldom forgotten." — Lord Bramwell, 19th Century English jurist

Introduction¹

When one reflects on the sorry condition of America's finances one has to wonder why there is such resistance to fiscal discipline. Is it merely because there is an obstreperous group in the US Congress who cannot abide any tax? Has the public been subtly lobbied into believing that American taxes are high, pointless and intolerable or is there some gene in the America's body politic that has always been there that expresses itself from time to time in a pernicious cheapness? Perhaps all those things are true, or perhaps none. Nevertheless, a glance backward at Colonial days can stimulate a sense of déjà-vu.

In writing this article I relied primarily on the writings of the American historian Lawrence Gipson, who wrote extensively on the New World in the Eighteenth Century. He undoubtedly has his own prejudices, but his pedigree seems impeccable.² The other main reliance was on Arthur Schlesinger, who closely studied the role of the colonial merchants in American Revolution.³

THE BACKGROUND: WAR AND THE EXHAUSTION OF REVENUES

When the "Great War for the Empire" (often incorrectly referred to as the "Seven Years War")⁴ ended in 1763, Great Britain was deeply in debt, but was ceded some first rate real estate, namely Canada. The war itself had been conducted on a global scale, including the French and Indian Wars in North America, and it took two

¹ My thanks to Professor Stephen Vasek for his guidance in researching and writing this article.

² Dr. Lawrence Henry Gipson was a member of the "Imperial School" of historians. He was born in Greely, Colorado, and was one of the first Rhodes Scholars. He earned degrees at the University of Idaho and Oxford and is famous for his 15-volumb study entitled "The British Empire" which includes detailed coverage of the colonies in North America and The Caribbean. He won the Pulitzer Prize in 1962 for the volume entitled "The Triumphant Empire." He died in 1971.

³ History is subject to interpretation, and is generally written by the winners. For a list and brief description other historical theories concerning the American Revolution see Gipson v. 13.

⁴ Vol. 13, p. 187. That war was a German operation.

separate treaties to terminate hostilities (the treaty of Paris and the treaty of Hubertusburg. Every major power in Europe participated in the war, and on a vast geographical scale that included hostilities along the African Coast, in Central and North America, India and the Philippines, all at great expense to the participants. The explanation of the origins of the of the War are exceptionally intricate and unmemorable.

The Great War included our French and Indian War, which pitted Britain against France in the New World. The colonists, especially from Massachusetts and Connecticut, contributed money and troops to the effort and after the war Britain reimbursed the colonies £ 1,072, 783, a third of which went to Massachusetts in light of its proportionately greater contribution. This roughly halved the war debts of the Colonies. Gipson described this British largesse as “unprecedented” in the sense that it was apparently the first time in modern history that a parent state reimbursed its colonies for such expenditures. On the other hand, Britain evidently imposed a one shilling per pound tax on tea imported into the American colonies⁵.

When the smoke of war cleared, Britain’s public debt was a then staggering sum of £146,000,000, and called for annual interest payments of £4,700,000 which left the British citizenry “with little prospect of reducing the heavy load of taxation.”⁶ On the other hand, the War had brought

“unprecedented prosperity” to the colonies, even great fortunes, because of the “shipment of vast sums of . . .specie from England to America, not only as pay for the soldiers, teamsters, army pioneers, bateau-men, and others, but also for the purchase at good prices of enormous quantities of food, supplies and other things needed for carrying on the war”⁷

There were other effects as well, all of which presented some peril for Britain; the American colonies soon emerged as an economic powerhouse, soon out-producing Britain in, ships and steel because of its natural advantages. There was a

⁵ Lawrence Henry Gipson, *The British Empire Before the American Revolution: The Triumphant Empire: Thunder-Clouds Gather in the West 1763-1766* Vol. X, p. 54 n. 1 (1965) (1 shilling per pound in the Massachusetts Bay Colony). In Great Britain, in the 1760's there was almost a 100% face value tax on imported tea. This was comprised of a 25% import tax on face value plus an additional excise of 25% plus 1 shilling per pound for tea sold for domestic consumption. Benjamin Woods Labaree, *The Boston Tea Party* 6 (Oxford University Press, 2d printing, 1968).

⁶ Gipson, Vol 13, p. 188.

⁷.” L. Gipson, *A VIEW OF THE THIRTEEN COLONIES AT THE CLOSE OF THE GREAT WAR FOR EMPIRE*, p.4 (monograph, reprinted from *New York History* , October 1959 (presentation of Canadian Historical association).

corps of hardened military veterans who could fight another war, and the colonists developed a stronger sense of solidarity, referring to themselves as “Americans” for the first time.⁸ Gipson describes the Americans as people “who had become the freest, most enlightened, most prosperous, and most politically experienced of all the colonials in the world” and he considered the very fact that blatantly subversive writing such as Jefferson’s *Summary Views of the rights of British America*, which preached that all efforts of Parliament to regulate the colonies were acts “of arbitrary power. . . over those States” could freely circulate showed that Britain ruled with a very light hand indeed.⁹

Finally, many newspapers had spring up, including the highly inflammatory *Boston Gazette and Country Journal* which presumably did well financially selling newsprint that fanned the flames of anti-British indignation in New England.

THE STAMP ACT

After subduing the French, the British felt obliged to maintain seven thousand troops along the frontier to protect American (and indirectly British) interests from fresh trouble. In 1765 the British projected the costs at £300,000 of which it expected America and the West Indies to contribute £100,000 by means of stamps and other duties; it appears that the £100,000 could well result in no drainage of currency in the sense that the money would be disbursed in America.¹⁰ By this accounting, Britain was a generous master and the Americans were mean-spirited ingrates in resisting their contribution. As one American historian put it, “the colonial militia did not find border garrison duty to its liking,”¹¹ so they left the dirty work to the British.

This revenue need led to the short-lived Stamp Act of 1765¹² which declared that various printed materials distributed in North America be produced on stamped paper made in London and bearing an embossed revenue stamp. The tax reached magazines, newspapers, legal documents and a variety of paper used throughout the colonies and was payable solely in British currency. This was not a novel form of taxation. The first stamp act was passed in 1670 “laying Impositions on

⁸ .Id., p.5-7 (monograph, reprinted from *New York History* , October 1959 (presentation to Canadian Historical association).

⁹ Gipson, Vol 13, p. 203-5 (“British indulgence and the flowering within the Empire of ideas of English liberty.”)

¹⁰ L. Gipson, *AMERICAN LOYALIST: JARRED INGERSOLL*, p. 161 (Yale 1971). (The book Chronicles the life and times of a Connecticut resident with moderate Loyalist leanings who was in the thick of the uproar that led to the American Revolution.)

¹¹ Benjamin Labaree, *THE BOSTON TEA PARTY*, p.16 (Oxford. Univ. Press 1964) (“Labaree”).

¹² Duties in American Colonies Act 1765, 5 George III, c. 12

Proceedings at Law”¹³ and was extended in 1694 via Parliament’s “Act for granting to Their Majesties several Duties upon Vellum, Parchment and Paper.”¹⁴ These taxes were limited to taxpayers in England, Wales and (believe it or not) the Town of Berwick Upon Tweed. In light of the long-standing domestic stamp taxes in Britain, Americans claiming the rights of Englishmen could hardly claim to be stunned by the extension of the century old tax to them.

The new Stamp Tax was slow to be enacted. George Grenville, who bore the imposing title “First Lord Commissioner of the Treasury and Chancellor the Exchequer,” presented the bill to Parliament in early 1764, but the House of Commons had serious reservations about it. Although Parliament had previously satisfied itself that it was lawful to impose a tax on unrepresented colonists, there were “many members warmly opposing it” and it was deferred until the next session of Parliament. The problem Parliament balked at was that the tax was “internal” to the colonies as opposed to an “external” tax in the form of import duties.¹⁵ Interestingly, Ben Franklin – later a firm supporter of the Revolution -- considered that if the colonies had to raise revenues, they would likely enact a “stamp Act, an Excise on Rum, etc.- or both...”¹⁶ Grenville himself was no drunken lord. According to writing of the day:

“Grenville, according to Maudit, sought to introduce a new constitutional principle in parliamentary legislation: namely, that the [colonial government] assemblies should signify their assent to a plan for raising a revenue in America and “should have the privilege of requesting any particular modification of it as they should think fit.”

Of course, the “privilege” of requesting changes is a long step from conditioning legislation on consent of the colonial assemblies.

Grenville also saw the tax as “an Equitable and fair contribution to the whole” and considered that it “will lay the burden principally upon Luxury, Law-Suits, etc. where it ought to fall.” Even with the projected revenues from the tax, the British would still pay the bulk of the cost of defending the Colonies and the money raised would in be recycled within the Colonies as a result of the payments to support the troops, and the Stamp Tax rates were much lower than those in Britain and documents that would otherwise have to be stamped in Britain were exempt.¹⁷

¹³ 22 and 23 Charles II, c.9.

¹⁴ 5 William and Mary, c.21.

¹⁵ L. Gipson, Vol. X, p.258.

¹⁶ Id. P.. 261.

¹⁷ Id., p.276.

The American reaction to the Stamp Tax was overwhelmingly negative for a number of reasons that Gipson traced, while declaring that understanding the entire issue is “one of the most difficult tasks that faces the student of American colonial history.”¹⁸

He identified three basic reasons. First, there were shifting constitutional claims. Initially, colonial thinking accepted Britain’s import duties and a tax on sailors to support Greenwich hospital on the theory that those were “external taxes” and that internal taxes were unacceptable, but later this shifted to the impermissibility of any taxes emanating from London. A second reason was the colonists’ growing sense of separate identity as a social group which manifested itself in resistance to being governed from abroad. The third reason, resistance to any tax, was set in a context of a weak economy, with people being cast into debtors’ prisons and political radicals pushing aside “slow-moving moderates.”¹⁹ This was exacerbated by the ugly fact that some people would profit from being granted the right to make money distributing the stamps.

Others likened the Stamp Tax to bondage and to the colonists as Israelites under the thumb of Egypt. By way of example, the *New Haven Gazette* printed this rant against the Act and its beneficiaries:²⁰

“I must take leave positively to declare that all measures prejudicial to the interests of America, ever taken, have not only been proposed but even warmly received by mean, mercenary Hirelings, Parricides among yourselves who for a little filthy Lucre would at any time betray every Right, Liberty and Privilege of their fellow subjects”

This was surely not the reaction the avuncular Grenville would have expected. Unfortunately for Britain, the timing of the tax was exceptionally poor in that the colonies were going through a temporary economic crisis and were unable to collect their own taxes,²¹ largely because the artificial economic prosperity created by the war ceased when the war ended and lavish military spending dried up.²² Buoyant prosperity returned in 1770.²³

¹⁸ L. Gipson, *AMERICAN LOYALIST: JARRED INGERSOLL*, p. 149 (Yale 1971).

¹⁹ *Id.* p. 153.

²⁰ *Connecticut Gazette*, August 9, 1765, supplement, reported in L. Gipson, *AMERICAN LOYALIST: JARRED INGERSOLL*, p. 155 (Yale 1971).

²¹ L. Gipson, *AMERICAN LOYALIST: JARRED INGERSOLL*, p. 154-155 (Yale 1971) discussing Connecticut.

²² See Arthur M Schlesinger, *COLONIAL MERCHANTS AND THE AMERICAN REVOLUTION: 1763-1776*. 56-67 (Frederick Ungar Pub. Co. 1964) (“Schlesinger”). There were
(2012) J. JURIS 15

Britain's finances were initially in the same sorry condition because of the recent world war. In any case, the Stamp Tax was repealed on March 18, 1766 largely because it was a failure at raising revenue thanks to populist intimidation of the collectors of the tax.²⁴ Parliament bungled the repeal in that the public relations benefits that accompanied the repeal of the tax were cancelled when Parliament simultaneously reaffirmed its legislative powers over the colonies in the Declaratory Resolution, which led to further apprehension in America because an earlier law called the Declaratory Act enabled Britain's control of Ireland.²⁵

To sum it up, radicals in the colonies succeeded in killing off a modest tax that was thoughtfully devised for a cause that overwhelmingly benefitted the colonists. In modern parlance, they ate the Crown's lunch. The fiscal problem remained, however, because the seven thousand troops still had to be paid to protect increasingly ill-tempered colonists. Administration of the American colonies was not cheap either.

THE EMPIRE STRIKES BACK: THE TOWNSHEND ACTS

Britain's next step, under the guidance of Chancellor of the Exchequer Charles Townshend²⁶, was to enact five laws²⁷ collectively known as the Townshend Acts. Their natures were mixed, but their vital purposes were to raise revenue in the colonies to pay the salaries of governors and judges so that they would be independent of financial reliance on local legislatures,²⁸ and to increase the efficiency of trade regulations, including combating smuggling.²⁹

other reasons for the economic decline, including restrictive legislation in 1764. One needs to keep in mind that in those days, defaulting debtors faced prison for nonpayment, so the pain from economic depression could be intense and therefore greatly feared. Laying a tax at such a moment was bad timing in terms of potential animosity of the Colonists.

²³ Id.. 250-242.

²⁴ Id. pp. 56-57, He considered the chief cause of the economic decline was restrictive trade legislation of 1764. Id. P. 56.

²⁵ http://en.wikipedia.org/wiki/Declaratory_Act (retrieved August 13, 2011).

²⁶ Townshend died in September of 1767 at the age of 42, which freed him from witnessing the dramatic failure of the Acts.

²⁷ The Revenue Act of 1767, the Commissioners of Customs Act, the Vice Admiralty Court Act, the Indemnity Act, and the New York Restraining Act to punish [New York](#) for failing to comply with the 1765 [Quartering Act](#) was designed to meet a temporary emergency. Schlesinger, p.93.

²⁸ Revenue Act of 1767, 7 Geo. III ch. 46.

²⁹ The Commissioners of Customs Act of 1767 set up the American Board of Customs Commissioners, an enforcement body, which was similar to the [British Board of Customs](#). It attracted much hostility.

On February 18, 1767 the House of Parliament approved a bill for £315,917.16.5 “toward defraying the extraordinary expenses of His Majesty’s land forces [in America] and other services up to February 3.”³⁰ America was annoyingly expensive to protect. According to a contemporaneous letter of Grenville’s:

“Nothing has yet been done or is likely to be done . . . except voting vast Sums of money to be raised upon Great Britain in order to ease America from the Burthen of Contributing any thing to her own Support, but however we may look upon the Question within Doors [of Parliament] the Tide out of Doors, seems very strong & universally turning the other way.”³¹

The Revenue Act component bowed to colonial constitutional claims that only external taxes were permissible by imposing import duties on various items, such as glass, certain paints, papers and tea and staying away from taxation beyond the point of importation, with the intention of raising a modest £ 40,000 pounds to pay for American administration and defense, and to be spent in America.. Britain repealed its heavy tax on imported tea³² and replaced some of the lost revenue with a three penny per pound tax imposed as an import duty on the colonies. The new model was supposed to allow British tea to undercut the price of smuggled tea, and was buttressed with stronger powers to combat smuggling, including hiring more customs officers, granting customs officials broad authority to search houses, break open doors and chests and seize smuggled goods.³³

Canada responded to the Acts with a yawn. Nova Scotia³⁴ was thriving economically and Quebec seemed not to care.³⁵ In fact, when the First Continental Congress invited Nova Scotia to participate in separation talks it did not even bother to send a delegate.³⁶

³⁰ Gipson, Vol. 11, p. 101.

³¹ Letter to Simon Fraser, Grenville Letter Book, Vol. 2, Huntington Library.

³² Indemnity Act of 1767, 7 Geo. III ch. 56. The tax was one shilling per pound. Gipson, Vol. XI, p.111. Among other things, it was hoped that this act would help support the finances of the East India Company, and entity that might nowadays be described as a government-private partnership with geopolitical overtones.

³³ Schlesinger p. 84.

³⁴ The jurisdiction was much larger then because it included New Brunswick and Prince Edward Island. Gipson, Vol. 13, p.133.

³⁵ Gipson vol. 13, p. 207. Gipson reports that the people of Quebec were dispirited by the King of France’s turning his back on them. Evidently this made them less quarrelsome.

³⁶ Gipson v. 13, p. 135. The invitation was to a second meeting of the Continental Congress in Philadelphia in 1775, Nova Scotia sought neutrality for various reasons, including economics and lack of identification with evolutionary ideas. Id.135-138.

Americans at least partly countered the taxes on items other than tea by making them in America.³⁷ Tea was another matter. Before the Townshend Acts changed things, Americans paid much lower taxes than Britons for their tea. Britain formerly levied inland duties plus a one shilling (12 pence) tax per pound of “black and Singlo tea,” but the one shilling tax was rebated (eliminated) on export and replaced with an export tax, making it much cheaper than tea sipped in Britain, although not untaxed.³⁸

The Townshend Act’s low tax rates were a boon to consumers and the bane of Northern merchants. From their point of view they were already burdened by restrictive British trade policies,³⁹ but made a good living selling tea smuggled from Holland and elsewhere.⁴⁰ “Elsewhere” included distant ports such as Madeira, a source of wines to traffic in.

John Hancock’s ship, *Liberty*, was in that smuggling trade at least once. (Hancock was the merchant prince of Boston.) In May, 1768 customs officials in Boston sequestered the ship and towed it out into the harbor under the guns of the *HMS Romney*, a ship known for forcibly impressing seamen, which led to a local riot, which included assaults on customs officers and a completely ineffectual effort at prosecution.⁴¹ The frustrated governor later made what Schlesinger calls a “bad tactical error” when he sent troops to Boston in reaction to the event.⁴²

Smuggling tea began to thrive again a few years later when the East India Company raised the price of tea, making smuggled tea competitive.⁴³ There was popular sympathy for the smugglers, and people who informed on them ran the

³⁷ Schlesinger p. 97. Smuggling of molasses, once very active declined, when Britain dropped the tax on molasses as part of the Townshend Acts. Id.

³⁸ Gipson. Vol. XI, p. 111. Historians seem to differ on the base and rate of the tax. It appears that tea imported from England bore a one shilling per pound tax burden. It may have taken the form of an export tax.

³⁹ Also known as the Staple(s) Act. For example, the Navigation Act of 1663 forced all European goods for the colonies to be initially shipped to Britain.. There numerous cumulative acts that amounted to the Navigation Acts.

⁴⁰ Schlesinger p. 103.

⁴¹ Schlesinger p. 103.

⁴² Schlesinger 104. The worst incident by far was the Boston Massacre in March of 1771, a skirmish in which Captain Preston’s over-anxious troops who were taunted by a crowd throwing ice balls at them caused the deaths of five and injuries to six others, opportune grist for the ideological mills of San Adams, Paul Revere and others. Two of the troops involved were found guilty by a local jury and the rest were acquitted thanks to the advocacy of John Adams. General Gage removed the troops.

⁴³ Schlesinger p. 98. Hancock was an exceptionally wealthy Boston merchant.

risk of being tarred and feathered.⁴⁴ In July of 1769 the British revenue cutter *Liberty* was burned, and in 1772 the unpopular revenue cutter *Gaspee*, which ran aground near Providence, was attacked by a rich merchant, a sea captain and an undefined mob, and set fire to. The chief justice of Rhode Island, John Brown, an ex-smuggler himself, headed a commission of inquiry, but it got nowhere because no one would inform on the participants in the affair.⁴⁵ The British later cut back on the use of revenue cutters and their seizures dropped by almost 60%.⁴⁶

According to Schlesinger's analysis, the colonial merchants – who had faced financial ruin from the 1764-1765 Parliamentary legislation -- became “the instigators of the first discontents.” Later, they found themselves shocked by the excesses of the mobs which their own agitation had spawned and retreated from stirring up blue-collar revolutionaries.⁴⁷ The later Tea Act threatened them with a monopoly and the majority of them responded by joining with the radicals, although most Boston merchants remained on the side of the Crown.

In April, 1770 Britain gave up and repealed the revenue provisions of the Townsend Acts, except for the small duty on tea. A great deal of the reason for repeal was that the merchants' collaborative and self-serving non-importation agreements that resulted in slashing British imports by 1769.

According to Schlesinger, the merchants returned to their satisfying work, leaving the radicals without a compelling issue or an organization divorced from the control of the merchant class. However, he reported that, “the home government supplied promising material [for the compelling issue] for the first time when the report reached Boston in . . . 1772 “ with the announcement that judges salaries would be paid from out of customs revenue. “No propagandist ever utilized and opportunity more dexterously than Samuel Adams on this occasion.”⁴⁸ Adams exhortations included the following diatribe against Americans paying judges' salaries. It starts with an objection to the merchants who allegedly:

⁴⁴ Schlesinger 100-101. He cites four instances as illustrations, including one case involving a tide watcher (port customs officer) in Providence.

⁴⁵ Schlesinger 252-3. There were reportedly over 1,000 witnesses.

⁴⁶ Schlesinger p.253

⁴⁷ Adams described meeting with a knot of ‘Sons of Liberty’ in a the counting room of a distillery, he found there two distillers, a ship's captain, the “printer of the popular organ,” and four mechanics. Schlesinger p. 72. The Sons of Liberty were especially voluble in their indignation at Britain.

⁴⁸ Schlesinger pp. 254-5. For example, Hancock, a patron of Sam Adams stopped promoting the antiparliamentary movement, to preserve his business interests, and on occasion threw his influence against Sam Adams

“have passively submitted to the Indignity of a Tribute; and the Landholders, tho’ sharers in the Indignity, have been perhaps too unconcern’d Spectators of the humiliating Scene . . . Had the body of the People shown a proper Resentment, at the time when the proud Taskmasters first made their appearance, we should never have seen Pensioners multiplying like the locusts of Egypt . . . Is it not High Time for the People of this Country explicitly to declare, whether they will be Freemen or Slaves? . . . Let it be the topic of conversation in every social Club . . . Let every Town assemble. Let Associations & Combinations be everywhere set up to consult and recover our just Rights.”⁴⁹

Governor Hutchinson, an American,⁵⁰ did not think much of the opposition’s character. They are, he wrote privately:

“Constituted of the lowest class of the people under the influence of a few of a higher class, but of intemperate and furious dispositions and of desperate fortunes. Men of property and of the best character have deserted their meetings, where they are sure of being affronted.”⁵¹

One curiosity of the writings of the era is the apparent absence of a vocal centrist group in America that spoke up for the honest point that the colonies’ defense and British administration were costly and had economic value and that it was reasonable for the British to ask for a modest contribution. Instead, the unstated American position seems to have been that its residents were entitled to all the rights of Britons, but should be exempt from taxes and should have the right to smuggle whatever was exposed to being taxed, especially cheap tea from Holland, their favorite stimulant.

⁴⁹ Schlesinger quotation at p. 256, from *Sam Adams Writing (Cushing)*, vol. ii, pp.332-337.

⁵⁰ Thomas Hutchinson, born in Boston to a family of 12 children, of a well-off merchant family, started off as a businessman. He had an affection for his collection of colonial historical documents, many of which were destroyed in a mob attack on his house that did great damage and included thefts, including of the cupola. The mob attack was based on charges of nepotism arising from his brother having been appointed a stamp collector. Thomas Hutchinson graduated from Harvard (Class of ‘27) at 16. As Governor, he advised Lord North to adopt moderate policy towards the colonies.

⁵¹ Schlesinger 256, citing Hutchinson’s letters.

THE BOSTON TEA PARTY

Parliament passed the Tea Act on May 10, 1773⁵² in order to help salvage the East India Company from bankruptcy and to allow it to dispose of a huge inventory of unsold tea sitting in London. It had nothing to do with taxes.⁵³ The three penny per pound tax remained in place and there was a full rebate of British taxes.⁵⁴

The legislative plan was to ship the tea to the colonies, and sell it at a low price. This posed a serious risk to the colonial merchant class because the new law allowed the Company to cut out both British exporters, who formerly bought tea at wholesale auctions, and American importers who bought from the British wholesalers. In effect, the Company stood to sell direct to American retailers via its consignees, allowing the American consumer to cut out the profits of two sets of former middlemen. The merchants recognized the risks to themselves immediately; this tea would undercut contraband Dutch tea while cutting them out of the Indian tea trade. According to Schlesinger, provocative behavior of propagandists in the chief smuggling ports – Boston, New York, and Philadelphia – broadened the basis of popular protest by invoking old arguments against the taxing authority of Parliament and invented “new and bizarre arguments.”⁵⁵

In the initial phase the newspapers generally decried the merchant’s losses, including to the lucrative smuggling trade and portrayed the East India Company as a monstrous conspiracy. The loyalists writers saw the real cabal as the collusive merchants “stirring up an odium against the [East India Company being] the main point at which they have labored.” The merchants most persuasive argument was that the tea monopoly was just the opening wedge of a strategy that would wipe out the entire domestic merchant class, which would be followed – once the Company had the monopoly it sought – by other imposts and crippling price increases.⁵⁶ This effort to induce paranoia included allegations that the Tea Act eliminated the 3 pence/pound tea duty in order to further undercut local

⁵² 13 George III, c.44.

⁵³ The existing Tea Tax yielded pitiful revenues. Ben Franklin calculated a net revenue after expenses of enforcement of £85 in 1772. Schlesinger at p.26, citing Franklin, *Writings* (A. H. Smyth, vol.v., p. 460, vol. vi, pp.2-3.

⁵⁴ Schlesinger p.263. The difference from prior law was that the East India Company would not be liable for shortfalls in revenue. Id.

⁵⁵ Schlesinger p.265.

⁵⁶ For example, according to the N.Y. Journal of Nov. 4, 1773 (from Schlesinger p. 271-272). Regardless of whether there was an import duty, “The scheme appears too big with mischievous consequences and dangers to Americans . . . as it may create a monopoly; or, as it may introduce a monster, too powerful for us to control, or contend with, and too rapacious, and destructive, to be trusted, or even seen without horror, that may be able to devour every branch of our commerce, drain us of all our property and substance, and wantonly leave us to perish by thousands...”

competition. On learning that the duty was still in place, the anger at not being taxed was followed by radical fury at being taxed without consent. Schlesinger considered the latter objection was “for rhetorical effect,” partly because tea revenues were only about 25% of total revenues, with the other 75% coming from sugar, molasses and wine, about which there was no complaint. At the absurd end of the rhetoric were claims that the Company had impoverished and killed seemingly endless Asians, that tea was a health hazard (inducing dropsy, etc.) and caused in the entire populace a general malaise. Not everyone agreed. The small town of Hinsdale, New Hampshire saw through the folly and declared it would banish tea as soon as” the towns and persons who declaimed it so loudly against the tea should abstain from the use of rum,” which they considered much more pernicious. This state of affairs is the stage on which the theater of Boston Tea Party was performed.⁵⁷

The “Tea Party”⁵⁸ was not America’s finest hour, although it has reached mythical proportions as an anti-tax rallying point. The essential facts were that on December 16, 1773 a mob of men forcibly boarded three ships in Boston Harbor carrying tea destined for Boston, and which Governor Hutchinson refused to be coerced into returning to Britain.

The circumstances preceding the destruction of the tea were that the owner of the tea-laden *Dartmouth*, Francis Rotch, had been forced into an impossible predicament. On the 14th of December he capitulated to colonial coercion a meeting of assemblies of several towns in Boston that he return to Britain with his ship and cargo. On the 16th the assemblies, suspicious of his delay⁵⁹, summoned him to appear and justify the continuing presence of the *Dartmouth*⁶⁰ in Boston. His explanation was that despite his efforts, the colonial authorities would not release the ship and Rotch necessarily refused to sail the ship back to Britain. Next, according to the *Boston Evening-Post*, the assembled persons at the meeting house, “[h]aving manifested a exemplary patience and caution in the method it had pursued to preserve the Tea, the property of the East India Company, without its being made saleable among us, which must have been fatal to the Common-

⁵⁷ Schlesinger pp.262-278 (content of the paragraph in general).

⁵⁸ Initially known as the “destruction of the tea” and apparently not called the “Tea Party” until some point in the 19th Century.

⁵⁹ The delay was bureaucratic. He needed a departure clearance which he tried for but was met with dithering. Interestingly, the British concocted a face-saving plan whereby Rotch would sail out and suffer a shot across the *Dartmouth*’s bow, after which the British impound it. Rotch balked because, he said, he could not find a crew for the task. Benjamin Labaree, *THE BOSTON TEA PARTY*, 140 (Oxford 1964).

⁶⁰ Also the name of a college in New Hampshire originally founded to educate native Americans.

Wealth”⁶¹ dissolved the meeting, which was apparently held in Old South Church.⁶²

Shortly thereafter a band of men thinly disguised as Mohawk Indians wearing blankets and brandishing hatchets, emerged from the building occupied by the radical *Boston Gazette*, shouting war whoops and, as we all know, forced they way aboard the offending vessels and dumped the ships’ tea worth £15,000 into the harbor. According to Gipson, “[it] was clear that all preparations for the boarding were carefully planned.”⁶³ The “Mohawks” then, still disciplined, marched through Boston with fifes and drums before dispersing.

So who was in the mob that swarmed the boats? We know that merchants selling smuggled tea had a stake in game as did legitimate importers who faced financial loss, if not ruin, from being cut out of the opportunity to take wholesale tea from Britain. Consumers benefitted from the Tea Act, so their stake was ideological and individualistic. By one slippery account fed to the government, they were people “from the country.”⁶⁴ Governor Hutchinson wrote that he was unable to get any account from the members of the assembly, although we do know that “many people of property” were at the assembly meetings, so the identity of the men who poured onto the dock “from the country” in addition to local hotheads⁶⁵ drunk on constitutional theories, could reasonably have included some offended merchants. A Web site founded by the present-day Tea Party confidently claims, with no stated authority, that two-thirds of those whose ages were known were under 20, including 16 teenagers and was a thoroughly mixed group, of whom only two were over 40.⁶⁶ Historian Arthur Schlesinger was much more cautious as to the numbers, and more concrete as to the role of colonial merchants. He found 15 of them “of the more radical stamp” among the mob, toiling “side by side with

⁶¹ Boston Evening-Post, December 20, 1773.

⁶² Benjamin Labaree, *THE BOSTON TEA PARTY*, p.136 (Oxford. Univ. Press 1964). By then he had the advice of his lawyers, who included John Adams.

⁶³ Gipson, Vol XII, p.82.

⁶⁴ Gipson,, p.83 (Knopf, 1961) (account of selectman John Scollay). A fourth ship destined for Boston and the same ignominious fate was grounded in a storm off the coast.

5. Id. p.85.

⁶⁵ A specific example from an unreliable source is that it includes Thomas Crafts, a decorative housepainter, vegetarian, member of the Sons of Liberty and a Mason, like many other Sons of Liberty. Boston Tea Party Historical Society, <http://www.boston-tea-party.org/>, (retrieved September 15, 2011), evidently a lifeless front for the present day Tea Party.

⁶⁶ Boston Tea Party Historical Society, <http://www.boston-tea-party.org/>, (retrieved September 15, 2011). The site puts the total number in the mob at over 150.

carpenters, masons, farmers, blacksmiths and barbers,”⁶⁷ not to mention the alleged swarming teenagers described at the Tea Party site. Paul Revere was among them.⁶⁸ If one accepts the Tea Party Website’s claim of 173 Mohawks⁶⁹, and eliminates the teenagers on the grounds of being younger than the age of reason, the result is 15 merchants and 43 others.

What we do know is that it was colonial merchants and not consumers who had the most to gain in the material world by the incendiary act of destroying the tea. A illustrative letter from a member of the Council,⁷⁰ Isaac Royall, to the Earl of Dartmouth pins the blame for civil disorder on the merchants. Royall asserted the local population was thoroughly loyal, and that the problem lay with depraved merchants (and presumably their British protectors) in the colonies. The colonists, he wrote, were:

“Zealously tenacious of their inestimable Charter Rights and Privileges which they apprehend , , , have been greatly infring’d and broken in upon through the Machinations and Misrepresentations . . . from persons on this side of the Atlantic, who, from an Insatiable Thirst after Power and Gain, are far from seeking the welfare of Great Britain and her Colonies.”⁷¹

A few immediate impacts of this destruction of the tea, which was only one of a number of provocations by colonial radicals, including a sharp increase in the price of smuggled tea that nearly led to riots in Philadelphia that were averted by a committee of investigation that forced tea merchants to reduce their prices.⁷²

AFTERMATH⁷³

Britain’s administration, headed by Lord North responded punitively by securing Parliamentary legislation that closed the Port of Boston until the East India Company received reparations, assurances were obtained that trade would be carried lawfully and that custom duties would be collected. Edmund Burke, the

⁶⁷ See Arthur M Schlesinger, *COLONIAL MERCHANTS AND THE AMERICAN REVOLUTION: 1763-1776*. 56-67 (Frederick Ungar Pub. Co. 1964).

⁶⁸ Labaree, , p. 72 (Oxford 1964). Labaree places John Hancock ashore, along with Sam Adams, ⁶⁹ I might have miscounted. The list is slightly sloppy.

⁷⁰ The Council was a long-standing eight-member institution that was in effect selected by the Crown but represented the interests of the colonists. It acted as advisor t the governor and had some limited powers.

⁷¹ Gipson, Vol XII, p. 85. Royall then went on the contrast the current administration with the previous ”more mild and prudent” one.

⁷² Schlesinger p. 290.

⁷³ What follows is largely cribbed from Carl T, Bogus, *Rescuing Burke*, 72 *Mo. L. Rev.* 387 (2007) (makes case that Edmund Burke was not a conservative in the modern sense).

political philosopher and member of Parliament, prudently counseled against the instinct to retaliate and pointed out the great risks to trade if harsher policies were to backfire,⁷⁴ including the risk of animosity, warning that, “[i]f punishment is not just but rigorous it is a double Cause of Complaint,” and went on to declare that “[e]very punishment is unjust that is inflicted on a party unheard.”⁷⁵ Hotter heads prevailed. The port was shut and Parliament enacted the Coercive Acts that included repeal of the Massachusetts Bay Colony’s right to select governmental members and to convene town meetings. More ominously, the new law granted the Crown the right try alleged criminals in England, and made the highly offensive practice of billeting British soldiers in colonial homes possible.⁷⁶

In due course war followed, and as Arthur Schlesinger put it, the northern merchant class became passive spectators or secret abettors of the British and “had the mournful satisfaction, when the war was closed, of finding their worst fears confirmed in the inefficient government which the radicals established and in the enfeebled state of American commerce and business at home and abroad.”⁷⁷ Ultimately, he reports in a twist one would not expect, they “drew together” in an effort to found a new government that would protect their interests, and thus:

“[O]nce more united, the mercantile interests became a potent factor in the conservative counter-revolution that led to the establishment of the United States Constitution.”

So, once the hysteria was over, there was a new country, which – having turned its back on any duty to pay for its own defense or administration -- now had to pay its own bills, and is once again inflamed by radicals to refuse to pay its bills.

Reflecting on the events, one is led to wonder, are there countries which we provide with expensive defense forces that decline to pay us? Are “merchants” whipping up our congenital hot heads? Is smuggling part of our heritage? Is our willingness to overlook important debts, such as future federal pension liabilities, tied to a collective private unwillingness to pay taxes? Is the private unwillingness based in part on revisionist history of pre-Revolutionary popular resistance to taxes? If the American Colonies had been granted a few seats in Parliament, would there be no United States, or would radicals have found more reasons for national indignation, or do empires crumble naturally anyway, inexorably releasing their colonies?

⁷⁴ Barbara W. Tuchman, *THE MARCH OF FOLLY* 196 (1984).

⁷⁵ Conor Cruise O'Brien, *THE GREAT MELODY: A THEMATIC BIOGRAPHY OF EDMUND BURKE* 3 at 137. (1992) (excerpted from speech in House of Commons).

⁷⁶ Bogus, at 429.

⁷⁷ Schlesinger, pp56-67.