

The Stamp Act and American Institutional and Economic History

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The American colonial protest against Parliament's Stamp Act was a seminal moment in the history of American Independence. To date, scholars have focused on colonists' constitutional objections to the Stamp Act. Yet, the Stamp Act taxed *institutional services* and, as this Essay describes, the opposition to the Stamp Act also focused on defending low-cost, well-functioning institutions that served local communities. It examines the arguments for and against the Stamp Act as revealing two distinct visions of the role for institutions in economic growth. It suggests that American independence affirmed colonists' commitment to low-cost locally managed institutions within their developing economy.

The British Parliament's enactment of the Stamp Act of 1765 is widely acknowledged as a starting point for the acceleration of tensions that led to the Declaration of Independence in 1776 (Morgan 1992, pp. 18-28; Wood 2003, pp. 28-36; McConville, p. 249). In the dominant scholarly accounts of the Revolution, the colonial opposition to the Stamp Act centered almost exclusively on ideological and constitutional objections to "taxation without representation." That is, individual colonists and colonial legislatures rose up against the Act because it violated fundamental constitutional rights by imposing an internal tax when colonists were not directly represented in Parliament (Morgan 1992, pp. 23-38; Wood, pp. 38-44).²

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² The most prominent colonial responses to the Stamp Act, of course, followed this line of argument. The Virginia House of Burgesses, for example, published a set of resolutions in response to the Stamp Act that stated, "That the Taxation of the People by themselves, or by Persons chosen by themselves to represent them . . . is the only Security against a burthensome Taxation and the distinguishing Characteristick of *British* Freedom, without which the ancient Constitution cannot exist." (Morgan 1959, p. 48). Similarly, the Pennsylvania Resolves of Sept. 21, 1765 stated "That it is the inherent Birth-right, and indubitable Privilege, of every *British* Subject, to be taxed only by his own Consent, or that of his legal Representatives, in Conjunction with his Majesty, or his Substitutes."

The scholarship to date, however, has largely overlooked that the Stamp Act taxed particular kinds of colonial activities, namely, official legal documents produced in the day-to-day workings of colonial institutions, as well as newspapers. Thus, unlike taxes that Parliament had levied in the past, such as duties on imported goods that Parliament had imposed since the Navigation Act of 1660, the 1765 Stamp Act raised the cost to colonists of *obtaining land grants, securing and publicizing property rights (such as title deeds and mortgages in land and slaves), obtaining and enforcing credit agreements, and publicizing and advertising in newspapers*. To prominent participants in business and government, each of these activities was foundational to the operation and growth of the local colonial economy. The colonists opposing the Stamp Act defended the centrality of low-cost institutional services that protected property rights and that transmitted information about property and credit. More broadly, they objected to the principle that a distant central authority had the capacity to impose costs on internal, local institutions.

In contrast, the proponents of the Stamp Act in England believed that the additional costs imposed on institutional services were reasonable and that the social and institutional consequences of the Act would be a net positive for the British Empire. They viewed themselves as advancing a particular theory of colonial economic development according to which it was not harmful for individuals to be deterred, on the margin, from what they viewed to be excessive use of institutions. They saw little harm, and some benefit, in reducing the volume of land conveyances, litigation, and the circulation of newspapers.

Thus, the fierce opposition to the Stamp Act reflected more than an ideological and constitutional opposition to the structure of Parliament and British Imperial law. Colonial

(Morgan 1959, p. 51). The Stamp Act Congress similarly stated in its declaration of Oct. 1765 that “That it is inseparably essential to the Freedom of a People, and the undoubted Right of *Englishmen*, that no Taxes be imposed on them, but with their own Consent, given personally, or by their Representatives.” (Morgan 1959, p. 62-63).

protestors were defending the achievement of the colonial legislatures and localities in creating a well-functioning *institutional* framework that served the interests of participants in the colonial economy. The opposition to the Stamp Act was, in part, opposition to the Stamp Act advocates' vision of how increasing the cost of institutional services might affect colonial economic activities. In an influential pamphlet, the Maryland lawyer Daniel Dulany (1765, p. 65), for example, emphasized that the Stamp Act would "produce in each colony, a greater or less sum, not in proportion to its wealth, but to *the multiplicity of juridical forms, the quantity of vacant land, the frequency of transferring landed property, the extent of paper negotiations, the scarcity of money, and the number of debtors.*" Understanding this more nuanced history of the Stamp Act controversy reveals that the movement for Independence was, in part, a movement for local control over institutions that secured property rights and promoted economic growth. It was an affirmation of the structure of property rights and credit markets that colonial opponents of the Stamp Act envisioned would lead to greater domestic economic prosperity.

The relation of the American Revolution's Stamp Act crisis to American institutional history, though neglected to date by historians, has immediate relevance today. For many decades, scholars and political commentators have focused on institutional foundations as a central determinant in countries' economic and political well-being (North & Weingast, 1989; North, 1981). In a recent prominent example of this body of work, James A. Robinson and Daren Acemoglu (2012) attribute the differential between thriving economies and poor economies to institutional foundations. In their account, countries with inclusive political institutions tend to foster local institutions that promote widespread economic growth. They contrast these countries to those where the political system and institutional structure serve the narrow interests of an elite to the detriment of broader growth. As this Essay describes, the Stamp Act controversy

helps explain how the United States came to have a well-functioning, relatively inclusive, institutional foundation in an expanding economy.³ The Stamp Act crisis was the breaking point in a longer history in which colonists protested the imposition of fees and costs that they viewed as serving the interests of an elite of imperial authorities at the expense of broader economic progress.

Even more specifically, Hernando de Soto (2000) attributes national wealth disparities to the existence of well-functioning and low cost institutions that grant and record title, protect property rights, and enforce credit agreements. A central section of de Soto's book documents the extraordinary costs, both in time and money, of using local institutions in locations from Peru to Egypt, Haiti, and the Philippines to obtain title and mortgages and to establish legal businesses (de Soto, pp. 18-28). To de Soto, these fees and costs are barriers to the use of institutions and lead to "dead capital": assets with inherent value that cannot be realized because they are excluded from credit and other market transactions (de Soto, p. 11) The Stamp Act crisis serves as an important landmark effort to defend local institutions from excessive and inequitable taxation by an unrepresentative government to protect the relatively well-functioning land and credit markets that the colonists' had created.

Around the world today, many policies are enacted or costs imposed on citizens that are reminiscent of those the Stamp Act opponents challenged. With regard to registering title to land, for example, the World Bank has published data on the number of procedures, time, and cost of

³ Of course slaves and married women were excluded from the system. Indeed, the institutions colonial lawmakers developed to support credit markets and the economy also laid the foundation for the slave system of labor. Colonial law innovated by defining slaves as property. Slaves quickly became a central form of collateral in many areas. Colonial institutions made it easy for colonists to record slave title and slave-backed mortgages, to lease slaves, to use slaves to satisfy debts by means of publicly-financed auctions and transfers (Priest 2006, pp. 416-437; Kilbourne 1995; Morris 1996, p. 66).

registering title in 185 countries, noting that formal title leads to increases in property values and improves an individual's chance of obtaining credit.⁴ As de Soto and others have found, additional costs imposed on land title registration leads market participants to convey land informally to avoid the fees and inconveniences, thereby making land records incomplete and inaccurate and raising the cost of credit. Similarly, the Stamp Act's taxation of land conveyances and official legal documents disrupted the functioning of local colonial institutions, threatened to suppress the recordation of land conveyances and mortgages, and to reduce litigation on the basis of credit transactions. To the extent that local institutions' central role is to publicize information about property rights and to process credit claims, those functions are vastly impaired by excessive costs imposed on the participants. Scholars have thus far overlooked the relationship between the desire to keep the cost of institutional services low and within the exclusive purview of the local legislatures and the imperial crisis that led to American independence.

To be sure, English advocates of the Act accused the colonial elite vocal in the Stamp Act crisis of permitting excessively large land grants in frontier areas for the purpose of land speculation. English Stamp Act advocates felt that the low-cost land conveyancing offered by colonial institutions encouraged the colonial elite to betray the longstanding English imperial policy of allocating land in relatively small parcels to immigrants and others who demonstrated an ability to cultivate. Thus, the Stamp Act crisis produced an interesting dynamic where its advocates promoted a scheme of property allocation, rooted in demonstrated ability to settle and cultivate land immediately, even if in practice there would be far less land settled. The critical

⁴ See <http://www.doingbusiness.org/data/exploretopics/registering-property>. In Nigeria, which ranks 182 out of 185, individuals wishing to register title to land face an 86 day process and a cost of 20.8% of the land value. In Syria, the process takes only 19 days, but costs 27.8% of the land value. Other countries, like Georgia and Belarus (ranking #1 and #3, respectively), have reformed their land registration system and now the same process takes two and ten days and costs .1% or zero, respectively. Ibid. (at *Why It Matters*).

characterization of colonial land conveyancing was disputed by the First Congress of the American Colonies (a meeting of delegates from nine North American colonies), held in New York City on October 7-25, 1765 in response to the Stamp Act. The Stamp Act Congress's 1766 petition to the House of Commons emphasized that the small scale of landowning in the colonies was precisely the reason why low-cost institutional mechanisms for land conveyancing were essential. It stated "That from the Nature of *American* Business, the Multiplicity of Suits and Papers used in Matters of small Value, in a Country where Freeholds are so minutely divided, and Property so Frequently transferr'd, a Stamp Duty must ever be very Burthensome and Unequal" (Morgan 1959, p. 68).

However important, the constitutional argument surrounding the Stamp Act crisis—taxation without representation—was only one component of colonists' protests. The colonists' abhorred the concept of English Parliamentary regulation of the fees and costs imposed on services performed by local institutions. They emphasized that colonial institutions were foundational to the economy and should be regulated exclusively by local representative legislatures.

Part I of this Essay describes the local colonial institutions and their role in the economy. It gives a brief history of the pre-1765 conflicts between imperial authorities and the colonists over the fees and costs of institutions. Part II examines the Stamp Act and the vision of the colonial economy and its institutions Stamp Act supporters in England advanced. Part III describes the Stamp Act opponents' arguments as they related to institutions and the economy.

I. The Central Role of Institutions in the Colonial Economy

A central achievement of the American colonial institutions that emerged from the mid-seventeenth century to the enactment of the Stamp Act in 1765 was to serve local colonial

communities by offering a means of recording land titles, executing land conveyances and mortgages, and resolving debt-related litigation. The Stamp Act directly taxed the legal documents produced by the courts and land record offices in these proceedings. Moreover, the Stamp Act taxed newspapers, which colonists relied upon heavily to market goods and insurance, to announce auctions and foreclosures, and to publish enacted colonial laws. Thus it is not surprising that when, in order to set the level of fees in the Stamp Act, Thomas Whately, Britain's Secretary of Treasury, asked Jared Ingersoll, Connecticut's future stamp distributor, to provide "information of the several methods of transfer, Law Process &c made Use of in the Colony," Ingersoll believed that Parliament would keep fees low when its members learned how heavily colonists used their institutions. (Morgan 1959, p. 34). In a Feb. 11, 1765 letter to Thomas Fitch, Ingersoll wrote:

I very well knew the information I must give would operate strongly in our favour, as the number of our Law Suits, Deeds, . . . & in short almost all the Objects of the intended taxation & Dutys are so very numerous in the Colony that the knowledge of them would tend to the Imposing a Duty so much the Lower as the Objects were more in Number (Morgan 1959, p. 34).

Events proved Ingersoll wrong, but his sentiments suggest the broad awareness among colonists that the Stamp Act was a tax on their institutions.

A. Colonial Courts and Land Records

Owning land was a pillar of the colonial economy. The economy was largely based on agriculture, and land reflected a principle store of wealth. Alice Hanson Jones's study of probate records at the time of the American Revolution reveals that land reflected 81.1% of wealth in New England, 68.5% in the mid-Atlantic region, and 48.6% of wealth in the South (with slaves constituting 35.6%) (Jones 1980, p. 98 & tbl. 4.5; Egnal 1998, p. 15 tbl.I.2). Granting land was a

central prerogative of the crown that was delegated to the royal governors, the crown-appointed imperial heads of state. Throughout the colonial era, there were repeated conflicts between the governors and colonists over the fees the governors imposed for obtaining original patents for land. The governors viewed the fees on the land patents issued by their offices as a source of revenue. Colonial opponents of the governor often objected, asserting that the Crown's policy should be to issue land at a low expense to encourage immigration and settlement, and to raise land prices. Governors often complained that colonial elites had usurped the land-granting process and were engaged in excessive "land jobbing" (land speculation) for their own profit. As will be described below, the Stamp Act—which taxed land patents—was a culminating moment in a long history fraught with tension over land patent fees.

Subsequent land titles and conveyances were recorded in local court records or special land records. By the early eighteenth century, each colony hosted courts of common pleas that were held in local counties quarterly on a rotating basis. (Nelson 1981, p. 23-24; Roeber 1981, 39-41) At the common pleas sessions, for a fee clerks of the court recorded titles and conveyances (sales and mortgages) of land and slaves. They recorded and entered into probate the wills of individuals who died. They recorded debt litigation based on various forms of debts or mortgage bonds.⁵ Each of these institutional services secured property rights and conveyed important market information to interested members of the community. The court, land, and probate records taxed in the Stamp Act thus played a central role in the colonial economy.

⁵ A vast number of such colonial records survive today, and several collections have been published. *See, for example*, Konig, David Thomas, ed. *The Plymouth Court Records, 1686-1859*, vols. 1-10. Wilmington, Del.: M. Glazier, 1978-1980; Martin, Marsha, ed. *Lancaster, Pennsylvania County Land Records, 1729-1750 and Land Warrants, 1710-1742*. Westminster, MD: Willow Bend Books, 2002.

Colonial credit markets were robust. First, mortgages, by which credit was extended on the basis of land and slave property, were highly common (Menard 1994, p. 667; Countryman 1992, p. 19 n.47; Warden 1976, pp. 87-98). G.B. Warden (1976, p. 81) found that 3,617 mortgages were recorded in Boston between 1692 and 1775 with a total value of £94,380. Russell Menard's study of mortgages of land and slaves in eighteenth century South Carolina found that, by means of mortgages, capital flowed "from the city and mercantile fortunes toward the country and plantation development" (Menard, p. 670).

Second, litigation, particularly based on debts, also played a central role within the colonial economy. Colonial historians have extensively documented the degree to which individuals were involved in webs of credit throughout a broad community: Where today, routine market transactions take place by means of cash, checks, and credit cards, in the colonial era market transactions involved debts on book accounts and promissory notes (analogous to a check) or, for larger transactions, by sealed bonds (Dayton 1995; Mann 1987; Priest 2001). Individuals also frequently took out lines of credit with merchants and shopkeepers, satisfying the debts later through crop harvests or other goods.

Litigation was essential to the credit system. When a creditor suspected the debtor might default on a debt, bringing a lawsuit on the debt established his priority to the debtor's assets. Debts were satisfied in the order in which creditors requested the court to issue writs of execution empowering the sheriff to physically seize the debtors' assets (Priest 2001). Word that one creditor was bringing a debt action against a debtor would, of course, be highly relevant to all of that debtor's other creditors. Debt records provided a priority list of creditors' claims against defaulting members of the community.

Colonial probate courts recorded and probated the execution of wills. Recording and probating wills had immediate credit market implications: when an individual died, probating the will gave the opportunity for creditors of the deceased to step forward and establish a claim against the assets of the deceased. Formally transferring ownership over land, slaves and other assets to creditors, widows, heirs and devisees instantly affected the recipient's wealth and creditworthiness.

The official production of court records at the quarterly court sessions provided a venue for the broader transmission of information throughout a community through word of mouth. Court days were highly popular events attended by most market participants (Roeber, pp. 73-95; Shepard 1995; Chitwood 2001, 94-95). Entire communities would converge at the location of the court sessions to hear about the court business of the day. At court day, individuals would personally observe or immediately hear about land conveyances, mortgages, the probate of wills, and lawsuits based on debts. As A.G. Roeber describes, "Court days" were an essential time to discover "who was recovering against whom and what their own roles might be at any given moment" (Roeber, p. 85). The role of institutions was therefore twofold: to actually create a formal record of the legal actions related to property status, and to provide a forum where the entire community became informed of all property-related status changes. Court days provided an important venue for the community to collectively discuss and coordinate resistance against high fees for essential institutional services.

B. The Importance of Low Fees

Over the eighteenth century, the colonial legislatures exercised authority over local, colonial institutions (Greene 1963). Colonial legislatures had authority to design and re-design things like

the election and appointment of officials running the institutions, as well as all of the fees and costs imposed on those who used the institutions (Greene 1963). Colonial legislatures frequently enacted into law extensive schedules of fees documenting every institutional service and how much each would cost (Priest 1999, pp. 2423-29).

The level of the fees, of course, had a direct impact on all who relied on the institutions. There were *ex ante* and *ex post* effects of fees for institutional services on credit markets. The fees levied to record title and mortgages were direct costs paid by those acquiring land and lenders and borrowers. *Ex ante* (before the individual used the service), the level of fees would influence an individual's decision whether or not, for example, to record a land transfer or a mortgage. The statutory fee level would increase or reduce the total amount of land and slave sales and mortgages recorded in an economy in which land and slaves were primary assets.

Court fees on litigation also posed an *ex post* problem for individuals involved in credit transactions. Court fees were imposed on the party losing the litigation. Court fees on debt judgments were often perceived to be a tax on debtors who were already unable to repay their debts (thus, taking away from the assets available to creditors as well). During times of widespread economic recession, the volume of litigation ballooned, increasing the total amounts extracted from economic actors for the payment of fees. It is not surprising that fees for institutional services were a political issue in the colonies.

The Stamp Act also taxed newspapers. In the colonial economy, individuals relied on newspapers to market goods, offer land or slaves for sale or auction, and to publicize that moveable property, such as slaves or cattle, had runaway or gotten lost. By statute, like today, court-sponsored foreclosure auctions of debtors' assets (such as land and slaves) were publicized

in the newspaper. Moreover, much like today, the published news itself reported essential information related to market conditions. The price of newspapers thus had a direct impact on market participants.

C. Precedents of the Stamp Act Crisis

The balance of power between elected representative assemblies and the crown-appointed governors and their appointed councils was a central and constant struggle in the political world of colonial America. As mentioned, by the early to mid-eighteenth century, colonial legislatures had assumed control over local institutions and the fees they charged. Nonetheless, the colonial governors often attempted to extend the boundaries of their spheres of influence in areas under the authority of the executive. This Section briefly describes two moments of high tension between colonial assemblies and governors over fees to illustrate the kind of controversy over institutions that was common throughout the colonies in the century before the Stamp Act.

1. The Andros Affair in Massachusetts

The Andros affair was a dramatic series of events occurring in Massachusetts at the end of the seventeenth century. The king revoked the Massachusetts Bay Company charter in 1684. Massachusetts was briefly governed by a crown-appointed council while the appointment process for a new governor was under way. Aware that a crown-appointed governor would likely invoke royal prerogative and exercise control over distributing lands, a widespread effort to formalize land titles commenced at many levels of Massachusetts society. The wave of land titling took place both in the individual towns and at the level of the largest landholders, some of whom acquired vast parcels made available after King Philip's War of 1675-76 (Martin 1991, pp. 260-80; Johnson 1981; Barnes 1923; Goldberg 2011). In 1686, King James II created the

Dominion of New England, which was designed to subject all of the New England colonies to firmer royal control and placed Massachusetts within it.

When Sir Edmund Andros was appointed in 1686, his commission and royal Instructions specified that he was to review the land titles that colonists had formalized outside of the official processes for granting royal land. Andros was highly suspicious of the actions of the previous administrations and ruled that all land titles in Massachusetts were effectively invalid (Martin, p. 263). He announced a program whereby residents would apply for new land patents, with the land surveyed by his office and with titles formalized with the royal seal. In addition to surveying costs, he imposed a fee for obtaining the new land patents.

Invalidating land titles undermined the legitimacy of the primary asset held by most Massachusetts residents (Sewell, pp. 219-221, 237, 251).⁶ Thus it is not surprising that an uproar throughout the colony ensued. With regard to the fees imposed, a 1691 account of the events written by members of Andros's Council described:

Nor could any mans own Land be confirmed to him, without a particular Survey of every part and parcel of them first made, the great charges whereof, and of other Fees to be taken would have been to most men Insupportable: *Yea it hath by some been computed that all the money in the Country would not suffice to patent the lands therein contained* (Andros, pp. 133-143).

Others wrote that the fees for obtaining new titles could reach 25% of the value of the underlying land.⁷ William Johnson, an Assistant, for example, wrote that:

⁶ The prominent lawyer Samuel Sewall wrote:

The title we have to our lands has been greatly defamed and undervalued: which has been greatly prejudicial to the inhabitants, because their lands, which were formerly the best part of their estate, became of very little value, and consequently the owners of very little credit (Sewall, pp. 219-21, 237, 251).

⁷ *The Andros Tracts* include the following testimonials: "hearing his land was to be taken, one resident "caused his Writ to be entred in the Publick Records in *Mr. West's* Office, which he paid for the Recording of; notwithstanding Sir *E.A.* ordered Captain *Clements* (as he said) to survey the same, and he shewed me a Plat thereof, and said, if I had a Patent for it, I must pay three pence *per* Acre, it being 650 Acres. He was further informed, That if the said

Had not an happy *Revolution* happened in England, and so in *New-England*, in all probability those few ill men would have squeezed more out of the poorer sort of people there, than half their Estates are worth, by *forcing them to take Patents*. Major *Smith* can tell them, that an Estate not worth 200l. had more than 50l. demanded for a Patent for it. (Andros, p. 68)

Andros was eventually violently overthrown in what all referred to as a Revolution (Martin, p. 263).

2. *The Pistole Crisis in Virginia*

The Andros affair was likely remembered, but was not within the lived experience of the residents of Massachusetts when Parliament enacted the Stamp Act. In contrast, the Pistole Crisis of 1754 was likely experienced directly by the Virginians opposing the Stamp Act. Beginning in the early seventeenth century, the House of Burgesses, the Virginia legislature, controlled the fees levied for many institutional services. By the early eighteenth century, the House of Burgesses had expanded the scope of its authority over appointments and fees for different services, including land surveying (Greene 1963, pp. 158-59; Greene 1958; Smith 1940). Although royal instructions typically authorized Virginia governors to establish fees with their appointed Council's consent, no governor chose to exercise this power until the 1750s, with one exception. The exceptional case was Governor Francis Howard, Lord Howard of Effingham, who in the 1680s imposed a fee of two hundred pounds of tobacco for fixing the public seal on land patents and—like the Stamp Act of 1765—probated wills and other official documents, as well as thirty pounds of tobacco for recording land surveys (Greene 1963, p. 159). The House of Burgesses became enraged and appealed to the Privy Council that Howard's actions exceeded

Russell would not take a Patent for it, Mr. *Usher* should have it" (Andros, p. 98); "Whether Husbandmen do need to be put in mind of the blessed Priviledge to which they were advancing, of taking Patents for their Lands, at a rate which would have reduced them to a meaner Estate than the Famine once brought the Egyptians unto?" (Andros, p. 205).

the scope of his authority. In September 1689, the Privy Council ruled that Howard's fees were illegal because he had not sought the consent of the Virginia Council before imposing them.⁸

The Virginia legislature thereafter maintained control over institutional fees until 1752 when, upon his arrival in Virginia, Governor Dinwiddie with the consent of his Council, assessed a fee of one "pistole," (a spanish coin worth 16 s 10 d English Sterling, or £1 2s 6d Virginia money at the time) on land patents issued by his office with the royal seal. Dinwiddie quickly submitted the issue of the fee's legality to the Board of Trade, which gave its approval. The opposition focused on the fact that the fee was a tax imposed without the Virginians' consent. As William Stith, a member of the Burgesses, wrote to the Bishop of London in April 1753, "This Attempt to lay Taxes upon the People WITHOUT Law was certainly AGAINST Law, & an evident Invasion of Property" (Greene 1958, p. 401). The opponents of the fee championed the slogan "*Liberty & Property and no Pistole*" and reported to their friends in London that the Governor's fee gave "very general Disgust and Alarms to the whole Country" (Greene 1958, p. 400). They petitioned the Privy Council, which held a hearing on the legality of the fee in June of 1754 (Greene 1958, pp. 406-22).

Like the Stamp Act controversy two decades later, the pistole crisis centered on how the cost of institutional services related to a broader theory of economic growth. Quite notably, William Murray, Lord Mansfield, who advocated on behalf of Governor Dinwiddie before the Privy Council, distinguished the pistole fee from the illegal fee imposed by Howard in the 1680s because Howard's fee taxed basic institutional services, unlike Dinwiddie's fee on land patents. According to Murray, Howard's fee was unlawful, in part because it was imposed on "Probate of

⁸ *Id.*; 2 Acts of the Privy Council of England, Colonial Series 142-43 (W.L. Grant & James Munro, eds. 1908-1912).

Wills, letters of administration and various other things; which, your Lordships observe, were matters of Right, which the Subject was obliged, was compelled to comply with” (Greene 1958, p. 409). In contrast, the pistole fee was “a matter of Discretion; if the Subject does not incline to ask for a Patent, he is not compelled to take one out” (Greene 1958, p. 409). It is notable that Murray referred to institutional services as matters of “Right,” with the inference that only local representative bodies could legally set their cost.⁹

Dinwiddie’s advocates, including Alexander Hume Campbell, characterized the opponents of the fee as “Land Jobbers, a Species of Men, who, in accumulating Estates, pay no regard to the publick Welfare” (Greene 1958, p. 410). Indeed, Campbell continued, “So inordinate and boundless is their Lust of acquiring Lands, that unless some effectual means are used to restrain it, it must in time produce the total destruction of that Colony;” (Greene 1958, p. 410).¹⁰ In contrast, the House of Burgesses protested that the fee was “an Infringement on the Rights of the People, and a Discouragement from taking up Lands, and thereby . . . the settling the Frontiers of this Country, and the Increase of his Majesty’s Revenue of Quitrents” (Green 1958, p. 401). The Virginians repeatedly emphasized the need for inexpensive patenting of lands to encourage immigration. According to Robert Henley, who represented the House of Burgesses,

A small Expence in taking up Lands is an Encouragement to Protestants to settle there from all parts of Europe, Germany in particular; but can it be Imagined that any European will settle there, if the Governor proves this Arbitrary, if they find themselves Subject to the extravagant demand of a Governor? (Greene 1958, p. 414)

⁹ Murray changed his interpretation in 1765: he defended the Stamp Act as a purely discretionary tax.

¹⁰ Lord Mansfield similarly emphasized:

It has long been the Custom in that Colony to make Application to the proper Officer, to take up great quantities of Land, more than the Takers up ever intended to Cultivate; merely, with a design to keep out other Tenants; Which your Lordships must be convinced to be the Case, when you are informed, that in one Day, there were granted out no less than One Million four hundred thousand acres. (Greene 1958, p. 407).

The Privy Council ultimately ruled in favor of Dinwiddie, although it carved large exemptions from the pistole fee for plots of land under 100 acres (presumably those immigrants would be likely to patent), and for lands for which patents were requested before Dinwiddie was appointed. The controversy foreshadowed both the constitutional arguments and arguments over the structure of the Virginia land policy that would reappear in the Stamp Act crisis.

II. THE STAMP ACT AS POLITICAL ECONOMIC REFORM

The Stamp Act was more than simply a tax on Britain's American colonies; it was a tax on legal and commercial transactions within those colonies. Examining the specific provisions of the Stamp Act itself helps explain both why it proved so controversial and what was at stake in the political controversy that it unleashed. By taxing the paper on which a variety of legal and commercial documents were printed, the Stamp Act effectively taxed economic transactions and information, the lifeblood of the colonial economy.

Both supporters and opponents of the Stamp Act understood its consequences in institutional terms. While much of the debate over the Stamp Act turned on questions of representation and the constitutional rights of colonists within the British Empire, both supporters and opponents of the Stamp Act recognized that parliamentary taxation in general, and the Stamp Act in particular, would have profound implications for the colonies' society and economy. Both sides understood that the Stamp Act was a deliberate effort to use taxation to change colonial institutions and to shift the trajectory of the North American economy. For its supporters, the Stamp Act promised to curb the licentiousness and disorder of the colonial economy, to restrain runaway land speculation, and to make the colonies more readily governed by Britain. For its opponents, the Act threatened to shred colonial property rights, while

dramatically raising the cost of legal and commercial transactions. Depending on where one stood, the Stamp Act looked very different, but its importance was clear not just as a constitutional precedent for Parliament's taxation of the American colonies but as a means of changing those colonies' economy and society.

The Stamp Act itself charged three pence per sheet on “any Copy of any Petition, Bill, Answer, Claim, Plea, Replication, Rejoinder, Demurrer, or other Pleading in any such Court.”¹¹ It levied one shilling for “any Monition, Libel, Answer, Allegation, inventory, or Renunciation” as well as for affidavits, bail documents, interrogatory depositions, rules, orders, and court warrants.¹² Licenses to practice law were likewise taxed at a rate of ten pounds sterling a page,¹³ a significant sum in a world in which the average Philadelphia ship captain earned around four pounds sterling per month.¹⁴ Notarial acts, letters of attorney, procurations, mortgages, releases, and other legal instruments not specifically mentioned were all charged at two shillings and three pence per page.¹⁵

The Stamp Act also targeted commercial transactions of both real and moveable property. Ships' commissions and their bills of lading, required in order to clear customs, were taxed. Bonds, which were used to secure the payments of debts, were likewise obliged to be printed on stamped paper. Licenses for retailing wine and spirits came under the Act. And, perhaps most significantly for an economy dependent on the acquisition and development of land, warrants, deeds, and grants were all to be taxed, with significantly higher rates for properties in excess of

¹¹ Duties in America (Stamp) Act, 1765, 5 Geo. 3, c. 12, § 1.

¹² *Id.*

¹³ *Id.*

¹⁴ The average sea captain in Philadelphia earned about seven pounds per month in Pennsylvania currency (Nash, p. 208). Pennsylvania currency was significantly less valuable than sterling. In calculating the salary of its agent in London in 1765, the Pennsylvania assembly reckoned that sterling currency was worth seventy-five percent more than Pennsylvania currency (Pennsylvania, p. 450).

¹⁵ Stamp Act § 1.

100 acres.¹⁶ In addition to taxing legal services and transactions, the Act also taxed information and civil society, levying revenue from pamphlets, newspapers, and newspaper advertisements. With stamp taxes, ordinary Americans would find it more expensive to conduct business, to read newspapers and pamphlets, to petition the government, and even to drink and gamble.¹⁷ The Stamp Act required colonists to pay for stamps in “Sterling Money of Great Britain,” valued at “Five Shillings and Six Pence the Ounce in Silver,” currency that was scarce in colonial America.¹⁸

Both supporters and opponents of the Stamp Act recognized that these taxes, particularly those on legal and commercial transactions, would disproportionately affect the economy of the northern colonies, while placing a much lighter burden on those wealthier colonies dependent on enslaved labor. Indeed, Thomas Whately, Britain’s Secretary of Treasury, made it very clear in a spring 1764 letter to his friend and Connecticut’s future stamp distributor, Jared Ingersoll, that the Stamp Act was “preferable to a Tax upon Negroes, which effect the Southern much more than the Northern Colonies” (Ingersoll 1766, p. 4). And yet, the Stamp Act did exactly the reverse of tax on the importation of enslaved Africans. It taxed the wealth of the poorer northern colonies, which had far fewer slaves, at a relatively higher rate than either tobacco-producing Virginia or the sugar-producing Caribbean. As Dulany (1765, p. 24) observed in an influential

¹⁶ *Id.*

¹⁷ The Stamp Act taxed playing cards and dice. *Id.* Stamp duties were frequently used in the eighteenth century to curb the circulation of potentially subversive ideas. For example, French Revolutionaries used stamp taxes to circumscribe political debate (Gough, p. 125-28, 141/42.)

¹⁸ Stamp Act § 62. Colonists repeatedly complained about the shortage of hard currency in the colonies, and this led them and their supporters in Britain to argue that they were incapable of paying the tax. *See, e.g., The Humble Address of the General Assembly of New York*, N.Y. GAZETTE, Dec. 2, 1765, at 1; *Resolutions of the Importers of European Goods, Philadelphia*, PENN. ADVERTISER & DAILY GAZETTE, Nov. 14, 1765, at //; Henry E. Huntington Library [hereafter HEH], Council & House of Reps. of Mass. Bay, The Address of the Council and House of Representatives of the Massachusetts Bay to Governor Bernard in the Governor’s Letter, 10 Nov. 1765, Stamp Act Correspondence, Stowe Manuscript 264, folder 156; Historical Society of Pennsylvania [hereafter HSP], James & Drinker/Barclay & Sons, 16 Nov. 1763, James & Drinker Letter Book, collection 176, vol. 13, p. 198; HEH, Temple/ Grenville, 9 Dec. 1764, Stowe Grenville Papers [hereafter STG], box 23, fol. 29; Beinecke Rare Book and Manuscript Library [hereafter BRBML], Whittelsey/Stiles, 16 April 1765, Ezra Stiles Papers, correspondence, folder 486.

pamphlet attacking the Stamp Act, “A larger sum will be extracted from a tobacco colony than from Jamaica; and it will not only be higher in one of the poorest colonies, and the least able to bear it, than in the richest.” While Whately rejected Dulany’s argument, he acknowledged that the higher value of West Indian land meant that the Stamp Act’s much higher tax on large land sales would be much more heavily felt in the northern colonies, where land owners were not only less wealthy but land transactions were larger and the value of land lower. In response, the Secretary of Treasury proposed to tax land in the sugar colonies at a higher rate than on the mainland;¹⁹ however, the final statute made no such provision.²⁰

Despite Whately’s protests to the contrary, there is considerable evidence that the Stamp Act’s architects and advocates intended these disproportionate effects. They believed that parliamentary taxation of the colonies offered a means of implementing much needed institutional reforms, which were more necessary in some colonies than in others. Indeed, Grenville and Whately, along with their protégé Charles Jenkinson, made no secret that they believed that the entire British Empire—and particularly the North American colonies—suffered from runaway disorder and a crisis of governance.²¹ As early as 1742, Pennsylvania’s governor, Sir William Keith, proposed stamp duties as a means of putting “an entire stop to all those Complaints and disputes, daily arising between the people of the Colonies, and their Respective Governours” and of reducing the “immoderate Quantity of Paper Bills Struck in many of the colonies to the discouragement of fair trade.”²² In the fight against “licentiousness,” taxation

¹⁹ British Library [hereafter BL], Whately, “Copy of Mr Secretary Whately’s General Plan for an American Bill Approved in Conference Before All the Lords of the Treasury,” 17 Dec. 1764, Hardwicke Papers, Add. Ms. 35,910, fols. 312/13..

²⁰ See Stamp Act § 1.

²¹ See Grenville 1765, p. 94; HEH, Grenville/Woodhouse, 3 Sept. 1768, George Grenville Letterbook [hereafter GGL], Stowe Papers 7, vol. 2.

²² BL, Keith, “Reasons Humbly Offr’d in Support of a Proposal Lately Made To Extend the Duties on Stamp Paper and Parchment all over the British Plantations,” 17 Dec. 1742, Newcastle Papers, Add. Ms. 33,028, fols. 376/77.

was a powerful weapon of moral and economic reform. As Grenville observed when discussing the Stamp Act a few years after its passage, “all taxes ought to be, and many are checks upon vice and luxury or regulations of different kinds as well as sources of revenue.”²³

The regulations the Stamp Act placed on the colonies would reduce land speculation by raising the cost of buying and selling real property, discourage litigation by taxing most legal papers, and curb colonial civil society by raising the cost of newspapers that fanned the flames of political opposition. The Stamp Act would, its supporters insisted, transform the way in which land was acquired and developed throughout British North America. It was designed George Grenville explained, “to discourage by a high duty the grant of large quantities of land to one person.”²⁴ Grenville’s deputy Whately also asserted that the Stamp Act would serve as “some check to those enormous grants and conveyances which are so detrimental to the colonies.”²⁵ Using taxation to limit the acquisition of vast tracts of the American interior was nominally egalitarian, but in reality it served to discourage territorial expansion and development while still leaving poor settlers with a significant tax burden.²⁶ This is not surprising. Authoritarian imperial reformers in Britain had long expressed concern that colonial settlement and expansion were getting out of hand and needed to be restrained lest the colonies challenge Britain’s economic supremacy within the empire. As Charles Jenkinson explained to Richard Wotters in a January 1765 letter, “the increase of our colonies is certainly what we wish but they must increase in such a manner as will keep them useful to the mother country.”²⁷ The English peer Richard Grosvenor, First Earl Grosvenor, a supporter of the Stamp Act who would later protest its repeal,

²³ HEH, Grenville/Knox, 16 Aug. 1768, GGL, Stowe Papers 7, vol. 2.

²⁴ Ibid.

²⁵ HEH, Whately/Temple, 9 Feb. 1765, SGP, Stamp Act letter book, box 13, folder 6.

²⁶ Alvord, Barrow, Egnal, Sosin, and Strang all demonstrate that this was a long-standing goal of authoritarian colonial reform.

²⁷ BL, Jenkinson/Wolters, 18 Jan. 1765, Liverpool Papers [hereafter LP], Add. Ms., 38,304, fol. 114; See also BL, Alexander, styled Sixth Earl of Stirling/Petty, Second Earl of Shelburne, 6 Aug. 1763, Bowood Papers, Add. Ms. 88,906/3/1, fol. 50.

likewise expressed concern about the “profligacy” and demographic growth of the colonies. He concluded that the best check on American growth was “confining our settlements in America within proper limits.”²⁸ Keeping the colonies useful to Britain meant checking the scramble for vast tracts of the American interior, a scramble that led to conflict with Native Americans and that ultimately threatened Britain’s economic control over its own empire.²⁹

While taxing land conveyances offered the most wide-ranging transformation of the colonial economy, the Stamp Act also promised to reduce the volume of litigation that made the colonies a risky and expensive place to do business. Indeed, the unreasonable litigiousness of American society was very much on Whately’s mind when he drafted the Stamp Act. Whately observed “the great Number of Law Suits in most of the Colonies” and the vast potential source of revenue that they offered (Ingersoll, p. 4). In 1768, George Grenville was more explicit about the goals of the Stamp Act when he explained to William Knox that it had been intended as a way “to make all law proceedings and instruments in the English language, to discourage a spirit of unnecessary litigation and several other things of the like nature.”³⁰ Indeed, the Stamp Act served as a sin tax on litigation, one whose steep taxes on the legal market would make Americans think twice before taking their grievances to court.

Grenville and his supporters designed the Stamp Act as a means of raising morals as well as revenue. Like the new duties on imperial trade and improved customs enforcement that they also supported, the Stamp Act promised to make Britain’s licentious, and often truculent,

²⁸ BL, Lord Grosvenor “Hints Respecting the Settlement of Our American Provinces, 25 Feb. 1763, LP, Add. Ms. 38,335, fols. 14/15. On Grosvenor’s opposition to the Stamp Act’s repeal, see [House of Lords], p. 16.

²⁹ On western expansion and Native American relations, see BL, Knox, “Hints Respecting the Civil Establishments in the American Colonies,” Feb. 25, 1763, LP, Add. Ms. 38,335, fol. 28.

³⁰ HEH, Grenville/Knox, 16 Aug. 1768, ST 7, GGL, vol. 2).

colonies more governable.³¹ By freeing governors from having to negotiate with colonial legislatures for military funds, the Stamp Act promised to strengthen executive authority. For example, both Georgia's agent to Parliament, William Knox, and Massachusetts's governor, Francis Bernard, urged policymakers in London to provide governors with sources of revenue that could not be held hostage by truculent colonial assemblies.³²

The Stamp Act also promised to shift the balance of power from the public to their leaders by transforming colonial institutions, particularly public petitioning and the newspaper press. Cheap political print, which exploded in the colonies and throughout the British Empire, was a longstanding source of popular political opposition (Levy; Spector; Warner; Boyer; Olson 1999; and Olson 2000). By taxing both newspaper and pamphlets, as well as the advertisements that made them profitable, the Stamp Act promised to make mobilizing public opinion against government much more difficult. It would likewise make petitioning, in which groups of citizens presented public officials with community grievances, more expensive and less common. When combined with the army of British troops that the Stamp Act helped pay for, it promised to radically transform the power dynamic between the colonial public and their imperial governors.

III. OPPOSITION TO THE STAMP ACT AND THE DEFENSE OF COLONIAL INSTITUTIONS

While supporters of the Stamp Act believed that it would bring much needed institutional reform to Britain's colonies, their opponents on both sides of the Atlantic insisted that remaking American institutions would spell the end of colonial liberty and prosperity. A large part of their argument hinged on the notion that arbitrary taxation by an unrepresentative Parliament was both

³¹ On disorder and disobedience in the colonies, see BL, Bernard, "Principles of Law and Policy Applied to the British Colonies in America," Liverpool Papers, Add. Ms. 38,342, fol. 194; BL, Knox, "Hints Respecting the Civil Establishments in the American Colonies," 25 Feb 1763, LP, Add. Ms. 38,335, fol. 23..

³² BL, Bernard, "Principles of Law and Policy," LP, Add. Ms. 38,342, fol. 195; BL, Knox, "Hints respecting the Civil Establishments in the American Colonies," 25 Feb.1763, LP, Add. Ms. 38,335, fols. 21, 23.

unconstitutional and spelled the end of secure property rights. If British legislators could take colonial property whenever it suited them, radical Americans and their British supporters argued, colonists would have little incentive to develop their economy. Although this was the crux of the radical argument against the Stamp Act, critics of the bill also attacked its specific provisions for their inequitable effects on the colonies. They took particular umbrage at the way the Stamp Act raised the cost of economic transactions, legal services, and information. They criticized the bill for placing a heavy burden on debtors, and for threatening newspapers that were a critical source of information. In a world in which North Americans were perpetually short on currency, particularly the hard and sterling currency necessary to pay the Stamp Act, and in which the instruments of credit that provided desperately needed liquidity were themselves taxed, the Stamp Act seemed not just unconstitutional but downright violent.

American opponents of the Stamp Act and their radical Whig allies in Britain repeatedly argued that it was not only unconstitutional but that its very unconstitutionality threatened property rights that were absolutely necessary for economic prosperity. As Thomas Fitch (1764), the elected governor of Connecticut explained, the Stamp Act made colonial “liberties and properties precarious,” which could only have “that unhappy Effect of causing the Colonies to languish and decrease.” “What Encouragement hath the Merchant to expose his Interest to Chances and Dangers, the Farmer, the Mechanic and the common Labourer to weary themselves in their fatiguing toilsome Employments,” Fitch asked, if their property “may be taken from them, and in such Ways and Manner as they have heretofore been led to think are inconsistent with their essential Rights and Liberties?” (Fitch, p. 22). Secure property rights, the kind that came with colonial self-government, would, on the other hand, “tend to invigorate, enliven and encourage the People, and keep up in them a Spirit of Industry in all Kinds of Dealing and

Business” (Fitch, p. 22). No less than twentieth and twenty-first century institutional economists, radical colonists were convinced that confidence in secure property rights was absolutely necessary for investment and productivity.

While those opposed to the Stamp Act worried that it threatened colonial property rights in general, they also expressed serious concern that it would undermine colonial legal institutions that adjudicated those rights. In an influential pamphlet, the Boston lawyer and Son of Liberty James Otis (1765, p. 33) predicted that bail bonds would rise from fifteen shillings sterling a ream to one hundred pounds; insurance policies would go from two pounds to 190, and probate fees would triple. As described above, Dulany (1765, p. 24), observed that the tax would “produce in each colony, a greater or less sum, not in proportion to its wealth, but to the multiplicity of juridical forms, the quantity of vacant land, the frequency of transferring landed property, the extent of paper negotiations, the scarcity of money, and the number of debtors.” For the Stamp Act’s staunchest opponents, it was a tax not only on the colonies but on their legal system. It threatened not only to price the poor and indebted out of the legal market, but to make it more difficult and more expensive to adjudicate property rights.

In arguing against the Stamp Act, radicals on both sides of the Atlantic maintained that a tax that targeted legal transactions rather than wealth would prove particularly damaging to the colonies’ industrious middle class and those struggling to reach the middle class. Otis (1765, p. 32), for example, argued, “The burden of the Stamp Act will certainly fall chiefly on the middling, more necessitous, and laboring people.” Like other radicals, Otis based his argument on the fact that the Stamp Act would raise the cost of legal defenses, particularly those of debtors who had been sued for recovery of debts. Benjamin Franklin (1766, p. 10) similarly told Parliament that

[t]he greatest part of the money must arise from law suits for the recovery of debts, and be paid by the lower sort of people, who were too poor easily to pay their debts. It is therefore a heavy tax on the poor, and a tax upon them for being poor.

Indeed, he rejected the argument made by supporters of the Stamp Act that it would reduce the number of lawsuits in the colony, insisting that because the costs of litigation “all fall upon the debtor, and are to be paid by him,” the Stamp Act offered “no discouragement to the creditor to bring his action” (Franklin, p. 10). Dulany (1765, p. 24) was likewise convinced that most of the stamp revenue would “be drawn from the poorest individuals in the poorest colonies, from mortgagors, obligors and defendants.” Nor was this view limited to American opponents of the Act. The London Quaker John Fothergill (1765, p. 21), whose writings circulated on both sides of the Atlantic, argued that the northern colonies were overwhelmingly made up of “low and middling people, the sure support of any country” and that they would bear the brunt of the new taxes. The Stamp Act’s inequity was problematic not only because it was unjust, harming the poor and the vulnerable, but because it fell directly on the legal institutions on which laboring and mercantile people depended upon to earn their living.

While the Stamp Act’s supporters saw it as a powerful means of regulating licentiousness and political opposition, its opponents insisted that represented the end of a free press and a grievous tax on the circulation of information. Indeed, the Act was such a threat to publishers that on December 9, 1765 the *New York Gazette* reprinted the New Jersey legislature’s declaration that the law was an infringement on the liberty of the press, and the printer James Parker, in an Aug. 8, 1765 letter, described its effect on the printing industry as a “killing Frost” (Franklin 1968, p. 227). The Stamp Act was particularly damaging to printers because it taxed not only newspapers and pamphlets but the advertisements that helped defray the cost of printing. It was clear to Franklin (1968, p. 65) that the Stamp Act would “affect the Printers more

than anybody, as a Sterling Halfpenny Stamp on every Half sheet of a Newspaper, and Two shillings Sterling on every Advertisement” would likely eliminate half of all advertisements and newspapers along with them. Such concerns were more than rhetorical, Franklin’s former partner David Hall reported losing 500 customers even after the repeal of the Stamp Act.³³ While the Act’s opponents were particularly alarmed by the severe damage that it threatened to both civil society and the printing industry, they also worried about its effects on the cost of information. Fothergill (1765, p. 21) observed that prior to the Stamp Act, “an *American* could advertise the loss of a cow, a horse, or a hog, and sometimes things of less value, at a little expense.” The Stamp Act spelled the end of all this easy and cheap circulation of information. “The price of circulating intelligence will become too expensive,” Fothergill warned, “and thus the poor *American*, who needs it most, has it least in his power to recover his substance, through this easy and effectual means.” The Quaker minister attacked the Stamp Act for raising the price of information that mattered in people’s everyday lives, but its effects on the much wider variety of useful and commercial information carried through newspapers was clear enough. And they threatened to reverberate far beyond the printing industry.

Both supporters and opponents of the Stamp Act believed that their preferred policy outcomes were institutionally efficient. Advocates of the Stamp Act argued strongly that the colonial economy was dangerously under-regulated, suffering from an excessive speculation and litigation. They were also convinced that Britain’s imperial state needed not only to raise new revenue in order to defray the costs of war and public debt but to provide a strong guiding hand for colonial economic development. The Stamp Act, by providing money for a stronger imperial government in the colonies and by raising the cost of certain harmful economic activities, offered a path to a sustainable model of colonial growth. Indeed, many of the Stamp Act’s supporters

³³ APS, Hall/Franklin, 14 Oct. 1765, Mss.B.H142.2.

were convinced that those reforms were the only thing standing between the collapse of both the British economy and the British Empire. To their opponents, this was not just foolhardy, but malevolent. The Stamp Act offered abundant evidence that Parliamentary taxation would serve the economic interests of those who were represented, British taxpayers, at the expense of those who were not, American colonists. It threatened the security of property and did so in a way that struck at the heart of the colonies' burgeoning commercial economy. Raising the cost of credit, of litigation, and of information was not only inequitable, it promised economic ruin.

IV. CONCLUSION

The Stamp Act promised to raise the cost of legal and land transactions in the colonies and to reduce the role of newspapers in American society. It was based on the notion, integral to authoritarian imperial thinking, that imperial subjects ought to accept the judgments of the metropolitan elite, even if such judgments meant that their economic development would be held back in the interest of the parent state. On the other hand, had the Stamp Act survived the opposition in the colonies, it seems likely that there would have been significant consequences for the practice of law and the sale of land in the colonies but that the effects of the Act would have stopped short of the total ruin predicted by its antagonists. Nevertheless, the colonies' fate would have been like those other dependent outposts of the British Empire in the nineteenth century. Ultimately, much of this disagreement boiled down to the very different conclusions supporters and opponents of the Stamp Act came to about the relationship between institutions and economic growth.

And yet, as sharp as the disagreement was, they agreed entirely that the Stamp Act mattered for colonial institutions and that those institutions had profound implications for the economy of

the colonies and the wider British Empire. The incentive structures dictated by the tax code shaped not only the rules of the game, but the future of the British Empire and its economy. Political conflicts over institutional costs did not end with the Stamp Act's repeal or even with American independence; they became part of the legal culture of post-Revolutionary society as well. When the Massachusetts legislature imposed a tax in specie to pay its share of the Revolutionary War debts in 1784, a liquidity crisis ensued that caused many creditors to call in their debts through debt litigation in the courthouses. The popular reaction was immediate and many focused on the level of court fees imposed on the losing parties (the debtors). (Taylor; Richards) The Massachusetts legislature enacted a series of statutes aimed at lowering the cost of institutional services. In July 1786, the General Court enacted a fee statute acknowledging that it was the legislature's duty to provide "speedy" decisions "attended with as little expense to the citizens of this Commonwealth, as the nature of things will admit."³⁴ Nonetheless, Daniel Shays famously led a rebellion in West Massachusetts that, in August 1786, forcibly closed several courthouses. In response to the public outrage, in November 1786, the General Court enacted "An Act for Rendering Processes in Law Less Expensive" that offered inexpensive debt litigation and placated its antagonists.³⁵

The Stamp Act's impact on institutions, and the arguments that emerged in opposition to the Act are important for our understanding of American history. They reveal that the Independence movement was concerned with far more than constitutional arguments about the structure of the empire and representation. The Stamp Act's opponents defended what even their antagonists acknowledged were essential institutional services. Their mobilization against the Stamp Act and Parliamentary taxation of Britain's North American colonies shows that the legitimacy of

³⁴ 1786-1787 Mass. Acts 55-57, ch. 21.

³⁵ 1786-1787 Mass. Acts 105-11, ch. 43.

taxation itself rests on the ways in which it constitutes the relationship between the state and the economy. For colonial and British radicals opposed to the Stamp Act, taxation could only be legitimate if it served the public good, respecting the ability of colonists to pay the tax as well as the institutions that shaped their economy and society. Indeed, the Stamp Act's assault on the colonial economic institutions was conclusive proof that "taxation without representation" would have dire economic and social consequences. A government accountable to its constituents was the only way of assuring that both taxation and economic institutions served the public interests of the colonies rather than private interests in England. It was a way of assuring that taxation would respect the diversity and complexity of what was already a modern economy. Indeed, it was that respect, far more than the actual rate of taxation, that mattered for colonial radicals, who willingly raised their own taxes to higher levels than they had ever known in defense of taxation with representation. The lasting legacy of the Founding Era was an aspiration for local institutions that catered to a broad constituency by defining, protecting, and publicizing property rights, by encouraging the extension of credit, and by offering services at a low cost.

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