"The door of the King’s apartment opened and the pages entered preceding his Majesty. He was followed by his burly son, his Royal Highness, the Duke, a very corpulent prince with a coat and face of blazing scarlet: behind them came various... officers of state among whom... [Warrington] at once recognized the famous Mr. Secretary Pitt by his tall stature, his eagle eye and beak, his grave and majestic presence.

"As I see that solemn figure passing even a hundred years off, I protest I feel a present awe and a desire to take my hat off. I am not frightened at George the Second, nor are my eyes dazzled by the portentous appearance of his Royal Highness, the Duke of Culloden and Fontenoy: but the Great Commoner, the terrible Cornet of Horse! His figure strides our narrow isle of a century back like a colossus, and I hush as he passes in his gouty shoes, his thunderbolt hand wrapped in flannel. Perhaps, as we see him now, issuing with dark looks from the Royal Closet, angry scenes have been passing between him and his august master."

Thus spake the Victorian novelist, Thackeray. His comment was uttered almost midway between our own times and the heyday of power of

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1 Read at a meeting of the Historical Society of Western Pennsylvania on March 30, 1943. For another article by Mr. Siebeneck on Pittsburgh's "name-father," see "William Pitt and John Forbes," ante 24:69-92 (June, 1941).—Ed.

our city's name-father, William Pitt. If we could remove the leaves that have fallen in the intervening years we should find that this meteor, Pitt, had made a deeper indentation, a more profound imprint on the British Isles than any statesman who has held the reins of power at Westminster since his era: neither the younger Pitt, Castlereigh, Canning, Palmerston, Disraeli, nor any of the men of our own recollection have measured up to him.

Pitt, the orator, not only commanded the applause of listening senates, but through the fear and admiration he aroused, coerced their votes. He was awe-inspiring. And as a statesman his influence was magnetic. "Mind agitates the mass," said the Romans. Pitt's mind was of such a dynamic nature as to energize all the forces of the realm—forces which raised the British flag over India and Canada where men of lesser stature have kept it since his day.

We are here dealing with Pitt's later years made memorable by his championing of America. It will be my aim to make clear the political theories he supported which upheld the contentions of the earliest American publicists in our revolutionary struggle. The British Stamp Act raised the issue of the power of Parliament to levy internal taxes outside Great Britain. The determination of that issue involves a sketch of the history of Parliament in its relation to King and Colonies.

In the course of the Seven Years' War, William Pitt had raised Britain from the depth of despair to the height of glory. Then in 1760 the old King, George II, died and his youthful grandson, George III, succeeded to the throne. In a trice the kaleidoscope of politics changed. The great Pitt was politically doomed. The sovereign's character was the paramount factor in the ensuing developments. And what was the character of that prince? His mother had described him to her friends as a "dull, good boy." She incessantly drilled into his mind the principles of absolutism as delineated in Bolingbroke's The Patriot King. And her son was a victim of the Oedipus complex if ever there was one. "George, be a King" was her constant adjuration. And the dull good boy fixed his limited intelligence on attaining that goal. He, like most dull men, was suspicious of superior people such as Fox, Pitt, Reynolds, and Nelson.3 The obstinacy he inherited led him to discharge minister after minister until he found in Lord North one who could manage Parliament to the

3 Thackeray, The Four Georges, 673 (Biographical Edition).
royal desire and thus permit him to be the Patriot King, although in that capacity he lost the fairer portion of his patrimony.

The British King's right and title to the Thirteen American Colonies had its origin in no parliamentary proceedings. That title was based on discovery. By the public law of Europe in the Renaissance period discoveries made under the authority of any monarch became the individual property of that monarch: the lands discovered did not become ancillary portions of his kingdom. Thus when Cortez discovered, or conquered, Mexico it became the individual property of the Emperor Charles V—not an appanage of his Castilian kingdom. Shortly after Columbus had stood the egg on end, other mariners yearned to take a hand at trans-atlantic adventures: so John and Sebastian Cabot proposed to Henry VII of England to discover new lands for him en route to Cipango. Henry gave them unlimited authority to do so, but no money, until they returned after discovering the Cape Breton Islands. Then he gave them ten pounds sterling. Next year they discovered our Atlantic sea coast as far south as Virginia when he bestowed a pension of twenty pounds on them.

No parliamentary subsidy was required for these princely gifts. They were paid for out of the royal purse, then filled by the extortions of Epsom and Dudley. The English nation had no stake in the venture. In fact it never made any initial investment in any colonization project till Cromwell's time: The acquisition of America was as purely the King's personal transaction as any act of his could be. Henry VII's title descended to his remote heir George III unencumbered and intact, save for the grants and charters bestowed by his predecessors on sundry colonists and others.

It was only when the tobacco habit gripped Europe that America became an object of economic interest in England. Then the King exercising his prerogative ordered all tobacco from America to be shipped only to England. He aimed to monopolize its sale for his own benefit, but in the long run failed to get away with it.

In the early Stuart period Parliamentary leaders recognized that New England and Virginia were not lands annexed to "The Crown," as

6 Encyclopedia of the Social Sciences, 1:426.
Wales had been, but were "the King’s as gotten by conquest" (that is, personal acquisition), so that it was improper for Parliament to make statutes to govern them, "for the King is to govern only by his Prerogative, as His Majesty shall think fit."7

This fundamental concept of the limitation of Parliamentary powers consonant to similar situations in history continued unaltered till Stamp Tax days. The Cromwellian interlude was an exception. But all Cromwellian actions were set at naught by the Restoration. One or two non-contentious statutes may have marred the integrity of the theory, but, broadly speaking, Parliament made no effort to tax or regulate the lives of the people living under the King’s charters in America.

Lord Mansfield advised that if a colony have an express constitution by charter (or so far as it was silent) it carried with it only such part of the law of England as was adapted to and proper for that colony’s particular situation. "Ecclesiastical, revenue and penal laws and a thousand other heads do not bind there by implication though in force here at the time of settlement."8 Penn’s charter, one typical of the King’s grants, provided that English property laws were to remain in force here only until changed by the Freemen’s Assembly. The Tory Mansfield was advising only as to the status of colonies, not as to Parliament’s power. But long continued custom is law, and established colonial rights.

When Cromwell’s Parliament abolished kingship it declared that the Realm of England “and the dominions thereunto belonging” were subject to the sole governance of Parliament.9 Cromwell was making a clean sweep of the Stuarts’ rights and possessions and employed this phraseology to that end. He appears to have been the first Englishman to conceive of colonies as appurtenances of a country rather than the property of a personal sovereign in a given territory. That may be a corollary to the abolition of monarchy, but it totally disregards the theory of government by consent of the governed. His phrase seems to have been the precedent for the language of William III’s coronation oath, but to have attracted no attention at the time. Certainly no one of royal Stuart blood had ever expressly abandoned the monarchs’ rights over their American dominions before 1783.

8 Grenville Papers, 2:476-477.
Our hero, George III, as heir at law of Henry VII and his other ancestors, was sovereign in many lands: King in Great Britain, Herzog in Hanover, Prince Elector of the Holy Roman Empire, Lord of the Isle of Man, King in Ireland, Duke of Alderney, Jersey and the other Channel Islands, King in the Thirteen American Colonies and other extra-European possessions he or his forebears had acquired. In a word, he was ruler of a number of states, most of which had feudal origins. Now, feudalism had shed many of its attributes since William the Conqueror established it in England. But the core of the feudal system still survived. That core was personal allegiance due to the sovereign in his natural being, not in his political capacity—not to the abstraction sometimes called "The Crown." "Where there is but one sovereign all subjects born in his dominions . . . are bound to him by one bond of faith and allegiance [yet they] . . . [are] to be ruled . . . under different laws and customs.” So Lord Chief Justice Coke decided in the famous case of the Post-Nati, which settled the law on that point for all time.  

In 1773 John Adams wrote Governor Hutchinson that his ancestors had come to America because they deemed it outside the bounds of the realm and out of the reach of English laws (just as Normandy had previously been): that the King of England by granting the Puritan charters had affirmed that identical principle. His ancestors, he said, had “compacted” with the King for homage and allegiance in his natural capacity, not with him as a representative of the English nation. And he added these significant words: “The English Nation cannot show that it ever acquired title to America.”

The persecution of the Puritans by the Established Church of England was still a vivid tradition in the minds of the great-grandsons of the Puritan emigrants. Those victims of over-regimentation by the governing class of the realm had left England to escape the Ecclesiastical Court of High Commission which ferreted out dissenters and imprisoned pastors and their flocks; to avoid the tithing-men and their extortionate claims; the censorship by the Bishops of all printing; the church courts with their proctors and apparitors enforcing decrees for libellous writings and manifold similar offenses. None of these adjutants of the uniformitarian Archbishop Laud could reach them in America. And the King,

10 HowelVs State Trials, Col. 567 ff.
whether still determined to "harry" the Puritans "out of the land," as he had threatened, or from more humane motives, had given them charters which to them were as the Constitution became to their descendants.

Adams' contentions were of course good law, buttressed by Coke's opinion—that allegiance was personal and unitary—that the different peoples, subjects of the same King, had different rights, just as they spoke different languages or dialects. Especially they had different representative bodies, each competent to levy taxes on its own people in aid of that common sovereign. Thus before the accession of the present royal house to the British throne, the "Estates" in Hanover had voted $300,000 to the Hanoverian ambassador at London to ensure George I's accession. And beyond a doubt that sum of money aided the Whig party in carrying out the terms of the Act of Settlement.

Turning now to the origin of Parliament. It is an offshoot of the feudal system. As William the Conqueror established that form of government, the King was supposed to live "of his own," that is, from the revenues of the innumerable manors he had reserved for himself, and to demand the military services which his feudal tenants had obligated themselves to perform. But the feudal array soon proved unsatisfactory as against mercenary armies, and for their foreign wars William's successors felt the need of tapping the growing wealth of the realm outside the ranks of their military tenants. Yet these mediæval rulers had only the most casual acquaintance with their peoples: to learn how many hearths there were in a given town, for instance, they were obliged to consult the burghers of that town. And as a convenient method of acquiring such knowledge of many towns, manors, and districts, representative assemblies began to be convoked by sovereigns all over western Europe, beginning with the Fueros of Aragon in 1063 and including Riksdags, Etats Generaux, Stande, States, Cortes, and Parliaments. Even the Isle of Man had its "House of Keys."13

Such representative bodies originally were merely organs of taxation—not of legislation. For it must never be forgotten that long after the Norman Conquest the making of new laws was as abhorrent as it was rare. The cry of the nation expressed in its early charters is for the preservation

of old laws, not the making of new ones. Magna Carta bound the King to levy no new taxes without the consent of the magnates of the realm. Then as trade and commerce grew the Plantagenet kings sought to reach this new source of revenue. Edward I on the eve of one of his ever-recurring wars appealed to his public with the slogan: "What concerns all, should be approved by all." He summoned his Model Parliament directing the sheriffs to cause knights of the shires and burgesses of the towns to be elected. They met at the same time as the prelates and barons who formed the Great Council. Yet the elected Commons were well aware that they had been assembled only to tax themselves.\(^{14}\)

At first the Lords and the Commons made separate grants of money which they tendered to the King by written indentures. Usually the grants made by the Commons were far greater than those of the Lords, for export duties on wool formed the bulk of the grants, and the merchant class primarily made these payments. So when Lords' and Commons' grants became joint affairs the Commons insisted on their priority in importance. Hence the rule that money-bills must originate in the House of Commons. When the Lords sent down a bill to have the streets of Westminster paved at the property-owners' expense, the lower house indignantly rejected it as a money-bill. But these money-grants were not originally listed as laws. In the early days they occasionally appear among the recorded statutes because some condition is annexed, and is so interwoven with the grant as to make it in effect part of a new law.\(^{15}\)

The Commons learned by experience that sometimes redress of grievances might be obtained in exchange for a grant of money. By this means very gradually they encroached on the lawmaking sphere previously monopolized by the Great Council. But for a long time there were two statute-making bodies in England: Parliament, consisting of Lords and Commons, and at the same time the Great Council of Prelates and Barons from which the Commons were excluded.\(^{16}\) The court of last resort in England as lately as 1915 judicially ruled that the assembly which enacted the famous Statute Quia Emptores was not a Parliament because

\(^{14}\) Encyclopedia Britannica, 17:316 ff. (14th Ed.).


no Commoners attended it. And in Pennsylvania our supreme court justices reported that no less than forty-eight English statutes made without the consent of the Commons were in full force and effect in this state.

Parliament in the past six centuries may then be said to have acted in a dual capacity: first as a tax-granting body, and, second, as a lawmaking body. Both Macaulay and Hallam note this diversification of functions particularly. And to this day the distinction persists. In 1909 the Lords rejected in toto the Liberal Party's budget. After two appeals to the electorate that party, with George V's aid, secured the enactment of a basic statute, under which the Lords cannot act adversely on a money-bill—either to reject or amend it. On general legislation they still may exercise a qualified negative.

EXTERNAL TAXATION AND THE NAVIGATION ACTS

Control of external commerce had long been a potent weapon in the hands of England's rulers in obtaining military support in aid of her continental wars. For instance, Edward III prohibited the export of English wool to Flanders, and brought dire distress upon that land of clothmakers. It produced a rebellion under Jan van Artevelde against Flanders' Francophile ruler, and its rescission made the Flemings England's allies in her war against France.

In Cromwell's day, the Dutch, from their predominance in international trade, were known as the "wagoners of the sea," greatly to the envy of their English cousins. To overcome this Dutch commercial superiority Cromwell devised his Navigation Acts. He, of course, absolutely controlled England's ports and by his navy those of her former King's dominions: and in exercise of that control he forbade the landing in those ports of any wares from Dutch ships except such goods as were the produce of the Netherlands. Thus in England he curtailed the Dutch international carrying trade.

And the same rule was applied to all foreign shipping. Whether the

17 St. John's Peerage Claim A.C., 1915, p.283.
18 Judges' Report 3 Binney's Reports, 599 ff.
19 Encyclopaedia Britannica, 17:316 ff.
20 Henri Pirenne, Histoire de Belgique, 2:107 (Bruxelles, 1922).
results of the Navigation Acts benefited English shipping in the long run is still a matter of dispute, but most authorities agree that the Dutch trade was injured thereby.

Charles II was equally hostile to the Dutch and had his willing Parliament re-enact Cromwell's measure and extend it to cover the shipping of America, Scotland, and the Channel Islands. Virginia tobacco had been subject to a plantation duty of a penny a pound. It was found that by shipping tobacco from Virginia to Boston and there paying that duty to royal officials the cargo could then legally be reshipped to Bordeaux or Amsterdam. To stop this evasion the Navigation Acts were amended by requiring the American skipper to give bond so worded that it was forfeit unless on his return he proved by customs' release issued in England that he had landed his cargo in that country.²¹

Whatever theoretic rights the then nascent American shipping trade had, it was caught in a forked stick; English ports were absolutely controlled by English laws; in other ports American ships could gain lawful entry only by treaties made by their sovereign, the English King—however beneficial direct trade might be to both sides. Therefore the practical Yankee skipper abjectly submitted to these trade regulations including the payment of customs duties to English officials in American ports. Those duties were purely incidental to the regulation of trade—the object desired by King, Parliament, and the English merchants. But these duties were trivial matters. Bancroft shows that for thirty years before the Stamp Act the average annual amount of all customs collected in America was only nineteen hundred pounds, while the expenditures for the same period for maintaining the customs houses averaged annually seven thousand pounds.²²

So at the time of the Stamp Act, the British Parliament may be said to have acted like an Interstate Commerce Commission: its admitted power to regulate trade between foreign nations and Britain and the King's dominions necessarily implied the power to levy external taxes on the trade of those dominions.


²² George Bancroft, History of the United States, 3:362 (Boston, 1876).
Thus in matters where the King had not by charter induced emigration to America he by exercise of his prerogative or by assenting to an act of Parliament might regulate the commercial relations between his subjects in the Dominions and the rest of the world.

This did not include internal taxation. Penn’s Charter illustrates the point. So far from recognizing the supreme power of Parliament, the King bluntly annuls the Statute Quia Emptores in Pennsylvania. Laws might be made there and taxes levied—both with the consent of the “freemen of that country”—subject, however, to a qualified veto by the King. In Section XVII the King expressly covenants not to levy any tax on the property of the inhabitants of that dominion: also that he will not collect customs duties there on exports or imports save with the Assembly’s consent or by act of Parliament. If the language of this section is not clear enough Section XIX resolves the doubt by providing that interpretations of doubtful meanings of the charter shall always be made favorably to the interests of Penn. As Penn’s profits in the venture depended on attracting settlers to Pennsylvania any interpretation of this Charter that would have enabled Parliament to levy internal taxes would have driven emigrants to Rhode Island or elsewhere to save their inherited rights of self-taxation on matters essential to their livelihood. That would manifestly have impaired the value of Penn’s sixteen-thousand-pound investment.\(^{23}\)

Constitutionally, therefore, the British Parliament might, the King approving, regulate American trade, incidentally raising a nominal revenue by customs duty on it, but no power to levy internal taxes on the freemen of America existed in King or Parliament. There was a world of difference between the two systems of taxation. Benjamin Franklin was to expound that difference graphically: customs duties were added to the price of imported goods—luxuries, he called them. If an American did not choose to pay the price thus established he did without the luxuries; as for necessities America was more than self-sustaining. Moreover, he added, there was a natural equity in the imposition of such duties: it was a recompense for the British navy’s service in freeing the seas of

pirates. Internal taxes were wholly different: living or dying, under the Stamp Tax, the American must pay for every act he performed.

PARLIAMENTARY LEGISLATION APART FROM TRADE REGULATIONS

During nearly two centuries Parliament had sporadically enacted measures which obliquely asserted its power over America. For instance, Guy Fawkes Day was made a holiday in realm and dominions—no one dissenting. If Americans heard of the act they may have thought that Wales and Berwick-upon-Tweed, the Scottish frontier post, were the dominions referred to. Later, Sunday sports were forbidden in the realm and dominions; doubtless Boston registered no protest to such a recognition of its own Sabbatarian regulations. A few other non-contentious laws may have been made before the Glorious Revolution. But they may reasonably be classified as political rodomontade such as no deliberative body ever wholly escapes in the long run. Serious repressive measures had been enacted against the border ruffians in Wales but that principality had been annexed to “the Crown” in 1284 and received a different classification from the American dominions before it was merged with England by the Tudors.

Conflicting interests besieged eighteenth-century Parliaments to regulate American importations to suit their diverse aims. Compromises were sometimes effected between these conflicting claims with curious results. For instance, the British Act of 1750 relieved American pig and bar iron of all import duties at London (not at Bristol), and the same act prohibited the erection of any more slitting mills, plating forges, and steel furnaces in America. Obviously one provision was made to placate some jarring interest. But Thomas Penn thought the effect would be beneficial to his province, and helped to lobby the bill through Parliament. Its importance was slight, however, for as late as 1755 only seventy-nine tons of bar iron were exported. The prohibitory clauses of the act were not “taken seriously,” as in the following decade the Schuylkill Valley blossomed out with new iron plants. Other restrictions were doubtless

24 Schuyler (p.24) has unearthed most of these statutes.
treated in the same fashion. Indeed it seems probable that the Parliamentary leaders expected nothing else. They had gratified all claimants.

It cannot fairly be asserted that American charter rights were impaired by such unenforced legislation. Americans in 1765 were not restrained from denying the lack of power in Parliament as to extra-territorial legislation; Americans were not hurt by unenforced statutes; hence they were not by their silence estopped later on to complain about enforced restrictions.

**THE CHANNEL ISLANDS**

The Channel Islands present the nearest analogue to the American Colonies in the matter of parliamentary powers. Those islands had been part of Normandy before the French conquered the mainland in 1204 from King John of England. But the Islanders adhered to the Plantage-nets and have ever since continued to be subjects of the English Kings. Otherwise they were and are not now connected with England at all. In 1805 a British anti-smuggling act, which in terms applied to them, evoked their opposition. They asserted that they, the Islanders, had a better right to legislate for Britain than Britain had to make laws for them. “Our Duke has become your King,” they said. Whereupon Parliament modified the act in question to comply with their demands. In 1891 an order in council was refused validation by the Islanders’ “States” and the order was forthwith rescinded. The Islands have never been taxed by Parliament, but they do make voluntary contributions to the imperial treasury.26

In the same general category is Ireland. Its case was modified by Poyning’s Act, extorted from the Irish Parliament in Tudor days. Too many complications are involved in the Irish case for it to be summarized here. John Adams and the Irish publicists, however, made similar contentions. In 1780, the Whigs controlling, Parliament conceded the gravamen of the Irish contentions to be correct.

**CONCLUSIONS**

We conclude:—

1. Parliament in 1765 had no constitutional right to levy internal taxes except in Great Britain.

2. Since the early years of the seventeenth century Parliament had so "inched up" in the matter of interstate and foreign trade regulation, that formerly unconstitutional statutes had by acquiescence became constitutional; and that incidentally thereto Parliament had acquired the right to levy export and import duties, in the King’s Dominions.

3. The general restrictive legislation had under one guise or another occasionally found its way into the statute book; but that such legislation either was not enforced or was enforced so laxly as not to injure or affect Americans or to create valid precedents against American pleas of ultra vires; that Parliament had by so legislating exceeded its powers.\(^\text{27}\)

**PART PLAYED BY WILLIAM PITT**

Having reviewed the limitations of Parliament's powers, I recur to the part played by William Pitt in expounding those limitations.

George III, unable to tolerate great intellects about him, soon manipulated matters so as to force Pitt to resign: Newcastle, the veteran party-manager, suffered a like fate to make room for the King's favorite, Lord Bute, his mentor and factotum. Bute made peace with France and then, 27Professor McIlwain (*The American Revolution*, 2 ff.) lays great stress on the change in Parliament's power over the Dominions that the Revolution of 1688 brought about: he says the coronation oath of William and Mary obligated them to govern the realm and "the dominions thereunto belonging" according to the statutes "in Parliament agreed on." Thereby, he maintains, Parliament acquired power over the dominions which it did not previously have; that this change, revolutionary in its nature, was binding on the English nation and the sovereigns, both parties assenting to it; but that it was not binding on the people of the Dominions who, even after recognizing William and Mary as sovereigns, had never assented to the enlargement of Parliament's power over the Dominions.

The Bill of Rights (Hallam, *The Constitutional History of England*, 576) provided that no charter granted before October 23, 1689, should be invalidated by that act. This applies to American charters and even, when read in connection with the coronation oath, seems clearly to indicate that Parliament then was making no change in the status of the King's overseas Dominions, especially those protected by royal charters. Macaulay in his very full account of the revolutionary proceedings does not mention any debates about the "Dominions" phase of the coronation oath; while he does deal at great length on the "Religious" phase of that oath. It seems difficult to believe that an enormous expansion of Parliament's power could be concealed in the wording of the oath each new sovereign was to take.

The change in the royal status which the Glorious Revolution brought about was a matter of practice rather than one of legal theory (Hallam, 516). The very practical persons who wore the Crown during the following generation fully realized that constant, increasing grants of money by Parliament were necessary to beat the French and keep
fearing impeachment if his dealings with the French minister, Choiseul, became known, resigned to make way for Grenville.

The fiscal burden of the Seven Years' War had been heavy, and the Exchequer needed replenishing. Grenville carried a cider-tax through Parliament by a close vote over bitter protests of the cider-making squirearchy. Next year the treasury still required alimentation and Grenville and the King sought for a source of revenue that might be tapped without evoking more protests from the House of Commons. America had no representatives in the House and so Grenville and his royal master resolved to make America pay. The entering wedge was to be a stamp tax.

Grenville sent for the colonial agents, and expounded the measure to them. Benjamin Franklin, one of the agents, asked him why he did not proceed in the constitutional way—why he did not requisition the colonial assemblies as his predecessors had done for many years. "Impractical," said Grenville: Maryland had failed to meet the last requisition made on her. It is only just, he said, that America should pay part of the cost of freeing her frontiers from the menace of hostilities.28

He overlooked the fact that after the French had withdrawn, Pontiac's War in 1763-64 demonstrated that America's frontiers were still subject to the menace of hostile attack. Grenville, too, was oblivious to the situation in America produced by then recent developments. No sooner had peace been made, including the cession by France of our Central West, than His Britannic Majesty by proclamation forbade his "loving subjects" to make settlements west of the Atlantic watershed—thereby, for instance, cutting down the territory granted to William Penn by one-third. The area from Johnstown to the Mississippi was set aside as a further restriction on their own heads. So these sovereigns grew accustomed to limit the selection of their chief counsellors to that political party which from time to time controlled a majority of the House of Commons. Monarchs did not persist in actions running counter to the pleasure of that majority. But, says the Encyclopædia Britannica (17:319), "it is curious to observe the indirect methods by which the Commons were henceforth kept in subjection to the Crown and the territorial aristocracy: the infamous system of bribing the members themselves became a recognized instrument of administration."

We may entirely agree with Professor McIlwain that Parliament's powers over the King's Dominions were limited before the Glorious Revolution, and at the same time dissent from his conclusion that the coronation oath of William and Mary was designed to enlarge those powers.

preserve for the new Northwest Company. That group of influential Englishmen hoped to rival the success of the famous Hudson’s Bay Company, which in one year had made a profit of twenty-five thousand pounds on an outlay of only five thousand pounds paid for American peltries.

“It does appear to us,” wrote Lord Hillsborough, “that the extension of the fur trade depends entirely upon the Indians being undisturbed in the possession of their hunting grounds, and that all colonizing does in its nature, and must in its consequences, operate to the prejudice of that branch of commerce...” The main object of colonizing, he added, was to extend the commerce of England. Hillsborough presumably had never heard of the religious troubles which led to the colonization of New England, Pennsylvania, and Maryland.

Under the 1763 scheme of appropriation, thus proclaimed, it is hard to see how the Thirteen Colonies stood to gain any increase in the amount of land available for the extension of their settlements. Their efforts in the Seven Years’ War seemed to have rather the opposite effect. And for a new country—one poor in ready money—those efforts had been very great. Pennsylvania with some 200,000 inhabitants had contributed four hundred forty thousand pounds net. Moreover in Forbes’s conquest of Fort Duquesne, Pennsylvania and Virginia had supplied 4,600 men, as against 1,300 Highlanders, 400 Royal Americans, and a company of British Artillery. Hence this part of America seems to have borne its fair share of the burden.

In spite of Franklin’s objections Grenville pushed his Stamp Act through Parliament in the spring of 1765. At the time, Pitt was laid up with the gout, and the only voice raised in the House of Commons to defend America was that of Colonel Isaac Barré, who dubbed the Americans, “The Sons of Liberty,” and whose name has been perpetuated in that of the great anthracite coal center of Wilkes-Barre. Grenville treated the whole of Britain’s American territory as a unit, and pledged the proceeds of the sales of stamps to the support of garrisons needed in

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Canada, while the Thirteen Colonies would be required to pay for almost all the stamps. Franklin believed that there was not enough gold and silver in them to pay for one year's supply of stamps.

However, what was mainly at stake was the principle—could the British reach out beyond their insular confines and at their sole pleasure force America to pay tribute to them by direct taxation? The Stamp Tax itself was meant to be only the opening gun. But, "the power to tax is the power to destroy," said Chief Justice John Marshall.

Almost before the news of the passage of the Stamp Act reached America, the King dismissed Grenville from office. His reasons were purely personal, and did not imply any change of the Royal heart with reference to America. In the summer of 1765 the Rockingham Whigs were inducted into office. They were the younger members of that party, liberal in their tendencies, but inclined not to thwart their sovereign's caprices.

America's reception of the Stamp Act was ominous. Stamps were burned, collectors forced by no gentle means to resign their commissions, and some British officials' houses were destroyed. More effective still were the Non-Importation Agreements which were signed throughout the country. Half of the Anglo-American trade was ended by that means, and debts due to British merchants were practically uncollectible.32

The Stamp Tax Congress met and petitioned the British government for repeal of the statute. All these proceedings aroused British merchants who communicated their woes to their representatives. Franklin organized the movement and soon floods of protests poured in from every one interested in the American trade. The new Rockingham government was naturally anxious to avoid trouble and decided to support Repeal. It was a matter of considerable doubt, however, whether a majority could be obtained in the House of Commons to rescind the action taken by it only the previous year. But at the critical moment Pitt recovered his health and announced his intention of speaking for Repeal. When the debate on that subject opened in the House "Americans crowded the galleries. To them Pitt came as an angel and a savior; to the House he came as a master and ruler."33

32 Winsor, Narrative and critical History, 6:29 ff.
33 Williams, Life of William Pitt, 2:188.
Pitt arose and said: “It is my opinion that this Kingdom has no right to lay a tax upon the Colonies... they are subjects... equally entitled with yourselves to all the natural rights... of Englishmen... they are entitled to the common right of representation and cannot be bound to pay taxes without their consent. Taxation is no part of the governing power. Taxes are voluntary gifts and grants of the Commons alone... When, therefore, we give and grant, we give what is our own. But in an American tax, what do we do? We, your Majesty’s Commons of Great Britain give and grant to your Majesty—what? our own property? No. We give and grant to your Majesty the property of your Majesty’s Commons in America. It is an absurdity in terms. The Commons of America, represented in their several Assemblies, have ever been in possession of their constitutional right of giving and granting their own money. They would have been slaves if they had not enjoyed it... I shall never own the justice of taxing America internally until she enjoys the right of representation.” He then added: “At the same time, this Kingdom, as the supreme governing and legislative power, has always bound the Colonies by her laws, her regulations of trade, navigation, manufacture—in everything, except that of taking their money out of their pockets without their consent.”

The phrase “supreme governing,” rings unpleasantly in our ears. But Pitt’s thirty years in the House may have taught him just how far he could go in denying that House’s authority; how much he must concede to the amour propre of a body whose precursors had unthroned Kings and abolished the House of Peers. At least he adhered to the theory of Parliament’s duality of functions—tax-levying and legislating.

The Government leader in the House, General Henry Seymour Conway, had not been responsible for introducing the Stamp Act, and so he could and did with good grace agree with Pitt’s conclusions and announced his associates’ support of the repealer.

With Grenville, no longer a minister but still a member of the House, it was different. He chose to break a lance with the great orator. He took up Pitt’s admission that the Kingdom had the sovereign, the supreme legislative power over America and averred that “taxation is a part of that sovereign power.” It is one branch of legislation. It had been exercised over those who were not represented: the County Palatine of Chester and the Bishopric of Durham—before they sent representatives to Parlia-
ment. "I appeal," he said, "for proof of the preambles of the acts which gave them their representatives"—acts of Henry VIII and Charles II.14

Grenville then referred to his acts of generosity to "the ungrateful people of America," and levelled the accusation of sedition against their abettors. This was too much for Pitt, and he rose again and said: "Sorry I am to hear the liberty of speech in this House imputed as a crime... I rejoice that America has resisted. Three million people so dead to all feeling of liberty as voluntarily to submit to be slaves would have been fit instruments to make slaves of the rest of us... I come not here armed at all points... with the Statute book doubled down in dogs' ears to defend the cause of liberty. If I had, I myself would have cited the two cases of Chester and Durham... to show that... parliaments were ashamed of taxing people without their consent and allowed them representatives... Wales... was never taxed by Parliament till it was incorporated... There is a plain distinction between taxes levied for the purpose of raising revenue and duties imposed for the regulation of trade... although in consequence some revenue may accidentally arise from the latter..."

"The gentleman asks, when were the Colonies emancipated? I desire to know, when they were made slaves?... The profits to Great Britain from the trade of the Colonies in all branches is two million [pounds] a year. This is the fund that carried you triumphantly through the last war... that is the price America pays for her protection... Shall a miserable financier... boast that he can bring a peppercorn into the exchequer to the loss of millions to the nation?" He said let "The Stamp Act be repealed absolutely, totally and immediately: let the reason for the repeal be assigned—because it was founded on an erroneous principle."

Repeal carried. Friends and foes alike were struck dumb by Pitt's oratory. He spoke like a man inspired—"Heavens, what a fellow is this Pitt", wrote Charlemont, "I had his bust before, but nothing less than his statue will content me now"; "Not a man was found to arraign his reasoning," wrote an opponent, "Nor one lawyer to prove that we have a right to tax our own colonies."35

This was Pitt's great service to America. It put off the Revolution for ten years. Those years were years of growth and development on this side of the Atlantic. They witnessed the migration of a vast host of

Scotch-Irish to America. Trade restrictions and rack-renting Irish landlords intent on squeezing the last penny out of tenants drove hundreds, if not thousands, of the best fighting men in the world across the Atlantic. They were anti-British to a man and promptly took up the American cause. The British officers under Howe, who had become well acquainted with their adversaries after the occupation of Philadelphia, termed the Revolution a “Scotch-Irish Rebellion,” for more than a third of Washington’s army were natives of Ireland.

Locally, we have only to recall such names as O’Hara, Craig, Ormsby, Hand, and a score of others to understand how much the success of the Revolution was due to this influx of Scotch-Irishmen. Had the Stamp Tax of 1765 produced the Revolution many of those fighting men would have still been in Europe. The postponement of that inevitable conflict for ten years was of incalculable advantage to America.

If a judicial decision of the constitutional issue between Pitt and Grenville is sought, the St. John’s Peerage Claim noted above is the closest approximation to that result that can reasonably be expected: There the claimant to the peerage based his case on an ancestor’s attendance in 1290 at the assembly which enacted the Statute Quia Emptores. The Court of last resort ruled against him—that statute-making body was not a Parliament, it held, because it contained no Commoners, while during the same year a tax-levying body of lords and commons met which that ancestor did not attend.

Thus lawmaking and tax-levying were judicially distinguished, even as Pitt contended. Had Claimant’s ancestor attended a session of lawmakers in 1390 when the Parliament of lords and commons had superseded the Great Council’s lawmaking functions, that attendance in the House of Peers would have established Claimant’s title.

Lord Parker, speaking for the Court in 1915, very aptly remarked (p.309) that on account of modern historical investigations we know now much more about early Parliaments than the last century did. The notion that the power to levy direct taxes necessarily includes legislative power and vice versa would have seemed absurd to the early parliamentarians. William Pitt rightly diagnosed the case from the symptoms: the

diverging forms of money-bills with the "we give and grant" formula, as against the statute form—the King "by and with the advice and consent" clause, made manifest to him that this duality of functions still constitutionally persisted. Parliament before 1765 had confined its direct tax-levying practice to Britain; its essentially local character could not suddenly be expanded; it could not tax Hanover, Ireland or Pennsylvania internally.

Exceptional instances of parliamentary action taxing Durham or Chester for a short time prove nothing. Even the principle that the King could not tax without the consent of his subjects was violated on many occasions from Edward I's day to James II's. Still the principle prevailed. Pitt did not base his conclusions upon any abstract postulate of the unitary character of sovereignty or on any other superficial generalization. He treated the subject of parliamentary powers as a matter of natural growth or evolution. Nature seldom builds an institution on clear-cut logical lines.\(^{38}\)

In his later years Pitt suffered from manic depressive insanity, according to his latest British biographer, William C. Brian Tunstall.\(^{39}\) He headed a reorganized ministry in 1766. Soon his health gave way and he remained in a state of mental eclipse for two years, when he resigned. Seldom did he appear in his capacity as Earl of Chatham in the House of Lords. In 1777 he made that fine speech in the House of Lords, saying "You can never conquer America—never."

In 1778 he died broken-hearted over the rupture with America.

\(^{38}\) Grenville's reference to Chester was irrelevant. After the Conquest it was made a county palatine (frontier) "with an independent parliament of its own." Welsh inroads necessitated keeping its natural leaders at home. When those troubles were over the palatinate ceased to have any reason for existence, and Parliament, perhaps inadvertently, included it in the tax levy. But complaints arose and it was granted representation. Durham had its "palatine assembly which dealt with fiscal questions"; it was on the Scotch frontier and its history is somewhat similar to Chester's.—*Encyclopaedia Britannica*, 5:423, 7:762.