

Among the causes of the American Revolution; Daniel Dulany and the nature of representation; “No Taxation without Representation”

As events of the 1760s unfolded and the colonists slowly began to question their place in the English empire and mercantile system, one area of dispute was taxation. The English had fought successfully a world war with the French that was called the Seven Years War. In the colonies it was called the French and Indian War. The war ended in 1763 with the English victorious. In the wake of the war, the King and Parliament decided to levy a series of modest taxes on the colonists in order to facilitate paying down the debt incurred in the war and to pay for policing the frontier. Two of the taxes were imposed via the Stamp Act of 1765 and the Sugar Act of 1763. The colonists protested against these new taxes; their objection to the taxes came as a surprise to King and Parliament because the colonists were burdened with historically low taxes that were in fact lower than those paid by Englishmen in England. Also it seemed only proper that the colonists pay a share of the funds needed to police their frontier. Arguments against the taxes were often vague and ill-defined until Daniel Dulany wrote Considerations on the Propriety of Imposing Taxes in the British Colonies in 1765.

Dulany was an unlikely author for such a tract. He was a wealthy Maryland lawyer, having been educated in England and he was a scion of a well to do family who served in the colonial legislature. Despite his undying loyalties to the Crown, Dulany, was nevertheless critical of some of the British policies and so he took up his pen in defense of the colonial opposition to the taxes. His argument was clever and insightful. He realized that the dispute was really not about the taxes but about representation. He argued that the colonists and those in England were using two different kinds of representation for their assemblies: the colonists were used to a system of proportional, literal representation in their colonial assemblies whereas the English were using a system of virtual representation in Parliament. By the time most readers finished his pamphlet in which he argued that the system of virtual representation was inadequate for the colonists, he had convinced them that the crux of the colonial argument about the taxes was really about the lack of representation that the colonists had in Parliament. This ultimately gave rise to the call for no taxation without representation.

Sadly for Dulany, as colonial opinion gathered behind the cause of rebellion his moderate tone and Loyalist sympathies left him in an increasingly untenable political position. What residual popularity he retained in 1773 was weakened further as a result of a published exchange that he had with Charles Carroll, a rising star in Maryland, over whether the British government could charge sums to the colonists without legislative approval if the sum was a fee. Dulany argued that fees as opposed to taxes had traditionally been charged without legislative approval and were legitimate. Carroll, on the other hand, argued that any such sums, whatever they were called, were taxes that must have legislative sanction to be legal. As opposed to many Loyalists who departed the colonies with the British, Dulany declared himself neutral and retired to an estate in the countryside, hoping to remain undisturbed so long as he did not actively support the Loyalist cause; eventually though his hopes were dashed: his property was confiscated and he was openly denounced for not supporting the rebellion. Carroll would go on to sign the Declaration of Independence and the man who had been one of the first to rally support in opposition to the King died destitute and forgotten in 1797.

As you read Dulany’s piece particular attention to:

1. *exactly what the flashpoints of disagreement are;*
2. *the complexity of the issues involved in Dulany's arguments;*
3. *After so articulately laying out the colonial position, how might the differences between the Crown's position and the colonial position been reconciled?*
4. *What does it say about the nature of central control that King and Parliament had over the colonies that such arguments as Dulany's might have found their way into the public realm and been taken seriously?*

I shall undertake to disprove the supposed similarity of situation, whence the same kind of representation is deduced of the inhabitants of the colonies, and of the British nonelectors; and, if I succeed, the notion of a virtual representation of the colonies must fail, which, in truth, is a mere cobweb spread to catch the unwary and entangle the weak. I would be understood. I am upon a question of propriety, not of power; and though some may be inclined to think it is of little purpose to discuss the one when the other is irresistible, yet are they different considerations; and, at the same time that I invalidate the claim upon which it is founded, I may very consistently recommend a submission to the law, whilst it endures....

Lessees for years, copyholders, proprietors of the public funds, inhabitants of Birmingham, Leeds, Halifax, and Manchester, merchants of the City of London, or members of the corporation of the East India Company, are, as such, under no personal incapacity to be electors; for they may acquire the right of election, and there are actually not only a considerable number of electors in each of the classes of lessees for years, etc., but in many of them, if not all, even members of Parliament. The interests, therefore, of the nonelectors, the electors, and the representatives are individually the same; to say nothing of the connection among neighbors, friends, and relations. The security of the nonelectors against oppression is that their oppression will fall also upon the electors and the representatives. The one cannot be injured and the other indemnified. Further, if the nonelectors should not be taxed by the British Parliament, they would not be taxed at all; and it would be iniquitous, as well as a solecism in the political system, that they should partake of all the benefits resulting from the imposition and application of taxes, and derive an immunity from the circumstance of not being qualified to vote. Under this constitution, then, a double or virtual representation may be reasonably supposed.

The electors, who are inseparably connected in their interests with the nonelectors, may be justly deemed to be the representatives of the nonelectors, at the same time they exercise their personal privilege in their right of election, and the members chosen, therefore, the representatives of both. This is the only rational explanation of the expression "virtual representation." None has been advanced by the assertors of it, and their meaning can only be inferred from the instances by which they endeavor to elucidate it; and no other meaning can be stated to which the instances apply....

The inhabitants of the colonies are, as such, incapable of being electors, the privilege of election being exercisable only in person, and, therefore, if every inhabitant of America had the requisite freehold, not one could vote but upon the supposition of his ceasing to be an inhabitant of America and becoming a resident in Great Britain, a supposition which would be impertinent because it shifts the question: Should the colonies not be taxed by parliamentary impositions; their respective legislatures have a regular, adequate, and constitutional authority to tax them;

and therefore there would not necessarily be an iniquitous and absurd exemption from their not being represented by the House of Commons?

There is not that intimate and inseparable relation between the electors of Great Britain and the inhabitants of the colonies, which must inevitably involve both in the same taxation. On the contrary, not a single actual elector in England might be immediately affected by a taxation in America, imposed by a statute which would have a general operation and effect upon the properties of the inhabitants of the colonies.

But though it has been admitted that the Stamp Act is the first statute that has imposed an internal tax upon the colonies for the single purpose of revenue, yet the advocates for that law contend that there are many instances of the Parliament's exercising a supreme legislative authority over the colonies and actually imposing internal taxes upon their properties --that the duties upon any exports or imports are internal taxes; that an impost on a foreign commodity is as much an internal tax as a duty upon any production of the plantations; that no distinction can be supported between one kind of tax and another, an authority to impose the one extending to the other.¹

If these things are really as represented by the advocates for the Stamp Act, why did the chancellor of the Exchequer make it a question for the consideration of the House of Commons, whether the Parliament could impose an internal tax in the colonies or not for the single purpose of revenue?

It appears to me that there is a clear and necessary distinction between an act imposing a tax for the single purpose of revenue and those acts which have been made for the regulation of trade and have produced some revenue in consequence of their effect and operation as regulations of trade.

The colonies claim the privileges of British subjects. It has been proved to be inconsistent with those privileges to tax them without their own consent, and it has been demonstrated that a tax imposed by Parliament is a tax without their consent.

The subordination of the colonies and the authority of Parliament to preserve it have been fully acknowledged. Not only the welfare but perhaps the existence of the mother country, as an independent kingdom, may depend upon her trade and navigation, and these so far upon her intercourse with the colonies that if this should be neglected, there would soon be an end to that commerce, whence her greatest wealth is derived and upon which her maritime power is principally founded. From these considerations, the right of the British Parliament to regulate the trade of the colonies may be justly deduced; a denial of it would contradict the admission of the subordination and of the authority to preserve it, resulting from the nature of the relation between the mother country and her colonies. It is a common and frequently the most proper method to regulate trade by duties on imports and exports. The authority of the mother country to regulate the trade of the colonies being unquestionable, what regulations are the most proper are to be of

¹ There are really two issues raised here: 1. Whether taxes that are internal to the colonies can be levied by Parliament; 2, Whether Parliament can levy taxes that are purely revenue generating.

course submitted to the determination of the Parliament; and if an incidental revenue should be produced by such regulations, these are not therefore unwarrantable.

A right to impose an internal tax on the colonies without their consent for the single purpose of revenue is denied; a right to regulate their trade without their consent is admitted. The imposition of a duty may, in some instances, be the proper regulation. If the claims of the mother country and the colonies should seem on such an occasion to interfere and the point of right to be doubtful (which I take to be otherwise), it is easy to guess that the determination will be on the side of power and that the inferior will be constrained to submit....

Not only as a friend to the colonies but as an inhabitant having my all at stake upon their welfare, I desire an exemption from taxes imposed without my consent, and I have reflected longer than a moment upon the consequences. I value it as one of the dearest privileges I enjoy. I acknowledge dependence on Great Britain, but I can perceive a degree of it without slavery, and I disown all other. I do not expect that the interests of the colonies will be considered by some men but in subserviency to other regards. The effects of luxury, and venality, and oppression, posterity may perhaps experience, and sufficient for the day will be the evil thereof.