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Abstract

The Stamp Act was passed by British Parliament on March 22, 1765. The first direct tax on the colonies, it resulted in widespread resistance throughout New York, New Jersey and all of Britain's North American colonies. William Livingston, at the time an established lawyer, essayist, and political propagandist, led the colony's opposition. Livingston utilized *The New-York Gazette or Weekly Post-Boy* as a vehicle to reach a broader audience to present his arguments against the tax and to highlight Parliament's subversion to trial by jury, a violation of American liberties. His legal career was directly affected by The Stamp Act and resulted in Livingston's and his constituents' staunch resistance regarding the oppressive British Monarch. This analysis of Livingston's propaganda in opposition to The Stamp Act will explore his ideology with regards to resisting royal authority while remaining a loyal subject in the British Empire and explore his initial resistance towards independence at the onset of the Revolutionary War.

Keywords: Early American History, Stamp Act, Colonial Newspapers, Publication

The Stamp Act was passed by British Parliament on March 22, 1765. Enacted in November of that same year, it was the first direct tax on the colonies that resulted in widespread opposition throughout all of Britain's North American Colonies. The Stamp Act enforced a tax

on all legal and printed materials but more importantly, it reminded colonists of the authority Parliament claimed over them. William Livingston, at the time, was an established lawyer in New York as well as an essayist and political propagandist. Livingston utilized *The New-York Gazette or Weekly Post-Boy* in order to reach a broader audience where he presented his arguments against British imperial policies such as the Stamp Act of 1765. He objected to the tax on the basis of unconstitutional measures and highlighted his grievances anonymously in a column titled the *Sentinel* that appeared in *The New-York Gazette or Weekly Post-Boy*. While Livingston opposed the extralegal means of protests that occurred in response to the passage of the Stamp Act, he argued that the Stamp Act threatened the safeguards of the British Constitution as well as judicial independence. The constitutional and legal framework Livingston incorporated in his *Sentinel* essays played a decisive role in terms of New York's response to the onset of colonial reform.

In the 1760s, William Livingston was a successful and established lawyer in New York. Hardly a novice to presenting his opinion on a larger public sphere, Livingston often published rebuttals to British imperial policies anonymously in colonial newspapers. His essays appeared amongst a variety of columns including *The Independent Reflector* (1752-1753), *The Watchtower* (1754-1755), the *Sentinel* (1765), and *The American Whig* (1768). In his essays, Livingston argued in favor of key enlightenment ideals that echoed the Lockean social contract that he was introduced to as a student at Yale College in the 1740s. While *The Independent Reflector* was one of the most important publications that stemmed from the colonial period because of Livingston's arguments in favor of key Enlightenment ideals such as anti-clericalism, self-cultivation, and localized cosmopolitanism, all of his essays foreshadowed the revolutionary debate. Livingston tackled fundamental issues that pertained to education, representation,

separation of church and state, and religious toleration that were at the forefront of colonial opposition. Livingston believed Crown officials threatened the basis of his progressive ideals and the Lockean Social Contract he believed so strongly in.

The basis of Livingston's arguments against British imperial policies was the unconstitutional measures of Parliament's subversion to trial by jury. One of the threats to judicial independence occurred when Cadwallader Colden succeeded James De Lancey as lieutenant governor of New York in 1760. Milton M. Klein explains in *The American Whig*, that although Livingston and his constituents were unhappy with De Lancey's incumbency, "they approved wholeheartedly his success in moving the chief justiceship from dependence on the Crown" and managed to acquire commission from the preceding Governor, Clinton (402). From thereon after, "inferior judges received similar commissions, and by 1760 such judicial tenure was considered the normal basis on which the courts were organized" (Klein, "The American Whig" 402). Colden challenged the tradition and insisted that the office be "filled by a stranger to New York Politics and that the appointment should be at the Crown's pleasure rather than during good behavior" (Klein, "The American Whig" 402). Colden did not want judges that were members of powerful familial clans and ones that he did not have to give commissions for life. Livingston argued against Colden's sentiments and prepared an address to Colden and requested he not depart from "tradition in tendering a commission to the new Chief Justice" (Klein, "The American Whig" 403). According to Myron Magnet in *The Founders at Home*, despite Livingston's address in favor of keeping with tradition, in December 1761, London decreed that "every colonial judge henceforth would receive his commission at the King's pleasure" (40). Livingston and his fellow lawyers were furious. He took to his restless pen and under an anonymous essay titled *From the Lion's Mouth*, Livingston accused Colden of;

Undermining the undoubted Right, of having the Judges of our Courts on a Constitutional Basis, derided Colden's knowledge of the law by proposing, sarcastically, that all of the colony's statutes *be retrenched to the Size of Poor Richard's Almanack* and every lawsuit decided in six hours, and wryly suggested that the governor be permitted to raise his fees for making land grants in order to augment his slim salary. (Klein, "The American Whig" 410)

Livingston and his constituents continued to have further confrontations with Governor Colden.

One of the most influential court cases in New York history, *The Forsey v. Cunningham* case, occurred in the summer of 1763. According to Klein, Thomas Forsey filed a suit for assault and battery against Waddel Cunningham. Cunningham allegedly "accosted Forsey in the street, drew a concealed sword, and *did beat Thrust Stab wound and evilly treat* him badly that he remained incapacitated for eighty-two days" (413). All of the members of the triumvirate, William Livingston, William Smith, Jr. and John Morin Scott, were involved in the case. John Morin Scott represented Forsey while William Livingston and William Smith, Jr., with James Duane, were retained by Cunningham. Cunningham ended up paying a £30 fine in January 1764. Forsey filed a civil suit later in the year where he was awarded £1,500 in damages (Klein, "The American Whig" 413). The confrontation between Colden and the bar came into fruition as a result of the civil suit. At this point in time,

appeals from the decisions of the common-law courts had been taken to the Governor in Council only by *writ of error*. The review in such cases was confined to errors of law in the record or in the bill of exceptions filed by the attorney and to irregularities in the lower court's jurisdiction: it did not attempt to examine the evidence or to pass judgment on the jury's verdict. (Klein, "Prelude to Revolution in New York" 454)

Examining the evidence was impossible without conducting another trial because witness proceedings and testimonies were not recorded. Cunningham, however, requested a review of the case and petitioned to the Supreme Court in Fall 1764. Livingston and the other attorneys involved refused to involve themselves with the case any further because they were “convinced that the move was a dangerous threat to the inviolability of jury trials” (Klein, “Prelude to Revolution in New York” 454). The Supreme Court denied Cunningham’s request for the minutes of the trial on the grounds that no *writ of error* was produced in the appeal. Colden examined his instructions; “and finding no specific mention of appeals in cases of error only - an unintentional oversight, it later proved - accepted Cunningham’s plea” (Klein, “Prelude to Revolution in New York” 455). Colden demanded the Chief Justice deliver the proceedings of the case of which he refused. In November of that same year when the Council convened, Colden again reiterated his claims and demanded the appeal be allowed. Chief Justice Daniel Horsmanden again refused and presented a lengthy argument with the help of the triumvirate in order to present his position. Horsmanden proclaimed that “Colden’s attempt to review the facts as well as the law would alter *the ancient and wholesome Laws of the land*, endanger the right of jury trial, and institute a novel procedure *repugnant to the Laws both of England and this Colony*” (Klein, “Prelude to Revolution in New York” 455). Klein explained, Colden was furious and publicly denounced the judges and Councilors with “Indecency, Want of respect to the King’s Authority and unwarrantable Freedoms” (455). Colden then went so far as to suggest that the Board of Trade remove the Supreme Court judges and “hinted at a plot on the Chief Justice’s part to bring about his death- by induced apoplexy, no doubt,” and warned that the entire Royal Government in America would be destroyed if he was not supported in his endeavors (Klein, “Prelude to Revolution in New York” 455). Klein explains that, New Yorkers were not

impressed with Colden's strong stance and argued that he insinuated "nothing less than the entire Subversion of the Constitution of the Province, by the destruction of its jury system and its courts as well" (Klein, "Prelude to Revolution in New York" 455). Colden's opinions regarding legal counsel were even more obtuse as he was "willing to denounce the whole jury system for its iniquitous and false verdicts, to assert the Crown's power to set up courts at will and to define their jurisdiction and procedure, and to proclaim the virtue of appealing all jury verdicts to the reasonable judgment of governors, kings, and councils" (Klein, "Prelude to Revolution in New York" 455). Despite the Chief Justice's decision to not allow an appeal on behalf of Cunningham, Colden sent the petition to the Privy Council in London.

While Livingston was dealing with complications that stemmed from the *Forsey v. Cunningham* case, the passage of the Sugar Act in April 1764 added additional threats to judicial independence with the establishment of vice-admiralty courts. Jonathan Mercantini explains in *The Stamp Act of 1765*, that the Sugar Act empowered non-jury vice-admiralty courts, established in Halifax, Nova Scotia, to try smugglers and tax evaders. Prior to the passage of the sugar Act, smuggling cases "had been heard in local courts and local juries could usually be counted upon to find colonial merchants not guilty in cases brought against them by the British Empire" (Mercantini, 7). However, in vice-admiralty courts, British magistrates tried cases leaving no recourse for trial by jury (Mercantini, 7). Livingston found himself at the forefront of colonial opposition when he was asked by the New York Assembly to compose its protest to the House of Lords in response to the Sugar Act in October of 1764. Myron Magnet explains that, in Livingston's protest to the House of Lords he "argued that *amazing powers* of the vice-admiralty courts denied colonists the protection of a jury trial and argued that this was *one of the most essential Privileges of Englishmen* (41). The passage of the Sugar Act coupled with Colden's

insistence on denouncing the entire jury system added to Livingston's already negative opinion of the British imperial government. While New Yorkers waited for Parliament's decision, Livingston took to his unrestful and satirical pen in order to publicly denounce Colden and bring to light much larger issues such as the violation of Englishmen's rights and how liberty itself was at stake. Livingston used *The Sentinel* as a "Grand engine of the press to inflame the Minds of People easily misled by Sounds" (Klein, "The American Whig" 418). He argued on the basis of "trial by jury" that was embedded in the "fabric of the English constitution" and brought to light a much larger issue regarding subversion to trial by jury, an aspect that stemmed from the Sugar Act but was reinforced with the Stamp Act.

On March 22, 1765, Parliament passed the Stamp Act which prescribed taxes for all paper documents including:

fifteen classes of documents used in court proceedings (including the licenses of attorneys), the papers used in clearing ships from harbors, college diplomas, appointments to public office, bonds, grants and deeds for land, mortgages, indentures, leases, contracts, bills of sale, articles of apprenticeship, liquor licenses, playing cards, dice, pamphlets, newspapers (and advertisements in them), and almanacs. (Morgan, 72)

All of these documents would need to be written or printed on paper affixed with a stamp embossed by the Treasury Office. The tax on the different documents varied but included £10 on attorney's licenses, other court papers varied from 3d. to 10s., while land grants under a hundred acres were taxed 1s and 6d., between 100 and 200 acres (Morgan, 72). The tax imposed on the paper products did not necessarily cause hardships on the colonists however, the Stamp Act brought with it numerous other provisions that threatened the English Constitution. These included exercising ecclesiastical jurisdiction, which brought up the possibility of England

stationing bishops in America, and giving admiralty court's jurisdiction over cases "arising out of violations of the Stamp Act" (Morgan, 73). Although the Sugar Act set the stage in terms of trying colonial cases in vice-admiralty courts, the Stamp Act now gave those courts the ability to make legal decisions on behalf of the colonists with no juries. In the *Journal of the assembly of the Colony of New York*, colonists highlighted their grievances in relation to the Stamp Act;

That the Acts of Trade giving a Right of Jurisdiction to the Admiralty Courts, in Prosecutions for Penalties and Forfeitures, manifestly infringes the Right of Trials by Jury; and that the late Act for granting Stamp Duties, not only exposes the American Subjects to an intolerable Inconvenience and Expence [sic], by compelling them to a Defence [sic] at a great Distance from Home; but, by imposing a Tax, utterly deprives them of the essential Right of being the sole Disposers of their own Property. (47)

Regardless of their initial protests, Parliament implemented the Stamp Act on the colonists who found themselves taxed "without consent for purposes of revenue, their rights to common-law trial abridged, the authority of one prerogative court (admiralty) enlarged, and the establishment of another (ecclesiastical) hinted at (Morgan, 74).

Livingston began contributing anonymous essays to *The New-York Gazette or Weekly Post-Boy* often signed as "Z" in February 1765. Although the *Sentinel* comprised of essays from all three members of the triumvirate, Livingston contributed the most pieces and acted as a spokesman on behalf of the lawyers. The first set of essays to appear in the *Sentinel* regarded the *Forsey v. Cunningham* case and Livingston's satirical pen was aimed at Colden and the subversion to Trial by Jury on the basis of unconstitutional grounds. In the *Sentinel* no. 1 published on February 28, 1765, Livingston questioned Colden's beliefs that the entire jury system should be denounced and the crown should define their jurisdiction in admiralty courts.

What then must we think of such political genius, who, from an expression constantly occurring in common parlance, frequently used by lawyers, for the removal of a cause in a course of error, nor to the meanest capacity, administering any difficulty of being understood, presumes to infer a design in the crown, in the best of kings, in a king of the illustrious house of Hanover, the perpetual assertors of liberty, to erect a court unknown to the constitution; and to deprive his most loyal and affectionate subjects, of all the benefits of a trial by their peers! (Livingston, “The Sentinel No. 1”)

Livingston went on in his second *Sentinel* essay published on March 7, 1765, where he attacked royal government officials and the lack of qualifications they possessed in order to make decisions on cases.

I will venture to add that our governors are frequently the least qualified to try either matters of law or fact. For among the numbers with which we have been blessed, how few have been equal to their important truth? Some indeed were not deficient in knowledge. But then they labored [sic] under a more capital defect. They wanted integrity: and so they could but accumulate riches, and conciliate ministerial favour [sic] by culminating the people, they cared not if the province sunk into eternal perdition. (Livingston, “The Sentinel No. 2”)

Livingston left no doubt that the *Sentinel* no. 2 was aimed at Colden, especially in reference to the province sinking into “eternal perdition.” Colden did not care whether or not the colony’s jurisdiction was ruined as a result and felt that it was filled with false verdicts and that jury verdicts should be up to the discrepancy of governors, kings, and councils in vice-admiralty courts.

Livingston began presenting arguments on a constitutional basis in the *Sentinel* no. 3 published on March 14, 1765. He brought up ideals of Liberty, freedom, and the unconstitutional measures Britain instilled upon the colonies by the establishment of admiralty courts and hindering colonists' constitutional liberties. Klein reiterated in his essay, *Prelude to Revolution in New York: Jury Trials and Judicial Tenure*, that "no single group was better able to articulate the colonial position within the political, legal, and constitutional framework of the Anglo-American debate than the men of the legal profession" (440). This was the point Livingston was making in the *Sentinel* no. 3.

Without Liberty no man can be a subject. He is a slave: And to say that he is bound to obey without being protected; is to say that there is no difference between absolute power and limited government, between Englishmen and Frenchmen, between law and despotism, freedom and vassalage, tyranny and justice. It is in short, adding mockery to nonsense, and insult to sophistry. (Livingston, "The Sentinel No. 3")

In the same essay, Livingston went on to question the validity of a Constitution that British officials were attempting to rewrite and, in the process, violated Englishmen's rights.

With what view then can any man, make an attempt on our liberties, by offering at a measure unconstitutional and unknown? It is for the public good that such an attempt is made? Or is a trial by juries, which has been the boast of Englishmen from the remotest antiquity, all at once become so pernicious, that it is no longer to be tolerated without an appeal? Is a constitution matured by ages, founded as it were on a rock, repeatedly defended against lawless encroachments by oceans of blood, meliorated by the experience of centuries, alike salutary to prince and people, and guarded by the most

awful sanctions: is such a constitution, I say, now be altered or abolished by the dash of a pen? (Livingston, “The Sentinel No. 3”)

When the Stamp Act was passed on March 22, 1765, by British Parliament, word arrived in the colonies in April 1765. Livingston, with his and his family’s position in the New York Assembly, received word immediately. While Livingston was still disconcerted over the *Forsey v. Cunningham* case, his *Sentinel* essays, while still maintaining arguments on an unconstitutional basis, began including ideals surrounding liberty and patriotism.

On April 4, 1765, Livingston’s *Sentinel* no. 6 was published in response to the passage of the Stamp Act.

While these colonies are straining every nerve to maintain their exemption from unconstitutional taxations, and for that purpose casting themselves at the king’s feet, imploring his royal protection, supplicating the lords in parliament to suffer the continuation of their rights, and adjourning the commons to a tender sympathy for the posterity of their dispersed countrymen; I say, while we are exerting ourselves in all the ways that fear can excite, and loyalty approves, by petitions or deprecation, representations, claims... is it not astonishing, that amidst this universal jealousy of the tax as ruinous and intolerable, not a word should be said relative to the necessity by which it is pretended to be justified? We see a standing army of fifteen thousand men established in the country- it is alleged to be necessary for our protection; and then concluded that according to our abilities we ought to contribute to its support; and the premises admitted, pray who can deny the consequence? (Livingston, “The Sentinel No. 6”)

Unconstitutional taxes were being forced upon the colonies, taxes that they did not give consent to. Although the initial taxes on paper products that resulted from the Stamp Act were not of a huge hindrance to colonists, the violation of judicial independence was. Livingston continued to argue against the Stamp Act on a constitutional basis.

In the *Sentinel* essay no. 9, published on April 25, 1765, Livingston tackled the qualities of Patriots in response to the oppressive British government. Livingston explained, “They are the friends of society, lovers of their country, protectors of liberty, enemies to oppression, and champions of public virtue and human happiness. And however they may sometimes experience the ingratitude of designing and self-interested men, they are sure either to rise triumphant above all opposition, or to fall gloriously in the best of causes” (Livingston, “The Sentinel No. 9”) By broaching the topic of Patriotism, Livingston reached a larger audience and his influence did not go unnoticed by loyalists and British officials. As a lawyer, Livingston had deeply rooted knowledge of political theory and he played a decisive role in New York’s push towards political reform through his *Sentinel* essays.

Livingston continued to argue against subversion to trial by jury in the *Sentinel* no. 12 published on May 16, 1765. More so, without a jury trial, colonists ran the risk of sacrificing truth and common sense for the sake of titles.

It is not more evident that Englishmen are free, than that they have a right to controvert the sentiments of any, the most exalted subject in the nation; or the necessary policy of government. The contrary supposition would lay us under the necessity of embracing every falsehood or absurdity, that should be delivered by the great; and compel us to sacrifice truth and common sense to the splendor of titles and offices. But error and

delusion cannot be dignified by the greatest names; nor can any political preheminance [sic] impart a lustre [sic] to sophistry or nonsense. (Livingston, “The Sentinel No. 12”)

On June 13, 1765, in the *Sentinel* no. 16, Livingston again attacked royal governors and aimed his pen at Colden. Livingston explained that governors who go against and attempt to sway the state are its biggest enemies and had nothing but ill contempt for the colonies they exercised authority over.

It would be a great blessing and Advantage gained to Mankind, under such Governments, if they could but compound with their Governors, to forbear doing their Mischief; and, upon that consideration, cheerfully give up all Hopes and Expectancy of any Good Advantages from them whatsoever. It would in Truth be a glorious Bargain, and mend the Condition of the World prodigiously; considering at what a sad and barbarous Rate the Government of the World is conducted in most countries. For it is melancholy to consider, but too true, that generally they who sway the State, are its greatest Enemies. It is therefore no Wonder, that they treat as Traitors, and often destroy its best Friends. (Livingston, “The Sentinel No. 16”)

On June 20, 1765, in the *Sentinel* no. 17, Livingston made a sarcastic dig at Greenville’s efforts in reference to the Stamp Tax and his building a Stamp Mill on the shores of Long Island. He exclaimed, “And we have Advice from Long Island, that one Greenville undertakes to make Gold Dust out of the Rockaway Pebbles, by Means of a new Stamp Mill, tho’ many People think him a bungling Projector, and that the Wages of the Workmen will exceed the Profits of the Mill” (Livingston, “The Sentinel No. 17”). Klein explained that, Livingston disapproved of the Stamp Act and believed it to be an “unconstitutional, ruinous, and intolerable tax” (“The American Whig, 438”).

Livingston strove and succeeded in reaching a broader audience while he presented his arguments on the subjects of patriotism, liberty, and the violations to judiciary independence that were implemented by Parliament. The *Sentinel* no. 21, published on July 18, 1765, appeared to have caught the attention of some of New York's most forceful and vocal opponents to the Stamp act, the Sons of Liberty. Livingston ardently proclaimed;

Let no illegal attempt against us appear inconsiderable, or unworthy our notice. A smaller will ever pave the way for a greater: The latter for a greater still. Let us therefore check the rising mischief; and crush the cockatrice in the egg. In a word, let us strive to transmit to our posterity, that ineffable blessing which our ancestors have handed down to us; And after having flood like unconquerable champions in the cause of liberty to our dying hour... (Livingston, "The Sentinel No. 21")

Livingston was content with wielding his pen and mobilizing public opinion on the "arbitrary government and to raise clamour [sic] and noise to accomplish his purpose, but he recognized that he was arousing a spirit of unrest that he could no longer control" (Klein, "The American Whig" 441). Livingston disagreed with the very public extralegal means of protests implemented by the Sons of Liberty. Recognizing that the increase of Stamp Act protests was in part affiliated with his public criticisms of imperial government, Livingston ceased publication of his *Sentinel* essays at the end of August 1765.

Livingston's essays penned during the passage of The Stamp Act of 1765, encompass many themes that are imperative in understanding colonial reform in New York in the 1760s and the prelude to revolution. Livingston played a large part in New York politics and him and his family were directly involved with the New York assembly. He penned protests to the House of Lords on behalf of the colony where he highlighted grievances that threatened the safeguards of

the Constitution. Livingston's experience and knowledge in law and political theory assisted him in recognizing that the British Constitution and the rights of Englishmen were at stake with the removal of judicial independence. This also resulted in him reaching a broader audience and his *Sentinel* essays generated an impactful response and pushed New York towards the desire for imperial reform. Later in 1776, Livingston was a delegate to the Second Continental Congress and the debate for independence was on the table. Livingston initially hesitated in his support of breaking ties with the mother country because he felt that foreign aid was needed before pursuing what appeared to be an impossible feat. Eventually, as the Revolutionary War waged on, Livingston did come to support independence and pushed for colonial support under various anonymous propaganda pieces. While Livingston's ideals of independence and liberty that he spoke in favor of in his *Sentinel* essays in the 1760s had very different meanings in 1776, his anonymous publications had a crucial and decisive impact on the colonists in New York and played a major role by pushing the colonists towards the recognition of colonial reform.

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