Plus Royaliste Que le Roi?

A Political Biography of Cadwallader Colden

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Table of Contents

Preface .................................................................................................................................................. 2

Introduction ........................................................................................................................................ 2

Chapter 1: British Whig, New York Tory .......................................................................................... 9

Chapter 2: Colden's First Political "Hiatus," an Era of Political Conflict ............................................. 19

Chapter 3: Political Enemies: How Colden Battled James DeLancey and the Assembly ................. 31

Chapter 4: Plus Royaliste Que le Roi ................................................................................................. 40

Epilogue .......................................................................................................................................... 52

Conclusion ...................................................................................................................................... 52
Preface

Cadwallader Colden's politics is a subject that has gone without much study, especially recently. The only scholarly political biography of Colden was written by Alice Mapelsden Keys, *Cadwallader Colden: a Representative Eighteenth Century Official*, which largely focuses on Colden's relationship with Governor George Clinton as a means of supporting her thesis, which is similar to mine, that Colden was a supporter of the crown prerogative. Keys ignores crucial moments in Colden's early career, such as the Zenger trial or the smuggling episode, and she downplays the importance of *Forsey v. Cunningham*. Moreover, most accounts of individual events that are discussed in this paper, such as the Zenger trial, do not incorporate the how this event appeared through the lens of Colden. However, there are some good insights into the *Forsey* case in Hulsebosch's *Constituting Empire*¹, but these pertain to a more general narrative of legal history rather than a specific political monograph on Colden. The goal of this project was to gain insight into a much studied man from an angle never exposed before. I believe that this paper fills in the gaps that many great scholars have left behind.

Introduction

Most politicians, and people in general, will act in a calculated manner to promote what is in their best interests, while others are more idealistic and act in accordance with a set of principles despite tremendous adversity because they think it is right. Cadwallader Colden falls into this latter group. In 1764 Colden, who was serving as the acting governor of New York, was presented the opportunity to expand executive power over the judicial system by attempting to

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expand the grounds for appealing a court decision past writs of error. This would, in effect, allow the governor, an extension of the crown, to decide whether or not a jury had made the right decision. All of Colden's advisors, the attorney general of New York, and the Supreme Court of New York made it explicitly clear to Colden that appeals could not be heard on such grounds, as it was an encroachment of the jury's autonomy. Despite these arguments, and despite any backlash he faced—an angry mob actually burned Colden in effigy some months later in an incident related to this—Colden proceeded because he did what he thought was right: uphold the interests of the crown.

When discussing Colden, one could use the phrase plus royaliste que le roi, more royalist than the king, because he was so active in promoting crown interests in a colony that was moving in a more democratic-republican direction with each passing regime. Colden began his political career as a close aide to governor William Burnet in the early 1720's. In this role Colden kept the interests of the crown at heart and took on the New York merchant class, whose members Colden knew were major power brokers, by helping Burnet craft legislation to crack down on smuggling. Two decades later as Colden served in this role again, this time for governor George Clinton, he went against the overwhelming majority of the political and social elite by fighting for a more independent source than the assembly for the salaries of royal officials. By doing this Colden sought to fight back the ever-expanding power the colonial legislature had over royal officials. Colden also played a significant role in the famous John Peter Zenger trial; he was an anonymous author of many of the articles alleged by the plaintiff William Cosby as libelous. The Zenger trial was a political success for Colden as his writings were upheld as non-libelous by a jury of his peers. Despite Cosby's position as a royal officer, his actions were in direct

2 He actually served on the Governor's Council from that point until his death in 1776
contradiction of the crown prerogative. He actively weakened his office, and by extension the crown, by ceding power to the assembly for profit. Ironically, three decades following this trial came another famous trial, *Forsey v. Cunningham*, in which Colden sought to discredit juries altogether. Whatever his other contradictions or consistencies were throughout his political career, one thing was certain, he was more royalist than the king.

Colden's political beginnings demonstrate that Colden upheld the interests of the English monarchy no matter what label one puts on him. His first political encounter came when he was asked to organize a Whig militia in the Jacobite uprising of 1715, but once he arrives on the Albany political scene he could easily have been labeled a Tory for staunchly upholding the interests of the crown. Colden's style of politics, which was bluntly to oppose anything that went against his beliefs, had mixed results. He was successful when he fought the powerful merchant class to root out the smuggling that was hurting the crown's interests. However, he made a great number of political enemies in doing this, so that when John Montgomerie became governor, and allied himself with Colden's new political enemies, Colden had no leg to stand on. Colden saw Montgomerie as an ineffective drunk who only sought to line his wallet. Colden could not do anything directly to fight Montgomerie, though, because he had made such enemies. Therefore, it was because of Colden's adamant loyalty to the crown he could not engage in the partisan politics of New York very effectively, unless there was a friendly governor in power. This would set the stage for how Colden would proceed with his storied political career. Many times Colden had to fight for the crown's interest from the political sidelines, by anonymously writing in Zenger's journal.

Despite Colden's outright public disapproval of several royal officials in Albany, such as Cosby and Montgomerie, he was still an incredibly loyal supporter of the royal prerogative. It
could be argued that Colden was not loyal to the crown, due to his public criticisms and opposition to governors Montgomerie and Cosby. These two men were an extension of the crown, and by that extension they spoke with royal authority. However, perhaps it should be said that Colden was at least more royalist than these governors. Colden rightly criticized Montgomerie and Cosby for attempting to make large profits from the governor's office by ceding royal power to the legislature. The reasoning behind Colden's distaste for Montgomerie has already been established, but he disliked Cosby even more. Cosby was perhaps the Anti-Colden because he only promoted his self-interest and lacked any real principles. This was brought to light by Colden in Zenger's journal, and subsequently Cosby filed suit against Zenger for libel. However, since it was shown that Colden's allegations against Cosby were true, Zenger was acquitted of these charges. This case had major long term effects as a legal precedent establishing truth as a defense against libel charges; however, it was also a short term victory for Colden, who brought down an agent who was against the prerogative of the crown.

As Colden's political career progressed it became quite obvious that his royalist tendencies and his New York partisanship went hand in hand. As a close political aid to George Clinton, Colden clashed with James DeLancey on numerous occasions. These conflicts were rooted in ideology and came to fruition through partisan politics. One example of such a conflict was over the right of royal office holders to a salary that was independent from the discretion of the legislature. Colden witnessed the erosion of the executive's, and by extension the crown's, autonomy from the assembly due to governors such as Montgomerie allowing the legislature to declare the governor's salary on a more frequent basis. Therefore, Colden influenced Clinton to demand a longer term between when the legislature could declare what they would pay the governor. DeLancey, who understood that declaring the governor's salary on
a more frequent basis gave the legislature more power, struck down Clinton's demand. He was able to do so through his control of the dominant faction of the assembly. Both men sought to expand the power of their respective branches, and, by doing so, Colden fought hard to maintain the authority of the king. However, his efforts were just too little too late. It was a sign of things to come for Colden, the colony, and for the country at large.

Colden's actions as governor in the midst of crises such as *Forsey v. Cunningham* and the Stamp Act riots demonstrate that he was more royalist than the king. The *Forsey* case was a relatively apolitical event, but it erupted into a legal philosophical question concerning appeals and the right of the public to trials by jury. Colden sought to expand the crown's influence in the courts, by broadly interpreting a royal instruction in order to hear Cunningham's appeal on the grounds of jury error. Colden's actions were largely protested by his advisors, the Supreme Court, and even the press. However, Colden held firm in his attempts to expand royal power. Unfortunately for him, the Stamp Act was passed during the appeal. The Stamp Act brought about, in the minds of colonial patriots, a threat to trials by jury. Due to his reputation as an anti-jury governor, Colden suffered a tremendous backlash before he had the chance to deliver the Stamp Act stamps to their first destination. Colden ultimately sought to uphold the royal prerogative in his first term as acting governor, and did so to a great extent. His initial willingness to enforce the act at all demonstrates his royalist idealism. However, he could not pragmatically accomplish this goal, due to his image extending from his royalist beliefs.

The overarching theme of this paper is that Colden had an incredible amount of royalist zeal and ambition to create and implement policy to accomplish those ends, but his own zeal brought pragmatic challenges that he could not overcome. While he was able to crack down on merchant smuggling into Canada, it politically ostracized him once a supportive executive left
office. He had tremendous intelligence and influence over certain individuals, but when it came time to fight tough political and ideological battles, such as the independent salaries question, Colden did not have the partisan support to defeat his adversary. When he fought to expand the executive's influence in the court system, he was vilified, victimized, and defeated by the masses because the press did not like him. However, he was not always a political failure due to his ardent loyalty. He demonstrated a great deal of political shrewdness in the Zenger affair, appealing to popular opinion to fight his battle for him. He clearly demonstrates in this conflict that he was quite adept towards operating within the political framework, but due to his loyalist ideals, seems willing to earn enemies and burn bridges, if it means accomplishing what is right. Therefore, it would be unfair to Colden to refer to him as aloof to the political process, however he was certainly unbending in many instances.

Despite these shortcomings, he was remarkably consistent in fighting for what he believed, even if it meant contradicting prior beliefs to accomplish his one goal of expanding royal power. One clear example of this is when he benefitted politically from the jury in the Zenger trial, but then turned around thirty years later and accused juries of being corrupt and politically biased. Whatever the circumstances, Colden sought to expand royal power.

In calling Colden a royalist, the logical follow up question would be, "what then is a royalist?" Taken with the context under which Colden lived, this is a difficult question to answer. Everyone in the time of Colden is going to claim that they were acting in the interest of the Crown, because that was the social norm, it is akin to the American political claim of acting in the interest of freedom. In a world where everyone is acting for the king, what then made an individual like Colden a royalist, where DeLancey was not. I am not sure that there is a checklist that categorically applies to everyone concerning this matter. However, there are conflicts
between these two men that objectively demonstrate that one side, Colden, was a royalist, while
the other, the DeLancey faction, was not. If one examines the smuggling incident, it is clear that
Colden was a loyalist while the DeLanceys were not. Colden fought to regulate an extremely
profitable business for the DeLancey faction, a business that was beneficial to the Colony of
New York, but a business that hurt the interests of the crown. Colden acted solely out of these
interests, while the DeLanceys acted out of interests counter to the crown. A second example
came during Clinton's administration during King George's War. Clinton needed money to pay
troops for an expedition on the Canadian border. James DeLancey refused to appropriate any
money, not on the basis of any ideological aversion to war, but because he did not want to
acquiesce power to the Governor. DeLancey had argued that Clinton had abused his power and
had misused any appropriations the Assembly had given him for the war effort, so he was cut
off. Clearly the money was needed, both for the war effort and to prevent the troops from
mutinying and rioting throughout New York, but DeLancey would not budge for political
reasons. Colden fought on Clinton's behalf, rightly asserting that it is in the crown's interest that
they appropriate the money. Therefore, while there is no checklist per se, there are examples of
Colden objectively upholding the crown prerogative, which will be further delved into
throughout the bulk of this paper.
Chapter 1: British Whig, New York Tory

Those that know of Cadwallader Colden's actions as governor might understand his early Whig ideology as a contradiction. However, after examining Colden's earliest political actions, one would recognize that Colden's early beliefs are consistent with the way he acted as governor. Upon entering office as Surveyor General, Colden noted the tremendous amount of fraud that the Albany merchants were committing against the crown. Furthermore, when Governor Burnet made it his top priority to regulate this fraudulent trade behavior, Colden was his right-hand man. Acting in the interests of the crown, Colden continued to battle with the merchant faction, until Burnet was transferred out of the governorship. Then, when Colden fell out of favor with the ruling political elite he took his actions both to the press, and to private letters, in which he strongly accused Burnet's successor, Montgomerie, of profiteering from his office and setting dangerous precedents at the expense of the crown. Therefore, the actions of Colden's early political career reflect that, despite staunch Whig inclinations, he was extremely loyal to the crown, and as a result became deeply imbedded in the factional politics of the New York colony, which would greatly impact the course of his political career.

Colden expressed a devotion to Whig politics before his political career germinated. Perhaps the earliest political action of Colden's life came when he returned to Scotland after years in America to marry his wife in her father's church. Colden happened to return home in the midst of the Jacobite uprising of 1715, when James Francis Edward Stuart, "the Old Pretender," attempted to reestablish the House of Stuart to the English throne. While in the Scottish town of Kelso, local elites urged Colden to use his influence to raise a group of volunteer militia in the
event that the Jacobite revolt spread. The uprising never made it to Kelso, and Colden subsequently disbanded the militia. While no direct action was committed, Colden's willingness to fight the Tory uprising and protect the British constitutional monarchy demonstrates his loyalty both to his Whig values and to the English crown. Colden would soon leave Scotland for Philadelphia, where he lived for several years out of the political scene.

Cadwallader Colden moved to New York in 1718 in order to start his political career. Governor Robert Hunter—a fellow Scottish Whig—offered Colden a temporary position in the Chancery Court, and made him heir apparent to the office of Surveyor General. However, Hunter left the country, and Peter Schuyler, who became acting Governor due to his Presidency of the Governor's Council, turned the Surveyor General's office to a member of his own party. Therefore, it should be said that Colden felt the bite of partisan politics before he ever really entered the political scene, giving him an early lesson in how New York politics worked. Subsequently, Robert Hunter, hearing of this while abroad, used his remaining influence in the colony to have the appointment defeated, thereby giving Colden the office.

William Burnet's chief objective when succeeding Hunter in the office of Governor was to regulate the trade relations between New York merchants and the French Canadians. Colden's position as Surveyor General endowed him with an intimate knowledge of the colony's relations with both the French Canadians and the Native Americans on the frontier. It was for this reason,

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in addition to Colden's political interests, when Burnet took office that he made Colden one of
his chief advisors and a member of his council.⁶ ⁷

Colden had a tremendous respect and loyalty to the crown, which is ultimately why he
was selected to be on the Governor's council. New York politics was dominated by a merchant
faction, whose members, out of self interest, did all they could in order to manipulate the system
to serve their own ends. Colden, on the other hand, perceived this behavior as detrimental to the
interests of the crown and wanted to clean it up. It seems as though, in terms of ideology, while
Colden was an ardent Whig, he was also what Bernard Bailyn would refer to as, an ardent
Briton.⁸ In Colden's view, the source of the merchant corruption—their self-interested policy that
superseded the interests of the entire British Empire—was their powerful political faction.
However, instead of trying to root factions out of politics, Colden played against them at their
own game, making alliances and standing diametrically opposed to this merchant party. Seeing
such commitment, Burnet knew that Colden would be a powerful weapon in his machine
because Colden would support most of Burnet's policy.

Colden's genius-level intellect, and expertise in the sciences, as well as in local
geography and Indian relations,⁹ also made him a clear choice for Burnet when selecting men to
surround himself with. Colden was a character who, much like Benjamin Franklin, wore many
hats. In fact, Colden's level of scientific expertise was quite astounding. He was an early
challenger of Newtonian mechanics, claiming, "I did not suspect that the Theory, and the best

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⁷ Burnet also established James Alexander, a close friend of Colden's, as a member of his council for similar reasons
tables of equations for the Earths Motion were defective...[until] after many calculations which I have made." He also introduced the Linnaean method of classification to the colonies, and "discovered" a great number of species. This reputation preceded him, and as Surveyor General he fulfilled the expectations of those who put him in that position by drawing extremely accurate maps of the colony. In doing this feat, Colden became intimately acquainted with the land, and as Surveyor, often was required to negotiate with both neighboring colonies and Native American tribes over boundary disputes. Therefore, Burnet saw a great deal of promise in Colden and a person in a seat of great power already and therefore gladly took him on board.

It is important to note that just by ascending to the Governor's council, Colden gained powerful political rivals. The two members of the council that Colden and James Alexander replaced, Adolphe Phillipse and Peter Schuyler, were of the Albany merchant class, and stood as barriers to Burnett's agenda. Colden argues, in a letter to his son, that Phillipse and Schuyler did in fact commit the highly punishable offense of allowing Phillipse to act as governor under the King's Seal when in fact Schuyler had the duty to act as governor in the interim between the administration of Hunter and Burnet. However, this would probably go without notice, had the two councilmen supported the interests of Burnet. Colden claims, "Mr. Burnet's motive to have them removed was to strengthen the interest of those gentlemen who had undertaken to serve him." Phillipse and Schuyler, members of the merchant faction, would not forget that it was Colden who played a role in ousting them from the Governor's council.

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12 Ibid. 310
Colden demonstrated his loyalty to the crown when he played a crucial role in Burnet's agenda of regulating the trade between Albany and Montreal. As a consequence of the 1713 Peace of Utrecht, trade between Native Americans and British, as well as trade between Native Americans and the French, was unrestricted. Therefore, New York importers of British goods used tribes such as the Kahnawake Mohawks as middle men, who transported goods between Albany and Montreal, in effect establishing a relatively lowly taxed trade relationship with French traders. As a direct result of this trade relationship, both the Albany merchants and the Canadian traders profited greatly, while the Crown was not gaining revenue from tariffs and duties on the goods exchanged in this relationship. Therefore, with Colden's expertise in Indian relations at his disposal, Burnet was able to pass legislation that heavily penalized "carrying Goods to the French, which are proper for the Indian Trade," effectively dissolving the legality of this trade arrangement.

Colden earned a great number of political enemies due to his participation in Burnet's legislative successes. After the passage of the regulations, not only did Albany merchants protest the act, but London merchants petitioned the crown to repeal the regulations. In order to save the legislation Colden wrote reports to the King defending the legislation, in which he charged Albany merchants with fraud saying, "not one Word of the Geography of these Merchants is true," and accusing them of "promoting the French interest, to the Prejudice of all his Majesty's

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14 Ibid., 173
15 Ibid., 168
16 Ibid., 172
Colonies." As a result of these personal attacks, Colden alienated key members of the merchant faction of New York politics, such as Stephen DeLancey and George Clarke.

Colden's actions as Master in Chancery Court also made him significant political enemies. One instance came with the case of a Hugenot Pastor Lewis Rou. Rou was under contract with the Hugenot Church in Albany and was to be paid yearly, but the only notarized copy of his contract was in the hands of the board of trustees, on which Stephen DeLancey sat. After serving the church for many years, Rou and prominent members of the church began to clash, and eventually the board of trustees refused to pay him. Rou then sued the board in Chancery Court, and the case was heard by Colden. The board of trustees claimed they did not know of a contract, since some of the members were new and had never seen it: technically speaking, the collective of the board never saw the contract. However, Colden made a decision in favor of Rou, much to the chagrin of DeLancey and his many allies in his merchant faction.

After Colden ruled against DeLancey's interest in the Chancery Court, an extremely bizarre set of events unfolded that both set the stage for the demise of Burnet in New York, thus significantly hampering Colden's influence, and saw Colden publicly defending DeLancey. DeLancey was nominated by the New York Assembly to temporarily serve in the seat of a recently deceased member of the Assembly. In order to serve in this office, the Governor had to swear him in, an act which DeLancey, a serving member of the House, had already completed once for his original seat. However, Burnet, under the advice of the Chief Justice of the Supreme Court, Lewis Morris, had refused to swear in DeLancey on the basis that he was not a naturalized

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17 Ibid. 173
18 Ibid. 181
19 Ibid. 181
citizen.\footnote{DeLancey was in fact born in France.} This created an uproar in the Assembly whose members felt that Burnet was encroaching on their right to judge their own qualifications. Moreover, the significant majority of Albany’s population was French and Dutch, and the community elites feared that his tyranny could possibly extend to their property rights. Upon hearing of this action, Colden forced Burnet to reconsider. Burnet formally apologized, but he left tremendous political scars on his allies.\footnote{Cadwallader Colden to Alexander Colden, \textit{The History of the Province of New-York, Volume I} (Cambridge: Belknap Press of Harvard University Press, 1972), 312}

Ultimately, Burnet’s undoing in New York extended both from his best and worst calculated political decisions. The enemies he made in the merchant faction served to give him enemies in high places, such as George Clarke—New York Deputy to Horace Walpole. In order to save himself from any smears by political rivals, Burnet wrote to Walpole explaining that the regulations he passed in order to serve the interests of the British government were being met with great resistance in Albany.\footnote{George Clarke to Robert Wapole, \textit{Documents relative to the colonial history of the state of New-York: procured in Holland, England, and France,Volume V} Edited by John Romeyn Brodhead. (Albany: Weed, Parsons, 1853), 768} Unfortunately for Burnet, Clarke wrote to Walpole explaining that the governor was meeting resistance mostly from the assembly itself. Moreover, that it was Burnet’s poor decisions as governor, such as the DeLancey incident, that were creating such a difficult political situation in Albany.\footnote{Ibid. 764} As chance would have it, George I died several weeks later, and, due to the transition reshifting of the Royal government, Walpole decided it was in the best interest of all parties concerned that Burnet transfer his governorship to Massachusetts Bay.

As a direct result of the actions of his early political career, Colden was in a precarious position as far as factional politics were concerned. In the late 1720s the dominating interest in New York politics, if the elections of 1727 are any indicator, was the merchant faction. Through his role in the regulation of Indian and Canadian trade, especially in writing that scathing report
in response to the London petition, his role in the Pastor Rou case, and even his ascension to the Governor's council, Colden alienated the powerful merchants who controlled New York Politics. Therefore, the only way Colden would be able maintain significant influence in Albany was if a Governor sympathetic to his views sat in office. So, with Governor Burnet on the way out, Colden was in a precarious political position, despite all of his intelligence and talents.

Colonel John Montgomerie arrived in New York in 1728 to replace Governor Burnet and it was at this time that, due to the current political landscape, Colden took a hiatus from politics. Montgomerie, a man, who in Colden's view, "did not want natural abilities nor any part of the education proper for a gentleman [but] had given himself up to his pleasures, especially to his bottle and had an aversion to business,"\(^{24}\) wanted nothing more than to profit from his position as governor, as many other contemporaries did. As a result, Montgomerie wanted to do nothing more than follow the path of least resistance and keep political contention to a minimum. Therefore, when he arrived in Albany, he made it his first priority to converse with George Clarke, who was highly touted by Walpole, and to tell him that he would "absolutely trust his advice."\(^{25}\) Moreover, with the Assembly now dominated by the merchant interest, who won the elections in 1727 in reaction to Burnet's regulation of Canadian trade, and thus Colden had no real influence in Albany at that moment. So he took the cue to remove himself from Albany for several years.

Colden remained active during his hiatus, contributing to John Peter Zenger's journal anonymously in reaction to the events in Albany. With Colden and Burnet out of Albany, the power vacuum was immediately filled by the DeLancey interest, which was able to control

\(^{25}\)Ibid. 318
Montgomerie with ease. DeLancey, the new Speaker of the Assembly, had Montgomerie's salary secured for five years. In exchange, Montgomerie was to repeal the regulations on the Indian-Canadian trade passed by Burnet and reduce the salary of Lewis Morris—a not so subtle revenge for Morris's role in the citizenship incident with DeLancey. While Colden criticized these actions in Zenger's journal, his efforts were ultimately rendered fruitless. Colden then directly expressed his concern to Montgomerie, whom Colden felt was setting an incredibly dangerous precedent, in that he allowed the Assembly to set the salary of Crown officials, thus encroaching on the powers of both Parliament and the King. However, all Colden could do was express these concerns for the precedent had already been set.

It was in Colden's interest to have taken a hiatus from politics, because he alienated Stephen DeLancey through his report to the King in response to the London petition and his role in the Pastor Rou case. DeLancey, as it has already been demonstrated, was an incredibly vindictive man. Colden, despite putting forth his best effort to quash Burnet's refusal to swear in DeLancey, did act against DeLancey's interests on numerous occasions, and was associated with the faction that was responsible for the swearing in incident. Therefore, it would not only it be a personally satisfying vendetta to attack Colden, but a politically sound tactic. Colden, who recognized that his influence could be felt even if he was away from Albany, made the correct move to leave for a period of several years. Colden could still speak through James Alexander, while also benefitting from the protection of being absent.

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The Whig inclinations of Colden's youth may serve as a surprise to those who know of the actions he committed as governor in the 1760s, but taken in the full context of the actions of his early political life, these inclinations are all consistent with one that supported the monarchy first and foremost. Colden's concern with the amount of fraud and overt smuggling through Native Americans demonstrates that his loyalty was with the crown from the moment he stepped into Albany. He earned many powerful enemies in the political elite by regulating this trade, but he kept his ideological zeal, and continued battling with the merchant class. When he launched a collection of press attacks against the acts of Governor Montgomerie, he was not launching them against what he recognized as a true representative of the king, but against a weak man who only sought to profit from his office—setting what Colden perceived as the dangerous precedent of allowing the Assembly set the salary of the Governor. It seems, then, that while Colden was a true Whig when he lived in Scotland, in New York he was very much a Tory.
Colden's First Political "Hiatus": an Era of Political Conflict

Some scholars point to Colden's fervent opposition to Governors Cosby and Montgomerie as evidence for his anti-monarchical tendencies. Colden's heretofore most significant political biographer, Keys, completely ignores this period of Colden's life in her analysis. In fact, Colden's significant political actions during his supposed "hiatus from Albany" demonstrate that he held true to his support of the crown. Colden was disgusted with Cosby before he even set foot in New York, recognizing his crimes against both merchants and the crown. This opposition was brought to fruition by the factional alliances of the two politicians, which manifested themselves in the two court cases of Rip Van Dam and John Peter Zenger, as well as Cosby's suspension of Colden from his office of surveyor general. Colden ultimately went on to support Cosby's chosen successor, George Clarke, because he made strides to tighten royal authority and expand the power of Colden's Country party. Therefore, Colden was opposed to royal governors not because they were royal, but because they were powerful leaders of the opposition party, who, due to their own greed, set precedents that weakened the crown in Albany.

Governor William Cosby came upon his position in New York politics with similar goals to John Montgomerie's. Cosby was already a seasoned colonial politician. Before his stint as New York governor, he served as governor of Minorca, a British colony in the Mediterranean. While governor there, he launched a half-baked scheme to steal a great amount of tobacco from a local merchant, using a faulty pretense of poor British-Spanish relations as justification.28 Once

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Cosby was found out, he was ordered to return the tobacco and pay a hefty fine of £1000 sterling. Conveniently, at the time of his fine, John Montgomerie died, and Cosby used his connections to land a transfer to New York. Many contemporaries understood the New York governorship to be quite lucrative due to its connection with the powerful merchant class, and thus it was also understood among the British political elite that Cosby's intention in the transfer was purely to recoup the losses he suffered at Minorca.

Colden certainly understood Cosby's transfer in this context, and therefore he was inclined to remain in the countryside away from the politics of Albany. He saw Cosby as a worse version of Montgomerie, under whom Colden also had little power even when in Albany. In his history of Cosby's governorship, Colden labeled Cosby a tyrant, a robber, and a threat to the moral fabric of New York. His strong distaste for Cosby might have been due to his complete abhorrence of the acts he committed as Governor of Minorca, but that does not tell the whole story. Colden also knew that Cosby would seek the path of least resistance in order to profit from his office, much as Montgomerie did when he arrived in New York. Therefore, Cosby would have to ally himself with the sitting majority in the legislature, the merchant faction led by Stephen DeLancey—Colden's political enemy.

Colden's suspicions of this factional alliance came to fruition through Cosby's first act as governor. Cosby called a meeting of the legislature in which he claimed that he had postponed his arrival to New York in order to successfully fight for New York's mercantile interests in

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29 Ibid. 283-286
30 Ibid. 283-286
31 Ibid., 286
Parliament. In return, Cosby demanded "a Revenue as full and ample and for as long a time as they or any former Assembly at any time [had] given," basically a large monetary gift.

Conveniently, the amount of the gift he asked for was £1000 sterling, the exact amount that he owed for his misdeeds as Minorca governor. The merchant led legislature was supportive of giving Cosby this monetary reward, but some members rebuffed him on the amount, saying that £750 sterling was sufficient. Cosby subsequently invited those who voted for £750 to his house for a lunch the following day. At this lunch Cosby vehemently scolded them, and in turn those Assemblymen acquiesced to his initial request of £1000. Surely a man who had such power over the opposition party to Colden would make the outspoken Colden's political career suffer—such as he did to Rip Van Dam and Lewis Morris.

Cosby had politically and economically crushed Rip Van Dam through an incident in which he took half of the salary Van Dam earned while serving as interim governor. There was in fact an ambiguity in the New York legal code regarding the payment of interim governors—if one was serving in the place of an absent governor he was entitled to half of the salary, whereas the other half went to the governor, but nothing in the law covered serving in place of a dead governor, such as the dead Montgomerie. Therefore, the Assembly just paid Van Dam the entire governor's salary for his favorable service. Cosby arrived with written royal instructions to obtain, for himself, half of the salary Van Dam earned as governor. While Colden claims that Cosby must have known of the ambiguity in the New York law and "produced" these instructions, the instructions were still written without due process given to Van Dam. Therefore, Van Dam refused to pay the back salary owed to Cosby. Cosby in turn wanted to file
suit against Van Dam, but it was unclear where the case would be heard. Cosby, who had the
decision on which court the suit would be filed in, refrained from filing it in a civil court in front
of a jury. His reasoning was that since he was a recently appointed governor with an already
tarnished reputation from his antics in Minorca, going up against a jury might stack the odds
against him. Therefore he decided that the case would be heard by the New York Supreme
Court, in front of Chief Justice Lewis Morris, and Justices James DeLancey and Frederick
Phillipse. Van Dam's lawyers, Andrew Hamilton and William Smith, argued that the Supreme
Court of New York could not stand in as the Court of the Royal Exchequer. Morris agreed with
Hamilton and Smith, orating a carefully written opinion that carefully demonstrated the lack of
jurisdiction. However, being of the merchant faction, DeLancey and Phillipse sided with
Cosby. Upon hearing this, Morris stormed out of the courtroom, effectively ending the
proceedings. For, as Colden argues, Van Dam and Morris had won in the court of public opinion,
and if Cosby decided to continue with the case in the absence of Morris, he would be accused of
setting up a "Despotic and Arbitrary Government by which all mens lives and estates might
become precarious." As a result of his defeat, Cosby indefinitely suspended Morris from his
seat on the Supreme Court, effectively destroying his political career in New York.

The direct aftermath of the Van Dam trial was a solidifying of the current rigid party
structure with Cosby at the helm. The landed elite wanted nothing more than to oust both the
merchant faction and Cosby at this point. Cosby had been extremely hostile towards them. When
nominating James DeLancey as Chief Justice of the Supreme Court, he purposefully arranged his
governor's council meeting. Most of the council was of the opposing party, so that they did not

University Press, 1972), 7.
38 Cadwallader Colden. "History of Cosby Administration" in The Letters and Papers of Cadwallader Colden 1711-
39 Ibid. 302
have the requisite number of members present for a quorum to actually take the appointment into consideration. When Colden confronted him about this, asking if he even cared about the council's opinion, Cosby offered that he did not care at all. Moreover, there was a special election held for the seat of an assemblyman from DeLancey's home district, who had died. Lewis Morris Jr. ran for the seat against the Cosbyite William Forster. The election became an intense showing of party politics, with both sides taking to the streets to demonstrate their individual party's platform on the day of the election. Moreover, a Cosby supporter attempted to discredit 38 of Morris's 231 votes, which was not in fact the margin of victory, by making all voters swear an oath, knowing that the local Quakers supported Morris. Quakers objected to taking oaths as a matter of principle, feeling that forcing one to take an oath implied that either they were dishonest, or that honesty in the context of the oath was more important than in other contexts. Therefore, Quakers rejected the practice of taking oaths on a religious ground, which was well known to many non-Quakers, even in the times of Colden. Therefore, the Cosby faction sought to disenfranchise the New York Quakers because they supported Morris. Morris ultimately won the election, however, and it was a small victory for the minority party.

Meanwhile, with party politics raging in Albany, Colden kept busy as surveyor general. However, Colden had been repeatedly approached by Cosby with a scheme in which Cosby would end up receiving one-third of all land grants, giving kickbacks to Colden in return. It is no surprise that Colden flat out rejected this idea. Therefore, due to his lack of cooperation in this corrupt scheme, Cosby suspended Colden from his office of Surveyor General. Cosby justified this move in London by claiming that Colden had smeared Cosby's name. His alleged that

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41 Ibid. 12.
Colden had broadcast to the public that Cosby was poor and could not pay his debts; that Colden showed Lewis Morris a letter concerning the meeting about James DeLancey's appointment, a breach of the trust of the council and that Colden had supported the Pretender in the Jacobite rising of 1715. Morris, who was present in England at the time, pleading his own case, defended Colden on all accounts, yet Colden was not restored until Cosby's death.43

When John Peter Zenger began publishing an anti-Cosby, anti-merchant journal in an effort to win the public opinion battle for the "country party", the landed elite, Colden had more than enough incentive to contribute. The country party knew that to overtake the majority in the assembly, they would have to win over voters through a public relations battle. They saw how they were able to win an election in a hotly contested district by doing so with Lewis Morris Jr., so they wanted to continue this process. Therefore, they began publishing anonymous attacks against Cosby and the "court party," the merchant majority party, in Zenger's newly formed New York Weekly Journal. Colden had a tremendous incentive to write in Zenger's journal. On moral grounds alone, Colden greatly disapproved of Cosby,44 and it became largely personal for Colden when he was both snubbed when protesting the appointment of James DeLancey, and removed from his Surveyor General office. Therefore, he became one of the chief contributors to Zenger's journal.45 While these published attacks were returned by counterattacks published in the court party controlled New York Gazette, Cosby was infuriated by them. So much so that he had Zenger thrown in jail for libel, thus initiating perhaps the most important incident of his governorship—the famous John Peter Zenger trial.

45 Ibid. 329. Colden's lamentation over the harshness of his attacks on are the only evidence for his contributions since the articles critical of Cosby were anonymous.
The Zenger trial was a landmark case, not only in New York politics, but in American history at large. Following election victories by the country party, Zenger and his contributors completely made a fool of Cosby in the *Journal.*\(^{46}\) Cosby appealed to the majority of his council who found that at least four issues of the Journal were libelous and seditious, giving grounds for Cosby to imprison Zenger. Zenger's bail was set a price he could not pay, £400 plus an addition set of fees which amounted to £400, so he waited for trial in jail for several months.\(^{47}\) One of the issues facing Zenger was that he could not use a local attorney since, operating through Chief Justice of the Supreme Court James DeLancey, Cosby was able to disbar Zenger's councilors—William Smith was in fact disqualified.\(^{48}\) However, luckily for Zenger, a sympathetic Andrew Hamilton, a heavyweight lawyer from Philadelphia, heard about his case and immediately came to Zenger's aid. In defending Zenger, Hamilton appealed directly to the jury, using the truth as a defense against the charges of libel, despite its being irrelevant in contemporary legal precedent whether or not libel was factual. This defense worked, however, due to Hamilton's association of the definition of libel with an incredibly unpopular institution, the Star Chamber.\(^{49}\) Therefore, Zenger won the case and Cosby suffered his greatest political defeat.

Hulsebosch understands the Zenger Trial in terms of its significance towards constitutional questions regarding the power of the governor to create a court. As was previously mentioned, Cosby made the political move to have the Van Dam case heard in the Supreme Court, thus serving as a local exchequer court, rather than the Court of the Royal Exchequer. In criticizing this tactic as politically motivated and illegal, Zenger's journal underscored a key

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\(^{46}\)Ibid. 319
\(^{47}\)Ibid. 329
tension as to whether or not it was within the bounds of the governor to create a court at all. By arguing that this was libel, Hulsebosch argues, Cosby represented the side of expanding the executive power. This idea has interesting implications for Colden, who both contributed to Zenger's journal and wanted to expand executive power. Colden's royalist motivation seems to be at odds with the side he came down on in this conflict, as Hulsebosch illustrates, since Cosby was fighting to expand the power of a royal figure. However, Cosby, in essence, wanted to give greater autonomy to the governor, regardless of any relationship to the king. Giving the governor more power over the court system in this regard, bore no relation to giving the crown any more power in the colonies. Whether or not Colden was cognizant of this conflict does not really matter because it was almost a non-issue relative towards his aims. However, one could argue that later on in his career, when Colden attempted to secure appeals of jury decisions to the governor, Colden was doing the same thing as Cosby—creating more power for the governor irrespective of any relation to the king. The crucial distinction in these two cases is that Colden used a royal instruction as his underlying justification, and saw it as the king's prerogative; whereas Cosby was fighting for a more personal reason, to secure money from Van Dam and, subsequently, Zenger.

Many may interpret Zenger's publications, which were anti-authoritarian and anti-tyrannical in nature, as anti-royal, and by extension Colden as writing against British authority. However his participation in Zenger's *Journal* was merely obeying partisan, as well as royalist, motivations. As was previously stated, Colden was motivated by his removal from office and Cosby's manner of conducting his office. Moreover, Colden's close political ally Lewis Morris,

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who was in London pleading to regain his office as Chief Justice, also made sure that Cosby's
defeat in the Zenger trial was widely publicized.\textsuperscript{51} His intention was merely to ruin Cosby's name
abroad, and possibly to have him removed from office. Colden, who tacitly accepted this,
therefore was not anti-monarchical because he associated with a party that recognized the
monarchy's power to remove a government official. If Colden was against the crown, he would
be against this process, and in turn argue for a more democratic procedure. Moreover, Colden's
intentions were to bring down a crown official who was acting in contrast to the royal
prerogative, so he was acting in support of the royal interest. One irony is that the Zenger Trial
ultimately created a greater freedom of the press in American case law, a freedom that would
later serve to destroy Colden in the Stamp Act Crisis. Moreover, it also seems contradictory that
Colden supported this freedom while also attempting to infringe upon the right to trial by jury
later in his political career. However, as this paper will later show, Colden's true allegiances were
with his political faction and the king in Parliament. Therefore, the two do not seem, at this
point, to contradict in the slightest.

Shortly following the Zenger trial, Cosby had been stricken with tuberculosis.\textsuperscript{52} Faced
with the fact that Rip Van Dam, now an enemy of Cosby and his associates for obvious reasons,
would serve as acting governor in the case of his passing due to his status as governor's council
president, Cosby made his last act as governor. Cosby suspended Van Dam from his duties as
president of the council, although he would remain on the council, and made his political ally
George Clarke president.\textsuperscript{53} When Cosby died and Clarke assumed the role of acting governor,

\textsuperscript{53} Ibid. 346
Van Dam protested, to such an extent that he actually nearly aroused an armed resistance against Clarke's authority. Clarke was confident that the public was on his side, but adjourned the Assembly, which would cause Van Dam to insist that he illegally had dissolved the legislative body.\textsuperscript{54} Van Dam responded by attempting to nominate several officers, such as the Albany mayor, sheriff, and coroner, and Clarke refused to acknowledge them. As the day drew near for Clarke to nominate different officers, he called in troops for protection, as public discourse turned threatening.\textsuperscript{55} When the assembly reconvened, and it became clear that Clarke was not going to nominate the men Van Dam selected, Van Dam and his nominees "resolved to act the next day, and resolutions were taken to support them by violence."\textsuperscript{56} However, luckily, for all parties involved, Clarke's commissions to act as governor arrived in Albany that next day, and the public was quick to support him. Colden, and the public at large, understood the near armed resistance as stemming from a recognition of Clarke being "justified in taking the Administration upon him."\textsuperscript{57} Moreover, while Clarke was responsible for the removal of Colden's mentor, William Burnet, Colden fully supported Clarke's commission as Governor over his political ally Rip Van Dam, due to the royal prerogative. Therefore, one may conclude from this episode that Colden's first priority, politically speaking, was the crown.

Clarke's first act as governor was perhaps the most significant, and most relevant to both Colden's position in the political landscape, and the New York political structure as a whole. Clarke served as an interim governor until the crown nominated John West as Governor. West, who was perfectly content with gaining half a salary as an absentee governor, allowed Clarke to

\textsuperscript{55} Ibid. 26
\textsuperscript{56} Ibid. 27
carry out the executive responsibilities of the governor as the lieutenant governor. However, as was previously mentioned, an official acting in this manner only received half of the governor's salary, as per New York law. The Assembly was only willing to pay this half salary, so Clarke dissolved the legislature. In the elections that followed, the Country party took the majority in the legislature, ousting the former Court party majority. While Colden was still semi-retired from political life, this changing of the guard allowed him to engage more in Albany dealing—a great deal more than he had during the Montgomerie and Cosby administrations.

While the political winds were shifting a great deal, they were still on a downward spiral, at least from Colden's perspective, since Burnet left office. In Montgomerie, Cosby, and Clarke, New York had three governors who truly weakened the Crown's power in New York politics in order to fulfill their own selfish ends. Many politicians saw governorships as a means of accruing personal wealth; however, in New York the only way to earn a great deal of money as a Governor was to concede to the legislature, which had control over the Governor's salary. Cosby was the greatest culprit in this regard. By acquiescing to the legislature in every respect so that he could personally profit, Cosby weakened the royal prerogative. Clarke was at least able to reassert some royal power by dissolving the legislature for not paying him his full salary. Colden approved of this arbitrary abuse of executive power, because it served both the crown interests and those of his factional allegiances.

Allegiance to the Crown and factional politics guided Colden's actions, even while he was away from Albany. He spoke out against Cosby during the Van Dam trial, and refused to take part in Cosby's schemes that would defraud the Crown. As a result he was removed from his

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58 Ibid. 354
position as Surveyor General\textsuperscript{59}, and spoke out against Cosby through John Peter Zenger's journal. Zenger was subsequently tried for libel due to Colden's attacks on Cosby, as well as other publications. Ultimately, Cosby was defeated, and his last act as Governor was to put a man in office who would turn Albany politics on its head, and restore Colden's, and his allies', political clout.

\textsuperscript{59} Which seems to justify his desire to stay away from politics while the opposition has all the power.
Political Enemies: How Colden Battled James DeLancey and the Assembly

Cadwallader Colden reemerged onto the New York political scene through serving as an advisor to Governor George Clinton. As an aid to Clinton, Colden sought to bolster the royal prerogative through Clinton. In his first act as the governor's advisor, he crafted a report on a meeting with Indians, which Colden had attended, and this report, which eventually would lead to a treaty, was questioned heavily by James DeLancey, the sworn enemy of Clinton and Colden. DeLancey was bitter because he had initially served as Clinton's advisor, and used this position to gain his own ends, and he lost this position to his enemy. As Colden continued as the advisor to Clinton, he helped the Governor tackle several challenges presented to him by DeLancey and his Assembly. One concerned an accusation of embezzlement against Clinton, in the midst of a crisis concerning a debt owed to a militia regiment that mutinied. Another dispute came when Clinton and Colden pressed for the salaries of royal officers, such as the governor, to be determined independently of the Assembly, thus removing this check the legislature had over the executive. However, ultimately the Colden-Clinton alliance failed, both in the short term and long term, because they did not accomplish most of their policy goals. To make matters worse for the two, DeLancey became acting governor. Therefore, as an aid to George Clinton, Colden sought to expand the ever shrinking power of the royal prerogative in New York despite intense political conflict with DeLancey. However, he failed to accomplish this.

George Clinton came to, and dealt with, his position as New York governor in a manner similar to that of his several predecessors—he needed money and sought the position to fulfill that end. Clinton was a naval officer in Britain who, unlike his peers, never was able to profit from his positions in the navy. He pleaded with the Duke of Newcastle to get him a profitable position, and when he was appointed governor of New York he understood it to be just that.
Therefore, when Clinton arrived in 1743, he did not want to rock the boat—much like Montgomerie and Cosby. So he took on as his close advisor James DeLancey, which would in time serve to haunt Clinton. Initially, Clinton acquiesced to any request made by DeLancey. One of his first moves as Governor was to make DeLancey's term as chief justice virtually a life long office.\textsuperscript{60} Clinton also assented to more or less every bill that was offered to him by the Assembly,\textsuperscript{61} something that was orchestrated by DeLancey. Therefore, despite Clinton's new title as Governor, it was DeLancey, who already had de facto control of both the legislature and the judiciary, who now had control of the executive office in Albany—making him the most powerful man in Albany.

DeLancey's influence over Clinton would not last, and with his fall as Clinton's right hand man, Colden filled the void DeLancey would leave in the Governor's mansion. By 1745, Clinton became disillusioned with the intentions of the Assembly, more specifically DeLancey. King George's War was raging on the frontier, and the Assembly continually frustrated Clinton by encroaching upon his power over war appropriations, and more or less sabotaging his military strategy. The first real conflict this tension bore, came when Clinton wanted to raise money to support troops at Oswego and the Assembly refused. Clinton, who heretofore expected DeLancey to help him with these matters, saw that DeLancey either could not or would not help him.\textsuperscript{62} Therefore, it is no mystery that after a night of heavy drinking at Clinton's estate the two would butt heads. More specifically, Clinton fired DeLancey, telling him that he did not want to be micromanaged in the way Delancey was handling him. DeLancey retorted by threatening

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vengeance upon Clinton. However, Clinton then found himself to be in quite a predicament. He needed to go to a conference hosting various Indian tribes to discuss alliances and strategy pertaining to the current war against the French, and needed three of his council members to be present. DeLancey obviously avoided this responsibility, not wanting to help his estranged host in his parasitic relationship with him, and other members of the council pleaded that they could not attend—using whichever excuse they saw fit. Colden was thus called upon, despite his initial pleas to stay at home. However, this choice to go with Clinton would ultimately prove to be one of the most important in terms of his political power in New York.

The results of this meeting would serve to set the tone for Colden's relationship both to Clinton and to the political landscape of Albany for the remainder of Clinton's administration. Clinton could not attend the conference because he fell incredibly ill. Colden who stood in his place reported back to the assembly with an account of events at the meeting which would help shape an Indian treaty. Several members of the council took immediate offense to the content of the report. In particular, there was a paragraph that mentioned that no one else on the council, besides Colden and two others, wanted to go with the governor—which was true. DeLancey took great offense to this, bringing up the issue in the last council meeting before it adjourned for the winter in 1746. Colden tabled the issue, citing that in fact no one actually wanted to go, but they should discuss it in privy council. As soon as Colden left Albany for the winter, he was smeared by DeLancey and his faction to George Clinton. They claimed that Colden was merely

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using Clinton, in a manner similar to DeLancey, and Colden, upon receiving news of this, defended himself to the Governor in a letter that smeared DeLancey and his allies. Colden argued that he sought to see the case go to Privy Council because the Privy Council, which included the Governor, could adequately judge the veracity of Colden's account of the meeting with the Indians. The council alone, Colden argued, was trying to supersede the authority of a Royal official, attempting to censure a paragraph from an official document—a power they did not have, which would give them the precedent to further censure the Governor if they chose, Colden argued. So in engaging in this seemingly partisan exercise, Colden was also protecting the royal prerogative. This type of defense endeared him to Clinton, who continued to use Colden as his close advisor and speech writer.

Colden continued to advance the royal prerogative through the partisan politics in Albany during a dispute between Clinton and the Assembly concerning a rather large debt to be paid to volunteer militia fighting on the frontier. Essentially what happened was Clinton rose a regiment of volunteer militia to go on a military expedition to fight the French in Canada in 1746. However, once the troops reached Saratoga, the expedition was cancelled by the assembly, and the volunteers were told to go home despite not receiving the money they were promised. The Assembly stood firm in their resistance to pay these troops, and Clinton became exasperated as all his efforts to convince the Assembly to appropriate more funds failed. Reacting to a lack of payment, troops in upstate New York mutinied and rioted. These riots became dangerous enough for Colden to implore his wife to return to their home in the countryside, worried that the troops

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67 Ibid. 334
may storm the cities and burn them to the ground. In addition to the unrest caused by the volunteers, DeLancey, in conjunction with his party in the Assembly, openly accused Clinton of "misappropriating" funds by making a series of suspicious financial decisions.

Colden responded to the Assembly in his pamphlet "Address to Freeholders," in which he argued to the people of New York that, by not paying the troops, the Assembly was both putting the lives of their constituents at risk and flouting the authority of the Crown. Colden claimed that the entire county of Albany would be destroyed while the Assembly refused to advance any money to the Governor, who had personally withdrew loans to ease the tension of the troops—risking his own assets. Moreover, Colden laid his argument's foundation on grounds of the Assembly disrespecting the king. "Perhaps this Province may be forced to pay this money...and their ungratefull and undutyfull behaviour to the King in the Character of his Governour be one reason why they may not be consider'd so graciously." After the Assembly voted against Clinton's motion to appeal to the Crown to resolve this matter, Colden continued the argument concerning the royal prerogative in a letter to Clinton, "The assembly...resolv'd that who ever advised that answer are enemies to the constitution of this Government which seems to imply that...the King has no authority to interpose in Differences between a Governor and an assembly of this province and seems to be a claim of Independence." Colden understood the conflict between Clinton and the Assembly as one of conflicting political agendas. On the one hand, Clinton sought to bolster the Crown's interests, because they in turn would benefit him, whereas

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the Assembly advanced against the Crown more and more with each decision they made. By denying a royal official any agency in stopping a revolt because it took power away from the Assembly, the Assembly took an ideological stand that the power of the legislature trumped the power of the Crown. Colden, being the Royalist he was, could not stand to see the legislature encroach upon Royal authority in this manner, and consequently made it his agenda to fight back.

Colden and Clinton continued fighting the legislature, with their next battle being a fight over how often salaries were declared for certain crown officials, including the governor. According to William Smith, the assembly felt that since they had the power of the purse, they had the annual responsibility of declaring how much the Governor was to be paid. Therefore, for the first four years of Clinton's administration, his salary was given on an annual basis, meaning that the legislature had control over his salary every year. Colden took issue with this practice writing in January of 1747, "the proper Ballance of power essential to the English Constitution is entirely distroy'd in the northern Colonies is wholly owing to the Governors having no subsistence but from the Asemblies." Since the assembly decided, on a yearly basis, how much the governor would be paid, they, in effect, had a tremendous amount of leverage over the governor, who, for the most part, was mostly concerned about making money. If the governor was given more years for each salary declaration, the assembly had less influence over the governor, who only really needed to acquiesce to the demands of the legislature when they were about to pay him.

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Clinton took a stand against the assembly in 1747, refusing to accept the one year salary and demanding multiple years. The assembly refused to part with their power to declare the governor's salary on a yearly basis, and the two sides engaged in a conflict for several weeks. It culminated once a report was sent to the king concerning the matter. The crown responded by sending a new royal instruction with Clinton's successor, Danvers Osborne, that gave more independence to royal salaries. However, since Osborne committed suicide within days of his arrival, and DeLancey succeeded him, the royal instruction was buried.

It should be contended that Clinton's stand for more independence on his salary was in large part due to Colden's influence. As was already mentioned in the second chapter of this paper, Colden had been concerned about this issue since the time of Montgomerie, who Colden privately and publicly criticized for allowing the assembly to set his salary on a yearly basis as a means of bribery. Colden understood then that Montgomerie set a dangerous precedent for the power of the governor, and it became salient once there was a governor in conflict with the assembly. Therefore it stands to reason that since Colden wanted to fight back against the assembly's ever increasing power, he would fight this precedent.

Perhaps DeLancey ultimately won in the political struggle between himself and the Colden-Clinton alliance because DeLancey became Lieutenant Governor at the end of Clinton's Administration. In fact DeLancey was actually appointed to this position in 1747, but Clinton refused to acknowledge this appointment, for a multitude of reasons. First and foremost, he absolutely despised DeLancey, and did not want to partake in any action that would benefit him.

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directly. Moreover, it is implied by William Smith that Clinton would have retired much earlier had DeLancey not been appointed to this position, since leaving office would make DeLancey the de facto governor. Clinton actually strove to have Colden nominated to this office, however he was unsuccessful in this endeavor for perhaps two reasons. Colden was not well liked domestically, and he had angered both the landed class and merchant class on several occasions when he attempted to advance the royal prerogative. DeLancey was well connected abroad. For example, one of his brothers-in-law was an advisor to Robert Walpole. Therefore, once Clinton was ousted from office, replaced by Sir Danvers Osborne, DeLancey's nomination was ratified. Coincidentally, Osborne committed suicide five days after arriving in New York, and DeLancey became governor. Clinton, who was destroyed politically, left the colony, and Colden, who was once again rendered impotent by the sitting governor, once again withdrew to the countryside. Therefore, it might have been the case that DeLancey got revenge on Clinton. Clinton was frustrated by DeLancey in every political move Clinton tried to make. Moreover, DeLancey managed to take away the governorship, although through succession, from Clinton. Moreover, Colden, Clinton's right hand, also felt the wrath of DeLancey as he too was defeated once DeLancey had risen.

Colden strove to uphold the royal prerogative and to prop up Clinton's administration at the same time. To a degree he was successful in doing this. He at least demonstrated to his political foes that they were on a path that ran against the will of the crown, and to an extent won the public relations battle—especially in the militia debt incident. However, DeLancey's

76 Ibid. 394
influence in both the legislature and in the courts, as well as back in England, was too great of an obstacle to overcome. Therefore, the Clinton administration ultimately fell to the DeLancey faction. Colden was able to maintain his seat on the council during the DeLancey years, and with the death of DeLancey he became the acting Governor of New York. The first several months of his administration were quite uncontroversial as Colden enjoyed walking about Albany and hearing former enemies congratulate him on his seat.
Forsey v. Cunningham was the single most significant event in Colden's political career. It tested his allegiance to the crown, and ultimately brought upon his demise. It concerned a relatively apolitical court case, which exploded into a legal philosophical question concerning appeals and the right of the public to trials by jury. As a royal official, Colden sought to expand the crown's influence in the courts, by broadly interpreting a royal instruction in order to hear Cunningham's appeal on the grounds of jury error. Colden's actions were largely protested in the press, and pinned upon him as the "anti-jury governor." This reputation would haunt him, since the Stamp Act coincidentally was passed during the Cunningham appeal. The Stamp Act brought about, in the minds of colonial patriots, a threat to trials by jury. Due to his position in the Forsey case, Colden suffered a great deal of unrest before he even had the chance to enforce the Stamp Act. Colden ultimately sought to uphold the royal prerogative in his first term as acting Governor, and did so to a great extent. However, his actions during the Forsey v. Cunningham incident ultimately incited a tremendous backlash against him once he attempted to enforce the Stamp Act, which ultimately brought about his failure as governor.

For such a politically charged event as Forsey v. Cunningham, the origins of the case were extremely apolitical. Thomas Forsey owed fellow Albany merchant Waddell Cunningham £150. Due to extenuating circumstances, Forsey's payment had been delayed significantly. The matter was taken public, with the two bickering over the debt in the New York Gazette. To make matters even more personal, Forsey sent a letter to Cunningham's business partners,

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accusing him exacerbating the situation with his publications in the *Gazette*. In retaliation, Cunningham set up a private meeting with Forsey, in which Cunningham threatened to literally whip Forsey if he did not retract his letter. Forsey refused. The following day, Forsey, in agreement with Cunningham's demand, brought a bullwhip to an agreed upon place to receive his penance for the letter. Cunningham arrived with a concealed sword and accosted Forsey, stabbing him in the left shoulder. Cunningham was subsequently jailed, but was not brought up on charges because Forsey's condition was teetering near death for weeks. When Forsey recovered, Cunningham was brought up on assault and battery charges. Forsey subsequently brought a civil suit against Cunningham and a jury in the New York Supreme Court ruled in favor of Forsey in the amount of £1500.

The verdict of the civil trial prompted a series of appeals that raised questions concerning the crown's role in the court system. Cunningham was outraged by the jury's ruling, insofar as the damages they awarded Forsey were concerned. However, his lawyers, John Morin Scott and William Smith Jr., refused to take part in any appeal, since they did not see any grounds for one. Cunningham's third lawyer, and personal friend, Robert Waddell, on the other hand, saw a route for an appeal. Waddell wanted to make a direct appeal to Colden, through a broad interpretation of the 32nd instruction of the Governor of New York, under which appeals could be more broadly defined to include appeals other than writs of error. This specific instruction reads,

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79 Ibid. 6
80 Ibid. 6
81 The fine for which was £30.
83 According to "Writ of error | LII / Legal Information Institute." LII | LII / Legal Information Institute. N.p., n.d. Web. 4 Mar. 2013. <http://www.law.cornell.edu/wex/writ_of_error>. A writ of error is a writ emanating from an appellate court, demanding that a lower court convey the record of a case to the appellate court so that the record may be reviewed for alleged errors of law committed during a juridical proceeding.
The commander in chief of our said province...in all civil causes on application being made to...the commander in chief...permit and allow appeals from any of the courts of common law in our said province unto the commander in chief and council of our said Province; and you [the Governor] are for the purpose to issue a writ in the manner which has been usually accustomed.\textsuperscript{84}

Therefore, Waddell was determined to use the Governor's power, endowed by the crown, to hear appeals, and to interpret the "manner which has been usually accustomed" extremely broadly, to encompass appeals on grounds other than writs of error. After Waddell failed to make a motion for an appeal through the notary public in the Supreme Court, he went directly to Colden. Colden's supportive reaction to hearing Waddell's argument was to be expected, since interpreting the instruction in Waddell's favor would expand royal power, and Colden was a staunch supporter of the King's prerogative. Colden ordered John Kempe, the attorney general, who was also present at the meeting between Colden and Waddell, to write his opinion on the matter and send it to him the following day.\textsuperscript{85}

Kempe's opinion highlights both the case history of the trial by jury, as well as the philosophical and historical importance of the jury—his sentiments echoed throughout New York. The importance of limiting the grounds for appeals to only writs of error, procedural errors of the court, was that it could keep the government from manipulating the courts. If the appeals court, or even worse the executive, could hear an appeal based on the grounds that the jury interpreted the facts incorrectly, then those who heard the appeals would ultimately decide the verdicts, not the jury. If one was to allow a crown representative to hear an appeal based on anything other than a writ of error, a grossly irresponsible precedent would be set that could lead


to an arbitrary abuse of power. Kempe echoed these sentiments in his opinion to Colden. However, Colden was by no means going to make his decision based on Kempe's opinion. In fact, Colden's decision had been made already. Colden submitted an order to the Supreme Court to appear before himself and the Provincial Council to defend their appeal denial on the same day that Kempe sent his opinion to Colden. The Supreme Court Justices, led by Chief Justice Daniel Horsmanden, echoed Kempe's opinion, adding that the appeal was based on an erroneous interpretation of the 32nd Instruction. Horsmanden's opinion strongly demonstrated the contrasting ideologies of himself and Colden. He argued, "An Attempt then to re-examine the Verdict of a Jury, is repugnant to the Laws both of England and this Colony...and being Dangerous both to the Prorogatives of the Crown, and the Liberty and safety of the Subject."

Ultimately, what proved Colden's fervent dedication to the royal prerogative was his insistence in Forrest v. Cunningham against the overwhelming majority opinion. Colden argued, despite the unpopularity of his opinion, that, “[T]he executory judicial powers are certainly in the Crown." Colden continued by arguing that Parliament encroached upon the autonomy of the court system by creating the law that established writs of error as the only grounds for an appeal—not allowing a case history develop. Therefore, he felt that the foundation of the appeals system was based on an arbitrary exercise of power, and that it needed a change. Colden argued that the court system would be far better off if a body such as the Provincial Council decided the verdicts of cases. Juries were rife with corruption and injustice, Colden argued, whereas the

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moral character and intelligence of an educated body such as the Provinical Council elevated it over low motives.\textsuperscript{90} Not only did Colden make these arguments domestically, as rebuttals against the likes of Horsmanden, but he also appealed to London for support. He complained to the Board of Trade and the Earl of Halifax that the power of the New York court system in general was becoming too great, and was starting to infringe on the king's prerogative.\textsuperscript{91} Colden's solution to the problem, he wrote to London, would be to remove Horsmanden from office.\textsuperscript{92}

It could even be argued that Colden was against the royal prerogative, in \textit{Forsey v. Cunningham}, since he was attempting to create a judicial system more powerful than any in the British Empire. Kempe made a similar argument in his initial opinion to Colden, arguing that he should not pursue interpreting Instruction 32 so broadly, since no official in England would support giving a colonial governor more power than the highest court in England.\textsuperscript{93} This should be interpreted in either one of two ways. The first is that Colden was attempting to settle old political scores, getting back at the old DeLancey and Livingston parties by trying to have major players removed from the Supreme Court. Another possibility is that he was, as the French would say, "plus royaliste que le roi," more royalist than the king. As his past would indicate, Colden would be more inclined to fall in line with the latter. Moreover, by going against an overwhelming majority, it does not seem as if Colden thought he was going to be truly successful at any type of political alienation. If Colden wanted to settle an old political score, he could have chosen a battle in which the sides were more evenly drawn, but Colden seemed to be

\begin{itemize}
\item \textsuperscript{90} Ibid. 3-7
\item \textsuperscript{91} Cadwallader Colden to the Lords of Trade, \textit{Documents relative to the colonial history of the state of New-York: procured in Holland, England, and France, Volume VII} Edited by John Romeyn Brodhead. (Albany: Weed, Parsons, 1853) 679.
\item \textsuperscript{92} Cadwallader Colden to the Earl of Halifax. \textit{Documents relative to the colonial history of the state of New-York: procured in Holland, England, and France, Volume VII} Edited by John Romeyn Brodhead. (Albany: Weed, Parsons, 1853) 680
\end{itemize}
one of the only people fighting for an expanded appeal procedure. A third option would be to claim that Colden was actually trying to advance his own political power by fighting for expanded royal prerogative in the judiciary. However, knowing that his appointment was temporary, his advancing of the power of the governor served his successor more than anyone. Therefore, it stands to reason that, in this case at least, Colden was more royalist than the king.

Whatever Colden's motivation truly was did not matter, for the opinion of the court and of the public was against him. The matter was eventually was heard in the Provincial Council, and to Colden's surprise, the Council ruled that only a writ of error was grounds for an appeal. Moreover, William Smith Jr., who ironically defended Cunningham in the original trial, was now using his connection to the absentee governor of New York, Monkton, to influence people in London to feel that Colden was crossing the line.94 Moreover, William Livingston published newspaper articles in his paper The Sentinel, lambasting Colden for tyrannically infringing on the English Constitution.95 These public attacks against Colden could not have come at a worse time for the governor, for concurrent to the Forsey v. Cunningham controversy was another incident that incited public outrage over trial by jury rights—the Stamp Act.

The tremendous backlash the Stamp Act of 1765 created in New York was largely due to its connection to Forsey v. Cunningham, vis-à-vis the trial by jury question. The Stamp Act was, in effect, a direct tax on nearly all paper goods, including, but not limited to, legal documents, periodicals, and even playing cards—it accomplished this by requiring a stamp on these paper goods made available through the British government. Similar to the reviled Sugar Act of 1764, the Stamp Act gave British admiralty courts, which lacked juries, jurisdiction in Stamp Act

cases. The Stamp Act Congress echoed the general New York concern over the right to juries in its Declaration of Rights and Grievances, holding that "Trial by jury is a right." Additionally, the Congress sharply criticized the use of the juryless admiralty courts in the enforcement of the act. Moreover, Robert Livingston made it explicitly clear in a letter to his father that the trial by jury issue was at the forefront of concerns of the Stamp Act Congress. As one would reasonably guess, Colden's position on the Stamp Act was in favor of the royal prerogative. However, it was Forsey v. Cunningham that ultimately set the agenda for public debate.

The timing of the resolution to Forsey v. Cunningham came as the Stamp Act crisis was gaining momentum in New York, which set the stage for Colden's public demonization. As the Stamp Act Congress met, George III coincidentally ordered that Cunningham's appeal be heard in the New York Supreme Court. By the time Colden got word of this and the order was put into action, the stamps had already arrived from London. Therefore, it was in the forefront of the minds of most New Yorkers that Colden was against juries. In addition to his position as a royal official, and his actual opinion on the Stamp Act, Colden became the ultimate villain in the press. The court procrastinated making a decision regarding hearing the case, until the end of the Stamp Act rioting, and then refused to hear it. Thomas Moore, the newly appointed Governor, arrived the following day and upheld this decision, probably to keep the unsteady peace in the colony.

Perhaps it might be an overstatement to say that the Stamp Act riots were in large part due to the Forsey case, or even the trial by jury question. The act did present the issue of taxation without representation, which the Stamp Act Congress sharply criticized, that served as one of

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the major grievances against Parliament, as any grade school American history class will demonstrate. However, the jury question was still an important one to be answered, and it did not help matters at all that the sitting governor of New York had recently come out publicly against juries. While it is purely speculation at this point, perhaps Colden could have tempered some of the violence had he not come across as anti-jury. This stance stripped away his legitimacy in the eyes of the rioters because he was so easily associated with the Stamp Act. Therefore, while the Stamp Act riots may not have been caused completely by the jury question, Colden's lack of efficacy was completely due to his stance in the Forsey case.

Colden's actions regarding the Stamp Act ultimately reflected a strong willingness to go out of his way to support the royal prerogative. Colden saw a great deal of unrest in Boston as a result of the Stamp Act. He also was aware of its tremendous unpopularity in New York, commenting on the masses, "the Minds of the People [are] disturbed, excited and encouraged to revolt against the Government...and Trample upon the Law." Colden knew it was not popular, and perhaps not even safe to pursue enforcement of the Stamp Act, but as this quote demonstrates he felt that he could not let the law be "trampled upon." Therefore, after the stamps arrived, and Colden determined that Thomas Moore would not arrive in time to enforce the Stamp Act, Colden took an oath to uphold all of the crown's laws. Following this oath, Colden received an extremely threatening letter, promising, among other things, that, "You’ll die a Martyr to your own Villainy, and be Hang’d, like Porteis, upon a Sign-Post, as a Memento to all wicked Governors, and that every Man, that assists you, Shall be, surely put To Death." This

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101 Ibid. 85
threat was a sign of what was to come over the subsequent weeks, in which Colden withstood a
great deal of harassment in his pursuit of upholding the crown's interests.

Among the several accusations made against Colden in his pursuit of the royal interest in
New York, was a claim that he was influenced by his Scottish roots, and was a threat to the
English prerogative in America. This claim is particularly interesting given Colden's true
position as a cog in the royal machine. Critics drew upon an old, factually inaccurate, criticism
Cosby leveled against Colden during the Zenger journal incident, which claimed that Colden
took part in the Jacobite uprising of 1715 in support of the Pretender. These critics argued that
since Colden was loyal to his Scottish roots, and sought to destroy the English monarchy, he took
great strides to implement a more Scottish court system, which was devoid of juries. Not only
was this a more Scottish system, critics argued, but it would also serve to turn true Englishmen
against the Crown and Parliament, who they perceived as the infringing parties on their jury
rights.\textsuperscript{102} This is particularly entertaining because it illustrates pragmatic a criticism of Colden.
That in his royalist zeal, he was actually hurting the crown's interests. The factual inaccuracy of
the claim renders this criticism unsound, but it demonstrates the mass unpopularity of Colden
during the Stamp Act Crisis.

In \textit{Constituting Empire}, Daniel Hulsebosch contends that Colden's Scottish influence was
a central force in the legal conflict in Forsey v. Cunningham. Hulsebosch writes that Colden's
"justification for appeals of jury determinations reveals his grasp on the problem of legal
uniformity in an expanding empire."\textsuperscript{103} He continues to argue that the source of this grasp on the
problem could have come from various sources, including Scottish law, common law, and the

royal prerogative. While it seems as though Scottish law may have played a role in Colden's motivation in the *Forsey* case, it seems as though this was merely a propaganda used against him, as was his Scottish heritage during several points in his political career, including the Zenger trial. It seems more in line with his character to assume that it was his efforts to expand the royal prerogative that he sought to give the executive more power in this conflict.

The backlash to *Forsey v. Cunningham* became salient once Colden put forth an active effort to enforce the Stamp Act. A week before Colden took his oath to enforce all the laws of King George, the stamps arrived in New York. Once it was known that the ship bearing the stamps arrived in New York Harbor, a mob formed with the intention of destroying the stamps, so Colden had them delivered to Fort George. After it was announced that Colden had taken his oath, a mob formed outside of the fort and burned Colden in effigy. They followed this by breaking into Colden's coach house and burning several of his coaches as well as some of his furniture. This incident demonstrates Colden's identity with the Stamp Act, and, more foundationally, his identity with the royal prerogative. The masses immediately took action once Colden was sworn in, and not a minute sooner. If Colden was not so intimately linked with the Stamp Act, then it is safe to assume this violence would have occurred in a much more random fashion. Colden ordered the troops at the Fort to fix their bayonets, however he did not make any strikes against the mob, for he feared doing so would create a civil war in the province of New York. After threats were made against his family, Colden ordered that the Stamps be delivered back to the ship, as a sign of good faith to the mob—so that they might disperse. However, the mob persisted in wreaking havoc outside of Fort George, therefore, on the advice of the commanding officer of the Fort, Colden delivered the stamps to the mayor of New York City. He felt that the stamps would be safe there, and the crowd would disperse, since the mayor would do
nothing against the stamps, and the crowd, who saw the mayor as their representative, would do nothing against the mayor. Colden was right, and the mayor held the stamps until the arrival of Henry Moore.

One may argue that Colden's reluctance, and ultimate failure, to enforce the Stamp Act demonstrates a more pragmatic side to Colden. However, Colden remained a staunch royalist, because acquiescing to the crowd was his only option. Colden lacked any enforcement power once the mob was formed because the limited troops at his disposal were spent defending the fort and the stamps. Had General Gage sent more troops before Fort George was surrounded, it is conceivable that they may have dispersed the mob. Instead Colden was faced with the option of either giving the stamps up to the mayor to hold, and thus quelling the crowd. By doing this he kept the possibility of enforcing the Stamp Act in New York alive. Had he attempted to bring the stamps out of the Fort and start levying taxes on paper without any extra troops, the mob would surely have overthrown the fort. Moreover, the threats made against his family seemed all the more real, with news of a Stamp Act mob ransacking and destroying Thomas Hutchinson's mansion in Massachusetts present in Colden's mind.104 Therefore, knowing that Hutchinson had firmly stood against the mob in his defense of the Stamp Act, he might have feared suffering a similar, if not worse, fate. Therefore, he made a politically wise choice that accorded with the royal prerogative.

Perhaps the most substantive analysis of Forsey v. Cunningham and its relation to the Stamp Act Crisis was The Legacy of Forsey v. Cunningham, by Carney and Kolb. They hold that Forsey v. Cunningham was so significant because it made trial by jury an issue in the Stamp Act crisis. They argue that had the case occurred fifty years prior, it would not have mattered, but

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104 As was mentioned before. Colden made his decisions during this crisis while cognizant of the Stamp Act backlash in Massachusetts.
its coincidental temporal proximity to the Stamp Act, whose backlash is traditionally ascribed to colonial disgust against taxation without representation, made trial by jury an issue. This point is played upon throughout this chapter as one of the primary reasons why Colden failed to enforce the Stamp Act. However, while Carney and Kolb illustrate Colden's royalist motivations, they underestimate his political intelligence, and mistake his self-righteous desire to do what he felt was right in the face of all adversity for incompetence.

Colden sought to protect the Crown's interest despite all opposition in New York. He fought great opposition to expanding the royal influence in the courts through Forsey v. Cunningham, and reveled in his success when the King ordered Cunningham's appeal to be heard. However, this fight cost him dearly in his subsequent political battle, as he failed to enforce the Stamp Act. Despite failing politically, he maintained the crown prerogative by preserving the stamps, instead of taking a firm stance against the mob.

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Epilogue

After the Stamp Act crisis Colden's political career was all but finished. The man was 76 at the time of the riots, but continued on in politics, semi-retired of course, until 1775, one year before his death. In the interim period between the Stamp Act and his full retirement, he did serve as acting governor twice more, but both brief administrations went on without much incident. Colden was incredibly apprehensive about the coming revolution. After the battles at Lexington and Concord he signed a letter to Thomas Gage from several members of the New York assembly expressing great concern over the impending civil war. They desired any means necessary to bring reconciliation instead of conflict. Colden might have understood that this was just the way the colonies were headed. After witnessing such a tremendous amount of power go to the legislature in his lifetime, in addition to the wild displays of the mobs during the Stamp Act riots, he should have seen armed resistance as inevitable. Perhaps he was blinded by his royalist notion of the world and felt that the crown was invincible, so he did not want unnecessary bloodshed in the name of a lost cause. Perhaps it was the opposite, that he saw the colonies as having a favored hand in the fight against the British, and wanted to reconcile to save the ways of the past. These are unanswerable questions that are left to the deep recesses of history.

Conclusion

Colden left behind an interesting legacy, not only in politics, but in the law as well. In the field of politics, Colden should always be remembered as the man who did not falter on his royalist principles. He was so loyal to the crown he gladly made the worst enemies defending its


107 Not to mention his tremendous work in science
honor. However, he paid a hefty price in doing this constantly throughout his career. Colden suffered the majority of his political defeats because of his unwillingness to play the politics game. However, even when he was down, he was not out of the fight. He managed to make an impact on the political scene even when his name was not attached to any documents, such as in the Zenger trial. Colden was partially responsible for a tremendously important legal precedent set in the Zenger case, in which the truth was used as a defense against the allegations of libel. Therefore, Colden's legacy is one of a political idealist, who, because he refused to compromise his beliefs, suffered great defeats, with the exception of the Zenger case.

While Colden may have been considered a Whig while fighting the Pretender in Scotland, if one examines Colden's complete body of work starting with his arrival in Albany, he will realize that Colden was concerned with protecting the English monarchy and its interests in the colonies. Colden was so concerned with the overt smuggling through Native American intermediaries because he felt that the crown was being defrauded out of a great deal of revenue, so he took great measures to protect the royal interest. One may even interpret his decisions against Stephen DeLancey in the Chancery Court as being motivated by Colden's royalism because Colden felt that he had a duty to the crown serve his office honestly, and to rule in favor of the popular opinion, for DeLancey's church, would bring dishonor to him and the crown. Therefore, the theme of doing what he perceived as the right thing in the face of tremendous political flak began at an early stage of Colden's career in Albany. Finally, despite what some of his critics may argue, Colden's press attacks against governor Montgomerie were not against what he viewed as a legitimate delegate of the crown, but against a profiteering, corrupt drunk. Moreover, Colden perceived that Montgomerie set an incredibly dangerous precedent of allowing the assembly to set the salary of the governor.
Colden's perception that Montgomerie set a dangerous precedent became a reality once
Clinton became governor. In fact, the issue of independent salaries set the stage for an
extraordinary political debate between Colden and James DeLancey. The conflict was rooted in
ideology, Colden the royalist against DeLancey the more progressive whiggish merchant.
However it was won by the political clout of DeLancey which was earned by playing the game
of politics, something Colden never did. The only influence Colden had was over the inept
governor George Clinton. Moreover, Colden was too much of an idealist; he may have thought
that doing the right thing would result in good consequences for everyone. Even if he did not
think this way, he still showed little regard for opposing perspectives.

Colden needed to take multiple hiatuses from politics because he made so many enemies
through his method of shooting first and asking questions later, and it led to a series of failures.
He had to sit on the political sidelines through the administrations of John Montgomerie and
William Cosby because those two governors immediately sided with Colden's political allies.
Had Colden remained in the forefront he would have lost his seat on the Governor's Council.
Cosby had already taken his surveyor general position from him. Therefore, Colden needed a
means to stay engaged in the political atmosphere without fighting on the front lines. So he
anonymously penned political articles through his friend John Peter Zenger. Due to these, and
many other, articles Zenger was put on trial for libel against Cosby, but won due to the
truthfulness of the claims made against Cosby. This minor political victory was ironically
contradicted by Colden in his handling of the Forsey v. Cunningham appeal because he
invalidated the ability of juries to make the right decisions. However, Colden ultimately failed in
the Forsey case because of his manner of conducting himself brashly. Just as he angered the
DeLancey faction when he ruled against them in the Rue case, creating decades of political
conflict (and a marriage between Colden's daughter and James DeLancey's nephew), Colden angered pretty much everyone in the political scene because he did not listen to his council, nor the Supreme Court, nor Cunningham's own lawyers. Colden was painted as the "anti-jury" governor in the press, and this served to immediately sabotage his attempts at maintaining royal authority in the Stamp Act crisis. The Stamp Act created such uproar about trials by jury rights that Colden was intimately linked with tyranny in the eyes of the patriots. While Colden was more royalist than the king, he did not have the enforcement power of the king, and that brought about his failures.

Perhaps the most remarkable aspect of Colden's royalism was its consistency, which raises a whole new set of questions pertaining to why he was so consistent and to where this strong sense of loyalism came. Perhaps he was so consistent because of his particular worldview. Colden was a physician by training and a scientist by nature, and in his work sought to explain most things with a few basic principles. Take his opposition to Newtonian physics. His mindset was so grounded in the view that all physical objects are material, due to his training as a physician, that he was baffled by the concept of an invisible force, gravity, dictating physical mechanics. This approach to explaining Colden's consistency is attractive, but incomplete. It must be supplemented by possible motivations for his loyalism. As was already demonstrated, Colden did not stand to gain very much from this particular worldview. As a Scottish Presbyterian, the Glorious Revolution ended the persecution of his faith by the Anglican Stuarts. Thus, it is quite reasonable to expect that Colden felt loyal to the British crown due to their protection of his culture. While his faith in religion might have been suspect, the ethos he was raised under a Presbyterian minister father, would be rather sympathetic to the constitutional
monarchs of Great Britain. Therefore, it also makes perfect sense that Colden would fight against the Pretender in 1715.