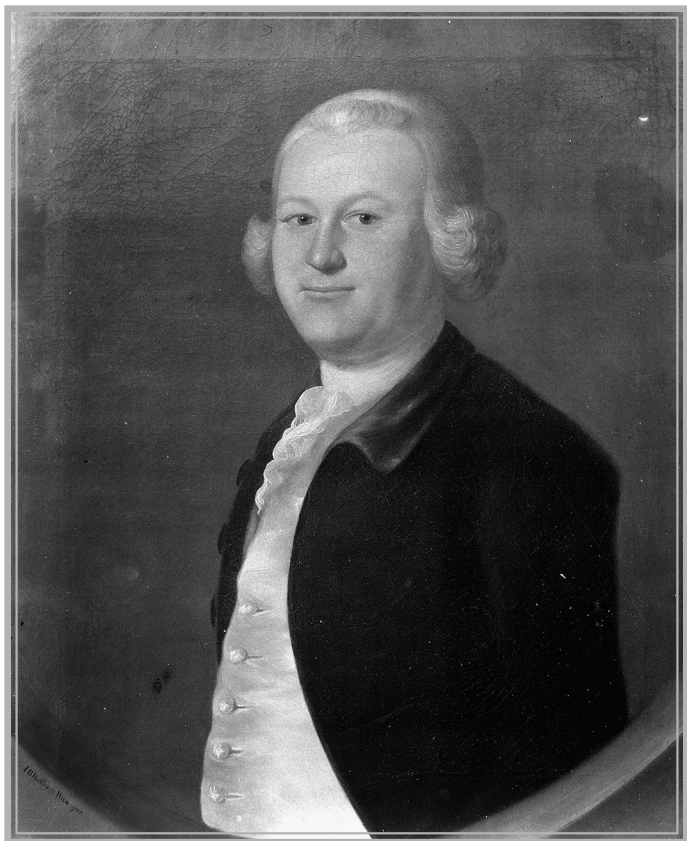


[Collected Political Writings
of James Otis]



James Otis

Collected Political Writings
of
James Otis

EDITED AND WITH AN INTRODUCTION

by Richard Samuelson



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Compilation, introduction, translations, editorial additions, and index

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{ INTRODUCTION }

The Life, Times, and Political Writings of James Otis

HISTORY REMEMBERS James Otis Jr. (1725–83) for three things.¹ According to John Adams, Otis's argument in the *Writs of Assistance* case of 1761 "began the revolution in the principles, views, opinions, and feelings of the American people."² By asking the court to render a law "void," Otis also presaged our modern ideas of judicial review. In addition, Otis is remembered for his intellectual and political leadership of the colonial cause in the 1760s. He wrote some of the most influential essays in opposition to the Stamp Act and coined the phrase "taxation without representation is tyranny." The Stamp Act Congress was his idea. Finally, Otis is remembered as "crazy James." In the late 1760s Otis gradually lost his mental composure, and was ultimately exiled from Boston to the countryside. Otis was not so consistent a patriot as Samuel Adams or Patrick Henry, and he could be violent in political combat, leading to speculation that his mental instability had something to do with his political inconstancy and his passionate outbursts against his enemies. All of Otis's claims to fame—his argument in the *Writs* case, his revolutionary writings, his intemperance, and his rhetorical or real inconstancy—can be seen in this volume of his writings.

This volume has three parts, containing Otis's writings on the *Writs of Assistance* case, on intracolony matters in Massachusetts in the early 1760s, and on the dispute between Anglo-America and Great Britain of the 1760s, in addition to a few other newspaper essays from Otis's pen. As a whole, these texts represent the vast majority of Otis's identifiable political writings.

James Otis, Jr., was born in Barnstable County, Massachusetts, in 1725 to James and Mary Allyne Otis. The Otises were an old Plymouth family of

1. To write the biographical parts of this introduction, we have drawn from "James Otis," in Shipton, *Biographical Sketches of Those Who Attended Harvard College*, 247–87, in addition to the other sources listed in the bibliography.

2. Adams to J. Morse, November 29, 1815, in Adams, *Works*, 10: 182.

some distinction. In the seventeenth and eighteenth centuries, Otises had been known to sit on the Massachusetts council. His father, Colonel Otis, was a second son. As such, he inherited fewer claims to power and place than did his elder brother. One could say the same about the Otis family's place of origin. Barnstable was in Plymouth. Although it was founded first, Plymouth had long played second fiddle to the Massachusetts colony, a trend that continued after the colonies were merged into the colony of Massachusetts Bay in 1691. Colonel Otis was a successful self-taught lawyer and politician. He rose to become speaker of the Massachusetts House of Representatives, and ultimately to a seat on the colony's council. The elder James Otis rose through grim determination, penny counting, and deal making. The powers that be in Massachusetts sometimes regarded him as a bit of a political hack, and treated him accordingly. His eldest son and namesake sought to lead a more gentlemanly life.

Jemmy, as young James Otis was known, sought refinement in the republic of letters. He appears to have been an indifferent student as a youth, doing not much more than was required of him to enter Harvard College in 1739. When the Great Awakening hit the college in 1740–41, it energized young Otis, first in religion, but ultimately in study. Once lit, the fire of study burned in him to the end of his days. Determined to recover lost time, Otis locked himself up in his study. One day Jemmy's classmates dragged him from his books and demanded that he play his fiddle so that they might dance. After complying, Otis halted abruptly and exclaimed, "So Orpheus fiddled, and so danced the brutes," and ran off. A young man's time was better spent with his books than at the dance. The college honored Otis with a speaking part at his graduation in 1743.

After leaving Harvard, Otis devoted himself to further study. In time, he would write a treatise on Latin prosody and another on Greek prosody. He published the former in 1760 but, as the colonies lacked the equipment to print Greek, he never published the latter, and ultimately destroyed the manuscript. When the time came to choose a profession, Otis turned to law. Law school not having been invented yet, students in Otis's day learned the law as apprentices to members of the bar. Otis studied under the tutelage of Jeremy Gridley, the leading lawyer of the colony, and the most philosophical member of its bar. According to Gridley, law was a moral discipline. "It was a favorite saying of Gridley that a lawyer ought never to be without a book of moral philosophy on his table," John Adams wrote.³ Members of the bar

3. John Adams to Richard Rush, April 14, 1811, "Some Unpublished Correspondence of John Adams and Richard Rush, 1811–1816," *Pennsylvania Magazine of History and Biography* 55 (1936): 433.

understood themselves to be servants of the law. And law, they thought, tethered communal standards of right to a higher law. That was the law to which Otis was attached when he joined the bar in 1748.

Otis rose quickly. He was a diligent student, and soon became deeply learned in the law. He also became an accomplished courtroom orator. James Putnum, a leading lawyer in the colony, said that “Otis was by far the most able, manly, and commanding character of his age at the bar.”⁴ That Colonel Otis was a rising politician and lawyer did not hurt his son’s ascent either. The elder Otis served the colonial governors of the 1750s well and ingratiated himself to the leading faction in colonial politics, which was led by Lieutenant Governor Thomas Hutchinson. His son’s obvious talents, his diligence, and his expanding practice, combined with his connections, allowed him to marry Ruth Cunningham, the beautiful daughter of a wealthy merchant, in 1755. In the late 1750s he became a justice of the peace for Suffolk County (the county in which Boston sits), and he also served as the colony’s deputy advocate general.

Otis’s steady rise in the Massachusetts political establishment changed in 1760 and 1761, when he abruptly resigned from his post as deputy advocate general and took the side of Boston’s merchant community in the *Writs of Assistance* case. The reasons Otis deserted the government’s side have been the subject of speculation since his day. One side claims that personal pique motivated Otis. Otis, they say, was upset that Francis Bernard, the colony’s newly appointed governor, made Hutchinson chief justice of the colony’s Superior Court in late 1760. In so doing, Bernard passed over Colonel Otis, to whom Governor Bernard’s predecessors had promised the next vacant seat on the court.⁵ Others say that principle motivated Otis. He thought that writs of assistance were instruments of tyranny, and he could not in good conscience defend them, as he would have had to were he still the government’s lawyer.

Writs of assistance were a form of general search warrant that the court gave to customs agents. These writs granted broad discretion to search ships, docks, and other like places. Those who held the writs (and they could be transferred from one person to another) could claim a percentage of whatever contraband was found. Two events underlay the case. First was the French and Indian War, or Seven Years’ War, as it was called in London, between

4. Shipton, “James Otis,” 249.

5. That it was the chief justice’s seat that was vacant was but a minor complication. Presumably Colonel Otis would have been an associate justice, and a current member of the court would have been made chief justice.

Britain and France (and other nations). New Englanders had a nasty habit of evading customs duties and trade restrictions. They did not cease trading with French colonies simply because Britain and France were at war. Writs of assistance were an effective enforcement tool. In addition, all writs terminated upon the death of a king and had to be reissued. In 1760, George II died, and his grandson was soon crowned George III. New writs had to be issued in his name. Not long after they were issued, Boston's merchant community challenged them in court.

Because of personal animus toward Hutchinson, principled antagonism to the writs, or some combination thereof, Otis argued forcefully against writs of assistance, and the case became an important one. Years later, John Adams recalled how Otis's argument had electrified the audience: "Every man of an immense crowded audience appeared to me to go away, as I did, ready to take arms against Writs of Assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born."⁶

As the *Writs* case progressed in 1761, Otis took a leadership role in the Massachusetts lower house, to which the people of Boston elected him in 1761. He would remain in the House for a decade. More often than not he was the leader of the "popular party," opposed to Thomas Hutchinson and his connections. At first, Otis hoped to cultivate Governor Bernard, and perhaps separate him from Hutchinson's camp. By the mid 1760s that effort had failed, and Otis grew more willing to criticize the governor.

Otis's writings from these years shed light on the rise and progress of his career in opposition politics and introduce many of his central political ideas. In his *Boston Gazette* essay of April 4, 1763, for example, Otis discusses the charge that his main political motivation was personal animus toward Hutchinson. Hutchinson claims that Otis threatened to "set the Province in a Flame" if he, rather than Otis's father, took the vacant seat on the Massachusetts Superior Court in 1760. Otis wrote that he had "not the least Remembrance of my having ever used such Expressions" and asserted that his actions were best explained by his adherence to the true principles of British liberty. "The true Principles of Loyalty & Obedience," he wrote, "are quite consistent with the warmest Love of Liberty and ones Country."⁷ Resistance to tyranny was obedience to the British constitution.

When read closely, Otis seems to suggest that Lieutenant Governor Hutchinson is the one who threatens to set the province aflame—through

6. John Adams to William Tudor, March 29, 1817, in Adams, *Works*, 10: 247–48.

7. *Boston Gazette*, April 4, 1763. See this volume, p. 65.

his monopolization of high offices. Hutchinson was lieutenant governor, chief justice of the colony's Superior Court, and a member of the colonial council, in addition to holding other offices. Members of his immediate and extended family held several other high offices in the colony. By monopolizing offices, Otis suggests, Hutchinson's faction destabilized the colony. At times Otis seemed to look for excuses to argue with Hutchinson. Even so, he always tried to ground his arguments with principles. This comes through in his essays on monetary policy from these years, and his defense of Jasper Manduit, the agent for Massachusetts Bay in London. Hutchinson's faction and Otis's each had a different candidate for the agency.

In these early political writings, we see Otis's engagement with the main currents of political thought in his day. Otis quotes the same passage of eighteenth-century French political philosopher Montesquieu that John Adams would quote in the first volume of his *Defence of the Constitutions* and that James Madison would quote in *Federalist* 47: "There is no liberty, if the power of judging be not separated from the legislative and executive power."⁸ To be sure, it was convenient for Otis to cry up checks and balances when the principal recipient of his political fire held offices in all three branches of government. But it is not always possible, and might not always be wise, to draw a wall of separation between principled and interested motives. There was no greater example of arbitrary power, Otis thought, than the union of legislative, executive, and judicial powers. To join those three powers together was to make an officer judge in his own case.

If one reads Otis's writings with great care, one might find that there is some truth to his claim that "Modern Politicians and modern Politics are my Aversion."⁹ Even so, in these early essays Otis paid close attention to the political ideas of John Locke, the Whig political theorist of the seventeenth century. Otis's first citations of Locke come in essays on monetary policy. Hutchinson, Massachusetts's authority on money, supported a fixed silver standard, and he cited Locke as an authority. Otis, by contrast, was a bimetalist. To criticize Hutchinson, he had to criticize Locke. More important, Otis quoted extensively, and with approbation, Locke's political ideas. The *Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts-Bay*, which Otis published in 1762, turned to Locke's *Second Treatise on Government* to describe the nature, purpose, and limits

8. For Adams see Adams, *Works*, 4: 424. For Madison see Alexander Hamilton, John Jay, and James Madison, *The Federalist*, ed. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 251.

9. *Boston Gazette*, April 4, 1763. See this volume, p. 68.

of government in general and a house of representatives in particular. This Lockean argument made the *Vindication of the House* an important tract of the American Revolution.

Events soon drew Otis from merely provincial concerns to a larger stage. The end of the French and Indian War in 1763 precipitated a constitutional crisis in the British empire. Britain had amassed a sizeable debt during the war and needed to repay it, and Britons regarded the colonists as their brethren and saw that they were relatively prosperous. Hence it seemed perfectly reasonable to them to ask the colonists to help pay the debt. Since the war had been started in America and since the British spent a good deal of treasure taking Canada away from the French, it seemed doubly reasonable to tax the colonists. In 1764, Britain passed the Sugar Act, an effort to collect revenue from the colonies by enforcing a duty on molasses. At the same time, the British Ministry, under the leadership of George Grenville, indicated that it would soon propose a stamp tax, which became law in early 1765. Most of the American colonists objected. Regarding taxation without representation as tyranny, they were determined to resist. Otis was an early leader of that resistance, boldly declaring that Parliament had no right to tax the colonists.

Otis was not merely a leader of the opposition to Parliament; he was also an imperial theorist. In his political writings from 1764 onward, Otis thought through the imperial problem. In March 1763, Otis published a short advertisement in the *Boston Gazette* indicating that he would soon publish a piece on “the present social state of the Province of *Massachusetts Bay*, with . . . a state of the Rights of the Colonists in general.” The Sugar and Stamp acts would spur Otis to think deeply about the subject. In a series of essays he published between 1764 and 1766, Otis elaborated his thoughts about what the British Empire’s constitution was and what it ought to be. First and foremost, Otis held that there ought to be a just number of colonial representatives in Parliament. Parliament would then have the same right to legislate in the colonies as it had in Wales after it became part of the realm. In addition, Otis thought that the entire mercantile program ought to be rethought and all restrictions on colonial ports, industry, imports, and goods repealed—or at least made exactly the same as in London. According to the Hat Act of 1732, for example, colonists could catch, cure, and export furs and pelts, but not finished hats. Otis thought that the act was arbitrary and unjust, as it created an inequality between periphery and center. “Can any one tell me why trade, commerce, arts, sciences and manufactures, should not be as free for an American as for an

European?"¹⁰ A reformed British Empire could not allow such discrimination to exist.

Otis's most systematic political treatise is 1764's *The Rights of the British Colonies Asserted and Proved*. In the pamphlet, Otis revealed his basic political premises. Government, he wrote, "has an everlasting foundation in the *unchangeable will of God*, the author of nature, whose laws never vary." From that conclusion, he drew the implication that government is "founded *on the necessities of our nature*."¹¹ However, he also held that "the form and mode of government is to be settled by *compact*."¹² In other words, he held that where men live, there will be governments, a few hermits to the contrary notwithstanding. On the other hand, he also found that the best way to create a government, or to change its form, was by compact. No compact, however, could be absolute. As in 1762, he suggested that checks and balances were a useful instrument of prudence to keep the government in line. Among the checks he noted was the one he highlighted in the *Writs* case: judges rendering legislative actions void. Ultimately, Otis concluded that "the Colonists are entitled to as *ample* rights, liberties and privileges as the subjects of the mother country are, and in some respects *to more*." As in 1762, to discover the nature of colonial rights, he turned to John Locke. Otis did not fail to notice the broader implications of his argument. He made strong statements against slavery. "Does it follow that tis right to enslave a man because he is black?" he asks. "Will short curl'd hair like wool, instead of christian hair, as tis called . . . help the argument?"¹³

The great question that puzzled Otis's contemporaries and has puzzled scholars since is whether Otis was consistent over time. In his major writings of 1765, *A Vindication of the British Colonies, Against the Aspersions of the Halifax Gentleman, in his Letter to a Rhode-Island Friend; Brief Remarks on the Defence of the Halifax Libel on the British-American-Colonies*; and a series of essays printed in the *Boston Gazette* from late July to early September 1765, later printed anonymously in London under the title *Considerations on Behalf of the Colonists. In a Letter to a Noble Lord*, in addition to a series of essays that appeared in the *Boston Gazette* in late 1765 and early 1766 under the pen name "John Hampden," Otis seemed to retreat from the bold proclamations

10. *Considerations on Behalf of the Colonists. In a Letter to a Noble Lord*, p. 22 in the original edition. See this volume, p. 247.

11. *Rights*, p. 8 in the original edition. See this volume, p. 124.

12. *Rights*, p. 15 in the original edition (italics in original). See this volume, p. 129.

13. *Rights*, p. 29 in the original edition. See this volume, p. 140.

of colonial rights he made in 1764. After 1764, Otis seldom published such strong statements about the rights of men and almost never quoted Locke in print. He never again suggested that courts might void acts of Parliament. In some of these writings, he seemed to suggest that Parliament had a right to tax the colonists. In the spring of 1765 he called for a Stamp Act Congress, and when it convened in the fall of that year he was one of its leading lights. Yet he was reluctant to sign the proclamation of rights issued by that very congress. Readers will have to draw their own conclusions, but it might be helpful to keep a few things in mind. Otis never allowed that Parliament ought to tax the colonists unless and until they were represented in Parliament, and he never ceased to suggest that putting Americans in Parliament was the best solution to the problem. What changed was his discussion of Parliament's rights in the matter. It might be that he simply changed his mind, or perhaps he simply changed his argument.¹⁴

After the repeal of the Stamp Act in early 1766, Otis began to disappear from the stage. He published little in the newspapers, and he began to play a smaller role in colonial politics. Otis had befriended John Dickinson at the Stamp Act Congress, and in 1767 Dickinson sent Otis the manuscript of his "Farmer's Letters." Otis saw to their publication in Boston. In his biographical sketch of Otis, Shipton suggests that Otis seems to have understood that he was gradually losing his mental composure and tried to wrap up his affairs.¹⁵ Between 1766 and 1770, Otis periodically did rouse himself and his fellow colonists against encroachments upon their rights.¹⁶ The second-to-last essay in this collection, Otis's essay of April 27, 1767, much of which was advice to voters in Massachusetts, sounds, in part, like a valedictory. From his perch in the House, Otis continued to oppose Hutchinson and his connections. In September 1769, Otis took umbrage against customs agents in Massachusetts who had called him a traitor. He and John Robinson, one of the agents, soon came to blows. The most contemporary accounts of the brawl suggest that Otis walked away relatively unscathed. But according to subsequent accounts, which have become part of the Otis legend, Otis suffered a great blow to the head, and that is what did him in.

14. In "Suggestions for Further Reading," in the bibliography, readers will find scholarly essays that take both sides of the argument.

15. Shipton, "James Otis," 276.

16. In his biographical sketch of Otis, Shipton recounts the following story from 1767: "One day a speaker in the House asserted that 'the parliament of Great Britain has no right to legislate for us.' Upon which Mr. Otis got up, made him a bow, and thanked him; saying, 'that he went further than he himself had yet done *in that house*.'" Shipton, "James Otis," 271.

Whatever the cause, by 1770 Otis was no longer the man he had been. His family and friends eventually saw to it that he was shipped out of Boston and cared for on a farm in the countryside. In his remaining years, he had occasional lucid intervals, and periodically returned to Boston and tried to restart his life, but he always relapsed. In these years, he also burned almost all of his personal papers, which is part of the reason his biography will always remain incomplete. Ultimately, he sided with his fellow Americans. When the revolution came, he disinherited his Tory daughter. The end for Otis came in 1783, as the Peace of Paris securing American independence from Britain was being finalized. On May 23 of that year, he stood in the doorway of the home at which he was staying and a bolt of lightning took him. Family and friends, shocked by the event, recalled that that was how he wished to go.

A Note on the Texts

The editor who seeks to publish Otis's political writings faces a problem: Otis often wrote anonymously. I have done my best to track down as many of his political writings as possible, even though it is virtually impossible to produce a comprehensive edition. The only major published writing of Otis that is certainly from his pen and that does not appear in this edition is his work on Latin prosody.¹

The five pamphlets Otis published in his lifetime are readily identifiable as his, as are certain newspaper essays that appeared under his own name. When we turn to Otis's anonymous and pseudonymous writings in the newspapers, the task gets a bit more difficult. That Otis wrote the series of essays signed "John Hampden" in late 1765 and early 1766 is clear. It is also clear that he penned the essays signed "Freeborn American" or "F.A." that constitute his 1765 pamphlet *Considerations on Behalf of the Colonists. In a Letter to a Noble Lord*. That being the case, we can conclude that when "Curious" published a query for the author of the *Noble Lord* essays in the August 19, 1765, edition of the *Boston Gazette*, it was Otis who penned the response that appeared in the August 26 issue of that year. For that reason, I have included both. Similarly, since the two essays signed "F.A." that appeared in the *Boston Gazette* in March 1766 are responding to criticisms of *Noble Lord*, presumably they came from Otis's pen.

Beyond that, the identifications must be based on informed speculation unless and until more evidence appears. It is highly likely that Otis was the author of the essay on writs of assistance that appeared in the *Boston Gazette* in January 1762 that is reprinted here. This volume also includes the two-part essay signed "John Hampden" from the November 24 and December 1, 1766, issues of the *Boston Gazette*, on the assumption that someone else did not steal Otis's pen name. As mentioned above, Otis signed the essays that

1. Otis also wrote a work on Greek prosody, but he never published it, and it is lost to history.

became his pamphlet *Letter to a Noble Lord* “F.A.,” and scholars have identified Otis as the author of the essays that seem to pick up that signature by “Freeborn American” and “Freeborn Armstrong” that appeared in the *Boston Gazette* not long after the *Noble Lord* essays were printed.² These essays are reprinted here as well. Helen Saltman identifies Otis as the author of two essays on the fight concerning Massachusetts’s agent in London,³ and they are included in this volume.

The scholarly apparatus of this edition is minimal. I have sought to equip readers with the basic tools that they need to understand Otis’s writings in the general introduction and the section introductions. This approach will allow the reader to experience the texts as part of a live and ongoing debate about the nature and purpose of a free society. Notations that might lead readers to approach the text as an artifact of a strange and foreign time and place have therefore been minimized. Translations of Latin and French material are provided. The text retains Otis’s footnotes in their original format (usually marked by symbols, such as asterisks or daggers); all new editorial notes, including the translations, are indicated by arabic numerals. If a Latin translation is needed in an original footnote, the translation appears in brackets after the Latin in the note itself.

As much as possible, the original spelling and punctuation have been retained. That has been easiest for the essays from the *Boston Gazette*. Because I turned to Charles Mullett’s fine edition of Otis’s pamphlets, I have allowed his editorial procedure to stand for those pamphlets, although I have silently corrected one or two typos that snuck into his edition. I have also followed Mullett’s practice of noting the original pagination of these pamphlets (in angle brackets inserted in the text). In a few instances, generally in the newspaper essays, when a word could not be determined due to the illegibility of the original source, I have put the assumed word in brackets with a question mark. Mullett chose not to print Otis’s 1765 pamphlets in chronological order. I have returned them to their original order of publication.

The section on the *Writs* case presents a peculiar challenge, as the case was argued twice, and parts of Otis’s argument were recorded (or reproduced) only at a later date. The first two texts in part I, the notes on the case, are from the pens of John Adams and Josiah Quincy Jr., as published by Quincy’s

2. Shaw, *American Patriots and the Rituals of the Revolution*, identifies Otis as the author, 250n47 and 252n62.

3. Saltman, “John Adams’s Political Satires: The Humphrey Ploughjogger Letters,” reprints these essays and identifies Otis as the author, pp. 227, 238.

grandson Samuel Quincy in 1865 in his *Reports*,⁴ as is the final piece in this section, “A Sample Writ of Assistance.” As stated above, the spelling and punctuation of the original have been retained, except for the expansion of certain common abbreviations (“the” for “ye,” “that” for “yt,” etc.). In one or two places where eccentric spelling makes it difficult to determine with certainty the precise word intended, the likely term has been inserted in brackets. The case being short, Adams’s and Quincy’s notes are reprinted in their entirety, in addition to the notes of Otis’s pleadings. John Adams’s reconstruction of Otis’s argument is taken from *The Works of John Adams*, as edited by Adams’s grandson, Charles Francis Adams.⁵

The source for Otis’s pamphlets is Charles Mullett’s edition, published in the *University of Missouri Studies* in 1929.⁶ For Quincy’s *Reports* on the *Writs of Assistance* case I have used the edition in the University of Michigan’s “Making of America” digital archive. Otis’s *Boston Gazette* essays are taken from the newspaper itself, with the assistance of the microfilm edition of the essays from the Early American Newspapers series. The *Boston Gazette* became available in a digital edition after this project began. I turned to it late in the process to clarify bits of text that are unclear in the microfilm edition. All have been rekeyed for this edition.

4. Quincy, *Reports*.

5. Adams, *Works*.

6. Mullett, “Some Political Writings of James Otis.”

Chronology of the Life of James Otis

- 1725: James Otis Jr. is born in Barnstable, Massachusetts.
1739: Otis enters Harvard.
1740: Religious revival at Harvard begins. Otis becomes studious.
1743: Otis graduates Harvard.
1745 or 1746: Otis begins to read law with Jeremy Gridley.
1748: Otis admitted to the bar in Plymouth.
1755: Otis marries Ruth Cunningham.
1756: Otis becomes a justice of the peace in Suffolk County.
[By] 1760: Otis becomes deputy advocate general of Massachusetts.
1760: Francis Bernard becomes governor of Massachusetts.
George II dies. George III becomes king.
Thomas Hutchinson becomes chief justice of Massachusetts.
1761: Otis quits his official post, represents Boston's merchants against the writs.
Writs of Assistance case heard in February and in August.
1762: Otis-Hutchinson feud over currency and other local issues.
Otis publishes the *Vindication of the House*.
1763: French and Indian War ends. Britain now master of a worldwide empire, and possessor of a substantial war debt.
1764: Sugar Act passes.
Otis publishes *The Rights of the British Colonies Asserted and Proved*.
1765: Stamp Act passes.
Otis publishes *Vindication of the British Colonies, Brief Remarks on the Defence of the Halifax Libel*, and *Letter to a Noble Lord*.
Otis starts the "John Hampden" essays. In the spring, he proposes a Stamp Act Congress; in the fall he attends it.
1766: Stamp Act repealed. Declaratory Act passes.
Otis concludes the "John Hampden" essays.

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| 1767: | Townshend Acts become law.
Otis sees to publication of “Farmer’s Letters” in Boston. |
| 1769: | Otis-Robinson brawl. |
| 1770: | Otis no longer mentally competent. He is removed from Boston. |
| 1771: | Massachusetts Probate Court finds that Otis is a “distracted or lunatick person.” |
| 1776: | American independence is declared. |
| 1783: | Treaty of Paris ends America’s Revolutionary War.
Otis dies, struck by bolt of lightning. |

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{ PART 1 }

Otis in the *Writs of Assistance* Case

THE *Writs of Assistance* case was argued twice, in February and again in November of 1761. According to M. H. Smith, the leading scholar of the case, Chief Justice Hutchinson wrote home to England after the February hearing to learn more about the kinds of writs in use in England and how they were issued. Having heard from England, Hutchinson convened a second hearing, after which the court ruled that the writs were legal in Massachusetts and that the court was the proper authority to issue them.

Three lawyers argued the case. Jeremiah Gridley, the leader of the Massachusetts Bar, argued for the Crown. James Otis Jr. argued against the writs. The evidence suggests that the third lawyer, Oxenbridge Thatcher, was *amicus curiae*, a friend of the court, charged with enlightening them dispassionately about the underlying legal issues. Robert Auchmuty, Jr. also makes a brief appearance in the case. M. H. Smith suggests that “he probably appeared in the capacity of acting Advocate General.”

A writ of assistance was a general search warrant given by the court to customs agents to search for contraband. It empowered customs agents and their deputies to access all “ships, boats, vessells, vaults, cellers, warehouses, shops, or other places” where imported goods were or might be hidden to search for contraband.

The case is significant because in it Otis raised two key issues. He said that “this writ is against the fundamental principles of law” and “as to Acts of Parliament, an Act against the Constitution is void: an Act against natural Equity is void: and if an Act of Parliament should be made, in the very words of this Petition, it would be void.” John Adams made the case famous by highlighting Otis’s argument and recurring back to it as a touchstone throughout his long and eventful life. On July 3, 1776, the day after Congress voted that “These Colonies are and of right ought to be free and independent states,” Adams wrote home to Abigail, “When I look back to the year 1776, and recollect the argument concerning Writs of Assistance, in the Superior Court, which I have hitherto considered as the commencement of the controversy, between Great Britain and America, and run through the whole period from that time to this, and recollect the

series of political events, the chain of causes and effects, I am surprised by the suddenness, as well as greatness of this revolution.”¹

We have records of the case because young John Adams took notes of the February 1761 hearing, and Josiah Quincy Jr., another young lawyer in Boston, took notes of the August 1761 rehearing in November. Unfortunately, Quincy appears to have missed most of Otis’s argument. Quincy’s grandson compiled the notes of the case, which are reproduced here. In his edition Quincy includes a writ of assistance assigned to Charles Paxton in 1752 as an appendix, included here as “A Sample Writ of Assistance.” These documents are taken from the edition of Quincy’s *Reports* to be found in the University of Michigan’s “Making of America” digital archive. These are followed by John Adams’s effort to re-create Otis’s argument in full as it appeared in *The Works of John Adams* (1856). Adams first published this version of Otis’s speech in the *Massachusetts Spy* in 1773. The article on writs of assistance that follows was probably by Otis and originally appeared in the *Boston Gazette* on January 4, 1762.

1. John Adams to Abigail Adams, July 3, 1776, in *Adams Family Correspondence*, ed. L. H. Butterfield et al. (Cambridge, Mass.: Belknap, 1963–), 2:28.

I. John Adams's Notes on the First Argument of the Case, February 1761

Gridley.—The Constables distraining for Rates. more inconsistent with Eng. Rts. & liberties than Writts of assistance. And Necessity, authorizes both.

Thatcher:

I have searched, in all the ancient Repertories, of Precedents, in Fitzherberts Natura Brevium, and in the Register (Q. What the Reg. is) and have found such Writt of assistance as this Petition prays.—I have found two Writts of ass. In the Reg. but they are very diff't., from the Writt prayd for.—

In a Book, intituled the Modern Practice of the Court of Exchequer there is indeed one such Writt, and but one.

By the Act of Palt. any other private Person, may as well as Custom House Officer, take an officer, a Sheriff, or Constable, &c. and go into any Shop, Store &c & seize: any Person authorized by such a Writt, under the Seal of the Court of Exchequer, may, not Custom House Officers only.—Strange.—Only a temporary thing.

The most material Question is, whether the Practice of the Exchequer, will warrant this Court in granting the same.

The Act impowers all the officers of the Revenue to enter and seise in the Plantations, as well as in England. 7. & 8 Wm 3, C. 22 § 6, gives the same as 13. & 14. of C. gives in England. The Ground of Mr. Gridleys argt is this, that this Court has the Power of the Court of Exchequer.—But This Court has renounced the Chancery Jurisdiction, which the Exchequer has in Cases where either Party, is the Kings Debtor.—Q. into that Case.

In Eng. all Informations of uncusted [i.e., uncustomed] or prohibited Importations, are in the Exchequer.—So that the Custom House officers are the officers of that Court.—under the Eye, and Direction of the Barons.

The Writ of Assistance is not returnable.—If such seisure were brot before your Honours, youd often find a wanton Exercise of their Power.

At home, the officers, seise at the Peril, even with Probable Cause.—

Otis. This Writ is against the fundamental Principles of Law.—The Privilege of House. A Man, who is quiet, is as secure in his House, as a Prince in his Castle—notwithstanding all his Debts, & civil processes of any Kind.—But

For flagrant Crimes, and in the Cases of great public Necessity, the Privilege may be incrohd [encroached] on.—For Felonies an officer may break, upon Processes, and oath.—i.e. by a Special Warrant to search such an House, [*“susp”* crossed out] sworn to be suspected, and good Grounds of suspicion appearing.

Make oath corm. *Ld. Treaer*, or *Exchequer*, in *Engd.* or a Magistrate here, and get a Special Warrant, for the public good, to infringe the Privilege of House.

Genl. Warrant to search for Felonies. *Hawk. Pleas Crown.*—every petty officer from the highest to the lowest, and if some of ’em are [*“com, others”* struck out] uncom others are uncomm. *Gouv’t Justices* used to issue such perpetual Edicts. (*Q.* with what particular Reference?)

But one Precedent, and that in the Reign of *C. 2* when Star Chamber Powers, and all Powers but lawful & useful Powers were pushed to Extremity.—

The authority of this Modern Practice of the Court of Exchequer.—it has an *Imprimatur*.—But what may not have?—It may be owing to some ignorant Clerk of the Exchequer.

But all Precedents and this am’g the Rest are under the Control of the Principles of Law. *Ld. Talbot.* better to observe the known Principles of Law than any one Precedent, tho in the House of Lords.—

As to Acts of Parliament. an Act against the Constitution is void: an Act against natural Equity is void: and if an Act of Parliament should be made, in the very Words of this Petition, it would be void. The Executive Courts must pass such Acts into disuse—*8. Rep. 118. from Viner.*—Reason of the Com Law to control an Act of Parliament.—*Iron Manufacture.* noble Lord’s Proposal, that we should send our Horses to *Eng.* to be shod.—

If an officer will justify under a Writ he must return it. *12th Mod. 396.*—perpetual Writ.

Stat. C. 2. We have all as good Rt to inform as Custom House officers—& every Man may have a general, irreturnable [*“Writ”* struck out] Commission to break Houses.—

By *12. of C.* on oath before *Ld. Treasurer*, *Barons of Exchequer*, or Chief Magistrate to break with an officer.—*14th. C.* to issue a Warrant requiring sheriffs &c to assist the officers to search for Goods not entr’d, or prohibit’d; *7 & 8th. W. & M.* gives Officers in Plantations same Powers with officers in England.—

Continuance of Writts and Proscesses, proves no more nor so much as I grant a special Writ of ass. on special oath, for specl Purpose.—

Pew indorsd Warrant to Ware.¹—Justice Walley search'd House. Law Prov. Bill in Chancery.—this Court confined their Chancery Power to Revenue &c.

Gridley. By the 7. & 8 of Wm C. 22. § 6th.—This authority, of breaking and entering Ships, Warehouses Cellars &c given to Custom House officers in England by the Statutes of the 12th and 14th of Charl. 2d, is extended to the Custom House officers in the Plantations:—and by the Statute of the 6th of Anne, [“this” struck out] Writts of Assistance are continued, in Company with all other legal Proscesses for 6 months after the Demise of the Crown.—Now what this Writ of assistance is, we can know only by Books of Precedents.—And we have produced, in a Book intituld the modern Practice of the Court of Exchequer, a form of such a Writ of assistance to the officers of the Customs. The Book has the Imprimatur of Wright C. J. of the K.'s B. which is as great a sanction as any Books of Precedents ever have. altho Books of Reports are usually approved by all the Judges—and I take Brown the author of this Book to have been a very good Collector of Precedents.—I have two Volumes of Precedents of his Collection, which I look upon as good as any, except Coke & Rastal.

And the Power given in this Writ is no greater Infringement of our Liberty than the Method of collecting Taxes in this Province.—

Every Body knows that the Subject has the Priviledge of House only against his fellow Subjects, not vs the K. either in matters of Crime or fine.

1. Pew and Ware were agents who used writs of assistance. Mr. Pew, leaving office, signed the writ over to Ware, his replacement.

2. Josiah Quincy Jr.'s Notes on the Second Argument of the Case, November 1761

Charles Paxton, Esq., applied to the Superiour Court for the Writ of Assis-
tants, as by Act of Parliament to be granted to him.

Upon this, the Court desired the Opinion of the Bar, whether they had a
Right and ought to grant it.

Mr. Otis & Mr. Thatcher spoke against.

Messrs. Gridley & Auchmuty for granting it.

Mr. Thatcher first read the Acts of 14 Car. 2, ch. 22, and 7&8 of Wm. &
Mary, upon which the Request for this Writ is founded.

Though this Act of Parliament has existed 60 Years, yet it was never
applied for, nor ever granted, till 1756; which is a great Argument against
granting it; not that an Act of Parliament can be antiquated, but Non-user
is a great Presumption that the Law will not bear it; this is the Reasoning of
Littleton and Coke. Knight Service, p. 80, Sect. 108. Moreover, when an Act
of Parliament is not express, but even doubtfull, and then has been neglected
and not executed, in such a Case the Presumption is more violent.

Ch. Justice. The Custom House Officers have frequently applied to the
Governour for this Writ, and have had it granted them by him, and there-
fore, though he had no Power to grant it, yet that removes the Argument of
Non-user.

Mr. Thatcher. If this Court have a Right to grant this Writ, it must be
either *ex debita Justitia*¹ or discretionary. If *ex debita Justitia*, it cannot in any
Case be refused; which from the Act itself and its Consequences, he argued,
could not be intended. It can't be discretionary; for it can't be in the Power of
any Judge at discretion to determine that I shall have my House broken open
or not. As says Just. Holt, "There can be no discretionary Power whether a
Man shall be hanged or no."

He moved further that such a Writ is granted and must issue from the
Exchequer Court, and no other can grant it; 4 Inst. 103; and that no other
Officers but such as constitute that Court can grant it. 2 Inst. 551. That this

1. *Ex debita Justitia*: "From a debt of justice." Translation taken from Henry C. Black,
Black's Law Dictionary, 6th ed. (St. Paul: West, 1990), 567.

Court is no such a one, *vid. Prov. Law*. This Court has in the most solemn Manner disclaimed the Authority of the Exchequer; this they did in the Case of McNeal of Ireland & McNeal of Boston. This they cannot do in Part; if the Province Law gives them any, it gives them all the Power of the Exchequer Court; nor can they chuse and refuse to act at Pleasure. But supposing this Court has the Power of Exchequer, yet there are many Circumstances which render that Court in this Case an improper Precedent; for there the Officers are sworn in that Court, and are accountable to it, are obliged there to pass their Accounts weekly; which is not the Case here. In that Court, there Cases are tried, and there finally; which is another Diversity. Besides, the Officers of the Customs are their Officers, and under their Check, and that so much that for Misbehaviour they may punish with corporal Punishment. 3 & 4 Car. 2 § 8. 7 & 8 W. & M. does not give the Authority.

(*Mr. Otis* was on the same Side, but I was absent, while he was speaking, most of the Time, and so have but few Notes.)

Mr. Otis. 12 Car. 2, 19. 13 & 14 Car. 2, p. 56. Let a Warrant come from whence it will improperly, it is to be refused, and the higher Power granting it, the more dangerous. The Exchequer itself was thought a Hardship in the first Constitution. *Vid. Rapin*, Vol. 1st, p. 178, 386, 403, 404. Vol. 2, 285, 375.

It is worthy Consideration whether this Writ was constitutional even in England; and I think it plainly appears it was not; much less here, since it was not there invented till after our Constitution and Settlement. Such a Writ is generally illegal. *Hawkins*, B. 2, ch. 1, Of Crim. Jur. *Viner*, Tit. Commission, A. 1 Inst. 464. 29 M.

Mr. Auchmuty. *Bacon*. 4 Inst. 100. From the Words of the Law, this Court may have the Power of the Exchequer. Now the Exchequer always had that Power; the Court cannot regard Consequences, but must follow Law. As for the Argument of Non-user, that ends whenever the Law is once executed; and this Law has been executed in this Country, and this Writ granted, not only by the Governor, but also from this Court in Ch. Justice Sewall's Time.

Mr. Gridley. This is properly a Writ of *Assistants*, not Assistance; not to give the Officers a greater Power, but as a Check upon them. For by this they cannot enter into any House, without the Presence of the Sheriff or civil Officer, who will be always supposed to have an Eye over and be a Check upon them. Quoting History is not speaking like a Lawyer. If it is Law in England, it is Law here; it is extended to this Country by Act of Parliament. 7 & 8 Wm. & M. ch. 18. By Act of Parliament they are entitled to like Assistants; now how can they have like Assistants, if the Court cannot grant them it; and how can the Court grant them like Assistance, if they cannot grant this Writ. Pity it would be, they should have a like Right, and not like

Remedy; the Law abhors Right without Remedy. But the General Court has given this Court Authority to grant it, and so has every other Plantation Court given their Superiour Court.

The Justices were unanimously of Opinion that this Writ might be granted, and some Time after, out of Term, it was granted.

3. John Adams's Reconstruction of Otis's Speech in the *Writs of Assistance* Case

"MAY IT PLEASE YOUR HONORS,

"I was desired by one of the Court to look into the books, and consider the question now before them concerning writs of assistance. I have accordingly considered it, and now appear, not only in obedience to your order, but likewise in behalf of the inhabitants of this town, who have presented another petition, and out of regard to the liberties of the subject. And I take this opportunity to declare, that whether under a fee or not (for in such a cause as this I despise a fee) I will to my dying day oppose with all the powers and faculties God has given me, all such instruments of slavery on the one hand, and villany on the other, as this writ of assistance is.

"It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book. I must, therefore, beg your Honors' patience and attention to the whole range of an argument, that may perhaps appear uncommon in many things, as well as to points of learning that are more remote and unusual; that the whole tendency of my design may the more easily be perceived, the conclusions better discerned, and the force of them be better felt. I shall not think much of my pains in this cause, as I engaged in it from principle. I was solicited to argue this cause as Advocate-General; and because I would not, I have been charged with desertion from my office. To this charge I can give a very sufficient answer. I renounced that office, and I argue this cause, from the same principle; and I argue it with the greater pleasure, as it is in favor of British liberty, at a time when we hear the greatest monarch upon earth declaring from his throne that he glories in the name of Briton, and that the privileges of his people are dearer to him than the most valuable prerogatives of his crown; and as it is in opposition to a kind of power, the exercise of which, in former periods of English history, cost one King of England his head, and another his throne. I have taken more pains in this cause, than I ever will take again, although my engaging in this and another popular cause has raised much resentment. But I think I can sincerely declare, that I cheerfully submit myself to every odious name for

conscience' sake; and from my soul I despise all those, whose guilt, malice, or folly has made them my foes. Let the consequences be what they will, I am determined to proceed. The only principles of public conduct, that are worthy of a gentleman or a man, are to sacrifice estate, ease, health, and applause, and even life, to the sacred calls of his country. These manly sentiments, in private life, make the good citizen; in public life, the patriot and the hero. I do not say, that when brought to the test, I shall be invincible. I pray God I may never be brought to the melancholy trial; but if ever I should, it will be then known how far I can reduce to practice principles, which I know to be founded in truth. In the mean time I will proceed to the subject of this writ.

"In the first place, may it please your Honors, I will admit that writs of one kind may be legal; that is, special writs, directed to special officers, and to search certain houses, &c. specially set forth in the writ, may be granted by the Court of Exchequer at home, upon oath made before the Lord Treasurer by the person who asks it, that he suspects such goods to be concealed in those very places he desires to search. The act of 14 Charles II. which Mr. Gridley mentions, proves this. And in this light the writ appears like a warrant from a Justice of the Peace to search for stolen goods. Your Honors will find in the old books concerning the office of a Justice of the Peace, precedents of general warrants to search suspected houses. But in more modern books you will find only special warrants to search such and such houses specially named, in which the complainant has before sworn that he suspects his goods are concealed; and you will find it adjudged that special warrants only are legal. In the same manner I rely on it, that the writ prayed for in this petition, being general, is illegal. It is a power, that places the liberty of every man in the hands of every petty officer. I say I admit that special writs of assistance, to search special places, may be granted to certain persons on oath; but I deny that the writ now prayed for can be granted, for I beg leave to make some observations on the writ itself, before I proceed to other acts of Parliament. In the first place, the writ is universal, being directed 'to all and singular Justices, Sheriffs, Constables, and all other officers and subjects'; so, that, in short, it is directed to every subject in the King's dominions. Every one with this writ may be a tyrant; if this commission be legal, a tyrant in a legal manner also may control, imprison, or murder any one within the realm. In the next place, it is perpetual; there is no return. A man is accountable to no person for his doings. Every man may reign secure in his petty tyranny, and spread terror and desolation around him. In the third place, a person with this writ, in the daytime, may enter all houses, shops, &c. at will, and command all to assist him. Fourthly, by this writ not only deputies, &c., but even their menial servants, are allowed to lord it over us. Now one of

the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses, when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and every thing in their way; and whether they break through malice or revenge, no man, no court, can inquire. Bare suspicion without oath is sufficient. This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts. Mr. Pew had one of these writs, and when Mr. Ware succeeded him, he endorsed this writ over to Mr. Ware; so that these writs are negotiable from one officer to another; and so your Honors have no opportunity of judging the persons to whom this vast power is delegated. Another instance is this: Mr. Justice Walley had called this same Mr. Ware before him, by a constable, to answer for a breach of Sabbath-day acts, or that of profane swearing. As soon as he had finished, Mr. Ware asked him if he had done. He replied, Yes. Well then, said Mr. Ware, I will show you a little of my power. I command you to permit me to search your house for uncustomed goods. And went on to search his house from the garret to the cellar; and then served the constable in the same manner. But to show another absurdity in this writ; if it should be established, I insist upon it, every person by the 14 Charles II. has this power as well as custom-house officers. The words are, 'It shall be lawful for any person or persons authorized,' &c. What a scene does this open! Every man, prompted by revenge, ill humor, or wantonness, to inspect the inside of his neighbor's house, may get a writ of assistance. Others will ask it from self-defence; one arbitrary exertion will provoke another, until society be involved in tumult and in blood.

"Again, these writs are not returned. Writs in their nature are temporary things. When the purposes for which they are issued are answered, they exist no more; but these live forever; no one can be called to account. Thus reason and the constitution are both against this writ. Let us see what authority there is for it. Not more than one instance can be found of it in all our law-books; and that was in the zenith of arbitrary power, namely, in the reign of Charles II., when star-chamber powers were pushed to extremity by some ignorant clerk of the exchequer. But had this writ been in any book whatever, it would have been illegal. All precedents are under the control of the principles of law. Lord Talbot says it is better to observe these than any precedents, though in the House of Lords, the last resort of the subject. No Acts of Parliament can establish such a writ; though it should be made in the very words of the petition, it would be void. An act against the constitution is

void. (vid. Viner.) But these prove no more than what I before observed, that special writs may be granted *on oath and probable suspicion*. The act of 7 & 8 William III. that the officers of the plantations shall have the same powers, &c. is confined to this sense; that an officer should show probable ground; should take his oath of it; should do this before a magistrate; and that such magistrate, if he think proper, should issue a special warrant to a constable to search the places. That of 6 Anne can prove no more.”

4. Essay on the *Writs of Assistance* Case, *Boston Gazette*,
January 4, 1762

To the PRINTERS.

SINCE the advancement of so great a lawyer as the Hon. Mr. H——TCH——NS——N to the *first J——st——s* seat, it would be deem'd the highest impertinence for any one to express the least surprize, that the Superior Court of this province, should after *solemn hearing* adjudge themselves authoriz'd to grant *such* a writ as the WRIT OF ASSISTANCE; or even to doubt, whether *by law*, they have power so to do: I hope however, I may say without offence, especially as I am inform'd that this writ is not yet given out, that I heartily wish it never may.—

It seems necessary to preface all our objections against such a power being given to the custom house officers, with a formal declaration against an *illicit* trade; for to bear any *spirited* testimony against their abuse of power, and especially to offer such abuse as the strongest reason why they ought not to be trusted with more, has been represented by these very persons and THEIR PATRONS, as if we had *combin'd* to break thro' all the *just* restraints of the laws of trade, and to force a free port.—I do therefore *from principle* declare against an illicit trade; I would have it *totally* suppress'd, with this proviso only, that it may have the same fate in the other governments; otherwise all the world will judge it unequitable: it is because *we only* are severely dealt with, that we complain of unreasonable treatment: and the writ of assistance, being a further degree of severity, will give us still further reason to complain.—

BUT it is not trade only that will be affected by this new severity: every housholde, in this province, will necessarily become *less secure*, than he was before this writ had any existence among us; for by it, *a custom house officer* or ANY OTHER PERSON *has a power given him, with the assistance of a peace officer, to ENTER FORCEABLY into a DWELLING HOUSE, and rifle every part of it, where he shall PLEASE to suspect uncustomed goods are long!*—Will any man put so great a value on his freehold, after such a power commences as he did before?—every man in this province, will be liable to be insulted by a *petty officer*, and threatned to have his house *ransack'd*,

unless he will comply with his unreasonable and *impudent* demands: Will any one then under *such* circumstances, ever again boast of *british* honor or *british* privilege?—I expect that some *little leering* tool of power will tell us, that the publick is now amus'd with *mere chimeras* of an overheated brain: but I desire that men of understanding, and morals, would only recollect an instance of this sort; when a late comptroller of this port, by virtue of his *writ of assistance* FORCEABLY enter'd into and rummag'd the house of a *magistrate* of this town; and what render'd the insolence intollerable was, that he did not pretend a suspicion of contraband goods as a reason for his conduct, but it was only because the honest magistrate had the day before taken the liberty to execute a good and wholesome law of this province against the comptroller.—

IT is granted that upon *some occasions*, even a *brittish* freeholder's house may be forcibly opened; but as this violence is upon a presumption of his having forfeited his security, it ought never to be done, and it never is done but in cases of the most urgent necessity and importance; and this necessity and importance always is, and always ought to be determin'd by *adequate* and *proper* judges: Shall so tender a point as this is, be left to the *discretion* of ANY person, to whomsoever this writ may be given! shall the *jealousies* and mere *imagination*s of a custom house officer, as *imperious* perhaps as injudicious, be accounted a sufficient reason for his breaking into a freeman's house! what if it shall appear after he has put a family which has a right to the kings peace, to the utmost confusion and terror; what, if it should appear, that there was no just grounds of suspicion; what reparation will he make? is it enough to say, that damages may be recover'd against him in the law? I hope indeed this will always be the case;—but are we *perpetually* to be expos'd to *outrages* of this kind, & to be told for our *only* consolation, that we must be *perpetually* seeking to the courts of law for redress? Is not this vexation *itself* to a man of a well disposed mind? and besides, may we not be insolently treated by our *petty tyrants* in *some* ways, for which the law prescribes no redress? and if this should be the case, what man will hereafter think his rights and privileges worth contending for, or even worth *enjoying*.

THE people of this province formerly upon a *particular occasion* asserted the rights of *englishmen*; and they did it with a *sober, manly* spirit: they were *then* in an insulting manner asked “whether english rights were to follow them to the ends of the earth”—we are *now* told, that the rights we contend for “do not belong to the English”—these writs, it is said, “are frequently issued from the exchequer at home, and executed, and the people do not complain of it—and why should we desire more freedom than they have in the mother country”—such is the *palliating* language of the great *patrons* of

this writ—and who claims more liberty than belongs to us as *British* subjects? we desire no securities but such as are deriv'd to us from the *british* constitution, which is our glory—no laws but what are agreeable to the *true spirit* of the *british* laws, to which we always have, and I hope always shall yield a chearful obedience—these rights and securities, we have with other *british* subjects gloriously defended against *foreign* invasions, and I hope in God we shall always have spirit enough to defend them against all *other* invasions.—Is there then any *express* act of parliament authorizing the exchequer to issue such writs? for if there is not *plain law* for such a power, the practice of one court *against law*, or which is the same thing, *without law*, can never be deem'd a *good* precedent for another, allowing there is no reason *to doubt*, the one is *legally* vested with all the power and jurisdiction of the other: but if ALL this be matter of *uncertainty*, ought it not then forever to be determin'd in favor of common right and liberty? and would not every wise man so determine it?

BUT admitting *there is such* a practice at home, and that it is not disputed, even at this time, when there is so warm a sense of liberty there; it may nevertheless be an Infringement upon the constitution: and let it be observ'd, there may be at some times a necessity of conceding to measures there, which *bear hard* upon liberty; which measures ought not to be drawn into precedent here, because there is not, nor can be such necessity for them here; and to take such measures, without any necessity at all, would be as violent an infraction on our liberties, as if there was no pretence at all to law or precedent. It is idle then, to tell us we ought to be content under the same restrictions which they are under at home, even to the *weakening of our best securities*, when it is tolerated then only *thro' necessity*, and there is no necessity for it here.—In *England* something may be said for granting these writs, tho' I am far from saying that anything can justify it. In *England* the revenue and the support of government, in some measure, depend upon the customs; but is this the case here? are any remittances made from the offices here? has the king's revenue, or the revenue of the province ever received the addition of a farthing, from all the collections, and all the seizures that have been made and forfeited, excepting what has been remitted by the late worthy collector *Mr. B——r——ns?*—I assert nothing: but if no benefit accrues to the publick, either here or at home, from all the monies that are receiv'd *for the use of the publick*, Is not this PECULATION? and what reason can there be, that a *free people* should be expos'd to all the insult and abuse, to the risque and even the *fatal consequences*, which may arise from the *execution* of a writ of assistance, ONLY TO PUT FORTUNES INTO PRIVATE POCKETS.

I desire it may be further consider'd, that the custom house officers at home, are under certain *checks* and *restrictions* which they cannot be under here; and therefore the writ of assistance ought to be look'd upon as a *different thing* there, from what it is here. In *England* the exchequer has the power of controuling them in *every respect*; and even of *inflicting corporal punishment upon them for mal-conduct*, of which there have been instances; they are the proper officers of that court, and are accountable to it as often as it shall call them to account, and they do in fact account to it for money receiv'd, and for their BEHAVIOR, once every week—so that the people there have a short and easy method of redress, in case of injury receiv'd from them: but is it so here? Do the officers of the customs here account with the Superior Court, or lodge monies received into the hands of that court; or are they as officers under any sort of check from it?—Will they *concede* to such powers in the Superior Court? or does this court, notwithstanding *these* are powers *belonging* to the exchequer—notwithstanding it is *said to be vested with ALL THE POWERS belonging to the exchequer*—and further, notwithstanding this *very writ of assistance* is to be granted AS a power belonging to the exchequer, will the Superior Court itself, assume the power of calling these officers to account, and punish them for misbehavior? It would be a small consolation, if we could have one instance: Have we not seen already, ONE of those officers, and he an *inferior* one too, REFUSING to account to *any power* in the province, for monies receiv'd by him *by virtue of his office*, belonging to the province, and which we are assured by the JOINT DECLARATION of the three branches of the legislature, is UNJUSTLY as well as *illegally* detain'd by him? Does not every one then see that a writ of assistance in the hands of a custom house officer here, is in reallity a *greater* power, &c more to be dreaded, than it is in England? *greater* because UNCONTROUL'D—and can a community be *safe* with an *uncontroul'd* power lodg'd in the hands of *such* officers, some of whom have given abundant proofs of the danger there is in trusting them with ANY?

5. A Sample Writ of Assistance

“Province of Massachusetts Bay.

“GEORGE the Second by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith &c—

“To all and singular Justices of the Peace, Sheriffs and Constables, and to all other our officers and Subjects within said Prov. & to each of you Greeting—

“Whereas the Commissioners of our Customs have by their Deputation dated the 8th day of Jan'y 1752, assign'd Charles Paxton Esqr Surveyor of all Rates, Duties, and Impositions arising and growing due within the Port of Boston in said Province as by said Deputation at large appears, WE THEREFORE command you and each of you that you permit the said C.P. and his Deputies and Servants from Time to time at his or their Will as well in the day as in the Night to enter and go on board any Ship, Boat or other Vessel riding lying or being within or coming to the said Port, such Ship, Boat or Vessel then & there found to View & Search & strictly to examine in the same, touching the Customs and Subsidies to us due, And also in the day Time together with a Constable or other public officer inhabiting near unto the Place to enter and go into any Vaults, Cellars, Warehouses, Shops or other Places to search and see whether any Goods, Wares or Merchandises, in the same Ships, Boats or Vessels, Vaults, Cellars, Warehouses, Shops or other Places are or shall be there hid or concealed, having been imported, ship't or laden in order to be exported from or out of the said Port or any Creeks or Places appertain'g to the same Port; and to open any Trunks, Chests, Boxes, sardells or Packs made up or in Bulk, whatever in which any Goods, Wares, or Merchandises are suspected to be packed or concealed and further to do all Things which of Rt and according to Law and Statutes in such Cases provided, is in this Part to be done: And We strictly command you and every of you that you, from Time to Time be aiding and assisting to the said C.P. his Deputies and Servants and every of them in the Execution of the Premises in all Things as becometh: Fail not at your Peril: WITNESS Stephen Sewell Esqr & c—”

{ PART 2 }

Otis in Massachusetts Politics,
1761–63

BETWEEN 1761 and 1763 Otis wrote several essays on political subjects other than writs of assistance. The bulk of the newspaper essays reprinted in this section have to do with Otis's argument with Thomas Hutchinson over currency. Otis was a bimetallist; Hutchinson was not. In these arguments the ever-present problem in the colonies of a lack of specie merged with the ongoing political arguments of late-colonial Boston. We also reproduce here two pieces on the agency question, probably from Otis's pen.

The second main subject of the essays is Otis himself. Otis's opponents charged that his political actions grew from one source: animosity toward Thomas Hutchinson. Otis's father, Colonel Otis, had believed that he would be appointed to the Massachusetts Superior Court. Instead, Hutchinson was appointed. Hutchinson claimed that Otis threatened to "set the Province in a Flame" if Colonel Otis did not get the post. For his part, Otis charged Hutchinson and his friends with hoarding offices.

The third subject of these essays is constitutional controversy. Otis's constitutional concerns are present in his newspaper essays, but they are most clear in the pamphlet *A Vindication of the Conduct of the House of Representatives of the Province of Massachusetts-Bay*. In *Vindication* Otis argues that the governor may not demand that the duly elected representatives of the colony cover expenses incurred during a recess of the House—even when those expenses have to do with fitting out a ship in a time of war. Otis fears that unchecked authority in the executive will soon become arbitrary power.

These essays show the connection between provincial political controversies of the 1760s and the imperial issues that would soon arise with such force. They reflect Otis's concern with checks and balances, with liberty under law, and with John Locke.

The newspaper essays were all published in the *Boston Gazette*. The *Vindication of the House* is rekeyed from the edition that Charles Mullett published in the *University of Missouri Studies* in 1929.

I. Essays from the *Boston Gazette*,
December 21, 1761–April 11, 1763

December 21, 1761

Messieurs EDES and GILL.

PERHAPS I should not have troubled you or the Public, with any Thoughts of mine, had not His Honour, the Lieutenant Governor, have condescended to give me a personal Challenge. This is an Honor that I never had Vanity enough to aspire after, and shall ever respect Mr. *Hutchison* for it, so long as I live; as he certainly consulted my Reputation more than his own, when he bestowed it. A General Officer in the Army would be thought very condescending to accept from, much more to give a Challenge to a Subaltern.

The Honour of entering the Lists with a Gentleman so much one's Superior in one View, is certainly very tempting; it is at least possible that his Honour may lose much, but from those who have, and desire but little, but little can possibly be taken away.

I am your humble Servant.
JAMES OTIS jun.

Boston, Dec. 19th, 1761.

THAT the present state of the currency and commerce of this province afford room for much speculation and discourse is certain; and it is heartily to be wished that people would act as well as speculate, till things are set right. His Honor asserts, that "gold passes at too high a rate compared with silver." I was at first as much surprised at this assertion, as his Honor ever was at a "whimsical conscience," for, at the late conference of both Houses, about a fortnight before his Honor published his last thoughts, he very strenuously opposed the province treasurer's being impowered to contract for gold, and "eventually (as I think he expressed it) making gold a tender"; his Honor then urged "that matters stood very well," that "the prices already set to gold and silver, all things considered *were* as good as might be" that "there *had* then been no difficulty about gold" that "a Johannes

had universally passed for eight Dollars” that “the man, who should refuse gold at that rate, would be hiss’d out of all company and society”; and “(as we commonly express it) bring himself into a praemunire” that “innovations, relating to *currency*, are very dangerous”; and “that the very moving this matter would have a tendency to alarm the people” with much more to the same purpose. After this it was not to be expected that in a fortnight his Honor would be the first to sound this very alarm in a common news paper, and that with an addition of his own name; which very justly imports great weight, as well as sound. Other people (who have published their thoughts, while matters were in debate before, or in the contemplation of the Legislators, and undetermined by them) have been deemed seditious scriblers, incendiaries, and have been solemnly given to understand that it would be taken ill if any thing should be published relating to government, or the administration of liberty of a Briton, and those very important branches of it, the liberty of speech, and of the *Press*. His Honor has an undoubted right to appear, when he pleases, with his name at full length, in every news paper upon the continent, and so have I, and so has my honest neighbour *Mr. Cooke the Cobbler*. His Honour, a few sentences further on, accounts in part for his change of stile; “I was in hopes upon my first thoughts, that there was not sufficient grounds for this alarm, and that we might go on for twelve years to come, as well as we have done for twelve years past; but, upon consideration, I find, this cannot be.” From all which I think it clear that his Honor has changed his opinion since the setting of the assembly, and in Christian charity, it ought to be presumed to be upon good grounds, and if so, is one mark of a true philosopher, who always gives up a false opinion upon new light and evidence.

THIS with his Honor’s example, will abundantly apologize for any sentiments in this answer which may appear to be different from what I advanced in the House of Representatives, or at the conference of both Houses; and hence I would hope that no one will impute such change to a “whimsical conscience,” or a “wrong head,” which epithet I find very liberally bestowed upon all who have the resolution to think, and act for themselves, even if such a fixed determination, should oblige them to oppose the *Leviathan* in power, or those other overgrown *Animals*, whose influence and importance is only in exact mathematical proportion to the weight of their purses: I would not by any means be understood, by this to intend a general reflection upon the Rich; for I sincerely declare, that I conceive the characters of a great majority of this class among us to be truly amiable and worthy.

WE are now told that “it is absolutely necessary, that something should be done to prevent the exportation, being made altogether in silver.”

IF any thing can be done consistent with justice and equity, to prevent the farther progress of this *newly discovered* evil, it is past doubt that every honest man will subscribe to it: but what can be done? that's yet a question. And before I attempt to answer it, I must be again indulged in expressing my surprize, that none of this danger should ever have reached, his Honor's ears, 'till since the last sessions of the general assembly, considering that his Honor has for more than thirty years, professedly made money one of the subjects of his *contemplation*, considering also that his Honor, for many years made a great figure in the mercantile world, and is acquainted with some *opulent, speculative, and inspecting*, though *no trading merchants*, and *gentry* considering too that a great personage, said to be most intimately known to his Honor has been heard to discourse of the great advantages the jews might make here from exchange by reason of the present state of our currency; but above all considering that a man of war has been freighted with dollars, and a near relation of his Honors drew last summer, for five thousand pounds sterling and remitted dollars to secure their acceptance which dollars were bought with those very bills, or which amounts to the same thing, with the gold they were here sold for. "In order to judge what is proper to be done" his Honor refers us "to the time of the exchange of our late depreciating and detestable paper currency."

I am not for introducing a paper currency again, but it is certain the sudden exchange of it gave such a convulsion to our commerce that it never has, and it is much to be feared, that it never will recover itself; and it may be safely affirmed, that the benefits hitherto derived to this province by a silver and gold currency, if we add, the temporal and accidental advantages enumerated by his Honor, as parliamentary grants, supplies of the army and navy, during the war, &c. are altogether far short of an equivalent, to what we lost by that fatal shock. I never could compare this to any thing but a similar fondness of some otherwise very able physicians, for a newly discovered nostrum, which is consequently so violently administred to remove some present disorder, that the future health of the patient is risqued, and he is in fact left weak and languid all his days.

That "trade once diverted, scarce ever returns to its former channel"; that "multitudes of people, constant employ and quick pay, whether they agree to take silver, paper or cocklesheles are the riches of a country"; that "domestic improvements, and consequently the commodities raised and manufactured, are the surest measure of the wealth of a people" are observations ne'er the less true for being old.

His Honor proceeds, "It was then the determination of the government, to have a perpetual invariable standard for the future."

If the government so determined, they then undertook to fix, what strictly speaking is impossible to be fixed. For silver in the nature of human affairs, is variable, as well as gold, and must be so to the end of time; and no act of parliament can alter the nature of things. An ounce of silver is indeed at any one given time of the same value with another ounce of silver of the same fineness & stamp, and so is an ounce of pewter or lead; but every ounce of silver in the universe often varies in its real value. This sufficiently appears by the very facts his Honor has furnished us with, of its frequent rise and fall in England. Is it not a common observation, that all the silver in Europe has fell above half in its real value, since the discovery of the American mines? If by an invariable standard is meant, that the government intended to have a sterling standard, as to fineness that is, the same which now prevails in England, and makes the lawful silver money of G Britain, it is readily granted, this was their intent; and coined silver of sterling alloy, if any thing was intended to be established by the act of 1759 as lawful money of this province at 6s. 8d. per ounce. It is not of a farthing consequence, whether the ounce is called 5s. or 6s. 8d. It was the silver of a certain fineness and stamp that was intended to be made lawful money. It is also granted that silver is the most proper for the computative money, or money of account, and if it were not so in itself, the long usage of commercial nations has made it so. But all this don't exclude gold from being money, lawful money, true sterling money, and a legal tender, provided it be set at a proper rate, not left "to pass in that proportion to silver, as it bears in other parts of the world with which we have commerce."

This, with all due submission, seems to be leaving things at a strange loose for common people, in town and country; & they must be acquainted with the course of Exchange, thro the world, before they can judge how many Dollars to give for a Johannes. This with the unavoidable currency of Gold, where Silver is established, I suppose, occasioned the Act for ascertaining the rates of Gold; which is doubtless a good and wholesome Law, and was intended to make Gold a tender, at the rates therein specified. His Honor thinks there are or two three mistakes in this Act, it is possible there may be; however, if there are two hundred, all I shall say to them at present is, that when they are clearly pointed out, they ought to be amended, only it seems strange that there should be any mistakes in this Act, considering the great abilities of the gentleman, who at the time of making it, ruled our Councils, and was the Prime Conductor of all our public affairs: But as I hold all men to be in a degree fallible, *Humanum est Errare*,¹ I will not impute these Errors to a whimsical conscience, or any other wrong cause, but to the fate of all

1. *Humanum est Errare*: "To err is human."

human affairs. From the same source its probable may be derived an error more palpable than any yet mentioned.

In the grand settlement of our so much boasted perpetual and invariable standard, *coin'd Silver*, and *Silver Bullion*, are together made lawful money, and the measure of commerce, which is not only making two measures, which may vary, but which in fact are, and ever will be, variant from each other.

Gold has been, and may be coined, and have a price fixed, that is made money; but Bullion which is uncoined Silver, and Gold, never were nor can be the money of any country.

"The coining of Silver, or making money of it, (says Mr. Locke) is the ascertaining its quantity by a Public Mark, the better to fit it for commerce."

"The precise weight & fineness by law appropriated to the pieces of each denomination, is called, The Standard."

December 28, 1761

[*Continuation of the Piece began in our last.*]

IF we are to look no farther than the act of 1749 for a standard, we shall find there established, as the measure of commerce, *silver bullion* indefinitely, at the rate of 6s. 8d. and *coined silver*, (tho' but one species of this) to wit, Spanish Mill'd Dollars at 6s.

Now though it is very improbable that "*an empty popular declaimer*," "*one who is fond of harranguing the Mobb*," (the best appellations which, I hear some have dignified me with) should have any clear Ideas of the terms, *Money*, *Standard*, *Sterling Standard* or be able to reason distinctly about money in general, or the laws of this Province in particular; yet that the *reader* may, the following extracts are inserted. Those who are curious will consult the Authors at large, "Money is the Metal, be it *Gold* or *Silver*, that receives authority by the Prince's impress, to be current; for as wax is not a seal without a print, so metal is not money without impression." Co. Lit. 207. "The legitimation of money, and the giving it its denominated value, is justly reckoned *inter Jura Majestatis*,² and in England it is one special part of the King's prerogative. Money is the common measure of all commerce, almost thro' the world; it consists principally of three parts; 1. The material whereof it is made. 2. The denomination or intrinsick value. 3. The impression or stamp. I. The material in England is either pure *Silver*, or pure *Gold*, whereof possibly some money

2. *Inter Jura Majestatis*: "Among the rights of the king."

anciently was made here in England or else Silver and Gold mixed with an alloy, which was usually, and is hitherto a small proportion of Copper. The standard of the money in England, that hath for many ages obtained, is that, which is commonly called *Sterling* Gold or *Sterling* Silver, for tho' the denomination of sterling was at first applied to the coin of Silver, and to that coin which was the penny commonly called *Sterlingus*, yet use hath made it applicable not only to all kind of English coin of silver, but also to coin of gold, and this is called the standard of coin. In the case of money newly coined by the King's authority in England, a proclamation is not absolutely necessary to the legitimation thereof or making it current. The true old *Sterling* standard, both of *Gold* and *Silver*, hath been the only standard of the English current money. I find rarely any proclamation for the setting of the rate of new coin, but only as before, when the denomination of what is in being is enhanced, or abated, or recalled; so that the indenture of the mint and common reputation is that which must try what is *English money*," (H.P.C.). "That in regulating the current value of money among ourselves, we ought to have regard to the practice of neighbouring countries, is a mistake of so capital a nature, that it is of consequence to have it obliterated from the minds of men. And it is easy to demonstrate in regulating the current value of the coin of a kingdom, it is of no moment to regard the conduct of neighbouring states."

S.D.C. Postle. V. Coin.

"It appertains to the King only to put a value to the coin, and to make a price of the quantity, and to put a print to it, the which being done, the coin is current for so much as the King has limited." (Arg. Pl. C.) It was resolved as the King may make money of what matter and form he pleases, and establish it, that so he may change the money in substance and impression, and enhance or abate the value thereof, or utterly decay and annul it, so as to be only Bullion, at his pleasure. It was resolved, that it belongs solely to the King of England to make or coin money within his dominions, so that no other person can do it without special licence of the King; and if any presumes to do it of his own head, this is treason against the person of the King by the *common law*. Every piece of money ought to have its denomination or valuation, for which it shall be accepted, or paid, as for a penny, a groat, or a shilling, and all this ought to be done by authority and command of the Prince, and ought to be done by proclamation of the Prince. Davis.

A tender may be made in foreign money, current by parliament or proclamation. Co. Lit.

The King by his proclamation may make any coin lawful money of England; *a fortiori* he may by his proclamation only, establish the standard of monies coined by his authority, within his proper dominions.

Viner. Prerog.

From the above authorities, I think it evident that the King's coin, as well gold as silver, is lawful money of Great Britain, sterling standard money, and a legal tender, as is also even foreign gold at such a rate as the King by his prerogative alone a fortiori, at such rates as the King, lords and commons, that is the parliament, may be pleased to establish. A vulgar error that no gold is a lawful tender has indeed prevailed here; but I believe it never was questioned in England, whether the king's coin, either of gold or silver, was *such*.

I shall now examine the act of 1749. In the title of said act are these words; "for ascertaining the rate of coined silver in this province for the future"; and in one of the preambles these words, "and it being of great importance that all possible means should be used for establishing an invariable silver currency for the future," but not a word in the whole act of the alloy of the silver. This is the first time that silver was ever establish'd as money, without fixing the alloy, or fineness. Dollars indeed, are by this act made a tender in discharge of these invariable silver contracts; but the fineness of these is also indeterminate so that as I said before, silver indefinitely, that is silver bullion, and spanish milled dollars of any alloy, are both together the money established by this act; what is worse, even dollars are no tender according to some Gentlemens way of arguing; for the act only ascertains the rate beyond which they shall not be passed, and nothing prevents their being payed at a less rate, nor obliges the creditor to receive them at that, unless you'll say that, all silver indiscriminately, is lawful money of this province at 6s. 8d. per ounce, as this act imports, and that a man is obliged to take fish scales, (as they are vulgarly called) pistareens, and old plate at 6s 8d. per ounce, without regard to the alloy, or fineness; which is contrary to common justice, as well as common sense.

What shall we say then? have we no standard at all? I answer, yes, a very good one, but it is not to be found in the act of 1749 but in one, that by the wording of this, seems to have been overlooked at that time; I mean the 14 George II C 4, by which it is enacted, "that all *coined silver of sterling alloy*; shall be accounted paid and taken, as lawful money of this province, at the rate of 6s 8d. per ounce, troy weight, and other *money* in the same proportion; and no otherwise; and all private trade, and dealings, where no other lawful money, or thing, is expressly contracted for, shall be intended to be in and for the money aforesaid." The words "*other money*" in this act, in their just and natural construction, must mean, gold as well as other coined silver. Sterling alloy is the standard of our gold and silver. The fineness of the silver established by the act, must also be taken as the measure of the fineness of the silver mentioned in the act of 1749, and that act must be read, coined silver

of sterling alloy, to make it intelligible. Now if the only standard of lawful money is sterling alloy, as it certainly is, as to silver, then I say by the reasoning of some gentlemen, no man can or ought to be obliged to take dollars (that is they are not a tender any more than any other bullion) for the act of 1749 don't in so many words say dollars shall be a tender. It says indeed, that they shall be received at 6*s.* and at no higher rate; but if this obliges a man to take them at that rate, as there is a little difference between dollars at 6*s.* and an english crown at 6*s.* 8*d.* why here is two standards say they. But this difference is accounted for by his Honor, to wit, to keep out hammered money and encourage the bringing in the dollars, and the dollars have ever been deemed a tender at 6*s.* and as good a tender as an English Crown at 6*s.* 8*d.* and this brings us to the Act of 23 G. II C v. entitled "An act for ascertaining the rates at which coined silver and gold, &c. may pass within this government." No lawyer ever doubted (that I heard of till the last session of the court) but gold was a tender according to the rates set in this act, which are the exact proportion to sterling silver. It is observable that an English Crown which is the standard for silver with the denomination of 6*s.* 8*d.* is one of the coins enumerated, which is one reason to conjecture that, the several species there enumerated were intended for *money* and consequently a *tender*. The cotemporary usage is another good argument among lawyers to prove such intent. Every one knows they have ever since been taken as money. And if *nonuser*, for 60 years, is not a sufficient argument, against the general words of an act, yet surely the universal practice for seven years after is an argument in favour of my construction. The words are "that they shall not be received, taken or payed at any greater or higher rate," but it is further enacted that fifty pounds penalty shall be forfeited by those who, "receive or pay" them at a greater or higher rate than there *regulated* and settled, as well as *allowed*: now *settled, to be received and paid*, looks to me like fixing the price, and making money of them, and consequently a tender. It has been observed that the act of Parliament, for regulating the price of gold, tho' it enacts that Guineas shall not be current at more than 28*s.*, has a proviso, that none shall be obliged to take them at that; to which I answer, as heretofore, 1. That this very proviso shows the sense of the parliament, that without that proviso they would have been a tender at 28*s.* 2. 28*s.* is 7*s.* more than they are worth, but our act has put them at their exact sterling standard value. But as some doubt has risen about gold being a tender at any fixed value, it ought to be settled as explicitly as possible in an explanatory act. And if the rates of gold and silver, are not well adjusted, (as I agree with his Honor upon his first thoughts they already are, and with his last thoughts, that) upon a discovery of any mistakes, they ought to be rectified. The invariable standard of silver will not be effected by gold's

being a tender at a fixed rate, any more than by dollars being a tender; when a man tenders me a dollar for 6s. it must be one that in weight and fineness is as 6s. to 6s 8*d.* or I am not obliged to take it any more than a counterfeit, and for so much as it wants of standard it is as bad as counterfeit, except here the *two pence* an ounce allowed for coinage and to encourage their importation, which has made no difficulty, nor will. The same reasoning will hold as to a Johannes, or any other gold coin compared to the sterling standard of gold, tho' by the way they now stand in the true proportion, if the gold is as good, which has hitherto been supposed. In one word, what inconvenience can possibly happen here, from having standard gold as well as silver? which, as I have said, I think we have already, tho' it has been much disputed of late, and is a matter of such importance, that it ought soon to be rendered indisputable one way or the other. I have asked the above question often but never had any satisfactory answer. At present I will suppose all his Honor's calculations to be right, tho' I hear he is convinced that some few of them are wrong, and others may hereafter prove to be so. In the mean time, if this position of his Honor's be true, that "whatever is the proportion between gold and silver bullion in England, the same must be kept in the colonies," what becomes of the invariable perpetual standard? I now promise to pay to any man that can fairly reconcile to my mind, a perpetual invariable standard, with a perpetual varying price of silver and gold bullion in England, a *praemium* equal to any that has been appropriated for the discovery of a perpetual motion, the squaring of the circle, or the invention of longitude. As to the singular reason subjoined to this position, which seems to imply that, most of our gold and silver must go; I answer, if that is inevitably necessary, all our puzzle, about altering denominations, will be of no more avail, than a boy playing crickets to day and marbles to morrow.

What mighty matter is it which goes first, gold or silver, if both must go, and we are to be reduced to an absolute state of poverty (which truly is threatned from more quarters than one) and made as hungry as hounds before our bellies or our pockets can be well filled again. But of this newly discovered way of growing rich, more hereafter.

As to the hint which seems to be given to the parliament, the only inference I make from the facts it is grounded upon, is that, they further manifest the impracticability of a perpetual invariable standard, which yet requires that "the same proportions should be kept here between the several species of it, as between gold and silver bullion in England."

The question returns again, "What is to be done to prevent any [mischivous?] effects?" It was proposed in the house, that in our present circumstances, we had best as a province, contract for the future in gold, and make it

more *explicitly* a tender. To this it was and is again objected that “it is contrary to the principle the government prosessed in 1749 and will be a violation of the public faith.” It may be answered, there is nothing in the act of 1749 that restrains the province, or a private man, from making a new bargain; if both parties concerned agree no body is hurt. It was the universal sense of the house not to break in upon any former special contract for dollars or any thing else, so far from it, that it was agreed to send gold to Spain to purchase dollars, if the creditors were so exact as to insist upon it. As to the distinction between public and private debts, I never heard any one contend that there ought to be any difference between them as to the punctuality of payment, or in any other respect. It was contended, and is yet, and it is to be hoped will be, that if a private man has a right to make a new bargain, so has the public. And if the province has not this right, it seems to me, to be under as strict a guardianship, as the poor-indians; so all the surprise about a whimsical conscience might have been omitted. We are informed “that there is no more difference between the promise of silver at 6s 8d. per ounce, and a promise for lawful money as the law now stands, than between a promise for a crown, and a promise for 5s.” This no one ever doubted, as I know of, tho’ there is reason to think, a certain gentleman imagined the whole house of representatives ignorant of this wonderful discovery; or he would hardly have proposed an amendment of a money bill, and the inserting of lawful money instead of gold. This with actually sending down a money bill, with such an amendment, and the manner of the proposal, &c. was as great an insult, as ever in the plenitude and zenith of power was offered to a house.

China is the only country in the world where gold is not money, or a tender.

That guineas can’t be refused as a tender in England at 21s, is in my opinion as clear law, as that George the Third is rightful King of Great Britain. Some have admitted that gold is a tender in law, but say it is so only at the market price. A new kind of tender this. A man at Sheffield must gallop to Boston to learn from the course of exchange, the market price of gold, and by the time he gets home, it may be altered, and so besides seeing a lawyer, and his trouble, he has a bill of cost to pay his litigious creditor.

His Honor proposes to reduce the Johannes only to 46s, tho’ according to some critical and accidental events and advices, they are really worth but 43s. 3d. Now it must be owned that this looks plausible: if they are really worth but 43s. 3d. and the creditor will take them at 46s. it is splitting the difference, as we say, in a country arbitration, and I think, the debtor, and the province which is the greatest debtor, ought to be very thankful if this will satisfy their creditors and acknowledge that their said creditors have very

good tender, not to say whimsical consciences, that they will take but half their due, and set down content with 20000 Lawful money, when they might demand 40000.—

As to few debtors having any money by them, it seems most probable that 9/10 of the money, in every country, is in the hands of debtors, or which is the same thing, traders and others, who will loose by its fall.

Our silver and gold; as now regulated, are exactly agreeable to the sterling standard of both, as may be seen by any one who will be at the pains to calculate them.

As 60*d* sterling, an ounce of silver, is to 80*d* lawful money, so is 21*s* the guinea to 28*s* lawful money, precisely; and as 129*gr*. the weight of a guinea, is to 336*d* lawful money so is 221*gr*. the weight of a johannes (or more properly the ½ johannes) to 576*d*, or 48*s* lawful money, as it now stands; and so of all the rest, bating the 2*d* an ounce between dollars at 6*s* and silver at 6*s* 8*d* *per ounce*, which has been accounted for; and some frivolous fractions may perhaps rise from the different alloy of some of the pieces, but they are too insignificant to deserve the notice of the legislature.

The proportion of sterling standard silver to gold is as 1 to 15 1/5, which is what has been conformed to by the provincial laws. It must be owned Mr. *Locke* is against gold's being made money or a tender, at any rate; and his reason is almost literally the same with his Honor's. See pag. 78 vol. 3*d*. And this opinion has been embraced by other writers of an inferior class. Now I think it very fortunate for me, that Sir Isaac Newton the only single name that I should have dared to mention against Mr. *Locke*, is of a different opinion; and upon his representation in 1717 above twenty years after Mr. *Locke* had published his treatise, the guinea was set at 21*s*. and has so stood ever since; add to this the concurrent practice of all nations and ages in making money of gold as well as silver. I have not room to insert the reasons that have been given against Mr. *Locke*'s opinion in this particular. It is enough that it has been over ruled by the wisdom of the nation. Mr. *Locke* tho' one of the princes of the philosophers was not infallible. It is by this time I hope evident that his Honor's calculations are founded not upon the *sterling standard*, but the varying *price of bullion*, a commodity which can no more make a standard than the price of *broad cloth*. It might also be demonstrated, that even upon his Honor's Hypothesis his calculations are wrong, but this every man may do for himself without being a Newton in mathematicks or a *Locke* in metaphysicks.

His Honor is of opinion that gold and silver cannot both be kept here without "lessening our imports," that "plenty of money has produced luxury, luxury tends to poverty" "poverty to industry and frugality" "these bring money again." I am no merchant, but have been informed that increasing the

exports is more advantageous to a country than lessening their imports. As to the revolution or wheel of fortune which his honor has described, *luxury* is a very vague & loose term, if by it is meant the importation of many foreign commodities, the more we have the better, if we can export enough to pay for them; poverty is so far from being the basis of industry and frugality that it is too often the occasion of vices directly opposite. Poverty can no more produce riches than it can furnish a man with the secret of the philosopher's stone. I know it is the maxim of some, that the common people in this town and country live too well; however I am of a quite different opinion, I do not think they live half well enough. I should be glad to see here as in England, tradesmen and yeomen worth their tens and their hundreds of thousand pounds, for then and not till then we shall see gentlemen and merchants worth their hundreds and their millions. The tradesman and the husbandman would do well to consider that when they are for cramping trade, they are for killing a faithful servant, who is toiling day and night, and eating the bread of care for their good as well as his own; the merchant & other gentlemen would do well to reflect that the hand of the tradesman and husbandman are their employers, and that unless they multiply and increase in their commodities and riches, the merchant will never flourish: The *merchant*, *manufacturer*, and *freeholder* should consider themselves as the most immediate and natural brothers in the community, that God and nature have made their interest inseparable: and when they will agree conjointly to pursue it, no mortal hand can ever prevail against them.

Nature has been as kind to this province as to most in the world. This is demonstrable from its increase in people, and trade, from its settlement to the year 1749; & yet we never raised our own bread. The balance yearly sent out in cash for wheat and flour, which we might raise as easily as the other colonies, has been often mentioned to our shame; and yet nothing has been done to encourage the raising of one, or manufacturing the other. It is said we pay two thousand pounds sterling a year, only for flour barrels. It is humbly submitted, whether it is not highly incumbent upon the government, to take this affair into their consideration, and grant a bounty for raising wheat; the saving between raising and paying the other colonies for our bread, would in two years furnish a sufficient medium for all our other trade.

Thus I have endeavoured according to my poor capacity to answer his Honor's reasons for lowering the price of gold, to prove the necessity of making gold expressly a tender, and have pointed out the only possible method of keeping gold and silver in plenty amongst us. Every political writer is allowed to lament the decay of public spirit: It is certain that in proportion to this

decay, calamities of every kind will invade a community: And amidst all our disquisitions, could we hit upon any method for reviving this spirit among us, public embarrassments that appear insuperable, would vanish before it.

I am the humble servant of my Country, and
a hearty Well Wisher to all men,
James Otis, junr.

P.S. Very soon after his Honor published his thoughts, he told me “he had been cutting out work for me in the paper,” as near as I can recollect the words, which I took as a personal challenge to answer him; if they were not so intended, I was mistaken: However, read in the preface challenge to *answer*; and those who can think it will make any difference in the sense, may for Cooke the Cobler, read *all mankind*.

J.O.

Column 2d. l. 9. of this paper, for *never was*, r. *has not been lately*.

January II, 1762

Messieurs EDES and GILL,

THE following is not intended for a regular Return to his Honor's Piece of the 4th; that can't come 'till he has finished and then he may be unanswerable. My Apology for this, is the Extract from Mr. Locke, published the same Day with my Answer.

I know not of the least offence that has been given by his Honor's inquiries; nor have I ever heard him charged, with any view in publishing his thoughts, but to the publick good; sure I am, that I never charged him with the contrary.

If Mr. Lowndes imagined that increasing the denomination of a piece of silver, would increase its real value; I happened to be more fortunate than to think so, as is evident from this assertion in your gazette of the 21st of Dec. “It is not of a farthing consequence, (i.e. as to the value) whether the ounce be called 5s or 6s 8d.”

I shall not compare myself to either of those great men, Mr. Locke, or Mr. Lowndes. But with regard to the terms *Delicacy* and *Politeness*, it may not be amiss to observe, that they are relative, and admit of no invariable standard. The present humour of a court, the prevalent fashion of the age,

and a thousand other accidents and circumstances, concur to vary the idea annexed to those words. The delicacy and politeness of the Russian court, would perhaps appear boorish in the present refinements at St. James's. The British courtier at Versailles may be looked upon with as much pity and contempt, as the true plain hearted Old Briton would be by a modern politician. In the days of our fore-fathers, power put on the grim visage of open force and violence. In this more delicate age, soft words; a smiling countenance, fair promises, and other tickling blandishments, are the only sure means of obtaining those enormous degrees of power, which mankind are so fond of: Whatever delicacy and politeness may dictate, good sense and good nature require that great allowances be made for the different ages, nations, education, advantages and natural tempers of men. In one word, I am no courtier; I know not to give flattering titles to men, nor have I the least desire to offend them. If plain english and freedom of speech are too hard for the digestion of any stomachs, those who labour under this infirmity, have a right to please their own palates, and will of course seek elsewhere for entertainment.

Mr. Locke informs us, that Mr. Lowndes was "no otherwise known to him than by his civilities," and adds, that he had "a very great esteem for him"; and so have I for his Honor, tho' no part of my respect arises from civilities I have received, but purely from his Honor's rank and merit. Mr. Locke in his disputes uses greater freedoms by fifty times, than I ever desired to use with his Honor, and it would be no difficult task to point out some in his controversy with his friend Lowndes. However, this might not serve me, as it may be said, that greater freedoms are excuseable between friends. The bishop of Worcester was greatly Mr. Locke's superior in rank, tho' I confess not so much as his Honor is mine in abilities. But it must be remembered, that no man carries the atmosphere of his commission or public character into a disputation; if there was any rule of logic in favour of that, the very name of a justice of the quorum would be as effectual to strike a poor plebeian dumb, as the *ratio ultima regum*³ of Lewis the XIV. Most men had rather be silent all their days, than run the risque of being thought worthy of hard names, bonds and stripes for every word that may happen to displease the delicate ears of a superior.

I return my most humble and hearty thanks to his Honor for his history of our currency, and should promise myself great entertainment, if he would gratify the public with a more general history of the province. His Honor's

3. *Ratio ultima regum*: "The last argument of kings." N.B.: Louis XIV had this engraved on a cannon.

long acquaintance with our ancient records, must have furnished him with many curious anecdotes, unknown to most others.

I entirely agree with his Honor, that our *standard for silver* has ever been the same with sterling. I could never see any necessity of altering the denomination, and have often wondered at such alteration taking place; and am more fully convinced since his Honor's opinion, that it was a very ill judged thing, tending only to confusion and disorder. It is a thousand pities that so fair an opportunity as offered itself in 1749, for rectifying this error should not have been embraced.

His Honor observes, that "in democratical governments, generally, there will be a bias in the legislature, to the number rather than to the *weight* of the inhabitants." It is presumed that this may be true in speculation, but it cannot well be examined in practice: because strictly speaking, there never were many democratical governments in the world. I don't at present recollect one such government existing upon the face of the earth. The English government is by some indeed considered as democratical, others have not scrupled to call it an anarchy; but the best opinion is, that the true British constitution, as settled by the glorious revolution, is a *mixed monarchy*, or a composite of the three famous kinds, viz. of *monarchy*, supplied by the King, *aristocracy*, supplied by the lords, and of *democracy*, supplied by the commons. This when the checks and ballances are preserved, is perhaps the most perfect form of government, that in its present depraved state, human nature is capable of. It is a fundamental maxim in such a government, to keep the legislative, and executive powers, separate. When these powers are in the same hands, such a government is hastening fast to its ruin, and the mischiefs and miseries that must happen before that fatal period, will be as bad as those felt in the most absolute monarchy.

It may happen in governments formed after this model, that in consequence of art and corruption, half a dozen, or half a score men will form an oligarchy, in favour of themselves; and an aristocracy in favour of their families and friends. Instances may be found, where a man of abilities, shall monopolize a power proportionate to all those of lord chief baron of the exchequer, lord chief justice of both benches, lord high treasurer, and lord high chancellor of Great Britain, united in one single person. There is no axiom in the mathematicks clearer than that no man ought to be sole legislator of his country, and supreme judge of his fellow citizens. Should it be objected, that in making these political reflections, I have wandered; my apology is, I went out of the way, for the sake of his Honor's company, whose observation upon the democratical *byass*, led me astray if I have erred. By analogy it seems probable, that in an aristocratical government, the byass will

be in favour of the weight rather than the number of the inhabitants. But the more equitable way in all governments, is to set quantity against quality, and to keep as exact a balance between debtor and creditor, as the nature of the thing will admit. If it is possible that his Honor should intend, a distant light *delicate* suggestion, that I am in the least warped by either of these byasses, he is very much mistaken. I desire neither poverty nor riches, and thank God heartily that I have neither. *Mediocritate mea contentus sum*.⁴ My argument in more respects than one, runs counter to what the wise of this world call interest. This will not lie, and when a man speaks against it, there is little reason to suspect his sincerity, however lightly we may think of his understanding. *Restituit Rem*,⁵ is a pompous motto, that I never expect to be complimented with, and I certainly will never assume it, but this, *Non populi fasces, non purpura Regum flexit*,⁶ is what every man should take care to deserve, before he pretends to any degree of *philosophy* or *patriotism*.

For the sake of the unlettered reader, let it be noted, that *Monarchy* is the government of a single person, whether King, Emperor, or perpetual *Dictator*. *Aristocracy* is a government administred by a few Nobles or Grandees. A *Democracy* is that government where the supreme power is in the Hands of the people. An *Oligarchy*, is the government of a few, sometimes justly termed a Junto. *Anarchy* denotes a mobb or no government at all.

There can't be a more severe satire upon many modern governments, than what Mons. Secondat is supposed gravely to assert, as the principle of Monarchal governments: "In Monarchies (says he) policy makes people do great things with as little virtue as she can. The state subsists independently of the love of one's country, of the thirst of true glory, of self-denial, of the sacrifice of our dearest interests, and of all those heroic virtues which we admire in the ancients, and which to us are known only by *Story*."

The same author, speaking of the British Constitution, observes that, "the political liberty of the subject is a tranquility of mind, arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted, as one man need not be *afraid* of another. When the legislative and executive powers are united in the same person, or in the same body of magistrates, (or nearly so) there can be no liberty, because (just and great) apprehensions may arise lest the same Monarch or Senate (or Junto) should enact *tyrannical* laws to execute them

4. *Mediocritate mea contentus sum*: "I have contented myself with my mediocrity."

5. *Restituit Rem*: "He restores the [usual] state of affairs."

6. *Non populi fasces, non purpura Regum flexit*: "Neither the honors of the people, nor the purple [clothes] of kings move [that man]."

in a *tyrannical* manner. Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul: for the judge would be then the legislator: were it joined to the executive power, the judge might behave with all the insolence of an *oppressor*. There would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise the powers of enacting laws, of executing the public resolutions, and of judging the crimes and differences of individuals. Most kingdoms of Europe enjoy a moderate government, (i.e. in comparison of Turkey) because the Prince, who is invested with the two first powers, leaves the third to his subjects.

“In Turkey, where these three powers are united in the Sultan’s person the subjects groan under the weight of a most frightful oppression.

“In the republics of Italy, where the three powers are united, there is less liberty than in our monarchies (in which the French is included). Hence their government is obliged to have recourse to as violent methods for its support, as even that of the Turks. Witness the State *Inquisitors*, and the *Lion’s Mouth*, into which every (rascally) informer, may at all hours throw his written accusations.

“What a situation must the poor subject be in, under those Republics! The same body of magistrates are possessed, as *executors* of the laws, of the whole power they have given themselves, as *legislators*. They may plunder and plague the state by their general (ignorant, vague, random and arbitrary) determinations; and as they have likewise the *judiciary* power in their hands, every private citizen may be ruined by their particular decisions. The whole *power is here* united in one body; and tho’ there is no external pomp that indicates an arbitrary sway, yet people (unless they are more stupid than stocks and stones) feel the effects of it every moment.

“Hence it is that many princes in Europe, whose (sole) aim has been levelled at arbitrary power, have *constantly* set out, with uniting in their own *persons*, all the (*material*) branches of magistracy, and all the great offices of state.” *Spirit of Laws*, V. I. B. X. C. vi.

O *Secondat*! thou wast surely inspired, or you could never have so exactly described the *state* of provinces, perhaps unpeopled, and of people unborn, when you first felt their miseries. Had France have had many Montesquieus, Canada might never have been conquered: Should Great Britain play it away, when another Pitt appears, she may conquer it again.

JAMES OTIS, Junr.

January 11, 1762 (supplement)

Messieurs EDES and GILL,

WHEN a rich (great and powerful) Man speaketh, every Man holdeth his Tongue. And look, what he saith, they extol it to the Clouds; but if the poor Man speak, they say, what Fellow is this? and if he stumble, they will help to overthrow him. —Wisdom of the Son of Syrach.

Great Men and Judges, and Potentates, shall be honoured; yet there is none of them greater than he that feareth the Lord. —Id.

What Agreement is there between the Hyena and a Dog? and what Peace between the Rich and the Poor. —Id.

SINCE I published my first thoughts in your paper; I have often very carefully revolved them in my own mind, and have also closely attended to all that has been published on the other side, and the result is, that, instead of being convinc'd of any material error, I am much confirmed in my first opinion, viz. That the rates of gold stand very well as they are, and that 'tis absolutely necessary it should be made expressly a tender at those rates.

I find the principal difficulty in the minds of my honest opposers (for as to those who are swayed by interest or party, it is in vain to reason with them) rises from their not carefully distinguishing between money and bullion.

Money is the coin of any certain weight and fineness, stamp & name fixed & established by the law of a country, be the metal what it may either silver, gold, copper, lead, or iron. The silver and gold are undoubtedly the best, when they can be come at, and silver, as Mr. Locke observes, is the properest computative Money, or money of accompt which no body ever contradicted as I know of. Bullion, strictly speaking, is silver and gold unwrought, tho' the term is now applied to all silver and gold, that is not the coin or money of the state. Hence, in England, all foreign coins that are not made money of England, by the King's proclamation are considered as bullion, and so is the English coin in foreign states. I believe there has been no proclamation since the arbitrary reigns establishing any foreign coin as money of Great Britain, so that silver and gold of the King's mint are the only money of Great Britain, and it is undoubtedly best it should be so; hence Johannes and Dollars are in England commodities, and upon the same footing with gold and silver in bars or ingots. The English having followed most other nations in what is by very judicious writers deemed false policy. The acts of Parliament prohibit the exportation of the King's coin

under the pains of death. Strange that the Prince's money should not be allowed a free currency thro' his own dominions; but this being the wisdom of the Parliament, we must submit. Hence it is necessary in the colonies to have recourse to foreign coin for a medium, it being one of the *Jura Regalia*⁷ to set up a mint, it would be a forfeiture of our charter to establish one here, and high treason in the operators, if the rigor of the law was insisted upon; tho' it seems it was winked at in the days of Yore for a little while, but was doubtless made a pretence for vacating our old charter, tho' it was but a pretence, if, what his Honor intimates be fact, viz. that the government in the Interregnum made an ally of us: this certainly furnished a good excuse, for this province then could not be expected to determine the difference between the power *de jure & de facto*.⁸

Nobody will pretend that the province has a right to be considered as an ally; nor does Great Britain consider this, or any other of her colonies, as in that absolute dependent state as conquered countries.

These Northern colonies subsisted for near a century, not only without the smiles, but in spite of the frowns of the great men in power, in the arbitrary reigns. But, since the glorious revolution, thank God, the scene has been changed, not only the rights of Great Britain, but our rights have been settled, and strictly adhered to by every Prince since that memorable event. We are intitled, by birth-right & inheritance, to all the essential privileges of the best Briton, and we never had nor shall have, while the present British constitution remains, any oppressors among us; but those who are made so here, whether natives or foreigners.

So long as people will submit to arbitrary measures, so long will they find masters, and whenever Tib kicks, master must cease whipping and spurring, or he will run a risque of his neck.

But, to return from what may be called a digression, let us examine the cause of the price of bullion being higher than sterling money. The first is this, if I have occasion to send fifty ounces of silver to Holland, I should do as most men would, give a penny or two pence an ounce more for bullion, rather than run the risque of a halter in melting down the King's coin.

The Jews and other sagacious jobbers, have rendered the trading in bullion so advantageous, that it is become not only a considerable branch of business, but no contemptible science in change alley. All this tends to raise bullion above the price of coin: Add to this, the frequent demands for the East Indies, where great quantities of silver are carried, never to return.

7. *Jura Regalia*: "Royal rights" or "rights of the king."

8. *De jure & de facto*: "By law and in fact."

The demand for silver is further increased by the plenty of gold in the East, which yields a fine profit in return for silver, which is scarce there; with all these and some other causes gold is rendered plentier in Europe, than it was formerly. With all this silver, bullion is about 5s an ounce more than it was in William's time. The proportion between English crowns and English guineas, or Sterling gold and silver, is as 15 $\frac{1}{5}$ to one; i.e. 15 & $\frac{1}{5}$ English crowns or ounce of silver, is equal to 1 ounce of gold; and so is 15 $\frac{1}{5}$ of an ounce of silver money here, to an ounce of gold, by our present province laws. Now tho' it has been said, that it is not of a farthing's consequence whether you call an ounce of silver 5s or 6s 8d this must be understood in this restricted sense, viz. provided silver is your only medium or standard. But if gold as it ought and is here, and in England, and every where else but in the East-Indies, *is money*, it is of consequence to keep as exact a proportion between them as possible; a perfect proportion is well known to be impossible.

To make this matter clearer, if I owe £105 sterl. in England, and remit an hundred Guineas, it fully pays my debt, and no more, because guineas can't be made merchandize of, and reshipped: But if I send home the same weight in Joannes or other foreign gold, it will yield me a handsome profit, besides the paying the £105, because these being bullion are worth something more to re-export. Silver bullion being somewhat more scarce than gold bullion, if I remit 420 English crowns, it just pays my debt; but if I send the same weight of dollars, it fetches as silver bullion, something more than gold bullion, from the variation of quantity, quality and demand, just as one sort of oil or cod fish, or any other commodity, fetches more than another. And for ought I see, the different prices of our fish and oil abroad, is an argument of the same kind, for altering the standard of our currency, with the varying price of bullion.

The merchant has a right to ship off gold or silver, as he thinks best; and he ought not to be restrained nor can he be; the profits of trade in this province are little enough; I wish they were much greater. The government have nothing to do with furnishing the merchants with a medium; if they are let alone and not burthened with imposts, excises, &c &c. they'll find themselves a medium; and the province, with all the blessings that attend a flourishing trade, into the bargain.

But it is of great importance that in all governments their currency should be established, and if you have money, both of gold and silver, that they should be in a due proportion. I grant also, that it would be best if this proportion could be the same thro' the world, but this can't be. I also grant, for I want to hide nothing, that our gold and silver *money*, and the sterling gold

and silver *money*, are a little disproportionate to the prices of gold and silver bullion in Europe, e.g. If I am in England & have an ounce of silver and an ounce of gold in bullion, and the same quantities in silver and gold coin of the kingdom; the gold in coin is 15 1/5 to the silver, but the gold in bullion is but about 15 to silver. What, does all this prove that gold coin should be lowered? No, but that silver coin is worth more, and if any thing is done should be raised, and this ought to be the case here if any alteration is made, as will appear by what follows. Mr. Locke was for excluding gold from being money or a tender (for they are synonymous). Sir Isaac Newton was not for excluding gold from being money or a tender, but only for lowering it, I shall have more occasion for this observation by and by. Upon Sir Isaac Newton's report the Guineas were lowered 6*d.* but the nation was far from finding their account in this, as appears by the following extract from Tindal's continuation of Rapin's History of England, vol. 27. p. 132.

"An attempt was made this session to lower the value of Guineas. Mr. Aislable having taken notice of the great scarcity of the silver coin, occasion'd chiefly by the exportation of silver and importation of gold, proposed, that a speedy remedy might be put to the growing evil, by lowering the value of gold species. Upon this the King was addressed for the representations made by the officers of the mint to the treasury, in relation to the gold and silver coins. Accordingly Mr. Lowndes presented to the house several papers relating to the coins, and particularly Sir Isaac Newton's representation to the Lords of the treasury. Then Mr. Aislable renewed his motion, and was seconded by Mr. Caswel, who made a long speech on the various values, which, at different times gold and silver coin have born with respect one with the other, according to the scarcity or plenty of either. He suggested, that the over-valuation of gold, in the current coin of Great Britain, had occasioned the exportation of great quantities of silver species; and to that purpose laid open a clandestine trade, which of late years had been carried on by the Dutch, Hamburgers, and other foreigners, in concert with the Jews and other, traders here, which consisted in exporting silver coin, and importing gold in lieu thereof, which being coined into guineas at the tower, near fifteen pence was got by every guinea, which amounted to about 5 per Cent. and, as these returns might be made five or six times in a year, considerable sums were thereby got, to the prejudice of Great Britain, who thereby was drained of silver, and overstocked with gold; concluding, that, in his opinion, the most effectual way to put a stop to this pernicious trade, was to lower the price of guineas, and all other gold species.

"This speech was received with applause, and an address was voted and presented to the King, for a proclamation to forbid all persons to utter or

receive guineas at a higher rate than one and twenty shillings for each guinea. Pursuant to this address the proclamation was issued the next day, after which the commons adjourned to the 13th of January.

“The lowering the value of gold, which was thought a proper expedient to procure a greater circulation of silver species, had during the recess a contrary effect, either, as was supposed, through the covetousness of some monied men, who hoarded up silver in hopes that the same would be raised; or out of fear that gold would still be lowered; or through the malice of the disaffected, who, by the same method, thought, if not to distress the government, at least to raise murmuring against it, among the common people, upon account of the stop which was thereby put to petty trade.

“In order therefore to remedy this great evil, as soon as the commons met, they came to a resolution, ‘that this house will not alter the standard of the gold and silver coins of this kingdom, in fineness, weight and denomination; the lords came to the same resolution, and ordered a bill to be brought in, to prevent the melting down of the silver coin.’”

Mr. Postlethwait, speaking of this transaction, says, “Though the reduction of gold was not so natural, perhaps as the raising the value of silver” (or rather giving silver coin the value it had at market) yet it would have equally answered the end (among themselves and without regard to individuals he evidently must mean) of fixing the par necessary between these metals, if the reduction had been great enough. But still it would have been, as in effect it was a disadvantage to England, with regard to foreigners. He demonstrates this loss to be above 100,000 l. only by what foreigners had in the English funds. And by his principles it may be rendered very probable that this province would lose near as much by reducing Johannes from 48s. to 46s. besides the injustice to the debtor and the possessors of gold.

Mr. Postlethwait proposes that *Silver* should be raised, so as to make the proportion about 15 to one, and then leave gold to find its price in the altercations at market; and yet proposes to have a price fixed to gold by law. I have no objection to the truth of his observation, that if any thing is amiss, silver coin is too low here, and in Europe, in proportion to gold coin, compared to the price of bullion, and that it is most natural silver money should be raised, and not gold money lowered. If any thing, I say this ought to be done in England, and then we might safely follow them.

I should not dare propose it to be done at present if I thought it was right, because a great cry would be soon raised; by the distressed creditor, that we were a going to pay him in names instead of realities, for 3*d.* a dollar is a reality to a creditor, tho’ some *metaphysicians* would pretend that 2*s.* a Johannes is a non-entity to a debtor, and that he would be just as well

without it as with it, but it is not so easy to perswade people out of their money at present.

They have been long convinced in England of the disproportion between silver and gold coin, or sterling standard if considered as bullion, yet all the alteration that has taken place this century, was the 6*d.* taken off from the guinea, which they soon repented of. When the english standard is altered 'twill do for us to alter ours, and not before. I am now going to argue in favour of the poor creditors. It is agreed on all hands that we are dependent upon England, and therefore it would be strange for us to undertake to set a proportion between our money of gold and silver different from theirs, but if we were independent, as ninety nine parts of our trade in a hundred is with them, and a balance greatly against us, according to Mr. Belloni, our money system regulated according to the true proportion of bullion would only hurry both gold and silver away the faster. See Sav. Dic. Com. v. Coin.

Gold bullion in England, is raised as well as silver since 1749. Handsome profits have been made by shipping silver, and when that is gone a considerable one may be made of Gold. A Johannes that in 1749 would fetch but 36*s.* will now fetch 37*s.* 9*d.* This has appeared as paradoxical to some; but the truth is, that bullion of gold and silver, like beef and pork, broadcloths and hollands, or other commodities, rise or fall, proportionably to the various accidents in commerce, or as summarily and commonly expressed according to the quantity and demand.

I don't blame any man for being concern'd in the trade of shipping money, it is allowable by the law of the land, but then the matter ought to have been generally known, that every one might have had a fair chance. A thing of this kind should not be made a secret of by a few people in government, of heavy *purses* and long heads. To have in favor of that trade but one species of money established here as a tender, and that the best to ship away, and after three hundred thousand pounds are contracted for in dollars in consequence of an act artfully drawn, perhaps to serve this very purpose; for the province to be told it shall not, nor the people in its jurisdiction, shall never pay but in silver, tho' you had gold of us, and we have sent all the silver away looks a little tantalizing, and may be compared to the proceedings of the Aegyptian task master, who required bricks without straw. Let us have gold and silver both a tender at the rates of sterling money, and let the merchant do as he pleases with bullion or any other branch of trade, the legislature has no business with either: Tho' I cant help saying, that I think more patriotick and reputable branches of business might be followed, than buying money to ship home. I say buying money, because our real traders and merchants are under a necessity, of sending home money, and can get hardly any thing

else. But those who do not owe in England are under no necessity of doing so; and, in short, their being able to do it to advantage, is partly owing to what is very ruinous to the trade of a young country, and that is the monied men with drawing their stocks out of business, and putting it at interest and turning stock jobbers. That this is a fact, is notorious. I could name persons worth £20000 sterl. raised by trade in this town, and born here, that have withdrawn it, and left the town, to avoid the taxes, which indeed are much too high here.

I can't say whether my ancestors traded in wampumpeag or beaver; but this is certain they did not trade to much advantage, or I should have been born perhaps with a silver spoon in my mouth.

However that was, if my father had raised a million of money in trade, and should leave it all to me, I would spend every farthing of it before I would desert my native town in distress, only to avoid bearing my share of her burthens, and misfortunes.

A series of oppressions and impositions upon trade, and in consequence great risque in it, with other evident causes, has taken great part of the Estate of the province out of trade, and little concern seems to take place about it, in those whose duty it is to cherish it most.

I find in Mr. Fleets paper a very prolix performance signed Y.Z. I had once determined with myself not to enter into a controversy with any gentleman, under the rank of a Lieutenant Governor; especially if he concealed his true name: But there are two or three reasons which have caused an alteration in my opinion with regard to Mr. Y.Z. I shall not name them, it is enough at present to tell the reader, that a thought has been suggested to me, by the following lines of Horace.

Alme Sol curru nitido, diem qui
Promis & celas aliusque &c idem
Nascereis; possis nihil urbe Roma
*Visere Majus.*⁹

If I am mistaken in my first conjecture, I have a right to say Mr. Y.Z. is a saucy, pert, impertinent upstart, and a busy body, to thrust his nose into a dispute between people of his honor's rank & mine. Surely he is unacquainted with the first principles of delicacy and politeness, to think his honor can

9. *Alme Sol curru nitido, diem qui / Promis & celas aliusque &c idem / Nascereis; possis nihil urbe Roma / Visere Majus*: "O dear Sun, who leads out the day with swift brilliance and hides in another place the same thing you brought forth; may you see nothing greater than the city of Rome!"

stand in need of his elucidations or *assistance*. I have suspected more than once whether this Mr. Y.Z. by his unmannerly and vulgar insinuations of a lawyers wilfully misrepresenting facts, and dealing in quibbles, mayn't be some leering *assurance* broker, piping hot from an unsuccessful counting house, who by his scurrility against the profession and divine science of the law, expects soon to be deemed a very fit candidate for preferment.

However, I have nothing more to say to him at present. Make way for his Honor, young man. *Vox sausibus haesit*.¹⁰

His Honor, among many things that I have not time to animadvert upon at present, has quoted a passage from Sir Isaac Newton's famous representation, which it's needless to repeat at large, these words "people are already backward to give silver for gold, and will, in a short time refuse to make payments in silver without a *premium*," are sufficient at present. I should almost as soon believe the doctrine of transubstantiation, as that Sir Isaac Newton ever talked nonsense. Yet he certainly must have done so, if gold was not a legal tender in England as well as silver.

I ask these plain questions, if gold was no tender in England, what could people pay their debts in but silver? if the law allowed payment in nothing else but silver, how then could they refuse paying them in silver?

Whether the King's coin of gold be a tender in England, at any fixed rate, has been a dispute here for three months; however this seems to be conceded at present, at least by Mr. Y.Z. *so there is one point gained*. The reader is desired to note with Mr. Locke once for all, that cavilling here and there at some expression, or little incident of a discourse, is no answer to it. That railing is no argumentation nor worth notice.

Mr. Y.Z. says, it seems to be allowed that gold is set at too high a rate, compared with the price of bullion and other foreign coin in England.

I have granted this, but say it is nothing in favour of lowering gold here, nor in England; and have proved that this concession is nothing to any purpose, but to prove that silver should be raised, which I dare say is not Y.Z.'s purpose. Mr. Y.Z. seems to triumph principally in three supposed errors of mine (1) In the calculation which is allowed to be just, if *60d.* is the true value of an ounce of sterling silver money. (2) My sense of Sir Isaac Newton's opinion. (3) In supposing a position of his Honor's inconsistent.

With regard to the first as it seems probable from Mr. Y.Z.'s concession of my quoting Sir Isaac Newton, that I had his representation before me, I could not be ignorant or unmindful that "a pound weight of silver (11 *oz.* 2 *dwt* fine, and 18*dwt.* alloy) is cut into 62 shillings," and that this answers

10. *Vox sausibus* [*sic*: faucibus] *haesit*: "[My] voice stuck in my throat."

to 62*d.* per ounce. Nor that “taking this for the standard, (as it really is) if a calculation were made agreeable to the given *form*, the result would differ considerably from that of the calculation refer’d to.” I say, all this I knew as well as this notable detector of errors: My design was not so much to address my self to the rich, the great, and the sagacious: they are able to take care of themselves. My design was to express myself in such a manner, that the common people might have their eyes a little opened to their interest. In doing this, I followed not only his Honor’s clear manner of considering this subject, but the manner in which it was considered by the sum of all civil power in this province the assembly which made the act of the 23 of George II*d.*

They considered an ounce of coined sterling silver, in relation to the currency to be established here, as 60*d.* to 80*d.*, and upon that supposition, a Guinea comes to 28*s.* and the half Joannes to 48*s.* That calculation was made for the common people in town and in the country; for I am not ashamed, nor afraid to declare, I think they want their eyes opened, and I shall always be ready to contribute my mite thereto. It was therefore needless to trouble them with Sir Isaac’s representation at large most of them would not have understood it; and I care not a Button if Mr. Y.Z. directly, as well as indirectly, insinuates, that this was done not from hurry, but from a design to misrepresent facts. Since I am upon this, I desire my candid reader to take notice once for all, that I have many affairs to attend, besides my own immediate interests; if I had piles and bags of gold and silver heaped up in abundance, I might have had more leisure to study a subject which was in a sort new to me at the last session of the court and might have avoided any mistakes. My dear Friends, Fellow Citizens, and Countrymen, I am forced to get my living by the labour of my hands, and the sweat of my brows, as most of you are, and obliged to go thro’ good report and evil report, for bitter bread, earned under the frowns of some who have no natural or divine right to be above me and entirely owe their grandeur and honors, to grinding the faces of the poor, and other arts of ill gotten gain and power.

*By honest Arts win Honors O my Son!
If not by Tricks, by H——ll, they must be won.*

Rem facias, rem, recte si possis quocunque modo rem,¹¹

*And honestly get Riches if you can,
At all Events they must be got my Man.*

11. Rem facias, rem, recte si possis quocunque modo rem: “Make money fairly if you can; but if not, make money any way possible.”

But here endeth the sound of the first triumph. Mr. Y.Z. is less sagacious then he would be tho't to be, if he don't know, (and if he don't) I now tell him, that adding the allowance of 2*d.* an ounce for coinage, which his Honor very justly takes notice of in his first performance, the result of my calculation will turn out, as it did before, bating a fraction, which none but a *quibbling Genius*, to return one of his *polite and delicate* complements, would have thought the subject of a triumph. However, if that calculation was as erroneous as it is exact, it would make nothing to the main argument, which is, Whether gold shall be made a tender here: As to "fixed rates," which Y.Z. adds, they are nonsense. A tender at an unfixed rate is jargon to a lawyer, as I trust it is to every man of commonsense.

The next mighty thing, is the affair of opposing Sir Isaac Newton to Mr. Locke. Mr. Y.Z. says, "it don't appear (to him I suppose he means) that Sir Isaac Newton has offered any thing in his *representation*, that can with propriety be construed to contradict Mr. Locke." I can't help that—Sir Isaac's representation appears very different to me, and I shall in a few minutes submit the affair to all gentlemen *and others*, which understands Sir Isaac Newton best, *he himself*, or Mr. Y.Z. I am content to lie under the imputation of writing in a *hurry*, or of a desire of misrepresentation, in the opinion of Mr. Y.Z. However precipitate or wicked I am, none of the effects of either happen to appear in the inference now to be considered. None much above a Zoophite could have Sir Isaac's representation before him; carefully read it over as I did, and assert as I have in my first piece, that "upon his representation a guinea was set at 21*s.*" (and consequently lowered from 21*s.* 6*d.* which every body knows was the price before) and has so stood ever since; and yet suppose that Sir Isaac Newton was against lowering gold. Add to this, Sir Isaac's representation was professedly in favour of lowering gold. I never said, heard or dreamt, that Sir Isaac Newton was against lowering gold, and if Mr. Y.Z. can fairly and clearly show that I have said such a word in any thing I have written, I will strike out the particle, *or*, and insert, *and*, in the promise of the premium which he built so many hopes upon!

If his hopes of gain, temporal and spiritual, are no better founded, than most of his inferences, I seriously recommend to his consideration, that it is as hard for a rich man to enter into the kingdom of Heaven, as for a camel to pass thro' the eye of a needle. Alas, alas, if longitude is never discovered till Mr. Y.Z. finds it out, wo unto poor mariners, as well as poor lawyers, which I suppose this joking scribler will retort in some future elaborate performance. Down anger! be still O my rage and madness, and attend to the dictates of reason.

I am now going to lay before the reader, my inference from Sir Isaac's representation, the same I made at first, and shall prove it be a just inference. My words are, "It must be owned Mr. Locke is against gold being made money or a tender." *Gaz.* Not a word about Mr. Locke's being of the opinion that the money of gold should be lowered, this would have been impertinent, not only in me, but Mr. Locke too; for he is for annihilating gold as money, which must make the question about lowering the *money* of gold needless.

I expressed no immoderate triumph from what I then and now conceive to be Sir Isaac's opinion, to wit, That the king's coin of gold in England is money, and a tender as well as silver, this I have above proved to be his opinion from his own words, quoted by Y.Z. (and his Honor too) or they are irreconcilable. I only said, I thought it fortunate for me, that Sir Isaac Newton, the only name I should have dared to mention against Mr. Locke, was of a different opinion. What opinion is there expressly referred to? why that of Mr. Locke against gold's being made "money or a tender," not a word about lowering gold: Further, if Sir Isaac Newton was of Mr. Locke's opinion, with regard to expunging the king's coin of gold, he did not act with integrity, in not hinting a word of so important an opinion in his report.

So the second triumph vanishes like the baseless fabrick of a vision.

The last and most boasted victory of all (and no wonder) is that upon which large money is depending, and much more I confess, than I am worth; but I'll procure it when due for all that. I know of two or three arts, that will earn the value of the premium, or premiums, before they will be won by Mr. Y.Z. These are a little courtly and miserly, but no matter for that, Horace says they may be used in case of urgent necessity.

His Honor has these words in his first performance, viz. "It may be proper to observe, that whatever is the proportion, between gold and silver *bullion*, not gold and silver coins, as they are commonly current by tale, in England, the same must be always kept in the colonies, for all we have of both metals, except what is absolutely necessary in trade, will always go to England, and if you *set* gold too high in the colonies, it will drain you of your silver, if you set it too low, you in effect exclude gold."

I did promise, and I do again promise to pay any man that "can fairly reconcile to my mind, a perpetual invariable standard, with a perpetual varying price of silver and gold bullion in England, a praemium equal to any that has been appropriated for the discovery of a perpetual motion, the squaring of the circle, or the invention of the longitude"; or all together, as the reader pleases.

There is no need of tables, or reasoning about the matter, the reader is desired only to recollect his ideas of money & of bullion, and remember that no laws of England, or this province, can regulate the price of bullion

(of money they may) and it will be incontestible, that the sense of the word *set*, used by his Honor, must be a fixing by law i.e. making money of silver and gold, and in this view it will be evident, I am in no danger of losing any money, nor Y.Z. entitled to recover any. His formidable table is at best founded upon nothing better, than begging the main questions in debate, even as he proposes them, viz. whether *gold is or shall be a tender*; for his table supposes that silver in dollars at 6s. is or ought to be our only standard, which I utterly deny, and have heretofore abundantly proved the contrary. As to the little frigid half born humour about reserving a private right of judging of the demonstration, I must have been very stupid not to have some diffidence about judgment, and judges, when I had charged so great and truly respectable a Name with an inconsistency. I knew that if his Honor could not, or would not deign to reconcile it, that some others would.

I must have been an owl indeed, not to have been sensible, that before I got through the woods, it would be probable I should be attacked by both Hawks and Buzzards in abundance; but if there is none of either brood better than Mr. Y.Z. he acted very prudentially in throwing out his little white flag of truce. Mr. Y.Z. you may go home, split your butterflies, twirl your glass globes, stroke the hyena, and beat the dog till he can't bark, he is not poor enough yet; and with all your apparatus, and experiments, so long as you can extract an electric spark, its probable you may be impel'd to infinite vain labours, to transmute it into gold or other money, rather than nurse it up to a vital flame. I recommend you to fit persons for your purposes, they are among many others, the students in chymistry, the searchers after the philosopher's stone, and the worshipful society of gold finders in change alley London.

I am determin'd not to give my self the least concern about any other anonymous gentry; those who sign at large, are entitled to delicacy and politeness; those who have behaved like Y.Z., are not entitled even to decency.

In fine, I regard his white rag as much as I shou'd the snivelling of a boy, who was ready to —— lest he should loose some glittering gewgaw.

I know a party, whose malice and ill designs against this province and its liberties, is much less unbounded than their riches and power, tho these are great enough. I know the worst I have to fear from them, and defy them: I have been guilty of no offence, but speaking my mind in favour of the rights of the people.

I am and will be at all times ready, when lawfully called, to speak write, fight, and die, for my country and for the cities of my God; and if I fall in such a conflict, I hope I shan't fall in the total ruin of my country. My

consolation will be at least that of a Roman, and I trust of a Briton and a Christian also.

JAMES OTIS, junr.

January 31, 1763

From a late ENGLISH Print

Of Government, and upon what Freedom depends.

THERE is nothing in which the Generality of Mankind are so much mistaken as when they talk of Government: The different affects of it are obvious to every one; but few can trace its Causes. Most Men having indigested Ideas of the Nature of it, attribute all public Miscarriages to the Corruption of Mankind. They think the whole Mass is infected; that it is impossible to make any Reformation; and so submit patiently to their Country's Calamities, or else share in the spoil. Whereas, Complaints of this Kind are as old as the World, and as every Age has thought their own the worst; we have not only our own Experience, but the Example of all Times, to prove, that Man in the same Circumstances will do the same Things, call them by what Names of Distinction you please. A Government is a mere Piece of Clock-Work; and having such Springs and Wheels, must act in such a Manner: And therefore the Art is, to constitute it so that it must move to the public Advantage.

It is certain, that every Man will act for his own Interest and all wise Governments are founded upon that Principle: So that this whole Mystery is only to make the Interest of the Governors and governed the same.

In an absolute Monarchy where the whole Power is in one Man, the Interest will be only regarded; in an Aristocracy, the Interest of a few; and in a free Government the Interest of every one.

The Freedom of this Kingdom depends upon the People's chusing the House of Commons, who are a Part of the Legislature and have the whole Power of giving Money. Were this a Representative, and free from external Force or private Bribery, nothing could pass there but what they thought was for the public Advantage. For their own Interest is so interwoven with the People's, that if they act for themselves, (which every one of them will do as near as he can) they must act for the common Interest of England: And if a few among them should find it their Interest to abuse their Power, it will be the Interest of all the rest to punish them for it. And then our Government

would act mechanically, and a Rogue would as necessarily be hanged, as a Clock strike Twelve when the Hour is come.

January 31, 1763

Mess's Printers. The ingenious Author and grand Architect of that wonderful Work, signed A.Z. and lodged at Messrs. Fleets Printing Office, for the free Inspection of the Members of a certain Great Assembly, and others, is vehemently suspected to be a tall slender, fair complexioned, fair-spoken "very good Gentleman."* His Beauty has captivated half the pretty Ladies, and his Finess more than half the pretty Gentlemen in the Province.—He has with great success both in Theory and Practice, made Money the Subject of his Contemplation, and the Object of his Wishes for some Years. He is judged to be very fond of being chosen Agent himself, only in order to rise higher. Should he fail in that View, he will give his Interest to any Man rather than to a Dissenter. The Arts of Hypocrisy and Chicanery he has cultivated and improved to Perfection. The Principles of arbitrary Power descended to him from his Ancestors; the Nourishment of a perpetual Dictator flow'd from his Mother's Breasts, and the Maximum aut Caesar aut Nullus,[†] was inscribed upon his swaddling Bands.

This famous Performance 'tis tho't, was only ushered to the Press by a certain stuttering Military Scribe, a notorious Tool, who, as the Eccho of some of his Master's lately attack'd no less a Character than that of Ld. B——e, publicly declaring in a large political Club, that it was "no credit to *Israel Mauduit*, Esq; or any one else, to be known to Ld B—— for that his Lordship was the Author of all the Disturbances in England." A.Z. is supposed to have partly furnished with his Anecdotes, by a young lean Exporter of Dollars, lately arrived from his Tour through Great Britain and Ireland. *Coelum non animus nutai qui trans mare currit.*¹² Too many of our young Gentlemen go abroad as wise as Hobby-Horses, and except a little sounding Brass and a few tinckling Symbols, return without any Acquisition of *Capital Stock*.[‡]

* MALCOLM *upon the Place.* See his *Dissertation upon the Conduct of the Governor and Secretary of Quebec.*

† *I'll have every Thing or Nothing.* [Maximum aut Caesar aut Nullus: "Either Ceasar is the greatest, or no one."]

‡ *Scraps of Plays, Saws, and Modern Cant.*

12. *Coelum non animus nutai qui trans mare currit:* "Those who cross the sea change the sky, not their heart."

February 28, 1763

Messieurs PRINTERS,

Please to give the following a Place in your next.

*“See Lawless Pow’r, the haughty Tyrant’s Pride
With Whips and Scorpions arm’d triumphant ride!
The Infant’s Cry, the Orphan’s bitter Tear,
The Father’s Care, the tender Mother’s Fear,
The Hope of Youth, the Wish of hoary Age,
Are all hiss’d off from —— sordid stage”*

The agent for this Province has been grossly and scandalously affronted, by an advertisement, in an Evening Post of January last. The conduct in that affair was abundantly more injurious than publishing the piece referred to, would have been. The manuscript was indeed shown to many; but those who did not see it, were left to guess the worst. Had it been printed, it would have appeared the most jejune puerile grubstreet performance that ever had birth, from the cave of poverty, to the pamper’d sleepy palaces of the rich, the great, and the wicked.

The publishers of the advertisement have not been call’d to account for their behaviour; nor do we read of any motion for a reprimand made by master secretary at war, or of any minatory visit made them by the pretended attorney general.*

I will venture to say, any other printer in the province would have run the risque of a severe prosecution, for saying half so much of a late Agent. Messieurs Edes and Gill were dictatorially threatened with the lash of the law, only for publishing a piece, which some prodigious wiseacres imagined there was a mistake, tho’ there was none; and even had it been as the conjurers on the other side imagined, it would have amounted to no more than this, *viz.* It should have been affected, that an “application to Parliament was despair’d of, without a recommendation from the treasury, which recommendation was despair’d of”; instead of “absolute despair”: Which last, however, there was ground for it being pretty unlikely that a Gentleman should obtain payment from a board that had paid so little regard to his solicitations, as not to give him a recommendation.

Mr. *Mauduit’s* letter, expressly, without any qualification, says, He had been told the affair was despair’d of. Who so likely to tell him this, as his predecessor?

* See the Votes of the House of Representatives; proving that the Governor and Council have no separate Right to appoint an Attorney General.

The Publishers of the Evening-Post, and their correspondents, have indiscriminately villify'd every Gentleman on "our side," as some of them are pleased to express it. All this, if done without promise of reward (which is much doubted) is also without any danger of punishment. But their forgiveness and safety don't flow from "any uncommon goodness of heart or generous compassion to the weakness and folly of impotent enemies," by which those excellent wretches, their honourable patrons and benefactors, could ever be distinguish'd.

The true grounds of the safety of the Publishers of the Ev'ning Post, and their correspondents, are well known. They scribble and publish in favor of plantation prerogatives, which, as practised by most Governors and their tools, are six times more burthensome than those exercised by the King our Gracious Sovereign, within the Realm. There is not one Governor, in America that has been transported to avoid death, in the shape *either of hunger or a halter*; but who (by exercising half the condescension to an assembly, that the best and greatest Prince in the world every day is graciously pleased to discover towards his parliament) might make himself and the people under him tollerably happy. Let it be remembered, that one side being profess'd advocates for the *Liberty of the Press*, can't with any face complain of that freedom in others, which they are so fond of themselves. Go on then *Ev'ning Posts, Pimps, Parasites, Sycophants, Predicting Parsons and Pedagogues*. I am ready for ye all, and would only hint to this last order of gentry, that they are Elective, and that no Governor has a negative in their choice. I intend one day or other to send into the world, thro' the Ev'ning Post, a good piece or two upon *Prerogative*; having great reason to conclude that none of the above tribe understand their own side of the question. It being impossible to conceive from their words or actions, that it ever enter'd into their imaginations, that liberty and prerogative stand entirely upon the same basis, nay at bottom are the same; and that whenever the thing meant by either of these terms for the "public good" is misunderstood or misapplied, tyranny begins in the shape of one D—I or a Legion.

In the mean time take a catalogue of the witnesses and standing monuments of the sublime and disinterested benevolence of the *idols* of a certain side, composing a *junto*, which I shall hereafter call the *benefactors*.—They have abus'd a worthy tho' unfortunate man, after his innocence has been prov'd even upon a scrutiny truly and literally *inquisitorial*; having been made by those who had no authority of themselves to punish; and consequently there would be no great merit in forgiving.

Nor civil officer commision'd by the Governor, can be displaced without the advice and consent of council.

This is or ought to be a great barrier to liberty. Tho' it would be better if all officers were appointed during good behaviour. And I venture to maintain, that it will be impossible for civil government, ever to rise to the greatest perfection and glory it is capable of, until this be done.

The *benefactors* owe so much of their wit and humor to humane reflections upon the poverty of others, that if they should be depriv'd of this single idea, their souls would instantly become *rasae tabulae*,¹³ except the idea of money. But upon recollection, they could not have the idea of riches, without that of poverty. They must see others poor, in order to form any notion of their own happiness.

The mystery of keeping a country poor opens. It is to give higher relish to the pleasures of the rich, especially those of them who, may have pretty suddenly forgot they, were but a little while since, as poor in purse as they will ever remain in spirit.

“Want is the scorn of every wealthy Fool,
And wit in rags is turn'd to Ridicule.”

Dryden

Some other fruits of the benefactors are—A native town (once the happy and flourishing metropolis of a province) decay'd in its trade—what is left monopoliz'd by a few people in power, or their friends and favorites—Acts of parliament dispensed with, in favour of one party, and push'd with rigor against another—The inhabitants miserably burthen'd and oppress'd with taxes—Too many who by a misplaced confidence, have been rais'd to undeserved riches and honour, not only forsaking, but using their utmost influence at home and abroad against the place that first gave them birth & importance—A whole province deeply in debt, at least 3 millions old tenor.—Publick revenues anticipated and mortgaged for a number of years—Projects on foot for keeping the people poor in order to make them humble, to all generations—Legislative and executive trusts, from the highest to the lowest, in many instances united and blended in the same person, to a degree that nothing short of omnipotence can enable the possessor to discharge the several functions, as the good of the people requires—To say nothing of the incompatibility of such multiform trusts—The obstruction of public justice—The partiality, and affection that are inseparable from most modern politicians, who are therefore totally disqualified to administer justice—The absurdity of sometimes having in effect the same judges appeal'd to, as are appeal'd from, is obvious—Law Makers and judges should have none to

13. *Rasae tabulae*: “Blank slates.”

make them afraid—Neither of them should ever be concerned in or about elections; if they are, the fruits of such concern will be apt to show themselves on the bench and in the senate.

Reader, have I discovered any thing new? do you see any earthen gods, that every knee should be made to bow before, or perish? can any mortal discern the blasphemy of squinting at those who grind the face of the poor without remorse, eat the bread of oppression without fear, and wax fat upon the spoils of the people? When such benefactors are found, they had better be let alone, it is not prudent to rouse them, they may have long claws, go about seeking whom they may devour; and perhaps make a libel of any thing they please. It is one of the most sublime, wonderful wise maxims of the common law, as settled in the arbitrary reigns, that “truth is no justification of a libel.” *Ratio Patet*,¹⁴ the truth is not always to be spoken, nothing being so dangerous to most politicians. Juries indeed sometimes regard the truth, and upon its being prov’d have acquitted. But juries may in time grow to be an unfashionable and uncourtly part of our constitution, as the house of representatives, is already in a manner become; and as useless clogs to the *benefactors*, both may be exploded together. It is said a certain governor and council have in effect made divers acts and laws original and explanatory without consulting the house, tho’ sitting.—Witness the making establishments for arm’d vessels; and the case argued by four barristers, without party or appeal.

When any of these things are mentioned, a cry of sedition is instantly raised, the whole army of dependents is in an uproar, and the military part of a house, what with the threats of broken heads and broad swords, really frighten their meek, and peaceable bretheren into any thing—I have nothing to say against the gentlemen of the blade acting in their sphere—But for politicians, their profession renders them unfit: A good soldier is bred in the only school of arbitrary power, that is necessary. This occasions a bias that is inseparable from the commander. I take this opportunity, to thank those of my countrymen, who have distinguished themselves in the late glorious war, and heartily wish they may be provided for as they deserve. But I never desire to see one of them in the senate, or in any civil employment. There is a rumor, that there will be a requisition upon the provinces to keep up a standing force in time of peace. Whether it will be for our interest to comply with such a demand, it will be time enough to determine when it is made? In the mean time, we are free to comply with or refuse such a proposal. And I hope the Freeholders of the Provinces will take care to return men another

14. *Ratio Patet*: “The reason is clear.”

year to represent them, who have no interest to serve in keeping up a standing army; such as don't expect military commissions for themselves or others. As to our being obliged to do every thing ask'd of us, and the threats if we refuse, they are the arts of the *benefactors*, who daily give it out they are going to get an Act of Parliament to alter our charter constitution, take away the election of councillors, have all the custom house officers, and other boys, appointed as in the province of New Hampshire. But this is Prerogative puff. Are there not protectors, who have but their own unparalleled impudence to protect themselves? There are seasons of stupidity, blindness and corruption, when but a distant hint at the enormities of those who are forging chains and shackles for their country, in the most bare faced manner, shall be deem'd seditious, libellous and traiterous; nay, according to one wizzard among the Benefactors, blasphemous. Every art shall be used to blacken the character of the supposed author of such a hint, to ruin his reputation and business, and deprive him, his wife and children, of their daily bread. When all other attempts fail, he shall be represented as a mad man, in order if possible, to lay a train to get the guardianship of his person, and the possession of what little estate he may have. This is a sort of fingering *Haercredipeta* an eminent clerk among the benefactors is very famous for. That the unlettered reader may understand me, *Haercredipeta* among the Romans, denoted a sly, flattering scriv'ner, who by his officious attendance upon rich old men and women, work'd himself into their favor, & obtain'd a legacy in their wills, or the heirship of their estates.

The next breath *approaching* fate is threatned, which in the sense some use *fate*, can't be applied to a *madman*, because the pedant says, speedy repentance, deep contrition, and total reformation, are to avert this *approaching fate*. 'Tis pity the predicting parson, and his knowing friend, had not found out, that punishment only is to be averted by penitence, and that the laws of *Draco* never punished a madman. One need not be a conjurer to discover that this parson is a prophet of bedlam, and a fit chaplain for lunaticks. His friend and he, with Baalam and his ass, before that unhappy beast was inspired, could they be brought together, would furnish out a very proper congregation for an hetrodox sermon, from these words, which I recommend to this right reverend for the subject of his next discourse upon a high holy day.

"Power, with or without Learning, in the Hands of High Flyers, in Church or State, is ten Times more dangerous to a Community, than Arrows, Fire brands and Death, in the Hands of a Fool."

And if the *benefactors*, with their whole united forces, on or before the first day of April next, will publish to the world a discourse of one page only, upon

this subject, “smile and stab or stab in the dark,” their first principle, if such performance be free from absurdity and contradiction, it shall be warranted to sell for *two pence*. Further, upon the head or heads of the benefactors (for some think them at least a two-headed monster) giving bond for his or their good behaviour, in their several lucrative departments, indisputable security shall be produced in double the sum, that Bluster, whoever is meant by that name, shall never seek or accept of any office during life, but shall devote all his leisure, to the detecting and exposing state rooks and robbers.

There is a species of penitence that will recommend any man to the benefactors.

The way to their caresses and favours, is known to be broad, smooth and easy; and many there are that find it.

As the war was occasioned by the Benefactors, so early terms of peace and alliance have been offered unask'd. The capital article upon which all negotiations have hitherto split, is, that certain gentlemen should, be treated worse than being given as hostages, in plain English, become the *Tools* to a few in power. Those who have attempted to bring about this submission, by all the sweet blandishments of persuasion, by the affronts of flattery, by the unprovok'd sacrifice of once dear friendships, by every other art of a courtier, and by the threats of all, and more than all the evils in the power of the great and the wicked, have hitherto found themselves mistaken. The writer of this, boasts of no superior learning or talents. *I am sure I am right*, is not his motto; but he humbly hopes he is not out in thinking *common sense, a good conscience, freedom, and dependence ultimately upon one supreme sovereign good, are to be valued infinitely beyond all other earthly felicity*; and when he can't enjoy these, he trusts he shall not repine at the first fair and lawful call to *die*. He has been taught from his early days, by a Gentleman of true honour, who never forsook or betray'd a friend, and to whom some Ingrates entirely owe their present power and grandeur, that “it is mean to fear the face of man”; that it ever “brings a snare”; that “we should not despair of the common wealth, tho' an army of Banditti were encamped round about, and a strong party of Patricides eating out her bowels.” “Call no man master upon earth,” is a saying worthy its author, and if rightly attended to, by all those whose particular duty it is to explain and inculcate so divine a doctrine, would soon scatter the tyrants of this world, like locusts and grasshoppers. I have discovered, without the help of the predicting parson, that error, early or late, must and will, and shall, fall before truth. A day is also hastning on, with very large strides, when some who are now the darling idols of a dirty, very dirty, witless rabble, commonly called the great vulgar, are to sink and go down, with deserved infamy, to all posterity.

Advertisement.

Prepared and Preparing for the Press,

1. An impartial History of the last Session of the Great and General Court or Assembly of the Province of the *Massachusetts-Bay*.
2. A full and true Account of the Grant of *Mount-Desert* Island to his Excellency FRANCIS BERNARD, Esq; Governor of the Province of the *Massachusetts-Bay*.
3. The present political State of the Province of the *Massachusetts-Bay*, with a brief Account of the Services of said Province, and a State of the Rights of the Colonists in general. To which will be added, by Way of Supplement, a View of Provincial Administration for about three Years past, interspersed with Strictures upon the Conduct of some eminent Personages in former Years.

By JAMES OTIS, Esq;

The last will be dedicated to the *KING*. The two first will be published so soon as the General Court is dissolved; the last as soon as possible.

P.S. The Writer of a Letter directed to the Author, and published in the last *Ev'ning-Post*, relating to the Expences of Lieutenant Governor PHIPS's Funeral, may meet with full Satisfaction as to that Business in the first of these Performances; Perhaps he might have had it sooner if he had given his Name.

March 21, 1763

Boston, March 21.

AT a Meeting of the Freeholders and other Inhabitants of this Town on Monday last, JAMES OTIS, Esq: was chosen Moderator, who made the following Speech, *viz.*

Fathers, Friends, Fellow-Citizens and Countrymen!

BY your unmerited good will, I am promoted to a much greater Honour than I ever aspired to. Be so good as to accept my most humble and hearty Thanks, for this unsolicited and unexpected Mark of your Esteem.—*Gentlemen.* It has pleased infinite Wisdom to give us a goodly Heritage. Our Forefathers have handed down to us the great Things which were done for them of old Time; but great as they were, they sell far short of what we have

heard with our own Ears, and seen with our own Eyes. A War began, upon the most just and solid Grounds, by his late Majesty GEORGE the Second of ever blessed Memory, was, during the Life of that great Monarch, crowned with a Series of Victories and Triumphs before unparalleled in History, and, which astonished the whole World. The Smiles of Heaven have been marvelously continued upon the Councils and Arms of his illustrious Grandson and Successor, our most gracious Sovereign GEORGE the Third, whom God long preserve! The Fall of Martineco, the Reduction of the Havannah, the Conquest of Cuba, the Destruction of the Spanish Marine and Commerce, were but Preludes to a Peace that will reflect immortal Honour upon the present Reign.

We in America have certainly abundant Reason to rejoice. The Heathen are not only driven out, but, the Canadians, much more formidable Enemies, are conquered and become Fellow-Subjects. The British Dominion and Power may now be said, literally, to extend from Sea to Sea, and from the Great Rivers to the Ends of the Earth: And we may safely conclude from his Majesty's wise Administration hitherto, that Liberty and Knowledge, Civil and Religious, will be co-extended, improved and preserved to the latest Posterity. No other Constitution of Civil Government has yet appeared in the World so admirably adapted to these great Purposes, as that of Great Britain. Every British Subject in America is, of common Right, by Acts of Parliament, and by the Laws of God and Nature, entitled to all the essential Privileges of Britons. By particular Charters there are peculiar Privileges granted, as in Justice they might and ought, in Consideration of the arduous Undertaking, to begin so glorious an Empire as British America is rising to. Those Jealousies that some weak and wicked Minds have endeavoured to infuse, with Regard to the Colonies, had their Birth in the Blackness of Darkness, and 'tis great Pity they had not remained there forever. The true Interests of Great Britain and her Plantations are mutual; and what God in his Providence has united, let no man dare attempt to pull asunder.

At this our first Meeting in FANEUIL-HALL, since the Fire, I take the Liberty to express Part of what you must all sensibly feel upon this Occasion. Sweet and grateful be the Remembrance of our generous and bountiful Benefactor, the late PETER FANEUIL, Esq! We are also obliged to the Government for their Grant of a Lottery for the Repairs.—We are this Day met to exercise one of our invaluable Privileges, in the Choice of Officers for this Metropolis the ensuing Year. Let us keep the public Good only in View. Should any Prejudices or Animositities exist, this is a proper Season for their Burial in everlasting Oblivion. Let not the Poor envy the Rich, nor the Rich despise the Poor: But let us remember we are all of one Flesh and one Blood:

and that the Good of the whole is closely and intimately connected with the Welfare and Prosperity of each Individual. The Love of our Neighbour is an evident Principle of natural as well as revealed Religion. 'Tis recorded much to the Honor of the Ancients, that this Sentiment. *Homo sum: humani nihil àne alienum puto*,¹⁵ was attended with a Thunder-Clap of Applause through the whole Roman Theatre. "He who don't consider himself as related to every one of the human Race, is unworthy the Name *Man*," A Christian should be able sincerely to declare, that he had rather be the meanest Friend of a Free People and of Mankind, than the Tyrant of the Universe.

Gentlemen,

As the Duty of my Office will require the greatest Impartiality, so on your Part Patience with, and Moderation towards each other, are absolutely necessary for attaining that Order which it will be impossible for me to preserve without your kind Assistance.

April 4, 1763

Messieurs PRINTERS,

Please to insert the following, and you'll oblige Your's,

JAMES OTIS.

AS it has been very industriously reported in the House of Representatives, as well as abroad, that upon the Lieutenant Governor's being appointed Chief Justice, I threatned to *set the Province in a Flame*; I think myself obliged in my own Vindication thus publickly to declare, that I have not the least Remembrance of my having ever used such Expressions in my Life; nor do I believe I ever did. The Persons who have framed this Story, and who still continue to propagate it, are both known to be invincibly prejudiced against me, and therefore every candid Man will believe it with Discretion. They have been incessantly misrepresenting my Conduct for these two Years past, and have in all Companies discovered such unparallel'd Virulence, that I am persuaded they would not obtain full Credit should they swear to the Truth

15. *Homo sum: humani nihil àne alienum puto*: "I am a man, and I reckon no man a stranger."

of it. Unreasonable Clamour, and all Kinds of Sedition, I detest and abhor as much as any Man. The true Principles of Loyalty & Obedience, which are quite consistent with the warmest Love of Liberty and ones Country, I would strongly inculcate: And I hope in God I shall never be wanting in my Endeavours to awaken as far as I can in my Countrymen the true Spirit of Patriotism, and to stir up a manly Opposition against the Attempts of any Governor or Lieutenant Governor whatever, to infringe the Rights of the People, tho' I should be charged by their Sycophants and Tools, with an Intent to set a whole Country in a Flame. As I had long ago forgiven and almost forgot any Thing in his Honor that was unfriendly to my Father, I should not have troubled the Public with this Address, had not the whole of my Conduct as a Representative of this Metropolis been repeatedly resolved into Enmity to his Honor, conceived in Consequence of his Appointment to be Chief Justice. I think it proper therefore to give a short Account of some Transactions which took Place about that Time. I am well acquainted with all the Secrets of that and many other political Appointments, and of some Juggles, which I shall unravel more at large as Occasion shall call for it. At present the following is sufficient. Upon the Death of the late Chief Justice SEWALL, Col. *Otis* wrote to the Lieutenant Governor, and Mr. Secretary OLIVER, his warmly profess'd Friends, and to none else. The Purport of his Letters was to let them know his Inclination, to be appointed, not Chief Justice as has been reported, but youngest Judge of the Superiour Court. These Letters I bro't to Town over Night, but before I had Opportunity to deliver them, I heard that it was a settled Point that his Honor was to be Chief Justice. I waited upon him however early next Morning, and communicated the Substance of the Letter to him, withal telling him that if he was determined to accept of the Office of Chief Justice, it would be needless to leave the Letter, and in vain to expect his Honor's Assistance. Upon which he assured me he had no Thoughts nor Desire of the Office, told me that some of his Friends had indeed mentioned such a Thing to him, but he had already Engagements enough upon his Hands, expresly declared he tho't Col. *Otis* had the best Pretensions to be Judge of that Court, promised his Interest, and took the Letter, which he has never condescended to answer from that Day to this. The Secretary gave me much the same Encouragement, and advised me to apply to *Charles Paxton*, Esq. I confess I was a little surprized at this, wondering what Influence that Gentleman could have in an Affair of that Importance; However, I obey'd. Mr. *Paxton* paid my Father a great many Compliments, and promised his Interest, assuring me he had not the least Reason to think his Honor had made any Interest to be Chief Justice, and finally advised me to wait on his Excellency, telling me the

Governor was determined not to fill the Vacancy in Favour of his Honor or any other Gentleman, without a personal *Application*. I accordingly took the first Opportunity to pay my Respects to his Excellency, and found his Honor and Mr. *Paxton* coming from him together, and by all I can since learn, a Promise of the much solicited Favour was obtained at that very Interview. His Excellency has more than once intimated, that the Lieutenant Governor's Connections were too formidable to be disoblged, and yet, strange to tell, he is every Day taking Measures to strengthen them, and depress as far as in him lies, the best Friends he has met with since his Arrival among us.

From this Narrative of Facts, it appears, the Lieutenant Governor and Col. *Otis* solicited the same Favour in Kind, tho' not in Degree. In such a case no one could have doubted which should have succeeded. But ought not his Honor to have acted a more open Part than to have taken the Letter without ever answering it? Should he have accepted, or even solicited a Place for himself, when he had promised to give his Interest in Favour of another? Should he have promised that Interest to his Friend, and kept him in Dependance upon it, after he had determined to use it for himself? If his Honor forgot his Promise, nay suppose he is certain he never made any, as certain as I am that he did; surely he can't have forgot that he took the Letter, which alone, but especially with his Declaration of his having no Tho'ts of the Place, &c. would seem to imply a Promise. I grant his Honour had a Right to change his Mind upon what he tho't good Reasons; and if it appeared to him either from the Flattery of his Friends, or his Opinion of his own Importance, that the Superior Court could not be tolerably filled by any Gentleman from the Bar, or elsewhere, without he would condescend to take upon him the Office of Chief Justice, in Addition to the Rest of his lucrative Places, he is highly to be praised for his disinterested Benevolence to an otherwise sinking Province. But then it would have been but consensaneous to that superlatively great, disinterested and candid Behaviour, for which his Honor is so eminently distinguish'd, if he had sooner intimated this Change of Sentiments to his old Friend, that he might either chearfully have given up his own personal Advantage for the good of the commonwealth, or have sought to other Friends to support his Pretensions. I don't at present recollect Col. *Otis* ever applied to one Gentleman for his Interest but the Lieutenant Governor and Secretary, and that by the Letters above mentioned. The Application to Mr. *Paxton* must be considered as a Consequence only of the Application to the Secretary. I have ever taken a sincere Pleasure in saying the best Things I possibly could of his Honor, and am now ready to subscribe that this *Father of his Country* stands fully excused by the Example of the Father of Poets.

*Aliquando bonus dormitat Homerus.*¹⁶

Homer outshines all Bards, all Heroes, and all gods; Yet Homer, the immortal Homer, sometimes nods!

Did not such Conduct as this however afford some Excuse for Offence, before it was perfectly understood? The Fruits of Col. *Otis's* Friendship, as could easily be demonstrated, his Honor was at this Time enjoying. Now because a Son felt the ungrateful Treatment of a Father, real or imaginary, ought it to be presumed that every part of his Conduct flows from the foul Sources of Envy and disappointed Ambition? Because a Man imagined he had just Cause to be offended with another, does it follow he is incapable of forming a true Estimate of his Abilities, or a sound Judgment of his Intentions by his Actions?

During the whole of these Transactions, Col. *Otis* was at a Distance 70 Miles from Town, and upon his coming up about six Weeks after, in the ordinary Course of his Business, he was told by the Governor, that he might be appointed as the youngest Judge of the Superior Court if the Lieutenant Governor would relinquish his Pretensions: Upon which he waited on his Honor, and finding him as he informed me extremely fond of the Place of Chief Justice, and set upon having it, He never gave himself the least farther Concern about the Affair from that Day to this. The Truth is, Col. *Otis* at that Time would have been pleased with so reputable a Retirement from the Fatigues of his Practice at the Bar, but is and was very soon heartily glad he did not succeed in his Application, for Reasons the Public has no concern in.

It happens to be well known that since I have had the Honor of a Seat in the House of Representatives, I have in divers Instances been so hardy as to appear openly in Opposition to the Sentiments of the Lieutenant Governor. This alone in the Eyes of some is an unpardonable Sin. However, I have had the Satisfaction in more of those Instances than one, of having almost the unanimous Voice of both Houses, and to my *immortal* Honor his Excellency at the Head of them, approving of my Sentiments.

It is a very easy Thing to persuade an unthinking Group of prerogative Slaves, and other strange Figures, that the whole of my Conduct is to be attributed to Envy and disappointed Ambition. Such Insinuations and their Authors, great and small; I hold in greater Contempt than Words can express. The Consciousness of having acted upon honest Principles affords me infinitely more solid Satisfaction than any have in the Smiles of the Great, or the Reptile Buz of their Adherents.

¹⁶. *Aliquando bonus dormitat Homerus*: "Sometimes [even] the good Homer nodded off."

I never asked a Court Favour, and am determined I never will accept any during the present Administration. Before I belonged to the General Court, I had the Office of Advocate General *unasked*, and *unexpectedly*, by the Recommendation of the late Chief Justice PRATT, and the unmerited Good-Will of Governor POWNALL. I soon found the Place did not suit with my Way of Thinking, & resigned it after clearing by my Office about Two Guineas, instead of a Hundred Pounds Sterling per Annum, that may be made of it by those who understand & can conform to all the Ways of this World.* I am so unfashionable as to be of Opinion, that any Gentleman who accepts of a Place while he is a Representative, deserves to be branded with a Degree of Infamy, and disqualified from ever serving afterwards; at least, he should be sent home again, as such are from the House of Commons in Great Britain, in order to see if a Town will re-elect a Man who in all Probability has carried his Constituents to Market. If this were the Fate of all who lift their Hands at the Beck of Power, we should not see so many selling their Votes and their Country for a Feather, as I have often discovered in two Years Experience upon a Stage that I have trod, with as much Pain to myself, as to any one else. It may be said, I can form no Pretensions to Favour. If Independency and Freedom of Speech exclude a Man From Favour, I own I am excluded, and glory in the Exclusion. I hope I shall never be over aw'd by the Frowns, nor captivated by the Enchantments of the Great. As long as I live, I shall speak, write and act my Sentiments. I have not, nor ever had the least Inclination to act in a public Sphere, and should be much more heartily rejoiced at my Dismission, than my Enemies could be. Modern Politicians and modern Politics are my Aversion. But while I am concerned in public Business, I hope I shall ever discharge a good Conscience.

Whenever I see corrupt and arbitrary Measures, I will both oppose and expose them; and those who are active in such Measures, are at full Liberty to give my Conduct what Colouring they please. I shall only add, that should there be a Gentleman so vain as to imagine there is no Man qualified for any of the Great Offices of a Province but himself; that the Rewards of Learning and Virtue ought therefore to be monopolized, and all Power, Legislative and Executive, may be rightly concentrated in his Person, tho' contrary to the very Spirit of the Constitution, and in direct Tendency to the Ruin of the Body Politick, I say he would be far, very far from being an Object of my Envy.

James Otis.

* I design no personal Reflection here.

April 11, 1763

I WAS agreeably surprized when I was first told that the Lieut. Governor had condescended to answer what I published last week in vindication of my conduct as a Representative, and to exculpate myself from the false accusation of enmity to his Honor. That piece was written in the spirit of love and meekness, and so shall this be. Before I had opportunity to peruse the new Gazette, I had the most delightful self-flattering imaginations. First, that after more than a year's separation, I was like to be again upon a footing with his Honor, and invested with a right to talk to him as it were face to face. The reader will now consider his Honor abstractly from all power, but that of reason and argument. My love of peace with all men is so great, and my opinion of his Honor's placid disposition was so high that I promised myself the pleasure of soon writing a panygeric on his benevolence. But alas! how was I astonished, grieved and disappointed to find instead of that calm serene mind we have so often heard of, anger and bitter reproaches, in spite of all the studied restraint, breaking out in almost every period and such things uttered that if they had not been signed no evidence would ever have convinced the world his Honor wrote them. I don't recollect that I ever cast an "injurious reflection of a general nature" upon his Honour since I was born. I have indeed had frequent occasion to make particular observations upon his Honor, but have always treated him like a Gentleman and ever will. If his Honor will be pleased to point out one instance to the contrary in my writing, or in the transactions public or private, which I have had the honor to be joined with him in, I will make him any concession or satisfaction he can desire. As to the weekly ribaldry his Honor seems to complain of, he surely would act very injuriously to impute any of it to me, after I have condescended to clear myself upon oath from a piece published about two years since, imagined by some to bear hard upon him. I have been treated by name worse than his Honor ever was, or I hope ever will be, even by supposing blanks and feigned names to be applicable. I wish some Gentlemen would recollect that all the late squibs began with a most scandalous libel on *Jasper Mauduit*, Esq; the agent of this province by name. Such an advertisement of Mr. Bollan, tho' dismissed from his agency, would have cost the publishers a prosecution, or I am much mistaken. But I can't think any of the weekly puffs worthy the notice of a gentleman armed with prudence, patience, and other christian graces, superadded to the experience of thirty years in the depths of Politics. Another consideration that should make us more patient with the hebdomadal scribblers on both sides is, that a little licenciousness is an inseperable incident and consequence of the liberty of the press, which is,

one of the great priviledges we enjoy; and tho' I wish there was less cursing, swearing, hanging and burning in some of these entertainments, yet I can't wish to see them under any other restraints than those of common sense and good manners, which if long kept out of sight, will most infallibly render a paper despicable, and bring on an easy death: whereas the common law restraints of fines, pillories and whipping posts, only increase a *flame*. For these and many other reasons, I am very glad to find the new Gazette is not published by authority, as some fondly conceived it would have been. The most distant hint of an *Imprimatur* is as impolitic as persecution in religion is wicked.

Two or three observations upon his Honor's state of facts will show which of us is right, as well as a volume. The Lieut. Governor is no where expressly charged by me with acting dishonorably as he seems to suppose. My whole argument will as [incontestibly?] follow upon his Honor's state of facts, as from mine. 'Tis but this, namely, that *a real or imaginary cause of offence given my Father, ought not to be considered as the [sole?] spring and motive of all my public conduct*. I am as sure, however, of the truth of my state of facts, as 'tis possible for a man to be of any thing that happened two years and an half ago. I have met with divers instances that convince me his Honor's understanding is much superior to his memory. The vast variety of facts that take place in a gentleman's mind who fills so many important departments, so much to the satisfaction of all but one empty declaimer, as his Honor is pleas'd to represent me, and who spends his whole time in the public service for almost nothing may be supposed to forget a little; But 'tis surprizing he should find himself under any necessity of denying: what a man has forgotten he can't affirm the truth of; but why he "*must deny*," as his Honor expresses it, I can't conceive.

His Honor says "he express'd his doubts of his abilities to give the country satisfaction." I supposed him sincere. Yet the next breath he denies he ever gave me any reason to suppose that he was determin'd to refuse the place. I would with all humility ask whether those very doubts did not furnish me with one reason to suppose his Honor would refuse? It was natural for me to conclude his Honor would not accept of a place of that importance, without a modest assurance of his own abilities. I am glad the receipt of the letter is not forgotten; and that 'tis admitted no answer was ever given to it.

His Honor in the piece I am now considering has made one or two strange mistakes in point of fact: He charges me with asserting that he "solicited the Governor for the place of Chief Justice." If his Honor will be pleased to peruse my piece of Monday last once more he will find I positively assert no such thing. "A promise of the much solicited favour was obtained" are my

words; by whom solicited I did not say. That it was very much solicited for his Honor, I think may be pretty fairly deduced from these words, "The Governor was pleased to say that the major voice seemed to be in my favour." I wish his Honor had informed us who began the several conversations from time to time between his Excellency and himself, by which the reader would have been a little better enabled to judge who solicited.

If his Honor would furnish me with a list of the company that dined at the Cattle the day he met me at Dorchester-Neck, and the time of day they dined, I should take it as a favor. I don't remember ever meeting his Honor at that place but once, that was the Monday after judge SEWALL's death. I dined at home mounted my horse about three in the afternoon, and just on this side the Fortification I was over taken by his Honor in his chariot with Mr Paxton. I rode more moderately than they did, for when I got down to the Neck, I found them coming over with his Excellency and Capt. Phillips. I saw no other company, understood they drank tea and return'd. They could not have been on the island an hour.

That I told his Honor that if he had any tho'ts of the place, his interest could not be expected, is natural; as 'tis that I should tell him no person would be more agreeable to Col Otis. All this was but a decent return for the many "Civil things" his Honor said but no great penetration is necessary to discover that this must have been upon supposition Col Otis should be refused; and so it was actually expressed. His Honor won't easily persuade the world that any man can prefer the interest of a friend to his own, at the very time he is professedly seeking his own. But a mutual openness between friends is always due. The reason for not answering the letter is curious, "The son had declared that neither he nor his Father would give up their pretensions to the Lieut. Governor, nor any one else." Had his Honor been as open, it might have saved him the loss of as good a friend, as he ever had in his life. As to the son, he could pretend to no interest, being a private man, and only a messenger to deliver the letters. Upon my being informed about a fortnight after my interview with his Honor, that the Governor had been persuaded that Col. Otis had given up his pretensions I tho't it my duty to wait on his Excellency, and tell him, I knew of no such thing, nor did I believe it; and that the only colour for such a story was, my having said to the Lieutenant Governor and Secretary, that I believed his Honor would be more agreeable to Col. Otis than any man, if his own pretensions were rejected. But his Honour was informed that I had uttered revengeful threats, of mischief, flames &c. I wish this &c had been supplied, because I fear some of his Honor's admirers will collect more from it than ever Lord Coke made out of one of Littleton's. This most cruel and inhuman charge which never

was tho't of till the late prosecution of some of the officers of the admiralty, set on foot by a number of worthy merchants, and in which, by reason of my old acquaintance with Mr. Paxton, I would not engage until I had his express consent and advice to it, however angry he grew against me afterwards, only for the faithful discharge of an unsought trust in the way of my profession. Before this, I challenge his Honor to prove one syllable of this kind being a "town talk."

But if this and a thousand times more was true, 'twould be no sufficient excuse for his Honor's conduct, and neglect in not answering the letter. He was, I repeat it, under great obligations to Col. Otis, but for whose friendship, he would have been out of the council ten years ago, and in consequence of it at this time, perhaps a private gentleman. Col. Otis for years made himself more enemies by espousing his Honor's interest, than by all the rest of his conduct in life. Often has his Honor been availed of the credit of measures at the old insurance office, that he had no more weight or influence in than I had. As often have his adorers & others blam'd Col. Otis, for measures he was trying to moderate, and which a former Governor was spurr'd on to by the present *prime minister* of this province. All this considered, should not his Honor have wrote his friend, that his son was ruining his father's interest? Wou'd it have been an infinite condescension to have sent for the son, and have dealt with him in a christian-like manner? But his Honor "tho't it most prudent to say nothing to Mr. Otis or his father upon the subject," 'till the place was secured to himself; and then he never said a word to either, of those terrible threats. His Honor's doubts of his abilities were now wonderfully cleared up, and "a call in providence was conscientiously listened to for the good of the people" a loud trumpeting by his relations and friends, that no other man in the province was fit for such a trust in point of capacity, or integrity, may be pretty well remembered, if *intimations* of the same kind never escaped his Honor. How far his Majesty has given his sanction to such an opinion, may be partly collected from his appointing BENJAMIN PRAT, Esq; to be Chief Justice of N. York.

His Honor roundly asserts *he* soon after had *reason* to suspect that those threats were carrying into execution. That his Honor is suspicious, I will not dispute; but that he had soon after, or even to this day has, one solid *reason* to suspect me guilty of what he has prejudged, I defy him to prove. Suspicion is a very different thing in my logic, from *reason* for suspicion. I call upon his Honor therefore for his *reason*, and he may depend upon it 'tis of more importance to him to take care & muster up a good reason for this assertion, than to vindicate himself against any thing I said of him last Monday, which is however all literally true; and if it could be doubted his

Honor's paper of this day has confirm'd it, in the opinion and, to the grief, of some of his best friends. His Honor must not flatter himself that the world will readily believe all the hard things he has been pleased to say of me, meerly upon his *suspicion*. 'Tis probable enough that I might say about the time refer'd to, that I fear'd his Honour would never cease engrossing places of power & profit for himself, his family, and dependents, 'till he had set the province in a flame. That is not only my present opinion, but I believe the opinion of some thousands who never saw his Honor 'till he rode the circuits. Unreasonable and unbounded desires of power and profit, and of such places as can't be legally executed by the same man, are apt to generate arbitrary power, oppression, uneasiness, animosities, civil dissensions, and in independent states, civil wars; but then these evils are to be attributed to those who usurp undue dominion, not to those who oppose it. After all, if the pretended threats were uttered, which I am satisfied never were, every unprejudiced man of common humanity would excuse them as rash unadvised words of heat and passion, especially, when uttered in the cause of an injured father, and, as there has been nothing done by me to disturb the quiet of the province, which is as loyal as any one in the dominions, and if his Honor would resign his seat at the council-board, would be free from any uneasiness. All the apprehension of animosities & civil wars, had therefore better have been spared, as it will answer no end but, what I dare say his Honor never intended, namely, to make the people of England look upon us in a very bad light, forward attempts to alter our constitution, and have a tendency to procure a standing army, to dragoon us into passive obedience. How much better effects are to be expected from a proclamation his Excellency was ill advised to issue last fall? It seems some of our Fathers took a strong aversion to bonfires, squibs and crackers, in consequence of which the populace were restrain'd from those marks of loyalty on the anniversary of the King's accession, I think it was. Some of the little Boys and negroes vented their rage at this disappointment upon the lower windows in the Town-House. This affair was dress'd up in the proclamation in such a manner, that I fear a stranger would mistake us all for a parcel of Jacobites, it being impossible to find by the proclamation that loyalty misguided was the occasion of this loss of glass to the public, which however I have good reason to suspect was the case, as most of the persons I saw from the Council Chamber, were children who could not be supposed to know the difference between a Jacobite & a Jebusite. Twenty Pounds were offered for discovering the offenders; yet the windows were left unmended for some weeks, as was said, for fear of a remonstrance from the House against the expence: A genteel rebuke to the House, for daring

to remonstrate about a month before, against the Governor and Council's arming vessels without their consent.

His Honor tells us the emoluments of his lucrative posts "are easily cast up"; but as the particulars are not in the power of every man to find out, I wish an account current had been stated. His Honor condescends to express his readiness to resign his office of Chief Justice, whenever the people shall desire it. His Honor is quite safe: his Excellency long ago informed him the majority were of his side; and if they were not, they can have no vote in the matter. I never heard any man contend that he should be deprived of his office of Chief Justice, or of his place of Lt. Governor, which I think are enough for any gentleman to hold. The office of judge of probate is incompatible with that of chief justice; and the commission for the latter, is in law a *supersedeas*¹⁷ of the former. So is the commission to be judge of the Superior Court, to that for the admiralty. And all acts & decrees made below after such superior commission, are illegal and void. There is no point of law clearer than this. If the salaries and perquisites of the chief justice will not maintain him with dignity, I am for his having more pay, not more offices and power. I have always contended for this in the House, and ever shall while I have the honour of a seat there. I have long tho't it and am far from being singular in my opinion, a great grievance, that the chief justice should have a seat in the council; and consequently so great a share of influence in making those very laws he is appointed to execute upon the lives and property of the people. But this opinion affects all the judges of the superior court, and can't therefore be founded on any particular prejudice to his Honor.

His Honor towards the close hath furnished us with a new kind of political catechism. It manifestly appears from some of the questions, that his Honor would not only have me subjected to the infamous character and punishment of a common Barrator, but to something far worse. What his Honor's ultimate wishes were when he wrote those genteel queries, I shall leave; first observing that I can't trace the least appearance of a wish for my amendment, or good estate hereafter. I shall take my leave of the performance, by wishing his Honor, health and prosperity in this life; that he may be made a great blessing to the province in his office of chief justice; that he may receive the rewards of virtue here, and be finally crowned with a happy immortality.

James Otis.

Boston, April 7, 1763.

17. *Supersedeas*: "You shall desist." "The name of a writ containing a command to stay the proceedings at law." From John Bouvier, *A Law Dictionary, Adapted to the Constitution and Laws of the United States* (1856).

2. *A Vindication of the Conduct of the House of Representatives
of the Province of the Massachusetts-Bay*

A
VINDICATION
OF THE
CONDUCT
OF THE
HOUSE OF REPRESENTATIVES
OF THE
PROVINCE
OF THE
MASSACHUSETTS-BAY
MORE PARTICULARLY.
IN THE
LAST SESSION
OF THE
GENERAL ASSEMBLY.

By James Otis, Esq;
A Member of said House.

“Let such, such only, tread this sacred Floor,
Who dare to love their Country and be Poor;”
“Or good tho’ rich, humane and wise tho’ great,
Jove give but these, we’ve nought to Fear from Fate!” ||

*Pope. || Anon.

BOSTON: Printed by EDES & GILL, in *Queen-Street*. 1762. <iii>

THE
PREFACE

The following Vindication, was written in order to give, a clear View of Facts; and to free the House of Representatives, from some very injurious aspersions, that have been cast upon them, by ill-minded people out of doors. Whether the writer has acquitted himself as becomes a candid and impartial vindicator, is submitted to the judgment of the publick; which is ever finally given without Favour or affection; and therefore the appeal is made to a truly respectable and solemn tribunal? At the same time that a sincere love is professed for all men, and the duty of honour and reverence towards superiors is freely acknowledged, it must be allowed that one of the best ways of fulfilling these Duties, is in a modest and humble endeavor, <iv> by calm reason and argument, to convince mankind of their mistakes when they happen to be guilty of any. The more elevated the person who errs, the stronger sometimes is the obligation to refute him; for the Errors of great men are often of very dangerous consequence to themselves, as well as to the little ones below them. However it is a very disagreeable task, to engage in any kind of opposition to the least individual in Society; and much more so when the opinions of Gentlemen of the first rank and abilities, and of publick bodies of men are to be called in question.

The world ever has been and will be pretty equally divided, between those two great parties, vulgarly called the winners, and the losers; or to speak more precisely, between those who are discontented that they have no Power, and those who never think they can have enough.

Now, it is absolutely impossible to please both sides, either by temporizing, trimming or retreating; the two former justly incur the censure of a wicked heart, the latter that of cowardice, and fairly and manfully fighting the battle out, is in the opinion of many worse than either. All further apology for this performance shall be sum'd up in the adage. Amicus Socrates, amicus Plato, sed magis Amica veritas.¹ <5>

A
VINDICATION &c.

A Quorum of the house of representatives of the Province of the Massachusetts-Bay, being met, on the 8th of Sept. A.D. 1762. according to prorogation, informed his Excellency the Governour by a committee chosen for

1. Amicus Socrates, amicus Plato, sed magis Amica veritas: "Socrates [is] a friend, Plato [is] a friend, but truth is more a friend."

that purpose, that they were ready to proceed to business. The committee returned that they had delivered the Message. Mr. Secretary came down soon after with a message from his Excellency, directing the attendance of the House in the council chamber. Mr. Speaker with the House immediately went up; when his Excellency was pleased to make the following Speech; of which Mr. Speaker obtained a Copy, and then with the house returned to their own Chamber.

His Excellency's speech is as follows. Viz.

"Gentlemen of the Council, and

"Gentlemen of the House of Representatives,

"I have been always desirous to make your Attendance to this General Court as unexpensive to your Constituents and as convenient to yourselves as the Nature and Incidents of the public Business will allow. But, as, whilst the War continues, this Province, however happy in the Operations being removed at a Distance, must expect to bear some Share of the Trouble and Expence of it: It will sometimes unavoidably happen that I must be obliged to call you together at an unseasonable Time.

"I have now to lay before you a Requisition of His Excellency Sir JEFFERY AMHERST, who, observing that the great and important Services on which His Majesty's Regular Troops are now employed, and the Uncertainty of their Return, render it absolutely necessary, that Provision should be made in Time for garrisoning the several Posts on this Continent during the Winter, desires that you would provide for continuing in Pay the same Number of Troops that remained during last Winter; that is, Six Captains, Thirteen Subalterns, and Five Hundred and Seventy Two Privates, amounting in the whole to Five Hundred and ninety one Men.

"I must observe to you that the Necessity of this Request arises from the present vigorous Exertion in the *West-Indies*; which promises effectually to humble the Pride of our Enemies, and pave the Way to Peace. As this glorious Expedition cannot but have your entire Approbation, I doubt not but you will readily embrace this Opportunity to give a public Testimony of it.

"The *French* Invasion of *Newfoundland* must give you great Concern upon Account of the National Loss which the Interruption of the Fishery there must have occasioned, although this Province will not, in its own particular, greatly suffer thereby. But I am persuaded that the Reign of the *French* in those Parts is by this Time near over; and I flatter myself that this Government will have some Share in the Honour of putting an End to it.

"Gentlemen of the House of Representatives,

"The great Alarm which spread itself over the Country upon the *French* getting Possession of a strong Post in *Newfoundland*, obliged me with the <7> Advice of Council to take some cautionary Steps which have been attended with Expence. But as these Measures were advised with an apparent Expediency, and have been conducted in the most frugal Manner, I doubt not but what has been done will have your Approbation. I shall inform you of the Occasion of these Expences, and order the Accounts thereof to be laid before you.

"Gentlemen of the Council, and

Gentlemen of the House of Representatives,

"As I have called you together at this Time with Reluctance, so I shall be desirous to dismiss you, as soon as the public Business shall have had due Consideration. This, I apprehend, will take up not many Days; after which I shall be glad to restore you to your several Engagements at your own Homes with as little Loss of Time as may be."

Council-Chamber,

FRA. BERNARD.

Sept. 8, 1762.

This speech (with General Amherst's Letter therein referred to) being read, the Consideration thereof was appointed for the next morning at nine of the clock.

September the 9th, the house agreeable to the order of the day, entered into the Consideration of his Excellency's speech.

In the course of the debate the following speech was made, as nearly as can be recollected by memory;

Mr. Speaker,

"This Province has upon all occasions been distinguished by its loyalty and readiness to contribute its most strenuous efforts for his majesty's service. I hope this spirit will ever remain as an indelible Characteristick of this People. Every thing valuable is now at stake. Our most Gracious Sovereign, and his royal Predecessor, of blessed memory, have for some years been engaged in a <8> bloody and expensive, but most just and necessary War, with the powerful Enemies of their Persons, Crown and Dignity; and consequently of all *our* invaluable civil and religious Rights and Privileges. The Almighty has declared the justice of this War, by giving us the most astonishing series of Victories and Triumphs recorded in ancient or modern story. From these Successes we had reason to hope that the War

would have ended last year in a glorious peace. Our King and Father has condescended to tell us that his Endeavors for that purpose were frustrated by Gallic Chicanery and Perfidy. The King of Spain has been prevailed upon to break his Neutrality, to forsake his alliance with Great Britain, to turn a deaf Ear to the Interest and Cries of his own Subjects, and to attach himself to the Party of France and of Hell. But Heaven still smiles upon his Majesty's Arms. We have within this Hour received undoubted Intelligence of a memorable Victory obtained by Prince Ferdinand of Brunswick; and of the Reduction of the Havannah, the Key of the Spanish Treasury. Besides an immense Value in specie we have taken and destroyed one quarter of the Spanish navy. This has been done at a bad Season of the year and in Spite of as Gallant a defence as ever was made of a strong Hold. *Mr. Speaker*, the Fate of North America, and perhaps ultimately of Great Britain herself depends upon this War.

"Our own immediate Interest therefore, as well as the general Cause of our King and Country, requires that we should contribute the last penny, and the last drop of Blood, rather than, that by any backwardness of ours, his Majesty's Measures should be embarrassed; and thereby any of the Enterprizes, that may be planned for the Regular Troops miscarry. Some of these Considerations, I presume, induced the Assembly, upon his Majesty's Requisition, signified last Spring by Lord *Egremont* so cheerfully and unanimously to raise thirty three Hundred Men for the present Campaign; and upon another Requisition, signified by Sir *Jeffery Amherst*, to give a handsome bounty for inlisting about nine Hundred more into the regular Service. The Colonies we know, have been often blamed without Cause; and we have had some share of it. Witness the miscarriage of the pretended Expedition against Canada in Queen Anne's Time, just before the infamous Treaty of *Utrecht*. It is well known by some now living in this Metropolis, that every Article, that was to be provided here, was in such readiness, that the Officers, both of the army and navy, expressed the utmost Surprise at it upon their arrival. To some of them no doubt it was a Disappointment; for in order to shift the Blame of this shameful affair from themselves, they endeavoured to lay it upon the New-England Colonies. I remember, that by some, who would be thought faithful Historians, the miscarriage at Augustin in the last War, has been attributed to the neglect of the Carolinians. But it is now notorious to all, that the ministry of that Day never intended that any good should come of that Enterprize; nor indeed of any other, by them set on foot, during the whole War. The Conduct of that War, so far as the ministry were concerned, has been judged to be one continued abuse upon the Sovereign and his People. Thank God, we are fallen into better Times. The King,

the ministry, and the People are happily united in a vigorous pursuit of the common good. Surely then if *we* should discover the least remissness in his Majesty's Service, as we should be truly blame-worthy, we may depend upon having matters represented in the strongest light against us, by those who delight to do us harm.

"I am therefore clearly for raising the men, if Gen. *Amherst* should not inform us, by the return of the next mail, that he shall have no occasion for them. But as his Letter is dated the 4th of *August*, before even Moore Castle was taken, and since the Reduction of the Havannah, a number of the Regulars are returned to New-York, it is possible the General may have altered his <10> Sentiments, as to the necessity of these Provincials.

"Waiting 2 or 3 Days however can't make any odds in this Business, as our Troops are all inlisted to the last of October. Upon the whole *Mr. Speaker*, I am for a Committee to take the Governor's Speech and the present Requisition into Consideration, and make report." This being seconded, *Mr. Speaker*, *Mr. Otis*, *Mr. Tyler*, General *Winslow*, and *Mr. Witt*, were appointed a Committee to take said Speech and Requisition into Consideration, and make report. The Committee waited a few Days for the Return of the Express, but hearing nothing further about the men it was taken for granted that the General expected them. The Committee therefore without debate unanimously reported to the House in favour of raising them at the bounty of Four Pounds each, that is, ten Shillings more than was given in the Spring. This Report was likewise almost unanimously accepted, and the men are now inlisting.

Here is another instance of the readiness of this Province to do every thing in their Power for his Majesty's Service. This Spirit notwithstanding many ungenerous Suggestions to the contrary, has remarkably discovered itself in most if not all the British Colonies during the whole War. This Province has since the year 1754, levied for his Majesty's Service as Soldiers and Seamen, near thirty Thousand men besides what have been otherwise employed. One year in particular it was said that every fifth man was engaged in one Shape or another. We have raised Sums for the support of this War that the last Generation could hardly have formed any Idea of. We are now deeply in debt, but should think our selves amply rewarded if *Canada* should be retained.

The House did not enter into a particular Consideration of the latter part of the Governor's Speech, at this Time; as it is general; and an explanatory message was expected, with particular accounts of all the expences alluded to.

Accordingly Sept. the 14th Mr. Secretary came down with the following message, from his Excellency, Viz.

<II> *Gentlemen of the House of Representatives,*

“SOON after the French Invasion of *Newfoundland*, the Inhabitants of *Salem* and *Marblehead*, who were concerned in the Fishery North-West of *Nova-Scotia*, were alarmed with Advice that a *French* Privateer was cruising in the Gut of *Canso*; and petitioned for protection for their Fishing Vessels then employed in those Seas.

“AS the *King George* was then out on a Cruize, and the *Massachusetts-Sloop* was just returned from *Penobscot*, I fitted the latter out in the readiest and most frugal Manner I could. I put on board her twenty-six Provincials, which I had within my Command, and augmented her Crew which was established at six Men, to twenty-four; and having completely armed her, sent her to the Gut of *Canso*, to the Protection of the Fishery there.

“FROM thence she is just now returned, after a Cruize of about a Month; in which she saw no Enemy, although she heard of a *French* Pirate being in those Seas, and looked after him; and has in some Part Answered her Purpose, by encouraging the Vessels there to stay to compleat their Fares.

“SHE now waits for Orders; and before I disarm her, and reduce her Crew, it may deserve Consideration whether it may not be advisable to keep up her present Complement, 'till the *King George* is discharged from the Service she is now engaged in; which I refer to your Deliberation.”

Council-Chamber,

FRA. BERNARD.

Sept. 11, 1762.

A little paper only, accompanied this message, with a short account of the Difference to the Province by the Governor and Council's enlarging the Establishment, which amounted to about Seventy two Pounds. But no notice was taken of the Commissary's and other Bills which must finally swell this account much higher. However it was neither the measure, nor the expence of it, that gave the House so much uneasiness, as the <12> manner of it; that is, the enlarging an Establishment without the knowledge of the house, and paying it without their privity or consent. The Council minute relating to this Affair stands thus.

“At a General Council held at the Council Chamber in Boston upon Monday the 9th Day of *August* 1762.

“Present

“His Excellency the Governor.

“Hon. *Thomas Hutchison*, Esq; Lieutenant Governor. Mr. *Danforth*, Judge *Lynde*, Brigadier *Royal*, Capt. *Erving*, Brigadier *Brattle*, Mr. *Bowdoin*, Mr. *Hancock*, Mr. *Hubbard*, Mr. *Gray*, Mr. *Russell*, Mr. *Flucker*, Mr. *Ropes*.

“Upon representation made to his Excellency the Governor from a Number of Persons Inhabitants of the Towns of *Salem* and *Marblehead*, for some protection to be afforded to the Fishery, they having received an account of a French Privateer in the Gut of *Canso*. Advised that his Excellency give orders for fitting out the Sloop-Massachusetts, in order to proceed on a cruize, to the Gut of *Canso*, and Bay *Vert*, for the protection of the Fishery and to continue her said cruize not exceeding one Month; and as his Excellency proposes to put on board twenty-six Provincials, and ten men out of the Ship King George, provided she arrives seasonably, towards manning of the said Sloop: Advised that her proper Crew be augmented to twenty-four men, officers included, upon the following Wages, viz. Captain £.5 6 8. per Month, Lieut. £.4 0 0. Master £.4 0 0. Master’s mate £.3 6 8. Boatswain £.3 6 8. Boatswain’s mate £.3 0 0. Gunner £.3 6 8. Gunner’s mate £.3 0 0. per Month, and each Private £.2 13 14. per Month; and that the Commissary General put in Provisions for said Cruize accordingly.”

The Protection of the Fishery is undoubtedly a very important object and the Province at the beginning of the War built a Ship of twenty Guns, and <13> a Snow of sixteen Guns, for the *immediate* protection of the Trade. I wish the Interests of Commerce were more attended to by those who have it in their Power to cherish them. The trade in the opinion of some has never received a Benefit from those Vessels equal to the Tax Trade alone has paid for their Support. However if more are wanted, when that necessity appears, doubtless the assembly will establish more, in the mean time, no more can be lawfully established at the publick Expense. There has been an Instance or two of the Governor and Council’s taking upon them in the recess of the Court to fit out the Province Ship, in a very unusual and unconstitutional manner, as appears by the following Extracts from the Council Records.

“11th of September 1760. Present in Council the *Governor*, *Lieutenant Governor*, the *Honorable Jacob Wendell*, *Samuel Watts*, *Andrew Oliver*, *John Erving*, *James Bowdoin*, *William Brattle*, *Thomas Hancock*, and *Thomas Hubbard*, *Esqr’s*.

“His Excellency having communicated to the board some Intelligence he had received of five Privateers being cruising off the *Southern Provinces* in Lat. 39. 28. and asked the advice of the Council with respect to manning

the Province Ship King George. Advised that his Excellency give Orders for immediately compleating the Ship's Complement of Men, by directing Captain Hallowell to beat up for Volunteers upon the Encouragement of eight Dollars per man for the Cruize over and above the Wages agreeable to the Establishment. Advised and Consented that a Warrant be made out to the Treasurer to pay unto Captain Hollowell the Sum of One Hundred and sixty Pounds sixteen Shillings, to pay the Bounty of said Men, he to be accountable."

To the Honour of General *Brattle* he was single in his Opposition to this Resolution.

"21st of May 1761. In Council,

"Present the *Governor, Lieutenant Governor, the honorable John Osborne, Jacob Wendell, Andrew Oliver, John Erving, William Brattle, Thomas Hancock, and Thomas Hubbard, Esqrs.*

<14> "Whereas Intelligence has been received of two Privateers cruising off Block-Island which have already taken divers Vessels bound to and from the Colonies, and the Ship King George having no more than thirty men belonging to her, Officers included, and there being no prospect of any further men inlisting upon the present *Establishment*, and the *appropriation* for the Service of said Ship being exhausted, and his Excellency having proposed to put fifty men of the new raised Troops on board said Ship to serve for one Cruize only; therefore in order to compleat the Complement of Men; advised that his Excellency give orders to Captain Hallowell to send the Ship down to Nantasket without Delay, and to impress from all inward bound Vessels, coasters and Provincial Vessels excepted; also to inlist Volunteers upon a Bounty of ten Dollars each; provided the money can be procured; and for that Purpose it is further advised that a Warrant issue upon the Treasurer for seven Hundred Dollars, to be paid out of such Sums as shall be subscribed by any Merchants or other persons, for the above services, upon the credit of a Reimbursement *to be made by** the General Court at their next Session."

There had been some other Proceedings that were very much disrelished by former Houses, e.g. In three Days after the Heirs of Lieutenant Governor Phipps had received a Denial from the House to bear the Expence of his Honor's Funeral, the Governor and Council paid it. Some other extraordinary accounts had also been allowed contrary to the known and express Sense of the House. All these matters together alarmed the present House, and

* I wish the words had been, "to be recommended to."

they thought it high time to remonstrate. Accordingly when the Governor's Message relating to the Sloop Massachusetts was read, (upon a motion made and seconded) it was ordered as an Instruction to the Committee to answer it, to remonstrate against the Governor and Council's making and increasing Establishments without the Consent of the House. Tho' <15> no Notice is taken of this Instruction in the printed Votes of the House. The Journal stands thus, "Read and Ordered, that Mr. Otis, Mr. Tyler, Captain Cheever, Col. Clap and Mr. Witt, take said message under consideration, and report an answer thereto."

Sept. the 15th, The committee reported the following answer and Remonstrance, Viz.

"May it please your Excellency,

"The House have duly attended to your Excellency's message of the 11th, Instant, relating to the Massachusetts *Sloop*, and are humbly of opinion that there is not the least *necessity* for keeping up her present complement of men, and therefore desires that your Excellency would be pleased to reduce them to six, the old establishment made for said Sloop by the General Court.

"Justice to our selves, and to our constituents oblige us to remonstrate against the method of making or increasing establishments by the Governor and council.

"It is in effect taking from the house their most darling priviledge, the right of originating all Taxes.

"It is in short annihilating one branch of the legislature. And when once the Representatives of a people give up this Priviledge, the Government will very soon become arbitrary.

"No Necessity therefore can be sufficient to justify a house of Representatives in giving up such a Priviledge; *for it would be of little consequence to the people whether they were subject to George or Lewis, the King of Great Britain or the French King, if both were arbitrary, as both would be if both could levy Taxes without Parliament.*

"Had this been the first instance of the kind, we might not have troubled your Excellency about it; but lest the matter should grow into precedent; we earnestly beseech your Excellency, as you regard the peace and welfare of the Province, that no measures of this nature be taken for the future, let the advice of the council be what it may."

Which being read, was accepted by a large majority, and soon after sent up and presented to his Excellency <16> by Captain Goldthwait, Mr. Otis, Captain Taylor, Mr. Cushing and Mr. Bordman.

The same day the above remonstrance was delivered, the Town was alarmed with a report that the House had sent a message to his Excellency

reflecting upon his Majesty's person and government, and highly derogatory from his crown and dignity, and therein desired that his Excellency would in no case take the advice of his majesty's council. About five of the clock P.M. the same day Mr. *Speaker* communicated to the house a Letter from the Governor of the following purport.

"SIR,

"I have this morning received a message from the house, which I here inclose, in which the King's name, dignity, and cause, are so improperly treated, that I am obliged to desire you to recommend earnestly to the house, that it may not be entered upon the Minutes in the terms it now stands. For if it should, I am satisfied that you will again and again wish some parts of it were expunged; especially if it should appear, as I doubt not but it will, when I enter upon my vindication, that there is not the least ground for the insinuation under colour of which that sacred and well-beloved name is so disrespectfully brought into Question.

"*September 15th.* To the Honourable Speaker of the House of Representatives."

Your's, etc.

FRA: BERNARD.

Upon the reading of this letter, it was moved to insert these words, to wit, "with all due reverence to his Majesty's sacred Person and Government, to both which we profess the sincerest attachment and loyalty be it spoken it would be of little importance," &c. But a certain member crying "*Rase them,*" "*Rase them,*"* the proposed amendment was dropped, it being obvious, that the remonstrance would be the same in effect, with or without the words excepted against. These dreadful <17> words, under which his Excellency had placed a black mark, were accordingly erased and expunged, and the Message returned to the Speaker.

In the course of the debate a new and surprising doctrine was advanced. We have seen the times when the majority of a council by their words and actions have seemed to think themselves obliged to comply with every Thing proposed by the Chair, and to have no rule of conduct but a Governor's will and pleasure. But now for the first time, it was asserted that the Governor in all cases was obliged to act according to the advice of the council, and consequently would be deemed to have no Judgment of his own.

* Meaning that part of the remonstrance which is in Italick.

In order to excuse if not altogether justify the offensive Passage, and clear it from ambiguity, I beg leave to premise two or three *data*.* 1. God made all men <18> naturally equal. 2. The ideas of earthly superiority, preheminance

* The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man; but to have only the law of nature for his rule. The liberty of man in society, is to be under no other legislative power, but that established by consent in the common wealth; nor under the dominion of any will, or restraint of any law, but what that legislature shall enact according to the trust put in it. Freedom then is not what Sir *Robert Filmer* tells us, O. A. 55. A liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws. But freedom of men under government, is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things where that rule prescribes not, and not to be subject to the unknown, unconstant, uncertain, arbitrary will of another man; a freedom of nature is to be under no restraint but the law of nature. This freedom from absolute arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it but by what forfeits his preservation & life together. For a man not having power over his own life, cannot by compact or his own consent enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life when he pleases: no body can give more power than he has himself. He that cannot take away his own life, cannot give another power over it.

Locke's DISCOURSE on GOVERN'T. Part II, CH. IV.

<18> The legislative, whether placed in one or more, whether it be always in being, or only by intervals, though it be the supreme power in every common-wealth, yet in the utmost bounds of it, it is limited to the public good of the society, it is a power that hath no end but preservation; and those can never have a right to destroy, enslave or designedly to impoverish the subjects.

These are the bounds to which the trust that is put in them, by the Society, and the laws of God and nature, have set to the legislative power of every common wealth, in all forms of government.

First, They are to govern by established promulgated laws, not to be varied in particular cases; but to have one rule for rich and poor, for the favourite at court, and the countryman at plough.

Secondly, These laws ought to be designed for no other end ultimately, but the good of the people.

Thirdly, They must not raise taxes on the property of the people, without the consent of the people, given by themselves or deputies.

Fourthly, The legislature neither must nor can transfer the power of making laws to any body else, nor place it any where but where the people have.

Id. Ch. XI.

Where the legislative and executive power are in distinct hands, as they are in all moderated monarchies and well formed governments, there the good of the society requires that several things should be left to the discretion of him that has the supreme executive power. This power to act according to discretion for the public

grandeur are educational, at least acquired, not innate. 3. Kings were (and plantation Governor's should be) made for the good of the people, and not the people for them. 4. No government has a right to make hobby horses, asses

good, without the prescription of Law, and sometimes even against it, is that which is called *PREROGATIVE*.

This power, while employed for the benefit of the community, and suitably to the trust and ends of government, is undoubtedly Prerogative, and never is questioned. For the people are very seldom or never scrupulous or nice in the point, they are far from examining Prerogative whilst it is in any tolerable degree employed for the use it was meant, that is, for the good of the people, and not manifestly against it. But if there comes to be a question between the executive power and the people, about a thing claimed as a prerogative, the tendency of the exercise of such prerogative to the good or hurt of the people, will easily decide the question. Prerogative is nothing but the power of doing public good without a rule. The old question will be asked in this matter of Prerogative, But who shall be judge when this power is made a right use of? I answer, between an executive power in being with such prerogative, and a legislative, that depends upon his will, for their convening, there can be no judge on earth, as there can be none between the legislative and the people. Should either the executive or legislative, when they have got this power in their hands, design or go about to destroy them, the people have no other remedy in this, as in other cases, when they have no judge upon earth, but to appeal to heaven. Nor let any one think that this lays a perpetual foundation for disorder, for this operates not 'till the inconveniency is so great that the majority feel it, and are weary of it, and find a necessity to have it amended. But this the executive power or wise Princes never need come in the danger of; and it is the thing of all others, they have most need to avoid; as of all others the most perilous.

Id. Ch. XIV.

Fatherly authority, or a right of fatherhood in our Author's sense (i.e. Sir *Robert Filmer*) is a divine unalterable right of sovereignty, whereby a Father, or a Prince, (and a Governor might have been added) hath an absolute, arbitrary, unlimited, & unlimitable power over the lives, liberties and estates of his children and subjects; so that he may take or alienate their estates, sell, castrate or use their persons as he pleases they being all his slaves, and he Lord proprietor of everything and his unbounded will their law.

Locke on Govt. B. I. Ch. II.

He that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it, and so lay a foundation for perpetual disorder, mischief, tumult, sedition and rebellion, (things that the followers of that hypothesis, i.e. *Filmer*, and the advocates for passive obedience, so loudly cry out against) must of necessity find out another rise of government, another original of political power, and another way of designing and knowing the persons that have it, than what Sir *R. Filmer* hath taught us.

Locke on Govt. B. II. Ch. II.

and slaves of <19> the subject, nature having made sufficient of the two former, for all the lawful purposes of man, from the harmless peasant in the field, to the most refined politician in the cabinet; but none of the last, which infallibly proves they are unnecessary. 5. Tho' most governments are *de facto* arbitrary, and consequently <20> the curse and scandal of human nature; yet none are *de jure*² arbitrary. 6. The British constitution of government as now established in his Majesty's person and family, is the wisest and best in the world. 7. The King of Great-Britain is the best as well as most glorious Monarch upon the Globe, and his subjects the happiest in the universe. 8. It is most humbly presumed the King would have all his plantation Governors follow his royal Example, in a wise and strict adherence to the principles of the British constitution, by which in conjunction with his other royal virtues, he is enabled to reign in the hearts of a brave and generous, free and loyal people. 9. This is the summit, the *ne plus ultra*³ of human glory and felicity. 10. The <21> French King is a despotic arbitrary prince, and consequently his subjects are very miserable.

Let us now take a more careful review of this passage, which by some out of doors has been represented as seditious, rebellious and traitorous. I hope none however will be so wanting to the interests of their country, as to

This other original Mr. *Locke* has demonstrated to be the consent of a free people. It is possible there are a few, and I desire to thank God there is no reason to think there are many among us, that can't bear the names of LIBERTY and PROPERTY, much less that the <20> things signified by those terms, should be enjoyed by the vulgar. These may be inclined to brand some of the principles advanced in the vindication of the house, with the odious epithets *seditious* and *levelling*. Had any thing to justify them been quoted from Col. *Algernon Sidney*, or other British Martyrs, to the liberty of their country, an outcry of rebellion would not be surprising. The authority of Mr. *Locke* has therefore been preferred to all others, for these further reasons. 1. He was not only one of the most wise, as well as most honest, but the most impartial man that ever lived. 2. He professedly wrote his discourses on Government, as he himself expresses it, "To establish the throne of the great restorer king *William*, to make good his title in the consent of the people, which being the only one of all lawful governments, he had more fully and clearly, than any Prince in christendom, and to justify to the world, the people of England whose love of liberty, their just and natural rights, with their resolution to preserve them, saved the nation when it was on the brink of slavery and ruin." By this title, our Illustrious Sovereign GEORGE the III. (whom GOD long preserve) now holds. 3. Mr. *Locke* was as great an ornament, under a crown'd head, as the church of England ever had to boast of. Had all her sons been of his wise, moderate, tolerant principles, we should probably never have heard of those civil dissensions that have so often brought the nation to the borders of perdition. Upon the score of his being a Churchman however, his sentiments are less liable to the invidious reflections and insinuations that High-flyers, Jacobites, and other stupid Bigots, are apt too liberally to bestow, not only upon Dissenters of all denominations, but upon the moderate; and therefore infinitely the most valuable part of the Church of England itself.

2. *De jure*: "By right," or "of right."

3. *Ne plus ultra*: "No more beyond," or "nothing more [is] beyond."

represent the matter in this light on the east side of the atlantick, tho' recent instances of such a conduct might be quoted, wherein the province has after its most strenuous efforts, during this and other wars, been painted in all the odious colours that avarice, malice and the worst passions could suggest.

The house assert, that "it would be of little consequence to the people, whether they were subject to George or Lewis, the King of Great-Britain or the French King, if both were arbitrary, as both would be, if both could levy taxes without parliament." Or in the same words transposed without the least alteration of the sense.

"It would be of little consequence to the people whether they were subject to George the King of Great-Britain, or Lewis the French King, if both were arbitrary, as both would be, if both could levy taxes without parliament."

The first question that would occur to a philosopher, if any question could be made about it, would be whether the position were true. But truth being of little importance with most modern politicians, we shall touch lightly upon that topic, and proceed to inquiries of a more interesting nature.

That arbitrary government implies the worst of temporal evils, or at least the continual danger of them is certain. That a man would be pretty equally subjected to these evils under every arbitrary government, is clear. That I should die very soon after my head should be cut off, whether by a sabre or a broad sword, whether chopped off to gratify a tyrant by the christian name of *Tom*, *Dick* or *Harry* is evident. That the name of the tyrant would be of no more avail to <22> save my life than the name of the executioner, needs no Proof. It is therefore manifestly of no importance what a prince's christian name is, if he be arbitrary, any more, indeed, than if he were not arbitrary. So the whole amount of this dangerous proposition may at least in one view be reduced to this, viz. *It is of little importance what a King's christian name is.* It is indeed of importance that a King, a Governor, and all other good christians should have a christian name, but whether Edward, Francis or William, is of none, that I can discern. It being a rule to put the most mild and favourable construction upon words that they can possibly bear, it will follow that this proposition is a very harmless one, that cannot by any means tend to prejudice his Majesty's Person, Crown, Dignity or Cause, all which I deem equally sacred with his Excellency.

If this proposition will bear an hundred different constructions, they must all be admitted before any that imports any bad meaning, much more a treasonable one.

It is conceived the house intended nothing disrespectful of His Majesty, his Government or Governor, in those words. It would be very injurious to insinuate this of a house that upon all occasions has distinguished itself by a truly loyal spirit, and which spirit possesses at least nine hundred and ninety-nine in a thousand of their constituents throughout the province. One good

natured construction at least seems to be implied in the assertion, and that pretty strongly, viz. that in the present situation of Great Britain and France, it is of vast importance to be a Briton, rather than a Frenchman; as the French King is an arbitrary despotic Prince; but the King of Great Britain is not so *de jure, de facto*, nor by *inclination*; a greater difference on this side the *Grave* cannot be found, than that which subsists between British subjects, and the slaves of tyranny.

Perhaps it may be objected that there is some difference even between arbitrary Princes in this respect at least, that some are more rigorous than others. It is granted, but then let it be remembered, that the life of <23> man is as a vapour that soon vanisheth away, and we know not who may come after him, a wise man or a fool; tho' the chances before and since Solomon, have ever been in favour of the latter. Therefore it is said of little consequence. Had it been *No* instead of *little*, the clause upon the most rigid stricture might have been found barely exceptionable.

Some fine Gentlemen have charged the expression as indelicate. This is a capital impeachment in politicks, and therefore demands our most serious attention. The idea of delicacy in the creed of some politicians, implies that an inferior should at the peril of all that is near and dear to him (i.e. his interest) avoid every the least trifle that can offend his superior. Does my superior want my estate? I must give it him, and that with a good grace, which is appearing, and if possible being really obliged to him that he will condescend to take it. The reason is evident; it might give him some little pain or uneasiness to see me whimpering, much more openly complaining at the loss of a little glittering dirt. I must according to this system not only endeavour to acquire my self, but impress upon all around me a reverence and *passive obedience* to the sentiments of my superior, little short of adoration. Is the superior in contemplation a king, I must consider him as God's vicegerent, clothed with unlimited power, his will the supreme law, and not accountable for his actions, let them be what they may, to any tribunal upon earth. Is the superior a plantation governor? he must be viewed not only as the most excellent representation of majesty, but as a viceroy in his department, and *quoad* provincial administration, to all intents and purposes vested with all the prerogatives that were ever exercised by the most absolute prince in Great Britain.

The votaries of this sect are all Monopolizers of offices, Peculators, Informers, and generally the Seekers of all kinds. It is better, say they, "to give up any thing, and every thing quietly, than contend with a su-<24>perior, who by his prerogative can do, and (as the vulgar express it) right or wrong, will have whatever he pleases. For you must know, that according to some of the most refined and fashionable systems of modern politics, the ideas of right

and wrong, and all the moral virtues, are to be considered only as the vagaries of a weak or distempered imagination in the possessor, and of no use in the world, but for the skilful politician to convert to his own purposes of power and profit.

With these,

*The Love of Country is an empty Name,
For Gold they hunger: but n'er thirst for Fame.*

It is well known that the least "patriotic spark" unawares "caught," and discovered, disqualifies a candidate from all further preferment in this famous and flourishing order of knights errant. It must however be confessed they are so catholic as to admit all sorts from the knights of the post to a garter and Star; provided they are thoroughly divested of the fear of God, and the love of mankind; and have concentrated all their views in *dear self*, with them the only "sacred and well-beloved name," or thing in the universe. See Cardinal Richlieu's *Political Testament*, and the greater Bible of the Sect, *Mandeville's Fable of the Bees*. Richlieu expressly in solemn earnest, without any sarcasm or irony, advises the discarding all honest men from the presence of a prince, and from even the purlieu of a court. According to Mandeville, "*The moral virtues are the political offspring which flattery begot upon pride.*" The most darling principle of the great Apostle of the order, who has done more than any mortal towards diffusing corruption, not only thro' the three kingdoms, but thro' the remotest dominions, is, "that every man has his price, and that if you bid high enough, you are sure of him."

To those who have been taught to bow at the name of a King, with as much ardor and devotion as a papist at the sight of a crucifix, the assertion under examination may appear harsh; but there is an immense <25> difference between the sentiments of a British house of commons remonstrating, and those of a courtier cringing for a favour. A house of Representatives here at least, bears an equal proportion to a Governor, with that of a house of Commons to the King. There is indeed one difference in favour of a house of Representatives; when a house of Commons address the King, they speak to their Sovereign, who is truly the most august Personage upon earth: When a house of Representatives remonstrate to a Governor they speak to a fellow subject; tho' a superior, who is undoubtedly intitled to decency and respect; but I hardly think to quite so much Reverence as his master.

It may not be amiss to observe, that a form of speech may be, in no sort improper, when used *arguendo*,⁴ or for illustration, speaking of the King,

4. *Arguendo*: "For the sake of argument."

which same form might be very harsh, indecent and even ridiculous, if spoken to the King.

The expression under censure has had the approbation of divers Gentlemen of sense, who are quite unprejudiced by any party. They have taken it to imply a compliment rather than any indecent reflection, upon his Majesty's wise and gracious administration. It seems strange therefore that the house should be so suddenly charged by his Excellency with *Impropriety, groundless Insinuations, &c.*

What cause of so bitter Repentance, *again* and *again*, could possibly have taken place, if this clause had been printed in the Journal, I can't imagine. If the case be fairly represented, I guess the province can be in no danger from a house of Representatives daring to speak plain English, when they are complaining of a grievance. I sincerely believe the house had no disposition to enter into any contest with the Governor or Council. Sure I am that the promoters of this address had no such view. On the contrary, there is the highest reason to presume that the house of Representatives will at all times rejoice in the prosperity of the Governor and Council, and contribute <26> their utmost assistance, in supporting those two branches of the legislature, in all their just rights and preheminance. But the house is and ought to be jealous and tenacious of its own privileges; these are a sacred deposit intrusted by the people, and the jealousy of them is a godly jealousy.

But to proceed with our narration; on Saturday about a quarter before one of the Clock, Mr. Secretary came down with his Excellency's vindication, which is as follows.

"Gentlemen of the House of Representatives,

"I have received an Answer from you to a Message of mine; informing you of my having upon a sudden Apprehension of Danger, fitted out the Province Sloop to protect a considerable and very interesting Fishery, belonging to this Province: Upon which Occasion you are pleased to observe, that the Method of doing this, which you call *making or increasing Establishments is taking from the House the Right of originating Taxes, annihilating one Branch of the Legislature*, and tending to make *the Government arbitrary*.

"These are hard Words: and the Consciousness of my own Integrity will not permit me to submit in Silence to such Imputations. I know what the Privileges of the People are, and their Nature and Bounds: and I can truly say that it has never been in my Thoughts to make the least Invasion of them. If therefore you think proper to send such a Charge as this to the Press; I must desire that my Vindication may accompany it.

"In Order to which I shall first consider what the legal and constitutional Powers of the Governor and Council are, then state the Fact in Question, and

by Application of the one to the other, see whether the Conclusions before-mentioned will follow. In this Disquisition I shall not inquire *whether any Necessity can be sufficient to justify a House of Representatives in giving up the Privilege of originating Taxes*; as I do not believe that such a Cession was ever desired by any Person concerned in the Government, or that any Governor and Council <27> since the Revolution attempted or ever will attempt to tax the People.

“The Business of originating the Taxes most certainly belongs to the Representatives of the People, and the Business of issuing Money out of the Treasury, as certainly belongs to the Governor with the Advice of the Council. In general all Votes and Orders for the Charge of the Government originate in the House of Representatives, and the Money for defraying such Charges is issued by Warrant of the Governor with the Advice of Council, without any further Reference to the House of Representatives.

“But as it is impossible that the General Court should provide for every Contingency that may happen unless they were continually sitting; there will sometimes be Cases in which the Governor, with the Council, is to be justified in issuing Money for Services not expressly provided for by the General Court: Of these there are two very obvious.

“The one is, where a Danger arises so immediate and imminent that there is no Time for calling together the Assembly. In this I apprehend there is no other Limitation of Expense, but in Proportion to the Evil impending: For the Safety of the People being the supreme Law, should at all Events be provided for.

“The other is, where the Expence of some necessary Service is so considerable, as to be not worth the while to put the Province to the Charge of the Assembly’s meeting for that Purpose only, at an Expence perhaps ten or twenty Times more than the Sum in Question.

“This I take to be the Law and Usage of every Royal Government on the Continent. In that over which I formerly presided, where the people were very averse to frequent or long Sessions of the Assembly, I have upon an Emergency, with Advice of the Council only, raised Three Hundred Men at a Time, and marched them to the Defence of the Frontiers; and when the Assembly has met, have received their Thanks for so doing.

<28> “Now let me state the Case in Question. Most of the principal Merchants in *Salem* and *Marblehead*, who were considerably interested in a Fishery near the Gut of *Canso*, in which I am told upwards of One Hundred Vessels from this Province were employed, received Advice that there was a French Privateer or Pirate cruising in those Parts. It has appeared since, that this Alarm was not peculiar to this Province: It reached *Quebec*, from whence an armed Schooner was fitted out to look after this Frenchman. It reached

New-York, from whence General AMHERST advised me of this French Vessel. These Merchants therefore applying by their Deputies to me for an immediate Protection of their Fishery, I laid the Matter before the Council, and it happening that the Province Sloop was just returned from *Penobscot*, it was advised by the Council, that she should be immediately fitted out to go to the Protection of this Fishery: this was done in the most frugal Manner possible; out of the Fifty Men put on board the Sloop, only twenty-four were charged to the Province, the rest were drawn out of the Provincials employed at *Castle-William*, and in the recruiting Service; the Ammunition and Military Stores were taken from the Castle, to which they have been restored without Loss or Expense; the Men were engaged only for one Month, after which they were not to be continued without the Advice of the General Court. This is the true State of this Transaction; and surely I may say it deserved a very different Animadversion than what it has had.

“Now to apply it to the Censure it has met with: This was an Act which the Governor with the Council had a Right to do; it was a legal and constitutional Exercise of the Powers vested in them; it was an Exertion of the Executive Power of the Government, distinct from that of the Legislature. If it was wrong and ill advised (which I don’t mean to admit) it could amount to no more than an improper Application of the public Money, by those who have lawful Authority to apply such Money to the public Purposes. When this Distinction <29> is considered; how can this Act, whether right or wrong, be applied to the Right of originating Taxes, annihilating one Branch of the Legislature and making the Government arbitrary?

“As for the discretionary Part of the Act, after I have had the Advice of the Council, and the Approbation of my own Judgment and Conscience, I shall not enter into any further Argument about it, than just to observe; That if the Governor and Council legally acting in the Executive Administration, and determining to the best of their Judgment and Skill, with a conscientious Regard to the Good of the People, shall be liable to be called to account for Difference of Opinion only, the Government will be very much weakened. But I shall persuade myself that a steady Attention to the Peace and Welfare of the Province, which you recommend to Me, will always sufficiently justify my Conduct: and in that Confidence I hope I shall never fail to exert the Powers which have been committed to Me for the Defence and Protection of the People of this Province, by all lawful and constitutional Means.

“Province-House,

“Sept. 18, 1762.

FRA. BERNARD.”

This being read, the Secretary instantly informed the Speaker, that his Excellency directed the attendance of the house in the council chamber.

The two houses had finished the publick business; and before this the house of Representatives had by a committee asked a recess, so it was presumed the house was sent for to be prorogued, as it turned out. The Speaker rose to go up to the council, without desiring the house to attend him, the usual and regular form, which it is presumed was forgot. But it was moved that his Excellency's vindication, according to his desire, should be printed in the Journal. This motion was seconded, and passed in the affirmative by a great majority. Then a motion was made and seconded, for a committee to prepare a Reply to this <30> vindication in the recess of the court, and to make report at the next session; this also passed in the affirmative by a considerable majority, and Mr. *Speaker*, Mr. *Otis*, and Mr. *Tyler*, were chosen a committee for said purpose. Then the House immediately attended his Excellency in the Council-Chamber. When his Excellency, after giving his assent to two or three bills, prorogued the court.

It was wished, at least by the moderate part of the house, that his Excellency had thought fit so far to give up the point, as to wave any contest about it, by assuring the house, that if his right was ever so clear, he would not exercise it, if grievous to the people. A like condescension crowned heads have practised, and found their account in it; as I am persuaded his Excellency would, if the unanimous vote of thanks from the whole representative body of this people is worth any thing. This I guess he would have had: And as it is a maxim that the King can do no wrong, but that whatever is amiss is owing intirely to those about him; so, with regard to his Excellency, we ought to presume the best; and that it is to be charged to the account of some weak or wicked advisers, that this business did not end happily. However, the matter is now become very serious, by his Excellency's vindication; which we shall next consider.

The Charter of the province of the Massachusetts-Bay, has invested the Governor and Council with power to issue (without the concurrence of the House, as it is now construed, or rather as the genuine sense of the Charter has been waved by former Houses) the monies out of the treasury. But the Question is, Whether this power be limited? If it is unlimited, the priviledge of levying taxes by originating them in the House of Representatives, is of little value. What Representative would plume himself upon the priviledge of originating taxes, if the money could be squandered away at pleasure; which in other words may happen hereafter to be just as the tools and sycophants of power shall <31> advise. This power therefore, in the nature and reason of the thing, should seem to be limited by some usage or custom, if not

by something more explicit. The words of the Charter are, "And we do for us, our heirs and successors, give and grant, that the said General Court or Assembly, shall have full power and authority to name and settle annually, all civil officers within the said province, for the time being; and to set forth the several duties, powers and limits of every such officer to be appointed by the said general court or assembly; and the forms of such oaths, not repugnant to the laws and statutes of this our realm of England, as shall be respectively administered unto them, for the execution of their several offices and places; and also to impose fines, mulcts, imprisonments, and other punishments; and to impose and levy proportionable and reasonable assessments rates and taxes, upon the estates and persons of all and every the proprietors or inhabitants of our said province or territory, to be issued and disposed of by warrant, under the hand of the Governor of our said province, for the time being, with the advice and consent of the Council, for our service, in the necessary *Defence* and support of *our* government of our said province or territory, and the protection and preservation of the inhabitants there, according to such acts as are or shall be in force within our said province." Here seems to be an express limitation of the power. Nothing is left to usage or custom, much less to discretion. It is manifest from the Charter, that the *Acts* of the province are the only legal and constitutional justification to the Governor and Council, in issuing any money out of the treasury: "*According to such Acts as are or shall be in force within our said Province,*" are certainly no unmeaning words.

It is clear from hence, that without the aid of an *Act* of the province, the Governor and Council cannot legally take a shilling out of the treasury, let the emergency be what it may. It is agreed with his Excellency, that in issuing Money from the treasury, as the charter <32> has of late years been construed the Governor and Council are meer executive officers. They are controllers-general of the Treasury, i.e. the treasurer cannot pay without their warrant; but then they are as much bound by the acts of the province, as the treasurer himself. He, the Treasurer, indeed may be called to an account, but they can't, being in other respects two branches of the Legislature. The only remedy therefore is a remonstrance, and when that proves ineffectual, the house may and ought to refuse to supply the Treasury, and stop a few Grants and Salaries; which would soon bring matters right without any dangerous shock to Government, or weakening thereof; but what the whole world must impute to a Governor and Council, that would oblige a House to have recourse to the last resort, but one; I mean as we are a dependent Government, a dutiful and humble remonstrance to his Majesty.

The Parliament of Great-Britain have as the last resort, been known to appeal to Heaven, and the longest sword; but God forbid that there ever

should be occasion for any thing of that kind again; indeed there is not the least danger of it since the glorious revolution, and the happy establishment resulting therefrom. It was formerly the custom for the Speaker of the house to sign all warrants upon the treasury, but this was at last either tamely given up, or at least waved.

It may be objected, that tho' our supply bills appropriate by far the greatest part of the sums raised, yet something is always expressly left for contingencies, and the Governor and Council may and must in the nature of the thing apply this at discretion. I answer, 1. Even this is issued by force of an act, and not by virtue of any general power in the Governor and Council, independent of the act. 2. Neither custom nor usage suppose that this sum appropriated for contingencies could be applied to the fitting out of men of war, and making establishments for them; for armed vessels is one express appropriation in our acts, which shews that <33> this is not considered as a contingency, and that the assembly do not expect any further charge for this article, than they have appropriated.*

3. All our Governors and Councils have not always confined themselves to the appropriation for contingencies, but some have drawn for what they deem'd contingencies when they have known the appropriation to be expended, and in short have not confined themselves to any appropriation in payment; whatever they may have done in the form of their warrants. 4. If the Governor and Council can fit out one man of war, inlist men, grant a bounty and make establishments, why not for a navy, if to them it shall seem necessary, and they can make themselves the sole judges of this necessity. The rumour in the case of the Massachusetts was that fourteen privateers instead of one *pyrate* were cruizing off Canso. What could this one poor sloop have done against such odds? *Salus populi est suprema Lex*.⁵ Why then did not the Governor and Council fit out fourteen men of war, or at least enough to take fourteen privateers? It has been said that there were no privateers among the fishermen, but that when they discovered the sloop, she was taken for one, and that many of the fishermen ran home in a fright, and lost their fares. How true this is I can't say, but have heard it reported, and believe there is at least as much ground for it as there was to believe the story of fourteen privateers. The Governor and Council doubtless meant well as to the protection of the fishery, and had there been no unjustifiable extension of their power, every one would have thankfully acquiesced. The money for fitting

* This Vessel's Expence was drawn for upon the Appropriation for armed Vessels, as appears by the Warrant and Roll.

5. *Salus populi est suprema Lex*: "The highest law is the people's well-being."

out this sloop might have been raised by the Governor and Council's promise to recommend a reimbursement to the assembly. They might perhaps have borrowed it of the Treasurer upon the same terms, and the privileges of the House thereby would have been preserved. It would be a very easy thing <34> to raise twenty times the sum wanted to fit out this sloop upon the credit of a like recommendation. This method was taken in fitting out the King George in 1761, as appears by the vote of Council, and the Governor's message afterwards to the house of Representatives, and their vote thereupon, which last are as follows,

"Gentlemen of the House of Representatives,

"The provision made the last session for manning the King George was soon found insufficient for the purpose, and after bearing up for a month the crew amounted to but thirty men. In this condition the ship remained, when I received advice that there were two French privateers on the coast and that there were several more to be expected: I immediately called a Council; at which attended a committee of the merchants. The council were of opinion, that the ship should be immediately fitted out: and in order to do it with more expedition, I offered that if the crew could be quickly compleated to an hundred men, I would put fifty provincials on board for a short cruize. It was therefore advised to raise seventy men, and to give ten Dollars bounty: But there was no fund in the Treasury to *resort* to for this purpose. It was therefore concluded to order the Treasurer to borrow seven hundred Dollars of the merchants on the credit of the province, (*not on the credit of a recommendation, as it should have been and perhaps was meant*) which was accordingly done; and I must desire you would take care for the repayment thereof."

The House, after long debate, and divers references, on the second of June, voted, "that the province treasurer be directed to repay the seven hundred Dollars borrowed of the merchants *on the credit of the province* for bounty, in order to man the ship King George."

I want to know why the same method of raising the money might not have been taken the first time of fitting out the ship King George, and in fitting out the sloop Massachusetts.

<35> However, even this method of supplying the treasury by the Governor and Council's ordering subscriptions upon the credit of the province (by which it is presumed a recommendation to the assembly is meant) is by no means a justifiable practice.

The Governor and Council have naturally a great influence in all Houses of Representatives, and when the money is once taken up and applied, it would seem hard to make the subscribers lose it; and so in time it would

come to be a thing of course, for the House to reimburse all expences the Governor and Council should be pleased to create in the recess of the assembly; and after a course of tame acquiescence in such a practice, the House would become as some desire to have it, a very insignificant, unimportant part of the constitution.

It is therefore the indispensable duty of the House of Representatives, to be very cautious how they allow or approve of any expences incurred even in this way.

His Excellency is pleased to wave any inquiry “whether any necessity can be sufficient to justify a House of Representatives in giving up the privilege of originating taxes?” for this reason only expressed; viz. “I don’t believe (says his Excellency) that such a cession was ever desired by any Person concerned in the government, or that any Governor and Council since the revolution, attempted or ever will attempt to tax the people.” I wish I could exercise as much charity towards former Governors and Councils, as for his Excellency and the present honourable Council; but I can’t. I am verily persuaded, that we have had some Governors and some Councillors, since the revolution, that would gladly have been as absolute as Turkish Bashaws; and that the whole tenor of their actions has given convincing proof of such a disposition.

A tax upon the people in form, by issuing a tax bill, and ordering an assessment, I believe has not been attempted by a Governor and Council since the revolution. This would be too alarming. The vulgar are apt to be forcibly affected with names and appearances, rather than by realities. If the money can be drawn out of the treasury without any regard to the appropriations, made by the acts of the province; and the House whenever called upon, will without murmuring supply the treasury again; they serve the purpose of a very convenient machine to quiet the people; and the money flows in with greater ease and plenty than if the Governor and Council were, *ad libitum*,⁶ to collect and dissipate the public treasure.

It is observable, that in France and other despotic governments, ’tis often with great difficulty, and sometimes with hazard, that the revenue is collected. Had *Richlieu* and *Mazarine* convinced the parliaments that it was a great privilege to be allowed to vote as much money as was called for, and for any purpose the court might want it, the government would have had the appearance of liberty under a tyranny; which to those ministers would have been a vast ease and security. But those great politicians either never thought

6. *Ad libitum*: “At pleasure.”

but to salve appearances? Otherwise it might run thus, "*Out of the public money in the treasury.*" "But as it is impossible, (says his Excellency,) that the General Court should provide for every contingency that may happen unless they were continually sitting; there will sometimes be cases in which the Governor & Council is to be justified in issuing money <38> for services not expressly provided for by the General Court; of these there are two very obvious." "The one is, when a danger arises so immediate and imminent, that there is no Time for calling together the assembly. In this I apprehend there is no other limitation of expence, but in proportion to the evil impending. For the safety of the people being the supreme law, should at all events be provided for. The other is, where the expence of some necessary service is so inconsiderable, as to be not worth the while to put the province to the charge of the Assembly's meeting for that purpose only, at an expence perhaps of ten or twenty times more than the sum in question." Frequent and long sessions I know are burdensome to the people, and many think they had better give up every thing, than not have short sessions. But let these consider that it is a very poor bargain, that for the sake of avoiding a session extraordinary, sacrifices the right of being taxed by their Representatives; and risques ten or twenty times the sum in the end, to be levied by a Governor and Council. I know too, that some gentlemen in order to lessen the weight of a House of Representatives, are constantly exclaiming against long and frequent sessions; the people are gulled with the bait, and the house when they meet, are often in want of time to compleat the public business, in the manner that they would wish, and the nature of some affairs requires. What is the consequence? Why, it is become a very fashionable doctrine with some, that in the recess of the court, the Governor and Council are vested with all the powers of the General Assembly. It is costly and unpopular to have frequent and long sessions; therefore they shall be few, short and hurried; and in the mean time, the Governor and Council shall have a right to do what they judge "the supreme law," the good of the common-wealth, requires, and no limitation or bounds are to be set to the money they expend, but their sovereign judgment of the *quantum*⁷ of the impending evil; for, "the safety of the people being the supreme law, should at all events, and <39> by all means (*but that of calling an assembly together*) be provided for." This is a short method to put it in the power of the Governor and Council, to do as they please with the men and money of the province; and those Governor's who can do as they please with the men and money of a country, seem to me to be, (or at

7. *Quantum*: "Magnitude."

least are in a pretty fair way soon to be) arbitrary; which in plain English means no more than do as one pleases. As to those inconsiderable services, not worth while to put the province to the charge of an assembly; it seems to be of no great importance whether they are performed or not. 2. There is always an appropriation for contingencies, great and small. If this sum should be exhausted, sufficient might always be procured upon the credit of a recommendation from the Governor and Council, for a reimbursement. 3. Any particular service had better suffer, and the province suffer, that way, than lose such a privilege as that of taxing themselves; upon which single privilege evidently depends all others, *Civil and Religious*.

His Excellency tells us of “the law and usage of every royal government upon the continent”; and that, “in that over which he presided formerly, he had upon an emergency, with the advice of the Council only, raised three hundred men at a time, and marched them to the defence of the frontiers, and when the assembly has met has received their thanks for so doing.”

Whether the assembly of this province equal the assembly of *New-Jersey*, in gratitude or any other virtue, I shall not presume to determine. But this I am sure of, that this province has been more liberal in their grants to his Excellency, than to any of his predecessors. Instead of any debate about *his salary*, three grants have been made in less than two years, amounting to near three thousand pounds sterling in the whole, besides the very valuable island of Mount Desart which the province thought they had a right to grant subject to his Majesty’s confirmation; and which his Excellency doubtless will have confirmed to him. <40> All this with the ordinary perquisites, besides the *full third* of all seizures, must amount to a very handsome fortune, obtained in about two years and two months. His Excellency has not been pleased to tell us, whether the assembly paid the expence of this extraordinary march, or whether the Governor and Council ordered it to be paid? Now if the assembly paid it, as they doubtless ought, after thanking his Excellency, and thereby admitting the utility of the measure, their privilege was saved. But if the Governor and Council paid it out of the treasury, and the House acquiesced in the infringement of their privilege, it cannot be produced as a precedent for us, let it be ever so royal a government. His Excellency has a right to transport any of the militia of this province to any part of it, by sea or land, for the necessary defence of the same; and to build and demolish forts and castles, and with the advice of the council in times of war, to exercise martial law upon the militia, but then it is with the House to pay the expence, or refuse it as they please. No man by charter can be sent out of the province but by an act of the three branches of the legislature. The King himself applies to parliament to support his army and navy, and it is their

duty to do it, and they ever have and will do it; and the supplies for these ever originate in, and are appropriated by the House of Commons; in whose money bills the House of Lords won't presume to make any amendment; consent or reject in the whole is all the power they exercise in this particular.

His Excellency next proceeds to state "the case in question," by which I suppose is meant the facts relative to fitting out the sloop Massachusetts. The facts mentioned, I take it for granted are in the main true, but the most material one seems to be omitted, namely, that the Governor and Council made an establishment; in consequence of which the expense of this fitting out, or a great part at least has been paid out of the Treasury, by warrant from the Governor and Council. There is also a small mistake in his Excellency's <41> saying the sloop was then returned. She was expected, but her return was uncertain. Had the sloop been sent and the pay or reimbursement referred to the House, there might have been no complaint as to this particular step. But the main question is not as to the right of sending the sloop, but of making, or increasing her establishment, and paying it out of the publick monies without the consent of the House; not only in this, but in a number of late similar instances, that have induced the House to question the right of the Governor and Council to draw monies out of the treasury in this way. Or more properly, as it results from the remonstrance of the House, and his Excellency's vindication: The question is in effect, whether the House have a right to appropriate the money they agree to levy upon their constituents?

It being pretty evident I hope by this time, that if the Governor and Council can issue what they please, *and for what* they please, that the House has no right to appropriate; and it is as clear that if the right of appropriation is of any avail or significancy, the Governor and Council cannot issue the monies from the treasury for what they please; but are bound and limited by the appropriations and establishments made by the acts of the province, to which by the way they are two parties of three in the making.

His Excellency having given us his state of the case in question, proceeds "to apply it to the censure it has met with" as his Excellency is pleased to express it. By which I presume his Excellency means the application he had promised in the beginning of his vindication. "I shall consider, says his Excellency, what the legal and constitutional powers of the Governor and Council are; then state the *fact* in question, and by the application of the one to the other, see whether the conclusion before mentioned will follow."

Here again there seems to be some little obscurity, by reason of these words, "*fact in question*"; there being no question about the facts, but about the right, <42> not so much about the right of fitting out the vessel, as the Governor and Council's right to pay for it out of the treasury, without the

consent of the House. What question can there be about facts? There is no doubt but that the vessel was sent, and that in consequence of an application from Salem and Marblehead gentlemen.

I therefore presume to read the second paragraph of his Excellency's vindication according to the sense and spirit, (tho' not strictly agreeable to the letter.) thus, "In order to my vindication (*dele to which*) I shall 1. Consider what the legal and constitutional powers of the Governor and Council are. 2. State the facts. 3. By application of the legal and constitutional powers of the Governor and Council to the fact, see whether the conclusions before mentioned will follow." According to this division, which in the spirit, tho' not in the letter, is a *very good one*; his Excellency has given us his sense of the legal and constitutional powers of the Governor and Council. His Excellency is undoubtedly as well acquainted with the nature of these powers, as "what the privileges of the people are, their bounds and their nature." I presume his Excellency also has the same thorough knowledge of "what the privileges of the House of Representatives are, their nature and their bounds"; which last are more immediately the subject of inquiry, than those of the people. Tho' it is true, that the privileges of the House are the great barrier to the privileges of the people, and whenever those are broken down the people's liberties will fall an easy prey.

His Excellency having finished his state of facts, proceeds according to the method premised to the third and last *head* of discourse, which is, with his Excellency the *application*; not "of the case in question, to the censure it has met with," tho' the latter words seem to import this; but of the legal and constitutional powers of the Governor and Council, to the facts, in order to make his conclusions. This is evidently his Excel-⁴³lency's meaning. The application is mental. The conclusions are expressed. The first his excellency is pleased to make is in these words. "This was an act which the Governor with the Council had a right to do." I am no great admirer of the syllogistic form of reasoning, and this dress is very uncourtly, yet all conclusive reasoning will bear the test of the schools. Let us try an experiment. His Excellency's whole vindication may nearly in his own words be reduced to this categoric syllogism.

"All the money for defreying the charges of the government *is* issued by warrant of the Governor with the advice of Council, without any further *reference* to the house of Representatives.

"The principal merchants in Salem and Marblehead were frightened with a rumour of a privateer; upon their application the Governor and Council took the alarm, fitted out an armed vessel, and by their warrant defreayed the charge out of the treasury without any reference at all to the House of Representatives."

Therefore,

1. "This was an act which the Governor with the Council had a right to do." No man in his senses to be sure can deny the major proposition, for the word *is* plainly implies a right; according to *Mr. Pope* and other great authorities, "whatever *is* is right." The minor is a bare recital of *notorious* facts; therefore the way is clear to follow his Excellency in the rest of his inferences.
2. Inference. "It was a legal and constitutional exercise of the powers vested in them." 3. "It was an exertion of the executive power, distinct from that of the legislative." 4. If it was wrong, &c.

His Excellency then proceeds to ask the House a very important question. But before we consider what answer may be given to that question, and probably would have been given, had there been time before the court was prorogued; I beg leave to make a few observations upon his Excellency's three last inferences. I have carefully examined the Charter, and the laws of this <44> province, and think I may challenge any man to show any thing in either, that gives the least colour of right to the Governor and Council, to fit out an armed vessel to cruize upon the high seas, at the expence of the province, or to grant a bounty for inlisting the seamen, or to impress them when they won't inlist fast enough, as in the case of the ship *King George*, or to make an establishment for the officers and seamens wages, much less to issue the money from the treasury for defreying these charges by warrant of the Governor and Council, without any *reference* to the House of Representatives, who must upon supposition of such powers be strangers, total strangers to the expense thus brought upon the province.

But we are told that "*this* is an exertion of the executive power of the government, distinct from the legislative."

I am as much for keeping up the distinction between the executive and legislative powers as possible. Happy, very happy, would it be for this poor province, if this distinction was more attended to than it ever has been. I am heartily rejoiced however, that his Excellency seems here to discountenance and explode the doctrine that some among us have taken great pains to inculcate, viz. that in the recess of the general assembly the whole power of the three branches devolves upon the Governor and Council. If I may compare small things with great, without offence, this doctrine is as absurd as if a man should assert that in the recess of parliament, the whole power of parliament is devolved upon the King and the House of Lords. Had such a doctrine always prevailed in England, we should have heard nothing of the oppressions and misfortunes of the *Charles's* and *James's*; The revolution would never have taken place; the genius of *William* the third would have languished in the fens of Holland, or evaporated in the plains of Flanders;

the names of three George's would doubtless have been immortal; but Great-Britain to this day might have been in chains <45> and darkness, unblessed with their influence. I take it for granted therefore, his Excellency must mean by "power of the government," not the power of the whole province in great and general court assembled, but only the executive power of the Governor and Council, distinct from the legislative, as just explained by him. Names are sometimes confounded with things by the wisest of men. It is however of little importance what the power is called, if the exercise of it be lawful. If the power of taxing is peculiar to the general assembly, if the charter has confined it to the general assembly, as I think it evidently does, and this act of the Governor and Council is a tax upon every inhabitant, as it clearly is, being paid out of money raised by their representatives upon them for other purposes, which must remain unsatisfied; and so much more must be raised upon them as is thus taken away: It follows that as all taxation ought to originate in the House; this act of the Governor and Council is so far from being an executive act peculiar to them, that it is evidently taking upon them in their executive capacity, or what other name else, you are pleased to give it, a power not only confined by the charter, law and constitution of the province, to the general assembly or legislative body of the province, but so far confined to one branch of that body, that it can lawfully and constitutionally originate only in the House.

If therefore this act was wrong and ill-advised, which I think has been abundantly proved, whether his Excellency will be pleased to admit it or not; it *could* "amount to more than an improper application of the publick money by those who have lawful authority to apply such money to the publick purposes." It is granted, should the treasurer without warrant do such an act, it would be no more than an improper application of the public money by one who has lawful authority to apply such money to the publick purposes, by warrant from the Governor and Council. Should the treasurer act without such warrant, he would be <46> accountable. But when he has the Governor and Council's warrant, that perhaps will justify, or at least, ought to excuse him, be the warrant right or wrong; because it would be hard to make him answerable for the conduct of his superiors, and to expect him to set himself up as a judge against the Governor and Council, one of which joins in his choice, and the other has an absolute negative upon him. But upon supposition the Governor and Council act wrong, and misapply the monies of the province, which his Excellency seems to concede, is at least a possible case. What is to be done? I agree with his Excellency that they are not liable to be called to an account, and it would be a ridiculous vanity and presumption in the House to think of *any* such thing. We have

no body to institute a suit against the Governor and Council; no court to try such a suit; all that would be left therefore in so unhappy a case (if the privilege of the House of joining in all issues from the treasury has been given up by former assemblies, and that is binding upon their successors, "which I don't mean to admit") is to remonstrate. This method the House have taken in the present case, rather than at this juncture reclaim their ancient privilege of joining in all warrants for the issues from the treasury. However, I conceive that the right of joining in such warrants can never die. But to confine ourselves to his Excellency's inferences, let us for a moment concede that this act by the Governor and Council, at most is only a misapplication of the publick monies. The conduct of the House is certainly to be justified. The Governor and Council of the province misapplying money, is a grievous event, a terrible misfortune, and a dreadful example to inferiors. It would be enough to infect seven eighths of the petty officers in the community. Whenever a peculator, great or small, should be called to an account after such an event repeated, and passed unnoticed by the House, he would at least console and comfort, nay even plume himself with such like reflections as these. <47> "My betters have done so before me. They make what applications they please of the publick money, without regard to law, or the duty of their trust, and so will I." Tho' with regard to the present Governor and Council, it is presumed a misapplication can proceed only from an error in judgment, which the wisest are in a degree subject to, not from any supposed pravity of inclination; yet it would be of dangerous tendency, and therefore a proper subject of remonstrance. A remonstrance is not an insolent and presumptuous "calling a Governor and Council to an account for difference of opinion only," nor any charge of wilful evil, but only of error in judgment, and a humble endeavour to point it out; relying always upon their known goodness and wisdom, that whenever they shall discover the truth, they will readily follow it. The House of Commons remonstrating (as they have sometimes done) I believe would be astonished to hear their humble petitions to the Throne called "*hard words and groundless insinuations*," &c. and viewed as calling the King to account. It is true, that the Governor and Council may do many things, if they are so disposed, which they cannot be called to an account for in this world; but this will hardly prove that they have a right to do them, especially after the whole body of the people by their Representatives complain of them as grievous. It is by no means a good inference in politicks, any more than in private life, or even in a state of nature, that a man has a right to do every thing in his natural power to do. This would be at once to make a man's own will and his power, however obtained, the only measure of his actions.

But in answer to his Excellency's grand question, it will appear that this act, and the like instances complained of, are more than a bare misapplication of the public money; they are what the house called them "a method, (and they might have added a lately devised method, the first instance almost being in the case of the ship King-George, in 1760) of making and increasing <48> establishments by the Governor and Council," in effect taking from the House their most darling privilege, that of "originating all taxes." "In short (i.e. a short method for) annihilating one branch of the legislature."

And it remains infallibly true, when once the Representatives of a people give up this privilege, the government will very soon become arbitrary, i.e. the Governor and Council may then do every thing as they please.

His Excellency asks, "When this distinction is considered, how can this act, right or wrong, be applied to the right of originating taxes, annihilating one branch of the legislature, and making the government arbitrary." His Excellency, thro' his whole vindication, seems to speak of the single act of fitting out the sloop, and don't once mention the establishment made for her, or the payment thereof; much less the two instances of fitting out the ship King George: All which the house had in view, as is manifest by their saying, that, "had this been the first instance, they might not have troubled his Excellency about it." However, if this was the only instance that ever had happened of such an exertion of the executive power by the Governor and Council, it seems to be very applicable to the right of originating taxes, and to have a tendency to make the Governor and Council of the province arbitrary. If the Governor and Council have a right to draw what money they please out of the treasury, under a notion of discretion which they are to exercise, as executive officers of the government; it follows, that for so much charge as the government incurs by the exercise of this discretionary power, by so much the province is taxed by the Governor and Council, without any privity or consent of the house; so much charge then as is incurred by this discretionary power, the house cannot be said to originate. Their right of originating taxes therefore is so far taken away; their power as to this ceasing and coming to nothing, by the Governor and Council exercising it themselves, without the house, may be said to be annihilated. <49> And when the power and privilege of any branch of the legislature ceases, is taken away and annihilated, then the government is so far arbitrary. The house are so modest as only to say, "that in such a case it will soon become arbitrary."

Can any man be so unreasonable as to contend that the province is not as much taxed by the Governor and Council's paying for this sloop out of the money already raised, as if the house had voted it? What is the difference? The people pay the reckoning whether the Governor and Council take

upon them to arm vessels out of money raised for other purposes, or the house vote to raise money for arming vessels. When the money is gone out of the treasury for arming vessels, the debts of the province contracted by the three branches of the legislature must nevertheless be paid, and other monies must be levied instead of those taken away by the Governor and Council. And as according to his Excellency's distinction, there is no limitation of the discretionary expence, so long as the good of the whole, in the opinion of the Governor and Council shall require it; they may spend every farthing in the treasury, and for what they please. Suppose his Excellency should judge it expedient and absolutely necessary upon the apprehension of some imminent and immediate danger (of which he is in fact absolutely by the charter the sole judge) to march all the militia to the frontiers. This he can do without even the advice of the Council. Suppose the Council, tho' not consulted, as they need not be, as to the utility of the march, should place such absolute confidence in his Excellency's wisdom as to sign a warrant for drawing every farthing out of the treasury for the paying and subsisting this armament. Could not as much be said for all this, as is said for fitting out the sloop?

The House of Representatives, should they presume to remonstrate, might with the same propriety be given to understand that "there was not time to call *them* together," that "the danger was immediate and imminent, and in such a case there is no limitation of expence, but in proportion to the evil impending"; "for the safety of the people being the supreme law, should at all events be provided for." Furthermore, "this was an act the Governor and Council had a right to do": "It is a legal and constitutional exercise of the powers vested in them." "It is an exertion of the executive power of the government, distinct from the legislative." Nay let us go but one step further, and I think the reasoning will be compleat on the side of his Excellency, or on the side of the House. All things are possible, and when his Excellency and the Council we are now blessed with, are taken from us, we may have a Governor and Council, that after they have given out orders to array and march the militia, and by warrant drawn all the money out of the treasury, may alter their minds as to the imminent danger, lay by the expedition, but instead of replacing the money in the treasury, divide and pocket it among themselves.

The reader no doubt starts at such a supposition, 'tis only a bare possibility as stated. The House might possibly remonstrate in such a case. But I hold that upon the principles advanced by his Excellency, it would be wrong in them so to do, and that it ought to be taken for a satisfactory answer, That "if it were wrong and ill advised in the Governor and Council (thus to convert all the treasure of the province to their own use, which they might not mean to admit) yet it would amount to no more than a *very improper application* of

the publick money, by those who had lawful authority to apply such money to the publick purposes.”

“When this distinction is considered, how could such an act, whether right or wrong, be applied to the right of originating taxes, annihilating one branch of the legislature, and making the government arbitrary.” Perhaps such future Governor not understanding law distinctions so well as his Excellency our present Governor, might expressly add, and so good Messieurs Representatives you have nothing to do but to supply the <51> treasury, again, tax the *many headed monster** once more, and when you have done it, the first moment I think fit I’ll draw it all out again, under colour of some sudden imminent danger; and if you don’t like it, you may e’en go h——g yourselves, as they *at least* most certainly would richly deserve who should tamely submit to such usage.

To conclude. Would all plantation Governors reflect upon the nature of a free government, and the principles of the British constitution, as now happily established, and practice upon those principles, instead (as most of them do) of spending their whole time in extending the prerogative beyond all bounds; they would serve the King their master much better, and make the people under their care infinitely happier.

Strange it is, that when King’s and many of her mighty men have fallen in their attempts upon the liberties of the people of Great Britain, that plantation Governor’s don’t all consider the Act of 13th of George the second, Chapter vii. which is a plain declaration of the British parliament, that the subjects in the colonies are entitled to all the privileges of the people of Great Britain. By this act of parliament even Foreigners having lived seven years in any of the British colonies, are deemed natives, on taking the oaths of allegiance, &c. and are declared by said act to be his Majesty’s natural born subjects of the kingdom of Great Britain, to all intents, constructions and purposes, as if any or every of them had been, or were born within the kingdom. The reasons given for this naturalization of foreigners, in the preamble of the act are, that “the *increase* of the people is the means of advancing the wealth and strength of any nation or country, and that many foreigners and strangers, from the *lenity* of our government, the *purity* of our religion, the *benefit* of our laws, the *advantages* of our trade, and the *security* of our property, might be induced to come and settle in some of his Majesty’s colonies in America, if they were made partakers of the <52> *advantages* and *priviledges* which the natural born subjects of this realm do there enjoy.” Nor is any new priviledge given by this act to the natives of the colonies, it is merely as to

* An opprobrious Name by some given to the People.

them a declaration of what they are intitled to by the common law, by their several charters, by the law of nature and nations, and by the law of God, as might be shown at large, had I time or room.

All settled attempts therefore, against the liberty of the subject, in any of the plantations, must end in the ruin of the Governor who makes them; at least they will render his administration as uneasy to himself, as unhappy for the people. It is therefore the indispensable duty of every one, and will be the sincere endeavour of every honest man, to promote the utmost harmony between the three branches of the legislature, that they may be a mutual support to each other, and the ornament, defence and glory of the people Providence has committed to their care.

I am convinced that if his Excellency will in all cases take the advice of the general assembly, (which however contemptably some may affect to speak of it, is the great council of this province, as the British parliament is of the kingdom) that his administration will be crowned with all the success he can desire. But if instead of this, the advice of half a dozen or half a score, who among their fellow citizens may be chiefly distinguished by their avarice, ignorance, pride or insolence, should at any time obtain too much weight at court, the consequences will be very unfortunate on all sides.

Had the writer of these sheets any thing to ask or fear from his Excellency, for himself, a very slender modern politician would quickly perceive the incompatibility of this performance with a court interest. That he has done every thing he could in his small sphere to make his Excellency's administration prosperous to him and happy for the people, abundant proofs have been given; and they will one day be convincing to his Excellency. He has never opposed his Excellency in any <53> thing but what he would have opposed his own Father in. And he takes this opportunity publickly to declare, that in all his legal and constitutional measures, his Excellency shall find him a fast tho' humble friend and servant: But the Liberty of his country, and the Rights of mankind, he will ever vindicate to the utmost of his capacity and power.

FINIS.

*ERRATA.*⁸

Page 12. Line 6. for *Dec.* 1761. read *August* 1762. Page 20. line 5 from bottom, for *inviduous* read *invidious*. The candid Reader is desired to correct any others with his Pen.

8. The corrections listed in the errata note have been made editorially in the text, p. 81, last line; p. 88, lines 5–6 from foot; the errata note has been left to preserve the integrity of the original text.

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All anonymous Reflections upon this Performance, will be treated with neglect. But if the writer is wrong in the Principles advanced, and any Gentleman will condescend to refute them, and give his Name to the Public, as Truth only is sought after, the Obligation to the Discoverer shall be gratefully acknowledged.

{ PART 3 }

Otis and the Imperial Crisis,
1764–67

BEGINNING in 1764, if not before, Otis's thoughts turned to the British Empire, as he tried to find a way to reconcile the rights of British subjects on the imperial periphery with government from the center. He spoke of "a genuine union of all parts" of the British empire. Some of Otis's ideas, such as his criticism of slavery, defense of the "rights of men," and of branches of government that "check and balance" each other sound familiar. Other parts of his argument are more obscure, and his logic can be hard to follow. Otis warned his readers that he was writing as a lawyer: "It is often very difficult for great lovers of power and great lovers of liberty, neither of whom may have been used to the study of law, in any of its branches, to see the difference between subordination, absolute slavery and subjection, on one side; and liberty, independence, and licenciousness, on the other. We should endeavor to find the middle road, and confine ourselves to it."

Since Otis's day, the great controversy surrounding these writings has to do with Otis's constancy. Did he, or did he not, change his mind about American rights? Sometimes Otis seemed to allow Parliament a great deal of authority in the colonies, and in others he seems to suggest that Parliament had little, if any, legitimate power in the colonies. The solution to the riddle lies in the tension between his political and legal thought, a tension which some think overwhelmed him.

The first part of this section consists of the four pamphlets Otis published in 1764 and 1765. The first, 1764's *The Rights of the British Colonies Asserted and Proved*, is Otis's most comprehensive and systematic treatise on government in general and colonies in particular. As Otis penned *Rights*, Francis Bernard, the governor of Massachusetts, was busy sending his thoughts about the British Empire to his superiors in London. Bernard had less respect for colonial rights than did Otis, and Otis seems to be responding to him.¹ In the last part of *Rights*, Otis responded directly to "The Administrator," who was Thomas Pownall, Bernard's immediate predecessor as governor of Massachusetts, and the author of a 1764 treatise, *The Administration of the Colonies*. In early 1765, Otis turned to defending the

1. Richard Koebner notes this in *Empire*, 131–32.

colonists from various critiques leveled against them, particularly Martin Howard's critique of Otis's arguments (and those of Stephen Hopkins, the Governor of Rhode Island), in *A Letter from a Gentleman at Halifax to his Friend in Rhode-Island*. Otis responded in March 1765 with *A Vindication of the British Colonies, Against the Aspersions of the Halifax Gentleman, in a Letter to a Rhode-Island Friend*. Howard responded to that with his *Defence of the Letter from a Gentleman at Halifax*, and Otis offered a rejoinder in May in the *Brief Remarks on the Defence of the Halifax Libel on the British-American-Colonies*. In May 1765, Otis published a piece in the *Boston Gazette* responding to the charge that he had changed his tune. It appears after *Brief Remarks*. In the summer of 1765, Otis turned to Englishman Soame Jenyns's dismissal of the colonists' claims, *The Objections to the Taxation of Our American Colonies, by the Legislature of Great Britain, Briefly Consider'd*, responding with a series of essays printed in the *Boston Gazette* from late July to early September 1765. These essays were later printed anonymously in London under the title *Considerations on Behalf of the Colonists. In a Letter to a Noble Lord*. In August 1765, as the *Noble Lord* essays were appearing in the *Boston Gazette*, a writer signing his name "Curiosus" wrote a letter to the editor asking about the author's ideas. Otis responded to that query separately from the essays that constitute the pamphlet. The query and Otis's response follow *Noble Lord*.

In addition to these pamphlets, all of which are rekeyed from Charles Mullett's edition of Otis's writings, this volume also includes several essays Otis published in the *Boston Gazette* from 1765 to 1767. The first set is a series of essays Otis penned in late 1765 and early 1766 in the form of letters "From John Hampden to William Pym." Pym was the pen name under which a series of essays critical of colonial rights was published in London in the summer of 1765, and which appeared in Boston in November 1765. Otis took the name of Hampden to respond. In early 1766, he signed off, noting that the Earl of Clarendon had taken up the same mantle against Pym. As Otis probably knew, "Clarendon" was John Adams. One final "Hampden" essay appeared in late 1766. That essay is reprinted here as well.

Next are the essays signed with the pen name "F.A." or "Freeborn American" or "Freeborn Armstrong." Otis used that nom de plume for the essays that

became the *Letter to a Noble Lord*. He turned to it again in a few *Boston Gazette* essays in 1766 and 1767.

Finally, this section ends with a short piece from November 1767 in which Otis denounces taxation without representation and stands up for the “Rights of Men.”

I. *The Rights of the British Colonies Asserted and Proved*

THE
RIGHTS
OF THE

British Colonies

Asserted and proved.

By James Otis, *Esq*;

*Hac omnis regio et celsi plaga pinea montis
Cedat amicitiae Teucrorum: et foederis aequas
Dicamus leges, sociósque in regna vocemus.
Considant, si tantus amor, et moenia condant.*¹

VIRG.

BOSTON:

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INTRODUCTION
OF THE ORIGIN OF GOVERNMENT

The origin of *government* has in all ages no less perplexed the heads of lawyers and politicians, than the origin of *evil* has embarrassed divines and philosophers: And 'tis probable the world may receive a satisfactory solution on *both* those points of enquiry at the *same* time.

1. *Hac* [Haec] *omnis regio et celsi plaga pinea montis / Cedat amicitiae Teucrorum: et foederis aequas / Dicamus leges, sociósque in regna vocemus. / Considant, si tantus amor, et moenia condant*: “All this region and the pine tract of the lofty mountains shall yield to the friendship of the Trojans. / And let us declare equal laws of compact / And let us call [them] allies in our kingdom / And if they have great love, Let them settle down and found city walls.”

The various opinions on the origin of *government* have been reduced to four. 1. That dominion is founded in *Grace*. 2. On *force* or meer *power*. 3. On *compact*. 4. On *property*.

The first of these opinions is so absurd, and the world has paid so very dear for embracing it, especially under the administration of the *roman pontiffs*, that mankind seem at this day to be in a great measure cured of their madness in this particular; and the notion is pretty generally exploded, and hiss'd off the stage.

To those who lay the foundation of government in *force* and meer *brutal power*, it is objected; that, their system destroys all distinction between right and wrong; that it overturns all morality, and leaves it to every man to do what is right in his own eyes; that it leads directly to *scepticism*, and ends in *atheism*. When a man's will and pleasure is his only rule and guide, what safety can there be either for him or against him, but in the point of a sword?

<4> On the other hand the gentlemen in favor of the *original compact* have been often told that *their* system is chimerical and unsupported by reason or experience. Questions like the following have been frequently asked them, and may be again.

"When and where was the original compact for introducing government into any society, or for creating a society, made? Who were present and parties to such compact? Who acted for infants and women, or who appointed guardians for them? Had these guardians power to bind both infants and women during life, and their posterity after them? Is it in nature or reason that a guardian should by his own act perpetuate his power over his ward, and bind him and his posterity in chains? Is not every man born as free by nature as his father? Has he not the same natural right to think and act and contract for himself? Is it possible for a man to have a natural right to make a slave of himself or of his posterity? Can a father supersede the laws of nature? What man is or ever was born free, if every man is not? What will there be to distinguish the next generation of men from their forefathers, that they should not have the same right to make original compacts as their ancestors had? If every man has such right, may there not be as many original compacts as there are men and women born or to be born? Are not women born as free as men? Would it not be infamous to assert that the ladies are all slaves by nature? If every man and woman born or to be born has, and will have, a right to be consulted, and must accede to the original compact before they can with any kind of justice be said to be bound by it, will not the compact be ever forming and never finished, ever making but never done? Can it with propriety be called a compact original or derivative, that is ever in treaty but never concluded?"

When it has been said that each man is bound as soon as he accedes, and that the consent may be either express or tacit, it has been asked, "What is a

tacit consent or compact? Does it not appear plain that those who refuse their assent can not be bound? If one is at liberty to <5> accede or not, is he not also at liberty to *recede* on the discovery of some intolerable fraud and abuse that has been palm'd upon him by the rest of the high contracting parties? Will not natural equity in several special cases rescind the original compacts of great men as effectually, as those of little men are rendered null and void in the ordinary course of a court of chancery?"

There are other questions which have been started, and a resolution of them demanded, which may perhaps be deemed indecent to those who hold the prerogatives of an earthly monarch, and even the power of a plantation government, so sacred as to think it little less than blasphemy to enquire into their origin and foundation: while the government of the supreme *ruler* of the universe is every day discussed with less ceremony and decency than the administration of a petty German prince. I hope the reader will consider that I am at present only mentioning such questions as have been put by high-flyers & others in church and state, who would exclude all compact between a Sovereign and his people, without offering my own sentiments upon them; this however I presume I may be allowed hereafter to do without offence. Those who want a full answer to them may consult Mr. Locke's discourses on government, M. De Vattel's law of nature and nations, and their own consciences. "What state were Great Britain, Ireland and the Plantations left in by the abdication of James II? Was it a state of nature or of civil government? If a state of civil government, where were the supreme legislative and executive powers from the abdication to the election of William and Mary? Could the Lords and Commons be called a complete parliament or supreme power without a King to head them? Did any law of the land or any original compact previous to the abdication provide, that on such an event, the supreme power should devolve on the two houses? Were not both houses so manifestly puzzled with the novelty and strangeness of the event, and so far from finding any act of parliament, book-case, or precedent to help them, that they disputed in solemn conference by what name to call the action, and at last gave it <6> one, as new in our language and in that of parliament as the thing itself was in fact?"*

* On King James's leaving the kingdom and *abdicated* the government, the lords would have the word *desertion* made use of, but the commons thought it was not comprehensive enough, for that the King might then have liberty of returning. The Scots rightly called it a forfeiture of the crown, & this in plain english is the sense of the term *abdication* as by the convention and every parliament since applied. See the history and debates of the convention, and the acts then made.

If on this memorable and very happy event the three kingdoms and the dominions fell back into a state of *nature*, it will be asked, “Whether every man and woman were not then equal? If so, had not every one of them a natural and equitable right to be consulted in the choice of a new king, or in the formation of a new original compact or government, if any new form had been made? Might not the nation at that time have rightfully changed the monarchy into a republic or any form, that might seem best? Could any change from a state of nature take place without universal consent, or at least without the consent of the *majority* of the individuals? Upon the principles of the original compact as commonly explained and understood, could a few hundred men who before the dissolution of the government had been called, and in fact were, lords, knights and gentlemen, have lawfully made that glorious deliverer and defender W. 3. rightful king?” Such an one he certainly was, and such have been all his illustrious successors to the present happy times; when we have the joy to see the sceptre sway’d in justice, wisdom and mercy, by our lawful Sovereign George the Third; a prince who glories in being a Briton born, and whom may God long preserve and prosper.

“If upon the abdication all were reduced to a state of nature, had not apple women and orange girls as good a right to give their respectable suffrages for a new king as the philosopher, courtier, petit maitre and politician? Were these and ten millions of others such ever more consulted on that occasion, than the multitude now are in the adjustment of that real modern farce, an election of a King of the Romans; which serves as a contrast to the grandeur of the antient republics, and shows the littleness of the <7> modern German and some other gothic constitutions in their present degenerate state?

“In the election of W.3, were the votes of Ireland and the plantations ever called for or once tho’t of till the affair was settled? Did the lords and commons who happened to be then in and about Westminster represent, and act, for the individuals, not only of the three kingdoms, but for all the *freeborn and as yet unconquered possessors and proprietors of their own money-purchased, blood-purchased plantations, which, till lately, have been defended with little or no assistance from Great-Britain?* Were not those who did vote in or for the new model at liberty upon the principles of the compact to remain in what some call the delectable state of nature, to which by the hypothesis they were reduced, or to join themselves to any other state, whose solemn league and covenant they could subscribe? Is it not a first principle of the original compact, that all who are bound should bind *themselves*? Will not common sense without much learning or study dictate obvious answers to all the above questions?—and, say the opposers of the original compact and of the natural equality and liberty of mankind, will not those answers infallibly show that

the doctrine is a piece of *metaphysical* jargon and *systematical* nonsense?" Perhaps not.

With regard to the fourth opinion, that *dominion is founded in property*, what is it but playing with words? Dominion in one sense of the term is synonymous with property, so one cannot be called the foundation of the other, but as one *name* may appear to be the foundation or cause of another.

Property cannot be the foundation of dominion as synonymous with government; for on the supposition that property has a precarious existence antecedent to government, and tho' it is also admitted that the security of property is one end of government, but that of little estimation even in the view of a *miser* when life and liberty of locomotion and further accumulation are placed in competition, it must be a very absurd way of speaking to assert that *one* end of government is the foundation of government. If the ends of government are to be considered as its foundation, it cannot with truth or propriety be <8> said that government is founded on any *one* of those ends: and therefore government is not founded on property or its security *alone*, but at least on something else in conjunction. It is however true in fact and *experience*, as the great, the incomparable *Harrington* has most abundantly demonstrated in his *Oceana*, and other divine writings, that Empire follows the balance of *Property*: 'Tis also certain that *property* in fact generally *confers* power, tho' the possessor of it may not have much more wit than a mole or a musquash: And this is too often the cause, that riches are fought after without the least concern about the right application of them. But is the fault in the riches, or the general law of nature, or the unworthy possessor? It will never follow from all this, that government is *rightfully* founded on *property*, alone. What shall we say then? Is not government founded on *grace*? No. Nor on *force*? No. Nor on *compact*? Nor *property*? Not altogether on either. Has it *any* solid foundation? any chief corner stone, but what accident, chance or confusion may lay one moment and destroy the next? I think it has an everlasting foundation in the *unchangeable will of God*, the author of nature, whose laws never vary. The same omniscient, omnipotent, infinitely good and gracious Creator of the universe, who has been pleased to make it necessary that what we call matter should *gravitate*, for the celestial bodies to roll round their axes, dance their orbits and perform their various revolutions in that beautiful order and concert, which we all admire, has made it *equally* necessary that from *Adam* and *Eve* to these degenerate days, the different sexes should sweetly *attract* each other, form societies of *single* families, of which *larger* bodies and communities are as naturally, mechanically, and necessarily combined, as the dew of Heaven and the soft distilling rain is collected by the all enliv'ning heat of the sun. *Government* is therefore

most evidently founded *on the necessities of our nature*. It is by no means an *arbitrary* thing, depending merely on *compact* or *human will* for its existence.

We come into the world forlorn and helpless; and if left alone and to ourselves at any one period of our lives, we should soon die in want, despair or distraction. So kind is that <9> hand, tho' little known or regarded, which feeds the rich and the poor, the blind and the naked; and provides for the safety of infants by the principle of parental love, and for that of men by Government! We have a King, who neither slumbers nor sleeps, but eternally watches for our good; whose rain falls on the just and on the unjust: yet while they live, move, and have their being in him, and cannot account for either, or for any thing else, so stupid and wicked are some men, as to deny his existence, blaspheme his most evident government, and disgrace their nature.

Let no Man think I am about to commence advocate for *despotism*, because I affirm that government is founded on the necessity of our natures; and that an original supreme Sovereign, absolute, and uncontrollable, *earthly* power *must* exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally* and *ultimately* in the people. I say supreme absolute power is *originally* and *ultimately* in the people; and they never did in fact *freely*, nor can they *rightfully* make an absolute, unlimited renunciation of this divine right.* It is ever in the nature of the thing given in *trust*, and on a condition, the performance of which no mortal can dispense with; namely, that the person or persons on whom the sovereignty is confer'd by the people, shall *incessantly* consult *their* good. Tyranny of all kinds is to be abhor'd, whether it be in the hands of one, or of the few, or of the many.—And tho' “in the last age a generation of men sprung up that would flatter Princes with an opinion that *they* have a *divine right* to absolute power”; yet “slavery is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation, that 'tis hard to be conceived that an *englishman*, much less a *gentleman*, should plead for it:”† Especially at a time when the finest <10> writers of the most polite nations on the continent of *Europe*, are enraptured with the beauties of the civil constitution of *Great-Britain*; and envy her, no less for the *freedom* of her sons, than for her immense *wealth* and *military* glory.

* The power of GOD almighty is the only power that can properly and strictly be called supreme and absolute. In the order of nature immediately under him, comes the power of a simple *democracy*, or the power of the whole over the whole. Subordinate to both these, are all other political powers, from that of the French Monarque to a petty constable.

† Mr. Locke.

But let the *origin* of government be placed where it may, the *end* of it is manifestly the good of *the whole*. *Salus populi supreme lex esto*,² is of the law of nature, and part of that grand charter given the human race, (tho' too many of them are afraid to assert it,) by the only monarch in the universe, who has a clear and indisputable right to *absolute* power; because he is the *only* One who is *omniscient* as well as *omnipotent*.

It is evidently contrary to the first principles of reason, that supreme *unlimited* power should be in the hands of *one* man. It is the greatest "*idolatry*, begotten by *flattery*, on the body of *pride*," that could induce one to think that a *single mortal* should be able to hold so great a power, if ever so well inclined. Hence the origin of *deifying* princes: It was from the trick of gulling the vulgar into a belief that their tyrants were *omniscient*, and that it was therefore right, that they should be considered as *omnipotent*. Hence the *Dii majorum et minorum gentium*;³ the great, the monarchical, the little Provincial subordinate and subaltern gods, demi-gods, and semidemi-gods, ancient and modern. Thus deities of all kinds were multiplied and increased in *abundance*; for every devil incarnate, who could enslave a people, acquired a title to *divinity*; and thus the "rabble of the skies" was made up of locusts and caterpillars; lions, tygers and harpies; and other devourers translated from plaguing the earth!*

The *end* of government being the *good* of mankind, points out its great duties: It is above all things to provide for the security, the quiet, and happy enjoyment of life, liberty, and property. There is no one act which a government can have a *right* to make, that does not tend to the advancement of the security, tranquility and prosperity of the people. If life, liberty and property could be enjoyed in as great perfection in *solitude*, as in *society*, there would be no need of government. But the experience of ages has proved that such is the nature of man, a weak, imperfect being; that the valuable ends of life cannot be obtained without the union and assistance of many. Hence 'tis clear that men cannot live apart or independent of each other: In solitude men would perish; and yet they cannot live together without contests. These contests require some arbitrator to determine them. The necessity of a common, indifferent and impartial judge, makes all men seek one; tho' few find him in the *sovereign power*, of their respective states or any where else in *subordination* to it.

2. *Salus populi supreme lex esto*: "Let the highest law be the people's well being."

3. *Dii majorum et minorum gentium*: "The gods of the great and small nations."

* Kingcraft and Priestcraft have fell out so often, that 'tis a wonder this grand and ancient alliance is not broken off forever. Happy for mankind will it be, when such a separation shall take place.

Government is founded *immediately* on the necessities of human nature, and *ultimately* on the will of God, the author of nature; who has not left it to men in general to choose, whether they will be members of society or not, but at the hazard of their senses if not of their lives. Yet it is left to every man as he comes of age to chuse *what society* he will continue to belong to. Nay if one has a mind to turn *Hermit*, and after he has been born, nursed, and brought up in the arms of society, and acquired the habits and passions of social life, is willing to run the risque of starving alone, which is generally most unavoidable in a state of hermitage, who shall hinder him? I know of no human law, founded on the law of *nature*, to restrain him from separating himself from the species, if he can find it in his heart to leave them; unless it should be said, it is against the great law of *self-preservation*: But of this every man will think himself *his own judge*.

The few *Hermits* and *Misanthropes* that have ever existed, show that those states are *unnatural*. If we were to take out from them, those who have made great *worldly* gain of their *godly* hermitage, and those who have been under the madness of *enthusiasm*, or *disappointed* hopes in their *ambitious* projects, for the detriment of mankind; perhaps there might not be left ten from *Adam* to this day.

The form of government is by *nature* and by *right* so far left to the *individuals* of each society, that they may alter it from a simple democracy or government of all over all, to any other form they please. Such alteration may <12> and ought to be made by express compact: But how seldom this right has been asserted, history will abundantly show. For once that it has been fairly settled by compact; *fraud force or accident* have determined it an hundred times. As the people have gained upon tyrants, these have been obliged to relax, *only* till a fairer opportunity has put it in their power to encroach again.

But if every prince since *Nimrod* had been a tyrant, it would not prove a *right* to tyrannize. There can be no prescription old enough to supersede the law of nature, and the grant of God almighty; who has given to all men a natural right to be *free*, and they have it ordinarily in their power to make themselves so, if they please.

Government having been proved to be necessary by the law of nature, it makes no difference in the thing to call it from a certain period, *civil*. This term can only relate to form, to additions to, or deviations from, the substance of government: This being founded in nature, the super-structures and the whole administration should be conformed to the law of universal reason. A supreme legislative and supreme executive power, must be placed *somewhere* in every common-wealth: Where there is no other positive provision or compact to the contract, those powers remain in the *whole body of*

the people. It is also evident there can be but *one* best way of depositing those powers; but what that way is, mankind have been disputing in peace and in war more than five thousand years. If we could suppose the individuals of a community met to deliberate, whether it were best to keep those powers in *their own* hands, or dispose of them in *trust*, the following questions would occur—Whether those two great powers of *Legislation* and *Execution* should remain united? If so, whether in the hands of the many, or jointly or severally in the hands of a few, or jointly in some one individual? If both those powers are retained in the hands of the many, where nature seems to have placed them originally, the government is a simple *democracy*, or a government of all over all. This can be administered, only by establishing it as a first principle, that the votes of the majority shall be taken as the voice of the whole. If those powers are lodged in the hands of a few, <13> the government is an *Aristocracy* or *Oligarchy*.^{*} Here too the first principles of a practicable administration is that the majority rules the whole. If those great powers are both lodged in the hands of one man, the government is a *simple Monarchy*, commonly, though falsely called *absolute*, if by that term is meant a right to do as one pleases.—*Sic volo, sic jubeo, stet pro ratione voluntas*,⁴ belongs not of right to any mortal man.

The same law of nature and of reason is equally obligatory on a *democracy*, an *aristocracy*, and a *monarchy*: Whenever the administrators, in any of those forms, deviate from truth, justice and equity, they verge towards tyranny, and are to be opposed; and if they prove incorrigible, they will be *deposed* by the people, if the people are not rendered too abject. Deposing the administrators of a *simple democracy* may sound oddly, but it is done every day, and in almost every vote. A. B. & C. for example, make a *democracy*. Today A & B are for so vile a measure as a standing army. Tomorrow B & C vote it out. This is as really deposing the former administrators, as setting up and making a new king is deposing the old one. *Democracy* in the one case, and *monarchy* in the other, still remain; all that is done is to change the administration.

The first principle and great end of government being to provide for the best good of all the people, this can be done only by a supreme legislative and executive ultimately in the people, or whole community, where God has placed it; but the inconveniencies, not to say impossibility, attending the consultations and operations of a large body of people have made it necessary

* For the sake of the unlettered reader 'tis noted, that Monarchy means the power of one great man; Aristocracy and Oligarchy that of a few; and Democracy that of all men.

4. *Sic volo, sic jubeo, stet pro ratione voluntas*: "Thus I will, thus I command, let will [stand for] reason." Or, "Thus I will, thus I command, let will take the place of a reason."

to transfer the power of the whole to a *few*: This necessity gave rise to deputation, proxy or a right of representation.

A Power of legislation, without a power of execution in the same or other hands, would be futile and vain: On the other hand a power of execution, supreme or subordinate, without an *independent* legislature, would be perfect despotism.

<14> The difficulties attending an universal congress, especially when society became large, have bro't men to consent to a delegation of the power of all: The weak and the wicked have too often been found in the same interest, and in most nations have not only bro't these powers *jointly*, into the hands of one, or some few of their number; but made them *hereditary*, in the families of despotic nobles & princes.

The wiser and more virtuous states, have always provided that the representation of the people should be *numerous*. Nothing but life and liberty are *naturally* hereditary: this has never been considered by those, who have *tamely* given up both into the hands of a tyrannical Oligarchy or despotic Monarchy.

The analogy between the natural, or material, as it is called, and the moral world is very obvious; God himself appears to us at some times to cause the intervention or combination of a *number* of simple principles, tho' never when *one* will answer the end; gravitation and attraction have place in the revolution of the planets, because the one would fix them to a centre, and the other would carry them off indefinitely; so in the moral world, the first simple principle is *equality* and the power of the whole. This will answer in small numbers; so will a tolerably virtuous *Oligarchy* or a *Monarchy*. But when the society grows in bulk, none of them will answer well *singly*, and none worse than absolute monarchy. It becomes necessary therefore as numbers increase, to have those several powers properly combined; so as from the whole to produce that harmony of government so often talked of and wished for, but too seldom found in ancient or modern states. The grand political problem in all ages has been to invent the best combination or distribution of the supreme powers of legislation and execution. Those states have ever made the greatest figure, and have been most durable, in which those powers have not only been separated from each other, but placed each in more hands than one, or a few. The *Romans* are the most shining example; but they never had a balance between the senate and the people, and the want of this, is generally agreed by the few who know any thing of the matter, to have been the cause of their fall. The *British* constitution in theory and <15> in the present administration of it, in general comes nearest the idea of perfection, of any that has been reduced to practice; and if the principles of it are adhered to,

it will according to the infallible prediction of *Harrington*, always keep the *Britons* uppermost in *Europe*, 'till their *only* rival nation shall either embrace that perfect model of a common wealth given us by that author, or come as near it as *Great Britain* is. Then indeed and not till then, will that rival & our nation either be eternal confederates, or contend in greater earnest than they have ever yet done, till one of them shall sink under the power of the other, and rise no more.

Great Britain has at present, most evidently the advantage, and such opportunities of honest wealth and grandeur, as perhaps no state ever had before, at least not since the days of *Julius Caesar*, the destroyer of the roman glory and grandeur; at a time when but for him and his adherents both might have been rendered immortal.

We have said that the form and mode of government is to be settled by *compact*, as it was rightfully done by the convention after the abdication of *James II*, and assented to by the first representative of the nation chosen afterwards, and by every parliament, and by almost every man ever since, but the bigots, to the indefeasible power of tyrants civil and ecclesiastic. There was neither time for, nor occasion to call the whole people together: If they had not liked the proceedings it was in their power to controul them; as it would be should the supreme legislative or executive powers ever again attempt to enslave them. The people will bear a great deal, before they will even murmur against their rulers: But when once they are thoroughly roused and in earnest, against those who would be glad to enslave them, their power is *irresistible*.*

At the abdication of King *James*, every step was taken that natural justice and equity could require; and all was done that was possible at least in the wretched state in which he left the nation. Those very noble and worthy patriots, the lords spiritual and temporal of that day, and the principal persons of the commons, advised the prince, who in consequence thereof caused letters to be "written to the lords spiritual and temporal, being protestants, and other <16> letters to the several counties, cities, universities, boroughs and cinque ports, for the choosing such persons to represent them as were of right to be sent to parliament, to meet at Westminster upon the 22d of January 1688, in order to such an establishment, as that their religion, laws and liberties, might not again be in danger of being subverted." See W & M. sess. 1. C. 1.

Upon this elections were made, and thereupon the said lord spiritual and temporal and commons met, and proceeded to assert their rights and

* See Mr. Locke on the Dissolution of Government.

liberties, and to the election of the Prince and Princess of Orange to be King and Queen of England, France and Ireland, and the dominions thereto belonging. The kingdom of Scotland agreed in the same choice: These proceedings were drawn into the form of acts of parliament, and are the basis of the acts of union and succession since made, and which all together are the sure foundation of that indisputable right which his present Majesty has to the Crown of *Great-Britain* and the dominions thereto belonging; which right 'tis the greatest folly to doubt of, as well as the blackest treason to deny. The present establishment founded on the law of God, and of nature, was began by the convention, with a professed and real view, in all parts of the *British* empire, to put the liberties of the people out of the reach of arbitrary power in all times to come.

But the grandeur, as well as justice, equity and goodness of the proceedings of the nation on that memorable occasion, never have been nor can be so well represented as in the words of those great men who composed the convention; for which reason partly, but principally because they shew the rights of all British subjects, both at home and abroad, and should therefore be in as many hands as possible, I have transcribed the following clauses.

1 Wm. & M. sess. 1. Chap. 1 preamble & sec 1—entituled—

“An act for removing and preventing all questions and disputes concerning the assembling and sitting of this present parliament.

“For preventing all doubts and scruples which may in any wise arise concerning the meeting, sitting and proceeding of this present parliament; be it declared and enacted <17> by the King's and Queen's most excellent Majesty's, by and with the advice and consent of the lords spiritual and temporal, and commons, now assembled, and by authority of the same:

“Itdly. That the lords spiritual and temporal, and commons, convened at Westminster, the two and twentieth day of January A.D. 1688, and there sitting the 13th of February following, are the two houses of parliament, and so shall be and are hereby declared, enacted and adjudged to be, to all intents, constructions, and purposes whatsoever, notwithstanding any want of writ or writs of summons, or any other defect of form or default whatsoever, as if they had been summoned according to the usual form.”

1 of W. & M. sess. 2. Chap. 2. sec. 3, 4, 5, 6, 11, 12.

“An act declaring the rights and liberties of the subject, and settling the succession of the Crown.

“Whereas the lords spiritual and temporal, and commons, assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did upon the 13th of February A.D. 1688, present unto their Majesties, then called and known by the names and stile of William and

Mary, Prince and Princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said lords and commons in the words following; viz.

“Whereas the late King James the second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom.

“1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

“2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

“3. By issuing and causing to be executed a commission under the great seal for erecting a court called, The court of commissioners for ecclesiastical causes.

“4. By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other <18> manner, than the same was granted by parliament.

“5. By raising and keeping a standing army within this kingdom in time of peace, without the consent of parliament, and quartering soldiers contrary to law.

“6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

“7. By violating the freedom of election of members to serve in parliament.

“8. By prosecutions in the court of king’s bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

“9. And whereas of late years, partial, corrupt and unqualified persons, have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

“10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

“11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

“12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons, upon whom the same were to be levied.

“All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm—.

“And whereas the said late King *James* the second having abdicated the Government, and the throne being thereby vacant, his highness the prince

of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants, and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the two and twentieth of January in this year 1688, in order to such an establishment, as that their religion, laws and liberties might not again be in danger of being subverted. Upon which letters, elections having been accordingly made:

<19> “And thereupon the said lords spiritual and temporal and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare,

“1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

“2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

“3. That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

“4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal.

“5. That it is the right of the subjects to petition the King; and all commitments and prosecutions for such petitioning are illegal.

“6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

“7. That the subjects which are protestants, may have arms for their defence, suitable to their conditions, and as allowed by law.

“8. That election of members of parliament ought to be free.

“9. That the freedom of speech, and debates, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

“10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

"11. That jurors ought to be duly impannelled and returned; and jurors which pass upon mens trials for high treason, ought to be freeholders.

<20> "12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

"13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

"And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example:

"To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein—.

"Having therefore an entire confidence, that his said Highness the Prince of Orange, will perfect the deliverance so far advanced by him, and will still preserve them, from the violation of their rights, which they have here asserted and from all attempts upon their religion, rights and liberties.

"III. The said Lords spiritual and temporal, and commons assembled at Westminster, do resolve that William & Mary Prince and Princess of Orange be, and be declared, King and Queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said Prince and Princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by the said Prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue, to the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange. And the Lords spiritual and temporal, and commons, do pray the said prince and princess to accept the same accordingly.

<21> "IV. Upon which their said Majesties did accept the crown and royal dignity of the kingdom of England, France and Ireland, and the dominions thereunto belonging, according to the resolutions and desire of the said lords and commons, contained in the said declaration.

"V. And thereupon their Majesties were pleased, that the said Lords spiritual and temporal, and commons, being the two houses of parliament, should continue to sit, and with their Majesties royal concurrence, make effectual provision for the settlement of the religion, laws and liberties of

this kingdom; so that the same for the future might not be in danger again of being subverted; to which the said lords spiritual and temporal, and commons, did agree and proceed to act accordingly.

“VI. Now in pursuance of the premises, the said lords spiritual and temporal and commons, in parliament assembled, for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted. That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be: and that all and every the particulars aforesaid, shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

“XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand remain and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the Lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted, and established accordingly.

“XII. And be it further declared and enacted by the authority aforesaid, that from and after this present session of parliament, no dispensation by *non obstante*⁵ of or to <22> any statute or any part thereof, shall be allowed; but that the same shall be held void and of no effect, except a dispensation be allowed in such statutes, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.”

12 & 13 of William 3d, Chap. 2. sec. 3 & 4.

“Whereas it is necessary that further provision be made for securing our religion, laws and liberties, after the death of his Majesty and the Princess Anne of Denmark, and in default of issue of the body of the said Princess, and of his Majesty respectively; it is enacted,

“That after the said limitation shall take effect, judges commissions be made *quandiu se bene gesserint*,⁶ and their salaries ascertained and established; but upon the address of both houses parliament, it may be lawful to remove them:

5. *Non obstante*: “Nothing to the contrary.”

6. *Quandiu se bene gesserint*: “So long as they might have conducted themselves well.”

"That no pardon under the great seal of England be pleaded to an impeachment by the commons in parliament.

"Whereas the laws of England are the birth-right of the people thereof, and all the Kings and Queens, who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them according to the same; all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people, and all other laws and statutes now in force, are by his Majesty with the advice and consent of the lords spiritual and temporal, and commons, ratified and confirmed."

I shall close this introduction with a passage from Mr. Locke.

"Tho', says he, in a constituted common wealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but one supreme power which is the legislative, to which all the rest are and must be subordinate; yet the legislative being only a fiduciary power, to act for certain ends, there remains still, '*in the people, a supreme power to remove, or alter, the legislative when they find the legislative act contrary to the trust reposed in them.*' For all power given, with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the power devolve into the hands of those who gave it, who may place it anew where they shall think best, for their safety and security. And thus the *community* perpetually retains a supreme power of saving themselves from the attempts and designs of any body, even of their legislators whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject. For no man or society of men having a power to deliver up their preservation or consequently the means of it to the absolute will and arbitrary dominion of another; whenever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve what they have not a power to part with; and to *rid* themselves of *those* who invade this fundamental, sacred and unalterable law of self preservation, for which they entered into society.

"And thus the community may be said in this respect to be always the supreme power, but not as considered under any form of government, because this power of the people can never take place, till the government be dissolved." Locke on Government, B. II. C. 13.

This he says may be done, "from without by conquest; from within, 1st. When the legislative is altered. Which is often by the prince, but sometimes by the whole legislative. As by invading the *property* of the subject, and making themselves arbitrary disposers of the lives, liberties and fortunes of the

people; reducing them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any further obedience, and are left to the common refuge which God hath provided for all men, against force and violence. Whensoever, therefore, the legislative shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, endeavour to gain themselves, or put into the hands of any other an absolute power over the lives, liberties and estates of the people, by this breach of trust, they forfeit the power the *people* had put into their hands for quite contrary ends, and it devolves to the *people*, who have a right to *resume* their <24> original liberty, and by the establishment of a *new* legislative (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society.” Idem Chap. 9.

Of Colonies in general

This subject has never, been very clearly and fully handled by any modern writer, that I have had the good fortune to meet with; and to do it justice, would require much greater abilities than I pretend to, and more leisure than I ever expect will fall to my share. Even the *English* writers and lawyers, have either intirely wavyd any considerations of the nature of *Colonies*, or very lightly touched upon it, for the people of England never discovered much concern for the prosperity of the *Colonies*, ’till the revolution; and even now some of their great men and writers, by their discourses of, and conduct towards them, consider them all rather as a parcel of *little insignificant conquered islands*, than as a very extensive settlement on the continent. Even their law-books and very dictionaries of law, in editions so late as 1750, speak of the *British* plantations abroad as consisting chiefly of islands; and they are reckoned up in some of them in this order—*Jamaica, Barbados, Virginia, Maryland, New-England, New-York, Carolina, Bermudas*. At the head of all these *Islands* (for there is no distinction made) stands *Jamaica*, in truth a *conquered* island; and as such, this and all the other little West-India islands deserve to be treated, for the conduct of their inhabitants and proprietors with regard to the Northern Colonies: Divers of these colonies are larger than all those islands together; and are well settled, not as the common people of *England* foolishly imagine, with a compound mongrel mixture of *English, Indian and Negro*, but with freeborn *British white subjects*, whose loyalty has never yet been suspected.

There is a man now living, or but lately dead, who once was a secretary of state; during whose *wonderful* conduct of national affairs, without knowing whether *Jamaica* lay in the Mediterranean, the Baltic, or in the Moon, letters

<25> were often received, directed to the Governor of the *island* of New-England. Which *island* of New-England is a part of the *continent* of North-America, comprehending two provinces and two colonies; and according to the *undoubted* bounds of their charters, containing more land than there is in the three kingdoms. But I must confine myself to matters of more importance than detecting the geographical blunders, or refuting the errors of dead, superannuated or any otherwise stupified secretaries of state, who are now all out of place.

If I were to define the *modern* Colonists, I should say, *they are the noble discoverers and settlers of a new world*; from whence as from an endless source, *wealth*, and *plenty*, the means of *power*, *grandeur* and *glory*, in a degree unknown to the hungry chiefs of former ages, have been pouring into *Europe* for 300 years past: In return for which those Colonists have received from the several states of *Europe*, except from *Great-Britain*, only since the revolution, nothing but ill-usage, slavery and chains, as fast as the riches of *their own* earning, could furnish the means of forging them.

A plantation or colony, is a settlement of subjects, in a *territory disjoined* or remote from the mother country, and may be made by private adventurers or the public; but in both cases the Colonists are entitled to as *ample* rights, liberties and privileges as the subjects of the mother country are, and in some respects *to more*.

Of the natural Rights of Colonists

Those who expect to find any thing very satisfactory on this subject in particular, or with regard to the law of nature in general, in the writings of such authors as *Grotius* and *Pufendorf*, will find themselves much mistaken. It is their constant practice to establish the matter of right on the matter of *fact*: This the celebrated Rousseau expressly says of *Grotius*, and with the same reason he might have added an hundred others. "The learned researches into the laws of nature and nations are often nothing more than the history of ancient abuses, so that it is a ridiculous in-<26>fatuation to be too fond of studying them."* "This was exactly the case with *Grotius*."† The sentiments on this subject have therefore been chiefly drawn from the purer fountains of one or two of our *English* writers, particularly from Mr. *Locke*, to whom might be added a *few* of other nations; for I have seen but a few of any

* Marquis D' A.

† Rousseau.

country, and of all I have seen, there are not ten worth reading. Grotius B. 3 C. 1. sec. 21. discoursing of confederates on unequal terms according to his manner says, "to the inequality in question may be referred some of those rights which are now called right of protection, right of patronage, and a right termed *mundiburgium*;⁷ as also that which mother cities had over their colonies among the Grecians. For as *Thucydides* says, those colonies enjoyed the same rights of liberty with the other cities, but they owed a *reverence* to the city whence they derived their origin, and were obliged to render her respect and certain expressions of honor, *so long as the colony was well treated*."

Grotius de jure belli,⁸ &c. B. 1. C. 3. 21.

"Hitherto also (says he) may be referred that separation which is made when people *by one consent*, go to form colonies. *For this is the original of a new and independent state. They are not content to be slaves, but to enjoy equal privileges and freedom says Thucydides.* And King *Tullius* in Dion. Hali. says, *we look upon it to be neither truth nor justice, that mother cities ought of necessity and by the law of nature to rule over their colonies.*"

B. 2. C. 9. sec. 10.

"Colonies, says Pufendorf, are settled in different methods. For either the colony continues a part of the common-wealth it was sent out from, or else is obliged to pay a dutiful respect to the mother common-wealth, and to be in readiness to defend and vindicate its honor, and so is united to it by a sort of unequal confederacy, or lastly is erected into a separate commonwealth, and assumes the same rights with the state it is descended from."

Pufend. B. 8 C. 11. 6.

"Different common wealths may be formed out of one by common consent, by sending out colonies in the manner usual in old Greece. For the Romans afterwards when <27> they sent a colony abroad, continued it under the jurisdiction of the mother commonwealth, or greater country. But the colonies planted by the Greeks, and after their method, constituted particular commonwealths, which were obliged only to pay a kind of deference and dutiful submission to the mother commonwealth."

Pufend. B. 8 C. 12. sec. 5.

7. *mundiburgium*: ". . . a Sort of Right of Protection." (from Barbeyrac's note to Grotius).

8. De jure belli: "On the law of war."

From which passages tis manifest that these two great men only state facts, and the opinions of others, without giving their own upon the subject: And all that can be collected from those facts or opinions is, that Greece was more generous, and a better mother to her colonies than Rome. The conduct of Rome towards her colonies and the corruptions and oppressions tolerated in her provincial officers of all denominations, was one great cause of the downfall of that proud republic.

Dr. Strahan says, "there is a great affinity between the British colonies and those of the Spaniards and other nations, who have made settlements among the Indians in those parts: For the grants made by our Kings, of tracts of lands in that country, for the planting of colonies, and making settlements therein, appear to have been made in imitation of grants made by the Kings of Spain to the proprietors of lands in the Spanish colonies, upon the very same conditions, and in consideration of the same services to be performed by the grantees. So that the *government* of the Spanish colonies and the rights of the proprietors of lands therein, depending chiefly on the rules of civil and feudal law, as may be seen by the learned treatise of Solorzano, *de indiarum jure*,⁹ the knowledge of the said laws must be of service likewise for determining any controversy that may arise touching the duties of forfeitures of the proprietors of lands in our English colonies."

Pref. to translat. of Domat.

With submission to so great an authority as Dr. Strahan, tis humbly hoped that the British colonists do not hold their lands as well as liberties by so slippery a tenure as do the Spaniards and French. The will of the Prince is the only tenure by which *they* hold; and the government of the Spanish and French settlements is in every respect despotic.

<28> 'Tis well known that the first American grants were by the Bulls of the Popes. The Roman Pontiffs had for ages usurped the most abominable power over princes: They granted away the kingdoms of the earth with as little ceremony as a man would lease a sheep-cot. Now according to Dr. Strahan's logic, it may be inferred, that the canon law, and the Pope's Bulls, must be of *service likewise, for determining any controversy that may arise, touching the duties or forfeitures of the proprietors of lands in the British colonies*. And indeed it must be owned, if we were to judge of some late proceedings*

9. *De indiarum jure*: "On the law of the Indies."

* Of some American Courts of Admiralty, if the reader pleases.

by this rule, we must allow that they savor more of modern Rome and the Inquisition than of the common law of England and the constitution of Great-Britain.

In order to form an idea of the natural rights of the Colonists, I presume it will be granted that they are men, the common children of the same Creator with their brethren of Great-Britain. Nature has placed all such in a state of equality and perfect freedom, to act within the bounds of the laws of nature and reason, without consulting the will or regarding the humor, the passions or whims of any other man, unless they are formed into a society or body politic. This it must be confessed is rather an abstract way of considering men than agreeable to the real and general course of nature. The truth is, as has been shown, men come into the world and into society at the same instant. But this hinders not but that the natural and original rights of each individual may be illustrated and explained in this way better than in any other. We see here by the way a probability, that this abstract consideration of men, which has its use in reasoning on the principles of government, has insensibly led some of the greatest men to imagine, some real general state of nature, agreeable to this abstract conception, antecedent to and independent of society. This is certainly not the case in general, for most men become members of society from their birth, tho' separate independent states are really in the condition of perfect freedom and equality with regard to each other; and so are any number of individuals who separate themselves from a society of which they have formerly been <29> members, for ill treatment, or other good cause, with express design to found another. If in such case, there is a real interval, between the separation and the new conjunction, during such interval, the individuals are as much detached, and under the law of nature only, as would be two men who should chance to meet on a desolate island.

The Colonists are by the law of nature free born, as indeed all men are, white or black. No better reasons can be given, for enslaving those of any color than such as baron Montesquieu has humorously given, as the foundation of that cruel slavery exercised over the poor Ethiopians; which threatens one day to reduce both Europe and America to the ignorance and barbarity of the darkest ages. Does it follow that tis right to enslave a man because he is black? Will short curl'd hair like wool, instead of christian hair, as tis called by those, whose hearts are as hard as the nether millstone, help the argument? Can any logical inference in favour of slavery, be drawn from a flat nose, a long or a short face. Nothing better can be said in favor of a trade, that is the most shocking violation of the law of nature, has a direct tendency to

diminish the idea of the inestimable value of liberty, and makes every dealer in it a tyrant from the director of an African company to the petty chapman in needles and pins on the unhappy coast. It is a clear truth, that those who every day barter away other mens liberty will soon care little for their own. To this cause must be imputed that ferocity, cruelty and brutal barbarity that has long marked the general character of the sugar-islanders. They can in general form no idea of government but that which in person, or by an overseer, the joint and several proper representative of a Creole,* and of the D——I, is exercised over ten thousands of their fellow men, born with the same right to freedom, and the sweet enjoyments of liberty and life, as their unrelenting task masters, the overseers and planters.

Is it to be wondered at, if, when people of the stamp of a Creolian planter get into power, they will not stick for a little present gain, at making their own posterity, white <30> as well as black, worse slaves if possible than those already mentioned.

There is nothing more evident, says Mr. Locke, than “that creatures of the same species and rank promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one among another, without subordination and subjection, unless the master of them all should by any manifest declaration of his will set one above another, and confer on him by an evident and clear appointment, an undoubted right to dominion and sovereignty.” “The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but only to have the law of nature for his rule.” This is the liberty of independent states; this is the liberty of every man out of society, and who has a mind to live so; which liberty is only abridged in certain instances, not lost to those who are born in or voluntarily enter into society; this gift of God cannot be annihilated.

The Colonists being men, have a right to be considered as equally entitled to all the rights of nature with the Europeans, and they are not to be restrained, in the exercise of any of these rights, but for the evident good of the whole community.

By being or becoming members of society, they have not renounced their natural liberty in any greater degree than other good citizens, and if tis taken from them without their consent, they are so far enslaved.

* Those in England who borrow the terms of the Spaniards, as well as their notions of government, apply this term to all Americans of European Extract; but the Northern colonists apply it only to the Islanders and other of such extract, under the Torrid Zone.

They have an undoubted right to expect, that their best good will ever be consulted by their rulers, supreme and subordinate, without any partial views confined to the particular interest of one island or another. Neither the riches of Jamaica, nor the luxury of a metropolis, should ever have weight enough to break the balance of truth and justice. Truth and faith belong to men as men, from men, and if they are disappointed in their just expectations of them in one society, they will at least wish for them in another. If the love of truth and justice, the only spring of sound policy in any state, is not strong enough to prevent certain causes from taking place, the arts of fraud and force will not prevent the most fatal effects.

<31> In the long run, those who fall on arbitrary measures, will meet with their deserved fate. The law of nature, was not of man's making, nor is it in his power to mend it, or alter its course. He can only perform and keep, or disobey and break it. The last is never done with impunity, even in this life, if it is any punishment for a man to feel himself depraved; to find himself degraded by his own folly and wickedness from the rank of a virtuous and good *man*, to that of a brute; or to be transformed from the friend, perhaps father of his country, to a devouring Lion or Tyger.

The unhappy revolutions which for ages have distressed the human race, have been all owing to the want of a little wisdom, common sense and integrity, in the administration of those, whom by their stations, God had in kindness to the world, rendered able to do a great deal, for the benefit of mankind with the exertion of a small portion of private and public virtue.

Of the Political and Civil Rights of the British Colonists

Here indeed opens to view a large field; but I must study brevity—Few people have extended their enquiries after the foundation of any of their rights, beyond a charter from the crown. There are others who think when they have got back to old *Magna Charta*, that they are at the beginning of all things. They imagine themselves on the borders of Chaos (and so indeed in some respects they are) and see creation rising out of the unformed mass, or from nothing. Hence, say they, spring all the rights of men and of citizens. . . . But liberty was better understood, and more fully enjoyed by our ancestors, before the coming in of the first Norman Tyrants than ever after, 'till it was found necessary, for the salvation of the kingdom, to combat the arbitrary and wicked proceedings of the Stuarts.

The present happy and most righteous establishment is justly built on the ruins, which those Princes bro't on their Family; and two of them on their

own heads—The last of the name sacrificed three of the finest kingdoms in Europe, to the councils of bigotted old women, priests and more weak and wicked ministers of state: He afterward went a grazing in the fields of St. Germain, and there died in disgrace and poverty, a terrible example of God's vengeance on arbitrary princes!

The deliverance under God wrought by the prince of Orange, afterwards deservedly made King Wm. 3rd. was as joyful an event to the colonies as to Great-Britain: In some of them steps were taken in his favour as soon as in England.

They all immediately acknowledged King William and Queen Mary as their lawful Sovereign. And such has been the zeal and loyalty of the colonies ever since for that establishment, and for the protestant succession in his Majesty's illustrious family, that I believe there is not one man in an hundred (except in Canada) who does not think himself under the best national civil constitution in the world.

Their loyalty has been abundantly proved, especially in the late war. Their affection and reverence for their mother country is unquestionable. They yield the most chearful and ready obedience to her laws, particularly to the power of that august body the parliament of Great-Britain, the supreme legislative of the kingdom and in dominions. These I declare are my own sentiments of duty and loyalty. I also hold it clear that the act of Queen Anne, which makes it high treason to deny "that the King with and by the authority of parliament, is able to make laws and statutes of sufficient force and validity to *limit and bind* the crown, and the descent, limitation, inheritance and *government* thereof" is founded on the principles of liberty and the British constitution: And he that would palm the doctrine of unlimited passive obedience and non-resistance upon mankind, and thereby or by any other means serve the cause of the Pretender, is not only a fool and a knave, but a rebel against common sense, as well as the laws of God, of Nature, and his Country.

—I also lay it down as one of the first principles from whence I intend to deduce the civil rights of the British colonies, that all of them are subject to, and dependent on Great-Britain; and that therefore as over subordinate governments, the parliament of Great-Britain has an undoubted power and lawful authority to make acts for the general good, that by naming them, shall and ought to be equally binding, as upon the subjects of Great-Britain within the realm. This principle, I presume will be readily granted on the other side of the Atlantic. It has been practiced upon for twenty years to my knowledge, in the province of the *Massachusetts-Bay*; and I have ever received

it, that it has been so from the beginning, in this and the sister provinces, thro' the continent.*

I am aware, some will think it is time for me to retreat, after having expressed the power of the British parliament in quite so strong terms. But 'tis from and under this very power and its acts, and from the common law, that the political and civil rights of the Colonists are derived: And upon those grand pillars of liberty shall my defence be rested. At present therefore, the reader may suppose, that there is not one provincial charter on the continent; he may, if he pleases, imagine all taken away, without fault, without forfeiture, without trial or notice. All this really happened to some of them in the last century. I would have the reader carry his imagination still further, and suppose a time may come, when instead of a process at common law, the parliament shall give a decisive blow to every charter in America, and declare them all void. Nay it shall also be granted, that 'tis barely possible, the time may come, when the real interest of the whole may require an act of parliament to annihilate all those charters. What could follow from all this, that would shake one of the essential, natural, civil or religious rights of the Colonists? Nothing. They would be men, citizens and british subjects after all. No act of parliament can deprive them of the liberties of such, unless any will contend that an act of parliament can make slaves not only of one, but of two millions of the commonwealth. And if so, why not of the whole? I freely own, that I can find nothing in the laws of my country, that would justify the <34> parliament in making one slave, nor did ever professedly undertake to make one.

Two or three innocent colony charters have been threatned with destruction an hundred and forty years past. I wish the present enemies of those harmless charters would reflect a moment, and be convinced that an act of parliament that should demolish those bugbears to the foes of liberty, would not reduce the Colonists to a state of absolute slavery. The worst enemies of the charter governments are by no means to be found in England. 'Tis a piece of justice due to Great-Britain to own, they are and have ever been natives of or residents in the colonies. A set of men in America, without honour or love to their country, have been long grasping at powers, which they think unattainable while these charters stand in the way. But they will meet with insurmountable obstacles to their project for enslaving the British colonies, should those, arising from provincial charters be removed. It would indeed

* This however was formally declared as to Ireland, but so lately as the reign of G. 1. Upon the old principles of conquest the Irish could not have so much to say for an exemption, as the unconquered Colonists.

seem very hard and severe, for those of the colonists, who have charters, with peculiar privileges, to loose them. They were given to their ancestors, in consideration of their sufferings and merit, in discovering and settling America. Our fore-fathers were soon worn away in the toils of hard labour on their little plantations, and in war with the Savages. They thought they were earning a sure inheritance for their posterity. Could they imagine it would ever be tho't just to deprive them or theirs of their charter privileges! Should this ever be the case, there are, thank God, natural, inherent and inseperable rights as men, and as citizens, that would remain after the so much wished for catastrophe, and which, whatever became of charters, can never be abolished *de jure*, if *de facto*, till the general conflagration.* Our rights as men and free born British subjects, give all the Colonists enough to make them very happy in comparison with the subjects of any other prince in the world.

<35> Every British subject born on the continent of America, or in any other of the British dominions, is by the law of God and nature, by the common law, and by act of parliament, (exclusive of all charters from the Crown) entitled to all the natural, essential, inherent and inseparable rights of our fellow subjects in Great Britain. Among those rights are the following, which it is humbly conceived no man or body of men, not excepting the parliament, justly equitably and consistently with their own rights and the constitution, can take away.

1st. *That the supreme and subordinate powers of the legislation should be free and sacred in the hands where the community have once rightfully placed them.*

2dly. *The supreme national legislative cannot be altered justly 'till the commonwealth is dissolved, nor a subordinate legislative taken away without forfeiture or other good cause.* Nor then can the subjects in the subordinate government be reduced to a state of slavery, and subject to the despotic rule of others. A state has no right to make slaves of the conquered. Even when the subordinate right of legislature is forfeited, and so declared, this cannot affect the natural persons either of those who were invested with it, or the inhabitants,† so far as to deprive them of the rights of subjects and of men—The colonists will have an equitable right notwithstanding any such forfeiture of charter, to be represented in Parliament, or to have some

* The fine defence of the provincial charters of *Jeremy Dummer*, Esq.; the late very able and learned agent for the province of the *Massachusetts Bay*, makes it needless to go into a particular consideration of charter privileges. That piece is unanswerable, but by power and might, and other arguments of that kind.

† See *Magna Charta*, the *Bill of Rights*. 3 Mod. 152 2. Salkeld 411. Vaughan 300.

new subordinate legislature among themselves. It would be best if they had both. Deprived however of their common rights as subjects, they cannot lawfully be, while they remain such. A representation in Parliament from the several Colonies, since they are become so large and numerous, as to be called on not to maintain provincial government, civil and military among themselves, for this they have chearfully done, but to contribute towards the support of a national standing army, by reason of the heavy national debt, when they themselves owe a large one, contracted in the common cause, can't be tho't an unreasonable thing, nor if asked, <36> could it be called an immodest request. *Qui sentis commodum sentire debet et onus*,¹⁰ has been tho't a maxim of equity. But that a man should bear a burthen for other people, as well as himself, without a return, never long found a place in any law-book or decrees, but those of the most despotic princes. Besides the equity of an American representation in parliament, a thousand advantages would result from it. It would be the most effectual means of giving those of both countries a thorough knowledge of each others interests; as well as that of the whole, which are inseparable.

Were this representation allowed; instead of the scandalous memorials and depositions that have been sometimes, in days of old, privately cooked up in an inquisitorial manner, by persons of bad minds and wicked views, and sent from America to the several boards, persons of the first reputation among their countrymen, might be on the spot, from the several colonies, truly to represent them. Future ministers need not, like some of their predecessors, have recourse for information in American affairs, to every vagabond stroller, that has run or rid post thro' America, from his creditors, or to people of no kind of reputation from the colonies; some of whom, at the time of administring their sage advice, have been as ignorant of the state of the country, as of the regions in Jupiter and Saturn.

No representation of the Colonies in parliament alone, would however be equivalent to a subordinate legislative among themselves; nor so well answer the ends of increasing their prosperity and the commerce of Great-Britain. It would be impossible for the parliament to judge so well, of their abilities to bear taxes, impositions on trade, and other duties and burthens, or of the local laws that might be really needful, as a legislative here.

3dly. *No legislative, supreme or subordinate, has a right to make itself arbitrary.*

It would be a most manifest contradiction, for a free legislative, like that of Great-Britain, to make itself arbitrary.

10. *Qui sentis* [*sic*: *sentit*] *commodum sentire debet et onus*: "He who agrees to the profit ought to agree to the burden."

4thly. *The supreme legislative cannot justly assume a power of ruling by extempore arbitrary decrees, but is bound to dispense justice by known settled rules, and by duly authorized independant judges.* <37>

5thly. *The supreme power cannot take from any man any part of his property, without his consent in person, or by representation.*

6thly. *The legislature cannot transfer the power of making laws to any other hands.*

These are their bounds, which by God and nature are fixed, hitherto have they a right to come, and no further.

1. *To govern by stated laws.*

2. *Those laws should have no other end ultimately, but the good of the people.*

3. *Taxes are not to be laid on the people, but by their consent in person, or by deputation.*

4. *Their whole power is not transferable.**

These are the first principles of law and justice, and the great barriers of a free state, and of the British constitution in particular. I ask, I want no more—Now let it be shown how 'tis reconcilable with these principles, or to many other fundamental maxims of the British constitution, as well as the natural and civil rights, which by the laws of their country, all British subjects are intitled to, as their best inheritance and birth-right, that all the northern colonies, who are without one representative in the house of Commons, should be taxed by the British parliament.

That the colonists, black and white, born here, are free born British subjects, and entitled to all the essential civil rights of such, is a truth not only manifest from the provincial charters, from the principles of the common law, and acts of parliament; but from the British constitution, which was reestablished at the revolution, with a professed design to lecture the liberties of all the subjects to all generations.[†]

In the 12 and 13 of Wm. cited above, the liberties of the subject are spoken of as their best birth-rights—No one ever dreamt, surely, that these liberties were confined to the realm. At that rate, no British subjects in the dominions could, without a manifest contradiction, be declared entitled to all the privileges of subjects born within the realm, to all intents and purposes, which are rightly given foreigners, by parliament, after residing seven years. These expressions of parliament, as well as of the charters, must be <38> vain and empty sounds, unless we are allowed the essential rights of our fellow-subjects in Great-Britain.

* See Locke on Government. B. II. C. xi.

† See the convention, and acts confirming it.

Now can there be any liberty, where property is taken away without consent? Can it with any colour of truth, justice or equity, be affirmed, that the northern colonies are represented in parliament? Has this whole continent of near three thousand miles in length, and in which and his other American dominions, his Majesty has, or very soon will have, some millions of as good, loyal and useful subjects, white and black, as any in the three kingdoms, the election of one member of the house of commons?

Is there the least difference, as to the consent of the Colonists, whether taxes and impositions are laid on their trade, and other property, by the crown alone, or by the parliament. As it is agreed on all hands, the Crown alone cannot impose them. We should be justifiable in refusing to pay them, but must and ought to yield obedience to an act of parliament, tho' erroneous, 'till repealed.

I can see no reason to doubt, but that the imposition of taxes, whether on trade, or on land, or houses, or ships, on real or personal, fixed or floating property, in the colonies, is absolutely irreconcilable with the rights of the Colonists, as British subjects, and as men. I say men, for in a state of nature, no man can take my property from me, without my consent: If he does, he deprives me of my liberty, and makes me a slave. If such a proceeding is a breach of the law of nature, no law of society can make it just—The very act of taxing, exercised over those who are not represented, appears to me to be depriving them of one of their most essential rights, as freemen; and if continued, seems to be in effect an entire disfranchisement of every civil right. For what one civil right is worth a rush, after a man's property is subject to be taken from him at pleasure, without his consent. If a man is not his *own assessor* in person, or by deputy, his liberty is gone, or lays intirely at the mercy of others.

I think I have heard it said, that when the Dutch are asked why they enslave their colonies, their answer is, that the liberty of Dutchmen is confined to Holland; and that it was never intended for Provincials in America, or anywhere else. A sentiment this, very worthy of modern <39> Dutchmen; but if their brave and worthy ancestors had entertained such narrow ideas of liberty, seven poor and distressed provinces would never have asserted their rights against the whole Spanish monarchy, of which the present is but a shadow. It is to be hoped, none of our fellow subjects of Britain, great or small, have borrowed this Dutch maxim of plantation politics; if they have, they had better return it from whence it came; indeed they had. Modern Dutch or French maxims of state, never will suit with a British constitution. It is a maxim, that the King can do no wrong; and every good subject

is bound to believe his King is not inclined to do any. We are blessed with a prince who has given abundant demonstrations, that in all his actions, he studies the good of his people, and the true glory of his crown, which are inseparable. It would therefore, be the highest degree of impudence and disloyalty to imagine that the King, at the head of his parliament, could have any, but the most pure and perfect intentions of justice, goodness and truth, that human nature is capable of. All this I say and believe of the King and parliament, in all their acts; even in that which so nearly affects the interest of the colonists; and that a most perfect and ready obedience is to be yielded to it, while it remains in force. I will go further, and readily admit, that the intention of the ministry was not only to promote the public good, by this act; but that Mr. Chancellor of the Exchequer had therein a particular view to the "ease, the quiet, and the good will of the Colonies," he having made this declaration more than once. Yet I hold that 'tis possible he may have erred in his kind intentions towards the Colonies, and taken away our fish and given us a stone. With regard to the parliament, as infallibility belongs not to mortals, 'tis possible *they* may have been misinformed and deceived. The power of parliament is uncontrollable, but by themselves, and we must obey. They only can repeal their own acts. There would be an end of all government, if one or a number of subjects or subordinate provinces should take upon them so far to judge of the justice of an act of parliament, as to refuse obedience to it. If there was nothing else to restrain such a step, prudence ought to do it, for forceably resisting the parliament and the King's laws, <40> is high treason. Therefore let the parliament lay what burthens they please on us, we must, it is our duty to submit and patiently bear them, till they will be pleased to relieve us. And tis to be presumed, the wisdom and justice of that august assembly, always will afford us relief by repealing such acts, as through mistake, or other human infirmities, have been suffered to pass, if they can be convinced that their proceedings are not constitutional, or not for the common good.

The parliament may be deceived, they may have been misinformed of facts, and the colonies may in many respects be misrepresented to the King, his parliament, and his ministry. In some instances, I am well assured the colonies have been very strangely misrepresented in England. I have now before me a pamphlet, called the "administration of the colonies," said to be written by a gentleman who formerly commanded in chief in one of them. I suppose this book was designed for public information and use. There are in it many good regulations proposed, which no power can enforce but the parliament. From all which I infer, that if our hands are tied by the passing

of an act of parliament, our mouths are not stoped, provided we speak of that transcendent body with decency, as I have endeavoured always to do; and should any thing have escaped me, or hereafter fall from my pen, that bears the least aspect but that of obedience, duty and loyalty to the King & parliament, and the highest respect for the ministry, the candid will impute it to the agony of my heart, rather than to the pravity of my will. If I have one ambitious wish, 'tis to see Great-Britain at the head of the world, and to see my King, under God, the father of mankind. I pretend neither to the spirit of prophecy, nor any uncommon skill in predicting a Crisis, much less to tell when it begins to be "*nascent*" or is fairly midwiv'd into the world. But if I were to fix a meaning to the two first paragraphs of the *administrations of the colonies*, tho' I do not collect it from them, I should say the world was at the eve of the highest scene of earthly power and grandeur that has been ever yet displayed to the view of mankind. The cards are shuffling fast thro' all Europe. Who will win the prize is with God. This however I know <41> *detur digniori*.¹¹ The next universal monarchy will be favourable to the human race, for it must be founded on the principles of equity, moderation and justice. No country has been more distinguished for these principles than Great-Britain, since the revolution. I take it, every subject has a right to give his sentiments to the public, of the utility or inutility of any act whatsoever, even after it is passed, as well as while it is pending.—The equity and justice of a bill may be questioned, with perfect submission to the legislature. Reasons may be given, why an act ought to be repeal'd, & yet obedience must be yielded to it till that repeal takes place. If the reasons that can be given against an act, are such as plainly demonstrate that it is against *natural* equity, the executive courts will adjudge such acts void. It may be questioned by some, tho' I make no doubt of it, whether they are not obliged by their oaths to adjudge such acts void. If there is not a right of private judgement to be exercised, so far at least as to petition for a repeal, or to determine the expediency of risking a trial at law, the parliament might make itself arbitrary, which it is conceived it can not by the constitution.—I think every man has a right to examine as freely into the origin, spring and foundation of every power and measure in a commonwealth, as into a piece of curious machinery, or a remarkable phenomenon in nature; and that it ought to give no more offence to say, the parliament have erred, or are mistaken, in a matter of fact, or of right, than to say it of a private man, if it is true of both. If the assertion can be proved with regard to either, it is a kindness done them to show them the

11. *Detur digniori*: "Let it be given to the more worthy."

truth. With regard to the public, it is the duty of every good citizen to point out what he thinks erroneous in the commonwealth.

I have waited years in hopes to see some one friend of the colonies pleading in publick for them. I have waited in vain. One priviledge is taken away after another, and where we shall be landed, God knows, and I trust will protect and provide for us even should we be driven and persecuted into a more western wilderness, on the score of liberty, civil and religious, as many of our ancestors were, to these once inhospitable shores of America. I had formed great expectations from a gentleman, who published his <42> first volume in quarto on the rights of the colonies two years since; but, as he foresaw, the state of his health and affairs have prevented his further progress. The misfortune is, gentlemen in America, the best qualified in every respect to state the rights of the colonists, have reasons that prevent them from engaging: Some of them have good ones. There are many infinitely better able to serve this cause than I pretend to be; but from indolence, from timidity, or by necessary engagements, they are prevented. There has been a most profound, and I think shameful silence, till it seems almost too late to assert our indisputable rights as men and as citizens. What must posterity think of us. The trade of the whole continent taxed by parliament, stamps and other internal duties and taxes as they are called, talked of, and not one petition to the King and Parliament for relief.

I cannot but observe here, that if the parliament have an equitable right to tax our trade, 'tis indisputable that they have as good an one to tax the lands, and every thing else. The taxing trade furnishes one reason why the other should be taxed, or else the burdens of the province will be unequally born, upon a supposition that a tax on trade is not a tax on the whole. But take it either way, there is no foundation for the distinction some make in England, between an internal and an external tax on the colonies. By the first is meant a tax on trade, by the latter a tax on land, and the things on it. A tax on trade is either a tax of every man in the province, or 'tis not. If 'tis not a tax on the whole, 'tis unequal and unjust, that a heavy burden should be laid on the trade of the colonies, to maintain an army of soldiers, custom-house officers, and fleets of guard-ships; all which, the incomes of both trade and land would not furnish means to support so lately as the last war, when all was at stake, and the colonies were reimbursed in part by parliament. How can it be supposed that all of a sudden the trade of the colonies alone can bear all this terrible burden. The late acquisitions in America, as glorious as they have been, and as beneficial as they are to Great-Britain, are only a security to these colonies against the ravages of the French and Indians. Our trade upon the whole is not, I believe, <43> benefited by them one groat. All

the time the French Islands were in our hands, the fine sugars, &c. were all shipped home. None as I have been informed were allowed to be bro't to the colonies. They were too delicious a morsel for a North American palate. If it be said that a tax on the trade of the colonies is an equal and just tax on the whole of the inhabitants: What then becomes of the notable distinction between external and internal taxes? Why may not the parliament lay stamps, land taxes, establish tythes to the church of England, and so indefinitely. I know of no bounds. I do not mention the tythes out of any disrespect to the church of England, which I esteem by far the best *national* church, and to have had as ornaments of it many of the greatest and best men in the world. But to those colonies who in general dissent from a principle of conscience, it would seem a little hard to pay towards the support of a worship, whose modes they cannot conform to.

If an army must be kept in America, at the expence of the colonies, it would not seem quite so hard if after the parliament had determined the sum to be raised, and apportioned it, to have allowed each colony to assess its quota, and raise it as easily to themselves as might be. But to have the whole levied and collected without our consent is extraordinary. 'Tis allowed even to *tributaries*, and those laid under *military* contribution, to assess and collect the sums demanded. The case of the provinces is certainly likely to be the hardest that can be instanced in story. Will it not equal any thing but down right military execution? Was there ever a tribute imposed even on the conquered? A fleet, an army of soldiers, and another of taxgatherers kept up, and not a single office either for securing or collecting the duty in the gift of the tributary state.

I am aware it will be objected, that the parliament of *England*, and of Great Britain, since the union, have from early days to this time, made acts to bind if not to tax Ireland: I answer, Ireland is a *conquered* country. I do not, however, lay so much stress on this; for it is my opinion, that a *conquered* country has, upon submission and good behaviour, the same right to be free, under a conqueror, as the rest of his subjects. But the old notion of the *right of conquest*, <44> has been, in most nations, the cause of many severities and heinous breaches of the law of nature: If any such have taken place with regard to *Ireland*, they should form no precedent for the colonies. The subordination and dependency of *Ireland* to Great Britain, is expresly declared by act of parliament, in the reign of G. 1st. The subordination of the *Colonies* to Great Britain, never was doubted, by a Lawyer, if at all; unless perhaps by the author of the administration of the colonies: He indeed seems to make a moot point of it, whether the colony legislative power is as independent "as the legislative Great Britain holds by its constitution, and under the great

charter.”—The *people* hold under the great charter, as ’tis vulgarly expressed from our law-books: But that the King and parliament should be said to hold under *Magna Charta*, is as new to me, as it is to question whether the colonies are *subordinate* to Great Britain. The provincial legislative is unquestionably subordinate to that of Great Britain. I shall endeavour more fully to explain the nature of that subordination, which has puzzled so many in their enquiries. It is often very difficult for great lovers of power and great lovers of liberty, neither of whom may have been used to the study of law, in any of its branches, to see the difference between subordination, absolute slavery and subjection, on one side; and liberty, independence and licentiousness, on the other. We should endeavour to find the middle road, and confine ourselves to it. The laws, the proceedings of parliament, and the decisions of the judges, relating to *Ireland*, will reflect light on this subject, rendered intricate only by art.

“Ireland being of itself a distinct dominion, and no part of the kingdom of England (as directly appeareth by many authorities in Calvin’s case) was to have Parliaments holden there as in England.”

4 INST. 349.

Why should not the colonies have, why are they not entitled to their assemblies, or parliaments, at least, as well as a conquered dominion?

“Wales, after the conquest of it, by Edward, the first, was annexed to England, *jure proprietatis*,¹² 12 Ed. 1. by the statute of Rutland only, and after, more really by 27 H. 8. and 34, but at first received laws from England, as <45> Ireland did; but writs proceeded not out of the English chancery, but they had a Chancery of their own, as Ireland hath; was not bound by the laws of England, unnamed until 27 H. 8. no more than Ireland is.

“Ireland in nothing differs from it, but having a parliament *gratia Regis*¹³ (i.e. upon the old notion of conquest) subject (truly however) to the parliament of England. None doubts Ireland as much conquered as it; *and as much subject to the parliament of England, if it please.*”

VAUGHAN. 300.

A very strong argument arises from this authority, in favour of the *unconquered* plantations. If since Wales was annexed to England, they have had a representation in parliament, as they have to this day; and if the parliament of England does not tax *Ireland*, can it be right they should tax *us*, who have

12. *Jure proprietatis*: “By the law of ownership.”

13. *Gratia Regis*: “By the right of property.”

never been *conquered*, but came from England to *colonize*, and have always remained *good subjects* to this day?

I cannot find any instance of a tax laid by the English parliament on *Ireland*. “Sometimes the King of England called his Nobles of Ireland, to come to his parliament of England, &c. and by special words, the parliament of England may bind the subjects of Ireland”—3 INST. 350—.

The following makes it clear to me, the parliament of Great Britain do not tax *Ireland*, “The parliament of Ireland having been prorogued to the month of August next, *before they had provided for the maintenance of the government in that kingdom, a project* was set on foot here to supply that defect, by retrenching the drawbacks upon goods exported thither from England. According to this scheme, the 22d, the house in a grand committee, considered the present laws with respect to drawbacks upon tobaccoes, muslins, and East India silks, carried to Ireland; and came to two resolutions, which were reported the next day, and with an amendment to one of them agreed to by the house, as follows, Viz. 1. That three pence pr pound, part of the drawback on tobacco to be exported from Great Britain for Ireland, be taken off.

“2. That the said diminution of the drawback do take effect upon all tobacco exported for Ireland, after the 24 of March 1713, and continue until the additional duty of three pence half penny per pound upon tobacco in Ireland, <46> expiring on the said 24th of March, be *regranted*: And ordered a bill to be brought in, upon the said resolutions.”

Proceedings of House of Commons, Vol. 5. 72.

This was constitutional; there is an infinite difference between taking off British drawbacks, and imposing Irish or other Provincial duties.

“Ireland is considered as a provincial government, subordinate to, but no part of the Realm of England,” Mich. 11. G. 2. in case of Otway and Ramsay—“Acts of parliament made here, (i.e. in England) extend not to Ireland, unless particularly named; much less judgments obtained in the courts here; nor is it possible they should, because we have no officers to carry them into execution there.” *ib.*

The first part seems to be applicable to the plantations in general, the latter is not; for by reason of charter reservations and particular acts of parliament, some judgments in England may be executed here, as final judgments, before his Majesty in council on a plantation appeal, and so from the admiralty.

It seems to have been disputed in Ireland, so lately as the 6 Geo. 1. Whether any act of the British parliament bound Ireland; or at least it was apprehended, that the undoubted right of the British parliament to bind Ireland, was in danger of being shaken: This, I presume, occasioned the act of that year, which declares, that “the kingdom of Ireland ought to be subordinate

unto and dependent upon the Imperial Crown of Great Britain, as being inseparably united thereto. And the King's Majesty, with the consent of the lords and commons of Great Britain in parliament, hath power to make laws to bind the people of Ireland."—This parliamentary power must have some bounds, even as to *Ireland*, as well as the colonies who are admitted to be subordinate *ab initio*¹⁴ to Great Britain; not as *conquered*, but as *emigrant* subjects. If this act should be said to be a declaration not only of the general, but of the universal power of parliament, and that they may tax Ireland, I ask, Why it has never been done? If it had been done a thousand times, it would be a contradiction to the principles of a free government; and what is worse, destroy all subordination consistent with *freedom*, and reduce the people to *slavery*.

<47> To say the parliament is absolute and arbitrary, is a contradiction. The parliament cannot make 2 and 2, 5; Omnipotency cannot do it. The supreme power in a state, is *jus dicere* only;—*jus dare*,¹⁵ strictly speaking, belongs alone to God. Parliaments are in all cases to *declare* what is parliament that makes it so: There must be in every instance, a higher authority, viz. GOD. Should an act of parliament be against any of *his* natural laws, which are *immutably* true, their declaration would be contrary to eternal truth, equity and justice, and consequently void: and so it would be adjudged by the parliament itself, when convinced of their mistake. Upon this great principle, parliaments repeal such acts, as soon as they find they have been mistaken, in having declared them to be for the public good, when in fact they were not so. When such mistake is evident and palpable, as in the instances in the appendix, the judges of the executive courts have declared the act "of a whole parliament void." See here the grandeur of the British constitution! See the wisdom of our ancestors! The supreme *legislative*, and the supreme *executive*, are a perpetual check and balance to each other. If the supreme executive errs, it is informed by the supreme legislative in parliament: If the supreme legislative errs, it is informed by the supreme executive in the King's courts of law.—Here, the King appears, as represented by his judges, in the highest lustre and majesty, as supreme executor of the commonwealth; and he never shines brighter, but on his Throne, at the head of the supreme legislative. This is government! This, is a constitution! to preserve which, either from foreign or domestic foes, has cost oceans of blood and treasure in every age; and the blood and the treasure have upon the whole been well spent. British America, hath been

14. *Ab initio*: "From the beginning."

15. *Jus dicere*: "To pronounce a right"; *jus dare*: "To grant a right."

bleeding in this cause from its settlement: We have spent all we could raise, and more; for notwithstanding the parliamentary reimbursement of part, we still remain much in debt. The province of the *Massachusetts*, I believe, has expended more men and money in war since the year 1620, when a few families first landed at Plymouth, in proportion to their ability, than the three Kingdoms together. The same, I believe, may be truly <48> affirmed, of many of the other colonies; tho' the *Massachusetts* has undoubtedly had the heaviest burthen. This may be thought incredible: but materials are collecting; and tho' some are lost, enough may remain, to demonstrate it to the world. I have reason to hope at least, that the public will soon see such proofs exhibited, as will show, that I do not speak quite at random.

Why then is it thought so heinous by the author of the administration of the colonies, and others, that the colonists should aspire after "a one whole legislative power" not independent of, but subordinate to the laws and parliament of Great-Britain? . . . It is a mistake in this author, to bring so heavy a charge as *high treason* against some of the colonists, which he does in effect in this place,* by representing them as "claiming in fact or indeed, the same full free independent unrestrained power and legislative will, in their several corporations, and under the King's commission, and their respective charters, as the government and legislature of Great-Britain holds by its constitution and under the great charter." No such claim was ever tho't of by any of the colonists. They are all better men and better subjects; and many of them too well versed in the laws of nature and nations, and the law and constitution of Great-Britain, to think they have a right to more than a *provincial subordinate legislative*. All power is of GOD. Next and only subordinate to him, in the present state of the well-formed, beautifully constructed British monarchy, standing where I hope it ever will stand, for the pillars are fixed in judgment, righteousness and truth, is the King and Parliament. Under these, it seems easy to conceive subordinate powers in gradation, till we descend to the legislative of a town council, or even a private social club. These have each "a one whole legislative" subordinate, which, when it don't counteract the laws of any of its superiors, is to be indulged. Even when the laws of subordination are transgressed, the superior does not destroy the subordinate, but will negative its acts, as it may in all cases when disapproved. This right of negative is essential, and may be enforced: But in no case are the essential rights of the subjects, inhabiting the subordinate dominions, to be <49> destroyed. This would put it in

* Page 39 of the administration.

the power of the superior to reduce the inferior to a state of slavery; which cannot be rightfully done, even with *conquered* enemies and *rebels*. After satisfaction and security is obtained of the former, and examples are made of so many of the latter, as the ends of government require, the rest are to be restored to all the essential rights of men and of citizens. This is the great law of nature: and agreeable to this law, is the constant practice of all good and mild governments. This lenity and humanity has no where been carried further than in Great Britain. The Colonies have been so remarkable for loyalty, that there never has been any instance of rebellion or treason in them. This loyalty is in very handsome terms acknowledged by the author of the administration of the colonies. "It has been often suggested that care should be taken in the administration of the plantations, lest, in some future time, these colonies should become independent of the mother country. But perhaps it may be proper on this occasion, and, it is justice to say it, that if, by becoming independent, is meant a revolt, nothing is further from their nature, their interest, their thoughts. If a defection from the *alliance* of the mother country be suggested, it ought to be, and can be truly said, that their spirit abhors the sense of such; their attachment to the protestant succession in the house of Hanover, will ever stand unshaken; and nothing can eradicate from their hearts their natural and almost mechanical, affection to Great Britain, which they conceive under no other sense nor call by any other name than that of *home*. Any such suggestion, therefore, is a false and unjust aspersion on their principles and affections; and can arise from nothing but an intire ignorance of their circumstances."* After all this loyalty, it is a little hard to be charged with claiming, and represented as aspiring after, independency. The inconsistency of this I leave. We have said that the loyalty of the colonies has never been suspected; this must be restricted to a just suspicion. For it seems there have long been groundless suspicions of us in the minds of individuals. And there have always been those who have endeavoured to magnify these chimerical fears. I find Mr. Dummer complaining of this many years since.

<50> "There is, says he, one thing more I have heard often urged against the charter colonies, and indeed tis what one meets with from people of all conditions and qualities, tho' with due respect to their better judgments, I can see neither reason nor colour for it. 'Tis said that their increasing numbers and wealth, joined to their great distance from Britain, will give them an opportunity, in the course of some years, to throw off their dependence on

* Administration, p. 25, 26.

the nation, and declare themselves a free state, if not curb'd in time, by being made *entirely subject to the crown*.”*

This jealousy has been so long talked of, that many seems to believe it really well grounded. Not that there is danger of a “revolt,” even in the opinion of the *author of the administration*, but that the colonists will by fraud or force avail themselves, in “fact or in deed,” of an independent legislature. This, I think, would be a revolting with a vengeance. What higher revolt can there be, than for a province to assume the right of an independent legislative, or state? I must therefore think this a greater aspersion on the Colonists, than to charge them with a design to revolt, in the sense in which the Gentleman allows they have been abused: It is a more artful and dangerous way of attacking our liberties, than to charge us with being in open rebellion. That could be confuted instantly: but this seeming indirect way of charging the colonies, with a desire of throwing off their dependency, requires more pains to confute it than the other, therefore it has been recurred to. The truth is, Gentlemen have had departments in America, the functions of which they have not been fortunate in executing. The people have by these means been rendered uneasy, at bad Provincial measures. They have been represented as factious, seditious, and inclined to democracy whenever they have refused passive obedience to provincial mandates, as arbitrary as those of a Turkish Bashaw: I say, Provincial mandates; for to the King and Parliament they have been ever submissive and obedient.

These representations of us, many of the good people of England swallow with as much ease, as they would a bottle-bubble, or any other story of a cock and a bull; and the worst of it is, among some of the most credulous, have been <51> found Stars and Garters. However, they may all rest assured, the Colonists, who do not pretend to understand themselves so well as the people of England; tho’ the author of the Administration makes them the fine compliment, to say, they “know their business much better,” yet, will never think of independency. Were they inclined to it, they know the blood and the treasure it would cost, if ever effected; and when done, it would be a thousand to one if their liberties did not fall a sacrifice to the victor.

We all think ourselves happy under Great-Britain. We love, esteem and reverence our mother country, and adore our King. And could the choice of independency be offered the colonies, or subjection to Great-Britain upon any terms above absolute slavery, I am convinced they would accept the latter. The ministry, in all future generations may rely on it, that British America will never prove undutiful, till driven to it, as the last fatal resort against ministerial oppression, which will make the wisest mad, and the weakest strong.

* Defence. 60.

These colonies are and always have been, "entirely subject to the crown," in the legal sense of the terms. But if any politician of "tampering activity, of wrongheaded inexperience, misted to be meddling," means, by "curbing the colonies in time," and by "being made entirely subject to the crown"; that this subjection should be absolute, and confined to the crown, he had better have suppressed his wishes. This never will nor can be done, without making the colonists vassals of the crown. Subjects they are; their lands they hold of the crown, by common soccage, the freest feudal tennure, by which any hold their lands in England, or any where else. Would these gentlemen carry us back to the state of the Goths and Vandals, and revive all the military tenures and bondage which our fore-fathers could not bear? It may be worth noting here, that few if any instances can be given, where colonies have been disposed to forsake or disobey a tender mother: But history is full of examples, that armies, stationed as guards over provinces, have seized the prey for their general, and given him a crown at the expence of his master. Are all ambitious generals dead? Will no <52> more rise up hereafter? The danger of a standing army in remote provinces is much greater to the metropolis, than at home. Rome found the truth of this assertion, in her Sylla's, her Pompey's and Caesars; but she found it too late: Eighteen hundred years have roll'd away since her ruin. A continuation of the same liberties that have been enjoyed by the colonists since the revolution, and the same moderation of government exercised towards them, will bind them in perpetual lawful and willing subjection, obedience and love to Great-Britain: She and her colonies will both prosper and flourish: The monarchy will remain in sound health and full vigor at that blessed period, when the proud arbitrary tyrants of the continent shall either unite in the deliverance of the human race, or resign their crowns. Rescued, human nature must and will be, from the general slavery that has so long triumphed over the species. Great-Britain has done much towards it: What a Glory will it be for her to complete the work throughout the world!

The author of the Administration (page 54) "describes" the defects of the "provincial courts," by a "very description," the first trait of which is, "The ignorance of the judges." Whether the description, or the description of the description, are *verily* true, either as applied by Lord Hale, or the Administrator, is left to the reader. I only ask, who makes the judges in the provinces? I know of but two colonies, viz. Connecticut and Rhode-Island, where they are chosen by the people. In all other colonies, they are either immediately

* Administration. 34.

appointed by the crown, or by his Majesty's governor, with the advice of what the Administrator calls, the "governor's council of state." And if they are in general such ignorant creatures, as the Administrator describes them, 'tis the misfortune, not the fault, of the people, in the colonies. However, I believe, justice in general, is as well administered in the colonies, as it will be when every thing is devolved upon a court of admiralty, general or provincial. The following is very remarkable. "In those popular governments, and where every executive officer is under a dependence for a temporary, wretched, and I had almost said arbitrary support, on the deputies of the people."*

<53> Why is the temporary support found fault with? Would it be wise to give a governor a salary for a longer time than his political life? As this is quite as uncertain as his natural life, it has been granted annually. So every governor has the chance of one year's salary after he is dead. All the King's officers, are not even in the charter provinces "dependent on the people" for support. The judges of the admiralty, those mirrors of justice, to be trusted, when none of the common law courts are, have all their commissions from home. These, besides other fees, have so much per cent on all they condemn, be it right or wrong, *and this by act of parliament*. Yet so great is their integrity, that it never was suspected that 50 per cent, if allowed, would have any influence on their decrees.

Custom-house officers universally, and Naval-officers, in all but two or three of the colonies, are, I believe, appointed directly from home, or by instruction to the Governor: and take just what they please, for any restraint they are under by the provincial acts. But on whom should a Governor depend for his honorable support, but the people? Is not the King fed from the field, and from the labor of his people? Does not his Majesty himself receive his aids from the free grant of his parliament? Do not all these originate in the house of commons? Did the house of Lords ever originate a grant? Do not our law books inform us that the Lords only assent or dissent, but never so much as propose an amendment, on a money bill? The King can take no more than the Parliament will give him, and yet some of his Governors have tho't it an insufferable hardship, that they could not take what they pleased. To take leave of the administrator, there are in his book some good hints, but a multiplicity of mistakes in fact, and errors in matters of right, which I have not time to mention particularly.

Ireland is a conquered kingdom; and yet have tho't they received very hard measure in some of the prohibitions and restrictions of their trade. But were

* Administ. 56.

the colonies ever conquered? Have they not been subjects and obedient, and loyal from their settlement? Were not the settlements made under the British laws and constitution? But if the colonies were all to be considered as conquered, they are <54> entitled to the essential rights of men and citizens. And therefore admitting the right of prohibition, in its utmost extent and latitude; a right of taxation can never be infer'd from that. It may be for the good of the whole, that a certain commodity should be prohibited: But this power should be exercised, with great *moderation* and impartiality, over dominions, which are not *represented*, in the national parliament. I had however rather see this carried with a high hand, to the utmost rigor, than have a tax of one shilling taken from me without my consent. A people may be very happy; free and easy among themselves, without a particular branch of foreign trade: I am sure these colonies have the natural means of every manufacture in *Europe*, and some that are out of their power to make or produce. It will scarcely be believed a hundred years hence, that the American manufactures could have been brought to such perfection, as they will then probably be in, if the present measures are pushed. One single act of parliament, we find has set people a thinking, in six months, more than they had done in their whole lives before. It should be remembered, that the most famous and flourishing manufactures, of wool, in *France*, were begun by *Lewis* 14, not an hundred years ago; and they now bid fair to rival the *English*, in every port abroad. All the manufactures that Great-Britain could make, would be consumed in America, and in her own plantations, if put on a right footing; for which a greater profit in return would be made, than she will ever see again for woollen sent to any part of Europe.

But tho' it be allow'd, that liberty may be enjoy'd in a comfortable measure, where *prohibitions* are laid on the trade of a kingdom or province; yet if *taxes* are laid on either, *without* consent, they cannot be said to be free. This barrier of liberty being once broken down, all is lost. If a shilling in the pound may be taken from me against my will, why may not twenty shillings; and if so, why not my liberty or my life? Merchants were always *particularly* favor'd by the common law—"All merchants, except enemies, may safely come into *England*, with their goods and merchandize"—2 Inst. 28.—And why not as well to the *plantations*? Are they not entitled to all the <55> British privileges? No. they must be confined in their imports and exports to the good of the metropolis. Very well, we have submitted to this. The act of navigation is a good act, so are all that exclude foreign manufactures from the plantations, and every honest man will readily subscribe to them. Moreover, "Merchant strangers, are also to come into the realm and depart at pleasure; and they are to be friendly entertained." 2 Ri. C. 1. But to promote the manufactures

of *England*, 'tis tho't best to shut up the *colonies* in a manner from all the world. Right as to Europe: But for God's sake, must we have no trade with other colonies? In some cases the trade between *British* colony and colony is prohibited, as in wool, &c. Granting all this to be right, is it not enough? No, duties and taxes must be paid without any *consent* or *representation* in parliament. The common law, that inestimable privilege of a jury, is also taken away in all trials in the colonies, relating to the revenue, if the informers have a mind to go the admiralty; as they ever have done, and ever will do, for very obvious reasons. "It has ever been boasted, says Mr. Dummer in his defence of the charters, as the peculiar privilege of an Englishman, and the security of his property, to be tryed by his country, and the laws of the land: Whereas this admiralty method deprives him of both, as it puts his estate in the disposal of a single person, and makes the civil law the rule of judgment; which tho' it may not properly be called foreign being the law of nations, yet 'tis what he has not consented to himself, nor his representative for him. A jurisdiction therefore so founded, ought not to extend beyond what *necessity* requires"—"If some bounds are not set to the jurisdiction of the admiralty, beyond which it shall not pass, it may in time, like the element to which it ought to be confin'd, grow outrageous, and overflow the banks of all the other courts of justice." I believe it has never been doubted by one sound, common lawyer of England, whether a court of admiralty ever answer'd many good ends; "the court of King's bench has a power to restrain the court of admiralty in England; and the reasons for such restraining power are as strong in New England as in Great-Britain," and in some respects more so; Yet Mr. Dummer mentions, a <56> clamour that was raised at home by a judge of the admiralty for New England, who complain'd "that the common law courts by granting prohibitions, weaken, and in a manner suppress the authority of this court, and all the good ends for which it was constituted." Thus we see, that the court of admiralty long ago discover'd, no very friendly disposition towards the common law courts here; and the records of the house of Representatives afford us a notable instance of one, who was expelled the house, of which he had been an unworthy member, for the abusive misrepresentations of the province, by him secretly made.

Trade and traffick, says Lord Coke, "is the livelihood of a merchant, the life of the commonwealth, wherein the King and every subject hath interest; for the merchant is the good Bailiff of the realm, to export and vent the native commodities of the realm, and to import and bring in, the necessary commodities for the defence and benefit of the Realm"—2 Inst. 28. reading on *Magna Charta*. C. 15—And are not the merchants of British America entitled to a livelihood also? Are they not British subjects? Are not an infinity

of commodities carried from hence for the *benefit of the realm*, for which in return come an infinity of *trifles*, which we could do without? Manufactures we must go into if our trade is cut off; our country is too cold to go naked in, and we shall soon be unable to make returns to England even for necessities.

“When any law or custom of parliament is broken, and the crown possessed of a precedent, how difficult a thing is it to restore the subject again to his former freedom and safety?” 2. Inst. *on the confirmation of the great charter*—which provides in these words: “And for so much as divers people of our realm, are in fear, that the aids and talks which they have given to us before time, towards our wars, and other business of their own grant and good will (howsoever they were made) might *turn to a bondage* to them and their heirs, because they might be at another time found in the rolls, and likewise for the prices taken throughout the realm by our ministers; We have granted for us and our heirs, that we shall not draw such aids, talks nor prices *into a custom*, for any thing that hath been done heretofore, be it by roll, or any other precedent that may be founden.”

<57> By the first chapter of this act, the great charter is declared to be the common law. I would ask, whether we have not reason to fear, that the great aids, freely given by these provinces in the late war, will in like manner turn *to our bondage*, if they are to be kept on and *increased* during a *peace*, for the maintenance of a *standing army* here?—If tis said those aids were given for *our own* immediate defence, and that England spent millions in the same cause; I answer: The names of his present Majesty, and his royal Grand-father, will be ever dear to every loyal British American, for the protection they afforded us, and the salvation, under God, effected by their arms; but with regard to our fellow-subjects of Britain, we never were a whit behind hand with them. The New England Colonies in particular, were not only settled without the least expence to the mother country, but they have all along defended themselves against the frequent incursions of the most inhuman Savages, perhaps on the face of the whole earth, at *their own cost*: Those more than brutal *men*, spirited and directed by the most inveterate, as well as most powerful enemy of Great Britain, have been constantly annoying our infant settlements for more than a century; spreading terror and desolation and sometimes depopulating whole villages in a night: yet amidst the fatigues of labor, and the horrors of war and bloodshed, Heaven vouchsaf'd its smiles. Behold, an extensive territory, settled, defended, and secured to his Majesty, I repeat it, *without the least expence to the mother country*, till within twenty years past!—When *Louisbourg* was reduced to his late Majesty, by the valor of his *New-England subjects*, the parliament, it must be own'd, saw meet to refund *part* of the charges: And every one knows the importance of *Louisbourg*, in the consultations of

Aix la Chapple; but for the loss of our young men, the riches and strength of a country, not indeed slain by the enemy, but overborn by the uncommon hardships of the siege, and their confinement in garrison afterwards, there could be no recompence made.—In the late war, the *northern colonies* not only rais'd their full quota of men, but they went even beyond their ability: they are still deeply in debt, notwithstanding the parliamentary grants, annually made them, *in part* of their expen-^{<58>}ces, in the common, *national, cause*: Had it not been for those grants, they had all been bankrupt long ago; while the *sugar colonies*, have born little or no share in it: They indeed sent a company or two of *Negroes* and *Molattoes*, if this be worth mentioning, to the sieges of Gaudaloupe, Martineco and the Havanna: I do not recollect any thing else that they have done; while the flower of *our* youth were annually pressed by ten thousands into the service, and there treated but little better, as we have been told, than hewers of wood and drawers of water. Provincial acts for impressing were obtained, only by letters of requisition from a secretary of state to a Governor; requiring him to use his influence to raise men; and sometimes, more than were asked for or wanted, were pressed, to give a figure to the Governor, and shew his influence; a remarkable instance of which might be mentioned. I would further observe, that Great-Britain was as immediately interested in the late war in America, as the colonies were. Was she not threatned with an invasion at the same time we were? Has she not an immense trade to the colonies? The British writers say, more than half her profitable trade is to *America*: All the profits of our trade center there, and is little enough to pay for the goods we import. A prodigious revenue arises to the Crown on American exports to Great-Britain, which in general is not murmured at: No manufacture of Europe besides British, can be lawfully bro't here; and no honest man desires they ever should, if the laws were put in execution upon all. With regard to a few Dutch imports that have made such a noise, the truth is, very little has been or could be run, before the apparatus of guardships; for the officers of some ports did their duty, while others may have made a monopoly of smuggling, for a few of their friends, who probably paid them large contributions; for it has been observed, that a very small office in the customs in America has raised a man a fortune sooner than a Government. The truth is, the acts of trade have been too often evaded; but by whom? Not by the American merchants in general, but by some former custom-house officers, their friends and partizans. I name no man, not being about to turn informer: But it has been a notorious grievance, that when ^{<59>} the King himself cannot dispense with an act of parliament, there have been custom-house officers who have practiced it for years together, in favor of those towards whom they were graciously disposed.

But to return to the subject of taxation: I find that "the lords and commons cannot be charged with anything for the defence of the realm, for the safe-guard of the sea, &c. unless by their *will* in parliament."

Ld. Coke, on Magna Charta, Cap. 30.

"Impositions neither in time of war, or other the greatest necessity or occasion, that may be, much less in the time of peace, neither upon foreign or inland commodities, of what nature soever, be they never so superfluous or unnecessary, neither upon merchants, strangers, nor denizens, may be laid by the King's absolute power, without assent of parliament, be it never for so short a time."

Viner Prerogative of the King.

Ea. 1. cites 2 Molloy. 320. Cap. 12 sec. 1.

"In the reign of Edward 3, the black Prince of Wales having *Aquitain* granted to him, did lay an imposition of suage or socage a *soco*, upon his subjects of that dukedom, viz. a shilling for every fire, called hearth silver, which was of so great discontentment and odious to them, that it made them revolt. And nothing since this time has been imposed by pretext of any prerogative, upon merchandizes, imported into or exported out of this realm, until Queen Mary's time."

2 Inst. 61.

Nor has any thing of that kind taken place since the revolution. King Charles 1. his ship-money every one has heard of.

It may be said that these authorities will not serve the colonists, because the duties laid on them are by parliament. I acknowledge the difference of fact; but cannot see the great difference in equity, while the colonists are not represented in the house of commons: And therefore with all humble deference I apprehend, that 'till the colonists are so represented, the spirit of all these authorities will argue strongly in their favour. When the parliament shall think fit to allow the colonists a representation in the house of commons, the equity of their taxing the colonies, will be as clear as their power is at present of doing it without, if they please. <60> When Mr. Dummer wrote his defence of the charters, there was a talk of taking them away, by act of parliament. This defence is dedicated to the right honourable the Ld. Carteret, then one of his Majesty's principal secretaries of state, since Earl of Granville. His third proposition is, that "it is not for the interest of the crown to resume the charters, if forfeited." This he proves; as also that it would be more for the interest of Great Britain to enlarge, rather than diminish, the

privilege of all the colonists. His last proposition is, that it “seems inconsistent with justice to disfranchise the charter colonies by an act of parliament.”

“It seems therefore, says he, a severity without a precedent, that a people, who have the misfortune of being a thousand leagues distant from their sovereign, a misfortune great enough in itself, should, unsummoned, unheard, in one day, be deprived of their valuable privileges, which they and their fathers have enjoyed for near a hundred years.” ’Tis true, as he observes, “the legislative power is absolute and unaccountable, and King, lords and commons, may do what they please; but the question here is not about *power*, but *right*” (or rather equity) “and shall not the supreme judicature of all the nation do right?” “One may say, that what the parliament cannot do justly, they cannot do at all. *In maximis minima est licentia*.¹⁶ The higher the power is, the greater caution is to be used in the execution of it; because the sufferer is helpless and without resort.” I never heard that this reasoning gave any offence. Why should it? Is it not exactly agreeable to the decisions of parliament and the determinations of the highest executive courts? (See the Appendix.) But if it was thought hard that charter privileges should be taken away by act of parliament, is it not much harder to be in part, or in whole, disfranchised of rights, that have been always tho’t inherent to a British subject, namely, to be free from all taxes, but what he consents to in person, or by his representative? This right, if it could be traced no higher than Magna Charta, is part of the common law, part of a British subjects birthright, and as inherent and perpetual, as the duty of allegiance; both which have been bro’t to these colonies, and have been hitherto held sacred and inviolable, and I hope and trust ever will. ’Tis humbly conceived, that the British colonists <61> (except only the conquered, if any) are, by Magna Charta, as well entitled to have a voice in their taxes, as the subjects within the realm. Are we not as really deprived of that right, by the parliament assessing us before we are represented in the house of commons, as if the King should do it by his prerogative? Can it be said with any colour of truth or justice, that we are represented in parliament?

As to the colonists being represented by the provincial agents, I know of no power ever given them but to appear before his Majesty, and his ministry. Sometimes they have been directed to petition the parliament: But they none of them have, and I hope never will have, a power given them, by the colonists, to act as representatives, and to consent to taxes; and if they should make any concessions to the ministry, especially without order, the provinces could not by that be considered as represented in parliament.

16. *In maximis minima est licentia*: “The license to do as one pleases is smallest in great affairs.”

*Hibernia habet Parliamenta et faciunt leges et nostra statuta non ligant eos quia non mittant milites ad Parliamentum, sed personae eorum sunt subjecti Regis, sicut inhabitantes Calinae Gasconiae et Guienae.*¹⁷

12 Rep. III. cites R. 3. 12.—

“Ireland hath parliaments, and makes laws, and our statutes do not bind them, *because they send no Knights to parliament*; but their persons are subjects, of the King, as the inhabitants of Guiene, Gascony, &c.”

Yet, if specially named, or by general words included as within any of the King’s dominions, Ireland, says Ld. Coke, might be bound.

4 Inst. 351.

From all which, it seems plain, that the reason why Ireland and the plantations are not bound, unless named by an Act of Parliament, is, because they are *not represented* in the British parliament. Yet, in special cases, the British parliament has an undoubted right, as well as power, to bind both by their acts. But whether this can be extended to an indefinite taxation of both, is the greater question. I conceive the spirit of the British constitution must make an exception of all taxes, until it is tho’t fit to unite a dominion to the realm. Such taxation must be considered either as uniting the dominions to the realm, or disfranchising them. If they are united, they will be intitled to a representation, as well as Wales; if they are so taxed without a union, or representation, they are so far disfranchised.

<62> I don’t find anything that looks like a duty on the colonies before the 25th of C. 2. c. 7. imposing a duty on enumerated commodities. The liberty of the subject was little attended to in that reign. If the nation could not fully assert their rights till the revolution, the colonies could not expect to be heard. I look on this act rather as a precedent of power, than of right and equity; if ’tis such, it will not affect my argument. The act appointing a tax on all mariners, of a certain sum per month, to be deducted out of their wages, is not to be compared with this. Mariners are not inhabitants of any part of the dominions: The sea is their element, till they are decrepit, and then the hospital is open for all mariners who are British subjects without exception. The general post-office established thro’ the dominions, is for the convenience of trade and commerce: It is not laying any burthen upon it; for besides that it is upon the whole cheaper to correspond in this way than any other, every one is at liberty to send his own letters by a friend. The act

17. Translation appears in the following paragraph.

of the 6th of his late Majesty, tho' it imposes a *duty* in terms, has been said to be designed for a *prohibition*; which is probable from the sums imposed; and 'tis pity it had not been so expressed, as there is not the least doubt of the just and equitable right of the parliament to lay prohibitions thro' the dominions, when they think the good of the whole requires it. But as has been said, there is an infinite difference between that and the exercise of unlimited power of taxation, over the dominions, without allowing them a representation:—It is said that the duties imposed by the new act will amount to a prohibition: Time only can ascertain this. The utility of this act is so fully examined in the appendix that I shall add nothing on that head here. It may be said that the colonies ought to bear their proportion of the national burdens: 'Tis just they should, and I think I have proved they have always done it freely and cheerfully, and I know no reason to doubt but that they ever will.

Sometimes we have been considered only as the corporations in England: And it may be urged that it is no harder upon us to be taxed by parliament for the general cause than for them, who besides are at the expence of their corporate <63> subordinate government.* I answer. 1. Those corporations are *represented* in parliament. 2. The colonies are and have been at great expence in raising men, building forts, and supporting the King's civil government here. Now I read of no governors and other officers of his Majesty's nomination, that the city of London taxes its inhabitants to support; I know of no forts and garrisons that the city of London has lately built at its own expence, or of any annual levies that they have raised for the King's service and the common cause. These are things very fitting and proper to be done by a subordinate dominion, and tis their duty to do all they are able; but it seems but equal they should be allowed to assess the charges of it themselves. The rules of equity and the principles of the constitution seem to require this. Those who judge of the reciprocal rights that subsist between a supreme and subordinate state or dominion, by no higher rules than are applied to a corporation of button-makers, will never have a very comprehensive view of them. Yet sorry am I to say it, many elaborate writers on the *administration* of the *colonies*, seem to me never to rise higher in their notions, than what might be expected from a secretary to one of the *quorum*. If I should be ranked among this number, I shall have this consolation, that I have fallen into what is called very good company, and among some who have seen very high life below stairs. I agree with the Administrator, that of whatever revenues raised in the colonies, if they must be raised without our consent, "*the first and special appropriation of them ought to be to the paying the Governors, and all*

* See Administration of the Colonies.

the other Crown officers"; for it would be hard for the Colonists to be obliged to pay them after this. It was on this principle that at the last assembly of this province, I moved to stop every grant to the officers of the crown; more especially as I know some who have built very much upon the fine salaries they shall receive from the plantation branch of the revenue. Nor can I think it "injustice to the frame of human nature,"* to suppose, if I did not know it, that with similar views several officers of the Crown in some of the colonies have been pushing for such an act for many years. They have <64> obtained their wish, and much good it will do them: But I would not give much for all that will center neat in the exchequer, after deducting the costs attending the execution of it, and the appropriations to the several officers proposed by the Administrator. What will be the unavoidable consequence of all this, suppose another war should happen, and it should be necessary to employ as many provincials in America as in the last? Would it be possible for the colonies, after being burthened in their trade, perhaps after it is ruined, to raise men? Is it probable that they would have spirit enough to exert themselves? If 'tis said the French will never try for America, or if they should, regular troops are only to be employed, I grant our regular troops are the best in the world, and that the experience of the present officers shews that they are capable of every species of American service; yet we should guard against the worst. If another tryal for Canada should take place, which from the known temper of France, we may judge she will bring on the first fair opportunity, it might require 30 or 40,000 regulars to secure his Majesty's just rights. If it should be said, that other American duties must then be levied, besides the impossibility of our being able to pay them, the danger recurs of a large standing army so remote from home. Whereas a good provincial militia, with such occasional succours from the mother country, as exigencies may require, never was, and never will be attended with hazard. The experience of past times will show, that an army of 20 or 30,000 veterans, half 3000 miles from *Rome*, were very apt to proclaim *Cesars*. The first of the name, the assassin of his country owed his false glory, to stealing the affections of an army from the commonwealth. I hope these hints will not be taken amiss; they seem to occur from the nature of the subject I am upon: They are delivered in pure affection to my King and country, and amount to no reflection on any man. The best army, and the best men, we may hereafter have, may be led into temptation; all I think is, that a prevention of evil is much easier than a deliverance from it.

The sum of my argument is, That civil government is of God: That the administrators of it were originally the whole people: That they might have

* Adm. p. 57.

devolved it on whom they <65> pleased: That this devolution is fiduciary, for the good of the whole; That by the British constitution, this devolution is on the King, lords and commons, the supreme, sacred and uncontrollable legislative power, not only in the realm, but thro' the dominions: That by the abdication, the original compact was broken to pieces: That by the revolution, it was renewed. and more firmly established, and the rights and liberties of the subject in all parts of the dominions, more fully explained and confirmed: That in consequence of this establishment, and the acts of succession and union his Majesty GEORGE III. is rightful king and sovereign, and with his parliament, the supreme legislative of Great Britain; France and Ireland, and the dominions thereto belonging: That this constitution is the most free one, and by far the best, now existing on earth: That by this constitution, every man in the dominion is a free man: That no parts of his Majesty's dominions can be taxed without their consent: That every part has a right to be represented in the supreme or some subordinate legislature: That the refusal of this, would seem to be a contradiction in practice to the theory of the constitution: That the colonies are subordinate dominions, and are now in such a state, as to make it best for the good of the whole, that they should not only be continued in the enjoyment of subordinate legislation, but be also represented in some proportion to their number and estates, in the grand legislature of the nation: That this would firmly unite all parts of the British empire, in the greatest peace and prosperity; and render it invulnerable and perpetual.

Appendix

<66> The City of *Boston*, at their Annual Meet- in *May*, 1764, made Choice of *Richard Dana*, *Joseph Green*, *Nathaniel Bethune*, *John Ruddock*, Esq's; and Mr. *Samuel Adams*, to prepare Instructions for their REPRESENTATIVES.

The following Instructions were reported by said Committee, and unanimously Voted.

To *Royal Tyler*,* *James Otis*, *Thomas Cushing*, and *Oxenbridge Thacher*, Esq's.

GENTLEMEN,

Your being chosen by the freeholders and inhabitants of the town of *Boston*, to represent them in the General Assembly the ensuing year, affords you the strongest testimony of that confidence which they place in your integrity

* Now of the honourable Board; in whose room was returned Mr. *Thomas Gray*, Merchant.

and capacity. By this choice they have delegated to you the power of acting in their public concerns in general, as your own Prudence shall direct you; always reserving to themselves the constitutional right of expressing their mind, and giving you such instruction upon particular matters, as they at any time shall judge proper.

<67> We therefore your constituents take this opportunity to declare our just Expectations from you.

That you will constantly use your power and influence in maintaining the invaluable rights and privileges of the province, of which this town is so great a part: As well those rights which are derived to us by the royal charter, as those which being prior to and independent on it, we hold essentially as free-born subjects of Great-Britain;

That you will endeavour, as far as you shall be able, to preserve that independence in the house of representatives, which characterizes a free people; and the want of which may in a great measure prevent the happy effects of a free government: Cultivating as you shall have opportunity, that harmony and union there, which is ever desirable to good men, when founded in principles of virtue and public spirit; and guarding against any undue weight which may tend to disadjust that critical balance upon which our happy constitution, and the blessings of it do depend. And for this purpose, we particularly recommend it to you to use your endeavours to have a law passed, whereby the seats of such gentlemen as shall accept of posts of profit from the Crown, or the Governor, while they are members of the house, shall be vacated, agreeable to an act of the British parliament, 'till their constituents shall have the opportunity of re-electing them if they please, or of returning others in their room.

Being members of the legislative body, you will have a special regard to the morals of this people, which are the basis of public happiness; and endeavour to have such laws made, if any are still wanting, as shall be best adapted to secure them: And we particularly desire you carefully to look into the laws of excise, that if the virtue of the people is endangered by the multiplicity of oaths therein enjoined, or their trade and business is unreasonably impeded or embarrassed thereby, the grievance may be redressed.

As the preservation of morals, as well as property and right, so much depends upon the impartial distribution of justice, agreeable to good and wholesome law: And as the judges of the land do depend upon the free grants of the general assembly for support; it is incumbent upon you at all times to give your voice for their honourable maintenance, <68> so long as they, having in their minds an indifference to all other affairs, shall devote themselves wholly to the duties of their own department, and the further study of the

law by which their customs, precedents, proceedings, and determinations are adjusted and limited.

You will remember that this province hath been at a very great expence in carrying on the war; and that it still lies under a very grievous burden of debt: You will therefore use your utmost endeavor to promote public frugality as one means to lessen the publick debt.

You will join in any proposals which may be made for the better cultivating the lands, and improving the husbandry of the province: and as you represent a town which lives by its trade, we expect in a very particular manner, that you make it the object of your attention, to support our commerce in all its just rights, to vindicate it from all unreasonable impositions, and promote its prosperity—Our trade has for a long time laboured under great discouragements; and it is with the deepest concern that we see such further difficulties coming upon it, as will reduce it to the lowest ebb, if not totally obstruct and ruin it. We cannot help expressing our surprize that when so early notice was given by the agent, of the intentions of the ministry, to burthen us with new taxes, so little regard was had to this most interesting matter, that the court was not even call'd together to consult about it 'till the latter end of the year; the consequence of which was, that instructions could not be sent to the agent, tho' solicited by him, 'till the evil had got beyond an easy remedy.

There is now no room for further delay: We therefore expect that you will use your earliest endeavours in the General Assembly, that such methods may be taken as will effectually prevent these proceedings against us. By a proper representation, we apprehend it may easily be made to appear that such severities will prove detrimental to Great Britain itself; upon which account we have reason to hope that an application, even for a repeal of the act, should it be already pass'd, will be successful. It is the trade of the colonies, that renders them beneficial to the mother country; Our trade, as it is now, and always has been conducted, centers in Great Britain, and in return for her manufactures, <69> affords her more ready cash, beyond any comparison, than can possibly be expected by the most sanguine promoters of these extraordinary methods. We are in short ultimately yielding large supplies to the revenues of the mother country, while we are labouring for a very moderate subsistence for ourselves. But if our trade is to be curtail'd in its most profitable branches, and burdens beyond all possible bearing laid upon that which is suffer'd to remain, we shall be so far from being able to take off the manufactures of Great Britain, that it will be scarce possible for us to earn our bread.—

But what still heightens our apprehensions is, that these unexpected proceedings may be preparatory to new taxations upon us: For if our trade may be taxed, why not our lands? Why not the produce of our lands, and every

thing we possess or make use of? This we apprehend annihilates our charter right to govern and tax ourselves—It strikes at our British privileges, which as we have never forfeited them, we hold in common with our fellow subjects who are natives of Britain: If taxes are laid upon us in any shape without our having a legal representation where they are laid, are we not reduc'd from the character of free subjects to the miserable state of tributary slaves?

We therefore earnestly recommend it to you to use your utmost endeavors to obtain in the general assembly, all necessary instruction and advice to our agent at this most critical juncture; that while he is setting forth the unshaken loyalty of this province and this town—its unrival'd exertion in supporting his Majesty's government and rights in this part of his dominions—its acknowledg'd dependence upon and subordination to Great-Britain; and the ready submission of its merchants to all just and necessary regulations of trade; he may be able in the most humble and pressing manner to remonstrate for us all those rights and privileges which justly belong to us either by charter or birth.

As his Majesty's other northern American colonies are embark'd with us in this most important bottom, we further desire you to use your endeavors, that their weight may be added to that of this province: that by the united application of all who are aggrieved, All may happily obtain redress.

<70> Substance of a Memorial presented the House, in Pursuance of the above Instructions; and by them voted to be transmitted to Jasper Mauduit, Esq; Agent for this Province;* to be improved as he may judge proper.

The publick transactions from William the I. to the revolution, may be considered as one continued struggle between the prince and the people, all tending to that happy establishment, which Great-Britain has since enjoyed.

The absolute rights of Englishmen, as frequently declared in parliament, from Magna Charta, to this time, are the rights of *personal security*, *personal liberty*, and of *private property*.

The allegiance of British subjects being natural, perpetual and inseparable from their persons, let them be in what country they may; their rights are also natural, inherent and perpetual.

By the laws of nature and of nations, the voice of universal reason, and of God, when a nation takes possession of a desert, uncultivated, and uninhabited country, or purchases of Savages, as was the case with far the greatest

* Only as a State drawn up by one of the House.

part of the British settlements; the colonists transplanting themselves, and their posterity, tho' separated from the principal establishment, or mother country, naturally become part of the state with its ancient possessions, and intitled to all the essential rights of the mother country. This is not only confirmed by the practice of the antients, but by the moderns ever since the discovery of America. Frenchmen, Spaniards, and Portugals are no greater slaves abroad than at home; and hitherto Britons have been as free on one side of the atlantic as on the other: And it is humbly hoped that his Majesty and the Parliament, will in their wisdom be graciously pleased to continue the colonists in this happy state.

It is presumed, that upon these principles, the colonists have been by their several charters declared natural subjects, <71> and entrusted with the power of making *their own local laws*, not repugnant to the laws of England, and with *the power of taxing themselves*.

Their legislative power is subject by the same charter to the King's negative as in Ireland. This effectually secures the *dependence* of the colonies on Great-Britain—By the *thirteenth of George the second, chapter the ninth*, even foreigners having lived seven years in any of the colonies, are deemed natives on taking the oaths of allegiance, &c. and are declared by the said act to be his Majesty's natural born subjects of the kingdom of Great-Britain, to all intents, constructions and purposes, as if any of them had been born within the kingdom. The reasons given for this naturalization in the preamble of the act are, "that the increase of the people is the means of advancing the wealth and strength of any nation or country; and that many foreigners and strangers, from the lenity of our government, the purity of our religion, the benefit of our laws, the advantages of our trade, and the security of our *property*, might be induced to come and settle in some of his Majesty's colonies in America; if they were partakers of the advantages and priviledges, which the natural born subjects there enjoy."*

The several acts of parliament and charters declaratory of the rights and liberties of the colonies are but in affirmance of the common law, and law of nature in this point. There are says my Lord Coke, regularly three incidents to subjects born. (1.) Parents under the actual obedience of the King. (2.) That the place of his birth be within the King's dominions. (3.) The time of his birth to be chiefly considered: For he cannot be a subject born of one kingdom, that was born under the allegiance of the King of another kingdom; albeit afterwards the kingdom descends to the King of the other kingdom. See Calvin's case, and the several acts of parliament and decisions

* 13 G. 2. C. 7.

on naturalization, from Edward the third to this day. The common law is received and practiced upon here, and in the rest of the colonies; and all antient and modern acts of parliament that can be considered as part of, or in amendment of the common law, together with all such <72> acts of parliament as expressly name the plantations; so that the power of the British parliament is held as sacred and as uncontrollable in the colonies as in England. The question is not upon the general power or right of the parliament, but whether it is not circumscribed within some equitable and reasonable bounds? 'Tis hoped it will not be considered as a new doctrine, that even the authority of the parliament of *Great-Britain* is circumscribed by certain bounds, which if exceeded their acts become those of meer *power* without *right*, and consequently void. The judges of England have declared in favour of these sentiments, when they expressly declare; that *acts of parliament against natural equity are void*. That *acts against the fundamental principles of the British constitution are void*.^{*} This doctrine is agreeable to the law of nature <73>

^{*} A very important question here presents itself, It essentially belongs to the society to make laws both in relation to the manner in which it desires to be governed, and to the conduct of the citizens: This is called the *Legislative Power*. The nation may entrust the exercise of it to the Prince, or to an assembly; or to the assembly and the Prince jointly; who have then a right of making new and abrogating old laws. It is here demanded whether, if their power extends so far as to the fundamental laws, they may change the constitution of the state? The principles we have laid down lead us to decide this point with certainty, that the authority of these legislators does not extend so far, and that they ought to consider the fundamental laws as sacred, if the nation has not in very express terms given them the power to change them. For the constitution of the state ought to be fixed; and since that was first established by the nation, which afterwards trusted certain persons with the legislative power, the fundamental laws are excepted from their commission. It appears that the society had only resolved to make provision for the state's being always furnished with laws suited to particular conjunctures, and gave the legislature for that purpose, the power of abrogating the ancient civil and political laws, that were not fundamental, and of making new ones: But nothing leads us to think that it was willing to submit the constitution itself to their pleasure.

When a nation takes possession of a distant country, and settles a colony there, that country though separated from the principal establishment, or mother country, naturally becomes a part of the state, equally with its ancient possessions. Whenever the political laws, or treaties make no distinction between them, every thing said of the territory of a nation, ought also to extend to its colonies.

D'Vattel.

"An act of parliament made against natural equity, as to make a man judge in his own cause, would be void"; For *jura naturae sunt immutabilia*: "The rights of nature are immutable." Hob. 87 Trin. 12. Jac. Day v. Savage S. C. and P. cited Arg. 10 Mod. 115. Hill. 11 Ann. C. B in the case of Thornby and Fleetwood, "but says, that this must be a clear case,

and nations, and to the divine dictates of natural and revealed religion. It is contrary to reason that the supreme power should have right to alter the constitution. This would imply that those who are intrusted with Sovereignty by the people, have a right to do as they please. In other words, that those who are invested with power to protect the people, and support their rights and liberties, have a right to make slaves of them. This is not very remote from a flat contradiction. Should the parliament of Great Britain follow the example of some other foreign states,* and vote the King absolute and despotic; would such an act of parliament make him so? Would any minister in his senses advise a Prince to accept of such an offer of power? It would be unsafe to accept of such a donation, because the parliament or donors would grant more than was ever in their power lawfully to give. The law of nature never invested them with a power of surrendering their own liberty; and the people certainly never intrusted any body of men with a power to surrender theirs in exchange for slavery.†

and judges will strain hard rather than interpret an act void, ab initio." *This is granted, but still their authority is not boundless, if subject to the controul of the judges in any case.* Holt, Chief justice thought what Lord Coke says in Doctor Bonham's case a very reasonable and true saying, that if an act of parliament should ordain that the same person should be both party and judge in his cause, it would be a void act of parliament, and an act of parliament can do no wrong tho' it may do several things that look pretty odd; for it may discharge one from the allegiance he lives under, and restore to the state of nature; but it cannot make one that lives under a government both judge and party per Holt. C. J 12 Mod. 687, 688 Hill. 13 W. 3 B. R in the case of the city of London v. Wood . . . It appears in our books, that in several cases the common law shall controul acts of parliament and sometimes adjudge them to be utterly void; for when an act of parliament is against common *right and reason*, or repugnant or impossible to be performed, the common law shall controul it, and adjudge it to be void, and therefore 8 E. 3. 30. Thomas Tregor's case upon the statute of W. 2. Cap. 38. and Art Sup Chart 9 Herle said that sometimes statutes are made contrary to law and right, which the makers of them perceiving will not put them in execution. 8 Rep. 118 Hill 7 J. Dr. Bonham's case.

* Sweden, Denmark, France, &c.

† "But if the whole state be conquered, if the nation be subdued, in what manner can the victor treat it without transgressing the bounds of justice? What are his rights over the conquest? Some have dared to advance this monstrous principle that the conqueror is absolute master of his conquest; that he may dispose of it as his property, treat it as he pleases, according to the common expression of *treating a state as a conquered country*; and hence they derive one of the sources of despotic government: But enough of those that reduce men to the state of transferable goods, or use them like beasts of burden, who deliver them up as the property or patrimony of another man. Let us argue on principles countenanced by reason and becoming humanity. The whole right of the conqueror

It is now near three hundred years since the continent of North-America was first discovered, and that by British subjects.* Ten generations have passed away thro' infinite toils and bloody conflicts in settling this country. None of those ever dreamed but that they were intitled, at least, <75> to equal priviledges with those of the same rank born within the realm.

British America has been hitherto distinguished from the slavish colonies around about it, as the fortunate Britons have been from most of their neighbours on the continent of Europe. It is for the interest of Great-Britain that her colonies should be ever, thus distinguished. Every man must wilfully blind himself that don't see the immense value of our acquisitions in the late war; and that tho' we did not retain all at the conclusion of the peace that we obtained by the sword; yet our gracious Sovereign, at the same time that he has given a divine lesson of equitable moderation to the Princes of the earth, has retained sufficient to make the British arms the dread of the universe, and his name dear to all posterity.

To the freedom of the British constitution, and to their increase of commerce, 'tis owing that our colonies have flourished without diminishing the inhabitants of the mother country; quite contrary to the effects of plantations

proceeds from the just defence of himself, which contains the support and prosecution of his rights. Thus when he has totally subdued a nation with whom he had been at war, he may without dispute cause justice to be done him, with regard to what gave rise to the war, and require payment for the expence and damage he has sustained; he may according to the exigency of the case impose penalties on it as an example, he may should prudence so dictate disable it from undertaking any pernicious designs for the future. But in securing all these views the mildest means are to be preferred. We are always to remember, that the law of nature permits no injury to be done to an enemy unless in taking measures necessary for a just defence, and a reasonable security. Some princes have only imposed a tribute on it; others have been satisfied of striping it of some privileges, dismembring a province, or keeping it in awe by fortresses; others as their quarrel was only with the sovereign in person, have left a nation in the full enjoyment of all its rights, only setting a sovereign over it. But if the conqueror thinks proper to retain the sovereignty of the vanquished state, and has such a right; the manner in which he is to treat the state still flows from the same principles. If the sovereign be only the just object of his complaint, reason declares that by his conquest he acquires only such rights as actually belonged to the dethroned sovereign, and on the submission of his people he is to govern it according to the laws of the state. If the people do not voluntarily submit, the state of war subsists." "When a sovereign as pretending to have the absolute disposal of a people whom he has conquered, is for enslaving them, he causes the state of war to subsist between this people & him."

Mr. De Vattel. B. 3. C. 10 sec. 201.

* The Cabots discovered the Continent before the Spaniards.

made by most other nations, which have suffered at home, in order to aggrandize themselves abroad. This is remarkably the case with Spain. The subjects of a free and happy constitution of government, have a thousand advantages to colonize above those who live under despotic princes. We see how the British colonies on the continent, have out-grown those of the French, notwithstanding they have ever engaged the Savages to keep us back. Their advantages over us in the West-Indies are, among other causes perhaps, partly owing to these, (1.) A capital neglect in former reigns, in suffering them to have a firm possession of so many valuable islands, that we had a better title to than they. (2.) The French unable to push their settlements effectually on the continent, have bent their views to the islands, and poured vast numbers into them. (3.) The climate and business of these islands is by nature much better adapted to Frenchmen and to Negroes, than to Britons. (4.) The labour of slaves, black or white, will be ever cheaper than that of freemen, because that of the individuals among the former, will never be worth so much as with the latter; but this difference is more than supplied; by numbers under the advantages abovementioned. The French will ever be able to sell their West-India produce cheaper than our own islanders; and yet while our own islanders can have such a price for theirs, as to grow much richer than the French, or any other of the King's subjects in America, as is the case, and what the northern colonies take from the French, and other foreign islands, centers finally in returns to Great-Britain for her manufactures, to an immense value, and with a vast profit to her: It is contrary to the first principles of policy to clog such a trade with duties, much more to prohibit it, to the risque if not certain destruction of the fishery. It is allowed by the most accurate British writers on commerce, Mr. Postlethwait in particular, who seems to favour the cause of the sugar islands, that one half of the immense commerce of Great-Britain is with her colonies. It is very certain that without the fishery seven eighths of this commerce would cease. The fishery is the center of motion, upon which the wheel of all British commerce in America turns. Without the American trade, would Britain, as a commercial state, make any great figure at this day in Europe? Her trade in woolen and other manufactures is said to be lessening in all parts of the world, but America, where it is increasing, and capable of infinite increase, from a concurrence of every circumstance in its favour. Here is an extensive territory of different climates, which in time will consume, and be able to pay for as many manufactures as Great-Britain and Ireland can make, if true maxims are pursued. The French for reasons already mentioned, can underwork, and consequently undersell the English manufactures of Great-Britain in every market in Europe. But they can send none of their manufactures here; and it is the wish of every honest British

American that they never may; 'tis best they never should; we can do better without the manufactures of Europe, save those of Great-Britain, than with them: But without the French West-India produce we cannot; without it our fishery must infallibly be ruined. When that is gone our own islands will very poorly subsist. No British manufactures can be paid for by the colonists. What will follow? One of these two things, both of which it is the interest of Great-Britain to prevent. (1.) The northern <77> colonists must be content to go naked, and turn Savages. Or (2.) Become manufacturers of linnen and woolen, to cloath themselves; which if they cannot carry to the perfection of Europe, will be very destructive to the interests of Great-Britain. The computation has been made, and that within bounds, and it can be demonstrated, that if North-America is only driven to the fatal necessity of manufacturing a suit of the most ordinary linnen or woolen for each inhabitant annually, which may be soon done, when necessity the mother of invention shall operate, Great-Britain & Ireland will loose two millions per annum, besides a diminution of the revenue to nearly the same amount. This may appear paradoxical, but a few years experience of the execution of the sugar act will sufficiently convince the parliament not only of the inutility, but destructive tendency of it, while calculations may be little attended to. That the trade with the colonies has been of surprizing advantage to Great-Britain, notwithstanding the want of a good regulation is past all doubt. Great-Britain is well known to have increased prodigiously both in numbers and in wealth since she began to colonize. To the growth of the plantations Britain is in a great measure indebted for her present riches and strength. As the wild wastes of America have been turned into pleasant habitations, and flourishing trading towns; so many of the little villages and obscure boroughs in Great-Britain have put on a new face, and suddenly started up, and become fair markets, and manufacturing towns, and opulent cities. London itself, which bids fair to be the metropolis of the world, is five times more populous than it was in the days of Queen Elizabeth. Such are the fruits of the spirit of commerce and liberty. Hence it is manifest how much we all owe to that beautiful form of civil government, under which we have the happiness to live.

It is evidently the interest, and ought to be the care of all those intrusted with the administration of government, to see that every part of the British empire enjoys to the full the rights they are intitled to by the laws, and the advantages which result from their being maintained with impartiality and vigour. This we have been reduced to practice in the present and preceeding reigns; and have <78> the highest reason from the paternal care and goodness that his Majesty, and the British Parliament, have hitherto been graciously pleased to discover to all his Majesty's dutiful and loyal subjects, and to the

colonists in particular, to rest satisfied, that our priviledges will remain sacred and inviolate. The connection between Great-Britain and her colonies is so natural and strong, as to make their mutual happiness depend upon their mutual support. Nothing can tend more to the destruction of both, and to forward the measures of their enemies, than sowing the seeds of jealousy, animosity and dissention between the mother country and the colonies.

A conviction of the truth and importance of these principles, induced Great-Britain during the late war, to carry on so many glorious enterprizes for the defence of the colonies; and those on their part to exert themselves beyond their ability to pay, as is evident from the parliamentary reimbursements.

If the spirit of commerce was attended to, perhaps, duties would be every where decreased, if not annihilated, and prohibitions multiplied. Every branch of trade that hurts a community, should be prohibited for the same reason that a private gentleman would break off commerce with a sharper or an extorsive usurer. 'Tis to no purpose to higgie with such people, you are sure to loose by them. 'Tis exactly so with a nation, if the balance is against them, and they can possibly subsist without the commodity, as they generally can in such cases, a prohibition is the only remedy; for a duty in such case, is like a composition with a thief, that for five shillings in the pound returned, he shall rob you at pleasure; when if the thing is examined to the bottom, you are at five shillings expence in travelling to get back your five shillings, and he is at the same expence in coming to pay it, so he robs you of but ten shillings in the pound, that you thus wisely compound for. To apply this to trade, I believe every duty that was ever imposed on commerce, or in the nature of things can be, will be found to be divided between the state imposing the duty, and the country exported from. This as between the several parts of the same kingdom or dominions of the same Prince, can <79> only tend to embarrass trade, and raise the price of labour above other states, which is of very pernicious consequence to the husbandman, manufacturer, mariner and merchant, the four tribes that support the hive. If your duty is upon a commodity of a foreign state, it is either upon the whole useful and gainful, and therefore necessary for the husbandmen, manufacturer, mariner or merchant, as finally bringing a profit to the state by a balance in her favour; or the importation will work a balance against your state. There is no medium that we know of.—If the commodity is of the former kind, it should be prohibited; but if the latter, imported duty free, unless you would raise the price of labour by a duty on necessaries, or make the above wise composition for the importation of commodities you are sure to lose by. The only test of a useful commodity is the gain upon the whole to the state; such should be free; the only test of a pernicious trade is the loss upon the whole,

or to the community, this should be prohibited. If therefore it can be demonstrated that the sugar and molasses trade from the northern colonies to the foreign plantations is upon the *whole* a loss to the *community*, by which term is here meant the three kingdoms and the British dominions taken collectively, then and not 'till then should this trade be prohibited. This never has been proved, nor can be; the contrary being certain, to wit, that the nation upon the whole hath been a vast gainer by this trade, in the vend of and pay for its manufactures; and a great loss by a duty upon this trade will finally fall on the British husbandman, manufacturer, mariner & merchant, and consequently the trade of the nation be wounded, and in constant danger of being eat out by those who can undersell her.

The art of underselling, or rather of finding means to undersell, is the grand secret of thrift among commercial states, as well as among individuals of the same state. Should the British sugar islands ever be able to supply Great-Britain and her northern colonies with those articles, it will be time enough to think of a total prohibition; but until that time, both prohibition and duty will be found to be diametrically opposite to the first principles of policy. <80> Such is the extent of this continent, and the increase of its inhabitants, that if every inch of the British sugar islands was as well cultivated as any part of Jamaica, or Barbadoes, they would not now be able to supply Great-Britain, and the colonies on this continent. But before such further improvements can be supposed to take place in our islands, the demands will be proportionably increased by the increase of the inhabitants on the continent. Hence the reason is plain why the British sugar planters are growing rich, and ever will, because the demand for their produce has and ever will be greater than they can possibly supply, so long as the English hold this continent, and are unrivalled in the fishery.

We have every thing good and great to hope from our gracious Sovereign, his Ministry and his Parliament; and trust that when the services and sufferings of the British American colonies are fully known to the mother country, and the nature and importance of the plantation trade more perfectly understood at home, that the most effectual measures will be taken for perpetuating the British empire in all parts of the world. An empire built upon the principles of justice, moderation and equity, the only principles that can make a state flourishing, and enable it to elude the machinations of its secret and inveterate enemies.

P. S. By ancient and modern gods, P. 10, I mean, all idols, from those of Old Egypt, to the canonized monsters of modern Rome; and by king-craft and priest-craft, civil and ecclesiastic polity, as administred

in general till the revolution. I now recollect that I have been credibly informed that the British Sugar Colonists are humane towards their slaves, in comparison with the others. Therefore in page 29, let it be read, foreign Sugar-islanders and foreign Creoles.

FINIS

2. *A Vindication of the British Colonies*

A
VINDICATION
OF THE
BRITISH COLONIES.

Published by
Mr. OTIS, at BOSTON,
In the Summer of the YEAR 1765.

Sed fugite, ô miseri, fugite, atque ab litore funem Rumpite!
Clamorem immensum tollit, quo pontus et omnes
Intremuere undae, penitúsque exterrita tellus,
Italiae curvísque immugiit Aetna Cavernis.
—fluit aes rivis, aurique metallum
Vulnificúsque chalybs vastâ fornace liquescit
—Alii ventosis follibus auras
Accipiunt reddúntque, alii stridentia tingunt
Aera locu: gemit impositis incudibus antrum.
Illi inter sese multâ vi brachia tollunt
*In numerum, versántque tenaci forcipe massam.*¹

VIRGIL.

BOSTON, printed:
LONDON, re-printed for J. ALMON, opposite
Burlington House, in Piccadilly. 1769.
[Price One Shilling.] <iii>

1. *Sed fugite, ô miseri, fugite, atque ab litore funem Rumpite! / Clamorem immensum tollit, quo pontus et omnes / Intremuere undae, penitúsque exterrita tellus, / Italiae curvísque immugiit Aetna Cavernis. / —fluit aes rivis, aurique metallum / Vulnificúsque chalybs vastâ fornace*

ADVERTISEMENT

The following little Tract is well known at Boston to have been written by Mr. Otis; and is now re-published, not for any Excellence in the Work, but for the Eminence of the Author. No one, who has read that Gentleman's former Book on *the Rights of the British Colonies*, will expect either Instruction or Entertainment from any other of his Performances.

But a very mean Writer may make a very good Evidence; and as such only he is now produced. We here see the first Leader in the American Disputes declaring the universal Opinion of the Colonies about the Rights of the British Parliament: And no Man can call in Question so very unexceptionable an Authority.

Soon after the News of the Stamp Act, Mr. Hopkins, Governor of Rhode Island, wrote a small Tract on that Subject. He was answered by Mr. Howard in a *Letter from a Gentleman at Halifax*. The present Tract is Mr. Otis's Reply to that Halifax Letter. All of them were published in the Course of the Summer, 1765.

Till that Time, the constant Language of the Colonists, even the Boast of their Loyalty, was; *we hold ourselves bound by all the Acts of Parliament wherein America is mentioned*. The Reader will here <iv> find the fullest Evidence of this Fact; and will see this Doctrine applied to the Right of laying Taxes of all kinds, *Internal as well as External on Lands as well as on Trade*, by this Representative, and standing Moderator of the Town of Boston.

He will be pleased only farther to remark, that this Book was published some Months after the Stamp Act had been passed: But before the Colonies had been untaught their Obedience to Parliament, by those factious Declarations made here against its Right.

What therefore were the Sentiments even of the most seditious Part of the Bostoners themselves, *before* the making of those Declarations, this Book will prove; Events will shew what they have been *since*. <I>

liquescit / — Alii ventosis follibus auras / Accipiunt reddúntque, alii stridentia tingunt / Aera locu [sic: lacu]: gemit impositis incudibus antrum. / Illi inter sese multá vi brachia tollunt / In numerum, versántque tenaci forcipe massam: “Fly! O wretched men, fly! And break the cables on the shore! / He raises an immense sound, by which the sea and all of its billows rose up / And the land of Italy was terrified far inland / Making Aetna resound within its bent caverns / Bronze and golden metal flows in streams / And steel, which makes wounds, is melted in a giant furnace / Some take in air with windy bellows and blow out winds / Others dip the hissing bronze in the lake. / The cave groans under the anvils. / They lift their arms with great force in rhythm together / And turn the mass [of metal], gripping it with tongs.”

A Vindication of the *British Colonies*, against the Aspersions of the *Halifax* Gentleman in his Letter to a *Rhode-Island* Friend

It had been long expected, that some American pen would be drawn in support of those measures, which to all thinking men must appear to be very extraordinary. Those who are above party, can peruse the speculations of a Whig or a Tory, a Quaker or a Jacobite, with the same composure of mind. Those who confine themselves within the bounds of moderation and decency, are so far respectable. All who grow outrageous, are disgusting. The head of a *tribunitian veto*, with a mob at his heels, and a grand *Asiatic* monarch, with a shoal of sycophants clinging about him, like the little wretches in the well known print of Hobbes's Leviathan, may be objects of equal diversion, derision and contempt. Mankind ever were, are and will be divisible, into the great and small vulgar. Both will have their respective heads. The laws of nature are uniform and invariable. The same causes will produce the same effects, from generation to generation. He that would be a great captain, must for a season exult in the honor of being a little one. <2>

“Bred on the mountains had *proud* Julius been,
He'd shone a *sturdy* wrestler on the green.”

The Halifax Gentleman having discovered that governor H——pk——ns is “totally unacquainted with stile and diction,” and yet “eagerly fond to pass upon the world for a man of letters,” great perfection might be reasonably expected in the composition of the friendly epistle. Instead of this, are found inaccuracies in abundance, declamation and false logic without end; *verse* is retailed in the shape of *prose*, solecisms are attempted to be passed off for good grammar, and the most indelicate fustian for the fine taste. The whole performance is truly *Filmerian*. The picture is very well charged with shade and thick darkness, intermixed with here and there a ray of light; now and then a flash, and once in a while is heard a little rumbling thunder from a few distant broken clouds.

“Some future bard may sing the present times,
And HE be made the hero of the song.”

These two lines are crowded together in one short sentence, in a prosaic form. (page 4)

The gentleman (page 5.) has given us a portrait of the English nation. It contains but a dozen lines, and expresses or plainly implies the following wonderful group of ideas, viz. “A high pitch of glory and power, envy and admiration of surrounding slaves, holding fast the balance of Europe, a rival

in arts <3> and arms of every period ancient and modern, impatience, jealousy, pride and folly, prodigality, particularly in laying wagers to the value of kingdoms, and a quick sensibility and consciousness of dignity, which renders plain simple truth intolerable.” As the English nation expired about sixty years since, in the union of the two kingdoms, ’tis needless to enquire whether this be a just character of that once brave and generous, free and loyal people: But if this should be intended for a filial compliment to Great-Britain, ’tis a very indifferent one. In the late war, America joined in the stakes: The bet was not for the safety of the colonies alone; it was for the salvation of Great-Britain, as well as the plantations, i.e. for the whole community. Cornwall raises and pays one company of dragoons, Devonshire another: Is Cornwall more obliged to Devonshire than Devonshire is to Cornwall? They are both obliged by the strongest ties of duty and loyalty, to the gracious Prince who protects and defends both: To each other they owe but love and good will.

I cannot think Mr. H——k——s, or any other of the writers who have the misfortune to fall under the sore displeasure of the Halifax Gentleman, ever really intended to encourage so groundless a claim as an independent uncontrollable Provincial legislative. Most of them ’tis well known expressly disavow such a claim. It is certain that the Parliament of Great-Britain hath <4> a just, clear, equitable and constitutional right, power and authority, to bind the colonies, by all acts wherein they are named. Every lawyer, nay every Tyro knows this. No less certain is it that the Parliament of Great-Britain has a just and equitable right, power and authority, to *impose taxes on the colonies, internal and external, on lands, as well as on trade*. This is involved in the idea of a supreme legislative, or sovereign power of a state. It will however by no means from thence follow, that ’tis always expedient, and in all circumstances equitable for the supreme and sovereign legislative to tax the colonies, much less than ’tis reasonable this right should be practised upon without allowing the colonies an actual representation. An equal representation of the whole state is, at least in theory, of the essence of a perfect parliament, or supreme legislative.

There is not the least color of a contradiction between the passages from the “rights of the colonies,” cited pages 6 and 7. It must indeed be confessed and lamented, that the last citation involves an sophism, unworthy the pen from whence it fell. But the critic with all his sagacity has not pointed where the fallacy lies. He has reduced his Honor’s argument to the form of a syllogism, which is conclusive. “The people of Great-Britain have not any sort of power over the Americans”; “The house of commons have no greater authority than the people of Great-Britain, who are their constituents”; “*ergo* the house of commons have not any sort of power over the Americans.” This I take to be literally true. Yet by the following reduction, the fallacy of his

Honor's argument will appear, "The common people of Great-Britain have no sovereign absolute authority over their fellow-subjects in America"; "The house of commons alone have no greater authority than the common people of Great-Britain"; "*ergo*, the British parliament, the King's Majesty, Lords and Commons, have no sovereign absolute authority over the subjects in the colonies." Who does not see the fallacy of this conclusion? The inquiry was not of the sole and separate power and authority of the house of commons, but of the authority of that august and transcendent body the parliament, which is composed of the three branches of the grand legislature of the nation, considered as united. But all this shows that the last citation at most is but an implicit, and is far from an "express, denial of the authority of parliament," and should, by that candor that is inseparable from a liberal mind, have been imputed to meer inadvertency.

We come now to the *rationale* of the epistle. "I have endeavoured (says the gentleman) to investigate the *true natural relation*, if I *may so speak*, between the colonies and their mother state, *abstracted from compact or positive Institution*." What a parade is here? What "a solemnity" does "he give to his performance?" "If I may so speak." Who would not think the world was about to be favored with some extraordinary discovery, too mighty for the powers and precision of language!

Let us attend the course of the bubble. "But here (adds he) I can find nothing satisfactory: Yet till this *relation* is clearly defined upon *rational* and *natural principles*, our *reasoning* upon the *measures* of the colonies obedience, will be *desultory* and inconclusive." "Every connection or relation in life has its reciprocal duties; we know the relation between a parent and a child, husband and wife, master and servant, and from thence are able to deduce their respective obligations." "But we have no notices of any *such* precise natural relation between a *mother state* and its colonies, and therefore cannot reason with so much certainty upon the *power* of the one, or the *duties* of the other." If, as the gentleman tells us, he could not find any thing satisfactory, he could only guess what reasoning would follow: And I leave it to his readers to determine, whether he has not proved that he guessed very rightly. He has placed the relation of master and servant among what he calls natural relations. In a state of nature, where all are equal, I believe the gentleman would be as much puzzled to find his master or servant, as others now may be to find his equal. 'Tis a little strange he should attempt to reason on a subject, of which he confesses he could find no "satisfactory notices." But he seems determined to flounder on thro' thick and thin, be his reasonings "desultory" or conclusive.

"The ancients (says he) have *transmitted* (for handed down; 'tis a wonder it had not been *transported*) to us nothing that is applicable to the state of

the modern colonies, because the *relation* between these (and their mother state should have been added) is formed by *political compact*.” *Brave!* “And the *condition* of each variant in their original and from each other.” Better and better still! If *condition* means the present state, and I think it can mean nothing else, what a delectable piece of jargon does the close of this period make! It amounts to this: “The present state of each modern colony is variant in its original, and from each other.” Be this as it may; if the *relation* of modern colonies to their mother states, is founded on *political compact*, how came the gentleman to beat his brains to find out “their *natural relation abstracted from compact or positive institution*?” To what purpose he has done this, he tells us when he confesses he can find nothing “satisfactory” about it. Are not *natural* and merely *political* or *civil relations* different things? Is it not a little jargonical and inconsistent, in one breath to talk of “investigating the *true, natural, clearly defined* relation of the colonies to their mother state, abstract from compact or positive institution”; and in the next to affirm, that so far as relates to modern <8> colonies, this relation depends, or “is founded on political compact?” Was there a natural relation between ancient states and their colonies, and none between the modern states and their colonies? Is not a “political compact,” the same thing with a “positive institution”? Is this “freeing a subject from embarrassment”? Well might the gentleman “shun the walk of metaphysics.” I wish he had not so much avoided that of logic. He every where seems to consider *power* and *duty* as correlated. Surely he should be the last man to charge his adversary with “vague and diffuse talk of” those levelling notions, “right and privileges.” He bewilders himself for half a poor creeping page more, abruptly sings a *requiem* to his sweet soul, composes the surges of his “philosophically inquisitive mind,” fatigued with its late flight after natural and political relations, and very gravely contents himself with considering the “colonies rights upon the footing of their charters.” This foothold, by a new and bold figure in rhetoric, he calls “the only plain avenues that lead to the truth of this matter.”

—“*facilis descensus Averni*.”²

The gentleman is at a loss (page 8) to “conceive how it comes to pass that the colonies now claim *any other or greater* rights than are expressly granted to them” by charter. Is the gentleman a British-born subject and a lawyer, and ignorant that charters from the <9> crown have usually been given for enlarging the liberties and privileges of the grantees, not for limiting them, much less for curtailing those essential rights which all his Majesty’s subjects

2. *Facilis descensus Averni*: “The descent into Avernus [the entrance to hell] is easy.”

are entitled to, by the laws of God and nature, as well as by the common law, and by the constitution of their country?

The distinction (page 8.) between personal and political rights, is a new invention, and, as applied, has perplexed the author of it. He every where confounds the terms rights, liberties and privileges, which, in legal as well as vulgar acceptation, denote very different ideas. This is a common mistake with those who cannot see any difference between power and right, between a blind slavish submission, and a loyal, generous and rational obedience, to the supreme authority of a state.

The rights of men are, *natural* or *civil*. Both these are divisible into *absolute* and *relative*. The natural absolute personal rights of individuals, are so far from being opposed to political or civil rights, that they are the very basis of all municipal laws of any great value. "The absolute rights of individuals, regarded by the municipal laws, compose what is called *political* or *civil liberty*." "The absolute liberties of Englishmen, as frequently declared in parliament, are principally three. 1. The right of *personal* security, 2. *personal liberty*, and 3. private property." "Besides these three *primary rights*, there are others which are *secondary* and *subordinate*, (to preserve the former <10> from unlawful attacks). 1. The constitution or power of parliament. 2. The limitation of the King's prerogative (and to vindicate them when actually violated). 3. The regular administration of justice. 4. The right of petitioning for redress of grievances. 5. The right of having and using arms for self-defence." See Mr. Blackstone's accurate and elegant analysis of the laws of England. The gentleman seems to have taken this and some other of his distinctions from that excellent treatise very ill understood. The analysis had given this general view of the *objects* of the laws of England. I. Rights of Person. II. Rights of Things. III. Private wrongs. IV. Public wrongs. Rights of persons are divided into these, 1. of natural persons; 2. of bodies politic or corporate, i.e. artificial persons, or subordinate societies. The rights of these are by the Letter-writer strangely confounded with the political and civil rights of natural persons. And because corporate rights, so far as they depend upon charter, are matters of the meer favor and grace of the donor or founder; he thence infers (page 9.) That "the colonies have no rights independent of their charters," and that "they can claim no greater than those give them." This is a contradiction to what he admitted in the preceding page, viz. That "by the common law every colonist hath a right to his life, liberty and property." And he was so vulgar as to call these the "subjects birth-right." <11> But what is this birth-right worth, if it depends merely upon a colony charter, that, as he says rightly enough, may be taken away by the parliament? I wish the gentleman would answer these questions. Would he think an estate worth much, that might

be taken from him at the pleasure of another? Are charters from the crown usually given for enlarging the liberties and privileges of the grantees, in consideration of some special merit and services done the state, or would he have his readers consider them like the ordinances of a French monarch, for limiting and curtailing those rights which all Britons, and all British subjects, intitled to by the laws of God and nature, as well as by the common law and the constitution of their country, so admirably built on the principles of the former? By which of these laws, in contradistinction to the other, are the rights of life, liberty, and estate, personal?

The gentleman's positions and principles, that "the several New-England charters ascertain, define and limit the respective *rights* and privileges of each colony," and that "the colonies have no rights independent of their charter," and that "they can claim no greater than those give them," if true, would afford a curious train of consequences. Life, liberty and property, are, by the law of nature as well as by the common law, secured to the happy inhabitants of South-Britain, and constitute their *primary* civil or political rights. But in <12> the colonies, these and all other rights, according to our author, depend upon charter. Therefore those of the colonies who have no charter, have no right to life, liberty or property. And in those colonies who have charters, these invaluable blessings depend on the meer good will, grace and pleasure of the supreme power; and all their charters, and of course all their rights, even to life, liberty and property, may be taken away at pleasure. Thus every charter in England may be taken away; for they are but voluntary and gracious grants of the crown, of certain limited, local, political privileges, superadded to those of the common law. But would it be expedient to strike such a blow, without the most urgent necessity? "In all states there is (and must be) an absolute supreme power, to which the right of *legislation* belongs; and which by the singular constitution of these kingdoms is vested in the King, Lords, and Commons."* Now Magna Charta is but a law of their making, and they may alter it at pleasure; but does it thence follow, that it would be expedient to repeal every statute from William the Conqueror, to this time? But by the gentleman's principles, this may be done wantonly, and without any reason at all. Further, by his logic the parliament may make the monarchy absolute, or reduce it to a republic; both which would be contrary to the trust reposed in them by the constitution, which is to preserve, not destroy <13> it; and to this all are sworn, from the King's Majesty in his coronation oath, to the meanest subject in the oath of allegiance. Into such absurd and treasonable doctrines must the

* Blackstone.

gentleman run, in order to be consistent. Nay, all the vagaries of Filmer, Manwaring and Sibthorp, and of the whole tribe of King Adam's subjects, will follow. As 1. That Adam was the first monarch of this earth. No Prince has a title to his crown but he who can prove himself to be the eldest heir male of the body of Adam. That all other Princes are usurpers and tyrants. That according to Filmer, God hath given to every father over his children, and much more to every Prince over his subjects, a power "absolute, arbitrary and unlimited, and unlimitable over the lives, liberties and estates of such children and subjects; so that they may take or alienate their estates sell, castrate or use their persons as he pleases, they being all his slaves, and the father or prince, lord proprietor of everything, and his unbounded will their law." This is the substance of one of Mr. Locke's inferences from these words of Filmer; "God hath given to the father a right or liberty to alien his power over his children to any other; whence we find the sale and gift of children to have been much in use in the beginning of the world, when men had their servants for a possession and inheritance, as well as other goods (and chattels); whereupon we find the power of *castrating*, and making eunuchs (for singing <14> songs like Lillibullero, &c.) much in use in old times." Obs. 155. "Law is nothing else, but the will of him that hath the power of the *supreme* father."* Horrid blasphemy! The Lord omnipotent reigneth, but to whom hath he committed his supreme power and authority? The Pope claims to be but Lord Lieutenant of Heaven, and before Sir Robert none but the Devil ever had vanity or folly enough to contend for the whole power of the supreme Father. According to Filmer, and his followers, among which the Halifax gentleman is a close imitator, "they that shed innocent blood of their sons and their daughters, whom they sacrificed unto the idols of Canaan," did no more than they had a right to do. Upon such principles Pharaoh was a pious virtuous Prince. And the drowning the infants in the Nile, was as justifiable a piece of preventive policy, as seizing the ships of the French without a declaration of war. The Philistine rulers too acted very commendably in depriving the Hebrews of the use of iron, it being very certain that any the most polite people, without the free use of this invaluable metal, would in one century return to the savage state of the Indians. "If the example of what hath been done, says Mr. Locke, be the rule of what ought to be, history would have furnished our author with instances of this absolute fatherly power in its height and <15> perfection, and he might have shewed us in Peru, people that begot children, on purpose to fatten and eat them." Mr. Locke has recited a story of this kind, so horrid, that I would,

* Observ. p. 225.

for the honor of the human species, think it incredible, and but the meer flight of imagination in *Gracilasso de Vega*; like Swift's proposal to the people of Ireland, to fatten their children for sale in Leaden-Hall market, as almost the only branch of commerce that would give no offence to the good people of England. See the story cited by Mr. Locke in his treatise on government, Chap. II. and VI. The Filmerians often preach the principles of anarchy in one breath, and those of despotism in another. The gentleman (page 9) says, "The individuals of the colonists participate of every blessing the English constitution can give them." "As corporations created by the crown, they are confined within the primitive views of their institution." "Whether therefore their *indulgence* is *liberal* or *scanty*, can be no cause of complaint; for when they accepted of their charters, they *tacitly* submitted to the terms and conditions of them." This is admirable! To be sure, a liberal indulgence could be no cause of complaint. I have heard of a scanty allowance, and it often happens in a transportation across the Atlantic: but what is a *scanty indulgence*? I am in doubt under what species of Hellenism to rank it. Is it Doric or Ionic? Attic I am sure it is not. But at present I am content it should pass as <16> very good English, for a poor pittance of bread, water, stinking beef and coarse clothes, instead of the roast beef of old England, praised and sung by such authors as delight in compositions like Lillibullero. Has a servant no reason to complain that his allowance is scanty, that he is half naked, and more than half starved, while his less faithful and less loyal fellow-servant is well fed, plump, gay, and clothed in purple and scarlet and fine linen, faring sumptuously every day, upon the spoils of his neighbour? But admitting the former has no right to complain, or utter a single sigh, the forced effect of "submissive fear and mingled rage," I cannot for the heart of me conceive how he "participates of every blessing" of his fellow-servant; unless the gentleman will contend that half a loaf is equal to a whole one, and that *Martin* and *Jack* were really a couple of scoundrels, for denying that the crusts Lord Peter would have palm'd upon them, were very good Banstead-down mutton. That "the colonists do not hold their rights as a privilege granted them, nor enjoy them as a grace and favour bestowed, but possess them as an inherent, indefeasible right," as Mr. H——k——s very justly asserts, is a self-evident proposition, to every one in the least versed in the laws of nature and nations, or but moderately skilled in the common law, except the learned gentleman of Halifax. Even the King's writs are divided into those which the subject hath a right to, *ex debito justitiae*,³ and those which <17> depend upon meer grace and favor. These may be denied,

3. *Ex debito justitiae*: "From a debt of justice."

the others cannot. The essential rights of British colonists stand on the same basis with those of their fellow-subjects of the same rank in any of the three kingdoms.

What the gentleman adds, viz. "that this postulatum of Mr. H——pk——s cannot be true, with regard to political rights," by which he evidently means the peculiar privileges of subordinate powers granted by charter, is (asking his pardon) meer impertinence, and, in a gentleman of his sense, could arise only from a certain set of prejudices having so far blinded him, as to make him confound the ideas of corporate subordinate privileges with essential, natural and civil rights, as is above most abundantly demonstrated, and clearly appears from his own words; (page 10.) "The force of an act of parliament, over the colonies, is *predicated* upon the common law, the origin and basis of all those inherent *rights* and *privileges* which constitute the boast and felicity of a Briton." I wish he had said the justly boasted felicity of a Briton; because, in that case, I should have suspected him of a Filmerian sneer in this place, which jealousy his dogmas elsewhere will justify. The inherent, indefeasible rights of the subject, so much derided and despised in other parts of the performance, are here admitted, in jest or in earnest: I care not which. The origin of those rights is in the law of nature and its author. This law is the grand basis of the com-~~mon~~ law, and of all other municipal laws that are worth a rush. True it is, that every act of parliament, which names the colonies, or describes them as by the words "plantations or dominions," binds them. But this is not so strictly and properly speaking by the common law, as by the law of nature, and by the constitution of a parliament, or sovereign and supreme legislative, in a state. 'Tis as true, that when the colonies are not named or described by an act of parliament, they are not bound by it.

What is the reason of all this? *Qui haeret in litera haeret in cortice*.⁴ Surely the bare naming of the colonies hath no magical charm or force in it. That the colonies should be bound by acts of parliament wherein they are named, is an exception from a general rule or maxim. What is that rule or maxim? It is, that the colonies being separate dominions, and at a distance from the realm, or mother state, and in fact unrepresented in parliament, shall be governed by laws of their own making; and unless named in acts of parliament, shall not be bound by them. *Quia non mittunt milites ad parlamentum*,⁵ says Lord Coke. Yet as a mark of, and to preserve their dependency on, and

4. *Qui haeret in litera haeret in cortice*: "He who clings to the letter, clings to the shell."

5. *Quia non mittunt milites ad parlamentum*: "Because they do not send soldiers to parliament."

subordination to, the mother state, and to prevent *imperium in imperio*,⁶ the greatest of all political solicisms, the mother state justly asserts the right and authority to bind her colonies, where she really thinks the good of the whole requires it; <19> and of this she remains the supreme judge, from whose final determination there is no appeal. The mother state hath also an undoubted right to unite a colony to itself, and wholly to abrogate and annihilate all colony or subordinate legislation and administration, if such alteration shall appear for the best interest of the whole community. But should this be done needlessly and wantonly, and without allowing the colonies a representation, the exercise of the power that would otherwise be just and equitable, would cease to be distinguished by those amiable qualities. Should a mother state even think it reasonable to impose internal, as well as external taxes, on six millions of subjects in their remote dominions, without allowing them one voice, it would be matter of wonder and astonishment: But it could not be said that the supreme legislative had exceeded the bounds of their power and authority; nor would this render a petition undutiful and seditious. Those six millions must, on such an event, unless blind, see themselves reduced to the mortifying condition of meer cyphers and blanks in society. Should all this ever happen to the British colonies, which God forbid, might it not be truly and safely affirmed that the representation in the House of Commons would be very unequal? The right of a supreme power in a state to tax its colonies, is a thing that is clear and evident; and yet the mode of exercising that right may be questionable, in point of reason <20> and equity. It may be thought to be unequal and contrary to sound policy, to exercise the right, clear as it is, without allowing a representation to the colonies. And though a representation would avail the colonies very little in this generation; yet, to posterity, it might be an invaluable blessing. It may also, in future ages, be very beneficial to Great-Britain. Is it to be believed, that when a continent, of 3000 miles in length, shall have more inhabitants than there are in this day in Great-Britain, France and Ireland, perhaps in all Europe; they will be quite content with the bare name of British subjects, and, to the end of time, supinely acquiesce in laws made, as it may happen, against their interest by an assembly 3000 miles beyond sea, and where, should they agree in the sentiments with the Halifax gentleman, it may be thought that an admission of an American member would “sully and defile the purity of the whole body”? One hundred years will give this continent more inhabitants, than there are in the three kingdoms.

6. *Imperium in imperio*: “A government in a government.”

Many great and good men have complained of the inequality of the representation in Great-Britain. This inequality can never be a reason for making it more so; which however is the method of reasoning adopted by the Halifax gentleman. At his rate, it would be just that half the counties and boroughs in Great-Britain, which now return members, should be curtailed of their right. If so, why not half the remainder, and so on 'till the House <21> of Commons will be reduced to a single member, and when he was split, one branch of the legislature would be annihilated. By a like process, the House of Lords, the second branch of the legislature, might be destroyed. This would be a shorter cut to absolute and unlimited monarchy, than ever Filmer was fortunate enough to invent. This brings us to the consideration of the maxim, that "no Englishman can be taxed but by his own consent, in person or by his representative." "This dry maxim, taken in a literal sense, and little understood *like* the song of *Lillibullero*, has made all the mischief in the colonies," says the gentleman; (page 11.) I cannot conceive how this, or any other dry maxim, or the song of *Lillibullero* like it, well or ill understood, can make any mischief in the colonies. What notable harm has the song of *Lillibullero* wrought in the colonies, or what like it has this "dry maxim" effected? "It is (says the gentleman, page 11.) the opinion of the House of Commons, and *may* be considered as a law of parliament, that they are the Representatives of every British subject wheresoever he be." *Festina lente domine!*⁷ This may be true in one sense. The supreme legislative indeed represents the whole society or community, as well the dominions as the realm; and this is the true reason why the dominions are justly bound by such acts of parliament as name them. This is implied in the idea of a supreme sovereign power; and if the parli-<22>ament had not such authority, the colonies would be independent, which none but rebels, fools or madmen, will contend for. God forbid these colonies should ever prove undutiful to their mother country! Whenever such a day shall come, it will be the beginning of a terrible scene. Were these colonies left to themselves, to-morrow, America would be a meer shambles of blood and confusion, before little petty states could be settled. How many millions must perish in building up great empires? How many more must be ruined by their fall? Let any man reflect on the revolutions of government, ancient and modern, and he will think himself happy in being born here in the infancy of these settlements, and from his soul deprecate their once entertaining any sentiments but those of loyalty, patience, meekness and forbearance, under any hardships that in the course of time they may be

7. *Festina lente domine!* "O Lord, make haste, slowly!"

subjected to. These, as far as may be consistent with the character of men and Christians, must be submitted to. If it is the opinion of the present honorable House of Commons, that they in *fact represent* the colonies, it is more than I know. Should this be their opinion, the gentleman may, if he pleases, “consider it is a law of parliament”: But I should rather chuse to consider it only as the very respectable opinion of one branch of the supreme legislative. The opinion of the House of Lords, and then, above all, the sanction of the King’s Majesty must be superadded, and the <23> concurrence of both is absolutely necessary to make any opinion of the House of Commons an act or law of *parliament*. ’Tis humbly conceived, that it was not as representatives in *fact* of the colonies, that the House of Commons granted his Majesty an external tax on the colonies, in the instance of the late act: Nor if before this time an act for granting internal taxes on the colonies should be passed, could I conceive that the House of Commons are our representatives in fact. As one branch of the supreme legislative they have an undoubted right to originate any bills that by naming them shall bind the colonies when passed into an act; let it be for levying internal or external taxes, or for any other regulation that may appear needful: But I cannot find it affirmed or declared in one act of parliament, history or journal of parliamentary proceedings, nor in one English law book, that a British house of Commons are in *fact* the representatives of all the plebian subjects, without as well as within the *realm*. Lord Coke indeed says, that “the House of Commons represent all the commons of *England*, electors and non-electors”; but he no where asserts that the House of Commons in *fact* represent the provincials of Ireland and other dominions out of the *realm*. He says, however, the people of Ireland are not represented in the English parliament and assigns that as the very reason why, in general, acts of parliament are confined to the realm. Though from the neces-<24>sity of the thing, in several cases, by naming them, the provinces are bound. In the *fourth institute*, speaking of the truly high and most honorable court on earth, and never more so than in the present state of the British parliament and nation; his Lordship says, “This court consisteth of the King’s Majesty, sitting there as in his royal political capacity, and of the three estates of the *realm*; viz. of the Lords Spiritual, Archbishops and Bishops, being in number 24, who sit there by succession in respect of their counties, or baronies, parcel of their bishopricks, which they hold also in their politic capacity; and every one of these, when any parliament is to be holden, ought, *ex debito justitiae*, to have a summons. The Lords Temporal, Dukes, Marquisses, Earls, Viscounts and Barons, who sit there by reason of their dignities, which they hold by descent or creation, in number at this time 106, and likewise every one of these being of full age, ought to have a writ of summons *ex debito justitiae*.”

The third estate is the *commons* of the *realm*, whereof there be knights of shires or counties, citizens of cities, and burgesses of burghs. All which are respectively elected by the shires or counties, cities and burghs, by force of the King's writ, *ex debito justitiæ*, and none of them ought to be omitted; and *these represent all the commons of the whole realm, and trusted for them, and are in number at this time 493.*"—4. Inst. 1.

<25> Here is not one word of the House of Commons representing or being trusted by or for the provincials of Ireland, or the colonists in America. And though, in page 4 of the same Institute, he says, "*in many cases multitudes are bound by acts of parliament which are not parties to the election of knights citizens, and burgesses, as all they that have no freehold, or have freehold in ancient demesne, and all women having freehold or no freehold, and men within the age of twenty-one years &c.*"—This, & may be supplied with female infants, lunatics, ideots and bedlamites in general. Yet this will not prove that these non-electors are in *fact* represented, and in *fact* trust the representatives in the House of Commons. In estimation of law they are justly deemed as represented. They have all fathers, brothers, friends or neighbours in the House of Commons, and many *ladies* have husbands there. Few of the members have any of these endearing ties to America. We are, as to any personal knowledge they have of us, as perfect strangers to most of them, as the savages in *California*. But, according to our letter-writer, we are not only in *law* but in *deed* represented in the House of Commons. How does he support this? Why he has dreamt, that some one House of Commons, in some former reign, once thought they were in *fact* our representatives. That "the opinion of a House of Commons is a law of parliament": Therefore "'tis determined by act of parli-
<26>ament, that we are, and shall believe we are in *fact* represented in the House of Commons." Here is more logic. Suppose some future House of Commons should be of opinion, that they were the true and proper representatives of all the common people upon the globe, would that make them so, and oblige all mankind to believe and submit to it? Would a fiction of the common law of England satisfy the innumerable multitudes on the face of the earth, that they were in *fact* represented, and consenting to all such taxes and tributes as might be demanded of them? Will any man's calling himself my agent, representative or trustee, make him so in fact? At this rate a House of Commons in one of the colonies have but to conceive an opinion that they represent all the common people of Great-Britain, and according to our author they would in *fact* represent them, and have a right to tax them. 'Tis strange the gentleman can see no difference between a literal sense of a fundamental principle or "dry Maxim" as he calls it and no sense at all. Does it follow, because it is "impracticable that each

individual should be in *fact* represented,” that therefore there should be no representation at all, or a very unequal one? Because the little insignificant isles of Jersey, Guernsey, and Man, have never obtained a representation, is it reasonable knowledge that the whole kingdom of Ireland and the plantations should be for ever excluded <27> from returning members to the British parliament, even should the parliament impose external and internal taxes on them, and take from them every subordinate power of local legislation? If this would be equal and rational, why might not Wales have been excluded from returning members, why may they not be excluded now, and Devonshire and Cornwall, and every other county and borough share the same fate? Matter of fact is one thing, matter of right another. The people of a state may in *fact* be very unequally represented; but few men would, like our author, in effect contend that it were best they should not be represented at all. Has the gentleman forgot the maxim, “that equity is equality”? ’Tis hoped he will not consider this as a levelling principle, as it has been more than once called. How astonishing is it, that the instances (page 12) of the unequal representation in Great-Britain, to which he might have added, those of “ten Cornish barns, and an ale-house,” should be brought as an argument to prove, that “the right of being represented in parliament” is “an *Utopian privilege*,” a “phantom,” a “cloud in the shape of Juno”? This is far from a fine compliment to the honourable House of Commons, of which as one of the branches of the supreme legislative, and of the privilege of sitting with them, it would have been more decent to have made a different choice of expressions. To atone for this indelicacy, the <28> next moment the pendulum vibrated as far the other way.

In page 13 the parliament is represented as so pure and perfect, that “*the beauty and symmetry of this body would be destroyed, and its purity defiled by the unnatural mixture of representatives from every part of the British dominions.*” “Parthians, Medes, Elamites, and the dwellers of Mesopotamia, &c. *would not, in such a case, speak the same language.*” “What a heterogeneous council would this form?” “What a monster in government would it be?” Let me add, was ever insolence equal to this? Are the inhabitants of British America all a parcel of transported thieves, robbers and rebels, or descended from such? Are the colonists blasted lepers, whose company would infect the whole House of Commons? There are some in the colonies who value themselves on their descent. We have the names of *Tudor* and of *Stuart*, of *Howard*, *Seymour*, and of *Russell*; who boast an unsullied descent from our ancient princes and nobles, or at least claim the honor of being of the same blood. Can none of these be returned as members without breeding a plague in the house. If this writer is an European, his insults upon the British colonies are quite unpardonable; if he be a native, he is an ungrateful parricide. Is he a

venal hireling of a party? his employers on either side the Atlantic should discard him as a meer Sir Martyn Marplot. Depend upon <29> it, one such letter as his, if known to breathe the sentiments of the great, would tend more to disgust the colonies against the conduct of their superiors, than a hundred thousand such pamphlets as the author scolds at. Parliaments are not only "as ancient as our Saxon ancestors," but as old as the commonwealths of Israel, Greece and Rome;* nay, as old as the first compact for changing a simple democracy into any other form of government. "Attendance in parliament" is not therefore, as the gentleman conceives, a "duty arising from a tenure of lands, or the feudal system," but from the nature of man, of society, and of all original, just, social and civil compacts for forming a state. "So that the privilege of sitting in it, i.e. in a parliament or grand council of a nation, is not 'territorial,' in the sense of the letter-writer, nor in its nature confined to Great-Britain." What is there, what can be there, that should naturally and necessarily confine the privilege of returning members, to the inhabitants of Great-Britain, more than to those of London and Westminster?

The gentleman (p. 14) says, "the parliament may levy internal taxes, as well as regulate trade, there is no essential difference." By regulating trade, I suppose he means, according to the common sophism, taxing trade. Even in this sense, 'tis admitted the parliament have the same right to levy internal taxes on the colonies, as to regulate trade; and that the right of levying both, is undoubtedly in the parliament. Yet 'tis humbly conceived and hoped, that before the authority is fully exerted in either case, it will be thought to be reasonable and equitable, that the dominions should be in *fact* represented. Else it will follow, that the provincials in Europe, Asia, Africa and America, ought to all generations to content themselves with having no more share, weight, or influence, even in the provincial government of their respective countries, than the Hotentots have in that of China, or the Ethiopians in that of Great-Britain.

I should be glad to know how the gentleman came by his assurance, that "a stamp-duty is confessedly the most reasonable and equitable that can be devised." (p. 14) Some few may be of this opinion, and there never was a new invented tax or excise, but its favorers and partizans would highly extol, as the most just and equitable device imaginable. This is a trite game "at ways and means." But bold assertions will not pass for clear proofs, with "philosophically inquisitive minds." "If the shaft is sped," and the aim so good, I wonder the gentleman should even faintly pretend to "desire not to see a stamp-duty established among us," or "wish to prevent the blow." Were I

* 4. Inst. 2, 3.

convinced, as he is, that it is reasonable and best that the colonies should be taxed by parliament, without being allowed a representation; and that it is become not only necessary to levy internal taxes on them; but that the art of man could not devise so equitable and reasonable a tax as a stamp-duty; I should heartily pray for its establishment.

The gentleman nowhere discovers his temper more plainly than in his comparison of Greece and Rome, in their conduct towards their colonies. 'Tis well known the Grecians were kind, humane, just and generous towards theirs. 'Tis as notorious that the Romans were severe, cruel, brutal and barbarous towards theirs. I have ever pleased myself in thinking that Great-Britain, since the Revolution, might be justly compared to Greece, in its care and protection of its colonies. I also imagined that the French and Spaniards followed the Roman example. But our letter-writer tells us quite a different story. He compliments the nation, and comforts the colonies by declaring that these "exactly resemble those of Rome." "The *Roman Coloniae*," says he, "did not enjoy all the rights of Roman citizens." "They only *used* the Roman laws and religion, and served in their legions; but had no right of suffrage, or bearing honours." "In these respects, adds he, our English colonies exactly resemble them." "We enjoy the English laws and religion, but not the right of suffrage, or of bearing honours in Great-Britain."

<32> Is this enjoying the rights, liberties and privileges of British-born subjects within the realm, to all intents, constructions and purposes? I find all this confirmed to the colonists, not only by the common law, and by their charters, but by act of parliament. Where does the gentleman find it decreed that the British "*Coloniae*" "have no right of bearing honours in Great-Britain?" Has not the King's majesty, the fountain of honour, an undoubted right by his prerogative, to confer any rank he may be graciously pleased to bestow on his American subjects, as well as on those in Great-Britain? Cannot the word of a King as easily make even a Halifaxian letter-writer, or his Rhode-Island friend, a knight of the garter or thistle, as if either of them had been dropped and drawn their first breath in one of the three kingdoms?

The gentleman may in his anger wish for the laws of "Draco to be enforced on America," and, in his fierce anger, for the "iron rod of a Spanish inquisitor." These may be sudden gusts of passion, without malice prepence, that only hurts his cause, and which his employers will not thank him for. But hard, very hard, must his heart be, who could employ all his stock of learning in a deliberate attempt to reduce the rights of the colonists to the narrow bound of a bare permission, to "use the English laws and religion without a suffrage in things sacred or civil, and without a right to bear honours in Great-Bri-<33>tain," "except that of being shot at for sixpence a day,

in her armies at home, as well as abroad." What is the English religion? Pray wherein does it differ from that of Scotland, Ireland, and the plantations? If it differs, and the colonies are obliged to *use* the religion of the metropolis, on her embracing paganism, so must the colonies. Since the Revolution, all dissenters, both at home and abroad, papists only excepted, have enjoyed a free and generous toleration. Would the gentleman deprive all protestants dissenters of this invaluable blessing? If he is an American by birth, what does he deserve of his country for attempting to realize, to this and to all future generations, the dreary prospect of confinement to the use of the laws and religion of a region 3000 miles beyond sea, in framing which laws, and in forming the modes of which religion, they shall have no voice nor suffrage; nor shall they have any preferment in church or state, tho' they shall be taxed, without their consent, to the support of both?

—— — aes triplex
Circa pectus erat.⁸ ——

The gentleman hath been at great pains in order to represent the merchants of America as a parcel of infamous smugglers. He says, "smuggling had well nigh become established in some of the colonies." 'Tis notoriously known who have been the great abettors and patrons of smugglers, and who have shared the greatest parts of the profits. All the riot <34> at Ephesus proceeded from certain collectors of the revenues of Diana of the Ephesians; the shrine-makers and silver-smiths were but their tools. The craft was in danger, but if it had been only that of Demetrius and his journeymen, we might not have heard of that day's uproar. 'Tis a very unjust aspersion to charge the American merchants, in general, with a design to elude and evade the acts of trade. I cannot so well tell how matters have been managed at Halifax or Rhode-Island; but in some other colonies, only a few favorites have been indulged in the lucrative crime of smuggling, which, after an eminent writer, the gentleman calls a crime "against the law of nature"; 'tis a wonder it had not been recorded from some old commentator, *crimen lesae Majestatis*,⁹ *high treason*. The like indulgence, as far as I can learn, has, in Rhode-Island, been confined also to a few choice friends. The article of Melasses is every where to be excepted. It was known at home, that the importation of this was universally tolerated, paying about one tenth of the duties imposed by the old act. The connivance became very general.

8. Aes triplex / Circa pectus erat: "Three-fold bronze was around [his] heart."

9. *Crimen lesae Majestatis*: "The crime of harming the majesty."

I have perused Mr. H——k——s' book over and over, but cannot find the least reflection on Dr. Spry, nor do I think any was intended. The Doctor perhaps may thank the gentleman for bringing his name into question; but I doubt, notwithstanding the gentleman's assertions to the contrary, whether the Doctor's "appoint-^{<35>}ments place him above any kind of influence." I believe he is under the influence of honor and conscience, a clear head, and a good heart, all which the gentleman seems too much a stranger to: And should the Doctor also be under that the influence, which flows from a general aversion, and contempt of flattery and falsehood, he must conceive an opinion of his Halifax neighbour, that will be very mortifying to one who hopes to make his court to the great, and to the Doctor among the rest, by abusing the colonies. The Doctor hath been in America some months, but I have not heard of one cause that has been tried before him. This is tolerable proof, either that smuggling was not so common a thing as the letter-writer asserts, or that those who used to be concerned in it, are reformed. I think it proves both.

In the 21st, and last page but one of the letter, the gentleman bethought himself, and having in a manner finished his epistle, makes an apology for not following Mr. H——k——s "with somewhat more of method." His excuse is, that "Mr. H——k——s hath not divided his argument with precision." He then formally proceeds to a curious, and, as he doubtless thought, precise division of the argument. "The dispute, says he, between Great-Britain and the colonies, consists of two parts. First, the jurisdiction of parliament: And secondly, the exercise of that jurisdiction: His Honour has blended these together, and no where marked the division between them. ^{<36>} The first I have principally remarked upon." I know of no dispute between Great-Britain and her colonies. Who is so hardy as to dispute the Jurisdiction of the Parliament? But were there a thousand disputes between Great-Britain and the colonies; if the colonists in general were as the letter-writer represents them, "a simple, credulous, and hitherto loyal people," in danger of "having their minds embittered, and their affections alienated from Great-Britain, by a few pamphlets": And if "from the pride of some, and ignorance of others, the cry against mother country has spread from colony to colony, and it were to be feared that prejudices and resentments were kindled among them, which it would be difficult ever thoroughly to sooth or extinguish"; all which insinuations are however very injurious; what would this prove against "The Rights of Colonies examined," or any other of the pamphlets that have been lately published in America? Mr. H——k——s, pages 10 and 11 of his book, speaking of the general concerns of the whole British empire, saith, "These, it is absolutely necessary, should have a general power to direct them; some supreme and over-ruling authority, with power to make laws,

and form regulations for the good of all, and to compel their execution and observation. It being necessary some such general power should exist somewhere, every man of the least knowledge of the British constitution, will be naturally led to look for, and find it in the parliament of Great-Britain; that grand and august legislative body must, from the nature of their authority, and the necessity of the thing, be justly vested with this power." Is not this a very clear admission and acknowledgment of the jurisdiction, power, and authority of parliament over the colonies? What could put it into the gentleman's head to think the jurisdiction of the parliament was a matter in dispute? I have perused a pamphlet published in Connecticut relating to their rights! but can find no question made of the jurisdiction of the parliament. "The Rights of the British Colonies asserted and proved," I have also read. This was published before either Mr. H——k——s, or that from Connecticut. These, so far as I can find, are all the pamphlets that have been published in America, upon the proposed new regulations of the colonies. From the knowledge I have of the sentiments of the "head of the *tribunitian veto*," as the gentleman is pleased to describe him, I take upon me to declare, that I have heard him in the most public manner declare his submission to the authority of parliament; and that from his soul he detests and abhors the thought of making a question of their jurisdiction.

The following passages from "The Rights of the British Colonies asserted and proved," may serve to shew how careful a hand the Halifax gentleman is at a matter of fact.

<38> "I also lay it down as one of the first principles from whence I intend to deduce the civil rights of the British colonies, that all of them are subject to, and dependent on, Great-Britain; and that therefore, as over subordinate governments, the parliament of Great-Britain has an undoubted power and lawful authority to make acts for the general good, that by naming them, shall and ought to be equally binding, as upon the subjects of Great-Britain within the realm." "When the parliament shall think fit to allow the colonists a representation in the House of Commons, the equity of their taxing the colonies will be as clear as their power is at present of doing it without, if they please." "No such claim (i.e. of an independent legislative) was ever thought of by the colonists. They are all better men and better subjects; and many of them too well versed in the laws of nature and nations, and the law and constitution of Great-Britain, to think they have a right to more than a *provincial subordinate legislative*. All power is of GOD. Next and only subordinate to him, in the present state of the well-formed, beautiful constructed British monarchy, standing where I hope it ever will stand, for the pillars are fixed in judgment, righteousness and truth, is the King and Parliament." "From all which, it

seems plain, that the reason why Ireland and the plantations are not bound unless named by an act of parliament, is, <39> because they are *not represented* in the British parliament. Yet, in special cases, the British parliament has an undoubted right, as well as power, to bind both by their acts. But whether this can be extended to an indefinite taxation of both, is the great question. I conceive the spirit of the British constitution must make an exception of all taxes, until it is thought fit to unite a dominion to the realm. Such taxation must be considered either as uniting the dominions to the realm, or disfranchising them. If they are united, they will be intitled to a representation, as well as Wales: If they are so taxed without a union, or representation, they are so far disfranchised.” “The sum of my argument is, That civil government is of God: That the administrators of it were originally the whole people: That they might have devolved it on whom they pleased: That this devolution is fiduciary, for the good of the whole: That by the British constitution, this devolution is on the King, Lords and Commons, the supreme, sacred and uncontrollable legislative power, not only in the realm, but thro’ the dominions: That by the Abdication, the original compact was broken to pieces. That by the Revolution, it was renewed, and more firmly established, and the rights and liberties of the subject, in all parts of the dominions, more fully explained and confirmed: That in consequence of this establishment, and the acts of succession and union, his Majesty George III. <40> is rightful king and sovereign, and, with his parliament, the supreme legislative of Great-Britain, France and Ireland, and the dominions thereto belonging: That this constitution is the most free one, and by far the best, now existing on earth: That by this constitution, every man in the dominions is a free man: That no part of his Majesty’s dominions can be taxed without their consent: That every part has a right to be represented in the supreme or some subordinate legislature: That the refusal of this, would seem to be a contradiction in practice to the theory of the constitution: That the colonies are subordinate dominions, and are now in such a state, as to make it best for the good of the whole, that they should not only be continued in the enjoyment of subordinate legislation, but be also represented, in some proportion to their number and estates, in the grand legislature of the nation: That this would firmly unite all parts of the British empire in the greatest peace and prosperity, and render it invulnerable and perpetual.” *Rights of the British colonies asserted and proved*, pages 32, 48, 59, 61, 64. Can the gentleman read these passages, and say they imply any question of the power and authority of parliament? Will he not blush, when he reflects, that he hath indiscriminately asserted, that these pamphlets “have a tendency to embitter the minds of a simple, credulous and hitherto loyal people, and to alienate their <41> affections from Great-Britain, their best

friend and *alma mater*”? Can terms expressive of greater loyalty or submission to the jurisdiction and authority of parliament be conceived, than many that are to be found in those pamphlets? Yet the gentleman has the effrontery to talk of the “frequent abuse poured forth in pamphlets against the mother country,” and laments that before his “not one filial pen in America had been drawn in her vindication.” How grand we look! Are not his dragoons enough, but he must fight with his pen too? I believe he must be a man of parlous courage; yet he is modest withal. He says he has “no ambition of appearing in print,” though he is the only loyal subject his Majesty has in his American dominions, and master of the only filial pen worth a button. If this is true, well might he call his countrymen a parcel of scoundrels, rebels, smugglers and traitors. I shall take leave of my gentleman, by desiring him to reflect, in his cooler hours, and well consider what would soon be his fate, if the Americans should treat him as he most richly deserves.

*I too have seen, in all the pride of May,
A flaunting sing-song genius toujours gay,
Whose life was one short senseless pretty dream,
Frisk on the margin of a mighty stream,
Till circling dances seize his tender brain:
He falls! he dies! alas a calf is slain!** <42>

POSTSCRIPT

Since the above sheets were finished, two or three pieces have been published in the Providence Gazette. The first of these hath furnished us with a clear and concise account of the several principal reasonings and arguments upon the subject of internal taxes to be imposed on the colonies by parliament, while they are unrepresented in the House of Commons. The sum is,

1. That it is the incontestible right of the subject in Great-Britain, not to be taxed out of parliament; and every subject within the realm is in fact or in law represented there.

* “*Narcissus*, in contemplating his own image, was turned into a daffodil. Who can think of this, and feel no pity for the pride and weakness of *man that is born of woman*?”

So have I seen, on some bright summer's day,
A calf of genius debonnair and gay,
Dance on the brink, as if inspired by fame,
Fond of the pretty fellow in the stream.

Four lines of Dr. Young, very modestly applied to Governor H——k——s, in the 5th page of the Letter from Halifax, as above cited, with the Allusion to *Narcissus*.

2. The British colonists being British subjects, are to all intents and purposes intitled to the rights, liberties and privileges of the subjects within the realm, and ought to be represented, in fact as well as in law, in the supreme or some subordinate legislature, where they are taxed; else they will be deprived of one of the most essential rights of a British subject, <43> namely, that of being free from all taxes, but such as he shall, by himself or representative, grant and assess.

3. As the colonies have been erected into subordinate dominions, with subordinate powers of legislation; particularly that of levying taxes for the support of their respective subordinate governments, and at their own expence; have not only supported the civil provincial administration, but many of them have, to their utmost ability, contributed both in men and money for the common cause, as well as for their more immediate defence against his Majesty's enemies, it should seem very hard that they should be taxed also by parliament, and that before they are allowed a representation in fact, and while they are quite unable to pay such additional taxes.

4. The immense commercial advantages resulting to Great-Britain from her plantations, the revenue thence arising to the crown, the taxes we pay by the consumption of an infinity of British manufactures, may be thought a reasonable return for the protection received, as 'tis really all that at present is in our power to yield.

5. If the colonies could and ought to yield greater aids towards the national expence, yet it should seem but reasonable either to allow them, 1. To raise such further sums as may be required, by taxing themselves in the most easy way and manner their several provincial legislatures could devise. Or, 2. at least to <44> allow them a representation in the House of Commons. This, with some animadversions on the present state of commerce, with the extension and enlargement of the admiralty jurisdiction in America, is the substance of all that has so much incensed the Halifax gentleman. Governor H——k——s hath no where said that "the colonies have rights independent of, and not controulable by, the authority of parliament."

See Providence Gazette, Feb. 16.

According to the gentleman, "it will follow that we may enjoy *personal* liberty, and yet be slaves in a *political sense*; and so, *vice versa*, we may be *personally slaves*, and yet have a political right to liberty. Life, liberty and estate being personal rights, are (by the gentleman admitted to be) secured to us by the common law. I do not remember to have heard that the colonies ever contended for more; and yet (by this personal and political distinction) our estates may be taken away from us against our consent, without any violation of our personal right; and all this for want of a *political* right."

<45> *Providence Gazette, Feb. 16, 1765.*

“The gentleman confidently maintains that acts of parliament derive their force from the common law; and for that reason he says, they are obligatory on the colonies. I ask him, how it is possible that the parliamentary power, which controuls, alters and amends the common law at will, can derive its support from the common law?”

Providence Gazette, February 23

The power and authority of parliament is from the constitution, and above all other laws, but those of God and nature.

“There may be a natural relation between two subjects that exist by nature; but mother country and colony exist only by policy, and may, and no doubt have a political relation to each other; but can have no natural one.”

Providence Gazette, March 2.

This remark is ingenious, and the manner in which 'tis elucidated is diverting; but I fear 'tis not solid. There is nonsense and contradiction enough of all conscience in the Halifax gentleman's attempt to investigate the “natural relation between colonies and their mother state,” without denying the existence of such a relation. Our allegiance is natural, and if this be admitted of each individual in a colony, as it must be, it would be strange to deny a natural relation between two whole bodies, between all the respective parts of which a natural relation is admitted. Society is certainly natural, and exists prior to, and independent of any form of civil policy, always excepting family societies and simple democracies. As there is a natural relation between father and son, so is there between their two families; and so is there between a mother-state or metropolis, and its colonies. The natural relation between two independent states or societies, is the basis of the law of nations; and all its obligations are thence deducible. It would be strange that a natural relation should subsist between two neighbouring states, and none be between a metropolis and a colony. I can see no absurdity in supposing both natural and political relations to subsist between a mother state and its colonies, any more than supposing two qualities in one and the same subject. The same man may be choleric and humane, another is calm and inveterate. The same two men may be father and son, fellow-men, fellow-subjects, fellow-citizens, and brother-aldermen. Political relations are but modifications of those which are founded in nature, and from whence rise duties of universal obligation.

I cannot suppress all my indignation at a remark in the close of the Halifax letter, which should have been taken notice of before, but it escaped me. “It may become necessary for the supreme legislature of the nation to frame some code, (and canons might have been as properly added) and therein adjust the rights of the colonies with precision and certainty, otherwise

Great-Britain will always be teased with new claims about liberty and privileges." Page 22.

If I mistake not, there is, in the air of this period, the quintessence of a meer martial legislator; the insolence of a haughty and imperious minister; the indolence and half thought of a petit maitre; the flutter of a coxcomb; the pedantry of a quack, and the nonsense of a pettifogger. A strange galli-
<47>maufry this: but I am not answerable for it, or for any other of the exhibitions of a monster monger. We want no foreign codes, nor canons here. The common law is our birth-right; and the rights and privileges confirmed and secured to us by the British constitution, and by act of parliament, are our best inheritance. Codes, pandects, novels, decretals of Popes, and the inventions of the D—I, may suit the cold bleak regions of Brandenburg and Prussia, or the scorching heats of Jamaica or Gambia; but we live in a more temperate climate, and shall rest content with the laws, customs and usages of our ancestors, bravely supported and defended with the monarchy, and from age to age handed down. These have, and ever will finally triumph over the whims of political and religious Enthusiasts; the extremes of which are libertinism and despotism, anarchy and tyranny, spiritual and temporal from all which may God ever preserve us. I must recommend it to the Halifax gentleman, before he publishes any more epistles, diligently to read over Swift's *Tale of a Tub*, and to take special note of Lord Peter's method of reasoning with his brethren. He will there find all the forms of syllogism, from the *sorites* to the categoric. Of the last form, he will find this, to prove that a little learning puffeth little men up.

"Words are but wind,
Learning is nothing but words,
Ergo. Learning is nothing but wind."

<48> Of the former kind of argumentation, he will find a species he seems to be peculiarly fond of.

"In the midst of all this clutter and revolution, in comes Lord Peter, with a file of dragoons at his heels, and gathering from all hands what was in the wind, he and his gang, after several millions of scurrilities and curses not very important here to repeat, by main force, very fairly kicks them (Martin and Jack) both out of doors, and would never let them come under his roof, from that day to this."

Tale of a Tub. p. 79. 104.

FINIS

3. *Brief Remarks on the Defence of the Halifax Libel on the
British-American-Colonies*

Brief
REMARKS
ON THE
DEFENCE
OF THE
Halifax LIBEL,
ON THE
British-AMERICAN-COLONIES.

*Ita et tibi jurisconsultus ipse per se nihil, nisi leguleius
quidam cautus et acutus, praeco actionum, cantor
formularum, auceps fabularum.*¹

CIC. DE ORATORE. I. LV.

BOSTON:
Printed and Sold by EDES and GILL, in Queen-
Street, M,DCC,LXV. <3>

1. *Ita et tibi jurisconsultus ipse per se nihil, nisi leguleius / quidam cautus et acutus, praeco actionum, / cantor formularum, auceps fabularum* [sic: syllabarum]: “So a lawyer in himself is nothing to you except a pettifogger, careful, sharpened and ready, a crier of actions, an extoller of formulas, a minute and trifling critic.”

Otis freely translates this passage at the end of this essay: “And so my Lord Editor, you think a learned lawyer is in himself nothing, unless to compleat and give the last polish to his education, and fit him for practice and accumulation, he is properly taught to become all things to all men and women too. He must, according to you, be a fine gentleman, a sly, artful petty-fogger, fraught with a good stock of low-cunning and brass, a master of grimace, a spouter of plays, a brawler of forms, with a voice fit for the common cryer of a court, *adeptus veré*, at repeating mass mattins and other musty formularies: To crown all, he should be a delicate chanter of *Lillibullero*, and other songs ancient and modern” (pp. 233–34).

Brief REMARKS, &c.

The author of the Halifax letter, who now affects to call himself only the editor, begins his defence with “a serene and composed survey of a storm, taken in a calm, after the tumult of the waves had subsided.” This is a specimen of the methodical disposition of his ideas, and of the regularity and clearness of his modes of thinking. He gives us a flourish on the “blood and immense treasure of her subjects that Great-Britain has lavished for the security of the colonies, as well as her own importance and dignity.” Were none of those subjects Americans? Was no part of those immense sums raised by the northern colonies? It is acknowledged with gratitude, and hath very generally impressed the deepest sentiments of duty and loyalty, that his present and late Majesty, with their respective parliaments, were graciously pleased to give the colonies far greater protection, support and encouragement, than had ever been received from all the Princes their royal predecessors together. But our notable editor should not have forgotten that these colonies ever distinguished themselves by the most unbounded loyalty. Their inviolable attachment to the present establishment in his Majesty’s illustrious family; their love to the British constitution and government, from which, under God, they derive their greatest happiness, have been, at all times, acknowledged by some of the most inveterate of their enemies. That the northern colonies on the continent have ever exerted their most strenuous efforts in the common cause of the whole empire, will not be denied but by those who are fearless of ridicule, and intirely lost to any sense of honor or shame. I will also venture to affirm, they will be ever found ready on any future occasion, to convince those of their mistakes, who may entertain any kind of doubt of their loyalty. I believe there were few so terrified and alarmed even in these dark and gloomy days of the American commanders preceding an Amherst, a Wolfe and a Monkton, as to have “gladly compounded for a barrier at Albany.” It was easy to foresee that a change of Generals would bring on so essential a change of measures, as at least, to secure his Majesty’s ancient territories. The event of things happily proved this, and a great deal more. I remember those days, and own I was one who was greatly terrified and alarmed at the rapid progress the French were suffered to make, while ten thousand of the best troops in the world were kept parading at Halifax, and spent the summer in mock-battles and sieges. If the editor then had his residence there, I presume he was well pleased to see the British forces so wisely employed, while the Canadians were bringing fire and sword into the bowels of the continent. I am pretty certain, he and all those of his stamp in America, would have been grieved at an Albany barrier, for this plain reason;

they were in hopes to join in chanting *Te Deum* with their French Catholic Brethren in the churches, chapels and meeting-houses of Boston, New-York and Newport. Upon all occasions, during the war, they manifested their joy and exultation at any little success of the French—<5>but kept vigils and severe fasts when they were drubbed. The Halifaxian is at this time very intimate with a set of gentry who are in combination to vilify the colonies, and depreciate every service they have rendered the crown. He is at no loss any ev'ning to find some *of his old gang*, who, if fame speaks true, as I believe she does for once, have crack'd many a bottle of true sterling to the health of J——m——y S——t, as these pretty lads call him when they are about half seas over, and imagine themselves out of danger. Such is the little, dirty, drinking, drabbing, contaminated knot of thieves, beggars and transports, or the worthy descendents of such, collected from the four winds of the earth, and made up of Turks, Jews and other Infidels, with a few renegado Christians & Catholics, and altogether formed into a club of scarce a dozen, at N——p——t. From hence proceed Halifax-letters, petitions to alter the colony forms of government, libels upon all good colonists and subjects, and every evil work that can enter into the heart of man. These are some of the gentry, who all of a sudden are become the most loyal subjects in America; and have had the impudence to attempt to persuade all England that the rest of the colonists are as great rebels as ever appeared in arms for the Pretender, not excepting those choice friends, of, that learned apothecary and barber-surgeon of a man of war Dr. Small-brain, the lying historiographer, of the first expedition to Louisbourg, whom he has bro't the *beau monde*² to call the *insurgents* of 1745. Our editor and his adherents, have from time to time, in the Newport Mercury and elsewhere *sub rosa*³ talked pretty loudly of “dragooning the colonists into better manners,” and said, “G——d d——m their blood, they shall soon see the difference between martial and <6> civil law: between the common law, and the ecclesiastical canons.” “They deserve to have all their laws written Draco and D——l-like in human gore.” “The hand of a Spanish inquisitor is far too light a punishment for Fanaticks.”* “I hope,” said one of the most mild and serene of them, laying down his flute, his fiddle and his Pilpay, “to see the time, grant it may soon come ye gods whom we all adore, when it shall be decreed meritorious to burn a rackoon-box, and kill a skunk.” These are two cant terms of the *junto*

2. *Beau monde*: “High society.”

3. *Sub rosa*: “In confidence.”

* See Halifax letter *per tot* Newport Mercury *sparsim*, and the Memoirs of the club *passim*, drawn up by that *mawgazeen* of knowledge Dr. Mumchance.

for meeting-houses and protestant dissenters. "A man," says another, "who would not fight for high-church and the hierarchy, sooner than for monarchy or a monarch, except one *Juris divini*,⁴ is no good subject or christian."

So M——rt——n, so, so, O M——rt——n, O, fie for Shame!
 Dear B——bb——y dear, sweet M——ffy sweet, you're all
 to blame.
 Thrice fifty more of their bright sayings could I tell;
 Strong stinking of the lambent flames of H——ll.*

I should not have thought the above vain threats worth citing, but as they show what a blessed advocate any administration hath in the editor and his *junto*. What an opinion should we have of our superiors, if, which God forbid, it were to be formed from what we know of these wretches? Should the editor think it against the laws of Polemicks to apply to him, or the Halifax letter-writer, who chose to be anonymous, even what I know hath been said by divers of the *junto*, let him recollect that the same editor in the defence of the letter, hath not only <7> made the writer of the vindication of the colonies answerable for every thing that hath been thought, spoken, written, printed or published in America, *anticatholicon*⁵ for several years past. He hath without sufficient authority, affirmed, that the author of the *Rights of the British colonies asserted and proved*, and the writer of their *Vindication* against the editor's foul aspersions, is the same person. This, if true, he did not know, and therefore *in foro conscientiae*⁶ approximates to leeing-making. Does this show his humane and serenely sweet disposition of avoiding any thing that looks like a personal contest. He certainly must be lost to all sense of honor, or when he was not only treated like a gentleman, but with infinitely more lenity than he deserved, and nothing said that could be called naming him, he would not have used this expression, "The rights of the British colonies asserted, of which this Boston writer was the author." This is certainly equivalent to naming who he thinks the writer of the *Vindication*, as the author of the *Rights* asserted gave his name to the public. Not content with this, he has made the writer of the *Vindication* answerable for pieces which he declares he never saw, 'till he read them in the defence. He has made him intimate with gentlemen he never heard of, and confederate with writers he never guessed at. The writer of the *Vindication* has more than once said

4. *Juris divini*: "Divine right" or "divine law."

* Balance for "so J——m——y, so, so," &c. cited from some of the dull dogs in the Boston Newspaper.

5. *Anticatholicon*: "anti-panacea; anti-cureall."

6. *In foro conscientiae*: "Before the tribunal of conscience."

in my hearing, "that he knows not any more than the dead who that Providence writer" is, but he believes him to be a match for all the Jacobites & Jew-jobbers in Newport.

With regard to the present subject, I solemnly declare, and defy the Editor to prove the contrary, and I have heard the author of the Rights of the British colonies asserted, say as much, I never was <8> directly nor indirectly concerned in, or knowing to the composing or publishing of one pamphlet or other piece, by the Editor cited, or any other, except the Rights of the Colonies asserted, and the Vindication, of which I own I was the publisher, and the author of the first is well known; and if there is any thing offensive in either, I am heartily sorry, and am well assured the author never intended any such thing, and has given me authority in his name, humbly to ask pardon for the least iota that may have displeased his superiors, humbly imploring as he at first expressed his diffidence of himself, that they would candidly impute any slip to the "agony of his heart, rather than to the pravity of his will." I as much disapprove of many things that have been published, as the Editor pretends to. But in a point of such importance, and in regulations at least new, is it to be wondered at, that there should be some diversity of sentiments? Should any imprudencies have escaped any, all "candid Philanthropes," but such as the Editor, will make benevolent allowances for, those who have been born and bred in the wilds of America, and have had little opportunity to learn the European urbanity and manners, unless they could take them from a few strollers, straggling pedlars & transports, which were the principal school-masters of politeness the letter writer conversed with before the late war, since the opening of which, many fine gentlemen have visited the colonies. As the country becomes polished, I hope it will grow in virtue and good manners, & avoid the least appearance of any thing that may offend. The colonies have been long indulged with a more ample subordinate legislation, than the wisdom of administration thinks the good of the whole Empire will admit of their enjoying any longer. Indepen- <9> dency on Great-Britain was never tho't of, much less wished for or desired. During the last war, his late and present Majesty were graciously pleased to avail themselves of all the aids in the power of their loyal subjects the northern colonists, by the royal requisitions signified by their respective ministers of state, to the several provincial assemblies. In consequence of these, and of our lives and fortunes being ever devoted to their Majesty's service, men from time to time were chearfully raised, and monies granted by the provincial representatives of the people, who in reflecting on the honour and happiness of being enabled to serve their King & country in this way, had also the pleasure of contemplating their own importance in society.—No disagreeable sentiment this, even

to the “good and virtuous men” of the Editor’s acquaintance, if *many* such there are. The business of the provincial assemblies for the future, will probably be confined to the “little low local affairs of their petty corporations,” as they are considered by the Editor. A very great friend of the colonies, as he is pleased to style himself, in a late M. Gazette, has carried the matter so far, as to say in effect, that the American colonies are of no more importance, than the most insignificant settlements on the coast of Africa.—That the inhabitants of Cape-Coast-Castle, who may not consist of more than a captain, two subalterns, fifty non-commission officers and privates, ten strumpets and their brats, have as much pretence to hope to be indulged with returning members of parliament, as all N. America, which has at this present writing, nearly as many inhabitants as there are in Scotland or Ireland, more than three millions of which are whites, and as great a proportion of them, as in any part of the British empire, without any reflection, <10> true and loyal subjects, who fear God, honour the King, reverence his parliament, and daily pray for the prosperity of Great-Britain. Am I a man, and must not speak? Tears relieve me a moment! Thank God there is no law humane or divine, against treating a Halifax letter-writer as he deserves. Tho’ some of the colonists should not in all things think with the very ingenious, learned, polite and delicate writer of a pamphlet intitled, *Regulations lately made concerning the colonies, and the taxes imposed on them considered*; yet none but the bigoted N——t Editor would thence infer, that all the continent of America were about to become *insurgents*. As there cannot be the least doubt but the views of administration are intentionally the best and wisest; so the law presumes with me, that they are really so on the whole. We at this distance can see but very imperfectly. Tis the duty of all humbly and silently to acquiesce in all the decisions of the supreme legislative. I will, however, presume to utter one short prophecy, namely, that nine hundred and ninety nine in a thousand of the colonists, will never once entertain a thought but of the most profound dutiful and loyal submission and obedience to the wisdom and goodness of our most gracious Sovereign, and to the authority of parliament, in all cases and possible contingencies. Any informations of a contrary disposition in the colonists, transmitted from America, upon a strict enquiry, will be found to be at least very great mistakes.

I have mentioned the pamphlet, intitled, *Regulations, &c.* but as a friend of mine, who is much pleased with that performance, and at his leisure, is preparing a critical and candid review of it, with a sincere design to conciliate as far as possible every <11> man in America to the system of measures there discussed, it is needless to make many observations on it here, especially as the bare naming it in a day, much more any comparison between that and

the Halifax letter, will, I fear, be considered as an outrageous affront to the real merit of the European, if so, I ask his pardon for it. The reader will there find the colonists, not only treated like men, but gentlemen, and British subjects.—None of your Draconic laws, nor inquisitorial grid-irons to broil hereticks on, are lisp'd, or I believe tho't of, much less openly threatened and wished for, as by the Halifaxian.—We see the traces of genius in every sentence, often in the choice of a single letter in the alphabet.—The tenderness of a parent, the prudence of a Nestor, the legislative skill of a Solon, and a Lycurgus are displayed, instead of the rage, malice and fury of an Orestes, tearing out the bowels of his mother, stabbing his sister, killing his own sons and his daughters, and plucking out his own eyes; all which are very faint traits of the madness of the Halifaxian. In the European we also find a perfect knowledge of our constitution, laws, political interests, internal police, and state of trade and commerce thro' the globe.—Of all this in the Halifaxian, verily nothing. The European tells us, we are a part, an essential part of the empire of Great Britain, and a beloved part, entitled to every benefit of the best constitution on earth. The Halifax Tartar will not allow his countrymen any greater rights and privileges than the Creoles allow the Ethiopians, or his brother Sythians afford their captives. *Quicquid est vocis ac linguae omne in istum turpissimum calumniae questum contulisti! Tu lucem adspicere audes? Tu hos intueri? Tu in foro, tu in urbe, tu in civium esse conspectu?*⁷ Anglicè, “you a lawyer and counsellor at law too, and a candidate for one of the provinces? There is nothing more of eloquence in you, than there is of music in the rumbling of a lumber cart. What little skill you have in the management of your voice, hath been employed in sing song, as your pen hath been in scandalizing your country. Dare you behold the light? Dare you face the forum, the city and the assembly of your injured fellow-countrymen?” I shall pass over what the Editor says of the Providence writer, as he calls him, and of the honourable gentleman, except where he has bro't the Vindication in question. Those gentlemen are able to defend themselves against this doughty champion for Great-Britain, as he vainly stiles himself. The Editor, in order to support his charge against the colonies, of disloyalty and disaffection to Great Britain, has been grubbing up all the little pieces that have been published in any of the News-Papers on the continent. He will have it again, contrary to what

7. *Quicquid est vocis ac linguae omne in istum turpissimum calumniae questum contulisti! Tu lucem adspicere audes? Tu hos intueri? Tu in foro, tu in urbe, tu in civium esse conspectu?* “All things whatever of voice and speech you have given over to the most disgusting practice of false accusation! You dare to face daylight? You dare to look at these men, and to be seen in the courts, in the city, among the citizens?”

he must know to be true, that “numberless pamphlets” have been published upon the occasion. If prior to the Halifax letter, he can name above four, and one since besides the Vindication against him, I will give him the weight in gold of all that have been published. This dictator has given the author of the sentiments of a British North-American, a place in his black catalogue. The Editor’s grand charge is against the motto of this piece, taken from Phaedrus, which being only a fable of an old man and his ass, surely none but a jack-ass could have been offended at it. Phaedrus could be no offender against the statutes of G.B. Phaedrus was certainly no subject of Great Britain, nor could he know any thing of her municipal laws and customs. But the treason is not in the <13> motto it seems, but “the application of the above fable to the subject of taxing the colonies, shews clearly the author’s opinion, that under the present parliamentary regulations it is matter of indifference what Prince we are subject to, whether a George or a Lewis, as a certain gentleman expressed it.”* The humanity and philanthropy of this attack on a gentleman who has been long in a very ill state of health, and now unable to answer for himself, is very remarkable. What an eagle-eyed fellow is this Editor, and would be governor, at espying plots, treason and rebellion, in all but his own club? Because Phaedrus his ass tho’t it a matter of indifference whose pack she carried, therefore the *North American* is of opinion, that it is a matter of indifference what prince or power we are subject to, whether a George or a Lewis. This is exactly of a piece with the law, the truth, the sincerity, the logic and philanthropy of the Editor in his other productions. As to the allusion of George and Lewis, the author of the Sentiments has no concern in it.—’Tis supposed to relate to an expression wilfully misrepresented by the Editor, and was very different from the manner in which it is cited. Those who please may see the whole story in the vindication of the house of representatives of M.B. published about three years since, and never attempted to be answered; in which ’tis clearly demonstrated, if I remember rightly, for I have not seen the book for some time, that the words really used, and as clearly intended, had quite an innocent meaning; and the author of that expression, if what went before and immediately followed is taken with it, may defy the Editor to show any thing disrespectful in it. The person, who used the words, thus, scandalously falsely and knowingly misrepresented, could boast a <14> series of services yielded to his Majesty and his illustrious predecessors, by himself and ancestors, as faithful as those the Editor and his junto have on all occasions shown their desire of yielding the pretender; but he repines not at

* Halifax defence, p. 8.

others reaping the fruit of his as well as of the labours of those from whom he is descended.* But he means not to be vain in boasting of his independency of spirit and purse, which the Editor so foolishly puffs and vapors about. He knows the dependency of man on man, and how little he has to expect from the philanthropy of modern politicians. The Editor complains most bitterly of “inhuman treatment,” particularly in the Boston pamphlet as he politely calls it. What instance has he pointed out to support this charge? By his own account of matters, he has received the greatest benefit by this Boston-pamphlet he ever received by any discipline in his life. I guess he will not receive half so much good by all the rewards he may receive from home, as the grand apologist of Great Britain. These rewards of his merit from *Apollo*, he gives broad hints he soon expects. But he says, I have fitted him for any misfortune in life, freed him from all future fears of purgatory, and the pains of h——ll; both which he had reason enough to dread, were it only for the almost unpardonable sin of being the author and Editor of the Halifax letter. By my help he flatters himself he is become an Achilles and a Salamander. He tells his readers, he can now safely travel thro’ the infernal abodes, and drink fire and brimstone, as sweetly as if it were nectar and ambrosia. Poor man, I fear he boasts a little too <15> much of his armour against the fiery darts he may yet have to encounter, from an old archer, in a certain passage he will soon make, without any possible assistance he can receive from the custom-house or me.

He gives a very unfair and false analysis of the Halifax letter. He says, “all the points he intended to prove were (amongst others) 1. That “the New-England colonies privileges, as corporations created by the crown, are fixed and ascertained by their charters.” 2. “That these charters give them no exemption from the jurisdiction of parliament.” These propositions are so self-evident, that no man can possibly be supposed to dispute them, or even to have ever admitted the least doubt of them. The amount of the first is, no more nor less than, that, *a charter is a charter*, of the second, that, *the parliament of Great-Britain is the supreme legislative of the whole British empire*. These are two wonderful discoveries the universe is obliged to this Halifax genius for. Had he stopped here, or with his other four wonderful propositions, he never would, at least by me, have been tho’t worthy of a chastisement for the sin of scribbling. Does monsieur Editor forget these assertions

* “He does not mean to be vain when he says” all this, and could add, that he is quite as “independent in spirit and circumstances as the Editor, and has no favors to ask of the people,” nor of any man, who like the Editor vainly thinks himself of a species above human nature.

of his in the letter? “The relation between modern colonies and their mother states, is formed by political compact.” This opinion, if true, would make it ridiculous for him to have attempted his laborious search after the natural abstract relation which he confessed his noddle would furnish him with no notices of. How will he excuse himself from the nonsense in supposing, as he does, that a natural relation subsisted between ancient states and their colonies; and yet, that it cannot enter into the heart or head of a man, to conceive any such relation between modern states <16> and their colonies? He was pressed with this absurdity, by his own confession, in the letter; he was press’d with it in the vindication; and he was so oppress’d with it when he composed his defence, that he was not able to say a single word about it. I would ask this great lawyer a few more questions in a catechism he ought to be much better acquainted with than I fear he ever will be. Does he think his allegiance to his most sacred and gracious Majesty GEORGE the III^d is *natural*? Dares he now deny this as in the *junto* room heretofore, and affirm the same thing of the *Pretender*, only because he was the son of an *Italian*, and for any thing that can be now certainly proved to the contrary, might be lineally descended from Taffy the fiddler, and *chanter* of Lillibullero to a very beautiful Queen? * Is the immortal distinction between “personal and political rights already forgotten,” my dear *Martinus Scriblerus*? Above all, don’t you remember, my dear boy, what you once said in a manner, it is too late to retract or palliate that “the several New-England charters ascertain, define and *limit* the respective rights and privileges of each colony,” and that the said self same colonies “have no rights independent of their charters”? The infinite nonsense and unparalleled absurdity of these expressions, are sufficiently exposed in the *Vindication of the British colonies*. I shall only add here, *ex abundanti*,⁸ as we lawyers, and would be thought great folks, sometimes puff it, that if by rights, is meant charter *rights*, then the sum will be, two other most wonderful dogmas, viz. 1. “Charter rights and privileges are ascertained and defined in and by charters.” 2. “The colonies have no charter rights or privileges independent of their charter.” My dear, dear Editor, neither you nor <17> the Halifax gentleman, *an alter et idem, nescio sed facile credo*,⁹ have heads for this argument. It requires something more than a musical genius, or a catcher of butterflies, to reason clearly and conclusively on the origin and principles of government; how much more—not being myself

* Who liv’d a thousand years since.

8. *Ex abundanti*: “From an abundance.”

9. *An alter et idem, nescio sed facile credo*: “I do not know whether it is the same or different, but I easily believe [it].”

qualified, I cannot certainly say. How silly a fellow must you be, Mr. Editor, to charge your most humble servant with “disingenuity, to say no worse of it,” only because by your own confession he plainly pointed out the fallacy of an argument that escaped your sagacity? Am I under any promise or obligation to swallow the errors of one man more than of another? How can I be a false brother to honorable gentlemen, to whom I have not the happiness of being known, or charged with deserting them, and the party of truth, the only party I recognize, because I think some of them are a little mistaken in their reasonings on the non-essentials of politicks? What depravity and insincerity in all this? Thy head is certainly turned; you are as visionary as any fanatic preacher, as you politely and indiscriminately call the dissenting clergy.

Among other surprizing mysteries, the Editor asserts, that an “implicit is the same with an express denial of the authority of parliament.” I hope he will not say an inadvertent implicit denial is equivalent to one that is not only express, but evidently premeditated. I must confess, however, that I should not be more astonished at this than at another assertion, that “a meer humble doubt of the equity of an act of parliament, is the same thing with a down right denial of the authority of parliament.” This calls up a saying of Mr. Hamilton to a certain attorney-general of New-York, much such a lawyer as the Editor, “A man” says he, “at New-York, may <18> make very free with his God and his king, but he must take special care what he says of a minister, or of a plantation governor,” as nearly as I remember. The more the Editor flutters and flounders on, the more he exposes, even in the opinion of some of his best friends, his shameful ignorance of the first principles of law, and of the British constitution. Reader, take this short account of the “little *modicum*” of knowledge that appears in either of the Editor’s performances. He took a journey to Boston in the depth of last winter, to exhibit his talents of singing before a certain august assembly, remarkable for the beauty and politeness of both sexes who attend it. In the course of his residence here, for the amusement of the gay and the pretty, he happened as I conjecture to overhear a few expressions which fell from the mouths of some learned men about that time, and has been these two months further mangling, chewing and retailing the “cud of politics,” I think Swift expresses it, so I will not be answerable for the indelicacy of the expression, should it affect the stomach of our fine gentleman; for to do him justice, tho’ he would lick the spittle and swallow a —— of a great man, he cannot bear the tho’ts of tobacco smoke, nor the name of another plant of no bad smell, but of a cursed bitter taste and touch, and to which he is said to have his aversion from indefeasible hereditary descent. This *circumstance* I knew not, and if I had, was not half

angry enough with him to allude to it, when I wrote before, nor should I now, had not his behaviour to his country proved that he hath the conscience of a highwayman, the heart of an assassin and the impudence of a billingsgate.

<19> His conceptions of the origin and foundation of the supreme power and legislative authority of a state and of that of Great-Britain in particular, are to the last degree ridiculous; and if he knew what he said would be a more direct attack upon that sacred & just power, than all he has picked up in the ransack of his printer's office, and from those repositories of learning, the news papers of America.

"The issue of stupidity *shall* be fairly tried. Sir Edward Coke says, indeed right, that the jurisdiction of this court is transcendent, &c. But from whence is it derived? Could this jurisdiction form and create itself? No: It is the *common* law founded upon long usage and consent, which has placed an uncontrollable transcendent jurisdiction in that court, even to alter and amend the course and direction of various branches of the common law itself."* Has this man forgot who is the author of all things, and by whom kings reign and princes decree justice; or did he never believe in this origin of things? Has he lost sight of the *Jus Divinum*¹⁰ which he has so often heard discussed by his "good & virtuous friends," and very scandalously applied? This is sometimes taken in a literal sense; when it serves the cause: But with regard to the present establishment they allow it to have no sense at all. Does not counsellor sing song know that the greatest part of what is now called common law, is held by the sages to have been originally enacted by parliament, the records of which have long since been swept away by the hand of all-devouring time? Could the common law, that is not only subordinate and controulable at pleasure of, and created, for the most part, by, parliament, create the parliament, because the parliament is not self-existent, and could not create itself?—How would this kind of doctrine sound in a political creed? I *Martinus Scriblerus*, *inter alia*, believe, profess, testify and declare, that Lewis XV is not self-existent, and that therefore he was created by the Count d'Estaing, his governor and lieutenant-general of his islands and dominions in America. I also believe that Dr. Murphy is a blockhead, and begin to believe that said Dr. Murphy made me *Martinus* one, and that we are both superlative blockheads, yet as the said Dr. Murphy did not create himself, and is not a self-existent blockhead, therefore I his pupil believe I made him so; and that he made me so—yet we are both equally superlative blockheads; and yet

* Defence, p. 18. *verbatim*.

10. *Jus Divinum*: "Divine right."

Martinus is superior to Murphy, and Murphy to *Martyn*. All this I believe, and whoever disbelieves it shall be politically d——n——d.

To be serious, the source of parliamentary authority is clearly derived from God, the author and creator of all things, principalities and powers. By his unerring laws of nature, societies, communities, and great states are formed in miniature, flourish and grow into mighty empires, and tumble again into ruins, that in their fall shake the whole universe. The various forms are in the opinion of some, left to what is called the free-will of man; and the compact of the whole with the whole, express or implied. Others think even the form is as mechanical in its generation as the substance, and that the whole is to be resolved into what is called power. Which of these opinions as the world generally goes is the truth, is of no great importance: those who want my opinion must, do what few perhaps ever will think it worth while, take the pains to read and understand the meaning of the writer of the pamphlet called *The <2I> Rights of the British Colonies asserted, &c.* before they find fault with him, or publish those dull things, which in England are called *Critical Reviews*.

The Editor having taken his leave of the "Providence writer," and of Mr. H——k——s, reserves the last fire for the "Boston writer," as he calls him. I have but a word to say with regard to his charge of ill treatment of some of the most respectable characters in the province of M.B.—As I am a lover of truth, 'tis confessed to my shame, that for two or three days I was most horribly deceived as to some of my antagonists in the dark in a little provincial paper war, some years since. I thought indeed that I had been engaged with some great & good men, but who had so far forgot themselves and the dignity of their stations, as to condescend to a little porter's play. I soon found out my mistake, and after a few hebdomidal *Nugae*¹¹ dropt the affair. For any thing I certainly know to the contrary, Dr. Seth H——d——n might write the first piece against me. The author of the long J. might be M——lv——y, who stood in the pillory lately. The writer of the d——n——d smart piece as the young bucks called it, may for ought I care have been hanged last assizes for Clarendon county; and the two chiefs of that gang of scribblers, if they now live, will, unless they repent of their sins, as I would charitably hope they have, meet with a worse fate the moment the breath goes out of their bodies, be it at which end it may.

I leave this confession to the consideration of the learned, and proceed to the further examination of the Tale of a Tub.

11. Hebdomidal *Nugae*: "Weekly trifles."

*"How weak, how long, how shallow and how dull,
The screeching of this empty, senseless owl?"*

<22> Let the frigid retort of outrageous disgust, the citation of the Evening-Post, the rhapsodical description of his passage thro' chaos, p. 24, and his return to the mansions prepared for that father of all Jacobites and his followers, sung by Milton in the first book of his paradise lost, be my witnesses.

Who but this poor maze-headed, clod-pated Editor would believe the same pamphlet could "scatter upon him unprovoked," or indeed any other "abuse," after what he had written in his letter; and at the same time "sustain and confirm" the principal argument of that letter which is not only without one argument in it, but a string of absurdities and flat contradictions from end to end. The passage he cites to prove that I am "foil'd," that I have "given up all at discretion," "and betray'd the whole party," only by "a most solemn recognition of the absolute unlimited authority of parliament over the colonies," is this,

"It is certain, that the parliament of Great Britain hath a just, clear, equitable, and constitutional right, power, and authority, to bind the colonies, by all acts wherein they are named. Every lawyer, nay, every tyro, knows this. No less certain is it, that the parliament of Great-Britain have a just and equitable right, power, and authority, to impose taxes on the colonies, internal and external, on lands as well as on trade." Why did he not add what immediately follows in the Vindication, viz. "This is involved in the idea of a supreme legislative or sovereign state. It will however by no means thence follow, that 'tis always expedient, and in all circumstances *equitable** for the supreme and sovereign legislative to tax the colonies; much less that 'tis reasonable this right <23> should be practiced upon, without allowing the colonies an *actual* representation. An equal representation of the whole state is, at least in theory, of the essence of a perfect parliament or supreme legislature." I think it impossible for any man that well considers the whole passage, to mistake my meaning or to find any thing in it repugnant to my former principles, or to truth; especially, if with the Editor he considers me as the author of *The Rights of the colonies asserted, &c.* which for the present he may, or may not, as he pleases. I certainly was or was not. If I was, there is a clear and express recognition of the authority and jurisdiction of parliament, not only in the above passage, but, in the only piece besides I ever wrote upon the subject of colony taxation, as appears beyond the possibility of a doubt, in the passages cited

* *i.e.* reasonable or proper, or for public utility, as the Editor allows we may express it, Letter, p. 21.

in page 27 of the Vindication, which I might here repeat with some additions to the same purpose. After this for the Editor to say I ever denied or questioned the jurisdiction of parliament, will be consummate. If he has been pleased to father upon me the heterodox opinions of others I am no way privy to, he must take the consequences. If he says I did not write the pamphlet intituled, *The rights of the British colonies asserted, &c.* then the worst I have done is to quote this passage from it, page 27 of the Vindication. "When the parliament shall think fit to allow the colonists a representation in the house of commons, the equity of their taxing the colonies will be as clear as their power is at present of doing it without, if they please." The Editor had so poor success in ratiotination, by his own confession, when he attempted a confutation of his honor in catagoricks, that he has prudently avoided any further use of Ramus and Burgusdicius. He contents himself only with hint-<24>ing at something inconsistent here with my recognition, as he calls it. It is very difficult—to deal with people who have such a contempt for letters and syllables, that they will not be at the trouble of learning to read, without which they never can know the meaning of words. Be it known to this great professor of the *Belle Lettres*, that in the English tongue the word *Equity* is used variously; sometimes it is, as it may be applied, synonymous with *law, justice, right, or reason*. So the word *Power* is most commonly, ever so in acts of parliament and law-language, which this man's clients have an *equitable* right to be assured he knows something of, synonymous with *authority, right of legislation & jurisdiction*. In natural philosophy *power* means a meer physical quality, that may be explained with the cause of gravitation in bodies, and the tendency of some souls to the centre. Now my dear M——rt——n, with the help of this spelling-book, attempt to read the passage once more, which, according to the plain sense of it, may be thus varied in expression, without any other alteration. "When the parliament shall think fit to allow the colonists an actual representation in the house of commons," the reasonableness of their taxing the colonies, *externally and internally*, will manifestly appear to be as clear to all, but the weak and obstinate, as their present just constitutional and legal power and authority of doing it without, if they please, is and ever was to me; they being the supreme legislative authority of Great-Britain and its dominions, and the only jurisdiction that I know of, who can finally and lawfully determine the questions, whether and how long 'tis reasonable a continent of this extent, numbers and importance, shall be taxed, without being allowed a representation in *fact*, <25> as they now have in law, or virtually as some express it, in the house of commons. The three branches of the supreme legislative, on my principles of politicks, which exactly coincide with the main principles of the incomparable writer of the new

regulations considered and vindicated, clearly represent the whole Empire. Let the Editor here recollect the leave he was pleased to give us in the close of his letter, where he began to open the method and plan of the discourse he had nearly finished. "The dispute between Great-Britain (says he) and the colonies, consists of two parts. First, the jurisdiction of parliament,—and secondly, the exercise of that jurisdiction." The first, I say, is unquestionable, and ever was with me. Under the second head, his highness was graciously pleased to permit "full liberty to remonstrate, petition, write pamphlets and news-papers, without number, to prevent any *improper* or *unreasonable* imposition."* With regard to this, I have some scruples, because I think the parliament infinitely the best judges. Therefore I should think it every one's duty to be very careful not to charge the supreme legislative with *improper* and *unreasonable* proceedings. The law of parliament is, that the parliament cannot err. And 'tis a maxim of the common law, that the King can do no wrong. The constitution, reason, the nature of sovereignty and of a supreme legislative, all concur to make it necessarily the duty of all subjects to acquiesce in the presumption that even the inmost intentions of the supreme power, have ever for their favourite object the good of the whole community. These are maxims & principles, without a due attention to which, no government could subsist. Government <26> being in short the dernier resort for law & justice, there can be no appeal from it, as there would be if private opinions and interpretations could have any authority, or were allowed to be set up and considered as of any weight in the scale against it. But general rules hinder not, nor were designed to prevent modest and humble enquiries after truth and reason. Should this be the case, it would tend much to stop the progress of all human improvement. The Editor to be sure is bound by his concession, that the *reasonableness* of measures may be discussed, this is *argumentum ad hominem*¹² as to him, and should not be taken back. We have better authority than his, I mean among others, the opinion of the author of the *New Regulations considered*, who, I am certain, is so fair and honest an enquirer after truth, that he would be freely willing others should enquire for themselves, as well as he. If none were to enquire into the reason and meaning of laws, we should have no judges nor lawyers, unless perhaps such as the Editor. I have ever tho't that the whole science of law, and the fair and just practice of it, was founded in the study, interpretation and right application and execution of the reason, meaning and intention of the laws, and consequently of the legislative. There is nothing in all this that can in the least

* Halifax Letter, p. 21.

12. *Argumentum ad hominem*: "An argument at the man."

impeach their power, right and authority to make laws. To apply this reasoning to the present times, the author of the book called the new regulations &c. is of opinion with me "that the colonies are justly bound by all acts of parliament wherein they are named." That the parliament have a "clear, just equitable and lawful authority, from the nature of a supreme legislative or sovereign power of a state, and by the British constitution in particular, to impose internal and external duties and taxes on the colonies, and to make any other laws they think fit, which when made are equally binding upon the colonists if named, as general acts are on the subjects within the realm."* I have the honor also to agree with the European writer, that the *colonists are virtually, constitutionally, in law and in equity to be considered as represented in the honourable house of commons.* This I endeavored to prove, and think I have done it, as incontestably, tho' perhaps no man in Britain could have proved that and a thousand other very important points, so handsomely as this writer has done. We have the honor of having our doctrine approved by the Newport Editor, who I dare say will allow it, will be somewhat of a greater honor still, when the stamp act shall have passed the supreme legislative, which if done before the publication of the defence, as is most probable, it was not known to the Editor, nor could be; for all the intelligence yet arrived, is a copy of the resolves of the honourable house of Commons. I therefore leave it to the Editor to reconcile to truth his positive assertion, that, the stamp act is passed, when we have not yet heard of more than an order to bring in a bill agreeable to the report of the committee, and the resolves of the honourable house. The falsity he begins his appendix with, is this. "Since the foregoing sheets were committed to the press, several vessels have arrived from London, and brought intelligence that the act of parliament for levying a stamp duty on the colonies is actually passed." Whether 'tis or 'tis not passed, would not alter the course of my argument. I have not a syllable to say against the jurisdiction or authority of parliament, never having entertained the least doubt of it, nor to my remembrance ever expressed any: But on the contrary; have ever expressed my opinion of its existence and extension through the whole Empire in the strongest terms, as I have above most abundantly shewn. Nor shall I presume to say a single word on the expediency and public utility of this measure, after the administration have so long had it in contemplation. I humbly, dutifully, and loyally presume, and could give my reasons for it, if I pleased, that the supreme legislative of Great-Britain do, and must know infinitely better what they are

* See the book, and the rights of the British colonies asserted and the Vindication, against the Halifax letter.

about and intend, than any without doors. Those who can entertain any doubt of this, are referred to the *new Regulations considered*, for ample conviction. But the Editor, if he pleases, may, and according to his system, he will have a right “modestly to represent his poverty and inability to pay taxes,” instead of spending his time in wool-gathering and abusing the colonies; instead of teaching people to spin and manufacture wool before they know where to get it, as he & the Dr. have been employed for these 12 months, with regard to the good people of R.-Island, for no possible end but to excite the jealousy of the British manufacturers, and that the colonists might incur the displeasure of the administration. The Editor with his topping “independent spirit” and pockets full of R.-Island old tenor, strutting in the fleecings of his clients, who furnish him with a sheep-pasture, he will never resign but for a government, can with but a bad grace plead for favor or promotion, *in forma pauperis*.¹³ The terrestrial Dr. at his elbow would give him the lie, and tell him he was a simpleton, for that many of his countrymen who have visited Ame-rica, could depose, and that safely, that one good farm on Rhode-Island, is worth all the Highlands in some British countries. We must not plead poverty till there is an end of the scandalous consumption of Holland’s Tea, and West-India produce in this country. The bane of the northern colonies has been Holland and West-India goods. With regard to some of those of New England, there has been another very impoverishing drain,—they have ever bought great part of their bread, and it seems at present impossible to persuade them even to attempt to raise it. These are the fine projectors, whose heads are full of present manufactures. These are a very fit object for those who neither have, nor can in less than fifty years have the materials to work if permitted; especially wool, which has made such a noise. The province which has by far the greatest proportion of sheep in America, has not more than sufficient wool to furnish its inhabitants with hose; mitts they must go without.

I have had some peculiar opportunities to get the exact number of the inhabitants, and am as well informed as I think possible, of the quantity of wool. I have reasons for not inserting either here. But whoever has a mind to make the least inquiry in any province but one, will find the people must go with bare feet, unless they can procure European made stockings. The manufacturers of Great-Britain are out of danger at present from the manufacturers of America. I wish there was no greater danger from any other countries. Having made a short digression from the Defence, tho’ not from the Editor, to show the absurdity of any project for an American woolen

13. *In forma pauperis*: “Like a beggar.”

manufacture, I return to the Herculean task, which the Editor and some few others it seems still think he has <30> imposed upon me of clearing myself from a contradiction, or the heinous crime of retracting my errors, when convinced of them, which last seems in the opinion of the Editor, to be by far the most aggravated transgression of the two, tho' he is pleased to give a sneering commendation, which has much more of the hissing and grinning of Pandemonium, than the angelic joy shown on the return of a prodigal, or penitence of any other sinner. I will now shew not only that the Editor has not pointed out any contradiction in the Vindication, but also that it is positively consistent with itself, and also with the doctrine advanced in the Rights of the colonies asserted, and with the truth. The Editor has not pretended to cite any passage, either from the Rights asserted, or the Vindication, against him, that contains any thing that is an express denial or even a direct question of the just power, right and authority of the parliament over the colonies. He cites the former part of the passage above-mentioned, page 22, and compares it with these words taken from the Rights of the colonies asserted, "When the parliament shall think fit to *allow* the colonists a representation (i.e. as the Editor takes it, and as it was meant) a representation in fact in the house of commons, the equity of their taxing the colonies will be as clear as their power is at present of doing it without, if they please." Now let the Editor keep sight of the distinction he made, which I grant is a just one, and almost the only one I have known him make, and his difficulty to reconcile me must vanish. I have to do only with him at present. 1. "The jurisdiction of parliament." 2. "The exercise of that jurisdiction." With regard to the first, he has endeavoured to show that "it is attached to every English subject, wherever he be." <31> "The *common law* has established it as a rule or maxim, that the plantations are bound by British acts of parliament, if particularly named: and surely no Englishman, in his senses will deny the force of a common law maxim. In a word, the force of an act of parliament, over the colonies, is predicated upon the common law."* I have said in the Vindication, "*It is certain* that the parliament of Great-Britain hath a just, clear, equitable and constitutional right, power and authority, to bind the colonies, by all acts wherein they are named." I have also asserted that the "parliament of Great-Britain hath a just and equitable power and authority to impose taxes on the colonies, internal and external, on lands as well as on trade. This is involved in the idea, &c."

The passages cited in the Vindication from the rights of the colonies asserted, of which he supposes I am author, are as full to the jurisdiction of

* Letter p. 10.

parliament, as any the Editor has written. So far we are now certainly agreed by the Editor's confession in the defence, viz. That the jurisdiction of parliament is out of any question between us, and it was ever out of any doubt with me.

2. Point is in the exercise of parliamentary jurisdiction. With regard to this the Editor allows, pag. 21. That arguments may be urged for or against particular measures, and that those arguments may be drawn from the topics of "*expediency, utility, propriety and reason* or of their opposites." "And this with a spirit of freedom." I would hope he means fair to his readers. He should have confined this liberty to the time when measures and bills are pending. After they have received the sanction of parliament, much less is allow'd to be said than before. <32> The safest way in such a case is humbly to acquiesce in the decision of parliament, and the disposals of providence. This I most sincerely and without reserve do, and advise all men to do the same. The supreme legislative of Great-Britain, and the dominions, if the stamp act is passed, relating to America, have, as they have an undoubted right to do, imposed internal as well as external taxes on us, and as they have tho't it expedient, reasonable, nay absolutely necessary, in the present circumstances and exigencies of the state, laboring under a debt of 130 millions. I wish, and begin to hope, it may on the whole be for the interest of all parts of the Empire.

But with regard to the Editor, I would ask him, if while a bill is pending, arguments may be urged from *reason*, expediency, &c. for or against it, why not from equity, equality and inequality? May not the propriety or impropriety of a measure be governed by the equity, reasonable equality, or unreasonable inequality. This is all I contend for, which is short of the Editor's claim, who reserves the liberty of writing and publishing, for any thing that appears, after a bill is passed the parliament, which is more than I think ought to be allowed with the great freedom at least, which he contends for. My reason is, such freedoms allow'd with regard to the right exercise of a jurisdiction, in particular instances, would bring government, and all courts into contempt. If the editor therefore thinks I have been inconsistent, he must think he has been much more so, as I shall shew in the instance of the persecution he complains so loudly of as an infringement of his liberty and the liberty of the press. One can't but smile at the courage and consistency of this hero. When 'tis for his interest <33> the colonists have no rights, no liberties nor privileges independent of charters. He calls the governor of the colony by name a calf, and in effect with him the whole general court the same, and traitors into the bargain, for approving the governor's book, which I take it was published with their assent, if not at their desire, tho' this is only my own conjecture, as the piece is said in the title page to be published by authority. The scene

changes, the general assembly resent the insult, the printer is sent for, I suppose more to frighten him than any thing else; the champion Editor fell into panics which he has not got rid of since. The affair was managed with candor, the governor not appearing, which I suppose was the reason that the lieutenant-governor, who was not so immediately attacked, presided. After a reasonable sweating, the printer was very prudently permitted to return to his beloved trembling Editor. Instantly the Newport-Mercury began the vindication of injured *liberty and property*. The *tribunitian veto* then sounded as loud in this notable paper, as formerly the *clanking* of chains and the marching of *dragoons*. But this lasted only three or four weeks, when the noble courage of the Editor revived again, and having found his great independent soul, which on this tragical occasion, fame says lay two or three days hid in a hay-mow or a hen-roost, he set about his defence, in which he describes with serene pleasure his hair-breadth escape. It will be at least granted to be possible, that the general assemblies have a just power and lawful authority to commit for contempt. If they have such a right, I reason thus from Martinus against M——r——t——n and company.—The assembly had a good, clear, just and equitable right, power and authority to have committed <34> M——rt——n and his *printer* to *limbo*, for calling them a parcel of fools, coxcombs, calves, knaves, smugglers and rebels. If they had so committed them, it could not have been complained of as against justice or equity, they having a right to commit. But yet a commitment would have been against reason and prudence, as it might either have made them too considerable, or have cramped the liberty of the press. The end being answered as it was hoped by the pannic, they were dismissed. What is there contradictory in all this? What is there wrong but the Editor's still persisting to abuse a government that has discovered so much lenity towards him? Sure I am, that if my superiors in Europe or America have taken any umbrage at any thing I have said or written, I am sorry for it, and whether they forgive me or not, I promise I will do my utmost not only never to offend them again, but in all things try to convince them I am not the man, the malice and ill-will of some have induced them to represent me. I have been so large in proving that the Editor has not shewn any inconsistency in me, that most I flatter myself will be of the mind, I have proved that the whole I have advanced on the subject is consistent. But to convince all, even the most obstinate, I must offer a word or two more. The passage cited by the Editor above, taken with the context and whole tenor of the book, and if the Editor pleases with the *Rights of the colonies asserted* too, prove that the argument was placed, not on a denial or suggestion of the want of power and authority in the parliament to tax the colonies. All that I ever pretended was, that an American return

of members seemed to me but a reasonable indulgence, upon the exercise, or rather resumption into their own hands, of that part <35> of supreme legislation which, consists in raising taxes for the support of government, the protection and defence of the whole empire. I never said nor tho't the colonists could demand or claim *ex debito justitiae*,¹⁴ as Lord Coke has it, an actual representation in the house of commons. Upon the reasonableness of an actual American representation I placed my foot, and built my only hope and desire, and that not for myself, nor for the Americans only, but because I thought it would be for the interest of the whole empire, and be one means of answering some very great purposes, and among others, that of most perfectly conciliating the obedience and reverence of every individual in the empire to the supreme legislative of Great-Britain, a grand object, which has been justly tho't worthy the views and contemplation of Majesty itself, and is by our most gracious Sovereign accordingly recommended for the advice and assistance of his greatest council, in his last speech, from the throne, truly worthy a British-born Prince, and a patriot King.

It was determined in parliament last year that external taxes should be raised on the colonists. I suppose that internal taxes are granted and imposed before now. This it was easy to foresee any time these seven years would soon be the case. It is incontestable that we are virtually and in law represented in the house of commons, and in the whole parliament. But after all this, there may be a question, whenever the administration shall please to make one of it, namely, whether notwithstanding the undoubted power and authority of Great-Britain to tax her colonies, and altho' they are already virtually represented in the house of commons, and as part of the whole in the supreme <36> legislative of the whole, yet as the American dominions are such a vast portion of territory, and contain so many good and loyal subjects, it is or may not be expedient and for the public utility to indulge them with the election and return of a few members. But this being a matter not of right but of favor, if desired, must be humbly asked as such. For tho' as Lord Coke says, the return of members in England is a matter of right in, and not of grace to, the privileged boroughs, &c. yet the case of the colonists is different. These never had a right to return members. Therefore it must be an indulgence when granted. The general assembly here tax and think they have a right to tax their out towns. Those towns do and must think themselves rightly taxed, when they have all other privileges but that of returning a member. Whether and when they shall receive this priviledge depends on the determination of the assembly. And when once granted it becomes a right, and they are ever

14. *Ex debito justitiae*: "From a debt of justice."

after entitled to a writ *ex debito justitiæ*. The case is just the same between Great-Britain and her colonies. The parliament of Great-Britain has a right to tax London. London has a right to return members. These are distinct independent rights. Some great towns there return no members, yet are taxed. These when it shall be tho't proper, will be actually represented; and when the administration thinks it reasonable, it can permit an actual representation of the colonies. There can be no decree without a judge, who that is we have seen. The parliament will ever consult the good of the whole. To make my meaning clear to the meanest capacity; the jurisdiction and authority of a court is one thing, the manner of exercising that jurisdiction is another. <37> This matter shall be exemplified from the court of a justice of the peace, to the high court of parliament. A justice has a legal, just and equitable authority, to try a cause of 40s. He tries the cause, gives judgment erroneously. His judgment is yet a just judgment and an equitable judgment, if his error was thro' a blameless ignorance of law, or of some fact, one of which is to be presumed. Here are three things, 1. A right to hold courts, or of jurisdiction. 2. This right of jurisdiction actually and honestly exercised. 3. A right of appeal in the party against whom an erroneous judgment is given. This will hold in the higher executive courts, 'till we come to the dernier resort of the common law, the house of Lords. Even the chancery of Great-Britain is but a kind of appeal from strict law, to more free, generous and equal principles of justice, reason and good conscience. There is something similar with regard to the parliament. Government knows of no appeal from their decisions, it is true, they being as to the subject next in power and authority to God. Their jurisdiction, power and authority, thro' the whole state and its dependencies, is uncontrollable. They exercise it on such objects as they think fit. All that can be done is a meek and patient acquiescence in their determinations, with a humble hope that as all humane decisions and determinations depend ultimately upon a knowledge of facts and circumstances when new light from thence appears, that the supreme legislative, ever watchful and vigilant for the good of the whole, will appeal of itself to its own further experience and information, and alter such former laws as they shall think fit. On this process is founded all repeals, additions to and amendments of laws, which are but so many further researches of the universal <38> mind of the state, for its own preservation, prosperity and grandeur, which are ever the same thing with the good of the whole, *Magna est lex et praevalebit. Salus populi suprema lex est* & esto.¹⁵

15. *Magna est lex et praevalebit. Salus populi suprema lex est & esto*: "The law is great and will prevail. The well-being of the people is the supreme law, and so let it be."

The Editor boasts of his “freedom from a dastardly, temporizing spirit that dares not speak out what every body knows to be true.” One would think there was no great heroism in telling all the world what they knew before. The Editor has quite mistaken his talent again, it certainly lies in speaking out boldly in many instances what neither he or any body else knows or believes to be true. I don’t say this is the case in the revival of the trite observations upon the illicit trade between the colonies and Holland, and other parts of Europe. He says this is a “vast prejudice to Great-Britain and her manufactures,” and he might have added, of infinite damage and hurt to the colonies themselves. Not only the interests of the fair trader, but the character, the lives and health of the whole continent have eventually been sacrificed or subjected to great danger, for the emolument of a few contraband traders in this way, and their patrons in each province. Many in a province have never been able to thrive, it would soon spoil the business. But why does not the Editor speak out, and tell all he knows of this trade? I defy his noble courage to do it. A word or two from so important a personage, might be very seasonable. Why does he not tell the ministry of the only possible method to stop smuggling from Europe, and that without any severity? Let him give not only the out-lines, but the whole of a bill for this purpose on the back of a card that would execute itself, and render it as impossible for him and his friends to trade from any part of Europe but Great-Britain, to <39> advantage, as from the moon. If he knows not how to effect this, which e’er long must be effected, let him learn a modest silence. The Editor has confessed, that money is nearly if not altogether his *summum bonum*.¹⁶ He says he is not “so ignorant of the world as not to know that money is almost become the supreme good; and the obligations of conscience and duty, are but feeble restraints when prospects of great gain present themselves. *This is true every where*.” He then gravely proceeds to prove it is true of every *one*. After this, the reader may if he can, doubt whether God or mammon is the most desirable object of, and most served by this hero.

The Editor’s contemptable flirt at a Prosodian, and his *auceps syllabarum*,¹⁷ reminds me of what I have seen in a MS. the antiquity of which indeed does not pretend to vie with the arundelian marbles, but I will venture to affirm it is of as good authority as half those that furnish Martynus Scriblerus, the first, or Dr. Bently the second, with their *variae lectiones*.^{*18} In this MS codicl.

16. *Summum bonum*: “The supreme good.”

17. *Auceps syllabarum*: “In lists of syllables.”

* See letter, p. 2.

18. *Variae lectiones*: “Various readings.”

syllabarum is read *fabularum*,¹⁹ which I take to be the truth, and agreeable to the emendation suggested, have restored the text. And 'tis submitted to the impartial public, whether 'tis not now compleat. The whole passage is so perfect a description of some lawyer, not only in Cicero's time but at this day, that I have ventured to prefix the whole passage to these remarks, where if they properly belong, in the name of truth, let them remain, I desire the reader not to transfer them. If any have a better claim to them than I and their *indelible indefeasible* known claim, can in a court of equity be supported, let them go, I am not over fond of them. For the sake of meer readers of Eng-^{<40>}lish and Guthries, no English translation of Cicero, I freely render it thus. "And so my Lord Editor, you think a learned lawyer is in himself nothing, unless to compleat and give the last polish to his education, and fit him for practice and accumulation, he is properly taught to become all things to all men and women too. He must, according to you, be a fine gentleman, a sly, artful petty-fogger, fraught with a good stock of low-cunning and brass, a master of grimace, a spouter of plays, a brawler of forms, with a voice fit for the common cryer of a court, *adeptus veré*,²⁰ at repeating mass mattins and other musty formularies: To crown all, he should be a delicate chanter of *Lillibullero*, and other songs ancient and modern."

*"Claudite jam rivos, pueri sat prata biberunt.
Qui legitis flores, et humi nascentia fraga,
Rigidus, O pueri, fugite hinc, latet anguis in herba.
Frigidus in pratis cantando rumpitur anguis.
Ducite ab urbe domum, mea Carmina ducite Daphnim."*²¹

———— MORBLEU!

*Stop the bottles, brave boys, the guards are all drunk.
Sc——nd——ls dare sing grand Louis, grand Jaques, and old Punk.
S——h fiddle (1) scrape, blow bagpipe (2), burn Homer and flute,
And the D——l take dear M——t——n, sweet M——ffy and brute. (3)*

(1) *Cacoethes scribendi* [*Cacoethes scribendi*: "Unstoppable urge to write"], which may be cured only by scrubbing and rubbing down, but the *merx*

19. *Syllabarum* [is read] *fabularum*: "Of syllables [is read] of fables."

20. *Adeptus veré*: "Truly adept."

21. *Claudite jam rivos, pueri sat prata biberunt.* / *Qui legitis flores, et humi nascentia fraga,* / *Rigidus, O pueri, fugite hinc, latet anguis in herba.* / *Frigidus in pratis cantando rumpitur anguis.* / *Ducite ab urbe domum, mea Carmina ducite Daphnim*: "Shut the streams now, the boys have drunk enough / You boys, who pluck the flowers arising from the ground / Flee, a cold snake hides in the grass. / The cold snake burst in the meadows by an incantation. / O my songs, lead Daphnis home from the city.

sulphurata [*merx sulphurata*: “Matches”] or *cannabis* properly applied *more galenico* [*more galenico*: In a galenic manner (the way Galen would define something)], never fails. (2) Scribbling and scolding in and out of print, a very harmless amusement. (3). *M——rt——n M——ffy and brute*. Three imaginary fictitious characters well known among the *entes rationis* [*entes rationis*: “beings of reason.”] at N——t R——d. The first represents a pettifogger and an editor; the second a quack and a scribler; the third an atheist and nothing else. I detest national provincial and personal reflections, have made none on any real existences but what are decent and respectful, and I desire the N——t Editor would not pretend to spy any, but rather apply himself to literal corrections, if he can find them. I have not time to look myself, besides this being the proper employment of a critic, a *belle lettre man*, a fine gentleman, and a Printers D——l, he will be most emphatically in his own element.

THE END

4. Otis in the *Boston Gazette*, May 13, 1765

To the Freeholders and other Inhabitants of *Boston*.

GENTLEMEN,

THERE is no pleasure in this life besides a good conscience, equal to that resulting from the just esteem of ones country, founded on a sincere desire of serving it, & of having strained every nerve for that purpose. To deserve in this way requires a thousand talents I never was betruſted with. I wiſh I had uſed what little I have better. The only ſtrong evidence I can find of a miſ-application is founded on the diſpleaſure of many of my fellow citizens, to whom I have ever held myſelf accountable in public and private.—Four years ſince you were pleaſed, unask'd, undeſired and unexpectedly, to confer on me an honor I had not vanity enough to aſpire after.—There lives not a man who can ſay I ever aſked his vote or his intereſt, I have ever deteſted the tho't—A provincial aſſembly was once of ſome importance—I fear I have ſurvived that period which will never return again—No miſfortune can give me the like wound—This only hath wounded my ſpirit—But God be thanked the wound is not mortal.—What would it avail for me to tell you, that were it lawful and poſſible, to get at my deeply entrenched fellow commoner, who I know to be the cauſe of all your calamities, I would leap like the Roe, not to run away but to pay part of the purchaſe of your ranſom with my life or his? Poſſibly I need not leave America, to find him. But be he who he may, he is at preſent quite ſafe from you and I. The miſchief long meditated has taken effect. God only can now help you. The divine Brutus once wore the cloak of a fool, and of a madman the only cloak I ever knew a man of true honor & ſpirit condeſcend to put on. As to the later *Bruti* they have never play'd fairly—The aſſaſſin of Julius deſerved to die more if poſſible than the tyrant he ſtabbed—It was unmanly—None but *Cassius* and the D—I could adviſe him to ſo bloody a deed—Cato was a coward—Had I lived in Rome at that time, and known as much as I now do, I ſhould have adviſed them rather to have introduced the modern refinement of duels on the ſingle combats of the generous ancients—Julius was certainly above engaging with any ſingle man in Rome—But had his wicked miniſters been called one

after another behind the Pantheon, till a lecky ball had given them and the world a quietus, instead of resignations and scampering to Utica the republic, would soon have retrieved its pristine glory—Be calm, be patient a little while gentlemen.—To return from old Rome to Boston—I ever tho't myself infinitely unequal to so very important a trust as the representative of a free people.—Were my abilities equal to what for your sakes I could wish, and my integrity as great as you once tho't it, they would at present be all lost.—But alas, I am a man of no name or fortune, and consequently can make but a survey figure in the modern world.—The only conceivable value of riches is, that they may place an honest man and a lover of his country at ease to study, and at leisure to push the best interests of the human species.—I have ever been without these means. I am, ever have been, and expect ever to be, a poor man. I tell you a melancholly truth, yet I have taken more pains for an honest quiet living than many who ride in their coaches and six.—I have given up £200 a year sterling, that I might have honestly made, besides what are called good decent perquisites—I know not where to go for any part of this money. Should my children want it, and their daily bread, I hope it will be some consolation to them, that their father lost part of his in a vain attempt to serve his country.—I leave the rest to Providence.—I have devoted far more of precious time to your service, than according to the vulgar political, arithmetic of the wise of this world, a poor man can honestly afford.—I have sacrificed peace, quiet, *real friends*, and every tempting allurements of a man, naturally and constitutionally inclined to social pleasures.—Tell me my once dear friends, what I have got by all this, besides the curse causeless of thousands, for whose welfare my heart has bled yearly, and is now ready to burst. At this instant, I have reason to believe many of you are pouring forth the most severe and undeserved censures of a man, who has risked his life, his family, his all, in your service, more than once.—I neither can, nor incline to speak more plainly at present—you may know my meaning more fully hereafter.—So far have I been from giving up one of your rights and privileges, that I have contended for them, *ut pro aris et focis*,¹ *as for the last and best drop of your & my hearts blood*. That I have hitherto contended so much in vain, has been no fault of mine—whose it is, time will discover.—I defy the worst enemy I have to give one instance and to prove it, to any the least degree or color of probability, wherein I have been false to my ever beloved & honored constituents.—So long as I had almost a unanimous voice in my favour, I tho't it a vast encouragement to persevere, as I ever shall without it, in the very hazardous attempt to serve you.—I ever thought such a call

1. *Ut pro aris et focis*: "As for altar and home."

rendered it my duty to sacrifice *temporal self interest*, and every other partial consideration, for the good of the *whole*. *Tempora mutantur et nos mutamur in illis*.² [They?] think so too.—My most sincere and upright intentions have been wilfully misconstrued, and misrepresented to deceive the weak but well meaning. I have been followed even to the retirements of private amusement. The little chit chat of the coffee house and the Jest cracked meerly for the pleasure of cracking it, hath been most gravely, solemnly and formally magnified and worked up to infidelity, treason & rebellion—To accuse, try and condemn a man unheard, and never to publish his sentence 'till the moment of execution, is not the usual conduct of true lovers of liberty: Perhaps it cannot be matched but in the proceeding of an enraged assembly at a *monster* of *monsters*. If I am such an one, dispatch me as soon as you please. I am,

Gentlemen, your very humble Servant,

J. OTIS.

P.S. Had the Printers time or room, I should refute a long catalogue of ridiculous stories lately propagated of me, but there will be opportunity hereafter.—I shall be at your meeting To-morrow at Nine of the clock—The only favor I have to ask, is, half an hour's talk before or after the Election, 'tis perfectly indifferent which.

J.O.

2. *Tempora mutantur et nos mutamur in illis*: "The times change, and we change in them."

5. *Considerations on Behalf of the Colonists.*
In a Letter to a Noble Lord

CONSIDERATIONS

On BEHALF of the

COLONISTS.

IN A

LETTER

TO A

NOBLE LORD.

LONDON

Printed for J. ALMON, opposite Burlington

House, in Piccadilly.

M DCC LXV.

[Price One Shilling.]

<iii> The following Pamphlet was sent to the Publisher, by an unknown Person, from Boston, in New England; with a Request to print it as soon as possible: finding after a careful Reading, it not to contain any Thing apparently, or particularly offensive to any Party, or Body of Men, he should have thought himself inexcuseable, if he had been the Means of withholding it from the Public. <1>

A LETTER, &c.

My Lord,

I have read the *Opusculum*¹ of the celebrated Mr. J——s, called “Objections to the taxation of the colonies by the legislature of Great-Britain, briefly considered.” In obedience to your lordships commands, I have thrown a

1. *Opusculum*: “A short work.”

few thoughts on paper, all indeed that I have patience on this melancholy occasion to collect. The gentleman thinks it is “absurd and insolent” to question the expediency and utility of a public measure. He seems to be an utter enemy to the freedom of enquiry after truth, justice and equity. He is not only a zealous advocate for pusillanimous and passive obedience, but for the most implicit faith in the dictatorial mandates of power. The “several patriotic favorite words <2> *liberty, property, Englishmen, &c*” are in his opinion of no use but to “make strong impressions on the more numerous part of mankind who have ears but no understanding.” The times have been when the favorite terms *places, pensions*, French *louis d’ors*² and English *guineas*, have made very undue impressions on those who have had votes and voices, but neither honor nor conscience—who have deserved of their country an ax, a gibbet or a halter, much better than a star or garter. The grand aphorism of the British constitution, that “*no Englishman is or can be taxed but by his own consent in person or by his deputy*” is absurdly denied. In a *vain* and most *insolent* attempt to disprove this fundamental principle he exhibits a curious specimen of his talent at chicanery and quibbling. He says that “no man that he knows of is taxed by his own consent.” It is a maxim at this day, that the crown by royal prerogative alone can levy no taxes on the subject. One who had any “understanding as well as ears” would from thence be led to conclude that some men must consent to their taxes before they can be imposed.

<3> It has been commonly understood, at least since the glorious revolution, that the consent of the British Lords and Commons, i.e. of all men within the realm, must be obtained to make a tax legal there. The consent of the lords and commons of his majesty’s ancient and very respectable kingdom of Ireland, has also been deemed necessary to a taxation of the subjects there. The consent of the two houses of assembly in the colonies has till lately been also thought requisite for the taxation of his majesty’s most dutiful and loyal subjects, the colonists. *Sed tempora mutantur*.³

I would ask Mr. J——s, if when a knight of a shire, or burgess of a borough, civil, military, or errant, possessed of a real estate, votes for a land tax, he does not tax himself and consent to such tax? And does he not by thus voting, tax himself as an *identic* individual, as well as some of his silly neighbours, who “may have ears but no understanding,” and be therefore in great danger at a future election of chusing an empty *individuum vagum*⁴ to

2. *Louis d’ors*: Literally, “Louis of gold,” from the image of Louis XIII on the coins, which were first struck in 1640.

3. *Sed tempora mutantur*: “But the times changed.”

4. *Individuum vagum*: “Vague individual.”

manage their highest concerns. 'Tis much to be lamented that these people with "ears but <4> without understanding" by certain vulgar low arts, may be as easily led to elect a state auctioneer or a vote seller as the wisest and most upright man in the three kingdoms. We have known some of them cry Hosanna to the man who under God and his king had been their saviour, and the next day appear ready to crucify him. However, when a man in Europe or America, votes a tax on his constituents, if he has any estate, he is at the same time taxing himself, and that by *his own consent*; and of all this he must be conscious unless we suppose him to be void of common sense.

No one ever contended that "the consent of the very person he chuses to represent him," nor that "the consent of the majority of those who are chosen by himself, *and* others of his fellow subjects to represent them," should be obtained before a tax can be rightfully levied. The pitiful chicanery here, consists wholly in substituting *and* for *or*. If for *and*, we read *or*, as the great Mr. J——s himself inadvertently reads it a little afterwards, the same proposition will be as strictly true, as any political <5> aphorism or other general maxim whatever, the theorems of Euclid not excepted; namely, "*that no Englishman, nor indeed any other freeman, is or can be rightfully taxed, but by his own actual consent in person, or by the majority of those who are chosen by himself or others his fellow subjects to represent the whole people.*"

Right reason and the spirit of a free constitution require that the representation of the whole people should be as equal as possible. A perfect equality of representation has been thought impracticable; perhaps the nature of human affairs will not admit of it. But it most certainly might and ought to be more equal than it is at present in any state. The difficulties in the way of a perfectly equal representation are such that in most countries the poor people can obtain none. The lust of power and unreasonable domination are, have been, and I fear ever will be not only impatient of, but above, controul. The Great love pillows of down for their own heads, and chains for those below them. Hence 'tis pretty easy to see how it has been brought about, that in all ages despotism has been <6> the general tho' not quite universal government of the world. No good reason however can be given in any country why every man of a sound mind should not have his vote in the election of a representative. If a man has but little property to protect and defend, yet his life and liberty are things of some importance. Mr. J——s argues only from the vile abuses of power to the continuance and increases of such abuses. This it must be confessed is the common logic of modern politicians and vote sellers. To what purpose is it to ring everlasting changes to the colonists on the cases of Manchester, Birmingham and Sheffield, who return no members? If those now so considerable places are not represented, they ought to be. Besides the

counties in which those respectable abodes of tinkers, tinmen, and peddlars lie, return members, so do all the neighbouring cities and boroughs. In the choice of the former, if they have no vote, they must naturally and necessarily have a great influence. I believe every gentleman of a landed estate, near a flourishing manufactory, will be careful enough of its interests. Tho' the great India com-pany, as such, returns no members, yet many of the company are returned, and their interests have been ever very carefully attended to.

Mr. J——s says, "by far the major part of the inhabitants of Great Britain are nonelectors." The more is the pity. "Every Englishman, he tells us, is taxed, and yet not one in twenty is represented." To be consistent, he must here mean that not one in twenty votes for a representative. So a small minority rules and governs the majority. This may for those in the saddle be clever enough, but can never be right in theory. What *ab initio*⁵ could give an absolute unlimited right to one twentieth of a community, to govern the other nineteen by their sovereign will and pleasure? Let him, if his intellects will admit of the research, discover how in any age or country this came to be the fact. Some favourite modern systems must be given up or maintained by a clear open avowal of these *Hobbesian* maxims, viz. That dominion is rightfully founded on force and fraud.—That power universally confers right.—That war, bloody war, is the real and natural <8> state of man—and that he who can find means to buy, sell, enslave, or destroy, the greatest number of his own species, is right worthy to be dubbed a modern politician and an hero. Mr. J——s has a little contemptible flirt at the sacred names of Selden, Locke, and Sidney. But their ideas will not quadrate with the half-born sentiments of a courtier. Their views will never center in the *paricranium*⁶ of a modern politician. The characters of their writings cannot be affected by the crudities of a ministerial mercenary pamphleteer. He next proceeds to give us a specimen of his agility in leaping hedge and ditch, and of paddling through thick and thin. He has proved himself greatly skilled in the ancient and honourable sciences of horse-racing, bruising, boxing, and cock-fighting. He offers to "risk the merits of the whole cause on a single question." For this one question he proposed a string of five or six.—To all which I say he may be a very great statesman, but must be a very indifferent lawyer. A good lawyer might risque the merit of a cause on answers, but never would rest it on mere interrogatories. A multiplicity of <9> questions, especially such as most of Mr. J——s's only prove the folly and impertinence of the querist. Answers may be evidence, but none results from questions only. Further,

5. *Ab initio*: "From the beginning."

6. *Paricranium*: "Head" or "cranium."

to all his queries, let him take it for a full answer, that his way of reasoning would as well prove that the British house of commons, in fact, represent all the people on the globe, as those in America. True it is, that from the nature of the British constitution, and also from the idea and nature of a supreme legislature, the parliament represents the whole community or empire, and have an undoubted power, authority, and jurisdiction, over the whole; and to their final decisions the whole must and ought peaceably to submit. They have an undoubted right also to unite to all intents and purposes, for benefits and burthens, a dominion, or subordinate jurisdiction to the mother state, if the good of the whole requires it. But great tenderness has been shown to the customs of particular cities and boroughs, and surely as much indulgence might be reasonably expected towards large provinces, the inhabitants of which have been born and grown <10> up under the modes and customs of a subordinate jurisdiction. But in a case of necessity, the good of the whole requires, that not only private interests, but private passions, should give way to the public. But all this will not convince me of the reasonableness of imposing heavy taxes on the colonists, while their trade and commerce are every day more than ever restricted. Much less will it follow, that the colonists are, in fact, represented in the house of commons. Should the British empire one day be extended round the whole world, would it be reasonable that all mankind should have their concerns managed by the electors of old Sarum, and the “occupants of the Cornish barns and ale-houses,” we sometimes read of? We who are in the colonies, are by common law, and by act of parliament, declared entitled to all the privileges of the subjects within the realm. Yet we are heavily taxed, without being, in fact, represented.—In all trials here relating to the revenue the admiralty courts have jurisdiction given them, and the subject may, at the pleasure of the informer, be deprived of a trial by his peers. To do as one would <11> be done by, is a divine rule. Remember Britons, when you shall be taxed without your consent, and tried without a jury, and have an army quartered in private families, you will have little to hope or to fear! But I must not lose sight of my man, who sagaciously asks “if the colonists are English when they solicit protection, but not Englishmen when taxes are required to enable *this country* to protect them?” I ask in my turn, when did the colonists solicit for protection? They have had no occasion to solicit for protection since the happy accession of our gracious Sovereign’s illustrious family to the British diadem. His Majesty, the father of all his people, protects all his loyal subjects of every complexion and language, without any particular solicitation. But before the ever memorable revolution, the Northern Colonists were so far from receiving protection from Britain, that every thing was done from the throne to the footstool,

to cramp, betray, and ruin them: yet against the combined power of France, Indian savages, and the corrupt administration of those times, they carried on their settlements <12> and under a mild government for these eighty years past, have made them the wonder and envy of the world.

These colonies may, if truly understood, be one day the last resource, and best barrier of Great Britain herself. Be that as it may, sure I am that the colonists never in any reign received protection but from the king and parliament. From most others they had nothing to ask, but everything to fear. Fellow subjects in every age, have been the temporal and spiritual persecutors of fellow subjects. The Creoles follow the example of some politicians, and ever employ a negroe to whip negroes. As to "that country," and "protection from that country," what can Mr. J——s mean? I ever thought the territories of the same prince made one country. But if, according to Mr. J——s, Great Britain is a distinct country from the British colonies, what is that *country* in nature more than this country? The same sun warms the people of Great Britain and us; the same summer cheers, and the same winter chills.

Mr. J——s says, "the liberty of an Englishman is a phrase of so various a significance-^{<13>} having, within these few years, been used as synonymous terms for *blasphemy*, *bawdy*, *treason*, *libels*, *strong beer*, and *cyder*, that he shall not here presume to define its meaning." I commend his prudence in avoiding the definition of *English Liberty*; he has no idea of the thing.

But your lordship may, if you please, look back to the most infamous times of the Stuarts, ransack the history of all their reigns, examine the conduct of every debauchee who counted for one in that parliament, which Sidney says, "drunk or sober," passed the five mile act, and you will not find any expressions equal in absurdity to those of Mr. J——s. He sagely affirms, "that there can be no pretence to plead any exemption from parliamentary authority." I know of no man in America who understands himself, that ever pleaded or pretended any such exemption. I think it our greatest happiness in the true and genuine sense of law and the constitution, to be subject to, and controulable by, parliamentary authority. But Mr. J——s will scribble about "*our American colonies*." Whose colonies can the creature mean? <14> The minister's colonies? No surely. Whose then, his own? I never heard he had any colonies. *Nec gladio nec arcu, nec astu vicerunt*.⁷ He must mean his Majesty's American colonies. His Majesty's colonies they are, and I hope and trust ever will be; and that the true native inhabitants, as they ever have been, will continue to be, his Majesty's most dutiful and loyal subjects. Every

7. *Nec gladio nec arcu, nec astu vicerunt*: "They conquered neither by sword, nor by bow, nor by skill."

garetteer, from the environs of Grub-street, to the purlieus of St. James's, has lately talked of *his* and *my* and *our* colonies, and of the *rascally colonists*, and of *yokeing* and *curbing* the *cattle*, as they are by some politely called, at "this present now and very nascent crisis."^{*}

I cannot see why the American peasants may not with as much propriety speak of their cities of London and Westminster, of their isles, of Britain, Ireland, Jersey, Guernsey, Sark, and the Orcades, and of the "rivulets and runlets thereof,"[†] and consider them all but as appendages to their sheep-cots and goose-pens. But land is land, <15> and men should be men. The property of the former God hath given to the possessor. These are *sui juris*,⁸ or slaves and vassals; there neither is nor can be any medium. Mr. J——s would do well once in his life to reflect that were it not for *our* American colonies, he might at this "present crisis," been but the driver of a baggage cart, on a crusade to the holy sepulchre, or sketching caracatura's while the brave were bleeding and dying for their country. He gives us three or four sophistical arguments to prove that "no taxes can be exactly equal." "If not exactly equal on all, then not just." "Therefore no taxes at all can be justly imposed." This is arch. But who before ever dreamt that no taxes could be imposed, because a mathematical exactness or inequality is impracticable.

Having in his odd way, and very confused method considered the right and authority of parliament to tax the colonies, which he takes for granted instead of proving; he proceeds to shew the expediency of taking the present crisis by the fore top, and proceeding in the present manner, lest it should run away. As to the "*nascent* crisis, or <16> present tense," it is as good a tense as any in grammar. And misers and politicians will, for their purposes, ever think it the best. If we must be taxed without our consent, and are able to pay the national debt, it is our duty to pay it, which some take for granted; why then I agree we had better pay it off at once, and have done with it. For this purpose, the "present identic very now, is better than any other now, or crisis, begotten, or about to be begotten; nascent, or about to be nascent; born or unborn."[‡] If Mr. J——s pleases, it shall be the great *Aera*, or TO NUN, of the colony administratrix.

Ultima cummoei venit jam carminis aetas
——— *Nascitar Crisis*.⁹

* Pownall's Administration of the Colonies. Second Edition.

† Terms used in our obsolete charters.

8. *Sui juris*: "Of one's own right."

‡ P——n——n Parody.

9. *Ultima cummoei venit jam carminis aetas* / *Nascitar Crisis*: "The age of song is coming now at last / Crisis comes forth."

But as to the manner and reasons, it may not be amiss to offer a word or two. He asks with the *pathos* of a stage itinerant, if “any time can be more proper to require some assistance from *our* colonies, to preserve to themselves their present safety, than when *this country* is almost *undone* by pro-^{<17>}curing it.” That that *country*, as he calls it, is almost undone, I shall not dispute; especially after I have the sagacious Mr. J——s’s opinion, to the same purpose. But he shows his ignorance, weakness, and wickedness, who imputes so tremendous an impending evil to procuring safety for the colonies. The colonies never cost Britain anything till the last war. Even now, if an impartial account was stated, without allowing one penny for the increase of European trade since the discovery of America, or for the employment yielded by the colonists to millions in Britain who perhaps might otherwise starve, the neat revenue that has accrued by means of “*our* American colonies” alone, would amount to five times the sum the crown ever expended for their settlement, protection, and defence, from the reign of queen Elizabeth to this day. In this calculate the whole expence of the last war is included, and supposed intirely chargeable to America, according to the visionary theorems of the Administrator, and Regulator.* I should think, however, that some small part of the national ^{<18>}debt might be justly charged to the “procuring the present safety of Hanover, and other parts of high and low Dutchland.” But, waving this, if it were all to be charged to America, the hundred and forty-nine millions were well laid out, and much better than any sum from the time of Julius Caesar, to the glorious revolution, the “nascent” aera of British liberty, glory, and grandeur. It was for the very being of Britain, as a great maritime, commercial, and powerful, state; none of which would she long be without the assistance of her colonies. It requires no penetration to foresee that should she lose these, which God forbid, she would in a few years, fall a sacrifice to France, or some other despotic power on the continent of Europe. The national debt is confessed on all hands, to be a terrible evil, and may, in time, ruin the state. But it should be remembered, that the colonists never occasioned its increase, nor ever reaped any of the sweet fruits of involving the finest kingdom in the world, in the sad calamity of an enormous overgrown mortgage to state and stock jobbers. No places nor pensions, of thousands and tens of thou-^{<19>}sands sterling, have been laid out to purchase the votes and influence of the colonists. They have gone on with their settlements in spite of the most horrid difficulties and dangers; they have ever supported, to the utmost of their ability, his majesty’s provincial government over them, and, I believe are, to a man, and ever will be,

* Administration and Regulations of the colonies.

ready to make grants for so valuable a purpose. But we cannot see the equity of our being obliged to pay off a score that has been much enhanced by bribes and pensions, to keep those to their duty who ought to have been bound by honour and conscience. We have ever been from principle, attached to his majesty, and his illustrious house. We never asked any pay: the heart-felt satisfaction of having served our king and country, has been always enough for us. I cannot see why it would not be well enough to go a nabob hunting on this occasion. Why should not the great Mogul be obliged to contribute towards, if not to pay, the national debt, as some have proposed? He is a Pagan, an East Indian, and of a dark complexion, which are full as good reasons for laying <20> him under contribution, as any I have found abroad in the pamphlets and coffee-house conferences, for taxing the colonists. There are, doubtless, good reasons to be assigned, or it would not be done, by my superiors; but I confess I cannot reach them, nor has Mr. J——s afforded me the least assistance in this matter. Necessity, say the coffee-house politicians has no law. Then say I, apply the *sponge* at once! A few jobbers had better be left to hang and drown themselves, as was the case after the South Sea bubble, and a few small politicians had better be sent after them, than the nation be undone. This would, in the end, turn out infinitely more beneficial to the whole, than imposing taxes on such as have not the means of paying them. In the way revenue has been sometimes managed, the universe, would not long set bounds to the rapid increase of the national debt. If places, pensions, and dependencies shall be ever increased in proportion to new resources, instead of carefully applying such resources to the clearing off former incumbrances, the game may be truly infinite. I remember that the great duke of Sully, on <21> a revision of the state of his master's finances; found that of one hundred and thirty millions annually extorted from the poor people, but thirty millions of those livres centred in his majesty's coffers. He proceeded in a manner worthy himself. Happily for Britain, the papists ruined France and their own cause, by the villainous assassination of one of the greatest, wisest, and best princes, that ever lived. Of course the power and influence of the best minister beyond all comparison, that ever existed, fell with the sovereign. He only lived to explain to France what she might have been. She has ever since been toiling to regain the lost opportunity; God be thanked, it is yet in vain, and if Britain pleases, ever will be.

Mr. J——s asks, if “any time can be more proper to impose taxes on their *trade*, than when they are enabled to rival us in our manufactures, by the encouragement and protection *we* have given them?” Who are WE? It is a miracle he had not affirmed, that the colonies rival Great Britain in trade also. His not asserting this, is the only glimmering of modesty or regard

to truth, <22> discoverable through his notable performance. As the colonists are British subjects, and confessedly on all hands entitled to the same rights and privileges, with the subjects born within the realm, I challenge Mr. J——s or any one else to give even the colour of a conclusive reason, why the colonists are not entitled to the same means and methods of obtaining a living with their fellow-subjects in the islands.

Can any one tell me why trade, commerce, arts, sciences and manufactures, should not be as free for an American as for an European? Is there any thing in the laws of nature and nations, any thing in the nature of our allegiance that forbids a colonist to push the manufacture of iron much beyond the making a horse-shoe or a hob nail? We have indeed “files for our mattocks, and for our coulter, and for our forks, and for our axes, to sharpen our goads,” and to break our teeth; but they are of the manufacture of Europe: I never heard of one made here. Neither the refinements of Montesquieu, nor the imitations of the servile Frenchified half thinking mortals, who are so fond of quoting <23> him, to prove, that it is a law of Europe, to confine the trade and manufactures to the mother state, “to prohibit the colonists erecting manufactories,” and “to *interdict* all commerce between them and other countries,” will pass with me for any evidence of the rectitude of this custom and procedure. The *Administrator* has worked these principles up to “fundamental maxims of police at this crisis.” The *Regulator* hath followed him, and given broad hints that all kinds of American manufactures will not only be discountenanced, but even prohibited, as fast as they are found to interfere with those of Britain. That is, in plain English, we shall do nothing that they can do for us. This is kind! . . . And what they cannot do for us, we are permitted to do for ourselves. Generous! . . . However, I can never hear American manufactures seriously talked of, without being disposed to a violent fit of laughter. My contempt is inexpressible, when I perceive statesmen at home amusing the mob they affect to despise, with the imminent danger, from American manufactories.

<24> Mr. J——s complains that “the plantation governors have broke all their instructions to procure a handsome subsistence, and betrayed the rights of their sovereign.” Traitors, villains! Who are they? I never before heard of any such governors. I have had the honour to be acquainted with not a few governors, and firmly believe they would in general sooner break their own necks than their instructions. If Mr. J——s has discovered such a knot of traitors and betrayers of their sovereign’s rights, as he represents the plantation governors to be “they one and all,”* for he makes no discrimination, it is

* P——nl——n.

his duty to give the proper information that they may be brought to condign punishment, and he himself stand unimpeached for misprision of treason. I promise him aid enough in most provinces to apprehend and secure such atrocious offenders as the betrayers of the rights of the best of kings. He may also rest assured, there is no colony but what would rejoice in seeing its governor rewarded according to his works, and duly exalted or depressed as he may deserve. But this man <25> cannot, by any figure in any logic or rhetoric, but his own, justify the position that the colonists ought to suffer for the perfidy and treachery of such governors as he says have betrayed the rights of their sovereign. That the colonies have eventually suffered and may again, by the faults of some governors is not impossible. But punishing the colonists in their stead, would be a sample of justice like that of hanging the weaver for the cobbler, according to Butler.

The reverend, honourable and grave, our American judges, are also lugged in head and shoulders, and scandalously abused by Mr. J——s. He has the audacity even to flout and sneer at those who wear long robes and full bottomed wigs, instead of greasy hats, shaggy hair, and ragged coats, as the manner of some yet is. He has the impudence to mention “costly perri-wigs and robes of expensive scarlet,” “as marks of the legal abilities of the American judges.” What an ungentleman-like insinuation is this? as if he apprehended them to be destitute of all other law-like qualifications. What a reflection is this on those who <26> appoint American judges? They are chosen by the people no where but at Rhode Island or Connecticut. There they never expect any salaries. Their judges have been in general men of fortune, honour, integrity, and ability, who have been willing to give a portion of their time to the public. For the judges in other colonies, the people are not answerable; if they are any of them weak or wicked, it is a sore calamity on the people, and needs no aggravation.—He says the judges are “so dependent on the humors of the assemblies, that they can obtain a livelihood no longer than *quamdiu se male gesserint*.”¹⁰ This makes the judges as bad as the governors, who for a morsel of bread, or a mess of pottage, he makes mercenary enough to “betray the rights of their sovereign.” I would have Mr. J——s, for his own sake, a little more careful of his treatment of American judges. I once knew an American chief justice take it into serious consideration, and consult the attorney-general of the province where he lived, whether his late majesty’s attorney and sollicitor-general had not been guilty of a libel upon his court, <27> in stating a favourite case before the king and counsel, in a manner that bore a little hard upon the provincial judicatory. I would also ask

10. *Quamdiu se male gesserint*: “So long as they behave poorly.”

good Mr. J——s if he certainly knows that any of our plantation governors and judges have lately complained home, that they cannot get a “livelihood” in America, but by *breaking* their instructions and oaths, and basely “betraying the rights of their sovereign”? Dare any of them openly avow such a complaint on either side the atlantic? If any of them have given such reasons, among others, in a sedulous application to the ministry, that America should have heavy duties and taxes imposed, let them come forth and declare it, and they will soon receive their reward. If there have been any complaints of this kind, to my great consolation, the authors are like to be sadly disappointed: for I cannot find my intention of applying any part of the new American revenue to the discharge of the provincial civil list. The present palliative indeed seems to be the appointing a number of influencial Americans to be STAMP masters; but I suspect this will be but a temporary pro-<28>vision, and as a kind of reward to some who may have been but *too active* in bringing about the measure. When the present set shall die off, or be suspended, there can be no objection to the appointment of Europeans, as I wish it had been at first. Here I must make a general reflection that will not affect the good, the just, and the worthy, all others are at liberty to apply it to themselves. In many years experience in American affairs, I have found that those few of my more immediate countrymen the colonists, who have been lucky enough to obtain appointments from home, have been either gentlemen of true American quality, or of no quality or ability at all. The former have generally the pride of a Spaniard without his virtue, the latter are often as ignorant and impudent as the Scotch writers of the Critical Review.—Hence ’tis easy to see the colonists, as they ever have been, would be in *general* better treated, less subjected to the insolence of office from Europeans, than from colonists. I will go one step further, and venture to affirm, that if we look carefully into the history of these provinces, we shall find <29> that in every grievance, every hardship in the restriction of our trade and commerce, some high or low dirty American has had a hand in procuring it for us.

The main object of the American revenue, according to Mr. J——s, the *Administrator*, the *Regulator* and others, seems to be for the maintenance of a standing army here. For what? To protect and defend us, poor souls. Against whom? Why a few ragged Indians, thousands and ten thousands of whose fathers, without any European aid, when we most wanted it, were sent to the infernal shades. But “filial duty,” the moral Mr. J——s thinks will “require that we give some assistance to the distresses of our mother country.” Dear mother, sweet mother, honored mother-country, I am her most dutiful son, and humble servant! But what better assistance can be given to madam, than by yielding, as her American sons have, for more than

a century, subsistence for half Britain? Take my word for once, my lord, every inhabitant in America maintains at least two lazy fellows in ease, idleness, or luxury, in mother Britain's lap. We have nothing we can <30> call our own, but the toil of our hands and the sweat of our brows. Every dollar that is exported hence to lodge in madam's great pocket, returns no more to us, *facilis descensus Averni*.¹¹ The coarsest coat of the meanest American peasant, in reality contributes towards every branch of our gracious and ever adored sovereign's revenue. The consumer ultimately pays the tax, and 'tis confessed on all hands, and is the truth, that America, in fact or eventually, consumes one half the manufactures of Britain. The time is hastening when this fair daughter will be able, if well treated, to purchase and pay for all the manufactures her mother will be able to supply. She wants no gifts, she will buy them, and that at her mother's own price, if let lone. That I may not appear too paradoxical, I affirm, and that on the best information, the Sun rises and sets every day in the sight of five millions of his majesty's American subjects, white, brown and black. I am positive I am within bounds, let the *Administrator* and *Regulator* compute as they please in their rapid flight thro' our western hemisphere. The period is not very remote <31> when these may be increased to an hundred millions. Five millions of as true and loyal subjects as ever existed, with their good affections to the best civil constitution in the world, descending to unborn miriads, is no small object. God grant it may be well attended to! Had I the honor to be minister to the first, the best monarch in the universe, and trustee for the bravest people, except perhaps one, that ever existed, I might reason in this manner, "the Roman Eagle is dead, the British Lion lives! strange revolutions! the savage roving Britons who fled before Julius Caesar, who were vanquished by his successors *Hengist* and *Horsa*, who cut the throats of the *Lurdanes*, and fell under the Norman bondage, are after all the masters of the sea, the lords of the ocean, the terror of Europe, and the envy of the universe! can Britain rise higher? Yes, how? Never think yourself in your zenith, and you will rise fast enough. Revolutions have been; they may be again; nay, in the course of time they must be. Provinces have not been ever kept in subjection. What then is to be done? Why it is of <32> little importance to my master, whether a thousand years hence, the colonies remain dependant on Britain or not; my business is to fall on the only means to keep them ours for the longest term possible. How can that be done? Why in one word, it must be by nourishing and cherishing them as the apple of your eye. All history will prove that provinces have never been disposed to independency while well treated. Well treated then

11. *Facilis descensus Averni*: "The descent into Avernus [the entrance to hell] is easy."

they shall be.” To return, the colonists pride themselves in the real riches and glory their labours procure for the best of kings: liberty is all they desire to retain for themselves and posterity.

I could wish my lord, that the colonists were able to yield ten times the aids for the support of the common cause ever yet granted by, or required of, them. But to pay heavy provincial taxes in peace and in war, and also *external and internal* parliamentary *assessments*, is absolutely out of the people’s power. The burden of the *stamp* act will certainly fall chiefly on the middling, more necessitous, and labouring people. The widow, the orphan, and others, who have few on earth to help, or even pity <33> them, must pay heavily to this tax. An instance or two will give some idea of the weight of this imposition. A rream of printed bail bonds is now sold for about fifteen shillings sterling; with the stamps, the same quantity will, I am told, amount to near one hundred pounds sterling. A rream of printed policies of assurance, is now about two pounds sterling; with the stamps it will be one hundred and ninety pounds sterling. Many other articles in common use here, are in the same proportion. The fees in the probate offices, with the addition of the stamps, will, in most provinces, be three times what has been hitherto paid. Surely these, and many other considerations that must be obvious to all who are versed in the course of American business, are far from being any evidence of the boasted equality and equity, of this kind of taxation. I do not mean to insinuate that there is, or hath been, any thing intentionally wrong, in the views of administration; far from it, I detest the thought. I am convinced that every Englishman, as ’tis his interest, really wishes and means well to the colonies, and I shall ever have full con-<34>fidence in the wisdom and rectitude of the present truly British administration. But I have a very contemptible opinion of divers vile informers and informations, that have been transported and re-transported, within these seven years. I know some of the former to be most infamous fellows, and not a few of the latter to be most infernal falsehoods. How many low and insignificant persons, have, on their landing in Britain, been instantaneously metamorphosed into wise politicians, or suddenly transformed into hugely sage *connoisseurs* in the *administration* of the colonies at this crisis? Some have had the assurance on their return to assert, that they were permitted to attend, and even frequent, lord Greenlaurel’s levy, and dine with duke Humphry? *Credat Judeus Appelia*.¹² Two hopeful young brother surgeons, who lately went over, wrote to their friends, that they had laid aside all thoughts of going into an ordinary hospital of invalids, having had overtures from the Critical Reviewers, to assist them in a new project of theirs, for

12. *Credat Judeus Appelia*: “Let Appela, the Jew, believe it.”

dissecting the colonies and all writers in their favour. An apothecary, a quack <35> and a fortune-hunter, not long since arrived, say they were closetted by this, and that, and t'other great man, who made most marvellous shrewd enquiries concerning the luxurious taste of our cods, crabs, muscles, eels, and smelts. They even add, that as a reward for their important discoveries and informations, in the nature of American shrimps and serpents, they are to be admitted members of the society for the encouragement of arts, &c. One swears he has obtained ample promises of high preferment, as soon as ever the *finance tres grande toute nouvelle et admirable*¹³ shall receive its long predicted completion in America. Another says, he is to be farmer general of a tax of his own projecting, on all colony gold finders. A third says, he shall accept of nothing less than the place of *Intendant extraordinaire*¹⁴ of the much expected duty on all North American manufactured mouse traps, he having given the first hint.—But be these things as they may: this however, is certain, that a set of fribbling people, and some others in the colonies, who are become to the last degree detestable to all true Americans, affect to use their sage advice, and surprising <36> influence, in order to conciliate good and worthy men to measures, which if ever so just and salutary, these contemptible persons would bring into disgrace.

Mr. J——s says, “imposing taxes on *our* colonies has been called harsh and arbitrary.” By whom? I never heard one man of sense and knowledge, in the laws and British constitution, call the parliamentary authority arbitrary. The power and authority of parliament is not to be questioned. Nay, after all the bustle, the authority of that august body really never has been questioned by one of the colony writers, when duly attended to. The mode of exercising this authority, and the manner of proceeding, may in some instances have been thought a little hard and grievous, and may be again, notwithstanding what Mr. J——s has said. He objects to the assertion of some, that “it would have seemed less hard if the administration or the parliament had been pleased to settle the respective *quota* of each colony, and left it to each one to assess the inhabitants, as easily to themselves as might be, on penalty of being taxed by parliament in case of any unreasonable non-<37>compliance with the just requisitions of the crown, of which the parliament is, and must, in the nature of things, be the final judge.”—Mr. J——s asks, “what would have been the consequence of this?” I answer, neither he nor I can tell. It will

13. *Finance tres grande toute nouvelle et admirable*: “The grand, all new, and admirable finance.”

14. *Intendant extraordinaire*: “An extraordinary (high) official.”

be time enough to answer this when the experiment is made; but I believe there would have been found a chearful compliance on the part of the colonies, and that they would exert their utmost abilities. He most insolently asks if the “assemblies have shown so much obedience to the orders of the crown, that we could reasonably expect they would tax themselves on the arbitrary commands of a minister”? I hope he holds the proper difference between the lawful commands of our sovereign, the just orders of the crown, and “the arbitrary commands of a minister,” though he has so strangely tacked them together? ’Tis our indispensable duty to yield every aid in our power to our gracious prince, and to the state, and to obey the just orders of the crown: but the arbitrary commands of a minister, are no more obligatory, than the bulls of the pope. How-^{<38>}ever, I have seen the time when the flower of our youth have been annually impressed and dragged forth by thousands and tens of thousands, to certain misery and want, if not death and destruction. I have also seen immense provincial taxes levied, and all these things effected, by a (no English) speech of a governor, the military mandate of a general, or, if possible, the more haughty dictate of a minister. What have we got by all our compliances? Precisely what by many wise and good men, was foreseen and foretold, we should get. Canada is conquered, the colony trade is more than ever restricted, we are taxed without our *actual* consent in person, or any representation *in fact*, and in many instances are to be tried without a jury. The remains of those tribes of savages, the French used to keep in pay, to scalp us, and cut our throats, are, in the estimation of some great men, more respectable than his majesty’s ancient, and ever loyal colonists.

Mr. J——s asks if it would be “possible to settle the quota’s of an American tax with justice?” Why not? The whole used to be commensurate with all the parts. ^{<39>} Is it not nearly as easy to say what each part ought to pay, as to determine what ought to be paid by the whole? The gentleman will not insinuate that administration can ever act so preposterous a part, as to guess what the whole should pay, as must be the case, if ignorant of the ability of each part. He also asks, if “any one of the colonies would submit to their quota, if ever so just?” What doubt can there be of the loyalty and submission, passive obedience, and non-resistance, of the colonies, in all cases and contingences, so far as the laws of God, of nature, and of their country require? I have none. Is not the obligation to submission the same in one case as in the other? If an act of parliament says *A* shall pay ten shillings, and *B* ten shillings, would any man in his right mind say it was less binding, than if *A* and *B* were by the same authority ordered conjointly to pay twenty. His odious comparison of “the Roman tyrants,” is left with its author, with this single remark: that “the choice of a dose, a dagger, or a halter is most certainly preferable to the

sudden obtrusion of either singly, without time allowed to say a short <40> *pater noster*.¹⁵ The gentleman has made himself quite merry with the modest proposal some have made, though I find it generally much disliked in the colonies, and thought impracticable, namely—*an American representation in parliament*. But if he is now sober, I would humbly ask him, if there be really and naturally any greater absurdity in this plan, than in a Welsh and Scotch representation? I would by no means, at any time be understood to intend by an American representation, the return of half a score ignorant, worthless persons, who like some colony agents, might be induced to sell their country and their God, for a golden calf. An American representation, in my sense of the terms, and as I ever used them, implies a thorough beneficial union of these colonies to the realm, or mother country, so that all the parts of the empire may be compacted and consolidated, and the constitution flourish with new vigor, and the national strength, power and importance, shine with far greater splendor than ever yet hath been seen by the sons of men. An American representation <41> implies every real advantage to the subject abroad, as well as at home.

It may be a problem what state will be of longest duration, greatest glory, and domestic happiness. I am not at leisure fully to consider this question at present. Time shall show. I can now only say, it will be that state, which, like Great-Britain, Heaven shall have favoured with every conceivable advantage, and gave it wisdom and integrity enough to see and embrace an opportunity, which once lost, can never be regained. Every mountain must be removed, and every path be made smooth and strait. Every region, nation and people, must to all real intents and purposes, be united, knit, and worked into the very bones and blood of the original system, as fast as subdued, settled or allied. Party views and short sighted politicians, should be discarded with the ignominy and contempt they deserve.

Mr. J——s seems to be seized with an immense pannic lest “a sudden importation of American eloquence” should interfere with those who are fond of monopolizing the place and pension *business*. He <42> even insinuates that it would cost more to pay our orators, than a standing army *here*. I will ease him of this difficulty. There would not be many worth the high prices of Britain. When trimmers, time servers, scepticks, cock fighters, architects, fiddlers and castle builders, who commonly sell cheap, were bought off, there might not be more than three or four worth purchasing; and if they should sell as cheap in Britain as I have known some of them in America, it would fall infinitely short of the blood and treasure a standing army may one day

15. *Pater noster*: “Our father.”

cost. From any danger therefore Mr. J——s is in, from “the sudden importation of American eloquence,” he may speechify and scribble for or against administration, abuse the colonies, turn and return, shift, wind and change as usual, no man will trust him, and ’tis hoped that in *secula seculorum*¹⁶ by the eternal fitness of things, and the constructure of the cells of his *cerebellum*, and moral aptitude, he will be kept down just where he is and ought to be. He seems to have no idea of revenue, but that of drawing money into the public coffers, *per fas aut nefas*,¹⁷ merely to squander away <43> *ad libitum*.¹⁸ Riches returning from the four winds of the earth in heavier showers than the poets ever dreamt of, into the pockets of the worthy and opulent British merchant will, according to him, give a griping minister too much trouble before he has extracted and “squeezed it out again by various domestic taxes.” His own words: “Perhaps” says he “in the mean time, it may enable the merchant, by augmenting his influence, together with his wealth, to plunge us into new wars and new debts, for his private advantage.” By this ’tis plain Mr. J——s’s plan is to stop the rivulets, and leave the cistern dry. Do you not see this, British colonists, British merchants, and British manufacturers? Consider this, before it is too late! it is the sum total of Mr. J——s’s political logic and arithmetic! It is too absurd to require a more particular refutation. He concludes, *ad captandum*,¹⁹ both the great and small vulgar, thus; “it is,” says he, “to be hoped, that in this great and important question, all parties and factions, or in the more polite and fashionable term, all connections will cordially unite; that every member of the <44> British parliament, whether in or out of humour with the administration, whether he has been turned out because he opposed, or whether he opposed because he has been turned out, will endeavour to the utmost of his power to support this measure. A measure which must not only be approved by every man who has any property or common sense, but which ought to be required by every *English* subject of an *English administration*.”—I thought all subjects were now British, and the administration too. I cannot tell whether the *exhorter* was ever “turned out because he opposed, or opposed because he was turned out”; but certainly among other species of readers, he has omitted to address himself to the hopeful young men and promising candidates for preferment, who have as it were perished in *embrio*,²⁰ by discovering too great an insolence and avidity

16. *Secula seculorum*: “Forever.”

17. *Per fas aut nefas*: “By right or not.”

18. *Ad libitum*: “At will.”

19. *Ad captandum*: “For capturing.” An argument that seduces the unskilled.

20. In *embrio*: Literally, “in embryo.”

of power, by assuming the advowson, nomination and induction of their fellow servants, before they themselves have been taken into place.

My Lord, we have heard much said of a *virtual representation*. What can it mean? If a society of a thousand men are united <45> from a state of nature and all meet to transact the business of the society they are on a perfect level and equality, and the majority must conclude the minority. If they find themselves too numerous to transact their business, they have a right to devolve the care of their concerns on a part of the society to act for the whole. Here commences the first idea of an *actual* trust or representation in *fact*. The trustees council or senate, so chosen are in fact representatives of and agents for the whole society. If the society agrees to have but one trustee, representative or agent, he is a *monarch*. If they make choice of a council or senate, they are joint agents, trustees or representatives of the whole community. Upon so simple a principle are all governments originally built. When a man chuses to act for himself he has no representative, agent or trustee. When the individuals of a community chose to take care of their own concerns, they are in no wise represented; but being their own factors in person, form that society which the learned wrangle about under the name of a *democracy*. When two or more are appointed joint <46> factors, agents for, trustees and representatives of, the whole society, they are called noble, and politicians denominate this form an *aristocracy*. When the trust is as above observed devolved on one, it is called a *monarchy*, i.e. one great or chief man is in fact trustee, representative of, and agent for the whole state. And he has a right to act for them so long as he may be chosen to act by the society. Which society being originally the constituents of their agent or representative, have an absolute right and power to lay him under such limitations and restrictions as they may think reasonable. In all this we find no mystery, no occasion for occult qualities, no want of the terms *virtual representation* as distinguished from a *representation in fact*, or any other jargon. If the society find each of the simple forms of administration inconvenient or dangerous, as they all are, and agree on a *mixture* of those simple forms, as it is commonly expressed, but in plainer English, to have different divisions, ranks and orders of trustees or representatives, they proceed thus. When they chuse a monarch or senate, they entrust him or <47> them with the necessary powers of government, to act for the good and welfare of the whole society. So in a government constructed like that of Great-Britain, the society hath made two divisions of the supreme power: the first is the *supreme legislative*, consisting of three ranks of branches, viz., King, lords and commons. The *supreme executive*, which is solely monarchical, and admits of no division or different ranks. Both these divisions,

and all the ranks of the former, derive their power originally from the whole community. This at least is all the idea a philosopher can form. As to the *jus divinum*, the indefeasible inheritance, the indelible character, and other nonsense of the schools, they are only for the entertainment of old women, and changelings.—The King's share in the legislative and executive trusts by the British constitution is perpetual, and his royal dignity is hereditary. So are the titles of the house of Lords. The honorable house of Commons, the third rank or branch of our universal legislative, are elective, and the *deliciae populi*.²¹ God grant they may be always viewed in this light. These several <48> branches and divisions are all subject to further alterations, limitations and restrictions from time to time. In the original idea and frame of our happy constitution, it was immaterial as to the succession to the crown, whether the heir apparent, were Pagan, Turk, Jew, Infidel or Christian. But now Papists, and all but Protestants, are very justly excluded from the succession, as for the best reasons they are from a seat in either house of the august parliament of Great-Britain.—The number of the two houses of parliament, is not by nature nor by any thing I can discover in the British constitution, definite. The families of the peers may be extinct. The constitution, has on such events left it to the crown to supply the vacancies by new families and new creations. And as reason requires, when places have grown to be considerable, they have been called to a share in the legislature of their country by a precept to return members to the great council of the nation. So when a territory hath been conquered, as was the case of Wales, or united, as was the kingdom of Scotland, they have had their full share in <49> the *legislative*. The wisdom of ages hath left Ireland to be governed by its own parliaments, and the colonies by their own assemblies, both however, subordinate to Great-Britain, and subject to the negative of both the supreme legislative and supreme executive powers there.* Is not this a sufficient subordination? The fears of our independency must be affected or imaginary. We all acknowledge ourselves to be not only controulable by his majesty's negative on all our acts, but more especially so by that august, and by all true British subjects, ever to be dearly esteemed and highly revered body, that high court the parliament of Great-Britain. In all this, however, we find nothing of *virtual representation*.

21. *Deliciae populi*: "The delight of the people."

* The charters generally reserve to the crown a negative on all colony laws. The parliament repeal such as they think fit. So that a colony bill is in effect subject to four negatives, viz. the governor and council here, and his majesty in his privy council at home, and after all the parliament.

The parliament of 1st of James 1st, “upon the knees of their hearts (as they express it) agnize²² their most constant faith, obedience and loyalty to his majesty and his royal progeny, as in that high court of <50> parliament, where all the whole body of the realm, and every particular member thereof either in person or by representation upon their own free elections, are by the laws of this realm, deemed to be personally present.” But as much prone as those times were to mystick divinity, school philosophy, academick politics, and other nonsense, they say not a word of the *virtual representation* of Ireland or the other dominions. There can be no doubt but the supreme legislature may if they please unite any subordinate dominion to the realm. It has not been yet asserted that the colonists are in *fact represented* in the house of commons, nor I believe will any man seriously affirm it. The truth is, the colonists are no more represented in the house of Commons than in the house of Lords. The king in his executive capacity, in *fact* as well as *law*, represents all his kingdoms and dominions: and king, lords and commons, conjointly, as the supreme legislature, in *fact* as well as in *law*, represent and act for the realm, and all the dominions, if they please. It will not follow from thence, that if all subordinate legislature and privy-<51>leges are re-assumed, without any equivalent allowed, but it will be a case of very singular hardship.* The inhabitants of the British nations, and of the dominions of the British crown, in Europe, Asia, Africa and America, are in my idea but one people, fellow subjects of the most gracious sovereign on earth, joint heirs to the rights and privileges of the best civil constitution in the world, and who I hope e’er long to see *united* in the most firm support of their Prince’s true glory, and in a steady and uniform pursuit of their own welfare and happiness.

It may perhaps sound strangely to some, but it is in my most humble opinion as good *law* and as good *sense* too, to affirm that all the plebeians of Great-Britain are in fact or virtually represented in the assembly of the Tuskarora’s, as that all the colonists are in fact or virtually represented in the honourable house of Commons of Great-Britain, separately considered as one branch of the supreme and universal legislature of the whole empire.

<52> These considerations I hope will in due time have weight enough to induce your lordship to use your great influence for the repeal of the *Stamp Act*. I shall transmit your lordship, by the next mail, a simple, easy plan for perpetuating the British empire in all parts of the world. A plan however

22. agnize: “to recognize or acknowledge.”

* It is no where said in any act or resolution of parliament, nor in any law book, that the British house of Commons, in fact or in law, virtually represent the colonists.

that cost me much thought before I had matured it. But for which I neither expect or desire any reward in this world, but the satisfaction of reflecting that I have contributed my mite to the service of my king and country. The good of mankind is my ultimate wish.

I am, my Lord,
Your Lordship's most obedient,
and humble Servant,

F.A.

Boston, Sept. 4, 1765.

6. Otis in the *Boston Gazette*, August 19 and 26, 1765,
Responding to Criticisms of *Noble Lord*

[August 19, 1765]

Messieurs EDES & GILL,

I Beg leave, to convey through the Channel of your Paper, my most humble and hearty Thanks to the Author of a Letter to a right noble Lord which you have been some Time publishing, for his very sensible, learned, and spirited Answer to the villainous Pamphlet of the celebrated Mr. —.

And at the same Time to convey my Request to that Gentleman, for an Explanation of a Passage in his Letter, that I cannot very clearly comprehend.—The Passage is this.—“True it is, that from the nature of the British Constitution, and also from the Idea and Nature of a supreme Legislative; the Parliament represents the whole Community or Empire, and have an undoubted Power, Authority and Jurisdiction over the whole; and to their final Decisions the whole must and ought peaceably to submit.”

I should be glad to know the Gentleman’s precise and determinate Meaning by, “The Nature of the British Constitution”? Whether he means the Form of Government that took Place among the Inhabitants of *Britain*, in the Days of *Julius Caesar*?—or the System of *William* the Conqueror—or the Laws of *Edward* the Third? or the Frame of Government in the Reign of *Elizabeth*? or the *Tyranny* of the *Steuarts* or the precise balance at the Union of *England* and *Scotland*? or any Thing that has existed since? Does he mean by the *British* Constitution, MAGNA CHARTA, or the Petition of Right, or the Habeas Corpus Act, or the Bill of Rights? or does he mean the most perfect Combination of human Powers in Society, that infinite Wisdom could contrive for the Preservation of Liberty and the Production of Happiness?—What does he mean by “the Idea and Nature of a supreme Legislative”? And how far will he carry the assertion that we “must and ought peaceably to submit to the Decrees of Parliament”?—If the Parliament should decree away the Property, Liberty and Life of every Member of the Empire that was not a Member of Parliament, ought we in that Case peaceably to submit?

I am &c. CURIOSUS.

[August 26, 1765]

TO THE PRINTERS.

I am obliged to *Curiosus* for a compliment, which however undeserved, his questions, and the manner of proposing his doubts in your last paper, show him to be a gentleman, a scholar, and a friend to liberty and to truth; and he shall be answered accordingly. It might be sufficient for the present to say, that the passage by him quoted may be taken for a general rule, and that to all such there are exceptions. My friend desires to know my precise and determinate meaning by the terms “the nature of the British constitution.”—I answer nearly in his own words, I mean “the most perfect combination of human powers in society,” that *FINITE wisdom hath yet contrived and reduced to practice* “for the preservation of liberty and the production of happiness.” The “idea and nature of a supreme power”—in natural philosophy, and in the sense of most modern politicians, means the *vis unita* or *vis fortiori*¹ of the society in whose hands soever it may be for the time being, and by what means soever it got there, be it by force or fraud, right or wrong. By the idea and nature of the supreme power, a lawyer, a moral philosopher, and a christian, always means the same power rightfully and honestly obtained, and that originally by the free choice and consent of the whole people or community. He has 2 other questions, (viz.) 1. “How far will he carry the assertion that we must and ought peaceably to submit to the decrees of parliament? 2d. If the parliament should decree away the property, liberty and life of every member of the empire that was not a member of parliament, ought we in that case peaceably to submit?” To this last I say clearly NO. It is past all doubt that if such a case should ever happen, which God forbid, all bands of society would be broken, & a total dissolution must ensue. The other question of the extent of our obligation to obedience, is *questio Spinoza*,² and has at different times been attended with terrible effects, both to those who would set no bounds to it, as well as to those who have contended for a reasonable limitation of this principle. I shall only observe here, that this question has generally related to the supreme executive; but a few passages from Mr. Locke, will show his sentiments also with regard to the supreme legislative. My own sentiments would be of very little weight in the scale with or against a philosopher who had a clearer idea of government, and of the British constitution in particular, than all the writers before him, or

1. *Vis unita* or *vis fortiori*: Literally, “a united strength [or] a stronger strength.”

2. *Questio Spinoza*: Literally, “the Spinoza question.”

perhaps that have succeeded him. I shall therefore in this *ordeal* road reserve my own opinion to myself. “The old question will be asked says Locke, in this matter of prerogative, *but who shall be Judge when this power is made a right use of?*” “I answer, between an executive power in being, with such a prerogative, and a legislative that depends on his will for their convening, there can be no judge on earth; as there can be none between the *legislative* and the people, should either the executive or the legislative, when they have got the power in their hands, design or go about to enslave or destroy them. The people have no other remedy in this, as in all other cases, where they have no judge on earth, but to appeal to heaven. For the rulers in such attempts exercising a power the people never put into their hands (who can never be supposed to consent that any body should rule over them for their harm) do that which they have not a right to do. And where the body of the people or any single man is deprived of their *right*, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment. And therefore though the people cannot be judge, so as to have, by the constitution of that society, any superior powers to determine and give effective sentence in the case; yet they have by a law antecedent and paramount to all positive laws of men, reserved the ultimate determination to themselves, which belongs to all mankind, where there lies no appeal on earth, (*viz.*) to judge whether they have just cause to make their appeal to heaven.—And this judgment they cannot part with, it being out of man’s power so to submit himself to another, as to give him a liberty to destroy him. God and nature never allowing a man so to abandon himself, as to neglect his own preservation. And since he cannot take away his own life, neither can he give another power to take it. Nor let any one think this lays a perpetual foundation for disorder; for this operates not ’till the inconveniency is so great, that the majority feel it and are weary of it, and find a necessity to have it amended: but this the executive power or wise princes never need come in danger of: and it is the thing of all others, they have most need to avoid, as of all others the most perilous.”

Locke’s Dis. on Gov’t. p. II. Chap. XIV. sc. 168.

“Here ’tis like the common question will be made says he, ‘Who shall be judge,’ whether the prince or legislative act contrary to their trust? This perhaps ill affected and factious men may spread amongst the people when the prince only makes use of his due prerogative. To this I reply, ‘the people shall be judge,’ for who shall be judge whether his trustee or deputy acts well and according to the trust reposed in him, but he who deposes him, and must by having deposed him, have still a power to discard him when he fails in his trust. If this be reasonable in particular cases of private men, why should it

be otherwise in that of the greatest moment, where the welfare of millions is concerned, and also where the evil if not prevented is greater, and the redress very difficult, dear and dangerous?"

Id. chap. 19. sc. 240.

"The legislative acts against the trust reposed in them, when they endeavour to invade the property of the subject, and to make themselves *or any part of the community*, masters or arbitrary disposers of the lives liberties and fortunes of the people." Id. cap. 19 pr Tot, and cap. 10. Tis probable further satisfaction will be given in the course of the letter.

I am your's &c. F.A.

7. John Hampden to William Pym

Essays from the *Boston Gazette*

December 9, 1765

JOHN HAMPDEN to WM. PYM.

Dear Sir,

EVERY subject of our gracious Sovereign, in whatever part of his dominions born, is not only by the law of nature, but by the common law and the British constitution, clearly intitled to all the rights, liberties and privileges essential to freedom. This generous principle brother Pym, I have so often heard you contend for, that I am perfectly astonished to find you inlisted among those who can think, or pretend to think, it just and reasonable that British subjects should be taxed without their consent, and tried without a jury. It must be very painful to your old friends, and to the last degree provoking to the Colonists to hear you of all men, raving and scolding at them, and, without the least colour of truth, accusing them of a formed settled design of making themselves independant of the Crown of Great Britain; and all this only because they complain of direct taxes that really exceed their ability, and which have been imposed not only without their consent and grant, but against their will. I do not believe the malicious insinuations of some of your new acquaintance, that you have inlisted for a cast suit a year, and a shilling a day, &c.* But it seems by some of the letters you have lately published, that you have drank plentifully of the waters of *Lethe*.—There remains not a single trace of your former notions of right and wrong. So far are you from speaking intelligibly of the rights of the Colonists, their state and circumstances, that you betray a shameful ignorance not only of the geography of the new world, but even of the colour of the brave inhabitants thereof. You affect to be in a mighty panic lest some of your sweet posterity, after a transportation to a paradise, for crimes deserving a swing at Tyburn, should be tried for all after offences by “a jury of Molattoes, in a court where the

* See Clarendon's Memoirs, and other Slanders, published of Wm. Pym the great Patriot.

descendant of some African Negro may sit as sole or chief judge"—These are nearly your own words, precisely your sentiments—That there have been too many corrupt and wicked judges in N. America is readily admitted; but be their complexion what it might, tis affirmed that there have been as many in Britain—Witness the affair of ship money, and the opinions of court judges of former times. You think most if not all the Colonists are Negroes and Molattoes—You are wretchedly mistaken—Ninety nine in a hundred in the more northern Colonies are white, and there is as good blood flowing in their veins, save the blood royal, as any in the three kingdoms. The common people in the Colonies are in general so well informed, that a man who cannot read and write, is looked on with as much pity and contempt as the ancient Romans view'd the Barbarians of old Britain. You think it a vast hardship that a Briton or, his descendant should be tried before a Negro Judge and a Molatto Jury, and yet your most penetrating genius could discern nothing unreasonable in it, that 4 or 5 millions of loyal and useful subjects should at one stroke be *taxed without their consent or grant; and have their property subjected to a tryal in a court of admiralty without any jury at all;* and this at such distance from home as the judge general and informer shall please, provided it be within the British dominions in America. The judge general may reside one year at Hudson's Bay, if he pleases, and cite all America to the regions of the north, and those who are not frozen in the march, he may call the next year to the torrid regions of,

"Those souls of fire, and children of the sun,
With whom revenge is virtue."*

I believe every Colonist, and any other man of common sense, had rather be tried by a jury of Molattoes or Mohawks, and before an African Judge too, than by nine in ten of all the Judges of Admiralty who have been seen in America from its first settlement.

I shall now give you some idea of the Colonists, and show the heavy taxes they pay, exclusive of the sugar act and stamp act.

The numbers of men in each Colony able to bear arms, including all colours, stand thus:

Nova Scotia, and the Northern Isles, which have cost the Crown more than the Settlement

of all the other Colonies,	10,000
Canada and Labradore,	30,000

* Wm. Pym's character of the Colonists in general.

Massachusetts Bay,	70,000
New Hampshire,	20,000
Colony of Rhode Island,	15,000
Connecticut,	45,000
New York,	25,000
New Jersey,	20,000
Pennsylvania and Lower Counties,	100,000
Maryland and Virginia,	180,000
North Carolina,	30,000
South Carolina,	45,000
Georgia and the two Florida's	10,000
The West India Islands,	<u>200,000</u>
Tot.	800,000
Multiplied by 5, gives,	4,000,000

The number of people, white, brown and black, within his Majesty's American dominions. All these except some of the remote tribes of Indians, not only acknowledge, but glory in, their allegiance and subjection to the crown; and are firmly persuaded that, their interest and happiness is closely and inseparably connected with that of Great Britain. The whole system of the laws of trade, as well as other acts, abundantly prove the dependant state of the colonies: And it is a truth clearly demonstrable, however little known or attended to, that altho' no considerable *direct* duty or tax, external or internal, has till lately been imposed on the colonies, by parliamentary authority, yet that *indirectly* and *eventually* the colonists are and have long been amazingly taxed by Great Britain, and have borne their heavy burdens, not only with patience, but chearfulness. The origin of the British colonies was in the cruel persecutions set on foot in church and state under the family of *Stuart*. These persecutions drove out thousands and tens of thousands, during the reigns of the three first of that arbitrary race. The second Charles, far from aiding or even protecting the colonists against their enemies, found means to restrain them in their trade and commerce. His parliament, professing to follow the example of other nations, among which the Spaniards were most closely imitated, obliged all the British colonies to carry the chief of their produce, all indeed of any great value, to Britain. Soon after this, the colonies were prohibited from importing any commodities or manufactures of Europe,* but from England, except a little salt for the fisheries, and a little wine from Madeira and the Western Islands. The liberty of importing

* By later Acts, no India Goods can be imported to the British Colonies, but thro' England.

salt has been since allowed Pennsylvania and New-York. But the rest must either let their meat perish on hand, or buy salt from Britain to preserve it. A few other trifling indulgencies have been since given, saving which, you shall hardly find an act, naming the colonies but what lays some grievous restriction on American commerce, and consequently imposes a *real*, tho' no *direct* tax. The enumerated commodities, which at this day can be exported from the Colonies only to Great Britain, are *Sugar, Molasses, Tobacco, Ginger, Cotton-Wool, Indigo, Fustick, and all other dying Wood, Tar, Pitch, Turpentine, Hemp, Masts, Yards, Bowsprits, Copper Ore, Beaver-Skins and other Furs, Rice, &c*: Excepting that rice and sugars may now under certain limitations and restrictions, be carried directly to some foreign markets. By the confinement of the British Colonies in their imports and exports, and shutting them out in a manner from all the world, *as Great Britain herself once was*, she has made herself the staple, in other words the monopolizer of all the commodities of the colonies, who in return are obliged to take her manufactures and commodities at her own price, not being allowed to trade at any other market. A merchant who could bring matters so to bear, as to force all his neighbours to buy his goods, and sell him theirs, and both at his own price, would soon grow rich; and all his neighbours would as soon grow poor; and while obliged to trade with him, upon such unequal terms, must ever remain so. But if he could persuade those neighbours, that he was the most generous fair trader in the world, & that they were very happy that he would trade with them, he must be a mad-man to try any further projects that might by any possibility undeceive them. At present I leave you to apply this as well as you can. In my next, I shall be more particular.

HAMPDEN.

December 16, 1765

JOHN HAMPDEN to WM. PYM.

SIR,

THE British Colonists have in divers instances been restrained in their attempts to erect manufactories, and forbidden to work up their own materials. Hats by a particular act are not to be exported from colony to colony, under the enormous penalty of £.500 Sterl. and by the same act the number of apprentices in the business of making Hats is restrained to two: Even a man's own negroes are not to be employ'd in it. This it is presumed might

be effected by some two or three dozen of opulent Haberdashers, and their connections within and without doors. Soon after this, there was as great an uproar among the iron-mongers, as that raised by the crafty silver smiths of Ephesus. The effect was that divers kinds of iron works in the colonies were interdicted under severe penalties. About the same time resolves passed the house of commons against all kinds of American manufactures, that *interfere* with those of G. Britain; i.e. *against all such as can by any possibility be there made*. When the iron-bill was pending, a gentleman of worth proposed that “as at a certain well known period there was no smith to be found, because none were allowed, in Israel, the Colonists should in all respects be *dealt wisely with*, and obliged to send their horses to Britain to be shod.” In the reign of King Wm. 3d, an act passed which forbids wool and woollen, under any pretence, to be water borne in the colonies, or in any way carried from colony to colony. This act has of late been, among many others, so rigorously executed, that gentlemen who have owned islands not a musquet shot from the main, have been obliged to smuggle off their wool, and then cart it an hundred miles to their houses. But who will believe that in the same glorious reign, the following very extraordinary clause is to be found in an act of parliament now in force viz. “That if any of the *Governors* in those plantations, or *any other person or persons in authority* there shall refuse to yield obedience to this act, such refusal is hereby declared to be a forfeiture of all and every the charters granted for the *government* and propriety of such colony.” And what do you think my dear Pym this act is entitled? Why only “an act for the more effectual suppression of piracy.” A sad proof this that how high soever the sense of the nation at that time was of their own rights and privileges, they had very little regard to the *liberty* of the colonies; or they never could have declared that not only the *jurisdiction*, but even the *propriety* of a whole colony should be subject to a forfeiture, as the case might happen, by the misdemeanor of a petty *constable*, who is a person as truly in authority as a plantation governor. I wonder if this clause had fallen in the way of a late M——n——st——r, whether he would not have tacked it to the St——p——a——t? This would have been a shorter cut than dragooning, or starving people into a compliance with buying his new curiously fabricated manufactures.

Among a thousand old rivited prejudices in relation to the British colonies, there is *one* that has proved a fruitful source of errors & wrong measures with regard to them. The *Spaniards* had figured it largely in colonization before England had made any progress in that way—Their arbitrary Princes ever considered their people as their property. The Pope considered not only all the Princes of the earth, but the whole earth itself as his patrimony. On the discovery of America, he began of course to give as usual what was none

of his own, and very gravely set himself to patent out the new world, among his most catholic and best beloved children. The Princes of his *no faith* beginning and carrying on the settlements at the public expence had something of a color on their system of government for considering their colonies as the meer *property* and *demesnes* of the crown. Our Princes after the reformation were restrained by law, at least from applying to the Pope, tho' few of them before the revolution were weaned from the Holy See: They of their own free will and meer motion gave out patents in various forms, and within that term being full as high in their notions of power, as any Pope of them all, tho' their patents were to particular companies of adventurers, and the settlements made entirely at private expence, yet the British colonies were very early considered by many in power as the meer absolute property of the Crown. It was early affirmed that they were and ought ever to be as absolutely under the sole direction and legislation of the Crown, as by the old barbarous law was a conquered country. This error in the common herd of writers, even at this day, is not much to be wondered at: But that a modern judge in Britain, high in rank at least, should declare it as his opinion, that "*the only law for a British colony is the sovereign will of the Prince,*" is wonderful. This is a hard doctrine for a Colonist to believe, harder still to swallow, and the man lives not who can cram it down the throat of a Hampden.—How abhorrent such a position is to all the colony charters, strait and limited as they are in their present state, how abhorrent to common law, common sense, and the first principles of a free constitution, like that of Great Britain, has been abundantly proved in divers late American publications, to which you are referred, to relearn the great doctrines of British liberty taught in 1640, since tempered and refined by the revolution, and perfected under the protestant succession now happily established in his Majesty's royal person and illustrious family, all which may God long preserve and prosper.

Besides the vulgar clamor occasioned against the Colonists by a meer whimsical jealousy of their aspiring after independency, which you have foolishly joined in, it has been very confidently & peremptorily asserted, that—"The Colonies pay no taxes"—That "Great Britain at her sole cost, has settled, nourished, protected, and bro't them to what they are"—That "in the late war Great-Britain expended many millions for their protection and defence, for all which she has never received so much in return as common *Gratitude*"—Nay one wiseacre of your party has affirmed, that "in equity and good conscience, the whole expence of the late war, 50 millions sterling at least, was chargeable to the account of the ungrateful colonies." In an answer to which, and an hundred thousand volumes of such absurd random assertions, I say, that till the late war, except the ill-judged projects for

settling Georgia and Nova Scotia, like Florida, under the *auspices* of the late magnanimous m——n——stry, I cannot find that the nation was ever at any expence worth mentioning for the colonies. North America was settled at the expence of the possessors, and the purchase sealed with the blood of their ancestors. And it is highly probable, that but for the wonderful exertions, and most miraculous success of the Colonists, Great-Britain, at this present writing, would not have been possessed of a single inch of all that fine country. For near a century after the first adventurers were cruelly driven out from their mother country, they had to struggle between the hardships of cultivating an unknown wilderness, and the invasions of the French and Indians. These were often not only connived at, but evidently assisted by the infamous ministers of the *Stuarts*, who to a man, with their masters, were ever the tools and dupes of France, Spain, the Pope or the —— some think of all four. Excuse me, brother Pym, tho' I am naturally as cool and calm as you are remarkably warm and impetuous, yet, when I find thee among the apostates, it rouses me somewhat.—

Posterity will hardly believe what in North America is a well known fact, namely, that altho' Great Britain has been rapidly increasing in numbers, wealth, power and splendor, from the first settlement of her colonies, to the conclusion of the late war; yet such have been her ministers till the close of the reign of George the second, of blessed and immortal memory that little or no attention was ever given to plantation affairs; and they were never taken in hand, but they were made worse; and both the interest of them and the mother country wounded. That great and good Prince had nearly spent his life in the embarrassments occasioned by the narrow party squabbles of Whigs and Tory's, when the nation with the greatest difficulty were at last convinced, that all their colonies were encircled by regular garrisons and strong holds. The Indians had long been taught to insult the British Colonists, with threats of one day sweeping them, "as with a cart rope," into the atlantic ocean. The simile was natural enough for an Indian who had seen the dreadful chain of forts, unknown in England, only for want of perusing the memorials, year after year sent over to be filed and to sleep in the plantation office; many of which it has been said, were thrown by without so much as breaking the covers. The important day, long wished for by the French and their Indian allies, as long dreaded by every true British Colonist, but scarcely ever dreamt of by Great Britain herself, at last arrived—France suddenly unmask'd all her batteries, and declared herself ready to fight for no less a prize than the empire of North-America.—It had been long before very rightly judged in the cabinets of *Colbert* and *Flury*, that this once obtained, and properly improved would facilitate the views of that haughty, vain and restless power, on all Europe, and probably on all the world.

The beginning, course and conclusion of the war, are well known, with the importance of it, to all Europe, and Great Britain in particular. And above all, the honour that it bro't to two successive monarchs, and all under God and them, by the wise plans and spirited execution of the only British minister who has yet proved that he knew how to conduct a war for the true interest of his country, and the true glory of his Prince. Over the rest time shall draw a veil—

I might now give a minute detail of your errors, and easily expose them, and you with them; but my desire is rather to convince and reform, than formally refute you. I shall therefore proceed to state a plain easy view of the real *taxes* the Colonies pay, call them *direct* or *indirect*, *external*, *internal* or *eventual*, as you please, it matters not. If the money is taken out of my pocket, it is of little importance what epithet is used, I shall not be a farthing the richer or poorer for words and names. I suppose if it be demonstrable, that the ungrateful colonies, as you are pleased to call them, were more heavily taxed to the public service, even before the Sugar-Act and Stamp-Act, than any of his Majesty's subjects in Great Britain now are, or ever were, you will allow it ought to be some small mitigation of your resentment occasioned by their complaints, and in some respects, unjustifiable conduct, with regard to new and insupportable burthens. I have nearly as good grounds for my account, as I have for my computation of the number of the colonists. I am not absolutely certain in either case, nor can any man be. But I will put the truth of both on this single issue, which I think a fair one, viz. If on the most exact scrutiny possible, it shall not be found that I am near enough to the fact, to support my argument against the equity and policy of the taxes imposed on America by the late regulations, I will, during life, cheerfully pay double my quota to all of them.

The imports of the Colonies, A.D. 1762, from Great-Britain, say

———— Sterling £.4,000,000

Lest any should be surpriz'd at this sum, let it be noted, that the memorial of the merchants of New York, sent home last year makes the imports into that colony only, in one year,

———— Sterling, £.600,000

It is agreed, by the best British writers on commerce, that £ 50 per Cent. of the first cost of Goods in England, from the maker, is artificial, arising from British taxes, impositions, monopolies, ill-judged laws of trade, and other political blunders,*

* Swift somewhere says, Harley told him to this Effect, "that he ever found it a most arduous task to convince a house of commons that two and two make four, on any subject relating to commerce & revenue."

It is a general rule, that the consumer pays the tax. This gives at one dash a tax on the colonies of _____ £2,000,000

The difference and loss to the colonies, and consequent gain of Great Britain, by the tight restrictions on the *enumerated* commodities of all kinds from the colonies, and nearly a total *prohibition* of all direct imports to them, from all other countries in the world, except “slaves & the souls of men,” from Africa, which by the laws of trade, and the consciences of modern christians, are left on the same footing with the teeth of dead Elephants, and the yellow dust of Gambia _____ £.500,000

To quit-rents, &c with the internal taxes for the support of colony government, through America, even in time of peace, _____ £500,000

Total. Per Annum. £.3,000,000

JOHN HAMPDEN.

December 23, 1765

JOHN HAMPDEN to WM. PYM.

SIR,

IN the estimate given in my last, nothing is included for the pay and perquisites of a great number of custom house and naval officers in the colonies. Nothing is reckoned for the extraordinary levies of men and money during all the wars since the settlement of America. This last alone has been a burthen of many millions sterling, besides the flower of the country annually drawn out to almost certain destruction, and that generally not by voluntary inlistment, but by the most arbitrary impresses: The commissions and exorbitant gains of the British merchants and factors on all goods sent to or from the colonies—£ 15 per cent. at least on an average, makes no part of that estimate. Nothing is reckoned for the gains of the merchant and retailer in the colonies. Nor has it been considered in forming the above calculate, that Great-Britain being an independant state, can easily make her colonies pay in their consumption all the taxes on her manufactures, while the poor colonists being dependant, cannot in return make the consumer in Britain pay the whole duties on imports from America: so far from it, that the truth is, a considerable part thereof falls on the planter. However, let these be thrown in, with the American taxes for the support of common justice, as county charges, those for the support of religion and learning, as college and parish charges, with town charges and provisions for the poor. The above sum of

three millions, which is exclusive of the sugar act and stamp act, bears a vast proportion to all the rents and other incomes in America, real and personal. What this is in the pound, I will not pretend to say at present, but am well assured it is much heavier than that of the land tax in England, even confined as that is to a very small part of the lands in South Britain, and those rated much below their real value.—I have heard divers intelligent gentlemen assert, that if all the lands in South Britain only were taxed equally, 2s per pound, would, with the other branches of the revenue, not only pay the interest of the national debt, but in a few years so augment the sinking fund as to discharge the whole—Well then may you and the late M——n——st——r be called on to behold the happy people of North America who pay no taxes—Who neither directly nor indirectly contribute any thing to the King's revenue!—Behold with a supercilious, jealous and malignant eye, those “undutiful children of your tender care, who have never cast in a mite to support the glory and grandeur of Great Britain, their *Alma Mater!*”

After what I have told you, can any man wonder at the immense riches and revenues of Great-Britain? Is it at all strange that the wives of brewers and button makers should be able to vie in their dress and equipage with the greatest Queens and Empresses.* It is a common thing in England for tradesmen by their industry to acquire from ten to a hundred thousand pounds sterling. Merchants and other commoners have realized a million. There never was but one man in North America that acquired an hundred thousand pounds sterling, which is more than any subject there at this day can realize. The high price of labor in America has been attributed to every cause but the true one. The truth is, it is principally owing to the high taxes the colonists pay, foreign and domestic.

If America now pays in taxes, as I am satisfied is the fact, per Annum

£.3,000,000

Had things been left only to the course they were in before the late regulations, America *caeteris paribus*,¹ would in 20 years have yielded 6,000,000

In 40 years	12,000,000
In 60 years	24,000,000
In 80 years	48,000,000
In 100 years	96,000,000

* The late Queen having refused to purchase a rich Silk, as extravagantly dear; Old Parsons the Brewer swore he would buy it for *Bets*, as he called his wife, and accordingly did. Upon which the Queen only said, she was glad his Majesty's subjects were so rich.

1. *Caeteris paribus*: “All other things being equal.”

Reckoning according to the natural increase of the Inhabitants, which double in less than twenty years. It requires no great penetration to foresee that, if it could be made the interest of North-America, to abstain from manufacturing another century and an half, they would consume annually more than all Europe could supply. In a much less time Great Britain might, if things were put on the true footing, or even left as they were, dispose of all hers, among her own colonists, and that for a good, sure and certain profit, with the double advantage of enriching the British merchants, and increasing the public revenue, as has ever been the case since the first settlement of the colonies, who by their consumptions alone have paid since the year 1600 a far greater sum in this way than the whole national debt, without reckoning a farthing for interest, simple or compound or for the profits of the British merchant manufacturer or landholder. All this, as heretofore, might have been effected imperceptibly to the colonists, except a few of them, and without the murmur and clamour ever attending a bungling shoulder tax, laid on like the lashes of a dog whipper. The art of taxation is by far the most nice game in the political world. What American peazant, before the late tremendous regulations, ever dreamt that his dearly bo't coarse coat to defend him from a seven months winter, was taxed half its cost to those who live and die in the ease, luxury and prodigality of Britain? Now they all know it, and that further and more *direct taxes*, *internal* and *external*, are required of them.

The *Administrator* has sagely proposed, that imposts on American commerce, inwards & outwards there, with an excise stamp & land taxes, should be the present objects of parliamentary taxation & that all other ways & means should for a while be left to the colony assemblies, to support the colony government. This is the rare gentleman, who in a most fulsome dedication compliments G——rg Gr——nv——lle on measures that will make his name detestable in the ears of all North America while the sun and moon shall endure, as it will all those of the placemen in the colonies, great and small, who have been the promoters of his wild projects and researches after the philosopher's stone. As to the little creatures that he closetted, cajoled or bought up by the dozen at a dear rate last winter & the winter before, most of them in their own country would sell as cheap as Tomcods, Smelts and Pigeons, when the markets are glutted. I will not, as some have in the latest London papers, charge a late M——n——st——r with being in the measures of Versailles:—But this I say, that had France given *ten millions* of *Louis d'ors* to bring about the late peace, and the measures consequent thereto, in relation to the British colonies, it might be affirmed she never spent French coin among British M——n——st——rs to so good a purpose since the days of Will the Norman.

Is it a marvel then, that the colonist though very artificially and gradually disposed to *submission*, *passive obedience*, and *non resistance*, should all of a sudden, be alarmed, rouse, grow tumultuous, outrageous, and to all appearance, as fixed and determinate as fate? What does that bungling, cobbling No *Statesman* deserve, who by his Quixotism has occasioned such a convulsion and commotion? Did a true politician ever tempt a young lion to try his paws, or a young eagle his wings and talons before the time? The eagles and the lions must have their prey; and 'tis far better that a reasonable portion should be quietly yielded, than to have them ranging and prowling at large, among the herds of the fields, and the flocks of the air, if from this consideration only, that when let loose, tho' it is possible that in a combined force of inferior individuals, the greatest of them may meet with his match; yet it would occasion much bloodshed.

HAMPDEN.

December 30, 1765

JOHN HAMPDEN to WM. PYM.

SIR,

HAVING shown the prodigious taxes the Colonists pay, I should now examine your pitiful expedient of an American representation in parliament, which according to your scanty ideas, and in the manner you would limit it, must prove more detrimental to the colonists, than the conduct of the wretched court dependent agents they commonly choose under the influence of their governors: But an important subject intervenes, that requires a present discussion: I mean the shutting the courts of justice, and public offices in North-America since the last of October. I shall therefore now only observe to you.—That I am fully satisfied any kind of American representation in parliament would be universally disagreeable to the colonists, and from their distance, poverty, and other circumstances is justly tho't impracticable.—That this topick was never handled, but principally as *argumentum ad hominem*,² to convince that no commoner in Britain consistently with his claim of an exclusive right of granting or taxing his own property, could grant that of another man, with whom he has no privity or connection. That if in the nature of things, and in some future age, a plan of a general union

2. *Argumentum ad hominem*: "An argument at the man."

of all parts of the British empire, under one equal and uniform direction and system of laws be possible to be carried into execution, yet it must be on such noble, generous and disinterested principles, that it is ten thousand to one if any such thing ever takes place.—Especially as the first steps towards it must be the forming an entire new system of commercial laws, the demolition of all monopolies great and small, and throwing open all the ports of the world to the colonists, under proper restrictions. When it is considered that all this and much more is requisite to obtain the greatest end, any nation ever had in view, it is not to be expected it will be properly tho't of, if ever attended to. Things therefore had better be left to their old course, in which Great Britain by means of her colonies, has long been the envy of Europe. Yet as great a paradox as tis, the greatest commercial state in the world never has had a council of commerce.

It used to be a good maxim, that the subject has the same right to his life, liberty, property and the *law*, that the king has to his crown; and tis yet very certain, that without the *law*, the crown cannot be supported, nor the subject protected. *Imperatoriam Majestatem non solum armis decoratam sed etiam legibus oportet esse armatam ut utrumque tempus et bellorum et pacis recte possit gubernari.*³ “In order to govern well, in peace and in war, ’tis absolutely necessary that imperial majesty should not only shine in arms, but be armed with laws.” By this tis evident not only that laws are requisite but the unremitted *administration* of justice, is absolutely necessary for the support of majesty and government, nay for their very existence. The full and true history of the stamp-act is left to a future day, and to some other hand; the fact is, that the courts of justice in America after the last of October were generally shut as close as the temple of Janus. The only thing that can warrant the shutting up the King’s courts, is an utter impossibility of holding them, by reason of war, rebellion or insurrection. Lord Coke says, “When the courts of justice be open, and the judges and ministers of the same may by law protect men from wrong and violence, and distribute justice to all, it is said to be a time of peace. So when by invasion, insurrection, rebellion, or such like, the peaceable course of justice is disturbed, and stopped, so as the courts of justice be as it were shut up, *et silent leges inter arma*,⁴ then it is said to be time of war. And the trial hereof is by the records and judges of the courts of justice, for by them it will appear whether justice had her equal

3. *Imperatoriam Majestatem non solum armis decoratam sed etiam legibus oportet esse armatam ut utrumque tempus et bellorum et pacis recte possit gubernari*: The translation follows directly, in the text.

4. *Et silent leges inter arma*: “The laws are silent in the face of arms.”

proceeding at that time or no, and this shall not be tried by jury. So as hereby it appeareth, that time of peace is the time of *law* and *right*, and time of war is the time of violent oppression, which cannot be *resisted* by the equal course of *law*." When this was established for law, the kingdom was divided into a great number of principalities and baronies, greater or lesser, like Germany at this Day. These were almost perpetually squabbling and taking sides, and a spark of fire once struck, often set the whole nation, sometimes the whole island in flames. In those times rebellions and insurrections, as well as invasions, must put a stop to all civil affairs, and consequently to the administration of justice in the King's courts, especially as formerly our Kings themselves sat as judges, and could by no possibility defend their crown by arms, and in person, and administer justice in a civil way at the same time. Besides this, the people of property were often all in the field, and by the tenures of their freeholds obliged to be there. In later and more regular times, since trade and commerce have been increased and the commons admitted to large shares of property, the case is widely different. It is also long since our Kings sat in the seat of justice. They have long ago devolved the administration of justice on the judges, who represent the King in his courts of law. In modern times Princes are seldom soldiers, or stir from court: and indeed war itself is so much reduced to art and science, that it gives little more disturbance to those who are not in arms, nor near the seat of it, than a horse race or a cock match. We do not find in the rebellion 1745 even when the rebels were in the heart of England, that the courts of law at Westminster were shut up. It is clear that the rule of *silent leges inter arma*, is never to be admitted further than force and arms oblige; and that without things are carried to the last extremity, the judges will never shut the king's courts. *Magna Charta*, and the other statutes are full "that we will not deny or defer to any man justice or right." "That it shall not be commanded by the great seal, or in any other way, to disturb or delay common right," i.e. the administration of justice according to common right, shall not be stopped but by force of arms which cannot be resisted. The judges in England are sworn "not to counsel or assent to any thing which may turn to the damage or disherison of the crown, and that they will not deny to any man common right by the king's letters, nor none other mans, *nor for none other cause*." What can tend more to the disherison of the crown, and distruction of the people, than needlesly and wantonly shutting all courts of law, and denying common justice to all men?

A great lawyer once said in parliament, "*My notion of free-born Englishmen is this that they are ruled only by laws of their own making and tried by men of their own condition*." These two things he calls very justly the "*pillars of the government*." But what would soon become of those *pillars*, and of

that *government*, if the judges of England, by *ministerial influence*, could be *induced* to shut up all the King's courts, and thereby declare the nation in a state of *civil war and rebellion*, whenever unpopular measures occasion a *tumult*? Of the new American doctrine, more in my next.

HAMPDEN.

January 6, 1766

JOHN HAMPDEN to WM. PYM.

SIR,

THE King's courts are to be ever open, when by any possibility they can be, and the subject has a right to have them thus open, and a right to resort to them for justice. What idea must be formed of the conduct of those, who thro' a vain fear, or from misguided policy have shut them up in America, may appear by the following extracts. "The *administration & exercise* of the kingly government, is in construction and consideration of law, all one and the same; and I think no body, that would reason aright from thence, can say there is any distinction *between* government and the exercise of government: For whosoever takes from the king the *exercise of government*, takes from the king *his kingship*; for the power, and the exercise of the power, are so joined that they cannot be severed. And the terms themselves, taking them as the law of England, which we are to argue from in this case teacheth them are so coincident, that they cannot either subsist without consisting together. If a man grant to another the government of such a place, this imports the exercise of the government there to be granted thereby."* It was by Holt and all the great lawyers who debated on king James's abdication, looked on as absurd to pretend to assert that the *office of a king* could continue after the *exercise of government* was given up. The same reasoning may be applied to a governor of a province. Maynard said on the abdication, "When there is a present defect of one to *exercise the administration of government*, there is a *vacancy of government*." The distinction of *right of government*, and the *exercise of that right*, was first devised to leave room for the restoration of James II. but both houses finally determined that the abdication of the exercise of government, and the abdication of the right of government, and to the crown was the same thing; and on this principle king William came in;

* Pollexsen's argument at the revolution conference.

and his Majesty now holds the crown of Great Britain by virtue of an act of parliament calling his illustrious family to the succession. "For this cause are tribunals erected, say the emperors Honorius and Theodosius, and the security of public laws provided, lest any man should give himself the liberty to avenge his own quarrel. The ancient liberty which the law of nature first gave us, remains still in force, *where there are no courts of justice*. Undoubtedly the liberty allowed before is now much restrained, since the erecting of tribunals: Yet there are some cases wherein that right still subsists; that is, *when the way to legal justice is not open*. For the law which forbids a man to pursue his rights in any other way, ought to be understood with this equitable restriction, *that one finds judges to whom he may apply*. Now the way to legal justice may fail, either for some time, or absolutely. It fails *for some time only*, when the judge cannot be waited for without certain danger or damage. It fails *absolutely* either by right or fact: By right, if a man be in places not inhabited, as on the seas in a wilderness in desert islands; and any other places where there is no civil government. By fact, *if subjects will not submit to the judge, or the judge, refuse openly to take cognizance of matters in dispute*. This was the case of Moses, when he saw one of his brethren (that is, an Israelite) suffering wrong, he defended him, and avenged him that was oppressed, and smote the Egyptian. For at that time the Israelites had no reason to expect justice from the *Egyptian judges*. *Where there are no courts of law to appeal to, it is then we must have recourse to the law of nature; nay, tho' the exercise of justice should but for the present be interrupted, we might certainly seize on what we could find, if the debtor were running away, and there should be no other method of recovering our own*. If a King, or any other prince, has abdicated his government, or manifestly abandoned it, after that time we may do the same to him as to a private man; but negligence in discharging the functions of government is not to be taken for a real abdication, provided such negligence be not very considerable; for if it be carried so far as that a King lets the affairs of a state run entirely into disorder and confusion, I make no doubt to consider his conduct as a real abdication. The thing speaks for itself." *Hugo Grotius de jure belli et pacis*.⁵ Lib. 1. C. 3. ff. 2. Lib. 2. C. 4. ff. 9. C. 7. ff. 2. n. 2. C. 20. ff. 2. p. 4 & 5, with Mr. Barbeyrac's notes. *Code Lib. I. Tit. IX De Judaeis & Coelicolis*. See also Bracton 240 The whole passage relating to the true legal sense of a time of war, which is but in part cited by Lord Coke, in his [1st?] Inst. By this it will most manifestly appear, that the time of war which justifies the courts of law being shut up, is to be taken in the sense I have explained to

5. *Hugo Grotius de jure belli et pacis*: "Hugo Grotius *On the law of war and peace*."

you. Bracton among other very judicious observations that Lord Coke has omitted, has this. “*Sed omne tempus possit esse tempus, guerrium (bellorum) et possit esse tempus pacificum, non autem simpliciter, sed ad quosdam et non ad omnes.*”⁶ “Any time may be a time of peace or a time of war, not simply, but as to some not as to all.” He rightly distinguishes between a general and special war, partial tumults, &c; And on the whole, it is plain from him the judgment as to a time of war or peace in a legal sense depends on this, whether there be not a great part of the community in a quiet orderly state, willing to submit to all just laws, and desirous to be governed by them?

The sovereign power in a state once established, is considered as perpetual, it cannot exist by intervals, ceases not but with the dissolution of government, as was the case at the revolution. This is the true sense of the maxim, that the King never dies, i.e. the sovereignty, and the exercise of it, are perpetual and unremitted. On this principle it may be affirmed, that should an act of parliament be made ordering all courts of law & justice to be laid aside it would be *ipso facto* an abdication of the government by all three branches of the legislature, and an instant dissolution of the society. For according to that great common lawyer and civilian, Bracton 107, “*Ad quod rex creatus sit in ordinaria jurisdictione? Ad hoc autem creatus est et electus, ut justiciam faciat universis, et ut in eo dominus sedeat, et per ipsum sua judicia discernat, et quod juste judicaverit sustineat et defendat quia si non esset qui justiciam saceret pax de facile posset extirminari et supervacuum esset leges condere et justiciam facere nisi esset qui leges tueretur.*”⁷ These arguments show that if a monarch’s refusal to exercise his kingly office, amounts to an abdication, as it did in James II. a formed, settled resolution of the plantation governors, & the great officers under them, to stop the whole course of justice, by refusing to exercise the trusts reposed in them, is a dangerous combination against the rights and liberties of the subject, and most manifestly and flagrantly tends to the disherison of the crown. The giving up the administration of justice in the colonies, by the several governors, judges, and other officers in the scheme, till

6. *Sed omne tempus possit esse tempus, guerrium (bellorum) et possit esse tempus pacificum, non autem simpliciter, sed ad quosdam et non ad omnes.* The translation follows, in the text.

7. *Ad quod rex creatus sit in ordinaria jurisdictione? Ad hoc autem creatus est et electus, ut justiciam faciat universis, et ut in eo dominus sedeat, et per ipsum sua judicia discernat, et quod juste judicaverit sustineat et defendat quia si non esset qui justiciam saceret pax de facile posset extirminari et supervacuum esset leges condere et justiciam facere nisi esset qui leges tueretur:* “For what purpose is a king crowned in the ordinary jurisdiction? He is crowned and chosen that he might do justice to all, that the Lord might be established through him and his justice might be learned, and that he might preserve and defend whatever he shall pass judgment upon with justice. Because if he does not do justice, any peace can be exterminated with ease. In this case it is pointless to establish laws, and ‘to do justice’ would mean nothing except to be the one who controls the law.”

they are forced and compelled to it, is deserting the cause of their royal master, and giving up, as far as is in their power, *his kingship and majesty*. What this amounts to, I leave those gentlemen who are against opening the courts to consider; as also who will be chargeable with all the ill consequences of such a desertion. This naturally brings on an enquiry, what force and compulsion has been the cause of the shutting up the courts? Is it a time of invasion? No. Is there a general insurrection or rebellion, or was there at the time of shutting them up? No. Has the least insult or contempt happened to any court sitting? No. But 'tis said "there have been in many of the principal towns, great and terrible riots." The more need of courts to suppress any further disorders of that kind, a lawyer would say. For this reason, among others, the people in general desire the courts opened, and have petitioned for it.—But it is said "these riots were occasioned by, and were in opposition to an act of parliament imposing stamps," that "they have not only obliged the distributors to resign but have gone such horrid lengths in the destruction of private property, as must be so far at least in the highest degree detestable to all good and honest men." It is granted, and therefore the town of Boston the next morning after the catastrophe of 26 August, met and took such measures as have happily prevented the least damage to property since. But granting for argument sake the most that has been insisted upon by any man, namely that the "actors on the 26th August were guilty of high treason," does that make all mankind guilty? What would become of the British government, if all courts of justice were to be shut up, every time there was a riot? Would not this have the direct tendency to increase rather than suppress the Evil? But it has been said, "that no stamps can be had by reason of the opposition to the distributors, and the judges cannot proceed without them." Is all the community to suffer, the King's government to be given up, the execution of all his other laws to cease, because the distributors, and those required to assist them, cannot carry one unpopular act into execution? Is a person subjected to any thing more than a mulct for not using the papers? Even from this, if not to be had, he is in law and reason excused. There can be no doubt of this as to the innocent; and as to those who have opposed the distributors, they are punishable *when found* in another way, than by having the courts of civil justice shut up, which involves the innocent with the guilty in the same loss. There is nothing in the act that looks as if it was intended that the courts should stop for want of stamps. There is no provision in case of the death of the distributors, or of the not arrival of the papers, or the loss of them by tempest, fire or other casualties. Must the courts in all such cases stop too? The act itself took place a month before the deputations to the distributors arrived, which is like the conduct of a late ministry in a certain expedition, when they sent the ammunition in one ship, and the cannon in another, and

the former actually arrived a month before the latter. Had it been intended that the act should have been executed in the manner the Governors, and other zealous friends of it contend for, the Parliament would have declared all papers without stamps void. But even then, an impossibility to get at them, would excuse a party not having them, & a court might & ought to go on without them. As to the oath enjoined the plantation governors, it is only "to do their utmost that all and every the clauses contained in the act be punctually and *bona fide* observed, according to the true intent thereof, so far as appertains to such governors." When a governor has made proclamations and speeches to enforce the act, itinerated, and in season and out of season exhorted all to receive the papers, and cannot prevail, I think he has discharged his trust, "delivered his own soul" and must be excused for not risking his poor little body. As to the judges, they are under no oath or penalty by the stamp act; but there is one clause in it that can never be complied with by the judges without opening their courts, and is the only thing required of them by the act, namely, "That the judges in the several courts, *and all other persons to whom it may appertain*, (if any mortal can tell who these are) shall at the request of the stamp officer, make such orders, and do such other matters and things for the better securing of the said duties, as shall be lawfully or reasonably desired in that behalf." Now 'tis humbly submitted to them all, and to those of the American judges in particular, who plead a tender conscience for shutting up the courts, whether they are not doing all in their power to defeat the stamp act at least refusing to do the only thing required of them towards enforcing it? For so squeamish have some lately been as to extrajudicial opinions in any case, that it has been taught, no question can be determined, even that whether the courts shall proceed, but in term time. Now if so, orders for enforcing the act will never be applied for or made unless the courts set; For any thing I can tell, it may be needful to give the distributors a writ of *assistants*, and I think there could be as good authorities cited in favor of it as ever were bro't in favor of that to the custom house. Nothing of this can be done without a court therefore it seems by the wise construction that has been made of the act, the courts of law, which were to be the great support of the distributors have tied their own hands from enforcing the act as required of them. But the plain truth is the friends of the act in America, and those who had orders from the late ministry to enforce it, *totis viribus*,⁸ have left no stone unturned. When the tumults about it ceased, and the panic was a little over and dragoons were not readily to be

8. *Totis viribus*: "Upon all men."

had, a doctrine was preached up, and has unaccountably prevailed, that all courts, all trade and commerce, must cease; that people must not eat nor drink unless the stamps were taken. This has been submitted to till people find themselves *very hungry*. In short, a resolution has been made that no law should be executed if the stamp act was not. A proceeding truly sage, an invention quite new and original, and the friends to the stamp act in America should have the chief credit of it. It is much about as wise as if the Dutch because they could not keep their Dykes, quite tight, should knock them all down, and let in the sea.

There are divers acts of parliament not executed in England. Sir William Jones says, “tho’ the judges are sworn to execute all laws, *yet there is no obligation upon any man to inform against another*. There are many laws still unrepealed, which are never executed, nor can be without *public detriment*. The judges know of many such *dormant* laws, and yet they never quicken the people to put them in execution, nor think themselves guilty of perjury that they do not.” But if common informers were an honourable set of men, as they were called in a celebrated charge to a grand jury, in opposition to Lord Coke, the common law, and statute law, who all call them *pessima gens hominum*,⁹ yet what a strange construction must it be of an oath that requires the judges ever to keep the King’s courts open, to say that very oath requires them to be shut up; because the distributors cannot execute the Stamp act? This is much like the deduction of that great genius, who because the courts are not to obstructed by the King’s letters, inferred that his Majesty could not order, nor even recommend it to his judges, to go on and dispatch his and his subjects concerns, when they take it in their heads to shut all his courts up without cause.

HAMPDEN.

January 13, 1766

JOHN HAMPDEN to WM. PYM.

SIR,
YOU are pleased to be “almost tempted to imagine” that all the colonists are “alike unacquainted with the nature of the colonies, and the constitution of Great Britain.” I wonder not at your temptations and delusions nor at

9. *Pessima gens hominum*: “The worst kind of men.”

those gross misrepresentations and blunders with which your late letters are so strongly tinged. Your sole aim fears to be to raise or rather keep up a clamor against the colonies among the vulgar in Britain, great and small, of which there is a prodigious plenty. Would you be instrumental in procuring a military enforcement of the stamp act? This it is said G——e Gr——nv——ll publicly threatened before his fall, and some in America have been his *Echo*. He also threatned *that every colonist on the continent should be disarmed*. Threats as weak, vain and wicked, as were all that *creatures* measures from the day he mounted the saddle till he was most deservedly hurled head-long to the dust from whence he came. Had his neck been broken in the fall, it would have been lamented by the colonists as putting an end to the ardent wishes of every good man, woman and child in North America, of soon hearing of his capital impeachment, condemnation, and ignominious execution.

It is very evident nothing can so much hasten on *American manufactures*, as destroying their trade, and taxing the inhabitants at the same time. There were before the late Gr——nd——v——l——n regulations, at least 50 000 British Americans annually employed in Navigation, besides those of that country on board his Majesty's ships of war. What a fine nursery this for the royal Navy? These, in the way things are going on, must soon be most of them turned ashore. The lands are every where falling. The inland country will not be worth settling. The effect of all will infallibly be that for ages only the sea coasts will be inhabited. Thousands from meer necessity must turn themselves to handicrafts, and America will learn to live within herself, without much more concern with or care for Great Britain than for China. A very ingenious gentleman in a southern province in a late valuable publication on the rights of the colonies, has this expression, "For bread thank God we depend not on Great Britain and for cloaths we need not."

The demand for British manufactures in America will ever be in proportion to the increase of trade and commerce on the coasts of the ocean, the settlements of the inland territories and the increase of inhabitants being as natural effects of this as vegetation is of the sun and rain in summer. And 'tis as certain the more they are encouraged, especially in the northern regions, to settle new plantations, the less will they run into manufactures of their own, and the more will they want from Britain. I have reason to think that there never were but two sorts of people in the colonies really for promoting a parliamentary taxation there. The first are those Governors and other great officers, who within these six months have frequently & pretty publicly made their boasts and their brags, that they were all to have fine salaries out of those taxes, and to be entirely independent of a "dirty house of representatives." This may be the true reason that they are most of them

so fond of the *child*. They have given clear demonstrations that they would shut up all courts, and other channels of public and private business, nay even dissolve all society rather than give up their sweet *babe*. The other sort of men are those few, very few in the colonies who at heart are disaffected to his Majesty's person and government, and would be very glad to see manufactures flourishing in America, not from any honest or patriotic views, but because they know they might finally be carried to such a length as to ruin the commerce and consequently the naval power of Britain herself, and pave the way for France, the Pope and the Pretender.—From which of these views, or whether from both, sprang your Martyns & your Murphy's Essays for encouraging manufactures in Rhode Island, is left to the reader. *Danaos timeo donae ferentes*.¹⁰

Now for your skill as a lawgiver, versed in the British constitution. Where did you learn this maxim of legislation & jurisprudence Pym? "*The most salutary laws will prove oppressive to some part of the people*." Tho' this partial "*oppression*" you say "*is no injury*." *Damnum absque injuria*¹¹ "a loss without injury," I have heard of, lawyer Pym! But you will as soon bring the colonists to believe the doctrine of transubstantiation, as that there can be *ministerial* or any other *oppression* without *injury*. Next for your political quackery in destroying old systems and building up new ones. You make no more conscience of demolishing, at one stroke, all the ancient constitutions, laws, usages and customs of colonies and kingdoms, than a parcel of unlucky boys would in overturning a dove house. "The vote" you say "of an English senate, can in an instant abrogate all the laws of the kingdom of Ireland." But would this be right and just Pym? Power is one thing, Right another. There are many things in point of power & authority, in dry theory, or on the meer arbitrary positive principles of some systems of civil government, that a senate might be said to have an authority and right to do, and yet the actual exercise of that authority and right would be full proof of *insanity of mind*. The general of an army has an authority and right in the military sense of the terms, to do a thousand things, which if done, would ruin him and all his army—It may be true, and admissible in theory, and on the meer positive principles of the British constitution, that allegiance is as inherent and indefeazable as are the natural rights and civil liberties of the subject—That the King & Parliament have a general superintending power and jurisdiction over the whole empire, and—that if such a *grand generous* plan of union as

10. *Danaos timeo donae ferentes*: "I fear Danaans [Greeks] bearing gifts."

11. *Damnum absque injuria*: The translation follows directly, in the text.

hinted at in a former letter were possible, they would not only according to dry theory have a right to tax the colonists, but might in that case justly and equitably put it in practice. *On the supposition only* of the possibility of such a union, the author of “the rights of the British Colonies asserted,” candidly and fairly admitted the general jurisdiction of parliament, and *on that supposition only* extended it so far as to hold up the right, justice and equity of even an internal parliamentary taxation in America. And this I think is a very good and unanswerable reason against a parliamentary taxation of the colonies, in their local and other circumstances that render such union at present impracticable, if not impossible. Especially is such taxation unreasonable, as their trade and commerce is now so amazingly taxed as I have demonstrated. Had what the author abovementioned has published been candidly attended to, and fairly considered, without mangling and murdering his sentiments by taking out here and there a detached sentence, and putting them together to serve a purpose, which is the practice of his enemies, none of his friends would have mistaken him. However, this is not to be wondered at; it was ever the greatest art of Jacobites and Tories. No less a man than Mr. Locke complains he was ever treated in this manner. “Cavilling here and there, says he, at some expression, or little incident of my discourse, is no answer to my book.” It never could be the meaning of any man, who regards the interest of the colonies, to admit the right, justice or equity of a parliamentary taxation of them, either in their present circumstances, or in any other that can be supposed to take place, at least these hundred years, if ever.

There are great writers on the law of nature, who deny allegiance to be of natural or perpetual obligation. In this nice point, all men will judge for themselves, and I wish they would always follow the dictates of conscience and of truth. Reason forbids not that a general jurisdiction may admit of exceptions and exemptions as to particular cases, persons and places. You say “the question now is, whether the American subjects are not bound by the regulations of a British parliament.” Enough has been said on the true question, and more than you can answer. This is not the true question. How many acts of parliament are there relating to the plantations, that are quietly and peaceably submitted to, and as regularly executed as any in Britain? Pray do not the colonists acknowledge their allegiance to our gracious Sovereign George the third? Have they not over and over proved they are as loyal subjects as any he has? And is not his Majesty King by act of parliament? The colonists only claim a particular exemption as to taxes from the necessity of the thing, and on this very necessity are all their charters founded.

HAMPDEN.

January 20, 1766

JOHN HAMPDEN to WM. PYM.

SIR,

YOU observe, that "the Americans are continually coming over and smuggling themselves into the house of commons." I have heard that some in former times, have bought in, but it is new to me that any are smuggled in. I thought smugglers were disqualified from setting in the British senate at any rate. It is immaterial to me how the *Creoles* get into the honorable house, when there, they represent the people who chuse them. The continent knows the conduct of the West-India members from the beginning, with regard to the trade of the northern colonies: And a late minister knows who bartered a sugar act for a stamp act. The islanders themselves have no exalted idea of the patriotism of some of their dignified brethren on a late trying occasion. I know but one native of the continent, who is a member of parliament, and he has fallen under the displeasure of his countrymen, whether justly or unjustly is left to the public. Suppose Martyn Howard and Dr. Moffat should find means to "smuggle themselves," as you term it, into the house of commons, would Howard be the virtuous virtual or real representative of the colonies, and Moffat of Scotland; or each of the places that should chuse them; or would this sweet lovely loving pair conjointly, make a part of the real representative of Great-Britain, or of the virtual representative of the whole empire? It would be best to lay aside jargon, and all distinctions, without differences, and words without meaning. The law knows no such thing as *virtual representation*. There can be no representation in parliament but a real one, and any man may be defied to form the idea of any other. It is observable that in the act 1. J. 1. Wherein "the parliament agnize on the knees of their hearts, their most constant faith, obedience & loyalty to his Majesty and his royal progeny, as in that high court of parliament where all the whole body of the realm, and every particular member thereof, either *in person* or by *representation*, upon their *own free election*, are by the laws of this realm deemed to be *present*"; there is not a word of virtual representation. The *realm* and the *realm* only, and all parts of it, are declared to be deemed as there in person, or by representatives of their own chusing; and with great reason for the members are collected from all parts of the *realm* on the free election of the people.

The true question is not of the general superintending power of parliament thro' the whole empire; for of this there can be no doubt: But whether it be reconcilable to the principles of reason and natural justice, that you

William Pym should at your will and pleasure, give and grant to his Majesty, the property of 4 or 5 millions of your fellow subjects in America, who are utter strangers to you, and desire ever to remain so, unless you mend your ways? If you can persuade all these good people, that their lives, liberties and properties too, ought to lie at the mercy of every Creole, or run away, that may happen to “smuggle” himself into good company, you will do something, otherwise you had better be silent.

You say “the colonies if offended either with the tax itself, or with the mode of taxation, should have petitioned the parliament for redress.” This is tantalizing, and in you insulting the colonies. Are you ignorant that the late minister and the colony agents found means to suppress all the petitions sent home last year; insomuch that even the poor, low, insipid, metamorphosed, harmless memorial of M—ss—ch—s—tts could not gain admittance? The famous R—d J—cks—n, Esq; kept the three provinces, for which he was absurdly chosen agent, sleeping in his pocket. This gentleman was a court dependant of the late minister. And tis apprehended in England, that Mr. Gr—nv—ll will soon be chosen agent for M—ss—ch—s—tts, which would just compleat, it is said, the policy of their last years choice of J—cks—n. How Mr. J—cks—n came in for M—ss—ch—s—tts is well known. The—closeted, cajoled, threatned or persuaded the members of both houses, one by one, till he secured in this and some other ways a majority. What finished it however, and without which after all J—cks—n never would have carried it, was that Jasper M—ud—t had abruptly resigned, and written to a number of gentlemen to give up all thoughts of his brother in favor of Mr. J—cks—n, and yet so inconsistent was he, that in a month after he expressed his surprize that his brother was not chosen. This by the bye.—I am as much for loyal and dutiful petitions as you, or any man. It was I presume from a sense of duty and loyalty, and to keep the people in the colonies as quiet as possible, till redress of their grievances could be had in a regular way, that the late Congress at New York was proposed by Massachusetts, and readily agreed to and attended by committees from all such colonies as were not prevented by the arts and machinations of their governors. There are by this time the loyal petitions of all the colonies on the continent arrived in England, except Virginia, who were first dissolved, and on the choice of a new house, it was prorogued to March. Nova-Scotia, Canada and Pensacola, being but military governments, are of no account. But such was the conduct of the late minister with regard to the petitions last year, that tis feared it threw the people into despair of any relief that way: Besides, there is reason to think they imagined, that if the act was once executed, it would

be impossible ever to obtain a repeal. Be these things as they may I only conjecture at causes, terrible effects we have all seen. It has been said the Stamp Act was put off a year, that the colonies might have notice to object and give their reasons against it. What notice other colonies had, I know not. The Massachusetts never had a line about it from one of the public offices. "Mr. Jasper M——ud——t indeed told them, that his brother Israel told him, that Mr. Gr——v——ll haughtily told him to tell his brother to tell his constituents, that if they would not stamp themselves, he would have them stamped," or very nearly to that effect. Our Israel asked his sublimity what kind of a stamp he expected the Massachusetts would impose on themselves? He shortly answered, "they know what stamp duties are imposed in England, by act of parliament, I expect the same from them."

Is this fit treatment of a colony that was honoured with royal requisitions during the war, and those transmitted by the greatest minister in the world? Can the late minister's behaviour be ever forgiven or forgotten in the colonies? No!

In your last letter Pym, you grow excessively abusive and scurrilous. You charge the colonists and their assemblies with "*rashness*," "*hot headed votes*," "*injustice*," "*ingratitude*," "*desire of independency and haughtiness*." You also say they are "*overbearing*," "*insolent*," "*brutal*," "*callous* to all feelings of humanity," "*dangerous as men and as citizens*." You charge them with "*inherent pride*," "*turbulence of temper*," "thinking of *bullying their King* and the august council of the mother country," with a deal more of such Stuff, in the course of half a score periods. This I suppose is your policy to soften and conciliate the minds of the colonists to the measures of the late minister.—You plainly discover you are one of those who would rejoice at an opportunity of dragooning, burning, whipping and starving the colonists into a fondness for chains and wooden shoes. How practicable such a plan would be especially in the hands of the late minister, will appear from this single consideration. In the late war, tho' the greatest part of it was under the conduct of no less a man than Mr. PITT, there were employed first and last in America 100,000 soldiers, besides seamen, to reduce that poor little nest of cut-throats & robbers, the Canadians. These wretches now upbraid the old colonists, and openly insult them with their "Quixotism in fighting 150 years in order to be reduced in point of liberty to the state of Canadians. We have lost nothing by the war say they. A Vaudreuil, a M——y, a Turkish Bashaw, is the same thing to a Frenchman. But what have you British Colonists got by furnishing half the men and money, and all the provisions necessary for conquering us, and without whose assistance the Europeans would never been able to hurt us till dooms day? Is your trade extended? Are you freer from taxes than before

the war? Is your idol Liberty secured by the conquest of Canada?"* These are plain questions Pym; yet I guess you will be confoundedly puzzled to give a satisfactory answer to them. How pleasing were the hopes of rest in the British colonies, from the toils of an 150 years war with Barbarians, when it was known Canada was ceded, and that liberty, prosperity and wealth might have been thereby secured to Great Britain & her dominions? These dreams are all vanished. Deep horror, distrust and despair, have succeeded. When will the light appear again? When will mutual love, concord and confidence again go hand in hand with the mutual interests of Great Britain and her Colonies? Once more yet! And I fear but once more for ever! Hear this ye Kings and Princes; remember this ye ministers who may rule Great Britain when I shall be no more! Time will produce another war, as glorious to Great Britain as her last; but if the peace that shall follow, be as ill judged as the last and the measures as ill concerted, as all these taken since the displacing of P——t, the nation will as certainly be ruined, as 'tis yet in their power to be the greatest people that ever were on this globe. The causes & the effects to any impartial considerate man, only of common sense, must be just as plain as the apparent motion of the heavenly bodies from east to west to the human eye.

HAMPDEN.

January 27, 1766

JOHN HAMPDEN to WM. PYM.

SIR,

I AM now more particularly to consider your last letter. It certainly beats all of the kind that I have met with in prose or rhyme: And tho' I shall not give you hard names as you deserve, and have given the Colonists, yet really I cannot much wonder at a Gentleman's calling you "a fellow of most prodigious impudence."[†]

Whether induced by your small stock of politicks, or constrained by the little remnant of your conscience, is not material; you seem to half confess the marvellous blunder of the late *immortal minister*, in procuring a total prohibition of Spanish silver and gold. The reason of this wise measure, that

* See Quebec Gazette.

† New York Gazette.

was given out to your British vulgar, is quite singular. It was said that "this silver and gold came from a Roman Catholic country, and as the English had enough of their own, if they should refuse to take any of these useless superfluous commodities from the Spaniards, it would most amazingly distress their trade, as they could not possibly get rid of them, unless the English were so weak as to sell mouse traps and grid irons for dollars & pistoles."*

You seem also to admit that the taxing of the British Colonies, in their present unrepresented state distant situation, and totally unknown circumstances, is unconstitutional. What is your sagacious expedient for reconciling matters, and making all things as systematically consistent as any piece of patch'd work, can possibly be? Why, theory and system being the *primum mobile, anima, gloria mundi*,¹² and practice being in no wise calculated for the *literati* of modern times, you have swallowed a bait long since thrown out on set purpose for small politicians. The knowing ones will easily see what I mean, when I tell them, that after all the bustle Mr. Wm. Pym is most graciously pleased of his great goodness to condescend to admit the reasonableness of an American representation in parliament, as a previous step absolutely necessary to reconcile a parliamentary taxation of the colonies to those principles of natural justice and equity, which are the fundamentals of the British constitution. But what will his Majesty and the two houses of that august body, the parliament of Great-Britain say to the proposal of such a Representation? That neither W. Pym nor I can tell. However, this I most firmly believe, if the thing were offered tomorrow, 999 in a 1000 of all the colonists would not accept it on any terms, much less as a favor. Be that as it may, I know that *Martinus Scriblerus* the second, and Dr. *Murphy* the first, having swallowed a nicely gilded pill, *consultantibus Gal. et Hippcc.*¹³ thus most admirably comment; on "the insolent proposal" in their opinion, "dangerous at any rate." "In addition to this head, (says Martyn) I could further urge the danger of innovations; every change in a constitution, in some degree, weakens its original frame; and hence it is that legislators and statesmen are cautious in admitting them." "Why should the beauty and symmetry of this body be destroyed and its purity defiled, by the unnatural mixture of representatives from every part of the *British* dominions. *Parthians, Medes, Elamites, and the dwellers of Mesopotamia &c.* would not, in such

* *Imprimatur* G——c G——l c.

12. *Primum mobile, anima, gloria mundi*: "The prime mover, the soul, the glory of the world."

13. *Consultantibus Gal. et Hippcc.*: "consulting with Galen and Hippocrates."

a case speak the same language. What a heterogeneous council would this form? what a monster in government would it be?"

But the greater lawyer and politician Mr. Pym, now solemnly holds forth, that the affair is become very serious, and that "it is now absolutely necessary to give the colonies a *proper* number of representatives *even* in the British parliament"; although in the same breath he proposes the total "*abolition of all colony assemblies, as the only thing possible to secure their dependance.*" I have often been amazed at the wisdom of the late political and ministerial writers in Britain, who so frequently express the most terrible apprehensions of the Colonists seeking for, and the great danger of their actually attaining, an Independency on the Crown of Great-Britain. Do they and you want to make the colonists think themselves of more importance than they really are? Did you never read of the growing pains of youth, which by a late judicious observator have been metaphorically applied to the struggles of the colonists for a free air? Where is the policy, Pym, of putting wicked dangerous tho'ts into young people's heads? Are not such tho'ts but too apt to obtrude themselves? For shame, let this string be no more saw'd, lest it be cut assunder in good earnest!

As to your whim of "abolishing all the colony assemblies," name it no more! You might just as well propose a general ordinance of G—— G——I for circumcising all the male colonists on the first of November *next*. Mind me Pym I only tell you my poor Opinion of causes and effects, without deciding, on any question of right. *I have no kind of doubt but that the colonists would as readily acquiesce in a decimation, nay, even a general decollation, as to your proposal of a total abolition of all their assemblies.*

Is it possible you should flatter yourself that 4 or 5 millions of people, well settled in good Climates that must contribute to the rapidity of their increase, can be bro't by the utmost efforts of rhetoric *forensic* or *military*, tamely to give up all their *now* ancient laws, usages and customs with all their natural rights and civil and religious privileges into the bargain, only for half a score idle profligate fellows, as the case might be, "smuggled" out of their own country into that great receptacle of small wares, a minister's coat pocket, and thence according to you, into the house of commons, with the pompous title of representatives of the colonies?

Do you, or any of your party, really think that the "coalition," as you call it, "between Great-Britain and her colonies," can ever take place on the ignominious terms you propose to the latter? You are not pleased to say what number of representatives your highness would admit from the "barbarous brutal" colonies as you call them. But you declare beforehand, in order I presume to reconcile the Americans to your plan, that you are "for being very

parsimonious in the number," lest the *new* members and the creoles, who you say "are every day smuggling themselves into the house of commons," may hereafter "gain a dangerous majority," and thereby "remove the Empire from the delightful borders of the Thames, to the inhospitable banks of the Oronoque or the Ohio." What wretched company must you have lately kept, to be able to say, "*as how* I scarce ever conversed with any person of understanding on this subject, who has not expressed the strongest apprehensions about the independency of the colonies?" Your fears are all up again, and tell you, "*as how* every body has declared, *as how* in another century, 'twill be more than probable that our posterity will be broiling on the sands of America." O dreadful! But in the name of wonder, what need you or I, Pym, be very anxious about a thing that may be probable, or "more than probable," an hundred years hence? How old are you child? I cannot say neither, on second thought, that I am very sorry to see you and your friends in such a panic about the independency of the colonies. I hope it will at least teach you and them a little caution, moderation and discretion—That you will be more respectful and honest—That you will be very careful how you treat them for the future. You continue your vain fears, "*as how* your posterity may receive laws from the very people whom their ancestors, (*oh impudent!*) established with such a" (*no*) "profusion of treasure and" (*no*) "deluge of blood," *but that of the martyrs, and an immensity of persecution, tyranny, and truly diabolical oppression, in church and state, that drove out all who could fly to the wilds of America.* Not one drop of the blood of *your* ancestors, not a penny of *their* treasures were expended for the British colonists, till the brave tho' banished puritans, assisted only by almighty God, in a miraculous support of their piety, virtue and resolution, had surmounted all obstacles, and firmly established themselves against the wiles of the devil, his adherents and emissaries, the French and Indians, ever secretly connived at, or openly assisted by a *popish, Stuartine, jacobite, inveterate faction at home and abroad.* For the truth of what is here advanced, I appeal to the incorrupt faith of all history.

You affect to frighten yourself by declaring "*as how* some tawny descendant of an African negro may happen to be invested with the administration of justice, and some free-born englishman may possibly be dragged before a jury of molattoes, as ignorant of humanity as justice, and equally unacquainted with the principles of liberty and law." Was there ever such a nonsensical rant penned, to raise the fears of these wise people in England, who have not yet learned but that all the Colonists are Indians, Negroes or Molattoes; and wonder to hear an American speak English? What danger can there be to your posterity from Negro judges or juries? Molattoe and all other juries, are, by the late regulations, taken away in the colonies; and if

the judges of the admiralty appointed from Home, are or should be Negroes it neither is nor can be any fault of the Colonists. But by the way, whose posterity are the present Colonists? They are, by far the greatest part of them, Britons born, or descended from such. To show your consistency, I will only ask, if your ancestors established the Indians and Negroes here? Blush if you can! Know vain man that none but knaves or fools ever broached the notion of the Colonists aspiring after independency, and none but the latter ever seriously believed a word of it! Know further! There are but two events that can ever make the Colonists wish to be independent of G. Britain. The first is extreme and long continued ministerial oppression. This can never happen in the reign of our gracious Sovereign, and I presume not in those of any of his protestant successors. The other is this; if at any time hereafter, which God of his infinite mercy avert, you or your party, which I take to be the restless rancorous jacobite pensioners of France, and the abettors of the Pretender, should, with the help of the Pope and the D——I, bring him in: In that case, I say Pym, I will plainly tell you, further, what would happen, tho' there is little need of it, for the very fear, of the bear possibility, makes your party so inveterate against the Colonies.—North America would continue to be what from the beginning it has been, the happy *Asylum* of all distressed, oppressed, persecuted protestants, and lovers of liberty, civil and religious. She would also be on such an event the best *asylum* for the protestant Royal Family—She would be then truly independent of Britain. A greater empire than the world has yet seen would then rise and flourish in the west, while G.B. would be a poor, pitiful, little, enslaved, bigotted dirty province of France, or some other European power. And this new Empire, should it rise, would be governed by our present most gracious Sovereign, or his lineal successors and illustrious posterity, so long as there should be one drop of true British or Brunswick blood on the face of the earth, which it is to be hoped will be until the consummation of all things.

I observe you quote—Ireland—the merit and submission of Ireland. Read the Drapier's letters, and Mollineux's case of Ireland; reflect on the treatment of Ireland for ages, and remember I tell you it is a common saying among the most sensible and judicious of that Island now in America, that the colonists are about to be treated as their countrymen have long been.

The most sensible and judicious also of the three kingdoms now residing in all the colonies, are the most zealous opposers of the Stamp Act in a lawful way.—The kingdom of Ireland, it seems has been offered a *union*, or *coalition*, as you call it; but if it was on such terms as you propose for the colonies, 'tis no wonder it was rejected. If Ireland joined to Britain, it would have the same free trade as London or Bristol. Tell me what there is in the

nature of a little narrow channel, to make such a mighty difference? If those who are a few miles from Britain are excluded from the immense commercial advantages of those within the realm what can the colonists expect who are 3000 miles distant? Nothing. Happy, thrice happy will they be, if left to carry on their little affairs thro' the old channels.

Dear Pym, having in all probability most thoro'ly exercised your patience, as well as that of others, I take leave in a manner at present very uncourtly, whatever it might have been in 1640. I most chearfully give up the pen into better hands, and to the direction of much abler heads. I resign *my country*, which is *the world*, and all my fellow citizens, *the inhabitants of the whole earth*, with great tranquility, to the protection of a kind providence, and shall think myself quite happy, when I *dare* be assured that I have in the least contributed towards convincing any part of the human species, of the infinite importance of *natural, civil and religious Liberty*.

HAMPDEN.

P.S. My most sincere, affectionate and respectful compliments to my Lord of Clarendon, when next you shall see him. Tell him there is great joy *even on earth* over a repenting sinner, of so eminent a genius.

H.

November 24, 1766

To the *PRINTERS*.

THE principles of *benevolence*, as well as those of *true policy*, induce me to be of opinion, that, all things considered it is best to make compensation to the sufferers in the late times. But I am far from thinking heaven and earth need be moved on the occasion, or that the fate of empires depends on a provincial grant of thirty or forty hundred pounds. I have not on the whole much doubt but that the good sense and generosity of my countrymen, to say nothing of that unshaken loyalty for which they have ever been remarkable, and on which they may justly pride themselves, will produce instructions, to the assembly at the adjournment chearfully to comply with his Majesty's most mild and gracious recommendation. In the mean time I shall advert to the letter of the Right Honorable the Earl of *SHELBURNE*, one of His Majesty's principal Secretaries of State, and a great patron of the colonies, to Mr. Bernard our governor. The public had some intimations of this very *instructive*

letter in one of Mr. *Deberdt's* published in your paper. It is arrived, and by the governor published. In order to a more full understanding of this truly excellent letter by all here concerned in its contents, I take the liberty to premise—That whether Mr. Bernard was really a promoter or friend of the *stamp-act* or not, I believe nine tenths of the province think he was *both*.—That he did nothing to prevent the passing that *fatal act* seems confessed by his public speeches—That, from the passing to the repeal of that act, he did every thing in his power to enforce it, is also evident not only by his speeches, but from the whole tenor of his conduct public and private—That he considered all who opposed that act, or its execution, in thought, word or deed, as rebels and traitors, I have no doubt—That he represented the colonists as aiming at *independency* on Great-Britain seems clear beyond a contradiction, by the printed protest of near thirty right noble Lords against the repeal, with a Prince of the blood royal at their head, in which this fact is asserted in a manner that *precludes* even a *quibble*.—That he openly charged both houses of assembly with *oppugnation*, against his Majesty's authority, is evident from his two notable and never to be *forgotten*, if *forgiven*, speeches in May last—That he strongly pressed the assembly the last year for help to enforce the stamp-act, we all know.

He also publicly exhorted the good people of this province, to put on what they tho't shackles and chains, as the most ready means of getting rid of them—He gave orders for raising a corps of dragoons, and the levies were actually begun—And on the news of the repeal, the countenances of some men suddenly fell, like that of *Haman* on the righteous decree of *Ahasuerus* the great. In those days also at a banquet, vengeance was sworn against all who had opposed certain measures, for executing the *stamp-act*, except such as should in a humble penitent manner confess their sins of opposition, and forsake them. Even from these it was *demande'd*, in a manner that was intended should *preclude all disputation as to a compliance*, that in future they should cringe like *true spaniels of state*. By this time the whole continent, in the manner of their public rejoicings, had demonstrated their unfeigned gratitude & loyalty to the best of Sovereigns, for their deliverance.—The general assembly of this province, was convened in perfect good temper, on the part of the *electors*. But Mr. Bernard's first signal was a slag of defiance.—He had before-hand threatned diverse *negatives*, should the elections be not to his mind—And he pretty publicly declared it should be his fault, if he had not a good council this year.—I think it therefore by no means to be charged to the assembly, if he has not such an one, as seems to be strongly intimated in one of his speeches.—The first *conciliating act* of the governor, was passing a negative on the election of the person first chosen Speaker, by

a large majority.—This was understood as a signal to battle—At the first onset, fell four or five counsellors, on whom the governor had greatly set his heart, but who owe their political death, in a great measure, to his defect in generalship.—On this *catastrophe* he grew outrageous—Negative followed negative—The sins of wicked children, were visited on confessedly innocent fathers. Six gentlemen, without any apparent reason, unless appeazing the *manes* of his departed friends might furnish one of a heathenish kind, were excluded from the honors their country intended them, tho' in this treatment they received a much greater—*Praefectorial* vengeance rested not here. It was a critical time with the colonies—It was of the last importance in order to defeat the purposes of our enemies, that we should appear in the eyes of his Majesty, and his ministry, perfectly quiet, easy and happy, on the redress of our grievances—This opportunity was greedily embraced to harangue the assembly in terms which have astonished all men—Whence could it flow but from tenderness and affection, that these declamations were, especially at such a time, suffered to see the light?—In one of them, his Majesty's most mild and gracious *recommendation* is interpreted into a *mandate*, as peremptory as those at any time dictated by the despots of *France* or *Turkey*—What else is a "*requisition* that precludes *all disputation as to a compliance?*" This interpretation too, was hurld down in thunder from the governor's *thrincle* with all the mimic terrors of the theatre; and tho' far short of what was threatned, yet I believe carried great fear and dread into the breasts of some of his Majesty's lieges then present—The governor also prophesied of a commission he was soon to receive from *above*; for as he had already that of his Majesty, and yet talked of a greater, where else could it come from?

The governor's speeches were followed by dispassionate answers from both houses, and by dutiful and loyal addresses to his Majesty on occasion of the repeal of the *stamp-act*, with votes of thanks to many of the illustrious members of parliament, who had patronized the colonies. In these the governor had no influence, except that his excessive ill-treatment of both houses rather hastened them in their steps to demonstrate, their loyalty and gratitude, and, that no aspersions of his could make them lose sight of their duty, or the *command* of their *temper*. The assembly soon after rose, and the members went home to consult their constituents with regard to the *recommendation*, now a *demand*, on behalf of the sufferers, tho' none of them had then petitioned, nor was it known they intended any personal application for relief. It was rather believed they would not apply. Yet governor Moore in his prudent speech to the assembly of New-York mentions such application as a preliminary, and which application I suppose was made, and was one principal reason of the ready compliance of that assembly. Had Mr. Bernard

made the same kind of speech, and pointed out the same application, in all probability this business would have been finished before this; at least he would have cut off the greatest occasion of imputing the delay to him. A few days after the prorogation, in order further to *conciliate* matters, letters were sent to divers colonels of the militia, members of the house, abruptly dismissing them from their employments. As no reason was assigned for this *lenitive* conduct, it has been conjectured that voting against the court is not pardonable on the plea of conscience—Since this captains have been made colonels, and corporals may in time grow up to be brigadiers, provided they embrace the true *orthodox faith* of the court—The high road to preferment is now broad, plain and easy—The only test required seems to be, that, a candidate shall vote as he is bid—A pliant temper may supply all defects of rank, family, fortune or ability—As to honor and integrity I cannot learn that the terms have been heard in what some call fashionable company these *six years*.

These two facts however are certain, 1. That the governor's first speech in May arrived in England some time before the addresses, answers and votes of assembly. 2. That in consequence of that and of representations received by the same ship, the people of this province were considered as *ungrateful*, and disposed to *oppugnate* the royal authority. On this our enemies began to exult.—They even upbraided *administration* with too much lenity to such *vile ingrates*, the softest name given us. By whom those injurious representations, were made, further than appears to all the world by the speeches, I affirm not. The rest is left to the reader.—The accounts received here in autumn from persons of the best intelligence, advised that the late ministry had received *informations* against the province much to its disadvantage—But still it was not fully known what those informations were, or who sent them.—In this state it was natural for the lovers of their country to be anxious—The reception the addresses would meet with was uncertain—The malice of our enemies had been often experienced, and was well known—Their implacability and indefatigability are unparalleled, but in *him* who goes about with them seeking whom he may devour—But we are now happily relieved from our concern—The address of the assembly to the King arrived the first of any from the continent, has been presented by his grace the Duke of Richmond, and was by his Majesty most graciously received.—The public letters lately received by the Speaker from some of the principal ministers of state, and members of both houses of parliament, are full of mildness and moderation, with the most noble and generous sentiments in regard to our invaluable rights and privileges *civil* and *religious*—These letters are also fraught with the strongest assurances that those rights and privileges are in no kind of danger, under the present wise and patriotic administration—But next to the

royal clemency, the highest testimony of this kind is contained in the letter of the Earl of SHELBURNE to the governor, which I shall more particularly consider after one or two reflections that result from the transactions of the years 1765 & 1766.—The clemency of a British Prince, especially of the house of Brunswick, is no new or strange thing; but it is very wonderful, that any governor should think it too great a condescension to follow the example of his royal master—How amazing is the contrast between a great man in Britain and one in America. I have known a governor not only scorn the *lenitives* directed by a minister of state, but set himself above his Prince.—I affirm that even the King of Spain, an absolute Monarch, taught from his cradle to consider his subjects as his property, and, like his coach horses, beasts of burden, has in the late disturbances at Madrid, shown more moderation and condescension than the plantation governors on this continent, except Mr. Penn, Mr. Moore, Mr. Ward, and possibly one or two others, have to the British subjects here, in all their late troubles—And, for any thing I have been able to discover to the contrary, most of the governors in America have been as ready to execute the stamp-act as would be G. Gr——nv——ll at the head of 2 hundred legions.—

Now let us consider Lord SHELBURNE's letter, which Mr. Bernard may think his second grand trophy. By this letter it appears that on *Lord's-day* June 29th 1766, and on Saturday July 19th following, Mr. Bernard devoutly set himself down, to inform his Majesty and his Ministry of the posture of affairs here. Both the *Sabbath-day* & *Saturday* letters it seems contained divers *inclosures* and *packages*, all which are *packed* up again, and *packed* away, *unpacked*, to be fully considered at a more convenient *season*.* The contents of those *inclosures* and *packages*, with their marks and numbers are, in part, unknown.—But it is most certain from his Lordship's letter that both "*his Majesty and his Ministry*" are thereby, or from some other quarter, informed,—and, "*are extremely sorry to observe any degree of ill-temper remaining in his colony of Massachusetts-Bay, and that points should be so improperly agitated as to tend to the revival of disputes which every friend to America must wish to be forgotten.*"

I solemnly declare, I know not of one man, woman or *child* in this province, who was out of *temper* on Sunday the 29th of June last, and till his Lordship's letter arrived, I presumed the governor was of as good and excellent a spirit on that Lord's-day as usual, and I have no right positively to affirm any thing to the contrary even now.—Indeed it must be confessed that he was

* See his Lordship's letter for the text, and the *Talk spoke* by Mr. Bernard last year to the council, about the *unpacked packs of stamps*, for the paraphrase.

uncommonly angry with the assembly in May, for choosing such counsellors as they thought fit; and tho' he almost acknowledged their right, yet his logical labours were more abundant in order to convince them that the exercise of that right was the most ready way to have it impeached and lost; and that its quintessence and perfection consisted altogether in *non-user*. However, as both houses were so dull of apprehension, that not a man of them ever confessed the force of the governor's argumentations, it might have been reasonably expected that by *Lord's-day* June 29th his fervor had abated, and cooled down a little. I hope at least this will be the case by January. By that time I hope also the "*narrow views, private combinations, and partial attachments*" he has been so liberal in charging on all who cannot see their way clear to fall in with his measures, will be found, with regard to such, to have existed only in his own imagination—With regard to himself let his whole *administration* witness. It is with great pleasure I find Lord SHELBURNE has "*upon this occasion*" tho't proper to observe in *general*, and to governor Bernard in *particular*, as his Lordship assured Mr. *Deberdt* he had, "*that the EASE and HONOR of his Majesty's government in America will greatly depend on the TEMPER and WISDOM (too) of those who are entrusted with the ADMINISTRATION*" here. Reader! Who is the first *administrator* and *trustee* of his Majesty in this province? On whom is principally devolved his Majesty's authority here? With whom next under the King is lodged the sacred deposit of government, according to the laws and constitution of the country? Who has the honor to represent the Majesty of a King here, and that a King of Great-Britain? Whose *administration* then, were it not for this courtly, but pretty broad hint of my Lord of SHELBURNE, should, as far as possible, at all times, be decorated with that wisdom, mildness, grace and clemency, which so much distinguish that illustrious Monarch, in whose name his Lordship addresses his Excellency.

[*To be continued.*]

December 1, 1766

[*Remainder of the Piece begun in our last.*]

I neither envy nor grieve to find that the Governor has been able to gloss over his own conduct "*during the disputes of last year,*" and found means to set it off in so favourable a point of view, as once more to obtain that *species* of ministerial approbation, which it might on his state of the case be

thought the dignity of government required.—It would at any time be a solecism in politicks, as well as unjust in itself, that a gentleman should be blamed merely for obedience to orders, especially if we suppose a person of a nice scrupulosity of conscience, was sworn to obey those orders. I never have heard what orders Mr. G——I gave the governors on this continent, but to be sure they were in general at all events to carry the stamp-act into execution.—Care was taken in the act itself to impose an oath on them to do all in their power within the bounds of reason for this purpose—No man however is to exceed his orders, let them come from what authority they may. Supererrogation is not required by any law, sacred or secular, and is in my opinion as ridiculous in politicks, as in divinity. Certainly whenever a master recedes from his first intentions, reason requires that a servant should proceed no further, especially after notice that on better information the principal has altered his mind—Violent measures should at all times be as far as possible avoided.—But after plain intimations of a change of opinion in the principal, all violent proceedings in the servant must be the effects of madness, malice or folly—The application is, or is not obvious. *Be*, or be it not, I leave it to the reader.—

I think I have in my life somewhere heard it remarked, that a person reprimanded by a superior is ever as much as may be screened from that pain and sorrow with which however mildly expressed, a censure falling from an immense height is usually and justly attended—The compunction of a mind not lost to all ingenuity, must on such an occasion be enough.

I am not in the least surprised that the approbation in his Lordship's letter is by the very terms of it confined to *the disputes of last year*. Those disputes we all know have been long since over—No such disputes have been agitated here since the happy repeal of the *stamp-act*, and I hope never will be again.—The single question of a publick nature is, *Compensation*, or no *Compensation*?

With regard to the governor's conduct this year, and in this very affair of a *Compensation* to the sufferers, I have not been able on the most careful perusal of his Lordship's letter, to discover a single word in commendation—As to this *particular* there seems to be *altum silentium*,¹⁴ a deep but very significant silence—So there is as to all his conduct in the memorable year 1766.—

I hope his Excellency is by this time fully convinced that as his Lordship very justly observes "*a temperate conduct, founded on the true basis of publick good, avoiding all unnecessary reserve, where nothing arbitrary is thought of,*

14. *Altum silentium*: "A profound silence."

and nothing unreasonable is required, must carry conviction to the hearts of the deluded, conciliate the minds of all, and insure the confidence of his Majesty's loyal subjects in America." His Majesty I hope and trust ever will be sure of the loyalty of his subjects in America, and of their inviolable attachment and affection to his person, family and government. And that his Majesty's servants here may as far as possible be assured of full *confidence*; I could wish that a fair copy of this letter of his Lordship, and of that other golden one of Mr. Secretary CONWAY, were placed in the cabinet of every governor on this great continent, carefully consulted and duly considered every time their highnesses think fit to write home, especially if it be on the Lord's-Day—Sure I am, that his most gracious Majesty's ever loyal subjects in the plantations desire no other or better *administration* than in these letters is plainly directed and enjoined on all who have the honor to serve his Majesty in office here, even from a *governor down to a petty constable*. His Lordship is pleased to express his kind wishes that our assembly may "*fall upon measures to terminate all local difficulties, which appears* (he says) *by your* (i.e. the governor's) *accounts* to have hitherto prevented that compliance which will be expected by parliament with the recommendation." Whatever strange accounts and highly painted scenes of *local difficulties* the Lord's-Day letter and its inclosures, or the *Saturday* letter and its appurtenances conveyed—I most sincerely rejoice that those testimonies among others of the governor's vast parental "*tenderness and affection*" towards this people, have as yet been productive but of a repetition of his Majesty's gracious *Recommendation*, and that in terms as mild as those in which it was at first conceived & communicated by general CONWAY.

Now let us inquire a little more minutely what have been and yet are the great "*local difficulties attending the recommendation.*" The hon. the house of representatives of the commons of Massachusetts-Bay, by a full vote 46 to 24, in their answer to the governor's speech at the opening of the October session 1766, declare without reserve what they take to be the "*local difficulties,*" and pretty roundly and directly charge his Excellency as the sole cause of them all.—I beg leave most humbly to subscribe to their very respectable opinion—The governor indeed calls them ungenerous for this vote; but I am prone to believe few who consider his treatment of them, and thro' them this whole *province*, will think with his Excellency—His *speeches* are in the journals of the house, as well as their own proceedings. I firmly believe, that if the sufferers had taken the first opportunity to petition the assembly, they would long since have received their money—Instead of this, they omitted applying to the government here till October 1766. Will this be believed in England? I know not; but it is the very *truth*. I will however do them the

justice to say I can readily believe this strange omission was owing more to the governor's influence than any fault of theirs—I can also if desired grant that it was he who buoyed them up with a vain imagination that the enforcement of the *stamp-act and their compensation* would and should with a high hand and stretched out arm come together—I can also easily conceive it to be possible, that it was by his advice, if not *direction*, they applied home, when it was indisputably their duty first to have applied to the government here.—If this was the case, the wonder in a great measure ceases, that all proposals of private subscriptions and collections have proved unacceptable.—It has been an hundred times observed by and among people of all ranks, that if the governor had a design to embarrass and finally to prevent a compensation to the sufferers, he could not easily have fallen on more proper measures for such a purpose than those he has adopted—The governor last year and this, has in my opinion addressed the representatives of a free and loyal people as if he tho't those representatives no better than rioters, burglars and rebels. What provocation had he for all this? Not the least. The governor's style and manner of address to the assembly from the beginning has appeared to some a strange composition of the superbe and contemptuous, but of late is insulting and overbearing. A short speech consisting of the honey suckles of May, June, &c. peradventure will not be unacceptable, as it will show what a marvellous proficient his Excellency is in the sweetly *lenient* and irresistably *conciliating* measures so finely urged in those very letters he is so fond of exhibiting to view in all the news-papers.

"Gentlemen of the Council, and Gentlemen of the House of Representatives,

"Government is attacked in form! There is a professed intention to deprive it of its best and most useful servants, whose only crime is their fidelity to the Crown!—I find my self obliged to exercise every legal and constitutional power to maintain the King's authority against this ill judged and ill-timed oppugnation of it"^a—I mean your excluding from the King's council, the principal crown officers!^b—Whilst this proceeding has its full effect, you will not, you cannot^c avoid being chargeable with unthankfulness and dissatisfaction on ground of

a. First May-day Speech *verbatim*. Query, Can there ever be a *well-timed & well-judged oppugnation of the King's authority*? No surely. Treason and rebellion are most certainly ever ill-timed, and most infamously ill-judged also. It could enter into the hearts of none but traitors and rebels to think "*fidelity to the crown a crime*."

b. Strictly speaking, there were before but two crown officers at the board; and their being placed there, was by many considered as an innovation, and much disliked, before the Stamp-Act was thought of.

c. 'Tis a wonder it had not been *you shall* not.

former heat and prevailing prejudice!—It is impossible to give any tolerable colouring to your proceeding!—Gentlemen of the House of Representatives, This requisition is of a singular nature!—so forceable that it cannot be controverted!—The authority with which it is introduced, should preclude all disputation about a compliance!^d—Your reasons for not complying at present, will be canvassed with great precision!—It has been neglected for nine months past, during which time the house had this business of indemnification under their consideration!^e—The King and Parliament expect from you, that the sufferers shall be indemnified at all events^f—You have now another opportunity to give a positive answer! It will be expected of me, that I report it to his Majesty before the opening of the business of next year!^g—The importance of the affair, and the hasty approach of the new year, will not allow the loss of a day. I shall make no other answer to your ungenerous insinuations of yesterday, than by refering to your own journals.”^h

What mellifluous, persuasive sounds are these? The governor in the same speeches at full length boasts of the moderation of his administration, and declares that a too ready forgiveness of injuries had been imputed to him as a failing. If the above are expressions of his tender mercies, what would be those of cruelty? And is *this* the return the province might have justly expected for the annual and chearful grants of support to the governor, not only as honorable as those made to any of his predecessors, but greater than some of them have been right glad to receive, after very considerable “*controversy and disputation as to a compliance?*” Is *this* the return for the grant of *lands* enough for a principality, a grant worth more thousands sterling than hundreds were *requested, demanded* or *intended*, a grant in truth made without a thorough knowledge of the *premisses* and *appurtenances*, but which has yet never been contested? Is this the return to this people for a fine fortune, besides the above, accumulated here in *six years*, by ways and means his Excellency perfectly understands, but till his arrival among us had never been so minutely investigated? There are who believe the governor in one shape or another has already realized double the sum any of the most knowing ones of his predecessors were able to acquire here. And are we not entitled to one

d. Second Speech at May session.

e. The house were not a month old, when thus charged with nine months neglect of duty; so they were heinously guilty of the sin of omission eight months before they were born. The house last year were never applied to by the sufferers, either for indemnification or compensation. The latter was indeed proposed by the governor, but in a manner that could produce only disgust.

f. Governor’s message in June.

g. October opening speech.

h. October closing speech.

soft word, nor kind look for all this? Has not the assembly done every thing in their power to gain the governor's love and good-will, and to enable him to keep up that good old hospitality he so much approves of in others, and which some of our governor's have thought fit to support, out of their own patrimony, for the ease of the people, and in bringing forward the plantation?

There is not quite so much difference between a governor and a colony assembly, as between a King and his parliament; yet it may be safely affirmed, that the history of the most arbitrary reigns will not furnish an instance of a British Prince holding his parliament at the awful distance we have seen practised by a governor. There have been, are, and may be again, gentlemen in both houses of our assembly, whose ancestors had the honor to serve with reputation in the highest seats in government here, long before nonjurors, and their disciples or hopeful progeny, temporal or spiritual, were known in the world—Persons of all ranks at a great distance may be—we know they often have been deceived, & that by those whose indispensable duty it has been to communicate the simple truth.

How contemptible an opinion must the governor have of American understanding in general, and of that of the Assembly in particular, once to flatter himself he is not seen *thro'* and *thro'*? I should not repine at his excellency's promotion. In the mean time, it can do no harm humbly to wish, that, as, far as in the *nature of things*, is possible, he would form all his public measures on that wise and generous plan of politicks, plainly eno' pointed out in those excellent letters which have been more than once referred to, in these well-intended, however imperfect animadversions. Then may his excellency hope, tho' I fear *never, never* to gain the full confidence of a people, who, peradventure, never reposed so much in him; and if they had, cannot, after what has happened, be easily bro't to place it a second time in the same man; yet to render the residue of his *administration* less burthensome to himself, and less disgustful to others. This, in my small opinion, "*must and will be*" his excellency's *neplus ultra*.¹⁵ But humble as this mark may seem, it is well worth striving for; especially as the attainment will afford many comfortable reflections, whenever the hour of his departure shall arrive. To be sure there is this remarkable resemblance between a natural and a political death, that both often come very suddenly. I hope I may be permitted in all humility, to exhort all politicians at least, duly to consider this, & lay it to heart.—I greatly fear his excellency to this *day, hour* and *minute*, does not thoroughly know my countrymen, and that he "*never will nor can.*" I pretend not myself to be able to pervade this great deep; but one conjecture I hazard,

15. *Neplus ultra* [ne plus ultra]: "Nothing more beyond."

that they never “*will nor can*,” to the end of time, rest quite satisfied with the *administration* of any governor, high or low, who shall think fit to “attack their constitution in form,” or charge two houses of assembly to their faces, with the infamous crime of “oppugnation against his Majesty’s authority.”

I take this first time, of paying my most respectful compliments to the public since the happy repeal of the stamp-act, to express my sense of the vast obligation of the colonists to those illustrious persons who compose his Majesty’s present wise and patriotic ministry, not forgetting the favors of the last. Let the names of Rockingham and Dartmouth be celebrated here thro’ all ages. Chatham in spite of the vain efforts to eclipse him, shall soon rise to the glorious immortality of Pitt, and in conjunction with Grafton, Camden, Conway, Shelburne and others, form a grand constellation.

—*Micat inter omnes*
Julium Sidus velut inter Ignes
*Luna minores.*¹⁶

JOHN HAMPDEN.

16. *Micat inter omnes / Julium Sidus velut inter Ignes / Luna minores*: “Great Julius’s star shines as the moon among all the lesser lights [of night].”

8. Freeborn American / Freeborn Armstrong

Essays in the *Boston Gazette*

January 27, 1766

Insert the following; and if you are questioned by Authority, tell the real Name of the Man who wrote it.

“In the House of Representatives, Jan 24, 1766.

RESOLVED

“That the shutting up of the Courts of justice in general in this Province, *and particularly the Superior Court*, has a manifest Tendency to dissolve all the bands of civil Society, is unjustifiable on the Principles of Law or Reason, is dangerous to his Majesty’s Crown and Dignity, and a very great Grievance to the Subject that requires immediate Redress; and that therefore the Judges, Justices and all other public Officers in this Province, *ought* to proceed in the Discharge of their several Functions as usual.”

The above Vote was tried by Yeas & Neas. There were 79 yeas, 4 Nays; two of which last in Effect recanted the next Morning; six or seven Members withdrew on the solemn Occasion, whose Names may be had, if any one thinks them worth enquiring after, at the Printers. The Resolve was the same Day sent up to the Hon. Board for their Concurrence, when the Hon. Thomas Hutchinson, Esq; Lieutenant Governor and Chief Justice of the Superior Court, who on this Occasion also sits as President of the Council, a place he has usurped,* after engrossing all the Places of Honor and Profit in the Province, moved to give it the go-by, saying it was Impertinent, and beneath the Notice of the hon. Board or to that Effect. But his Highness was over ruled, and next Thursday, to his infinite Mortification, is appointed for the Consideration of this truly arduous Affair. Special Summons are gone only to Brother Lynde and Brother Oliver, to come and judge, as Councillors, with the Chiefy, in their own cause, in Effect on a Complaint of the

* There are elder Councillors, and he sits not as Lieut. but as Councillor.

House, of their Misdemeanor as Judges of the Superior Court of this Province. A blessed System of Government this!

FREEBORN ARMSTRONG

P.S. All Judges, Superior and Inferior, ought to take themselves off on this Occasion, unless for Necessity, if there cannot be a *Quarum* without them. If not, I hope the Man will be hanged that ever votes for a Superior Judge again. I say Superior: for the Inferiors have only followed. It could not be expected they would take the lead. F.A.

February 3, 1766

To the PRINTERS.

I observe some Votes of the Honorable Board in this Day's Gazette, which I presume were inserted for the Information of the Public both in *Fact* and in *Law*. The most ready Way of satisfying the Public in this Case with Regard to the former, would have been for the Lieut. Governor or the Honorable Board to have published all that was said on that Occasion, rather than have contented themselves with only declaring what some of them did not hear. There being no Words *absolutely* charged in my Letter; if any Thing "to that Effect" was said, it is enough. What Words are *to the same Effect*, with those mentioned, being Matter of Opinion the Speech at large would be a great Help to determine the Judgment. And I now put the Whole on this fair issue, viz. If his Honor will reduce to Writing, and favor the Public with an attested Copy of all he said in Council on Friday last, on Occasion of the Resolve of the House relating to the Courts of Justice, and it shall not amount in Effect at least to as much as I have alledged, I will make him any Christian and Gentleman like Satisfaction he shall ask. I am by no Means convinced but that his Honor might possibly utter Words "to the Effect" mentioned in my other Letter, and yet Sixteen of the Council by the next Week forget them, really believe and even declare they did not hear any such. Negative and indeed positive Evidence of Words is a slippery Business, especially with many of those whose Minds are intent upon the arduous Affairs of State. Besides, as the Names of the Sixteen are not published, it might be worth While to enquire if they were all present on Friday.

I now desire only to ask a few Questions. Did not his Honor call the Vote of the House an extraordinary, an irregular, an *extrajudicial*, or an improper

Proceeding? Did he not *propose*, or *move*, or urge that it should *lay by* indefinitely, in Opposition to those who were for assigning a Time to consider of it? What might his Honor say at this Time relating to the Vote or Recommendation of the Council, without the Governor, on the Boston Petition, to have the Courts open? Have not his Honor and his Friends in General Court, and without, held and strenuously maintained that the Judges ought not only to be free to do Justice, but to shut up the Courts of Justice when they think fit? That the Judges could not determine extrajudicially, i.e. out of Term Time, whether they would open or not? Was it not in Consequence of this Doctrine uncertain after the Recommendation of the Council, whether the Inferior Court of Com. Pleas in Suffalk would proceed? And did not this Uncertainty remain till that Court actually opened? Is not this Uncertainty very hard on the Subject? Has it not very lately been held as a capital Argument by some even in the House, against the Governor and Council's ordering the Courts open, that it would be incompatible with the Freedom and Independency of the Judges: which was also held to be of so transcendent a Nature, that even the whole Legislature of the Province could not with Propriety pass a Resolve, Order, or Act, for the Courts being opened? Nay, Has not this been lately pushed so far by some, as to make not only the Executive Power independent of and uncontrollable by the Legislative, but to render the Judges above accounting for their Conduct in any Case but to God? Is not this a very short Way to absolute Monarchy? If the Doctrines alluded to above are Law; I say it was very *impertinent* in the House to enquire into this Matter, let the Lieut. Governor say what he will. And if the Proceeding was extrajudicial, or out of the Jurisdiction of the General Court, the greater the Impertinence of the House in meddling in the Affair, the more shameful the Proceeding, and the greater Want of Knowledge is discovered in the House on this Occasion. I say also on this Supposition it was beneath the Notice of the honorable Board, and the President in particular; and therefore whether it was called or treated as impertinent extrajudicial or improper, by his Honor; or whether he was for giving it the *go by*, or *lie by*, is really not very material. But on the other Hand, if the House did not exceed their Power and Jurisdiction, as certainly it will be found they have not; if they should be forced against their Inclination to exert their full Authority; then I must think it will follow, that if any Gentleman was for treating them and their Vote as some did the Petition of the Town of Boston, that it implied a *very great Reflection* on the House, though the honorable Board may be pleased to think it "*carried*" none. We must all think for ourselves in Matters of meer opinion. And should any of us differ, I think this the worst Time in the World to attempt any Thing against the Liberty of the Press. Secretary's

Warrants, and persecuting poor Primers and their Authors are gone lately pretty much out of Taste in England.

The third Resolution of the honorable Board, is a very Summary Decision in Favour of his Honor's Right and Title to the Presidency. This being a Matter of Law, it would be enough to observe, that unless the Title can be supported by Charter, or the Laws of the Province, it is at least dubious. Now there is nothing in either that entitles a Lieutenant Governor to a Seat at the Board, much less to the Presidency. There is nothing in the Usage of our Ancestors that gives him a Right as Lieut. Governor, to any Place at the Board; so far from it that with them it was commonly a good Objection against the Choice of a Councillor, that the Candidate was Lieutenant. Mr. Dummer, as unexceptionable a Character as was ever among us, I have been well informed, was left out only because he had been appointed to the Lieutenancy.—He held no other Office neither. It is said “when his Honor first took the Place of President of the Board, it was determined by the Resolution of the Board *at that Time*.” Is there clear Record of this? Where is it? It is also said there was a “searching of the Books for Precedents in the like Cases.” How many were found? Where are they? The Board have not said they found one. But were there Fifty, it would not make a Law in this Case. The honorable Simon Bradstreet, Esq; was created first President of the Council of this Province, by the Royal Charter of K. William & Q. Mary, by being the first nominated in the List of Councillors thereby created, and Priority in that Nomination, or in subsequent Elections hath been the only legal Title ever since, and in the Nature of the Thing ever must be so. I am therefore yet most humbly of Opinion, that his Honor not being the eldest Councillor, has no Title to the Presidency. The Hon. Board are so far from having a Right to elect a President, that it has been, and may again be very justly questioned, if they have any Right to vote in the General Election at all?

The Vote says, his Honor was “altogether silent on the Occasion.” But it has been said some others were not. I have heard that the late very worthy Sir William Pepperrell, Baronet, deceas'd, that great Lover of his Country, who in his great Modesty gave Place, was blamed by his Friends: He I believe had sat at the Board with his Honor's Father. Others tho't very hard of his taking the Place of President, and looked on themselves as degraded by it, in a Manner they neither expected nor deserved. But his Honor's Friends having secured the Majority, it was carried; and I think the least his Honor could do was to keep “altogether silent on the Occasion.” I am and ever was far from any Desire to prejudice his Honor, much less could I wish to raise any Clamour against him. I have as thoro' a Detestation of the Injuries he has received, especially in his Property, as any Man. But so long as the Fear

of Man bringeth a Snare, so long will there be who will be fearful lest an European Commission may some Time or other interfere with a Provincial one—that the Independency of a Judge may be incompatible with the passive Obedience expected by most Ministers of State, and by none more than the late *one*.—If my Country be unreasonably deprived of the whole Course of justice, 'tis immaterial to me whether it proceeds from the Head or the Heart, from Prejudice, Error or Design; the Evil is the same to the Community, and ought to be redressed. The Commons have voted this Redress, and all Men as well as the Members, have a Right to give their Opinions on Grievances. I never meant any more; this is all I mean now. I wish his Honor as happy as he can himself; but as I have heretofore, so I shall again, speak my Mind on public Affairs, whenever I think my Duty, especially as one of the Legislative Body in America, shall require. If there are any Expressions in my former Letter that may seem too acrimonious or ludicrous, in Justice to myself, as well as others, I declare they arose from Causes that would abundantly excuse them; but it would answer no good Purpose to divulge them at present; more especially as 'tis to be hoped the grand Point under the Consideration of the Legislature, relating to opening the Courts, will be soon accommodated to universal Satisfaction.

Your's, FREEBORN ARMSTRONG.

Thursday, January 30 1766.

March 10, 1766

The following is taken from last Thursday's Gazette.

From the Critical Review for *November*.

Considerations on Behalf of the Colonists. In a Letter to a noble Lord 8vo. 13 Almon.

We have in a former number taken notice of the little pamphlet to which this performance is intended as a reply as well as to the authors of two other publications concerning the regulations and administration of our colonies. If the pamphlet before us be written by an American he must be of the Cherokee or Esquimaux extraction, one who has learned as much English as enables him to scold, but never can acquire as much understanding as can serve him to reason. Without entering upon any defence of the late ministry as to the well timing or propriety of the stamp duty, which we have reason to believe the present ministry will not vindicate; we shall once for all observe,

that if this furious author was every day to redouble his railings, and multiply the distresses, inconveniencies and hardships of his country, all he could say would be nothing to the purpose, unless he could prove the negative of the following simple proposition, that, "The British colonists in America are *not* bound by an Act which was unanimously passed by the British legislature."

The Critical Review-Makers impartially Reviewed.

A Critical Review maker is a Butcher, Mangler, and Retailer, of other Men's Works, without understanding one Word of them, and according to *Voltaire*, "*it is very rare to find an Explainer of other Men's Wit, have any of his own.*"||

|| Smollet's Translation, *verbatim*.

In the Court-Gazette of Thursday last was published, and for any thing I know or care, *by authority*, an extract said to be from the thing called the Critical Review for November: I find however no such thing in that fungous production. It possibly may be of American fabric, and the ingenious work of Palinurus the great, prime conductor of that newly christened useful paper, the Massachusetts Gazette, which Phoenix-like, has risen out of the ashes of the old Thursday's News Letter.—An offspring that its *seven* god-fathers and god-mothers were so fond of, that in favour to this they had like to have suppressed by their *authority*, all other papers, and *stamped* it with an *Oxonian Imprimatur*. A friend of mine lately arrived from *Mount Desart* is positive that by the style and air, it must be the dream of a *Mohawk* or a *Mickmack* Indian.*

The Review-makers, be they who they may, *in effect* say, what I hope none of the *Magi* will deny, as 'tis in black and white, namely, that my letter "is intended as a *reply*" to a certain "little" thin "pamphlet," as well as to the more bulky businesses of the *Administrator* and the *Regulating Captain*. Now I, who certainly wrote my own letter, and must best know, declare I never intended any formal *answer* nor *reply* to either of those mi——n——st——i——I scribblers, for this plain reason, that I never tho't either of them worthy of so much notice. The letter was but the amusement of a few leisure hours, and intended chiefly to inform the Right Noble Lord, who condescends to honor me with a correspondence, of some material facts relating to North America, and to point out some of the capital blunders of a late bungling administration, to say the best of it. In my ramble, I met with the

* Tribes who are marked in the forehead with the figure of a Savage behind a tree, with a *bow* and *arrow* shooting at a *Planter* who is cutting his way to him thro' *vipers* and *rattlesnakes*, *wolves*, *tygers* and *dragons*, with these words in a label from his mouth, *Verres! Pirata! Praedo! Hostis humani generis! Viam inveniam aut faciam!* [*Verres! Pirata! Praedo! Hostis humani generis! Viam inveniam aut faciam!* "O Verres, you Pirate! You robber! Enemy of all humankind! I will find the way, or I will make one!"]

Administrator, and run over the *Regulating Captain*.—As I passed, I gave a few strictures on the *Objections Considered** and of course ridiculed the superlative absurdities of a certain right honorable. His *Opusculum*¹ with an essay on the origin of evil, the *principles* of civil polity, & the new *Regulator* altogether, form a compleat representation of the chaos of old, as well as of that which overspread a late curious collection of skulls.

I most humbly thank my Review makers for doing me the justice to declare, that “furious redoubled railings, and multiplied distresses and inconveniencies bro’t on my country, are not to my purpose”: But they would have been vastly to theirs, as well as For that of their employers, the late mi——n——st——y, could they have kept the saddle, and “vindicated the propriety” of the stamp act, by dragooning or starving the colonists into a purchase of their new paper and parchment manufactures; and that at such exorbitant prices, as the inventors and venders should from time to time affix to their wares. It is demonstrable that they would by advance on paper on fees, and ditto on ditto, soon have peculated from the colonies the enormous sum of £.100,000 sterl. *per annum*, for themselves and connections in Europe and America, besides perhaps filching as much more out of the public revenue, by commissions and perquisites.—Very fine pickings indeed! I wonder not at the sorrow of the review makers, nor at their despair of seeing such measures “*vindicated*,” or even countenanced, by the present *upright* and *wise* administration.

I am desired “to prove the negative of the following (negative) simple proposition; that the British colonies in *America* are *not* bound by an act which was unanimously passed by the British Legislature.” Be the canons of criticism what they may, the laws of good logic oblige no man to prove a negative, much less the negative of a negative proposition. Unless in the language of Critical Review makers, two negatives here make an affirmative, and the negative of a negative proposition in their dialect means the affirmative side of the question. But then, even in that case, if they have so little modesty as to call on me for proofs which should have come from *messieurs* the Administrator and Regulator, I have long since furnished them, and I think abundantly shown, the *general sense* in which it may and must be admitted, that “the British Colonies in America, and every where else, are bound by acts of the British Legislature,” and that this *general sense* is subject to limitation, and

* Retailled in Mass. Gazette, as most of the pieces against the Colonies have been, by special order or desire of —— I suspect for ’tis to be presumed the publishers are more friendly to their country than to do it of their own heads.

1. *Opusculum*: “A short work.”

to clear exceptions at least, of all acts for *levying taxes, external or internal*, and of the exercise of *all other authority whatever*, by reason of *local circumstances evidently inconsistent* with the rights, liberties, and freedom of the Colonists, both as men and as Englishmen. To *these* by the laws of God, of Nature and the British constitution they derive their title, and are co heirs and joint heirs therein with their brethren in Britain. This most manifestly appears by those Laws, by Magna Charta and the Bill of Rights, as well as those sacred confirmations of the benefits thereof in and by the respective Royal Charters of our Kings to the several Colonies, by the recognition of Parliament itself, particularly in 13 G. 2. and by uninterrupted usage for near 200 years.

If the Review makers mean any thing more by their negative of a negative, I own it must be beside my purpose, which is only the promotion of common sense and honesty. If they should have any other purpose yet lurking, and are inclined to venture their necks and numskulls in N. America, and will set up the review making and tory-logic manufactories, I will engage them a commodious shop near the Tree of Liberty, in any of our capital towns, provided *always*, that they shall give security to the landlord, to leave the premisses in good tenantable repair in case they should get hanged or knocked on the head in good earnest, as most of them have been in effigy. For my own part, on the most serious and conscientious self examination, I cannot find in my heart the least propensity to preach up doctrines that I am morally certain 99 in a hundred of my countrymen would never believe or embrace, were they and their posterity after them to be dragooned to all generations, of which at present however there is not the least danger.

If by “an act unanimously passed” is meant the Stamp Act, we know that was not the fact. And it is as certain when Bully Gr——nv——le carried his point on the previous question the winter before that in which the act passed, it was very late, the house thin, and consisting mostly of placemen & min——st——r——l dependants. “To the *Tower!* To the *Tower!*” and thence to *Tyburn* with him.* And let Dr. Smallbrain and the whole tribe of the tory jacobite Review makers and enemies to Great-Britain and her Colonies follow him. These, besides cheating the public of their money for numberless volumes of their crudities, according to their measure, have assisted the most weak, wicked and infamous m——n——st——r that ever existed, in leading blindfold both countries to the borders of perdition.

F. A.

* A late Cry in a certain great Assembly.

March 17, 1766

To Palinurus the Great.

*Ecce gubernator sese Palinurus agabat.
Unde haec, O Palinure, tibi tam dira cupido?*²

VIRGIL.

SIR,

IT is most astonishing to all but me who know you, and wonder at nothing that you are everlastingly betraying yourself & all connected with you into scrapes and difficulties. Why did not you take more care, and see the proper month prefixed to the extract from the Critical Review, so edifying to all Tories here, as well as at home? November was referred to. I look'd thro' that month. I found no such thing there. I have said no more. If in my power, was it my business to correct the errors of you or your Printers?

I am sorry you should attempt to confound an *Oxonian Imprimatur* with a *Westminster stamp*. There is as much difference between the one and the other, as between a *court christian* and a *Spanish Inquisition*. The *Westminster stamp-mark* indeed affects all our conveyances, law proceedings, news papers, pamphlets & purses, which is hard enough and too hard too of all conscience. But the true *Oxonian Imprimatur* is the *genus* that spawns a thousand species. It rides triumphant over all *right, liberty & property*. It devours every thing. It swallows up houses, lands, *islands*; money, ships, cargoes, copies, creeds and libraries, and involves all opposers in one general conflagration, of their bodies *pro salute animarum*,³ for the good of their souls. Unless therefore you shall persist in your project of introducing this *Imprimatur*, you may cease your groaning, and still your groundless fears, no body will hurt you. As to your printers, they were used with great tenderness; and 'tis pity they could not perceive, if they do not, that as in all justice it ought, every thing wrong in their paper is imputed to you. For, besides the wretched pieces before alluded to, and published I suppose at your earnest desire, if not by your express order, pray Sir, who wrote a little piece putting the B. Colonists in

2. *Ecce gubernator sese Palinurus agabat. / Unde haec, O Palinure, tibi tam dira cupido?* "Look: the pilot Palinurus introduced himself. / O Palinurus, whence came this terrible desire to you?"

3. *Pro salute animarum*: "For the well-being of their souls."

America on no better footing than the *Asiatics* and *Africans*? Who procured *Howard's* infamous discourse, on the utility of dragoons to enforce the late Regulations, to be re-published here? But even you I forgive, as I hope those will, who, never but in derision, you call the *Patriots* and *True born Sons of Liberty*. You have no other ideas but those of *scorn* and *reproach* to annex to those terms, therefore are so far excuseable. But I believe neither they nor I shall ever forget your indefatigable attempts to enslave this whole continent. Before I take leave of you, I must give you one word of information and sound advice. 'Tis probable from the frame of human nature, that less may be borne, from a known court dependent, against the rights and liberties of the subject, than from another, and much less from a court-scribbler. I therefore in love & christian charity, earnestly recommend it to you, your publishers, editors and printers, to avoid every thing irritating, be humble, be prudent, be silent, be wise, lest in some of your sneering moods you too far exasperate those who have strove, and will again strive, whenever it shall be needful, in all lawful and laudable ways, to save their country from falling a prey to ravenous vultures, and other savage devourers.

F. A.

February 9, 1767

Messieurs EDES & GILL,

Please to insert the following.

THE preservation of English Liberty, both in Great Britain and her colonies, greatly, if not wholly, depends on a due care and jealousy of the just rights belonging respectively to the three branches of our happy constitution, as established by magna charta, and the bill of rights, confirmed at the glorious revolution—This, every true Englishman, every friend to liberty must accede to: but such is the depravity of the human heart, such is the corruptness of the present generation, it is rare to see a man in power so careful and jealous of the rights of the subject as he ought to be, and who has virtue enough to sacrifice his ambition to the freedom and happiness of mankind. Hence we find the courtier constantly declaiming on the licentiousness of the times, whenever an abuse of power is complained of by the People, anarchy and confusion, according to him threaten destruction to the Nation at the least appearance of opposition to measures ever so destructive.—Every attempt to preserve our just rights when in danger, will by him be called flying in the

face of authority; and every complaint against the administration of government, a contempt of government itself. In short it seems to be established as a truth, that government can alone be supported by implicit obedience to those in authority.

I confess, party rage, and not a real regard for the unalienable rights of mankind, often actuate the pretended Patriot, as well as the designing Courtier; but from the days of William the third of blessed memory, to this hour, I do not know that the constitution has ever been in danger from the popularity of a fictitious or real Patriot, while there has scarcely been a Parliament since that time, but have found it necessary, at some period or other, to counterwork the measures of some ambitious courtier, in order to preserve the rights of the People from his rapacious grasp.—Tho' it is a maxim the King can do no wrong, yet thank God, the time is not yet come, however, sincerely wished for by *some*, that a Minister or Governor, may for no just cause rob his Majesty's subjects of their rights, or treat them as traitors and rebels with impunity.—It is the bulwark of *English liberty*, that a servant of the crown, however high his station may be, is not too high to have his conduct examined and censured if faulty by the lowest peasant in the nation—Ever since Great Britain has been free, this privilege has been used to the utmost extent, and been found of great utility, whenever oppression has attempted to sway her Iron Sceptre.—No ill consequences have as yet accrued from this liberty, nor can accrue, since those who are invested with power, from the influence it naturally creates, can always find men of ability and integrity, both able and willing to vindicate them when injured, and set their characters in a true light.—Unhappy for mankind, such is the corruptness of human nature, that men of ability without integrity, are often, very often to be found, who will undertake to support the most destructive administration, and vindicate the most unjust and illegal measures.

I have been led into these reflections, from reading the dispute now subsisting between Philanthrop and his opponents. A dispute which tho' it may not by some be apprehended of much consequence, I cannot but think of the greatest importance—you all know my countrymen, the anxiety and distress we were in but lately, at the destruction which threatned us as a free People—you *must* remember with how much difficulty our relief was obtained. How many open enemies both here and in England, we had constantly representing us as a turbulent factious People, *whose design was to bring the authority of Parliament into contempt*. How many pretended friends who were constantly advising us to submit to the stamp-act, as the best means to obtain its repeal, who were of opinion we had no *rights* of our own, whatever were our *privileges*, who were so conscientious in their obedience to that ruinous act,

they could not perform the duties of their stations personally, tho' they saw their way clear to do it virtually by a representative. Happy for Great Britain, happy for us, notwithstanding the machinations of such enemies to the peace, welfare and liberty of the British nation, by the spirited conduct of America, and her friends in England, a most loyal and dutiful People, were reinstated into the favor and affection of the best of Kings. *The Snare was broken, and we escaped.* Nay more, his Majesty like a tender kind benevolent Father, expressed to us and *his servants*, his desire that a veil should be drawn over all that was past, to the end that concord and confidence might take place of distrust and confusion. This was the glorious news, these were the happy tidings we received a few months past—indeed all things seemed to conspire to render the felicity and freedom of the colonies, fix'd and permanent.—Now my countrymen, if we have any regard for civil and religious liberty, if we have any love for our rights as Englishmen, if we have any loyalty to the best of Kings, what must we think of him who could at this critical juncture, contrary to his Majesty's mild and gracious inclinations, and in direct violation of truth, justice, humanity and gratitude, characterise us, as *openly oppugning the King's authority, as rioters and rebels, and as neglecting men for their deference to acts of the British legislature, and their fidelity to the crown?* Can it be possible, nay ought we ever to forgive such a man, 'till he has recalled those cruel, unjust and wicked aspersions, as publicly as they were vented abroad?—If this is not done, we cannot but expect they will be believed, however injurious; especially as neither himself, nor his friends, have as yet attempted so much as to paliate them—When we consider the almost unparallel'd affection this country bears to Great-Britain; when we reflect on the ties of blood, and of civil and religious liberty, which so closely connects our happiness with hers—when we call to mind the horrors of a civil war, which so dreadfully threatened us, unless we would bow our necks to the yoke of slavery—when we think how by the kind disposition of God, and our King towards us, we escaped a storm which would have blasted the happiness of us and our posterity to the latest generations—What must be our sentiments of him, who could at such a time be wicked enough to endeavour without the least colour of truth, publicly to represent us in a light which must warrant, if just, such treatment as would deluge this country in blood, and entail misery to unborn millions?—What, I say, must be our sentiments of him, when it is remembered, we might justly have expected from his connection with us, the tenderest treatment, when it is remembered we were intitled to his best services from the many unmerited favors conferred upon him; and that gratitude as well as duty, ought to have influenced him to draw a veil over our infirmities, *without a command from his*

master?—Be not, my countrymen, I beseech you, preached out of your senses, by any court-sycophant whatever.—Let him assume a thousand shapes to gain his purposes, still with your countenance and protection, your friends will be able to counterwork his design—Should he put on the guise of religion, and pretend to support unrighteous rule from his word who came to make us free indeed—should he attack your tenderest passions, and endeavour to work on your commiseration—should he attempt to persuade you he is your best friend, who could thus abuse you; and that he labours only for your freedom and happiness—be not deceived, Satan, we are sensible, can transform himself into an angel of light, to gain his ends.—Either you have been injured, or you have not—If not, let Philanthrop vindicate his patron, *lest with what judgment he has judged*, this province, *he should be judged again*.—If you have been injured, if you are not that turbulent, factious, rebellious people you have been openly declared to be; as you value your own honor, as you value your liberty civil and religious, as you value the happiness of posterity, I beg, I entreat you never to be content, till you are as publicly acquitted, as you were publicly charged.—This you have a right to expect, and this it is your duty to demand; and I'll venture to say, he that can attempt, or even wish to seduce you from this, is your enemy, is an enemy to Great-Britain and her welfare, and deserves not the least countenance or favour from his injured country.—If we are the people we have been represented, can we hope for any mercy from our King or his Parliament? nay, do we not justly deserve, and have we not reason to expect the severest chastisement, even the chastisement of a standing army?—Let the sycophant call your just indignation, flying in the face of authority; let him brand your endeavours to wipe off such malicious and false accusations, with the most opprobrious epithets a parasite can invent—this is no more than we might reasonably expect, in truth, it is much less than is necessary to vindicate his master's character: For in what light must a ruler appear to his Majesty, who should lay such heavy charges on a loyal people, and not be able to make them good? Can we suppose he will not, for the sake of his reputation, and what he values more, his *interest*, attempt, and even endeavour by all means in his power, to prove us such a people as he has painted us to all the world, and that he will leave any stone unturned, to set us in such a light to his Majesty?—Nay, have we not the best authority that he has already done it, at a time too when we relied on his friendship for the province?—Will you then, my countrymen, rest easy with such an e——my in your bowels—an e——my who is *necessarily obliged* to misrepresent and vilify you to that King whom you all love, and almost adore?—who must prove you the most ungrateful and rebellious of subjects, or himself the most abandoned and

wicked of r——rs.—This is no exaggeration, it is no false colouring, it is but the voice of cool dispassionate reason, it is the dictates of a heart that feels when you are injured or oppress'd, and knows you cannot be at rest, till you are freed from so dangerous an enemy.—Let no one then, I entreat you, my fellow-subjects, obtain your confidence or esteem, who is inclined to foster a viper in your bosoms, who is for suffering such insults to pass unnoticed, who is either a friend to a cruel G——r himself, or for bringing his friends into power—or who dares to go such lengths in his service, as openly to usurp a seat he has no right to from the constitution, or by the suffrages of your Representatives.—Let no one be trusted, who is not a lover of liberty, without licentiousness, both in word and practice, who is not an avowed enemy to tyranny and usurpation, and a sincere friend to this government, as part of the British empire.—Then you need not fear what man can say or do to hurt you: then will you be able to vindicate your injured honor, and transmit the sweets of freedom to your posterity, who will rise up and call you blessed.

FREEBORN AMERICAN.

March 9, 1767

Messieurs EDES & GILL,

Please to insert the following.

MAN, in a state of nature, has undoubtedly a right to speak and act without controul. In a state of civil society, that right is limited by the law—Political liberty consists in a freedom of speech and action, so far as the laws of a community will permit, and no farther: all beyond is criminal, and tends to the destruction of Liberty itself.—That society whose laws least restrain the words and actions of its members, is most free.—There is no nation on the earth, where freedom of speech is more extensive than among the English: This is what keeps the constitution in health and vigour, and is in a great measure the cause of our preservation as a free people: For should it ever be dangerous to exercise this privilege, it is easy to see, without the spirit of prophecy, slavery and bondage would soon be the portion of Britons.—Mankind never entered into society to aggrandize rulers, but rulers were invested with power for the good of the people; & it is to them alone they ought to be accountable for their conduct—The rights of the subject are as well known in the British dominions, and ought to be as sacred as the rights

of the crown; and whenever they are in danger, or invaded, no man who is silent, will act the part of a good subject to his King, or a friend to his country.—It is as much the duty of a member of society to oppose every encroachment on the subject, as it is to support the prerogative when in danger, from the licentiousness of the people.—Without this check, we should be liable to oppression, whenever a tyrant was in power; nay, an ambitious designing ruler, I dare to say, fears more the correction of the Press, than any other controul whatever; and it is to the freedom with which the conduct of the Great is scanned in England, that we are principally indebted for our glorious constitution.—Anarchy, I grant, is as much to be dreaded as tyranny; but surely no wise man can say, we are in as much danger from contempt of all government, as from the corruption of it.—A wicked ruler, who, to gratify his insatiable ambition or avarice, is trampling on the liberties of the subject, and wading to wealth and power, thro' the destruction of all that is dear to a free people, will always stigmatize with the opprobrious names of licentiousness and contempt of authority, every warrantable step taken to counterwork his destructive schemes.—He who nobly undertakes to support an injured people, and oppose the measures of those in power inimical to their rights, must expect to be set forth by every court-sycophant as a licentious incendiary, a *firebrand*, and a disturber of public tranquillity—This is a tax no friend to his country can hope to escape, while there can be found men so devoid of all benevolence and patriotism, as to worship at the shrine of power, tho' at the expence of public Liberty—Unfortunate for mankind, in the present depraved state of human nature, a B——d will never meet with much difficulty to find a H——n and a R——s to support him in all his measures; but that people who have an H——y, O——s & A——s to counterwork their pernicious designs, should account themselves happy indeed.

WHEN, my much respected fellow-countrymen, I did my self the honor to communicate my sentiments to you a few weeks past, I did not then think I should so soon have occasion to trouble you again; but you will, I dare say, excuse my officiousness, when I assure you my only wish and aim is, for your happiness and welfare—*That our assiduity in vindicating the province from the unjust charges of G——r B——d, will draw on us the indignation of the King and his Parliament—That our censure of that unconstitutional measure of the L——t G——r, still persisted in by him and his E——y, proceeded from a factious spirit—That we are forging chains for ourselves and posterity, by our present spirited conduct.—In short, That the only way for us to be a happy people, is to yield implicit obedience to those in authority.*—This, my countrymen, is the language of some I could name, who finding by experience we are yet too wise, and too honest, tamely to give up our privileges, would now terrify us

with private letters and secret intelligence from authors they are ashamed of, or dare not name: Letters which contain threats affronting to the wisdom and goodness of the King, his Parliament and his Ministry, and highly derogatory to the honor and loyalty of this province—As my countrymen we always have been, so let us continue to be, a willing and obedient people, to every constitutional command of his Majesty or his representative; but at the same time, let us preserve our rights as British subjects, being persuaded no one can take offence at a conduct so worthy of Englishmen, but such as we ought never to please.—Without being captious in matters of no importance, let us be steady and resolute in vindication of our charter-privileges, and we need not fear any evils from a patriot King, and an English Parliament.—If we should be again misrepresented to them by our enemies, it cannot ultimately injure us, if we are vigilant and assiduous to counterwork their designs—He who has once vilified and abused us to all the world, may, and likely will, do it again; especially as we find his friends undertaking his vindication—Let Philanthrop attempt to support the G——r's conduct by quotations from stale letters, which have all been heretofore published, and are mostly anonymous—let him dignify them with the name of testimonials, still they can be of no weight, nor his forced inferences from them, of any consequence, till we are as sure of the truth of the testimonials themselves, as we are of his being author of certain speeches against this people, which, if just, would taint the loyalty of an highland clan. Here, my countrymen, humanity to his Ex——y, obliges me to declare, That I do not believe we should have been thus barbarously insulted and abused by the G——r, but for the advice of him whose ambition and lust of power was solely disappointed about that time—He surely cannot be your friend, who after the strongest marks of your favor and affection, could in contempt of your election, and, as if he meant, to insult you and your charter, take a seat at the C——l board; nay who notwithstanding your determination to the contrary, still presumes his claim to be good, tho' he will not dispute it with the *present house*; because he would be glad to see a “RESTORATION of harmony and tranquility” so much wanted in this province—Philanthrop tells us the expressions complained of, in the G——r's sp——s, were unguarded—What, when they were repeated after a week's deliberation and reflection?—If they were unguarded, why are they not recalled? Has the G——r once acknowledged they were unjust? Or does he say you have been injured? No my countrymen. This, however, you have a right to expect; and this it is your duty to demand of him, if you value the esteem of his Majesty and his Parliament. The enemies to this province, having described us as undutiful and disloyal subjects, would now be glad to quiet our just resentment, by holding

up to view the displeasure of the King and his Ministry, if we are not tamely submissive under their cruel aspersions—Indeed were their representations true, we should have reason to dread it.—Conscious of our loyalty and affection to his Majesty, we have nothing to fear from the great council of the nation, which will not act but on the best evidence.—Could we suppose the Parliament of Great-Britain wicked eno’ to attempt our destruction as a free people, it would be then high time for us to look out for ourselves; and there is no good citizen, I am sure, but would think opposition more glorious, and more to our honor, than passive obedience.—But, GOD be praised, that is not our unhappy situation. The free parliament of the free people of England, must ever be pleased, rather than offended, at a noble and manly support of our rights, and a just indignation at our injuries.—Let us always be sure we are acting on constitutional principles, and we may be sure they will not, cannot be offended, or hurt us for a conduct so worthy Englishmen.—Give no heed then, my countrymen, to such idle tales; it is the common game of designing courtiers, to carry their points; they always have exclaimed, and always will exclaim, against the licentiousness of the times, on the least opposition to their tyrannical measures; and we are not to expect at this day, they will leave any stone unturned to obtain their ends.—We cannot fear any thing worse from a free examination of, and manly opposition to, unrighteous and unjustifiable proceedings in any, be they ever so great, than from a pusillanimous acquiescence in their arbitrary demands—Indeed the latter conduct will more surely end in the destruction of all we value, than the former. We have seen one treat a loyal and free people as traitors and slaves, and not attempt to vindicate or excuse his conduct: We have seen another thro’ a lust of power, usurp a seat he could not constitutionally be possessed of; and with his usual humility, support his claim against the almost united voice of the whole representative body of the people.—We have had the exercise of our charter-privileges called oppugnation of the King’s authority—We have been charged with a design to bring the authority of Parliament into contempt—An opposition to a custom-house officer, (not so violent as happens every day in some part or other of Great-Britain) we know to have been represented as a general combination of the whole province against the King’s officers. We have been *proclaimed* as a set of Robbers and Baditti to all the world—In short, we have been characterized as esteeming fidelity to the crown, as the greatest crime in our public transactions—And after all this, (are we ever so innocent) we must sit still and tamely submit, without even a right to complain—If we open our mouths in our own vindication, we shall draw down the resentment of the King and Parliament on our heads. If we attempt to vindicate ourselves from the most injurious charges ever laid on a

loyal people, it is a manifest contempt of government, and the severest chastisement is to be expected—This is the language of those who would be glad to accomplish our ruin without opposition; but it is not such language as a good Patriot, nay, a good British subject will in the least give heed to—Go on then my countrymen, to support and vindicate with decency, plainness and courage, your rights, liberties and privileges; regardless of trifles, preserve with fortitude the essentials of the constitution; and as you are a loyal and a free people, let no one traduce you to his Majesty unnoticed. Let no one break in upon the constitution without a rational opposition—Fear not the threats of your enemies, nor be seduced from your duty to your country by their arts—Let every thing give way to the preservation of our rights as British subjects, and when that is secure, let every thing yield to good order without supineness, and peace without dangerous security; being assured we cannot be good subjects without we are vigilant of public liberty, as well as public tranquility.

FREEBORN AMERICAN.

April 27, 1767

Messieurs EDES & GILL,

Please to insert the following.

TO obey such laws, and submit to such taxations *only* as we consent to, is the peculiar happiness of British subjects, and the invaluable privilege of Englishmen. This is our felicity, and this is what characterizes us a free people. Every subject has by birth an equal title to this privilege, and would have a just right to a *personal* share in the formation of all laws, did not experience convince us such an administration would clog government, and render it too unwieldy to answer the good purposes of society.—For this reason our wise fore-fathers found it necessary for every town or district, to devolve this power on one or more chosen from among *themselves*, to meet together and represent the whole: by which prudent regulation, such laws as they should see fit to enact, and such taxes as they should think best to lay for the general good, might properly be said to be done with the consent of each member of society. But that this authority so delegated to our Representatives, might not be used to bad purposes, nor abused without redress, the time of their continuance in that important office, is not only limited, but there is reserved to their constituents a right on all occasions, when they think proper, to

instruct them how they are to act; which instructions they are oblig'd to obey, tho' it should be against their own judgment; because by their appointment they are to represent their constituents, and all in their stead; otherwise it could never properly be said, the consent of the whole was obtained.—In all cases where our Representatives are uninstructed they are to act their own best judgment, which is always supposed to be the judgment of their constituents; because each town if they pleased to exercise it had a right to instruct them otherwise.

The time of Election being near at hand, suffer me *my beloved countrymen*, to lay before you a few observations on the extent and importance of the power you delegate to your Representatives, the qualifications necessary in a candidate, and the motives which should actuate you to your choice—The General Assembly, as has been before observed, are justly supposed to represent the whole body of the people; the laws they frame, and the taxes they lay, are therefore binding on all. Legally assembled they are the supreme court, and (if I may be allowed the expression) the animal spirits of the constitution. They are the fountain of all power, and are superior to all other courts. Tho' in this country their duration extends to but one year, yet no one can say what mischief they may do in that short space of time, *In an age where precedents are held to be more binding than reason, law, or the charter*. It is in their power during the administration of some wicked Verres, to enslave you and your posterity, or drive you to such a state of desperation as we have lately escaped from, and which often ends in tyranny or anarchy. They may either from corruption or even pusillanimity, by acting in concert with designing men, fetter you with the shackles of slavery, or from magnanimity and virtue, preserve your Rights from their wicked attempts to destroy them. They can beggar you by the lifting up of their hands, or nobly defend your property from illegal taxations. As the influence of the prerogative has always been and is so great, that it is much easier to guard against unconstitutional and oppressive laws than to get them repealed when once they are enacted, and as all laws unconstitutionally made, let them be ever so old, are supposed to be consented to until they are repealed, how circumspect ought we to be in an appointment, which not only greatly concerns our own happiness, but that of posterity: For it is very difficult to wrest from the hands of a tyrant what he can once sanctify with the approbation of your representatives, be it ever so cruel and unjust. If then you are bound to obey laws till repealed, and you know an oppressive ruler when he can seduce your representatives to assist him, will always gratify his ambition at the expence of your liberty, and never yield what he has thus obtained but with reluctance, you cannot pay too much attention to this matter. If you love your country, if you value

your constitution, if you feel any tenderness, for posterity, it must and will claim your serious deliberation as an unwise delegation may destroy them all, and entail slavery on many generations. Tho' a wise representative body are properly called the guardians of the people, yet if they are once corrupted, we must loose our freedom: for as Montesquieu justly observes, the English nation will fall when the legislative shall be more corrupt than the executive body.

As to the necessary qualifications of a good representative, I take wisdom and ability, with a general knowledge of our constitution to be the first requisites in a candidate. Without these he may be seduced from his duty, let his integrity and patriotism be ever so great. Tho' we have lately seen a man so supremely audacious as publickly to ridicule in a late assembly all pretensions to patriotism, yet there is scarce an instance to be found in the English history, where tyranny has been bold enough to declare her purposes, and not endeavoured to cloak herself with the sacred veil of public good. Whatever may be their designs, men in general choose to be thought upright and honest. How necessary is wisdom to develope the dark disguised schemes of such men and frustrate their purposes! In politicks we know not what a day or an hour may bring forth; even when we think ourselves the most secure, the iron hand of oppression may be lifted up against us, and ages groan under a yoke which a judicious choice might have prevented—Integrity, with a sincere love for liberty & the British constitution, are also absolutely necessary; without integrity you cannot rely on his wisdom or abilities, and without a regard for liberty and the British constitution, he may value his own interest before that of his country; such a man will be always unfit to represent a free people, as he will be liable to yield to bribery of one kind or other, and sacrifice the public good to his private emolument, whenever he shall be tempted. Prudence and fortitude are likewise essential; if he has not prudence he may needlessly irritate your enemies; if he has not fortitude he may timidly give up your just Rights. There is however no character so dangerous to liberty as the man of prudence. *You may possibly be right, but at this juncture it is not prudent to insist upon it*, is the language of artful courtiers, and has done more hurt than can well be imagined. When our rights are invaded, it is high time to throw aside prudence, and believe me my countrymen, he is not worthy your suffrages who on such an occasion would *prudently* resign them for the sake of peace. He that is afraid to speak his mind, and is for suffering injury, injustice or oppression, rather than disturb *public tranquillity* or more properly dangerous security, is not to be confided in; for it is always safer to oppose any the least infraction of our happy constitution, than prudently to acquiesce for the preservation of peace. He

that does not know ambition as well as avarice in rulers is never satisfied, and to yield in the material point only makes way for another, and so on till there is no more to give, must be a novice indeed; and he that knowing this, still persists to act on maxims of prudence, where our charter rights are concerned, is no better than a traitor to his country. A free government never degenerated into tyranny all at once, it is the work of years. There is nothing however will in the end more surely work the destruction of liberty, than a prevailing opinion that it is better tamely to submit than nobly assert and vindicate our priviledges. Prudence is necessary and only desirable to temper his conduct, and preserve him from ill timed and over heated zeal, in affairs of little or no moment, and which cannot affect the constitution: but he that is constantly preaching up this doctrine as suitable on all occasions is not to be trusted; as by that means he may ignorantly if not willfully betray your rights, and resign them into the hands of such men as are watching for your destruction. A moderate fortune and an independent spirit should also claim your attention: the one to keep him above temptation, and the other to support him against all opposition. I would not here be understood to assert that fortune is absolutely necessary, but all other circumstances alike, undoubtedly he that is possessed of it should be preferred. It is a maxim I know laid down by artful men, that the rich are most proper to represent a free people, because they are the least liable to corruption, and have more to protect and defend. I am apt however to imagine if you look into history you will find the wealthy have been as easily and as often if not more frequently seduced from their duty to their constituents, than those who are not so, and are endowed with a generous independent spirit. In short my countrymen, if a man wants one of the qualifications I have mentioned, and his wealth has no bounds, he is not a suitable person to obtain your confidence and be entrusted with the guardianship of your liberties: On the contrary tho' he is intimately acquainted with poverty, yet if he is in all respects otherwise qualified, his poverty should be no obstacle to his choice, *especially if he has been proved and found faithful*: because his virtues will more surely keep him out of the reach of temptation than the riches of the other. We very seldom find any but the children of Fortune advancing this doctrine which generally proceeds from pride, envy or ambition. They vainly imagine their wealth must make them statesmen, and are therefore very assiduous to obtain the honor of a seat where they can display their wonderful abilities. You should my countrymen be very cautious of such men, for whatever they may think, the representation of a free people is an arduous and painful undertaking, and is not sought after by those who are qualified for so important a trust.

The observations which have naturally resulted from the foregoing delineation of a worthy candidate have almost anticipated what I had further to say on the motives which should actuate you in your choice—At a time when innovations and inroads on the constitution seem to be the bent of those in power, when the friends of liberty and the rights of mankind are very solicitous for your welfare, it would be unpardonable to let party divisions or animosities of any kind have an influence in your elections; lest you should thereby sacrifice the invaluable privileges of Englishmen to private pique and revenge. Is the candidate wise honest and resolute? does he at all times assert your rights as men and liberties as Englishmen unappalled by threats and unseduced by promises? has he heretofore with manly courage supported your freedom and defended the charter from the encroachments of ambitious men through a fondness for power? did he with firmness vindicate your injured honor and sacred privileges, when you last employed him, (or if that favor never was conferred on him) have you good reason to think he will thus act, without fear or affection? Is his prudence tempered with magnanimity, and his patriotism uniform and untainted? He is then worthy your esteem, your confidence, and your suffrages.

Consider I beseech you the difference between freedom and slavery, the happiness of enjoying the rights of men, the privileges of British subjects and the misery of groaning under the yoke of tyranny and arbitrary power. Remember that possibly on your present delegation depends which of these conditions shall be your portion. Let such motives as these actuate you in your choice, and I am confident you will not only act worthy the name of Englishmen, and appoint a wise representative body; but have the pleasing consolation of being blessed by the present and future generations.

There are my countrymen who are constantly bruited about that our fears are chimerical that if we continue to act as we have done we shall be ruined; and that our only way to be a happy people, is to rest easy and quiet, or in other words, not disturb them in their pursuit after power and wealth.

*Tis thus, the false Hyaena makes her moan,
To draw the unwary Traveller to her den.*

Whether our liberties are secure, or whether we are blessed with patriot rulers, who are a terror to evildoers only and a praise to them that do well, I will not pretend to determine but this I am sure of nothing is more dangerous than careless security and ill-timed prudence and that it is our duty in the best of times to watch over our constitution with a jealous eye. I do not desire to irritate or inflame but it is the wish of my soul to impress you with a sense

of the importance of chusing a patriot representative body who will protect and defend your rights liberties and charter whenever invaded.

I have before said and I believe on rational grounds it is not only your right but your duty, to instruct your representatives how they shall act whenever you think it adviseable and that they are indispensably obliged to obey such instructions. Having therefore taken the liberty to give you my sentiments relative to the choice of them, suffer me just to remind you of one or two things concerning which it would not be amiss to instruct them. Privy councils heretofore unknown to this country, have of late grown much into vogue and been used as having the powers of a full council legally called together. Our charter it is true says, seven *at least* shall make a council, but by no means countenances a partial warning of seven particular councillors devoted to the will of a Governor; for then the words *at least* in the charter would have been unnecessary and besides a Governor would be absolute in all matters before such a council. Moreover this *novelty big with mischief*, has been used as possessing sufficient authority to grant away your property in a manner which it is to be presumed a full council would not have done, and probably the only reason why this new scheme of transacting business has been adopted, is, because a full council was found not sufficiently subservient. In short, it is now come to this, if a Governor by his influence can obtain *only* four councillors chosen, who reside any where at hand, and are subservient to his pleasure, he will then have a majority in this new branch of the legislative, and consequently have his will the rule of their actions: And so bent has his E——y been upon this matter, that he has repeatedly declared unless two particular gentlemen who reside in B——n are chosen as councillors, he will not suffer their places to be filled up. Now if his E——y can declare this of two, why not of four, nay why not of the whole twenty eight, which will amount to no more than this, *that he is determined to appoint his own council, or have none*, the consequence whereof is much *better* imagined than described—Again, in certain cases where a majority of the council have not co-operated with the G——r the world by finesse have been more than once made to believe, they approved measures which were almost unanimously rejected by them. The courtly expression of such a day the G——r *in* council did so and so, and such a *deposition* was taken by the G——r *in* council has been made use of to this end in some matters which have been laid before a privy council at St. James's, and even the British Parliament; by which pious procedure the province has been greatly injured on the other side the water. Witness Capt Malcomb's affair. The affidavits relative to which were not only taken *ex parte*, but prefaced with these words "sworn before the G——r in Council." Will any one undertake to say this was not done to make the

world believe the G——r had the concurrence of the council in taking them? surely no. What shall we think then of a man who in addition to such artifice as this could endeavour to magnify a bagatelle opposition to a customhouse officer, to the enormous size of a general contempt of all King's officers? But it is all of a piece, and we have only to hope *the reproach will fall on his own head*. Though this matter seems at first blush more properly to concern the honor of the council than the house, yet as many ill consequences may flow from such management to this people, I cannot think he that could tamely suffer such a prostitution of his assent; without resentment, is worthy to be related.—It is a doctrine lately advanced by an executive J——ge in a public assembly, and is manifestly agreeable to liberty and law, *that a legislator and judge in the same person are incompatible with that freedom & independence necessary to an impartial administration of government*; and yet this very J——ge for a long time was elected a legislator and served as such: Nay more, when the last year he was wisely rejected because he was an executive officer, he very modestly claimed, and still supports an indefeazable right to a share in that department; but least this claim should fail him, we are insulted with a declaration, that his seat shall never be filled by any other person. You all know my countrymen, what noble and successful attempts were made a year past in more than one instance to redress this grievance; and altho' we were branded with the most opprobrious names malice could invent for that glorious conduct, we have as yet felt no ill effects therefrom, and I trust shall not, so long as we act on constitutional principles: for we may be assured his Majesty and his Parliament will always judge of our conduct from reason and the nature of English government, and not from the partial representations of an incensed G——r. To show you what little regard is paid to our charter in this enlightned age, suffer me to remind you what it says relative to the appointment of a Judge & other officers: It declares "that no nomination or appointments of officers shall be made without *notice first given or summons issued out seven days before such nomination or appointment, unto such of the said councellors or assistants as shall be at that time residing within our said province*." Notwithstanding this very plain passage we have but a few days since seen, (undoubtedly for wise or *political* reasons) a man nominated and appointed to the important office of a superior judge, without summons or notice as the charter directs, and that too when but a week before the whole general court were together, and the nomination was publicly talked of and expected. Whether this appointment will stand good I will not undertake to determine, but leave to those who are better judges of the law and the charter. I cannot however think a prudent enquiry into this matter wou'd be unbecoming a house of representatives; for if our charter and constitution

are thus to be annihilated to serve the purposes of designing men, we may as well submit at once, and acknowledge their will our law.

It is my countrymen of the utmost consequence that we boldly oppose the least infraction of our charter, and rights as men. *Obsta Principiis*⁴ is a maxim never to be forgot: If we do not resist at the first attack, it may soon be too late; and where such a prize as the liberties and priviledges of British subjects is at stake, who dares say it is not better to be too jealous, than too secure, and begin too early rather than suffer all to be lost by inattention and neglect. We know our rights, liberties and priviledges have been attacked, we know our charter has been grossly [wrested?] to obtain a seat in Council for a favorite, we know it has been violated by a frequent use of modern privy Councils, and I believe, if possible more so in a late appointment. We know his E——y has usurped a priviledge of dictating in effect who shall be Councillors and who not; and further by an artful expression taught the world to believe the Council consented to measures they absolutely rejected, wherein the welfare of this province was greatly concerned: After all this, who is there hardy eno' to say we have no reason to be jealous of our constitution, and ought not to be careful that we obtain a wise representation—But to the end that you may be still more secure, and your representative without excuse. I should think the foregoing observations, might well enough be comprized in the following short instructions to him.

1st. That no person obtain his suffrage for a seat in Council, whose other employments are incompatible therewith.

2. That he enquire whether the modern use of Privy Councils is not unconstitutional.

3. That he examine whether some late appointments were not made without notice first given agreeable to charter—and,

4. That he oppose, with decency & fortitude, every unconstitutional and arbitrary measure of ambitious men:

Believe my countrymen, notwithstanding what may be said to the contrary by Court seducers, instructions like these, observed in their full extent, by such a representative body as I have before delineated cannot injure you nor endanger your liberties; but must serve you as a free people, and in the end put to shame your enemies. For conduct like this your King must esteem you, the parliament respect you, the present generation love you, and posterity speak of you with reverence.

4. *Obsta Principiis*: "Resist the beginnings." The English equivalent would be "nip it in the bud."

Be not I beseech you frightened or seduced from your duty, by the whispers of malice, the threats of disappointed ambition, the forged falsehoods with which the News Papers are daily stuffed by the foes to Liberty and this Country, the private menacing letters artfully circulated by court sycophants, nor the more dreadful calamity of a standing army, which the friends to arbitrary power are constantly setting up to view, in hopes to shake your constancy. These are but the stale tricks of wicked designing men, and not to be regarded,—While we conduct ourselves like Englishmen, and support our liberty without licentiousness, we have nothing to fear from our present patriot King and his Parliament. It is treason in any to suppose that because they have the power, they would even desire in opposition to law, justice, liberty & the British constitution to load us their fellow subjects with the chains of slavery. Let us then continue to act as men, as British Subjects, and as Americans, remembering we are only Stewards to Posterity, and must be accountable to them for every privilege we have received from our Fathers; who through many perils and dangers transmitted them to us pure and unsullied and charged us by their sufferings to deliver them to our children intire.

FREEBORN AMERICAN.

9. November 1767 Essay by Otis in the *Boston Gazette*

November 30, 1767

To the PRINTERS.

*A Regard to Truth, and Justice to myself, induce me, in a public Manner to deny, and I utterly deny, that, ever before, at, or since the late Meeting of this Town, I said “it was absurd to suppose that the Commissioners had the least Hand or Influence in laying or procuring the [late] Duties.” Nor did I then or ever say “that we had often desired the Establishment of a Board of Commissioners in the Plantations, and complain’d, that for want of it, we were deprived of many Advantages which our Fellow Subjects in Great Britain enjoy.” Nor did I then or ever say that “we ought to consider the Establishment of that Board as a Favour and of great Advantage.”**

Whatever I may have heard and firmly believe of fervent Desires here, and earnest Applications from hence for the Establishment of such a Board, I certainly know of none even from or by a single interested Individual. Sure I am, the Government, here, never made any such Application nor yet signified any such Desire. I say the Government, for if a few here have solicited this Thing, they are not yet quite the whole Government. As to the vast Utility of this new Establishment I cannot at present form a Judgment. I know not the full Extent of the Powers devolved on those Gentlemen, having never had Opportunity to see their Commission. Besides, should the Effects of this Establishment not prove answerable to the Intention and Expectation, Time alone will sufficiently point out the Reason and the Remedy: In the mean while the Conjectures of a private Man would be of no avail. However, if the Office of a Commissioner General imports no more than that of a Surveyor General, no Man of Sense will contend about a Name, and should the next Administration think fit to call them Commissaries-General, no Man need break his rest about it. The TAX! the TAX! is undoubtedly at present the apparent Matter of Grievance; and this I think is a great One: But Redress is to be sought in a legal and constitutional

* See the Evening-Post of Monday last.

Way. And I take this further Opportunity to declare without Reserve, that if from the Bottom of my Heart to disapprove of all tumultuous and riotous Proceedings, and upon all proper Occasions to bear my most humble Testimony against them is to be a Tory, I am, and ever have been, so far a Tory. On the other Hand, if to stand like Men, for the Rights of Men, be a distinguishing Characteristic of the Whigs, I hope I am, and ever shall be, so far a Whig. I profess however to be not altogether devoted to any Party but that of Truth and right Reason, which I think I am ready to embrace where-ever I find it.

James Otis.

Boston, Nov. 24th, 1767.

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