

RIGHTS OF THE BRITISH COLONIES ASSERTED AND PROVED

JAMES OTIS (1725–1783)

Otis rose to prominence in 1761, after he gave a courtroom speech opposing the Writs of Assistance—blanket warrants issued by the British for searching suspect property. He edited that speech into this essay three years later, after the passage of the Sugar Act. Its arguments contain the seed of the American Revolution—an appeal to natural rights applied against particular abuses of political power. Struck by lightning in 1783, Otis did not live beyond the Revolution. But John Adams remarked that he had never known a man “whose service for any ten years of his life were so important and essential to the cause of his country as those of Mr. Otis from 1760 to 1770.”

1764

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 this 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 conferred by the people, shall *incessantly* consult *their* good. Tyranny of all kinds is to be abhorred, whether it be in the hands of one, or of the few, or of the many.—And though “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

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the generous temper and courage of our nation, that it is hard to be conceived that an *Englishman*, much less a *gentleman*, should plead for it”....

But let the *origin* of government be placed where it may, the *end* of it is manifestly the good of *the whole*. *Salus populi suprema lex esto*, is of the law of nature, and part of that grand charter given the human race (though too many of them are
5 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*....

The *British* constitution in theory and in the present administration of it, in
10 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 commonwealth given us by that author, or come as near it as *Great-Britain* is. Then indeed, and
15 not 'till then, will that rival and 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....

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
20 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.

25 1st. *That the supreme and subordinate powers of legislation should be free and sacred in the hands where the community have once rightfully placed them.*

2ndly. *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
30 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 effect 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 equi-
35 table right, notwithstanding any such forfeiture of charter, to be represented in parliament, or to have some 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....

3rdly. *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.

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 independent judges.* 5

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

6thly. *The legislative cannot transfer the power of making laws to any other hands.* 10

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.* 15
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 it is reconcileable 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 entitled 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. 20 25

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 re-established at the revolution, with a professed design to secure the liberties of all the subjects to all generations. . . . 30

. . . [T]he liberties of the subject are spoken of as their best birth-rights—No one ever dreamed, 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 35

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 vain and empty sounds, unless we are allowed the essential rights of our fellow-subjects in Great-Britain.

- 5 Now can there be any liberty, where property is taken away without consent? Can it with any color 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
10 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
15 them, we should be justifiable in refusing to pay them, but must and ought to yield obedience to an act of parliament, though 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
20 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
25 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 entirely at the mercy of others.

- 30 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 any where else. A sentiment this, very worthy of modern Dutchmen; but if their brave and worthy ancestors had entertained such narrow ideas of liberty, seven
35 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 really 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 it is 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, it is 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 forcibly resisting the parliament and the King’s laws, is high treason. Therefore, let the parliament lay what burdens 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 it is 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. . . .

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 repealed, and 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, though 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 judgment to be exercised, so far at least as to petition for repeal, or to determine the expediency of risking a trial at law, the parliament might make itself arbitrary, which it is conceived it cannot 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 offense 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 truth. With regard to the public, it is the duty of every good citizen to point out what he thinks erroneous in the commonwealth. . . .

To say the parliament is absolute and arbitrary, is a contradiction. The parliament cannot make two and two, five: Omnipotency cannot do it. The supreme power in a state, is *jus dicere* only:—*jus dare*, strictly speaking, belongs alone to God. Parliaments are in all cases to *declare* what is for the good of the whole; but it is not the *declaration* of 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 act, 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 luster 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. . . .

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 through 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 thereunto 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 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 legislation 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.