

James Otis, An American Colonist Opposes New Taxes and Asserts the Rights of the Colonists (1764)

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In the period following the Seven Years' War (1754–1763), Britain attempted to shift its policy in North America from "benign neglect" to direct control. This came in the form of a series of parliamentary acts and writs, which enabled British agents to enforce the new acts. Assertion of British rule came as something of a surprise in the colonies and provoked a variety of responses. A passionate and radical member of the opposition to royal authority, James Otis made his name arguing against the British Writs of Assistance. He lost the case but his assertion of the natural rights of the colonists made him a prominent member of the opposition. He became the head of the Massachusetts Committee of Correspondence and a member of the Stamp Act

Congress. In this reading, Otis asserts the natural and political rights of the colonists.

Otis, James, "The Rights of the British Colonies Asserted and Proved" (1764), in Bernard Bailyn, ed., *Pamphlets of the American Revolution, 1750–1776*, Cambridge, Mass.: Belknap Press of Harvard University Press, 1965, vol. 1, pp. 439–440.

It is . . . 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, though 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 sought 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 cornerstone 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 concern 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-enlivening 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. . . .

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, tranquillity, 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, though few find him in the sovereign power of their respective states or anywhere else in subordination to it. . . .

I know of no human law founded on the law of nature to restrain him from separating

himself from all 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 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. . . .

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. . . .

The colonists are by the law of nature freeborn, 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 curled 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 favor 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 men's liberty will soon care little for their own. . . .

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.

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 the Atlantic. It has been practised 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 through the continent. . . .

That the colonists, black and white, born here are freeborn 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. . . .

The liberties of the subject are spoken of as their best birthrights. 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 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.

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 useful subjects, white and black, as any in the three king-doms, 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, though erroneous, till repealed. I can see no reason to doubt but 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. . . .

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.

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 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 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 greater peace and prosperity, and render it invulnerable and perpetual.

Questions

1. According to Otis, who can curtail natural rights?
2. How does Otis's notion of natural rights impact his understanding of royal authority?
3. How does Otis formulate the relationship between the colonists and British authority?