CHAPTER FIVE

Toward Independence: Years of Decision
1763–1776

Imperial Reform, 1763–1765

In 1763 all British subjects, including the American colonists, celebrated their victory over the French in the Great War for Empire, but the celebrations were short-lived. The British national debt had increased by more than 75 percent, and while demanding more in taxes from subjects at home, imperial officials also expected the colonists to bear more of the cost of administering the newly enlarged empire in North America. That these same colonists had a history of evading trade laws and resisting parliamentary control convinced the crown of the need to reform the "imperial system to ensure stricter enforcement of any prospective revenue measure. Thus, although the Sugar Act of 1764 cut by one-half the tax imposed by the 1733 Molasses Act, it strengthened the means of collection. Colonial merchants would not be able to avoid this new tax as easily as they had its earlier counterpart, and accused violators could be tried in vice-admiralty courts, that is, in maritime courts without the benefit of juries and likely outside of the jurisdiction where the alleged violations had occurred.

James Otis Jr. wrote the most influential colonial response to the Sugar Act (Document 5-1). Even as the debate over the propriety of the 1764 act was commencing, however, Parliament was already contemplating a more far-reaching stamp bill. Because the colonists insisted that they could be taxed only with their consent, given directly or through their representatives, Thomas Whately attempted to convince them that they were represented in Parliament in the same way that "nine-tenths of the people of Britain" were—"virtually" (Document 5-2). The Stamp Act Congress rejected Whatley's arguments (Document 5-3). Rather abruptly after 1765, the issue of whether the colonists were represented in Parliament disappeared from the public discourse.

5-1 Rights of the Colonies Asserted and Proved (1764)

James Otis Jr.

The French and Indian War, or as it was known in Europe, the Seven Years' War, left Britain in command of over half a continent; however, it also saddled the empire with a huge financial burden. The British national debt had increased by over 75 percent as a result of the war, and interest charges on that debt alone consumed 60 percent of the annual budget.
In 1763 Parliament and the ministry saw not only the need for new sources of revenue but also an opportunity to implement imperial reforms that had been left in abeyance for more than a dozen years. The Sugar Act of 1764 was supposed to meet both of these ends. It superseded the widely evaded Molasses Act of 1733 and reduced the duty collected on imported molasses from six pence per gallon to three, but it bolstered the administrative machinery associated with the collection of these taxes. The colonial reaction was first to voice economic concerns regarding the potentially negative impact of the tax, and second to raise constitutional objections to its legitimacy. James Otis, a Harvard-educated lawyer who had already begun to establish a reputation for himself as a champion of colonial rights, wrote the best-known response to the Sugar Act.

Let no Man think I am about to commence advocate for despotic power, 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 proceed over every society; from whose final decisions there can be no appeal but directly to Heaven. It is ever 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 so 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 consider their good, and way of all kinds is to be abhorred, whether it be in the hands of their magistrates.

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 has happily 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.

1. That the crown and subordinate powers of legislation should be free and sacred in the hands where the community have once rightfully placed them.
2. That the supreme national legislative cannot be altered justly till the commonwealth, nor a subordinate legislative taken away without forfeiture or other good cause. Nor can the subject in the subordinate government be reduced to a state of servitude, and subject to the despotic rule of others. . . . The colonists who have an equitable right, notwithstanding any such forfeiture of charter, to be represented in parliament, or to have some new subordinate legislature among them, it would be 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 be-come so large and numerous, as to be called on not only to maintain provincial government, civil and military, among themselves, for they have cheerfully 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, cannot be thought an unreasonable thing, nor if asked, could it be called an improper request. . . .

No representation of the colonies in parliament alone, would, however, be equivalent to a coordinate legislative among themselves; nor so well answer an end of increasing their prosperity and the commerce of Great-Britain. It would be impossible for the parliament to judge so well of the wide opportunity to the people of the northern colonies, as representatives in parliament are of the whole: that the constitution is the most free, just and perfect, now existing on earth: that by this constitution, this devolution is fiduciary, for the good of the whole: that by the British constitution, this devolution is not his, but by right of the whole: that by the act of succession, the constitution is the most free and is not his overruling power is to make it best for the good of the whole, that they should have devolved it on whom they pleased: that this devolution is for the good of the whole: that by the ancient charters, from the principle 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. . . .

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 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 taxation, 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 liberty. . . .

Cases are taken to be on the lands, but by their consent in person, or by deputy, his liberty is gone, or lays entirely at the mercy of others. . . .

To say the parliament is absolute and arbitrary, is a contradiction; the parliament cannot make 2 and 5: Omnipo-tency cannot do it. The supremacy, which is just, is due alone;—just, strictly speaking, belongs alone to God. Parlia-ments 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, and equity and justice, and consequently void: and so it would be adjudged by the parliament itself, when convinced of their mistake. Upon this great prin-ciple, 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. . . .

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 declaration is fiduciary, for the good of the whole: that by the British constitution, this devolu-tion is on the King, lords and commons, the supreme su-ced 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 rev-olution, it was renewed, and more firmly established, and the rights and liberties of the subject in all the parts of the dominions, more fully explained and confirmed: that in conse-quence of this establishment of the supreme and ancient su-preme and equal union, and his Majesty GEORGE III. is rightful king and sov-ereign, and with his parliament, the supreme legislative of Great-Britain, France and Ireland, and the dominions thenceunto 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 with out their consent: that every part has a right to be repre-sented in the supreme or some subordinate legislature: that the returns of this body of citizens to the parliament, 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 legis-lation, but he also represented in some proportion to their number and estates in the grand legislature of the na-tion: that this would firmly unite all parts of the British empire, in the greatest peace and prosperity; and render it irreversible and perpetual.

Source: James Otis Jr., Rights of the Colonies Asserted and Proved (Boston, 1764).

Questions
1. Otis argued that Parliament’s legislative power was “supreme” and “uncontrollable,” and therefore that the colonies were obligated patiently to submit regardless of how burdensome it proved to be; however, he also claimed that Parliament could not tax the colonies without their consent. How do you explain this apparent contradiction?
3. How do you explain the fact that people on both sides of the imperial crisis endorsed Otis’s pamphlet?