

The Foundation of Freedom:
Natural Rights and State Power in Revolutionary Massachusetts

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Abstract

This research project is an attempt to explain the political mindset which drove the actions of the Massachusetts Patriots during the American Revolution. The British government's attempts to assert increased control over the American colonies, beginning with the Sugar and Stamp Acts in 1764-1765, initiated a decade-long political struggle between Britain and America. During that struggle, all politically active Americans had to wrestle with questions of where their rights came from, the role of government in relation to those rights, and the constitutional limits of a government's power over the governed. The question of the origin of rights was thus central to the quarrel between Britain and the American colonies.

This study makes the case that the Massachusetts Patriots believed the freedoms of Americans came from their natural rights as men. Natural rights doctrines provided the ideological foundation for the Patriots' resistance to the British government and explains why that resistance eventually turned into a revolution. According to the natural rights argument, the British government had not given Americans their rights in constitutions or charters, those political actions were instead designed as protections for the preexisting natural rights of the people. The Patriots were fond of the Massachusetts Charter and the British Constitution, but they did not believe that those documents were the source of their rights. When faced with the possibility of their rights being taken away, the Patriots made their defense by appealing to their foundational belief in a universal set of natural rights possessed by all men.

To explain the political mindset of the Massachusetts Patriots, this study traces the historical roots of natural rights doctrines back to the Middle Ages and examines how that tradition became ingrained in the political mindset of Massachusetts' inhabitants during the Colonial Period. The role of natural rights doctrines in shaping the resistance of the Massachusetts Patriots to increased British control over the American colonies and its role in their support of the political revolution which resulted is then explored in-depth.

Chapter 1: Introduction

“Would men have had the idea of allegiance to an earthly Prince, had they not first found it necessary to form government on earth, under God, to protect their natural rights? Is not therefore the Subject’s allegiance first due to the constitution of government, which secures the natural rights of the governed; and as a necessary means thereof circumscribes and limits the power of those, whom they have or shall constitute to be their legislators and governors, whether Kings, or Parliaments, or both?”¹

I. Thesis

This single passage captures the essence of the political struggle between the American colonies and the British government in the years before the Declaration of Independence. Several crucial claims were made by its anonymous author. First, men possessed natural rights before the creation of governments. Second, governments were first created in order to protect the natural rights of the governed. Third, the power of governors is delegated to them, and limited by, a constitution which possesses the first claim to the allegiance of the people. These bold claims were made on the front page of the March 17, 1766 edition of the *Boston Gazette*, a prominent Massachusetts newspaper which regularly published political literature defending the rights of the American colonists.

These claims were also made in the midst of the Stamp Act Crisis, the first major event of the “long train of abuses and usurpations” which would cause the American colonies to “dissolve the political bands” which united them to Britain.² In order to raise revenue from its American colonies, and to help pay off the debt the British Empire had incurred in the Seven

¹ Britannus Americanus, “Essay on the Rights of the Colonies,” *Boston Gazette*, March 17, 1766, in *The Annotated Newspapers of Harbottle Dorr, Jr.*, Massachusetts Historical Society.

² Second Continental Congress, Declaration of Independence, July 4, 1776, National Archives.

Years War, Parliament decided a tax would be levied by requiring a stamp to be affixed to nearly every form of printed material in the American colonies, including newspapers and legal documents.

The political crisis which was sparked by the passage of the Stamp Act in Parliament and the debate which raged with varying levels of intensity over the next decade raised a multitude of questions in American minds. At some point during that decade, all politically active Americans had to wrestle with questions of where their rights came from, the role of government in relation to those rights, and the constitutional limits of a government's power over the governed.

The question of the origin of rights was thus central to the quarrel between Britain and the American colonies. The colonists had to ask themselves where their freedoms came from. Were the liberties Americans enjoyed granted to them through the gracious indulgence of their government? This would mean that their freedoms could be granted or revoked at the will of the political leadership, whether in Britain or the colonies, at any point in time. As much as the American colonists revered their civil and constitutional rights as Englishmen, basing their most cherished rights on the will of the British government did not give them confidence that their freedoms rested on a solid foundation. The American colonists could, and frequently did, point to English common law, established custom, the unwritten British constitution, and their colonial charters when defending their rights. They were particularly zealous in regards to their charters, which they regarded as constitutions. But did they consider those political documents and decrees to be the true source of their rights?

Another potential source of liberties that the colonists had at their disposal was the natural rights tradition. If the freedoms which the colonists were defending were natural rights that would mean that those liberties were possessed by all men inherently. It would also mean

that their civil rights as Englishmen were a formal recognition by the government of natural rights which the people already possessed. According to this line of argument, the British government had not given Americans their rights in constitutions or charters, those political actions were instead designed as protections for the preexisting natural rights of the people. A natural rights argument would make the colonists' rights permanent freedoms which are inseparable from individuals and do not rely on a government for their existence.

It has been recognized by some scholars that the American colonists, and Englishmen in general, tended to equate their civil, i.e. constitutional, rights as Englishmen and their natural rights as men to the point where these concepts were nearly synonymous in their minds. It was common for Americans to speak of their "natural and constitutional rights" in political discussions. One conclusion that can be drawn from this equation of constitutional rights and natural rights is that colonial references to natural rights are merely another rhetorical way of speaking of their constitutional rights as Englishmen, those rights granted to them by custom and government indulgence. In this view, the rhetoric of natural rights in the American Revolution becomes irrelevant as a distinct form of political discourse. This is the position that John Reid takes in his *Constitutional History of the American Revolution*.³

A contrary conclusion is that the language of natural rights is essential to understanding how the American colonists understood their constitutional rights. By pointing to natural rights as the ultimate source of their liberties, the American colonists were able to build their political arguments on what they considered to be a more solid foundation. English common law, established custom, the unwritten British constitution, and the colonial charters all provided

³ John Reid, *Constitutional History of the American Revolution: Abridged Edition* (Madison: University of Wisconsin Press, 1995), 13-15.

useful arguments for the colonists, but those arguments left American freedoms in doubt when faced by political pressure from Parliament.

Similar to a house built on sand, American freedoms based only on constitutional arguments could be destroyed by the next political storm. Those Americans who chose to declare their independence from Britain, the Patriots, decided instead to build their political house on what they regarded to be a rock, the foundation of natural rights. Broadly speaking, the generation of Americans who lived during the Revolutionary Era only had those two basic sources of freedom to choose from. Their rights were either merely civil, i.e. created by the government, or their rights were natural, i.e. possessed independent of any government action. The American Patriots who eventually rebelled against British rule generally chose the latter argument.

This question of the origin of rights was at the forefront of the political controversies during America's Revolutionary Era, 1765-1789. This definition of the Revolutionary Era begins with the crisis surrounding the Stamp Act, one of the first events leading to American independence, and ends with the creation of the Constitution and Bill of Rights, which established a new system of government in the fledgling United States. Perhaps during no other period in American history has the study of rights and their origins been carried on so fervently and led to such crucial consequences for society. The events of the Revolutionary Era forced America's Founders, those colonists who supported the Revolution and took part in the ratification of the Constitution, to struggle with these questions at a fundamental level. Beginning with the Stamp Act in 1765, the American colonists were faced with a number of vital questions related to individual rights and state power, none of which had easy or comfortable answers.

The first question the colonists faced was, did the British Parliament have the right to tax or make laws for the American colonies without their consent? Distinctions were made between direct versus indirect taxes, internal versus external taxes, and taxes designed to regulate trade versus taxes designed to raise revenue, but at the end of the day, it makes little difference what form a tax takes if it is made without the consent of those persons required to pay it. If Parliament's right to tax the colonies without their consent was answered in the affirmative, troubling questions followed. If Parliament did have the right to tax and legislate for the colonies, was its authority absolute and unrestricted? Would the colonial assemblies become impotent in the face of Parliamentary supremacy? Would the colonial assemblies be abolished? Would the charters be made of no effect? If Parliament's authority was absolute, would it use its authority to reduce the colonists to the status of slaves, without any legal or political rights?

A rejection of Parliament's right to tax or legislate for the colonies would also bring difficult questions in its wake. If Parliament does not possess the right to legislate for the colonies, what was the relationship between the colonies and Parliament? What was the relationship between the colonies and the king? A rejection of Parliament's right in this case would imply that there are limits to Parliament's authority. What are those limits? The issue of Parliament's authority also brought up the issue of the extent of the authority of the colonial assemblies. Do the colonies possess the absolute right to legislate and control their own internal affairs? If they do, where did that right come from? If they did possess that level of authority, would that make the colonies into independent states? Would Parliament and the king accept claims for self-governance made by the colonies? Was resisting Parliament's claims to authority the right thing to do? Were the colonists on the side of justice?

Numerous debates were conducted on both sides of the Atlantic trying to resolve these, and other equally trying, questions. In no colony were these debates more important than in Massachusetts. This colony was at the heart of the controversy between the colonies and Britain in the 1760s and 1770s. From the beginning of the troubles, Massachusetts was a leader in resisting the authority of Parliament and asserting the rights of the colonies. A contemporary English historian seeking to explain the origins of the conflict in 1776 stated that, “in all the late American disturbances, and in every attempt against the authority of the British government, the people of Massachusetts Bay have taken the lead. Every new move towards independence has been theirs: and in every fresh mode of resistance against the laws, they have first set the example, and then issued their admonitory letters to the other colonies to follow it.”⁴

While they did not stand alone, the citizens of Massachusetts were especially fervent in protecting their rights and demanding restrictions on the power of the British state. They were confident that they possessed certain rights as Englishmen and that those rights were threatened by the actions of the British government. This present study will focus its attention on the Massachusetts Patriots and this colony’s role in America’s founding. This focus is not an attempt to claim that Massachusetts was the sole, undisputed leader of the 13 colonies which eventually declared independence from Britain in 1776 or that Massachusetts was the only colony making the arguments which will be examined in the succeeding chapters. But Massachusetts did have a unique situation in that British actions to enforce control over the colonies were decidedly real in this New England colony. The controversy was no abstract debate over political theory for the citizens of Massachusetts, it was a debate that impacted their daily lives.

⁴ Israel Mauduit, *A Short View of the History of the New England Colonies* (London: J. Wilkie, 1776), 5.

One of the clearest examples of the relevance of this controversy for the citizens of Massachusetts is the passage of the Coercive Acts by Parliament in 1774. Passed in response to Massachusetts' resistance, and as punishment for the destruction of a shipload of tea by the Boston Sons of Liberty, these acts gave the British government direct control over the colony and severely limited the colonists' rights. A standing army of British regulars was then settled in the colony to enforce Britain's control. As a result, it was in Massachusetts that the first shots of the Revolutionary War were fired at Lexington and Concord in April 1775. It was here that the first full-scale battle was fought between colonial militias and British troops at Bunker Hill that June. The citizens of Massachusetts were thus confronted with the practical reality of the controversy and served as an example for the other colonies. Thus, the relevance of the debate over the rights of the colonists and the power of the British state took on added significance in Massachusetts.

This present study is primarily a work of intellectual history. It is concerned with the ideas which drove the actions of the Massachusetts Patriots, and their revolutionary compatriots in the other colonies. Since the controversy between the colonies and the British government was a political and constitutional struggle, the ideas examined in this study will be related to political theory. In particular, this study will emphasize the closely related concepts of natural law and natural rights. As the Patriots of Massachusetts delved into the origins of their constitutional rights as Englishmen, they found that they had to go deeper than formal acknowledgements of civil rights. While they deeply cherished their English heritage and the rights long recognized as belonging to Englishmen, as embodied in such landmark documents as Magna Carta (1215) and the English Bill of Rights (1689), they realized that the source of their rights was not their Englishness.

Magna Carta and the Bill of Rights did not “grant” their ancestors any rights, these were instead documents in which the state “recognized” rights which their ancestors already possessed. Thus, the conclusion the Massachusetts Patriots came to was that the state was not the source of rights, instead, all men possess certain inalienable rights simply due to their humanity. In other words, all men possess natural rights and that rather than the state creating these rights, governments are created to protect rights. This is not a conclusion which can be attributed to the Patriots from Massachusetts or the Founding generation as a whole. This is a conclusion which rests on the long tradition of natural law theory in Western Civilization and one which had been widely accepted by political theorists in England for centuries.

The origins of natural law theory stretch back over 2,000 years to the Classical World of Ancient Greece and Rome. With the rise of Christianity in the late Roman Empire, natural law was incorporated into the Christian worldview and became a key feature of the political thought of Christian scholars. Perhaps the most systematic approach to natural law ever produced by a Christian scholar was created by Thomas Aquinas (1225-1274 A.D.), the Medieval Scholastic and *Doctor Angelicus* of the Catholic Church. His *Treatise on Laws* contained in his magnum opus, the *Summa Theologica*, laid out a system in which the natural law was understood as a participation in God’s eternal law. As such, Aquinas understood natural law as providing the standard for justice in human societies.⁵ As a political theory, natural law survived the religious debates of the 16th Century Reformation and remained prominent in both Protestant and Catholic circles.

⁵ Thomas Aquinas, *Treatise on Law: Summa Theologica, Questions 90-97*, ed. Stanley Parry (Chicago: Henry Regnery Company, 1965).

It was particularly prominent in England, where it played a role in justifying Parliament's resistance to King Charles I in the English Civil War (1642-1649) and the settlement of the Glorious Revolution (1688-1689). By the dawn of the 18th Century natural law theory, with its complementary concept of natural rights, was a widely accepted political theory as to the origin of civil rights and the functions of state power in England. It was particularly important to the English Commonwealthmen, also referred to as the "Old" Whigs or "Real" Whigs. This vocal minority group within English politics, which included the likes of Robert Molesworth, Thomas Hollis, and William Pitt, saw itself as the true inheritor of the principles of the Glorious Revolution. The theories of natural law and natural rights found equal, if not greater, acceptance in the rapidly growing colonies on the Atlantic Coast of North America. The American colonies inherited their adherence to natural law from their English forebears and the writings of the English Commonwealthmen were one means through which this inheritance was transmitted to the colonies.⁶ This inheritance gave the colonists a strong sense of both their civil and natural rights and a firm conviction that those rights must be protected from state power.

At this point, a brief survey of the natural law tradition of the 17th and 18th centuries will be useful. This tradition will be examined in more depth in chapters two and three. A few works representative of the tradition inherited by the Massachusetts Patriots, and their friends in the other colonies, will suffice to show how the colonists defined the concepts of natural law and natural rights. John Locke's *Second Treatise of Government* (1689) serves as a useful summary of the natural law tradition absorbed by American Patriots. In this work, Locke defined the *natural law* as the "law of reason." This law was granted to all men by God, since all men possess the faculty of reason, and it clearly teaches men that "no one ought to harm another in

⁶ Caroline Robbins, *The Eighteenth Century Commonwealthman* (New York: Atheneum, 1968), 5-21.

his life, health, liberty, or possessions.”⁷ The natural law thus points men to their *natural rights* to their own life, liberty, and estates. Locke sometimes used the term “property” as short-hand for man’s natural rights since these are things men inherently possess. Men also possess a natural right to self-preservation and can defend themselves against invasions of their rights by other men.⁸

When it comes to civil government, natural law is the standard by which all civil laws are to be judged. Civil laws are only right and just if “they are founded on the law of nature, by which they are to be regulated and interpreted.”⁹ The chief end of government is the preservation of its citizens’ property (natural rights) and the power of the state is limited by the natural law, “the law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they make... must... be conformable to the law of nature, i.e. to the will of God, of which that is a declaration...”¹⁰

Another work which aptly summarizes the natural law tradition in England and the American colonies is Algernon Sidney’s *Discourses Concerning Government* (1698). Sidney posited that “the universal law of God and nature is always the same” and that reason is central to man’s nature, “is not the law of nature a rule which he (God) has given to things? and the law of man’s nature, which is reason, an emanation of the divine wisdom, or some footsteps of divine light remaining in us?”¹¹ When it came to setting limits on the power of the state, Sidney argued

⁷ John Locke, *Second Treatise of Government*, 1690, ed. C.B. Macpherson (Indianapolis: Hackett Publishing Co., 1980), 9.

⁸ *Ibid.*, 46.

⁹ *Ibid.*, 12.

¹⁰ *Ibid.*, 71.

¹¹ Algernon Sidney, *Discourses Concerning Government*, 1698, ed. Thomas West (Indianapolis: Liberty Fund, 1996), 85, 113, 297.

that “the liberties of nations are from God and nature, not from kings.”¹² According to this conception, men possess natural rights before the creation of government and it is thus absurd to argue that the rights men possess are granted to them by the state. All government must rest upon the consent of the governed, for men possess a “natural right, to be governed by none, and in no other way than they should appoint...”¹³

The natural rights of a state’s citizens are beyond the authority of the state. The state cannot rule arbitrarily or claim a right to dispose of its citizens’ possessions at will, instead, rulers are “obliged by the law of nature to preserve the lands, goods, lives and liberties of their subjects, those subjects have by the law of nature a right to their liberties, lands, goods, &c...” and this right “cannot depend upon the will of any man, for that dependence destroys liberty...”¹⁴ A key limit placed upon the authority of the state is the consent of the people. The people are the judge of how much of their natural liberty they will resign for the good of the community and of how much power the rulers will be granted. All just government is grounded upon the consent of the governed and the right of the people to judge for themselves is the standard by which men can determine whether they are “freemen or slaves.”¹⁵ This brief excursion into the natural law tradition in the English world in the 17th and 18th centuries shows that anyone adhering to this tradition, as the Massachusetts Patriots did, would have clear definitions of natural law and natural rights. They would also have possessed clearly defined limits on state power in relation to the natural rights of a nation’s citizens.

¹² Ibid., 273.

¹³ Ibid., 127.

¹⁴ Ibid., 350.

¹⁵ Ibid., 54-56, 63.

The central question throughout this study will be, where did the Massachusetts Patriots believe their freedoms came from? This work argues that the Massachusetts Patriots believed the freedoms of Americans came from their natural rights as men. Since the Patriots from Massachusetts believed this, their position brings up several other questions which will be discussed throughout the study. First, how did the Patriots understand the relationship between natural rights and state power? Second, in the political mindset of the Patriots, what constitutional limits were placed on the power of the British state in relation to the rights of the American colonists and how were those limits determined? Third, what options for resistance did the Patriots believe the American colonists had if the British state exceeded the limits of its power and violated the rights of the people? Answering these three questions goes a long way towards explaining the actions of the Massachusetts colonists in the 1760-1770s.

The majority of the primary sources used in this study will come from publications meant for public consumption. This includes sermons, political pamphlets, books on political theory, newspaper articles, the declarations of political assemblies, and constitutional documents. The *Boston Gazette* will be a key source as it contained many articles related to the relationship between natural rights and state power, and the relationship between the colonies and the British government. Private documents, such as correspondence, will be used mainly to supplement the public sources. This is a study concerned with political ideas, and thus, political sources will be central to its analysis. Several Massachusetts Patriots whose writings will be particularly important are: Jonathan Mayhew, James Otis, John Adams, and Samuel Adams. A number of less well-known authors will also be included, such as, Josiah Quincy Jr., James Lovell, and Charles Chauncy. The writings of these Massachusetts Patriots were steeped in the language of natural law and natural rights.

II. Historiography

It has been widely recognized by historians that natural law theory, and its corresponding concept of natural rights, played a significant role in the ideological justification for the American Revolution. The Massachusetts Patriots, and the other Founding Fathers, were adamant that the Revolution was a struggle between liberty and tyranny. The British government, King, Ministry, and Parliament, were attempting to take away the constitutional rights the colonists possessed as English citizens/subjects and the natural rights they inherently possessed as men. In response to this tyranny, the American colonists asserted their natural rights and claimed the supremacy of those rights over governmental actions. In essence, they were arguing that natural law, and natural rights, trump the powers of the state. While all historians must recognize the presence of natural law theory in the American Revolution, there are differing views on the legitimacy of the natural rights argument as the true foundation of the American Revolution.

The Founders' natural rights argument was accepted almost without question for a century after the Revolution. Contemporary American historians who were supporters of the Revolution, Patriots, threw their full support behind this argument. David Ramsay's *The History of the American Revolution* (1789) was published the same year that the Constitution became the supreme law of the land. Ramsay cited the tyranny of the British Parliament as the cause of the Revolution. Beginning with the Stamp Act in 1765, or so it was argued, Parliament began a concerted campaign to reduce the American colonies to a condition of servitude. The Stamp Act and Townsend Acts were "abortive attempts to raise a parliamentary revenue in America" which "caused a fermentation in the minds of the colonists, and gave birth to many enquiries respecting

their natural rights.”¹⁶ The colonists were eventually forced to declare independence as the only remaining means of securing their liberty and happiness from a government which was claiming absolute authority over them. Their natural rights were no longer safe under British rule, so revolution was the only real option.

Another example of a Patriotic historian is Mercy Otis Warren. Her major work on the Revolution was the *History of the Rise, Progress and Termination of the American Revolution* (1805). In Warren’s estimation, the British government’s “love of domination” was to blame for causing the Revolution. The British had encroached upon American liberties and this tyranny made the Declaration of Independence a necessity for the colonists’ “political salvation.” When faced with British tyranny, the American colonists “stood ready to submit to the chances of war, and to sacrifice their devoted lives to preserve inviolate, and to transmit to posterity, the inherent rights of men, conferred on all by the God of nature, and the privileges of Englishmen, claimed by Americans from the sacred sanctions of compact.”¹⁷

The spirit of Patriotic history continued on in America through to the end of the 19th century, providing the foundations for the Nationalist school. Nationalist historians in the United States continued to depict the American Revolution as a struggle between liberty and tyranny. The textbook example for this school is George Bancroft’s *History of the United States: From the Discovery of the Continent*, published in 10 volumes (1864-1875). Bancroft’s acclamation of the American Revolution was fervent and unreserved. The success of the Revolution was a triumph for liberty and the colonists’ right of revolution in defense of their natural rights was accepted as a simple fact. By resisting the invasion of their rights, the American Patriots “were

¹⁶ David Ramsay, *The History of the American Revolution*, 1789 (Indianapolis: Liberty Fund, 1990), 75.

¹⁷ Mercy Otis Warren, *History of the Rise, Progress and Termination of the American Revolution*, 1805 (Indianapolis: Liberty Fund, 1989), 82.

an example and encouragement to all nations, worthy of the esteem of the whole world as brave men, defending with moderation and with intrepidity the rights which God and not the British legislature gave them as men!”¹⁸

The natural rights argument began to be questioned in the early 20th century with the emergence of the Progressive school of history. Progressive historians shifted their emphasis away from ideas, such as liberty and natural rights, and began to focus more on social struggles as driving forces in history. In particular, they emphasized struggles between elites and the lower classes in society. They also stressed the growth of democracy as a key historical movement. During the Progressive era, the study of natural law and natural rights was largely submerged beneath the waves of studies on class struggle. The Progressive turn away from the natural law tradition was part of a broader movement towards legal positivism and legal realism taking place in American society in the late 19th and early 20th centuries. A key trend of both positivism and realism was to divorce law from morality or universal truth. More and more, American jurists and legal scholars began to reject the idea that law or government was based on absolute, immutable principles of justice that are valid in all places and in all times.

In the related systems of positivism and realism, justice and the rights of citizens became social constructs, as opposed to universal truths which are manifested in human societies. These schools of thought rejected the objectivity of law and truth which the natural law tradition rested upon. With that foundation gone, the natural law tradition lost its validity as a legal theory among a large number of American jurists and scholars. Oliver Wendell Holmes (1841-1935), the prominent jurist and Supreme Court justice from Massachusetts, was a notably figure in this

¹⁸ George Bancroft, *History of the United States: From the Discovery of the Continent*, vol 8 (Boston: Little, Brown, and Company, 1864-75), 252.

shift in American legal thought. Many historians also embraced the new traditions of positivism and realism.¹⁹

Arthur M. Schlesinger's "The American Revolution Reconsidered" (1919) argued that the Revolution was begun by the economic elites in the colonies, wealthy merchants and planters, who saw their economic interest threatened by increased imperial control by the British government. To increase the strength of their resistance to imperial taxes and regulations, the colonial elites co-opted the common people into their resistance by encouraging the idea of British injustice towards all levels of colonial society. As the movement gained steam, the common people gradually seized control and changed the focus of resistance to the issues of constitutional and natural rights. These lower classes provided the impetus which drove the American colonies to declare their independence.

Other works which emphasized class struggle and generally neglected natural law as a key feature include: Charles M. Andrew's "The American Revolution: An Interpretation" (1926), J. Franklin Jameson's "The American Revolution Considered as a Social Movement" (1926), and Merrill Jensen's "Democracy and the American Revolution" (1957). While some minor recognition was given to natural law by Progressive historians, its importance was deemed secondary to considerations of class struggle and democratic impulses. Notable exceptions to the Progressive trend were Carl Becker's *The Declaration of Independence: A Study in the History of Political Ideas* (1922) and Alice Baldwin's *The New England Clergy and the American Revolution* (1928). These two works swam against the intellectual current of the Progressive Era by making natural law central to their analysis of the Revolution.

¹⁹ Andrew Forsyth, *Common Law and Natural Law in America: From the Puritans to the Legal Realists* (Cambridge: Cambridge University Press, 2019), 125-45.

The view of the American Revolution as a struggle between liberty and tyranny made a resurgence with the rise of the Neo-Consensus approach to history in the 1940s-1950s. The post-World War II era especially saw a surge in the importance of studying the ideologies behind the Revolution. With this renewed emphasis on ideas, the study of natural law returned to a prominent place among works by professional historians. A possible influence on this return to the natural law tradition may well have been the consequences of legal positivism put on display by the totalitarian regimes of the mid-20th Century and the horrors of World War II. The evident injustices committed by fascist and communist regimes during this period, all with the legal sanction of government, likely contributed to a desire among scholars to reconsider the idea of an objective standard of law, which the natural law tradition provided.

Edmund S. Morgan and Helen M. Morgan's *The Stamp Act Crisis: Prologue to Revolution* (1953) focused attention on the idea of constitutional rights as the cause of the American Revolution. In the mindset of the American colonists, the passage of the Stamp Act by Parliament, an act of taxation without representation, was a clear threat to their rights as English citizens. While constitutional rights receive the most attention in this work, the authors also recognized that American arguments in defense of their constitutional rights were often backed up with claims to natural rights. For the colonists, constitutional rights were based on natural rights and were an expression of natural law principles.

Trevor Colbourn's *The Lamp of Experience* (1965) shows the connection between English Whig historians and the American Revolution. The American colonists were avid readers of history and many works by Whig historians could be found on their bookshelves. Whig history was characterized by its assertion of popular/parliamentary supremacy, opposition to royal prerogative, and the view of English history as a struggle between liberty and tyranny.

Reading these histories contributed to the colonists' view that their liberties were being endangered by the actions of the British government. Whig historians, and their colonial readers, tended to identify English rights with natural rights. England's unwritten constitution had long embodied and protected the natural rights of its citizens, but that was no longer true. Revolution was the logical action for a people who valued their natural and civil rights, yet believed these liberties were in mortal danger, and so the colonists revolted in 1776.

Bernard Bailyn's *The Ideological Origins of the American Revolution* (1967) has become a standard work on the intellectual foundations of the Revolution. Bailyn's key contribution was to identify five major traditions which the American colonists drew upon when writing political pamphlets in the years leading up to independence: Enlightenment theories, covenant theology, classical literature, English common law, and English commonwealth writers. Bailyn regards the English commonwealth tradition as the source which harmonized the other strands of thought and had the most influence in shaping American political ideology in the 18th Century. The English Commonwealthmen conveyed a strong belief in the supremacy of natural rights over state power to the American colonists. Arguments for natural rights were also inspired by the other traditions, which possessed strong natural law themes as well. Covenant theology, which was central to the Puritan mindset, will be a key tradition examined in this study.

In recent decades, the study of natural law and natural rights has continued to be a major area of interest for scholars of the American Revolution. Similar to Neo-Consensus histories, many recent historical works recognize the American Revolution primarily as a struggle over rights. An organization which has done much to promote the study of these topics is Liberty Fund, an "educational foundation established to enrich the understanding and appreciation of the

complex nature of a society of free and responsible individuals.”²⁰ In pursuit of this mission, Liberty Fund has sponsored the publication of numerous works on natural law, both ancient and modern, and also manages the Online Library of Liberty, which makes many of these works available to the scholars, and the general public, in digital format free-of-charge.²¹

A current debate among scholars of the American Revolution is whether the rights the colonists were fighting for were their constitutional rights or their natural rights. Some scholars separate those two issues and see the natural rights argument as secondary or irrelevant to the constitutional struggle between the American colonists and the British government. Jack Greene’s *The Constitutional Origins of the American Revolution* (2011) is representative of this approach. Greene argues that the Revolution was a struggle over constitutional rights. In his analysis, the rights the colonists believed they possessed as Englishmen were based on custom and usage. The colonists had possessed rights in practice for decades before the controversies of the 1760-1770s. Therefore, they were fighting for their constitutional rights and the reference to natural rights in the Declaration of Independence was a deviation from their main strand of argument. John Reid’s *Constitutional History of the American Revolution* (1995) makes a nearly identical argument.

Patrick Mullins’ *Father of Liberty: Jonathan Mayhew and the Principles of the American Revolution* (2017) represents the school of thought which continues to see a connection between constitutional rights and natural rights in the arguments used by American Revolutionaries. As Mullins shows, Mayhew was a staunch advocate for natural rights and the need to protect those rights from British encroachments. The pastor of West Church in Boston became one of the most

²⁰ “About Liberty Fund,” accessed April 17, 2021, <https://www.libertyfund.org/about/>.

²¹ “Online library of Liberty,” <https://oll.libertyfund.org/>.

vocal proponents of the doctrines of liberty, both from his pulpit and in the printed page. While Mayhew died towards the end of the Stamp Act Crisis in 1766, his influence carried on in the writings of the other Massachusetts Patriots who had absorbed his sermons and treatises on liberty. John Adams, who often heard Mayhew preach at West Church, is perhaps the most notable example of Mayhew's impact on the younger generation of Patriots. Mayhew also serves to show how deeply entrenched in the Massachusetts mind the concepts of natural law and natural rights were. The concepts had been drawn upon for decades before the political controversy with Parliament began in the 1760s.

Another example of this approach is Andrew Forsyth's *Common Law and Natural Law in America* (2019). Forsyth shows that the concepts of natural law and common law were deeply intertwined in America up to the end of the 19th Century. He begins his analysis with the Puritans (early 17th Century) and continues up through the partial supplanting of natural law in American jurisprudence by the legal realists in the early 20th Century. A major contribution of Forsyth's analysis is his observation that natural law was foundational to the Revolutionary generation's understanding of law in general. A key area where natural law's influence can be seen in the colonial period is the curriculums of American colleges. The American colonists were part of an intellectual and legal tradition that rooted civil rights in a higher authority, natural rights. Thus, any controversy over constitutional rights in the 18th Century would be predicated on the colonists' views on natural rights.

Recent historical studies of natural law have not been restricted to the American Revolution; scholars are also recognizing its importance throughout the history of Western Civilization. Several other significant scholarly works related to natural law are: Susan Wiltshire's *Greece, Rome, and the Bill of Rights* (1992), Michael Zuckert's *Natural Rights and*

the New Republicanism (1998), Lee Ward's *The Politics of Liberty in England and Revolutionary America* (2004), and Lee Strang's *Originalism's Promise: A Natural Law Account of the American Constitution* (2020). These works provide excellent historiographical context for the present study.

III. Chapter Overview

The chapters in this study will follow a chronological pattern. This will allow the development of colonial thought in regards to natural rights and state power to be seen in the context of the developing controversy between the colonies and the mother country. Chapter two will explore the intellectual traditions which influenced the Massachusetts Patriots. What were the traditions that shaped the political mindset of Massachusetts colonists before the constitutional struggle with Parliament began in the 1760s? This chapter will begin with the Medieval foundation of natural law theory in the 13th Century and follow developments in that theory up through the 18th Century, encompassing such pivotal movements as the Reformation and the Enlightenment. Bernard Bailyn's *The Ideological Origins of the American Revolution* provides a starting point in regards to the traditions which must be examined in this chapter.²²

Some recent scholarship has emphasized the importance of the English Commonwealthmen, also known as the "Real" Whigs, in transmitting theories of natural rights to the American colonists. Lee Ward and Patrick Mullins are representative of that approach.²³

²²Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967).

²³ Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge: Cambridge University Press, 2004); Patrick Mullins, *Father of Liberty: Jonathan Mayhew and the Principles of the American Revolution* (Lawrence, Kansas: University Press of Kansas, 2017).

Other scholars have emphasized Enlightenment theories, particularly the influence of John Locke, as the key tradition informing the political views of the American colonists. Michael Zuckert takes this approach in *Natural Rights and the New Republicanism*. Were any of these traditions more relevant than others when it comes to influencing the citizens of Massachusetts? Were there other traditions that influenced the colonists as well? What was the political mindset created by these traditions? How did natural law theorists in these time periods reconcile the apparent conflict between reason and revelation as sources of truth?

Chapter three will attempt to create a portrait of the Massachusetts mindset in regards to political theory before the end of the Seven Years War in 1763. This chapter will begin with the founding of the colonies of Plymouth and Massachusetts Bay in the 1620s-1630s and follow the history of those colonies up to 1763. How important was covenant theology to the political mindset of Massachusetts' inhabitants? How were natural law principles woven into the legal framework of Massachusetts' government during the colonial period? How did the Massachusetts colonists interpret the nature of their charters?

Chapter four will focus on the opening years of the controversy between the colonies and the British government. The debates over the Sugar Act (1764) and the Stamp Act (1765) will cover nearly all of this chapter. The constitutional issues brought forth by these two acts of Parliament, especially the Stamp Act, were the central issues that would be debated for the next decade. The ultimate failure to resolve these central issues of rights, state power, and the consent of the governed would lead to the Declaration of Independence in 1776. The battle lines were thus largely drawn by the two sides, colonies and Parliament, during these early debates. The positions Massachusetts Patriots took in these debates will show the influence of the various traditions on their political mindset. Their positions will also show their stance on the

relationship between natural rights and state power early in the controversy, before the pressure of events could have significantly influenced their thinking. Why did the colonists resist these actions by Parliament? What was the political and philosophical basis for the colonists' resistance?

Chapter four will conclude with an examination of the Declaratory Act by Parliament in 1766. This act asserted Parliament's right to bind the colonies in "all cases whatsoever" and sparked renewed outrage on the part of the American colonies. Here was an act in which Parliament, an assembly in which the colonies had no representation, claimed absolute authority over the colonies. The colonists realized that if they acquiesced to this act their rights could be taken away at the whim of political leaders who were entirely unaccountable to them.

Chapter five will examine how the unresolved issues related to the Stamp Act Crisis escalated in 1767-1769. One concept will be central in this chapter, suppression, the British government's use of force to assert its claims to authority over the colonies. How did the British government apply force in its efforts to control the American colonies? How did the Massachusetts Patriots interpret the use of force by the British government? Their views on the presence of a standing army in the colony are especially relevant. Did Parliament's continued determination to assert its sovereignty over the colonies convince the colonists that their rights were in imminent danger?

In Chapter six, the largely theoretical controversy between the colonies and Parliament will become tangible within Massachusetts. The city of Boston was a hotbed of unrest between 1770-1773 and became the center of the controversy due to several major events. First, the colonists' complaints over a standing army being quartered in the colonies during peacetime was exacerbated by the event known as the Boston Massacre in 1770. This bloody clash between

angry colonists and British regulars helped to crystalize colonial resistance and increase the demands of the colonists for self-government. Second, the issue of independent magistrates dominated the headlines of newspapers and made Massachusetts' Patriots fearful of an absolute government being established over them. Third, the Boston Tea Party (1773) demonstrates the level of colonial frustration with British control and led directly to Parliament taking more decisive action to curb the unruly colony of Massachusetts, actions which will be explored in chapter seven. How did the events of the early 1770s impact the political positions of Massachusetts' Patriots? Was Massachusetts becoming more radical than the other colonies in its rejection of British authority during this time?

Chapter seven examines the clearest attempt by the British government to impose its control on an American colony, the Coercive Acts passed in 1774. These acts targeted Massachusetts in an effort to punish this colony for its resistance and make it an example to the other colonies. The citizens of Massachusetts thus experienced the tangible loss of the rights they had been arguing so vehemently for since the troubles began almost ten years earlier. This practical loss of rights and the extension of state power by the British government over a populace which had not given its consent to the laws it was being ruled by makes Massachusetts unique among the colonies in the years leading up to independence.

No other colony experienced such severe measures and the British actions in Massachusetts did make the colony an example to the other colonies, an example of British tyranny that must be resisted at all costs. The citizens of Massachusetts did resist and that resistance led to the first shots of the Revolutionary War being fired in Massachusetts. How did the citizens of Massachusetts react to British attempts to impose control over their colony? Did the rhetoric in Massachusetts become more radical as a result of British actions? Did

Massachusetts begin calling for armed resistance, or even independence, sooner than the other colonies because of British actions within the colony?

Chapter seven will also examine the political debates which culminated in the approval of the Declaration of Independence by the Second Continental Congress on July 4, 1776. Did the experiences of the Massachusetts colonists make them more adamant in their calls for resistance, and eventually independence, than their compatriots from other colonies? Were the Massachusetts Patriots convinced that resistance was the only option left to them if they wanted to preserve their rights? How did the concept of natural rights factor into the “right of revolution” which was espoused by the Founders when they declared independence from Britain?

A fruitful area for study that many historians of the American Revolution touch upon, but still has many unexplored dimensions, is the Founder’s understanding of the relationship between natural rights and state power. How is that relationship defined by a constitution under which a civil society is governed? A study of this subject could shed light on two key areas, the right of revolution invoked by the Founders in 1776 and the restrictions placed on the powers of the federal government under the American Constitution at the end of the Revolutionary Era. Many states, including Massachusetts, were also careful to limit the powers of state governments and codified protections for the people’s natural rights into their political systems. Massachusetts’ Constitution of 1780 is a prime example of how natural rights provided the foundation for the political systems created by America’s founding generation.

This present study, which explores the thought of the Massachusetts Patriots, will be particularly beneficial due to this state’s disproportionately large impact on the Revolution. Massachusetts was the epicenter of the contentious events which drove the American colonies to declare independence. A study into the natural rights theories held by the Massachusetts

Revolutionaries will help to explain why this one colony/state played such a significant role. A better understanding of where the Massachusetts Patriots believed rights came from, government or nature, will also help to illustrate the political mindset of the entire Founding generation and inform contemporary debates over the role of government in American society.

Chapter 2: Lex Rex

“Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. For this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.”¹

The Massachusetts Patriots belonged to the long tradition of natural law theory; a tradition which survived the transition from the Classical World to the rise of Christendom, the tumults of the 16th Century Reformation, and the scientific onslaught of the Enlightenment. A remarkable degree of continuity exists in the doctrines of natural law throughout its over 2,000-year history, and in order to better understand the Patriots’ political mindset, it is necessary to explore some of that history. One of the key doctrines of natural law is the belief in a higher authority than humans themselves. In the Classical Era, philosophers pointed to the Greek and Roman pantheons as the higher authority which imparted natural law to men through the faculty of reason.

With the rise of Christianity, the followers of the new faith replaced the pagan gods with a different higher authority, the one true God. The Christian God became the source of natural

¹ Romans 13: 1-7 (King James Version).

law and man's reason became one of the means through which God revealed His laws to men. However, reason is not the only source of truth in the Christian tradition. Medieval Christians also recognized Scripture, i.e. divine revelation, as being the written Word of God. Christianity thus espouses two sources of truth and authority, reason and revelation.

Traditionally, Christians have argued that these two sources do not contradict each other and both are the manifestation of God's divine will to humans. This *two source theory* has had a profound impact on the political theory of Christians ever since the Middle Ages. Christians ardently seeking to walk in accordance to God's will in the political sphere of human life have used their reason and searched the Scriptures for standards of justice to apply in human societies and instruction on the duties of governors and the governed. Scriptural passages such as Romans 13 and 1 Peter 2 became classic proof texts for demonstrating a Christian's duty in regards to civil authority.

The Puritan history of Massachusetts is well-known and the importance of religion to social life in this devout colony has been well-documented. The Massachusetts Patriots were proud of their Puritan heritage and the colony remained deeply religious in the late 18th Century. New England Puritanism was informed by the Reformed tradition of Protestantism, tracing much of its theology back to John Calvin and emerging from the 16th Century Reformation. Reformed churches were the norm in New England, making up around 84% of all churches. The Congregationalists, with their highly democratic model of church government, were the largest

single sub-group within Massachusetts.² *Covenant theology*, one of the key sources of revolutionary ideology, was an important feature of Puritanism.

This chapter will first seek to show how Christians reconciled the two sources of truth in the Medieval Era and during the Reformation. A second focus will be the growing importance of covenant theology in regards to civil authority during the Reformation. A statistical study of the sources cited during the American Revolution has shown that the Bible, the source of covenant theology, was the single most-cited source. 34% of all citations in political works during the Revolutionary Era were taken from the Bible. To put that in perspective, all Enlightenment writers combined, including such giants as John Locke and Montesquieu, come in second with 22% of the total.³

Distribution of Citations by Decade (%)⁴

	1760s	1770s	1780s	1790s	1800-1805	% of Total Number
Bible	24	44	34	29	38	34
Enlightenment	32	18	24	21	18	22
Whig	10	20	19	17	15	18
Common Law	12	4	9	14	20	11
Classical	8	11	10	11	2	9
Peers	6	2	3	6	5	4
Other	8	1	1	2	2	2

² Mark David Hall, "Vindiciae, Contra Tyrannos: The Influence of the Reformed Tradition in the American Founding," In *Faith and the Founding of the American Republic*, ed. Mark David Hall and Daniel L. Dreisbach (New York: Oxford University Press, 2014), 45-46.

³ Donald Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *The American Political Science Review* 78, no. 1 (March 1984): 189-97.

⁴ *Ibid.*, 192.

Historical interpretations of Biblical passages related to civil authority were thus crucial in shaping the way in which Massachusetts' Patriots understood social covenants. The *social contract theories* of the Enlightenment have been recognized by scholars as another key influence on the American Revolution. When the two theories are compared, social covenants and contracts are shown to be virtually synonymous in their key doctrines and practical applications. It has been noted that "the theory of social contract was, as has so often been pointed out, a translation into secular terms of the Puritan idea of the social covenant..."⁵ Thus, the third focus of this chapter will be to demonstrate the synthesis that took place between covenant theology and social contract theory in the English political tradition in the 17th and 18th centuries.

I. The Medieval Foundation

Christian scholars in the Middle Ages carried on the Classical natural law tradition and incorporated it into the Christian worldview. Key to that process was the acceptance of two sources of truth and authority, reason and revelation. One of the most influential scholars of the era, and perhaps the most systematic in his approach to natural law, was the great scholastic Thomas Aquinas (1225-1274 A.D.). His works on natural law include the *Treatise on Law*, contained in his magisterial *Summa Theologica*, and *De Regimine Principum* (On the Rule of Princes), a treatise on just government written for the benefit of rulers. In these works, Aquinas laid out a systematic framework to explain how God revealed His will to men and what the

⁵ Alan Heimert, *Religion and the American Mind* (Cambridge: Harvard University Press, 1966), 241.

duties of men were in civil society. This framework laid an important foundation for later scholars, both Catholics and Protestants, to build on in the following centuries.

In Aquinas' framework, all laws essentially fall into one of two categories, *eternal law* or *human law*. The eternal law is further subdivided into *natural law* and *divine law*. The eternal law refers to the laws of God which He has established as the sovereign ruler of the universe. These laws were made according to God's divine reason. The eternal law is the sovereign "type," the standard or measure by which all "products" must be judged. It thus corresponds directly to reality and any human law, being a "product," is only true so long as it conforms to eternal law. All men everywhere are subject to this law due to its being revealed to them through either the natural law or the divine law.⁶

Natural law is that portion of the eternal law which God has imprinted on man's nature. Every rational creature has some knowledge of the eternal law within them, as "each man is imbued by nature with the light of reason," and they also possess a natural inclination to act in harmony with this law.⁷ Despite this natural inclination, man's rational knowledge of the eternal law is imperfect. The natural law has been darkened, and to a certain extent blotted out, by the impact of sin on human nature. Man's sinful impulses have diverted him away from the path of reason and many have turned their back on God and His law.

For Aquinas, man's Post-Fall state explains why the natural law is not followed by all men in all nations. While retaining a basic knowledge of the eternal law through the natural law,

⁶ Thomas Aquinas, *Treatise on Law: Summa Theologica, Questions 90-97*, ed. Stanley Parry (Chicago: Henry Regnery Company, 1965), 91.1, 93.1-5.

⁷ Thomas Aquinas, "De Regimine Principum," in *Aquinas: Political Writings*, ed. R.W. Dyson (Cambridge: Cambridge University Press, 2004), I.1.

man's inclination to follow sin often wins out over his inclination to follow reason.⁸ The general precepts of the natural law cannot be fully blotted out of men's hearts, although sometimes, "it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice..." for "sin blots out the law of nature in particular cases, not universally..."⁹

The first and foundational precept of the natural law is that "good is to be done... and evil is to be avoided."¹⁰ All the other precepts of natural law derive from this first precept and are conclusions reached through the use of practical reason, showing what is good or evil for man to do. Because man's knowledge of the eternal law has been obscured by sin, natural law is enough for men to live peacefully in society, but it is not enough for men to have peace with God. Therefore, God gave his divine law, written Scripture, as a correction to the natural law, which had become corrupted in the hearts of men. This divine law further restrains man's iniquity and guides him to perform virtuous works.¹¹ It clarifies all the good acts men must perform and all the evil they must avoid.¹² Aquinas sums up the connection between natural law and divine law in this passage: "by the natural law the eternal law is participated (in) proportionately to the capacity of human nature. But to his supernatural end man needs to be directed in a yet higher way. Hence the additional law given by God, whereby man shares more perfectly in the eternal law."¹³

⁸ Aquinas, *Treatise on Law*, 91.6, 94.1-6.

⁹ *Ibid.*, 94.6.

¹⁰ *Ibid.*, 94.2.

¹¹ Aquinas, "De Regimine Principum," I.16.

¹² Aquinas, *Treatise on Law*, 91.4-5, 94.5.

¹³ *Ibid.*, 91.4.

In Aquinas' thought, natural law and divine law are both manifestations of the eternal law of God, just revealed through different means. Natural law contains the general precepts of the eternal law, which are common to all men by reason, and divine law concerns more particular matters, the knowledge of which is necessary to bring man into communion with God. This divine law is made known through the revelation found in Scripture. If man had never fallen from his first condition, where he always acted in accordance with reason, the natural law alone would have been sufficient for him to know the law of God perfectly.¹⁴

The second major category of law is human law, those statutes made by men in civil societies. Human laws can be divided into two categories, *just laws* and *unjust laws*. Human laws are just when they are derived from the precepts of the natural law. Just laws are simply the application of natural law principles to particular situations in society. Natural law is thus the standard of justice for all human laws and it is the task of civil authorities to craft laws which correspond to natural justice as closely as possible. Just laws bind citizens in a society in conscience as they answer the end of human law, the common good, the authors of the law have not exceeded their legal authority, and the burdens of the law are laid upon all subjects equally. Unfortunately, due to the fallibility and corruption of human nature, human laws do not possess the infallibility of natural and divine laws. The result is that men sometimes craft unjust laws which do not derive from the law of nature.¹⁵

Unjust laws represent a deviation from the standard of natural justice, "every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law."¹⁶ Laws which are

¹⁴ Ibid., 91.5-6, 97.3.

¹⁵ Ibid., 91.3, 96.4.

¹⁶ Ibid., 95.2.

devoid of justice are to be regarded as no laws at all, essentially null and void. Unjust laws do not bind the conscience because they are contrary to the end of all human law, the common good, and are thus in opposition to God's will for human society. This makes it the particular concern of rulers to ensure that all their actions are in conformity to natural justice, otherwise, they are acting in opposition to God himself.¹⁷

Aquinas cautioned rulers against becoming unjust and tyrannical. Government is just if it fulfills its primary purpose, to secure the common good of the people, and unjust if it fulfills a contrary purpose, such as the private good of the rulers. As monarchy was the prevailing form of government in the Middle Ages, Aquinas spoke primarily to monarchs. He considered "rule by one" to be the best form of government due to its unity of purpose, yet advocated the placing of legal restrictions on the powers of monarchs, i.e. kings, to prevent them from becoming tyrants. A king, properly understood, rules justly and is a great blessing to the people. But if well-regulated kingship with limits on the king's power is the best form of government; tyranny, the polar opposite of kingship, is the worst. If he is not limited by the law, a tyrant will make his own will the standard for the community. The result will be "no security, but all things uncertain, when the law is forsaken..."¹⁸

The subjects will have changed from *freemen*, those who are the masters of their own actions and possess property they can call their own, to *slaves*, those who live by the will of another and can call nothing their own. A tyrant is not properly a king, for "a man who rules

¹⁷ Ibid., 96.4.

¹⁸ Aquinas, "De Regimine Principum," I.2.

without reason according to the lusts of his own soul is no different from a beast.... to be subject to a tyrant seems the same as to be mauled by a ferocious animal.”¹⁹

Tyrants, whether monarchs or other magistrates, represent a deviation from natural justice and their unjust actions are condemned by both reason and revelation. Tyrants have changed from being “ministers of God,” who carry out the divine will for civil government, to something horrible. Aquinas cautions tyrants that, although God permits tyrants to exercise power for a time, His judgement will not be delayed for long and may well take the form of their overthrow by the people. Here Aquinas has to reconcile the submission towards civil authority seemingly required of Christians in the Bible, especially in Romans 13, with the fact that tyrants are acting in opposition to the will of God. Is the obedience required from Christians absolute and gives them no means of resistance except patience and prayer? Aquinas answers “no,” but resistance must be conducted within carefully prescribed limits. It is not just for a private man to presume to punish a ruler he considers a tyrant; this would create chaos in a community. Tyrants may be resisted, and even removed, only by a “public authority.” The example Aquinas gives is that of the Roman Senate, which represented the people of Rome and removed emperors on their behalf when necessary.²⁰

Resisting a tyrant through the instrument of public authority is just, because “in cases where it belongs by right to a community to provide a ruler for itself, that community can without injustice depose or restrain a king whom it has appointed, if he should abuse royal power tyrannically. Nor should such a community be thought disloyal if it acts to depose a tyrant even if the community has already pledged itself to him in perpetuity; for the tyrant who has failed to

¹⁹ Ibid., I.2.

²⁰ Ibid., I. 7, 8, 11.

govern the community faithfully, as the office of king requires, has deserved to be treated in this way.”²¹ Here Aquinas exhibits an early form of the social covenant. Rulers are created on the condition that they will rule justly and not exceed the limits placed on their power by the laws of the community. If they break that condition and become tyrants, the people may justly remove them from the office of kingship. Aquinas’ exposition of the two sources of truth and the seeds of the social covenant found in his writings laid a foundation for later Christian scholars.

One such scholar was John Fortescue (1394-1479 A.D.), the prominent English jurist and chancellor. Fortescue worked within Aquinas’ conceptual framework and represents a bridge between the natural law theory of the Middle Ages and that of the Renaissance-Reformation period. Fortescue recognized the two sources and was even more explicit than Aquinas in claiming the supremacy of law over kings. The concept of the constitution as the supreme law of England is a key concept in Fortescue’s thought. He provides an early example of a defender of England’s “mixed” constitution. Some of Fortescue’s major works in relation to natural law and civil authority are *The Nature of the Law of Nature*, *In Praise of the Laws of England*, and *A Treatise on Absolute and Limited Monarchy*.

Following Aquinas, Fortescue posited two sources of authority and classified natural law as a participation in the eternal law of God. He defined natural law as “the truth of justice which is capable of being by right reason revealed.”²² Divine law is found in revelation, i.e. the writings of the Old and New Testaments, and its purpose is to lead man to his spiritual good. Natural law is the standard of justice for all human actions and focuses on man’s temporal good. At Creation, God endowed man with the ability to distinguish between good and evil. Natural law thus directs

²¹ Ibid., I.7.

²² John Fortescue, “The Nature of the Law of Nature,” In *The Works of Sir John Fortescue*, arranged by Thomas (Fortescue) Lord Clermont (London: For Private Distribution, 1869), 224-225.

humans to do what is “right,” i.e. “just,” by giving every man their due. While human nature was corrupted as a result of the Fall, human reason is still strong enough to perform its function of directing man to justice. Knowledge of justice is permanently infused into man. While men may sometimes *ignore* their knowledge of what is right, they still *know* what is right. Natural law provides man with a model for establishing justice in his government over the world, more particularly, in establishing temporal governments in specific nations.²³

Since it was crafted by God and embodies His justice, natural law is superior to all human laws, which are crafted by man’s often fallible will. Human laws sometime deviate from justice and contradict the natural law. When that is the case, those human laws are null and void. No king or government has the right to make unjust laws, since governments are also subject to the natural law and must rule in accordance to its precepts. The natural law serves as the model for human legislators to follow. If human laws correspond to natural law, governments will fulfill their function of promoting virtue, peace, and prosperity for man.²⁴

Using *natural justice* as the standard of justice for civil government, Fortescue differentiated between kings, who rule according to right, and tyrants, who are “oppressors and destroyers of men” and only *seem* to be a king in their outward appearance. Their actions disqualify them from truly possessing that title. Fortescue identified three fundamental forms of government: royal, political, and mixed. In a royal government, the king governs according to his own will and pleasure; all the laws derive from the ruler himself. In a political government, the ruler governs according to the established laws and the “many,” i.e. the people, have a say in government. Fortescue classified England as a *mixed* system, a combination of royal and

²³ Ibid., 187-188, 193-194, 211,220-222, 243-245.

²⁴ Ibid., 200, 218-223.

political governments. England's government had a balance between hereditary monarchy, with a royal prerogative, and government by popular consent. Parliament acted as a representative body for the people and as a restraint on royal power.²⁵

This mixed system can properly be termed England's *constitution*, its fundamental political laws which bind both rulers and the people. Fortescue based this system on the presupposition that all governments are created by a *compact* between the people living in a community and that the purpose of this union is the security of the lives and property of the people. Surely, "no nation ever formed themselves into a kingdom by their own compact and consent, with any other view than this, that they might hereby enjoy what they had against all dangers and violence, in a securer manner than before ; and consequently they would find themselves disappointed of their intention, if afterwards the king they had so set over them should despoil them of their properties...."²⁶ All rulers, kings in particular, are delegated their power by the people for the protection of the lives and property of the people. A Tyrant acts contrary to the condition upon which he received his civil authority. Fortescue believed that England had the best laws of any nation because of its mixed constitution, which required the consent of the king and the people's representatives in Parliament before laws could be made.²⁷

A Treatise on Absolute and Limited Monarchy focused on the difference between purely royal governments, such as France in Fortescue's determination, and mixed governments, such as England. The fundamental difference between the two systems is that royal government is arbitrary and depends merely on the will of the rulers, whereas a mixed government requires the

²⁵ Ibid., 196-197, 205-207.

²⁶ John Fortescue, "In Praise of the Laws of England," in *The Works of Sir John Fortescue*, arranged by Thomas (Fortescue) Lord Clermont (London: For Private Distribution, 1869), 399.

²⁷ Ibid., 395-402, 441.

consent of the people. In a mixed system the lives and property of the people are more secure than in a royal government and tyranny is less likely to take place because of the legal limits placed on the power of rulers. In England, Fortescue claimed that the law was the supreme authority.²⁸ Fortescue thus provides evidence of the presence of covenant-contract theory in England prior to the Reformation. His strong defense of England's mixed constitution also foreshadowed arguments made by English Parliamentarians in opposition to arbitrary royal rule during the English Civil War almost two centuries later. Fortescue defended his positions using both reason and revelation, reminding rulers that their authority is conditional and that all their actions will be judged by the standard of natural justice.

II. The Reformation

Along with the doctrinal issues, the 16th Century Protestant Reformation involved a revolt against the perceived spiritual tyranny of the leadership in the Catholic Church. Martin Luther, John Calvin, and other Reformers were less concerned with temporal authority than with liberating the Christians of Europe from their spiritual tyrants, with the Pope being the arch-tyrant. When faced with human traditions which deviated from or contradicted Scripture, the only source of spiritual authority for Protestants, the Reformers instructed the faithful to follow the example of the Apostles and “obey God rather than men.”²⁹

But while advocating disobedience to spiritual tyrants, the Reformers were often reluctant to endorse disobedience to secular tyrants. That reluctance stemmed from conservative

²⁸ John Fortescue, “A Treatise on Absolute and Limited Monarchy,” in *The Works of Sir John Fortescue*, arranged by Thomas (Fortescue) Lord Clermont (London: For Private Distribution, 1869), 449-451.

²⁹ Acts 5:29.

interpretations of key Biblical passages, such as, Romans 13 and 1 Peter 2; passages in which unlimited obedience and nonresistance of civil authorities seem to be commanded. The doctrine of *passive obedience* sometimes drawn from these passages commands nonresistance to civil authority. According to this theory, while subjects do not have to obey commands from rulers which are in direct violation of the Law of God, they are given no means of resisting through law or force. The only remedy for tyranny is patience and prayer, relying on God to remove or convert the tyrant.

The Reformers condemned secular tyrants as “monsters” and “beasts” who were acting in defiance of God, but they often continued to view those civil authorities as “ordinances” and “ministers” of God which must be submitted to for conscience sake. Those conservative interpretations began to change by the mid-16th Century as many secular authorities who sided with the Catholic Church persecuted and waged war against the Protestants on religious grounds. In many cases, it was not just individual Protestants who were in danger, it was entire towns and principalities. Gradually, Protestant interpretations began to break down the theoretical wall separating spiritual tyrants from secular tyrants; both could be disobeyed and even resisted by force under certain conditions without any disobedience to God. The concept of the social covenant, already present in the Middle Ages, came to the forefront of Protestant understanding of civil authority during the 16th Century. A distinction was drawn between just rulers, *ministers of God*, who fulfill their duties to the community; and unjust rulers, *ministers of the Devil*, who break the covenant and oppress the community.

The *rule of law*, teaching the supremacy of law over magistrates, was also called upon to justify disobedience to civil authorities who acted against the fundamental laws of a community. The result was the exposition of various forms of the *lesser magistrate doctrine*. The essence of

this doctrine is that the constitution of a community is supreme, over magistrates and the people, and that the people owe their primary allegiance to the constitution, not the rulers themselves. Tyrannical *supreme magistrates*, e.g. kings or emperors, can be resisted under the public authority of *subordinate magistrates*, e.g. princes or governors, in defense of the constitution and the people. In this way, disobedience to civil authorities and obedience to God could be carried out at the same time. Protestants could resist spiritual and secular tyrants without harming their consciences and they could support this position by appealing to both sources of truth, reason and revelation. Scripture was the more important of the two sources for the Reformers, in accordance with their emphasis on the doctrine of *sola Scriptura* (Scripture alone).

Martin Luther (1483-1546 A.D.), the fiery German monk who helped spark the Reformation in 1517, is representative of the difficulty many Reformers had in reconciling reason and revelation when it came to civil authority. Luther continued the tradition of accepting both sources as being derived from God. For instance, Luther noted that the Ten Commandments were primarily expositions of principles found in the natural law. Divine law is more specific than the principles of natural law, but the two sources are not contradictory.

The classic passage Luther used to explain the fundamental connection between reason and revelation is Romans 2:14-15a, “For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which shew the work of the law written in their hearts, their conscience also bearing witness...” Some principles of natural justice are universal and known by all men, even those who have never read Scripture, “such as these: there is one God, no one is to do wrong to another, no one is

to commit adultery or murder or steal, and others like them. This is written by nature into their hearts; they did not hear it straight from heaven” in the form of written revelation.³⁰

Luther’s exposition of 1 Peter 2:13-17 laid down clear duties for magistrates in order to fulfill their obligations as ministers of God. He also distinguished between spiritual and secular tyrants, with subjects having different obligations for obedience depending on which kind of tyranny they faced. The text of 1 Peter 2:13-17 lays the grounds for civil obedience:

“Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme; Or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well. For so is the will of God, that with well doing ye may put to silence the ignorance of foolish men: As free, and not using your liberty for a cloke of maliciousness, but as the servants of God. Honour all men. Love the brotherhood. Fear God. Honour the king.”

The purpose for which magistrates “bear the sword” of civil authority is to protect the good and punish the wicked. This purpose statement is the basis for obedience to civil authority and explains why magistrates are ordained by God, “it is God's will that evildoers should be punished, and those that do well should be protected, that there may be concord in the world.”³¹ While the authority of magistrates is vast, it is limited to external things and magistrates exceed their bounds when they command spiritual things. Christian freedom makes a believer a servant of God and not of man in spiritual matters. If the Pope were merely to claim temporal authority, Luther would endorse obedience to his commands, but the Pope had instead become a spiritual tyrant and invaded the freedom of Europe’s Christians. As a spiritual tyrant the Pope had no

³⁰ Martin Luther, “How Christians Should Regard Moses, August 27, 1525,” in *Luther's Works: Word and Sacrament I*, trans. Theodore Bachmann (Philadelphia: Muhlenberg Press, 1960).

³¹ Martin Luther, *The Epistles of St. Peter and St. Jude Preached and Explained*, trans. E.H. Gillett (New York: Anson D.F. Randolph, 1859) 1 Pet. 2:13-17.

claim to lawful authority over men's souls and his usurped authority could be rejected by faithful Christians.³²

While Luther drew the limit of civil authority at the border of spiritual things, he stepped back from endorsing resistance to temporal tyrants. Luther's most in-depth examination of civil government is found in his treatise on *Temporal Authority*, in which the central question Luther discussed is the how far the civil authorities should be obeyed. Luther maintained that subjects would be mistaken if they considered the power of magistrates and the obedience of subjects as both being unlimited. Subjects are not commanded by God to obey their rulers in everything. Christians are to follow the guidance of Matthew 22: 21, "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." Civil authorities can bind men in externals, but spiritual matters are under the authority of God alone, only He can command the soul.

With the limits of authority set, the next question is, can subjects resist tyrants? Luther here endorsed passive obedience, "outrage is not to be resisted but endured; yet we should not sanction it, or lift a little finger to conform, or obey."³³ Even if a supreme magistrate acts contrary to his ordinance he cannot be opposed by force or brought to heel by subordinate magistrates, "a prince should not go to war against his overlord- king, emperor, or other liege lord- but let him who takes, take. For the governing authority must not be resisted by force, but only by confession of the truth."³⁴

³² Ibid., 1 Pet. 2:13-17.

³³ Martin Luther, *Temporal Authority*, 14.

³⁴ Ibid., 20

Despite his endorsement of passive obedience, Luther did attempt to subject magistrates to the rule of law and uttered harsh condemnations of tyrants. “Princes and rulers should maintain the laws and statutes, or they will be condemned.... The prince who governs without laws, according to his own brain, is a monster, worse than a wild beast; but he who governs according to the prescribed laws and rights, is like unto God, who is an erector and founder of laws and rights.”³⁵ God Himself will condemn tyrants and cast them down from their thrones.

John Calvin (1509-1564 A.D.), the great French Reformer and primary root of the Reformed tradition, also sought to reconcile the commands of reason and revelation in relation to civil authority. A possible source for the difficulty Luther and Calvin had in this regard is that they focused on the *providential* appointment of magistrates. While recognizing that magistrates have a delegated authority, Luther and Calvin derived that authority *immediately* from God instead of recognizing the people as the *medium* of God’s will. The result was to see any magistrate who happened to hold power in-fact as having been ordained by God, even if that magistrate acted in direct opposition to God’s *revealed will*, the duties listed in Scripture. Calvin went farther than Luther in distinguishing between God’s providential will and His revealed will, yet retained a hesitancy when it came to opposing magistrates who violated the latter.

Calvin pointed to natural law and divine law as sources of truth, yet asserted that human reason has been severely weakened by the effects of sin. Man’s Fall and the resulting depravity of human nature caused reason to be darkened and polluted. Reason is still sufficient to guide men to justice in most of their temporal activities, such as civil government, but the divine law is necessary to guide men to spiritual salvation. The divine law also clarifies the principles of

³⁵ Martin Luther, *Table Talk*, trans. William Hazlitt (Grand Rapids: Christian Classics Ethereal Library), Of Princes and Potentates, DCCXIV, DCCXVI.

natural law for the benefit of men whose natures have been corrupted. Despite the fallibility of human reason, natural law still provides the standard of justice for human laws to conform to. Divine law can provide additional assistance to magistrates seeking to rule justly.³⁶

Calvin viewed magistrates as ambassadors and vice-regents of God. God had granted them the power of the sword not for their own benefit, but for the service of others. Magistrates have a duty to rule justly and guard the people from evil-doers. They are also the appointed guardians of the people's liberty. Every action taken by magistrates should be for the public good. For instance, taxes are collected not for the benefit of rulers, but to be used for the defense and benefit of the whole people. Taxes belong to the public treasury, not the private purses of magistrates. Chief among the objects for which God ordains civil authority is the peace and security of the community, "that the public quiet be not disturbed, that every man's property be kept secure..."³⁷

When it came to choosing a form of government for a community, Calvin preferred aristocracy to all others because it represents a balance between liberty and authority. The dispersal of power among multiple members of government adds wisdom to their rule and helps to prevent tyranny by rulers or licentiousness among the people. But whatever form of government subjects live under, they are bound to submit. The primary duties of subjects are to respect and obey magistrates, since their jurisdiction has been delegated to them by God. Similar

³⁶ John Calvin, *The Institutes of the Christian Religion*, trans. Henry Beveridge (Grand Rapids: Christian Classics Ethereal Library), II.1, II.2, II.8, IV.20.

³⁷ Calvin, *The Institutes*, IV. 20; John Calvin, *Commentary on Romans*, ed. John Owen (Grand Rapids: Christian Classics Ethereal Library), 13:1-7.

to Luther, Calvin did not grant magistrates absolute dominion. Once again, the limits of authority and obedience were set at the dividing line between temporal things and spiritual things.³⁸

Just as the Jewish Chief Priest had in Acts 5, the Pope had become a spiritual tyrant who sought unbridled authority and issued commands in opposition to God's Word. He had gone from being an "ambassador of Christ" to a "minister of Satan" who sought to tread the entire Kingdom of Christ underfoot. Any ruler, temporal or spiritual, who makes a similar challenge to God's authority is but a man. A spiritual tyrant sets himself up against God and exceeds the bounds of his office. At that point, he deserves to be "despoiled of his honor," i.e. his authority.³⁹

But just as Luther had, Calvin stepped back from drawing a direct analogy between spiritual and temporal tyrants. Calvin recognized that there were mutual duties between rulers and the people and that secular tyrants did not fulfill their obligations. In Calvin's view of the covenant, however, noncompliance by one party did not absolve the other party of its obligations. All magistrates, even the unjust, derive their power from God and have been appointed by divine providence. Subjects living under unjust magistrates should focus on their duties of respect and obedience and leave vengeance to God. Christians are called to endure injustice in this life. Yet despite his inclination to passive obedience, Calvin did make statements that opened the door for lawful resistance to tyrants.⁴⁰

The opening was created by Calvin's distinction between resistance by private citizens and resistance by public authorities, a form of the lesser magistrate doctrine. Private citizens

³⁸ Calvin, *The Institutes*, IV. 20; John Calvin, *Commentary on Acts*, vol. I, ed. Henry Beveridge (Grand Rapids: Christian Classics Ethereal Library), 5:27-29.

³⁹ Calvin, *Commentary on Acts*, 5:27-29.

⁴⁰ Calvin, *The Institutes*, IV. 20; John Calvin, "First Peter," in *Commentaries on the Catholic Epistles*, ed. John Owen (Grand Rapids: Christian Classics Ethereal Library), 2:13-17.

have a duty to disobey impious or unjust commands by magistrates, but they do not have a right to actively resist magistrates. The right of resistance is possessed by popular magistrates. These magistrates “have been appointed to curb the tyranny of kings (as the Ephori, who were opposed to kings among the Spartans, or Tribunes of the people to consuls among the Romans, or Demarchs to the senate among the Athenians; and perhaps there is something similar to this in the power exercised in each kingdom by the three orders, when they hold their primary diets) ...”⁴¹ Popular magistrates who fail to check tyrannical kings would “betray the liberty of the people, while knowing that, by the ordinance of God, they are its appointed guardians.”⁴² Tyrants cannot accurately be considered “ordained” by God since they act in opposition to the purposes of their ordination.

The main reason for Calvin’s dilemmas in relation to civil authority seems to be his conception of the source of civil authority. By focusing on God’s providential appointment of magistrates, Calvin was constrained to accept whoever happened to be sitting on the throne, no matter how unjust. Yet he also recognized that tyrants were counteracting the revealed will of God. While Calvin opened the door to resistance by a mere crack, other Reformers were able to throw the door wide open by declaring the people as the medium of God’s will. A prime impetus for this principle of popular sovereignty was the real-world persecution many European Protestants faced from civil authorities.

Resistance began with spiritual tyrants. The city of Magdeburg, located within the Holy Roman Empire, provides one of the clearest expositions of the lesser magistrate doctrine during the Reformation. In April 1550 the city leaders issued *The Magdeburg Confession*, a public

⁴¹ Calvin, *The Institutes*, IV. 20.

⁴² *Ibid.*, IV.20.

statement explaining why the city was resisting Emperor Charles V. The reason was the Emperor's attempt to enforce the Augsburg Interim (1548), essentially an attempt to reintroduce a veiled Catholicism in the Lutheran principalities of the Empire. The men of Magdeburg considered this edict as a rejection of Christ and the Gospel and an attempt to subjugate true Christians to the kingdom of the Devil, with the Pope at its head. In response to their opposition, Charles V laid siege to Magdeburg for one year, before finally withdrawing and leaving the city to worship God in its own way. The city of Magdeburg was convinced that it was defending its spiritual liberty and that their armed resistance was justified due to its organization under lesser magistrates, the city leaders in this case.⁴³

According to the city leaders, their defense was justified by natural law and divine law. Obedience to a spiritual tyrant would be absurd as a covenant binds rulers and the people to mutual obligations. If the people must still obey unjust magistrates, "by the same sort of reasoning, twice 4 shall cease to be 8. Magistrates and subjects shall be bound by sure chains and mutual oaths, but it shall be permitted to magistrates, when they want, to be loosed and free from all obligation, while subjects shall always be bound in all circumstances and never be free."⁴⁴ Magistrates are bound to govern according to the law, which derives from the community, not according to their own will.

When a superior authority, e.g. the emperor, attempts to enforce unjust or impious laws, the inferior magistrates of the community, e.g. princes or city leaders, have a right and a duty to refuse obedience. That duty extends to armed resistance if the superior magistrate attempts to impose their tyrannical rule by force. At the heart of the lesser magistrate doctrine is the

⁴³ *The Magdeburg Confession*, 1550, trans. Matthew Colvin (Createspace, 2012), 3-6, 45-55.

⁴⁴ *Ibid.*, 50.

principle of the rule of law, that even rulers are subject to the laws of a community. The lesser magistrate doctrine also endorses the principle of *accountability*, that rulers can be resisted and even punished for abusing their authority. The men of Magdeburg recognized a key point; the rule of law is impotent in the face of tyranny if rulers are not also accountable to the people for their actions.

The Magdeburg city leaders' exposition of Romans 13 reconciled the teachings of reason and revelation in regards to civil authority. If a magistrate acts contrary to his ordinance by being a terror to good works and a praise to evil, "there is no longer in him, because he does thus, the ordinance of God, but the ordinance of the Devil. And he who resists such works, does not resist the ordinance of God, but the ordinance of the Devil."⁴⁵ There are four levels of tyranny possible by rulers. The first is the result of man's fallible and weak nature. Magistrates make mistakes and this is easily remedied. The second and third levels involve magistrates willfully committing injustice towards the people. Injuries are committed against the lives and property of the community members and the ruler has become a tyrant who may be opposed if necessary. The fourth and highest level is when a magistrate becomes so mad as to persecute God Himself. At this point, the magistrate has become a minister of the Devil, "he is not merely a bear-wolf... but is a very Devil himself..." holding office in the "kingdom of the Devil."⁴⁶

While obedience is owed to just magistrates, neither reason or revelation demand obedience to tyrants who persecute the people and God in their service to the Devil. The evidence of Scripture shows that God, who is no respecter of persons, has always punished wicked magistrates for their actions. Sometimes that punishment comes through the means of

⁴⁵ Ibid., 57.

⁴⁶ Ibid., 58-59.

human instruments. Lesser magistrates could thus be a lawful instrument, endorsed by reason and revelation, through which tyrants could be resisted.

The city of Magdeburg was not obligated to either obey the emperor's tyrannical commands or suffer persecution, the city had a right to "employ the defense of inferior magistrates that is granted against unjust violence by divine law... as well as by natural and human law, and especially by the prerogative of our German Empire, according to which superiors and inferiors are mutually bound by certain laws and privileges."⁴⁷ In other words, the social covenant makes magistrates accountable to the people for the exercise of their office.

Germany was not the only region which experienced persecution and violence during the Reformation, the Wars of Religion caused decades of civil strife between Catholics and Protestants in France in the late 16th Century. Three key works came out of that situation which demonstrate the growing importance of the social covenant to Protestant thinking in response to persecution. Those works were Theodore Beza's *The Right of Magistrates* (1574), Francis Hotoman's *Franco-Gallia* (1574), and *Vindicae Contra Tyrannos* (1579), possibly written by Philippe de Mornay or Hubert Languet. The expositions of the social covenant found in these works are far more detailed than in most previous Protestant works. These works emphasize the constitutional nature of the covenant, making the people the source of a government's lawful authority and setting the legal limits of authority and obedience. All three works espouse a form of the lesser magistrate doctrine as a means to defend the fundamental laws of the community from tyrannical rulers.

⁴⁷ Ibid., 80.

Beza's *The Right of Magistrates* began by asserting that the obedience owed to magistrates is not unlimited. The limit set to any magistrate's authority is that he does not command anything unjust or impious. Neither the law of God or the law of nature require men to passively submit to tyranny. While Christian patience in response to injustice is laudable in many cases, it is preferable for a community to establish constitutional safeguards against tyranny so that civil authority might fulfill its true purpose, serving the good of the people.⁴⁸

The people are the source of power in a community and they create rulers for the purpose of protecting the good and restraining the wicked. The evidence of history, reason, and revelation show the truth of government's power residing originally in the people; "assuredly, (it is clear) that peoples did not in the first instance originate from rulers, but whatever peoples desired to be ruled by a single monarch or by chief men elected by them were anterior to their rulers. Hence it follows that peoples were not created for the sake of rulers, but on the contrary the rulers for the sake of the people..."⁴⁹

All magistrates, whether supreme or subordinate, derive their authority from the consent of the people. The histories of Rome, Sparta, Israel, and many other nations show that kings were originally elected to office by the people and given powers which were limited by the fundamental laws of the community. These histories also show that the power which elects kings can remove them. All government authority is thus limited and conditional, with the bounds set by the covenant made between the rulers and the people.

Beza drew a contrast between the governments of England and France in his day. He praised England for its blessed condition in which nearly all government authority was

⁴⁸ Theodore Beza, *The Right of Magistrates*, 1574, ed. Patrick S. Poole, 2-6.

⁴⁹ *Ibid.*, 5.

dependent on Parliament, which represented the people. By contrast, he lamented that France had devolved from a free government into an arbitrary system. The Estates, a legislative assembly, had once represented the people in the French government. But now, its legal authority was gone and the will of the king alone reigned supreme. That change in the French constitution was for the worse.⁵⁰

Since the people are the “supreme power” in a community, the constitution originally created with their consent becomes the supreme law of the land. The constitution represents the fundamental laws in a community, laws which are superior to any magistrate. All magistrates derive their authority directly from and are subject to the supreme power in the kingdom; this includes supreme magistrates, inferior magistrates, and the estates. Beza defined tyranny as an “authority setting itself against the laws.” The mark of tyranny is “a persistent malice which strives with might and main to subvert the constitution and the laws upon which the kingdom rests as upon foundations.” By acting contrary to the law, a magistrate violates the “essential conditions” of the covenant and annuls his own authority. He is thus no longer to be considered a lawful magistrate.⁵¹

In Beza’s opinion, resistance to tyrants is defense of the lawful constitution. Resistance is not to be carried out by private citizens as this would create chaos. Resistance is only to be carried out through the instrument of public authority, either inferior magistrates or an assembly of the estates. Both of these groups are bound by oath to protect the laws and the people. If a supreme magistrate assaults either by force, it is lawful to resist with force. Resistance undertaken in defense of the constitution and under the aegis of public authority is not treason,

⁵⁰ Ibid., 14-20.

⁵¹ Ibid., 8, 17, 30, 38.

the real traitors are those who seek to subvert the constitution and act against the rights of the people. Thus, the first loyalty of all citizens living in a community is to the constitution, not to the rulers.⁵²

Towards the end of the treatise, Beza discussed the objection that tyrants are appointed by the will of God and thus cannot be resisted without acting in opposition to God. Beza countered by arguing that men need to focus on that portion of God's will that He has "revealed" to men. Providence is not a valid argument for nonresistance, in fact, historical instances of unjust rulers being overthrown by the people could be used as arguments that God supports resistance to tyrants.⁵³ A ruler suffers no injustice when the people remind him of his duty according to the covenant. Furthermore, he suffers no injustice if it becomes necessary for the people, acting through public authorities, to forcefully restrain him from acting contrary to his duty. The only lawful authority rulers exercise is that which is within the limits established by the covenant.⁵⁴

Francis Hotoman's *Franco-Gallia* defended the ancient constitution of France with primarily historical arguments. He asserted that the kingdoms of Franco-Gallia established after the expulsion of the Romans around 450 A.D. were based on a "mixed" constitution designed to protect the rights of the people. The people were the original source of power in Franco-Gallia and they had the power to both create and dethrone their kings. This constitution was mixed as civil authority was centered in the "public council;" a yearly assembly in which the king, nobles, and commons met and made laws with the consent of all the estates in the kingdom. The kings were elected by the people, acting through the public council, and the authority of kings was

⁵² Ibid., 10-20, 27, 35-36.

⁵³ Ibid., 36.

⁵⁴ Ibid., 39.

limited by the laws passed in the council. Kingship was conditional in Franco-Gallia, not unlimited and arbitrary.⁵⁵

The “three marks of tyranny” were absent in France’s ancient constitution. First, there was no forced obedience as the king could not rule contrary to the will of the people. Second, there was no lifeguard of foreigners, i.e. a standing army, which could be used by a king to force submission to his unjust edicts. The defense of the kingdom was in the hands of the people. Third, the kingdom was not ruled for the personal benefit of the king. The annual public council, which represented all the estates, ensured that government was conducted for the good of the governed.⁵⁶ In this system, the kings acted as guardians of liberty and the term “Frank,” used to identify the subjects of Franco-Gallia, itself originally meant a “freeman” who was not in servitude to anyone, including the king. “Slavery” is to be subjected to the unbounded will of a tyrant and this could not be said of the ancient Franks.⁵⁷

Since kings were made upon conditions established in the constitution, the public council had the legal authority to remove tyrannical kings from office. This right had been exercised multiple times over the 1,000 years since the Romans left France. It was during the reign of King Louis XI in the mid-15th Century that France’s constitution began to change. The public council, acting in defense of the liberties of the people, used force to resist the unlawful actions of the king and constrain him to act within the limits of his office. This was irrefutable evidence for the French that, “we may easily perceive that our Commonwealth, which at first was founded and establish'd upon the Principles of Liberty, maintained itself in the same free and sacred State,

⁵⁵ Francis Hotoman, *Franco-Gallia*, 1574, trans. Robert Molesworth (London: Edward Valentine, 1721), 39-52.

⁵⁶ *Ibid.*, 48-49.

⁵⁷ *Ibid.*, 35-36.

(even by Force and Arms) against all the Power of Tyrants for more than Eleven Hundred Years.”⁵⁸

Unfortunately, towards the end of Louis’ reign certain “inconsiderable fellows” began to put forward the idea that it was high treason to hold public assemblies and challenge the authority of the king. Their doctrine gained strength and France’s annual assembly was gradually reduced to a mere shadow, without any real authority. The public council was no more and France was now ruled by an arbitrary monarch. For their role in subverting France’s ancient constitution, Hotoman asserted that it was those inconsiderable fellows who were “guilty of High-Treason against God, the King, and the Commonwealth.”⁵⁹ The constitution had been broken in the reign of Louis XI and Hotoman argued a return to the ancient constitution would provide a remedy to the civil wars taking place in France during the 16th Century Wars of Religion.

Vindicae Contra Tyrannos (A Defense Against Tyrants) was written under the pseudonym “Stephanus Junius Brutus, the Celt” and the author’s true identity cannot be known with certainty. Likely candidates are Philippe de Mornay or Hubert Languet, both French Protestants who witnessed the Wars of Religion. This work is distinguished by its explanation of the people as the medium through which God’s will for civil government is made known and the stress the author placed on the social covenant. For the author, all civil authority rests on the covenant between the king and the people. He defended this assertion with evidence drawn from natural law and the history of Israel found in Scripture.

⁵⁸ Ibid., 70.

⁵⁹ Ibid., 71.

Magistrates are created by and receive their authority from the “whole people.” Since men are naturally free and equal, no man possesses an inherent right to rule over others. While God can rightly be said to grant kingdoms to certain men providentially, the means through which that grant takes place is the consent of the people living in a community. There is no contradiction between reason and revelation as the people are the medium of God’s will. “We now say that the people constitutes kings, confers kingdoms, and approves the election by its vote. Indeed, God willed that it should be done in this way, so that whatever authority and power they have, should be received from the people after Him...” Magistrates would do well to remember that “they are born entirely by the same lot as other men, and that they are elevated from the ground to their position by the votes and, as it were, on the shoulders of the people...” If a king should come to feel entitled to his office as ruler, the author offered a further reminder that “kings should always remember that it is from God, but by the people and for the people that they rule; and that they should not claim that they have received their kingdom from God alone...”⁶⁰

Civil authority is conferred on the king by the covenant made between the king and the people. In this covenant, the king agrees to rule within certain prescribed limits made by the people. The law is above the king and sets the bounds to his power. These fundamental laws are created by the people and require their consent before any changes can be made. The king’s primary obligation according to the covenant is to rule justly and according to the laws. This is an absolute, unconditional promise made by the king. He cannot be absolved from this obligation under any circumstances. The obligation of the people is to obey the king as long as his

⁶⁰ *Vindicae Contra Tyrannos*, 1579, ed. George Garnett (Cambridge: Cambridge University Press, 1994), 68-69.

commands are just and according to law. Thus, the promise the people make is conditional. If the king does not fulfill his covenantal obligation, the people are absolved from their obligation to obey. Justice, giving to each man what is his by right, is the standard by which the people will judge whether or not the king is keeping the covenant.⁶¹

A tyrant is the polar opposite of a king. While kings protect the people and rule according to the laws, tyrants oppress the people and subvert the laws. A king rules according to the covenant, a tyrant rules merely according to his own will and pleasure. A tyrant is like a “roaring lion” as he devours the people in order to satisfy his own avarice.⁶² The law of nature, on which the covenant is founded, teaches men to protect their lives and liberties against invasions by other men. It also commands men to take up arms against tyrants who violate the covenant and act without right. It is the tyrant who is guilty of high treason against the kingdom. He becomes a traitor and rebel for his crimes against the people and may lawfully be resisted by arms and deposed by his superiors, i.e. the people, for breaking the covenant. This resistance is not to be carried out by individuals, it is to be organized by “officers of the kingdom,” i.e. lesser magistrates, who are the appointed vindicators of the covenant.⁶³

By the late 16th Century, the tensions between reason and revelation in regards to civil authority had largely been resolved by Protestant thinkers and the two sources of truth were regarded as complementary, rather than contradictory. Many of the elements of covenant theology can already be seen in Protestant writings from this time. Chief among those elements was the assertion that the people are the supreme authority in a state and that governments derive their lawful authority from the consent of the governed. The right to resist tyrants who break the

⁶¹ Ibid., 129-131.

⁶² Proverbs 28:15.

⁶³ *Vindicae Contra Tyrannos*, 138-150, 157-172.

conditions of the covenant was also being asserted by Protestants. During the 17th and 18th centuries in England, covenant theology would blend with the emerging social contract theories until the two theories became virtually inseparable. This synthesis of covenant theology and social contract theory was one of the most significant legacies of the English political tradition which the Puritans carried across the Atlantic to Massachusetts and helped to shape the thought of the Patriots.

III. The English Political Tradition

A strong adherence to natural rights doctrines can be seen in the English political tradition during the 17th Century. This tumultuous century witnessed both the English Civil War (1642-1649) and the Glorious Revolution (1688-1689). These two events were part of a connected struggle over the interpretation of England's unwritten constitution. The key question was supremacy; was it the king or Parliament which held the final authority? A primary cause of both those conflicts was kings attempting to rule as absolute monarchs, a claim which the members of Parliament adamantly rejected. Since it was comprised of the representatives of the people, the ultimate source of civil authority, supporters of Parliament often used the language of natural rights to explain its opposition to the king, who was regarded as attempting to subvert the English constitution by introducing arbitrary rule and "popery." The struggles between king and Parliament led to one king losing his head and another losing his crown.⁶⁴

⁶⁴ King Charles I was executed in 1649 at the end of the English Civil War and King James II was regarded as having "abdicated" the throne when he fled the country during the Glorious Revolution in 1688.

By the end of the 17th Century, the conflict between king and Parliament over England's constitution had been resolved. The result was the concept of *Parliamentary supremacy*, the theory that Parliament held the true sovereignty in England, as the representatives of the people, and that the power of kings was limited by law.⁶⁵ Over the course of the 18th Century a new constitutional conflict arose between Parliament and the American colonies. Once again, the key issue was supremacy. By the late 18th Century, in England, the theory of Parliamentary supremacy had come to overrule the natural rights doctrines which were largely responsible for its theoretical justification. Parliament began to interpret its supremacy as including authority over the constitution itself. In the eyes of Parliament, the acts of Parliament were authoritative interpretations of the constitution. An act of Parliament could not be *against* the law, because Parliament *made* the law. In practice, Parliament *was* the law.⁶⁶

Contrary to that position, English natural rights theorists taught what can be called *constitutional supremacy*, that the original contract between the people and their rulers is fixed and outlines the fundamental laws of society. No one magistrate, or even a group like Parliament, has the authority to change the constitution without the express consent of the people. The authority to change the constitution would make Parliament as arbitrary as the most absolute monarch. Instead, sovereignty resides in the people and their consent is absolutely necessary to change any of the fundamental laws of society. Parliament is an excellent instrument of representation, but it is not above the law. The constitution, containing society's fundamental laws, is supreme. The foundation of this position is the covenant-contract theories propagated by natural rights theorists.

⁶⁵ Francis Fukuyama, "The Last English Civil War," *Daedalus* 147, no. 1 (January 2018): 15-24.

⁶⁶ John Reid, *Constitutional History of the American Revolution: Abridged Edition* (Madison: University of Wisconsin Press, 1995), 3-4, 24.

The 18th Century Commonwealthmen, i.e. “Real Whigs,” in Great Britain, the proper title of England and Scotland after the Act of Union in 1707, have been identified by scholars as a major influence on the American colonists. The Commonwealthmen regarded themselves as the true inheritors of the “Revolution principles” on which the Glorious Revolution was based. Their written works helped to transmit those principles to the American colonies and added to the foundation of constitutional supremacy which the colonists would adhere to in the years leading up to independence.⁶⁷

Richard Hooker’s *Of the Laws of Ecclesiastical Polity* (1594-1597) is representative of the English natural law mindset in the wake of the Reformation and before the English Civil War. Hooker continued the long tradition of asserting two sources of truth, reason and revelation. He argued that natural law teaches men laws to live by which are binding even outside of political societies. Although natural law gives men a morally binding guide for their actions, many men choose to rebel against reason and perform wicked actions. These men are like wild beasts which seek only to gratify their appetites/passions. Since these wicked men harm others and only seek their own good, it is necessary to create governments in order to restrain their actions.

The primary function of government is to secure peace and rest for its citizens. This is accomplished when the people grant their natural law-making power to an authority who can then frame laws (human laws) which prevent injury and promote justice. Many human positive laws are “mixed” human laws, they simply codify duties which men are already bound to perform under the law of nature. These laws enforce the natural law by constraining those who

⁶⁷ Caroline Robbins, *The Eighteenth Century Commonwealthman* (New York: Atheneum, 1968), 5-7, 20-21.

act against reason. Other positive laws are “merely” human laws, these create a new duty which was not contained in the natural law. These laws are those which are convenient and expedient for a particular society to be governed well. All human laws must rest upon the consent of the *entire* people living in the society or they are invalid.⁶⁸

Hooker clearly argued that all lawful power rests on the consent of the governed. Due to the depravity of human nature, men long ago learned that it was better to be ruled by laws created by the community, where the duties and penalties pronounced by the law are clearly known, than to live either without laws or where the law is subject to one man’s will. The rule of law was based on public consent, because “the lawful power of making laws to command whole politic societies of men belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself, and not either by express commission immediately and personally received from God, or else by authority derived at the first from their consent upon whose persons they impose laws, it is no better than mere tyranny.”⁶⁹ Thus, the essence of tyranny is making laws without the consent of the community.

The issue of consent was at the heart of the constitutional struggle between King Charles I and Parliament in the years leading up to the outbreak of the English Civil War in 1642. Parliament’s Petition of Right (1628)⁷⁰ shows how the natural rights concept of consent was used to support the rule of law in opposition to the arbitrary actions of a king. In this petition, Parliament was attempting to bring the king under the rule of law by asserting the constitutional rights of Englishmen, rights which they had inherited from their ancestors and which were

⁶⁸ Richard Hooker, “Concerning Laws and Their Several Kinds in General, Book I, Of the Laws of Ecclesiastical Polity,” in *The Works of Richard Hooker*, vol. 1, ed. John Keble (Oxford: Clarendon Press, 1888), 175-182, 197-205.

⁶⁹ *Ibid.*, 201.

⁷⁰ “Petition of Right,” 1628, in *On Civil Liberty*, ed. Francis Lieber (Philadelphia: J.P. Lippincott & Co., 1883).

enshrined in Magna Carta (1215). Chief among those rights was the necessity of Parliament's consent before the creation of taxes. This right helped to secure the property of Englishmen from tyrannical rulers. A second set of rights concerned the administration of justice. Parliament cited Magna Carta against royal attempts to abrogate due process and trial by jury. These rights secured the lives, liberties, and property of Englishmen from tyrannical rulers.

A third key issue Parliament brought up was the king's act of keeping soldiers and sailors in the kingdom during a time of peace. This standing army was a threat to the people's rights as it could be used to enforce arbitrary rule at the point of the sword. All these actions taken by King Charles were against the law of the land and done without the consent of Parliament. Essentially, this document was an assertion of the rule of law. Parliament wanted the king's assurance that he and his ministers would act "according to the lawes and statuts of this realme..."⁷¹ It was the king's refusal to govern as a limited monarch, under the laws and with the consent of Parliament, which led to civil war between Parliamentarians and Royalists in 1642.⁷² When war broke out, Parliamentarians turned to the language of natural rights to explain the lawfulness of their resistance to the king.

Philip Hunton's *A Treatise of Monarchy* (1643) and *A Vindication* (1644) were written while the Civil War was in its early stages. He took a moderate approach in his support for Parliament's right of resistance. He affirmed the justice of Parliament fighting against the king, but did not wish to see the king deposed or England's form of government changed. Hunton based the right of resistance on natural law and England's *fundamental constitution*, i.e. its social covenant-contract. Hunton posited that civil authority originally resides in the people.

⁷¹ Ibid., 481.

⁷² Lawrence Stone, *The Causes of the English Revolution 1529-1642* (London: Routledge, 2017), 151-164.

Magistracy is an “ordinance of God” in the sense that it is God’s will that there should be civil authorities instituted for the good of society. Magistracy is a “human ordinance” in that the specific type of magistracy has been left to the judgement of each society. Thus, the people living in a society bind themselves to live under a form of government by giving their consent and a fundamental constitution is created.

This framework for understanding the creation of a fundamental constitution relies on the distinction between *primary* and *secondary causes*. While God is the primary cause of government, since He has ordained its existence, the people are the secondary cause. As the secondary cause, the people are the “means” or the “instrument” through which God’s will operates. There is thus no contradiction between reason and revelation when explaining the origins of government. The people are the means through which God operates in instituting civil authority. All civil authority originally rested on consent. Even monarchs were first elevated to their position through election by the suffrages of the communities they were to govern.⁷³

The people possess *natural liberty* before the institution of government and they resign a measure of that liberty to the civil authorities on specific conditions. Those conditions are fixed in the fundamental constitution and protect the rights of the people from rulers who seek to exceed their authority.⁷⁴ Hunton claimed that England’s form of government, according to the fundamental constitution, was a *mixed-limited monarchy*. It was *mixed* because all three “estates” possessed a share in sovereignty and each had to give its consent before laws went into effect. England’s constitution combined the three simple forms of government. The three estates were the king (representing monarchy), the House of Peers (aristocracy), and the House of Commons

⁷³ Philip Hunton, *A Treatise of Monarchy*, 1643 (London: Randal Taylor, 1689), 1-4, 15-18.

⁷⁴ Philip Hunton, *A Vindication*, 1644 (London: Randal Taylor, 1689), 70-75.

(democracy). England's constitution was *limited* because the actions of magistrates were restricted to those actions permitted by law. The constitution set limits on how far any ruler's power extended and subjects were not bound to obey commands which were beyond the authority granted to that ruler by law.⁷⁵

Since rulers possess only limited powers, it is lawful for the people to resist unlawful commands. Hunton distinguished between *passive resistance*, e.g. petitioning or fleeing the country, and *active resistance*, using the force of arms to oppose rulers who exceed their authority. Applying his framework to England's situation, Hunton argued that the English king was not an *absolute-unlimited monarch*. King Charles had exceeded his lawful authority by attempting to make laws without the consent of Parliament, the other two estates, and it was lawful for those two estates to defend the constitution from his aggression. A victory for the king would subvert the constitution and reduce the people to the status of slaves.⁷⁶

The law of nature grants men and nations the *right of self-preservation*, that they might resist the unlawful invasions of destroyers, even those who come under the guise of civil authority. Since the king was attempting to subvert the constitution and become an absolute monarch, it was the duty of the two estates in Parliament, the Lords and Commons, to take up the power of the sword in defense of liberty and the constitution. As terrible as civil war would be, "a temporary evil of war is to be chosen rather than a perpetual loss of liberty, and subversion of the established frame of government."⁷⁷

⁷⁵ Hunton, *A Treatise of Monarchy*, 5-14, 19-36.

⁷⁶ *Ibid.*, 39-51.

⁷⁷ *Ibid.*, 48.

Parliament had both a right and a duty to exercise the nation's natural right of self-preservation against a king who had broken his contract with the people. Interestingly, Hunton's view of the constitution as fixed led him to restrict lawful resistance to the "subordinate instruments" sent by the king to carry out his tyrannical commands. The king himself could not be harmed or even removed from the throne because English monarchs did not simply hold an "office" at the will of the people, kings were a permanent element of England's fundamental constitution.⁷⁸

Other writers were willing to go farther than Hunton in their resistance to the king and take the language of the social covenant-contract to its logical conclusion, that the king held an office in trust from the people and could be removed for deliberate breaches of that trust. Chief among those writers were the Scottish Presbyterian Samuel Rutherford and the English Puritan John Milton. Rutherford's *Lex Rex* (1644) has a Latin title which can be translated as "the law and the king" or as "the law is king." While both translations are accurate, the latter is far better at conveying the central theme of the work.

Throughout a schema of 44 questions and responses, Rutherford drove home his point that the law is the true civil authority in a community. Similar to Hunton, Rutherford argued that, while God was the *immediate* source of civil authority, the power of government was given to specific rulers through the *mediation* of the people. In the absence of a direct voice from heaven, the consent of the people is the means by which magistrates receive their authority. The method of crowning kings in ancient Israel provides a prime example of this process. Even with the

⁷⁸ Ibid., 39-42.

direct anointing of Saul and David by God, a voice from heaven, neither man became king until they were also elected by the people of Israel.⁷⁹

Rutherford asserted that every man is born free and equal. Men are naturally free because they all possess a natural liberty in which they are not subject to any civil authority without their voluntary submission. Men are naturally equal because all are born in the same status in regards to civil authority. No one is naturally born a slave to another and no one is naturally born a lord or master over others. All lawful civil subjection and superiority derives from human ordinances made by the consent of the people. Not even kings are born with a divine right to rule, they are born in the same status as all other men, as “no man bringeth out of the womb with him a scepter, and a crown on his head.”⁸⁰

Since men are naturally free and equal, the people hold the original sovereignty; civil authority is established by a covenant between the king (magistrates) and the people. In this covenant, the community entrusts its original power to the rulers it has elected. The chief end of the covenant, and the reason men resign a portion of their natural liberty, is the external peace and safety of society. Political covenants include mutual obligations laid on the king and the people, it is a reciprocal relationship.

The people agree to obey the king in the lawful and just exercise of his authority. The king agrees to rule according to the laws, administer justice, and to act as the protector of the people. The king’s duty is summed up by the maxim *salus populi lex suprema*, “the safety of the people is the supreme law.” The civil authority granted to kings is thus *fiduciary*, i.e. a legal

⁷⁹Samuel Rutherford, *Lex Rex* (Colorado Springs: Portage Publications, 2009), Questions 1- 4. Refer to 1 Samuel 10:17-25 and 11:12-15 for the record of Saul’s coronations. David’s coronations are recorded in 2 Samuel 2:1-7 and 5:1-5.

⁸⁰ Ibid., Q. 7, 12-13.

trust, which makes the obedience due from the people conditional on the king fulfilling that trust. The covenant thus presupposes a limited monarch; one who must rule according to divine law, natural law, and the laws of the community.⁸¹

The king and other lesser magistrates hold an office of trust through the election of the people. If they break that trust by repeated acts amounting to a fundamental breach of the covenant, the power which was granted to them by the people may be resumed by the people. As the “fountain-power” of civil authority, the people are superior to a king and the king is properly a servant of the people while he faithfully executes his “office.” It is only faithful, lawful magistrates who are referred to as “ministers of God” in Romans 13. In contrast, tyrants are “lions” and “wolves” seeking to devour the people for their private benefit. Rutherford laid down the maxim that “tyranny being a work of Satan, is not from God.”⁸² He further argued that “absolute power to tyrannize is not from God,” or the people, and that “it is no power which is not lawful power.”⁸³

Essentially, a magistrate who acts without the sanction of law has no authority and is no longer to be regarded as a magistrate. He has no power from God or the people to play the tyrant, and thus, resistance to a tyrant is not resisting God’s ordinance. In fact, resistance to tyrants is acting in accordance with God’s ordinance for civil authority. God ordained government to protect the natural rights of the people; namely their lives, liberties, and property. If governors become tyrants and attempt to take these away without the consent of the people, the people can then exercise their natural right of self-preservation.

⁸¹ Ibid., Q. 8, 9, 14, 16.

⁸² Ibid., Q. 9, 14, 15, 17, 19.

⁸³ Ibid., Q. 22.

By necessity, the people are the judges of when magistrates have broken the covenant and when armed resistance must be used to defend their rights. The claim that passive obedience is the only option when faced with tyrannical rulers is absurd as it places the people at the mercy of wicked magistrates and flies in the face of God's ordinance. Since England and Scotland had mixed constitutions, Rutherford asserted that the best means to organize resistance to a tyrannical king was through the Parliaments, which represented the other two estates in the kingdoms.⁸⁴

Rutherford applied these principles to the case of the English and Scottish Parliaments resisting King Charles I. In his analysis, the king was attempting to impose arbitrary rule and popery on England and Scotland through armed force. The central question was whether these kingdoms would be arbitrary governments ruled by the will of a tyrant or governments ruled by law. Rutherford called on Englishmen and Scots to follow God's revealed will, as shown in reason and revelation, by taking up arms in defense of the covenant. There was a difference between a "king by office," who rules under the law, and a tyrant, who sets himself above the law. King Charles had broken the covenant by playing the tyrant and the people had a natural right to compel the king to keep the covenant. The king was accountable to the people for the trust they had place in him and it was time to call him to account by force. Rutherford reminded his Scottish readers that "the Estates of Scotland have power to punish the king, if he labor to subvert religion and laws." This was a message which applied to Englishmen also.⁸⁵

John Milton wrote *The Tenure of Kings and Magistrates* in January 1649, while King Charles I was on trial before the English Parliament, and it was published that February, two weeks after the king was executed for his crimes against the kingdom. Milton's purpose was to

⁸⁴ Ibid., Q. 16, 17, 18, 22, 24, 30.

⁸⁵ Ibid., Q. 40-42.

explain the lawfulness of Parliament's actions in deposing and executing a king which he regarded as a tyrant. He sought to prove "that it is Lawfull, and hath been held so through all Ages, for any who have the Power, to call to account a Tyrant, or wicked KING, and after due conviction, to depose and put him to death."⁸⁶ To accomplish this task, Milton went back to the natural law foundation of the covenant between the king and the people. Milton argued that all men are naturally free and commonwealths are formed by *common league* between the men seeking to live in a society. Men choose to ordain a governing authority for the purpose of defense and to punish transgressors of peace and common right.

If that authority is given to one man, the ruler is a monarch; if given to several, the rulers are magistrates. In either case, the rulers have been entrusted with power, the "sword of justice," in order to execute the laws and not to seek personal gain. Magistracy should be understood as an "office" since rulers hold the authority delegated to them by the people in trust. Magistrates are the deputies of the people, not their masters. There is a solemn covenant between the people and their rulers. Rulers agree to execute laws which the people have made and consented to. No ruler possesses an arbitrary, absolute power; their authority is limited by the laws of the covenant. As a result of the covenant, the people's obedience to their rulers is limited. The people are no longer bound to obey a ruler if he breaks the terms of the covenant. At that point, he becomes an enemy of the people and they have a right to resume their natural liberty and remove the ruler from office.⁸⁷

This principle of *accountability* is key to understanding Milton's view of magistracy as an office and is directly connected to the issue of *security*. If magistrates cannot be called to

⁸⁶ John Milton, *The Tenure of Kings and Magistrates*, 1649, ed. William Allison (New York: Henry Holt and Co., 1911), 35.

⁸⁷ *Ibid.*, 38-43.

account for breaking the covenant, neither the natural rights of the people or the English constitution were safe from the ravages of tyrants. Unaccountable magistrates would be disastrous for a community, “to say Kings are accountable to none but God, is the overturning of all Law and government. For if they may refuse to give account, then all covnants made with them at Coronation; all Oathes are in vaine, and meer mockeries, all Lawes which they sweare to keep, made to no purpose; for if the King feare not God, as how many of them doe not? we hold then our lives and estates, by the tenure of his meer grace and mercy.”⁸⁸

Since the people have a natural right to judge their rulers, Milton approved of Parliament acting as the official court of justice to call King Charles to account for his crimes. Since kingship was an office, a king convicted of breaking the covenant could be removed from office and returned to the status of a private man. As a private man, the former king was now subject to punishment by the law. Nothing could be more certain than that King Charles had “unkinged” himself by breaking the covenant and making war against his own people for seven years.

The true mark of a free nation for Milton was the accountability of its magistrates, “and surely that shall boast, as we doe, to be a free Nation, and not have in themselves the power to remove, or to abolish any governour supreme, or subordinate with the government itself upon urgent causes, may please thir fancy with a ridiculous and painted freedom, fit to coz’n babies; but are indeed under tyranny and servitude; as wanting that power, which is the root and sourse of all liberty.... Without which natural and essential power of a free Nation, though bearing high thir heads, they can in due esteem be thought no better than slaves and vassals...”⁸⁹

⁸⁸ Ibid., 39-40.

⁸⁹ Ibid., 51.

The execution of King Charles I ushered in a decade-long Interregnum in which Oliver Cromwell ruled as the Lord Protector at the head of a subservient Parliament. This failure of republican government led to the Restoration when Charles II, the son of the executed king, was invited to return to the throne in 1660. Milton argued vociferously against England's return to monarchy and likened it to Israel's desire to return to bondage in Egypt when faced with the hardships of the Exodus. He made his case against monarchy and outlined a plan for free government in *The Ready and Easy Way to Establish a Free Commonwealth* (1660). Milton was appalled that, after Parliament had successfully defended England's religious and civil liberties from a tyrannical king who sought to subvert both, so many Englishmen desired to return to bondage under monarchy. England was renouncing its freedom and returning to the same yoke which it had broken a decade earlier. Had they not learned that the rights of the people were not safe under monarchs?⁹⁰

A free commonwealth, i.e. a republic, was superior to monarchy because of the accountability of magistrates and the greater security of the people's rights in that system. A monarchical system made it extremely difficult to call kings to account for their actions. A monarch was "not to be remov'd, not to be contrould, much less accus'd or brought to punishment, without the danger of a common ruin, without the shaking and almost subversion of the whole land. Whereas in a free Commonwealth, any governour or chief counselour offending, may be remov'd and punishd, without the least commotion."⁹¹ Magistrates in a commonwealth can be easily removed through legal means when they violate the trust placed in their office, whereas history had shown that removing tyrannical kings almost always required extralegal

⁹⁰ John Milton, *The Ready and Easy Way to Establish a Free Commonwealth*, 1660, ed. Evert Clark (New Haven: Yale University Press, 1915), 52-55.

⁹¹ *Ibid.*, 56.

means, most likely civil war. To ensure the accountability of magistrates in the commonwealth, Milton proposed a system of government which was republican and had hints of federalism.

In this system, the supreme authority in England would be delegated by the people to a Grand Council, essentially a reworked Parliament. This Council would only have one house, the Commons, without any spiritual or temporal lords. The representatives would be elected through a system of limited suffrage, only the best and most qualified members of communities would vote so as to refine the election process. While Milton preferred a Council which would sit perpetually, with members only being removed from office by death or conviction of crimes, he recognized that a “partial rotation” of members every few years would be expedient and alleviate fears of a Council with overgrown powers. Chief among the Council’s powers would be its ability to make laws and its role commanding the military forces of the nation.

Along with the Grand Council at the national level, Milton advocated ordinary assemblies be held in each county. These County Assemblies would make every county “a little commonwealth” as each would have local control over laws and the administration of justice. Nearly every county official would be elected to office. The counties would also send deputies to the nation’s Grand Council to express their assent or dissent to laws made by that supreme authority. Milton thus presents a federal system in which the many “little commonwealths,” the counties, are united under a national government to form a republic. The central feature of that republic was that every magistrate, at the county and national level, would be accountable to the people for his actions. Ensuring the accountability of magistrates would also increase the security

of the people's rights. Both spiritual liberty and civil liberty would be far safer under accountable magistrates than under a monarch and his court favorites.⁹²

Milton was sure that a free commonwealth was the system of government "the most agreeable to all due libertie and proportiond equaliti, both humane, civil and Christian, most cherishing to vertue and true religion , but also (I may say it with greatest probabilitie) planely commended or rather enjoind by our Saviour himself, to all Christians..."⁹³ This is a reference to Matthew 20:25-27, where Jesus contrasted "gentile kingship" with the Christian concept of authority. Jesus told his disciples that "ye know that the princes of the Gentiles exercise dominion over them, and they that are great exercise authority upon them. But it shall not be so among you: but whosoever will be great among you, let him be your minister; And whosoever will be chief among you, let him be your servant..."⁹⁴ Thus, natural law and revealed religion pointed to a republican system as the best form of government for fulfilling government's primary purpose, providing for the safety of the people.

Another attempt to frame a commonwealth in accordance with reason and revelation can be seen in the writings of James Harrington. Harrington's *The Commonwealth of Oceana* (1656) and *The Prerogative of Popular Government* (1658), which set out to vindicate the claims made in *Oceana*, attempted to lay out a system of government absent the kind of inequalities which caused the English Civil War. One of Harrington's greatest contributions was his argument that the nature of empire is determined by the *balance of property* in a civil society. The type of property which brought wealth and political power with it in the 17th Century was land. Thus, whichever group in society owned the largest share of land was the group which would naturally

⁹² Ibid., 58-62, 66-68.

⁹³ Ibid., 55.

⁹⁴ Matthew 20: 24b-27.

control the civil authority. If one man held the balance, the result would be absolute monarchy. If the balance was held by the few (nobility), government would take the form of an aristocracy or limited monarchy. If the whole people held the balance by owning their own land, society would naturally be a commonwealth in which the common people took part in government.⁹⁵

In Harrington's view, the English Civil War was caused by an attempt to impose a balance by force; and any attempt to do so is unnatural and bound to be of short continuance. England's constitution had never been an absolute monarchy, even after the Norman Conquest in 1066, because the balance had been held by the nobility. By the early 17th Century that balance had shifted in favor of the people, more specifically the "middling sort," i.e. the yeomanry or landed gentry. Since empire follows property, the House of Commons experienced a corresponding rise in political power. The problem was that English kings were attempting to claim the powers of absolute monarchs in a society that was naturally oriented towards being a commonwealth. When King Charles I attempted to impose his unnatural authority with force, the Commons resisted and the government was dissolved. Unfortunately, the government which followed, with Cromwell at the head of a single council in Parliament, was not a true commonwealth. It was more of an oligarchy with a single tyrant at its head.⁹⁶

To prevent more civil tumults in the future, Harrington proposed a system of government which returned to the fundamentals of civil authority. Above all, "a commonwealth is an empire of laws and not of men."⁹⁷ It is the laws which must be sovereign in a society and not the will of the rulers. It is only with the rule of law that liberty will be protected and justice will be

⁹⁵ James Harrington, "The Commonwealth of Oceana," 1656, in *The Oceana and Other Works*, ed. John Toland (London: Becket and Cadell, 1771), 85-91.

⁹⁶ *Ibid.*, 116-30.

⁹⁷ *Ibid.*, 97.

administered according to right reason. Harrington advocated a mixed constitution for England with a separation of powers built into the system. There would be a Senate, the aristocratic element made up of nobles, with a role of debating and proposing laws. A Council, the democratic element consisting of the people's representatives, would choose or resolve which laws went into effect based on the recommendations of the Senate. Combined, the Senate and Council would comprise the legislative power in society. The third branch of government would be the Magistracy, representing monarchical power. The Magistracy would execute the laws passed by the legislative branches.⁹⁸

Harrington illustrated this model of government with his analogy of a cake. In order to ensure equality in the division of a cake to multiple children, no one child should have the power to divide the cake into slices and also choose who gets which slices. Someone with both powers would obviously cut a larger slice for themselves. Thus, in his system, the Senate (House of Lords) would debate and propose laws, similar to dividing the cake into slices, and the Council (House of Commons) would then pass resolves on which laws to accept, similar to choosing who gets which slices. It would thus be in everyone's common interest to ensure equality before the law, i.e. that the slices were equal. Absolute monarchy or unaccountable magistrates would destroy this system of equality as the rulers would have the sole power of dividing the cake, making it likely that they would take the whole cake for themselves. The system would devolve from an empire of laws to an empire of men.⁹⁹

In order to maintain the rule of law, Harrington asserted that it is absolutely essential for the magistrates to be accountable to the people for executing their office in accordance with the

⁹⁸ Ibid., 99-100.

⁹⁹ James Harrington, "The Prerogative of Popular Government," in *The Oceana and Other Works*, ed. John Toland (London: Becket and Cadell, 1771), 396-301.

law. The essence of government must be that the “law is king.” The best way to ensure magistrates remain under the law is to implement a plan of “rotation” in political offices. Since all civil authority ultimately rests on the consent of the people, it is essential that the people have the right to exercise their suffrages in the choice of magistrates. The absence of this fundamental right would destroy a commonwealth, for “where the suffrages of the people go for nothing, it is no commonwealth.”¹⁰⁰ Harrington cited the ancient commonwealth of Israel in defense of his model for England. God Himself, the supreme ruler of the universe, had only placed laws on Israel after the Israelites had first consented to accept the covenant.¹⁰¹

The accountability of rulers would ensure the security of property in the English commonwealth proposed by Harrington. With the rule of law, each man would know what he could call his own and that his property was protected by the laws from unjust invasions. Along with rotations in magistracy by election, Harrington advocated an agrarian law which would ensure that the common people would not lose their land and that the balance of property would remain forever in the people’s favor, thus ensuring the political stability of the commonwealth.¹⁰²

Harrington’s emphasis on the balance of property in a commonwealth led him to make some observations on “provincial governments,” i.e. colonies, that foreshadowed the conflict between the British government and the American colonies 100 years later. He observed that, if the balance was held by the people living in a province, their natural condition would be political independence. Empire is founded on property, so self-government would only be natural for the provincials in this case. Any attempt to keep a province dependent on the central government was subject to the flaws of absolute monarchy, which relies on armed force to maintain its

¹⁰⁰ Harrington, “Oceana,” 101.

¹⁰¹ Harrington, “The Prerogative,” 300-304.

¹⁰² Ibid., 336-50.

control when the balance is in the people's favor. Attempts to control the people by taking their property would likely result in the people rising up and casting off their unnatural dependence. It is useful to remember that a man who owns both a plow and a sword will use the latter to defend his right to the former.¹⁰³

Some of the perils of England returning to bondage under monarchs which Milton had predicted proved true; as the Restoration in 1660, placing Charles II on the throne, was followed within three decades by the Glorious Revolution in 1688-1689, in which Parliament deposed James II and granted the throne to King William and Queen Mary. While monarchy remained in England after the Revolution, the claims of absolute monarchs were effectively gone forever and England entered the 18th Century with a limited monarchy in which the kings and queens readily acknowledged the supremacy of Parliament in England's political system. Several works helped to bury absolute monarchy in its political grave, notably Algernon Sidney's *Discourses Concerning Government* and John Locke's *Second Treatise of Government*.

Algernon Sidney was one of the most vocal critics of kings and advocates for the right of resistance in the era between the Restoration and the Glorious Revolution. This criticism came with a cost, as Sydney's *Discourses* were still in note-form in 1683 when he was executed by the royal government for allegedly taking part in a plot to overthrow the regime of King Charles II. Passages from his *Discourses* were read by the royal prosecutors during his trial as evidence of his revolutionary ideology. Sidney was executed despite a lack of hard evidence against him and came to be revered as a martyr to the "cause of liberty" in the Whig tradition. The *Discourses* were first published in 1698, 15 years after Sidney's execution.

¹⁰³ Harrington, "Oceana," 85, 94-96; "The Prerogative," 394-296.

Sidney wrote the *Discourses* primarily as a refutation of Robert Filmer's *Patriarcha* (published posthumously in 1680), a royalist work which made the case for absolute monarchy as the only lawful form of government. The central themes of Sidney's response were the natural liberty of the people and the accountability of magistrates. The root of the issue was a different understanding of the foundations of government. Filmer and the royalists argued that "the whole fabrick of that which they call popular sedition would fall to the ground, if the principle of natural liberty were removed." Sidney countered with the argument that "the whole fabrick of tyranny will be much weakened, if we prove, that nations have a right to make their own laws, constitute their own magistrates; and that such as are so constituted owe an account of their actions to those by whom, and for whom they are appointed."¹⁰⁴

Sidney argued that men are naturally free and this *liberty* consists of two key components, an exemption from all human laws to which a man has not given his consent and independence from the will of another. This liberty was not granted to men by any government, it was a direct gift from God. Along with being naturally free, all men are naturally equal, they possess the same rights as other men. Thus, the natural liberty that all men possess in equal measure means that a government's power comes from the consent of the governed and the will of the magistrate is bound by the laws created with their consent. The people decide how much of their natural liberty they resign when they create a government.

Slavery is when a man enjoys all he has (both his person and his goods) at the will of his master. According to Sidney, Filmer's conception of absolute monarchy reduced the people to this condition. Filmer granted the people no natural rights, as even the people's rights under a

¹⁰⁴ Algernon Sidney, *Discourses Concerning Government*, 1698, ed. Thomas West (Indianapolis: Liberty Fund, 1996), Chapter I, Section 2.

government are but gracious concessions of a sovereign who is above the law. Under absolute monarchy, the people have no choices except obeying the king/tyrant, i.e. doing what is commanded, or suffering, i.e. lying down and allowing their throats to be cut. Sidney argued that this state of slavery is a worse condition than when civil wars and tumults, resulting from an excess of liberty, befall a nation. A government which has made slaves of its people is a plague upon them and the governors, e.g. absolute monarchs, have become enemies and destroyers of mankind. Governments of this kind “give the name of peace to desolation.” These governments have a *false peace*, one which brings only poverty and slavery to the people.¹⁰⁵

Sidney asserted that kings, and all other magistrates, receive their lawful authority as grants from the people, who act as the medium through which God’s will is manifested. The people are the source and original of all political power. Magistrates are made by the people and for the good of the people. As such, they may justly be censured or rejected by the people if they depart from their purpose and pursue wicked ends. Even after the formation of a government, the people perpetually retain their natural right to judge their magistrates and restrain or chastise magistrates who misuse the power conferred upon them. In Sidney’s system, magistrates are subject to the law and to the people; not the other way around.

Two key components of Sidney’s system of accountability are consent and contracts. The people give their consent when they choose a form of government and determine which powers magistrates in that government will have. The people then make contracts with their magistrates, restricting the magistrates’ powers to those granted to them by law. Rulers who go beyond the legal limits of their power, at that moment, cease to be lawful magistrates and may be removed

¹⁰⁵ Ibid., I. 2-3, 5-6, 10-12, 20; II.6; III.33.

from office by the people. Sidney argued that *mixed* forms of government, those which incorporate elements of monarchy, aristocracy, and democracy, are the best political structure for the preservation of liberty. In a mixed system, the *estates* in a society, meeting in an assembly or parliament, can act as judges and correct errant kings and magistrates through legal means. However, if a magistrate refuses to be judged by legal means, then force may be used to bring him to heel and prevent tyranny. If the people did not possess this right to depose kings by force, there would be no restraining the savage fury of tyrants.¹⁰⁶

Sidney drew on Romans 13 to contrast lawful magistrates with tyrannical magistrates. The first are *ministers of God* who are guided by God's justice and obey the laws of God and nature. They are a terror to those who do evil works and praise men who do good works. The latter are *children of the Devil* and do the works of the Devil. They are a terror to good works and praise those who do evil. The first must be obeyed, the second must be opposed.¹⁰⁷ Sidney listed *lives, liberty, and property* as the natural rights of the people, rights which governments are bound by the laws of nature to protect. These are rights which "cannot depend upon the will of any man, for that dependence destroys liberty..." A true minister of God will defend the natural rights of the people, whereas a minister of the Devil will seek to destroy those rights.¹⁰⁸ Sidney followed the familiar pattern of linking the accountability of rulers to the security of the people's natural rights.

John Locke's political writings did not have anything particularly original to say when compared to prior natural rights theorists in the English political tradition. Locke's ideas on natural equality and liberty, government by the consent of the governed, and the right of

¹⁰⁶ Ibid., I.2, 6, 20; II.6-7, 30-32.

¹⁰⁷ Ibid., I.20; III.11.

¹⁰⁸ Ibid., III. 16, 21.

resistance had already been discussed by numerous authors before his *Second Treatise of Government* was published in 1689 in support of the Glorious Revolution. Perhaps Locke's true impact lies in the force and clarity with which he conveyed his ideas in a relatively concise volume, the *Second Treatise* is one-fourth the size of Sidney's *Discourses*. Locke did have a profound impact on the political thinking of the American colonists, but it would be a mistake to view Locke as the creator of a new system of Enlightened political thinking. The great John Locke himself is best situated within the broader English political tradition, a tradition which synthesized social covenants and contracts and drew upon both reason and revelation to support the rule of law in civil society.

Locke's famous *state of nature* contains the proposition that all men are naturally free and equal. 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 the law of nature for his rule." *Political liberty*, that which a man enjoys as a member of a civil 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 legislative shall enact, according to the trust put in it....," for the "freedom of men under government is, to have a standing rule to live by, common to every one of that society... and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man..."¹⁰⁹

Men consent to leave a state of nature and join together in civil society for the better protection of their God-given natural rights of life, liberty, and property. Men thus trade a measure of their natural liberty for the added security afforded to them by political liberty.

¹⁰⁹ John Locke, *Second Treatise of Government*, 1690, ed. C.B. Macpherson (Indianapolis: Hackett Publishing Co., 1980), II.4-6; IV.22.

Magistrates are then entrusted by the people with the authority needed to protect the rights of the community by punishing transgressors of the law. This is the essence of Locke's social contract, merely a social covenant by another name. Its central feature is the rule of law and the absence of arbitrary power.

Locke made a distinction between *political power* and *despotic power*. Political power is “that power, which every man having in the state of nature, has given up into the hands of the society, and therein to the governors, whom the society hath set over itself, with this express or tacit trust, that it shall be employed for their good, and the preservation of their property... and this power has its original only from compact and agreement...” Despotic power is “an absolute, arbitrary power one man has over another, to take away his life, whenever he pleases. This is a power which neither nature gives... nor compact can convey...”¹¹⁰ To live under despotic power would reduce a people to a state of slavery and strip them of all security and property.

A magistrate who breaks the bounds of his lawful authority and attempts to rule with despotic power becomes a tyrant and his attempt to destroy the constitution puts him in a *state of war* with the people. Whenever any magistrate attempts “to take away, and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience...” Their attempt to claim “an absolute power over the lives, liberties, and estates of the people...” breaks the social contract and “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 original liberty, and by the establishment of a new legislative... provide for their own safety and

¹¹⁰ Ibid., XV.171-174.

security, which is the end for which they are in society.” In such a case, the true “rebels” would not be the people who resisted their tyrannical rulers, but the rulers themselves. Rebellion is not carried out against specific rulers; it is a crime committed by anyone who acts in opposition to the laws.¹¹¹

A concept which is found throughout Locke’s *Second Treatise* is his endorsement of an *appeal to heaven*. It is a historical fact that tyrants almost always have positive laws on their side, but Locke pointed out that positive laws are not the standard of justice, natural laws are. When the people have exhausted every ordinary, legal means of resistance against tyrannical rulers, the people’s last recourse is to follow the counsel of Jephthah (Judges 11:27) and appeal to heaven for justice, “Where there is no judge on earth, the appeal lies to God in heaven...” When making an appeal to heaven, a man’s conscience must be certain of the justice of his cause, for he “will answer it, at the great day, to the supreme judge of all men.”¹¹² This final recourse of the people, an appeal to heaven, may be necessary if both the legislative and executive powers, or the supreme and subordinate magistrates, in a community are corrupted and complicit in subverting the laws and the constitution. The people have “by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, viz. to judge, whether they have a just cause to make their appeal to heaven.”¹¹³

The Glorious Revolution in 1688 can be viewed as an appeal to heaven and the royal settlement which followed in 1689 as an attempt to codify in some measure England’s unwritten constitution. The English Bill of Rights (1689) stands with Magna Carta (1215) as a legal

¹¹¹ Ibid., XVIII.199, 207; XIX. 212, 222, 226.

¹¹² Ibid., III.20-21.

¹¹³ Ibid., XIV. 168.

manifestation of England's unwritten constitution and the social covenant-contract between English kings and the English people. It also provided a model for the American Declaration of Independence with its explanation of how a tyrannical government could be replaced by the representatives of the people. There are three main sections to the English Bill of Rights. The first section is a list of 12 charges against King James II. By ruling without the consent of Parliament, keeping a standing army in time of peace, and corrupting the administration of justice, the king "did endeavor to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom..." and the nation was delivered from "popery and arbitrary power" by the elevation of Prince William of Orange to the English throne. James had broken the covenant and disqualified himself from sitting on the throne.¹¹⁴

The second section is a list of England's "ancient rights and liberties," such as, no taxation without consent, the holding of frequent Parliaments, and trial by jury. This is a statement of the political liberties which the English government was designed to protect. The third section declares the election of King William and Queen Mary to the throne by an act of Parliament. The official wording stated that James had "abdicated" the throne and that it was thereby "vacant." Thus, Parliament could elect a new king and queen, monarchs who would agree to rule according to the laws of the realm and respect the rights of the people. This represented a gentle reminder for future monarchs of the conditions set for their rule, an arbitrary executive would not be accepted by Englishmen. The English Bill of Rights ushered in the era of Parliamentary supremacy in England, it was no longer a question who held the supreme authority

¹¹⁴ "English Bill of Rights," in *On Civil Liberty*, ed. Francis Lieber (Philadelphia: J.P. Lippincott & Co., 1883), 492-493.

in the government. Parliament was in charge, but that does not mean that the people of England were fully represented or that arbitrary power became a relic of a bygone era.

It is a sad observation on history that, once in power, men tend to forget the principles upon which that power is founded. Such was the history of the British Parliament during the 18th Century. The Commonwealthmen, or “Real Whigs,” were a vocal minority in British politics who consistently attempted to remind the government of the *Revolution principles* upon which it was founded. The writings of Robert Molesworth, Benjamin Hoadly, and John Trenchard and Thomas Gordon are representative of the principles advanced by the 18th Century Commonwealthmen.

Robert Molesworth was one of the most prominent leaders within this political subgroup. Molesworth’s preface to his translation of Francis Hotoman’s *Franco-Gallia* (1721) provided a definition of a Commonwealthman and described the core principles held by the group. Molesworth described a Real Whig as a man who owns the Revolution principles, “one who is exactly for keeping up to the Strictness of the true old Gothick Constitution, under the Three Estates of King (or Queen) Lords and Commons; the Legislature being seated in all Three together, the Executive entrusted with the first, but accountable to the whole Body of the People, in Case of Male Administration (maladministration). A true Whig is of Opinion, that the Executive Power has as just a Title to the Allegiance and Obedience of the Subject, according to the Rules of known Laws enacted by the Legislative, as the Subject has to Protection, Liberty and Property...”¹¹⁵ As seen in this passage, accountability and security are closely linked in a civil society.

¹¹⁵ Robert Molesworth, “Translator’s Preface,” in *Franco-Gallia*, trans. Robert Molesworth (London: Edward Valentine, 1721), 5.

A Real Whig believes in the rule of law and the right to resist tyrannical magistrates. He believes that the constitution is the supreme authority in the kingdom, for the English:

“Constitution is a Government of Laws, not of Persons. Allegiance and Protection are Obligations that cannot subsist separately; when one fails, the other falls of Course. The true Etymology of the word Loyalty (which has been so strangely wrested in the late Reigns) is an entire Obedience to the Prince in all his Commands according to Law; that is, to the Laws themselves, to which we owe both an active and passive Obedience.”¹¹⁶

Molesworth’s *An Account of Denmark: As it was in the Year 1692* (1694) reminded Englishmen that, although they lived in a free nation after the Glorious Revolution, liberty could be lost if the people did not maintain a careful watch upon their freedoms. This book told the story of how Denmark went from being a free nation to an enslaved nation in 1660. Just like England, Denmark once had a government based on a fundamental constitution, the rule of law, a representative parliament, protections for the liberties of the people, and the power to elect and depose its kings. But that all changed in 1660 and the Denmark of the 1690s was ruled by absolute and arbitrary monarchs.

Parliaments were abolished, liberty was gone, the will of the king was above the law, and poverty and misery were the common lot of all. The fault belonged ultimately to the people themselves. As Molesworth told the story, the commons and the clergy had offered the king absolute power in 1660 in order to curb an insolent nobility which refused to pay its fair share in taxes. While the king did put the nobility in its place, the short-sighted political gains of the other

¹¹⁶ Ibid., 6.

estates were overshadowed by the chains which the king next placed on the people. In reality, the people had forged their own chains and handed the king the keys.¹¹⁷

Denmark's constitution had lost the core principle which is necessary to maintain the rule of law, the accountability of magistrates. Having made the king above the law, the people were powerless to restrain his actions. The loss of accountability led directly to the loss of security. The people, whether commoners or nobles, no longer had any property which they could call their own. Everything they possessed was held at the pleasure of the king and might be taken from them at any moment.

The Danish kings used two pillars to support their tyrannical rule, a standing army and the clergy. The army was made up of foreign mercenaries who would have no reservations about using armed force to quash any Danes who resisted the extortion of heavy taxes, the mercenaries were paid out of those taxes after all. Thus, a standing army was used to bind the bodies of the Danish people. The second pillar was the Lutheran clergy, who supported the king by teaching doctrines of passive obedience, that it was a sin against God to resist any of the king's actions. This teaching was effective in binding the souls of the people. Viewing the political scene from the perspective of the 1690s, Molesworth forecast that it was unlikely Denmark would break its chains and regain its lost liberty any time soon, its people would continue to be slaves under tyrants.¹¹⁸

Molesworth admonished the people of England to learn from the lesson of Denmark and stand watch over their liberties. The key was to preserve England's constitution, which was based on an original contract, from being subverted. Englishmen were born free and they had a

¹¹⁷ Robert Molesworth, *An Account of Denmark* (London: Timothy Goodwin, 1694), 39-49, 67-68.

¹¹⁸ *Ibid.*, 68-80, 228-231, 235-246.

duty to transmit that freedom to posterity. The recent history of Denmark demonstrated that, if the principle of accountability was lost, security would be lost along with it. The result, as Denmark also demonstrated, would be a slavery marked by poverty and misery. “Want of liberty is a disease in any society or body politick.”¹¹⁹

Bishop Benjamin Hoadly’s *The Measure of Submission to the Civil Magistrate Consider’d* (1718) is a collection of several of Hoadly’s sermons and a defense of his doctrines. In this collection, Hoadly demonstrates how Commonwealthmen viewed the difference between God’s providence and his revealed will, the lawfulness of resistance, and the supremacy of the constitution. In his exposition of Romans 13, Hoadly asserted that a minister of God is one who performs the “positive will,” i.e. revealed will, of God as found in the duties laid out in Scripture. A magistrate who does not fulfill those duties is acting contrary to God’s revealed will, and thus, contrary to the divine commission for civil authorities. While God’s superintending providence places tyrannical rulers on thrones, that does not imply God’s approval of their tyrannical actions. Tyrants have no authority from God to act against God’s revealed will, that would be an absurd claim, and are instead acting as ministers of the Devil by promoting injustice and oppression. Since God ordained the office of magistracy as a means to secure the public happiness, neither reason or revelation require subjects to sit passively while a tyrant ruins the nation in opposition to God’s revealed will.¹²⁰

Hoadly’s central doctrine was that, when governors “act contrary to the End of their Institution, and invade the Rights of their Subjects, and attempt the ruine of that Society over which they are placed; it is Lawful and Glorious for these Subjects to consult the Happiness of

¹¹⁹ Ibid., Preface.

¹²⁰ Benjamin Hoadly, *The Measure of Submission to the Civil Magistrate Consider’d* (London: James Knapton, 1718), 25-28, 38, 110, 118-122, 131.

the Public, and of their Posterity after them, by opposing and resisting such Governours.”¹²¹

Romans 13 provides no grounds for those demanding absolute obedience on the part of subjects. Submission to civil authority is only a duty when magistrates are just and rule according to the constitution. Submission is not a duty when magistrates are evil and attempt the subversion of the constitution and the ruin of society. Since magistrates that act contrary to their divine commission and their contract with the people are not ministers of God, opposition to them is not opposition to God, rather, it is obedience to God’s revealed will.¹²²

Hoadly cited the actions of the Apostle Paul as evidence for the lawfulness of resistance to magistrates acting without the authority of law. Since Romans 13 is so often cited by advocates of passive obedience, Hoadly argued Paul’s *actions* should be used to interpret his *doctrine* concerning civil authority. Acts 16, 22, and 23 are all cited by Hoadly as examples of instances in which Paul demanded the recognition of his civil rights, as a Roman citizen and an Israelite, in response to magistrates who acted in violation of the law. Surely, if Paul expected unlimited, passive submission from other Christians, he would have kept his mouth shut and endured unjust persecution in these cases. Instead, Paul claimed the superiority of the law over magistrates and made their adherence to the law the measure of their administration. Paul’s actions show that he viewed the submission required from subjects as limited and that he only advocated obedience to lawful authority.¹²³

Another argument Hoadly used to defend the right of resistance was the Glorious Revolution. If resistance to tyrants was not lawful, then the entire foundation of England’s present political establishment would crumble to dust. If the people did not possess a natural

¹²¹ Ibid., 61-62.

¹²² Ibid., 1-16, 51.

¹²³ Ibid., 209-220.

right of resistance, based on the law of self-preservation, “the Late Revolution, which (as everybody at that time acknowledged) saved us from utter Ruine, and the Protestant Settlement, which (as everybody ought to acknowledge) can only for the future preserve us from the same ruine, had been both impossible.”¹²⁴ The right of resistance exercised during the Revolution had defended the supremacy of the English constitution and preserved the liberties of the people.

The rule of law is necessary if any government is to fulfill its primary function of providing for the happiness of society. That happiness consists in the citizens’ enjoyment of liberty, property, and the free exercise of religion. Arbitrary governance is a danger to these rights and would turn the people into the slaves of their governors, instead of the governors being the servants of the people. The Revolution had saved the constitution from destruction and England from absolute monarchy.

The English constitution was “so fram’d , that we enjoy all the Liberty that is consistent with good Government, without lying at the Mercy of any one Person. By the same good Providence we can much more justly call our Possessions, and our Labours, our own, than they can who are liable to the Invasion of an Absolute Monarch, whensoever He pleaseth.”¹²⁵ To reject the principles of the Revolution would be to reject England’s present constitution and the security and happiness of the people living under it, “and need I tell to what it is that we owe these singular and invaluable Happinesses? Is it not too plain to need any Proof that we owe them all entirely to the late Revolution, and those Principles upon which it was founded?...

¹²⁴ Ibid., 66.

¹²⁵ Ibid., 201.

without which our Liberties, and Properties, had long ago been nothing but Words; and our Religion nothing but Passive Obedience.”¹²⁶

Another major contribution to the political thought of the Commonwealthmen was a collection of essays written by John Trenchard and Thomas Gordon entitled *Cato's Letters* (1720s). A regular theme of *Cato's Letters* was the necessity of the rule of law to the security of the people's rights. By definition, a *free government* is one in which there are constitutional limits placed on the power of magistrates. In a free government, the power of magistrates is fixed by the law and rulers are accountable to the people for any breaches of the trust placed in them. This accountability of rulers to the law produces security for the people and, in turn, security produces material prosperity for a nation. It is only in a nation where the law rules that the people will have a level of security which produces prosperity. Liberty and property are the natural rights of the people and the rule of law protects these rights. It is only the foolish and those who expect to share in power who promote doctrines of unlimited power and passive obedience.¹²⁷

Despotic or arbitrary government is the polar opposite of a free government. In an arbitrary system, the rulers possess unlimited powers and are not accountable to the law. This unaccountability leads to the loss of security; the lives, liberties, and property of the people are precarious and subject to the whims of tyrants. That insecurity results in poverty and misery, who works hard when they have no guarantee they will receive the benefits of their labor? Since tyranny does not rest on the consent of the governed, it relies on force and terror to control the

¹²⁶ Ibid., 202.

¹²⁷ John Trenchard and Thomas Gordon, *Cato's Letters*, ed. Ronald Hamowy (Indianapolis: Liberty Fund, 1995), volume II, no. 60, 61, 63, 68; volume III, no. 75-76.

people.¹²⁸ The law means nothing in such a case, for “the laws therefore of tyrants are not laws, but wild acts of will, counselled by rage or folly, and executed by dragoons.” Tyranny, especially in the form of arbitrary, absolute monarchy “is a constant war upon heaven and earth, against the souls as well as bodies and properties of men.”¹²⁹

Trenchard and Gordon also weighed in on the difficulties of governing colonies when all lawful government rests on the consent of the governed. It would be unjust to apply the principles of natural rights to Britain, while denying those principles to the American colonies. There are really only two ways to govern a nation, with consent or with force. Similarly, there are only two ways to maintain the dependence of colonies on the mother country, consent or force. The key to maintaining the consent of a colony’s population was to promote the mutual economic interest of the two regions. It would be natural for the American colonies to grumble about their dependence if the mother country enforced laws contrary to the interest of the colonists. Mutual interest must be cultivated in order to maintain harmony between the colonies and the mother country.

The other option was to use armed force to coerce colonies into continued dependence. Trenchard and Gordon cautioned against Britain taking this approach with its American colonies. The exercise of force would destroy the economic prosperity of the colonies, and then what good would they be to Britain? It would also be a rejection of the political principles the Commonwealthmen wanted Britain to be governed by.¹³⁰

¹²⁸ Ibid., II.60, 62-63, 68.

¹²⁹ Ibid., II.63.

¹³⁰ Ibid., II. 60; III.95; IV.106.

One final theorist representative of the English political tradition is the famous jurist William Blackstone, whose *Commentaries on the Laws of England* (1765) was published at the beginning of the troubles between Britain and the American colonies. Blackstone was not properly a Commonwealthman, although he did assert natural rights as the foundational basis for the civil rights of Englishmen. Blackstone represents the state of political thought in Britain on the eve of its troubles with America. He shows that the principles of natural rights still held great sway among British theorists, yet the principles had been tempered in practice. *Parliamentary supremacy*, with its assertion that Parliament's power was absolute and without control, had come to replace the *constitutional supremacy* which earlier natural rights theorists and the Commonwealthmen had advocated. Blackstone tended to take for granted the proposition that Parliament, comprised of the Commons, Lords, and the king, represented the people and would always act to protect the natural rights of the people. In particular, Blackstone shied away from theories on the dissolution of government and the accountability of the king.

Blackstone accepted the two sources of truth as providing the foundations for just government, "upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these."¹³¹ He was also vocal in asserting that civil authority derives its lawful authority from the consent of the governed and that the primary purpose of government is to protect the natural rights of the people. *Political liberty* is "no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public."¹³²

¹³¹ William Blackstone, *Commentaries on the Laws of England*, vol. I, ed. George Sharswood (Philadelphia: J.P. Lippincott, 1893), 42.

¹³² *Ibid.*, 125.

Men have a natural right to personal liberty, personal security, and private property. Blackstone praised Britain's mixed constitution for protecting these natural rights and maintaining a balance of power between the elements of monarchy, aristocracy, and democracy. He admitted that the subversion of that constitution by any of the branches would be a breach of the original contract upon which the constitution was based. However, he thought Mr. Locke "perhaps carries his theory too far" by stating that this would amount to a dissolution of government and that the civil power would then devolve to the people, who would have a right to create a new government. However just the conclusions of Locke and other theoretical writers were "in theory," those conclusions could not be adopted as practical guides.¹³³

Blackstone also showed an interesting interpretation of the right British kings had to their title. He argued that British monarchs had a "hereditary right," but one which was limited by law and subject to certain conditions outlined by Parliament. He was quick to assert that this was not to say that British monarchs had a "divine right" to the throne, instead, their title rested on the consent of Parliament. But, he argued that British monarchs were not "elected" to an office. As absurd as claims to divine right were, the claim that kings were elected was even more absurd.

Only such wild republicans as the men who had executed King Charles I would hold such an idea. It was against reason that Charles "should be told by those infamous judges who pronounced his unparalleled sentence, that he was an elective prince; elected by his people, and therefore accountable to them, in his own proper person, for his conduct."¹³⁴ Blackstone thus represents a tension between principle and practice in Britain in the mid-18th Century. While natural rights theories remained important in Britain, those in positions of power in the British

¹³³ Ibid., 51, 160.

¹³⁴ Ibid., 191-195, 209.

government had a tendency to step back from theoretical conclusions which would endanger their practical political power. That tension between principle and practice is not unique to Britain in the 18th Century, it can also be seen throughout the history of America and every other nation.

Conclusion

This chapter has sought to show how Christian theorists reconciled the two sources of truth in the Medieval Era and the Reformation. This reconciliation allowed later natural rights theorists to draw on the evidence of both reason and revelation in support of their doctrines. The second focus of this chapter was to show the importance of covenant theology in regards to civil authority during the Reformation. The covenant theology developed in Reformed circles and the social contract theories of the Enlightenment were virtually synonymous in their key doctrines and practical applications. Thus, the third focus of this chapter was to demonstrate the synthesis that took place between covenant theology and social contract theory in the English political tradition in the 17th and 18th centuries.

The result of this synthesis was the doctrine of constitutional supremacy. The Massachusetts Patriots had learned from their English ancestors that, in a free nation, the law was king. No magistrate was above the law and all were accountable to God and the people for their actions. The accountability of magistrates was regarded as the best means to ensure the security of the people's natural and political liberties. The Massachusetts Patriots would agree with James Harrington's maxim that "the commonwealth where the law is king, is... the kingdom of God. And where by the lusts or passions of men a power is set above that of the law

deriving from reason, which is the dictat of God, God in that sense is rejected or depos'd that he should not reign over them..."¹³⁵

¹³⁵ Harrington, *Oceana*, 104.

Chapter 3: English Liberties

“The rights of Magna Charta depend not on the will of the prince, or the will of the legislature; but they are the inherent natural rights of Englishmen: secured and confirmed they may be by the legislature, but not derived from nor dependent on their will.”¹

From the beginning, Colonial Massachusetts had a political mindset which was based on the concept of social covenants. Every relationship was understood as being governed by a covenant; husbands and wives, parents and children, and members of a civil society, all were based on reciprocal obligations and each party was directed to fulfill the conditions for their role. The Massachusetts colonists were adept at codifying these covenants with written legal documents. When writing those documents, they drew upon their religious and political heritage as Puritans and as Englishmen. The first settlers in what became Massachusetts, the “Pilgrims,” were English Separatists, a subgroup of the Puritans, who left Europe seeking greater religious freedom.

Puritans were the hardline Protestants of the 17th Century and their rejection of the church hierarchy and various ceremonies of the Anglican Church put them in conflict with the powers-that-be in England. The Puritans belonged to the “Reformed” branch of Protestantism and most of their theology can be classified as “Calvinism,” from the teachings of John Calvin. By coming to the New World, the Pilgrims hoped to establish both civil and church communities that were in conformity to God’s Word.

¹ Elisha Williams, *The Essential Rights and Liberties of Protestants*, 1744, in *Political Sermons of the American Founding Era*, vol. 1, ed. Ellis Sandoz (Indianapolis: Liberty Fund, 1998), 103.

The first settlement established by the Pilgrims in 1620 was named Plymouth. Despite harsh winters and various trials, the Pilgrims survived and their settlement grew into the colony of Plymouth. A much larger wave of Puritan emigrants came across the Atlantic in the 1630s in the “Great Migration.” These settlers established the colony of Massachusetts Bay; and the two colonies, Plymouth and Massachusetts, remained legally separate until 1691. This whole region, which later included several other colonies, was often referred to as New England.²

While these two colonies were legally separate, their political systems developed along nearly identical lines and the colonists shared a general political mindset. Following the Reformed and English traditions discussed in chapter two, the Massachusetts Puritans accepted the two sources of authority, reason and revelation, and drew from each when crafting their legal-constitutional systems. A second feature of the Plymouth-Massachusetts system was the covenantal basis for civil society. The synthesis of social covenants and social contracts which took place in England in the 17th and 18th centuries was shared by the New England colonists. The colonists may have been ahead of their English brethren in one area, the codification of the social covenant into written documents. England continued to have an unwritten constitution at the same time that the Plymouth and Massachusetts colonies had written charters, defining their relationship with the English king, and numerous legal statements which further explained the laws and liberties of the land.

A third feature of the New England political system was the high level of self-government found in the colonies. Colonial society was far more egalitarian than in England and far more adult males were included in the political process. This gave New England politics a

² Alan Taylor, *American Colonies* (New York: Penguin Books, 2001), 158-166.

decidedly “republican,” i.e. commonwealth, mold in comparison to English politics. Government was closer to the people in the New England colonies and colonial magistrates were readily accountable to the people for their actions, at least until the creation of a new charter in 1691. This chapter will seek to draw on these features of New England politics in order to assess several key points.

The first major focus of this chapter is an examination of the covenantal understanding of civil society in the colonies of Plymouth and Massachusetts Bay. The founding documents for the colonies, including the Charter of Massachusetts Bay (1629), demonstrate a covenantal approach to civil society which rested upon the consent of the governed. New England colonists clearly understood the people as the original source of political authority, since the people were the medium through which God appointed magistrates. The reciprocal nature of covenants also made magistrates accountable to the people for their actions and created a sense of security in regards to the rights of the people. The second focus of this chapter will be an assessment of how the principles of accountability and security were woven into the legal framework of New England politics. From the beginning, the New England colonists demonstrated a concern for protecting the rights of the people from magistrates who might seek to exceed their lawful authority.

The nature of the colonial interpretation of the charters will be the third focus of this chapter. The New England colonists viewed their charters as constitutions, i.e. manifestations of a social covenant-contract made between the English king and the people living in the colonies. As such, they understood the charters as containing the fundamental laws governing civil society and, as natural rights doctrines taught, the fundamental laws cannot be changed without the consent of the whole people living in a community. The charters were not viewed by New

Englanders as gracious concessions of a magnanimous king, the charters were viewed as binding agreements between the king and the colonists. The actions of both sides were bound by the limits set in the charters.

This chapter will be divided into three sections since New England politics went through three major phases during the colonial era. The first section will cover events and sources concerning the founding of the colonies and the time period under the “First Charter” (1620-1684). The second section will consider events in New England which happened at the same time as the Glorious Revolution in England (1684-1691). The New England political system was shattered in 1684 when the Massachusetts Charter was revoked and, one year later, when King James II attempted to consolidate all the New England colonies into the “Dominion of New England.” Similar to their brethren in the mother country, the New England colonists rose up and cast off the shackles of tyranny being forced upon them by an arbitrary government.

The destruction of the First Charter led to the creation of a “Second Charter” in 1691 which officially combined Massachusetts and Plymouth into a single royal colony. While restoring many liberties to the colonists, this charter represented a compromise between royal authority and self-government which lessened the accountability of magistrates to the people. The period 1691-1765 represents a near-continuous struggle between the colonists and the Crown over the accountability of magistrates in the colony. During this period, the understanding of the charter as a written constitution became crucial to the colonists as a means to gain greater security for their lives, liberties, and property.

I. The First Charter (1620-1684)

When the first Pilgrims arrived on the shores of America in 1620, they found themselves in a situation as close to a *state of nature* as perhaps any group of people has ever been in. They were in a land beyond the bounds of the laws of England and beyond the legal authority of the English state. The action taken by the Pilgrims is reflective of the political mindset which governed the New England colonies throughout the Colonial Era. One of the first things the Pilgrims did upon arriving in America was to draw up a covenant, in written form, which rested upon popular consent. The document created was The Plymouth Combination, better known as The Mayflower Compact (1620).

In this constitutional document, the men of the colony agreed to “solemnly and mutually, in the presence of God and one another, Covenant and Combine our selves together into a Civil Body Politick, for our better ordering and preservation...” This basis of popular consent granted the civil authorities the power to “enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions and Officers, from time to time, as shall be thought most meet and convenient for the general good of the Colony...” The central condition for magistrates under a social covenant can be seen in this phrase. The rulers would ensure that the laws were “just and equal,” thus ensuring the protection of the people’s rights. Immediately after that statement comes the covenantal obligation placed upon the people. They promised “all due submission and obedience” to the civil officers and the just laws established for the community.³ The colony of Plymouth was created by an explicit covenant between the citizens of the community.

³ “Mayflower Compact,” 1620, in *Colonial Origins of the American Constitution*, ed. Donald Lutz (Liberty Fund: Indianapolis, 1998), 49-50.

As the colony grew, Plymouth developed a tradition of self-government and the rule of law based on that initial covenant. An effort was made in the 1630s to flesh-out the constitution which was to govern the colony. The Plymouth Agreement (1636) succinctly stated the most fundamental law of the colony, that no laws could be made without the consent of the governed. The colonists were “freeborn subjects,” and as such, “noe act imposition law or ordinance be made or imposed upon us at present, or to come but such as shall be imposed by Consent of the body of associates or their representatives legally assembled; which is according to the free liberties of England.”⁴

That statement laid the foundation for the Pilgrim Code of Laws (1636), a more comprehensive statement of the Plymouth Constitution. After beginning with the requirement of consent, the document went into an explanation of the primary means by which that consent would be expressed, the election of magistrates. In Plymouth, every magistrate of significance was to be elected annually by the freemen of the colony. Once a year, the freemen would elect a governor and seven assistants to manage the political affairs of the colony. These positions were *offices* and the authority of the *officers* was limited to specific areas.

The governor’s primary role was set as the execution of the laws and the calling of the assembly, the general court of assistants, when required. The assistants were to act as the colony’s assembly and an advisory body to aid the governor. Any person entering either office was required to take an oath. The governor swore to “be truly loyal... to administer justice... execute the laws and... labor to advance and further the good of the colonies and plantations

⁴ “Plymouth Agreement,” 1636, in *Colonial Origins of the American Constitution*, ed. Donald Lutz (Liberty Fund: Indianapolis, 1998), 73.

within the limits thereof to the utmost of your power and oppose any thing that shall seem to hinder the same. So help you God, who is the God of truth and punisher of falsehood.”⁵

Assistants swore to “be truly loyal...diligently, duly, and truly see that the laws and ordinances of this corporation be faithfully executed... and... labor to advance the good of the several plantations within the limits thereof and oppose anything that shall hinder the same by all due means and courses.”⁶ The freemen of the colony also swore an oath. They agreed to be loyal, just as the officers had, and to “faithfully submit to such good and wholesome laws and ordinances as either are or shall be made for the ordering and government of the same...”⁷

Provisions were also made for constables and other inferior officers within the colony, along with a clear statement ensuring the right to a trial by jury for any freeman in the colony. Plymouth would follow the precedent set by England in the administration of justice. Plymouth’s Constitution made it clear that the law was king in the colony and not the will of the rulers. It also was explicit in its assertion that the colonists possessed the *liberties of Englishmen* and could only be governed by their consent. What was subtly implied was that the authority of the English king, and by extension the English state, was also restricted to the bounds set by the consent of the Plymouth colonists.⁸

The constitution presented in the Pilgrim Code of Laws was revised 22 years later in the Puritan Laws and Liberties (1658). The preface to this document stated that, when framing their political constitution, the colonists had their eyes on the law of God and the principles of moral

⁵ “Pilgrim Code of Law,” 1636, in *Colonial Origins of the American Constitution*, ed. Donald Lutz (Liberty Fund: Indianapolis, 1998), 76.

⁶ *Ibid.*, 77.

⁷ *Ibid.*, 76.

⁸ *Ibid.*, 74-79.

equity. Their primary source for good and wholesome laws would be those instructions God granted to ancient Israel in Scripture, but they would also look to the profitable examples of the heathen nations who framed laws in accordance with moral equity, i.e. natural law. Essentially, the men of Plymouth would consult both reason and revelation when crafting their political constitution.

They also pointed to the covenant made in the Mayflower Compact (1620) as the moment at which the political society of Plymouth was created by the people themselves. The document then included sections on the annual election of the governor and seven assistants and the oaths to be taken by officers and freemen. Those drawing up these revisions made sure to restate the most fundamental law in the colony, that the freemen of Plymouth would only be governed by laws made with their consent.⁹

The founding of Plymouth's sister-colony of Massachusetts Bay was similarly shaped by a covenantal understanding of civil society. John Winthrop, a long-time governor and one of the most important leaders in the early years of the colony, gave a message entitled *A Modell of Christian Charity* (1630) onboard one of the ships crossing the Atlantic on its way to America. This message reminded the Puritan colonists of their mission to create a godly society in the wilderness, "a city upon a hill." He expounded two fundamental rules which would shape the colonists' "walke towards one another: Justice and Mercy." The colonists would also be governed by a "double Lawe... the law of nature and the lawe of grace... By the first of these lawes man as he was enabled soe withall [is] commaunded to love his neighbour as himself upon

⁹ "[Puritan] Laws and Liberties," 1658, in *Colonial Origins of the American Constitution*, ed. Donald Lutz (Liberty Fund: Indianapolis, 1998), 138-148.

this ground stands all the precepts of the morrall lawe, which concernes our dealings with men.”¹⁰

Winthrop instructed his listeners to consider their work in establishing a colony as a commission from God, a commission which was based on a covenant:

“Thus stands the cause betweene God and us, wee are entered into Covenant with him for this worke, wee haue taken out a Commission... Now if the Lord shall please to heare us, and bring us in peace to the place wee desire, then hath hee ratified this Covenant and sealed our Commission, [and] will expect a strickt performance of the Articles contained in it, but if wee shall neglect the observacion of these Articles... the Lord will surely breake out in wrathe against us and be revenged of such a periured people and make us knowe the price of the breache of such a Covenant.”¹¹

If the Massachusetts colonists observed the articles of the covenant, by practicing justice and mercy, God would bless them in their endeavor. But if they broke the covenant, through injustice and impiety, God would curse the colony and cause its destruction. While the members of the community were the primary parties in the covenant, God was also a party to Massachusetts’ civil society.

Winthrop’s “Little Speech on Liberty” (1645) shows further evidence of the covenantal nature of Massachusetts society. As governor, Winthrop went through an impeachment process in 1645 and gave this speech after his acquittal. In it, he discussed the bounds of authority and liberty in a civil society, since “the great questions that have troubled the country, are about the authority of the magistrates and the liberty of the people.” Winthrop pointed to the people as the source of a magistrate’s lawful authority, for “it is yourselves who have called us to this office,

¹⁰ John Winthrop, *A Modell of Christian Charity*, 1630, Papers of the Winthrop Family, Massachusetts Historical Society, 2.

¹¹ *Ibid.*, 13-14.

and being called by you, we have our authority from God, in way of an ordinance...”¹² The people were the medium or secondary cause by which God appointed magistrates and granted them power over a civil society.

Winthrop described magistrates, including himself, as servants of the people. Since magistrates share the same corrupt nature as all other men, perfection is not to be expected from those in power. The standard of a good servant is whether or not his will is directed towards fulfilling his covenantal obligations. The covenant between Winthrop, as governor, and the people was codified in “the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God’s laws and our own, according to our best skill.” If a magistrate were to willfully break the covenant and fail in his trust, he would be accountable to the people for that breach of faith.

Winthrop concluded his speech with an exposition of civil liberty, that freedom which men possess while living under a political covenant. He described civil liberty as the “proper end and object of authority.” Furthermore, liberty could not exist without civil authority, the two rise and fall together. Civil liberty “is maintained and exercised in a way of subjection to authority...,” an authority which is established by the political covenant agreed to by the people. Any use of authority which ran counter to the civil liberty of the people was not properly authority, but “a distemper thereof.”¹³

John Cotton, an important minister and leader in New England, also expressed the reciprocal relationship between the authority of magistrates and liberty of the people. Cotton

¹² John Winthrop, “Little Speech on Liberty,” 1645, in *The American Republic*, ed. Bruce Frohnen (Liberty Fund: Indianapolis, 2002), 34.

¹³ *Ibid.*, 34-35.

described the political system of New England in a letter to an English nobleman considering emigrating to the colonies in the 1630s. In that letter, he asserted that Scripture contained instructions for the right ordering of both church and civil governments. While being two distinct spheres of government, the church and the state would operate along similar lines. The government of the New England colonies was properly a *commonwealth*, one in which the people elected their rulers and the rulers governed according to the established laws. New England was a popular government, but not a direct democracy. It was the representatives of the people who exercised civil authority, not the people themselves. In this system, the authority of magistrates and the liberty of the people “mutually and strongly mainteyne one another.”¹⁴

The political system of Massachusetts was established by the Charter of Massachusetts Bay (1629), the First Charter and the system under which the colony was governed from 1629-1684.¹⁵ There were four key features to this constitutional document. First, the colony of Massachusetts Bay was established as a political body. The creation of this civil society took the form of an implicit covenant between the English king and the colonists migrating to the area within the geographical bounds of Massachusetts Bay. The second feature was the creation of the government which was to act as the civil authority in the colony. Massachusetts was to operate as a republic, essentially a little commonwealth, with almost total control over its internal affairs. Government would operate on the principle of the consent of the governed as the freemen of the colony would elect all the significant political officers for the colony.

The government would consist of a governor, a deputy governor, and 18 assistants; all of whom would be chosen by the freemen in annual elections. These three groups would hold

¹⁴ “Copy of a Letter From Mr. Cotton to Lord Say and Seal,” 1636, in *The American Republic*, ed. Bruce Frohnen (Liberty Fund: Indianapolis, 2002), 36-38.

¹⁵ Charter of Massachusetts Bay, 1629.

regular meetings throughout the year, known as “general courts.” Under the First Charter Massachusetts, like Plymouth, enjoyed a high-degree of self-government and was largely free from the coercive power of royal officials sent from England. The third feature was the extensive powers granted to the government of Massachusetts Bay. The Massachusetts government had all the essential powers of an independent republic. It could create additional government offices and appoint officers for the better administration of government, carry out the administration of justice, exercise military force in defense of the colony, and most importantly, make its own laws. There was one key limit set to the laws made in Massachusetts, that “such Lawes and Ordinances be not contrarie or repugnant to the Lawes and Statuts of this our Realme of England.”¹⁶

The fourth feature of the 1629 Charter was a promise made by the king to the people of Massachusetts Bay. The colonists were to have the same civil rights as the citizens of England. All freemen living in Massachusetts would “have and enjoy all liberties and Immunities of free and naturall Subiects within any of the Domynions of Us. our Heires or Successors, to all Intents, Construccions, and Purposes whatsoever, as yf they and everie of them were borne within the Realme of England.”¹⁷ The colonists were to be governed only by their own consent and by representatives whom they had elected to act on their behalf. The First Charter created a political system in which the magistrates were accountable to the people and the rights of the people were protected by laws to which they had given their consent. The Charter thus acted as a functional constitution for Massachusetts Bay.

¹⁶ Ibid.

¹⁷ Ibid.

The freemen of Massachusetts demonstrated a marked concern for the protection of their rights as men and as Englishmen. This can be seen in the Massachusetts Body of Liberties (1641), which took the form of a *bill of rights* for the colony. The document began with a statement on the fundamental connection between liberty and stability in any society: “The free fruition of such liberties Immunities and priveledges as humanitie, Civilitie, and Christianitie call for as due to every man in his place and proportion; without impeachment and Infringement hath ever bene and ever will be the tranquillitie and Stabilitie of Churches and Commonwealths. And the deniall or deprivall thereof, the disturbance if not the ruine of both.”¹⁸ The document then went into a list of rights, liberties, and privileges which included 98 articles. These were rights which the freemen of Massachusetts were to enjoy “impartiallie and inviolably.”

Numerous articles referred to the administration of justice and demonstrated a concern that no man’s life, liberty, or property be taken away without just cause. The very first article enshrined the rule of law in the colony by stating that none of these rights could be taken away “nor any way indammaged under Coulor of law, or Countenance of Authoritie, unlesse it be by vertue or equitie of some expresse law of the Country warranting the same, established by a generall Court and sufficiently published...” The law was to be the final authority in the colony. The second article endorsed the principle of legal equality, every man was equal under the law: “Every person within Jurisdiction, whether Inhabitant or forreiner shall enjoy the same justice and law, that is generall for the plantation, which we constitute and execute one towards another, without partialitie or delay.”¹⁹

¹⁸ “Massachusetts Body of Liberties,” 1641, in *Colonial Origins of the American Constitution*, ed. Donald Lutz (Liberty Fund: Indianapolis, 1998), 82.

¹⁹ *Ibid.*, 83.

Other articles contained such familiar protections as no double jeopardy (Article 42), no cruel or unusual punishments (45 & 46), and the right to a trial by a jury composed of freemen from the local area (50). A concern for free and fair elections was also expressed. Each town had the right to elect its own representatives to the General Court on an annual basis (62, 67, 68). Furthermore, the General Court could not be “desolved or adjourned without the consent of the Major parte thereof” (69), preventing an arbitrary governor from doing away with the representatives of the people and ruling by his own will.

The final article was designed to ensure that the statement of these rights and liberties was consistent with the will of the people. The Massachusetts Body of Liberties would not go into effect immediately under the authority of the General Court which was in session when it was written. The entire document was ordered to be read and discussed every year, over the next three years, and any articles which were not altered or repealed during that time would be considered as having been ratified. This process of ratification ensured that the people, through their representatives, were a party to the approval of the fundamental laws and liberties contained in this bill of rights.²⁰

The Laws and Liberties of Massachusetts (1647) was a codification of laws made by the General Court in preceding years. It represents a working-out of Massachusetts’ Constitution in the practical administration of government and an application of the fundamental principles of civil society which were held by the Puritans who founded the colony. The document began with a statement of those fundamental principles. First, the General Court looked to the lights of reason and revelation in the crafting of the laws by which Massachusetts was to be governed. All

²⁰ Ibid., 82-95.

the laws which they made were to be framed in accordance with the law of nature and God's Holy Word. Second, the representatives sitting in the Court recognized that they were exercising a delegated power granted to them by the people, who acted as the medium of God's will. The people had called the representatives "from amongst the rest of our Bretheren and given us power to make these lawes..." The representatives' civil authority rested on the consent of the governed.²¹

Many of the articles found in the Laws and Liberties (1647) are the articles which were accepted or revised from the Body of Liberties (1641). Thus, elections and the fair administration of justice took center stage once again. The Massachusetts Constitution was to function along the lines of federalism. Each town had the authority to make laws applicable within its own jurisdiction, provided those laws were not contrary to the laws of the General Court. The representatives sent to the General Court were to be selected by township, with no more than two deputies representing each town. Thus, each region in the colony was to have its say in the governance of the colony.²²

As can be seen in these constitutional documents, the freemen of Massachusetts were supporters of the principle of self-governance. Massachusetts operated largely as a little commonwealth within the dominions of the English king, a commonwealth which was nearly independent from the political authority of the king and the English Parliament. A 1661 Act of the General Court asserted that autonomy and stood as a defense of self-government in the face of encroachments made by English authorities. Notably, this act was passed one year after the Restoration of Charles II to the throne in England. Perhaps, with the restoration of the monarchy,

²¹ "The Laws And Liberties Of Massachusetts," 1647, in *Colonial Origins of the American Constitution*, ed. Donald Lutz (Liberty Fund: Indianapolis, 1998), 101-104.

²² *Ibid.*, 111-117, 129-131.

the colonists were afraid of increased royal control over the colonies. The Act was divided into two succinct sections, the first concerns the liberties of the colony and the second concerns the duties and allegiance which the colonists believed they owed to the English king.

The colonists believed the patent (Charter) “(under God) to be the first and main foundation of our civil polity here...” Massachusetts Bay was a body politic “in fact and name” in which the freemen had the right to choose the magistrates who were to represent them in the colony’s government: “The governor, deputy governor, assistants, and select representatives or deputies have full power and authority, both legislative and executive, for the government of all the people here... without appeal, excepting law or laws repugnant to the laws of England.” Since the colonists had the right to govern themselves, they perceived “any imposition prejudicial to the country contrary to any just law of ours, not repugnant to the laws of England, to be an infringement of our right.”²³

After making their defense of self-government and condemning any attempt by external bodies to impose control over the colony, the General Court then asserted their loyalty to the king. They did not see any contradiction between standing up for their liberties and the obedience they owed to the king. In fact, it was perfectly consistent with loyalty for the colonists to plead “with their prince against all such as shall at any time endeavor the violation of their privileges...”²⁴ The freemen of Massachusetts thus regarded their Charter as both a covenant between the king and people and as a constitution which contained the fundamental laws of the

²³ “An Act of the General Court (Mass.),” 1661, in *Colonial Origins of the American Constitution*, ed. Donald Lutz (Liberty Fund: Indianapolis, 1998), 149-150.

²⁴ *Ibid.*, 150.

colony. The most fundamental law of which was that the people of Massachusetts would only be governed by laws made with their consent.

The political mindset of Massachusetts was reinforced not only by political statements, but also by messages from the pulpit. The preachers of this colony often stood as some of the most vocal proponents of the rights of the people as men and citizens. Political sermons were a regular occurrence in Massachusetts throughout the colonial era. Some political sermons were inspired by specific events and provided the people with spiritual direction in their current temporal affairs. Others were worked into the ordinary operation of Massachusetts' political life. There were two sets of annual sermons in Massachusetts which provide a regular glance at the political mindset of the colony, the *election sermons* and the *artillery sermons*.

Under the First Charter (1629), election sermons were generally given before the deputies of the General Court, and any other officials present, at the time of the election of the governor. Under the Second Charter (1691) these sermons were given on the day upon which the members of the Council (assistants) were selected. Artillery sermons were given when it was time to elect officers for the colonial militia. Since both of these events were ripe with civic significance, Massachusetts preachers took these opportunities to instruct both the people and civil authorities upon their duties as found in reason and revelation. It became common for these political sermons to be printed and made available throughout the colony. In the political sermons of the Colonial Era, the Massachusetts colonists were instructed on God's divine approbation of their political system.²⁵

²⁵ Baldwin, *The New England Clergy and the American Revolution*, 4-9.

John Davenport's 1669 *Election Sermon* drew upon the last words of King David in 2 Samuel 23:3, "The God of Israel said, the Rock of Israel spake to me, He that ruleth over men must be just, ruling in the fear of God." The first doctrinal point which Davenport put forth was that God's ordinance for civil government was that "some men, orderly chosen, should rule over other men." In his exposition of this point, he dealt with the issue of where civil magistrates get their authority and argued that civil authority comes from God in its root, yet is given to magistrates by means of the free choice of the people. This was clear from both the light and law of nature, which is God's Law, and Scripture.

When it came to granting civil authority to certain men and not others, "the Choice hereunto is from God by men..." The people act as the medium of God's will; "For the designation of these, or those, to be Civil Rulers, leaving out others, is from God, by the Peoples free Choice... This Power of Rulers of the Common-wealth is derived from the Peoples free Choice (therefore it is said in the Doctrine, being orderly chosen) for the Power of Government, is originally in the People..."²⁶ The creation of civil authorities was an exercise of the people's natural right of self-preservation. In order to improve their security, the people communicate a portion of their natural power to magistrates who will defend them from unjust invasions of their rights.

The power granted to rulers is thus also limited in its exercise. The people measure out the portion of power which they desire to grant their magistrates, in conformity to the instructions found in God's Word. They also have the right to "set bounds and banks to the exercise of that Power, so as it may not be exuberant, above the Laws, and due Rights and

²⁶ John Davenport, *A Sermon Preach'd at the Election of the Governour, at Boston in New-England, May 19th 1669*, Printed in the year 1670, Evans Early American Imprints, 4-5.

Liberties of the People.” Civil authority is also conditional, the people give it out “upon this or that condition; so as, if the condition be violated, they may resume their power of chusing another.”²⁷

Davenport’s second point set the primary qualifications for rulers based on 2 Samuel 23:3, that they “be just, ruling in the fear of God.” Magistrates are not to follow their own will; they are to rule according to the laws of the community and the laws of God. Davenport’s third point reminded his audience that magistrates who exercise justice and fear God will be blessings to the communities over which they govern. The freemen of Massachusetts thus had a great responsibility when exercising their right to choose their rulers. They must be careful to choose good men, who meet the qualifications for rulers, instead of wicked and godless men. If Massachusetts experienced the curse of wicked rulers, it would be the fault of the people themselves, since they chose those rulers.²⁸

Davenport also wrote a treatise on church government, *The Power of Congregational Churches* (1672), which defended New England’s primarily Congregational model for church discipline. Davenport drew an analogy between Congregational churches and “free cities,” since the two forms of society are based on the same principles. In both polities, church and civil, the polity is formed by a voluntary and mutual covenant made by its members. As such, the original power is held by the members of the community and is delegated to the officers chosen by the people.²⁹

²⁷ Ibid., 6.

²⁸ Ibid., 10-11.

²⁹ John Davenport, *The Power of Congregational Churches* (London: 1672), 27-28, 37-40, 82-86, 93-96, 102-106, 123-126.

A Congregational church is essentially a perfect, i.e. complete, spiritual city.

Congregational churches and free cities share three fundamental privileges: they make their own laws, they appoint their own magistrates, and they exercise their own judgements. When it comes to the authority of officers in both systems, the people have a *conditional obedience*. They are bound to obey their officers only while those officers “act according to Rule.” Officers must exercise their powers within the limits set by the laws of the community. Rulers become “delinquents” if they break the rule set over them. At that point, the people may exercise their original power, which is inalienable, and act as judges over their rulers. And if necessary, the people may depose rulers who have broken the covenant and failed in the trust reposed in them. Davenport’s political sermon and his treatise on church government show that there was a great deal of overlap between the way church polities and civil polities operated in New England.³⁰

Samuel Nowell’s 1678 artillery sermon, *Abraham in Arms*, was an exposition of Abraham’s rescue of Lot through the use of military force in Genesis 14. Nowell’s primary point was the lawfulness of defensive wars, using Abraham’s actions in Genesis 14 as Scriptural evidence in support of the natural law of self-preservation. Men have the right to defend their lives, liberties, and property with the sword when these rights are unjustly invaded. These rights had been given to the people of Massachusetts “both by the Laws of God & Men...” and “when these are invaded, we may defend ourselves.”³¹

One of the primary duties of rulers is to defend the people through military means. Soldiers, like the Massachusetts militiamen, are the walls and bulwarks of the people. A community’s military strength “is, under God, the appointed means, or in the ordinary way of

³⁰ Ibid., 136-139.

³¹ Samuel Nowell, *Abraham in Arms*, Delivered in an Artillery-Election-Sermon, June, 3. 1678, Evans Early American Imprints Collection, 9-10.

Providence, is the proper and only means for our preservation...” It cannot be expected that God will send a miracle to save a community, the rulers have a duty to prepare the community’s soldiers as the “ordinary” means of their temporal salvation.³² While Nowell’s primary focus was on defense from external threats to the community, he did include some cautionary statements for the civil authorities set over that same community.

Magistrates were not to abuse their power, for “God hath not given great ones in the world that absolute power over men, to devour them at pleasure, as great Fishes do the little ones; he hath set Rulers their bounds & by his Law hath determined peoples libertyes and property.” Kings in the Old Testament were “commanded to read the Book of the Law because it is a boundary of their authority, as well as of the peoples liberty.”³³ Here can be seen a statement of the central condition for lawful magistrates; that they defend the rights of the people instead of invading those rights. Magistrates must remember that their authority is limited by the law and that the people possess a natural right of self-preservation. An implied conclusion is that the people can exercise that right against unjust magistrates also. If the magistrates don’t defend them, the people will defend themselves, even against the magistrates if need be.

³² Ibid., 11.

³³ Ibid., 10; a reference to Deuteronomy 17:18-20, “And it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book out of *that which is* before the priests the Levites: And it shall be with him, and he shall read therein all the days of his life: that he may learn to fear the LORD his God, to keep all the words of this law and these statutes, to do them: That his heart be not lifted up above his brethren, and that he turn not aside from the commandment, *to the right hand, or to the left*: to the end that he may prolong *his* days in his kingdom, he, and his children, in the midst of Israel.”

II. The Glorious Revolution (1684-1691)

By the late 17th Century, the colonies of Plymouth and Massachusetts Bay had developed political traditions which mirrored the English tradition. The colonists viewed consent, as expressed in covenants, as the basis for lawful government and they viewed those covenants as the constitutions for civil societies. The New Englanders considered their charters as their constitutions, laying out the fundamental laws by which society would operate. Their charters ensured self-government, the rule of law, and the accountability of government officials. In turn, these fundamentals provided the people of the New England colonies with security, the knowledge that their lives, liberties, and property were safe from arbitrary power. Thus, New England received quite a shock in 1684 when the English Crown revoked the colonial charters in a unilateral court action. The colonies were given no chance to defend their charters and a new political system was forced upon them.

While the charters were revoked under King Charles II in 1684, a new king inherited the throne in 1685. During the first year of his reign, King James II created the “Dominion of New England” by combining Plymouth, Massachusetts Bay, and several other colonies into one territory. This led to the establishment of an arbitrary and unaccountable government in New England, one in which the rights of the people were insecure. From the colonial perspective, the constitution and fundamental laws had been subverted by the illegal actions of a tyrant. One of the core principles of social covenants is that any alteration made to the covenant must be consented to by *all* the parties involved. But the colonists had never given their consent to the revocation of their charters or the new Dominion. How could the new government be considered as having any lawful authority without the consent of the people? Simply put, it could not.

The Dominion was a government devoid of authority and resting merely on fear and force. With such shaky foundations, and standing in such stark contrast to the political tradition of New England, it is no surprise that the Glorious Revolution in England was followed by a New England Revolution shortly after news of the events in England arrived in the colonies. The people of New England rose up and overthrew their Crown-appointed rulers, including Governor Edmund Andros, just as their English brethren overthrew King James and welcomed Prince William of Orange as their “deliverer.”³⁴

The utter subversion of the First Charter can be seen in Sir Edmund Andros’ commission as governor of the Dominion of New England.³⁵ There was to be no self-government in the Dominion and certainly no representative assembly by which the people could express their consent or dissent to actions of the government. All the superior officers of the Dominion’s government were to be wholly Crown-appointed; that included the governor, lieutenant governor and the Council. One of the powers which Governor Andros would possess under his commission was the ability to suspend any member of the Council if there was “just cause” for doing so. For the government to conduct business, the presence of the governor plus five members of the Council at a meeting would be regarded as a quorum.

Essentially, the entire Dominion could be ruled by five or six men, none of whom were accountable to the people. If a councilor were to stand up for the people and oppose the governor, the governor could suspend that member. This made the Council dependent on the governor’s good graces and widened the gap between the people and their government. In this centralized political system, all power was centered on the governor. With the “consent” of the

³⁴ Taylor, *American Colonies*, 276-287.

³⁵ Commission of Sir Edmund Andros for the Dominion of New England, 1688, The Avalon Project.

Council, Governor Andros could levy taxes, appoint judges and inferior officers, command the militia, and dispose of lands “belonging” to the Crown. In essence and in fact, the governor was an arbitrary ruler and the government was not accountable to the people over which it ruled. The result was a deep feeling of insecurity among the people of New England and when news arrived of the Glorious Revolution, the people decided to take action.

On April 18, 1689, Governor Andros and many of his subordinates were seized and placed under arrest by the “People in Arms.” As many as twenty companies of colonial militia assembled in Boston in order to make these arrests and the offenders were placed in prison until being shipped back to England.³⁶ The people of Massachusetts explained their actions in a statement of grievances which was read publicly at noon that same day.³⁷ Chief among the list of the royal government’s crimes was that the Charter had been vacated unjustly and replaced by an illegal, arbitrary, and absolute government. Under Andros, the government of New England was ruled by five or six men and the inferior ranks of the government were filled with the “tools” of the governor. These “horse-leeches” sought only to sate their own avarice by sucking on the life-blood of the people.

The people of New England had been reduced to the status of slaves, even worse, their new masters in the government openly asserted the abject position of the people. The people had been told that “we must not think the Privileges of Englishmen would follow us to the end of the World...” Evidently, Magna Carta did not apply to the colonists and *English liberties* were not among their possessions. The Boston Declaration of Grievances lamented the loss of security

³⁶ Nathaniel Byfield, “An Account of the Late Revolution in New-England,” April 18, 1689, in *The American Republic*, ed. Bruce Frohnen (Liberty Fund: Indianapolis, 2002), 101-102.

³⁷ “Boston Declaration of Grievances,” April 18, 1689, in *The American Republic*, ed. Bruce Frohnen (Liberty Fund: Indianapolis, 2002), 102-105.

under the Dominion due to the corruption of justice by an arbitrary administration. Andros and his lackeys had even attempted to seize lands owned by colonial families for decades and declare that those lands belonged to the English Crown. Those lands would only be returned to the families if they first paid a fee to the Crown officers. Nothing was safe from the rapacity of the Dominion's civil officers.

The men of New England claimed that they had patiently endured these injustices without taking any action except crying unto God. It was only when the "extreamest necessities" had driven them to action that they took up arms against their oppressors. Fear of a French take-over of New England and news of Prince William's success in saving England from "Popery and Slavery" prompted New Englanders to provide for their own security by removing their tyrants. The colonists firmly believed that "we have endeavoured nothing but what meer Duty to God and our Country calls for at our Hands: We commit our Enterprise unto the Blessing of Him, who hears the cry of the Oppressed, and advise all our Neighbours, for whom we have thus ventured ourselves, to joyn with us in Prayers and all just Actions, for the Defence of the Land."³⁸ Resistance to a tyrannical government was a duty performed on behalf of God and country.

After the New England Revolution was over, the colonists were keen to defend the lawfulness of taking up arms against, and arresting, the magistrates set over them. One of the first attempts to vindicate the actions of the colonists was *An Appeal to the Men of New England* (1689).³⁹ The *Appeal* argued that the New England charters had been invaded and destroyed by a usurping government. The colonists had been robbed of their charters and denied their common

³⁸ Ibid., 105.

³⁹ *An Appeal to the Men of New England* (Boston, 1689), Evans Early American Imprints.

rights as Englishmen. The whole government of the Dominion was placed at the “arbitrary disposal of five or six men” who ruled over the people as masters rule over slaves. This was an attempt to institute a “French government” in a land which had once enjoyed liberty. The oppressors, Governor Andros and his supporters, were nothing but robbers who twisted the law to serve their own ends. These “Publick Thieves” were the real traitors. They had committed “the worst of Treasons against the Liberties of the English Nation.”⁴⁰

The Revolution in New England Justified (1691) began by arguing that the “Doctrine of Passive Obedience and Non-Resistance, which a sort of men did of late when they thought the World would never change, cry up as Divine Truth, is by means of the happy Revolution in these Nations, exploded, and the Assertors of it become ridiculous.” Anyone who supported the Revolution in England, “must justifie that in New England also; for the latter was effected in compliance with the former...”⁴¹ The two revolutions were conducted on the same principles and armed resistance saved both Englands from the threats of “popery and slavery” which King James II and Governor Andros represented.

This vindication took the form of a list of grievances and of statements collected from witnesses testifying against the criminal actions of the Andros administration. Governor Andros and his accomplices had “made laws destructive of the Liberty of the People,” levied illegal taxes, seized property without just cause, and corrupted the administration of justice. The fundamental laws of the constitution had been subverted and the rights of the people invaded. When the colonists had argued against being taxed without their consent, they had been told that “the Laws of England would not follow them to the end of the Earth...” When they complained

⁴⁰ Ibid., 3.

⁴¹Edward Rawson, Samuel Sewall, and Increase Mather, *The Revolution in New England Justified* (Boston, 1691), Early English Books Online, 3.

that their rights as Englishmen were violated, the administration's response was that "the King's Subjects in New England did not differ much from Slaves, and that the only difference was, that they were not bought and sold..."⁴²

After providing a whole catalog of witness statements, the writers of *New England Justified* were certain that they had provided sufficient evidence for the Andros administration to be found guilty of tyranny in the court of public opinion, or even in an actual courtroom. The administration had acted contrary to the most fundamental laws of the constitution. This was epitomized in the complaint that the colonists had been taxed without their consent. When the New England charters had promised the colonists that they would have the full enjoyment of English liberties, the colonists reasoned that surely the principle of consent was included in that promise.

Those who opposed the Revolution were enemies of English liberty and had forgotten that there was an "*Original Contract* between the King and the first Planters in New-England..." The charters were contracts between the king and the people. According to the terms of the contracts, the colonists had agreed to subdue the wilderness of New England, and in return, the king had promised that they would fully enjoy English liberties. Chief among those liberties was that the people would not be taxed without their consent.⁴³

It was the king and the governor who had broken the contracts by denying the New England colonists their rights. In cases such as this, there was such a thing as *lawful rebellion*, resistance made in defense of the fundamental laws and in opposition to tyranny. The New England Revolution was undertaken in opposition to an arbitrary and illegal administration.

⁴² Ibid., 8.

⁴³ Ibid., 36-38

Thus, the colonists had justice on their side. They were also following the example of their brethren in England. Even better, divine approval for lawful rebellion could be found in Scripture. God had blessed the ancient Jewish King Hezekiah's rebellion against the tyrannical King of Assyria. Surely God would also approve of the actions taken by the New England colonists.⁴⁴

Several former councilors whose dissent had been suppressed composed *A Narrative of the Proceedings of Sir Edmond Andros and his Complices* (1691) to catalogue the grievances the people of New England had suffered under during the Andros administration. The former councilors described how their objections to arbitrary measures had been ignored and their voices suppressed. Dissenting councilors were simply excluded from meetings and Governor Andros used the minimum quorum of five councilors to pass his measures. The result of this arbitrary administration was insecurity. The colonists' situation was "rendred exceeding uneasie" and their hope was that "the way of Governing English Subjects in Their Majesties Dominions without an Assembly of the Peoples Representatives (would be) banished out of the World forever."⁴⁵

As a pamphlet entitled *Loyalty Vindicated* proclaimed, colonists across New England had become convinced that King James and Governor Andros had endeavored to "Damn the English Nation to Popery and Slavery." The Dominion had twisted the political system of New England into a "French government" and liberty would have been destroyed if "the Hand of Heaven" had not "sent the glorious King WILLIAM to break those chains" and the people of New England had not been moved to "be early in shaking off their Tyrants, and declaring for their Deliverer."

⁴⁴ Ibid., 40; A reference to 2 Kings 18-19.

⁴⁵ William Stoughton, and Increase Mather. *A Narrative of the Proceedings of Sir Edmond Andros and his Complices*, 1691, Evans Early American Imprints, 7.

When they rose up against Governor Andros, “the People took the Government out of their Arbitrary betrayers hands.”⁴⁶

Unfortunately, there were still supporters of arbitrary power who preached “the damned Doctrins of Passive Obedience, and Non Resistance” and attempted to convince the people “that we ought patiently to hold our Protestant Throats to be cut by... a Popish King...” These “false priests of Baal” were even present among the ranks of the ministry and used their pulpits to proclaim lies under the cover of divine truth. These “popish trumpets” were so bold as to assert to New Englanders that procuring their temporal salvation by “being faithful to their God, their Country, and their Laws, in the defence of the Holy Protestant Religion, and the Rights and Liberties of English men, and their thankful declaring for the most glorious Prince... their Deliverer: was the blackest of Treason and rebellion.”⁴⁷ Those who took part in the Revolution were not traitors, they had acted in defense of English liberties and in opposition to arbitrary government. By resisting tyranny, the men of New England had proved faithful to their God, their country, and their laws.

In the aftermath of the Revolution, Plymouth and Massachusetts were in need of a functioning constitution. What they received in 1691 was the Second Charter.⁴⁸ This charter represented a compromise between the colonists and the new king. Although it was far better than the Dominion, it was not a full restoration of the First Charter and self-government would never again reach the level it had before 1684. Under the Charter of Massachusetts Bay (1691), the colonies of Plymouth and Massachusetts were officially united as a single political body. The

⁴⁶ *Loyalty Vindicated From the Reflections of a Virulent Pamphlet* (Boston: Printed by B. Green and J. Allen, 1698, Evans Early American Imprints, 2, 6.

⁴⁷ *Ibid.*, 9.

⁴⁸ Charter of Massachusetts Bay. 1691.

government would also now be composed of a mixture of elected representatives and Crown-appointed officials. In essence, the political systems of Plymouth and Massachusetts had been changed from that of small, semi-independent republics to that of a subservient royal colony.

The governor and lieutenant governor would be appointed by the king, there would be a General Court consisting of deputies elected by the freemen of the colony, and a Council of 28 men would be nominated by the General Court, but only take office after receiving the approval of the governor. Both the General Court and the Council would be elected on an annual basis. The governor's tenure was subject to the royal pleasure. Just as in the first, the Second Charter included the promise that the citizens of Massachusetts would "have and enjoy all Libertyes and Immunities of Free and naturall Subjects within any of the Dominions of Us Our Heires and Successors to all Intents Construccions and purposes whatsoever as if they and every of them were borne within this Our Realme of England."⁴⁹ The colonists were to have the full enjoyment of English Liberties.

Despite the resolution of their precarious political situation, the Second Charter was unpopular in Massachusetts for several reasons. The first problem with the Charter from the colonial perspective was the "negative voice" which the governor and the Crown possessed. The governor could veto any law approved by the General Court. Thus, a non-elected official held the power to nullify the will of every single representative of the people. Furthermore, all laws which passed the desk of the governor could still be vetoed by the king for three years after their

⁴⁹ Ibid.

passage. The Crown exercised its negative several dozen times in the decade after the Second Charter went into effect, once again, the will of the people could be overruled.⁵⁰

A second problem was the format of the Council. While the Council was supposed to consist of 28 members, the presence of only seven councilors would be considered a quorum for conducting business. Since each councilor had to be approved by the governor, this created the possibility of governors filling skeleton-Councils with their “creatures.” The nominations of 21 good men might be rejected and those of seven scoundrels accepted.

The principle behind these two problems was accountability. The governor, an official with no ties to the people, had powers which were a match for those of the elected representatives. This led to repeated power struggles between the General Court and royal governors for the rest of the Colonial Era. The General Court came to be viewed as the protectors of liberty in Massachusetts and one of the primary goals of the representatives was to contain the power of the governor through legal safeguards. One of the most effective of those safeguards was the General Court’s control over monetary expenditures, including its power of granting governors their salaries.

Controlling the purse strings was the only legal means the representatives had of making the governor accountable to the people of Massachusetts. It also made the representative assembly the only effective means of providing for the colony’s security against arbitrary measures. The Second Charter represented a “new” covenant between the king and the people, a new constitution for Massachusetts. Yet it contained a built-in tension concerning the

⁵⁰ Richard Bushman, *King and People in Provincial Massachusetts* (Chapel Hill: University of North Carolina Press, 1992), 102-108.

accountability of its civil officers, especially the governor, which would not be resolved until the American colonies declared independence in 1776.

III. The Second Charter (1691-1765)

The Massachusetts colonists considered their Charter to be a constitution, containing the fundamental laws of their political society, and they defended it fiercely against attempts to increase external, royal control over the colony. Despite its imperfections, the people of Massachusetts believed that the Second Charter, and the promise it contained from the king, protected their English liberties. In the decades after the Charter's adoption in 1691, the "Revolution principles" espoused by the English Commonwealthmen proved popular in New England. Covenant theology and social contract theory continued to blend together in the political rhetoric of Massachusetts. This synthesis of covenants-contracts ensured that the language of the Glorious Revolution, with its insistence on the natural rights of man, remained prominent in Massachusetts politics right up to the eve of the American Revolution. The people of Massachusetts knew their natural and constitutional rights and were not shy of reminding the civil authorities of their covenantal obligations to the people.

Election sermons were an annual means of giving these reminders. In the immediate wake of the Glorious Revolution, Samuel Willard gave the 1694 election sermon entitled *The Character of a Good Ruler*. Willard's chosen text was 2 Samuel 23:3,⁵¹ the same text John Davenport had chosen for his 1669 election sermon. Willard pointed out two primary

⁵¹ 2 Samuel 23:3, "The God of Israel said, the Rock of Israel spake to me, He that ruleth over men must be just, ruling in the fear of God."

qualifications for magistrates, that they “be just” and “fear God.” To be just, a magistrate must recognize that his power is not unlimited and arbitrary, he must exercise his power “in Conformity to the Law of God, and the Light of Nature, for God’s Honour, and the promoting of the common benefit of those over whom he bears Authority.”⁵² Fearing God entails a recognition of God’s supremacy over them as the governor of the universe.

Magistrates receive their authority from God’s ordinance, by means of the people. The only two *ordinary means* for conferring civil authority currently in the world, in the absence of direct revelation, are force and voluntary consent. The first is an illegal and unjust title to authority. The latter is the only just means by which any magistrate holds his position of power. Lawful magistrates are elected by the people and for the good of the people. Magistrates hold a place of trust over the community and God has ordained that their tenure in office should be held “during good behavior.”

Magistrates must remember that they are accountable for their actions, for “you not only Rule under such as are your Superiors on Earth, unto whom you are accountable for what you do; but under GOD also, who is your Great SOVERAIGN. Your Authority is from Him, and ought therefore to be for Him, else will you be found false to your Trust.” If necessary, the people may call a wicked magistrate to account by making an *appeal to heaven*; “if you do that which is Right to them (the people), He will be Pleased, but if you should do otherwise, their APPEAL is open to Him, and there is a COURT that will be called, wherein their CAUSE shall be Heard, and Adjusted.”⁵³

⁵² Samuel Willard, *The Character of a Good Ruler*, 1694, Evans Early American Imprints, 5.

⁵³ *Ibid.*, 12.

Ebenezer Pemberton's 1710 election sermon, *The Divine Original and Dignity of Government Asserted*, reminded magistrates of both their civil elevation over other men and their natural equality with those same men. His text was Psalm 82:6-7, "I have said, Ye *are* gods; and all of you are children of the most High. But ye shall die like men...." Pemberton explained that magistrates are "gods" in the sense that they are elevated to positions of authority and called to reflect the attributes of God Himself, with justice being the primary attribute necessary for their office. Magistrates are "men" in that they share the same sinful, corrupt nature as the rest of mankind and none of them are born to rule. This natural equality is not subsumed upon their civil elevation, in fact, a magistrate who pursues his sinful appetites degrades himself to something less than a man. He becomes a "beast."⁵⁴

Magistrates have been elevated to a position of trust by their fellow men. They are both God's vice-regents and the guardians of the rights of the people. As such, they have a duty to fulfill God's primary design for civil government, providing for the public good. In order to ensure that rulers seek the public good, and not a private end, it is necessary for magistrates to govern according to fixed rules. The authority of magistrates is limited by a variety of things: "by the Will of GOD, and Right Reason, by the General Rules of Government, and the particular Lawes Stated in a Land. Government was never ordained that Some men might have Advantage to be *Beasts of Prey*, to the feebler part of Mankind; nor that Others should be under a necessity of becoming *Beasts of Burden*..." A ruler who sought arbitrary power in order to satisfy his own covetousness could not properly be said to bear the image of God, but rather, the image "of the Grand Enemy and Destroyer of Mankind."⁵⁵

⁵⁴ Ebenezer Pemberton, *The Divine Original and Dignity of Government Asserted*, An Election Sermon, May 31, 1710, Evans Early American Imprints Collection, 1-2, 23-26, 29.

⁵⁵ *Ibid.*, 10-11, 16, 19-21.

Rulers are under the constitution of the land, by which the limits of their authority are expressly stated. It is only when the authority of rulers is fixed by law that the land will experience stability and the people will feel their rights are secure. Pemberton argued that the present condition of Britain and the American colonies reflected such a happy situation. With the rule of law and the supremacy of the constitution, both in Britain and in Massachusetts, the colonists could be assured that their magistrates would protect their natural and civil rights.

In such a situation, it was the duty of the people to submit to the lawful authority of their magistrates. But, if the inconceivable happened and tyranny rose up to threaten the rights of the people, Pemberton was sure that “GOD has not left a State without a *Regular Remedy* to Save itself, when the Fundamental Constitution of a People is Overturned; their Laws and Liberties, Religion and Properties are openly Invaded, and ready to be made a Publick Sacrifice.”⁵⁶ The accountability of magistrates was a necessity if the rights of the people were to have any security and the constitution was to remain supreme.

While it was a treatise on church government and not an election sermon, John Wise’s *A Vindication of the Government of the New England Churches* (1717) demonstrates the close analogy New Englanders drew between church government and civil government. Wise defended the Congregational model used by the majority of New England Churches by drawing on the evidence of the primitive church in antiquity, the light of nature, Holy Scripture, and the historical experience of New England. According to Wise, the Congregational model was the best church constitution for protecting the rights inherent in the laity, among which was the right to elect and depose church officers.⁵⁷ When expounding his evidence from reason (natural law)

⁵⁶ Ibid., 16, 31-33.

⁵⁷ John Wise, *A Vindication of the Government of New-England Churches* (Boston: Printed by J. Allen, 1717), Evans Early American Imprints, 9-15.

and revelation (Scripture), Wise explained the close connection between church government and civil government.

Reason shows that all men possess natural liberty and equality. Natural liberty entails an absence of subjection to any other man. The only law by which men are bound in such a state is the law of nature. Natural equality provides the basis for civil society. Since no man is born to rule over others, sovereignty is conferred on some men by covenant. Men enter civil society by exchanging a portion of their natural liberty for the mutual protection of the community. This shows that the original power in a civil society is in the people. By making a covenant with each other, men bequeath their power to magistrates and create a constitution by which the community will be governed. Wise argued that mixed constitutions are the best form of church and civil government because these combine the advantages of the monarchic, aristocratic, and democratic models. It is essential that the democratic element be retained in a constitution so that the rulers, whether ministers or magistrates, remain accountable to the people.⁵⁸

According to Wise, revelation supported the evidence for Congregational government found in natural law. The church constitution described in Scripture clearly “settles all Power Originally [under Christ] in the People.” The people are thus superior to the officers of the church, because the people elect the officers and confer their original power upon those officers. This power is held in trust by the officers and may be resumed by the people if that trust is broken. Since civil government is an almost mirror image of church government, the same principles apply. The constitution is supreme in both systems and the definition of a *traitor* or

⁵⁸ Ibid., 18-33.

rebel is someone who seeks to subvert the constitution. Thus, those terms can apply to rulers and not just to the people. The laws of the community are the judge.⁵⁹

The supremacy of the constitution was a regular refrain in Massachusetts political sermons. John Hancock's 1722 election sermon on Luke 22:25⁶⁰ explained the obligation rulers are under to rule according to the laws. The end of government is the benefit of the people and laws should be designed to defend the "common rights" of men. As "ministers of God for good," magistrates must fulfill their trust by sacrificing themselves for the good of the people and defending the rights and liberties of the people.

"BUT when Rulers forget their duty, and abuse their Power; when they neglect their care, their People and their charge; grow Imperious and Tyrannical, lord it over GOD's Heritage... they are so far from answering the Ends of Government, and from being *Benefactors*, that they are the greatest *Burdens* unto Mankind, and the greatest *Plagues* and punishments to the World. *As a roaring Lion and a ranging Bear, so is a wicked ruler among the People...*"⁶¹

To prevent this abuse of power, magistrates must be guided by the laws of the land and the laws of God. They must remember that they serve God and a free people, who will expect the preservation of liberty and justice by those in authority. If magistrates were to abuse their power and exceed the bounds set to their authority by the law, they would "forfeit the gratitude and regard due to Benefactors" by the people and make "a righteous God angry."⁶²

⁵⁹ Ibid., 27, 36-39.

⁶⁰ Luke 22:25, "And he said unto them, The kings of the Gentiles exercise lordship over them; and they that exercise authority upon them are called benefactors."

⁶¹ John Hancock, *Rulers Should be Benefactors*, An Election Sermon, May 30, 1722, *Evan Early American Imprints*, 6, 8; a reference to Proverbs 28:15, "As a roaring lion, and a ranging bear; so is a wicked ruler over the poor people."

⁶² Ibid., 10, 14.

John Bernard delivered two election sermons to the magistrates of Massachusetts. His 1734 sermon on Proverbs 16:12⁶³ asserted constitutional supremacy in no uncertain terms. Bernard called upon the dictates of reason and revelation to demonstrate the rights of the Massachusetts colonists as men, as Englishmen, and as colonists. In Bernard's analysis, the natural right of being governed only by consent demonstrated that the people are the medium through which God ordains civil authority. Therefore, the only just title to magistracy is the election of the people. The light of nature also points out the great end of civil government, to preserve the natural rights of the people.⁶⁴

If a civil government is to experience stability, the magistrates must be "righteous." The central component of righteousness for magistrates is that they act upon and preserve the constitution. The form of government for any community is laid out in the fundamental laws found in the constitution and this is the only form of government which the people have consented to. Magistrates have no right to alter or act contrary to the fundamental laws. The constitution also sets the limits to the lawful authority of each magistrate. They must govern according to the law and cannot exceed their authority or encroach upon the powers granted to another office. A truly righteous ruler will be careful "to secure the Community in their Rights... to maintain entire and untouched, those natural, and civil, Liberties, and Priviledges, which are the Property of every Member of the Society; and to guard against the dark Designs of those who are secretly endeavouring to undermine, or more openly attempt to destroy them..."⁶⁵

⁶³ Proverbs 16:12, "It is an abomination to kings to commit wickedness: for the throne is established by righteousness."

⁶⁴ John Bernard, *The Throne Established by Righteousness*, An Election Sermon, May 29, 1734, Evans Early American Imprints, 6-15.

⁶⁵ *Ibid.*, 16-19.

Since the constitution set the limits of authority for magistrates, it also set the limits of obedience for the people. Subjects are required to obey magistrates who are executing their constitutional offices and acting according to the laws. The result of constitutional supremacy would be the stability of society and the security of the rights of the people:

“For when their Constitution is acted upon, all due Honours are paid to the Rulers of a People, and their Rights, Liberties, and Privileges are securely enjoyed, their Persons are free from Insult, and their Property from Encroachments by Fraud or Violence; while none but good and wholsom Laws are Enacted, and these duely Executed... what would the necessary Result of all this be, but the Stability of the Throne and Government at home? For what could there be among such a People to render them uneasy?”⁶⁶

Every member of the community would rest confident in the security of his life, liberty, and property. The rule of law would prevent tyranny on the one hand and anarchy on the other. Bernard closed with an affirmation that the essential rights of the colonists were secure. The people of Massachusetts possessed a two-fold security as they were protected by both the British Constitution and their Charter.⁶⁷

Bernard’s 1746 election sermon on Psalm 82:1a⁶⁸ heaped more praise upon the political system which the colonists lived under. Bernard asserted that the phrase “the congregation of the mighty” pointed to a form of government in which a “number of men” were invested with civil authority. There are a number of reasons why it is better to divide civil authority among a multitude of rulers rather than investing one man with absolute power: the benefit of counsel, the heavy burden of responsibility, and the temptation to become tyrants that sinful men are exposed

⁶⁶ Ibid., 33.

⁶⁷ Ibid., 33, 39.

⁶⁸ Psalm 82:1a, “God standeth in the congregation of the mighty...”

to when given power. Scripture thus provides evidence of God's support for mixed constitutions in which a balance of power is determined by law.⁶⁹

Bernard cited the British Constitution as the prime example of a mixed constitution. Furthermore, the Massachusetts Charter was a reflection of the British political system in miniature. Massachusetts had a good constitution as the power was balanced along the same lines as the division between king and Parliament (Lords and Commons) in Britain. Massachusetts had a governor who represented the king, a Council chosen from amongst the populace, and a House of Representatives elected directly by the freeholders of the colony. Surely, the people of Massachusetts lived under a just and desirable constitution.⁷⁰

It was to the British and colonial constitutions that New Englanders turned when they felt their liberties were threatened. Elisha Williams' *The Essential Rights and Liberties of Protestants* (1744) was a call for greater religious freedom given in the midst of the Great Awakening. While primarily concerned with the relationship between Christian liberty and civil authority, Williams also delved into issues of natural and civil liberty. Williams' explanation for the origin of civil society followed the path set by John Locke and the *Second Treatise of Government* was quoted numerous times. Following Locke, Williams asserted that all men are naturally equal in that they are born with natural liberty, meaning they have no earthly superior and are only bound by the law of nature. Since the "state of nature" is not safe, men join together in civil societies for greater security.

⁶⁹ John Bernard, *The Presence of the Great God in the Assembly of Political Rulers*, An Election Sermon, May 28, 1746, Evans Early American Imprints, 4-6.

⁷⁰ *Ibid.*, 11-12.

This origin means that the original of civil power is the people and the end of government is the preservation of the lives, liberties, and property of the people. The people have only given up that portion of their natural liberty which was necessary in order to receive security for their rights; “That greater security therefore of life, liberty, money, lands, houses, family, and the like, which may be all comprehended under that of person and property, is the sole end of all civil government.” At least, that is the true end of government. Sadly, “there are too many arbitrary governments in the world, where the people don’t make their own laws. These are not properly speaking governments but tyrannies; and are absolutely against the law of God and nature.” Williams here pointed out one of the key safeguards for the rights of the people, that they participate in crafting the laws under which they are to live.⁷¹

That “every society ought to be subject only to its own proper legislature” was an inviolable principle of religious and civil societies for Williams. No polity should be subject to an external authority imposed upon them. A community must be free to make its own laws. Williams also pointed out God’s condemnation of tyrants. In his view, Romans 13 was a passage which had often been twisted to support tyranny. The Apostle Paul intended “higher powers” in the text to refer to the real, legal powers in a community, not the “pretended powers.” The proper way to interpret “higher powers” was to restrict its meaning to those officers found in a community’s constitution and who act within the law.

Williams’ condemnation of tyrants was driven home by a logical sequence: arbitrary rule is not according to the constitution, so arbitrary rule is not a “power,” therefore officers who exercise it are not sent from God, and thus no obedience is due to those arbitrary officers.

⁷¹ Williams, *The Essential Rights and Liberties of Protestants*, 61-64.

Applying that logic to Britain, Williams asserted that “the powers that be in Great Britain are the government therein according to its own constitution: If then the higher powers for the administration rule not according to that constitution, or if any king thereof shall rule so, as to change the government from legal to arbitrary; the power from God fails them, it is then a power not in this text, and so no subjection due to it by the text.” There is nothing in Romans 13 which could be even remotely understood as requiring a community to submit to the will of a tyrant. The limited powers granted magistrates under a constitution implies limited obedience on the part of the subjects. If magistrates act beyond the limits set by the law, no obedience is required from the people.⁷²

Williams closed with a demand for the preservation of civil and religious liberty in New England. In doing so, he provided a succinct picture of how New Englanders viewed the relationship between natural and constitutional rights when he asserted that, “the rights of Magna Charta depend not on the will of the prince, or the will of the legislature; but they are the inherent natural rights of Englishmen: secured and confirmed they may be by the legislature, but not derived from nor dependent on their will.” Men possessed natural liberty before civil societies were first formed. Ever since, it has been the duty of those governments to secure that liberty from invasion. Sadly, the history of human governments has shown that “it has commonly been the case, that Christian liberty, as well as civil, has been lost by little and little; and experience has taught, that it is not easy to recover it, when once lost.” If New England wished to maintain its liberty, “so precious a jewel is always to be watched with a careful eye: for no people are likely to enjoy liberty long, that are not zealous to preserve it.”⁷³

⁷² Ibid., 67-69, 77-80.

⁷³ Ibid., 103.

That New Englanders were zealous to preserve their liberties can be seen in the sermons of the prominent Boston minister Charles Chauncy. *The Sermon Occasioned by the Rebellion in Favour of the Pretender* (1745) was given in response to the attempt of Charles Stuart (the Young Pretender) to retake the British throne. Chauncy's text was Isaiah 7:5-7, which describes a conspiracy by several powerful enemies to overthrow the King of Judah and place a puppet on the throne.⁷⁴ Chauncy expounded that this conspiracy was an "evil design" because it sought to overturn the constitution of Judah and make the people slaves to a "tool" of external powers.

His application of the text to the Pretender's rebellion showed that he considered that rebellion to also be an evil design as it sought to subvert the British Constitution. If the rebellion succeeded, Charles would destroy English liberties and establish a tyranny. The rights of the people would be invaded and the laws, which are the security of the people, would be dispensed with. Parliament itself would be denied and Britain would be ruled by the will and pleasure of an arbitrary prince. Britain would then suffer from the twin plagues of popery and slavery, which inevitably produce destruction in a community. In the 1680s, King James II had attempted the same design in England and Governor Andros had pursued it in New England. The result was the Glorious Revolution, in which the people of both realms rose up in support of their deliverer, Prince William.⁷⁵

The Pretender was an enemy to the British Constitution and liberty, whereas the present king, George II, was a faithful defender of the constitution and the rights of the people.

Furthermore, George possessed the only legitimate "right" to the throne, the consent of the

⁷⁴ Isaiah 7: 5-7, "Because Syria, Ephraim, and the son of Remaliah, have taken evil counsel against thee, saying, Let us go up against Judah, and vex it, and let us make a breach therein for us, and set a king in the midst of it, *even* the son of Tabeal: Thus saith the Lord GOD, It shall not stand, neither shall it come to pass."

⁷⁵ Charles Chauncy, *Sermon Occasion'd by the Rebellion in Favour of the Pretender*, Thursday Lecture, February 6, 1745, Evans Early American Imprints, 5-11.

people as expressed in multiple acts of Parliament in Britain and the public support given him by the people of New England. New Englanders recognized George as “our rightful and lawful king” and they prayed that “he would mercifully save his People from Popery and Slavery; perpetuating to them the Enjoyment of their Rights and Liberties...”⁷⁶

Chauncy’s 1747 election sermon, *Civil Magistrates Must be Just, Ruling in the Fear of God*, was a classic exposition of that favorite text for political sermons, 2 Samuel 23:3. Chauncy expounded that government “in general” was ordained by God, but that the specific forms of government and the persons to exercise it are chosen by individual communities. The chief end of civil power is to provide security for the rights of the people. Chauncy argued that these doctrinal positions were supported by the evidence of reason and revelation.⁷⁷

Since magistrates are entrusted with civil power by the people and act as ministers of God, they are under an obligation to “be just” in their use of that power. Being just primarily means confining the exercise of their power “within the limits prescribed in the constitution they are under. And this, so long as it remains the constitution, they are bound in justice to conform themselves to: To be sure, they ought not to act in violation of any of its main and essential rights.” It is the constitution which is supreme in a community and determines the balance of power among the separate magisterial offices; “The constitution is here evidently the grand rule to all cloathed with power, or claiming priviledge, in either branch of the government. And ’tis indeed a fundamental point of justice, that they keep respectively within the bounds marked out

⁷⁶ Ibid., 12-15.

⁷⁷ Charles Chauncy, “Civil Magistrates Must be Just, Ruling in the Fear of God,” An Election Sermon, May 27, 1747, in *Political Sermons of the American Founding Era*, vol. 1, ed. Ellis Sandoz (Indianapolis: Liberty Fund, 1998), 117-118.

to them in the constitution. Rulers in one branch of the state should not assume the power delegated to those in another...”⁷⁸

There is a difference between “right” and “might” in the exercise of civil power. The first is the exercise of lawful authority and must be submitted to by subjects. The second is no more than violence and tyranny, flying in the face of the rule of law. One of the chief ends of lawful magistrates is “to preserve and perpetuate to every member of the community, so far as may be, the full enjoyment of their liberties and privileges, whether of a civil or religious nature...” A good magistrate must guard “against the designs of those, who would rule in a despotic manner, to the subversion of the rights naturally or legally vested in the people.”⁷⁹ Thus, the constitution will be preserved and the rights of the people will be secure.

Jonathan Mayhew, another prominent Boston minister, was even more vocal than Chauncy in defending the rights of the people. Mayhew gave one of the most famous political sermons ever preached in America, entitled *A Discourse Concerning Unlimited Submission and Non-Resistance to the Higher Powers* (1750). The impetus for this fiery sermon was the anniversary of the death of King Charles I, who had been executed by Cromwell’s followers in 1649. This anniversary had become an occasion for Anglican clergy, in Britain and America, to extoll the saintly qualities of Charles, painting him as a martyr, and to expound the doctrines of passive obedience and non-resistance. Mayhew was appalled by the cringing servility of those clergymen and by what he considered to be the utter falsehood of the doctrines they spewed forth

⁷⁸ Ibid., 119-120.

⁷⁹ Ibid., 120-128.

from the pulpit. Mayhew's sermon was an attempt to set the record straight and he did so by expounding Romans 13.⁸⁰

Mayhew argued that the "higher powers" Paul spoke of referred to civil officers in possession of lawful authority. The submission God required was not to all who hold the "title" of magistrate, but to those who "perform" the duties of good rulers. Paul's use of "absolute terms" must not be understood as requiring unlimited submission. Paul was speaking of government "in general" as a good institution when he endorsed submission to it. Similar absolute terms can be found throughout Scripture in situations where even the misguided proponents of passive obedience would recognize limitations to the submission required. God required children to obey their parents and servants to obey their masters, and voiced those requirements in absolute terms, but no one was foolish enough to think that a child or a servant must obey a command which would cause them to sin against God. If limits were recognized in those areas, why should limits not be admitted in relation to civil authority?⁸¹

Mayhew asserted that the Apostle Paul was calling Christians to a *conditional obedience* to civil authority. Rulers could only claim to be "ministers of God" if their actions matched the description of a lawful magistrate which Paul gave in the text. A ruler who acts contrary to God's revealed will loses all legal and moral authority; "it is blasphemy to call tyrants and oppressors, *God's ministers*. They are more properly the *messengers of Satan*..." Only magistrates who rule according to the laws and for the good of society are to be submitted to: "when once magistrates act contrary to their office, and the end of their institution; when they rob and ruin the public, instead of being guardians of its peace and welfare; they immediately

⁸⁰ Jonathan Mayhew, *A Discourse Concerning Unlimited Submission and Non-Resistance to the Higher Powers* (Boston: D. Fowle and D. Gookin, 1750), VI, 48.

⁸¹ *Ibid.*, 10-12, 14-23.

cease to be the *ordinance* and *ministers of God*” and are better termed “*pirates* and *highwaymen*.”⁸²

Since neither reason nor revelation support the doctrine of passive obedience, it is not only the *right* of the people to resist tyrants, it is a *duty* to do so. When a king “turns tyrant, and makes his subjects his prey to devour and to destroy, instead of his charge to defend and cherish, we are bound to throw off our allegiance to him, and to resist... Not to discontinue our allegiance, in this case, would be to join with the sovereign in promoting the slavery and misery of that society...”⁸³ When a tyrant is stalking abroad, the real criminals are not those who resist him, but those who submit to his illegal exercise of power.

“For a nation thus abused to arise unanimously, and to resist their prince, even to the dethroning him, is not criminal; but a reasonable way of vindicating their liberties and just rights; it is making use of the means, and the only means, which God has put into their power, for mutual and self-defence. And it would be highly criminal in them, not to make use of this means.”⁸⁴

When Mayhew applied his exposition of Romans 13 to King Charles I, he found that Charles was guilty of being just such a tyrant. Charles had assumed powers above the law and demonstrated his arbitrary oppression by a long series of actions. He had no regard for the English Constitution or the legal limits it placed on his power. Thus, Parliament’s act of armed resistance to this tyrant was justified as it had defended the natural and legal rights of the people. By violating the constitution, Charles had “unkinged” himself and become a “lawless tyrant.” While the trial which found him guilty of treason and sentenced him to death was “a mockery of

⁸² Ibid., 23-29.

⁸³ Ibid., 30.

⁸⁴ Ibid., 40.

justice,” being carried out by the Army faction instead of Parliament as a whole, that does not change the fact that Charles was guilty of the crimes he stood trial for.⁸⁵

Mayhew made sure his audience knew that passive obedience, which was preached by so many servile clergy on this anniversary, was an absurd doctrine which could not be supported by the law of nature or the Word of God. It was the principles of resistance to tyranny which had preserved English liberties for centuries and imparted those liberties intact to New England. Mayhew’s understanding of the anniversary of King Charles’ death was diametrically opposed to that of the churchmen who preached passive obedience. Instead of a commemoration of a saintly martyr, Mayhew hoped this anniversary would “prove a standing memento, that Britons will not be slaves; and a warning to all corrupt councillors and ministers, not to go too far in advising to arbitrary, despotic measures.” Fortunately, New Englanders could be both “free” and “loyal” under the present king, George II, who had made the law his rule.⁸⁶

That just and lawful king died in October 1760 and the throne passed by inheritance to his grandson, King George III. Mayhew reflected on the import of this event in *A Discourse Occasioned by the Death of King George II* (1761). One of the themes of this sermon was a historical explanation of how the House of Hanover, of which George III was a member, gained the “right” to the British crown. Simply put, their right rested on the Glorious Revolution and Revolution principles. James II was a tyrant who had attempt to undermine the constitution and destroy the liberties of the people. England had been saved from this terrible fate, summarized as “popery and slavery,” by Parliament’s resistance. While God had providentially supplied Prince William as England’s deliverer, God did not immediately ordain rulers. Prince William’s right to

⁸⁵ Ibid., 41-48.

⁸⁶ Ibid., 54-55.

the crown was his *election* by the people. The crown later devolved upon the House of Hanover by the consent of the people, as expressed by Parliament's acceptance of George I, the first Hanoverian king.⁸⁷

During the Glorious Revolution, “the senseless, brutish principles of passive obedience and non-resistance, in consequence of the supposed divine, indefeasable right of kings by inheritance” had been “exploded” and the true basis of government was restored when Parliament declared that “the kings of England held the crown by virtue of an ‘original contract...’” The Declaration of Rights, agreed to by William and Mary, served as a reminder of the conditions of that original contract between the king and the people. By endorsing Revolution principles, Mayhew promoted loyalty and obedience to the present government, “and this upon the very principles on which that government is founded, in opposition to those of despotism and tyranny.”⁸⁸ Remove the right of resistance exercised during the Glorious Revolution and George III would immediately lose his right to the throne; England would be forced to return the crown to the tyrannical Stuarts.

Mayhew was proud that the King of Britain was a “constitutional king” whose right to the throne was the consent of his people. He was a king who “made the laws the rule of his government.” The late George II had been such a king and the result was the security of the “private property, the life and rights of the subject” under his administration. The subjects of George III would experience no contention, “unless it is a contention, who shall shew at once the greatest loyalty to his majesty, and the sincerest love to British liberty, as founded in, as established and secured by, the British laws: which ought indeed to be more sacred with Britons,

⁸⁷ Jonathan Mayhew, *A Discourse Occasioned by the Death of King George II*, January 4, 1761, Evans Early American Imprints, 4-12.

⁸⁸ *Ibid.*, 10-12.

than the interest of any particular person or family whatsoever.” Mayhew saw loyalty to the constitution as perfectly consonant with loyalty to the king, after all, a constitutional king gloried in ruling over free men and not slaves.⁸⁹

Interestingly, the election sermons for 1761 and 1762 both included assertions of constitutional supremacy. Benjamin Stevens praised the Hanoverian Kings as “guardians of liberty” who ruled under the British Constitution. With George III on the throne, New Englanders could expect “the continuance and advancement of all those blessings we enjoyed under the reign of his royal grand-father” and take confidence from their new prince’s “firm and invariable resolution to adhere to, and strengthen our excellent constitution...” Massachusetts itself was “blessed with a constitution formed upon the model of the British Government:—A constitution, which if kept inviolate, will secure to us the blessings of civil society, and the advantages of religious liberty.” Surely, George III would preserve the Massachusetts Charter inviolate.⁹⁰

Abraham Williams also praised Massachusetts’ charter-constitution for securing the rights of the colonists. A key component to maintaining that security was preserving the community’s original right of choosing its magistrates. The freeholders of Massachusetts had the great privilege of choosing two branches of their government and this right was highly conducive to “the publick Safety and Welfare” of the province. The men chosen to those offices were given a trust, just as all magistrates receive their civil power in trust. For a magistrate to abuse that trust would be a grievous sin, “deserving the Indignation of Mankind, and... the Wrath and Curse of

⁸⁹ Ibid., 13-14, 17.

⁹⁰ Benjamin Stevens, *Election Sermon*, May 27, 1761, Evans Early American Imprints, 24-25.

God in this and the future World.” But if all were faithful to their trusts, there would be no schism in the political body. It is faithlessness which brings division to a polity.⁹¹

Despite their praise for liberty under the Second Charter, the men of Massachusetts were aware that there was a tension between their natural right to self-government and the political realities of imperial rule. They were also aware that the security of their rights depended on the maintenance of the constitutional supremacy of their charter. There were some in the British government who advocated revoking the Second Charter and placing the province under the immediate authority of crown-appointed officials. One such attempt took place in the 1720s and provoked Jeremiah Dummer, a Massachusetts native acting as the colony’s agent in London, to issue *A Defence of the New England Charters* (1721).

Dummer recognized that the Second Charter was “not much more than the Shadow of the old One” due to the political dependency it created. Massachusetts was not the independent commonwealth it had been under the First Charter; it was subject to crown-appointed officials whose accountability to the people was limited at best. It was also subject to the negative voice held by the governor and the Crown. But even as a shadow, the Second Charter stood as the colony’s only defense against arbitrary government. Revoking the Charter and instituting Crown rule would deny Massachusetts the most fundamental right of Englishmen, to be governed only by laws to which they had given their consent.⁹²

The imposition of arbitrary governors, not bound by a charter, would expose the rights of the colonists to invasion. Massachusetts would no longer be “a free Government, where the Laws

⁹¹ Abraham Williams, “An Election Sermon,” 1762, in *American Political Writing During the Founding Era*, vol. 1, ed. Charles Hyneman and Donald Lutz (Indianapolis: Liberty Fund, 1983), 21-23.

⁹² Jeremiah Dummer, *A Defence of the New England Charters* (London: Printed by W. Wilkins, 1721), 3.

are sacred, Property secure, & Justice not only impartially, but expeditiously distributed.” This loss of freedom would bring with it a loss of security. The “laws,” if they could be considered as such, would no longer be the security of the people, but would be twisted into instruments of oppression. Poverty and misery would take the place of the material prosperity which Massachusetts experienced under the Charter. Dummer did not seek to question the “power” of the British Parliament to revoke the Charter, but he did question its “right” to do so. The members of Parliament considering revoking the Charter should remember that what they “can’t do justly, they can’t do at all.” Revoking the Massachusetts Charter would be a great injustice.⁹³

40 years later, the prominent Massachusetts lawyer and provincial legislator James Otis sounded the same refrain in two cases concerning the exercise of arbitrary power. The first was the Writs of Assistance Case which was argued before the Massachusetts Superior Court in 1761. Otis represented the opponents of these “general writs,” which were a form of search warrant allowing the customs officers holding them to search any location they suspected for contraband. Officers holding these writs could search anywhere they wanted and did not need to justify their suspicions before carrying out the search.

Otis argued that writs of assistance were instruments of slavery and villainy. In his estimation, the writs were “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.” “Special writs” were legal because they required customs officers to state the specific location to be searched and why that search was necessary. By contrast, “general writs” were illegal because they were “a power, that places the liberty of every man in the hands of every

⁹³ Ibid., 25-30.

petty officer.” The mere possession of such a writ gave an officer the power to be a tyrant and lord that power over his fellows. These petty tyrants were not accountable to the people of Massachusetts and their power destroyed the security the people enjoyed under the rule of law.⁹⁴

The colonists would not even be secure in their own homes, which was an undoubted right of Englishmen who were not guilty of any crime. Surely the court would recognize that “reason and the constitution are both against this writ.” When looking for the legal authority upon which the writs relied, Otis could only find a shaky precedent, for “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...” Otis did not consider that precedent sufficient to uphold the writs, because “had this writ been in any book whatever, it would have been illegal. All precedents are under the control of the principles of law.” Otis’ argument reached a crescendo when he stated that “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.” Simply put, even Parliament did not have the right to violate the constitution.⁹⁵

Otis opposed the writs upon principle. He could not sit by and watch an arbitrary power destroy the security of the people of Massachusetts. The arbitrary power which the writs represented was “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.”⁹⁶ While the Superior Court upheld the writs as lawful, Otis continued to speak out against them after the trial was over. In an article

⁹⁴ James Otis, “The Writs of Assistance Case,” in *The Collected Political Writings of James Otis*, ed. Richard Samuelson (Indianapolis: Liberty Fund, 2015), 11-14.

⁹⁵ *Ibid.*, 6.

⁹⁶ *Ibid.*, 11.

in the *Boston Gazette*, Otis remarked that he was not surprised the writs had been upheld by the court. What else could be expected from judges which were appointed by the governor and served royal interests? Otis continued to assert the illegality of the writs, no matter what the court said. He claimed that the colonists desired nothing more than the rights and securities promised them in the British Constitution; “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.”⁹⁷

Otis and the House of Representatives saw what they considered to be another invasion later that year when Governor Francis Bernard took money out of the public treasury to fit out a sloop in support of the war effort against France. Otis published *A Vindication of the Conduct of the House of Representatives of Massachusetts Bay* (1762) to explain why the House resisted this action. While the governor spending money on a single sloop may seem like a minor issue, the House took umbrage with this requisition of public funds because the governor did not ask for its consent before spending the money. The House interpreted this act as a violation of the Charter. According to the Charter, the power to tax and the power to control expenditures were both placed in the hands of the House. In their view, the governor’s expenditures to fit out a sloop amounted to an arbitrary tax on the inhabitants of Massachusetts because that hole in the public treasury would have to be filled by collecting more taxes from the people.⁹⁸

By laying a tax on the people without the consent of the House, the governor and his Council, who agreed to the measure, had exceeded their lawful authority and usurped a power

⁹⁷ James Otis, “Essay on the Writs of Assistance Case,” *Boston Gazette*, January 4, 1762, in *The Collected Political Writings of James Otis*, ed. Richard Samuelson (Indianapolis: Liberty Fund, 2015), 15-18.

⁹⁸ James Otis, *A Vindication of the Conduct of the House of Representatives of Massachusetts Bay*, 1762, in *The Collected Political Writings of James Otis*, ed. Richard Samuelson (Indianapolis: Liberty Fund, 2015), 84, 95-106.

which the constitution placed in the House. While the House had no legal remedy to call the governor to account for this action other than issuing a remonstrance, they asserted that governors would do well to remember that the colonists were “entitled to all the privileges of the people of Great Britain... by the common law, by their several charters, by the law of nature and nations, and by the law of God.” Any attempts by governors to become absolute and tread upon the rights of the colonists would “end in the ruin of the Governor who makes them.”⁹⁹

Otis closed his vindication by telling Governor Bernard 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.”¹⁰⁰ In other words, Otis would exercise a conditional obedience and support the supremacy of the constitution. This was a position which reflected the political mindset of Massachusetts on the eve of the political troubles with Great Britain.

Conclusion

This chapter focused on three key issues related to the political mindset of Massachusetts’ inhabitants during the Colonial Era. First, this chapter examined the covenantal understanding of civil society in the colonies of Plymouth and Massachusetts Bay. The colonists understood their founding political documents as covenants made by, and binding on, the members of their civil society. Those covenants were also expressions of the principles of consent, accountability, and security. The Massachusetts colonists believed that the original

⁹⁹ Ibid., 107, 110-111.

¹⁰⁰ Ibid., 111.

source of civil authority was the people and that government existed for the benefit of the people. It was the people who had created Massachusetts' government and defined the limits of its authority in the community's social covenant.

The second focus of this chapter was an assessment of how the principles of accountability and security were woven into the legal framework of New England politics. The people of Massachusetts believed those two concepts were intimately connected. If a community's magistrates were not accountable to the people, the people would lose the security which makes civil government a blessing. Instead of a blessing, unaccountable magistrates become a curse upon a community. The principles of accountability and security were placed on shaky ground with the political settlement that created the Second Charter in 1691. The limited accountability of Crown officers under that system created a tension within Massachusetts politics that was not resolved until the rejection of royal authority during the Revolution.

The third focus of this chapter was an examination of the colonial interpretation of the Massachusetts charters. By the 1760s, the Massachusetts mind had been conditioned by decades of political sermons and controversies to view the Charter as a covenant-contract between the king and the people. The Charter was the constitution to which the people had given their consent and the laws it contained provided security for the lives, liberties, and property of the people. The people of Massachusetts endorsed the principle of constitutional supremacy, for if the constitution lost its supremacy, then the people would lose the security they enjoyed for their *English liberties*, which was just another way for the colonists to say "natural rights" by 1765.

Chapter 4: Obsta Principiis

“History, one may presume to say, affords no example of any nation, country or people long free, who did not take some care of themselves; and endeavour to guard and secure their own liberties. Power is of a grasping, encroaching nature, in all beings, except in him, to whom it emphatically “belongeth;” and who is the only King that, in a religious or moral sense, “can do no wrong.” Power aims at extending itself, and operating according to mere will, wherever it meets with no ballance, check, controul or opposition of any kind. For which reason it will always be necessary, as was said before, for those who would preserve and perpetuate their liberties, to guard them with a wakeful attention; and in all righteous, just and prudent ways, to oppose the first encroachments on them. “Obsta principiis.” After a while it will be too late.”¹

The tensions in the Massachusetts Charter between self-government and royal authority exploded into controversy in the mid-1760s. While victorious, Britain’s massive expenditures in the Seven Years War left the nation deep in debt. On top of that, King George III had decided to keep the army at a near-wartime level by permanently garrisoning 10,000 troops in America. Those troops were ostensibly there to guard British interests in the newly-annexed territories taken from France during the war. The money to supply and pay those troops would have to come from somewhere. The solution the British Ministry settled on was to tax the American colonies. That decision led to questions of rights and the fundamentals of the constitution, which in turn led to a decade-long political struggle between the colonies and the mother country. Throughout that struggle, the Massachusetts Patriots turned to the doctrines of natural rights to oppose the British government’s attempts to increase control over the colonies.

¹ Jonathan Mayhew, “The Snare Broken,” May 23, 1766, in Sandoz, 190.

Part of the reason why the British government's "right" to legislate for the American colonies was called into question was the lack of an "imperial constitution" defining the political relationship between the colonies and the mother country. Early in the controversy, Americans were willing to admit colonial subordination and dependence on Britain, but the limits of that subordination were ill-defined. Where exactly was the line marking the extent of Britain's lawful authority over the colonies? Americans were sure that Britain's authority was limited, but what were those limits? Another factor which contributed to the controversy was the different view of the constitution held in Britain and the American colonies.

The dominant theory of the constitution in Britain was *Parliamentary supremacy*, the concept that the acts of Parliament were authoritative interpretations of the constitution. An act of Parliament could not be *against* the law, because Parliament *made* the law. In practice, Parliament *was* the law.² The Massachusetts Patriots, and many of their colonial brethren, held to the contrary doctrine of *constitutional supremacy* which had been promoted by English natural rights theorists. According to this theory, the original contract between the people and their rulers is fixed and outlines the fundamental laws of society. No one magistrate, or even a representative assembly like Parliament, has the authority to change the constitution without the express consent of the people. Since all political authority rests upon the consent of the governed, their approval is an absolute necessity before the fundamental laws of a society can be altered. The constitution must remain fixed and inviolate until the people agree to change it. No government has the authority to make changes without the consent of the people.

² Reid, *Constitutional History of the American Revolution*, 3-4, 24.

Constitutional supremacy appealed to the Patriots from both theoretical and practical standpoints. In terms of theory, it matched their understanding of the natural rights foundation of political authority. All authority was originally in the people and was delegated to the officers of the government chosen by the people. The structure of the government was created by a covenant-contract which laid out the fundamental laws by which the community was to be governed, i.e. the constitution. This made the constitution the ultimate authority in a community since it was the form of government which the people had consented to. The laws were meant to govern everyone in the community, including the rulers. This position is aptly summarized in the maxim *lex rex*, the law is king.

In terms of practical application, constitutional supremacy provided the American colonists with a firm legal position in their opposition to increased imperial control over the colonies. The theory granted the colonists a *two-fold security* as they saw both the British Constitution and the charters, also constitutions, as contracts which were fixed. Any attempt by the British government to unilaterally alter the political relationship between the colonies and Britain would, by its very nature, be unconstitutional since it would involve altering the constitution without the consent of the colonists. Theory and practice converged in the political struggles between the American colonies and Britain. By returning to the fundamental laws of the community, i.e. the natural rights foundation of political authority, the Patriots found a theoretical justification for resisting British actions which damaged the colonists' practical, material interests.

The Sugar Act (1764) and Stamp Act (1765) passed by Parliament were regarded as a threat to those interests. These acts were regarded as invasions of arbitrary power which subverted the constitution under which the colonists lived. As such, these acts were also a

definite threat to the security of the colonists' lives, liberties, and property. Of these three natural rights, property received the most emphasis in the remonstrances issued by the Massachusetts Patriots. This was not because Americans loved their property more than their lives or liberties, but because they saw the security of property as providing for the security of their other rights. If their property could be taken away by arbitrary power, they would become defenseless and their lives and liberties would be next.

The primary complaint the colonists had against these acts was their arbitrary nature. These acts were passed by the British Parliament, a body in which the colonists had no representation and which did not answer to the colonists for its actions. Parliament was not accountable to the people of the American colonies and, as the natural rights tradition taught, if the rulers are not accountable to the people, the people have no security. The old maxim taught in schools across America, "no taxation without representation," is a relatively accurate summary of the American complaint against the Sugar and Stamp Acts. While the Sugar Act can be defined as an "external tax" focused on the enforcement of customs duties, the Stamp Act was an "internal tax" which required government stamps to be affixed to a wide range of documents used in the colonies. Both were designed by the British Ministry, led by George Grenville, for the novel purpose of raising a revenue from the American colonies.

While the issue of external versus internal taxes received some attention in the 1760s and has been discussed by scholars since, the Massachusetts Patriots tended to regard a tax as a "tax," plain and simple. It didn't matter what form that tax took if it took money out of their pockets without their consent. Along with taxation, the administration of justice was the other main issue raised by the Sugar and Stamp Acts. The authority of admiralty courts, where trials were conducted by Crown-appointed judges, was expanded in the colonies by the Sugar Act in order

to aid customs officers with the enforcement of duties. This denied colonists the right to a trial by jury and put their property at the mercy of judges who were just as unaccountable as Parliament. When viewed in combination, the Sugar and Stamp Acts appeared to the Massachusetts Patriots like a design to reduce the American colonies to the status of *slaves* within the British Empire. While that may sound a bit dramatic, the acts were certainly part of a design by the British Ministry to enforce Parliament's "right" to legislate for the American colonies.³

This chapter focuses on three key points. First, the Massachusetts Patriots believed that natural rights provided the foundation for the civil rights of political societies. The Patriots were proud of the British Constitution and the Massachusetts Charter because they were convinced that the political system they lived under was the best in the world for securing the natural rights of the people. Indeed, the civil rights of British subjects were considered a near-perfect manifestation of the natural rights of mankind. Natural rights doctrines also provided the Patriots with a covenantal-contractual understanding of civil society. For the Patriots, political authority rested on the consent of the governed, as expressed in the constitution.

Second, the Patriots argued for the principle of constitutional supremacy. Since the constitution was a covenant-contract agreed to by the members of the community, it could not be altered without the consent of the people. Parliament's attempts to tax the colonies were interpreted as dangerous innovations which would alter the constitution. It is also important to note that the Patriots were conditioned to regard *loyalty to the constitution* as the primary duty of a subject. Thus, for subjects to resist civil officers who acted contrary to the constitution was not disloyal or rebellious, it was the supreme act of devotion to the country. This understanding of

³ Morgan, *The Stamp Act*, 38-51, 86-98.

loyalty fits well with the third focus of this chapter, *conditional obedience*. According to this conception of submission, subjects are legally and morally obligated to obey civil officers when they are exercising their lawful authority. But, as soon as officers step outside of the bounds set for them by the constitution, the people are no longer obligated to submit to their commands.

The analysis in this chapter will cover the years 1764-1766 and be divided into three sections: personal statements, public statements, and political sermons. This format will demonstrate the widespread acceptance of natural rights doctrines in all levels of Massachusetts society. It was not just the political and economic elites who espoused these doctrines, the common people also believed in the principles of natural rights. These were doctrines which provided the theoretical foundation for civil society in the mindset of the Massachusetts Patriots.

I. Personal Statements

One of the first leaders among the Massachusetts Patriots was the colony's champion in the Writs of Assistance Case, James Otis. Otis was a force to be reckoned with in Massachusetts politics as a prominent member of the House and an influential writer in the press. Otis published a number of pamphlets and newspaper articles in response to the Sugar and Stamp Acts in which he opposed Parliament's "right" to tax the American colonies. Some of Otis' most significant works were: *The Rights of the British Colonies Asserted and Proved*, *A Vindication of the British Colonies*, *Brief Remarks on the Defence of the Halifax Libel on the British-American-Colonies*, *Considerations on Behalf of the Colonists*. In a *Letter to a Noble Lord*, the John Hampden to William Pym essays, and the Freeborn Armstrong essays.

While Otis consistently defended the rights of the colonists, he was criticized by some of his contemporaries for contradicting himself when discussing the authority of Parliament over the colonies. In some passages, Otis seemed to deny that Parliament had any legal authority over the colonies. In others, he seemed to argue that the colonists were legally obligated to obey all the acts Parliament made concerning them. Simply put, his critics were right, Otis did contradict himself on occasion. One possible explanation for these contradictions was Otis' loyalty to Britain.

Like most of his fellow Patriots in 1764-1766, Otis had no desire for independence for the American colonies and readily recognized the subordinate political position of the colonies in the British Empire. He and his fellows were engaged in a delicate balancing act; how to defy what they regarded as unconstitutional actions by the British government while still demonstrating loyalty to the British Crown. Sometimes that led them to make comments which apparently supported Parliament's right to legislate for the colonies.

Otis found a strong theoretical foundation for his defense of the colonists' civil rights in natural rights doctrines. According to Otis, the natural rights of man provided the foundation for the colonists' civil rights as British subjects and as citizens of Massachusetts. If anyone could be said to possess a "divine right" to political authority, it was the people. Absolute political power was "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." Civil authorities possess a delegated authority, one which is "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.”⁴

That good is consulted primarily by defending the natural rights of the people. Otis accused his opponents of confounding the concepts of “rights” and “privileges.” There was a crucial difference between the two. Any civil right of any true value was derived from the natural rights of man. Otis cited Locke for the natural rights origin of civil rights and Blackstone to argue that the three central English liberties were the rights to personal security, personal liberty, and private property. These were rights founded on nature which could not be taken away without a man’s consent, they were “absolute” rights. Rights are thus worlds apart from privileges, the gracious grants of an indulgent government. The American colonists did not hold their rights at the will of any prince or government body. The colonists were men and, as such, they were born with the natural freedom and equality inherent in all men. This natural equality meant they were entitled to a political equality with British subjects living in the mother country. All were men and all were British subjects, meaning that all were entitled to the enjoyment of *equal rights*.⁵

Otis was ready to admit that the British Parliament had authority over the colonies in a “general sense,” but subject to definite limitations and exceptions. He drew the line at the colonists’ most essential rights. Parliament did not have authority 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

⁴ James Otis, “The Rights of the British Colonies Asserted and Proved,” in *The Collected Political Writings of James Otis*, ed. Richard Samuelson (Indianapolis: Liberty Fund, 2015), 124.

⁵ *Ibid.*, 137; James Otis, “A Vindication of the British Colonies,” in Samuelson, 188.

title, and are co heirs and joint heirs therein with their brethren in Britain.”⁶ The Glorious Revolution had secured these rights to the people when an *arbitrary king* (James II) was deposed and a *constitutional king* (William) was raised to the throne. After the Glorious Revolution, rulers were reminded that the constitution was a compact, one which limited the authority of rulers to those powers granted them by the people.

The chief glory of the British Constitution was that it defended the inalienable rights of the people from arbitrary power. Among those rights was the limitation that political powers remain in the hands of those the community granted it to, that the people be represented in a legislature as a means to express their consent, that no legislature has a right to make itself arbitrary, that even the supreme legislature (Parliament) is bound to govern by fixed rules, and that the government cannot take a man’s property without his consent. Otis argued that the bounds of authority for all governments are fixed by God and nature. All governments are bound to govern by stated laws, made for the good of the people and consented to by the people.⁷

After laying out these fundamental principles of justice, Otis challenged his opponents to explain “how ’tis 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 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.” Even Parliament was bound to act within the limits set by the British Constitution, the most perfect manifestation of the natural law to be found among human governments. Parliament was not absolute or arbitrary and, according to these principles, it had

⁶ James Otis, “Freeborn Armstrong,” March 10, 1766, in Samuelson, 314.

⁷ Otis, “The Rights of the British Colonies Asserted and Proved,” 145-147.

no “right” to tax the American colonies. Surely, Parliament had been misinformed as to its own authority when it passed the unconstitutional and unjust acts imposing taxes on the colonies. Justice would require them to correct their mistake once they were properly informed of the limits of their authority.⁸

Otis did his best to inform Parliament of those limits while also cautiously informing the colonists of the limits of their obedience to the British government. The colonists should be quick to obey the lawful commands of their sovereign, but they were not bound to obey the arbitrary commands of British ministers. Neither were they bound to exercise absolute obedience to the British Parliament. It was a grand aphorism of the British Constitution that no man could be taxed without his consent. Since the colonists had no *actual representatives* in Parliament, that legislative body had no authority to tax them. The *virtual representation* promoted by the Ministry was nothing more than an absurd legal fiction. Only flesh-and-blood representatives elected by the free suffrages of the people counted. The colonists were actually represented in the subordinate assemblies which existed in each colony, and only those assemblies had the lawful authority to tax them.⁹

If Parliament were to do the unthinkable and pursue its unconstitutional course into the depths of tyranny, the colonists would have no recourse but to follow the principles of Locke and make an *appeal to heaven*. Otis postulated that only two events could make the king’s loyal American subjects desire independence. The first event was an “extreme and long continued ministerial oppression.” Of course, a good king like George III would never let that happen. The second possibility was if a pretender-tyrant arose and seized the throne in Britain. In that case,

⁸ Ibid., 147-151.

⁹ James Otis, “Considerations on Behalf of the Colonists. In a Letter to a Noble Lord,” in Samuelson, 239-259; Responding to Criticisms of Noble Lord,” in Samuelson, 261-263.

America would serve as an asylum for the lovers of liberty forced out of Britain and for the true king, George III. In any case, Americans would always remain loyal to the British Constitution.¹⁰

Oxenbridge Thacher was another prominent Boston lawyer who threw his political weight against the Sugar Act. Although he was a key leader among the Patriots early on, Thacher died in 1765 and his influence is largely overlooked as a result. Thacher's 1764 pamphlet, entitled *The Sentiments of a British American*, made it clear that the colonists possessed equal rights with their brethren living in Britain:

“The colonies, making a part of this great empire, having the same British rights inherent in them as the inhabitants of the island itself, they cannot be disfranchised or wounded in their privileges but the whole body politic must in the end feel with them. The writer of this, being a native of an English colony, will take it for granted that the colonies are not the mere property of the mother state; that they have the same rights as other British subjects. He will also suppose that no design is formed to enslave them, and that the justice of the British Parliament will finally do right to every part of their dominions.”¹¹

If the colonists were to be treated as equals, they must enjoy the most essential rights of Englishmen; chief among which was the right that “no person shall be subject to any tax but what in person or by his representative he hath a voice in laying.” Since the colonies had no representatives in Parliament, that body had no lawful right to impose taxes upon them. Besides, the colonies had their own subordinate legislatures in which they were represented and which already collected taxes for the administration of their local governments. If Parliament were to tax the colonists, they would be “doubly taxed” and suffer under grievous burdens. Thacher also criticized the extension of the authority of admiralty courts under the Sugar Act. These courts

¹⁰ Ibid., 261-263; “John Hampden to William Pym,” January 27, 1766, in Samuelson, 290-295.

¹¹ Oxenbridge Thacher, *The Sentiments of a British American*, 1764, Oxford Text Archive, 1.

denied the colonists their “birthright” of being tried by the common law and by a jury of their peers.

The Sugar Act also removed the legal accountability of customs officers for wanton exercises of power in the colonies. This loss of security was to be deplored, for “a malicious seizer may take the goods of any man, ever so lawfully and duly imported, and carry the trial of the cause to a thousand miles distance, where for mere want of ability to follow, the claimer shall be incapable of defending his right.” The administration of justice would be corrupted and the colonists would have no means of redress against arbitrary officers. In Thatcher’s estimation, the new regulations imposed under the Sugar Act amounted to a *disenfranchisement* of the American colonists. They were being treated as if they were something less than British subjects and were “put under regulations alien from our happy constitution.” The solution to the present disaffection between the colonies and the mother country was a return to the rule of law under the constitution.¹²

John Adams, the future second president of the United States, was a talented and promising young lawyer in 1765. When the troubles between Britain and its American colonies began, he devoted his considerable talents to the Patriot cause. One of Adams’ most famous works was also one of his first, *A Dissertation on the Canon and Feudal Law*, published in spring 1765 after news of the Stamp Act’s passage reached Massachusetts. Adams also wrote a series of newspaper articles in January 1766, framed as letters from *The Earl of Clarendon to William Pym*, in which Adams chastised a supporter of the Stamp Act. In these works, Adams clearly posited natural rights as the basis for English liberties. He also issued a call for increased

¹² Ibid., 3-4.

political knowledge in the American colonies, because ignorance was one of the chief causes of the ruin and enslavement of mankind. A people needed to be well-educated as to their rights before they could defend those rights.

Sadly, according to Adams, most of human history was a story of how the ignorance of the people reduced them to being the slaves of the rich and powerful. A survey of history showed that the powerful almost always strove to keep the people ignorant of their rights, “to wrest from the populace... the knowledge of their rights and wrongs, and the power to assert the former or redress the latter. I say rights, for such they have, undoubtedly, antecedent to all earthly government, — *Rights*, that cannot be repealed or restrained by human laws — *Rights*, derived from the great Legislator of the universe.”¹³ Mankind received its rights from God but, through ignorance, had lost those rights to tyrants.

Adams pointed to two systems of tyranny which had dominated Europe since the rise of Christianity in the early Middle Ages, the *canon law* and the *feudal law*. The first was established by the Romish clergy and put the people of Christian Europe in spiritual chains, binding their minds and consciences. The second was based on the concept that the sovereign (king or prince) owned all of the land in a community. This system shackled the people with temporal chains and bound their bodies. What is even worse, these two systems formed a “wicked confederacy” in which the priests and princes agreed to support each other in their tyrannical efforts. The result was an age of darkness for the masses which lasted hundreds of years. The people were made “dependent” upon their masters and kept in ignorance of their natural rights.

¹³ John Adams, “A Dissertation on the Canon and Feudal Law,” in *The Revolutionary Writings of John Adams*, ed. C. Bradley Thompson (Indianapolis: Liberty Fund, 2000), 29.

The breakthrough came with the 16th Century Reformation, which increased the knowledge of the people and challenged the tyrannical systems. In England, an awakened people attempted to break their chains, but opposed by “the execrable race of the Stuarts, the struggle between the people and the confederacy aforesaid of temporal and spiritual tyranny, became formidable, violent, and bloody.” This struggle was the chief cause of the Puritans’ choice to flee to America; “it was this great struggle that peopled America. It was not religion alone, as is commonly supposed; but it was a love of universal liberty, and a hatred, a dread, a horror, of the infernal confederacy before described, that projected, conducted, and accomplished the settlement of America.” The Puritan founders of Massachusetts loved civil and religious liberty and established a political system based on freedom, in opposition to the tyrannical systems they left behind in Europe.¹⁴

The Puritans knew the importance of knowledge for preserving liberty, leading them to foster education in their community. The result was a colony populated by men educated to know their natural and civil rights, men who were equipped to assert those rights when necessary. History had taught the men of Massachusetts that “liberty must at all hazards be supported.” They were not granted their liberty by any government, the colonists “have a right to it, derived from our Maker.” If the people’s knowledge of their rights was lost, liberty would be lost soon after. Therefore, the people must be aware that they have a right to call their political leaders to account for their actions:

The people “have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge, I mean, of the characters and conduct of their rulers. Rulers are no more than attorneys, agents, and trustees, for the people; and if the cause, the interest and trust, is insidiously

¹⁴ Ibid., 29-31.

betrayed, or wantonly trifled away, the people have a right to revoke the authority that they themselves have deputed, and to constitute abler and better agents, attorneys, and trustees.”¹⁵

Responding to the criticism that the colonists were too argumentative in asserting their rights and criticizing British officers, Adams asserted that the true problem was “American timidity.” The only fault the colonists could be blamed with was being too submissive when British officials exceeded their lawful authority. Americans had been too cautious in their opposition and too willing to accept small grievances. Americans were a loyal and quiet lot by nature, at least they would remain so “until the essentials of the great compact are destroyed or invaded.” American timidity was reinforced by the supporters of government who told the colonists that the very word “rights” was offensive and that the King, Ministry, and Parliament “will not endure to hear Americans talk of their rights...” In response to their complaints, the colonists had been told that it was their duty to submit to the British government “even when she seems to us to shake the foundations of government” and that Britain had the power to “force her own judgment into execution, right or wrong.”¹⁶

Adams was appalled by these notions of passive obedience promoted by the supporters of government. While Americans might be overly timid, the “spirit of liberty” was still alive among the colonies. The colonists possessed the same spirit that forced King John to sign Magna Carta, that severed Charles I’s head from his body, and that drove King James II out of Britain. Adams encouraged his fellow colonists to direct that spirit to laudable ends by increasing their knowledge of the principles of government. The colonists should “study the law of nature; search into the spirit of the British constitution; read the histories of ancient ages; contemplate the great examples of Greece and Rome; set before us the conduct of our own British ancestors, who have

¹⁵ Ibid., 34.

¹⁶ Ibid., 34-36.

defended for us the inherent rights of mankind against foreign and domestic tyrants and usurpers, against arbitrary kings and cruel priests, in short, against the gates of earth and hell.”¹⁷

Well-informed colonists would be ready to proclaim “that British liberties are not the grants of princes or parliaments, but original rights, conditions of original contracts, coequal with prerogative, and coeval with government; that many of our rights are inherent and essential, agreed on as maxims, and established as preliminaries, even before a parliament existed.” They would also be ready to oppose the design which Adams believed existed to enslave America. Individuals in the British government were attempting to bring tyranny upon the colonies by degrees. The first step in the design was “an entire subversion of the whole system of our fathers, by the introduction of the canon and feudal law into America.” The Stamp Act would help to make this possible by preventing access to knowledge in the colonies. Thus, the Stamp Act was not only a novel and unconstitutional tax, it was the opening wedge in a devious plan to enslave America.¹⁸

Adams identified the plotters as the British Ministry and their “creatures of power,” a derisive term for Crown officers on both sides of the Atlantic. Those who supported this plan were guilty of “apostasy,” they had abandoned the “real” British Constitution and become enemies to liberty. American resistance to being taxed without consent and the extension of admiralty courts was based on the principles of the constitution. It was the Americans who were being loyal to the law. Their struggle against arbitrary power was “founded in principles so indisputable in the moral law, in the revealed law of God, in the true constitution of Britain, and

¹⁷ Ibid., 37.

¹⁸ Ibid., 38-39.

in the most apparent welfare of the British nation, as well as of the whole body of the people in America.”¹⁹

The American “sons of liberty” had been charged with ignorance of the British Constitution, but that charge had no basis. Americans knew “the true constitution and all the resources of liberty in it, as well as in the law of nature, which is one principal foundation of it...” Adams provided a definition of the British Constitution for the edification of his opponents. The first fundamental of the constitution was the establishment of a mixed and limited monarchy. Second, that mixed system was designed to preserve the subject’s liberty. In fact, liberty was the primary end of the British Constitution. Third, there was a division of power among the executive and legislative branches of government.

Fourth, the people possessed the power of election. Rulers receive their authority by the consent of the people and act as their representatives in government. Fifth, the power of election is based on the principle of natural equality. This means that “the meanest and lowest of the people are by the unalterable, indefeasible laws of God and nature, as well entitled to the benefit of the air to breathe, light to see, food to eat, and clothes to wear, as the nobles or the king. All men are born equal; and the drift of the British constitution is to preserve as much of this equality as is compatible with the people’s security...” Sixth, there is a reservation of the fundamentals of government to the people. This retention of “popular power” is what keeps the constitution mixed. Without the right of the people to call their leaders to account, the rulers would become arbitrary and the constitution itself would no longer be “secure.”

¹⁹ Ibid., 35; “The Earl of Clarendon to William Pym, no. I,” January 13, 1766, in Thompson, 44-46; “The Earl of Clarendon to William Pym, no. II,” January 20, 1766, 47-49.

Adams pointed to two fundamental popular powers which enabled the people to “check” their rulers, voting for representatives and trial by jury. These rights were essential for preventing arbitrary government and preserving liberty. If these powers were taken away from the people, that would signal the death of the constitution, and with it, the security the law provided for the rights of the people. Adams’ definition of the British Constitution carried a definite implication in regards to the Sugar and Stamp Acts. Those acts denied the American colonists their fundamental popular powers, implying that their continuance would lead to the death of the constitution.²⁰

Samuel Adams is best known for his role as a popular agitator and rabble-rouser, but he also served multiple terms in the Massachusetts House of Representatives, was a delegate to the Continental Congress, and wrote extensively in defense of American rights. Adams’ rhetorical efforts in letters and newspaper articles were just as important as his efforts organizing resistance on the streets of Boston. His personal and semi-official correspondence during the Stamp Act Crisis demonstrate the importance the Massachusetts Patriots placed on safeguarding their two-fold security, the British Constitution and the Massachusetts Charter, from the encroachments of arbitrary power. He is also highly representative of the *legacy of liberty* which Americans believed they belonged to.

The Massachusetts colonists were descended from ancestors who were renowned for “their Zeal for true Religion & Liberty: When they found it was no longer possible for them to bear any Part in the Support of this glorious Cause in their Native Country England, they transplanted themselves at their own very great Expence, into the Wilds of America.” The first

²⁰ “The Earl of Clarendon to William Pym, no. III” January 27, 1766, 50-54.

settlers had fled persecution and sought refuge in a “dreary wilderness,” consoled only by the knowledge that they could now enjoy their rights in safety. This sense of legacy made the colonists highly sensitive to any invasions of their rights. Thus, the British government should not have been surprised that the Sugar and Stamp Acts were “obnoxious to the people here.”²¹

When the colonists crossed the Atlantic, they “undoubtedly brought with them all the Rights & Laws of the Mother State.” As British subjects, they possessed equal rights and any distinction between the colonists and subjects living in Britain was absurd. All British subjects were born free and remained so under the British Constitution, which was “founded in the Principles of Nature and Reason” and admitted “no more Power over the Subject than is necessary for the Support of Government- which was originally designed for the Preservation of the unalienable Rights of Nature...”²² The true glory of the British Constitution was that it was copied from the natural law; the natural rights of man had been interwoven into its very fabric. The colonists considered themselves entitled:

“to all the inherent, unalienable Rights of Nature, as Men— and to all the essential Rights of Britons, as subjects. The common Law of England, and the grand leading Principles of the British Constitution have their Foundation in the Laws of Nature and universal Reason. Hence one would think that British Rights, are in a great Measure, unalienably, the Rights of the Colonists, and of all Men else.”²³

The enjoyment of their natural and constitutional rights had been confirmed to the colonists in the Massachusetts Charter, which was a contract between the king and the colonists. While the Second Charter (1691) was a mere shadow of the First Charter (1629), it still took the

²¹ Samuel Adams, “To the Reverend G-. W-.,” November 11, 1765, in *The Writings of Samuel Adams*, vol. I, ed. Harry A. Cushing (New York: G.P. Putnam & Sons, 1904), 27; “To John Smith,” December 19, 1765, in Cushing, vol. I, 44-45.

²² *Ibid.*, 45-47.

²³ Samuel Adams, “To Dennys De Berdt,” December 20, 1765, in Cushing, vol. I, 64.

form of a contract. Central to that contract was the king's promise that the colonists would "enjoy all the Libertys & Immunitys of free & natural Subjects of Great Britain..." From the colonial perspective, "this Charter is to be lookd upon, to be as sacred to them as Magna Charta is to the People of Britain; as it contains a Declaration of all their Rights founded in natural Justice." Two rights which were certainly sacred were representation and trial by jury, both of which were denied by the Stamp Act.²⁴

According to the Charter and the principles of the British Constitution, the colonists had the exclusive right to make laws and collect taxes concerning their internal governance. The Charter recognized the subordinate position of Massachusetts to Britain, but that did not mean the colonists were subject to the absolute power of Parliament. Since the colonists had no representatives in Parliament, it was contrary to Magna Carta and natural justice for Parliament to impose a tax upon them. If the Stamp Act were to remain in effect, the Charter would be effectively annihilated and the colonists would lose their security.²⁵

The "subordinate powers of legislation" which Massachusetts' colonial government exercised were a necessity if the colonists were to remain free men. The continuance of these powers was a matter of justice; the colonists had a right to make their own laws and choose their own representatives by free election. The provisions for the negative voice of the governor, and Crown, found in the Charter made Massachusetts as dependent on Britain as was consistent with justice and a well-ordered political system. Any attempt to annihilate the Charter, as the Sugar and Stamp Acts did, would place the "primary, absolute, natural Rights of Englishmen" to personal security, personal liberty, and private property in jeopardy.

²⁴ Adams, "To the Reverend G-. W-., " 28; "To John Smith," 46.

²⁵ Adams, "To the Reverend G-. W-., " 28-29.

Adams had no problem admitting “the general superintending Power of the Parliament over the whole British Empire... so far as in our Circumstances is consistent with the Enjoyment of our essential Rights, as Freemen, and British Subjects...” Ultimately, the American resistance to the Sugar and Stamp Acts was consistent with the principles of the British Constitution, it was the supporters of those unconstitutional acts who were at fault.²⁶

Numerous anonymous authors filled the Massachusetts newspapers with similar arguments to those put forth by Otis, Thacher, and John and Samuel Adams. An author writing under the initials *B.W.* argued against the “grievous and unconstitutional Tax laid upon the Colonies by the Stamp Act” on the basis of the most fundamental maxim of English liberty, “that no Man shall be taxed but with his own consent.”²⁷ Since it was clear that the colonies were not represented in Parliament in any “sober sense,” it was just as clear that Parliament had no right to tax them. The denial of Parliament’s claim to possess a legal, constitutional right to tax Massachusetts was also based on the Charter, which asserted the province’s “exclusive Right of charging our Estates with such sums as we ourselves think necessary for the Preservation and Advancement of our Public Interest.” If the colonists submitted to the Stamp Act, that submission would amount to a resignation of their right to tax themselves. Submission would also throw away their right to a trial by jury.

Far from alleviating their concerns, submission would only be the beginning of their miseries. After the Stamp Act, the colonists could “next expect a Tax on your Lands; and after that one Burthen on the Back of another, till you are reduced to a State of the most abject Poverty.” The colonists must remember that “the least Infraction of your Liberties is a Prelude to

²⁶ Adams, “To Dennys De Berdt,” 65-70.

²⁷ B.W., *Boston Gazette*, October 7, 1765, in *The Annotated Newspapers of Harbottle Dorr, Jr.*, Massachusetts Historical Society.

greater Encroachments.” If the colonists gave up one inch in the struggle, the British government would have gained a foothold for the expansion of arbitrary power. The end result of any submission would be the enslavement of the present and future generations of Americans.

B.W. could not imagine that such a “slavish temper” existed in Massachusetts, a land renowned for its love of liberty. The Massachusetts colonists were “the Descendants of Britain, born in a Land of Light, and reared in the Bosom of liberty...” They were the descendants of heroic ancestors known for “the glorious stands they have often made against the Yoke of Thralldom” and “their inviolable attachment to the inestimable Blessings of Freedom...” Surely, the present generation would not be guilty of the sin of submitting to slavery. A submission which would ensure the bondage and misery of their posterity.

Resistance to the unconstitutional Stamp Act was not disloyalty, vindicating the natural rights of man was not treason. B.W. was aware that “Revolution principles” were offensive to the “Tories” who supported the Stamp Act.²⁸ But these were principles based on truth and it could never be a crime to speak the truth. If anyone could be accused of treason it was the Tories. To support such a clearly unconstitutional act, they must either be ignorant of the principles of the British Constitution or open traitors to their country. A *true patriot* would stand firm in defense of his country’s liberties. Resistance was not simply an option, for defending liberty was a duty every true patriot owed to God and his country. A true patriot must be ready to resist both the open assaults of the “roaring lion” and the more subtle invasions of the “wilely serpent.”²⁹

²⁸ B.W., *Boston Gazette*, April 14, 1766, in *Dorr*, Massachusetts Historical Society.

²⁹ B.W. *Boston Gazette*, October 7, 1765, in *Dorr*, Massachusetts Historical Society.

Americanus issued a passionate argument for the equal rights of the American colonists.³⁰

It was a common opinion in America that “*British Subjects are British Subjects*, by which you mean that those of them that live in America are entitled to the same essential privileges as they that live in Britain.” Unfortunately, this just opinion was opposed by a contrary opinion put forth by the supporters of the British government. Their view argued that a colonist must not look upon himself simply as the “subject of the K. of Great Britain, you should remember that you are *subjects of the subjects* of that monarch,” that “when your Forefathers were driven out of their native land, their privileges were not sent along with them to America, but tarried behind at *Westminster*.” Clearly, the colonists had no property which they could justly call their own, everything they seemingly possessed was actually the property of the people of Britain.

What is more, the colonists must submit when Britain demanded they turn over that property. It was this mindset which led to the introduction of the Stamp Act in America, which *Americanus* colorfully compared to requiring the colonists to accept the “Mark of the Beast.”³¹ The colonists had been told that, if they “hug the chains” placed upon them, they would be granted peace and quiet by their masters in Britain. They were told that “when your neck has been accustomed to the yoke, it will not feel so galling; when your backs are grown callous by reiterated flagellation, the whip will make but little impression.... Your ancient privileges will then be forgot” and you will live in a peaceful and submissive slavery. Submission upon such conditions was unacceptable to *Americanus*, who pledged “in the presence of Almighty God,

³⁰ *Americanus*, “A Word of Advice,” *Boston Gazette*, October 21, 1765, in *Dorr*, Massachusetts Historical Society.

³¹ Revelation 13: 16-17: “And he causeth all, both small and great, rich and poor, free and bond, to receive a mark in their right hand, or in their foreheads: And that no man might buy or sell, save he that had the mark, or the name of the beast, or the number of his name.”

that I will suffer the most ignominious and torturing Death rather than submit to receive the accursed Stamp Papers.”³²

Britannus Americanus was just as passionate in his opposition to the Stamp Act.³³ As much as he despised this act, he recognized that it had one salutary impact, it had awakened Americans to “a sense of the importance of securing their rights and privileges.” The rights of Americans were endangered by the insidious designs of “corrupt and arbitrary ministers” and the “tools and sycophants” who attempted to carry out the will of their political masters. *Britannus Americanus* expressed a confidence that the king and Parliament were on the side of justice and would act as the means of redemption for the American colonies. That confidence may have begun to weaken as the months went by and both king and Parliament remained deaf to the petitions sent by the colonies.

In March 1766, *Britannus Americanus* wrote another article which stressed the mutual obligations of allegiance and protection.³⁴ The first settlers in Massachusetts had chosen their form of government, modelled on England’s political system, and chosen the English king as their own sovereign. Massachusetts’ political system rested upon compact, with the terms of the agreement listed explicitly in the Charter. Upon migrating to America, the colonists did not forfeit their status as English subjects. Even without the declarations in the Charter promising them equal rights, the colonists would still be entitled all the rights of Englishmen; the most prominent of which were the rights of consenting to their own laws and trial by jury.

³² *Americanus*, *Boston Gazette*, December 16, 1765, in *Dorr*, Massachusetts Historical Society.

³³ *Britannus Americanus*, *Boston Gazette*, November 4, 1765, in *Dorr*, Massachusetts Historical Society.

³⁴ *Britannus Americanus*, “Essay on the Rights of the Colonies,” *Boston Gazette*, March 17, 1766, in *Dorr*, Massachusetts Historical Society.

These rights were unalienable, Parliament had no more “lawful power to make an act which shall deprive the people of *New England* of those rights, than they have to make an act to deprive the people of *Old England* of those same rights.” Would not the people of Old England “think it very unjust, to have an act of Parliament made, which should deprive them of the unalienable rights of the constitution...?” If they would not part with their rights, why would they expect the American colonists, their equals, to tamely surrender the rights they enjoyed?

Britannus Americanus speculated that unconstitutional laws which denied Americans equal rights might well “cut the thread of political connection and obligation” between the colonies and the mother country:

“Does not allegiance infer protection? Has not the latter the strongest claim? Would men ever have had the idea of allegiance to an earthly Prince, had they not first found it necessary to form a government on earth, under God, to protect their natural rights? Is not therefore the Subject’s allegiance first due to the constitution of government, which secures the natural rights of the governed; and as a necessary means thereof circumscribes and limits the power of those, whom they have or shall constitute to be their legislators and governors, whether Kings, or Parliaments, or both?”

The Massachusetts colonists could not be expected to submit to arbitrary laws which denied them the rights they were entitled to by nature; and which had been confirmed to them by the British Constitution and their Charter. The enjoyment of their natural and constitutional rights required the existence of a local legislative assembly and a provincial government in Massachusetts. It would be impossible for the colonists to enjoy their rights without this measure of self-government. Thus, the powers of government granted to the provincial government in Massachusetts were “not a mere favor, but that which was *right, fit, equitable*; for without it they must have been depriv’d of that right, which others enjoy’d who were no more than their *equals*;

and which were some of them the essential rights of nature, as well as the constitution, and therefore inseparable from them either as men or subjects.”

Just as Parliament, which represented the British people, made the laws for Britain; the provincial government of Massachusetts, made up largely of the colonists’ representatives chosen by free election, made the laws for the colony. Britannus Americanus closed his article with an interesting suggestion. What if the positions of Old England and New England were reversed? Assuming that the principles put forth by the supporters of the Stamp Act were correct and that the consent of the governed was not a political necessity, “would it not then be just as equitable, and just as consistent with the British Constitution... for the representatives of the people of New England, or any other colony, to make a law to tax their *fellow subjects* in England, as for their representatives to make a law to tax *their* fellow subjects in the colonies?” If the supremacy of the constitution was abandoned, it was open season on the rights of British subjects on both sides of the Atlantic.

Philoletes also emphasized the mutual ties of allegiance and protection.³⁵ While it was common to say that the king had “granted” the colonists their charter rights, *Philoletes* argued that it was more accurate to say that the king had “confirmed” rights which the colonists already possessed. The colonists’ charter rights “must not be understood as meer emanations of Royal Favour or new Bounties granted, which the people could not justly challenge, or had not right to before... this Charter is for the most part declaratory of the principal Grounds of the fundamental laws and Liberties of England....” The colonists possessed their rights before the Charter was created and they could justly expect the king to regard their rights as “sacred and inviolable.”

³⁵ *Philoletes*, *Boston Gazette*, November 11, 1765, in *Dorr*, Massachusetts Historical Society.

An author writing on behalf of *The Whole People of North America* wrote an address “To All the Members of the Honorable House of Commons in Great Britain” in an attempt to remind them of the fundamental principles of the British Constitution.³⁶ The chief principle was that “no man shall be taxed but by his own or his Representative’s consent.” Clearly, Parliament imposing a tax upon the American colonists violated this principle and denied the colonists their equal rights as British subjects. In order for Parliament to avoid being charged with “so black a crime” as overthrowing the constitution, the colonists had been told that they were “virtually represented” in Parliament. While not accepting that explanation, which most colonists regarded as utter nonsense, the author decided to play along with the concept and give Parliament some “virtual instructions.”

First, the members of Parliament should repeal the Stamp Act. Second, they should agree to never pass any future act or law imposing a tax upon the colonies. Third, in all their affairs, they should “act agreeable to the principles of the constitution, and not to the mandates of any minister of state.” If the members of Parliament truly were the virtual representatives of the American colonists, they would remember that “we think our happiness is inseparably connected with the preservation of our liberty” and that it was their duty as representatives to preserve that liberty.

One of the most eloquent defenders of English liberty was *Aequus*, likely either an American living in London or a Bostonian writing under an assumed identity. An article from *Aequus* was published in the March 6, 1766 edition of the *Massachusetts Gazette*, ostensibly as a

³⁶ The Whole People of North America, “To All the Members of the Honorable House of Commons in Great Britain,” *Boston Gazette*, November 18, 1765, in *Dorr*, Massachusetts Historical Society.

reprint from a London newspaper.³⁷ Aequus began with the big question, what “right” did the mother country have to impose taxes on its American colonies? This question went to the heart of English liberty, which Aequus defined as “the primitive right that every freeholder had of consenting to those laws by which the community was to be obliged.” Under the British Constitution, every free man was a “party to the laws,” either in person or by his representative.

Aequus considered this right of consenting to laws to be the basis for the *legal obedience* of subjects. The problem was that American colonists could not be said to be a party to any laws made by Parliament, because they were not “present or represented” in the British legislature. Thus, without the necessary condition of consent being met, the American colonists were not obligated to obey laws created by Parliament. On the contrary, the charters included express statements that the colonists had the exclusive power of “enacting their own laws, provided the same be not repugnant to those of Great-Britain.” Based on these principles, Aequus found it “hard to conceive from what constitutional principle applicable to a colony, not a conquered country, his obedience to a statute-law can be deduced.” Parliament had no “right” to legislate for the colonies.

By contrast, the colonies had every “right” to legislate for themselves. The charters functioned as constitutions for the colonies, guaranteeing the right of consenting to laws to the colonists, and as compacts, the terms of which could not be violated by any party without committing an injustice. Even the king recognized that his actions in relation to the colonies were bound by the terms of the charters. What is more, those members of the British government who

³⁷ Aequus, *Massachusetts Gazette*, March 6, 1766, in *American Political Writing During the Founding Era: 1760-1805*, vol. 1, ed. Charles Hyneman (Indianapolis: Liberty Fund, 1983), 57-60.

thought the colonies were too “independent” of the mother country were wrong. The charters effectively secured both the rights of the colonists and the supremacy of the British government.

The Navigation Acts which directed colonial trade to the mother country, the Crown-appointed governors, and the Crown’s negative on colonial legislation all secured the political dependence of the American colonies. The colonists had consented to *this* measure of British supremacy. The crucial thing the British government needed to remember was that its supremacy was not absolute. One key exception to British authority was the power to tax. To be consistent with justice and the equal rights of the colonists, only the representatives in the colonial legislatures could tax the people living in the colonies.

That some colonists in Massachusetts were aware they were regarded as inferior subjects can be seen in a two-part article, by an unnamed author, reflecting on the depiction of the colonies in British newspapers.³⁸ The author argued that British newspapers were filled with misrepresentations of the colonies and were designed to create prejudices against the colonists among their fellow subjects in Britain. An Englishman reading newspapers in the mother country was impressed with the image that the colonists were “dangerous rivals in business, and likely to deprive him of the means of subsistence” and that the colonists were “a kind of Vassals to Great Britain... under a more abject or inferior degree of subjection than the people of England.”

The colonists were also described as being “seditiously inclined,” “aiming at independency,” and “ungratefully refusing to contribute anything” to the cost of maintaining the Empire. Along with the criticisms of colonists, British newspapers were filled with passages

³⁸ “Remarks on Sundry Articles of News and Pieces Relating to the British American Colonies, Published in the Late English Papers,” *Boston Evening-Post*, June 10, 1765, in *Dorr*, Massachusetts Historical Society; “Continuation of the Piece Entitled Remarks, Begun in Our Last,” *Boston Evening-Post*, June 17, 1765, in *Dorr*, Massachusetts Historical Society.

alluding to the imposition of more grievous burdens on these unruly, inferior subjects. The supporters of the British government were attempting to intimidate the colonists “into a tame submission to the arbitrary orders that deprive us of our constitutional rights, for fear, that if we prove refractory, a more grievous burden will be imposed upon us...” In his opposition to the “evil designs” of those writing such passages in British newspapers, the author called for the “assistance of every friend to the natural rights of mankind, upon which the English Constitution is founded.”

This opposition was necessary to prevent the British Ministry from completing its plans to destroy the British Constitution and replace it with an arbitrary government. The author reflected that the Ministry’s plan to create a “system of corruption, destructive to the fundamentals of the English Constitution, and the natural rights of mankind... must soon produce some terrible revolution, or end in national ruin...” The plan must be stopped now, before the tyrannical system took hold and became too strong to oppose.

Another unnamed author reflected on the very nature of that liberty which the American colonists were struggling to preserve in an article beginning with the stirring words, “O Give Me Liberty!”³⁹ Was the concept of liberty a mere delusion, “a wild chimaera of a distracted brain?” The author responded with a resounding “no!” That America itself would be a land of liberty was the “will of Heaven,” but it would have to be defended from the onslaughts of tyranny if it was to be delivered from the “shades of utter gloom and darkness” into which it had fallen. The most precious liberties of Englishmen were:

“utterly subverted by a most grievous and oppressive act; made,
we would hope, rather thro’ a too hasty judgement in what

³⁹ “O Give Me Liberty!” *Boston Evening-Post*, November 11, 1765, in *Dorr*, Massachusetts Historical Society.

constitutes our true, essential and invaluable Liberties, than a determination to strip from us those Liberties wherewith God, and the most solemn contracts between a Prince and his People, hath made us free.”

It was in defense of those liberties that Americans were contending against their would-be masters in the British Ministry. Americans would not submit to using the “baneful papers” which the Stamp Act was attempting to force upon them. Any colonist who did use the stamps would be a traitor to his country. He would be guilty of “bringing slavery upon his country” and condemning posterity to chains. The author encouraged his fellow colonists to “stand fast in the support of *Magna Carta*, the right of every British subject; and the liberties and privileges confirmed to us, and ever recognized by the Crown of Great Britain...” Liberty was not a delusion, it was the God-given birthright of every man.

According to a writer using the initials Y.Z., that birthright was in imminent danger due to the monstrous Stamp Act.⁴⁰ This act was intended as the “entering wedge” of a “devilish scheme” by the British Ministry to put the colonists in chains. The one benefit of the act was that it had awakened Americans to this scheme. They had heard the “rattling of chains” before it was too late to make a defense. Y.Z. encouraged the colonies to remain united in their opposition to this evil design and to always be ready “on the first appearance of tyranny or oppression, to rise as a man and crush it in embryo.”

The concept of constitutional supremacy was well-represented in the September 2, 1765 edition of the *Boston Post-Boy*, which included a “Definition of Treason” first published in the *Connecticut Gazette*.⁴¹ This attempt at definition was divided into two sections. First, the

⁴⁰ Y.Z. *Boston Evening-Post*, November 25, 1765, in *Dorr*, Massachusetts Historical Society.

⁴¹ “Definition of Treason,” *Boston Post-Boy*, September 2, 1765, from the *Connecticut Gazette*, in *Dorr*, Massachusetts Historical Society.

negatives, those actions which it was not treason to perform. There were 15 items in this list, which began with the assertion that, “it is not treason to say the inhabitants of the North American Colonies are Englishmen.” Number two built on that statement by proclaiming “it is not treason to assert that Englishmen have Rights of which no Power on Earth can Justly deprive them.” Furthermore, it could not be regarded as treason for the colonists to assert these rights or attempt to convince Parliament that it had mistakenly infringed upon them. It could never be treason to hold to the principles of the British Constitution, and thus, “it is not treason to say no man can be taxed, agreeable to the British Constitution, without his consent.” Since the colonists were not represented in Parliament, their resistance to the arbitrary power Parliament was claiming over them could not be defined as treason.

The second section contained the *affirmatives*, those actions which should be regarded as treason. This list of 18 items began with the claim that “to attempt the Subversion of the most happy Constitution upon Earth, is Treason.” Even the king and Parliament were bound to govern according to the laws, “to maintain that the King and Parliament may enact Laws contrary to the fundamentals of the constitution, is Treason.” It was also treason to “assert that the Subject is bound to yield Obedience to such laws” as were contrary to the constitution. Only a conditional obedience was owed to rulers, for it was the constitution which claimed the first loyalty of British subjects.

Anyone, even political rulers, seeking to enslave British subjects and deny them their just rights was guilty of treason. Subverting the constitution would alter the fundamental laws by which the community operated. It would change English liberty, based on the rule of law, into the despised “French politics” of arbitrary power. Anyone attempting to introduce French absolutism into Britain or the American colonies was not only a traitor, they were also a “villain”

and a “parricide.” This article, while originating in Connecticut, is highly representative of the political mindset of the Massachusetts Patriots. Treason was a crime committed against the constitution, not the officers in the government, and the obedience of subjects was conditional, not absolute. Agreement with the fundamental laws of society was the standard to judge who the true traitors were. Based on those fundamental laws, it was clearly the British Ministry and its supporters, not the Patriots, who were guilty of treason.

II. Public Statements

The belief that natural rights provided the foundation for the civil rights of the American colonies, that the constitution was supreme, and that conditional obedience was due to rulers was also clearly expressed in the public statements made by political bodies in Massachusetts during the Stamp Act Crisis. Two representative political bodies were the town meetings, expressing the sentiments of local communities, and the House of Representatives, made up of members elected by those same communities. The *instructions* which individual towns wrote for their representatives are especially beneficial for demonstrating the depth of political sentiments in Massachusetts. These instructions, along with the correspondence carried out between towns, show that the political mindset of the Massachusetts Patriots was by no means restricted to the political elite. Natural rights doctrines had permeated all socio-economic layers of Massachusetts society.

At the Boston town meeting in May 1764, the Bostonians unanimously approved instructions to their representatives in the House of Representatives, i.e. the General Court,

which included James Otis, Thomas Cushing, Oxenbridge Thacher, and Thomas Gray.⁴² The citizens of Boston declared their expectation that their representatives would defend the rights the colonists possessed by birth as “free-born subjects of Great Britain” and by royal charter. The Bostonians were upset by laws passed by the British Ministry and Parliament, e.g. the Sugar Act, which obstructed their trade. They were also upset by the news they had received of “the intentions of the ministry, to burthen us with new taxes,” likely a reference to the plans for the Stamp Act.

The Bostonians saw these acts as a prelude to a host of future impositions, as “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 *everything* we possess or make use of?” If these acts were not opposed, where would the demands of the British Ministry end? The Bostonians perceived that being taxed by the Parliament in Britain “annihilates our charter right to govern and tax ourselves.” It also amounted to a disenfranchisement of the colonists. For, “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?”

The same Boston town meeting also submitted a memorial to the House of Representatives to accompany the instructions.⁴³ This memorial was approved by the House and sent to the colony’s agent in London as an expression of the colony’s position on being taxed by the supposed authority of Parliament. It began with a brief history lesson. From the conquest of William I to the Glorious Revolution, the history of England had been a story of the struggle between the princes and the people. The Glorious Revolution had settled that struggle, in favor

⁴² Town of Boston, “Instructions,” May 1764, in Samuelson, 170-173.

⁴³ Town of Boston, “Substance of a Memorial Presented the House, in Pursuance of the Above Instructions,” May 1764, in Samuelson, 173-182.

of the people, with a public declaration of the absolute rights of Englishmen to personal security, personal liberty, and private property.

These rights were “natural, inherent, and perpetual,” thus, the colonists did not lose these rights when they traveled across the Atlantic. The charters agreed to by the king and the colonists were declarations of the natural rights of the colonists as British Subjects, entrusting them with the “power of making *their own local laws*, not repugnant to the laws of England, and with *the power of taxing themselves*.” The passages on of self-government found in the charters were affirmations of the law of nature.

The current question at issue between Britain and the American colonies was the extent of Parliament’s authority, was it absolute or limited? The Bostonians asserted that it was limited, “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 judicial history of Britain itself confirmed their position. British judges had declared that “acts of parliament against natural equity are void. That acts against the fundamental principles of the British constitution are void.” This was a position which was supported by reason and revelation.

One of the key limits of Parliament’s authority concerned the constitution itself. Even though Parliament was the “supreme power” in the British Empire, it was “contrary to reason that the supreme power should have the 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” If the supporters of the British government were correct, and Parliament was absolute, that would mean an end to the legal safeguards which

protected the liberties of the colonists. The British Constitution and the charters would be dead letters, impotent in the face of arbitrary power.

In Boston's September 1765 instructions, the town pledged to speak out "at a time when the British American Subjects are everywhere loudly complaining of arbitrary & unconstitutional Innovations..."⁴⁴ The Stamp Act was the prime example of these measures and it was astonishing to the Bostonians that the British Ministry and Parliament would approve of that unconstitutional tax. The Stamp Act flew in the face of the Massachusetts Charter, which guaranteed self-government and equal rights to the colonists. The most essential of those rights, the "two pillars of the British Constitution," were the rights of "being represented in the same Body which exercises the Power of levy & of having their Property tryed by Jurys." These rights did not originate with the British Constitution either, they were original rights, founded on the "common rights of mankind."

The Stamp Act effectively annihilated the Charter and deprived the colonists of "the most essential rights of Britons," greatly weakening "the best Security of our Lives, Libertys, & Estates." The Bostonians perceived that the Stamp Act was designed to set a dangerous precedent, and if the stamps were allowed, Parliament would claim the authority to tax the colonies whenever and however it wanted, all without the consent of the colonists. Resistance to the Stamp Act was a duty which the present generation owed to its country and to posterity. Boston's representatives were to use their "best Endeavors in the General Assembly, to have the inherent, unalienable Rights of the People of this Province, asserted & vindicated & left upon the

⁴⁴ Town of Boston, "Instructions," September 1765, in Cushing, vol. I, 7-12.

publick Records; that Posterity may never have Reason to charge the present Times, with the Guilt of tamely giving them away.”

Many other Massachusetts towns joined Boston in instructing their representatives to oppose the Stamp Act and defend the rights of the colonists. One of the most prominent was Plymouth, the site of the first Puritan settlement. Plymouth’s stand for freedom thus had great symbolic significance for the Massachusetts Patriots. It was a town originally founded by settlers seeking religious liberty and its current defense of political liberty tapped into that sense of legacy. In October 1765, the freeholders of Plymouth unanimously approved their instructions to their representative in the General Court.⁴⁵ They began by asserting their affection for the British Constitution, which was “founded on the true principles of liberty.” The happiness of the colonists was directly related to their enjoyment of that liberty, because the rights guaranteed to all British subjects provided them with security.

If the happiness of the colonists was to be preserved, they would need to continue to enjoy equal rights with the subjects living in Britain. A loss of equal rights would result in a loss of security for the colonists. This negative consequence was the primary thrust of the colonists’ present complaint against the British government. By taxing them without their consent and depriving them of trial by jury, the Stamp Act had undermined the “main Pillars of the British Constitution” and created an unjust distinction between the colonists and their fellow subjects. The Plymouth freeholders reminded their representative, Thomas Foster, that they were the descendants of the first settlers of their country. They lived on the very ground which had served as an “Asylum of Liberty” for their noble ancestors.

⁴⁵ Town of Plymouth, “Instructions,” *Boston Gazette*, November 4, 1765, in *Dorr*, Massachusetts Historical Society.

Their fathers, “possess’d of the Principles of Liberty in their Purity, disdaining Slavery, fled to enjoy those Privileges which they had an undoubted right to, but were deprived of by the Hands of Violence and Oppression in their native Country.” As their descendants, the Plymouth freeholders regarded it as their duty to oppose the Stamp Act. A failure to make a stand for liberty would disgrace the memory of their ancestors and bring upon them the curses of posterity. The freeholders encouraged their representative to push for an explicit assertion of their rights in the House, so that “all Generations yet to come may be convinced that we have not only a just sense of our Rights and Liberties, but that we never (with Submission to divine Providence) will be Slaves to any Power on Earth...”

In January 1766 the town of Plymouth sent an official “Address of Thanks” to the town of Boston for the efforts its inhabitants had made in defense of the colony’s natural and constitutional rights.⁴⁶ When the colony was threatened with “slavery and poverty,” Boston had demonstrated its “inviolable attachment” to the principles of liberty. Plymouth and Boston were united in their efforts as “Fellow-Sufferers in the Calamities of this country, and... Fellow-Labourers in the Vineyard of Liberty.”

Boston responded in March with a letter praising the spirit of liberty which Plymouth had shown in opposition to the Stamp Act.⁴⁷ Boston was happy to see that the inhabitants of the colony’s “original Settlement still retain the truly noble Spirit of our renowned Ancestors...” Just as the first Puritan settlers had loved true religion and liberty, and fled tyranny to enjoy those blessings, the present inhabitants of Plymouth had demonstrated the same spirit by opposing the

⁴⁶ Town of Plymouth, “An Address of Thanks from the Town of Plymouth to the Town of Boston,” *Boston Gazette*, February 3, 1766, in *Dorr*, Massachusetts Historical Society.

⁴⁷ Town of Boston, “The Town of Boston to the Town of Plymouth,” March 24, 1766, in *Cushing*, vol. I, 71-73.

measures designed to enslave the colony. Boston closed the letter by praying that all the other towns would follow Plymouth's example and that "the Spirit of our venerable Forefathers, may revive and be defused (diffused) through every Community in this Land: That Liberty Civil and Religious, the grand Object of their View, may still be felt enjoy'd & vindicated by the present Generation, and the fair Inheritance, transmitted to our latest Posterity..."

A number of other Massachusetts towns expressed the same sentiments as Boston and Plymouth. The instructions Cambridge gave its representative in October 1765 asserted that the colonists had a legal claim to "all the natural, inherent, constitutional rights of Englishmen" and that the Stamp Act was "an infraction upon these rights..." If this act succeeded in depriving the colonies of their liberty, the result would be poverty and misery for the inhabitants.⁴⁸

Preparing for the same session of the General Court, Weymouth's instructions struck an identical refrain of poverty, misery, and ruin resulting from the "late Acts of Parliament."⁴⁹ The inhabitants asked the king and Parliament to "forgive us if we do not consent to our own ruin..." Parliament itself was not infallible and it had surely made a mistake when it passed the Stamp Act. The colonists must not forget the simple facts that "men have natural rights- that they have also rights as members of society" and "that to assert, explain, and vindicate these, is but acting up to the character of men..." On top of the rights the colonists possessed as "free born British Subjects," they possessed still more rights guaranteed to them by royal charter. A not-so-subtle dig was made at the idea of "virtual representation" when Weymouth gibed that these rights had long been acknowledged and consented to "really or virtually" by Parliament.

⁴⁸ Town of Cambridge, "Instructions," *Boston Gazette*, October 21, 1765, in *Dorr*, Massachusetts Historical Society.

⁴⁹ Town of Weymouth, "Instructions," *Boston Gazette*, October 21, 1765, in *Dorr*, Massachusetts Historical Society.

Newbury-Port reminded its representative that the British Constitution was “founded on the liberty of the subject” and that liberty was “so interwoven, in every Part of it, that the least infringement of Liberty is a Blow aimed at the Vitals of the Constitution.”⁵⁰ The colonists of Massachusetts, as free born subjects, were fully entitled to the protection of the British Constitution and the royal charter was but a confirmation of their rights. The colonists had inherited their rights from their ancestors, “who were Parties to the GREAT CHARTER OF LIBERTY (Magna Carta)” and who had possessed those rights even before the great Anglo-Saxon kings had sat on the throne of England. These were rights that “no Men or Body of Men on Earth, have the least Right to infringe...” While not suggesting that Parliament intentionally designed to reduce the colonists to slavery with the Stamp Act, Newbury-Port asserted that slavery was a consequence which was bound to follow if the act was enforced. That the policies pursued in the Stamp Act were “contrary to the constitutional Rights of Britons cannot be denied...”

Several towns stressed the conditional obedience of the colonists to the British government. Ipswich told its representative that the subordination of the colonies to the mother country was founded entirely on the charters, which it was his duty to maintain.⁵¹ Any act which was “not consistent with those charters, and that deprives us of any right in them, is neither consistent with such subordination or implied in it.” The Massachusetts Charter was the only political connection between that colony and Britain. All the terms of that political union were contained in the Charter, including the legal subordination of the colony. But that subordination

⁵⁰ Town of Newbury-Port, “Instructions,” *Boston Gazette*, November 4, 1765, in *Dorr*, Massachusetts Historical Society.

⁵¹ Town of Ipswich, “Instructions,” *Boston Gazette*, November 4, 1765, in *Dorr*, Massachusetts Historical Society.

was not absolute and any claims to supremacy made by Britain in opposition to the terms in the Charter must have their foundation “in despotism and arbitrary principles that have no bound, and of course may run up to tyranny on the one hand and down to abject slavery on the other...”

Rowley’s instructions considered the unconstitutional Stamp Act as “an introduction to a train of other acts of a similar oppressive nature...”⁵² The freeholders were aware that “non-compliance must be attended with many and grievous difficulties...” But however difficult opposing the Stamp Act might become, it would be preferable to compliance, which “threatens utter ruin...” The freeholders of Norton knew that they possessed civil rights as Englishmen, yet they ventured to assert that they also had “rights founded in nature, confirmed by charters, and guarded by the British Constitution itself.”⁵³ Any attempt made to divest the colonists of those rights “must be looked upon as arbitrary and unconstitutional, and ought to be opposed by all means that are warranted by the laws of God, the British Constitution, and the common rights of mankind.”

Freeholders across Massachusetts were aware that tyranny must be opposed in its early stages, *obsta principiis* (withstand beginnings). This awareness stands out in the instructions sent by the town of Pembroke.⁵⁴ After considering the Stamp Act, the freeholders judged it best “to withstand the evil in its beginning, lest after the chains are once fastened upon us we should find no remedy till we are worn out and entirely consumed.”

⁵² Town of Rowley, “Instructions,” *Boston Evening-Post*, October 21, 1765, in Dorr, Massachusetts Historical Society.

⁵³ Town of Norton, “Instructions,” *Boston Evening-Post*, November 4, 1765, in Dorr, Massachusetts Historical Society.

⁵⁴ Town of Pembroke, “Instructions,” *Boston Evening-Post*, October 28, 1765, in Dorr, Massachusetts Historical Society.

The evidence strongly suggests that the representatives sent to the Massachusetts General Court by the towns shared the political principles of their constituents. The members of the House of Representatives listened to their instructions and acted upon the principles expressed therein. In March 1765, the House and Council collaborated in crafting a petition to the House of Commons in Parliament.⁵⁵ But while the General Court expressed its dissatisfaction with the Sugar and Stamp Acts, which denied the colonists their equal rights as British subjects, this petition was also a cautious statement. Lt. Governor Thomas Hutchinson's influence was at least partly responsible for the caution and political pragmatism which shaped the language of the petition.⁵⁶ The Court wrote in deferential tones towards a Parliament which was ostensibly a political body with absolute power over the colonies. That deference can be seen in the choice of the word "privileges" instead of "rights" at key points in the petition. The General Court asked for relief from the burdens brought upon the colonies by the late acts of Parliament and requested that "the *privileges* of the colonies, relative to their internal taxes, which they have so long enjoyed, may still be continued to them..."⁵⁷

That deferential mood did not last within the House and their statements became bolder as the months went by and Parliament continued to assert its "right" to tax the colonies. The House's growing boldness shines through in the messages which passed between the House and Massachusetts' Crown-appointed governor, the rather unpopular Governor Francis Bernard. Controversy swelled up between the House and the Governor immediately after the representatives, carrying their instructions, arrived in Boston in October 1765. In their answer to

⁵⁵ House of Representatives and Council, "Petition to the House of Commons," *Boston Evening-Post*, March 11, 1765, in Dorr, Massachusetts Historical Society.

⁵⁶ Edmund Morgan, *The Birth of the Republic, 1763-89* (Chicago: University of Chicago Press, 1956), 18.

⁵⁷ House of Representatives and Council, "Petition to the House of Commons," *Boston Evening-Post*, March 11, 1765.

a speech by the Governor at the opening of the session, the House cast off the language of “privileges” and asserted their “rights” in no uncertain terms.⁵⁸

In response to the Governor’s claim that the Stamp Act should be observed, because it was an act of Parliament and “the right of the Parliament to make laws for the American colonies remains indisputable in Westminster,” the House asserted that even Parliament’s authority was limited. Magna Carta, i.e. the British Constitution, set the boundaries of Parliament’s lawful authority and any actions Parliament took contrary to the principles of Magna Carta were inherently unconstitutional. Furthermore, the Massachusetts Charter invested “the General Assembly with the power of making laws for its internal government and taxation.” According to the Charter, the colonists were guaranteed self-government in the area of taxation. When it came to Parliament, that body only possessed “a right to make all laws within the limits of their own constitution...”

Parliament did not possess “a despotic power within themselves” and the House asked the Governor whether or not his assertion that Parliament had the authority “to tax the subjects without their consent, does not include the idea of such a power?” Surely the Governor must admit that “there are certain original inherent rights belonging to the people, which the Parliament itself cannot divest them of, consistent with their own constitution: among these is the right of representation in the same body which exercises the power of taxation.” Since the colonies were not represented in Parliament, and any system of sending American representatives there was impractical, it was a political necessity that the American colonies exercise the power of taxation themselves.

⁵⁸ House of Representatives, “Answer to the Governor’s Speech,” October 23, 1765, in Cushing, vol. I, 13-

The colonists felt that the “inestimable rights which are derived to all men from nature, and are happily interwoven in the British constitution” were threatened by Parliament’s recent actions. The Stamp Act injured the essential rights of the colonists and was “totally subversive of the happiest frame of subordinate, civil government, expressed in our charter, which amply secures to the Crown our allegiance, to the nation our connection, and to ourselves the indefeasible rights of Britons...” The enforcement of the Stamp Act could also be used as “a precedent for their fellow subjects in Britain for the future, to demand of them what part of their estates they shall think proper, and the whole if they please...” It was worrisome that the king’s American subjects were “not to be governed, according to the known stated rules of the constitution, as those in Britain are,” instead, the constitution was to be subverted and the colonists placed under an arbitrary power.

A few days later, the House issued a set of official resolutions on “the just rights of his Majesty’s subjects of this Province, derived to them from the British Constitution, as well as the royal charter” which had “been lately drawn into question....”⁵⁹ The House clearly regarded the political questions before them as being questions about “rights.” The list of resolutions built upon the first resolve, “that there are certain essential rights of the British Constitution of government, which are founded in the law of God and nature, and are the common rights of mankind...” The inhabitants of Massachusetts were “unalienably entitled to those essential rights in common with all men” and “no law of society can, consistent with the law of God and nature, divest them of those rights.” The colonists were entitled to the exercise of equal rights, among which were the inseparable rights of no taxation without consent and representation.

⁵⁹ House of Representatives, “Resolutions,” October 29, 1765, in Cushing, vol. I, 23-26.

These were original, inherent rights possessed by all British subjects and “fully confirmed to them by Magna Charta [sic], and by former and by later acts of Parliament.” British subjects in the American colonies were “in reason and common sense, entitled to the same extent of liberty with his Majesty's subjects in Britain.” Equal rights and self-government had also been confirmed to Massachusetts by the royal charter. The House wrapped up its resolves by demonstrating the conclusions of their reasoning related to the Stamp Act.

In regards to taxation, “all acts made by any power whatever, other than the General Assembly of this Province, imposing taxes on the inhabitants, are infringements of our inherent and unalienable rights as men and British subjects, and render void the most valuable declarations of our charter.” In regards to admiralty courts, this system was “a most violent infraction of the right of trials by juries” which were the “only security of the lives, liberties, and properties of his Majesty's subjects here.” The essence of these resolves was that Parliament had no “right” to take away the “rights” of the American colonists.

The Massachusetts resolves were reflected by the Resolutions of the Stamp Act Congress, also passed in October 1765. This meeting was first proposed by the Massachusetts House and met in New York. Massachusetts was represented by James Otis, Oliver Partridge and Timothy Ruggles.⁶⁰ The delegates of the nine colonies which attended the congress assented to the legal subordination of the colonies to the king and Parliament, but that subordination was not absolute.⁶¹ The colonists owed the “same allegiance” to the Crown as subjects in the realm of Britain and “all due” subordination to Parliament. The subordination and obedience of the colonies was based on the supremacy of the constitution.

⁶⁰ Morgan and Morgan, *The Stamp Act Crisis*, 138-154.

⁶¹ Resolutions of the Stamp Act Congress, October 19, 1765, American Battlefield Trust.

The colonists were “entitled to all the inherent rights and privileges of his (the king’s) natural born subjects within the kingdom of Great Britain.” It was “unreasonable and inconsistent with the principles and spirit of the British Constitution for the people of Great Britain to grant to His Majesty the property of the colonists” without their consent and unjust to deprive them of trial by jury. The colonists were being denied their equal rights by the late acts of Parliament, which acts demonstrated a “manifest tendency to subvert the rights and liberties of the colonists.” Similar to the Massachusetts House of Representatives, this American congress argued that American opposition to the Sugar and Stamp Acts was based on the principles of the British Constitution. It was the colonists who were the king’s most loyal subjects, precisely because their first loyalty was to the constitution.

III. Political Sermons

It was not only in political platforms that the Massachusetts Patriots stood in opposition to what they regarded as the unconstitutional acts of the British Ministry and Parliament, the pulpits of Massachusetts also thundered forth in defense of liberty. The overwhelming allegiance of Massachusetts’ ministers to the Patriot cause demonstrates the importance of covenant theology within the colony. It also provides excellent examples of the covenant-contract synthesis which had developed well before 1765. The Patriot-ministers of Massachusetts called upon reason and revelation in equal measure to denounce the Stamp Act and defend liberty.

The *Boston Gazette* of August 12, 1765 carried a sermon on Psalm 105:15, “touch not mine anointed,” a text which had often been perverted to support passive obedience and non-

resistance to tyrants according to the preacher.⁶² By placing this passage in its historical and biblical context, the preacher showed that the “anointed” referred to was not a chief magistrate, e.g. a king; it was instead referring to the “people” of God, the nation of Israel in this case. This text was “so far from meaning the chief magistrate by the word *anointed*, and prohibiting the *People* from *touching him*, that it means the very reverse. The *People* are the *anointed*: and Kings are forbid to *touch them*.” Furthermore, the term “anointed” could not refer to kings, because this psalm was set in the context of the Exodus from Egypt, which was 300 years before Israel had a king.

After identifying the proper subject of the passage, the people, the preacher then expounded what was meant by “touching them.” A people who were “touched” were deprived of their natural rights and enslaved by tyrants. Tyranny itself was “a kind of political damnation” and “all those wretched nations, who live under absolute governments, and are stripped of the natural rights of mankind by their unrelenting oppressors, are miserably *touched*.” Absolute government required a system in which despotic power was placed above the law, in which the “will of the prince” reigned supreme. Thus, the subversion of the law was the clearest indicator that a people was “touched” by the hand of tyranny.

The law is what provides security for a free people, it is what guarantees to them the civil rights which are derived from their natural rights. Thus, if the law is subverted, the people lose their security and all their liberties are placed in the most “precarious tenure” imaginable. Without the protection provided by the law, their liberties are held subject to the will of another

⁶² “Sermon on Psalm 105:15,” *Boston Gazette*, August 12, 1765, in *Dorr*, Massachusetts Historical Society.

man and can be taken away at any moment. This dire picture is what it means for a people to be “touched.”

The preacher closed his sermon in the traditional Puritan style, with an “application” of the foregoing doctrines. The twisting of this passage to support tyranny was an example of the necessity for God’s people of reading the Scriptures for themselves, so that they might not be misled by the disciples of Hobbes and Filmer, or any other author who taught that humans are “born to vassalage.”⁶³ In contrast to those who perverted God’s Word, a pious Christian could see that the Scriptures “abominate the impious doctrine of subjecting millions to the arbitrary will of one. Government indeed is a divine appointment; but unlimited power is no government. It is tyranny: it is misrule: it is the most tremendous and complicated evil under the Sun.” The inspired writers of Scripture everywhere extolled the virtues of liberty and described slavery in the most detestable manner.

Both the people and their princes must remember that it is the “people” who are “the Lord’s *anointed*”; and He will first or last *rebuke* their oppressors.” God will defend His people from would-be tyrants. The preacher finished his application by exhorting his audience to “bless God that we are born in a land of light and liberty,” a land where their rights were secure. But, if they were to continue in the enjoyment of their rights, the people must “be ever jealous of lawless encroachments; and still remember that we are the Lord’s *anointed*...” They must “oppose arbitrary rule in every shape, by every lawful method in our power.” Even the smallest invasion of liberty was not to be overlooked, for “a smaller will ever pave the way for a greater: The latter for a greater still. Let us therefore check the rising mischief; and crush the cockatrice

⁶³ Thomas Hobbes wrote *Leviathan* and *The Citizen*; and Robert Filmer wrote *Patriarcha* and *The Anarchy of a Limited or Mixed Monarchy*. Both authors were supporters of absolute power.

in the egg.” The hand of tyranny must be opposed from the beginning, lest it “touch” the rights of the people.

The November 4, 1765 edition of the *Boston Gazette* carried another sermon, this time on Acts 13: 7-12.⁶⁴ This submission was prompted by the sermon on Psalm 105:15, which the reader submitting the present sermon found edifying. According to the reader, this sermon was a half-century old, having been preached by one of his ancestors in a time of political crisis for the colony. The context may well have been the efforts by some in the British government to revoke the Massachusetts Charter in the 1720s, the same event which provoked Jeremiah Dummer to write *A Defence of the New England Charters* (1721). The reader hoped that the resurrection of this “old puritanic sermon, long since dead and buried for a time in oblivion, should prove a terror to the wicked” in the present political situation.⁶⁵

Acts 13 was a prime example of how “false prophets and court sorcerers,” those “offspring of the old serpent the Devil,” attempt to turn political deputies from the paths of faith and justice. Paul’s confrontation with the court sorcerer in this passage was also an example of how all “good men” must publicly oppose such “wicked seducers” in high places. The application of these doctrines pointed out the “perilous times” the Massachusetts colonists lived

⁶⁴ Acts 13: 7-12, “Which was with the deputy of the country, Sergius Paulus, a prudent man; who called for Barnabas and Saul, and desired to hear the word of God. But Elymas the sorcerer (for so is his name by interpretation) withstood them, seeking to turn away the deputy from the faith. Then Saul, (who also is called Paul,) filled with the Holy Ghost, set his eyes on him, And said, O full of all subtilty and all mischief, *thou* child of the devil, *thou* enemy of all righteousness, wilt thou not cease to pervert the right ways of the Lord? And now, behold, the hand of the Lord is upon thee, and thou shalt be blind, not seeing the sun for a season. And immediately there fell on him a mist and a darkness; and he went about seeking some to lead him by the hand. Then the deputy, when he saw what was done, believed, being astonished at the doctrine of the Lord.”

⁶⁵ “Sermon on Acts 13:7-12,” *Boston Gazette*, November 4, 1765, in *Dorr*, Massachusetts Historical Society.

in and the wicked designs plotted against them by modern court sorcerers. If these designs succeeded, the colonists and their children were to be “sold, to be destroyed, and to perish...”

To prevent the ruin designed for them, the colonists must remember their duty as good men and oppose the plotters. The colonists must bear public testimony against the wicked, and thus, it was their duty to call “a knave a knave, a fool a fool, and a tool a tool.” It was their duty to “conflict with the powers of darkness, and with wicked men in high places.” It did not take a stretch of the imagination to apply this old sermon to the events of the 1760s. The threat was the same as when the sermon was first given, wicked men in the halls of government who opposed “the cause of truth and justice, by seeking to turn deputies from the faith.” Just as their ancestors had, the present generation in Massachusetts must obey the command of Scripture and “waver not” in their opposition to the wicked.

The election sermon in May 1765 was given by Andrew Eliot on the text of 1 Chronicles 12:32.⁶⁶ The context for this passage was the elevation of David to the throne of Israel with the consent of the tribes. To explain this event, Eliot gave an exposition of the original Hebrew Constitution and the foundational principles of that political system. Under this constitution, each tribe was a distinct government which ordered its own affairs. The nation of Israel was a general union of the tribes, in which each tribe sent representatives to a general assembly when it was necessary to consult the good of the whole. David was made king by the consent of the tribes at one such general assembly.⁶⁷

⁶⁶ 1 Chronicles 12:32, “And of the children of Issachar, *which were men* that had understanding of the times, to know what Israel ought to do; the heads of them *were* two hundred; and all their brethren *were* at their commandment.”

⁶⁷ Andrew Eliot, *Election Sermon*, May 29, 1765, Evans Early American Imprints, 1-2.

This was in perfect conformity to God's will, because while reason, i.e. the voice of God, had dictated that government must exist, God left the choice of the form of government they were to live under to the people of each community. All lawful authority is "founded in mutual consent, it is the undoubted right of the community to say who shall govern them; and to make what limitations or conditions they think proper." Power based on fraud or force was no better than usurpation and could not provide the basis for any lawful government.⁶⁸

Since all lawful authority is based on consent, the supreme authority in a community is the constitution, which is "obligatory on those who govern, as well as those who are governed. These constitutions are a sort of fundamental laws, which cannot be violated without the greatest danger to a community. When either part attempts to invade the rights of the other, it usually produces convulsions, which sooner or later overturn the state." It is especially important that rulers "know very well what it is to act right, where power ends and liberty begins" so that they do not subvert the constitution.⁶⁹

Rulers and the people they govern have mutual duties. Rulers are bound to govern according to the laws and for the good of the people; and the people are bound to submit to the lawful commands of the magistrates. While essential to the peaceful existence of a well-ordered community, the submission required from subjects is not unlimited. The Apostle Paul had set the limits of obedience in Romans 13. The people must obey magistrates as long as those magistrates act as "ministers of God" for the good of the people. When magistrates pursue contrary purposes, subverting the constitution and enslaving the people, they lose all claim to divine or legal authority. In such a case, those who *support* a tyrannical magistrate become traitors to their

⁶⁸ Ibid., 6-7.

⁶⁹ Ibid., 7-8.

country. Furthermore, any man who *submits* to tyranny commits a crime against his country, against all of mankind, and against God.⁷⁰

Applying these doctrines to the present political situation, Eliot asserted that the form of government in Massachusetts was “a little model of the British Constitution.” This system was established by the Charter, which was a contract between the king and the colonists. It was the form of government to which the people of Massachusetts had given their consent. At present, the people were greatly perplexed and alarmed at the danger they apprehended their most valuable privileges to be in from the actions of the British government. Eliot asserted that he was “far from impeaching the justice of the British Parliament. If any acts have pass'd that seem hard on the colonies, we ought to suppose, they are not owing to any design formed against them, but to mistakes and misrepresentations...”

It was the duty of the General Court to bring those mistakes to the attention of Britain's politicians. Eliot trusted that, when properly informed, the “King and his Parliament will yet hear us and confirm our liberties and immunities to us.” Dark clouds had hung over the American colonies before and been dissipated by a benevolent providence. These too would pass. The logic of conditional obedience would not yet need to be applied to the political union of the American colonies and Britain.⁷¹

Edward Barnard's 1766 election sermon on Nehemiah 5:19⁷² also highlighted the principles of constitutional supremacy and conditional obedience. Government originated from the law of self-preservation and, when properly designed, resulted in an “equitable constitution.”

⁷⁰ Ibid., 15-18.

⁷¹ Ibid., 18-20.

⁷² Nehemiah 5:19, “Think upon me, my God, for good, *according* to all that I have done for this people.”

Such a constitution established a “balance of power” between the various officers of the state and set limits to the lawful authority of each. It was a duty of rulers to preserve this balance “by a scrupulous adherence to the duties of their department, and the seasonable check to the violation of prescribed limits” by other officers.⁷³

Whatever position an officer was in, he was absolutely bound to govern according to the prescribed laws. No officer could set himself above the constitution. Since the constitution was supreme and the chief end of government was the good of the people, it was clear that “unlimited submission, — submission in all cases, cannot be (a) duty” demanded of subjects. Lawful officers are to be obeyed, but unlawful power has no authority behind it.⁷⁴

When news reached the American colonies of the repeal of the Stamp Act in March 1766, the ministers of Massachusetts prepared thanksgiving sermons to celebrate the occasion and extoll the lawful resistance the colonies had made in defense of the British Constitution and their charters. On May 23, 1766, just several weeks before his death, Jonathan Mayhew preached *The Snare Broken* from his pulpit in Boston’s West Church. The text for this sermon was Psalm 124:7-8, “Our soul is escaped as a bird out of the snare of the fowlers: the snare is broken, and we are escaped. Our help *is* in the name of the LORD, who made heaven and earth.”

Mayhew gave thanks to God that the American colonies had been emancipated from the slavish bondage designed for them under the Stamp Act and restored to the enjoyment of their ancient rights and privileges. The colonists’ natural right to property and their constitutional right to trial by jury had been preserved from danger. These were rights which were secured for the colonists as British subjects under Magna Carta and confirmed to them under their royal charters.

⁷³ Edward Barnard, *Election Sermon*, May 28, 1766, Evans Early American Imprints, 5-7.

⁷⁴ *Ibid.*, 15.

Any act contrary to these rights, as the Stamp Act was, were “*ipso facto* null and void” due to their inherently unconstitutional nature.⁷⁵

Mayhew was perhaps a little overly-optimistic when he declared that “a total repeal of that dreadful act is now obtained. His majesty and the Parliament were far too wise, just and good to persist in a measure, after they were convinced it was wrong... They have been pleased, in the act of repeal itself, greatly to their honor, implicitly to acknowledge their fallibility and erroneous judgment...” Looking into the future, Mayhew stated his confidence that “an act of the like nature will never again be heard of.” America had escaped from the cunning snare laid for it and was once again at liberty.

Mayhew did not blame the king or Parliament for the act, he identified the “fowlers” as “evil-minded individuals” within the British government who were traitors to their country. These individuals had attempted to trick the king and Parliament into enslaving the American colonies. If their plans had succeeded, the colonists would have been slaves, since the very definition of slavery is men being “obliged to labor and toil only for the benefit of others... the fruit of whose labour and industry may be lawfully taken from them without their consent, and they justly punished if they refuse to surrender it on demand.”⁷⁶

Mayhew was glad the king and Parliament had seen through this plan, because the Americans had been determined never to submit to slavery. If the Stamp Act had not been repealed, Mayhew predicted that America and Britain would have been plunged into a dreadful civil war. Fortunately, this had not proved necessary and the colonies had been restored to their constitutional subordination to the mother country. However, this did not mean that liberty had

⁷⁵ Mayhew, “The Snare Broken,” in Sandoz, 178-179.

⁷⁶ Ibid., 180-182.

been secured forever. There would always be designing men seeking to enslave their brethren and the colonists must remain wary.

While granting all lawful submission to the king and Parliament, Mayhew reminded his listeners that “power is of a grasping, encroaching nature” and “aims at extending itself, and operating according to mere will, wherever it meets with no ballance, check, controul or opposition of any kind.” The colonists must always stand guard over their liberties, *obsta principiis* (withstand beginnings). If the snare was allowed to be drawn tight, liberty would be crushed by tyranny and might never rise again. One thing was certain to Mayhew, inspired by the spirit of liberty, Americans would never tamely submit to slavery.⁷⁷

On July 24, 1766, Charles Chauncy gave a thanksgiving sermon on Proverbs 25:25, “As cold waters to a thirsty soul, so *is* good news from a far country.” The British king and Parliament had repealed the Stamp Act through a “benevolent righteous regard to the public good” and removed the grievous burden the act imposed on the colonies. While the act had remained in effect, the American colonists had been deeply aggrieved at what they considered an invasion of their “rights” as British subjects and as parties to their charters. With the principles of constitutional rights deeply embedded in their minds, it was probable that the colonists “would not have submitted, unless they had been obliged to it by superior power.”

To explain this resistance, Chauncy described how the colonists had imbibed the sentiment that “they should be wanting neither in loyalty to their King, or a due regard to the British-Parliament, if they should defend those rights which they imagined were unalienable, upon the foot of justice, by any power on earth...” Because of their adherence to the principle of

⁷⁷ Ibid., 184-186, 190-192.

constitutional supremacy, if the issue had been forced, the colonists would have “upon this principle, whether ill or well founded, stood upon their defence” and “opened, on this American continent, a most doleful scene of outrage, violence, desolation, slaughter... a state of civil war.” Thankfully, repeal had removed all the colonists’ fears and renewed their affection for the king and Parliament.⁷⁸

With the repeal of the Stamp Act, Chauncy encouraged loyalty and submission to Britain among his fellow colonists. They had been saved from “a state of slavery under the appellation of Englishmen.” It was now time for the colonists to conduct themselves as “good subjects and good Christians.” Chauncy closed with a prayer that God would “appear on our behalf in every time of danger and difficulty, guard us against evil, and continue to us all our enjoyments both civil and religious!”⁷⁹

IV. The Declaratory Act

With their joy over the repeal of the Stamp Act, many of the American colonists seem to have overlooked the true conditions upon which Parliament repealed that act. A close examination of the Act Repealing the Stamp Act and the Declaratory Act, both passed on March 18, 1766, show that Parliament never admitted having made an error in passing that act. Parliament also never surrendered its “right” to tax or legislate for the colonies, on the contrary, it asserted that right in bold terms. In the repeal, Parliament admitted that “the continuance of the said act would be attended with many *inconveniencies*, and may be productive of consequences

⁷⁸ Charles Chauncy, *A Discourse on the Good News from a Far Country*, July 24, 1766, Evans Early American Imprints, 3-8.

⁷⁹ *Ibid.*, 11-12.

greatly detrimental to the *commercial interests* of these kingdoms,” but never said it had made a mistake.⁸⁰ The Stamp Act was repealed for pragmatic, economic reasons; not because it was contrary to core political principles.

That Parliament did not share the principles being espoused in America can be seen in the opening words of the Declaratory Act, the purpose of which was “the better securing the *dependency* of his Majesty’s dominions in America upon the crown and parliament of Great Britain.” Parliament rejected the claim made by the colonial legislatures that only those assemblies could tax the inhabitants of the colonies. The votes and resolutions passed by the colonial legislatures in pursuit of that claim were “against law... derogatory to the legislative authority of parliament, and inconsistent with the *dependency* of the said colonies and plantations upon the crown of Great Britain.”⁸¹

Parliament, by its own estimation, “had, hath, and of *right* ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever.” In other words, even without American representatives in Parliament, that body possessed an absolute power over the colonies. It did not need the consent of the governed, the most fundamental principle of English liberty according to Americans, it was the supreme authority and it would not be questioned.

That the majority in Parliament paid no regard to the petitions presented by the colonies, or recognition to the principles upon which those petitions were based, can be seen in the statement that “all resolutions, votes, orders, and proceedings, in any of the said colonies or

⁸⁰ Act Repealing the Stamp Act, March 18, 1766, in Frohnen, 135.

⁸¹ Declaratory Act, March 18, 1766, in Frohnen, 135-136.

plantations, whereby the power and authority of the parliament of Great Britain, to make laws and statutes as aforesaid, is denied, or drawn into question, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever.”⁸² In essence, Americans were being told that all their efforts to resist arbitrary, unaccountable power were illegal. When Parliament enacted a law, Americans must shut their mouths and submit.

Not all of the Massachusetts Patriots overlooked Parliament’s claims of “right” in the Declaratory Act. In fall 1766, an author writing under the pseudonym of *Algernon Sidney* attempted to awaken the colonists to the continued danger.⁸³ He was appalled by the doctrines he heard coming from across the water: that Americans who opposed the Stamp Act were “lawless rioters,” that Parliament’s decision to repeal the Stamp Act was “through lenity and indulgence (not because it was just),” and that the “highest gratitude was due to the Parliament, for their tenderness and generosity, tho’ at the same time they have declared their rights to take away our Property without consent, or in other words, to make slaves of us at pleasure.” Americans were told that they should admit they were in the wrong, as to their resistance, and accept Parliament’s “declaration of right to make laws binding on the colonies in all cases whatsoever...”

Algernon Sidney proposed contrary doctrines for a “British American Creed:” that King George III was king of a free people, that a free people have rights, and that the greatest of those rights is that “no power can legally tax them without their own consent in person, or by representative...” The author asserted that “whatever pretences a people may make to freedom, if they dare not assert, support, and, if need be, defend their Rights, THEY ARE NOT FREE--- That whenever it is dangerous for a free people to assert their Rights, it is a sure sign the rights

⁸² Ibid., 136.

⁸³ Algernon Sidney, *Boston Gazette*, August 18, 1766, in *Dorr*, Massachusetts Historical Society.

themselves are in danger...” The American colonies were placed in such a situation by Parliament’s Declaratory Act. They had been told that their actions taken in defense of their rights were criminal.

According to the author, the colonists asserting their rights was “not a crime, but rather our indispensable duty as Englishmen...” Americans should take every opportunity to assert their rights “and more especially when they are called in question by an august body, and the greatest and most valuable of them absolutely denied us...” It did not matter that it was Parliament telling the colonists that they were wrong, Algernon Sidney told his fellow Americans to stand their ground. When it came down to it, the only question that mattered was this, “whether we will consent to our own slavery, by keeping a timid and dastardly *silence*, when our rights are openly challenged, or with a spirit worthy our ancestors, worthy the name of Freemen, resolutely assert them.” When posterity read the history of these times, Algernon Sidney hoped they would read of how the present generation of Americans stood for liberty in 1766.

Conclusion

As this chapter has shown in its examination of the private statements of Massachusetts’ Patriots, the public statements from town meetings and the General Court, and the political sermons of the colony’s ministers, the heart of the political controversy between the American colonies and the British government was a question of rights. These questions remained unresolved in 1766 when the Stamp Act was repealed and remained the core of the controversy in the ensuing years.

This chapter focused on three key points. First, the Massachusetts Patriots believed natural rights provided the foundation for the civil rights of political societies. Natural rights doctrines provided the Patriots with a covenantal-contractual understanding of civil society and contributed to the stress they placed on the consent of the governed, as expressed in the constitution, as the source of lawful authority. Second, the Patriots argued for the principle of constitutional supremacy. Since the constitution was a covenant-contract agreed to by the members of the community, it could not be altered without the consent of the people. This view clashed with the doctrine of Parliamentary supremacy espoused in Britain.

Third, the principle of conditional obedience was derived from the Patriots' emphasis on loyalty to the constitution as the primary duty of a subject. According to this conception of submission, subjects are legally and morally obligated to obey civil officers when they are exercising their lawful authority. But, as soon as officers step outside of the bounds set for them by the constitution, the people are no longer obligated to submit to their commands. The Patriots had imbued the principle of *obsta principiis* from their political tradition. When faced with the encroachment of arbitrary power in the form of the Sugar and Stamp Acts, they were resolved to "withstand the beginnings." With these principles as their foundation, the Massachusetts Patriots opposed those acts as unconstitutional exercises of power by a political body which had no lawful "right" to tax the American colonies. Parliament's assertion that it did possess that right ensured the continuation of the conflict. Tensions returned when Parliament attempted to exercise their claim with the passage of the Townshend Acts in 1767.

Chapter 5: Ultima Ratio

“Let anyone imagine the distress of this people—a free city, I mean once free and still entitled to its freedom, reduc'd to the worst of tyranny—an aggravated tyranny! Was not an army of placemen and pensioners sufficient, who would eat us up as they eat bread, but an array of soldiers must be stationed in our very bowels—Where is the bill of rights, magna carta and the blood of our venerable forefathers! In this dilemma to what a dreadful alternative were we reduc'd! To resist this tyranny, or, submit to chains...”⁸⁴

The repeal of the Stamp Act in March 1766 did nothing to resolve the primary issues at the heart of the political struggle between the American colonies and the British government. With the passage of the Declaratory Act, Parliament asserted its “right” to legislate for the colonies “in all cases whatsoever,” which clearly included the power to levy taxes. Parliament had thrown down the gauntlet, by going to the heart of the controversy, and the Massachusetts Patriots picked up that gauntlet, accepting the political duel which was to ensue over the next several years.

As a result, the years 1767-1769 did not witness a lessening of tensions between the colonies and Britain; if anything, the tensions grew as each side hardened its political position with strongly-worded declarations and resolutions. But words were not all they used in this duel, both sides also took action against the other. American Patriots, especially the Sons of Liberty in Massachusetts, resisted British authority by intimidating customs officers and royal officials, conducting non-importation campaigns, and practicing mob-based coercion to bring the

⁸⁴ Samuel Adams, “Alfred,” *Boston Gazette*, October 2, 1769, in Cushing, vol. I, 392.

supporters of government around to the Patriots' point-of-view. Parliament took action by sending in the army to enforce its authority by military means.⁸⁵

Between 1767-1769, the Massachusetts Patriots continued to stress the three themes examined in chapter four: the natural rights foundation of civil rights, constitutional supremacy, and conditional obedience. This chapter will focus on a new concept which came to the forefront of Patriot writings during these years, *suppression*. According to the covenantal-contractual foundation of civil society in the Massachusetts political mindset, there are two essential means by which a government gains authority over the governed, *consent* or *force*. While both systems have been practiced by governments throughout history, followers of natural rights doctrines only accept consent as a lawful source of authority. Governments which rely on force to control the people, usually with a standing army, have no just authority over the people. The leaders of these governments are better classified as “robbers” than “magistrates.”

With their natural rights background, the Massachusetts Patriots were quick to interpret the words and actions of the British government between 1767-1769 as suppression. In their view, Britain had resorted to force to support its claims of authority over the American colonies. Thus, by resorting to force, Britain was admitting that it had no lawful authority to legislate for the colonies. The British government was resorting to the *ultima ratio*, “the final argument” of kings and tyrants.

There were three ways the Massachusetts Patriots believed the British government was suppressing the American colonies. First, the government and its supporters were issuing *threats* against those who dared to resist their authority. The terms “traitor” and “rebel” were used

⁸⁵ Pauline Maier, *From Resistance to Revolution* (New York: W.W. Norton & Company, 1991), 114-145.

liberally to describe the Patriots and the Patriots resented such negative classifications. Holding to their position of constitutional supremacy, the Patriots argued that the “real” traitors were those who supported the unconstitutional actions taken by the British government. The Patriots themselves could not be guilty of treason, because they were loyal to the constitution.

Second, the British Ministry ordered colonial governors to *dissolve assemblies* which refused to recognize Parliament’s authority over the colonies. While dissolving recalcitrant assemblies was not a new tactic, it became Britain’s standard approach to dealing with dissent in the late 1760s. The tactic was simple; governors would be instructed to issue the legislature in their colony an ultimatum and non-compliance would be immediately followed by an order to dismiss the representatives. This effectively nullified the legislative authority of the assemblies and denied the colonies the measure of self-government guaranteed by their charters.

Two dissolutions will be used as examples in this chapter, the suspension of New York’s assembly in the fall of 1767 and that of Massachusetts in the summer of 1768. Massachusetts Patriots paid close attention to what was happening in New York in 1767 and warned their fellow-colonists that Massachusetts could be next. As it happens, their warning proved accurate. Both assemblies were dissolved for resisting British authority, New York’s for not complying with the Quartering Act and Massachusetts’ for refusing to rescind the “Circular Letter” which the House had sent to the other colonies. The people of Massachusetts refused to tamely submit to the dissolution of their legislature and, in the absence of a provincial assembly, they organized resistance at the town-level through various town meetings and even a convention of towns from across the colony.⁸⁶

⁸⁶ Middlekauff, *The Glorious Cause*, 156, 175.

The British government interpreted the continued resistance to its authority by the colonies as a spirit of lawlessness and disobedience. In their view, the unruly colonists simply would not accept reason and it was time to resort to more severe measures. Britain then implemented the third and most drastic means of suppression, ordering a *standing army* to Massachusetts. Ever since they had learned of the king's plan to station 10,000 troops in North America, the colonists had feared the possibility that those troops were being placed there to oppress instead of protect them. Now it seemed that possibility was becoming a definite reality. Two regiments of British regulars, accompanied by warships, arrived in Boston on October 1, 1768 and took up stations around the city.

For the Massachusetts Patriots, the presence of a standing army in their colony's capital was a clear manifestation of Britain using force to decide what should have been constitutional issues. Ostensibly, these regiments were in Boston to maintain law and order, but the Patriots argued vigorously against the supposed necessity of their presence. In their view, a standing army is not necessary to maintain order among a free people during a time of peace. The only reason for placing troops in the midst of a civilian population is to awe that population into submission. The problem was that the people of Massachusetts refused to be cowed by a few redcoats. By resorting to force, the British government only hardened the resistance against it in Massachusetts and the American colonies as a whole. In the face of clear and present danger, the Patriots became more determined than ever to assert their rights and oppose the threat of arbitrary power. The British government's efforts at suppression in 1767-1769 failed.⁸⁷

⁸⁷ Middlekauff, *The Glorious Cause*, 179; Edmund Morgan, *The Birth of the Republic, 1763-89* (Chicago: University of Chicago Press, 1956), 41-47.

I. Threats

The Massachusetts Patriots were offended by the appellations granted to them by the British government and its supporters after their vigorous resistance to the Sugar and Stamp Acts in 1764-1766. They were offended because they sincerely believed, of the opposing parties in this political struggle, they were the party which was remaining loyal to the principles of the British Constitution and the conditions of the royal charter. How could they be charged with being “traitors” and “rebels” for vindicating their natural and constitutional rights when threatened by arbitrary power? Were they not simply following the example of their venerable ancestors in Britain who opposed the tyrannical Stuarts a century earlier? Was not the real definition of “treason” acting contrary to the fundamental laws of the community stated in the constitution?

Throughout 1767 and early 1768, numerous Patriots took to the press to reflect on the threats issued against them by the supporters of government. Their reflections show that they felt no guilt for resisting Parliament’s unconstitutional attempts to legislate for the American colonies. These reflections also show that the Patriots were not intimidated by the threats of the British government and its supporters. Using threats to suppress the Massachusetts Patriots failed.

James Otis fired away in the *Boston Gazette* in spring 1767 that the preservation of liberty, in Britain and America, required a firm adherence to the fundamentals of the British Constitution. While loyalty to the constitution should be expected from all Englishmen, “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...”⁸⁸ Otis argued that whenever ambitious courtiers find their schemes for arbitrary power opposed, their standard tactic is to argue that the nation is on the brink of anarchy and confusion. True patriots can expect to be vilified by those frustrated courtiers; “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.”

It would seem that the powerful do not like to be told that their power has limits. They are fond of telling the masses about the “privileges” which have been granted to the people and forget that the people have “rights” which are not derived from their governors’ favor. There were some supposed “friends” of America in the colonies who thought the same way and whose thinking needed to be corrected. Otis wanted the public record set straight and the reputation of the Patriots vindicated; “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 publickly acquitted, as you were publickly charged. — This you have a right to expect, and this it is your duty to demand.”

Despite being vilified by the supporters of government, Otis urged his fellow-colonists to continue to assert their rights by speaking out against arbitrary power. *Freedom of speech* was a key component of natural and political liberty. The people’s right to speak out against injustice

⁸⁸ James Otis, “Freeborn American,” *Boston Gazette*, February 9, 1767, in Samuelson, 316-320.

was key to preserving the constitution and checking the ambitions of tyrants. Freedom of speech in the British Empire kept “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.”⁸⁹

Without the check to arbitrary power provided by freedom of speech, British subjects would “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.” It is the press which points out the illegal nature of a tyrant’s actions and awakens the people to his schemes. Thus, tyrants and their tools have always been enemies to freedom of speech and have sought to restrict it. Fortunately, the efforts of arbitrary men to muzzle the press had thus far been unsuccessful in the British Empire. That is not to say that they had not tried.

Even in the British dominions it was common for a wicked ruler to stigmatize “with the opprobrious names of licentiousness and contempt of authority, every warrantable step taken to counterwork his destructive schemes.” A true patriot, “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 tranquility — This is a tax no friend to his country can hope to escape.” The Massachusetts Patriots should expect these derogatory appellations to be thrown at them, in fact, being called these names was likely a sign they were on the side of justice.

⁸⁹ Otis, “Freeborn American,” *Boston Gazette*, March 9, 1767, in Samuelson, 320-324.

Since the colonists had justice on their side, and were arguing their case in accordance with constitutional principles, Otis was confident that the king and Parliament would ultimately vindicate the rights of the colonists once they were made aware of the true nature of the colonists' actions. Americans had been *misrepresented* by their arbitrary enemies within the government. Once the king and Parliament learned the truth, they would see the justice of the American cause. Until that day of vindication, the colonists must endure being called "robbers" and "banditti" by their enemies.

Until that day, the colonists must also continue to guard the constitution and their rights. The colonists knew that "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."⁹⁰ It was this right of consent, given through representatives in an assembly, that made British subjects happy and free. With the spring 1767 elections to the General Court approaching, Otis took the time to remind the freeholders of Massachusetts of the importance of the moral characters of the men they elected to represent them. The choice of weak and submissive men would condemn the colony to slavery, but the choice of men who would stand strong as guardians of liberty would prove the colony's salvation. In their choice of guardians, the people of Massachusetts must pick men who would stand up to the threats being issued from the British government and its supporters.

Above all, voters must be careful not to select "prudent" men to represent them. These were men who would accept the false peace offered by "artful courtiers" for the sake of a temporary reprieve in the political struggle. These were men who would give up the "rights" of

⁹⁰ Otis, "Freeborn American," *Boston Gazette*, April 27, 1767, in Samuelson, 324-332.

the colonists without a fight. In contrast to prudent men, the colonists must choose “patriot” representatives, men who would make their stand upon the constitution. Otis held forth that, “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.” In the face of the threats issued by their enemies, the Patriots of Massachusetts must:

“boldly oppose the least infraction of our charter, and rights as men. *Obsta Principiis* 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 privileges 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.”

John Adams was similarly insulted by the vilification the Patriots received from their opponents. In January and February 1767, Adams wrote a series of articles to refute Jonathan Sewell, a supporter of Governor Bernard writing under the pseudonym “Philanthrop.” Adams’ articles invoked the legacy of the Puritans by taking the form of a discourse between two of Massachusetts’ most venerable founding fathers, John Winthrop and William Bradford. Adams pointed out the beneficial side of calamities for a body politic, these events “arouse the soul. They restore original virtues. They reduce a constitution back to its first principles.”⁹¹ In recent years, “the iron sceptre of tyranny, which was so lately extended over all America, and which threatened to exterminate all for which it was worthwhile to exist upon earth, terrified the inhabitants into a resolution and an ardor for the noble foundations of their ancestors.”

During the Stamp Act Crisis, Americans were awakened to the dangers of arbitrary power and rose up in defense of the constitution. But, with the repeal of the Stamp Act, Adams

⁹¹ John Adams, “Governor Winthrop to Governor Bradford, no. I,” January 26, 1767, in Thompson, 56-57.

feared that the ardor which sustained Americans in 1764-1766 had waned. Within a few months of its repeal, the ardor of Americans had “cooled down into such a tame, torpid state of indolence and inattention, that the missionaries of slavery are suffered to preach their abominable doctrines” without being countered by Patriots. Silence would prove the downfall of America, for the threat to American liberties still existed.

Philanthrop and the supporters of government were spreading principles subversive to liberty in an attempt to lull American colonists into a state of “indolent security and inattention.”⁹² There were individuals in the British and colonial governments who coveted arbitrary power and such men:

“always have recourse to secrecy and the blackness of darkness to cover their wicked views, and have always their parties and instruments and minions at hand, to disguise their first approaches, and to vilify and abuse, — as turbulent destroyers of the public peace, as factious, envious, malicious pretenders to patriotism, as sowers and stirrers of sedition, — all those who perceive such approaches, and endeavor to inform and undeceive their neighbors.”

Throughout human history, liberty had always been surrounded by danger and imperiled by the wicked confederacy of “the world, the flesh, and the Devil.” This was a struggle which was likely to continue until the fall of Antichrist and the end of human history. The history of England itself was the story of a struggle between liberty and arbitrary power. Over the centuries, tyranny had been opposed by men unjustly vilified as “turbulent destroyers of the public peace,” but who Adams and his fellow-colonists considered “the guardian angels of their country’s liberties...”

⁹² John Adams, “Governor Winthrop to Governor Bradford, no. II,” February 9 & 16, 1767, in Thompson, 58-66.

An anonymous author using the name *Philalethes* wrote a number of articles in the *Boston Gazette* in the spring of 1767. Like Adams, Philalethes worried that the colonists had been “supine and negligent under repeated endeavors to ruin us.”⁹³ Not possessing enough righteous zeal for the occasion was more of a danger than the overabundance of supposedly misguided zeal Americans were accused of demonstrating during the Stamp Act Crisis. The true patriots in the colonies had been “much stigmatized with the modest names of incendiaries, firebrands, etc...” This was unjust because those same men had “with great Christian fortitude, and self-denial... persevered in the honest cause...”

The enemies of Massachusetts, and the American colonies as a whole, might continue to vilify the Patriots, but the efforts of the Patriots in the press were beginning to bear fruit. The “false appearances” and “disguises” worn by the supporters of the government were being daily stripped away. Americans were beginning to see the truth of the political struggle and were no longer willing to “be duped or enslaved” by designing men. Philalethes made it his mission to help “strip the gilding” off the true knaves, Governor Bernard foremost among them.

The American Patriots were engaged in the cause of right and justice, they had truth and the constitution on their side. According to the British Constitution, even the king as the supreme magistrate was a “limited king,” he was legally bound to govern according to the laws rather than his arbitrary will.⁹⁴ If the king was bound by the law, so were the king’s representatives in the colonies, the plantation governors. Just as the king was bound by the acts of Parliament, so the governor of Massachusetts was bound to govern according to the acts of the supreme

⁹³ Philalethes, *Boston Gazette*, March 9, 1767, in Dorr, Massachusetts Historical Society.

⁹⁴ Philalethes, *Boston Gazette*, March 23, 1767, in Dorr, Massachusetts Historical Society.

legislature in the colony, i.e. the General Court. There was no place for the exercise of arbitrary and uncontrolled power in Britain or America.

The American Patriots had always balanced a due deference to the king, and his representatives, with a desire to maintain the fundamental laws of the constitution inviolate. For their efforts to preserve the rule of law, the Patriots had been charged with “disaffection to government,” “oppugnation to the king’s authority,” and being “disaffected and disloyal” by certain “vultures in power,” among whom was Governor Bernard. It was not the Patriots who were insulting King George, it was the vultures in power; “every stretch of power beyond law, by any servant of the crown, having a disagreeable reference to the supreme magistrate, is to be resented as an injury to Majesty itself.”

The American colonists had exhibited an “unshaken loyalty to their Sovereign” and had always yielded “a cheerful obedience to all constitutional acts of the supreme legislature in G. Britain.” Loyalty to the constitution could not be a crime and neither could reminding the king’s servants in the colonies, or even Parliament itself, of the limits placed on their authority by the law. Since the colonists were the real loyalists, any “formal attempt to vilify and traduce the faithful subjects of his Majesty, and by false and malicious misrepresentations to alienate the affections of their Sovereign from such subjects; is cruel, illegal, and oppressive.”

Philaethes clearly believed that the Stamp Act was unconstitutional and subversive of liberty.⁹⁵ Since it was not a lawful exercise of authority, the colonists’ resistance to that arbitrary act was just. Governor Bernard was guilty of entering into arbitrary measures to enforce the Stamp Act and of encouraging submission to it. The Governor was a party to the “intrigue to rob

⁹⁵ Philaethes, *Boston Gazette*, April 6, 1767, in Dorr, Massachusetts Historical Society.

us of our birth-right” of liberty as British subjects. When the colonists resisted these invasions of lawless power, there were those among the supporters of government who advocated calling in military force to suppress the resistance. Philalethes considered what the result of Britain using military force against the colonies would be and came to the conclusion that it would cause a civil war. This result was nearly inevitable, because Americans would never submit to be slaves.

Submission to slavery was not required of men on the grounds of either reason or revelation as “neither law, gospel, or natural reason, enjoin obedience to a power like this, so nothing less than the ordinance of God, can influence this people to sit down patiently beneath the scourge of Tyranny.”⁹⁶ Since there was no such ordinance to be found, Americans would continue to resist any unconstitutional acts which threatened their rights. If military force was sent to suppress them, Americans would resist that too.

In May 1767, a writer using the name *Populus* wrote that Americans would maintain their rights “at the expence of everything dear and valuable, even their blood...”⁹⁷ Americans would not be “tame spectators” to the infringement of their rights. For their resistance to unconstitutional actions by the British government thus far, Americans had been labeled “ungrateful, factious, and disloyal” by their enemies. Yet, while they would resist all unconstitutional acts, Americans were disposed “to yield the most cheerful obedience to every constitutional act of Great Britain.”

Americans had no problem supporting the authority of the king and Parliament “upon the well-known and establish’d principles of the British Constitution...” In their political struggle with Britain, the colonists were holding fast to the constitution and exhibiting a “truly noble

⁹⁶ Philalethes, *Boston Gazette*, May 11, 1767, in Dorr, Massachusetts Historical Society.

⁹⁷ Populus, *Boston Gazette*, May 4, 1767, in Dorr, Massachusetts Historical Society.

spirit.” Populus’ opinion was that “whoever shall go about, either by open attempts or secret machinations to destroy, or even in the least degree to check such a spirit, let him be accursed, and all the people shall say Amen.”

When news reached Massachusetts in fall 1767 that New York’s assembly had been dissolved for refusing to comply with the Quartering Act (1765), the sense of being threatened increased. Here was an example of the British government making good on its threats. According to the Quartering Act, colonies were required to provide quarters and certain provisions for British troops stationed within their borders. While this was a somewhat indirect means of taxing the American colonies, Americans had come to disregard any polite distinctions regarding the form taxes took. A tax levied by Parliament was a tax levied without the colonists’ consent, it was as simple as that. Since New York refused to be taxed without its consent, Parliament issued the colony an ultimatum in the Suspending Act (1767). The suspension of the colony’s assembly was set to go into effect on October 1, 1767, but New York could avert that consequence by complying with the Quartering Act. The colony refused and suffered the consequences.⁹⁸

Massachusetts Patriots were decrying the measure even before the suspension went into effect. An author signing himself *Sui Imperator* lamented that traitors to their country were attempting to reduce America to a “den of slavery.”⁹⁹ Would Americans submit to this treatment? If American assemblies could be dissolved at will by an external power, Americans might as well give up any attempt to “preserve the shadow of liberty, when the substance (I mean the power of disposing of your own property) is fled to a distant country.” What was the point in

⁹⁸ Middlekauff, *The Glorious Cause*, 150-158.

⁹⁹ *Sui Imperator*, *Boston Gazette*, August 31, 1767, in Dorr, Massachusetts Historical Society.

electing representatives if colonial legislatures were to be “arraigned, nay annihilated, for refusing a blind obedience to those who do not & cannot” represent the interests of the colonies?

The author was sure that Americans would not submit. In America, there were “more than seven times seven thousands, who never have, and though threatened with death and tortures, never will, bow the knee to that cursed Baal, arbitrary power.”¹⁰⁰ Americans would never release their hold on liberty. Sui Imperator assured his readers that he knew the depth of their conviction, that “tho’ wading through seas of blood, though stunn’d with the awful roar of cannon...you will with a fortitude and resolution which nothing can withstand, defend your Liberties and maintain your Rights.”

These were rights which God and nature had entrusted to their care. It was the duty of the present generation to pass them on inviolate to posterity. This was a task which would require all the American colonies to present a united front. While some might say that New York stood alone and was the only colony affected by its assembly’s dissolution, Sui Imperator told the people of Massachusetts, “if the Parliament of Great Britain can suspend the legislative authority of New York, the legislature here is a poor, contemptible air castle.” Simply put, if Parliament possessed the authority to suspend one colony’s assembly, it could suspend them all. The colonies must remain united in their opposition to tyranny and resolve to be free. If they did this, they could expect Heaven itself to guard them.

Just across the page from that article, *A.F.* identified the core of the issue; New York’s assembly had been dissolved for refusing to acknowledge that Parliament had a “right” to

¹⁰⁰ A reference to 1 Kings 19:18 and God’s preservation of a loyal remnant in the midst of widespread spiritual apostasy in ancient Israel.

legislate for them.¹⁰¹ The consequences of Parliament dissolving a colonial assembly were dire, for “if our legislative authority can be suspended whenever we refuse obedience to law we never consent to, we may as well send home our representatives, and acknowledge ourselves slaves; for a parliament can be of no use to a people who are subject to laws they do not make. It is but an illusion without any benefit...” A.F. also called upon Massachusetts to ensure that New York did not stand alone. The people of Massachusetts would look upon the measure dissolving New York’s assembly as if they were the objects of it. Massachusetts knew that the colonies must “rise and fall together” in the struggle for liberty.

A.F. encouraged his fellow-colonists to rise up together, and with one voice, “declare like true Englishmen, we abhor slavery, and such as would enslave; we love Liberty, and her friends; and that we will encourage the one, and depress the other by all justifiable means in our power.” The colonists must not be afraid to exercise their freedom of speech by filling the press with the words of liberty. The press itself was a grand “support of Liberty and Right” in a free nation and must resist the assaults of arbitrary power, wielded by those seeking to stifle all resistance. A.F. closed by reminding his readers that, though their “righteous opposition to slavery be called rebellion, yet will a true Englishman pursue his duty with firmness, and leave the event to Heaven.”

That some guilty party was attempting to enslave America in the fall of 1767, some Patriots had no doubt. *Britannus Americanus* returned to the press to declare his conviction that wicked men were engaged in malignant schemes to enslave America.¹⁰² What he was not sure about, was whether or not all of Britain was engaged in these schemes. Could it be possible that

¹⁰¹ A.F., *Boston Gazette*, August 31, 1767, in Dorr, Massachusetts Historical Society.

¹⁰² *Britannus Americanus*, *Boston Gazette*, September 7, 1767, in Dorr, Massachusetts Historical Society.

the people of the mother country, which Americans held in such high esteem, were involved in the plot? Britannus Americanus prayed that was not the case. He hoped that Britain, which had “long been the scourge of tyrants, will never set up a tyranny...,” that “she will never attempt to enslave her own children.”

He then asked the question, what would happen if Britain did, in some distant period, become a tyrant and attempt to forge chains for America, “would America submit to her tyranny?” The answer was clearly “no.” Slavery was detested in America and submission would never even cross the mind of a true patriot. If resisting slavery was a “crime,” Britain had itself to blame for the Americans’ resistance. Americans had learned to fight against tyranny from their mother country’s example. They were doing nothing else but speaking the language Britons had always spoken, “Britons will never be slaves.” Could Britain really blame the Americans for following the noble example of their shared ancestors? Would not Britons defend their freedoms if the situation were reversed? Yet Americans were now being threatened with “whips and scorpions” for their resistance. The enemies of America had plans of sending an armed force to awe the colonies into submission.

Roger Martyn, who prefaced his article by informing his readers that he was an old man with numerous offspring, declared that he could not be silent when he saw the liberties of his country assaulted.¹⁰³ For denying Parliament’s claims of authority over them, British newspapers had called the colonists “rebels, traitors, revolvers, rioters, outlaws, and every base appellation, that the malice of the writers can invent.” Their humble supplications seeking the redress of their grievances were labeled “high crimes and misdemeanors” and it seemed like every pamphleteer

¹⁰³ Roger Martyn, *Boston Gazette*, September 14, 1767, in Dorr, Massachusetts Historical Society.

in the British Isles was calling upon the British government “to send troops into America, to dragoon us out of our liberties.” The situation was certainly dire when Parliament was suspending colonial assemblies for refusing to pay taxes “imposed upon us for the support of a *standing army* in this remote corner of the world, where they can have nothing to do,” except perhaps to suppress disobedient colonists.

Josiah Quincy Jr., a promising and talented young Boston lawyer, wrote several articles under the name *Hyperion* in September and October 1767. Quincy began his September 28 article with a sobering political maxim, “that all government tends to despotism, and like the human frame brings at its birth the latent seed which finally shall destroy the constitution.”¹⁰⁴ While the state might be kept in good health for a time, this degeneration was an inevitable and natural process. The history of civil societies in every age bore testimony to the truth of this maxim. Quincy then applied the maxim to Britain’s present condition and diagnosed that the disease of despotism was taking hold in the mother country.

Quincy saw evidence of an “insatiable appetite, an enormous thirst of despotic sway” that was driving Britain towards an absolute government. But men were not made to hold absolute power, “neither was the sceptre of civil society form’d for arbitrary and universal empire. The political, like the animal body is in the best health, while the original constitution is kept pure and undebauch’d.” Americans must do everything in their power to preserve that original constitution from dangerous innovations or they would leave their children a legacy of bondage. Failure to resist the encroachments of tyranny would be a betrayal of the legacy of liberty; “Our fathers sacrificed their blood – they died freemen – they purchas’d Liberty with death – they left

¹⁰⁴ Josiah Quincy Jr., “Hyperion,” *Boston Gazette*, September 28, 1767, in Dorr, Massachusetts Historical Society.

the legacy of freedom to their offspring. – We their sons, shall leave the *royal* gift of bondage to our sons and daughters.”

There were some who were telling the Massachusetts colonists that resistance was futile, that the best option they had was to bow their necks and accept the yoke. Quincy encouraged the colonists not to be deceived by the words of “venal hirelings” and “mercenary tools of power.”¹⁰⁵ The colonists must not let them “cajole you by their subtleties into submission or frighten you by their vapourings into compliance.” When told of their supposed “inability” to resist the mother country, Quincy asserted that “in defence of our civil and religious rights, we dare oppose the world; that with the GOD of ARMIES on our side, even the GOD who fought our Father’s battles, we fear not the hour of trial...” The worldly strength of Britain did not enter the equation. With God on the colonists’ side, who could stand against them? Come what may, Americans would not be intimidated into submission. They were determined to live and die as free men, leaving the ultimate outcome to providence.

A Patriot signing himself *G*, possibly a resident of New York, wrote a letter “To the People of Boston and all other English Americans” which was published in the *Boston Gazette* on October 5, 1767.¹⁰⁶ According to *G*, there was nothing more sacred to an Englishman than the constitution of his country, which contained declarations of his fundamental rights, among which was the assertion that men would be “bound by no human laws but such as we have assented to...” Surely these rights had been violated by Parliament, a body in which the colonists had no representatives, passing the Stamp Act and other oppressive acts targeting the American

¹⁰⁵ Josiah Quincy Jr., “Hyperion,” *Boston Gazette*, October 5, 1767, in Dorr, Massachusetts Historical Society.

¹⁰⁶ *G*, *Boston Gazette*, October 5, 1767, in Dorr, Massachusetts Historical Society.

colonies. If the colonists were denied these fundamental rights, G asked, “have we anything that we can call our own? and can there be a more perfect slavery?”

The security of the American colonies depended on their unity. New York must not be left to stand alone, for “if one colony is once enslaved, none of the rest, nor England itself, will long remain free! – The most *grace* that the most favoured must expect to find, will be such as *Polypheme* promised *Ulysses*, *to be devoured last*.” The British Constitution was the best in the world because it approached the nearest to the laws of God and nature. The fundamental laws of Britain were manifestations of the immutable natural laws and no one had a right to abrogate those laws. This was the glorious constitution which Americans were seeking to defend, this was the system which made British subjects free and happy. G lamented that the guardians of liberty were vilified by its enemies:

“And shall those men who exert themselves in defence of their native rights, and the beloved, the glorious constitution of England, be treated as factious disturbers of the public peace, and branded with the opprobrious names of *rebels* and *traytors*? Forbid it justice... No, Let those who have attempted this barborous violation of the most sacred rights of their country apply those hateful epithets to themselves.”

The real traitors were those men subverting the constitution and invading the rights of their fellow-subjects. These men were traitors “no only against the laws of their country and their King, but against Heaven itself, and that God who has established the laws of nature.”

The October 12 and 19, 1767 editions of the *Boston Gazette* republished an article from *The Craftsman*, a British Newspaper, which asked one key question, how can a man be a *friend* to the “constitution” and an *enemy* of the “government?”¹⁰⁷ This was a vital distinction in

¹⁰⁷ A Friend to the Constitution, “From the Craftsman,” *Boston Gazette*, October 12 & 19, 1767, in Dorr, Massachusetts Historical Society.

explaining the lawfulness of resisting government actions by the Massachusetts Patriots. In the Patriot's mindset, if this distinction was valid, their resistance to the unconstitutional actions of Parliament and the Ministry were justified.

According to this distinction, a "constitution" is the fixed principles upon which a nation operates. It is the system and the *rule* upon which the government is supposed to act. The "government" is the conduct of the magistrates holding office at a particular point-in-time. This term refers to how the magistrates *actually* govern, which might be good or bad. A "good" government adheres to the constitution and a "bad" government deviates from it. Of all the ways in which a government can go bad, a corrupt and tyrannical Parliament would be the worst. If Parliament came under the sway of tyrants, the "names and forms" of a free government would be maintained, but the substance of freedom would be gone. The representatives would be dependent on and serve a master instead of serving the people, violating the trust which had been delegated to them by the people.

However fearful the phantom of Parliamentary tyranny might be, it could be prevented by preserving the constitution and making a return to the rule of law. And as powerful as Parliament might be, it did not possess the authority to alter or annul the constitution. Parliament might be "supreme," some might even describe it as "absolute," but it had no right to be "arbitrary." Since the original source of authority in civil society was the people, and the constitution was created based on that authority, only the people had the right to alter the constitution.

If a government attempted to alter or annul the constitution without the express consent of the people, this would amount to a dissolution of the bonds of civil society and the people would return to a state of nature. In such a situation, the people would be justified in resisting the government in order to preserve the constitution. If the government did succeed in dissolving the

constitution, the people would regain “their natural right of restoring the constitution, or of making a new one.” Thus, being an enemy to the government was not always a crime. What really mattered was whether a person was a friend, i.e. was loyal, to the constitution.

An author writing under the name *Benevolus* also stressed the fixed nature of the constitution. Parliament was surely the supreme authority in the British Empire, but it was not arbitrary.¹⁰⁸ The power of Parliament itself was “circumscribed by certain known, fundamental principles, the bounds of which they may not overleap.” These fundamental principles were contained in the constitution, which established the political system the people had consented to live under. It was illogical to think that a legislative assembly, which was delegated its powers according to the constitution, would have the power to alter that constitution. The supremacy of the constitution is to be regarded as sacred and even Parliament must remember that its power is derived from the fundamental laws, that it has no power above the law. One of the fundamental laws of Britain, based on a natural right of mankind, was that a person give his consent in-person, or by his representative, before parting with his property. Consent is the only lawful basis for political authority and consent was something Parliament was sorely lacking in its efforts to tax the American colonies.

That Americans were bitter over Parliament’s efforts to tax them without their consent, and over the efforts of the supporters of government to enforce submission to Parliamentary actions, can be seen in a string of articles written by Dr. Joseph Warren in the spring of 1768. Warren wrote under the pseudonym *A True Patriot* and launched a thinly veiled assault on Governor Bernard in the February 29 edition of the *Boston Gazette*.¹⁰⁹ While he never named the

¹⁰⁸ Benevolus, *Boston Gazette*, November 9, 1767, in Dorr, Massachusetts Historical Society.

¹⁰⁹ Joseph Warren, “A True Patriot,” *Boston Gazette*, February 29, 1768, in Dorr, Massachusetts Historical Society.

Governor directly, anyone remotely familiar with Massachusetts politics would have known exactly who Warren was talking about. Governor Bernard certainly did, because he attempted to bring Warren up on charges before the Council. For his efforts to enforce submission to Parliament's supposed authority, and the "slanders" Bernard had sent back to Britain about the colony, Warren charged Bernard with "enmity to this province" and "cruelty to a loyal people."

Americans believed that they could never "treat good and Patriotic rulers with too great Reverence – But it is certain that Men totally abandoned to Wickedness, can never merit our Regard, be their Stations ever so high." Warren used an interesting maxim to drive home his distinction between good and bad rulers; "if such Men are by God appointed, the Devil may be the Lord's anointed." In his follow-up article on March 7, Warren feigned innocence to the charge that his first article had Governor Bernard as its object.¹¹⁰ Surely, he could not be held responsible for the "construction put upon it" by other men.

It was not his fault that other men had taken the description of a wicked ruler he provided and applied it to Governor Bernard. Warren claimed that his design in the first article was to "compare wicked men, and especially wicked magistrates, with those enemies to mankind the devils, and to intimate that the devils themselves might boast of divine authority to seduce and ruin mankind, with as much reason and justice, as wicked rulers can pretend to derive from God, or from His word, a right to oppress, harass, and enslave their fellow-creatures." A wicked ruler was a "monster" and a "villain," as such, he possessed no authority from God to be a tyrant.

¹¹⁰ Joseph Warren, "A True Patriot," *Boston Gazette*, March 7, 1768, in Dorr, Massachusetts Historical Society.

In his third article on March 14, Warren expressed his approval of how the American colonists had asserted their rights, all while enduring “unjust aspersions upon their characters.”¹¹¹ The province of Massachusetts especially had been misrepresented and slandered by its enemies. Massachusetts had been “barbarously traduced; and now groans under the weight of those misfortunes which have been thereby brought upon it...” Now that the colonists had detected some of their enemies, it was time to strip the “serpents of their stings.” The true “betrayers of their country” should be consigned to disgrace and bear the scorn of a free people. It was the wicked rulers and their supporters who deserved to be vilified, not the true patriots of the colonies.

Located directly below Warren’s article, *Populus* returned to voice his opinion on the colonists being demeaned for asserting their rights.¹¹² This author reflected on how freedom of the press and freedom of speech were hated by tyrants because, when people could speak freely, tyrants were unable to hide their villainous schemes. According to *Populus*, there was nothing “so fretting and vexatious, nothing so justly TERRIBLE to tyrants, and their tools and abettors as a FREE PRESS.” The reason was rather simple, a free press acted as a bulwark to the people’s liberties. A tyrant must first silence the press before he can steal the liberties of the people.

Because of this, men who were bold enough to speak the truth, and call a villain “a villain,” could expect to be hated by tyrants and their tools. Those who spoke the truth would be charged with libel; and “the more true, the more libellous” their writings would be considered. The American press had sounded the alarm when tyrants had attempted to forge America’s chains with the Stamp Act. The American press had “spoken to us the words of truth...” It had

¹¹¹ Joseph Warren, “A True Patriot,” *Boston Gazette*, March 14, 1768, in Dorr, Massachusetts Historical Society.

¹¹² *Populus*, *Boston Gazette*, March 14, 1768, in Dorr, Massachusetts Historical Society.

set before Americans the liberty they might enjoy or the slavery they would be reduced to by submitting to the schemes of tyrants. Because Patriots in the American press had told the people the truth, Americans should not be surprised that those good men had become an object of hatred for tyrants and their tools. True patriots had been branded as “infamous” by their enemies. It was the price to be paid for standing for truth.

In April 1768, a Patriot writing under the name *Monitor* summed up the attitude of many Patriots in Massachusetts in an article entitled “Divide & Impera- Divide and Tyrannize.”¹¹³ The Patriots believed that they had identified a shift in the British strategy to enslave the American colonies after the failure of the Stamp Act. That strategy was simple, to create division among the colonies and thus weaken any attempts at effectual, united resistance. The enemies of American liberty had decided to “*sap*, not to *storm* our freedom.” The encroachments of arbitrary power would be more subtle, targeting individual colonies to isolate them from their sister-colonies. These encroachments would be disguised in measures bearing the form of legality, in forms which discouraged the other colonies from intervening in defense of the targeted colony. If this plan succeeded and the individual colonies only looked out for themselves, America would be tyrannized by its new masters in Britain.

Monitor believed that the suspension of New York’s assembly for noncompliance was a part of this plan. The tyrants in Britain “hoped the *rest of the colonies* would not interest themselves in the fate of *one*; but look with silence and unconcern on this violation of American freedom...” New York’s assembly had been dissolved for refusing to pay a tax demanded by Parliament. Would the other colonies ignore that violation of American liberty? Monitor

¹¹³ Monitor, “Divide & Impera, Divide and Tyrannize,” *Boston Evening-Post*, April 4, 1768, in Dorr, Massachusetts Historical Society.

encouraged the opposite reaction, he wanted the American colonies to “manifest to all the world, how unanimously we are determined, both with hand and heart, to maintain our freedom, and frustrate the designs of those, who, by *dividing*, *would enslave us*.” The effort to suppress resistance to the British government among Massachusetts’ Patriots through threats and intimidation had failed.

II. Dissolving Assemblies

The Massachusetts House of Representatives also wanted all Americans to be united in their opposition to unconstitutional actions by the British government. That desire for unity led the House to write its “Circular Letter” to the assemblies of the other colonies in February 1768. While this letter did little more than repeat the positions the House had already expressed in numerous petitions, letters, and public resolutions, the British Ministry interpreted it as a rebellious action designed to create “unwarrantable combinations” against the lawful government. In summer 1768, the Ministry ordered Governor Bernard to issue the House an ultimatum, rescind the “Circular Letter” or be dissolved. The House refused the ultimatum outright and was dissolved immediately afterwards, per the instructions of the Ministry.

The Massachusetts Patriots had warned their fellow-colonists that the dissolution of New York’s assembly was just the beginning, that no organized political resistance to the British government’s authority would be tolerated by the would-be tyrants on either side of the Atlantic. The second form of suppression had come to Massachusetts. The colony’s assembly had been dissolved for refusing blind obedience to the arbitrary commands of an external and

uncontrollable authority, the British Ministry. From the perspective of the Patriots, if this action was constitutional, the colonial assemblies were essentially worthless.

If all self-government, even that guaranteed by the charters, was subject to external control, the colonists had no real role in their government. The assemblies were little better than chambers of debate where the colonists could voice their opinions, but only as long as those opinions were considered acceptable by their political masters in Britain. It seemed like the British government had resolved to suppress any contrary opinions, even those expressed by the constitutionally-elected legislatures in the colonies.

Before it wrote the “Circular Letter,” the House expressed its views in a number of letters sent across the Atlantic in early 1768. One of those letters was addressed to Massachusetts’ colonial agent, Dennys De Berdt, and expressed the colony’s concern over a number of acts passed by Parliament in its latest sessions.¹¹⁴ As the guardians of the rights and liberties of their constituents, the members of the House were deeply troubled by the passage of laws to which the colonists had not given their consent. The colonists were not a party to the laws by which they were to be governed. This letter repeated many of the themes examined in chapter four. For instance, the House argued that natural rights provided the basis for the colony’s civil rights and that the constitution was the supreme authority in the British Empire. The House viewed the Massachusetts Charter as an “original contract” which guaranteed equal rights to the colonists.

Those equal rights were being denied to the colonists and the House cited a number of “revenue acts” as examples: the Sugar Act, the Stamp Act, and the Townshend Acts. The Townshend Acts were a collection of customs duties designed to levy an “external tax” on a

¹¹⁴ Massachusetts House of Representatives, “To Dennys De Berdt,” January 12, 1768, in Cushing, vol I, 134-152.

variety of goods imported into the American colonies, such as, paper, glass, and tea. These acts were the brainchild of Charles Townshend, the Chancellor of the Exchequer in 1766-1767, and were passed by Parliament in 1767. The Townshend Acts are a great example of how the primary issue of “right” was not resolved at the conclusion of the Stamp Act Crisis. Parliament continued to assert its claims of authority over the American colonies and the colonies continued to resist those claims.¹¹⁵ The House also expressed their reservations about the Declaratory Act, which they identified as Parliament making a claim for the authority to levy “external and internal” taxes in America.

The House found the intended uses of the tax revenue generated by these customs duties almost as unpleasant as the taxes themselves. The House identified three key uses which they objected to. First, the revenue would be used for the support of government in the colonies, including the administration of justice. That would make government officials, often appointed by the Crown, independent of the colonial legislatures for their salaries. The House feared that governors and judges would become corrupt as a result.

Second, these monies would be used to maintain a standing army in the colonies. As British subjects, the colonists had “an aversion to an unnecessary standing army, which they look upon as dangerous to their civil liberties...” Third, there would be an “unnecessary increase of Crown Officers” to collect these customs duties. Given time, this “host of pensioners” would “become as dangerous to the liberties of the people as an army of soldiers...” The House feared

¹¹⁵ Middlekauff, *The Glorious Cause*, 452-158; Morgan, *The Birth of the Republic*, 34.

that the time might come “when the united body of pensioners and soldiers may ruin the liberties of America.”¹¹⁶

The House also reflected on the implications of Parliament’s act dissolving the New York assembly for non-compliance to a set condition. Such an action, if used throughout the colonies, would annihilate the legislative powers in America and deprive “the people of a fundamental right of the constitution, namely, that every man shall be present in the body which legislates for him.” Parliament’s action in suspending the New York assembly left the representatives in the Massachusetts House staring a simple truth in the face; if they refused to grant away their constituents’ money when demanded by Parliament, “they shall no longer have any legislative authority.” The House was convinced that “political death and annihilation” was its likely fate if it did not passively obey commands coming from Britain. It seemed that, according to Parliament, consent was no longer a necessary prerequisite for government.¹¹⁷

Throughout January 1768, the House sent a petition to the king and a series of letters to members of the British Ministry protesting on behalf of the necessity of consent in a free government. The “Petition to the King,” approved on January 20, began with a gentle reminder that the Charter guaranteed the essential rights of Englishmen to the Massachusetts colonists.¹¹⁸ The House was careful to recognize the “superintending authority” of Parliament over all the territories in the British Empire. But the House was also careful to qualify that statement, claiming that Parliament’s superintending authority was recognized by the colonies “in all Cases, that can consist with the fundamental Rights of Nature & the Constitution” which the king’s

¹¹⁶ Massachusetts House of Representatives, “To Dennys De Berdt,” January 12, 1768, in Cushing, vol. I, 143-146.

¹¹⁷ *Ibid.*, 147-151.

¹¹⁸ Massachusetts House of Representatives, “Petition to the King,” January 20, 1768, in Cushing, 162-166.

subjects had a just claim to. Being taxed by a body in which they were not represented was inconsistent with those fundamental rights. If Parliament's taxes for the colonies remained in force, the House regretted to inform the king that the colonists would be left with only the *name* of free subjects.

Two days later, the House approved a letter to the Marquis of Rockingham, a prominent statesman and previous prime minister of Britain (1765-1766).¹¹⁹ While once again recognizing the superintending authority of Parliament over the colonies, the House expressed their apprehension that an arbitrary rule was being raised over them. Once again, the House asserted that the "superintending power of that high court (Parliament) over all his Majesty's subjects in the empire, and in all cases which can consist with the fundamental rules of the constitution, was never questioned" by anyone in Massachusetts. But the Marquis must remember that the constitution of a free state is fixed and that not even the supreme legislative and executive powers can "break through the fundamental rules of the constitution, without destroying their own foundation."

The House feared that the revenue generated by the Townshend Acts would be used to make the governors and other Crown officers in the colonies independent of the colonial legislatures. If civil officers became independent of the people and the legal checks currently in place were removed, "corrupt and arbitrary rule may take place, even within the colonies, which may deprive a bench of justice of its glory, and the people of their happiness and safety." The House hoped the Marquis understood that the colonies had been misrepresented to the British government by their enemies. What the colonies' enemies had "taken occasion to represent to his

¹¹⁹ Massachusetts House of Representatives, "To the Marquis of Rockingham," January 22, 1768, in Cushing, 169-173.

Majesty's ministers and the Parliament, as an undutiful disposition in the colonies, is nothing more than a just and firm attachment to their natural and constitutional rights." Letters were sent to several other members of the Ministry making the same points.

Massachusetts' "Circular Letter" of February 11, 1768, addressed to "the speakers of other houses of representatives," did not contain any ideas the House had not already expressed in its letters mailed directly to the Ministry.¹²⁰ The representatives recognized Parliament as the supreme legislative power in the Empire, but they also asserted that, "in all free States the Constitution is fix'd; & as the supreme Legislative derives its Power & Authority from the Constitution, it cannot overleap the Bounds of it without destroying its own foundation." In their view, the American colonists were entitled to all the fundamental rights of nature and the constitution. Parliament's attempts to tax the colonists without their consent were a clear violation of those fundamental rights. The House questioned the wisdom of independent salaries for Crown officers in the colonies, as that would likely "subvert the principles of Equity & endanger the Happiness & Security of the Subject."

The House knew that the enemies of Massachusetts had misrepresented the colonists as "factious disloyal & having a disposition to make themselves independent of the Mother Country," but asserted that those charges were unjust. While promoting unity among the colonial assemblies, the House denied any "Ambition of taking the Lead or dictating to the other Assemblys." The representatives simply wanted to make their opinions known to the other colonial assemblies and they freely submitted "their opinions to the Judgment of others, & shall take it kind in your house to point out to them anything further which may be thought

¹²⁰ Massachusetts House of Representatives, "The Circular Letter," February 11, 1768, in Cushing, vol I, 184-188.

necessary.” The letter finished with an expression of confidence in the king as their “common head & Father” and their belief that the “the united & dutifull Supplications of his distress’d American Subjects will meet with his royal & favorable Acceptance.”

While nothing in the “Circular Letter” was particularly radical or novel, the British Ministry interpreted this official call for unity among the colonies as a criminal act. Lord Hillsborough, the Secretary of State for the American Department, promptly sent Governor Bernard instructions to issue the House an ultimatum, rescind the letter or be dissolved. Massachusetts’ assembly was about to be suppressed. During the time it took those messages to cross the Atlantic, the annual election was held and a new House assembled for the summer 1768 session.

The newly-elected representatives met on May 25, 1768 to listen to Daniel Shute’s election sermon on Ezra 10:4.¹²¹ Throughout this sermon, the representatives received a heavy dose of the principle of consent, the natural rights foundation of government, constitutional supremacy, and conditional obedience. When discussing submission to magistrates, Shute based submission on the supposition “that the laws made by civil rulers coincide with moral fitness, and are calculated to answer the end for which only they are empowered to make laws; if otherwise, the subject can be under no obligation to observe them; but may be morally obliged to resist them, as it must ever be right *to obey God rather than men*.” The doctrine of passive obedience and non-resistance, urging an unlimited submission to magistrates, “came not down from above, as it can be supported neither by reason nor revelation...” This was a doctrine more

¹²¹ Ezra 10:4, “Arise; for this matter belongeth unto thee: we also will be with thee: be of good courage, and do it.”

fit to be promoted by the “rulers of darkness” than by those rulers lawfully appointed as the guardians of the peoples’ rights.¹²²

Shute reminded the representatives that the happiness of Massachusetts resulted from the peoples’ enjoyment of their natural rights as guaranteed by the British Constitution and the Charter. If arbitrary measures were introduced, contrary to the constitution, the result would be misery, poverty, and ruin. The people of Massachusetts regarded “their civil constitution as the basis of all their temporal felicity...” Every privation of the natural and constitutional rights guaranteed to the people would be “subversive of their happiness, and every infringement of the form of their constitution has a tendency to such privation...” The attention of the people was focused on the preservation of their rights and they expected their rulers to demonstrate an equal concern. While the representatives acted as the “guardians of this people” and were “intent upon securing their rights and promoting their happiness,” they could expect to be supported in all their endeavors.¹²³

A month after Schute’s election sermon, Governor Bernard issued his ultimatum to the House. On June 30, 1768, the House sent the Governor a letter informing him of their decision and the reasons behind it.¹²⁴ The representatives expressed shock that the Governor would order them to rescind the “Circular Letter,” which was not even passed by the present House, and his assertion that the House would be dissolved for non-compliance. In the House’s view, that letter to the other colonial assemblies barely intimated “a desire that they would join in similar dutiful and loyal petitions to our most gracious Sovereign, for the redress of the grievances” burdening

¹²² Daniel Shute, *Election Sermon*, May 25, 1768, Evans Early American Imprints, 17.

¹²³ *Ibid.*, 22-24.

¹²⁴ Massachusetts House of Representatives, “To the Governor,” June 30, 1768, in Cushing, vol. I, 229-236.

the colonies. They could not perceive anything dangerous or even remotely rebellious in one colonial assembly communicating its opinions with the others.

The previous House had only advocated that the colonies make use of their right to petition the king for redress of grievances. The present House was appalled by the ultimatum, because “if the votes of the House are to be controlled by the direction of a minister, we have left us but a vain semblance of liberty.” While the Governor had the constitutional right, according to the Charter, to dissolve assemblies, the excessive and unnecessary exercise of that right was dangerous. If the assembly could be dissolved at whim, by an ill-disposed governor or the instructions of a minister, the Charter was of no real value. The House concluded by informing the Governor of its decision not to rescind the “Circular Letter” by a vote of 92 *against* and only 17 *for* rescinding.

The House also sent a letter to Lord Hillsborough on June 30 to protest his instructions to Governor Bernard.¹²⁵ In this letter, the representatives reinforced their legal status by referring to themselves as a “British House of Commons.” It was most unusual, indeed unprecedented, for any minister to issue such an order relative to any British assembly. Hillsborough’s assertion that the “Circular Letter” tended to “create unwarrantable combinations, and to excite an unjustifiable opposition to the constitutional authority of Parliament” was erroneous. The “Circular Letter” was constitutional, it was not even close to being a conspiratorial or criminal act. The vote not to rescind represented a clear majority opinion in support of its principles among the representatives, and thus the people, of Massachusetts.

¹²⁵ Massachusetts House of Representatives, “To Lord Hillsborough,” June 30, 1768, in Cushing, vol. I, 219-229.

Writing these two letters were the final actions of the House that session, as Governor Bernard ordered its dissolution immediately upon receiving his letter. The second means of suppression had been exercised in Massachusetts. The British government had settled on an effective tactic for preventing dissenting opinions among the constitutionally-elected representatives of the American colonies, it would simply dissolve any assemblies which were bold enough to disagree. But, even when denied an assembly, the Massachusetts Patriots continued to speak out against the actions of the British government. They simply refused to be suppressed. The July 11 edition of the *Boston Gazette* published the voting list of the 92 “anti-rescindors” and 17 “rescindors” in the House so that everyone knew which representatives truly stood for the people.¹²⁶

Two of the rescinders, William Brown and Peter Frye, were representatives of the town of Salem. A town meeting was held in Salem on July 18, 1768 in which a majority of those present expressed their dissatisfaction with the vote made by their representatives.¹²⁷ The majority of constituents in Salem did not share the same sentiments as Brown and Frye, whose behavior had led the whole town to be characterized as “supine and lifeless” by the rest of Massachusetts. The constituents wanted to set the record straight; if given the choice, the people of Salem would have voted against rescinding the “Circular Letter.” This meeting was not without opposition however, a “small party” present tried to condemn the proceedings for “the impropriety, the illegality, and bad tendency” which constituents voicing their opinions apparently demonstrated.

¹²⁶ “The 92 Anti-Rescindors and the 17 Rescindors,” *Boston Gazette*, July 11, 1768, in Dorr, Massachusetts Historical Society.

¹²⁷ A Native of Salem, “Town Meeting,” *Boston Evening-Post*, August 15, 1768, in Dorr, Massachusetts Historical Society.

The town of Marblehead met a few days before Salem and expressed its thanks to the 92 representatives who voted against rescinding. This vote of thanks passed in a unanimous decision.¹²⁸ The inhabitants of Marblehead were concerned that “a lawful Attempt to unite a considerable part of the subjects in dutifully petitioning to the Throne, and decently remonstrating to the British Parliament for a redress of grievances, is called a measure of an inflammatory nature, and evidently tending to create unwarrantable combinations, and to excite an unjustifiable opposition to the constitutional authority of Parliament...” Clearly, the freeholders of Marblehead saw nothing dangerous or illegal in the “Circular Letter.” In fact, they praised the 92 “anti-rescinder” members of the House for their resolution and true patriotism.

A number of newspaper articles discussed the suppression of Massachusetts’ assembly for not rescinding the “Circular Letter.” A writer using the initials *F.F.* considered dissolution a method for annihilating the colonial charters and preventing redress of grievances by cutting off the regular, legal means of redress.¹²⁹ Another anonymous author discussed the “artful approaches” which a “wicked faction” in America, and its allies in Britain, were using to bring slavery and chains to America.¹³⁰ After the failure of the Stamp Act, the enemies of America switched to the more subtle tactic of the Townshend Acts. It was their design to raise a revenue for the support of government in the colonies, a government which would be independent of the colonial assemblies, and thus, of the people.

The colonial assemblies had seen through this scheme, issuing petitions and remonstrances against it, and that led to their suppression. The “master stroke of policy”

¹²⁸ Town of Marblehead, “Thanks to the 92 Members,” *Boston Evening-Post*, July 18, 1768, in Dorr, Massachusetts Historical Society.

¹²⁹ *F.F.*, *Boston Gazette*, August 1, 1768, in Dorr, Massachusetts Historical Society.

¹³⁰ “Artful Approaches,” *Boston Gazette*, August 15, 1768, in Dorr, Massachusetts Historical Society.

determined by the schemers was “to contrive some pretence or other, for the dissolution, prorogation, or adjournment of every assembly upon the continent, that is likely to give them the least disturbance...” This was a serious matter, because “if this system is legal and constitutional, we are legally and constitutionally slaves.” In a system where the Charter was annihilated, where independent Crown officers reigned supreme, and where no assemblies were allowed to meet, the principle of mixed government lauded in the constitution was destroyed. Massachusetts, and all the other colonies, were to be subjected to an absolute monarchy, where the people no longer had any say in their government.

This system was completely unacceptable to *Wyman*, who asserted that any member of any “British house of commons” had the right to speak his mind and vote freely “according to the dictates of *his own* conscience.”¹³¹ This was an essential right of assemblies and could not be abridged without effectively obliterating the assembly itself. With this right in mind, Wyman pointed out the utter absurdity of a British minister “dictating to a British house of commons a particular mode of proceeding, and threatening them with annihilation for a non-conformity thereto...” This was, of course, exactly what Lord Hillsborough did to the Massachusetts assembly with his order to rescind the “Circular Letter.”

Samuel Adams, writing as *Determinatus*, lamented how Massachusetts suffered from misrepresentation throughout the Empire.¹³² If the colony’s enemies were to be believed, the whole province was “upon the point of ruin by mobs and tumults...” This simply was not true. The people of Massachusetts were always ready to “support the civil officers in the *due execution of the Law*...” It was the exercise of arbitrary power and the use of force which the

¹³¹ Wyman, *Boston Gazette*, August 29, 1768, in Dorr, Massachusetts Historical Society.

¹³² Samuel Adams, “*Determinatus*,” *Boston Gazette*, August 8, 1768, in Cushing, vol. I, 236-240.

colonists objected to. They were enlightened enough to distinguish between “the *due execution of the laws of the land*, and the exercise of *new invented, strange, unconstitutional Powers*, repugnant to the British Constitution and the Charter of the Province...” While Adams did not support riots and tumults, he recognized that:

“when the People are oppress'd, when their Rights are infring'd, when their property is invaded, when taskmasters are set over them, when unconstitutional acts are executed by a naval force before their eyes, and they are daily threatened with military troops, when their legislative is dissolv'd! and what government is left, is as secret as a *Divan*, when placemen and their underlings swarm about them, and Pensioners begin to make an *insolent* appearance - in such circumstances the people will be discontented...”

This was not a situation in which men who possessed the spirit of freedom could remain silent. They were sure to boldly assert their freedom and were certainly justified in doing so. Adams knew very well that “to murmur, or even to *whisper* a complaint, some men call a riotous spirit.” Tyrants would be happy if the people accepted slavery in silence and hated when patriots spoke out against their plans. While efforts were being made to silence the Patriots in America, they were “in the right of it to complain, and complain Aloud. And they *will* complain, till they are either redress'd, or become poor deluded miserable ductile Dupes, fitted to be made the slaves of dirty tools of arbitrary power.”

The boldest statements from any Massachusetts Patriot in 1768 came from the Reverend John Cleveland of Ipswich, writing as *Clericus Americanus*.¹³³ Cleveland's position was only partially tempered by structuring his discourse as a list of questions he was putting forward for discussion. The fifth question asked whether or not the political union between the American

¹³³ John Cleveland, “Clericus Americanus,” *Boston Gazette*, September 5, 1768, in Dorr, Massachusetts Historical Society.

colonies and Great Britain was not “entirely founded in the covenants and compacts... which are contained in their *Charters*?” Clearly, Cleveland was of the opinion that it was. Question six built upon that position by asking; if the British government broke the conditions of the charters, “whether the political union... of these Colonies to the British Empire and government are not hereby dissolved and the Colonists reduced to a state of nature?” Question eight listed a catalogue of actions taken by the British government which, collectively, would amount to a breach of the charters and asked Americans to judge whether Britain had not already broken the social covenant-contract with the colonies. The dissolution of Massachusetts’ assembly featured prominently in this list.

If Britain had broken the contract and the colonists were in a state of nature, according to question nine, then would it not be appropriate for the towns of Massachusetts to assemble and choose representatives for a General Court with instructions to enter into a new covenant with the King? Cleveland was clear that the colonists would maintain their allegiance to King George, but the conditions of that allegiance would need to be renegotiated as a result of Britain’s breach of trust. It was time for Massachusetts to renew the “charter-covenant and compact” connecting it to the King, and through him, to Britain.

Cleveland addressed several objections he anticipated would be made to his plan for a renewed charter. First, some might object that, if Americans took this step, “the King and Parliament will declare us rebels.” He answered that they could not do that to America “in justice,” because the American cause was just. Second, some in the colonies argued that Britain would send an army to subdue America in response to the colonies’ political resistance. Cleveland responded with another question, “subdue us to what? To be loyal subjects of his Britannic Majesty?” That is exactly what Americans always had been and desired to always be.

The only other option was that this army's purpose would be reducing the colonies to slavery. If anyone in the British government was foolish enough to attempt this, Americans would tell them that "we are willing and desirous to be their fellow-subjects – That we are *Englishmen* and claim the privileges of *Englishmen*, but will never submit to be slaves to our fellow-subjects..." Cleveland finished his discourse by calling upon his fellow-colonists to pray for the king and queen, that they might be granted the wisdom to discern between their faithful servants (Americans) and the enemies of the British Constitution. Above all, Cleveland desired that "the political union of *Great Britain* and the *Colonies* may be renewed and established on a firm and lasting foundation." The question was, would the British government allow this renewal to take place or would it use increasing levels of force to suppress American resistance?

III. A Standing Army

It seems that force was the British government's answer to the constitutional debate it was engaged in with the American colonies. Thus, when Massachusetts continued to resist British authority, even after its assembly was dissolved, two regiments of British regulars were ordered to Boston. The stated purpose of these regiments was to maintain law and order. The view from across the Atlantic was that Massachusetts was out of control. The people of Massachusetts interpreted the arrival of armed forces a different way, in their view, these troops were being sent to oppress them.

Having deeply imbibed natural rights doctrines from their youth, Massachusetts Patriots were conditioned to view a standing army in peace-time as a threat to liberty. This was especially true of "mercenary" armies, professional soldiers who made their living in military pursuits. True

to their English traditions, these colonial Englishmen believed that “citizen-soldiers” were the best defense a country had. Massachusetts did not need an external military force to maintain order; the *posse comitatus*, the militia or literally the “power of the county,” was sufficient.

As rumors flew and the fears of a standing army mounted in the fall of 1768, the town of Boston composed a petition to Governor Bernard on September 12.¹³⁴ The town’s inhabitants wanted the Governor to inform them about the regiments whose arrival was expected daily. They also issued the first of many requests for the Governor to call a General Assembly due to “the present precarious situation” of their invaluable rights and privileges. The inhabitants met again on September 13 and issued a strongly-worded Declaration & Resolves.¹³⁵ This significant political statement, most of which passed unanimously, began with “the first principle in Civil Society, founded in Nature and Reason...” This was the principle of consent, “that no Law of the Society can be binding on any Individual, without his Consent, given by himself in Person or by his Representative, of his own free election.”

This principle of natural law had been confirmed in the English Bill of Rights during the Glorious Revolution and guaranteed to the people of Massachusetts by their royal charter. As Englishmen, entitled to equal rights, the people of Massachusetts were resolved to defend the king, whom they were steadfastly loyal to, and their own rights, “at the utmost Peril of their Lives and Fortunes...” Since consent provided the foundation of civil authority, the province’s assembly was the only political body which could legally tax its inhabitants. It was also the only civil authority which could legally authorize keeping a standing army in the colony during a time

¹³⁴ Town of Boston, “Petition to the Governor,” *Boston Gazette*, September 19, 1768, in Dorr, Massachusetts Historical Society.

¹³⁵ Town of Boston, “Declaration & Resolves,” *Boston Gazette*, September 19, 1768, in Dorr, Massachusetts Historical Society.

of peace. The English Bill of Rights was quoted directly to support the colony's position on both taxes and troops. All lawful authority derived only from the consent of the people, given directly or by their representatives in a freely-elected assembly.

Since Parliament had not received, or even asked for, the people's consent, sending a standing army to the province "would be an Infringement of their Natural, Constitutional, and Charter Rights; and the employing such Army for the enforcing of Laws made without the Consent of the People, in Person, or by their Representatives, would be a Grievance." A standing army would add another "intolerable grievance" to the list under which the colonists groaned. A portion of the Declaration which did not pass unanimously, yet still earned a "great majority," was the meeting's resolve that the people of Massachusetts should exercise their right to have "arms for their defence," as stated in the Bill of Rights and the laws of the province. In Boston's view, this declaration was "founded in Nature, Reason, and sound Policy, and is well-adapted for the necessary Defence of the Community."

A "good and wholesome law" of the province required "every listed Soldier and other Householder" to be provided with a firelock musket, accoutrements, and ammunition. It was the intent of Boston that this law be observed and freeholders who did not possess the necessary martial equipment were encouraged to arm themselves. The stated reason was apprehensions of an approaching war with France, but this sounds more like an excuse. Placed in the context of the Declaration, it would be easy to interpret Boston's promotion of arms for self-defense as being directed against the British government, not the French.

Boston also voted to send out its own circular letter. Since frequent assemblies were necessary to the health of a free state, and the governor refused to call a new General Court until legally required to by the Charter, which was not until the following May, Boston issued a call

for a convention of towns to meet on September 22. Boston regarded a convention of Massachusetts' towns as a perfectly constitutional method for preserving their rights and petitioning for redress of grievances. The committee chosen to write the letter was composed of James Otis, Thomas Cushing, Samuel Adams, and John Hancock.

This committee composed the "Boston Circular Letter" within a day and mailed it out to the other towns of Massachusetts on September 14, 1768.¹³⁶ This letter began by listing the "very alarming circumstances" which all the towns of Massachusetts were only too well acquainted with. First and foremost, taxes were being impressed upon the people without their consent. To make matters worse, those taxes were to be used for the unconstitutional purposes of supporting the civil government in the colony and maintaining a standing army. And if that was not enough, the province's petitions had proved ineffectual as they had not reached the royal ear and a minister had ordered the colony's assembly dissolved.

Another issue Boston was especially apprehensive about was the expected arrival of British troops to their city. The city was sure these troops were not really coming for their stated purpose of maintaining the laws and good order; "the Design of these Troops is in everyone's Apprehension nothing short of Enforcing by military Power the Execution of Acts of Parliament, in the forming of which the Colonies have not, and cannot have any constitutional influence." The colony's constitutional and lawful protests were to be suppressed by a standing army.

Towns across Massachusetts met quickly to hold meetings and select representatives to the Convention. The town meeting held in Abington is representative of the political mood in

¹³⁶ Town of Boston, "Circular Letter to Other Towns of Massachusetts," *Boston Gazette*. September 19, 1768, in Dorr, Massachusetts Historical Society.

Massachusetts in the fall of 1768.¹³⁷ The meeting began with a prayer, followed by dissertations upon natural and constitutional liberty; then a reading of Magna Carta, the English Bill of Rights, the oath of Henry III to keep the laws of the kingdom, and the clause in the Massachusetts Charter confirming the essential rights of the colonists. The freeholders then proceeded to compare “the late Acts of Trade,” i.e. Townshend Acts, with the fundamental laws contained in the documents they had just finished reading. Not surprisingly, they found those trade laws to be incompatible with the fundamental laws. The freeholders then read one of Cato’s Letters on the subject of liberty for good measure, before electing an “anti-rescinder” to represent Abington at the Convention.

Representatives from almost 100 towns met at the Convention on September 22, held at Boston’s Faneuil Hall. The Convention’s first action was sending a petition to Governor Bernard.¹³⁸ The representatives were careful to begin the petition by disclaiming “all Pretence to any authoritative or governmental Acts...” The representatives were aware that they were not a political body with authority under the constitution, but there was nothing illegal about the towns meeting to make united statements expressing the sentiments of the province’s people. In fact, the representatives regarded it as their duty to the king to declare their opinions and express their apprehension of the negative effects of being denied an assembly.

Among their long list of grievances which holding an assembly would help to resolve, the representatives gave special attention to their expectation that a standing army “is immediately to be introduced among the People, contrary, as we apprehend, to the Bill of Rights- a force

¹³⁷ A Friend to Constitutional Liberty, “Town-Meeting in Abington,” *Boston Gazette*, September 26, 1768, in Dorr, Massachusetts Historical Society.

¹³⁸ Convention of Massachusetts Towns, “Petitions to the Governor- With Response,” *Boston Gazette*, September 26, 1768, in Dorr, Massachusetts Historical Society.

Represented to be sufficient to over-awe and controul the whole Civil Power of the Province, which must render every Right and Possession dreadfully precarious.” Governor Bernard refused to even accept the petition, since he thought that would entail a recognition of the Convention as a “legal assembly.” He did send a response however, in which he called this meeting an “illegal assembly” and warned the towns that they were committing a serious crime, he hoped through ignorance, and making themselves subject to severe penalties. Bernard ordered the Convention to break up and separate. If they did not, the Governor claimed that he was ready to assert the king’s constitutional authority and “entire sovereignty” over the province. Anyone who attempted to usurp that sovereignty would be made to “repent of his Rashness.”

After receiving the Governor’s response, the Convention sent a second petition in which they reminded him that they were not claiming any legal authority and were not seeking to challenge the current legal authorities in the province. By assembling together, the towns’ only motives were attempting to redress their grievances and preserve peace within the province. The representatives requested his Excellency to “point out to us wherein the Criminality of our Proceedings consists,” how they had usurped the king’s sovereignty, and how they could be charged with promoting “the least incentive of Rebellion, or even a mental Disaffection to the Government by Law established and exercised?”

The Convention sent a letter to the colony’s agent, Dennys De Berdt, defending the legality of town meetings and lamenting how their just complaints were characterized as “arising from a spirit of faction, disloyalty, and rebellion” by the colony’s enemies. These misrepresentations of Massachusetts had led to a military force being sent to subdue a loyal

people.¹³⁹ The Convention finished by proclaiming the “Result” the towns’ representatives had unanimously agreed upon.¹⁴⁰ The “Result” defended the legality of the Convention’s recent proceedings and of the actions taken by the House in February, the session which issued the “Circular Letter.” In both cases, the people of Massachusetts had adhered to the principles of the constitution and were only practicing their right of petitioning for redress of grievances.

The “Result” stressed the apprehension the colonists felt of having a standing army in their province. As Englishmen, the inhabitants of Massachusetts had “an Aversion to an unnecessary Standing Army, which they look upon as dangerous to their civil Liberty.” It was quite possible that the time would come when a “united Body of Pensioners and Soldiers may ruin the Liberties of America.” The Convention was certain that the *posse comitatus*, “when legally called in Aid of the Civil Power, will ever be sufficient to restrain all Orders of Men within the Bounds of the Law and the Limits of the Constitution.”

Massachusetts had always observed a just balance between abject submission to oppression on the one hand and irrational resistance to authority on the other. The colony was resolved to steadily persevere in its “orderly and constitutional” efforts to preserve its rights. The Result closed by expressing Massachusetts’ trust in God’s sovereign control over human events. God was sure to support their efforts to “steadfastly maintain those invaluable Blessings which are derived to them from God and Nature, and the happy Constitution of the Government under which” they lived.

¹³⁹ Convention of Massachusetts Towns, “To Dennys De Berdt,” *Boston Gazette*, October 10, 1768, in Cushing, vol. I, 241-247.

¹⁴⁰ Convention of Massachusetts Towns, “Result,” *Boston Gazette*, October 3, 1768, in Dorr, *Massachusetts Historical Society*.

As two British regiments sailed for Boston, Josiah Quincy Jr. returned to the press as *Hyperion* after a 12-month absence. In an article on September 26, 1768, Quincy reflected on the “unpardonable crimes” which were bringing a standing army to Massachusetts: oppugnation to customs officers, patriotism, openly daring to discuss the rights of mankind, and exercising freedom of speech.¹⁴¹ It seemed that loving your country was now a “crime,” at least according to the horde of placemen and pensioners who sought to benefit from restricting liberty in America. These vultures, who reap what they have not sown, were declaring that Americans would be put in their place once British troops arrived. They believed it was time for Americans to be punished by the halter, fire, the pillory, the whip, and the scaffold. “Dragoons and executioners” were being sent to “awe and terrify, with fire and sword, every man, who should dare give his countrymen one timely caution” of the approaching calamity.

Another article by Quincy was published on October 3, just two days after the British regiments set foot on Boston’s docks.¹⁴² Quincy asserted that the disease of arbitrary government, a free country being placed under the uncontrollable will of an external power, was afflicting America. The colonies were in need of physicians to proclaim the cure, but “for the people to ask council is deemed treasonable; to assemble themselves to consult is denominated rebellion.” The symptoms of arbitrary government were on display for all the world to see: taxes levied without consent, legislatures suspended, and now standing armies. It was clear to Quincy that those troops were not in Boston to protect the people. Instead, the cities of America were “in a time of profound peace, filled with standing armies, to preclude us even from that last solace of

¹⁴¹ Josiah Quincy Jr., “Hyperion,” *Boston Gazette*, September 26, 1768, in Dorr, Massachusetts Historical Society.

¹⁴² Josiah Quincy Jr., “Hyperion,” *Boston Gazette*, October 3, 1768, in Dorr, Massachusetts Historical Society.

the wretched; - to open their mouths in complaint and send forth their cries in bitterness of heart.”

In such a situation, when an external power claimed the right to dispose of “the all” of Americans and used force to suppress any complaints, where was the boasted liberty of Englishmen? Was it really possible that fellow-Englishmen in Britain, of whom those in America were equals, would resort to such measures in an effort to enslave their brethren? It would be bad enough to suffer the oppression of a single tyrant, “but to be shackled by Englishmen, by our equals, is not to be borne!” Americans would not surrender the birthright of liberty, derived to them by nature and their charters. Future generations would not read the history of the present age and see that their forefathers “tamely gave away the most invaluable earthly blessings.” With manly fortitude, Americans would declare, “we will die, if we cannot live Freemen.” If Americans resolved to act the part of men, God would defend their righteous cause; “while we have equity, justice, and GOD on our side, tyranny, spiritual or temporal, shall never ride triumphant in a land inhabited by ENGLISHMEN.”

Samuel Adams presented his opinions throughout 1768 and 1769 using a number of pseudonyms. He began with an unsigned article entitled “*Principiis Obsta*” on October 17, 1768.¹⁴³ The opening sentence was Locke’s famous aphorism that “where law ends, tyranny begins.” In Adams’ estimation, Massachusetts was standing on a precipice. Just one more step and the province would plunge over the edge of the law and into the depths of tyranny. The introduction of military power into Massachusetts might well provide the push which would send the colony off the cliff. This was because “where *military power* is introduced, *military maxims*

¹⁴³ Samuel Adams, “Principiis Obsta,” *Boston Gazette*, October 17, 1768, in Cushing, vol. I, 251-253.

are propagated and adopted, which are inconsistent with and must soon eradicate every idea of *civil government*.”

Where military government was introduced, it was likely that the military would come to see itself as being above the laws of the civil government. This attitude carried with it the frightful tendency of replacing *rule of law*, fixed laws and expectations, with *rule by the sword*, the arbitrary will of men supported by armed force. Adams wrote a series of articles on the inconsistency between military power and civil government under the name *Vindex* in December 1768. Adams forecast that “the posting a *standing army* among us, especially as it is *without* and *against our consent*, instead of preventing tumults, which it is said was the profess'd design of the troops being *sent for*, and ordered here, it is to be feared, will have a tendency quite the reverse...”¹⁴⁴ Massachusetts would not submit to be governed, or be awed, by a military force. Thus, placing troops among the people would only stoke the fires of conflict.

Furthermore, there was no need for a military force in the province as there were no “traitors” or “rebels” to subdue. The people of Massachusetts had been unjustly charged with treason and rebellion for vindicating their natural and constitutional rights. It was the presence of a standing army, not opinionated colonists, which was the real threat to law and order in America. The British military in Massachusetts was being set above the civil magistrates, it was operating as a “power without a check,” and would soon bring tyranny upon the province if unopposed. Thus far, Americans had opposed the introduction of tyranny with the “force” of reason, sound argument, and the law. America’s enemies had responded with the “force” of arms.¹⁴⁵

¹⁴⁴ Samuel Adams, “Vindex,” *Boston Gazette*, December 5, 1768, in Cushing, vol. I, 255-259.

¹⁴⁵ Samuel Adams, “Vindex,” *Boston Gazette*, December 12, 1768, in Cushing, vol. I, 264-268.

Nothing could be simpler than the safeguard enshrined in the English Bill of Rights that, “the raising and keeping a standing army within the kingdom, in a time of peace, unless it be with the consent of Parliament, is Against Law.” Clearly, the consent of Parliament implied the consent of the people, as given by their representatives. Thus, the presence of a standing army in any territory required, as a prerequisite, the consent of the people living there. Applied to America, this meant that no armies could lawfully be stationed in a colony without first receiving approval from that colony’s legislature. The logic of Adams’ argument, if applied to the current situation in Massachusetts, would make the very presence of the British regiments stationed there unlawful. The colony’s legislature had never given its consent, in fact, it had been dissolved and thus could not voice its opinion either way.¹⁴⁶

Americans had never given their consent to the presence of standing armies among them, and never would, which made the posting of British regulars in the colonies fit the definition of arbitrary government exactly. In an arbitrary government, the people have no say in important matters, such as whether a military force is necessary to protect them. The governors are the only judges of such matters in an arbitrary system and, more often than not, they will employ standing armies to subdue the people to tyranny. They will then justify that action by arguing that the troops were necessary to maintain order.

That is exactly what America’s enemies had done. In order to justify sending British troops to the colonies, America’s enemies had represented the Patriots “as seditious, disloyal and even upon the very eve of rebellion!” In reality, Americans as a whole, and certainly the people

¹⁴⁶ Samuel Adams, “Vindex,” *Boston Gazette*, December 19, 1768, in Cushing, vol. I, 269-272.

of Boston, were “a people of unspotted loyalty to their sovereign, as well as tenacious of those sacred rights and liberties wherewith God hath made them free.”¹⁴⁷

Writing as *Shippen*, Adams argued that, since they did not have justice or truth on their side, America’s enemies had resorted to the use of force, “the last resource of ignorant despotism.” However, force would not convince Americans that *they* were wrong and Parliament *did* have the “right” to legislate for the colonies. Force was not a “very suitable means of changing the sentiments of the people: It is rather adapted to rivet and confirm them.” In other words, the British government sending standing armies to occupy the colonies was a sure way to convince the colonists that there *was* a conspiracy against liberty, that tyrants *were* trying to enslave them.¹⁴⁸

Writing as *Alfred*, Adams declared his opinion that there was a plot to enslave America.¹⁴⁹ The Stamp Act would have reduced the continent to a “perfect absolute slavery” and the Declaratory Act represented a continuation of the efforts to accomplish that design. The tax acts which followed, i.e. the Townshend Acts, were yet more proof the design existed. Now, a “cursed Cabal” in Boston, those who desired to “fatten themselves upon the spoils and plunder of the people,” had succeeded in their efforts to introduce a military power into Massachusetts. Boston, a free city, had been reduced to an “aggravated tyranny.” The Bills of Rights, Magna Carta, and the legacy of liberty left to the colonists by their forefathers were being destroyed by a tyranny enforced by a standing army. Americans, especially those living in Massachusetts, had been reduced to a dreadful alternative, “to resist this tyranny, or, submit to chains...”

¹⁴⁷ Samuel Adams, “Vindex,” *Boston Gazette*, December 26, 1768, in Cushing, vol. I, 272-278.

¹⁴⁸ Samuel Adams, “Shippen,” *Boston Gazette*, January 30, 1769, in Cushing, vol. I, 297-306.

¹⁴⁹ Samuel Adams, “Alfred,” *Boston Gazette*, October 2, 1769, in Cushing, vol. I, 386-395.

As election season approached in May 1769, towns all over Massachusetts held meetings expressing their resolve to resist that tyranny and issued instructions to their newly-elected representatives in the House. The people were resolved not to be suppressed by threats, dissolutions of assemblies, or standing armies. Boston held a town meeting for the express purpose of protesting the presence of armed forces in the city during the election for the House.¹⁵⁰ According to the freeholders, “the residence of an armed force in the Town, during an Election of so great Importance, is a gross Infringment of their constitutional Rights...” That force could easily be used to influence the result of the election. The freeholders did proceed to hold the election, but they did so only after putting their protest on the public record. They did not want to set a precedent for future elections by seemingly consenting to the presence of an armed force. They were only holding the election in those conditions because of the extreme necessity they were reduced to.

Boston’s instructions to the town’s new representatives stressed the importance of maintaining the freedom of the assembly.¹⁵¹ How could the debates in the House be free when there were cannons and guards stationed outside the Court House? The town’s representatives must enquire into the grievances the people had suffered under the military power while it was stationed there and then use their “utmost endeavors for a speedy removal” of the troops. Under no circumstances should the representatives agree to use any of the province’s money to make payments for the support of the troops. The troops had been sent there without the consent of Massachusetts and there was no way the House, while it remained a free assembly, would consent to the people’s own money being used to oppress them. The House must also practice its

¹⁵⁰ Town of Boston, “Vote,” May 5, 1769, in Cushing, vol. I, 340-342.

¹⁵¹ Town of Boston, “Instructions,” *Boston Gazette*, May 15, 1769, in Dorr, Massachusetts Historical Society.

right to petition and its right to communicate with the assemblies of other colonies, as a previous House did with the “Circular Letter,” in order to present united petitions.

Braintree instructed its representative to endeavor “by all possible Means, to find out , by what wicked Artifice, this unhappy Province could be so grossly abused, and misrepresented to our most gracious Sovereign, as to give Occasion for Troops, and Ships of War, to be sent here, to support the Civil Authority...”¹⁵² Just as Boston had, Braintree desired its representative to maintain “a constant, amicable, and constitutional correspondence” with the other colonial assemblies in all matters of mutual concern.

Marblehead instructed its representative to “endeavor to have removed every Thing that has the least Tendency to awe or controul the Freedom of Debate in your Assembly.”¹⁵³ In all likelihood, this statement referred to kicking the regiments of British regulars out of Boston. The town’s representative must not vote in support of any requisition demanding reimbursement for the cost of posting troops in Massachusetts. He must also assert that no “Power on Earth” had the right to levy taxes on the people of Massachusetts except the General Assembly of that province. The House should express its loyalty to the king and recognize the supreme legislative authority of Parliament, but it must also assert that Parliament’s authority did not extend to laying taxes on Massachusetts without the consent of the people living there.

When the representatives assembled in Boston on May 31, 1769, immediately after taking their oaths and before proceeding to any other business, the House sent a message to

¹⁵² Town of Braintree, “Instructions,” *Boston Gazette*. May 22, 1769, in Dorr, Massachusetts Historical Society.

¹⁵³ Town of Marblehead, “Instructions,” *Massachusetts Gazette*, June 8, 1769, in Dorr, Massachusetts Historical Society.

Governor Bernard, followed by a Resolution & Protest.¹⁵⁴ These statements claimed that the freedom of assembly which was the House's constitutional right was restricted while "an Armament by Sea and Land investing this Metropolis, and a military Guard, with Cannon pointed at the very Door of the State-House where this Assembly is held" remained in place. The experience of ages showed that "military power is ever dangerous, and subversive of a free constitution."

The history of Britain itself showed that legislatures had been suppressed through "Awe of Standing Armies." The House requested that the Governor order the troops removed from the city so that the assembly could be assured of free debate during its present session. This was a request that Governor Bernard refused. After issuing those statements, the House then proceeded to the business of electing members for the Council. But, they did so out of necessity and only after protesting the presence of troops during the election.

Jason Haven's election sermon on Psalm 75:6-7,¹⁵⁵ given shortly before the choice of councilors, was certainly not designed to make the House more submissive to British authority. Just as in so many election sermons, the House in 1769 received a reminder of the fundamental principles of civil authority. In particular, the representatives were reminded of the principle of conditional obedience. Haven asserted that the people were obligated by God to obey their magistrates in all things "lawful" and while the rulers pursued the ends of their offices, i.e. the good of the people. There were limits to the obedience God expected from subjects and Haven cited Paul's words in Romans 13 to support that conclusion. He also cited Locke's maxim

¹⁵⁴ Massachusetts House of Representatives, "Message to the Governor" and "Resolutions & Protest," *Boston Gazette*, June 5, 1769, in Dorr, Massachusetts Historical Society.

¹⁵⁵ Psalm 75:6-7, "For promotion *cometh* neither from the east, nor from the west, nor from the south. But God *is* the judge: he putteth down one, and setteth up another."

“where law end, tyranny begins,” since reason and revelation were in perfect accord on this issue. It is the law which rules and when a magistrate:

“uses his authority for purposes just the reverse of those for which it was delegated to him— when he evidently encroaches on the natural and constitutional rights of the subject —when he tramples on those laws which were made, at once to limit his power, and defend the people—in such cases they are not obliged to obey him. They are guilty of impiety against God; and of injustice to themselves, and the community, of which they are members, if they do: for his commands interfere with those of the supreme ruler, and overthrow the foundations of government, which he hath laid.¹⁵⁶

There were cases when subjects “must obey God rather than man.” Applying the principle of conditional obedience to the present troubles between Britain and the American colonies, Haven asserted the readiness of Americans “to yield obedience to the *due* exercise of the authority of the British Parliament.” While he claimed it was not his job as a minister to judge the political circumstances behind those troubles, Haven pointed the representatives to the Charter as their guide. This document established a political system which resembled the British Constitution in miniature. It was also a contract, listing the rights due to the colonists as a matter of justice and the conditions upon which the agreement was originally made, conditions which the people of Massachusetts had always faithfully performed.¹⁵⁷

For his part, Governor Bernard refused the House’s initial request to remove the troops or warships stationed in Boston, claiming that he possessed no legal authority over his Majesty’s armed forces. The House responded to that claim on June 13 by arguing that, as the King’s representative, the Governor was the supreme executive in Massachusetts.¹⁵⁸ As such, all civil

¹⁵⁶ Jason Haven, *Election Sermon*, May 31, 1769, Evans Early American Imprints, 14-15.

¹⁵⁷ *Ibid.*, 16-17.

¹⁵⁸ Massachusetts House of Representatives, “To the Governor,” June 13, 1769, in Cushing, vol.I, 342-346.

and military officers within the bounds of the colony were under his command. If the Governor was not able to issue orders to British troops in the colony, then Massachusetts was being occupied by an unaccountable and uncontrollable military power. The logical consequences were simple: being subject to an “unaccountable power” meant that the colonists were living under an “absolute power,” which in turn meant that the people no longer had any “security” for their rights. If the military was above the civil authorities, then rule of law had been replaced with rule by the sword.

This military power was ostensibly in Massachusetts to aid in the execution of the laws. The House’s opinion was that, by its nature, the use of military power to enforce the execution of laws was “inconsistent with the spirit of a free constitution, and the very nature of government.” It was also unnecessary, because the *posse comitatus*, the body of the people, stood ready to “aid the magistrate in the execution of such laws as *ought* to be executed.” The House went to the heart of the issue when it contrasted government by consent with government by force:

“The very supposition of an unwillingness in the people in general, that a law should be executed, carries with it the strongest presumption, that it is an unjust law; at least, that it is unsalutary. It cannot be their law; for, by the nature of a free constitution, the people must consent to laws, before they can be obliged, in conscience, to obey them.”

“No consent” from the people means a command is “no law” at all, which means there is “no obligation” for the people to obey that command. Using force to enact unjust laws, e.g. the Townshend Acts, would not change that simple fact. The House met in Boston for the last time on June 15, 1769, before Governor Bernard moved its place of meeting to Cambridge. The House delivered another message to the Governor just prior to that change of venue.¹⁵⁹ In its

¹⁵⁹ Massachusetts House of Representatives, “To the Governor,” June 15, 1769, in Cushing, vol. I, 346-348.

opinion, the Governor had chosen the “dangerous innovation” of an uncontrollable standing army over the freedom of the legislature. Instead of removing the troops from Boston, he removed the entire assembly. The Governor’s justification was that he could no longer bear to see so much “time and treasure” wasted to no purpose as the assembly complained about a standing army outside the doors of its meeting place. But in the opinion of the House, “no time can better be employed, than in the preservation of the rights derived from the British Constitution... No treasure can be better expended, than in securing that true old English liberty...”

At this point, the House was fed up with Governor Bernard and wanted nothing less than his removal from office. The representatives made that request in a petition to the king approved by a unanimous decision on June 27, 1769.¹⁶⁰ The House argued that Bernard’s “whole Administration appears to have been repugnant not only to your Majesty's service, and the welfare of your subjects in the Colony, but even to the first principles of the British Constitution.” What followed that statement was a list of 17 charges against Governor Bernard, all cited as evidence that he should be removed from office. Among those charges was the claim that he had misrepresented the colonists and been a “principal instrument” in stationing a military force in Massachusetts. After everything he had said and done, the House was certain that Bernard “endeavoured to overthrow the present constitution of Government in this Colony, and to have the people deprived of their invaluable Charter Rights...”

¹⁶⁰ Massachusetts House of Representatives, “Petition to the King,” June 27, 1769, in Cushing, vo. I, 349-354.

On July 8, the House passed a number of resolves unanimously.¹⁶¹ Among those resolves was the assertion that Governor Bernard was an enemy to the constitution. His actions had exposed his “Enmity to the true Spirit of the British Constitution, to the Liberty of the Colonies” and he had “struck at the Root of some of the most invaluable Constitutional and Charter Rights of this Province...” Foremost among those actions was his role in establishing a standing army in Massachusetts during a time of peace and without the consent of the colony’s assembly. The introduction of a standing army was an unconstitutional invasion of the natural and constitutional rights of the colonists.

A standing army, stationed in a territory without the consent of the people, was “not known as a Part of the British Constitution in any of the King’s Dominions; and every Attempt to establish it has been esteemed a dangerous Innovation, manifestly tending to enslave the People.” The House could not help but express their concern that “too many in Power, at Home and Abroad, so clearly avow... the most rancorous Enmity against the *free* Part of the British Constitution, and are indefatigable in their Endeavors to render the Monarchy absolute, and the Administration arbitrary in every Part of the British Empire.” In short, the theme of the resolves was that arbitrary government was being forced upon Massachusetts.

A town meeting in Boston on October 18, 1769 approved the publishing of *An Appeal to the World*, a report written by a committee of Bostonians in an attempt to vindicate the town’s actions and clear its good name.¹⁶² This report argued that Governor Bernard and his associates had been restless “in their malicious Intrigues to traduce not this Town and Province, alone, but the whole British American Continent.” There was a steady design by the Governor and customs

¹⁶¹ Massachusetts House of Representatives, “Resolves,” *Boston Evening-Post*, July 10, 1769, in Dorr, Massachusetts Historical Society.

¹⁶² *An Appeal to the World*, October 18, 1769, in Cushing, vol. I, 396-445.

officers “to blacken the Character of the Town” of Boston and introduce an arbitrary and lawless power into the province. This plan was forwarded by the introduction of a standing army into Massachusetts on false pretenses, that troops were necessary to support the civil authority. But this was “a Purpose for which the military Power was certainly never design'd; a very dangerous Purpose, and abhorrent to the British Constitution and the Spirit of a free Government...”¹⁶³

These troops would be used to “break thro' the Mounds, and tear up the very Foundation of the civil Constitution.” Further evidence of that plan could be seen in the Governor’s “Aversion to free Assemblies.” He apparently felt threatened by the freedom of speech and debate exercised in the town meetings held in Boston and elsewhere. He well knew that such assemblies had “ever been the Dread - often the Scourge of Tyrants...” The town meetings had certainly been a medium for the people of Massachusetts to express their discontent over a standing army being stationed in their province.¹⁶⁴

The people knew that the true purpose of the troops was to suppress resistance to the arbitrary measures of the Governor and his associates in their efforts to enforce Parliament’s unconstitutional acts. The troops were in Massachusetts to awe the people into submission, but it would not work. Boston itself had not been “awed,” but it had been “distressed” by its danger. The people of Boston had spoken out against a standing army and arbitrary measures in their town meetings, especially that held in September 1768, which had composed the “Boston Circular Letter.”¹⁶⁵ The attitude expressed by Boston in its town meetings was certainly spirited, “but not too spirited for the Times.” It was hardly possible to accuse a free people of being too spirited when the constitution was threatened. When this was the case, “the Principles of the

¹⁶³ Ibid., 398, 408, 412.

¹⁶⁴ Ibid., 415, 420-421.

¹⁶⁵ Ibid., 428.

Constitution must, if ever, be asserted and supported....” As free British subjects, the people of Massachusetts claimed:

“all that Security against arbitrary Power, to which we are entitled by the Law of God and Nature, as well as the British Constitution. And if a Standing Army may not be posted upon the Subjects in one Part of the Empire, in a Time of Peace, without their Consent, there can be no Reason why it should in any other; for all British Subjects are or *ought to be* alike free.”¹⁶⁶

The people of Massachusetts had heard that *some* of the Revenue Acts, i.e. Townshend Acts, were going to be repealed by Parliament, but not *all* of those acts. This was simply not enough to redress the colonists’ grievances or remove the grounds of discontent between America and Britain. The colonists were not concerned with mere political pragmatism, their discontent arose from “higher principles.” From the perspective of Americans, their rights had been invaded by these acts and nothing short of a *total* repeal would do:

“the Grievances which lie heavily upon us, we shall never think redress’d, till *every* Act, pass’d by the British Parliament for the express Purpose of raising a Revenue upon us without our consent, is Repeal’d; till the American Board of Commissioners of the Customs is dissolv’d; the Troops recall’d, and Things are restor’d to the State they were in before the late extraordinary Measures of Administration took place.”¹⁶⁷

Conclusion

Until the total repeal of Britain’s arbitrary measures and the restoration of their natural and constitutional rights to Americans, there would be no harmony between the mother country and its colonies. Neither side softened its position on its “rights” during 1767-1769, in fact, those

¹⁶⁶ *ibid.*, 433.

¹⁶⁷ *Ibid.*, 441.

years witnessed a hardening of the positions held by both sides. Those years also witnessed an increased emphasis among Massachusetts Patriots on the concept of *suppression*. The British government was resorting to *force* to support its authority, since it did not have the *consent* of the colonists. There were three methods the British government used to suppress resistance in Massachusetts between 1767-1769.

First, the government and its supporters issued *threats* against those who dared to resist its authority. The terms “traitor” and “rebel” were used liberally to describe the Patriots, men who saw themselves as defending their just rights and the supremacy of the constitution. Second, the British Ministry ordered colonial governors to *dissolve assemblies* which refused to recognize Parliament’s authority over the colonies. Massachusetts’ assembly was dissolved in June 1768 for refusing to rescind the “Circular Letter” issued by a House from a previous legislative session. This tactic silenced the constitutionally-elected representatives of the people and made legal efforts by the colonists to redress their grievances more difficult.

Third, the most drastic form of suppression was the Ministry’s decision to order a *standing army* to Massachusetts in fall 1768. The people of Massachusetts, and especially the inhabitants of Boston, were painfully aware that those troops were not there to protect them. They viewed the British regulars as an external occupying force which had invaded their province and was instead being used to oppress them. The army was stationed in Massachusetts in order to awe the colonists into submission to the arbitrary measures of its enemies in the government on both sides of the Atlantic. The Patriots knew that armed force could be used to crush even peaceful petitions and protests made against those arbitrary measures. Interpreting the words and actions of their political opponents from a natural rights background, the Patriots

believed that the British government was resorting to the *ultima ratio*, “the final argument” of kings and tyrants.

The people of Massachusetts deeply resented the presence of a standing army in their province and petitioned repeatedly for its removal. Many even predicted that the presence of troops would be the cause of tumults and conflict, instead of providing a remedy for disorder. Those predictions proved true when British regulars fired upon a crowd of Bostonians on March 5, 1770, an event which became immortalized as the Boston Massacre. Suppression did not solve the political struggle between Britain and the American colonies. It certainly did not work in Massachusetts, where every effort to suppress the colonists of that province between 1767-1769, especially the threat of armed force, only led to more defiant resistance.

Chapter 6: The Hand of Tyranny

But, when in addition to the repeated inroads made upon the Rights and Liberties of the Colonists, and of those in this Province in particular, we reflect on the late extraordinary measure in affixing stipends or Salaries from the Crown to the Offices of the Judges of the Superior Court of Judicature, making them not only entirely independent of the people, whose lives and properties are so much in their power, but absolutely dependent on the Crown (which may hereafter, be worn by a *Tyrant*) both for their appointment and support, we cannot but be extremely alarmed at the mischievous tendency of this innovation; which in our opinion is directly contrary to the spirit of the British Constitution, pregnant with innumerable evils, and hath a direct tendency To deprive us of everything valuable as Men, as Christians and as Subjects, entitled, by the Royal Charter, to all the Rights, liberties and privileges of native Britons. Such being the critical state of this Province, we think it our duty on this truly distressing occasion, to ask you. What can withstand the Attacks of mere power? What can preserve the liberties of the Subject, when the Barriers of the Constitution are taken away?¹

While attempts at suppression in 1767-1769 failed to subdue American resistance to British authority, that did not stop the British government from trying. The plan to bring the colonies to heel persisted through personnel changes in the British Ministry and in the colonial administration. Governor Francis Bernard was removed from office in August 1769, though not as a result of the petitions made by the colonists. He was replaced by his erstwhile Lieutenant Governor, Thomas Hutchinson, a Massachusetts native and staunch loyalist. While having a native-son at the helm might seem like a good thing for Massachusetts, Hutchinson proved to be just as unbending in his support for the British government as Bernard. His position as a native

¹ Town of Boston, "A Letter of Correspondence to the Other Towns," November 20, 1772, in Cushing, vol. 2, 369-370.

only made his betrayal worse in the eyes of the Massachusetts Patriots. He would never be forgiven by his neighbors for his actions in support of the British government.²

He would certainly never be forgiven for his role in continuing the suppression of resistance in Massachusetts. For instance, he repeatedly refused to move the Assembly from its temporary home at Harvard College in Cambridge back to its historic meeting place in Boston. The continued inconvenience of the Assembly's meeting place was a great annoyance to the people's representatives, but it paled in comparison to what happened in Boston on March 5, 1770. The event which came to be known as the Boston Massacre became the prime example for the Patriots of the *consequences of suppression*. The discussion of those consequences in the aftermath of the Massacre will be the first focus of this chapter.

From the perspective of the Patriots, their fellow-citizens had been murdered by soldiers from a standing army, an army which was in the colony without the consent of the people and with the express purpose of using force to bend the colonists to the will of an arbitrary government. While Patriot propaganda exaggerated this event in the press, with Paul Revere's engraving contributing to a skewed picture of what happened, the death of five colonists at the hands of British soldiers needed little embellishment.

The death of innocents was what happened when a government resorted to unlawful force in order to suppress lawful resistance to its arbitrary measures. The innocent blood which stained the streets of Boston was crying out to God for vengeance. In the immediate aftermath of the Massacre British troops were removed from the city itself, yet remained close-by and on-call.

² Middlekauff, *The Glorious Cause*, 204.

From their garrison in Castle William, located in Boston Harbor, British troops could move quickly to suppress colonists on the mainland if resistance continued.³

The second focus in the chapter will be the issue which dominated the political debates in Massachusetts between 1770-1773. This was the concept of *independent magistrates*, rulers who are not accountable to the people over whom they govern. Drawing upon the natural rights doctrines in their political tradition, the Massachusetts Patriots believed in the absolute necessity of maintaining the accountability of rulers. There must be constitutional checks in place to prevent rulers from exceeding their authority and becoming tyrants. The problem from the Patriots' perspective was caused by the tensions between Crown authority and self-government built into the Second Charter (1691). Since many officials in the colony were appointed by the Crown, and served at the pleasure of the king, the accountability of Massachusetts' leading magistrates was limited at best.⁴

The debate over independent magistrates which raged between 1770-1773 focused on the governor and the judges of the province's Superior Court, with enormous amounts of ink being spilled discussing the independence of the governor alone. Under the Second Charter, governors were appointed by the king and could only be removed by the king. Judges and several other lesser officers similarly served at the king's pleasure. This problem of accountability was long resolved through the Charter's clause that the General Court had full power "to impose and levy proportionable and reasonable Assessments Rates and Taxes upon the Estates and Persons of all and every the Proprietors and Inhabitants of our said Province ... in the necessary defence and support of our Government of the said Province..."⁵ In simple terms, the representatives in the

³ Ibid., 210-213; Morgan, *The Birth of the Republic*, 47; Maier, *From Resistance to Revolution*, 194-196.

⁴ Chapter 2, p.29-31.

⁵ Charter of Massachusetts Bay, 1691.

Assembly controlled the salaries of the governor and other Crown-appointed officials. This power of the purse acted as a constitutional check upon errant Crown officers and the Patriots were acutely aware that it was the *only* check the people possessed on those magistrates.

Several measures taken by the British government in 1770-1773 threatened to destroy what little accountability there was and make magistrates completely independent of the people. First, the Ministry began to govern Massachusetts through its *instructions* to Governor Hutchinson. While issuing instructions to a governor was nothing new, the Patriots argued that the instructions being issued in these years were an abuse of the king's prerogative and subverted the Charter. Massachusetts was being governed by the arbitrary will of British ministers instead of the laws to which the people had given their consent. Since the governor controlled when and where the Assembly met and had a negative voice on legislation, instructions could cripple the ability of the Assembly to function as a representative body. The Charter became a meaningless document in the face of ministerial instructions.

Second, the Ministry took steps to grant Crown officers in Massachusetts *independent salaries*. Instead of receiving their salaries from the Assembly, these officers would now be paid directly by the Crown. The funds for their salaries would come from the revenue generated by the various customs duties still in place. While nearly all the Townshend Duties had been repealed by Parliament, the duty on tea remained. Magistrates being paid with Crown salaries was doubly-insulting to the Patriots. Not only did Crown officers serve at the king's pleasure, with no legal means of removal by the colonists, now they were to be paid by the Crown, with tribute extorted from the colonists by the British government.

It is important to note that the "independence" of Crown officers referred to their lack of accountability to the people of Massachusetts, while also implying a "dependence" on the

Crown. Magistrates who blindly obeyed instructions sent from England and whose salaries were paid from extorted tax revenue became the instruments of the Crown, or more accurately, of the Ministry which claimed to speak for the king. For example, there was one thing all Patriots could agree on by the early 1770s, that Thomas Hutchinson was a “tool.” He was merely a political instrument which did the will of its masters in the Ministry. He followed every instruction to the letter, even when contrary to the Charter, and his Crown salary made him untouchable. The Patriots feared that all the magistrates in Massachusetts would become tools as well.

It is a simple fact that a servant does the will of the master who pays him; it is in his interest to do so. When the Assembly paid the governor, there was an incentive for the governor to align his interests with those of the people. Now that the governor was paid by the Crown, the link to the people which made mutual interest possible was severed. Governors would have no incentive to act for the good of the people and every incentive to obey their instructions. In one sense Crown officers would still be accountable, but only to their political masters, not to the people over whom they governed. The Patriots believed this form of accountability made tyranny more likely. Arbitrary ministers, and maybe even kings, would only appoint spineless hirelings to office. These would be the kind of amoral men who will follow any instruction as long as they get paid.

Even civil officers with a modicum of moral courage would still be likely to side with the Crown against the rights of the people. The payment of their salaries by the Crown would align their interests to the government and blind them to injustices. With the lack of true accountability, the door was wide open for arbitrary government. The supremacy of the constitution would also be lost in Massachusetts as independent magistrates would have no legal check on their power. Only the king, but really his ministers, could remove colonial magistrates

from office and the Ministry was more likely to remove upright magistrates, for opposing their plans, and promote wicked magistrates, at least from the perspective of the Patriots. If the Ministry succeeded in its plans for independent magistrates in Massachusetts, accountability, a central pillar of natural rights doctrine, would be lost.

The plan for independent magistrates was attempted in Massachusetts. Governor Hutchinson repeatedly refused the Assembly's offers to pay his usual salary in 1771, arousing a great deal of suspicion among the representatives. Their suspicions were publicly confirmed in June 1772 when Hutchinson informed the Assembly that he had accepted a Crown salary. Massachusetts now had an independent governor. The rumors of independent judges which circled around the colony in the fall of 1772 were confirmed in February 1773. That independent magistrates had no concern for the people and sought only to fulfill the will of their masters in Britain was confirmed for the Patriots with the exposure of "Secret Letters" sent by Hutchinson and other Crown officers in June 1773. In these letters, which were procured by Benjamin Franklin while he was serving as Massachusetts' agent in London, the Patriots found ample evidence of the arbitrary nature of their independent magistrates.⁶

At this point, there were some among the Patriots who believed that government in Massachusetts had been corrupted beyond repair. The Charter had been effectively nullified and the British government had unilaterally altered the constitution under which the people of Massachusetts lived. The rulers were no longer accountable to the people and all security for the people's lives, liberties, and property had been lost. According to natural rights doctrine, this is

⁶ Middlekauff, *The Glorious Cause*, 224-226.

the point at which the methods of resistance may justifiably switch from ordinary, legal means to extraordinary, extralegal means.

The third focus of this chapter will examine this transition to extralegal means of resistance by exploring the concept of *necessity*. The Patriots had been taught that, after all legal means of redress are tried and fail, the people may put down their pens and take up the sword in defense of their rights. By fall 1773, many were convinced that it was time for more drastic measures. Petitions had failed, resolves had failed, reason itself had failed; the British government was steadfastly pursuing its plan for absolute and arbitrary government in the colonies. The only recourse left was to make an *appeal to heaven*, for the people to use force against their oppressors and call upon God as the judge of their actions. The administration of justice in the British Empire had been corrupted; it was time to appeal to the righteous, uncorruptible, sovereign Lord of the universe.

The resistance to the Tea Act, passed by Parliament in May 1773, culminated in an act of necessity by the Patriots of Massachusetts. When a group of Patriots, dressed as Native Americans, boarded ships carrying tea owned by the East India Company on December 16, 1773, and dumped 342 crates into Boston Harbor, they regarded that technically illegal act as a necessary action. In their view, they had no other option left to them. Their choices were either to accept the tea, and the slavery it represented, or to use force in defense of their natural and constitutional rights. They chose the latter option and were confident that God would judge them blameless when they appeared before Him.

The destruction of 342 crates of tea, a significant act of property damage, was not yet the final appeal to heaven which the American colonies would make by declaring independence in 1776. In the Boston Tea Party, the Patriots exercised force in what they regarded as an act of

self-defense, but that force was only directed against property, not people. The time for the sword itself had not yet come; for now, the hatchet, used to break open the crates of tea, was a sufficient exercise of force to prevent tyranny in Massachusetts. While that exercise of force was limited, the people of Massachusetts did cross a line at the Boston Tea Party. They had resorted to extra-legal methods out of necessity and the Boston Tea Party thus marks an important milestone in the events leading up to the Declaration of Independence. The people of Massachusetts had learned that, if they wanted to keep their rights, it was now necessary for them to go beyond the laws of men and resort to the laws of nature.

I. The Consequences of Suppression

Massachusetts newspapers began running accounts of the Boston Massacre immediately after the tragic events of March 5, 1770. These accounts overwhelmingly painted the British soldiers as murderers and the five men who were killed as victims. While that picture was an oversimplification of events, and not wholly accurate, it did express the mood in Massachusetts after several of the province's citizens were killed by what they considered to be a foreign occupation force. The March 12 edition of the *Boston Gazette* carried an account of the Massacre that began by pointing to March 5 as a “melancholy Demonstration of the destructive Consequences of quartering Troops among Citizens in a Time of Peace, under a Pretence of supporting the Laws and aiding Civil Authority...”⁷

⁷“Account of the Boston Massacre,” *Boston Gazette*, March 12, 1770, in Dorr, Massachusetts Historical Society.

The real reason a standing army was stationed in Boston was to “inforce oppressive Measures; to awe and controul the legislative as well as executive Power of the Province, and to quell a Spirit of Liberty...” Using an armed force to suppress the people resulted in the blood of Boston’s citizens “running like water” through the streets. This story recounted how, in the immediate aftermath of the Massacre, a Boston town meeting on March 6 sent a request to Lt. Governor Hutchinson, who was the acting governor, to order the removal of the troops from the city. Hutchinson claimed that he did not possess the authority to give orders to his Majesty’s troops, but he did “advise” the colonel in command to remove the troops. The colonel took that advice and pulled out of the city, settling the soldiers in the garrison at Castle William, located in Boston Harbor.

A Patriot writing as *A Whig* described March 5 as the “late bloody Massacre” and the “late barbarous murders.”⁸ The troops stationed in America to suppress liberty were described as “murderers” and “a profligate, licentious, and blood-thirsty Soldiery...” *Elutherus* lamented that there was an “infernal plot concerted and prosecuted on each side of the Atlantic, against all *American* liberty and property.”⁹ The righteous efforts of the Patriots were being stigmatized as “riotous” and “rebellious” at the same time that “a mercenary licentious rabble of banditti are encouraged to riot uncontroul’d, and tear the bowels and vitals of our brave but peaceable fellow-subjects, and to *wash the ground with a profusion of innocent blood...* which, like the blood of Abel and Zechariah, *still* crieth ALOUD for *pointed* vengeance...” The Sons of Liberty would not be terrified by tyrants or their tools. They would not be “afraid of their terror, who can

⁸ A Whig, *Boston Gazette*, March 19, 1770, in Dorr, Massachusetts Historical Society.

⁹ Elutherus, *Boston Gazette*, May 28, 1770, in Dorr, Massachusetts Historical Society.

do no more than kill the body.”¹⁰ The Patriots would put their trust in God, the author of their political as well as spiritual salvation, and stand fast in the liberty wherewith He had made them free.¹¹

The opinions of multiple towns were published in the press in the months following the Massacre. Medford held a town meeting on March 14 and sent a message “To the Select-Men of the Town of Boston” expressing their shock and outrage at the “horrid & unparalleled butchery of your fellow-citizens...”¹² March 5 was but the latest event in the “detested machinations” of wicked men to subvert the constitution and reduce the colonies to a state of slavery. The Massacre served “as a specimen to shew what these Colonies are to expect, if a military power shall supercede their civil authority, and their well regulated Cities and Towns are dragooned to an obedience to Laws, made not only without, but against their Consent.” What happened in Boston could happen in any town in any colony in America.

The freeholders of Cambridge assembled on March 12 and expressed their opinion that the standing army present in Massachusetts had been sent to enforce “unprecedented and unconstitutional Acts of Parliament” to which the colonists had not given their consent.¹³ The use of force to suppress resistance to unlawful actions had initially led to their fellow-citizens being assaulted, insulted, and abused by the soldiers stationed in their midst. Now it had led to colonists being “barbarously and inhumanely murdered.”

¹⁰ A reference to Luke 12:4, “And I say unto you my friends, Be not afraid of them that kill the body, and after that have no more that they can do;” Matthew 10:28, “And fear not them which kill the body, but are not able to kill the soul: but rather fear him which is able to destroy both soul and body in hell.”

¹¹ A reference to Galatians 5:1, “Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage.”

¹² Town of Medford, “To the Select-Men of the Town of Boston,” *Boston Gazette*, March 19, 1770, in Dorr, Massachusetts Historical Society.

¹³ Town of Cambridge, *Boston Gazette*, March 19, 1770, in Dorr, Massachusetts Historical Society.

Plymouth held a meeting on March 26 and asserted that the military force stationed in Massachusetts was intended to “aid and support laws designed to subvert the liberties of English subjects in America, and more effectually to answer the purpose to begin by suppressing that spirit of freedom” which all of America, but especially Boston, was known for.¹⁴ Plymouth voted to render a public thanks to Boston for “the firm and spirited opposition they have made to the attempts of tyranny and oppression to enslave us...” It was this spirited defense of their rights which led to the “butchery” of the town’s citizens on March 5.

Abington was referring to the troops stationed in Boston as “murderers” even before the events of March 5. A town meeting on February 21, 1770 sent a petition to the town’s select-men instructing those representatives on how to resist the “bold and wicked attempts of the enemies of the British Constitution, on both sides of the Atlantic, to enslave a free people...”¹⁵ It was the town’s opinion that the revenue acts passed by Parliament were unconstitutional and tantamount to an infringement of the colonists’ natural and constitutional rights. Since taxing the American colonies was beyond Parliament’s constitutional authority, any act created for that purpose by Parliament was *ipso facto* null and void. Thus, the revenue acts were “a mere nullity,” and consequently, no obedience was due to those acts from the colonists.

The British government’s choice to use armed force to seize the property of the colonists anyway made any government official who participated in that activity no better than “a highwayman.” The government’s decision to send troops to Boston to enforce its unconstitutional acts amounted to “an open declaration of war against the Liberties of America.” The rights of Americans had been invaded and the colonists had been “reduced to a state of

¹⁴ Town of Plymouth, *Boston Gazette*, April 2, 1770, in Dorr, Massachusetts Historical Society.

¹⁵ Town of Abington, “To the Select-Men of Abington,” *Boston Gazette*, April 2, 1770, in Dorr, Massachusetts Historical Society.

nature, whereby our natural right of opposing force is again devolved upon us.” And this was Abington’s opinion of a standing army even before March 5.

In early April 1770, the Massachusetts House of Representatives sent a message to Lt. Governor Hutchinson in response to a request from the Lt. Governor for increased executive powers supposedly needed to prevent tumults and disorders taking place in Massachusetts’ towns.¹⁶ The House refused this request, arguing that the present laws were sufficient to maintain order in the province and that any extension of the executive’s power would be “dangerous to the Rights and Liberties of the People.” In the House’s opinion, the cause of any tumults which did take place was the yoke of oppression the people of Massachusetts groaned under. It was only natural that a free people, conscious of their rights, would be impatient and unsettled “while they are under the Hand of Tyranny and arbitrary Power...”

In such a case, the remedy was not increasing the severity of the laws, but for the government to redress the grievances which were making the people unsettled. The presence of a standing army among the people, without their consent, was one of the chief grievances under which the people labored. It was the House’s opinion that the military force stationed in Massachusetts was designed to subvert the free constitution and enforce a system of corruption and arbitrary power. The presence of an army designed to “subjugate the People to arbitrary Measures” was a “most violent Infraction of their natural & constitutional Rights...” The standing army was the “unlawful assembly” being held in the province which the House was concerned about. Whenever the soldiers acted to restrain “the Liberty of any Individual,” that amounted to a crime which greatly exceeded the supposed rioting of the people.

¹⁶ Massachusetts House of Representatives, “To the Lt-Governor,” *Boston Gazette*, April 30, 1770, in Dorr, Massachusetts Historical Society.

A few upset citizens expressing their discontent loudly in the streets was trifling in comparison to the unlawful exercise of military power in the province. The army's "unlawful assembly" had committed numerous outrages against the people, including: multiple assaults made on peaceful subjects, wounding a magistrate in the execution of his office, rescuing prisoners out of the hand of justice, and now perpetrating a horrid slaughter of the people (the Massacre). The disorders which the Lt. Governor accused the people of would be natural reactions to such violent provocations as these, especially when combined with the unconstitutional actions of Crown officers in the province. The House forecast that tyranny and confusion would continue to afflict Massachusetts as long as the "terror of arms" hung over the colony. Remove the troops and restore the people to their just rights, and then a return to law and order would be possible.

The consequences of suppression were discussed in numerous political sermons and commemorative orations in Massachusetts in the months and years after the Boston Massacre. The most immediate was John Lathrop's sermon *Innocent Blood Crying to God from the Streets of Boston*, delivered the Sunday after March 5, 1770 and later published in 1771. Lathrop's sermon was taken from Genesis 4:10, "the voice of thy brother's blood crieth unto me from the ground." This was a statement directed by God to the first murderer in human history, Cain, after Cain slew his brother Abel. Lathrop used the story of the first human murder to demonstrate that "human blood crieth unto God, when it is shed in a wanton or cruel manner, without warrant from the *law of the land* or *law of nations*, founded upon and consistent with the *law of nature written upon the heart* by God himself..."¹⁷

¹⁷ John Lathrop, *Innocent Blood Crying to God from the Streets of Boston*, March 11, 1770, Evans Early American Imprints, 3.

No murder could escape the sight of the omniscient judge of the universe. God sees every injustice committed by men and will demand a reckoning for their wicked acts. Reason and revelation demand the punishment of the guilty party in the case of a murder. Lathrop applied this lesson to “the bloody and most cruel action of last Monday evening,” the Boston Massacre. He claimed that the “unparalleled barbarity of those who were lately guilty of murdering a number of our innocent fellow-citizens will never be forgot.” Boston was living in gloomy times when its citizens were “murdered before our eyes, and our most public streets were deeply dyed with innocent blood.” He could not help exclaiming, “what a solemn cry of innocent blood is now going up to heaven from our streets!”¹⁸

The use of troops to enforce the British government’s claims of authority amounted to rejecting the foundation of the law and choosing instead to govern “by the sword.” Based on the evidence that Lathrop had, he was sure that the Massacre was an act of murder, that “a number of the troops, with other sons of Belial, were determined to murder the inhabitants” of Boston. The inhabitants of that town had to see their brethren being killed in cold blood and to hear their dying groans. It was certain that God both saw and heard the murder which took place on March 5; the innocent blood of the colonists was crying to Him from the ground.¹⁹

Samuel Cooke’s election sermon on May 30, 1770, given before the General Court at Cambridge, drew upon 2 Samuel 23: 3-4 to expound the character of a good ruler.²⁰ Cooke did not reference the Boston Massacre directly, but he made several statements that would have been clear references to that event for his listeners. Cooke asserted that rulers were to act as the

¹⁸ Ibid., 2-3, 8.

¹⁹ Ibid., 8-9.

²⁰ 2 Samuel 23: 3-4, “The God of Israel said, the Rock of Israel spake to me, He that ruleth over men *must be just*, ruling in the fear of God. And *he shall be* as the light of the morning, *when* the sun riseth, *even* a morning without clouds; *as* the tender grass *springing* out of the earth by clear shining after rain.”

guardians of the constitution and must confine their authority to the limits prescribed by the constitution. There was no room for arbitrary will, and the use of armed force to support an arbitrary government was counterproductive, as “military aid has ever been deemed dangerous to a free civil state; and often has been used as an effectual engine to subvert it.”²¹

Military force was an improper safeguard for a free constitution. The natural consequence of using soldiers to enforce obedience to a government was the old Latin maxim *inter arma silent leges*, “among arms, laws are silent.” Besides, there was no need for a standing army to enforce obedience in a society when the lives, liberties, and property of the people were secured by just laws. The natural consequence of security was the happiness of the people. Sadly, the American colonists had lost their sense of security due to infractions of their rights. Americans did not consider their claims to equal rights “as novel, or wantonly made, but founded in nature—in compact—in their right as men—and British subjects...” No amount of suppression by an armed force would return the colonists to a state of security and dissipate the darkness they lived under.²²

Charles Chauncy delivered a sermon in Boston, the historic meeting place of the Assembly, on the same day. The text for this sermon was Psalm 22:4, “Our fathers trusted in thee: they trusted, and thou didst deliver them.” The colonists’ ancestors had trusted in God throughout their religious persecution in England, during the settlement of a wilderness, and the tyranny which led to the Glorious Revolution. In all these trials, God had delivered the colonists from their religious and political oppressors. It was divine providence which had preserved the rule of law in the British Empire and prevented the enslavement of the people for hundreds of

²¹ Samuel Cooke, *Election Sermon*, May 30, 1770, Evans Early American Imprints, 7.

²² *Ibid.*, 7-8, 12-13, 19.

years. Since the colonists were now living in a day of darkness and great trouble, it was time for them to follow the example of their ancestors and “trust in God.”²³

The colonists were being treated as rebels and Massachusetts’ metropolis was garrisoned with the king’s troops. Among many other hardships, “the opened earth in one of our streets, in the month of March last, received the streaming blood of many slaughtered, and wounded innocents.” Chauncy desired that the soldiers accused of causing this bloodshed have a “fair and equal” trial. It would be a great crime if “blood guilt” was allowed to go unpunished in the land. Chauncy closed by lamenting the misrepresentations of Massachusetts which had led to the colony’s oppression and praying that God would “forgive those lovers of themselves in opposition to their King and country, who, from selfish views, have represented this people as disposed to treason and rebellion.”²⁴

Samuel Stillman’s 1770 artillery sermon on 2 Timothy 2:3²⁵ sought to inform the province’s militia of the character which makes a good soldier. While doing so, Stillman took some shots at the British regulars stationed in Massachusetts. One of the characteristics of good soldiers was “to avoid the methods of cruelty” in the execution of their office. Soldiers must not be devoted to bloodshed, plunder, and rapine. The 5th of March stood as a sad example of the British Army’s failure to observe the character of good soldiers. This event should not have happened, for the role of “men of the sword” was “to defend, not to destroy their fellow-subjects; to secure, not waste their property.”²⁶

²³ Charles Chauncy, *Trust in God*, May 30, 1770, Evans Early American Imprints, 5-8.

²⁴ *Ibid.*, 13-14.

²⁵ 2 Timothy 2:3, “Thou therefore endure hardness, as a good soldier of Jesus Christ.”

²⁶ Samuel Stillman, *Artillery Sermon*, June 4, 1770, Evans Early American Imprints, 7-8.

A memorial published in commemoration of the Massacre in 1771 compared the 5th of March to the “5th of November,” the date on which British subjects commemorated the Gunpowder Plot, a thwarted attempt made by Papists to blow up the king and Parliament in 1605.²⁷ Of the two, the 5th of March was the more memorable day because it marked “a day of blood and slaughter! A day wherein five Americans were inhumanely murdered by the tools of tyrants – Tyrants, who after the example of the first Popish plotters, formed a plan to blow up all the liberties of the Americans.” The 5th of March should be commemorated “as a warning to all generations to come, to guard against the fatal effects of standing armies” and to keep up the spirit of liberty among the people.

Another memorial advised commemorating the 5th of March as “a solemn and perpetual memorial of the Tyranny of the British Administration of Government in the Years 1768, 1769, & 1770.”²⁸ This was also a date upon which the people should remember the consequences of standing armies, along with the people’s great duty of opposing tyranny in its first approaches (*obsta principiis*). Every year, upon March 5, Americans could reflect upon the “detestable principles and arbitrary conduct of those Ministers in Britain who advised, and of their Tools in America who desired, the Introduction of a Standing Army into this Province in the Year 1768.” This memorial finished with an interesting twist. The author altered the traditional ending of “God Save the King” to “God Save the People!” Perhaps, in this author’s mind, the Boston Massacre had already begun to sever the mutual obligations of allegiance and protection between the king and the people.

²⁷ “5th of March, From the Essex Gazette,” *Boston Gazette*, February 18, 1771, in Dorr, Massachusetts Historical Society.

²⁸ “Memorial for the 5th of March, From the Essex Gazette,” *Boston Gazette*, March 11, 1771, in Dorr, Massachusetts Historical Society.

James Lovell, a schoolteacher who would go on to serve as a delegate to the Second Continental Congress and the Confederation Congress, delivered an annual oration commemorating the Boston Massacre at a Boston town meeting on April 2, 1771.²⁹ Lovell began his oration by reminding his audience of the legacy of liberty they had inherited from their ancestors, who had traveled to the distant shores of America in order to enjoy “full *English Liberty*.” That liberty had become much impaired by the stationing of a standing army in Massachusetts by the British government. The “fatal tendency” of that practice was what his audience was meeting to commemorate.

Lovell made the classical argument that the “militia” were the security of a commonwealth and that “mercenary armies” were dangerous to a free state. The British Army was just such a band of mercenaries. If the British Parliament decided it had a good reason, then it could station a standing army in Britain, “but when did our assembly pass an act to hazard all the property, the liberty and lives of their constituents? What check have we upon a British Army? Can we disband it? Can we stop it's pay?” The fact that the people of Massachusetts had no check upon the British Army was a major problem for Lovell. He went on to define a “free people” as “those who have a *constitutional check upon the power* to oppress.”

Lovell desired that the 5th of March would mark the beginning of “the resurrection of your birthrights, which have been murdered by the very strength that nursed them in their infancy (Britain).” It was time for Americans to utterly reject the doctrine of Parliamentary Supremacy. The idea that Parliament had *any* legal right over Massachusetts must be firmly opposed. Any claims of right by Parliament must be pointed out as usurpations and illegal

²⁹ James Lovell, *An Oration to Commemorate the Bloody Tragedy of the Fifth of March, 1770*, April 2, 1771, Evans Early American Imprints.

exercises of power without authority. More dangerous than any other act was Parliament's Declaratory Act, which signed the "death-warrant" for the birthrights of Americans and wanted only a tyrannical king, willing to exercise military force unabashedly, to put it into execution. It was up to Americans to make the 5th of March the turning point in the struggle for liberty.

Dr. Joseph Warren delivered the commemorative oration to Boston's freeholders in 1772.³⁰ Warren asserted that public happiness in a community depends on "an unshaken attachment to a free constitution." In Massachusetts, the Charter of 1691 was both the constitution establishing the political system for the province and a compact, i.e. contract, between Britain and Massachusetts. Key conditions of that contract included the provisions that the colonists would possess equal rights and be subject to no laws to which they had not given their consent. Since Parliamentary taxation of the colonies was clearly contrary to those conditions, the British government could not support its claims to authority over the colonies with reason or sound argument. So instead, Britain had resorted to using a standing army to demand obedience in Massachusetts.

This illegal action of placing a standing army in Massachusetts during a time of peace was itself intended to support the illegal actions already taken by the British government in violation of the Charter. British troops were in Massachusetts "for the enforcement of obedience to acts which upon fair examination appeared to be unjust and unconstitutional." These troops were the "ready engines of tyranny and oppression" and were intended to "overawe" the colonists. The fatal consequences of this plan were displayed by the Boston Massacre. Warren noted that the troops involved in the death of five colonists had been tried in an earthly court and

³⁰ Joseph Warren, *Oration on the 5th of March*, March 5, 1772, Evans Early American Imprints.

acquitted of murder. But he reminded his listeners that those troops, and their masters who sent them, would have to stand before an omniscient judge one day. Perhaps God would render a different verdict.

God would certainly not approve of the British plan to enslave America that the presence of a standing army was just one element of. It seemed that Britain was resolved to subject the colonies to its absolute commands and seize whatever property it desired without the consent of Americans. If the colonists complained, those complaints were treated with contempt. If they asserted their rights, those assertions were deemed insolence and disrespect to authority. If they attempted to “submit the matter to the impartial decision of reason, the SWORD is judged the most proper argument to silence our murmurs!” In such a situation, the people of Massachusetts must follow the example of their fathers and defend their liberties from lawless force, even to the shedding of their own blood. If they did so, Warren asserted, America would be “a land of Liberty, the seat of virtue, the asylum of the oppressed.” March 5 would forever serve as a reminder to Americans of the necessity of making a stand against tyranny.

II. Independent Magistrates

While the Boston Massacre was a major news story, the attention accorded it in the Massachusetts press was miniscule in comparison to the debate over independent magistrates. The issue of civil officers who were independent of the people of Massachusetts, and dependent on political masters in Britain, was seen as an even larger threat to liberty than a standing army. While the colonists might lose their lives to the soldiers of a standing army, all their liberties were threatened by tyrannical, unaccountable magistrates. If Massachusetts’ provincial

government was controlled by civil officers who followed instructions sent by the British Ministry and whose salaries were paid by the Crown, Massachusetts' mixed constitution would be fundamentally altered. These officers would be able to act without a constitutional check on their power and the people would lose all security for their rights. Most of the debate centered on the office of the governor, occupied by Thomas Hutchinson, yet judges of the Superior Court and other civil offices were also included.

The debate began over instructions sent by the Ministry to Lt. Governor Hutchinson, who replaced Bernard as acting governor in August 1769. In May 1770, the freeholders of Boston brought up the issue of ministerial instructions in their own instructions to their representatives in the Assembly.³¹ The Bostonians were convinced there was a "deep-laid and desperate plan of imperial despotism" being executed, with the destruction of the British Constitution as its goal. Ministerial instructions were one means being used to carry out that plan. The instruction which Bostonians were currently complaining about was the Ministry's order to Hutchinson to continue holding the General Court at Harvard College in Cambridge, instead of its historic seat in Boston.

According to the Charter, the decision to dissolve, adjourn, or prorogue the Assembly belonged to the governor alone. As the king's representative in Massachusetts, governors held this power as an exercise of *prerogative*, which must always be exercised for the good of the people. Governors must exercise their own judgement and maintain their "independence" from external powers, i.e. the British Ministry. Bostonians had "for a long time, beheld with grief, and astonishment, the unwarrantable practice of ministerial instructions to the commanders in chief

³¹ Town of Boston, "Instructions," *Boston Gazette*, May 21, 1770, in Dorr, Massachusetts Historical Society.

of this province.” They worried that “such an enormous stretch of power, if no longer unchecked, will eventually annihilate the essentials of all civil liberty.” It was contrary to the first principles of government that an external power, at a distance of 3,000 miles and with interests differing from the people, should be in effective control of Massachusetts’ civil government.

The House sent a message to the Lt. Governor in August 1770, likewise protesting the instructions to hold the Assembly in Cambridge.³² Hutchinson’s determination to keep the Assembly in Cambridge, in obedience to instructions, was an abuse of prerogative and a violation of the Charter. The House argued that injurious instructions, by their very nature, were not binding upon civil officers. The primary reason the Ministry refused to allow the Assembly to move back to Boston was to force compliance to arbitrary measures. Hutchinson should disregard his instructions and use the Charter as the rule of his administration. The Charter, which was a solemn contract, must always be regarded as supreme. If instructions were allowed to supersede the Charter, that amounted to “vacating the Charter at once, by the Breath of a Minister of State.” Was Massachusetts to be ruled by the law or by the arbitrary will of British ministers?

The House sent a message to Benjamin Franklin, who was acting as the colony’s agent in London, in November 1770 which further expounded upon the representatives’ consternation over ministerial instructions to the governor.³³ The House feared that, with Hutchinson’s claims of having no legal authority over British troops, the civil authority in Massachusetts was yielding to a military power. The result was an “absolute uncontroll’d military tyranny” in the province,

³² Massachusetts House of Representatives, “To the Lt-Governor,” August 3, 1770, in Cushing, vol. 2, 19-35.

³³ Massachusetts House of Representatives, “To Benjamin Franklin,” November 6, 1770, in Cushing, vol. 2, 46-56.

as the army was “allowed to trample upon the laws of the land, the common security, without restraint!” Hutchinson’s insistence that he had no authority over the military was contrary to his powers as commander-in-chief within Massachusetts’ borders. The Lt. Governor was knuckling under to the arbitrary will of British authorities instead of acting as a constitutional magistrate.

It was clear to the House that Hutchinson’s instructions were contrary to the Charter and injurious to the people of Massachusetts. The instructions appeared “to be solely calculated to further and execute the measures, and enforce the laws of a different state; by which means his Majesty’s colonies may be entirely subjected to the absolute will of his other subjects in Great Britain, for which there can be no pretence of right, but what is founded in mere force.” Massachusetts was plagued with a governor who was controlled by the Ministry and a standing army which was “uncontrolled by any authority within the province...”

The House had also heard of an act passed by Parliament for the provision of independent salaries to civil officers in the colonies. The Ministry had “determined to bestow large salaries upon the attorney-general, judges and governor of this province; whereby they will be made not only altogether independent of the people, but wholly dependent upon the ministry for their support.” There were also rumors of designs to further alter the constitution by appointing the Council from home, i.e. Britain, instead of holding elections in Massachusetts. If Britain claimed any more power over Massachusetts, it must be because it regarded the colonists as “bastards and not Sons.” Massachusetts was in a perilous situation, “a step further will reduce us to absolute subjection.”

The next year, the House was puzzled by Governor Hutchinson’s refusal to accept the bills passed by the Assembly to provide his usual salary. Hutchinson’s official appointment as governor had become public knowledge in January 1771. The House sent a message to

Hutchinson in April 1771 asking why he was not accepting his salary.³⁴ Did the Governor have another source of support which would make him independent of the “Commons” of Massachusetts?

The House sent another message in June informing the Governor of the consequences of him following instructions and being supported independent of the Assembly.³⁵ The Governor must not make the mistake of regarding his instructions as having the force of law, binding both him and the subjects living in Massachusetts. He must exercise his own judgement in the execution of his constitutional powers. If Hutchinson was to be controlled by instructions, he would cease to be a governor and become a mere political machine. If instructions did have the force of law, they could supersede the Charter in all instances. What would be the point of having a charter then?

Hutchinson must also remember that the Assembly’s control over the salaries of civil officers in the province acted as a check on power. According to the Charter, “the Governor with other civil officers, is to be supported by the free Gift of the General Assembly...” The safety of the people required that this continue to be the only means of support for civil officers in the province. For instance, an independent governor could dissolve the Assembly at will, abolishing the democratic branch of Massachusetts’ mixed constitution.

Another message to Franklin a few days later asserted that Massachusetts’ mixed constitution was being replaced by an absolute government, funded by the revenue extorted from

³⁴ Massachusetts House of Representatives, “To the Governor,” April 25, 1771, in Cushing, vol. 2, 171-172.

³⁵ Massachusetts House of Representatives, “To the Governor,” *Boston Gazette*, June 24, 1771, in Dorr, Massachusetts Historical Society.

Americans by Parliament's novel taxes.³⁶ Independent salaries for governors, and other Crown officers, ruined the balance of power in the constitution and created a power without check. The House was sure that the plan for independent magistrates did not end with the Governor, who had repeatedly refused to accept his usual salary without giving an explanation for his conduct. Judges and other civil officers would be next-in-line to receive Crown salaries, followed by a permanent military power. All would be paid from the extorted revenue.

Boston's instructions to its representatives in May 1772 expressed the town's concern that Governor Hutchinson was being supported by "the very Money unjustly taken from us" and made independent of the people over whom he presided. The town also expressed its abhorrence of independent magistrates in general, asserting that "a Ruler independent of the People over whom he presides, is abhorrent to the Principles of a Free Government – Power without a Check is Tyranny: Whoever is possessed of such a Power, is a Master, instead of a Governor; and whoever submits to such a Power, is a Slave, instead of a Subject." Independence would give the Governor interests which would not only be different than those of the people, but in opposition.³⁷

The fears of Massachusetts' inhabitants that their governor would be wholly independent and without control were confirmed on June 13, 1772 when Governor Hutchinson publicly informed the House that he had accepted a Crown salary. A House committee prepared a report in response to that news and published its findings in early July.³⁸ The committee concluded that a governor with a salary independent of the Assembly was "an Infraction upon the Rights

³⁶ Massachusetts House of Representatives, "To Benjamin Franklin," June 29, 1771, in Cushing, vol. 2, 177-186.

³⁷ Boston, "Instructions," *Boston Gazette*, May 25, 1772, in Dorr, Massachusetts Historical Society.

³⁸ "Report of the House Committee on the Governor's Support," *Boston Gazette*, July 13, 1772, in Dorr, Massachusetts Historical Society.

granted to the inhabitants by the Royal Charter, and in Derogation of the Constitution.” This was unacceptable since the Charter was a solemn contract which explicitly granted the Assembly control over the support of government in the province, “of which the Support of the Governor is a most material and important Part.”

This power and authority vested in the General Assembly was necessary “to preserve the Freedom of the Constitution: For, if the King who has the absolute Power of appointing and commissionating [sic] the Governor, shall also have the Power of judging and determining what shall be a reasonable and adequate Support for Him... there remains no Check at all upon the Power devolved by Charter on the Crown...” The king appointing and paying the governor would create a dangerous precedent. Massachusetts would be exposed to the extension of this practice to all civil officers in the province, establishing an arbitrary and unchecked government over the people.

Since the Charter was a contract, the people of Massachusetts could not have an independent governor forced upon them; that was not among the conditions the people had agreed to. According to the Charter, the governor was intended to be “dependent” on the people and any effort to make him “independent” amounted to an alteration of the constitution and exposed the province to a despotic administration. The House wrote a message to Governor Hutchinson on July 10, 1772, informing him that his independent salary was a violation of the Charter and an infraction upon the rights of the inhabitants of Massachusetts.³⁹ Hutchinson avoided the issue in a message he sent to the House on July 13, in which he informed the House

³⁹ Massachusetts House of Representatives, “To the Governor,” July 10, 1772, *Boston Gazette*, July 20, 1772, in Dorr, Massachusetts Historical Society.

that the province-house, i.e. governor's mansion, was in a ruinous state.⁴⁰ He requested funds be provided by the House for repairs.

The House responded on July 14, informing the Governor that they were aware the province-house needed repairs.⁴¹ The problem was that the residence in question had been originally procured for a constitutional governor whose "whole support" was to be provided for by the acts of the General Assembly. As long as Hutchinson received his support from another source, the House did not consider it their duty to pay for any repairs. If he would accept his usual salary from the Assembly, the representatives would be more than happy to furnish the Governor with a residence that was not only "tenable, but elegant." The rub was that he was not currently acting as a constitutional governor.

Hutchinson responded directly to that message and demonstrated a view of the Charter which was in direct opposition to that held by the representatives in the House.⁴² According to Hutchinson, the Charter was not a contract between the colonists and the king. Nor was it a "recognition" of natural rights which the colonists already possessed as men. In the Charter, the colonists were "granted privileges" by the Crown. What is more, these privileges, even the entire Charter itself, could be legally vacated by the Crown at any time.

Hutchinson, although a native of Massachusetts, represented the prevailing mindset in the British government. Evidently, the principles of consent and the rule of law which lay at the heart of the British Constitution did not apply to the American colonies. Hutchinson thought the

⁴⁰ Thomas Hutchinson, "To the House," July 13, 1772, *Boston Gazette*, July 20, 1772, in Dorr, Massachusetts Historical Society.

⁴¹ Massachusetts House of Representatives, "To the Governor," July 14, 1772, *Boston Gazette*, July 20, 1772, in Dorr, Massachusetts Historical Society.

⁴² Thomas Hutchinson, "To the House," July 14, 1772, *Boston Gazette*, July 20, 1772, in Dorr, Massachusetts Historical Society.

House's claim that independent magistrates would destroy the security of the colony's citizens was absurd. Hutchinson was accountable to "a power superior to him." But he regarded that power as the Crown, not the people over whom he governed.

Rumors that the judges of the Superior Court in Massachusetts would also receive independent salaries became a major worry for the province's inhabitants in fall 1772. The freeholders of Boston sent a message to Governor Hutchinson on October 28 informing him of their opposition to independent judges.⁴³ This was especially troubling as, just like the governor, these judges held their positions "during pleasure." Bostonians regarded this innovation as tending to "rapidly compleat the System of their Slavery; which originated in the House of Commons of Great Britain, assuming a Power and Authority to give and grant the Monies of the Colonists without their Consent, and against their repeated Remonstrances." The freeholders asked Hutchinson to inform the town whether or not the reports of independent judges were true.

Hutchinson refused to respond to that question, arguing that it was not proper for the governor to discuss that matter with a "town." Simply put, it was none of their business. The town did not take the hint, instead, they sent Hutchinson an official petition on October 30. In the town's opinion, paying judges with Crown salaries was clearly contrary to "the plain and obvious Sense of the Charter..." For the administration of justice to remain uncorrupted, judges must remain impartial in their rulings. Not only must that impartiality be observed in rulings between subject and subject, but it was also crucial to rulings over disagreements between the Crown and subjects. A Crown salary would destroy that impartiality by introducing bias in favor of the Crown.

⁴³ Town of Boston, "Message & Petition to the Governor," *Boston Gazette*, November 2, 1772, in Dorr, Massachusetts Historical Society.

Boston adopted a three-part report on November 20, 1772 which explored the issue of independent magistrates in-depth.⁴⁴ Part I, “The Rights of the Colonists,” laid the foundation for the town’s conclusions by providing an overview of the rights which the colonists possessed by nature, as Christians, and as subjects. The natural rights of the colonists included life, liberty, and property; along with the right of self-defense, which was necessary to preserve the first three. All just government was based on the consent of the governed and was formed primarily for the common defense of a community’s natural rights. These natural rights were not renounced when individuals joined a civil society; to assert that was absurd, since the primary purpose of governments was to defend those rights. How could a government defend rights which the people had renounced?⁴⁵

It was the people who possessed “absolute rights” in a civil society. No government had a right to “absolute, arbitrary power over the lives and fortunes of the people...” Property could only be taken by a government after it had first received the consent of the people. Part II, “A List of Infringements & Violations of Rights,” included a list of 12 violations committed by the British government and its tools in America. The list began with Parliament’s claims of authority over the colonies and its attempts to extort a revenue from them (#1-3). That revenue was being used to support customs officers who exercised unconstitutional and arbitrary powers (#4), maintain a standing army and fleet intended to support those officers in their unconstitutional acts (#5), and make the governor independent of the people (#6). That independence destroyed the balance of the mixed constitution and fundamentally altered Massachusetts’ political system.

⁴⁴ Town of Boston, “The Rights of the Colonists, A List of Violations of Rights, and A Letter of Correspondence,” November 20, 1772, in Cushing, vol. 2, 350-374.

⁴⁵ Ibid., 350-359.

Bostonians feared that independence would be expanded to all other Crown offices in the province.

Civil officers who held their positions at the pleasure of the Crown and were also paid by the Crown would be dependent on the Crown. This was troubling since those officers exercised a great deal of control over the lives, liberties, and property of the people. The people would have no security left to them from the ravages of arbitrary power.⁴⁶ The ministerial instructions sent to the governor were also concerning. Instructions turned the governor into a mere “ministerial engine” for oppressing the people and preventing the other branches of government, House and Council, from resisting that oppression. Governors ruled by instructions were no better than tools of tyranny.⁴⁷

Part III, “A Letter of Correspondence to the Other Towns,” sought to spread Boston’s alarm about the “plan of *Despotism*” which the enemies of American rights were hastening to completion. Repeated inroads had been made “upon the Rights and Liberties of the Colonists” in pursuit of that plan. The latest inroad was the “extraordinary measure” of granting Crown salaries to the judges of the Superior Court, making them “intirely independent of the people” and “absolutely dependent on the Crown...” It was time for Americans to ask, “What can withstand the Attacks of mere power? What can preserve the liberties of the Subject, when the Barriers of the Constitution are taken away?” Boston asked its fellow-towns to unite with them in rescuing their constitution from destruction and preventing “the Iron hand of oppression” from

⁴⁶ Ibid., 359-364.

⁴⁷ Ibid., 364-365.

“daily tearing the choicest Fruit from the fair Tree of Liberty, planted by our worthy Predecessors...”⁴⁸

Committees of correspondence became active in Boston and many of the other towns in Massachusetts in late 1772 in order to promote that united stand for freedom and, as 1773 began, the House did its part to oppose the expansion of independent magistracy in Massachusetts. In a message to the Governor on January 26, 1773, the House asserted that it was the British government which had adopted unconstitutional principles, not the people of America.⁴⁹ Parliament’s claims of authority over the colonies were ungrounded, because the colonies were outside Parliament’s legal jurisdiction, which did not extend beyond the boundaries of Britain. The colonies must be considered as independent states and were to be governed by their charters, not orders sent from Britain.

On February 4, Governor Hutchinson officially informed the House that judges of the Superior Court would be receiving Crown salaries. The House responded with a message on February 12, which began by asserting that “no Judge, who has a due regard to justice, or even to his own character, would choose to be placed under such an undue bias as they must be under, in the opinion of this House, by accepting of, and becoming dependent for their salaries upon the Crown.”⁵⁰ The introduction of Crown salaries for judges was the latest in a long string of attempts being made to “render null and void those clauses in our charter, upon which the

⁴⁸ Ibid., 369-374.

⁴⁹ Massachusetts House of Representatives, “To the Governor,” January 26, 1773, in Cushing, vol. 2, 401-426.

⁵⁰ Massachusetts House of Representatives, “To the Governor,” February 12, 1773, in Cushing, vol. 2, 428-430.

freedom of our constitution depends..." The House hoped that the judges would refuse to accept a means of support so obnoxious to justice, the Charter, and the rights of the people.

On March 3, the House passed a series of resolves related to independent Crown officers who were paid from revenue taken without the consent of Americans.⁵¹ The House regarded any attempt to support civil officers within the province, other than by the grants of the General Assembly, as "a violent breach" of the Charter. The "independence" of judges should refer to their freedom from monetary-persuasion, allowing for impartial decisions. Making judges dependent on the Crown for their support was clearly unconstitutional and "destructive of that Security which every good Member of civil Society has a just Right to be assured of..." The dependence of judges on the Crown "tends at all Times, especially while they hold their Commissions during Pleasure, to the Subversion of Justice & Equity and to introduce Oppression and Despotic Power."

In the opinion of the House, any judge of the Superior Court who accepted a Crown salary was an "Enemy to the Constitution" and had it in his heart to "promote the Establishment of an arbitrary Government in the Province." Even the Council broke ranks with Governor Hutchinson over the issue of independent judges and sent a message to the Governor on March 5 expressing their apprehensions.⁵² According to the Council's interpretation of the Charter, the General Court possessed the power to levy taxes for the support of government in Massachusetts, which included the judges of the Superior Court. The dependence of the judges on the Crown would corrupt the impartial administration of justice in the province, upon which so much of the

⁵¹ Massachusetts House of Representatives, "Resolves," March 3, 1773, *Boston Gazette*, March 8, 1773, in Dorr, Massachusetts Historical Society.

⁵² Massachusetts Council, "To the Governor," March 5, 1773, *Boston Gazette*, March 8, 1773, in Dorr, Massachusetts Historical Society.

community's happiness depended. The Councilors could not help but think that "by this Innovation in Government, a Foundation may be laid for rendering the Rights, Liberties, and Properties of the People, in many Respects, precarious and insecure."

Boston's May 1773 instructions emphasized the insecurity which arose from having unaccountable magistrates who could use brute force, in the form of a standing army, to bend the people to their will.⁵³ After years of "atrocious violations of Right, Justice, and the Constitution," the enemies of American freedom were still working to complete their "infernal plan of enslaving America." The most recent step in that plan was providing pensions to Crown officers, "which in effect is bribing them on the side of Despotism." Instead of being the guardians of public security and liberty, pensioned Crown officers were to be regarded as "subordinate Tyrants, entrusted with a Rod to Scourge us, and suppress that Spirit of Freedom, which is the glorious Characteristic of America."

Lancaster's instructions informed the town's representative that its freeholders regarded a Crown salary for the governor as an unconstitutional innovation and salaries for the judges as corrupting the pure and impartial administration of justice in the province.⁵⁴ The security of the people's lives, liberties, and property depended on the impartial nature of judges, especially in cases between the Crown and subjects. The "absolute dependency" of the judges on the Crown would bias the minds of the judges in favor of the Crown and weaken the people's confidence in the administration of justice.

⁵³ Town of Boston, "Instructions," *Boston Gazette*, May 10, 1773, in Dorr, Massachusetts Historical Society.

⁵⁴ Town of Lancaster, "Instructions," *Boston Gazette*, March 17, 1773, in Dorr, Massachusetts Historical Society.

Samuel Adams spent a great deal of time reflecting on the impact of ministerial instructions in his private correspondence. In his letters to Stephen Sayre, a resident of London, in the winter of 1770-1771, Adams asserted that the “People here are indeed greatly tenacious of their just Rights” and “Every Attempt to enforce the plan of Despotism will certainly irritate them...” The method which the Ministry was currently using to further its plan was “sending Instructions to the Governor to be the rule of his Administration...”⁵⁵

Ministerial instructions were being enforced to the point where “they not only prescribe to the Assembly, which ought to be free the forms of Legislation in the most essential Parts, but even annihilate the Powers of the Gov’r vested in him by Charter.” Adams was beginning to think that Americans could not rely on their friends in Britain to work out their political salvation, Americans must rely on themselves. One of the effects of ministerial despotism was America’s young men becoming “ambitious of making themselves perfect Masters of the Art *military*.”⁵⁶ Along with instructions, Adams had begun to hear rumors that newly-appointed Governor Hutchinson was to be given an independent salary. Did this not amount to “perfect despotism?”⁵⁷

Adams’ correspondence with Arthur Lee, a prominent Patriot from Virginia, throughout 1771 demonstrates a deep concern over the despotism which would result from Massachusetts being ruled by independent magistrates. The attempt to make the governor independent of the Assembly, and thus of the people, for his support would deprive “the House of Representatives of the only Check they have upon him...” The governor’s independence from the “many,” i.e. the people, actually made him dependent on “one,” the minister who controlled his salary. In

⁵⁵ Samuel Adams, “To Stephen Sayre,” November 16, 1770, in Cushing, vol. 2, 56-61.

⁵⁶ Samuel Adams, “To Stephen Sayre,” November 23, 1770, in Cushing, vol. 2, 66-69.

⁵⁷ Samuel Adams, “To Stephen Sayre,” January 26, 1771, in Cushing, vol. 2, 134-135.

appearance, Massachusetts was to be governed by one man, ostensibly the governor, “but in Reality some other person residing in Great Britain, whose Instructions the Gov' must punctually observe upon pain of forfeiting his place.” Massachusetts was to be governed by the tool of a tyrant.⁵⁸

Adams was certain that Massachusetts' independent governor was no more than a tool of his political masters. In all his actions, Hutchinson could be found “to crouch to his superiors” in accordance with his instructions. If the people expressed their resentment of the arbitrary power being exercised over them, the governor had a standing army at his disposal, which was not stationed in the city of Boston, but was “within call upon occasion.”⁵⁹ Adams reflected that Massachusetts was already in “a State of perfect Despotism.” The introduction of an independent governor had altered the province's government in its essential aspects, “Instead of having a Gov exercising Authority within the Rules & Circumscription of the Charter which is the Compact between the King & the People, & dependent upon the people for his Support, we have a Man with the Name of a Governor only.”

Hutchinson was not a “real” governor. He may have been commissioned by the king, but he was controlled by a minister, “to whose Instructions he yields an unlimited Obedience,” while being paid with monies extorted from the people over whom he governed. The government of Massachusetts had been shifted into the hands of Lord Hillsborough, the governor's master in the Ministry. The Ministry's instructions to Hutchinson had also rendered the Assembly ineffectual. With the governor's powers over legislation, the Assembly could accomplish nothing which ran contrary to the will of the Ministry. What options did the people of Massachusetts have left with

⁵⁸ Samuel Adams, “To Arthur Lee,” April 19, 1771, in Cushing, vol. 2, 164-167.

⁵⁹ Samuel Adams, “To Arthur Lee,” July 31, 1771, in Cushing, vol. 2, 189-193.

which to defend their rights? Their rulers were no longer accountable to the people. There was no legal means of removing a governor from office available to them. Was the *ultima ratio*, an appeal to armed force, the only recourse left to Massachusetts?⁶⁰

The period of 1770-1773 was also a prolific period for Adams in terms of articles he wrote for publication in Massachusetts newspapers. Adams wrote under a variety of pseudonyms during this time, including: *A Chatterer*, *Vindex*, *Candidus*, *Cotton Mather*, and *Valerius Poplicola*. These articles provide further insights into Adams' opinion that the introduction of independent magistrates into Massachusetts' government subverted the constitution. Adams argued that Massachusetts was being changed from a government of laws to an arbitrary government. The supremacy of the constitution, along with the core principle of accountability, was being destroyed; which in turn, destroyed the security which the people enjoyed for their natural and constitutional rights.

Was Massachusetts to be governed "according to the rule of the Constitution" or "Instructions, form'd by a set of Ministers?" While the governor might obey every instruction sent his way by the Ministry, the people of Massachusetts would not give a "blind obedience" to those commands.⁶¹ Instead, the people would follow the example of the noble Bereans⁶² and "judge freely of every point of *state doctrine*, & reject with disdain a blind submission to the authority of *mere names*, as being equally ridiculous, as well as dangerous in government and religion." The Ministry and its tools were treating instructions with a profound veneration and

⁶⁰ Samuel Adams, "To Arthur Lee," September 27, 1771, in Cushing, vol. 2, 230-237.

⁶¹ Samuel Adams, "A Chatterer," *Boston Gazette*, August 13, 1770, in Cushing, vol. 2, 35-39.

⁶² Acts 17:10-11, "And the brethren immediately sent away Paul and Silas by night unto Berea: who coming *thither* went into the synagogue of the Jews. These were more noble than those in Thessalonica, in that they received the word with all readiness of mind, and *sought the scriptures daily, whether those things were so.*"

discouraging any inquiry into the injustice of their arbitrary measures. When the people had defied their will and searched into the law, the Ministry responded by sending a standing army to “convince them of the *reasonableness* of these opinions...”⁶³

Those who searched into the law were not rebels, they were acting the part of “true patriots.” A true patriot knew that power was intoxicating and that those entrusted with it must constantly be watched for abuses. Such was “the weakness or the perverseness of human nature, they will be apt to *domineer* over the people, instead of governing them, according to the known laws of the state, to which *alone* they have submitted.” A true patriot would point out any deviations from the constitution by those in power. Only a “traitor to the constitution” would have need to fear such a noble action.⁶⁴

Perhaps Governor Hutchinson was one such traitor. His actions had clearly demonstrated that he placed obedience to his instructions above the Charter, giving instructions the “force of laws” and using them as the “rule of his governing” in the province. While there were some in the province, even among the clergy, who were encouraging submission to the administration for the sake of peace, Adams knew that there were many men in Massachusetts who would not “bow the knee to Baal,” i.e. to tyranny in the form of “unconstitutional revenue acts, arbitrary ministerial mandates, and absolute despotic independent governors...”⁶⁵

Massachusetts was standing in defense of its Charter, which was a compact containing the agreed to, legal powers which each branch of the government possessed. According to the Charter, the governor was supposed to exercise his own judgement for the good of the province,

⁶³ Samuel Adams, “A Chatterer,” *Boston Gazette*, August 20, 1770, in Cushing, vol. 2, 39-43.

⁶⁴ Samuel Adams, “Vindex,” *Boston Gazette*, January 21, 1771, in Cushing, vol. 2, 142-153.

⁶⁵ Samuel Adams, “Vindex,” *Boston Gazette*, June 10, 1771, in Cushing, vol. 2, 172-175.

not act “as Lord Hillsborough shall think fit, for he is not the governor.” The Ministry’s practice of governing by instructions altered the political system in Massachusetts. It overthrew the constitution and established an arbitrary government in which “the mere *will* and *pleasure* of an arbitrary minister” replaced the laws and became the rule of government. Adams argued that it was “a pitiful constitution indeed, which so far from being fixed and permanent as it should be - sacred and unalterable in the hands of those where the community has placed it, depends entirely upon the breath of a minister, or of *any man...*” This alteration placed the political system in Massachusetts on a “precarious and sandy foundation.”⁶⁶

The British government was attempting to support that system by making the civil officers in the colonies independent of the people and using a standing army to crush opposition. The relationship between the governor and the people had changed to that between a “master,” with absolute and uncontrolled power, and his “slaves.” The Ministry was trying to further buttress this system by making the judges independent of the people as well.⁶⁷

In Adams’ estimation, the British government’s attempt to create this system was treason. Whatever the supporters of government might think, “Kings and Governors may be guilty of treason and rebellion: And they have in general in all ages and countries been more frequently guilty of it, than their subjects.” By degenerating into tyrants, rulers entered a “state of war” with the people and their administration no longer deserved the name of “civil government.” Adams used the example of Jeroboam, a king of ancient Israel,⁶⁸ as proof that magistrates can become

⁶⁶ Samuel Adams, “Candidus,” *Boston Gazette*, September 23, 1771, in Cushing, vol. 2, 222-230.

⁶⁷ Samuel Adams, “Candidus,” *Boston Gazette*, October 7, 1771, in Cushing, vol. 2, 246-250.

⁶⁸ 1 Kings 14:16, “And he shall give Israel up because of the sins of Jeroboam, who did sin, and who made Israel to sin.”

rebels against God and their country. Americans would oppose modern Jeroboams attempting to reduce them to a state of slavery.⁶⁹

The people of Massachusetts were living in a time of extreme distress according to Adams. They were to be ruled by a pensioned governor and pensioned judges, the constitution was being overturned and ruined, and the “iron hand of tyranny” was ravishing the province’s laws. The province was being governed by violence, instead of by consent, and the colonists’ petitions had surely reached the Royal “ear,” but not the Royal “heart.” Instead of redress, the colonists were being forced to endure “grievance upon grievance.” With the rise of independent magistrates, tyranny had risen to dangerous heights. The people of Massachusetts were “at this moment upon a precipice. The next step may be fatal to us.”⁷⁰

Samuel Adams was not the only Patriot to regard pensioned Crown officers as tools and to voice that opinion in the press. The Reverend John Cleveland of Ipswich, Massachusetts, wrote several articles under the pseudonym *Johannes in Eremo* (God’s Grace in the Wilderness) discussing that very issue. Cleveland began questioning Hutchinson’s position as governor immediately after receiving news of Hutchinson’s appointment in January 1771. Would Hutchinson serve the good of the people or would he be “a meer tool of an arbitrary minister of state, who makes ministerial instructions and mandates rather than the royal charter and established laws of this province, the grand rule of his administration...?”⁷¹ What was the point of having a governor if he ignored violations of the people’s rights and yielded blind obedience to the Ministry? As long as the governor was a “pensioner” accepting a Crown salary, “there is

⁶⁹ Samuel Adams, “Candidus,” *Boston Gazette*, November 11, 1771, in Cushing, vol. 2, 268-274.

⁷⁰ Samuel Adams, “Valerius Poplicola,” *Boston Gazette*, October 5, 1772, in Cushing, vol. 2, 332-337.

⁷¹ John Cleveland, “Johannes in Eremo,” *Boston Gazette*, January 28 and February 4, 1771, in Dorr, Massachusetts Historical Society.

no great prospect of his being anything better than the tool of an arbitrary and despotic minister.” Cleveland was already suspicious in early 1771 that Hutchinson was accepting monetary support independent of the Assembly’s usual grants.

Based on Hutchinson’s public actions thus far, such as keeping the Assembly in Cambridge contrary to the will of the people, Cleveland judged that Hutchinson was nothing more than a tool. Hutchinson gave instructions “the force of laws in a very high degree” and was not only “absolutely resolved” to obey them himself, he was “determined that the whole province shall submit” to them as well. How could Hutchinson not see that his instructions included manifest violations of the people’s rights?

Cleveland explained Hutchinson’s blindness by citing Deuteronomy 16:19, which included God’s instructions to Israel’s judges, “thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift: for a gift doth blind the eyes of the wise, and pervert the words of the righteous.” The Crown salary which Cleveland suspected Hutchinson had accepted was a “gift” which had made the Governor “blind” to “infractions of our essential rights as men and citizens, as well as those derived by the British Constitution and royal charter to this colony!”

In April 1771, Cleveland responded to a number of queries by other writers and came to some rather drastic conclusions about the political relationship between Britain and Massachusetts.⁷² According to Cleveland, the civil subjection of Massachusetts was founded on “voluntary compact,” the terms of which were manifested in the Charter. The whole point of this subjection to civil government was the protection of the people’s natural rights. Cleveland built

⁷² John Cleveland, “Johannes in Eremo,” *Boston Gazette*, April 8 and 22, 1771, in Dorr, Massachusetts Historical Society.

on that theoretical foundation by next asserting that “both Parties in this Compact are bound by it, so that a Breach on either Side necessarily infers a total Dissolution.”

If the British government “either vacate the Charter or make an Infraction of the Compact, our political Union is totally dissolved, our civil subjection ceases, and we are left in full Possession of our Rights and Liberty to seek Protection where we judge we shall have it, and from whom we shall be indulged with the full Enjoyment of all our essential Rights as Men.” If the Charter was vacated, the political union between Britain and Massachusetts was dissolved and the allegiance of the people was “alienated.”

A necessary consequence of this dissolution would be that Crown officers in the colony would lose all legal authority over the people of Massachusetts. They would cease to be magistrates and no obedience would be due them. Cleveland argued that the creation of an independent governor, who would be an absolute despot and possess power without a check, would amount to a breach of the Charter. The plans Cleveland had heard for creating an independent Council, appointed by the Crown instead of being elected by the House, would be another breach of the Charter. If all the recent actions of the British government were taken together, with the introduction of independent magistrates being just one issue in a larger scheme, it could not be denied that those actions amounted to “an open *Infraction* and *vacating* our Charters or an absolute Breach of the *Compact*...”

Since the compact had been broken, the political union between Britain and Massachusetts, and the other colonies as well, was dissolved. Since this was the case, Cleveland considered a renewal of the social contract to be the proper action for Massachusetts to take. The Assembly should petition the king and craft a new charter, one which would “protect and defend us in the free and full Enjoyment of all our natural and essential Rights as Men and Citizens...”

Cleveland's conclusions were radical in the sense that he considered the political union between Britain and the American colonies to be dissolved already in 1771, with independent magistrates being one of his core reasons behind the dissolution, yet conservative in the sense that he was not ready for a total break with the British Crown. Cleveland wanted a renewal of the relationship, not total political independence for America. At least not yet.

James Lovell threw his opinions into the political debate by writing columns for the *Boston Gazette* in the weeks preceding every election to the House in 1771, 1772, and 1773. Throughout these articles, written as *An Elector*, Lovell informed his fellow-citizens of the importance of electing men to the House who would oppose the alterations taking place in Massachusetts' constitution. He was particularly critical of Governor Hutchinson, who he accused already in May 1771 of supporting "Parliamentary Supremacy" over the colonies and desiring to be made independent of the people.⁷³ If Hutchinson was granted an independent salary, Lovell told his readers it "was immaterial to you whether he is paid by the King of France or Spain, or by King George III of Great Britain, if it is done with *money not given by you for that very purpose.*"

Parliament did not possess a "right" to take away the property of the colonists and use it for any purpose, let alone providing civil officers with Crown salaries.⁷⁴ Instead of consent, British authority in the colonies was founded upon force, making Parliament little better than a "robber" who waylaid travelers on a highway. The colonists had responded to British aggression with petitions and remonstrances. They had been answered with "the *Fist* of the British

⁷³ James Lovell, "An Elector in 1771," *Boston Gazette*, May 6, 1771, in Dorr, Massachusetts Historical Society.

⁷⁴ James Lovell, "An Elector in 1771," *Boston Gazette*, May 13, 1771, in Dorr, Massachusetts Historical Society.

Parliament, by a *Fleet and Army*.” It was this system, based on force instead of consent, which Governor Hutchinson supported. Perhaps he did so because that system supported him.

Before the elections in spring 1772, Lovell told the voters of Massachusetts to instruct their representatives to utterly “refuse allegiance to a Governor paid *otherwise than by their own free act...*” Providing the governor with a Crown salary would sever the only link remaining between him and the people over whom he governed, their control over his monetary interest.⁷⁵ By Charter, the people, not the king, possessed the right to pay the governor. Furthermore, this was the “*only one* check” left to them for the redress of grievances. Take away that check and the government of Massachusetts would be changed from the “System under which your Fathers and you have lived” into an “absolute uncontrouled Monarchy.”⁷⁶

Lovell continued his exposition of the change in Massachusetts’ political system, which he referred to as “ministerially-directed Provincial Despotism,” into July and August. It was the Assembly’s control over the governor’s salary which made him accountable to the people. If that legal, “ordinary” means of checking the governor was taken from them, the people would be forced to resort to “extraordinary” measures to preserve their rights. Hutchinson’s claim that he was accountable to a power above him, i.e. the king, was no consolation to the colonists. What control did the people of Massachusetts have over the king? None at all. The new system of government would render the lives and property of the people dependent upon the will of men in Europe, the Ministry, men over whom the people likewise had no influence or control.⁷⁷

⁷⁵ James Lovell, “An Elector in 1772,” *Boston Gazette*, February 3, 1772, in Dorr, Massachusetts Historical Society.

⁷⁶ James Lovell, “An Elector in 1772,” *Boston Gazette*, February 17, 1772, in Dorr, Massachusetts Historical Society.

⁷⁷ James Lovell, “An Elector in 1772,” *Boston Gazette*, July 27 and August 24, 1772, in Dorr, Massachusetts Historical Society.

In April 1773, Lovell accused Hutchinson of having declared his independence from the people.⁷⁸ The Governor was not just independent of the people, his interests went against theirs. He was “deeply interested against us, and sedulous in the Propagation of Doctrines, which reduce us to the Condition of Slaves,” he was “vigorous in the Promotion of Measures destructive of our Rights and Property,” and he had declared the people’s “Felicity to be dependent upon the Acceptance and Continuation of his debasing political System.” Was not such a ruler “a Despot, a Tyrant?” Lovell pondered whether it was time for the people to take more drastic measures in the face of persistent despotism. Massachusetts had tried petitions and resolves, only to be treated with contempt. The colony’s friends in Britain had received the same contempt, while its enemies had been “esteemed, pensioned, knighted...” Perhaps it was time to elect an Assembly which would enter upon “*a more efficacious Vindication*” of the people’s rights.

A Patriot writing as *Mucius Scaevola* based his assessment of independent magistrates on a radical interpretation of the Charter, at least the British government would consider it radical. According to Mucius Scaevola, the Charter was a compact which “recognized” the rights of the people.⁷⁹ Those rights had not been “granted” to them by the Crown. This compact and the laws under which the people lived were based on consent, and if the government ceased to operate based on consent, this would destroy the security which the people enjoyed for their rights.

According to this compact, the political union between Britain and Massachusetts was a relationship between “confederate states.” Massachusetts was an “independent” and “equal” political community. The colony was united to Britain by choice, not because it was a

⁷⁸ James Lovell, “An Elector in 1773,” *Boston Gazette*, April 26, 1773, in Dorr, Massachusetts Historical Society.

⁷⁹ Mucius Scaevola, *Boston Gazette*, March 4, 1771, in Dorr, Massachusetts Historical Society.

“dependent” sub-state. Massachusetts’ legislature was likewise equal to that of Britain’s legislature, i.e. Parliament, and the link connecting the two political communities was their “common sovereign.”

If the Crown were to break the conditions of the compact, it would be operating in opposition to the constitution and without the consent of the people. Such a breach of the Charter would reduce “the Subject again to a state of nature, which being a state of *war*, the party so reducing, may be said *rebellare*...” If the Crown violated the Charter, it would be guilty of rebellion against the constitution and the people would be freed from allegiance to the king. With this interpretation of the Charter as his foundation, Mucius Scaevola was quick to judge Thomas Hutchinson as a usurper and tyrant.

While he received support otherwise than by the Assembly’s free grants, Hutchinson was most certainly not a “lawful and constitutional” governor.⁸⁰ Why was the Ministry so determined in its plan to subsume the governor’s salary? The answer was simple, “because the pay or hire has always operated as a bribe...” If the governor’s salary was paid by the Ministry, his interest would align with the Ministry’s and he would act for the good of the Ministry. His economic independence from the people removed the check they had traditionally possessed over the colony’s first magistrate.

The revenue extorted from the colonists was being used “to hire a man to TYRANNIZE over us, whom his *Master* calls our Governor.”⁸¹ Mucius Scaevola could not regard Hutchinson as a true governor, instead, Hutchinson was a “usurper” with no legal jurisdiction over the people

⁸⁰ Mucius Scaevola, “For the Massachusetts Spy,” *Boston Gazette*, December 2, 1771, in Dorr, Massachusetts Historical Society.

⁸¹ Mucius Scaevola, “For the Massachusetts Spy,” *Boston Gazette*, November 18, 1771, in Dorr, Massachusetts Historical Society.

of Massachusetts. Since he was without authority, any public action taken by “Mr.” Hutchinson was “*ipso facto*, null and void, and consequently, not binding upon us.” Until Hutchinson rejected his Crown salary and stipulated with the people for his support, by definition, he could not be regarded as a legal governor. Hutchinson was a “pretended Governor” and it was time for him to be dismissed and replaced by a lawful one, with a salary provided by the people and making him accountable to the people.

Josiah Quincy Jr., writing as *Marchmont Nedham*, used a variety of colorful descriptions to portray Governor Hutchinson as an independent magistrate. Quincy began an article on June 8, 1772 by citing Genesis 3:1, “The Serpent, subtlest Beast of all the Field.” Traditionally, Christians have interpreted this passage as referring to the Devil. Quincy took the reference and applied it to Thomas Hutchinson, whose general characteristics included “Worldly policy and serpentine insinuation...”⁸²

Just like the Devil, Hutchinson was a deceiver, one whose public conduct had been characterized by “inconsistence, prevarication, insincerity, and falsehood.” He had publicly professed his affection for the people of Massachusetts. His words were designed “to sooth and conciliate... to invite and charm,” yet his actions showed that he was leading the people to destruction. Hutchinson was “a traitor to his species, with the genius and obstinacy of a devil...” He was exercising all the cunning he possessed to ensure the success of his sinister designs. He had accepted the wages of a “prostitute” by accepting a Crown salary and succumbed to the temptation of riches and grandeur for himself, at the expense of the people. As an independent ruler, Hutchinson was “a monster” who sought to rivet chains on his fellow-men. It is hard to

⁸² Josiah Quincy Jr., “Marchmont Nedham,” *Boston Gazette*, June 8, 1772, in Dorr, Massachusetts Historical Society.

think of a more damning comparison to make in Puritan Massachusetts than comparing the Governor to that Old Serpent, the Devil.⁸³

The Patriots believed evidence of Hutchinson's serpentine nature could be seen in the Governor's "proclamation of thanksgiving" issued in fall 1771. Evidently, the Governor thought it was an appropriate time for the people to "offer up their humble and hearty thanks to Almighty God" for the continuation of the people's "civil and religious privileges." A number of Patriots expressed their astonishment that the province's governor could issue such a proclamation when the people's rights were being wrested from them and independent magistrates imposed upon them.

Christian asked whether it was appropriate for the people to give thanks when Parliament was claiming a right to make laws binding the colonists "in all cases whatever," when the people were taxed without their consent, when that extorted revenue was being "appropriated to maintain a Governor absolutely independent of us," when an army and navy were stationed in the province, and when the streets of Boston were stained with the blood of its citizens? When all these things were considered, it was clear that Hutchinson's proclamation was an insult to Massachusetts.⁸⁴

Sincerus considered the proclamation an "impious mockery."⁸⁵ The colonists were being told to give thanks for the "almost total *ravishment* and deprivation of, their *civil* and religious privileges!" One of the key causes of that ravishment was the introduction of independent magistrates. It was absolutely essential that magistrates depend upon the people for their support,

⁸³ Josiah Quincy Jr., "Marchmont Nedham, *Boston Gazette*, June 15, 22, 29 and July 6, 1772, in Dorr, Massachusetts Historical Society.

⁸⁴ *Christian*, *Boston Gazette*, November 4, 1771, in Dorr, Massachusetts Historical Society.

⁸⁵ *Sincerus*, *Boston Gazette*, November 4, 1771, in Dorr, Massachusetts Historical Society.

otherwise, those magistrates would act contrary to their purpose; “That Governors, Councillors, and Representatives might be and remain, what God and nature ever designed them, the *servants* of the PEOPLE, they were to depend upon them for *reward*, as well as *appointment* for their service.” The power of appointment had been usurped by the Crown long ago, now the power of rewarding magistrates, i.e. granting their salaries, was also being usurped. In such a situation, a proclamation calling for “fasting and prayer” would have been more appropriate.

A.Z. accused Hutchinson of attempting to make the people “easy and quiet under the grim paw of oppression and tyranny...”⁸⁶ This was the purpose of his proclamation, but the people had seen through the deception. They had perceived that the proclamation was not only an insult to the people, it was “the most glaring affront to the Supreme Being that could possibly have been offered to Him by the most prophane wretch living...” The people of Massachusetts were also aware that their “civil constitution is razed to its very foundation...” Along with Parliament’s usurpation of power over the colony, their governor had been “placed ABOVE ANY DEPENDENCE on the people, for his support, which is the ONLY CHECK they can have over him...” The people knew that they had no real “civil privileges” left. Everything they possessed was subject to the “*arbitrary will* and pleasure of those over whom they do not and can not have the *least controul*.” How could the people give thanks when all security had been lost?

Even stronger evidence of Hutchinson’s devilry was put on display when his “Secret Letters,” along with those of several other Crown officers, were made public in June 1773. These letters were written to a number of British officials and statesmen over the preceding years and

⁸⁶ A.Z., *Boston Gazette*, November 18, 1771, in Dorr, Massachusetts Historical Society.

discussed the need for increased British control over Massachusetts in-depth. The Patriots now had clear and indisputable evidence of the character of the independent magistrate who was to rule over Massachusetts. They were persuaded that a tyrant was ruling over them and they wasted no time in presenting evidence of Hutchinson's tyrannical nature to the people.

On June 15, 1773, the House issued a series of resolves in response to the "Secret Letters," which they had received on June 2.⁸⁷ The House accused Hutchinson of filling his Letters with "aggravated accounts of facts, and Misrepresentations..." These misrepresentations of events had a "public operation" by influencing the policies of the British government in relation to Massachusetts. According to the House, Hutchinson and his cronies were largely responsible for the alienation of the king's affections towards Massachusetts, the destruction of the harmony between Britain and America, and the implementation of destructive measures towards the province.

Hutchinson had desired to be made an independent magistrate. He had supported the creation of revenue acts by Parliament, the use of military force to aid in the collection of that revenue, the application of that revenue for providing salaries to Crown officers, and introducing "measures destructive of our Constitutional Liberty..." along with deceitfully "practicing every Method among the People of this Province, to fix in their Minds an exalted Opinion of his warmest Affection for them, and his unremitted Endeavors to promote their best Interest at the Court of Great-Britain." The "Secret Letters" had revealed Hutchinson's true nature. He was one of the chief instruments in a long-running plan to destroy the Charter of Massachusetts and eradicate the "Rights and Liberties of the American Colonies."

⁸⁷ Massachusetts House of Representatives, "Resolves on Hutchinson and Oliver's Letters," *Boston Gazette*, June 21, 1773, in Dorsey, Massachusetts Historical Society.

The House was of the opinion that the king would “judge it to be incompatible with the Interest of his Crown and the Peace and Safety of the good People of this his loyal Province, that Persons should be continued in Places of high Trust and Authority in it, who are known to have, with great Industry, though secretly, endeavored to undermine, alter, and overthrow the Constitution of the Province...” The House’s final resolve was to create a petition to the king asking for the removal from office of Hutchinson and Andrew Oliver, the Chief Justice of the Superior Court and writer of his own secret letters. That petition was duly issued on June 23.⁸⁸

In response to the unveiling of the “Secret Letters,” a number of Patriots vented their frustrations with Massachusetts’ independent governor, and his acolytes, in the press. They were particularly upset with several of the key passages in Hutchinson’s letters. *Rusticus* noted that Hutchinson encouraged the British government to increase “penalties” in an effort to dissolve the “combinations” which had been formed to resist British authority in the province.⁸⁹ One result of Hutchinson’s suggestion for increased penalties was the extension of the Act of Henry VIII to the colonies, enabling the trials of Americans charged with treason to be held in England. Perhaps none of Hutchinson’s proposals were more despised than his suggestion for the further “restraint of English Liberty” in the colonies.

In his letters, the Governor had insisted that “*there must be an abridgement of what are called English Liberties...*” *Lucius* asked why Governor Hutchinson would desire the people of Massachusetts to be deprived of their rights as men and subjects?⁹⁰ The answer was, because that would aid him in carrying out his plans to establish a tyranny over the province. Hutchinson had promoted the diabolical maxim that “*a colony distant from the parent state, cannot possibly*

⁸⁸ Massachusetts House of Representatives, “Petition to the King,” June 23, 1773, in Cushing, vol. 3, 45-48.

⁸⁹ *Rusticus*, *Boston Gazette*, June 21, 1773, in Dorr, Massachusetts Historical Society.

⁹⁰ *Lucius*, *Boston Gazette*, June 21, 1773, in Dorr, Massachusetts Historical Society.

enjoy all the liberty of the parent state.” These were the words of a tyrant. A Patriot signing himself as A pointed out that Hutchinson’s assertion that government in the colonies needed additional “support” led to the introduction of a standing army in Massachusetts.⁹¹ A further argued that a standing army was exactly what Hutchinson had meant when he asked for “support” from the British government.

Hutchinson had worked to convince the British government that “nothing but anarchy reign’d in Massachusetts” and that nothing but a military power could restore order.⁹² Hutchinson had gone so far as to call for “vengeance upon individual persons,” merchants involved in the nonimportation agreements, and the exercise of more severe “penalties” in order to dissolve those “combinations.” He had also advised of “the necessity of severe measures, to maintain the dependence of the colony upon the parent state...” Hutchinson’s whole plan revolved around “an abridgement of what are called *English Liberties*” and a “great restraint of *natural Liberty*.” The destruction of the colonists’ liberties would ensure their continued dependence on Britain.⁹³

The Boston Committee of Correspondence summed up the two “capital Grievances, which are the fountain from whence every other Grievance flows,” in September 1773.⁹⁴ First, laws were made and a revenue raised without the consent of the people in America. Second, in Massachusetts, that revenue was being appropriated to support the governor and judges in the province, from which it was clear that there was “a fixd Design to make our Executive dependent upon them (America’s enemies) & subservient to their own purposes.” When this letter was

⁹¹ A, *Boston Gazette*, July 26, 1773, in Dorr, Massachusetts Historical Society.

⁹² A, *Boston Gazette*, August 2, 1773, in Dorr, Massachusetts Historical Society.

⁹³ A, *Boston Gazette*, August 9, 1773, in Dorr, Massachusetts Historical Society.

⁹⁴ Boston Committee of Correspondence, “To the Worcester Committee of Correspondence,” September 11, 1773, in Cushing, vol. 3, 50-52.

written, all the justices of the Superior Court, except Chief Justice Oliver, had agreed to accept a salary from the General Assembly, but “this by no means makes it certain whether they intend for the future to depend upon the Crown for Support or upon the Grants of the Gen' Assembly.”

In fall 1773, there was a great deal of uncertainty in Massachusetts because of the insecurity of the people's rights. That insecurity was likewise prompted by the unaccountability of independent magistrates, such as Governor Hutchinson and Chief Justice Oliver. In the “Secret Letters” of those “friends of government,” the Patriots thought they saw the arbitrary nature of the men being raised up to rule over the people of Massachusetts. Even without that evidence, the Patriots had been conditioned by their natural rights upbringing to interpret independent rulers as “monsters in a free state” and a serious threat to liberty. It would have taken men of a saintly disposition, men who stood up for the colonists' rights, to even begin to soften the Patriots' fears of independent governors and judges ruling over them. Instead, the Patriots were convinced the colony was plagued by serpents in its highest offices.

III. Necessity

By winter 1773, some Patriots were beginning to think that all ordinary, legal means of seeking redress had been exhausted. Despite all the Patriots' petitions and resolves, the British government remained resolved to bring the American colonies to heel. Britain was not backing down, if anything, it had increased the severity of its measures in response to ever-increasing levels of resistance in the colonies. News of Parliament's passage of the Tea Act reached Massachusetts by October 1773. The colonial response in Massachusetts, culminating in the Boston Tea Party of December 16, 1773, provides insight into the concept of *necessity*.

According to natural rights doctrines, the people's means of protecting their rights from a tyrannical government are not limited to those means allowed by law. In fact, tyrants are rather adept at twisting the law to act as an instrument of oppression. Thus, if the law fails and they have no other choice, the people are justified in resorting to extra-legal means of resistance.

The Boston Tea Party was understood as an act of necessity by Massachusetts' Patriots. They tried every other method possible to prevent the tea from being unloaded, and when those methods failed, they called upon God to judge the justice of their actions, and dumped a small fortune worth of tea into Boston Harbor. Extra-legal resistance, which the Boston Tea Party most certainly was, may appear to be a criminal act by those looking on from the outside; that is certainly how the British government interpreted the apparently wanton destruction of the East India Company's property. But those who undertake it feel justified in their actions because they have appealed to a higher law, the law of nature and nature's God.

The Patriots' problem with the Tea Act went well beyond the tax on imported tea itself, which the Act actually lowered. Their opposition centered on what the Tea Act represented, the British government's determination to reduce the colonies to arbitrary governments. The Massachusetts Committee of Correspondence, appointed by the House of Representatives, issued a circular letter to committees located in the other colonies on October 21, 1773, shortly after learning about the Tea Act.⁹⁵ The Massachusetts Committee was seriously questioning the effectiveness of the ordinary means of redress they had been using. The latest accounts they had received from Britain showed that the Ministry and Parliament were not even considering a "relaxation" of the grievances which the colonies groaned under, much less a total redress. On

⁹⁵ Massachusetts Committee of Correspondence, "To the Other Committees of Correspondence," October 21, 1773, in Cushing, vol. 3, 62-67.

the contrary, the British government seemed resolved “to pursue their plan of arbitrary power” over America.

It seemed that the members of the Ministry and Parliament considered themselves “*the Sovereign of America*.” The Massachusetts Committee encouraged unity among the American colonies and the withholding of any kind of support from Britain, even in the event of a foreign war, until “the Rights & Liberties which they ought to enjoy are restored, & secured to them upon the most permanent foundation...” Americans must not stop short of a total restoration of their liberty. It would “be debasing to us after so manly a Struggle for our Rights to be contented with a mere *temporary* relieve.” Massachusetts desired to remain united with Britain, but only upon the terms of “Equal Liberty.” That the Ministry did not intend to grant Americans equal liberty could be seen in the recent creation of the Tea Act, which provided a “fresh Instance of the temper & Design of the British Ministry...”

In the face of such persistence by the British government, what options did the Patriots of Massachusetts have left? A Patriot writing as Z reflected on how often his countrymen had “been deluded with vain Expectations of Redress of their Grievances from the British Court...”⁹⁶ While there were surely some good men in Parliament, they were clearly outnumbered. Parliament had “knowingly and deliberately trampled on the Liberties of America” for years. What could Americans expect from such men but “continued Injuries?”

The only source of relief left to Americans was to create a union of American colonies and, through determined resolution, to “force their unjust Oppressors to comply with the Dictates of Reason. How would the colonies exert enough force to bring Britain to terms? They would do

⁹⁶ Z, *Boston Gazette*, October 11, 1773, in Dorr, Massachusetts Historical Society.

so by forming “an Independent State – An American Commonwealth.” Z could see no other plan which would suffice to save American liberty. This plan did not necessarily imply total political independence from Britain, but it would require Britain to recognize America as its equal.

Praedicus regarded the Tea Act as a fresh plot to “fix our chains.”⁹⁷ He even questioned whether the king, who appeared to be complicit in this plot, had not abdicated his throne; for “what prince, sworn to maintain the laws and constitution of his Empire, can connive at such villainy, without abolishing his title to the crown...?” Americans’ “expectations of relief have been too long misplaced.” They could not even fly to the throne for safety. Perhaps it was not yet too late to save liberty in America, but its enemies would have to be “vigorously opposed” by the colonists themselves. The time for waiting for “the issue of petitions at the court of Great Britain” was over. Americans should treat the “extorters of this slavish tribute” (the Tea Act) in the same “just and spirited manner” as they had treated the stamp masters (Stamp Act) years earlier. This was a not-so-subtle allusion to tarring-and-feathering customs officer, then running them out of town.

The Town of Boston issued a set of resolves on November 5, 1773 in response to the Tea Act.⁹⁸ Bostonians considered this act as the most recent evidence of the British government’s plan to “introduce Arbitrary Government and Slavery” in America. The Town regarded the attempt to ship East India Company tea to America, subject to the duty, as “an open attempt to enforce the Ministerial Plan, and a violent attack upon the Liberties of America.” It was “the Duty of every American to oppose this attempt” and “whoever shall directly or indirectly countenance this attempt, or in any wise aid or abet in unloading receiving or vending the Tea

⁹⁷ *Praedicus*, *Boston Gazette*, October 18, 1773, in Dorr, Massachusetts Historical Society.

⁹⁸ Town of Boston, “Resolves,” November 5, 1773, in Cushing, vol. 3, 67-69.

sent or to be sent out by the East India Company while it remains subject to the payment of a duty here is an Enemy to America.” Under no circumstances should the tea be unloaded at a port in Massachusetts.

Ships carrying East India Company tea did arrive outside Boston in late November and this provoked Boston’s Patriots to hold another town meeting, and issue more resolves. Boston’s freeholders met on November 29 and 30, with the primary issue on the docket being how to prevent the “unloading, receiving, or vending” of the tea which had just arrived.⁹⁹ On November 29, the Town voted to send the tea back from whence it came, without the duty being paid. It then informed the owners of the vessels carrying the tea and the consignees, the businessmen responsible for the tea, of the Town’s decision.

When the meeting reassembled on November 30, a proclamation from Governor Hutchinson, concerning their previous vote, was read to those present. Hutchinson informed the Bostonians that he considered them to be “unlawfully assembled.” Appealing to his authority as Governor, which many of those present probably did not recognize, he ordered them “forthwith to disperse and to surcease all further unlawful Proceedings at your utmost Peril.” The immediate response to this proclamation from the freeholders was “a loud and very general Hiss.”

The second response was holding a vote, in which the assembly expressed their resolve *not* to disperse. The assembly then proceeded to carry on its efforts to prevent the unloading of the tea. A captain of one of the ships, and that ship’s owner, were brought before the assembly and a promise to send back the tea was exacted from them, although they protested what they

⁹⁹ Town of Boston, “Account of the Town-Meeting on November 29 & 30,” *Boston Gazette*, December 6, 1773, in Dorris, Massachusetts Historical Society.

considered a promise made under coercion. The owner of a second ship bound for Boston, and currently off the coast of Nantucket, likewise agreed to send back the tea on that vessel.

The Town then encountered an obstacle when the consignees claimed re-shipping the tea was “out of their power.” Despite that refusal, the freeholders approved a resolve that any person who imported tea from Britain, “until the said unrighteous Act shall be repeal’d, he or they shall be deem’d by this Body, an Enemy to his Country...” Boston likewise resolved to “prevent the Landing and Sale of the same, and the Payment of any Duty thereon. And we will effect the Return thereof to the Place from whence it shall come.” The freeholders then expressed their determination by voting to carry out the foregoing resolves “at the Risque of their Lives and Property.” No tea would be unloaded in Boston.

Several other Massachusetts towns met to pass similar resolves against the unloading of East India Company tea. Many of these resolves invoked the colonists’ natural rights to property and to be governed only by laws to which they had given their consent. Dorchester expressed its approval of the conduct of Boston in relation to the tea and the town’s inhabitants assured the public “that should this country be so unhappy as to see a day of trial for the recovery of its rights, by a last and solemn appeal to him who gave them, we should not be behind the bravest of our patriotic brethren...”¹⁰⁰

Brooklyn likewise gave its approval of Boston’s opposition to importing tea designed to raise an unconstitutional revenue and having “a direct tendency to bring the Americans into Slavery...”¹⁰¹ Brooklyn’s inhabitants resolved to give Boston “all the assistance” in their power

¹⁰⁰ Town of Dorchester, November 30, 1773, *Boston Gazette*, December 6, 1773, in Dorr, Massachusetts Historical Society.

¹⁰¹ Town of Brooklyn, December 1, 1773, *Boston Gazette*, December 6, 1773, in Dorr, Massachusetts Historical Society.

in an effort “to oppose and frustrate this most detestable and dangerous tea scheme, and every other that shall appear to us to be subversive of the rights and liberties of America...”

While Brooklyn declared every tea consignee, and anyone else helping to import the tea in America, an “enemy to this country,” the town of Roxbury went so far as to declare those men outside of the town’s legal protection.¹⁰² Those who sought to destroy liberty could not expect the protection of the law. Roxbury’s inhabitants considered themselves duty-bound to “stand fast in that Liberty wherewith the Supream Being hath made them free” and “readily join with the Town of Boston and other Sister Towns, in such Constitutional Measures, as shall be judged proper to preserve and hand down to Posterity inviolate, those inestimable Rights and Liberties handed down to us (under Providence) by our worthy Ancestors.”

Charlestown cited mankind’s natural right, and every Englishmen’s constitutional right, to “dispose of his property either by himself or his representative.”¹⁰³ The Tea Act was a violation of this right. This act was “a striking instance of their (the Ministry’s) determination to persevere in their attacks, and thereby reduce us to the most abject state of wretchedness and slavery.” Boston’s actions in this “alarming crisis” were to be commended and Charlestown stood with Boston, and all their other “oppressed American brethren...” The town’s inhabitants were ready to risk their “lives and fortunes in the support of those rights, liberties, and privileges with which God, nature, and our happy constitution has made us free.”

¹⁰² Town of Roxbury, December 3, 1773, *Boston Gazette*, December 6, 1773, in Dorr, Massachusetts Historical Society.

¹⁰³ Town of Charlestown, December 4, 1773, *Boston Gazette*, December 6, 1773, in Dorr, Massachusetts Historical Society.

Marblehead praised Boston for its “Support of American Liberty” and its firm resistance to the Tea Act.¹⁰⁴ Not to be outdone in expressing its zeal for liberty, Marblehead’s inhabitants pledged that they stood ready with their “Lives and Interest” to assist Boston “in opposing these and all other Measures tending to enslave our Country.” Lexington asserted that if the tea was unloaded in Massachusetts, if the colonists “once admit *this subtle, wicked, ministerial plan* to take place – once permit *this tea*, thus imposed upon us, by the *East India Company*, to be landed, received and vended, by their *consignees, factors &c*, the badge of our slavery is fixed, and the foundation of ruin is surely laid...”¹⁰⁵

Lexington’s inhabitants resolved to work with Boston “in every rational measure, that may be necessary for the preservation, or recovery, of our rights and liberties, as Englishmen and Christians...” They trusted that, with God’s help, “should the state of our affairs require it, we shall be ready to sacrifice our estates and everything dear in life – yea, and life itself, in support of the common cause” of liberty. While these towns, with Boston at their head, were resolved to prevent the unloading of any East India Company tea in Massachusetts, the province’s administration was just as adamant that the tea should be unloaded and the duty on it collected. The result of each side’s determination was the Boston Tea Party, which took place on December 16, 1773.

An account published in the *Boston Gazette* a few days after the Tea Party is representative of how Massachusetts’ Patriots perceived that event.¹⁰⁶ The author, calling himself *An Impartial Observer*, argued that the actions taken on December 16 were taken out of

¹⁰⁴ Town of Marblehead, December 7, 1773, *Boston Gazette*, December 13, 1773, in Dorr, Massachusetts Historical Society.

¹⁰⁵ Town of Lexington, December 10 & 13, 1773, *Boston Gazette*, December 20, 1773, in Dorr, Massachusetts Historical Society.

¹⁰⁶ An Impartial Observer, *Boston Gazette*, December 20, 1773, in Dorr, Massachusetts Historical Society.

necessity. According to the author, “every possible step was taken to preserve this property.” But the people of Massachusetts were determined to defend their rights and, when given the choice between destroying the tea and allowing their own liberty to be destroyed, they chose to destroy the tea. The author placed the blame for that destruction on the governor, the consignees, and the customs officers; all of whom had opposed the people’s attempts to re-ship the tea. The inhabitants of Boston had assembled at a town meeting on December 14, and resumed that meeting on December 16, in order to pursue every peaceful method in their power to get the tea sent back to Britain.

All those peaceful attempts failed. Those assembled at Boston’s town meeting had convinced one of the ship owners to apply for a “clearance,” allowing the ship to exit the harbor and sail back to Britain with its cargo of tea still on board. But the custom’s officers refused that request. The ship owner was then instructed to apply directly to Governor Hutchinson for a “pass,” allowing the ship to go by Castle William and leave the harbor. This was also refused. When news of that refusal reached the town meeting, the assembly dissolved. There was nothing left for them to do from a legal standpoint. Just previous to the assembly dissolving, “a number of persons, supposed to be Aboriginal Natives from their complexion,” appeared outside the meeting. Before the meeting was even brought to an official close, those “Savages” made their way to the ships containing the “pestilential Teas.”

These supposed “Natives” proceeded to break open 342 chests of tea and dump the contents into Boston Harbor. During this action, “not a single ounce of tea was purloined or carried off.” A number of other goods were located on the ships, none of which were destroyed. The “Savages” were only concerned with the tea and showed marked restraint in relation to all other forms of private property. They even replaced a small lock, belonging to one of the ship

captains, which was broken during the incident. It appeared that these “Natives” were men acting upon higher principles than those of simple vandals and malcontents. The people of Massachusetts had no other option on December 16, “a fatal necessity has rendered this catastrophe inevitable – the landing the tea would have been fatal, as it would have saddled the colonies with a duty imposed without their consent & which no power on earth can effect.”

Samuel Adams provided an overview of the Boston Tea Part to Arthur Lee in a letter written on December 31, 1773.¹⁰⁷ Adams recounted the multiple efforts made by Bostonians to get the tea re-shipped to Britain, all to no avail. Adams also pointed to the printed accounts of Boston’s town meeting as evidence that “the people were resolved that the tea should not be landed, but sent back to London in the same bottom; and the property should be safe guarded while in port, which they punctually performed.” Blame for the tea’s destruction should be laid at the feet of the governor, the consignees, and the customs officers; they were the ones who frustrated all attempts to re-ship the tea. After the failure of their peaceful attempts to prevent the unloading of the tea, the Bostonians proceeded to dump 342 chests of tea in the harbor, “without the least injury to the vessels or any other property.” Adams told Lee that he could not “imagine the height of joy that sparkles in the eyes and animates the countenances as well as the hearts of all we meet on this occasion; excepting the disappointed, disconcerted Hutchinson and his tools.”

Josiah Quincy Jr., writing as *Marchmont Nedham*, likewise argued that the tea’s destruction was caused by the “wantonness and obstinacy” of the Governor and consignees.¹⁰⁸ Quincy claimed that the people had been “temperate and patient,” they had tried appealing to reason and crafting resolutions in their efforts to seek redress for their grievances. Their efforts in

¹⁰⁷ Samuel Adams, “To Arthur Lee,” December 31, 1773, in Cushing, vol. 3, 73-77.

¹⁰⁸ Josiah Quincy Jr., “Marchmont Nedham,” *Boston Gazette*, December 20, 1773, in Dorr, Massachusetts Historical Society.

that regard had been treated with insult and contempt, but that did nothing to weaken their resolve. When they were left with no other choice, “when the exigency of the times increased and *resolutions alone* were vain, they proceeded to action with order and discretion; and executed *the only remaining duty*, without unnecessary outrage and intemperate revenge.”

It appeared that Governor Hutchinson interpreted events differently. The Governor was talking of “treason” and “rebellion;” of the necessity of an “armed force” being deployed in the province. Quincy claimed that he did not pretend to be an expert on the law, but he was sure that “if to appear for my country is treason, and to arm for its defence is rebellion; like my fathers, I will glory in the name of rebel and traitor, as they did in that of Puritan and Enthusiast.” Governor Hutchinson and the other supporters of government should remember that, “when this people are driven to desperation, *they who abuse them*, will no longer dwell in safety.” If the people were pushed too far, there would be a reckoning for the tyrants and tools who pushed them beyond the limits of their patience.

As 1773 drew to a close, a Patriot writing under the name *Union* asked the supreme question facing America, how would its liberty be preserved?¹⁰⁹ Americans had been given their freedom by God and it was their duty to defend it. They stood upon a precipice. It was time for the people to determine whether they would “lose what liberty they have got, or recover what they have lost.” The province of Massachusetts itself had lost much, meaning they had much to regain:

“we had a first charter, we have not; we had a free trade, we have not; we had all our commodities from England without duty, we have not; we had streets free from slaves and pensioners, we have not; we had judges free from undue influence, have we now? We had an independent governor (not dependent on the

¹⁰⁹ Union, *Boston Gazette*, December 27, 1773, in Dorr, Massachusetts Historical Society.

Crown), we have not; we had affection for the mother country, we have not; we had a castle, we have not; enough: For if ever human patience was tortured to resentment, the patience of this country is. We have already suffered with too much pusillanimity, we can redress ourselves if we will; and what the people wills shall be effected.”

No time should be lost in forming “a Congress or meeting of the American states...” A union of American states was the method by which Americans should seek redress and nothing short of that would do. Americans could allow themselves to be reduced to being “senseless slaves” who embraced “the tyrant’s rod” or they could stand firm in defense of a “state of freedom,” which is “the reign of God.” One thing was certain, necessity had now driven Americans to seek more drastic means of preserving their liberty.

Conclusion

This chapter explored three main points in relation to the events of 1770-1773. First, the Boston Massacre became the prime example for the Patriots of the *consequences of suppression*. The Patriots believed that their fellow-citizens had been murdered by soldiers from a standing army, an army which was in Massachusetts without the consent of the people and with the express purpose of using force to bend the colonists to the will of an arbitrary government. Second, the political debates of 1770-1773 were dominated by arguments over the issue of *independent magistrates*, rulers who are not accountable to the people over whom they govern. With their background in natural rights doctrines, the Massachusetts Patriots believed in the absolute necessity of keeping rulers accountable to the people. A loss of accountability for magistrates meant a corresponding loss of security for the rights of the people.

This debate exposed a significant tension between Crown authority and self-government in Massachusetts' Second Charter (1691). With many key officials in the province, such as the governor and judges of the Superior Court, being appointed by the Crown, the accountability of those magistrates was severely limited. And that was before the British Ministry resolved to govern the colony through *instructions* sent to Governor Hutchinson, superseding the Charter, and to provide key civil officers in the province with Crown salaries funded by revenue taken from Americans without their consent. Massachusetts' Patriots regarded the Assembly's control over the salaries of the province's magistrates as the only constitutional check which they possessed on officers appointed by the king. Take away that check and Massachusetts' political system would be changed to an absolute monarchy.

Third, the Boston Tea Party serves as an example of the transition between legal and extra-legal means of seeking redress which was taking place throughout the political struggle between America and Britain. This transition is aptly summed up in the concept of *necessity*. According to natural rights doctrines, once all legal means of redress are tried and fail, the people may use force to defend their rights against a tyrannical government. In many ways, the Boston Tea Party was an *appeal to heaven*, with the Massachusetts Patriots calling upon God to judge the righteousness of their actions. This appeal, involving only the destruction of British property, foreshadowed the greater appeal made by the American colonies in 1776.

There was still some hope among Massachusetts' Patriots, however faint, that their earthly judges could be restored to reason in 1773. That hope would be destroyed by Britain's punitive response to the Boston Tea Party in 1774; leading the colonists to call upon God as their judge when they took up defensive arms in 1775, and again when Massachusetts joined its sister-

colonies in declaring independence in 1776. The hand of tyranny was becoming too heavy for Americans to bear.

Chapter 7: An Appeal to Heaven

There cannot remain a doubt in any man , that will calmly attend to reason , whether we have a right to resist and oppose the arbitrary measures of the King and Parliament; for it is plain to demonstration, nay, it is in a manner self -evident, that they have been and are endeavoring to deprive us not only of the privileges of Englishmen , and our charter rights, but they have endeavored to deprive us of what is much more sacred, viz., the privileges of men and Christians; i.e., they are robbing us of the inalienable rights that the God of nature has given us as men and rational beings... they have endeavored to deprive us of the sacred charter of the King of Heaven. But we have this for our consolation: the Lord reigneth; he governs the world in righteousness, and will avenge the cause of the oppressed when they cry unto him. We have made our appeal to Heaven, and we cannot doubt but that the Judge of all the earth will do right.¹

The Massachusetts Patriots understood the American Revolution as an *appeal to heaven*.

This principle that the people had a right to resist, and even take up arms against, tyrannical magistrates was deeply ingrained in natural rights doctrine. For hundreds of years, natural rights theorists had promoted the right of resistance by the people and based that right on man's natural right of *self-preservation*. God had granted men their rights to life, liberty, and property; and He had also granted them the right to act in defense of those invaluable blessings.

The Patriots' understanding of natural rights as the foundation of their civil rights, and of all civil authority, was a decisive influence on their perception of the political struggle between Britain and the American colonies in the 1760-1770s. Indeed, it was the grounding of Patriot thought on natural rights doctrines that led to the transition from resistance to revolution. Natural

¹ Samuel West, "Election Sermon," May 29, 1776, *The Pulpit of the American Revolution*, edited by John Thornton (Boston: D. Lothrop & Co.), 304-305.

rights doctrines shaped how the Patriots understood events and the actions they took in response to those events. Simply put, natural rights provided the foundation for American freedom.

All of the many concepts examined throughout this treatise culminated in The Declaration of Independence being approved on July 4, 1776. First, for the Patriots, natural rights provide the foundation for civil rights. Second, the principle of constitutional supremacy maintains the accountability of rulers to the people, thus ensuring the security of the people's rights. Third, civil authority is derived from a covenant-contract made between the members of a community and rests on the consent of the governed. That consent is codified in a constitution, containing the fundamental laws under which the people have agreed to live. The Massachusetts Patriots understood their colony's Charter as being one such covenant-contract-constitution.

Fourth, the principle of conditional obedience limits the authority of rulers to those powers granted to them by the constitution and absolves the people from obedience to rulers who go beyond their lawful authority. From the Patriots' perspective, nearly every action taken by the British government since the passage of the Sugar Act (1764) and Stamp Act (1765) was taken in violation of the constitution. Thus, the British government's attempts to exercise increased control over the colonies were exercises of power without authority, meaning the American colonists were not obligated to obey those actions. Britain had attempted to tax the colonies without consent, suppress resistance with force, and make colonial magistrates independent of the people. Combined, these actions amounted to a subversion of the charter-constitutions under which Americans lived. According to the principle of conditional obedience, Americans were not only justified in declining obedience to the unconstitutional actions taken by the British government, they could also actively resist those actions.

This chapter will focus on two concepts for the years 1774-1776. First, it will apply the concept of the *dissolution* of government to the situation in Massachusetts following Parliament's passage of the Coercive Acts, aka the Intolerable Acts, in spring 1774. Parliament implemented these severe measures in response to the Boston Tea Party and the measures were intended as a punishment for Massachusetts' disobedience to British authority. Taken collectively, the Coercive Acts were the final straw which broke the constitution. In these acts, the British government attempted to enforce its claim of absolute authority over the colonies by force. All subtlety was discarded and Massachusetts' Charter was annulled. In the eyes of the Patriots, lawful government in Massachusetts had been dissolved; it had ceased to exist when the constitution was destroyed by the outright tyranny of the Coercive Acts.

Since government was dissolved in Massachusetts, all Crown officers acting in accordance with the Coercive Acts had lost all lawful authority over the people of Massachusetts. The colonists were reduced to living under a tyranny, implying arbitrary rule by unaccountable magistrates. This was a status directly contrary to living under a government, which implies the rule of law and accountability. Thus, Massachusetts was without a government by the summer of 1775.

The dissolution of government in Massachusetts set the stage for the second focus of this chapter, an *appeal to heaven*. All extra-legal resistance by Americans to the British government, from mobs protesting the Stamp Act to the Boston Tea Party, can be properly understood as appeals to heaven. The very nature of the imperial political system seems to have made appeals to heaven necessary for Americans to defend their rights. This was due to a major flaw in the imperial system, the limited accountability of Crown officers to the people over whom they governed.

Governors and certain other civil officers were appointed by the Crown and served at the king's pleasure, with no legal means for colonies to remove bad magistrates. In addition to that, there was no legal authority established within the British Empire which could act as an impartial judge between the British government and the colonies. According to the theory of Parliamentary supremacy, which dominated in Britain, Parliament was the final judge of all political disputes. The problem was that this made Parliament absolute and arbitrary, its members became a law unto themselves. American Patriots had rejected that doctrine and instead supported constitutional supremacy, making the social covenants-contracts supreme.

But there was still no constitutionally appointed judge to decide disputes between Britain and the colonies, making the people the final arbiter by default. Since all civil authority is originally derived from the people, that makes the people the supreme judge, under God, of their government's adherence to the social covenant-contract. Since this was not expressly stated in the colonial charters, and many colonial magistrates were unaccountable to the people, this position made extra-legal resistance into a necessity in cases when the British government rejected colonial petitions for redress of grievances. When faced with persistent British tyranny, the people of Massachusetts, and America as a whole, had only one viable option for defending their rights. The people had no choice but to appeal to heaven, asking God to recognize the justice of their cause.

I. An Appeal to Heaven

The Declaration of Independence was the culmination of America's appeal to heaven. But, properly speaking, that appeal had begun long before July 4, 1776. In Massachusetts, armed resistance to the British government was being promoted as early as the fall of 1774. With the failure of all peaceful methods of resisting British tyranny, and the recent passage of the Coercive Acts, the Patriots of Massachusetts were ready to take up arms in defense of their natural and constitutional rights. That decision to take up defensive arms led to the first battles of the Revolutionary War, Lexington and Concord (April 19, 1775) and Bunker Hill (June 17, 1775), being fought in Massachusetts.

The attempted impeachment of Chief Justice Peter Oliver by the House of Representatives represents how every legal means of resistance had been exhausted by Massachusetts' Patriots. Oliver was the only justice of the Superior Court who refused to accept an Assembly salary, resolving to receive his support from the Crown instead. In February 1774, Oliver became the object of the House's campaign against independent magistrates. In mid-February the House passed a resolve condemning Oliver's decision to be supported by a Crown salary.² According to the House, this was contrary to the Charter, and thus, unconstitutional. By accepting an unconstitutional salary, Oliver had disqualified himself from holding office in Massachusetts. He should be removed from office forthwith. This resolve passed by a vote of 96-9.

² Massachusetts House of Representatives, "Resolves on Peter Oliver," *Boston Gazette*, February 14, 1774, in Dorr, Massachusetts Historical Society.

The House formally submitted articles of impeachment against Oliver for “high crimes and misdemeanors” on February 24.³ The representatives based their case on the Charter, which stated that the General Court controlled both the creation of courts within the province and the salaries of government officers. Oliver’s acceptance of a Crown salary, in willful defiance of the Charter, proved his guilt in the attempt to “subvert the constitution of this province” and “introduce into the said court a partial arbitrary and corrupt administration of justice...” His acceptance also gave legal sanction to Parliament’s attempts to collect and apportion an American revenue, an action which was “a most destructive infraction of the constitution of this province, and a violation of the natural and constitutional rights of the people...” The vote for impeachment passed by margin of 92-8.

The House then ran into a legal obstacle when Governor Hutchinson refused to hold an impeachment trial. The House attempted to remind the Governor of his duty in early March 1774.⁴ By Charter, the Governor and the Council possessed the power of appointing judges and other civil officers in Massachusetts. Based on that provision in the Charter, the Governor and Council possessed the “power of removal.” While that power was not “expressed” in the Charter, it was an “implied” power which the colony’s government must possess by necessity.

For Massachusetts’ constitution to function correctly, there must be a “supreme court” possessing the power to remove civil officers found guilty of high crimes and misdemeanors. The Governor and the Council, acting collectively, were that supreme court. Since Massachusetts’ Charter was the “epitome of the English Constitution,” the House argued that

³ Massachusetts House of Representatives, “Articles of Impeachment Against Peter Oliver,” February 24, 1774, *Boston Gazette*, March 7, 1774, in Dorr, Massachusetts Historical Society.

⁴ Massachusetts House of Representatives, “To the Governor- With Reply,” *Boston Gazette*, March 14, 1774, in Dorr, Massachusetts Historical Society.

their impeachment of Oliver followed the example of the English House of Commons, which had frequently impeached high-ranking civil officers. The House believed that impeachment by the commons, followed by a trial before the Governor and Council, was a necessary practice if the supremacy of the constitution was to be preserved.

Governor Hutchinson seems to have disagreed. He sent the House and Council a message abruptly closing the Assembly on March 9, 1774. Hutchinson accused both houses of issuing public votes and resolves which struck “directly at the honour and authority of the King and of the Parliament...” He cited his “duty to the king” in defense of his decision to close the Assembly. It was his duty to prevent the Assembly from “proceeding any further in the same way,” presumably the path of treason. The Assembly’s attempt to use impeachment as a legal means of making magistrates accountable to the people had failed. The method was blocked by a governor who was unaccountable himself, and who honestly, was likely next on the House’s list of magistrates to impeach.

The Massachusetts Committee of Correspondence reflected on this failure in a letter to Benjamin Franklin on March 31.⁵ Their attempt to prevent an absolute government had been blocked by a governor who refused to try Oliver, presumably because the Governor “received *his* support from the Crown.” The Committee despaired of any “constitutional remedy” against corrupt civil officers when the governor was independent of the people and dependent on the Ministry. The Committee told Franklin that “it will be in vain for any to expect that the people of this Country will now be contented with a partial and temporary relief...” The people of America

⁵ Massachusetts Committee of Correspondence, “To Benjamin Franklin,” March 31, 1774, in Cushing, vol. 3, 85-92.

were “united in sentiment and their opposition to unconstitutional Measures of Government is become systematical.”

Americans still hoped for a harmonious political union with Britain, but only “upon the condition of equal liberty.” If that condition was not met, reconciliation would be impossible. The people of Britain were not the “Sovereign of America,” each colony was a distinct government united under a common sovereign, the king. Each colony also possessed its own constitution, expressed in its charter and based on the principles of the British constitution, and requiring representation before any political body could claim authority over the people. Britain could not claim authority over America consonant with the principles of its own constitution or the laws of nature, so it had decided to “employ Fleets and Armies for the Support of a claim which she cannot in Reason defend...” If the colonies were to defend their constitutions from armed aggression it would take more than appeals to reason, it would require an appeal to arms and the God of Hosts.

Massachusetts’ constitution was placed in real danger when Parliament began passing the Coercive Acts in spring 1774. News of these acts reached Massachusetts in May and June, eventually leading the Patriots to conclude that their province’s government had been dissolved. The Boston Port Act, set to go into effect on June 1, 1774, effectively closed Boston’s harbor and ended all maritime trade for the city.⁶ The only exceptions were for food and fuel, but even ships carrying those necessities had to stop at Salem and be searched before docking in Boston. Parliament cited the “dangerous commotions and insurrections” taking place in Massachusetts,

⁶ British Parliament, “Boston Port Act,” *Boston Gazette*, May 16, 1774, in Dorr, Massachusetts Historical Society.

the destruction of the East India Company's tea, the obstruction of lawful trade, and the inability of customs officers to collect duties as the reasons for this act.

Anyone found violating the Port Act was subject to severe penalties, in the form of fines and forfeitures, and was to be prosecuted by Crown officers. Parliament and the King did set conditions for the reopening of Boston's harbor, but those conditions were anything but clear. Boston's harbor could reopen when the King, with the advice of his Privy Council, judged that "peace and obedience to the laws" had been restored to Boston. The King was also the judge of a second condition, that "full satisfaction" be made by the town of Boston, or on its behalf, for the losses suffered by the East India Company and Crown officers who suffered in several riots which happened in November and December 1773. The restoration of "peace and obedience" and "full satisfaction" were somewhat ambiguous terms and the Patriots of Massachusetts expected that those terms implied a total submission to British authority as the central condition for the Boston Port Act being repealed.

The Administration of Justice Act allowed military and civil officers in Massachusetts who were accused of murder or other capital offenses, committed in the exercise of their duty, to be tried in another colony or even in Britain.⁷ Parliament's justification for this act was its assertion that, in Massachusetts, "an attempt hath lately been made to throw off the authority of the Parliament of Great Britain... and an actual and avowed Resistance, by open Force, to the Execution of certain Acts of Parliament, hath been suffered to take place, uncontroled and unpunished in Defiance of His Majesty's Authority, and to the utter subversion of all lawful Government." In Parliament's view, a trial by jury in Massachusetts would not be impartial. No

⁷ British Parliament, "Administration of Justice Act," *Boston Gazette*, June 6, 1774, in Dorr, Massachusetts Historical Society.

British officer, military or civil, should be tried by subjects who had rejected the authority of the laws. Once again, the central issue at stake was British authority.

The Quartering Act required Massachusetts to provide shelter and basic supplies to British troops stationed within the province. The act also put the enforcement of this act in the hands of the governor. Massachusetts was to have a standing army, supported by money extorted from the people without their consent.⁸

The act with the most far-reaching implications was the Massachusetts Government Act, which effectively revoked the colony's Charter and fundamentally altered its political system.⁹ Parliament asserted that Massachusetts' political system, under the Charter, was a poor system of government because it did not promote the "just subordination" and dependence of the colony on Britain or adequately maintain peace and good order. The Government Act altered the Council, doing away with elections by the House and providing for the direct appointment of councilors by the Crown. The members of the Council would serve at the king's pleasure.

Next, a number of civil offices were placed under the direct control of the governor. "Judges of the Inferior Court of Common Pleas, Commissioners of Oyer and Terminer, the Attorney General, Sheriffs, Provosts Marshals, Justices of the Peace" and additional officers were now to be appointed and removed by the governor, without requiring the consent of the Council. The act went on to ban town meetings anywhere in the province, except under stringent conditions. Massachusetts' towns were allowed to hold a single annual meeting for the election of local officers, but could conduct no other business during that annual meeting. If a town

⁸ Middlekauff, *The Glorious Cause*, 236-237.

⁹ British Parliament, "Massachusetts Government Act," *Boston Gazette*, June 6, 1774, in Dorr, *Massachusetts Historical Society*.

wanted to hold a meeting at any other time of the year, it had to receive the governor's consent first.

The act also altered how jury trials would operate in Massachusetts. Juries were to be "returned," i.e. selected, by county sheriffs, who were appointed by the governor, instead of being returned by town constables. The Massachusetts Government Act had altered the fundamental laws of the colony's constitution and self-government in Massachusetts was severely restricted. An elected assembly would still be allowed to meet, but its teeth had been pulled. Town meetings could be held, but could not be used to express dissatisfaction with the provincial government. Political power in Massachusetts would be held almost exclusively by Crown officers or those appointed by Crown officers. To the Patriots of Massachusetts, this amounted to leveling the foundations of the colony's constitution and building an absolute government upon the ruins of freedom.

The leader of that absolute government in Massachusetts was to be General Thomas Gage. Gage arrived in Massachusetts with a commission to replace Thomas Hutchinson as governor in May 1774. In obedience to his commission, Gage was determined to enforce the Coercive Acts and restore Massachusetts to a state of obedience, instead, the colony moved closer to a state of war over the next year. The inhabitants of the colony, but especially the citizens of Boston, were convinced that they were "Suffering the Stroke of Vengeance in the Common Cause of America."¹⁰ But while Massachusetts had been singled out for immediate ministerial vengeance, the assault being made upon liberty was "doubtless design'd for every

¹⁰ Boston Committee of Correspondence, "To the Colonies," May 13, 1774, in Cushing, vol. 3, 107-109.

other Colony, who will not surrender their sacred Rights & Liberties into the Hands of an infamous Ministry.”¹¹

An anonymous article in the *Boston Gazette* pointed to the “unparalleled tyranny” of the Boston Port Act, which exhibited to every town and colony in America what could be expected “from a government that claims an unbounded authority over us...”¹² The “reasons” for Massachusetts’ resistance to Parliamentary taxation were indisputable and had been answered by “meer brutal force,” and “of this force Boston is destined to be the first example.” At the moment, the vengeance of a tyrannical government was falling upon Massachusetts, but its sister-colonies should view its treatment as “a specimen of what they may expect after we are subdued...” Britain was attempting to extract a “Renunciation of Rights” from Massachusetts through “military torture.”

Perhaps the most in-depth examination of the consequences of the Boston Port Act and the presence of a standing army in Massachusetts came from Josiah Quincy Jr. Quincy published his *Observations on the Boston Port-Bill; With Thoughts on Civil Society and Standing Armies* in mid-May 1774. According to Quincy, the Port Act was a prime example of how resistance to Parliament’s so-called authority had become dangerous. If the British government could be so severe in its punishment of an entire town, which it had sentenced without a trial, the execution of a single man for resisting its authority would be an easy matter. With the Port Act, Parliament had exhibited its determination to rule by the sword and violently suppress any resistance.¹³

¹¹ Boston Committee of Correspondence, “To the Philadelphia Committee of Correspondence,” May 13, 1774, in Cushing, vol. 3, 109-111.

¹² “On the Boston Port Act,” *Boston Gazette*, May 16, 1774, in Dorr, Massachusetts Historical Society.

¹³ Josiah Quincy Jr., *Observations on the Boston Port-Bill; With Thoughts on Civil Society and Standing Armies*, Boston: May 14, 1774, Evans Early American Imprints, 3, 9, 19-20.

Instead of basing its authority over America on reason and truth, which were not on its side, Britain was claiming “the power of passing laws merely on her own authority.” A standing army had been sent into Massachusetts to enforce that authority, bringing spoil and slaughter and then calling the result “government;” spreading general devastation throughout the country and calling it “peace.” Standing armies, the ever-present aid of tyrants, were being used in America to put Parliament’s Declaratory Act into execution. All the evil consequences which the people of Massachusetts were currently suffering had their source in Parliament’s claim of absolute authority over the American colonies.

Once those armies had enforced obedience to the British government, the colonies would be left with nothing but the “formalities” of a free state, while enduring a system which served the “ends” of a despotic state. Subordinate colonial legislatures, such as the Massachusetts Assembly, would be pointless and lack any real power. They would only serve to aid the “fatal delusion” meant to distract Americans from the reality of being ruled by a Parliament which was without control and without accountability to the people of America. The constitutions of the colonies had been subverted and the social compacts upon which those political systems rested had been destroyed.¹⁴

Quincy reminded his readers that it was tyrants who were “rebels against the first laws of Heaven and Society” and that “to oppose their ravages is an instinct of nature—the inspiration of GOD in the heart of man.” Opposition to tyranny was not treason, it was obedience to God. The defenders of liberty could consider “the LORD OF HOSTS as their leader, and his angels as fellow-soldiers...” The American colonies must be united in their resistance, for Americans

¹⁴ Ibid., 17, 21, 31-32.

would stand or fall together. They must not be terrified into obedience by the terror of arms, the axe and the scaffold; or deceived into obedience by wolves in sheep's clothing and tyrants dressed as "men" in the colonies, who encouraged British oppression and American slavery. Resistance to tyranny would require a hard struggle, but Americans possessed "courage and swords," the two most fundamental means of preserving liberty.¹⁵

As spring turned into summer and the full, monstrous nature of the Coercive Acts was revealed when the Massachusetts Government Act and the Administration of Justice Act became public knowledge, a number of concerned Patriots, including many of the colony's ministers, voiced their opposition to acts which effectively dissolved the constitution. The language of constitutional supremacy and conditional obedience pervades these documents. Gad Hitchcock preached the election sermon on May 25, 1774, in the presence of Governor Thomas Gage and the Assembly, on Proverbs 29:2, "When the righteous are in authority, the people rejoice: but when the wicked beareth rule, the people mourn." Hitchcock reminded the colony's political leaders that government was based on compact and that the people must give their consent to the constitution under which they are to live.¹⁶

The people of Massachusetts had chosen to live under a mixed constitution, a copy of the British Constitution. In such a system, each ruler has distinct powers assigned to them by the people, who are the original source of civil authority. The people also possess an "original right" to choose their rulers and may "resume" that right if they judge that their rulers are abusing civil power. Rulers are "trustees" and hold their power under limited conditions, being accountable to both God and the people for their adherence to those terms. The people possess yet another right,

¹⁵ Ibid., 13

¹⁶ Gad Hitchcock, *Election Sermon*, May 25, 1774, Evans Early American Imprints, 2-4.

“self-preservation,” and can justly resist rulers who refuse to be bound by the laws of the land. Who could argue against these principles? After all, these were the “Revolution principles” upon which the present king’s right to the throne was founded.¹⁷

Hitchcock’s application was highly critical of the British government’s attempts to gain increased control over Massachusetts. He praised the conduct of the people’s representatives, the House and Council, for their defense of the people’s natural rights and the constitution. Governor Gage was reminded that, while he was appointed by the king and not the people, he was obligated to rule according to the terms of Massachusetts’ charter-constitution. If he did so, the people of Massachusetts would yield ready obedience to his actions as their chief magistrate. Would Gage instead become an instrument of tyranny, ready and willing to serve his masters in the Ministry? It is important to note that the Government and Justice Acts had not yet become public knowledge in Massachusetts by May 25. There was no question of Gage’s loyalties after those acts were revealed.

Hitchcock was certain that Massachusetts’ “danger is not visionary, but real.” The people of the colonies were not contending with Britain for trivial causes, “our contention is not about trifles, but about liberty and property; and not ours only, but those of posterity, to the latest generations.” Hitchcock was also certain that there was a plan afoot to strip Americans of their liberty and property. He argued that, “if I am mistaken in supposing plans are formed, and executing, subversive of our natural, and charter rights, and privileges, and incompatible with every idea of liberty, all America is mistaken with me.” In Hitchcock’s estimation, the existence of those plans made it essential for the people’s representatives to assert the rights of the people

¹⁷ Ibid., 7-13.

and maintain the integrity of the constitution. In doing so, the representatives would be acting on behalf of the entire community and of God Himself.¹⁸

John Lathrop preached the artillery sermon on June 6, 1774, drawing upon Romans 12:18, “If it be possible, as much as lieth in you, live peaceably with all men.” Lathrop pointed out that this admonition to exercise patience and forgiveness, when possible, implied that there would be cases in which it was “impossible,” even for a Christian, to live peaceably. Christ, the prince of peace, does not require his followers to “be quiet, and tamely submit to insults and abuses” in all cases. In Lathrop’s view, there may be cases in which a Christian not only could, but “ought to unsheath the sword and *resist unto blood*,” for “Christians have natural rights as well as other men, and it can be no less their duty to defend those rights against the encroachments of tyrants and oppressors, after having professed their subjection to the Son of GOD, than it was before.”¹⁹

Lathrop expounded resistance to tyrants as one of the situations in which it was impossible for a Christian to live peaceably with all men. When a tyrant arises and threatens the lives, liberties, and property of the members of a community, those citizens have a right to defend themselves. Tyrants, by definition, seek “absolute dominion” over their fellow-men and attempt to place themselves above the law. They break the conditions of the “original compact” which the people consented to and commit “treason” against the state and constitution; “these compacts which lie in the foundation of all civil societies, may not be disturbed: A single article

¹⁸ Ibid., 18-21.

¹⁹ John Lathrop, *Artillery Sermon*, June 6, 1774, Evans Early American Imprints, 2.

may not be altered but with the consent of the whole body. — Whoever makes an alteration in the established constitution, whether he be a *subject* or a *ruler*, is guilty of treason.”²⁰

Lathrop applied these principles to English history, with its many examples of resistance to tyrants, culminating in the Glorious Revolution. He then applied the lesson to recent American history. Americans were loyal to the constitution first and foremost, rejecting the claims of Parliament’s “omnipotence.” American resistance to Parliament would be justified since the principle that “we may and ought, to resist, and even make war against those rulers who leap the bounds prescribed them by the constitution, and attempt to oppress and enslave the subjects, is a principle on which alone the great revolutions which have taken place in our nation can be justified.”²¹

The British scheme for establishing an American revenue, and then punishing Boston for resisting that unconstitutional taxation, was a prime example of rulers leaping over the limits of the law. While Lathrop advocated non-importation as the means of resistance, he finished his sermon with an admonition on “the necessity of preparing for unavoidable war.” America had been settled on the principles of loyalty and freedom and its soldiers must always act in subordination to the laws of the land. America’s soldiery should take the form of a militia, raised in defense of the people’s rights. This militia would be ready to fight *pro aris et focis* (“for hearth and home” or “for God and Country”).

The militia would fight “for their fathers and mothers, — for their wives and children, — for their private property, — for their liberty, — their religion, and the honour of their GOD.” Americans would not draw the sword in an unrighteous cause. Lathrop’s sermon is a great

²⁰ Ibid., 5-8.

²¹ Ibid., 9-10.

example of the *moral certainty* which was already well-developed among the Patriots by 1774. They had few, if any, doubts that God was on their side and would judge them righteous if they made an appeal to heaven.²²

Before learning of the Government and Justice Acts, the Patriots did appeal to Governor Gage to be a constitutional governor. The House of Representatives responded to Gage's speech opening the summer 1774 legislative session with a message in which, in the midst of the usual political platitudes, they requested that Gage "make the known Constitution and Charter of the Province the Rule of your Administration."²³ *A Freeholder in the County of Suffolk* wrote several messages to Governor Gage in the *Boston Gazette*. On July 4, the *Freeholder* reminded Gage that the people over whom he was to govern knew of "no authority but that which is derived from the law of the land... and whenever a magistrate goes beyond the limits of the law, or attempts to do that which the law does not authorize him to do, he cannot in that *attempt* be considered as a magistrate..."²⁴

Because the constitution is supreme, magistrates who go beyond the law have no lawful authority. If Gage wanted the people to obey him, he should first make the "law of the land the rule of his conduct." The people would not be intimidated into obedience by the closure of Boston's harbor or the presence of armed troops. Their ancestors had come to America "to enjoy the rights of men and Christians" and the present generation still considered "their lives and fortunes less dear than their liberties and religion..."

²² Ibid., 12-16.

²³ Massachusetts House of Representatives, "Message to the Governor," *Boston Gazette*, June 13, 1774, in Dorr, Massachusetts Historical Society.

²⁴ *A Freeholder in the County of Suffolk*, "To His Excellency Governor Gage," *Boston Gazette*, July 4, 1774, in Dorr, Massachusetts Historical Society.

On August 1, the *Freeholder* pointed out to Gage that the Government and Justice Acts, if enforced, would destroy Massachusetts' Charter.²⁵ The other colonies had not failed to perceive that "the same Stroke which destroys the Charter of this Colony, mortally wounds their Charters." Nor had the people of Massachusetts failed to perceive that the "same Power which can essentially alter their Charters, can with equal Justice annihilate them..." If that happened, what security would the people have left for their lands and property? The people would regard an attempt by Gage to put the Government and Justice Acts into execution as "an Attempt to cut them intirely off from the Face of the Earth."

John Allen, writing as *The British Bostonian*, issued a pamphlet in the summer of 1774 entitled *The Watchman's Alarm: Or, the British Parliamentary Boston Port-Bill Unwrapped*. The primary text of this pamphlet was drawn from Isaiah 21:11-12²⁶ and Allen wrote in the style of a prophetic call to the Lord's people in light of the British government enforcing the Port Act. Allen defined civil liberty as "the people's inherent right to enjoy; namely, all the privileges of their laws according to their compact with their King..." This was a right which Allen argued was "ever inherent in the people, and cannot be given to kings, nor taken away by any parliament whatsoever; the enjoyment may, but the right cannot; its creation is natural and rises with every generation." Civil liberty was a "power of the people *which binds kings in fetters and nobles in irons*." Rulers are bound to govern in accordance with the terms of the original compact.²⁷

²⁵ A Freeholder in the County of Suffolk, "To His Excellency Governor Gage," *Boston Gazette*, August 1, 1774, in Dorr, Massachusetts Historical Society.

²⁶ Isaiah 21: 11-12, "The burden of Dumah. He calleth to me out of Seir, Watchman, what of the night? Watchman, what of the night? The watchman said, The morning cometh, and also the night: if ye will inquire, inquire ye: return, come."

²⁷ John Allen, *The Watchman's Alarm*, Summer 1774, Evans Early American Imprints, 3.

Those terms had been violated by the British Ministry, and thus, the compact had been broken. Allen compared the British Ministry to the wicked rulers of ancient Israel described in Micah 7:3.²⁸ The Ministry had “wrapped up our harbor, our common, our castle, our trade, our wharves, our ships,” they had wrapped up “our charter rights, liberties, and constitutional privileges... What more would they have?” Apparently, the Ministry would not be content until their tyrannical political system had been carried to fruition. The Ministry desired “to wrap up *America* into the British kingdom; they want to make three bishopricks in *America*, a Bishop for *Boston*, &c. a Bishop for *New-York*, &c. a Bishop for the *Carolinas*, &c. all officers and offices to be held in the power of the Crown, and at the dispose of the King, and sixty more lordships by degrees...”²⁹

It was time for Americans to “unwrap” the Ministry’s plans and restore the rule of law. Allen asked what he considered to be the grand question between America and Britain, “who are the rebellious and disobedient,” the Americans or the British government? The answer was Britain. It was the British government which had broken the terms of the compact and claimed an authority over Americans to which they had “no right.”³⁰

A day of public fasting and prayer was held across Massachusetts on July 14, 1774 due to the dark situation the colony had been plunged into. Peter Whitney delivered two sermons on Proverbs 28:³¹ at the church in Northborough that day, jointly entitled *The Transgression of a Land Punished by a Multitude of Rulers*. In his first sermon, delivered in the morning, Whitney

²⁸ Micah 7:3, “That they may do evil with both hands earnestly, the prince asketh, and the judge *asketh* for a reward; and the great *man*, he uttereth his mischievous desire: so they wrap it up.”

²⁹ Allen, *The Watchman’s Alarm*, 6-7.

³⁰ *Ibid.*, 8-9.

³¹ Proverbs 28:2, “For the transgression of a land many *are* the princes thereof: but by a man of understanding *and* knowledge the state *thereof* shall be prolonged.”

drew upon his text to assert that good civil government and good rulers are a blessing to a people, because of the security which is provided. The people of a community voluntarily submit to good governments, which derive their civil authority from consent, as expressed in the constitution. The people do not consent to submit to and obey bad rulers.

Instead of being a blessing, tyrants were the “public robbers and the destroyers of mankind and of human happiness.” Tyrants “make use of their power and authority in a manner subversive of the end of their designation to office... they encroach on the natural and constitutional rights of the people... they trample on those laws, which were made, at once to limit their power, and defend their subjects...” In such a case, the people are not bound to obey the tyrants, but rather, the people are morally obligated to resist them.

Reason and revelation both support the principle that it is not just a right, but a duty to oppose tyrants. John Locke and the God of Nature were in agreement on this point; “Wheresoever law ends, tyranny begins, if the law be transgressed to another's harm. And whoever in authority, exceeds the power given him by law, and makes use of the force he hath under his command, to compass that upon the subject which the law allows not, ceases in that to be a magistrate; and acting without authority, may be opposed as any other man, who invades the right of another.”³²

In his second sermon, delivered in the afternoon, Whitney expanded his exposition to show that, in the British Empire, civil government had become a curse rather than a blessing. America was plagued by “a multitude of princes,” who were making “gigantic strides after despotic government and arbitrary power...” The Port Act was “an amazing stretch of power,

³² Peter Whitney, *The Transgression of a Land Punished by a Multitude of Rulers*, July 14, 1774, Evans Early American Imprints, 1-7; quoting John Locke, *Second Treatise on Government*, 18.202.

replete with cruelty and oppression; not to be paralleled in the records of any court, even the Ottoman, and stands unexampled in all history.” The Government and Justice Acts were “fundamentally subversive of our chartered rights, and civil constitution...” The laws of the land were repealed and government in Massachusetts was “rendered despotic and arbitrary.”

If the people of Massachusetts submitted to these acts, “liberty here will be at an end, we hold our rights, property and lives by the most precarious tenure.” With the dissolution of the constitution, the lives, liberties, and property of the people would be put into the hands of rulers acting “without controul.” For the people to submit to slavery would be “unpardonable,” because “freedom is the gift of God” and “He has given us right and means to assert it.” Resistance to British tyranny was a duty for Americans. Thankfully, Americans had not yet been reduced to the “dreadful necessity” of taking up arms.³³

Samuel Webster delivered his fast sermon on Nehemiah 9:36-38³⁴ in the town of Salisbury. Similar to the ancient Israelites living under the dominion of the Persian Empire, Americans had been reduced to the status of “servants and tributaries” in their own land. Americans had nothing they could call their own, they held everything, “all our blessings, even our *Estates and Lives*, but as tenants at *Will and Pleasure*.” Americans had been placed under the absolute power of their “Lords and Masters” in Britain. In the present situation, Americans could no longer be defined as “freemen.”³⁵

³³ Ibid., 13-18, 25.

³⁴ Nehemiah 9:36-38, “Behold, we *are* servants this day, and *for* the land that thou gavest unto our fathers to eat the fruit thereof and the good thereof, behold, we *are* servants in it: And it yieldeth much increase unto the kings whom thou hast set over us because of our sins: also they have dominion over our bodies, and over our cattle, at their pleasure, and we *are* in great distress. And because of all this we make a sure *covenant*, and write *it*; and our princes, Levites, *and* priests, seal *unto it*.”

³⁵ Samuel Webster, *The Misery and Duty of an Oppressed and Enslaved People*, July 14, 1774, Evans Early American Imprints, 4, 7.

Webster asserted that almost everything said in the passage from Nehemiah 9 was “naturally applicable” to America in its present evil situation. Americans had a right to call the land their own, but dominion over it was being taken from them. In Massachusetts, that dominion had been guaranteed to the people by the Charter, a “solemn covenant” between the king and the people. The British government had broken the conditions of that covenant by attempting to take away the liberty and property of the people. Britain was extorting a revenue from Americans, sending over placemen and pensioners to act as “task-masters” over the people, and had sent a standing army to enforce obedience to bondage. The Coercive Acts were designed to “take away every charter-right worth contending for” and who knew “what further is meditated by the men of blood” in Britain. Americans were no longer living under the political system of their fathers; they were living as servants to their British masters.³⁶

On July 15, 1774, Samuel Adams wrote a letter to Richard Henry Lee discussing the impact of the Coercive Acts on Massachusetts.³⁷ The Port Act was “unrighteous and oppressive,” but the other acts were even worse. The Government Act was designed to totally “destroy our free Constitution and substitute an absolute Government in its Stead” and the Justice Act was meant to screen “from Punishment any Soldier who shall Murder an American for asserting his Right.” While the British certainly “expected” a submission to these acts, with Gage commanding an armed force to act as persuasion, they would find it rather difficult “to *force* the People to submit to so great and fundamental a Change of Government...” Americans would not tamely submit to the destruction of their charter-constitutions, they would act upon the law of self-preservation.

³⁶ Ibid., 10-13.

³⁷ Samuel Adams, “To Richard Henry Lee,” July 15, 1774, in Cushing, vol. 3, 136-139.

A writer using the name *Vox Vociferantis in Eremo* (a voice crying in the wilderness)³⁸ described the nature of those charter-constitutions for the benefit of Governor Gage and his fellow-subjects in Massachusetts.³⁹ According to the writer, the American colonies were distinct “states” united under the aegis of the British Empire by “a sacred Compact” expressed in their charters. The connecting point in this political union was the formal recognition of a common sovereign, in their charters, by each state in the Empire. Since each state was distinct and possessed its own constitution, each state was also equal to all its “sister-states.” The British state was thus equal to the American states and possessed no political authority over them. It could not tax them or legislate for them without their consent and, to claim that authority, would be an act of tyranny.

Since all political union between the separate states was centered in the king, his actions had great significance. If the king violated the conditions of the compact he had with a state, that state would be discharged from allegiance to the Crown and return to a state of nature. That state would be effectively dismembered from the Empire, it would be totally independent. In such a case, the king would cease “to be their king, and his governor set over such a colony as his representative, ceases to have any lawful authority to govern that people...” Government in that colony-state would be dissolved and the people would be in a state of political independence, with the liberty of creating their own state or uniting with another if they so desired.

The writer applied his framework for understanding the Empire to the recent actions of King George III and concluded that the King had broken his compacts with the American colonies. He had done so by giving his assent to laws, passed by the British Parliament, which

³⁸ Perhaps a reference to Isaiah 40:3 and John 1:23.

³⁹ *Vox Vociferantis in Eremo*, “To the Governor, from the *Essex Gazette*,” *Boston Gazette*, August 15, 1774, in Dorr, Massachusetts Historical Society.

violated those compacts. By recognizing the superiority of Britain over the American states, the King was denying the equality of those states and was made complicit in the destruction of their constitutions. Worse still, in the Coercive Acts, Parliament had effectively declared “war” against the state of Massachusetts, and the King had consented to that invasion. The writer still hoped that God would “heal the wide Breach in the British Empire,” yet he also recognized that the American cause was “righteous” and that God would “arise for our Deliverance, after he had sufficiently corrected and humbled us for our Sins against Heaven.” Whether political independence would be part of that deliverance was a question still to be decided, but it was a valid option due to the unjust actions of the British government.

In August and September 1774, the counties of Massachusetts held conventions to discuss the Coercive Acts and prepare for the next meeting of the General Court, scheduled for October 5. Those conventions expressed the people’s willingness to give Governor Gage one last chance to govern the colony according to the Charter, but if he refused and attempted to put the Government and Justice Acts into execution, the counties supported the forming of a “provincial congress” to replace the government which had been dissolved. Gage could either govern according to the constitution or he would not govern at all. A refusal from Gage would put the final nail in the coffin and leave no doubt that Massachusetts’ previous system of government was dead and buried.

After considering the Government Act, the County of Middlesex resolved that nothing less than the choice between “life & death, or what is more, freedom & slavery”⁴⁰ was being put before the inhabitants of Massachusetts.⁴¹ Would the inhabitants submit to slavery or support

⁴⁰ A reference to Deuteronomy 30:19.

⁴¹ County of Middlesex, “Resolves,” August 30-31, 1774, *Boston Gazette*, September 12, 1774, in Dorr, Massachusetts Historical Society.

their freedom? The people of Middlesex were loyal to the king and did not desire to withdraw their allegiance to him, “while permitted the free Exercise of our natural and Charter Rights...” The conditions for their allegiance were defined in the Charter and had not been transgressed by the people. On the other hand, the Coercive Acts did amount to transgressions of those conditions. Parliament was violating the Charter and exceeding the bounds of its lawful authority.

A Crown-appointed Council would destroy the “constitutional equilibrium” which existed under the Charter and make the councilors into “tools and creatures.” Crown-appointed judges would subvert the “free administration of justice” and foster corruption among civil magistrates. Sheriffs appointed by the governor, and juries summoned by those same sheriffs, would render the security resulting from trial by jury “altogether precarious.” The ban on town meetings “cuts away the Scaffolding of English Freedom” and reduced the colony to “a most abject State of Vassalage and Slavery.” The inhabitants of Middlesex were of the opinion that the Coercive Acts, if submitted to, would “annihilate the last Vestiges of Liberty in this Province...” The people must therefore be justified “by God and the World, in never submitting to them.”

Any civil officer who acted in accordance with the Coercive Acts, instead of the Charter, was acting in an unconstitutional manner and was not to be regarded as a lawful magistrate. No obedience was due them from the people and they could be lawfully opposed in their attempts to carry an arbitrary government into execution. Middlesex supported forming a “provincial congress” and deferred to the authority of the Continental Congress. The county’s inhabitants were resolved to transmit the fair inheritance of liberty to their children; “no Danger shall affright, no Difficulties intimidate us. And if in support of our Rights we are called to encounter

even Death, we are yet undaunted, sensible that HE can never die too soon, who lays down his Life in support of the Laws and Liberties of his Country.” The resolves passed 146-4.

The County of Worcester resolved that the recent acts of Parliament had rendered the Charter “in part null and void” and established a system of appointing officers over the colony “wholly unknown before in this Province, incompatible with its Charter, and forming a compleat system of Tyranny...”⁴² No power on earth had the right “without the consent of this Province to alter the minutest tittle of its Charter, or abrogate any Act whatever made in pursuance of it... or constitute Officers of Government in ways not directed by Charter...”

But that is exactly what the British government was doing with the passage of the Coercive Acts. The “free constitution” of Massachusetts was being altered, and thus, Worcester supported forming a “provincial convention” in order for the people’s representatives to “devise proper ways and means to reassume our original mode of government... or some other as may appear to them best calculated to regain and secure our violated Rights.” The towns of Massachusetts should disregard the ban on town meetings, and assemble as usual, and no obedience should be given to the Coercive Acts “in any respect.”

The County of Cumberland unanimously approved a series of resolves prefaced by an assertion that “it is the indispensable duty of every subject of the English Constitution... to preserve the same inviolate and unimpaired...”⁴³ Unfortunately, it was “too apparent that the British Ministry have long been hatching monstrous acts to break our constitution, and some they have at length brought forth.” Based on the Ministry’s “endeavor to execute their wicked designs

⁴² County of Worcester, “Resolves,” August 30-31, 1774, *Boston Gazette*, September 12, 1774, in Dorr, Massachusetts Historical Society.

⁴³ County of Cumberland, “Resolves,” September 21-22, 1774, *Boston Gazette*, September 26, 1774, in Dorr, Massachusetts Historical Society.

by military force” in Boston, the inhabitants of Cumberland feared it was “their aim to introduce despotic monarchy” in the province. The Government Act in particular was to be regarded as “big with mischief and destruction, tending to the subversion of our charter and our province laws...” The county recommended “a manly opposition to those cruel acts, and every measure which despotism can invent to ‘abridge our English Liberties...’”

The County of Essex likewise unanimously accepted the assertion that the Government Act was “a most dangerous Infraction of our Constitutional and Charter Rights, and tending to a total subversion of the Government of the Province, and Destruction of our Liberties...”⁴⁴ While this act was being carried into execution by “military violence,” the sacred regard the inhabitants of the county had for their rights as Englishmen and freemen meant that they were bound to resist. The people of Essex resolved that obedience would only be granted to civil officers acting in accordance with the Charter, as they were the only lawful magistrates in the colony.

Civil officers who acted in accordance with the Government Act declared themselves “enemies” of the constitution, and the County of Essex, and were contributing towards driving the colonies into “the Horrors of a Civil War.” While the people of Essex deprecated the horrors of civil war, they considered the “horrors of slavery” to be far worse. Accordingly, they expressed their determination that, “if the Despotism and Violence of our Enemies should finally reduce us to the sad Necessity, we, undaunted, are ready to appeal to the last Resort of States; and will in Support of our Rights encounter even Death...”

The County of Suffolk unanimously approved its resolves, asserting that the power and vengeance of Britain was now pursuing the people of Massachusetts, just as it had “persecuted,

⁴⁴ County of Essex, “Resolves,” September 6-7, *Boston Evening-Post*, September 19, 1774, in Dorr, Massachusetts Historical Society.

scourged, and exiled” their parents, driving them from their native land.⁴⁵ That same hand of power had now succeeded, with the aid of military force, in destroying the constitution. Due to British tyranny, “that unalienable and inestimable inheritance, which we derived from Nature, the Constitution of Britain, which was covenanted to us in the Charter of this Province, is totally wrecked, annulled, and vacated...” Clearly, the Charter was a covenant between the King of Britain and the people of Massachusetts, it was the “Tenure and Claim on which are founded our Allegiance and Submission.”

In the face of British tyranny, the people of Massachusetts had a duty to God and their country to defend their natural and constitutional rights. Those rights were severely threatened by the Coercive Acts, which were “gross Infractions of those Rights to which we are justly entitled by the Laws of Nature, the British Constitution, and the Charter of this Province.” No obedience was due to those acts or to any unconstitutional officers attempting to carry them out. Instead of obedience, Britain would receive opposition from the County of Suffolk. That opposition would take the form of armed force if necessary. Suffolk resolved that the local militia should “acquaint themselves with the Art of War as soon as possible, and do for that Purpose appear under Arms at least once every Week.” This militia would be prepared to engage in defensive warfare, in accordance with the principle of self-preservation. While the militia prepared for war, Suffolk supported the creation of a provincial congress and recognized the authority of the Continental Congress.

⁴⁵ County of Suffolk, “Resolves,” September 6 & 9, 1774, *Boston Evening-Post*, September 19, 1774, in Dorr, Massachusetts Historical Society.

The County of Hampshire resolved that the Charter was a compact between the king and the people.⁴⁶ As such, “it ought to be kept Sacred and Inviolable by each Party,” and “it cannot in any respect be varied or altered by one Party only, without a most Criminal Breach of Faith...” The Government Act was an egregious breach of that faith. That one act alone would “sap the Foundation of the Constitution of this Province, and annihilate the most important Rights of the Inhabitants...” The people of Hampshire seriously doubted whether Gage could be considered a constitutional governor or if any obedience should be given to him. Hampshire approved of forming a provincial congress and resolved that the local militia “acquaint themselves with the Military Art.” Each man should have arms and ammunition for that purpose.

The County of Plymouth began its resolves by pointing out that their meeting was taking place “on the ground first trod by our venerable Ancestors, and at the place Providence directed them to, as any asylum from the persecuting rage and oppression of their contemporaries in Britain...”⁴⁷ Since that same rage was now pursuing their descendants, Plymouth’s inhabitants crafted their resolves “feeling the same spirit, and actuated in defence of our rights, by the same principles which animated” their ancestors. Those principles supported the assertions that “the inhabitants of the American colonies are intitled to all the natural rights of mankind, and are by right subject to the controul of no power on earth, but by their own consent.”

The people of Massachusetts had consented to a political union with Britain which was outlined in their Charter. This original compact contained the conditions of that political union and Britain’s supposed “right” to tax and legislate for Massachusetts was not among those

⁴⁶ County of Hampshire, “Resolves,” September 22-23, 1774, *Boston Evening-Post*, October 10, 1774, in Dorr, Massachusetts Historical Society.

⁴⁷ County of Plymouth, “Resolves,” September 26-27, 1774, *Boston Evening-Post*, October 10, 1774, in Dorr, Massachusetts Historical Society.

conditions. Therefore, Parliament had clearly broken the conditions of the compact when it assumed absolute power over Massachusetts and enacted the Coercive Acts. Since Britain had violated the colonists' natural and constitutional rights, it was "a duty which every man and every body of men, owes to posterity, as well as to God and their Country, to oppose with all their power the execution of said acts..."

The Coercive Acts altered the province's constitution and broke down the barriers of liberty which the laws provided for the people. Accordingly, none of the newly-appointed Crown officers should be obeyed. The only officers which Plymouth recognized as possessing any authority in the colony were those who were appointed under, and acted in accordance with, the province's charter. Plymouth believed that holding a provincial congress was "absolutely necessary" due to the dangerous situation the colony was in. That situation was so dangerous that it was also necessary for the local militia to begin equipping themselves with arms "immediately" and devoting themselves to the diligent study of military discipline. Preparing an armed force was necessary so that "our enemies may be disappointed, and we be the better enabled to make that last appeal which the law of God and nature will justify..."

As September 1774 drew to a close, there seemed to be an awareness among Massachusetts' Patriots that the stakes were higher than ever before. An example of that awareness is provided by the County of Worcester, which held a second meeting, resolving to send warnings if any of the county's towns were invaded or in danger of being invaded by a military force, i.e. by British regulars.⁴⁸ A warning system would allow the militia from other towns to "come properly armed and accoutred to protect and defend the Place invaded." The

⁴⁸ County of Worcester, "Resolves," September 21, 1774, *Boston Gazette*, October 3, 1774, in Dorr, Massachusetts Historical Society.

local militias should be ready to act at “a Minute’s Warning” so that they could respond to any emergency which threatened the towns of Worcester County.

As the date for the meeting of the General Court neared, Massachusetts’ Patriots anticipated that Governor Gage would dissolve that assembly for resisting British Authority. Boston’s *Instructions* to its representatives in late September emphasized that realization.⁴⁹ Boston’s freeholders instructed their representatives to “adhere firmly to the Charter” and “do no Act which can possibly be construed into an Acknowledgement of the Validity of the Act of the British Parliament for altering the Government of Massachusetts Bay...” The freeholders told their delegates to anticipate that “a conscientious Discharge of your Duty will produce your Dissolution as an House of Representatives...” Since that was the case, those men were to become the town’s representatives in the provincial congress being formed to “preserve the Liberties of all America.”

The Patriots were right, Gage issued a proclamation “discharging” the Assembly on September 28, well-before the session was scheduled to begin on October 5 and before the people’s representatives even had a chance to voice their opposition to British authority.⁵⁰ For his justification, Gage cited “the many tumults and disorders which have since taken place, the extraordinary resolves which have been passed in many of the counties, the instructions given by the town of Boston , and some other towns, to their representatives, and the present disordered and unhappy state of the province...” Based on that evidence, Gage thought it “highly inexpedient that a great and general court should be convened...”

⁴⁹ Town of Boston, “Instructions,” *Boston Gazette*, September 26, 1774, in Dorr, Massachusetts Historical Society.

⁵⁰ Governor Thomas Gage, “Proclamation Discharging the Assembly,” September 28, 1774, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775* (Boston: Dutton and Wentworth, 1838), 3-4.

The Patriots had also anticipated that argument. Over a month before Gage's proclamation, a Patriot writing under the initials *J.L.* had predicted that, since the Charter had been "grossly mutilated by the Hand of Power," it would not surprise him if the next step was to "*stab the most vital Part* of it, by declaring our lower House of Assembly totally *inconvenient...*" Now Massachusetts was to have no elected representatives in its government, a far cry from the political system established by the Charter.⁵¹

Despite being discharged, 90 of the representatives chosen to the General Court still met in Salem on the appointed day. Since they could not conduct official business, the representatives resolved themselves into Massachusetts' First Provincial Congress, which met between October 7- December 10, 1774 in Salem, Concord, and Cambridge. The representatives issued a series of resolves on October 7, in which they argued that Gage's Proclamation was "unconstitutional, unjust, and disrespectful to the province..."⁵² They based their legal position on the Charter, which they still regarded as the only lawful source of civil authority over the province. According to the Charter, a governor was obligated to call a General Court on a yearly basis and could not discharge that assembly before it had even met. To do so was unconstitutional.

The representatives argued that the constitutional government of Massachusetts was being "superseded and annulled" with the assistance of a military force stationed in the province. Gage's action in discharging the Assembly was evidence of the necessity of Massachusetts' people making the "most vigorous and immediate exertions for preserving the freedom and constitution thereof." The Patriots of Massachusetts recognized that the Provincial Congress was

⁵¹ J.L., *Boston Gazette*, August 15, 1774, in Dorr, Massachusetts Historical Society.

⁵² Massachusetts Provincial Congress, "Resolves at the First Meeting," October 7, 1774, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 5-6.

an extra-legal political body, but they also believed it was a necessity since the legal political system of Massachusetts had been dissolved.

On October 13, the Provincial Congress sent a message to Governor Gage expressing its alarm over his “hostile preparations” which threatened to plunge the province into “all the Confusion and Horrors of a Civil War...”⁵³ The representatives reminded Gage that the end of government was “the Protection and Security of the People” and that whenever civil power was used for contrary purposes, such as harassing and enslaving the people, “it becomes a Curse rather than a Blessing.” Evidence of the curse of government under Gage could be seen in the Coercive Acts and the fortification of Boston-Neck by British troops. These actions endangered the “Lives, Liberties, and Properties” of the people, a people which was “rigidly and justly tenacious of their Constitutional Rights.” The Congress hoped that Gage would order British troops to stand down and cease their warlike preparations. That did not happen.

With the horrors of civil war on the horizon, the Provincial Congress ordered the creation of a “Committee of Safety,” which would organize the militia in defense of the people’s rights, on October 26.⁵⁴ It was resolved that “the security of the lives, liberties, and properties of the inhabitants of this province, depends, under Providence, on their knowledge and skill in the art military, and in their being properly and effectually armed and equipped...” The British troops, which were sent over to subvert the constitution and subjugate the people to an arbitrary government, had begun seizing private property, primarily arms and ammunition, in an attempt “to place the province entirely in a defenceless state...” That could not be allowed.

⁵³ Massachusetts Provincial Congress, “To the Governor,” October 13, 1774, *Boston Gazette*, October 17, 1774, in Dorr, Massachusetts Historical Society.

⁵⁴ Massachusetts Provincial Congress, “Resolves on the Defense and Safety of the Province,” October 26, 1774, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 31-35.

The Provincial Congress sent another message to Governor Gage on October 29, informing him that “menaces will never produce submission from the people of this province...”⁵⁵ If Gage proceeded with his hostile preparations, he would not only be an instrument in the subversion of the constitution, he would become an instrument in driving the province towards civil war. Gage’s strange misconception of the facts had led him to suggest “that the conduct of the province, for supporting the constitution, is an instance of its violation,” a reference to the extra-legal Provincial Congress.

The representatives defended their assembly as a constitutional body, arguing that their action was “warranted by the most approved precedent and examples, and sanctioned by the British nation, at the revolution; upon the strength and validity of which precedent the whole British constitution now stands, his present majesty wears his crown, and all subordinate officers hold their places.” Massachusetts was acting upon Revolution principles.

In adherence to their claim to be acting in defense of the constitution, the Provincial Congress even invited the “constitutional Councilors,” who had been elected in May, per the Charter and before the Government Act went into effect, to join the Congress.⁵⁶ This was an early move towards the Provincial Congress taking the reins of government into its own hands. If there was a House and a Council, the Provincial Congress could claim to be the legitimate government of Massachusetts under the Charter. While they were moving in that direction, the representatives were still wary of taking such a bold step in 1774.

⁵⁵ Massachusetts Provincial Congress, “To the Governor,” October 29, 1774, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 42-45.

⁵⁶ Massachusetts Provincial Congress, “Invitation for the Constitutional Councilors,” October 28, 1774, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 40-41.

They were not afraid of arming the militia in defense of the constitution. On December 10, 1774, the last day the First Provincial Congress was in session, the Congress sent a message “To the Freeholders and other Inhabitants of the Towns and Districts of Massachusetts Bay.” That message cited the “incessant and unrelenting malice” of the province’s enemies in pursuit of a “system of colony administration, so unfriendly to the protestant religion, and destructive of American liberty...”⁵⁷ Since Massachusetts’ enemies were resolved to pursue a “system of tyranny,” the people must know that “a general attention to military discipline must so establish their rights and liberties, as, under God, to render it impossible for an arbitrary ministry of Britain to destroy them.” The Congress hoped to avoid a civil war, but it gave instructions for the “minute men” to be fully equipped with arms and “disciplined three times a week, and oftener, as opportunity may offer.” With the intensification of the threat to the people’s rights, came an intensification of the militia’s training regimen. The Massachusetts militia would be ready in 1775.

The Second Provincial Congress met between February 1- May 29, 1775. One of its first actions was to send another message “To the Inhabitants of Massachusetts Bay” on February 9.⁵⁸ The Congress reminded the people that “when a people entitled to that freedom, which your ancestors have nobly preserved, as the richest inheritance of their children, are invaded by the hand of oppression, and trampled on by the merciless feet of tyranny, resistance is so far from being criminal, that it becomes the Christian and social duty of each individual.” The British Constitution was designed to provide equal security for the lives and property of each member of

⁵⁷ Massachusetts Provincial Congress, “To the Freeholders and other Inhabitants of the Towns and Districts of Massachusetts Bay,” December 10, 1774, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 69-72.

⁵⁸ Massachusetts Provincial Congress, “To the Inhabitants of Massachusetts Bay,” February 9, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 91-93.

the community, from the meanest peasant right up to the prince. This was accomplished by requiring consent before taxation could take place and maintaining the accountability of the rulers to the people.

Consent and accountability had both been abrogated with the British government's claim of absolute authority over the American colonies. When the people of Massachusetts had attempted to preserve those principles, and the constitution in which they were enshrined, "fleets, troops, and every implement of war" had been sent "into the province, with apparent design to wrest from you that freedom which it is your duty, even at the risk of your lives, to hand inviolate to posterity." The Congress urged the people to make "every preparation for your necessary defence; for, unless you exhibit to your enemies such a firmness as shall convince them that you are worthy of that freedom your ancestors fled here to enjoy, you have nothing to expect but the vilest and most abject slavery."

If the colonists should be "so unhappy as to be driven to unsheath the sword, in defence of your lives and properties," they would need to be prepared in order to make success a real possibility. Courage was a good start, but the militia would also need to be well-disciplined and its magazines well-stocked. The Congress trusted that the people would remain steadfast and would "never submit your necks to the galling yoke of despotism prepared for you; but with a proper sense of your dependance on God, nobly defend those rights which Heaven gave, and no man ought to take from us."

On February 15, the Provincial Congress issued a resolve which justified these defensive preparations by appealing to the "great law of self-preservation."⁵⁹ Massachusetts'

⁵⁹ Massachusetts Provincial Congress, "Resolve on Self-Preservation," February 15, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 102-103.

representatives had “real cause to fear that the most reasonable and just applications of this continent to Great Britain, for ‘peace, liberty, and safety,’ will not meet with a favorable reception; but, on the contrary ... we have reason to apprehend that the sudden destruction of this colony in particular is intended, for refusing, with the other American colonies, tamely to submit to the most ignominious slavery...” The “minute men” must be ready.

On April 5, 1775, the Provincial Congress approved the “Rules and Regulations for the Massachusetts Army.”⁶⁰ The preface stated that the militia must be organized and disciplined if it was to defend the legacy of liberty which the people’s forefathers had handed down to them. The members of the Congress had seriously considered “the duty we owe to God, to the memory of such invincible worthies, to the king, to Great Britain, our country, ourselves, and posterity” and resolved that it was the present generation’s “indispensable duty, by all lawful ways and means, in our power, to recover, maintain, defend, and preserve, the free exercise of all those civil and religious rights and liberties, for which many of our forefathers fought, bled, and died, and to hand them down entire, for the free enjoyment of the latest posterity...” This was to be a defensive army, formed upon the principle of “the great law of self-preservation.”

The rules and regulations which followed this preface were designed to make self-preservation a distinct possibility in the face of the strongest military in the world. That Massachusetts’ army was to act in accordance with the laws of God and nature can be seen in the first rule governing its actions. Article I stated that “all officers and soldiers, not having just impediment, shall diligently frequent divine service and sermon, in the places appointed for the assembling of the regiment, troop, or company, to which they belong...” This was not to be a

⁶⁰ Massachusetts Provincial Congress, “Rules and Regulations for the Massachusetts Army,” April 5, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 120-129.

purely secular military force; the Army of Massachusetts was intended to act under the authority of God and in the righteous cause of liberty.

The militia's first act of self-preservation took place at Lexington and Concord on April 19, 1775. Several hundred British troops had marched out of Boston on a mission to seize the property of the people, in the form of arms and ammunition, being stockpiled by the militia in Concord. When those troops arrived at Lexington, the town's militia, under the command of Captain John Parker, stood their ground on the town commons. In the confused situation which followed, the first shots of the Revolutionary War were fired and the first blood was shed. After dispersing the Lexington militia, the British troops continued on their march to Concord, only to be attacked and harassed by swarms of militia flocking to the fight from nearby towns. Blood was shed on both sides and a decisive line had been crossed. A war of resistance, which would transform into the Revolutionary War, had begun.⁶¹

The Provincial Congress reacted to the events at Lexington and Concord by issuing a message "To the Inhabitants of Great Britain" on April 26, justifying Massachusetts' appeal to defensive arms.⁶² Since "hostilities are at length commenced in this colony by the troops under the command of General Gage," Massachusetts wanted an "authentic account of this inhuman proceeding" to reach their brethren in Britain. The account which Massachusetts provided clearly labelled the British troops as the aggressors.

The Massachusetts militia had acted in self-defense. The scenes of death and destruction taking place in Massachusetts were the "marks of ministerial vengeance against this colony, for

⁶¹ Middlekauff, *The Glorious Cause*, 273-279.

⁶² Massachusetts Provincial Congress, "To the Inhabitants of Great Britain," April 26, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 154-156.

refusing, with her sister colonies, submission to slavery...” While the people of Massachusetts claimed to maintain their loyalty to the king, they resolved that “to the persecution and tyranny of his cruel ministry, we will not tamely submit. Appealing to Heaven for the justice of our cause, we determine to die or be free.”

On May 10, the Provincial Congress sent a message to the Continental Congress further justifying Massachusetts’ actions.⁶³ The taking up of defensive arms was necessary due to “the sanguinary zeal of the ministerial army, to ruin and destroy the inhabitants of this colony...” The people of Massachusetts had been “reduced to the sad alternative of defending by arms, or submitting to be slaughtered.” With deference, the Provincial Congress suggested that “a powerful army, on the side of America” was “the only means left to stem the rapid progress of a tyrannical ministry. Without a force superior to our enemies, we must reasonably expect to become the victims of their relentless fury: with such a force, we may still have hopes of seeing an immediate end put to the inhuman ravages of mercenary troops in America...” All of America must join Massachusetts in its appeal to arms and the God of Hosts.

That appeal was ingrained into the oaths which members of the Massachusetts Army took upon beginning their service.⁶⁴ Officers and private soldiers swore to “truly and faithfully serve in the Massachusetts army, to which I belong, for the defence and security of the estates, lives and liberties of the good people of this and the sister colonies in America, in opposition to ministerial tyranny, by which they are or may be oppressed, and to all other enemies and

⁶³ Massachusetts Provincial Congress, “To the American Continental Congress,” May 10, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 187-189.

⁶⁴ Massachusetts Provincial Congress, “Massachusetts Army Oath,” May 8, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 201.

opposers whatsoever.” Soldiers were to obey the army’s regulations and act in defense of all the American colonies. Their oath finished with “So help me God.”

Generals in the Massachusetts Army swore to “well and faithfully execute the office of a general, to which I have been appointed, according to my best abilities, in defence and for the security of the estates, lives, and liberties of the good people of this and the sister colonies in America, in opposition to ministerial tyranny, by which they are or may be oppressed, and to all other enemies and opposers whatsoever.”⁶⁵ This oath also included an assertion of the superiority of civil authority over the military. Generals swore to obey the “Congress of the colony of Massachusetts Bay... or any future congress, or house of representatives, or legislative body of said colony...” This was a war of resistance being undertaken in defense of the constitution and liberty, it was therefore essential that even the military be subject to the laws of the land.

The Provincial Congress made it clear that no one in Massachusetts was subject to the authority of “General” Gage in a resolve passed on May 5, 1775.⁶⁶ Gage’s recent hostile actions, especially the unprovoked attack on Lexington and Concord, had proven that he was “an instrument in the hands of an arbitrary ministry to enslave this people...” By his actions, General Gage had “utterly disqualified himself to serve this colony as a governor, and in every other capacity...” The Congress resolved that “no obedience ought, in future, to be paid by the several towns and districts in this colony, to his writs for calling an assembly, or to his proclamations, or any other of his acts or doings; but that, on the other hand, he ought to be considered and

⁶⁵ Massachusetts Provincial Congress, “Oath for Generals in the Massachusetts Army,” May 17, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 233-34.

⁶⁶ Massachusetts Provincial Congress, “Resolve on General Gage,” May 5, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 192-193.

guarded against, as an unnatural and inveterate enemy to this country.” General Thomas Gage was *not* the legal governor of Massachusetts.

The Patriots of Massachusetts had long realized that the colony’s Charter-government had been dissolved when the Coercive Acts went into effect in the summer of 1774. One prominent Patriot making that argument in early 1775 was John Adams. Adams published a series of newspaper articles under the title *Novanglus* (New England) from January- April 1775. The central question these articles dealt with was whether Parliament’s authority extended to the American colonies. Adams opposed that claim and gave frequent historical overviews of events which had occurred in the political struggle of the last decade, beginning with the Stamp Act, to illustrate his position. Throughout the twelve issues of *Novanglus*, Adams countered the arguments of *Massachusettensis*, who had written a series of articles in the *Massachusetts Gazette*, and other Tories who supported British authority

The first issue of *Novanglus* explained that Whigs, like Adams, held fast to Revolution principles, which were nothing else than “the principles of Aristotle and Plato, of Livy and Cicero, and Sidney, Harrington, and Locke; the principles of nature and eternal reason; the principles on which the whole government over us now stands.”⁶⁷ These were also the principles which stood in the way of the Tories and the British government’s claims to authority over America. According to these principles, civil authority was based on a contract and “a manifest design in the prince, to annul the contract on his part, will annul it on the part of the people.” One act of tyranny would not justify a revolution, but a long train of abuses would. Adams argued that “a settled plan to deprive the people of all the benefits, blessings, and ends of the contract, to

⁶⁷ John Adams, “Novanglus, no. I,” January-April 1775, in Thompson, 126-130.

subvert the fundamentals of the constitution, to deprive them of all share in making and executing laws, will justify a revolution.”

In the third issue, Adams argued that the central issue being disputed by Tories and Whigs was the fundamentals of the government under which the people of America were to live.⁶⁸ Tories supported the idea that Parliament was absolute and uncontrolled, that it was sovereign over the colonies. Whigs, who represented the majority of honest Americans, based their arguments on the constitution and the laws of nature and came to the conclusion that Parliament had no legal authority over America. Americans had consented to Parliament regulating trade within the Empire, but nothing more. Furthermore, Parliament had no authority to unilaterally overturn the constitution by claiming authority over America. But that is exactly what Parliament had been attempting since the passage of the Stamp Act. Parliament now sought to put its Declaratory Act into practice and its Coercive Acts were a means to that end.

Since Parliament was attempting to enforce its claims of authority, Adams asked, by what law does Parliament have authority over America? Adams could not find a just foundation for Britain’s claims, for “by the law of God, in the Old and New Testament, it has none; by the law of nature and nations, it has none; by the common law of England, it has none... by statute law it has none...” Since Parliament was without a just basis for its authority, “what religious, moral, or political obligations then are we under to submit to parliament as a supreme legislative? None at all.” Therefore, American resistance to British authority was not treason and rebellion, it was noble and just.

⁶⁸ John Adams, “Novanglus, no. III,” January-April 1775, in Thompson, 139-148.

American resistance was being countered by Britain with “the *ratio ultima* of Louis XIV... the law of brickbats and cannon balls, which can be answered only by brickbats and balls.” In Massachusetts, a military government had been established and the province’s constitution “demolished to the foundation.” Instead of supporting its authority with right, Britain was doing so with “fleets and armies... by fire and sword...”⁶⁹ Those very fleets and armies were making it possible for the Tories to pursue their systematic plan to destroy the Charter. In large measure, the Charter had already been destroyed, but the Tories would be content with nothing less than a complete destruction. It seemed that “nothing will satisfy them still but blood and carnage. The destruction of the Whigs, charters, English liberties, and all, they must and will have, if it costs the blood of tens of thousands of innocent people. This is the benign temper of the Tories.”⁷⁰

Since the British government and its Tory supporters in America were pursuing a plan based on usurpation and lawless violence, resistance to that plan was not rebellion. In the sixth issue of *Novanglus*, Adams explained that there are “judicial” and “extra-judicial” means available for a people to prevent injuries by their magistrates.⁷¹ If the law fails to restrain tyrannical magistrates, the people are justified in resorting to other methods to preserve their freedom, including taking up arms. This position was supported by Revolution principles and Adams cited Grotius, Pufendorf, Locke, Sidney, and other theorists in support of his argument.

In Adams’ view, the Boston Tea Party was one such example of justified extra-legal resistance. The people of Boston had tried every other method and found no legal means of redress available to them. Thus, the destruction of the tea was an act of absolute necessity.

⁶⁹ John Adams, “Novanglus, no. IV,” January-April 1775, in Thompson, 149-157.

⁷⁰ John Adams, “Novanglus, no. V,” January-April 1775, in Thompson, 158-172.

⁷¹ John Adams, “Novanglus, no. VI,” January-April 1775, in Thompson, 172-186.

Strangely, Britain's response with the Coercive Acts took away what few options the colonists might have for legal redress in the future and made the province's government even more arbitrary. Destroying the constitution and the rule of law would only ensure that the people had no choice but to resort to extra-legal means of resistance in future struggles.

From the seventh issue on, Adams dwelt extensively on the principle of consent, which was the only just basis for civil authority, and the nature of the British Empire's political union. Adams argued that the Empire was composed of distinct states, i.e. separate realms, which were united under one king. The legislature of each state was sovereign within its borders, meaning Parliament had no authority outside of Britain except that consented to by the other states, such as the authority to regulate trade.⁷² Since the colonies were sovereign states, the colonial legislatures did not derive their political authority from the British Parliament. The laws governing New England, for instance, were derived "from the law of nature, and the compact made with the king in our charters."⁷³

Adams could not stress that point enough. The rights of Americans rested upon the foundation of natural law, not the whims of the British Parliament. Americans were proud of their constitutional rights, but what were English liberties "but certain rights of nature, reserved to the citizen by the English constitution, which rights cleaved to our ancestors when they crossed the Atlantic, and would have inhered in them if, instead of coming to New England, they had gone to Otaheite or Patagonia, even although they had taken no patent or charter from the king at all." The colonial charters were social contracts which expressly recognized the natural rights of the colonists; the king had not granted the people any rights.

⁷² John Adams, "Novanglus, no. VII," January-April 1775, in Thompson, 187-201.

⁷³ John Adams, "Novanglus, no. VIII," January-April 1775, in Thompson, 202-215.

Since the rights of Americans were not granted to them by the British government, Parliament had no right to take away those liberties. How could one group of men take away what God had granted to their fellow-men?⁷⁴ The charters could not be forfeited or revoked; they were binding contracts. Massachusetts' acceptance of the destruction of its First Charter by the British Crown a century earlier was "the deepest stain upon its character." Never again would the people allow their just rights to be taken away; "if the contract of state is broken, the people and king of England must recur to nature. We shall never more submit to decrees in chancery, or acts of parliament, annihilating charters, or abridging English liberties." In Adams' view, British actions which broke the social contract and dissolved the colonial governments, as the Coercive Acts did, justified an appeal to heaven by the colonists.⁷⁵

Massachusetts' Provincial Congress officially recognized the dissolution of the province's government in a message to the Continental Congress on May 16, 1775.⁷⁶ Massachusetts had been "denied the exercise of civil government, according to our Charter, or the fundamental principles of the English Constitution..." The representatives also recognized that their province was making an appeal to heaven by taking up defensive arms. The province had been "compelled to raise an army, which, with the assistance of the other colonies, we hope, under the smiles of Heaven, will be able to defend us, and all America, from the further butcheries and devastations of our implacable enemies."

But the province did not wish to stay in such a precarious political position. The Provincial Congress asked the Continental Congress to "favor us with your most explicit advice,

⁷⁴ John Adams, "Novanglus, no. XI," January-April 1775, in Thompson, 229-235.

⁷⁵ John Adams, "Novanglus, no. VIII," January-April 1775, in Thompson, 202-215.

⁷⁶ Massachusetts Provincial Congress, "To the American Continental Congress," May 16, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 229-231.

respecting the taking up and exercising the powers of civil government...” Massachusetts needed a new government, but how should it be organized? That issue would be settled by the Third Provincial Congress, which met between May 31- July 19, 1775. This assembly opened with an election sermon by Samuel Langdon entitled *Government Corrupted by Vice and Restored by Righteousness*. This sermon was given on the anniversary of the date fixed, by Charter, for the election of councilors. Langdon’s text was taken from Isaiah 1:26, a message of restoration for ancient Israel.⁷⁷

Langdon prayed that Massachusetts would experience a restoration, the colony was certainly in need of it. The present generation had “lived to see the time when British Liberty is just ready to expire;—when that constitution of government which has so long been the glory and strength of the English nation, is deeply undermined and ready to tumble into ruins;—when America is threatened with cruel oppression, and the arm of power is stretched out against New-England...” Massachusetts’ Charter had been mutilated and an arbitrary and unaccountable government set upon the ruins of the old political system. Civil government in Massachusetts had been dissolved.⁷⁸

What is more, war was already engulfing the province. That war began at Lexington and Concord on April 19 when British troops, acting as robbers, committed an act of aggression by attempting to “seize and destroy one of our magazines, formed by the people merely for their own security...” Why had the war begun? It began because the colonists “made a noble stand for

⁷⁷ Isaiah 1:26, “And I will restore thy judges as at the first, and thy counsellors as at the beginning: afterward thou shalt be called, The city of righteousness, the faithful city.”

⁷⁸ Samuel Langdon, *Government Corrupted by Vice and Restored by Righteousness*, May 31, 1775, Evans Early American Imprints, 2-3, 10.

their natural and constitutional rights, in opposition to the machinations of wicked men..." Their appeal to heaven was an act of self-defense.⁷⁹

If the people of Massachusetts repented of their sins and turned to God, they could "hope for the direction and blessing of the Most High, while we are using our best endeavors to preserve and restore the civil government of this Colony, and defend America from slavery." Now that they had acted in defense of their rights, it was time for the colonists to exercise their natural right of creating a new civil government based on the consent of the people. It was good that the Provincial Congress had assumed the powers of government during the dissolution, but this was an "imperfect order" and it was time to settle the issue.⁸⁰

On June 20, 1775, three days after the Battle of Bunker Hill, the Provincial Congress received the advice which it had requested from the Continental Congress on how to settle that issue.⁸¹ The people of Massachusetts were advised to consider the offices of the governor and lieutenant governor as "vacant," since those officers were acting to subvert the Massachusetts Charter. Massachusetts should form a new government which conformed "as near as may be, to the spirit and substance of the Charter..." To accomplish that, an appeal must be made to the original source of all civil authority, the people. The Provincial Congress should write to all the towns and request that those towns elect representatives to an Assembly, i.e. a House of Representatives. That Assembly could then elect a Council, per the Charter, and the House and Council collectively would assume the full "powers of government, until a governor of his majesty's appointment will consent to govern the colony according to its charter."

⁷⁹ Ibid., 3-4.

⁸⁰ Ibid., 10-12.

⁸¹ Continental Congress, "Message on Civil Government," June 9, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 358-359.

The Provincial Congress followed that advice and issued a letter to the towns of Massachusetts that same day.⁸² The towns then proceeded to elect representatives to a new General Court, which began meeting on July 19, 1775. The Provincial Congress was duly dissolved and the House and Council, as the representatives of the people, assumed full political authority over the province of Massachusetts. When their government was dissolved by British tyranny, the people of Massachusetts relied on the natural rights foundations of civil authority in order to establish a new government. That government would lead Massachusetts while the American colonies made the ultimate appeal to heaven, declaring their independence.

II. Independence

The American Declaration of Independence on July 4, 1776 was the culmination of the appeal to heaven which had already begun when Massachusetts minutemen took up defensive arms over a year earlier. Independence transformed that appeal from resistance to revolution. Instead of simply defending their rights against British tyranny, while remaining within the Empire, Americans chose to sever the bonds of political union with Britain entirely and establish new governments in the colonies. They also chose to unite the disparate colonies in a new political union, the United States of America. This was not a decision that the Patriots of Massachusetts, or Americans as a whole, made lightly; but it was a logical decision, based on the natural rights foundation of civil authority in the Patriot mindset.

⁸² Massachusetts Provincial Congress, "Letter to Massachusetts Towns," June 20, 1775, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775*, 359-360.

From the Patriot perspective, the British government had broken the social contracts-covenants between it and the colonists. This infidelity had happened at every level of government, including the king. The charge against the king was particularly significant, because the Patriots saw the colonial charters as covenants between the colonists and the king, not the British Ministry or Parliament. Thus, for the king to break the covenant, meant that all Crown officers in the colonies lost all legitimacy and civil authority returned to its original source, the people. If the Patriots had only charged Parliament and the Ministry with being tyrannical, America's appeal would have never gone past resistance. It was when the king came to be regarded as a tyrant, due to his complicity in what the Patriots viewed as unlawful and unconstitutional British actions, that the American Revolution began.

As resistance transformed into revolution in 1775-1776, the Massachusetts Patriots explained their actions with natural rights doctrines. Indeed, the Continental Congress did the same in two of its most important declarations, the Declaration of the Causes and Necessity of Taking Up Arms (July 6, 1775) and the Declaration of Independence (July 4, 1776). Both of these declarations received overwhelming approval within Massachusetts. The Continental Congress did not say anything novel in the declarations, Congress simply repeated the sentiments that Massachusetts' Patriots had been voicing for years and were currently living out by taking up defensive arms. Indeed, many of Massachusetts' towns declared their support for independence weeks before the Declaration of Independence was approved by the Continental Congress, and they did so using the same language that Thomas Jefferson is so well-known for.

The Declaration of the Causes and Necessity of Taking Up Arms is an excellent example of the Patriot's perception that America's appeal to heaven had already begun in 1775.⁸³ This declaration rejected Parliament's claim of absolute authority over America on the basis of natural rights doctrines, since civil authority was based on consent and representation, neither of which Parliament could justly claim. Americans had pursued "every temperate, every respectful measure" in their attempts to find a peaceful resolution to the political struggle between the colonies and Britain, but all in vain. It was the British government which, driven by "an inordinate passion for a power" and an "intemperate rage for unlimited domination," had "attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms."

Britain was the aggressor, attempting to alter the political union established by the colonial charters, and America was acting in self-defense. When hostilities began at Lexington and Concord, Americans were left with only two choices, they were "reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force. The latter is our choice." Americans had "counted the cost of this contest, and find nothing so dreadful as voluntary slavery."

Americans could express a moral confidence in the justice of their cause and "solemnly, before God and the world, declare, that, exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance, employ for the preservation of our liberties; being with one mind resolved to die

⁸³ Second Continental Congress, The Declaration of the Causes and Necessity of Taking Up Arms, July 6, 1775.

freemen rather than to live slaves.” The appeal to heaven had already begun and the American Patriots called God and the world as witnesses to the justice of their cause.

The newly-formed Massachusetts House of Representatives was aware of this when it issued a proclamation for a day of public thanksgiving which was to take place on November 23, 1775.⁸⁴ The people of Massachusetts were pursued by the “Iron hand of Tyranny” and were feeling “the dreadful Effects of Civil War, by which America is stained with the Blood of her Valiant Sons who have bravely fallen in the laudible defence of our rights and Privileges.” Yet despite the dark aspect of the present situation, the House believed the people had “the greatest reason to adore and praise the supreme disposer of events, who deals infinitely better with us than we deserve, and amidst all his Judgments hath remembered mercy...”

The people should be thankful for the brave American Army, i.e. the Continental Army, which had been raised in defense of their rights and the political union between the American colonies. Above all, the people should thank God that their “rights and Privileges, both Civil and Religious, are so far preserved to us, notwithstanding all the attempts of our bar-barous Enemies to deprive us of them.” The people should pray, appealing to God to bless their civil authorities, the General Court, and that He would “graciously smile upon our Endeavours to restore peace, preserve our rights and Privileges, and hand them down to posterity.” The proclamation finished with the telling words, “God Save The People.”

⁸⁴ Massachusetts House of Representatives, “A Proclamation for a Public Thanksgiving, on November 23,” November 4, 1775, *Acts and Resolves, Public and Private, of the Province of Massachusetts Bay*, vol. 19 (Boston: Wright & Potter, 1918), 136-137.

The House expressed America's appeal to heaven again in spring 1776, when it proclaimed a day of public fasting for March 7.⁸⁵ The people of Massachusetts must recognize that "events are in the hands of the Supreme Governor of the Universe." It was therefore their duty to implore God to "commend his Blessing upon our Councils & Arms in the present Struggle with Great Britain, for those inestimable Rights, Civil and Religious, with which God & Nature has invested us, and made it our Duty to endeavour at every hazard to hand down to Posterity..." In their struggle with Britain, Americans needed God on their side, they needed His recognition that their cause was just. Since they were making their appeal based on the principles of nature, which are the laws of God, they were certain that God was on their side.

Perhaps no one was more certain than Samuel Adams. Throughout 1776, Adams repeatedly expressed his resolve that the American colonies should declare independence. He already had his heart set on a political union between the colonies in January 1776, while he was serving with the Continental Congress in Philadelphia. Adams wrote to James Warren, a prominent member of the Massachusetts House, that the idea of an American "confederation" was "not dead but sleepeth." Adams did "not despair of it" and he recognized that British military actions were hastening on the creation of that confederation. Every British cannon fired drove the American colonies closer to forming an independent political union.⁸⁶

A few days later Adams wrote to James Sullivan, asking him "What have we to expect from Britain, but Chains & Slavery?" Adams hoped that Americans would "act the part which the great Law of Nature points out," i.e. take up defensive arms for their self-preservation.⁸⁷ In

⁸⁵ Massachusetts House of Representatives, "Resolve Appointing a Day of Fast, on March 7," February 20, 1776, *Acts and Resolves*, vol. 19, 278.

⁸⁶ Samuel Adams, "To James Warren," January 6, 1776, in Cushing, 250-254.

⁸⁷ Samuel Adams, "To James Sullivan," January 12, 1776, in Cushing, 257-258.

early April 1776, Adams wrote to Samuel Cooper asking him “is not America already independent? Why then not declare it?” Under what terms could America reconcile with Britain? Based on British proclamation and actions, the only terms Americans could expect were “our abjectly submitting to Tyranny, and asking and receiving Pardon for resisting it.”⁸⁸

Adams sent another letter to Cooper in late April, in which he asserted that “the Ideas of Independence spread far and wide among the Colonies. Many of the leading Men see the absurdity of supposing that Allegiance is due to a Sovereign who has already thrown us out of his Protection.” It was past-time for America to form a confederation where “one Government may be formd with the Consent of the whole —a distinct State composd of all the Colonies with a common Legislature for great & General Purposes.” Independence was the logical decision to make when the colonies and Britain were already in a state of war.⁸⁹

In February 1776, Adams wrote a newspaper article promoting a declaration of independence. Adams was in full support of the arguments for independence espoused by Thomas Paine in *Common Sense*.⁹⁰ The fiery Puritan asserted that America was not “dependent” on Britain in any true political sense. There was no imperial constitution and, before 1763, the legal connection between the colonies and Britain was based on “vague and uncertain laws.” Americans should also consider the character of the British government. That government had “broken through the most solemn covenants, debauched the hereditary, and corrupted the elective guardians of the people's rights... established an absolute tyranny in Great Britain and Ireland, and openly declared themselves competent to bind the Colonies in all cases whatsoever...” Nothing was to be expected from Britain but more tyranny. It was time for

⁸⁸ Samuel Adams, “To Samuel Cooper,” April 3, 1776, in Cushing, 273-277.

⁸⁹ Samuel Adams, “To Samuel Cooper,” April 30, 1776, in Cushing, 281-285.

⁹⁰ Samuel Adams, “Candidus,” February 3, 1776, in Cushing, 261-268.

America to declare its independence and assume an equal footing among the nations of the world.

On May 10, 1776, a month before Richard Henry Lee introduced his June 7 motion for independence in the Continental Congress, the Massachusetts House issued a resolve to the province's towns requesting their sentiments on the question of independence.⁹¹ The towns were asked to inform their representatives to the next General Court "whether that, if the honourable Congress should, for the Safety of the said Colonies, declare them independent of the Kingdom of Great Britain, they the said Inhabitants will solemnly engage, with their Lives and Fortunes, to support them in the measure." The House was appealing to the people on the great question of independence. In accordance with natural rights doctrines, the House knew that such an action would require the express consent of the people. And the people of Massachusetts overwhelmingly gave that consent, with dozens of towns publicly declaring their support for independence.

Boston saw a chance for English history to repeat itself and asserted that "the whole United Colonies of America are upon the verge of a glorious Revolution..."⁹² The king had become the "worst of tyrants" and loyalty to him had become "treason to our country." The entire British government, King, Ministry, and Parliament, was determined to subjugate America at the point of the sword. Based on the evidence of British actions, reconciliation appeared to the inhabitants of Boston "to be as dangerous as it is absurd." They thought it was "absolutely impracticable for these Colonies to be ever again subject to or dependant upon Great Britain,

⁹¹ Massachusetts House of Representatives, "Resolve Requesting Sentiments on Independence," May 10, 1776, *New England Chronicle*, May 16, 1776, in Dorr, Massachusetts Historical Society.

⁹² Town of Boston, "On Independence," May 23, 1776, *American Archives*, series 4, vol. 6, edited by Peter Force (Washington, March 1846), 556-557.

without endangering the very existence of the state.” If Congress should consider it necessary, for the people’s safety, to declare America independent, the people of Boston would support independence with “their lives and the remnant of their fortunes.”

The town of Malden unanimously asserted that it was “now the ardent wish of our souls that America may become a free and independent State.”⁹³ The British government had sent “fleets and armies to America, that by depriving us of our trade, and cutting the throats of our brethren, they might awe us into submission, and erect a system of despotism...” That tyrannical plan had reached a crisis point on April 19, 1775, when British aggression at Lexington and Concord broke the political connection between Massachusetts and Britain. Since even appeals to the justice of the British people had failed, Malden renounced “with disdain our connection with a kingdom of slaves. We bid a final adieu to Britain.” The present generation would be “deficient in their duty to God, their posterity, and themselves, if they do not establish an American Republick.”

The town of Scituate cited the British Ministry’s plans for “subjecting the Colonies to a distant, external, and absolute power, in all cases whatsoever” and Britain’s resolve to carry out those plans with “fire and sword” in its explanation for independence.⁹⁴ Britain seemed resolved “to extirpate the Americans from the face of the earth, if possible, unless they tamely resign the rights of humanity...” The town of Wrentham argued that Massachusetts’ Charter had been destroyed by “divers acts of the British Parliament” and that “fleets and armies have been sent to enforce them, and at length a civil war has commenced, and the sword is drawn in our land...”⁹⁵ Wrentham’s inhabitants were of the opinion that “all hopes of an accommodation are entirely at

⁹³ Town of Malden, “On Independence,” May 27, 1776, in *Force*, 602-603.

⁹⁴ Town of Scituate, “On Independence,” June 4, 1776, in *Force*, 699.

⁹⁵ Town of Wrentham, “On Independence,” June 5, 1776, in *Force*, 699-700.

an end. A reconciliation has become as dangerous as it is absurd.” American independence had become a necessity.

The town of Alford asserted its support for independence because, due to British actions, “the union and connection between Great Britain and the United Colonies of North America are, on the part of Britain, cut in sunder, and that the United Colonies ought to take forfeiture.”⁹⁶ The town of Palmer asserted that the British had “altered the Charter of this Colony, and thereby overthrown the Constitution.”⁹⁷ Since Britain, “being bent on her favourite scheme of enslaving the Colonies, declared them Rebels, and treated them as such. The Colonies, being driven to a state of despair of the least relief from them, were obliged, by the law of self-preservation, to take up arms in their own defence...” The struggle had now reached such a height that it was “impossible for the Colonies ever to be joined with Great Britain again with the least security and safety to themselves or posterity.” Once again, American independence was viewed as a necessity.

The town of Natick thought that the sooner independence came, the better.⁹⁸ The sooner America declared its independence, “the fewer difficulties we shall have to contend with, and the grand objects of peace, liberty, and safety, will be more likely speedily to be restored and established in our once happy land.” The town of Topsfield asserted that Britain had made itself America’s “greatest enemy.” In this town’s opinion, “the United Colonies will be greatly wanting in their duty, both to the great Governour of the Universe, to themselves, and posterity, if independence of the Kingdom of Great Britain is not declared, as soon as may be...”⁹⁹

⁹⁶ Town of Alford, “On Independence,” June 7, 1776, in Force, 701.

⁹⁷ Town of Palmer, “On Independence,” June 17, 1776, in Force, 701-702.

⁹⁸ Town of Natick, “On Independence,” June 20, 1776, in Force, 703.

⁹⁹ Town of Topsfield, “On Independence,” June 21, 1776, in Force, 703-704.

Samuel West's May 29, 1776 election sermon, given before the General Court, to which these town instructions were arriving daily, likewise argued for the necessity of American independence. West's sermon, taken from Titus 3:1,¹⁰⁰ asserted that the law of nature was God's law. Based on that premise, West could assert that the doctrines of passive obedience and non-resistance were contrary to the evidence of both reason and revelation. Neither source of authority expected a people to yield absolute obedience to tyrants; because, whereas natural law provided the foundation for all just government, tyranny was subversive of the ends of government. Civil societies were formed based on the political authority which God had originally granted to the people and with the purpose of protecting the people's liberty.

West argued that "from hence it follows that tyranny and arbitrary power are utterly inconsistent with and subversive of the very end and design of civil government, and directly contrary to natural law, which is the true foundation of civil government and all politic law. Consequently, the authority of a tyrant is of itself null and void..." Civil magistrates have no authority but that which they derive from the people and, if they act contrary to the public good, they forfeit that authority. Reason and revelation only obligate men to obey "lawful magistrates" who are pursuing the proper end of their office and acting as ministers of God to the people. It was the "collective body" of the people which constituted the supreme authority in a state, not the magistrates themselves. It was that collective body which alone possessed the right to alter the constitution and displace tyrannical magistrates.¹⁰¹

Based on the right of self-preservation, West argued, a community has the right to declare its independence from a tyrannical government. Since consent and representation were absolute

¹⁰⁰ Titus 3:1, "Put them in mind to be subject to principalities and powers, to obey magistrates, to be ready to every good work..."

¹⁰¹ Samuel West, "Election Sermon," May 29, 1776, in Thornton, 271-278.

rights, “when a people find themselves cruelly oppressed by the parent state, they have an undoubted right to throw off the yoke, and to assert their liberty...” The law of self-preservation taught that independence was not just the people’s right, “but it is their indispensable duty, if they cannot be redressed any other way, to renounce all submission to the government that has oppressed them, and set up an independent state.” Resistance to tyranny was a duty owed to God and country.¹⁰²

Applying his framework to the political struggle between America and Britain, West regarded it as every American’s duty to oppose British tyranny. West asserted that “there cannot remain a doubt in any man, that will calmly attend to reason, whether we have a right to resist and oppose the arbitrary measures of the King and Parliament...” He argued that it was:

“self-evident, that they have been and are endeavoring to deprive us not only of the privileges of Englishmen, and our charter rights, but they have endeavored to deprive us of what is much more sacred, viz., the privileges of men and Christians; i.e, they are robbing us of the inalienable rights that the God of nature has given us as men and rational beings, and has confirmed to us in his written word...”

Americans could be certain they were fulfilling their duty by taking up arms against British tyranny. West told Americans that “we have made our appeal to Heaven, and we cannot doubt but that the Judge of all the earth will do right.” It was an indispensable duty “which we owe to God and our country, to rouse up and bestir ourselves, and, being animated with a noble zeal for the sacred cause of liberty, to defend our lives and fortunes, even to the shedding the last drop of blood...” Americans must “beat our ploughshares into swords, and our pruning-hooks into spears,¹⁰³ and learn the art of self-defence against our enemies.”

¹⁰² Ibid., 279-285.

¹⁰³ A reference to Joel 3:10.

God would not forsake America if it did not first forsake him, in fact, it seemed that “Providence has designed this continent for to be the asylum of liberty...” To preserve this asylum, West observed “that Providence seems plainly to point to us the expediency, and even necessity, of our considering ourselves as an independent state.” The British Parliament had essentially already declared America independent by declaring war “against a whole community without distinction...” The British government had dissolved the constitution with its tyrannical actions and Americans had thus far performed their duty by appealing to heaven and taking up defensive arms. It was now time for America to fulfill its duty to God, in defense of liberty, and declare its independence.¹⁰⁴

Massachusetts’ Patriots knew that duty would not be easy. On July 1, 1776, the first day of debate over Jefferson’s draft of the Declaration of Independence, John Adams wrote to Archibald Bullock that, “the object is great which we have in view, and we must expect a great expense of blood to obtain it; but we should always remember, that a free Constitution of civil Government cannot be purchased at too dear a rate, as there is nothing on this side the *New-Jerusalem* of equal importance to mankind.”¹⁰⁵ Adams wrote to Samuel Chase that, “if you imagine that I expect this Declaration will ward off calamities from this country, you are mistaken. A bloody conflict we are destined to endure.”¹⁰⁶ If Chase thought that Adams flattered himself with images of “happiness and halcyon days, after a separation from Great Britain, you are mistaken again.” Independence would be difficult, “but freedom is a counterbalance for poverty, discord, and war, and more.”

¹⁰⁴ West, “Election Sermon,” 303-305, 311-313.

¹⁰⁵ John Adams, “To Archibald Bullock,” in Force, 1193-1194.

¹⁰⁶ John Adams, “To Samuel Chase,” in Force, 1194-1195.

The preface of the American Declaration of Independence, approved by the Continental Congress on July 4, 1776, must be read with its natural law foundation in mind. The Declaration's sweeping claims in favor of human freedom, such as "all men are created equal" and that they are "endowed by their Creator with certain unalienable Rights," lose any true meaning if separated from their natural law foundation.¹⁰⁷ At least, divorcing those statements from natural law would have undermined the philosophical foundation of the Declaration in the minds of Massachusetts' Patriots. The resolves passed by the Massachusetts towns throughout May and June 1776 demonstrate how that colony's Patriots interpreted the language of the Declaration. They considered American freedom to be founded upon the laws of nature.

American Independence was an action taken based on the Founders' understanding of natural law and the relevance of that law to civil authority. For instance, the Declaration espoused a covenantal-contractual basis for civil authority, since governments derive "their just powers from the consent of the governed" and the primary purpose of government is to secure the people's natural rights, among which are "Life, Liberty and the pursuit of Happiness." Tyranny is a violation of the covenant-contract and when a government proves to the people that it has become tyrannical by "a long train of abuses and usurpations," the people have a right and a duty "to throw off such Government, and to provide new Guards for their future security."

The people are under no moral or legal obligation to sit idly by while their natural rights are endangered by tyrants and their security is lost. This preface puts the second section of the Declaration, the charges against King George III, in context. Through his attempts to deny Americans their natural and constitutional rights, and his efforts to establish arbitrary

¹⁰⁷ Second Continental Congress, Declaration of Independence, July 4, 1776.

governments in the colonies by military force, the King had become a tyrant and could be overthrown, for “a Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.”

The conclusion of the Declaration made America’s appeal to heaven explicit when the representatives asserted that they were “appealing to the Supreme Judge of the world for the rectitude of our intentions...” After asserting America’s political independence from Britain in no uncertain terms, the Declaration closed with a passage reminiscent of the words which so many Massachusetts towns had voiced over the preceding month; “and for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.” All five of the delegates from Massachusetts signed the Declaration: John Hancock, Samuel Adams, John Adams, Robert Treat Paine, and Elbridge Gerry.

The Massachusetts Council officially voiced its approval of the Declaration on August 28, 1776 and the House followed suit on September 4.¹⁰⁸ The House expressed its “entire satisfaction in the Declaration of Independence” and were pleased with the “very general approbation that measure has met with, through all ranks of people, in this and the other United States of America...” Just like their fellow-Patriots in the Continental Congress, the members of the House were “ready to pledge their fortunes, lives and sacred honour” in support of independence. The ultimate appeal to heaven had been made by America declaring its independence, now it was time to win that independence.

¹⁰⁸ Massachusetts Council, “To the House,” August 28, 1776, *A Journal of the Honorable House of Representatives of the Colony of Massachusetts Bay, 1776* (Boston: Powars and Willis, 1777), 74; Massachusetts House of Representatives, “To the Council,” September 4, 1776, *House Journal, 1776*, 88-89.

Conclusion

This chapter focused on two concepts for the years 1774-1776. First, it applied the concept of the *dissolution* of government to Massachusetts upon Parliament's passage of the Coercive Acts. Massachusetts' Patriots regarded these acts as an outright assault on the constitution which governed their province. If the Acts were enforced, the constitution would be destroyed and Massachusetts reduced to a system of despotism. When the British government did attempt to enforce the Acts, with the aid of fleets and armies, the Patriots regarded the government as dissolved and took steps to establish their own government upon the ruins of the old political system. The extra-legal Provincial Congress and the House-Council government which followed it did try to adhere as closely as possible to the Charter, but these were not the same system of government as before. The social covenant-contract between Massachusetts and Britain had been broken and the people of Massachusetts rejected any Crown officer who attempted to claim civil authority under the Coercive Acts.

The second concept explored in this chapter was an *appeal to heaven*, the principle of justified extra-legal resistance in the face of tyranny. Once British tyranny had caused the dissolution of Massachusetts' government, that province's Patriots had no earthly judge who could decide their case. Appealing to the Supreme Ruler of the universe thus became a moral and political necessity. That appeal took the form of armed resistance when Massachusetts minutemen began to train and equip in fall 1774, it became a reality when the first shots of the Revolutionary War were fired at Lexington and Concord on April 19, 1775, and it culminated in the Declaration of Independence on July 4, 1776.

The Patriots of Massachusetts, and arguably the vast majority of American Patriots, justified their resistance to British tyranny using natural rights doctrines. Without those

doctrines, American freedom would have had no theoretical foundation in 1776. Without those doctrines, the United States of America would have no explanation for its existence as an independent nation.

Chapter 8: Conclusion

A man must be indifferent to the sneers of modern Englishmen, to mention in their company the names of Sidney, Harrington, Locke, Milton, Nedham, Neville, Burnet, and Hoadly. No small fortitude is necessary to confess that one has read them. The wretched condition of this country, however, for ten or fifteen years past, has frequently reminded me of their principles and reasonings. They will convince any candid mind, that there is no good government but what is republican. That the only valuable part of the British constitution is so; because the very definition of a republic is “an empire of laws, and not of men.” That, as a republic is the best of governments, so that particular arrangement of the powers of society, or, in other words, that form of government which is best contrived to secure an impartial and exact execution of the laws, is the best of republics.¹

I. Thesis Reviewed

This treatise has made the argument that natural rights doctrines provided the ideological foundation for American freedom. This was certainly the case among the Massachusetts Patriots, who were the focus of this work. The Patriots of the Revolutionary Era frequently appealed to the language of natural rights in the political struggle between the American colonies and the British government. It was the ideas espoused by adherents of this theory which provided the vital arguments needed for Americans to resist increased British control over the colonies. It is possible that, without natural rights doctrines, there would not have been an American Revolution.

The language of constitutional rights, i.e. civil rights, could only lead American resistance so far. It certainly fell short of justifying a declaration of independence on the part of

¹ John Adams, “Thoughts on Government,” 1776, in Thompson, 243.

the American colonies. The political struggle at the heart of the American Revolution was a struggle over fundamental political principles and the theory of natural rights is primarily concerned with fundamentals. The language of natural rights was thus the natural choice for Massachusetts' Patriots to rely on when defending the freedoms they believed had been granted to them by God.

This was a work of intellectual history. It focused on the ideas which drove the actions of the Massachusetts Patriots, and their revolutionary compatriots in the other colonies. Chapter one provided a brief overview of natural rights doctrines and the Patriots' foundational understanding of that theory in regards to their constitutional rights. The Patriots deeply cherished the rights they held as Englishmen; but they believed these constitutional rights had been "recognized" by their government in political documents such as Magna Carta (1215) and the English Bill of Rights (1689), not "granted" to the people by the state.

The Patriots were convinced that all men possess certain inalienable rights simply due to their humanity. In their understanding the state is not the source of rights, rather, the state acts as the protector of the rights which the people already possess. That is a conclusion which did not originate during the American Revolution, it is a position which natural rights theorists, such as Aquinas, Milton, Locke, Sidney, and Hoadly, had been promoting over the previous 2,000 years. Hence, the American Revolution was the culmination of a long tradition of political principles. It provides one of history's greatest examples of principles being put into practice.

Chapter one also provided a historiographical overview of the role historians have given to natural rights doctrines in the American Revolution. While some historians and schools of thought have downplayed or disregarded the importance of natural rights for providing the ideological justification for the American Revolution, many other historians have recognized its

importance. A current debate among historians is whether the American colonists were fighting for their constitutional rights or their natural rights. This treatise argued that Massachusetts' Patriots were fighting for both, but natural rights was the more significant issue as it was seen as providing the foundation for the constitutional rights enjoyed by Americans.

Chapter two placed the natural rights doctrines held by the Massachusetts Patriots in historical context, beginning with Medieval theorists and tracing the theory through the Protestant Reformation and the Glorious Revolution in England. This chapter placed emphasis on how the *two source theory* reconciled the apparent conflict between reason and revelation, the importance of *covenant theology* to the Protestant understanding of civil authority in the wake of the Reformation, and how covenant theology and social contract theory merged in England during the 17th and 18th centuries to create the *covenant-contract synthesis*. The English political tradition which developed from the 13th Century to the 18th Century had natural rights at its core and heavily influenced the closely-related political tradition which developed in colonial Massachusetts.

Chapter three examined the political tradition of Massachusetts from the founding of the Plymouth and Massachusetts Bay colonies in the 1620s-1630s to the early 1760s, the eve of the political struggle which culminated in American independence. This chapter explored the *covenantal understanding of society* in the colonies of Plymouth and Massachusetts Bay, how the principles of *accountability* and *security* were woven into the legal framework of New England politics, and the nature of *the colonial interpretations of Massachusetts' charters*.

The New England political tradition was largely a reflection of the tradition back in England, although it can be argued that principle and practice were more closely aligned in New England politics. By 1765, Massachusetts' Patriots had been conditioned to view their colony's

charter as a constitution, establishing the fundamental rules the colonists were to live under, and as a covenant-contract, which the people of Massachusetts had consented to live under. As a result, the Patriots of Massachusetts were fiercely attached to their *English liberties*, which they regarded as synonymous with their “natural rights.”

Chapter four focused on the beginning of the political struggle between the American colonies and the British government in 1764-1766. Parliament’s passage of the Sugar and Stamp Acts ignited the tensions which existed between self-government and imperial rule in the American colonies. This chapter expounded the belief of Massachusetts’ Patriots in the *natural rights foundation* for the civil rights of political societies. It also contrasted the position of *Parliamentary supremacy*, dominant in British politics in the late 18th Century, with the opposing theory of *constitutional supremacy*, which the Patriots supported and relied on to argue against British taxation of the colonies. The theory of constitutional supremacy provided the basis for the doctrine of *conditional obedience*, upon which American resistance and eventually the American Revolution were based.

Chapter five demonstrated how the repeal of the Sugar and Stamp Acts by Parliament did nothing to resolve the primary issues at the heart of the political struggle between the American colonies and the British government. With the passage of the Declaratory Act, Parliament asserted its absolute authority over the American colonies. It then attempted to enforce that authority in 1767-1769 through the *suppression* of resistance in Massachusetts and its sister-colonies. From the Patriot perspective, the British government was relying on *force*, rather than *consent*, to impose its authority over the governed. Three means of suppression used by the British government in Massachusetts during these years were *threats*, *dissolving assemblies*, and deploying a *standing army* to the province. Britain’s efforts at suppression in 1767-1769

ultimately failed to eliminate resistance to the government's authority. Instead, suppression only made the Patriots more determined to assert their natural and constitutional rights.

Chapter six considered what the Massachusetts Patriots came to regard as the increasingly heavy hand of British tyranny between 1770-1773. This chapter focused on the Boston Massacre as an example of the *consequences of suppression*, the fear of *independent magistrates* being introduced into Massachusetts' government, and the transition from legal to extra-legal means of resistance exemplified by the concept of *necessity* and demonstrated by the Boston Tea Party. In its efforts to enforce its authority over America, the British government attempted to remove the pillars of accountability which restrained colonial magistrates and preserved the security of the colonists' rights. Massachusetts' Patriots resisted, first through legal means, and then through extra-legal means when they felt they had no other choice.

Chapter seven examined the events leading up to, and surrounding, the American Declaration of Independence. The years 1774-1776 witnessed the implementation of the Coercive Acts, passed by Parliament, which destroyed self-government in Massachusetts and set up an absolute government on the ruins of liberty. The first concept explored in this chapter was the *dissolution* of government in Massachusetts as a result of the Coercive Acts. According to the Massachusetts Patriots, the covenant-contract had been broken and the constitution overturned by British tyranny. For all intents and purposes, there was no constitutional government in Massachusetts by the summer of 1775. The second concept explored in this chapter is that of an *appeal to heaven*, the people's natural right to resist tyrannical governments through extra-legal means. The armed resistance which led to the Battles of Lexington and Concord and Bunker Hill in 1775 was part of this appeal, which culminated in the American Declaration of Independence on July 4, 1776.

II. A New Covenant

Once the American colonies declared their independence from the British Empire, the old colonial charters were inadequate civil constitutions. The Patriots of Massachusetts and its sister-colonies needed to craft new constitutions and, in Massachusetts, the Patriots turned to natural rights doctrines when they did so. The result was the Massachusetts Constitution of 1780, the oldest civil constitution still in operation anywhere in the world and one steeped in the language of natural rights.² This political document was crafted as a covenant-contract between the people of Massachusetts and rested firmly upon the consent of the governed.

Massachusetts' first attempt at a state constitution was the Massachusetts Constitution of 1778. This constitution was crafted by the General Court, i.e. the House and Council in convention, beginning in late 1777 and submitted to the people of Massachusetts for adoption or rejection in spring 1778. The General Court's constitution was overwhelmingly rejected by the voters, with 83% voting against it. Key among the objections to the Constitution of 1778 was the argument that the legislature, i.e. the sitting government, could not craft a constitution.

A constitution is a covenant-contract among the people, as such, the people must have a direct voice in shaping the laws they are to live under. Another objection was the absence of a bill of rights, which would provide the people with additional security for their freedoms. In the people's view, the Constitution of 1778 was deficient in its adherence to natural rights principles. The process by which it was crafted had not adequately recognized the doctrine that political

² Robert Taylor, "Construction of the Massachusetts Constitution," *American Antiquarian Society* 90, no. 2 (January 1981): 317.

sovereignty resides originally in the people and it did not adequately provide security for the people's rights.³

"The Essex Result" is representative of the mindset of those Massachusetts voters who rejected the Constitution of 1778.⁴ This result was written by delegates sent by the towns of Essex County to a special convention authorized to consider the proposed constitution. Under the leadership of Theophilus Parsons, a local lawyer and future chief justice of the Massachusetts Supreme Court, the delegates crafted an eloquent and detailed rejection of the General Court's proposed constitution. Among the reasons given for their rejection, the delegates listed: the absence of a bill of rights, that the security provided for the people's rights was insufficient, and that there was not an adequate separation of powers among the branches of government. The delegates argued that the proposed constitution could not be accepted due to its "nonconformity" to the "true principles of government." The most essential principle being that civil society is formed to protect the natural rights of the people. They argued that the people of Massachusetts' current task was framing a constitution in accordance with those principles.⁵

Only one form of government would work, "a free republican constitution." This new political system should be based on the principle that "all men are born equally free. The rights they possess at their births are equal, and of the same kind." This essential equality meant that the "supreme power" in the state was the collective body of the people, for government was nothing more than the exercise of those powers granted to the people's servants for the good of the whole. The new political system must ensure political liberty to the people, "the right every

³ Samuel Morison, *A History of the Constitution of Massachusetts* (Boston: Wright & Potter, 1917), 14-16.

⁴ "The Essex Result," April 29, 1778, in Frohnen, 205-224.

⁵ *Ibid.*, 205-207.

man in the state has, to do whatever is not prohibited by laws, TO WHICH HE HAS GIVEN HIS CONSENT.”

In order to preserve political liberty in the republic, Massachusetts’ government must have a proper separation of powers and a system of checks and balances. Each branch of government, legislative, executive, and judicial, would be independent of the others, while also possessing powers which would allow it to limit abuses of power by the other branches. The inclusion of a bill of rights into the constitution, prior to its ratification, was also essential to preserving political liberty. The boundaries of individual liberty and state power must be clearly defined from the beginning, otherwise the state would begin to usurp the rights of the people.⁶

The Essex delegates crafted a general outline for a free republican government, striving to make it “consonant to the natural rights of mankind, to the fundamental terms of the original social contract, and to the principles of political justice...” They wanted Massachusetts to have a government in which the people’s “natural rights are attended to, in which the original social contract is observed, and in which political justice governs...” The foremost goal of Essex County was to promote a constitutional system in which the security of the people’s political liberty and natural rights was safeguarded by just laws.⁷

Massachusetts’ second attempt at framing a constitution would prove successful. Learning from its mistakes, the General Court called a special constitutional convention, which consisted of representatives chosen by the towns specifically for that purpose. In a recognition of popular sovereignty, the property requirements for voting were suspended and all males over 21

⁶ Ibid., 208-210.

⁷ Ibid., 223-224.

years of age were allowed to vote for representatives to the Convention. Those representatives met in several sessions in the town of Cambridge between September 1779 and June 1780.

The draft of the constitution was created by a three-man subcommittee composed of James Bowdoin, Samuel Adams, and John Adams, with John Adams being the primary writer, and was then debated extensively by the representatives. In March 1780, after much debate and revision, the final draft was approved by the Convention and submitted to the towns for further criticism. The town meetings were encouraged to examine the constitution clause-by-clause and vote on their approval or disapproval of each passage.

The Convention reconvened on June 5, 1780 and examined the returns from the towns. The returns showed that two-thirds of the voters were in favor of the Constitution, subject to some revisions, and the Convention formally approved the Massachusetts Constitution of 1780 on June 15, 1780. Massachusetts had formed a new social covenant and established a political system based on natural rights doctrines.⁸ The preamble to the Constitution of 1780 began with the assertion that, “the end of the institution, maintenance, and administration of government is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquility, their natural rights and the blessings of life...”⁹

The people of Massachusetts understood their new constitution as a social covenant-contract. This conception of civil society was reflected in the preamble’s statement that, a “body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be

⁸ Morison, *A History of the Constitution of Massachusetts*, 18-22.

⁹ Massachusetts Constitution of 1780, July 15, 1780.

governed by certain laws for the common good.” The people of Massachusetts thanked “the great Legislator of the universe” for His divine goodness and the opportunity He was providing Massachusetts with, “in the course of His providence,” of “entering into an original, explicit, and solemn compact with each other, and of forming a new constitution of civil government for ourselves and posterity...”

Part one of the Constitution was a lengthy “declaration of rights,” i.e. bill of rights, which was intended to provide security for the constitutional and natural rights of the people. Many of the articles expressed concepts which have been discussed throughout this treatise, such as, popular sovereignty, accountability, security, consent, and the separation of powers. Article I stated the fundamental maxim that “all men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.” Article V enshrined popular sovereignty and accountability into the Constitution by asserting that “all power residing originally in the people, and being derived from them, the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are the substitutes and agents, and are at all times accountable to them.”

Article X defended the principle of consent; “every individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws” and “no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Other articles defended such crucial rights as trial by jury, no unreasonable searches and seizures, freedom of the press, and the right to keep and bear arms. All told, there were thirty articles in

the declaration of rights, with Article XXX ensuring a separation of powers between the three branches of the Massachusetts government.

Section two explained how that separation of powers worked and described the “frame of government” in the Commonwealth of Massachusetts, which the people understood as being a “free, sovereign, and independent body-politic or State...” Massachusetts was to have three distinct branches of government. Chapter I described the legislative branch, i.e. General Court, composed of a house of representatives and a senate. Chapter II covered the executive branch, composed of a governor, lieutenant governor, a council, and several other offices. Chapter III discussed the role of the judicial branch. Each branch was designed to be independent of the others, yet possess powers which could be used to check attempts at usurpation and tyranny by the other branches.

The final portion of the Constitution set forth the amendment process. Chapter VI, Article X ensured that the Constitution could not be altered by those in power, i.e. the state’s government. It is only the people who possess the right, and the authority, to alter their social contract-covenant. If “two-thirds of the qualified voters” expressed their desire to amend any part of the Constitution, the towns could then proceed to elect delegates to a special convention for the specific purpose of revising the Constitution. Constitutional conventions were thus designed to give the people the ability to alter the laws they were governed by, while simultaneously preventing those in government from breaking the bounds of the law.

The first government formed under the Constitution of 1780 assembled in Boston to hear a special sermon from Samuel Cooper on October 25, 1780. Cooper preached to newly-elected Governor John Hancock and the General Court on Jeremiah 30: 20-21, “their congregation shall be established before me, and I will punish all that oppress them. And their nobles shall be of

themselves, and their governor shall proceed from the midst of them..." Cooper pointed out the striking similarity between Massachusetts and ancient Israel found in this passage of sacred Scripture. It seemed as if this prophecy had been made for the people of Massachusetts.¹⁰

The people of Massachusetts, under God and the Constitution of 1780, were now enjoying the blessings of self-government. Heaven had granted the people of Massachusetts:

"an inestimable opportunity, and such as has been rarely if ever indulged to so great a people: An opportunity to avail ourselves of the wisdom and experience of all past ages united with that of the present; of comparing what we have seen and felt ourselves, with what we have known and read of others; and of chusing for ourselves, unencumbered with the pretensions of royal heirs, or lordly peers, of feudal rights, or ecclesiastical authority, that form of civil government which we judge most conducive to our own security and order, liberty and happiness: An opportunity, though surrounded with the flames of war, of deliberating and deciding upon this most interesting of all human affairs with calmness and freedom. This, in all its circumstances, is a singular event; it is hard to tell where another such scene was ever beheld. The origin of most nations is covered with obscurity, and veiled by fiction; the rise of our own is open as it is honorable; and the new-born state, may I not be allowed to say, is a "spectacle to men and angels..."¹¹

Despite the terrors of war, which still raged throughout America in 1780, Massachusetts had much to thank God for. The people had deliberately framed the constitution under which they were to live themselves and, henceforth, they were "to be subject to no laws, by which you do not consent to bind yourselves..." Under the Constitution, a citizen of Massachusetts could say of his country, "we are here united in society for our common security and happiness. These fields and these fruits are my own: The regulations under which I live are my own; I am not only a proprietor in the soil, but I am part of the sovereignty of my country."¹²

¹⁰ Samuel Cooper, *A Sermon at the Commencement of the Constitution*, October 25, 1780, Evans Early American Imprints, 2.

¹¹ *Ibid.*, 12.

¹² *Ibid.*, 13.

Just like ancient Israel, Massachusetts was now structured as a “free republic” and the state’s political system was firmly established in a covenant to which the people had given their express consent. Cooper encouraged the citizens of Massachusetts to “reverence their constitution.” The freedoms Massachusetts now enjoyed came at a heavy cost. Cooper asked his listeners to consider “what heroes have bled, what invaluable lives have been offered up to redeem us from slavery, and place us on a free constitution?” The people of Massachusetts must remember that “rights retrieved with such blood as hath flowed from the veins of America in our great cause, must certainly be held by us at an inestimable price, and improved to the greatest advantage...”¹³ With a new covenant established, it was now the responsibility of the people to preserve their freedom:

It is with you also my fellow-citizens, by whose appointment this constitution was framed, and who have solemnly acknowledged it to be your own; it is with you to give life and vigour to all its limbs freshness and beauty to its whole complexion; to guard it from dangers; to preserve it "from the corruption that is in the world;" and to produce it upon the great theatre of nations with advantage and glory. We have now a government free indeed; but after all, it remains with the people, under God, to make it an honourable and happy one...”¹⁴

¹³ Ibid., 5, 14, 20-21.

¹⁴ Ibid., 21.

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Chapter 1: Introduction

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