

A N
HUMBLE ENQUIRY

I N T O

The NATURE of the DEPENDENCY of the
AMERICAN COLONIES upon the PAR-
LIAMENT of *GREAT-BRITAIN*,

A N D

The RIGHT of PARLIAMENT to lay TAXES
on the said COLONIES.

By a FREEHOLDER of *SOUTH-CAROLINA*.

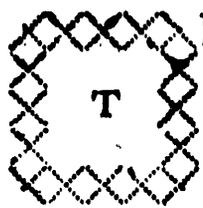
A House divided against itself cannot stand.

When people heard ship money demanded as a right, and found it by sworn judges of the law adjudged so, upon such grounds and reasons as every stander-by was able to swear was not law, and so had lost the pleasure and delight of being kind and dutiful to the King, and, instead of GIVING, were required to PAY, and by a logick that left no man any thing that he might call his own, they no more looked upon it as the case of one man, but the case of the kingdom, nor as an imposition laid upon them by the King, but by the judges, which they thought themselves bound in publick justice not to submit to. It was an observation long ago of *Thucydides*, "That men are much more passionate for injustice than for violence, because (saith he) the one proceeding as from an equal seems rapine, when the other proceeding from a stranger is but the effect of necessity." — When they saw reason of State urged as elements of law, judges as sharp-sighted as secretaries of State, judgment of law grounded upon matter of fact of which there was neither enquiry nor proof, and no reason given for the payment but what included all the estates of the standers by, they had no reason to hope that doctrine, or the promoters of it, would be contained within any bounds; and it is no wonder that they who had so little reason to be pleased with their own condition were no less solicitous for, or apprehensive of the inconveniences that might attend any alteration. — *History of the long Rebellion, vol. 1. p. 70, 71.*

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AN HUMBLE ENQUIRY, &c.



THOUGH few or none claim infallibility in express terms, yet it is very difficult ever to persuade some men they are mistaken. We generally have so good an opinion of our own understanding, that insensibly we take it for granted those that do not think as we do must needs be in the wrong. When disputes are once heightened by personal prejudice, or the bitterness of party, it becomes so much the more difficult to the disputants themselves to see their mistakes, and even to bystanders the truth appears wrapped up in a cloud, and through the fog and dust of argument becomes almost imperceptible.

These remarks I believe will particularly hold good in the subject now in agitation between *Great-Britain* and her colonies, a subject however of too serious a nature to be given up to prejudice, or to be decided by the rage of party. Every argument *pro* or *con* deserves to be most carefully weighed, and he that sets the whole in the clearest light does the publick no inconsiderable service, and that whether it be by pointing out the justice of the *American* claims to *Great-Britain*, or setting such constitutional arguments before the *Americans* as must either leave obstinacy inexcusable, or will dispose loyal and reasonable men to a chearful acquiescence.

The argument on which the *Americans* seem to lay the greatest stress is, they say that it is a principle of the *British* constitution, that no *Englishman* ought to be taxed but by his own consent, given either by himself or his representative. I find it admitted by such as disapprove the *American* claims, that no man is bound by any law to which he hath not given his consent either in person or by a representative. Perhaps these two propositions are not perfectly equivalent; however it seems clear, that he that holds that no man is bound **BY ANY LAW** to which he has not personally or by a representative consented, must also admit, that no man is bound by any law that lays a tax on him without his consent given by himself or representative. What is true of **ALL** laws in general must also hold true of **EVERY** law in particular. If no law can operate upon any man that hath not in the above manner given his assent to

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it, certainly no such law can be binding upon whole communities, or any considerable part of the whole nation. In the spirit of the above principle, it seems essential to law, that it be assented to by such on whom it is afterwards to operate. To suppose, therefore, that a law is binding upon such as have not given their assent, is to suppose (I argue upon that principle) a law may be valid and binding at the same time it is confessedly destitute of the very essential point to make it so; and if the assent of those that are to be governed by the law is not necessary or essential to the making of it, then representation is a mere superfluous thing, no better than an excrescence in the legislative power, which therefore at any convenient time may be lopped off at pleasure, and without the least danger to the constitution; the governed then have no part in the legislation at all, the will of those in power, whoever they be, is the supreme and sole law, and what hath been above asserted to be a constitutional principle seems to me to fall to the ground without remedy to all intents and purposes.

Supposing, on the other hand, that principle, as is asserted to be constitutional, then to me, as is further asserted, it seems to be of the very nature of it, that it be general and hold in all cases. This it does not only clearly imply, but also fully and strongly express; but yet if so, it would also seem that no man, or no people, in no case, or by no power whatever, can be bound to pay a tax to which they have not consented either personally or by their representatives. Every constitutional principle must be general and hold in all cases, and I may add in all places too, for it is usually said that the liberties of an *Englishman* follow him to the end of the world, much more then must they follow him over all the *British* dominions; this is so true, that by an express law, the children of *British* parents, though born in a foreign dominion, are just as much entitled to all *British* liberties as those who have been born within the realm.

An inference may possibly hence be drawn, that if so, the *British* colonies are subject to none of the acts of the *British* Parliament, (*scil.* because they never assented to them neither in person nor by representative) and therefore must be considered as independent of the legal or parliamentary power of *Great-Britain*. I confess I should be sorry to see *America* independent of *Great-Britain*, and if any of the arguments the *Americans* make use of imply an independency on the mother state, I should shrewdly suspect there must be some fallacy couched under an otherwise specious appearance. The sum and strength of this inference I conceive lies thus: The *British* legislature must be the supreme power in all the *British* dominions, and if so, all the *British* dominions ought to pay obedience in all cases to all the laws in which they are mentioned that may be enacted

acted by the *British* Parliament, and to refuse obedience in any such case is to declare themselves an independent people.

I freely own I have not heard any thing stronger said in favour of taxation by the *British* Parliament, and I think this argument is highly deserving the most serious consideration. Every good man would wish to hear the voice of dispassionate reason before he forms his judgment in any debate. Vulgar prejudices may sway vulgar minds, but a wise man is neither carried away by the torrent of power, nor the blast of popularity. I would endeavour therefore to consider this argument with all the candour and impartiality I am capable of; I would do it with a mind open to conviction, and with steadiness sufficient to follow truth wherever she may lead me.

To have a clear view how far this argument may affect the present question between *Great-Britain* and her colonies, it will be necessary carefully to state the relation which they bear to one another; without this we shall never have a precise and determinate idea of the matter. The argument I think is made up of two propositions, *viz.*

The Parliament of *Great-Britain* is the supreme legislature in all the *British* empire.

All the *British* dominions therefore ought to pay obedience thereto in all cases and to all the laws in which they are mentioned, and to refuse obedience to any such is to declare themselves an independent people.

Before I proceed to take a distinct view of each of these propositions, I repeat, that they are said to be built upon a constitutional principle, and that this principle must be general and hold in all cases; this must undoubtedly be admitted, for what enters into the very essence of the constitution must doubtless operate as far as the constitution itself. Let us now proceed to consider every part of these two propositions distinctly, and this must infallibly lead us to form a sound judgment of the whole.

The kingdom of GREAT-BRITAIN consists of two parts, north and south, or *England* and *Scotland*, united since 1707 into one kingdom, under the name of *Great-Britain*. This union hath not been so full and absolute, as to put both kingdoms in all respects upon a perfect equality; but tho' the legislature is the same, yet the laws and the administration of justice are not the same in every instance. The same legislature making laws that affect only the one or the other of these kingdoms, and even laws made to be binding upon both, do not affect both alike, of which the difference in raising the supplies by land tax is a very full and striking proof, this could not be the case if the union between the two kingdoms was so entire and absolute, as for instance between *England* and the principality of *Wales*.

THE BRITISH EMPIRE is a more extensive word, and should not be

be confounded with the kingdom of *Great-Britain*; it consists of *England*, *Scotland*, *Ireland*, the Islands of *Man*, *Jersey*, *Guernsey*, *Gibraltar*, and *Minorca*, &c. in the *Mediterranean*; *Senegal*, &c. in *Africa*; *Bombay*, &c. in the *East-Indies*; and the Islands and Colonies in *North-America*, &c. As *England*, strictly so called, is at the head of this great body, it is called the mother country; all the settled inhabitants of this vast empire are called *Englishmen*, but individuals, from the place of their nativity or residence, are called *English*, *Scotch*, *Irish*, *Welch*, *Americans*, &c.

Scotland and *Ireland* were originally distinct kingdoms and nations, but the colonies in *America*, being settled upon lands discovered by the *English*, under charters from the crown of *England*, were always considered as a part of the *English* nation, and of the *British* empire, and looked upon as dependent upon *England*; I mean, that before the union of the two kingdoms, (and very few colonies have been settled since) they depended on *England* only, and even now I suppose are rather considered as a dependance upon *England* than of the two kingdoms united under the name of *Great-Britain*. Were it not for the union, which incorporates the two kingdoms, the colonies never would have depended on that part of *Britain* called *Scotland*, and by the terms of the union I apprehend *England* has not given up or brought her colonies under the dominion of *Scotland*, but tho' dependent on *Great-Britain*, they still remain what they always were, *English* colonies.

All the inhabitants of the *British* empire together form the **BRITISH NATION**, and that the *British* Parliament is the supreme power and legislature in the *British* nation I never heard doubted.

By the *English* constitution, which is that which prevails over the whole empire, all *Englishmen*, or all that make up the *British* empire, are entitled to certain privileges indefeasible, unalienable, and of which they can never be deprived, but by the taking away of that constitution which gives them these privileges. I have observed that the *British* empire is made up of different kingdoms and nations, but it is not the original constitution of *Scotland* or *Ireland*, but of *England*, which extends and communicates its privileges to the whole empire. This is an undeniable principle, and ought never to be lost out of sight, if we would form a sound judgment on the question now to be considered.

From the consideration above admitted, that the *British* Parliament is the supreme legislative power in the whole *British* empire, the following conclusion has been drawn; the colonies (and the same I suppose is meant of all the *British* empire, of which the colonies are a part) are bound by and subject to all the laws of the *British* Parliament in which they are mentioned, or are subject to none of any kind whatsoever.

Before

Before this can be properly discussed, it must be observed, that *Great-Britain* has not only a Parliament, which is the supreme legislature, but also a constitution, and that the now Parliament derives its authority and power from the constitution, and not the constitution from the Parliament. It may also be very fairly inferred hence, that the liberties of *Englishmen* arise from and depend on the *English* constitution, which is permanent and ever the same, whereas the individuals which compose the Parliament are changed at least once every seven years, and always at the demise of a king.

The Parliament of *Great-Britain* is the supreme legislature in the *British* empire. It must be so either absolutely or agreeable to the constitution; if absolutely, it can alter the constitution whenever it sees fit; if agreeable to the constitution, it is not bound by the constitution, nor any thing else; if agreeable to the constitution, then it can no more make laws, which are against the constitution, or the unalterable privileges of *British* subjects, than it can alter the constitution itself. Supposing a Parliament, under some of the arbitrary reigns of the last century, should have made a law, that for the future the king's warrant should be sufficient to lay a tax on the subject, or to oblige him to pay ship money, it would have been an act of the supreme legislature, but it may safely be doubted, whether the nation would have thought it constitutional. I conclude therefore, that the power of Parliament, and of every branch of it, has its bounds assigned by the constitution.

If the power of the Parliament is limited by the constitution, it may not be improper next to enquire, whether the power of the *British* Parliament affects all the subjects of the *British* empire in the same manner.

If the power of the *British* Parliament affects all the subjects of the *British* empire in the same manner, it follows, that all the laws made by the *British* Parliament are binding alike upon all those over whom this power extends, or in other words, that all the subjects of the *British* empire are bound not only by those laws in which they are expressly mentioned, but every law by the Parliament made, for what need is there to mention every individual of those for whom the law is made in general, every subject therefore of the *British* empire, upon this supposition, must be bound by every law of the *British* Parliament, unless expressly excepted.

Those that hold the subjects of *Great-Britain*, living without *England* or *Scotland*, are bound by every law in which they are mentioned, seem also clearly to hold, that the same persons are not bound by such laws in which they are not mentioned. Thus the alternative, that the subjects of the *British* empire must be subject to all or none of the laws of the *British* Parliament, is limited even by those who plead for an universal submission. He that is only bound

to obey some laws, cannot be said to be bound by all laws, and on the contrary, he that is bound to obey all laws, is excused in none.

I suppose, before the union with *Scotland*, none would have scrupled to call the *English* Parliament the supreme legislature of all the *British* empire, though *Scotland* was still an independent kingdom, and by the union *Scotland* and its Parliament was not swallowed up and absorbed by *England* and its Parliament, but united with the kingdom, and the Parliaments also of the two kingdoms united in one general legislature. The ecclesiastical laws and constitution also of each kingdom remains as it was before, *i. e.* entirely different from each other.

Perhaps it may not be amiss to conceive, that the authority of the *British* Parliament extends over the whole *British* nation, though the different respective subjects are not altogether alike affected by its laws: That, with regard to national trade, the power of making it most beneficial to the head and every branch of the empire is vested in the *British* Parliament, as the supreme power in the nation, and that all the *British* subjects every where have a right to be ruled by the known principles of their common constitution.

Next, it may be proper to take a nearer view how far, and in what manner, the acts of Parliament operate upon the different subjects of the *British* empire.

ENGLAND doubtless is the first and primary object of the *British* Parliament, and therefore all laws immediately affect every resident in *England*; and of the king himself it has been said, *Rex Anglia in regno suo non habet superiorem nisi Deum & legem*. Proceedings at law I take to be the same in *England* and *England's* dependencies.

SCOTLAND is united with *England*, and therefore there is a different operation of the laws that subsisted before and those that have been made since the union, and even these do not affect *Scotland* as of themselves; but in consequence of and in the terms of the union between the two nations, the union makes no alteration in proceedings at law, nor does it take away any private property.

IRELAND is a distinct kingdom, and hath been conquered from the native *Irish* two or three times by the *English*; it hath nevertheless a Parliament of its own, and is a part of the *British* empire. It will best appear how far the *British* Parliament think *Ireland* dependent upon *Great-Britain*, by inserting, *A Bill for the better securing of the Dependency of Ireland*. The act was as follows: Whereas attempts have lately been made to shake off the subjection of *Ireland* unto, and dependence upon the imperial crown of this realm, which will be of dangerous consequence to *Great-Britain* and *Ireland*. And whereas the House of Lords in *Ireland*, in order thereto, have, of late, against law, assumed to themselves a power and jurisdiction to examine, correct and amend, the judgment and decrees of the courts of justice in the kingdom of *Ireland*; therefore, for the bet-

er securing of the dependency of *Ireland* upon the crown of *Great-Britain*, may it please your Majesty, that it may be enacted, and it is hereby declared and enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said kingdom of *Ireland* hath been, is, and of right ought to be, subordinate unto, and dependent upon the imperial crown of *Great-Britain*, as being inseparably united and annexed thereunto, and that the King's Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons of *Great-Britain*, in Parliament assembled, 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 people and kingdom of *Ireland*.

And be it farther enacted, by the authority aforesaid, That the House of Lords of *Ireland* have not, nor of right ought to have, any jurisdiction to judge of, affirm, or reverse any judgment, sentence, or decree, given or made in any court within the said kingdom, and that all proceedings before the House of Lords upon any such judgment, sentence, or decree, are, and are hereby declared to be utterly null and void to all intents and purposes whatsoever.

The occasion of this bill was an appeal brought 1719 from the House of Peers in *Ireland* to the House of Peers in *England*. A **PITT** was the first that spoke against it in the House of Commons, because, as he said, in his opinion it seemed calculated for no other purpose than to encrease the power of the *British* House of Peers, which in his opinion was already but too great. The Duke of *Leeds* protested against it in the House of Lords, and gave fifteen reasons to support the claim of the House of Peers in *Ireland*. The bill however passed, though Mr. *Hungerford*, Lord *Molesworth*, Lord *Tyrconnel*, and other members, endeavoured to shew, that *Ireland* was ever independent with respect to courts of judicature. Some proposals have several years ago been made to incorporate *Ireland* with *Great-Britain*, but without any effect.

The Islands of *Guernsey* and *Jersey*, though in ecclesiastical matters considered as a part of *Hampshire*, are under the direction of an Assembly called the Convention of the States of *Jersey*, &c. The *Isle of Man* hath lately been annexed to the crown, but their own *Manks* laws still obtain in the island.

The *British* colonies and islands in *America* are not the least important part of the *British* empire; that these owe a constitutional dependence to the *British* Parliament I never heard they denied; though of late they have frequently been charged with it, these charges have not been grounded upon any declaration of theirs of the kind, their very petitioning, petitions and resolutions, manifestly

festly speaking the very reverse; but their aversion to certain new duties, laid upon them for the sole purpose of raising a revenue, have been made a handle of against them, and they have as good as been charged, that they declare themselves an independent people. These insinuations the *Americans* are apt to look upon as being neither very fair nor very friendly; however at present I would only consider what kind of dependence is expected from the *American* colonies. An act of Parliament has fixed that of *Ireland*; a later act of the same power hath also fixed that of *America*, though, as will appear from the comparison, not altogether on the same footing. The act is entitled, *An Act for the better securing the Dependency of his Majesty's Dominions in America upon the Crown and Parliament of Great-Britain*, and runs thus:

Whereas several of the Houses of Representatives in his Majesty's colonies and plantations in *America* have of late, against law, claimed to themselves, or to the General Assemblies of the same, the sole and exclusive right of imposing duties and taxes upon his Majesty's subjects in the said colonies and plantations, and, in pursuance of such claim, passed certain votes, resolutions and orders, derogatory to the legislative authority of Parliament, and inconsistent with the dependency of the said colonies and plantations upon the crown of *Great-Britain*, may it therefore please your most excellent Majesty, that it may be declared, and be it declared, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, That the said colonies and plantations in *America* have been, are, and of right ought to be, subordinate unto and dependent upon the imperial crown and Parliament of *Great-Britain*, and that the King's Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, of *Great-Britain*, in Parliament assembled, 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.

And be it further declared and enacted, by the authority aforesaid, That all resolutions, votes, orders and proceedings, in any of the said colonies or 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.

This is the standard of dependence which the Parliament of *Great-Britain* hath fixed for the *British* colonies on the 18th of *March*, 1766. The Stamp Act was repealed the same day, and the opinion of several noblemen who protested against that repeal

peal was, “ that this declaratory bill cannot possibly obviate the
 “ growing mischiefs in *America*, where it may seem calculated only
 “ to deceive the people of *Great-Britain*, by holding forth a de-
 “ lusive and nugatory affirmance of the legislative right of *Great-*
 “ *Britain*, whilst the enacting part of it does no more than abro-
 “ gate the resolutions of the House of Representatives in the
 “ *North-American* colonies, which have not in themselves the least
 “ colour of authority, and declares that which is apparently and
 “ certainly criminal only null and void.” I presume I may ven-
 ture to affirm, that in and by this act, the Parliament did not mean
 to set aside the constitution, infringe the liberties of *British* sub-
 jects, or to vindicate unto themselves an authority which it had
 not before, was known to have, and would always have had, though
 this act had never been made. I also find, that, in order to overlet
 any act, law, resolution, or proceeding, of the colony Assemblies,
 nothing seems necessary, but that the Parliament should declare it
 null and void to all intents and purposes whatsoever. And it seems
 pretty clear, that the same power that can disannul any act by a
 simple declaration, with one single stroke more, can also annihilate
 the body that made it.

The remark already made, that though all the different parts
 of the *British* empire are in a state of dependence upon the Parli-
 ament of *Great-Britain*, yet that the nature and degree of depen-
 dence is not exactly alike in the respective different parts of the same,
 will receive new strength and light, if we compare the act for
 better securing the dependency of *Ireland* with that for better se-
 curing the dependency of the colonies. Both acts, though at dif-
 ferent times, have been made by the same authority, and for a si-
 milar purpose, and none can better tell us what kind and degree
 of dependency the Parliament expects and requires of its depen-
 dents than the Parliament itself.

The *Irish* is entitled in very general words, for the better securing
 the dependency of *Ireland*.

The title of the *American* law is more explicit; *Ireland's* depen-
 dency is mentioned, but the dependency of the *Americans* is more
 clearly expressed, and said to be upon the crown and Parliament of
Great-Britain. *America* seems to owe two dependencies, one to the
 crown, and one to the Parliament.

The preamble of the *Irish* bill brings no less a charge than an
 attempt to shake off subjection unto and dependence upon the im-
 perial crown of *Great-Britain*.

The preamble of the *American* bill brings no such accusation,
 but only, that the *Americans* have claimed an exclusive right to lay
 on taxes on his Majesty's subjects within the colonies, and passed
 votes and resolutions derogatory to the legislative power of Parlia-
 ment, and inconsistent with the dependency of the said colonies

and plantations upon the crown (the word and Parliament is not made use of in this place) of *Great-Britain*. The principal differences between these bills seems to me to lie in this, that *Ireland* is said to be subject to and dependent only on the crown of *Great-Britain*, whereas *America* throughout is declared subject, at least dependent and subordinate, not only to the crown, but also to the Parliament of *Great-Britain*, and then *Ireland* is only declared dependent upon, and subordinate to, in very gentle terms, whereas the right of making laws to bind the *Americans* is expressed in these very strong, most extensive terms, **IN ALL CASES WHATSOEVER.**

Time was when the dependency of the colonies upon *England* was spoke of exactly in the terms made use of for *Ireland*; the charter of this province saith, "our pleasure is, that the tenants and inhabitants of the said province be subject IMMEDIATELY to the crown of *England*, as depending thereof forever;" but by the late law all *America* is said to be dependent on crown and Parliament. This alteration seems to me by no means immaterial, but to imply a change both in the subjection expected from the colony and in the authority to which the colony owes dependency and subordination. In Parliament, King, Lords, and Commons, constitute the supreme power; but as each of these has its own distinct unalienable right, and incommunicable prerogatives, rights, or privileges, so I cannot but conceive dependency upon the crown and dependency upon crown and Parliament are things not exactly alike. If (as asserted in the charter) the colonies at some time or other were only dependent on the crown, and now are subordinate unto and dependent upon crown and Parliament, it should seem both the authority on which they depend, and the nature of their dependency, hath undergone some alteration; neither doth this appear to me a trifling alteration, and it seems to me at least if so it must needs make some alteration in the system of government and obedience.

Hitherto all appeals from the colonies, after passing thro' chancery in *America*, have been made to the King in council; this I conceive must have been in consequence of the dependency of the colonies immediately upon the crown; but perhaps for the future appeals will not be carried to the King in council, but to the King and Parliament.

The crown has hitherto had a right of a negative upon all *American* laws, and they were obliged to be passed in *America* with a saving clause; but if, as is asserted in the declaratory bill, the King has a right and power to make laws to bind the *Americans*, *by and with the advice and consent of the Lords Spiritual and Temporal, and Commons of Great-Britain, assembled in Parliament*, then probably the same authority must also concur to repeal the laws made in *America*, whereas the crown hitherto repealed any law made in *America*

America without asking or waiting for the consent of Lords and Commons.

It appears also, by a late act suspending the Assembly of *New-York*, that the parliamentary authority also extends to suspend, which is but another word for proroguing or dissolving (or annihilating) Assemblies; all which has hitherto been done by the crown without the interfering of Parliament: But that the crown hath a right of proroguing or dissolving the Parliament itself by its own authority I suppose will not be denied. I cannot dismiss this subject without observing, that even the declaratory bill speaks of the Assemblies in *America* as Houses of Representatives. If it is allowed that they are represented in *America*, unless they are represented doubly, they cannot be represented any where else; this strikes at the root of virtual representation, and if representation is the basis of taxation, they cannot be taxed but where they are represented, unless they are doubly taxed, as well as doubly represented.

It is evident upon the whole, that a much greater degree of dependency and subordination is expected of *America* than of *Ireland*, though, by the way, *Ireland*, in the preamble of their bill, is charged with much greater guilt than *America*; nay, the words in ALL CASES WHATSOEVER are so exceeding extensive, that, in process of time, even hewing of wood, and drawing of water, might be argued to be included in them.

It was necessary to state the authority claimed by Parliament over *America* as clear and full as possible; with regard to the *Americans* it must be owned, when they profess to owe dependency and subordination to the *British* Parliament, they do not mean so extensive and absolute a dependency as here seems to be claimed, but that they think themselves in a constitutional manner dependent upon and in subordination to the crown and Parliament of *Great-Britain*, even those votes, resolutions, and proceedings, which are disannulled by the House of Commons and the declaratory bill, most fully and cheerfully declare.

It has indeed been said, that unless they are subject to all the *British* acts in which they are mentioned, they are subject to none of any kind whatsoever, and consequently to be considered as independent of the legal and parliamentary power of *Great-Britain*; but I should think it might be as fairly and safely concluded, that while the *Americans* declare themselves subject to any one law of the *British* legislature, it cannot be said they declare themselves independent, or not subject to any law whatever.

In so delicate and important a matter, may I be permitted to observe, that the measure of power and of obedience in every country must be determined by the standard of its constitution. The dispute seems to lie between the Parliament and colonies; the Parliament will certainly be the sitting judges; I will not take upon
me

me to say that the *Americans* may not look upon Parliament as judge and party; however, it is very possible for a judge to give a most righteous sentence, even where he himself is deeply interested, but they that are sufferers by the sentence will ever be apt to wish that he had not been party as well as judge.

From what hath been said hitherto, the due and constitutional authority of the *British* Parliament appears clear, and it does not less so I hope, that the subordination to and dependency on the *British* Parliament is not exactly the same in all the respective parts of that extensive empire; perhaps this will appear with still greater evidence by taking a particular view of the subject of taxation.

Any unlimited power and authority may lay on the subjects any tax it pleaseth; the subjects in that case themselves are mere property, and doubtless their substance and labour must be at their disposal who have the disposal of their persons. This is the case in arbitrary governments; but the *British* empire is an empire of freemen, no power is absolute but that of the laws, and, as hath been asserted, of such laws to which they that are bound by them have themselves consented.

Did the power and authority of the *British* Parliament in point of taxation extend in the same manner over all its dependencies, *e. g.* the same over *Scotland* as over *England*, over *Ireland* in the same manner as over *Scotland*, over *Guernsey* and *Jersey* as over *Ireland*, &c. then the very same act which lays a general tax would lay it also at the same time upon all over whom that authority extends. The laws of every legislature are supposed to extend to and be made over all within their jurisdiction, unless they are expressly excepted. Thus an excise law extends to all the *British* kingdom, because it is a publick law; but acts have frequently been made to lay on a penny *Scots* on beer, which, being for a local purpose, cannot operate on the whole kingdom. The same I believe may be said with regard to the method of recovering small debts; it seems absurd to say, that any supreme legislature makes an unlimited law which at the same time is designed not to be binding upon the greatest part of the subjects within that empire. Was it ever known that the land tax being laid on the whole united kingdom, the bishoprick of *Durham*, and the manor of *East-Greenwich*, were not also supposed to be included? and if any part within the immediate jurisdiction, and equally dependent on the same legislature, should be designed to be excused from, or not liable to pay a general tax, would it not be absolutely necessary that such a place should be expressly excepted? If, because *America* is a part of the *British* empire, it is as much so, or in the same manner is a part of it, as is the bishoprick of *Durham*, or the manor of *East-Greenwich*, nothing can be plainer than that it must be affected by every tax that is laid just in the same manner and proportion as is the bishoprick of *Durham*, or manor
of

East-Greenwich. This hath not been the case, nor thought to be the case hitherto. *Ireland* and *America* have not been called upon to pay the *British* land tax, malt tax, nor indeed any tax in which they have not been expressly mentioned; the reason of which I presume must be, either that the *British* Parliament did not look upon them as any part of the kingdom of *Great-Britain*, or else did not think them liable to any tax in which they were not expressly mentioned. If any subjects of the *British* empire are not liable to any or every tax laid on by the *British* Parliament, it must be either because they are not liable by the constitution, (as not being represented) or because they are excused by the favour of Parliament; if they are not liable by the privileges of the constitution, their not being compelled to pay is no favour, the contrary would be oppression and an anticonstitutional act; if they have been hitherto excused by the lenity of the *British* Parliament, it must be owned the Parliament bore harder on those who were made to pay those taxes than on those who by their lenity only were excused.

The noble Lords who protested against the repeal of the Stamp Act observe, "it appears to us, that a most essential part of that authority, (*sc.* the whole legislative authority of *Great Britain*, without any distinction or reserve whatsoever) the power of legislation, cannot be properly, equitably, or impartially exercised, if it does not extend itself to all the members of the state in proportion to their respective abilities, but suffers a part to be exempt from a due share of those burdens which the publick exigencies require to be imposed upon the whole: A partiality which is directly and manifestly repugnant to the trust reposed by the people in every legislature, and destructive of that confidence on which all government is founded."

If in the opinion of these Noblemen, therefore, it is partiality to suffer any part of the state to be exempt from a due share of those burdens which the publick exigencies require should be imposed upon the WHOLE, it would also seem to be a species of partiality, to lay a burden on ANY PART of the state which the other parts of the same state are not equally bound to bear. Partial burdens, or partial exemptions, would doubtless affect those that are burdened or exempted in a very different manner; but if not extending alike to the whole, must still be looked upon as partial. And if this partiality is inconsistent with the trust reposed BY THE PEOPLE in every legislature, it would also seem that the legislature could not lay any burdens but as entrusted by the people who chose them to be their representatives and a part of the legislature. We may hence also learn what is to be expected, if every other part of the *British* empire, *England* and *Scotland* only excepted, have hitherto been exempted from the taxes paid in *England*, which it must be owned are very heavy, by mere favour; or, as some seem to express

it, “*flagrant partiality and injustice* ;” their being indulged time immemorial will not be deemed a sufficient plea to excuse them always, but with an impartial hand the very same taxes that now obtain in *Great-Britain* will be laid upon *Ireland, America, Jersey, Guernsey, the Mediterranean, African* and *East-India* settlements, and, in short, on every individual part of the *British* empire. Whether a design to do this be not ripening apace I will not take upon me to say, but whenever it does, it must make some alteration in the policy of the mother and infant state, nay in the system of the whole *British* empire.

There are several parts of the *British* empire that pay no tax at all; this I take to be the case of *Gibraltar, Minorca, Newfoundland, East-Florida*, and all the *African* and *East-India* settlements, &c. The reason is, that all these places have no legislature of their own, and consequently none to give or dispose of their property; had these places been taxed by Parliament, there might however this reason been given, that having no representatives within themselves, and having never contributed any thing to the publick burdens, though they all receive protection, perhaps greater than the *American* colonies, the Parliament supplied that defect; but this cannot be urged against the colonies, who both have legislatures, and also contributed to the publick burdens, and that so liberally, that even the crown and Parliament thought they had exerted themselves beyond their abilities, and for several years gave them some compensation. I may mention those parts of the *British* empire as striking instances, that where there is no representation, taxation hath not been thought of, and yet *Newfoundland*, which is not taxed at all, is certainly as much represented in Parliament as all the colonies, which are designed to be doubly taxed.

By the constitution taxes are in the nature of a free gift of the subjects to the crown; regulations of trade are measures to secure and improve the trade of the whole nation. There is no doubt but regulations may be made to ruin as well as to improve trade; yet without regulations trade cannot subsist, but must suffer and sink; and it seems no where more proper to lodge the power of making these regulations than in the highest court of the empire; yet a man may trade or not, he may buy or let it alone; if merchandizes are rated so high that they will not suit him to purchase, though it may be an inconvenience, yet there is no law to compel him to buy; to rate the necessaries of life, without which a man cannot well do, beyond their real value, and hinder him at the same time from purchasing them reasonably of others, is scarce consistent with freedom; but when duties are laid on merchandizes not to regulate trade, but for the express and sole purpose of raising a revenue, they are to all intents and purposes equal to any tax, but they can
by

by no means be called the free gift of those who never helped to make the law, but, as far as in them lay, ever looked upon it as an unconstitutional grievance.

If taxes are a free GIFT of the people to the crown, then the crown hath no right to them but what is derived from the GIVERS. It may be absolutely necessary that the subject should give, but still he that is to give must be supposed the judge both of that necessity, and how much he may be able and ought to give upon every necessary occasion. No man can give what is not his own, and therefore the constitution hath placed this right to judge of the necessity, and of what is to be given, in the Commons as the representatives of all those who are to give, investing a right in them to give public supplies to the crown; it did not, could not mean to invest them with any power to give what neither belongs to them, nor those whom they represent; and therefore, as no man constitutionally "owes obedience to any law to which he has not assented either in person or by his representative;" much less doth the constitution oblige any man to part with his property, but freely and by his own consent; what those who are representatives are not willing to give, no power in *Great-Britain* hath any right violently to take, and for a man to have his property took from him under pretence of a law that is not constitutional, would not be much better than to have it took from him against the express consent of those whom he constitutionally made his representatives.

It is held a maxim, that in government a proportion ought to be observed between the share in the legislature and the burden to be borne. The *Americans* pretend to no share in the legislature of *Great-Britain* at all, but they hope they have never forfeited their share in the constitution.

Every government supposes rule and protection from the governors, support and obedience from those that are governed; from these duly tempered arises the prerogative of the crown and the liberty of the subject; but he that has not a right to his own hath no property, and he that must part with his property by laws against his consent, or the consent of the majority of the people, has no liberty. The *British* constitution is made to secure liberty and property; whatever takes away these takes away the constitution itself, and cannot be constitutional.

To form a clear judgment on the power of taxation, it must be enquired on what right that power is grounded. It is a fundamental maxim of *English* law, that there is a contract between the crown and subjects; if so, the crown cannot lay on any tax, or any other burden, on the subject, but agreeable to the original contract by authority of Parliament; neither can the Lords properly concur, or the Commons frame a tax bill for any other purpose but the support

port of the crown and government, consistent with the original contract between that and the people.

All subjects are dependent on and subordinate to the government under which they live. An *Englishman* in *France* must observe the laws of *France*; but it cannot be said that the dependency and subordination in *England* is the same as dependency and subordination in *France*. In governments where the will of the sovereign is the supreme law, the subjects have nothing to give, their ALL is in the disposal of the government; there subjects pay, but having nothing of their own cannot give; but in *England* the Commons GIVE and GRANT. This implies both a free and voluntary act, and that they give nothing but their own property.

Though every part of the *British* empire is bound to support and promote the advantage of the whole, it is by no means necessary that this should be done by a tax indiscriminately laid on the whole; it seems sufficient that every part should contribute to the support of the whole as it may be best able, and as may best suit with the common constitution.

I have before observed the different degree of dependency on the mother state; I shall now review the same again, with a particular regard to imposing or paying taxes, and if a material difference hath always obtained in this respect, it will confirm my assertion, that every branch of the *British* empire is not affected by the tax laws of *Great-Britain* in the self same manner.

The Parliament has a right to tax, but this right is not inherent in the members of it as men; I mean, the members of Parliament are not (like the Senate of *Venice*) so many rulers who have each of them a native and inherent right to be the rulers of the people of *England*, or even their representatives; they do not meet together as a court of proprietors to consider their common interest, and agree with one another what tax they will lay on those over whom they bear rule, or whom they represent, but they only exercise that right which nature hath placed in the people in general, and which, as it cannot conveniently be exercised by the whole people, THESE have lodged in some of their body chosen from among themselves, and by themselves, for that purpose, and empowered for a time only to transact the affairs of the whole, and to agree in their behalf on such supplies as it may be necessary to furnish unto the crown for the support of its dignity, and the necessities and protection of the people.

It would be absurd to say, that the crown hath a right to lay on a tax, for as taxes are granted to the crown, so in this case the crown would make a grant to itself, and hence the bill of rights expressly asserts, that *the levying of money for or to the use of the crown, by pretence of prerogative, without grant of Parliament, for a longer time or*

in any other manner than the same is or shall be granted, is illegal; hence also there is a material difference between money bills and all other laws. The King and Lords cannot make any amendment in money bills, as the House of Lords frequently doth in all others, but must accept or refuse them such as they are offered by the Commons, the constitutional reason of which is very obvious, it is the people only that give, and therefore giving must be the sole act of those by whom the givers are represented. The crown cannot take till it is given, and they that give cannot give but on their own behalf, and of those whom they represent; nay even then they cannot give but in a constitutional manner; they cannot give the property of those they represent without giving their own also exactly in the same proportion; every bill must be equally binding upon ALL whom they represent, and upon every one that is a representative.

Every representative in Parliament is not a representative for the whole nation, but only for the particular place for which he hath been chosen. If any are chosen for a plurality of places, they can make their election only for one of them. The electors of *Middlesex* cannot chuse a representative but for *Middlesex*, and as the right of sitting depends entirely upon the election, it seems clear to demonstration, that no member can represent any but those by whom he hath been elected; if not elected he cannot represent them, and of course not consent to any thing in their behalf. While *Great-Britain's* representatives do not sit assembled in Parliament, no tax whatever can be laid by any power on *Great-Britain's* inhabitants; it is plain therefore, that without representation there can be no taxation. If representation arises entirely from the free election of the people, it is plain that the elected are not representatives in their own right, but by virtue of their election; and it is not less so, that the electors cannot confer any right on those whom they elect but what is inherent in themselves; the electors of *London* cannot confer or give any right to their members to lay a tax on *Westminster*, but the election made of them doubtless empowers them to agree to or differ from any measures they think agreeable or disagreeable to their constituents, or the kingdom in general. If the representatives have no right but what they derive from their electors and election, and if the electors have no right to elect any representatives but for themselves, and if the right of sitting in the House of Commons arises only from the election of those designed to be representatives, it is undeniable, that the power of taxation in the House of Commons cannot extend any further than to those who have delegated them for that purpose; and if none of the electors in *England* could give a power to those whom they elected to represent or tax any other part of his Majesty's dominions except themselves, it must follow, that when the Commons are met, they represent no other place or part of his Majesty's dominions, and

cannot give away the property but of those who have given them a power so to do by choosing them their representatives.

The Parliament hath the sole right to lay on taxes, and, as hath been observed in Parliament, 'tis not the King and Lords that GIVE and GRANT, but this is the sole act of the Commons. The Commons have the right to do so either from the crown or people, or it is a right inherent in themselves. It cannot be inherent in themselves, for they are not born representatives, but are so by election, and that not for life, but only for a certain time; neither can they derive it from the crown, else the liberty and property of the subject must be entirely in the disposal and possession of the crown; but if they hold it entirely from the people, they cannot hold it from any other people but those who have chosen them to be their representatives, and it should seem they cannot extend their power of taxing beyond the limits of time and place, nor indeed for any other purpose but that for which they have been chosen. As the Commons in Parliament cannot lay any tax but what they must pay themselves, and falls equally on the whole kingdom of *England*, so, by a fundamental law, they cannot lay but such a part of the general tax on some part of the united kingdom. The principality of *Wales* was never taxed by Parliament till it was incorporated and represented, and, poor as it is, it pays now considerably larger than *Scotland*, which is as big again. When *England* is taxed two millions in the land tax, no more is paid in *Scotland* than 48,000*l.* and yet to lay a higher land tax on *North Britain* the *British* Parliament cannot, it cannot without breaking the union, that is, a fundamental law of the kingdom. All the right it hath to tax *Scotland* arises from and must be executed in the terms of the union. *

The Islands of *Guernsey*, &c. are not taxed by the *British* Parliament at all, they still have their own States, and I never heard that the *British* Parliament ever offered to hinder them to lay on their own taxes, or to lay on additional ones, where they are not represented.

Ireland

* While *Scotland* was yet a separate kingdom, it was once debated in Parliament, whether a subsidy should first be granted, or overtures for liberty first be considered; when the Queen's Ministry insisted on the former, a member urged, that it was now plain the nation was to expect no return for their expence and toil, but to be put to the charge of a subsidy, and to lay down their necks under the yoke of slavery, &c. Another member said, that he insisted for having a vote upon the question which had been put: That he found as the liberties of the nation were suppressed, so the privileges of Parliament were like to be torn from them, but that he would rather venture his life than that it should be so, and should chuse rather to die a freeman than live a slave. Some pressed for the vote, adding, that if there was no other way of obtaining so natural and undeniable a privilege of the Parliament, they would demand it with their swords in their hands.

See Annals of Queen *Ann* for 1703, page 76. These were no *American* speakers.

Ireland is a conquered kingdom, the greater part of its inhabitants *Papists*, who in *England* pay double tax. The *Romans* always made a difference between their colonies and their conquests, and as reasonable, allowed greater and indeed all common liberties to the former. *Ireland* hath been conquered twice again upon the natives since its first conquest, nevertheless it hitherto had its own legislature; if the Parliament of *Great-Britain* claims a right to tax them, they never yet have made use of that right, and seeing for ages past they enjoyed the privilege of having their own property disposed of by representatives in a Parliament of their own, it is very natural to suppose, that they think themselves entitled to these things, and the more so, because, in the very bill that determines their dependency, they are not said to be dependent on the *British* Parliament, nor yet on crown and Parliament, but only on the crown of *Great-Britain*.

I would now proceed to take a distinct view of the point in debate between *Great-Britain* and her colonies.

It seems to be a prevailing opinion in *Great-Britain*, that the Parliament hath a right to tax the *Americans*, and that, unless they have so, *America* would be independent of *Great-Britain*.

And it seems to be a prevailing opinion in *America*, that to be taxed without their consent, and where they are not and cannot be represented, would deprive them of the rights of *Englishmen*, nay, in time, with the loss of the constitution, would deprive them of liberty and property altogether.

It is easily seen, that this is a very interesting subject, the consequences in each case very important, though in neither so alarming and dangerous to *Britain* as to *America*. With regard to *Great-Britain*, if it should not prove so as is claimed, the consequence can only be this, that then no tax can be laid, or revenue be raised, on the *Americans*, but where they are represented, and in a manner which they think consistent with their natural rights as men, and with their civil and constitutional liberties as *Britons*. The dependency of *America* upon *Great-Britain* will be as full and firm as ever, and they will cheerfully comply with the requisitions of the crown in a constitutional manner. The question is not, whether the *Americans* will withdraw their subordination, or refuse their assistance, but, whether they themselves shall give their own property, where they are legally represented, or, whether the Parliament of *Great-Britain*, which does not represent them, shall take their property, and dispose of it in the same manner as they do theirs whom in Parliament they actually represent. The *Americans* do not plead for a right to withhold, but freely and cheerfully to give. If 100,000*l.* are to be raised, the question is not, shall they be raised or no? but shall the Parliament levy so much upon the *Americans*, and order them

them to pay it, as a gift and grant of the Commons of *Great-Britain* to the King? or, shall the *Americans* also have an opportunity to shew their loyalty and readiness to serve the King by freely granting it to the King themselves? It is not to be denied the *Americans* apprehend, that if any power, no matter what the name, where they are not represented, hath a right to lay a tax on them at pleasure, all their liberty and property is at an end, and they are upon a level with the meanest slaves.

England will not lose a shilling in point of property; the rights and privileges of the good people of *Britain* will not be in the least affected, supposing the claim of the *Americans* just and to take place; whereas every thing dreadful appears in view to the *Americans* if it should turn out otherwise. The crown cannot lose; the *Americans* are as willing to comply with every constitutional requisition as the *British* Parliament itself can possibly be. The Parliament cannot lose, it will still have all the power and authority it hitherto had, and ought to have had, and when every branch of the legislature, and every member of the *British* empire, has a true regard to reciprocal duty, prerogative and privilege, the happiness of the whole is best likely to be secured and promoted.

The *Americans* most solemnly disclaim every thought, and the very idea of independency; they are sometimes afraid they are charged with a desire of it, not because this appears to be the real case, but to set their arguments in an invidious light, and to make them appear odious in the sight of their mother country. This is not a dispute about a punctilio, the difference in the consequence is amazingly great; supposing *America* is not taxed where not represented, and supposing things are left upon the same footing in which with manifest advantage to *Britain* and *America* they have been ever since *Britain* had colonies, neither the trade nor authority of *Britain* suffers the least diminution, but the mischief to the colonies is beyond all expression, if the contrary should take place. If they are not to raise their own taxes, all their Assemblies become useless in a moment, all their respective legislatures are annihilated at a stroke; an act passed by persons, most of whom probably never saw, nor cared much for *America*, may destroy all the acts they ever passed, may lay every burden upon them under which they are not expected immediately to sink, and all their civil and religious liberties, for which their forefathers went into this wilderness, and, under the smiles of Heaven, turned it into a garden, and of immense consequence to the mother country, will, or may be at an end at once. Probably the present Parliament or generation would never carry matters to this length, but who knows what might be done in the next? The first settlers of the *American* wilds never expected that would come to pass what we have seen already. It seems as if some evilgenius had prevailed of late; had these new duties

duties been laid on payable in *England*, at least the expence of a Board of Commissioners, and of the swarms of new officers, might have been prevented; but it looks as though some men wished that *America* might not only be borne hard upon, but also be made to know and feel that their liberty and property lay at the mercy of others, and that they must not flatter themselves to enjoy them any longer than the good pleasure of some who would willingly take away what *they* never did give. I have endeavoured candidly to state the question, let us now endeavour to view the claim made on each side as calmly and impartially as possible.

'Tis said the *British* Parliament hath a right to tax the *Americans*. If this proposition is incontrovertible, it must certainly be built on such a basis and such clear principles as will be sufficient to dispose loyal and reasonable men chearfully to acquiesce in it. There are some points in government which perhaps are best never touched upon, but when any question once becomes the subject of publick debate, strength of reason is the sole authority that with men of reason can determine the matter.

If the Parliament of *Great-Britain* have a right to tax the *Americans*, it must either be the same right in virtue of which they have a right to tax *Great-Britain*, and be vested in them by the same power, or it must be a distinct right either inherent in themselves, or vested in them by some other power.

The right of the Commons of *Great-Britain* to lay on taxes arises, as I conceive, from their having been chosen by the people who are to pay these taxes to act in their behalf and as their representatives. There may be other qualifications necessary, that a man be a *Briton* born, subject of the King, possessed of a certain estate, &c. but none is so absolutely necessary as election. He that hath been a representative had a right to refuse or concur in any tax bill whilst a member, but if he is not chosen again in a following Parliament, he hath no right whatever to meddle in the matter; this proves that the power is originally in the people, and the legislative capacity of the whole House, and of every member, depends upon their free election, and is of force no longer than for the time for which they have been elected; this being elapsed, the trust reposed in them entirely ceases, it absolutely returns to the body of the people; in that interval during which the people are unrepresented, any power their representatives might have is entirely and solely in the people themselves, no tax can be laid on, nor any law to bind the people be formed, for this plain reason, because there are no persons qualified for the purpose. The people have not representatives assigned, but chuse them, and being so chosen, the rights of the people reside now in them, and they may, but not before, act in their behalf. Now, when the crown issues writs of election, it is not to

empower the electors to chuse representatives for *America*, nor yet for all *Great-Britain*, but only for some certain place specified in the writ; and when the electors of *Great-Britain* chuse representatives, their meaning also is not to chuse representatives for their fellow subjects in *America*, or any where else, but for themselves. In *Great-Britain* *English* electors cannot elect in behalf of *Scotland*, and *Scotch* electors cannot in behalf of *England*; and for the same reason neither *Scotch* nor *English* can elect any for *America*. These electors do not represent the *Americans*, nor are they their proxies to vote in members in their behalf; neither can *British* electors give any instructions to *British* representatives, or invest them with any power to dispose of the rights and property of any of their fellow subjects without the kingdom of *Great-Britain*. It seems not unreasonable then to conclude, that the right which the elected acquire by their election to pass tax laws binding upon their electors does not at the same time give them a right to represent and lay on taxes on those who never invested them with any such power, and by whom they neither were nor could be elected. If the *Americans* themselves are not received as voters in the bishoprick of *Durham*, manor of *East Greenwich*, or any place mentioned in their charters, and the same liberty and privileges with those places therein secured unto them, if they are not allowed to chuse any representatives for themselves in the House of Commons, it seems natural, that what they have no right to do themselves, none can have a right to do for them, and so no body can chuse or send a representative for them to any place where they are not allowed to sit or be represented. If so, the electors of *Great-Britain* never in fact elected representatives for *America*, nor could these electors possibly convey any power to give away property where they have no property themselves. The electors do not represent *America*, neither their representatives by them elected; the electors cannot dispose of the property of *America*, therefore they cannot give a power so to do unto others. In *England* there can be no taxation without representation, and no representation without election; but it is undeniable that the representatives of *Great-Britain* are not elected by nor for the *Americans*, and therefore cannot represent them; and so, if the Parliament of *Great-Britain* has a right to tax *America*, that right cannot possibly be grounded on the consideration that the people of *Great-Britain* have chosen them their representatives, without which choice they would be no Parliament at all.

If the Parliament of *Great-Britain* has a right to tax the *Americans* distinct from the right which they derive from their electors, and which they exercise as the representatives of the people of *Great-Britain*, then this right they must hold either from the crown, or from the *Americans*, or else it must be a native inherent right in them-

themselves, at least a consequence of their being representatives of the people of *Great-Britain*.

It is plain that the colonies have been settled by authority and under the sanction of the crown, but as the crown did not reserve unto itself a right to rule over them without their own Assemblies, but on the contrary established legislatures among them, as it did not reserve a right to lay taxes on them in a manner which, were the experiment made in *England*, might be thought unconstitutional, so neither do I find that a reserve of that kind was made by the crown in favour of the Parliament, on the contrary, by the charters all the inhabitants were promised the enjoyment of the same and all privileges of his Majesty's liege subjects in *England*, of which doubtless not to be taxed where they are not represented is one of the principal. As to any right that might accrue to Parliament from any act or surrender of the *Americans*, I believe it hath never been thought of; they have a profound veneration for the *British* Parliament, they look upon it as the great palladium of the *British* liberties, but still they are not there represented, they have had their own legislatures and representatives for ages past, and as a body cannot be more than in one place at once, they think they cannot be legally represented in more than one legislative body, but also think, that by the laws of *England* Protestants ought not to be doubly taxed, or, what they think worse, taxed in two places.

If therefore this right of taxing the *Americans* resides in the Commons of *Great-Britain* at all, it must be an inherent right in themselves, or at least in consequence of their being representatives of the people of *Great-Britain*. The act for better securing the dependency of the colonies, which I have inserted at large, evidently seems to tend this way. That the colonies were thought at the disposal of Parliament one might be led to think, because by that act, from the simple authority of the crown, which they were till then subject to by their charters, they were now declared to be subordinate to and dependent (on the joint authority) of crown and Parliament. Yet, concerning this act, I would only observe, that however it may determine the case from that day, it cannot be the ground on which the subordination of the colonies originally was or now can be built; for it declares not only, that the colonies ARE AND OUGHT TO BE, but also that they ALWAYS HAVE BEEN, subject to crown and Parliament. A law binds after it is made, it cannot bind before it exists, and so surely it cannot be said, that the colonies have *always* been bound by a law which is above a hundred years posterior to them in point of existence. It is also a little difficult to reconcile this law with prior charters; our *Carolina* charter makes our province subject immediately to the crown, and near a hundred years after a law is made to declare, that this was not

not and must not be the case, but that the *Americans* always were and ought to be subject to crown and Parliament. Perhaps this hath not been so seriously considered as it may hereafter, but neither this nor any law can be supposed to be binding *ex post facto*, or contrary to our fundamental constitution. *Montesquieu* observes, that the *British* constitution (which God preserve) will be lost, whenever the legislative power shall be more corrupted than the executive part of the legislature.

And after all, in this very law, the *Americans* are allowed to be represented in their own Assemblies, and to lay on duties and taxes, though not exclusively; but whether *America*, or any part of the *British* empire, should be liable to have taxes imposed on them by different legislatures, and whether these would not frequently clash with one another to the detriment of crown and subjects, I leave others duly to consider.

It is said, if *America* cannot be taxed by the *British* Parliament, then it would be independent of *Great-Britain*. This is now a very popular cry, and it is well if many join in it only because they know no better. This is not, will not, cannot be the case. *America* confessedly hath not been thus taxed since it was settled; but no body in *Britain* or *America* ever dreamed that *America* was independent. In *England* the people cannot be taxed when the Parliament does not sit, or when it is dissolved; are they then therefore independent. *Scotland* cannot be taxed in the same degree as *England*; is it therefore independent? *Ireland* and *Jersey* have their own legislatures, and so tax themselves; will you call them independent? All those parts of the *British* empire that have no Assemblies pay no taxes at all, neither among themselves, nor to *Great-Britain*; but it will not therefore be said, that they are independent. The Parliament itself claims a right to refuse supplies till their grievances are heard and redressed, this is looked upon as a constitutional remedy against any encroachments by the crown, and hath very often been made use of in former reigns, and yet the Parliament neither claimed nor were charged with a desire of independency. Those who so freely charge with a desire of independency, and even treason and rebellion, would do well to consider, that this charge, heinous as it is, reflects greater disgrace on those who unjustly make it, than on those on whom it is unjustly made. A man of honour would not easily forgive himself whenever he should discover that he made so rash a charge against two millions of people, as innocent, loyal, and well affected to their King and country, as any of his fellow subjects or himself possibly can be. There never was an *American Jacobite*, the very air of *America* is death to such monsters, never any grew there, and if any are transported, or import themselves, lots of speech always attends them. The loyalty of the *Americans*
to

to their King hath not only been ever untainted, it hath never been as much as suspected. There is a difference between independency and uneasiness. In the late reign, the people in *England* were uneasy at the *Jew Bill*, and it was rapidly repealed; in the present, the *Cyder Act* was an odious measure, and immediately altered, and that without any disgrace or diminution of parliamentary authority. If there hath been any appearance of riot in *America*, perhaps it may hereafter appear at whose instigation, the law was ever open, and even overbearing odious Custom-House Officers might have been redressed, if they had thought fit to apply for a legal rather than a military remedy. In *England* it is possible Majesty itself hath met with indignities which have not been shewn in *America* even to those men to whom the nation in general is indebted for the present uneasiness, and it is not improbable, that, after all that hath been said and done, the *Americans* will be found an exception to the general rule, that oppression makes even a wise man mad: An ancient rule, the truth of which hath been experienced in *England* oftener than in *America*. The opinion of the *Americans* is, that to be taxed where they are not represented would deprive them of the rights of *Englishmen*, nay, in time, with the loss of the constitution, might and must deprive them of liberty and property altogether. These it must be owned are gloomy apprehensions; two millions of people are so thoroughly prepossessed with them, that even their children unborn may feel the parents impressions; should there be any real ground for them, the *Americans* can hardly be blamed; they sit uneasy under them; they can no more help their uneasiness, than deny the blood which glows in their veins, or be angry with the milk that was their first nourishment. This is not a dark abstruse point, but seems plain and essential to the very being of liberty. The sole question is, Is it, or is it not, the right of an *Englishman* not to be taxed where he is not represented? Can you be tired of being represented, O *Britons*! Is it consistent with the constitution you so justly boast of to be thus taxed? Then representation is not essential to your constitution, and sooner or later you will either give it up or be deprived of it. A borough that does not exist shall send two representatives, a single county, neither the largest nor richest, shall send forty-four members, and two millions of souls, and an extent of land of eighteen hundred miles in length, shall have taxes laid on them by such as never were nearer to them than one thousand leagues, and whose interest it may be to lay heavy burdens on them in order to lighten their own. And are these, who are thus taxed, unrepresented, unheard and unknown, *Englishmen*, and taxed by *Englishmen*? Do these enjoy what the charters most solemnly ensure them, the same

and all the privileges of the subjects born and resident within the realm? I must doubt it.

Let those who make light of *American* grievances give a plain answer to this plain question, Are the colonies to be taxed by Parliament represented in Parliament? if they are, by whom, or since when? if not, once more, Is it, or is it not, the right of *Britons* not to be taxed where not represented? Here the whole matter hinges, and surely the question is not so impertinent but a civil answer might be given before a mother sends fire and sword into her own bowels. When constitutional liberty is once lost, the transit is very short to the loss of property; the same power that may deprive of the one may also deprive of the other, and with equal justice; those that have not liberty enough to keep their property in reality have no property to keep. Some that look no further build right upon power, and insist the Parliament can do so. If power is all that is meant very like it may, so it may alter the constitution. If a stately tree should take umbrage at some diminutive shrubs, it can fall upon and crush them, but it cannot fall upon them without tearing up its own roots; it can crush those within reach, but its own branches will take off the weight of the impression, permit the shrubs to send forth new shoots, while there is no great probability that the envious oak will return to its former stand and vigour. *C'est une chose a bien considerer*, (this ought to be well considered first) said *Molier's Malade imaginaire*, when his quack proposed to him to have one of his arms cut off, because it took some of the nourishment which in that case would center in the other, and make it so much the stronger. If every Assembly in *America* is suspended, the consequence must be, that the people are without their usual legislature, and in that case nothing short of a miracle seems capable to prevent an anarchy and general confusion. No power can alter the nature of things, that which is wrong cannot be right, and oppression will never be productive of the love and smiles of those that feel it.

The Parliament can crush the *Americans*, but it can also, and with infinitely greater certainty and ease, conciliate their affections, have the ultimate gain of all their labours, and by only continuing them the privileges of *Britons*, that is, by only doing as they would be done by, diffuse the blessings of love and concord throughout the whole empire, and to the latest posterity; and which of these two is the most eligible, it is NOW for you, O *Britons!* to consider, and in considering it, *majores vestros cogitate & posteros*, think on your ancestors and your posterity.

Those whom God hath joined together, (Great-Britain and America, Liberty and Loyalty) let no man put asunder: And may peace and prosperity ever attend this happy union.

FEB. 1, 1769.