

Chapter Three — **Reading 1768: On the Edge of Empire**

*In many ways, this chapter is a sequel to the one that comes before it in the dissertation. James Wilson was a young Scottish immigrant looking to make a name for himself and make his fortune. After spending his first academic year in America working as a tutor at the College of Philadelphia (now the University of Pennsylvania), Wilson studied law for a little over a year under the supervision of prominent attorney John Dickinson.*

*The purpose of this chapter is to examine the differences between Wilson and Dickinson on the role of British North America in the British Empire. The initial draft of this chapter spent a good deal of time exploring the argument of American writers opposed to an all-powerful British Parliament, before examining the differences between Wilson and Dickinson. After receiving feedback from several members of my dissertation committee, this draft begins to refocus, more explicitly, on the writings of the two men.*

*What I need from your reading and participation in our meeting is to provide feedback on whether I've cut too much of my examination of other writers (is there enough to put what Wilson and Dickinson said in context) OR do I need to expand my analysis of just the two authors?*

When James Wilson's *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* is examined as a component of a body of literature dealing with the role of British North America and its place within the British Empire, it is invariably discussed as relating to the year in which it was published—1774. As a component of Wilson's literary work of 1768, I will situate *Considerations* within the larger body of work that appeared just prior to Wilson's arrival in America in 1765 and the completion of *Considerations* in late 1768. I pay particular attention to those works that were widely distributed, especially those authored by James Otis and Wilson's legal mentor, John Dickinson.

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The year 1768 was a significant one for James Wilson. Early the previous year, he completed his training with John Dickinson and embarked upon his legal career. Due to the abundance of lawyers in Philadelphia, Wilson decided in mid-1767 to move fifty miles northwest of the city to Reading, the county seat of Berks County.<sup>1</sup> As his practice struggled to gain attention, Wilson maintained a firm correspondence with William White. The two friends collaborated on *The Visitant* with notable success. After the end of the series on May 16, 1768, Wilson turned his attention to a new writing project.

Reading, when Wilson moved there, was a small outpost of the empire with fewer than a thousand souls, with a majority of residents of German descent. The principal economic activity of the town revolved around the production of felt hats—the production of which left a distinct odor that marked the town and provided a product destined for sale within the wider Atlantic world. Though small in size, Reading was home to thirty-one taverns.<sup>2</sup> It was from this perspective, on the periphery of Philadelphia’s economic and cultural influence, which itself was on the periphery of the larger British Atlantic world, that James Wilson contemplated the role of how Britain’s North American colonies fit within that larger world.

A little over two years before Wilson embarked for America, on February 10, 1763, representatives of the warring powers signed the Treaty of Paris. The treaty ended the lengthy war for empire between the British and the French, but it planted the seeds for the next great battle over North America—a civil war within the British Empire itself.

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<sup>1</sup> Page Smith, *James Wilson: Founding Father, 1742-1798*, (Chapel Hill: University of North Carolina Press, 1956), 29.

<sup>2</sup> Smith, 29.

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As Wilson prepared to come to America in 1765, he must have given attention to newspaper coverage of passage of the Sugar Act of 1764, on April 5<sup>th</sup>, and the resolve adopted by Parliament to enact a Stamp Act in 1765. News of this legislation broke upon America's shores as a rogue wave, washing away the euphoria of victory in the French and Indian War.<sup>3</sup> Americans had been gazing covetously at the seemingly open territory, in the west, brought within their view with the removal of the French. Instead, America's attention turned eastward, to the Houses of Parliament in London. Authors—principally lawyers—took to their writing desks, to wage a battle for public opinion, sending forth pamphlets arguing the merits or ominous portents of Parliament's legislative maneuvers. The first to attract wide-spread attention was the writings of James Otis, Jr. of Massachusetts.

Otis' *The Rights of the British Colonies Asserted and Proved*, was the opening shot aimed at the Stamp Act to appear in America after news of the proposed act arrived.<sup>4</sup> Parliament's actions were an attempt to come to terms with the ramifications of the enlarged British Empire in North America acquired through the Treaty of Paris. Vital issues of how to address the massive national debt incurred during the war; relations between North American colonists and Native Americans; governance of French colonists left behind in Canada; and the proper relationship between the British Isles and her colonies in the Western Hemisphere all vied for attention. The Ministry of George Grenville sought to bring order, while preserving prosperity, to the Empire. A

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<sup>3</sup> For a British perspective of these events, see: I.R. Christie, *Crisis of Empire: Great Britain and the American Colonies 1754-1783*, (New York: W.W. Norton & Company, 1966).

<sup>4</sup> Merrill Jensen, ed., *Tracts of the American Revolution, 1763-1776*, (New York: The Bobbs-Merrill Company, Inc., 1967), xxi.

crucial component for this enlarged and improved British Empire were to be new taxes levied in America. These taxes would help defray the expenses of protecting His Majesty's North American possessions and contribute to lowering the tax burden in the British Isles, while also addressing the national debt. James Otis celebrated the victory of the British Empire over the French, but he openly challenged the authority of Parliament to extract taxes directly from His Majesty's American subjects.

In laying the groundwork for his assault on the Stamp Act's constitutionality, Otis inquired into the very nature and foundation of English government and the Glorious Revolution of 1688. He argued that during the events of the Glorious Revolution, the North American colonies were not consulted during the settlement bringing William and Mary of Orange to the English throne. The relationship between the charters—granted by the crown—of the colonies and what became the British Empire, existed between the colonies and the throne. Ultimate sovereignty, Otis named this “*earthly* power,” must be “[s]overeign, absolute, and uncontroulable,” a power, “from whose final decisions there can be no appeal but directly to Heaven.”<sup>5</sup> Where did such power reside? Otis proclaimed, “It is therefore *originally* and *ultimately* in the people.”<sup>6</sup>

He argued that the people can allocate portions of their sovereignty to governments, but never completely relinquish it. These governments exist to further the interests of the people from whom the power was bestowed. If the government failed to rule in the interests of the people, the government was no longer valid and the sovereign power of the people could be withdrawn.

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<sup>5</sup> Ibid., 50.

<sup>6</sup> Ibid., 50.

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The settlement of the Glorious Revolution was for the benefit of all British subjects within the Empire. “No man or society of men,” held absolute sovereignty, only the people themselves held such power, thus, the people, “will always have a right to preserve what they have not a power to part with; and to *rid* themselves of *those* who invade this fundamental, sacred and unalterable law of self preservation, for which they entered into society.”<sup>7</sup> As to how this applied to the colonies in North America, Otis explained, “A plantation or colony, is a settlement of subjects in a territory *disjoined* or *remote* from the mother country, and may be made by private adventurers or the public; but in both cases the Colonists are entitled to as *ample* rights, liberties and priviledges as the subjects of the mother country are, and in some respects *to more*.”<sup>8</sup>

With the reality of slow travel and communication between the disparate components of the British Empire, it was only natural that colonists may enjoy more “rights, liberties and priviledges,” than those enjoyed by British subjects in the home islands.<sup>9</sup> However, Otis carried this one step further, “The Colonists are by the law of nature free born, as indeed all men are, white or black.”<sup>10</sup> Not a sentiment entertained by large numbers of his fellow Americans.

English subjects who risked everything to journey to America to establish colonies on the North American mainland did not renounce their rights upon embarkation, they retained them. Otis acknowledged that the colonies were, “subject to,

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<sup>7</sup> Ibid., 64.

<sup>8</sup> Ibid., 66.

<sup>9</sup> In a contemporary setting, aerospace entrepreneur, Elon Musk, has argued that any colony established on Mars must be governed through a direct democracy. A right that his employees in the United States do not enjoy.

<sup>10</sup> Otis, 69.

and dependent on Great Britain; and that therefore as over subordinate governments, the parliament of Great Britain has an undoubted power and lawful authority to make acts for the general good.”<sup>11</sup> This was the crucial point, the “general good,” legislation that existed to regulate the activities of the Empire as a whole, principally through navigation acts. Parliament existed as the final umpire within the Empire for the component parts, but Otis believed that it fell outside of their power to enact legislation, such as the Stamp Act, that only existed to raise revenue within the North American colonies. This was a power reserved for the elected assemblies of the colonies themselves.

American representation in parliament was one possible solution, but not necessarily the most desirable. “No representation of the Colonies in parliament alone, would however be equivalent to a subordinate legislative among themselves.”<sup>12</sup> Given the slow communication between the colonies and Britain, Otis advocated an American parliament. This parliament, subordinate to the British parliament in matters of concern for the Empire as a whole, would concern itself with areas where a parliament on the far side of the Atlantic lacked experience and information of American conditions, such as “their abilities to bear taxes, impositions on trade, and other duties and burthens, or of the local laws that might be really needful.”<sup>13</sup>

Until a new constitutional arrangement could be instituted which incorporated American representation, Otis declared, “we should be justifiable in refusing to pay

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<sup>11</sup> Ibid., 73.

<sup>12</sup> Ibid., 77.

<sup>13</sup> Ibid., 77.

them, but must and ought to yield obedience to an act of parliament, tho' erroneous, 'till repealed."<sup>14</sup> Americans needed to work through established channels to seek redress of parliamentary overreach. Only parliament could repeal legislation enacted. It was well within colonial rights to educate parliament on the harm caused by legislation, but obedience to parliament's authority was necessary, for if openly challenged, "There would be an end of all government, if one or a number of subjects or subordinate provinces should take upon them so far to judge of the justice of an act of parliament, as to refuse obedience to it."<sup>15</sup>

On the issue of taxes themselves, Otis boldly declared, "But take it either way, there is no foundation for the distinction some make in England, between an internal and an external tax on the colonies."<sup>16</sup> Once the precedent of internal taxation was accepted, Otis asked, "Why may not the parliament lay stamps, land taxes, establish tythes to the church of England, and so indefinitely. I know of no bounds."<sup>17</sup> For Otis, the lawyer, the establishment of a precedent on taxes must be avoided at all costs. "This barrier of liberty being once broken down, all is lost." He explained, "If a shilling in the pound may be taken from me against my will, why may not twenty shillings; and is so, why not my liberty or my life?"<sup>18</sup>

One of the justifications for the new taxes found in the Stamp Act was to defray costs incurred by the Empire to defend new territories in North America. Otis

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<sup>14</sup> Ibid., 78.

<sup>15</sup> Ibid., 80.

<sup>16</sup> Ibid., 82.

<sup>17</sup> Ibid., 83.

<sup>18</sup> Ibid., 94.

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questioned the logic of stationing a standing army in North America, a dangerous new precedent, to defend against whom? Particularly in the case of New England, these colonies, “were not only settled without the least expence to the mother country, but they have all along defended themselves against the frequent incursions of the most inhuman Salvages, perhaps on the face of the whole earth, at *their own* cost.”<sup>19</sup> With the French gone, why did the ministry feel it necessary to choose the extremely costly and taxing path of stationing regiments permanently on America’s borders? Was their mission to protect the colonies *or* to restrain them? Many of these arguments put forth by Otis’ were be picked up by other authors. By the close of 1764, Rhode Island governor and friend of Otis, Stephen Hopkins, published his views.

Hopkins’ *The Rights of Colonies Examined*, written in November, appeared in print on December 22, 1764.<sup>20</sup> He echoed many of the arguments put forth by Otis. Hopkins considered the British constitution, “the best that ever existed among men,” due to it being, “founded by compact, and established by consent of the people.”<sup>21</sup> He argued this “consent” was lacking from the proposed Stamp Act.

Hopkins concurred with Otis in the belief that obedience to parliament was a necessary condition of being a British subject, “it becomes the indispensable duty of every good and loyal subject, chearfully to obey and patiently submit to all the acts, laws, orders and regulations that may be made and passed by parliament, for directing and

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<sup>19</sup> Ibid., 97.

<sup>20</sup> Stephen Hopkins, *The Rights of Colonies Examined*, in Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1764-1772*, (New York: Library of America, 2015), 123-42.

<sup>21</sup> Hopkins, 125.



governing all these general matters.”<sup>22</sup> Whereas Otis called for full American representation in parliament, even better, he sought an American parliament, subservient in matters only of imperial policy, Hopkins also sought representation, but in a different form, “some way or other, in parliament; at least whilst these general matters are under consideration.”<sup>23</sup> How this would function in practice was not clear, but Hopkins believed, “They ought to have such notice, that they may appear and be heard by their agents, by council, or written representation, or by some other equitable and effectual way.”<sup>24</sup>

This conditional representation raises many questions. Hopkins sought representation in parliament, but did his proposal only provide an avenue for colonies to be heard on proposed legislation? Could they vote? If not, how would this differ from the current system of colonial access to parliament? How Hopkins’ proposal would safeguard American rights is unclear. Such an unwieldy apparatus is hard to imagine being successfully implemented with components of the empire spread all over world.

At the time when George Grenville submitted the set of resolutions that would comprise the Sugar Act, on March 9, 1764, he also included a resolution stating that it would be necessary to institute a Stamp Act in the North American colonies. Hopkins dedicated the bulk of his work to attacking the potential of a Stamp Act itself.

Hopkins argued that as subjects of the British Empire, “all laws, and all taxations, which bind the whole, must be made by the whole.”<sup>25</sup> Residence in Great Britain did not

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<sup>22</sup> Ibid., 131.

<sup>23</sup> Ibid., 131.

<sup>24</sup> Ibid., 131.

<sup>25</sup> Ibid., 138.

confer enhanced rights at the expense of those living in other parts of the empire. Where did the people of Great Britain obtain the power to a “sovereign and absolute authority over their fellow-subjects in America, or even any sort of power whatsoever over them; but it will be more absurd, to suppose they can give a power to their representatives [parliament], which they have not themselves.”<sup>26</sup>

Unlike James Otis’ plan for an American parliament sovereign in domestic affairs, Stephen Hopkins defended the colonial assemblies by decrying the expansion of parliamentary power into areas that had traditionally been reserved for them. Even if Hopkins’ ideas on representation were implemented, it is hard to conceive how legislation, like the proposed Stamp Act, could be stopped. American representation in parliament—presumably based on the same principles as the Scottish delegation—would never constitute a voting bloc that could ensure defeat of harmful legislation to North America. Only the prospect of representation, based on population, which would accommodate America’s future numerical growth could address such an imbalance—this could benefit their posterity, but would not address pressing political disagreements.

Following the publication of Hopkins’ pamphlet at the close of 1764, a vigorous battle in print broke out between those opposing parliament’s acts and those supporting them. A political opponent of Stephen Hopkins in Rhode Island, Martin Howard, Jr., was the first to take the field. His *A Letter from a Gentleman at Halifax to his Friend in*

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<sup>26</sup> Ibid., 138-9.

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*Rhode Island* appeared two months later, in February 1765.<sup>27</sup> Hopkins replied to the pamphlet in the pages of the *Providence Gazette* on four occasions.<sup>28</sup> James Otis leapt to the defense of his friend with a pointed rebuttal of Howard.<sup>29</sup> The next phase of the pamphlet wars appeared after news of the passage of the Stamp Act arrived from London—it came from the Chesapeake colony of Maryland.

Daniel Dulany, a prominent Maryland attorney, was keen to keep abreast of political events in the empire. On May 17, 1764, he read an account in the *Maryland Gazette* of a debate in the House of Commons, which determined that parliament possessed the requisite authority to directly tax the colonies.<sup>30</sup> The subject of taxation was an interest of his since the beginning of the French and Indian War—he had come to the conclusion that parliament was wrong and set out to prove his case.

Dulany was a member of a prominent Maryland family who had been educated in England, first at Cambridge and then at the Middle Temple in London to study law. Upon returning to America, he became one of the colony's notable attorneys. In 1765, he held the offices of secretary and commissary general for the colony and was also a member of the governor's council. During the first half of the year, Dulany collected various writings from supporters of parliament. This coincided with the time when James Wilson prepared to leave Scotland and sail to America. While Wilson was at sea,

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<sup>27</sup> Martin Howard, Jr., *A Letter from a Gentleman at Halifax to his Friend in Rhode Island*, in Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1764-1772*, (New York: Library of America, 2015), 147-61.

<sup>28</sup> Morgan, 52.

<sup>29</sup> James Otis, *A Vindication of the British Colonies against the Aspersion of the Halifax Gentleman in his Letter to a Rhode Island Friend*, in Bailyn, Bernard, ed. *Pamphlets of the American Revolution 1750-1776*. (Cambridge: Harvard University Press, 1965), 553-79.

<sup>30</sup> Morgan, 77.

in August 1765, Daniel Dulany's *Considerations on the Propriety of Imposing Taxes in the British Colonies, For the Purpose of Raising a Revenue, by Act of Parliament* was published.<sup>31</sup> The pamphlet would be reprinted throughout America and a London edition appeared in 1766.<sup>32</sup>

*Considerations* addressed front and center the issue of representation. Dulany pointedly asked, "But who are the Representatives of the Colonies? To whom shall THEY send their Instructions, when desirous to obtain the Repeal of a Law."<sup>33</sup> The subject of virtual versus actual presentation drove Dulany's analysis of the political divide existing between the North American colonies and parliament. The questioning of parliament's authority, "might be dangerous," but he did not feel, "bound to acknowledge it's Inerrability, nor precluded from examining the Principles and Consequences of Laws, or from pointing out their Improperities, and Defects."<sup>34</sup> Unlike the pamphlet wars in New England, which had degenerated into personal attacks, Dulany chose an academic—a lawyerly—discourse.

Where did parliament believe they had acquired the authority to directly tax the colonies? "To give Property, not belonging to the Giver, and without the Consent of the Owner, is such evident and flagrant Injustice."<sup>35</sup> Responding to supporters of

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<sup>31</sup> Daniel Dulany, *Consideration on the Propriety of Imposing Taxes in the British Colonies, For the Purpose of Raising a Revenue, by Act of Parliament* in Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1764-1772*, (New York: Library of America, 2015), 243-304.

<sup>32</sup> Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1764-1772*, (New York: Library of America, 2015), 241.

<sup>33</sup> Dulany, 245.

<sup>34</sup> *Ibid.*, 246.

<sup>35</sup> *Ibid.*, 247.

parliament's authority, Dulany noted, "But it is alledged that there is a *Virtual*, or *implied Representation* of the Colonies springing out of the Constitution of the *British* government. ... the Representation is not actual, it is virtual, or it doth not exist at all."<sup>36</sup> For British subjects in North America, virtual representation was alien, lower houses of colonial assemblies were filled through elections of candidates residing in the colony. Dulany wrote, "The Colonies claim the Privilege, which is common to all *British Subjects*, of being taxed only with their own Consent given by their Representatives, and all the Advocates for the *Stamp Act* admit this Claim."<sup>37</sup> Colonists claimed a right of actual representation, which was already present in their assemblies.

Relying upon his interpretation of the colonial charters, Dulany brazenly declared, "the Inhabitants of the Colonies claim an Exemption from *all Taxes* not imposed by their own Consent, and to infer from their Objection to a Taxation, to which their Consent is not, nor can be given."<sup>38</sup> But it is at this point that Dulany backs off from the logical outcome of this statement. He retreated into a discussion of parliamentary acts that impose taxes, "for *the single Purpose of Revenue*," and those, "made for the Regulation of Trade, and have produced some Revenue in *Consequence of their Effect* and Operation as *Regulations of Trade*."<sup>39</sup> This line of argument rendered a conclusion where, "A Right to impose an internal Tax on the Colonies, without their

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<sup>36</sup> Ibid., 247.

<sup>37</sup> Ibid., 247.

<sup>38</sup> Ibid., 275.

<sup>39</sup> Ibid., 279.

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Consent *for the single Purpose of Revenue*, is denied, a Right to regulate their Trade without their Consent is admitted.”<sup>40</sup>

As Dulany’s *Considerations* made its way around the colonies in the fall of 1765, James Wilson disembarked in New York City and made his way to Philadelphia, where he would soon meet noted Pennsylvania lawyer, John Dickinson. Dickinson himself, was thinking about the stresses appearing in the British empire and what should be done about it. On December 7, his pamphlet, *The Late Regulations Respecting the British Colonies on the Continent of America Considered, In a letter from a gentleman in Philadelphia to his friend in London* was published.<sup>41</sup>

Using the fiction of a letter, which was common during this era, allowed Dickinson to answer questions he wanted to examine in a conversational manner. The letter was intended to support his belief, “that the late measures respecting America, would not only be extremely injurious to the *Colonies*, but also to *Great Britain*.”<sup>42</sup> He relied upon a principally economic argument. The colonies needed to trade with the French islands in the Caribbean and other European colonies to earn the necessary hard currency needed to purchase the goods desired from British manufacturers. Trade between the colonies and Great Britain alone would be insufficient as the British market was incapable of absorbing all that America produced. Further, the demand of the American domestic market for British goods would only grow with the rapid population growth in the colonies.

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<sup>40</sup> Ibid., 280.

<sup>41</sup> John Dickinson, *The Late Regulations Respecting the British Colonies*, in Paul Leicester Ford, ed., *The Political Writings of John Dickinson 1764-1774*, 1<sup>st</sup> pub. 1895, (New York: Da Capo Press, 1970), 208-44.

<sup>42</sup> Dickinson, 213.

Dickinson criticized parliament's restrictions upon the emission of paper money in the colonies, citing "their emissions were of vast benefit both to the provinces and to Great Britain."<sup>43</sup> The scarcity of hard currency in the colonies constrained trade and hurt the economies on both sides of the Atlantic. Where would the specie required by the Stamp Act come from? A concern Dickinson shared with Dulany and Hopkins.

One possible solution, Dickinson put forward, was the establishment of "a currency throughout the colonies," which, perhaps, may generate great benefits for everyone, but first it must be tried.<sup>44</sup> If parliament was unwilling to sanction emissions of paper money from individual colonies, the creation of a continental currency with the backing of parliament was one way forward. Liquidity of credit and a reliable circulating medium would alleviate the shortage of money and allow for all segments of the colonial economy, from merchants; to creditors and debtors; and taxpayers to meet their obligations. Dickinson shared a story that sheriffs in Virginia, when collecting taxes due, were forced to bring back, not hard currency, but "effects which they have taken in execution, but could not sell, as there were no bidders for ready money."<sup>45</sup> Estates were being seized and sold at auction for a fraction of their true worth to satisfy slight debts, due to lack of money.

If the Stamp Act and restrictions on American trade were not addressed, then action must be taken. Dickinson joined Dulany in warning of an economic boycott and import substitution for British goods. "We have our choice of these two things—to

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<sup>43</sup> Ibid., 218.

<sup>44</sup> Ibid., 221.

<sup>45</sup> Ibid., 227.

continue our present limited and disadvantageous commerce—or to promote manufactures among ourselves, with a habit of œconomy, and thereby remove the necessity we are now under of being supplied by *Great Britain*.”<sup>46</sup>

Dickinson argued, “may not the mother country more justly be called *expensive* to her colonies, than they can be called *expensive* to her?”<sup>47</sup> Wasn’t the very idea of establishing colonies to acquire raw materials to enrich the mother country? If this was the case, what difference did it make, “If the colonies enable *her* to pay taxes, is it not as useful to her, as if *they* paid them?”<sup>48</sup> The shortage of specie was a problem that did not exist in Britain, but it was an acute problem in America.

If the colonies curtailed their purchases of British goods and substituted domestic ones, the decline in sales of goods by British manufacturers would necessitate a decline in employment in Great Britain. Dickinson argued that whatever the amount raised by the Stamp Act, the decline in “demand will be as much less for British manufactures, as the amount of the sums raised by the taxes.”<sup>49</sup> The damage would be greater and longer lasting in Britain than in the colonies, where the economic hardship would be, “so much the more distressed at first, and afterwards so much the more frugal, ingenious, laborious and independent will the colonists become.”<sup>50</sup> In short, in an economic war between the colonies and Great Britain, Dickinson argued that the colonies would emerge stronger for it.

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<sup>46</sup> *Ibid.*, 234.

<sup>47</sup> *Ibid.*, 239.

<sup>48</sup> *Ibid.*, 238.

<sup>49</sup> *Ibid.*, 240.

<sup>50</sup> *Ibid.*, 240.



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Dickinson addressed a fear, one he did not share, of which he had been informed, “that many persons at home affect to speak of the colonists, as of a people designing and endeavoring to render themselves independent, and therefore it may be said to be proper as much as possible to depress them.”<sup>51</sup> He reassured his reader that no plans for withdrawal from the empire had been formulated. But, he did warn that pursuing a course of harsh and unjust treatment of colonial aspirations might very well lead to that undesirable condition. “In short, we never can be made an independent people, except it be by *Great Britain* herself; and the only way for her to do it, is to make us frugal, ingenious, united and discontented.”<sup>52</sup>

In the closing paragraphs of his pamphlet, Dickinson spoke to the spurned affection that Americans felt towards Great Britain. He, like other authors, believed that Great Britain had not sufficiently appreciated the sacrifices the colonies undertook to assist in the successful outcome of the late war. He questioned the value of the territory gained from France, if the end result was an estrangement between colonies and mother country. The obedience of the colonists to the empire were, “secured by the best and strongest ties, *those of affection*, which alone can, and I hope *will* form an everlasting union.”<sup>53</sup> If parliament took the correct steps, colonial membership in the empire could continue for the foreseeable future, however, if parliament acted unwisely, then colonials may come, “to fear her victories or to repine at her glories.”<sup>54</sup> The choice was up to parliament.

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<sup>51</sup> Ibid., 241.

<sup>52</sup> Ibid., 241-2.

<sup>53</sup> Ibid., 244.

<sup>54</sup> Ibid., 244.

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After the turn of the new year, parliament began to debate repealing the Stamp Act. In a speech on January 14, 1766, William Pitt rose in the House of Commons and forcefully demanded the repeal, earning him adoring adulation from Americans, when they read newspaper accounts later that spring. Pitt had read Daniel Dulaney's *Considerations* and agreed with much of it.<sup>55</sup> However, while acknowledging the wisdom of repeal, Pitt also urged the adoption of an assertion of parliament's legislative authority over the colonies—what became known as the Declaratory Act.

Three days after Pitt's speech, a meeting of leading cabinet ministers gathered at the home of the Marquis of Rockingham, who had assumed the post of prime minister from Grenville the previous July. They agreed that the way forward was to adopt what Pitt had presented in his speech. In early February, the 3<sup>rd</sup>, Rockingham introduced a resolution that would become the Declaratory Act. It was not until two weeks later, on the 21<sup>st</sup>, that the resolution for complete repeal of the Stamp Act was submitted to parliament.<sup>56</sup> Repeal passed a crucial vote early the next morning at 2am.<sup>57</sup> Americans and their British allies had achieved their goal, but at what cost? The Stamp Act was repealed, but the Declaratory Act would become the key point of contention, between America and parliament, sparking Lexington and Concord nine years later.

As events unfolded in London, Americans continued to think, write, and argue for the Stamp Act's repeal. Virginia's Richard Bland published, *An Inquiry into the Rights of the British Colonies*, a few weeks after repeal and nearly two months before word

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<sup>55</sup> Morgan, 283.

<sup>56</sup> *Ibid.*, 279.

<sup>57</sup> *Ibid.*, 291.

reached America, in March 1766.<sup>58</sup> Bland took a slightly different line of reasoning from his predecessors, the thesis of his work was, “whether the Ministry, by imposing Taxes upon the Colonies by Authority of Parliament, have pursued a wise and salutary Plan of Government, or whether they have exerted pernicious and destructive Acts of Power.”<sup>59</sup>

Bland first addressed representation in a manner similar to that of Daniel Dulany. The crucial, “[q]uestion is whether the Colonies are represented in the *British* Parliament or not?”<sup>60</sup> For supporters of parliament the answer was yes, for Bland it was no. As an American, the theory of virtual representation held no meaning for him. “I cannot comprehend how Men who are excluded from voting at the Election of Members of Parliament can be represented in that Assembly, or how those who are elected do not sit in the House as Representatives of their Constituents.”<sup>61</sup> A component of virtual representation theory held that members of the House of Commons were elected to represent the empire as a whole, not serve as representatives of the voters who had elected them. Both notions, of how members were elected and who they served, were incompatible with Bland’s political beliefs.

Colonial legislatures were elected by a broader representation of the white male population, than that found in Great Britain. Responding to advocates of virtual representation, Bland wrote, “If what you say is a real Fact, that nine Tenths of the People of *Britain* are deprived of the high Privilege of being Electors, it shows a great

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<sup>58</sup> Jensen, xxxiv.

<sup>59</sup> Richard Bland, *An Inquiry into the Rights of the British Colonies* in Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1764-1772*, (New York: Library of America, 2015), 309-29.

<sup>60</sup> Bland, 310.

<sup>61</sup> *Ibid.*, 311.

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Defect in the present Constitution, which has departed so much from its original Purity; but never can prove that those People are even *virtually* represented in Parliament.”<sup>62</sup> This reasoning can not be applied to the British subjects of North America, “who are considered by the *British* Government itself, in every Instance of Parliamentary Legislation, as a distinct People.”<sup>63</sup> Precedent held that the acts of parliament only applied to the American colonies if they were explicitly named in them.

Expanding upon arguments first put forward by Otis in the pamphlet debate, Bland argued that America was not a conquered land, like Ireland, and thus had a different relationship to the empire, through settlement sanctioned with charters bestowed by the English crown. Englishmen who settled the colonies conducted their affairs by adhering to the provisions of each colony’s charter, whether it be royal or proprietary. The colonial relationship ran through the crown, not through parliament.

The great flaw in this argument is that the events of the English Civil War in the mid-seventeenth century and especially the settlement, between crown and parliament, concluded during the Glorious Revolution of 1688, fundamentally altered the relationship between the two. Bland and others may argue that the original relationship was still in force and that America never consented to a revised constitutional framework, but the reality was that the structure of empire had changed. Sovereignty, post-1688, resided in parliament and it could be argued that future colonial charters would be issued by the king, serving as the executive, on behalf of parliament.

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<sup>62</sup> *Ibid.*, 315.

<sup>63</sup> *Ibid.*, 315.

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Even prior to 1688, the constitutional reality of the empire had changed, Bland, “admitted that after the Restoration the Colonies lost that Liberty of Commerce with foreign Nations they had enjoyed before that Time.”<sup>64</sup> The navigation acts adopted by parliament restricted colonial trade to the benefit of the mother country, this well-established precedent validated the authority of parliament—at least in the area of trade regulation for the empire as a whole. Bland decried regulations preferential to Britain and detrimental to the colonies, but remained unconvinced that parliament had any authority to extract taxes from within the mainland colonies.

As Richard Bland’s *Inquiry* garnered notice around the colonies, James Wilson was completing the college term at the College of Philadelphia as a tutor of Latin. His horizon extended far beyond the walls of the school and he took steps to secure the services of John Dickinson to qualify him for a career as a lawyer. Before he began work with Dickinson in the summer of 1766, Wilson took part in the graduation ceremonies at the college held on May 20. He was awarded an honorary master’s degree for his work at the school. This very week of commencement was also the week when the first word of the Stamp Act’s repeal reached Philadelphia.

During the winter of 1767-68, as James Wilson and William White began work on their newspaper series, *The Visitant*, two series of essays appeared in Philadelphia’s newspapers. The first, written by John Dickinson, *Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies*, first appeared on the front page of the *Pennsylvania Chronicle* on December 2, 1767.<sup>65</sup> The second, written by William

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<sup>64</sup> Ibid., 323.

<sup>65</sup> Wood, 405. John Dickinson, *Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies*, in Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1764-1772*, (New York: Library of America, 2015), 407-89.

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Hicks, *The Nature and Extent of Parliamentary Power Considered*, appeared in the *Pennsylvania Journal*, with the first installment published on January 21, 1768.<sup>66</sup> Both authors used pseudonyms—Dickinson used *A Farmer* and Hicks *A Citizen*. The work of both men would appear as collections in pamphlet form. Dickinson’s work was republished throughout the colonies as first, individual installments, and then as a collection. The series appeared in every colonial newspaper in the thirteen colonies, except for three.<sup>67</sup> *Letters from a Farmer* went through eight editions in America, two editions in London, one in Ireland, and another, in French, in Amsterdam.<sup>68</sup> “Almost overnight, they made him the most popular patriot in America.”<sup>69</sup>

Dickinson’s *Letters from a Farmer* series is an examination of the history of disputes between the colonies and Great Britain since the repeal of the Stamp Act and the passage of the Declaratory Act in early 1766. As a published series, *Letters*, was comprised of twelve installments. The very first letter focused on the importance of legislatures, particularly the suspension of the New York legislature for alleged non-compliance with an order from parliament to provide enumerated supplies for imperial troops stationed in the colony.

Dickinson disagreed with the “conduct in that instance,” of the New York legislature, but this had, “not blinded me so much, that I cannot plainly perceive, that they have been punished in a manner pernicious to *American* freedom, and justly

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<sup>66</sup> Jensen, xli.

<sup>67</sup> Philip Davidson, *Propaganda and the American Revolution 1763-1783*, 1<sup>st</sup> pub. 1941, (New York: W.W. Norton & Company, 1973), 102.

<sup>68</sup> Wood, 405.

<sup>69</sup> Wood, 405.

alarming to all the colonies.”<sup>70</sup> If the legislature of one colony could be suspended, by parliament, what might lead to further suspensions and for what offenses?

The Declaratory Act provided justification for parliament’s action, but it was a legal authority with which John Dickinson, one of the most prominent lawyers in Pennsylvania, whole-heartedly disagreed. He first queried whether there existed any limit to the possible demands of parliament—upon colonial legislatures and ultimately their citizens. He declared, “An act of parliament, commanding us to do a certain thing, if it has any validity, is a tax upon us for the expence that accrues in complying with it.”<sup>71</sup> The incomplete submission to parliamentary direction was, “regarded as an act of ‘disobedience to the authority of the BRITISH LEGISLATURE.’ This gives the suspension a consequence vastly more affecting.”<sup>72</sup> Here were the real-world consequences of the Declaratory Act. “It is a parliamentary assertion of the *supreme authority* of the *British* legislature over these colonies, in *the point of taxation*, and it is intended to COMPEL *New York* into a submission to that authority.” Parliament’s authority would be backed by a commitment to the use of military force to ensure compliance.

The plight of New York was the plight of all the colonies. “If the parliament may lawfully deprive *New York* of any of *her* rights, it may deprive any, or all the other colonies of *their* rights; and nothing can possibly so much encourage such attempts, as a mutual inattention to the interests of each other.”<sup>73</sup> Dickinson argued that the true

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<sup>70</sup> Dickinson, *Letters*, 410.

<sup>71</sup> *Ibid.*, 410.

<sup>72</sup> *Ibid.*, 411.

<sup>73</sup> *Ibid.*, 412.

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design of the British ministry was, “*To divide, and thus to destroy*, is the first political maxim in attacking those, who are powerful by their union.”<sup>74</sup> Previous success in safeguarding American rights required the cooperation of all the colonies, just as in the successful fight against the Stamp Act, the colonies needed to stay united in their defense against parliamentary encroachment. Failing to remain united would bring devastating of consequences.

In Letter II, Dickinson turned to the extent of parliament’s authority. Parliamentary supporters believed there were no limits upon the body’s sphere within which it could legislate. Dickinson, like many other authors, acknowledged, “a legal authority to regulate the trade of *Great Britain*, and all her colonies.”<sup>75</sup> As all constitutional authorities of the time agreed, there needed to “exist a power somewhere, to preside, and preserve the connection in due order.”<sup>76</sup> Parliament held the power to regulate the constituent parts of the empire for the benefit of the whole. Dickinson wrote he had, “looked over *every statute* relating to these colonies,” from their individual founding until the present; and until the events surrounding the Stamp Act, all previous statutes were, “calculated to regulate trade, and preserve or promote a mutually beneficial intercourse between the several constituent parts of the empire.”<sup>77</sup>

He acknowledged that many of the duties enacted raised revenue, “yet those duties were always imposed *with design* to restrain the commerce of one part, that was

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<sup>74</sup> Ibid., 412.

<sup>75</sup> Ibid., 413.

<sup>76</sup> Ibid., 413.

<sup>77</sup> Ibid., 413-4.



injurious to another, and thus to promote the general welfare.”<sup>78</sup> Any revenue generated was inconsequential. This was the heart of Dickinson’s argument, the *intent* of parliament, until the Stamp Act, was never, “FOR THE PURPOSE OF RAISING A REVENUE,” only for the regulation of trade.<sup>79</sup> He summarized this new expansion of parliament’s authority in America: “This I call an innovation; and a most dangerous innovation.”<sup>80</sup>

Concluding Letter II with a summarizing thought on the actions of parliament, beginning with the Stamp Act, Dickinson identified the vital question vexing the colonies’ relationship with Great Britain: “[W]hether the parliament can legally impose duties to be paid *by the people of these colonies only*, FOR THE SOLE PURPOSE OF RAISING A REVENUE, *on commodities which she obliges us to take from her alone*, or, in other words, whether the parliament can legally take money out of our pockets, without our consent.”<sup>81</sup> If this new authority could be enforced, in the thirteen colonies, then, “our boasted liberty is but, *Vox et prateria nihil*, A sound and nothing else.”<sup>82</sup>

The subject of Letter III was, “whether ‘our rights *are* invaded.”<sup>83</sup> He dismissed previous authors who inclined towards armed resistance, “To talk of ‘defending’ them, as if they could be no otherwise ‘defended’ than by arms, is as much out of the way, as if a man having a choice of several roads to reach his journey’s end, should prefer the

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<sup>78</sup> *Ibid.*, 414.

<sup>79</sup> *Ibid.*, 415.

<sup>80</sup> *Ibid.*, 416.

<sup>81</sup> *Ibid.*, 421.

<sup>82</sup> *Ibid.*, 421.

<sup>83</sup> *Ibid.*, 422.

worst, for no other reason, but because it is the worst.”<sup>84</sup> Throughout the series, Dickinson was very clear in his abhorrence of any resort to armed resistance. The conservative he was, sought to defend American rights with every means at his disposal, short of armed or mob resistance. The overriding goal of *Letters from a Farmer* was, “to convince the people of these colonies, that they are at this moment exposed to the most imminent dangers; and to persuade them immediately, vigorously, and unanimously, to exert themselves, in the most firm, but most peaceable manner, for obtaining relief.”<sup>85</sup>

Dickinson, in educating his readers, explained, “Every government at some time or other falls into wrong measures,” however, “every such measure does not dissolve the obligation between the governors and the governed.”<sup>86</sup> “It is the duty of the governed to endeavor to rectify the mistake,” for, “they have not at first any other right, than to represent their grievances, and to pray for redress.”<sup>87</sup> The only exception to this lesson, for Dickinson, was in the eventuality in which a situation arose where there was not, “time for receiving an answer to their applications, which rarely happens.”<sup>88</sup> If a situation again arose, like that during the passage of the Stamp Act when petitions from the colonies were not even read before parliament, then, and only then, would “that kind of *opposition* becomes justifiable, which can be made without breaking the laws, or

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<sup>84</sup> Ibid., 422.

<sup>85</sup> Ibid., 422.

<sup>86</sup> Ibid., 423.

<sup>87</sup> Ibid., 423.

<sup>88</sup> Ibid., 424.

disturbing the public peace.”<sup>89</sup> Dickinson was referring to the use of economic boycotts of British goods. “For experience may teach them, what reason did not; and harsh methods cannot be proper, till milder ones have failed.”<sup>90</sup>

He did acknowledge after a lengthy period of peaceful petitions, economic boycotts, and domestic substitutions; if parliament still failed to redress colonial objections, armed resistance may become justified. However, Dickinson set a very high threshold for armed resistance. “[I]t never can be justifiable, until the people are FULLY CONVINCED, that any further submission will be destructive to their happiness.”<sup>91</sup> In the course of his research and thinking on the imperial relationship, Dickinson became convinced that, “the prosperity of these provinces is founded in their dependance on Great Britain.”<sup>92</sup> Americans must be of one mind if force was resorted to, for the fortunes and futures of all would be at risk.

Early in Letter IV, which he devoted to the subject of taxation, Dickinson boldly declared his, “total denial of the power of parliament to lay upon these colonies any ‘tax’ whatever.”<sup>93</sup> He then defined the word, “I annex that meaning which the constitution and history of England require to be annexed to it; that is—that it is *an imposition on the subject, for the sole purpose of levying money.*”<sup>94</sup> Here again, Dickinson’s focus remains on the *intent* of parliamentary legislation. After a discussion of the history of

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<sup>89</sup> Ibid., 424.

<sup>90</sup> Ibid., 424.

<sup>91</sup> Ibid., 424.

<sup>92</sup> Ibid., 425.

<sup>93</sup> Ibid., 426.

<sup>94</sup> Ibid., 427.

taxation in English history, he closed with the quote: “*Habemus quidem senatus consultum,—tanquam gladium in vagina repositum.* We have a statute, laid up for future use, like a sword in the scabbard.”<sup>95</sup> The warning reminded Americans that any precedent established conceding parliament’s taxing authority in the colonies was intolerable and likely to resorted to in the future with increasing frequency.

Returning to the issue of parliamentary intent in enacting legislation, Dickinson, in Letter VII, focused on *whom* laws were applied. “Where these laws are to bind *themselves*, it may be expected that the house of commons will very carefully consider them: But when they are making laws that are not designed to bind *themselves*, we cannot imagine that their deliberations will be as cautious and scrupulous, as in their own case.”<sup>96</sup> Drawing attention to a recent parliamentary act imposing taxes on the importation of glass and paper from Britain into America, Dickinson declared, “For I am convinced, that the authors of this law would never have obtained an act to raise so trifling a sum as it must do, had they not intended by *it* to establish a *precedent* for future use.”<sup>97</sup> Americans couldn’t risk acquiescing in even the most trivial of taxes enacted by parliament, for to do so would establish the precedent that Dickinson and other authors feared. Once the precedent was accepted then there would exist no limit to demands for revenue. “In short, if they have a right *to* levy a tax of *one penny* upon us, they have a right to levy a *million* upon us: For where does their right stop?”<sup>98</sup> Once

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<sup>95</sup> Ibid., 432.

<sup>96</sup> Ibid., 445.

<sup>97</sup> Ibid., 449.

<sup>98</sup> Ibid., 449.

accepted, the parliamentary power to tax would result in a chilling result—“whether *our own money* shall continue in *our own pockets* or not, depends no long on *us*, but on *them*.”<sup>99</sup>

In the remaining installments of the series, Dickinson returned again and again to arguments put forth in those published in the first half. In Letter X, he paused for a moment to consider what he believed a future historian—looking back on the present day—would write about the imminent future. In the eighth year of George III’s reign “*a very memorable event*” occurred, for the “American colonies” acquiesced, “for the *FIRST* time, to be *taxed* by the *British* parliament.”<sup>100</sup> The historian praised the conduct of the colonies in successfully achieving repeal of the Stamp Act, but repeal heralded the moment of their downfall. “This affair rendered the SUBMISSIVE CONDUCT of the colonies so soon after, the more extraordinary; there being no difference between the mode of taxation which they opposed, and that to which they submitted.”<sup>101</sup> Their acceptance of parliamentary taxation was the last and most crucial act. “From thence the decline of their freedom began, and its decay was extremely rapid; for as *money* was always raised upon them by the parliament, their *assemblies* grew immediately useless, and in a short time *contemptible*: And in less than one hundred years, the people sunk down into that *tameness* and *supineness* of spirit, by which they still continue to be distinguished.”<sup>102</sup>

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<sup>99</sup> *Ibid.*, 450.

<sup>100</sup> *Ibid.*, 472.

<sup>101</sup> *Ibid.*, 472.

<sup>102</sup> *Ibid.*, 473.

### James Wilson: *Anxious Founder*

Dickinson's account from a possible future was bleak, but he offered an alternative. Relying upon the experience of previous succession colonial protest, he closed his final contribution, Letter XII, and the series as a whole with the following admonition: "Is there not the strongest probability, that if the universal sense of these colonies is immediately expressed by RESOLVES of the assemblies, in support of their rights, by INSTRUCTIONS to their agents on the subject, and by PETITIONS to the crown and parliament for redress, these measures will have the same success now, that they had in the time of the *Stamp Act*."<sup>103</sup>

Dickinson's *Letters from a Farmer* held a prominent position, appearing just below the masthead, in the pages of *Pennsylvania Chronicle*, until the initial appearance of his former law student's *The Visitant* on February 1, 1768. *Letters* remained a component of the paper, for two more weeks, until Letter XII was published on February 15. A week prior to Wilson and White's series appearing in the *Chronicle*, William Hick's *The Nature and Extent of Parliamentary Power Considered* began appearing in the *Pennsylvania Journal*.<sup>104</sup> Though not as celebrated as Dickinson's *Letters from a Farmer*, Hick's series, also published in Philadelphia, would have drawn James Wilson's attention.

Not as constrained as John Dickinson in criticizing the actions of parliament, William Hicks used an element of ridicule in his writing. Even though the French had been removed from Canada, the British ministry sought it prudent to retain, "a very considerable body of troops, and are daily sending over fresh supplies—to *protect us*

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<sup>103</sup> Ibid., 489.

<sup>104</sup> William Hicks, *The Nature and Extent of Parliamentary Power Considered*, in Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1764-1772*, (New York: Library of America, 2015), 369-400.

*from any future dangers.*"<sup>105</sup> The logic of this escaped Hicks as, "we are both able and willing to defend our own frontiers, without putting the government to the trouble of transporting troops for that purpose, at such an immense expence."<sup>106</sup> Might there be another mission for the troops—to enforce new taxes?

Hicks firmly declared he, like Dickinson, was "no favourer of violent measures." Instead, "I would endeavour to support our pretensions by force of reasoning, not by force of arms; but yet I would anxiously wish that nothing may intimidate us into an acquiescence with the measures of oppression."<sup>107</sup> Acknowledging the military might of Great Britain, "We may be compelled to submit, but never to relinquish our claim to the privileges of the free men."<sup>108</sup> Echoing arguments put forth by authors going back to James Otis, Jr., nearly four years earlier, Hicks again claimed that the ambitions of colonists extended no further than securing the same rights enjoyed by their forefathers before leaving the shores of the British Isles. He could not understand how voyage from the eastern shores of the Atlantic to the western fundamentally restricted the rights of colonists. He asked, "If we are entitled to the liberties of British subjects we ought to enjoy them *unlimited and unrestrained.*"<sup>109</sup>

Contemplating the empire as a whole, Hicks, like Dickinson, acknowledged, "the *necessity* of lodging in some part of the community *a restraining power,*" for the regulation of trade and manufacturing for the common good, this power being vested in

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<sup>105</sup> Hicks, 369.

<sup>106</sup> *Ibid.*, 369.

<sup>107</sup> *Ibid.*, 372.

<sup>108</sup> *Ibid.*, 372.

<sup>109</sup> *Ibid.*, 373.

parliament.<sup>110</sup> However, with the recent history of parliament's actions detrimental to colonial interests, beginning with the Stamp Act, he was having second thoughts. "If liberty be the object which we pursue, and slavery the misfortune which we most cautiously avoid, we have as much to apprehend from a corrupt parliament, as from an ambitious king;" he criticized anyone, "who would patiently submit to the usurpations of the one and resolutely oppose the despotism of the other, only declares, by his conduct, that he would rather be ruled by five hundred tyrants than by one."<sup>111</sup>

Unlike John Dickinson, who acknowledged parliament's supremacy in the area of imperial trade, Hicks believed that, "under a pretence of regulating our trade we may be stripped of our property; and with an appearance of limiting our manufactures, we may insensibly be robbed of our liberty."<sup>112</sup> Parliament could not be counted on to do what was just for all of the members of the British Empire, so their authority to control colonial trade must also be challenged.

James Wilson brought his broad, Scottish Enlightenment education to bear upon what he titled: *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*.<sup>113</sup> This research project, which he began after completing his last installment of *The Visitant*, was envisioned as an attempt to make a name for himself within Philadelphia's literary community. The success of *The Visitant*

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<sup>110</sup> Ibid., 374.

<sup>111</sup> Ibid., 376.

<sup>112</sup> Ibid., 400.

<sup>113</sup> James Wilson, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, in *Collected Works of James Wilson*, Eds. Kermit L. Hall and Mark David Hall, 2 vols., (Indianapolis: Liberty Fund, 2007), 3-31.



demonstrated his writing ability to the reading public, but since he and William White used a pseudonym, readers were left to ponder the identity of the author. The authorship of *Considerations* would be prominent on the title page.

Wilson began his pamphlet with a simple question that would form the thesis of the whole, “No question can be more important to Great Britain, and to the colonies, than this—does the legislative authority of the British parliament extend over them?”<sup>114</sup> In Letter II, John Dickinson examined the authority of parliament and concluded that it held, “a legal authority to regulate the trade of *Great Britain*, and all her colonies.”<sup>115</sup> Wilson wasn’t ready to concede that the regulation of trade—virtually all of the authors since James Otis, Jr., except for William Hicks, conceded this authority—came within the sphere of the powers of the British parliament. “Oppression is not a plant of the British soil; and the late severe proceedings against the colonies must have arisen from the detestable schemes of interested ministers, who have misinformed and misled the people.”<sup>116</sup> In other words, the British public had been misled by ministers, pushing taxation on America to lighten the burden of taxation upon British taxpayers, into believing they held a power, which Wilson argued they didn’t possess.

Joining with authors who had written before him, James Wilson agreed that what Americans were fighting for was to be, “reinstated in the enjoyment of those rights, to which we are entitled by the supreme and uncontrollable laws of nature, and the fundamental principles of the British constitution.”<sup>117</sup> Relying upon the laws of nature,

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<sup>114</sup> Wilson, 3.

<sup>115</sup> Dickinson, *Letters*, 413.

<sup>116</sup> Wilson, 3.

<sup>117</sup> *Ibid.*, 4.

### **James Wilson: *Anxious Founder***

as he understood them, “All men are, by nature, equal and free: no one has a right to any authority over another without his consent.”<sup>118</sup> This was the crucial point, if Americans were unable to bestow their consent, then legislation enacted designed to apply to them, was null and void. “All lawful government is founded on the consent of those who are subject to it: such consent was given with a view to ensure and to increase the happiness of the governed, above what they could enjoy in an independent and unconnected state of nature.”<sup>119</sup> Wilson had read and thoroughly understood John Locke. For Wilson, this justification for government held a consequence—“that the happiness of the society is the *first* law of every government.”<sup>120</sup>

By placing the “happiness of the society” as the foundation upon which all governmental authority rested, James Wilson applied a new standard to the relationship of the North American colonies to the parliament of Great Britain and to the larger British Empire. “The people have a right to insist that this rule be observed; and are entitled to demand a moral security that the legislature will observe it.”<sup>121</sup> From this demand, he concluded, “If they have not the first, they are slaves; if they have not the second, they are, every moment, exposed to slavery.”<sup>122</sup> He then rhetorically asked if placing a “supreme, irresistible, uncontrolled authority over,” America, in the British parliament, was conducive to the happiness of Americans.<sup>123</sup> He answered in the

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<sup>118</sup> Ibid., 4.

<sup>119</sup> Ibid., 5.

<sup>120</sup> Ibid., 5.

<sup>121</sup> Ibid., 5.

<sup>122</sup> Ibid., 5.

<sup>123</sup> Ibid., 5.

negative, for “Parliaments are not infallible: they are not always just. The members, of whom they are composed, are human; and, therefore, they may err; they are influenced by interest; and, therefore, they may deviate from their duty.”<sup>124</sup>

In the heated debate between supporters of actual or virtual representation, Wilson fully supported actual. “[T]he colonies are entitled to all the privileges of Britons,” this required actual representation in parliament.<sup>125</sup> Since Americans elected no members to parliament, any laws, irrespective of their design, were inoperative on them. On the retention of the rights of Britons, “We have committed no crimes to forfeit them: we have too much spirit to resign them. We will leave our posterity as free as our ancestors left us.”<sup>126</sup>

In Letter VII, John Dickinson explained why it was important legislation, enacted by parliament, be evaluated by who it applied to. James Wilson noted the importance of elected representatives coming from the body that put them in office. It was vital that, “The interest of the representatives is the same with that of their constituents. Every measure, that is prejudicial to the nation, must be prejudicial to them and their posterity. They cannot betray their electors, without, at the same time, injuring themselves.”<sup>127</sup> The resort to frequent elections was necessary as, “The first maxims of jurisprudence are ever kept in view—that all power is derived from the people—that their happiness is the end of government.”<sup>128</sup> If members of parliament never, or even

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<sup>124</sup> Ibid., 5.

<sup>125</sup> Ibid., 6.

<sup>126</sup> Ibid., 6.

<sup>127</sup> Ibid., 8.

<sup>128</sup> Ibid., 9.

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very infrequently, faced voters, then constitutional restraints would be broken and the interests of government would become selfish, to the detriment of the people. “A regard for the publick was now no longer the spring of their actions: their only view was to aggrandize themselves, and to establish their grandeur on the ruins of their country.”<sup>129</sup>

If legislators were immune from accountability, then it mattered not how many of them there were. Wilson declared, “Kings are not the only tyrants: the conduct of the long parliament will justify me in adding, that kings are not the severest tyrants.”<sup>130</sup> If the primary objective of any government was the happiness of the people, how could the happiness of Americans reside in a body—parliament—comprised of legislators who were unfamiliar with the land, interests, and desires of those for whom they enacted laws?

James Wilson—along with every pro-American author since James Otis—agreed, “One of the most ancient maxims of the English law is, that no freeman can be taxed at pleasure.”<sup>131</sup> He acknowledged there existed classifications of subjects who were ineligible to vote, but he argued that these distinctions did not apply to America. First, he asked where the power to pass laws, binding Americans, came from. Were Americans not fellow British subjects? If so, when did this relationship change? “By what title do they claim to be our master? What act of ours has rendered us subject to those, to whom we were formerly equal?”<sup>132</sup> Could it be that, “British freedom [is]

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<sup>129</sup> Wilson gave a lengthy discourse on the history of the Long parliament, begun under Charles I and resurrected under Charles II. *Ibid.*, 10.

<sup>130</sup> *Ibid.*, 10.

<sup>131</sup> *Ibid.*, 13.

<sup>132</sup> *Ibid.*, 16.

denominated from the *soil*, or from the *people* of Britain?”<sup>133</sup> If freedom is held in the soil of the British Isles, “do they lose it by quitting the soil? Do those, who embark, freemen, in Great Britain, disembark, slaves, in America?”<sup>134</sup> Logically, if this were true, why would any British subject—other than those ordered to do so, such as soldiers and convicts—ever leave home? The establishment of another class of citizenship, consisting of a constrained set of rights, was not conducive to the flourishing of trade or the expansion of the empire.

In a footnote, Wilson argued that the supporters of parliamentary authority over America grounded their position, “upon the very absurd principle of their being *virtually* represented in the house of commons.”<sup>135</sup> Returning to the subject of the legislators themselves, Wilson argued that it was impossible for the British parliament to hold authority over America. “Can members, whom the Americans do not elect; with whom the Americans are not connected in interest; whom the Americans cannot remove; over whom the Americans have no influence—can such members be styled, with any propriety, the magistrates of the Americans?”<sup>136</sup> In elections, in Britain, where Americans could not participate, “A member of the house of commons may plume himself upon his ingenuity in inventing schemes to serve the mother country at the expense of the colonies; and may boast of their impotent resentment against him on that account.”<sup>137</sup> This situation, “is repugnant to the essential maxims of jurisprudence, to

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<sup>133</sup> Ibid., 16.

<sup>134</sup> Ibid., 16.

<sup>135</sup> Ibid., 15.

<sup>136</sup> Ibid., 15.

<sup>137</sup> Ibid., 17.

the ultimate end of all governments, to the genius of the British constitution, and to the liberty and happiness of the colonies, that they have no share in the British legislature.”<sup>138</sup>

After dismissing the authority of parliament over America with a survey of English history and case law, Wilson put forth the foundations of the relationship between Great Britain and her North American colonies. The relationship did not rest upon conquest, as that between Britain and Ireland. America’s place, within the British Empire, existed in a relationship between the colonies and the crown. “They took possession of the country in the *king’s* name: they treated, or made war with the Indians by *his* authority: they held the lands under *his* grants, and paid *him* the rents reserved upon them: they established governments under the sanction of *his* prerogative, or by virtue of *his* charters.”<sup>139</sup> Parliament did not exercise a role in this relationship for, “no application for those purposes was made to the parliament: no ratification of the charters or letters patent was solicited from that assembly, as is usual in England with regard to grants and franchises of much less importance.”<sup>140</sup>

In an extended footnote at the end of the pamphlet, Wilson noted, “After considering, with all the attention of which I am capable, the foregoing opinion—that all the different members of the British empire are distinct states, independent of each other, but connected together under the same sovereign in right of the same crown.”<sup>141</sup>

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<sup>138</sup> Ibid., 18.

<sup>139</sup> Ibid., 27.

<sup>140</sup> Ibid., 27.

<sup>141</sup> Ibid., 30.

### **James Wilson: *Anxious Founder***

Here was where James Wilson departed from the writings of previous authors. He not only denied all parliamentary authority over America, but for all colonies in the British Empire. The empire existed through the person of the king, but all local governance, including trade, resided in colonial assemblies elected by the colonists themselves.

When James Wilson's *Considerations* appeared in August 1774, inside the front cover, there was a section labeled, "Advertisement." The publisher included a paragraph, from Wilson explaining why and when the pamphlet was written. He explained that it had been written during "the late Non-Importation Agreement," but that the situation was resolved before the pamphlet was ready for publication.<sup>142</sup> When he began his research, "He entered upon them with a view and expectation of being able to trace some constitutional Line between those cases, in which we ought, and those in which we ought not, to acknowledge the power of Parliament over us."<sup>143</sup> However, by the end of the work, "he became fully convinced, that such a Line does not exist; and that there can be no medium between *acknowledging* and *denying* that power in *all* cases."<sup>144</sup> *Considerations* appeared nearly six years after it was written and long after James Wilson desired it to reach the public.

In a letter from his close friend, William White, sent from Philadelphia to Wilson in Reading, on November 27, 1768, Wilson was advised to delay publication.<sup>145</sup> Not only had White received a copy of *Considerations*, but so had Dr. Francis Alison, rector of the

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<sup>142</sup> James Wilson, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* in Gordon Wood, ed., *The American Revolution: Writings from the Pamphlet Debate 1773-1776*, (New York: Library of America, 2015), 113.

<sup>143</sup> *Ibid.*, 113.

<sup>144</sup> *Ibid.*, 113.

<sup>145</sup> Letter from William White to James Wilson, November 27, 1768, Case 8, Box 35, Gratz Miscellaneous Collection, Historical Society of Pennsylvania.

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Academy and professor in the College of Philadelphia. Wilson had attached a note to Alison's copy saying he would soon be visiting Philadelphia. Dr. Alison had sent a letter to Wilson urging him to suspend publication of the pamphlet until they could talk in person. His objection rested on two parts: First, Alison felt that the pamphlet was too long; and Second, John Dickinson was envious that the last two installments of his *Farmer's Letters* had been relegated to the interior pages of the *Pennsylvania Chronicle* by the appearance of Wilson and White's *The Visitant*.

White had a private conversation with Alison before sending his letter to Wilson. He explained that the authorship of *The Visitant* among the reading public was unknown, but Alison believed it soon would be. In Alison's opinion, being the author of both *The Visitant* and *Considerations*, "might be a disadvantage to you."<sup>146</sup> White included a postscript at the end of the letter. He was, "surprised you did not submit your piece to Mr. Ewing rather than Dr. Alison."<sup>147</sup> White believed that Ewing might, "have been as good a Judge of ye Merit of it, and I think a better Judge as to ye Propriety of publishing it."<sup>148</sup>

James Wilson listened to the advice he received from friends in Philadelphia and shelved plans for immediate publication of *Considerations*. Not until a more favorable climate arose in 1774 did Wilson dust off the work and arrange for publication. In the latest published collection of pamphlets of the era, Gordon Wood declared Wilson's

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<sup>146</sup> Ibid.

<sup>147</sup> Ibid. This was Mr. John Ewing, later Rev. Dr. John Ewing, Provost of the University of Pennsylvania, into which the College of Philadelphia was transformed in 1779.

<sup>148</sup> Ibid.



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pamphlet, “as radical as Jefferson’s.”<sup>149</sup> Jefferson’s *A Summary View of the Rights of British America* also appeared in 1774 and became better known among the general public.

1768 was an important year when examining James Wilson’s life. His acceptance, by the reading public, of his contributions to *The Visitant*, nourished his innate ambition to make a name in Philadelphia’s polite society. *Considerations* was to be his solo debut upon the very same stage, but this time without the cloak of a pseudonym. His advocacy of the total denial of parliamentary authority in 1768 was truly revolutionary, but in 1774 it was just another voice in an increasing cacophony of argument aimed at parliament. In *The Visitant*, Wilson examined the society of colonial America from the perspective as one who was part of it, with *Considerations*, he stepped back and examined colonial America within the context of the British Empire and found that a new path was necessary. In advocating his conclusions in *Considerations*, what one day would become known as the British Commonwealth, James Wilson prepared his thinking for his vote on July 2, 1776 in the Pennsylvania State House declaring independence from the British Empire. Further, it prepared him for battle John Dickinson over the drafting of a new national constitution at the Constitutional Convention of 1787.

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<sup>149</sup> Wood, 109.