The First Continental Congress
and the Problem of American Rights

In October 1774 Joseph Galloway left the First Continental Congress frustrated and angry, sentiments he soon after expressed publicly, accusing his opponents in Philadelphia of adopting “untenable principles, and thence rearing the most wild and chimerical superstructures.” He condemned what he thought were the absurd arguments and baseless assertions made by his congressional adversaries as they debated Parliament’s authority over the colonies and attempted to define American liberties in a Declaration of Rights. “Even the authors themselves,” he complained bitterly, “finding that they have conveyed no satisfactory idea to the intelligent mind, of either the extent of parliamentary authority, or the rights of America, have exploded them, and taken new ground, which will be found to be equally indefensible.” What is worse, they were leading America down the wrong path, “bewildered among the erroneous principles upon which her advocates have attempted in vain to support her rights.”

The men who had dominated Congress and pushed through the Declaration of Rights were duping the people and manipulating public opinion, groaned Galloway, convinced that congressional leaders only pretended to seek reconciliation when what they really wanted was independence. Explicitly he berated them for their inconsistency; implicitly he questioned their sincerity as well.

Galloway was hardly the first to impugn both the motives and the logic of those who eventually became revolutionaries. General Thomas Gage had said much the same thing six years before. Writing from his New York headquarters he advised William Barrington, the secretary at war, that those

who criticized British policy and at the same time professed to be loyal citizens of empire were not to be trusted.

That they will struggle for independency, if the good folks at home are not already convinced of it, they will soon be convinced. From the denying the Right of internal taxations, they next deny the Right of duties on Imports, and thus they mean to go step by step, 'till they throw off all subjections to your laws. They will acknowledge the King of Great Britain to be their King, but soon deny the prerogative of the Crown, and acknowledge their King no longer than it shall be convenient for them to do so.²

For Gage then, as for Galloway later on, this all smacked of contrivance, of an insincerity that was at the heart of their inconsistency. Reiterating his warning to Barrington, in 1772 Gage predicted that Americans would continue to shape their ideology to fit their interests. They would, he sneered, turn to "the Laws of God and Nature" as well as to "Charter Rights" and the "British Constitution," and "as they fail in producing Proof from the one, have Recourse to the other."³

The patriots did indeed shift their ground, a fact left unchanged despite the efforts of historians who argue that they were consistent in the ways that mattered most.⁴ Even so that does not mean Galloway was right—that his opponents in Congress had been cynically disingenuous. There is another


³ Gage to Barrington, May 4, 1772, ibid., 2:604.

⁴ Charles M. Andrews, The Colonial Background of the American Revolution (1924; reprint, New Haven, 1958), 64, and "The American Revolution: An Interpretation," American Historical Review 31 (1926), 219–32, argued that the patriots were inconsistent on basic constitutional and political issues. Randolph G. Adams, Political Ideas of the American Revolution (1924; reprint, New York, 1958) traced in more detail how arguments against Parliament’s authority to tax in one form or another escalated to a rejection of parliamentary authority altogether. Edmund S. Morgan, "Colonial Ideas of Parliamentary Power, 1764–1766," William and Mary Quarterly (hereafter, W&MQ) 5 (1948), 311–41 emphasized patriot flexibility in an attempt to counter charges of inconsistency, an emphasis carried through his later writings—notably The Birth of the Republic, 1763–1789 (1956; reprint, Chicago, 1977), 52, and continued in his student Marc Kruman’s recent book, Between Authority and Liberty (Chapel Hill, 1997), 11. Also see the writings of John Phillip Reid in n. 28 below. Jack P. Greene, Peripheries and Center (Athens, Ga., 1986) neatly summarizes the historical and historiographical complexities involved in arguments over constitutional rights in the empire. Greene deals with the nature of those rights and how they were understood on both sides of the Atlantic.
explanation for their changing positions, one that reaches down to a more basic level and does so without turning their different postures into mere posturing. Those patriots who attended the First Continental Congress knew the danger of being backed into a rhetorical corner and the risk of precipitating the very confrontation they wanted to avoid. And yet they did not always see where their arguments would take them nor did they understand what was resolvable—and what was not—until after they began to debate their rights. Simply put, they were uncertain about what to say and how to say it. Opinions that had been circulating in patriot tracts or offered on the floor of provincial assemblies could not easily be reconciled when the delegates to Congress gathered in September 1774. Virtually all of them hoped it was still possible to couple empire with liberty. They shaped their arguments to fit that desire, and consequently stressed some points while avoiding others. To seek consistency in this setting, or perfect clarity in the Declaration of Rights that came out of it, is to look for that which could not exist and to misconstrue the process by which protest led to revolt and revolt to revolution.

Many months before Congress convened Samuel Adams predicted an eventual eruption of hostilities. “I have long feared that this unhappy contest between Britain and America will end in Rivers of Blood,” he sighed in the aftermath of the 1772 Gaspee affair. By the spring of 1774 his fears had only deepened. Knowing that Parliament would soon pass legislation that became infamous as the Coercive Acts, he prophesied to Arthur Lee that “if the British Administration and Govenment do not return to the principles of moderation and equity, the evil which they profess to aim at preventing by their rigorous measures, will the sooner be brought to pass,” namely, “the separation and independence of the Colonies.”

But to predict is not necessarily to advocate. True, Adams’s loyalty to the empire was qualified and to him “equity” meant that Britain could not put Massachusetts in political thraldom. As Adams explained to Lee, “I wish for a permanent union with the mother country, but only on the principles of liberty and truth,” a sentiment which to him did not express disloyalty or a veiled desire for independence. Adams wanted a “bill of rights for British


6 Samuel Adams to Arthur Lee, Apr. 4, 1774, ibid., 3:100.
Americans" to counter Parliament's Declaratory Act of 1766 because he still hoped for accommodation and reconciliation even though he also believed that American independence was inevitable. Parliament by its "multiplied oppressions" was only hastening the date. That Adams could speak of both reconciliation and separation in nearly the same breath is proof of his ambivalence. Nevertheless it was an ambivalence that he either resisted or did not even perceive. That he was somehow contradictory, even illogical, does not make him disingenuous. The same was true of the men who would join him in Philadelphia. How could they yet know that they were attempting the impossible?

Fellow delegate John Adams had masked his anxiety about the state of imperial affairs by looking ahead to a Congress that "would be a Seminary of American Statesmen, a School of Politicians, perhaps at no greater Distance of Time, equal to a British Parliament, in a wiser as well as better Age." Those were his sentiments before he arrived in Philadelphia; his feelings as he prepared to return home were strikingly different. Complaining of petty "nibbling and quibbling," he was relieved to put Philadelphia and his inability to obtain what he wanted behind him. But then he and his cousin—like many of their colleagues in Congress—had had unrealistic expectations and imprecise objectives when they rode into town.

They went to Philadelphia seeking a solid consensus if not unanimity among the delegates who gathered in Carpenters' Hall. Although the Adamses could guess that their views differed markedly from those of some of the men they would meet, they nevertheless thought that the truth as they

7 Ibid., 3:101.

8 Samuel Adams to William Checkley, June 1, 1774, ibid., 3:128.


understood it would prevail. In hindsight theirs was an overly optimistic expectation that at the time did not seem wholly unreasonable. Some delegates were appointed by their home legislatures, others were chosen in town or county elections, but all were sent with remarkably similar charges: to restore the “union & harmony between Great Britain and the Colonies” which would entail “ascertaining American rights” and adopting “a plan for the purpose of obtaining a redress of American grievances.” Individual preferences, delegates were instructed, should be subordinated to the greater good to insure that consensus was achieved.

Arthur Schlesinger warned against looking too closely at these resolutions to reconstruct intent. They stated, he cautioned, “not so much what the dominant elements in a community really wanted, as what they dared to say that they wanted.” But confusion could have played as large a role as calculation. What Schlesinger saw as artifice in minds already formed could instead have been genuine misunderstanding as those who first came

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11 As taken from the Massachusetts resolution of June 17, 1774, and the Pennsylvania resolution of July 22, 1774, both of which are printed (along with those of the other colonies that sent delegates) in Worthington C. Ford, ed., _The Journals of the Continental Congress_, (34 vols., Washington, D.C., 1904-37), 1:16, 20. Resolutions passed by freeholders in town and county meetings and by delegates in assemblies and provincial conventions between May and Aug. 1774 are gathered in the _American Archives_ (6 vols., Washington, D.C., 1837-53), 4th series, vol. 1 passim. Instructions to the New Hampshire delegates are in K. G. Davies, ed., _Documents of the American Revolution_, (21 vols., Shannon, 1972-81), 8:170-71. Those resolutions and instructions reflect the widespread opposition to the Coercive Acts, the desire to define and defend American rights, and popular pressure to wage some sort of economic warfare. They also reflect the wide range of opinions and preferences that could make a unified policy difficult to achieve.

together rhetorically joined in protest learned that formulating a response and taking a united stand would prove difficult and divisive.\textsuperscript{13}

Division came quickly enough when Congress opened on September 5. Those wanting each colony to have one vote prevailed over those who wanted representation to be based on "the respective importance of each Colony."\textsuperscript{14} Putting those differences aside rather than truly resolving them, the delegates moved on to what they deemed a more pressing matter, unanimously approving on September 6 a resolution that a committee be appointed to "state the rights of the Colonies in general, the several instances in which these rights are violated or infringed, and the means most proper to be pursued for obtaining a restoration of them."\textsuperscript{15} Congress then decided by "a great majority" rather than unanimously that the committee be composed of two men from each of the delegations and the members were named the next day. Geographical representation took precedence over any presumed expertise on constitutional issues, with twenty-two men—effectively half of the forty-five delegates then present from eleven provinces—on just this one committee. Because Rhode Island and New Hampshire had only two delegates apiece their entire delegations sat on the committee. Two more members were added to the group on September 14 when the North Carolina delegates finally arrived. The committee expanded yet again on September 19 when three members, including Patrick Henry of Virginia, joined them from another committee (on trade and manufactures). Both Adamses were present from the beginning, as were Joseph Galloway of Pennsylvania and Stephen Hopkins of Rhode Island who presided as chair.\textsuperscript{16}

\textsuperscript{13} Which is not to deny that some of the individual delegations were themselves only formed through accommodation and forced attempts at moderaton, as Joseph Tiedemann shows for New York in Reluctant Revolutionaries: New York City and the Road to Independence, 1763–1776 (Ithaca, N.Y., 1997), 198–219, and Richard Alan Ryerson for Pennsylvania in The Revolution Is Now Begun (Philadelphia, 1978), 65–115. Also see Deputy Governor John Penn to the earl of Dartmouth, Sept. 5, 1774, in Davies, ed., Documents, 8:186–187. However united the delegates were in their opposition to the Coercive Acts, Penn observed, "there is great diversity of opinions as to the proper mode of opposition."

\textsuperscript{14} Ford, Journals, 1:25.

\textsuperscript{15} Ibid., 1:26.

\textsuperscript{16} Ibid., 1:28, for the "majority" and original membership (John Sullivan and Nathaniel Folsom for New Hampshire; Samuel and John Adams for Massachusetts; Stephen Hopkins and Samuel Ward for Rhode Island; Eliphalet Dyer and Roger Sherman for Connecticut; James Duane and John Jay for New
This committee, the first to be formed, may well have been the last to complete its task—if final action on its report by the whole body is the yardstick used. Committee members had their initial meeting on September 8 and decided the next day that a subcommittee should draft a declaration of rights. On September 14 the subcommittee reported back to the full committee which in turn submitted its report to Congress on September 22. Congress did not finish what the committee had started until weeks later—probably on October 14, as is usually surmised, but possibly not until after October 18 or even as late as October 26, the day that Congress adjourned.17

That the committee would find unanimity elusive became evident when the members gathered on September 8. Assuming that it would be wisest to move from the general to the specific, members decided to settle on what constituted fundamental American rights before attempting to draft any sort

17Ibid., 1:63–74, includes the declaration with the so-called "Sullivan draft" next to it and gives the impression that all was taken care of on October 14. Paul H. Smith, ed. Letters of Delegates to Congress, 1774–1789, (24 vols., Washington, D.C., 1976–), 1:193–94, and James H. Hutson, A Decent Respect to the Opinions of Mankind (Washington, D.C., 1975), 50–52, note that the "Sullivan draft" is actually in the hand of John Dickinson, who did not take his seat as a Pennsylvania delegate until Oct. 17. Also, the declaration was not published until Oct. 27, an unusually long gap between passage and printing compared with other congressional resolutions, most of which were published within a day or two of approval. Still, Dickinson may simply have copied the resolutions from a text shown to him earlier by John Adams in one of their many evening meetings before Oct. 17 and then given that copy to Adams (it did end up in his papers). The Extracts From the Proceedings Of the American Continental Congress, Held at Philadelphia on the 5th of September 1774 (Philadelphia, Oct. 27, 1774), only indicate the Oct. 14 passage. Since grievances were discussed after that date perhaps the resolution about rights passed then while the grievances were still being discussed and not finally settled upon until some days later. John Sullivan had chaired a subcommittee appointed by the larger committee to draft a set of grievances on Sept. 14, after the subcommittee on rights returned its report to the larger committee—see Adams's recollection in Butterfield, et al., Diary and Autobiography, 3:310, which agrees with Ward's diary entry of Sept. 14, in Smith, Letters of Delegates, 1:72. The committee passed on the subcommittee report on rights to the full Congress on Sept. 22 and the subcommittee report on grievances two days later (see Ford, Journals, 1:42). Perhaps the two reports were only finally combined into one sometime between Oct. 14 and 26. In any event, as Hutson observed, the final declaration was shaped by many voices, the result of subcommittee, committee, and committee of the whole discussions.
of declaration. John Adams recorded the basic positions as they were stated, beginning with Richard Henry Lee of Virginia. According to Lee those rights "were built on a fourfold foundation; on nature, on the British constitution, on charters, and on immemorial usage." John Jay of New York believed it "necessary to recur to the law of nature, and the British constitution, to ascertain our rights," with the stipulation that the "constitution of Great Britain will not apply to some of the charter rights." By contrast John Rutledge of South Carolina thought their claims "well founded on the British constitution, and not on the law of nature." New Yorker James Duane concurred that they ought to state their case "without recurring to the law of nature" but added that a reference to colonial charters as "compacts between the Crown and the people" should be included, along with references to the British constitution. "I have looked for our rights in the law of nature, but could not find them [there]" contended Joseph Galloway. He found them instead "in the constitution of the English government."18

Resuming this discussion the next day the committee decided, as Samuel Ward of Rhode Island recorded in his diary, "to found our Rights upon the Laws of Nature, the Principles of the English Constitution, & Charters & Compacts."19 Duane and Galloway lost; those wanting natural law built into the foundation of American rights won. Galloway feared that such an allusion would tear the empire loose from any effective constitutional anchor and set the colonies adrift toward independence. Duane feared the same outcome if Americans claimed the full rights of Englishmen. They objected on both philosophical and practical grounds; their opponents, they believed, were wrong in their understanding of imperial relations and wrong in how they wanted to state their case.

Patrick Henry's passionate proclamation on September 6 to the full Congress that the colonists had been thrown back into a "State of Nature" because "Government is at an End" had no doubt heightened Galloway's sensitivities even before the committee on rights was named. Henry had made his reputation through oratorical excess, and delegates who heard his


19 Ward diary, Sept. 9, 1774, in Smith, Letters of Delegates, 1:59. Also see James Duane's "Propositions" to the committee in ibid., 1:38–44.
“I am not a Virginian, but an American”\textsuperscript{20} knew hyperbole when they heard it. Still, for someone like Galloway a grave danger lurked behind the high-flown rhetoric. Retrospectively he would characterize Henry’s actions as typically duplicitous of radicals seeking independence while they feigned loyalty to the empire.

Even so, Galloway’s own views could hardly be considered orthodox by the standards prevailing at Westminster. Galloway rejected the idea that Parliament could rightfully exercise any authority over the colonies, at least as imperial relations then stood. “I never could find the Rights of Americans, in the Distinction between Taxation and Legislation, nor in the Distinction between Laws for Revenue and for the Regulation of Trade,”\textsuperscript{21} he explained in the committee meeting of September 8. He thus distanced himself from the type of arguments made by Daniel Dulany in response to the Stamp Act and by John Dickinson in the wake of the Townshend duties, arguments no doubt appealing to some of the men assembled with him in Carpenters’ Hall.\textsuperscript{22} Still, his questioning of Parliament could have confused matters. Did or did this not put him in line with views just expounded in Thomas Jefferson’s (anonymous) \textit{Summary View}, a pamphlet prepared for the Virginia delegates whose views Galloway dismissed as too radical?\textsuperscript{23} The differences would only become obvious in subsequent debates.

And the potential problems did not end there. Galloway had quite possibly flinched when Roger Sherman of Connecticut described the original settlers as reverting to a state of nature, only rejoining the empire through a voluntary compact with the crown. But Galloway, his refusal to accept the natural rights argument notwithstanding, would have been hard pressed to find many at Westminster who thought his view any more acceptable than that of Sherman. Although Pittites and Rockinghamites had been sympathetic to some American claims over the previous decade, they

\textsuperscript{20} Adams diary, Sept. 6, 1774, in Butterfield, et al., \textit{Diary and Autobiography}, 2:126, 124, 125. Also see James Duane’s notes in Smith, \textit{Letters of Delegates}, 1:30.

\textsuperscript{21} Adams diary, Sept. 8, 1774, in Butterfield, et al., \textit{Diary and Autobiography}, 2:129.

\textsuperscript{22} [Daniel Dulany], \textit{Considerations on the Propriety of imposing Taxes in the British Colonies, For the Purpose of raising a Revenue, by Act of Parliament}, (2nd ed., Annapolis, 1765); [John Dickinson], \textit{Letters from a Farmer in Pennsylvania, to the Inhabitants of the British Colonies} (Philadelphia, 1768).

\textsuperscript{23} [Thomas Jefferson], \textit{A Summary View of the Rights of British America} (Williamsburg, [1774]).
considered Parliament the supreme legislature for the entire empire, the American colonies included. Interestingly enough Galloway—who referred to Lord North and his supporters as "our Enemies"—confessed that his views too could "tend to an Independency of the Colonies."²⁴

At bottom the dispute dividing committee members on September 8 and 9 was the question of how to clarify what had to that point been rather murky, and in so doing form one opinion from the many. Decades after the fact John Adams would reflect that the problem was primarily one of choice, of deciding "Whether We should recur to the Law of Nature, as well as to the British Constitution and our American Charters and Grants."²⁵ In other words they had to determine how best to make their case—what to state and what to leave unsaid, what to express precisely and what to keep ambiguous. Somehow they had to combine heartfelt conviction with hardheaded practicality, remaining true to their beliefs without making reconciliation impossible. This was a daunting task for men who by and large were meeting together for the first time, who presumed to speak for all of the colonists, and whose beliefs about the empire were themselves changing. Moreover, choosing what to say would affect what they believed, as the articulation of what had previously been vague was now brought into sharper relief. "Mr. Galloway and Mr. Duane were for excluding the Law of Nature," remembered Adams. "I was very strenuous for retaining and inserting it, as a Resource to which We might be driven by Parliament much sooner than We were aware."²⁶ For both Adams and Galloway what they said and how they said it were equally important. Their task was to shape a coherent statement from what had turned out to be a confusing blend of assumptions. For Adams to be circumspect was not to be insincere; for Galloway that circumspection was proof that "radicals" like Adams had disingenuously hidden their real desire for independence.

Although the question of natural rights had been raised at the Stamp Act


²⁶ Ibid. As Joseph Tiedemann noted in his study of New York City politics, to act "expeditiously" was not the same as behaving disingenuously and opportunism could be mixed with sincere ideological attachment. See his *Reluctant Revolutionaries*, 266 and passim.
Congress nine years earlier, it had not proved to be the stumbling block that it would become in Philadelphia. The declaration of rights approved by the delegates in New York City, along with the memorials to the crown and both houses of Parliament, had said nothing about the state of nature. The delegates to the Stamp Act Congress had decided to base their rights on the English Constitution. Laying claim to rights as "Natural Born Subjects" of the crown was not the same as claiming rights inherent in nature. Nor was pointing out a "fondness for the Old Customs & Usages" the same as insisting on charter rights as fundamental, equal to those granted by a mythical constitution. They had practiced the politics of avoidance even as they attempted to define and defend their position. Hence they had acknowledged "a due Subordination" to Parliament without explaining what that might be. At the very least it did not include the right to tax. Parliament, they contended, did not, could not, represent them; only their own legislatures had the authority to tax them directly. Because the politics of avoidance could be pursued on both sides of the Atlantic—witness Parliament's dismissal of the Stamp Act Congress with an evasive huff and the careful wording of the Declaratory Act—basic differences had been papered over for the moment.

Edmund Morgan pointed to these tendencies over a generation ago; John Phillip Reid has done so more recently. What should be added is that the

27 The Stamp Act Congress's declaration and the messages to the crown and both houses of Parliament are reprinted in C.A. Weslager, The Stamp Act Congress (Newark, Del., 1976), 200–14, with the due subordination clause appearing in the declaration (p. 201) and the messages to Lords (p. 207) and Commons (p. 210), the natural born subjects passage in the declaration (p. 201), and old customs and usages in the missive to Commons (p. 213). Eliphalet Dyer, Caesar Rodney, Thomas McKean, Thomas Lynch, and John Rutledge, all of whom sat on the rights committee, formed on Sept. 7, were veterans of the Stamp Act Congress. Although John Dickinson, who also attended the Stamp Act Congress, was never a member of the committee he participated in informal discussions with committee members and may have helped to shape the final declaration.

28 See Reid's Constitutional History of the American Revolution, (4 vols., Madison, 1986–93), which Reid condensed in an abridged edition of the same title (Madison, 1995). Reid's case for colonial consistency is more complex as well as more detailed than Morgan's, and Reid's discussion of "forensic evidence" is most helpful in understanding how the patriots shaped their arguments—see too his In a Rebellious Spirit (University Park, Pa., 1979). I agree with much of what Reid has written. He presses too hard, however, in drawing distinctions between natural and constitutional law, separating what the patriots blended. As he admitted in "The Irrelevance of the Declaration" in Hendrik Hartog, ed., Law in the American American, and the Revolution in the Law (New York, 1981), 67, "the word constitution" was less precisely defined then than now; indeed, as he cautioned in The Concept of Representation in the Age
A paradoxical combination of confrontation and avoidance was in part the result of men not yet sure of what constituted fundamental law. What, they were increasingly pressured to explain, was the foundation of rights and in what structural order? James Otis's influential pamphlet on rights in the empire, published a year before the Stamp Act Congress convened, suggested a hierarchy that started with God, passed from Him to nature, and from there into the English Constitution and ultimately to colonial charters.29 Stephen Hopkins, a future delegate to the First Continental Congress, was not quite as explicit in his Rights of the Colonies Examined, which was published in the months following Otis's tract. Hopkins talked primarily about constitutional and charter rights. He did so, not because he rejected the idea of divine ordination or natural rights, but because he opted to leave a discussion of those sources of fundamental law to others. He did not think it necessary to give equal space to all sources or to fully articulate his views—which in fact may not have been fully formed anyway. When he wrote that the colonists "were free-born subjects, justly and naturally intituled to all the rights and advantages of the British constitution,"30 it might appear that his argument was essentially constitutional, with "naturally intituled to" being contained within that tradition. But he did not preclude even if he did not discuss rights beyond that framework.

Others were more explicitly inclusive. For instance, John Dickinson drafted resolutions passed by the Pennsylvania assembly before Hopkins's pamphlet and the Stamp Act Congress which opened with the assertion that "the Constitution of Government in this Province, is founded on the natural Rights of Mankind and the noble Principles of English Liberty, and is therefore perfectly free."31 Here were charter rights derived from both natural and constitutional rights. Dickinson's position would not change much over the next decade, as his 1774 Essay on parliamentary authority and

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29 James Otis, The Rights of the British Colonies Asserted and Proved (Boston, 1764).

30 [Stephen Hopkins], The Rights of the Colonies Examined (Providence, 1765), quotation from p. 9.

31 As taken from Paul Leicester Ford, ed., The Writings of John Dickinson (Philadelphia, 1893), 173.
constitutional rights in the colonies shows. Between the Stamp Act Congress and the First Continental Congress, the Massachusetts House repeatedly made similar pronouncements; so did the Boston town meeting. Divine ordination was often worked in as well, as a direct reference to God or, more indirectly, in allusions to the rights of “Christian” subjects. Thus the 1768 circular letter from the Speaker of the Massachusetts House to his counterparts in the other colonies referred to provincial instead of parliamentary taxation as “an essential unalterable Right in nature ingrafted into the British Constitution, as a fundamental Law &c ever held sacred & irrevocable.” There could be no taxation without representation, the colonists were not and could not be represented at Westminster, so only their own legislatures could tax them. Some months later the Boston town meeting employed similar language in a circular letter of its own to towns throughout the province.

Samuel Adams was in the thick of all this rights writing. He also served on the committee that sent instructions to Dennys De Berdt, a London merchant who acted as lobbyist for the Massachusetts House. Adams and the other committee members passed along the same message to him. “It is the glory of the British constitution,” they wrote, with “its foundation in the law of God and nature” that men should have their property rights protected. Adams’s public pronouncements complemented his personal

32 John Dickinson, An Essay on the Constitutional Power of Great-Britain over the Colonies in America (Philadelphia, 1774). Dickinson’s ideas made no sense to Galloway; thus his plan of union, which went beyond Dickinson in proposing changes to the imperial structure—and thus the danger of using oversimplified categories of conservative, moderate, or radical to characterize the differences of the men who gathered in Philadelphia.

33 See The Votes and Proceedings of the Freeholders and other Inhabitants of the Town of Boston, In Town Meeting assembled, According to Law (Boston, [1772]), which John Phillip Reid, ed., The Briefs of the American Revolution (New York, 1981), 2, called “one of the very few statements of rights issued by American whigs during the prerevolutionary era that relied on the authority of natural law.” Actually Samuel Adams, who drafted many of the resolutions that came out of the town meeting and the Massachusetts House, often conflated natural law, constitutional law, charter rights, and divine precept. See, notably, the resolutions he wrote for the Massachusetts House in Oct. 1765, printed in Cushing, Writings of Samuel Adams, 1:23–26.

34 As taken from Cushing, Writings of Samuel Adams, 1:185. Also see the House resolution of Jan. 30, 1768, in A Journal of the House of Representatives (Boston, 1768), app. 1–2.

sentiments. "The Rights of Nature are happily interwoven in the British Constitution" he wrote to a friend in 1765. Nine years later he professed disbelief that Whitehall and Westminster could be contemplating the Coercive Acts "merely because" the people of Massachusetts "held up principles founded in nature, and confirmed to British Subjects by the British Constitution, and to the subjects in this Province by a sacred charter." When Adams arrived in Philadelphia he would be joining others, such as Richard Henry Lee, whose sentiments had followed the same course. John Sullivan of New Hampshire, who served with Lee and Adams on the committee organized to draft the Declaration of Rights, had already decided that Massachusetts's situation was the same as that of his own province. "I know it may be said that they are a Charter, & We a King's Government," he conceded in the spring of 1774, "but I confess I know but little difference between them and us." Massachusetts, he pointed out, had a written charter "which could be only a confirmation of those Liberties which the God of nature had given them before, And we were equally intitled to them" even if they had not been "reduced to Writing."

Given the tendency that existed long before Congress convened for colonial protesters to meld the divine with the natural and to try to join natural, constitutional, and charter rights into a seamless whole, the committee's decision on September 9 as Ward recorded it (i.e., "to found our rights upon the laws of Nature, the principles of the English Constitution, and charters and compacts") is not all that surprising. Nonetheless some committee members had to change their thinking in order to accept this view. Though Galloway thought the committee thereby claimed too much, most of his colleagues did not. On the contrary, endorsement of the Suffolk Resolves a week later by the full Congress proves that the committee had not

36 Adams to John Smith, Dec. 19, 1765, ibid., 1:147.

37 Adams to Benjamin Franklin, May 31, 1774, writing for the committee of correspondence, ibid., 3:86.


pushed as far as some delegates were willing to go. In condemning British policy the resolves adverted to “the unalienable and inestimable inheritance” which the residents of Suffolk County, Massachusetts, had “derived from nature, the constitution of Britain, and the privileges warranted to us in the charter of the province.” What once might have been considered philosophical abstractions or rhetorical embellishments or, only slightly more tangible, arcane points in constitutional law, were here being tied to hated policies and protest resolutions that made the abstract decidedly more real. The authors of the Suffolk Resolves had put their notion of colonial rights into a potentially controversial historical context. They treated the imperial tie as voluntary, based on a compact that the first generation had entered into of their own accord after reentering the state of nature by their move to America. George III was their king, not by birth but because they chose to accept him.

That whereas his majesty, George the Third, is the rightful successor to the throne of Great Britain, and justly entitled to the allegiance of the British realm, and agreeable to compact, of the English colonies of America—therefore, we, the heirs and successors of the first planters of the colony, do cheerfully acknowledge the said George the Third to be our rightful sovereign, and that said covenant is the tenure and claim on which are founded our allegiance and submission.

Had Joseph Warren and the other patriots of Suffolk County declared themselves kingmakers, now with the blessing of Congress? So the resolves seem to say, though it is unclear how many understood that at the moment, including those in Congress on the committee of rights and the subcommittee assigned to draft a formal declaration. The subcommittee had completed its work just a few days before Congress sanctioned the Suffolk Resolves. The exact membership of this subcommittee—how many served on it and who most of them were—has been lost in the historical fog. Samuel Ward of Rhode Island was a member; so too were John Adams and probably John Rutledge. Adams recalled many years later that they went “over the ground again” on American rights, after which “a Sett of Articles

40 Ford, Journals, 1:33.

41 Ibid.
were drawn and debated one by one.” They could agree upon all “excepting one, and that was the Authority of Parliament, which was indeed the Essence of the whole Controversy.” According to Adams the final wording of this part of the declaration as Congress adopted it sometime between October 14 and 26 did not differ significantly from the subcommittee’s original version.

The resolution to which Adams referred became the fourth of ten enumerated in the Declaration of Rights. It and only one other failed to pass Congress *nemine contradicente*—that is, without opposition. The other resolution—the sixth—stipulated that the provinces were “entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.” This assertion offended those delegates who feared that it put colonists in the position of reviewing parliamentary legislation, choosing which laws were acceptable and which were not. But it was the fourth resolution, the longest of the ten, that stood out as most dangerous to those who did not want to figuratively hurl a gauntlet at Parliament’s feet. It declared:

That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxes and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed. But, from the necessity of the case, and a regard to the mutual interests of both countries, we cheerfully consent to the operation of such acts of the British parliament, as are bona fide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation

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internal or external, for raising a revenue on the subjects in America without their consent.44

Talk of natural rights had been troubling enough to some committee members; this resolution proved even more disquieting. The subcommittee had been formed in part because the larger group found the question of parliamentary authority so difficult to answer. Some committee members wanted to deny Parliament's authority to tax them while others wanted to deny that Parliament had any legislative authority over them whatsoever. Still others sought a distinction between internal and external taxes. Those wanting to insist on the empire as compact were countered by those fearing that such a claim would hopelessly confuse the issue of ultimate sovereignty and make reconciliation impossible. With some reluctance the committee accepted the statement, possibly drafted by John Adams, that became the fourth resolution eventually approved by Congress. The committeemen had put aside the internal-external distinction quickly enough "but they all soon acknowledged that there was no hope of hitting on any thing, in which We could all agree with more Satisfaction," Adams reminisced. The subcommittee reported to the full committee and there the entire report stalled. "Another long debate ensued especially on this Article," Adams continued, "and various changes and modifications of it were Attempted, but none adopted."45

Joseph Galloway and those siding with him not only fought against the

44 Ibid., 1:68–69; the punctuation and capitalization in the version given in Extracts From the Votes and Proceedings, 4–5, differ slightly from this. Josiah Tucker, Tract V. The Respective Pleas and Arguments of the Mother Country, and of the Colonies, Distinctly Set Forth (Gloucester, Mass., 1775), included the Declaration of Rights (pp. 33–37) as proof that no compromise was possible—that the Americans, with their Lockean attachment to "immutable Truths" (p. 39), would never be happy with anything short of independence. But that was the very logic patriots in Philadelphia and their friends at Westminster were trying to avoid confronting.

45 Adams autobiography in Butterfield, et al., Diary and Autobiography, 3:310. A comparison of the so-called "Sullivan draft" with the final text approved by Congress—see Ford, Journals, 1:63–73—shows that the changes that were made at some point were hardly cosmetic. Language and tone are toughened (such as in the references to "cruel" acts of Parliament "destructive of American rights" on p. 66) and elsewhere softened (such as dropping "illegal and void" in resolutions 2, 3, and 9, and the deletion in Resolution 8 of "most pernicious tendency").
fourth resolution, they protested the entire report and endeavored to undermine the foundation of rights agreed to on September 9.\textsuperscript{46} They tried throughout to obstruct the subcommittee’s work as well as that of the larger committee, doing their best—and in some sense successfully—to prevent the committee from presenting a concise statement to the full Congress. Delegates not even on the committee became involved in after-hours discussions. At one gathering Christopher Gadsden was “violent against” allowing Parliament any power over the colonies, as John Adams recorded the South Carolinian’s outburst. “A Right of regulating Trade is a Right of Legislation, and a Right of Legislation in one Case, is a Right in all,” Gadsden exclaimed. Adams jotted tersely in his diary, “This I deny.”\textsuperscript{47} John Dickinson, who would not take his seat as a Pennsylvania delegate until the middle of October, was also caught up in these impromptu gatherings, as the debates in Carpenters’ Hall spilled into public lodgings and private homes.

Congress bogged down with the committee’s report as soon as it was presented on September 22. The subsequent decision to address only those grievances dating from 1763 reflected a desire to sidestep basic issues for the moment, perhaps with the hope that consensus on the particulars would make consensus on general issues easier to obtain—a reversal of the approach taken by the committee on rights when it began its deliberations earlier in the month. Joseph Galloway seized the opportunity opened by this impasse to introduce his plan for a new imperial union. Galloway hoped that his proposal would vault Congress over what otherwise loomed as an insurmountable obstacle. On the one hand he was convinced, as he had already stated in the full Congress, that the colonists should not be taxed by Westminster; on the other he believed in the ultimate supremacy of the British Parliament.

Ten years earlier James Otis had urged that Americans be given seats as MPs in Commons, thus solving the problem of subordination to Westminster with direct representation there. Galloway once felt the same. Times had changed; so had he. He no longer thought representation at Westminster feasible nor did any of his congressional colleagues. In order to make parliamentary authority more “equitable” and more “constitutional”—note the

\textsuperscript{46} Or so claimed Joseph Galloway in his testimony to the House of Commons in June 1779, printed as The Examination of Joseph Galloway, Esq. (London, 1779), 61.

\textsuperscript{47} Adams diary, Sept. 14, 1774, in Butterfield, et al., Diary and Autobiography, 2:133–34.
emphasis on both criteria—he laid out an arrangement not unlike that presented by Franklin at Albany in 1754. Colonial assemblies would send delegates to an annual “Grand Council” administered by a “President General” appointed by the Crown. Together they would act as a legislative body charged with “regulating and administering all the general police and affairs of the colonies, in which Great-Britain and the colonies, or any of them, the colonies in general, or more than one colony, are in any manner concerned, as well civil and criminal as commercial.” The president general would have veto power over the Grand Council. The key to the arrangement was essentially a federative legislative division of power. Matters purely of concern to individual colonies would be handled internally, as those colonies saw fit. The Grand Council would be treated as “an inferior and distinct branch of the British legislature, united and incorporated with it.” How? “Any of the said general regulations may originate and be formed and digested, either in the Parliament of Great Britain, or in the said Grand Council, and being prepared, transmitted to the other for their approbation or dissent,” and “the assent of both shall be requisite to the validity of all such general acts or statutes.” Emphasizing that any idea of independence was abhorrent and that the colonists “most ardently desire the Establishment of a Political Union” with the “Mother State,” Galloway promoted his plan as the best way to restore “permanent Union & Harmony.”

By Galloway’s own admission this was a desperate measure. Denying Parliament’s “supreme authority” over the colonists, Galloway believed, was impossible to reconcile with their position as “subjects of the British Government.” Therefore “let us ask for a participation in the freedom and power of the English constitution in some other mode of incorporation.” No “other expedients,” he pled, would work as well if at all. In other words,

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48 Ford, Journals, 1:43–51, reprints the plan and what Galloway claimed in his 1780 Historical and Political Reflections (see note 1 supra) was the speech he made in its defense; quotations from pp. 45, 50, and 48. Also see Smith, Letters of Delegates, 1:112–13, 116–17, on the “conflicting evidence” as to whether a formal vote on Galloway’s plan ever took place and was afterward expunged from the record.

49 Ibid., 1:47. Galloway had sensed from the beginning that he would lose the debate and that he would have to take his views—and his plan—directly to the public; see William Franklin to the earl of Dartmouth, Sept. 6, 1774, in Davies, Documents, 8:192, 185–86. Also see the discussions in Julian Boyd, Anglo-American Union: Joseph Galloway’s Plans to Preserve the British Empire, 1774–1788 (Philadelphia, 1941); William H. Nelson, The American Tory (Oxford, 1961); Robert M. Calhoon, “I Have Deduced Your Rights: Joseph Galloway’s Concept of His Role, 1774–1775,” Pennsylvania History 35 (1968),
constitutional relations had to be adjusted to social need. James Duane seconded Galloway's proposal. Fellow New Yorker John Jay who, unlike Duane and Galloway, had thought it necessary to "recour to the law of nature," also lent his support. John Rutledge's younger brother Edward joined them. "I came with the Idea of getting a Bill of Rights, and a Plan of permanent Relief," stated the South Carolinian, and "I think the Plan may be freed from almost every objection." The Rhode Islanders split: Samuel Ward was opposed while Stephen Hopkins, yet another delegate who accepted the idea of natural rights, was in favor. That Hopkins and Jay could back Galloway, that Ward and Hopkins could split, and that Adams and Gadsden—supposedly allies—disagreed over the question of limiting parliamentary authority shows the danger of looking for neat categories—conservatives, moderates, and radicals—in Congress. Moreover Duane, who is often cast alongside Galloway as a "conservative," supported Galloway's proposal as preferable to the alternative, not as some magical cure. He would have been content to recognize Parliament's right to regulate commerce and was pushed by circumstance to a position Whitehall and Westminster would have viewed as even more radical.

Alas for Galloway, more delegates were against him than with him. "We shall liberate our Constituents from a corrupt House of Commons," lashed out Patrick Henry, only to throw "them into the Arms of an American


50 Adams diary, Sept. 28, 1774, in Butterfield, et al., Diary and Autobiography, 2:141–44; Rutledge on p. 143.

51 Though I find much that I like in the partisanship emphasis of Henderson and even Becker as well as the greater emphasis on consensus in Ammerman, Rakove, and Marston (see n. 12 supra), I am reluctant to apply their categories to delegates on the matter of fundamental law and basic rights. Not only were opinions more fluid than is often appreciated, but it could be argued that all of the men in Congress were part of a political culture that stressed reason and moderation, which in turn set the tone of their discussions. Their language was therefore guarded by inclination as well as necessity. To get some idea of the expectations of political leaders in what might be considered a more genteel age see, variously, Stow Persons, The Decline of American Gentility (New York, 1973); Henry F. May, The Enlightenment in America (New York, 1976); Daniel Walker Howe, The Political Culture of the American Whigs (Chicago, 1979); Gordon S. Wood, The Radicalism of the American Revolution (New York, 1992); and Richard L. Bushman, The Refinement of America (New York, 1992).
Legislature that may be bribed by that Nation which avows in the Face of the World, that Bribery is a Part of her System of Government." Henry warned that Galloway's plan, if adopted, would "lead to War" rather than peace and harmony. Whether or not most delegates shared Henry's view of Parliament they agreed that the Pennsylvanian's solution was no solution at all. Galloway's plan, introduced on September 28, was set aside and taken up one last time on October 22, only to be passed over. Perhaps final acceptance of the Declaration of Rights helped make Galloway's plan moot.

Delegates discussed the proposed declaration with no small amount of trepidation. "My Fears were up when We went into the Consideration of a Bill of Rights," confessed Samuel Chase. "I was afraid," the Marylander added, "we should say too little or too much." He thought no good could come from any attempt to push Parliament out of the imperial picture and favored recognizing Parliament's right to regulate trade. So did James Duane. Not so John Adams who stipulated that Parliament's "right" was based on colonial consent, not inherent authority. Ward and Hopkins split yet again. Though Hopkins could accept Parliament's involvement with colonial commerce, Ward could not. In arguing against it Ward started out with the idea of a social compact which he extended to an idealized Saxon England in his plea for representative government by consent. Reversing the language as well as the theory behind the Declaratory Act he contended that Parliament had no right "to make Laws for Us in any Case whatsoever." That Parliament had legislated for the colonies over the years he dismissed as irrelevant: precedent did not establish right. That there should be a "supreme Legislature in every Community" he did not question; that the mother country and colonies actually formed a single community, he did. "I have the highest Idea of parental & filial Connection" but, he stressed, "the Duties are reciprocal." Venting his frustration, he decried Parliament. Even if it had the right to legislate for the colonies—which he had already denied—it was not worthy to exercise it. He did not stop there. "The People of England[,] formerly a sober[,] frugal[,] industrious & brave People are

52 Adams diary, Sept. 28, 1774, in Butterfield, et al., Diary and Autobiography, 2:143.

53 Adams diary, Oct. 6 (?), 1774, ibid., 1:148.
now immersed in Luxury[,] Riot & Dissipation," he lamented.54

How many delegates, if any, joined Ward in his denunciations we do not
know. The record is silent on this matter as it is on so many others. Quite
possibly there were those who felt similarly and yet said nothing. Still others
may have found themselves drifting inexorably toward that same shore. If so
they had probably not anticipated that this would happen as a result of going
to Philadelphia. They were, after all, seeking reconciliation, not
confrontation. Dealing with Galloway’s plan and hammering out the
resolutions and grievances contained in the Declaration of Rights forced
them to confront troubling differences. Outbursts like Ward’s must have
caued much discomfort. “We have proceeded with the Utmost Caution[,] knowing how critical and important an undertaking it was, & how fatal a
misstep must be,”55 Silas Deane of Connecticut confided to a friend. Afterward he put the best face he could on what he and his colleagues had
accomplished, emphasizing that they had truly achieved unanimity. The
South Carolina delegates, by contrast, were more candid in their report
home. They admitted that they came away with less than what they really
wanted for the sake of at least looking united.56 No doubt they had the
Continental Association more in mind than the Declaration of Rights,
though the underlying problem was the same: compromise born of
expedience that the delegates worried might undercut principle and the
interests of their home colony. John Adams too went home with less than
what he wanted, which helps to explain his complaint about “nibbling and
quibbling.” Astute enough to know that personal preference and public
stance might not always be one and the same, he was frustrated
nonetheless.57

54 Samuel Ward, notes for a speech, Oct. 12 (?), 1774, in Smith, Letters of Delegates, 1:184–89; quotations, 188.

55 Deane to Thomas Mumford, Oct. 16, 1774, ibid., 1:202.

56 Deane to Jonathan Trumbull, Oct. 22, 1774, ibid., 1:227; South Carolina delegates in their report
to the provincial convention of Jan. 11, 1775, ibid., 1:292–94.

57 See Adams’s stance as “Novanglus,” beginning with the first installment of Jan. 23, 1775 (see n. 81 below). Arguments that the empire was based on compact, with the colonists returning to a state of
nature and only reentering the empire voluntarily through their charters, had become common in the
Boston press some years before. See Neil L. York, “Tag-Team Polemics: The ‘Centinel’ and His Allies
Fear of a “misstep”—of precipitating a war—probably did as much to determine the declaration's final form as the desire to articulate American rights. Rights in nature were kept along with those derived from the English Constitution and colonial charters, but an allusion to the empire's dependence on compact theory was vague and made in passing—a concession to those disturbed by any hint that they were claiming the colonies had ever returned to a state of nature. The declaration alluded to what patriots had lumped together as the Coercive Acts, condemning them as “impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights.” But its authors also pointed out that they left the list of grievances incomplete because of their “ardent desire that harmony and mutual intercourse of affection and interest may be restored.”

The declaration stopped well short of Thomas Jefferson's *Summary View* and did not even venture as far as James Wilson's *Considerations*, settling on a position much closer to John Dickinson's *Essay*. Dickinson wrote his piece as a guide for Pennsylvania's delegates to Congress. He characterized the empire as being formed by compact and contended that colonial legislatures were “founded on the immutable and unalienable rights of human nature, the principles of the constitution, and charters.” He accepted Parliament's authority to regulate colonial commerce; he also stipulated that the colonists could decide for themselves when parliamentary legislation crossed the line from regulation to revenue-raising. They could, in effect, determine intent. Dickinson's argument may have been somewhat “muddled,” as Jack Rakove put it, but that is not really the point. Dickinson

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considered himself a loyal subject of the crown and a citizen of the empire. Trying desperately to combine empire and liberty he was precise where possible and obscure where necessary. It was an approach that many patriots took. Thus that peculiar combination of assertiveness and deference giving the Declaration of Rights more in common with the document that came out of the Stamp Act Congress in 1765 than with the Declaration of Independence that the Continental Congress would pronounce in July 1776.62

And yet looking back from his vantage point many years later John Adams emphasized the continuities between the Declaration of Rights and the Declaration of Independence. In his autobiography he wrote that the latter document essentially "recapitulated" the ideas of the former63—even though the Declaration of Independence rejected George III as a legitimate father while the Declaration of Rights reaffirmed the filial tie, and even though the Declaration of Independence took the colonies out of the empire while the Declaration of Rights tried desperately to keep them in it.

When Adams linked the two declarations he projected back into 1774 attitudes that would actually be defined later.64 In 1804, when he recounted these events in his autobiography, hindsight warped the record. The future was now the past; Joseph Galloway, disgraced as a Loyalist, was as dead as his plan; independence appeared a more noble cause than the defense of rights within the empire. Adams forgot how uncertain he had been in those days, as indeed most future revolutionaries had been. "Men were always only

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White Plains, N.Y., 1982--), 5:241, 5:314. Dickinson's pamphlet was the only one in those Commons debates cited as representative of the patriot position. But then that was part of the problem: there really was no single patriot position to cite.

62 In some sense the members of this first Congress were like those who drafted the Constitution eleven years later. They created a "patch-work," to borrow a word and a notion from John P. Roche, "The Founding Fathers: A Reform Caucus in Action," The American Political Science Review 55 (1961), 799–816; quotation, 815.


64 However, before passing judgment on Adams it should be noted that historians disagree over whether change or continuity should be emphasized as the patriots moved in their discussion of rights from the 1774 declaration to that of 1776. Compare John Phillip Reid's "The Irrelevance of the Declaration" with Michael P. Zuckert's The Natural Rights Republic (Notre Dame, Ind., 1996), 97–117.
half sure of where their thought was going,” Gordon Wood has noted. But there was more than uncertainty involved here, more than an unclear sense of direction. The patriots were trapped by their own contradictory desires, caught as they sought—futilely—to reconcile conflicting aspirations.

John Adams’s memory could be faulty and the past became hazy to him, despite his having helped draft both the Declaration of Rights and the Declaration of Independence. Ironically Adams’s reconstructed past seemingly gives credence to Joseph Galloway’s accusation that Adams and the men of his ilk had wanted independence all along, while only the Pennsylvanian and his supporters wanted reconciliation. Calling himself “a friend to true liberty” Galloway presented his failed plan to the public in a pamphlet early in 1775. “Such is the Folly, may I not say the Frenzy of America,” he complained to a friend as he awaited the pamphlet’s publication, “that she seems determined to set up for Herself, plunge into Rebellion and subject her People to all the horrors of a civil War.” Whether the “Fickleness” of his opponents in Philadelphia could be attributed to “ignorance” or “design” mattered little. The outcome was the same: a rising “Spirit of American Independency.”

Both Adamses had sensed soon after they arrived in Philadelphia that some delegates wondered about their intentions. Those sympathetic to Massachusetts’s plight under the Coercive Acts urged them to be patient and avoid stridency. Most of them dreaded the thought of rebellion, and Galloway was not alone in suspecting, as Samuel Adams perceived, that the men of Massachusetts sought “total Independency not only of the Mother Country but of the Colonies too.” Neither Adams, it appears, had actually


67 [Galloway], Candid Examination, 48.


crossed that psychological Rubicon yet; they were not clearly in favor of independence. They doubted that reconciliation was possible, but their doubts were not strong enough—nor their belief in the pairing of empire and liberty weak enough—that they were ready to insist on severing all ties. Still, both understood that their colleagues had to be assuaged, regardless of how "groundless" those fears might be. The Adamses had to hope that most delegates could be brought around to their way of thinking through the art of debate and moral suasion and the use of language at once insistent and conciliatory, clear and yet vague.

Galloway stayed to the end, unpersuaded by his opponents and aggrieved at their tactics. He afterward accused John Adams of inconsistency and Adams retaliated in kind. For both men inconsistency became proof of insincerity, despite the fact that they had each modified their positions over the years. When pressed in his 1779 examination in the House of Commons to explain why, if what Adams and his allies in Congress did was so hateful, he had not left, Galloway responded that he could not know what they would do before they did it. With their "perpetually changing their ground, taking up principles one day, and shifting them the next," he thought it best to remain and do what he could to block them from reaching their true though hidden goal: independence. Adams felt equally victimized. "I find that there is a Tribe of People here, exactly like the Tribe" backing Governor Thomas Hutchinson in Massachusetts, he complained within a few days of reaching Philadelphia. "Their Opinions have undergone as many Changes as the Moon," he wrote derisively, and men like Joseph Galloway were at the position that Hutchinson and his cronies had been during the Stamp Act crisis. In the years following, Adams continued with grim satisfaction, Hutchinson's true character had been exposed. Hutchinson, that pretended "Friend of Liberty," had shown he was a tyrant who hid behind "machiavellian Dissimulation." Presumably Galloway and his "tribe" would suffer the same fate.

Adams recognized that Hutchinson had become his own worst enemy, the proverbial bull in a china shop. Wanting to prove that his view of the empire was right and that of his opponents wrong, Hutchinson had initiated

70 Examination of Joseph Galloway, 54n.

a debate with the Massachusetts House and Council in January 1773. He presented his case for the indivisibility of sovereignty and the supremacy of Parliament in the empire; they offered a rebuttal. Nothing was resolved, much to Adams's glee. "He will not be thanked for this," Adams predicted. Instead, "his Ruin and Destruction must spring out of it, either from the Ministry and Parliament on one Hand, or from his Countrymen, on the other." 72

After learning of this episode the earl of Dartmouth, the secretary of state for American affairs, was not sure how to react. He knew that the actions of dissident elements in the province cried out for some sort of response "but," he wrote to Hutchinson, "how it was or was not expedient to enter so fully in your speech into an exposition of your own opinions in respect to the principles of the constitution of the colony I am not able to judge." 73 Corresponding some months later with House Speaker and future delegate to the First Continental Congress, Thomas Cushing, Dartmouth gently chided Cushing that the House was wrong. Cushing replied that Hutchinson had precipitated the confrontation; he and his colleagues would just as soon not debate such troubling issues. He did not, however, retreat from the House position. But then both men preferred to patch over their basic differences in conciliatory language. Dartmouth assured Cushing that he expressed himself "with the greatest Freedom" when in fact he was being guarded. Nor did he really possess "the utmost confidence" that their differences could be resolved, despite what he told Cushing. 74

In dealing with Cushing, Dartmouth anticipated advice offered by Edmund Burke in the British Commons when the legislation that would precipitate the First Continental Congress was being debated. Reviewing the Stamp Act, its repeal, and then passage of the Townshend duties, Burke warned that "you revived the scheme of taxation, and thereby filled the minds of the colonists with new jealousy and all sorts of apprehensions." In

72 Adams diary, Mar. 1, 1773, ibid., 2:77; also see Samuel Adams to Arthur Lee, Apr. 9 and May 6, 1773, in Cushing, Writings of Samuel Adams, 3:20, 38. For the debate itself go to Reid, Briefs of the American Revolution.

73 Dartmouth to Hutchinson, Mar. 3, 1773, as cited from Davies, Documents, 6:95.

effect it was best to let sleeping dogs lie; taxes woke them. "Then it was, and not till then, that they questioned all the parts of your legislative power, and by the battery of such questions have shaken the solid structure of this empire to its deepest foundation." Parliament should change its intended course, he advised. "But if, intemperately, unwisely, fatally, you sophisticate and poison the very source of government, by urging subtle deductions, and consequences odious to those you govern," he predicted, "from the unlimited and illimitable nature of supreme sovereignty, you will teach them by these means to call that sovereignty into question."

Burke thus repeated the warning Gage had passed along to Barrington in 1768, except in a different tone and for a different purpose. If constitutional issues had become confusing and blurred, admonished Burke, the leaders of Parliament had only themselves to blame. To try and impose their will—and their view—would destroy the empire. Ultimately it was more important that they be wise than that they be correct about a point in constitutional law. Since the colonists had lived for generations in virtual autonomy, a habit they now considered a right, it was too late to make the empire into something other than what they understood it to be.

Burke was eloquent but unpersuasive. The Coercive Acts became law and Congress convened. Lord North would have agreed with Burke that Parliament had to that point sent the colonists confusing signals. But where Burke urged avoidance North saw the need for confrontation. In retrospect it is now obvious that Parliament was moving away from a "constitution of custom" toward a "constitution of command," to borrow notions from John Phillip Reid. Nonetheless, questions about fundamental law and the divisibility of legislative sovereignty that perplexed American patriots were still being asked at Westminster, even during debates over the Coercive Acts. Blackstone had displaced Coke as the most revered, most frequently cited English jurist but the "ancient constitution" remained real to some parliamentarians and trying to follow Blackstone's reasoning on natural


76 For Reid's works, see n. 28 supra, most accessible in the Constitutional History of the American Revolution, abridged ed., 3–25.
rights could lead to befuddlement. The colonists got no clear picture by looking in that direction. Objectionable policies and conflicting constitutional traditions pushed them to develop their own understanding.

James Wilson's comments about how his own ideas took shape in the midst of all of this confusion can be applied to the emergence of the patriot view as a whole and to the larger process that led to the Declaration of Rights. Although the argument that Wilson presented in his Considerations on parliamentary authority occurred to him with the collapse of nonimportation at the end of 1770, he waited until the crisis brought on by the Coercive Acts to publish it. When he sat down to write the essay he had not intended to deny that Parliament had any legitimate authority over the colonies. That conclusion, he stressed, "was the result, and not the occasion" of his disquisition. He began with the expectation that he could find a solution to the imperial problem by showing how some legislative functions could be reserved to Parliament; he ended by deciding that the line he wanted to draw "does not exist; and that there can be no medium between acknowledging and denying that power in all cases." Wilson left the impression that he reached this conclusion reluctantly, even painfully, and there is no reason to think him disingenuous.

His experience was all too common. Attempts to define American rights shook rather than reinforced the imperial foundation, as delegates to the First Continental Congress learned firsthand. Perhaps this was the inevitable outcome of combining the politics of avoidance with pursuit of the unattainable. For years patriots had muted their protests when trying to present arguments at once palatable to Whitehall and Westminster and yet indicative of their real feelings. There would not be a clear, unambiguous patriot position to state until circumstances imposed one and in 1774 those circumstances had not yet been produced. Thus delegates came to Philadelphia in September and left in October still sorting through basic questions of fundamental law and imperial relations—as they had been doing.

77 The comments of Constantine Phipps in Commons on Apr. 29 and May 4, 1774, during debates over the bill that became the Administration of Justice Act in Simmons and Thomas, Proceedings and Debates, 4:324–25, 390–91, are instructive here.

78 [James Wilson], Considerations on the Nature and the Extent of the Legislative Authority of the British Parliament (Philadelphia, 1774), iii. Tucker, Respective Pleas, 47, cites this passage (misidentifying Wilson as Benjamin Franklin) as proof that no compromise was possible.
for the previous decade. Their charge, first and foremost, had been to seek a restoration of imperial "union & harmony" and only pursue their inquiries as far as reaching that goal required.

But their inquiries raised more questions than they answered and the Declaration of Rights stands as a reminder that, ideologically, they left unfinished business behind them in Philadelphia. Giving their "consent" to laws regulating trade within the empire was a thinly veiled challenge to parliamentary authority, a position between Gadsden and Duane, perhaps, but a position that settled nothing. Likewise was the resolution challenging Parliament's right to station troops in the colonies without first receiving the approval of local legislatures an oblique assault on parliamentary authority, as were other elements of the declaration as well as the association and the message to the king.79 Because all were written to give both sides wriggling room, they did not argue some points as vigorously as others. The so-called "radicals" could see themselves as conciliators, men who settled for less than they wanted. Even so what they wanted could be problematical, not simply because it was at odds with the predominant London view but because they were still not sure exactly what they wanted. Their dream of that ever-elusive middle ground where they could have both liberty and empire persisted. A logician would find it difficult to reconcile the threatening language of the Suffolk Resolves with the more moderate tone of the Declaration of Rights, but then the men in Congress who approved them were not concerned primarily with logical consistency.

James Wilson and other patriots, including those who gathered for the First Continental Congress, would eventually go through "a Strange

79 See the address to the people of Great Britain (Ford, Journals, 1:82–90), the address to George III (ibid., 1:115–122), and Edwin Wolf, "The Authorship of the 1774 Address to the King Restudied," W&MQ 22 (1965), 189–224. Wolf discusses the three drafts of the address to George III—the first by Patrick Henry, the second by Richard Henry Lee, and the third by John Dickinson, with the third and final draft being phrased in more conciliatory language than the first two. In order to be conciliatory, Dickinson understood that he also had to be somewhat vague. Bernhard Knollenberg, "John Dickinson vs. John Adams: 1774–1776," Proceedings of the American Philosophical Society 107 (1963), 138–44, suggests that Adams began to dislike Dickinson because the petition Dickinson drafted was so much weaker than Adams thought necessary. If so this stands as just one example of a delegate who knew what he did not want even if he could not yet be explicit or certain about it.
Oscillation between Love and Hatred, between War and Peace.”

The words are John Adams’s, written in the summer of 1775. Adams referred to attitudes still evident when patriots were fighting for their rights in the empire, reluctant as they were to strike out on their own. Adams had finally made the decision for independence; he also knew that countless others had not. For them it was easier to look back to what they had wanted under the Declaration of Rights than to look ahead and see that the quest that had taken them there would eventually push them on to a declaration of independence. With the passage of time Adams nearly forgot the painful process of separation, forgot how desperately he had clung to the ideal of empire and liberty, and therefore forgot a basic truth that John Locke had pointed to over a century before. “People are not so easily got out of their old Forms, as some are apt to suggest,” cautioned Locke. “They are hardly to be prevailed with to amend the acknowledg’d Faults, in the Frame they have been accustom’d to,” much less create something new. John Adams and the other men who wrote the Declaration of Rights are proof of Locke’s point.

 Brigham Young University

NEIL L. YORK


81 [John Locke], An Essay Concerning the True Original, Extent, and End of Civil Government (1690), reprinted in Peter Laslett, ed., Two Treatises of Government (Cambridge, 1989), 414 (from chap. 19, “Of the Dissolution of Government”). Both John Adams (as “Novanglus” in an essay of Jan. 23, 1775) and Daniel Leonard (as “Massachusettensis” in an essay of Dec. 26, 1774), though writing in opposition to each other, accepted the truth of Locke’s assertion—see Novanglus and Massachusettensis (New York, 1968), 13, 157–58, as did the Declaration of Independence. “Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes,” it stated, “and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.”