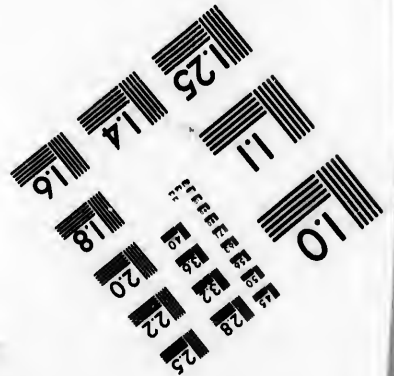
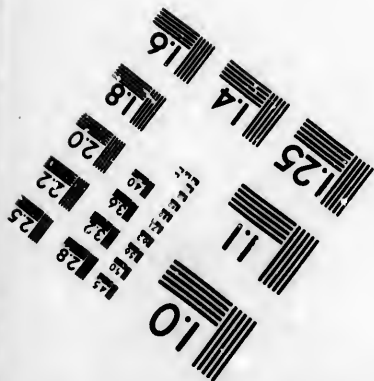
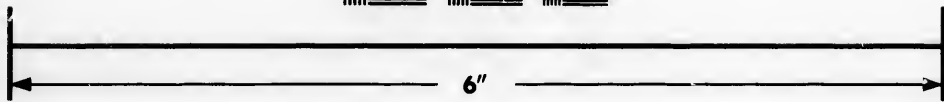
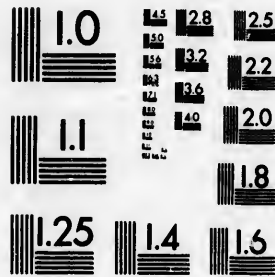


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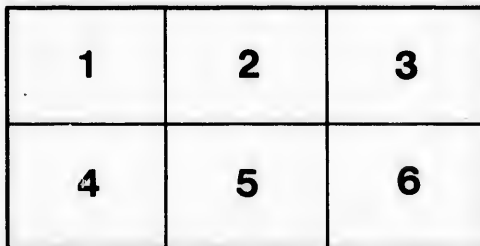
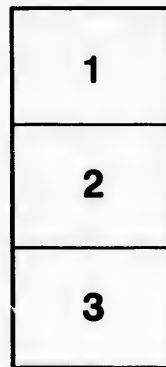
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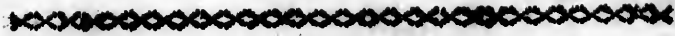
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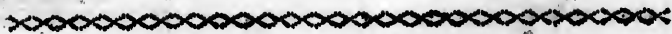
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EXAMINATION

OF THE

RIGHTS

OF THE

COLONIES

IN

PRINCIPLES OF LAW

THE RIGHTS OF THE COLONIES
IN THE YEAR 1763

BY JOHN ADAMS


IN TWO VOLUMES

LONDON

Printed by J. DODD, in Pall-mall



AN EXAMINATION &c.


S the various and contradictory Opinions upon the Subject of the present Dispute with the COLONIES, sufficiently prove, either a Want of real Information with Regard to the Merits of the Controversy, or a real Difficulty as to the Merits themselves; nothing can contribute more to illustrate the Subject, than impartially

A tially

tially to examine the Grounds and Principles upon which the present Contest turns.

As all new Questions of Right, Authority and Power, can only be decided upon the first Principles of Justice, and of Government; It is a Misfortune on this Occasion, that the Maxims of both are so abstracted, and drawn from a Compass of Observation so deep and systematical, that they do not fall within the Reach of the common Class of Mankind; because it follows from hence, that the Bulk of the People, however interested in the Decision, are very incompetent Judges of the
Merits

Merits of a Question, wholly depending upon such Maxims as they are Strangers to.

In free States, the People will at times take the Lead, & being unaccustomed to deliberate where a Point of Interest is in View; their Opinion, however ill founded, is adopted with as full Conviction, and followed with as much Zeal as an infallible Revelation.

Let us cast an Eye upon the Resolutions of several of the lower Houses of Assembly in *America*, and we shall see what sort of Decisions are to be expected from Men, unacquainted with the Principles upon which they

ought to judge; from Men, who have a strong Bias of Interest to incline them to one Opinion, and very little Knowledge of the Principles of Policy, and the Institutions of Civil Government, which alone can be urged in Favour of another.

We must not be surprized if in such Assemblies it is held as incontestable, that the Members thereof and their Constituents, are entitled to all the essential Rights, and at the same Time, are exempt from many of the essential Duties of *British* Subjects.

We must not be surprized, if in the same Assemblies it should be
also

also held, that the Members thereof and their Constituents, ought not to be taxed in support of the State whereof they are a Part; or if in such Assemblies, there should be an entire Unanimity of Opinion, That His Majesty's Subjects in *Great Britain*, ought to be further taxed for their Benefit; and that they ought not to be taxed for the Benefit of themselves.

If we consider the Influence of the Passions in Popular Assemblies, where an Interesting Point is under Debate; We must not be surprized, if amidst the captivating Harangues, upon Liberty, Property

ty, and no Stamp Act, the cool
Voice of Reason hath not yet been
heard.

The Friends of the Colonies,
have fortunately for the Cause of
Truth, stated the Grounds, upon
which their Claim is founded; And
it is very remarkable, that in assert-
ing a Claim to so high a privilege,
the Advocates for it, who profess a
real Deference to the Common Law,
do not pretend, either to any Grant,
(the *Mary-Land* Charter excepted);
or to any Prescriptive Usage, un-
der which they claim this important
Exemption.

A Privilege from Taxes, is so
deluding

deluding an Object, that in the Warmth of Pursuit, they have strangely forgot a Title, that is essential.

The Common Law, can't without a Contradiction, be supposed to exempt any Part of the People from the Common Lot. It is therefore a Maxim, that whoever claims a *jus Singulare*, or Special Privilege, must show a particular Title to it: And that Title, must be either a Grant from one who had Power to give, or an Immemorial Usage, that presupposes such a Grant.

But, if the Colonies do not found
their

their Claim, either on Grant, or Prescription; Let us see in what Manner they make out their Title. This valuable Privilege, they say, is supported by *MAGNA CHARTA*; agreeable to the Practice in *England*, where, it hath long been usual, for every Man, who thinks proper to fly in the Face of the Law, to make *Magna Charta* his Authority for doing so.

But when I attempt to find out, how *Magna Charta* confers this supposed Right, I am, (to use a Sportsman's Phraise) entirely at a Fault. For, the Cliaments of this ~~Exemption~~, do not quote the Text,

as Mr *Wilkes* quoted his *Invictus liber homo &c*; nor do they so much as give any Reference, to the Clause they rely upon: instead of which, a Proposition is framed apparently for the Purpose of supporting a present Assertion, and then, that Proposition is rested upon with the same Confidence, as if it really contained the literal Text of *Magna Charta*.

The Proposition laid down is this, “ That no *English Man* can “ be Taxed but by his own Con- “ sent in Person or by Deputy.” If by this newly constructed Sentence, for which no kind of Authority has ever yet been cited, is

B

meant

meant only, “ That Taxes can’t
 “ be imposed in England without
 “ the Consent of Parliament;” I
 readily acknowledge the undoubted
 Truth of it. But, if under this
 Proposition, it is maintained as
 Law, “ That no English Man can
 “ be subjected to the Payment of
 “ Taxes, who has not a Right to
 “ vote in chusing the Representa-
 “ tive Body of the People;” then
 the Proposition is clearly false.

Let any one compare the Free-
 holders of a County, to the Num-
 ber of it’s Inhabitants, the Number
 of Boroughs, to the Number of
 Towns; the Persons qualified to
 vote

vote in the respective Boroughs, to the Persons unqualified, and it will then be seen, whether it is true, “ that *no English Man* is or can be bound to pay any Tax without *his own Consent* in Person or by *his Deputy*. I much Question, whether one twentieth Part of the Inhabitants of *England* have a Right to vote in chusing the Representative Body of the whole People.

Did the Inhabitants of the Counties of *Chester* or *Durham*, or other Counties Palatine that formerly were not specially represented, ever dream, that an Act of Parliament to impose Taxes did not bind them?

such an Assertion was never heard of: tho', their Residence in *England*, made it very practicable, for them to enjoy the Privilege of choosing Representatives.

But by stating what Magna Charta does say upon the Head of Taxation, we discover what it does not say. I cite the Clause from the Magna Charta of King *John*, dated the fifteenth of *June* One Thousand two Hundred and fifteen, because, altho' the Magna Chartas, executed by King *Henry* the Third, in the Years One Thousand Two Hundred and Sixteen, and One Thousand Two Hundred and Seventeen,

venteen, and that published in the
 Statute Book of the Eleventh of
February, One Thousand Two
 Hundred and Twenty Four, con-
 tain the same Passage in Substance;
 yet, it is more fully expressed in
 King *John's* Charter; which affords
 in this Part, a lively Picture, of
 an antient ENGLISH Parliament.
 The Words are these, “ Et ad ha-
 “ bendum commune Concilium
 “ Regni, de Auxilio affidendo, ut
 “ liter quam in tribus casibus pre-
 “ dictis, vel de scutagio affidendo,
 “ summoneri faciemus, Archie-
 “ piscopos, Episcopos Abbates,
 “ Comites, et Majores Barones,
 “ singulatim per Letteras nostras,
 et

“ et preterea, faciemus summoneri in
 “ generali per Vicecomites et Ba-
 “ livos nostros, omnes illos qui de
 “ nobis Tenent in Capite, ad cer-
 “ tum Diem &c.” Does this Pas-
 sage, by which it appears, that the
 King engages, not to impose any
 Taxes without summoning the
 Archbishops and Bishops, the Ab-
 bots, the Earls, the greater Barons,
 and their Tenants in Capite, war-
 rant the Proposition, “ That no
 “ *Englishman* shall be taxed with-
 “ out *his own Consent* in Person,
 “ or by *his Deputy?* ”

It appears from the Passage just
 now cited, and is the known Law
 of

of the Land, that the King can't impose Taxes on his Subjects in *England*, without the Consent of Parliament. It is inferred from hence, that he can't impose Taxes on his Subjects out of *England*, with the Consent of Parliament. Or in other Words, a Concession from the Crown, that the Subjects in *England*, shall not be taxed by the King singly, amounts, according to the Logick of *America*, to a Law, that His Majesty's Subjects out of *England*, cannot be taxed at all. For if the King and Parliament have no Authority to levy Taxes in the Colonies, how can the Charters and Letters Patent of the
the

the King alone, be a sufficient Authority to levy Taxes there at this Time.

Nemo dat qui non habet.

If the Colonists once exempt themselves from the Duty of submitting to the Authority of Parliament in the Article of Taxes, what Contempt may we not expect they will hereafter express for the Authority at present exercised over them under the Great Seal only?

Having shewn how the Exemption insisted upon stands on the Authority of **MAGNA CHARTA**, which was made Three Hundred Years

Years before the Discovery of *America*, and can be but ill apply'd, to ascertain the Relations in which His Majesty's Subjects on that Continent, stand to the Sovereign Power of *Great Britain*.

I will now consider the next Point relied upon, which is, that the Colonies having a Power to make Laws within themselves, and being in Fact, accustomed to raise Money for their several Purposes, are disturbed in the Enjoyment of this Right, if they are subject to any other Taxation. It is very unwarrantable, to insist upon the Practice of raising Money in the Colonies

C

nies

nies, under the King's Charters and Letters Patent, against the Authority of Parliament.

Let me refer the Reader's Attention back to the Clause lately cited from Magna Charta; by which the King binds himself not to raise any Money on the Subject, but with the Concurrence of the States of the Realm: let me refer him to the Clause, following next after that which has been quoted, whereby the King engages not to authorize, even a Feudal Lord, to demand of his own Dependants more than the Feudal Aids; he will then be able to judge, how far, a
Practice

Practice of raising Money under the Great Seal, can be opposed to the Authority of Parliament.

But in Order to do all possible Justice to the Force of this Objection, I will suppose, that the Usage of raising Money in the several Provinces, for separate and local Purposes, was founded upon an Act of the whole Legislature; Then, the several Colonies would in that Respect be in the same Situation with the several Counties in *England*, which do, by Authority of Parliament, raise Money within themselves for their separate and local Purposes. But no Man ever

conceived, that this Regulation of internal Police, would give rise to a Debate whether every County was not a Kingdom. The nearness of Affinity between a County and a Kingdom, hath not as yet, thank Heaven, been discovered in *Great Britain*.

It is further insisted on Behalf of the Colonies, that *Ireland* is not subject to be Taxed by the *British* Parliament. Is there any Principle, upon which it can be shewn, that the Rights and Privileges, the Restrictions and Obligations which, in the Course of Five Hundred Years, have been established with
 Respect

Respect to *Ireland*, are at this Day established in Respect of His Majesty's Colonies in *America*; or that the Regulations with Respect to the Colonies are applicable to *Ireland*?

When an Advantage is in View, the Argument is adopted. Suppose it to be turned to the Disadvantage of the Colonies, can any one doubt but it would be exclaimed against: The Rights and Priveleges, the Advantages and Disadvantages of *Ireland* and the Nature of it's Dependence on *Great Britain*, are fundamentally different from those of the Colonies.

Ireland

Ireland is a separate, tho' now an independent Kingdom. When it was conquered, it retained all it's Antient Rights, Privileges, and Immunities not expressly taken away by the Conquerer; it's present State, and it's Relation to *Great-Britain*, cannot be understood without having Regard, as well to it's Original Condition, and Independence, wherein it differs totally from the Colonies, as to the several Laws and Usages by which it's present Connexion with *Great Britain* is defined and ascertained.

Tell an American, that he is no better than an Irishman, and you will
will

will find him egregiously affronted, he will probably reply, that he is a true born Englishman. He would urge that the first Parents of the *English* Plantations were Englishmen; that *America* is a Part, and a very important Part of the *British* Empire; That His Majesty's Subjects who live upon that Continent, under the different Regulations of Police established by their different Charters of Incorporation, are undistinguished and undistinguishable from His Majesty's Subjects in *England*, that both taken together, make one People, of one Blood, having one Religion, one Law,
and

and one King. He might possibly add, that all these Circumstances were not equally true with Respect to *Ireland*, that the Irish were of a different Race, that they were another People, and of a different Kingdom.

It is unnecessary to observe, how very inconclusive the Arguments drawn from Analogy are generally found to be; to observe the resemblance without taking Notice of the Difference betwixt any two Things can tend but little to the Discovery of Truth.

As the Colonists, sometimes ac-
knowledge

knowledge the Authority of *Great Britain*, not only to make Laws in general to bind them, but to make Laws of Revenue and Taxation in *America*, as far as Duties imposed on Imports and Exports extend; and insist at the same Time, that the Right extends no further. I wish they had mentioned upon what Principles of Law or Government, this Distinction is founded; and whether the Distinction itself, is not cotemporary with the Imposition of the Stamp Duty, as it is exactly adapted to elude the Payment of it?

The Objection here taken Notice
D
tice

tice of, which recommends itself, by the Candour of admitting what materially affects the Question, gives a Right, to ask those who make the Admission, and maintain the Objection how they establish their *ne plus ultra* of Sovereign Power. And how, they themselves are satisfied, that the King and the States of the Realm, having a legal and well founded Right, to make Laws in general to govern *America*, and to impose Taxes on Imports and Exports, have no Right to impose Taxes in any other Manner?

In Arguments before a com-
mon

mon Audience, a well-turn'd Phrase
or Expression is often of Weight,
and we are apt to say, this sounds
Right, or that sounds wrong, even
when we are stating the Merits,
not of Words, but Things.

I have endeavoured to find out
the Merits of the Distinction taken
betwixt an External and Internal
TAX: And tho' I do not say,
the whole Force of the Objection
consists in the elegant Contrast be-
tween the two Epithets, yet I can't
help believing, that the Turn of
the Phrase hath had its Weight,
in raising an Opinion, that the
Difference betwixt an external and

an internal Tax, is much wider than it is in Reality. But suppose the Difference to be material, and not resting entirely upon the Time, Place, and Manner of demanding the Tax; I must again ask, how the Colonies are represented sufficiently to be liable to an External, and not liable to an Internal Tax? And upon what Principle can it be shewn, that a greater or different Authority is requisite to impose the one than the other?

I believe all that has been advanced in support of this Objection, is, that an internal Duty has not been before imposed in the Colonies;

nies; which is not true in Fact; because, the whole Post-Office Establishment is internal, and requires the Payment of internal Duties.

I am at a Loss to know what Modes of Collection will make a Tax External, and what make it Internal; and where to draw the Line betwixt them. And if the Regulations necessary to the Payment of any particular Tax, should unfortunately fall some under one Denomination, and some of them under an other, I wish to know, where an Arbiter between *Great-Britain* and *America* can be found, to decide the Disputes that will inevitably

inevitably arise before all the Learning is settled, that may be necessary to understand such Modes of Collection, as being partly external, and partly internal, may in the Language of Metaphysicians be styled **MIXED MODES.**

If it be a sufficient Objection to a new Tax, that it can't be raised without a new Mode of Collection, there is an end of Taxing.

I can't conclude this Head without observing that the Objection under Consideration is contrary to the most approved Maxims. That it makes the Right, depend upon the
Remedy

Remedy; that it makes the Substance
 or Tax, depend upon the Shadow
 or Mode of Collection.

I know not of any other Objections
 insisted upon by the Colonies, be-
 sides these I have taken Notice of;
 all of which upon a full and se-
 parate Examination appear to be
 groundless: And when it is con-
 sidered, that, altho' for near fifty
 Years Past, a Session of Parlia-
 ment hath scarce been held, in
 which, some Act hath not been
 made, relative to the Interests, the
 Trade, the Customs, or the Cur-
 rency of *America*; and that from
 the first establishing the first Settle-
 ments,

ments, to the Year before last, the Sovereign and Parliamentary Authority of *Great Britain*, has been uniformly acknowledged, and invariably acquiesced under in the Colonies; One can't but conclude, that it is not from new Lights, but new Prejudices that the present Objections are started.

Since the Cession of *Canada* to *Great Britain*, the Colonies are less exposed to the Danger of an Enemy; therefore when you talk of Protection, they answer, they have no need of Assistance. When you alledge that *Great Britain* is so deeply involved in Debt, that it is
indispensably

indispensably necessary to exert every Endeavour, and to call for Assistance from every Part of the Empire, in order to restore Health and Vigour to the Sinews of Government: What Impression can you expect to make on Men, who know their own Wants, but are entire Strangers to the Necessities of the Publick?

If no Tax is to be paid, till the People acknowledge the reasonableness of its being demanded, none will ever be paid at all. For this Reason it is wisely provided by the Constitution of *England*, that the Necessities of the State, are

E to

to be judged of, by the representative Body of the People, not by the Individuals themselves. The common People have neither Means to know, nor Capacity to judge of the Publick Wants. When Laws are enacted by the Crown, in Conjunction with the States of the Realm, the same Constitution requires, that such Laws shall be obeyed.

An open, continued and avowed Resistance of the Law, is an open, continued, and avowed Resistance of the State.

The executive Power is then
called

called upon, to enforce Obedience to the Commands of the Legislature. If the executive Power is too weak, to enforce Obedience to the Laws, without being assisted with an extraordinary Supply: Or if the Laws themselves require Alteration, it is then necessary, for the Crown to lay its Difficulties before the Representatives of the People. But if no Supply was wanted, nor any Alteration of the Laws desired, it might then perhaps be injurious to the Constitution, and dangerous to the executive Power of the Crown, to make the Representatives of the People the Council of State.

Innovations will infensibly obtrude themselves : It is agreeable to those who preside at the Helm, to have the Sanction of the Publick for the Measures they adopt. This may introduce a Practice, of laying the Measures intended by the Administration, before the Representatives of the People. A few Instances of the Practice, cannot fail to make the People, who are always Judges where they are Parties conclude, they have a Right to be thus consulted.

If it is once understood, that the executive Power, is to wait for, and be guided by the Advice of the
 People,

People, they then direct the executive Power, or in other Words, become the executive Power themselves. It is well known, to be an Absurdity in Government, for the executive Power to be in the Hands of the People; and the Reason of it is obvious: They can't without the greatest Mischief, be informed of all the Secrets of State. The Measures intended, and the Measures already taken, cannot be divulged by the Administration, without Danger of being defeated; and it is of no real Service to ask the Opinion of those, whom the prudential Reserves of Caution, do not permit to be fully informed

informed, and the Intricacies of political Knowledge render averse to judge, of all the Difficult and perplexing Points that occur in Civil Government.

It is essential to the well being of a Great Empire, that it's political Measures be thoroughly digested, and even regulated by System, That it's Counfels be secret, and it's Operations quick, of all which Things the People are incapable. It follows from hence, that a Great Empire is in imminent Danger, when the executive Power is exercised by the People.

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