

John Adams and the Constitutional History of the Medieval British Empire

James Muldoon

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John Adams and the
Constitutional History
of the Medieval British
Empire

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James Muldoon
John Carter Brown Library
Providence, RI, USA

Studies in Modern History
ISBN 978-3-319-66476-7 ISBN 978-3-319-66477-4 (eBook)
<https://doi.org/10.1007/978-3-319-66477-4>

Library of Congress Control Number: 2017950727

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The registered company is Springer International Publishing AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

PREFACE

When discussing the respective spheres of responsibility proper to the Church and to the State, and the limits on the right of the Church to intervene in secular affairs, medieval canon lawyers employed a useful image. For churchmen to intervene in secular matters would be as wrong as the act of a man who “put his sickle in a stranger’s harvest.”¹ Such an act violated a legitimate boundary line and enabled the trespasser to steal from the owner. The phrase came to mind in the course of writing this book. After all, what right does a medieval historian have to write a book on one of the most deeply intellectual of the Founding Fathers? Am I swinging my sickle in the bountiful fields that academic practice assigns to specialists in American colonial history?

This project originated many years ago as a query from my graduate mentor, Brian Tierney, some time after I had completed graduate school where I studied medieval canon law and written a dissertation on the concept of secular power in the medieval canonists. He inquired what I could make of Adams’s *Dissertation on the Canon and Feudal Law*, a collection of essays that Adams published in 1765 against the backdrop of the Stamp Act Controversy and the rumor that the Church of England was going to establish a diocese in North America. At first glance, the

¹Innocent III, Venerabilem (1202) in *The Crisis of Church and State 1050–1300*, ed. Brian Tierney (Englewood Cliffs, NJ: Prentice Hall, 1964; reprinted, University of Toronto Press: Toronto, 1988), 133–134 at 133. The phrase is from Deuteronomy, 23:25.

title is misleading because the articles were not about law, canon or feudal in the literal sense. These laws represented the kinds of pressure involved in the struggle between the North American colonists and the increasing power of the English parliament. It seemed to me that Adams was employing the image of the two laws to compare the situation in the colonies with the Norman Conquest of England in 1066 and the imposition of what came to be labeled the Norman Yoke, feudalism in secular affairs and the canon law of the reformed Catholic Church in religious matters, on Saxon England. This image was widely employed in the seventeenth century by opponents of the Stuarts to describe Stuart government and became a part of the English political vocabulary.²

In the course of reading Adams I discovered that he never used the term Norman Yoke, but it seemed to me that he did not need to use that specific language to make his point. His readers would recognize the image and the association with Norman oppression. As we shall see, the image of the imposition of the yoke contributed to the theme of the history of England since 1066 as the contest between the virtuous Saxon republican tradition and the Norman tradition of oppression. The struggle between the colonists and parliament was only the most recent stage of that conflict.

Could Adams have really believed that the eighteenth-century government of England was ready to suppress the Americans in the way that the Normans suppressed the Saxons? Would the American colonies have been returned to the medieval dark ages unless the colonists had rebelled and continued to develop a republican government? Given the memory of the English Civil War (1642–1649), the numerous historical works available to the English-speaking world that dealt with English constitutional history, and the memory of the English Civil War, how could the Americans not fear a repetition of Norman and Stuart oppression? That being the case, how could they not recognize the two laws as symbols of the Norman Yoke?

Professor Tierney's interest in Adams's writings sprang from an exchange of articles with Prof. Samuel Beer, a distinguished political scientist. Professor Beer had published an article contrasting the political

²Christopher Hill, *Liberty Against the Law* (London: Penguin, 1996), 83–90; also his *Puritanism and Revolution* (London: Secker & Warburg, 1958); John Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge: Cambridge University Press, 1957, 1987), 318–319.

thought of Thomas Aquinas (1225–1274) with that of John Adams (1735–1826) in order to demonstrate the radical difference between medieval political thought and that of the American revolutionaries. Professor Beer argued that when the American revolutionaries chose to create a republic “they turned their backs on one of the main lessons of the Western political tradition,” a belief that authority was vested “in a hierarchy of natural virtue and a hierarchy of divine ordination,” a theory that he argued was central to the thought of Aquinas. He employed “the Thomistic system as a magnifying glass to bring more fully into view the deeper lineaments of the hierarchic idea,” which he argued was the fundamental principle of medieval political thought. In his opinion, “we today will not grasp the radicalism of the American choice in 1776 unless we compare it with the ancient political orthodoxy against which both the English republicans and their American successors took up arms.”³

In Beer’s opinion, for 2000 years virtually all political thinkers “had rejected popular government” because they “did not doubt that the ruler, whether prince or prelate, knew what was good for the ruled and, therefore, had the right, indeed the duty, to direct them toward the good.”⁴ The bulk of the people were not capable of knowing what was best for them.

In contrast to the thought of Thomas Aquinas, Beer pointed to John Adams’s *A Dissertation on the Canon and Feudal Law*. According to Beer, these essays “had gone to the heart of the conflict between Britain and America,” and saw it “as a contest between the idea that the many must look to the few for instruction in and direction toward the common good and the opposing idea that the many can themselves determine the common good and direct the polity toward its realization.”⁵

Professor Beer’s polarized vision of political thought, medieval and modern, Aquinas and Adams, did not go unchallenged. Tierney pointed out that Aquinas was far from being the only medieval thinker who dealt

³Samuel H. Beer, “The Rule of the Wise and the Holy: Hierarchy in the Thomistic System,” *Political Theory* 14 (1986): 391–422 at 391–393. He made a similar argument in “The Rule of the Wise and the Holy: Thomas Aquinas,” Chap. 1 of *To Make a Nation: The Rediscovery of American Federalism* (Cambridge: Harvard University Press, 1993), 31–65.

⁴Beer, “Rule of the Wise and the Holy,” 391.

⁵Beer, 392–393.

with political matters and he was far from being the most important.⁶ He discussed the large amount of work that scholars dealing with medieval political thought had produced since World War II, especially work dealing with theories of political representation that Beer had asserted only arose much later. Tierney pointed out that theories of popular representation had arisen in the later Middle Ages in connection with the conciliar movement that sought to create a constitutional structure for the Christian Church. Furthermore, it was not the theologians and philosophers such as Aquinas who were developing these theories but the canon lawyers who were a dominant force in the organization and administration of the medieval Church.⁷ For these thinkers the concept of representation “implied also an actual bestowal of authority upon the representative by those whom he was to represent, with the corollary that such authority could be withdrawn in case of abuse.” A pope’s power was “a derivative and limited right of government conferred on him by the Church” so that the pope “far from possessing absolute power, responsible to no human tribunal” had limited power and could be removed if he failed in his role.⁸ In Tierney’s opinion, well before the eighteenth century, the concept of representation, one of the most debated issues in the decade preceding the American Revolution, was being discussed and developed by medieval scholars, especially canon lawyers. In fact, there “seemed to be a possibility of presenting a coherent history of the growth of Western constitutional thought from twelfth-century jurisprudence to the fully developed constitutional theories of the seventeenth century.”⁹ Seen in that light, Adams’s work does

⁶Brian Tierney, “Hierarchy, Consent, and the Western Tradition,” *Political Theory* 15 (1987): 646–652. It is worth noting that in *To Make a Nation*, Beer did not cite Tierney’s article.

⁷On the importance of the canonists: see Walter Ullmann, *Medieval Papalism: The Political Theories of the Medieval Canonists* (London: Methuen, 1949), 1–4.

⁸Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge: Cambridge University Press, 1955; reprinted and enlarged, Leiden: Brill, 1998), 4–5.

⁹Tierney, *Foundations*, xxi; subsequently, he produced a volume to do just that: *Religion, Law, and the Growth of Constitutional Thought, 1150–1650* (Cambridge: Cambridge University Press, 1982). See also the work of Francis Oakley, *The Conciliarist Tradition* (Oxford: Oxford University Press, 2003) and J.H. Burns and Thomas M. Izbicki, *Conciliarism and Papalism* (Cambridge: Cambridge University Press, 1997). The work of Tierney, Oakley, and those who have demonstrated the importance of the medieval canonists has received strong criticism, especially from Cary Nederman: see his

not appear to be the radical break with the past that Prof. Beer postulated, because the medieval debates about governance provided concepts and a vocabulary that when secularized in the early modern world could be and were employed in secular political debates up to the eighteenth century and beyond.¹⁰

At the beginning of his article, Tierney observed that the work of medievalists is ignored except by fellow medievalists. At the same time, “everyone feels competent to pass judgment on medieval achievements, or to decry the lack of them.”¹¹ This was not restricted to Prof. Beer’s work.

The Tierney-Beer debate ended with the publication of Tierney’s article. One might have expected some further discussion between the authors because of the importance of the issue at stake, the development of representative government, but none occurred. There was some scholarly discussion of these articles but not apparently in journals devoted to

“Conciliarism and Constitutionalism: Jean Gerson and Medieval Political Thought,” *History of European Ideas*, vol. 12 (1990): 189–209; his “Constitutionalism – Medieval and Modern: Against Neo-Figgisite Orthodoxy (Again),” *History of Political Thought*, 17 (1996): 179–194; and his “Empire and Historiography of European Political Thought: Marsiglio of Padua, and the Medieval/Modern Divide,” *Journal of the History of Ideas* (2005): 1–15. Nederman in turn received a sharp response from Francis Oakley, “Nederman, Gerson, Conciliar Theory and Constitutionalism: *Sed Contra*,” *History of Political Thought*, 16 (1995): 1–19.

¹⁰The way in which medieval ecclesiastical concepts entered the secular political vocabulary has attracted a good deal of interest in recent years: see, for example, Carl L. Becker, *The Heavenly City of the Eighteenth-Century Philosophers* (New Haven: Yale University Press, 1932). There is also the work of Carl Schmitt: see Giacomo Marramao, “The Exile of the *Nomos*: For a Critical Profile of Carl Schmitt,” *Cardozo Law Review*, 21 (2000): 1567–1587 at 1571. The work of Tierney, Oakley, and those who have demonstrated the importance of the medieval canonists has received strong criticism, especially from Cary Nederman: see “Conciliarism and Constitutionalism: Jean Gerson and Medieval Political Thought,” *History of European Ideas*, 12 (1990): 189–209; see also “Constitutionalism—Medieval and Modern: Against Neo-Figgisite Orthodoxy (Again),” *History of Political Thought*, 17 (1996) 179–194; and “Empire and the Historiography of European Political Thought: Marsiglio of Padua, and the Medieval/Modern Divide,” *Journal of the History of Ideas* (2005): 1–15. Nederman in turn received a sharp response from Francis Oakley, “Nederman, Gerson, Conciliar Theory and Constitutionalism: *Sed Contra*,” *History of Political Thought*, 16 (1995): 1–19.

¹¹Tierney, “Hierarchy and Consent,” 646.

American history.¹² In a note, Tierney observed one of his own books on these issues had been translated into Japanese and that an Italian translation was in process. “But such current work somehow just does not enter the consciousness of modern historians who feel moved to write about medieval ideas.”¹³ Specialists in American history failed to appreciate the importance of this work.

My first response to the questions that Tierney raised was to focus on eighteenth-century American knowledge of the Middle Ages. Did Adams assume that his readers would immediately recognize the Norman Conquest of England and related developments in the Catholic Church and its implications for English development? Such recognition would demonstrate the extent of their knowledge of Saxon England upon which the yoke was placed; their understanding of the great Investiture Controversy that reformed the Roman Church and created the canon law; and finally their understanding of feudalism that was the basis of English property law. It is often assumed that eighteenth-century Americans knew little or nothing about the Middle Ages because the modern world of which the Americans were an important exemplar was a rejection of all that was medieval, the Middle Ages being the Dark Ages, the age of obscurantism and ignorance as Adams declared in the *Dissertation on the Canon and the Feudal Law* and as Prof. Beer saw matters.

Subsequently, discussing Tierney’s interest in Adams with my Rutgers colleague Gordon Schochet led to the suggestion that I attend a seminar on eighteenth-century political thought at the Folger Library (1987) directed by John Pocock. Participation in this seminar introduced me to a number of scholars working on issues relating to Adams and his generation. One consequence was the publication of an article on the *Dissertation*, as well as a great deal of encouragement to continue working on Adams. Subsequently, an invitation to present a paper at

¹²These articles appear to have interested scholars dealing with political thought but not American historians. See, for example, Mark C. Murphy, “Consent, Custom, and the Common Good in Aquinas’s Account of Political Authority,” *The Review of Politics*, 59 (1997): 323–350; Constantin Fasolt, “Voluntarism and Conciliarism in the Work of Francis Oakley,” *History of Political Thought* 22 (2001): 41–52; Carl Watner, “Quod omnes tangit: Consent Theory in the Radical Libertarian Tradition in the Middle Ages,” *Journal of Libertarian Studies* 19 (2005): 67–85.

¹³Tierney, “Hierarchy, Consent,” 651, n. 2.

The Many Legalities of Early America Conference (1996) enabled me to develop some ideas about Adams's views of the legality of the British acquisition of North America, a topic usually associated with Spanish debates about the legality of the conquest of the Americas. The annual International Medieval Congress at Western Michigan University provided a very helpful venue for trying out ideas about the relation between medieval and early modern political ideas to an audience of medievalists. A book-length attempt to deal with the issues involved, however, went nowhere and I gave up on the topic.¹⁴

A few years ago, after retiring from Rutgers University and coming to The John Carter Brown Library, in a discussion of current research projects, I mentioned my interest in eighteenth-century American knowledge of the Middle Ages, especially as John Adams employed such knowledge in his polemical writings. A listener asked if I was examining previously unknown or unappreciated sources containing materials by Adams. I answered that the project was not so ambitious. In fact, considering the amount of attention given in recent years to Adams, it is hard to imagine that there are any untapped sources to be exploited. My goal was simply to approach some of Adams's extensive pre-revolutionary writings from the perspective of a medieval historian. One might, of course, reasonably ask "Why bother?" What could a medievalist see in Adams's writings that others have not already seen? Indeed, what possible relevance could Adams's knowledge of the Middle Ages have for his writings in support of the Revolution? Was not the American Revolution one of the major elements of modernity, a forceful rejection of the medieval approach to political life as Prof. Beer argued?

It being the conventional wisdom that eighteenth-century Americans had no interest in or knowledge of the Middle Ages, a casual observer glancing at the cover of a book entitled *John Adams and the Constitutional History of the Medieval British Empire* might be puzzled. Such a response would be perfectly understandable. After all, was it not Henry Adams who was intimately connected with the

¹⁴James Muldoon, "John Adams, Canon Law, and the Ghost of Thomas Becket," in *Empire and Revolutions*, ed. Gordon Schochet (Washington DC: Folger Institute, 1993): 235–259; also "Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America," in *The Many Legalities of Early America*, eds. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2001): 25–46.

nineteenth-century revival of things medieval in the United States, serving as Professor of Medieval History at Harvard for a few years, who wrote *Mont-Saint Michel* and *Chartres?* Henry Adams did as much as anyone else to encourage Americans to contemplate the virtues of medieval society.¹⁵ Furthermore, it was the mid- and late nineteenth century that saw widespread interest in the Middle Ages in both Europe and the United States, not the early nineteenth century and certainly not the eighteenth century. Nineteenth-century intellectuals who recoiled from what they perceived as the multiple plagues of industrialization, urbanization, and democracy shunned the smoke-belching factories and replaced them in their own minds, and occasionally in their parish churches, with visions of Gothic cathedrals and square-towered Norman village churches filled with virtuous peasants who knew their place in the grand scheme of things.¹⁶

Eighteenth-century Americans, John Adams and his contemporaries, were, so the popular argument goes, quite different from their nineteenth-century descendants. The members of the earlier generation shared a belief in rational Christianity, progress, and republicanism. They were optimistic about the future and about their place in it. Such men, so the argument went, did not feel shoved aside by the surging modern world. They were, on the contrary, on the leading edge of the wave of progress. Their approach to the world was plain, austere, and hard-working, admiring not the chivalric warriors of the Middle Ages who fought for the love of fighting but the poor, valiant republican citizen-soldiers of ancient Rome who fought only when necessary and then returned to the plow. Cincinnatus not Ivanhoe was their beau ideal. Eighteenth-century Americans rejected what they saw as the dark, superstitious Middle Ages in favor of the cool, rational Roman Republic. They failed to appreciate, however, that their interest in the ancient Romans was quite as romantic in its own way as was the nineteenth-century infatuation with the Middle Ages. Livy's Rome was as romantic a vision of the past as was Sir Walter Scott's England. Given this tradition, it would be much easier to accept

¹⁵Henry Adams, *The Education of Henry Adams* (Boston: Houghton Mifflin, 1918). For his experiences as a professor: see chapter XX, significantly entitled "Failure", 251–263.

¹⁶Concerning the romantic revival of things medieval in nineteenth-century America: see Howard Mumford Jones, *O Strange New World* (New York: The Viking Press, 1964), 76–77.

a book on John Adams and the Roman Republic than one dealing with Adams and the Middle Ages, but that will not be the case here.

John Adams is, however, an especially useful figure to examine when considering the intellectual formation of the revolutionary generation. Not only was he actively involved in the revolutionary movement from its earliest days and through the Revolution, he wrote extensively on the fundamental issues involved. This is not to say that Adams was the ideal type of American revolutionary. He clearly was not typical. He was famously ambitious, touchy, sensitive to slights, and, eventually quite concerned that the country that emerged out of the Revolution was not quite what he anticipated.¹⁷ On the other hand, although he was quite proud of his learning, he was not a closet scholar. He wrote for newspapers so that he could reach a wide audience, he served on committees that required that he exchange views with other learned individuals, and he held various public offices. He may well have overestimated the educational level and the moral qualities of many of his readers, but this only demonstrated his high expectations of them and of himself.¹⁸

Taking up Adams again, at first it looked as though the best path was to take the approach that I had taken years earlier, simply examining Adams's writings for information about the Middle Ages. In the years since my first attempts to deal with Adams's political thought, however, I had become interested in early modern discussions about the nature and structure of the vast oceanic empires that were being constructed in the wake of Columbus's voyages, something which led me to write a book on the history of the concept of empire.¹⁹

Subsequently, it became clear to me that Adams's writings, poorly organized and developed as they were, contained a history of the development of the British Empire from the twelfth century to the eighteenth. The work of Daniel Leonard, the Loyalist defender of parliament's claim to legislate for the American colonies, and whose writings

¹⁷Adams's personality, sensitive to slights, vain, has attracted a good deal of attention in recent work: see the brief survey in C. Bradley Thompson, *John Adams and the the Spirit of Liberty* (Lawrence: University Press of Kansas, 1998), xv–xvi.

¹⁸In later years, beginning around 1790, "Adams' conception of American society had dramatically changed." See John R. Howe, Jr., *The Changing Political Thought of John Adams* (Princeton: Princeton University Press, 1966), 155.

¹⁹James Muldoon, *Empire and Order: The Concept of Empire, 800–1800* (NY: St. Martin's Press, 1999).

Adams challenged, made it clear that he and Adams had conflicting conceptions of the history of the British Empire and that their competing political positions rested on these competing histories. Seen in this light, the proposed book became a continuation of themes I had developed earlier in the volume on the concept of empire.

The John Carter Brown Library has been a wonderful place to work on this and other projects over the last sixteen years. Norman Fiering, the former Director of the Library, created the title of Invited Research Scholar that has allowed me to use the Library's great resources and to benefit enormously from the company of scores of scholars who have come here. They are indeed the greatest treasure that the Library possesses. His successors, Ted Widmer and Neil Safir, have allowed me to remain here for which I am eternally grateful. Being here brought me into contact with two leading colonial historians, Jack Greene and Gordon Wood, who listened patiently while I went on at length about Adams and the Middle Ages and generously suggested what I should be reading on the topic. Tim Harris suggested what I should be reading in early modern English History. They encouraged me to take up the Adams project again. I owe them and their students a great debt of gratitude. I also owe a great debt to the many fellows here who made suggestions about what to read, criticized some of my arguments, and read parts of the work. Neil Kamil's comments were especially helpful.

Over the years a large number of friends and colleagues encouraged, critiqued, modified, and otherwise contributed to shaping the book: these include Edward Peters, the late Tom Leavitt, Rodney Carlisle, Dennis Cashman, Alan Tarr, Frederick Russell, Russell Murphy, and my sister Mary Muldoon. I realize that there are others whose names I have omitted. I apologize to them. Finally, I owe a great debt of gratitude to my late wife, Judith Fitzpatrick, who lived with this project for a very long time and put up patiently with it. I dedicate this book to her.

Providence, USA

James Muldoon

CONTENTS

1	Introduction: The Eighteenth Century and the Middle Ages	1
2	The Norman Yoke—Feudal Law	43
3	The Norman Yoke—Canon Law	83
4	Daniel Leonard and the Modern British Empire	119
5	Is There a British Empire?	157
6	Imperial Origins: Wales, Ireland, and America	173
7	Empire by Consent	209
8	Conclusion	247
	Index	263

Introduction: The Eighteenth Century and the Middle Ages

In *Cincinnatus* Garry Wills described the way in which post-revolutionary Americans sought to create a suitable image to represent George Washington and, by extension, the entire revolutionary generation.¹ The result was the presentation of Washington in a toga, a visual statement of the republican nature of the American Revolution. The Revolution's leader, tall and strong, carved in chaste white marble, wearing a toga was the incarnation of the true spirit of the Revolution, the representative of the sturdy farmers who left the plow to take up weapons against imperial oppression, and who then, like Livy's hero Cincinnatus, their task accomplished, returned to their farms to continue the humble work of plowing and planting.

The image of Washington as Cincinnatus is a compelling one and yet in most details is quite wrong. In the first place, the statue itself, cold white marble, a striking reflection of Washington's personality, is wrong, based on a misunderstanding of the actual appearance of ancient Roman statues. In fact, as art historians have demonstrated, Roman statues were not pure, chaste marble but painted in colors that we would label

¹Garry Wills, *Cincinnatus: George Washington & the Enlightenment* (Garden City, NY: Doubleday, 1984).

garish.² In the second place, Washington was not a simple republican farmer but the owner of a large, slave-worked estate, the kind of wealthy individual characteristic of the imperial age of Rome, the people who acquired the small farms of men like Cincinnatus and combined them into *latifundia* worked by gangs of slaves.³

Finally, when the representatives of the Roman people came to request Cincinnatus to save them in their hour of crisis he was, according to Livy, “at work on his land – digging a ditch, maybe, or ploughing.” He was asked “to put on his toga and hear the Senate’s instructions,” so “he told his wife Racilia to run to their cottage and fetch his toga. The toga was brought, and wiping the grimy sweat from his hands and face he put it on”⁴ No one could imagine Washington wiping sweat from his face, digging a ditch, plowing a field, or sending Martha on an errand.⁵ In fact, representatives of the American rebels did not even have to come to Mount Vernon to offer Washington command of the army. He was present at the First Continental Congress and, lest anyone misunderstand his intentions, he “had brought with him from Mount Vernon a red-and-blue uniform he had worn in the French and Indian War ... and now he was wearing it daily, as if to signify to his fellow-Delegates that he believed the time had come to take the field.”⁶ By wearing the uniform, he was also indicating to the other delegates who, in his opinion, should lead the army.

²The belief that ancient sculpture consisted of pure white marble statues was based on a fallacy. Those statues that survived had been buffeted by the elements for centuries. This treatment, not the intentions of the sculptors, led to eighteenth-century scholars believing that statues had always been uncolored. Subsequent research demonstrated that in fact, the statues had originally been painted, “often in garish coloring”: see Miles Unger, “That Classic White Sculpture Once Has a Paint Job,” *New York Times*, October 14, 2007.

³See Edmund G. Berry, “Latifundia in America,” *Classical Journal* 39 (1943): 156–158.

⁴Livy, *The Early History of Rome*, trans. Aubrey de Séincourt (London: Penguin, 1960, 2002), 226–230.

⁵The statue of the Minuteman in Concord, MA, one hand leaving the plow, the other taking up the rifle is closer to the image of Cincinnatus than is Washington even in a toga.

⁶Douglas Southall Freeman, *George Washington*, 7 vols. (NY: Scribner, 1948–1957), 3: 426. In his *Defence of the Constitutions of Government* Adams did not see Cincinnatus as a model of the virtuous citizen because he possessed not “popular qualities” but “aristocratical ones”, the antithesis of the eighteenth-century image of him: see Adams, *Works*, VI, 16. According to Michael J. Hillyard, Adams claimed “that the old legend had been overrated.” See his *Cincinnatus and the Citizen-Servant Ideal: The Roman Legend’s Life, Times, and Legacy* (Xlibris, 2001), 142.

The image of Washington in a toga reflects a not uncommon practice of clothing one's heroes in what is thought to be appropriate garb. Medieval saints' lives often attributed similar miracles to saintly individuals of the same category, archbishops for example, on the grounds that all saintly archbishops are likely to have possessed the same characteristics and performed the same miracles.⁷ In the case of Washington and Cincinnatus, about the only action that they shared was that each one retired to his farm once he had saved his people from their enemies. This symbolized the link between republican virtue and agrarian society. Livy's Cincinnatus was an implicit criticism of the decline of the traditional Roman family and with it the virtues that gave rise to Roman greatness.⁸ A similar romantic view of the small farm characterized many of the leading American revolutionaries as well.⁹ Washington, of course, was anything but a small farmer.

The cloaking of one reality in the imagery of another is not restricted to individual heroes. The same can be said of entire historical eras as well. The image of Cincinnatus reflects not only Washington but the general role of images drawn from the classics, especially the Latin classics, to illustrate the moral qualities of the revolutionary generation. Classicists have done much to spell out in detail the ways in which classical concepts and images provided the revolutionaries with a vocabulary to articulate their conception of politics.¹⁰ Newspaper articles and pamphlets "with contributions from anonymous citizens writing under the *nom de plume* of Cato, Caesar, Brutus,... and the like," reflected the American desire to identify with the virtuous Roman Republicans.¹¹

⁷Richard Kieckhefer, "Imitators of Christ: Sainthood in the Christian Tradition," in *Sainthood: Its Manifestations in World Religions*, eds. Richard Kieckhefer and George D. Bond (Berkeley: University of California Press, 1988), 1–42 at 31–34.

⁸Livy's goal was to "trace the process of our moral decline" from the high level of the ancient Romans who were poor but virtuous: "Of late years wealth has made us greedy" and lacking moral virtue (Livy, *History*, 30). Virtue required returning to the simple agrarian life of men like Cincinnatus.

⁹Romantic agrarianism is especially linked to Thomas Jefferson: see Darren Staloff, *Hamilton, Adams, Jefferson: The Politics of Enlightenment and the American Founding* (NY: Hill and Wang, 2005), 282–285. Washington remained a symbol of it as well: see Alexandra Kindell, "Washingtonian Agrarianism: Antebellum Reformers and the Agrarian Image of George Washington," *American Nineteenth Century History* 13 (2012): 347–370.

¹⁰See, for example, Richard M. Gummere, *The American Colonial Mind and the Classical Tradition* (Cambridge: Harvard University Press, 1963).

¹¹Alexander Hamilton, John Jay, James Madison, *The Federalist*, intro. Edward Mead Earle (NY: Modern Library, 1937), ix.

Eran Shalev has developed this concept in a more sophisticated fashion, asking: were the Americans expressing the “truths of antiquity dressed in an American guise, or those of America dressed in togas?”¹² There is a paradoxical quality to the revolutionaries’ identification with the ancient republican tradition. While they did create a republic and they certainly praised the virtues associated with ancient agrarian republics, they did not seek to create a government headed by annually elected consuls, to re-create the Roman Senate, to base the new government on the *comitia centuriata*, or to divide the population into patricians and plebians. In other words, they did not desire to recreate the Roman Republic.

What the revolutionaries demanded as the basis of their polity was a set of principles and institutions that were not ancient at all. They were in fact from medieval Europe and reflected not the practices of the Romans but of medieval feudal society.¹³ This underlying medieval infrastructure of eighteenth-century American political thought is reflected in four fundamental assertions that the colonists made to justify their position. In the first place, they asserted that there could be “No taxation without Representation,” a claim that was derived from the Roman Law principle that *Quod omnes tangit, ab omnibus approbetur*, that is, what affects all must be approved by all. Originally the phrase was not a statement of political principle but “originated in the law concerning guardianship. Where multiple guardians exercised *tutela*, it could not be dissolved without the consent of all.”¹⁴ In other words, the phrase dealt

¹²Eran Shalev, “Ancient Masks, American Fathers: Classical Pseudonyms During the American Revolution and Early Republic,” *Journal of the Early Republic* 23 (2003): 151–172 at 153.

¹³The term feudal is employed as a matter of convenience and convention, although medievalists would prefer not to employ it: see Elizabeth A.R. Brown, “The Tyranny of a Construct: Feudalism and Historians of Medieval Europe,” *American Historical Review* 79 (1974): 1063–1088; Susan Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford: Clarendon Press, 1994), 1–16.

¹⁴Bruce Braisington, “‘A Divine Precept of Fraternal Union’: The Maxim *Quod omnes tangit* in Anglo-American Thought to the Ratification of the Constitution,” in James Muldoon, ed., *Bridging the Medieval-Modern Divide: Medieval Themes in the World of the Reformation* (Ashgate: Burlington, VT, 2013), 205–223 at 205, n.2. See also Gaines Post, “A Romano-Canonical Maxim, *Quod omnes tangit*, in Bracton and Early Parliaments,” *Studies in Medieval Legal Thought. Public Law and the State, 1100–1322* (Princeton: Princeton University Press, 1964), 163–238; Peter Landau, “The Origin of the Regula

with private law not with constitutional issues. The phrase had received a great deal of discussion and application in the Middle Ages when lawyers picked it up and employed it in their discussions of the relations between bishops and their cathedral chapters and later kings and their subjects. When a ruler sought to act beyond the boundaries of his traditional jurisdiction he required the consent of those who would be affected by his action.

In the second place, in order to implement the claim that a king required consent to some actions, the American colonists demanded recognition of their right to participate in their own governance, that is, the right either to places in the English Parliament or to a Parliament of their own, and not be subject to laws and taxes imposed by an English Parliament in which they had no direct representation. Here again, the colonists were demanding rights that had come into being during the Middle Ages, not in the ancient world. The writing down of traditional customs, fixing them so that the king for example could no longer manipulate them to his own advantage, meant that changes had to be negotiated.

Magna Carta (1215) was the classic illustration of the written text to which the colonists could appeal to defend their claims. In the third place therefore, the colonists demanded what they called the ancestral rights identified with Magna Carta, a vague claim not always articulated in detail but carrying a powerful image. In a broader sense, they sought what James Otis described as our “rights as men and freeborn British subjects” and they appealed to various charters and other legal documents to support their position.¹⁵ Here again, in making a claim to rights they were acting in a way alien to Roman practice but central to medieval political practice.¹⁶

juris ‘Quod omnes tangit’ in the Anglo-Norman School of Canon Law during the Twelfth century,” *Bulletin of Medieval Canon Law* 32 (2015): 19–35.

¹⁵James Otis, “The Rights of the British Colonies Asserted and Proved,” *Pamphlets of the American Revolution, 1750–1776*, 4 vols., ed. Bernard Bailyn (Cambridge: Harvard University Press, 1965), I: 419–470 at 444. Otis’s career exemplified the dilemma that the colonists faced in making their case: see Richard A. Samuelson, “The Constitutional Sanity of James Otis: Resistance Leader and Loyal Subject,” *The Review of Politics*, 61 (1999): 493–523.

¹⁶The concept of rights is the subject of a great deal of debate among medievalists. For an introduction to this debate see Brian Tierney *The Idea of Natural Rights* (Atlanta, GA: Scholars Press, 1997) and his *Liberty & Law: The Idea of Permissive Natural Law*,

Finally, the colonists were asserting claims that were based on the constitutional history of England and the British Empire as evidenced in royal proclamations, parliamentary statutes, and longstanding traditions and practices. This in turn generated the fourth assertion, namely that the relation of the colonists to the king of England was based on contract as demonstrated in the colonial charters. Here again, there was no ancient precedent for such a claim but there were numerous medieval precedents for it.¹⁷

In claiming their rights the colonists were not articulating principles from the ancient world even when these claims were drawn from Roman law and expressed in latin. For example, even though consent to laws affecting them was expressed originally in terms of Roman law, it was Roman law as developed and understood by medieval writers who applied the phrase to the political order. Although the revolutionaries often clothed their demands in classical Roman republican language and incarnated this language in statues and in the architecture of the city of Washington, they were calling for a governmental structure that was essentially medieval in origin, not ancient. The language and images drawn from the ancient world masked the medieval origins of political regime that the colonists sought to establish.

Were the colonial polemicists aware of the paradox when they composed their pamphlets and wrote their essays for newspapers? The answer to this questions lies in the eighteenth-century American understanding of the Middle Ages, an understanding rooted in the hostile critique of the Middle Ages that Italian Renaissance humanists, Protestant Reformers, and Enlightenment philosophers had generated over several centuries. While there were important differences among these schools of thought, on one point they were in profound agreement. They all agreed that the medieval era was an age of intellectual, spiritual, and

1100–1800 (Washington DC: Catholic University of America Press, 2014). See also Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas* (NY: Continuum, 2005). For a discussion of this debate: see Nederman, 29–48, 99–121.

¹⁷ See Fritz Kern, *Kingship and Law in the Middle Ages*, trans. S.B. Chimes (Oxford: Blackwell, 1939), 196. He argued that contract theory was not originally medieval, although kings were bound to adhere to the law and could be deposed if they failed to do so.

moral collapse, useful only as a source of examples of artistic, spiritual, and political corruption.

The Italian humanists were the earliest to decry the evils of the Middle Ages. The poet and essayist Petrarch (1304–1374) may have been the first humanist scholar to label the Middle Ages as dark, an image that was to become widely used. Two centuries later, Giorgio Vasari (1511–1574) began his famous collection of biographies of Renaissance artists with a description of the world that preceded the rebirth of art that began with Cimabue (1251–1302), a description that neatly summarized the Renaissance view of the Middle Ages.

With Rome's fall the most excellent craftsmen, sculptors, painters, and architects were likewise destroyed, leaving their crafts and their very persons buried and submerged under the miserable ruins and the disasters that befell that most illustrious city.

With a zeal that paralleled the Protestant Reformers' condemnation of the medieval Church, Vasari went on to explain that it was not only the coming of the barbarian tribes that destroyed the Roman cultural tradition: "But what was the most infinitely harmful and damaging to the above-mentioned professions ... was the fervent zeal of the new Christian religion" that destroyed "all the marvelous statues, sculptures, paintings, mosaics, and ornaments of the false pagan gods" and all the statues honoring "illustrious persons" who were the ornaments of ancient Rome. The result was not only the destruction of ancient pagan religion but the disappearance of the body of artists and craftsmen that had produced artistic works associated with it.¹⁸

Some Protestant Reformers would not agree with Vasari's criticism of the medieval Church's destruction of ancient artwork, there being a strong iconoclastic streak in early Protestantism. They would no doubt approve that practice. Like the humanists, the Protestant Reformers identified the Middle Ages with darkness that gave way to the light of the Reformation. For Vasari's English contemporary John Foxe (1516–1587), the author of the great Protestant history of the English Church, John Wyclif (1330–1384) was "the morning-star" of the Reformation,

¹⁸Giorgio Vasari, "Selections," *The Italian Renaissance Reader*, ed. Julia Conaway Bondanella and Mark Musa (NY: Meridian, 1987), 385–386.

the first hint of the light that was to illuminate true Christianity and bring it out of papal darkness.¹⁹

The theme of the medieval darkness now being replaced by the new enlightened era appeared in a number of ways in the eighteenth century. The leading intellectuals, those who created the Enlightenment, continued to condemn the Middle Ages as an age of intellectual and spiritual darkness. One of the most famous depictions of this contrast appeared in Gibbon's description of the moment that inspired him to write his history of the fall of the Roman world. On March 15, 1764, as he wrote, "I sat musing amidst the ruins of the capital, while the barefooted friars were singing vespers in the temple of Jupiter, that the idea of writing the decline and fall of the city first started to my mind."²⁰ Vespers is the service that comes in the late afternoon, as the sun begins to fade and darkness comes. Gibbon and his contemporaries represent the light that has now come upon the world, clearing away the friars, vespers, and the looming darkness.

Eighteenth-century Americans were therefore heirs to a three-fold tradition that saw the Middle Ages as a period of darkness and destruction, the Dark Ages, that ended as the light of modernity shone forth from the Renaissance, the Reformation, and the Enlightenment, illuminating the darkness.²¹ It is no wonder then that even though the colonists demanded a package of institutions and rights that were clearly medieval in origin, indeed, even the concept of rights, natural and contractual, was largely medieval, they could not identify them as such, because that would be to see something positive in an era that by definition contained

¹⁹John Foxe, *The Acts and Monuments*, ed. Stephen Reed Cattley, 8 vols. (R.B. Seeley and W. Burnside: London, 1841), 2: 792. Emily Michael has suggested that Wyclif may also have been the "morning star" in the development of science as well: see her "John Wyclif on Body and Mind", *Journal of the History of Ideas* 64 (2000): 343–360, esp. at 344 and 358. See also Stephen Lahey, *John Wyclif* (Oxford: Oxford University Press, 2009).

²⁰Edward Gibbon, *The History of the Decline and Fall of the Roman Empire*, 4 vols. (NY: Harper & Brothers, 1836), 1: xi. There is some doubt about the accuracy of Gibbon's recollection: see John G.A. Pocock, *Barbarism and Religion*, 5 vols. (Cambridge: Cambridge University Press, 1999), 1: 283–284.

²¹Petrarch (1304–1374) seems to have initiated the practice of associating the Middle Ages with darkness: see Theodor E. Mommsen, "Petrarch's Conception of the 'Dark Ages'", *Speculum* 17 (1942): 226–242, esp. 228–229. This article has been reprinted in his *Medieval and Renaissance Studies*, ed. Eugene F. Rice, Jr. (Ithaca: Cornell University Press, 1959), 106–129 at 106–107.

only darkness, decay, and corruption. Under those circumstances presumably there would be no interest in learning anything about the Middle Ages because it would have no relevance to their situation. It would be easy enough to argue that when Americans asserted “No taxation without representation” or demanded the rights guaranteed in Magna Carta they were asserting claims that had long been separated from their historical origins and transformed into abstract principles, with natural law or with a vague immemorial English tradition.²² While it would be easy to stop at this point, there is more to be said, especially about knowledge of the Middle Ages.

In spite of the well-known aversion of advanced eighteenth-century figures to the medieval world, the theme of this book is the knowledge held by eighteenth-century Americans about the Middle Ages, how they obtained that knowledge, and how they employed that knowledge in the polemical warfare that preceded the American Revolution. The central figure in this story is John Adams whose extensive writings in the decade before the Revolution drew heavily upon the medieval history, especially the constitutional history, of England. Adams was not alone in turning to the Middle Ages to find ammunition against the claims of the English government. Adams was writing for an audience that expected to hear arguments about politics that drew upon the history of England.

Adams presented his views on the constitutional history of the British Empire in two series of essays that he published in newspapers in the decade preceding the American Revolution. The first series, four essays published in 1765, in response to the Stamp Act, were subsequently published as a small volume, *A Dissertation on the Canon and the Feudal Law*. The second series, a dozen essays (1774–1775) that Adams published under the name *Novanglus*, was a response to a series of essays defending the claim of the English Parliament to legislate for the American colonies by his friend Daniel Leonard (1740–1829) writing as *Massachusettensis*.²³ Adams’s essays contained a great deal of information

²²John G.A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge: Cambridge University Press, 1957–1987), 30–33.

²³The modern scholarly edition of the *Dissertation*, published as part of the Adams Papers project, is in the *Papers of John Adams*, ed. Robert J. Taylor, 4 vols. (Cambridge: Belknap Press, 1977–1979), 1: 106–128. That edition will be cited as *Papers*. The *Dissertation* was published in *The Works of John Adams*, ed. Charles Francis Adams, 10 vols. (Boston: Little, Brown, 1850–1856), 3: 447–464. This text has been reprinted in

about medieval English constitutional development although poorly organized and presented as his opponent Daniel Leonard and others observed.²⁴ The reader who takes the time to probe these materials will discover that within this mass of work are the basic materials for constructing a history of the British Empire that supports the colonists' claims against Parliament. In the first series of essays Adams discussed the Norman Yoke, the harsh rule imposed on the English by William the Conqueror in 1066. For him, the history of England since 1066 was the history of resistance to the yoke and the re-assertion of English liberty. In the "*Novanglus*" essays Adams discussed the claims of Parliament's legislative authority over the colonies in terms of the yoke, now in the form of Parliament.

Such historically based arguments were a staple of American colonial political debate just as they had been traditionally a part of English political debate. Many of the pamphlets that Adams's contemporaries produced in the period from the Stamp Act of 1763 to the outbreak of the Revolution employed materials from the history of the Middle Ages that Adams used. Those who defended the British government in the polemical warfare also drew upon the experience of medieval England to explain why the British government was in the right. Remove medieval materials from the debates about relations between the colonies and England and much of the point of the political debate that preceded the conflict is lost. In effect Adams and many of the other polemicists who entered the lists in the decade before Lexington and Concord were writing their versions of the constitutional history of the British Empire to defend their position on the relation between the American colonies and England. It was also possible, however, to deny that this constitutional history had any relevance to the contemporary political struggle. Daniel Leonard, whose essays defended British imperial policy toward the colonies, made this precise point. Nonetheless, Adams and those in his camp looked to the historical record to support their case. This is not to say that they were always factually correct when they employed medieval

the *Revolutionary Writings of John Adams*, ed. C. Bradley Thompson (Indianapolis, IN: Liberty Fund, 2000), 21–35.

²⁴On Adams as a writer: see Zoltán Haraszti, *John Adams & the Prophets of Progress* (Cambridge: Harvard University Press, 1952; reprinted, NY: Grosset & Dunlap, 1964), 46–48.

materials or that they did not carefully edit the materials they quoted. It does mean however that they thought in historical terms, terms that must be understood if we are to understand their arguments.²⁵ In brief, the polemical war that preceded the Revolution was a battle of competing histories of the empire.

Why have scholars not paid more attention to the place of medieval history in the thoughts of eighteenth-century Americans? Much of the reason lies in the structure of scholarly endeavor. Specialists in various aspects of intellectual history have considered the role of the particular aspect of intellectual history that interests them in colonial and revolutionary America. Scholars interested in the French Enlightenment have discussed the place of the *philosophes* in shaping the American mind.²⁶ Other historians, specialists in seventeenth-century English politics, have pointed to the importance of seventeenth-century political debates in the formation of the eighteenth-century American political outlook.²⁷ Specialists in the Scottish Enlightenment and in ancient history have pushed the claims of their respective historical periods in the shaping of the American revolutionary outlook.²⁸ Recently, David J. Bederman

²⁵John Phillip Reid has pointed out the difference between the historians' use of evidence and what he terms "forensic history": see his *Constitutional History of the American Revolution*, abridged edition (Madison: University of Wisconsin Press, 1995), 59–60.

²⁶The literature on the relationship between the Enlightenment and the American Revolution is extensive: see Henry F. May, *The Enlightenment in America* (New York: Oxford University Press, 1976) and Paul M. Spurlin, *The French Enlightenment in America* (Athens, Ga.: University of Georgia Press, 1984).

²⁷See, for example, Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge: Harvard University Press, 1959); H.T. Colbourn, *The Lamp of Experience* (Chapel Hill: University of North Carolina Press, 1965; reprinted, NY: Norton, 1974); J.R. Pole, *Political Representation in England and the Origins of the American Republic* (London: Macmillan, 1966; reprinted, Berkeley: University of California Press, 1971); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press, 1967, 1992); Douglass Adair, *Fame and the Founding Fathers* (New York: Norton, 1974; reprinted, Indianapolis: Liberty Fund, 1998); J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975); J.G.A. Pocock, *The Ancient Constitution*.

²⁸See Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City NY: Doubleday, 1978). Two important contributions by classicists on the place of classical materials and ideals in the work of the Founding Fathers are: Richard M. Gummere, *The American Colonial Mind and the Classical Tradition; Essays in Comparative Culture* (Cambridge: Harvard University Press, 1963); and Meyer Reinhold, *The Classical Pages: Classic Reading of Eighteenth-Century Americans* (University Park PA: Pennsylvania

published a forceful discussion of the importance of the classical tradition on the generation that produced the Constitution that illustrates the point. In doing so, he completely overlooked the entire Middle Ages, leaving the impression that the eighteenth-century readers read the ancient texts directly without any awareness of the fact that these texts had been copied, read, and commented upon for over a millennium.²⁹

Traditionally, on their side medievalists rarely moved beyond the fifteenth century to consider the implications of medieval thought and institutions in the modern world, although there were suggestions that they would find familiar ideas in early modern writings. One of the most important such suggestions came in the massive work of R.W. and A.J. Carlyle, *A History of Mediaeval Political Theory in the West*. The sixth and final volume (1936) spanned 1300–1600, ending on the note that the political struggles of the seventeenth and eighteenth centuries were a conflict between medieval theories of representation and modern theories of absolutism.³⁰ The Carlyles also pointed their readers to J.W. Allen's recently published book on sixteenth-century political thought which complemented their work, although there were significant differences as well.³¹ Allen opened with a blunt statement of the importance of the medieval political tradition. "It is an error to suppose that the sixteenth century saw the development of much that was significantly new in political philosophy." He went on to assert that throughout "the century, except at least in Italy, political thought remained essentially medieval in character."³² One might have expected that these works would have encouraged further examination of early modern political

State University Press, 1975). For a thorough survey of the literature on the classical tradition in America including criticism of it: see Nicholas P. Cole, "America and Ancient and Modern Europe" in *Thomas Jefferson, the Classical World, and Early America*, eds. Peter S. Onuf and Nicholas P. Pole (Charlottesville: University of Virginia Press, 2011): 171–192; see also Peter Thompson, "Aristotle and King Alfred in America", *ibid.*, 193–218.

²⁹David J. Bederman, *The Classical Foundations of the American Constitution* (Cambridge: Cambridge University Press, 2008).

³⁰R.W. Carlyle and A.J. Carlyle. *A History of Mediaeval Political Theory in the West*, 6 vols. (Edinburgh and London: William Blackwood & Sons, 1903–1936), 6: 524–525.

³¹Carlyle and Carlyle, 6: x–xi.

³²Allen, J.W. *A History of Political Thought in the Sixteenth Century*, rev. ed. (reprinted, NY: Barnes & Noble, 1960), xiv.

texts with a view to discussing their relation to medieval ideas in some detail. That did not happen, although some important works on early modern political thought did point to some medieval roots. The work of Charles H. McIlwain and Edward S. Corwin is especially important here, because of the way in which they stressed the *longue durée* of medieval thought. Corwin's famous essay, *The "Higher Law" Background of American Constitutional Law* (1928–1929), emphasized a long tradition of legal and political thought and institutions stretching back to the ancient world that undergirded eighteenth-century American constitutional thought.³³ Along with the authorities usually associated with American constitutional thought, Aristotle and Cicero, and the modern influences such as Sir Edward Coke, Hugo Grotius, John Locke, and Sir William Blackstone, Corwin included not only Thomas Aquinas but also the less well-known John of Salisbury (1115–1180) and Isidore of Seville (c. 560–636). The book's title, referring as it does to the "higher law" underlying the American constitution, emphasized a fundamental medieval legal and philosophical doctrine. As he pointed out, the "conception of a higher law pervades the Middle Ages; it also becomes sharpened to that of a code distinctively for rulers."³⁴ The ruler must adhere to the principles of the higher law or face the possibility of deposition. Corwin pointed specifically to the writings of the twelfth-century scholar and bishop John of Salisbury (d. 1180) whose work "foreshadows the distinctive contribution of the Middle Ages to modern political science – the notion of all political authority as intrinsically limited."³⁵

The work of Charles H. McIlwain developed the concept of the connection between medieval and modern political thought in terms of constitutionalism, that is the notion of limited government: "constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule...."³⁶ From his perspective,

³³Edward S. Corwin, *The "Higher Law" Background of American Constitutional Law* (Ithaca: Cornell University Press, 1955). This was originally published in the *Harvard Law Review* 42(1928–1929): 149–185, 365–409. See also Charles Howard McIlwain, *Constitutionalism Ancient & Modern* (Ithaca: Cornell University Press, 1940; rev. ed. 1947).

³⁴Corwin, 17.

³⁵Corwin, 19.

³⁶McIlwain, *Constitutionalism*, 21. Overall, McIlwain's work stressed the long-term development of political and legal thought. A good deal of his work spanned the period from c. 1250 to the American Revolution; see his *The High Court of Parliament and its*

the polemical wars preceding the American Revolution were about the nature of the English constitution, which was the subject of the series of essays by Leonard and John Adams writing as “*Novanglus*” on the very eve of the Revolution. According to McIlwain, these essays were possibly “the fullest contemporary discussions of the particular point taken up in this chapter - the constitutional relation of realm and dominions” that the polemicists on both sides had produced.³⁷

The work of McIlwain and Corwin was quite general, suggestive more than definitive, stressing theory not institutional development, but emphasizing important continuities between medieval and early modern political thought and practice. The core of the present book is a careful analysis of Adams’s line of argument designed to present in detail his use of medieval history to support his argument that the English Parliament had no constitutional right to make laws for the internal operation of the colonies without the consent of the colonists.

One of the most forceful assertions of the need to pay more attention to the medieval role in shaping early modern political thought came almost seventy-five years ago when an Italian scholar, A. Passerin d’Entreves, teaching at Oxford pointed out the importance of medieval political thought, especially as transmitted through the work of the sixteenth-century English cleric Richard Hooker (1554–1600) on later political thought. Passerin d’Entreves pointed to John Locke whose *Second Treatise on Government* contained a number of references to the “judicious Hooker.” In a brief introduction to the volume, the well-known medievalist F.M. Powicke remarked that the book was designed for the “needs of an Oxford audience, whose acquaintance with the history of political thought is generally confined to selections from the writings of Aristotle, Hobbes, Locke, and Rousseau.”³⁸ As d’Entreves made clear, Locke’s references to Hooker were more than rhetorical flourishes. Hooker was an important figure in transmitting medieval political ideas

Supremacy (New Haven: Yale University Press, 1910; reprinted, Hong Kong: Forgotten Books, 2012).

³⁷Charles H. McIlwain, *The American Revolution: A Constitutional Interpretation* (NY: Macmillan, 1923; reprinted, Ithaca: Cornell University Press, 1958), 138.

³⁸F.W. Powicke, “Introductory Note,” to Alexander Passerin d’Entrèves, *The Medieval Contribution to Political Thought* (Oxford: Oxford University Press, 1939; reprinted, New York: Humanities Press, 1959), vii.

to the modern English world, especially the thought of Thomas Aquinas. Even though eighteenth-century Americans did not recognize or admit it, they were deeply indebted to these medieval ideas by way of Locke and other writers. D'Entrèves was calling not only early modernists to look for the roots of early modern thought in the Middle Ages, but also calling on medievalists to push their research on into the early modern world. There was, however, no widespread response among medievalists to the suggestion that the political thinkers of the early modern world deserved a closer look than they had thus far received from medievalists.

In spite of the general disinterest of medievalists in examining early modern political thought, at the beginning of the twentieth century there was some research being done along those lines, but from an unexpected perspective, the study of the medieval Church, especially the fifteenth-century movement to create a conciliar structure to govern the Christian Church. The great legal historian, Frederic William Maitland (1850–1906) had asserted that:

The medieval church was a state. Convenience may forbid us to call it a state very often, but we ought to do so from time to time, for we could frame no acceptable definition of a state which would not comprehend the church. What has it not that a state should have? It has law, lawgivers, law courts, lawyers.

When the medieval church is regarded as a political organism, as a state, it becomes very interesting. As a whole the constitution of this state may be unique, but there is hardly a feature in it for which we may not find analogies elsewhere. At various points it becomes a model for the constitutions of other and secular states.³⁹

John Neville Figgis, a student of Maitland, summed up Maitland's position tersely: in "the Middle Ages the Church was not a State, it was the State...." Consequently, the great theoretical question that should interest scholars is to understand the "change which substituted the civil for the ecclesiastical authority...."⁴⁰ In other words, so Figgis argued, the

³⁹Frederic William Maitland, *Roman Canon Law in the Church of England* (London: Methuen, 1898), 100.

⁴⁰John Neville Figgis, *Studies of Political Thought from Gerson to Grotius: 1414–1625* (Cambridge: Cambridge University Press, 1907); reprinted as *Political Thought from Grotius to Grotius 1414–1625* (NY: Harper & Brothers, 1960), 5.

modern state, secular and territorial, asserted the same claims to power and jurisdiction that the medieval papacy had asserted. For Figgis:

Probably the most revolutionary official document in the history of the world is the decree of the Council of Constance asserting its superiority to the Pope, and striving to turn into a tepid constitutionalism the Divine authority of a thousand years. The movement is the culmination of medieval constitutionalism. It forms the watershed between the medieval and the modern world. We see in the history of the movement the herald of that struggle between constitutional principles, and the claims of autocracy in the State which was, save in this country and the Netherlands, to conclude by the triumph of the latter and the riveting of despotism upon the peoples until the upheaval of the French Revolution.⁴¹

In other words, Figgis placed the great constitutional struggles of the early modern era, by implication the American revolutionary movement as well, within the framework of a constitutional struggle that had begun within the Church in the fifteenth century. He argued that although the conciliar movement failed, the literature that it generated continued to provide materials for later secular debates about constitutional issues. Figgis's argument about the importance of the medieval constitutional tradition seem not to have had much influence on the study of political thought, although it did receive some attention in standard texts on the history of political thought. It did not influence the work of the Carlyles for example, although it apparently did influence George H. Sabine whose popular text on political theory (1st edition, 1937) devoted a chapter to the conciliar movement.⁴²

Since World War II, however, several scholars have taken up Figgis's challenge to conventional understandings of early modern political

⁴¹Figgis, 41.

⁴²George H. Sabine, *A History of Political Theory* (NY: Henry Holt, 1937), Chap. 16. The increased interest in the Maitland and Figgis line of argument in turn generated criticism: see Francis Oakley, "Nederman, Gerson, Conciliar Theory and Constitutionalism: *Sed Contra*," *History of Political Thought*, 16 (1995): 1–19. See also S. Adam Seagrave, "How Old Are Modern Rights: On the Lockean Roots of Contemporary Human Rights Discourse", *Journal of the History of Ideas* 72 (2011): 305–327 and Tierney's response: "Response to S. Adams Seagrave's 'How Old Are Modern Rights? On the Lockean Roots of Contemporary Human Rights Discourse'," *Journal of the History of Ideas* 72 (2011): 461–468.

thought and re-examined the importance of the theory underlying the conciliar movement. That in turn has led to re-consideration of several other aspects of early modern political thought, especially the concepts of natural law and natural rights. This work is associated with Brian Tierney and several of his students, especially Kenneth Pennington, and with the work of other scholars such as Francis Oakley, and the older work of Gaines Post as well. Tierney in particular has argued forcefully for considering the role of medieval constitutional thought and institutions in the development of the constitutional tradition that culminated in the American Constitution.⁴³

What is most significant about the approach of Tierney, Oakley, and those who work in the same vein is that they approach medieval constitutional thought not only through the writings of philosophers and theologians such as Aquinas but by way of the canon lawyers who developed the law of the medieval Church. It was the canonists who developed theories of constitutional, limited government in the course of the rise of the papacy to an active leadership role in the Church in the course of the great reform movement of the eleventh and twelfth centuries. The language of the canonists found its way into the secular political debates of the early modern world as the legal advisors of kings sought to legitimate the claims to power that the monarchs were making by placing them on a legal basis. Gaines Post demonstrated that the canonists and other medieval lawyers developed theories of representation that eventually contributed to the American argument that there can be “no taxation without representation,” a theme that Bruce Braisington has developed further.⁴⁴ Kenneth Pennington has demonstrated that Bodin’s theory of sovereignty was rooted in the medieval legal notion of the independence of kings from imperial jurisdiction, that a king in his own country was the equal of the emperor in his empire, that is, free from any outside power.⁴⁵

In spite of these extensive scholarly efforts directed at demonstrating the ways in which medieval political and legal thought continued

⁴³Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150–1650* (Cambridge: Cambridge University Press, 1982).

⁴⁴Braisington, “A Divine Precept,” 205–223.

⁴⁵Kenneth Pennington, *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993), 276–277.

to inform early modern debates, modernists, historians, and political scientists such as Samuel Beer working on American colonial political thought, paid little attention. The article by Beer that provoked Tierney's response reflected a position that had become obsolete at least among medievalists for many years. To a great extent, the medievalist's and the modernist's approach to American political and legal thought have operated in parallel universes. What was missing was any obvious means of connecting these two universes until in 1984 Donald Lutz suggested another way of approaching the issue of eighteenth-century American knowledge of the medieval experience. He published a quantitative study of the citations in 916 pieces of American political writing between 1760 and 1805. One of the important conclusions of this work was that eighteenth-century Americans were even more influenced by their historical reading than had previously been suspected. In a list of the 36 most often cited authors in American writings in this period, Lutz indicated the presence of several historians, David Hume, William Robertson, and Paul de Rapin-Thoyras, all popular eighteenth-century historians, who ranked 4, 13, and 36 on his list. Interestingly, Lutz concluded that as for John Locke (1632–1704) who ranked number 3 on the list, there "is probably still a tendency to overestimate his importance." Furthermore, the historian David "Hume is more important for theory surrounding the writing of constitutions [than Locke] when it comes to content."⁴⁶ Not only did the writers that Lutz listed write history, they wrote at some length on medieval history. Hume and Rapin-Thoyras, for example, wrote at length about medieval English constitutional history. In addition, two other authors, Sir William Blackstone and Sir Edward Coke, who ranked 2 and 10 on Lutz's list, provided a great deal of information about medieval English constitutional and legal history in their treatises on English law.

The order in which Hume wrote his *History of England* illustrates the way in which these writers approached the history of the Middle Ages.

⁴⁶Donald S. Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *The American Political Science Review*, 78 (1984): 189–197 at 194, 196. More recently, Mark Spencer, has argued that Hume's writing "attracted a significant colonial readership" contrary to the usual scholarly opinion and that John Adams in particular. See his *David Hume and Eighteenth-Century America* (Rochester: Rochester, 2005), 81, 93–96. See also, Edward McNall Burns, "The Philosophy of History of the Founding Fathers," *The Historian* 16 (1954): 142–168.

Having first written two volumes on the Stuart era, Hume then published two volumes on the Tudors and only then produced two volumes on the history of England from the earliest times to the sixteenth century. By writing this history in chronologically reverse order, so to speak, Hume suggested that to understand the Stuarts, one must first understand the actions of the Tudors that set the stage for the crisis of the seventeenth century that destroyed the Stuarts, but in order to understand the problems facing the Tudors, one must go back to the Middle Ages and see the Tudors as part of a long process of political development.⁴⁷ In this way, the medieval experience became important not in itself but as a necessary background for understanding the modern world.

Something of the same approach to the Middle Ages can also be found in Robertson's *History of Charles V* which began with a long essay entitled "A View of the Progress of Society in Europe from the Subversion of the Roman Empire to the Beginning of the Sixteenth Century." As the title indicated, the essay was a survey of medieval history that served as a preface and backdrop to the career of Charles V and comprised approximately one-quarter of the two volumes Robertson devoted to him. In Robertson's opinion, the history of Europe from the fall of the Roman Empire in the West to the reign of Charles V was characterized by "the great steps by which they [the barbarians] advanced from barbarism to refinement" over the course of the centuries. In the early or feudal stage of development, Europeans lived in a "universal anarchy, destructive in a great measure of all the advantages which men expect to derive from society prevailed." By the sixteenth century, however, Europeans had advanced to the point where the "kingdoms of Europe had arrived at such a degree of improvement in the internal administration of government, and princes had acquired such command of the national force which was to be exerted in foreign wars, that they were in a condition to enlarge the sphere of their operations, to multiply their claims and pretensions, and to increase the vigour of their efforts."⁴⁸ The work of these authors emphasized the development of

⁴⁷Volumes 5 and 6 were published in 1754 and 1756, volumes 3 and 4 in 1759, and volumes 1 and 2 in 1761.

⁴⁸William Robertson, *History of the Reign of Charles the Fifth*, 2 vols. (London: George Routledge, 1878), 1: 13, 17, 115. Adams derived his definition of feudalism from William Robertson, *The History of Scotland*, 3 vols. (London: T. Cadell and W. Davies, 1809), I: 216.

modern Europe out of the Middle Ages instead of seeing the modern world as resulting from an abrupt rejection of the medieval past.

The quantity of information about medieval history that was available to eighteenth-century Americans has not been adequately appreciated. In the first place, it appears that as the colonial Americans had little use for the Middle Ages, American historians have assumed that they knew little or nothing about the Middle Ages. In the second place, because the Middle Ages were seen only as preparatory to the modern world, there were no histories of the medieval period as such available to Americans. The history of the Middle Ages was as it were cloaked within other works, such as those of Hume, Rapin-Thoyras, and Robertson. Finally, eighteenth-century Americans often divided history into two periods, ancient and modern, not three, ancient, medieval, and modern, as twentieth-century scholars are accustomed to dividing it, so that medieval history was subsumed under the rubric of modern history.⁴⁹ In 1771, for example, when a friend asked Thomas Jefferson to “form a catalogue of books amounting to about 30.lib.sterl.,” Jefferson divided his selections under a number of headings. Historical works were simply listed as “antient” or “modern.” Under modern history, Jefferson listed two works by Robertson, *The History of Scotland* and *The History of Charles V*. The former work contained an extensive history of medieval feudalism, thus providing additional information about the Middle Ages for eighteenth-century Americans though not under the heading of medieval history. Jefferson also recommended the purchase of Hume’s *History*, so that without recommending a single book that contained the words medieval history or history of the Middle Ages in its title, Jefferson recommended to his correspondent the equivalent of three good-sized volumes dealing with the Middle Ages. Furthermore, he also suggested the purchase of Blackstone’s *Commentaries* as well, thus providing the reader in his proposed library an important source of information about the medieval development of the English constitution.⁵⁰

⁴⁹ See, for example, Alexander Fraser Tytler, *Elements of General History, Ancient and Modern*, new ed. (London: Scott, Webster, and Geary, 1813), 227. The first edition was 1801.

⁵⁰ *The Papers of Thomas Jefferson*, 27 vols., ed. Julian Boyd (Princeton: Princeton University Press, 1950–1997), vol. I, 1760–1776), 80. The division of history into ancient and modern was also to be found in the great French *Encyclopédie* which began to appear in 1751: see Nelly Schargo Hoyt, *History in the Encyclopédie* (New York: Columbia University Press, 1947), 52.

These volumes dealing with aspects of medieval history were all published within a few years of Jefferson's letter and were part of what one historian had termed "the vogue of historical books between 1750 and the outbreak of the French Revolution [that] was as great as the vogue of poetical literature in the age of Shakespeare or of the novel in the age of Scott."⁵¹ Robertson's *History of Scotland* appeared in 1759 and his life of Charles V in 1769. Hume's *History* appeared between 1754 and 1761 and Blackstone's *Commentaries* between 1765 and 1769. When Jefferson was selecting volumes for the proposed library, his historical selections provided his reader with both ancient classics and current popular favorites. That these volumes contained a good deal of information about the Middle Ages has been overlooked by twentieth-century scholars but was no doubt obvious to Jefferson. It is worth noting at this point that Jefferson himself participated in the interest in Anglo-Saxon studies, suggesting that Saxon be the official language of the United States.⁵²

Another reason for neglecting eighteenth-century American awareness of the Middle Ages is the fact that the eighteenth-century intellectual world was still reverberating from the debate between Ancients and Moderns, a debate that had roiled English and continental intellectual life from about 1690 to 1740. This debate revolved around the relevance of classical learning for modern men. Was it true that the "best, the only political education, is a training in the classical authors" and that "Latin and Greek are the keys to a treasure chest of wisdom and examples, unmatched by anything afterward?" In a sense, this debate was a continuation of a debate that had begun in the Renaissance and that flared up periodically, usually in connection with "challenges to the classical curriculum."⁵³ In this debate the medieval period is of no great importance.

⁵¹J.B. Black, *The Art of History* (London: Methuen & Co., 1926; reprinted, New York: Russell & Russell, 1965), 14.

⁵²Stanley R. Hauer, "Thomas Jefferson and the Anglo-Saxon Language," *PMLA* 98 (1983): 879–898. Jefferson's discussion of Anglo-Saxon government provides the details that fill out Adams's sketchy references to the importance of the Anglo-Saxon period: see David N. Mayer, *The Constitutional Thought of Thomas Jefferson* (Charlottesville: University of Virginia Press, 1994), 12–20.

⁵³Joseph M. Levine, *The Battle of the Books: History and Literature in the Augustan Age* (Ithaca: Cornell University Press, 1991), 5.

One area in which the debate between ancients and moderns did, however, contribute directly to eighteenth-century English and American thought was the discussion of Anglo-Saxon England before 1066. The publication of an English translation of William Camden's *Britannia* (originally published in Latin in 1586) in 1610 sparked extensive research into pre-conquest England. Bede's history of the English Church, the *Anglo-Saxon Chronicle*, and other sources appeared in modern English editions.⁵⁴ In addition, there was increased interest in uncovering and preserving the physical remains of the Saxon period.⁵⁵ These materials contributed to shaping the debate about the impact of the Norman Conquest on English society, first in the course of the English Civil War of the mid-seventeenth century and then in the early stages of the American Revolution. As Joseph Levine has pointed out, however, in spite of the high quality of this early scholarly examination of the Saxon world "the gathering forces of *anciennoté* were finding it more and more difficult to sustain an enthusiasm for erudition of any kind, but especially for medieval learning." The Middle Ages remained "the 'Ages of Ignorance' ... when much was lost or corrupted."⁵⁶

The importance of the medieval period in the intellectual outlook of the *philosophes* of the eighteenth century was noted by Lionel Gossman two decades ago. Assessing the importance of the voluminous historical writings of Jean-Baptiste de La Curne de Sainte-Palaye (1697–1781), Gossman pointed out that his work "stands at the center of a vast literature of European proportions through which a certain image of the Middle Ages was propagated in the eighteenth century and passed on to the early Romantics of the succeeding century."⁵⁷ Sainte-Palaye's influence was not restricted to France. He played an important role in encouraging interest in the Middle Ages in England and Scotland where Gibbon and Robertson, among others, reflected his influence.⁵⁸ Given the strong intellectual links between the Americans and their European

⁵⁴Concerning printed editions of Bede's *History*, see Bede, *Ecclesiastical History of the English People*, eds. Bertram Colgrave and R.A.B. Mynors (Oxford: Clarendon Press, 1969), lxx–lxxiii.

⁵⁵Levine, 328–336.

⁵⁶*Ibid.*, 374.

⁵⁷Lionel Gossman, *Medievalism and the Ideologies of the Enlightenment* (Baltimore: Johns Hopkins University Press, 1968), 327.

⁵⁸*Ibid.*, 329–330.

intellectual counterparts, it should come as no surprise that eighteenth-century Americans shared the European interest in medieval history. It would be more surprising if they did not.

The role of this medieval history was to provide a backdrop against which the advances made in the modern world could show up clearly against the darkness of the preceding era. The barbarism and superstition of the Middle Ages were contrasted sharply with the humanity and rationalism of the modern world. The corruption of the medieval church's brand of Christianity paved the way for the Protestant Reformation and, paradoxically, for the revival of reason. The medieval struggle for political liberty against the claims of royal absolutism justified the Civil War and the Glorious Revolution of the seventeenth century. To appreciate the significance of the advances made in the religious, political, and social realms it was necessary to know in some detail the evils of the medieval world that were overcome in the modern era.

This approach to the Middle Ages reached its fullest development in text books and document collections for introductory survey courses in American history. One such collection of materials relating to the *Intellectual Origins of American National Thought* opened with "The Classical Heritage" containing about a dozen excerpts from ancient writers such as Aristotle, Cicero, Tacitus, and Plutarch and ended with material from St. Augustine and from Justinian's code of Roman law. The editor then moved to "The English Tradition to 1700" and began with excerpts from the writings of Thomas More. The only purely medieval document that the editor provided was Magna Carta. The writer might have included some material on the development of Parliament, on charters for new communities, perhaps some excerpts from Bracton and other legal writers. What he obviously overlooked were the historians whose writings Adams and his contemporaries read, historians such as Machiavelli (Lutz, no. 28) and Guiccardini who wrote the history of the Italian city-states and David Hume and Paul Rapin-Thoyras who wrote extensive histories of England.⁵⁹ All of these writers provided a great deal of information about medieval Europe.

Thus, while John Adams and his contemporaries may well have scorned the Middle Ages, they did so not out of ignorance but out of

⁵⁹Wilson Ober Clough, ed., *Intellectual Origins of American National Thought*, 2nd rev. ed. (NY: Corinth Books, 1961).

knowledge, if only knowledge of a limited kind. They read and discussed and cited the fashionable histories and debated eighteenth-century constitutional issues in terms of the medieval and early modern development of the English constitution. We know, for example, that Adams read Rapin-Thoyras, Hume, Robertson, Coke, and Blackstone because he cited them in his writings. Careful reading of the writings of Adams and his contemporaries will no doubt reveal even more borrowings from these historians than the citations indicate. The examples from the medieval past were so much a part of the political vocabulary of eighteenth-century America that they were used without always identifying the source, because the writers simply took for granted the knowledge of the sources, at least in general, among the audience for which they wrote.

In stressing the importance of medieval notions of government and of the legal and political structures that institutionalized these ideas and the role they played in shaping the American colonial conception of the nature of the British Empire and the colonists place within it, the present book and others like it are reviving a line of research that ran from the late nineteenth century through to about 1950. Randolph G. Adams's *Political Ideas of the American Revolution* first published in 1922 for example was "the first book ever devoted solely to the subject."⁶⁰ In the Preface to the second edition of the book (1939) Adams observed that R.L. Schuyler and C.H. McIlwain had been preparing "books on the same subject which my little volume rather anticipated." He specifically pointed to McIlwain's *The American Revolution: A Constitutional Interpretation*, that appeared in the following year.⁶¹

Randolph Adams's interest in colonial thought stemmed from his interest in the contemporary debates about the nature of the British Empire, whether it should be "a huge superstate" or should it move toward "the disintegration of the empire into a commonwealth of nations." This also had implications for those interested in the efforts at creating some form of "league or association of nations" because of the fear that such a structure might create "the great Leviathan-like

⁶⁰Merrill Jensen, "Commentary," Randolph G. Adams, *Political Ideas of the American Revolution*, 3d ed. (NY: Barnes & Noble, 1958), 5–31 at 5.

⁶¹Adams, *Political Ideas*, 35. McIlwain and Schuyler later engaged in a scholarly controversy that involved the nature of imperial citizenship: see Harvey Wheeler, "Calvin's Case (1608) and the McIlwain-Schuyler Debate," *American Historical Review* 61 (1956): 587–597.

state of states.”⁶² Understanding the experience the eighteenth-century American colonists faced would therefore provide some insights for Randolph Adams’s contemporaries. In the following year McIlwain’s *The American Revolution* appeared. It had been finished but not published before Adams’s book appeared. McIlwain appreciated Adams’s book as providing “corroboration of the views set forth here by the work of another student who has reached the same general conclusion from another starting point and by a wholly different path.” Adams worked from a “political” perspective while McIlwain worked from a “constitutional” perspective. They agreed, he concluded, “that the central problem of the American Revolution was the true constitution of the Empire.”⁶³ McIlwain argued that one “of the most interesting features of the British Empire ... is its lack of constitutional uniformity.”⁶⁴ Each member of the empire was acquired in a unique way although there were some commonalities. The acquisition of Ireland in particular was often compared and contrasted to the acquisition of the lands in North America, a line of argument that required careful analysis of the history of the English in Ireland that began in the late twelfth century. McIlwain’s emphasis on the constitutional history of the empire required knowing a good deal of medieval history, particularly legal materials related to the acquisition and governance of the various distinct elements of the empire and also the history of the English Parliament and its role, or its lack of a role, in colonial development. The work of Adams, McIlwain and others in the 1920s and 1930s was suggestive and could have led to a fuller discussion of the role of medieval thought and experience in the shaping of the American outlook on the eve of the revolution.⁶⁵ It was not, however, followed up in detail. For the most part, the discussion of the European influence on the Americans was limited to the study of seventeenth and eighteenth-century writers, especially John Locke and his theory of the social contract and to several French philosophes such as Montesquieu and Rousseau. The result was that

⁶²Randolf Adams, 40.

⁶³McIlwain, *American Revolution*, v–vi.

⁶⁴*Ibid.*, 78.

⁶⁵These authors and others formed what is known as the imperial school of colonial historians: see Max Savelle, “The Imperial School of American Colonial Historians,” *Indiana Magazine of History* 45 (1949): 123–134.

“Constitutional history, once the dominant discourse in the profession, in the second half of the twentieth century was increasingly marginalized subfield.”⁶⁶

Subsequently, there was a revival of interest in earlier influences on the revolutionary generation that Gordon Wood has traced to the revival of interest “in the intellectual character of the Revolution” in the work of Edmund and Helen Morgan and then to a series of scholarly works on English and American political thought that included the work of Bernard Bailyn and that of Wood himself. A major theme of this new work, according to Wood, “seems to be reverting to an older nineteenth-century emphasis on America’s debt to Europe’s intellectual heritage.”⁶⁷

This interest was paralleled by a revival of interest in constitutional history. The dominant figure here among historians is Jack P. Greene whose interest in the constitutional roots of the American revolutionary movement, what he termed “the classic question of the causes of the American Revolution” in spite of the fact that the reigning approach to studying the Revolution, Bernard Bailyn’s ideological approach, “had closed off serious discussion in that direction.”⁶⁸

Greene also pointed out that although the mainstream of colonial historians was diverted away from constitutional issues, other scholars, lawyers, legal historians, and political scientists were interested. The most important of these scholars according to Greene was John Phillip Reid, a professor of law, who had written extensively “on the legal dimensions of the contest between the metropolis and colonies between 1763 and 1776.” Greene judged Reid’s work “as being of fundamental importance” to understanding the revolutionary movement but “the major historical journals revealed little appreciation of the importance of Reid’s work” and rarely reviewed it. Greene also pointed to several legal historians, “Barbara Black, Thomas Grey, Hendrik Hartog, and William Nelson” who were writing on the constitutional elements of the colonial

⁶⁶Anthony Brundage and Richard Cosgrove, *The Great Tradition: Constitutional History and National Identity in Britain and the United States, 1870–1960* (Stanford: Stanford University Press, 2007), 181.

⁶⁷For a thorough survey of this literature: see Gordon S. Wood, *The Creation of the American Republic 1776–1787* (Chapel Hill: University of North Carolina Press, 1969, 1998), 622–627.

⁶⁸Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge: Cambridge University Press, 2011), xi.

debates. Taken as a whole, the work of these authors, though generally ignored by academic historians, “called into question the adequacy of the reigning paradigm and constituted a powerful reinterpretation of the pre-Revolutionary controversy.” Above all, these authors demonstrated “the centrality of legal and constitutional concerns in the politics of pre-Revolutionary America” and “the legitimacy, that is, the quintessential Englishness, of American constitutional arguments in the pre-Revolutionary debates.”⁶⁹

The work of John Adams provides a good subject for considering the American debt to European constitutional and legal thought in general and to medieval constitutional thought and institutions in particular. He was after all, a lawyer and in his historical writings being dealt with here he thought as lawyers think, as an advocate presenting a case. He presents in the best light possible the evidence available to him and does his best to disprove contrary evidence. Unlike the academic historians, he was not required to present all sides of the case, only the evidence that supported his position. It was for the judge, or in this case the troubled colonist, to see the matter from both sides and then to make a judgment.

Not only was Adams actively involved in the revolutionary movement from its earliest days and through the Revolution, he wrote extensively on the fundamental issues involved. This is not to say that Adams was an ideal type of American revolutionary. He clearly was not typical. He was famously ambitious, touchy, sensitive to slights, and, eventually quite concerned that the country that emerged out of the Revolution was not quite what he anticipated.⁷⁰ On the other hand, although he was quite proud of his learning, he was not a closeted scholar. He wrote for newspapers so that he could reach a wide audience, he served on various

⁶⁹Greene, *Constitutional Origins*, xi-xiii. See also his “From the Perspective of Law: Contest and Legitimacy in the Origins of the American Revolution,” *South Atlantic Quarterly* 75 (1986): 56–77.

See, for example: Barbara A. Black, “The Constitution of Empire: The Case for the Colonists,” *University of Pennsylvania Law Review*, 124 (1976): 1157–1211.

⁷⁰Adams’s personality has always attracted a good deal of attention. According to Davis McCullough Adams “could be high-spirited and affectionate, vain, cranky, impetuous, self-absorbed, and fiercely stubborn ...,” and these were only some of his characteristics: see David McCullough, *John Adams* (NY: Simon & Schuster, 2001), 18–19. As for his disillusionment after the war: see Gordon Wood, *The Radicalism of the American Revolution* (NY: Vintage Books, 1991), 366–367.

committees that required that he exchange views with a wide range of individuals, both learned and poorly educated, and he held various offices that required that he deal with voters and officials. He may well have overestimated the educational level and the moral qualities of many of his readers, but this only demonstrates his high expectations of them and of himself.

Adams's first foray into political polemics, a series of newspaper essays that appeared in 1765 and were subsequently published as the *Dissertation on the Canon and the Feudal Law*, demonstrated that eighteenth-century political polemicists continued to rely on medieval materials, images, and language in their writings. These articles were Adams's response not only to the Stamp Act and to the concurrent rumor that the Parliament was also planning to erect a diocese of the Church of England in North America. Adams employed the terms canon and feudal law not in a narrow, technical sense but in a broad way, as symbols of the ecclesiastical and royal tyranny, the Norman Yoke, that, he argued, characterized the Middle Ages and were identified with William the Conqueror and the conquest of England (1066). The Parliamentary party in the course of the English Civil War a century earlier had identified tyranny with the Norman Conquest.⁷¹ His use of these terms in a series of articles destined for a popular audience, the readers of the *Boston Gazette*, suggests something about the importance of examples from medieval history in American political debate. Adams was seeking to reach and to arouse a popular audience, an audience that might not know medieval history in scholarly detail but knew enough to respond to the words canon and feudal law in the way that he wished them to respond. While to twentieth-century readers, the terms canon and feudal law mean little, to a generation that read the kind of histories that Hume, Robertson, and their contemporaries wrote, these terms had an emotionally charged significance. To label the Stamp Act as an act of feudal oppression and to see the appointment of a bishop as an act of ecclesiastical oppression, actions which, if followed by other actions of a similar kind, could lead to a return to the wicked Middle Ages, was a useful polemical device in 1765 when trying to arouse an

⁷¹ *Puritanism and Liberty: Being the Army Debates (1647–9) from the Clarke Manuscripts*, ed. A.S.P. Woodhouse (London: J.M. Dent, 1938, 1974, 1986, 1992), 53, 120, 204. See also Pocock, *Ancient Constitution*, 1957, 1987), 318–321.

American audience. The union of the canon and the feudal law formed the Norman Yoke, the tyrannical government of William the Conqueror imposed on the Saxons in 1066. As we shall see, Adams saw the history of England in terms of a continuous struggle between Saxon liberty and Norman oppression so that the colonists were in the place of the Saxons who had lost their liberty to the Normans. It was an image that had played a significant role in the polemics of the seventeenth-century English Civil War with the parliamentary party being the beleaguered Saxons.

Ten years later, in 1774, Adams rejoined the polemical wars preceding the revolution with a series of essays that he wrote under the name *Novanglus*. These essays were a response to a series published under the name *Massachusettensis* which provided a forceful defense of British colonial policy. The author was Daniel Leonard, an old friend of Adams, something Adams did not know that at the time nor for many years after.⁷² As we shall see, the “*Novanglus*” essays did not emphasize the image of the Norman Yoke but the underlying theme of these essays was the threat of the imposition of the yoke.

That eighteenth-century Americans saw history in practical terms, as providing guidance in political and constitutional matters, as philosophy teaching by example, is a cliché. What they wanted was a useful past that would provide instruction for the leaders of the revolutionary society. They saw the past not only as providing warnings about the evils that could befall if they were not alert, oppressive taxation and bishops for example, but also providing evidence of positive goods that their ancestors had gained as well.⁷³ As a result, when the colonists began to demand better treatment from the king and the Parliament, they initially did so in terms of the historic rights of free-born Englishmen, rights they claimed had been guaranteed in Magna Carta.⁷⁴ They wanted what their seventeenth-century English ancestors had defined as the rights provided by the Ancient Constitution, the mythical, even mystical, fundamental law that was supposed to have existed in Saxon England before the

⁷²Adams, *Works*, 4: 5–10, esp. note 1.

⁷³Douglas Adair, *Fame and the Founding Fathers* (Indianapolis: Liberty Fund, 1974–1998), 153–154.

⁷⁴Otis, I: 466.

Norman Conquest in 1066.⁷⁵ This approach to the relations between the colonies and England meant that the Americans placed themselves squarely in the historical tradition of those who defended Saxon liberty against Norman royal absolutism. Thus, the entire English constitutional tradition was relevant to the Americans' defense of their rights. In order to appreciate fully the issues, required a knowledge of Saxon history and of the Norman Conquest, the history of Magna Carta and the development of Parliament, the history of relations between Church and State in medieval England and, curiously, the history of medieval Ireland, England's first overseas imperial conquest. The need to know something about the conquest and settlement of Ireland stemmed from the argument that if Parliament could legislate for Ireland, how could the Americans deny that the Parliament could legislate for them? The Americans identified with the English colonists in Ireland who had argued for an Irish Parliament immediately answerable to the monarch and not subordinate to the English Parliament. The parallels between the Irish and the American colonial situations were well known on both sides of the Atlantic and that history could be employed by either side in the American debate.⁷⁶

Along with parallels between the English experience in Ireland and North America, there were also important contrasts. The colonists rejected arbitrary government in both the Church and the State, that is canon and feudal law, while praising both the good Saxon period of political history and praising the Church before the papacy came to play a dominant role in its direction. As we will see, there was a tendency to divide the medieval experience of England into two stages, a good Middle Ages identified with a kind of Saxon republic, a stage that ended with the Norman Conquest in 1066, a stage that brought the Saxon era to an end and placed the people under the yoke of canon and feudal law. It was this idealized Saxon republic that Americans sought to restore, not the ancient Roman one. The history of the British Empire seen in light of the Norman Yoke included the continuing battle to regain the rights and liberties lost to the Normans.

⁷⁵Pocock, *Ancient Constitution*, 46–47.

⁷⁶The comparison with the situation with Ireland was widely employed in the debates: see Reid, *Constitutional History*, 44–45, 59–60.

American interest in the Middle Ages declined as the Revolution proceeded. As the colonists moved from being English subjects to American citizens, from living under a monarchy to living in a republic, the history of medieval Europe became less relevant and the history of ancient Rome, suitably reworked to fit the American needs, as the story of Cincinnatus demonstrated, took over. For the polemicists who aroused the Americans to revolution, however, it was not Cincinnatus and the Roman republic but medieval English principles that provided inspiration although the colonists did not identify any individual to represent the positive aspects of the Middle Ages only institutions such as Parliament and documents such as Magna Carta.

Samuel Beer used Thomas Aquinas to present medieval political thought to a modern audience, suggesting that his writings represented the fullest medieval discussion of political thought. The work of Tierney and others such as Oakley has emphasized that medieval political thought was more than the thought of Thomas Aquinas. In an ironic turn, Tierney pointed to the role of the canon lawyers, Adams's *bete noirs* in the development of medieval political and legal thought as they struggled with the problems associated with the structure of the medieval church, known as ecclesiastical constitutionalism.⁷⁷ He has argued that a good deal of what has been seen as the fruit of modern, especially eighteenth-century, political thought is in fact deeply rooted in the medieval legal tradition.⁷⁸ To a much greater extent than has been appreciated, it was medieval lawyers not modern political philosophers who first articulated what we label constitutional thought, and it is to the legal tradition that we must look to find the mainstream of medieval political thought, not Thomas Aquinas.

Alexis de Tocqueville had said something of this sort when he pointed out that since the thirteenth century lawyers have played the leading role in "extending the domination of the kings," as well as, eventually, striving "to restrict that same power," having "played a prominent part in overthrowing the French monarchy in 1789." In the United States, "the lawyers form the political upper class and the most intellectual section of

⁷⁷Oakley, "Nederman, Gerson, Conciliar Theory and Constitutionalism: *Sed Contra*," 2.

⁷⁸Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150–1650* (Cambridge: Cambridge University Press, 1982) and *The Idea of Natural Rights* (Atlanta, GA: Scholars Press, 1997).

society.”⁷⁹ The legal tradition in which these American colonists participated, that is, common law, was in turn historically based and rooted in a particular conception of English legal and constitutional development, especially the medieval phase of that development. Thus, it should not be surprising that a student of medieval legal history would find much that is familiar in American political thought of the revolutionary era. This is not to say that a medievalist’s reading of American political materials will overthrow or radically transform our understanding of American political thought. The goal is more modest than that, to illuminate another layer of what Valerie Flint once described as “mental geology,” that is, the layers of learning and experience that formed the minds of eighteenth-century Americans in order to provide a fuller picture of the American revolutionary generation.⁸⁰

Until recently Adams has been one of the least studied of the founding fathers and much of what has been written on him concerns his family life, especially his wife, and his personality. His political thought has received less attention and it is in his political writings that his historical approach to political development extensively developed.

Scholars who have discussed Adams’s political writings have generally ignored his use of history. For a long time, the only book on the topic was Correa Moylan Walsh’s old (1915) study of Adams’s arguments in support of mixed government and the bicameral system, a mode of government that Walsh believed was now “obsolete, but it was extensively in vogue at the time of the framing of our American constitutions Our State and Federal systems of two chambers and veto-possessing governors or presidents, are remnants of the old theory of mixed government.”⁸¹ Walsh was interested only in Adams’s *Defence of the Constitutions*, the *Discourses on Davila*, and some other post-revolutionary letters because they contained Adams’s arguments for the mixed constitution that balanced classes and functions in a complex set of relationships that would prevent any class from taking control of

⁷⁹Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence, ed. J.P. Mayer (Garden City, NY: Doubleday, 1969), 264–265, 268.

⁸⁰Valerie I.J. Flint, *The Imaginative Landscape of Christopher Columbus* (Princeton: Princeton University Press, 1992), 116.

⁸¹Correa Moylan Walsh, *The Political Science of John Adams: A Study in the Theory of Mixed Government and the Bicameral System* (NY: G.P. Putnam’s Sons, 1915; reprinted, Freeport NY: Books for Libraries Press, 1969), iii.

society. Walsh, “a fervent Progressive” actively involved in early twentieth-century debates according to a critic, “attacked Adams in order to reveal once and for all the obsolescence of natural rights theory and the system of balanced government.”⁸² For him, Adams’s history was of no relevance, an opinion with which Adams’s polemical opponent, Daniel Leonard, agreed. Leonard referred to Adams as basing his position on “arguments drawn from obsolete maxims, raked out of the ruins of the feudal system, or from principles of absolute monarchy,” not useful for understanding “the present constitution of government.”⁸³

To appreciate fully Adams’s use of history and its importance it is necessary to begin with John G.A. Pocock’s *The Ancient Constitution and the Feudal Law*. His goal was to establish “the existence and extent of a ‘language’ of precedent, common law and ancient custom, in which a significant part of English political argument was, for long periods and with important consequences carried on.” This approach was central to the thought of the English Civil War where the image of the Norman Yoke played a significant role in political discussions. As Pocock demonstrated, this mode of thought lasted “far into the eighteenth and nineteenth centuries” In Pocock’s opinion, his work aimed at providing “a picture of one of the most typical and necessary, but by historians one of the most neglected, strands in the thought of the seventeenth-century English: the attempt to understand themselves by understanding their past and their relation to it.” In Pocock’s opinion, during “the sixteenth and seventeenth centuries one of the most important modes of studying the past was the study of the law....”⁸⁴ This is precisely John Adams’s opinion as well.

In the years since Pocock’s work was published Adams’s historical writings have received more attention and his use of history taken more seriously. John R. Howe, Jr. pointed out that:

⁸²Stephen G. Kurtz, “The Political Science of John Adams: A Guide to His Statecraft,” *The William and Mary Quarterly*, 3rd ser. 25 (1968): 605–613 at 607, 609. Progressivists generally opposed the checks and balances tradition as blocking efforts to modernize the federal government: see Peri E. Arnold, *Remaking the Presidency: Roosevelt, Taft, and Wilson, 1901–1916* (Lawrence, Kan.: University Press of Kansas, c. 2009), 7–20.

⁸³Massachusettensis, 226.

⁸⁴Pocock, *Ancient Constitution*, xi, xiii.

Adams' understanding of the American condition was ordered around a cyclical theory of historical development. History ... consisted of the gradual rise and fall of successive empires Initially, the Assyrian and Egyptian empires had flourished. They then succumbed to Greek and Roman supremacy [And the] seat of empire next moved to France, and finally to England.⁸⁵

Here in a secularized form Adams was linking the future of the American colonies to the biblical history of mankind associated with the image of the great statue made of gold, silver, brass, iron, and clay representing the stages of decay of human existence until "the God of heaven [shall] set up a kingdom, which shall never be destroyed ... and shall stand for ever."⁸⁶ This biblical image with its apocalyptic implications was associated with the rise and fall of various ancient empires, ending with the Roman Empire. The immediate consequence of this theory was important for Adams because if "England was on the wane, a new empire must be rising to take her place, and America was the obvious successor."⁸⁷ In taking this position, Adams was linking the American experience to the biblical image.

Having presented briefly Adams's placing of the development of British North America within the framework of imperial rise and fall, Howe moved on to examine the extensive use of history in Adams's later works, especially in the three volume *Defence of the Constitutions* (1786–1787) and the *Discourses on Davila* (1791). He had little interest in the earlier works that will be discussed here and paid little attention to the history underlying the pre-revolutionary works. He judged the *Dissertation on the Canon and the Feudal Law* as primarily a "reflection of his own preoccupations" that provided "an explanation of their heritage and instructions for their own conduct."⁸⁸ The *Novanglus* essays received even less attention and the cause of these essays, Daniel Leonard's *Massachusettensis* essays, has received almost no scholarly interest.

⁸⁵John R. Howe, Jr., *The Changing Political Thought of John Adams* (Princeton: Princeton University Press, 1966), 32–33. On the cyclical theory of empire and its westward movement see Muldoon, *Empire and Order*, 101–108.

⁸⁶Book of Daniel, King James Version (NY: American Bible Society, nd) 2: 37–44.

⁸⁷Howe, 36.

⁸⁸*Ibid.*, 42.

The most extensive but still limited discussion of Adams's use of historical material in his political thought is in C. Bradley Thompson's *John Adams and the Spirit of Liberty*. Rather than dealing almost entirely with Adams's later writings, Thompson began by examining the two major pieces that Adams published before the Revolution, the *Dissertation on the Canon and Feudal Law* and the "Novanglus" essays. Like McIlwain, Thompson saw the struggle as a constitutional one centered on the question of what "was the constitutional structure of the British empire."⁸⁹ The *Dissertation* according to Thompson was written "to restore colonial liberties by appealing to history and sentiment", designed to lead "his audience back to the world of their ancestors...."⁹⁰ As for "Novanglus," Thompson concluded that it "may not have been read by many colonists but it certainly would have provided the most thoughtful and influential American Whigs ... with a seemingly endless reserve of arguments."⁹¹

The present book is a return to the approach of the "imperial school" of American historians, scholars such as Charles M. Andrews and Herbert Osgood, which stressed the continuities between the medieval and early development of England and the development of the North American colonies. Andrews wrote that in the early seventeenth century as the overseas colonies were being established "much that was medieval was running concurrently with the beginning of modern things"⁹² With regard to Adams's use of the term feudal, Andrews observed that "we find it hard to comprehend why in dealing with our colonial history we should need to know anything about the rules of feudal law that appear to be nothing but fossils from a bygone age." Nevertheless, Andrews argued that modern historians have to understand something of that law if they are "properly to interpret life in the American colonies" because "to large numbers of the English people of that time no other system was conceivable."⁹³

⁸⁹C. Bradley Thompson, *John Adams and the Spirit of Liberty* (Lawrence: University Press of Kansas, 1998), 37.

⁹⁰Ibid., 53.

⁹¹Ibid., 79.

⁹²Charles M. Andrews, *Our Earliest Colonial Settlements* (NY: New York University Press, 1933), 31. See Max Savelle, "The Imperial School of American Colonial Historians," *Indiana Magazine of History* 45 (1949): 123-134.

⁹³Andrews, 144.

The starting point for discussing Adams's historical perspective is an analysis of Adams's *Dissertation* focusing on how he used the image of the canon and the feudal laws as the framework for understanding the political crisis of the British Empire resulting from the Stamp Act of 1765. The core of the book is an analysis of Adams's "Novanglus" essays, Adams's response to the *Massachusettsensis* essays of Daniel Leonard in 1774–1775. In these essays, Adams offered a great deal of historical information to support his contention that the English Parliament had no constitutional right to legislate for the internal governance of the colonies. To appreciate what Adams's views were, there is also an analysis of Leonard's essays. These two series of essays reflect two distinct approaches to the problem of empire. While Adams relied heavily on the historical record, Leonard might be termed a political realist who defended the claims of Parliament and the growing British role in governing the colonies as simply the facts of political life, facts that the imperial government would support by force of arms if necessary. As it happened Leonard's realism about the relative strengths of the colonies and the empire was accurate but his prediction about the consequences of the disparity was wrong. As McIlwain pointed out, the two sets of essays present the fundamental constitutional arguments that ultimately led to the American Revolution. They also provide two distinct histories of the British Empire that in turn support the political position each writer took when the Revolution broke out.

We will then look in detail at Adams's use of historical materials and how he shaped them to support his vision of the British Empire. Furthermore, to appreciate the concept of the British Empire that Adams was opposing, there is an analysis of the *Massachusettsensis* essays written by Adams's fellow lawyer and polemicist Daniel Leonard.

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The Norman Yoke—Feudal Law

SINCE the promulgation of christianity, the two greatest systems of tyranny, that have sprung from this original, are the *cannon* and the *feudal* law. The desire of dominion, that great principle by which we have attempted to account for so much good and so much evil, is, when *properly restrained*, a very useful and noble movement in the human mind. But when such restraints are taken off, it becomes an incroaching, grasping, restless and ungovernable power.¹

John Adams framed his history of the British Empire in terms of a continual struggle between republican liberty and feudal and ecclesiastical tyranny. This struggle was the theme of his initial contribution to the war of polemics that preceded the first shots fired in the American Revolution, a series of four articles in the *Boston Gazette* in August and September, 1765. These essays first took shape in a legal discussion

¹John Adams, “A Dissertation on the Canon and the Feudal Law,” *Papers of John Adams*, vol. I, *September 1775–October 1773*, ed. Robert J. Taylor et al. (Cambridge, MA: Harvard University Press, 1977): 103–128 at 112. The modern scholarly edition of the *Dissertation*, published as part of Adams Papers project, is in the *Papers of John Adams*, ed. Robert J. Taylor, 4 vols. Cambridge, MA: Harvard University Press, 1977–1979), 1: 103–128. That edition will be cited as *Papers*. The *Dissertation* was published in *The Works of John Adams*, ed. Charles Francis Adams, 10 vols. (Boston: Little, Brown, 1850–1856), 3: 447–464. This text has been reprinted in the *Revolutionary Writings of John Adams*, ed. C. Bradley Thompson (Indianapolis, IN: Liberty Fund, 2000), 19–35.

group, the Sodality, that he had joined earlier in that year. Over several months members of the Sodality read a number of works dealing with the legal history of feudalism. These included parts of the *Corpus Juris Civilis*, the basic book of Roman law, and commentaries on it by later writers, and works on English law by Henry Holt, Lord Kames, and Sir William Blackstone. In addition the members read William Robertson's *History of Scotland*. Originally, Adams had planned to present a paper on feudal law to the members of the Sodality but the public debate about the Stamp Act and about the coming of a bishop caused him to expand and present his views to a wider audience than the Sodality could provide. Some years later these pieces appeared in a London edition where the publisher, Thomas Hollis, gave them the title by which they are now known, the *Dissertation on the Canon and the Feudal Law*.²

These essays were an angry response to two important issues roiling the political waters in British North America. The first was the Stamp Act (1765) that would place a tax on every piece of paper used in legal matters and on "every paper, commonly called a *pamphlet*, and upon every news paper" and in practice on all forms of paper. The tax was designed to pay the costs of maintaining the British army in North America. The colonists believed that this money was specifically required to support 10,000 British troops stationed along the Appalachian Line to block expansion westward.³ The second cause for Adams writing these essays was the rumor that the Church of England was about to erect a diocese in British North America with its bishop having his seat in Cambridge.⁴

²Adams, "Diary," 1765, *Works*, 2: 146-150; Charles Francis Adams, *Life* [of John Adams], *Works*, 1: 66. On the publication history of the *Dissertation*: see Adams, *Works*, 3: 447. See also James Muldoon, "John Adams, Canon Law, and the Ghost of Thomas Becket" in *Empire and Revolutions* (Washington D.C.: Folger Shakespeare Library, 1993): 235-259, esp. 235-238.

³"The Stamp Act," *Documents of American History*, ed. Henry Steele Commager, 5th ed. (NY: Appleton-Century Crofts, 1949), 53-55 at 53. The fundamental book on the Stamp Act is: Edmund S. Morgan and Helen M. Morgan, *The Stamp Act Crisis: Prologue to Revolution* (Chapel Hill, NC: University of North Carolina Press, 1953). See also John Phillip Reid, *Constitutional History of the American Revolution*, 4 vols. (Madison: University of Wisconsin Press, 1986-1993), Vol. 1: 18, 19, 160-167, 228, 229; Vol. 3: 9-10, 12-13, 34-38, 306-307.

⁴The fundamental book on the question of an Anglican hierarchy in British North America is that by Arthur Lyon Cross, *The Anglican Episcopate and the American Colonies* (NY: Longman, Green, 1902). For the background of Adams's *Dissertation*: see pp. 139-160. See also, Carl Bridenbaugh, *Mitre and Sceptre: Transatlantic Faiths*,

The theme of the essays is tyranny, secular and spiritual, symbolized by the two laws, canon and feudal. In emphasizing the tyrannical consequences of the union of spiritual and temporal power Adams was drawing on one of the great themes of seventeenth-century English constitutional history, the Norman Yoke. The image Adams presented was of Duke William of Normandy (r. 1066–1089) defeating the Saxon King Harold at Hastings in 1066 and imposing tyrannical rule on the liberty-loving Saxons in both temporal and spiritual realms.⁵ Specifically, the image of the Norman Yoke accused William of imposing feudalism and feudal law, the notion that all the land belonged to the king by right of conquest, on the free Saxons' political order that was based on freemen owning their land and governing themselves through their representatives.⁶

In the spiritual order, the Conquest meant that the Church in the Saxon era that had been “at once catholic, English, episcopally governed, and spiritually independent” but which in “the later medieval period saw the cooperative usurpation of Pope and King over the divine right of bishops,” a process that had begun with William the Conqueror.⁷ The Conqueror had received a papal blessing for his claim to the English

Ideas, Personalities, and Politics, 1689–1775 (New York: Oxford University Press, 1962), 230–259; John Frederick Woolverton, *Colonial Anglicanism in North America* (Detroit: Wayne State University Press, 1984), 222–225; Peter M. Doll, *Revolution, Religion, and National Identity: Imperial Anglicanism in British North America, 1745–1795* (Madison, NJ: Fairleigh Dickinson University Press, London, Cranbury NJ, 2000), 155–156.

⁵The fundamental work on the Norman Yoke is that of Christopher Hill, *Puritanism and Revolution: Studies in Interpretation of the English Revolution of the 17th Century* (London: Secker & Warburg, 1958), 50–122; and his *Intellectual Origins of the English Revolution Revisited* (Oxford: Clarendon, 2001), 360–365. See also Pocock, *Ancient Constitution*, 318–321, 334, 361, 377. For a recent survey that includes a discussion of the emergence of the Norman Yoke image and a useful brief bibliography: see Richard Huscroft, *The Norman Conquest: A New Introduction* (Harlow: Pearson/Longman, 2009), 317–319.

⁶Hill, 57. Medievalists have debated whether William actually introduced feudalism into England or whether it already existed there to some degree: see Marjorie Chibnall, *The Debate on the Norman Conquest* (Manchester: Manchester University Press, 1999), 57–60, 81–89. See also David C. Douglas, “The Norman Conquest and English Feudalism,” *Economic History Review* 9 (1939): 128–143; C. Warren Hollister, “The Norman Conquest and the Genesis of English Feudalism,” *American Historical Review* 66 (1961): 641–663; and *The Norman Conquest of England: Sources and Documents*, ed. Reginald Allen Brown (Woodbridge UK: Boydell Press, 2002).

⁷R.J. Smith, *The Gothic Bequest* (Cambridge: Cambridge University Press, 1987), 28.

throne and imposed the Lombard monk Lanfranc (ca. 1005–1089) as archbishop of Canterbury, replacing the Saxon archbishop, Stigand, as well as most bishops and abbots, and enforcing the Gregorian reforms that centralized the Roman Church on the previously semi-autonomous English Church.⁸

Each of these powers imposed a hierarchical structure on its sphere of competence with the king and the archbishop, the heads of the respective hierarchies, joining together to oppress the defeated Saxons. Each was tyrannical in itself but united they formed the worst sort of tyranny known to man, leading to the suppression but not the destruction of the Saxon constitution.

Adams did not specifically mention William the Conqueror and Lanfranc, nor did he mention the Saxon Church, when he identified the tyrannical yoke that the two laws created, but surely his readers would have made the connection. Since the English Civil War of the seventeenth century, the image of the Norman impact on the conquered Saxons was widespread in political polemics. As Christopher Hill pointed out in *Puritanism and Religion*:

The theory of the Norman Yoke, as we find it from the seventeenth century onwards, took many forms; but in its main outlines it ran as follows: Before 1066 the Anglo-Saxon inhabitants of this country lived as free and equal citizens governing themselves through representative institutions. The Norman Conquest deprived them of this liberty, and established the tyranny of an alien King and landlords. But the people did not forget the rights they had lost. They fought continuously to recover them, with varying success.

Periodically, the suppressed Anglo-Saxons were able to regain at least some of their lost liberty when they “extorted it from their rulers” as when they forced King John to issue Magna Carta.⁹ The constitutional history of England from 1066 to Adams’s own day was thus the struggle of the Saxons to throw off the Norman Yoke and to regain the liberties

⁸The impact of William’s actions on the English Church has been debated. In particular, there was a very active debate among nineteenth-century scholars as to whether or not Roman canon law was binding within the English Church: see Chibnall, 139–145.

⁹Hill, 57.

that they had lost. The use of the Norman Yoke in the political debates varied, sometimes playing a significant role and at other times being less important. Christopher Hill observed, however, that the “second half of the eighteenth century saw revivals of radical versions of the Norman Yoke theory.”¹⁰

Adams presented his version of the Norman Yoke in the opening words of the *Dissertation*, a quote from John Tillotson (1634–1694), a writer he greatly admired.¹¹ “Ignorance and inconsideration are the two great causes of the ruin of mankind.” Building on Tillotson’s statement, Adams wrote:

Since the promulgation of Christianity, the two greatest systems of tyranny, that have sprung from this original, are the *cannon* and the *feudal* law. The desire of dominion, that great principle by which we have attempted to account for so much good and so much evil, is, when properly restrained, a very useful and noble movement in the human mind. But when such restraints are taken off, it becomes an encroaching, grasping, restless and ungovernable power. Numberless have been the systems of iniquity contrived by the great for the gratification of this passion in themselves: but in none of them were they ever more successful than in the invention and establishment of the *cannon* and the *feudal* law.¹²

Terrible as the existence of each of these distinct forms of tyranny was, there was worse yet to come.

BUT another event still more calamitous to human liberty, was a wicked confederacy between the *two systems* of tyranny above described. It seems to have been even *stipulated* between them, that the *temporal* grandees should contribute every thing in their power to maintain the ascendancy of the *priesthood*; and that the spiritual grandees in their turn, should employ that ascendancy over the *consciences* of the *people*, in impressing on their minds a *blind, implicit* obedience to civil magistracy.¹³

¹⁰Ibid., 94.

¹¹John Tillotson (1630–1694) was a popular preacher whose printed sermons circulated widely. Eventually he became the Archbishop of Canterbury (1691–1694): see the *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), vol. 54: 791–801.

¹²Adams, *Papers*, 1: 111–112.

¹³Adams, *Papers*, 1:113.

For Adams, “as long as this confederacy lasted, and the people were held in ignorance; Liberty, and with her, Knowledge and Virtue too, seem to have deserted the earth; and one age of darkness succeeded another, till GOD in his benign providence, raised up the champions who began and conducted the *reformation*.”¹⁴ The confederacy of which Adams’s spoke here would seem to refer to the alliance of Church and State that in his eyes characterized the entire history of Christianity until the Reformation. He made no explicit exception for the Saxon Church but in all of his writings he made almost no references to Saxon England and he did not specifically identify the confederacy with William the Conqueror and the pope who blessed his invasion of England. Unlike Thomas Jefferson, Adams did not romanticize the Saxon era.¹⁵ His most extensive discussion of the Saxon world came in one of a series of essays (1772 and 1773) titled “The Independence of the Judiciary” published in the *Boston Gazette* on February 1, 1773. Here Adams discussed the origins of common law and stated that “William the Conqueror confirms and proclaims these to be the laws of England”¹⁶ At the same time, however, if Adams’s broad strokes about the evils of European development before the Reformation were the macro-history of European development, the same themes could be applied by his readers to the micro-history of English development. Therefore, for five centuries the history of England centered on the conflict between feudal and ecclesiastical tyranny on the one hand and the liberty of the people on the other. With the Reformation, the tide gradually turned and the people began to regain their liberty by rejecting the papacy, the spiritual element of the yoke. The “encroachments on liberty, in the reigns of the first James and the first Charles, by turning the general attention of learned men to government, are said to have produced the greatest number of consummate statesmen, which has ever been seen in any age or nation.”¹⁷

¹⁴Ibid., 1: 113.

¹⁵On Jefferson’s interest in the Saxons: *see* Hill, 94. For Jefferson, “there had existed a political utopia in Saxon England.” H. Trevor Colbourn, *The Lamp of Experience* (New York: W. W. Norton, 1965), 183.

¹⁶Adams, *Works*, III, 540–550 at 541.

¹⁷Adams, *Papers*, 1: 127.

These statesmen were responding to what seemed “to be a direct and formal design on foot, to enslave all America,” that is, to re-impose the feudal yoke.¹⁸ While the language was perhaps overwrought, the colonists were well aware that slavery did not exist in England but did exist in the American colonies. If it was legal to enslave Indians and Africans, what was to stop the British government from enslaving White settlers as well?

Adams was not alone in alluding to the Norman Yoke. Two of his contemporaries, James Otis and Jonathan Mayhew, men often associated with Adams, also alluded to the image without using the term. Two years before Adams wrote the essays in the *Dissertation*, Otis had written that “liberty was better understood and more fully enjoyed by our ancestors, before the coming in of the first Norman Tyrants than ever after”¹⁹ Left unmentioned, but clearly implied, was the notion of the Saxon constitution as the guarantor of liberty, a liberty lost when the Normans won at Hastings. In 1766, in connection with observances celebrating the repeal of the Stamp Act, Jonathan Mayhew preached a famous sermon, “The Snare broken,” in which he too alluded to the yoke. As he observed, some believed “that the money to be raised by the duty on stamps, would partly be applied to pay certain civil officers’ salaries” while others saw the duty in direr terms, namely that “the money was to be chiefly applied towards maintaining a standing army in America” in order “to awe the colonies themselves” into obedience to government commands. Still others feared that the money raised “was partly intended to maintain a standing army of bishops and other ecclesiastics”²⁰

One can find similar usages in other contemporary pamphlets and essays. When polemicists referred to feudalism, to Norman tyranny, to a standing army, or to the Saxon tradition of liberty, they were alluding

¹⁸Ibid., 1: 127.

¹⁹James Otis, “The Rights of the British Colonies Asserted and Proved,” in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002): 119–135 at 119. On Otis: see Richard A. Samuelson, “The Constitutional Sanity of James Otis: Resistance Leader and Loyal Subject,” *The Review of Politics* 61 (1999): 493–523.

²⁰Jonathan Mayhew, “The Snare broken. A Thanksgiving-Discourse,” (Boston: R. & S. Draper, 1766), 18–19. Mayhew did use the term Yoke, once to defer the consequences of a French conquest of North America (15) and the Yoke that the Stamp Act “laid on our necks” (16). See also p. 39. On Mayhew: see Colbourn, *The Lamp of Experience*, 60–66.

to the Norman Yoke and to the ongoing struggle to restore those liberties associated with the Saxon era.²¹ Finally, the assertion often made that the implications of the Stamp Act would reduce the Americans to slavery suggests the imposition of the yoke.

Could Adams really have believed that the actions of George III and his government were the equivalent of the Norman Conquest or of the reign of the Stuarts? Did he believe they would repress the freedom-loving Americans as William and Lanfranc had repressed the Saxons, even reducing them to slavery? In fact, the answer is a conditional “yes.” He pointed out that the “cannon and feudal systems tho’ greatly mutilated in England, are not yet destroy’d” and that “much of the domineering spirit of them still remains.” By imposing the Stamp Act, and “loading the Press, the Colleges, and even an Almanack and a News-Paper, with restraints and duties” George III’s government would “introduce the inequalities and dependencies of the feudal system, by taking from the poorer sort of people all their little substance, and conferring it on a set of stamp officers, distributors, and their deputies.”²² Adams declared that all of these actions linked to the Stamp Act seem to be an attempt “to enslave all America.” While the term “enslave” might seem rhetorical overkill, it can be found throughout Adams’s writings. If not enslaved, the imposition of feudalism would reduce the colonists to the level of serfs as their Saxon ancestors had been by the Normans unless they strongly resisted the imposition of the yoke. Feudalism may have been on its death bed but it was not deceased and could be revived as a consequence of the Stamp Act.²³

²¹ See, for example, the writings of Richard Bland, the Anonymous “An English Patriot’s Creed,” and Demophilus in *American Political Writing during the Founding Era, 1760–1805*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: Liberty Fund, 1983), 67–87, 318–320, 340–367.

²² Adams, *Papers*, 1: 127–128.

²³ A recent article by a Law Commissioner for England and Wales argues that even now there are feudal elements in English law that ought to be eliminated: see Charles Harpum, “Does feudalism have a role in 21st century land law?,” *Amicus curiae* 23 (2000): 21–25. William Blackstone (1723–1780), whose *Commentaries on the Laws of England* appeared contemporaneously with Adams’s *Dissertation*, pointed out that all elements of feudalism had not been entirely eliminated in his own day: see William Blackstone, *Commentaries on the Laws of England*, facsimile edition, 4 vols. (Chicago: University of Chicago Press, 1979), vol. 2:78.

In identifying the union of spiritual and temporal powers as the greatest of all evils, Adams was reminding his readers of the civil war that their Puritan ancestors had fought to free the English from Stuart tyranny, spiritual and temporal, which had, among other consequences, led to the establishment of the Massachusetts Bay colony. “IT was this great struggle that peopled America” and “not religion *alone*, as is commonly supposed; but it was a love of *universal Liberty*, and an hatred, a dread, an horror, of the infernal confederacy, before described, that projected, conducted, and accomplished the settlement of America.”²⁴ He was also reminding his readers that the union of powers that threatened their liberties was not a new evil but a longstanding one, a continual theme in English history and an evil that had always to be resisted. As H. Trevor Colborne put it, “In American eyes English medieval history settled into a pattern of periodic efforts to re-establish pre-Norman liberties.”²⁵ Although Adams did not use this language, he clearly intended his readers to recall their seventeenth-century ancestors who had identified “the confederacy aforesaid of temporal and spiritual tyranny” with “the *execrable* race of the Stuarts” whose conflict with the English people “became formidable, violent, and bloody,” thus linking the Stuarts to William the Conqueror who had brought the Norman Yoke down on the necks of the freedom-loving Saxons.²⁶ Adams’s Puritan ancestors fled Stuart England following the example of those Saxons who had left England rather than submit to the Normans.²⁷

Adams could have pointed out that the image of the Norman Yoke long preceded the Civil War of the seventeenth century. Orderic Vitalis (1075–c. 1142), a monk of a French family in England who wrote the *Ecclesiastical History* that was in effect a history of Normandy, observed that the Norman Conquest led to the Saxons “groaning under the Norman yoke” all the while mourning “their lost liberty.”²⁸

²⁴ Adams, *Papers*, 1: 113–114.

²⁵ Colborne, 35.

²⁶ Adams, *Papers*, 1: 113.

²⁷ Some went to Scotland while others joined the Varangian Guard of the Byzantine emperors: see Hume, 1: 206. See also Dimitry Obolensky, *The Byzantine Commonwealth: Eastern Europe, 500–1453* (London: Weidenfeld and Nicolson, 1971), 236.

²⁸ Ordericus Vitalis, *Ecclesiastical History*, ed. and trans. Marjorie Chibnall, 6 vols. (Oxford: Oxford University Press, 1969–1980), 2: 203.

A contemporary of Adams who had read currently fashionable histories of England, for example David Hume's widely read *History of England*, the final volumes of which dealt with that history from its earliest days to the early years of Henry VIII, would readily recognize the allusions to the Norman Conquest and its implications for the Americans.²⁹ According to Hume, William the Conqueror "introduced into England the feudal law He divided all the lands of England ... into baronies, and he conferred these ... on the most considerable of his adventurers." The result of this distribution of lands was that "the Norman dominion seemed now to be fixed on the most durable basis, and to defy all the efforts of its enemies."³⁰

According to Hume, not satisfied with imposing feudalism on the free Saxons, William also brought into England something else, a "doctrine which exalted the papacy above all human power," that is the canon law that placed the pope at the apex of a universal legal system and constituted him the chief and unchallenged head of the Church. He did this because the papacy had blessed his invasion of England. The goal was to "break the spiritual as well as civil independency of the Saxons, who had hitherto conducted their ecclesiastical government, with an acknowledgment indeed of primacy in the see of Rome, but without much idea of its title to dominion or authority."³¹ The consequence of William's actions was to keep "united the civil and ecclesiastical powers" in a wicked conspiracy to keep the English in permanent submission.³²

A reader of Adams's *Dissertation* who was acquainted with Hume's work would have no difficulty with the image of the post-Conquest England that Hume provided to illustrate the dire consequences of yielding to the yoke. Having defeated Harold at Hastings, William subsequently put down harsh attempts to throw off Norman domination. Faced with ultimate destruction, the Saxons eventually submitted to William in the hope of winning his favor. They discovered, however,

²⁹He was fourth on Lutz's list.

³⁰David Hume, *History of England*, 6 vols. In 3 (NY: WM. L. Allison, nd.), 1: 210–211. This was initially published in 1761. Whether in fact William the Conqueror brought feudalism to England or whether he developed indigenous practices that facilitated the introduction of fully developed feudalism has generated a good deal of debate among medievalists: see Chibnall, 38.

³¹Hume, 1: 212–213.

³²Ibid., 1: 215.

“that instead of a sovereign, whom they had hoped to gain by their submission, they had tamely surrendered themselves, without resistance, to a tyrant and a conqueror.”³³ Many of the surviving leading Saxons fled the kingdom, finding refuge in lands “abroad free from oppression” and escaping the imposition of the Norman Yoke.³⁴ Adams echoed Hume’s point when he argued that the oppression of the Stuart era caused the victims to remove to the New World where they “formed their plan, both of ecclesiastical and civil government, in direct *opposition* to the *cannon* and the *feudal* systems.”³⁵

Hume presented one position on the significance of the Norman Conquest and its implications for the American situation but another author that Adams read, Paul Rapin-Thoyras (1661–1725), took a different tack, a position that Adams’s opponents in the polemical wars might have taken. In his opinion, “God no doubt was pleased to make use of this *Conquerour* as his Instrument to render the *English* Nation more Illustrious than it had ever been before.” Under the Normans the “*English*, hitherto almost unknown to the rest of the World, began after this *Revolution* to make a considerable Figure in *Europe*.” Thus, the Conquest rather than subjugating the Saxons brought England “to that Height of Grandeur and Glory we behold it in at present.”³⁶ Furthermore, Rapin-Thoyras also suggested that some historians believed that the Saxons had brought the worst consequences of the Yoke on themselves when they rebelled against their Norman masters rather than accepting the new regime.³⁷ From this perspective, the Norman Yoke harnessed the strengths of Saxons and Normans to bring England to the imperial heights they attained in the eighteenth century.

Furthermore, Rapin-Thoyras argued that the Conquest did not benefit the Church. In his opinion, “the *Pope* and *Clergy* were considerable Losers by it” because the “Devout and Submissive *Saxon* Princes” who had contributed heavily to the support of the Church were succeeded by Norman rulers who were “Wholly taken up with grasping at Arbitrary

³³Ibid., 1: 205.

³⁴Ibid., 1: 206.

³⁵Adams, *Papers*, 1: 114.

³⁶Paul de Rapin-Thoyras, *The History of England as well Ecclesiastical as Civil* (London: James and John Knapton, 1730), 15 vols., 2: 216.

³⁷Rapin-Thoyras, 2: 242.

Power” and so subjugated the clergy to their yoke just as the laity had been.³⁸

The image of the Norman-imposed yoke thus had a double meaning which could be understood differently by Adams’s two distinct audiences. A countryman without the benefits of a classical education would have understood the term Norman Yoke in terms of a pair of domesticated oxen bearing the weight of the heavy yoke on their shoulders held in place by oxbows looped around their necks—the team of oxen being directed by an occasional flick of the driver’s whip. A farmer could easily identify the oxen with the defeated and submissive Saxons and the Normans with the driver and his whip.³⁹

An educated reader of the *Dissertation*, however, would need little help in recalling the role of the yoke in Livy’s history of Rome. As with the image of Washington in a toga, the yoke was also associated with Cincinnatus. After the Romans defeated their enemies, the Aequians, the

soldiers were to be allowed to go with their lives, but, to force a final confession of absolute defeat, they were to pass “under the yoke.” A “yoke” was made from three spears, two fixed upright in the ground and the third tied across them, and the Aequian soldiers were made to pass under it.⁴⁰

The Aequians were not simply defeated, they were humiliated as they stooped low to pass under the crossbar of the yoke, and they were to remember that they were not an honorably defeated people but publicly shown to be the inferiors of the Romans. When Adams alluded to the two laws joined in “a wicked confederacy,” his meaning was clear. Perhaps thinking of Livy, he felt no need to spell out in detail the elements of the Norman Yoke. For him, the image of the yoke bore a strong message, the two laws, canon and feudal, representing spiritual and temporal power, were the two spears thrust into the ground. William joined them together when he came to rule England and subjugated the defeated Saxons. For the Americans to accept docilely the Stamp Act and the troops it would support along with the establishment of an

³⁸Ibid., 2: 428.

³⁹The Yoke is also associated with religious conversion, as in accepting the yoke of Christ: see Matthew 11: 29–30. In a religious sense, this is a positive view of the Yoke but it does demonstrate submission as does the secular uses of the term.

⁴⁰Livy, 229.

Anglican diocese would be to admit defeat in the struggle for liberty, to be humbled, stooped low to pass under the yoke like the defeated Aquians before the victorious Romans. The only choices available to the Americans were humiliating submission, flight to another land, or fighting. The ancestors of the colonists fled Stuart tyranny long ago and now their descendants would have to fight the latest attempt to impose the yoke of submission on the colonists in the New World.

The comparison of the situation in British North America in 1765 with the Norman Conquest seven centuries earlier is obviously rhetorical. Adams certainly did not expect George III to land in Boston with a fleet in order to reduce the Americans to feudal submission and the archbishop of Canterbury to disembark in full pontificals and impose Anglicanism on the Congregationalists of Boston. He did, however, see events occurring in Massachusetts as reflecting the spirit of the yoke.

Have not some generals, from England, treated us like servants, nay, more like slaves than like Britons? Have we not been under the most ignominious contribution, the most abject submission, the most supercilious insults of some custom-house officers?⁴¹

In other words, even before the full implications of submission to the Stamp Act were in effect, the representatives of the British government were acting toward the colonists as the Norman nobles had acted toward the submissive Saxons.

One might argue that Adams was being pretentious in comparing the American situation to the medieval one, perhaps only anxious to impress less well-educated people with his arcane learning. If he had in fact discussed the Stamp Act in terms of the feudal law texts that were the core of the Sodality's reading list, then this might have been simply an exercise in vanity.⁴² But, as we shall see, Adams did not rely only on the medieval legal texts about feudalism that he had read. He stressed instead the popular understanding of feudalism as a synonym for tyranny, royal or

⁴¹ Adams, *Papers*, 1: 124.

⁴²The nature of medieval feudalism was widely discussed from the sixteenth to the eighteenth century. This discussion of the "academic law of fiefs" was rooted in the twelfth century *Libri Feudorum*: see Susan Reynolds, *Fiefs and Vassals* (Oxford: Oxford University Press, 1994), 3. Adams claimed to have read works on feudal law as a member of the Sodality: see *Works*, 2: 146–147.

ecclesiastical, as it appeared in popular historical works. In a feudal society, land was held by “base services and servile dependencies” while in a republic land was held “allodially” that is each man was “the sovereign lord and proprietor of the ground he occupied” As such, allodial holdings were associated with ancient republics and also with “that religious liberty with which Jesus had made them free.” What he did not mention was that the allodial society of the Saxons was transformed into a feudal society as a result of the Conquest, although others, most famously Thomas Jefferson, did. The American colonists did “hold their lands of their king, as their sovereign lord,” that is as fiefs, and they did do homage for it lest it appear that they had created “a government too nearly like a commonwealth” but they did not pay homage to “mesne or subordinate lords” and they did not perform “any of the baser services” associated with feudalism.⁴³ At this point Adams was interested in comparing the oppressive consequences of the Stamp Act that Parliament had issued with the feudal oppression of medieval kings, not with the specific details of medieval feudal government. Feudalism was a stereotype that had to be understood within the broader context of human history and human development, as yet another form of tyrannical rule.

But was there more to Adams’s fear of the Stamp Act and the Established Church? Could he have literally meant that the Stamp Act would impose feudalism and the Church of England on British North America? In fact, however, given the history of the term feudalism as a stage in development, it is quite possible that Adams intended to be taken literally as well as well as figuratively on this matter.

Feudalism is a term that many twentieth-century medieval historians wish had never been invented because among other things it has multiple meanings so that it means different things to different people.⁴⁴

⁴³Adams, *Papers*, 1: 115–117. The original colonists in Massachusetts held their land as “free and common socage,” a tenure that was neither “servile nor military” and that eventually replaced feudal tenures in 1660: see Theodore F.T. Plucknett, *A Concise History of the Common Law*, 5th ed. (Boston: Little, Brown, 1956), 537. On Jefferson’s fascination with the Saxons and their landholding: see Thomas Jefferson, *A Summary View of the Rights of British America* (Williamsburg: Clementina Rind, 1774), 7–8.

⁴⁴The best introduction to the problem that feudalism poses for twentieth-century medieval historians is Elizabeth A.R. Brown, “The Tyranny of a Construct: Feudalism and Historians of Medieval Europe,” *American Historical Review*, vol. 79 (1974): 1063–1088. She concludes: “The unhappiness of historians with the terms ‘feuda’ and ‘feudalism’ is, thus, understandable. Far less comprehensible is their willingness to tolerate a situation

At the same time, no one has created another term to replace it, at least not a term that is widely accepted to describe the complex of political, economic, social, and personal relations that, combined with a variety of legal and institutional structures, formed the basic framework of western European life from the seventh to the fifteenth centuries. Even the period of time that might most fairly be labeled “the feudal era” is not something that all contemporary medievalists would accept without qualification. Some specialists in medieval studies would expand the chronological parameters while others would narrow them. Furthermore, discussion of the extent to which the various parts of Europe were feudalized also generates a great deal of spirited debate among medievalists. In the final analysis, however, the problems of the chronological and the geographical extent of feudalism depend upon what actually constituted feudalism.

The fundamental difficulty with the term “feudalism” is that it was not a medieval term at all. The words *feudum* and *feodum* from which the modern word feudalism comes were medieval usages that referred to an income-producing property, usually a piece of land, given to a mounted warrior in return for performing military service under specified conditions. Along with the land came peasants, usually serfs, that is, unfree individuals, tied to that particular piece of land and obliged to work there under specific terms. Although modern romantic descriptions of feudalism tend to emphasize the role of the mounted warrior, the bulk of the feudal lord’s activity involved managing his lands and administering justice to his serfs. Furthermore, what modern observers often describe as feudalism is two distinct but related institutions. The first is feudalism specifically referring to the world of the mounted warrior, the knight, who holds land in return for military service. The second is manorialism, the land and its peasant laborers who form the manor, the economic unit, the estate, which supported the knightly class.⁴⁵

The term feudalism only emerged in the sixteenth and seventeenth century as French and English lawyers and antiquarians attempted to

often deplored” Ibid., 1088. A very careful analysis of the terminology of feudalism, especially the legal terminology, is F.L. Ganshof, *Feudalism*, tr. Philip Grierson (New York: Harper, 1964). Two large studies deal with feudalism in great detail: Reynolds, *Fiefs and Vassals*, esp. 1–3 and Otto Brunner, *Land and Lordship*, trans. Howard Kaminisky and James van Horn Melton (Philadelphia: University of Pennsylvania Press, 1992).

⁴⁵ Reynolds, 2.

find a political and economic structure under the mass of medieval laws, institutions, and practices that continued to exist in their own day.⁴⁶ Did there exist under this residue of the Middle Ages a coherent political, economic, and social system that could reasonably be termed feudalism? The general conclusion was that such a system existed. The existence of fiefs throughout Europe proved that the feudal system had existed and some vestiges of it still remained.

The result of this work is that early twentieth-century textbooks often contained a pyramidal chart of medieval society illustrating the feudal structure. The king was at the top of the pyramid and the greater and lesser nobles occupied the middle region. The lowest and most extensive region down to the base of the pyramid consisted of the mass of serfs.⁴⁷

This textbook chart provides a number of difficulties in understanding medieval European society, not least of which at no time and place, except perhaps, for a brief moment in 1066 when William of Normandy conquered England, did any medieval king actually claim ownership of all the land in his kingdom.⁴⁸ That being the case, there were landholders in every European kingdom during the Middle Ages who did not fit into the neat chart found in the books. These possessed allods, lands that had never been surrendered to or granted by the king, were not held by military service. Furthermore, the practical applications of this were even more complicated. Medieval governments did not possess extensive records for the transfer and disposition of property which characterizes modern states.⁴⁹ As a consequence, a great deal of medieval litigation concerned who had what rights to which property. Furthermore,

⁴⁶The basic modern studies on this issue are: Pocock, *The Ancient Constitution*, esp. Chaps. IV and V; Donald R. Kelley, "De Origine Feudorum: The Beginning of an Historical Problem," *Speculum* 39 (1964): 207–228; Reynolds, 3–14.

⁴⁷See, for example, James Harvey Robinson, *An Introduction to the History of Western Europe* (Boston: Ginn & Co., 1903), 115. It was reprinted in later editions as well.

⁴⁸Strictly speaking, William claimed the English throne by right of inheritance not by conquest. Conquest only enabled him to implement his lawful claim. Chibnal, 9–12.

⁴⁹The registration of land titles can be traced to the possessory writs created by Henry II in the twelfth century to settle conflicting claims to property—for their history and significance: see Frederick Pollock and F.W. Maitland, *The History of English Law Before the Time of Edward I*, 2 vols., 2nd ed. (Indianapolis IN: Liberty Fund, 2010), 154–161. See also Plucknett, 353–360. The importance of the development of the written record of property law is discussed in M.T. Clanchy, *From Memory to Written Record: England 1066–1307*, 2nd ed. (Oxford: Blackwell, 1993), 67, 90–92.

properties were constantly being divided, sub-divided, combined and recombined, leading to an increasingly confusing situation. Some would be inclined to call it chaotic or anarchic rather than systematic. It took seventeenth-century antiquarians and lawyers to find underlying order in the relic of the medieval past.

In addition to the problem of defining feudalism in a formal, legal way, there is also the fact that the term feudal has acquired meanings that have nothing to do with the institutions of medieval European political and economic life. Third-World countries are often said to be feudal or medieval, meaning that they are backward and underdeveloped according to modern western standards and are ruled by dictators. Such uses of the term feudal have a long history and contribute to the confusion about its use in any particular context. These confusions were as common in the eighteenth century as they are in the twenty-first.

As generally used, feudalism is pejorative. When seventeenth-century and eighteenth-century French and English lawyers were developing their definitions of feudalism, they generally saw it as a form of government that was clearly inferior to the forms of government that existed in their own day. Furthermore, depending on exactly how they defined feudalism, seventeenth-century lawyers could see one or more elements of feudalism in their own kingdoms.

The crucial development that enabled some aspects of feudalism to survive was the separation of military service, feudalism proper, from its economic basis, that is, manorialism. While standing armies and professional soldiers armed with expensive new weapons replaced the mounted warrior, thus eliminating the military function of the knightly class, various sorts of economic and governmental powers associated with manorialism remained in aristocratic hands. This often remained true even in those cases where the lands of the manor were sold off to peasant proprietors. These powers and rights were a significant part of the income of eighteenth-century aristocratic families as well as a constant irritation to those who were affected by them. In France, many of these powers and taxes, the *banalités*, only ended when the French revolutionaries declared feudalism abolished in August 1789.⁵⁰ In eighteenth-century

⁵⁰“The Fourth of August Decrees,” *The Constitutions and other Select Documents Illustrative of the History of France, 1789–1907*, ed. Frank M. Anderson, 2nd ed. (reprinted, New York: Russell & Russell, 1967), 11–14.

England, as William Blackstone observed in his *Commentaries on the Laws of England*, although “the oppressive or military part of the feudal constitution was happily done away, yet we are not to imagine that the constitution itself was utterly laid aside, and a new one introduced in it’s room....” In the previous century, virtually all of the medieval or feudal forms of tenure, that is forms of holding landed property, “were reduced to one general species of tenure” but it remained necessary to understand the feudal tenurial system in its fullness and complexity “since it is that alone, to which we can recur to explain any seeming, or real, difficulties, that may arise in our present mode of tenure.”⁵¹ Even in late eighteenth-century England, feudalism in a weakened or modified condition still remained a living, if feeble, reality.

While there is no doubt that at least some aspects of feudalism, more precisely of manorialism, remained in eighteenth-century Europe, there is considerable debate about whether it existed in the New World. There is no denying that a form of feudalism existed in both Spanish and French territories in the New World. Long ago, Francis Parkman identified the form of government in French Canada as “Canadian feudalism ... an offshoot of the feudalism of France, modified by the lapse of centuries, and further modified by the royal will.” This modified form of feudalism was basically a manorial society designed to “produce a faint and harmless reflection of French aristocracy, and simply and practically to supply agencies for distributing land among the settlers.”⁵²

It was easy to admit the existence of feudalism in New France because, as Parkman and others had long argued, it was the feudal nature of French colonial society that caused its defeat by the English in the French and Indian Wars.⁵³ The fundamental flaws of the French feudal

⁵¹William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Facsimile of first edition, 1765–1769, Chicago: University of Chicago Press, 1979), 2: 78.

⁵²Francis Parkman, *The Old Régime in Canada* (Boston: Little, Brown, 1927), 304–305. Some historians have rejected or modified the use of the term feudal with regard to the government of New France: see, for example, David Hackett Fischer, *Champlain’s Dream* (NY: Simon & Schuster, 2008), 470–471; Marcel Trudel, *The Beginning of New France 1524–1663*, trans. Patricia Claxton (Toronto: McClelland and Stewart, 1973), 246–252; Allan Greer, *The People of New France* (Toronto: University of Toronto Press, 1997), 37–39; Sigmund Diamond, “An Experiment in ‘Feudalism’: French Canada in the Seventeenth Century,” *William & Mary Quarterly*, 3rd ser., 18 (1961): 3–34.

⁵³There has been increasing interest in the legal history of French Canada: see Edward Cavanagh, “Possession and Dispossession in Corporate New France, 1600–1663:

regime in Canada meant that the hardy souls who lived there dwelled under “spiritual and temporal vassalage from which the only escape was to the savagery of the wilderness ...” If a man wished to avoid the “swarming corruptions which were the natural result of an attempt to rule, by the absolute hand of a master beyond the Atlantic, a people bereft of every vestige of civil liberty” he had to move far away from French rule.⁵⁴ In other words, from Parkman’s perspective the French colonists in North America lived under the kind of yoke that Adams argued the English were attempting to impose on the English settlers.

To admit that feudalism existed in British North America would be to admit that the colonists there lacked the liberty of Englishmen and were at least potentially open to the same forces that corrupted the French Canadians and subjected the Saxons to the Norman Yoke. Could feudalism or some other form of dependent landowning be imposed on the American colonists in the future? Something of that sort occurred in 1684 when the Massachusetts charter was annulled. Edmund Andros was then assigned to create the Dominion of New England, consolidating the five New England colonies, New York, and East and West Jersey into a single administrative unit. Andros “challenged the legality of the land titles issued by the town governments under the old Puritan charter” and required landowners “annually to pay quitrents” in order to “secure a perpetual revenue for the crown,” actions that “horrified” the colonists because of their “sweeping and expensive challenge to their land titles.”⁵⁵ A challenge to their land titles was a challenge to their status as freemen. If Andros was successful, even more measures could follow, reducing the colonists to a dependent class, making them something akin to medieval serfs.

Scholars usually argue that, at best, there were some vestiges of feudalism in British North America, but that they were dying because they were so shallowly rooted with the New World providing a great expanse

Debunking a ‘Juridical History’ and Revisiting *Terra Nullius*,” *Law and History Review* 32 (2014): 97–125.

⁵⁴Francis Parkman, *Montcalm and Wolfe*, 2 vols. (Boston: Little, Brown, 1927), 2: 427.

⁵⁵Alan Taylor, *American Colonies: The Settling of North America* (London: Penguin, 2001), 276–277.

of land for colonization.⁵⁶ In fact, however, if the grants to French settlers can be described as feudal in nature, then how can the original grants to settle the English colonies in North America be described in any other terms? To be precise, some of the charters by which the first English settlers obtained lands in North America were manorial in style. That is, the king gave to the recipients of the charters the traditional rights and privileges of those who possessed manors in feudal society. This is especially clear in the case of the proprietary colonies when an individual or group of individuals received grants of land and the power of governing these lands and administering justice. The original charter of Maryland, June 20, 1632, for example, gave Lord Baltimore not only specific lands but also created him:

Baron of Baltimore, and his Heirs, the True and Absolute Lords and Proprietaries of the Region Aforesaid ... To Hold of Us as of our Castle of Windsor ... in free and common Soccage, by Fealty only for all Services, and not in capite, nor by Knight's Service ... And ... We ... do grant unto the said now Baron ... free, full, and absolute Power, by the tenor of these Presents, to Ordain, Make, and Enact Laws, of what kind soever, according to their sound Discretions⁵⁷

Lord Baltimore had the same rights and privileges as any contemporary feudal lord in England and so did the proprietors who obtained Pennsylvania and the other proprietary colonies.⁵⁸

In general, American historians have neglected the issue of feudalism in British North America, except to see feudal survivals as quaint vestiges of an earlier age. John Locke's *Fundamental Constitutions for the Carolinas*, a plan of government based on medieval feudal notions of government

⁵⁶ Andrews, 1: 1–5, 56–57.

⁵⁷ The Charter of Maryland, Commager, *Documents*, 21–22.

⁵⁸ One historian who has taken the concept of feudalism in British North America is Maxine Neustadt Lurie who has studied the proprietary colonies in great detail. See her dissertation, "Proprietary Purposes in the Anglo-American Colonies: Problems in the Transportation of English Patterns of Social Organization," University of Wisconsin, 1968, and her article, "New Jersey: The Unique Proprietary," *New Jersey History*, vol. 105 (1987): 77–97. In the latter article, she makes the interesting observation that in "the colonial period it [New Jersey] underwent a metamorphosis from a feudal institution to a corporation, a transformation unique in North America and one which prefigured modern business structures." p. 77.

and social order, usually draws scorn from twentieth-century historians. One popular textbook described the *Fundamental Constitutions* as an “extraordinary document which attempted to provide for the new colony a romanticized feudalism”⁵⁹ Another author described the document as a “grandiose plan of government, a pretentious system” that proved utterly unworkable, simply some elaborate feudal nonsense designed to promote interest in the colony but not meant as an actual plan of government.⁶⁰ John Adams had earlier described Locke’s *Constitutions* as an example of the “Chimerical systems of legislation” which are “neither new or uncommon, even among men of the most resplendent genius and extensive learning.” Locke’s proposed system for the Carolinas was so unworkable and unreal that Locke “should have first created a new species of beings to govern, before he instituted such a government.”⁶¹ The clear implication of this line of argument is that feudalism could not work in the free air of America, *Amerikanisch-luft macht frei* so to speak. Although in retrospect the demise of feudalism and its related institutions by the end of the eighteenth century appears quite plain to later generations, it was not at all clear to everyone at the time. In France, for example, the Church, the nobles, and a variety of corporate groups still possessed a number of rights and privileges that derived from the feudal era. Some of these rights served as a check on the exercise of royal power, thus blocking the implementation of the absolute power claimed by the French kings. The provincial estates, medieval representative assemblies, continued to function, as did the parlements, which were powerful law courts. Both represented the interests of groups that opposed the expansion of royal power.⁶² In addition, although many, if not most of the noble families in France had sold off their land to peasant proprietors, they retained a number of economic and social benefits associated with the land. “The peasant owed no labor to the lord,” the core of the lord’s

⁵⁹Samuel Eliot Morison and Henry Steele Commager, *The Growth of the American Republic*, 4th ed., 2 vols. (New York: Oxford University Press, 1950), I: 70.

⁶⁰John A. Garraty, *The American Nation: A History of the United States to 1877*, 4th ed. (New York: Harper and Row, 1979), 21.

⁶¹John Adams, “Defence of the Constitutions of the Government of the United States of America,” *Works*, 4: 463–464.

⁶²R.R. Palmer, *The Age of the Democratic Revolution*, 2 vols. (Princeton: Princeton University Press, 1959, 1964), 1: 27–52.

traditional relationship with his peasants, “except [for] a few token services in some cases.”⁶³

The manor, however, still retained certain features of the feudal age:

The noble owner enjoyed ‘hunting rights,’ or the privilege of keeping game preserves, and of hunting on his own and the peasants’ land. He usually had a monopoly over the village mill, bakeshop, or wine press, for the use of which he collected fees, called banalites. He possessed certain vestigial powers of jurisdiction in the manorial court, from which fees and fines were collected.⁶⁴

French nobles in the late eighteenth century were not content simply to collect these revenues and to enjoy the status they possessed, they were actively working to reassert other rights and privileges that their ancestors had lost or neglected. They were engaged in what R.R. Palmer had termed the “aristocratic resurgence,” an attempt by nobles and other endangered groups to defend themselves against changes in the social and political orders by asserting their rights and privileges under the “historic constitution.”⁶⁵ While this did not mean that they were seeking a revival of feudalism in all of its glory, it did mean attempting to stop the erosion of the privileges and the income they derived from feudal sources.

The importance of the place of feudalism and of the aristocratic revival in late eighteenth-century France can be seen in the actions of the French revolutionaries. One of the first steps in achieving the goals of the Revolution was to declare feudalism dead. Article 1 of the Decree of August 4th stated: “The National Assembly completely abolishes the feudal regime.”⁶⁶ This was not simply a gesture. As R.R. Palmer observed, it was the only solution to the Gordian knot of privileges and exemptions created over a thousand years by “the complexities and eccentricities of intermeshing masses of special laws and privileges of all kinds, in which the peculiar rights and advantages of persons, orders, estates, corporate bodies ... and certain taxpayers were incomprehensibly intermixed.”

⁶³R.R. Palmer and Joel Colton, *A History of the Modern World* (New York: Alfred A. Knopf, 1965), p. 336.

⁶⁴*Ibid.*

⁶⁵*Ibid.*, 439, 451.

⁶⁶*The Constitutions and other Select Documents ... of France*, 11.

At the same time, as he added, one must be careful to define what was abolished. “What was abolished, in this famous abolition of feudalism, was ‘feudalism’ in its eighteenth-century meaning: the seigneurial relationship between landlord and tenant, the manorial forms of income and property, the differences between nobles and commoners in taxation and in the penalties inflicted by law for the same offenses”⁶⁷

Considering that in France and elsewhere on the continent of Europe there was a resurgence of feudalism in the eighteenth century, what relevance could that have had for the British North American colonies on the eve of the American Revolution? Some years ago, two scholars provided a basis for suggesting that fears of a feudal resurgence in the American colonies were quite real. According to Rowland Berthoff and John M. Murrin, “proprietary projects on a feudal model dominated all seventeenth-century attempts to plant English settlements in the New World.” This is, of course an unexceptional statement, quite similar to statements found in any number of textbooks. The explanation that these authors gave for the failure of these feudal experiments was, however, strikingly original. They argued that feudal “projects collapsed in the seventeenth century not because America was too progressive to endure them, but because it was too primitive to sustain them.⁶⁸ The small, scattered population of the early settlements made the collection of feudal dues and the imposition of feudal discipline, both authorized by the proprietors’ royal charters, too expensive in light of what could actually be collected. As the colonies grew, however, and their economies

⁶⁷ *Ibid.*, 484–485.

⁶⁸ Rowland Berthoff and John M. Murrin, “Feudalism, Communalism, and the Yeoman Freeholder,” *Essays on the American Revolution*, ed. Stephen G. Kurtz and James H. Hutson (Chapel Hill: University of North Carolina Press, 1973), 256–288 at 264. Medieval historians generally see feudalism and manorialism as characteristic of Europe from about the tenth to the thirteenth centuries, not from the period at which the Roman Empire lost control of western Europe which took place from the fourth to the seventh centuries. In his classic work on feudalism, Marc Bloch distinguished between the two ages of feudalism, the first being the age of the invasions and the second, beginning around 1050, being the more stable, orderly society that included the manor. “When the relationships truly characteristic of feudalism fell into decay the manor lived on, but with different characteristics; it became more territorial, more purely economic.” Marc Bloch, *Feudal Society*, trans. L.A. Manyon, 2 vols. (Chicago: University of Chicago Press, 1961), I: 279. It was this “more purely economic” aspect of feudal society that lingered on into the eighteenth century.

developed, the situation changed. According to Berthoff and Murrin, by 1730 “the older colonies had become populous enough to make the old feudal claims incredibly lucrative.”⁶⁹ “As in France, the feudal revival in the English colonies employed old legal and social forms for quite single-mindedly modern purposes.”⁷⁰ What was happening in France, the ripping of “feudal relationships out of their original context” in order to seize “what surviving obligations could be enforced for the income they might produce” was also taking place in the British colonies in North America.⁷¹ Strictly speaking, if Berthoff and Murrin are correct, what was on the upswing in North America, was the economic side of the feudal order that is manorialism.

Against the background of the aristocratic revival in Europe and the increased interest of feudal proprietors in extracting profits from their estates, John Adams’s *Dissertation on the Canon and the Feudal Law* takes on a new significance. If feudalism and manorialism were on the rise, or even if they only appeared to be on the rise, then Adams’s choice of the term feudal law to describe the implications of the Stamp Act was not rhetorical but literal.

If we begin with this premise, then the question is what did Adams actually know of feudalism and how did he see it in the North American context? One overlooked possibility was the Royal Proclamation concerning America (1763), the law that among other things outlined the need to provide a standing army in North America, the army that the Stamp Act was to support. This proclamation provided that:

such reduced officers as have served in North America during the late war, and are actually residing there, and shall personally apply for the same, the following quantities of land

To every person having the rank of a field officer,

5000 acres.

To every captain, 3000 acres.

To every subaltern or staff officer, 2000 acres.

⁶⁹ Berthoff and Murrin, 265.

⁷⁰ *Ibid.*, 266.

⁷¹ *Ibid.*, 267.

To every non-commission officer, 200 acres.

To every private man 50 acres.⁷²

Assuming that 50 acres was the amount of land necessary to establish a self-sufficient farm family, the amount granted to senior officers would establish 100 families, the number associated with one of the basic medieval English governmental units, the Hundred, a unit also found in earlier settlements in North America.⁷³

What did Adams understand by the term feudalism? Although he claimed to have read several medieval legal treatises on feudalism as a member of the Sodality, Adams appears to have derived his definition of feudalism from William Robertson's works. In his *Diary* he referred to Robertson's discussion of feudalism as said to be "the clearest account of the feudal system"⁷⁴ In the *History of Scotland*, a book Adams had read in conjunction with the work of the Sodality and in his *History of the Reign of Charles the Fifth*, Robertson defined feudalism. He saw feudalism as having arisen out of the need of the conquering invaders of Europe to protect themselves from other tribes that sought to enter Europe.

The difficulty of maintaining a new conquest, as well as the danger of being attacked by new invaders, rendering it necessary to be always in a posture of defence, the form of government which they established was altogether military Their General still continuing to be the head of the

⁷²"Royal Proclamation Concerning America", *Select Charters and Other Documents Illustrative of American History 1606–1775*, ed. William MacDonald (NY: Macmillan, 1899), 267–272 at 270. There were "no less than 158 NCOs and men" who took advantage of this proposal: see Stephen Brumwell, *Redcoats: The British Soldier and War in the Americas, 1755–1763* (Cambridge: Cambridge University Press, 2002).

⁷³Fifty acres was often employed as the basis of a freehold. John Locke's *Constitution for the Carolinas* provided that "In the precinct-court no man shall be a juryman under fifty acres of freehold." Macdonald, "Fundamental Constitutions," 148–168 at 161. Colonies varied as to the number of acres a required in order to vote, but in East Jersey, Pennsylvania, Delaware, North Carolina, and Georgia "fifty acres" was the required amount of land. Cortland Field Bishop, *History of Elections in the American Colonies* (New York: Columbia College, 1893), 76. On the history of the Hundred: see, Helen Cam, *The hundred and the hundred rolls; an outline of local government in medieval England* (London: Methuen, 1930).

⁷⁴On the Sodality, Adams, *Works*, 2: 146–147.

colony, part of the lands were allotted to him A feudal kingdom was properly the encampment of a great army⁷⁵

Adams presented Robertson's argument this way: feudalism began:

for the necessary defence of a *barbarous people*, against the inroads and invasions of her neighbouring nations; yet, for the same purposes of tyranny, cruelty, and lust, which had dictated the *cannon* law, it was soon adopted by almost all the princes of Europe⁷⁶

As a result, the feudal legal structure demonstrated that:

It was originally, a code of laws for a vast army in a perpetual encampment. The general was invested with the sovereign propriety of all the lands within the territory. Of *him*, as his servants and vassals, the first rank of his great officers held the lands; and in the same manner, the other subordinate officers held of *them*; and all ranks and degrees held their lands, by a variety of *duties* and *services*, all tending to bind the chains the faster, on *every* order of mankind.⁷⁷

While this was not a definition of feudalism that would fully satisfy twenty-first century scholars, it is a definition that demonstrated a knowledge of the basic elements of feudalism. Adams recognized the fundamentally military nature of feudalism and its origins in the collapse of the Roman world. A major weakness in this definition, however, is that it implies that feudalism arose out of the ruins of the Roman Empire as the barbarian invaders fought among themselves. While it is true that elements of the feudal order can be found in the centuries immediately following the collapse of the Roman Empire in the west, the fully developed feudalism that Adams described, one in which the various levels of society were tightly bound under the power of the king who claimed all of the land, was something that developed over a long period of time.

⁷⁵William Robertson, *The History of Scotland*, 2 vols., 5th ed. (Dublin: James Williams, 1766), I: 13. There is a similar definition in his *History of the Reign of Charles the Fifth*, 2 vols. (London: Routledge, 1878), I: 14–16. A similar description of feudalism is also to be found in Hume, I: 479–481. Hume cites Robertson's *History of Scotland* as one of his sources, I: 479.

⁷⁶Adams, *Papers*, I: 112–113.

⁷⁷*Ibid.*, I: 113.

As Berthoff and Murrin pointed out about British North America, feudalism could only exist when the proper circumstances for its functioning existed. What Adams described as feudalism and the feudal law was the product of centuries of development, not simply a primitive form of government that would arise in the absence of strong central authority. It was the form of feudal order that emerged in the eleventh and the twelfth centuries, not, say, the sixth and the seventh centuries. In effect, Adams was describing the high medieval development of feudalism, thus brushing out the history of medieval development from the fifth to the tenth centuries.

At the same time, it is also worth noting that Adams and his sources recognized that feudalism was both a military arrangement and a way of organizing and distributing land. Because the colonists were freeholders, they were free men, possessed of liberty. Indeed, as Adams saw things, the British colonies in North America owed their creation to anti-feudal feelings. As he observed: “AFTER their arrival here, they began their settlements, and formed their plan both of ecclesiastical and civil government, in *direct opposition* to the *cannon* and the *feudal* systems.”⁷⁸

The American colonies were, in effect, anti-feudal establishments, founded on principles diametrically opposed to the feudal order that the colonists had left behind them when they crossed the Atlantic as Adams stated in the *Dissertation*. Liberty existed in these colonies because there was no permanent standing army installed over the population, no system of vassalage whereby lesser individuals held their land in return for military service to a superior and because the colonists had created societies in which there was “knowledge diffused generally thro’ the whole body of the people.” Above all, there existed colleges endowed with “ample privileges and emoluments.”⁷⁹ The implication is that the American colonists were creating the kind of society, a republic, that the Saxons would have developed had they not been subjected to the Norman Yoke.

At first glance, it would appear that Adams could not have really feared the creation of a feudal order in North America because the colonists had taken steps to prevent that from happening at the very beginning of the colony’s existence. On the other hand, Adams’s view of

⁷⁸Ibid., 1: 114.

⁷⁹Ibid., 1: 118.

history was not an optimistic one. For him history demonstrated the continuing struggle between those who would rule through a combination of force and ignorance and those who would rule themselves by the light of reason. The liberty that the Americans had achieved could only be maintained if the colonists defended it at every turn.

The Stamp Act was simply yet another threat to American liberty, a threat rooted, in Adams's opinion, in the weakness of the colonists and their failure to act aggressively in the defense of their rights. The "true source of our sufferings," he wrote, "has been our timidity."⁸⁰ The Americans have failed to defend their rights actively and so, inevitably, the royal government has attempted to extend its jurisdiction over the Americas rather like water rising to fill a vacuum. Although the Americans did not see it, there was a deliberate plan to destroy American liberty.

There seems to be a direct and formal design on foot, to enslave all America. This however must be done by degrees. The first step that is intended seems to be an entire subversion of the whole system of our Fathers, by the introduction of the cannon and the feudal law, into America.⁸¹

Feudalism, in other words, still existed as a political reality and posed a direct threat to the American colonists unless steps were taken quickly to stop Parliament from imposing feudal institutions on the Americans. Furthermore, in this part of the argument, Adams suggested not only that feudalism corrupts those who are subject to it, but also that corrupted people, those who do not assert their rights sufficiently strongly, will have feudalism imposed upon them.

The first stage in Parliament's move to impose feudalism on the American colonists was the tax on paper which was the first step in a calculated plan to take from "the poorer sort of people all their little subsistence," thus reducing them to the status of dependents instead of free men. For the middle and upper class, the future was equally bleak. With the loss of their property would follow the loss of their political liberty and the reduction of the once free property owners to the status of

⁸⁰Ibid., 1: 122.

⁸¹Ibid., 1: 127.

propertyless tenants living at the whim of the official class who had used the Stamp tax to effect the transfer of the colonists' wealth to themselves. Furthermore, the darkness of ignorance would fall upon the towns that once prided themselves on their schools and colleges. Learning and liberty would cease. The people would exist "in herds and clans in a state of *servile* dependance on their lords ..., in a state of total ignorance of everything divine and human, excepting the use of arms, and the culture of their lands."⁸²

The reader of these essays in 1765 would also know that one of the important justifications for the passage of the Stamp Act was to support a standing army of 10,000 men in the colonies. While the official explanation was that such a force was required to protect the western boundaries of the colonies from the Indians, Americans knew better.⁸³ To an American who read Adams and knew about feudalism, these troops would be "a vast army in a perpetual encampment," a feudal oppressor seated on the shoulders of the subjugated Americans.⁸⁴

Furthermore, if one function of this proposed British army in North America was to protect the colonists from the Indians, another was to protect the Indians from encroachments by the colonists anxious to cross the Appalachians in search of new lands. If the English government was able to block westward expansion and if the population of the American colonies continued to rise, then the vast areas of eastern lands still in the hands of proprietors would become increasingly valuable and the proprietors would then be able to derive their long-awaited profits from their estates, the profits that Berthoff and Murrin argued the proprietors were seeking in the late eighteenth century.

⁸²Adams, *Papers*, 1: 113. Literacy was widespread in New England, especially among men: see Kenneth Lockridge, *Literacy in Colonial New England* (New York: Norton, 1974).

⁸³On how the English government planned to spend the money it raised from the Stamp Act: see Esmond Wright, *Fabric of Freedom 1763-1800* (New York: Hill and Wang, 1961), 42-50. The Proclamation of 1763 forbade colonial expansion into the trans-Appalachian west. The implications of English policy with regard to the trans-Appalachian are spelled out in great detail in Thomas P. Abernethy, *Western Lands and the American Revolution* (NY: D. Appleton-Century, 1937; reprinted, New York: Russell & Russell, 1959), esp. pp. 20-38.

⁸⁴Adams, *Papers*, 1: 113.

Could this vision of a feudal society be realized in North America? Given Adams's view of history as a continual struggle between the few and the many and his definition of feudalism, it is clear that he believed that if the Americans did not take strong action against the Stamp Act then they would have to deal with a feudal order at home. Liberty was not the inevitable consequence of historical development. The fact that the colonies originated in what he saw as an anti-feudal movement did not guarantee that feudalism would not appear. If Parliament was able to assert its power over the colonies then the colonists would come under the control of a powerful government that could revive or introduce elements of feudalism if the proper circumstances occurred. The timidity of the Americans in the face of existing English officials provided a warning of what would happen if an English army was to occupy the colonies on the pretext of defending them from Indians. Already:

American governors, and their friends and all the crown officers, have avail'd themselves of this disposition [to timidity] in the people. They have prevailed on us to consent to many things, which were grossly injurious to us, and to surrender many others with voluntary tameness, to which we had the clearest right. Have we not been treated formerly, with abominable insolence, by officers of the navy?... Have not some generals, from England, treated us like servants, nay, more like slaves than Britons?⁸⁵

The aftermath was not what the leading colonists expected. They celebrated the “end of the danger of French and Indian raids and seemed to open a vast and fertile continent to colonial settlement.” The defeat of the French in North America however made the government and the colonists aware of their different interests. Royal officials became aware of the prosperous state of the colonies and looked forward to imposing higher taxes “to support the empire that benefited” the colonists so much. Officials also became very aware that “the colonists routinely ignored imperial regulations that hurt their economic interests”⁸⁶ Both required imposing more governmental control over the colonies in order to secure the income required to administer the growing empire. What Adams identified as the “abominable insolence” of senior military and naval officers, and then went on to criticize, was a consequence

⁸⁵Ibid., 1: 124.

⁸⁶Taylor, 438–439.

of increased English interest in the colonies. The colonists were being treated as a people subjected to imperial rule and not as freeborn Englishmen and equal partners in the administration of the empire.

Adams described the feudal order as a decline from the republican and democratic traditions of the ancient world. The dependence of the lower class on their lords and kings associated with feudalism did not exist in the “ancient seats of liberty, the republic of Greece and Rome” with “the constitution of human nature and that religious liberty with which Jesus had made them free.”

Instead, he admitted that the Middle Ages saw an improvement in the people’s situation. With the collapse of the ancient world feudalism was established “for the necessary defence of a barbarous people against the inroads and invasions of her neighboring nations,” but eventually outlived its purpose.⁸⁷ Eventually, however, during the early Middle Ages a significant change gradually took place:

BY what causes it was bro’t to pass, that the people in the middle ages, became more *intelligent* in general, would not perhaps be possible in these days to discover: But the fact is certain; and wherever a general knowledge and sensibility have prevail’d among the *people*, arbitrary government, and every kind of oppression, have lessened and disappeared in proportion.⁸⁸

As the people became increasingly aware of their rights there emerged a continuous series of conflicts between the rulers and the people. The people sought to exercise their rights, knowledge of which rights their rulers sought to keep from them. These rights, however, are “undoubtedly, antecedent to all earthly government — *Rights* that cannot be repealed or restrained by human laws – *Rights* derived from the great legislator of the universe.”⁸⁹

The process of knowledge and of conflict based on that knowledge was, according to Adams, medieval in origin. The great enemies of this emerging knowledge of fundamental, God-given rights, were also medieval creations, the canon and feudal laws. The union of the secular and

⁸⁷Adams, *Papers*, 1: 112–113.

⁸⁸*Ibid.*, 1: 111.

⁸⁹*Ibid.*, 1:112. Expressed this way, Adams’s views are clearly not based on ancient Roman understanding of rights and God as law maker.

the ecclesiastical leaders of medieval society symbolized by the union of canon and feudal laws led to the creation of a world in which:

the people were held in ignorance; Liberty, and with her Knowledge, and Virtue too, seem to have deserted the earth; and one age of darkness, succeeded another, till GOD in his benign providence, raised up the champions, who began and conducted the *reformation*⁹⁰

For Adams, the Protestant Reformation was both a religious and a political movement, freeing mankind from the tyranny of the canon law of the medieval church and the feudal law of tyrannical kings: as “knowledge gradually spread ... and in proportion as that increased and spread among the people, *ecclesiastical* and *civil* tyranny ... seem to have lost their strength and weight.”⁹¹ Even at this point, however, this gradual increase in liberty was neither inexorable nor inevitable. In the seventeenth century, the Stuarts sought to block this process and their ultimate defeat was not assured. So uncertain was the outcome of the struggle with the Stuarts that many people fled to North America to escape Stuart tyranny. The result was the creation, in the colonies, of governments “formed ... in *direct opposition* to the *cannon* and the *feudal* systems.”⁹²

In describing the creation of the American colonies, Adams was romanticizing their institutions. It was true, of course, that the first colonists in Massachusetts Bay were escaping from English feudal and ecclesiastical tyranny. It is also true, however, regardless of what Adams said in 1765, that the colonists’ claims to lands in America rested on royal authorization. The colonists had not simply proceeded to the New World, settled, and acquired possession of land from the Indians and then established governments. The first settlers began the process of colonization by securing royal charters that authorized the settlements and specified the territory that the colonists could occupy and listed the colonists’ rights and privileges under English law. Above all, possession of a royal charter insured that the colonists could apply to the king and to the courts for protection against those who would seek to interfere with

⁹⁰Ibid., 1:113.

⁹¹Ibid., 1: 113.

⁹²Ibid., 1: 114.

their occupation of land in America. Those colonies that began without royal charters, Plymouth, Rhode Island, Connecticut, sought charters to protect their interests.

The original charter of Massachusetts Bay, for example, stated that the king granted to the colonists the right “to have and enjoy all liberties and Immunities of free and naturall Subjects within any of the Domyinions of Vs” and the Company was to be self-governing, authorized

to make, ordeine, and establishe all Manner of wholesome and reasonable Orders, Lawes, Statutes, and Ordinnces ... not contrairie to the Lawes of this our Realme of England⁹³

Thus, the very basis of the American colonies rested on royal grants that were in turn based on the theory that the king was the ultimate source of legitimate authority and that he could grant to a colonizing body of his subjects a monopoly of access to a specific territory. Any property that they did acquire, they would hold under English law as specified in the charter.⁹⁴ If they did not adhere to the terms of the charter, settling in some other region for example, then the king would not protect them and he could authorize another body of potential colonists to settle there in their place.

In the long run, Adams’s objections to feudalism were moral, not only legal or political. It was the social and cultural consequences of feudal law and the governmental system that it created that disturbed him. Subordination and deference were the characteristic virtues of such a society because the people were, for the most part, landless laborers on the estates of the rich and powerful. Where the people hold “their lands, allodially,” that is in full ownership, or where every man was “the sovereign lord and proprietor of the ground he occupied,” the result was

⁹³“First Charter of Massachusetts” 1629, in Francis Newton Thorpe, *The Federal and state constitutions, colonial charters, and other organic laws*, 7 vols. (Washington DC: Government Printing Office, 1909), 3: 1846–1860 at 1857.

⁹⁴It is important to note that the charter did not claim that the king of England possessed land in North America, only that if the colonists did acquire land there, the king would protect their interests if they administered the colony according to the terms of the charter.

different. The characteristic virtues of this kind of society were pride and independence and such men would require “a government, too nearly like a commonwealth.” The words “too nearly like a commonwealth” were crucial here because Adams was not insisting upon the separation of the Americans from their loyalty to the king of England. Free subjects, dwelling on their own lands, would have been content “to hold their lands of their King, as their sovereign Lord, and to him they were willing to render homage: but to no mesne and subordinate Lords, nor were they willing to submit to any of the baser services.”⁹⁵ Although he did not say so, what Adams was describing here was the Saxon system of government that existed in England before the Norman Conquest in 1066, or at least that system as he understood it. The virtues that he associated with the Saxon world were also those associated with Protestantism, especially Calvinism.⁹⁶

After publishing the *Dissertation on the Canon and the Feudal Law*, John Adams rarely mentioned feudalism or feudal law again. The repeal of the Stamp Act in March 1766 meant that the terrible consequences that Adams had foreseen would not occur. Indeed, the repeal of the Act demonstrated the truth of Adams’s argument that tyranny could not withstand the people’s demand for liberty. At the same time, he also recognized that the struggle between feudalism and liberty was not ended. In 1773, for example, he discussed feudalism again during an exchange of letters with General William Brattle in the *Boston Gazette* concerning a proposal for paying the judges of colonial courts directly from the royal treasury and not from funds voted by the colonial legislatures. Adams argued that as long as the judges’ salaries were paid from funds voted by the assemblies the people would retain some control over them. If, however, the judges owed not only their appointments to the king but their incomes as well, they would be in effect dependent on and subordinate to the king. Furthermore, if the judges held their offices only during the royal pleasure [*durante bene placito*], as the proponents of royal payment also argued, rather than as long as they functioned properly [*quam diu*

⁹⁵Adams, *Papers*, 1: 118.

⁹⁶The characteristics that Adams identified as those of the colonists are those also associated with the so-called Protestant Ethic. For a recent discussion of the importance of this tradition in American life: see the controversial book of Samuel P. Huntington, *Who Are We? The Challenges to America’s National Identity* (New York: Simon & Schuster, 2004), 69–75.

bene se gesserint], then the judges would fear to offend the king who paid their salary. Adams traced the development of the ancient constitution of the kingdom in order to demonstrate historically the “improbability that the judges held their offices during good behaviour,” and the historical probability that they held their office as long as they functioned in a proper manner.⁹⁷ The ancient constitution was, for course a commonplace of seventeenth-century political debate. As J.G.A. Pocock has pointed out, by “1600 or thereabouts there was hardly any constitutional movement without its accompanying historical myth.” One important result of the development of these myths was that it “was largely through these attempts to determine the antiquity of their institutions that the nations of Europe embarked on the study of their medieval past and barbaric origins”⁹⁸

Adams based his discussion of the place of judges in the ancient constitution on the writings of Sir Edward Coke and a variety of other legal writers who had discussed the historical roots of the English legal system. According to Adams, the Saxon ancestors of eighteenth-century Englishmen and Americans were:

one of those enterprising northern nations, who made inroads upon the provinces of the Roman empire, and carried with them wherever they went, the customs, maxims, and manners of the feudal system

Even though over the centuries, the Saxons:

when they intermingled with the ancient Britons, they shook off some part of the feudal fetters, yet they never disengag’d themselves from the whole. They retained a vast variety of the regalia principis, of the feudal system And among other regalia the creation, and annihilation of judges, was an important branch.⁹⁹

The retention of this regalian power, even if rarely employed, was nevertheless a threat to the independence of the bench that, Adams argued, could be countered only by having the people’s elected representatives appropriating the salaries for the judges.

⁹⁷“On the Independence of the Judges,” in Adams *Papers*, 1: 252–309 at 256.

⁹⁸Pocock, *Ancient Constitution*, pp. 16–18.

⁹⁹“The Independence of the Judges,” Adams, *Papers*, 1: 281.

Adams's use of the term feudalism in the debate about judges was rooted in the common lawyers' history of the law and the constitution. Following the tradition of the ancient constitution, he assumed that the roots of what was good in government was to be found in the Saxon world before the Norman Conquest, back in the world of the Gothic or barbarian constitution. His goal was to reassert popular control of the institutions of government in the face of royal efforts to end such control.

Although Adams's discussion of feudalism would seem to paint a bleak portrait of an unrelievedly wicked institution, his opinion was, in fact, rather more complex, as some of his later writings indicated. In the preface to his 3-volume *Defence of the Constitutions of Governments of the United States of America* (1786), Adams professed to see some good qualities in feudal government. He first criticized the various attempts by ancient societies to create a stable and just order, such as that of Solon (d. 559 BC) in Athens "which expired in one century" and that of Romulus in Rome (ca. 8th century BC) which "lasted but two centuries and a half." He then turned to the history of the Germanic peoples and "the Teutonic institutions, described by Caesar and Tacitus," institutions which:

are the most memorable experiment, merely political, ever yet made in human affairs. They have spread all over Europe, and have lasted eighteen hundred years Nothing ought to have more weight with America, to determine her judgment against mixing the authority of the one, the few, and the many, confusedly in one assembly, than the wide-spread miseries and final slavery of almost all mankind, in consequence of such an ignorant policy in the ancient Germans.

The strength of the Teutonic polity in Adams's opinion was the participation of all free, adult males in its deliberations. The weakness was that unrestrained democracy, like unrestrained monarchy, destroyed freedom. The best and most stable government, England being the best example, had a balance of powers within the constitution so that the one, the few, and the many could be represented and each could contribute to the common good.

What is the ingredient which in England has preserved the democratical authority? The balance, and that only. The English have, in reality, blended together the feudal institutions with those of the Greeks and Romans, and

out of all have made that noble composition, which avoids the inconveniences, and retains the advantages of both.¹⁰⁰

Adams's gradual lack of interest in feudalism in his later writings is not really very surprising. His initial interest in the feudal stage of medieval English development arose directly from his reading and study as a member of the Sodality and from his work as a practicing lawyer. Having been working on feudal law when the Stamp Act appeared, it was intellectually attractive to place it and its consequences within a feudal context. In addition to the argument that the Stamp Act could lead to a revival of feudal institutions in North America, a technical legal argument that many of his readers might not appreciate, there was also the fact that feudalism itself was a pejorative term in the popular mind. In terms of both legal and rhetorical usage, feudalism was a useful term in the political debate surrounding the Stamp Act.

The repeal of the Stamp Act certainly obviated the use of the feudal argument in pre-revolutionary political debate. To some extent, this alone would explain the lack of this line of argument in the pre-revolutionary debate. Before concluding this discussion, however, it is necessary to examine the extent to which Adams's contemporaries saw feudalism as a threat to their liberties. Was Adams's fear of feudalism unique to him, and therefore not a very useful line of attack in 1765, or was it widely held and therefore a useful line of argument at least until the repeal of the Stamp Act?

There is no evidence that Adams's contemporaries saw the crisis with England in the decade before 1775 in feudal terms. While, as we shall see, other writers did discuss the situation in terms of Magna Carta, the Norman Conquest, and the medieval development of Parliament, historical events that interested Adams, no one else appears to have seen the Stamp Act in feudal terms. On this, Adams stood alone. In later years, perhaps for this reason, Adams himself downplayed the importance of the *Dissertation*. In 1770, for example, he wrote to the historian Catherine Macaulay dismissing the *Dissertation* as only a few pieces:

written at random, weekly, without any preconceived plan, printed in the newspapers without correction, and so little noticed or regarded here, that

¹⁰⁰ Adams, "Preface," *Defence of the Constitutions, Works*, 4: 297–298.

the author never thought it worth his while to give it either a title or a signature.¹⁰¹

A few years later, however, in 1778, Adams saw the *Dissertation* in another light when he claimed that these essays created the opposition that eventually led to the repeal of the Stamp Act.¹⁰²

Adams gave some final reflections on the *Dissertation* in 1815 when he responded to Jedidiah Morse's request for his opinions about the causes of the Revolution. In his response, Adams said nothing about feudalism and concentrated on the significance of Parliament's attempt to erect a Diocese of the Church of England in North America in the 1760s.¹⁰³ Although Adams lost interest in the *Dissertation*, it continued to be reprinted. In 1765 and 1768, Thomas Hollis had it reprinted in London and a third London edition appeared in 1773 in a 4-volume set of *Tracts on the Subjects of Taxing the British Colonies in North America*.¹⁰⁴ At least some people thought that Adams's arguments were relevant to the debate about the Stamp Act and about the power of Parliament to tax. It may also be significant that the *Dissertation* was published by, and apparently read by, English opponents of the Stamp Act and not by American colonists. Feudalism would have meant much more to an English reader than to an American.

In the final analysis, Adams's argument about the possible imposition of a feudal order on the North American colonies was a false start. The repeal of the Stamp Act meant that feudalism as Adams saw matters was a dead issue in the colonies, at least for the time being. The inability of the English government to impose the tax meant that the 10,000 troops who were to guard the frontier, and, in Adams's view, to oppress the colonists, never came. Without these troops, the movement of the colonists across the Appalachians could not be prevented and so the value of the proprietors' lands never rose to the point that they could obtain large revenues from their tenants.

The fact that the repeal of the Stamp Act prevented the feudalization of American society that Adams feared does not mean that Adams

¹⁰¹ Adams, Letter to Catharine Macaulay, *Works*, 9: 331–333 at 332.

¹⁰² Editor's introduction to the *Dissertation* in Adams, *Papers*, 1: 104.

¹⁰³ Adams, *Works*, 10: 185–188.

¹⁰⁴ Editor's introduction to the *Dissertation* in Adams, *Papers*, 1: 105.

misjudged the possible impact of the Act on the colonies at the time when he wrote. His argument about the need to act firmly in the face of parliamentary claims to exercise jurisdiction over the colonies was correct. An American willingness to accept taxation to support an English army in North America, an army that would effectively prevent the Americans from crossing the Appalachians in search of new lands, would lead to the restriction of the colonies to the eastern seaboard. Should the population continue to grow, and there was no reason to believe that it would not, the demand for land would certainly increase the value of lands held on essentially feudal terms. Adams's fear of bankrupt free-men, burdened by oppressive taxes and reduced to the status of tenants on the lands of the great landowners, was not as far-fetched as it might appear. Feudalism and manorialism might have been dying, but reports of their demise had not been made to eighteenth-century Americans and Europeans. Both the French Revolution and the American Revolution were inspired to some extent by the fear that the patient would arise from his bed and regain control of society.

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The Norman Yoke—Canon Law

... the apprehension of Episcopacy contributed fifty years ago, as much as any other cause, to arouse the attention, not only of the inquiring mind, but of the common people, and urge them to close thinking on the constitutional authority of parliament over the colonies.¹

If John Adams feared the revival of feudal law in British North America as one bow of the Norman Yoke, it is fair to say that he feared what he termed canon law, the other bow, even more. Canon law, the law of the medieval Catholic Church, was a body of law with which Adams was familiar through the discussions of the Sodality. Furthermore, the term canon law, like the term feudal law, had long had a pejorative meaning. Medieval ecclesiastical reformers had often criticized the development of canon law and the legalistic approach to the religion it generated.² Protestant reformers identified the evils afflicting the Church with canon

¹John Adams to Dr. J. Morse, December 2, 1815, *Works*, 10: 185–188 at 185. The letter was first published in in Jedidiah Morse, *Annals of the American Revolution* (Hartford: n.p., 1824), 197.

²On the history of canon law: see James A. Brundage, *Medieval Canon Law* (London: Longman, 1995); also *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*, eds. Wilfried Hartmann and Kenneth Pennington (Washington, DC: Catholic University of America, 2008).

law and Martin Luther even publicly burned copies of canon law in a bonfire designed to mark the end of the old church.³ In practice, canon law was employed as a synonym for ecclesiastical oppression that corrupted both spiritual and political communities.

In terms of the Norman Yoke, canon law recalled the role of the papacy in supporting William the Conqueror's invasion of England, support symbolized by Pope Alexander II's (1061–1073) blessing of a banner borne before William at the battle of Hastings.⁴ The price of this support was the Conqueror's agreement to reform the Church in England according to the principles of the Gregorian Reform movement.⁵ The visible sign of this alliance was the appointment of the Italian scholar and monk Lanfranc (c. 1005–1089) as archbishop of Canterbury, replacing the Saxon Stigand who had been excommunicated.⁶

From the perspective of Adams, as feudalism destroyed the political structure of Anglo-Saxon society, reducing the people to serfdom, so the church reform movement of the eleventh and twelfth centuries destroyed the Anglo-Saxon ecclesiastical structure. The reformed Church's heavy emphasis on papal universal administrative jurisdiction, symbolized by

³For medieval criticism of canon law and canon lawyers: see John W. Baldwin, "Critics of the Legal Profession: Peter the Chanter and His Circle," in the *Proceedings of the Second International Congress of Medieval Canon Law*, eds. Stephan Kuttner and J. Joseph Ryan (Vatican City: S. Congregatio de Seminariis et Studiorum Universalibus, 1965): 249–259; also Amelia J. Uelmen, "A View of the Legal Profession from a Mid-twelfth-Century Monastery," *Fordham Law Review* 71 (2003): 1517–1541. For Luther's response to canon law, which included the public burning of a volume of canon law, see Brundage, 182.

⁴David C. Douglas, *William the Conqueror: The Norman Impact Upon England* (Berkeley: University of California Press, 1964), 187–188; see also Richard Huscroft, *The Norman Conquest: A New Introduction* (Harlow: Pearson/Longman, 2009), 121.

⁵The papacy had a long history of involvement with English monarchs stretching back to the mission sent by Pope Gregory I in 596. A modern scholar has suggested that even the Church reformers such as Gregory VII allowed William and his immediate successors a great deal of room to intervene in ecclesiastical matters, even to the extent that "William the Conqueror, his sons, and perhaps grandson, Henry II, dominated what could be called a national church." See Uta-Renate Blumenthal, *The Investiture Controversy: Church and Monarchy from the Ninth to the Twelfth Century* (Philadelphia: University of Pennsylvania Press, 1988), 153; see also Kathleen G. Cushing, *Reform and the Papacy in the Eleventh Century: Spirituality and Social Change* (Manchester: Manchester University Press, 2005), 77.

⁶On Lanfranc: see Margaret Gibson, *Lanfranc of Bec* (Oxford: Clarendon Press, 1978); H.E.J. Cowdrey, *Lanfranc: Scholar, Monk, and Archbishop* (Oxford: Oxford University Press, 2003).

uniformity of ritual and the development of a canon law for the entire Church, spelled the end of a kind of primitive Church institutionally distinct from Rome for the most part.⁷

Adams explained that canon law was:

the most refined, sublime, extensive, and astonishing constitution of policy, that ever was conceived by the mind of man, was framed by the *Romish* clergy for the aggrandisement of their own order.

This conjured up a vision of the medieval Church oppressing mankind in its desire for wealth and power. Even more frightening than canon or feudal law alone, was the union of the two. What characterized medieval Europe was “another event still more calamitous to human liberty, was a wicked confederacy, between the two systems (d. 1072) of tyranny above described.”⁸

The deposition of Stigand (d. 1072) as archbishop of Canterbury and appointment of Lanfranc (1005–1089), an Italian scholar who had become a monk in Normandy and who was associated with the reform movement, signaled the imposition of the Gregorian Reform movement in England.⁹ Subsequently almost all of the bishops of the Saxon Church were deposed and replaced by Norman clerics just as virtually all major Saxon landholders were replaced by William’s followers. Lanfranc enforced the strict ecclesiastical discipline associated with the Church reform, celibacy of the clergy for example, in place of what the papacy saw as the relaxed standards of the church in Saxon England.¹⁰

As with the issue of feudalism in England, Adam’s discussion of canon law and the role of William the Conqueror in imposing it on England greatly over-simplified the story. In fact, the English Church had always been subject to canon law and to the papacy, although Adams would

⁷On Gregory VII and England: see H.E.J. Cowdrey, *Pope Gregory VII, 1073–1085* (Oxford: Oxford University Press, 1998), 60, 459–480.

⁸Adams, *Papers*, 1: 112–113.

⁹On removal of Saxon bishops, see Gibson, 113–115.

¹⁰On the imposition of the Gregorian reform in England: see Gibson, 133–139; Brian Golding, *Conquest and Colonialism: The Normans in Britain, 1066–1100*, 2nd ed. (Houndsmills: Palgrave Macmillan, 2013), 139–140.

have it that Saxon England was a kind of Christian, but not papal, ecclesiastical republic until William imposed the Yoke on the English.¹¹

Strictly speaking, Adams was less worried about the establishment of an Anglican hierarchy in North America than he was about the power that could authorize such an establishment, which was the English Parliament. In his opinion, the creation of a diocese like the imposition of the Stamp Tax was the assertion of a power that Parliament did not possess with regard to North America.

Years later (1815) Adams went on to admit that such concern about the importance of fears about the creation of an Anglican diocese in North America on the eve of the Revolution would be hard to accept in a country which now possessed bishops of various sorts, Methodist, Anglican and even “bishops, archbishops, and Jesuits of the church of Rome.”¹² It was a measure of the changes that had taken place between 1765 and 1815 that Adams was forced to explain why he believed that the colonists had been driven to revolution by fears of bishops.

What did this “wicked confederacy” have to do with the Stamp Act? It had nothing to do with it, at least not directly. What Adams was alluding to was the rumor that the British government was planning to erect a diocese of the Church of England in North America, a possibility that had troubled many colonists for a long time.¹³ Even many of those colonists who were Anglicans, such as the Virginians for example, did not want to have a bishop and the full panoply of the church hierarchy in the colonies.¹⁴ During the 1760s, there was a great deal of debate about

¹¹The question of whether or not canon law operated in England before 1066 was the subject of a famous scholarly debate between two leading English historians in the nineteenth century, Frederic Maitland and Bishop William Stubbs: see Richard H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990), 4–20.

¹²Adams to Dr. J. Morse, *Works*, 10: 185.

¹³The fundamental book on the question of an Anglican hierarchy in British North America is Arthur Lyon Cross, *The Anglican Episcopate and the American Colonies* (New York: Longmans, Green, 1902; reprinted, Hamden, CN: Archon Books, 1964). For the background of Adams’s *Dissertation*, see pp. 139–160. See also, Carl Bridenbaugh, *Mitre and Sceptre: Transatlantic Faiths, Ideas, Personalities, and Politics 1689–1775* (New York: Oxford University Press, 1962), pp. 230–259. See also, John Frederick Woolverton, *Colonial Anglicanism in North America* (Detroit: Wayne State University Press, 1984), pp. 222–225.

¹⁴Cross, 225.

activities that seemed to foreshadow the erection of a diocese. As a result of this coincidence in timing, Adams was able to link the rumor about an American bishop with the reality of the Stamp Act in the *Dissertation*. What these parliamentary actions had in common was Parliament's claim to legislate for the colonies in each case, thus uniting the two forms of oppression, the oxbows, into a formidable weapon to control the colonists. In Adams's opinion, eighteenth-century Parliament was claiming the same kind of tyrannical power that William the Conqueror had asserted.¹⁵

In the *Dissertation on the Canon and the Feudal Law*, Adams did not explicitly mention the efforts to establish an Anglican diocese in North America. Toward the end of the *Dissertation* however he wrote:

The cannon and feudal systems, tho' greatly mutilated in England, are not yet destroy'd. Like the temples and palaces, in which the great contrivers of them, once worship'd and inhabited, they exist in ruins; and much of the domineering spirit of them still remains. The designs and labours of a certain society, to introduce the former of them into America, have been well exposed to the public by a writer of great abilities¹⁶

The writer to whom he was referring was Jonathan Mayhew, who had criticized the policy of the Society for Propagating the Gospel [SPG] for sending its missionaries into already Christian New England instead of into the lands of the infidel Indians.¹⁷ To Mayhew and his fellow New Englanders such as Adams the SPG was yet another instrument for imposing British imperial control on the colonists rather than a vehicle for missionary work among the Indians. As colonial self-government

¹⁵“Parliament, if it did not usurp royal prerogative, certainly took over day-to-day control of the church, a control which had once been the domain of the king.” Woolverton, 17.

¹⁶Adams, *Papers*, 1: 127–128.

¹⁷Alan Heimert has suggested that the fact “the legend [of Mayhew's importance] persists despite this record is probably testimony to the effectiveness of John Adams' reminiscences,” where he labeled Mayhew the “fifth most important spokesman” for what Adams termed “American principles.” Alan Heimart, *Religion and the American Mind: From the Great Awakening to the Revolution* (Cambridge: Harvard University Press, 1966), 290–291. See also Cross, 146–158; Bridenbaugh, 224–229; Woolverton, pp. 223–225. For a recent re-evaluation of Mayhew's views: see Howard Lubert, “Jonathan Mayhew: Conservative Revolutionary,” *History of Political Thought* 32 (2011): 589–616.

was being undercut by Parliament's claim to be able to tax the colonists without their consent, so too, colonial self-government in ecclesiastical affairs, the right of the congregation to select its own minister, would be ended if the discipline of the Anglican Church were to be imposed in New England through the establishment of diocesan administration.

The debate about having a bishop had a long history because it dealt with the very nature of the Christian Church. The Puritans saw the retention of bishops and a hierarchical church structure by the Church of England as the most obvious sign of that Church's incomplete acceptance of the Reformation. Removing to America, the Puritans could remain members of the Church of England but could create a church structure that they believed to be more in keeping with the structure of the early church than was the episcopal model. The congregational and presbyterian structures as they developed in British North America were attempts to re-create the structure of the early church. The settlement of America was, therefore, part of the continuous process of freeing men from the burdens of medieval ecclesiastical tyranny that had begun in the sixteenth century, a process that paralleled the task of freeing men from their feudal bonds. This process reached its climax in England:

under the *execrable* race of the *Steuarts*, the struggle between the people and the confederacy aforesaid of temporal and spiritual tyranny, became formidable, violent and bloody.¹⁸

The purpose of colonizing North America “seems to have been to establish a government of the church more consistent with the scriptures, and a government of the state more agreeable to the dignity of human nature” In order to achieve those goals the encrustations of feudal and ecclesiastical laws had to be identified and removed. Just as the creation of a proper political structure required the dismantling of feudal law and the governmental institutions that had developed during the Middle Ages, so the establishment of “a church more consistent with the Scriptures” would require dismantling the medieval church's law and institutional structure that the Church of England had retained.¹⁹ Furthermore, just as Adams's arguments about the nature and evils of

¹⁸Adams, *Papers*, 1: 113.

¹⁹Ibid., 1: 115–116.

feudal law rested on an historical basis, so too did his arguments about the church.

In the *Dissertation on the Canon and the Feudal Law*, Adams assumed that his readers were acquainted with the history of the Church as the Protestant reformers had presented it. That history generally contrasted the Christian community of the first three centuries with the medieval Church. Broadly speaking, that history showed the Church as passing through a series of stages in the 1500 years before the Protestant Reformation. The first stage was that of the early Church, a voluntary community that had no connection with the state. The second stage began with the legalization of Christianity by the Emperor Constantine in 311. This began a period of gradual decline from the simplicity of the primitive Church as the leaders of the Church, now favored by the imperial government, lost their zeal and virtue.

In the tenth and eleventh centuries, as feudalism was emerging from the ruins of the Roman world to create a wicked political order, so too the papacy was emerging out of the decaying remains of the early Church to impose canon law on the Christian people. From then until the Reformation of the sixteenth century, the papacy and its corrupt system dominated the Christian Church. There were, however, always those who opposed the papal system and were forerunners of the sixteenth-century Reformers. The Reformation was, according to this view of Christian history, a return to the primitive form of Christianity, a return to the roots of the Church as it existed before the bishops of Rome came to seize control of it and corrupt it.²⁰

The Reformers' history of the Church clearly had a close relationship to the history of Europe since the fall of Rome that the Renaissance humanists had developed in the fourteenth and fifteenth centuries.²¹ The humanists had popularized the tripartite view of history with the Middle Ages, the period between the glories of the ancient world and the revived glories of the modern world, as a period of decay and corruption between the two glorious ages. Feudalism was the political structure

²⁰For a basic introduction to the Protestant historical writing: see Ernst Breisach, *Historiography: Ancient, Medieval, and Modern*, 3rd ed. (Chicago: University of Chicago Press, 2007), 150–160. There is an interesting selection of excerpts from a variety of Protestant historians including John Foxe in *Visions of History from Antiquity to the Enlightenment*, ed. Donald R. Kelley (New Haven: Yale University Press, 1991), 321–346.

²¹On the humanists' conception of history: see Breisach, 160–170; Kelley, 218–310.

of the corrupted Middle Ages and the papally-led Catholic Church provided the ecclesiastical system, canon law, for that era.

In the English-speaking world, the most important source of the Reformers version of Church history was John Foxe [1516–1587], whose *Acts and Monuments or Book of Martyrs* provided Englishmen with the history of the early and the medieval church in general and the history of the English church in particular.²² Curiously, Foxe's work had developed along the lines that Hume's *History* was to develop, that is, he began with the more recent period and then, in later editions, added medieval material. In the edition of 1559, Foxe began with John Wyclif (1320–1384), the English theologian and heretic whom he termed the "morning star" of the Reformation.²³ In the edition of 1570, Foxe had added material dealing with the early history of the Church, the bringing of Christianity to England in the days of the Apostles and the development of Christianity in England on through the Middle Ages. The result was another important addition to the knowledge of the Middle Ages available to Englishmen.

Foxe's *Acts and Monuments* was not however one of the works that turned up in Lutz's analysis of citations in American writings from the revolutionary era. This does not mean, however, that Foxe's work was not important to the historical outlook of colonial Americans. Copies of the work appear in seventeenth-century American catalogs of books and library lists, and a number of leading seventeenth and eighteenth-century figures are known to have read it.²⁴ Cotton Mather (1663–1728),

²²John Foxe, *The Acts and Monuments*, 8 vols., ed. Stephen Reed Cattley (London: Seeley and Burnside, 1837–1841). For the publication history of Foxe's book, a work that grew in size and scope as it passed through several editions, see William Haller, *The Elect Nation: The Meaning and Relevance of Foxe's Book of Martyrs* (New York: Harper and Row, 1963), 9.

Haller's book on Foxe and his earlier *The Rise of Puritanism* (New York: Columbia University Press, 1938) are fundamental to understanding the historical outlook of the Puritans, both at home and abroad in the colonies.

²³Stephan E. Lahey, *John Wyclif* (Oxford: Oxford University Press, 2009), 223. The term came from the Protestant scholar, John Bale. On the development of Wyclif's reputation: see James Crompton, "John Wyclif: A Study in Mythology", *Leicestershire Archeological and Historical Society* 42 (1966–1967): 6–34, esp. 10–11.

²⁴Concerning the existence of copies of Foxe's work in the colonies, especially in New England: see Thomas G. Wright, *Literary Culture in Early New England, 1620–1730* (New Haven: Yale University Press, 1920; reprinted, New York: Russell & Russell, 1966), 36, 38,

for example, expressed the hope that his *Magnalia Christi Americana* “would establish him as the John Foxe of the New World.”²⁵ Later, Jonathan Edwards (1703–1758) followed Foxe’s view of the history of the Church in his *A History of the Work of Redemption*.²⁶ Although John Adams does not appear to have cited Foxe, his view of history, as we shall see, was rooted in that tradition. Although Adams does not appear to have cited Foxe, one of Adams’s major opponents, Thomas Hutchinson (1711–1780), possessed a copy and read it regularly.²⁷

When Adams came to discuss the evils of the medieval Church, the canon law system, he did not have to provide his readers with the details of the historical development involved. He could simply point to the corruption of the Catholic Church as the end product of the development. The settlers of North America, the ancestors of his readers, had rejected the medieval church and all its corruptions.

They saw clearly, that of all the nonsense and delusion which had ever passed thro’ the mind of man, none had ever been more extravagant than the notions of absolutions, indelible characters, uninterrupted successions, and the rest of those phantastical ideas, derived from the common [sic, canon] law, which had thrown such a glare of mystery, sanctity, reverence and right reverence, eminence and holiness, around the idea of a priest, as no mortal could deserve, and as always must from the constitution of human nature, be dangerous in society.²⁸

In effect, Adams was condemning the entire Catholic development of the theology of the sacraments, especially Holy Orders, that had occurred during the Middle Ages and which was seen by Protestants as central to the clergy’s domination of Christian society. The clergy

58, 128; L.B. Wright, *The Cultural Life of the American Colonies: 1607–1763* (New York: Harper, 1957), 133.

²⁵Wright, *Cultural Life*, p. 161. For the importance of Foxe as a source of both historical facts and the philosophy of history for Puritan historians in America: see Peter Gay, *A Loss of Mastery: Puritan Historians in Colonial America* (Berkeley: University of California Press, 1966), 16.

²⁶Gay, *Loss*, 97–98.

²⁷Moses Coit Tyler, *The Literary History of the American Revolution, 1763–1783*, 2 vols. (reprinted, New York: Frederick Ungar, 1957), II: 398.

²⁸Adams, *Papers*, 1: 116.

monopolized the sacraments, claiming that the forgiveness of sins, absolution, could only be granted by a properly ordained priest, one whose power, characterized by an indelible character implanted on the soul at ordination, was derived from one of Christ's apostles, transmitted by the bishop who performed the ordination. The bishop's power came in an uninterrupted line from the apostles.

The institutional consequence of this sacramental theology that Adams condemned was "the whole system of Diocesan episcopacy," the regular administrative structure of the medieval church by which every Christian lived within a diocese and a parish, under the supervision of a bishop and a parish priest.²⁹ In this way, the superstructure of priests and bishops sat upon one shoulder of the masses and the feudal hierarchy on the other. In a weakened form, many of these corruptions existed within the Church of England according to its critics.

When the first colonists came to Massachusetts Bay, they rejected this sacramental theology and its institutional consequence, the diocesan structure. Instead of basing the power of the clergy on "the ridiculous fancies of sanctified effluvia from episcopal fingers, they established sacerdotal ordination, on the foundation of the bible and common sense." The result was the formation of a body of clergy characterized by "industry, virtue, piety and learning" instead of forming "a sordid, stupid, wretched herd" as did the Roman clergy. The reformed clergy were, as a result, "infinitely more independent on the civil powers, in all respects than they could be where they were formed into a scale of subordination, from a pope down to priests and fryars and confessors"³⁰ The result was an educated and free clergy more in keeping with the biblical model of the clergy than with the medieval papal model. His theme was the formation of a republican church for a republican people.

Adams's emphasis on the independence of the clergy in New England reflected what he saw as the most dangerous aspect of the medieval church, its relationship with secular power, the conspiracy of canon and feudal law to oppress the great bulk of the members of society for their own selfish interests. The colonists:

²⁹Ibid., 1: 116.

³⁰Ibid., 1: 116.

had an utter contempt of all that dark ribaldry of hereditary, indefeasible right—the Lord’s anointed—and the divine, miraculous original of government, with which the priesthood had enveloped the feudal monarch in clouds and mysteries, and from whence they had deduced the most mischievous of all doctrines, that of passive obedience and non resistance.

Adams went on to argue that this evil relationship between ecclesiastical and secular powers was not known “in the ancient seats of liberty, the republic of Greece and Rome” Furthermore, the colonists thought “all such slavish subordinations were equally inconsistent with the constitution of human nature and that religious liberty, with which Jesus had made them free.”³¹

The key to retaining liberty in both church and state was knowledge. Not only did the colonists create a political and ecclesiastical system that was designed to prevent the re-creation of feudal and canonical systems in North America, they created educational institutions that would insure the continuation of that state of affairs.

Their civil and religious principles, therefore, conspired to prompt them to use every measure, and take every precaution in their power, to propagate and perpetuate knowledge. For this purpose they laid, very early the foundations of colleges, and invested them with ample privileges and emoluments³²

The result was that every town was required by law to have a school so that a “native of America who cannot read and write is as rare an appearance, as a Jacobite or a Roman Catholic, i.e., as rare as a Comet or an Earthquake.”³³

Adams then called upon his clerical readers to revive the spirit of their predecessors and not to be intimidated.

Let the pulpit resound with the doctrines and sentiments of religious liberty. Let us hear the danger of thralldom to our consciences from

³¹Ibid., 1: 117. Adams either did not know of the role of religious ceremonies in the ancient city states or he chose to overlook it: see Ramsay MacMullen, *Paganism in the Roman Empire* (New Haven: Yale University Press, 1981).

³²Adams, *Papers*, 1: 118.

³³Ibid., 1: 120.

ignorance, extreme poverty and dependence, in short, from civil and political slavery.³⁴

In arguing thus, Adams neatly reversed the wicked alliance of feudal and canon law that characterized the Middle Ages and the Stuart era. In New England, the clergy side with liberty and with the people against governmental oppression and the enslavement of the people. As long as the clergy are learned and their congregations composed of educated people, feudal and ecclesiastical oppression cannot exist in the colonies in spite of English pressure. The clergy are to call the people to liberty rather than convincing them that slavery is their appointed lot in life. They are in effect to play a role directly opposed to that of the medieval clergy.

How real was Adams's fear that the British government was planning to erect an Anglican diocese in North America with all of its attendant evils? On the one hand, there was strong interest among some segments of the Church of England to establish formal church control over the American churches by establishing a diocese.³⁵ This generated a great deal of apprehension on the part of at least some of the Americans, that if a diocese was created the Independent churches of New England would lose their independence and become subject to episcopal control. This fear was accentuated by the submission of a number of well-known clerics to the Church of England as well as accepting Anglican ordination in the 1720s. These individuals subsequently became active in the movement to bring a bishop to the colonies, forming a kind of fifth column undermining the colonial intention to remain free of episcopal control. If the Anglican Church became the established church in America, more clerics might submit and the Independent churches would be forced to accept Anglican discipline or to fade away. In New England, above all, the Independents would lose their own established status with its financial and political advantages.

The increasing activity of the SPG in New England during the 1760s led to even more fear of episcopacy. Years later, Adams wrote that when the Reverend East Apthorp:

³⁴Ibid., 1: 126.

³⁵Cross, 144–147; Woolverton, 220–225.

hot from Oxford, and still more warmed by holy orders from Episcopal hands, returned to his native country [1760] ... [there] soon after arose a splendid edifice, as it was then thought, which every-body immediately concluded was intended for an Episcopal palace and in time for a Lambeth.³⁶

The reference to Lambeth of course accentuated the threat because Lambeth Palace was the seat of the Archbishop of Canterbury, the head of the Church of England under the king. Adams was suggesting here not simply that the appointment of a single bishop was feared but the creation of an extensive hierarchy of bishops under an archbishop. Such a situation would not only be oppressive ecclesiastically but economically as well. A clerical hierarchy would require income suitable to its members rank and station just as the rank and status of the crown's secular officials required incomes from taxes on the colonists.

If Adams and his contemporaries pointed to the actions of the Anglicans alone on the issue of an American episcopate, then perhaps one might be inclined to reject their fears as excessive. The end of the wars with France that brought all of French Canada under British control in 1763, however, posed another threat on the religious front. The inhabitants of French Canada were of course Catholics and the treaty that ended the war contained provisions that protected the Catholic Church from interference. This did not appeal to the New Englanders who had long feared invasion from Canada by Frenchmen and Indians aroused to slaughter New England Protestants by their priests. When he came to reflect on the importance of the debate about an American episcopate fifty years later, John Adams pointed to the Quebec Act of 1774 which granted official standing to the Catholic Church in Canada, making it in effect an established Church.³⁷ From this later perspective Adams saw his fear of episcopacy in British North America as confirmed. If the British government was going to accept the Catholic Church with its bishops as the established religion of a body of its subjects in Canada, what could possibly hold the government back from creating a diocese of the Church of England for its American colonists who were, presumably, already members of the Church of England? From the perspective of

³⁶Adams, Letter to J. Morse, *Works*, 10: 187; *see also* Bridenbaugh, 211–212.

³⁷Adams, Letter to J. Morse, *Works*, 10: 188. For the terms of the Act: *see* "The Quebec Act," Commager, *Documents*, 74–76.

Americans like Adams, the differences between Roman Catholicism and the Church of England were not really very great. There was also always the fear that the Church of England would reunite with Rome, a fear that had fanned the conflict with the Stuarts, even to the point of accusing Archbishop Laud, who hated the Catholic Church, of being a secret Catholic.³⁸ The eventual return of the Stuart family to the Catholic Church provided more evidence of the existence of a Catholic conspiracy at the highest levels of English government.³⁹

It is important to realize at this point that Adams's experience with Catholics, above all priests and bishops, was derived from his reading of history. He never encountered a bishop in the flesh until his mission to France during the Revolution when he encountered priests and bishops in some numbers at the French court. Furthermore, after the Revolution, he was proud of his role in assisting the formation of the Episcopal Church in the United States.⁴⁰ His opposition, so it would seem, was not so much to bishops in the flesh as bishops in history.

Can we identify Adams's fear of bishops with any particular exemplar of episcopal wickedness more recently than 1066? The obvious example would, of course, be Archbishop William Laud (1573–1645), the scourge of the Puritans and the staunch ally of King Charles I (1625–1649). Adams did not mention Laud in connection with the *Dissertation*, however, and his only mention of Laud appears to be in a letter he wrote in 1802.⁴¹ We might conclude that because Laud was so well-known, it would not have been necessary to cite him by name in the *Dissertation* or in any of his other writings.

In the *Dissertation on the Canon and the Feudal Law* Adams made it very clear that the bishops that he was criticizing were not those of the

³⁸On the Puritan attacks on Laud: see the fundamental life of Laud: Hugh Trevor-Roper, *Archbishop Laud 1573–1645*, 2nd ed. (London: Macmillan, 1962), 307.

³⁹James II had become a Catholic secretly before ascending the throne and his second wife was a Catholic French princess. The last Stuart was a cardinal of the Roman Church, Henry Benedict Stuart (1725–1807). On the later Stuarts and Catholicism: see Geoffrey Scott, "The court as a centre of Catholicism," in Edward Corp, *A Court in Exile: The Stuarts in France, 1689–1718* (Cambridge: Cambridge University Press, 2004): 234–256.

⁴⁰Adams, "To the Printers of the Boston Patriot" [1809], *Works*, 9: 241–312 at 276.

⁴¹Adams, Letter to Joshua Thomas, et al., *Works*, 9: 587. A reader of Hume would have known a good deal about Laud including the story that he had twice been offered a cardinal's hat by the pope: Hume, v. 4: 452.

Stuart era. Indeed, from one perspective, Laud would not have been a good example to present to an eighteenth-century audience. Laud, after all, lost. The Stuart monarchy he had served deserted him and then fell itself. Laud certainly was an example of episcopal tyranny or, more specifically, attempted episcopal tyranny, but it is hard to see how Adams could have had Laud in mind when he sought to arouse an eighteenth-century American audience to oppose the tyranny of canon law since Laud and his party were defeated over a short span of time. The theme of the *Dissertation* after all was that the tyranny of canon law was the product of a long period of development over time, a formidable enemy that continued to rear its head generation after generation. Furthermore, it is clear that when Adams was reminding his readers of the evils associated with feudal law, he was not simply reminding them of the Stuart attempt to revive medieval, or feudal, forms of royal income that had fallen into abeyance. He really meant the occupation of a conquered people by a standing army, the sort of army that he identified with feudal society in the Middle Ages. If he was concerned with the revival of medieval feudal law and tyranny in the eighteenth century why not suppose that he meant the same thing when he referred to canon law? In other words, instead of looking for a seventeenth-century analog to the bishops who created and operated the system of canon law in the Middle Ages, why not look for a medieval bishop whose life and career Adams could presume was known in general terms at least to the readers of the *Boston Gazette*.

One medieval bishop who was well-known in the eighteenth century was Thomas Becket, whose murder in 1170 was one of the most famous events in the medieval Church-State conflict. Becket's reputation as a martyr began within a generation of his death, and there were stories and poems about him in virtually every European language. His shrine at Canterbury, as Chaucer has reminded us, was one of the most important pilgrimage sites in all of Christendom, important enough for Henry VIII to order it destroyed and the saint's bones scattered in the sixteenth century.⁴² At the same time, Becket's life and career continued to hold a fascination for Protestant Englishmen and Foxe devoted a great deal

⁴²On the popularity of Becket in the Middle Ages: see Jonathan Sumption, *Pilgrimage: An Image of Mediaeval Religion* (London: Faber & Faber, 1975), 150–151; Frank Barlow, *Thomas Becket* (Berkeley: University of California Press, 1986), 265–275.

of space to Becket in his *Acts and Monuments*. In fact, as William Haller pointed out: "It was Foxe who first popularized the story of Henry II's contention with Becket."⁴³ The popular eighteenth-century historians Paul de Rapin-Thoyras and David Hume also contributed to the discussion of the conflict between Henry II and Becket.⁴⁴

Adams and his generation also knew a great deal about Becket because there was great interest in the career of King Henry II (1154–1189) whose conflict with Becket led to the archbishop's murder. Henry II's private life was the subject of two plays between the end of the seventeenth century and the end of the eighteenth.⁴⁵ In addition, his public career was the subject of two biographies written during the last three decades of the eighteenth century. The first of these studies was that of George Lord Lyttelton whose *History of the Life of King Henry II* appeared in 1767. This five-volume work, of which a copy can be found in Adams's library, devoted virtually all of one volume to examination of the conflict between the king and the archbishop. In 1790, Joseph Berington, an English Catholic priest, published a study of Henry II and his two sons, Richard I and John, subtitled "in which the Character of Thomas A Becket is vindicated from the attacks of George Lord Lyttelton." Berington contended that Lyttelton's biography had unfairly condemned Becket and did not give adequate consideration to the wrongs that Henry II had committed against the Church.⁴⁶ In other words, when John Adams was preparing the *Dissertation of the Canon and the Feudal Law*, Thomas Becket was being widely discussed in the English-speaking world. When he was warning his readers of the evils that would flow from the appointment of an Anglican bishop for North America, he was not simply presenting an abstract conception of a bishop, he was calling upon the history of the medieval English

⁴³Haller, 155.

⁴⁴See Rapin-Thoyras, 3: 20–48; Hume, 1: 320–355.

⁴⁵See Thomas M. Jones, "Henry II in Drama: Changing Historical Outlooks," *Comparative Drama* 12 (Winter, 1978–1979): 309–325.

⁴⁶George Lord Lyttelton, *The History of the life of King Henry the Second*, 2nd ed., 4 vols. (London: W. Sandby and J. Dodsley, 1767–1771). Joseph Berington, *The History of the Reign of Henry the Second, and of Richard and John, His Sons* (London: G. G. J. & J. Robinson, R. Faulder, 1790). For a brief introduction to eighteenth-century views of Becket: see *The Becket Controversy*, ed. Thomas M. Jones (New York: John Wiley and Sons, 1970), 59–69 and 149–152.

Church and upon the popular memory of the most famous archbishop of Canterbury, Thomas Becket.

One major difficulty with this interpretation of the place of Thomas Becket is that Adams does not mention him in the *Dissertation*. Indeed, he only mentioned Becket once in his collected writings. In 1774 and 1775, Adams wrote a series of letters attacking the claim that the English Parliament could legislate for the American colonies. Defenders of Parliament's claim to possess such power pointed to the example of Ireland, a conquered country subject to parliamentary legislation. In *Novanglus* or a *History of the Dispute with America, from its origins in 1754, to the Present Time*, Adams rejected the comparison between the English conquest of Ireland and the settlement of North America. He explained that Henry II who had begun the conquest of Ireland:

had long cast a wishful eye upon Ireland, and now partly to divert his subjects from the thoughts of Becket's murder, partly to appease the wrath of the pope for the same event, and partly to gratify his own ambition[invaded Ireland].⁴⁷

Adams had the chronology of the events wrong, the English expressed interest in Ireland as early as 1155 with an English presence from 1166, four years before Becket's murder. The point here, however, is not the accuracy of his historical knowledge of the conquest of Ireland but the casual manner in which he referred to Becket. He assumed that his readers would know who Thomas Becket was and why his murder was so important that the king of England would invade a foreign country in order to distract attention from it.

Working on the assumption that John Adams and his readers possessed some knowledge of medieval bishops, especially Thomas Becket, we might ask what picture of a bishop they could have derived from reading the popular histories in circulation in the mid-1760s. Such an analysis will provide some insight into the vehemence of Adams's response to the threat of an Anglican diocese in North America.

The starting point for any discussion of the eighteenth-century American, especially the Puritan New England, attitude toward bishops is, of course, John Foxe's *Acts and Monuments*. The eight-volume

⁴⁷ Adams, "Novanglus," *Papers*, 2: 355.

nineteenth-century edition of Foxe's work devoted almost 100 of the 920 pages in one volume to Henry II's reign. Of these pages, about 60 were devoted to the conflict between the king and the archbishop.

Foxe began his discussion of Becket with a direct assault on the claim that Becket was a true martyr for the Church:

If the cause make a martyr, as is said, I see not why we should esteem Thomas Becket to die a martyr, more than any others whom the prince's sword doth here temporally punish for their temporal deserts. To die for the church I grant is a glorious matter. But the church, as it is a spiritual and not a temporal church, so it standith upon causes spiritual, and upon a heavenly foundation ... and not upon things pertaining to this world, as possessions, liberties, exemptions, privileges

According to Foxe, Becket's death resulted from his greedy desire to protect the Church's possession and exemptions from the law of the land. Because Becket fought to defend these temporal goods, not the spiritual values of the Church, he could not, according to Foxe, "be excused from the charge of being a plain rebel against his prince," one who employed every means at his disposal against the legitimate efforts of his sovereign to limit the Church's possessions and to restrict its power to intervene in secular matters.⁴⁸

Foxe contrasted the firm action that Henry II of England had taken against the greed of churchmen like Becket with the weakness of the rulers of the Holy Roman Empire. If the emperors:

had done the like to the popes contending against them, what time they had taken them prisoners; that is, if they had used the law of the sword against them, and chopped off the heads of one or two, according to their traitorous rebellion, they had broken the neck of much disturbance, which long time after did trouble the church.⁴⁹

Writing in Elizabethan England, Foxe stressed the subordination of the church to the state and of all subjects, even priests and bishops, to royal justice. At the same time, he was also critical of the way in which Becket's death had occurred. The four knights who had actually

⁴⁸Ibid., 2: 196–197.

⁴⁹Ibid.

committed the murder had acted without the king's express instructions and to that extent were in the wrong. The king and the knights, no less than Becket and the bishops, were bound to act according to the law, so that to the extent that the archbishop's death resulted not from a lawful judicial judgment but from a violent expression of the king's wrath, it was a poor reflection on the king.⁵⁰

The supremacy of royal justice was important to Foxe, a point he stressed when he discussed the most famous aspect of the conflict between Becket and Henry II, the issue of clerics who when accused of a crime claimed exemption from the jurisdiction of secular courts.⁵¹ He recognized that Becket's episcopal colleagues, as benefited obedient subjects of the king, acceded to Henry's demand that clerics convicted in clerical courts of serious crimes be handed over to the secular courts for punishment. According to Foxe, at first the other bishops convinced Becket to agree, but he later changed his mind and refused to sign the Constitutions of Clarendon which stated the king's position until he could consult with the pope. Then, fearing Henry's wrath, Becket attempted to flee to the continent but was prevented by contrary winds. The positions of the two sides gradually hardened because the "king, for his regal authority, thought it much that any subject of his should stand against him" while the "archbishop again, bearing himself bold upon the authority, and especially on the letters, of the pope ... thought himself strong enough against the king and his realm."⁵²

As Foxe judged the matter, Becket's intransigence was placing the pope in a difficult position because, as Adams was to echo two centuries later, the popes "useth always to hold in with kings, howsoever the world speedeth." On the one hand, the pope removed Becket from his position as papal legate in England at Henry's request but, on the other hand, he informed Becket in a letter that "it was never my mind or purpose, nor ever shall be, God willing, to subdue you or your church under the obedience of any person, to be subject to any, save only to the bishop of Rome."⁵³ The portrait that Foxe painted for his readers revealed a

⁵⁰Ibid.

⁵¹On this issue: see Charles Duggan, "The Becket Dispute and the Criminous Clerks," *Bulletin of the Institute of Historical Research* 35 (1962): 1–28.

⁵²Foxe, 2: 206.

⁵³Ibid., 2: 206–207.

devious pope and an ambitious Archbishop of Canterbury who joined forces to mislead a king whose only desire was to provide a uniform system of justice for all of his subjects.

Eventually, Henry II made his peace with Becket because he found himself in a variety of circumstances that required him to make peace on some fronts in order to defend himself and his kingdom from even greater enemies. Becket, however, a man lacking fundamental loyalty and decency, returned to England but then continued to act in ways that Foxe concluded were designed to test the king's patience. The result was the famous scene in which Henry II, losing his patience with his troublesome archbishop, exclaimed whether "amongst so many [in the royal court] that he had done for, there was none that would revenge him of his enemy," that is, the Archbishop of Canterbury. Four knights of the royal court leaped to horse, eventually reaching Canterbury and confronting Becket. According to Foxe, the murderers first asked the archbishop "whether he would relent to the king's mind, and come to some conformity."⁵⁴ Becket stubbornly refused to act the part of a dutiful subject and submit. For Foxe, Becket was doing one of the worst things a man could do, he was refusing to obey his king. Furthermore, Becket had once appeared to be the king's close friend. Now he was throwing off the mask of friendship and revealing himself for what he was, an ungrateful priest who owed everything to royal favor and was now rewarding royal friendship with ingratitude.

According to Foxe, the potential murderers accused Becket of an even more heinous crime before they finally killed him. One of the knights reminded Becket that he had excommunicated those bishops who had taken part in the coronation ceremony of Henry II's eldest son, an action that took place while the archbishop was in exile. The obvious purpose of the coronation was to insure a smooth succession at Henry II's death.⁵⁵ The murderer charged that Becket had excommunicated the bishops, opposed the coronation of the king's son, and also Henry, because "it seemeth likely that you aspired to take his crown from him,

⁵⁴Ibid., 2: 244.

⁵⁵On the practice of crowning the royal heir during his father's lifetime: see W.L. Warren, *Henry II* (Berkeley: University of California Press, 1977), 110–111. This was the first and the last time it was ever done in England, although it had long been done in France and continued to be done into the thirteenth century. The younger Henry in any even did not succeed his father, dying in 1183.

and to be exalted king yourself.” The archbishop denied the charge: “such good will I do bear him, that, only his father, the king [Henry II], excepted, there is none whose honour I more tender and love.”⁵⁶ The charge that Thomas Becket sought the English throne was ludicrous, but it fitted nicely into Foxe’s theme, the unbridled lust of the clergy after power, a theme that was to be found in Adams’s *Dissertation*.

John Foxe concluded his discussion of Thomas Becket with information from several twelfth-century and thirteenth-century sources designed to prove that even Becket’s own contemporaries thought that he was an arrogant man whose excessive zeal only brought down the king’s wrath on the church in an evil cause. One of the chroniclers Foxe cited claimed that around 1220, the masters of the University of Paris held a debate on the question of “whether Thomas Becket was saved or damned?” One side argued that Becket deserved “death and damnation, for that he was so obstinate against God’s minister, his king.” The opposing side defended Becket’s claim to sanctity by citing the numerous miracles that the faithful had attributed to Becket’s intervention.⁵⁷

Using the miracles attributed to Becket as a starting point, Foxe then went on to decry the credulity of those who believed in miracles and other papist superstitions. He asserted that the only function of such stories was “to bring men to Canterbury, with their vows and offerings to enrich the covent.” This interest in miracles and its consequences were yet another sign that the medieval Church was corrupt.⁵⁸

Foxe’s discussion was lengthy and detailed. His reader was presented with both a detailed analysis of the issues involved and with lengthy excerpts from the relevant contemporary documents as well as extensive references to the works of medieval chroniclers who described the struggle. Like many other sixteenth-century historians, Protestant and Catholic, Foxe was anxious to demonstrate the historical validity of his religious position, taking the ironic position that the evils of medieval Catholicism could be clearly demonstrated from medieval Catholic sources. The result was a picture of bishops that was, at best a picture of frightened men, such as Becket’s episcopal colleagues, who obeyed the

⁵⁶Foxe, 2: 245.

⁵⁷Ibid., 2: 249.

⁵⁸Ibid., 2: 250.

king only out of fear. Becket stands out as a man unafraid but in an evil cause. The pope, the bishop of Rome, was devious and cunning.

Lest the reader miss the point of the argument, Foxe followed his discussion of Becket and his fellow bishops with a description of a group of late twelfth-century Christians, the Waldenses. These people dwelling peacefully in southern France, studied the Bible, prayed and otherwise led model Christian lives. The pope and the bishops persecuted these good people, another proof for Foxe that the medieval Church was fundamentally corrupt and beyond redemption. Small groups like the Waldenses were, in Foxe's opinion, the bearers of true Christianity, keeping it alive through the medieval darkness until the Protestant Reformation enabled true Christianity to reappear.⁵⁹

John Foxe and the other polemical historians of the sixteenth century, along with the antiquarians who discovered, edited, and published the relevant documents, provided later historians with the materials from which they could write the history of the Middle Ages without, they claimed, entering into the confessional wars involving scholars from the different Christian denominations. At the same time, the secular-minded historians of the Enlightenment tended to follow in the footsteps of the Protestant historians of the Reformation when it came to understanding and judging the medieval church. They too despised bishops, condemned the entire papally directed ecclesiastical structure, and generally sided with secular rulers when dealing with the medieval Church-State conflict. Historians in the tradition of the *philosophes* were not, however, interested in supporting the arguments of Protestant historians about how the sixteenth century saw a return to pure, primitive Christianity. What the *philosophes* did assert, however, was the need to return to the virtuous polity that existed before the barbarian invasions and the rise of the Christian Church. Like the Protestant historians, the *philosophes* were interested in returning to a purer antiquity, in this case the Roman Republic, not the church communities described in the Acts of the Apostles.

⁵⁹Ibid., 2: 264–271. This theme reflected the notion of the “saving remnant,” the biblical notion that throughout history, regardless of the persecution of Christians, there would always be a few true believers keeping the faith alive until it would overcome all of its enemies: see James R. Mathis, *The Making of Primitive Baptists* (New York: Routledge, 2004), 106–109.

Even if Adams and his contemporaries did not read Foxe, they did read about the medieval English church in a variety of histories that were not ostensibly devoted either to medieval or to ecclesiastical history. When Paul de Rapin-Thoyras came to examine the conflict between Henry II and Becket, he painted the contrast between the goals of the bishops and those of the king in even starker terms than Foxe. He pointed to the way in which:

the power of the Clergy was increase'd to the Prejudice of the Royal Authority. *Henry*, who had seen very bad effects of it in the Reign of *Stephen*, resolv'd upon his Accession to the Crown to do his Endeavour to bring this exorbitant Power within due Bounds.

In Rapin-Thoyras's opinion, Henry II began his reign with the intention of instigating conflict with the clergy. He arranged for the appointment of Thomas Becket as Archbishop of Canterbury in order to implement that goal. Instead of doing as Henry II expected, however, Becket "flatter'd himself before-hand with the thoughts of immortal Glory in vigorously espousing the *Cause of the Clergy*, which they generally affected to stile called the *Cause of God*." Furthermore, all the bishops "were of [the] Opinion that they cou'd not give surer Ma[r]ks of their Zeal for Religion and the Service of God, than by maintaining, to the utmost of their Power, these pretended *Immunities of the Clergy*, and consequently, all the Abuses that spring from thence." Like Foxe, Rapin-Thoyras, portrayed the king as the purveyor of justice to all his subjects, even the clergy. According to him, when Becket asserted the immunity of clerics from the jurisdiction of secular courts, the king replied: "being appointed by God to cause Justice to be done to all his Subjects, without distinction, he did not understand why these pretended *Immunities* shou'd screen Malefactors of what Order soever"⁶⁰ The king also warned the nobles of England that if "Care was not taken to curb the Fury of that Prelate's haughty and arrogant Temper he would at length usurp all the *Prerogatives* of the Crown, under the Pretence of Religion."⁶¹ Here Rapin-Thoyras was echoing Foxe's picture of an Archbishop of

⁶⁰Paul de Rapin-Thoyras, *The History of England: As Well Ecclesiastical as Civil*, trans. N. Tindal (London: James and John Knapton, 1731), 3: 21–22.

⁶¹*Ibid.*, 3: 24.

Canterbury who was anxious to usurp royal power. In Rapin-Thoyras's opinion, by arousing fears of clerical usurpation of royal power, Henry II was able to isolate the clergy from the nobles who might otherwise see, in the archbishop's opposition to Henry's attempts to extend royal jurisdiction over the clergy, a signal of what might happen to them if Henry's plans to control the clergy proved successful. As Henry increased the pressure on Becket to accept the Constitutions of Clarendon and the limits on clerical exemption from royal jurisdiction that the Constitutions contained, the archbishop became increasingly stubborn because in the long run, according to the historian, his goal was not a reasonable solution to the issue. Apparently realizing that any attempt to obtain royal power was now beyond his grasp, Rapin-Thoyras's Thomas Becket sought a new, more important goal. Becket now proposed "to make himself famous, by a Firmness, which, in his Opinion ought to rank him among the most renowned Confessors in the *Church*."⁶² In so acting, Becket was only doing what Rapin-Thoyras believed the other bishops thought should be done, even if they lacked the courage to be martyrs themselves. There is, he argued, "never any bringing Matters to an Accomodation with the Clergy, unless their Demands are all answer'd. They pretend that their Cause is the Cause of God, and consequently they can give up nothing without Sin."⁶³

Rapin-Thoyras concluded his discussion of Becket with a brief look at the thirteenth-century debate about Becket at the University of Paris. Where Foxe had positioned the debate in terms of Becket's quarrel with the king, "God's minister," in sixteenth-century vocabulary, Rapin-Thoyras broadened the charge, saying that Becket's critics had "asserted, that for his extreme Pride, he had deserv'd to be damn'd."⁶⁴ This change in the emphasis of the charge against Becket suggests a change in the way Becket was coming to be viewed in the eighteenth century, especially by men such as John Adams. Where Foxe, a prudent Elizabethan, stressed the need for bishops to work with kings, thus making disloyalty Becket's chief failing, Rapin-Thoyras emphasized the pride that caused Becket to rise up against his king. Furthermore, for the later historian, Becket was not alone in his opposition to the king. All bishops

⁶²Ibid., 3: 28.

⁶³Ibid., 3: 41.

⁶⁴Ibid., 3: 47.

were guilty of a dangerous pride that needed to be contained before it destroyed the state. In this starker, eighteenth-century portrait of the conflict, there is no chorus of loyal, if weak, bishops telling Becket to conform. There is, for Rapin-Thoyras, only unspoken episcopal support for the stand that Becket took. The issue has become who shall control the kingdom, the clergy or the king and his nobles? The king represents justice and good order, while the clergy represent destructive special privilege that seeks not parity with the secular order, much less subordination to it, but domination over it.

When David Hume came to discuss Becket's battle with Henry II, he, like Rapin-Thoyras, dealt with it in terms of Henry's desire to re-establish the "justice and tranquility, of which the kingdom had so long been bereaved" because of the civil war that preceded the king's reign. Hume stressed that Henry had begun his reign with a series of actions designed to restore order. He sent away the mercenaries who had caused some of the civil war's worst depredations, and he tore down the multitude of castles erected during the war that had provided "so many sanctuaries to freebooters and rebels."⁶⁵ In addition, he reformed the civil order by reforming the coinage that had fallen into decay. Then as Hume saw matters, Henry brought the nobles under control and made peace with the king of France in order to bring the clergy under royal control. This was in his opinion "an enterprise which, though required by sound policy, and even conducted in the main with prudence, bred him great disquietude, involved him in danger, and was not concluded without some loss and dishonour." For Hume, the plan to bring the clergy under royal control was a simple, straightforward matter:

The usurpations of the clergy, which had at first been gradual, were now become so rapid, and had mounted to such a height, that the contest between the regale and the pontificale was really arrived at a crisis in England; and it became necessary to determine whether the king or the priests, particularly the Archbishop of Canterbury, should be sovereign of the kingdom.

Henry had hesitated to move against the Church while Becket's predecessor as archbishop, Theobald, "a man of mild character and advanced

⁶⁵Hume, *History*, 1: 315.

years,” remained alive.⁶⁶ In addition, according to Hume, Henry owed the elderly archbishop a debt of gratitude for having paved his way to the throne in a peaceful fashion. As he wrote these lines praising Henry’s sense of gratitude, Hume was undoubtedly recalling that one of the great charges against Becket was his ingratitude toward a man who had done so much for him, who had been, indeed, his patron in his rise to power. Henry arranged for Becket to assume the archbishopric of Canterbury precisely because he was a man “on whose compliance he thought he could entirely depend.”⁶⁷ Becket, in turn, “was well acquainted with the king’s intentions of retrenching, or rather confining within the ancient bounds, all ecclesiastical privileges, and always showed a ready disposition to comply with them”⁶⁸

According to Hume, the king’s plan to use Becket as the tool for achieving his goal of controlling the Church ended in frustration because Becket underwent a personal transformation upon his elevation to the archbishopric of Canterbury. Changing his style of life dramatically, Becket “totally altered his demeanour and conduct, and endeavoured to acquire the character of sanctity” He surrendered all the secular offices that he had held and “was now become entirely a new personage.” He wore sackcloth under his outer garments which, because of “his affected care to conceal it, was necessarily the more remarked by all the world.”⁶⁹ Becket also engaged in a variety of public demonstrations of his new-found piety that attracted wide attention and approval. While the simple might have been convinced on the new archbishop’s sanctity, however, “all men of penetration plainly saw that he was meditating some great design, and that the ambition and ostentation of his character had turned itself towards a new and more dangerous object.” Having adopted a new way of life, one designed to gain for him the laurels of sanctity, Becket could hardly wait for an opportunity to confront the king. The result was that Becket “was himself the aggressor” and he “endeavoured to overawe the king by the intrepidity and boldness of his

⁶⁶Ibid., 1: 320.

⁶⁷Ibid., 1: 321.

⁶⁸Ibid., 1: 323.

⁶⁹Ibid., 1: 324. The nature of Becket’s conversion experience has been the subject of much discussion among medievalists in recent years: *see*, for example, David Knowles, *Thomas Becket* (Stanford: Stanford University Press, 1971), 53–55; Beryl Smalley, *The Becket Conflict and the Schools* (Totowa, NJ: Rowman and Littlefield, 1973), 115–117.

enterprises.”⁷⁰ These activities included asserting a claim to lands that had once belonged to the church of Canterbury but had long been in secular hands. Seeking the return of these lands, even from the greatest nobles in England, was a signal of Becket’s intentions regarding secular power.

Hume argued that Becket’s drive for power was dangerous in twelfth-century England because the “union of the civil and ecclesiastical power serves extremely, in every civilized government, to the maintenance of peace and order; and prevents those mutual encroachments which, as there can be no ultimate judge between them, are often attended with the most dangerous consequences.” Becket’s actions threatened to upset their necessary union. If civil power did not dominate the union then “those gross impostures and bigoted persecutions which, in all false religions, are the chief foundation of clerical authority” would flourish. When the clergy become too powerful, “the state, by the resistance of the civil magistrate, is naturally thrown into convulsions” as a result of the need to respond to “so dangerous and insidious a rival.” Becket being “a prelate of the most inflexible and intrepid character ... the contending powers appeared to be armed with their full force, and it was natural to expect some extraordinary event to result from their conflict.”⁷¹

The apparent resolution of the conflict with an agreement between Henry II and the pope sprang from the political pressures on each party at the same time that necessitated an end to the conflict in which Becket played the central role. Henry was willing to drop his claims to jurisdiction over the clergy and he hoped that years in exile would have moderated the archbishop’s zeal for clerical privileges. Instead, if anything, Becket was even more convinced of the righteousness of his position:

Assured of support from Rome, he was little intimidated by dangers which his courage taught him to despise, and which, even if attended with the most fatal consequences, would serve only to gratify his ambition and thirst of glory.⁷²

⁷⁰Hume, *History*, 1: 325.

⁷¹*Ibid.*, 1: 326–327.

⁷²*Ibid.*, 1: 348.

In Hume's opinion, it was an exasperated Henry II who responded to the problems which Becket caused in England upon his return. The king became "vehemently agitated, [and] burst forth into an exclamation against his servants, whose want of zeal ... had so long left him exposed to the enterprises of that ungrateful and imperious prelate."⁷³ This, in turn, led to "the tragical end of Thomas à Becket, a prelate of the most lofty, intrepid, and inflexible spirit, who was able to cover to the world, and probably to himself, the enterprises of pride and ambition under the disguise of sanctity and of zeal for the interests of religion."⁷⁴ The subsequent exaltation of Becket's memory that led to his shrine at Canterbury was due to the clergy's desire to use the archbishop's death to insure the achievement of their primary goal, superiority over secular power. They took particular pride and interest in Becket because while other "saints had only borne testimony by their sufferings to the general doctrines of Christianity ... Becket had sacrificed his life to the power and privileges of the clergy"⁷⁵

The picture of Becket that Rapin-Thoyras and Hume provided did not entirely support Adams's position on bishops. They portrayed Becket and other high-ranking clerics not as allies of kings in the suppression of the people but as enemies of good kings, enemies who had to be brought under strict control lest they upset the good order of the kingdom. Furthermore, as Hume pointed out in direct contrast to Adams, kings and bishops should work together for the good of the kingdom. The medieval churchmen were the opposite of that, troublemakers who upset the good order of the kingdom. Seen in this light, there was no Norman Yoke of the sort Adams claimed existed but there was a good deal of Church-State conflict. Theobald's predecessor, Anselm of Bec (ca. 1033–1109) was twice driven into exile while archbishop (1093–1109) and another archbishop, Stephen Langton (c. 1150–1228) was appointed archbishop (1207–1228) by Pope Innocent III (1199–1216) but was forbidden to enter England by King John (1199–1216) until

⁷³Ibid., 1: 349.

⁷⁴Ibid., 1: 350.

⁷⁵Ibid., 1: 353.

1213. Furthermore, he was one of the leaders of the opposition to King John and played a leading role in the drafting of *Magna Carta*.⁷⁶

The union of spiritual and temporal powers that Adams saw as medieval was much weaker than Adams either recognized or admitted. It was Henry VIII (1509–1547) who joined the two powers together permanently when he declared that he was “the supreme head of the Church of England.”⁷⁷ No medieval English ruler had the kind of control over the Church as did Henry VIII and his successors.

For eighteenth-century Americans like John Adams and his contemporaries, bishops like Thomas Becket were the bishops they knew and feared. Even though the twelfth-century Archbishop of Canterbury was chronologically much further removed from eighteenth-century Boston than were the contemporary bishops and archbishops of the Anglican Church, the fact that Becket played such a large role in the histories that the colonial Americans read meant that when a polemicist like Adams wanted to arouse colonial Americans to oppose English policies that could lead to an American episcopate, he would use those images that were most inclined to move his audience in the direction he wished them to go. Becket represented the worst possible politico-religious situation. He was a leading member of the church that had corrupted the true Christian faith and he wanted to replace government by kings with government by priests. He was far worse than the worst of the Anglican bishops, even William Laud, the seventeenth-century scourge of the Puritans. Laud, after all, fell, and with the subsequent fall of King Charles I went the last hope of a Church-State relationship in England like that of the medieval Church. For the Puritans, what was wrong with

⁷⁶On Langton’s important role in the creation of *Magna Carta*: see F.M. Powicke, *Stephen Langton* (Oxford: Clarendon Press, 1928), 112–114. Powicke’s position was strongly criticized by H.G. Richardson and G.O. Sayles, *The Governance of Mediaeval England from the Conquest to Magna Carta* (Edinburgh: University Press, 1963), vi, 363. See also, John Hudson, “Magna and the *ius commune*, and English Common Law,” in *Magna Carta and the England of King John*, ed. Janet S. Loengard (Woodbridge: Boydell Press, 2010), 99–119.

⁷⁷Henry VIII, “An Act concerning the King’s Highness to be Supreme Head of the Church of England” 1534, in *The Tudor Constitution*, G.R. Elton, ed., 2d ed. (Cambridge: Cambridge University Press, 1982), 364–365.

Laud was that he was, according to them, inclined toward Rome.⁷⁸ At best, or, perhaps more accurately, at worst, Laud was only a pale reflection of the great evil bishops of the Middle Ages of whom Becket was the exemplar.

When John Adams linked the Stamp Act with the rumors about the erection of an Anglican diocese in North America as the evidence of a British plot to oppress and enslave the colonists, he was articulating an argument with which many of his contemporaries would accept without much difficulty. The way in which he presented the argument, in terms of the revival of medieval laws and institutions, however, may not have been all that acceptable to them, even if, being acquainted with the same history, they understood what he was saying. Adams himself subsequently had differing opinions about the significance and impact of the *Dissertation*. In 1770, only five years after the essays had appeared in the *Boston Gazette*, he responded to an inquiry about them from the historian Catherine Macaulay by observing that “it was rather a mortification to me to find that a few fugitive speculations in a newspaper had excited your curiosity to inquire after me.” With modesty, or perhaps, false modesty, Adams added that he had thought the work to be so insignificant that he had “never thought it worth his while to give it either a title or a signature.”⁷⁹ Some years later, in 1778, however, Adams wrote to another correspondent, claiming “that the ‘Dissertation’ was the spark which ignited New England’s opposition to the Stamp Act”⁸⁰ Again, in 1805, he appears to have changed his mind again, referring to the *Dissertation* as a “lamentable bagatelle,” adding that he retained “no copy of it,” and, furthermore, he knew “not where to get one.”⁸¹

Adams’s final words on his *Dissertation* came in 1815 when he was responding to Jedediah Morse’s request for his opinion about the causes of the American Revolution. At this point, it was Adams’s considered opinion that the “apprehension of Episcopacy” aroused the colonists “to close thinking on the constitutional authority of the parliament over the colonies.” Thus, as Adams saw the matter in 1815, the objection was not

⁷⁸Hume, *History*, 4: 452. Hume repeated the story that Laud had been offered a cardinal’s hat if he would adhere to Rome.

⁷⁹Adams, Letter to Catherine Macaulay, August 9, 1770, *Works*, 9: 331–333 at 332.

⁸⁰Adams, *Papers*, 1: 104.

⁸¹Adams, letter to F.A. Vanderkemp, February 5, 1805, *Works*, 9: 589–590 at 589.

merely to the office of a bishop, though even that was dreaded, “but to the authority of parliament, on which it must be founded.” The crucial issue was that there was “no power or pretended power, less than parliament, that can create bishops in America.”⁸²

If the Americans had accepted this “power or pretended power,” then they would have opened the floodgates of despotic parliamentary rule:

But if parliament can erect dioceses and appoint bishops, they may introduce the whole hierarchy, establish tithes, forbid marriages and funerals, establish religions, forbid dissenters, make schism heresy, [and] impose penalties extending to life and limb as well as to liberty and property.⁸³

To prove his point, Adams concluded his discussion of the pre-revolutionary American fear of an Anglican episcopate by pointing to what happened in Canada after the French had been ousted. In 1774, the English government passed the:

Canada bill, by which the Roman Catholic religion and Popish bishops were established in that province by authority of a British parliament. The people said, if parliament can do this in Canada, they can do the same thing in all the other colonies; and they began to see and freely to say, that parliament had no authority over them in any case whatsoever.⁸⁴

In reconsidering the significance and impact of the *Dissertation* on the colonists in the decade before the Revolution broke out, Adams shifted the basic argument from fear of the imposition of feudal and ecclesiastical institutions to fear of Parliament’s jurisdiction over the colonies because Parliament claimed jurisdiction in both secular and spiritual matters. In the long run, for eighteenth-century Americans it was the extent of Parliament’s jurisdictional claims that aroused the Americans to revolution, because Parliament was the re-incarnation of William the Conqueror claiming secular and spiritual jurisdiction over the colonies and imposing the yoke.

In his later re-evaluation of the *Dissertation*, however, Adams saw the question of Parliament’s jurisdiction was much less important than

⁸²Ibid., Letter to J. Morse, December 2, 1805, *Works*, 10: 185.

⁸³Ibid., 10: 185.

⁸⁴Ibid., 10: 188.

the feudal and ecclesiastical consequences of that power. Adams seems to have neglected the issue of feudalism in his reconsideration, focusing instead on the question of the appointment of a bishop. In effect, he appears to have decided that the threat of feudalism had not been as immediate a threat as was the creation of a medieval ecclesiastical system. Perhaps he simply realized that the threat of feudalism had ended with the repeal of the Stamp Act but that the possibility of an Anglican episcopate remained not only real but ever more likely after 1766.

The lack of American response to the *Dissertation* was balanced by greater English interest in the argument. Jonathan Mayhew sent copies of the essays that had appeared in the *Boston Gazette* to Thomas Hollis, an English Baptist who was a leader in the opposition to High-Church Anglicanism and to Roman Catholicism, both of which appeared to be on the march in England in the 1760s. It was he who arranged for the publication of these essays and gave them the title of the *Dissertation on the Feudal and the Canon Law*.⁸⁵ To an English audience, feudal and canon law would have much more meaning than to an American audience. Adams may have feared the growth of these systems in a land where hitherto they had not existed, but to Hollis and his contemporaries, feudal and canon law still existed, even if in a weakened condition. The *Dissertation* might have been more significant if it had been published as part of the contemporary debate about the established Church in England instead as part of the debate about the Stamp Act in the colonies.

The image of the Norman Yoke in the *Dissertation* may not have resonated as much with the American audience as Adams would have liked, but it continued to appear in his next series of essays, the *Novanglus* essays that appeared ten years later.

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⁸⁵Bridenbaugh, 194–202, 236, 238.

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Daniel Leonard and the Modern British Empire

If the colonies are not a part of the British empire already, and subject to the supreme authority of the state, Great Britain will make them so.¹

The second stage in the development of Adams' history of the rise of the British Empire came a decade after the publication of the *Dissertation on the Canon and the Feudal Law*. In the months leading up to the outbreak of the American Revolution in 1775, he became embroiled in a polemical combat about English policy toward the colonies and the relationship of the English Parliament to the American colonies. This debate caused him to examine the medieval roots of English constitutional development in order to demonstrate that contemporary English policies

¹*Massachusettsensis*, in John Adams and Jonathan Sewell, *Novanglus and Massachusettsensis; or Political Essays Published in the Years 1774 and 1775* (Boston: Hews & Goss, 1819; reprinted, New York: Russell & Russell, 1968), 143. Very little work has been done on Leonard although he was a very significant figure in Loyalists circles: see James H. Stark, *The Loyalists of Massachusetts* (Boston: J.H. Stark, 1910), 325–332; Ralph Davol, *Two Men of Taunton* (Taunton, MA: Davol Publishing Co., 1912): “Leonard, Daniel,” in *American National Biography* (Oxford: Oxford University Press, 1999), 489–490; Mary Beth Norton, *The British-Americans: The Loyalist Exiles in England 1774-1789* (Boston: Little, Brown, 1972), 16, 21, 130, 134, 148–151. On Sewell: see Carol Berkin, *Jonathan Sewell: Odyssey of an American Loyalist* (NY: Columbia University Press, 1974), 14–16, 109–110, 142–143; see also Ruma Chopra, *Choosing Sides: Loyalists in Revolutionary America* (Lanham, MD: Rowman & Littlefield, 2013), 23–24, 102–107. In later years, Adams was reconciled with Sewell and Leonard.

toward the colonies were in violation of the long-standing principles of the English constitution. This series of articles, the *Novanglus* letters, continued to employ themes found in the *Dissertation*, especially the Norman Yoke and the power of Parliament, but also provided specific examples of English colonial policy relevant to the American situation. Above all, this debate raised the issue of what constituted the British Empire, indeed it raised the question of whether there really was such a constitutional entity as the British Empire at all. In the long run, one's position held on the American Revolution centered on one's response to this question.

The immediate cause of this new round of political es-says was the publication of a series of seventeen letters in the *Massachusetts Gazette* between December 1774 and April 1775. The author of these letters, known to contemporaries only as *Massachusettensis*, presented a forceful defense of the English Parliament's assertion of control of the American colonies. For many years, Adams believed that *Massachuset-tensis* was Jonathan Sewell, a prominent Boston lawyer and old friend, who was destined to leave Boston when the British evacuated the city in 1776 and to remain in exile for the remainder of his life. In fact, as Adams came to learn only in his last years, the actual author was another old friend and fellow Boston lawyer, Daniel Leonard, who, like Sewell, went into permanent exile with the other Loyalists.² Adams's antagonism to Thomas Hutchinson was based in part on the fact that "he seduced from my bosom three of the most intimate friends I ever had in my life, Jonathan Sewall, Samuel Quincy, and Daniel Leonard."³ Adams's confusion about the real identity of *Massachusettensis* is another indication that the leaders of both sides in the debates that preceded the American Revolution shared the same broad intellectual background, the same pool of information about legal and constitutional matters, and similar concerns about the nature of the British Empire. They differed on the significance of these materials and their relevance to the situation that was developing in the colonies. The choice of arguments and supporting evidence in such essays would not immediately identify the author of a contribution

²Adams, *Papers* 2: 217, 221–222. For further information about Leonard's subsequent career: see Norton, 103.

³Letter to William Tudor, November 16, 1816 in Adams, *Works*, 10: 230–232 at 231.

to these polemical debates because this common pool of information was available to all sides.⁴

At the heart of this debate was the question of the legal and constitutional framework that undergirded the collection of peoples and lands subject to the king of England? From this question came two other issues, how did the king of England come to possess all these lands, and what was the relation of the English Parliament to them? The essays of Adams and Leonard differed strongly about the nature of that empire and where the North American colonies fitted. Adams's letters were not, however, simply responses to Leonard's articles, although there are obviously references in each set of essays to the other set. Adams only began to respond to Leonard after the appearance of the first six essays and he had read only the first in the series.⁵ Each set of letters can be considered as a political treatise in itself and will be analyzed as such here. Long ago, C.H. McIlwain pointed out their importance in the constitutional debate about the causes of the American Revolution:

Possibly the fullest contemporary discussions of the particular point taken up in this chapter – the constitutional relation of realm and dominions – is found in Daniel Leonard's papers John Adams's answer is the most elaborate exposition extant of the American interpretation of the constitutional problem of the empire⁶

In order to appreciate the nature of Adams's position it is therefore necessary to examine Leonard's argument in some detail. This chapter will discuss Leonard's views on the nature and powers of the British Empire and subsequent chapters will discuss Adams's response to these arguments.

The broad constitutional questions that Leonard and Adams debated in turn generated several subordinate questions specifically connected to the developing crisis in North America. The first concerned the manner in which the English gained possession of the American lands that they settled and colonized. This in turn raised the subordinate question

⁴Janice Potter-MacKinnon, *The Liberty We Seek: Loyalist Ideology in Colonial New York and Massachusetts* (Cambridge: Harvard University Press, 1983), 10.

⁵Adams, *Papers*, 2: 226.

⁶Charles Howard McIlwain, *The American Revolution: A Constitutional Interpretation* (NY: Macmillan, 1923; reprinted. Ithaca, NY: Cornell University Press, 1958), 138–139.

of the status of the indigenous population and its relation, if any, to the colonists. The second dealt with the place of the North American colonies within the imperial structure. The third issue concerned the jurisdiction of the English Parliament, especially its power to tax the American colonies.

Daniel Leonard's letters dealt at great length with the history of England and its colonies from the sixteenth to the eighteenth centuries. He took for granted the existence of the British Empire from the Middle Ages and it was on this point too that John Adams was to attack him in great detail.

Leonard began his series of essays on December 12, 1774 with an apologia for writing. He wrote to counter the writings of the Whigs who have made "the press itself ... an engine of oppression or licentiousness" that "is as pernicious to society, as otherwise it would be beneficial." As a consequence, "little has been published on the part of government" and Leonard aimed to correct that deficiency. His opponents, the Whigs, have created the "present wretched situation" that has replaced "our former happy one", so he must take up his pen to refute their lies and misrepresentations in order to bring his fellow colonists to their senses.⁷

The fundamental cause of all these troubles was the Stamp Act (1765) with its assertion that the English Parliament could impose taxes and other legislative acts on the colonists without their consent. In Leonard's opinion, however "closely we may hug ourselves in the opinion, that the parliament has no right to tax or legislate for us, the people of England hold the contrary opinion as firmly." The English people "tell us we are a part of the British empire" whether or not the colonists like the idea. The subordination of the colonists was not, however, simply a fact of political life, it was a fundamental element of any effective government because "every state, from the nature of government, must have a supreme, uncontrollable power, co-extensive with the empire itself; and that that power is vested in parliament."⁸ Here Leonard was echoing the concept of sovereignty associated with Jean Bodin's (1530–1596) *Six Books of the Republic*. Writing against the background of the religious wars in France and elsewhere in the sixteenth century, Bodin argued that the solution for such conflicts was the consolidation of power in the hands

⁷Leonard, 141–142.

⁸Ibid., 143.

of a sovereign whether a single ruler such as a king or some institutional structure such as a Parliament. The sovereign stood above all the elements of the state, rather like the leviathan of Thomas Hobbes (1588–1679). Leonard’s argument also echoed the theory of Divine Right monarchy in that there was no legitimate basis for rebelling against the sovereign unless he failed to protect the lives and property of the subjects.⁹ In this sense, Leonard was articulating what one might call the theory of the modern state, a state that seeks to transform the various territories that medieval dynasties had gathered over the centuries into a cohesive whole. The various elements of the dynastic states had generally retained their individual laws, customs, and languages, forming “composite states” in which the ruler’s power varied according to the customs and traditions of each governmental unit.¹⁰

If the reader was inclined to reject this theory of an imperial constitution, Leonard had a compelling pragmatic argument as well:

If the colonies are not a part of the British Empire already, and subject to the supreme authority of the state, Great Britain will make them so.¹¹

While Leonard may not have realized it, this statement would support Adams’s argument that the aim of English government was to impose the Norman Yoke on the recalcitrant colonists if they refused to submit voluntarily. In making this point, he was also echoing a point made by some historians of the Norman Conquest, namely that the Anglo-Saxons had brought the yoke on themselves by their own rebellious behavior.

Having made this seemingly irrefutable point, *Massachusettensis* could have retired from any further debate. He did not, however, and so he went on to support his views by a variety of arguments designed

⁹On the medieval roots of the concept of sovereignty: see Kenneth Pennington, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993); see also Julian H. Franklin, “Sovereignty and the Mixed Constitution: Bodin and his Critics,” in *The Cambridge History of Political Thought 1450-1700*, J.H. Burns and Mark Goldie eds. (Cambridge: Cambridge University Press, 1991), 298–328.

¹⁰H.G. Koenigsberger, “*Dominium Regale* or *Dominium Politicum et Regale*,” in *Politicians and Virtuosi: Essays in Early Modern History* (Rio Grande, Ohio: Hambleton, 1986): 1–25 at 12; John H. Elliott, “A Europe of Composite Monarchies,” *Past & Present*, 137 (1992): 48–71.

¹¹Leonard, 143.

to reinforce the fundamental point. Above all, he stressed the recent successes of British arms around the world. Would the English government voluntarily surrender its control over the American colonies after having expended so much blood and treasure in the conquest of North America? The colonists will be “much deceived,” he wrote, if they “imagine that Great Britain will accede to the claims of the colonies,” because the English “will as soon conquer New-England as Ireland or Canada, if either of them revolted”¹² In effect, *Massachusettensis* accepted the reality of the Norman Yoke. Like the eleventh-century Anglo-Saxons, if the people of British North America did not accept their subordination peacefully, the English government would force them to accept it. At the same time, Leonard emphasized that the British did not rule by force of arms unless forced to do so by the unwillingness of their subjects to accept Norman rule:

Has not she been a nursing mother to us, from the days of our infancy to this time? Has she not been indulgent almost to a fault? ... Will not posterity be amazed, when they are told that the present distraction took its rise from a three penny duty on tea, and call it a more unaccountable frenzy, and more disgraceful to the annals of America, than that of the witchcraft?¹³

The core of *Massachusettensis's* argument was that the British North American colonies were part of the British Empire and that both the British and the colonists, at least until recently, agreed on this point. This of course overlooked the fact each side understood the nature of the empire in a different way, as Adams was to demonstrate. The quarrel was after all not simply about the existence of a British Empire as a concept but about the constitutional relationship of the various lands ruled by the king of England to the king and to Parliament.

According to Leonard, the unrest that the Whigs have initiated has caused “the bands of society, [to be] cut asunder, and the sanctions that hold man to man, trampled upon” with result that “civil government [is] dissolved” and there is only anarchy. Furthermore, he argued that the Whigs and their supporters have in reality engaged in “acts of

¹²Ibid., 144.

¹³Ibid., 145–146.

high treason” by creating their own legislative assembly “without being called by authority” and then passing “governmental acts” that undercut royal authority. The Whigs were thus not seeking relief from legitimate grievances, which was their right, but asserting a right to dissolve their relation to the British imperial government and to create a new and independent state if they were dissatisfied with British rule.¹⁴

Ultimately, according to Leonard, the actions of the Whigs and the theories they advanced to support them could only lead to disaster. Do the Whigs seriously believe that they can defy the British government, “be dismembered from the empire, and become as distinct a state from Great Britain, as Hanover ...?” After all, why was Great Britain “so lavish of her best blood and treasure in the conquest of Canada, and other territories in America?” Did the English do this only to “raise up a rival state, or to enlarge her own empire?”¹⁵ Obviously, should the colonists attempt what the Whigs proposed, the British Empire would lower the yoke on the colonists just as William of Normandy had lowered it on the Anglo-Saxons who resisted the new ruler hundreds of year before.

In addition to the theoretical arguments against the Whigs’ position, Leonard argued that the military experience of the recent wars for North America provided no hope for a successful revolt. In the series of wars for control of North America the colonial troops, poorly trained and disciplined, fared poorly, especially in comparison with the English professionals. Any trained officer “would rather take his chance with five thousand British troops, than with fifty thousand such militia.” Furthermore, if the colonists declared their independence, not only would they face the might of the greatest empire in the world, with its vast navy and regular troops stationed in North America, they would also face “our ancient enemy, the Canadians” and their savage allies. The result of this threefold threat would be disastrous for the colonists.¹⁶ Indeed, even the colonies south of New England would not support the New Englanders in their rush to independence.

In the second letter Daniel Leonard turned to the crucial issue in the polemical war among the colonists: did the English Parliament have the authority to tax the North American colonies? The problem arose from

¹⁴Ibid., 142.

¹⁵Ibid., 143.

¹⁶Ibid., 144–145.

a very real financial problem, the need to pay the costs of the expensive imperial wars of the eighteenth century.¹⁷ One result of these wars was that “Great Britain found that though she had humbled her enemies, and greatly enlarged her own empire” the British people faced a heavy national debt. In addition, the military forces needed to defend the world-wide empire had to be expanded. The result was that heavy “taxes and duties were already laid, not only upon the luxuries and conveniences, but even the necessaries of life in Great Britain and Ireland.” That being the case, it appeared “as reasonable that the colonies should bear a part of the national burden, as that they should share in the national benefit.”¹⁸

According to Daniel Leonard, the colonists objected to the costs imposed on them by the Stamp Act because they “would be grievous” and would be “beyond our utmost ability to pay.” At the same time “we did not dream of denying the *authority* of parliament to tax us, much less to legislate for us. We had always considered ourselves, as a part of the British Empire, and the parliament, as the supreme legislature of the whole.” Furthermore, “We were happy in our subordination” From Leonard’s perspective, the repeal of the Stamp Act and the end of the taxes associated with it, except for the tax on tea, “was the lucky moment when to have closed the dispute” with England.¹⁹

Instead of ending the dispute with concessions on each side, however, demagogues roused the people of Boston, telling them “that the ministry had formed a plan to enslave them,” and that there were proposals for other taxes that would have paved “the way for reducing the country to lordships,” that is, establishing a medieval socio-economic order in the New World, something that Adams had suggested in the *Dissertation* might happen if Parliament was not blocked in its effort to assert its jurisdiction over the colonies.²⁰

Leonard ended the second essay with a vision of what was happening and what the Whigs were anticipating. The Whigs were attempting “to traduce Majesty itself,” depicting the British Empire that was “once the

¹⁷John Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (Cambridge: Harvard University Press, 1990), 132, 175–176.

¹⁸*Massachusettsensis*, 147.

¹⁹*Ibid.*, 147–148.

²⁰*Ibid.*, 150.

admiration of the world” as now “rushing to its fall.” This process would inevitably lead to the creation of a new empire. According to Leonard, the Whigs believed that this new empire would be an American empire because the “rapid growth” of the colonial population demonstrated that “America was upon the eve of independent empire.”²¹ As far as Leonard was concerned, his opponents sought not the redress of their grievances and reconciliation with Great Britain but independence.

In the third essay, Leonard attacked the Whigs for arousing and misleading the “bulk of the people [who] are generally but little versed in matters of state.” The Whigs’ goal was “to persuade the people that their rulers are tyrants, and the whole government is a system of oppression.” The result was that the people “are thus made the dupes of artifice” and “are sure to be losers in the end.”²² The Whigs were organized, and their opposition to the crown would lead their followers “to snatch the sceptre out of the hands of our sovereign, and to strike the imperial crown from his sacred head.”²³

At this point, Leonard came to the defense of Thomas Hutchinson, the royal governor of Massachusetts, who was the object of much colonial wrath, especially that of Adams.²⁴ He asserted that Hutchinson was a man of “great abilities, integrity and humanity” who had become the object of “the envenomed arrows of malice and party rage.” Hutchinson sought to prove to the potentially rebellious colonists that “the first principles of government; our several charters, and the express acknowledgements of our ancestors” proved that the claims of the governor’s critics “were inconsistent with the subordination due to Great Britain”²⁵

If the aroused populace of Boston believed the Whigs and came to “believe that every attempt to strengthen government and save our charter was an infringement of your privileges” then they would fall victim to “a despotism cruelly carried into execution by mobs and riots” The inevitable result of success on the part of the Whigs would then

²¹Ibid., 150.

²²Ibid., 152.

²³Ibid., 154.

²⁴Bernard Bailyn’s *The Ordeal of Thomas Hutchinson* (Cambridge: Harvard University Press, 1974) is a sympathetic study of Adams’s most important enemy.

²⁵Ibid., 155–156. In saying this, Leonard was echoing those chroniclers who argued that the severity of the Norman Yoke was the result of Anglo-Saxon obstreperousness not Norman wickedness. See also Hume 1: 200–206; Rapin-Thoyras, 2: 242–248.

require the “absolute necessity of the interposition of the parliament” on behalf of the people.²⁶ In other words, Parliament was the protector and defender of the people’s rights, not their oppressor. Recognition of Parliament’s authority therefore was not humiliating or oppressive but, on the contrary, was the true guardian of the people’s rights against the forces of riot and disorder.

The first three *Massachusettsensis* essays emphasized on the one hand the military might of the British Empire and on the other hand the positive advantages that the colonists had derived from their participation in that empire because it was a powerful and supportive parent in the development of the fractious colonists. If the Whigs had their way, however, this positive support of the colonists would be lost, giving way to chaos and disorder and then replaced by the armed might of the empire. Accept the British view of the empire and its jurisdiction voluntarily or face the military consequences, that is, accept the Norman Yoke voluntarily or have it imposed by force. In making this argument he was making the point that Adams had made in the *Dissertation*.

Having stressed in the opening essays the political and military power that would keep in check any attempt by the colonists to create an independent nation, in the fourth essay Daniel Leonard turned to the great economic advantages that the colonists had obtained through their membership in the British Empire and the mildness of British imperial rule. Now the carrot would replace the stick as the means of convincing the colonists of the great advantages that membership in the British Empire provided them, advantages that the Whigs failed to appreciate. For example, the mild British response to the Boston Tea Party demonstrated both the power and the wisdom of the British in their response to the challenge that the Tea Party presented, providing stability in response to the Whigs’ call for anarchy.

Leonard traced the wisdom inherent in the British imperial system to the fact that “the government of England is mixt, so the spirit or genius of the nation is at once monarchical, aristocratical, democratical, martial and commercial.” The political structure therefore possessed all of the qualities that political philosophers had long argued were characteristic of the best governments. While he did not arrange these qualities in rank order, presenting them as equals, he also asserted that “Commerce is the

²⁶Ibid., 158.

great source of national wealth” Unlike other nations, the English “respect” the merchant while in other countries “a merchant is held in contempt by the nobles” The purpose of trade is for “mutually supplying each other with their redundancies. Thus none are impoverished, all enriched, the asperities of human life worn away, and mankind made happier by it.”²⁷ Seen in this light, the British Empire was a vast machine composed of disparate elements brought together into a harmonious and profitable whole that benefited all its members:

Upon these, and considerations arising from the fertility and produce of different climates, and such like principles, the grand system of the British trade is founded. The collected wisdom of the nation has always been attentive to this great point of policy, that the national trade might be so balanced and poised, as that each part of her extended dominions might be benefitted, and the whole concentrate to the good of the empire.²⁸

Under such circumstances, the imperial government is obliged to issue “acts for regulating trade” in order to “prevent one part of the empire being enriched at the expence and to the impoverishing of another”²⁹ Such regulation in turn requires a large number of officials of all sorts, special courts such as the admiralty courts, and so on in order to ensure that all of the elements of the imperial structure function as they should for the good of all, both individually and collectively.

A specific problem that faced the imperial regulatory regime in North America was smuggling, an occupation that Leonard claimed was scorned in England because wealth accumulated by such means was “obtained at the expence and often the impoverishing of another The smuggler not only injures the public but often ruins the fair trader.”³⁰ He argued that it was smugglers who instigated the Tea Party that destroyed the tea of the East India Company. The tea would have been sold below the price of smuggled tea even with the three-pence tax

²⁷Ibid., 159–160.

²⁸Ibid., 160.

²⁹Ibid., 160.

³⁰Ibid., 160–161. This may have been a reference to John Hancock who was a well-known smuggler. His reputation as a smuggler may have been “magnified in the minds of British officials because of politics.” See William M. Fowler, *The Baron of Beacon Hill: A Biography of John Hancock* (Boston: Houghton Mifflin, 1980), 82.

on it. The tax was, according to Leonard, not for the purpose “of raising a revenue from the three penny duty, but to put it out of the power of the smugglers to injure them by their infamous trade.”³¹ Fearing the destruction of their illegal enterprise, the smugglers aroused some of the colonists to destroy the company’s tea for their own selfish ends.

The response of the British government to the Tea Party’s challenge to its regulatory regime demonstrated to Leonard the wisdom and generosity of the imperial government. If, for example, the refusal of the colonists to repay the East India Company for its losses had occurred when Oliver Cromwell (1599–1658) ruled England (1653–1658) Boston would have “been levelled with the dust” and “rivers of blood would have been shed to make atonement for the injured honor of the nation.” Instead of a bloody Cromwellian response, however, George III’s government presented two choices to the rebellious colonists. The first and milder choice, would “compel an indemnification for the sufferers and prevent the like for the future ...” The second option would be “severe,” depending on how the Bostonians acted in the future. The choice of responses “was to depend on us.”³²

According to Leonard, the British response to the Tea Party was the milder one, a blockade of the port of Boston until the East India Company was paid. The smugglers and their supporters responded to this mild bloodless punishment by inflaming the public against the government and creating a “committee of correspondence” to carry on their contest with the imperial government. “These committees,” Leonard charged, “when once established, think themselves amenable to none” and “they assume a dictatorial style” and were “propagating sedition through the country.”³³

The result of the Whigs’ opposition to the mild imperial response encouraged the spread of opposition to imperial policy. Thus the “humane and benevolent, in various parts of the continent, were induced to advise us not to comply with the terms for opening our port” The people were “most insidiously induced to believe that Great Britain is rapacious, cruel, and vindictive, and envies us the inheritance purchased by the sweat and blood of our ancestors.” In fact, he argued, the king is

³¹Ibid., 161.

³²Ibid., 163–164.

³³Ibid., 165.

“the provident father of all his people” and “Great Britain [is] a nursing mother to these colonies”³⁴

Leonard chose not to recognize that the paternal and maternal qualities associated with the British government were the silken glove that masked a stern imperial hand. Fail to accept the mild response of George III and the colonists would receive the severe punishment associated with Cromwell, or, although he did not mention him, with William the Conqueror.³⁵ On the other hand, acceptance of the yoke and its regulatory regime would contribute not only to the economic well-being of the colonists but also to that of all of the other inhabitants of the empire wherever they lived.

Having described the choices that lay before colonists and the responses that the British Empire will likely make to each course of action, Daniel Leonard turned to a broader issue that underlay the entire debate. What was the fundamental purpose of government, that is, why does it exist at all? He argued that the people of Boston, and indeed elsewhere, were being misled by demagogues whose teachings, if implemented, would lead “to their utter ruin, and the province of Massachusetts Bay in danger of being drenched with blood and carnage” Under these circumstances he felt that “I could restrain my emotions no longer” Freed from “the bands of natural reserve” that marked his character and would have prevented him from entering public debate, Leonard resolved to examine the very roots of the American situation, that is, why there must be government in order to educate the lower class citizens of Boston so that they might see the errors being propagated by the demagogues. If successful in this endeavor, he believed that he would be able to restrain the Whigs “till such time as they shall have changed their sentiments, principles, and measures” and came to appreciate membership in the British Empire.³⁶

³⁴Ibid., 167.

³⁵Although Leonard did not mention it, William the Conqueror also provided an example of the harsh treatment of those who opposed him. According to Hume, because of the “restless disposition of the Northumbrians ... he issued orders for laying entirely waste that fertile country ... for the extent of sixty miles,” killing according to Hume 100,000 people. *See* Hume, 1: 209. He exaggerated the numbers of those killed but evidence of the devastation was apparent for another generation.

³⁶Leonard, 168.

What is the fundamental issue to be resolved? Daniel Leonard saw the matter this way: “I suspect many of our politicians are wrong in their first principle, in denying that the constitutional authority of parliament extends to the colonies; if so, it must not be wondered at, that their whole fabric is so ruinous.” By ruinous, he meant the disordered condition of Boston where “every barrier that civil government had erected for the security of property, liberty and life, was broken down, and law, constitution and government trampled under foot by the rudest invaders.”³⁷

Daniel Leonard began the sixth *Massachusettensis* essay by rejecting the claim that the colonists were not “a part of the British empire or dominion, and as such, subject to the authority of the British parliament” In the past anyone who would have made such a claim “would have been called a fool or a madman” because if such a claim was true, the colonists would be deprived “of British liberties, and build up absolute monarchy in the colonies”³⁸

To demonstrate the subordination of the colonists to Parliament, Leonard turned to an analysis of the original charter of Massachusetts Bay (1629) to support his argument:

our charters suppose regal authority in the grantor: if that authority be derived from the British crown, it pre-supposes this territory to have been a part of the British dominion, and as such subject to the imperial sovereign; if that authority was vested in the person of the king, in a different capacity, the British constitution and laws are out of the question, and the king must be absolute as to us, as his prerogatives have never been circumscribed.³⁹

Leonard appears to have assumed that Parliament was the only obstacle to the English king’s acting as an absolute monarch, a point that Adams was to deny. As we shall see, Adams pointed out that the power of the English king was limited by a variety of customs, traditions, and practices, Magna Carta for example, and was not the absolute monarch that Leonard described.

³⁷Ibid., 169.

³⁸Ibid., 173.

³⁹Ibid.

Leonard went on to point out that the opponents of the Stamp Act denied “the authority of parliament to impose internal taxes,” but they admitted its “right to impose external ones” Subsequently, however, the Whigs imposed another qualification on their theory of Parliament’s powers, now distinguishing between Parliament’s “right to lay duties upon merchandize for the purpose of regulating trade, but not for the purpose of raising a revenue” Leonard saw this line of argument as a series of stages leading inevitably to the colonists’ plan “to extricate” themselves from Parliament’s authority and become “independent states” because there “is no possible medium between absolute independence, and subjection to the authority of parliament.”⁴⁰

From Leonard’s perspective, denial of “the supreme authority of the state, is a high misdemeanor” and “to oppose it by force is an overt act of treason”⁴¹ In his opinion there are only two possible kinds of political status, complete absorption in the state or complete rejection of it. In a sense, Leonard was reducing the several varieties of political relationship that had existed to two, rather as the *Act Abolishing Feudal Tenures* (1660) had reduced the various forms of landholding in England to one, common socage.⁴² Both were elements of modern state building, simplifying the legal and constitutional structure of the state to make it more efficient. In this case, Leonard saw the process as reducing the relation between the king of England and the various lands he ruled to a single pattern. This modern state was composed of “the ancient realm of England, in contradistinction to Wales and other territories, that have been annexed to it. These as they have been severally annexed to the crown, whether by conquest or otherwise, became a part of the Empire, and subject to the authority of parliament, whether they send members to parliament or not, and whether they have legislative powers of their own or not” These other places included Ireland that had its own Parliament and “Guernsey and Jersey [that] are no part of the realm of England, nor are they represented in parliament, but are subject to its

⁴⁰Ibid., 173–174.

⁴¹Ibid., 174.

⁴²*Sources of English Constitutional History*, eds. Carl Stephenson and Frederick George Marcham (NY: Harper & Brothers, 1937), 536–537 at 537.

Theodore F.T. Plucknett, *Concise History of the Common Law*, 5th ed. (Boston: Little, Brown, 1956), 537.

authority” Given these examples, it is not surprising that “in the same predicament are the American colonies, and all the other dispersions of the empire.”⁴³

Leonard’s argument took for granted two issues central to the entire polemical debate about the relation of the American colonies to the king of England. In the first place he denied that the manner by which the kings of England had acquired their territories had any bearing on the current situation. In the second place, he assumed that the crown of England included Parliament so that the fullness of the monarchy’s authority was expressed in the concept of the king in Parliament, as if this had always been the case but it was not.⁴⁴

Having stated his position, Leonard went on to analyze further the charter of Massachusetts on which his opponents built their case denying the colony’s subjection to Parliament. According to him the language of the charter proved that when King James I granted the charter, acting “in his royal capacity, as king of England,” he assumed that “the territory granted, to be a part of the English dominions, holden of the crown of England.”⁴⁵

What Leonard did not explain was the basis on which the king of England could grant land in North America to a group of his subjects. He appears to have assumed that the land in question was unoccupied when the settlers arrived, because he made no reference to an existing population. The original Patent of the Council of New England (1620) which was included at the beginning of the charter of Massachusetts of 1629 stated that since the lands in question were “deserted as it were by their their naturall Inhabitants,” as a result of “Plague ... horrible Slaughters, and Murthers committed amongst the Savages and brutish People there by the inhabitants,” they “should be possessed and enjoyed by such of our subjects and People ... [who will be] directed and conducted thither.” The only limitation on the colonists’ acquisition of land was that it not be possessed or inhabited by “any other Christian Prince or State” or within the boundaries of the lands of the Virginia Company.

⁴³Leonard, 174.

⁴⁴Brewer, 22.

⁴⁵Ibid., 174. Strictly speaking, the colonial charter did not grant land to the colonists, only the right to English protection of what land they acquired by purchase or otherwise: see Muldoon, “Discovery, Grant”, 46.

The charter also pointed to “the reducing and Conversion of such say-ages as remaine [there] ... to Civil Societies and Christian Religion ...”⁴⁶

The charter of 1629 also spelled out the governmental responsibilities of the colonists including the right to make *laws* for the direction of the colony as long as such laws and ordinances were “not *contrary* or repugnant to the laws and statutes of this our realm of England.”⁴⁷ The language of the charter made it clear to Leonard that the Massachusetts Bay colony was subordinate to the king as the text states that he has “given, granted, and confirmed” the creation of a corporate body “by the name of the governor and company of the Massachusetts Bay, in New England ...” Given this language, Leonard begs “leave to ask one simple question, whether this looks like a distinct state or independent empire?”⁴⁸ The obvious answer is no.

Turning to the much disputed issue of taxation, Leonard pointed to the clause in the Massachusetts charter exempting the colonists from the payment of various taxes for a specific period of time. Such exemptions obviously demonstrated the existence of a taxing authority so Leonard raised the question of where such power lay. He argued that it lay with “the king or parliament ...” It could not “be by the king alone, for as king of England ... he had no such power, exclusive of the lords and commons” so “it must have been by the parliament” because it has the power to tax and to exempt from taxation.⁴⁹ Leonard recognized that Parliament’s role in governing the colonies had been contested previously “in some arbitrary reigns, [when] attempts were made by the servants of the crown to exclude the two houses of parliament, from any share of authority over the colonies ...”⁵⁰ Parliamentary involvement in colonial affairs thus becomes in Leonard’s eyes not a burden but a defense against royal tyranny.

Coming to the end of this essay, Leonard returned to the issue of colonial representation in Parliament. He rejected the American claim to “a total exemption from parliamentary authority, because we are not

⁴⁶“Patent for the Council of New England,” (1620), *Select Charters ... of American History 1606-1775*, ed. William Macdonald (NY: Macmillan, 1899), 24–33 at 25.

⁴⁷Leonard, 175–176.

⁴⁸Ibid., 175.

⁴⁹Ibid., 176.

⁵⁰Ibid., 176.

represented in parliament.” Such a position he argued “is pregnant with the grossest absurdities.” If his opponents were correct, then “if we are not annexed to the crown, we are aliens, and no charter, grant or other act of the crown can naturalize us or entitle us to the liberties and immunities of Englishmen. It can be done only by act of parliament.” Those lands such “as Wales, Jersey, Guernsey, Ireland, the foreign plantations ... became parts of one and the same empire” so that if an Englishman “removes” to one of those lands he retains all the rights and privileges associated with being an Englishman even though he no longer is represented in Parliament.⁵¹ He is also still subject to the authority of Parliament. This is precisely the situation of the American colonists according to Leonard.

In the seventh essay Leonard focused on the question of the origins of English colonies in North America. There is he admits a good deal of information about the early stages of English interest in North America, the period before “the emigration of our ancestors” to the New World. As far as he was concerned, however, it “is immaterial when America was first discovered or taken possession of by the English.”⁵² Generally speaking, the English paid far less attention to this issue than did the Spanish who wrote extensively to justify their possessions in the Americas.

As a result, Leonard did not discuss the various individuals who were said to have first reached the Americas. For example he did not mention the fanciful story of the Welsh prince Madoc who was supposed to have come in the twelfth century, nor did he mention Sir Humphrey Gilbert’s attempts to colonize Nova Scotia later in the sixteenth century, nor the small communities of fishermen who had settled along the coast to exploit the North American fisheries.⁵³

⁵¹Ibid., 177.

⁵²Ibid., 178. On Spanish justifications for the acquisition of the Americas: see Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania Press, 1949). This generated a lively scholarly debate about whether Hanke had created a “White Legend” that largely defended the Spanish in contrast to the older “Black Legend” that had condemned them. On this debate: see Benjamin Keen, “The Black Legend Revisited: Assumptions and Realities,” *Hispanic American Historical Review* 49 (1969): 703–719.

⁵³Madoc was said to be Welsh prince who settled a colony in America around 1170. John Dee used this story, and that of John Cabot (1491) who reached America before Columbus, to support English claims to land in America. See *John Dee: The Limits of the British Empire*, Kenneth Macmillan, with Jennifer Abeles, eds. (Westport CN: Praeger, 2004), 43–44.

As far as Leonard was concerned, the history of the English in the New World began in 1602 when “one Gosnold landed upon one of the islands, called Elizabeth islands” and attempted to establish a colony but “the project failed” and the site abandoned. In 1606 James I “granted all the continent from 34 to 45 degrees,” roughly from Virginia to Maine, to two groups of merchants for the establishing of two colonies, one in Virginia, and the other in New England. In 1607 the latter group attempted a colony at Sogadahoc in what subsequently became the state of Maine “but the emigrants were disheartened after the trial of one winter, and that attempt failed of success.”⁵⁴ Clearly, according to Leonard, the land involved in these attempts “had not only been granted by the crown for purposes of colonization, which are to enlarge the empire or dominion of the parent state, and to open new sources of national wealth; but actual possession had been taken by the grantees, previous to the emigration of our ancestors, or any grant to them.”⁵⁵ As far as Leonard was concerned, the English settlement of North America was part of a policy of imperial expansion authorized by the king and carried out by authorized corporate groups. It was not simply the consequence of the actions of groups seeking to escape English control.

In 1620, a new patent was issued incorporating the “*council for the affairs of New Plymouth*” and it was from “this company of merchants in England, our ancestors derived their title to this territory. The tract of land called Massachusetts, was purchased of this company, by sir Henry Roswell and associates” in 1627 and in the following year this group “obtained a charter of incorporation” “The liberties, privileges and franchises, granted by this charter, do not perhaps exceed those granted to the city of London and other corporations within the realm.” According to Leonard, this charter was severely limited and “did not even extend to levying taxes of any kind” although “that power was however assumed under this charter” by the colonists. It was for this and other reasons that the charter was “adjudged forfeited, and the franchises seized” in the reign of Charles II. The forfeiture of the charter of Massachusetts “did not affect our ancestors title to their lands” however, because the possession of these lands was “not derived originally from

⁵⁴Leonard, 178. On Bartholomew Gosnold: see *American National Biography*, eds. John A. Garraty and Mark C. Carnes NY: Oxford University Press, 1999), vol. 9: 316–317.

⁵⁵Leonard, 178–179.

the charter ... but by purchase from the council at Plymouth” that held these lands “immediately under the crown.”⁵⁶

Leonard’s discussion of the origin of the Massachusetts colony avoided any discussion of how the English kings had acquired any right to authorize settlements in North America in the first place. He also neglected to mention the Indian population at this point. Having dealt with the forfeiture of the charter under Charles II, he moved on to explain the subsequent history of the colony. Having lost the charter, the colonists were starting anew so to speak. While they had lost all rights and privileges granted in the charter, “our ancestors had now reduced what before was a naked right to possession, and by persevering through unequalled toils, hardships and dangers, at the approach of which other emigrants had fainted, rendered New England a very valuable acquisition both to the crown and nation.”⁵⁷ Here again, Leonard appears to have assumed that the lands in question were either literally uninhabited or *terra nullius*, that is lands that no one actually owned and presumably farmed. Aligning himself with John Locke, Leonard argued that the efforts of the colonists to transform this unproductive region to a valuable asset of the British Empire gave them the right to possess the land.⁵⁸

After the Glorious Revolution and the replacement of James II by William and Mary (1688–1689), a new charter combined “Massachusetts, New Plymouth, and several other territories into one province.” This charter granted more “extensive powers of legislation, than those contained in the first charter” but these powers were “confined to local or provincial purposes” and could “*not be repugnant or contrary to the laws of this our realm of England.*” According to Leonard the Whigs have striven to “evade the force of these words” but it is quite

⁵⁶Ibid., 179.

⁵⁷Several seventeenth-century sources describe the coastline of New England as uninhabited and therefore open to settlement: *see*, for example, the “Patent of the Council For New England” (1620) in *Select Charters*, 23–33 at 25. The term *terra nullius* is sometimes employed meaning that while there may be people there, they were not permanently settled farmers: *see* James Muldoon, “Discovery, Grant, Charter, Conquest, or Purchase,” in *The Many Legalities of Early America*, eds. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2001), 25–46 at 41; *see also* Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World 1492-1640* (Cambridge: Cambridge University Press, 1995), 31–33.

⁵⁸John Locke, *Two Treatises of Government*, ed. Ian Shapiro (New Haven: Yale University Press, 2003), 119–120.

clear that “it is impossible to reconcile them to the idea of an independent state, as it is to reconcile disability to omnipotence.”

In Leonard’s view, the English government had a number of corporations, that is, chartered municipalities, each of which had, under the overarching jurisdiction of the English Parliament “subordinate powers of legislation” that in no way “abridge or diminish the powers of the higher legislatures” The jurisdiction of each of these lesser corporations was clearly limited in its charter. The colonists had no more right to deny the jurisdiction of Parliament than did any chartered town in England. To support his argument, Leonard quoted at length from “a pamphlet, published in 1764, by a Boston gentleman, who was then the oracle of the whigs” The unidentified pamphlet was *The Rights of British Colonies Asserted* by another Boston lawyer James Otis (1725–1783). He had argued that:

therefore as over subordinate governments, the parliament of Great Britain has an undoubted power and lawful authority to make acts for the general good, that by naming them, shall and ought to be equally binding, as upon the subjects of Great Britain within the realm.

Regarding the question of taxes, Leonard quoted at some length James Otis’s *Rights of British Colonies Asserted*. Otis observed that as “it is agreed on all hands, the crown alone cannot impose them, we should be justifiable in refusing to pay them, *but must and ought to yield obedience to an act of parliament, though erroneous, till repealed.*” In his opinion, the king and his Parliament have nothing “but the most pure and perfect intentions of justice, goodness and truth, that human nature is capable of” when dealing with the American colonies. At the same time, however, he also asserts that the “power of parliament is uncontrollable but by themselves, and we must obey.” Parliament must be obeyed otherwise there “would be an end of all government” if “subjects or subordinate provinces” should “refuse obedience” to acts of Parliament. In cases where the colonists see injustices, they must “submit and patiently bear them, till they will be pleased to relieve us.”⁵⁹

⁵⁹Ibid., 179–181. James Otis, *The Rights of British Colonies Asserted and Proved in The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002): 119–134 at 122–124. See Richard A. Samuelson, “The Constitutional Sanity of James Otis: Resistance Leader and Loyal Subject,” *The Review of Politics* 61 (1999): 493–523.

Leonard then moved from James Otis of Boston to John Dickenson (1732–1808) of Pennsylvania who wrote as *The Pennsylvania Farmer*. According to Leonard, Dickenson “took the lead in explaining away the right of parliament to raise a revenue in America . . .,” but even Dickinson admitted that the colonies were not “states as distinct from the British empire,” are “much dependent on Great Britain,” and therefore must accept the acts of Parliament. From Leonard’s perspective, the great fallacy in the arguments of the Whigs is that they deny “the authority of parliament, which is the imperial sovereign, gilded over with professions of loyalty to the king, but the golden leaf is too thin to conceal the treason.”⁶⁰ As we shall see, Adams and the Whigs would argue that Leonard’s fallacy was to overlook the fact that Englishmen at home elected the members of the Parliament who then imposed taxes on the king’s subjects. The situation that Leonard described was the Norman Yoke.

Lest any reader miss the fundamental point, Leonard followed the discussion of the necessity of obeying Parliament even when it acted unjustly toward the colonists with the argument that the Whigs lie when they encourage their fellow colonists to rebel because “we are a match for Great Britain” on the field of battle. “The army is sent here to decide a question . . . whether the colonies shall continue a part of, or be forever dismembered from the British empire.”⁶¹ The answer to this question, Leonard assumed, is quite obvious. The yoke will be imposed in spite of the military efforts of the colonists. Like the Anglo-Saxons in 1066, the choice is theirs, rebellion and crushing defeat or acceptance of the new regime and the great benefits that it provides.

Will any other imperial power assist the American colonists if they choose to fight? That, Leonard argues, is not likely because these “powers have colonies of their own, and might not choose to set a bad example, by encouraging the colonies of any other state to revolt.” Furthermore, the “French and Spaniards have not yet forgot the

⁶⁰Leonard, 181. John Dickinson (1732–1808) wrote one of the most widely read series of letters (1767–1768), “Letters from a Farmer in Pennsylvania, to the Inhabitants of the British Colonies.” He took a cautious moderate position on independence, refusing to sign the Declaration of Independence, but subsequently being one of the authors of the Constitution. For a modern edition of these letters: see *Empire and Nation*, 2nd ed., ed. Forrest McDonald (Indianapolis: Liberty Fund, 1999), 1–86.

⁶¹*Ibid.*, 182.

drubbing they received from Great Britain [in the] last war” which ended with the British becoming the dominant European power in North America. There are “eleven regiments in Boston” and a “respectable fleet in the harbour” that should make it clear to the colonists that the leaders of the British Empire will use great force if necessary to keep the colonists subject to the Empire.⁶²

In the eighth of the essays, Leonard proposed what he labeled an “extravagant and romantic” view of a future in which England, “overwhelmed by her ancient hereditary enemies,” loses her American colonies or, perhaps, “planting more loyal colonies in the new discovered regions of the south” retains “her pre-eminence among the nations, though regardless of America.” He also painted a picture of an independent American nation, “[d]estitute of British protection,” becoming “the sport and prey of the maritime powers of Europe” as well becoming “exposed to the pillaging of every piratical enterprise” and the victim of all kinds of violence in the absence of the British fleet.⁶³

What would be the solution to the American situation? Leonard observed that in order to defend themselves, the colonists “must unite into one empire” something that he believed was not likely because of “jarring interests, and opposite propensities” of the various colonies. What would result from independence would not be a strong united state but a “many headed monster in politics, unwieldy and inactive” and unable to protect the former colonies from stronger nations. Such a situation would inevitably lead to some “aspiring genius,” another Oliver Cromwell, taking command of the colonial army in order to “subjugate the whole to the yoke of despotism.” Leonard then pointed out that Cromwell’s reign was so “odious and arbitrary” that upon his death “all parties conspired to restore monarchy” rather than continue with the Cromwellian protectorate.⁶⁴

Suppose for argument’s sake, Leonard continued, that “the colonies united, and moulded into some form of government,” how would they support their government? In his opinion, once in power, the Whigs and those who followed them would recognize “that to render government operative and salutary, subordination is necessary” so that the Whigs

⁶²Ibid., 182–183.

⁶³Ibid., 184.

⁶⁴Ibid., 184–185.

would have to impose their will on those who chose not to accept their rule. Once in power the Whigs would reveal the “severity of their discipline to restore subordination” to the new government. Such severity “would be in proportion to their former treachery in destroying” the previous government. From his perspective, the threat of a new Norman Yoke would come “from such scourges of mankind, when supported by imperial power.”⁶⁵

Even united under the rule of a Cromwell, the American colonies would not be able to defend themselves. To the claim that the “colonies would open a free trade with all the world, and all nations would join in protecting their common mart,” thus protecting the independence of the new nation, Leonard responded that “this is chimerical.” The American role in world trade is “but a drop of the bucket” for Great Britain “or the light dust of the balance, to all the commercial states of Europe.” Without the protection of the British fleet, the French and the Spanish would re-take those territories lost to the British in recent wars. Without British might, “the whole continent would become their easy prey, and would be parcelled out, Poland like.” He concluded this line of argument with the ominous words: “Consider what must *really* have been our fate, unaided by Britain last war.”⁶⁶

Separation from Great Britain would lead inevitably to conquest by a European nation—or nations. “Which state would you prefer being annexed to; France, Spain, or Holland?” Even the Dutch, although a republic, were not an attractive option. “Those of you that have visited Surinam, and seen a Dutch governor dispensing at discretion his own opinions for law, would not suddenly exchange the English for Dutch government.”⁶⁷ In support of his argument, Leonard concluded this essay with another lengthy excerpt from John Dickinson’s *Letters from a Farmer in Pennsylvania*, ending with the blunt statement: “In truth the prosperity of these provinces is founded in their dependence on Great Britain.”⁶⁸ Submission to British imperial rule and dependence on British

⁶⁵Ibid., 185.

⁶⁶Ibid., 185–186. The reference is to the first partition of Poland (1773). Two more were to follow, 1793 and 1795. The entire country was divided among Prussia, Russia, and Austria: see Norman Davies, *God’s Playground: A History of Poland*, 2 vols. (NY: Columbia University Press, 2005), 1: 386–411.

⁶⁷Leonard, 186.

⁶⁸Ibid., 187.

arms therefore was not the humiliation signified by the yoke but rather the route to economic and political success.

In the ninth essay Leonard argued that the long-term interests of both Great Britain and the American colonies depended on their constitutional connection. To deny this relationship is rebellion which is “the most atrocious offence, that can be perpetrated by man” except for rejection of God. Rebellion “dissolves the social band, annihilates the security resulting from law and government” and ultimately reduces society to the “state of nature.” In his opinion the Whigs wanted not reform of the constitutional relationship but the severing of that relation, and he saw the Whigs in terms of the Scottish Highlanders who rose up to support Charles Stuart in 1745. They were defeated and “cut down like grass before the scythe of the mower” In Leonard’s opinion, the Whigs did not simply want to replace one king with another as happened in 1689. They may proclaim their loyalty to the king but only “as means to subvert his government.”⁶⁹ The rebellious colonists would be guilty of high treason if they continued along the path upon which they were setting.

Having set out in some detail the elements that constitute high treason in common law, in the tenth essay Leonard moved to consider the “American grievances” that motivated his opponents. Has the king or the Parliament done anything so evil that the colonists would be justified “in thus forcibly opposing their government?” The government only wanted to improve the quality of local government because the Whigs “by their intrigues and machinations, had rendered the assembly incapable of answering the purpose of government” The result was that the form of government created by the charter of Massachusetts “was become as inefficacious as an old ballad.”⁷⁰

According to Leonard, the problems facing the colony were not caused by the British government but by the charter which lent itself to grave abuses and by the colonists themselves. In earlier times “this province has been happy under our charter form of government; but when the political storm arose, its original defect became apparent.”⁷¹ Parliamentary action was necessary to correct these defects. In other

⁶⁹Ibid., 187–189.

⁷⁰Ibid., 192.

⁷¹Ibid., 193.

words, as the colony developed, a charter that was suitable in the early days of the settlement required modification. If these modifications had “been made in moderate times, when due reverence was yielded to the magistrate, and obedience and to the law, they might have been called grievances” and they in turn would have been “repealed in whole or part, should our present form of government be found by experience to be productive of rapine or oppression.” Furthermore, Leonard added, sometimes “we are told that the charters are sacred” but sacred or not “they are forfeited through negligence or *abuse* of their franchises” and when the people have “broken the conditions, upon which it was incorporated.” Parliament can revoke a charter when it is necessary in order “to restore peace and harmony to the province”⁷² In effect, Leonard was arguing that colonial government, indeed all governments, must keep up with the times. When his opponents based their arguments on the charter or charters that had been issued for Massachusetts in the seventeenth century, they were looking backwards to a simpler time. Furthermore, the charter was never intended to govern the colony forever. A successful colony would require more sophisticated governmental structures than a newly planted one. He might have added that there were also new ideas circulating about governments, what they do and how they function. The eighteenth century was filled with new ideas about government and other empires such as the Spanish were also debating the nature of empires and how they should operate.

In the eleventh essay Daniel Leonard turned to the grievances of which the colonists complained. He saw these as arising from the fact that “the whigs suppose the colonies to be separate or distinct states” As a result, “having fixed this opinion in their minds, they are at no loss for grievances.” Consequently, “our patriots have rashly tendered Great Britain an issue, against every principle of law and constitution, against reason and common prudence” so that now there “is no arbiter between us but the sword”⁷³ The focus of Leonard’s argument at this point was the Declaratory Act of 1766. According to him, the Whigs’ claim that this act “hath most unrighteously asserted” that the fact that Parliament has the right to make laws for the colonies “without any qualification or restriction” was “an innovation, and inconsistent

⁷²Ibid., 194–195.

⁷³Ibid., 196.

with liberty.” According to Leonard, it is obvious that the purpose of the act “was to assert the supremacy of the parliament in the colonies, that is, that its constitutional authority to make laws and statutes binding on the colonies, is, and ever had been as ample, as it is to make laws binding upon the realm.” In other words, the colonists were in the same relation to Parliament as any community in England and the residents of the colonies had the same rights as those dwelling in England. It would be quite wrong therefore to charge, as the Whigs were charging, that the act asserted Parliament’s right “to deprive the colonists of their lives, to enslave them, or to make any law respecting the colonies, that would not be constitutional, were it made respecting Great Britain.”⁷⁴

According to Leonard, the purpose of the Declaratory Act was to “assert the right of parliament, to make laws and statutes for raising a revenue, lest the repeal of the stamp act might be urged as a disclaimer of the right.” From his perspective, the repeal of the Stamp Act was a tactical step meant to end the current crisis in the colonies without surrendering Parliament’s claims to make laws affecting the colonies. In supporting this argument he turned to current thinking about the nature of government. Is not the “power to raise a revenue ... the inherent, unalienable right of the supreme legislative of every well regulated state ...?” The purpose of government is after all to protect “the people from internal violence and rapacity, and from foreign invasion.” “Were any part of an empire exempt from contributing their proportionable part of the revenue, necessary for the whole, such exemption would be manifest injustice to the rest of the empire ...” To allow each of the various elements of an empire to determine what share they would pay in support of the empire in their own legislative bodies would “involve ... the absurdity of *imperium in imperio*” and constant quarreling among the separate elements.⁷⁵

⁷⁴Ibid., 197.

⁷⁵Ibid., 198. The phrase *imperium in imperio* was often used in discussions of the relation between Church and State, for example, by William Warburton in his widely read *The Alliance Between Church and State* (London, 1766), 88; see also the example in Philip Hamburger, *Separation of Church and State* (Cambridge: Harvard University Press, 2002), 58, n. 67. For another political use of this phrase: see Daniel J. Hulsebosch, “*Imperia in Imperio*: The Multiple Constitutions of Empire in New York, 1750–1777,” *Law and History Review* 16 (1998): 319–379 at 340.

Turning to the historical record, Leonard argued that the first charter of Massachusetts provided an exemption from taxation for 21 years after which taxes could be imposed “and the authority of parliament to impose such taxes, was claimed so early as the year 1642.” Furthermore, the charter of Pennsylvania stated that no laws could be made for the colony without “the consent of the proprietors, chief governor, or assembly, or *act of parliament*.” Thus, “the claim of a right to raise a revenue in the colonies, exclusive of the grants of their own assemblies, is coeval with the colonies themselves.”⁷⁶

In the twelfth *Massachusettsensis* essay Leonard turned to the issue of duties and taxes levied on the colonists. Did the English Parliament levy these for regulating trade, as the Whigs admitted it could or for generating revenue to cover the operating expenses of the empire? Citing an act of Charles II that levied duties on “goods and merchandise of various kinds” that were “exported from the colonies to foreign countries, or carried from one colony to another,” Leonard argued that it “is apparent, from the reasoning of this statute, that these duties were imposed for the sole purpose of revenue.” The purpose of this act therefore “was to tax, rather than to regulate the trade” as the Whigs would have it.⁷⁷ Furthermore, the right of Parliament to tax the colonists had been recognized “from a period more remote than the grant of the present charter [1691], to this day.”⁷⁸

Leonard recognized that the power to tax could be abused but he argued that Parliament could not constitutionally levy any tax that would generate a revenue greater “than its just and equitable proportion of the necessary, national expence.” The real question, he argued, was “whether America is not obliged in equity to contribute something toward the national defence” Therefore, the only real issue was the amount of revenue raised by Parliament’s acts that “amounts to our proportion,” especially since the colonial legislatures had failed to act in their own best interest?⁷⁹

With the thirteenth essay, Daniel Leonard turned to attacking Novanglus directly. Specifically, he criticized Adams for making

⁷⁶Leonard, 198–199.

⁷⁷Ibid., 199–200.

⁷⁸Ibid., 201.

⁷⁹Ibid., 202–203.

unfounded accusations that are “destitute of foundation” and others that are not relevant to the issues being discussed. Above all, Adams had accused a number of people including two former governors of the colony and a judge “of a conspiracy to enslave their country,” acting “the part of an assassin, in thus attempting to destroy the reputation” of these great men. The charge was that these individuals had attempted to impose the plan to consolidate the New England colonies into the Dominion of New England that Sir Edmund Andros, acting on behalf of King James II, tried to impose in 1689. In Leonard’s opinion, the real issue was that Governor Shirley wanted Parliament “*to tax the whole according to their several proportions*” in order to secure the defense of the colonies in the wars with France.⁸⁰

In the fourteenth essay Leonard attacked *Novanglus’s* argument “that exclusive of her assistance in the last war, we have had but little of her [i.e., Great Britain’s] protection ...” According to Leonard, another Whig asserted that the war with the French for control of North America “was undertaken solely for the benefit of Great Britain and that however advantageous the subduing or keeping any of these countries, viz. Canada, Nova-Scotia and the Floridas may be to Great Britain, the acquisition is greatly injurious to these colonies.” Furthermore, he argued, the Whigs claimed that the colonists “have been pouring the fruits of all their labours into their mother’s lap, thus reversing Leonard’s image of Great Britain as the nursing mother of the colonies.⁸¹

Leonard responded that the “plantations are additions to the empire of inestimable value.” They provide a “market for British manufactures,” a “great nursery for seamen,” and other resources that provide “increasing and inexhaustible sources of national wealth and strength.” This kind of development is possible, however, only under the protection of Great Britain. It was Great Britain that protected the colonists from “the incursions of the French and savages” when the colonies faced destruction at their hand.⁸² The consequence of the protection that the British provided led to a great war “kindled in America, spread through the four quarters of the globe” until Great Britain stopped “the rapid progress of its devouring flames.” This great series of wars was enormously expensive

⁸⁰Ibid., 204–205.

⁸¹Ibid., 209–210.

⁸²Ibid., 210.

and “the colonies reap the benefit of them equally with the rest of the empire.” This clearly proved, according to Leonard, “that Great Britain is not less attentive to our interest than her own” in spite of the claims of the Whigs to the contrary.⁸³

In the fifteenth essay, Leonard developed his argument that the economic advantages, that membership in the British Empire brought, had benefited the colonists greatly and at small cost to them. The “great council of the empire has ever esteemed our prosperity as inseparable from the British; and if in some instances the colonies have been restricted to the emolument of other parts of the empire, they, in their turn, not excepting England itself, have been also restricted sufficiently to restore the balance, if not to cause a preponderation in our favour.” As evidence of the benefits that membership in the British Empire provided, Leonard quoted at length from “a pamphlet written in England, and lately republished here, wherein this matter is stated with great justice and accuracy.” The pamphlet essentially presented the mercantilist argument that England supported the colonists in their early days as they cleared the forests in order to create agricultural land. Since tobacco was a crop well suited to Virginia, its cultivation in Great Britain and Ireland was forbidden in order to encourage its growth in Virginia which was more suitable for it and thus favoring the interests of the colonists. Other colonial products were equally protected. Because of the shortage of timber for shipbuilding and other uses in Europe, timber from the colonies could only be sold into England but “full and ample indemnity has been given to the colonies for the loss of a choice of markets in England, by very large bounties paid out of the revenue of Great Britain”⁸⁴ Other products, rice and indigo for example, that the English could import from elsewhere, could not be imported into England except from British North America, thus providing a protected market for the American producers of these items. In Leonard’s opinion, the “annals of no country, that ever planted colonies, can produce such an instance as this of regard and kindness to their colonies, and of restraint laid upon the inhabitants of the mother country for their advantage.”⁸⁵

⁸³Ibid., 212.

⁸⁴Ibid., 213–214.

⁸⁵Ibid., 215.

Using data “lately made” from an unnamed source, Leonard next moved to calculate the amount of revenue the British government received from the duties imposed on trade with the American colonies on the one hand, and the amount that the colonists derived from “bounties and encouragement paid out of the British revenue upon articles of American produce imported into England” on the other. According to Leonard, the “bounties and encouragements” are four times greater than the revenue that the duties generated for the British government, clearly a balance very favorable to the colonies.⁸⁶

In the final analysis, Leonard concluded that the benefits received from membership in the British Empire far outweighed the costs. After all, from “what source has the wealth of the colonies flowed?” Agriculture alone would not create the wealth that the colonies now enjoy. Without “commerce the colonists would this day have been a poor people,” living at bare subsistence levels and would have “degenerated into a state of ignorance and barbarity.” Instead, under the guidance and protection of the British Empire, the population is expanding, cities “springing up in the depths of the wilderness, schools, “colleges, and even universities” are everywhere and every colony “abounds with foreign refinements ... and exotic luxuries ... infallible marks not only of opulence but of freedom.”⁸⁷

All of the benefits that the colonists enjoyed were the result of British imperial economic policies. That being obvious, Leonard asked rhetorically “Where are the traces of the slavery that our patriots would terrify us with?” Pointing to the poverty-stricken condition of European peasants, he noted that “land is not disgraced by the wooden shoes of France, or the uncombed hair of Poland: we have neither racks nor inquisitions, tortures or assassinations” The colonist’s person and property is protected by law. “My dear friends, let me ask each one whether he has not enjoyed every blessing, that is in the power of the civil government to bestow?” The colonies have prospered not in spite of but because of the policies of the British government and Parliament has “from the earliest days of the colonies, claimed the lately controverted right, both of legislation and taxation; and for more than a century has been in the actual exercise of it.” Those who support the claims of

⁸⁶Ibid., 215–216.

⁸⁷Ibid., 215–216.

grievance that the Whigs alleged wish to “make war against our parent” who has nurtured the colonies from the beginning and will crush their rebellion. If that happens, “New England will stand recorded [as] a singular monument of human folly and wickedness.”⁸⁸

Thus, far into the series of essays Leonard focused on the economic benefits that the colonists obtained from the imperial structure. For the most part he ignored the constitutional issues that Adams and others were raising, for example the claim that petitions for the redress of grievances had been “treated with contempt” by British officials. This, Leonard asserted, was a “libel” because in fact they had been “graciously received” and “generally granted.” Furthermore, these petitions “originated in illegal assemblies” and “were insidious attempts to wrest from the crown, or the supreme legislature, their inherent, unalienable prerogatives or rights.” Under those circumstances it would have been pointless to discuss the issues being raised.⁸⁹

One of the most important grievances was the Whig claim that “A standing army has been kept in these colonies ever since the conclusion of the late war, *without the consent of our assemblies.*” From Leonard’s perspective, this grievance “is a denial of the king’s authority to station his military forces in such parts of the empire, as his majesty may judge expedient for the common safety.” Accept this claim and you are likely to hear the claim made that the crown had no right “to declare war, or conclude a peace, by which the colonies would be affected, without the consent of our assemblies.” Whether he realized it or not, at this point Leonard was touching upon a point that greatly concerned the Whigs, the importance of an imperial constitutional structure that would enable the colonists to participate in the making of major governmental decisions. “No taxation without representation” was one articulation of this point and was a variation of the ancient Roman law principle of “what concerns all must be approved by all” that Adams and others saw as the crucial issue between Great Britain and the colonies. In Leonard’s opinion, acceding to these demands would require the crown to surrender “some constitutional right at the same time,” rights that the crown possessed constitutionally. Leonard recognized that the colonists had legitimate grievances that could and should be corrected. Nevertheless, it “is

⁸⁸Ibid., 216–217.

⁸⁹Ibid., 217–218.

one thing to complain of the inutility or hardship of a particular act of parliament, and quite another to deny the authority of parliament to make any act." In the event of a Parliament passing an act that proved "oppressive" to the colonies, once the oppressive nature of the act was clearly demonstrated, Parliament would repeal it.⁹⁰

What drew Leonard's greatest scorn was the creation of the First Continental Congress (1774), a meeting that claimed to represent the several colonies. Such a congress would have been "salutary" if its members had been "constitutionally appointed by the supreme authority of the state, or by the several provincial legislatures, amenable to, and controulable by the power that convened them," the situation that had obtained with the Albany congress of 1754. Any meeting proclaiming itself a representative convention or congress that was not "controulable" by the sovereign power "must be an unlawful assembly, wholly incompatible with the constitution" and therefore a threat to good order. Such a power usurped the authority of "the rightful prince" and, if successful would destroy the sovereign power. Ultimately, the "prince, or sovereign, as some writers call the supreme authority of a state, is sufficiently ample and extensive to provide a remedy for every wrong, in all possible emergencies and contingencies" when his power is not diminished by illegal assemblies.⁹¹ The actions of the colonists in recent months amounted to "a manifest revolt from the British empire," treating "Great Britain as an alien enemy"⁹² That being the case, Leonard concluded that the goal of the Whigs now was clear as they have established themselves as "the states general or supreme legislature of all the colonies, from *Nova Scotia* to *Georgia*," and then by enacting new laws in their own name. They "recognize the authority of the several provincial legislatures, yet they consider their own authority as paramount or supreme"⁹³ The colonies were now acting as if they were "distinct

⁹⁰Ibid., 218.

⁹¹Ibid., 219. On the Albany Congress: see Timothy Shannon, *Indians and Colonists at the Crossroads of Empire: The Albany Congress of 1754* (Ithaca: Cornell University Press, 2000); also see Francis Jennings, *Empire of Fortune: Crow, colonies, and tribes in the Seven Years War in America* (NY: W. W. Norton, 1988), 95–108.

⁹²Leonard, 220.

⁹³Ibid., 221.

states” and assumed “the powers of legislation” and “excluded every idea of monarchy”⁹⁴

For Leonard, these claims by the colonists demonstrated a serious inconsistency. On the one hand, the colonists “call themselves and constituents ‘his majesty’s most loyal subjects’ ... [and] are entitled ‘to all the immunities and privileges granted and confirmed to them by royal charters ... [and] support his royal authority and our connection with Great Britain;’ yet deny the king’s prerogative to station troops in the colonies, disown him in the capacity in which he granted the provincial charters; disclaim the authority of the king in parliament” and otherwise to act “without any authority derived from the crown.” In the final analysis, the colonists claim the “‘rights, liberties and immunities of free and natural born subjects within the realm of England,’ and ‘all the benefits secured to the subject by the English constitution,’ but disclaim all obedience to the British government....”⁹⁵ The colonists now ignore the provincial assemblies established by royal charters and make their own laws, clearly a rejection of the king’s government whatever the colonists might say otherwise.

In this list of what Leonard saw as the contradictions in the Whigs’ position, there was one point that he glided over that was crucial to the argument of the Whigs. He referred to the “authority of the king in parliament” as if this was a longstanding constitutional fact. He took for granted that the principle that the king does not act alone but in conjunction with Parliament was a part of the English constitutional tradition for centuries. In reality, however, as Adams and others were to point out, this conception of royal authority was a relatively recent formulation, a consequence of the Glorious Revolution of 1688–1689 and not an ancient one. Thus, the Whigs could claim their loyalty to the king alone because it was the king who issued the charters and there was no mention of any role for Parliament.

In the final essay of this series, Daniel Leonard summed up the main lines of his position and took direct aim at the author of the *Novanglus* essays. He opened this essay with a criticism of those “advocates for the opposition to parliament” who “tell us that government in the dernier resort is in the people” who have the right to change it when

⁹⁴Ibid., 222–223.

⁹⁵Ibid., 223.

circumstances call for change. He then asserted that “the collective body of the people, that are subject to the British empire, have an inherent right to change their form of government, or race of kings” but “it does not follow, that the inhabitants of a single province, or of a number of provinces ... have such a right.”⁹⁶

As for *Novanglus*, Leonard claimed that he “has accused me of tra-
ducing the people of this province,” by encouraging them to believe that the Tories represented the right way to govern. Leonard responded that he was fully “convinced, that our calamities were chiefly created by the leading whigs” and following their lead “would complete our ruin” *Novanglus* also “abuses” Leonard for saying that “the whigs aim at independence.” He responded that another Whig writer clearly made such an assertion. As for Adams’s historical approach to understanding the development of the British Empire, Leonard retorted that *Novanglus* should realize “that arguments drawn from obsolete maxims, raked out of the ruins of the feudal system, or from principles of absolute monarchy” are not useful for understanding “the present constitution of government.” Rather than opposing “the supreme legislature,” that is the king in Parliament, the colonists should be respecting “its authority” along with “the king respecting his prerogatives, and with Great Britain respecting our subordination” thus submitting “to constitutional government, to be happy.”⁹⁷

Leonard’s position was that the American colonists will either voluntarily and wisely accept their subordinate position with the Empire or they will be forced to accept it. “Do you expect to conquer in war,” he asked his opponents? “Nothing short of a miracle could gain you one battle” if there is a war.⁹⁸ He had effectively described the Norman Yoke that Adams had warned against 10 years earlier.

Leonard’s essays provided a brief, clear defense of the British Empire as it was developing in the mid-eighteenth century. In his view, even if one did not agree with this course of development, it was nonetheless the course that the British were following and, if necessary, imposing by force on the subordinate members of the Empire. There was no point in, as Adams and others were doing, going back to the earliest stages

⁹⁶Ibid., 225.

⁹⁷Ibid., 225–226.

⁹⁸Ibid., 226–227.

of imperial development and claiming customary rights, privileges, and exemptions that had lost their utility. The past was irrelevant, what mattered was the way in which the British Empire was now operating.

In the second place, Leonard saw the Empire in the most positive terms. The king was the good father of his children and the Empire itself was the nursing mother of the colonists. If the colonists had legitimate grievances they had only to state their situation in the proper manner and the parental figures would correct the problems. At the same time, as good parents, they would also point out fallacies in the colonial claims that would justify not responding positively to them. What the rulers might have to do is to explain to the American colonists that some limitations on their activities might be in order for the good of the Empire as a whole. In the long run however, the colonists would benefit from the wise policies created by those at the top who sought the good of the entire Empire, not just particular elements of it. Above all, according to Leonard, the colonists have had in the past and enjoyed at the moment, and could confidently expect in the future, great economic benefits from membership in the British Empire.

Failure to accept this conception of the paternal king and the maternal Empire could only lead to disaster for their unruly colonists. In Leonard's opinion, Adams and the Whigs were demanding not redress of grievances but independence, a course of action, if successful, could only lead to disaster as the other European empires would seek to acquire lands lost to the English in the wars for control of North America.

What Leonard overlooked in this positive conception of the Empire was the political and constitutional issue of membership in the English Parliament. If it was the right of Englishmen to be taxed only with their consent, how could the Parliament impose taxes on the American colonists who had no such representation? Did the gain in economic benefits that Leonard claimed the Empire provided outweigh the loss of traditional constitutional rights? Should the American colonists accept a second-class political status within the British Empire in order to benefit economically from membership in the British Empire? More importantly, would they accept such a status? Writing as *Novanglus*, John Adams said that they should not and would not accept the role within the Empire that Leonard set out.

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Is There a British Empire?

... the terms “British Empire” are not the language of the common law, but the language of news papers and political pamphlets, the dominions of the king of Great-Britain has no uncontrollable power co-extensive with them.¹

It has been often observed by me, and it cannot be too often repeated, that *Colonization* is *Casus omissus* at common law. There is no such title known in that law. By common law, I mean that system of customs, written and unwritten, which was known and in force in England, in the time of king Richard the first.²

¹Adams, *Papers*, 2: 250. On the history of the term British Empire: see James Truslow Adams, “On the Term ‘British Empire’,” *American Historical Review* 27(1922): 485–489. Historians have used the term empire to describe the possessions of medieval English monarchs: see John Le Patourel, *Feudal Empires Norman, and Plantagenet* (London: Hambleton, 1984); John Gillingham, *The Angevin Empire*, 2nd ed. (NY: Oxford University Press, 2001); Martin Aurell, *L’empire des Plantagenêt* (Paris: Perrin, 2003).

²Adams, *Papers*, 2: 327.

On January 23, 1775 John Adams re-entered the polemical wars that preceded the American Revolution when he published the first of his “Novanglus” essays in the *Boston Gazette and Country Journal* in response to Daniel Leonard’s *Massachusettensis* essays. At this point, he wrote, “I have not in my possession, more than one of his Essays, and that is in the *Gazette* of December 26,” the third of the series. According to Adams, a response was called for because Leonard had asserted:

that the temporal salvation of this province depends upon an entire and speedy change of measures, which must depend upon a change of sentiments respecting our own conduct and the justice of the British nation.³

Adams did not know at the time who wrote these essays but he identified the author with the writings of someone known as *Philanthrop*, an “ill-fated and unsuccessful, tho’ persevering writer,” whose previous efforts had defended the policies of Governors Francis Bernard (1760–1771) and Thomas Hutchinson (1769–1774) but in Adams’s opinion had only created “more general resentment and aversion” toward Bernard and demonstrated the “ambition and avarice, the simulation and dissimulation, the hypocrisy and perfidy” of Hutchinson. Nevertheless, he “still hopes to change your sentiments and conduct ... to convince you, that the system of colony administration which has been pursued for these ten or twelve years past, is a wise, righteous, and humane plan”⁴

Having dismissed *Massachusettensis* as an “unsuccessful” polemicist and the Tories as greedy hypocrites, Adams turned to the fundamental issues involved, the crisis facing the British Empire and its American colonies. His response to the crisis was interesting in that he simply denied that there was such a crisis because there was no British Empire and there were no colonies. From his perspective the term British Empire was only a popular expression to describe the totality of the possessions of the king of England. It had, however, no legal or constitutional significance and only served the purposes of polemicists and journalists. As for colonies, Adams pointed out that common law made no reference to

³Ibid., 2: 226. Leonard, 152. *Philanthrop* was Jonathan Sewell, another old friend of Adams: see Peter Shaw, *The Character of John Adams* (Chapel Hill: University of North Carolina Press, 1976), 54–55.

⁴Adams, *Papers*, 2: 227–228; Leonard, 152. Only years later did Adams learn that *Massachusettensis* was a fellow lawyer and old friend Daniel Leonard.

colonies. They were a *casus omissus* in the law.⁵ If there was no Empire and there were no colonies, then what term would serve to identify all of the territories that the king of England ruled in one or another of his multiple capacities?

For Tories such as Daniel Leonard, Adams's arguments were irrelevant to the contemporary situation. The Tories argued that the development of the British Empire was the result of a process that had extended over a long time. It did not require formal documents to demonstrate its creation. There was an Empire and there were colonies. If Adams and his colleagues thought otherwise, the armed forces of that Empire would demonstrate their error.

On the other hand, Adams demanded that the Tories produce the constitutional documents that had created the Empire and established the colonies that they claimed existed, something that they could not do because no such documents had ever been created, at least not as Adams defined them. Adams's argument was complicated however because in rejecting the spiritual jurisdiction of the papacy, King Henry VIII (1509–1547) had declared that “by divers sundry old authentic histories and chronicles it is manifestly declared and expressed that this realm of . . .”⁶ In order to explain why he asserted the non-existence of the British Empire and its colonies, Adams provided two brief histories. The first examined the history of the term empire and its cognates as related to the English situation. The second brief history reviewed the history of colonies, beginning with those in the ancient world. He examined with particular care the charters of the English possessions in North America to explain the status of Englishmen in these overseas territories.

The “Novanglus” essays began, however, not with a statement of the principal themes Adams intended to pursue but with a slashing attack on the constitutional positions and the personal qualities, the character defects if you will, of Leonard, Hutchinson, and Bernard. According to Adams, they were the purveyors of policies “conducted by intrigues at a distant court” to the detriment of the people. In the second essay he accused the Tories of involvement in “schemes for enslaving this country” and described Bernard as “avaricious to a most infamous degree,”

⁵Adams, *Papers*, 2: 327–328.

⁶“Act of Appeals,” *Tudor Constitution*, 353–358 at 353.

anxious to enrich his family by office holding, as indeed Hutchinson was anxious to do as well.⁷

In contrast, Adams and the Whigs operated “by constant appeals to a sensible and virtuous people” who inhabited Massachusetts. In the forthcoming essays Adams planned to show “the wicked policy of the Tories—[and] trace their plan from its first rude sketches to its present compleat draught ...” At the same time, Adams agreed with Leonard’s observation “that the bulk of the people are generally but little versed in matters of state” and, according to Adams, they have relied too much on “certain persons” whom they trusted with the result that Adam’s earlier work on threat of tyranny was ignored. “The people were informed of it and warned of their danger ... [but] could never be persuaded to believe, until prophecy, became history.”⁸ This time, however, as he wrote in a tone of “I told you so,” the people will believe him when he asserts that the Tories intended to bring the people under their domination.

Historically, so Adams argued, when wicked leaders “have conceived the design of enslaving their country, and building their own greatness on its ruins,” rulers such as Philip and Alexander the Great, and Julius Caesar in the ancient world, and contemporaries such as Charles V and Louis XI, the “latent spark in the breasts of the people,” the “love of liberty” was “kindled into a flame” that led to the overthrow of such leaders. Those who have opposed tyrants have stressed that “kings are but the ministers of the people; that their authority is delegated to them by the people for their good, and they have the right to resume it ...” These are what he labels “revolution principles” associated with “Aristotle and Plato ... Livy and Cicero ... Sydney, Harrington, and Lock.—The principles of nature and eternal reason”⁹ At this point, Adams made no reference to medieval writers who held the same positions, although his later discussion of parliamentary representation indicates that he was aware of the medieval experience.¹⁰

⁷ Adams, *Papers*, 2: 228, 236.

⁸ *Ibid.*, 2: 228–229.

⁹ *Ibid.*, 2: 229–230.

¹⁰ The fundamental book on medieval ideas about the right of resistance to royal tyranny is Fritz Kern, *Kingship and Law in the Middle Ages*, trans. S.B. Chimes (Oxford: Basil Blackwell, 1939). See also Peter D. Clarke, “The Interdict and Medieval Theories of Popular Resistance,” in *Pope, Church, and City: Essays in Honour of Brenda M. Bolton*, eds. Frances Andrews, Christopher Egger, and Constance M. Rousseau (Leiden: Brill, 2004), 77–97 at 81–82, 86–87. On Kern’s long-term influence: see Gábor Klaniczay, *Holy Rulers*

For Adams, these principles formed the basis of government which he defined as a contract between a people and their ruler or rulers. The Tories, however, saw these principles as generating “perpetual discord” because their application would cause the people to harass their government on a regular basis on minor points, thus rendering the state unable to achieve its proper ends. To Adams, however, “order, concord, and stability in the state, never was nor can be preserved without” these principles. There will of course always be points of difference about public policy but these do not require the imposition of force to restrain such differences. They are the consequence of having an engaged citizenry. On the other hand, the policies that the Tories supported demonstrated “a manifest design in the Prince, to annul the contract on his part, [which] will annul it on the part of the people. A settled plan to deprive the people of all the benefits, blessings, and ends of the contract, to subvert the fundamentals of the constitution—to deprive them of all share in making and executing laws, will justify a revolution.”¹¹ The denial of representation of the colonists in the English Parliament was just such a case. Adams placed himself in the long line of political theorists, Greek, Roman, English, who had defended the right of the people to participate in their own governance and to remove rulers who failed to uphold the peoples’ rights. The Tories, however, sought to advance “the principles of Hobbs and Filmer” while pronouncing “damnation ... on all who do not practice implicit passive obedience to all established government, of whatever character it may be.”¹² The *Leviathan* of Thomas Hobbes (1558–1679) and Robert Filmer’s (1558–1663) *Patriarcha* were among the most forceful statements defending the Tory position. Hobbes’s *Leviathan* asserted the need for a strong ruler to protect men from one another, while Filmer’s *Patriarcha* defended the Divine Right of Kings as

and *Blessed Princesses: Dynastic Cults in Medieval Central Europe* (Cambridge: Cambridge University Press, 2002), 3–5.

¹¹ Adams, *Papers*, 2: 230–231.

¹² *Ibid.*, 2: 231. On Hobbes, Filmer, and those who followed their lead: see J.P. Sommerville, “Absolutism and Royalism,” in J.H. Burns with Mark Goldie, eds. *The Cambridge History of Political Thought 1450–1700* (Cambridge: Cambridge University Press, 1991), 347–373. See also the old classic John Neville Figgis, *The Divine Right of Kings*, 2nd ed. (Cambridge: Cambridge University Press, 1914; reprinted, NY: Harper & Row, 1965).

the basis of the best form of government.¹³ In both cases the result was the subordination of presumably free people to servitude.

Adams pointed out that the traditional principles he had listed, the “principles of nature and eternal reason,” were “very troublesome” to Leonard. These fundamental principles, however, “have been invariably applied ... against the Stuarts, the Charles’s, and the James’s, — in support of the reformation and the protestant religion; against the worst tyranny, that the genius of toryism has ever invented, I mean the Romish superstition.”¹⁴ Thus, the current British government and its American supporters were attempting to do what ten years earlier Adams had warned would happen. They would re-impose the elements of the Norman Yoke, royal tyranny, and the Roman Church, that generations of Englishmen had fought to remove, and return the colonists to the Roman Church and slavery. Adams added that the restoration of the yoke would not only harm the English colonists but all of Europe as well. If Charles I had his way, the Stuarts:

would undoubtedly have established the Romish religion and a despotism as wild as any in the world. And as England has been a principal bulwark ... of civil liberty and the protestant religion in all Europe, if Charles’s schemes had succeeded, there is great reason to apprehend that the light of science would have been extinguished, and mankind, drawn back to a state of darkness and misery, like that which prevailed from the fourth to the fourteenth century.

History has demonstrated that rebellion was necessary to insure that liberty was not lost. The Romans rebelled against their Etruscan masters and in the modern world the Dutch and the Swiss had successfully defended their liberty against wicked overlords. As for England, “Did not the English gain by resistance to John, when Magna Charta was

¹³There are numerous editions of Hobbes available and only a few of Filmer. In recent years both have been reissued with thoughtful introductions in the *Cambridge Texts in the History of Political Thought*: see Thomas Hobbes, *Leviathan*, ed. Richard Tuck (NY: Cambridge University Press, 1996); Robert Filmer, *Patriarcha and Other Writings*, ed. Johann P. Sommerville (NY: Cambridge University Press, 1991). On Filmer: see Gordon Schochet, *Patriarchalism in Political Thought* (NY: Basic Books, 1975).

¹⁴Adams, *Papers*, 2: 231.

obtained?”¹⁵ This raises an obvious paradox, however, because the legal and constitutional ideas that Adams supported, government by consent, Parliament, common law, all emerged within the era of “darkness and misery” that he condemned.

The opening essay in the *Novanglus* series went on to restate the arguments that Adams had made ten years earlier. The image of tyranny associated with the yoke was to reappear from time to time in the subsequent essays, re-stated somewhat differently but making the same fundamental point. In the third essay for example, he pointed out that the colonists were strong in the “necessary defence of their liberties” because, among other reasons, they had a “horror of arbitrary power and the Romish religion,” the characteristics of the yoke.¹⁶ In the fourth essay he observed that the colonists “have a hereditary apprehension of and aversion to lordships, temporal and spiritual.”¹⁷ From Adams’s perspective, the actions of Bernard, Hutchinson, and their allies in imposing the yoke would return the colonists to the dark ages. In other words, throughout the *Novanglus* essays, the theme of the dangers posed by the union of the temporal and the spiritual powers, the substance of the Norman Yoke, indeed the major theme of history since the introduction of Christianity, was always present.

The first *Novanglus* essay also demonstrated some of the basic strengths and weaknesses of Adams’s approach to the issues involved. On the one hand he made several broad assertions, referred to a number of historical actors in the political realm, and cited the work of some leading political theorists. On the other hand, he sometimes provides too much data, too many examples, sometimes repetitiously, and does not always explain the significance of the material in sufficient detail. The arguments presented in these essays have been highly praised and strongly criticized, beginning with the dismissive words of Daniel Leonard:

Novanglus strives to hide the inconsistencies of his hypothesis under a huge pile of learning.

¹⁵ *Ibid.*, 2: 232.

¹⁶ *Ibid.*, 2: 246.

¹⁷ *Ibid.*, 2: 265.

Surely he is not [got?] to learn, that arguments drawn from obsolete maxims, raked out of the ruins of the feudal system, or from principles of absolute monarchy will not conclude to the present constitution of government.¹⁸

On the other hand, some modern scholars, C.H. McIlwain, for example, have praised Adams's essays as "the most elaborate exposition extant of the American interpretation of the constitutional problem of the empire" on the eve of the revolution. More recently, C. Bradley Thompson has praised them as "a close, point-by-point refutation of Leonard's argument," a "systematic attempt" to describe the "jurisdictional boundaries of the imperial British constitution."¹⁹

Other scholars have criticized Adams as a writer in terms not unlike those used by Daniel Leonard. Zoltán Haraszti pointed to Adams's general "habit of incorporating unwieldy alien material in his books," that he "lacked the patience to digest his sources," and that in his writings there was "the absence of a logical development of ideas" Subsequently, Peter Shaw argued that "the 'Novanglus' essays" embodied Adams's peculiarities as a writer and "set the pattern for the rest of Adams's extended political writings by both beginning and ending in disorganized response to developing events."²⁰

These evaluations of Adams's work suggest that it is possible to say that Adams provided the most important criticisms of the Tory position on the constitution of the Empire but that he expressed his position poorly and in a disorganized manner. If then one takes the *Novanglus* essays not as a logically constructed series of points but as a body of information, Leonard's "huge pile of learning," especially historical information, that provided the raw materials about the growth and development of the British Empire as Adams saw it, one might then derive from the data the fundamental themes that Adams wanted his readers to take away from reading these essays but that he had not stated clearly.

¹⁸Leonard, 226.

¹⁹McIlwain, *American Revolution*, 139; Thompson, *Revolutionary Writings*, 148.

²⁰Haraszti, 47–48. Haraszti made this observation specifically about Adams's volumes on the *Constitutions of the New United States* but the observation applies to all of Adams's writings. Shaw, 84. .

The first such theme dealt with the constitutional nature of the British Empire, how it acquired the lands subject to it, and under what terms they functioned. Was there a difference in status between lands acquired by conquest and lands acquired by contract, that is, by voluntary submission? Furthermore, was the Empire a loose confederation of lands under a single monarch or was there a strong central overarching authority, an unchallengeable ruler, a sovereign? Would a sovereign be the yoke in modern dress?

The second theme dealt with the ways in which English monarchs had acquired various lands and peoples over the centuries. Adams's point was that each element of the lands loosely labeled the British Empire had been acquired in a specific manner and ruled by a particular set of terms. There was no universal format of colonial and imperial government. Each of the constituent elements of the Empire therefore had a particular relationship to the king of England, a relationship that could be understood only by examining the history of English acquisition of each territory, particularly, the histories of the English in Wales and in Ireland, the lands most often compared with the situation of the North American colonies.

The third theme then dealt with the place of the North American colonies within this empire: how they were acquired, what their legal status was, and what would be the status of Englishmen who settled in those colonies? Would they possess the traditional rights claimed by Englishmen? Would North America be another stage in the eternal conflict between liberty and tyranny? Would it be possible to resist the imposition of sovereign power?

The final theme concerned the place of the English Parliament and the extent of its jurisdiction in the Empire which in turn raised the issue of representation and consent. Can a Parliament to which the colonists did not send representatives, and to which they did not give their consent to legislate for them, legislate regarding the internal operations of the colonies? This question in turn generated yet another one, what were the rights of Englishmen and did the colonists possess them? Above all would or could the spirit of liberty that produced Magna Carta, Parliament, and the notion that legitimate government required the participation of the people overcome the threat of the yoke?

Having savaged the reputations of his opponents in the opening essays, in the third essay, Adams turned to what he saw as the fundamental issue at stake: what is the nature of the British Empire that the Tories

claim to defend. He then denied the legal and constitutional existence of a British Empire at all:

... the terms “British Empire” are not the
 the language of the common law, but the
 language of news papers and political pamphlets
 the dominions of the king of Great Britain has
 no uncontrollable power co-extensive with them.

If that statement is true, he went on:

... by what law the parliament has authority over America? By the law of GOD ... it has none. By the law of nature and nations, it has none. By the common law of England it has none. For the common law, and the authority of parliament founded on it, never extended beyond the four seas. By statute law it has none

Then, he went on to confront the ultimate Tory position, namely that if the Americans do not submit voluntarily to Parliament’s authority, that is, the imperial authority, they will be forced to do so:

When it is said, that if we are not subject to the supreme authority of parliament, Great- Britain will make us so, all other laws and obligations are given up, and recourse is had to the ratio ultima of Lewis XIVth and the suprema lex of the king of Sardinia to the law of brickbats and cannon balls, which can be answer’d only by brickbats and balls.²¹

From Adams’s perspective, however, there was no Empire in the sense that Leonard and the other Tories claimed, that is there was no unified sovereign state, only a collection of lands that various kings had acquired over the centuries and held by a variety of terms. As a result, the king of Great Britain has “no uncontrollable power, coextensive” with all of these lands and his Parliament has no authority over any of the king’s

²¹ Adams, *Papers*, 2: 251.

lands unless it has been authorized.²² To accept the Tory position meant to accept the Norman Yoke, that is rule by force.

Next, Adams raised the question of why since there is no Empire there is what is known as “the imperial crown of Great Britain.” This was not, so he argued, a traditional concept but an invention “of court sycophants” who introduced it into political discourse in order “to insinuate, that the crown was absolute, and had no need of lords or commons to make or dispense with laws.” Adams chose his words carefully here, stressing that those who employed this phrase wished “to insinuate” that the powers of the king of England were equivalent to those possessed by the ancient Roman emperors although they knew perfectly well that that meaning was untrue. They knew that the imperial title really only meant that “the crown of England was independent of France, Spain, and all other kings and states in the world.”²³

When Adams pointed out that the imperial title only referred to the independence of England from the jurisdiction of any other state, he was alluding to the Act of Appeals (1533) that Henry VIII (1509–1547) had issued to assert the independence of England from papal jurisdiction, but the language he employed also asserted England’s independence from claims of universal imperial jurisdiction claimed by the Holy Roman Emperors as well. As Henry VIII stated: “by divers sundry old authentic histories and chronicles it is manifestly declared and expressed that this realm of England is an empire ... governed by one supreme head and king having the dignity and royal estate of the imperial crown of the same”²⁴ In other words, the claim to imperial status referred to the equivalent of sovereignty, not to a claim to possess vast territories.²⁵

Although Adams did not mention it, the originality of Henry VIII’s use of the term ‘imperial crown’ lay not in its application to the secular

²²Ibid., 2: 250–251.

²³Ibid., 2: 251.

²⁴Henry VIII, “Act of Appeals” (1533), 353–358 at 353.

²⁵Empire, imperial, etc., have multiple meanings: see James Muldoon, *Empire and Order, The Concept of Empire, 800–1800* (NY: St. Martin’s Press, 1999), 8–15. See also Anthony Pagden, *Lords of all the World: Ideologies of Empire in Spain, Britain and France c. 1500–c. 1800* (New Haven: Yale University Press, 1995), 11–62; and his *Peoples and Empires: A Short History of European Migration, Exploration, and Conquest, from Greece to the Present* (NY: Modern Library, 2001). See also *Theories of Empire, 1450–1800*, ed. David Armitage (Aldershot: Ashgate, 1998).

independence of England but in its use against papal claims to universal ecclesiastical jurisdiction. In the year following the Act of Appeals, he issued an act separating the English Church from papal jurisdiction and declaring the king “the supreme head of the Church of England,” in effect uniting the temporal and the spiritual powers in the yoke.²⁶

The notion of independence from any overarching jurisdiction, temporal or spiritual, was not novel when Henry VIII employed it. It was a traditional usage first used in a decision of Pope Innocent III (1199–1215) who asserted that the king of France in his own kingdom had the powers attributed to the emperor in his empire, effectively denying imperial claims of jurisdiction over the kingdoms of Europe by the Holy Roman Emperor.²⁷

To Leonard’s claim that there must be “an uncontrollable power coextensive with” all of the lands subject to the king of England and binding them together in a single constitutional unit, Blackstone’s definition of sovereignty, Adams responded that no such constitutional power existed.²⁸ Tyrannical rulers such as Louis XIV had claimed such power but not the English kings.²⁹ If, however, one agreed with Leonard’s position, then there remained a serious problem because if there really ought to be an “uncontrollable power” at the head of the British

²⁶“An Act ... be Supreme Head,” *Tudor Constitution*, 364–365 at 364.

²⁷Medievalists have written extensively on the early development of the concept of sovereignty. The fundamental book is Kenneth Pennington, *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993). This contains an extensive bibliography. See also Francesco Maiolo, *Medieval Sovereignty* (Delft: Eburon Publishers, 2007).

²⁸This is Blackstone’s definition: “However they [the various forms of government] began, or by what right soever they subsist, there is and must be in all of them a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside.” William Blackstone, *Commentaries on the Laws of England* 4 vols. (Oxford: Clarendon Press, 1765–1769; facsimile edition Chicago: University of Chicago Press, 1979), 1: 48–49.

²⁹In making this distinction Adams was echoing Sir John Fortescue’s famous distinction between absolute and constitutional or limited government, the French monarchy being the former and the English the latter. According to Fortescue (c. 1394–c. 1480) there were two forms of government: “one king reigns upon his people ‘by only royal dominion’, and the other reigns ‘by political and royal dominium’; for the former kingdom began of and by the might of the prince, and the latter by the desire and institution of the people of the same prince.” The former is France and the latter is England. Sir John Fortescue, *On the Laws and Governance of England*, ed. Shelley Lockwood (Cambridge: Cambridge University Press, 1997), 83. Adams appears to have owned a copy of Fortescue and cited

Empire, it “cannot be supplied consistently ... without the consent of the colonies and some new plan of connection.”³⁰

If in fact the British government did “set at defiance” the colonists’ claims to exemption from Parliamentary jurisdiction and “resort to the ratio ultima, all Europe will pronounce her a tyrant, and America never will submit to her ...” At the same time Adams did concede that the British government did have the authority “of regulating trade” and the colonists had always been willing to accept this situation.³¹

Turning to Leonard’s claim that England had always been protective of the colonies, defending them from their enemies and encouraging their development, a sign of responsibility for the subjects of the Empire, Adams pointed out that England did so “for her own interest, because all of the profits of our trade centered in her lap.”³² The colonists have already shown their affection for Great Britain by rewarding “her all along tenfold for all her care and expence in our nurture.”³³ Indeed, he observed that the English success in the final war with France for possession of North America resulted from “the annual millions from America” that paid much of the war’s cost as even “the minister who conducted that war informed us ...”³⁴

Adams concluded this essay with a call to see the profound issues at stake. The tax of “threepence upon tea” was not “our only grievance,” it was only one of many examples of British tyranny. Above all, “Is not a military government put over us? Is not our constitution demolished to the foundation? Have not the ministry shown, by the Quebec bill, that we have no security against them for our religion any more than our property, if we once submit to the unlimited claims of parliament!”³⁵ The yoke in the form of the theory of the king in Parliament as the sovereign, unchallenged power in the English-speaking world was about to

him in his defence of the British soldiers tried in connection with the Boston Massacre (1770): see *Legal Papers of John Adams*, eds. L. Kinvin Wroth and Hiller B. Zobel, 3 vols. (Cambridge: Harvard University Press, 1965), 1: liv, 3: 82, 243.

³⁰ Adams, *Papers*, 2: 251.

³¹ *Ibid.*, 2: 251.

³² *Ibid.*, 2: 251.

³³ *Ibid.*, 2: 256.

³⁴ *Ibid.*, 2: 252.

³⁵ *Ibid.*, 2: 255.

complete the process of its imposition on the already burdened shoulders of the American colonists unless they rose up to fend it off.

Having denied the legal and constitutional existence of the British Empire and having denied the positive advantages for the American colonists of being subordinate to the British government, Adams turned to the question of how did the English acquire the lands commonly termed the British Empire and how were they governed. He discussed in some detail the ways in which Wales and Ireland had come under English control to illustrate his point about the unique status of each land that the English acquired. In effect, what others might see as the constitutional history of the unified British Empire, Adams saw as a series of micro-histories, each of which explained the nature of the relationship of a particular people to England.

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Imperial Origins: Wales, Ireland, and America

The cases of Wales and Ireland are not yet exhausted. They afford such irrefragable proofs, that there is a distinction between the crown and realm, and that a country may be annexed to the former and not to the latter

The more these cases, as well as those of Chester, Durham, Jersey, Guernsey, Calais, Gascoine, Guienne, &c are examined, the more clearly it will appear, that there is no precedent in English records ... for the case of colonies; and, therefore, that we derive our laws and government solely from our own compacts with Britain and her kings, and from the great legislature of the universe.¹

At the core of Adams's conception of what might loosely be called the British Empire was the argument that each element of the Empire was acquired under a particular set of conditions and terms that continued to set the relationship of the people to the king and Parliament of England unless modified with the consent of the people involved. As a consequence, since there was no British Empire, there could not be a constitutional history of an Empire, only a series of micro-histories, the history of the constitutional structure of each of the peoples subject to the individual who was king of England, Ireland, and Scotland as well as Lord

¹Adams, *Papers*, 2: 363.

of Man, ruler of the Channel Islands, and so on. Each of those titles was associated with a specific constitutional history.

The two histories to which Adams gave the most attention were those of Wales and Ireland because the situation in the American colonies was often compared to them. Nevertheless, he argued “the case of the America differs totally from the case of Wales, Ireland, Man, or any other case which is known at common law or in English history.”² The relation of the American colonies to England was, like all other such relationships, unique and the Empire was a composite empire not a unified one.³

Daniel Leonard saw the development of the Empire as a process that gradually and inevitably reduced the relation between the king of England and the various lands he ruled to a single constitutional pattern that subordinated all of them to the jurisdiction of the king in Parliament. This modern state was composed of “the ancient realm of England, in contradistinction to Wales and other territories, that have been severally annexed to the crown. These as they have been severally annexed to the crown, whether by conquest or otherwise, became a part of the Empire, and subject to the authority of parliament, whether they send members to parliament or not, and whether they have legislative powers of their own or not” These other places included Ireland that had its own Parliament and “Guernsey and Jersey [that] are no part of the realm of England, nor are they represented in parliament, but are subject to its authority” Given these examples, it is not surprising that Leonard argued that “in the same predicament are the American colonies, and all the other dispersions of the empire.”⁴ As a result, Adams’s emphasis on the histories of the various elements of the Empire in the eighteenth century was irrelevant to the contemporary situation.

In asserting that the colonists wanted the royal government to recognize what they saw as their traditional rights and privileges of Englishmen wherever they lived, Adams was undermining the core of Leonard’s argument, namely that legal claims based on the history of the

²Ibid., 2: 353.

³On the concept of the composite state: see H.G. Koenigsberger, *Politicians and Virtuosi: Essays in Early Modern History* (Rio Grande, OH: Hambleton, 1986), 2–13; John H. Elliott, “A Europe of Composite Monarchies,” *Past & Present*, 137 (1992): 48–71.

⁴Leonard, 174.

British Empire were irrelevant to the current debates about the nature of the Empire.

The first comparable situation that Adams examined was that of Wales. He appears to have drawn his knowledge of Wales from Hume's *History*, but not without re-writing it to some degree. According to Hume, the warlike Welsh had been a constant problem to "the Saxon and Norman" kings and their princes "preserved authority in their own country" and constantly threatened the frontiers of England. The Welsh princes "had often been constrained to pay tribute to the crown of England, [but] they were with difficulty retained in subordination, or even in peace" and the English were never able to conquer the country or to reduce it to "feudal subjection" until the reign of Henry III (1216–1272).⁵

According to Hume, in 1237 Lewellyn, the Prince of Wales, facing a rebellion from his youngest son sought the aid of Henry III. Lewellyn "purchased security and tranquillity ... on dishonorable terms," that is, he "consented to subject his principality ... to vassalage under the crown of England"⁶ In spite of the apparently voluntary submission of the Welsh to the king of England, subsequently, the Welsh became involved in the wars within England that marked the reign of Henry III.⁷ Edward I continued to have difficulties with Lewellyn and the Welsh leading to his desire to conquer Wales once and for all. The refusal of the Welsh prince "to perform the duty of a vassal" justified Edward's invasion of Wales in 1277.⁸ With the Statute of Wales in 1287, Edward completed the conquest of the Welsh and held Wales "by Feudal Right," a phrase not included in Hume's discussion although his language generally echoed its text.⁹ "All the Welsh nobility submitted to the conqueror; the laws of England, with the sheriffs, and other ministers of justice, were

⁵Hume, 1: 560. Hume did not identify his source but his language echoes the opening lines of Gerald of Wales, *The Journey through Wales and The Description of Wales*, trans. Lewis Thorpe (London: Penguin, 1978), 220. For a fuller picture of the situation in Wales: see John Davies, *A History of Wales* (London: Penguin, 1993), 134–150.

⁶Hume, 1: 560.

⁷For a recent evaluation of Henry III's reign: see D.A. Carpenter, *The Reign of Henry III* (London: Hambleton Press, 1997).

⁸Hume 2: 7. "The Statute of Wales," in *The Statutes of Wales*, ed. Ivor Bowen (London: T. Fisher Unwin, 1908), 2–28.

⁹Hume, 2: 10; "Statute of Wales 12 Edward 1".

established in that principality ...” A conquest that had taken 800 years was “through the abilities of Edward, completed by the English.”¹⁰

When Adams came to deal with the comparison with Wales, he began with its earliest history, writing that Wales was a “little portion of the island of Great-Britain, which the Saxons were never able to conquer.” With the coming of the Normans to England, however, “and untill the reign of king Edward the first” [1272–1307], the “princes” of Wales “did homage to the crown of England, as their feudal sovereign, in the same manner as the prince of one independent state in Europe frequently did to the sovereign of another.” The Welsh had maintained their “independence, through long and bloody wars against the omnipotence of England, for eight hundred years.”¹¹

Although the Welsh princes had accepted the English king as their feudal lord from “the Norman period,” during the reign of Edward I, Lewellyn “refused to go to England to do homage” so the king waged a war designed to force the Welsh prince to fulfill his feudal obligations. The result was Lewellyn’s submission and “permitting all the other Barons of Wales, excepting four, to swear fealty to the same crown.”¹²

What then was the constitutional relation of Wales to England? Leonard had argued that Wales was annexed to the kingdom of England. Adams argued to the contrary that Wales was in not annexed to the kingdom but was “always held of the crown of England, or the kingdom of England” so that “whoever was king of England had a right to homage, &c. from the prince of Wales.” Wales was not, however, “parcel of the realm or kingdom, nor bound by the laws of England.” Adams argued that even the Statute of Wales (1284) by which Wales “was annexed and united to the crown of England ... was not an act of parliament, (as it seems that it was not,) the incorporation made thereby was only a union *jure feudali, et non jure proprietatis*.”¹³

Adams went on to argue that “Wales was subject by feudal law, to the crown of England before the conquest of Lewellyn, but not subject to the laws of England ...” After the conquest of Wales, “Edward and his nobles, did not seem to think it subject to the English parliament, but to

¹⁰Hume, 2: 10.

¹¹Adams, 2: 337.

¹²Ibid.

¹³Ibid., 2: 338.

the will of the king, as a conqueror in war.” The Statute of Wales “never was passed as an act of parliament, but as an edict of the king.” Wales was thus annexed and united “to the English crown” but “parliament was not considered as acquiring any share in the government of Wales by this conquest.” That being the case, if “it should be admitted that the colonies are all annexed and united to the crown of England, it will not follow that Lords and Commons have any authority over them.”¹⁴

To support his interpretation of the Statute of Wales, Adams turned to the writings of Justice Edward Coke (1552–1634). According to Coke, Wales was held of the English crown until the Statute of Wales was issued in 1284 by Edward I “by authority of parliament.” Adams rejected Coke’s claim to a parliamentary role in the issuance of the statute, saying that there was an “inaccuracy” in Coke’s opinion because “the *statutum Walliae*, was not an act of parliament, but made by the king, with the advice of his officers of the army, by his sole authority, as the statute itself sufficiently shews.”¹⁵ According to Adams, the Welsh were “fond of English laws, and desirous of being incorporated into the realm, to be represented in parliament, and enjoy all the rights of Englishmen” but they were frustrated in this. “But Kings were so fond of governing this principality by their discretion alone, that they could never obtain these blessings until the reign of Henry the Eighth” Adams did not, however, provide any evidence for his claim that the Welsh desired English law, but it fitted his theme of the need to have the consent of the ruled when making changes in the constitutional relationship of a people to the English.

It was not until 1534 when Henry VIII issued the Act for the Government of Wales that the status of the Welsh was finally clarified. According to the Act, “some rude and ignorant people have made distinction and diversity between the king’s subjects of this realm and his subjects of the said dominion ... of Wales” The act pointed out that “the Dominion Principality and Country of WALES justly and righteously is, and ever hath been incorporated annexed united and subject to and under the Imperial Crown of this Realm, as a very Member and Joint of the same” The distinction between the English and the Welsh that the “rude and ignorant” stressed resulted from the fact that

¹⁴Ibid., 2: 339.

¹⁵Ibid., 2: 341.

the Welsh still possess “divers Rights, Usages Laws and Customs ... far discrepant” from English law and “daily use a Speech nothing like ... the natural Mother Tongue used within this Realm ...” Those who did not “use and exercise the English Speech or Language” could not hold any office under the king. In order to end the basis for this conflict, the king with “the deliberate Advice Consent and Agreement of the Lords Spiritual and Temporal, and the Commons” declared that Wales was forever incorporated united and annexed to and with his Realm of England” and shall “have and enjoy ... all and singular Freedoms Liberties Rights Privileges and Laws ... as other the King’s Subjects naturally born within England and other of the King’s Dominions.”¹⁶ In keeping with the formal assertion of the rights of Englishmen in the act, a number of seats in the English Parliament were created for Wales and the holders of these seats would be “elected and chosen [as] in all other Shires of this Realm of England ...”¹⁷

Adams pointed out that this act provided the clearest proof that being subject to the imperial crown of England, as presumably the Welsh had been since Edward I’s statute, did not “intitle Welchmen to the liberties of England, nor make them subject to the laws of England.” It was only by the terms of Henry VIII’s act of 1534 that “the laws, of England shall be introduced and established in Wales,” replacing the local customary law that Edward I’s statute had allowed to continue in use. Adams pointed out that Henry VIII’s act also provided for Welsh representation in Parliament, completing the full incorporation of Wales into the imperial realm and under the jurisdiction of the English Parliament.¹⁸

Having outlined the process by means of which Wales was brought into full incorporation with England, beginning with its conquest, Adams moved to explain the significance of the term imperial crown that Henry VIII’s act had employed. According to the act, “Wales ... *is, and ever hath been incorporated, annexed, united, and subject to*

¹⁶“27 Henry 8, c. 2, *Statutes of Wales*.” A modern scholar has observed that “the clauses in the statute of 1536 are declaratory clauses confirming union rather than mandatory ones creating union.” Davies, 232.

¹⁷“H8 27 c. 6, *Statutes of Wales*,” 89–90. In about 1670 another English judge put the relationship this way: In the thirteenth century Wales “was a part, not of the dominion of the kingdom of England, but of the empire of the king of England, an argument confirmed by the introduction to the Statute of Rhuddlan.” See Davies, 148.

¹⁸Adams, *Papers*, 2: 342.

and under the imperial crown of this realm, as a very member and joint of the same” Thus, according to Adams, this demonstrated that “being annexed to the imperial crown does not annex a country to the realm, or make it subject to the authority of parliament” The result of this new act was that “the distinction between the realm of England and the realm of Wales, has been abolished, and the realm of England, now and ever since, comprehends both” Furthermore, “this union and incorporation were made by the consent and upon the supplication of the people of Wales, as Lord Coke, and many other authors inform us” The fact that the people of Wales requested incorporation and annexation also meant “that there was an express contract between the two bodies of people.”¹⁹ Coke may have said that the Welsh people desired annexation and full union with England, but the act of 1535 made no mention of such a desire.

Instead of ending the discussion about the nature of the Empire, the discussion of the way in which Wales became “annexed and united” to Great Britain that Leonard presented provided a basis for Adams to challenge the validity of the comparison between Wales and the North American colonies. In the first place, Adams asked: “Was there ever any act of parliament, annexing, uniting, and consolidating any one of all the colonies to and with the realm of England or the kingdom of Great Britain?” Even if there had been such an act, would it “have any validity, without the consent, petition or supplication of the colonies?” Above all, would such annexation be valid “without admitting representatives for the colonies in the house of commons, and American lords into the house of peers?”²⁰

Coming to the end of his essay, Leonard returned to the issue of colonial representation in Parliament. He rejected the American claim to “a total exemption from parliamentary authority, because we are not represented in parliament.” Such a position he argued “is pregnant with the grossest absurdities.” If his opponents were correct, then “if we are not annexed to the crown, we are aliens, and no charter, grant or other act of the crown can naturalize us or entitle us to the liberties and immunities of Englishmen. It can be done only by act of parliament.” Those lands such “as Wales, Jersey, Guernsey, Ireland, the foreign plantations

¹⁹Ibid., 2: 342–343.

²⁰Ibid., 2: 344.

... became parts of one and the same empire” so that if an Englishman “removes” to one of those lands he retains all the rights and privileges associated with being an Englishman even though he no longer is represented in Parliament. He is also still subject to the authority of Parliament. This is precisely the situation of the American colonists according to Leonard.²¹

Turning the issue around, Adams suggested that even if there had been or would be an act providing colonial representation in the Parliament, would the number of seats accurately reflect the American population and even then “could America support the expence of them?” Furthermore, even if these issues could be resolved, could representatives in Westminster really appreciate the needs and interests of their American constituents and could the colonists properly evaluate their members of Parliament who functioned at such a great distance? Finally, even if this could be resolved in a favorable manner, given “the general frailty and depravity of human nature” and given the experience of the colonists with “Massachusettensis and the junto,” would not corrupt royal officials “be able to seduce our Members to betray us as, fast as we could send them?”²² At this point, Adams’s line of argument would seem to support Leonard’s charge that the Whigs did not want reform, they wanted independence. Representation in the English Parliament would not in the long run satisfy the colonists’ concerns even if it was feasible. What was needed was some form of governmental institution in British North America that could represent the interests of the colonists.

In the next stage of the argument, Adams pointed out that the annexation of Wales did not end the king’s “absolute authority” over Wales, a warning to the colonists that any contract of annexation would have to be written carefully to ensure the rights of the colonists. Adams went on to explain that until the reign of James I (1603–1625) “the crown ... claimed an authority to rule it [Wales] by discretion” something that the Americans would not tolerate. The various stages of Welsh annexation to England, a process lasting 350 years, thus demonstrated “that a country may be subject to the crown of England, the imperial crown; and yet not annexed to the realm, nor subject to the authority of parliament.”²³

²¹Leonard, 177.

²²Adams, *Papers*, 2: 344.

²³Ibid., 2: 344–345.

In the tenth *Novanglus* essay Adams began the examination of the Irish situation, starting with Leonard's argument that since Ireland possessed "perhaps the greatest possible subordinate legislature, and send[s] no members to the British Parliament, [and] is bound by its acts, when expressly named" how could the Americans claim exemption from Parliament's jurisdiction?²⁴ According to Adams, any changes in the nature of the relationship between the Irish and the king of England required the consent of the people. Therefore, the jurisdiction that the English Parliament claimed in Ireland had to be "founded on the consent and compact of the Irish," because the change required the voluntary consent of the Irish people—not simply imposed by force.²⁵

For Daniel Leonard the authority of the English Parliament to govern a place did not require the consent of the governed. Therefore, if the American colonists have "any grievance, it does not consist in our being subject to the authority of Parliament, but in our not having an actual representation in it."²⁶ The lack of representation in Parliament did not mean, however, that Parliament could not legislate for the American colonies. The Americans were not represented because the vast distance that separated them from London made it "impracticable" to send representatives.²⁷ In effect, Leonard was arguing that although consent to legislation was generally required by the English constitutional tradition, circumstances could exist whereby consent could not be reasonably obtained and so was not required. He pointed out that in addition to Ireland:

²⁴Ibid., 2: 355.

²⁵Ibid., In using "the Irish" Adams sometimes appears to have conflated the native Irish and the English settled in Ireland, the so-called "Degenerate English" or the "Middle Nation": see James Muldoon, *Identity on the Medieval Irish Frontier: Degenerate Englishmen, Wild Irishmen, Middle Nations* (Gainesville, FL: University Press of Florida, 2003), 36–38. William Molyneux (1656–1698) who had written on the relation of the English Parliament to Ireland and whose work paralleled but was not identical with Adams's position solved the problem of the two categories of Irishmen by asserting that the present population of Ireland consist "of the *English* and *Britains*, that have from time to time come over into this Kingdom" and "there remains but a meer handful of the Antient *Irish* at this day" See his *The Case of Ireland* (Dublin: Joseph Ray, 1698), 20.

²⁶Leonard, 172.

²⁷Ibid.

Guernsey and Jersey are no part of the realm of England, nor are they represented Parliament, but are subject to its authority: and, in the same predicament are the American colonies, and all other dispersions of the empire.²⁸

Here again, as with Wales, Adams took the position that Ireland and America had become English possessions under quite different circumstances so that the argument about the subjection of Ireland was not a precedent for American subjection to Parliament was invalid. In the ninth *Novanglus* essay, he had written that “I shall hereafter shew from the case of Ireland, that subjection to the Crown implies no obedience to the Parliament.”²⁹ The key to his argument was the distinction between the English crown and English Parliament. Where Daniel Leonard assumed that crown and Parliament were one, Adams took the opposite position:

the authority of parliament to bind Ireland at all, if it has any, is founded upon a different principle entirely from any that takes place in the case of America. It is founded on the consent and compact of the Irish by Poyning’s law to be so governed, if it has any foundation at all: and this consent was given and compact made in consequence of a conquest.³⁰

Adams derived this conclusion from his reading about the conquest of Ireland, a history that he also acquired from David Hume’s *History*. Hume in turn had acquired his information from the well-known history of the invasion by Giraldus Cambrensis (c. 1145–1214), better known as Gerald of Wales, a priest and member of one of the most important baronial families that participated in that conquest. His *Conquest of Ireland* was written about 30 years after the first Anglo-Norman adventurers had landed and appeared in print translated into English in the sixteenth century. All later writers on the issue have relied on Gerald’s work.³¹

²⁸Ibid., 174.

²⁹Adams, *Papers*, 2: 346.

³⁰Ibid., 2: 355.

³¹Giraldus Cambrensis’s *Expugnatio hibernica*=*The Conquest of Ireland*, ed. and trans. A.B. Scott and F.X. Martin (Dublin: Royal Irish Academy, 1978). The first English translation was in Raphael Holinshed’s *The Chronicles of England, Scotlande, and Ireland*, 2 vols. (London, 1577). The Irish volume has been published separately: Raphael Holinshed,

According to Giraldus, the English conquest of Ireland began 1167 when Dermot McMorrogh (Dermote Macmurche), the “Kyng of Leynister,” stole the wife of a neighboring prince who then waged a campaign against Dermot along with the support of the people of Leinster who had tired of Dermot’s rule. In 1166, Dermot turned to King Henry II (1154–1189), then in Aquitaine, for aid in regaining his kingdom. Gerald suggests that Dermot’s request for assistance interested Henry II because some years earlier, in 1155, he had obtained from Pope Adrian IV (1154–1159) “licence to attempt the conquest of Irelande” in order to reform the Church in Ireland.³²

Reaching Henry’s court, Dermot proffered “the interest of his Crowne, with condition hee mighte be restored to some parte of his lands.” The king “receyued Dermote into his protection, taking of him both his bond of subiection and oathe of fidelitie” but not providing any troops. Instead, Henry issued a letter indicating that he had received Dermot “into the bosome of our grace and beneuolence” and encouraged adventurous subjects to “restore him as our liege man and faithfull subiect” and for this service have not only “our licence” but also receive “fauour and thankes at our handes.”³³

As a result of Henry’s interest in Ireland, a number of Anglo-Normans from the Welsh frontier, the largest group led by Richard of Clare (1130–1176) in 1170, known as Strongbow, eventually joined Dermot. If successful in restoring Dermot, Strongbow would receive the hand of Dermot’s daughter and succession to his kingdom as his reward.³⁴ The theme of Gerald’s work was the difficulties that

Holinshed’s Irish Chronicle, ed. Liam Miller and Eileen Power (Atlantic Highlands, NJ: Humanities Press, 1979). See also Robert Bartlett, *Gerald of Wales, 1146–1223* (NY: Oxford University Press, 1982).

³² *Irish Chronicle*, 154–155. It is interesting to note that according to the English chroniclers in both Ireland and Wales, local figures called upon the English king for assistance in tribal wars. Subsequently, on the seal of the Massachusetts Bay colony was an Indian looking eastward and saying “come over and help us,” suggesting that the English were to assist the Indians to become Christians: see Cathy Rex, “Indians and Images: The Massachusetts Bay Colony Seal, James Printer, and the Anxiety of Colonial Identity” *American Quarterly* 63(2011): 61–93 at 61–63.

³³ *Irish Chronicle*, 155.

³⁴ *Ibid.*, 156.

Strongbow and his associates faced in restoring Dermot to power and the numerous campaigns against the other Irish chiefs that ensued in this process. They were, however, successful and Strongbow married Dermot's daughter.

According to Gerald, the success of Strongbow and the other Anglo-Normans caused Henry II to pay more attention to Ireland because it appeared that Strongbow and his associates were planning to create a kingdom of their own in Ireland:

King Henry ... yet he liked nothing at all to see him [Strongbow] thus advanced in Irelande, sith he might in time atteyne to such power there that, the same adioyned to hys faction in Wales, he should be able to countenance the Crowne of England.

To prevent this from happening, Henry issue an order requiring all his subjects to return from Ireland or face the loss of their possessions in England and permanent exile.³⁵ The adventurers did not return to England and continued campaigning in Ireland so Henry sailed to Ireland in 1171 where he remained for some months and received from some Irish kings oaths "of fidelitie and, delivering pledges for further assurance thereof, couenanted to pay a certaine yearely tribute."³⁶ He returned to England in 1172. In 1175 Henry met with a number of other Irish chiefs at Windsor and obtained their fealty as well. These Irish kings "acknowledged king Henrie for the supreme Lorde and soueraigne Prince of all the Ilande," thus completing the subjection of Ireland to English rule.³⁷

The situation in Ireland remained difficult and the chiefs were not paying tribute and rendering obedience to the English. At the same time, Henry's "iealousie increased towards Earle Strangbow, whom he mistrusted" because he was easily misled. At the same time, Henry's advisors argued that Strongbow was the most likely figure "to brydle and keepe vnder the Irish" who were troublesome. Strongbow's response to the overall situation was to avoid a confrontation by meeting with Henry

³⁵Ibid., 163.

³⁶Ibid., 168–169.

³⁷Ibid., 169. The text of this agreement, "The Treaty of Windsor," is in Curtis and McDowell, 22–24.

and being appointed “gouverneur ... of Ireland” in order to bring the native population under control.³⁸

Gerald’s history of the conquest emphasized the role of the Anglo-Normans whose fierce campaigning brought the Irish under some sort of English domination although it was a constant struggle. The king’s role was minimal. As was to be the case later in the New World, the monarch authorized a body of men to undertake a task and when they proved successful, as a grandson of William the Conqueror, Henry II was well aware of the ambitions of noble families, sought to put a bridle on Strongbow lest he attempt to become an independent ruler.

Hume’s version of the English coming to Ireland was much more detailed than the one that Adams was to provide in the *Novanglus* essays. According to Hume, Henry II had long been interested in acquiring Ireland but the Irish, though primitive and warlike, had “never given any reason of complaint to any of their neighbours,” so Henry appealed to the pope, “Adrian III [sic. IV] ... an Englishman,” to authorize him to subdue Ireland in order to bring the Irish into conformity with the practices of the reformed Roman Church. The pope issued the bull *Laudabiliter* in 1156 but having other “more interesting business on the continent” Henry did not implement the papal authorization for many years.³⁹ Hume’s history then followed Giraldus’s narrative for the most part beginning with Dermot Macmorrogh, the ousted king of Leinster, seeking Henry II’s support (1166) in order to regain his kingdom.⁴⁰ In return for Henry’s support, Dermot “offered ... to hold his kingdom in vassalage under the crown of England.”⁴¹ Henry did not provide any direct support for Dermot because of his own difficulties with his French subjects and with the papacy but he authorized Dermot to recruit soldiers from among his subjects. The Irish chief was able to recruit a number of them led by Richard of Clare, Strongbow, to whom Macmorrogh promised the hand of his daughter in marriage and the kingdom of Leinster upon his death. The first Anglo-Normans landed in 1169 and

³⁸ *Irish Chronicle*, 174–175.

³⁹ Hume, 1: 357–358.

⁴⁰ It is a historical curiosity that John Quincy Adams subsequently pushed a long poem on the English entry into Ireland: *Dermot MacMorrogh or the Conquest of Ireland*, ed. Martin J. Burke, et al. (Bethesda, MD: Maunsel & Co., 2005).

⁴¹ Hume, 1: 359.

in the following year Strongbow arrived with additional forces that won back Leinster for Macmorrogh and won the hand of his daughter and the succession to Leinster.⁴²

The Anglo-Norman invaders were so successful in their campaign in Ireland that Henry appears to have become concerned that Strongbow and his followers would attempt to create a kingdom for themselves unless he acted to forestall such a possibility because no one “in Ireland now dared to oppose themselves to the English.” In 1171 Henry, “jealous” of Strongbow’s success “made preparations to attack Ireland in person.” At this point Strongbow and the other Anglo-Normans who had come to Ireland “found means to appease him [Henry] by making him the most humble submissions, and offering to hold all their acquisitions in vassalage to his crown.” The Anglo-Normans had been so successful that there was no need for Henry to use the forces he brought with him. “He left most of the Irish chieftains or princes in possession of their ancient territories; bestowed some lands on the English adventurers,” made Richard of Clare “Seneschal of Ireland,” and then returned to England. Thus, concluded Hume, by “these trivial exploits ... was Ireland subdued, and annexed to the English crown.”⁴³

Adams’s discussion of the conquest of Ireland clearly relied on Hume’s work for some details but reduced what Hume discussed in several pages to a few paragraphs. Adams opened his treatment of Ireland this way:

In the reign of Henry 2nd Of England, there were five distinct sovereignties in Ireland ... besides several small tribes. As the prince of any one of these petty states took the lead in war, he seemed to act, for the time being, as monarch of ` the island Roderic O’Connor, King of Connaught, was advanced to this preëminence. Henry had long cast a wishful eye upon Ireland ... partly to divert his subjects from the thoughts of Becket’s murder ... and partly to gratify his own ambition, he lays hold of a pretence, that the Irish had taken some natives of England and sold them for slaves, and applies to the pope for license to invade that island. Adrian III., an Englishman by birth ... was easily persuaded ... to act as emperor of the world He issued a bull ... [and] exhorts Henry to

⁴²Ibid., 1: 359–362.

⁴³Ibid., 1: 361.

invade Ireland ... [and] gives him fill right and entire authority over the whole island; and commands all to obey him as their ` sovereign.⁴⁴

Adams's reliance on Hume's work was not simple verbatim quotations, generally unidentified. He repeated Hume's general description of the situation in Ireland with some verbal changes and he repeated Hume's error about the name of the pope who authorized Henry II to enter Ireland. He also associated Henry's interest in Ireland to his need to "divert his subjects from the thoughts of Becket's murder," something that Hume had not specified. Hume had indicated that Henry did not initially go to Ireland when Adrian IV's bull authorized to do so, in part because of "his disputes with the see of Rome" that prevented him from doing so, but he did not identify those disputes and made no mention of Becket.⁴⁵

More important is what Adams did not take from Hume. Hume had devoted approximately three pages to discussing the entry of Richard of Clare and the other Anglo-Normans into Ireland with Henry II's authorization. He then stressed the importance of Strongbow's success in acquiring power in Ireland and Henry's fear of the Anglo-Normans creating an independent kingdom. Adams completely overlooked this element of Hume's work. For Adams, MacMorrough fled to Henry's court for assistance "and promised to hold his kingdom in vassalage of the crown of England" and "Henry accepted the offer, and engaged in the enterprise." The result was "the total conquest of Ireland, and its annexation forever to the English crown" and "all the princes and petty sovereigns of Ireland agreed to become vassals of the English crown." By submitting to Henry, Ireland "was become part of the *property, possession, or revenue* of the English crown, and its authority over it was absolute and without control."⁴⁶

In Adams's reconstruction of the English acquisition of Ireland, not only did Strongbow and his associates have no role in the conquest, neither did the English Parliament. Therefore, the Parliament had no role in the subsequent government of Ireland unless the king chose to grant such power to it in some fashion. In fact, although Adams did not

⁴⁴ Adams, *Papers*, 2: 356.

⁴⁵ Hume, 1: 359.

⁴⁶ *Ibid.*, 2: 356.

mention it, when the English first entered Ireland, an English Parliament did not exist.

From one perspective, it is curious that Adams did not mention the Anglo-Norman presence in Ireland. After all, their experience was similar to that of the seventeenth-century settlers in Massachusetts. That is, a body of adventurers went to a foreign land with the king's permission, established themselves successfully and by so doing attracted royal interest. To prevent the adventurers from asserting independence the king went to Ireland to insure the loyalty of the Anglo-Normans and to emphasize the subordination of the lands they acquired to English jurisdiction. The point of Adams's history of the events in Ireland of course was to refute Leonard's assertion that the situations of Ireland and British North America were similar. In Adams's history Henry II directed the conquest of Ireland and obtained possession of the entire island. There were no intermediaries, no preliminary steps leading up to royal conquest, no threat of an independent Anglo-Norman kingdom in Ireland.

Above all, the point of Adams's reconstruction of the English acquisition of Ireland was to demonstrate that Parliament had no role in it and therefore no role in the subsequent governance of Ireland unless it acquired such specific jurisdiction in some fashion. Furthermore, Adams pointed out that there were subsequent royal acts affecting Ireland that kings Henry III (1216–1272) and Edward I (1272–1307) issued concerning the use of English law in Ireland and the holding of an Irish parliament. They did not, however, indicate that the English Parliament had any authority over Ireland.⁴⁷ These kings acted on the basis of their “sole and absolute authority” over Ireland and “parliament was not allowed to have obtained any jurisdiction over it” In addition he argued, even if a king issued an act that “was passed in parliament [it] was never considered to have any more binding force, than if it had been made only by the king.”⁴⁸

Having presented the history of the English acquisition of Ireland by Henry II, and then having made a brief reference to acts affecting

⁴⁷ See documents 9, 10, and 11 ds. Edmund Curtis and R.B. McDowell, 31–38.

⁴⁸ Adams, *Papers*, 2: 357–358. Here, as elsewhere, by “absolute” Adams meant that the king acted alone without any parliamentary participation. As king, the monarch was bound by the traditional customary limitations on royal power and was not acting as an absolute monarch in the eighteenth-century sense.

Ireland that Henry III and Edward I had issued, Adams jumped to the late fifteenth century, overlooking the complicated history of the English in Ireland in the intervening centuries. He alluded to that history when he remarked that “notwithstanding all that is said of the total compact [conquest], by H. 2, yet it did not extend much beyond the neighbourhood of Dublin, and the conqueror could not enforce his laws and regulations much further.”⁴⁹ Here at least, Adams recognized that Ireland had not been entirely conquered and recognized that the authority of the English in Ireland was limited for the most part to the English settled in Ireland. He also recognized that the effective conquest of Ireland only occurred in the seventeenth century, contemporaneously with the beginning of the colonization of America.

The failure of the English to conquer Ireland completely, and the limitation of the royal government’s authority to a small area around Dublin, the Pale, had led to the creation of what was labeled “the middle nation,” which was composed of the descendants of the original twelfth-century Anglo-Norman settlers in Ireland. In order to protect their interests in Ireland, these families had, in Kipling’s famous phrase, “gone native,” that is, they had taken to live like the Irish and in effect create new Irish tribes. The English referred to them as the “degenerate English,” that is, those who had degenerated from the civilized mode of existence found in England to the pastoral level of the Irish.⁵⁰ The people of the middle nation had their own interests that were not identical with those of the English or with those of the native Irish who greatly outnumbered them.

From the English perspective, Ireland therefore consisted of two peoples, the native Irish and the people of the middle nation, and when Adams discussed the Irish situation, he was not always careful to distinguish between these two groups. When he asserted that the English parliament obtained a role in the governance of Ireland only at the end of the fifteenth century with the consent of the Irish people, he was in fact referring only to the people of the middle nation and not to the native Irish.

Adams claimed to have examined “every law made by the king of England, whether in parliament or out of it, for the government of

⁴⁹Ibid., 2: 358.

⁵⁰Muldoon, *Identity*, 17–19, 34–47.

Ireland, from the conquest of it by Henry the 2d, in 1172, down to the reign of Henry the 7th, when an express contract was made between the two kingdoms, that Ireland should for the future be bound by English acts of parliament, in which it is specially named.” For three centuries, until 1495, Ireland, “tho, a conquered country, and annexed to the crown of England; yet was so far from being annexed to or parcel of the realm, that the king’s power was absolute there, and he might govern it without his English parliament”⁵¹ Here Adams was pointing to Poyning’s Law, the act by means of which the acts of the English Parliament also applied to Ireland by the consent of the Irish.

Poyning’s Law was enacted in 1496 by the Irish Parliament in the wake of a revolt in Ireland against Henry VII (1485–1509) in support of two purported Yorkist claimants to the English throne, said to be the missing murdered nephews of Richard III (1483–1485).⁵² Some of the leading English families in Ireland had supported these claimants, another sign of the weakness of English control of the island. Being no longer involved in wars with France, Henry VII chose this moment to complete once and for all the conquest that had been in process since the late twelfth century. Adams alluded only briefly to the proximate cause of Henry VII’s interest in Ireland, the fact that “Ireland revolted from England, or rather adhered to the partizans of the house of York,” that is to two young men, Perkin Warbeck and Lambert Simnel, presented as the missing princes. The plots to replace Henry VII with a presumed Yorkist heir failed but “he decided to pacify Ireland, especially the parts inhabited by ‘Irish savages’, who were to be brought under English law.”⁵³ What Adams did not mention was the importance of the leading middle nation families such as the FitzGerald in the Yorkist cause. The FitzGerald later rebelled in the reign of Henry VIII and were put down

⁵¹ Adams, *Papers*, 2: 359–360.

⁵² On the missing princes: see *Thomas More, King Richard the Third*, ed. George M. Logan (Bloomington IN: Indiana University Press, 2005), 96–101. Richard III’s reputation as the killer of his nephews stems from More’s history. For a recent evaluation of the case: see Josephine Wilkinson, *The Princes in the Tower* (Amberley Press: Gloucestershire, UK, 2014).

⁵³ Adams, *Papers*, 2: 360; James Lydon, *Ireland in the Later Middle Ages* (Dublin: Gill and Macmillan, 1973), 173. The fundamental book on the Irish Parliament is H.G. Richardson and G.O. Sayles, *The Irish Parliament in the Middle Ages* (Philadelphia: University of Pennsylvania Press, 1952).

violently in 1537, at which point Henry VIII declared himself king of Ireland.⁵⁴

One of the most important problems that Henry VII faced in achieving his goals in Ireland was raising the funds necessary to achieve a complete conquest of the native Irish. The Irish Parliament was to be the vehicle for achieving this goal.⁵⁵ There had been a Parliament in Ireland since 1264 along the lines of the English Parliament. The membership of the Irish House of Commons “was drawn exclusively from the wealthier class in town and country and those whom they elected were equally drawn from a narrow class—the knights of the countryside and the burgesses of the town.” These were the families of the middle nation. The native Irish were not represented in the Irish Parliament until the reign of Henry VIII (1509–1547) when “certain Gaelic lords were raised to the ranks of the peerage” and allowed to sit in the upper house of the Irish Parliament.⁵⁶

In 1494 Henry VII sent Sir Edward Poyning to Ireland with instructions to settle matters. One of his first acts was to summon the Irish Parliament and instruct its members as to the king’s wishes. The overall goal was “to exercise as much direct control as possible over the government of Ireland.” The most famous action of this Parliament, and one that had great significance for John Adams, however, was the clause that required that “no parliament is to be held in Ireland until the proposed acts have been approved by the king and English council and the royal licence to summon a parliament procured.”⁵⁷ This was part of an effort to play a more active royal role in Ireland now that the century of campaigns to gain the throne of France had come to an unsuccessful end.

In the tenth *Novanglus* essay Adams explained that Poyning was sent to settle Irish affairs where he called a Parliament “which is famous in history for the acts which it passed in favour of England, and Englishmen settled in Ireland.”⁵⁸ Previously, he had referred to the inhabitants of Ireland as Irish without distinguishing between the native population

⁵⁴Margaret MacCurtin, *Tudor and Stuart Ireland* (Dublin: Gill and Macmillan, 1972), 15–20.

⁵⁵An American colonist reading about this in 1765 might well have recognized its similarity to the efforts to raise funds to support the British army in North America.

⁵⁶Lydon, 33.

⁵⁷*Ibid.*, 177–178.

⁵⁸Adams, *Papers*, 2: 360.

and the English long settled there, but at this point he specified that Poyning's actions concerned the status of the English in Ireland and not that of the native population.⁵⁹ According to Adams, by Poyning's Law "all the former laws of England, were made to be of force in Ireland" and in the future "no bill can be introduced into the Irish parliament, unless it previously receive the sanction of the English privy council" Furthermore, "by a construction if not by the express words of these laws, Ireland is still said to be bound by English statutes in which it is specially named." For Adams the submission of Ireland to the English Parliament was "grounded entirely on the voluntary act, the free consent of the Irish nation, and an act of an Irish parliament"⁶⁰ This freely accepted contractual relationship between Ireland and the English Parliament was the basis of the English Parliament's claim to jurisdiction over Ireland.

This being the case, Adams then asked Daniel Leonard and others who saw the Irish situation as a precedent for the American situation: "has any colony in America ever made a Poyning's act?" Have these colonies "ever consented to be bound by acts of parliament, if specially named? Have they ever acquiesced in, or implicitly consented to any acts of Parliament, but such as are *bona fide* made for the regulation of trade?"⁶¹ The answer of course was that no colony ever consented to parliamentary jurisdiction in a formal act such as Poyning's Law and so, logically, Parliament could claim no jurisdiction over the colonies according to Adams.

Adams then returned to a point made earlier about common law. That law had no "principle, rule, or maxim" that authorized "binding countries without the realm" by English parliamentary statutes "if specially" named. The extension of English law "must be by statute law, then, or none. In the case of Wales and Ireland, it was introduced by solemn compact, and established by statutes, to which the Welch and Irish were parties, and expressly consented." As for British North America,

⁵⁹ Adams's arguments concerned the status of the North American colonists within the empire and had almost no interest in the status of the Indian population. This made the situation in North America quite different from that in Ireland where the native population was a constant threat to British rule and was being to some extent assimilated into the English system.

⁶⁰ Adams, *Papers*, 2: 360–361.

⁶¹ *Ibid.*, 2: 361.

however, “there is no such statute” or contract so that Parliament’s acts do not bind the American colonists.⁶²

Having demonstrated that the English had acquired Ireland and Wales by conquest, Adams moved to examine how they acquired lands in North America. At first glance, it would appear that the entry of the English into North America in the late sixteenth and early seventeenth centuries was another conquest, so that the English monarch had as much right to govern North America as he did to rule Ireland and Wales.

However, as Adams then explained, the situations were not similar at all. Each of the lands that the king ruled was acquired in a unique manner, so that what others might see as the constitutional history of a unified British Empire, Adams saw as a series of micro-histories, each of which explained the nature of the relationship of a particular people to the king of England.

Adams then went on to explain the origins of English colonies in America. In his opinion, the North American colonies were unique because they existed “not [in] a conquered, but a discovered country ... explored by the settlers ... and purchased by the settlers, of the savages.” In addition, they were not the product of a royal grant or acquired by any form of royal action. North America “was very dearly earned by the planters, in the labour, blood, and treasure which they expended to subdue it to cultivation.” The colonists possessed land in America on the basis of “the law of nature, and their express contracts in their charters, and their implied contracts in the commissions to governors and terms of settlement.”⁶³

As Adams saw matters, the English colonization of North America was purely the work of the settlers. The only royal participation was the issuance of charters that authorized those interested in establishing a colony to leave England with the right of return. It was the colonists’ efforts alone that explored the newly discovered land, purchased it from the natives, and then transformed an untamed countryside to a settled agricultural world.⁶⁴ The colonies exemplified John Locke’s theory of property because it was the labor of the settlers that created

⁶²Ibid., 2: 361.

⁶³Ibid., 2: 373–374.

⁶⁴John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge Press), ch. V.

a right to property in land, not a royal grant. This line of argument fitted neatly with Adams's assertion that the colonial charters were only writs of *execat*. Seen in that light, not only did English Parliament play no role in the settlement of America and therefore had no jurisdiction over the colonies, even the king had no jurisdiction there, unless the colonists voluntarily consented to accept royal jurisdiction, at least in some matters. Adams began the eighth Novanglus essay with the flat assertion that "*Colonization is Casus omissus* at common law" by which he meant that there "was no provision made in this law for governing colonies, beyond the Atlantic, or beyond the four seas [North, Irish, Atlantic, English Channel], by authority of parliament, no nor for the king to grant charters to subjects to settle in foreign countries."⁶⁵ In saying this, Adams was being literally correct. Common law said nothing about overseas colonization or for that matter colonization at all. The territories that English monarchs had acquired over the centuries, some of which were subsequently lost, the lands in France for example, had been acquired by conquest, inheritance, or marriage, but not by colonization. The English obviously had been creating colonies in Ireland since the late twelfth century, but such colonies were the consequence of conquering Ireland and the need to install an English population to govern there. The situation of the American colonies was often compared to the situation of Ireland but was not in fact identical with it.⁶⁶ Furthermore, the Tudor and the Stuart monarchs were especially interested in resolving the problem of Ireland as their several efforts at large-scale plantations demonstrated, and some of those individuals involved in these Irish wars, Humphrey Gilbert and Walter Raleigh for example, also engaged in colonizing endeavors in North America. Colonizers often compared the Indians of North America with the native Irish, suggesting they were at the same level of political and social development and could be dealt with in the same way.⁶⁷

By asserting that there was no formal legal pattern for the creation of overseas colonies, Adams was emphasizing that each territory that the

⁶⁵ Adams, *Papers*, 2: 327.

⁶⁶ See Jack P. Greene, "Empire and Liberty," in *Exclusionary Empire: English Liberty Overseas 1600–1900*, ed. Jack P. Greene 1–24 at 7–10; James Kelly, "'Era of Liberty': The Politics of Civil and Political Rights in Eighteenth-Century Ireland," *ibid.*, 77–111.

⁶⁷ James Muldoon, "The Indian as Irishman," *Essex Institute Historical Collections* 111(1975): 267–289.

English kings ruled was governed according to the terms of its original acquisition unless these terms had been changed with the consent of the ruled. Ireland for example was ruled under the terms of its conquest, but, Adams argued, the English had not conquered North America so the Irish example was not relevant.⁶⁸ The fundamental issue in his opinion was the status of Englishmen in lands acquired overseas.

Adams also denied the relevance of ancient Roman and Greek colonization practices. What differentiated the English experience from that of the Greeks and Romans was that the ancients had formal procedures for sending out surplus populations to establish colonies, while the only role that the English royal government played in colonization was a negative one.⁶⁹ The king could prohibit “the emigration of any of his subjects, by issuing his writ *Ne exeat Regno*. And therefore it was in the king’s power to permit his subjects to leave the kingdom.” Failure to return if the king ordered, however, meant that “the offenders lands shall be seized ‘till he return’” because he went “beyond the sea, against the king’s will” Anyone who left England “by the king’s permission ... carried with him, as a man, all the rights of nature.”⁷⁰

What did these rights entail? The emigrant’s allegiance bound him to the king, and “intituled him to protection” but not if he went to France or America. The king of England could not provide the Englishman abroad with protection, not “in France, nor in America. Not in the dominions of Lewis [XIII, 1610–1643], nor of Passachus, or Massachusetts.”⁷¹ The rights of the Englishman and the obligation of the king to protect him and his exercise of “the liberties of England” operated only “upon his return there, not otherwise.” That being the case, how “do we New Englandmen derive our laws? I say, not from

⁶⁸Adams, *Papers*, 2: 361–362.

⁶⁹Ibid., 2: 311. On eighteenth-century knowledge of ancient colonizing experience: see Krishan Kumar, “Greece and Rome in the British Empire: Contrasting Role Models,” *Journal of British Studies* 51(2012): 76–101.

⁷⁰Adams, *Papers*, 2: 327–328. On the writ: see James Beames, esq., *A Brief View of the Writ Ne Exeat Regno*, 1st American ed. (NY: S. Gould, 1821).

⁷¹Adams, *Papers*, 2: 328. It is interesting that for his purposes here Adams recognized the jurisdiction of the chiefs of Indian tribes as equal to that of the king of France. This is linked to his argument elsewhere that one of the several means by which the colonists acquired legitimate possession of land in America was by purchase from its legitimate owners: see Muldoon, “Discovery, Grant” 30.

Parliament, not from common law, but from the law of nature and the compact made with the king in our charters. Our ancestors were intitled to the common law of England, when they emigrated, that is, to just so much of it as they pleased to adopt, and no more. They were not bound or obliged to submit to it, unless they chose it." As long as emigrants did "nothing against their allegiance to the king," they retained the rights of Englishmen.⁷² It is worth noting that in this list of places where the king of England had no jurisdiction he included North America where Indian rulers had jurisdiction equivalent to that of European sovereigns. That being the case: "How, in common sense, came the dominions of king Philip, king Massachusetts, and twenty other sovereign, independent princes here, to be within the allegiance of the king of England, James and Charles?"⁷³ This seemingly casual observation was to have a significant role in Adams's arguments about the relation of the colonists to the royal government.

Once Englishmen left England with royal permission, that is, with the writ, "and being never commanded to return into the realm" they possessed "a clear right to have erected in this wilderness a British constitution, or a perfect democracy, or any other form of government they saw fit." If they had done this and created an entirely new government "their children would not have been born within the king's allegiance, would not have been natural subjects, and consequently not intitled to protection, or bound to the king."⁷⁴ Seen in this light, the rights of Englishmen went with them beyond the boundaries of the kingdom but the king's jurisdiction did not go beyond those boundaries.

Adams's reading of the charter of Massachusetts glided over some obvious difficulties. The charter was not in fact a writ of *execat*, a general authorization to leave England, but authorization to go to a specific place outlined by lines of latitude. Once there, the potential colonists were to plant a colony but only on land "not then actually possessed or inhabited by any other Christian Prince or State, nor within the Boundes, Lymitts, or Territories of the Southern Colony, then before graunted by our saide Dear Father" King James I. This language made it clear that the charter did not contain an English claim to possess land

⁷²Adams, *Papers*, 2: 328.

⁷³Ibid., 2: 330.

⁷⁴Ibid., 2: 328.

in the Americas, only a claim to regulate English access to a specific portion of North America to prevent conflict with other European rulers whose subjects had already settled there or with other English settlers who possessed a similar charter for an adjoining region. Furthermore, at the end of the charter the king protected the interests of those fishermen who had already established “such Wharfes, Stages, and Workehouses as shalbe necessarie” for the catching, salting, and preparing for shipping of fish caught in American waters.⁷⁵ All of these clauses demonstrate that the fundamental purpose of the charters was to grant a monopoly of access to a specified region, to a specific group, and to regulate relations among the various English settlements and with other European monarchs in the hope of avoiding armed conflict among the colonizers of the New World.⁷⁶

Given his opinion that the charter was a writ of *execut*, it is no surprise that according to Adams the only way in which the king’s jurisdiction could be extended to new settlements abroad would be if the settlers requested it and sought to be “annexed to the realm” That said, Adams then raised the issue of to what realm if any the New England colonies had been annexed. When the colonists settled in North America, the king of England ruled three realms, England, Scotland, and Ireland. “To which of these three realms was New England annexed?” By what parliamentary act was New England annexed? Furthermore, if New England was annexed to the realm of England, how came that colony to be annexed to the realm of, or kingdom of Great Britain? The Act of Union that joined England and Scotland in a single unit (1707), Great Britain, has “not one word about America”⁷⁷ As far as Adams was concerned, if there was no parliamentary act then there was no annexation. For example, he pointed to Wales which had been annexed

⁷⁵Charter of Massachusetts (1629), Thorpe, 3: 1846–1860 at 1846, 1859.

⁷⁶In doing this, English charters were in the tradition of Alexander VI’s *Inter cetera* (1493) that divided the New World into two zones, one Spanish, the other Portuguese, in order to regulate European entry to avoid conflict. In turn, this papal bull was only the most recent in a series of such papal acts designed to regulate Spanish-Portuguese relations since 1420. See James Muldoon, “Papal Responsibility for the Infidel: Another Look at Alexander VI’s *Inter Caetera*,” *Catholic Historical Review* 64(1978): 168–184; reprinted in Muldoon, *Canon Law, the Expansion of Europe*; see also Muldoon, “Discovery, Grant,” 31–36.

⁷⁷Adams, *Papers*, 2: 328–329.

by means of the *Act for the Government of Wales* (1536), the last in a series of acts designed to bring Wales into full union with England. This act declared that the “said country or dominion of Wales shall be, stand, and continue forever from henceforth incorporated, united, and annexed to and with his realm of England”⁷⁸ Where was the similar act for North America?

According to Adams, a formal act of incorporation with England or Great Britain was essential to any parliamentary claim to jurisdiction over the North American colonies. As he phrased it, “if America was annexed to the realm, or a part of the kingdom, every act of parliament that is made, would extend to it, named or not named.” However, “every body knows that every act of parliament, and every other record, constantly distinguishes between this kingdom, and his majesty’s other dominions.” Ireland for example “is a distinct kingdom or realm by itself, notwithstanding British parliament claims a right of binding it in all cases, and exercises it in some.” Adams then made the formidable claim that “Massachusetts is a realm, New-York is a realm, Pennsylvania another realm, to all intents and purposes, as much as Ireland is, or England or Scotland ever were. The king of Great Britain is the sovereign of all these realms.”⁷⁹ In other words, the king of Great Britain is king of each of the American colonies. Instead of the unified imperial structure that Daniel Leonard described, Adams saw a series of small kingdoms that the king of England ruled in a variety of capacities.

Leonard of course argued that the concept of the English king as “king of Massachusetts” and so on would dissolve the empire because if “our connexion with Great Britain by the Parliament be dissolved, we shall have none among ourselves” so that the colonies would be entirely “distinct” from one another and not members of some kind of unified polity.⁸⁰ The bundle of realms that Adams describes is the exact opposite of the single imperial realm that Leonard described. Above all, Adams’s

⁷⁸“Act for the Government of Wales” (1536), Stephenson and Marcham, 314–317 at 315.

⁷⁹Adams, *Papers*, 2: 329. The similarity that Adams saw between the status of Ireland as a realm and the status of the American colonies as realms was denied by William Molyneux who pointed out that Ireland was usually referred to as a kingdom but the term was not used for the American colonies: see his *The Case of Ireland’s Being Bound by Acts of Parliament, Stated* (Dublin: Joseph Ray, 1698), 148.

⁸⁰Leonard, 171.

position rejected the notion that Leonard adopted from Blackstone, namely “that every state, from the nature of government, must have a supreme, uncontrollable power, co-extensive with the empire itself; and that power is vested in parliament.”⁸¹ Thus, according to Adams, with the colonies never having been annexed to the realm, Leonard’s “whole superstructure falls.”⁸²

According to Adams, Daniel Leonard justified his defense of imperial government, even if it did not provide for colonial representation in Parliament, on the grounds that without some supreme power, the colonists would be deprived of the “English liberties” that the Whigs claimed. Adams argued that these liberties were not the products of royal grants “but certain rights of nature reserved to the citizen, by the English constitution, which rights cleaved to our ancestors when they crossed the Atlantic” and would remain with them wherever they went. The charters and patents that the colonists obtained did not create English liberties, they only stipulated that the original colonists “and their posterity should forever enjoy all those rights and liberties.”⁸³

Adams then moved on to a fundamental question that Leonard failed to discuss: how did the English colonists obtain possession of land in North America? Invoking the image of the Norman Yoke, this time as an intellectual obstacle to human understanding, Adams claimed that the “clouds and vapours which have been raised in it [the human mind] by the artifices of temporal and spiritual tyrants” have prevented the current generation from seeing clearly under what terms English colonists acquired land in North America. Specifically, he asked “How, in common sense, came the dominions of king Philip, king Massachusetts, and twenty other sovereign, independent princes here, to be within the allegiance of the king of England, James and Charles?” Here of course Adams was raising an issue rarely discussed in English circles but dealt with extensively in Spanish circles.⁸⁴ To the claim that the English possessed their American lands by right of discovery, Adams responded that,

⁸¹Ibid., 143.

⁸²Adams, *Papers*, 2: 329.

⁸³Ibid., 2: 330.

⁸⁴The fundamental starting point for discussing the intellectual debates about the legitimacy of the Spanish conquest of the Americas is Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America*, new introduction, eds. Susan Scafidi and Peter Blakewell (Dallas, TX: Southern Methodist University Press, 2002).

discovery “could give no title to the English king, by common law, or by the law of nature, to the lands, tenements and hereditaments of the native Indians here.”⁸⁵ The colonists were aware that the Indians legitimately possessed the lands they occupied so they “honestly purchased their lands of the natives” and “might have bought them to hold allodially, if they could.” By allodial possession, Adams meant that the colonists owed no feudal obligations to the king of England for these lands.⁸⁶

In recognizing the legitimacy of Indian possession of land, Adams was following a legal tradition developed by canon lawyers whose legal system he equated with tyranny. In the mid-thirteenth century, defending the right of crusaders to seize the lands of Muslims in the effort to regain possession of the Holy Land, the canonist Sinibaldo Fieschi, better known as Pope Innocent IV (1243–1254), asserted that the campaign to regain the Holy Land was a just war because the Muslims had seized these lands from Christians in an unjust war. This did not, however, justify the conquest of other Muslim lands that had not been seized from Christians. Pope Innocent argued that all men have the right to own property and to govern themselves.⁸⁷ When Adams asserted that the original colonists had purchased their lands from the Indians he was

⁸⁵Adams, *Papers*, 2: 330. What was meant by discovery, and what were its legal consequences, has been the subject of scholarly debate: see Wilcomb Washburn, “The Meaning of Discovery in the Fifteenth and Sixteenth Centuries,” *American Historical Review* 68(1962): 1–21; John T. Juricek, “English Territorial Claims to North America Under Elizabeth and the Early Stuarts,” *Terrae Incognitae* 7(1975): 7–22; Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World 1492–1640* (Cambridge: Cambridge University Press, 1995), 6–10. At the least it seems to have meant that a European ruler had a monopoly of European access to a place that his subjects had encountered and where no other Europeans had been.

⁸⁶Adams, *Papers*, 2: 330. This was a form of landholding commonly found among the various peoples who had established themselves in the ruins of the Roman Empire. Unlike feudal kings, the rulers of these new kingdoms did not claim to possess all the land in the kingdom: “the possessions of their subjects were perfectly allodial; (that is, wholly independent, and held of no superior at all)” According to Blackstone, “This allodial property no subject in England has, it being a received, and now undeniable, principle in the law, that all lands in England are holden mediately or immediately of the king.” William Blackstone, *Commentaries on the Laws of England*, A Facsimile of the First Edition of 1765–1769, vols. (Chicago: University of Chicago Press, 1979): 2: 47, 105.

⁸⁷James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250–1550* (Philadelphia: University of Pennsylvania Press, 1979), 5–15.

making an argument rooted in the medieval canon law tradition even if he did not realize it.

If, as Adams argued, the colonists purchased their lands from the Indians then how could the king of England claim any jurisdiction over them? To explain this, he discussed the theories of legitimate possession associated with canon and feudal law. In the feudal order as we have seen “the prince, the general, was supposed to be sovereign Lord of all the lands, conquered by the soldiers in his army; and upon this principle, the king of England was considered in law as Sovereign Lord of all the land within the realm,” that is England. Had a British army been sent to America and conquered the Indian nations, the king would “have been sovereign lord of the land here” but “there was no rule of the common law, that made the discovery of a country by a subject, a title to that country in the prince.” Furthermore, such a conquest “would not have annexed the country to the realm, nor have given any authority to the parliament.” The land would be the king’s to do with as he pleased. There was also the false theory that the pope had sovereign “over the whole earth.” On this theory, a fundamental element of canon law in Adams’s opinion, popes had “claimed a right to all the countries and possessions of heathens and infidels: a right divine to exterminate and destroy them at his discretion, in order to propagate the catholic faith.”⁸⁸

What was the relevance of these theories of governance to the situation of the English colonies in North America? The Reformation in England, the work of Henry VIII and his Parliament, “stripped his holiness of his supremacy, and invested it in himself by an act of parliament” with the result that the king “and his courtiers seemed to think that all the right of the holy see, were transferred to him ...” This led to the belief “that as feudal sovereign and supreme head of the church together, a king of England had a right to all the land his subjects could find” as long as “heathen or infidel nations” possessed it. Even if this was true, however, such possession did not infer “any right in parliament, over the new countries conquered or discovered”⁸⁹

Even if one accepted as true the principles of feudal and canon law with regard to possession of new territory, this fact “by no means deprives us of English liberties” and does not “build up absolute

⁸⁸ Adams, *Papers*, 2: 330–331.

⁸⁹ *Ibid.*, 2: 331.

monarchy in the colonies” as Leonard charged. The king, after all, “had a right to enter into a contract with his subjects, and stipulate that they should enjoy all the rights and liberties of Englishmen forever” as a reward for their willingness “to clear the wilderness, propagate Christianity,” and otherwise advance the interests of Church and State.⁹⁰

But did the liberties claimed by Englishmen really go with them wherever they went? A century earlier Joseph Dudley (1647–1720), a native of Boston who had played a major role in James II’s and Edmund Andros’s attempt to create the Dominion of New England, had raised this question. According to Adams, Dudley posed the issue as a question: “Do you think that English liberties will follow you to the ends of the earth?” This cut to the heart of the argument about the source of rights. According to Adams, Dudley’s position was “that English liberties were confined to the realm, and out of that the king was absolute.” To agree with Dudley would mean that these rights were in the gift of the king of England and not inherent in Englishmen by their very nature. Since the rights of Englishmen were inherent, the king could never be absolute in his relations with his subjects whether they dwelled in England or elsewhere. Furthermore, if a king attempted to deprive his subjects “of their liberties,” they would be “released from their allegiance” to him.⁹¹

Returning to Leonard’s essay, Adams dealt with the nature of the relationship between the king of England and the American colonists. Assuming for the moment that Leonard was correct when he stated that “our charters suppose regal authority in the grantor,” Adams asked how “can this writer shew this authority to be derived from the English crown, including in the idea of it Lords and Commons? ... Was parliament, were Lords and Commons part of the sovereign feudatory? Never.” Such claims about the “regal authority” that Leonard accepted were, according to Adams, derived from “the popish and feudal ideas before mentioned,” that is, the Norman Yoke, and not from the true English tradition.⁹²

⁹⁰Ibid.

⁹¹Adams, *Papers*, 2: 331–332. The king of England was not absolute in the sense that the term is applied to eighteenth-century rulers, as Charles McIlwain pointed out, that is, not subject to law. Medieval rulers were, he argued, limited by the terms of “constitutionalism,” the laws, customs, and traditions of his kingdom. See McIlwain’s “The Historian’s Part in a Changing World,” *American Historical Review* 42(1937): 207–224 at 219.

⁹²Adams, *Papers*, 2: 332.

Leonard assumed that the notion of the fullest expression of imperial power was present in the king in Parliament formula that was created only in the wake of the revolution of 1688–1689. Opposition to the notion of the king in Parliament, and the consequent jurisdiction of Parliament over the American colonies, “tends manifestly to independence,” a status to which the colonies would logically arrive “did not Great Britain check them” before that occurred.⁹³

Thus, he had argued that any lands colonized by Englishmen were either subject to the king in Parliament or to the king as an absolute monarch. If the latter was the case, then the colonists who denied the role of the English parliament in imperial governance could not claim the rights of Englishmen. Adams pointed out, however, that the charters of the colonies recognized and secured the traditional rights of Englishmen. The Massachusetts charter of 1629 phrased these rights this way:

That all and every the Subjects of Vs. our Heires or Successors, which shall goe to and inhabite within the saide Landes and Premisses hereby mencoed to be graunted, and every of their Children which shall happen to be borne there, or on the Seas in going thither, or returning from thence, shall have and enjoy all liberties and Immunities of free and naturall Subjects within any of the Domyinions of Vs. our Heires or Successors, to all Intents, Construcons, and Purposes whatsoever, as yf they and everie of them were borne within the Realme of England⁹⁴

Those colonies that did not have charters nonetheless were secure in the possession of their rights because “the commissions to their governors have ever been considered as equivalent securities both for property, jurisdiction, and privileges, with charters” In addition, Adams added that there “is no fundamental or other law, that makes a king of England absolute any where, except in conquered countries, and an attempt to assume such a power, by the fundamental laws, forfeits the princes right even to the limited crown.”⁹⁵ What Adams overlooked was the charter’s linking of the rights of the settlers and their descendants to inhabiting the land specified in the charter. If they did not land where the charter

⁹³ Leonard, 184.

⁹⁴ Massachusetts Charter, 1629, Thorpe 3: 1856–1857.

⁹⁵ Adams, *Papers*, 2: 332.

specified, they would not have the royal protection that the charter guaranteed, a fact that was quite apparent to the Plymouth colonists who composed the Mayflower Compact to provide a basis for their corporate existence.⁹⁶

In making this point, Adams was echoing Blackstone's assertion that "the limitation of the king's prerogative by bounds [is] so certain and notorious, that it is impossible he should ever exceed them, without the consent of the people" In Blackstone's opinion, "the limitation of the regal authority was a first and essential principle in all the Gothic systems of government established in Europe" during the Middle Ages but was "gradually driven out ... of most of the kingdoms of government on the continent."⁹⁷ Apparently, the Gothic age, that is at least a part of the Middle Ages, was not entirely wicked after all.

But what if a colony's charter "may happen to be forfeited, by the grantees not fulfilling the conditions of them" as Dudley argued, "the only consequence would be, that the king would have no power over them at all" because the "connection would be broken between the crown and the natives of the country."⁹⁸ Adams then went on to claim that there "has been a great dispute, whether charters granted within the realm, can be forfeited at all." The great example of this was the revocation of London's charter by Charles II in 1683. This was in turn revoked in 1689 by William and Mary. Other charters, including some American ones, were declared forfeited as well. These included the Massachusetts charter (1691). Adams accused the Massachusetts colonists of surrendering their charter without a fight. On this point, he was taking a dubious position. The forfeiture of charters was nothing new. The procedure by which it could be done was by writ of Quo warranto, by what right does a person or corporate body claim the rights, liberties, and privileges it asserts. This procedure went back to the thirteenth century and was first

⁹⁶For the Mayflower Compact: see MacDonald, 33–34. This was in the tradition of medieval travelers agreements: see Merrill Jensen and Robert L. Reynolds, "European colonial experience: A plea for comparative studies," *Studi in onore di Gino Luzzatto* (Milan: A. Giuffrè, 1950), 75–90.

⁹⁷Blackstone, I: 230–231.

⁹⁸Adams, *Papers*, 2: 332–333.

used to regain for the monarchy lands and other items improperly held by nobles, churchmen, and so on.⁹⁹

When Adams criticized his fellow Bostonians for their meek acceptance of the *quo warranto* proceeding he was subtly changing the meaning of the procedure. Any corporate body or rights-possessing individual could be the subject of such a proceeding because it involved legitimate possession of rights presumably derived from royal gift or grant. The Massachusetts Bay Company possessed a corporate charter similar to those of other corporate groups such as towns and subject to the same terms, including being subject to a *quo warranto* proceeding. Adams however interpreted the charter as the constitution of a colony, not simply the charter of a corporation. No English court, he argued, whether chancery or one of the common law courts, has any authority allowing for “annihilating charters, or abridging English liberties.”¹⁰⁰ Additionally, no colonial agent in London has the authority “to concede away their privileges again” as was done previously. The inhabitants of Massachusetts could no more “forfeit their privileges” than the people of England can. In a situation such as presently existed in the relation between the colony and England, if “the contract of state is broken, the people and king of England, must recur to nature. It is the same in this province.”¹⁰¹ With this line of argument, Adams transformed a royally granted corporation charter, with specific rights and privileges, into a contract between a body of people who legitimately emigrated and the king. If the contract was broken, the colonists returned to the condition they were in when they freely chose to contract with the king of England.

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⁹⁹On the history of *quo warranto*: see Michael T. Clanchy, *From Memory to Written Record, England 1066–1307* (Cambridge, Blackwell, 1979), 35–43. This process stressed the importance of written records when asserting claims.

¹⁰⁰Adams, *Papers*, 2: 333.

¹⁰¹*Ibid.*, 2: 333.

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Empire by Consent

The truth is, the authority of parliament was never generally acknowledged in America Because they were not represented in parliament and were therefore not bound And from that time to this, the general sense of the colonies has been, that the authority of parliament was confined to the regulation of trade, and did not extend to taxation on internal legislation.¹

Having proved to himself at least that there was no British Empire, only a collection of territories acquired by English kings over centuries and held under a variety of terms, Adams then moved to explain the constitutional relationship of some of the most significant territories said to be parts of the British Empire to the king of England. He then turned to the relationship of the North American colonies to the English monarch. His conclusion, a *reductio ad absurdum* in Leonard's opinion, was that the king of England was the king of each of the colonies and governed each one according to the terms under which a king had acquired the land. The colonial charters were contracts between the king and the colonists and spelled out in detail the terms of the relationship that the contracts created. That being the case, the English Parliament could only claim jurisdiction over the internal affairs of those colonies where its jurisdiction was recognized in the documents associated with their acquisition or was subsequently recognized by constitutional action such

¹Adams, *Papers*, 2: 260.

as Poyning's Law in Ireland or the Statute of Wales. For Parliament to assert jurisdictional claims unilaterally over the North American colonies was in effect to impose tyranny, that is the yoke, on the colonists because legitimate English government required the consent of the governed.

Adams's position on the importance of consent raised a theoretical question: could or would the various lands ruled by the king of England be transformed into a coherent imperial structure, one that included an imperial Parliament? Turning to the constitutional situation of the North American colonies, Adams insisted that in spite of the Tories' claims, "the authority of parliament was never generally acknowledged" by the American colonists "because they were not represented in parliament and were therefore not bound" by its actions.² For Adams, the issue of representation was not simply an organizational problem but a question about the principles that undergirded the constitutional structure of the territories that the king of England ruled. Furthermore, the issue was not a new one but had been explicitly asserted at the Stamp Act Congress (1765) a decade earlier.³ Among the resolutions of the Congress was the statement that it is "essential to the freedom of a people, and the undoubted right of Englishmen, that no tax be imposed on them, but with their own consent given personally, or by their representatives."⁴ In addition, a resolution of the Congress observed that the distance of the North American colonies from London was too great to allow the colonists to participate in the meetings of Parliament through their representatives, so that "no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures."⁵ Adams pointed out that if the Tory policy is carried out and the colonists do not have parliamentary representation "the people [will be] subject to the unlimited power of parliament as their supreme legislative" and inevitably reduced to "slavery" and the tyranny that their ancestors fled when leaving England.⁶ In accusing the Tories of aiming at reducing the colonists to slavery, Adams was not simply using hyperbolic rhetoric. The American colonists were well aware of slavery and what it involved.

²Ibid., 2: 260.

³Edmund S. Morgan and Helen M. Morgan, *The Stamp Act Crisis* (Chapel Hill: University of North Carolina Press, 1953): 102–115.

⁴Adams, *Papers*, 2: 260–261.

⁵Ibid., 2: 261.

⁶Ibid., 2: 265.

According to a recent study, in the mid-eighteenth century “over sixteen hundred slaves lived in Boston, comprising between 10 and 15 percent of the total population” If “they suddenly disappeared ... Boston’s economy would have collapsed.”⁷ Given that Adams saw the fundamental political issues involved in terms of liberty or slavery with no middle ground, his choice was obvious. Unlike most Englishmen, a Bostonian could see slavery first hand and respond viscerally to Adams’s language.

If the colonial legislatures were in fact the only institutions that could legitimately tax the colonists, then what linked the colonists to Great Britain? Even before the Stamp Act Congress, Benjamin Franklin had raised that issue. Adhering to Franklin’s position, Adams asserted that “We had considered ourselves as connected with Great-Britain, but we never thought parliament the supreme legislature over us We never allowed them any authority in our internal concerns.”⁸ If that was so, what created the constitutional bond that linked the distant North American colonies to Great Britain? Daniel Leonard and the Tories assumed the existence of some unspecified bond and made it clear that in any event if the colonists did not resign themselves to parliamentary authority over them, the British government would force them to submit.

Adams then quoted Leonard’s opinion that the Whigs “flattered the people with the idea of independence,” a term that meant to Leonard “treason and rebellion” and ultimately colonial rejection of any participation in the British Empire. Adams responded asking “Does he mean that the people were flattered with the idea of total independence on parliament?” Of course, argued Adams, it meant no such thing. The colonists have always known and accepted “the equity and necessity of parliament’s regulating trade” in the interests of the empire. The colonists accept their subordination to parliament in that regard. The Whigs “acknowledge a voluntary subordination to Parliament” while the Tories acknowledge “absolute dependence upon parliament as their supreme legislative, in all cases whatsoever, in their internal polity, as well as taxation,” in other words, submission to the yoke.⁹

⁷Jared R. Hardesty, *Unfreedom: Slavery and Dependence in Eighteenth-Century Boston* (New York: New York University Press, 2016), 5.

⁸Adams, *Papers*, 2: 261.

⁹*Ibid.*, 2: 264.

Leonard had claimed that the Whigs were well aware the British were not oppressing the colonists and so their claims were false. Adams retorted that the evidence of oppression was plain to see. The government had removed local men from Castle William that guarded the entrance to Boston harbor and replaced them with “regular soldiers,” a sure sign of the yoke. Furthermore, “the governor was no longer paid by themselves according to their charter, but out of the new revenue” that Parliament was raising in unconstitutional fashion. These and other practices rendered the colonial “assemblies useless, and indeed contemptible,” evidence of the continuing efforts to subordinate, indeed, “to enslave” the colonists, making them “subject to the unlimited power of parliament” in the future.¹⁰

Were the colonists correct in seeing the plans of the Tories as leading to their enslavement or was it only an extravagant statement made for polemical purposes? Adams responded with another reference to the long-standing fear of the yoke on the colonists:

... the people of this country in general, and of this province in special, have an hereditary apprehension of and aversion to lordships temporal and spiritual. Their ancestors fled to this wilderness to avoid them And there are few of the present generation who have not been warned of the danger of them by their fathers or grandfathers, and enjoined to oppose them.

In addition to the yoke itself, Adams pointed out that it was common knowledge that “the people of England were depraved, the parliament venal, and the ministry corrupt ... most melancholy truths” that reinforced the colonists’ fear of Parliament’s claims.¹¹ Even if one wanted to support the Tory position as a realistic acceptance of the nature of the British Empire, such a government would be in the hands of the worst possible political creatures. As if to demonstrate the evils of the English government at the local level, Adams closed his harsh criticism of the style of political life associated with English Parliament and those who supported its claims by saying: “The worst sort of tumults and outrages ever committed in this province, were excited by the tories.”

¹⁰Ibid., 2: 265.

¹¹Ibid.

Then, to demonstrate the virtue of the Whigs, he added that that “We are then told that the whigs erected a provincial democracy, or republic, in the province,” a concept that the Tories do not understand, probably because such government is associated with a virtuous citizenry.¹²

With the fifth *Novanglus* essay Adams came to what Leonard had seen as the crucial issue in the current situation, the claim “that he that would excite a rebellion, is at heart, as great a tyrant as ever wielded the iron rod of oppression.” Were the colonists seeking not redress of their grievances but the creation of an independent state where they could in turn tyrannize over their critics? Were they not the reformers they claimed to be but revolutionaries seeking to overturn the existing imperial order and replace it with their own form of government? Adams’s response was blunt: “We are not exciting a rebellion.” The reason that the colonists’ endeavors did not rise to the level of rebellion was that “open, avowed resistance by arms, against usurpation and lawless violence, is not rebellion by the law of God, or the land. Resistance to lawful authority makes rebellion.” The famous English opponents of Stuart tyranny “were no tyrants nor rebels, altho’ some of them were in arms” and in other ways opposed the Stuarts.¹³ In other words, the Whigs and their supporters were part of a long line of opponents of royal oppression, not upstart rebels seeking to establish a tyranny.

As Adams saw the situation, Leonard and the Tories saw any opposition to their policies as rebellion. He pointed out that Leonard had argued that the Whigs had “their questions upon high matters determined by yea and nay votes, which were published in the gazettes” for all to see. Again, Adams’s response was blunt: “And ought not great questions to be so determined?” After all, “What better way can be devised to discover the true sense of the people?” The people’s opinion is important, so important in fact that generally “perhaps universally, no unpopular measure in a free government, particularly the English, ought ever to pass. Why have the people a share in the legislature, but to prevent such measures from passing, I mean such as are disapproved by the people at large?”¹⁴ Is not that why legislatures and elections exist?

¹²Ibid., 2: 268.

¹³Ibid., 2: 269.

¹⁴Ibid., 2: 269.

To the charge that the Whigs used force and threats of force to coerce support for their actions, Adams asserted that no one lost his livelihood by supporting the Tories. In fact, such people were often granted “some lucrative employment, title, or honorary office, as a reward from the court.” The Tories obviously had at their disposal the means of buying support for their policies and in the colonial assembly their voices “were always patiently heard.”¹⁵ Adams’s old friends, Jonathan Sewell and Daniel Leonard, had received appointments from royal governors demonstrating that it was the Tories who were seeking to silence the voices of the people by buying their support not the Whigs.

Adams then turned to the role of the agent who represented the colony in London. On the surface, the agent voiced the views of the colonists. Adams observed, however, that there was no legal requirement to have such an agent, but if there is to be an agent, he should represent the people not just the views of the royally appointed governor. The conflict between the assembly and the governors meant that an agent agreeable to the interests of the colonial assembly, but not to those of the governor, will lead to the result that “the people shall have no agent at all” to represent their views. As Governor Hutchinson did not agree with the agent in London at his assumption of his office, he refused to pay for his services, thus insuring that there was no dissenting Massachusetts voice in London. This was in practice a denial of the right of every “private citizen, much more every representative body” to exercise its “undoubted right to petition the king” by means of a paid agent.¹⁶

As far as Adams was concerned, the colonial assemblies had “been generally on the side of the governor and the prerogative” even though there was also a long history of criticism of the colonial charter “as too popular and republican” The Stamp Act, however, had led to a breakdown of good relations between the elected representatives and the royal governors because it created more “officers of the crown, who were dependent on the ministry, and judges of the superior court whose offices were thought incompatible with a voice in the legislature, members of the council.”¹⁷

¹⁵Ibid., 2: 270.

¹⁶Ibid., 2: 271.

¹⁷Ibid., 2: 273.

One consequence of this proliferation of offices was that an individual could hold several of them at the same time, thus reducing, if not eliminating, the necessary tension among the various elements of government. Thomas Hutchinson, for example, “was chief justice and a judge of probate for the first county, as well as lieut. governor, and a counselor, too many offices for the greatest and best man in the world to hold” Furthermore, there was “too much business for any man to do” and the operation of these various offices inevitably led to them “clashing and interfering with each other.” Other men held similar collections of offices and were also “nearly and closely connected with him by family alliances.” This created a network consisting of Thomas Hutchinson, Francis Bernard, and Andrew Oliver (1706–1774) who had “before people were aware of it, erected a tyranny in the province.” The “junto” as Adams termed this alliance, “had the legislative and executive in their controul, and more natural influence over the judicial, than is ever to be trusted in any set of men in the world.” Men such as Hutchinson and his allies were anxious “to promote submission to the stamp act, and to discountenance resistance to it ... [and] to encourage a compliance with all ministerial measures and parliamentary claims, of whatever character they might be.”¹⁸ The Stamp Act made an unconstitutional assertion of parliamentary jurisdiction, supported by the most corrupt colonial officials. Accept the claims of Parliament and the corrupt would control the government of the colonies.

Adams recognized that parliament did repeal the Stamp Act, the kind of virtuous English response to legitimate grievances that Leonard had praised. He then added, however, that by following the repeal of the Stamp Act with the Declaratory Act (1766) English Parliament “had asserted its supreme authority, and new taxations and regulations should be made, if the junto could obtain them” Those who opposed the extension of parliamentary jurisdiction would “be surely cut off from all hopes of advancement.”¹⁹ Fortunately the junto failed to achieve its goals: “the designs of taxing the colonies fell, and the schemes for

¹⁸Ibid., 2: 273–274. Andrew Oliver was married to a sister-in-law of Thomas Hutchinson.

¹⁹Ibid., 2: 274. The American Declaratory Act was virtually word for word the same as the Irish Declaratory Act (1719): see Macdonald, 316–317; *Irish Historical Documents*, 186.

destroying all the charters on the continent and for erecting Lordships fell” as well.²⁰

Adams then turned to Leonard’s charge that the elected council blocked Governor Hutchinson’s efforts to raise the militia when necessary. Leonard claimed that the colony’s charter limited the governor’s power by requiring the consent of the council before acting. Adams asserted that the “Council, by the Charter, had nothing to do with the militia. The Governor alone had all authority over them.” Thus, if the militia “refuse obedience ... when commanded to assist in carrying into execution the Stamp Act, or in dispersing those who were opposing it, does not this prove the universal sense and resolution of the people not to submit to it?” In other words if the colonists refused to obey the governor’s order to enforce the Act, they were in effect refusing to enforce a law enacted by a Parliament in which they had no representation. The colonists were therefore emulating the actions of the British army in 1688 when opposing James I. In both cases, were not the people demonstrating their “abhorrence of that unconstitutional power, which was usurping over them?” Even if officials in the colonies such as Governor Bernard, along with the elected members of the council and the assembly, had ordered the submission of the colonists, still the “people would have spurned them all, for they are not to be wheedled out of their liberties by their own Representatives, any more than by strangers.” Nevertheless, Governor Bernard did seek military assistance from London that would enable him “to enforce Stamp acts, Tea acts, and other internal regulations, the authority of which, the people were determined never to acknowledge.”²¹

In Adams’s opinion, Bernard, Hutchinson, and their friends were acquiring “estates and dignities for themselves” while claiming “to be friends to our charter, enemies to parliamentary taxation,” and “advocates for public virtue and popular government.” Furthermore, in addition to extending the power of Parliament and gaining wealth for themselves and their families, these defenders of empire also planned to support the movement for “an American Episcopate” even though

²⁰Adams, *Papers*, 2: 275.

²¹*Ibid.*, 2: 275–276. According to Historian Tim Harris, James I “threw in the towel in the face of the desertions ... even within his own military.” Tim Harris, *Revolution: The Great Crisis of the British Monarchy 1685–1720* (London: Penguin, 2007), 275.

they claimed to be devout Calvinists. Adams admitted that there was no evidence that the members of the junto “ever directly solicited for Bishops” but such an establishment would be a logical consequence of “establishing the unlimited authority of parliament!”²² Thus the yoke was not only tyrannical, it was generated corruption allowing officials who served it to advance their own interests at the expense of their fellow colonists.

The last several pages of this essay dealt with the views of Bernard, Hutchinson, and the Tories in general. Where Leonard had seen them as brave, intelligent, virtuous individuals that the people ought to admire and obey, Adams saw them as hypocrites and greedy place seekers. In constitutional terms, the great sign of the threat that the Tories posed to the liberty of the colonists was their desire to have the king “take the payment of the judges into his own hands” and away from the elective assemblies that traditionally had that responsibility.²³ Take away the tax-raising responsibilities of the assemblies and the colonists would have no means of restraining the power of the governors except for rebellion.

In the sixth essay Adams expanded upon the discussion of restraining tyrannical rulers. Leonard had condemned the refusal of the Whigs to submit to the Stamp Act and the Tea Act as illegal violence that was destroying the peace of the colony. Adams opened with the observation that “there are tumults seditions, popular commotions, insurrections and civil wars, upon just occasions as well as unjust.” He then provided quotations from the works of several well-known contemporary writers on government, Grotius, John Locke, Algernon Sidney, Pufendorf, Barbeyrac, and Le Clerc, to support his observation.²⁴ His identification of these writers was a direct criticism of Leonard who had claimed the support of unnamed writers on international law. Adams then provided a long quotation from Algernon Sidney’s *Discourses on Government* that

²²Adams, *Papers*, 2: 276–277. Hutchinson “began to drift to the Anglican shore” according to Carl Bridenbaugh, 331.

²³Ibid., 2: 282.

²⁴Adams, *Papers*, 2: 288–293. All of these authors contributed to the debate about natural law and natural rights that was an important element of eighteenth-century political theory: see Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999).

made a similar point. If a wicked ruler cannot be restrained by peaceful means, “seditions, tumults, and wars, are justified by the laws of God and man.”²⁵

Tories might complain about the violence associated with resistance to Parliament’s claims, but Sydney observed:

Peace is seldom made, and never kept, unless the subject retain such a power in his hands as may oblige the prince to stand to what is agreed²⁶

What if the prince, that is the ruler whether a single individual or an entire Parliament, acts unjustly toward the people? The function of officials is to support and uphold the law but if “the laws of God and men, are therefore of no effect, when the magistracy is left at liberty to break them; and if the lusts of those who are too strong for the tribunals of justice, cannot be otherwise restrained than by sedition, tumults, and war, those seditions, tumults, and wars, are justified by the laws of God and man.” To support Sydney’s opinion at this point, Adams turned to the writings of another important writer on law, Samuel Pufendorf, who asserted that “a tyrant may lawfully be dethroned” but only when the tyranny is “so notorious and evidently clear, as to leave no body any room to doubt of it etc.”²⁷

Having demonstrated that esteemed writers on international law recognized the right of the people to use force against a tyrannical ruler, Adams moved on to consider the case of the colonists who violently resisted the tax on tea. In his opinion, the real object of the violence was not the tea and its owner, the East India Company, but what he labeled “the Ministerial Tea” because the East India Company had been paid for the tea by the British government. It was Ministerial Tea because of the “mistaken policy of the ministry, in obstinately persisting in their claim of right to tax America, and refusing to repeal the duty on Tea” and other products. The ministry saw this as an opportunity to “accomplish four great purposes at once: establish their precedent of taxing America; raise a large revenue there by the duties; save the credit of the company; and

²⁵ Adams, *Papers*, 2: 290.

²⁶ Adams, *Papers*, 2: 289.

²⁷ *Ibid.*, 2: 290–291.

the 400,000l.” sterling a year that the government received from the company.²⁸

The issue for Adams was the fact that raising revenue from the American colonists without seeking their consent “was an attack upon a fundamental principle of the Constitution,” a principle so important that violence could legitimately be employed to oppose it.²⁹ “If parliament has a right to tax us, and legislate for us, in all cases, the destruction of the tea was unjustifiable; but if the people of America are right in their principle, that parliament has no such right, that act of parliament is null and void, and it is lawful to oppose and resist it” The ministry could not defend its actions on the grounds that the revenue was being employed for the good of the empire as a whole. Not only had “the British ministry ... plundered the people by illegal taxes,” the officials then “applied the money in salaries and pensions” to buy the support of some colonists, thus adding corruption to their crimes.³⁰ With these funds they created “a detestable, tho’ small party of knaves, and a despicable, tho’ more numerous, company of fools that supported the Tories.” The ultimate result of the English ministerial policy was that instead of “relieving the [East India] company he had hastened its ruin: [and] instead of establishing the absolute and unlimited sovereignty of parliament over the colonies, he had excited a more decisive denial of it, and resistance to it. An election drew nigh, and he dreaded the resentment even of the corrupted electors.”³¹

What prevented the Tories from achieving their goals was the “charter constitution of the Massachusetts-Bay” that provided for “representatives [who] were too numerous and too frequently elected, to be corrupted” and were actively involved in the governance of their own local communities. Governor “Bernard and the junto rightly judged that by this constitution the people had a check, on every branch of power, and therefore as long as it lasted, parliamentary taxations, &c. could never be enforced.”³² Here, Adams was alluding to the long history of local self-government in England, a tradition rooted in the Anglo-Saxon era

²⁸Ibid., *Papers*, 2: 294.

²⁹Ibid., 2: 296.

³⁰Ibid., 2: 298.

³¹Ibid., 2: 299.

³²Ibid., 2: 299–300.

but expanded extensively in the eleventh, twelfth, and thirteenth centuries. As A.B. White pointed out, the Norman and Angevin kings created self-government at the king's command by requiring local residents to participate in government as jurors. These juries dealt not only with judicial matters but also engaged in some administrative functions as when required to join the sheriff in pursuing criminals. By being organized into administrative units, the hundred and the tithing, serving on juries, participating in trials, and other participating in the work of government at the ground level, many Englishmen learned how government functioned, how they could participate in it, and how they could manipulate it in their own interests.³³ The habits and practices of self-government were so ingrained that when the English began to settle permanently in the New World, there was no need to send royal officials with them. Furthermore, even those colonies that had royal governors also had elective assemblies that insured that the colonists would play a significant role in their own governance.

But what of Leonard's claim that had Oliver Cromwell been ruling England in the mid-eighteenth century, the colonists would have seen their "proud capital ... levell'd" and their pretensions to autonomy if not full independence smashed. "Will he set up Cromwell as a model for his deified lords, Bute, Mansfield and North?" Adams pointed to Cromwell's war in Ireland that involved savage cruelties on both sides. These cruelties might seem "necessary in order to restore any peace to that kingdom" but the situation in North America was as long and bloody as that in Ireland so that Leonard's reference to Cromwell only illustrated the extent the Tories would go to defend their interests.³⁴ David Hume wrote that in ordering the massacre of the entire population of an Irish town was "a barbarous policy in order to terrify all other garrisons from resistance." This for the Whigs was Leonard's model for the eighteenth-century empire in the face of the legitimate claims of the colonists according to Adams. He and the Tories seem unaware of the "diabolical" qualities associated with the name of Cromwell. "To what strains of malevolence, to what flights of diabolical fury, is not tory rage

³³See Albert Beebe White, *Self-Government at the King's Command: A Study in the Beginnings of English Democracy* (Minneapolis: University of Minnesota Press, 1933), 124–125, 128. White pointed out that participation in the work of government could be quite time consuming and therefore the requirement to participate was not always welcomed.

³⁴Adams, *Papers*, 2: 300–301.

capable of transporting men!" Here again, underlying the image of Cromwell, is another example of the Norman Yoke, unchecked tyrannical power, this time in modern dress.³⁵

Interestingly, Adams's judgment of Cromwell at this point was harsher than the one he had offered in the first *Novanglus* essay where he was presenting his basic position on the right to resist tyranny. Looking only at Cromwell's role in the English Civil War and as Lord Protector, Adams pointed out that unless stopped, Charles I would "undoubtedly have established the Romish religion, and a despotism as wild as any in the world." Under those circumstances, although it is "to be lamented, that Cromwell did not establish a government as free as he might, and ought; but his government was infinitely more glorious and happy to the people than Charles's."³⁶ There is an implication here that while Cromwell's behavior in England, if harsh, was justified by its successful defense of the rights of Englishmen, if employed in North America would be used against the rights of Englishmen.

Adams moved on to define the situation in the colonies in graphic terms. If in fact the colonists had yielded to British demands to comply with parliamentary acts, they would have "enjoyed the esteem and affection of their fellow slaves" but instead "they acted for America and posterity" and "they never will submit to a precedent in any part of the united colonies, by which parliament may take away Wharves and other lawful estates, or demolish Charters" because if they did "every right of Americans will be taken away, and governors and councils, holding at the will of a Minister, will be the only legislatives in the colonies."³⁷

One of the most important vehicles for defending the rights and liberties of the colonists were the committees of correspondence that arose throughout the colonies. Leonard and the Tories condemned these committees as subversive of government. According to Adams, however, they were of the greatest importance because almost "all mankind have lost their liberties thro' ignorance, inattention, and disunion." Recalling that "many states have lost their liberties, merely from want

³⁵Ibid., 2: 300–301. Hume 5: 292. A modern Irish historian has written: "Oliver Cromwell's record in Ireland is still inextricably identified with massacre and expropriation." R.F. Foster, *Modern Ireland 1600–1972* (NY: Penguin 1988), 101.

³⁶Adams, 2: 232.

³⁷Ibid., 2: 301.

of communication with each other, and union among themselves” these committees “may be intended by providence” to enable the Americans to retain their liberties. The ancient Greeks lost their freedom because they could not unite, and the various Spanish kingdoms “all complained of oppression under Charles the fifth ... and took arms against him” but failed to retain their freedom because “they never consulted or communicated with each other.”³⁸ The willingness of the British government and its allies among the colonial Tories to subvert “all religion and morality” and to abolish “the laws and constitution of the country” has forced the colonists to organize in their own defense.³⁹

According to Adams, there will be no harmonious resolution of the conflict between the colonists and the British Empire until the British desist “from the plan of taxing them and interfering with their internal concerns, and returning to that system of colony administration, which nature dictated, and experience for one hundred and fifty years found useful,” that is, to the original English constitution as the colonists understood it.⁴⁰ It was the gradual modernizing of the constitutional structure without the consent of the king’s subjects that was violating the principles of the British Empire and to which Adams objected.

In the seventh *Novanglus* essay Adams arrived at the fundamental issue between himself and Daniel Leonard. Dismissing all that has gone before, Adams stated that Leonard has now come “to a great subject indeed, the British constitution; and undertakes to prove that ‘authority of parliament extends to the colonies’”.⁴¹ Adams pointed out that the issue is not quite what Leonard said it was. There were two distinct issues involved not one. The first concerned the regulation of trade. The second dealt with the internal operation of the colonies.

With regard to parliamentary regulation of trade throughout the British Empire, Adams pointed out that the Whigs never denied Parliament’s authority to do this. The reason was that such regulation dealt with “a case not provided for by common law, and to supply a defect in the British dominions, which there undoubtedly is, if they are to be governed only by that law” Where the Whigs differed with the

³⁸ *Ibid.*, 2: 302–303.

³⁹ *Ibid.*, 2: 305.

⁴⁰ *Ibid.*, 2: 306.

⁴¹ *Ibid.*, 2: 307.

Tories was not “whether the authority of parliament extends to the colonies in any case; for it is admitted by the whigs, that it does in that of commerce; But whether it extends in all cases.” The Whigs asked about the basis for “the authority of parliament to regulate our trade ...” Could Parliament unilaterally claim such authority? Adams answered that if the English Parliament possessed the authority to regulate colonial trade in the interests of the empire, as it did, it had to be based on the “*compact* and *consent* of the colonies ... not on any original principle of the English constitution” and certainly not “upon the principle that parliament is the supream and sovereign legislature over them in all cases whatsoever.”⁴²

Having framed the conflict between Tories and Whigs in terms of the powers that the English Parliament claimed to possess, and then stated the source of that authority with regard to the American colonists in terms of their own consent to such authority, Adams turned to the question of the existence of an empire. According to Leonard, “the colonies are a part of the British empire,” but what can he mean by this? Adams pointed out that “Some of the colonies, most of them indeed, were settled before the kingdom of Great Britain was brought into existence” by the union with Scotland in 1707. For the most part, the overseas colonies were the product of the Stuart kings (1603–1689) who were kings of both England and Scotland, two distinct kingdoms, not a unitary one. The English Parliament had no authority over Scotland at this point and the Stuarts had to work with a Scottish Parliament when acting as kings of Scotland. “Scotland, England and the colonies were all under one king before” the Act of Union, but each, according to Adams, was ruled individually. If that were the case, then presumably Charles I (1625–1649) could have had “as good a right to have governed the colonies by his Scottish, as by his English parliament, and to have granted our charters under the seal of Scotland” instead of the English seal.⁴³

As Adams presented the state of the British Empire in the time of the Stuarts, England, Scotland, and the American colonies were equal participants in the Empire. If taken literally, he was suggesting that the king of England and of Scotland was also king of British North America, although the latter title certainly did not exist. It is also curious that he

⁴²Ibid., 2: 307.

⁴³Ibid., 2: 309.

left the title of king of Ireland off of the list as well as the claim to the throne of France, something that the kings of England asserted until 1801.

If the British Empire was equated with the United Kingdom of Great Britain, the kingdom created by the Act of Union (1707), then how could the American colonies be subject to that empire since some if not all of the colonies “were settled before the kingdom of Great Britain was brought into existence?”⁴⁴ It was Charles I, king of England and also king of Scotland, who issued the original charter of Massachusetts in 1629. In which capacity was he acting, king of England or king of Scotland when he issued the charter? This question was a rhetorical device to mislead those who had not actually read the charter. The charter identified Charles I as the “Kinge of England, Scotland, Fraunce, and Ireland” and the territory involved will “be houlden of our saide most Deare and Royall Father, his Heirs and Successors, as of his Mannor of East Greenwich in the County of Kent, in free and common Soccage”⁴⁵ Obviously, Charles was acting in his capacity as king of England when he stated that the land would be held according to English law.

Having raised the issue of Scotland, Adams then went on to ask “If the English parliament were to govern us, where did they get the right, without our consent to take the Scottish parliament, into a participation of the government over us?” By his reckoning the colonists in North America should have had a voice in the act that created the kingdom of Great Britain if it was to have jurisdiction over British North America. The English constitution recognized the existence of three basic forms of government, monarchy, aristocracy, and democracy, so when the union occurred, “was the American share of the democracy of the constitution consulted?” The answer of course is that they were not consulted, so “were not the Americans deprived of the benefit of the democratical part of the constitution?”⁴⁶

⁴⁴Ibid., 2: 309.

⁴⁵Charter of Massachusetts (1629), *The Federal and State Constitutions*, ed. Francis N. Thorpe (Washington DC: Government Printing Office, 1909). 7 vols., 3: 1846–1860 at 1846–1847.

⁴⁶Adams, *Papers*, 2: 309.

In making this argument, Adams was calling Leonard's bluff, because he had praised the English constitution for its balance of the interests of the one, the few, and the many. Adams responded that if such was the case, and "a new constitution was to be formed for the whole British dominions, and a supream legislature coextensive with it, upon the general principles of the English constitution, an equal mixture of monarchy, aristocracy, and democracy, let us see what would be necessary." Making some reasonable assumptions about the populations of the various constituent elements of the Empire, Adams postulated that if the English population should have 500 seats in an imperial Parliament the American colonies should have 250 seats, Ireland one or two hundred, and so on. Such a Parliament would be impossible to create given the extent of the territories under British domination and the time it would take to travel to London for meetings of the imperial Parliament. "Yet, without such a union, a legislature which shall be sovereign and supream in all cases whatsoever, and coextensive with the Empire, can never be established upon the general principles of the English constitution, which Massachusetts lays down, viz. an equal mixture of monarchy, aristocracy, and democracy." Furthermore, "this new government, this mighty Colossus, which is to bestride the narrow world" will need a House of Lords whose members will be drawn from all corners of the Empire. In a generation or two, the booming American population will equal and then greatly surpass the population of England requiring Leonard's "supream legislative" would have to be "translated, crown and all, to America." This vision of the imperial future would provide "a sublime system for America" ultimately encouraging "those ideas of independency, which the tories impute" to the Whigs.⁴⁷

Having presented a vision of a future empire not British but American, then Adams moved to deal with Leonard's claim that "when a nation takes possession of a distant country, and settles there, that country ... naturally becomes a part of the state, equal with its ancient possessions." According to Leonard this was not simply his opinion but that of the "best writers upon the law of nations," unnamed scholars whose opinion ought to be respected. Adams was scornful of these unnamed legal theorists and then re-interpreted the opinions Leonard attributed to them to support his own argument. The obvious opinion of Leonard

⁴⁷ *Ibid.*, 2: 309–310.

and the authors he cited was that conquest meant bringing the conquered lands and people under the domination of the conqueror. Adams, however, provided a more complicated explanation of these words. He argued that these words may mean “that it is best they should be incorporated with the ancient establishment by contract, or by some new law and institution, by which the new country shall have equal right, powers, and privileges, as well as equal protection; and be under equal obligations of obedience, with the old.”⁴⁸

At this point Adams did not provide any example of such incorporation of a conquered land to support his point. Instead, having assumed that previous conquests concluded with a contractual connection, he then asked has “there been any such contract between Britain and the Colonies? Is America incorporated into the realm?” For Adams, incorporation into the British realm would have required a “share in the legislative of the realm ... because the “constitution requires that every foot of land should be represented, in the third estate, the democratical branch of the constitution.” In his view, the lack of a contract with Great Britain and the lack of representation in the Parliament demonstrated that the American colonies had never been incorporated into Great Britain. This lack of any evidence of the incorporation of the American colonies into the British Empire resulted from the fact that Great Britain had never conquered North America. The colonists were not conquerors but “emigrants from a state” who chose to leave their homes. Under that circumstance, having left their homes, the emigrants were free from any claims of jurisdiction over them by the state they left. They could choose to remain the king’s subjects, they could give their allegiance to another ruler, or they could establish an independent state of their own.⁴⁹

In order to explain the nature and development of the British Empire and the place of the American colonies within it, Adams turned to the history of colonies. There were various forms of colonial development. The ancient Greek city states for example “planted colonies, and neither demanded or pretended any authority over them, but they became distinct, independent commonwealths.” These colonies were a way of exporting surplus populations and not a policy of expansion by conquest. They did not form imperial networks and the colonies were in no way

⁴⁸Ibid., 2: 310–311.

⁴⁹Ibid., 2: 310–311.

subject to the jurisdiction of the city-state from which the founders of the colonies had migrated.⁵⁰

The Roman Empire presented a different situation with regard to colonies, one that Adams argued was rather similar to the situation that was leading to conflict between the American colonists and Parliament. Roman colonies remained “under the jurisdiction of the mother commonwealth - but, nevertheless, they allowed them the privileges of cities,” that is, local self-government under the imperial government. Like contemporary British government officials, Roman officials were aware of the “impossibility of keeping colonies planted at great distances, under the absolute control of her *senatus consulta*.”⁵¹ Quoting from James Harrington (1611–1677), Adams pointed out that under the Republic the Romans had created colonies for discharged soldiers and surplus urban populations within the boundaries of Italy but not beyond. To settle the people in colonies further away would “have alienated the citizens, and given a root to liberty abroad” that might in the long run have created enemies for Rome. Those who colonized the new settlements “were always allow’d all the rights of Roman citizens, and were govern’d by senates of their own. It was the policy of Rome to conciliate her colonies by allowing them equal liberties with her citizens.” When the Republic came “under the yoke of the emperors” the wise policy of conciliating colonists, lest they become enemies, ended because the emperors were unaware of the dangers of creating distant colonies.⁵² Under the Republic, the “senate and people of Rome did not interfere commonly by making laws for their colonies, but left them to be ruled by governors and senates.”⁵³ Given the obvious long-term success of the Roman Republic’s policy of allowing colonies self-government and not taxing them, Adams asked his opponent what evidence is there from

⁵⁰Ibid., Krishan Kumar, “Greece and Rome in the British Empire: Contrasting Models,” *Journal of British Studies* 51(2012), 76–101, esp. for the eighteenth century, 76–78, 81, 84–87. Greek city-states established a number of colonies around the Mediterranean as far to the west as southern Italy and Sicily and to the north along the shores of the Black Sea: see Claude Orrieux and Pauline Schmitt Pantel, *A History of Ancient Greece*, trans. Janet Lloyd (Oxford: Blackwell, 1999), 42–66.

⁵¹Adams, *Papers*, 2: 311. See also James Harrington, *The Commonwealth of Oceana and a System of Politics*, ed. J.G.A. Pocock (Cambridge: Cambridge University Press, 1992), 223.

⁵²Adams, *Papers*, 2: 311.

⁵³Ibid., 2: 312.

Roman law that demonstrates that any Roman government had taxed the colonies?

Having praised the wisdom of the ancient Romans for “not planting colonies out of Italy,” Adams turned to another of Harrington’s observations about colonies. Using an image similar to one employed by Leonard, the Empire as the nurturing mother of the colonies, Harrington described them as “babes, that cannot live without sucking the breasts of their mother cities” but they will eventually mature and “wean themselves” so that they no longer require the attention of the British Empire.⁵⁴ For Adams, Parliament’s efforts at taxing colonists indicated that imperial officials had so little awareness of the situation in North America that they believed that now, a century and half after their establishment, Parliament could tax the colonists without generating strong opposition. How could the members of Parliament now assert a right to “subdue us to an implicit obedience to a legislature, that millions of us scarcely ever tho’t any thing about?” The fact that other states engaged in such practices as taxation of colonies, a point that Daniel Leonard had made, was not enough to justify English Parliament’s claims to jurisdiction. Any “practice must be reasonable, just and right, or it will not govern Americans.” Harrington pointed out that only absolute monarchs would attempt to tax subjects who were settled abroad, but that was because such rulers did not establish free-standing colonies as the English had done but instead treated such distant subjects “as tenants for life or at will” but not as free citizens with property and political rights.⁵⁵

Having asserted the right of the colonists to local self-government, Adams then went on to respond to Leonard’s claim that such autonomy as the Whigs claimed for the colonies would mean that “two supreme and independent authorities” would exist within the “same state,” a logical impossibility given the definition of sovereignty that Leonard was using. Adams agreed that two such sovereign powers could not exist in one state, but he then went on to explain that the powers claimed by the colonists were not in conflict with those of Parliament. He argued that “our provincial legislatures are the only supreme authorities in our

⁵⁴Ibid., 2:313. Harrington, 18.

⁵⁵Adams, *Papers*, 2: 313. See also James Harrington, “The Commonwealth of Oceana,” in *The Political Writings of James Harrington*, ed. J.G.A. Pocock (Cambridge: Cambridge University Press, 1977), 155–359 at 324–325.

colonies.” The jurisdiction of English Parliament extended over the ocean where it possessed “an authority supreme and sovereign over the ocean” but this jurisdiction “may be limited by the banks of the ocean, or the bounds of our charters” The charters of the colonies “give us no authority over the high seas,” but “Parliament has our consent to assume a jurisdiction over” them.⁵⁶ The jurisdiction of the English Parliament thus came to an end at the coast of North America. There was therefore no conflict between two supreme authorities because their respective jurisdictions were separate and distinct. The link between the two powers was the consensual relationship that the colonists created with Parliament.

The exchange between Adams and Leonard about sovereignty was a late reflection of the well-known medieval conflict between Church and State and indicates a blind spot in Adams’s understanding of the Middle Ages. In Adams’s opinion, the medieval world suffered from the union of Church and State as exemplified by the Norman Yoke. While it is obviously true that there was a great deal of cooperation between the two powers, as illustrated by the yoke, there was also a great deal of conflict about their respective jurisdictions, just as there was in Adams’s mind about the respective jurisdictions of the English Parliament and the colonial assemblies. The medieval canon lawyers accepted the notion that there were two powers, spiritual and temporal. One of the most important questions for them was the source of the legitimacy of the authority exercised by the Holy Roman Empire and by extension all secular rulers. Did legitimate secular power come directly from God to the ruler or did it come from God through the Church, in the imperial case through the imperial coronation at the hands of the pope? Were then the pope and the emperor therefore co-rulers of Christendom? An English canon lawyer, Alanus Anglicus (d. 1238), a defender of the most extreme position on the power of the pope, argued that if the legitimacy of secular power was not based on it being mediated through the Church then Christendom would have two heads. Then, in a striking image, Alanus declared that as everyone knows that a two-headed animal would be a biological monster (*monstrum erit*), so too a two-headed Christendom

⁵⁶ Adams, *Papers*, 2: 313.

would be a monstrous social construct.⁵⁷ Leonard's assertion of the necessity of having a sovereign state with a Parliament that legislated for the entire empire echoed the most extreme medieval statement of the jurisdiction of the pope.

From Adams's perspective, the conflict between the colonists and Parliament could be resolved if the "acts of trade and navigation" were "confirmed by provincial laws, and carried into execution by our own courts and juries" This two-stage process of making and executing legislation would in Adams's opinion work because the proper boundaries between the two spheres of jurisdiction would be observed. The "everlasting clamours of prejudice, passion and private interest drown every consideration of that sort, and are precipitating us into a civil war."⁵⁸ For Adams, sovereignty was not a single power held by one element of the constitution, the English Parliament, as the Tories would have it, but a power that could be distributed to a number of elements of the imperial structure.

Having determined that the relation between the American colonies and the British government was based on a contract, that is, the charter of the colony, and on clear cut jurisdictional lines that defined the respective zones of responsibility for sovereignty, Adams moved on to discuss what he saw as the crucial issue at stake. Leonard had stressed the subordination of the colonies to the British Empire. Phrases such as the "British empire" and the "supreme power of the state," phrases that Leonard had employed, were really meaningless. He used these phrases so that the colonists might "be conjured out of our senses by the magic" of these words, but they had no meaning and no magic. They were meaningless because there was no British Empire at all and, he added, neither were other European governments such as France and Spain. All of these putative empires are in fact "monarchies, supposed to be governed by fixed fundamental laws, tho' not really." The British government is not "an empire," it "is a limited monarchy much more like a republic than an empire." The king of England "is first magistrate" and even though the monarchy is "hereditary, and ... [is] possessed of

⁵⁷ James Muldoon, "*Extra ecclesiam non est imperium*: The Canonists and the Legitimacy of Secular Power," *Studia Gratiana* 9 (1966): 553–580 at 561. It is reprinted in James Muldoon, *Canon Law, the Expansion of Europe, and World Order* (Aldershot, UK: Ashgate/Variation, 1998).

⁵⁸ Adams, *Papers*, 2: 314.

such ample and splendid prerogatives,” these characteristics provide “no objection to the government’s being a republic “as long as it is bound by fixed laws, which people have a voice in making, and a right to defend.” To Adams, an “empire is a despotism, and an emperor a despot, bound by no law or limitation, but his own will” Even an absolute monarch such as the king of France whose will “is law” must have “his edicts ... registered by parliaments.” By his count, there “are but three empires now in Europe, the German or Holy Roman, the Russian, and the Ottoman.”⁵⁹ What empire meant to Adams here was not rule over a large number of diverse populations inhabiting a large territory, the usual definition of the term, but a form of government, often associated with unlimited power in the hands of the ruler.

Adams also asserted that there was another way in which the term empire could be understood. Empire was not limited to describing the Russian, German, or Ottoman governments, “it may be applied to the government of Geneva, or any other republic, as well as to monarchy, or despotism.” The meaning of empire in such cases was as a synonym for “government, rule, or dominion.” Understood in that light, the American colonists “are within the dominion, rule or government of the king of Great- Britain.”⁶⁰

The central issue for Adams with regard to the concept of a British Empire was not its existence as such but “whether we are a part of the kingdom of Great-Britain” In his opinion, the colonies were not part of that kingdom. Indeed, to argue as Leonard did that the colonies were a part of the kingdom and subject to English Parliament “is an affront to us; for there is not an acre of American land represented there - there are no American estates in parliament.” To argue, again as Leonard did, that subordination to English Parliament was an obvious fact was for

⁵⁹Ibid., 2: 314–315. It is not clear that Adams appreciated the difference between a Parliament, that is, a legislative body, and a Parlement, that is a court. In France royal edicts were registered in Parlement of Paris, the most important courts in the kingdom. By using the term Parliament for such registration of laws, he is implying legislative participation in the making of law. See Alfred Cobban, “The Parlements of France in the Eighteenth Century,” *History* 35 (1950): 64–80; R.R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760–1800*, 2 vols. (Princeton: Princeton University Press, 1959–1964), vol. 1, *The Challenge*, 42–44; Sylvia Neely, *A Concise History of the French Revolution* (Lanham MD: Rowman & Littlefield, 1991), 5–6.

⁶⁰Adams, *Papers*, 2: 315.

Adams to assert that the status of the colonies was not based on “any law or upon any principles, but those of meer power,” in other words, yet another example of the tyranny associated with the Norman Yoke.⁶¹

What if the colonists admitted that their place within the broader framework of the British Empire was what Leonard said it was - what would be the significance of that fact? Adams argued that what the situation would prove was “that Britain has been imprudent enough to let Colonies be planted, untill they are become numerous and important, without ever having wisdom enough to concert a plan for their government, consistent with her own welfare.” Lacking such long-term planning, “now it is necessary to make them submit to the authority of parliament” not by some “principle of law, or justice, or reason” but by “resort to war and conquest ...”⁶²

In arguing that there had been no long-term planning for the development of an overseas empire composed of colonial settlements established by English settlers, Adams was correct. The American colonies had not been created as a result of deliberate imperial policy but to serve the interests of various groups of English people. The current efforts to impose direct parliamentary control over the colonies resulted from the English government’s realization that there was “a defect in her government” that required attention. Such a correction should “be supply’d by some just and reasonable means” which meant for Adams “the consent of the Colonies ...” What Adams was calling for was a meeting where colonists and royal officials could work out a kind of imperial constitution that would recognize that the colonies had proved successful.⁶³

At this point, one might argue that both Adams and Leonard were right. There was an empire that the British would defend by force and certainly with regard to the mainland American colonies it was the result of a century and a half of development largely, but not entirely, ignored by the English government. Having defeated the French for control of North America and having acquired a range of territories around the world the English government was now forced to consider how to deal with them. In this process the English were doing what other European empires were doing, attempting to transform a scattered collections of

⁶¹Ibid., 2: 315.

⁶²Ibid., 2: 315.

⁶³Ibid., 2: 315.

territories acquired in a variety ways into something like a modern state. In a sense, Adams was anticipating J.R. Seeley's famous observation about the British Empire having been acquired "in a fit of absence of mind."⁶⁴

Adams then examined the history of the American colonies to demonstrate that English Parliament played no role in the establishment and development of the colonies. The first point he made was that the documents associated with the establishment of colonies in North America make no mention of Parliament. Analyzing the second charter of Virginia (1609), he argued that this charter exempted the colony "from all taxes and impositions forever, upon any goods or merchandizes" imported or exported to England or "into any other of our realms or dominions."⁶⁵ This statement was true but it was not the only reference to taxation in the charter. The charter also exempted the Virginia Company from "all Subsidies and Customs in *Virginia*, for the Space of one and twenty Years"⁶⁶ Clearly, the charter did not include a blanket exemption from taxes, only a careful listing of which taxes would be imposed and under what terms. Adams was therefore wrong to assert that since "the authority of a supreme legislature includes the right of taxation," the exemption of the Virginia colony from specific taxation meant that the colonists were not "to remain subject to parliament as a supreme legislature" as Daniel Leonard would have it.⁶⁷

Another colony that for Adams demonstrated the exemption of the colonies from the jurisdiction of Parliament was Plymouth. "They had no charter or patent for the land they took possession of, and derived no authority from the English parliament or Crown, to set up their government. They purchased land of the Indians, and set up a government of their own, on the simple principle of nature" They never acquired a charter from the king nor the crown, but they exercised "all the powers of government ... upon the plain ground of an original contract among independent individuals" until eventually incorporated into Massachusetts.⁶⁸

⁶⁴J.R. Seeley, *The Expansion of England* (Boston: Egberts Brothers, 1883), 8.

⁶⁵Adams, *Papers*, 2: 316.

⁶⁶"Second Charter of Virginia," McDonald *Select Charters*, 11–16 at 15.

⁶⁷Adams, *Papers*, 2: 316.

⁶⁸*Ibid.*, 2: 317.

Adams's portrait of the Plymouth colony omitted some important elements of the story. In the first place, the colonists were well aware that they were not landing where their contract had required them to settle. In order to legitimize their settlement, they agreed to "covenant & combine our selves together into a civill body politick, for our better ordering & preservation" This Mayflower Compact, modeled on medieval travelers' agreements, was designed to form a corporate community that could then apply for a charter. Without a charter they had no claim to English protection if other people, even Englishmen, attempted to settle there.⁶⁹ A charter granted a monopoly of access to a designated area to a specific corporate group and was designed to regulate entry into the Americas in order to prevent conflict among competing groups.

As long as there was no English competition for land around Massachusetts Bay, the Pilgrims were left alone. Recognizing that they needed a charter if they wished to have secure legal possession of the lands on which they had settled, the Pilgrims spent a good deal of effort to obtain such legitimacy as "the legal right of the Pilgrims to administer a civil government had rested on no certain foundation." In the long run, however, "the want of a legal right to exist proved its ultimate undoing" and in 1691 Plymouth "was annexed to Massachusetts," thus, ending its anomalous legal situation and guaranteeing that they possessed the legal rights of all Englishmen and providing legal protection for the lands that they had acquired.⁷⁰

The Plymouth colony's independence was a forerunner of what Adams saw as the clearest example of colonial independence, the various settlements in Connecticut. The colonists who "emigrated to Sea-Brook,

⁶⁹For the text of the Mayflower Compact: see *Colonial Origins of the American Constitution*, ed. Donald S. Lutz (Indianapolis: Liberty Fund, 1998), 31–32. On the situation at Plymouth: see Charles M. Andrews, *The Colonial Period of American History*, 4 vols. (New Haven: Yale University Press, 1934–1938), vol. 1, *Settlements*, 290–294; Herbert L. Osgood, *The American Colonies in the Seventeenth Century*, 3 vols. (NY: Columbia University Press, 1904), 1: 290–294. See also Donald S. Lutz, *Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988), 7, 19, 24, 26, 31. For medieval travellers' agreements: see Merrill Jensen and Robert L. Reynolds, "European Colonial Experience: A Plea for Comparative Studies," *Studie in onore di Gino Luzzatto*, 4 vols. (Milan: A. Giuffrè, 1950): 307–330, esp. 46–47. This is reprinted in *The Medieval Frontiers of Christendom*, eds. James Muldoon and Felipe Fernández-Armesto (Farnham, UK: Ashgate, 2008).

⁷⁰Andrews, *The Colonial Period*, 1: 290.

New-Haven, and other Parts of Connecticut” had “no idea of dependence on Parliament” According to Adams, a letter from King Charles II to the Connecticut settlers indicated that the king considered “them rather as friendly allies, than as subjects to his English parliament” The king even requested that the colonists “pass a law in their assembly relative to piracy,” an act that Adams saw as demonstrating royal recognition of the independence of the settlement from parliamentary oversight.⁷¹

The reader, Daniel Leonard for example, might at this point assume that the independence of the settlers at Plymouth and in Connecticut from parliamentary jurisdiction was simply a brief moment in the history of these settlements, a stage in colonial development to be followed by the assertion of parliamentary jurisdiction. Lest the reader be misled on this point, Adams went on to explain that “almost every ancient paper and record” in the history of the Massachusetts Bay colony demonstrated that the colonists always believed themselves “exempt from the authority of parliament, not only in the point of taxation, but in all cases whatsoever.”⁷² To illustrate this line of argument, he referred to the way in which the Massachusetts colonists responded to the Navigation Act of 1660. After receiving a communication from the British government that they were not adhering to the Navigation Act, the assembly ordered “the strict observation of the said acts.” Having done that, the assembly then informed the government that the Act was “an invasion of the rights, liberties, and properties of the subjects of his majesty in the colony, they not being represented in parliament” The argument was that “*the laws of England were bounded within the four seas, and did not reach America.*”⁷³ Nevertheless, knowing the king’s pleasure in this matter, the assembly acted as it did. Adams concluded from this that adherence to the Navigation Acts was therefore “by the voluntary act of the colonies” that was given with “their free chearful consent” and not because the English Parliament imposed its will on the colonies.⁷⁴

In Adams’s opinion, the response of the Massachusetts colony to the “interregnum,” the period between the execution of Charles I (1649)

⁷¹Adams, *Papers*, 2: 318.

⁷²Ibid., 2: 318.

⁷³Ibid., 2: 319.

⁷⁴Ibid., 2: 319.

and the restoration of the Stuarts to the throne with the coronation of Charles II in 1660, demonstrated the colonists' understanding of their status. At that point, the colonists saw themselves as members of "a free commonwealth, an independent Republic," and as such could determine for themselves the course they should follow in the current political crisis. Eventually, after 16 or 17 years, "with the utmost reluctance" the colonists "were bro't to take the oaths of allegiance" to the new government. Adams ended this phase of his argument by declaring that "there is not one word ... concerning parliament" in the documents he examined, proof positive that Parliament had no place in the governance of the colonies.⁷⁵

From Leonard's position, the argument that the American colonies were not subject to Parliament's jurisdiction was equivalent to saying that these colonies were as independent of England as Scotland was before the union of 1707, or as Hanover was at the moment. Here again Leonard was taking a simple either/or position, recognizing no gradations or variations in political relationships, as indeed Adams did, although with the opposite conclusion. Leonard's position on the need for the consolidation of the powers of government and the creation of an unchallenged sovereign at the center foreshadowed European criticism of the governmental system that the colonists in the course of the revolution were to make. One of the most famous criticisms and one that influenced Adams's later three-volume *Defence of the Constitutions of government of the United States of America* (1787) was that of the French philosophe Anne Robert Jacques Turgot (1727–1781). In a letter to an English philosopher Richard Price (1723–1791) Turgot criticized the failure of the Americans to create a modern centralized state:

Instead of bringing all the authorities into one, that of the nation, they have established different bodies, a house of representatives, a council, a governor, because England has a house of commons, a house of lords, and a king. They undertake to balance these different authorities

As for the "general union of the states with one another"⁷⁶ It is only an aggregate of parts, always too separate" In other words, the Americans

⁷⁵Ibid., 2: 319–320.

⁷⁶Turgot to Price, March 22, 1778 in Adams, *Works*, IV: 278–281 at 279.

have failed to bring their government up to modern standards as Leonard had warned.

Adams pointed out that individual “states may be united under one king,” as England, Ireland, and Scotland obviously had been, or as the score of kingdoms and other governmental units headed by the Spanish monarchs were. Philip II (r. 1556–1598) of Spain, for example, had more than 20 royal titles.⁷⁷ In the case of the North American colonies, the colonists “have by our own express consent, contracted to observe the navigation act, and by our implied consent, by long and uninterrupted acquiescence, have submitted to the other acts of trade, however grievous some of them may be.” To Adams, this kind of relationship is like “a treaty of commerce, by which those distinct states are cemented together, in perpetual league and amity.” At this point, a Tory might declare that Leonard was right to think that the Whigs’ goal was independence from the British Empire. Adams would respond that independence was not a goal to be achieved but a right to be protected from a power-greedy Parliament. If there were to be changes in the nature of the relationship, changes such as those that were at the heart of the current debate about the jurisdiction of Parliament, “the colonies would readily enter into them, provided their other liberties were inviolate.”⁷⁸

Recognizing that relationships between political units formed a spectrum of degrees of connection, Adams then raised the issue of to whom, or to what, the colonists gave allegiance. He denied Leonard’s assertion that the colonists owed allegiance to the “imperial crown” and asserted that the colonists “owe allegiance to the person of his majesty, king George the third, whom God preserve” but “not to his crown,” by which Adams meant allegiance was to the king in “his natural, not his politic capacity” Adams added that the colonists owed no allegiance to the imperial crown and he specifically stated that if “such a crown involves in it a house of lords and a house of commons” then clearly “we owe no allegiance to any crown at all.”⁷⁹

In distinguishing between the person of the king and the crown, Adams was pointing to one of the major developments in legal thought,

⁷⁷ Muldoon, *Empire*, 114.

⁷⁸ Adams, *Papers*, 2: 320.

⁷⁹ *Ibid.*, 2: 320–321.

the concept of the *King's Two Bodies* as a famous modern work phrased it.⁸⁰ As a person, the king obviously dies but the royal crown remains. Allegiance can be sworn to each of these. Early medieval rulers received allegiance in person so that when a king died, so did allegiance to him and so did the laws that he swore to uphold. Medieval chroniclers often described the chaos surrounding the death of kings. Servants stole the dead man's rings and jewelry while nobles dashed to their estates to protect their possessions.⁸¹ This began to change in the thirteenth century at the death of King Henry III (1216–1272). When discussing Henry III's death, David Hume observed that the "English were as yet so little inured to obedience under a regular government, that the death of almost every king, since the Conquest, had been attended with disorders" In Henry III's case the danger of disorder and conflict was especially great because the heir to the throne, Edward I (1272–1307), was in the Holy Land on crusade and would not arrive in England for over a year. To secure the succession, and with it the stability of the kingdom, the great nobles "hastened to proclaim Prince Edward, to swear allegiance to him, and to summon the [e]states of the kingdom, in order to provide fore the public peace in this important juncture."⁸² At this point, there emerged a clear distinction between the king as a person and the royal crown as a symbol of the kingdom itself. This distinction was to

⁸⁰The distinction between the king as a person and as a legal fiction "a Body natural, and a Body politic," is the subject of one of the most important and controversial books in the study of medieval history in the twentieth century: Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957), 7. The notion of the undying crown, the "Body politic," was part of the development of the concept of sovereignty. Kantorowicz's work has received a great deal of attention from specialists in intellectual and cultural history but, curiously, little attention from specialists in constitutional history: see Bernhard Jussen, "The King's Two Bodies Today," *Representations* 106 (2009), 102–117, at 102; see also Victoria Kahn, "Political Theology and Fiction in *The King's Two Bodies*," *Representations*, 106 (2009), 77–101; and her *The Future of Illusion: Political Theology and Early Modern Texts* (Chicago: University of Chicago Press, 2014). There is a recent biography of Kantorowicz: Robert E. Lerner, *Ernst Kantorowicz: A Life* (Princeton: Princeton University Press, 2017).

⁸¹For example, see the description of William the Conqueror's death: Ordericus Vitalis, *Historia Ecclesiastica*, 4: 102–104.

⁸²Hume, *History*, 2: 1.

become increasingly important as a stage in the transition from government as personal loyalty to the impersonal state.

Adams then dealt with the nature of the relationship between the colonists and the monarchy that resulted from the Glorious Revolution (1688–1689) that ousted James I and led to the installation of William and Mary. He asserted that “there was a revolution here as well as in England, and that we made an original, express contract with king William, as well as the people of England.” The oaths of allegiance that the colonists swore to the new monarchs were “established by a law of the province” The consequence was that “our allegiance to his majesty is not due by virtue of any act of a British parliament, but by our own charter and province laws.” The climax of this line of argument came with the assertion that in fact, King William was not only king of England, Ireland, Scotland, and France, he was also “king of Massachusetts, king of Rhode-Island, king of Connecticut, &c.” Leonard saw such an assertion as an “absurdity” but to Adams this was the reality of the British imperial structure and he wished that the William “would be graciously pleased to assume them.”⁸³

Adams’s empire was thus not a neatly arranged hierarchical structure with the king of England and his Parliament at the peak directing and coordinating all the elements of the empire towards a common goal as Leonard would have it. Instead it was a collection of separate states each of which possessed a unique relationship to the king of England alone, based on its own history. Each of these constituent elements of the king’s domain would have its own form of government, laws, and customs, and, perhaps most important of all, its own economic and political interests which could be in conflict with those other constituent states or with the goals of the empire itself.

⁸³Adams, *Papers*, 321. This concept was not new. William Molyneux (1656–1698) had discussed the same point in order to distinguish Ireland, what he termed “*a Compleat Kingdom*,” from the North American settlements which were colonies not kingdoms. He asked rhetorically: do the English monarchs “use the Title of Kings of *Virginia*, *New-England*, or *Maryland*?” The obvious response was that these are colonies not kingdoms: see William Molyneux, *The Case of Ireland’s Being Bound by Acts of Parliament, Stated* (Dublin, 1698), 148. On Molyneux: see *Oxford Dictionary of National Biography*, eds. H.C.G. Matthew and Brian Harrison, 60 vols. (Oxford: Oxford University Press, 2004). James G. O’Hara, “Molyneux, William (1656–1698),” *Oxford Dictionary of National Biography* (Oxford University Press, 2004; online edn, Jan 2008) [<http://www.oxforddnb.com/view/article/18929>, Accessed 24 March 2015].

Adams recognized the importance of the debate about the relation of the various elements of the Empire to the monarchy. For a long time, there has existed “on both sides of the Atlantic, an idea, an apprehension that it was necessary, there should be some superintending power to draw together all the wills, and unite all the strength of the subjects in all the dominions, in case of war, and in the case of trade.”⁸⁴ This line of argument underlay Leonard’s position on the nature of the Empire. The economic and military situation of the English territories required a central authority, the unchallenged sovereign, to insure the wellbeing of the entire Empire. Adams conceded that with regard to the regulation of trade, such a position was sensible and therefore the colonists have consented that Parliament should exercise such a power.

What Adams did not concede, however, was that such a concession of power to Parliament was necessary in matters of war and defense, as the experience of the colonists in the recent wars in North America demonstrated. He admitted that the colonists were not as effective in military affairs as they should have been. For example, “the proprietary colonies, on account of disputes with the proprietors, did not come in so early” to assist in the war effort as they should have. Examples of colonial lack of cooperation in securing the larger interests of the Empire as a whole because of local political conflicts should not, however, be an excuse to ensure “the absolute ruin to the liberties of all which must follow the submission to parliament, in all cases, which would be giving up all the popular limitations upon the government.”⁸⁵ Adams went on to point out that the New England colonies bore the brunt of the effort in these campaigns but did so willingly rather than yield their independence to the English Parliament. Furthermore, having seen the consequences of the failure of some colonies to participate in the war effort, now “there is no danger, in case of another war, of any colonies failing of its duty.”⁸⁶ The colonists have learned by experience what is necessary for their long-term self-interest and see it more clearly than a distant Parliament could.

Adams recognized that the situation in North America did require the cooperation of the various colonies if they were to be secure in the future. There might well be a need for “a supreme power, coextensive

⁸⁴ Adams, *Papers*, 2: 321.

⁸⁵ Adams, *Papers*, 2: 322.

⁸⁶ *Ibid.*, 2: 322.

with all the dominions” to oversee the entire Empire and support the well being of the North American colonies. Does that necessarily mean that the “parliament as now constituted has a right to assume this supream jurisdiction?” His response to this hypothetical question was a firm “By no means.” One solution might be a “union of the colonies ... and an American legislature ...” After all, the colonial population was approximately one quarter of the population of Great Britain, so that if the English Parliament is to be the imperial Parliament, the American colonists should have a quarter of the seats there and “the haughty members for Great-Britain, must humble themselves, one session in four, to cross the Atlantic, and hold the parliament in America.”⁸⁷ Obviously this was not going to happen.

The problem facing the colonists as Adams saw it was the problem of colonial representation at the highest levels of imperial government. One solution, the worst one, would be to cede to “parliament all power over us, without a representation in it.” The easiest solution would be to go “on as we begun, and fared well for 150 years, by letting parliament regulate trade, and our own assemblies all other matters.” Adams saw the development of government in the colonies as derived from the English experience but adapted to the American situation. One consequence was that from the English perspective, the colonists seemed to “enjoy, and are intitled to more liberty than the British constitution allows,” to which Adams responded “where is the harm?” How could more liberty not be a positive advance? Likewise, “if we enjoy the British constitution in greater purity and perfection than they do in England, as is really the case, whose fault is this? Not ours.”⁸⁸ Perhaps rather than attempting to limit the liberties of the colonists, the English should emulate at home the liberty found in the American colonies.

From Adams’s perspective “all the blessings” of the English constitution are to be found in the assemblies found in every colony. These assemblies, our “Houses of Representatives have, and ought to exercise, every power of the house of Commons.” According to Adams, the original charter of Massachusetts did not explicitly include the “power of taxing the people” but it did grant “all the rights and liberties of

⁸⁷Ibid., 2: 322.

⁸⁸Ibid., 2: 322.

Englishmen, which include the power of taxing the people.”⁸⁹ In making this argument Adams was transforming a corporate charter, a traditional governmental form into the foundation document, a constitution, of a new state.

Returning to his fundamental theme, representation, Adams pointed out that there were those who argued “that we are to enjoy the British constitution in our supreme legislature, the Parliament, not in our provincial legislatures.” To this he responded that if the English “parliament is to be our supreme legislature, we shall be under a complete oligarchy or aristocracy, not the British Constitution” The “King, lords, and commons, will constitute one great oligarchy, as they will stand related to America,” that is, as another incarnation of the Norman Yoke. Lest the reader not appreciate what he meant, Adams defined an oligarchy as “a government by a number of grandees, over whom the people have no controul.” If the English Parliament is successful in asserting its jurisdiction over the internal governance of the American colonies, will “not representatives be chosen for them by others, whom they never saw nor heard of?”⁹⁰ The grandees would be the modern incarnation of the feudal army, the yoke placed upon the shoulders of the subordinated people.

Adams recognized that “representation in parliament is impracticable” given the great distance between England and North America, so as a consequence “we must have a representation in our supreme legislatures here.” In his opinion, this was the position taken “by kings, ministers, our ancestors, and the whole nation, more than a century ago, when the colonies were first settled” Only since the end of the wars for control of North America has there been any doubt about the right of the American colonists to representation in the legislative body that governs them. Governor Hutchinson had publicly declared that the situation of the American colonists required “an abridgement of what is called English liberties.” To Adams, this could mean “depriving us of trial by jury” and presumably of the right to elect representatives to Parliament and to pay only those taxes to which they have consented.⁹¹

Coming to the end of this essay, Adams rejected Leonard’s claim that the Whigs sought to separate the North American colonies from

⁸⁹Ibid., 2: 323.

⁹⁰Ibid., 2: 323–324.

⁹¹Ibid., 2: 324–325.

Great Britain. Adams responded firmly that “We are a part of the British dominions, that is, of the king of Great-Britain, and it is in our interest and duty to continue so. It is equally our interest and duty to continue subject to the authority of parliament, in the regulation of our trade, as long as she shall leave us to govern our internal policy, and to give and grant our own money, and no longer so.”⁹²

Adams closed this essay with an interesting “flight of fancy,” what might be called an alternative history of the future development of the British Empire. Assume for a moment that at some point in the future, the North American colonies “may have the balance of numbers and wealth in her favour.” If the former colonies, now the dominant members of the empire “should attempt to rule her by an American parliament, without adequate representation in it” would not Englishmen rise up to “resist us by her arms?” His answer is a confident “Infallibly” she will.⁹³ The result would be not an American Revolution but an English Revolution against the American application of the yoke.

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⁹²Ibid., 2: 326.

⁹³Ibid., 2: 326.

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Conclusion

This book began in the aftermath of a scholarly debate between a political scientist, Samuel Beer, and a medieval legal historian, Brian Tierney, about what, if any, debt American political thinkers on the eve of the American Revolution owed to the medieval legal and constitutional tradition. Samuel Beer argued that there was a radical break between American political thought as articulated by John Adams and medieval thought identified with Thomas Aquinas. Brian Tierney responded that “Americans of 1776 had often forgotten the remote origins of the tradition that shaped their consciousness, that had given birth to the ideas of consent and obligation they took for granted.”¹ In other words, the central themes of American revolutionary thought were medieval in origin even though eighteenth-century American revolutionaries and twentieth-century American political scientists appear unaware of that fact, often stressing instead the influence of the ancient Roman and Greek experience.

The subject of the Beer-Tierney debate was not new. The relation of the medieval experience to the development of the modern world has been debated by historians and social scientists for decades. There is an extensive literature on the topic, especially in recent years as medievalists have argued for a medieval *longue durée* stretching up to the seventeenth and even the eighteenth century. At the same time, modernists have

¹Tierney, “Hierarchy, Consent,” 651.

pushed back into the fifteenth century, encouraging the development of the notion of early modernity.² The result is that rather than seeing a sharp break between the medieval and the modern, it is now possible to see a zone of transformation lasting at least two centuries.

Seeing the medieval-modern divide as a zone instead of a sharp break then raises the question of how much could John Adams and his contemporaries have known about the Middle Ages, to what extent did that knowledge influence his (and their) political thinking, to what degree did the medieval English experience contribute to the shaping of the constitutional structure of the eighteenth-century colonies, and why is it important?

The answers to these questions lay in the title attached to his early essays on the Stamp Act, *The Dissertation on the Canon and the Feudal Law*. Tierney had argued that Beer erred when he used Thomas Aquinas as the exemplar of medieval political thought because it was not the philosophers and theologians who created “the real foundation for medieval and early modern theories of government,” it was “the medieval jurists” who did.³ In that sense, Adams was accurate when he used canon and feudal law to symbolize medieval thinking on constitutional matters. By invoking these laws as forming the Norman Yoke, Adams was asking his readers to see their political situation in the context of the history of medieval England and to recognize that the American colonists in 1765 were in a position similar to that of the Saxons in 1066. By using the image of the laws, Adams was pointing to the real source of thinking about constitutional matters, medieval law, including the canon law of the Catholic Church. In other words, in order to appreciate what would be the consequence of imposing the Stamp Act and a bishop on the North American colonies, the colonists should study the history of the Norman conquest of England and the constitutional history of medieval and early modern England that resulted.

Adams not only wanted the colonists to see their situation in terms of the English experience, he was implicitly reminding his readers that they

²For a recent survey of this issue: see James Muldoon, “Introduction” to *Bridging the Medieval-Modern Divide: Medieval Themes in the World of the Reformation* (Burlington, VT: Ashgate, 2013), 1–21.

³Tierney, “Hierarchy, Consent,” 647.

were like the Saxons in that they largely governed themselves in secular matters and paid little heed to papal claims of universal jurisdiction in the ecclesiastical order. Forewarned of the consequences of another Norman Conquest, the colonists would be able to avoid the fate that befell the Saxons in 1066.

Seen in terms of the medieval-modern debate, one might argue that it was not Adams who was making a sharp break with tradition but that it was the English Parliament that was doing just that when it asserted its sovereignty over the American colonists, basing the claim on the notion of the king in Parliament as the sovereign authority in the empire. For Adams, the claims of the Parliament were in effect the old Norman Yoke in new garb. In the *Dissertation* he sketched the fundamental outline of his historically based conception of the nature of the imperial crisis. The history of England since 1066 was a series of conflicts between Saxon liberty and Norman tyranny and that conflict, now in modern dress, was being relived by the American colonists in their battle with the English Parliament.

In 1765 Adams set out an historical framework for understanding the constitutional issues facing the colonists in their struggle with the English Parliament. Ten years later, on the eve of the Revolution that was the result of the continuing constitutional crisis, he developed his argument further using a good deal of historical material to support his position in more detailed manner. In the *Novanglus* essays he responded to Daniel Leonard's defense of Parliament's claims by examining in some detail the medieval and early modern history of the British Empire. The competing series of essays represented the two fundamental approaches to the crisis facing the colonists. These were important not simply because Adams wrote one of them but because, as Charles H. McIlwain observed, they provide the best examples of the arguments for and against the parliamentary claims to jurisdiction over the North American colonies.

For Leonard, the British Empire was a powerful reality. Having defeated the French for control of North America and India and possessing a powerful fleet to defend its world-wide possessions, the British Empire could easily devastate the American colonies if the colonists continued to defy the Parliament. The British would crush the Americans as thoroughly as Oliver Cromwell had crushed the Irish in the previous century. This was a forceful expression of *realpolitik*, the reality of the situation that the colonists faced as Leonard saw the situation.

Given the political reality of the situation, Leonard argued that the economic interests of the colonists would be best served by accepting their place within the imperial structure. The specific grievances of the colonists regarding the economic structure of the empire would be addressed by a wise and generous imperial government that saw that the wellbeing of the colonists was in the best interest of the empire as a whole. According to Leonard, however, the grievances of which the colonists were complaining could not be resolved by negotiation but were in fact a demand for independence, a consequence that would be disastrous for the colonists if successful. How long would an independent American government last in the face of French and Spanish military and naval power? From Leonard's position, the only secure future for the American colonists was within the embrace of the "nursing mother" of the British Empire even at the price of not having parliamentary representation.

Leonard's claim to having a realistic view of the empire and of the colonists' place within it included recognizing that the empire was an institution in a continual process of development. That being the case the early charters and related documents associated with the establishment of the colonies, the documents on which Adams based his arguments, did not provide the governing principles of the empire's colonial policy in the eighteenth century. Massachusetts in 1775 was very different from the small community founded in 1630 and the British government had changed even more. In his opinion, the eighteenth-century inhabitants of British North America could not expect that they would be treated as if they were they still lived in the fragile seventeenth-century settlements whose future was doubtful.

When Leonard evaluated the situation facing the colonists on the eve of the American Revolution he displayed a cynical streak similar to Governor Bernard's opinion that as the colonies were now successful, the central government could brush aside the political rights of Englishmen that the colonists claimed to have from the charters. As Adams observed, however, having run the risks of colonization, contributed significantly to the defeat of the French in North America, and paid the costs of colonization in lives and money, the American colonists would now be brought under direct imperial control and turned into obedient imperial subjects with a consequent loss of the independence that their sacrifices had earned.

At this point, John Adams came on the scene to challenge Leonard's position. In the final analysis, he differed fundamentally with Leonard

on the nature of the conflict between the colonists and the imperial government. For Adams, the crucial issue was not the economic wellbeing and military protection that the empire provided to the colonists but the political liberty associated with the liberties of freeborn Englishmen guaranteed to the original colonists and their descendants. Because Leonard accepted the power and jurisdictional claims of Parliament and the imperial government as it had developed in the course of the 150 years since the initial English colonies in North America, he rejected claims to rights contained or said to be contained in the original charters. According to Adams, however, the history of the empire's growth and development was written in these documents and their contents created the constitutional framework of the colonies and the colonists. The terms of these documents could not be changed without the consent of the peoples involved.

Consequently, without a formal statement creating an imperial government with the consent of the people, there could be no British Empire, that is, a single overall governmental structure that administered the various possessions that English monarchs had acquired over the centuries the kings had acquired lands under a variety of conditions and held them under a variety of terms. It would be possible to consolidate the various lands into a single imperial structure but it would require the consent of the peoples involved in order to change the terms by which they were subject to English rule. It could not be done simply by parliamentary act, however, but would require some kind of a constitutional convention with representatives from every land involved that would create a formal imperial constitution.

The older arrangement of the territories labeled the British Empire was quite satisfactory to Adams because it kept royal power widely distributed and limited by the specific terms according to which the individual lands were acquired. It was the drive to create a sovereign, unlimited power, identified with the king in Parliament, that Adams opposed and not the empire as such. In theory at least, there could have been a federated form of empire. Under those circumstances, the power of the sovereign would be constrained in a fashion rather like the system of checks and balances that Adams argued should be the basis of the American constitutional structure.

At first glance, the federated or composite empire that Adams's line of argument would seem to support would resolve a significant number of problems that the creation of a true British Empire would entail.

Upon closer examination, however, it is clear that Adams was not concerned with the entire population of the potential empire or with the overall structure of imperial government, but only with the status of the English settlers and their descendants within the empire, whatever form it took. Would they possess the same rights and liberties as those who lived in England? Would the claims of the English Parliament to empire-wide jurisdiction without empire-wide representation reduce those who lived in the colonies to some form of second-class citizenship or, even, more worrisome, to the status of the native Welsh and Irish or even to the level of the native peoples of the Americas and elsewhere? If the right to representation in Parliament could not be effectively exercised because of the distances involved then it would atrophy and be lost. How could this be avoided? As long as the jurisdiction of English Parliament was restricted to England itself unless specifically accepted by the inhabitants of the imperial lands, and the various units of the empire were linked directly to the monarch as the American colonies were, the system would work. From Adams's point of view, the medieval and early modern English kings were limited in their exercise of power by the nobles and by the customs and traditions of each of the king's possessions, and was not the unlimited sovereignty that contemporary theorists insisted was the basis of any modern government. In effect, Adams was arguing that the medieval constitutional structure with its widely royal dispersed power limited by custom, tradition, and written documents such as the colonial charters provided the best protection for the colonists' rights of freeborn Englishmen.

Would Adams's imperial structure work in all the lands under the king? The answer was no, because no colony had quite the same basis as the North American ones. Above all, the American colonies as Adams described them did not have what Jack P. Greene mentioned as "dependent peoples" like the native Irish and the African slaves found in the West Indian colonies. In time these peoples "became so restive as to persuade politically dominant populations to abandon self-government altogether ... abandoning representative institutions, some of which were two centuries old."⁴ North America was not simply *terra nullius*, it was a *tabula*

⁴Jack P. Greene, "Preface," *Exclusionary Empire: English Liberty Overseas 1600–1900*, ed. Jack P. Greene (Cambridge: Cambridge University Press, 2010), ix–xiii at xii.

rasa where the colonists could develop without making any significant concessions to a pre-existing population or establish a powerful military force in order to maintain control. In effect, Adams saw the American colonies in the context of the constitutional development of England, that is medieval and early modern England, and not as a break with the English past. If English development was like that of a mighty oak then, for Adams, the American colonies were like a great limb emerging out of the trunk but developing separately while remaining a part of it.

That being the case, why is it that the medieval constitutional tradition is usually overlooked in current discussions of colonial constitutional development and the American experience said to be primarily derived from either the classical tradition or from the Enlightenment? To a significant extent, this was due to the general antipathy to the Middle Ages that characterized Protestant Englishmen. One consequence was that American colonial political and legal thought and practice though largely medieval in origin was clothed in classical garb to make it acceptable to an eighteenth-century audience. This approach implied that the Americans were replacing the contemporary English form of government developed in the Middle Ages with ideas and institutions derived from the ancient Roman world. The image of George Washington as Cincinnatus illustrated the point. That image, however, masked the owner of a great slave-worked estate within the toga of a Roman republican hero, the kind of small farmer, Cincinnatus, who had formed the backbone of the Roman Republic but who had lost his land and his status to great landowners as the Roman Republic gave way to the Roman Empire.

The second way in which the medieval origins of colonial government were masked was to attribute the major themes of the polemics to Enlightenment political theorists as Professor Beer did in his article. The notion of natural rights that Adams employed was, however, medieval in origin not ancient Roman. Medieval lawyers and philosophers had developed theories of rights that all men possessed long before eighteenth-century thinkers discovered them. When Adams argued that common law reflected natural law he was masking the fact that English common law was the product of centuries of medieval experience, not the product of contemporary fashionable thought. The same applies to the notions of representation and consent, concepts that had been discussed at length by medieval lawyers.

The argument developed in this book is that our understanding of the thought of eighteenth-century Americans is shaped by a series of masks designed to conceal the fact that John Adams and those who thought as he did were defending the medieval practice of governmental power divided among various groups in tension with one another, in the face of the English efforts at organizing and consolidating the numerous elements that formed the British Empire into a coherent imperial structure. Adams opposed the transformation of the imperial constitutional structure without the consent of the governed, by which he meant the English colonists and their descendants, a process of consolidation that Daniel Leonard supported. Adams could not assert publicly, however, that he supported what was in effect the medieval governmental structure even if he wanted to do so. To him and Protestants generally the Middle Ages represented all that had gone wrong for a thousand years. His *Dissertation on the Canon and the Feudal Law* after all made this clear in its forceful rejection of the Middle Ages. This forceful rejection of the Middle Ages, however, masked the fact that the kind of government he favored with its emphasis on the traditional limited role of Parliament, the importance of consent to legislation, common law, limited powers of the monarch, and the right of resistance to the unconstitutional use of power were all medieval concepts not ancient Roman ones even if expressed in classical republican terms.

Thus, Adams's conception of the Middle Ages was more complex than is apparent at first glance. In effect he saw not one but two medieval traditions, the one he opposed identified with the Norman Yoke and another that the yoke subordinated but did not destroy, the Saxon world of limited monarchy and an autonomous Christian Church. For him, the constitutional history of medieval and early modern England is the story of the continuous struggle of the Saxon tradition to overcome the yoke. The seventeenth-century civil war was the final stage of this struggle in England itself. The American crisis of the eighteenth century demonstrated that the same contest was inherent in English society and could, and likely would, occur wherever Englishmen settled.

Not only did Adams mask medieval concepts and institutions in the development of the British Empire, his way of presenting his position did not make it easy for his reader. Anyone who has read the *Novanglus* essays will be inclined to agree with Daniel Leonard's disparaging remarks about Adams's writing. One modern commentator observed with faint praise that "if Adams was not cursed with the impenetrable

style and logic of the Jeffersonian theorist, John Taylor, he was verbose and repetitious.”⁵ Adams piled up references and citations from a wide range of sources as if to stun the reader into submission by their sheer weight. What he did not do was organize his material in a coherent fashion. He left it to his reader to fill out the details of the historical materials he presented and to work out the implications of his evidence for their current situation.

At first glance Adams’s mass of references appears impressive, but these materials require some serious analysis before being accepted. As we have seen, not only did Adams engage in careful selection of the materials he employed to make his case, he was not above re-writing the materials he employed in order to insure that they supported the conclusions he desired.⁶ The historical sources that he used to construct his arguments were carefully edited, cut, and shaped to meet the needs of the argument. In other words Adams, like many other participants in these polemical exchanges, was practicing “law office history.”⁷ The fact that he was willing to re-write parts of the historical record to support his views indicates how important he believed that the historical record was in these debates. Furthermore, he clothed his re-written historical material in the mantles of authoritative historians such as Hume, Robertson, and Rapin-Thoyras, from whose work he had obtained some of his material.

⁵Stephen G. Kurtz, “The Political Science of John Adams: A Guide to his Statecraft,” *The William and Mary Quarterly*, Third Series, 25 (1968): 605–613 at 606.

⁶The editing and shaping of texts to defend a position was not unique to Adams. Canon law tradition saw the same practice when sixteenth-century humanists produced a scholarly edition of Gratian’s *Decretum* that corrected the texts that Gratian used according to the latest scholarly principles with the result, as a modern scholar has noted, “not to restore the *Decretum* as Gratian composed it, but as he ought to have composed it.” See Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2000), 9; see also Mary Sommar, *The Correctores Romani: Gratian’s Decretum and the Counter-Reformation Humanists* (Berlin: Lit, 2009).

⁷This issue has become of wider significance in the course of the current debate about whether to interpret the constitution as a living document, as the writers originally intended, or as it was understood by contemporaries. Adding to the complexity of the debate has been the shifting interpretation of the founding fathers intentions in recent years: see Matthew J. Festa, “Applying a Usable past: The Use of History in Law,” *Seton Hall Law Review* 38 (2008): 479–554. See also Bruce Allen Murphy, *Scalia: A Court of One* (NY: Simon & Schuster, 2014), 152–157, 164–172, 244–248.

Presumably Adams believed that his readers would recognize at least some of the citations and references and appreciate the points that he was making. While some poorly educated readers might be impressed by the quantity of references alone, better educated readers would recognize some of the sources. A reader of currently popular histories of England, those of Hume, Robertson, or Rapin-Thoryas, for example, would recognize the source of some of the information that Adams did not identify in the text. Such readers might even notice that Adams did not always quote these writers accurately but nevertheless would have to engage the history that he offered.

The historical record was important to Adams because it provided tangible evidence of the structure and principles of English development. It was on the solid ground of charters and other official documents and the historically based common law, not the theories of eighteenth-century philosophers, that the English constitution developed. It was the historical experience of the English people that created the governmental structure so that those engaged in the debate about the nature of the empire in the eighteenth century should first study that history.

The *Dissertation on the Canon and the Feudal Law* and the *Novanglus* essays demonstrate the importance of the historical record in Adams's writings. Taken together they provide a rudimentary constitutional history of the British Empire. The *Dissertation* provided a fundamental framework for the history of English constitutional development, the conflict between royal and spiritual tyranny on the one hand and English liberty on the other. The *Novanglus* essays presented detailed historical information supporting this framework, detailing how this fundamental conflict developed in the course of expansion beyond the kingdom of England itself. Over the centuries, from the English entry into Wales and then Ireland, up to the creation of the colonies in North America, English monarchs had acquired territories they collectively labeled the British Empire although, Adams argued, the term was only a convenient but misleading way of identifying the king's possessions. In constitutional terms there was no empire, only a collection of disparate territories that the king of England ruled under the terms by which each of these lands had been acquired. There was no formal act creating an empire, a reality best illustrated by the fact that there was no British emperor, but only an imperial power which was a rough equivalent of sovereignty. When Henry VIII referred to the imperial crown of England he was asserting the independence of England from Roman imperial temporal

jurisdiction and from papal spiritual jurisdiction. When the term was used in later English documents it was used in this sense but not as in modern usage to identify rule over a large diversified state.⁸ Given the widespread popular use of the term “British Empire” even Adams occasionally employed it when discussing the contemporary situation simply because it was regularly used in the various polemical writings of the eighteenth century and there was no other term that could be used to label all of the possessions of the king of England. The reader must always be careful to understand what is meant by empire in terms of who was using it and in what context.

In current legal debate, Leonard might be termed a believer in the theory of the living constitution, that is in the adaptation of old texts and principles to fit new circumstances without the need for any formal legislative enactment. From his perspective, the old precedents that Adams always cited had no doubt a useful role when they had been enacted but changing circumstances required new ways for the empire to function successfully. Too literal adherence to these precedents would hinder the modernization of the empire.

On the other hand Adams might be termed an originalist with regard to the constitution of the empire. He argued that centuries-old statutes, charters, and other legal documents along with ancient customs and traditions remained in force until formally changed with the consent of those bound by the terms of those actions. With regard to the North American colonies, Adams argued that the original colonists left England in possession of all the rights and privileges of Englishmen, and their charters guaranteed these same rights and privileges to their descendents. Charters were contracts between the colonists and the king, the terms of which could not be altered without the consent of the contracting parties. The obvious problem was that the distance from Boston to Westminster was far too great to allow for American colonial participation in English Parliament, so the colonists’ consent to legislation affecting them could not be obtained. If the colonists were not able to exercise their rights in Parliament on a regular basis, what value would those rights have? Would the traditional right to be represented when

⁸It is worth noting that that when the imperial title was created in the nineteenth century, Victoria was Empress of India and Queen of England: *see* Muldoon, *Empire and Order*, 149.

taxation affecting the colonists was being discussed in Parliament atrophy through non-exercise? To be taxed by a Parliament to which the colonists did not send representatives was an act of tyranny and a violation of the rights of Englishmen, the Norman Yoke in parliamentary garb. In Adams's calculations, the economic benefits that Leonard saw as stemming from membership in the empire were not worth the cost of the political rights involved.

The debate between Adams and Leonard was a consequence of the development of the concept of sovereignty, that is, the notion as Blackstone asserted, that there can be only one source of authority in the state. This was a relatively recent element of government practice, although like other elements of the debate it had deep medieval intellectual roots. Medieval lawyers had developed the notion that a king possessed in his kingdom the same powers that the emperor had in the empire, meaning that a king was not subject to any outside secular authority, even the Holy Roman Emperor. The Reformation applied the same principle to the Church as Henry VIII declared himself Supreme Head of the Church in England. Throughout Europe modernizing rulers were moving to consolidate power and to eliminate local, regional, and corporate rights and privileges that hindered the exercise of royal power. National assemblies withered because they were identified with these corporate rights. The English Parliament survived only because of the particular situation in England, although the Stuarts did attempt to govern without Parliament but failed. The unexpected consequence of this failure was not simply Parliament's survival but the assertions that it existed even if not called by the king and the related concept that the supreme power in the kingdom was the king in Parliament.⁹ This union was then the sovereign authority not simply in England but throughout the entire empire.

When Adams took on Leonard's arguments in defense of the empire he did not assert American independence of England, nor did he deny that it was the existence of a constitutional structure that brought all of these diverse territories into some kind of relationship to the English king. In effect, he was arguing against Leonard's concept of the

⁹The Triennial Act (1641) mandated that if the king did not call a Parliament within three years, the lord chancellor should call one "without any further warrant or direction from his Majesty" being required. See *The Stuart Constitution, 1603-1688*, 2nd ed., ed. J.P. Kenyon (Cambridge: Cambridge University Press, 1986), 197-200 at 197.

imperial sovereign power as the constitutional basis for subordinating the American colonies to English Parliament. The relation between the inhabitants of each territory and the English king was direct and personal. Parliament could only play a role in those places where its role was specifically mentioned. Since the colonial charters did not mention Parliament, Adams argued that it had no right to tax or to legislate for the colonies unless the colonists had agreed to authorize such action.

The debate about the nature of the British Empire that led to the American Revolution was not about the origins of the empire and about justifying its existence, the topics that occupied Spanish intellectuals for two centuries in what Lewis Hanke labeled *The Spanish Struggle for Justice in the Conquest of the Americas*.¹⁰ There was some discussion of the legitimacy of possession of the colonies associated with the theory of the right of discovery and *terra nullius*, but no full-throated debate as there was in Spain. In the long run, the American debate was about the place and status of the English colonists and their descendants within the empire whatever form it took. If the colonists did not have effective representation in English Parliament would they and their descendants eventually be reduced to the level of the Indians, another subject people with no claim to the rights of Englishmen? The larger issues that empire building generated, the substance of imperial economic policies for example, or the way in which the empire would be financed and operated were not discussed at any significant length by Adams and Leonard. Those issues would be resolved only when the status of the colonists was resolved.

Above all, the debate about the status of the colonists did not extend to any lengthy discussion of the status of the indigenous population, an issue that was central to Spanish discussions of empire building. By defining North America as *terra nullius*, land not owned by anyone, the English avoided any discussion of the legitimacy of their possession of the land on which the colonists had settled. Adams discussed this issue to some extent but only in order to defend his argument that the colonists had acquired the land by their own actions, purchase or conquest in a just war and then entered into a contractual relationship with the king of England to accept his rule.

¹⁰Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America*, new edition (Dallas, TX: Southern Methodist University Press, 2002).

Although the charters contained traditional papal language encouraging the conversion of the Indians and bringing them to a civilized state of existence, the English made little effort to achieve those goals. Instead, the Indians were killed, driven out of the lands that the English settlers wanted, or reduced to a shabby existence on the fringes of colonial society. In this the colonists were acting in the same way as their contemporaries were acting toward the native Irish and the Highland Scots. Frustrated by the failure to assimilate the native Irish after centuries of confrontation, the Tudor and Stuart monarchs as well as the Commonwealth headed by Oliver Cromwell sought to reduce them to powerlessness, expecting that the remaining population would serve as a peasant class under English rule.

In the long run, the differences between Leonard and Adams came to two conflicting images and histories of the British Empire. For Leonard, the empire was an evolving, hierarchically constructed institution with sovereign power in the hands of the king in Parliament that can be exercised throughout the empire. For Adams, the empire was a mixture of elements acquired in a variety of ways having histories of their own that defined their relationship to the kings of England. This collection of territories could not be reduced to a neat organizational chart. England had its own constitutional history distinct from those of the other lands that the king ruled. Thus, while the concept of the king in Parliament was the basis of government in England as a result of the civil war, the Glorious Revolution, and with the consent of the people, it did not affect the American colonists because they never indicated their consent to this. As C. Bradley Thompson phrased the situation:

Ironically, Adams and the other Revolutionaries were caught in a kind of constitutional time warp. They were defending a particular, if not a peculiar, reading of the seventeenth-century English constitution. ... The imperial constitution consented to by the Americans was that which existed before 1688.¹¹

That constitution reached all the way back to Saxon England and was the basis for the long-lived struggle against the Norman Yoke in its various forms.

¹¹C. Bradley Thompson, *John Adams & the Spirit of Liberty* (Lawrence: University Press of Kansas, 1998), 80.

In his writings on the eve of the Revolution Adams was warning the colonists that if they did not oppose the attempts of English Parliament to impose legislation on them without their consent, they would lose their fundamental rights as Englishman. The history that underlay the *Dissertation* and the *Novanglus* essays, a history that Leonard discarded as irrelevant, was for Adams crucial to understanding the issues at stake. Under the garb of Parliament as the imperial nursing mother was another, more frightening armature, the Norman Yoke.

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INDEX

A

- Act Abolishing Feudal Tenure*, 133
Act for the Government of Wales, 198
Act of Appeals, 167
Act of Union, 197
Acts and Monuments or Book of
Martyrs, 99
Adams, John, 9, 14, 23, 27, 33, 43,
83, 91, 98, 99, 111, 112, 122,
154, 158, 210, 212-214, 218,
220, 225, 228, 230, 232, 235,
237, 241, 242, 248, 250, 251,
257, 258, 260
Discourses on Davila, 32
Dissertation on the Canon and the
Feudal Law, 34, 44, 87, 89, 96,
98, 119
*History of the Dispute with
America, from its origins in
1754, to the Present Time*, 99
Novanglus, 14, 34, 35, 99, 146,
147, 152, 154, 158, 159, 163,
164, 181, 182, 194, 249
Adams, Randolph G., 24

- Political Ideas of the American
Revolution*, 24
Adrian IV, 183, 187
Laudabiliter, 185
Alanus Anglicus, 229
Albany congress, 151
Alexander II, 84
Allen, J.W., 12
Andrews, Charles M., 35
Andros, Edmund, 61, 147, 202
Anglo-Saxon Chronicle, 22
- ## B
- Bailyn, Bernard, 26
Bederman, David J., 11
Beer, Samuel, 18, 247, 253
Bernard, Francis, 158, 215, 216
Blackstone, Sir William, 13, 18, 44
Commentaries, 21
Boston Gazette, 43, 48, 97, 112, 114
Boston Gazette and Country Journal, 158
Bracton, 23
Braisington, Bruce, 17

British Empire, 6, 9, 24, 43, 119, 121, 124–126, 128, 129, 131, 138, 141, 153, 158, 159, 164, 168, 170, 173, 209, 243, 254, 256, 259, 260

C

Calais, 173
 Camden, William, 22
 Britannia, 22
 Canada, 60, 113, 125, 147
 Carlyle, A.J., 12
 History of Mediaeval Political Theory in the West, 12
 Channel Island, 174
 Charles I, 96, 111, 162
 Charles II, 137, 138, 204, 236
 Charles V, 19, 21, 160, 222
 Chester, 173
 Church of England, 44, 86, 88, 92, 94–96, 111, 168
 Cimabue, 7
 Cincinnatus, 3
 Civil War, English, 22
 Coke, Sir Edward, 13, 18, 177
 Connecticut, 234, 235
 Constitution, 12
 Constitutions of Clarendon, 101
 Continental Congress, 2
 Corwin, Edward S., 13
 The “Higher Law” Background of American Constitutional Law, 13
council for the affairs of New Plymouth, 137
 Council of New England, 134
 Cromwell, Oliver, 141, 220, 249, 260
 Lord Protector, 221

D

Declaratory Act, 144, 215
 Dermot McMorrogh, 183
 Dickinson, John, 142
 Letters from a Farmer in Pennsylvania, 142
 The Pennsylvania Farmer, 140
 Divine Right, 123, 161
 Dominion of New England, 147, 202
 Dudley, Joseph, 202
 Durham, 173

E

East India Company, 218
 Edward I, 238
 Edward II, 176
 Edwards, Jonathan, 91
 A History of the Work of Redemption, 91
 English Civil War, 28, 29, 46
 English parliament, 5, 121
 Enlightenment, 6, 11, 253
 philosophes, 11

F

Figgis, John Neville, 15
 Filmer, Robert, 161
 Patriarcha, 161
 First Continental Congress, 151
 FitzGerald, 190
 Foxe, John, 90
 Acts and Monuments or Book of Martyrs, 90
 Franklin, Benjamin, 211

G

Gascoine, 173
 George III, 55, 130, 131

Gerald of Wales (Giraldus Cambrensis), 182
 Conquest of Ireland, 182
 Gilbert, Humphrey, 136, 194
 Glorious Revolution, 239
 Gossman, Lionel, 22
 Government of Wales, 177
 Greene, Jack P., 26
 Grotius, Hugo, 13
 Guernsey, 173, 179
 Guiccardini, 23
 Guienne, 173

H
 Hanke, Lewis, 259
The Spanish Struggle for Justice in the Conquest of the Americas, 259
 Hanover, 236
 Haraszti, Zoltán, 164
 Harrington, James, 227
 Henry II, 98, 100, 102, 107, 110, 183, 185, 187, 188
 Henry III, 175, 188, 238
 Henry VII, 190, 191
 Henry VIII, 52, 111, 159, 167, 177, 178, 191, 201, 256, 258
 Hill, Christopher, 46
Puritanism and Religion, 46
 Hobbes, Thomas, 123
Leviathan, 161
 Holy Roman Emperor, 167, 258
 Holy Roman Empire, 100, 229, 231
 Hooker, Richard, 14
 Howe, John R., Jr., 33
 Hume, David, 18, 52, 98, 107, 182, 220, 238, 255
History of England, 18, 52
 Hutchinson, Thomas, 91, 120, 127, 214–216, 242

I
 imperial crown, 167
 Innocent III, Pope, 110
 Innocent IV (Sinibaldo Fieschi), 200
 Ireland, 25, 30, 99, 126, 133, 173, 179, 182, 186–189, 191, 197, 198, 210, 224, 237, 256
 degenerate English, 189
 middle nation, 189
 Isidore of Seville, 13
 Italian Renaissance humanists, 6

J
 James I, 134, 137, 180, 196, 216
 James II, 138, 147
 Jefferson, Thomas, 20, 48
 Jersey, 173, 179
 John, King, 110
 John of Salisbury, 13
 John Wyclif, 7, 90

K
 king Philip and king Massachusetts, 196

L
 La Curne de Sainte-Palaye, Jean-Baptiste de, 22
 Lanfranc, archbishop of Canterbury, 84
 Laud, William, 111
 Leonard, Daniel, 9, 10, 29, 33, 34, 36, 121, 125, 126, 131, 132, 146, 158, 159, 163, 174, 181, 182, 198, 199, 212, 214, 216, 217, 220–223, 225, 230, 232, 233, 236, 237, 240, 242, 249, 257, 258, 260

Massachusettensis, 9, 29, 34, 158, 180
 Lewellyn, the Prince of Wales, 175
 Livy, 2, 160
 Locke, John, 13, 14, 18, 62, 138, 193, 217
 Second Treatise on Government, 14
 Lord Lyttelton, George, Lord, 98
 History of the Life of King Henry II, 98
 Louis XIV, 168
 Lutz, Donald, 18

M
 Machiavelli, 23
 Madoc, 136
 Magna Carta, 46, 111, 132, 162, 165
 Maitland, Frederic William, 15
 Martin Luther, 84
 Massachusetts Bay, 51, 92, 132, 135, 205, 219, 234, 235
 Massachusetts Gazette, 120
 Mather, Cotton, 90
 Magnalia Christi Americana, 91
 Mayflower Compact, 204, 234
 Mayhew, Jonathan, 49, 87, 114
 McIlwain, Charles H., 13, 14, 121, 164, 249
 Morgan, 26
 Edmund, 26
 Helen, 26
 Morse, Jedediah, 112

N
 Navigation Act, 235
 Norman Conquest, 22, 28, 30, 50, 52, 53, 123, 249
 Norman Yoke, 28, 30, 53, 110, 124, 140, 162, 199, 202, 221, 249, 260

Nova Scotia, 136, 147, 151

O

Oakley, Francis, 17
 Orderic Vitalis, 51
 Ecclesiastical History, 51
 Otis, James, 5, 49, 139
 The Rights of British Colonies Asserted, 139

P

Parliament, 177
 Passerin d'Entreves, A., 14
 Pennington, Kenneth, 17
 Petrarch, 7
 Philip II, 237
 Plymouth colony, 234
 Pocock, John G.A., 33
 Ancient Constitution and the Feudal Law, 33
 Post, Gaines, 17
 Powicke, F.M., 14
 Poynings, Edward, 191
 Poyning's Law, 210
 Price, Richard, 236
 Pufendorf, Samuel, 218
 Puritans, 88

Q

Quincy, Samuel, 120
 Quo warranto, 204

R

Raleigh, Walter, 194
 Rapin-Thoyras, Paul de, 98, 105, 255
 Reid, John Phillip, 26
 Renaissance, 7, 21
 Richard III, 190

- Richard of Clare (Strongbow), 185
 Robertson, William, 18, 44, 255
 The History of Charles V, 19, 20
 The History of Scotland, 20, 44
 Roman and Greek colonization practices, 195
 Roman Empire, 227, 253
 Roman law, 6, 150, 228
 Corpus Juris Civilis, 44
 Roman Republic, 4, 31, 104, 227, 253
 Roman Senate, 4
 Roswell, Henry, 137
- S**
 Sabine, George H., 16
 Scotland, 173, 197, 198, 223, 236
 Seeley, J.R., 233
 Sewell, Jonathan, 120, 214
 Shalev Eran, 4
 Shaw, Peter, 164
 Sidney, Algernon, 217
 Discourses on Government, 217
 Sodality, 44, 67, 79
 Sovereignty, 17
 Stamp Act, 9, 10, 28, 36, 44, 55, 72, 76, 79, 80, 86, 112, 114, 122, 126, 133, 248
 Stamp Tax, 86
 Statute of Wales, 176
 Stuart, 19, 50, 51, 94, 97, 162, 194, 213, 223, 236, 258
- T**
 Terra nullius, 138, 259
 Thomas Aquinas, 13, 31
 Thomas Becket, 97, 99, 103, 105, 106, 110, 111
- Thompson, C. Bradley, 35, 164, 260
 John Adams and the Spirit of Liberty, 35
 Tierney, Brian, 17, 247
 Tillotson, John, 47
 Tocqueville, Alexis de, 31
 Tories, 153, 158, 159, 161, 211–213, 217, 220, 221, 223, 230
 Tory, 161, 166, 237
 Tudor, 19, 194, 260
 Turgot, Anne Robert Jacques, 236
- V**
 Vasari, Giorgio, 7
 Virginia, 233
 Virginia Company, 134
- W**
 Waldenses, 104
 Wales, 173, 174, 176, 179, 182, 192, 198, 256
 Walsh, Correa Moylan, 32
 Washington, George, 1, 3
 West Indian colonies, 252
 Whigs, 125, 131, 138, 150, 151, 180, 199, 211, 213, 217, 220, 222, 223, 228, 237, 242
 William and Mary, 138, 204
 William Laud, Archbishop, 96
 William of Normandy, 45
 William the Conqueror, 45, 46, 48, 51, 52, 84, 85, 87, 113, 185
 Wills, Garry, 1
 Cincinnatus, 1
 Wood, Gordon, 26