James Otis strode confidently into the Boston coffee house on this afternoon of 1769. An anti-British activist, Otis was a hero to many Americans in the city. He had won praise years before for his denunciation of writs of assistance (broad search warrants that British officials used to search the homes and businesses of colonists). Otis had argued that the writs violated the natural and English rights of Americans. He continued to harshly criticize the British for acts of tyranny throughout the 1760s. But Otis's bold speeches and cutting essays had made him powerful enemies among the British officials of the colony. Several such people were in the coffee house this day, and they eyed Otis angrily as he sat down at a table with several Patriot allies.

One of the British officials suddenly got up from a nearby table and approached Otis, raising his cane in the air. Otis recognized him as a man he had attacked by name in a newspaper essay. Before he could react, the official brought the cane down upon Otis's head, knocking him to the floor. Otis was struck several more times before his friends could react and restrain the enraged official. Mayhem ensued in the coffee house, as a fight broke out between Patriots and British officials. During the brawl, Otis lay unconscious on the floor, blood spilling from his head. The attack would end not only Otis's public career, but also his chance to be remembered among the foremost heroes of the American independence movement.

**Background**

James Otis was born on Cape Cod, Massachusetts, on February 5, 1725. He was the first of thirteen children. One of his sisters, Mercy, would become famous as a champion of the Patriot cause and as the author of a history of the American Revolution. Otis's father was a prominent Massachusetts politician. Young Otis attended Harvard College, graduating in 1743. He began the study of the law shortly afterward and was admitted to the bar in 1747.

In 1750, Otis moved to Boston, where he established a successful law practice. Six years later, the royal governor of Massachusetts appointed him an advocate general in the Vice Admiralty Court. Decisions were rendered by appointed royal judges, not by citizen juries. This generated resentment among Americans. Many cases heard by the admiralty courts involved smuggling, a common activity among American merchants seeking to skirt British taxes and restrictions.

In 1751, the British Parliament approved a new tool to aid customs officials in stopping smuggling: writs of assistance. Writs of assistance were search warrants that gave customs officials broad authority to inspect ships, warehouses, and even private homes. Officials did not have to present evidence to a judge before a search was conducted. They also did not have to specify what they were looking for. Writs of assistance soon became one of the chief complaints of the colonists against the British government.

**James Otis (1725–1783)**

I will to my dying day oppose, with all the powers and faculties God has given me, all such instruments of slavery on the one hand, and villainy on the other, as this writ of assistance is.

—James Otis, 1761
The Writs of Assistance Case
Otis was troubled by the broad authority granted inspectors by the writs. When his father was passed over for the job of Chief Justice of the Massachusetts Superior Court, Otis decided to turn against the British authorities. In 1761, he resigned his post and allied himself with Boston merchants who were mounting a legal challenge to the renewal of the writs by the new king, George III.

In a five-hour-long speech to the court, Otis referred to traditional English rights in condemning the writs. “Now one of the most essential branches of English liberty is the freedom of one’s house,” Otis told the court. “A man’s house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege.”

Otis also made a more radical argument, citing natural law to condemn the writs. He asserted that every man possessed the inalienable rights of life, liberty, and property, which could not rightfully be taken away by anyone without consent or due process. Taking this argument to its logical conclusion, Otis condemned slavery as a violation of the rights of the enslaved. John Adams, who observed the speech, would later claim that Otis’s speech marked the start of the American Revolution.

The Rights of the British Colonies
Otis lost the case, and the writs of assistance were renewed. But Otis became a hero among Americans, who were emboldened to challenge the use of writs by customs officials. Otis was elected to the Massachusetts legislature in 1762. The following year, the French and Indian War came to an end. The British government announced that it would attempt to raise revenues from the American colonies to help pay for their defense.

Otis took the lead in opposing British efforts to tax the colonies. He soon became an ally of Samuel Adams and John Hancock, two of the leaders of the Patriot movement in Boston. Otis headed the Massachusetts Committee of Correspondence, which distributed information and criticized British policies toward colonists. He gave speeches and wrote essays in defense of American liberty.

In 1764, Otis published The Rights of the British Colonies Asserted and Proved. In this pamphlet, Otis argued that the British government had no right to tax the colonies because they were not represented in Parliament. Otis argued that British taxation of the American colonies “is absolutely irreconcilable with the rights of the colonists as British subjects and as men.” Otis again championed the natural rights of Africans. “The colonists are by the law of nature freeborn,” he asserted, “as indeed all men are, white or black.” Otis condemned slavery as “the most shocking violation of the law of nature” and declared that it “makes every dealer in it a tyrant.”

Madness and Death
Otis played a leading role in the Stamp Act Congress of 1765. In 1767, he and Samuel Adams wrote a circular letter to the other colonies, coordinating resistance to the Townshend Duties. Otis also continued to write newspaper essays about the tyranny of British officials.

Otis’s boldness in asserting the rights of American colonists made him many enemies. When he was elected speaker of the Massachusetts General Court in 1766, the governor vetoed the decision. Three years later, Otis was physically attacked in a Boston coffee
house by a customs official whom Otis had criticized in the *Boston Gazette*. The official beat Otis’s head with a cane, fracturing his skull and causing permanent brain damage.

For the remaining fourteen years of his life, Otis suffered from periodic insanity. He had always been an eccentric man, nervous and volatile. But he was now unfit to participate in public life on a regular basis. In his last years, Otis often wandered the streets of Boston, talking to himself and ranting aloud to no one in particular. In May 1783, he was struck and killed by lightning. A central American figure of the period 1760–1770 faded into obscurity.

**Reading Comprehension Questions**

1. What were writs of assistance? What was their significance in the conflict between the British government and the American colonists?

2. What arguments did Otis use to defend the rights of Americans during the 1760s?

3. What was Otis’s opinion of slavery?

**Critical Thinking Questions**

4. John Adams called Otis “the most conspicuous, the most ardent, and influential” American in the period 1760–1766. How can Adams’s assessment be justified?

5. Discuss three ways James Otis acted courageously as a Patriot leader.
VOCABULARY AND CONTEXT QUESTIONS

Excerpts from *The Rights of the British Colonies Asserted and Proved*, 1764

1. **Vocabulary**: Use context clues to determine the meaning or significance of each of these words and write their definitions:
   a. tranquility
   b. prosperity
   c. brethren
   d. body politic
   e. inestimable
   f. chapman
   g. barter
   h. renounced

2. **Context**: Answer the following questions.
   a. Who wrote this document?
   b. When was this document written?
   c. What type of document is this?
   d. Why was this document written?
IN HIS OWN WORDS:
JAMES OTIS ON NATURAL RIGHTS

Excerpts from The Rights of the British Colonies Asserted and Proved, 1764

Directions: Read the excerpts from Otis's essay, and then follow the directions on Handout D.

1. The end of government being the good of mankind points out its great duties: it is above all things to provide for the security, the quiet, and happy enjoyment of life, liberty, and property. There is no one act which a government can have a right to make that does not tend to the advancement of the security, tranquility, and prosperity of the people. . . .

2. The colonists, being men, have a right to be considered as equally entitled to all the rights of nature with the Europeans, and they are not to be restrained in the exercise of any of these rights but for the evident good of the whole community. . . .

3. The colonists are by the law of nature freeborn, as indeed all men are, white or black. . . . Nothing better can be said in favor of [the slave] trade that is the most shocking violation of the law of nature, has a direct tendency to diminish the idea of the inestimable value of liberty, and makes every dealer in it a tyrant, from the director of an African company to the petty chapman in needles and pins on the unhappy coast. It is a clear truth that those who every day barter away other men’s liberty will soon care little for their own. . . .

4. By being or becoming members of society they have not renounced their natural liberty in any greater degree than other good citizens, and if ’tis taken from them without their consent they are so far enslaved. . . . Now can there be any liberty where property is taken away without consent? . . . There can be no prescription old enough to supersede the law of nature, and the grant of God almighty; who has given to all men a natural right to be free. . . .

Excerpts from John Locke’s *Second Treatise of Civil Government* (1690)

**Directions:** After reading the excerpts from James Otis’s *The Rights of the British Colonies Asserted and Proved* (1764) on Handout C and excerpts from John Locke’s *Second Treatise of Civil Government* (1690) below, write a sentence summarizing the main ideas of each paragraph. Then, write a sentence explaining how Otis was influenced by the natural rights theory of John Locke.

1. Men [are] by nature all free, equal, and independent. No one can be put out of this estate and subjected to the political power of another without his own consent, which is done by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a greater security. . . .

2. But though men when they enter into society give up the equality, liberty, and . . . power they had in the state of Nature into the hands of the society . . . yet it [is for] the better to preserve himself, his liberty and property . . . And all this to be directed to no other end but the peace, safety, and public good of the people.

3. [Men are in] a state . . . of equality . . . and there cannot be supposed any such subordination among us that may authorize us to destroy one another, as if we were made for one another’s uses, as the inferior ranks of creatures are for ours.

4. [Men] join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties, and estates, which I call by the general name—property. . . . The great and chief end, therefore, of men . . . putting themselves under government, is the preservation of their property.


**Paragraphs 1:**

**Otis’s Main Idea:** ____________________________________________

**Locke’s Main Idea:** __________________________________________

**How was Otis influenced by natural rights theory?** ____________________________________________

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Founders and the Constitution: In Their Own Words—Volume 2
ANALYSIS: JAMES OTIS AND JOHN LOCKE’S
THEORY OF NATURAL RIGHTS

Paragraphs 2:
Otis's Main Idea: __________________________________________

__________________________________________________________

Locke's Main Idea: _________________________________________

__________________________________________________________

How was Otis influenced by natural rights theory? _______________

__________________________________________________________

Paragraphs 3:
Otis's Main Idea: __________________________________________

__________________________________________________________

Locke's Main Idea: _________________________________________

__________________________________________________________

How was Otis influenced by natural rights theory? _______________

__________________________________________________________

Paragraphs 4:
Otis's Main Idea: __________________________________________

__________________________________________________________

Locke's Main Idea: _________________________________________

__________________________________________________________

How was Otis influenced by natural rights theory? _______________

__________________________________________________________
Liberty was the central political principle of the American Revolution. As Patrick Henry, one of its staunchest supporters, famously intoned, “Give me liberty or give me death.” Henry was not alone in his rhetorical fervor. Indeed, no ideal was proclaimed more often in the eighteenth-century Anglo-American world than liberty.

The idea of liberty defended by the American Founders came from several sources. The most venerable was English common law. Beginning in the late medieval period, writers in the common law tradition developed an understanding of liberty which held that English subjects were free because they lived under a system of laws which even the Crown was bound to respect. Leading English jurists argued that these legal limits on royal power protected the subject’s liberty by limiting the arbitrary use of political power.

Under English common law, liberty also consisted in the subject enjoying certain fundamental rights to life, liberty and property. William Blackstone (1723–1780), the leading common lawyer of the eighteenth century, argued that these rights allowed an English subject to be the “entire master of his own conduct, except in those points wherein the public good requires some direction or restraint . . .” For Blackstone, these English rights further protected the subjects’ liberty by making them secure in their persons from arbitrary search and seizure, and by ensuring that their property could not be taken from them without due process of law.

In order to preserve these fundamental rights, the English common law allowed the subject the right to consent to the laws that bound him by electing representatives to Parliament whose consent the monarch had to obtain before acting.

Common lawyers in the seventeenth and eighteenth centuries did not view these rights and the liberty they protected as the gift or grant of the monarch; rather, they believed that they were an Englishmen’s “birthright,” something that inerred in each subject and that therefore could not be taken away by royal prerogative.

This common law understanding of liberty was central to the seventeenth-century struggles against the Stuart monarchy. Prominent jurists and Parliamentarians such as Edward Coke (1552–1634) took the lead in the attempt to limit what they saw as the illegal and arbitrary nature of the Stuarts’ rule. This struggle culminated in the Glorious Revolution of 1689 and the triumph of Parliamentary authority over the Crown. For champions of English liberty, the result of this century-long struggle was the achievement of political liberty. They further argued that, as a result of this struggle, Britain in the eighteenth century had the freest constitution in the world. According to the French writer Montesquieu (1689–1755), Britain was “the only nation in the world, where political and civil liberty” was “the direct end of the constitution.”

This seventh century struggle between royal power and the subject’s liberties made a great impression on the American Founders. They absorbed its lessons about the nature and importance of liberty through their reading of English history as well as through their instruction in English law.

A second and equally influential understanding of liberty was also forged in the constitutional battles of the seventeenth century: the idea that liberty was a natural right pertaining to all. The foremost exponent of this understanding of liberty in the English-speaking world was John Locke (1632–1704). Locke’s political ideas were part of a wider European political and legal movement which argued that there were certain rights that all men were entitled to irrespective of social class or creed.

Like the common lawyers, Locke saw liberty as centrally about the enjoyment of certain rights. However, he universalized the older English understanding of liberty, arguing that it applied to all persons, and not just to English subjects. Locke also expanded the contemporary understanding of liberty by arguing that it included other rights—in particular a right to religious toleration (or liberty of conscience), as well as a right to resist governments that violated liberty. In addition, Locke argued that the traditional English common
law right to property was also a natural right, and
was an important part of the subject’s liberty.

Locke began his political theory by arguing that
liberty was the natural state of mankind. According
to Locke, all men are “naturally” in a “State of
perfect Freedom to order” their “Actions, and
dispose of their Possessions, and Persons as they
think fit, within the bounds of the Law of Nature,
without asking leave, or depending upon the Will
of any other Man.”

However, Locke did not argue that this natural
liberty was a license to do whatever we want.
“Freedom is not,” he argued, “A Liberty for every Man to
do what he lists (For who could be free, when every
other Man’s humour might domineer over him?).”
Rather, Locke held that since
all men are “equal and
independent, no one ought
to harm another in his Life, health, Liberty, or Possessions.” According to Locke, each of us has
“an uncontroulable Liberty to dispose of our persons and possession,” but we do not have the
right to interfere with the equal liberty of others to
do the same.

In Locke’s political theory, men enter into society and form governments to better preserve
this natural liberty. When they do so, they create a
political system where the natural law limits on
liberty in the state of nature are translated into a
legal regime of rights. In such a system, Locke
argued, each person retains his “Liberty to dispose,
and order, as he lists, his Person, Actions,
Possession, and his whole Property, within the
Allowance of those Laws under which he is; and
therein not to be subject to the arbitrary Will of
another, but freely follow his own.”

For Locke, as for the common lawyers, the rule
of law was necessary for liberty. In Locke’s view,
“the end of law is not to abolish or restrain, but to
preserve and enlarge Freedom.” According to Locke,
“Where there is no Law, there is no Freedom. For
Liberty is to be free from restraint and violence from
others which cannot be, where there is no law.”

Building on both the English common law and
on Locke’s ideas, the eighteenth-century English
writer Cato argued “that liberty is the unalienable
right of mankind.” It is “the power which every
Man has over his own Actions, and his Right to
enjoy the Fruit of his Labour, Art, and Industry, as
far as by it he hurts not the Society, or any
members of it, by taking from any Member or by
hindering him from enjoying what he himself
enjoys.” Cato was the pseudonym for two British
writers, John Trenchard and Thomas Gordon.
Their co-authored Cato’s Letters (1720–1723) were
widely read in the American colonies.

On the eve of the American Revolution, then,
the received understanding of liberty in the Anglo-
American world was a powerful amalgam of both
the English common law and the liberal ideas of
writers like Locke and Cato. On this view, liberty
meant being able to act freely, secure in your basic
rights, unhindered by the coercive actions of others,
and subject only to the limitation of such laws as you
have consented to. Central to this idea of liberty was the
right to hold property and to
have it secure from arbitrary
seizure. In addition, under the
influence of Locke, liberty was
increasingly being seen on
both sides of the Atlantic as a universal right, one
not limited to English subjects. Equally influential
was Locke’s argument that if a government violated
its citizens’ liberty the people could resist the
government’s edicts and create a new political
authority. However, despite the gains that had been
made since the seventeenth century, many
Englishmen in the eighteenth century still worried
that liberty was fragile and would always be
endangered by the ambitions of powerful men.

Since the first settlements were established
in the early seventeenth century, the American
colonists shared in this English understanding of
liberty. In particular, they believed that they had
taken their English rights with them when they
crossed the Atlantic. It was on the basis of these
rights that they made a case for their freedom as
colonists under the Crown. In addition, in the
eighteenth century, the colonists were increasingly
influenced by the Lockean idea that liberty was a
natural right. As a result, when they were confronted
with the policies of the British Crown and
Parliament in the 1760s and 1770s to tax and legislate for them
without their consent, the colonists viewed them as
an attack on their liberty.

In response, the colonists argued that these
British taxes and regulations were illegal because they
violated fundamental rights. They were particularly
resistant to the claims of the British Parliament, as
expressed in the Declaratory Act of 1766, to legislate
for the colonies “in all cases whatsoever.” By 1774,
following the Boston Tea Party organized by Samuel
Adams and John Hancock, and the subsequent
Coercive Acts, many leading colonists such as Thomas Paine and James Otis argued that they had a natural right to govern themselves, and that such a right was the only protection for their liberty. In addition to several essays in defense of rights, including Letters from a Farmer in Pennsylvania, John Dickinson wrote the first patriotic song, “The Liberty Song.”

This colonial thinking about liberty and rights culminated in the Declaration of Independence issued by the Continental Congress in 1776, which proclaimed that, because their liberty was endangered, the colonists had a natural right to resist the English King and Parliament.

Having made a revolution in the name of liberty, the American challenge was to create a form of government that preserved liberty better than the vaunted British constitution had done. In doing so, the founders turned to the ancient ideal of republican self-government, arguing that it alone could preserve the people's liberty. They further argued that the modern understanding of liberty as the possession of rights needed to be a central part of any proper republican government. Beginning in 1776, in the midst of the Revolutionary War, all of the former colonies began to construct republican governments which rested on the people's consent and which included bills of rights to protect the people's liberty.

Since there was widespread consensus among the Founders that liberty required the protection of rights and the rule of law, much of the political debate in the crucial decades following the American Revolution revolved around the question of which institutional arrangements best supported liberty. Was liberty best protected by strong state governments jealously guarding the people's liberties from excessive federal authority, as leading Anti-Federalists like George Mason contended; or, was an extended federal republic best able to preserve the freedom of all, as leading Federalists like James Madison and Alexander Hamilton argued?

The era of the American Revolution also gave birth to a further series of important debates about liberty. Was slavery, as some Americans in the eighteenth century were beginning to recognize, an unjust infringement upon the liberty of African Americans? Were women, long deprived of basic legal rights, also entitled to have equal liberty with their male fellow citizens? By making a Revolution in its name, the Founders ensured that debates about the nature and extent of liberty would remain at the center of the American experiment in self-government.

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Suggestions for Further Reading


