



JAMES OTIS

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JAMES OTIS, American patriot and orator of the Revolutionary era, was born at West Barnstable, Mass., Feb. 5, 1725, and died at Andover, Mass., May 23, 1783. After studying at Harvard, where he graduated in 1743, he entered the law and rose to eminence in his profession, becoming a law officer under the Crown. His public career began in 1761, when an Order of Council was sent from England directing the issue of what was termed "Writs of Assistance," which authorized the customs officers to enter any man's house on suspicion of concealing smuggled goods. This order he strenuously opposed, as later on he was opposed to the expenditure of public money otherwise than by consent of the colonial legislature. He therefore resigned his office and appeared for the people against the issue of the writs. His plea was so fervid in its eloquence that it was described as "a flame of fire." John Adams, who heard it, said that "American independence was then and there born." The orator was soon afterward chosen a representative from Boston to the colonial assembly, and he was reelected to that post nearly every year during the active portion of his life. His influence at home in directing the movement of events which led to the Revolution was universally felt, and no American was so frequently quoted, denounced or applauded in Parliament and the English press as the principal fomenter of the rebellious spirit of the colonies. In 1765, Massachusetts sent him as one of her representatives to the first Continental Congress. Four years later his public career was brought to an untimely close. In 1769, he got into a controversy with some Tory revenue officers and attacked them in a journal of the period. This brought upon him, a few days later, a savage assault while he sat in a coffee-house, and during the encounter received a sword-cut on the head from which he never fully recovered. He lived, however, to the year 1783, when he was struck by lightning in front of his own doorway and instantly killed.

AGAINST "WRITS OF ASSISTANCE"

SPEECH DELIVERED BEFORE THE SUPERIOR COURT IN BOSTON,
FEBRUARY, 1761

MAY it please your honors, I was desired by one of the court to look into the books, and consider the question now before them concerning Writs of Assistance. I have, accordingly, considered it, and now appear not only in obedience to your order, but likewise in behalf of the inhabitants of this town, who have presented

another petition, and out of regard to the liberties of the subject. And I take this opportunity to declare that, whether under a fee or not (for in such a cause as this I despise a fee), 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.

It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book. I must, therefore, beg your honors' patience and attention to the whole range of argument, that may, perhaps, appear uncommon in many things, as well as to points of learning that are more remote and unusual; that the whole tendency of my design may the more easily be perceived, the conclusions better descend, and the force of them be better felt. I shall not think much of my pains in this cause, as I engaged in it from principle. I was solicited to argue this cause as Advocate-General; and because I would not, I have been charged with desertion from my office. To this charge I can give a very sufficient answer. I renounced that office, and I argue this cause from the same principle; and I argue it with the greater pleasure, as it is in favor of British liberty, at a time when we hear the greatest monarch upon earth declaring from his throne that he glories in the name of Briton, and that the privileges of his people are dearer to him than the most valuable prerogatives of his crown; and as it is in opposition to a kind of power, the exercise of which, in former periods of history, cost one king of England his head and another his throne. I have taken more pains in this cause than I ever will take again, although my engaging in this

and another popular cause has raised much resentment. But I think I can sincerely declare that I cheerfully submit myself to every odious name for conscience' sake; and from my soul I despise all those whose guilt, malice, or folly has made them my foes. Let the consequences be what they will, I am determined to proceed. The only principles of public conduct that are worthy of a gentleman or a man are to sacrifice estate, ease, health, and applause, and even life, to the sacred calls of his country.

These manly sentiments, in private life, make the good citizen; in public life, the patriot and the hero. I do not say that when brought to the test, I shall be invincible. I pray God I may never be brought to the melancholy trial; but if ever I should, it will be then known how far I can reduce to practice principles which I know to be founded in truth. In the meantime I will proceed to the subject of this writ.

Your honors will find in the old books concerning the office of a justice of the peace precedents of general warrants to search suspected houses. But in more modern books, you will find only special warrants to search such and such houses, specially named, in which the complainant has before sworn that he suspects his goods are concealed; and will find it adjudged that special warrants only are legal. In the same manner I rely on it, that the writ prayed for in this petition, being general, is illegal. It is a power that places the liberty of every man in the hands of every petty officer. I say I admit that special writs of assistance, to search special places, may be granted to certain persons on oath; but I deny that the writ now prayed for can be granted, for I beg leave to make some observations on the writ itself, before I proceed to other acts of Parliament. In

the first place, the writ is universal, being directed "to all and singular justices, sheriffs, constables, and all other officers and subjects"; so, that, in short, it is directed to every subject in the king's dominions. Every one with this writ may be a tyrant; if this commission be legal, a tyrant in a legal manner, also, may control, imprison, or murder any one within the realm. In the next place, it is perpetual; there is no return. A man is accountable to no person for his doings. Every man may reign secure in his petty tyranny, and spread terror and desolation around him, until the trump of the archangel shall excite different emotions in his soul. In the third place, a person with this writ, in the daytime, may enter all houses, shops, etc., at will, and command all to assist him. Fourthly, by this writ, not only deputies, etc., but even their menial servants, are allowed to lord it over us. What is this but to have the curse of Canaan with a witness on us; to be the servant of servants, the most despicable, of God's creation? Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and while 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. Custom house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient. This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts. Mr. Pew had one of these writs, and when Mr. Ware succeeded him, he indorsed this writ over to Mr. Ware; so that these writs are

negotiable from one officer to another; and so your honors have no opportunity of judging the persons to whom this vast power is delegated. Another instance is this: Mr. Justice Walley had called this same Mr. Ware before him, by a constable, to answer for a breach of the Sabbath day acts, or that of profane swearing. As soon as he had finished, Mr. Ware asked him if he had done. He replied: "Yes." "Well then," said Mr. Ware, "I will show you a little of my power. I command you to permit me to search your house for uncustomed goods"; and went on to search the house from the garret to the cellar, and then served the constable in the same manner! But to show another absurdity in this writ, if it should be established, I insist upon it that every person, by the 14th Charles II., has this power as well as the custom house officers. The words are: "It shall be lawful for any person or persons authorized," etc. What a scene does this open! Every man prompted by revenge, ill-humor, or wantonness, to inspect the inside of his neighbor's house, may get a writ of assistance. Others will ask it from self-defence; one arbitrary exertion will provoke another, until society be involved in tumult and in blood. . . .

[John Adams says that after this exordium Otis continued under four several headings which he gives thus—taking the exordium as the first:]

2. "He asserted that every man, merely natural, was an independent sovereign, subject to no law but the law written on his heart and revealed to him by his Maker, in the constitution of his nature, and the inspiration of his understanding and his conscience. His right to his life, his liberty, no created being could rightfully contest. Nor was his right to his property less incontestable. The club that he had snapped

from a tree, for a staff or for defence, was his own. His bow and arrow were his own; if by a pebble he had killed a partridge or a squirrel, it was his own. No creature, man or beast, had a right to take it from him. If he had taken an eel, or a smelt, or a sculpin, it was his property. In short, he sported upon this topic with so much wit and humor, and at the same time with so much indisputable truth and reason, that he was not less entertaining than instructive. He asserted that these rights were inherent and inalienable; that they never could be surrendered or alienated, but by idiots or madmen, and all the acts of idiots and lunatics were void, and not obligatory, by all the laws of God and man. Nor were the poor negroes forgotten. Not a Quaker in Philadelphia, or Mr. Jefferson in Virginia, ever asserted the rights of negroes in stronger terms. Young as I was, and ignorant as I was, I shuddered at the doctrine he taught; and I have all my life shuddered, and still shudder, at the consequences that may be drawn from such premises. Shall we say that the rights of masters and servants clash, and can be decided only by force? I adore the idea of gradual abolitions! but who shall decide how fast or how slowly these abolitions shall be made?

3. "From individual independence he proceeded to association. If it was inconsistent with the dignity of human nature to say that men were gregarious animals, like wild geese, it surely could offend no delicacy to say they were social animals by nature; that there were natural sympathies, and, above all, the sweet attraction of the sexes, which must soon draw them together in little groups, and by degrees in larger congregations, for mutual assistance and defence. And this must have happened before any formal covenant, by express words or signs, was concluded. When general councils and deliberations commenced, the objects could be no other than the mutual defence and security of every individual for his life, his liberty and his property. To suppose them to have surrendered these in any other way than by equal rules and general consent was

to suppose them idiots or madmen, whose acts were never binding. To suppose them surprised by fraud, or compelled by force into any other compact, such fraud and such force could confer no obligation. Every man had a right to trample it underfoot whenever he pleased. In short, he asserted these rights to be derived only from nature and the Author of Nature; that they were inherent, inalienable, and indefeasible by any laws, pacts, contracts, covenants, or stipulations which man could devise.

4. "These principles and these rights were wrought into the English Constitution as fundamental laws. And under this head he went back to the old Saxon laws, and to Magna Charta, and the fifty confirmations of it in Parliament, and the executions ordained against the violators of it, and the national vengeance which had been taken on them from time to time, down to the Jameses and Charleses, and to the Petition of Right and the Bill of Rights and the Revolution. He asserted that the security of these rights to life, liberty, and property had been the object of all those struggles against arbitrary power, temporal and spiritual, civil and political, military and ecclesiastical, in every age. He asserted that our ancestors, as British subjects, and we, their descendants, as British subjects, were entitled to all those rights, by the British Constitution, as well as by the law of nature and our provincial charter, as much as any inhabitant of London or Bristol, or any part of England; and were not to be cheated out of them by any phantom of 'virtual representation,' or any other fiction of law or politics, or any monkish trick of deceit and hypocrisy.

5. "He then examined the acts of trade, one by one, and demonstrated that if they were considered as revenue laws, they destroyed all our security of property, liberty, and life, every right of nature, and the English Constitution, and the charter of the province. Here he considered the distinction between 'external and internal taxes,' at that time a popular and commonplace distinction. But he asserted that there was no such distinction in theory, or upon any principle but

'necessity.' The necessity that the commerce of the empire should be under one direction was obvious. The Americans had been so sensible of this necessity, that they had connived at the distinction between external and internal taxes, and had submitted to the acts of trade as regulations of commerce, but never as taxations, or revenue laws. Nor had the British Government till now ever dared to attempt to enforce them as taxations or revenue laws. They had lain dormant in that character for a century almost. The Navigation Act he allowed to be binding upon us, because we had consented to it by our own legislature. Here he gave a history of the Navigation Act of the 1st of Charles II., a plagiarism from Oliver Cromwell. This act had lain dormant for fifteen years. In 1675, after repeated letters and orders from the king, Governor Leverett very candidly informs his Majesty that the law had not been executed, because it was thought unconstitutional, Parliament not having authority over us."

ISAAC BARRÉ



ISAAC BARRÉ, a British officer and politician of French parentage, was born at Dublin, Ireland, in 1726, and died at London, July 20, 1802. In 1745, he graduated from Trinity College, Dublin, and became an ensign in the British army, taking part under General Wolfe in the capture of Quebec, in 1759, having previously served as major of brigade in the expedition against Louisburg, Cape Breton. He was one of the officers at Wolfe's side when that general fell on the Heights of Abraham, and appears conspicuously in Benjamin West's well-known painting of the "Death of Wolfe." In 1761 Barré entered the English Parliament and was a member of the Commons for nearly thirty years, during which he took strong ground against the taxation of the American colonies, and was paymaster-general of the army in Lord Shelburne's administration. In Parliament he gained considerable reputation as an orator and manifested great powers of invective and sarcasm, and was a dreaded opponent of Lord North's ministry. With Sir Philip Francis and other writers of the period, Barré was cited as one of the probable authors of the famous "Letters of Junius." A town in Massachusetts was named after him, in honor of his attitude in the English Parliament on the subject of the taxation of the colonies, while Wilkes-Barré (now Wilkes-Barre), Pa., takes part of its name from the orator. In his later years Barré was a great invalid and suffered from blindness.

SPEECH ON AMERICA'S OBLIGATION TO ENGLAND

[Delivered in England in reply to Charles Townshend, a member of the ministry, in 1765.]

THE honorable member has asked—"And now will these Americans, children planted by our care, nourished by our indulgence, and protected by our arms,—will they grudge to contribute their mite?" They planted by your care!—No, your oppressions planted them in America! They fled from your tyranny to a then uncultivated and inhospitable country, where they exposed themselves to almost all the hardships to which human nature is liable; and among others, to the cruelties of a savage foe the most subtle, and I will take it upon me to say the most formidable, of any people upon the face of God's earth; and yet, actuated by principles of true English liberty, our American brethren met all hardships with pleasure, compared with those they