



The Dissenters America's Voices of Opposition

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The Dissenters

AMERICA'S VOICES
OF OPPOSITION



EDITED, WITH INTRODUCTIONS, BY

John Gabriel Hunt

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INTRODUCTION

THE AMERICAN PATRIOT wears many hats and changes clothes often. The extraordinary leaders and great thinkers who helped mold the Republic are not only the figures traditionally highlighted in history textbooks. Equally patriotic were those Americans who fought against the status quo, who agitated for economic and social reform, who championed the rights of those whose rights had not yet been acknowledged, and whose ideas were new and revolutionary in their own times. It is the words of these men and women, the creative opposition, that appear in *The Dissenters*.

The foremost dissenters, of course, were the courageous leaders of the American Revolution—men like Samuel Adams, Thomas Paine, and Thomas Jefferson—who opposed the tyranny of England's rule over the colonies, and who, in fomenting revolution, created the American nation. After the establishment of the United States, dissent often exploded into insurrection—for example, in the western Pennsylvania farmers' revolt known as the Whiskey Rebellion; in the struggle of Native American tribes against the white settlers' usurpation of their lands; and in the greatest revolt of all, the Southern states' secession from the Union.

During the 1800s, opposition movements supporting abolitionism, temperance, women's rights, and new laws to protect the poor and the mentally ill were led by such notable men and women as William Lloyd Garrison, John Brown, Sojourner Truth, Elizabeth Cady Stanton, Dorothea Dix, and Jane Adams. Opposing voices in the early 1900s furthered revolutionary economic and political aims, particularly in the area of

workers' rights—as exemplified by the anarchism of Emma Goldman, the labor agitation of Mother Jones, and the socialism of Eugene Debs and, by the 1920s, Norman Thomas.

Dissent throughout the twentieth century has been considerably more varied: opposition to the death penalty for criminals (Clarence Darrow); forest preservation and the creation of national parks (Theodore Roosevelt); the dissemination of birth control information (Margaret Sanger); black civil rights (Malcolm X and Martin Luther King, Jr.); and the protest against the Vietnam War (Daniel Ellsberg). The effects of the feminist movement of the 1970s reverberated in the landmark U.S. Supreme Court decision of 1973, *Roe v. Wade*. In *The Dissenters*, both the opinion of the Court, which overturned the nation's established abortion laws, and the dissenting opinion are included, since each reveals an outstanding voice of opposition to a still divisive issue.

In other Supreme Court cases presented in this book, the true dissenters are the justices who wrote opinions against the status-quo-supporting decisions of the Court. The subjects of these cases range from the rights of slaves as citizens (*Dred Scott v. Sandford*) to the religious rights of schoolchildren (*Minersville School District v. Gobitis*). In assembling these lengthy judicial decisions—as well as the passages from government testimony—certain technical references and esoteric digressions have been omitted. And while many of the other selections are presented in their entirety, some have been condensed because of excessive length.

The men and women whose words fill *The Dissenters* may all be considered great Americans. In their own times, their cries were revolutionary and often violently opposed. In the annals of history, however, their names are written on the roster of outstanding and truly patriotic Americans.

JOHN GABRIEL HUNT

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SAMUEL ADAMS



The Rights of the American Colonists

From the Boston Gazette, December 23, 1771

Samuel Adams (1722–1803) was an outspoken opponent of repressive British tax measures such as the Sugar Act of 1764 and the Stamp Act of 1765. As clerk of the lower house of the Massachusetts legislature from 1765 until 1774, he became a leader of the American independence movement in the state. Adams was active in political as well as literary arenas during the colonial struggle with Great Britain and took leading roles in the Boston chapter of the Sons of Liberty, the protest against the Boston Massacre, the Boston Tea Party, and the Committee of Correspondence of Boston. He wrote the influential tracts True Sentiments of America (1768), Appeal to the World (1769), and The Rights of the Colonists as Men, as Christians, and as Subjects (1772). Using a number of pseudonyms, Adams reached a wide audience with his rousing articles, which called for separation from England and appeared in the Gazette, a Boston newspaper. Samuel Adams served as a delegate to the Continental Congress from 1774 to 1781 and as governor of Massachusetts from 1794 to 1797.

The writer in the Massachusetts Gazette, who signs “Chronus,” in his address to the public, recommended petitioning and humbly representing the hardship of certain measures; and yet before he finished his first paper, he pointed out to us the unhappy effects in former times of the very method he had prescribed. Those “intemperate patriots” it seems, the majority of both houses of the general assembly, not hearkening to the

cool advice of the few wise men within and without doors, must needs make their humble representations to the king and Council upon the claims of New Hampshire and Rhode Island. And what was the consequence? Why, he says the province lost ten times the value of the land in dispute. Did Chronus mean by this, and such like instances, to enforce the measure which he had recommended? They certainly afford a poor encouragement for us to persevere in the way of petitioning and humble representation. But perhaps he will say the General Assembly had at that time no reason to complain of the encroachment of these sister colonies; their claims were just; and the discerning few who were in that mind were in the right. Just so he says is the case now. For he tells us that "no one has attempted to infringe the people's rights." Upon what principle then would he have us petition? It is possible, for I would fain understand him, that what Candidus and others call an *invasion of our rights*, he may choose to denominate a *grievance*; for if we suffer no grievance, he can certainly have no reason to advise us to represent the hardship of certain measures. And I am the rather inclined to think that this is his particular humor, because I find that the Stamp Act, which almost everyone looked upon as a most *violent infraction* of our natural and constitutional rights, is called by this writer a *grievance*. And he is so singular as to inquire what *liberties* we are now deprived of, although an act of Parliament is still in being, and daily executed, very similar to the Stamp Act, and formed for the very same purpose, viz., the raising and establishing a revenue in the colonies by virtue of a supposed inherent right in the British Parliament, where the colonies cannot be represented, and therefore without their consent. The exercise of such a power Chronus would have us consider as a *grievance* indeed, but not by any means a deprivation of our rights and liberties, or even so much as the least *infringement* of them.

Mr. Locke has often been quoted in the present dispute between Britain and her colonies, and very much to our purpose. His reasoning is so forcible that no one has even attempted

to confute it. He holds that “the preservation of property is the end of government, and that for which men enter into society.” It therefore necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society, which was the *end* for which they entered into it; too gross an absurdity for any man to own. Men therefore *in society having property*, they have such a right to the goods, which by the law of the community are theirs, that nobody hath the right to take *any part* of their subsistence from them without their consent; without this, they could have no property at all. For I truly can have no property in that which another can by right take from me when he pleases, against my consent. Hence, says he, it is a mistake to think that the supreme power of any commonwealth can dispose of the estates of the subjects arbitrarily, or *take any part of them* at pleasure. The prince or senate can never have a power to take to themselves the whole or any part of the subjects’ property without *their own* consent; for this would be in effect to have *no property* at all. This is the reasoning of that great and good man.

And is not our own case exactly described by him? Hath not the British Parliament made an act to take *a part* of our property against our *consent*? Against our repeated submissive petitions and humble representations of the hardship of it? Is not the act daily executed in every colony? If therefore the preservation of property is the very *end* of government, we are deprived of that for which government itself is instituted. ’Tis true, says Mr. Locke, that “government cannot be supported without great charge; and ’tis fit that everyone who enjoys a share in the protection should pay his proportion for the maintenance of it. But still it must be with their own *consent*, given by themselves or their representatives.” Chronus will not say that the monies that are every day paid at the customhouses in America for the express purpose of maintaining all or any of the governors therein, were raised with the *consent* of those who pay them, given by themselves or their representatives. “If anyone,” adds Mr. Locke, “shall *claim* a power to lay and levy taxes on the

people by his own authority and without such *consent* of the people, he thereby *subverts the end of government*.” Will Chronus tell us that the British Parliament doth not *claim* authority to lay and levy such taxes, and doth not actually lay and levy them on the colonies without their *consent*? This is the case particularly in this province. If therefore it is a *subversion of the end of government*, it must be a subversion of our civil liberty, which is supported by civil government only.

And this I think a sufficient answer to a strange question which Chronus thinks it “not improper for our zealous patriots to answer,” viz., what those liberties and rights are of which we have been deprived. If Chronus is really as ignorant as he pretends to be, of the present state of the colonies, their universal and just complaints of the most violent infractions of their liberties, and their repeated petitions to the throne upon that account, I hope I shall be excused in taking up any room in your valuable paper, with a view of answering a question which to him must be of the utmost importance. But if he is not, I think his question not only impertinent, but a gross affront to the understanding of the public. We have lost the *constitutional right* which the Commons of America in their several Assemblies have ever before possessed, of giving and granting *their own money*, as much of it as *they please*, and *no more*; and appropriating it for the support of their *own government*, for their *own defense*, and such other purposes as *they please*.

The great Mr. Pitt, in his speech in Parliament in favor of the repeal of the Stamp Act, declared that “we should have been *slaves* if we had not enjoyed this right.” This is the sentiment of that patriotic member, and it is obvious to the common sense of every man. If the Parliament have a right to take as much of our money as *they please*, they may take *all*. And what liberty can that man have, the produce of whose daily labor *another* has the right to take from him if he pleases and, which is similar to our case, take a part of it to convince him that he has the power as well as the pretense of right?

That sage of the law Lord Camden declared, in his speech

upon the declaratory bill, that his searches had more and more convinced him that the British Parliament have no right to tax the Americans. Nor, said he, "is the doctrine new. It is as old as the Constitution. Indeed, it is its *support*." The taking away this right must then be in the opinion of that great lawyer, the removal of the very *support* of the Constitution, upon which all our civil liberties depend. He speaks in still stronger terms: "Taxation and representation are inseparably united. This position is founded on the laws of nature. It is more: it is itself an eternal law of nature. Whatever is a man's own is absolutely his own; and no man has a right to take it from him without his consent, either expressed by himself or his representative. Whoever attempts to do it attempts an injury. Whoever does it commits a robbery. He throws down the distinction between liberty and slavery."

Can Chronus say that the Americans ever consented, either by themselves or their representatives, that the British Parliament should tax them? That they have taxed us we all know; we all feel it. I wish we felt it more sensibly. They have therefore, according to the sentiments of the last mentioned nobleman, which are built on nature and common reason, thrown down the very distinction between liberty and slavery in America. And yet this writer, like one just awoke from a long dream, or, as I cannot help thinking there are good grounds to suspect, with a design to "mislead his unwary readers (and unwary they must needs be, if they are thus misled) to believe that all our liberties are perfectly secure, he calls upon us to show "which of our liberties we are deprived of"; and in the face of a whole continent, as well as of the best men in Europe, he has the effrontery to assert, without the least shadow of argument, that "no one has attempted to infringe them." One cannot, after all this, be at a loss to conceive what judgment to form of his modesty, his understanding or sincerity.

It might be easy to show that there are other instances in which we are deprived of our liberties. I should think a people would hardly be persuaded to believe that they were in the full

enjoyment of their liberties while their capital fortress is garrisoned by troops over which they have no control, and under the direction of an administration in whom, to say the least, they have no reason to place the smallest confidence that they shall be employed for their protection, and not, as they have been, for their destruction—while they have a governor absolutely independent of them for his support, which support as well as his political being depends upon that same administration, though at the expense of their own money taken from them against their consent—while their governor acts not according to the dictates of his own judgment, assisted by the constitutional advice of his council, if he thinks it necessary to call for it, but according to the edicts of such an administration. Will it mend the matter that this governor, thus *dependent upon the crown*, is to be the judge of the *legality* of instructions and their consistency with the Charter, which is the Constitution? Or if their present governor should be possessed of as many angelic properties as we have heard of in the late addresses, can they enjoy that tranquillity of mind arising from their sense of safety, which Montesquieu defines to be civil liberty, when they consider how precarious a person a provincial governor is, especially a good one? And how likely a thing it is, if he is a good one, that another may soon be placed in his stead, possessed of the principles of the Devil, who for the sake of holding his commission which is even now pleaded as a weighty motive, will execute to the full the orders of an abandoned minister, to the ruin of those liberties which we are told are now so secure.

Will a people be persuaded that their liberties are safe, while their representatives in general assembly, if they are ever to meet again, will be deprived of the most essential privilege of giving and granting what part of their own money they are yet allowed to give and grant, unless, in conformity to a ministerial instruction to the governor, solemnly read to them for their direction, they exempt the commissioners of the customs, or any other favorites or tools of the ministry, from their equitable share in the tax?

All these and many others that might be mentioned, are the natural effects of that capital cause of complaint of all North America, which, to use the language of those "intemperate patriots," the majority of the present assembly, is "a subjugation to as arbitrary a tribute as ever the Romans laid upon the Jews, or their other colonies."

What now is the advice of Chronus? Why, much may be done, says he, "by humble petitions and representations of the *hardship* of certain measures." Ask him whether the colonies have not already done it—whether the assembly of this province, the convention, the town of Boston, have not petitioned and humbly represented the hardship of certain measures, and all to no purpose—and he tells you either that he is "a stranger to those petitions," or that "they were not duly timed, or properly urged," or that "the true reason why all our petitions and representations met with no better success was because they were accompanied with a conduct quite the reverse of that submission and duty which they seemed to express"—that "to present a petition with one hand, while the other is held up in a threatening posture to enforce it, is not the way to succeed." Search for his meaning, and inquire when the threatening hand was held up, and you'll find him encountering the resolves of the town of Boston to maintain their rights, (in which they copied after the patriotic assemblies of the several colonies) and their instructions to their representatives.

Here is the sad source of all our difficulties. Chronus would have us petition, and humbly represent the hardships of certain measures, but we must by no means *assert our liberties*. We must acknowledge, at least tacitly, that the Parliament of Great Britain has a constitutional authority "to throw down the distinction between liberty and slavery" in America. We may indeed, humbly represent it as a hardship, but if they are resolved to execute the purpose, we must submit to it, without the least intimation to posterity that we looked upon it as unconstitutional or unjust. Such advice was sagely given to the colonists a few years ago, at second hand, by one who had taken a trip to

the great city, and grew wonderfully acquainted, as he said, with Lord Hillsborough; but his foibles are now “buried under the mantle of charity.” Very different was his advice from that of another of infinitely greater abilities, as well as experience in the public affairs of the nation, and the colonies: I mean Dr. Benjamin Franklin, the present agent of the House of Representatives. His last letter to his constituents, as I am well informed, strongly recommends the holding up our constitutional rights, by *frequent resolves*, etc. This we know will be obnoxious to those who are in the plan to enslave us. But remember, my countrymen, it will be better to have your liberties wrested from you by *force*, than to have it said that you even implicitly *surrendered* them.

I have something more to say to Chronus when leisure will admit of it.

CANDIDUS

THOMAS PAINE



Reconciliation or Independence?

From *Common Sense*, 1776

Born in England, Thomas Paine (1737–1809), the great political philosopher and revolutionary agitator, was encouraged by Benjamin Franklin to emigrate to America. In Philadelphia, Paine became the editor of the Pennsylvania Magazine and wrote “radical” articles on such issues as women’s rights, slavery, copyrights, and humanitarianism. Paine’s pamphlet Common Sense, published in January 1776, called for a free and independent America that would usher in a new age of enlightened republican government. Widely circulated, it energized the American colonists in their struggle against the British monarchy and encouraged adoption of the Declaration of Independence. Paine added to his fame—and his notoriety—with his revolutionary and rationalist books The Rights of Man (1791–1792) and The Age of Reason (1794, 1796) as well as by his participation in French Revolution politics.

The present state of America is truly alarming to every man who is capable of reflection. Without law, without government, without any other mode of power than what is founded on and granted by courtesy. Held together by an unexampled concurrence of sentiment, which is nevertheless subject to change, and which every secret enemy is endeavoring to dissolve. Our present condition is legislation without law; wisdom without a plan; a constitution without a name; and, what is strangely astonishing, perfect independence contending for dependance. The instance is without a precedent; the case never existed before; and who can tell what may be the event? The property of no man is secure in the present unbraced system of things. The mind of the multitude is left at random, and feeling