1765, edition of the *Boston Gazette* offered his readers an astute, if unduly conspiratorial, aside on the broader issues of press freedom and public discourse: "It seems very manifest from the S—p A-t itself, that a design is form'd to strip us in a great measure of the means of knowledge, by loading the Press, the Colleges, and even an Almanack and a News-Paper, with restraints and duties." Perhaps inspired by this aside, a newspaper in neighboring Connecticut came out as scheduled on November 1—the Stamp Act's operative date—and did so on unstamped paper with an open editorial ode to "the press" as "the test of truth, the bulwark of public safety, [and] the guardian of freedom." The anonymous and perhaps inspirational *Gazette* essayist was none other than John Adams, then a week shy of his thirtieth birthday and readying himself to play an increasingly public role in the great scenes unfolding all around him.[53]

On March 18, 1766, less than a year after it enacted the ill-fated and much-hated Stamp Act, Parliament formally repealed the law.

TOWNSHEND, TROOPS, AND TEA

When news of the repeal hit their local papers, most Americans rejoiced, thinking London had listened and agreed. Actually, London had not listened particularly carefully and had not conceded any issue of constitutional principle. In turn, many Americans themselves misinterpreted what London was saying and not saying. An intercontinental constitutional conversation had begun, but each side at times heard what it wanted to hear.

Nothing in the repeal of the Stamp Act declared that the act had violated any precept of British liberty. Nowhere did Parliament say that Americans could be taxed only by Americans—only by local representatives of their own choosing. Instead, alongside its Stamp Act repeal, Parliament passed an ominous Declaratory Act claiming for itself "full power and authority to make laws and statutes . . . to bind the colonies and people of America . . . in all case whatsoever."

Read broadly, this sweeping assertion of Parliamentary sovereignty said that Americans had no rights that Parliament was bound to respect. Parliament's power was plenary, bounded only by the self-imposed limits that Parliament might adopt as a matter of sovereign grace.[54]

Less than sixteen months after this Declaration, Parliament did indeed enact another series of high-profile taxes on its American colonists. The 1767 Townshend Acts expressly aimed at raising money via new duties on a range of imported items, including glass, lead, paint, paper (again, stupidly), and tea. The better to enforce these new duties and deter smuggling, Parliament also provided for additional writs of assistance.[55]

Why did Parliament think that Americans would accept this mixed-signal message of repeal plus declaration? Why did it think that the Townshend Acts would fare any better in America than had the Stamp Act? In turn, why did Americans not immediately understand the mixed message that Parliament was sending in 1766? When confronted in 1767 by the Townshend Acts and their new writs, how did Americans react?

As Britain saw things, Americans in 1764 and 1765 had obviously directed far more rhetorical firepower and nullification energy at the Stamp Act than at the Sugar Act. In 1766, Parliament had thus repealed the Stamp Act while leaving the Sugar Act intact. Yet Americans seemed mollified, even joyful. Many Americans had seemed to say that they opposed all Parliamentary taxation; yet the Sugar Act had expressly avowed a revenue-raising purpose. So perhaps the Americans thought that *external* taxes—duties on imported items like foreign molasses (per the Sugar Act)—were qualitatively different from *internal* taxes on everyday items produced in the colonies themselves, such as newspapers (per the Stamp Act)?

Some in London thought the distinction made sense. Others, including Charles Townshend, the Exchequer chancellor who hatched the 1767 tax plan, thought the distinction absurd, but assumed that

the colonists were dunces. In language dripping with contempt, he said the distinction was "ridiculous in everybody's opinion except the Americans."[56]

In any event, given that the Sugar Act had passed muster in America, a new set of duties on a broader range of imported items must also be acceptable, Townshend reasoned. If the Americans tried to complain, it was too late. They had already consented to the Sugar Act (and the 1733 Molasses Act before that). If their consent was based on a silly and easy-to-outflank internal-external distinction, they had only themselves to blame for their own speciousness.

Some Americans in 1764–1765 had indeed seemed to draw an internal-external line. In honey-tongued testimony before the House of Commons in early 1766, colonial agent Benjamin Franklin had suggested that many Americans did draw this line.[57] The charming Franklin succeeded in his immediate goal—Stamp Act repeal—but did so by sowing confusion. The Stamp Act Congress had made no such internal-external distinction; nor had the vast majority of colonial assembly declarations. Otis's pamphlet had explicitly rejected the distinction, which he had attributed to various leaders in London: "There is no foundation for the distinction some make in England, between an internal and an external tax on the colonies." In other words, he thought the distinction was ridiculous in everybody's opinion except the English.[58]

Many Americans drew a different line in the sand, as lawyer John Dickinson would soon explain in an influential series of "Letters from a Farmer," which appeared in more than twenty of the mainland colonies' twenty-five newspapers and also found their way into print in England, Ireland, and even France.[59] A Parliamentary enactment designed to regulate trade within the empire or between the empire and the outside world was one thing. Such a statute was a legitimate trade law, even if it incidentally raised some revenue. But a law *plainly designed* to raise revenue from unrepresented British subjects was something entirely different. Such a law was an improper Parliamentary tax. The *purpose* of the law made all the difference. As John Adams would later argue in the Boston Massacre trial, purpose

often matters in law; thus, an accidental killing should not be treated the same as a cold-blooded premeditated murder. On this view, the Stamp Act clearly fell on the improper side of the line, and so did the Townshend Duties, even though the latter were "external."

As for the Sugar Act, the Massachusetts Assembly in 1764 had initially declared that "we look upon those [Sugar Act] Duties as a tax" that "ought not to be laid without the Representatives of the People affected by them." But Hutchinson had persuaded the Assembly to refrain from sending this provocative constitutional statement to London. As a result of Hutchinson's intervention, London may have been misled about the true sentiments of the men of Massachusetts (just as Franklin's later testimony would prove misleading about the more general colonial view).[60]

But why, we might ask, did Americans misunderstand Parliament's actual message in 1766, when the repeal of the Stamp Act was pointedly paired with the Declaratory Act?

Partly because Americans had only limited access to Parliamentary debates (just as Englishmen had only limited understanding of the initial Massachusetts Assembly vote on the Sugar Act). Many Parliament members themselves understood the Declaratory Act phrase "in all cases whatsoever" to include taxes as well as all sorts of other legislation; this specific issue had in fact been debated on the floor. But many Americans did not know that. Modern norms of democratic openness and transparency in government had not yet entrenched themselves. Parliamentary sessions in the 1760s were not yet routinely open to the public, and printers could not publish accounts of what was said in Commons without special permission. (In that era, to print without permission was punishable interference with Parliamentary speech and debate.)[61]

Two things that colonists did know led them to believe, or at least hope, that the Declaratory Act was not as bad as it looked. First, the act did not expressly say, but surely could easily have said, "in all cases whatsoever, *including taxation.*" (In the cagey diplomatic spirit of Franklin, the ministry had purposefully omitted the T-word, which officials thought might be unduly provocative. The result, as with

Franklin's earlier fudging, was to improve immediate harmony by sowing confusion and risking future misunderstandings.)[62] Second, the text of the 1766 Declaratory Act echoed the language of Parliament's 1719 Declaratory Act asserting plenary legislative authority over Ireland; yet Parliament had in fact never taxed Ireland.[63]

The 1767 Townshend Duties generated new rounds of intercolonial and transatlantic constitutional conversation—this time with a strong sense of déjà vu. In 1768 Massachusetts initiated another circular letter to sister assemblies, and these assemblies renewed their claims that Parliament lacked authority to tax unrepresented colonists. Merchants again organized boycotts, and patriots again took to the streets to pressure loyalists and fence-sitters to honor the boycotts. In response, supporters of the ministry on both sides of the Atlantic continued to insist that taxes were no different from anything else and that Parliament was sovereign over everything.[64]

Writs of assistance were also back in the news, far more visibly than in 1761. The Townshend Duties brought renewed attention to customs officials, who were the ones charged with collecting the new duties. If enforced, these duties meant more money for London. If evaded, they meant more profit for smugglers. However, if customs officials could catch the smugglers, the officials themselves would profit from the resulting forfeiture suits in (juryless) vice-admiralty courts, as would royal governors, who were entitled to share in the forfeiture proceeds. The vice-admiralty judges and their subordinates would also profit, as more judicial business would mean more court fees.

When customs officials went to various provincial high courts (not to be confused with vice-admiralty courts) to ask for writs of assistance in the late 1760s, the officials encountered more judicial resistance than had Charles Paxton in 1761. Why? First and most obviously, the writs were now tied (as they had not been in 1761) to the most politically sensitive issues imaginable: the Townshend