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## **Oxenbridge Thacher: Boston Lawyer, Early Patriot**

**By**

**Clifford Putney**

We have learned from the laws of our mother country, and from many [of] the most public & solemn acts to consider ye rights of Britons as sacred & inviolable. And we cannot conceive that the colonists have forfeited them by their emigrating a thousand leagues, subduing immense forests, filled with savage beasts and men, to the British obedience, protecting at their own expence the British subjects at ye great distance from the capital, & thereby enlarging the British empire & commerce. Now we have ever supposed this to be one essential right of British subjects, that they shall not be subjected to taxes which, in person or by representative, they have no voice in laying.<sup>1</sup>

Foremost among the men who began the American Revolution were Boston lawyers. They included such famous patriots as James Otis, John Adams, Samuel Adams, and Robert Treat Paine. They also included less well-known figures such as Oxenbridge Thacher, a leader of the Whig Party in Massachusetts. Because Thacher died at the outset of the Stamp

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<sup>1</sup> Oxenbridge Thacher, "Draft of an Address to King and Parliament" [1764], in Massachusetts Historical Society, *Proceedings* (1882-1883), v. 20 (Boston: The Society, 1884): 51.

Act crisis in 1765, he did not participate in the historic Stamp Act Congress, and his name has generally been omitted from standard history texts. Thacher did, however, forcefully oppose the Sugar Act of 1764, and he was among the first to decry taxation without representation. In the estimation of John Adams, no one except Otis did more than Thacher in the early 1760s to produce “an awakening and a revival of American principles and feelings.”<sup>2</sup>

Oxenbridge Thacher was born in Boston on December 27, 1719. His family was one of the most respected in Massachusetts. According to one historian, Oxenbridge’s grandfather, the Rev. Peter Thacher of Milton, produced “a whole race of ministers, some of them distinguished for intelligence and wit, but upon the whole characterized by a winning gentleness of speech and life.”<sup>3</sup> Certainly the Thacher family contained quite a number of distinguished Congregational clergymen. Oxenbridge Thacher’s great-grandfather and namesake, John Oxenbridge, was pastor of the First Church in Boston, his uncle was minister of Middleborough, and his first cousin was minister in Attleborough. Oxenbridge’s father, Oxenbridge, Sr., also began his career in the ministry, serving for seven years as the first minister of what is now Canton. Later in life he left that post to become a successful brazier, a “respectable merchant,” with homes in Boston and Milton. The elder Oxenbridge was a member of Elisha Cooke’s party, and with Cooke’s help he became a minor political figure, serving first as a Boston selectman (1727-1730) and then as a representative to the General Court (1731, 1733-1736).<sup>4</sup>

Oxenbridge Thacher’s son entered Harvard with the class of 1738. He placed third in the class, a fact that attests to his family’s superior social standing; for at that time Harvard students were ranked according to family status and not academic ability. The highlights of Thacher’s college career were summed up by John Sibley as follows:

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<sup>2</sup> [www.geocities.com/At...5148/adams-john\\_american\\_revolution.html](http://www.geocities.com/At...5148/adams-john_american_revolution.html), John Adams to H. Niles (February 13, 1818).

<sup>3</sup> John Langdon Sibley, *Sibley’s Harvard Graduates* (Boston: Massachusetts Historical Society, 1958), v. 2: 377.

<sup>4</sup> Alden Bradford, *Biographical Notices of Distinguished Men in New England* (Boston: S. G. Simpkins, 1842), 390.

The younger Oxenbridge became the first Freshman to win the Hopkins Prize; later he was fined for using prohibited liquors. He remained in residence after taking his first degree, read for the ministry, testified before the Overseers as to the misconduct of Tutor Prince, and joined the first Church of Cambridge. At the Commencement of 1741, when he took his M.A., he delivered the Valedictory. For his Quaestio he prepared the negative of “An Bruta, ab omni morali obligatione esse immunia, possit probari.”<sup>5</sup>

While Oxenbridge was in college, his mother Elizabeth (sister of Sir Charles Hobby and widow of Thomas Lillie) passed away. Soon thereafter in 1740, his bereaved father remarried, taking as his second wife the widow of John Kent, Bathsheba Doggett, to live in the Thacher house on Tremont Street. The conjugal bonds between the Thacher and Kent families were reinforced one year later when the younger Oxenbridge wedded his seventeen-year-old stepsister, Sarah, the daughter of Bathsheba. She bore him eight children, the most famous of whom was Peter Oxenbridge Thacher. Peter was elected “patriot chaplain” to the Provincial Council. Eventually he became minister of the Brattle Street Church, which was then arguably the most influential church in New England.

Like his son Peter, Oxenbridge Thacher was attracted to the ministry, a career for which he studied at Harvard. Sometime after graduating from Harvard, however, he was forced to abandon his ministerial ambitions, since his feeble constitution, “slender frame,” and weak voice all precluded him from being an effective preacher.<sup>6</sup> In the words of John Eliot, a sympathetic biographer,

Mr. Thacher was sensible, learned, pious, a Calvinist, beloved by his friends, and respected by the numerous friends of a family distinguished from the first settlement of the country; yet with all these advantages, found it necessary to leave his profession, and go into a line of

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<sup>5</sup> Clifford K. Shipton, *New England Life in the 18th Century* (Cambridge, MA: The Belknap Press of Harvard University Press, 1963), 443.

<sup>6</sup> Emory Washburn, *Sketches of the Judicial History of Massachusetts* (Boston: Charles C. Little and James Brown, 1840), 223.

life [probably business], which required no abilities but a great deal of drudgery to transact. He soon failed, and was persuaded to study law; for which he had no great inclination at first.<sup>7</sup>

At the time of Thacher's entry into law, the profession was still in its infancy. "Colonial lawyers, even barristers...usually prepared their own cases and then argued them in all the courts; they also functioned as accountants, land agents, business agents and clerks."<sup>8</sup> In the three decades before the Revolution, the dozen or so lawyers who practiced in Boston were intimate colleagues, drawing upon a limited pool of clients, riding the circuit together, bedding at the same inns, and arguing for and against each other in the same courtrooms before the same judges. During their break times, they often gathered at a local tavern, perhaps to reminisce about their Harvard College days. In the evenings, they sometimes got together at someone's home to discuss law, politics, religion or poetry. Lawyers read omnivorously, for though books were somewhat scarce in the colonial period, there was a lot of time in which to read. "A lawyer," wrote James Otis, "ought never to be without a volume of natural or public law, or moral philosophy on his table or in his pocket."<sup>9</sup>

Oxenbridge Thacher did his reading for the law under the tutelage of Jeremy Gridley, "the greatest lawyer and the greatest classic scholar" at the bar.<sup>10</sup> Another of Gridley's pupils was James Otis, and Gridley once remarked that in Otis and Thacher "he had reared two young eagles who would one day peck out his eyes."<sup>11</sup> Upon completing his legal training,

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<sup>7</sup> John Eliot, *A Biographical Dictionary* (Salem: Cushing and Appleton, 1809), 454.

<sup>8</sup> Gerard Gawalt, *The Promise of Power* (Westport, CT: Greenwood Press, 1979), 11.

<sup>9</sup> "Some Newly Discovered Portraits of Early Massachusetts Lawyers with Brief Accounts of Them," *Massachusetts Law Quarterly*, v. 14, no. 2 (Nov. 22, 1928): 4.

<sup>10</sup> Washburn, 223.

<sup>11</sup> Sibley, v. 7: 523.

Thacher established his law office opposite the south door of the Old State House.<sup>12</sup> “At first [he] took divorce cases, which were regarded as refuse below the attention of any lawyer who could do better; but in a few years he worked up to a practice as good as any in Boston.”<sup>13</sup> His new-found professional eminence attracted such talented scions of the patrician class as Josiah Quincy, Jr., and John Lowell to read law at his office. Lowell, whom Thacher called “a shoe licker and A-se Kisser of Elisha Hutchinson,” eventually became the first federal judge for the District of Massachusetts; then he became one of John Adams’ infamous “Midnight Judges.”<sup>14</sup> Quincy began studying law with Thacher in 1763, and he remained to take over Thacher’s practice after the latter’s death in 1765.

Despite his choice of a secular career, Thacher was a “sound moralist” who relished theological speculation.<sup>15</sup> He admired the Rev. Jonathan Edwards, purchased a pew at Old South Meetinghouse, and became a founding member of the Society for Propagating Christian Knowledge Among the Indians of North America.<sup>16</sup> He was also a good general scholar with a sound knowledge of Latin and French. An inventory of his impressive personal library reveals his interest in a variety of subjects, including law, theology, history, medicine and geography.<sup>17</sup> As a broadly educated, well-read man, Thacher was able to command the attention of clever young conversationalists such as John Adams, who talked at length with Thacher on October 25, 1758. “Drank Tea and spent the whole Evening upon original sin, Origin of Evil, the Plan of the Universe, and at last, upon Law,” noted Adams in his diary.<sup>18</sup>

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<sup>12</sup> William Sullivan, *An Address to the Members of the Bar of Suffolk Massachusetts* (Boston: Press of the North American Review, 1825), 33.

<sup>13</sup> Shipton, 444.

<sup>14</sup> L. H. Butterfield, ed., *Diary and Autobiography of John Adams* (Cambridge, MA: The Belknap Press of Harvard University Press, 1961), v. 1: 300.

<sup>15</sup> Washburn, 223.

<sup>16</sup> *Massachusetts Archives* (Boston, [1960]), v. 14: 289.

<sup>17</sup> An inventory of Thacher’s estate is listed in the Suffolk County Probate Records, Suffolk County Courthouse, Boston.

<sup>18</sup> Butterfield, v. 1: 55.

Historians have gained much of their knowledge about Boston's early legal community from Adams' diary and his letters. In the 1750s, Adams was a struggling young lawyer. A newcomer to Boston, he sought the friendship and patronage of older, more established lawyers such as Oxenbridge Thacher. Adams thought highly of Thacher's character, but he had a lower opinion of the man's intellectual powers. In comparison to Otis, Adams wrote, "Thacher has not the same Strength and Elasticity; He is sensible but slow of Conception and Communication. He is queer and affected. He is not easy."<sup>19</sup>

According to Adams, Thacher was a highly emotional man, "extremely tender, and sensible of Pleasure and of Paine." Thacher's passions are easily touched," wrote Adams, "his Shame, his Compassion, his Fear, his Anger, etc." As an example of Thacher's "wild, extravagant, loose opinions and expressions," Adams mentioned a time when Thacher had said, "I wish myself to be a soldier. I look upon these private soldiers with their guns upon their shoulders as superior to me."<sup>20</sup>

Adams disliked the fact that Thacher's "crude thoughts and wild expressions are caught and treasured as proofs of his character."<sup>21</sup> But he conceded in reference to Thacher that "there was not a citizen of [Boston] more universally beloved for his learning, ingenuity, every domestic and social virtue, and conscientious conduct in every relation of life."<sup>22</sup> Thacher's popularity not only impressed Adams; it also impressed the historian William Tudor, who described Thacher as "unassuming and affable in his deportment of strict morality, punctual in his religious duties, and with sectarian attachments that made him, like a large majority of the people, look with jealousy and enmity on the mediated encroachment of the English hierarchy."<sup>23</sup>

With his reputation for virtue, popularity, and passionate opinions, Thacher was a natural candidate for entry into the eighteenth century

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<sup>19</sup> Ibid., v. 1: 84.

<sup>20</sup> Ibid., v. 1: 109-110.

<sup>21</sup> Ibid., v. 1: 110.

<sup>22</sup> Shipton, 444.

<sup>23</sup> William Tudor, *The Life of James Otis of Massachusetts* (Boston: Wells and Lilly, 1823), 57.

political arena. In 1745 he turned down his first elected post, that of constable; but in later years he served as clerk of the market. He also served on various committees that dealt with school governance, smallpox vaccinations, illegally parked carts, and other municipal concerns.<sup>24</sup> As a politician, Thacher “was an ardent patriot; but firm, temperate, and intelligent; no one more so.”<sup>25</sup> He had strong Whiggish views about the inalienable constitutional rights of Englishmen, and these views alienated him from Lt. Governor Thomas Hutchinson’s conservative party. They also led him to oppose the controversial writs of assistance.

Issuing writs of assistance in Massachusetts was first proposed by the Boston commissioner of customs, Charles Paxton. In 1755, he petitioned the Superior Court of Massachusetts for the ability to grant writs of assistance to aid customs officials in the execution of their tax-collecting duties.<sup>26</sup> Writs of assistance allowed customs men to proceed without warrants to enter any houses they suspected of containing uncustomed goods. The writs also permitted the seizure of such goods. Writs of assistance were viewed as legal by the Court of the Exchequer in England. But Massachusetts merchants complained that unscrupulous customs agents used writs of assistance to harass and intimidate their political enemies. To stop this from happening, merchants in Boston and Salem hired Oxenbridge Thacher and James Otis, Jr., to oppose the writs in court. The lawyers’ old mentor, Jeremy Gridley, argued against them as the king’s attorney.<sup>27</sup>

Arguments for and against the writs of assistance were heard in February and August of 1761 in the council chambers of the town hall in Boston. Underneath portraits of Charles II and James II, the lawyers

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<sup>24</sup> Shipton, 445.

<sup>25</sup> Bradford, 390.

<sup>26</sup> Josiah Quincy, *Reports of Cases Argued and Adjudged in the Superior Court of Judicature of the Province of Massachusetts Bay* (Boston: Little, Brown, & Co., 1865), 452-455.

<sup>27</sup> The merchants first asked Benjamin Prat, arguably the most highly regarded lawyer in Boston in the early 1760s, to argue their case against the writs. The government also asked Prat to take the writs case, but Prat declined to argue for either side because he was busy preparing for his move to New York to assume the chief judicial post of that colony (Washburn, 225).

involved in the writs case pleaded before judges dressed in “voluminous wigs, broad bands, and robes of scarlet cloth.” “Gridley opened the case,” wrote William Tudor. “He was followed by Mr. Thacher on the opposite side, whose reasoning was ingenious and able, delivered in a tone of great mildness and moderation.”<sup>28</sup> Thacher’s memorable presentation led John Adams to praise the lawyer’s “pure principles” and “musical eloquence.” Thacher, in Adams’ view, was no longer queer and affected. Instead, he “argued with the softness of manners, the ingenuity and cool reasoning, which were remarkable in his amiable character.”<sup>29</sup>

According to Thacher, writs of assistance were impermissible for two reasons. First, writs were not mentioned in the ancient laws of England.<sup>30</sup> Second, the fact that writs were issued in England did not mean they should be issued in Massachusetts, since “the Superior Court of Massachusetts did not share the power of the Exchequer Court of England in granting such writs.”<sup>31</sup> These arguments were countered by the opposing council, Jeremy Gridley, who maintained that the practice of the Exchequer ought to be followed by the Massachusetts courts. Gridley also asserted that “the necessity of having public taxes effectually and speedily collected is of infinitely greater moment to the whole, than the liberty of any individual.”<sup>32</sup>

Gridley’s arguments outraged Thacher’s colleague, James Otis, who in Adams’ words performed in the writs case “like a flame of fire.”<sup>33</sup> While Thacher opposed the writs for legal reasons, Otis condemned them on philosophical grounds. “Every man’s home is his castle,” thundered Otis. “And whilst he is quiet he is as well guarded as a prince in his

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<sup>28</sup> Tudor, 59-60.

<sup>29</sup> Shipton, 445.

<sup>30</sup> Quincy, 469-471.

<sup>31</sup> Shipton, 445.

<sup>32</sup> George Richards Minot, *Continuation of the History of the Province of Massachusetts Bay* (Boston: J. White & Co., 1803), v. 2: 90.

<sup>33</sup> Tudor, 60.

castle.”<sup>34</sup> Such arguments cut little ice with the justices of the Superior Court, who decided to grant the writs of assistance, though “they never dared to execute them.”<sup>35</sup>

Otis and Thacher both gained fame from the writs case, though Otis’ fame was undoubtedly greater than Thacher’s. In the years that followed the writs case, “Bluster and Whackum” (names given by one journalist to Otis and Thacher) were elected to the Massachusetts House, where they led the opposition against the king’s taxes.<sup>36</sup> Thacher often found himself eclipsed in the House by Otis, whose “learning, quickness, keen perception, bold and powerful reasoning, made him the primary source of every measure.”<sup>37</sup> But Otis’ brilliance was often offset by his erraticism, and this erraticism infuriated Thacher. When a group of barristers went before the Massachusetts Superior Court in 1763 to change the rules governing the conduct of lawyers, Otis capriciously broke ranks and spoiled the barristers’ well-laid plans. In an angry response, Thacher swore that “Whoever votes for him [Otis] to be any Thing more than a Constable let him be Anathema Marantha. I pamphleteer for him again? No. I’ll pamphleteer against him.”<sup>38</sup>

Thacher was usually able to control the erratic Otis and hold him to the Whig Party line, but Otis must have disliked being handled, since he “treated [Thacher] in so overbearing and indecent a manner that he was obliged at times to call upon the speaker to interpose and protect him.”<sup>39</sup> Being abused by Otis was undoubtedly disagreeable for Thacher, but it did

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<sup>34</sup> [www.i5ive.com/article.cfm/us\\_founding\\_era/40746](http://www.i5ive.com/article.cfm/us_founding_era/40746), Brian Tubbs, “James Otis Lights a Fire” (June 6, 2000).

<sup>35</sup> Minot, 87.

<sup>36</sup> *Boston Evening Post* (Sept. 5, 1763), Boston Athenaeum.

<sup>37</sup> Frank Washburn Grinnell, *Some Early Lawyers of Massachusetts and Their Present Influence in the Life of the Nation* (Baltimore, MD, 1921), 4.

<sup>38</sup> Butterfield, v. 1: 236.

<sup>39</sup> William Gordon, *History of the Rise, Progress, and Establishment, of the Independence of the United States of America* (London, 1788), v. 1, 205.

not persuade him to leave the House. Nor did it stop him from promoting American rights, which he extolled in a variety of pamphlets.<sup>40</sup>

Among Thacher's earliest tracts was an argument in favor of paper money. Massachusetts had long suffered from a severe shortage of silver money. In response, the Massachusetts House passed a bill in 1761 that made gold legal tender at a high rate. This stood to benefit the many debtors in the House, who wanted to increase the value of money in circulation. The wealthy creditors of the Council, however, opposed inflation, and they rejected the House bill, after which "the General Court prorogued in a bad temper." In defense of the Council's action, Thomas Hutchinson wrote an article in which he warned that raising the value of gold would hurt the Massachusetts economy.<sup>41</sup> Thacher read Hutchinson's article and decided to refute it point by point. In a 1762 pamphlet entitled *Considerations on Lowering the Value of Gold Coins, Within the Province of the Massachusetts Bay*, Thacher not only defended the House position on gold. He also went so far as to support the issuance of paper money, an anathema to anti-inflationists. Paper money would help rather than hinder the economy, argued Thacher, who emphasized that he was no enemy to trade. "Trade hath made this province what it is," he rhapsodized, "-- hath raised it from a wild forest to a fair and beautiful colony, -- hath enabled it to bear the heaviest wars without sinking."<sup>42</sup>

Two years after crossing swords with Hutchinson over the issue of inflation, Thacher crossed swords with him again over the issue of dual appointments. Hutchinson was the Chief Justice of Massachusetts in 1764, and he was also a member of the Massachusetts Council. That created a conflict of interest, argued Thacher, because "He [the judge] ought to stand quite indifferent from all parties." "Everybody must see," concluded Thacher, "that where the whole legislative and whole executive powers are

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<sup>40</sup> Along with his known works, Thacher reportedly "published some political essays in 64 or 65 against the stationing of troops in the provinces in time of peace" (Bradford, 390).

<sup>41</sup> Minot, v. 2, 102-106. Hutchinson's article appeared in the 14 Dec. 1776 edition of *The Boston Evening Post*.

<sup>42</sup> Thacher, *Considerations on Lowering the Value of Gold Coins, Within the Province of the Massachusetts-Bay* (Boston: Edes & Gill, 1762), 25.

invested in some individual, their power is uncontrollable.”<sup>43</sup> These words in favor of excluding judges from elected posts were reminiscent of Montesquieu, wrote one reader, who praised Thacher for the “precision, perspicuity, and coolness” of his writing style.<sup>44</sup>

Thacher may have been cool in criticizing Hutchinson for dual office holding, but he was passionate in his dislike of the man and his family. Thacher, observed John Adams, strongly believed that the Hutchinson family was engaged “in a deep and treasonable conspiracy to betray the liberties of their country, for their own private, personal, and family aggrandizement.”<sup>45</sup> Hutchinson for his part viewed Thacher as a moderate supporter of the Crown until shortly before the election of 1763, “when he appeared in favour of Liberty.”<sup>46</sup> “Thacher was not born a plebeian,” observed Hutchinson frequently, “but he was determined to die one.”<sup>47</sup>

Because of his unimpeachable character, Thacher came to be regarded by the Tories of Massachusetts as the most important member of the local Whig Party in the early 1760s.<sup>48</sup> “The opposition of Thacher gave the government great uneasiness,” wrote William Tudor; “his disposition and habits secured public confidence, and while his moderation preserved him from the imputation of ambition, his learning and ability gave weight to his opinions, and prevented him from being considered under the influence of others.” “They hated him more than they did James Otis or Samuel Adams,” Tudor concluded, “and they feared him more, because they had no revenge for a father’s disappointment of a seat on the Superior bench to impute to him, as they did to Otis.”<sup>49</sup>

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<sup>43</sup> Thacher, *Considerations on the Election of Counsellors, Humbly Offered to the Electors* (Boston: Edes & Gill, 1764), 5-6.

<sup>44</sup> Minot, v. 2: 112.

<sup>45</sup> Shipton, 446.

<sup>46</sup> Thomas Hutchinson, *The History of the Province of Massachusetts Bay* (London: John Murray, Albemarle St., 1828), v. 3: 104.

<sup>47</sup> John Adams to H. Niles (13 Feb. 1818).

<sup>48</sup> Shipton, 446.

<sup>49</sup> Tudor, 58.

Opposition to Thacher arose not only from conservatives, but also from moderates such as Massachusetts Attorney General Joseph Sewall, a lukewarm ally of Thomas Hutchinson. In a 1762 letter to Robert Treat Paine, Sewall inquired, “What side do you take in the political controversy? What of Otis? What of Thatcher? What think you of bedlam for political madmen?” Paine replied, “What of Thacher? Answer: as Jacob said of his own son Dan, as a serpent in the way he biteth the horses heels, so that his rider falleth backward.”<sup>50</sup>

Despite facing opposition from conservatives and some moderates, Thacher won election to the House of Representatives in 1763 with support from Boston merchants, lawyers, and the artisan-oriented South End caucus.<sup>51</sup> During his first term in office, Thacher vigorously opposed the Sugar Act. When Thomas Hutchinson was chosen to travel to England to lobby against the act, Thacher, who plainly felt that Hutchinson did not represent the true interests of Massachusetts, protested his selection. “He found fault with the choice as having a dangerous tendency to the liberties of the people,” recalled Hutchinson. When the question of retaining or rejecting Hutchinson came to the floor of the House for a re-vote, many conservative legislators had already gone home, enabling Thacher’s party to dismiss Hutchinson by a vote of 33 to 3.<sup>52</sup>

In the spring of 1764, Thacher won reelection, rising to the top of the ballot in Boston. He reentered the House with a copy of Samuel Adams’ “Instructions,” which urged delegates to uphold the rights that were due to the colonists as “free born subjects of Great Britain.”<sup>53</sup> In accordance with these instructions, Thacher, a member of the Massachusetts Committee of

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<sup>50</sup> Ralph Davol, *Two Men of Taunton* (Taunton: Davol Publishing Co., 1912), 145. Paine may not have respected Thacher, but Thacher evidently respected Paine. He was at least willing to send his son-in-law, Matthew Merriam, to Paine for legal help (Oxenbridge Thacher to Robert Treat Paine [6 Sept. 1764], Massachusetts Historical Society, Boston).

<sup>51</sup> Gawalt, 17.

<sup>52</sup> Hutchinson, v. 3: 106.

<sup>53</sup> Richard Frothingham, *The Rise of the Republic of the United States* (Boston: Little, Brown, and Co., 1872), 168. Adams’s “Instructions” were printed in *The Boston Gazette* (28 May 1764), *The Boston Post Boy* (31 May 1764), and *The Massachusetts Gazette* (31 May 1764).

Correspondence, drafted a letter to the colony's agent in London, "directing him to use his Endeavors to obtain a Repeal of the Sugar Act, and to exert himself to prevent a Stamp-Act or any other Impositions and Taxes upon this and the other American Provinces."<sup>54</sup> Thacher also drafted a petition that called upon "the King and Parliament" to stop taxing the colonists without their consent.

Thacher's "Address to the King and Parliament" was accepted without material alterations by the House, but the Council rejected it. Hutchinson offered a milder petition of his own which was endorsed by the Council but dismissed by the House. Both House and Council finally agreed to send Thacher's petition to Parliament, but not to the King. A dispute then emerged over whether the phrase "British rights," which had been substituted for Thacher's original "privileges" by the House, should be changed to "British liberties," as proposed by the Council. The Council's wording held, and Thacher's petition eventually arrived in England, though it was never formally presented to Parliament.<sup>55</sup>

In his petition, Thacher criticized the Navigation Act and the Acts of Trade. He criticized those acts again in his last pamphlet, *The Sentiments of a British American* (1764). In this work, Thacher insisted that the colonists possessed the same rights as Englishmen. He also urged Parliament to stop taxing Americans. England profited more than the colonists from the French and Indian War, argued Thacher; therefore England ought to assume payment for the war. England ought also to stop tampering with American trade, wrote Thacher, because that trade had made England great, and tinkering with it might prove ruinous.<sup>56</sup>

These were undoubtedly good arguments, but the most remarkable thing about Thacher's *Sentiments* in the opinion of John Adams was its pioneering case for the injustice of taxation without representation.<sup>57</sup> "It is esteemed an essential British right, that no person shall be subject to any

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<sup>54</sup> See Massachusetts House of Representatives, *Journal* (13 June 1764); and Massachusetts Historical Society, *Proceedings* (1882-1883), v. 20 (Boston: The Society, 1884): 53.

<sup>55</sup> Hutchinson, v. 3: 113-114.

<sup>56</sup> Frothingham, 173.

<sup>57</sup> Robert J. Taylor, ed., *Papers of John Adams* (Cambridge, MA: The Belknap Press of Harvard Univ. Press, 1977), v. 2: 334.

tax but what in person or by his representative he hath a voice in laying,” wrote Thacher in *Sentiments*. Taxing the colonists from afar was not only unfair, he concluded; it was also a departure from tradition, since in Thacher’s words,

The Colonies have ever supported a subordinate government among themselves. Being placed at such a distance of the capital, it is absolutely impossible they should continue a part of the kingdom in the same sense as the corporations there are. For this reason, from the beginning, there hath been a subordinate legislature among them, subject to the control of the mother state, and from the necessities of the case there must have been such; their circumstances and situation being in many respects so different from that of the parent state, they could not have subsisted without this. Now, the Colonists have always been taxed by their own representatives and in their respective legislatures, and have supported an entire domestic government among themselves.<sup>58</sup>

Writing *Sentiments* was one of Thacher’s last significant accomplishments. In February 1764, he informed Robert Treat Paine of his intent to go to Shirley Point to be inoculated in the Castle Hospital against smallpox.<sup>59</sup> Joseph Sewall and John Adams may have accompanied him on the same mission.<sup>60</sup> Sadly for Thacher, the inoculation was not a success. Instead of developing an immunity to the disease, Thacher caught it and infected his wife Sarah, who died at her father-in-law’s home in July.

Though broken in health, Thacher was not broken in spirit, and he continued to be politically active. In May 1765, he was elected to the House for the third and last time, dropping to third place on the ballot.

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<sup>58</sup> Frothingham, 173.

<sup>59</sup> Oxenbridge Thacher to Robert Treat Paine (22 Feb. 1764), Massachusetts Historical Society, Boston.

<sup>60</sup> Taylor, v. 1: 97-98.

Soon afterward, he was confined to a sick-bed on orders from his doctor, Samuel Gardner. Just before his death, Thacher was visited by John Adams, who wrote

He sent for me to commit to my care some of his business at the bar. I asked him whether he had seen the Virginia resolves: "Oh yes -- they are men! they are noble spirits! It kills me, to think of the lethargy and stupidity that prevails here, I long to be out. I will go out -- I will go out -- I will go into Court and make a speech, which shall be read after my death, as my dying testimony against this infernal tyranny, which they are bringing upon us." Seeing the violent agitation into which it threw him, I changed the subject as soon as possible and retired.<sup>61</sup>

Thacher apparently never made his grand departure speech. Instead he died of "pulmonary consumption" on July 9, 1765. He was buried three days later with a Masonic funeral, and his seat in the House passed to Samuel Adams.<sup>62</sup>

It was said of Thacher's old mentor, Jeremy Gridley: "He was indifferent to wealth and died insolvent."<sup>63</sup> The same can be said of Thacher. He died intestate, but did leave a library, which was scattered. He also left some land in Franconia, New Hampshire, and Wilmington, Vermont, worth 398 pounds.<sup>64</sup> "The list of his creditors, who held his notes amounting to 412 pounds, sounds like a Social Register." The largest creditor was the clerk of the Suffolk County Inferior Court, Ezekiel Goldthwait, to whom Thacher owed 59 pounds.<sup>65</sup> Thacher's father died soon after his son, entreating his friends Thomas Hubbard, Thomas

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<sup>61</sup> Tudor, 66.

<sup>62</sup> Washburn, 223.

<sup>63</sup> *Ibid.*, 212.

<sup>64</sup> Suffolk County, Massachusetts, Probate Records, v. 71 [1765]: 325.

<sup>65</sup> Shipton, 449.

Cushing, and Col. Josiah Quincy to look after his grandchildren's education and welfare.<sup>66</sup>

The younger Thacher died on the eve of the American Revolution. To John Adams, he was an inspirational figure, deserving of admission into the pantheon of patriotic greats.<sup>67</sup> Had Thacher lived a few more years, he would undoubtedly have become one of the best known figures of the Revolution. But as one historian noted, he died "so early in the struggle for independence, that his name is not generally associated with those leading spirits who survived him."<sup>68</sup>

Reflecting on Thacher's death, his old enemy, Thomas Hutchinson, felt moved to observe, "Death is the common enemy of patriots and courtiers." Thacher's death, continued Hutchinson, "frustrated the expectations which many had formed of long continued benefit from [his] talents in supporting the side of liberty."<sup>69</sup>

A more fulsome elegy for Thacher appeared in the July 18, 1765, edition of *The Boston News-Letter*. The elegy was written by a friend of Thacher, who said this of the patriotic lawyer:

Once warm with Zeal in honest Virtue's Cause,  
That Tongue spoke free, and wielded Britain's Laws;  
With equal Eloquence, unwarp'd, display'd,  
For Wealth or Poverty, it's pow'rful aid;  
Alike to him, Worth could it's Charm impart,  
In King, or Beggar, touch'd his gen'rous Heart.  
From humble Birth, to Path's of just Renown,  
He dawn'd, he brighten'd to the Hour of Noon!  
Learn'd, yet not vain, in useful Science read,  
Fair Freedom's Cause with manly Strength he plead;  
A Patriot's Flame, with pious Zeal sustain'd,  
His Country's Rights, with jealous Care maintain'd;  
With grateful eye beheld the Glory past,

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<sup>66</sup> Suffolk County, Massachusetts, Probate Records, v. 72 [1766]: 230.

<sup>67</sup> John Adams to H. Niles (13 Feb. 1818).

<sup>68</sup> Washburn, 223.

<sup>69</sup> Hutchinson, v. 3: 104.

Drop'd a sad Tear, and fighting breathed his last.<sup>70</sup>

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<sup>70</sup> *Boston News-Letter* (18 July 1765).