

Exploring the Bounds of Liberty

Exploring the Bounds of
LIBERTY

*Political Writings of Colonial British
America from the Glorious Revolution
to the American Revolution*



VOLUME III

Edited and with an Introduction by
Jack P. Greene and Craig B. Yirush

Latin Translations by Kathleen Alvis



LIBERTY FUND

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The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word “freedom” (*amagi*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

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Contents

Introduction	xi
Editors' Note	xxi
Translator's Note	xxiii
Acknowledgments	xxv

VOLUME I

1. William Penn, The Excellent Priviledge of Liberty and Property (Philadelphia, 1687)	3
2. [John Palmer], The Present State of New England (Boston, 1689)	47
3. Gershom Bulkeley, The People's Right to Election (1689)	95
4. [Edward Littleton], The Groans of the Plantations (London, 1689)	115
5. [Edward Rawson], The Revolution in New England Justified (1691)	147
6. John Montague, Arguments Offer'd to the Right Honourable the Lords Commissioners (1701)	195
7. [Thomas Hodge], Plantation Justice, London (1701)	215
8. "An American" [Benjamin Harrison], An Essay upon the Government of the <i>English</i> Plantations on the Continent of America (London, 1701)	227
9. [William Penn], The Allegations Against Proprietary Government Considered (1701)	279

10. Reflections on the Printed Case of William Penn, Esq., in a Letter from Some Gentlemen of Pensilvania (1702)	287
11. Anonymous, A Letter from a Merchant at Jamaica to a Member of Parliament in London (London, 1709)	297
12. Anonymous, Truth Brought to Light (London, 1713)	313
13. Anonymous, Some Instances of the Oppression and Male Administration of Col. Parke (1713)	327
14. Samuel Mulford, Samuel Mulford's Speech to the Assembly at New-York [New York, 1714]	345
15. [Robert Hunter], <i>Androboros: A Biographical Farce in Three Acts</i> [New York, 1714]	355
16. [James Spence and Roderick MacKenzie], <i>The Groans of Jamaica</i> (London, 1714)	395
17. [William Gordon], <i>A Representation of the Miserable State of Barbadoes</i> (London, 1719)	463
18. Elisha Cooke, <i>Mr. Cooke's Just and Seasonable Vindication</i> (Boston, 1720)	485
19. Anonymous, <i>A True State of the Case between the Inhabitants of South Carolina, and the Lords Proprietors of That Province</i> [London, 1720]	499
20. Jeremiah Dummer, <i>A Defence of the New-England Charters</i> (Boston, 1721)	509
21. [Samuel Cranston and] R. Ward, <i>A Vindication of the Governour and Government of His Majesty's Colony of Rhode-Island</i> (Newport, 1721)	551
22. David Lloyd, <i>A Vindication of the Legislative Power</i> (1725)	561
23. James Logan, <i>The Antidote</i> (1725)	573
24. John Bulkley, "Preface" in <i>Roger Wolcott, Poetical Meditations</i> (New London, 1725)	595

-
25. J. N., *The Liberty and Property of British Subjects Asserted* (London, 1726) 629
26. Daniel Dulany, *The Right of the Inhabitants of Maryland to the Benefit of the English Laws* (1728) 649
27. "Amicus Reipublicae," *Trade and Commerce Inculcated* ([Boston], 1731) 677
28. "A Sincere Lover of Virginia" [Sir William Gooch], *A Dialogue* (Williamsburg, 1732) 725

VOLUME II

29. William Smith, *Mr. Smith's Opinion Humbly Offered to the General Assembly of the Colony of New-York* (New York, 1734) 743
30. Joseph Murray, *Mr. Murray's Opinion Relating to the Courts of Justice in the Colony of New-York* (New York, 1734) 809
31. Sir John Randolph, *The Speech of Sir John Randolph, upon His Being Elected Speaker of the House of Burgesses* (Williamsburg, 1734) 869
32. ["Americanus"], *Letter to the Freeholders and Other Inhabitants of the Massachusetts-Bay* (Newport, 1739) 875
33. [Maurice Moore], *A True and Faithful Narrative of the Proceedings of the House of Burgesses of North-Carolina* (Williamsburg, 1740) 887
34. [William Douglass], *A Discourse Concerning the Currencies of the British Plantations in America* (Boston, 1740) 933
35. Thomas Baxter, *A Letter from a Gentleman at Barbados to His Friend* (London, 1740) 979
36. Samuel Chew, *The Speech of Samuel Chew, Esq.* (Philadelphia, 1741) 1005

-
37. "Remarks on the Maryland Government and Constitution,"
American Magazine (1741) 1021
38. [Jonathan Blenman], Remarks on Several Acts of
Parliament (London, 1742) 1049
39. Thomas Stephens, The Hard Case of the Distressed
People of Georgia (London, 1742) 1117
40. [Edward Trelawny], An Essay Concerning Slavery
(London, 1746) 1131
41. Samuel Nevill, Mr. Nevill's Speech to the House of
Representatives of the Colony of New-Jersey (*New York
Weekly Post Boy*, May 19, 1746) 1165
42. "A Freeholder," "A Native of Maryland," "Americano-Britannus,"
"Philanthropos," and Anonymous (*Maryland Gazette*, 1748) 1185
43. [Archibald Kennedy], An Essay on the Government
of the Colonies (1752) 1261
44. Anonymous, The Voice of the People (Boston, 1754) 1293
45. [Landon Carter], A Letter from a Gentleman in Virginia
to the Merchants of Great Britain (London, 1754) 1301
46. George Frye, The Case of Capt. George Frye (London, 1754) 1323
47. Anonymous, A Short Account of the Interest and Conduct
of the Jamaica Planters (London, 1754) 1359
48. Stephen Hopkins, A True Representation of the Plan
Formed at Albany, for Uniting All the British Northern
Colonies (Newport, 1755) 1371
49. "Philolethes" [Samuel Ward], A Short Reply to
Mr. Stephen Hopkins's Vindication (Newport, 1755) 1391
50. [William Smith], A Brief State of the Province of
Pennsylvania (London, 1755) 1399
51. Anonymous, An Answer to an Invidious Pamphlet, Intituled,
A Brief State of the Province of Pennsylvania (London, 1755) 1421

52. "Veridicus" [Thomas Frearon], The Merchants, Factors, and Agents Residing at Kingston, Complainants, Against the Inhabitants of Spanish-Town (London, 1755) 1477

VOLUME III

53. [William Livingston], An Address to His Excellency Sir Charles Hardy (New York, 1755) 1541
54. Daniel Fowle, A Total Eclipse of Liberty (Boston, 1755) 1555
55. J.W., A Letter from a Gentleman in Nova-Scotia, To a Person of Distinction on the Continent ([London], 1756) 1579
56. T[homas] W[right] and [William Wragg], Letters to the *South Carolina Gazette* (May 13, June 5, 1756) 1589
57. [Landon Carter], A Letter to a Gentleman in London, from Virginia (Williamsburg, 1759) 1613
58. Richard Bland, A Letter to the Clergy of Virginia (Williamsburg, 1760) 1637
59. [Joseph Galloway], A Letter to the People of Pennsylvania (Philadelphia, 1760) 1659
60. James Otis, A Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts-Bay (Boston, 1762) 1679
61. Massachusetts House of Representatives: Instructions to Jasper Mauduit (June 15, 1762) 1723
62. John Camm, A Single and Distinct View of the Act, Vulgarly Entitled, The Two-Penny Act (Annapolis, 1763) 1737
63. Richard Bland, The Colonel Dismounted: Or the Rector Vindicated (Williamsburg, 1764) 1777
64. John Dickinson, A Speech, Delivered in the House of Assembly of the Province of Pennsylvania (Philadelphia, 1764) 1835

65. Joseph Galloway, <i>The Speech of Joseph Galloway, Delivered in the House of Assembly, of the Province of Pennsylvania (Philadelphia, 1764)</i>	1869
66. "An American" [Arthur Lee], <i>An Essay in Vindication of the Continental Colonies of America (London, 1764)</i>	1933
67. [Nicholas Bourke], <i>The Privileges of the Island of Jamaica Vindicated (London, 1766)</i>	1955
68. [Robert Munford], <i>The Candidates; Or, The Humours of a Virginia Election [1770]</i>	2023
69. Anonymous, <i>Observations upon the Report Made by the Board of Trade against the Grenada Laws (London, 1770)</i>	2053
70. John Gardiner, <i>The Argument or Speech of John Gardiner, Esquire (St. Christopher, 1770)</i>	2085
71. "A Freeman" [John J. Zubly], <i>Calm and Respectful Thoughts on the Negative of the Crown (Savannah, 1772)</i>	2123
72. "A Planter" [Edward Long], <i>Candid Reflections upon the Judgement on What Is Commonly Called the Negroe-Cause (London, 1772)</i>	2149
73. Samuel Estwick, <i>Considerations on the Negroe Cause (London, 1773)</i>	2193
74. A Member of the Assembly [John Day], <i>An Essay on the Present State of the Province of Nova-Scotia [Halifax, 1774]</i>	2231
75. Anonymous, <i>Considerations on the Imposition of 4½ Per Cent; Collected on Grenada, Without Grant of Parliament (London, 1774)</i>	2249
Index	2269

[William Livingston],
An Address to His Excellency
Sir Charles Hardy
(New York, 1755)



WHEN SIR CHARLES HARDY assumed the governorship of New York in 1755, William Livingston, a young man who had already gained a reputation as an effective political commentator, greeted him with this pamphlet. Livingston's ostensible intention was to present Hardy with "a general account of our political state," and he emphasized the colony's mixed political and cultural heritage from its Dutch and English past, stressing its inheritance "from such ancestors" of "the highest relish, for civil and religious LIBERTY," which at once made New Yorkers susceptible to political divisions and "party-rage," produced "an unbounded love of English-Liberty," and made them passionate advocates for religious liberty. Religious liberty, he explained, meant that, in contrast to a few who had an excessive "fondness for the *English* hierarchy," they mostly had a strong "aversion to ecclesiastical establishments," a "levelling principle," he explained, that was "no innovation, in our colony constitution; but rather one of its original and fundamental ingredients." With these observations on religion, Livingston got to the underlying intent of his pamphlet, which was to enlist Hardy in the fight over whether newly founded King's College, now Columbia University, should have a religious affiliation. "The inhabitants of this colony," he explained, "are *equally* protestants" and expected "an *equal* indulgence from the government. As they are *alike* loyal subjects," he continued, "they hope for the *same* privileges and protection." Closing with a declaration of

his opposition to “the pernicious doctrine, that the people have no right, to inspect into, or animadvert upon, the actions of their superiors,” he warned Hardy that by “distinguishing one persuasion, and depressing the rest,” a governor would, “instead of glory and applause, earn only insecurity, and reproach.” (J.P.G.)

AN
ADDRESS

TO

HIS EXCELLENCY

Sir CHARLES HARDY, Knt

Captain General and Governor in Chief of
the Province of *New-York*, and Territories
thereon depending in AMERICA,
and Vice-Admiral of the same.

By the AUTHOR *of a Weekly Paper,*
ENTITLED, *The WATCH-TOWER*

NEW-YORK:
M,DCC,LV.

To his Excellency Sir Charles Hardy, &c.

May it please your EXCELLENCY,

Tho' the people of this province, claim not the honour, of a personal acquaintance with your EXCELLENCY; yet his Majesty's advancing you to this exalted station, when the honour of his imperial crown, and the success of the *British* arms, so greatly depend upon the wisdom of your conduct, is an illustrious proof of your EXCELLENCY's superior merit. At this important crisis, when an enemy equally aspiring and perfidious, is insolently meditating, to tarnish the lustre of his diadem; and trample on the dignity of the nation; it is to be presumed, that our august sovereign, in appointing a governor, for this part of the theatre of all their intended violence and insult, was peculiarly directed in his choice, by his princely wisdom and the maturest deliberation. From this obvious reflection, and the concurrent reports of your EXCELLENCY's amiable character, the universal joy and acclamation upon your long-wished-for arrival, was a tribute of honour, not more due to your EXCELLENCY, than cordially offered by the people. 'Twas the natural expression of minds overflowing with gratitude, for that paternal and royal bounty, which had provided them a ruler, with talents to plan; and resolution to execute.

This address, SIR, will perhaps appear, not more singular in the materials that compose, than in the motives which inspire it. The author is neither led by custom; nor urged by interest. He intends not to play the panegyrist; but to communicate the sentiments,—the *genuine* sentiments of his heart. Instead of congratulating your EXCELLENCY with the smoke of incense; he begs leave to approach you, with the more substantial sacrifice of sincerity and affection. An oblation this! of greater value with men of sense; and therefore, to you, SIR, more acceptable, than the solemn farce of ceremony, and the accustomed delusions of complement. He would, with the greatest humility, convey to your judicious ear, what those in your eminent station, *seldom* hear; and what it is the interest of many, they should *never* hear. He is prompted to do himself this honour, by an ardent affection for the prosperity of his country; and the warmest wishes for the glory and tranquility of your administration. In defence of the former, he has long toiled with indefatigable vigour; and to promote the latter, he would as cheerfully lend his aid, by opening to your EXCELLENCY's view, such interesting scenes, as the artful and designing, may endeavour to misrepresent, or conceal.

Tho' your EXCELLENCY has entered a tempestuous ocean; yet nothing is easier, than to out-ride the storm. It is, in short, only refusing the command, to those who will rather sink the vessel, than not govern the master.

Yes,—*may it please your EXCELLENCY*, I have known men who were *foremost* in resounding a governor's fame; and having rendered him odious to the people, *foremost* in exciting a clamour against him. That we have still amongst us, such specious deceivers, I hope you, SIR, by a suitable precaution, may never experience.

To inspect into their own affairs, not blindly trusting to favourites, is the most durable security and renown, of those at the political helm. It was therefore a wise remark, and worthy the princely mouth that uttered it, which an Emperor of *Persia* made to a creature of his, who told him, that he degraded the royal majesty, by being seen too much by the people. "No, replied the monarch, it is owing to the tricks and frauds of flatterers, that a prince is shut up in solitude; whence they themselves may have the larger scope, to tyrannize in his name. He who would truly reign, must see all, and direct all."

Against such men, and their insidious devices, your EXCELLENCY will, doubtless, be ever on your guard. They *kiss* only with a view to *betray*; and in the language of an inspired potentate, *tho' their words are smoother than oil, yet they be very swords*: Sedulously disguising their own counsels; prone to blacken others; and alike imperious and fawning. To keep men of candour and sincerity at a distance, they will misrepresent, decry, and traduce them. The clamours too of the people, are often, by such crafty seducers, kept from a governor's knowledge; and he is murmured at for measures, which he believes to be popular.

If they cannot lord it in the name of their master; they will strive to create faction against him: And if to them he resigns the sway; his will be the reproach of their wanton domination. But, thanks to heaven! their power of doing mischief, is decreased, in proportion as their mischievous designs, have been explored and divulged. To be deaf therefore to their wily blandishments, is certain security and fame; as a resignation to their misguidedness, is inevitable infelicity and ruin.

Too often, has it been the misfortune of rulers, to repose an excessive confidence in pretended friends, who are the worst of enemies. Alas, how greatly exposed! surrounded as they are, by subtle and interested men; while the virtuous and modest, retire with commiseration and sorrow, because

they abhor flattery; and will not ensnare. They wait till they are sought, and seldom, very *seldom*, are they inquired after. Ill men on the contrary, are impudent and insinuating; dextrous at dissimulation; and to sooth the passions of those in power, ever ready to violate honour and conscience. How unhappy therefore is a governor, open to the artifices of such fallacious favourites, and neglecting to encourage men of veracity and a becoming freedom!

The author of this address, has made it an invariable rule, to flatter no man. He has unfolded the pernicious schemes of designing politicians, without passion or prejudice. He never pursued any interest, but that of the common weal; and thence the malice of those, whose views were inconsistent with the public good. For this he hath been threatned and defamed:— For this, been flattered and cajoled. But as he neither courts the favour, nor dreads the frowns, of the great; he has been alike uninfluenced by hope or fear; and equally despised their vengeance, or applause.

Instead therefore of imitating, the pompous adulation and parade, of common addresses; he humbly begs leave to testify his high respect for your EXCELLENCY, by laying before you a general account of our political state.

This would probably, to the superficial and empty, appear less courtly and polite: But will, I am confident, by a gentleman of your EXCELLENCY'S judgment, be esteemed more useful and sincere.

I shall therefore, SIR, without farther apology, beg leave to acquaint you, that the greatest number of our inhabitants, are descended either from those, who with a brave and invincible spirit, repelled the spanish tyranny in the *Netherlands*; or from those, who for their ever-memorable opposition, to the arbitrary measures of King CHARLES 1st, were constrained to seek a refuge, from the relentless sword of persecution, in the then inhospitable wilds of AMERICA.

From such ancestors, we inherit the highest relish, for civil and religious LIBERTY. A patrimony, more permanent and invaluable, than the most affluent riches, or extensive possessions! Inamoured as we are with freedom, we are at the same time, too incurious, minutely to examine our happy constitution. Hence we are easily captivated, with appearances, instead of realities. This fatal inattention is encouraged, by some, who under the gilded title of patriots, are daily forging chains for their fellow subjects. And indeed, while the popular pulse beats high for privileges, but incompetently understood, it is easy for a man of fortune, and influence, to raise numbers

at his call. Such a temper in our inhabitants, joined to so inglorious a negligence, gives ample scope, to the restless and insatiate spirit of ambition. And when the mock-patriot, thinks fit to sound the alarm, the administration is tumbled into anarchy; and the province thrown into convulsions: Or is he not indulged with an immoderate share of power, his disappointment swells into indignation and revenge. And thus falls the public peace, a dreadful sacrifice to private pique and resentment.

With too much of this spirit, have our most important concerns, for many years past, been conducted. We have seen a late administration, tho' far from unexceptionable, frequently embarrassed, and opposed, thro' a pretended zeal for the public: And a mighty faction erected, upon the sordid foundation, of a personal quarrel. The smallest oversights in government, were then represented, as premeditated encroachments on the rights of the subject; and errors, to the best of men unavoidably incident, aggravated into crimes, inexpiable, and enormous. Instead of the cool deliberate voice of reason, matters of the utmost moment, were managed by the virulence of party-rage. On the pile of vulgar error, they mounted their glory; and spread artificial mists, before the eyes of credulous simplicity. To display their consequence, they created monsters only to quell them; as HERCULES demanded a HYDRA, for the illustration of his valour. The bulk of the people, the mean while, were unhappily divided, as he who bore the sway, or they who, aimed at usurping it, could gain the ascendant. Thus were we rendered the pliant tools of those, whose invariable principle is, absolutely to rule, or absolutely to oppose a governor. To point out persons, would be a task, both unnecessary and invidious. Your EXCELLENCY'S superior penetration, will soon discover, those men of dark intrigues. And by holding the reins of government with an equal and steady hand, you will infallibly disappoint their designs, whether they aim at governing, or confounding the province.

Apt as we are, to split into parties, thro' a zeal for liberty and our misconception, in many cases, of the true interest of the province; we are, however, when united, an easy and a generous people: *Easy* in our submission to a wise and prudent administration; and *generous*—in supporting, with a voluntary and unsparing hand, the true dignity and lustre of government. The only requisite therefore, to render a gentleman of your EXCELLENCY'S distinguished station; as happy, as eminent, is an equal distribution of good offices, to persons of every denomination. The seditious and aspiring, who

would swell their importance, by means of a slavish faction, and a misrepresentation of men of virtue and independence, will undoubtedly meet with your contempt and abhorrence.

Properly to describe our unshaken loyalty, and indissoluble attachment, to his MAJESTY'S most sacred person, and illustrious house, should be the task of a prompter genius, and a more accomplished pen. So universal a warmth, for the glorious REVOLUTION, and its more glorious consequences, animates every breast, that the least disaffaction, to the protestant descent, in the imperial house of HANOVER, is a blemish, from which we can boast, a total exemption. Nor to be admired at indeed, is this our exemplary allegiance; It is a virtue naturally resulting, from an unbounded love of ENGLISH-LIBERTY, which to our *august sovereign*, and his *royal father*, has ever been an object, of the most diligent attention. Such unparalleled fidelity, to the best of Kings, must necessarily ensure to his representative, an obedience the most chearful, and undissembled. And while your EXCELLENCY, continues deaf, to the evil insinuations of those, who aim at inordinate power, our submission to your pleasure, will be as unlimited, as we have reason to hope, your administration will be just.

Our religious character, is as multiform, as our origin is various. Popery however, is not to be enumerated, among our several professions. We equally detest the doctrines, and the interests of *Rome*. With the same passion for FREEDOM, so strongly apparent, in our *secular concerns*, are we also inspired, in matters of *religion*. And different as our sentiments are on that momentous subject, (bating a few, whose fondness for the *English* hierarchy, inclines them to wish for what they would perhaps, be the first to deplore,) we universally concur, in an aversion to ecclesiastical establishments. This leveling principle, as some are pleased most improperly to stile it, is no innovation, in our colony constitution; but rather, one of its original and fundamental ingredients. It is a principle, to which we owe our numbers,—our prosperity,—our opulence. A principle indispensibly requisite, in the formation of every infant state: A principle in fine, chiefly adverted to, in the capitulation and surrender of this province, by the *Dutch*; and in the conditions upon which it was settled, by the DUKE of YORK: The latter, expressly declaring, “that every township, shall pay their own minister, according to such agreement, as they shall make with him; the ministers being elected, by the major part, of the housholders and inhabitants of the town.” And let me humbly presume, to assure your EXCELLENCY, that

nothing is more odious to the people, who have the honour to be governed by you, than religious tests, and discriminations, for civil purposes. *Jests* and *discriminations*, so expressly repugnant, to the very genius of our provincial constitution. Distinctions of this kind, are indeed artfully set up by some, with whom *DIVIDE ET IMPERA*,¹ is a never-failing maxim. They industriously administer fuel for contention, between those, who are weak enough to submit to their guidance; and such, as resolutely refuse the same implicate subjection. By giving a preference to the former, they necessarily excite the resentment of the latter. Thus are we divided, that we may be weakened; and consequently more easily subdued.

This important scene, in our political drama, 'tis presumed will no sooner open to your EXCELLENCY'S view, than be wisely closed, by your vigilant circumspection: Your happy arrival, forbodes the speedy abolition, of so obnoxious a distinction: and encourages every honest man, of whatever profession, to hope for that protection and confidence, which real merit, seldom fails to receive, from gentlemen of your benevolent disposition, and courtly refinement.

To conclude this address, without some account of our college, which has long been the subject of animated debate, would, considering the importance of the dispute, be an unpardonable omission. It is universally esteemed, an affair deserving the utmost attention, as its defeat or success, must eventually issue, either in the corroboration or destruction, of our sacred and political privileges. I cannot, for this reason, think it a matter, altogether unworthy your EXCELLENCY'S notice. Every good magistrate, will make the care of his people, in some degree, his *own* care. Nor would any wise ruler, in a mixt government at least, chuse to be unacquainted, with the inclinations of his inferiors; or the principles, and motives, that actuate the contending parties. The body politic, as well as the natural body, cannot be preserved in its bloom and vigour, without a competent knowledge, of its constitution, and frame. These considerations embolden me, to implore your EXCELLENCY'S patience, while I exhibit a summary sketch, of the rise, progress, and present state of our college. Aware of the flatness, inevitably attending historical narrations, I shall confine myself to all possible brevity. Your EXCELLENCY may perhaps condescend, after the present hurry,

1. ["Divide and conquer."]

occasioned by your joyful accession; to peruse some late papers, in which this interesting topic, hath been more diffusely canvassed.

From the first settlement of this province, to the year 1746, the education of youth, however advancive of its prosperity, was shamefully, and almost totally neglected. A jealousy of our neighbours, whose attention to the progress of science, was nearly coeval with the birth of their colonies, at length gave a spring to our ambition. Measures were not concerted, for the cultivation of literature, and the glorious introduction of light, and knowledge. As we are divided, into a great variety of protestant denominations, who all participated in the expence of this noble design, reason dictated, justice demanded, and policy required, the most LIBERAL CONSTITUTION. Sensible of this,—let the authors of the scheme, with confusion hear the story! sensible of this; and fearful of a disappointment, *party-spirit* concealed its malignant purpose, of ingrossing the government of the intended seminary; and contracting its basis, to subserve the narrow aims of a faction. *Concealed* it,—till several thousand pounds were raised by public lottery, for its erection. To their own perpetual infamy, and the general, tho' unmerited dishonour of their persuasion, a small juncto² of the church, hatched this baneful cokatrice. To carry the project into execution, before the public had the least intimation of their latent designs, they privately conspired an establishment by CHARTER, in which they reserved to themselves, the power, the *exorbitant* power, of ruling the college, according to their sovereign, uncontrollable pleasure. The subversion of this fastidious babel, was owing to his late excellency governor *Clinton*; who boldly refused a patent, for so odious a monopoly. The evidence of this transaction, accidentally reached the ear of a late writer, who foreseeing the meditated mischief, exposed it to the world, in a course of papers then publishing, under the title of the *Independent Reflector*.

Unaw'd and unabash'd, they still prosecuted their measures, with unre-mitted assiduity. Measures, peculiarly detrimental to their country; and adapted to subjugate the whole province, to their boundless dominion. The detection of these subdulous machinations, at once inflamed the resentment of the contrivers; and inspirited them with fresh ardor, for its speedy accomplishment. Their conduct, blended with fraud and imposition, became in the year 1753, so shameless and rampant, that instead of entering upon a detail of particulars, tenderness to their reputations, enjoins me to throw

2. ["A group of men assembled for a purpose"; also *junto*.—Tr.]

over it the veil of silence. The discovery of that, and several other gradations, towards the mark of their ambitious views, will doubtless be made by your EXCELLENCY, upon a farther acquaintance with your province.

Permit me then, Sir, to inform you, that tho' the several branches of the legislature, had, by the sanction of a law, reserved solely to themselves, the disposition of the sums raised for a college; and deposited them in the hands of trustees, impowered to set them at interest; and made accountable to the legislative body; yet without their consent or approbation, those very trustees on the 20th of *May*, 1754, petitioned his honour the lieutenant governor, for a charter. A charter, clogged with discriminating tests, and formed to gratify the ambition and arrogance of an aspiring party! The injustice and impolicy, of incumbering a new colony of protestant refugees, of various persuasions, with an ecclesiastical test, tho' strongly insisted upon, in a protest of one of their own members, were arguments insufficient to dissuade them, from so partial and unrighteous a scheme. A scheme unnaturally calculated, to exclude from the PRESIDENT'S CHAIR, every man in the province, not in communion with an episcopal church; however distinguished for his merit, his genius, his erudition, or his loyalty.

The people, who have long felt the benign influences of his most gracious MAJESTY'S auspicious reign, were naturally incensed at an innovation, which obliquely impeached, their loyalty to their SOVEREIGN, and their affection for the illustrious house of *Hanover*. That such would be the effect, of this extraordinary procedure, was obvious to two gentlemen of the board of council, who protested against granting the petition. Its tendency to foment feuds and animosities, amongst his majesty's subjects, at this critical juncture, is particularly alledged, among other irrefragable reasons, assigned for their dissent. These appear on the minutes of council, which your EXCELLENCY hath a right, at all times to consult. Tho' a majority of the committee of that honourable board (two of whom, [surprising to relate] were among the petitioning trustees) advised his honour in favour of the petition: Yet, so far were the people from being satisfied, that the current of all public and private conversation, ran violently, not only against the *exclusive* clauses, but any kind of charter constitution. Your EXCELLENCY will reasonably expect, that the sense of the community, discovered itself in the grand assembly of their representatives. It did so. The flame which had long been enkindling, in the great mass of the people, impatient of further restraint, at length, broke out in the house; and the trustees were

ordered, to give an account of their proceedings. At this juncture (on the 31st of *October*) his honour, after five months consideration of the charter, gave his *FIAT* for its passing the seals: And in a few days after, the assembly resolved, to apply the money to no other college, than such, as should be incorporated and established, by legislative act. A bill for that purpose, was accordingly brought in, read and committed; and afterwards printed, for the public animadversion. When the *Dutch*, the most numerous of our inhabitants, had embarked in the affair, by petitioning the house, for a clause in the act, establishing a *theological professor* of their communion; and the popular voice, was loud against the charter, it was reasonably hoped, that its partizans would have dropped the project. A project, that without the approbation of the people, could never attain, the true ends of an institution, for the education of youth. But instead of a cordial concurrence in the bill, it was by the authors of the charter, vehemently opposed. They vainly relied on their imaginary power, to vanquish their adversaries; and wheedle the *Dutch*, into an acquiescence in their measures, by obtaining a new charter, which only in part conferred, what the latter had by their petition, requested of the assembly. Flushed with these sanguine prospects, the majority of the *governors*, appointed by the first charter, procured without the consent of the *Dutch*, a supplemental patent for a professor. Soon after, on the 12th of *June*, just before your EXCELLENCY'S expected arrival, they petitioned the house (in the absence of several of the members averse to the scheme) for a confirmation of both the charters; and their investure with the monies, set a part for the use of a college. But agreeable to the general spirit of sundry petitions from the counties, to their respective representatives, the consideration of this extraordinary request, was postponed till after *September* next.

Loud and universal, was the joy of the public; who in this interval, impatiently waited your EXCELLENCY'S appearance, to give a favourable turn to so important an affair. Whether this will best be effected by a dissolution (the customary complement on the arrival of a new governor, scarce ever omitted; and strongly commended in the first address of the general assembly to Mr. *Clinton*) or any other measures, is not mine, but your EXCELLENCY'S, to determine.

From this simple relation of facts, might be deduced several observations, to display in a stronger light, the peculiar genius and temper of a province, which not more joyfully hails, your EXCELLENCY'S safe arrival; than it congratulates itself, on the delightful prospect, of your appeasing

our commotions, by a righteous administration. But as I have already, Sir, too long trespassed on your patience, I shall only take the liberty to say, that as the inhabitants of this colony, are *equally* protestants, they expect an *equal* indulgence from the government. As they are *alike* loyal subjects, they hope for the *same* privilege and protection: To secure this priceless jewel, their ancestors abandoned their native soil; crossed the perilous ocean; and settled a howling wilderness. No wonder then, if to their posterity, this remains ever dear, and beyond all estimation precious. No wonder, if a partial distribution of honours, is ey'd with jealousy; and produces disaffection, and clamour. Less marvel still, if a governor, for distinguishing one persuasion, and depressing the rest, should, instead of glory and applause, earn only insecurity, and reproach.

Besides these unquestioned privileges of Englishmen, I claim no higher boon, than the unmolested immunity, of treating public men, and measures, with the freedom and impartiality, always indulged by the best administrations, nor even restrained but by the worst. To me, utterly unintelligible is the pernicious doctrine, that the people have no right, to inspect into, or animadvert upon, the actions of their superiors. A doctrine, fit only for a tyrant to enjoyn, and slaves to obey. A doctrine, invented by wicked men, to screen their flagitious deeds, from public cognizance, and public censure. Truth, and rectitude, dread not the closest inquiry: And guilt, and iniquity, ought to be detected, arraigned, and condemned, however gorgeously appavelled, or highly exalted. In these sentiments, I am sure of being joined, by every man, whose personal merit, (like that of your EXCELLENCY'S) amidst the greatest external splendor, constitutes his real,—his substantial dignity.

With singular delight, Sir, we anticipate the superior blessings, to arise from the elevation, of so humane and beneficent a gentleman, to the seat of government. A station, that will enable him, to exercise diffusive and god-like benevolence—to be the patron of the oppressed,—the scourge of the oppressor,—to administer relief to the necessitous—and by his powerful authority and example, at once to encourage, and to embellish, virtue. By VIRTUE here, I mean not, a superstitious devotion, an implicit faith, or a bigotted attachment to those solemn fooleries, too often miscalled, by that venerable name; but an habitual disposition of doing good to all; of injuring none; and of promoting the happiness of human kind.

This is glory, solid, intrinsic, and undecaying! *Undecaying* indeed!—for such is the effulgence of genuine worth; and such the transcendent dignity,

that beams from PATRIOTISM and PUBLIC-SPIRIT, that the trophies thence acquired, will triumph over all the monuments, erected to exterior and advantitious grandeur. And while the rich, and the fortunate, are had in momentary remembrance by portraits and statues; the HERO and the PATRIOT, will survive in the affections of posterity; and disseminate their actions, thro' distant ages.

That your EXCELLENCY may long deserve, and as long enjoy, the smiles of your royal master; the love of a happy people; and the benediction of the KING OF KINGS.—That you may constantly be illuminated, by the boundless source of light; and having closed this mortal scene, with great renown and length of days, be finally advanced, to the supreme honours of immortality,—is the fervent prayer of him, who desires to be ever esteemed, what he sincerely is, with the profoundest submission,

SIR, YOUR EXCELLENCY'S *most humble, most dutiful,*
and most obedient servant,

The AUTHOR of the WATCH-TOWER.

Daniel Fowle,
A Total Eclipse of Liberty
(Boston, 1755)



NOT ALL THREATS to individual liberty in colonial British America came from corrupt or arbitrary metropolitan officials. As this selection shows, some came directly from the elected legislatures themselves. In the fall of 1754, the Massachusetts Assembly took such offense at *The Monster of Monsters* (this selection will be included in the ebook-only edition) that it ordered it burned by the common hangman and set about an investigation of who wrote and who published the tract. The investigation led to the printer Daniel Fowle who denied that he had printed it but admitted to selling it in his shop. After rigorous examination by the legislature, he further admitted that he had obtained the pamphlets he sold from two other printers, his brother Zachariah and Royal Tyler who operated another printing establishment. On suspicion that Daniel was the actual publisher, however, the Assembly ordered him committed to the common jail (here spelled “gaol”) and denied contact with the outside world. Written while he was in jail, this selection is mostly an account of his disagreeable confinement for several days in a rat-infested and stinking cell and of the effects of his confinement upon the health of his wife.

But Fowle also used it to protest the Assembly’s venting its “intemperate Zeal . . . upon some of those very innocent Persons who gave” it its authority and condemned its action in confining him as “an *unheard of Attack upon the Liberty of an Englishman*.” Dismissing the objection that such a protest was “a Freedom not becoming a private Person, to complain of a *real or supposed Injury* received by those in Authority, and especially of those who are look’d

upon [as] the *Guardians of our Liberty*, and the *Fathers of the Country*," Fowle charged that the Assembly's assumption of the commitment power constituted "an unjust President" that could "be of *fatal Consequence* to a free Constitution" and that implied that the members of the Assembly "*were not to be accountable to their Constituents*." But no "State could be . . . happy, except the *Magistrates were as Subject to the Laws, as private Persons were to the Magistrates*," he argued, asserting that representatives expressed the "Voice of the People" only when they acted "*according to the Laws of the Land, or at least, not inconsistent with them, and their Conduct is agreeable to the Constitution of a free People*" and that it would "*be very absurd, to suppose [that] when a free People unite in choosing a small Number of Men to transact the publick Affairs with Dispatch*" they gave "*up that Power which of right belongs to them, and not only so, but*" gave "*them a Power to oppress and distress them as they please*." Declaring the Assembly's action as "purely ARBITRARY" and "a new Thing in the Land," he denied that he had been dealt "*with in a due Course and Process of Law*" and cited an array of authorities, including the French philosopher Montesquieu, the political writer Henry Care, and the English legal theorist Sir John Fortescue, to show that, in the English jurisprudential tradition, he had "*been treated contrary to, and in direct Violation of all the Laws of the English Nation*" and that imprisonment without due process constituted a form of "*civil Death*." "Strange!" it seemed to Fowle, "That Men who have had Liberty and Property continually sounding in their Ears from the Press and the Pulpit; even from their Infancy, should be guilty of this unaccountable Conduct," and he reminded his readers that the proper venue for trying supposed wrongs was the courts, operating with "*the Grand Privilege of Trials, by our Country, that is by Juries*." (J.P.G.)

A Total ECLIPSE of LIBERTY:

Being a true and faithful Account of the
Arraignment, and Examination of *Daniel Fowle*
before the Honourable House of Representatives
of the Province of the *Massachusetts-Bay* in
New-England, Octob. 24th 1754. barely on Suspicion
of his being concern'd in Printing and Publishing a
Pamphlet, intituled, *The Monster of Monsters.*

Also his Imprisonment and Sufferings in a
Stinking Stone Gaol, without the Liberty of Pen,
Ink or Paper, and not allowed to see his nearest
Friends, nor to write a Line to his Wife; with
many other Incidents and Aggravations; which
shews it to be Monstrous Treatment.

Written by Himself.

——— O give me LIBERTY;
For were ev'n Paradise itself my PRISON,
Still I should long to leap the Crystal Walls. DRYD.

BOSTON, Printed in the Year 1755.

Dedication.

To the Freemen of New-England.

Gentlemen,

There are many who imagine, that unless their Performances are dedicated to some Great Person of the first Rank, they loose their Value, and are soon thrown aside as useless—yet at the same Time are so lavish of their Talents, that they think themselves happy if they are indulged the Favour of being quite extravagant in stuffing the same with fulsome Complements, but *laughing in their Sleeves*, to use an old homely Saying, while they are endeavouring to *ingracciate* themselves into Favor with those they have *no real Regard for*.

But the Author of the following Piece thinks himself arriv'd almost to the Pinnacle of Honour, that he can take the Liberty, and hopes to be indulg'd the Favour, of addressing himself to a great Number of *Freemen*, (not forgetting the *Clergy*, who I heard was roused on this Occasion, as well they might, some of whom came to see him afterwards, though he was condemn'd without Benefit of Clergy) in whose Veins there is yet a *free Circulation* of that noble Blood, some of which was formerly spilt, to *procure the Privileges* we now enjoy under the best of Kings, and that without the least ECLIPSE, unless at some particular Times, when Pride and Ambition fires the Breasts of those who have had some *little Share* in the *Honours of Government*; but quite mistaking the End and Design thereof, have run themselves into such *wrong Notions* by their intemperate Zeal, which has even vented itself upon some of those very innocent Persons who gave them their Authority; which for want of Skill to conduct properly, or what is worse, such an high Opinion of themselves, that *Reason* for a while has been *dethron'd*, and the Imagination they have had of Power above all Law and Reason, has taken Place.—As I am now only speaking of what has been in Times past, I hope no one will think I am aiming at any Person's Conduct in the present Government of Affairs—No, Gentlemen, this is only to put you upon your Guard; I have not the false Complaisance to Flatter those who I am well assured had rather have Truth deliver'd with Simplicity, than only the Appearance thereof in a pompous Stile; and therefore shall take the Liberty of subscribing my self your sincere Friend and humble Servant, while you continue steadfast, and do not give up your *Birth-Rights*.—

D. F.

Preface.

October 29. 1754.

Candid Reader,

It is customary for Authors to apologize by Way of Preface to the World for their Writings; and surely those of a low Class I think, ought never to publish without one. Indeed such great Men as Lock, Pope, Dryden, Shakespear, Milton, or Butler, need none to their Works, but common Scriblers should offer an Excuse for troubling the Public; which happens to fall to my Lot at this Time. I must acknowlege, I should have been glad had I remain'd in Obscurity as I have done for many Years, and slid out of this noisy World unnoticed: But as there is an over-ruling Providence, and every Thing will in the End turn to the Advantage of Truth and Honesty; sometimes even in this Life, but most certainly will in the future.—So I desire to be resign'd, waiting for the Event.

But not to be too tedious, or raise the Expectation of the Reader, with more in my Title and Preface, than there is in the Book itself, shall only observe, That I doubt not the following Piece will be thought by many, if not all, who peruse it, to be a new, remarkable, unprecedented Procedure, especially as it was done in the English Nation: Therefore shall submit this plain, honest Account of the whole Matter, to your better Judgment, who shall take the Pains to give it a reading; and doubt not all proper Allowance will be made, as it is the first Time the Author has taken the Freedom, or rather Courage, to venture without a Pilot, as he would not willingly have any one even suspected to be concern'd, lest it should be accounted a Libel, and upon that very SUSPICION, be thrown into a stinking Stone Gaol, though never so innocent, and suffer in the same Manner as if he was the real Author: without Law, nay, contrary to Law, and in direct Opposition even to the poor dim Light of Nature, if I am not very much mistaken. And as I have experienc'd the same for another Person (and it may perhaps be the Lot of many more, unless divine Providence, in the Use of appointed Means, interpose) yet I would not wish my greatest Enemy to remain there so long, unless I was sure it was lawful to take away his Life, as it had like to have cost me mine—therefore would not publish this Affair, if I apprehended any other Person would be thought the Author besides myself, or any ways accessory thereto; but I am well assur'd the plain unpolish'd Stile it appears in, will convince them to the contrary, and that it is only their humble Servant,

D. F.

Introduction.

Perhaps there has not any Occurrence for many Years happen'd, especially, in this Country, which has occasion'd *more Speculation* than a late Proceeding of the Lower House of Assembly against the Author of the following Piece, only upon *Suspicion* of his being concern'd in printing and publishing a Pamphlet entitled, *The MONSTER of MONSTERS*.*

Had Expresses been immediately dispatch'd, the News could not have flew quicker to the most distant Parts of the Province, and the other Governments upon the Continent; and no Doubt will be the *Wonder* of our *Mother Country*, when they have a true Account of this notable Affair, which if the Reader will but have Patience a while, he will find it was an *unheard of Attack upon the Liberty of an Englishman*, than which scarcely any Thing is dearer, if he has but the Spirit of a Man: And as my Antagonists in a few Months will become weak as other Men, and loose their Strength, as *Sampson* did when his Locks was shorne, no one can object, but that I shall be upon an Equality with them, so that what was done only by a *pretended Power*, (which is no very good Character, when Laws *human* and *divine*, as well as *Reason*, are set aside) will have a due Consideration.

And though it may be thought by some, a Freedom not becoming a private Person, to complain of a *real* or *supposed Injury* received by those in Authority, and especially of those who are look'd upon the *Guardians of our Liberty*, and the *Fathers of the Country*; yet when its done with a becoming Modesty, and proper Deference, surely every Man who is born free, and especially the "English, who deserve the Liberties they enjoy; and are so much the more worthy of them, as they have spared no Pains to preserve them, whose Breasts are all on Fire for Liberty:"

I say, when this is the Case, every Man, who has not *justly forfeited* it, will think he has a Right to vindicate himself, and have the *same Satisfaction*, in Proportion, as if the Injury had been done to any *Gentleman of Fortune*, or

* *There has not, says the Author of this Pamphlet, to my Knowledge, been any Monster in this Town; nor any Thing like a Monster. There has nothing happened lately which could naturally give Occasion to such a Fiction; nor any Thing to which it can be justly apply'd in the Way of Allegorical Interpretation. And the Persons who shall attempt this, must be very simple, or ill-natur'd, for it is merely a Work of Fancy and Imagination, of which there is neither Type nor Antitype. And having declar'd this, I think I may innocently let it see the Light, as a very harmless, toothless Production, wishing that all other Romancers and Storytellers had been as fair and ingenuous, to undeceive their Readers—Pag. 23.*

high Character in Life, as an unjust President establish'd or conniv'd at, may be of *fatal Consequence* to a free Constitution. To use the Words of One who speaking of the different Forms of Government in *Europe*, says, "None of them appears so perfect as that of *England*: Here it is that we find united all the Qualifications necessary to make the *People happy*, and the *Prince great*, as long as he is *just*."

It was the Opinion of *Solon*, "That a State could not be happy, except the *Magistrates were as Subject to the Laws, as private Persons were to the Magistrates*. According to the Sentiments of this venerable Sage, the Constitution of a Government should be so framed, as to keep an *Equilibrium* between the People and the Prince." As what I am now writing is only an Introduction to something of an extraordinary Nature, hope I shall be excused, and not incur the Censure of being too *verbose*, as perhaps it might give too great a Shock to some Persons, and would scarcely be credited, unless their Minds were prepared to receive the Truth before hand, which is my Intention.

And as it is an acknowledged Truth, "That nothing is *so dear* to an *honest Man*, as his good Name, nor ought he to neglect the just Vindication of his Character, when it is *injuriously* attack'd by any;"—so this, I think, being my Case, I hope to make it appear to every honest, unprejudiced Person, that I have been most severely, cruelly, and unjustly treated; and that I have a Right from the Laws of GOD and Man to make my Complaint, without a *partial Respect to Persons*; and no one will have Reason to say, *I speak Evil of Dignities*, or of the *Rulers of the People*; for I am determin'd to stick close to the Truth, and certainly that will *prevail* with those who have any Regard for their own Freedom, or their Posterity—

And though I have had many Thoughts concerning the Publication of this Affair, I now think upon the whole, it is for the best; and therefore shall give the Publick the Truth, the whole Truth, and nothing but the Truth; for should this be overlook'd, our *Children perhaps may pay Reverence to a grey-headed Error*; therefore this ought not to be wink'd at, least it should take deeper Root;—but as a faithful Physicion would act, it ought to be cut out, and thrown away as an *eating Canker*, which in a little Time would eat out the *Vitals* of that *noble Principle of Liberty*, for the Sake of which our *pious Forefathers* ventur'd their *Lives*, and all that was *dear* to them.

I would endeavour to use *soft Words* where the Subject will allow of it, so as not to *stir up*, but *turn away Wrath*; and *smoother* than *Oyl*, but at the same Time to *cut like a Razor*; to make it appear I am *Serious*, and in *Earnest*—And

therefore shall conclude this introductory Part with an Extract from the Letters of *Pliny** viz. *Pomponius Secundus*, the famous tragic Poet, whenever his Friend and he differed about the retaining or rejecting any Thing in his Writings, used to say *I appeal*† to the People; and accordingly by their Silence or Applause, adopted either his own or his Friends Sentiments: such was the Regard he paid to the *Populace*!‡

A Total Eclipse of Liberty.

BOSTON, Stone-Gaol, Octob. 25. past 2 o'Clock in the Morning.

On the 24th of October 1754, while at Dinner, I was apprehended by an Order from the *Lower House of Assembly* sign'd *Thomas Hubbard* Speaker, on Suspicion of publishing a Pamphlet, entitled THE MONSTER OF MONSTERS;§ and forthwith to make my Appearance before said House to answer to such Questions as should be ask'd me relating to the above

* Vol. 2 Book 7. P. 399, 440{?}

† There is a kind of Whitticism in this expression, which will be lost to the meer English Reader, unless he be informed, that the Romans had a privilege confirm'd to them by several Laws which passed in the earlier Ages of the Republick, of appealing from the Decisions of the Magistrates, to the GENERAL ASSEMBLY OF THE PEOPLE: and they did so in the Form of Words which *Pomponius* here applies to a different Purpose.

|| By this Expression, I appeal to the People, some perhaps may say, the Representatives are the People; and I only appeal to them again; I must observe, in a Sense, they are so, but then it must be understood in a qualified Sense, i.e. when they act according to the Laws of the Land, or at least, not inconsistent with them, and their Conduct is agreeable to the Constitution of a free People; and their whole Proceedings Legal, and consequently will be approved by the Voice of the People, which I am sorry is so little regarded as it generally is, as though they were not to be accountable to their Constituents, not considering that the Persons sent are not greater than those who send them, especially if they are taken collectively, as a Body, and then the Expression is proper, THE GENERAL ASSEMBLY OF THE PEOPLE, as the Power originally was, and still is in them—for would it not be very absurd, to suppose when a free People unite in choosing a small Number of Men to transact the publick Affairs with Dispatch, that they give up that Power which of Right belongs to them, and not only so, but give them a Power to oppress and distress them as they please.

‡ However unsafe in general, an Appeal to the Vulgar Notions may be, there are yet some Cases in which their Sentiment, have ever been received by the judicious, as decisive.

§ Extract from the Votes of the House of Representatives October 24th, P. 63.

A Complaint being made to the House of a printed Pamphlet, entitled, The Monster of Monsters, as reflecting on sundry Members of this House; the said Pamphlet was laid on the Table, and having been read through;—

Pamphlet;—But before I could be admitted, was confined in the Lobby about an Hour, then was by the Messenger called before the House; and after my proper Complements before that *Grand Assembly*, was interrogated in the following Manner, by Mr. Speaker, viz. *Do you know any Thing of the Printing this?*—Holding it out—Upon which I desired it in my own Hands; which was granted:—After looking over it some Time, I said, it was not of my printing, neither had I any such Letters in my Print-House:—After some considerable Pause, and the Gentlemen looking upon one another, I was ask'd, *Whether I knew any thing relating to said Book?*—I then desir'd the Opinion of the House, *Whether I must answer to that Question?* But notwithstanding this

Resolved, *That the Pamphlet intitled, the Monster of Monsters, is a false, scandalous Libel reflecting upon the Proceedings of the House in general, and on many worthy Members in particular, in Breach of the Privileges thereof.*

Ordered, *That the said Pamphlet be burnt by the Hands of the common Hangman below the Court-House in King-Street Boston, and that the Messenger of the House see the same carried into Execution.*

Resolved, *That the Messenger of the House do forthwith take into Custody Daniel Fowle of Boston, Printer, who they are informed was concerned in printing and publishing the said Pamphlet, and that the Speaker issue his Warrent for that purpose.*

Daniel Fowle was brought into the House, and examined, and then was recommit- ted to their Messenger by Order of the House.

Joseph Russel Apprentice to Daniel Fowle, was brought into the House, and exam- ined relating to said Pamphlet.

Ordered, *That Daniel Fowle be committed to the Common Gaol in the County of Suffolk; and that the Speaker issue his Warrent accordingly.—*

Resolved, *That the Messenger of the House do forthwith take into Custody Zechariah Fowle Printer and Royal Tyler, both of Boston, who they are informed were concerned in printing and publishing the Pamphlet, intitled, The Monster of Monsters; and that the Speaker issue his Warrant for that Purpose—*

Royal Tyler was brought before the House: Mr. Speaker examined him whether he had been concerned in printing and publishing said Pamphlet? Thereupon said Tyler moved for Council.

Which the House took into Consideration, and determin'd that it was not conve- nient to allow him Council; of which Mr. Speaker inform'd him.

Then Mr. Speaker again examined him relating to the said Pamphlet, and the only Answer he would make was, Nemo tenetur seipsum Accusare; {"No one is made to condemn himself."—Tr.} or, a Right of Silence was the Privilege of every Englishman.

Whereupon he was ordered to remain in the Custody of the House. Then the said Tyler moved he might be admitted to Bail; the Messenger of the House was ordered to withdraw with said Tyler.

Then the Question was put, Whether the said Request of Mr. Tyler's is compatible with the Means the House are taking to discover the Authors of the said Pamphlet? It pass'd in the Negative.

reasonable Request, there was no Vote pass'd, that I could perceive, excepting three or four Gentlemen said *Yes, Yes*, very earnestly: Upon which I inform'd them, I could not say, *I had no Concern*; for as I heard there was such a Pamphlet to sell, I had bought two Dozen, and sold them out of my 'Shop, and should not tho't any Harm if I had sold an hundred of them. This brought on the following *Questions* and *Answers*, viz. *Who did you buy them of?*—I reply'd, they were sent, I thought, by a young Man, but could not tell his Name.—*Who did he live with?* I then again desir'd the Opinion of the House, Whether I was oblig'd to tell who I bought of?—Three or four again rose up and said *I must*: Upon which I said, I believ'd the young Man liv'd with Mr. *Royal Tyler*. It was then demanded, *Whether I had any Conversation with him about them?* I reply'd, I believe I might in the same Manner as I had with many others, not that I imagin'd him the Author, or any other Person, for I never agreed with any Body about the Printing of it, neither was it ever offer'd to me. I was then ask'd, *Whether any of my Hands assisted in the doing of it?* I answer'd, I believe my Negro might, as sometimes he work'd for my Brother. I was then queried, *Whether my Brother had any Help?* I said, No. Then a Gentleman said, *Somebody must help him, for one could not print alone*: As this was what I never knew before, I reply'd, one could print, and I could do five hundred with my own Hands.—I was next question'd, *Whether I ever saw any of it while printing?* As I was determin'd to shew no Contempt of Authority, I acknowledg'd I had seen some of it printing off, as Printers transiently go into one another's Houses.—*Whose House was it?*—I think it was my Brother's—*What is his Name?*—*Zechariah*—*Where does he live?* Down by Cross-Street.—One Gentleman stood up and said, *some time ago I said I bought but two Dozen, afterwards I bought a hundred*; to which I reply'd, *I would have bought a hundred if I could have sold them*. Another then stood up and said, before I had Time to answer, **YOU DO NOT KNOW WHEN YOU LIE**: Upon which I said, *Begging your Pardon, Sir, I know when I LIE, and what a Lie is as well as your self*: to which there was no Reply.

They then concluded I was the Author, as I could bring no Body else— I desired I might have a little Time to consider as the Book was publish'd several Months past, and perhaps I might give more Light in the Affair; but instead of telling me to go to my Print-House to enquire who brought the Books there, I was *lock'd up for three Hours in the upper Chamber of the Court-House*: Then was ordered down to make my Appearance before the Hon. House a second Time, and was further examined relating to this **MONSTROUS BUSINESS**, to know if I could say any thing more, or

give any further Light; (I understood Mr. ROYAL TYLER had been sent for, and examin'd in my Absence) but as I had nothing to correct in my Answers before, told them I could not give any further Light.—Upon which one stood up and said, *when I was in the House before, I said that I bought the Books of ROYAL TYLER;*—Here I was suspicious they intended to get me to acknowledge I had them of him. Which was not true in Fact. I deny'd and said I believe his Boy left them at the Shop. Which I find also I am mistaken in. And after being oblig'd to repeat over great Part of what I had before said, was *ordered again in the above Loft*, where I was confin'd till between nine and ten o'Clock at Night, without Company or Prisoners Fare—From thence was ordered, *Malefactor-like*, attended with a Crowd of Spectators, who were waiting at the Doors, to know the *Event of the Monster*, to his Majesty's Gaol in *Boston*; as soon as I was *guarded* to the Prison-Keeper's House, many Friends came to see me, endeavouring to keep up my Spirits; but no one imagin'd what was to follow, nor I myself;—but every one concluded, as Security enough was offer'd, that I might have the best Chamber and Bed in the Prison-Keeper's House; a while after my nearest Friends withdrew, and wish'd me a good Night. It being now between 11 and 12 at Night, we came to the Point in Hand, *whether I must actually go into the Gaol*; I was told I must, and that into the *Stone-one*; this I said was *cruel hard*; but go I must and did; where I now am an Englishman, free born; having been for *many Years entitled to the Privilege of voting for some of the Members of that very House*, by whose Order I am now committed for no other Reason, but upon SUSPICION of printing and publishing the aforesaid Book entitled the MONSTER of MONSTERS;*—but as I have heard of many Wonders in

* *This Affair was thought of so much Consequence to the Publick, that the 25th of October being the next Day,*

Resolved, *That the House will now take under Consideration the Affair of Daniel Fowle, now in his Majesty Gaol.*

Resolved, *That it appears to this House, that Daniel Fowle has been concerned in publishing a Scandalous Pamphlet, intituled, The Monster of Monsters; in which the House are greatly reflected on in Breach of their Privileges.* *Vot. p. 67.*

October 26, *The Messenger of the House inform'd the Speaker that Royal Tyler requested that he might appear before the House before they adjourned: He was accordingly admitted into the House, and represented, that his Family was in distressed Circumstances, and pray'd he might be admitted to Bail. Whereupon Mr. Speaker, by Order of the House, declared to him, he might return to his Family, provided he gave his Word of Honour to the House, he would be forth coming when by them required: which he accordingly did, and then withdrew.* See Printed Votes of the House, P. 69

the World, this seems to be the WONDER of WONDERS; and I think from this Time I shall never more wonder at any Thing;—But perhaps some may say, this is only a Whim, a Fancy of some Lunatick Person, who imagin'd this Thing while he was dreaming of MONSTERS. Can it be true in Fact! Is it possible under the *English Constitution!* Is it possible among a *Free People!* Especially is it any way likely among *New-England Subjects!* Search for a Paralel in all the *English Records!* See if the like can be found, unless when *Tyranny* prevail'd, and *Liberty*, the *Glory of our Constitution*, was oblig'd to hide it's Head! Without any more Admirations, this very Affair was transacted in BOSTON, *New-England*, a Place where our *Ancesters* fled for Refuge, and left their pleasant Habitations, that they might enjoy LIBERTY, the natural Right of free-born Subjects, and not be *confin'd* upon SUSPICIONS, nor subjected to those *Oppressions which are enough to make a wise Man mad.*

Thus far I wrote in Gaol the first Night: About 8 o'Clock in the Morning the Prison-Keeper came up into my dark Apartment and said he had Orders not to allow me Pen, Ink, or Paper, which he immediately took from me; and also said his Orders was, Not to let me see or speak with any Body; which perhaps some may think ought not to be *told in Gath*, and that I might have more MODESTY* than to blaze it about, or *publish it in the Streets of Askelon, &c.*

Part II.

BOSTON, *Stone-Gaol, Upper Loft*, October 26. 1754.

I Should have enlarg'd in my first Account, but it was either surmised, or somebody inform'd that I had a Pen and Ink, which the Prison-Keeper said he had Orders to take from me, which he did; so was oblig'd to break off abruptly; and for Fear of being search'd, hid what I had wrote in a

* And tho' it is generally thought by many that a Man must be so modest, as not to say any Thing in his own Favour, or justify his own Conduct, for fear it would seem like praising himself; yet as this is only a Modern Notion, I shall here insert the Opinion of the Ancients on this Head, in the Words of a celebrated Writer, who says,

It is most certain that *Modesty*, according to the Idea the Ancients had of it, did not (neither in the Truth of Things does it) forbid a Man to speak well of (or justify) himself—*Homer's Ulysses* (to borrow the Observation of a very polite and judicious Critick) calls himself the wisest of the *Grecians*, as his *Achilles* does not scruple to represent himself the *best and most valiant of them*; and that too in a Council of all the Princes: I might mention *Virgil* in making *Aeneas* talk frequently of his Piety and Valour—*Socrates* in *Plato*, *Cyrus*, *Caesar* and the great Jewish Writers of his Life, &c.—

private Place, where I thought Modesty would be a Check upon him from searching: Now thinking my self very secure, only *desired I might have the Liberty of writing a few Lines to my Wife*; this Favour was denied me. I then begg'd I might have the Liberty of speaking with some Friend in the Place of my Confinement, which was also denied me;—I then intreated that my Wife might be sent for, that I might deliver some Message to her to intercede for my Deliverance out of this *stinking, dark, melancholly Place*; but all my Pleadings were of *no avail*. Mr Young then said, he would carry any Message for me, but not in writing,* though I told him he might see *what I wrote*.—This I look'd upon to be *shocking Orders* which Mr. Young had receiv'd, but knew at the same Time, that no Man or Body of Men had a *right to give*, as this Affair was circumstanc'd either from the *Laws of God or Man*, but was purely ARBITRARY in the *bad Sense* of the Word—Had I been a Murderer, I should not have been denied these Favours, for they are generally allow'd, the Comfort of their nearest Friends; and though I could enlarge with Truth, and show wherein this Treatment was almost *too much for human Nature to bear*, shall not at present proceed any further on this Head—

All I could be allow'd was to send a Message by Mr. Young, who said he would deliver it to the Person who was below, and had brought me some Victuals, if I inclin'd to send Word by him; but as I did not care to commit any Thing of a private Nature to him, only desired him to acquaint my Wife†

* *About this Time I received a Letter in a private Manner from my Wife, wherein were these Expressions—“I am almost raving distracted, and am quite ill: If you do not come home I shall be quite dead; or get Leave to see you: send me a Line or two, and I shall be glad: I have had no Sleep all Night, and know not whether you will find me alive.*

Your most afflicted and distressed Wife, L. F.”

† *All the Friends and Disciples of Socrates, that were in the City, excepting Plato, who was sick, departed to the Prison to take their last Farewell of their dying Master. As they came very early in the morning that they might have an Opportunity of conversing with him all the Day, they were detained some time at the Prison-Door before they were admitted; for the Eleven Magistrates were then untying Socrates, according to the Laws of Athens, which decreed, that when a Criminal was by the final Orders of these Eleven doom'd to die, he was immediately released from all manner of Bonds, as a Victim to Death. As soon as this Ceremony was performed, they were introduced by the Gaoler into the Apartment in which he was to suffer, where they found him unbound, with his Wife Xantippe and his Children sitting by him; who as soon as she saw them, cried out, O Socrates, this is the last Time you and your Friends will converse together. Life of Socrates, Book 5. P. 155.*

and Relations, That I was *deprived either of the Pleasure of her Company, or theirs*; for I was not allow'd to have any Body with me; nor to *write her a Line*. Which was deliver'd as far as I know. But to digress a little, This Building, by what I can learn from the Prisoners, has seven Apartments, besides the Dungeon; the Walls about three Feet and half thick. When I was first convey'd to Mr. *Young's House*, I thought I might have lodg'd there, giving Securitys as before hinted, but the Officer shewed me a Paper, Sgn'd by *Thomas Hubbard*,* Speaker, wherein was these Words, TO PUT ME INTO THE COMMON GAOL: I hop'd the Common Gaol meant no more than the Wooden one; but I must go into the Stone one, which it seems is the proper Meaning of the Words Common Gaol, as there were explain'd at that Time: I suppose it is called Common, because all Sorts of Criminals are put here, such as *Murderers, Thieves, Common-Cheats, Pick-Pockets, &c.* And what is worse than all that has been mention'd, SUSPICIOUS PERSONS, who are convicted of *no Crime at all*; but are to remain there during the Pleasure of *Lawless, arbitrary, ambitious Men*. So I am here as one of the worst of Criminals, the Nature of my Crime, being only *Suspicion*. But to proceed, After all Intreaties of my self and Friends failed, as before mention'd, and I found *I must go into this Place*, I then endeavoured to bring my Mind to my Condition, and *thought* more than I said, as there are no humane Laws against *Thinking*, though against *Speaking*. After *Eleven at Night*, when People were

The Design of this Note is to represent, that tho' he was sentenc'd to die, unjustly, through the implacable Malice of his Enemies, yet was not FORBID THE COMPANY OF HIS WIFE AND CHILDREN.

* Copy of the Mittamus.

SEAL.

Province of the Massachusetts-Bay.

To William Baker, Messenger of the House of Representatives now sitting in Boston, and to the Keeper of His Majesty's Gaol in the County of Suffolk.

Whereas by a Resolve of the said House of Representatives, I am directed to issue my Warrent for the Commitment of Daniel Fowle of Boston in the County of Suffolk Printer to the Common Gaol, of the said County as a Person Suspected of being guilty of spreading and publishing a scandalous Libel upon the said House of Representatives, entitled the Monster of Monsters.

You are hereby therefore required to commit to said Gaol the said Daniel Fowle now in your Custody.

And the Keeper of the said Gaol is hereby required to receive the said Daniel Fowle into said Gaol, and him there to detain until the further Order of the said House of Representatives.

Given under my Hand and Seal at the Court-House in Boston, the 24th Day of October Anno. Dom. 1754.

T. Hubbard Speaker of the House of Representatives.

generally gone to Rest, I was by the Prison-Keeper and several others, conducted through several Apartments, each of which was secured with Locks and Bolts; on each Door of about 70 Spikes, the Heads of which about two Inches diameter. I walk'd very slow, that I might observe as I went along; and could not help thinking of those Words, which appear'd very striking to me, of *walking through the dark Valley of the Shadow of Death*. Having got to my Apartment, without any broken Bones, it being an ugly stumbling Way to the Place, an extraordinary *Composure of Mind ensued*;* I then fancy'd myself like one of the *old Philosophers*, the Account of whose Lives has been some Entertainment to me, but wish'd for *Diogene's Tub* or *Hogshead*, or something to keep out the Inclemency of the Weather, for it was a dark stormy Night, and rain'd prodigious hard all next Day. I had no Bed to lodge on, but a Pillow and one Blanket. I walked about, and when tired sat down, and heard the Clock strick every Time from 12 till Eight. There is but one Window, and that without any Thing to keep off the Weather, as there is only several Iron Bars, no Winder-shut, which the *Murderer was favour'd with*. The Place *stunk prodigiously*, which oblig'd me to tye my Handkerchief over my Mouth and Nose, for fear of being *suffocated*; worse than the *Smell of Brimstone*. I heard no Noise for some considerable Time; *all Nature seem'd to be dead*; the first stirring of any Thing I could hear, was the Noise of Rats, which seem'd to be of a prodigious Size, and have Reason to think if I had been favour'd with a Club, I might have been the Death of some of them. As I was now depriv'd of all *human Company*, I wished for my little Dog *Corriden*, and was sorry I had not thought of him before, whose Company perhaps I might have been indulg'd. About two o'Clock I heard a most *terrible Groan* as of some human Person, which startled me a little, but had Resolution enough I thought, to encounter, had it been One from the other World; the *Groan appear'd to be very long and piercing*: In a few Minutes after, I spoke out with as strong a Voice as I could, *Who's there!* This seem'd to bring the *Dead to Life*; for I soon found I had roused the Prisoners in the other Apartments, and was immediately answer'd by one

* I would not have any imagine by this, that I was easy, and contented. No, far from that, but if there is any such Thing as a Hell upon Earth, I think this Place is the nearest Resemblance of any I can conceive of; all I mean by it is, that as I was Conscious I did not deserve this Treatment; but had the proper Exercise of my Reason; and Innocence and a clear Conscience, will almost quench the Flame of the most dismal Place, to speak parabolically; while Consciousness of Guilt, will Torment a Man in the most delightful Palace.

who said his Name was *Wyer*, *I suppose you have heard of me*; he was to have been executed the Thursday following. I told him I was sorry for his Misfortune; and advised him to behave sutablely under his Affliction; he thank'd me, and bid me a good Night; he was in the next Room; only a Plank Partition parted us. Soon after I was hail'd by one in the upper Loft, whose Name is *Webb*, to know if I had just come in, and desired I would not take it amiss, as Prisoners were as kind to one another as the Place would allow of; I then told him between eleven and twelve. From that Time till eight the next Morning, I had no more Conversation with any Body; soon after I heard *Wyer* at Prayer, who seem'd to be very penitent, then there was a general Muster of the Prisoners, and calling to one another, some for *Tobacco*; some for *Rum, Sugar, Water, &c.* some *Swearing, Crying and Praying*; so that I was entertained with a Variety, which seem'd as though I had got into another World. As I found my Companions must be *Murderers, Thieves, common Cheats, &c.* I imagin'd I might make a good Improvement by conversing with these notorious Sinners: And though it is said *a Man may be known by his Company*; yet I beg Leave to contradict that general prevailing Notion, and differ from some; I think there is an Advantage in being with all Sorts of Persons, if Prudence is used, and the Place does not stink too much. Had I not been here, I should not have known the Behaviour of a poor Melefactor bound in Chains; I should not have had so clear an Idea of that *Patience and Resignation*, which is so much talk'd of, and so little practised in the World. I than desired the Prison Keeper to remove me any where in the Prison, so I might get out of this Place, for I was *almost suffocated with the Smell*. He told me he could not, unless I went above with *Webb*; which I readily accepted of; and in about two Hours after was removed; which Place was *pleasant* in Comparison of the other. I endeavour'd now to make the best of my Companion; and though I had heard a *notorious Character of him*, must say, he behaved to me with all the Civility of a good natur'd Man.

* ¶ * Is it not very unaccountable, as this Affair took up so much Time, and was carried on with *so much Deliberation*, that it was *never* sent up to the Honourable Board, to know if his *Excellency and Honours*, (who are two Branches of the Legislature) approved of it? Had this been done, as I think it should, with Submission to better Judgment; and had I been so happy as to have been favour'd with their Opinion, doubt not it would have met with but a *very cool Reception*, and finally thrown out, as not being for the *Dignity of the General Assembly* to take Notice of such an *imaginary Creature*; or if in

their Wisdom should have thought otherwise, I cannot entertain the least Doubt but that the Law would have been the Rule for my Trial, and that it could never find Place in the Heart of a sincere and upright Christian of prosecuting it to Effect in the Manner it was done.

Part III.

Prison-House, Saturday October 26. past 12 o'Clock, Forenoon.

As I was ordered half a Hour ago by the Prison-Keeper to come out of the close Stone-Gaol, into his Dwelling-House, I think it necessary immediately to give some further Account of this extraordinary Affair, which is not mention'd fully in my first and second Papers.

I have been 48 Hours confin'd in a stinking close Stone-Gaol, a particular Account of which I gave in my second Paper. It is now more than ever before a pleasant Thing for my Eyes to behold the Sun. I am now allow'd the Use of Pen, Ink, Paper, the Pleasure of seeing my Relations, and many Friends, whom before I knew nothing of. I seem to myself as *one almost risen from the Dead*, and though weak in Body, can perceive a Revival as I have the Liberty of breathing a freer Air. While I was in Tribulation, I am inform'd the People were in Doubt, saying one to another, *What meaneth this?* And tho' I had not the Use of the Bible, I cannot remember, whether that in particular was forbid me.

But as I have had many Thoughts, some Parts of Scripture came fresh in my Mind, such as, "If this Counsel or this Work be of Men, it will come to Nought;" And that "there is no Wisdom, nor Understanding, nor Counsel against the LORD." I was inform'd about Midnight, that the Jaylor had received a strict Charge to thrust me into Prison, and there to keep me safely, but no Orders to make my Feet fast in the Stocks. Afterwards the Keeper himself told this Saying to me, which I suppose came from the Magistrates, TO LET ME GO; and doubt not I might have departed in Peace: But St. Paul's Words seem'd to be rivited into me, speaking of himself and his Fellow-Sufferers, "They have beaten (or abused) us openly uncondemn'd (i.e. by the Law) being Romans, and have cast us into Prison; and now do they thrust us out privily? Nay, verily, but let them come themselves and fetch us out:" Perhaps their hard Hearts may relent, when they see the Situation we are in, as it is natural for the Eye to affect the Heart. So it is applicable in some Measure to my Case, as I was put into the inner Room

in the Prison, and that at *Midnight, uncondemn'd*, i.e. by the Law; and I am an *Englishman*, free-born, not having forfeited my Liberty any more than the *above Romans*; and I now desire that the same Authority that put me in, would by Virtue of that same Power take me out, and not thrust me out privily. I had heard that the Chief Magistrate, and some others, gave this good Advice; *Take heed to yourselves, what ye intend to do as touching those Man*. If any should say *I am mad, or beside my self*; it could not be wondered at considering the Treatment I have unjustly received; but I can affirm with all seriousness in the Words of *St. Paul, I am not mad, but speak forth the Words of Truth and Soberness*. I only speak freely, and every *Man of common Sense* has this Right, and I think every Man is more or less concern'd in an Affair of this Nature, *for this Thing was not done in a Corner*, unless it was in a Corner of the Court-House. I did nothing that was worthy of Death or of Bonds, the *former* I was in great Danger of, the *latter* I actually experienced; when at the same Time I ought to have been set at Liberty. I have Reason to think twenty four Hours more would have put an End to my Life, for I had catch'd a prodigious Cold the first Night, as the Wind blew hard in upon me the whole Time; and had that been the Case, *what Satisfaction* could have been made to injur'd Innocence? Would it have been any Mitigation, because it was done by the Representatives of the People, or at least by a Number of them? No! the Crime would have been so much the more aggravated, as it cannot be supposed they were ignorant of what they were doing, though I have so much Charity as to think that *forty Men of superior Sense then sitting*, would sooner have cut off their Hands than been guilty of such a *base Action*; but suppose most Votes carried it.

After I was deliver'd from this doleful, melancholly Stinking Place, into Mr. *Young's* Dwelling House, I had a particular Account of the Doctor's attending my Wife, who on this Occasion, was thrown into *Fainting Fits*, and *Hesterick Disorders*, of which perhaps she may never recover so as to be the same Woman as before. Here is a further Aggravation of this *unprecedented Conduct* of those who had no Right to put me there, as I hope I shall be able to prove—The whole Time she was *forbid Admittance*, who would willingly have kept with me: How then must this appear to a thinking Mind, that the dearer Part of a Man's Self must be as it were torn from him, which *God had join'd together, and no Man had a Right to put asunder*,

excepting in some particular Cases, of which there can no Shadow of a Reason be pretended here. I could only hear while in Gaol, the tender *Cries of an aged Mother*, for the Sight of her Son, the Intercession of Friends for a Relief, and the encouraging Words of some to keep up a good Heart; and the Pity of the poor Melefactor, who said, he thought I was worse off than himself. Soon after I had got into the Prison-Keeper's House, being weak in Body, and scarcely able to walk, my dear Companion, with Assistance, came in, whose *Paleness and quivering Lips, with Trembling*, was enough to move a Stoick. Here, I acknowledge, I want Words to paint this Scene in *true and lively Colours*; and as I imagine Language, were I capable, would only eclipse a true Idea of it, so I think nothing but a compleat Orator, a Master of Language, perfectly acquainted with human Nature, *can draw it to its Life*; therefore shall forbear.

The Day being now far spent, and my Friends taking their Leave, I retired to a Chamber, and went to Rest as soon as I could; having a tolerable Night's Refreshment, I awoke with considerable Strength of Body, heard two Sermons preach'd to the poor Melefactor; as there was a Number of Persons came to see the Prisoner on this Occasion, there was Enquiry, *how I came out*. I also heard the House had sent for the *Mittimus*¹ on Saturday, and that the Sheriff would not give up the Original, for I was not under Bonds, nor any Body for me, that I should not depart the Prison-Yard; and the Doors and Gates being *frequently open* I had opportunity enough to go out, but being determin'd to show no Contempt of Authority, nor any other Orders, am now, on Monday, (October 28.) still confin'd waiting for the Pleasure of the Hon. House.*

1. [Literally, "We (the king) send." A writ directing the imprisonment of a person; an arrest warrant.—Tr.]

* *Having had my Trial before the Lower House, and suspected to be guilty, on Tuesday the fifth Day after Confinement, it was "Ordered, that Daniel Fowle be brought to the Bar of the House, and Reprimanded by the Speaker, for his publishing a Scandalous Libel, called, the Monster of Monsters, greatly reflecting upon the Honour of this House; and then be discharged, paying Costs.*

The said *Daniel Fowle* was accordingly brought to the Bar of the House, and Reprimanded by the Speaker.

Ordered, That Mr. Speaker issue his Warrant to the Keeper of his Majesty's Gaol, in the County of Suffolk, to discharge the said Daniel Fowle upon his paying Cost. Which was issued by Mr. Speaker accordingly.

This Affair, I understand, is the chief Topick of Conversation in Town, and well it may be, for it is a new Thing in the Land. As I live under the Constitution of *England*, shall transcribe a few Thoughts out of that approved Piece, entitled the *Spirit of Laws*, Vol. 1. P. 216, and so on.—

“The Liberty of the Subject is a Tranquility of Mind, arising from the Opinion each Person hath of his Safety. In order to have this Liberty, it is requisite the Government be so constituted as *one Man* need not be *afraid of another*.

“When the Legislative and Executive Powers are *united, in the same Person*, or in the same *Body of Magistrates*, there can be *no Liberty*; because Apprehensions may arise, least the same Monarch or Senate should enact *tyrannical Laws*, to execute them in a tyrannical Manner.

“Again, There is *no Liberty*, if the *Power of judging* be not *separated* from the Legislative and Executive Powers. Were it join'd with the Legislative, the Life and Liberty of the Subject would be exposed to *arbitrary Controul*; for the *Judge* would be the *Legislature*. Were it joined to the *Executive Power*, the *Judge* might behave with all the Violence of an Oppressor.

“There would be *an End of every Thing*, were the *same Man*, or the *same Body*, whether of the Nobles or of the People, to exercise those three Powers, that of *enacting Laws*, that of *executing the Publick Resolutions*, and that of *judging the Crimes* or Differences of Individuals.”

Tuesday October 29. Afternoon.

The Doctor having acquainted me that my Wife was thrown into Fits on Account of my Confinement, which oblig'd me to write the following Letter to *Thomas Hobbard*, Esq; Speaker, to be communicated to the House, viz.—

Hon. Gentlemen,

As I have been confin'd in Mr. *Young's* Custody for above five Days, two Days and Nights of it in the Stone-Gaol, and hearing my Wife has had several fainting Fits, which the Doctor says will *endanger her Life*; and as it proceeds, he thinks, upon this Account, I must beg you would dismiss me, to go to her, and shall be ready to wait upon you *when you may have Occasion for me*.

I am with all due Regard Your most humble Servant

Daniel Fowle.

P. S. Since I wrote the above, I have receiv'd the inclosed Letter—

Mr. Fowle,

I was so *shock'd* at your Confinement in the Common Gaol, that I was Seized with a Trembling, and I sunk down with a Fainting Fit; I have had several since, and my Spirits are quite gone;—I am now going to Bed weak and faint, and God alone knows whether I shall ever come to my self again. *Can the House be stript of all Bowels of Compassion?*—I am, &c.—

L. F.—

October. 29.

It may not be amiss here to transcribe some Passages of that excellent Book, entitled the *English Liberties*; or, *The Free-born Subjects Inheritance*: The Author, in his Preface says, "Let us then by perusing this Treatise deeply imprint in our Minds the Laws and Rights that from Age to Age have been deliver'd down to us from our Renown'd Fore-Fathers, and which they so dearly bought and vindicated to themselves at the Expence of so much Blood and Treasure: In a Word, Let them never perish in our Hands, but let us make our Lives happy in the Enjoyment of them, and piously transmit them to our Posterity; being fully convinced of this Truth, that when *Liberty* is once gone, even *Life itself grows insipid*, and loses all its Relish."

*No Freeman shall be taken or imprisoned, or disseised of his Freehold, or Liberties, or Free Customs, or be outlawed; or exiled, or any otherwise destroyed, nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We will sell to no Man, we will not deny or defer to any Man, either Justice or Right.

No Freeman shall be taken, &c. These Words deserve to be written in Letters of Gold, and I have often wondered that they are not inscribed in

* MAGNA CHARTA, Pag. 22. Chap. 29.

This excellent Charter was read at West-minster Hall in Presence of the Nobility and Bishops, with lighted Candles in their Hands, the King all the while laying his Hand on his Breast, and at last solemnly Swearing faithfully and inviolably to observe all the Things therein contained, as he was a Man, a Christian, a Soldier, and a King. Then the Bishops extinguished their Candles, throwing them on the Ground, crying,—Thus let him be extinguished and stink in Hell, who violates this Charter. It was thought to be so beneficial to the Subject, and a Law of so great equity, in Comparison of those which were formerly in Use, that King Henry, for the granting it, had the fifteenth Penny of all the moveable Goods both Temporal and Spiritual.

Cham. Diet. It is called the GREAT CHARTER OF LIBERTIES.

CAPITALS, in all our Courts of Judicature, Town-Halls, and most publick Edifices; they being so essential to our English Freedom and Liberties, and because my Lord Coke in the second Part of his *Institutes*, has many excellent Observations on this Chapter; I shall recite his very Words;

That no free Man shall be taken, or imprisoned, but by the Law of the Land, i.e. by the Common Law, or by the Statute Law, for the Liberty of a Man's Person is more dear to him than any Thing, and therefore if he be wronged in that Liberty, 'tis very reasonable he should be relieved.

No Man shall be disseised, i.e. put out of Seisin or be dispossessed of his Freehold, i.e. of his Lands or Tenements, or Livelihood, or of his Liberties, or Free-Customs, which belong to him as his Birth-right, unless it be by Lawful Judgment, i.e. by a Verdict of his Equals, or Men of his own Condition, or by the Law of the Land, i.e. to speak once for all, by the due Course and Process of Law.

No Man shall be taken, &c. i.e. restrained of his Liberty, by Petition, or Suggestion, to the King or Council, unless it be by Indictment or Presentment, of good and lawful Men, living near the Place where such Deeds were done. The Warrant or *Mittimus*,² containing a Lawful Cause, ought to have a Lawful Conclusion, &c. and him safely to keep until he be delivered by Law, &c. and not until the Party committing shall farther Order.

If any Man, by Colour of Authority where he hath not any in that particular Case, shall presume to arrest or imprison any Man, or cause him to be arrested or imprisoned, this is against this Act, and it is most hateful, when it is done by Countenance of Justice.

There are three Things, which the Law of England (which is a Law of Mercy) principally regards and taketh Care of, viz. Life, Liberty and Estate. Next to a Man's Life, the nearest Thing that concerns him, is Freedom of his Person; for indeed what is Imprisonment, but a kind of civil Death? "Therefore," saith Forteseus, "the Laws of England do, in all Cases, favour Liberty."

If the Impartial should think upon perusing the foregoing, that I have wrote with any unbecoming Passion or Prejudice, I am willing to acknowledge it. But at the same Time must observe, to use the Words of an excellent Writer, "All Anger or Resentment cannot be condemned, although there is little lovely in any Degree of it. An intire Insensibility of all Injuries, of which there are but few Instances, would be a very inconvenient Disposition; exposing a Man to the Contumelies and Petulance of others; nor consistent with his own Character."

2. ["Mittimus." See n. 1.—Tr.]

Is it not very surprising, such a Vote should pass that House, when I declar'd the Book was not of my printing, neither had I any such Types to print with? If it be said it was put to Vote, and there was a Majority for my Commitment, and Mr. Speaker was order'd to sign a Mitemus to put me into the Common Gaol, I think he might with as much Propriety have sign'd my *Death Warrant* if order'd. If it then be said, Mr. Speaker was against this Proceeding, could he not in a genteel Manner have excused himself, and desired the House to appoint another for this Case, and considered if he did me Wrong, though by their Influence, or Order, it would not excuse him, unless they had an absolute Power to take away Life at Pleasure—[I here shall insert that Passage in the English Liberties, Pag. 3. "'Tis true the Law itself affirms, the King can do no Wrong; which proceeds not only from a Presumption, that so excellent a Person will do none, but also because he acts nothing but by Ministers, which (from the lowest to the highest) are answerable for their Doings; so that if a King in his Passion should command A to kill B, without Process of Law, A may yet be prosecuted by Indictment, or upon an Appeal, (where no Royal Pardon is allowable) and must for the same be executed, such Command notwithstanding."'] Would he in Fact have done it, had I been his Son in Law, though ordered by the whole General Assembly? No I dare say, he would not; and he certainly must know, or at least ought to know, in order to qualify him for that Office, I was not dealt with in a *due Course and Process of Law*; and that their Power did not extend in such Cases to any but their own Members. All I desir'd was a fair Trial at Common Law, which I doubt not is founded upon Reason; and if I had been condemn'd, would have endeavoured to be calm and easy, and thrown them in the Heap of Misfortunes Mankind are subject to.

If this was a just Method of Proceeding, why was not the other Printers sent for, and against whom Warrants were issued? It seems there was no Occasion for this; but if they could sacrifice an innocent Person, it might be a Terror to others. Is this just? Has it the Appearance of Justice! Nay, would any of them have carried the Affair to such a monstrous Heighth with a Relation or an Acquaintance? Would Mr. Speaker have sign'd that Mitemus had I been nearly allied to his Family? It is unaccountable, that a Gentleman, who for several Years has had almost the unanimous Vote of this Town to represent them, should act thus, when he must know our Liberties were *touch'd to the Quick*; (for I would not in the least imagine he could be IGNORANT) and that the plain *English* of establishing such a Precedent would be this: If

I can be *secure*, or *protected*, I will do all in my Power to put every Man into the Stone Gaol that shall pretend either directly or indirectly to find Fault with the Conduct of the House of Representatives, while I am Speaker, even if they are *barely suspected*; and whatever they order, I will sign, and we will be Judges of *Parallels* and *Innuendoes*, though we should incur the Censure of *Juvenal*, who says, "There are a *Sett of Creatures* who have *no Mercy on Paper*, and are ready to *answer*, even when they are *absolute Strangers* to the *Subject*."

Strange! That Men who have had Liberty and Property continually sounding in their Ears from the Press and Pulpit; even from their Infancy, should be guilty of this unaccountable Conduct? Is the Nature of *Right* and *Wrong* altered? Is this Glory departing from *New-England* which our Renowned Predecessors purchased with so much Blood and Treasure? We hope not. We have our Courts of Justice not yet overthrown: For we have the Grand Privilege of *Trials*, by our Country, that is by *Juries*; and I hope never to see the Day, when the People of this Country, will be so *stupid* as *tamely* to give up the Privileges they of Right enjoy; but always have a Godly Jealousy, when there is the least Encroachment either in *Civil* or *Religious* Affairs, and more especially when the very *Foundation* is struck at; and act like Men; fear not stern Countenances, the Threats of a Prison, nor the rattling of Chains; but imitate the noble Courage of your Fathers, who are now sleeping quietly in the Dust, and fear'd none of these Things, as they knew they were acting in a just Cause; and have overcome, and no Doubt gain'd the Prize: For should you act an *inglorious* Part, and they could rise out of their Graves, you would not be acknowledged as their Children, but the *degenerate Plants* of a strange Vine.

Now while we have Opportunity, let us consider, that as *Life* once lost, can never be recovered; so when *Liberty* is banish'd, or by bad Treatment, takes it Flight to another Climate, where it will be kindly receiv'd, it's almost as impossible to recover it again in its native Beauty, as it is for the *Ethiopian* to *change his Skin*, or the *Leopard his Spot*.

Although I could inlarge, with Assistance, from the best Authors, who has wrote on the Original of Civil Government, The internal Structure of States, and the several Parts of the supreme Power, The Downfall of Tyranny &c. and show wherein the Author of the foregoing Piece has been treated contrary to, and in direct Violation of all the Laws of the English Nation; but must reserve these Thoughts, with an APPENDIX, for another Opportunity.

FINIS.

J.W., A Letter from a Gentleman
in Nova-Scotia,
To a Person of Distinction
on the Continent
([London], 1756)



“NOT A SINGLE INSTANCE can be found in english history of any colony being planted with success under the direction of military measures,” said a writer signing himself J.W. in this “sketch . . . of a plan” to establish Nova Scotia as “a secure and most valuable frontier to the english possessions in *America*.” Emphasizing the singularity of the Nova Scotia constitution and government, he complained that it differed from “all others . . . in the *English* dominions.” With a lieutenant colonel for governor, a Council composed entirely of military or naval personnel and a few civil officers, and no legislature of the sort that could “be found in all the other *English* colonies and islands in *America*,” this government subjected the “free born subjects of *England*” to taxes and regulations to which they had not given their assent, even laying restraints on speech by making “it criminal to utter opinions different from the unerring judgment” of the governor and Council. “Notwithstanding that we are the youngest child as a colony upon the continent,” the author acidly remarked, “we are vain enough to set examples which no other colony has yet undertaken.”

Noting the King’s “disposition, not only to defend and protect his subjects under the full enjoyment of the liberties they are born to, but to extend the same into his american dominions,” the author called for a representation to the Crown to establish that “essential of english men’s priviledges, I mean

that of the representatives of the people in the third branch of legislative authority." He also called for the removal of British troops to the western frontiers and their replacement with regiments composed of Americans, "the only troops" who knew how "to encounter the savages," were free from the "arbitrary dispositions" of European soldiers, and might be attracted by the promise of land—in this case, improved land by the dispossessed Acadians. Men bred up and living under a civil government in which they had a voice and on which they could depend to secure their liberty and property, he suggested, "would for ever be themselves the most forward in rendering their assistance to maintain the authority of the civil magistrate." (J.P.G.)

A
LETTER
From a GENTLEMAN
IN
Nova-Scotia,
TO
A Person of Distinction on the Continent.
Describing the present State of Government
in that Colony.
With some seasonable Remarks.

Printed 1756.

Halifax, March 1. 1756.

SIR,

Notwithstanding the pleasure I receive from the honour you are pleased to confer on me, in favouring me with your confidence, and in complimenting my ability to give you a description of the present state of our government; and asking my opinion what methods would be most conducive to improve the advantages gained over the *French* in this colony, from the reduction of *Beausejour*, and the exterpation of the perfidious *Neutrals*; I must confess, that it being a matter of such vast importance to the interest of the *British* nation in general, and the colonies in *America* in particular, that I should very gladly excuse my self. However, as I cannot now depart from my constant practice of treating all your requests as commands, you must be obey'd.

The model of the present government in *N——a S——a*, differs from all others that I am acquainted with in the *English* dominions. For here we have a *L——t G——r*, who is a *L——t C——l* of one of his Majesty's regiments in this province, and senior officer in the army upon the spot, who commands (now) in the absence of the *G——r*. As our constitution is singular, so in this particular is it that this *L——t G——r* takes upon himself the stile and title of Excellency;—and he seems to be the first in that rank, who has discovered either an impatience to have a better title to it, or that his predecessors in the different provinces in *America*, had less sense of their own prerogative, or more modesty than himself.

The next branch of our legislative authority, is the king's council; and this consists of one captain in the army, who is also the Governor's secretary, and executes the office of secretary of the province. I mention this gentleman first, because in case of demise or absence of his *E——y* the *L——t G——r*, and the two senior *C——rs* who are both place-men, but on the civil list; this captain would command two *L——t C——ls* in the army, who are also *C——rs* and juniors to the captain; and the other three are a captain in the navy, and the two chief justices of the supream court of the province, and the inferiour court of common pleas.

The other branch, which is to be found in all the other *English* colonies and islands in *America*, is at present *VACANT*.—For hitherto it has not been filled up—so that all the laws, edicts, proclamations, call them what you will, are promulged, and absolute obedience thereto exacted from the free born subjects of *England*, by these two branches only of

authority:—However strange it may appear, they impose taxes, and execute by virtue of their laws or ordinances, corporal punishments;—so that should they create new felonies, it is not to be wonder'd at; for one of their laws published in the *Boston* news-paper, as an extraordinary thing in its kind, lays restraint on the speech, and renders it criminal to utter opinions different from the unerring judgment of his Ex——y and H——rs. From the first settlement of the province until *October 1754*, the supream court of the province consisted of the Governour and Council, and in his absence his Ex——y the L——t G——r and their H——rs, acted as the supream judges in all law cases.—As it was the original plan, to frame this government after the model of the government of *Virginia*, so the first commission appointing the justices of the lower courts, was here in the same manner as it is there under the denomination of county courts; and they were held monthly:—inconveniencies soon appearing, the commission was altered for the lower courts to be model'd after the method of the *New-England* inferiour court of common pleas; and they were slated to be held four times a year, which is the present practice.

As the same men are justices of the peace, who are justices of the inferiour court of common pleas, the quarter sessions is open'd the same day, and the same jury-men attend both courts; these are eight justices named in both these commissions, six of whom are place-men, and dependants upon the government for their subsistence.—And 'tis observable that a uniformity runs through every part of this constitution, and I believe it is singular that the provost marshall or high sheriff, has the arbitrary appointment of all jury-men; no such thing as balloting jurors having ever yet been practised here.—In *October 1754*, a chief justice for this province arrived from *England*; a gentleman, whose whole life seems to have been spent in the severe study of the law;—for in that he is allowed to be a great man, or in other terms an accomplished lawyer.—To compleat the singularity of all the material parts of our government, this gentleman, in order to countenance his Ex——y the L——t G——r, takes upon himself the stile and title of his Lordship:—and in the supream court he now sits ALONE; sometimes in scarlet, sometimes in black robes, but always with a very large full-bottom wigg, after the example of the judges in *Westminster-Hall*.

Thus Sir, you see that notwithstanding we are the youngest child as a colony upon the continent, we are vain enough to set examples which no other colony has yet undertaken.

You demand of me, whether the people have no voice in the choice of any town officers? I must do justice to the administration, by informing you that the people have a privilege of this sort, for every year new constables are chosen; and this being an office of great importance, and a necessity of the most able and skilful persons to execute the charge, twelve constables are returned by majority of voices every year; thus we have an election once a year: and this is the only instance wherein the people have any connection with the administration, saving the obedience they are compell'd to render to the statutes, laws, ordinances, edicts, or whatever you are pleased to call them, that are framed and published as coercive under the sanction of his Ex——y and H——rs.

This is, Sir, a very candid and just representation of the present administration in *Nova-Scotia*.

As I never attempted to claim any pretention to the character of a politician, so you cannot expect other remarks from me than what are obvious to the meanest capacity; and such as are the natural dictates of common sense. The certainty of a very considerable number of *Neutrals*, not less than 6000 at least being remov'd from this province, is a fact evident to all the northern colonies to which they have been carried; and that they have left behind them the several farms upon which they subsisted, is likewise certain.—The climate of the country being as healthy as any upon the globe, is universally agreed—as also that a more fertile soil is not to be found in *America*, is likewise agreed by all good judges in agriculture. Nothing then remains now to be done, but for a proper encouragement to be pointed out to fill the vacated lands with subjects sincerely and heartily attached to the interests of his majesty, and the descendants of his royal house.—His majesty's disposition, not only to defend and protect his subjects under the full enjoyment of the liberties they are born to, but to extend the same into his american dominions; is likewise a fact as well known to each individual of his subjects there, as that he is king of *Great-Britain*. Nothing surely remains to remove the first objection, which is too generally made against coming to settle in this province; namely, that the essential of english men's privileges, I mean that of the representatives of the people in the third branch of legislative authority: but that a proper representation be made to his majesty, and there can be no doubt but the royal order will immediately be forwarded upon such representation.

Another prevailing objection urg'd by those who are well disposed to occupy the vacated lands is, it seems, that the behaviour of the military force employed by his majesty for the defence of his subjects in this province, has been so very extraordinary, that men who can otherways provide for themselves, will never come within the reach of their insults and ravages.

'Tis needless to inform you, Sir, because I am sensible you will soon be informed from a cloud of witnesses, that the extravagancies of the military people here, have carried them such lengths, that the fewel for some of the soldiers barracks, have been supplied great part of this winter by pulling to pieces and burning the houses built by the settlers, at their own charge and expence.

To remove this objection, I know but one possible method; and that is, to *remove* the authors of it: As it may be urg'd that such a step would be to expose the colony an easy conquest to the *French*; I most humbly beg leave with the greatest deference, to propose an expedient that may obviate that difficulty, and perhaps point out a method to secure the province with more certainty to his majesty; and have an immediate tendency to fill it with useful inhabitants, with less expence to the crown, and more satisfaction to all his faithful subjects in the colonies.

'Tis very notorious that the regular troops which come from *Europe*, are altogether unskilled in the Indian method of fighting; which does not seem to be disputed since general *Braddock's* defeat: and in all the skirmishes that have happened in this province, some of the regulars have been pillaged of their scalps;—but never have they been able to produce a single trophy of that kind, to the enemy's loss.

Should this province be threatned with a formal invasion, from an expedition carried on by regular troops and shipping from old *France*, we cannot doubt being supported and relieved by a sufficient naval armament to repel the invaders.

The greatest thing then to be attended to, is how to secure the planters who may set down upon their lands from the ravages of the Indian enemy; and for this purpose experience has confirmed to us, that regulars are useless; for part of the troops have more than once or twice, been scalped in a manner under the walls of their forts, where there was not any settlements to defend.

As *Americans* are the only troops calculated to encounter the savages,—I would with the greatest submission recommend to your consideration,

whether 2000 men to be raised in all *America*, either to be regimented or as independant companies, so that a saving be made of all field officers; to be victualled and paid upon a footing with the other *American* troops, and discharged either at the end of the present contention, or sooner as occasion may offer; would not be more successful than double that number of regulars:—their usefulness in this respect, I consider as one of the least advantages arising to the province. For they would consist of people unacquainted with arbitrary dispositions, no contention would ever arise between military and civil authority;—nor between the *Americans* and *Europeans*: for 'tis evident in *America*, all strangers that behave themselves with decency, are constantly treated with respect and humanity. A different conduct influences some *Europeans* here to the prejudice of the *Americans*, who are almost totally driven away from the province;—men bred up under a civil government, would for ever be themselves the most forward in rendering their assistance to maintain the authority of the civil magistrate.

I would further propose that as an encouragement for sufficient numbers to enter into this service, that they should be informed that during their service they should be intitled to some part of the vacated lands, where they might in the interval of their duty, employ their time for the benefit of themselves and families in improving their lands; by which method at the time of their discharge, the colony would be enriched with a number of settlers without any expence other than that which must be expended on the same number of regular troops.

Nothing of this sort can be expected from men who enter the army for life, and subject to be removed from one part of the province to another in their circle of duty.—Whereas in the service of *Americans*, no occasion of relieving the posts they are destined to, would offer among men who might be put into such a posture as to be employed, as well for the defence of their own possessions and families, as those of their neighbours.—Should any regular troops be thought necessary to be planted in this province, it is to be hoped those raised in *America*, will be preferred; and as to the other regular troops, I need not mention that they are greatly qualified to defend such forts and passes in all the frontiers of *America*; and many such posts there are from *St. John's* river in this province, even to fort *Du Quesne*, which will require at least four or five regiments to garrison; and this distribution of regular troops, would be a great saving to the several colonies who are now obliged to garrison their forts with men of their

own, who might be much better employed and much more to their own satisfaction in any other way.

Thus, Sir, have I given you in obedience to your commands, the rough sketch or out-lines of a plan to establish this colony a secure and most valuable frontier to the english possessions in *America*.—The more masterly touches requisite to finish so great a work, is under your direction in a very able hand:—I shall conclude with one or two short remarks,—That not a single instance can be found in english history, of any colony being planted with success under the direction of military measures—The more exposed to dangers these settlers live, the more necessary to encrease their priviledges to make their situations sit easy upon 'em; and therefore ought they to be the least of any people living subject to military influence, when they can be protected, or in other words, enabled to protect themselves by a better method.

I am, Sir, your most obedient, and very humble Servant,
J. W.

T[homas] W[right] and [William Wragg],
Letters to the *South Carolina Gazette*
(May 13, June 5, 1756)



THROUGHOUT THE EARLY 1750s in South Carolina, the Assembly and the Council, acting in its role as an Upper House, engaged in a variety of contests, most of them over the Council's right to amend money bills and inspect accounts, long denied it by the Assembly, and its right to have a share in choosing the colony's London agent. These contests came to a head in the spring of 1756 and led to a remarkable newspaper exchange in which the very structure of the South Carolina constitution came under discussion. Published as a supplement to the May 13 edition of the weekly newspaper, *The South-Carolina Gazette*, the opening salvo in this exchange was signed by T—s W—t, whom most historians assume to have been Thomas Wright, a member of the Assembly. Whether or not a small Council, appointed by the pleasure of the Crown, had ever been an adequate instrument for fulfilling in colonial polities the legislative role exercised by the House of Lords, whose members were independent of the Crown, had long been a subject of political discussion within the British American empire, but no one before Wright had directly challenged the legislative competence and authority of a provincial council on constitutional grounds.

Wright argued that the settlers' refusal to implement early proprietary plans to create a landed aristocracy in South Carolina during its early years meant that during the proprietary period its emerging polity had "only two estates, the lords proprietors and the people," and he suggested that because the British Parliament, in the act by which the proprietors surrendered title of the colony to the Crown, implicitly confirmed this arrangement, "the

legislative power in this province” consisted of “none but his majesty’s rights and those of the people.” Without a nobility, Wright observed, “the government cannot here be similar to that of *England*, one estate or part of the *British* constitution being wanted, and therefore we come as near to the practice of *Great-Britain* . . . as the situation and circumstances of our province will admit,” with the Assembly passing laws and the governor assenting to them. For the Council, whose members served at the Crown’s pleasure, also to have a voice in legislation, Wright argued, would give the Crown twice as much weight as the people and thereby destroy the balance requisite to British government. Wright admitted that the Council had, “for some time past, . . . claimed and assumed the power of an Upper House of parliament, affecting to resemble the House of Lords.” In contrast to members of the House of Lords, however, colonial councilors voted for representatives in the legislature, served at pleasure, and were not hereditary, conditions that in his view made it impossible to find “the least similitude between the Council in *Carolina*, and the house of peers in *England*.” Indeed, the Council’s claims had no other foundation than “his majesty’s instructions to his governor,” which, he insisted, could not constitute “a legal establishment.” Such instructions might be binding on governors and other Crown appointees, he wrote in making a point often made by colonial legislators over the previous century, but they could never be “laws and rules to the people of this province,” which was why over the years the Assembly had ignored one instruction after another, “the people not thinking ’twas proper to pass laws for such a purpose.” “Without an act of parliament of *Great-Britain*, or an act of assembly of this province,” he concluded, “such an upper house could not have a legal establishment.”

The Council responded to this frontal assault by publishing in the June 5, 1756, issue of the *South Carolina Gazette* a detailed “Vindication” in three parts, the last of which is reprinted here. Presented as a collective effort by the Council but probably composed by councillor William Wragg, who later wrote consistently on the side of Crown authority, this document drew upon ideas developed by Crown authorities during the Restoration, arguing that the authority of colonial legislatures did not derive from their constituents’ inherited rights as English people, as colonial legislative leaders had long claimed, but were entirely “*ex Grátis Regia*,” grants from the King, and could “therefore be limited by him, and be subject to his correction.” “Without the grace of the crown,” the Council declared, South Carolina

would “have no legislative power at all, much less . . . a right to exercise the power given” it “in express *Contradiction* to the directions of the crown.” It could “no more prevent its being subject to the controul of the crown,” the Council exclaimed, “than it could make laws to bind the kingdom of Great-Britain.” Because the Assembly could thus claim no “authority as a legislative body but *immediately* from the crown, it followed that the Council’s claim to the status of an upper house was based on exactly “the *same Right*” and the same legal foundation as that of the Assembly. Arguing that various acts of Parliament applying to the colonies proved that colonial legislative authority was both “*limited and qualified*,” the Council warned the Assembly not to provoke Parliament’s interposition into South Carolina’s affairs “by too *immoderate* and *frantic* an use of those privileges we are *now* permitted to enjoy” and specifically cautioned it not to presume “to call in question” the Council’s long-standing status as an upper house, a status that derived from an authority that was “*co-eval* and *co-equal*” with that of the Assembly itself. (J.P.G.)

South Carolina Gazette, May 5th 1756

*(Rara temporum faecilitate, ubi sentire quae velis,
& quae sentias dicere licet.)*¹

TAC.

As the Council in this province, for some time past, have claim'd and assumed the power of an Upper House of parliament, affecting to resemble the house of lords in *Great-Britain*, I offer some considerations to the public on that head.

By royal charter of his majesty king *Charles II.* dated at *Westminster* the 24th of *March* 1662, and in the 15th year of his reign: And also by a second charter of his said majesty, dated the 30th of *June* 1665, in the 17th year of his reign: He did grant and confirm to the lords proprietors of the province of *Carolina*,

All that province or tract of ground, called *Carolina*, situate, lying, and being within or about the degrees of 36 30 northern latitude, and so west in a direct line as far as the *South-Seas*; and south and westward as far as the degrees of 29 inclusive, northern latitude.

By the 4th paragraph or clause, his majesty was pleased to give the said lords power and authority, to ordain, make and enact, any laws and constitutions whatsoever, according to their best discretion, by and with the advice, assent and approbation of the freemen of the said province, or the greater part of them, or their delegates or deputies, &c.

By the 7th paragraph or clause, his majesty was pleased to ordain, constitute and declare, *That the province of Carolina*

shall be of our allegiance, and the subjects and people transported or to be transported into the said province, and the children of them, and such as shall descend from them, there born, or hereafter to be born, be, and shall be denizens and lieges of us, our heirs and successors, of this our kingdom of England, and be in all things held and reputed, as the liege people of us, our heirs and

1. ["O rare times, when it is easily permitted to think what you wish and to say what you think."]

successors, born within this our said kingdom or any other our dominions, &c. As likewise all liberties, franchises, and privileges, of this our kingdom and of other our dominions aforesaid, may freely and quietly have, possess, and enjoy, as our liege people born within the same, without the molestation, vexation, trouble or grievance of us, our heirs and successors, &c.

By an act of parliament, passed in the 2d year of his present majesty's reign, for establishing an agreement with seven of the lords proprietors of Carolina, for the surrender of their title and interest in that province to his majesty, it is obvious, that, altho' his present majesty is vested with all the interest, property, and estates of seven of the late lords proprietors, yet (in the said act of parliament) nothing is expressed or intended, to take away or diminish any of the rights and liberties of the people of this province; but, on the contrary, there is a tacit confirmation of of all the privileges granted by his late majesty king *Charles II.* in his two charters, since in the said act they are both recited.

The ancient and usual method, from the first settlement of this province, to the end of the government of *Robert Johnson*, Esq; the proprietors governor, (above 50 years), the words used in the enacting clauses of our laws were, "Be it enacted by {blank} palatine, and the rest of the true and absolute lords and proprietors of this province, by and with the advice and consent of the rest of the members of assembly now met at *Charles-Town*, &c." This custom was used until the inhabitants denied the authority of the lords proprietors, and *James Moore*, Esq; was chosen governor: When the enacting clause was altered, and ran in the words following, "Be it enacted by the honourable *James Moore*, Esq; governor, by and with the advice and consent of the council and representatives of the inhabitants of the settlement in *South-Carolina*, now met at *Charles-Town*, and by the authority of the same." The reasons for this alteration are evident, for they could not make use of the name of the palatine, as he was chosen governor by the people, who had disclaim'd the jurisdiction of the lords proprietors, and consequently were obliged to alter the method formerly used in wording the enacting parts of their laws.

The first law I have met after governor *Nicholson's* arrival, bears date the 18th of *August*, 1721, in which the words of the enacting clause run thus, "Be it enacted by his excellency *Francis Nicholson*, Esq; governor, by and with the advice and consent of his majesty's honourable council, and the assembly of this province, &c." I have not been able to learn the reasons why this method

has been since usually followed, unless 'twas occasioned by the preceding acts passed in governor *Moore's* time; which acts could not be worded, in the enacting clause, either with the names of the lords proprietors, or his then majesty king *George*, because governor *Moore* had no commission from the king, and the province had disowned the authority of the lords proprietors. It is as reasonable, now to make use of the king's majesty's name in all our enacting clauses, as it was, in former times, to use the palatine's name and the rest of the lords proprietors, for his majesty, now our sovereign and proprietor, has his representative, the governor, to consent on his behalf to all laws passed in the province: and therefore, the using his majesty's name, would appear more similar and like the custom used in *Great-Britain* of enacting all laws; and the practice of *Ireland*, governed by a lord-lieutenant, is so good a precedent, as this province could not be in the wrong to imitate.

It is plain, to every considerate man, that the practice in this province formerly, in passing their laws, shewed there was only two estates, the lords proprietors and the people. The lords proprietors had a governor, who represented the palatine; and the other lords had each his deputy, who consented for his constituent or principal. The governor, with these deputies, sat in council, and gave his, and they their, consent to all laws they approved. This method will plainly appear, by examination of all the laws passed in this province to the end of the proprietors government under Mr. *Johnson*. Our constitution is no way altered by his majesty's being vested with the estate of the lords proprietors; it ought to be as near as possible like that of *England* (by our charter); but the scheme form'd by the late lords proprietors, for making a nobility in this province to represent an upper house, failing, hitherto none but his majesty's rights and those of the people seem to constitute the legislative power in this province; for, since there is no nobility, the government cannot here be similar or like that of *England*, one estate or part of the *British* constitution being wanted, and therefore we come as near to the practice of *Great-Britain*, by passing our laws in the assembly, and those confirmed or assented to by the governor, as the situation and circumstances of our province will admit. The parliament of *England* is composed of king, lords, and commons; the two houses agreeing and uniting, are a proper balance of power between the crown and people: But, if his majesty's authority is represented by his governor, which constitutes one estate of our legislature, and his majesty should further appoint a council, to preside in the nature of an upper house or house of peers, and these appointed only *durante bene*

placito regis,² such an appointment must necessarily destroy the balance, and be contrary to the usage of our mother-country. I dare venture to affirm, no instruction from his majesty to any governor, ever called the council an upper house, nor can the council produce any instruction to any governor, wherein any words can imply them to be a house of peers. The council have not any correspondence with his majesty's ministers, or with the lords for trade and plantations, as council. They have no commission or patent for their places, but are only named by his majesty, or by his majesty's order to his governor to appoint them. The council have nothing to shew to support any claim or privilege, only his majesty's instructions to his governor: To him and them they must apply and refer themselves, to know, who they are, what power they have, and what his majesty's pleasure is concerning them. Their power lives, moves, and has being, only from the governor's instructions: How far such a council is, from the nature of an upper house, or house of peers, will easily be discerned from a little inquiry: But first it will be proper, to consider the council as assistants to the governor, and named by his majesty for that end, lest the weighty affairs of government be too ponderous for the judgment of every governor, and that the advice of council might help the governors in arduous affairs, and support the rights of his majesty, as well as promote the good of his people in the colonies. If the council were in the nature of an upper house or house of peers, then the governor would have no counsellors; for, they having, as an upper house, given their opinion, he would be precluded asking their advice, they having already determined, and consequently, in most or many cases, will be without council; as it happened not many years since, when a law was proposed for making and stamping bills for the payment of two sloops (the *Nonpareil* and *Pearl*) then lately employed in the service of the province; also last year, when a bill was passed by the assembly, for granting to his majesty 40,000 *l.* to be sent to *Virginia*, and employed in defending his majesty's just rights, &c. the council, as an upper house, approved and pass'd the bill, the governor would not assent to the same, in which circumstance his excellency was deprived of counsel, which creates such an absurdity in the government here, that there needs but few words to prove the inconsistency of the council acting as an upper house. The messages usually sent to the assembly are full of absurdity, for they are frequently brought down by the clerk of the council, who stiles him so at the

2. ["As long as it is pleasing to the king."]

conclusion, and begins with, a message from the upper house. The lords of parliament are called by writ every parliament, as well as the commons, to consult about the arduous affairs of the kingdom. The lords have no vote for electing parliament-men. The lords are independent, and not to be displaced at pleasure of a minister. The peers are hereditary counsellors to the king and kingdom. The counsellors in *Carolina* are dependent, and hold their places during pleasure. The counsellors in *Carolina* vote for members of assembly, and have their representatives: Can they represent themselves, and be represented? The members of the council can be suspended by the governor: Can a peer of *England* be suspended? The members of the council are summoned, by the governor's order, upon every important occasion: Does his majesty summon the peers of the realm? Surely, no person can draw the least similitude between the council in *Carolina*, and the house of peers in *England*. If his majesty's ministers should be pleased to order his governor to carry into execution, any instruction which the people apprehend inconsistent with their rights, can the council here appear against such instructions? Have not some governors, instructions to receive no salary or present from the people, unless they will settle it upon them and their successors? Have not some governors instructions, that the laws of the province should all be passed with a saving clause? Can members of the council advise, or publicly oppose, against such instruction? If they cannot appear (from the nature of their office) to dissuade the people from complying with such measures recommended by the ministry, such an upper house would be most dangerous to our rights, liberties, and estates.—It appears to me very odd, that any set of men can be so deluded, as to imagine, that one day they can be freemen, voting for representatives; the next day, representing themselves, as peers; and the third day, metamorphosed into a council of state, to approve or disapprove of what they had determined the morning or day before as an upper house.

If the scheme for making a nobility, form'd by the lords proprietors, had taken effect, then the landgraves, barons and cassicks, would have been an upper house of parliament in this province: But that scheme was never confirmed by act of assembly of *Carolina*, and so failed.—I imagine from hence, no addition or diminution can be made to our constitution; and altho' his majesty should be pleased, by his ministers, to give instructions to his governor, for erecting or making an upper house of assembly, I conceive, such an upper house could not have a legal establishment, without an act of parliament of *Great-Britain*, or an act of assembly of this province; for, if any instructions from his majesty can substitute an upper house, or make

an addition to our legislature, by the same rule, his majesty's instructions can lessen the rights of assembly, or totally take away all their privileges.—Instructions from his majesty, to his governor, or the council, are binding to them, and esteem'd as laws or rules; because, if either should disregard them, they might immediately be displaced: But, if instructions should be laws and rules to the people of this province, then there would be no need of assemblies, and all our laws and taxes might be made and levied by an instruction.—'Tis certain, many instructions to the governors of the colonies have never been carried into execution, the people not thinking 'twas proper to pass laws for such a purpose.

If the council was admitted to be an upper house, they would have no right to meddle in money matters, which can be made appear, from many precedents in the journals of the house of commons: And if, by seeing the accompts, they can neither lessen nor augment any sum provided in the schedule annexed to the tax-bill, the demand made, for the accompts to be sent them, brings to my mind the novel of the curious impertinent in *Don Quixote*.—If the council should take upon them to shorten or increase any sum, provided in the schedule to the estimate, it would lead the assembly into a perplexing review of all the accounts again, who have examined them already with the eyes and judgments of the counsellors, as their representatives.—If the gentlemen of the council can shew the instrument of writing, by which they claim their privileges of an upper house, from the grant of any king of *England*, I will promise to shew them all the rights and liberties the assembly claim endorsed on the back of it.

T—s W—t.

Charles-Town, May 6, 1756.

South Carolina Gazette, June 5th 1756 The Vindication of the Council concluded.

As to the *Fourth* Head.

It would justly be esteemed the highest presumption in any of the legislative bodies of this province, who, in their most exalted state, are but a *poor Epitome* of *British* grandeur, to enter into a discussion of the extent of the privileges and powers of the house of peers and house of commons

in *Great-Britain*: A subject of too much delicacy to be touched by any but themselves: Much less decent would it be for them to undertake to determine which of those two wise and august bodies have been in *the Right*, in matters of that kind that have been in dispute between them.

It is confessed on the one hand, that the house of commons have claimed the *sole Right* of framing, altering, and amending money bills; it must also be confessed on the other hand, that the lords have never allowed *that Right* to be in the house of commons: They have constantly asserted their own privileges in that respect, which their journals amply testify, though from considerations of prudence, they have frequently waved and suspended their exercise of them. This matter still remains undetermined: For these honourable assemblies having no *Superior* to appeal to, their disputes can never be decided *by others*.

It would be comparing *small* things indeed with great, to mention this province in such a dispute.

This province, and the legislature of it, is entirely subordinate and dependent. Its powers are *derivative*, and not *original*. And it can no more prevent its being subject to the controul of the crown, than it can make laws to bind the kingdom of *Great-Britain*.

The whole power of legislation here springs from the crown: The assembly's power as a branch of it, must undoubtedly be derived from the same fountain; for they claim their privileges in that respect from the charter, and *that* was given by the crown. Without this power, which is of the kind with those given to corporations for making *By Laws*, they could not exercise any legislative functions at all.

If this liberty had not been granted, they must have been unprovided with such laws as would be properly adapted to their situation: The legislature of *England*, being so far removed, might not have known their wants, or might not have known them early enough to have made a suitable provision for them. Therefore the privileges they now enjoy are *ex Gratia Regis*; may they not therefore be limited by him, and be subject to his correction?

It is to be considered then, whether the charter will furnish any pretence for the assembly's *claiming ALL the Privileges of the House of Commons in Great-Britain*.

The charter granted to the lords proprietors gives a power "TO THEM, to ordain, make, and enact Laws according to their best Discretion, by and with the Advice, Assent, and Approbation of the Freemen or their Delegates,

provided the same be consonant to Reason, and, as near as may be conveniently, agreeable to the Laws and Customs of this our Realm of England."

It is explicit as to the *Subject-Matter* of them; but is *silent as to the Powers and Privileges* of the several constituent parts of the legislative bodies.

If the privileges of the house of commons in *Great-Britain* are not *expressly* given, as they are not; it must be said, that they are *impliedly* given; but that they are not *impliedly* given will as clearly appear.

The king, it is true, enjoins and commands that the people shall be treated and reputed as his *LIEGE faithful People*, and shall enjoy all *Liber-ties, Franchises and Privileges* as his *LIEGE People* born within the kingdom of *England*.

What more is meant by the word *Liege*, than that such a person shall be intitled to the protection of the king and the laws, for which he is bound to pay a due submission to the king and the laws. Can no man enjoy the privileges of a *LIEGE* subject, without having *all the transcendant Powers of the House of Commons virtually in him*? A man may certainly have a right to have his property secured to him, and to have his person protected from violence, and yet be incapacitated from giving a vote for a member of parliament, of being a member, or of enjoying the privileges of one.

Those are privileges depending upon *other* qualifications and *other* requisites.

"All the tenants and inhabitants shall be immediately subject to *our Crown of England*, as depending thereof, for ever."

Many facts might be produced to illustrate this, but we shall refer to one of the latest in 1718, in an act of repeal of the lords proprietors.

"His majesty having been pleased, by his order in council, to signify his royal pleasure to us the lords proprietors, that we should forthwith repeal an act passed in that province, we *in OBEDIENCE TO HIS MAJESTY'S COMMANDS*, repeal, &c."

If neither from the *Words* nor *Spirit* of the charter the inferences drawn by the assembly can be collected, what admiration will it not create in our mother-country, to find them declaring, that *if they are not permitted to exercise EVERY Privilege that the House of Commons in Great-Britain* does, they will *renounce THAT* which is given them by the charter, of advising, assenting to, or approving of such measures as are conducive to the public safety and tranquility?

This is the plain English, without any gloss, of their first alternative.

“If the governor shall be of opinion, that the present assembly assume any Power or Privilege whatsoever which is not exercised by the House of Commons in Great-Britain, since we despair of being able to advance the public good, we desire to be dissolved immediately.”

But if the privileges contended for by the assembly were to be found in the charter, and that they had *not renounced* the benefits of it, by the people’s throwing off the government of the lords proprietors, it must be admitted, that the operation of it would be *equally strong* in every clause of it. And what comparison will the 15th, 16th and 18th clauses bear, with the numerous advantages and benefits the province enjoys under his majesty’s benign administration of government among us?

The lords proprietors, their deputies or officers, had the powers given them of a captain-general of an army, full power, liberty and authority, in case of rebellion, tumult, or sedition, to exercise MARTIAL LAW against such as shall refuse to SUBMIT themselves to their GOVERNMENT, or shall refuse to serve in the wars, or are OTHERWISE OFFENDING against MILITARY DISCIPLINE.

This is what *Freemen* are subjected to by the charter *without* their advice, assent or approbation. This is one of the privileges we boast of under it!

“Power is given to them likewise, to grant an universal liberty and toleration in religion, even in *Indulgencies* and *Dispensations*.”

But thanks to God, the infatuation never prevailed so far, as to have arguments drawn from the charter in favour of *POPERY*!

If it does not appear, from the most critical observation upon the charter, that the assembly are either possessed of, or intitled to, the privileges of the house of commons;

Their *Claim* must be derived from

1st. Length of practice. Or,

2dly. From some fresh grant under the crown.

As to the first, to avoid prolixity, we will confine ourselves to the question upon the accompts, which the assembly refused this year to send to the council.

For which purpose it is proper to be kept in our mind, that *without* the grace of the crown they have no legislative power at all, much less have they a right to exercise the power given them, in express *Contradiction* to the directions of the crown.

From the beginning of government in this province, the accompts relating to expences incurred for public services, have always undergone the examination of both council and assembly.

Humble application having been made by the people of the province, who had renounced the government under the charter, to request his majesty's most gracious and immediate government and protection of them, Mr. *Nicholson* was appointed, by his majesty, provisional governor, with full powers, instructions and authorities to establish the peace of the province. In his time an act was passed for electing members of assembly. The 11th clause of this act, immediately, and for many years after, was so understood (and surely therefore rightly understood*), that a committee of the council joined a committee of the commons house of assembly, to examine the accompts of the creditors of the public; and money-bills, *strictly* and *properly* so called, were amended by the council, as occasion required, according to his majesty's 35th instruction to governor *Nicholson*. This instruction is made *Part* of the election-act, which, by way of *Proviso*, restrains the commons house of assembly from claiming any privileges that are contrary to that instruction.

The clause of the act is,

That all and every member of the commons house of assembly, shall have as much power and privilege, as any member of the commons house of assembly of *this Province* heretofore of right had, might, could or ought to have in the said province; provided *the same are such as are according to his majesty's 35th instruction*.

The instruction is,

And whereas the members of several assemblies in the plantations, have frequently assumed to themselves privileges NO WAYS belonging to them, especially of being PROTECTED from suits at law during the term they remain of the assembly, to the great prejudice of their creditors and the obstruction of justice; and some of the assemblies have presumed to ADJOURN themselves at pleasure, without leave from our

* N B *Since the passing of the said election-act, the assembly have not only conformed to this instruction in money bills, but even, to this day, have likewise never adjourned without the governor's leave agreeable to the instruction therein referred to; tho' the house of commons in Great-Britain adjourn at Pleasure, without applying to the king for his leave.*

governors first obtained, and others have taken upon them the SOLE FRAMING of money bills, refusing to let the council alter or amend the same: ALL which practices are very detrimental to our prerogative: If upon your calling an assembly in *South-Carolina*, you find them insist upon any of the abovesaid privileges, you are to signify to them, that it is our express will and pleasure, that you do not allow any protection to any member of the council or assembly, further than in their persons, and that only during the sitting of the assembly, and that you are not to allow them to adjourn themselves, otherwise than *de Die in Diem*,³ except for sundays and holidays, without leave from you or the commander in chief for the time being first obtained: It is also our further pleasure, that the council have the like power of framing money bills as the assembly; and you are expressly enjoined, not to allow the said assembly, or any of the members thereof, any power or privilege whatsoever which is not allowed by us to the house of commons, or the members thereof, in *Great-Britain*.

These privileges were exercised by the council, without *any* exception taken thereto by the assembly 'till 1735, at which time we find the first precedent of their claiming a sole right of framing, altering and amending money-bills. This claim was afterwards repeated in 1739, but was peremptorily denied by the council.

As we were then upon the eve of a war with *Spain*, and considering the danger to the public which would arise from such disputes, in order to prevent them, a *middle way* was agreed upon by *both Houses*: The assembly admitted the council to *propose* amendments, and the council allowed their *proposed* amendments to be *inserted* by the assembly, and the accompts were always sent by the assembly to the council, and from that time the practice has constantly been observed 'till NOW.

As to the second point.

The instructions to every governor since have been of the same tenor; and indeed no fresh grant of privileges to the assembly has been so much as attempted to be, nor can with *Truth* be, urged. But there is one of a *contrary* tendency, where the governor is not to issue money, but by his warrant by and with the advice and consent of the council.

3. ["From day to day."]

“But the assembly may, nevertheless, be PERMITTED, from time to time, to view and examine all accompts of money disposed of by virtue of laws made by them.”

If the instruction giving the council a power to frame, alter and amend money bills, is of force and validity, which, being incorporated with the law, can admit of no doubt, it must authorise them likewise to look into every thing *relative* to such bills: For it would imply a gross absurdity to give a Power of doing a thing, composed of various parts, a consideration of *every one of which* is necessary to form the judgment, and at the same time to *restrain* the exercise of that judgment, by concealing *any one* of those parts: For it is a known and uncontroverted rule, that *qui finem dat, dat media ad finem necessaria*,⁴ in order to accomplish any end proposed, you must make use of the necessary means for it; and the *more so* in this province, where *many* of these accompts are for services done by the advice of council, who must therefore be the best judges of them.

From an obstinate perseverance in that mistaken opinion, that because an *independent* body, which acknowledges *no Superior*, enjoys certain rights and privileges, that therefore an *inferior subordinate* and *dependent* body has an equal claim to them, this province may be drawn into real dangers, and finally suffer the greatest evils.

The disparity between this province and her mother-country is great and obvious; there the people cannot be bound by any law that is not made *with* their own consent. The people of this province likewise, it is true, do consent to the making of laws for their own government in a *limited and qualified Way*. But it is well known, that they are bound by laws made not only *without*, but even *against* their consent,* whenever the parliament of Great-Britain find it necessary to interpose their authority for OUR GOOD, which either we *do not see* or *do not pursue*; as they undoubtedly will do in preventing our drawing evils on ourselves by too *immoderate* and *frantic* an use of those privileges we are *now* permitted to enjoy.

But as the gradations in *Vice* are regularly progressive, 'till they terminate in a dissolute and abandoned course of life, so the *Claims* of the assembly with regard to privileges, which at first began by making small advances

4. [“Who provides the end provides the necessary means to the end.”]

* *The laws relating to paper currency, private banks, duties upon our commodities, navigation act, for the better recovering debts in America, &c.*

upon our constitution without receiving any check, have gradually risen to such a pitch, that every new whim and conceit of *splenetic Mind* or *innovating Genius*, is immediately resolved into privilege. And as power is ever assuming, and ill brooks controul, a doctrine is lately laid down and *publicly avowed* by them, in a message of the 15th of *April* to the governor, in which they deny any legislative power or authority to be in the council: *This* point once gained, *this* restraint upon any exorbitancy of an assembly once removed, all power must of course center with them. *This* was the plan of 1648: *That* succeeded; and the train of evils that flowed from it are too notorious to be expiated upon. *This* is the object now struck at, and to serve that purpose is the stroke given. Too plain is the design to be misunderstood, of too great consequence is it to be passed over without observation.

Granting, say they, that the persons appointed by the king as council to advise his majesty's governors in *America*, have a power to act in a legislative capacity, or as an upper house, as the council are pleased to call themselves, which we think *may be denied with a great deal of Reason*, 'till an Act of Parliament shall be made to give them such a Power, &c.

Perhaps it might have too much the air of *Sarcasm* to admit this proposition, and to ask in consequence of it, *when* the act of parliament passed to give *the Assembly* the privileges of the house of commons in *Great-Britain*? *Whether* the crown has not as much power to appoint a council, as it has to give the liberty of chusing an assembly? And *whether* the assembly claim any authority as a legislative body, but *immediately* from the crown, and in the *same Right* that the council do?

As the present circumstances of our affairs require a speedy supply to his majesty, especially the important work of building a fort in the *Cherokee* nation; and as the public good is our only aim, we are desirous to fall upon ANY EXPEDIENT that may save the province from the impending danger, therefore are READY TO PREPARE another bill for accomplishing these ends, which WE will present to your excellency, if you shall THINK FIT to give your assent to the same.

Their ZEAL is so predominant, that it is *extraordinary* to find an inclination in them to *wait* the formality of a governor's assent. But it is difficult to reconcile this new manner of enacting laws by *Two* branches of the legislature with that part of the same message, where they say,

“We look upon the *British* constitution to be the *best* that ever was established, we are very desirous, ’tis our only aim, to have the public business carried on in this province, as the same is done in our mother-country, as nearly as may be, and consistently with our charter, rights, and privileges.”

In *Great-Britain* laws are known to be enacted by three estates. That is admitted to be the *best* method: They would approach it as near as may be *conveniently*: They are the judges of that *Convenience*, and by a *SUPERIORITY* of genius have discovered that *Two* is nearest to *Three*. If they preferred four branches, they would *equally as much* resemble their mother-country. But the words of the charter, “as nearly as may be conveniently agreeable to the laws and customs of *England* refer to the *Matter* of the laws to be enacted, and not to the *Persons or Branches* enacting.

That the council have exercised a legislative right, though in a much inferior degree to the house of peers in *Great-Britain*, is evident from Experience: That they have at this time the same authority for exercising *that* right that the people indisputably have of sending representatives to the assembly, will appear as fully by the charter itself, as it does by the king’s commission to his governor.

This is certain, they are a body that the assembly are not so well acquainted with as they should be. If they had, they would not have fallen into the inconsistency of *finding Fault* with the imperfection in their constitution, *because they are removable* at pleasure and not hereditary as the house of lords are, and at the same time of pointing out the *Benefit to the Public* from the governor’s *Power of suspending or removing* them from their station. It would have been more discreet to have attacked the individuals than the body. It seems there is not that *Pliancy in their* disposition, that *implicit Resignation* to the opinion of the assembly, that the service of his majesty and the security of the province requires, *therefore they hope his Excellency will please to suspend the Council, and appoint other Men* according to their own heart, *SUCH* as they may gently lead into the path they would have them walk in. It is unlucky that, before they made their request, they had not discovered the governor’s *Want of Power* to gratify it, as they were no doubt *well assured of his great Inclination to comply with whatever they desired*. But they have now found, that the power given by the crown to suspend, is not *arbitrary*; it is *so limited* as not to admit of a *wanton* exercise of it, to gratify the caprice or humour of a *Governor*, or his *most affectionate Friends*; it is to

be made use of only against such as neglect or betray that trust which by the constitution they are invested with, and which by their oaths they have engaged faithfully and conscientiously to discharge.

Let the world consider, that the families and estates of the members of the council, *such as they are*, are mostly in this province, that the *Advantages* they receive from a long attendance as council to the governor in the executive part of government, and also as a branch of the legislature, are *no greater* than what the assembly receives,—*the Satisfaction of serving their Country, and thereby rendering the truest and most acceptable Service to our Sovereign*;—and that their seats in council are only during pleasure:—Then let them declare what *Temptation* there can be to induce the council to advance their *momentary Power* to the abridgment of the privileges of their POSTERITY, THEIR FRIENDS AND THEIR COUNTRYMEN.

It is immaterial whether the persons thus circumstanced, thus complained of, and exercising the second branch of the legislature, are called *Deputies, Council, House*, or BOARD, as the assembly affect to call them. The house of peers are known by various names, *House of Lords, House of Peers*, and *the Upper House of Parliament*. The name will make no variation in the substance and essence of the thing, and the powers belonging to it.

If the palatine was represented by the governor, the other lords proprietors by their deputies, and the people by their delegates, the three distinct branches are formed. If the lords proprietors deputies were appointed only to advise the governor, as the assembly would have the present council to do, then the other lords proprietors would not have an *equal* share of power with the palatine, nay they would be excluded from having *any*, whereas the right of legislation is given to every one *equally* with the palatine.

That these three distinct branches existed, is clear from the *Recital* in *Archdale's* first law in 1695–6, where it is admitted and acknowledged, in the most *explicit Terms*, by the whole community.

Whereas the lords proprietors, out of their *paternal* care of us the inhabitants of this their colony, have been graciously pleased to empower and commissionate *John Archdale* to do and act such things, with the *Advice* and CONSENT of three or more of their deputies, and by and with the *Advice* and CONSENT of the delegates and representatives of the people, as to him and THEM shall seem most to conduce, &c. therefore the representatives of the people do in most *humble Manner*

pray the Governor and THE LORDS PROPRIETORS DEPUTIES that it may be enacted.

And then follows the enacting stile that always had been used, and was continued to the time of the people's renouncing their charter, "By palatine, and the REST of the true and absolute lords proprietors of this province, by and with the advice and consent of the REST of the members of the general assembly."

That these DEPUTIES were a COUNCIL, appears from the act for building a state-house in 1712.

The commissioners shall form the model of the said house after such manner as it may most conveniently answer the end for which it is designed; that it shall contain a handsome convenient room for the COUNCIL, a large hall for the HOUSE OF COMMONS, and closets for the papers belonging to THE COUNCIL AND HOUSE OF COMMONS.

Many of the lords proprietors disallowances and repeals of acts passed here, shew the same thing.

"To the governor and COUNCIL of *South-Carolina*."

The term, "and the REST of the members of the general assembly," shews there were more than *Two* distinct estates: For if the deputies were no branch of the legislature, the form of enacting would have been, *By the Palatine and the Members of the General Assembly*; or, as the form is in *Pennsylvania*, by {blank} governor, &c. *by and with the Advice and Consent of the Freemen in General Assembly met.*

But if this had been *otherwise*, it is plain, that the *People themselves* understood, and tho't it most eligible, that there should be *Three* distinct branches of the legislature; for at the *intermediate Time* between their renouncing the proprietary government, and the king's receiving them more immediately under his own government, when they modelled the legislature ACCORDING TO THEIR OWN WISH, we see the laws enacted by *the Governor, by and with the Advice and Consent of THE COUNCIL, and the Representatives.*

Upon a *further* perusal, will be found this title to an act in 1722.

"An estimate of the charges of the government, that is and will be due on the 25th of *March* next 1723, to be provided for by the *General Assembly*, and agreed to by the *Committee* of BOTH HOUSES appointed for that purpose."

This ERROR in calling and considering the middle branch of the legislature, *Deputies, Council, and HOUSE*, prevailed 'till the present *enlightened* assembly made this new discovery.

For no longer ago than the 11th of *May 1754*, the assembly, in their address to the governor, take notice of his *Affection and Regard* for the Welfare of the province, lately expressed in his excellency's speech to BOTH HOUSES.

When the majority of the assembly become better acquainted with the excellency of the *British* constitution, they will discern the indulgence that has been shewn to this province by extending the *essential* parts of it hither. They will not, it is to be hoped, assert against *Reason*, as they have done against *Fact* and *Experience*: They will, it is to be wished, *at least* have so much regard for their *Posterity*, as not to draw on them those evils, which their forefathers have avoided, by *not presuming* to call in question that power that is *co-eval* and *co equal* with their own.

If this truth can be any longer doubted of, let them cast their eyes a little further, and read the *Introduction* to every disallowance and repeal by the king, of acts passed here since his majesty's taking this province under his more immediate protection.

"Whereas BY COMMISSION UNDER THE GREAT SEAL OF GREAT-BRITAIN the governor, COUNCIL, and assembly are authorized and empowered to *make, constitute and ordain* laws, &c."

But the favourite proposition is, *that the legislative Power of the Council must be annihilated. Assertions* take the place of *Argument*. The charter, it is said, gives them *no such Power*; that nothing can give them *such a Power* but an act of parliament; and that *no such Power* has been given them by any act of parliament; that the constitution of this country is composed of only *Two* legislative branches, a governor and the commons house of assembly; and therefore that the commons house of assembly presenting a bill for any purposes of government to the governor, and his assenting to it, will give it the force and validity of a law.

And then again *immediately*, as if they were determined to *be* confuted by the *changing Sides*, "The council are a *Branch of the Legislature*; for they WANTONLY reject tax bills, they *withheld* tax-bills; from this conduct of theirs, *in not passing Bills*, our *Grievances* arise; by this we are UNAVOIDABLY exposed to *Dangers, Calamities, Evils, &c.*"

Thus their arguments, like *two-edged Swords*, are intended to cut on the opposite sides. Some may be made proselytes of by *One Part*, and some by

the other. If all can but be brought, even by *different Principles*, into the *same Opinion*, laying blame or odium on the council, the *Point* is gained, and the *End* answered.

Mistake may admit of excuse, as condour will acknowledge and correct it when discovered: But this absurdity has its foundation in *Malice*: And as the *Superstructure* is composed of ill-connected parts, it will, like *other bad Buildings*, fall to pieces without the help of any extraneous force.

Can it be convincing or conclusive to a common understanding, to be told, that the council *cannot proceed* with a bill, and that their doing it would be to *assume a Power* they have not, and yet that *they are to blame for NOT having proceeded in it*.

The council admit, that they act as a legislative body by virtue of no other power or authority than his majesty's SIGN-MANUAL, and his majesty's COMMISSION and INSTRUCTIONS to his governor; and they take an OATH to defend all his majesty's *Jurisdictions, Pre-eminences, and Authorities* by act of parliament or OTHERWISE.

Besides the instructions already mentioned, there is one that obliges "the governor to observe, in passing all laws, that the stile of enacting the same be, by the GOVERNOR, COUNCIL, and ASSEMBLY."

Another says, "That in every act which shall be transmitted (and all are ordered to be transmitted) the *several Dates, or respective Times* when the same passed the ASSEMBLY, the COUNCIL, and received YOUR ASSENT, be particularly expressed."

But if it was admitted, for argument's sake, that it is *unconstitutional* for the council to be a branch of the legislature, that they *never did* exercise any such power, that his majesty *never gave or intended* to give them any such, and *even* that he has *no Authority* to give any such: but that he has *so circumscribed* the power of his governor, that he cannot give his assent to any bill without having the advice and consent of the council so to do.

What are the advantages that will accrue to the province from such an admission? Will the business of the public be more *expeditiously* or *better* carried on?

If this practice should prevail, let the *Errors* of a bill presented to the governor by the assembly be *ever so gross*, or *ever so numerous*, they must either be enacted into a law, or the unexceptionable parts of the bill must drop.

The governor lays it before the council, and asks their advice and consent whether he shall assent to it.—They are of opinion he ought not.—*What*

then?—He cannot pass it: And the bill must die. For the only parliamentary step the governor can take is, either to *assent* to it, or to say, he will *consider* of it; which is his *parliamentary Language of rejecting it*.

If it is a bill of that consequence, that the public will suffer for the want of what is intended to be provided for by it, there must be a *Prorogation*, that it may be altered and brought in again, and so {*toties quoties?*} from PASSION-WEEK even to CHRISTMAS-Week, 'till the council think it is brought to such a degree of perfection, that the governor may assent to it.

If a tax-bill is laid before them by the governor; they find a *Schedule* is referred to; they can't judge of the *Propriety* or of the *Truth* of the *Allegations* in it, without seeing that *Schedule*; that *Schedule* refers to *Accompts*, upon which it is founded; they cannot say the public does not pay too much, or that the creditor of the public has as much as in conscience and justice he ought to have, without seeing *those Accompts*; they will not give the governor their advice in a blind and implicit manner to assent to the bill. Is not the advice to be given according to *Judgment*? Can a judgment be formed without having the *Facts* before them?

According to this *Refinement* of the constitution, in all human probability no bill would ever pass. As *it is*, messages frequently pass, and conferences are held, between the council and assembly, before the bills are brought to such maturity as to be fit for the governor's assent.

Upon this plan of *Refinement*, the council's power over the bill would be *as great* as it is at present; the inconveniences and delays to the members of assembly would be *greater*; and the public would at last be deprived of that *Benefit* they had reason to promise themselves from the *sage and important Appearance of so many Representatives*.

Upon a *Recapitulation* of the several parts of this *Vindication*, it will be found, that if the repeated advice of the council had been fortunately attended to, the fort in the *Cherokees* had been *long since built*; after many opportunities had been lost, that yet a *small* detachment might have been at *Tennessee* the *End of February* last, and the whole body by the *Middle of April*. The not passing the tax-bill in *April* could not surely have been foreseen in *January*; nor could a transaction in *April* have prevented those that were to be employed from leaving the town in *February* and *March*.

And therefore, that the governor's not fulfilling his engagements to the *Cherokees* cannot arise from the council's not passing the tax-bill.

Had the assembly sent the accounts *according to constant Usage*, instead of attempting to destroy the legislative powers of the council, the tax-bill would have been proceeded in. It was in the power of the assembly, by doing *this*, to remedy the evils they complain of. By *this*, it was in the power of the assembly, not only to have carried on the fortifications in *Charles-Town*, but to have given maintenance to many of the *Acadians* by employing them in those works, since they would not remove the *Dangers* apprehended from them, and which, in one of their messages to the governor, they said *they could not lose Sight of*.

It has appeared, that the *Precariousness* and *Uncertainty* of passing tax-laws do not proceed from the council; but from the assembly's setting up *NEW* claims and pretences, speciously disguised with the name of *Privileges*, though ill founded and unsupported by *Usage* or *Reason*, which they would sooner suffer the public to be shipwreck'd, than they would recede from.

It has been evident also, that the council's having rejected two tax-bills did not proceed from *Wantonness* in them; but from a lavish, or to use *with Propriety* an expression adopted in the remonstrance, a *wanton* provision being made and insisted upon by the assembly for the supposed services of a person, when they had no evidence to produce of his *Merit*: That their passing the third, transcribed *Verbatim* from the second, did not arise from a conviction that they had acted *wrong* in rejecting the other two, but from a *superior* consideration, from a generous regard for the honour of *Carolina*; that the province might not labour under the disgrace and imputation of not having exerted itself in defence of his majesty's just rights, after the point so *essential* to the constitution as the *Independency* of the council, as a *Branch* of the legislature, had been so fully established by their rejecting the two former bills.

It has been obvious, that the commons house of assembly have not, nor can, consistently with the constitution of this province, enjoy *ALL* the same privileges that are enjoyed by the house of commons in *Great-Britain*; and that the council must, agreeable to this constitution, exercise a legislative power, though in a much inferior degree to that exercised by the house of peers in *Great-Britain*; and that without such power, the constitution of this province can in no respect be said to have *any Affinity* with that of *Great-Britain*, the excellence of which commands our *Admiration*, as our imitation of it will insure our *Safety*, and which the assembly cannot imitate without acknowledging that power in the council as A *FIRST PRINCIPLE*.

Upon the whole.

The council are filled with the greatest zeal for his majesty's honour and the welfare of this province; and they sincerely lament the unhappy situation it must be in, from the interruptions *that have been, and are likely to be*, given to the public business in general assembly. The satisfaction they receive from a conviction that they don't contribute towards it, administers but small consolation to them. They would not have made this appeal to the public, if they had not perceived *Jealousies* infused into people's minds, in order to cast an *Odium* upon their conduct. When it has been so publicly arraigned, it becomes them to break thro' a silence (which their moderation hath hitherto imposed upon them) which might be looked upon as an admission of those charges that have been so *laboriously misrepresented* and so *industriously propagated*. They are not in the least desirous of making any advances or encroachments upon the privileges of *others*, but their duty to his majesty, to their country, and to themselves, call upon them to defend *the Post* that has been entrusted to their care.

All that they have had in view, upon this disagreeable occasion, hath been to clear themselves from blame, where it has *unjustly* been cast upon them. And if in the course of this vindication any *unwelcome Truths* are fixed on those, whose misrepresentations have obliged them to lay open the real state of things, it has been *involuntary and extorted from them*. They have avoided all *fallacious Arts*, or *Asperity of Language*, that might give *specious Colours* or a *keener Edge* to their arguments. The *Justice* of their cause needs not the *one*, nor would their *Moderation* admit of the *other*, however *excusable* in them the *Treatment* they have received might have rendered it.

It is not for want of a DUE RESPECT that no notice is taken AT PRESENT of his excellency's ANSWER to the REMONSTRANCE. Perhaps a little Time, though it may be needless to give MORE LIGHT, may give a more PROPER OPPORTUNITY,

By Order of the House,

WILLIAM SIMPSON, C.C.

[Landon Carter],
A Letter to a Gentleman in London,
from Virginia
(Williamsburg, 1759)



DURING THE Seven Years' War, many colonies lacked the liquid capital to pay for the large expenditures they made for defense without issuing paper money, secured in various ways but usually by a government pledge to accept it for taxes, and most such issues were designated legal tender. Virginia, which had never previously resorted to paper money, was among the colonies that now issued it. Parliament having prohibited the issue of legal tender paper currency in the four New England colonies by a 1751 statute, London authorities took a dim view of such issues but, given the need for colonial help with defense against the French, they had little choice but to accept them. In the case of Virginia, the British merchants who dominated the tobacco trade between Virginia and Britain worried that the Virginians might use the legal tender stipulation to pay their considerable debts to them in depreciated paper. They expressed their worries in a memorial to the Board of Trade, which sent it along to Virginia. In this selection, Landon Carter, an important member of the House of Burgesses, defended the legislature's issuing of such currency as a product of wartime necessity and, bristling with indignation against the charge that Virginians might try to defraud their British creditors, explained that the statutes authorizing the issues protected creditors against being paid in depreciated paper by requiring the judiciary to reset the value of the currency in relation to sterling at frequent, regular intervals. This exchange marked the beginning of a long debate, the result of which was that Parliament, by the Currency Act of 1764, extended the prohibition against the issue of legal tender money to the colonies south of New England. (J.P.G.)

A
LETTER
TO A
GENTLEMAN in *LONDON*,
FROM
VIRGINIA.

WILLIAMSBURG:
Printed by WILLIAM HUNTER.
MDCCLIX.

A Letter to a Gentleman in London.

VIRGINIA, January ———, 1759.

SIR,

Having lately seen in the Journals of the Assembly of this Colony, held in 1758, a long Memorial, addressed to the Right Honorable the Lords Commissioners for Trade and Plantations, by the Merchants of London, in Behalf of themselves and of their Correspondents, Merchants of *Bristol*, *Liverpool* and *Glasgow*, trading and interested in the Colony of *Virginia*, I cannot help entertaining you with some Observations upon it; and, that you may judge of the Justice with which they are made, I have transcribed the whole Memorial, as it appears on the Journals aforesaid.

The MEMORIAL.

That the General-Assembly of *Virginia* have lately passed an Act, whereby their Provincial Treasurer is authorized, for the Purposes therein mentioned, to issue Paper Notes to the Amount of £.80,000 which said Paper Notes so issued and rated at Proclamation Money by the said Act of Assembly, are thereby declared to be a lawful Tender in Payment of any Debt or Demand whatever, excepting his Majesty's Quitrents.

That your Petitioners having very large Sums of Money now due to them in the said Province, in the Way of Trade, upon Bargains and Contracts made with the Inhabitants of *Virginia*; and for, and on their Account, do moreover stand bound to the Tradesmen in *Great-Britain* for large Sums: All which said Bargains and Contracts, by general Agreement, are payable in Sterling, or at the Rate of Sterling, lawful Money of this Kingdom; and were entered into, and concluded, long before the Issuing of such Notes, and before any such Traffick, by Way of Paper-Money, was known or heard of in the *Virginia* Trade.

Your Memorialists therefore beg Leave hereupon to remonstrate to your Lordships the very great Injury that may arise to the trading Interest of these Kingdoms, and more particularly to your Memorialists, from the *Virginia* Act, as it now stands; not only by Reason that it does affect Debts, Bargains and Contracts, due to the Merchants of these Kingdoms, expressly stipulated payable to them, before the passing of the Act, in Sterling, or at the Rate of Sterling, lawful Money of *Great-Britain*, but does moreover invert the Nature of Trade, from a certain to an uncertain

Value of Profit and Loss: And, in so far, your Memorialists do conceive the said Act to be arbitrary and unjust; arbitrary, because it does, *ex post facto*, extend to Debts due on Bargains and Contracts made before the passing of the Act; unjust, by Reason that it does depreciate the Nature of such Debts, by making Debts (payable in Sterling Money, of universal Value) to be received in Paper Notes of a local, uncertain, and fluctuating Value, at the same Time that no Provision is made by the Act for making Payment in such Notes *ad valorem* of Sterling, according to the Difference of Exchange between such Paper-Money and Sterling, when Payment is made; which Provision, on Principles of Law and common Equity, ought to have been made: In so far, therefore, as that your Memorialists may be very great Sufferers from the Defects in the said Act as it now stands, as well as from a Clause in one other Act that passed in the said Province Anno 1748, intituled, *An Act declaring the Law concerning Executions, and for the Relief of insolvent Debtors, whereby Executions for Sterling Debts shall be levied in current Money, at the Rate of 25 per Cent. Advance on Sterling for the Difference of Exchange, and not otherwise.*

Your Memorialists do therefore humbly offer to your Lordships Consideration an Expedient which your Memorialists apprehend may fully answer the End proposed by your Memorialists by guarding against the Injury that may arise from the said Acts, with respect to your Memorialists Properties and the Trade of this Kingdom, and at the same Time no ways defeat the Operation of the Paper Money Act, with regard to the military Services thereby intended; which Expedient is *viz.* That the Governor of *Virginia* be instructed by his Majesty to urge to the Assembly the passing another Act for explaining and amending the Act now in Question, and thereby provide that all Debts, Bargains, or Contracts, that were entered into before the passing of the said Act shall remain and stand payable according to the Nature of such Debts, Bargains or Contracts. And that all Bargains or Contracts that have been heretofore made, or that may hereafter be made and entered into, in the Course of Trade or otherwise, between these Kingdoms and *Virginia*, if the same shall be expressly stipulated and made payable according to Sterling or lawful Money of *Great-Britain*; that then and in such Cases such Paper Notes so issued or that hereafter may be issued, or any other Species of Current Money not being Sterling, shall not be deemed a lawful Tender in Payment of any such Debt, Bargain, or Contract, so entered into, payable in Sterling or lawful Money of *Great-Britain*, unless the Person or

Persons to whom such Payment is tendered in Paper Notes or in any other Species of Current Money shall think proper to accept thereof in such Paper Notes or other Species of Current Money, if the same shall be offered to him or them, according to the Difference of Exchange between such Paper Notes and other Species of Current Money, at the Time when such Paper Notes or other Species of Current Money shall be so offered in Payment of Sterling Debts, &c. And that the Person or Persons so accepting of Payment in Paper Notes or in any other Species of Current Money, according to the Difference of Exchange between Sterling and Paper Currency, and such other Species of Current Money, shall be deemed and held as fully paid and satisfy'd for his and their Debts to all Intents and Purposes as if such Payment had been made in Sterling or lawful Money of *Great-Britain*, any thing in the aforesaid Act or in any other Act to the contrary notwithstanding.

To an Amendment of this Nature your Memorialists conceive the Assembly of *Virginia* can make no Objection, in so far as that it is *bonâ fide* founded on Principles of common Justice and the Laws of this Kingdom, and more particularly agreeable to the Act of the Sixth Year of her late Majesty Queen *Anne*, whereby foreign Silver is made Current in the Plantations, but in due Proportion as the intrinsick Value thereof is to Sterling. And at the same Time it is thereby provided that all such Species of Silver Coin so made Current shall not affect Contracts or Bargains made prior to the Act. And it is thereby further provided that nothing in the said Act shall be construed to compel any Person or Persons whatsoever to receive in Payment any of the said Species of such foreign Silver Coin as the same is rated in the Act. In so far therefore as that the Amendment proposed by your Memorialists to the Act of *Virginia*, coincides with Equity and the Laws of *England*, and with the Regard that is at all Times due to the trading Interest of these Kingdoms, and with the Justice due to your Memorialists in this particular Case.

From such Considerations your Memorialists humbly hope for your Lordships Interposition with his Majesty for an Instruction to the Governor of *Virginia*, for the Purposes aforesaid, and that your Lordships will be pleased to suspend giving Judgment upon the *Virginia* Act as it now stands by way of Approbation thereof, 'til such Time as the Sense of the Assembly of that Province is had upon the Amendments proposed thereto.

As to the Memorial, by Way of general Observation, I say, it appears from the Complexion of it, to be a Performance wholly dictated by an uncommon Kind of Partiality, and the grossest Species of Weakness imaginable: For from the wording of it, it is evident, that it is but of very late Date that any Paper Money was heard of in *Virginia*. It would therefore have been but Justice, previous to any Complaint in an Instance so rare, and new, to have made some Enquiry into the Cause of making such an Act; especially if it is attended with such dreadful Consequences as it is represented to be. They would then have found that not only extreme *Poverty*, but even extreme *Danger*, united to compel the Colony to fall on some Expedient for raising Money to defray the Expences of an Army that they were under the greatest Necessity imaginable of collecting together, to secure themselves against the rapid Incursions of a cruel and barbarous *Enemy*. And that before they attempted to substitute Paper or any Thing in Lieu of what I find is by Merchants only called, Money, they had used every Method of borrowing Money at a greater Interest than common, and if I am not much mistaken, Application was even made to some of these complaining Gentlemen, but with very little Success. Such an Enquiry would not only have explained the Cause of making such an Act, by shewing the Dilemma that the Country was in (for altho' many Gentlemen discovered on the Occasion a truly Patriot Spirit, yet it was impossible for private Fortunes to go any serviceable Length in such an Affair) but it might possibly have convinced Men, calling so loudly for *Equity, Law, Justice*, and what not, that such an Act was exceedingly proper, and indeed well precedented; for we find even limited Monarchies and Commonwealths have done the same Thing in such distressed Circumstances: Some have coined in the Field, and others have substituted baser Metals in the Room of Gold and Silver which they had not, to answer their pressing Occasions. Surely then they who shall apply the Words *Arbitrary* and *Unjust* to a Transaction truly similar as to its Circumstances, to what has before been deemed necessary and passed uncensured, must either be very bad Haberdashers of Epithets, or Men of low and selfish Notions. Should it be said that *Virginia* ought not to be considered with respect to its Power of making Laws in the Light of a limited Monarchy or Commonwealth; I answer that whenever any People are reduced to the before mentioned Necessity, it is an incontestable Argument for the Exertion of every Degree of Power, since it is certainly ultimately exercised for the absolute Benefit of that very State from which a Power

of the same Nature must necessarily have been granted, had it been near enough to have extended it in a proper Time: Such a Power therefore is always imply'd in the very Nature of Things, let the Degree of Subjection be what it will; and the Consequence of its not being so, would in the Case of any potent and sudden Invasion be the Loss of the Colony to that very State which claims the Subjection, unless Matters shall be conducted hereafter with much greater Precaution, than has hitherto been experienced. To prevent any Thing that may be advanced against this Argument with Respect to the distressed Situation of the Colony, on Account of the Assistance sent to it under General *Braddock*, or the £. 20000 remitted to the Honorable *Robert Dinwiddie*, the then Governor; I say in the former Instance, it was more distressed by the Defeat suffered, than it was before the Assistance was sent; for the unexpected Victory inspired the Enemy, with greater Boldness, and if possible lessened their Humanity. In the Instance of the Money, the Person intrusted is perhaps able to assign some Reason why not more than £. 800 was expended, or apply'd to the Use of the Colony, or Maintenance of their Army.

And here I think I ought to be a little explicit, and disclose a Matter somewhat scandalous in the transacting. Mr. *Dinwiddie*, from a general Foresight in turning the Penny (always distinguishable in him) having ordered certain Necessaries for the Use of the Forces, under the Command of General *Braddock*, refused absolutely to discharge the Accounts of the Persons employ'd to procure the same to the Amount of £. 1236 - 11 - 2, pretending that he could not regularly carry those Articles to Account with the Government in *England*, and by frequent Solicitations to the Committee appointed for the Disposal of the Money raised here for the Defence of the Colony, he engaged them to pay that Sum under a most solemn Promise of subjecting to their Order £. 5000 that remained in his Hands out of the above mentioned £. 20000, which he alledged might be regularly done, as that Money was remitted to him for the Use of the Colony; but when the Assembly addressed him to dispose of a Part of that £. 5000 for building a Fort in the *Cherokee* Country; a Thing recommended to them as necessary to preserve the Friendship of those People, he returned for Answer, that he had no more remaining in his Hands of the above £. 20000 than the £. 800 before mentioned; accordingly no more than that Sum was apply'd as is before expressed. So that the Country instead of being benefitted by that Remittance from *England*, was not a little injured in as much as it was

properly speaking the Means of their loosing £. 435 - 11 - 2 of their own Money in this Instance alone. I might add further, that at the Time the above Sum of £. 20000 was in that Gentleman's Hands, or at his Disposal, he was graciously pleased to lend the Country the Sum of £. 3000 at the exorbitant Interest of Six per Cent. which was punctually paid him. These Facts are too true to be deny'd, and although the Sum perhaps may be too trifling for the Enquiry of a *British* Parliament, yet certainly as it was a very glaring Abuse of the good Intentions of the People of *England*, it seems but just that the Public should be satisfy'd with an impartial Examination into the Conduct of that Gentleman, in this Particular at least, since from his own Mouth, we have been informed that the M——y at Home had complimented him with £. 2000 of that Money as a Recompence for his extraordinary Care in the Disposal of it.

Now as this was the Situation of the Country, could any Thing but mere *Partiality* and *Weakness* dictate a Complaint against an Act so immediately conducive to its Preservation. Thus far I observe of the Memorial in general, I shall now treat it in a more particular Manner, and pursue it as paragraphically as may be in order to shew that the *Partiality* with which I charge it, is of such a Nature as will not endure a Disguise even with the false Shew of Reasoning which seems to have been purposely adapted quite thro' it.

I. We are told that the Paper Notes emitted by the Act are by it declared to be a lawful Tender in Payment of any Debt or Demand whatever (excepting his Majesty's Quitrents.) I agree it is so declared in the Act, and of what Use would such Notes have been, or to what Purpose should they have been issued at all, if they were not to be Current in all Cases. Gentlemen may attempt to gloss over their Endeavours by talking of Expedients for making the Act serviceable for the *military Purposes* for which it was intended, and yet not general as to the Currency of these Notes; but I beg Leave to say it is nothing more than a Piece of artful Nonsense; for what are the military Services of Money, but the paying of the Soldiers, and purchasing the Stores necessary for War; and could any Man be hired to fight for a Cash that he could not pay his Debts with, but at the Option of his Creditor? And who is there that would part with any Kind of Stores for a Piece of Paper that should only be useful at the Will of another that might think proper to deal with him? If then it is necessary that such Notes should be a current Tender in such Cases; why not in all Cases? Why is a Debt in *England* of

greater Dignity? Kings indeed have a just Right to such Exceptions, their privy Purses ought always to be kept sacred from any Touch, but that of the last Instance: But Subjects have no Pretence to Immunities, one more than another, they must all equally enjoy an Advantage, or suffer a Calamity whenever it attends a Community. And I hope I am not arguing with Persons who do not think *Virginia* a Part of the *British* Community. Had this Law been calculated on the Footing of the *Expedient*, proposed by the Memorialists to their Lordships, it would have carried its own Insignificance; that is, it would not have answered its Intention of raising Men for the War, which was necessarily aimed at; but I shall treat the *Expedient* in a more respectful Manner by taking full Notice of it, when it comes in its Turn, and I believe shew, however prettily it might read in a Countinghouse, it would meet with a quite different Fate at a Bar of Equity.

II. We are told in what Manner the Merchants are affected by the Act.

The Inhabitants of the Colony are indebted to them in large Sums of Money. Furthermore the Merchants on Account of these Inhabitants are bound to the Tradesmen of *Great-Britain* in large Sums; both of which were by general Agreement payable in Sterling, or at the Rate of Sterling, and this by Contracts concluded long before the issuing of any Paper Money in *Virginia*.

I think we have here a Declaration of the whole Cause of their Complaint, that is, 1st, The Planters are indebted to them; 2dly, They are furthermore indebted to them; for I am persuaded however artfully they may have divided on this Article of Debt, it is but one and the same Thing, that is, a Debt to the Merchants from the Planters; but it seems to have been necessary here to represent the whole City, nay the several Kingdoms of *Great-Britain*, likely to be endangered by this Act, in order to raise the greater Clamor against it. I shall not do Justice to the Weakness of this Paragraph, if I do not here take Notice of a Discovery made by it, that I am sure many Merchants of the City of *London*, have deny'd to be the Case when charged with it in private Letters. We have had many of us for some Time past, great Reason to own the Thing is unhappily true in the first Instance, of our being indebted. Unhappily in as much as the Generality of Creditors are a Kind of lording Tyrants over their unfortunate Debtors, notwithstanding the undoubted Securities pledged, and the annual Tribute paid in, of a very high tho' lawful Interest. And to this we do attribute (and we presume with

great Truth too) the Growth of many Innovations and *arbitrary* Charges (to use the Gentlemen's own Language) that have been and are every now and then brought to Account to keep the poor Dogs of Debtors deep in their Books, and render the Redemption of their Freedom impossible, by thus lowering the Produce of their Commodity, that they may continue under the Obligation of sending it to them alone, thro' Fear of more apparent Persecutions. I say this we knew, and we have had great Reason to believe (that notwithstanding the Merchants always took Care to carry every Article of Goods as soon as shipped to the Account of the Planter) they were nevertheless in Arrears to the Tradesmen for them, from their being so observably rated above the same Things purchased with ready Money; but it was never certainly known to be so till this Declaration made, which I call a *Discovery*, and I am much mistaken if they were aware of making it, at the Time they were endeavouring to interest others in their Complaints. Now tho' this artful Division of theirs is but a weak Effort in them; yet it opens to us a prodigious Aggravation of the Misfortunes of those that are indebted to them, in as much as they are not only obliged to pay dearer, for the Necessaries they send for, from the advanced Price of the Tradesmen, always added for long Credit given; but are loaded with Interest in the Merchants Accounts on that advanced Price; which must needs be a large annual Sum out of the Profits of the Colony, put into the Pocket of the Merchant; a Practice not so well founded as to admit of a common Justification: But I shall forbear to consider this any further here, as it is an Article that may one Day make a very good Figure amongst many others, in a Complaint from this Side of the Water, when the Leisure of a *British* Parliament shall admit of an Enquiry into the real Causes of the distressed Situation of their Colonies; and some truly noble Spirit shall glory in exerting itself for that Benefit, which has so long been desired.—Let the Attempt be thine, O FAUQUIER, to complete thy Goodness, thine to explode and remove all unnatural and destructive Jealousies, and by thy Happiness demonstrate to distant and succeeding Delegations, that it is the Patriot GOVERNOR alone that can represent the Patriot KING. Nor deem thou this as a Drop bubbling from the nauseous Fountain of Flattery: No 'tis the Dictate of a Mind that enjoys more than Kings can confer, a *contented Condition*; a Mind that has no Demand against thee but what must centre in its *Country's Good*; a Mind that disdains all Praise or Commendation to any dignify'd Character but such as is made truly glorious by *public Virtue*. Now let me ask the

Gentlemen how a Debt from the Planters to the Merchants came to be made an Introduction to their Complaints. It does indeed shew a Connection they have with the Colony, but I beg Leave to say, they are not in that Connection, in the least affected by any new Thing in the Act. They acknowledge the Debts due from the Colony, were by general Agreement dischargeable in *Sterling or at the Rate of Sterling Money*; and does this Act say they shall not be so discharged? No, nor was it ever intended to operate in such a Manner; it says indeed, that the Paper Notes so issued, shall be a lawful Tender in Payment of any Debt or Demand whatever, and these Words do expressly imply *ad valorem*, with Respect to Sterling Debts, and it is not in the Power of the most quibbling Petyfogger to cavil long enough to draw any other Meaning out of them. 'Tis a known Rule in the Construction of Statutes, that two Acts equally subsisting shall only operate in the Manner in which they are truly reconcileable, and this for a very good Reason, otherwise every new Statute must be extended so as to take in all the Laws that are relative to the Matter contained in such Statute, which would be perhaps constructing a Volume every Session of Parliament too large for any one Man's Perusal, and might be productive of great Confusion, which is too often the Case in frequent Revisals. When therefore a subsisting Act has fully regulated any Matter or Thing, a succeeding Statute not expressly or virtually repealing it, shall not be extended to defeat the Purpose of the proceeding Act. I will exemplify it in the Case before us, to shew the Justice of it, tho' there seems to be little Need of any Exemplification, as there is scarcely a Book treating of Statutes that does not confirm it. There was an Act made in 1748, which the Memorialists have recited, declaring that Executions for Sterling Debts should be levied in Current Money at the Rate of Twenty-five per Cent. Advance on Sterling, and not otherwise. The Act in the Paper Emission in no Part either virtually or expressly repeals or contradicts it; can the Clause then, allowing the Tender of Paper Notes in Payment of any Debt whatever, mean with Respect to Sterling Debts any Thing else, but that such Tender shall be made according to the Act in Force, before the making the Act for Paper Emission, and was that Law in 1748 still in Force could such Tender made under the Paper Act be good, unless it had been made at the Rate of Twenty-five per Cent. And as this was the then *ad valorem* between Sterling and Currency, how can the Merchant be affected by the Paper Act, as to his Sterling Debt, Bargain, or Contract. This may be a Method out of the Way of Reasoning with these Gentlemen, but if they

will wade in Waters that they are Strangers to, they should apply to those who are acquainted with them, before they rush into Fears and Apprehensions and expose themselves by mere groundless Complaints. From hence it appears any other Construction upon the Act complained of would be against the Rule of Law, and I must say, Against the Rule of common Sense too, for they might as well in my Opinion, carry the Tender in the Act to a Payment of a Debt in Tobacco, which would be an Absurdity, if there was no Limitation of the Words to be allowed. The Gentlemen must now excuse me if I tell them, that altho' they have laid their Complaint against the Act, in the Defect of it with Respect to a Provision for Sterling Debts; I cannot think that they or their Draftsman were really so ignorant as not to know, that this Act did not stand in Need of any such Clause; but that by the amending Clause in the Expedient proposed to their Lordships, they intended some Thing further, and that their sole Motive for complaining was, that they should not be obliged to take these Notes at any Rate at all, but as they pleased. Should this be the Case, they are not only Men of very *inhumane Principles*, but notwithstanding their long Practice in the Arts of Profit and Loss, very bad *Politicians*, as to their particular Interest. *Inhumane* in that they would either compel a Man to do an Impossibility, (*viz.*) Pay a Debt in a particular Coin, when it is not in his Power to acquire one Penny of it to do it with, or else pay it in such a Manner, as would oblige him to Part with all that he has: For if there was to be no Restriction set as to the Value of Sterling Money, and the Difference wholly left to the Will of the Creditor, it would be vesting such Creditor with the most arbitrary Rule in the World, and from the very Nature of complaining in all such Cases, it would be giving up the Debtor and his dependent Connections, as a Sacrifice to the certain Cruelty of the Creditor; for he that growls at the wholesome Restrictions Society shall think proper to establish between Man and Man, can only do it from an incompassionate and devouring Temper; in vain is Charity to be expected from him who contends against Laws that have Charity for their Basis. In *England* indeed where all the Currency they have is a rated Sterling, there can be no Occasion for a Law of this Kind to enable the Debtor to stop the Persecutions of his Creditor; but in Countries where Sterling is a Coin very little seen, such a Law is not only salutary for the Community, but highly Equitable and Just, between Man and Man, that they should be permitted to discharge their Money Debts, of what Kind or Nature soever, in the Currency of the Country in which they live, and it is

the true Business of the Legislature to keep such Laws at all Times subsisting; for Man left to his own Will over his Fellow Creatures, may sometimes fall into such Depravations of Mind, as to become more cruel than the most Savage Beast of Prey. As to their Politicks, I need only put a Case founded on a real Fact, to shew how bad they are with Respect to their Debts. Suppose a People to be so circumstanced as to have no Sterling at all amongst them, and very little of any other Coin, how can such a People be ever able to pay their Debts; few Commodities besides their Tobacco can be exported to any certain Market, but in the Way of Barter; their Tobacco seldom yields much more in *England* in common Crops, than is sufficient to purchase Necessaries and pay Interest; and should an accidental foreign Trade send a little of its Gold into that Country, a Tender *ad valorem* of that Gold, must necessarily be allowed, or that would be of little Service; if then it must be allowed in the Case of one Species of Currency, why should it not in all Kinds; would it not then be much easier for such Merchants to get their Debts paid by an established circulating Currency, than by none at all: A Debt so paid might in the Round of Trade (which Adventurers are well acquainted with) be carried Home to *England*, and there centre in Sterling, with a very fair and considerable Profit. I will now ask where is the material Difference between one Kind of Currency and another with Respect to Trade or Debts; but I bar the Man of miserly Habits from giving any Answer at all, he is first for the most Part a Stranger either to Trade or Debts, because he can scarcely trust himself, how then will he trust another. Again, the Wretch conceives such an inexpressible Pleasure in the counting and poring over his Golden Guineas, that I much question whether double the Sum in Bank-Bills would purchase them. 'Tis to the rational Trader alone that I apply, and such Merchants ought to be deemed; to them therefore I address myself, and I am persuaded I have their true Answer in this Memorial.

They tell us, the Act for emitting Paper-Money is unjust, by Reason that it depreciates the Nature of Sterling Debts, by making what was payable in a Coin of universal Value, payable in Notes of a local, uncertain, and fluctuating Value: If I understand these Terms right, we are to collect from them, that the Value of Sterling is universally agreed upon; and that Paper Notes have no Value at all, but in the Place they are made current; and that even the Value there is uncertain, because of its Fluctuation with Respect to the Value of Sterling: The material Difference between Paper and Sterling

must then lye in the Certainty of the one, and in the Uncertainty of the other. And is it not evident, that all other Species of Coin, with Respect to Sterling, are of the same uncertain Nature as Paper? Neither can Gold and Silver Coin be less so than Paper, as it must be rated by Sterling, the Scarcity or Plenty of which will certainly lower or advance the exchanging Difference; and to say that Gold and Silver Coin is current in more Places than the Paper Currency is, and therefore though local yet less confined, is but a Kind of begging the Question, and when it is granted, it makes very little in the Point, for in those Countries where Gold and Silver Coin are not current by Law, they are only to be considered as a trading Commodity, which is more or less vendible in Proportion to the Gain or Profit that is to be made by it, and there can be no Instance in which a Paper Currency that can be remitted to the Country where it is made current by Law, will not be as good a Commodity in Trade as Gold and Silver, but one; that is, where the trafficking or exchanging Difference between Gold and Silver and Sterling is greater than the intrinsick Difference; and as this can only happen from the too great Scarcity of Sterling Trade, should an Instance or two depending upon such an Accident be made such an Argument of as to decry a Paper Currency, when in every other Case it is equal to all other Coins, except Sterling: And as to Trade or Debts, I beg Leave to say they cannot be affected by it, for the Trader has it always in his Power to suit his Trade to his expected Payments; and the Sterling Debt, when paid in Paper, will always be paid in the exchanging Difference that is then circulating: To be injured, therefore, by the Paper Notes, the Trader or Creditor must put a Case that can only center in his own Neglect or Avarice; his Neglect, in not negotiating it away in Time, before Exchange shall rise; Avarice, in keeping it by him, in Expectation that the Exchange is still falling, and from thence proposing a farther Gain to himself. Those who tell us, that Paper Currency has a farther Difference from Gold and Silver Coins, in that it is difficult to be realized; if they mean it is difficult to turn an Estate in Paper Notes into a landed, or any other permanent Estate, I answer it cannot be more so in that than it would be in other Coins, when the Act is considered; for that does absolutely bar all Difference between them, and when an Estate becomes vendible, it cannot by Law be of more Value in one than another: A Man, indeed, of a miserly Disposition might be tempted to part with a Tract of Land for Gold, when he would not for Paper; but that Gold he must keep useless, or clandestinely exchange it; for if he does it openly, he can get no

more for it than if it was Paper. Should a Man want to realize it, as they call it in *England*, he can as easily exchange it for Bills as Gold, if he does not care to venture it in the Commodity of the Country; and in no Instance does it differ with Respect to realizing from Gold and Silver Coins, but in the before-mentioned one, where the Plenty of such Coin shall so far exceed the Sterling Trade, as to make the exchanging Difference greater than the intrinsic: And thus, at last, does this Difficulty of realizing become greater in the one than the other, by the same Accident which I have before mentioned, and which must be so rare as scarcely to happen twice in a Man's Life. I am pretty well satisfied, that these Arguments against the *Virginia* Paper Currency have been adopted from the Practice of other Colonies, where they have both Gold and Silver, and Paper Currencies, at a great Difference with Respect to each other; but it should be considered, that it is there a profitable Trade to the cunning Merchants, and that no Provision (as I am informed) was ever made against it in the Acts that emitted the Paper: But in *Virginia* this is in a great Measure prevented, and will be more so, as the Iniquities of such Trade shall from Time to Time be discovered; but here I beg Pardon for a Digression; I shall now consider the *Arbitrariness*, and Injustice charged on the Act by the Memorialists.

The Act they say not only inverts the Nature of Trade from a certain to an uncertain Value of Profit and Loss; but it extends *ex post facto* to Debts due on Bargains and Contract, made before the Passing of the Act, and therefore it is *arbitrary*. I was something puzzled to fix a Meaning to the certain Value of Profit and Loss in Trade, which this Act has overset, because from all the Ideas I could collect of Trade, it can have very little Certainty in it; there is always a Probability in it, and some Trades are more probable as to their Success than others; but as I know it was a Complaint against the Act, I have endeavoured to extract a Meaning out of it: That is, that before the Making of the Act, they used to Trade for Sterling only, which they call a Trade of certain Value, and since the Act they are obliged to Trade for Paper Currency, which is of uncertain Value. If this is the Accusation, I beg Leave to say, it is a Mistake, for they did not, nor could they trade any more for Sterling before the Making of the Act, than they do, or can since the Act; that is before the Act there was always a subsisting Currency in the Country, which they were obliged to take in Exchange for Sterling, trade how they would, and this Act does no more than introduce a new Kind of Currency, which these Gentlemen, as I have already shewn, are only pleased

to think meanly of, not that it materially differs from the Currency that subsisted before the making of the Act: Their Accusation therefore as to its inverting of Trade, &c. is vague and idle, and their *ex post facto* is of the same Stamp; they are Words that do not deserve my Notice, only to expose the Scheme couched in them, they know they give a retrospective Cast to the Act, and such is the popular Cry against a Retrospection in Statutes, that it is like bawling out a mad Dog in the Streets, which has been the Cause of violent Deaths to many an harmless and useful Cur. But I will first satisfy those who shall read me, that it is a Complaint ill founded, and then shew these Gentlemen, that whatever the common and vulgar Opinion may be of retrospective Acts, they may be the most salutary Acts imaginable to a Community in some Instances.

1st, 'Tis said the Act does *ex post facto* extend to Debts, &c. due before the Making of the Act. I say no Part of this is true, but that the Debts, &c. were contracted before the Act: And how does this Act extend to such Debts? In no other Manner than what they were always extended to, and must from the very Nature of Things have been extended to as soon as ever a Debt, &c. could possibly have been contracted: I say it must from the very Nature and Reason of Things, have been a Rule that every Person trading from *Great-Britain* in a Country where the particular Currency of that Country was of less Value than Sterling, that such Trader should be obliged to take his Debt or Contract in such Country, at some certain Discount, between the Currency of such Country and Sterling, or he must have traded solely by Barter; and if any one will give himself the Trouble of enquiring Back into the History of Exchange and Trade in this Colony, he will find that for a long Time, the Riches of the People, lying more in Sterling than Currency, from that over Balance, the Difference of Exchange was first on the Side of Currency. I can charge my Memory with having read old Letters, wherein one per Cent. Sterling, was given for one Hundred Pounds Currency. And this seems to be the Reason of those Acts now subsisting amongst us (tho' very little regarded) prohibiting the Exportation of Cash under large Penalties, and of those other Acts (now so iniquitously extended) giving Encouragement for the Importation of Cash: In Time as the Quantity of Cash encreased, Sterling claimed a superior Value, and as the Riches of the Country declined in Sterling, the exchanging Value encreased; during all which Time the Trader must have suited himself to the Possibility of his Chapman, and the Creditor to that of his Debtor; but when Men became so extravagant as to pay

no Regard to social Good, but governed their Demands wholly by Avarice, let it undo where it would; then the Law in 1748, came in to Remedy the Evil where it could, by taking Cognizance of the Claim of the Creditor, and so ultimately confining the Trader; and if he could not be contented with a reasonable Exchange, the Process brought against the Debtor, ended in a Regulation of the Exchange between Sterling and Currency, as the Legislature then thought was most reasonable: But this Limitation of Exchange to a certain Standard always, was by these very Gentlemen exclaimed against (as I shall shew them presently, to give the World the true Complexion of this Memorial) and the Legislature then fell on the best and most equitable Rule, that can be devised by Man, for the dispensing of Justice to the Creditor, and preserving the unfortunate Debtor from his merciless Claws; by directing Courts to Rate the Value of their Sterling Judgments given, in Current Money, according to the general and most known exchanging Difference; so that the Creditor was justly dealt with, and always had Cash in such a Proportion, as might enable him to replace his Sterling Debt in *England*, if he pleased. Thus the Rule, which Reason and Nature dictated should be subsisting, became the Rule established by Law, and did subsist before the Act, for emitting Paper Currency. I hope it is now evident the Act has done nothing *ex post facto*, it has enacted no new Thing with Regard to any Sort of Debts, but only directed that for such a Time, such Notes should have all the Value, that any other Species of Currency had: If it should be said that although Sterling Judgments were before the Act, to be rated in Currency, yet such Currency was no Tender in Law, at it is in this Act; I answer, it is a mere Lawyer's Quibble, and if it was not expressly declared so in former Acts, yet it was virtually, and consequentially so done, in that every Creditor must know he could recover no more than the real Difference of Exchange; and surely that Court where it should appear that the Debtor had made the Creditor a Tender of the full Exchange on his Debt, must have treated such Creditor on his Refusal, as a litigious Person.

As to retrospective Statutes, I need do no more than mention a common Proposition, to prove that notwithstanding popular Clamor, they are often very expedient. Let a preceeding Transaction be what it will, it may be productive of very great Evil to a Community by its Effects, and shall a Community go on to endure this Evil, because it was produced by an Action done before the Evil was experienced: To say they ought is to fix the Infalibility of human Understanding, as to Causes, Effects, and Consequences,

which is an Absurdity. A Retrospection therefore in such Cases, is not only salutary, but absolutely necessary, to destroy such Effects even if it is obliged to reach the Cause: Suppose for Instance there had been no Rule or Law subsisting to oblige a Creditor to accept of an adequate Exchange for his Sterling Debt in Currency; I say from the apparent Necessity there was of making this Act to raise Men and Money, which has been shewn beyond Contradiction, it was absolutely necessary for the Good of the Community, that the Act should be so made, as to take in the Creditor before the Act, or else such Creditor might have defeated the main Purpose of the Act (that of providing an Army) in refusing to be satisfy'd for his Debt by the Notes, and would not such a Proceeding in Creditors, have struck at the very Vitals of the Community, by leaving the Land defenceless, and in the Power of the Ravages of the Enemy.

The Injustice wherewith this Act is charged, in depreciating Debts, &c. has been fully answered, in the Arguments already used, which shew that neither Trade or Debt, are or can in the least, be affected by the Act; the very Defect they hint at in the Act (that is the Want of a Proviso for paying Sterling Debts *ad valorem*) is nothing more than a Defect in their own Brain; they either have not read the Laws of the Country, or are disturbed that all the Laws are not every Session brought into one Law, and what a mighty Law would that be! In Fact, the Clause they want was long before this Act enacted, and in some Measure at their own Instance, which I shall now shew in their next Paragraph of Complaint.

In order to make their Complaint more formidable, they usher in the Act passed in 1748, to shew what Sufferers they are like to be by the *Virginia* Acts of Assembly. In the short Sketch that I have just now given of the History of Exchange in this Colony, I shewed that it was always a Method in the Country, of paying Currency for Sterling *ad valorem* and that whilst Creditors were govern'd by the real or exchanging Difference subsisting, it remained only an equitable Rule, necessarily subsisting in the Nature and Reason of Things; but when Avarice admitted of no Bounds to their Demands, the Assembly in 1748, took the Case under their Consideration, and to do Justice to both Creditor and Debtor, made all Executions on Sterling Debts leviable at Twenty-five per Cent. which was then thought the common and reasonable Exchange: But the Law was not long known in *England*, before the Merchants of *London*, whom I suppose I may safely call the Memorialists, endeavoured to obtain a Repeal

of it, by the King's Proclamation; however they were given to understand it was constitutionally late, for a Repeal by Proclamation, as his Majesty had given his Assent to the Act. And an Instruction was accordingly sent to the Governor, to urge the Assembly (as those Gentlemen term it) to do it by a subsequent Act. The Assembly always endeavouring to avoid giving the least Color for a Complaint against them, then readily embraced the Opportunity, and with great Alacrity, passed a Law to Repeal that in 1748, and so enacted, that all Courts on any Judgment given in Sterling, should at the Time of passing such Judgment, settle at what Rate of Discount, the same should be leviabie in Current Money. Now let any candid Man say what these Memorialists would be at: A Clause is wanted in the Paper Act to provide for the Payment of Sterling *ad valorem*, and it is so done and practised before and after the making of the Act. Again, the Act in 1748, is likely to injure them, when in Fact there is no such Law in Being: Surely these Things can hardly be called common Mistakes, no, they are gross *Blunders*, begotten by a Genius for *Clamoring*. I now again hope this Act is not only cleared of all *Arbitrariness* and *Injustice*, but that it justly rides in Triumph over the Memorial, and all its devilish Machinations, for certainly calumniating Insinuations, and false Accusations, are Satan's chief Implements.

I will now consider the Expedient proposed by these Gentlemen, and that minutely too, to shew how little deserving of Regard this Body are in this Instance, however formidably they may have united; and indeed to shew how necessary it is to preserve the Justice due to every Cause, by hearing both Parties fully before a Determination should be given.

To separate the Expedient from its great Bundle of Preamble, is simply to say, it is an Amendment to the Paper Act. 1st, To secure all Contracts before the passing the Act from any Effect at all by it. 2dly, That in all Cases of Sterling Debts, &c. stipulated payable in Sterling either before or after the Act, such Debts, &c. shall not be effected by a Tender of Paper, or any other Species of Currency not being Sterling at any Rate, unless the Creditor, &c. shall consent to it; and if he does consent to it and takes the Money, that then he shall be deemed in Law, fully satisfy'd for his Debt, &c.

I cannot here pass over a Compliment due to the Gentlemen, on Account of their Happiness in the Choice of a Draftsman, who has discovered in the Memorial, a wonderful Dexterity in splitting Unities; that is, dividing

one and the same Thing into several Parts, for the Sake of multiplying Sentences: The wiser Part of Mankind has indeed condemned the Practice as nonsensical, but a bad Cause (or rather no Cause at all) for complaining, should be rolled up in an abundant Disguise of Words. The first Part of the Amendment proposed is wholly to secure Debts, &c. made before the Act from being affected by it. And what does the second Part of the Amendment propose? Nothing more than to secure all Sterling Debts, made both before and after the Act, from being affected by it; for I conceive it wants no written Law to tell a Man if his Creditor is willing to discharge his Debt, for Carrots or Turnips, he may pay them to him; and that after he has paid them, and the Creditor has taken them as such, he is certainly discharged from any further Claim on Account of that Debt or Contract; and for this he has the Law of common Sense to direct him. But now for the Reasonableness of such an Amendment, which not only strikes at the Paper Act, but at all Rules and Acts relative to the exchanging of current Money, and of Course at the Law of necessary Justice, before explained; when I say the Reasonableness of such an Amendment, I mean not the Amendment as it is worded, for verily that is mere formal Nonsense, but of any Amendment to secure these Sterling Debts, &c. from being paid by Law in the Currency of the Country *ad valorem*, for that is the certain Drift of the Memorialists; a Drift they did not care to be plain in discovering, when they charged the Paper Act as being defective with Respect to Sterling Debts: In this Kind, indeed, it is defective; and had it been otherwise, it would have been the most fallacious Act imaginable, by emitting a Currency that should be no where current, not so current as a Cask of Nails, or any other Commodity, to be sold only to him that might want to buy them, for any Man might hold what he had to sell at a Sterling Demand, and then of what Worth would the Paper Notes have been? I need say nothing more to such an Amendment, than to remind any Reader of the Necessity that must have always subsisted of exchanging (not only in *Virginia*, but in every Country where Sterling is not the sole Currency) Sterling for such Currency, at an agreed Rate; and that it was from this Necessity alone that any Law could ever have arisen to establish the Method of doing it, lest the Will of the Creditor should grow too extravagant for the Capacity of the Debtor; all which, I flatter myself, I have fully shewn in my Observations already made on this Memorial. I should now take Leave of the Expedient, but that there is a seeming Arrogancy in concluding that it was impossible for the

Assembly of *Virginia* to make any Objections to the Amendment, in so far as it is, *bona fide*, founded on Principles of *common Justice*, and the Laws of *England*. What, do the Principles of common Justice oblige a People, extending the Power of a Mother-Country, by improving her distant Territories, and in doing that, confined (except in some trifling Commodities) solely to a Trade with that Mother-Country? I say, should such a People, in the Course of such Trade, fall in Debt to such Mother-Country, do the Principles of *common Justice* enjoin, that Persons so circumstanced should not be allowed any Way of paying such Debts, but in a Coin of which there is hardly an Hundred Pounds to be found amongst them in a Year; or else to pay them according to the extravagant Demands that their Creditors shall make in the Currency they have: Gentlemen that talk so, must be Madmen; is this *common Justice*? It is, *bona fide*, *unnatural*, and *against all Justice*. Again, the Amendment (they say) is founded on the Laws of *England*; to this I answer, without entering into a critical Enquiry as to the Fact, and with all possible Deference, that if there be such a Law, as the Laws of no People on Earth should be unalterable, every Moment that it has had any Effect in the Manner that these Memorialists propose, it must have been grievously partial and burthensome; and therefore it ought now to change its Face, and smile on those who have deserved all Attention, and every reasonable Indulgence; who, in Spite of Poverty and every unnatural Check, have certainly convinced the World, that they are faithful Subjects, endued with that Nobleness of Spirit that has ever distinguished a true-born *Briton*.

The Conclusion is of a Piece with the whole Memorial, that runs on with a very great Air of Importance, but complains of *nothing real*; and this, it is evident, is as pompously inclined to the same Point, *Nothing*. There is a Request made to their Lordships, that they would be pleased to suspend giving Judgment on the *Virginia* Act as it now stands, by Way of Approbation thereof, till such Time as the Sense of the Assembly of the Province is had upon the Amendments proposed thereto; which, in Fact, is desiring that their Lordships would let the Act keep its Force and Efficacy, which every Act must necessarily do that is passed by the Governor, unless his Majesty shall declare his Dissent by Proclamation, which no Doubt he is in some Cases advised to: But, if the Act lyes for his Majesty's Pleasure, it is necessarily operating here as a Law, unless provided against in the Body of it by a suspending Clause. Their Lordships Approbation of an Act might

indeed incline his Majesty to give his Assent to it, and thereby give it a greater Degree of Firmness in the Constitution; but this can hardly be very necessary, in many temporary Laws: Of Course then these Gentlemen have really asked for *nothing*, with Respect to their Complaint; not only *nothing* to their Purpose, but so long as their Request is granted; that is, that their Lordships shall be silent as to their Approbation of the Act. It is very materially against them; but I have all along seen they have a latent Meaning in the Memorial, and I suspect here they are praying that their Lordships will suspend their Approbation, in order to offer up another Prayer hereafter, that they will be pleased to advise his Majesty to repeal it; and this Construction is not out of the Way of their partial System carefully kept up through the whole: But would not this be a most extraordinary Prayer indeed, first to let an Act emit Money at such a settled Currency and on such a settled Fund, and, when the Money is in Circulation, repeal it, because *London* or *British* Merchants are put on the necessary and just Footing with other People. If I mistake not, it would amount to an entire Forfeiture of *publick Faith*, with a very sacred Absolution for so doing.

I will now recommend both the Memorial, and Observations on it, to the impartial Reader; and let him say if in any Instance he ever met with less Cause of Complaint, less Decency or Gratitude to that Country against whom they complain, less Respect to that Board to whom they address themselves, or less Regard for the Reputation of their own Body: I say less Cause of Complaint, because the very Matter complained of (if ever it existed) was not only long before their Complaints fully remedied, but even before the passing the Act; I say less Decency and Gratitude to that Country against whom they complain; 1st, in puffing out how largely they are indebted to them; 2dly, in accusing them with arbitrarily and iniquitously endeavouring to destroy their Trade, and cheat them of their Debts: For this would be the Conclusion, had the Facts been true; and not in the least reflecting how many of them owe their very Being, as Merchants, to the Civilities of the Country, and at Times perhaps when their own Credit was not sufficient to have induced any Man but a bold-venturing *Virginian* to have trusted them: I say less Respect to that Board to whom they address themselves, in presuming to build on *Mistakes*, *Blunders*, *scandalous Accusations*, and what not, in order (if possible) to deceive their Lordships, and less regardful of their own Reputation in rendering it for ever after this a

just Matter of Suspicion, whether the Facts on which they shall ground any future Complaint, are truly stated or not.

Was it for such Uses as these, ye *Merchantmen of London*, that this Country has submitted to a long and constant Tax on their Commodity, in order to raise a Treasury for the mutual Benefit of the Trade;* that instead of assisting them in their greatest Poverty, in the Day of their greatest Distress, with the Overflowings of that Heap, if properly accounted for ye do not only loudly oppose their Endeavours to preserve themselves, but even abuse them, and aim by your Complaint (no Matter whether founded on Truth or Falsehood) at particular Exemptions of yourselves, from all Possibility of suffering in the common Calamity, and thereby shew yourselves no otherwise *interested in the Country*, than in the dirty Demands you have against it.

If the Gentlemen shall think proper to shew themselves offended at what I have written, I can only say that I am sorry for the Cause of Writing, but not for having done it; for 'tis certainly a Piece of Justice due to the Legislative Body of my Country, to remove from them where it can be done with Truth, every Kind of Reflection against their *Honor*, their *Virtue*; and I shall never be affected with any Reply that can be made, having an excellent little Fortress to protect me, one built on a Rock not liable to be shaken with Fears, that of *Independency*, my Batteries are *Facts* and *Truth*, and my Engineer is a Fellow as fit for his Post as any in the World, *Reason*; thus supported I will conclude with the Words of *Cicero*, in the Cause he plead for *Publius Quinctius*.

Hic ego, si Crussi omnes cum Antoniis existant, si tu L. Philippe, qui inter illos florebas hanc causam votes cum Hortensio dicere, tamen superior sim necesse est; non enim quemadmodum putatis, omnia sunt in eloquentiâ, est quaedam tamen ita perspicua veritas, ut eam infirmare nulla res possit. Of which I shall give the following modest Translation, by Way of Address to the Lords of Trade, &c.

* Three pence per Hogshead now comprehended under the Article of Petty-Charges in the Accounts of Sales for our Tobacco sent to them, which has been always understood as a Tax intended for the Support of any Solicitation that might be necessary for the Benefit of the Trade. Never as yet, as we could learn, apply'd but to their own particular Ends in Trade.

My Lords,

I am so confident of the Justice of my Country, in the Matter complained of to your Lordships, by this Memorial, that I cannot avoid saying, altho' all the *Croffus's* and *Anthony's*, that ever excelled in Oratory; nay tho' *Lucius Phillippus*, who made so great a Figure at the Bar, even in their Days, was now in being, and engaged with the Merchants of *London* against me, yet I am satisfy'd that I must of Necessity prevail, and this not from any Boast of extraordinary Eloquence in what I have written, but from that evident Truth which governs thro' the Whole, Truth that cannot be perverted by any Kind of Artifice whatever.

I am,

SIR,

Your most Obedient.

Richard Bland,
A Letter to the Clergy of Virginia
(Williamsburg, 1760)



NOT JUST London merchants but also the Bishop of London, the official with jurisdiction over the Church of England in the American colonies, subjected the conduct of the Virginia legislature to severe strictures during the late 1750s. The Anglican Church had long been the established church in Virginia, and its clergymen received a public salary in tobacco. When short crops of tobacco in a few counties in 1755 and in most counties in 1758 substantially raised the market value of tobacco, the legislature passed the so-called Two-penny Acts enabling taxpayers to pay their taxes in money instead of tobacco at the set rate of two pence per pound. When the legislature failed to heed the protests of some of the Virginia clergy, who regarded this legislation as a means to cheat them out of what would have been a welcome economic windfall, some of the more vociferous met in convention and dispatched Rev. John Camm, rector of York-Hampton Parish, to London to present a memorial to try to get the 1758 law overturned as unfair, using as a wedge the fact that, inasmuch as the measure altered an existing law that had been confirmed by the Crown, it could technically only be passed with a clause suspending its execution until London authorities had approved it.

In London, Camm gained the sympathetic ear of the Bishop of London, who in a 1759 letter to the Board of Trade denounced the Two-penny Acts as an attack not just on the maintenance of the clergy but on “the Prerogative and Influence of the Crown” and charged that Virginia, formerly “a

well-ordered and well-regulated Colony” whose inhabitants “lived in Submission to the Power set over them,” now had “nothing more at Heart than to lessen the Influence of the Crown.” Although Camm’s mission succeeded in getting both measures disallowed by the Crown, he failed in his intention to have them declared void from the moment of their passage.

To defend Virginia from the Bishop’s charges and the legislature for its passage of the Two-penny Acts, Richard Bland, the colony’s leading antiquary and a burgess for Prince George County, published this pamphlet. Bland devoted much of his pamphlet to correcting the Bishop’s assertion that the legislature had only recently placed the patronage to ecclesiastical appointments in the local vestries, instead of in the governor, showing that the practice dated back more than a century to 1642. But he also made the case that the Two-penny Acts were only intended to provide short-term relief to taxpayers at a time of “general Distress and Calamity” when short tobacco production occurred while the colony was already burdened by high taxes required for defense measures undertaken in the Seven Years’ War, and he argued that provincial governments had to have the flexibility to deal with such pressing situations in a timely fashion, declaring that “where . . . Necessity prevails, every consideration must give Place to it,” even the “fixed Rule[s] of the Constitution.” This controversy continued for another four years, in pamphlets by Bland, Landon Carter, and Camm (Selections 61 and 62 also refer to this controversy). (J.P.G.)

A
LETTER
TO THE
Clergy of *Virginia*,
IN WHICH
The Conduct of the GENERAL-ASSEMBLY
is vindicated,
AGAINST
The REFLEXIONS contained in a LETTER to the
LORDS of TRADE and PLANTATIONS,
from the Lord-Bishop of LONDON.

By *RICHARD BLAND*, Esq;
one of the REPRESENTATIVES
in ASSEMBLY for the County
of PRINCE-GEORGE.

*Ne quid falsi dicere audeat, ne quid veri non audeat.*¹
CICERO.

WILLIAMSBURG:
Printed by WILLIAM HUNTER.
MDCCLX.

1. ["Let him not dare to say something false, let him not dare not to say something true."]

Copy of a Letter from the Lord-Bishop
of London, to the Lords of Trade
and Plantations.

FULHAM, *June 14th, 1759.*

My LORDS,

I have considered the Act from *Virginia*, referred to me: It seems to be the Work of Men conscious to themselves that they were doing wrong; for, though it is very well known that the Intention of the Act is to abridge the Maintenance of the Clergy, yet the Framers of the Act have studiously avoided naming them, or properly describing them, throughout the Act; so that it may be doubted whether, in a legal Construction, they are included or not. But, to take the Act as they meant it, and as every Body understands it, we must first consider by what Authority the Assembly acted, in passing such a Law; and, in the next Place, how inconsistent the Provision of the Act was with Justice and Equity: The Subject-Matter of the Act, as far as the Clergy are concerned, was settled before by Act of Assembly; which Act had the Royal Assent and Confirmation, and could not be repealed by a lesser Power than made it; and, to make an Act to suspend the Operation of the Royal Act, is an Attempt which in some Times would have been called Treason, and I do not know any other Name for it in our Law.

If they had brought in an Act of Repeal, to take Place from the Time they could obtain the King's Assent to the said Act of Repeal, they would have been blameless; but, to assume a Power to bind the King's Hands, and to say how far his Power shall go, and where it shall stop, is such an Act of Supremacy as is inconsistent with the Dignity of the Church of *England*, and manifestly tends to draw the People of the Plantations from their Allegiance to the King, when they find they have a higher Power to protect them: Whether or not such an Effect be produced, I know not; but, surely it is Time to look about us, and to consider the several Steps lately taken to the Diminution of the Prerogative and Influence of the Crown; lately taken, I say: Because, within a few Years past, *Virginia* was a well-ordered and well-regulated Colony, and lived in Submission to the Power set over them; they were all Members of the Church of *England*; and no Dissenters amongst them; the Clergy respected, and well used by the People; but these Days are over, and they seem now to have nothing more at Heart than to lessen

the Influence of the Crown and the Maintenance of the Clergy, both which ends will be effectually served by the Act now under our Consideration.

It was not till the Year 1748 that this Spirit began to shew itself, at which Time an Act of Assembly passed, by which the Patronage of all the Livings in the Colony were taken from the Crown, and given to the Vestry in the several Parishes; and yet this Act received the Royal Assent, upon what Inducements, I know not: But it was observable, that the Assembly did not care to attack the Rights of the Crown, and that of the Clergy, at the same Time; and therefore, in the same Act of 1748, there is the strongest Confirmation of the Clergy's Right to their full Proportion of Tobacco, without any Diminution whatsoever, which Provision was meant to silence the Complaints of the Clergy against the other Part of the Act; and Reason they had to Complain, when, instead of the Royal Authority, they were put under the Power of the Vestry and made subject to the Humours of the People.

That no Good was finally intended the Clergy, is manifest from hence, that no sooner were they in Possession of the Patronages, but they wanted also to be absolute Masters of the Maintenance of the Clergy; in which Attempt, they proceeded warily, and endeavoured to bring in the Scheme by Degrees; and accordingly, in the Year 1755, the Clergy in the Counties of *Princess-Anne* and *Norfolk* were deprived of their Tobacco, and forced to accept of a Compensation in Money, very much to their Loss.

The same Year produced a general Act, but a temporary one, and was followed by a very extraordinary Resolution of the Council; the Case was this: The Assembly had passed the Act; when it came to the Governor for his Assent, he boggled at it; and, for his own Security, thought proper to advise with the Council, that is, with the very Persons who had been the Promoters of it; he tells them, he apprehended it interfered with the Law confirmed by his Majesty in regard to the Allowance provided for the Clergy.

Here the Case is fully stated: It is admitted, that the Maintenance of the Clergy had the King's Confirmation; and that the Governor, by his Instructions, is restrained from altering it; but it seems the Act confirmed by his Majesty, appointed 16,000 Pounds of Tobacco to each Clergyman. The Act upon which this Advice was asked took no Notice of the Quantity of Tobacco allowed to the Clergy, but made it subject to a Compensation in Money, which was to be rated by the very Persons who were liable to the Payment of the whole: Upon this Circumstance the Council gave

their Judgment, and declared it was the Opinion of the Board, that this Bill was not contradictory to that Law, insomuch as it by no Means lessened the Quantity of Tobacco allowed the Clergy, but only ascertained the Price thereof to be paid in Money for all Dues, as well to Officers as to the Clergy.

This Declaration is a formal Judgment in the Case, stated between the Authority of the Crown and the Power of the Assembly, and subjected the Laws established by the Royal Assent to be altered, corrected or suspended, by a Vote of the Assembly.

The Lieutenant-Governour wanted something of an Excuse for what he was strongly inclined to do, and a very sad one they furnished him with. What made him so zealous in the Cause, I pretend not to judge; but surely the great Change which manifestly appears in the Tempers and Disposition of the People in that Colony, in the Compass of a few Years, deserves highly to be considered; and the more so, as the Deputy-Governour and Council seem to act in Concert with the People, to lend their Authority to support their unreasonable Demands: But one would think, upon Consideration of some late Transactions there, that the Deputy-Governours thought themselves obliged, upon their first Entrance, to make a Present to the Vestries of the Maintenance of the Clergy, the Jurisdiction of the Prerogative and the Supremacy and Rights of the Crown.

As to the Want of Justice and Equity shewed in the Act to the Clergy, the Case is too plain to admit of any Reflexion upon it: If the Crown does not or cannot support itself in so plain a Case, as is before us, it would be in vain for the Clergy to plead the Act confirmed by the King; for their Rights must stand, or fall, with the Authority of the Crown.

I am, my LORDS,
Your most obedient humble Servant,
T. LONDON.

A Letter to the Clergy of Virginia.

GENTLEMEN,

The Character given to the Lord Bishop of *London's* Letter to the Lords of *Trade*, and the Exultations it has occasioned amongst some of our Clergy, inflamed me with an ardent Desire of seeing it; but that was a Favour too great for me to receive; it was to be put only into confiding Hands, and with

a kind of Adjuration, that no Person should see it, but such as might be trusted: However, I have at last obtained a Copy of it, and I assure you, my Expectations were never more disappointed; for, instead of the Force and Conviction with which it is boasted to be written, it is, to me at least, only an Evidence of the Imbecillity of the human Mind; and a Demonstration, that, at certain Periods of Life, the most learned and pious Men are subject to the Impositions of the Crafty and Malevolent.

I take it for granted, that this Letter contains the Substance of the Instructions given Mr. *Camm* by that *small* part of the Clergy, that met at the *College* in a *late* Convention; when Men, in the highest Stations, and of the best Characters, were treated with so much Rudeness and Indecency, that the Clemency of the Administration was never more conspicuous, than in not punishing such atrocious and riotous Behaviour.

To give a proper, and, at the same Time, a decent Answer to this Letter, is scarce possible. His Lordship stands too much in my Way: A Person, in his high and sacred Station, is not to be treated with the same Language he is pleased to bestow upon a whole People; nor, impeached with an Attempt to hoot out Truth, with Harangue and Declamation. But, though this Deference is due to his Lordship's great Name, surely Mr. *Camm*, nor his Abettors expect the same Complaisance: They stand upon the same Level with other Men, and are not superior to them, as I know of, either in Station or Learning.

The *British* Parliament, you know, always consider his Majesty's Speeches from the Throne, as Speeches from the Ministry, and treat them as such, with the utmost Freedom: Now, by observing the same Rule, I will suppose this Letter to be a Memorial from the *Convention*, representing their Complaints against the Colony to the Lords of *Trade*; and, upon this Supposition, I will prove that it is an invidious and insolent Charge, without Foundation, and contrary to Facts, which you yourselves know to be true.

That his Lordship, did not give himself the Trouble to enquire into the Truth of this Memorial; and that, by taking Things at second Hand, he has been imposed on, is extremely evident; for, if he had exercised his own Candour and Integrity, and not relied on these Memorialists for the Truth of Facts, he could never have accused the *General-Assembly* with breaking through the Constitution, by Usurpations on the Prerogative of the Crown, and Encroachments on the Rights of the Clergy; which, in this Letter, are

so dexterously interwoven, that the *Colony* must be guilty of constructive Treason at least, whenever they concern themselves with what the Clergy are pleased to call their Rights.

Before I examine into the Reasons which prevailed with the General-Assembly to pass the Act so much complained of, it will be necessary for me to lay before you the several Charges against the Colony, in the Order of Time in which they stand; and, that the Reasonings of these Memorialists may not lose their Force, I will give them in the full Strength of his Lordship's own Expressions.

Within a few Years past, VIRGINIA was a very orderly and well-regulated Colony, and lived in Submission to the Power set over them; they were ALL Members of the Church of England, and NO Dissenters amongst them; the Clergy respected, and well used by the People: But, these Days are over; and they seem NOW to have nothing more at Heart, than to lessen the Influence of the Crown, and the Maintenance of the Clergy.

Surely, these Memorialists must be more than infatuated to talk at this Rate; and, by the grossest Misrepresentations, endeavour to traduce a Colony, that has given a Thousand recent Proofs of her Affection to her Sovereign, and her Regard to the established Church; and at a Time too, when she is exerting herself, even beyond her Abilities, to maintain a War against the professed Enemies of the Religion and Liberties of *Britain*, who have invaded his Majesty's Dominions and frequently supported a *Popish Pretender* to his Throne.

These are certainly strong Instances of a fixed Design in the General-Assembly to assume a Power to bind the King's Hands, and to say how far his Power shall go and where it shall Stop; and evidently show their traitorous Intent, of assuming a Supremacy inconsistent with the Dignity of ENGLAND, and manifestly tending to draw the People of the Plantations from their Allegiance to the King: Pompous Words, and a heavy Charge, truly! and, if true, it is Time for England to look about, and consider the several Steps LATELY taken, to the Diminution of the Prerogative and Influence of the Crown; especially as the Deputy-Governour and Council seem to act in Concert with the People, and to lend their Authority to support their unreasonable Demands; and think themselves obliged, to make a present to the Vestries of the Maintenance of the Clergy, the Jurisdiction of the Bishop, and the Supremacy and Rights of the Crown.

I could not have imagined, that Men acquainted with *Virginia* could have forged such a false and invidious Accusation; but really it gives me Surprise

to find we have Men, even among our Clergy, who, in Defiance of the Truth, stick at no Artifice to bring their evil Machinations to Perfection; and who, if they can but gain their End, condemn the Scandal of Detection.

Till within these few Years, we were all Members of the Church of ENGLAND, and had no Dissenters amongst us. If the Memorialists, by this Assertion, only intended to advance a manifest Untruth, I should not have thought it worth my Time to take Notice of it; but, when they would from thence insinuate, that the greater Part of the Colony, especially of the General-Assembly, are Dissenters (for this is the plain Inference from the Expression) it must create a proper Resentment in every Member of that Assembly, to be treated with such an opprobrious and outrageous Reflexion.

That we have had Dissenters among us almost from the first Settlement of the Colony; you know, Gentlemen, and unless these Memorialists can procure a Repeal of the Act of Toleration, and establish an Hierarchy upon Arch-Bishop *Laud's* Principles, I will venture to pronounce we shall always have them: Indeed our religious Forefathers, in the Year 1662, did attempt to prevent their Increase, by a very extraordinary Law, which imposed Fines, Penalties, and even Banishment, upon them; but this Law was repealed by the King, after the Revolution, as contrary to the Spirit of Christianity, and the Mildness and Equity of the *English* Government.

And so far have the General-Assembly been from attempting to lessen, or to make a Present to the Vestries of the Maintenance of the Clergy, that I dare venture to appeal to yourselves, whether from the frequent Declarations of many Members of that Assembly, you have not had Reason to expect an Establishment more to your Satisfaction, than that which you at present enjoy? You certainly had such Expectations in the Year 1755, when you petitioned the Assembly for a more liberal Provision; I will take the Liberty to transcribe the Substance of that Petition, from the *Burgesses Journals*: It sets forth,

That the Salary appointed by Law for the Clergy is so scanty, that it is with Difficulty they support themselves and Families, and can by no Means make any Provision for their Widows and Children, who are generally left to the Charity of their Friends; that the small Encouragement given to Clergymen, is a Reason why so few come into this Colony from the two Universities; and that so many, who are a Disgrace to the Ministry, find Opportunities to fill the Parishes; that the raising the Salary would prove of great Service to this Colony, as a decent

Subsistence would be a great Encouragement to the Youth to take Orders; for Want of which, few Gentlemen have hitherto thought it worth their while to bring up their Children in the Study of Divinity; that they generally spent many Years of their Lives at a great Expence in Study, when their Patrimony is pretty well exhausted; and, when in Holy Orders, they cannot follow any secular Employment for the Advancement of their Fortunes, and may on that Account expect a more liberal Provision.

This Petition was, indeed, rejected by the *Burgesses*; because, as they had been just forced into an expensive and dangerous War, which they could not foresee the Consequences of, they thought it a very improper Season to take a Matter, which would bring an additional Tax upon the People, under their Consideration. This, many of you know to be the Reason your Petition did not meet with a more favourable Reception; and some of you were so satisfied with it, that they disclaimed all Knowledge of the Petition, and were extremely offended with the Promoters of it.

And now, if what these Memorialists would insinuate be true, that the Clergy are not *now* treated by the People, with the Respect they used to be in *former* Times, allow me to ask you, whether this Petition does not assign a good Reason for it? For if *so many of the Clergy, who are a Disgrace to the Ministry, find Opportunities to fill the Parishes*, they must necessarily sink very low in the Opinion of good Men, and cannot expect to be treated with Respect by the People, who are generally influenced by Example more than Precept; but do not understand me as if I would say that all our Parishes are filled with such Men; no, Gentlemen, we have *some* Clergymen who are an Honour to their Function; who not only teach the Doctrines of their great MASTER, but also endeavour to imitate him in the Purity of his Life and Manners; and these Clergymen do, and always will, command that Respect, I had almost said Veneration, from the People, which is due to good and pious Men. If the Memorialist had said that those Clergymen, who (according to this Petition) are a Disgrace to the Ministry, have fallen into the Contempt of the People, I would have acknowledged it with great Candour; but, to charge the People with a Contempt of the Clergy in general, and from this bare-faced Insinuation too, that they are all Dissenters, is as false as it is malicious.

And now, what Effrontery must these Men be Masters of, who have advanced such palpable Untruths? And what Name do they deserve, who have dared to publish Inventions of their own against plain Matters of Fact: Truly, a Name so abhorred, that it finds not Room in civil Conversation.

But these are not the only severe and confident Censures contained in this Memorial; for it is with the same Spirit of Misrepresentation and Abuse, these Memorialists think fit to say, That it was not till the Year 1748 this Spirit began to show itself, at which Time an Act of Assembly passed, and the Patronages of all the Livings in the Colony were taken from the Crown, and given to the Vestries in the several Parishes: But it was observable that the Assembly did not care to attack the Rights of the Crown, and that of the Clergy, at the same Time; and therefore, in the same Act of 1748, there is the strongest Confirmation of the Clergy's Right to their full Proportion of Tobacco, without any Diminution whatsoever, which Provision was meant to silence the Complaints of the Clergy against the other Part of the Act; and Reason they had to complain; when, instead of the Royal Authority, they were put under the Power of the Vestries, and made Subject to the Humours of the People.

That no Good was finally intended the Clergy, is manifest from hence; that, no sooner were they in Possession of the Patronages, but they wanted also to be absolute Masters of the Maintenance of the Clergy: In which Attempt they proceeded warily, and endeavoured to bring in the Scheme by Degrees; and accordingly, in the Year 1755, the Clergy in the Counties of Princess-Anne and Norfolk were deprived of their Tobacco, and forced to accept of a Compensation in Money, much to their Loss.

The Storm begins to gather, has a dismal and frightful Appearance, and seems to be rushing on with a mighty Force; but Men, who are conscious of the Uprightness and Integrity of their Actions, are not easily dismayed; that stand firm and unshaken, and are under no Apprehensions from the Appearance of Things: I must beg your Indulgence, till I examine this Part of the Memorial, and wipe off these severe Reflexions from my Country.

By an Act of Assembly, made so long ago as the Year 1642, which was revised and re-enacted in the Year 1662, the Right of Patronage, or Presentation, was given to the Vestries in the several Parishes (which indeed they had before by the Law of *England*, as Builders and Endowers of all the Churches within their Parishes) and the Right of Induction was given to the Governour: This Act is now in Force, and this Method of Presentation and Induction was constantly observed till the Year 1727, when a new Act was made, whereby

Every Minister, received into any Parish by the Vestry, had an annual Salary of 16,000 Pounds of Tobacco and Cask; and the Vestries were to purchase, and appropriate, not less than 200 Acres of Land for a Glebe

in every Parish; and were to build, on such Glebe, a Mansion-House, and all other Outhouses and Conveniences, for the Use and Habitation of the Minister, at the Charge of the Parish: And every Minister, during his Incumbency, was to keep, and leave, all the Buildings on his Glebe, in tenantable Repair; and, on Failure, was subject to the Action of the Church-Wardens for Damages, to be recovered with Costs of Suit.

After the making of this Act, the old Method of Presentation and Induction was, for the most Part, discontinued; and, when a Parish became vacant, the Governour and Commissary usually wrote recommendatory Letters to the Vestry, upon which the Clergyman recommended was generally *received* into the Parish, and had Possession of the Spiritualties and Temporalities of it.

This Method of filling the Parishes continued till the Year 1748, at which Time a Suit was determined in the *General-Court*, between Mr. *Kay*, Minister of *Lunenburg* Parish, in the County of *Richmond*, and his Vestry; in which, the Question was, "Whether the *Reception* of a Minister by a Vestry, under the Act of Assembly made in the Year 1727, will enable him to maintain an Action for a Trespass committed on the Glebe Lands, without Induction, against Persons acting under an Order of Vestry:" This Trial made a great Noise, the Clergy interested themselves very much in it, and the Judges were divided in Opinion upon the Argument; but at last Judgment was pronounced for the Minister, and the Vestry appealed to his Majesty in his Privy-Council.

The General-Assembly was now sitting upon the Revisal of the Laws; and, as such Controversies were thought to be a Prejudice to Religion, they determined to put a Stop to them for the future; and, when the Act for the better Support of the Clergy came under their Consideration, they added a Clause to it, by which, "every Minister, *received* into any Parish, is entitled to all the spiritual and temporal Benefits of it; and may maintain an Action of Trespass against any Person or Persons whatsoever who shall disturb him in the Possession and Enjoyment thereof."

But this was not the only Favour the Clergy received from that *Assembly*: They had an Addition of Four *per Cent.* upon their Salaries, and the Vestries were impowered to make necessary Repairs upon their Glebes, at the Charge of the Parish, which they could not do by the Act 1727; so that the Ministers are now, in Effect, discharged from keeping their Glebes in

Repair. The most Part of these Alterations were made at the Instance of your late Commissary Doctor *Dawson*, and some others of your Reverend Body; who looked upon them, at that Time at least, as Favours; and several of the Burgesses received their Acknowledgments, which some of you must remember.

It is true, indeed, that Assembly did declare, that the Vestries Right of Presentation to vacant Parishes, which had been given them, indisputably, by the Act of 1662, or more properly 1642, should be extended to twelve Months, when it was supposed before to be limited to six Months only: And the Reason was, that as Clergymen were not always to be had in this Country, the Vestries might have Time to procure them from *England*; and you must allow this to be a good Reason for this Alteration, since thereby we have an Opportunity, to endeavour at least, to fill our Parishes with Clergymen from the Universities, who, possibly, may be no *Disgrace to the Ministry*.

Here is the Case *fully stated*, as to this Part of the Memorial; and I desire a *formal Judgment* upon it. Were not the Vestries in Possession of the Patronages above an Hundred Years before the Act of 1748? If they were, as is evident from the Act of 1642, then the Assembly in 1748 could not have *taken them from the Crown, and given them to the Vestries*. Are the Clergy, by the Act of 1748, *put under the Power of the Vestries and made subject to the Humours of the People*, more than they were before, by Laws that have had Existence ever since the Establishment of a civil Power amongst us? If they are, produce an Instance; for, I protest, that neither myself, or any Person with whom I have conversed upon the Subject, can discover one; or, does it *manifestly appear, that no Good was intended the Clergy by the Act of 1748?*

If that Act has made any Alteration in the Case, is it not in Favour of the Clergy? It has given them an Addition of four *per Cent.* to their Salaries; it has given the Vestries Power to keep their Glebes in Repair for them; and it has made them as complete Incumbents, and as independent of the Vestries, as if they were regularly and formally instituted and inducted by a Bishop.

These are the Benefits the Clergy receive from the Act of 1748, more than what were given them by the Act of 1727; and yet it is said that Act takes the Patronages from the Crown, and gives them to the Vestries: It puts the Clergy under the Power of the Vestries, and makes them subject to the Humours of the People; and no Good was finally intended them by it. If the most glaring Instances of Unfairness and Disingenuity; if Rudeness and

Insolence to the legislative Body of a Country, to which they are beholden for a Subsistence; if an unrestrained License in Invective and Abuse are the Criterion by which we are to judge of the Truth of Facts, these Memorialists have, without Doubt, established theirs upon a Foundation not to be shaken. But how far this part of the Memorial is consistent with that Truth and Candour which becometh those who profess themselves Teachers of the Religion of the GOD of Truth, must be left, upon what has been observed, to every fair and impartial Person to determine.

But the General-Assembly, it seems, is composed of a Set of artful designing Men, who proceed *warily, and endeavour to bring in their Schemes by Degrees; for no sooner were they in Possession of the Patronages, but they wanted to be absolute Masters of the Maintenance of the Clergy: And accordingly, in the Year 1755, the Clergy in the Counties of Princess-Anne and Norfolk, were deprived of their Tobacco, and forced to accept of a Compensation in Money, much to their Loss.*

You, who are well acquainted with the Value and Goodness of Tobacco in every Parish in the Colony, know that the Tobacco made in *Princess-Anne and Norfolk*, is the worst and meanest in the Country; and that, in common Years, it does not sell for more than eight or ten Shillings the Hundred, and often under. As this is owing to the Quality of the Lands in those Counties, which are improper for the Culture of Tobacco, the Inhabitants have been forced upon other Employments to gain a Subsistence, and seldom made Tobacco enough to discharge the common Expences of their Counties and Parishes: The People being under these Circumstances, and exposed to the arbitrary Exactions of the publick Collectors, petitioned the General-Assembly for Relief; they set forth,

That their Lands being very poor, and but small Quantities of Tobacco made by them, they were subject to great Impositions in Discharge of their Tobacco Debts; and prayed that an Act might pass to enable such Persons, as had not Tobacco sufficient to discharge all their publick Dues, after applying so much as they might have, to pay the Balance in Money, at a Price to be rated annually by the Courts of the said Counties.

This Petition was thought extremely reasonable by the Ministers in those Counties, as the House of Burgesses were informed by their Representatives, and accordingly an Act passed for the Relief of those People; and I am perswaded the Ministers, principally concerned never once complained

of this Act: For I myself have heard the Minister of *Norfolk* (who lives in great Harmony with his Parishioners, and is much esteemed and respected by them) declare, he was perfectly satisfied with it; and I believe it would be no difficult Matter to prove that he fell under the severe Censure of these Memorialists because he refused to enter into their Measures.

But, admitting that the Assembly did wrong, and ought not to have passed such an Act, this Errour could only be an Errour in Judgment, proceeding from a very laudable and Christian Principle, a Desire to relieve these People from the unhappy Circumstances they were under from the Laws then in Force, and not from any *traiterous Intent*, to lessen the Prerogative of the Crown, and to become absolute Masters of the Maintenance of the Clergy; I say *traiterous Intent*, because, according to the Doctrine the Memorialists are desirous to establish, whoever entertains a Thought which, by the most forced Construction, seems to be disadvantageous to the Clergy, must necessarily be *Traitors, and no other Name can be found for them in our Law*.

Thus you have the History of this Act; and I hope that you, who are so eminent for Acts of Mercy and Benevolence, who cannot be influenced by the secular Trifles of Wealth and Riches, will think that the *Assembly* did nothing more than their Duty, when they extended their Assistance to these their oppressed Brethren; and endeavoured, in a Way that did Injury to no Man, to relieve them from their Distresses.

I now come in Order of Time to the Act, passed in the Year 1757, for enabling the Inhabitants of this Colony to discharge their Tobacco Debts in Money for that Year; this Act, it is said, *seems to be the Work of Men conscious to themselves that they were doing wrong*: Why so? Because, *though it is well known that the Intention of the Act is to abridge the Maintenance of the Clergy, yet the Framers of it have studiously avoided naming them, or properly describing them, throughout the Act so that it may be doubted in a legal Construction whether they are included or no*; but, might not the Framers of the Act make Use of general Words descriptive of their Intentions, without being conscious to themselves that they were doing wrong? And might not they intend an adequate Compensation to the Clergy for their Salaries, without having any Design to abridge them of their Maintenance? This is certainly a Demonstration in the Abstract, and is so convincing a Way of Reasoning that it could certainly fall from no Pen but that of the Memorialists.

But to take the Act as they intended it, and as every Body understands it: Strange! that every Body should understand the Clergy to be included in an Act, when the Framers of it studiously avoided naming them, or properly describing them; and when it may be doubted, in a legal Construction, whether they are included or not: But to be serious, for really the Subject requires it, we must first consider by what Authority the Assembly acted in passing such a Law; and, in the next Place, how inconsistent the Provision of the Act is with Justice and Equity.

The Subject-Matter of the Act, so far as the Clergy are concerned, was settled before by Act of Assembly, which Act had the Royal Assent and Confirmation, and could not be repealed by a lesser Power than made it; and to make an Act to suspend the Operation of the Royal Act, is an Attempt which, in some Times, would have been called Treason, and I know no other Name for it in our Law.

In order to give an Answer to this Part of the Memorial, I must carry you a good Way into our Laws, and lay before you the Motives that prevailed with the Assembly to pass the Act so loudly exclaimed against.

By an Act of Assembly passed in the Year 1662, an annual Salary of £. 80 was settled upon every Parish Minister, "to be paid in the valuable Commodities of the Country; if in Tobacco, at 12 Shillings the Hundred; if in Corn, at ten Shillings the Barrel." This Act continued in Force many Years; but Tobacco falling in its Value to about ten Shillings the Hundred, and the Clergy being thereby deprived of one Sixth of the Provision the Law intended them, in the Year 1696 a new Act was made, and their Salaries were fixed at 16,000 lbs of Tobacco with Cask, which at that Time was worth about £. 80. In the Year 1727 the Assembly made some farther Provision for the Clergy; but, as Tobacco continued at nearly the same rate then as it was of in the Year 1696, they made no Alteration in their Salaries; and, till the Inspection-Law took Place, in the Year 1731, the Clergy's Salaries were generally worth about £. 80 annually: That Law indeed, by raising the Value of Tobacco, increased the Clergies Salaries to about £. 100 or £. 120, which they seldom if ever exceeded.

In the Year 1748 the Act of 1727 was revised, and an Addition of Four *per Centum* was made to the Clergies Salaries, to enable them to turn their Transfer Notes (in which the Salaries are payable) into Receipts for Crop Tobacco, without Loss, which they could not do before. From this short Detail of the Laws, it is plain that the Legislature intended a Settlement for

the Clergy of not more than £. 80 or £. 100 *per Annum*, exclusive of their Glebes and other Perquisites.

Besides these Salaries to the Clergy, there are other great and heavy, though necessary, Charges to be born by the People; such as Maintenance of the Poor, and many other parochial Charges, publick and County Levies, Secretaries, County-Court Clerks, Sheriffs, Surveyors, and other Officers Fees; all which are, by Law, made payable in Tobacco: And that these Salaries, Levies and Fees, may be duly and regularly collected and paid, the Sheriffs and other publick Collectors are empowered to distrain the Slaves, Goods and Chattels, of every Person from whom they are demandable, who does not pay them by the 10th Day of *April* annually; and the Slaves, Goods and Chattels, so distrained, are to be sold at publick Auction, if the Owners do not replevy them by Payment, within two Days after Distress made.

Thus do the Laws stand at this Time, with respect to all publick Tobacco-Debts; and now let me suppose that these Laws have received the Royal Assent, and from the Inclemency of the Season and other Accidents not one Pound of Tobacco should be made in the Colony, what are the People to do, and what is to become of them? The Clergies Salaries, you say, must be paid; but that, upon the Supposition, is impossible; they must then, you say, apply for the Royal Permission to repeal or suspend these Laws; but that will not do: The Father of his People is at too great a Distance to extend his beneficent Hand for their Relief in Time; they must then, you say, be left to the Charity of the Clergy: Great and extensive, I acknowledge your Charity to be, Gentlemen! But what must be done with the other publick Creditors, who perhaps have not such large Bowels of Mercy and Compassion? And what must be done with those Harpies, those Beasts of Prey, the publick Collectors? Must they be left to feed, without Controul, upon the Vitals of the People? Must they ravage, as they list, far and wide? Must the People be exposed to their Impositions, Exactions and Rapines?—Have their Estates seized, sold and destroyed, for not complying with Laws which Providence has made it impossible to comply with? Common Sense, as well as common Humanity, will tell you that they are not, and that it is impossible any Instruction to a Governour can be construed so contrary to the first Principles of *Justice* and *Equity*, as to prevent his Assent to a Law for relieving a Colony in a Case of such general Distress and Calamity.

How such a Law, in such a Case, can be a *binding of the King's Hands*, and how it *manifestly tends to draw the People of the Plantations from their*

Allegiance to the King, is, I confess, to me inexplicable: I should imagine it would have a quite different Tendency; for, if it could be possibly supposed, that the People of the Plantations could ever entertain a Thought of withdrawing their Dependency from the *British Throne*, such Doctrines, as are propagated in this Memorial, would be the ready Means of doing it, as thereby the People would be reduced to a State scarce superior to that of Galley-Slaves in *Turkey*, or *Israelites* under an *Egyptian Bondage*.

I need not inform you that the Circumstances of the Colony were almost as deplorable in the Year 1757, as the Case above supposed: It was a Year in which many Thousands of the People did not make one Pound of Tobacco, a Year in which the humane Landlord and Creditor were obliged to withhold their Demands from their Tenants and Debtors; a Year in which, if all the Tobacco made in the Colony had been divided between the tithable Persons only, they would not have had 200 lb. a Man to pay the Taxes for the support of the War, their Levies and other publick Dues, and to provide a scanty Subsistence for themselves and Families; and, what was still more melancholy, it was a Year in which Dearth and Scarcity took such Hold of the Land that the *General-Assembly* were obliged to issue Money from the publick Funds to keep the People from starving.

What now were the Legislature to do? Were they to sit idle, and silently commiserate the Miseries of the People, without affording them Assistance? No, Gentlemen; this would have been Treason indeed—Treason against the State—against the Clemency of the Royal Majesty: They therefore did their Duty, and passed a Law which gave them some Relief, without doing Injury to any publick Creditor; a Law, which was approved of by almost every Man in the Colony, and which every other honest benevolent and charitable Man, when rightly informed, must approve of as extremely just and necessary. They did not attempt, or even entertain a Thought of, *abridging the Maintenance of the Clergy*; but allowed them a Price for their Salaries equal to *Crop Tobacco* at 18 Shillings the Hundred, which made their Salaries that Year £. 144; a Sum, I will pronounce, larger than the Clergy in general had received in any one Year from the first Regulation of their Salaries by a Law, and which (one would be willing to think) they, above all Men ought to have been contented with, in a Year of such general Distress.

And here permit me to observe, that at the Time this Act passed, many Landlords and publick Officers, whose Rents and Fees were payable in Tobacco, were Members of the *General-Assembly*; and, with great

Chearfulness, consented to, and indeed were the chief Promoters of, it. I need not draw a Comparison between their Conduct and that of the Memorialists; the Contrast is apparent, without any Animadversions of mine.

But to make an Act to suspend the Operation of the Royal Act, which the Governour, by his Instructions, is restrained from altering, is an Attempt which in some Times would have been called TREASON; and I do not know any other Name for it in our Law.

The Royal Prerogative is, without Doubt, of great Weight and Power in a dependent and subordinate Government: Like the King of *Babylon's* Decree, it may, for aught I know, almost force the People of the Plantations to fall down and worship any Image it shall please to set up; but, great and powerful as it is, it can only be exerted while in the Hands of the best and most benign Sovereign, for the Good of his People, and not for their Destruction. When, therefore, the Governour and Council (to whom this Power is in Part delegated) find, from the Uncertainty and Variableness of human Affairs, that any Accident happens which general Instructions can by no Means provide for; or which, by a rigid Observation of them, would destroy a People so far distant from the Royal Presence, before they can apply to the Throne for Relief; it is their Duty as good Magistrates, to exercise this Power as the Exigency of the State requires; and, though they should deviate from the strict Letter of an Instruction, or perhaps, in a small Degree, from the fixed Rule of the Constitution, yet such a Deviation cannot possibly be *Treason*, when it is intended to produce the most salutary End, the Preservation of the People: In such a Case it deserves Commendation and Reward.

The Royal Instructions ought certainly to be obeyed, and nothing but the most pressing Necessity can justify any Person for infringing them; but, as *salus populi est suprema lex*,² where this Necessity prevails, every Consideration must give Place to it, and even these Instructions may be deviated from with Impunity: This is so evident to Reason, and so clear and fundamental a Rule in the *English* Constitution, that it would be losing of Time to produce Instances of it. You were of this opinion, I believe, when you petitioned the *Assembly*, in the Year 1755, for an Alteration in your Salaries; and, I am persuaded, if you had been lucky enough to have had them fixed in Money to your Satisfaction, we should have seen you strong Advocates for

2. ["The safety of the people is the highest law."]

such a Law, notwithstanding it would have been as manifest an Infringment of the Royal Instructions as the Law is which these Memorialists complain of: We should then have had no Representations against us for *assuming a Supremacy inconsistent with the Dignity of England*; we should have been *an orderly and well-regulated Colony, and the Clergy would have been respected and well used by the People*.

And pray what is the Reason of this Difference in the Conduct of the Clergy? Why should they commend the *General-Assembly* for altering the *Royal-Act* in the Instance before us, and condemn them for doing the same Thing for the Advantage and Preservation of the whole People? Why should they treat the *General-Assembly* as Traitors, as Contemnners of the Church and Clergy, for deviating from his Majesty's Instructions (and a very small Deviation it was) in this Case, and be extolled as liege Subjects, as true Sons of the Church, and Respecters of the Clergy, for the very same Deviation in the other: The Clergy, it must be confessed, is of great Consideration in the State; as Instructors of the People in that Religion upon which the Salvation of Souls depends, they ought to be held in high Estimation; but yet the Preservation of the Community is to be preferred even to them.

Thus I have considered this Memorial: It is hard to see what good End the Memorialists propose by it; they certainly do not intend the Advancement of Religion, or to establish themselves, as Lovers of Truth, in the Opinion of Mankind; and to gain a small pecuniary Advantage, at the Expence of their Veracity, is an Acquisition, I should think, Men of their Function could not possibly endeavour at, even if there was a Certainty of their obtaining it. I should now take my Leave of you, if it was not for an Insinuation which is flung out in the latter Part of the Memorial; which, though it seems to be personal, I think myself obliged to take Notice of:

One would think, upon the Consideration of some late Transactions, that the Deputy-Governours thought themselves obliged, upon their first Entrance, to make a Present to the Vestries of the Maintenance of the Clergy, the Jurisdiction of the Bishop, and the Supremacy and Rights of the Crown.

What these *late Transactions* are, I know not; but, if this Insinuation is levelled against the Gentleman now at the Head of the Administration, I think myself obliged, in Justice to his Merit, to endeavour to obviate it: He, indeed wants no *Panegyrist*; but yet thus much I will say, that whilst he maintains, with a becoming Dignity, the Honour and just Rights of the Crown, he wields the Rod of Authority with so gentle, so easy and merciful

an Hand, that though the People know the Power of the Prerogative, they scarce feel the Weight of it, and rejoice under the Felicity of his Government; and yet this Gentleman has less Reason to govern with Lenity (if pecuniary Considerations can be a Reason to a noble and generous Mind) than most of our former Governours; for I affirm, and I defy even these Memorialists to prove the contrary, that he has not been offered by the People the Present our former Governours have usually been complimented with upon their Accession to the Government, neither has he received any Money from the People but that which the Nature of his Appointment justly entitles him to; so that, if this Insinuation is intended to reflect on him as a mercenary Man, who would sacrifice the Rights of the Crown to his own private Interest, it is downright Calumny, a Contradiction to Truth and clear Matter of Fact, and deserves no farther Consideration.

I do not say this to flatter, or gain Favour: Flattery I despise, and I never was anxious of the Favours of great Men; it is Truth that forceth it from me, and I hope I shall never sacrifice that, even to procure the good Opinion of the Clergy.

If it should be thought that I have said more than I can justify, I am ready for my Trial: We are upon the Spot, where Facts can be known and Truth discovered; but then I insist on the Privilege of an *Englishman*, that my Trial be fair, open and publick; for I abhor those Accusers, who, like *Romish* Inquisitors, or some *late* Conventioners, carry on their insidious Practices in the Dark, lest the Day-light should discover the Iniquity of their Transactions, and then *valeant quantum valere possint*.³

I am Gentlemen,
Your obedient Servant,
RICHARD BLAND.

JORDAN'S, *March 20, 1760.*

3. ["Let them be as valid as they may be."]

[Joseph Galloway],
A Letter to the People of Pennsylvania
(Philadelphia, 1760)



THE INDEPENDENCE OF judges from royal influence was an important theme in the English constitutional debate of the seventeenth century, and as an important part of the Revolutionary settlement, the Act of Settlement of 1701 specified that thenceforth the tenure of judges should not be at the pleasure of the Crown, as had been the case under the Stuarts, but during good behavior. But British authorities never extended this stipulation to the colonies. Although a few colonies managed, through metropolitan inadvertence, to achieve the same arrangement, most of them had not done so by the middle of the 1750s. During the quarter century before the American Revolution, colonial legislatures in many colonies, including New York, New Jersey, Pennsylvania, North Carolina, South Carolina, and Jamaica, tried to pass measures requiring judicial tenure during good behavior, only to have them struck down by London authorities. The Pennsylvania Assembly passed its judicial tenure act in 1759, and this pamphlet, almost certainly written by Joseph Galloway, is the fullest statement of colonial British American thinking on this subject.

Opening with a consideration of the importance of an independent judiciary in a free government, the author recounted in some detail the English experience in this regard, arguing that it was an ancient English right, restored on the settlement that followed the Glorious Revolution, and that Parliament had “*intended*” to extend this essential element of English liberty “to all the King’s Subjects in *America*.” Accusing proprietary governors of trying to revive “the wicked Policy” of the Stuarts by making judges

dependent upon them, he urged his readers to oppose such effort. Not “the least Spark of Reason [can] be offered, why a *British* Subject in *America*” should “not enjoy the like Safety” with Britons at home from an independent judiciary, he declared, urging his readers “to insist on the Enjoyment of this your native, your antient and indubitable Right” until they had “prevail[ed] on your G[overno]rs to grant the Judges Commissions to the People of *Pennsylvania*, in the same free and constitutional Manner, as your Sovereign grants them to his Subjects in *England*.” (J.P.G.)

A
LETTER,
To the People of
PENNSYLVANIA;
Occasioned by the ASSEMBLY's
passing that Important ACT,
FOR
CONSTITUTING the JUDGES
OF THE
SUPREAM COURTS and COMMON-PLEAS,
During GOOD BEHAVIOUR.

I charged your Judges at that Time, saying, Hear the Causes between your Brethren, and judge Righteously between every Man and his Brother, and the Stranger that is with him: Ye shall not Respect Persons in Judgment, but you shall hear the Small as well as the Great; you shall not be afraid of the Face of Man, for the Judgment is GOD's.

Deut. i. 16, 17.

PHILADELPHIA: Printed in MDCCLX.

A Letter, To the People of Pennsylvania, &c.

Whoever has made himself acquainted with antient History, and looked into the original Design of Government, will find, that one of its chief and principal Ends was to secure the Persons and Properties of Mankind from private Injuries and domestic Oppression.

In forming a Plan of Government compleatly to answer these excellent Purposes, the fundamental Laws and Rules of the Constitution, which ought never to be infringed, should be made alike distributive of Justice and Equity, and equally calculated to preserve the Sovereign's Prerogative and the People's Liberties. But Power and Liberty ever being *Opponents*, should the Work stop here, the Constitution would bear a near Analogy to a Ship without Rudder, Rigging, or Sails, utterly incapable of answering the End of its Construction. For tho' the wisest and best Laws were enacted to fix the Bounds of Power and Liberty, yet without a due Care in constituting Persons impartially to execute them, the former by its Influence, and Encroachments on Liberty would soon become Tyranny, and the latter by the like Extent of its Limits might possibly degenerate into Licentiousness. In both which Cases, the Condition of Mankind would be little mended; scarcely better than in their original State of Nature and Confusion, before any civil Polity was agreed on.

The Men therefore who are to settle the Contests between Prerogative and Liberty, who are to ascertain the Bounds of sovereign Power, and to determine the Rights of the Subject, ought certainly to be perfectly free from the Influence of either. But more especially of the former, as History plainly evinces, that it is but too apt to prevail over the Ministers of Justice by its natural Weight and Authority, notwithstanding the wisest Precautions have been used to prevent it.

The Necessity of this independent State of Justice is rendered apparent by the slightest Consideration of human Frailty. Consider Men as they really are, attended with innumerable Foibles and Imperfections, ever liable to err; and you will find but very few, who are so obstinately just, as to be Proof against the enticing Baits of Honor and Interest. The Love of Promotion and private Advantage, are Passions almost universal, and admit of the most dangerous Extreams. The one in Excess generally produces the most servile Obedience, the other intolerable Avarice and a base Dereliction of

Virtue. That which we love and engages our Attention, we are ever ready to purchase at any *Price*. Thus an inordinate Lover of Promotion sooner than part with it, would surrender up his Regard for Justice, his Duty to his Country, and to his GOD for its Preservation. And the avaricious Man sooner than lose his Pelf, would part with his Honor, his Reputation, I had almost said his Life. And such is the Influence of this Dread of parting with that which we esteem, whatever it be, that it so effectually chains down the Powers of the human Soul, that it cannot be said to enjoy Freedom of Judgment, scarcely Freedom of Thought.

Of this Truth, the abject Promises and servile Conduct of the great Lord *Bacon*, exhibit an irrefragable Proof. It was but rational to think, that a Man of his extensive Abilities, and capacious Soul, that could comprehend all the Beauties of Rectitude and Justice at a View, would at least preserve in his public Station, an independent and unperturbed Judgment. And yet his Virtue fell a Victim to his love of Promotion. He begged for Preferment with the same low Servility, that the necessitous Pauper would beg for daily Bread. His Promise to the King in order to obtain the Chancellors Place, was, "That when a Direction was once given, it should be pursued and performed." And when he succeeded in his Wishes, his Conduct with respect to the Court and its arbitrary Measures, shewed that he strictly fulfilled his Engagement.

Whoever has read the Form of a Commission *during Pleasure*, and considered its Limitations, must certainly be surprized that a generous Mind would accept of a Tenure so servile, and so incompatible with the very Nature of Justice. He can be but a *Tenant at Will* of a G——r at best, and for the most Part of an At——y G——l, or perhaps some other Favorite in the several Counties. The Terms of Tenure are, *until our further Will and Pleasure shall be made known*, which, by a natural Construction, if we may call Reason and Experience to our Aid, is, no longer than you gratify us, our Favorites and Creatures, in your Determinations, let our *Will and Pleasure* therein be ever so illegal, ever so partial and unjust.

That some Men of independent Circumstances, happy in the Possession of Virtue, have accepted of those Commissions and acted uprightly, I will not pretend to dispute. They are remarkable Instances of public Integrity, and merit the highest Commendation. They are among Mankind, as a Comet among the Stars, rarely to be seen. But generally to look for strict Impartiality and a pure Administration of Justice; to expect that Power

should be confined within its legal Limits, and Right and Justice done to the Subject by Men who are dependent, is to ridicule all Laws against Bribery and Corruption, and to say that human Nature is insensible of the Love, or above the Lure of Honor, Interest, or Promotion.

With what Freedom and Justness do the modern Writers of a certain great Nation, complain against the Multiplicity of ministerial Officers, who hold their Commissions *during Pleasure*; and what renders that Freedom so justifiable, and those Complaints so just, but the Misfortunes the Nation has suffered, by the Weight these *Creatures* have thrown into the Scale of Power, by paying an implicit Obedience to its Commands, and a devoted Adherence to its Measures. If then, such are the dangerous Effects of a Dependency in the ministerial Officers, whose Conduct is circumscribed by positive Laws, and checked by the superior Courts of Justice; how much more so must a Dependency of the judicial Officers be, where every Thing is left in the Power, and to the Discretion of the Judge, on whose Breath, the Security of all Property and the Liberty of the People depend? Must it not produce more dangerous Consequences? Will it not bring on inevitable Ruin?

But further to illustrate the Necessity of an independent State of Justice in every Community where the Security of Property and the Happiness of Mankind, is the object of its *Polity*, numerous Instances might be adduced from the Histories of *Europe*, in which it has been the principal Policy of the most arbitrary Princes, who have conceived a Design of quelling the Spirit of Liberty, and enslaving their Subjects to their *Will and Pleasure*, to draw over to their Party the Ministers of the Law. By this Means, having effectually superseded the Execution of the Laws, and subdued the Power which alone could check a tyrannical Exercise of Prerogative; they have let loose every Instrument of Oppression, and left Nothing in the Community able to oppose the Torrent. Attempts of this Kind have frequently succeeded, and sometimes in Reigns, when the Judges have been as independent as the Law could make them. If so, how much more easily is this Policy pursued and executed, when the Judges hold their Offices on the servile Tenure of *during Pleasure*.

Without wandering into foreign History, a few Examples from that of our Mother-Country, and our own Province, will best suit my Purpose, as they are more familiar and adapted to your Circumstances.

By this Kind of Policy, RICHARD H. broke over every Barrier of Law, and prostrated the Fence which the Wisdom of Ages had planted round

the Constitution. Or as the Historian has it, "By the murderous Weapons of perverted Law."

The Opinion subscribed by all the Judges in *England*, touching the Commission for inspecting the public Revenues of the same Reign, is an evincing Evidence of this Truth. The Parliament observing the immense Profusion of the public Treasure by the Ministers of RICHARD, the great Want of Oeconomy in his Houshold, a Number of Pensions granted to his Creatures, his numerous Favorites grown rich amidst a national Penury and Distress, saw the Necessity of an Enquiry into, and Reformation of these Abuses, and appointed a Committee of eleven Noblemen for that Purpose, whose Authority was confirmed by an Act of Parliament. But this being inconsistent with the King's arbitrary Plan, he no sooner received the Supplies, but in a most solemn Manner he protested against it, and pursued every Measure in his Power to enslave the Nation. His detestable Scheme was to intimidate and corrupt the several Sheriffs to return a packed Parliament of his own Tools; the City of *London* was to furnish him with Men and Money, and the Judges of the Courts were to *pervert the Laws*, and sacrifice the *Rights of the Nation*.

But he failed in all his Reliances, save on the prostituted Judges: The Sheriffs informed him, that the People would never give up that *most valuable Privilege*, the *Freedom of Elections*. The City of *London* excused herself from acting her Part in the horrid Scene. But the Judges over-awed and corrupted, justified all his Measures. In the Opinion, I have mentioned above, they declared, that the Commission and Statute aforesaid, were derogatory to the King's Prerogative; that the Persons who moved for them, procured, or prevailed on his Majesty to assent to them, should be punished with *Death*; that the King in all Matters to be treated of in Parliament, had a Right to *direct and command* from the Beginning to the End thereof; that if they acted contrary to the King's *Pleasure* made known therein, they were to be punished as Traitors; that he could whenever he pleased, remove any of his Judges and Officers, and *justify* or punish them for their Offences; And that the Lords and Commons could not impeach them for any of their Crimes; with many other Things equally subversive of the Laws of the Land, and the very Being of the Constitution. An Opinion, so evidently infamous and servile, that it cannot call for the least Remark. I shall therefore only observe, that *Belknap* Chief-Justice, after he had signed it, not being resolute enough to be steady, nor so vicious as to want Remorse for violating his Oath, the

Cause of Truth and his Country, declared, "that he wanted Nothing but a Hurdle, a Horse, and a Halter to bring him to the Death he deserved."

The same Plan of Policy was pursued by CHARLES I. He removed Sir *Robert Heath*, Lord Chief-Justice, from his Office, because he could not approve of, and justify his Conduct, and Sir *John Finch*, a most abject Tool of the Court, became his Successor.

Thus by removing *at his Pleasure*, Men of Virtue and Integrity from the Courts of Law, and placing in their Stead such as would serve his arbitrary Purposes, he procured a Set of Judges entirely devoted to his Will. Under the Sanction of their Opinion, he issued forth his Proclamations, and enforced an Obedience to them, as the fundamental Laws of the Land; while those very Laws, by which not public and private Property only, but the very Existence of the Constitution itself was preserved, were dispensed with. So far did he carry this Policy, that it was common for the Secretaries of State, to send Letters to the Judges to lay aside the Laws against Papists, while the Persons that dared to disobey his arbitrary Proclamations, were proceeded against with more Rigour than if they had violated the fundamental Laws of the Kingdom.

The same Measure was taken to justify and support that infamous Violation of the Subjects Right, the Imposition of Ship-Money. The Judges were first closetted, flattered, threatened and intimidated, until they were prevailed on to subscribe to an Opinion, directly inconsistent with the Laws of the Land and the Liberties of the Nation.

No *Englishman* can ever forget the unheard of Barbarities committed by Judge *Jefferies*, that murdering Instrument of the Court of JAMES II.

Nor will that successful Attempt of the same King, to procure a set of Judges that should determine, not according to Law, but his tyrannical Directions, ever to be effaced from the Minds of *Britons*: He first closetted them agreeable to the Example of his Predecessor CHARLES; and would have made an express Bargain with them, *that they should continue in their Commissions, provided they would maintain his pretended Prerogative of dispensing with penal Laws*. But four of them discovered great Dissatisfaction at the Proposal, and particularly, Sir *Thomas Jones* plainly told him, "He would not do what he required of him." His Majesty answered, "He would have twelve Judges of his own Opinion." Sir *Thomas* replied, "Twelve Judges, Sir, you may possibly find, but not twelve Lawyers." But to convince him of his Mistake, the King in a few Days appointed four such *Creatures* from

the Bar, in the Room of the four worthy Judges, as effectually answered his Purpose; and eleven out of twelve, confirmed, as far as their Opinions could confirm, his illegal Power of dispensing with the Laws of their Country.

Many other Instances of this Nature, might be brought from the History of your Fore-fathers to demonstrate the Necessity of creating the Office of a Judge, *independent of Power*; and to show that an Increase of Prerogative, a Perversion of the Laws, a Suspension of your natural Rights, and a Violation of the fundamentals of an *English* Constitution, have often been effected by this Kind of Policy; this undue and *illegal Influence* on the Courts of Justice.

But permit me to remind you of those notorious Instances of violated Property, the Insistment of your Servants in the late *Spanish* War, who were a Part of Property as firmly secured by the Laws of your Country, as any you enjoy; as much your Right, as the Ox you have paid for, or the Inheritance you have purchased. Were they not by an arbitrary Stretch of Power, violently wrested from your Hands, without *Money and without Recompence*? What availed all your Endeavours to procure the Benefit of those Laws, and a Restitution of your Rights? Your Courts of Justice were dependent on, and under the Direction of the very Author of the Oppression.

Thus it is evident from the Nature of Justice, from the slightest Consideration of the frailty of human Nature, and from antient as well as modern Observation; that your Rights and Properties have been utterly insecure, while your Judges have been under the Influence of, and subject to the pleasure of your Rulers; and that your Welfare and Happiness have been merely Ideal, when the Laws of the Land, those impregnable Bulwarks of your Safety, have either been suspended, or not executed.

Having shewn you, that a Security of your Rights and Properties was the chief End of your entering into Society, and that, that Security cannot be obtained without an independent and uninfluenced Judicature; it becomes an indispensable Duty to take some Pains, to convince you, that this *Security* is your undoubted Privilege as *Englishmen*, of which you cannot be divested without Violence to your antient Rights and the Principles of an *English* Government.

To trace this your important Privilege to its original Source, it will be necessary to follow me back to the first Dawn of the present Constitution of *England*; there to learn the precarious Situation of Property, and the wise Remedy, that was framed to give it a permanent Security.

Before the Time of the great ALFRED, that wise Founder of the *English* Government, the Care of the several Counties was committed to the Nobility. They acted in a double Capacity as Leaders of the Troops, and Judges of the People's Properties; and being frequently absent on Military Duty, were obliged to leave the Administration of their civil Affairs to Prefects or Deputies, who, holding their Authority during the Pleasure of the Lords, and the Lords being the *Creatures* and *Dependents* of the Crown, in all their Determinations, paid a devoted Obedience to the *Directions of their Superiors*, and the Voice of Prerogative, while, the Execution of the Laws, and the Rights of the Subject were the least of their Concern. The Nation at this Time had Property, but no Safety in the Enjoyment. They had some Degree of Liberty, but held it as *Tenants at Will* of the Crown, of the Nobility or their Favorites; they had Laws, but no Protection from the hostile Hand of the domestic Oppressor. In this unfortunate and desponding Situation, did the great Father of public Virtue find Liberty and Property—The two principal Objects of all good Laws. A generous Compassion for the distressed State of the Nation, induced him to alter the Constitution wherever he found it inconsistent with the Welfare and Happiness of his People. The *Security of Property*, without which private Felicity is a mere Chimera, engrossed his chief Attention. He was the Author of the excellent Institution of Trials by Jurors that solid Pillar of *English* Liberty. He altered the former dependent State of Justice, by appointing and commissionating Judges *independent of the Crown*; that they might ever after remain free from its Influence, and deaf to every Solicitation, but the Convictions of Truth. He did not perhaps, like our modern Politicians, see no Advantage in an impartial Administration of Justice, but well knew from late Experience, that Justice must be a Stranger to the Land, whose Form of Government could not ensure Safety to the Liberties, and Properties of the People.

The Office of a Judge being thus wisely established, numerous Instances might be drawn from the *English* History, to demonstrate, that the Ministers of Justice were not removeable at *the Pleasure of the Crown*. EDWARD I. a Prince remarkable for his excellent Schemes of distributive Justice, and as cautious as the good ALFRED, lest his Prerogative should oppress the Law, was determined to purge the civil Polity from the gross Pollutions it had contracted from former Reigns. But before he could displace a Set of the most venal and corrupted Judges, he was under a Necessity from the *Nature*

of their Commissions, to impeach them before the Nobility, and convict them of their Offences.

The like Method was taken by the great Restorer of *English* Liberty, EDWARD III. In Order to remove *Green* and *Skipwith* from their Offices, who had justly incurred his, and the Nations Displeasure, by their Extortion and Partiality.

The infamous *Tresilian* Chief-Justice, and his Brother Judges; the former of whom was punished Capitally, and the others banished to *Ireland* in the Reign of RICHARD II. were first tryed and convicted, before they were removed from the Seat of Justice.

In the arbitrary Reign of JAMES I. Lord Chief-Justice *Coke*, who at that Time had become very odious to the King, by a virtuous Opposition to his Measures, and had also incurred the public Indignation, by his extream Avarice, was convicted, of one of the most trifling Articles exhibited against him, on his own Confession, which served as a *Pretence* for the removing him from his Offices.

Agreeable to this excellent Policy of the common Law, ever since the latter End of the eighth Century, the Judges have held their Commissions *during their Good Behaviour*; a few Instances to the Contrary made by the Incroachments of Power, excepted: Even in the most arbitrary Reigns of CHARLES, and JAMES II. the Judges were commissioned in this legal and constitutional Form; reigns in which Power had so great an Ascendancy, that had it not been consistent with the antient common Law, and the Usage and Custom of Ages, the Rights of the Nation had not met with so great a Favour. The Forms of the Commissions of Sir *Robert Hide*, and Sir *Robert Forster*, who held them *during Good Behaviour*, are to be seen in the Reports of CHARLES'S Reign. And Sir *Robert Archer* some Time before, having unjustly incurred the Displeasure of CHARLES, received a Supersedeas to his Commission as one of the Judges, but with virtuous Resolution, he refused to surrender his Patent without a Trial, and continued in his Office during his Life.

The next Thing worthy your Attention is, how far this invaluable Policy, so often suspended by arbitrary Power, was restored and confirmed by your Predecessors, the first Settlers of this Province. They had drank of the bitter Cup of despotic Authority: They had sufferd the Mischiefs of perverted Law: They had seen their Liberties both civil and religious bend under its Weight: They resolved therefore to seek a more hospitable Country, but

would not venture their Lives and Estates in this *desart* Land, without some Security against any Incroachment on this *inestimable Part* of their Mother Constitution. They wisely foresaw great Danger of an Invasion thereof, in a Province, where an immense Quantity of *Property*, was to attend a large Extent of *Power*, where the same Person who was to enjoy the Powers of Government, was likewise to be an *universal Landlord*, possessed of many Millions of Acres, with all their increasing Advantages and Emoluments; that this *Property*, at the same Time it produced Contests, would create Power and Influence, and if those Contests were to be decided, tho' not immediately by the Proprietary himself, yet mediately by his Deputies, whose Dignity, Office and Estate depended on his Breath, their Conditions and Circumstances by their Removal could be rendered worse, and the Safety of their Persons and Properties more precarious. It was therefore expressly stipulated and solemnly covenanted by *William Penn*, with the first Adventurers before their Departure from their native Country, That

He would nominate and appoint such Persons for *Judges*, Treasurers, Masters of the Rolls, Sheriffs, Justices, as were most fitly qualified for those Employments; to whom he would make and grant Commissions for the said Offices respectively, to hold them for so long Time as every such Person should *well behave himself*, in the Office or Place to him respectively granted, and no longer.

Thus secured as they Thought, in the Enjoyment of their Liberties and Estates, they surrendered up every social Connection of their native Land, under the vain Expectation of enjoying this Privilege agreed on before their Departure. But how righteously this fundamental Rule of your Constitution has been observed, the late dependent State of your Magistracy (whose Commissions have been granted during the *Governors Pleasure*) the Partiality and Favour that have been shewn to a favorite Att—y, to whose Influence they have been indebted for their Offices, and on whose Will their Continuance therein depended; the many Instances of Men of Integrity being displaced from the Seat of Justice, because of their virtuous Opposition to the Measures of Power; and the partial Distribution of Offices to Creatures and Tools, are so many incontestable Testimonies, of a manifest Breach of public Faith with your Predecessors and you their Posterity.

If your Ancestors here were not wanting in their Endeavours to secure you from the Mischiefs of perverted Law, and to transmit to you an upright

Administration of Justice; the Parliament of your Mother Country, have not been less careful in this respect. At the Time of the happy Revolution, that famous Opportunity of overcoming the Usurpations of former Reigns, and restoring the Constitution to its antient Freedom, many of the national Rights were revived and confirmed by the *Bill of Rights*. And yet, such was the Haste and Zeal of the Parliament, to settle the Essentials of the present Government, that many important Matters were neglected, among which may be accounted, a Restitution of the Courts of Judicature to their antient *Independency*. But this Error was not long undiscovered, the Parliament called to Mind the Mischiefs the Nation had suffered by the slavish Opinions of the Judges in the Case of Ship-Money; the arbitrary Removal of Justices *Powel* and *Holloway*, for acting consistent with their Oaths and Consciences in the Case of the five Bishops; they remembered that such was the Influence of JAMES II. with the Judges, whom he commissioned *during his Pleasure*, that Juries were packed; the Subject held to excessive Bail; the Laws of Liberty violated and dispensed with; expensive Fines imposed; cruel Punishments inflicted; the Spirit of Liberty worn out, and many Innocents condemned. Without the Spirit of Divination, they plainly foresaw, that the same Train of fatal Consequences must attend the Liberties of the Nation, should their Judges remain subject to the same Influence. They therefore, as soon as it became necessary to make a farther Limitation of the Succession of the Crown in the Protestant Line, gladly embraced the happy Opportunity of rectifying former Mistakes, and of making a further Security for the antient Rights and Liberties of the Subject. They resolved that the *one* should go Hand in Hand with the *other*. And by the Act which settled the further Limitation of the Crown, it is, among other Things expressly declared, That the Judges Commissions shall be made *Quam diu se bene gesserint*, or as long as they should behave themselves well in their Offices; and their Salaries shall be ascertained and established.

Here it is worthy your Information, *first*, That the Rights and Liberties claimed and declared by the Bill of Rights, that second Magna Charta, and the Act of Settlement, created no Innovation of the antient Constitution. The Parliament had no Design to change, but only to restore the antient Laws and Customs of the Realm, which were the true and indubitable Rights and Liberties of the People of *England*. This appears as well from the Bill of Rights, and the Resolves which preceded the Act of Settlement, as from the Act itself. From whence it follows, that this Right of the People to

have their Judges indifferent Men, and independent of the Crown, is not of a late Date, but Part of the antient Constitution of your Government, and inseparably Inherent in the Persons of every freeborn *Englishman*; and that the granting Commissions to the Judges *during Pleasure*, was then esteemed by the Parliament, and truly *was*, an arbitrary and illegal Violation of the Peoples antient Liberties.

Secondly, That those excellent Laws were *intended* to extend, and actually do extend to all the King's Subjects in *America*. That their Faith and Allegiance are bound by them to the present most *excellent* Royal Family, and of Course that they are entitled to the Rights and Liberties therein claimed, asserted and confirmed. And yet your former G——rs, as if they had been determined to revive and pursue the wicked Policy of those arbitrary Reigns I have mentioned, and to throw aside the worthy Example of his present most gracious Majesty, have acted as if those excellent Laws were not to be executed, and the Example of their Sovereign unworthy of influencing their Conduct. They have granted all the Commissions of the Judges *during their Will and Pleasure*, and like CHARLES and JAMES, have occasionally removed such as dared oppose their arbitrary Designs, and filled up their Places with others, who would ratify and support their Measures, however unjust and illegal.

This being the Case, what Censure and Blame would your Representatives have merited, had they not seized the first Opportunity of rendering your *Courts and Judges independent*. An Opportunity offered; they passed a Law, limiting the Number of the Judges which before was unlimited, and left it in the Power of a bad G——r, to create as many Dependents as his Measures should call for. It directs that the Judges of the Supream Court and Common-Pleas, shall hereafter hold their Commissions *during their Good Behaviour*; which before have often depended on the Nod of a G——r, or an At——y G——l. And it ordains, that the Judges of the Common-Pleas shall hold the Orphans Court; that in no Instance, your Properties exceeding the Value of £5. should be determined by Men *dependent* on Power or its Advocates; and the Ministers of Justice, who ought to be the Ministers of your Protection, may not be prevailed on, either to pervert your Laws, or to give up your Rights.

A law so full of Advantages to the People, one would imagine could not have an Enemy; and yet we find there is Nothing so virtuous, but the Enemies of Virtue will decry. The principal Objection against this Law is, that

“It brings a great Expence on the Counties, without any Benefit accruing from it.” Let us enquire what mighty Burden will attend it in the County of *Philadelphia*, where the Expence will be greatest. The Judges have never sat above *Five Days* in the Quarter at most, which, at *Twenty Shillings* per Day, will amount to *One Hundred Pounds* per Annum. *One Hundred Pounds* divided among 7000 Taxables, which this County contains, will not make it *Three pence half penny per Man*. Is an Expence so trifling equal to the Advantages to be derived from such a Law? Is that Expence unnecessary which procures Safety to your Property, and Protection to your Persons? Is an impartial Administration of Justice of so little Moment to the People? For what Purpose were the Courts of Judicature established? Was it that Judgment should be given according to the Nod and Direction of a P—y, G—r, or Att—y G—I, or, as the last shall happen to be employed? Or, was it that they should be free from all Fear, Favour or Affection whatsoever? That their Determinations might flow from an honest Conscience, from an impartial and unbiassed Mind?

The Enemies to this Law, like all other Persons who do not act upon Principle, manifestly contradict their own constant Practice. What Man among them, who has a Controversy with his Neighbour, would not chuse to have it determined by Arbitrators at least as independent of his Opponent as himself? I think I am safe in asserting, that no Man of common Sense, would submit his Cause to the Judgment of Arbitrators, who are the *Tenants at Will*, or Debtors of his Antagonist, or to Persons who are connected with him by Blood or Affinity, or by Obligations and Favours conferred. Is it not a common Objection at our Courts of Justice, in the Election of Referees, that the Person named, is of the same religious Persuasion with the other Party? Whence arises the Objection but from a well grounded Suspicion, that in some Men, even Similitude of Sentiments may create undue Favour and Attachment to the Interest of one side; and bias the private Judgment and be the Cause of Injustice.

If this be the Case between Neighbour and Neighbour, how does it stand between the Proprietaries and the People of this Province? Every Freeholder is by Contract their Debtor, and therefore every one of them may, and many often will, have Disputes and Lawsuits with them, respecting the many Covenants contained in their Grants, and the Quitrents. Does not the same Reason which declares the Use of indifferent Arbitrators in the Case of private Persons, loudly proclaim the Necessity of independent Men

to settle the Differences between Power and Property; between the Proprietaries and the People? Have not Men who are cloathed with immense Property and extensive Power, by the Weight of these alone, too great an Opportunity of influencing the Courts of Justice, without this unnatural and unreasonable Dependency of the Judges *on their Pleasure*?

I have shewn you, in the Reigns of CHARLES and JAMES, that Men of Fortune and the most extensive Abilities, have sacrificed their Honor, their Oaths and their Consciences, on the Altar of Court Influence. That they have violated the sacred Office and Trust of a Judge, which were committed to them for the Welfare of the People. Do you think it would be a difficult Task to produce you Examples of the like Immolations in your own Government? Have some of your past Administrations been less oppressive and arbitrary than those of CHARLES and JAMES? Have not the Royal Grant and Proprietary Charter, the Foundations of your Constitution, been dispensed with, and superseded by arbitrary P——y Edicts? Have not those Edicts, which like the Laws of the *Medes* and *Persians* were to alter not, chained down the Judgments of your Rulers, and deprived them of their Discretion in Matters of Legislation?

Have you known a Scheme of Power to deprive you of your Properties, in which your M——g——st——es have not been concerned? Have you forgot the Attempt to destroy the Freedom of your Elections, abetted and supported by the Men who ought to have suppressed it? Have not your Servants, as much your Property as the Money in your Purses, been illegally enlisted, by a former G——r, and scarcely any could be found, who dared to execute the Laws made for its Safety? What Part did they act, in preventing your Houses, (which by Law are to every Man a Place of Refuge and Safety) from being made *Barracks* for the Soldiery.—Did they execute the penal Statute of our Mother Country against it, or did not some of them act a *shameful* Neutrality, while others united with Power, and in its very Council abetted the illegal Attempt. How *manfully* and *conscientiously* did they exert themselves in suppressing the Rioters, those Instruments of Power, who were collected to frighten the Representatives to surrender up your sacred Rights, or were not some of them mixed with the Mob, promoting and abetting their wicked Design?

Where then is the Difference? If CHARLES and JAMES dispensed with penal Statutes in Order to introduce *Poper*y, your former G——rs have dispensed with the Laws and Fundamentals of your Liberties and Privileges,

in order to introduce *Slavery*. If the former influenced the Determinations of the Judges, and thereby perverted the Laws of the Country, your P——ries by severe Penalties, have deprived the Head of the executive as well as legislative Authority, of his Discretion and Reason: And your G——rs have so influenced the Courts of Justice to justify and support their despotic Designs, that you and your Predecessors, from the like dangerous Policy, have suffered equal Mischief, and the like Misfortunes.

Should, then, the same illegal and arbitrary Measures hereafter be pursued by some future Son of Oppression; should a Design be formed of dispensing with your Laws, and of imposing unnecessary Taxes and Burthens *heavy to be born*, without the Assent of your Representatives, and the Ministers of Justice be thought the proper Instruments of effecting these horrid Purposes, how certain the Success! how easy the Task! while your Judges are dependent on the *Will of the Oppressor*. Can you doubt that human Nature, wearing the Yoke engraved with the Motto DURING PLEASURE, will not hold and practice the Doctrine of *passive Obedience* and *non Resistance*, with respect to the Destruction of your Rights and Privileges? If it should retain Virtue enough not to be active in their Ruin, Will not the same Cause ever produce the same Effect? Will that which was once destructive, now change its Nature, and become harmless and innocent? Has the Poison of the Asp ever lost its virulent Quality? Will you then surrender up your sacred Rights into the Hands of Power for Protection? Will you suffer the Safety of your Persons, which is still more precious, to depend on the Humour and Caprice of your Rulers and their Favorites?

Consider, my Countrymen, farther, are the *Pennsylvanians* Men of more independant Fortunes, or of greater Abilities? do they inherit a greater Share of inflexible Virtue? And are they less liable to Influence and Corruption than the People of *England*? Has not fatal Experience evidently demonstrated, that the private Property of your P——ries, and their Favorites, will daily clash more and more with yours; more frequently and in a much greater Degree than the private *Interest* of your Sovereign possibly can with that of his Subjects. And yet has not the wise Example and Policy of a *British* Parliament thought it indispensably necessary, even there, that the Judges should hold their Commissions *during good Behaviour*, as independent of the Crown as of the Nation.

If those Things be so, can the least Spark of Reason be offered, why a *British* Subject in *America* shall not enjoy the like Safety, the same Protection

against domestic Oppression? Is it because you have left your native Land at the Risque of your Lives and Fortunes, to toil for your Mother Country, to load her with Wealth, that you are to be rewarded with a Loss of your Privileges? Are you not of the same Stock? Was the Blood of your Ancestors polluted by a Change of Soil? Were they Freemen in *England*; and did they become Slaves by a six Weeks Voyage to *America*? Does not the Sun shine as bright, our Blood run as warm; Is not our Honor and Virtue as pure, our Liberty as valuable, our Property as dear, our Lives as precious here as in *England*? Are we not Subjects of the same King, and bound by the same Laws, and have we not the same God for our Protector?

What, then, can you think of those abject *Americans*; those Slaves by Principle; those Traitors to their own and Posterities Happiness, who plunging the Dagger into the Vitals of their own Liberty, do not blush at declaring, that you are not entitled to the same Security of Property; the same Rights and Privileges of the freeborn Subjects of *England*? Let me ask those Enemies to your Welfare, how much thereof are you entitled to? Who will measure out and distribute your poor Pittance, your short Allowance? Is a Tenth, an Hundredth, or a Thousandth part to be the Portion of your Liberty? Abject detestable Thought! The poor *African*, who is taken Captive in War, and dragged an involuntary Slave to *Jamaica*, calls for your Humanity and Compassion; but the voluntary Wretch, that works out his own and Posterities slavish Condition, for the Sake of a little present Lucre, Promotion or Power, is an Object deserving your deepest Resentment, your highest Indignation.

Ye who are not wilfully blind to the Advantages of this beneficial Law, who for want of a little Reflection have spoke derogatorily of its Merits; let me rouse you from your Lethargy, and prevail on you to see through the Perspective of Truth, your and your Posterities Danger and approaching Misery. What will avail the Laws which are and shall be made for your Protection, if they are not impartially executed? What will avail the virtuous Struggles, the noble Victories of your Representatives over the Attempts of your intestine Enemies? What will avail, the heavy Taxes you labour under? the Thousands you have exhausted? the Blood and Treasure you have expended, to protect your Persons and Properties from foreign Invaders, if they are not safe from the insidious Designs of Ambition and Power, their ever vigilant and active Foes, nor even from the artful Attempts of a

litigious Neighbour, who is in favour with the *Great*, or can first employ a favorite Attorney?

Whatever then, be the Fate of the Law, which has occasioned this Address to you, let me intreat you, to insist on the Enjoyment of this your native, your antient and indubitable Right. 'Tis yours by the Usage and Custom of ages; 'tis yours by the Rules of Reason; 'tis yours by Covenant with the first Founder of your Government; 'tis yours by the united Consent of King, Lords and Commons; 'tis yours by Birth-right and as *Englishmen*.—Complain, and remonstrate to your Representatives incessantly, until they shall, like the great and good ALFRED, make a Restitution of this your most important and essential Right, the first and principal Object of their Concern; until they prevail on your G——rs to grant the Judges Commissions to the People of *Pennsylvania*, in the same free and constitutional Manner, as your Sovereign grants them to his Subjects in *England*.

Be assured, if a Privilege thus justly founded, so often ratified and confirmed; if an impartial and independent Administration of Justice is once wrested from your Hands, neither the Money in your Pockets, nor the Clothes on your Backs, nor your Inheritances, nor even your Persons, can remain long safe from Violation. You will become Slaves indeed, in no respect different from the sooty *Africans*, whose Persons and Properties are subject to the Disposal of their tyrannical Masters.

FINIS.

James Otis,
A Vindication of the Conduct
of the House of Representatives
of the Province of the Massachusetts-Bay
(Boston, 1762)



WRITTEN BY JAMES OTIS, a lawyer and influential member of the Massachusetts House of Representatives who would subsequently achieve wider fame as a result of his writings during the stamp crisis, this pamphlet deals with one of the oldest and thorniest issues in colonial politics: the control of colonial finance. While the Assembly was recessed in December 1761, Governor Francis Bernard and his council voted to expend funds from the treasury to outfit a vessel to go to the aid of Massachusetts fishermen threatened by privateers off the coast of Cape Breton, and this pamphlet recounts the altercation that ensued after the House expressed its “uneasiness” at an action that involved the disbursement of funds “without the knowledge of the house, and paying it without their privity or consent.” Citing the few similar examples in which the governor and council had previously acted in an “unusual and unconstitutional way,” the House complained that such actions “in effect” took “from the house their most darling priviledge, the right of originating all Taxes,” and led in the direction of “annihilating one branch of the legislature.” “Once the Representatives of a people give up this Priviledge,” the House declared, “the Government will very soon become arbitrary.” In response, Bernard argued that although “the Business of originating Taxes most certainly belongs to the Representatives

of the People," the "Business of issuing Money out of the Treasury, as certainly belongs to the Governor with the Advice of Council."

In his pamphlet, Otis argued that executive authority over disbursements was "confined by the charter, law and constitution of the province . . . to the general assembly or legislative body of the province" and that the governor and council were completely "bound and limited by the appropriations and establishments made by the acts of the province" and had no discretion in their disbursements. "Would all plantation Governors reflect upon the nature of free government, and the principles of the British constitution, as now happily established, and practice upon those principles, instead (as most of them do) of spending their whole time in extending the prerogative beyond all bounds," Otis noted, "they would serve the King their master better, and make the people under their care infinitely happier," and he advised Bernard that, if he wanted to have a successful administration, he should "in all cases take the advice of the general assembly. (Which however contemptably some may affect to speak of it, is the great council of this province, as the British parliament is of the kingdom.)" (J.P.G.)

A
VINDICATION
OF THE
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MORE PARTICULARLY,
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OF THE
GENERAL ASSEMBLY.

By James Otis, Esq; A Member of said House.

“Let such, such only, tread this sacred Floor, Who dare to love
their Country and be Poor;”*

“Or good tho’ rich, humane and wise tho’ great, Jove give but
these, we’ve nought to Fear from Fate!”†

BOSTON: Printed by EDES & GILL, in *Queen-Street*. 1762.

* Pope.

† Anon.

The Preface

The following Vindication, was written in order to give, a clear View of Facts; and to free the House of Representatives, from some very injurious aspersions, that have been cast upon them, by ill-minded people out of doors. Whether the writer has acquitted himself as becomes a candid and impartial vindicator, is submitted to the judgment of the publick; which is ever finally given without Favour or affection; and therefore the appeal is made to a truly respectable and solemn tribunal? At the same time that a sincere love is professed for all men, and the duty of honour and reverence towards superiors is freely acknowledged, it must be allowed that one of the best ways of fulfilling these Duties, is in a modest and humble endeavor, by calm reason and argument, to convince mankind of their mistakes when they happen to be guilty of any. The more elevated the person who errs, the stronger sometimes is the obligation to refute him; for the Errors of great men are often of very dangerous consequence to themselves, as well as to the little ones below them. However it is a very disagreeable task, to engage in any kind of opposition to the least individual in Society; and much more so when the opinions of Gentlemen of the first rank and abilities, and of publick bodies of men are to be called in question.

The world ever has been and will be pretty equally divided, between those two great parties, vulgarly called the winners, and the losers; or to speak more precisely, between those who are discontented that they have no Power, and those who never think they can have enough.

Now, it is absolutely impossible to please both sides, either by temporizing, trimming or retreating; the two former justly incur the censure of a wicked heart, the latter that of cowardice, and fairly and manfully fighting the battle out, is in the opinion of many worse than either. All further apology for this performance shall be sum'd up in the adage. Amicus Socrates, amicus Plato, sed magis Amica veritas.¹

A Vindication &c.

A Quorum of the house of representatives of the Province of the Massachusetts-Bay, being met, on the 8th of Sept. A.D. 1762, according to prorogation, informed his Excellency the Governour by a committee chosen

1. ["Socrates is a friend, Plato is a friend, but truth is even more of a friend."]

for that purpose, that they were ready to proceed to business. The committee returned that they had delivered the Message. Mr. Secretary came down soon after with a message from his Excellency, directing the attendance of the House in the council chamber. Mr. Speaker with the House immediately went up; when his Excellency was pleased to make the following Speech; of which Mr. Speaker obtained a Copy, and then with the house returned to their own Chamber.

His Excellency's speech is as follows. Viz.

Gentlemen of the Council, and Gentlemen of the House of Representatives,

I have been always desirous to make your Attendance to this General Court as unexpensive to your Constituents and as convenient to yourselves as the Nature and Incidents of the public Business will allow. But, as, whilst the War continues, this Province, however happy in the Operations being removed at a Distance, must expect to bear some Share of the Trouble and Expence of it: It will sometimes unavoidably happen that I must be obliged to call you together at an unseasonable Time.

I have now to lay before you a Requisition of His Excellency Sir JEFFERY AMHERST, who, observing that the great and important Services on which His Majesty's Regular Troops are now employed, and the Uncertainty of their Return, render it absolutely necessary, that Provision should be made in Time for garrisoning the several Posts on this Continent during the Winter, desires that you would provide for continuing in Pay the same Number of Troops that remained during last Winter; that is, Six Captains, Thirteen Subalterns, and Five Hundred and Seventy Two Privates, amounting in the whole to Five Hundred and ninety one Men.

I must observe to you that the Necessity of this Request arises from the present vigorous Exertion in the *West-Indies*; which promises effectually to humble the Pride of our Enemies, and pave the Way to Peace. As this glorious Expedition cannot but have your entire Approbation, I doubt not but you will readily embrace this Opportunity to give a public Testimony of it.

The *French Invasion of Newfoundland* must give you great Concern upon Account of the National Loss which the Interruption of the Fishery there must have occasioned, although this Province will not, in its own particular, greatly suffer thereby. But I am persuaded that the Reign of the *French* in those Parts is by this Time near over; and I flatter myself

that this Government will have some Share in the Honour of putting an End to it.

Gentlemen of the House of Representatives,

The great Alarm which spread itself over the Country upon the *French* getting Possession of a strong Post in *Newfoundland*, obliged me with the Advice of Council to take some cautionary Steps which have been attended with Expence. But as these Measures were advised with an apparent Expediency, and have been conducted in the most frugal Manner, I doubt not but what has been done will have your Approbation. I shall inform you of the Occasion of these Expences, and order the Accounts thereof to be laid before you.

Gentlemen of the Council, and

Gentlemen of the House of Representatives,

As I have called you together at this Time with Reluctance, so I shall be desirous to dismiss you, as soon as the public Business shall have had due Consideration. This, I apprehend, will take up not many Days; after which I shall be glad to restore you to your several Engagements at your own Homes with as little Loss of Time as may be.

FRA. BERNARD.

Council-Chamber, Sept. 8, 1762.

This speech (with General Amherst's Letter therein referred to) being read, the Consideration thereof was appointed for the next morning at nine of the clock.

September the 9th, the house agreeable to the order of the day, entered into the Consideration of his Excellency's speech.

In the course of the debate the following speech was made, as nearly as can be recollected by memory;

Mr. Speaker,

This Province has upon all occasions been distinguished by its loyalty and readiness to contribute its most strenuous efforts for his majesty's service. I hope this spirit will ever remain as an indelible Characteristick of this People. Every thing valuable is now at stake. Our most Gracious Sovereign, and his royal Predecessor, of blessed memory, have for some years been engaged in a bloody and expensive, but most just and necessary War, with the powerful Enemies of their Persons, Crown

and Dignity; and consequently of all *our* invaluable civil and religious Rights and Priviledges. The Almighty has declared the justice of this War, by giving us the most astonishing series of Victories and Triumphs recorded in ancient or modern story. From these Successes we had reason to hope that the War would have ended last year in a glorious peace. Our King and Father has condescended to tell us that his Endeavors for that purpose were frustrated by Gallic Chicanery and Perfidy. The King of Spain has been prevailed upon to break his Neutrality, to forsake his alliance with Great Britain, to turn a deaf Ear to the Interest and Cries of his own Subjects, and to attach himself to the Party of France and of Hell. But Heaven still smiles upon his Majesty's Arms. We have within this Hour received undoubted Intelligence of a memorable Victory obtained by Prince Ferdinand of Brunswick; and of the Reduction of the Havannah, the Key of the Spanish Treasury. Besides an immense Value in specie we have taken and destroyed one quarter of the Spanish navy. This has been done at a bad Season of the year and in Spite of as Gallant a defence as ever was made of a strong Hold. *Mr. Speaker*, the Fate of North America, and perhaps ultimately of Great Britain herself depends upon this War.

Our own immediate Interest therefore, as well as the general Cause of our King and Country, requires that we should contribute the last penny, and the last drop of Blood, rather than, that by any backwardness of ours, his Majesty's Measures should be embarrassed; and thereby any of the Enterprizes, that may be planned for the Regular Troops miscarry. Some of these Considerations, I presume, induced the Assembly, upon his Majesty's Requisition, signified last Spring by Lord *Egremont* so cheerfully and unanimously to raise thirty three Hundred Men for the present Campaign; and upon another Requisition, signified by Sir *Jeffery Amherst*, to give a handsome bounty for inlisting about nine Hundred more into the regular Service. The Colonies we know, have been often blamed without Cause; and we have had some share of it. Witness the miscarriage of the pretended Expedition against Canada in Queen Anne's Time, just before the infamous Treaty of *Utrecht*. It is well known by some now living in this Metropolis, that every Article, that was to be provided here, was in such readiness, that the Officers, both of the army and navy, expressed the utmost Surprise at it upon their arrival. To some of them no doubt it was a Disappointment; for in order to shift the Blame of this shameful affair from themselves, they

endeavoured to lay it upon the New-England Colonies. I remember, that by some, who would be thought faithful Historians, the miscarriage at Augustin in the last War, has been attributed to the neglect of the Carolinians. But it is now notorious to all, that the ministry of that Day never intended that any good should come of that Enterprize; nor indeed of any other, by them set on foot, during the whole War. The Conduct of that War, so far as the ministry were concerned, has been judged to be one continued abuse upon the Sovereign and his People. Thank God, we are fallen into better Times. The King, the ministry, and the People are happily united in a vigorous pursuit of the common good. Surely then if *we* should discover the least remissness in his Majesty's Service, as we should be truly blame-worthy, we may depend upon having matters represented in the strongest light against us, by those who delight to do us harm.

I am therefore clearly for raising the men, if Gen. *Amherst* should not inform us, by the return of the next mail, that he shall have no occasion for them. But as his Letter is dated the 4th of *August*, before even Moore Castle was taken, and since the Reduction of the Havannah, a number of the Regulars are returned to New-York, it is possible the General may have altered his Sentiments, as to the necessity of these Provincials.

Waiting 2 or 3 Days however can't make any odds in this Business, as our Troops are all inlisted to the last of October. Upon the whole *Mr. Speaker*, I am for a Committee to take the Governor's Speech and the present Requisition into Consideration, and make report.

This being seconded, *Mr. Speaker*, *Mr. Otis*, *Mr. Tyler*, General *Winslow*, and *Mr. Witt*, were appointed a Committee to take said Speech and Requisition into Consideration, and make report. The Committee waited a few Days for the Return of the Express, but hearing nothing further about the men it was taken for granted that the General expected them. The Committee therefore without debate unanimously reported to the House in favour of raising them at the bounty of Four Pounds each, that is, ten Shillings more than was given in the Spring. This Report was likewise almost unanimously accepted, and the men are now inlisting.

Here is another instance of the readiness of this Province to do every thing in their Power for his Majesty's Service. This Spirit notwithstanding many ungenerous Suggestions to the contrary, has remarkably discovered

itself in most if not all the British Colonies during the whole War. This Province has since the year 1754, levied for his Majesty's Service as Soldiers and Seamen, near thirty Thousand men besides what have been otherwise employed. One year in particular it was said that every fifth man was engaged in one Shape or another. We have raised Sums for the support of this War that the last Generation could hardly have formed any Idea of. We are now deeply in debt, but should think our selves amply rewarded if *Canada* should be retained.

The House did not enter into a particular Consideration of the latter part of the Governor's Speech, at this Time; as it is general; and an explanatory message was expected, with particular accounts of all the expences alluded to. Accordingly Sept. the 14th Mr. Secretary came down with the following message, from his Excellency, Viz.

Gentlemen of the House of Representatives,

Soon after the French Invasion of *Newfoundland*, the Inhabitants of *Salem* and *Marblehead*, who were concerned in the Fishery North-West of *Nova-Scotia*, were alarmed with Advice that a *French* Privateer was cruising in the Gut of *Canso*; and petitioned for protection for their Fishing Vessels then employed in those Seas.

As the *King George* was then out on a Cruize, and the *Massachusetts-Sloop* was just returned from *Penobscot*, I fitted the latter out in the readiest and most frugal Manner I could. I put on board her twenty-six Provincials, which I had within my Command, and augmented her Crew which was established at six Men, to twenty-four; and having completely armed her, sent her to the Gut of *Canso*, to the Protection of the Fishery there.

From thence she is just now returned, after a Cruize of about a Month; in which she saw no Enemy, although she heard of a *French* Pirate being in those Seas, and looked after him; and has in some Part Answered her Purpose, by encouraging the Vessels there to stay to compleat their Fares.

She now waits for Orders; and before I disarm her, and reduce her Crew, it may deserve Consideration whether it may not be advisable to keep up her present Complement, 'till the *King George* is discharged from the Service she is now engaged in; which I refer to your Deliberation.

FRA. BERNARD.

Council-Chamber, Sept. 11, 1762.

A little paper only, accompanied this message, with a short account of the Difference to the Province by the Governor and Council's enlarging the Establishment, which amounted to about Seventy two Pounds. But no notice was taken of the Commissary's and other Bills which must finally swell this account much higher. However it was neither the measure, nor the expence of it, that gave the House so much uneasiness, as the manner of it; that is, the enlarging an Establishment without the knowledge of the house, and paying it without their privity or consent. The Council minute relating to this Affair stands thus.

At a General Council held at the Council Chamber in Boston upon Monday the 9th Day of August 1762.

Present

His Excellency the Governor.

Hon. *Thomas Hutchison*, Esq; Lieutenant Governor. Mr. *Danforth*, Judge *Lynde*, Brigadier Royal, Capt. *Erving*, Brigadier *Brattle*, Mr. *Bowdoin*, Mr. *Hancock*, Mr. *Hubbard*, Mr. *Gray*, Mr. *Russell*, Mr. *Flucker*, Mr. *Ropes*.

Upon representation made to his Excellency the Governor from a Number of Persons Inhabitants of the Towns of *Salem* and *Marblehead*, for some protection to be afforded to the Fishery, they having received an account of a French Privateer in the Gut of *Canso*. Advised that his Excellency give orders for fitting out the Sloop-Massachusetts, in order to proceed on a cruize, to the Gut of *Canso*, and *Bay Vert*, for the protection of the Fishery and to continue her said cruise not exceeding one Month; and as his Excellency proposes to put on board twenty-six Provincials, and ten men out of the Ship *King George*, provided she arrives seasonably, towards manning of the said Sloop: Advised that her proper Crew be augmented to twenty-four men, officers included, upon the following Wages, viz. Captain £.5 6 8. per Month, Lieut. £.4 0 0. Master £.4 0 0. Master's mate £.3 6 8. Boatswain £.3 6 8. Boatswain's mate £.3 0 0. Gunner £.3 6 8. Gunner's mate £.3 0 0. per Month, and each Private £.2 13 14. per Month; and that the Commissary General put in Provisions for said Cruize accordingly.

The Protection of the Fishery is undoubtedly a very important object and the Province at the beginning of the War built a Ship of twenty Guns,

and a Scow of sixteen Guns, for the *immediate* protection of the Trade. I wish the Interests of Commerce were more attended to by those who have it in their Power to cherish them. The trade in the opinion of some has never received a Benefit from those Vessels equal to the Tax Trade alone has paid for their Support. However if more are wanted, when that necessity appears, doubtless the assembly will establish more, in the mean time, no more can be lawfully established at the publick Expense. There has been an Instance or two of the Governor and Council's taking upon them in the recess of the Court to fit out the Province Ship, in a very unusual and unconstitutional manner, as appears by the following Extracts from the Council Records.

11th of September 1760. Present in Council the *Governor, Lieutenant Governor, the Honorable Jacob Wendell, Samuel Watts, Andrew Oliver, John Erving, James Bowdoin, William Brattle, Thomas Hancock, and Thomas Hubbard, Esqr's.*

His Excellency having communicated to the board some Intelligence he had received of five Privateers being cruizing off the *Southern Provinces* in Lat. 39. 28. and asked the advice of the Council with respect to manning the Province Ship King George. Advised that his Excellency give Orders for immediately completing the Ship's Complement of Men, by directing Captain Hollowell to beat up for Volunteers upon the Encouragement of eight Dollars per man for the Cruize over and above the Wages agreeable to the Establishment. Advised and Consented that a Warrant be made out to the Treasurer to pay unto Captain Hollowell the Sum of One Hundred and sixty Pounds sixteen Shillings, to pay the Bounty of said Men, he to be accountable.

To the Honour of General *Brattle* he was single in his Opposition to this Resolution.

21st of May 1761. In Council,

Present the *Governor, Lieutenant Governor, the honorable John Osborne, Jacob Wendell, Andrew Oliver, John Erving, William Brattle, Thomas Hancock, and Thomas Hubbard, Esqr's.*

Whereas Intelligence has been received of two Privateers cruizing off Block-Island which have already taken divers Vessels bound to and from

the Colonies, and the Ship King George having no more than thirty men belonging to her, Officers included, and there being no prospect of any further men inlisting upon the present *Establishment*, and the *appropriation* for the Service of said Ship being exhausted, and his Excellency having proposed to put fifty men of the new raised Troops on board said Ship to serve for one Cruize only; therefore in order to compleat the Complement of Men; advised that his Excellency give orders to Captain Hallowell to send the Ship down to Nantasket without Delay, and to impress from all inward bound Vessels, coasters and Provincial Vessels excepted; also to inlist Volunteers upon a Bounty of ten Dollars each; provided the money can be procured; and for that Purpose it is further advised that a Warrant issue upon the Treasurer for seven Hundred Dollars, to be paid out of such Sums as shall be subscribed by any Merchants or other persons, for the above services, upon the credit of a Reimbursement *to be made by** the General Court at their next Session.

There had been some other Proceedings that were very much disrelished by former Houses, e.g. In three Days after the Heirs of Lieutenant Governor Phipps had received a Denial from the House to bear the Expence of his Honor's Funeral, the Governor and Council paid it. Some other extraordinary accounts had also been allowed contrary to the known and express Sense of the House. All these matters together alarmed the present House, and they thought it high time to remonstrate. Accordingly when the Governor's Message relating to the Sloop Massachusetts was read, (upon a motion made and seconded) it was ordered as an Instruction to the Committee to answer it, to remonstrate against the Governor and Council's making and increasing Establishments without the Consent of the House. Tho' no Notice is taken of this Instruction in the printed Votes of the House. The Journal stands thus, "Read and Ordered, that Mr. Otis, Mr. Tyler, Captain Cheever, Col. Clap and Mr. Witt, take said message under consideration, and report an answer thereto."

Sept. the 15th, The committee reported the following answer and Remonstrance, Viz.

* I wish the words had been, "to be recommended to."

May it please your Excellency,

The House have duly attended to your Excellency's message of the 11th, Instant, relating to the Massachusetts *Sloop*, and are humbly of opinion that there is not the least *necessity* for keeping up her present complement of men, and therefore desires that your Excellency would be pleased to reduce them to fix, the old establishment made for said *Sloop* by the General Court.

Justice to our selves, and to our constituents oblige us to remonstrate against the method of making or increasing establishments by the Governor and council.

It is in effect taking from the house their most darling priviledge, the right of originating all Taxes.

It is in short annihilating one branch of the legislature. And when once the Representatives of a people give up this Priviledge, the Government will very soon become arbitrary.

No Necessity therefore can be sufficient to justify a house of Representatives in giving up such a Priviledge; *for it would be of little consequence to the people whether they were subject to George or Lewis, the King of Great Britain or the French King, if both were arbitrary, as both would be if both could levy Taxes without Parliament.*

Had this been the first instance of the kind, we might not have troubled your Excellency about it; but lest the matter should grow into precedent; we earnestly beseech your Excellency, as you regard the peace and welfare of the Province, that no measures of this nature be taken for the future, let the advice of the council be what it may.

Which being read, was accepted by a large majority, and soon after sent up and presented to his Excellency by Captain Goldthwait, Mr. Otis, Captain Taylor, Mr. Cushing and Mr. Bordman.

The same day the above remonstrance was delivered, the Town was alarmed with a report that the House had sent a message to his Excellency reflecting upon his Majesty's person and government, and highly derogatory from his crown and dignity, and therein desired that his Excellency would in no case take the advice of his majesty's council. About five of the clock P.M. the same day Mr. *Speaker* communicated to the house a Letter from the Governor of the following purport.

SIR,

I have this morning received a message from the house, which I here inclose, in which the King's name, dignity, and cause, are so improperly treated, that I am obliged to desire you to recommend earnestly to the house, that it may not be entered upon the Minutes in the terms it now stands. For if it should, I am satisfied that you will again and again wish some parts of it were expunged; especially if it should appear, as I doubt not but it will, when I enter upon my vindication, that there is not the least ground for the insinuation under colour of which that sacred and well-beloved name is so disrespectfully brought into Question.

September 15th. To the Honourable Speaker of the House of Representatives.

Your's, etc.

FRA: BERNARD.

Upon the reading of this letter, it was moved to insert these words, to wit, "with all due reverence to his Majesty's sacred Person and Government, to both which we profess the sincerest attachment and loyalty be it spoken it would be of little importance," &c. But a certain member crying "*Rase them,*" "*Rase them,*"* the proposed amendment was dropped, it being obvious, that the remonstrance would be the same in effect, with or without the words excepted against. These dreadful words, under which his Excellency had placed a black mark, were accordingly erased and expunged, and the Message returned to the Speaker.

In the course of the debate a new and surprising doctrine was advanced. We have seen the times when the majority of a council by their words and actions have seemed to think themselves obliged to comply with every Thing proposed by the Chair, and to have no rule of conduct but a Governor's will and pleasure. But now for the first time, it was asserted that the Governor in all cases was obliged to act according to the advice of the council, and consequently would be deemed to have no Judgment of his own.

* Meaning that part of the remonstrance which is in Italick.

In order to excuse if not altogether justify the offensive Passage, and clear it from ambiguity, I beg leave to premise two or three *data*.* 1. God made all men naturally equal. 2. The ideas of earthly superiority, preheminance

* The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man; but to have only the law of nature for his rule. The liberty of man in society, is to be under no other legislative power, but that established by consent in the common wealth; nor under the dominion of any will, or restraint of any law, but what that legislature shall enact according to the trust put in it. Freedom then is not what Sir *Robert Filmer* tells us, O. A. 55. A liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws. But freedom of men under government, is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things where that rule prescribes not, and not to be subject to the unknown, unconstant, uncertain, arbitrary will of another man; a freedom of nature is to be under no restraint but the law of nature. This freedom from absolute arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it but by what forfeits his preservation & life together. For a man not having power over his own life, cannot by compact or his own consent enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life when he pleases: no body can give more power than he has himself. He that cannot take away his own life, cannot give another power over it.

Locke's DISCOURSE on GOVERN'T. Part II, CH. IV.

The legislative, whether placed in one or more, whether it be always in being, or only by intervals, though it be the supreme power in every common-wealth, yet in the utmost bounds of it, it is limited to the public good of the society, it is a power that hath no end but preservation; and those can never have a right to destroy, enslave or designedly to impoverish the subjects.

These are the bounds to which the trust that is put in them, by the Society, and the laws of God and nature, have set to the legislative power of every common wealth, in all forms of government.

First, They are to govern by established promulgated laws, not to be varied in particular cases; but to have one rule for rich and poor, for the favourite at court, and the countryman at plough.

Secondly, These laws ought to be designed for no other end ultimately, but the good of the people.

Thirdly, They must not raise taxes on the property of the people, without the consent of the people, given by themselves or deputies.

Fourthly, The legislature neither must nor can transfer the power of making laws to any body else, nor place it any where but where the people have.

Id. Ch. XI.

grandeur are educational, at least acquired, not innate. 3. Kings were (and plantation Governor's should be) made for the good of the people, and not

Where the legislative and executive power are in distinct hands, as they are in all moderated monarchies and well formed governments, there the good of the society requires that several things should be left to the discretion of him that has the supreme executive power. This power to act according to discretion for the public good, without the prescription of Law, and sometimes even against it, is that which is called *PREROGATIVE*.

This power, while employed for the benefit of the community, and suitably to the trust and ends of government, is undoubtedly Prerogative, and never is questioned. For the people are very seldom or never scrupulous or nice in the point, they are far from examining Prerogative whilst it is in any tolerable degree employed for the use it was meant, that is, for the good of the people, and not manifestly against it. But if there comes to be a question between the executive power and the people, about a thing claimed as a prerogative, the tendency of the exercise of such prerogative to the good or hurt of the people, will easily decide the question. Prerogative is nothing but the power of doing public good without a rule. The old question will be asked in this matter of Prerogative, But who shall be judge when this power is made a right use of? I answer, between an executive power in being with such prerogative, and a legislative, that depends upon his will, for their convening, there can be no judge on earth, as there can be none between the legislative and the people. Should either the executive or legislative, when they have got this power in their hands, design or go about to destroy them, the people have no other remedy in this, as in other cases, when they have no judge upon earth, but to appeal to heaven. Nor let any one think that this lays a perpetual foundation for disorder, for this operates not 'till the inconveniency is so great that the majority feel it, and are weary of it, and find a necessity to have it amended. But this the executive power or wise Princes never need come in the danger of; and it is the thing of all others, they have most need to avoid; as of all others the most perilous.

Id., Ch. XIV.

“Fatherly authority, or a right of fatherhood in our Author’s sense (i.e. Sir Robert Filmer) is a divine unalterable right of sovereignty, whereby a Father, or a Prince, (and a Governor might have been added) hath an absolute, arbitrary, unlimited, & unlimitable power over the lives, liberties and estates of his children and subjects; so that he may take or alienate their estates, sell, castrate or use their persons as he pleases they being all his slaves, and he Lord proprietor of everything and his unbounded will their law.”

Locke on Govt. B. I. Ch. II.

“He that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it, and so lay a foundation

the people for them. 4. No government has a right to make hobby horses, asses and slaves of the subject, nature having made sufficient of the two former, for all the lawful purposes of man, from the harmless peasant in the field, to the most refined politician in the cabinet; but none of the last, which infallibly proves they are unnecessary. 5. Tho' most governments are *de facto*² arbitrary, and consequently the curse and scandal of human nature; yet none are *de jure*³ arbitrary. 6. The British constitution of government as

for perpetual disorder, mischief, tumult, sedition and rebellion, (things that the followers of that hypothesis, i.e. *Filmer*, and the advocates for passive obedience, so loudly cry out against) must of necessity find out another rise of government, another original of political power, and another way of designing and knowing the persons that have it, than what Sir *R. Filmer* hath taught us."

Locke on Govt. B. II. Ch. II.

This other original Mr. *Locke* has demonstrated to be the consent of a free people. It is possible there are a few, and I desire to thank God there is no reason to think there are many among us, that can't bear the names of LIBERTY and PROPERTY, much less that the things signified by those terms, should be enjoyed by the vulgar. These may be inclined to brand some of the principles advanced in the vindication of the house, with the odious epithets *sedition* and *levelling*. Had any thing to justify them been quoted from Col. *Algernon Sidney*, or other British Martyrs, to the liberty of their country, an outcry of rebellion would not be surprising. The authority of Mr. *Locke* has therefore been preferred to all others, for these further reasons. 1. He was not only one of the most wise, as well as most honest, but the most impartial man that ever lived. 2. He professedly wrote his discourses on Government, as he himself expresses it, "To establish the throne of the great restorer king *William*, to make good his title in the consent of the people, which being the only one of all lawful governments, he had more fully and clearly, than any Prince in christendom, and to justify to the world, the people of England whose love of liberty, their just and natural rights, with their resolution to preserve them, saved the nation when it was on the brink of slavery and ruin." By this title, our Illustrious Sovereign GEORGE the III. (whom GOD long preserve) now holds. 3. Mr. *Locke* was as great an ornament, under a crown'd head, as the church of England ever had to boast of. Had all her sons been of his wise, moderate, tolerant principles, we should probably never have heard of those civil dissensions that have so often brought the nation to the borders of perdition. Upon the score of his being a Churchman however, his sentiments are less liable to the invidious reflections and insinuations that High-flyers, Jacobites, and other stupid Bigots, are apt too liberally to bestow, not only upon Dissenters of all denominations, but upon the moderate; and therefore infinitely the most valuable part of the Church of England itself.

2. ["In reality."]

3. ["By law."]

now established in his Majesty's person and family, is the wisest and best in the world. 7. The King of Great-Britain is the best as well as most glorious Monarch upon the Globe, and his subjects the happiest in the universe. 8. It is most humbly presumed the King would have all his plantation Governors follow his royal Example, in a wise and strict adherence to the principles of the British constitution, by which in conjunction with his other royal virtues, he is enabled to reign in the hearts of a brave and generous, free and loyal people. 9. This is the summit, the *ne plus ultra*⁴ of human glory and felicity. 10. The French King is a despotic arbitrary prince, and consequently his subjects are very miserable.

Let us now take a more careful review of this passage, which by some out of doors has been represented as seditious, rebellious and traitorous. I hope none however will be so wanting to the interests of their country, as to represent the matter in this light on the east side of the atlantick, tho' recent instances of such a conduct might be quoted, wherein the province has after its most strenuous efforts, during this and other wars, been painted in all the odious colours that avarice, malice and the worst passions could suggest.

The house assert, that "it would be of little consequence to the people, whether they were subject to George or Lewis, the King of Great-Britain or the French King, if both were arbitrary, as both would be, if both could levy taxes without parliament." Or in the same words transposed without the least alteration of the sense.

"It would be of little consequence to the people whether they were subject to George the King of Great-Britain, or Lewis the French King, if both were arbitrary, as both would be, if both could levy taxes without parliament."

The first question that would occur to a philosopher, if any question could be made about it, would be whether the position were true. But truth being of little importance with most modern politicians, we shall touch lightly upon that topic, and proceed to inquiries of a more interesting nature.

That arbitrary government implies the worst of temporal evils, or at least the continual danger of them is certain. That a man would be pretty equally subjected to these evils under every arbitrary government, is clear. That I should die very soon after my head should be cut off, whether by a sabre or a broad sword, whether chopped off to gratify a tyrant by the christian name of *Tom, Dick* or *Harry* is evident. That the name of the tyrant would be of

4. ["No further, the limit."]

no more avail to save my life than the name of the executioner, needs no Proof. It is therefore manifestly of no importance what a prince's christian name is, if he be arbitrary, any more, indeed, than if he were not arbitrary. So the whole amount of this dangerous proposition may at least in one view be reduced to this, viz. *It is of little importance what a King's christian name is.* It is indeed of importance that a King, a Governor, and all other good christians should have a christian name, but whether Edward, Francis or William, is of none, that I can discern. It being a rule to put the most mild and favourable construction upon words that they can possibly bear, it will follow that this proposition is a very harmless one, that cannot by any means tend to prejudice his Majesty's Person, Crown, Dignity or Cause, all which I deem equally sacred with his Excellency.

If this proposition will bear an hundred different constructions, they must all be admitted before any that imports any bad meaning, much more a treasonable one.

It is conceived the house intended nothing disrespectful of His Majesty, his Government or Governor, in those words. It would be very injurious to insinuate this of a house that upon all occasions has distinguished itself by a truly loyal spirit, and which spirit possesses at least nine hundred and ninety-nine in a thousand of their constituents throughout the province. One good natured construction at least seems to be implied in the assertion, and that pretty strongly, viz. that in the present situation of Great Britain and France, it is of vast importance to be a Briton, rather than a Frenchman; as the French King is an arbitrary despotic Prince; but the King of Great Britain is not so *de jure, de facto, nor by inclination*; a greater difference on this side the *Grave* cannot be found, than that which subsists between British subjects, and the slaves of tyranny.

Perhaps it may be objected that there is some difference even between arbitrary Princes in this respect at least, that some are more rigorous than others. It is granted, but then let it be remembered, that the life of man is as a vapour that soon vanisheth away, and we know not who may come after him, a wise man or a fool; tho' the chances before and since Solomon, have ever been in favour of the latter. Therefore it is said of little consequence. Had it been *No* instead of *little*, the clause upon the most rigid stricture might have been found barely exceptionable.

Some fine Gentlemen have charged the expression as indelicate. This is a capital impeachment in politicks, and therefore demands our most serious

attention. The idea of delicacy in the creed of some politicians, implies that an inferior should at the peril of all that is near and dear to him (i.e. his interest) avoid every the least trifle that can offend his superior. Does my superior want my estate? I must give it him, and that with a good grace, which is appearing, and if possible being really obliged to him that he will condesend to take it. The reason is evident; it might give him some little pain or uneasiness to see me whimpering, much more openly complaining at the loss of a little glittering dirt. I must according to this system not only endeavour to acquire my self, but impress upon all around me a reverence and *passive obedience* to the sentiments of my superior, little short of adoration. Is the superior in contemplation a king, I must consider him as God's vicegerent, cloathed with unlimited power, his will the supreme law, and not accountable for his actions, let them be what they may, to any tribunal upon earth. Is the superior a plantation governor? he must be viewed not only as the most excellent representation of majesty, but as a viceroy in his department, and *quoad* provincial administration, to all intents and purposes vested with all the prerogatives that were ever exercised by the most absolute prince in Great Britain.

The votaries of this sect are all Monopolizers of offices, Peculators, Informers, and generally the Seekers of all kinds. It is better, say they, to give up any thing, and every thing quietly, than contend with a superior, who by his prerogative can do, and (as the vulgar express it) right or wrong, will have whatever he pleases. For you must know, that according to some of the most refined and fashionable systems of modern politics, the ideas of right and wrong, and all the moral virtues, are to be considered only as the vagaries of a weak or distempered imagination in the possessor, and of no use in the world, but for the skilful politician to convert to his own purposes of power and profit.

With these,

*The Love of Country is an empty Name,
For Gold they hunger: but n'er thirst for Fame.*

It is well known that the least "patriotic spark" unawares "caught," and discovered, disqualifies a candidate from all further preferment in this famous and flourishing order of knights errant. It must however be confessed they are so catholic as to admit all sorts from the knights of the post to a garter and Star; provided they are thoroughly divested of the fear of

God, and the love of mankind; and have concentrated all their views in *dear self*, with them the only "sacred and well-beloved name," or thing in the universe. See Cardinal Richlieu's *Political Testament*, and the greater Bible of the Sect, *Mandeville's Fable of the Bees*. Richlieu expressly in solemn earnest, without any sarcasm or irony, advises the discarding all honest men from the presence of a prince, and from even the purlieu of a court. According to Mandeville, "*The moral virtues are the political offspring which flattery begot upon pride.*" The most darling principle of the great Apostle of the order, who has done more than any mortal towards diffusing corruption, not only thro' the three kingdoms, but thro' the remotest dominions, is, "that every man has his price, and that if you bid high enough, you are sure of him."

To those who have been taught to bow at the name of a King, with as much ardor and devotion as a papist at the sight of a crucifix, the assertion under examination may appear harsh; but there is an immense difference between the sentiments of a British house of commons remonstrating, and those of a courtier cringing for a favour. A house of Representatives here at least, bears an equal proportion to a Governor, with that of a house of Commons to the King. There is indeed one difference in favour of a house of Representatives; when a house of Commons address the King, they speak to their Sovereign, who is truly the most august Personage upon earth: When a house of Representatives remonstrate to a Governor they speak to a fellow subject; tho' a superior, who is undoubtedly intitled to decency and respect; but I hardly think to quite so much Reverence as his master.

It may not be amiss to observe, that a form of speech may be, in no sort improper, when used *arguendo*,⁵ or for illustration, speaking of the King, which same form might be very harsh, indecent and even ridiculous, if spoken to the King.

The expression under censure has had the approbation of divers Gentlemen of sense, who are quite unprejudiced by any party. They have taken it to imply a compliment rather than any indecent reflection, upon his Majesty's wise and gracious administration. It seems strange therefore that the house should be so suddenly charged by his Excellency with *Impropriety, groundless Insinuations, &c.*

5. ["In clarification."]

What cause of so bitter Repentance, *again* and *again*, could possibly have taken place, if this clause had been printed in the Journal, I can't imagine. If the case be fairly represented, I guess the province can be in no danger from a house of Representatives daring to speak plain English, when they are complaining of a grievance. I sincerely believe the house had no disposition to enter into any contest with the Governor or Council. Sure I am that the promoters of this address had no such view. On the contrary, there is the highest reason to presume that the house of Representatives will at all times rejoice in the prosperity of the Governor and Council, and contribute their utmost assistance, in supporting those two branches of the legislature, in all their just rights and preheminance. But the house is and ought to be jealous and tenacious of its own privileges; these are a sacred deposit intrusted by the people, and the jealousy of them is a godly jealousy.

But to proceed with our narration; on Saturday about a quarter before one of the Clock, Mr. Secretary came down with his Excellency's vindication, which is as follows.

Gentlemen of the House of Representatives,

I have received an Answer from you to a Message of mine; informing you of my having upon a sudden Apprehension of Danger, fitted out the Province Sloop to protect a considerable and very interesting Fishery, belonging to this Province: Upon which Occasion you are pleased to observe, that the Method of doing this, which you call *making or increasing Establishments is taking from the House the Right of originating Taxes, annihilating one Branch of the Legislature*, and tending to make *the Government arbitrary*.

These are hard Words: and the Consciousness of my own Integrity will not permit me to submit in Silence to such Imputations. I know what the Privileges of the People are, and their Nature and Bounds: and I can truly say that it has never been in my Thoughts to make the least Invasion of them. If therefore you think proper to send such a Charge as this to the Press; I must desire that my Vindication may accompany it.

In Order to which I shall first consider what the legal and constitutional Powers of the Governor and Council are, then state the Fact in Question, and by Application of the one to the other, see whether the Conclusions before-mentioned will follow. In this Disquisition I shall not inquire *whether any Necessity can be sufficient to justify a House of Representatives in giving up the Privilege of originating Taxes*; as I do not believe that such a Cession was ever desired by any Person concerned in the

Government, or that any Governor and Council since the Revolution attempted or ever will attempt to tax the People.

The Business of originating the Taxes most certainly belongs to the Representatives of the People, and the Business of issuing Money out of the Treasury, as certainly belongs to the Governor with the Advice of the Council. In general all Votes and Orders for the Charge of the Government originate in the House of Representatives, and the Money for defreying such Charges is issued by Warrant of the Governor with the Advice of Council, without any further Reference to the House of Representatives.

But as it is impossible that the General Court should provide for every Contingency that may happen unless they were continually sitting; there will sometimes be Cases in which the Governor, with the Council, is to be justified in issuing Money for Services not expressly provided for by the General Court: Of these there are two very obvious.

The one is, where a Danger arises so immediate and imminent that there is no Time for calling together the Assembly. In this I apprehend there is no other Limitation of Expense, but in Proportion to the Evil impending: For the Safety of the People being the supreme Law, should at all Events be provided for.

The other is, where the Expence of some necessary Service is so inconsiderable, as to be not worth the while to put the Province to the Charge of the Assembly's meeting for that Purpose only, at an Expence perhaps ten or twenty Times more than the Sum in Question.

This I take to be the Law and Usage of every Royal Government on the Continent. In that over which I formerly presided, where the people were very averse to frequent or long Sessions of the Assembly, I have upon an Emergency, with Advice of the Council only, raised Three Hundred Men at a Time, and marched them to the Defence of the Frontiers; and when the Assembly has met, have received their Thanks for so doing.

Now let me state the Case in Question. Most of the principal Merchants in *Salem* and *Marblehead*, who were considerably interested in a Fishery near the Gut of *Canso*, in which I am told upwards of One Hundred Vessels from this Province were employed, received Advice that there was a French Privateer or Pirate cruising in those Parts. It has appeared since, that this Alarm was not peculiar to this Province: It reached *Quebec*, from whence an armed Schooner was fitted out to

look after this Frenchman. It reached *New-York*, from whence General AMHERST advised me of this French Vessel. These Merchants therefore applying by their Deputies to me for an immediate Protection of their Fishery, I laid the Matter before the Council, and it happening that the Province Sloop was just returned from *Penobscot*, it was advised by the Council, that she should be immediately fitted out to go to the Protection of this Fishery: this was done in the most frugal Manner possible; out of the Fifty Men put on board the Sloop, only twenty-four were charged to the Province, the rest were drawn out of the Provincials employed at *Castle-William*, and in the recruiting Service; the Ammunition and Military Stores were taken from the Castle, to which they have been restored without Loss or Expense; the Men were engaged only for one Month, after which they were not to be continued without the Advice of the General Court. This is the true State of this Transaction; and surely I may say it deserved a very different Animadversion than what it has had.

Now to apply it to the Censure it has met with: This was an Act which the Governor with the Council had a Right to do; it was a legal and constitutional Exercise of the Powers vested in them; it was an Exertion of the Executive Power of the Government, distinct from that of the Legislature. If it was wrong and ill advised (which I don't mean to admit) it could amount to no more than an improper Application of the public Money, by those who have lawful Authority to apply such Money to the public Purposes. When this Distinction is considered; how can this Act, whether right or wrong, be applied to the Right of originating Taxes, annihilating one Branch of the Legislature and making the Government arbitrary?

As for the discretionary Part of the Act, after I have had the Advice of the Council, and the Approbation of my own Judgment and Conscience, I shall not enter into any further Argument about it, than just to observe; That if the Governor and Council legally acting in the Executive Administration, and determining to the best of their Judgment and Skill, with a conscientious Regard to the Good of the People, shall be liable to be called to account for Difference of Opinion only, the Government will be very much weakened. But I shall persuade myself that a steady Attention to the Peace and Welfare of the Province, which you recommend to Me, will always sufficiently justify my Conduct: and in that Confidence I hope I shall never fail to exert the Powers which have been committed to

Me for the Defence and Protection of the People of this Province, by all lawful and constitutional Means.

FRA. BERNARD.

Province-House, Sept. 18, 1762.

This being read, the Secretary instantly informed the Speaker, that his Excellency directed the attendance of the house in the council chamber.

The two houses had finished the publick business; and before this the house of Representatives had by a committee asked a recess, so it was presumed the house was sent for to be prorogued, as it turned out. The Speaker rose to go up to the council, without desiring the house to attend him, the usual and regular form, which it is presumed was forgot. But it was moved that his Excellency's vindication, according to his desire, should be printed in the Journal. This motion was seconded, and passed in the affirmative by a great majority. Then a motion was made and seconded, for a committee to prepare a Reply to this vindication in the recess of the court, and to make report at the next session; this also passed in the affirmative by a considerable majority, and Mr. *Speaker*, Mr. *Otis*, and Mr. *Tyler*, were chosen a committee for said purpose. Then the House immediately attended his Excellency in the Council-Chamber. When his Excellency, after giving his assent to two or three bills, prorogued the court.

It was wished, at least by the moderate part of the house, that his Excellency had thought fit so far to give up the point, as to wave any contest about it, by assuring the house, that if his right was ever so clear, he would not exercise it, if grievous to the people. A like condescension crowned heads have practised, and found their account in it; as I am persuaded his Excellency would, if the unanimous vote of thanks from the whole representative body of this people is worth any thing. This I guess he would have had: And as it is a maxim that the King can do no wrong, but that whatever is amiss is owing intirely to those about him; so, with regard to his Excellency, we ought to presume the best; and that it is to be charged to the account of some weak or wicked advisers, that this business did not end happily. However, the matter is now become very serious, by his Excellency's vindication; which we shall next consider.

The Charter of the province of the Massachusetts-Bay, has invested the Governor and Council with power to issue (without the concurrence of the House, as it is now construed, or rather as the genuine sense of the

Charter has been waved by former Houses) the monies out of the treasury. But the Question is, Whether this power be limited? If it is unlimited, the priviledge of levying taxes by originating them in the House of Representatives, is of little value. What Representative would plume himself upon the priviledge of originating taxes, if the money could be squandered away at pleasure; which in other words may happen hereafter to be just as the tools and sycophants of power shall advise. This power therefore, in the nature and reason of the thing, should seem to be limited by some usage or custom, if not by something more explicit. The words of the Charter are,

And we do for us, our heirs and successors, give and grant, that the said General Court or Assembly, shall have full power and authority to name and settle annually, all civil officers within the said province, for the time being; and to set forth the several duties, powers and limits of every such officer to be appointed by the said general court or assembly; and the forms of such oaths, not repugnant to the laws and statutes of this our realm of England, as shall be respectively administered unto them, for the execution of their several offices and places; and also to impose fines, mulcts, imprisonments, and other punishments; and to impose and levy proportionable and reasonable assessments rates and taxes, upon the estates and persons of all and every the proprietors or inhabitants of our said province or territory, to be issued and disposed of by warrant, under the hand of the Governor of our said province, for the time being, with the advice and consent of the Council, for our service, in the necessary *Defence* and support of *our* government of our said province or territory, and the protection and preservation of the inhabitants there, according to such acts as are or shall be in force within our said province.

Here seems to be an express limitation of the power. Nothing is left to usage or custom, much less to discretion. It is manifest from the Charter, that the *Acts* of the province are the only legal and constitutional justification to the Governor and Council, in issuing any money out of the treasury: "*According to such Acts as are or shall be in force within our said Province,*" are certainly no unmeaning words.

It is clear from hence, that without the aid of an *Act* of the province, the Governor and Council cannot legally take a shilling out of the treasury, let the emergency be what it may. It is agreed with his Excellency, that in issuing

Money from the treasury, as the charter has of late years been construed the Governor and Council are meer executive officers. They are controllers-general of the Treasury, i.e. the treasurer cannot pay without their warrant; but then they are as much bound by the acts of the province, as the treasurer himself. He, the Treasurer, indeed may be called to an account, but they can't, being in other respects two branches of the Legislature. The only remedy therefore is a remonstrance, and when that proves ineffectual, the house may and ought to refuse to supply the Treasury, and stop a few Grants and Salaries; which would soon bring matters right without any dangerous shock to Government, or weakening thereof; but what the whole world must impute to a Governor and Council, that would oblige a House to have recourse to the last resort, but one; I mean as we are a dependent Government, a dutiful and humble remonstrance to his Majesty.

The Parliament of Great-Britain have as the last resort, been known to appeal to Heaven, and the longest sword; but God forbid that there ever should be occasion for any thing of that kind again; indeed there is not the least danger of it since the glorious revolution, and the happy establishment resulting therefrom. It was formerly the custom for the Speaker of the house to sign all warrants upon the treasury, but this was at last either tamely given up, or at least waved.

It may be objected, that tho' our supply bills appropriate by far the greatest part of the sums raised, yet something is always expressly left for contingencies, and the Governor and Council may and must in the nature of the thing apply this at discretion. I answer, 1. Even this is issued by force of an act, and not by virtue of any general power in the Governor and Council, independent of the act. 2. Neither custom nor usage suppose that this sum appropriated for contingencies could be applied to the fitting out of men of war, and making establishments for them; for armed vessels is one express appropriation in our acts, which shews that this is not considered as a contingency, and that the assembly do not expect any further charge for this article, than they have appropriated.*

3. All our Governors and Councils have not always confined themselves to the appropriation for contingencies, but some have drawn for what they deem'd contingencies when they have known the appropriation to be

* This Vessel's Expence was drawn for upon the Appropriation for armed Vessels, as appears by the Warrant and Roll.

expended, and in short have not confined themselves to any appropriation in payment; whatever they may have done in the form of their warrants. 4. If the Governor and Council can fit out one man of war, inlist men, grant a bounty and make establishments, why not for a navy, if to them it shall seem necessary, and they can make themselves the sole judges of this necessity. The rumour in the case of the Massachusetts was that fourteen privateers instead of one *pyrate* were cruising off Canso. What could this one poor sloop have done against such odds? *Salus populi est suprema Lex.*⁶ Why then did not the Governor and Council fit out fourteen men of war, or at least enough to take fourteen privateers? It has been said that there were no privateers among the fishermen, but that when they discovered the sloop, she was taken for one, and that many of the fishermen ran home in a fright, and lost their fares. How true this is I can't say, but have heard it reported, and believe there is at least as much ground for it as there was to believe the story of fourteen privateers. The Governor and Council doubtless meant well as to the protection of the fishery, and had there been no unjustifiable extension of their power, every one would have thankfully acquiesced. The money for fitting out this sloop might have been raised by the Governor and Council's promise to recommend a reimbursement to the assembly. They might perhaps have borrowed it of the Treasurer upon the same terms, and the priviledges of the House thereby would have been preserved. It would be a very easy thing to raise twenty times the sum wanted to fit out this sloop upon the credit of a like recommendation. This method was taken in fitting out the King George in 1761, as appears by the vote of Council, and the Governor's message afterwards to the house of Representatives, and their vote thereupon, which last are as follows,

Gentlemen of the House of Representatives,

The provision made the last session for manning the King George was soon found insufficient for the purpose, and after bearing up for a month the crew amounted to but thirty men. In this condition the ship remained, when I received advice that there were two French privateers on the coast and that there were several more to be expected: I immediately called a Council; at which attended a committee of the merchants. The council were of opinion, that the ship should be immediately fitted out: and in order to do it with more expedition, I

6. ["The safety of the people is the highest law."]

offered that if the crew could be quickly compleated to an hundred men, I would put fifty provincials on board for a short cruize. It was therefore "advised to raise seventy men, and to give ten Dollars bounty: But there was no fund in the Treasury to *resort* to for this purpose. It was therefore concluded to order the Treasurer to borrow seven hundred Dollars of the merchants on the credit of the province, (*not on the credit of a recommendation, as it should have been and perhaps was meant*) which was accordingly done; and I must desire you would take care for the repayment thereof.

The House, after long debate, and divers referrences, on the second of June, voted, "that the province treasurer be directed to repay the seven hundred Dollars borrowed of the merchants *on the credit of the province* for bounty, in order to man the ship King George."

I want to know why the same method of raising the money might not have been taken the first time of fitting out the ship King George, and in fitting out the sloop Massachusetts.

However, even this method of supplying the treasury by the Governor and Council's ordering subscriptions upon the credit of the province (by which it is presumed a recommendation to the assembly is meant) is by no means a justifiable practice.

The Governor and Council have naturally a great influence in all Houses of Representatives, and when the money is once taken up and applied, it would seem hard to make the subscribers lose it; and so in time it would come to be a thing of course, for the House to reimburse all expences the Governor and Council should be pleased to create in the recess of the assembly; and after a course of tame acquiescence in such a practice, the House would become as some desire to have it, a very insignificant, unimportant part of the constitution.

It is therefore the indispensable duty of the House of Representatives, to be very cautious how they allow or approve of any expences incurred even in this way.

His Excellency is pleased to wave any inquiry "whether any necessity can be sufficient to justify a House of Representatives in giving up the privilege of originating taxes?" for this reason only expressed; viz. "I don't believe (says his Excellency) that such a cession was ever desired by any Person concerned in the government, or that any Governor and Council since the

revolution, attempted or ever will attempt to tax the people." I wish I could exercise as much charity towards former Governors and Councils, as for his Excellency and the present honourable Council; but I can't. I am verily persuaded, that we have had some Governors and some Councillors, since the revolution, that would gladly have been as absolute as Turkish Bashaws; and that the whole tenor of their actions has given convincing proof of such a disposition.

A tax upon the people in form, by issuing a tax bill, and ordering an assessment, I believe has not been attempted by a Governor and Council since the revolution. This would be too alarming. The vulgar are apt to be forcibly affected with names and appearances, rather than by realities. If the money can be drawn out of the treasury without any regard to the appropriations, made by the acts of the province; and the House whenever called upon, will without murmuring supply the treasury again; they serve the purpose of a very convenient machine to quiet the people; and the money flows in with greater ease and plenty than if the Governor and Council were, *ad libitum*,⁷ to collect and dissipate the public treasure.

It is observable, that in France and other despotic governments, 'tis often with great difficulty, and sometimes with hazard, that the revenue is collected. Had *Richlieu* and *Mazarine* convinced the parliaments that it was a great privilege to be allowed to vote as much money as was called for, and for any purpose the court might want it, the government would have had the appearance of liberty under a tyranny; which to those ministers would have been a vast ease and security. But those great politicians either never thought of this refinement, or, the parliaments were too stupid to be convinced, of the utility of such a plan.

His Excellency proceeds, "The business of originating the taxes most certainly belongs to the Representatives of the people; and the business of issuing money out of the treasury, as certainly belongs to the Governor and Council." To say nothing of the doubt that might justly be made, whether a non-claim, waver, or even an express concession by any former house, of the privilege of joining in a warrant, for issuing the money, can be binding upon their Successors? Would not a stranger to our constitution be lead to think, from this general assertion of the Governor, that he with the Council, could issue money without regard to the acts of the province, and

7. ["At pleasure."]

the *appropriations* thereby made; and that the house indeed, had no *right* to appropriate, but only to lay the burden of taxes on the people? Especially when his Excellency in the next period says, that "in general, all votes and orders (and acts might have been added) for the charge of the governments, originate in the House of Representatives; and the money for defreying such charge, is issued by the Governor, with the advice of the council, without *any further reference* to the house of Representatives."

That this is true in fact, to wit, that after the money is raised, his Excellency and their Honors have no further *reference to, or regard* for the house, is possible. But that they have had some regard to appearances is certain from the form of their warrants.

Province of the *Massachusetts-Bay*.

By his Excellency the Governor.

You are, by and with the Advice and Consent of his Majesty's Council, ordered and directed to pay unto A. B. the sum of

Which sum is to be paid out of the appropriation for

For which this shall be your warrant.

Given under my Hand at Boston, the {blank} Day of 176{blank}, in the {blank} Year of His Majesty's Reign.

F. B.

To Mr. Treasurer.

By Order of the Governor, with the Advice and Consent of the Council.

A. O. Sec'y.

Now, if after the house have supplied the treasury, the Governor and Council have a right to issue the money without further regard to the house of Representatives; why are the words *Out of the appropriation for, &c.* inserted, but to salve appearances? Otherwise it might run thus, "*Out of the public money in the treasury.*" "But as it is impossible, (says his Excellency,) that the General Court should provide for every contingency that may happen unless they were continually sitting; there will sometimes be cases in which the Governor & Council is to be justified in issuing money for services not expressly provided for by the General Court; of these there are two very obvious." "The one is, when a danger arises so immediate and imminent, that there is no Time for calling together the assembly. In this I apprehend there is no other limitation of expence, but in proportion to the evil impending. For the safety of the people being the supreme law, should at all

events be provided for. The other is, where the expence of some necessary service is so inconsiderable, as to be not worth the while to put the province to the charge of the Assembly's meeting for that purpose only, at an expence perhaps of ten or twenty times more than the sum in question." Frequent and long sessions I know are burdensome to the people, and many think they had better give up every thing, than not have short sessions. But let these consider that it is a very poor bargain, that for the sake of avoiding a session extraordinary, sacrifices the right of being taxed by their Representatives; and risques ten or twenty times the sum in the end, to be levied by a Governor and Council. I know too, that some gentlemen in order to lessen the weight of a House of Representatives, are constantly exclaiming against long and frequent sessions; the people are gulled with the bait, and the house when they meet, are often in want of time to compleat the public business, in the manner that they would wish, and the nature of some affairs requires. What is the consequence? Why, it is become a very fashionable doctrine with some, that in the recess of the court, the Governor and Council are vested with all the powers of the General Assembly. It is costly and unpopular to have frequent and long sessions; therefore they shall be few, short and hurried; and in the mean time, the Governor and Council shall have a right to do what they judge "the supreme law," the good of the common-wealth, requires, and no limitation or bounds are to be set to the money they expend, but their sovereign judgment of the *quantum* of the impending evil; for, "the safety of the people being the supreme law, should at all events, and by all means (*but that of calling an assembly together*) be provided for." This is a short method to put it in the power of the Governor and Council, to do as they please with the men and money of the province; and those Governor's who can do as they please with the men and money of a country, seem to me to be, (or at least are in a pretty fair way soon to be) arbitrary; which in plain English means no more than do as one pleases. As to those inconsiderable services, not worth while to put the province to the charge of an assembly; it seems to be of no great importance whether they are performed or not. 2. There is always an appropriation for contingencies, great and small. If this sum should be exhausted, sufficient might always be procured upon the credit of a recommendation from the Governor and Council, for a reimbursement. 3. Any particular service had better suffer, and the province suffer, that way, than lose such a priviledge as that of taxing

themselves; upon which single privilege evidently depends all others, *Civil and Religious*.

His Excellency tells us of “the law and usage of every royal government upon the continent;” and that, “in that over which he presided formerly, he had upon an emergency, with the advice of the Council only, raised three hundred men at a time, and marched them to the defence of the frontiers, and when the assembly has met has received their thanks for so doing.”

Whether the assembly of this province equal the assembly of *New-Jersey*, in gratitude or any other virtue, I shall not presume to determine. But this I am sure of, that this province has been more liberal in their grants to his Excellency, than to any of his predecessors. Instead of any debate about *his salary*, three grants have been made in less than two years, amounting to near three thousand pounds sterling in the whole, besides the very valuable island of Mount Desart which the province thought they had a right to grant subject to his Majesty’s confirmation; and which his Excellency will have confirmed to him. All this with the ordinary perquisites, besides the *full third* of all seizures, must amount to a very handsome fortune, obtained in about two years and two months. His Excellency has not been pleased to tell us, whether the assembly paid the expence of this extraordinary march, or whether the Governor and Council ordered it to be paid? Now if the assembly paid it, as they doubtless ought, after thanking his Excellency, and thereby admitting the utility of the measure, their privilege was saved. But if the Governor and Council paid it out of the treasury, and the House acquiesced in the infringement of their privilege, it cannot be produced as a precedent for us, let it be ever so royal a government. His Excellency has a right to transport any of the militia of this province to any part of it, by sea or land, for the necessary defence of the same; and to build and demolish forts and castles, and with the advice of the council in times of war, to exercise martial law upon the militia, but then it is with the House to pay the expence, or refuse it as they please. No man by charter can be sent out of the province but by an act of the three branches of the legislature. The King himself applies to parliament to support his army and navy, and it is their duty to do it, and they ever have and will do it; and the supplies for these ever originate in, and are appropriated by the House of Commons; in whose money bills the House of Lords won’t presume to

make any amendment; consent or reject in the whole is all the power they exercise in this particular.

His Excellency next proceeds to state "the case in question," by which I suppose is meant the facts relative to fitting out the sloop Massachusetts. The facts mentioned, I take it for granted are in the main true, but the most material one seems to be omitted, namely, that the Governor and Council made an establishment; in consequence of which the expense of this fitting out, or a great part at least has been paid out of the Treasury, by warrant from the Governor and Council. There is also a small mistake in his Excellency's saying the sloop was then returned. She was expected, but her return was uncertain. Had the sloop been sent and the pay or reimbursement referred to the House, there might have been no complaint as to this particular step. But the main question is not as to the right of sending the sloop, but of making, or increasing her establishment, and paying it out of the publick monies without the consent of the House; not only in this, but in a number of late similar instances, that have induced the House to question the right of the Governor and Council to draw monies out of the treasury in this way. Or more properly, as it results from the remonstrance of the House, and his Excellency's vindication: The question is in effect, whether the House have a right to appropriate the money they agree to levy upon their constituents?

It being pretty evident I hope by this time, that if the Governor and Council can issue what they please, *and for what* they please, that the House has no right to appropriate; and it is as clear that if the right of appropriation is of any avail or significancy, the Governor and Council cannot issue the monies from the treasury for what they please; but are bound and limited by the appropriations and establishments made by the acts of the province, to which by the way they are two parties of three in the making.

His Excellency having given us his state of the case in question, proceeds "to apply it to the censure it has met with" as his Excellency is pleased to express it. By which I presume his Excellency means the application he had promised in the beginning of his vindication. "I shall consider, says his Excellency, what the legal and constitutional powers of the Governor and Council are; then state the *fact* in question, and by the application of the one to the other, see whether the conclusion before mentioned will follow."

Here again there seems to be some little obscurity, by reason of these words, "*fact in question*"; there being no question about the facts, but about

the right, not so much about the right of fitting out the vessel, as the Governor and Council's right to pay for it out of the treasury, without the consent of the House. What question can there be about facts? There is no doubt but that the vessel was sent, and that in consequence of an application from Salem and Marblehead gentlemen.

I therefore presume to read the second paragraph of his Excellency's vindication according to the sense and spirit, (tho' not strictly agreeable to the letter.) thus, "In order to my vindication (dele to *which*) I shall 1. Consider what the legal and constitutional powers of the Governor and Council are. 2. State the facts. 3. By application of the legal and constitutional powers of the Governor and Council to the fact, see whether the conclusions before mentioned will follow." According to this division, which in the spirit, tho' not in the letter, is a *very good one*; his Excellency has given us his sense of the legal and constitutional powers of the Governor and Council. His Excellency is undoubtedly as well acquainted with the nature of these powers, as "what the priviledges of the people are, their bounds and their nature." I presume his Excellency also has the same thorough knowledge of "what the priviledges of the House of Representatives are, their nature and their bounds;" which last are more immediately the subject of inquiry, than those of the people. Tho' it is true, that the priviledges of the House are the great barrier to the priviledges of the people, and whenever those are broken down the people's liberties will fall an easy prey.

His Excellency having finished his state of facts, proceeds according to the method premised to the third and last *head* of discourse, which is, with his Excellency the *application*; not "of the case in question, to the censure it has met with," tho' the latter words seem to import this; but of the legal and constitutional powers of the Governor and Council, to the facts, in order to make his conclusions. This is evidently his Excellency's meaning. The application is mental. The conclusions are expressed. The first his excellency is pleased to make is in these words. "This was an act which the Governor with the Council had a right to do." I am no great admirer of the syllogistic form of reasoning, and this dress is very uncourtly, yet all conclusive reasoning will bear the test of the schools. Let us try an experiment. His Excellency's whole vindication may nearly in his own words be reduced to this categoric syllogism. "All the money for defreying the charges of the government *is* issued by warrant of the Governor with the advice of Council, without any further *reference* to the house of Representatives."

The principal merchants in Salem and Marblehead were frightened with a rumour of a privateer; upon their application the Governor and Council took the alarm, fitted out an armed vessel, and by their warrant defreyed the charge out of the treasury without any reference at all to the House of Representatives.

Therefore,

1. "This was an act which the Governor with the Council had a right to do." No man in his senses to be sure can deny the major proposition, for the word *is* plainly implies a right; according to *Mr. Pope* and other great authorities, "whatever *is* is right." The minor is a bare recital of *notorious* facts; therefore the way is clear to follow his Excellency in the rest of his inferences. 2. Inference. "It was a legal and constitutional exercise of the powers vested in them." 3. "It was an exertion of the executive power, distinct from that of the legislative." 4. If it was wrong, &c.

His Excellency then proceeds to ask the House a very important question. But before we consider what answer may be given to that question, and probably would have been given, had there been time before the court was prorogued; I beg leave to make a few observations upon his Excellency's three last inferences. I have carefully examined the Charter, and the laws of this province, and think I may challenge any man to show any thing in either, that gives the least colour of right to the Governor and Council, to fit out an armed vessel to cruize upon the high seas, at the expence of the province, or to grant a bounty for inlisting the seamen, or to impress them when they won't inlist fast enough, as in the case of the ship *King George*, or to make an establishment for the officers and seamens wages, much less to issue the money from the treasury for defreying these charges by warrant of the Governor and Council, without any *reference* to the House of Representatives, who must upon supposition of such powers be strangers, total strangers to the expense thus brought upon the province.

But we are told that "*this* is an exertion of the executive power of the government, distinct from the legislative."

I am as much for keeping up the distinction between the executive and legislative powers as possible. Happy, very happy, would it be for this poor province, if this distinction was more attended to than it ever has been. I am heartily rejoiced however, that his Excellency seems here to discountenance and explode the doctrine that some among us have taken great pains to inculcate, viz. that in the recess of the general assembly the whole power

of the three branches devolves upon the Governor and Council. If I may compare small things with great, without offence, this doctrine is as absurd as if a man should assert that in the recess of parliament, the whole power of parliament is devolved upon the King and the House of Lords. Had such a doctrine always prevailed in England, we should have heard nothing of the oppressions and misfortunes of the *Charles's* and *James's*; The revolution would never have taken place; the genius of *William* the third would have languished in the fens of Holland, or evaporated in the plains of Flanders; the names of three *George's* would doubtless have been immortal; but Great-Britain to this day might have been in chains and darkness, unblessed with their influence. I take it for granted therefore, his Excellency must mean by "power of the government," not the power of the whole province in great and general court assembled, but only the executive power of the Governor and Council, distinct from the legislative, as just explained by him. Names are sometimes confounded with things by the wisest of men. It is however of little importance what the power is called, if the exercise of it be lawful. If the power of taxing is peculiar to the general assembly, if the charter has confined it to the general assembly, as I think it evidently does, and this act of the Governor and Council is a tax upon every inhabitant, as it clearly is, being paid out of money raised by their representatives upon them for other purposes, which must remain unsatisfied; and so much more must be raised upon them as is thus taken away: It follows that as all taxation ought to originate in the House; this act of the Governor and Council is so far from being an executive act peculiar to them, that it is evidently taking upon them in their executive capacity, or what other name else, you are pleased to give it, a power not only confined by the charter, law and constitution of the province, to the general assembly or legislative body of the province, but so far confined to one branch of that body, that it can lawfully and constitutionally originate only in the House.

If therefore this act was wrong and ill-advised, which I think has been abundantly proved, whether his Excellency will be pleased to admit it or not; it *could* amount to more than an improper application of the publick money by those who have lawful authority to apply such money to the publick purposes." It is granted, should the treasurer without warrant do such an act, it would be no more than an improper application of the public money by one who has lawful authority to apply such money to the publick purposes, by warrant from the Governor and Council. Should the treasurer

act without such warrant, he would be accountable. But when he has the Governor and Council's warrant, that perhaps will justify, or at least, ought to excuse him, be the warrant right or wrong; because it would be hard to make him answerable for the conduct of his superiors, and to expect him to set himself up as a judge against the Governor and Council, one of which joins in his choice, and the other has an absolute negative upon him. But upon supposition the Governor and Council act wrong, and misapply the monies of the province, which his Excellency seems to concede, is at least a possible case. What is to be done? I agree with his Excellency that they are not liable to be called to an account, and it would be a ridiculous vanity and presumption in the House to think of *any* such thing. We have no body to institute a suit against the Governor and Council; no court to try such a suit; all that would be left therefore in so unhappy a case (if the privilege of the House of joining in all issues from the treasury has been given up by former assemblies, and that is binding upon their successors, "which I don't mean to admit") is to remonstrate. This method the House have taken in the present case, rather than at this juncture reclaim their ancient privilege of joining in all warrants for the issues from the treasury. However, I conceive that the right of joining in such warrants can never die. But to confine ourselves to his Excellency's inferences, let us for a moment concede that this act by the Governor and Council, at most is only a misapplication of the publick monies. The conduct of the House is certainly to be justified. The Governor and Council of the province misapplying money, is a grievous event, a terrible misfortune, and a dreadful example to inferiors. It would be enough to infect seven eighths of the petty officers in the community. Whenever a peculator, great or small, should be called to an account after such an event repeated, and passed unnoticed by the House, he would at least console and comfort, nay even plume himself with such like reflections as these. "My betters have done so before me. They make what applications they please of the publick money, without regard to law, or the duty of their trust, and so will I." Tho' with regard to the present Governor and Council, it is presumed a misapplication can proceed only from an error in judgment, which the wisest are in a degree subject to, not from any supposed pravity of inclination; yet it would be of dangerous tendency, and therefore a proper subject of remonstrance. A remonstrance is not an insolent and presumptuous "calling a Governor and Council to an account for difference of opinion only," nor any charge of wilful evil, but only of error in judgment,

and a humble endeavour to point it out; relying always upon their known goodness and wisdom, that whenever they shall discover the truth, they will readily follow it. The House of Commons remonstrating (as they have sometimes done) I believe would be astonished to hear their humble petitions to the Throne called "*hard words and groundless insinuations, &c.* and viewed as calling the King to account. It is true, that the Governor and Council may do many things, if they are so disposed, which they cannot be called to an account for in this world; but this will hardly prove that they have a right to do them, especially after the whole body of the people by their Representatives complain of them as grievous. It is by no means a good inference in politicks, any more than in private life, or even in a state of nature, that a man has a right to do every thing in his natural power to do. This would be at once to make a man's own will and his power, however obtained, the only measure of his actions.

But in answer to his Excellency's grand question, it will appear that this act, and the like instances complained of, are more than a bare misapplication of the public money; they are what the house called them "a method, (and they might have added a lately devised method, the first instance almost being in the case of the ship King-George, in 1760) of making and increasing establishments by the Governor and Council," in effect taking from the House their most darling privilege, that of originating all taxes." "In short (i.e. a short method for) annihilating one branch of the legislature."

And it remains infallibly true, when once the Representatives of a people give up this privilege, the government will very soon become arbitrary, i.e. the Governor and Council may then do every thing as they please.

His Excellency asks, "When this distinction is considered, how can this act, right or wrong, be applied to the right of originating taxes, annihilating one branch of the legislature, and making the government arbitrary." His Excellency, thro' his whole vindication, seems to speak of the single act of fitting out the sloop, and don't once mention the establishment made for her, or the payment thereof; much less the two instances of fitting out the ship King George: All which the house had in view, as is manifest by their saying, that, "had this been the first instance, they might not have troubled his Excellency about it." However, if this was the only instance that ever had happened of such an exertion of the executive power by the Governor and Council, it seems to be very applicable to the right of originating taxes, and to have a tendency to make the Governor and Council of the province

arbitrary. If the Governor and Council have a right to draw what money they please out of the treasury, under a notion of discretion which they are to exercise, as executive officers of the government; it follows, that for so much charge as the government incurs by the exercise of this discretionary power, by so much the province is taxed by the Governor and Council, without any privity or consent of the house; so much charge then as is incurred by this discretionary power, the house cannot be said to originate. Their right of originating taxes therefore is so far taken away; their power as to this ceasing and coming to nothing, by the Governor and Council exercising it themselves, without the house, may be said to be annihilated. And when the power and privilege of any branch of the legislature ceases, is taken away and annihilated, then the government is so far arbitrary. The house are so modest as only to say, "that in such a case it will soon become arbitrary."

Can any man be so unreasonable as to contend that the province is not as much taxed by the Governor and Council's paying for this sloop out of the money already raised, as if the house had voted it? What is the difference? The people pay the reckoning whether the Governor and Council take upon them to arm vessels out of money raised for other purposes, or the house vote to raise money for arming vessels. When the money is gone out of the treasury for arming vessels, the debts of the province contracted by the three branches of the legislature must nevertheless be paid, and other monies must be levied instead of those taken away by the Governor and Council. And as according to his Excellency's distinction, there is no limitation of the discretionary expence, so long as the good of the whole, in the opinion of the Governor and Council shall require it; they may spend every farthing in the treasury, and for what they please. Suppose his Excellency should judge it expedient and absolutely necessary upon the apprehension of some imminent and immediate danger (of which he is in fact absolutely by the charter the sole judge) to march all the militia to the frontiers. This he can do without even the advice of the Council. Suppose the Council, tho' not consulted, as they need not be, as to the utility of the march, should place such absolute confidence in his Excellency's wisdom as to sign a warrant for drawing every farthing out of the treasury for the paying and subsisting this armament. Could not as much be said for all this, as is said for fitting out the sloop?

The House of Representatives, should they presume to remonstrate, might with the same propriety be given to understand that "there was not

time to call *them* together," that "the danger was immediate and imminent, and in such a case there is no limitation of expence, but in proportion to the evil impending;" "for the safety of the people being the supreme law, should at all events be provided for." Furthermore, "this was an act the Governor and Council had a right to do:" "It is a legal and constitutional exercise of the powers vested in them." "It is an exertion of the executive power of the government, distinct from the legislative." Nay let us go but one step further, and I think the reasoning will be compleat on the side of his Excellency, or on the side of the House. All things are possible, and when his Excellency and the Council we are now blessed with, are taken from us, we may have a Governor and Council, that after they have given out orders to array and march the militia, and by warrant drawn all the money out of the treasury, may alter their minds as to the imminent danger, lay by the expedition, but instead of replacing the money in the treasury, divide and pocket it among themselves.

The reader no doubt starts at such a supposition, 'tis only a bare possibility as stated. The House might possibly remonstrate in such a case. But I hold that upon the principles advanced by his Excellency, it would be wrong in them so to do, and that it ought to be taken for a satisfactory answer, That "if it were wrong and ill advised in the Governor and Council (thus to convert all the treasure of the province to their own use, which they might not mean to admit) yet it would amount to no more than a *very improper application* of the publick money, by those who had lawful authority to apply such money to the publick purposes."

"When this distinction is considered, how could such an act, whether right or wrong, be applied to the right of originating taxes, annihilating one branch of the legislature, and making the government arbitrary." Perhaps such future Governor not understanding law distinctions so well as his Excellency our present Governor, might expressly add, and so good Messieurs Representatives you have nothing to do but to supply the treasury, again, tax the *many headed monster** once more, and when you have done it, the first moment I think fit I'll draw it all out again, under colour of some sudden imminent danger; and if you don't like it, you may e'en go h——g yourselves, as they *at least* most certainly would richly deserve who should tamely submit to such usage.

* An opprobrious Name by some given to the People.

To conclude. Would all plantation Governors reflect upon the nature of a free government, and the principles of the British constitution, as now happily established, and practice upon those principles, instead (as most of them do) of spending their whole time in extending the prerogative beyond all bounds; they would serve the King their master much better, and make the people under their care infinitely happier.

Strange it is, that when King's and many of her mighty men have fallen in their attempts upon the liberties of the people of Great Britain, that plantation Governor's don't all consider the Act of 13th of George the second, Chapter vii. which is a plain declaration of the British parliament, that the subjects in the colonies are entitled to all the privileges of the people of Great Britain. By this act of parliament even Foreigners having lived seven years in any of the British colonies, are deemed natives, on taking the oaths of allegiance, &c. and are declared by said act to be his Majesty's natural born subjects of the kingdom of Great Britain, to all intents, constructions and purposes, as if any or every of them had been, or were born within the kingdom. The reasons given for this naturalization of foreigners, in the preamble of the act are, that

the *increase* of the people is the means of advancing the wealth and strength of any nation or country, and that many foreigners and strangers, from the *lenity* of our government, the *purity* of our religion, the *benefit* of our laws, the *advantages* of our trade, and the *security* of our property, might be induced to come and settle in some of his Majesty's colonies in America, if they were made partakers of the *advantages* and *priviledges* which the natural born subjects of this realm do there enjoy.

Nor is any new priviledge given by this act to the natives of the colonies, it is meerly as to them a declaration of what they are intitled to by the common law, by their several charters, by the law of nature and nations, and by the law of God, as might be shown at large, had I time or room.

All settled attempts therefore, against the liberty of the subject, in any of the plantations, must end in the ruin of the Governor who makes them; at least they will render his administration as uneasy to himself, as unhappy for the people. It is therefore the indispensable duty of every one, and will be the sincere endeavour of every honest man, to promote the utmost harmony between the three branches of the legislature, that they may be a mutual

support to each other, and the ornament, defence and glory of the people Providence has committed to their care.

I am convinced that if his Excellency will in all cases take the advice of the general assembly, (which however contemptably some may affect to speak of it, is the great council of this province, as the British parliament is of the kingdom) that his administration will be crowned with all the success he can desire. But if instead of this, the advice of half a dozen or half a score, who among their fellow citizens may be chiefly distinguished by their avarice, ignorance, pride or insolence, should at any time obtain too much weight at court, the consequences will be very unfortunate on all sides.

Had the writer of these sheets any thing to ask or fear from his Excellency, for himself, a very slender modern politician would quickly perceive the incompatibility of this performance with a court interest. That he has done every thing he could in his small sphere to make his Excellency's administration prosperous to him and happy for the people, abundant proofs have been given; and they will one day be convincing to his Excellency. He has never opposed his Excellency in any thing but what he would have opposed his own Father in. And he takes this opportunity publickly to declare, that in all his legal and constitutional measures, his Excellency shall find him a fast tho' humble friend and servant: But the Liberty of his country, and the Rights of mankind, he will ever vindicate to the utmost of his capacity and power.

FINIS.

Massachusetts House of Representatives:
Instructions to Jasper Mauduit
(June 15, 1762)



AS THE Seven Years' War wound down, rumors stretched across the Atlantic of metropolitan intentions to tighten London's control over the colonies, and when the Massachusetts agent William Bollan reported that metropolitan authorities might try to require the inclusion of a suspending clause in all subsequent Massachusetts legislation, the Massachusetts General Assembly appointed a committee, composed of Thomas Hutchinson and James Bowdoin from the Council and Thomas Cushing, Johan Phillips, and Royall Tyler from the House, to draft these instructions to newly appointed agent Jasper Mauduit in protest of such a step. Metropolitan insistence upon suspending clauses had been an increasing source of tension within the empire since the late 1740s and had generated much discussion in several colonies. These instructions provide perhaps the fullest statement of colonial objections to such devices and of late colonial convictions about the necessity for colonial legislative independence in regard to local affairs.

Those objections and convictions were both practical and constitutional. The practical considerations were two. First, the instructions pointed out that suspending legislation for any period would delay its implementation, thereby in many cases defeating the intentions of the legislature, delaying the resolution of problems, and in general contributing to confusion in "the domestick concerns" of the province. Second, it argued that the governor and assembly were, "in the nature and Reason of things," "the most Adequate Judges, of all local Laws, and most of our

Laws are such." If effective governance of distant polities depended upon their legislatures' having wide scope to handle the pressing exigencies arising within their societies, British constitutional traditions, the instructions argued, dictated that provincial legislatures exercised their authority as a matter of right. Contending that "No Reason can be given why a man should be abridg'd in his Liberty, by removing from Europe to America, any more than by his removing from Dover to London," the instructions, deliberately conflating natural rights, British rights, and charter rights, argued that the right "to be free from any superior power on Earth" and not "to be under" any "legislative power but that established by Consent in the Commonwealth" or "under the Dominion of any Will or Restraint of any Law, but what such legislative shall enact" was the "principal" right among many "Rights of the Colonists," a right that was "so inherent" that no people could "give it up without becoming Slaves." This "essential and fundamental" privilege, the report declared, was "by no means local, that is, confined to the Realm [of England]; but by the Common law and by particular Acts of Parliament extended throughout the Dominions."

In this brief for the legislative independence of provincial legislatures throughout the empire, the authors expressed pride in the fact "that British America" had, in its enjoyment of British liberty, ever been "distinguished from the slavish Colonies round about it, as the fortunate Britains are from their Neighbours, upon the Continent of Europe" and went on to attribute Britain's "present Strength, and populousness" to "the Growth of the plantations" and, in turn, their growth "to that beautifull Form of Civil Government under which we live." Expressing the belief that the commitment of the Hanoverian monarchs to support liberty throughout the empire would ensure "that our privileges will remain sacred and inviolate," the report concluded by suggesting that the strenuous exertions of the colonies in general and of Massachusetts in particular during the Seven Years' War should provide "very strong inducements, to enlarge rather than Curtail our Privileges." (J.P.G.)

Instructions to Jasper Mauduit

SIR,—Our late Agent William Bollan, Esqr., having by his letters of the 8th of May 1761, of the 12th of February, and the 15th of March last, Copies of which will be transmitted you with this, informed the General Court that the Province's power of Legislation is like to be nearly affected if not called in Question, by the Requisition of a suspending Clause in our Acts, and that in certain Cases, at least, they shall not take Effect untill they shall have received the Royal Sanction.

We are also informed by the same Gentleman, that “many powerful Reasons have for a long” Time called

for a thorough Examination in order for a full proof and firm Establishment of the Original, inherent and just Title of the Colonies in America to the Rights, Liberties and Benefits of the State, whereof they were Members, when they prosecuted this noble Enterprize, and of which by their great Expence, Toil and Peril in inlarging the Dominions for the Common good, they continued perfect Members, and from whom of Course these Rights descended to their Posterity.

The natural Rights of the Colonists, we humbly conceive to be the same with those of all other British Subjects, and indeed of all Mankind. The principal of these Rights is to be “free from any superior power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule.”

Our political or Civil Rights will be best understood by beginning at the Foundation,

The Liberty of all Men in society is to be under no other legislative power but that established by Consent in the Commonwealth, nor under the Dominion of any Will or Restraint of any Law, but what such legislative shall enact, according to the trust put in it. In General freedom of Men under Government, is to have standing fundamental Rules to live by, common to every one of that Society, and made by the legislative power erected in it; a Liberty to follow my own will in all things where that

Rule prescribes not, and not to be subject to the inconstant, uncertain, unknown arbitrary will of another Man; as freedom of Nature is to be under no Restraint but the law of Nature.

This Liberty is not only the Right of Britons, and British Subjects, but the Right of all Men in Society, and is so inherent, that they Can't give it up without becoming Slaves, by which they forfeit even life itself. Civil Society great or small, is but the Union of many, for the Mutual Preservation of Life, Liberty and Estate. These notions of Liberty had the Ancient Greeks and Romans, and the same Ideas had our Ancestors in Britain, long before the discovery of America. Most of the Transactions from the Grant of *Magna Charta* to the Revolution may be considered as one continued Struggle between Prince and People, all tending to that happy Establishment, which Great Britain has since enjoyed and is every day increasing to perfection.

The *Allegiance* of British Subjects being perpetual and inseparable from their persons, so while they are in the Breach of none of the Laws of their Country, is their *Liberty*. No Reason can be given why a man should be abridg'd in his Liberty, by removing from Europe to America, any more than by his removing from London to Dover, or from one side of a street to the other. So long as he remains a British Subject, so long must he be intitled to all the privileges of such an one: The most essential and fundamental of these Priviledges, are by no means local, that is, confined to the Realm; but by the Common law, by the Constitution and by particular Acts of Parliament extended throughout the Dominions. The particulars of these privileges are to be found in *Magna Charta*, the Bill of Rights, and in almost every publick Transaction, since the Revolution. By the Laws of Nature and of Nations, which in this Instance at least, are the voice of universal Reason, and of God, when a Nation takes possession of desert, uncultivated and uninhabited Countries, or which to our present purpose is the same thing, of a Country inhabited by Salvages, who are without Laws and Government, and settles a Colony there; such Country tho' separated from the principal Establishment or Mother Country, naturally becomes part of the State, equally with its antient possessions. This is not only Confirmed by the Practice of the Antients, but by the Moderns, ever since the Discovery of America. Frenchmen, Portugals, and Spaniards are no greater Slaves abroad than at home, and by Analogy Britains should be as free on one side of the Atlantic as on the other.

That this is the sense of the British Parliament is among many instances that might be cited very evident from the 13th G: 2nd C: 7. By this Act even Foreigners having lived seven Years in any of the British Colonies are deemed Natives, on taking the Oaths of Allegiance, etc., and are declared by said Act, to be his Majesty's natural born Subjects, of the Kingdom of Great Britain, to all intents, Constructions and purposes, as if any, or every of them, had been or were born within the Kingdom. The Reasons given for this Naturalization, in the Preamble of the Act are, that

the Increase of the People is the Means of advancing the wealth and Strength of any Nation or Country, and that many Foreigners and Strangers from the *Lenity* of our Government, the *Purity* of our Religion, the *Benefit* of our Laws, the *advantages* of our Trade, and the *security* of our property, might be induced to come and settle in some of his Majesty's Colonies in America, if they were made *partakers* of the *advantages* and *privileges* which the natural born Subjects of this Realm do *there* enjoy.

It seems a little strange that after this explicit declaration of the Parliament, made no longer since, than the 13th Year of the last Reign, that any of the Colonies should be called upon by their agent, and earnestly pressed for a full proof and firm Establishment of their original and inherent Rights.

It is now near three Hundred Years since America was first discovered, and that by, British Subjects, and near ten Generations have passed away, thro' various Toils and many bloody Conflicts, in settling this Country. None of these ever dreamt, but what they were intitled to equal Priviledges, with those of the same Rank, born within the Realm. We have heard it from our Fathers, and their Fathers told it unto them, that British America was ever to be distinguished from the slavish Colonies round about it, as the fortunate Britains are from their Neighbours, upon the Continent of Europe. We humbly conceive that it is for the Interest of Great Britain that her Colonies should be thus distinguished. It is agreed by some very judicious English Writers, that the Expeditions made by our antient Princes, however they might enlarge their power, and exalt their glory, were far enough from being serviceable to the Liberty or property of the Subjects. The figure Great Britain now makes, arises from Maxims embraced in the Reign of Queen Elizabeth, and which have been in a measure adhered to ever since, and are daily improving by Practice. This wise Queen is thought to have laid the Real Foundation of that Wealth, power and true Glory which we

rejoice to see our illustrious Sovereign in the full possession of. She among other great things, promoted the Navigation and Commerce of her subjects, open'd a free passage for them to both the Indies, and excited that spirit which induced her Subjects to make Settlements in the most distant parts of the Globe.

Some things indeed of a very disagreeable kind, (even in her Reign, and much more so, in every Reign afterwards till the Revolution) conspired to hasten these Settlements. These furnish a very striking proof, that the great Author of Nature, and the kind Father of us all, has made the sorest temporal Evils, Civil war and discord subservient to his allwise purposes, and productive of great temporal good. To the freedom of the British Constitution, and to their Increase of Commerce, it is owing, that these Colonies have flourished, without diminishing the inhabitants of the mother Country, contrary to the Effects of plantations made by most other Countries, which have suffered at home, in order to aggrandize themselves abroad.

Great Britain is well known to have increased prodigiously both in Numbers and in wealth, since she began to Colonize. There are very good judges, who scruple not to affirm, that it is to the Growth of the plantations Great Britain is indebted for her present Strength, and populousness. As the wild wastes in America have been turned into pleasant Habitations, and flourishing trading Towns, so many of the little Villages, and obscure Burroughs in England, have put on a New Face, suddenly started up and become fair Market Towns, and great Cities. London itself, which bid fair to become the Metropolis of the World, is five Times more populous than in the days of Elizabeth. This and numberless other Mutual Advantages are intirely derived from the spirit of Trade and Commerce, the planting of Colonies and some consequential Amendments in our Constitution, or rather to the Reduction of it, to its first principles. Hence it is demonstrable how much we all owe to that beautifull Form of Civil Government under which we live. It is also evidently the Interest, and ought to be the care of all those intrusted with the Administration of the Government, to see that every part of the British Empire enjoys to the full the advantages derived from the Laws, and that Freedom which is the Result of their being maintained with Impartiality and Vigour. This we have seen reduced to Practice in this and the preceding Reigns, and think we have the highest Reason (from the paternal care and goodness that his Majesty has hitherto discovered to all his dutiful and loyal subjects and to us in particular) to rest assured that our priviledges

will remain sacred and inviolate: We shall ever pray that our most gracious Sovereign's life may be prolonged, and that he and his posterity may Reign in Britain, and in British America till Time shall be no more.

It must be manifest to every judicious and disinterested person, that the Connection between Britain and her Colonies is so strong and natural, as to make their mutual happiness, depend upon a mutual Support. Nothing tends more to the destruction of both, than sowing seeds of Dissention between them. From the Importance of these principles, it is presumed, that Great Britain has been induced to go through so many glorious Enterprizes during this and the last Reign, for the defence of her Colonies, and that the Colonies have so very loyally and strenuously exerted themselves. We think it but a piece of Common Justice due to the good people of this Province, to declare that they are not behind any of the Colonies in their Duty to their King and Country.

We have the satisfaction to inform you, that altho' the War is protracted beyond what was expected, this Province has readily complied with every Requisition made for his Majesty's service this year.

We have raised three Thousand three hundred provincials, and granted a Bounty of seven pounds Currency for Eight hundred and ninety Men more to enlist into the Regular Regiments. We shall upon all Occasions rejoice in demonstrating, even with the Sacrifice of life and Fortune, our Attachments to his Majesty's person, Family and Government. The New England Governments for many Years (without any immediate Support from England, or their neighbouring Colonies, some of which last indeed were unable) defended themselves, and protected their Brethren, from the Insults of the French, and the Ravages of the Barbarians. The particulars of these services, and the Expence and loss of Men, may be hereafter collected in one view, and transmitted you. But at present we must attend to the Subject of Legislation.

The power of Legislation is in this Province immediately derived from the Charter of King William and Queen Mary; which with a New impression of our laws will be transmitted you, by the first opportunity. This Legislative power has been ever Subject to the King's Disapprobation, as expressed in said Charter. And all antient Acts of Parliament are received here, and duly obeyed, that can be considered as part of, or amending the Common Law; and all such Acts of Parliament as expressly mention the plantations.

By this Charter, it is granted, ordained, and established, that all and every of the Subjects, that shall come to inhabit within this Province or Territory, and every of their Children, which shall happen to be born here, or on the Seas in coming here, or returning from hence, shall have and enjoy all the Liberties and Immunities, of free and natural Subjects, within any of the dominions, to all intents, and Constructions and purposes, whatsoever, as if they had, and every of them were born within the Realm of England. This is declaratory of the Common Law, the Law of nature and nations, which all agree in this particular. There are regularly three Incidents to a subject born: 1. Parents under the actual Obedience of the King. 2. That the place of his Birth, be within the King's dominions. 3. The time of his Birth, is to be chiefly considered, for he cannot be a Subject born of one Kingdom, that was born under the allegiance of the King of another Kingdom, albeit afterwards, the one Kingdom descends, to the King of the other Kingdom, see 7. Coke, Calvin's Case, and the several Acts of Parliament relating to Naturalization, from Ed: 3d to this time. By which it will evidently appear that the British American Colonies are part of the Common wealth and well entitled to the rights, liberties and benefits thereof.

It may not be amiss to observe that we were possessed of one very important branch of Liberty, before the people of England were, for by the Charter of King James I to the adventurers, a free profession of Religion is declared to be one of the principal ends of the plantation. This was long enough before the Acts of *Toleration* at home.

The said Charles proceeds,

And we do for us, our heirs and Successors, Give and grant, that the said General Court or assembly, shall have full power and authority, to name and settle Annually, all Civil officers within the said Province, such officers excepted, the Election and Constitution of whom, we have by these Presents reserved to us, our heirs and Successors, or to the Governour of our said Province for the Time being; and to set forth the several duties, powers, and Limits, of every such officer, to be appointed by the said General Court or assembly; and the Forms of such Oaths, not repugnant to the Laws, and Statutes of this our Realm of England, as shall be respectively administred to them, for the Execution of their several offices and places; and also to impose Fines, Mulcts, Imprisonments, and other punishments; and to impose and levy proportionable and reasonable

assessments, Rates and Taxes, upon the Estates and persons, of all and every the proprietors or Inhabitants of our said Province or Territory, to be issued and disposed of, by Warrant under the hand of the Governor of our said Province, for the time being, with the advice and Consent of the Council for our service, in the Necessary Defence and Support of our Government of our said province or Territory, and the Protection and preservation of the Inhabitants there, according to such Acts, as are or shall be in Force within our said Province and to dispose of Matters and Things whereby our Subjects, Inhabitants of our said Province may be Religiously, Peaceably, and Civilly, governed, protected and defended, so as their good life, and orderly conversation, may win the Indians, Natives of the Country, to the Knowledge and obedience of the only true God, and Saviour of Mankind, and the Christian Faith, which his Royall Majesty, our Royal Grandfather, King Charles the First, in his said Letters Patent, declared was his Royal Intention, and the Adventurers free profession to be the principal End of the said Plantation. And for the Better securing and maintaining Liberty of Conscience, hereby granted to all persons, at any time, being and residing, within our said Province or Territory as aforesaid, willing, commanding and requiring, and by these presents, for us, our heirs and Successors ordaining and appointing, that all such orders, Laws, Statutes and ordinances, instructions and directions, as shall be so made and published under our seal of our said Province or Territory, shall be carefully and duly observed, kept and performed and put in Execution, according to the true intent and meaning of these presents. Provided always And we do by these presents, for us, our heirs and Successors, establish and ordain, that in the framing and passing of all such orders, Laws, Statutes and ordinances, and in all Elections, and Acts of Government whatsoever, to be passed, made or done, by the said General Court or assembly, or in Council; the Governor of our said Province or Territory of the Massachusetts Bay in New England, for the time being, shall have the Negative Voice; and that without his Consent or approbation, signified and declared, in writing, no such orders, Laws, Statutes ordinances Elections, or other Acts of Government whatsoever, so to be made, passed or done by the said General Assembly, or in Council, shall be of any Force, Effect, or Validity; any thing herein contained to the contrary in any wise notwithstanding. And we do for us, our heirs and Successors, establish and ordain, that the said orders, Laws, Statutes and ordinances, be by the first opportunity, after the making thereof,

sent or transmitted unto us, our heirs and Successors, under the publick Seal, to be appointed by us, for our or their approbation, or disallowance. And that in Case all or any of them shall at any time within the Space of three Years, next after the same shall have been presented to us, our heirs and Successors, in our, or their Privy Council, be disallowed and rejected, and so signified by us, our heirs and Successors, under our or their Sign Manual, and Signet; or by order in our or their Privy Council, unto the Governour for the time being, then such and so many of them as shall be so disallowed and rejected, shall thenceforth cease and determine and become utterly Void, and of none Effect. Provided always, That in Case, We, our heirs, or Successors, shall not, within the Term of three Years after the presenting of such orders, laws, Statutes or ordinances, as aforesaid, signify our, or their disallowance, of the same, then the said orders, Laws Statutes or Ordinances, shall be and Continue in full Force and Effect, according to the true Intent and Meaning of the same, until the Expiration thereof, or that the same shall be repealed, by the General Assembly of our said Province for the time being. Provided also, That it shall and May be lawful, for the said Governour, and General Assembly, to make or pass any grant of Lands, lying within the Bounds of the Colonies, formerly called the Colonies of the Massachusetts Bay, and New Plymouth, and Province of Main, in such manner, as heretofore they might have done, by virtue of any former Charter, or letters Patent; which grants of Lands, within the Bounds aforesaid, We do hereby Will and ordain to be and continue forever in full force and Effect, without our further approbation or Consent. And so as Nevertheless, and it is our Royal Will and pleasure, that no grant, or Grants of any Lands, lying or extending from the River of Sagadahock, to the Gulph of St. Lawrence, and Cannada Rivers, and to the Main Sea Northward, and Eastward, to be made or past by the Governour and General Assembly of our said Province be of any Force, Validity or Effect, untill we our heirs and Successors shall have signified our or their approbation of the same.

The Reasons against a suspending Clause, in these laws, until the King's approbation, or disapprobation may be known, are briefly these: 1. There is no such thing required by the Words of the Charter, except in a particular Case, to wit of grants of Land, in Sagadahock. 2. The Cotemporary, as well as constant usage to the country, ever since the Charter, and which has never before been called in question, is, as we think, an unanswerable argument in

Law, and in reason, that no such thing was ever intended. 3. The Laws for Assessments, Rates and Taxes mentioned in the Charter, and many others are in their nature annual. Now if these are not to take Effect, until they have received the Royal Sanction, they would often not take Effect at all, for the time of their Continuance, or the greatest part of it would be ordinarily elapsed before such Sanction could possibly be obtained. This Consideration is enough to evince, what confusion would happen in the domestick concerns of the province, even in the time of Peace. But in a time of War, as this is, his Majesty's Service would be extremely endangered hereby, for if all Acts and orders for levying our provincial Troops (which are commonly raised in the Spring, and dismissed in the Fall) were to be sent home, as by this principle they must, the Campaign would be over before such Acts and orders could be returned from England. A Multiplicity of such instances might be mentioned, and numberless others that can't be foreseen, may possibly happen, by the Establishment of such a principle. All the officers of the Government, who depend upon annual grants, for their services, must be by this means, kept out of their pay and Subsistence, untill the Royal approbation be known, so that the Treasury instead of yielding ready and prompt payment, will ever be a year behind hand, and the King's officers in the meantime, starving, and his service Suffering. The Charter provides, that without the Governor's Consent or approbation, signified and declared in writing, no such orders, Laws, Statutes, Ordinances, Elections, or other Acts of Government whatsoever to be made, passed or done by the said General Assembly, or in Council, shall be of any force Effect or Validity. This at least very strongly implies, that immediately upon such consent or approbation, they become Laws, and want nothing but publication, especially as in the Clause preceeding, upon such Consent of the Governor, and publication under the Seal of the Province, the Subject is required to yield carefull and due Obedience.

5. If it had been intended that the Royal approbation should also have been obtained, previous to our Laws having any Force, a Word or two would have put the matter beyond all doubt, as in the subsequent Clauses relating to the grants of Lands. Those in Massachusetts, Plymouth and Province of Main, are expressly grantable by the Province, without having further royal approbation than the Charter. Those in Sagadahock are expressly grantable, by the General Court, but the grant is as expressly suspended until the Royal approbation be signified. 6: This Clause then, "such and so many

of them, as shall be disallowed and rejected, shall thenceforth cease and determine, and become utterly void and of none Effect," shews the intent was, to make the King's disallowance in the nature of a repeal, and the act *voidable, not void*. If it is considered in this light all mean Acts are good. This Construction is abundantly confirmed by the constant usage hitherto, and by the next Clause

Provided always, that in Case we, our heirs or Successors, shall not within the Term of Three years after the presenting of such orders, Laws, Statutes and ordinances as aforesaid, signify, our or their disallowance of the same, then the said orders, Laws, etc. shall be and continue in full force and Effect, according to the true intent, and meaning of the same

until the Expiration thereof, or that the same shall be repealed by the General Assembly. If this doctrine of Suspension takes place, every Act must lie three years, unless his Majesty's pleasure be sooner signified, which is not probable, for there is no Instance, of any allowance being signified, nor is it requisite by Charter, and there have been but few disallowances. If all our Acts are to be three Years, in order for a disapprobation, the most important affairs, as raising Taxes, laying Excise, Imposts, Grants of Money, to his Excellency the Governor, and others for their Salaries, levying Troops, paying and subsisting for the King's service, would be always three years behind hand. Such a form of Legislation, would be a burthen rather than a benefit to the Subject. *Omnis Innovatio plus novitate perturbat, quam utilitate prodest.*¹ We have proved that be an act, ever so necessary to be carried into immediate Execution, yet by this new system, it may lay and be suspended three years. Let us suppose that the next day after the three years of suspension are expired, the Continuance of the Act, any longer becomes dangerous, or detrimental to the Province, from some one of a Thousand Changes in Circumstances, which are daily turning up, in the ordinary Course of human affairs.

What is to be done: Why the Assembly, as by Charter they have right, repeal this Act, but this Act of repeal can have no immediate Effect, any more than any other law, but must be suspended it is said for the Royal

1. ["The disturbance resulting from an innovation is so great an evil as to outweigh any benefit that might arise from it." Translation taken from <http://www.duhaime.org/LegalDictionary>.—Eds.]

approbation or disallowance, and may lie three years more without any allowance or disallowance, so here's six years gone, three of which the poor Colony is without a law, perhaps absolutely needful for its being, and three Years after the Occasion of the law ceases, and becomes absolutely bad, it must remain in force. A little Change in Circumstances would cause another similar rotation, and so on Ad infinitum, both in Number and Continuance, *Uno absurdo dato Mille Sequuntur.*²

Further, the Governor, and the Assembly, by the Charter, and in the nature and Reason of things, are deemed in general the most Adequate Judges, of all local Laws, and most of our Laws are such. Some few there may be indeed, of which the boards in England, are infinitely better Judges than we are, but if they all had the Wisdom of angels they must often be in the dark in relation to such as in their nature are local, and have the particular state and Circumstances of this People for their object. If these suspensions are Established, it will be in the power of the Crown, in Effect, to take away our Charter without act of Parliament, or the Ordinary process at Common law, and surely, the laws of England, will never make such Construction of the King's Charter, as to put it in the power of the donor or his Successors to take it away when he pleases. We have nothing of this kind to fear from his present Majesty, or his Ministry, on the contrary, we flatter our selves that when the services and sufferings of the American Colonies in general, and of this in particular, are fully considered, they will afford very strong inducements, to enlarge rather than Curtail our Priviledges. We would recommend to you, to Consult Mr. Jackson upon this Subject and such other Council, learned in the law as you may think Needfull.

We shall as soon as possible furnish you with some further particulars, relative to this very interesting and important question.

We shall with this transmit you Copies of the Instructions heretofore given Mr. Bollan, and from time to time make such additions as our affairs may require.

In Council, June 14th, 1762. Read and accepted, and ordered that the Secretary transmit a Copy hereof to Mr. Agent Mauduit by the first opportunity.

Sent down for Concurrence.

JNO. COTTON, *Dep: Sec'y.*

2. ["One absurdity granted, a thousand follow."]

In the house of Representatives. June 15, 1762.

Read and Concurr'd. TIMO. RUGGLES, SPEAKER.

Copy. A. OLIVER, Sec'y.

BOSTON, June 15, 1762.

SIR,—I am directed by the General Court to inform you that in case any Attempt should be made to abridge or in any measure controul the General Court in regard to their Power of Legislation as granted by the Province Charter, You are then to make use of the Letter of Instructions herewith sent you upon that Subject, in such manner as your discretion shall dictate; but if no such Attempt should be made, You will in that case keep them to Yourself.

In their behalf, I am, Sir, Your most humble Servant,

AND'W OLIVER.

John Camm,
A Single and Distinct View of the Act,
Vulgarly Entitled, The Two-Penny Act
(Annapolis, 1763)



JOHN CAMM, leader of the clerical revolt in Virginia against the Two-Penny Acts of 1755 and 1758, waited nearly three years to answer Richard Bland's and Landon Carter's 1760 defenses of those measures (see Selection 58). Camm argued that those acts were aimed at relieving, not the poor, but the wealthy property holders and, using his own parishioners in York County as an example, succeeded in showing that the wealthy with many tithables on their establishments benefited most from the legislation. Stressing his maxim of "*Salus Populi est Suprema Lex*,"¹ Bland had contended that legal technicalities like suspending clauses always had to give way before the common good, but in Camm's view, Bland's conception of that maxim meant no more than "to take as much as shall be thought necessary from the Incomes of the Clergy, and dispose of it chiefly among the Rich and Wealthy and Successful," while "not quite excluding all of the Poor and Distressed sort from their share in the Booty."

But Camm also took up the constitutional question, suggesting that the Virginia Assembly had not, "till very lately," claimed "a power to pass Laws that interfer'd with any confirm'd by his Majesty without a *suspending Clause*" and that such claim was "an Innovation" that violated the "Old Constitution."¹ "I look not on the Colony, as a little independent Sovereignty; but

1. ["The safety of the people is the supreme law."]

as having a particular Connection with the Mother Country and [being] dependent on the Crown of *Great-Britain*," he wrote, "and I know not in what this dependence can more properly consist, than in the standing uninterrupted Validity of Laws confirmed by the Crown, until they are Repeal'd or Suspended by the same Authority." He confessed his sentiments "that if we could destroy the substance of the King's Power, or the Rights of the Crown, or the Prerogative . . . and reduce it to a mere Shadow, something that has no *Weight*, is not to be *felt*, we should only hereby Sap one of the strongest batteries, erected for the defense of Liberty and Property."

In the appendix, Camm republished his correspondence with the Virginia printer Joseph Royale, the public printer for Virginia who declined to publish Camm's tract on the grounds that it might offend the Virginia House of Burgesses. Royale's refusal explains why Camm published the pamphlet in Annapolis. (J.P.G.)

A
SINGLE and DISTINCT
VIEW OF THE ACT,
Vulgarly entitled,
THE TWO-PENNY ACT:
CONTAINING

An Account of it's beneficial and wholesome Effects in
YORK-HAMPTON PARISH.

In which is exhibited
A SPECIMEN of Col. *Landon Carter's*
JUSTICE and CHARITY; as well as of
Col. *Richard Bland's* SALUS POPULI.²

By the Reverend JOHN CAMM,
Rector of YORK-HAMPTON.

*Though I have the Gift of Prophecy, and understand all Mysteries,
and all Knowledge,—and have not Charity; I am Nothing.*

CARTER'S TEXT.

*Ne quid falsi dicere audeat, ne quid veri non audeat.*³

BLAND'S MOTTO.

Could nothing but thy chief Reproach serve for a Motto.

SWIFT.

Annapolis: Printed by Jonas Green, for the Author. 1763.

2. "Safety of the people."

3. ["Let him not dare to say something false, let him not dare not to say something true."]

A Single and Distinct View of the Act vulgarly entitled *The Two-penny Act*.

In compliance with the Opinion of my Friends, and with Col. *Bland's* challenging the CLERGY to an open Justification of their Complaint, on the Spot, where particular Facts can be best Examined, I have here put down a few plain ones in point, for the Satisfaction of HIM and the PUBLIC: Though, in his Appeal to particular Facts I am afraid he was not over Sincere; in as much as no body deals more in General Topicks, False Facts, and ill-adapted Maxims, than himself.

I suppose, if my Tobacco had been paid in 1758, I could have sold it for Fifty Shillings a Hundred; and I allow 133 *l.* 6 *s.* 8 *d.* Currency for 100 *l.* Sterling, as the Exchange in that Year. If I am not exact to a *shilling*, in either of these Articles, it will not affect the Consequences to be deduced from them; or, the proportionable Share which must be Assign'd to each of my Parishioners, out of that Part of my Income, for one Year, proposed to be taken away from me, by The Two-penny Act.

Taking these Premises for granted, I find, that my Salary that Year would have amounted to 300 *l.* Sterling; and that the Sum intended to be taken out of it for *certain good purposes* is 200 *l.* Sterling. To shew what these good Purposes are, I have here put down a List for 1758, of the Persons who Pay towards the Maintainance of the Minister in my Parish, with their Number of Tithables, taken from Authentick Copies now in my Hands; and have annexed the Sum in Sterling, that each of them was Presented with, as far as they could be by the late Assembly, out of my Salary; which I shall beg leave to accompany with a few Reflections at the bottom.

I depend on the good Sense of my Parish, who have never shewn any Resentment, or given any Ill-treatment to me, for presuming to make a Voyage to *England*, in quality of *Agent for the Convention of the Clergy*, that they will not be Offended at seeing their Names on this Occasion. But, as I have consulted no Body on this Head, if any of them should take Offence, he must thank Col. *Bland*, and Col. *Carter* for it, whose Endeavours to confound Poverty with Riches, Loss with Gain, Justice with Injustice, Necessity with its Opposite, have called upon me to dispel the Fog, which they are willing to diffuse over the Face of a Truth, in it's own Nature AS CLEAR AS THE SUN.

A LIST of the OBJECTS OF CHARITY in the Parish of York-Hampton, containing all the White Men, except a few very poor People and the Parson, who are deem'd Rich enough to relieve All these Objects.

	Tithables.	£.	s.	d.				
Col. Carter Burwell, Three Estates.	61	10	19	10¼				
Col. Edward Digges, Two Estates.	56	10	1	10				
Hon. William Nelson.	38	6	16	11½				
Mr. James Burwell.	34	6	2	6½				
Mr. John Wormeley.	24	4	6	6	T.	£.	s.	d.
Hon. T. Nelson.	22	3	10	3½	235	42	6	11¾
Mrs. Lightfoot, Two Estates.	38	6	16	11½				
Mr. John Godwin, senior.	19	3	8	5¾				
Mr. Thomas Reynolds.	18	3	4	10½				
Mr. John Godwin.	17	3	1	3½				
Mrs. Frances Nelson.	16	2	17	8				
Mrs. Agnes Smith.	15	2	14					
Mr. Robert Smith.	15							
Peyton Randolph, Esq;	15							
Mr. William Allin.	14	2	10	5½				
Richard Ambler, Esq;	14							
Mr. Arthur Dickenson.	14							
Mr. Hudson Allin.	14							
Mr. John Norton.	13	2	6	10¼				
Mr. Robert Ballard.	11	1	19	7¾				
Mr. Aaron Philips.	11							
Mr. John Chapman.	11							
Mrs. Jemima Barham.	11							
Mrs. Elizabeth Godwin.	10	1	16	0½				
Mr. John Wynne.	10							
Mr. James Mitchell.	16							
Mr. Laurence Smith.	10	1	16	0½				
Mr. Nathaniel Buck.	10				T.	£.	s.	d.
Mr. John Tenham.	10				326	58	14	11½

A LIST of the OBJECTS OF CHARITY in the Parish of York-Hampton (continued)

	Tithables.	£.	s.	d.
Col. Charles Carter, Mem. Assembly.	9	1	12	5¼
Mr. William Moss, junior.	9			
Mr. James Mills.	9			
Mr. Elliston Armistead, Estate.	9			
Mr. John Gibbons.	9			
Mr. Thomas Gibbons.	9			
Mr. Charles Hansford, junior.	9			
Mr. Everard Dowsing.	8	1	8	10
Mr. William Powell.	8			
Mrs. Ann Chapman.	8			
Mr. Benjamin Moss, senior.	8			
Mr. John Lester, senior.	8			
Mr. David Morce.	8			
Mrs. Mary Moss.	7	1	5	2¾
Mrs. Elizabeth Moss.	7			
Mr. Philip Dedman.	7			
Mr. Thomas Pescod.	7			
Col. Dudley Digges, Mem. Assembly.	7			
Mr. Griffin Stith.	7			
Mr. Joseph Mountfort.	7			
Mr. John. Wagstaff.	7			
Mr. Edward Potter's, Estate.	7			
Mr. William Moody.	7			
Mrs. Martha Bryan.	7			
Mr. John Hunter.	6	1	1	7½
Mr. Edward Cross.	6			
Mr. George Riddell.	6			
Mr. Edmund Tabb.	6			
Mr. Thomas Archer.	6			
Mr. William Moss.	6			
Mr. James Moss.	6			
Mr. Robert Godwin.	6			

	Tithables.	£.	s.	d.				
Mr. <i>Augustine Moore,</i>	5		18					
Mr. <i>Robert Shield.</i>	5							
Mr. <i>William Stevenson.</i>	5							
Mr. <i>John Baptist.</i>	5							
Mr. <i>Armistead Lightfoot.</i>	5		18					
Mr. <i>John Chisman, junior.</i>	5							
Mr. <i>Charles Mills.</i>	5							
Mr. <i>William Adduston Rogers.</i>	5							
Mr. <i>John Burcher.</i>	5							
Mr. <i>John Harvey.</i>	5							
Mr. <i>Philip Burt.</i>	5							
Mr. <i>Young Moreland.</i>	5							
Mr. <i>Basil Wagstaff.</i>	5							
Mrs. <i>Mary Lewis.</i>	5							
Mrs. <i>Martha Wade.</i>	5							
Mr. <i>Thomas Wade.</i>	5							
Mr. <i>William Baker.</i>	5							
					T.	£.	s.	d.
					321	57	16	11¼
Mr. <i>Seymour Powell.</i>	4		14	5				
Mr. <i>David Jameson.</i>	4							
Mr. <i>Nicholas Dickson</i>	4							
Mr. <i>Patrick Mathews</i>	4							
Mr. <i>Edward Baptist.</i>	4							
Mr. <i>Thomas Gibbs.</i>	4							
Mr. <i>Edward Wright.</i>	4							
Mr. <i>Thomas Wootton.</i>	4							
Mr. <i>John Burcher.</i>	4							
Mr. <i>Anthony Robinson</i>	4							
Mr. <i>Richard Hobday.</i>	4							
Mr. <i>James Cosby.</i>	4							
Mr. <i>John Coman.</i>	4							
Mr. <i>Henry Chisman.</i>	4							
Mr. <i>Whitehead Lester.</i>	4							
Mr. <i>James Matt Ince.</i>	4							

A LIST of the OBJECTS OF CHARITY in the Parish of York-Hampton (continued)

	Tithables.	£.	s.	d.
Mr. Edmund Glanvill.	3		10	9 ³ / ₄
Mr. William Harris.	3			
Mr. Christopher Cortes.	3			
Mr. Thomas Gibbs.	3			
Mrs. Anne Gibbons.	3			
Mrs. Mary Moody.	3			
Mrs. Martha Satterwhite.	3			
Mr. Kemp Charles.	3			
Mr. John Wootton.	3			
Mr. Alexander Maitland.	3			
Mr. William Evans.	3		10	9 ³ / ₄
Mr. John Roberts.	3			
Mr. Robert Booth Armistead.	3			
Mr. Matt. Burt.	3			
Mr. Samuel Hill.	3			
Mr. Charles Hansford, senior.	3			
Mr. Benjamin Barham.	3			
Mr. John Hyde.	3			
Mrs. Mary Catton.	3			
Mrs. Frances Lester.	3			
Mrs. Elizabeth Barham.	3			
Mrs. Mary Cocket.	3			
Mrs. Mary Potter.	3			
Mr. John Hack.	2		7	2 ¹ / ₂
Mr. William Brodie.	2			
Mr. Joseph Nisbett.	2			
Mr. Peter Mace.	2			
Mr. Benjamin Moss, junior.	2			
Mr. Samuel Jones.	2			
Mr. John McClary.	2			
Mrs. Martha Goosley.	2			

Tithables.	£.	s.	d.
Mrs. Elizabeth Buckler.	2		
Mrs. Elizabeth Irwin.	2		
Mrs. Catharine Hansford.	2		
Mrs. Bethia Morris.	2		
Mrs. Anne Cosby.	2		
Mr. William Cary.	2		
Mr. John Hay.	2		
Mr. Dudley Wright.	2		
Mr. Thomas Trotter	2		
Mr. Richard Singleton	2		
Mr. Ambrose Burfort.	2		
Mr. Francis Peters.	2		
Mr. Dickeson Yeatman.	2		
Mr. John Dunford.	2		
Mr. George Booth.	2		
Mr. John Lester, junior.	2		
Mr. Edward Hansford; junior.	2		
Mr. Robert Martin.	2		
Mr. Sacheveral Sclater.	2		
Mr. Joseph Freeman.	1	3	7 ³ / ₄
Mr. John Freeman.	1		
Mrs. Ann Orton.	1		
Mrs. Amy Archer.	1		
Mrs. Elizabeth Allin.	1		
Mrs. Mary Tuomar.	1		
Mrs. Martha Pepper.	1		
Mrs. Anne Dunford.	1		
Mrs. Sarah Bruce.	1		
Mrs. Sarah Cosby.	1		
Mrs. Mildred Moreland.	1		
Mr. Haldenby Dixon.	1		
Mr. George Wilson.	1		

A LIST of the OBJECTS OF CHARITY in the Parish of York-Hampton (continued)

	Tithables.	£.	s.	d.	
Mr. William Holt.	1				
Mr. Allen Jones.	1				
Mr. Thomas White.	1				
Mr. John Pearson.	1				
Mr. Hillsman Thomas.	1				
Mr. John Bower.	1				
Mr. Thomas Burroughs.	1				
Mr. Will. Mitchell.	1				
Mr. John Davis.	1				
Mr. Richard Limehouse, junior.	1				
Mr. Richard Coventon.	1				
Mr. Charles Freeman.	1				
Mr. Will. Stroud.	1				
Mr. Joseph Stroud, junior.	1				
Mr. Will. Gill.	1				
Mr. James Martin.	1				
Mr. Joseph Wootton.	1				
Mr. Charles Yeatman.	1				
Mr. Anthony Roberts.	1				
Mr. Hansford Hill.	1				
Mr. Robert Harrison.	1				
Mr. Thomas Mansfield.	1				
Mr. Savage Hooker.	1				
Mr. Edward Mansfield.	1				
Mr. John Mansfield.	1		3	7¼	
Mr. Edward Parish.	1				
Hon. Robert Burwell's Rachel.	1				227
					Deduct <u>2</u> Constables.
					£. s. d.
					225 40 10 11¼

T.	£.	s.	d.
235	42	6	11¾
326	58	14	11½
321	57	16	11¼
225	40	10	11¼
1107	199	9	9¾
		10	2¼
	£.200	0	0

By avoiding the nicety of Fractions.

Remarks on the above Dividend.

The poor Slaves, the White Servants, such as have no Tithables, such as are excused paying Tithes on account of their Poverty, all which answer to the poor and labouring People in other Countries, come in for no share in this Dividend.

The Poor, who have an annual Allowance of Tobacco from the Parish for the Maintainance of themselves, and other poor Persons, the Clerk of the Church and the Sexton, are so far from coming in for any share in the above Dividend, that they lose two thirds of their stated Allowance, as well as the Parson, being proportionably affected by the Act.

One would think, that in a Project for the Benefit of the Poor, the Poorer any Man was, the greater Share he should have in the Benefit of the Project. But here every thing is just the reverse; the Poorer the Man is, the less share he has in the Benefit of the Project. And such a degree of uniformity runs through the Scheme, that the very poorest sort of Free People, instead of being Sharers in the Benefit of the Project, are Sharers and Fellow-sufferers in the Detriment of the Project. To squeeze the Clergy for the advantage of the Poor, is like *robbing Peter to pay Paul*. However it would be no little Satisfaction to the Clergy if the Poor had the Advantage.

The first Class of Persons enumerated, consisting of one Half of the Vestry, share £ 42 6 11¾. The second Class, composed of such as have under Twenty Tithables (except One of them who has more) and not less than Ten, that is, of such who have none of them perhaps less than Eight Slaves, besides their Lands and other Property, run away with £ 58 14 11½. Here is above Half the Sum to be sure very Charitably disposed of. The third Class, being Persons who have none of them less than Five Tithables, are allotted £ 57 16 11¼. And

to the Class, among whom such Poor People are included as are intitled to a Part in this Charity, is left £ 40 10 11¼: In this last Class, and even among such as have but one Tithable in my Parish, are comprehended, Persons who have large Possessions in other Parishes; Merchants whose Fortunes lie in Trade; Substantial Tradesmen and young Persons Storekeepers, who are above receiving the Donation of *three shillings and seven Pence farthing* at my Hands: Nor would any of the poorest People in my Parish, I think I can venture to answer for them, desire me to lose Two Hundred Pounds Sterling, that they might save *three shillings and seven Pence farthing*, or double, or treble, or quadruple that Sum. In short it may appear plainly from hence, to such as will be pleased to open their Eyes, that if Ten Pounds had been properly distributed among the *real poor* and *necessitous* or *distressed* in my Parish, it would have had more effect towards Relieving such *real poor* and *necessitous* or *distressed*, than the Two Hundred disposed of as above. And if the Parson either would not, or could not, afford to give the said Ten Pounds, would it have been any mighty Burden upon the Shoulders of the whole Parish, to whom the Care and Maintainance of the Poor properly belong, and not to the Parson alone.

Compare what the Poorest receive, with what goes to the Richest, and you will find, that the one does not get so many *six pences* as the other does *pounds*. Now can it be looked upon in any other Light than as a very severe Tax upon Charity, to oblige a Man for every Six-pence he bestows upon the Poor, to give Forty Times as much to the Rich? In a word, if any Man can discover any Justice, Charity, Benefit to the Community, Sense or Reason in this Project, which is not infinitely over-balanced by contrary effects, I say no more, but let him stand forth and endeavour with all his might, to make it appear; whether he chuse by fair Argumentation to Confront me at the Bar of Reason; or by impertinent Abuse, antiquated Maxims, confident Assertions, imaginary impossible Cases, inconsistent Notions, sneaking Chicanery and voluminous Nonsense, to Summon me before the Tribunal of Folly. It is an easy matter to gloss over Vices with the Names of Virtues, and *vice versa* to blacken Virtues with the Titles of Vices; which is the chief Art, that I find used by the Two Pamphleteers.

Permit me to conclude this my first Series of Remarks, with commenting on a fundamental Passage of Col. *Carter's*; which should have stood at the beginning of his Piece. For from this Root naturally issue all the rest of his Tenets and smart Sayings, as so many legitimate Branches.

The Country is in the general Poor, and may be *said* to have been so, for some Time past; because the Crops do seldom more, if so much, as

balance the Disbursements of the Year: *The cause of this is immaterial in the case, as that must Rest solely on the immediate Poverty; and let the Cause of that Poverty be what it will, as it cannot be instantly cured, it will make nothing against the Argument.*

I cannot enough admire the propriety of Conduct in this Writer; who, having Sentiments to offer to the Public which cannot be cover'd with too thick a Veil, usually takes care to wrap them up Warm in a Cloudy Diction: And thereby makes it necessary for his Opponents to be at some pains in dragging his enveloped Notions into the Light, before they can be properly exposed. When this Operation has been duly performed by the thinking Reader upon the above Passage, he will discover the Notion lurking in it to be no other than this, that when a certain Number of Gentlemen have contracted Debts, which it is inconvenient for them to Pay, as exceeding the Ability of their present Running Cash, though this should have happened by means of the worst Extravagancies, no matter; it would be the highest degree of Cruelty and Unreasonableness of the ordinary Creditor, to expect any thing from such Debtors, much more to be so unpolite as to think of breaking in upon their Estates, or disturbing the Symetry of their elegant Moveables. From whence, when we advert to the Subject which this judicious Writer is upon, easily flows this Consequence, that it is very Pious and Charitable, when Occasion serves, to withdraw the Revenues of a Church aiming to come at a moderate Provision, establish'd in the firmest manner by Law, and bestow them towards feeding the voracious and insatiable Gaming Table, and thereby discharging, like Gentlemen, the Debts of Honour, improperly so call'd, if not to be esteem'd of most dignity. All which may be dexterously performed; provided the Superstition of the middling Frugal, and some of the poorer Ranks be quieted, by giving them a share in the Advantages of this profitable Doctrine, proportionable to their Circumstances: It being Hoped, that the boasted Respect of such for the Church and Clergy will not always amount to the value of Twenty Shillings; when that of their Superiors may be sometimes bragged of for Rising so high, as to gratify an Hungry and obliging Parson with a good Dinner; which is, what I suppose Col. *Bland* chiefly means by *that general good Reception given to Clergymen of good Behaviour*; and is consonant to the printed Boast of Col. *Carter*, concerning the Encouragement bestow'd on the Learned in the Profession of Physick; when he tells us *the Labourers in that Vineyard have the Honour of being occasionally admitted to a share*

in the Delicacies of a plentiful Table. Col. Carter has shewn more Judgment in suppressing part of the Apostle's Account of Charity, than in giving us what he has quoted. For had he given the Apostle's account unmutilated, the Reader must have seen that *Charity vaunteth not itself*, and that a Man may not only give away what belongs to another, but even every thing of his own, without having Charity. The Proverbial Account of Charity, which informs us, that it begins at Home, would have been more for the Colonel's Purpose, than the Apostle's Account. And if he could have proved that it ends too where it begins, his Point I think would have been fully carried.

MISCELLANEOUS Remarks.

I have met with two very credible Accounts, of the Number of Hogsheads of Tobacco, shipped in the scarce Year to *Britain*; one of them an imperfect one amounting to about Twenty five Thousand Hogsheads, the other Thirty five Thousand. Comparing either of these Numbers of Hogsheads shipped, and the Price Sold at in the Colony that Year, with those of any other Year, you may prove that the scarce Crop was one of the most valuable Crops that ever was raised in *Virginia*. Any Inconvenience or Distress then that could arise to the Inhabitants, could not arise from the Smallness but from the Unevenness of it alone. And supposing, that in such a Case, the Assembly are to interpose and rectify the unequal Distributions of Providence; how are they to proceed to Act Justly? Are they to take from all the Gainers by the scarcity, and especially the Rich, and distribute what is thus collected among the poor Sufferers only: Or are they to take from some of the least and poorest Gainers, and let all the Rich and chiefest Gainers come in for the largest Share of the Contributions with the Sufferers. If it be argued, that the proper Distinction could not have been made; then there should have been none made: For an improper one could not answer the End proposed, nor any good end whatsoever, except it be a good one, to leave Things worse than we find them by increasing that very Inequality, which we pretend to be desirous of removing. But it is denied, that a proper Distinction could not have been made. For every one, who knows that there are Warehouses in the Country, to which the Tobacco must be carried for Inspection, before it be Shipped, also knows, that what Tobacco every Man brought thither could have been ascertained to the utmost Nicety. And if

the Persons, who engaged in so delicate a matter, as that of Property must needs be to a *British* Subject, would not take the necessary pains to do it as it ought to be done, to give general Satisfaction: I repeat it, that I am one of those who assume the Liberty to think, that they had better not have Meddled at all in so Nice a Business.

If there be not above Eighty Parishes in *Virginia*, as I believe there is not, at least there never has been above that Number filled at one Time, the whole Tobacco coming to the Clergy, amounts to Twelve Hundred and Eighty Hogsheads, of a Thousand Weight each; and if the Crop ever fall so low as to Twenty five Thousand and Sixty Hogsheads, they will be entitled to one Twentieth Part of the Crop, but when it rises to Sixty Thousand Hogsheads, they will not be entitled to so much as a Fortieth: Nay their Proportion will be a good deal less in either of these Cases; because the Hogsheads in general are much above a Thousand Weight each, for what I know, Twelve Hundred, one with another. If there be One Hundred and Twenty eight Thousand Tithables in the Colony, the Income of the whole Clergy will come to Ten Pounds of Tobacco *per* Poll; one Third as much *per* Poll as is paid to the Clergy in *Maryland*. By the above reckoning a Parish at a medium contains Sixteen Hundred Tithables; and the poor Men, who have each of them one Tithable to pay for, throughout the Colony, when the Sum of Two Hundred Pounds Sterling are taken from the Parson, save one with another *two shillings* and *six Pence*. If in some Parishes such a poor Man saves Five Shillings, or upwards, in other Parishes again, to make up the balance, the poor Man must save but *one shilling* and *three pence*, or under. In a good common Year, when the Parson's Salary amounts to One Hundred Pounds Sterling, the poor Men, who have one Tithable to pay for, pay, towards the said Salary, *one shilling* and *three pence* Sterling, upon an Average. Add to all this, that Tobacco, in which the Clergy are paid, is no Necessary of Life, that it is but One Article of Commerce, though the Chief one, out of Many. These Things consider'd, I hope Col. *Carter*, for whom my present Pains are principally intended, will be induced to think, the Colony well secured from any exorbitant Demands of the Clergy; whatever may be their Ambitious or Covetous Designs: And will in particular be able to Conquer his excruciating Apprehensions for the Fate of the Tithe Pig. There is often a Cry about the Scarcity of Transfer Tobacco to pay the Clergy and other Creditors with, even in Years of Plenty: What does this arise from? not from the Scarcity of the Crop, in proportion to the Demands

upon it, but from other well-known Causes. The Gentlemen Ship their whole Crops, and depend upon Purchasing Transfer Tobacco, to discharge their Tobacco Debts with; others follow the Example of their Superiors, and sell their whole Crops with the same Dependence; and when by this Management Transfer Tobacco becomes Dear, the Collectors and Sheriffs are blamed for taking high Prices: The payment of the Clergy is retarded to their great Damage on various Accounts, and they are at last rewarded for a Forbearance, in itself very hurtful to them, with worse Tobacco a great deal, than must have been paid them, had it been paid in Legal Time. If it be consider'd how much more it takes *here*, than in many Parts of *England*, to enable a Clergyman to live and appear decently; to employ himself suitably to his Station; to do his Duty in an extensive Parish; and to provide for his Family: His Income would, on a fair estimation, be perhaps thought inferior to that of a Fifty Pounds a Year Curacy in the Mother Country. It is well known, that the Stipend, one Year with another, or compar'd with that of many inferior employments, is a very small Provision; otherwise more Persons in *Virginia*, where Learning is cheap, would give their Sons a proper Education for the Church; and there would have been no Occasion for a late Proposal in the Assembly, to raise a little Fund to be distributed, by way of a Bounty, for encouraging young Natives, duly qualified, to enter into Holy Orders. There are many of the Clergy, who have served here a great Number of Years, that, if they had receiv'd their Legal Dues as the Law stood, without the interposition of the Two-penny Act, could have done no more with them than discharge their arrears on the Books of the Merchants; and might now be glad to give up the Sum in debate, provided the present Assembly, out of their Compassion for unhappy Debtors, would enable them to Pay those Debts, which the late Assembly, out of a like Compassion, depriv'd them of an Opportunity to Discharge; not to go farther than my next Neighbours for Instances of this kind; what Reasonableness or Expediency could there be in taking Ten or Twenty Pounds from Mr. *Davis* and his Family, consisting of a Wife and eleven Children; to bestow this Sum in Charity on Col. *William Digges*, possessed of above an Hundred Slaves, and Lands proportionable; or from Mr. *Warrington* and his Family; to bestow a Charitable Gift on Persons of Col. *Hunter's* or Col. *Cary's* immense Fortunes and Opportunities of Advantage. Nay, to confess a serious Truth, I believe I should myself, who am a single Man, have grown Old in the Service, and lately expected Mountains of Riches and Preferment from the

profitable Employments, conferr'd upon me by my Opulent and Powerful Brethren, according to the sollicitous and public Spirited Apprehensions of certain profound Politicians, thoroughly acquainted with Mankind, should lose nothing by the compensation mentioned. Of such Persons as these Col. *Carter* complains for not being eminently Charitable; that is, for not Founding Colleges; or not rivalling him in *Ostentatious** Charity Schools; or not being liberal in Donations to the Rich and Wealthy. In which he just Acts the part of one, who, after being at great Pains to dry up the Source, should rationally wonder why the Stream does not flow; Yes and overcome it's Banks, and spread it's Waters to quench the thirst of the soil adjacent, all round about to no little Distance. I cannot but think, that, if he had a Mill to erect, or a piece of Ground to prepare for a Meadow, our Author's notions would take another Course, and run in a quite different Channel.

I will not say, as Col. *Carter* does, it is no matter how I became Poor; I must be reliev'd by Charity; or rather I must have my legal Dues; That therefore my numbering myself among some of the poorest of the Clergy, who confessedly have had less advantages for improving their Circumstances than myself, may not be imputed altogether to that Want of Oeconomy, and an extravagant Way of Living too fashionable in the Colony. I will endeavour to give some other Account of it, besides the smallness of the Provision at the best for the Clergy. I was out near Two Hundred Pounds Current Money, to be valued by the Exchange as it stood some Years ago, in Damages sustained on my Glebe, for want of Necessaries to make it properly mine, and in providing the said necessaries against future ravages; for which I never desired any return. It has cost me a considerable Sum out of my *own* Pocket, in contending to make other Professors, as well as myself, useful at the College, in endeavouring to obtain for them, so much Command over their Pupils, and the Servants of the College, as is necessary for the Education of the former; and that the Masters may not be deprived, without a Hearing

* See at the end of the Appendix an excellent Sample of Col *Carter's* charitable Temper, and manner of Writing, under the pressure of a grievous Calumny. In which he modestly justifies his sole Claim to the merit of Founding, what he Honours with the Title of an *extensive* Charity School; shews himself a perfect Master of vituperative Language, in Opposition to certain *cloven footed* Gentry *born to Dignity and Figure*; and in the laudatory way, to invite applause as well as discourage Censure, demonstrates, how finely he could *enamel* with grateful Panegyrick, if he had an Opportunity, any Gnathonick Trumpeter of Encomiums on his Charity.

for no Crime alledged, but that of Sickness, or that of not contradicting any Law of the Society. This I may perhaps take some other Opportunity to enlarge upon for the information of the Reader. I have had some Losses by Sea, my Tobacco having been sometimes taken by the Enemy; and it never enter'd into my Head, that the Assembly, or any Body else, were to make up the Damage to me; but I thought it my Duty to bear the cross Accidents of Life without repining. I have made these Pleas, as not desiring to be thought either ashamed or proud of my Poverty; though, of the Two, I would rather chuse to have Occasion for the latter, than the former. When Poverty is brought upon us by our own Fault intirely, or moves us to mean behaviour under it, we have Reason to be ashamed of it; it is truly disgraceful. There is no knowing how a Man would Act in the last Extremity; but I think I should suffer a great deal before I could be too importunate for Relief; much more, before I could take upon me the Character of a Sturdy Beggar, and, like my two Rich Opponents, most unmercifully Abuse those, who are confessedly unwilling to bestow their Charity upon me, after I had first taken care to get enough from them to satisfy my present need, without asking their consent or being beholden to their good will. It is amazing, that these Writers should not be aware, that the Clergy may, with more Reason, urge the Plea of Poverty for obtaining their just and legal Dues to the uttermost Farthing, than these Writers can plead Poverty for the rest of the Community, for the Rich as well as the Poor, but particularly the Rich, to justify the withholding from the Clergy, their just and legal Dues, and transferring them to the greatest Gainers by that Scarcity, of which there has been so many exaggerated Descriptions, and so much ill-grounded Complaint.

I am no less astonished at Col. *Bland's* casting the Conduct of *Archbishop LAUD* in our Teeth; and not forgetting to compare us to *Romish Inquisitors*; and this too for secret Machinations; though he knows every Thing that passes among us, and more too, than I am with Col. *Carter's* seeming to dread some design upon his *Tithe Pig*. Had the former but just reflected upon his own Practice of Officiating as a Clergyman, in the Churches of the Parish, wherein he makes the most Conspicuous Figure; on his Reading the Public Prayers, and Delivering Sermons there, he might have found a fitter Parallel for the present State of the *Virginia* Clergy in the Time of *Cromwell's* Preaching Colonels, than in that of the Reign preceding; and, that a professed Friend of the Church of *England* should even betray a wish to see the Clergy of it Lower, who are already unable to secure either their small

Stipends or their Office from invasion, not to mention the illiberal Freedom with which their private Characters are Traduced, is a moderately striking Phoenomenon in *this* Region. It is to be sure happy for us to have Laymen, who are not only infallible Judges of a Clergyman's Duty and Merit, but can perform such eminent Parts of his Office as well as himself; because, where this is the Case, there is the less Occasion to provide a good Maintainance for the Clergy, or for being punctual in paying their appointment whether it be great or little; the Office being by the same Means preserv'd from that Contempt, which justly falls upon the Person of the Minister. Yet if a Parson was to go into a Muster-Field, and take upon him to Exercise the Colonel's Troop, in the Colonel's absence, I make no doubt but such an Impropriety would be loudly condemn'd as an heinous Offence and unseemly Usurpation.

Col. *Bland*, I think, speaks pretty plain in comparing the Prerogative of the Crown of *Great-Britain* to the King of *Babylon's* Decree, in that Topick of his Encomium on the Governor, where he judiciously extols him for not letting the People *feel the Weight* of the Prerogative; but chiefly with Respect to my present Subject in his maxim of *Salus Populi est Suprema Lex*, for I cannot bring it any other way to suit his Purpose than by construing it thus, *Salus Populi*, to take as much as shall be thought necessary, and as often as thought necessary from the Incomes of the Clergy, and dispose of it chiefly among the Rich and Wealthy and Successful, and not quite excluding all of the Poorer and Distressed sort from their share in the Booty, *est Suprema Lex*, is a Law of the first obligation, and therefore must take place of any Law confirm'd by the Crown: This maxim was advanced, though somewhat differently interpreted, to suit a far different Occasion, at the glorious Revolution, to which we owe innumerable Blessings. It was then produced for setting aside an arbitrary Popish and Abdicating King; and now it is prostituted towards setting aside the useful Authority of our late and present most just and benevolent Sovereigns; but tho' it was Apposite and Rightly used for the former Purpose, I hope it will never be available for the latter, or come to be esteem'd suitable to any Occurrence that can arise from a short and *valuable* Crop of Tobacco: When the Clergy think themselves aggriev'd by any Thing done here, and seek a Remedy for the supposed Grievance, by Methods which they are advised are legal and free for *British* Subjects to use, under apparent Injury, a great Cry is industriously propagated against the Clergy; representing them as disturbers of Government and Factious

contemners of Authority. So far all goes well; and while it is kept in this Key, the Song of Authority is sweet and ravishingly Delectable; but if it happen to be taken a Note higher, then the Musick becomes altogether harsh and dissonant. If the Clergy appeal to Authority, and pretend that Authority as well as Equity declares on their side of the Question, if they talk of the King's Power and Authority, then truly they are warned of the Danger of the Prerogative; are put in Mind what dreadful Feats it perform'd among our Ancestors; are carried into *Asia*, into the most despotick Regions and most antient Times, to be shewn the Scenes of Terror exhibited by the Decrees of the Kings of *Babylon*; as if any Thing of a similar Nature was to be apprehended in these Days, under such Sovereigns as we are and have long been blest with; to whose singular concern and tenderness for the Happiness of their People, we are bound in the strongest ties of Gratitude, and, to whose Decision no one, who has any Opinion of the Uprightness of his Cause, or sincerely desires, that Right may take place, need to be afraid of Appealing. Methinks there is some inconsistency in this Conduct of those who differ from us on this Occasion, of Men, who seem to be rigid Exactors of Attention and Obedience to Authority, while she builds and feathers her Nest in Shrubs and Bushes: But Advocates for the softest indulgence and remissness, when she mounts higher and utters her Voice from the Top of the *British* Oak. However, be that as it will, I frankly confess my Sentiments to be, that if we could destroy the substance of the King's Power, or the Rights of the Crown, or the Prerogative, I care not what you call it, and reduce it to a mere Shadow, to something that has no *Weight*, is not to be *felt*, we should only hereby Sap one of the strongest Batteries, erected for the defence of Liberty and Property. My Enemies are welcome to make the most of this Confession; but if my Brethren should entertain the same Sentiments, whatever may be the Opinion of Col. *Bland*, and his Adherents, gather'd from former Times and distant Governments which have no Resemblance with ours, I hope they will permit us to take Shelter in our Distress, under the Wings of the Prerogative; under the Protection of a most Gracious and Religious Monarch, eminently and illustriously attach'd to the true Interests and Felicity of his Subjects.

But Col. *Bland* allows, that nothing except *the most pressing Necessity* could excuse the Passing such an Act, as that which chiefly prompted our Complaint and his rambling Declamation, as contrary almost in every Instance to the Truth, as it is foreign to the Purpose: And if Col. *Bland* will

stick to this, I think all that is worth debating about, between us, is at an End; for it must appear, from what I have already offer'd to the Public, not only, that such an Act was Unnecessary, but that the Nature of Things do not admit of a possibility for such an Act to be necessary. For how, in the Name of Wonder, can any Calamity, tho' set off with all the aggravations of Col. *Bland's* fruitful Pen, make it Necessary to take from the Poor and Needy, and distribute the principal part of what is so taken, among the Rich and Wealthy; nay, among the Gainers by that very Calamity? That the Clergy are, and must be, Poor, I will borrow a Proof from Col. *Bland*, who says, that they never generally receiv'd for one Year, so much as an Hundred and Forty-four Pounds Current Money a piece: And that they, who were to be Benefited by the Detriment of the Clergy, are chiefly the Rich and Wealthy, and many of them great Gainers by the Calamity, has been sufficiently shewn already. This Point needs no farther illustration. However, take the following: If there had been a Proposal for an Indulgence to such as were used to raise Tobacco to pay their Levies with, and could not raise it in the Scarce Year, that they might be excused from paying any Thing that Year, provided they should be obliged to pay the full Value next Year, according to the Price which the Clergy had actually sold the rest of their Income at, in the scarce Year; would not the Clergy have agreed to this? Was not this, or something like this, all that could be Necessary? And if so, could the Act which went so much farther, be Necessary? If there should be some Necessity for departing a little from *the establish'd Rule of Right*, as Col. *Bland* Justly calls it, Can there be any Necessity for going Beyond the Demands of Real Necessity? Yes, says the Colonel, we did not chuse the tedious employment of inquiring too minutely into the Real Necessity, it was difficult to make every body, who was advantaged by it, pay to the relief of it; there was a Lion in the Way; and therefore, to save Time and Trouble, it was necessary to go beyond the Demands of Real Necessity, as far as, in what Manner, and for what Purposes, we pleased. He might as well say, that when he wants a Coat for a Pigmy, he will direct his Taylor to take Measure of a Giant: Or, that in such a Situation, he will order Cloth enough for a Giant, lest the Taylor should complain for want of Cabbage. And why not? when the Cloth is not only to cost him Nothing, but he is also to go Snacks with the Taylor in the Cabbage. However, they who suffer by such severe attacks upon the Cloth, cannot help wishing, that he would be more sparing of it; and may well take up the speech of the poor Frogs in the Fable, who could not pop

their Heads above Water with safety, and tell the pelting Boys, *This is Sport to you, Young Gentlemen, but it is Death to us.*

But let us try what can be made of this always suspicious Plea of Necessity; this Plea, constantly used in unjustifiable Cases, when nothing else can be said; this Plea, upon which Col. *Bland* rests his whole Defence. Let us try, I say, what can be made of it, when admitted for Argument's sake in the utmost Extent that Col. *Bland* can desire. Col. *Bland* allows, that an Act, *interfering with one confirm'd by the King, and passed without a suspending Clause, can be justify'd by the most pressing Necessity alone.* Four Acts complain'd of, agree in the peccant Circumstance and the justifying Occurrence, by which alone according to him such Acts can be justify'd, is urged only in behalf of one of them; and it is not so much as pretended, that it is applicable to more of them. This Plan of Defence therefore proves three Acts out of four totally unjustifiable. And what can this most pressing Necessity signify towards exculpating the fourth, when we resume our first position and deny it not only to have had a real, but a possible Existence? What Necessity was there for Passing the *Norfolk and Princess-Ann Act*, or the Act for the Frontier Parishes *without a suspending Clause*? What Necessity was there for the general Act, which affected the whole Clergy in 1755; by which several suffered, and one in particular was defrauded of about Twenty Pounds by the Collector, who received Tobacco from the People and paid off the Parson in Money, as the Act directed; and who was therefore in Col. *Bland's* mild, moderate, and decent Stile, *a Beast of Prey; a Harpy left to feed on the Vitals of the poor Parson without controul.* There was just as much Necessity for all this, as there was for stinting the price of Corn at Twelve shillings and Six pence a Barrel; which all the Year afterwards did not sell higher than at Ten Shillings. In Truth, the late Assembly, being fallible, as well as other Societies of Men, have frequently suffer'd themselves to be imposed upon by frightful Descriptions of approaching Scarcity; which may serve as a Warning to their Successors against too hasty credulity concerning Accounts of the Crop, at a Time when it cannot certainly be known how it will turn out.

Col. *Bland* seems displeas'd that the Clergy should complain of the particular Acts agreeable he says to the Ministers concerned (how far they were so we shall see by and by) as well as of the general Acts. I will therefore let him know how these particular Acts came to be taken Notice of by the Body of the Clergy. When some of them applied to Governor *Dinwiddie* to beseech a Negative on the General Two Penny Act in 1755, he, readily

condemning the Act, as contrary to Law, Justice, and his Instructions, at first Approved of their Petition, and finally gave no Reason for Rejecting it (besides his Fear of Displeasing the People) but that the Act confirm'd by the Crown had been already broken through by the particular Acts: And for a Proof of this, he was pleased to call in Col. *Tucker of Norfolk*, as an Evidence: The Clergy hereupon took this Matter into consideration, and found the particular Acts not only grievous in their own Nature, but used as steps and precedents for injuring the whole Clergy. I have charged Col. *Bland* with the want of Truth and Ingenuity in many Instances; to Trace out every one of which would carry me farther than there is any need to go on this Occasion; however, that I may not appear to have made this Charge without sufficient Reason, I shall single out a few Capital ones: The first that I shall mention, concerns a Matter of Fact asserted in the most positive manner, as thus, "I myself have heard the Minister of *Norfolk* (who lives in great Harmony with his Parishioners, and is much Esteem'd and Respected by them) declare," he was perfectly satisfied with it (the *Norfolk* Act) "and I believe it would be no difficult Matter to prove, that he fell under the severe censure of these Memorialists because he refused to enter into their Measures." To which, I answer, I myself have heard the same Minister, since the Publication of this confident Assertion, Declare before Evidences, that he did not know there was any such Act as the above in Agitation, 'till long after it had been Passed; and, that from the Moment in which it came to his Knowledge, he always expressed an utter Dislike of it. I myself have heard one of this Minister's Parishioners, a Person of undoubted Credit, as well as the Minister, declare, that to his Knowledge, this Minister had always expressed his strong Dislike of the Act. And I myself also declare, that I believe it would be a very difficult Matter, for Col. *Bland* to prove, that this Minister, deservedly esteem'd and respected by his Parish, was ever severely censured by any Memorialists for not entering into their Measures. The Ministers, concerned in the other particular Act, might, for what I know, be well satisfied with it. But why? Because they, or their Predecessors, had been before contented to take the poor pittance of Fifty Pounds Current Money a Year from their respective Parishes, rather than go to Law, of which they were not able to bear the Expence. And pray where now was the Wonder, that they should prefer a lesser to a greater Evil? Col. *Bland* has given us some Account of a famous Petition of the Clergy, in which I own I see no mighty Harm, provided it might stand Alone, without the Colonel's

Comment. Had it been offer'd in the Behalf, instead of being offer'd in the Name, of the Clergy, they would have had less Cause to be offended at it. I could have wish'd too, that it had been so nicely Worded, as not to have been liable to be interpreted into any implied Censure by the most strained Construction: Particularly that there had not been in it the doubtful Expression *so many*, which is capable of being taken by two Handles; the worst of which this Commentator has not fail'd to lay hold on. This Petition, he says, was disclaimed by *some* of the Clergy. It was indeed disclaimed by many of them; but not for the Reason he mentions. It was not Owned by any more than One Clergyman, who designed Well; but, whether he was strictly justifiable in doing what he did on this Occasion I will not determine. No more than two Clergymen were privy to this Petition; and one of them had scarce Time to Read it over, it having been only shewn him in the Lobby immediately before it was presented. Be all this as it will, the Petition must be Argued upon, as if it had been the Petition of the Body; tho' at other Times such of the Clergy, as think proper to attend the regular Summons of the Bishop's Commissary, must not expect to pass with Col. *Bland* for that Body; no not when almost all the absent Members send excuses for the want of their Appearance, together with their Concurrence in the Measures proposed by their Brethren. It is Matter of pleasantry to observe concerning this vilified Petition, that the Author of it did not prefer it from any Imagination that there was Room to expect Success in it, but to evince the contrary by Experiment, to such as might be weak enough to entertain a Notion of Success in this way at that Time. This is a Piece of secret History, a Stratagem, a Machination, which it seems Col. *Bland*, with all his Sagacity and Insight into every body's Affairs has not been able to penetrate. And though it may seem not altogether fair and quite contrary to the known Openness and Sincerity of the Person I am speaking of: Yet, if it was proper to dwell any longer on this Circumstance, a very good Account might be given of it. But thus much Col. *Bland* might have known, if he pleased, that it was not the Petition of the Clergy; for most of the Assembly knew this a Day or two after it's Presentation; and were first offended at such a Petition from the Clergy, and afterwards chagrind to find that it did not come from the Clergy. Part of the charge on this Petition is a generous Inference drawn from it, that if the Provision for the Clergy was to be made better by an Act they would make no complaints concerning encroachments

on the Authority of the King. To make this Inference good, it should have appear'd in the Petition that the Clergy wanted a better Provision by an Act *without a suspending Clause*. But there is no such Thing in the Petition: And I believe it would be a difficult Matter, for Col. *Bland* to prove, that the Clergy, though willing enough to have a better Provision, would accept of it by means of an Act *without a suspending Clause*. However this way of Arguing is an Acknowledgment from Col. *Bland*, that in his Opinion the Clergy would not have complained of any Act, had their Condition not been made worse by it: Yet he says of the Assembly, *they did not attempt or even entertain a thought of abridging the Maintainance of the Clergy*. This Man knows every body's Thoughts; not only beyond, but even contrary to, their professions. For it cannot be forgot, that every body declared their expectations of Forty Shillings a Hundred for their Tobacco, at the Time when Sixteen Shillings and Eight pence a Hundred were prescribed to the Clergy; nor that several of the Members publickly threaten'd, that if the Clergy would not be content with Two pence a Pound, they should very soon be compell'd to take a penny a Pound, nor that a much less price than Sixteen Shillings and Eight pence a Hundred was put to Vote in the House of Burgesses; nor that some one of the Members cried out for Five Shillings a Hundred, whether this last Person was a Friend or a Foe it Matters little, since either way it shews his Opinion of what was then a doing.

I hope there is no Occasion to enter into any more particular refutations of what is affirmed by this Writer. If it was in Character for me to return his own civil and temperate and genteel Language upon him, I should say this *rude, infatuated, atrocious Writer; this utterer of palpable Falshoods, who, if he can but carry the Ends of a Hot and Violent Demagogue with the People despises the scandal of Detection; whose unpunished Behaviour alone is a sufficient proof of the Mildness of the Administration,* (at least how far some Men are freely permitted to go with Impunity: Nay with no small Share of Applause in the Abuse of others) with all the rest of his hurly burly vociferous verbosity, applicable to no Creature living, more than to Himself; not excepting his Brother Brawler (to compliment him too in a kind of Language, which he loves to use) that Boreas of the Northern Neck, who has bluster'd so long and so hard, to blow down, if he could, all the Professions, and reduce his Country to a primitive State of Barbarity; and when he cannot bring his Friends and Neighbours to

join in this ennobling Project, with singular Moderation, Humility and Charity, Bellows out, *O Northern Neck! Opprobrium Judaicum!*⁴ *No good can come out of Nazareth.*

There is one Observation in Col. *Bland's* Pamphlet, not altogether destitute of Truth and Sense, and 'twere a Sin to rob him of his Mite. This is concerning the Patronage of Livings. The Clergy knew, that some Persons piqued themselves upon a Point carried against them in the Law of 1748, with the approbation of the Bishop's Commissary. They consider'd the Laws and did not find the Presentation to Livings mentioned before that Law. They procured this Matter to be examin'd by better Heads than their own for such an inquiry; which also fell into the same Mistake. The Reason of which was, that the old Law by which the Presentation to Livings is placed in the Vestries so long ago, is not referr'd to in the subsequent Laws. However the Lords of Trade pointed out this old Law; and this Matter was immediately given up as a Mistake: Upon which I must have Leave to wish, that every Body else were as ready to part with their Errors, when *detected*, as the Clergy, who do not pretend to be Infallible, nor allow Infallibility in other Men; neither are they willing to be Governed, whatever Col. *Bland* may insinuate, by any Popes either Ecclesiastical ones or Civil ones. I wish too, that the two Pamphleteers would have rested satisfied to leave the Difference between them and the Clergy, in the Hands of the ordinary Courts of Justice; of the Right Honourable the Lords Commissioners of Trade and Plantations; of the most Honourable the Privy Council, and his most Gracious Majesty: Who, if the Clergy had been so weak as to design such an Imposition, cannot be imposed upon by them. When these Writers shall be pleased coolly to consider this; they certainly cannot persist to think that they, who under the Persuasion of suffering a most singular Grievance, a Grievance never heard of in the Mother-Country, appeal to the most disinterested and impartial Judges; to Judges brought up in the true Notions, and nursed in the Bosom of Liberty; and confine themselves within legal Methods of Complaint; that they, I say, are more properly stiled Clamorous, than those, who in inflammatory Harangues, and scurrilous Pamphlets, stuffed with personal Accusation and private Malice, appeal to the common People of *Virginia*, liable enough (GOD knows) to Imposition, or else such Writers would not attempt to persuade them out of their Senses.

4. ["Jewish disgrace."]

I am not ignorant, that others as well as these Writers, have taken Offence at the Clergy for carrying their Complaint to *England*. I cannot think that any *British* Subject has Reason to blame another, for making Use of that happy Privilege, which every *British* Subject enjoys, of approaching the Throne in an humble Petition. However, in the present Case this Measure was unavoidable: The late Commissary was desired to call the Clergy together; that they might meet at the same Time with the Assembly, who, according to Report, were going to pass an Act, in which the Clergy understood themselves to be very much concerned; but the Commissary, not being under the Influence of the Clergy, or in their true Interest, refused this Request: When the Assembly were met, the Speaker was applied to, that some of the Clergy might be heard before a Committee, upon the Bill depending, by themselves or their Counsel; which they imagined was agreeable to Parliamentary Proceedings; the Council were applied to for the same Purpose; the Governor for a Negative on the Bill; all this without any Kind of Success. And now where were the Clergy, thus rejected by every Branch of that Part of the Legislature which resides here, to go, but to the Fountain-head; where they might hope to be heard; where they acknowledge with the most submissive Duty and Gratitude, they were heard; and where they entertain the most pleasing Hopes they still shall be most graciously heard. I will conclude this Paragraph with wishing, that the two Colonels, when they write next, would be pleased to make a Distinction between a loyal Attachment, which was never called in Question, to the present most illustrious Family on the Throne, in Opposition to *Popish* Pretenders, and an Aversion to lessen the Authority of the reigning Prince; two Things as obviously distinct in their own Nature, as they are manifestly and totally confounded together by these Writers, too rapid with Rage and Rancour to be free from Foam and Froth, and to flow in a gentle and pellucid Stream of Precision.

It has often been urged as an Argument against the Reasonableness of the Clergy's Complaint, that the Secretary, the Clerks and other Officers of the Law, suffered a greater Loss by the Act than the Clergy: It is granted, that they did so; but two Things are observed at the same Time, which make the Case of these Gentlemen, and that of the Clergy widely different. If they lose more, it is a Proof, that there is a much better Provision made for them than for the Clergy; and they can therefore better afford to lose a great Deal than the Clergy can afford to lose a little. In the other Point, the Clergy have

the Advantage of the Gentlemen of the Law: For the Provision of the latter is Temporary, confessedly changeable by the Assembly alone; and hence a good Reason arises, why it may be Prudence in them to be mute, and make a Merit of their Silence; while it concerns the Clergy to complain; not that they are, or ought to be, more willing than other Men to part with what belongs to them; but for fear the Remedy should prove worse than the Disease. This Account of the Matter is confirmed by a late Attempt of some Gentlemen of the Law, to have their Fees placed upon a better Foundation.

However, if all this was otherwise, I am so far from finding any Consolation in seeing my Neighbour's Goods taken away from him, as well as my own from me, that I shall always rejoice at the ill Success of the Blow aimed at the Merchants, as one good Effect of the Complaint set a foot by the Clergy, and seconded by the Merchants; even though the Clergy themselves should never be one Penny the better, but much out of Pocket by their Attempt. But at the same Time I own I am at a Loss to know, what good Reason can be given for an Order by the late Assembly, to support all *Vestries* against the Appeals of the Clergy, and no Order for supporting private Contractors against the Merchants: Since if they were minded to support the Validity of their Act, they should have supported it, one would think, against one Set of Men as well as another. What a Pity it is that the Clergy are not all Good! since in that case, if we may venture to reason from what Col. *Bland* says of the general Respect paid to *well-behaved* Clergymen, the Body would not have been thus singled out as the Mark of peculiar Resentment.

I have heard the Word *Constitution* urged in conversation, as something that the Clergy were endeavouring to Overturn by their Application to legal Methods of Complaint, under their present pretended Grievances; and Col. *Bland* seems to lean this Way, when he discovers an indignant Fear (Real no doubt) that his Condition was going to be made like that of a *Galley Slave in Turkey*, or an *Israelite under Ægyptian Bondage*: How solid by the Bye is this Innuendo! How consistently it comes from such a Disposition (so void of Tyranny and Insolence) as is discover'd in Col. *Bland's* Pamphlet. The Colonel if he pleases, may set his Heart at rest, and be assured, that no body desires to see him reduced even to so bad a Condition as that of the *Ægyptian* Bondage of his own Slaves. But setting aside this ridiculous Intimation, that the Clergy in a contention for Property, the general Property as well as their own, have shewn themselves willing to introduce more Slavery into the Colony than is to be found there at present; if the Argument about the

Constitution be rightly urged; if the Clergy can make a Breach in it by Petitioning the Crown, or having recourse to Courts of Judicature; I am afraid Injustice, under the Name of *Charity*, *Necessity*, or some other good-natur'd Term, but by no Means under so ill-sounding a Title as that of *Rapacity* is like to become Constitutional: And if so, the Clergy cannot possibly have any Provision, but what is totally precarious, not certain or establish'd in any Degree whatsoever, except the mere Will and Pleasure of some, who have been pleas'd to shew their ill-will, not to Individuals, but to that Body of Men, can merit such an Appellation. I do not know whether it is safe for me to meddle on so nice a Point, in which I may easily Wade out of my Depth: However, I will venture a few Words, not as declaring what is, or what is not, Constitutional, (I leave that to those wiser Heads who are every Day to be met with) but what possibly may be Right; and is so, for any Thing that I know to the contrary; and I will hope that my Ignorance, if I mistake, may be excused by *the mildness of the Administration*. I have heard that one of the revised Laws, making some Alteration in Land Affairs, because it contradicted a Law confirm'd by the Royal Assent, laid sometime Dormant and Unobserv'd for want of the like Assent. I have Reason to believe, that a power to pass Laws that interfer'd with any confirm'd by his Majesty *without a suspending Clause*, was never claim'd by the Assembly, till very lately, when they pass'd several Laws of this kind in respect to the Clergy: And if so, the passing such Laws must appear in the Light of an Innovation; the removal of which must be no less than adhering to, and preserving the Old Constitution. I look not on the Colony as a little independent Sovereignty; but as having a particular Connection with the Mother Country and dependent on the Crown of *Great-Britain*: And I know not in what this dependence can more properly consist, than in the standing uninterrupted Validity of Laws confirm'd by the Crown, until they are Repeal'd or Suspended by the same Authority. I am confirm'd in these Notions by considering, that the Natives, and those who reside here, have the Power and Riches of the Mother Country for their Defence against their Enemies; that they hold their Lands of the Crown; that they have the same Rights in the Mother Country as other *British* Subjects, that consequently other *British* Subjects have equal Rights here; that those Subjects, who Trade hither and have considerable Effects here, tho' residing in *Britain*, are properly a Part of the Colony, whose Interests must be attended to, as well as that of those who reside here; and that if those, who reside here, could at pleasure suspend Laws

confirm'd by the King, (which seems a Thing of the same Nature with a dispensing Power in the Crown) could dissolve all Contracts; could put every body in the State of Minors under Wardship; rendering them as little able to make Contracts as they are compellable to comply with them when made, could discharge Tenants from the Payment of their Rents and Arbitrarily dispose of every Man's Property: The Subjects residing in *Britain* would probably be as unwilling to Trust their Property here, as in any Foreign Kingdom independent of the Crown of *Great-Britain*. If Dependence be one of our Fundamentals, and such a one as we cannot even subsist without, our Security against our Foes and against one another, it is our Interest and our Business to know wherein it consists, and fulfil the Obligation. Nothing I apprehend is to be got by mistaking our Situation; for whatever we Build on so sandy a Basis, can only serve to Tumble about our Ears and crush us in the Ruins. However I only speak herein my own sense, which I desire to obtrude upon no body. I only hope, that my Adversaries will allow thus much, that in a Dispute between the Authority of the Crown and that of the Assembly, it concerns the Clergy and all loyal Subjects to find out by all legal Methods, what is their Duty, who are their Sovereign Masters, and whom they ought ultimately to Obey. If his sacred Majesty please to give up any Part of his Authority and Royal Prerogative, the Clergy most undoubtedly must submit: But in the mean Time, let them stand excused for wishing to see that, which after the best Information they can get, they esteem a Part of the Constitution equally valuable for supporting Liberty and Property and for Maintaining the Dignity of the Crown inviolably preserv'd.

What should make the two Writers take such unnecessary Pains to shew, that the present Governor had received no pecuniary Gratification from the Assembly at the Time of their Writing, not even the *common Compliment*, as it is called, they best know; what this has to do with the Subject which they undertake to discuss, must be left to themselves to explain. I do not believe, that any of the Clergy ever imagin'd the Governor to have receiv'd any Reward for passing the Two-Penny Act, except the Pleasure and Satisfaction of Obliging it's Friends and Promoters. For my own Part, I never suspected that the Governor had receiv'd any Present from the Assembly at the Time when these Gentlemen wrote their Pamphlets; any more, than I now suspect the Present, which he has since receiv'd, on the Motion of one of these Gentlemen, to have any Relation to the Two-Penny Act. If that Present be any Thing more than the usual Compliment, the Excess is not worthy of Notice, not enough

to compensate for it's inferiority in Point of Time, when compar'd with other Presents of the like Nature. However if the Two-Penny Act should remain as a Precedent, to shew what might Occasionally be taken from the Clergy without the King's Consent, I cannot say but some of the Clergy would be apprehensive, that future Governors might possibly be influenced by Motives which his present Honour is above; and so a Present, out of the Revenues of the Clergy to other Men, might in Process of Time become as common a Compliment on the arrival of a new Governor, as a Present from the Assembly to the Governor; and I think the very Introduction of such a Topick by my Adversaries before the Public, shews that their Sentiments are not far wide of mine, if I should adopt such an Apprehension.

I am not to learn, that Modesty and Impudence, or in other Words, Rudeness and Politeness, belong more to the Station of Men than to their Behaviour in them; and make no Doubt of falling for the Freedoms I have used, even among many who call themselves *British* Subjects, under the Imputation of factious Insolence; while my Adversaries are graced with the generous Praise of having demeaned themselves on all Occasions with Temper and Decency. I could have wished indeed, that the Arguments on both Sides might have been considered independent of Names and Situations in Life: But my Adversaries, being Persons of Figure, began the War in such a Manner as to shew, that the doing this would, in their Opinion, be parting with their strong Holds. It is plain enough that they thought it inexpedient to *give*, and esteemed themselves far above the Apprehension of having Occasion to *take* Quarter. The Manner of my Defence has perhaps been too much directed by the Conduct of the Attack. I acknowledge that I was at a Loss how otherwise to discharge myself; when in my Judgment I had to do with Hectoring Bullies, more considerable for fierce Language than true Spirit. I found it too great a Difficulty for me to let the Merit of their Example be entirely thrown away. I must therefore now prepare to muster up as much Courage as I can, to stand my Ground: Expecting no other than to be peppered off with Vollies of Small Shot, after having borne the Thunder of the Great Guns, from the Forts of the two Colonels, and perhaps other tremendous Batteries, *founded upon* boasted *Rocks of an impregnable Stability, under the Command of Engineer Reason*, as one of the Colonels has it, in a former modest and unanswerable Pamphlet, written to the Merchants of *London*, and designed for the Information of the Lords Commissioners of Trade and Plantations. But what Terrors are sufficient to make a free

British Subject cold in the Cause of Common Sense, Common Justice, and Common Honesty, when their Enemies are formidable, and would triumph over them, under Pretence of soaring to superior Heights of Virtue? Such Heights of Virtue as lie hid in the Clouds of an Understanding sanguine enough to make sure of Victory beforehand, and certain to rage under a Defeat, when it cannot bring every other Imagination about it to partake of its Reveries, and embrace Phantoms for Substances. Yet, that I may, if possible, soften the two Colonels, and contribute towards rendering their next Fire less cruel, and such as will not wound me with chewed Bullets; I humbly entreat them to consider, whether they have any Reason to be angry, if I have at last endeavoured to scrape off some of the Dirt, which they threw so liberally, and return it to the right Owners; or, to change the Allusion, for one perhaps as proper, if I have taken out, at last, what they owed me for Cash and Reputation, in their *own Way*, after giving them the *usual long Credit*. I hope they will consider, that so far from treating them thus publicly, with too much plain Dealing and Asperity, my Intention was not to answer them at all, any otherwise than by a Trial in the ordinary Courts of Judicature; till I was advised by my Friends, that This was too long a-coming, and the Colonels would have Reason to think themselves neglected. And finally, since I am in the Humour of Hoping, I hope the Colonels will think, that I have been punished enough in sustaining the Reproaches already cast upon me; in missing, as several of the Visitors stick not to affirm, an Election into the President's Place at the College; in having been forbid, with others, the late Governor's House, under the Title of Disturbers of his Government; in having been recommended by him, in Conjunction with others, to the Correction of the Grand Jury for being so audacious as to publish under our Names, an Invitation to as many of our Brethren, as were willing to attend, for them to meet us at a Brother's House, before he left the Country; in having been forbid the present Governor's Palace, when I waited on him with the Royal Disallowance of several Acts; in enduring, for some Time, an annual Commemoration or Renewal of this Prohibition; and in losing, no Doubt, many good Dinners, as well as agreeable and improving Conversations, both at the Palace and other Places, *cum multis aliis quae nunc perscribere longum est*.⁵ All this, which some in my Place would call a Persecution,

5. ["Together with many other matters that it would be lengthy to write," i.e., and so on, et cetera.—Tr.]

but my Temper does not incline me to inflame either my Readers, or my own Resentment, with any Expressions of so sour and aggravating a Cast; all this, I say, has happened to me, for what is called my Obstinacy, but what notwithstanding, I have the Pleasure and Satisfaction of thinking a Regard for Justice, Learning, Religion, Liberty and Property, and the Public Good, unabated by too scrupulous a Concern about what Calumnies might be uttered to my Disadvantage, or what other ill Consequences might follow to myself. A Thought which I shall undoubtedly hold fast and enjoy, as a Fountain of Consolation in my Troubles; until I find better Reasons for parting with it, than have hitherto appeared.

N. B. In looking over the Calculation at the Beginning of this Piece, I find a Mistake. The Assembly's Allowance of Two pence a Pound was not on nett, but on transfer Tobacco. In consequence of which I have given them Credit for Eight Pounds Sterling less than I ought to have done. My supposed Loss therefore will not amount to Two Hundred Pounds Sterling; but only to One Hundred and Ninety-two Pounds; and a Twenty-fifth Part must also be deducted from the supposed Savings of every Person in the Catalogue. If any one think Fifty Shillings a Hundred for my Tobacco, too high a Rate for the scarce Year; or the Exchange allowed for that Year not high enough; then my Loss will be the less; also the Relief to the Poor and Distressed will be diminished; and the Gain too to the Opulent and Successful will be more moderate; these being all inseparably linked together in one Chain. If there be any other Mistakes in the above Piece, I shall without any Kind of Reluctance, acknowledge myself under Obligations to him, who will bestow the Favour of just Corrections upon them; my chief View in this Undertaking being to have the Matter placed in the truest Light, and determined in the exactest Manner possible. The intelligent Reader will observe, that I have not calculated what ought to be paid me in case of my Recovering; but only my supposed Loss, and the supposed Savings of other Persons, by the Act. I have therefore said nothing of Interest for lying out of my Money, or of the Costs of Suit. If any shall appear hereafter on this Subject; if they shall dismiss all personal Invectives; if they shall forbear Writing in such a Manner, as if they thought the Clergy of *Virginia* answerable for the Conduct of *ROMISH INQUISITORS*, &c. because they may be comprised under the same common Name of *CLERGYMEN*; which is just as if we should reproach particular Laymen, with the Cruelties and Oppression of other Laymen; which is treating Men like Children; and aiming to scare

them with Bugbears, is merely combating the Air, and neither better nor worse than so much of *nothing to the Purpose*; I say, if this Behaviour, and all other extraneous Reflections shall be avoided, it will cut the Business short, will probably save a great Deal of Ink-shed, and tend to lessen the Increase of Waste-Paper. But if the old Method of Reply shall be chosen, I cannot promise that something of the same Leaven will not diffuse itself through the Mass of the Rejoindre. For this seems necessary, if it be but out of pure Complaisance to the Patterns given by such genteel Opponents, such discreet Adversaries; who understand so well wherein their Strength consists. To be plain and serious; we desire not any Truth, or sound Argument, to be suppressed for our Convenience; but only the trifling Arts of intemperate Declamation.

The Appendix.

The following Letters are Published, to shew, how an ordinary Inhabitant of *Virginia*, may be run down, even in Print, with all the Appearance of Openness and Intrepidity, in challenging him to an Answer: While he is actually debarred of Using that Privilege, and his not using it, is at the same Time taken for a Confession of the Justice with which he has been censured; the Press being open to Abuse, but not to Disabuse.

To Joseph Royle, Esq; Keeper of the Public Press.

Dear Sir,

I have been misrepresented and abused from your Press, by Col. *Richard Bland*, and Col. *Landon Carter*. The former has challenged me, as to certain *atrocious Crimes*, which he has been pleased to accuse me of, to make the most public Defence *here*; where Facts relative to the Dispute between us are already known, or of easy Examination. I have never in the least blamed you for accommodating these Gentlemen with the Use of your Press, to assist them in the above Undertakings; because I judged, that your having done this, would, in your Opinion, lay you under Obligation to grant me the Use of the same Press, whenever I should be moved to answer their Accusations. Which Obligation, if you should refuse to fulfil, you will shew beyond Contradiction, that you want either the Inclination, or the Permission, to keep a Free Press.

I desired the Use of your Press some Time ago, and you told me that the Press was engaged in indispensable Duty for the Present: Which Excuse I

admitted to be reasonable. I now repeat my Request, and beg that you will either publish what I have to say, in my own Vindication, with all possible Dispatch, or else, that you will, in a few Days, give me an entire Refusal to publish. If the former be your Resolution, keep this Letter by you, to shew any who may be inclined to censure you for lending your Press to me, that you could not do otherwise, consistently with your own Honour, or that of the Public. But if you will not publish a Defensive Piece for me, as well as Offensive Ones against me; in that Case, let this Letter at least, appear in your Gazette, to satisfy my Friends and my Foes, that I have been called upon to vindicate myself from the Press *here*, and have not been permitted to do it *here*; and that therefore this Letter and the Piece, which is made the Subject of it, will both be published in *England*. I heartily wish you well, which is all in the Power of

Your real Friend,
JOHN CAMM.

To the Reverend Mr. Camm.
Williamsburg, Aug. 1, 1763.

Dear Sir,

In Answer to Yours, desiring me to let you know, whether my Press would be open for you, to give a Reply to the Matters alledged against you by Col. Richard Bland and Col. Landon Carter; I cannot help thinking, but it will be the Opinion of every impartial Man, that you have a good Right to expect the same Means of justifying any Instances in your Conduct, which you may think those Gentlemen have misrepresented or abused. You may, therefore, as soon as you please, send your Vindication to the Press; but if there be any Thing in it, which Reflects on the Proceedings of the General Assembly, it would be very imprudent in me, I think, to be concerned in Printing any Animadversions on their Conduct, as I believe every Body will agree in this, that it is my Duty, as Printer to the Public, studiously to avoid giving Offence to the Legislature.

I am, Your most obedient humble Servant,
JO. ROYLE.

Dear Sir,

I here send you my Piece, and hope you will find no Reason against its Publication. In the mean Time, I depend on your not permitting it to go out

of your Hands. You will find I have said nothing at all of the present Assembly, who are the Legislature; and with regard to the late Assembly, who were, but are not, the Legislature, I have gone no farther than to suppose them fallible Men, and therefore liable to be imposed upon by Misrepresentation. As for *Bland* and *Carter*, I have taken more Freedom with them. They have given me a full Right so to do; which, I assure you I should have been better pleased, if they had not given.

Since you acknowledge my Right to publish in my own Vindication; you cannot sure deny, that the Conduct of this Vindication must be left to myself. If, contrary to my Design, I have said any Thing at which just Offence can be taken, it is I, and not you, who must be answerable. Every Body will know, that as you would not prescribe to my Adversaries in what Manner they should treat me, neither could you prescribe in what Manner they should be treated by

Your most humble Servant,

J. CAMM.

Williamsburg, Aug. 5, 1763.

Dear Sir,

On looking over your Pamphlet, I find it not only a Reply to those of Colonels Bland and Carter, but also intermixed with Satyirical Touches upon the late Assembly, and some Particulars besides. The present Assembly is composed of near the same Set of Gentlemen with the last, so that I am of Opinion what is said against them, if it should Displease, would be taken as ill by this Assembly, as if pointed directly at them; I am far from saying it would give them Offence, nay, I think otherwise; however as there is a Possibility in the Case, it will be most prudent in me not to risk forfeiting their Good-will upon such an Issue, as I cannot but own myself a Dependent upon the House of Burgesses, and the Public in general. I therefore return you your Pamphlet, and can assure you, that Nobody has seen it, as it has not been out of the Hands of

Your very humble Servant,

JO. ROYLE.

Dear Sir,

I am sorry to find that the Rule of your Press is to publish *Satyirical Touches and some Particulars besides* by way of a Blow at the Clergy; and to

refuse publishing any Thing, which appears to you, of the like Kind, in a Defence of that Body. Neither does it give me any Pleasure to see, that this Rule is intirely owing to Hope of Advantage from being aiding and assisting to abuse the Clergy; and to Fear arising from a *possibility* of Harm, should the Clergy be assisted to wipe off that Abuse.

I cannot tell how to reconcile your allowance of my Right to vindicate myself by the means of your Press, and your refusing me the Benefit of that Right, with your professing to think, that what I have written, if published by you, would not have given Offence. Whether any unreasonable Offence would have been taken or not, I cannot tell; no just Offence, in my Opinion, could have been taken. Col. *Bland* challenged me, to enter openly into a Debate about an Act of the late Assembly; and censured my Behaviour as *atrociously* Criminal, in relation to that Act: How then could I answer him, without calling the Justice, Reasonableness, and Validity of that Act into Question?

I acknowledge as much Prudence as you please, in the Rule by which your Press is Conducted; but would it not have been Acting more Wisely, by which I mean Fairly and Honestly, either to have published for me Now, or Never to have published against me? Whence has your Office derived a Right to sacrifice any Person's Reputation to worldly Convenience, or prudential Regards?

I have had an Occasion imposed upon me, to put you, I find, to too severe a Trial; in which you have acted just as some of your Superiors would have done under the like Circumstances. You set, no Doubt, a proper Value upon your Character, which is very amiable in many Points of View; it hurts me to find in one an Exception. In Consideration of it's standing so clear of every other Blemish, and in Hope that you will take *gang warily*, in the best Sense of the Expression, for your future Motto, fearing as much to do Injury to the Poor and Impotent, as to do Justice upon the Rich and Mighty, I desire to remain

Your sincere Friend,
JOHN CAMM.

☞ It was thought proper to add this last Letter, though it was not sent at the Time of it's being written, for Reasons of a private Nature.

The *Virginia* Act of Assembly, which gave Occasion to the two Pamphlets, to which the above is an Answer, so far as the Author thought, and perhaps farther than many others will think, there was any Necessity to answer, is here added, that the Original Subject of Altercation between the Antagonists in this Debate, may not be forgotten by their Readers, or lost in the Heat of Contention.

*An ACT to enable the Inhabitants of this Colony, to discharge
their Public Dues, Officers Fees, and other Tobacco Debts, in
Money, for the ensuing Year.*

It being evident from the prodigious Diminution of our Staple Commodity, occasioned by the Unseasonableness of the Weather in most Parts of the Colony, that there will not be Tobacco made sufficient to answer the common Demands of the Country, and it being certainly expedient at all such Times, to prevent as much as possible the Distresses that must inevitably attend such a Scarcity; *Be it therefore Enacted by the Lieutenant-Governor, Council and Burgesses of this present General Assembly, and it is hereby Enacted by the Authority of the same, That it shall and may be lawful to and for any Person or Persons, from whom any Tobacco is Due, by Judgment for Rent, by Bond, or upon any Contract, or for Public, County and Parish Levies, or for any Secretaries, Clerks, Sheriffs, Surveyors, or other Officers, Fees, or by any other Ways and Means whatsoever, to pay and satisfy the same, either in Tobacco according to the Directions of the Act of Assembly entitled, An Act for amending the Staple of Tobacco, and preventing Frauds in his Majesty's Customs, or in Money at the Rate of 16s8{p.} for every Hundred Pounds of nett Tobacco, and so in Proportion for a greater or lesser Quantity, at the Option of the Payer.* And the Sheriffs, and other Collectors, shall, and they are hereby required to receive the same from Any Person or Persons, in Discharge of any such Levies and Officers Fees. And the Sheriffs, or other Collectors of the Levies and Fees aforesaid, shall Account with and Pay to the Persons entitled to the same, in Proportion to their several Demands, all Tobacco and Money which they shall receive in Payment of such Levies and Fees, which shall discharge such Sheriffs and Collectors from any other Demands for such Levies and Fees, any Law to the contrary thereof notwithstanding. *Provided always, That nothing herein contained shall extend, or be construed to extend, to any Public County, or Parish*

Levies, or Officers Fees, now due, or hereafter to become due, in any County where by Law the Inhabitants of such County are now empowered to discharge the same in Money. *Provided also*, That nothing herein contained shall extend to any Contract made for Tobacco before the Passing of this Act, where the Money or Goods given for such Tobacco, have been *bonâ fide* paid at a greater Rate than Sixteen Shillings and Eight pence per Hundred, as aforesaid; but that all such Contracts shall be Discharged in Tobacco, according to the Terms of such Contracts, or in Money according to the Price really given for such Tobacco, together with the lawful Interest arising on the same to the Time of Paying the same, at the option of the Person or Persons from whom the Tobacco would have been Due, had this Act never been Passed. *And be it farther Enacted*, That this Act shall Continue and be in Force for One Year, and no longer.

A VERY elegant Composition closes this *APPENDIX*, that the Author, a Person of the first Renown for Eloquence, and a celebrated Master of the *English LANGUAGE*, may have the generous Pleasure of seeing one of his many *admirable Performances*, distinguished from the Rest, by no superior Degree of Merit, but by Brevity alone, arrive at the Honour of a Second Edition, and contribute to the Sale of an Adversary's Work. For which this Adversary here makes him all the Acknowledgments due from a grateful Enemy.

Richard Bland,
The Colonel Dismounted:
Or the Rector Vindicated
(Williamsburg, 1764)



SIGNING HIMSELF “Common Sense,” Richard Bland in this pamphlet offered a detailed critique of John Camm’s *Single and Distinct View of the Act* (see Selection 62). Organized around a mock dialogue between Bland and Landon Carter, Camm’s other protagonist, much of the pamphlet was a detailed commentary on Camm’s prose and ideas in which Bland tried to show the absurdity of Camm’s charge that, in passing the Two-penny Act, the House of Burgesses “were attempting to overturn the constitution and to restrain the royal prerogative by passing acts which interfered with acts confirmed by His Majesty, without a suspending clause.” But the pamphlet is most remarkable for its early articulation of the long implicit colonial theory about the distribution of authority among the several polities that composed the British Empire.

Written after colonials knew that the British Parliament was considering imposing taxes on the colonies but before it had actually done so, the pamphlet was one of the earliest ruminations on the extent of Parliament’s authority over the colonies, the issue that would finally sunder the empire a dozen years later. After taking the reader through the various legal, cultural, customary, and historical foundations for Virginia’s exercise of legislative powers and rehearsing the by now thoroughly conventional colonial claims to the rights of freeborn English people and the legacy of the English common law, Bland offered an extended examination of the colonial Virginia

constitution, which he referred to as “a legal constitution,” and, more especially, of the scope of Virginia’s legislative authority. Because no laws could be made within the empire without the consent of “a legislature composed in part of the representatives of the people” to whom those laws applied, the authority of colonial legislatures, Bland declared flatly, necessarily included the exclusive power to “enact laws for the INTERNAL government of the colony and suitable to its various circumstances and occasions.” If the colonies’ dependent status required that they “be subject to the authority of the British Parliament” in “every instance” of the “EXTERNAL government,” he reasoned, that body could not “impose laws upon us merely relative to our INTERNAL GOVERNMENT,” without depriving colonists “of the most valuable part of our birthright as Englishmen, of being governed by laws made with our own consent.” By the constitutional practice of the British Empire, he suggested, “all power over the colony” was “excluded from the mother kingdom but such as respects its EXTERNAL Government,” and the colonial legislatures had “a right to enact ANY law they shall think necessary for their INTERNAL Government.”

Bland did not deny that the Crown’s assent through its governor was requisite to the exercise of colonial legislative functions, but, cautioning against those who, like Camm, were advocates of the doctrines of Sir Robert Filmer, he observed that “submission, even to the supreme magistrate, is not the whole duty of a citizen” and that consideration was “likewise due to the rights of our country and to the liberties of mankind.” From this perspective it seemed obvious to Bland that the royal instructions, which were “nothing more than rules and orders laid down as guides and directions for the conduct of governors,” could not, as Camm suggested, “have the force and validity of a law, and must be obeyed without reserve,” an arrangement, which, if followed, would, Bland objected, “at once strip us of all the rights and privileges of British subjects, and . . . put us under the despotic power of a French or Turkish government.” “Not being obligatory on the people,” then, royal instructions could not bind the Virginia Assembly, which had “a right to present any act relative to the internal government of the colony to the governor for his assent.” So far from “setting up the standard of rebellion against the King’s authority” when it passed the Two-penny acts, the Virginia legislature was thus doing no more than fulfilling its role of making law for the colony, a role that only its members had the first-hand knowledge necessary to perform. (J.P.G.)

THE
Colonel Dismounted:
OR THE
Rector Vindicated.
In a Letter addressed to His REVERENCE:
CONTAINING
A Dissertation upon the CONSTITUTION
of the COLONY.
By COMMON SENSE.

*Quodcumque ostendis mihi sic, incredulus odi.*¹ HOR.

WILLIAMSBURG:
Printed by JOSEPH ROYLE, MDCCLXIV.

1. ["Disbelieving, I hate whatever you show me."]

I think it necessary to advertise the readers that this letter was drawn up above eight months ago, purely for amusement. But from a motive which has prevailed with me, I NOW make it public. To distinguish His REVERENCE's elegant and polite language, the quotations from his inimitable works are printed in ITALIC characters.

To the Reverend John Camm, Rector of York-Hampton

It must be confessed, may it please Your Reverence, that you have erected two noble works, outlasting monumental brass, in honor of your victory over the *patrons of ignorance and irreligion*. The dignity of sentiment that shines with so peculiar a luster in your *Single and Distinct View* and in your *Observations*,* the elegant language devoid of sophistry and diversified with the most agreeable tropes that give ornament and strength to those excellent performances, must excite the admiration of the present age and transmit your name, with distinguished éclat, to posterity.

Wonderful genius! who with infinite wit and humor can transform the *unripe crab*, the *mouth-distorting persimmon*, the most arrant *trash* into delicious fruit, nay *wring-jaw cider* into palatable liquor. Presumptuous *tithe-pig* Colonel! Infatuated *syllogistical* Colonel! What humiliating disgrace have they brought upon themselves! But they deserve it. Why did they *inflame* your *resentment*? Did they not know Your Reverence has honesty to represent facts truly, learning to write accurately, and wit to make your lampoons, though loaded with rancor and abuse, agreeable and entertaining? Did they not know that besides these excellent accomplishments you possess in an eminent degree that cardinal virtue[†] with whose assistance very moderate abilities are capable of making a great figure? What arrogance was it then, even in the *boreas of the Northern Neck*, in the *violentus auster*,² to enter the lists against such a gladiatorian penman? Could these pygmies expect to triumph over such a redoubted colossus? And in defense too of a cause that was not defensible? In defense of *some particular* Assemblies that had been impeached of high crimes and misdemeanors before the Lords of Trade and Plantations, when Your Reverence was agent for the WHOLE body of the Virginia clergy in England?

* See Appendix, No. 2.

† *Nullum numen abest si sit impudentia*. {"No divinity is present if there is impudence."—Tr.}

2. ["The violent South wind."]

These high crimes and misdemeanors, it is certain, are accumulated in the impeachment to a surprising degree; but what then? The impeachment may be true, notwithstanding; nay, it is true: Your Reverence has said it is true and that is enough. Indeed the colonels with their *hurly-burly vociferous verbosity* dispute your veracity and pretend that in your representation of the General Assembly's conduct you indulge a language injurious to the truth, that you encourage party contentions, that you break in upon the respect owing to the legislature of the colony, that you construe the worthiest and best intentions into criminal designs against the royal authority, that you prefer the support of your own cause before the truth and the service of the public, and that by a low kind of wit and satire you expect to prevail against reason and argument. But they, you know, *deal in false facts, ill-adapted maxims, confident assertions, imaginary impossible cases, inconsistent notions, sneaking chicanery, and voluminous nonsense*, and therefore are not worthy of credit.

May it please Your Reverence, I was pronouncing the other day a sublime *miscellaneous* oration before a numerous audience, and proving that Your Reverence does not deserve these reflections. But before I proceed I must explain what I mean by a *miscellaneous* oration, not that I intend this explanation for Your Reverence's information; this would be presumption, since you have proved indisputably, by your own incomparable writings, that you are a perfect master of the *miscellaneous* manner. But as this letter may fall into the hands of readers less learned than Your Reverence, I think it necessary for their information. A *miscellaneous* oration then is exactly like that kind of *miscellaneous* writing in which, according to a noble author, the most confused head, if fraught with a little commonplace book learning, may exert itself to as much advantage as the most orderly and settled judgment.

An orator in this way draws together SHREDS of learning and FRAGMENTS of wit, and tacks them in any fantastic form he thinks proper; but connection, coherence, design, and meaning are against his purpose, and destroy the very spirit and genius of his oration. In short, may it please Your Reverence, it is just like the *miscellaneous* remarks in your *Single and Distinct View*.

I say, may it please Your Reverence, I was holding forth to a numerous audience in support of your charge against the General Assembly, when the *hot and violent demagogue*, rushing through the crowd in an attitude that would have frightened the renowned knight of La Manca himself, advanced

upon me with hasty strides and *brawled out*, Thou dealer in general topics, thou confounder of justice with injustice, I will prove this charge to be contrary to the truth in every instance.

I had given half a crown, may it please Your Reverence, for your *Single and Distinct View*; and as a subscriber to the *Virginia Gazette* I became possessed of your *Observations*, and another witty paper* remarkable for an elegant and polite description of a certain odoriferous knight who has the honor of being distinguished by one of the titles properly belonging to Your Reverence. But Ned the barber, a shrewd inquisitive fellow, while shaving me the other day, cast his eye upon that facetious paper, which I held in my hand, and asked me whether the progenitors of the sweet-scented knight received the honor of knighthood from the monarch who advanced the loin of beef to that dignity or not. I told him I believed this honor must have been conferred by the *British Solomon*, because as history tells us he was very intimate with His Reverence's ancestors, making them the constant companions of his sports and divertisements; and it was probable he created them baronets when he instituted that order, but of this I could not be positive. Well then, said Ned, pray Sir ask the Rector of York-Hampton; he knows all things, all secrets, no prattling gossip,

Who with an hundred pair of wings
 News from the furthest quarters brings,
 Sees, hears, and tells, untold before,
 All that she knows, and ten times more,

knows so much as this Reverend Rector does; and as nothing can be hid from him, no person is so capable of resolving this question. To oblige Ned the barber, this digression has obtruded itself; and he waits with impatience for your determination.

May it please Your Reverence, as you had declared the *hectoring bullies* were more considerable for fierce language than true spirit, I was under no difficulty about the manner of my defense; for, thought I, if Your Reverence obliged two bullies to part with their strongholds, surely the same weapons, though perhaps not managed when in my hands with the same

* *The Over-Hearer*, a periodical paper supposed to be written by the Rector of Y—— H—— in which a S——r R—— is much celebrated.

dexterity as when under Your Reverence's conduct, will *dispel the fog which ONE Cromwellian preacher endeavors to diffuse over the face of truth*. Then by a motion of my left hand, which I was obliged to use upon this occasion, similar to that of a soldier when he is commanded to handle his cartridge, I drew your *Single and Distinct View* from my right pocket, and opposing it to the enemy I found myself more invincible than if armed with Mambrino's celebrated helmet, or the more celebrated shield, forged with Vulcanian art for the son of Thetis. It was, may it please Your Reverence, altogether impenetrable to the *enemy's great guns*; and as for his *small arms*, they made not the least impression upon it. Having this advantage, I advanced, in my turn, upon my antagonist, drove him off the field, and took possession of several *posts the strength of which he had magnified, until they fell into my hands*. He then *shifted his ground*, and by a sudden maneuver which I really did not expect, *entrenched himself in new entrenchments*. These I instantly stormed; but as I could not carry them I was at a *loss how to conduct my attack* until reflecting on the astonishing virtues of your *Single and Distinct View*, I resolved to try if trumpeting it out would not have the effect upon these entrenchments as the sound of the ram's horn had upon the walls of Jericho; and I assure you I had great expectations at first, for the entrenchments were shocked several times, especially upon the repetition of your fine criticisms, and I verily thought they would have been leveled with the ground by the sound of the words *justice, learning, religion, liberty, property, public good*, which compose part of your character, in the panegyric Your Reverence so justly bestows upon yourself.

But as the severest shocks from this *tremendous battery* did not destroy the entrenchments, though they were frequently severe enough to shock my senses, I applied to your *Observations*, and thundering out with a *vociferous contempt* these words of your other encomium upon yourself, *I write for liberty and property, for the rights of commerce, for an established church, for the validity of the King's authority, pro aris et focis*,³ immediately the enemy beat the chamade and demanded a conference, which I granted him. As this conference relates to Your Reverence, I think it proper to transmit you a particular detail of it, which I choose to do through Mr. Royle's press, that I may be certain of its *coming safe to hand*.

3. ["For altars and fires," i.e., for hearth and home.—Tr.]

The Colonel opened the conference as followeth:

I make no doubt, Sir, said he, but that you have entered into this controversy from an opinion that everything the Rector has advanced with respect to the General Assemblies, and those whom he distinguishes by the name of his adversaries, is true.

I replied, My motive for espousing His Reverence proceeds from my opinion of his veracity. Then, Sir, said the Colonel, I will convince you that the Rector has neither *truth* or *ingenuity*. Neither truth or ingenuity in His Reverence's works! replied I, hastily. What do you mean, Colonel? Have you not experienced the wonderful effects of his *Single and Distinct View*? And would you not have felt, perhaps, more fatal effects from his *Observations* had you not implored this conference? I acknowledge, said the Colonel, the Rector's works, like those deep-throated engines Milton makes the apostate angels oppose to the celestial army,

... belched out smoke,
And with outrageous noise the air
And all her entrails tore; disgorging foul
Their devilish glut . . .

but smoke and noise are not evidences of truth. Colonel, said I, interrupting him, I expect you will not treat His Reverence with *scurrility*. I will endeavor to avoid it, answered the Colonel, for I am by no means fond of copying the Rector's style or saintlike phrases; it is by reason and argument, not by blows and insults, that I expect to convince you of the truth.

The Colonel went on: I had determined not to give myself any further trouble about the Rector of York-Hampton. I know it was a Sisyphean labor to engage in a dispute with this man, for, as Pope says,

Destroy his fib, or sophistry, in vain,
The creature's at his dirty work again.

I thought too I should be very indifferently employed to reply in form, as Lord Shaftesbury calls it, to his *Single and Distinct View*, which in my opinion carries with it its own ridicule; neither could I be persuaded that so sorry a performance, which perverts the meaning of my most simple expressions, mutilates sentences, and makes me speak words I never uttered would be looked upon by men of sense as a refutation of my *Letter to the Clergy*. And as for his tinsel wit, if it can be worthy of such an epithet, I despised

it. But that I may convince you of this writer's sophistry, of his misrepresentation of the plainest facts, and of the constitutional proceedings of the General Assembly, I will examine his legerdemain performances; and I hope irksome as the talk is I shall have the strength to go through with it.

In the apology this Rector makes for his *impudence* or *rudeness* (these are his own words) he says that *in this war which his adversaries BEGAN, the manner of his defense has been directed by the conduct of the attack, for he found it too great a difficulty for him to let the merit of their example be entirely thrown away*; so that *LEX TALIONIS*⁴ is the rule of retribution with this peacemaking Rector. However, let that be as it will, let us see whether this eminent divine is a man of *truth and ingenuity*. *My adversaries BEGAN the war*, says this faithful recorder of events. But is he sure of this? OR is it a *false fact, a confident assertion* invented to *persuade men out of their senses*, according to his own elegant expressions? I affirm it is a *false fact, a confident assertion*, which, if I prove, will, I presume, make the scourge he intended for others reverberate with double force upon himself.

At the September session of Assembly in the year 1758, the people represented to the House of Burgesses that "by reason of the short crops of tobacco made that year it would be impossible for them to discharge their public dues and taxes that were payable in tobacco, which would expose them to the vexatious and oppressive exactions of the public collectors; and they prayed that an act might pass for paying all public, county, and parish levies, and officers' fees in money at such price as by the House should be thought reasonable." The short crops made that year, and the impossibility of paying their public tobacco dues as the laws then stood, were the reasons given by the people for desiring, and by the General Assembly, in consequence of this representation, for passing the Two-Penny Act. But though the relief of the people from the general distress of that year could be the only possible motive with the General Assembly for passing that act, yet this discerner of spirits, *this man who knows everybody's thoughts*, discovered other reasons for their conduct. Suffer me to recite them in brief from the impeachment brought against the legislative body of the colony before the Lords of Trade and Plantations in the time of the Rector's agency in England. In that impeachment they are accused with *exercising acts of supremacy inconsistent with the dignity of the Church of England and manifestly tending*

4. ["The law of retribution."]

to draw the people of the plantations from their allegiance, with assuming to themselves a power to bind the King's hands, with having nothing more at heart than to lessen the influence of the crown and the maintenance of the clergy, with attacking the rights of the crown and of the clergy, with depriving the King of his royal authority over the clergy, putting them under the power of the vestries and making them subject to the humors of the people, with never intending any good to the clergy, with taking possession of the patronages and wanting to be absolute masters of the maintenance of the clergy, with passing acts of Assembly on pretense that only small quantities of tobacco were made in some years that they might render the condition of the clergy most distressful, various, and uncertain after a painful and laborious performance of their functions. In short, and to sum up the whole in one word, with being traitors in the legal sense of the word.

This charge, so heavy and so injurious, occasioned my *Letter to the Clergy*; and I will submit it to your determination whether I had not a right, as a friend to truth, as a member of that body so grossly abused, to obviate the acrimonious invectives contained in this charge. If I had no right, then I am the aggressor; but if I had, then the Rector's want of *truth and ingenuity* in a plain matter of fact is evident, as he must be the author of this controversy.

To this I replied, You certainly have a right, Colonel, *by all legal methods*, to vindicate the conduct of the General Assembly not only as a member of it, but as an honest man, against every unjust accusation; and as this impeachment was brought in a public manner before the Lords of Trade in England, who have the direction and superintendency of the plantation affairs, I must own that your publishing your defense HERE does not make you the *author of this war*. The promoter of this impeachment is, without question, the person who BEGAN it. Well then, Sir, said the Colonel, the Rector BEGAN *the war*. I replied, Be not so hasty, Colonel; His Reverence is innocent. A man of his integrity, of his truth and uprightness of heart, could not invent such a malevolent groundless charge; and as you accuse a clergyman remarkable for his humility and meekness of temper as a promoter of dissension between the legislature and clergy of the colony, you deserve the censure His Reverence has thought proper to pass upon you. Why Sir, asked the Colonel, seemingly astonished, was not the Rector the author of this impeachment? If he was not the CLERK that drew it, still he was the instrument; or, that I may express myself in less ambiguous terms, the INFORMER upon whose evidence it was drawn up. Nay, does

not the paper* presented by him to the Lords of Trade as *The Humble Representation of the Clergy of the Church of England in His Majesty's Colony and Dominion of Virginia*, which in fact composes part of this invidious libel, prove that he was the author of it? And is not this more than *thinking*, according to the pretty proverb so wittily applied in his *Observations*? Is it not *good authority* for charging him with being the author, the forger of the impeachment? Besides, does he not justify it in his *Observations*? Does he not, by a most unfair and disingenuous *comment* upon four acts passed by the General Assembly attempt to prove that they all agree in these *peccant circumstances*? Why really, Colonel, said I, how can you justify *three* of those acts? For by your present *plan of defense*, you only endeavor to prove that the General Assembly were not guilty of the crimes laid to their charge by passing *one* act; their passing *three* others, then, of the same *pernicious tendency*, is *altogether unjustifiable*. I was, may it please Your Reverence, a little *graveled here*, and under some apprehension of *tripping* if I had attempted a further justification of your *truth and ingenuity*. I was therefore desirous to divert the Colonel from pursuing his proofs against you as the *author of the war* by putting him upon his defense of the other three *peccant* acts.

The Colonel replied, I perceive, Sir, by your attempting to divert me from the point I was upon, you are convinced the Rector BEGAN *the war*. The Colonel stopped. I was silent. For, may it please Your Reverence, what could I say in your vindication until I had it from yourself that you was not the INFORMER upon whose evidence this impeachment was drawn up; but if you deny that you was the INFORMER, and will let me know who was, I am resolved to have another bout with the Colonel. I must therefore beseech you to be very explicit in this particular when you favor the public with your next production.

It would be disgustful, even to you, Sir, his friend, resumed the Colonel, was I to take notice of all the fustian contained in his panegyrics upon his own and his *brethren's* loyalty. Don't think, gentlemen of the clergy, said the Colonel, breaking out into a rhapsody upon repeating the word *brethren*, don't think that you ALL have the honor of being *brethren* to this ever-to-be-reverenced Rector. No, gentlemen, the word *brethren*, like the word MANY,† is *capable of being taken by two handles*. Do not, therefore, flatter yourselves

* See Appendix, No. 3.

† See *Single and Distinct View*, p. 29.

that the Rector of York-Hampton takes it by the same handle he takes the word ALL* (by which single word ALL has produced one of the finest pieces of true genuine original criticism that ever was invented by the wit of man). I say, gentlemen, the word *brethren* is not, like the word ALL, to be taken by the BIG handle, but like the word MANY is to be taken by the LITTLE handle; so that the Rector's *brethren* are but few comparatively with the whole body of the Virginia clergy, perhaps only a quindecemvirate⁵ of them, of which he is the chief, who in a *general* convention of twenty-five carried the vote for appointing him their agent to impeach the General Assembly of their country of treason. But now I am addressing myself to the clergy, give me leave to propose a question or two to those fifty-five (for it seems there are at least eighty parochial clergymen in the colony)[†] who did not *think proper to attend the regular summons of the bishop's commissary*. Did you, gentlemen, when you sent *excuses for want of your appearance* send also your *concurrence in the measures* that were proposed in the convention? Were you acquainted with these measures before they were proposed? If you were, who made you acquainted with them? Not your late commissary. He was one of the traitors; he *was not under the influence of the clergy or in their true interest*, and therefore cannot be supposed to have given you the information, though he was the only person who ought to have done it; perhaps he was not let into the secret designs of the Rector and his *brethren*. And if you were not informed, could you send your concurrence to measures you knew nothing of? I am persuaded you could not, but that you would have attended the *regular summons of the bishop's commissary* on purpose to have opposed the measures that were carried by the quindecemvirate had you been acquainted with them before the meeting of the convention. The respect I bear you, the high sentiments I entertain of your *truth and ingenuity* (these, gentlemen, are favorite words with the Rector), the piety, candor, and integrity so conspicuous in the lives of most of you, make me sure you would have attended on purpose to oppose measures so contrary to your real interest, so repugnant to truth, and which could only serve to destroy the harmony and concord it is your inclination as well as duty to cultivate and maintain between the legislature and the reverend body of the clergy.

* See the Rector's *Observations in the Appendix, No. 2.*

5. ["Council of fifteen."]

† See *Single and Distinct View*, p. 16.

The Colonel resumed his defense: Was I to trace out ALL the Rector's boasts of his and his *brethren's adhering to and preserving the old constitution*, which *some particular Assemblies were endeavoring to destroy*, of their *sheltering themselves under the authority of the British oak*, under the *wings of the prerogative*, under the *protection of a most gracious and religious monarch*, from whose allegiance the General Assemblies were *attempting to draw the people of the plantations*, it would carry me further than there is any need to go on this occasion. ALL his ostentatious flourishes are to be seen at large in his masterly works, which I suppose are by this time transmitted to Graham Franks, now in England, to be laid before the Board of Trade or perhaps a more honorable board, that his unparalleled loyalty may be manifested when his cause against the collector of his parish levy is carried before that high tribunal. But lest the word ALL, which I have taken occasion to use TWICE in this part of my defense, to wit, ONCE when I spoke of the Rector's boasts, and again when I spoke of his ostentatious flourishes, should fling him into labor with another criticism and make him bring forth, like the mountain in the fable, I must inform you which *handle* you are to take it by in these two places. Know then, Sir, that you are to take this word ALL by the BIG *handle*, and not by the LITTLE *handle*, which last mentioned *handle* I took it by when in my *Letter to the Clergy* I explained my sense of it as it stood in the impeachment by making it include the GREATER part of the members of the General Assembly; which I said must be the import of the word in that part of the impeachment I was then considering. But this explanation I suppose the Rector passed over, that he might demonstrate to the world his profundity in critical knowledge.

I will now examine the *three acts* the Rector cites as further instances of the General Assembly's disloyalty.

In the year 1738 two new counties and parishes were erected upon the frontiers of the colony, far distant from navigation. That these counties might be settled and a good barrier be thereby made against the French,* several encouragements were granted to the inhabitants; one of these was that they might pay all levies and officers' fees in money for tobacco, at the rate of three farthings per pound. Under this regulation the salary of the ministers in each of the new parishes was only £152, when the salary of

* See the act for establishing these counties, anno 1738.

the other parochial ministers was 16,640 pounds of tobacco, as settled by the act of 1727, which was then in force. The ministers of these new parishes continued to receive this salary of £152 until the year 1753, when one of them petitioned the Council for an augmentation of his salary; this petition was sent by the Council to the House of Burgesses, who immediately passed the act for the *frontier* parishes, as the Rector calls it, whereby the minister's salary in each of these parishes was settled at £100 a year, according to the desire of the minister petitioning. This act, passed upon this consideration, and which was so advantageous to the ministers of these parishes, was one article in the impeachment of high crimes against the majesty of our sovereign and the dignity of the Church of England; and as the colony had no agent at that time in England to represent a true state of the case, was, from the misrepresentation of the agent appointed by fifteen of the Virginia clergy without the participation of the two ministers concerned, repealed by the royal proclamation. For this repeal the ministers of those two parishes returned the Rector their humble and hearty acknowledgments by their petition to the General Assembly for a renewal of the repealed act, without which they must starve; which petition had such an effect upon the humanity of this traitorous Assembly, who had *nothing more at heart than to lessen the maintenance of the clergy and to render their condition most distressful, various, and uncertain*, that regardless of the Rector's resentment they complied with the ministers' request.

As to the Norfolk and Princess Anne Act, I presume I need not repeat what I have said upon it in my *Letter to the Clergy*, where I have given a candid and honest account of the reasons which prevailed with the General Assembly to pass it; to which I can add nothing, except that the petition from the people which gave rise to it was presented to the House of Burgesses at their October session, 1754, and being referred to the next session, did not come under the consideration of the House until the 7th day of May, 1755; so that full time was given for any person to represent against it if it had not been agreeable to him.

From this account of the Frontier and Norfolk acts the Rector's want of *truth and ingenuity*, of decency and good manners in his remarks upon the General Assembly for passing these acts, is sufficiently evident. For him to charge the legislature with *attempting to lessen the influence of the crown and the maintenance of the clergy* because they gave to the ministers of the frontier parishes an increase of salary, without which they must have lived in

the greatest indigence, and because they gave relief to the people in one part of the colony from laws which under their particular circumstances were extremely oppressive to them, I say for him to charge the legislature with such attempts is an instance of want of truth and an indecency of behavior which no man could be guilty of but one who was resolved to trudge, with might and main, through dirt and mire to gain his ends.

And now, Sir, may I not say with great justice of this Rector, in his own words, that *he has shown more judgment in suppressing part of the Apostle's account of charity than in giving us what he had quoted; for had he given the Apostle's account unmutilated, the reader must have seen that charity doth not behave itself unseemly, that it rejoiceth not in iniquity, but rejoiceth in the TRUTH.* But as the *proverbial account of TRUTH*, that it is not to be spoken at all times, *seemed to be more for the Rector's purpose*, he has preferred it in his articles of impeachment.

The general act of 1755 was passed when, I confess, there was not such a PRESSING NECESSITY for it as there was afterwards, in the year 1758; but their passing this act when perhaps there was no great necessity for it does not make the General Assembly guilty of the crimes contained in the Rector's impeachment.

The legislature of this as of all other countries are fallible men, and as such may enact laws which they may think necessary and for the public good but which from experience may be found unnecessary and even destructive of that good they were intended to promote. But is this fallibility to be imputed to them as a crime? Or is their enacting a law to enable the inhabitants of the colony to discharge their tobacco debts in money, in a year, as they thought, of general dearth and scarcity, an evidence of their attempting to restrain the power of their sovereign and to destroy the dignity of the established church? And yet in such a point of view does this Rector place their conduct. Is such a representation honest? Is it such a one as ought to have come from a man who so confidently charges others with a want of *truth and ingenuity*? And is it decent for a clergyman to treat members of the General Assembly for offering a just defense against so aggravated a charge with a language not to be found but amongst those who have prostituted themselves to the lowest dregs and sediments of scurrility? Here I stopped the Colonel and said with some warmth, You forget your promise, Colonel, not to treat His Reverence with hard names. His *scurrility*, indeed, is *provoked defensive scurrility*; which consideration will have its due effect with the readers of every degree, who

are the judge and jury and everything with His Reverence. But you, Colonel, have, unprovoked, abused His Reverence in your first defense, and in your letter to him published in a public newspaper you have charged him with a neglect of duty in his parish, which is *one of the most palpable, barefaced, and impudent falsehoods that ever was invented*. I thought, Sir, replied the Colonel, I had convinced you that the Rector was the aggressor, and that his abusive and unjust charge against the General Assembly had occasioned the controversy between us. As to my abuse of him in my *Letter to the Clergy*, you must be convinced of the contrary if you will read that letter with attention; for though the manner in which he has detached my words which seem to have any severity of expression in them from their proper places, collected them into one view, and taken them to himself, may show how easy it is for a caviler to give a new sense, or a new nonsense, to anything, yet as they are applied by me in the several parts of my *Letter to the Clergy* in which they stand they will appear to be nothing more than proper and just expressions relative to the treatment the General Assemblies have received from the Rector and his accomplices. It is true, in one place of my letter I have disputed the Rector's superiority in point of learning above other men, which I acknowledge is great sauciness in me, since he has demonstrated by his fine writings that he is as excellent a critic and as learned a divine as he is a good Christian; but as I did not know so much at that time, I hope I shall be forgiven. If I have accused him with a neglect of DUTY in his parish, and can be convinced that this accusation is unjust, in that case I have done him an injury, and will not only ask his forgiveness of my offense, but make an atonement for it by publicly acknowledging that I have aspersed the character of a diligent pastor, attentive to and perpetually careful of the spiritual concerns of ALL the flock committed to his charge. But then, as I *may differ from him about the precise meaning of the word DUTY*, I must, to prevent mistakes, have the meaning of it fixed and determined; for perhaps I may understand it in a more extensive sense than the Rector doth. It is, you know Sir, according to his own definition of it, a *complex term*, and consequently must include something more than an excursion out of the parish where he resides to his church in York-Hampton on a *Sunday when he is not confined at home by pain and sickness*. I suppose the Rector calls himself a MINISTER, a LABORER, a WATCHMAN, a PASTOR, a STEWARD, an AMBASSADOR, in sacred things. These different characters, then, must have different heads of DUTY belonging to them. I cannot therefore agree that he discharges all these duties by only attending

his parish church on a *Sunday*; and if he does nothing more, he may be likened to a servant who having six talents committed to his management wraps five of them up in a napkin and only trades with one, or rather a small part of one of them. Whether such a servant acts justly or not is not for me to determine. But Colonel, said I, *I have studied to find out what connection there could be between His Reverence's neglect of duty in his parish and the dispute between you and him about the Two-Penny Act.* Exactly as much, Sir, replied the Colonel, as there is between my *officiating as a clergyman in the churches of the parish where I live* and a dispute relating to the power of the General Assembly to enact laws; which is all the reply I shall make to his *windmill and giant* and his other quixotisms. Why Colonel, said I, do you really *officiate as a clergyman in the churches of the parish where you live?* I do not, answered the Colonel; but I officiate sometimes as READER in the church which I frequent in the absence of the minister, being thereto appointed by the vestry. My motive for accepting this appointment, I presume, the Rector has no right to inquire into, since it was not from a pecuniary consideration. Well Colonel, said I, as to that matter, whether right or wrong, I have no business with it; but your resentment against His Reverence *for making use of the happy privilege which every British subject enjoys, of approaching the throne in an humble petition*, is not to be defended. Did I express any resentment against the Rector, replied the Colonel, for making use of this *happy privilege*, I should be blameable because I value it as much as the Rector can, notwithstanding his pompous encomiums upon his own loyalty. But I shall always consider it as an affront to the throne, which under our present illustrious race of kings has been eminently distinguished for truth and justice, to approach it with a petition loaded with calumny and abuse against the King's substitute and every other part of the legislature of the colony. If the Rector thought himself injured by any act of the General Assembly, he had a right to *approach the throne with an humble petition* against it; but then he should have approached it with truth: he should have represented facts with candor and integrity, and not have imputed such act to causes which could not possibly exist; and if he had done so, I assure you, Sir, he and I should have had no dispute.

But Colonel, said I, in your account of the *famous petition** you have reflected with great severity upon the clergy, when *I own I can see no mighty harm* in that petition, provided it might stand alone, without *your comment*.

* See *Single and Distinct View*, p. 29.

Besides, it was the petition of *one* clergyman only, who did not prefer it from any imagination that there was room to expect success in it, but to evince the contrary by experiment. Your reflections therefore were very disingenuous; and though the design of the petition is a piece of secret history, a stratagem, a machination, which it seems you, with all your sagacity and insight into everybody's affairs, have not been able to penetrate, yet your inference drawn from it that if the provision for the clergy was made better by an act they would make no complaint concerning encroachments on the authority of the King is no less ungenerous, since to make this inference good it should have appeared in the petition that the clergy wanted a better provision by an act without a suspending clause. But there is no such thing in the petition; and I believe it would be a difficult matter to prove that the clergy, though willing enough to have a better provision, would accept of it by means of an act without a suspending clause. My account of the famous petition, as the Rector calls it, replied the Colonel, is taken from the Burgesses' Journals, where it stands as the petition of the clergy, and not as the petition of *one* of them. However, let it be for the present that it was owned by *one* clergyman only. The Rector says this clergyman *designed well*; and that *one* other clergyman was *privy* to the petition, who, from what he says about the secret history of it, I conclude must be himself. Now this petition declares that MANY CLERGYMEN WHO ARE A DISGRACE TO THE MINISTRY FIND OPPORTUNITIES TO FILL THE PARISHES; and can any expression be found in my *Letter to the Clergy*, torture it how you will, that reflects with such severity upon them as this declaration doth, which was made in the most public manner by *one* of their own body abetted by *one* other, and he no less a person than the pious Rector of York-Hampton? And if our parishes are filled with so MANY clergymen who are a disgrace to the ministry, may it not be suspected that such men would *accept of a better provision by an act without a suspending clause*? And that they would not be very nice in examining whether such act was worded exactly conformable to a royal instruction to the governor for his own particular conduct, especially when they were not answerable for a transgression of it? The Rector, in zeal for the royal authority, might, for aught I know, be willing to refuse *a better provision* under such an act; but as he has not as yet attained to that degree of supremacy as to decree by his own authority that his brethren should refuse it, it would be necessary to determine this matter in a convention. And if the clergymen, distinguished with such excellent characters by the author of the petition, who are so

MANY, should prevail against the self-denying Rector of York-Hampton upon a question in which their temporal interest might outweigh the royal authority as in all probability they would, the Rector, by an established rule of the convention, must submit, and perhaps rather than be the occasion of a schism, would subscribe to the vote of the majority. But as his conduct in such a case cannot be known, it must remain a matter of opinion whether he would accept of a *better provision* or not under such an act.

But notwithstanding the CHANGES the Rector is perpetually RINGING upon an act *with*, and an act *without* a suspending clause, his loyalty will not shine forth with a meridian brightness unless he refuses to accept of a better provision under an act *with* a suspending clause; for the governor is not to give his assent to any act *with* a suspending clause that alters or repeals an act which has received the royal approbation, without first obtaining the King's permission. So that before the Rector ought to accept of a *better provision* under any act of the General Assembly, the clergy should appoint him their agent a second time to *approach the throne with an humble petition* for the royal permission to the governor to give his assent to such act; which appointment, if I dare venture a conjecture, would be extremely pleasing to him, as he would thereby have an opportunity of soliciting a place for himself of the first ecclesiastical dignity in the colony, which I believe is at this time vacant.

And let it not be thought that a convention cannot be held during the vacancy of the commissaryship for appointing him agent; for if an advertisement in the *Virginia Gazette*, signed by him and two or three others, was of sufficient authority, in the late commissary's time, to convene the clergy, certainly now there is no commissary he may by his own power call a convention upon a matter of such importance to himself.

But let all this happen as it may, it is extremely obvious that the Rector's temper *inclines him to inflame his own resentment* into a fixed contempt of the General Assembly; otherwise he could not have approved of the conduct of the author of this petition, if what he says of him is true, that *he did not prefer the petition from any imagination that there was room to expect success in it, but to evince the contrary by experiment*: so that the General Assembly may be used by designing men as instruments to carry on their deep-laid stratagems and machinations on purpose to afford *matter of pleasantry* to the Rector. But it may be that the Rector has *tripped* in his history of this clergyman's conduct, who, I have heard, gave the gentleman on whom he

prevailed to present the petition to the House of Burgesses a quite different account of his design; and that gentleman was insulted by a great intimate of the Rector's for presenting it; which insult, I suppose, would not have been given if the author of the petition had expected no other effects from it than what the Rector says he did.

Colonel, said I, your remarks are of a *sour and aggravating cast*. His Reverence's temper *does not incline him to inflame his own resentment*; he has suffered persecution; he has *missed the president's place at the college*; he has been *forbid, with others, the late governor's house under the title of disturbers of his government*; he has been *recommended by the late governor in conjunction with others to the correction of the Grand Jury for being so audacious as to publish under their names an invitation to as many of their brethren as were willing to attend, for them to meet at a brother's house before he left the country*. He has been *forbid the present governor's palace, when he waited on him with the royal disallowance to several acts of Assembly*. He has, I say, suffered all these persecutions, *cum multis aliis quae nunc prescribere longum est*;⁶ and certainly His Reverence, *who has suffered so much for adhering to reason and justice, and the principles of true patriotism*, is excusable *for the freedoms he has used*.

The Rector, replied the Colonel, gives colorings to his imagery as best suit his purpose; but remove the false appearances and his representations will not exhibit so amiable a character. The brother at whose house this meeting was appointed was not a person of that distinction or moral accomplishments as to make it necessary for the clergy to pay their compliments to him in a body upon his leaving the country. The late governor knew, the late commissary knew, as did many other gentlemen, that he was one of the cabal; and they all believed, and, *if it was proper to dwell any longer on this circumstance, a very good account might be given* for their belief, that this meeting was on purpose to raise disturbances in the government, to form stratagems and machinations against the administration and the legislature of the colony, which this brother was to solicit in England. And as Mr. Dinwiddie, the late governor, thought it an affront to his authority as well as to the bishop's commissary for three or four clergymen to assume to themselves a power to call a meeting of the clergy, he resented the insult in a manner becoming his character as the King's substitute. As to the prohibition the Rector received from appearing at the present governor's palace, his affrontive and disrespectful

6. ["With many other things which now it is lengthy to write," i.e., and so on.—Tr.]

behavior was the occasion of it; for, as I have been informed that contrary to his duty and the respect due to the King's representative, he did not wait on the governor with *the royal disallowance to several acts of Assembly*, with which he was charged by the Lords of Trade, until several weeks after his arrival in the country, though he was in the place of the governor's residence; and when he did wait on him he delivered the dispatch opened after he had communicated it to such of his brethren as he thought proper. So that his own modesty, if he has any, and a consideration of his own character, should, methinks, have prevented his complaining of this prohibition.

And as to his missing the president's place at the college, his contumacious treatment of the Visitors' authority, which is so publicly known, could not entitle him to their favors, even admitting that he was qualified in other respects.

Colonel, said I, this is all prejudice. You *suffer your passion to make a fool of you*. His Reverence has given the strongest proofs of *true patriotism*; he has delivered the constitution from the basest attempts to destroy it; he faces every attack, encounters every danger, despises every obloquy; in short, he may say, with old Siffredi in the play,

. . . I have preferred my duty,
The good and safety of my fellow subjects,
To all those views that fire the selfish race
Of men . . .

since he has with boldness, and, as he says, with truth justified his impeachment against the General Assemblies who were *attempting to overturn the constitution and to restrain the royal prerogative by passing acts which interfered with acts confirmed by His Majesty, without a suspending clause*. Now, Colonel, how can you exculpate the General Assemblies from this atrocious crime?

The Rector's patriotism, answered the Colonel, is as conspicuous as his modesty and politeness; but it is really *matter of pleasantry*, as this Thersites*

* *Thersites only clamor'd in the throng,
Loquacious, loud, and turbulent of tongue;
Aw'd by no shame, by no respect control'd,
In scandal busy, in reproaches bold:
With witty malice studious to defame;
Scorn all his joy, and laughter all his aim.*

Popé's *Iliad*

said of the *famous* petition, to hear him haranguing about the constitution, which if he knows anything of, he does not care to make it public.

The constitution cannot be destroyed, nor the royal prerogative restrained by any act of the General Assembly. The King as sovereign possesses an inherent power in the legislature of the colony and can give his allowance or disallowance to any act passed by them; but as the Rector boasts that I am not able to answer his arguments upon this head of accusation, that I am *graveled*, that *he hath caught my gentleman tripping lightly over marshy ground*, you must give me leave to examine into THE POWER OF THE GENERAL ASSEMBLY TO ENACT LAWS, which I believe will put an end to the Rector's exultations and convince you it was the CONTEMPTIBLENESS and not the WEIGHT of his arguments that prevented my answering them in the letter I thought proper to address to him.

I do not suppose, Sir, that you look upon the present inhabitants of Virginia as a people conquered by the British arms. If indeed we are to be considered only as the savage ABORIGINES of this part of America, we cannot pretend to the rights of English subjects; but if we are the descendants of Englishmen, who by their own consent and at the expense of their own blood and treasure undertook to settle this new region for the benefit and aggrandizement of the parent kingdom, the native privileges our progenitors enjoyed must be derived to us from them, as they could not be forfeited by their migration to America.

One of the greatest lawyers and the greatest philosopher of his age* tells us, "A country gained by conquest hath no right to be governed by the English laws." And another no less eminent lawyer† says, "Where the country of a pagan or infidel is conquered, there, *ipso facto*, the laws of such country are abrogated." And from hence I suppose it was that a learned and upright judge‡ gave it as his opinion, "That Virginia is to be governed by such laws as the King pleases." But certainly this great judge was not acquainted with Virginia; if he was he never would have given an opinion which with respect either to the original or present inhabitants of this country must be erroneous. It must be erroneous with respect to the original inhabitants because they were never fully conquered, but submitted to the English government

* Lord Chancellor Bacon.

† Lord Coke.

‡ C. J. Holt.

upon terms of peace and friendship fixed and settled by treaties; and they now possess their native laws and customs, savage as they are, in as full an extent as they did before the English settled upon this continent. It must be erroneous with respect to the present inhabitants because upon a supposition that their ancestors were conquerors of this country, they could not lose their native privileges by their conquests. They were as much freemen, and had as good a right to the liberties of Englishmen after their conquest as they had before; if they had not, few of them, I believe, would have been induced by so inadequate a reward to endeavor an extension of the English dominions, and by making conquests to become slaves.

Under an English government all men are born free, are only subject to laws made with their own consent, and cannot be deprived of the benefit of these laws without a transgression of them. To assert this is sufficient; to demonstrate it to an Englishman is useless. He not only KNOWS, but, if I may use the expression, FEELS it as a vital principle in the constitution, which places him in a situation without the reach of the highest EXECUTIVE power in the state, if he lives in an obedience to its laws.

If then the people of this colony are freeborn and have a right to the liberties and privileges of English subjects, they must necessarily have a legal constitution, that is, a legislature composed in part of the representatives of the people who may enact laws for the INTERNAL government of the colony and suitable to its various circumstances and occasions; and without such a representative, I am bold enough to say, no law can be made.

By the term INTERNAL government it may be easily perceived that I exclude from the legislature of the colony all power derogatory to their dependence upon the mother kingdom; for as we cannot lose the rights of Englishmen by our removal to this continent, so neither can we withdraw our dependence without destroying the constitution. In every instance, therefore, of our EXTERNAL government we are and must be subject to the authority of the British Parliament, but in no others; for if the Parliament should impose laws upon us merely relative to our INTERNAL government, it deprives us, as far as those laws extend, of the most valuable part of our birthright as Englishmen, of being governed by laws made with our own consent. As all power, therefore, is excluded from the colony of withdrawing its dependence from the mother kingdom, so is all power over the colony excluded from the mother kingdom but such as respects its EXTERNAL government. I do not deny but that the Parliament, as the stronger power,

can force any laws it shall think fit upon us; but the inquiry is not what it can do, but what constitutional right it has to do so. And if it has not any constitutional right, then any tax respecting our INTERNAL polity which may hereafter be imposed on us by act of Parliament is arbitrary, as depriving us of our rights, and may be opposed. But we have nothing of this sort to fear from those guardians of the rights and liberties of mankind.

But it may be objected that this general position excludes all the laws of England, so as that none of them are obligatory upon us in our INTERNAL government. The answer to this objection is obvious: the common law, being the common consent of the people from time immemorial, and the "birthright of every Englishman, does follow him wherever he goes," and consequently must be the GENERAL law by which the colony is to be governed. So also the statutes of England in force at the time of our separation, having every essential in their institution to make them obligatory upon our ancestors, that is, their consent by their representatives, and having the same sanction with the common law, must have the same extensive force, and bind us in the same manner the common law does; if it was otherwise it would involve this contradiction, that of two laws made by the same power, one is coercive upon us when the other is not so, which is plainly absurd.

From these principles, which I take to be incontrovertible, as they are deduced from the nature of the English constitution, it is evident that the legislature of the colony have a right to enact ANY law they shall think necessary for their INTERNAL government.

But lest these principles, plain and evident as they are, should be controverted by the Rector or some other of Sir Robert Filmer's disciples, who perhaps may assert that the King by his prerogative can establish any form of government he pleases in the colony, I will examine the power the General Assembly derives from grants from the crown, abstracted from the original rights of the people.

King James I by his charter, under the great seal of England, granted the dominion of Virginia to the Treasurer and Company of Adventurers, and gave them full power and authority to constitute a form of government in the colony as near as might be agreeable to the government and policy of England. Pursuant to this power, the Treasurer and Company by their charter established the legislature in the governor, Council, and representatives of the people, to be called the GENERAL ASSEMBLY, with "free power to treat, consult, and conclude as well of all emergent occasions concerning

the public weal of the colony and every part thereof, as also to make, ordain, and enact such general laws and orders for the behoof of the colony and the good government thereof as shall from time to time appear necessary or requisite."

The General Assemblies have continued to exercise this legislative power from that time. King James left them in full possession of this power upon his dissolving the company; and King Charles I in the year 1634 by order in his Privy Council declared that "interests which the colony enjoyed while they were a corporation should not be impeached, but that they should enjoy the same privileges they did before the recalling the company's patent." And in the year 1642 under his sign manual and royal signet he "confirmed the form of government, declared that they should ever remain under the King's immediate protection, and that the form of government should not be changed."

After the Restoration, in the year 1675, the General Assembly sent three agents to England to solicit a new charter from King Charles II. Their petition upon this occasion was referred by the King's order in his Privy Council the 23rd of June to his attorney and solicitor general, who reported their opinion to the Lords of the Committee for Foreign Plantations, "That it would be for His Majesty's service and for the increase of the trade and growth of the plantation of Virginia if His Majesty shall be graciously pleased to grant and confirm, under his great seal, unto his subjects in Virginia the particulars following." And then they recite the several heads of the General Assembly's petition, one of which was "That the power and authority of the General Assembly, consisting of the governor, Council, and Burgesses, may be by His Majesty ratified and confirmed"; but with this proviso, "That His Majesty may, at his pleasure, revoke any law made by them; and that no law so revoked shall, AFTER such revocation and intimation thereof from hence (i.e., from England), be further used or observed."

The Lords of the Committee for Foreign Plantations presented this report to His Majesty in his Privy Council at Whitehall on the 19th of November 1675; which His Majesty approved and confirmed, and ordered a bill to be prepared by the attorney and solicitor general for his signature in order to the passing letters patent "for the settlement and confirmation of all things according to the said report."

A complete charter was accordingly prepared, and received the King's signature; but before it came to the great seal stopped in the hanaper office upon receiving an account of Bacon's insurrection.

But though the charter did not pass the great seal, King Charles II from that time, and his successors ever since, have inserted the several clauses of it relative to the power of the General Assembly in their commissions to their governors, who have “full power and authority, by and with the advice of the Council to call General Assemblies, and by and with the advice and consent of the Council and Assembly or the major part of them respectively, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of the colony, and the people and inhabitants thereof.” “Which laws, statutes, and ordinances, of what nature or duration soever, are to be within three months or sooner after the making of them transmitted unto the King under the public seal of the colony for the royal approbation or disallowance. And in case all or any of them shall at any time be disallowed and not approved and so signified by the King under his sign manual or by the Privy Council unto the governor or commander-in-chief of the colony for the time being, then such and so many as shall be disallowed and not approved shall from THENCEFORTH cease and determine and be utterly void and of no effect.”

From this short review of our constitution it may be observed that the people have an original right to a legal government, that this right has been confirmed to them by charter, which establishes the General Assembly with a general power “to make, ordain, and constitute laws, statutes, and ordinances for the public peace, welfare, and good government of the colony.” Which power, by a constant and uninterrupted usage and custom, they have continued to exercise for more than 140 years. And if what Lord Coke says in *Calvin’s Case* is true, that “where the King by charter or letters patent grants to a country the laws of England or a power to make laws for themselves, he nor his successors can alter or abrogate the same,” we cannot be deprived of this right, even upon the Rector’s principles of passive obedience.

But it may be asked if the King’s assent is not necessary to give sanction to the acts of the General Assembly. I answer, it is necessary. As sovereign, no law can be made without his assent, but then it is not necessary that he should be present in his royal person to give his assent; this is plainly impossible. He therefore gives power by commission under his great seal to his governor to give his assent, which, to speak in the language of the law, is in this case a *TESTE MEIPSO*⁷ and gives life and being to the laws in the same manner as if he was present in his royal person.

7. [“Witness myself.”]

The King frequently gives his assent to acts of Parliament by commission to persons appointed for that purpose; he does the same thing by his commission to the governor, who thereby becomes the King's representative in his legislative character, so that the governor's assent to laws here is in effect the King's assent. But as the King cannot be informed of the nature of the laws passed by his commissioner while under the consideration of the General Assembly, he reserves to himself a power of abrogating them, notwithstanding his commissioner's assent; and FROM THE TIME of such abrogation, and not BEFORE, they are to cease and determine.

But Colonel, said I, notwithstanding you have deduced your history of the constitution from the royal grants and the established principles of the English government, His Reverence is in the right. He relies upon the King's instructions to the governor, which ought not to be infringed, but must have the force and obligation of laws upon us.

I have, replied the Colonel, a high reverence for the majesty of the King's authority, and shall upon every occasion yield a due obedience to all its just powers and prerogatives; but submission, even to the supreme magistrate, is not the whole duty of a citizen, especially such a submission as he himself does not require. Something is likewise due to the rights of our country and to the liberties of mankind. To say that a royal instruction to a governor, for his own particular conduct, is to have the force and validity of a law, and must be obeyed without reserve, is at once to strip us of all the rights and privileges of British subjects, and to put us under the despotic power of a French or Turkish government. For what is the real difference between a French edict and an English instruction if they are both equally absolute? The royal instructions are nothing more than rules and orders laid down as guides and directions for the conduct of governors. These may and certainly ought to be laws to them, but never can be thought, consistently with the principles of the British constitution, to have the force and power of laws upon the people. Which is evident from this plain reason: promulgation is essential to the nature of laws, so that no law can bind any people before it is declared and published to them; but the King's instructions are to be kept secret and not published to us, no not even to the Council, unless the governor thinks it for the King's service. "You are to communicate," says one of these instructions to the governor, "unto our Council of Virginia from time to time, such and so many of our instructions as you shall find convenient for our service." So that from the instructions themselves it is evident the

King does not intend them as laws to his people. Besides, the royal instructions are drawn up in England by ministers who from their distant situation from us cannot have so full and perfect a view of affairs in the colony as is necessary for those who are to be legislators and supreme directors of them. Sudden emergencies will arise; present occasions will be lost; and such quick and unexpected turns are perpetually happening in all sublunary affairs as require the utmost vigilance and celerity, and can never stay for such a distant guidance and command. The ministers in England see nothing with their own eyes that is passing amongst us and know nothing upon their own knowledge, and therefore are very improper legislators to give laws to the colony. The King's instructions, then, being only intended as guides and directions to governors, and not being obligatory upon the people, the governors are only answerable for a breach of them, and not the General Assembly; and if they are answerable only, they have the only right of determining whether their passing acts upon particular emergent occasions is contrary to the spirit and true meaning of their instructions or not. In short, Sir, the Council and House of Burgesses have a right to present any act relative to the internal government of the colony to the governor for his assent without violating any instruction; and the governor has a right, as the King's commissioner representing the royal person, to give or refuse his assent to such act as he may think it agreeable or contrary to his instructions directing his conduct in this particular. This I say, Sir, the Council and House of Burgesses may do, from the general powers with which they are invested by the constitution, without being guilty of attempts to restrain the power of the royal prerogative; which being committed to the governor, he is to determine how he is to exercise it and no other person has anything to do with it in this case. From hence then it is evident that the General Assembly may pass an act which alters or repeals an act that has received the royal approbation without destroying the *old constitution or attempting to bind the King's hands*; and if such act is passed, it must have the force and obligation of a law until the King declares his royal disallowance of it.

But since the royal instructions are so much insisted on by the Rector, I will examine whether the same doctrine I have endeavored to establish may not be deduced from them.

I have no copy of the instructions relating to this question, nor have I been able to procure one; but as I have formerly read them, I believe I can recite them tolerably exact.

By these instructions the governor is “not to give his assent to any act that alters or repeals any other act without a suspending clause, although the act to be altered or repealed has not had the royal approbation, unless in cases of great emergency; nor is he to give his assent to any act that alters or repeals any other act which has had the royal approbation without first obtaining the King’s permission, under the penalty of being removed from his government and incurring the King’s highest displeasure.” Now I infer from these instructions that, admitting the governor should pass an act contrary to them, he subjects himself to the penalties inflicted on him for a breach of his instructions, but the act so passed by him has the obligation of a law until the King’s disallowance of it; for if such act is void, *AB INITIO*,⁸ the instructions would be absurd, because to restrain the governor from passing an act which when passed is as absolutely void as if it had never existed, is absurd and useless.

Our sovereign, therefore, knowing that from the fundamental principles of the constitution such act must have the force of a law when passed by the governor, has restrained him from giving his assent in such a case under particular personal penalties, but has left the act to its course until he thinks proper to repeal it by his disapprobation.

But this is not all; for as the governor may pass an act in a case of great emergency though contrary to the general tenor of the instructions, it would involve a greater absurdity, if possible, should an act be void *AB INITIO* which he passes by virtue of the general powers given him by his commission under the King’s great seal, and another act passed by him under the same authority have the force of a law because the governor is of opinion that the exigencies of the colony make such act necessary. Under such a construction the case is plainly this: the governor passes an act in a case of great exigency contrary to the strict letter of his instructions, which act shall have the force of a law because he thinks the circumstances of the colony require it; but if he passes such an act when he thinks the circumstances of the colony do not require it, such act shall be void *AB INITIO*. This is like the absolution in the Romish Church, which is of no effect, though proclaimed with a loud voice, unless the intention of the priest accompanies, and is too absurd to deserve any further consideration. And yet into such an absurdity

8. [“From the beginning.”]

must you fall, Sir, when you contend that such an act is void *AB INITIO*, from a construction of the royal instructions to the governor.

Neither will the Rector's hearsay account* of one of the *revised* laws make any alteration in the case, for the land law that was altered by this *revised* law never received the royal assent; but the reason why this *revised* law laid *some time dormant and unobserved* was that as it affected the King's grants of his lands, a suspending clause was added to it so that it could have no operation until the royal approbation of it was obtained. And though this approbation was obtained, it was not known to us until several years after, when Mr. Montague, our present agent, by direction from the committee of correspondence, inquiring after it found it in the Council office in England and transmitted it to us, from which time it became in force here.

But Colonel, said I, though all this may be true *I am at a loss to know what good reason can be given for an order of the late Assembly to support the vestries against the appeals of the clergy, and not an order for supporting private contractors against the merchants.* When, Sir, answered the Colonel, you can produce an instance of a merchant or any other person except the Rector and two or three of his brethren bringing suits to try the validity of an act of the legislature, I will give you a reason why the merchants were not included in the order of the late Assembly. I suppose from what you say you would insinuate as if the Assembly pointed the clergy out as the particular objects of their resentment; but in this you are mistaken. An action was brought in the General Court by the Rector against the collector of his parish levy on purpose to controvert the power of the General Assembly in making laws, or rather to render their power a mere cipher. It behoved them then to support their own authority and the validity of their own acts against every attempt to destroy it; and from hence it was that by an order of the late Assembly the collector of York-Hampton parish levy was to be defended in the Rector's suit against him at the public expense.

Thus, Sir, I have endeavored to obviate the Rector's arguments and to convince you that the General Assemblies were not setting up the standard of rebellion against the King's authority when they passed the acts which have given this patriot Rector such great offense. The insults offered by him to the legislative body of the colony and to private characters are

* See *Single and Distinct View*, p. 37.

certainly carried to a great height; but whether this is owing to the panic he is thrown into lest the *old constitution* should be destroyed or to satisfy a malevolent and turbulent temper, is not worth my time to inquire. I have avoided repeating what I said formerly in my letters upon this subject, so must desire you to consider those letters as part of my present defense, since I cannot think that the Rector has given any answer to them.

I know that the plainest demonstration is lost upon men who are under the influence of prejudice or an obstinate disposition of mind. Such men will never want ground for wrangling, especially if they have any by-purposes to serve. But notwithstanding the artful endeavors and invidious representations of such men, I make no doubt that you will, from a sincere desire of promoting truth and the public good, give an impartial decision in this dispute, which I shall submit to you after observing that whoever throws out reflections on the acts of the legislature as plainly tend to weaken their authority, let his profession of patriotism be otherwise ever so specious, is so far an enemy to his country.

Colonel, said I, I have not sufficiently considered this matter to form a just opinion of it; but as His Reverence is a great master of reason and acquainted with the nature and principles of government, I will communicate this conference to him, which, as soon as he has *reconnoitered*, I doubt not will receive a proper reply.

And thus, may it please Your Reverence, the conference broke up of which I have given you this faithful account. I shall be extremely rejoiced if you can find leisure from the *laborious and painful* duties of your pastoral office to send forth a reply to the Colonel's arguments; but

*Cum tot sustineas et tanta negotia solus,
 . . . moribus ornes,
 Legibus emendes; in publica commoda peccem,
 Si longo sermone morer tua tempora . . .*⁹

I am, may it please Your Reverence, with the utmost deference and esteem,

Your most obedient servant,

COMMON SENSE.

9. ["While you alone . . . sustain so many and such great affairs . . . you adorn [the Roman world] with your character, you reform it by your laws, I would wrong the public good if I should waste your time, O Caesar, with a long epistle."]

Appendix Number I

To the Rev. Mr. John Camm, Rector of YORK-HAMPTON.

SIR,

Colonel Landon Carter and myself have at length fallen under your correction. It has been delayed, indeed, a good while; and you tell us in excuse *your intention was not to answer us at all, otherwise than by a trial in the ordinary court of judicature, until you was advised by your friends that this was too long a coming, and the colonels would have reason to think themselves neglected.* But this certainly cannot be a good reason for withholding your chastisement from us for more than three years; however, I should be satisfied with it if I did not believe you had at least another motive for not letting us hear from you until this time. The motive I mean is, I confess, a little JESUITICAL and does no great honor to your candor and integrity; but then it is a strong instance of your sagacity, a virtue in your estimation infinitely more valuable than either of the former. You, Sir, have a cause with the collectors of your parish levy to be determined [by] this General Court; and your pamphlet appears mighty properly for that trial.

But let your reason for appearing in print at this time be what it will, I should think the rude and uncivil language that hath been *brawled* out by Colonel Carter and myself, *too rapid with rage and rancor to be free from foam and froth* should not have been exceeded by a person of your urbanity and politeness; but you, who always act so consistently with your OWN character, have managed this controversy into which you are pleased to enter with the colonels with a *rage and rancor* ten times more *foaming and frothy* than those are actuated with on whom you have thought proper to discharge the overflowings of your good nature. But perhaps, Sir, according to the language of your first memorial to the Lords of Trade, you was so diligently employed in *a painful and laborious performance of your function* amongst your parishioners that you had no time to examine your weapons properly; and as scurrility and venomous abuse were nighest at hand and most easily to be come at, you employed them in your defense instead of reason and argument *flowing in a gentle and pellucid stream.*

You, Sir, seem to imitate those reasoners who, to use the words of an *ingenious* divine, are very prolix in invalidating arguments which nobody lays any stress upon; but when they are really strong and impregnable, they

would fain slip them over as hastily as they can and take a slight cursory notice of them. Very material objections are to them like marshy ground: a man may make a shift to run lightly and nimbly over it, but if he ever treads leisurely and dwells long upon one place, he infallibly sinks.

This is evident as well from your manner of managing your arguments against the Two-Penny Act, as you call it, as from your way of examining the facts contained in my *Letter to the Clergy*. In the one case you do not give a just account of the tobacco made or the price it sold at in the scarce year, nor do you consider the advantages arising from it to the people in general, in opposition to the disadvantage a few individuals suffered by means of it, which, I presume, ought to be a principal consideration with legislatures in forming of laws. In the other case you jumble into one confused and undigested heap distinct points that have not the least connection with one another, and pronounce with the authority of an overbearing pedagogue that my *rambling declaration* is contrary almost in every instance to the truth, and foreign to the purpose.

Without pursuing you through the maze of your disjointed arguments, I will *exhibit* a specimen of your way of reasoning from your miscellaneous remarks.

The Bishop of London tells the Lords of Trade, in his letter to them, that *within these few years past the people of Virginia were ALL members of the Church of England, and NO dissenters among them; but these days are over*. In answer to this part of the bishop's letter, I show that there were dissenters in the colony above 100 years ago; and I say, *unless the memorialists can procure a repeal of the Act of Toleration, and establish a hierarchy upon ARCHBISHOP LAUD's principles, I will venture to pronounce we shall always have them*. In another part of my letter I compare the conduct of *some* conventioners to Romish inquisitors, as to the secret manner of carrying on their transactions.

Now in answer to these two distinct and very different parts of my letter, you express your astonishment at my *casting the conduct of ARCHBISHOP LAUD in your teeth, and not forgetting to compare you to Romish inquisitors*. And, which must certainly be the strongest and most convincing reason in the world for disproving what I say, you charge upon me, what I am sure you do not know, *my own practice of officiating as a clergyman in the churches of the parish where, with a sarcasm peculiar to men of your uncommon wit, you say I make the most conspicuous figure*.

This I must confess is to me a *new* way of reasoning; but if it is a conclusive one, suffer me to try how it will do in another case.

By the statutes against nonresidence, the parson is obliged to reside constantly in his parish to discharge the several duties of his office; but the Rector of York-Hampton hath deserted his parish, and is scarce ever in it to perform the duties of his office. Therefore his *Single and Distinct View* is *almost* in every instance contrary to the truth and foreign to the purpose.

If this is good logic I will submit it to every impartial person to determine whether I have not the advantage in the argument, since my *major* proposition is known to be true by all the lawyers, and my *minor* is known to be true by all the inhabitants of York-Hampton, let my conclusion be what it will. But your argument is not true in any part of it.

This instance, *cum multis aliis, quae nunc prescribere longum est*, but may be found almost in every page of your masterly work, is sufficient to expose your sophistry in the management of this controversy.

But let me ask you, what has my officiating in the church as a clergyman, suppose it true, or Colonel Carter's founding a free school in his parish for the instruction of the poor and ignorant in the duties of religion, to do in a question upon the utility of the act of Assembly that gives you so great offense? Are you enraged with us for actions which, without your learned commentary, when truly known, may be commendable? Or do you collect all the trash you can from *shrubs and bushes*, with a purpose to swell your notable performance to the size of a thirty-penny pamphlet, that you may be reimbursed *the large sums you have expended out of your own pocket in contending to make the professors useful at the college*.

I remember to have read in some book or other that, after a long and tedious argument of a cause in one of the courts in England, in which much was said quite foreign to the purpose, the judge, when he came to deliver his opinion, told the counsel they had made the cause like a BANBURY cheese, from which, if the bad and unsound parts were pared, the remaining good would be reduced to a very small size. Your *Single and Distinct View* may then most justly be compared to a BANBURY cheese: pare off the scurrility and abuse, the false reasoning, and more false facts, and it will be reduced to less than the title page.

In answer to your scurrility and personal abuse, as I despise what you can say of me, I shall only observe that, like the Yahoo in Lemuel Gulliver, you

fling your filth about you in such a manner that no cleanly person can come within your reach without disgust.

I have before *exhibited a specimen* of your false reasoning, and would in this place produce many more instances of it; but as a particular recital of them will much exceed the limits prescribed me by the printer in his paper, I must content myself with desiring every reader who thinks you or me worthy his notice to compare those parts of your *Single and Distinct View* wherein I am mentioned with my *Letter to the Clergy*, and they will easily discover them without my animadversions.

But though false reasoning can easily be discovered by every intelligent reader, false facts cannot be known but from evidence which every reader may not perhaps be acquainted with; it will be necessary therefore for me to consider particularly those you have advanced. You say you have *met with two VERY CREDIBLE accounts of the tobacco shipped in the scarce year to Britain, one of them an IMPERFECT one amounting to 25,000 hogsheads, the other to 35,000.* The impropriety of your expression in this part of your *remarks*, that an IMPERFECT account should be a CREDIBLE one, would not be worth noticing if I had not to do with a person who writes with so much exactness and precision, and who has employed above three years in composing his mighty work. But, Sir, even this imperfect account exceeds the quantity of tobacco shipped the scarce year if the receiver general's accounts are to be credited. By his accounts, only 24,169 hogsheads were shipped; and if you had inquired, you might have known that at least 5,000 of these hogsheads were of the preceding year's crop and the property of merchants residing in Great Britain in the hands of their factors here, and that full 1,000 hogsheads of the tobacco made in the scarce year were brought from the neighboring provinces; so that upon a just state of the account it will appear that not 20,000 hogsheads were made in this colony that year. But I will suppose 20,000 hogsheads were made. Computing then this number of hogsheads at 1,000 each, and allowing the number of tithables to be 120,000, which is 8,000 less than you suppose them to be, it will appear that the tobacco made in the scarce year does not come to 170 pounds for each tithable. But when the clergy's salaries, the secretary's, county court clerks' and sheriffs' fees, with the expenses of the several parishes exclusive of the clergy's salaries and expenses of the several counties, which at a very moderate computation will be found to exceed 4,650,000 pounds of tobacco, I say when these expenses are deducted it will be found that not 100 pounds

of tobacco will be remaining for each tithable to maintain themselves and families and to support the late war in that dreadful year.

The circumstances that the people labored under in that year I have particularly described in my letter, which you have not been hardy enough, now you are upon the spot where truth can be discovered, to deny; though I have been informed by good authority when you was in England you told the Lords of Trade in your second memorial to them that the scarcity complained of was mere pretense.

In answer to what you say of the injury the clergy received by the Two-Penny Act, which is what your long list of names and accurate calculations are intended to show, as I have not as yet been under your tuition to learn confidence enough to contest self-evident facts, I shall admit to be true in part; but then let me examine whether the consequences you mention are justly deducible from thence.

Suppose the rich men who had tobacco due to them from their poor tenants could possibly have acted upon the same principles that seem to govern your conduct. Would not *these* poor tenants have felt the inconveniences of that year in a more affecting manner than they did under the protection of that act? If you could have compelled these rich men to pay any price for their proportion of your salary you had thought proper to exact from them, could not they have meted the same measure to their poor tenants? And in this case, would not the tenants have been the only sufferers? The same reason extends to all kinds of tobacco debtors, and indeed in a good degree to those money debtors the produce of whose labor was not sufficient to subsist their families; and you yourself must acknowledge, if you will acknowledge any truth, that thousands of the people were under such circumstances.

But allowing that the tobacco creditors had a right to receive their tobacco under the several laws that establish their salaries and fees or a compensation in money adequate to the value of tobacco that year, what ought this compensation to be? And here you will find that your account of the price of tobacco the scarce year is no less false than your other facts. In the beginning of the inspection that year, crop tobacco sold at about 27 or 28 shillings; it did rise afterwards to 35 and 40 shillings, and for a short time was as high as 50, and some of the best crops sold at 52 shillings and six pence, occasioned by a man who commenced a purchaser without any design of paying; but it soon fell, and in the month of June was down as low as 35 shillings. The

public collectors could not distrain upon the people until the 10th of April, and the public creditors could not legally demand their tobacco from the collectors until the 10th of June, so that at the time your salary was due, crop tobacco was at 35 shillings; but as yours was transfer tobacco, and not equal to crop in value, it would not have produced that price; and yet in your computation you make your salary worth 50 shillings the hundredweight. *Credat Judaeus Apella, non ego.*¹⁰

Your insinuations that the General Assembly are attempting to restrain the power of the royal prerogative are too contemptible to deserve any reply; but your charge against me relative to my account of the minister of Norfolk's conversation with me requires a particular answer. You say that gentleman was *always* dissatisfied with the act I mention in that part of my *Letter to the Clergy* where I am speaking of Norfolk and Princess Anne. Now I repeat it here that I myself have heard that gentleman declare he was satisfied with it, and I am ready to produce at least three gentlemen, at this time in this city, who will declare he did not *ALWAYS* express an utter dislike of it; and I can likewise prove, by gentlemen also in this city, that he said he left your convention and refused to contribute towards your agency as he disapproved of your scheme. Could I attain to the sublimity of your diction I might very justly exclaim out on this occasion, *O John Camm! opprobrious John Camm! no good cometh out of John Camm.*

I assure you my principal design in making you this address is to obviate this reflection, flung out by you with so much malevolence against my private character. Indeed, I did not regard it myself, as it came from you; but I did not know what credit it might meet from persons unacquainted with you or me. For the future, whatever productions you may think proper to send forth against me, I shall treat them as they deserve, with a silent contempt.

I am, as I ought to be, In every respect, yours.

RICHARD BLAND.

Williamsburg, October 25th, 1763.

10. ["The Jew Apella may believe it, but not I."]

Number II

Observations on Colonel BLAND's Letter to the Reverend JOHN CAMM, Rector of York-Hampton, published in the Virginia Gazette October 28, 1763.

To the READERS.

This is humbly to acquaint you that Colonel Richard Bland's letter directed to me in the *Gazette* is come safe to hand; and according to report I am in imminent danger of being knocked down with a folio volume from the other colonel, 50 pages of it being already finished. But this is none of my business at present; for why should I anticipate misfortunes? It is enough to bear them with fortitude when they arrive.

My present antagonist seems to give up several posts, the strength of which was magnified until they fell into the enemy's hands; but now when they are no longer tenable by the original possessor, according to a usual turn in war, they are undervalued as of little consequence. He fights as he runs, to secure as handsome a retreat as possible. He shifts his ground and entrenches himself in new encampments. Well, it is still his place to lead and mine to pursue. Farewell then all attempts to prove an act to be made *in salutem populi*¹¹ for the very preservation and subsistence of the people, which, whatever the respectable enactors intended, is in its own nature a plain attack upon private property, on the foundations of commerce, on the provision for an established church, on the principles of free government, on the King's authority, on the stability of private and public faith, on everything which a British subject has just cause to value himself upon. Adieu to that most pressing necessity which Colonel Bland told us was the only thing that could justify any departure from the *established rule of right* or the passing certain acts *without a suspending clause*, which necessity for the act in question wants nothing to make it fit for the Colonel's purpose but a *possibility* of existence. Good night to the famous petition, which as the petition of the whole clergy was to effect terrible things, but as the petition of *one* individual is unable to perform any mighty matter. And lastly, peace to the ashes of the kings of Babylon, Turkish slaves, harpies, beasts of prey, monsters, and tithe pigs. No, I beg Colonel Bland's pardon, the tithe pig belongs to the other colonel, and must be kept cold for his particular

11. ["For the safety of the people."]

entertainment, as I understand him to be a great lover of cold roast pig. I wish among the kings of Babylon, etc., I could have buried Archbishop Laud and the Romish inquisitors; but these obstinate warriors still keep the field, and like some heroes in romance insist upon being killed over again.

The Colonel sets off with detecting a horrible machination of mine in publishing my *Single and Distinct View* at so critical a time, for which he pronounces me to be Jesuitical, and kindly informs me what little value I set upon *candor and integrity, resolving*, I suppose, that the letters which have passed between Mr. Royle and me relative to the time and manner of my publishing are not authentic, and that my pretended voyage to the metropolis of Maryland is all an invented trick. As to my setting little value upon *candor and integrity*, I hope the Colonel will be convinced to the contrary by my leaving them in his hands, and desiring that he will show his regard for them by trying to *hold them fast*. As to my being Jesuitical, I can only entreat him to give over fancying that to tease an adversary with *cant* terms and to talk to the purpose are one and the same thing. Once upon a time terms of this kind would have done wonders, but at present they are somewhat out of date, and no more regarded than an old almanac. But the Colonel talks of a cause that I have with *the collectors of my parish levy*. If it be so as he says, let him tell whether it be usual for the legislature of a free government to interfere in a private lawsuit by making an order to support one private subject against another. If this be usual, I shall be glad to be better informed. The Colonel says the above cause is to be determined *this* General Court, in which I have the misfortune to find him a false prophet. I desire the readers to take notice that, as I was acquainted by my attorney, then here but now in England, my vestry would not agree that the collectors should stand suit with me until they were assured that the General Assembly would bear the expense of an appeal, and that several private contractors with the merchants gave up the point in dispute for want of the like assurance.

I cannot help being diverted at the Colonel's *scolding* so bitterly against *scurrility*. He is pleased to confess that I exceed both Their Worships in *scurrility*, which I assure you is no ordinary victory; and therefore he is entitled to my thanks for so easily ceding to me this honor. As he has not condescended to particularize any scurrilous words of mine, I suppose he means his own words, which I have returned to him in as good condition as I received them. I find the Colonel is of their turn who like to be very sharp and cutting themselves, but do not like to be attacked with the same weapons, who

will fight anybody in the way of wit and argument, provided they may be allowed the use of a small sword against their adversary's penknife. So the *overseer* is hugely delighted to exercise the cowskin upon others; but if any bystander presume to snatch it out of his hand and let him *feel* the weight of it a little, he takes it very unkindly, grows furious, and strikes the first person, whether friend or foe, who has the misfortune to be placed within the reach of his arm. These gentlemen act herein as if they had obtained an *exclusive* right to the trade of scurrility. If they have, they have nothing to do but to produce their *patent*. After all, the Colonel is not the proper person to determine *finally* whether I have been scurrilous or not, but this must be left to the decision of the readers of every degree; and if they bring me in guilty, as they are the judge and jury and everything with me at present, I have nothing further to urge but only to recommend myself to their mercy, hoping they will consider that my scurrility was *provoked defensive* scurrility, and suffer this consideration to have its due effect in mitigating the rigor of the penalty.

The Colonel next tells us that his *salus populi*,¹² his *most pressing necessity*, which was once the only thing that could bring him off and justify the act in debate and all the other arguments which I have endeavored to invalidate, he no longer lays any stress upon. That's a good Colonel now! This is very kind; this is meeting me more than half way; we shall be quite agreed presently. But hold, the Colonel has still got some *impregnable* fortresses. He is not indeed so indiscreet a commander as to tell me in what their strength consists, but he makes me in some measure acquainted with their situation; by which I am afraid the *foundation* is *bad* upon which they are erected, for it seems they stand on *marshy* and *rotten* ground. Now if I have *run lightly* over the Colonel's *marshy* ground in saying no more of this *marshy* ground than he has, he has *run as lightly* over it as I have done; and therefore the worst that can be concluded against me from hence is that the Colonel and the Parson of York-Hampton are equally expert in *bog-trotting*.

The Colonel says that I have not given a just account of the tobacco *made* or the price it sold at in the scarce year. I do not pretend to be exact to a pound of tobacco or to a shilling in money, which I think I have told the public already. Why will the Colonel have me to be infallible when I disclaim any such pretensions? The Colonel talks of what ought to be a principal

12. ["Safety of the people."]

consideration with legislatures in forming laws. I have already endeavored to show either that the occasion of the dispute between the Colonel and me was not a fit object for the legislature of a free government to consider, or if it was, that things have been most *grievously* and *irregularly* managed, that the remedy for the supposed evil was worse than the disease. The Colonel seems to think that he has nothing to do but to prove that there was some disorder or inconvenience had happened to some members of the community here, whereas it lies upon him to show that a safe and adequate remedy was made use of for their relief. To do some good to a green wound in the extremities by throwing the whole body politic into a declining and hectic condition is no sound nor commendable practice. Whether the Colonel or I jumble most, or ramble most, or are most foreign to the purpose is become a matter of fact which cannot now be amended, but must be left as it is to the examination of the readers.

The Colonel will not pursue me through the maze of my disjointed arguments. He is in the right, for without engaging in that undertaking he is sufficiently bewildered.

There is no pressing necessity for supposing that the late Bishop of London by the words *all* and *no* meant that there was lately a time when there was not a *single* dissenter in the colony; because the Colonel himself, as we shall see by and by, uses the like kind of terms without designing to have them taken in so strict a sense. But supposing that the old and venerable bishop had made some mistake here, what has this to do with repealing the Act of Toleration or Archbishop Laud's hierarchy? Was the Bishop of London any enemy to toleration? Are not the clergy in Virginia friends to toleration? Do they desire anything more than that neither the toleration nor the establishment may be sacrificed the one to the other? Does not the Colonel read the public prayers and deliver sermons in the churches of his own parish whenever he pleases? If his zeal should lead him to turn field-preacher, who will take upon them to hinder him? What more toleration would he have? Why I suppose as he goes halves with the parson in the spiritualities, he thinks it but reason that he should have a share in the temporalities too; which purpose the frequent repetition of Two-Penny Acts would answer fully. *I hope Archbishop Laud and his hierarchy will not have the assurance to rise up again.* What are these horrible secrets for which the conventioners are to be compared to *Romish inquisitors*? I know of nothing that the conventioners had any occasion to keep secret. I know nothing of their

being more secret than any other body of men on similar occasions. If I do not mistake (for I have not the pamphlets at this instant before me) the two colonels fall upon them both for being *too secret* and *too open* in relation to the same article, namely, the Bishop of London's letter. *I beg that these Romish inquisitors may be quiet, and not be so impertinent as to give us any further trouble.* Have I brought nothing to disprove what the Colonel says but *his own practice of officiating as a clergyman in the churches of the parish wherein he makes the most conspicuous figure?* Why did he not put in *delivering sermons* too? The Colonel says I do not *know* him to make use of this practice. He means that I never was one of his congregation. True; but what then? What if I know those who have been made a part of his congregation? Will not their evidence be sufficient?

We must now view the Colonel in his meridian glory, armed at all points in a logical coat of mail, drawing up his majors and his minors and allied army of lawyers, rank and file. With all this apparatus, to do what? To attack a windmill instead of a giant, for there is just as much connection between a windmill and a giant as there is between my residing a *mile or two* out of my parish and the dispute about Two-Penny Acts; and anger makes more Don Quixotes than ever were made by reading romances or books of chivalry. But let us muster these majors and minors with the forces under their command and examine how they can perform their exercise. Upon this the Colonel is so hardy as to risk the fortune of the day; and if he will abide by his own criterion, I am afraid he is in great danger of a total overthrow. First, for the Colonel's major; it is this: "By the statutes against nonresidence the parson is obliged to reside constantly in his parish to discharge the several duties of his office." How does the Colonel prove this major proposition? It is known, he says, to be true by *all* the lawyers. Has the Colonel consulted *all* the lawyers in the universe? Has he consulted *all* or *half* the lawyers in Virginia? If the Colonel does not mean by this expression *all the lawyers* above 50 of that numerous body, then let him learn to forgive that learned, religious, and public-spirited prelate, the late Bishop of London, his *all* and *no*. Be it known to the readers that I have received advice on this point of nonresidence wherewith I am so well satisfied that whenever the Colonel or anybody else shall be pleased to proceed legally against me for what is injurious to no living soul, I am willing to contest the matter; and if I cannot support myself against the charge, I know I must suffer the penalty in that behalf made or provided, which I hope to bear with patience. The

Colonel justly remarks the use of residence, which is that the parson may discharge the several duties of his office. And what if these be discharged without residing as well as they could be by residence, in any part of my parish? Nay, what if they be discharged better, as I have more opportunity now of getting assistance when confined at home by pain or sickness than I could have if resident in any part of my parish? What foundation then can there be left for complaint? Does the Colonel think that the statutes can oblige those Virginia clergymen to reside in their parishes whose glebes and houses are placed out of their parishes? If the Colonel does not, then he will allow some exceptions in the case of residence, and some good reasons for nonresidence. But it is time to look after the Colonel's minor proposition, which is this: "The Rector of York-Hampton hath *deserted* his parish, and is *scarce ever* in it to perform the duties of his office." How does the Colonel prove this minor proposition? He says it is known to be true by *all* the inhabitants of York-Hampton. *All* again! Why will the Colonel lay himself so open? I am almost ashamed to take this advantage of an *angry* man in single combat. Is it not amazing that in an attempt to clear himself, when questioned in point of veracity, this writer should *utter* one of the *most palpable*, barefaced, and impudent falsehoods that ever was invented? If there be a single Negro in my parish so abandoned as to agree to the Colonel's minor proposition, I will beg his master to let him become one of the Colonel's congregation, for I despair of his ever receiving any good from me. And now let the readers decide whether the Colonel's logical outrage will ever prove him to have the advantage of the argument. If the Colonel pleases to excuse *all* this falsehood by attributing it to *confusion* (which I believe he knows to have been pleaded very lately in excuse for an arrant detected falsehood, at a time too when the person I speak of was in the act of clearing up his character), I have no objection to its going as far as can be desired with the readers. Could the Colonel forget himself so far as to think of *awing*, with a fierce and bullying look, *all* my parishioners into false witnesses? Why must I be continually called upon to put the Colonel in mind of the smallness of that circle within which his domineering influence is, or ought to be, circumscribed? Had the Colonel gone no further than to accuse me of neglect of duty in my parish, and to found this charge upon his believing I was too defective in memory to be able to pronounce the names of half the people in my parish, that is of half the free subjects and half the slaves on perusing their faces, I am sorry to say he would have had better authority for this accusation

than I could have wished. He would have had that of a very respectable person, to whom I am obliged for several favors, and with whom it gives me pain to have any dispute of this nature. However, this gentleman must excuse me for adding on this occasion in my own defense that in charging me with neglect of duty I think he is mistaken in point of fact; that in bringing this charge behind my back he did not act so handsomely as I had reason to expect from one of his station and character; and that in laying the matter before the Visitors and Governors of the college there appears to me something of absurdity, because these gentlemen have not, that I know of, undertaken to extend their authority over the parochial affairs of York-Hampton. It would grieve me to appear ungrateful for favors; but I must say that if any person understands by doing me the greatest favor that he thereby acquires any right to treat me in other matters as he pleases, he is in an error. I will not purchase favor at any such dear rate. Had this gentleman condescended to be explicit to me on the head of duty, I might either have been better informed concerning my duty, or else I might have found that he and I differ about the precise meaning of the complex term *duty*, just as the colonels and I differ about the ideas which ought to be comprised under the terms *charity*, *poverty*, and *necessity*; for the syllogistical Colonel must know that most disputes, when thoroughly canvassed, are found to end in mere logomachies. Thus much with regard to the gentleman with whom I wish to be upon good terms. With regard to any others it is sufficient to say that I do not look upon either the clergy or the masters of the college to be purely hired and public butts for the patrons of ignorance or irreligion to shoot their arrows at by way of exercise or amusement.

Having studied to find out what connection there could be between my neglect of duty in my parish and the dispute between the Colonel and me, I have stumbled upon an incident which makes me think that the Colonel *does* believe I went to Annapolis and that Mr. Jonas Green really printed my *Single and Distinct View*; and on this incident, as I take it, is founded the connection which it has cost me so much labor to investigate. For you must know that by going to Annapolis to publish against Colonel Bland (*hinc illae lachrymae*)¹³ I was absent one Sunday from one of my churches, and the person engaged to officiate in my room happened to be too sick to attend. It fell the harder upon the parish as there are no colonels in it

13. ["Hence these tears."]

pragmatical enough to be fond of supplying in my absence and exercising my office. When the press here happens to be shut against me, if the Colonel could keep so tight to the duty of my parish as to prevent my having any intercourse with other presses, who knows but he might be easy?

The Colonel talks of my collecting *trash* from shrubs and bushes. I suppose he here uses the vulgar idiom, and by the word *trash* means *fruit*; and if I spend three years in gathering this fruit, provided it be eatable at last, I therein show the public more respect than I should have in presenting them with hastily gathered, green, sour productions; as full of verjuice as an unripe crab, and as rough to the palate as a mouth-distorting persimmon, or, as the common planter emphatically expresses it, wring-jaw cider.

The Colonel's Banbury cheese is excellent, and is served up in its proper place, close after the fruit, to cure the teeth set on edge by the trash. It will do again and again, on any other occasion as well as this.

Whether the Colonel's not being able *to come near me* is owing to my *yahoo* nature or to something *more disagreeable* to the Colonel, is left to the readers to determine.

Whereas the Colonel recommends it to the readers to compare what I have said in my *Single and Distinct View* with his *Letter to the Clergy*, I have no objection to the sale of his pamphlet. On the contrary, I wish every brother of the quill may meet with proper encouragement.

The Colonel makes rather too much rout concerning the differences between his 24,169 hogsheads and my 25,000. That this observation of the Colonel's may look the more like something, he dexterously drops the little unfavorable word *about*; for I had said the credible and imperfect account amounts to *about* 25,000.

And now suppose, for argument's sake, that the receiver general's account should be unfinished, putting down some parts of Virginia blank, may not the Colonel get an idea from hence how an account may be credible as far as it goes, and yet be imperfect? My other account I am informed came from England, where it may be as well known as here what tobacco was shipped that year to Britain. I do not know whether the principles of the Colonel's calculation be true by which he reduces the crop in the scarce year to 20,000 hogsheads; but if they be, in that case the income of the whole clergy will not amount to a fifteenth part. And a fifteenth of one article of commerce, and no necessary of life, might be paid to the clergy once in fifty years without any heavy burden upon the people; and if it was, I am sure it would be

far enough from putting the other colonel's tithing into any kind of danger. Against the remainder of the preceding crop, and the hogheads of tobacco which come from other provinces, if the Colonel will descend into these minutiae, he should have set the quantity smuggled and shipped off without inspection. This I presume is not *all* to be found in the receiver general's accounts, or in any other account; so that every account of tobacco raised or exported in any one year viewed in this very nice light must fail of exactness and be at the best credible and imperfect. And surely if the Colonel will reckon on the one side what comes hither from other provinces, he ought to reckon too on the other side what goes from hence to other provinces. I do not know how to deduct the secretary's, county court clerks', and sheriffs' fees except the Colonel had produced authentic accounts of them; and therefore I am only led into a maze by this part of the Colonel's calculations. If the Colonel will give me the liberty he takes of supposing my premises, I will undertake to secure what conclusions I have a mind; but though I do not know how much the above fees come to, this I know, that the price of the scarce crop more than made up for the defect in quantity, besides its causing the next year's crop to sell better than it otherwise would have done; that the scarce crop was a very valuable crop; that any grievance which could arise from it must arise from the inequality of the shares enjoyed by individuals; that to take from some of the poorest and least gainers and give what was so taken to the richest and greatest gainers by means of the high price and small quantity was augmenting the inequality which caused the grievance if there was any, and thereby augmenting the grievance itself. As to what the Colonel says about supporting the war in that dreadful year, I do not remember whether the war was more dreadful in that year than in other years; but if it was, no exigence of war could give any right or make it expedient and useful for one part of the community to plunder the other, or for some subjects to reimburse themselves for their losses by the war out of the substance of those other subjects who cheerfully contributed their quota towards the expense of the war with the rest of the people. This is like the other colonel's urging that *all* the country was poor, and thence arguing not that money must be some way or other got from other countries to relieve the *general* poverty of this, but that money must be taken from some of the poorest part of the community here and be given to the richest to relieve the *general* poverty of the richest and render frugality unnecessary among the opulent. I pretend to be as great a friend, at least speculatively,

to the true and real utility of the *whole* colony as Colonel Bland or anybody else; and I believe (whether the Colonel will believe it or not) that it is an honest zeal of this kind which now prompts me to say that I had rather we had endured almost any evil the Colonel can imagine than that a legislature of a free government should set the example of breaking the firmest agreements, not to mention that original compact concerning which some of the best writers on government enlarge with so much pleasure. The Colonel can tell by the event of the scarce year how grievous it sometimes is to many people for *one* single man to fail of complying with his agreements.

Whether the Colonel has good authority or not for my telling the Lords of Trade that the scarcity complained of was mere pretense, I hope he will allow me the benefit of the proverb which tells us that a man cannot be hanged for *thinking*; and he may remember, if he pleases, that the first Two-Penny Act was passed when there was no real scarcity.

What would the Colonel say about an inconsiderable number of tenants? Were *all* the tenants poor? Could none of them bear one hard year by the success of former years? Did none of them raise good crops in the scarce year and thereby find it in itself a happy year for them? Were none of them to be ranked among those who were much profited by the *particular* calamity? Could anybody tell better than the landlord himself whether his tenant was an object of charity? Must the landlords as well as the parsons, must everybody, to serve the Colonel's views, be supposed to be void of compassion, except the *charitable corporation*, I mean the late Assembly? If anybody but the landlord can remit or dispose of his rents in charity, has he the private property of his lands? Was there no way to relieve such as were in want but by unhinging private property? Could not the sufferers have been separated from the prosperous, the sheep from the goats? Could not a collection of voluntary contributions have been made for the really unfortunate through the colony as there was for the sufferers by fire in Boston? Would not this have answered all *just* and *reasonable* purposes much better than *such* an act of Assembly? Would it not have been more agreeable to the practice of free governments? Would the landlords have acquiesced so quietly under the act had they not been reimbursed and found their account in the scheme one way for what they lost in another? Must the landlord be compelled, in a *free* government, to relieve the poor tenant by remitting his rents; and must the parson be compelled to reimburse the landlord? Let the Colonel look over my catalogue once more, and tell

me how much of my money went either to *poor men*, or to *poor tenants*, or to *poor sufferers* by any accident whatsoever; and let him not forget that many such catalogues, many such objects of charity, might easily be produced, objects which were rich before the *dreadful* calamity arrived and still more enriched by the *dreadful* calamity itself. If all the *angry* colonels upon earth were to beg me to believe that an act which gives three or four or five shillings, whatever it be, to a poor man in Gloucester, and five or six hundred times as much to Mr. Page, was made for the sake of the *poor* man in Gloucester and not for the sake of Mr. Page; or that an act which gives a small amount to a few poor tenants and prodigious sums to a promiscuous crowd (of tenants and no tenants, gainers by the high market and no gainers, not in proportion to the poverty but to the riches of each) was made for the sake of the few *poor* tenants, and not for the sake of the promiscuous crowd; or that Mr. Nicholas, for selling his crop of tobacco in the scarce year for 1500 guineas, and his next crop the better by reason of the preceding scarcity, *ought* to be ranked among *objects of charity*; I am so obstinate in this, as well as other points, while I think I have reason and justice on my side, that the *angry* and imperious colonels might in my mind as well bid me swallow one of the Allegheny Mountains under the pretense that it is but a pill of moderate size which may be gulped down at a single effort with the utmost facility by a patient of any resolution.

If the Colonel cannot prevail for having the Two-Penny Act adjudged law (and GOD forbid he should); if he cannot get *all the lawyers* on his side of the question in this debate, his next petition is that the parsons may have as small a compensation by the way of damages as possible. But what if evidence has been already given in one court that tobacco was sold at 50s. a hundred in May and June, and that tobacco to be delivered in August was sold in May at 50s.? What if some of the parsons either did sell or can prove that they could have sold at 50s. in May or June, provided they could have engaged to deliver the tobacco a month or two afterwards? Must not all these things be considered and settled by the jury? Besides, Colonel Bland should not run the tobacco down too low, because this will prove that the *poor men*, the *poor tenants*, and the *poor sufferers* received so much the less relief. As for the *rich men* and the *great gainers*, they perhaps could make more of the tobacco by selling it at 50s. than the parsons could have done by selling at 35s. a hundred. When the Colonel can prevail with those who sold their tobacco at 52s. 6d. to refund because the high price was partly

occasioned by a man who commenced purchaser without any design of paying, then will I agree that the parson ought to have less damages on this account, especially from those who sold their tobacco at 52s. 6d. a hundred.

Colonel Bland is pleased to say, "your insinuations that the General Assembly *are* attempting to restrain the power of the royal prerogative are too contemptible to deserve any reply." Is not the Colonel a little graveled here? Or, in his own phrase, have I not caught my gentleman here *tripping lightly over the marshy ground*? I do not insinuate that the General Assembly *are*, but that some *particular* Assemblies *were*, attempting to restrain the power of the royal prerogative. I do not insinuate that Colonel Bland *is* endeavoring to give the people frightful ideas of the royal prerogative in his letter before me, but that he *was* doing this in his former letter. Is not passing acts which interfere with acts confirmed by His Majesty, without a suspending clause and without any necessity, attempting to restrain the power of the royal prerogative? Has not Colonel Bland acknowledged that this departure from the *established rule of right* can be justified by the *most pressing necessity alone*? Will he eat his own words? I do not believe that Colonel Bland refuses to reply on this head because he thinks my arguments contemptible. For this plain reason I do not believe it, because contemptible arguments are more easily replied to than such as are otherwise. Will the Colonel answer none but *sound* arguments? If he will not, he discovers a strange delight to show his art of disputation on the wrong side of the question. Barely to say anything is contemptible must, in a dispute, pass for nothing. If Colonel Bland was to vary this phrase, *I do not like your arguments*, a thousand ways, he would be more tedious than convincing.

Now comes on the minister of Norfolk's affair. The Colonel repeats it that he heard him say he was *satisfied* with the Norfolk Act, and has three gentlemen to produce who will declare he did not always express an utter dislike of it. Supposing this to be true, if I had an opportunity I should beg leave to ask the gentlemen a few such questions as these: Did the minister of Norfolk say he was *perfectly* satisfied with the act? What might he be supposed to mean by being satisfied with the act, from the occasion and circumstances of the discourse? Did he mean that he thought the act just and reasonable in its own nature, or that he was willing to acquiesce rather than disoblige his parishioners? Which Colonel Bland seems willing to make the criterion of a good clergyman. Might he not mean that he was willing to acquiesce rather than be at any considerable expense about it? As

the conversation seems to have been about the time of the last convention: Are you sure the minister spoke of the Norfolk Act and not of the last Two-Penny Act? Observe, Colonel Bland brings this story against the clergy for complaining of an act with which the person immediately concerned was *perfectly* satisfied, on the maxim I suppose of *volenti non fit injuria*.¹⁴ This is representing the minister of Norfolk as if he originally thought the act just and reasonable, or at least had given his consent for it to be proposed to the General Assembly; so that if this matter was searched to the bottom, I am still apprehensive it would appear that the Colonel had added something to what the minister said, or that if he has not *altogether* invented a speech, he has, what is almost as bad, invented a meaning for the minister of Norfolk, and is a great improver of small tales into matters of consequence. The Colonel says he can prove, by the evidence of gentlemen, that the minister of Norfolk said, "he left our convention, and refused to contribute to my agency, as he disapproved of our scheme." This no doubt augmented the minister's merit with the Colonel; but the Colonel does not now undertake to prove that the minister of Norfolk was ever severely censured by any memorialists for this conduct, which a while ago the Colonel may remember was *believed* by him to be no difficult matter. There is such a striking difference between what the Colonel now says and what he said before, his assertions are so much *rounder* in the one place than in the other, that he who will be at the trouble of comparing the passages will not want reason to conclude that the Colonel did exceed his commission from the minister of Norfolk.

I have no desire to meddle with the Colonel's private character, though he seems to be no sparer of private characters; but if the Colonel will publish daring assertions to the prejudice of others, he makes it the business of everyone injured thereby to dispute his veracity.

And now I endeavor at being as indifferent as I ought to be about either the Colonel's *silent* or his *vociferous* contempt. He is welcome either to amuse himself with the sullen or a more boisterous expression of his resentment. I acknowledge the ancient and undeniable right of a baffled disputant to sit down and dissipate his chagrin by swallowing his own spittle alone, or to give it vent in outrageous exclamations, as he finds it most for his ease and convenience. It must be very grating (and I cannot

14. ["Injury does not happen to one who is willing."]

help being touched with compassion for him) to a *patriot* and a *Churchman* to be caught in such a controversy as this in which Colonel Bland has been a fiery volunteer quite on the wrong side of the question with respect to both these characters.

If anyone thinks me too warm, let him consider the cause in the defense of which I have engaged. I write for liberty and property, for the rights of commerce, for an established church, for the validity of private and public contracts, for free government, for the King's authority, *pro aris et focis*. The forces set in battle array against these are *charity, poverty, necessity, a particular* not a general *calamity*, which are not the natural enemies of the former, but pressed into the service against their inclination. I am as ready to dispute the prize of patriotism with the Colonel, whenever he pleases, as that of veracity. I believe it would puzzle the Colonel to name a man in the colony who has suffered more for adhering to what he thinks agreeable to reason and justice and the principles of true patriotism than *opprobrious* John Camm. For engaging so zealously in this contest and in compliance with a public challenge, one worthy gentleman I am told is for having the *flesh pulled off my bones with pincers*. To do the Colonel justice, though he has some time ago appeared inclinable to call upon the secular arm by insinuating that the administration was too *mild* in not punishing our *atrocious* and *infatuated* behavior, I do not believe that he would approve of this short method of argument by the pincers, because it savors too much of the Romish inquisition. Let Colonel Bland say what he will of me, I am far from saying *no good can come out of Colonel Bland*. On the other hand, I believe *some good* may come out of him in his calmer moments, when he does not suffer his passion to make a fool of him. It would be hard if there should not some good come out of him when he is pleased, considering how much evil comes out him when he is disobliged.

At length I think I have got tolerably well rid of this blast from *violentus auster* without much damage to my sails and rigging, on which the furious puff seems chiefly to have spent its force. If I was but as well over the storm which is gathering from the opposite quarter, why then I think I might sleep soundly without breaking my rest half a dozen times in a cold night to inquire which way the wind is, and on being told that it is either north or south, jumping out of bed and preparing for a hurricane. I wish these blustering deities would peruse the Reverend Mr. Giberne's once-admired discourse upon peace, and tell us how much better he agrees with the apostle

about peace than a certain gentleman that shall be nameless agrees with him about charity.

Oh peace! thou source and soul of social bliss . . .
 Oh liberty! thou goddess heav'nly bright . . .
 But what is *Hecuba* to *them*, or *they* to *Hecuba*!

I hope the sublimity of this conclusion will be to the Colonel's taste. Readers, until I shall be called upon again to give you further trouble, farewell.

I am your most humble servant,
 JOHN CAMM.

P.S. Look at the act of Assembly; you will find it was passed (under the influence of a panic terror raised or promoted perhaps by some designing people) on supposition that *there would not be tobacco made sufficient to answer the common demands of the country* for that year. Look at the Colonel's calculations in his letter to me; you will see he supposes about 100 pounds of tobacco left for each tithable, over and above what would have answered these demands. A hundred and twenty thousand tithables (as the Colonel supposes) multiplied by 100 and again divided by 1000 will give twelve thousand hogsheads of tobacco of a thousandweight each. Observe the consequences hence arising; that there was more than twice as much tobacco made in the scarce year as the act supposes would be made; that after all the debts of the year deducted, there was more tobacco remaining than the act supposed would be made in the *whole*; that after all the debts of the year deducted (the clergy having been paid among the rest) there would remain in the hands of the owners about ten times as much of tobacco alone as the clergy's allowance comes to. These are the consequences from Colonel Bland's own calculation, taking all his suppositions for granted, whereas several of them may be doubted, and one of them is undoubtedly false, namely, his rating the hogsheads shipped at no more than a thousandweight upon an average.

Besides, the tobacco raised in the scarce year was not divided into equal shares and so distributed among the people according to their number of tithables, but some raised little or none, and some had as much as usual. In this consisted the evil, if there was any, which was not remedied but increased by the act. Had such a division of the whole crop been proposed by the Colonel to the General Assembly, it would have been more to the purpose than the act which passed. It would have been a natural and effectual way to remove the

inequality *deemed grievous*; but that they who raised as good crops as they did commonly, and sold them for thrice the usual price, should receive a charitable donation into the bargain, is what occasions one of the most difficult parts of the Colonel's talk in justifying the act, which parts the Colonel wisely refuses to buckle to or approach by reason of the difficulty.

The Colonel expresses himself very strangely when he speaks of the tithables maintaining themselves and their families and supporting the late war in that *dreadful* year as if all the tithables were free subjects, when in truth more than three fourths of them are slaves, not possessors of estates, but estates themselves, and maintained (chiefly at least) out of the grain and other produce, the profits of merchandise, and the advantages made by mechanical businesses.

I do not like the Colonel's affecting to call the scarce year that *dreadful* year or his seeming to grudge the expense of a war (so happy and successful, so interesting and beneficial to Virginia) in that *dreadful* year. I dare say, bating a groundless alarm or two, the Colonel enjoyed his fireside very quietly in that *dreadful* year. And what if he did pay his proportion towards the support of the war in that *dreadful* year? Why should this appear to give him such deep regret? Would he have had the brave fellows who ventured their lives for his defense to have fought for nothing in that *dreadful* year?

Since the above was written, Mr. Smith, the late minister of Norfolk, who, as far as I am able to judge, has been the innocent occasion of a dispute between Colonel Bland and me, has appeared in the *Gazette* in his own justification. From whence it is clear that he said he was satisfied with the Two-Penny Act which did not affect him, but never said he was satisfied with the Norfolk and Princess Anne Act, which proved in the end to be a Three-Half-Penny Act, under the lash of which he was left by the Two-Penny Act. On the other hand, after Colonel Bland has given a particular account of the petition for this Three-Half-Penny Act in his *Letter to the Clergy*, page the 12th, his following words are: "This petition was thought *extremely reasonable* by the *ministers* in those counties, as the House of Burgesses were informed by the representatives, and accordingly an act passed for the relief of those people; and I am persuaded the ministers principally concerned never *once* complained of this act. For I myself have heard the minister of Norfolk (who lives in great harmony with his parishioners, and is much esteemed and respected by them) declare he was *perfectly* satisfied with it; and I believe it would be no difficult matter to prove that he fell

under the *severe* censure of these memorialists because he refused to enter into their measures.”

Now let anybody reconcile what Colonel Bland has here said or what he has said in his letter to me with what I have said and what Mr. Smith has said in print, if they can. I have only to add that from the nature of the thing it does not appear probable to me either that the ministers in Norfolk and Princess Anne should think a petition for putting it into the breast of a county court and their parishioners to set a price upon their tobacco *extremely reasonable*, or that the representatives of those counties, whoever they were, should inform the House of Burgesses that the *ministers* thought such a petition *extremely reasonable*.

Number III

To the Right Honorable the Lords Commissioners for Trade and Plantations.

The humble representation of the clergy of the Church of England in His Majesty's colony and dominion of Virginia:

Showeth,

That about the year 1620, in the infancy and first establishment of the said colony, whilst the same was held under grants from the crown to the Virginia Company, that company, in making provision for the clergy, had ordered 100 acres of land in each borough or division to be laid off for a glebe, and for their further maintenance a certain and standing revenue out of the profits of each parish, so as to make each living at least £200 sterling per annum, to be raised by a certain quantity of tobacco and corn per head on tithable persons; and afterwards for a further encouragement that pious, learned, and painful ministers might be invited to go over, the said company ordered six tenants to be placed on each of these glebes at the public expense.

That the said provision for a glebe was enacted into a law by an act of the governor, Council, and Burgesses in General Assembly in the year 1662, which law was again repealed by another act made the 24th of September, 1696; and in lieu thereof, by the last-mentioned act it was enacted that the minister in each parish should have for his maintenance the yearly sum of 16,000 pounds of tobacco besides his lawful perquisites. And the vestries were authorized to raise and levy the same in their respective parishes, as

also to levy 5 per cent for collecting and paying the same; and other matters were thereby enacted for purchasing and laying out a glebe and building a convenient dwelling house for the ministers. Which provision with other advantages also to the minister have been enforced by sundry other additional acts of Assembly passed since that time, and particularly by an act of the year 1727, by which the time for the vestries' meeting and laying the parish levy was to be on or before the 15th of October yearly. That in the year 1748 an act of Assembly entitled An Act for the Support of the Clergy, and for the Regular Collecting the Parish Levies was passed, which was to take place on the 10th of June, 1751, whereby all former acts relating to provision for the clergy were repealed, and that matter was put upon a new footing, viz., that the sole right of presentation should be in the vestries in the several parishes, and that every minister then already preferred or thereafter to be preferred to any parish should have and receive an annual salary of 16,000 pounds of tobacco and cask, with an allowance of 4 per cent for shrinkage to be levied, assessed, collected, and paid in manner therein directed. That the clergy, hoping that the said regulation was certain, fixed, and determinate, acquiesced under the said act, and His Majesty was graciously pleased to give his royal assent thereto, whereby it became a firm and absolute law not within the power of the Assembly of Virginia of themselves to break through, repeal, or alter, as the clergy conceived; but they very soon found their mistake, for that the same has from time to time since been pretended to be set aside in some instances, partially for some particular parts of the colony, and in others totally, for the whole colony, by a number of acts passed by the Assembly in manifest opposition to His Majesty's royal instructions to his governor, contrary to common justice, and to the great discouragement, loss, and injury of the clergy of the said colony.

For by one act of Assembly passed in ——— each of the ministers of the two particular parishes of Frederick and Augusta are to be paid in money at the annual rate of £100 Virginia currency only, in lieu of 16,000 pounds of tobacco and cask. And by another act passed the 26th of June, 1755, as to two other counties of Princess Anne and Norfolk the justices in the county courts are annually to set a price on tobacco not under 10 per cent; and whatever value tobacco may happen to be of, all persons chargeable with tobacco for public dues in those counties are to pay and discharge the same in money at such fixed price. And some other partial acts of the like nature have been pretended to be passed there.

And by another more general short temporary act passed in the same year (1755) entitled An Act to Enable the Inhabitants of This Colony to Discharge Their Tobacco Debts in Money for This Present Year (on a pretense that only a small quantity of tobacco was made), all persons from whom any tobacco was due, by any ways or means whatsoever, were to pay the same either in tobacco according to the directions of another act therein referred to, or else in money at the rate of 16s. 8d. per hundred, at the option of the payer; that act to continue in force for the space of ten months, and no longer.

And again, by another general act passed on the 12th of October, 1758, entitled An Act to Enable the Inhabitants of This Colony to Discharge the Public Dues, Officers' Fees, and Other Tobacco Debts in Money for the Ensuing Year (upon a surmise that the crop might prove deficient), all persons in the colony from whom any tobacco is due, by any ways or means whatsoever, are to pay the same either in tobacco according to the directions of another act therein referred to, or else in money at the rate of 16s. 8d. per hundred, at the option of the payer; this act to continue in force for one year, and no longer.

That by these several acts the condition of the clergy is rendered most distressful, various, and uncertain after a painful and laborious performance of their functions in parishes very wide and extensive, some of them 40 or 50 miles in length, and possessed of numerous inhabitants; and they are deprived of that maintenance which was enacted for them by His Majesty, whose royal authority the said Assembly cannot by law control, and are put upon such unjust and unequal footing that if on the one hand tobacco is plenty and the price low, they are to take the tobacco in kind, but if in other years the price or value is something better, then the clergy are by these short temporary acts stripped of the common benefit and obliged to take money, and that paper currency also at a value to be put upon tobacco by the vestry or the justices, who are the persons that owe and are to pay the greatest parts or shares of the same at a price far beneath the real value; whereby the parishes aim at a power to turn out as well as to nominate the rectors there, it being wholly in their own power to render their provision so very mean as to drive them away from the same, to the great hardship of the clergy, who entered on their function, as they conceived, on the faith of a sure and absolute law, as they imagined, but who find themselves thus unduly deprived of the same not only after the contract made but even after

the duty and service performed, which is a singular hardship upon the body of the clergy in Virginia in general.

That the clergy are advised that it is not in the power of the Assembly to break through the laws confirmed by His Majesty's royal authority, and that this matter interferes with the royal prerogative in several respects and is forbid by many of the royal instructions, which have been broke through in order to pass these pretended acts there.

That the said acts complained of are made to commence immediately, and contain no suspending clause to wait the royal judgment and pleasure; and some of them are short temporary acts, made only for 10 or 12 months so as to prevent the possibility of the royal consideration of them whilst in continuance: the better to effect which purpose the same are either not sent over at all or at best not until very near the expiration of the same; and the last of the said acts is not yet sent to Your Lordships' board, though passed on the 12th of October, 1758. But the clergy most humbly present herewith an attested copy of the same: that the convention of the clergy being there most grievously and insupportably injured, have, by their most humble address to His Majesty, implored his royal relief.

And pray of Your Lordships to represent the premises to His Majesty in such manner that not only the said pretended acts may be declared null and void *ab initio*, but also that such explicit instructions and commands may be sent to His Majesty's governor that no act may be pretended to be passed there for the future to repeal, alter, or prejudice in any manner the said fundamental act passed in 1758 and confirmed by His Majesty, whereby a certain and fixed maintenance for the clergy in that colony was settled; and to afford the clergy there all such further and other relief in the premises as to Your Lordships, in your great wisdom and justice, shall seem meet.

And they shall ever pray, etc.

JOHN CAMM,

Agent appointed by the General Convention of the Clergy in Virginia.

John Dickinson, A Speech,
Delivered in the House of Assembly
of the Province of Pennsylvania
(Philadelphia, 1764)



THE DEMAND for royal government in Pennsylvania came to a head in 1764 after the Crown had disallowed several Pennsylvania laws passed in 1759 and the new governor, Richard Penn, a member of the proprietary family, had refused to pass a tax bill unless it followed exactly the stipulations in form set down by the London Privy Council for such measures. This was the last straw for the anti-proprietary group that dominated the Assembly, which proceeded to debate the question of whether it should ask the Crown to take over the colony, adjourned for a few weeks to sound out its constituents on the question, and finally, following the collection of about thirty-five hundred signatures on petitions favoring the change, drew up and voted overwhelmingly for a petition to the Crown to take the colony under its immediate jurisdiction. Among the very few dissenters was the young lawyer John Dickinson, who had spent considerable time in London reading law and observing British politics during the late 1750s and early 1760s. No adherent of the proprietors, Dickinson nonetheless expressed powerful reservations about the timing of the petition in a speech which he subsequently published.

In the speech, the published version of which was introduced by a long preface by an anonymous writer sympathetic to its views, Dickinson was primarily concerned to warn Pennsylvanians of the danger that a transition to the Crown might result in the loss of many, if not all, of the colony's

peculiar and extensive liberties. Pointing out that the “gale of ministerial favour has in *all seasons* blown propitious to proprietary interests” and that over the last several years “Every point in which the Proprietors thought fit to make any opposition” had been “decided against us,” Dickinson thought it all too probable that a shift to royal government would deliver Pennsylvania not only “from the government of the Proprietors” but also from “the privileges we claim under them.” “Numerous are the instances, that might be mentioned, of rights vindicated and equitable demands made in this province, according to the opinions entertained here, that in *Great-Britain*, have been adjudged to be illegal attempts, and pernicious pretensions,” he observed. He noted that the colony still “labour[ed] under the disadvantage of royal and ministerial displeasure” and predicted that British authorities would be dismayed “when they understand that our . . . application for a change, proceeds from the governor’s strict adherence to the terms of stipulations, so solemnly made, and so repeatedly approved, by the late and present King,” that Pennsylvanians “desire[d] to come *more immediately* under the King’s command BECAUSE they will *not obey* those royal commands, which have already been signified to them.”

In contrast to the proponents of royal government who surmised that, if the Crown’s ministers did try to take away any of Pennsylvania’s privileges, the British Parliament would intervene to protect them, Dickinson asserted that Pennsylvanians had no reason to expect that “the opinion of Parliament” would be any different from “the undeviating practice of the ministry;” as it had been exhibited “in every instance” in recent years. “At this period, when the administration is regulating new colonies, and designing, as we are told *strictest reformations* in the old,” he warned, it was unlikely that they would either “grant an invidious distinction in our favour” and thereby distinguish “the People of Pennsylvania . . . from all other subjects, under his Majesty’s *immediate* government” or exempt them from the metropolitan impulse to ensure “that the prerogative should be exercised with its full force in our American provinces, to restrain them within due bounds, and secure their dependance on this kingdom.”

With this pamphlet, Dickinson initiated a pamphlet war that may be followed through the next selection (see Selection 65). (J.P.G.)

A
SPEECH,
Delivered in the HOUSE of ASSEMBLY
of the Province of *Pennsylvania*,
May 24th, 1764.

By JOHN DICKINSON, Esq;
One of the MEMBERS
for the County of *Philadelphia*.

On Occasion of a PETITION, drawn up by Order,
and then under Consideration, of the *House*; praying his
Majesty for a Change of the *Government* of this *Province*.

WITH A PREFACE.

*Certe ego libertatem, quae mihi a Parente meo tradita est, experiar;
verum id frustra, an ob rem faciam, in vestra manu situm est, Quirites.*
SALL. Bel. Jugurth. in Orat. MEMMI.

As for me, I will assuredly contend for that glorious plan of
Liberty handed down to us from our ancestors; but whether
my Labours shall prove successful, or in vain, depends wholly
on you, my dear Countrymen!

PHILADELPHIA:
Printed and Sold by WILLIAM BRADFORD,
at his Book-Store adjoining the *London* Coffee-House.
M,DCC,LXIV.

Preface.

To understand clearly the nature of that dispute which led the Assembly to those measures, which are so justly animadverted on in the following excellent Speech, it will be proper to look a few years backward.

In the year 1759, Governor *Denny*, whose administration will never be mentioned but with disgrace in the annals of this Province, was induced, by considerations to which the world is now no stranger, to pass sundry acts, contrary to his duty, and to every tie of honor and justice. On the 2d of September 1760 his late Majesty in council repealed six of these acts; and in regard to the seventh (which was an act for granting to his Majesty One hundred thousand Pounds, by a tax on all estates real and personal &c.) the Lords of his Majesty's most honorable privy Council declared it their opinion "that the said act was fundamentally WRONG and UNJUST, and ought to be repealed, unless six certain amendments were made therein;" —

BENJAMIN FRANKLIN and Robert Charles, Agents for the Province, undertook that, in case the act might be left unrepealed, "the Assembly of Pennsylvania would prepare and pass an act for making the amendments proposed by the Lords of the Council, and to indemnify the Proprietaries from any damage they might sustain by such act not being prepared and passed." This stipulation was signed by the hands of the said agents, and the Proprietors for the sake of peace accepted of it.

But, notwithstanding the solemnity of this agreement, the Assembly in framing the late *Supply-Bill*, insisted upon explaining the 2d and 3d articles of the stipulation in their own way, and inserting them in the bill in different words from those made use of by the Lords of Council, and signed by their own agents. The Governor, on the contrary, thought that no words could be so proper to convey the meaning of the Lords of Council and prevent disputes, as those which their Lordships themselves had made use of; and that he could neither in decency or duty depart from them.

Hereupon messages ensued, and the Assembly, among other vehement and warm resolves, broke up with the following most extraordinary one, *viz.*

That this House will adjourn, in order to consult their constituents, whether an humble address should be drawn up, and transmitted to his Majesty, praying that he would be graciously pleased to take the people of this Province, under his immediate protection and government &c.

What methods were taken, during this adjournment, to lead a number of rash, ignorant and inconsiderate people into petitions, the evil tendency of which they did not understand, is an enquiry not suitable to the present occasion. It is enough to say that, after incredible pains, in a Province containing near THREE HUNDRED THOUSAND SOULS, not more than 3500 could be prevailed upon to petition for a change of government; and those very generally of a low rank, many of whom could neither read nor write.

The wiser and better part of the Province had far different notions of this measure. They considered that the moment they put their hands to these petitions, they might be surrendering up their birth-right, and putting it in the power of a few men, for the sake of gratifying their own ambitious projects and personal resentments, to barter away that glorious plan of public liberty and charter privileges, under which this Province has risen to the highest degree of prosperity, with a rapidity almost unparalleled in history.

Though the ill success of these petitions, must have been very mortifying to the projectors of them, yet the Assembly were at all hazards to be persuaded to make them the foundation of a petition to the King for a change of government. It was in vain to urge the smallness of the numbers who signed the petitions; the high veneration in which our present constitution hath long been held by good men of every denomination, and the multitudes of industrious people whom even the very fame of it hath invited among us, from almost every part of the world. These considerations were but slight bars to men actuated by ambition and resentment; men who have long found their own importance to consist in fomenting the divisions of their country, and now hope to aggrandize themselves by bringing about the proposed change, whatever may be its consequences to others. They therefore found means to carry their petition thro' the House; but not without the most spirited testimony against it, from a NOBLE FEW, a PATRIOT MINORITY, whose names will be mentioned with honor, so long as any remembrance is left of the present boasted LIBERTIES of PENNSYLVANIA.

At the head of these FEW, the worthy author of the following SPEECH signalized himself. Having devoted to a severe course of study those years which too many give to dissipation and pleasure, he shewed himself, at his first entrance on public life, possessed of a knowledge of the laws and constitution of his country, which seldom falls to the share even of grey hairs. Alike independent in spirit and in fortune, removed as far as any man can be from all connections with the Proprietors or their immediate friends, and

following only the unbiassed dictates of his own heart; he could not be a silent spectator while the most distant attempt was made upon that constitution, for which our fathers planted a wilderness, and which is derived to us by the FAITH OF CHARTERS, and SANCTITY OF LAWS!

This SPEECH was delivered on the 24th of May, and the late Speaker, Mr. NORRIS, with the four Members under mentioned, are said to have declared to Mr. DICKINSON, that he had fully spoke their Sentiments, in his own. The next day in the afternoon, Mr. Dickinson *moved* that the further consideration of the matter should be adjourned to the following morning. But it was voted by a great majority (Mr. Dickinson, Mr. Joseph Richardson, Mr. Isaac Saunders, and Mr. John Montgomery being for the negative) that the PETITION as then drawn, should be transcribed, in Order to be signed by the Speaker; which was ordered accordingly.

Mr. Dickinson having then digested the heads of his speech into the nature of a *Protest*, in which he was joined by Mr. Saunders and Mr. Montgomery,* offer'd it to be entered in the minutes; but it was refused.

Mr. Norris the Speaker, who, from the nature of his office, could not join in the *Protest* or take any part in the debate, finding matters pushed to this extremity, informed the House, in a very solemn and affecting manner, "That for thirty years past he had had the honour of serving as a Representative of the people of this Province, and near half that time as SPEAKER—That, in these offices, he had uniformly endeavoured, according to the best of his judgment, to promote the public good—That the subject of the present debate was a matter of the utmost importance to the Province—That as his sentiments on the occasion were very different from those of the *majority*, and his seat in the chair prevented him from entering into the debate, he therefore *prayed* the House, That if, in consequence of their order, his duty should oblige him to sign the *Petition* as Speaker, he might be permitted to offer his sentiments on the subject before he signed, and that they might be entered on the minutes;" which was granted accordingly.

The House then adjourned to the next morning, and when they met, the Clerk delivered the members a letter from the *Speaker*, acquainting them that his indisposition prevented his further attendance, and praying them

* [See their letter below.]

to chuse a new Speaker. Thus this aged member and faithful servant of the House, as if foreseeing troubles to come, chose to retire, and leave them to those whose temper they better suited.

BENJAMIN FRANKLIN, Esq; was *accordingly* chosen *Speaker*, and in the afternoon of the same day, signed the *Petition*, as one of his first acts; an act which . . . but posterity will best be able to give it a name!

As these transactions could not fail of being very interesting to the good people of this Province, it is not to be wondered that they expressed an earnest desire to see the following *Speech*, that they might be able to form some knowledge of what was intended: for their own Representatives did not think proper to let the contents of their petition for the proposed change be known; tho' upon this single stake, so far as depended upon them, they have risked our whole constitution. On the 6th of June, therefore, a great number of the principal Gentlemen of *Philadelphia*, applied to Mr. DICKINSON for a copy of his speech, by letter as follows *viz.*

Philadelphia, June 6th, 1764.

SIR,

We whose names are underwritten, citizens of Philadelphia, acknowledge the obligations that the good people of this Province are under to you, for your spirited defence of our charter privileges, which we apprehend are greatly endangered by some late proceedings, particularly the setting on foot a petition to his Majesty for a change of government. We are surprized that our representatives, who ought to be guardians of the constitution, do not check rather than encourage this unseasonable application of a few (comparatively) of the people of this extensive Province. We hereby testify our sincere gratitude to you, Sir, and the other patriot Members that appeared on the side of our Charter and Privileges, and request a copy of the Speech you delivered on that occasion in the House, as we are perswaded that the publication thereof would be of great utility and give general satisfaction. We beg leave to assure you of our regard, and are

Sir *Your most obedient humble Servants,*

About the same time Mr. *Saunders* and Mr. *Montgomery*, earnestly desirous that their names might be joined with Mr. *Dickinson's* thro' this whole affair, sent him the following letter.

SIR,

As we are informed that a number of the principal gentlemen of the city of Philadelphia intend applying to you to have your Speech, which was deliver'd a few days ago in the House of Assembly, against the measure, proposed for a change of government, published, and as we are of opinion the publication thereof, together with the reasons on which our protest is founded, may be of considerable service: We judge it proper (in case you are of the same opinion of making them publick) that you should signify to the publick how heartily we have concurred with you in the same sentiments, set forth in your Speech, and in disapprobation of the late resolves of the House; this we judge a piece of justice due to ourselves, least we incur, from our constituents, the imputation of betraying or sacrificing their essential rights and privileges which we meant to defend: We likewise authorize you hereby to affix our names to the dissent and protest,* which the House refused entering on their minutes.

We are respectfully,

Sir, *Yours &c.*

ISAAC SAUNDERS.

JOHN MONTGOMERY.

Having thus given a faithful account, both of the occasion of this Speech, and of its publication, it would be almost impossible not to quote a few passages from former Assemblies, to shew in what high terms, even of rapture and admiration, they continually mentioned our present constitution and plan of government.

We hope, say they,† the people of Pennsylvania will never be wanting to acknowledge the great wisdom and singular goodness of our late honourable Proprietor, from whom we derive the privileges of our annual elections, as well as many other immunities which have so manifestly contributed to the prosperity of the Province, &c. again

When‡ we commemorate the many blessings bestowed on the inhabitants of this colony, the *religious* and *civil liberties* we possess, and to whom these valuable blessings under God and the King, are owing, we should be

* As all the arguments in this *Protest* are to be found more at large in the following Speech, it is not printed here, but will be published by itself in the News Papers.

† Assembly 1730.

‡ Address to the honourable JOHN PENN, Esq; 1764.

wanting to ourselves and them, that we represent, did we not do justice to the memory of thy worthy ancestor.

Our* happy constitution secured to us, by the wisdom and goodness of our first Proprietary and founder of this province, so happily continued to us, under the government of his honourable descendants justly entitle them to our affection and zeal for their honor and interest.

But it would be endless to quote all that has been said by our Assemblies, in favour of the constitution of this province, and its worthy founder. The sum of the whole when taken from the minutes, and thrown together in their own express words, is nothing less than what follows.

WILLIAM PENN,
 (1) A man of principles truly humane,
 an Advocate for
 RELIGION and LIBERTY,
 (2) Possessing a noble spirit
 That exerted itself
 For the good of mankind,
 WAS
 (3) The great and worthy founder
 Of
 PENNSYLVANIA.
 To its Inhabitants, by CHARTER,
 (4) He granted and confirmed
 (5) Many singular PRIVILEGES and IMMUNITIES,
 (6) CIVIL and RELIGIOUS
 (7) Which he continually studied
 to preserve and defend for them,
Nobly declaring

* Assembly 1738.

(1) Minutes 1734.

(2) Minutes 1740.

(3) Minutes 1738, 1740, 1745.

(4) Minutes 1735.

(5) Minutes 1730.

(6) Minutes 1734.

(7) Minutes 1735.

(8) That they had not followed him so far
 To lose a single tittle
 Of the GREAT CHARTER
 To which all *Englishmen* were born!
 For these Services,
 (9) Great have been the acknowledgements
 Deservedly paid to his MERIT;
 (10) And his MEMORY
 Is dear to his people,
 Who have repeatedly confessed
 That
 (11) Next to divine Providence,
 (12) Their Happiness, Prosperity and Increase
 (13) Are owing
 To his wise conduct and singular goodness
 (14) Which deserve ever to be remembered
 With
 GRATITUDE and AFFECTION
 By PENNSYLVANIANS.

Were it intended to write the highest encomium on the constitution of this country, and to erect the most lasting monument to the memory of its illustrious founder, a more noble *inscription* could hardly be devised than what is contained in the foregoing minutes of Assembly; and a time may come when impartial posterity, notwithstanding the presenting gratitude of a *few*, may perhaps adapt it for this purpose.

As to the wild measures now on foot, they will undoubtedly destroy themselves by their own violence; and it would be impossible to add any thing that can more expose their rashness than what is contained in the following Speech. The Proprietors hold *their Right* by that charter under

(8) Minutes 1736.

(9) Minutes 1740.

(10) Minutes 1719.

(11) Minutes 1715.

(12) Minutes 1731.

(13) Minutes 1734.

(14) Minutes 1732.

which ours is derived. Can the latter in law or equity be deemed more sacred than the former: Have the Proprietors, by any act of theirs, forfeited the least tittle of what was granted them by his Majesty's royal ancestors? Or can they be deprived of their charter-rights without their own consent? have they not constantly sheltered themselves under the wing of government, and received the approbation of his Majesty's first servants in the law to every material *Instruction* sent to their governors here?

In the present dispute nothing has been insisted upon on the part of our Governors but a strict adherence to what has been solemnly determin'd by his Majesty in Council.

Indeed we have every way the worst of the whole business. If a change were to take place, the Proprietors before they resign their charter, would certainly obtain a full equivalent for their *Rights of Government*, and likewise have all their *Rights of Property* secured to them by laws which we could not dispute. Such a change, were they inclined to it, could certainly be of very little prejudice to them; but with respect to us the case is quite different. Instead of securing any thing in reversion or exchange, our representatives, by their present petition, seem (so far at least as depends on them) to have offered up our whole charter-rights, leaving it to the grace of others to return us any part, or indeed no part of them, according as it may be thought proper. But, thanks be to God, this is a power with which our representatives were never vested by us; and therefore the act they have committed is VOID in itself. Nor is there any doubt but an immense majority of the good people of this Province will still be found ready, at a proper time, to vindicate their charter-rights; and to let the world know that they hold those men unworthy of all future trust, who could wantonly sport with things so sacred.

Former Assemblies made it an article of impeachment against one of the most considerable* men of this Province. "That he had contrived to violate (only) a part of the constitution of this government." But what would they have thought of an attempt to violate the whole?

We know it will be replied, that the change now proposed is not a change of this kind, and that our privileges might be preserved in virtue

* James Logan, Esq;

of our *Laws*, even if our charter were given up. But a sufficient answer is given to this in page the 11th and 12th of the following *Speech*; and indeed it is astonishing that this argument could ever be made use of to impose upon any person, when it is well known that the chief privileges, by which the constitution of this province is distinguished, depend upon our charter alone, and upon no positive law whatever.

And here, let no wrong construction be put upon this defence of the particular constitution of *Pennsylvania*. Those who now contend for it, have the highest veneration for the dignity and authority of the Crown. They think themselves as much under its immediate protection as any of his Majesty's subjects on this continent are; and it is well known, that they have on all occasions been among the first of those who have appeared in defence of the just rights of our gracious Sovereign.

They think it may be said, without giving the least offence, that the inhabitants of this Province enjoy certain privileges which are not to be found in the governments around them, and which they could not have the least hopes of preserving in case of any change of our present constitution. Multitudes of people have chosen a settlement in this Province, preferable to all others, on account of these privileges, and they now think that they have a right to the perpetual enjoyment of them; as they are in no case inconsistent with good order or the public good. Many private corporations, in his Majesty's dominions enjoy singular immunities upon the like foundation; and those bodies have never been thought undutiful for adhering tenaciously to their rights from age to age. Certainly we may be considered in something higher light than Corporate Bodies of this kind.

Having swelled this preface to a much greater length than was at first intended, we shall only offer one remark more, upon the terms in which the *Petition* of our Assembly is said to be drawn up. We have heard that this Province is described in it as a scene of *riot, violence and confusion*: but yet one can hardly judge it possible, that our representatives could venture to approach the royal ear with such an unjust account of their constituents. Nevertheless we have a right to insist on a copy of this petition from the Committee in whose hands it is, that if we lie under any accusations in it, we may have an opportunity to answer them. A request so reasonable, that we are persuaded it cannot be refused, especially in a matter wherein we may be greatly affected.

We would only observe that the present is not a time for divisions of any kind in his Majesty's colonies; but for the closest union among ourselves, that we may be able, by decent and just representations of the state of our country, to save it from burthens which it cannot bear, and to encourage it in those improvements whereof it is capable. Let it be remembered what we have got by bringing our party quarrels before the Crown these many years past, most certainly nothing but shame to ourselves, and a load of expence to our country, which, however beneficial it may have been to the *Agents* employed, has not been of the least service to the public.

The Speech of John Dickenson, Esq; &c.

Mr. SPEAKER,

When honest men apprehend their country to be injured, nothing is more natural than to resent and complain: but when they enter into consideration of the means for obtaining redress, the same virtue that gave the alarm, may sometimes, by causing too great a transport of zeal, defeat its own purpose; it being expedient for those who deliberate of public affairs, that their minds should be free from all violent passions. These emotions blind the understanding: they weaken the judgment. It therefore frequently happens, that resolutions form'd by men thus agitated, appear to *them* very wise, very just, and very salutary; while others, not influenced by the same heats, condemn those determinations, as weak, unjust, and dangerous. Thus, Sir, in councils it will always be found useful, to guard against even that indignation, which arises from integrity.

More particularly are *we* bound to observe the utmost caution in our conduct, as the experience of many years may convince us, that all our actions undergo the strictest scrutiny.—Numerous are the instances, that might be mentioned, of rights vindicated and equitable demands made in this province, according to the opinions entertained here, that in *Great-Britain*, have been adjudged to be illegal attempts, and pernicious pretensions.

These adjudications are the acts of persons vested with such dignity and power, as claim some deference from us: and hence it becomes not unnecessary to consider, in what light the measures now proposed may appear to those, whose sentiments from the constitution of our government, it will always be prudent to regard.

But on this important occasion, we ought not to aim only at the approbation of men, whose authority may censure and controul us. More affecting duties demand our attention. The honour and welfare of *Pennsylvania* depending on our decisions, let us endeavour so to act, that we may enjoy our own approbation, in the cool and undisturbed hours of reflection: that we may deserve the approbation of the impartial world; and of posterity who are so much interested in the present debate.

No man, Sir, can be more clearly convinced than I am, of the inconveniences arising from a strict adherence to proprietary instructions. We are prevented from demonstrating our loyalty to our excellent Sovereign, and our affection to our distress fellow-subjects, unless we will indulge the Proprietors, with a distinct and partial mode of taxation, by which they will save perhaps four or five-hundred pounds a year, that ought to go in ease of our constituents.

This is granted on all sides to be unequal; and has therefore excited the resentment of this House. Let us resent—but let our resentment bear proportion to the provocation received; and not produce, or even expose us to the peril of producing, effects more fatal than the injury of which we complain. If the change of government now meditated, can take place, with all our privileges preserved; let it instantly take place: but if *they* must be consumed in the blaze of royal authority, we shall pay too great a price for our approach to the throne; too great a price for obtaining (if we should obtain) the addition of four or five hundred pounds to the proprietary tax; or indeed for any emolument likely to follow from the change.

I hope, I am not mistaken when I believe, that every member in this House feels the same reverence that I do, for these *inestimable rights*. When I consider the spirit of liberty that breathes in them, and the flourishing state to which this province hath risen in a few years under them, I am extremely desirous, that they should be transmitted to future ages; and I cannot suppress my solicitude, while steps are taking, that tend to bring them all into danger. Being assured, that this house will always think an attempt to change this government too hazardous, unless these privileges can be *perfectly secured*, I shall beg leave to mention the reasons by which I have been convinced, that such an attempt ought not *now* to be made.

It seems to me, Sir, that a people who intend an innovation of their government, ought to chuse the most proper *time*, and the most proper *method*

for accomplishing their purposes; and ought seriously to weigh all the probable and possible *consequences* of such a measure.

There are certain periods in public affairs, when designs may be executed much more easily and advantageously, than at any other. It hath been by a strict attention to every interesting circumstance; a careful cultivation of every fortunate occurrence; and patiently waiting till they have ripened into a favourable conjuncture, that so many great actions have been performed in the political world.

It was through a rash neglect of this prudence, and too much *eagerness* to gain his point, that the Duke of *Monmouth* destroyed his own enterprize, and brought himself dishonourably to the block, tho' every thing then verged towards a revolution. The Prince of Orange with a *wise delay* pursued the same views, and gloriously mounted a throne.

It was through a like neglect of this prudence, that the commons of *Denmark*, smarting under the tyranny of their nobility, in a fit of revengeful fury, *suddenly* surrendered their liberties to their king; and ever since with unavailing grief and useless execrations, have detested the *mad moment*, which slipt upon them the shackles of slavery, which no struggles can shake off. With *more deliberation*, the *Dutch* erected a stadholdership, that hath been of signal service to their state.

That excellent historian and statesman *Tacitus*, whose political reflections are so justly and universally admired, makes an observation in his third annal, that seems to confirm these remarks. Having mentioned a worthy man of great abilities, whose ambitious ardour hurried him into ruin, he uses these words, "*quod multos etiam bonas pessum dedit, qui spretis quae tarda cum securitate, praematura vel cum exitio properant.*" "Which misfortune hath happened to many good men, who despising those things which they might *slowly* and *safely* attain, seize them too hastily, and with fatal speed rush upon their own destruction."

If then, Sir, the best intentions may be disappointed by too rapid a prosecution of them, many reasons induce me to think, that this is not the *proper time* to attempt the change of our government.

It is too notorious and too melancholy a truth, that we now labour under the disadvantage of royal and ministerial displeasure. The conduct of this province during the late war, hath been almost continually condemned at home. We have been covered with the reproaches of men, whose stations give

us just cause to regard their reproaches. The last letters from his majesty's secretary of state prove, that the reputation of the province has not yet revived. We are therein expressly charged with double dealing, disrespect for his Majesty's orders, and in short, accusations, that shew us to be in the utmost discredit. Have we the least reason to believe, when the transactions of this year, and the cause of our application for a change, are made known to the king and his ministers, that their resentment will be waived? Let us not flatter ourselves. Will they not be more incensed, when they find the public service impeded, and his majesty's dominions so long exposed to the ravages of merciless enemies, by our inactivity and obstinacy, as it will be said? For this, I think, hath been the constant language of the ministry on the like occasions. Will not their indignation rise beyond all bounds, when they understand that our hitherto denying to grant supplies, and our application for a change, proceed from the governor's strict adherence to the terms of the stipulations, so solemnly made, and so repeatedly approved, by the late and present King?

But I may perhaps be answered, "that we have agreed to the terms of the stipulations, according to their true meaning, which the Governor refuses to do." Surely, Sir, it will require no slight sagacity in distinguishing, no common force of argument, to persuade his Majesty and his Council, that the refusal to comply with the true meaning of the stipulations proceeds from the Governor, when he insists on inserting in our bill the very words and letters of those stipulations.

"But these stipulations were never intended to be inserted *verbatim* in our bills, and our construction is the most just." I grant it appears so to *us*, but much I doubt, whether his Majesty's Council will be of the same opinion. That Board and this House have often differed as widely in their sentiments. *Our* judgment is founded on the knowledge we have of facts, and of the purity of our intentions. The judgment of *others*, is founded on the representations made to them, of those facts and intentions. These representations may be unjust; and therefore the decisions that are formed upon them, may be erroneous. If we are rightly informed, we are represented as the mortal enemies of the proprietors, who would tear their estates to pieces, unless some limit was fixed to our fury. For *this purpose* the second and third articles of the stipulations were formed. The inequality of the mode was explained and enlarged upon by the provincial counsel; but in vain. I think, I have heard a worthy member who lately returned from *England*, mention these circumstances.

If this be the case, what reasonable hope can we entertain, of a more favourable determination *now*? The Proprietors are still living. Is it not highly probable that they have interest enough, either to prevent the change, or to make it on such terms, as will fix upon us *for ever*, those demands that appear so extremely just to the *present Ministers*? One of the Proprietors appears to have great intimacy and influence, with some very considerable members of his Majesty's Council. Many men of the highest character, if public reports speak truth, are now endeavouring to establish proprietary governments, and therefore probably may be more readily inclined to favour proprietary measures. The very gentlemen who *formed* the articles of the stipulations, *are now in power*, and no doubt will enforce their *own acts* in the strictest manner. On the other hand, every circumstance that now operates against us, may in time turn in our favour. We may perhaps be fortunate enough, to see the present prejudices against us worn off: to recommend ourselves to our Sovereign: and to procure the esteem of some of his ministers. I think I may venture to assert, that such a period will be infinitely more proper than the present, for attempting a change of our government.

With the permission of the House, I will now consider the *manner* in which this attempt is carried on; and I must acknowledge, that I do not in the least degree approve of it.

The time may come, when the weight of this government may grow too heavy for the shoulder of a subject; at least, too heavy for those of a woman, or an infant. The proprietary family may be so circumstanced, as to be willing to accept of such an equivalent for the government from the crown, as the crown may be willing to give. Whenever this point is agitated, either on a proposal from the crown or proprietors, this province may plead the cause of her privileges with greater freedom, and with greater probability of success, than at present. The royal grant; the charter founded upon it; the public faith pledged to the adventurers, for the security of those rights to them and their posterity, whereby they were encouraged to combat the dangers, I had almost said, of another world; to establish the British power in remotest regions, and add inestimable dominions with the most extensive commerce to their native country; the high value and veneration we have for these privileges; the afflicting loss and misfortune we should esteem it, to be deprived of them, and the unhappiness in which his majesty's faithful subjects in this province would thereby be involved; our inviolable loyalty and attachment to his Majesty's person and illustrious family, whose sovereignty

hath been so singularly distinguished by its favourable influence on the liberties of mankind.—ALL these things may then be properly insisted on. If urged with that modest heart-felt energy, with which good men should always vindicate the interests of their country, before the best of sovereigns, I should not despair of a gracious attention, to our humble requests. Our petition in such a case, would be simple, respectful, and perhaps affecting.

But in the present mode of proceeding, it seems to me, that we preclude ourselves from every office of decent duty to the most excellent of Kings; and from that right of earnestly defending our privileges, which we should otherwise have. The foundation of this attempt, I am apprehensive, will appear to others, *peculiarly unfortunate*. In a sudden passion, it will be said against the proprietors, we call out for a change of government. Not from reverence for his Majesty; not from a sense of his paternal goodness to his people; but because we are angry with the Proprietors; and tired of a dispute founded on an order approved by his Majesty, and his royal grandfather.

Our powerful friends on the other side of the *Atlantic*, who are so apt to put the kindest construction on our actions, will no doubt observe, “that the conduct of the people of *Pennsylvania*, must be influenced by very extraordinary councils, since they desire to come *more immediately* under the King’s command, BECAUSE they will *not obey* those royal commands, which have been already signified to them.”

But here it will be said; nay it has been said; and the petition before the House is drawn accordingly; “we will not alledge this dispute with the Governor on the stipulations, but the general inconveniences of a proprietary government as the cause of our desiring a change.” ’Tis true we may act in this artful manner, but what advantages shall we gain by it? Though *we* should keep the secret, can we seal up the lips of the Proprietors? Can we recal our messages to the Governor? Can we annihilate our own resolves? Will not all—will not any of these discover the *true cause* of the present attempt?

Why then, should we unnecessarily invite fresh invectives in the very beginning of a most important business, that to be happily concluded, requires all the favour we can procure, and all the dexterity we can practice?

We intend to surround the throne, with petitions that our government may be changed from proprietary to royal. At the same time we mean to preserve our privileges: But how are these two points to be reconciled?

If we express our desire for the preservation of our privileges, in so general or faint a manner, as may induce the King to think, they are of no great consequence to us, it will be nothing less than to betray our country.

If on the other hand we inform his Majesty, "that tho' we *request* him to change the government, yet we *insist* on the preservation of our privileges," certainly it will be thought an unprecedented Stile of petitioning the crown, that humbly asks a favour, and boldly prescribes the terms, on which it must be granted.

How then shall we act? Shall we speak, or shall we suppress our sentiments? The first method will render our request incoherent: the second will render it dangerous. Some gentlemen are of opinion, that these difficulties may be solved, by intrusting the management of this affair to an Agent: but I see no reason to expect such an effect. I would first observe that this matter is of too prodigious consequence to be trusted to the discretion of an Agent—But if it shall be committed by this House, *the proper guardian of the public liberties*, to *other* hands, this truth must at some time or other be disclosed, "that we will never consent to a change, unless our privileges are preserved." I should be glad to know, with what finesse this matter is to be conducted. Is the agent to keep our petition to the crown in his pocket, till he has whispered to the ministry? Will this be justifiable? Will it be decent? Whenever he applies to *them*, I presume, they will desire to know his authority for making such an application. Then our petition must appear; and whenever it does appear, either at first or last, *that* and the others transmitted with it, I apprehend, will be the foundation of any resolutions taken in the King's Council.

Thus, in whatever view this transaction is considered, shall we not still be involved in the dilemma already mentioned, "of begging a favour from his Majesty's goodness, and yet shewing a distrust that the royal hand, stretched out at our own request for our relief, may do us an injury?"

Let me suppose, and none can offer the least proof of this supposition being unreasonable, that his Majesty will not accept of the government, clog'd, as it will be said, with privileges inconsistent with the royal rights: how shall we act then? We shall have our choice of two things: one of them destructive: the other dishonourable. We may either renounce the laws and liberties framed and delivered down to us by our careful ancestors: or we may tell his Majesty with a surly discontent, "that we will not submit to his *implored protection*, but on such conditions, as we please to impose on him."

Is not this the inevitable and dreadful alternative, to which we shall reduce ourselves?

In short, Sir, I think the farther we advance in the path we are now in, the greater will be the confusion and danger in which we shall engage ourselves. Any body of men acting under a charter, must surely tread on slippery ground, when they take a step that may be deemed a surrender of that charter. For my part, I think the petitions that have been carried about the city and country to be signed, and are now lying on the table, can be regarded in no other light, than as a surrender of the charter, with a short indifferent hint annexed of a desire, that our privileges may be spared, if it shall be thought proper. Many striking arguments may in my opinion be urged, to prove that any request made by this House for a change, may with still greater propriety be called a surrender. The common observation "that many of our privileges do not depend on our charter only, but are confirmed by laws approved by the Crown," I doubt will have but little weight with those, who will determine this matter.

It will readily be replied, "that these laws were founded on the charter; that they were calculated for a proprietary government, and for no other; and approved by the Crown in that view alone: that the proprietary government is now acknowledged by the people living under it to be a bad government; and the Crown is intreated to accept a surrender of it: that therefore by abolishing the proprietary government, every thing founded upon it, must of consequence be also abolished."

However if there should be any doubts in the law on these points, there is an easy way to solve them.

These reflections, Sir, naturally lead me to consider the *consequences* that may attend a change of our government; which is the last point, I shall trouble the House upon at this time.

It is not to be questioned, but that the Ministry are desirous of vesting the immediate government of this Province, advantageously in the Crown. 'Tis true, they dont chuse to act arbitrarily, and tear away the present government from us, without our consent. This is not the age for such things. But let *us* only furnish them with a pretext, by pressing petitions for a change; let us only relinquish the hold we now have, and in an instant we are precipitated from that envied height where we now stand. The affair is laid before the parliament, the desires of the Ministry are insinuated, the rights of the Crown are vindicated, and an act passes to deliver us

at once from the government of Proprietors, and the privileges we claim under them.

Then, Sir, we who *in particular* have presented to the authors of the fatal change, this *long-wish'd* for opportunity of effecting it, shall for *our assistance* be entitled to their thanks—*Thanks!* which I am persuaded, every worthy member of this House would *abhor* to deserve, and would *scorn* to receive.

It seems to be taken for granted, that by a change of government, we shall obtain a change of those measures which are so displeasing to the people of this Province—that justice will be maintained by an equal taxation of the proprietary estates—and that our frequent dissensions will be turned into peace and happiness.

These are effects indeed sincerely to be wished for by every sensible, by every honest man: but reason does not always teach us to expect the warm wishes of the heart. Could our gracious Sovereign take into consideration, the state of every part of his extended dominions, we *might* expect redress of every grievance: for with the most implicit conviction I believe, he is as just, benevolent, and amiable a Prince, as heaven ever granted in its mercy to bless a people. I venerate his virtues beyond all expression. But *his* attention to our particular circumstances being impossible, we must receive our fate from ministers; and from *them*, I do not like to receive it.

We are not the subjects of ministers; and therefore it is not to be wondered at, if they do not feel that tenderness for us, that a good prince will always feel for his people. Men are not born ministers. Their ambition raises them to authority; and when possessed of it, one established principle with them seems to be, “never to deviate from a precedent of power.”

Did we not find in the late war, tho' we exerted ourselves in the most active manner in the defence of his Majesty's dominions, and in promoting the service of the Crown, every point in which the Proprietors thought fit to make any opposition, decided against us? Have we not also found, since the last disturbance of the public peace by our savage enemies, the conduct of the late Governor highly applauded by the ministry, for his adherence to those very stipulations now insisted on; and ourselves subjected to the *bit-terest reproaches*, only for attempting to avoid burthens, that were thought extremely grievous. Other instances of the like kind I pass over, to avoid a tedious recapitulation.

Since then, the gale of ministerial favour has in *all seasons* blown propitious to proprietary interests, why do we now fondly flatter ourselves, that

it will *suddenly* shift its quarter? Why should we with an *amazing credulity*, now fly for *protection* to *those* men, trust *every thing* to *their* mercy, and ask the most distinguishing *favours* from *their* kindness, from whom we complained a few months ago, that we could not obtain the most reasonable requests? Surely, Sir, we must acknowledge one of these two things: either, that our *complaint* was then *unjust*; or, that our *confidence* is now *unwarranted*. For my part, I look for a rigid perseverance in former measures. With a new government, I expect new disputes. The experience of the royal colonies convinces me, that the immediate government of the Crown, is not a security for that tranquility and happiness we promise ourselves from a change. It is needless for me to remind the House, of all the frequent and violent controversies that have happened between the King's Governors in several provinces, and their Assemblies. At this time, if I am rightly informed, *Virginia* is struggling against an instruction relating to their paper currency, that will be attended, as that colony apprehends, with the most destructive consequences, if carried into execution.

Indeed, Sir, it seems vain to expect, where the spirit of liberty is maintained among a people, that public contests should not *also* be maintained. Those who *govern*, and those who *are governed*, seldom think they can gain too much on one another. Power is like the *ocean*; not easily admitting limits to be fixed in it. It must be in motion. Storms indeed are not desirable: but a long dead calm is not to be looked for; perhaps, not to be wished for. Let not *us* then, in expectation of *smooth seas*, and an *undisturbed course*, too rashly venture our *little vessel* that hath safely sailed round *our own well known* shores, upon the *midst* of the *untry'd deep*, without being first fully convinced, that her *make* is strong enough to bear the *weather* she may meet with, and that she is well *provided* for so long and so dangerous a voyage.

No man, Sir, amongst us hath denied, or will deny, that this Province must *stake* on the event of the present attempt, liberties that ought to be immortal—*Liberties!* founded on the acknowledged rights of human nature; and restrained in our mother-country, only by an unavoidable necessity of adhering in some measure, to long established customs. Thus hath been formed between old errors and hasty innovations, an entangled chain, that our ancestors either had not moderation or leisure enough to untwist.

I will now briefly enumerate, as well as I can recollect, the particular privileges of Pennsylvania.

In the first place, we here enjoy that best and greatest of all rights, *a perfect religious freedom*.

Posts of honour and profit are unfettered with *oaths* or *tests*; and therefore are open to men, whose abilities, strict regard to their conscientious persuasion, and unblemished characters qualify them to discharge their duties with credit to themselves, and advantage to their country. Thus justice is done to merit; and the public loses none of its able servants.

The same wisdom of our laws, has guarded against the absurdity of granting greater credit even to villains, if they will swear, than to men of virtue, who from religious motives cannot. Therefore those who are conscientiously scrupulous of taking an oath, are admitted as witnesses in criminal cases. Our legislation suffers no checks, from a council instituted, in fancied imitation of the House of Lords. By the right of sitting on our own adjournments, we are secure of meeting, when the public good requires it: and of not being dismissed, when private passions demand it. At the same time, the strict discharge of the trust committed to Us, is enforced by the short duration of our power, which must be renewed by our constituents every year.

Nor are the people stripped of all authority, in the execution of laws. They enjoy the satisfaction of having some share, by the appointment of provincial commissioners, in laying out the money which they raise; and of being in this manner assured, that it is applied to the purposes, for which it was granted. They also elect sheriffs and coroners; officers of so much consequence, in every determination that affects honour, liberty, life or property.

Let any impartial person reflect, how contradictory some of these privileges are to the most antient principles of the English constitution, and how directly opposite other of them are to the settled prerogatives of the crown; and then consider, what probability we have of retaining them on a *requested** change: that is of continuing in fact a proprietary government, though we humbly pray the King to change this government. Not unaptly, in my opinion, the connection between the proprietary family and this Province, may be regarded as a marriage. Our privileges may be called the fruits of that marriage. The domestic peace of this family, it is true, has not been unvexed with quarrels, and complaints: But the pledges of their affection

* *Imperium facile iis artibus retinetur, quibus initio partum est.* {"Power is easily kept by those methods by which it was obtained in the beginning."—Tr.}

ought always to be esteemed: and whenever the parents in an *imprudent request* shall be *divorced*, much I fear, that their *issue* will be declared *illegitimate*.—*This* I am well persuaded of, that surprizing must our behaviour appear to all men, if in the instant when we apply to his Majesty for relief from what we think oppression, we should discover a resolute disposition to deprive him of the uncontroverted prerogatives of his royal dignity.

At this period, when the administration is regulating new colonies, and designing, as we are told the* *strictest reformations* in the old, it is not likely that they will grant an invidious distinction in our favour. Less likely is it, as that distinction will be liable to so many, and such strong *constitutional* objections; and when we shall have the weight both of the clergy and ministry, and the universally received opinions of the people of our mother country to contend with.

I mean not, Sir, the least reflection on the church of *England*. I reverence and admire the purity of its doctrine, and the moderation of its temper. I am convinced, that it is filled with learned and with excellent men: but all zealous persons, think their own religious tenets the best, and would willingly see them embraced by others. I therefore apprehend, that the dignified and reverend gentlemen of the church of *England*, will be extremely desirous to have *that* church as well secured, and as much distinguished as possible in the American colonies: especially in those colonies, where it is overborne, as it were, by dissenters. There never can be a more critical opportunity for this purpose than the present. The cause of the church will besides be connected with that of the crown, to which its principles are thought to be more favourable, than those of the other professions.

We have received certain information, that the conduct of this Province which has been so much censured by the ministry, is attributed to the influence of a society, that holds warlike measures at all times to be unlawful.—We also know, that the late tumultuous and riotous proceedings, which are represented in so strong a light by the petition, now before the House, have been publicly ascribed to the influence of another society. Thus the blame of every thing disreputable to this province, is cast on one or the other of these dissenting sects. Circumstances! that I imagine, will neither be forgot, nor neglected.

* Some late Acts of Parliament shew what strict reformations are to be made in the Colonies.

We have seen the event of our disputes concerning the *Proprietary* interests; and it is not to be expected, that our success will be greater, when our opponents become more numerous; and will have more dignity, more power, and as they will think, more law on their side.

These are the dangers, Sir, to which we are now about to expose those privileges, in which we have hitherto so much gloried. *Wherefore?* To procure two or three, perhaps four or five hundred pounds a year, (for no calculation has carried the sum higher) from the Proprietors, for two or three or four or five years, for so long and something longer, perhaps, the taxes may continue.

But are we sure of gaining this point? *We are not.* Are we sure of gaining any other advantage? *We are not.* Are we sure of preserving our privileges? *We are not.* Are we under a necessity of pursuing the measure proposed at this time? *We are not.*

Here, Sir, permit me to make a short pause. Permit me to appeal to the heart of every member in this House, and to entreat him to reflect, how far he can be justifiable in giving his voice, thus to hazard the liberties secured to us by the wise founders of this Province; peaceably and fully enjoyed by the present age, and to which posterity is so justly entitled.

But, Sir, we are told there is no danger of losing our privileges, if our government should be changed, and two arguments are used in support of this opinion.—The first is, “That the government of the Crown is exercised with so much lenity in *Carolina* and the *Jerseys*.”—I cannot perceive the least degree of force in this argument. As to *Carolina*, I am not a little surprized, that it should be mentioned on this occasion, since I never heard of one privilege that colony enjoys, more than all the other royal governments in *America*. The privileges of the *Jerseys*, are of a different nature from many of which we are possess; and are more consistent with the royal prerogative.

Indeed I know of none they have, except that *Quakers* may be witnesses in criminal cases, and may bear offices. Can this indulgence shewn to them for a particular reason, and not contradictory to the rights of the crown, give us any just cause to expect the confirmation of privileges directly opposite to those rights, and for confirming which no such reason exists. But perhaps the gentlemen, who advance this argument, mean, that *we* shall purchase a change at a cheap price, if we are only reduced to the same state with the *Jerseys*—Surely, Sir, if this be their meaning, they entirely forget those extraordinary privileges, which some time ago were mentioned.

How many must we in such a case renounce? I apprehend, it would prove an argument of little consolation to these gentlemen, if they should lose three fourths of their estates, to be told, that they still remain as rich as their neighbours, and have enough to procure all the necessaries of life.

It is somewhat remarkable, that this single instance of favour in permitting an affirmation instead of an oath, in a single province, should be urged as so great an encouragement to us, while there are so many examples of another kind to deterr us. In what *royal government* besides the *Jerseys*, can a *Quaker* be a witness in criminal cases, and bear offices? (a) *In no other*. What can be the reason of this distinction in the *Jerseys*? Because in the infancy of that colony, when it came under the government of the crown, there was, as appears from authentic vouchers, an ABSOLUTE NECESSITY from the scarcity of other proper persons, to make use of the people called *Quakers* in public employments. Is there such a necessity in this Province? Or can the ministry be *persuaded*, that there is such a necessity? No, Sir, those from whom they will receive their information, will grant no such thing; and therefore I think there is the *most imminent danger*, in case of a change, that the people of *this society* will lose the exercise of those rights, which, tho' they are intitled to as men, yet such is the situation of human affairs, they with difficulty can find a spot on the whole globe where they are allowed to enjoy them. It will be an argument of some force I am afraid, that the church of *England* can never expect to raise its head among us, while we are encouraged, as it will be said, in dissension: but if an *oath* be made necessary for obtaining offices of honour and profit; it will then be expected that any *Quakers* who are tempted to renounce their principles, will undoubtedly make an addition to the established church.

If any other consideration than that which has been mentioned, was regarded in granting that indulgence in the *Jerseys*, tho' no other is exprest, it seems not improbable, that the nearness of this Province might have had some weight, as from its situation it afforded such strong temptations to the inhabitants of the *Jerseys* to remove hither, had they been treated with any severity.

(a) It is said: that a *Quaker* was lately committed to gaol in New-York, because he would not swear in a criminal case.

Their government in some measure was formed in imitation of our government; but when this is altered, the *English* constitution must be the model, by which it will be formed.

Here it will be said "this cannot be done but by the Parliament; and will a British Parliament do such an act of injustice, as to deprive us of our rights?" This is the second argument, used to prove the safety of the measures now proposed.

Certainly the *British* Parliament will not do, what they think an unjust act: but I cannot persuade myself, that *they* will think it unjust, to place us on the same footing with themselves. It will not be an easy task to convince them, that the people of *Pennsylvania* ought to be distinguished from all other subjects, under his Majesty's *immediate* government; or that such a distinction can answer any good purpose. May it not be expected, that they will say

No people can be freer than ourselves; every thing more than we enjoy, is licentiousness, not liberty: any indulgences shewn to the colonies heretofore, were like the indulgences of parents to their infants; they ought to cease with that tender age; and as the colonies grow up, to a more vigorous state, they ought to be carefully disciplined, and all their actions regulated by strict laws. Above all things it is necessary, that the prerogative should be exercised with its full force in our American provinces, to restrain them within due bounds, and secure their dependance on this kingdom.

I am afraid, that this will be the opinion of the Parliament, as it has been in every instance, the undeviating practice of the ministry.

But, Sir, it may be said "these reasons are not conclusive, they do not demonstratively prove, that our privileges *will be* endangered by a change." I grant the objection: but what stronger reasons, what clearer proofs are there, that they *will not be* endangered by a change.

They are safe now; and *why* should we engage in an enterprize that will render them *uncertain*? If nothing will content us but a revolution brought about by ourselves, surely we ought to have made the strictest enquiries what terms we may expect; and to have obtained from the ministry some kind of security for the performance of those terms.

These things might have been done. They are not done. If a merchant will venture to travel with great riches into a foreign country, without a

proper guide, it certainly will be advisable for him to procure the best intelligence he can get, of the climate, the roads, the difficulties he will meet with, and the treatment he may receive.

I pray the House to consider, if we have the slightest security that can be mentioned, except opinion (if that is any) either for the preservation of our present privileges, or gaining a single advantage from a change. Have we any writing? have we a verbal promise from any Minister of the Crown? We have not. I cannot therefore conceal my astonishment, that gentlemen should require a less security for the invaluable rights of *Pennsylvania*, than they would demand for a debt of five pounds. Why should we press forward with this unexampled hurry, when no benefit can be derived from it? Why should we have any aversion to deliberation and delay, when no injury can attend them?

It is scarcely possible, in the present case, that we can spend too much time, in forming resolutions, the consequences of which are to be *perpetual*. If it is true as some averr, that we can *now* obtain an advantageous change of our government, I suppose it will be also true next week, next month, and next year: but if *they* are mistaken, it will be early enough, whenever it happens, to be disappointed, and to repent. I am not willing to run risques in a matter of such prodigious importance, on the credit of *any man's opinion*, when by a small delay, that can do no harm, the steps we are to take may become more safe. *Gideon*, tho' he had conversed with an "angel of the lord" would not attempt to relieve his countrymen, then sorely opprest by the *Midianites*, lest he should involve them in greater miseries, until he was convinced by two miracles that he should be successful. I do not say, we ought to wait for *miracles*; but I think we ought to wait for something, which will be next kin to a miracle; I mean, some *sign* of a *favourable disposition* in the *ministry* towards us. I should like to see an *olive leaf* at least brought to us, before we quit the *ark*.

Permit me, Sir, to make one proposal to the House. We may apply to the Crown now, as freely as if we were under its immediate government. Let us desire his Majesty's judgment on the point, that has occasioned this unhappy difference between the two branches of the legislature. This may be done without any* violence, without any hazard to our constitution. We

* Nihil vi, nihil secessione opus est. {"Nothing by violence, nothing by secession is necessary."—Tr.} Sall. Bell. Jugurth.

say the justice of our demands, is clear as light: every heart must feel the equity of them.

If the decision be in our favour, we gain a considerable victory; the grand obstruction of the public service is removed; and we shall have more leisure to carry our intentions coolly into execution. If the decision be against us, I believe the most zealous amongst us will grant it would be madness to expect success in any other contest. This will be a single point, and cannot meet with such difficulties, as the procuring a total alteration of the government. Therefore by separating it from other matters, we shall *soon* obtain a determination, and know *what chance* we have of succeeding in things of greater value. Let us try our fortune. Let us take a cast or two of the dice for smaller matters, before we dip deeply. Few gamesters are of so sanguine a temper, as to stake their *whole wealth* on *one* desperate throw at first. If we *are to play* with the *public happiness*, let us act at least with *as much* deliberation, as if we were *betting* out of our private purses.

Perhaps a little delay may afford us the pleasure of finding our constituents more unanimous in their opinions on this interesting occasion: and I should chuse to see a vast majority of them join with a calm resolution in the measure, before I should think myself justifiable in voting for it, even if I approved of it.

The present question is utterly foreign from the purposes, for which we were sent into this place. There was not the least probability at the time we were elected, that this matter could come under our consideration. We are not debating how much money we shall raise: what laws we shall pass for the regulation of property; nor on any thing of the same kind, that arises in the usual parliamentary course of business. We are now to determine, WHETHER A STEP SHALL BE TAKEN, THAT MAY PRODUCE AN ENTIRE CHANGE OF OUR CONSTITUTION.

In forming this determination, one striking reflection should be preserved in our minds; I mean, "that we are the servants of the people of *Pennsylvania*"—of *that people*, who have been induced by the excellence of the present constitution, to settle themselves under its Protection.

The inhabitants of remote countries, impelled by that love of liberty which all wise providence has planted in the human heart, deserting their native soils, committed themselves with their helpless families to the mercy of winds and waves, and braved all the terrors of an unknown wilderness, in hopes of enjoying in these woods, the exercise of those invaluable rights,

which some unhappy circumstance had denied to mankind in every other part of the earth.

Thus, Sir, the people of *Pennsylvania* may be said to have *purchased* an inheritance in its constitution, at a prodigious price; and I cannot believe, unless the strongest evidence be offered, that they are now willing to part with that, which has cost them so much toil and expence.

They have not hitherto been disappointed in their wishes. They have obtained the blessings they sought for.

We have received these seats by the free choice of this people, under this constitution; and to preserve it in its utmost purity and vigour, has always been deem'd by me, a principal part of the trust committed to my care and fidelity. The measure now proposed has a direct tendency to endanger this constitution; and therefore in my opinion, we have *no right* to engage in it, without the *almost universal consent of the people*, express in the plainest manner.

I think, I should improperly employ the attention of this House, if I should take up much time in proving, that the deputies of a people have not a right by any law divine or human, to change the government under which their authority was delegated to them, without such a consent as has been mentioned.—The position is so consonant to natural justice and common sense, that I believe it never has been seriously controverted. All the learned authors that I recollect to have mentioned this matter, speak of it as an indisputable maxim.

It may be^(b) said perhaps in answer to this objection “that it is not intended to change the government, but the governor.” This, I apprehend, is a distinction only in words. The government is certainly to be changed from proprietary to royal; and *whatever may be intended*, the question is, whether such a change will not expose our present privileges to danger.

It may also be said “that the petitions lying on the table, are a proof of the people’s consent.” Can petitions so industriously carried about, and after all the pains taken, signed only by about thirty five hundred persons, be look’d on as the *plainest expressions of the almost universal consent* of the many thousands that fill this Province? No one can beleive it.

It cannot be denied, Sir, that much the greatest part of the inhabitants of this Province, and among them men of large fortunes, good sense, and

(b) This was frequently said in the House.

fair characters, who value very highly the interest they have in the present constitution, have not signed these petitions, and as there is reason to apprehend, are extremely averse to a change at this time. Will they not complain of such a change? And if it is not attended with all the advantages they now enjoy, will they not have reason to complain? It is not improbable, that this measure may lay the foundation of more bitter, and more lasting dissensions among us, than any we have yet experienced.

Before I close this catalogue of unhappy consequences, that I expect will follow our request of a change, I beg leave to take notice of the *terms* of the petition, that is now under the consideration of the House.

They equally excite in my breast—surprize, and grief, and terror. This poor Province is already sinking under the weight of the discredit and reproaches, that by *some fatality* for several years past, have attended our public measures; and we not only seize this unfortunate season to engage her in new difficulties, but prepare to pour on her devoted head, a load that must effectually crush her.—We inform the King by this petition, that *Pensylvania* is become a scene of confusion and anarchy: that armed mobs are marching from one place to another: that such a spirit of violence and riot prevails, as exposes his Majesty's good subjects to constant alarms and danger: and that this tumultuous disposition is so general, that it cannot be controuled by any powers of the present government; and that we have not any hopes of returning to a state of peace and safety, but by being taken under his Majesty's immediate protection.

I cannot think this a proper representation of the present state of this Province. Near four months are elapsed, since the last riot: and I do not perceive the least probability of our being troubled with any more. The rioters were not only successfully opposed, and prevented from executing their purpose; but we have reason to believe, that they were convinced of their error, and have renounced all thoughts of such wild attempts for the future. To whose throat is the sword now held? What life will be saved by this application; Imaginary danger! Vain remedy! Have we not *sufficiently felt* the effects of royal resentment? Is not the authority of the Crown *fully enough exerted* over us? does it become *us* to paint in the strongest colours, the folly or the crimes of our *countrymen*? To require unnecessary protection against men who intend us no injury, in such *loose* and *general* expressions, *as may produce even the establishment of an armed force among us?*

With unremitting vigilance, with undaunted virtue, should a free people *watch* against the encroachments of power, and *remove* every pretext for its extension.

We are a dependant colony; and we need not doubt, that means will be used to secure that dependance. But that we ourselves should furnish a reason for settling a *military establishment* upon us, must exceed the most extravagant wishes of those, who would be most pleased with such a measure.

We may introduce the innovation, but we shall not be able to stop its progress. The precedent will be pernicious. If a specious pretence is afforded for maintaining a small body of troops among us now, equally specious pretences will never be wanting hereafter, for adding to their numbers. The burthen that will be imposed on us for their support, is the most trifling part of the evil. The poison will soon reach our vitals. Whatever struggles we may make to expell it,

Haeret lateri lethalis arundo—¹

The dart with which we are struck, will still remain fixed—too firmly fixed, for our feeble hands to draw it out. Our fruitless efforts will but irritate the wound; and at length we must tamely submit to—I quit a subject too painful to be dwelt upon.

These, Sir, are my sentiments on the petition that has occasioned this debate. I think this neither the *proper season*, nor the *proper method*, for obtaining a change of our government. It is *uncertain*, whether the measures proposed will place us in a better situation, than we are now in, with regard to the point lately controverted: with respect to other particulars it may place us in a worse. We shall run the *risque* of *suffering great losses*. We have *no certainty* of *gaining* any thing. In seeking a *precarious, hasty, violent* remedy for the present *partial* disorder, we are *sure* of exposing the *whole body* to danger. I cannot perceive the necessity of applying such a remedy. If I did, I would with the greatest pleasure pass over to the opinion of some gentlemen who differ from me, whose integrity and abilities I so much esteem, that whatever reasons at any time influence me to agree with them, I always receive a satisfaction from being on their side. If I have erred now, I shall comfort myself with reflecting, that it is an *innocent error*. Should the measures pursued in consequence of this debate, be opposite to my opinion; and

1. ["The fatal shaft sticks in his side."]

should they procure a change of government with all the benefits we desire; I shall not envy the praise of others, who by their *fortunate* courage and skill have conducted us unhurt through the midst of such threatening danger, to the wished for port. I shall cheerfully submit to the censure of having been *too apprehensive* of injuring the people of this Province. If any severer sentence shall be passed upon me by the worthy, I shall be sorry for it: but this truth I am convinced of; that it will be much easier for me to bear the unmerited reflections of *mistaken zeal*, than the just reproaches of a *guilty mind*. To have concealed my real sentiments, or to have counterfeited such as I do not entertain, in a deliberation of *so much consequence* as the present, would have been the *basest hypocrisy*. It may perhaps be thought that this however would have been the most *politic* part for me to have acted. It might have been so. But if *policy* requires, that our words or actions should *belye* our hearts, I thank God that I *detest* and *despise* all its *arts*, and all its *advantages*. A good man *ought* to serve his country, even tho' she *resents* his services. The great reward of honest actions, is not the fame or profit that follows them, but the *consciousness* that attends them. To discharge on this important occasion, the *inviolable duty* I owe the public, by obeying the *unbiassed dictates* of my *reason* and *conscience*, hath been my sole view; and my only wish now is, that the resolutions of this House, whatever they are, may promote the happiness of *Pennsylvania*.

FINIS.

Joseph Galloway,
The Speech of Joseph Galloway,
Delivered in the House of Assembly,
of the Province of Pennsylvania
(Philadelphia, 1764)



ALONG WITH BENJAMIN FRANKLIN, Joseph Galloway was a primary leader in the movement for abolishing proprietary government in Pennsylvania, and he rushed to answer Dickinson's opposition to the petition to the Crown for royal government (see Selection 64). Fronted by an anonymously written preface that, at thirty-seven pages in small type, probably contained far more words than the body of the text, the pamphlet was a detailed and entirely hostile review of Dickinson's position that accused him of political naïveté and an inexcusable lack of awareness of the extent to which the proprietor's numerous "Attempts of Power" in recent decades had "deeply wounded" the rights of Pennsylvanians. Only "a Stranger to Proprietary Usurpations," Galloway declared, could fail to appreciate the fact that for "these twenty Years" "Proprietary Partizans" had been "cursing our Constitution, declaring that it was no Constitution . . . and that Things could never be well with us, 'till it was new-modell'd, and made exactly conformable to the *British* Constitution," arguing that privileges that were "proper in the Infancy of a Colony, to encourage Settlement," were "*unfit for it* in its grown State, and *ought to be taken away.*"

For people of Galloway's persuasion, such behavior only served to underline the undesirability "flowing from an Union of great Wealth, with extensive Power." A proprietary regime had everywhere "been found

inconvenient, attended with Contentions and Confusions where-ever it existed," and, "greatly to the Satisfaction and Happiness of the People," had been "gradually taken away from Colony after Colony" until only Pennsylvania and Maryland remained as proprietary colonies in an empire in which all the rest were under the immediate jurisdiction of the Crown. With none of the "Mischiefs" incident to proprietary colonies, he averred, royal colonies enjoyed "a full Freedom and Power of Legislation" with "No Obstructions to his Majesty's Service," and "a perfect Administration of Justice." Denying that there was any "Royal and Ministerial Prejudice" against Pennsylvania, Galloway challenged Dickinson to show some proof to support his surmise "that his Majesty and Ministers will act with Violence, and desert the Principles of Justice and Law, to take away our Rights without our Consent" and confidently asserted that "a *British* House of Commons, the Guardians of *British* Liberties," could always be counted on to put a stop to "unjust Attempts of particular Ministers, on the Liberties of *America*." (J.P.G.)

THE
SPEECH

OF

Joseph Galloway, Esq;

One of the MEMBERS for PHILADELPHIA COUNTY;

IN ANSWER

To the SPEECH of *John Dickinson, Esq;*

Delivered in the House of ASSEMBLY,

of the PROVINCE OF PENNSYLVANIA, May 24, 1764.

On Occasion of a Petition drawn up by Order,
and then under the Consideration of the HOUSE;
praying his MAJESTY for a ROYAL, in lieu of a
PROPRIETARY GOVERNMENT.

*Audi et alteram Partem.*¹

PHILADELPHIA:

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MDCCLXIV.

1. ["Listen to the other side."]

Preface.

It is not merely because Mr. *Dickinson's* Speech was usher'd into the World by a Preface, that one is made to this of Mr. *Galloway*. But as in that Preface, a Number of Aspersions were thrown on our Assemblies, and their Proceedings grossly misrepresented, it was thought necessary to wipe those Aspersions off, by some proper Animadversions; and by a true State of Facts, to rectify those Misrepresentations.

The Preface begins with saying, that "Governor *Denny*, whose Administration will never be mentioned but with Disgrace, in the Annals of this Province, was induced by *Considerations* to which the World is now no Stranger, to pass sundry Acts," &c. thus insinuating, that by some unusual base Bargain secretly made, but afterwards discover'd, he was induc'd to pass them.—It is fit, therefore, without undertaking to justify all that Governor's Administration, to shew what those Considerations were.—Ever since the Revenue of the Quit-rents first, and after that the Revenue of Tavern Licences, were settled irrevocably on our Proprietaries and Governors, they have look'd on those Incomes as their proper Estate, for which they were under no Obligations to the People: And when they afterwards concurr'd in passing any useful Laws, they considered them as so many Jobbs, for which they ought to be particularly paid. Hence arose the Custom of Presents twice a Year to the Governors, at the close of each Session in which Laws were past, given at the Time of Passing. They usually amounted to a Thousand Pounds per Annum. But when the Governors and Assemblies disagreed, so that Laws were not pass'd, the Presents were with-held.—When a Disposition to agree ensu'd, there sometimes still remain'd some Diffidence. The Governors would not pass the Laws that were wanted, without being sure of the Money, even all that they call'd their Arrears; nor the Assemblies give the Money without being sure of the Laws.—Thence the Necessity of some private Conference, in which, mutual Assurances of good Faith might be receiv'd and given, that the Transactions should go hand in hand. What Name the impartial Reader will give to this Kind of Commerce, I cannot say: To me it appears, an Extortion of more Money from the People, for that to which they had before an undoubted Right, both by the Constitution, and by Purchase: But there was no other Shop they could go to for the Commodity they wanted, and they were oblig'd to comply.—Time establish'd the Custom, and made it seem honest; so that

our Governors, even those of the most undoubted Honor, have practis'd it.—Governor *Thomas*, after a long Misunderstanding with the Assembly, went more openly to work with them in managing this Commerce and they with him. The Fact is curious, as it stands recorded in the Votes of 1742–43, Sundry Bills sent up to the Governor for his Assent, had lain long in his Hands without any Answer.—*Jan. 4.* The House

Ordered, That *Thomas Leech*, and *Edward Warner*, wait upon the Governor, and acquaint him, that the House had long waited for his Result on the Bills that lie before him, and desire to know when they may expect it.—The Gentlemen return and report, that they waited upon the Governor, and delivered the Message of the House according to Order, and that the Governor was pleased to say, He had had the Bills long under Consideration, and *waited the Result* of the House.

—The House well understood this Hint; and immediately resolv'd into a Committee of the whole House, to take what was called *the Governor's Support* into Consideration, in which they made, the Minutes say, *some Progress*; and the next Morning it appears, that that *Progress*, whatever it was, had been communicated to him; for he sent them down this Message by his Secretary;—"Mr. *Speaker*, The Governor commands me to acquaint you, that as he has received Assurances of a *good Disposition* in the House, he thinks it incumbent on him to shew *the like* on his Part; and therefore sends down the Bills which lay before him, without any Amendment."—As this Message only *shew'd a good Disposition*, but contain'd no Promise to pass the Bills; the House seem to have had their Doubts; and therefore, *February 2*, when they came to resolve, on the Report of the Grand Committee, to give the Money, they guarded their Resolves very cautiously, viz.

Resolved, That *on the Passage* of such Bills as now lie before the Governor, the Naturalization Bill, and such other Bills as may be presented to him, during this Sitting, there be PAID him the Sum of *Five Hundred Pounds*.—Resolved also, That *on the Passage* of such Bills as now lie before the Governor, the Naturalization Bill, and such other Bills as may be presented to him this Sitting, there be PAID to the Governor, the further Sum of *One Thousand Pounds*, for the current Year's Support; and that Orders be drawn on the Treasurer and Trustees of the Loan Office, pursuant to these Resolves.

—The Orders were accordingly drawn, with which being acquainted, he appointed a Time to pass the Bills, which was done with one Hand, while he received the Orders in the other; and then with the utmost politeness, thank'd the House for the Fifteen Hundred Pounds, as if it had been a *pure Free Gift*, and a mere mark of their Respect and Affection. “I *thank you*, Gentlemen, (says he) for this *Instance of your Regard*; which I am the more pleased with, as it gives an agreeable Prospect of *future Harmony* between me and the Representatives of the People.”—This, Reader, is an exact Counterpart of the Transaction with Governor *Denny*; except that *Denny* sent Word to the House, that he would pass the Bills before they voted the *Support*.—And yet, here was no Proprietary Clamour about Bribery, &c. And why so? Why, at that Time, the Proprietary Family, by Virtue of a secret Bond they had obtained of the Governor at his Appointment, were to share with him the Sums so obtained of the People!

This Reservation of the Proprietaries they were at that Time a little asham'd of, and therefore such Bonds were then to be Secrets. But as in every Kind of Sinning, frequent Repetition lessens Shame, and increases Boldness, we find the Proprietaries ten Years afterwards, openly insisting on these Advantages to themselves, over and above what was *paid* to their Deputy:

Wherefore, (say they,) on this Occasion, it is necessary, that we should inform the People, through yourselves, their Representatives, that as, by the Constitution, OUR CONSENT is NECESSARY to their LAWS, at the same Time that they have an *undoubted Right* to such as are necessary for the Defence and real Service of the Country; so it will tend the better to *facilitate* the several Matters which *must* be transacted with us, for their Representatives to shew a *Regard* to us and our INTEREST.

—This was in their Answer to the Representation of the Assembly, [*Votes, December, 1754, Page 48*] on the Justice of their contributing to *Indian Expences*, which they had refused. And on this Clause, the Committee make the following Remark;—

They tell us, their Consent is *necessary* to our *Laws*, and that it will tend the better to *facilitate* the Matters which *must* be transacted with them, for the Representatives to shew a *Regard* to their INTEREST: That is, as we understand it, though the Proprietaries have a Deputy here, supported by the Province, who is, or ought to be, fully impower'd to pass all

Laws necessary for the Service of the Country; yet, before we can obtain such Laws, we must *facilitate their Passage*, by paying Money for the Proprietaries which they ought to pay, or in some Shape make it their *particular INTEREST* to pass them. We hope, however, that if this Practice has ever been *begun*, it will never be *continued* in this Province; and that, since, as this very Paragraph allows, we have an *undoubted Right* to such Laws, we shall always be able to obtain them from the Goodness of our Sovereign, without going to Market for them to a Subject.

—Time has shewn that those Hopes were vain; they have been oblig'd to go to that Market ever since, directly, or indirectly, or go without their Laws. The Practice has continued, and will continue, as long as the Proprietary Government subsists, intervening between the Crown and the People.

Do not, my courteous Reader, take Pet at our Proprietary Constitution, for these our Bargain and Sale Proceedings in Legislation.—'Tis a happy Country where Justice, and what was your own before, can be had for Ready Money. 'Tis another Addition to the Value of Money, and of Course another Spur to Industry.—Every Land is not so bless'd. There are Countries where the princely Proprietor claims to be Lord of all Property; where what is your own shall not only be wrested from you, but the Money you give to have it restor'd, shall be kept with it, and your offering so much, being a Sign of your being too rich, you shall be plunder'd of every Thing that remain'd. These Times are not come here yet: Your present Proprietors have never been more unreasonable hitherto, than barely to insist on your Fighting in Defence of their Property, and paying the Expence yourselves; or if their Estates must, (ah! *must*) be tax'd towards it, that the *best* of their Lands shall be tax'd no higher than the *worst* of yours.

Pardon this Digression, and I return to Governor *Denny*; but first let me do Governor *Hamilton* the Justice to observe, that whether from the Uprightness of his own Disposition, or from the odious Light the Practice had been set in on *Denny's* Account, or from both, he did not attempt these Bargains, but pass'd such Laws as he thought fit to pass, without any previous Stipulation of *Pay* for them. But then, when he saw the Assembly tardy in the Payment he expected, and yet calling upon him still to pass *more Laws*, he openly put them in Mind of the Money, as a *Debt* due to him from Custom.

In the Course of the present Year, (says he, in his Message of July 8. 1763) a great Deal of public Business hath been transacted by me; and I believe,

as many useful *Laws enacted*, as by any of my Predecessors in the same Space of Time; yet I have not understood, that any *Allowance* hath hitherto been made to me for my Support, as *hath been customary* in this Province.

—The House having then some Bills in hand, took the Matter into immediate Consideration, and voted him five Hundred Pounds; for which an Order or Certificate was accordingly drawn; and on the same Day the Speaker, after the House had been with the Governor, reported,

That his Honor had been pleased to give his Assent to the Bills, by *enacting the same into Laws*; and Mr. Speaker farther reported, that he had *then*, in behalf of the House, presented their Certificate of *Five Hundred Pounds* to the Governor, who was pleased to say, he was obliged to the House for the same.

—Thus we see the Practice of purchasing and paying for Laws, is interwoven with our *Proprietary* Constitution, us'd in the best Times, and under the best Governors. And yet, alas poor Assembly! How will you steer your brittle Bark between these Rocks? If you pay ready Money for your Laws, and those Laws are not lik'd by the Proprietaries, you are charg'd with Bribery and Corruption:—If you wait a While before you pay, you are accus'd of detaining the Governor's customary Right, and dun'd as a negligent or dishonest Debtor, that refuses to discharge a just Debt!

But Governor *Denny's* Case, I shall be told, differs from all these, for the Acts he was induced to pass, were, as the Prefacer tells us, “contrary to his Duty, and to every Tie of Honor and Justice.” Such is the Imperfection of our Language, and perhaps of all other Languages, that notwithstanding we are furnish'd with Dictionaries innumerable, we cannot precisely know the import of Words, unless we know of what Party the Man is that uses them.—In the Mouth of an Assembly-man, or true *Pennsylvanian*, *Contrary to his Duty, and to every Tie of Honor and Justice*, would mean, the Governor's long Refusal to pass Laws, however just and necessary, for taxing the proprietary Estate; a Refusal contrary to the Trust reposed in the Lieutenant Governor, by the Royal Charter, to the Rights of the People, whose Welfare it was his Duty to promote, and to the Nature of the Contract, made between the Governor and the Governed, when the Quit-rents and Licence Fees were establish'd, which confirm'd what the Proprietaries call

our *undoubted Right* to necessary Laws.—But in the Mouth of the Proprietaries, or their Creatures, *contrary to his Duty, and to every Tie of Justice and Honor*, means, his Passing Laws, contrary to *Proprietary Instructions*; and contrary to the *Bonds* he had previously given to observe those Instructions:—Instructions however, that were unjust and unconstitutional, and Bonds that were illegal and void from the beginning.

Much has been said of the Wickedness of Governor Denny in Passing, and of the Assembly in prevailing with him to pass those Acts. By the Prefacer's Account of them, you would think the Laws so obtain'd were *all* bad, for he speaks of but seven, of which, six he says were repeal'd, and the seventh reported to be "fundamentally WRONG and UNJUST," and "ought to be repealed, unless six certain Amendments were made therein."* Whereas in fact there were *nineteen* of them; and several of those must have been good Laws, for even the *Proprietaries* did not object to them. Of the eleven that they oppos'd, only six were repeal'd; so that it seems these good Gentlemen may themselves be sometimes as *wrong* in opposing, as the Assembly in enacting Laws. But the Words *fundamentally WRONG* and *UNJUST* are the great Fund of Triumph to the *Proprietaries* and their Partizans. These their subsequent Governors have unmercifully dinn'd in the Ears of the Assembly on all occasions ever since, for they make a Part of near a Dozen of their Messages.—They have rung the Changes on those Words, till they work'd them up to say that the Law was *fundamentally wrong and unjust* in Six several Articles. [Governor's Message, May 17th, 1764.] instead of "ought to be repealed unless six Alterations or Amendments could be made therein"—A Law unjust in six several Articles, must be an unjust Law indeed; Let us therefore once for all, examine this unjust Law, Article by Article, in order to see whether our Assemblies have been such Villains as they are represented.

The first Particular in which their Lordships propos'd the Act should be amended, was, "That the real Estates to be tax'd, be *defined with Precision*, so as not to include the unsurveyed waste Land belonging to the Proprietaries." This was at most, but an *Obscurity* to be cleared up. And tho' the Law might well appear to their Lordships incertain in that Particular; with us, who better know our own Customs, and that the Proprietaries waste

* This Act is intitled, An Act for granting to his Majesty, the Sum of One Hundred Thousand Pounds, striking the same in Bills of Credit, and sinking the Bills by a Tax on all Estates real and personal.

unsurveyed Land, was never here considered among Estates real, subject to Taxation, there was not the least Doubt or Supposition, that such Lands were included in the Words, "all Estates real and personal." The Agents therefore, knowing that the Assembly had no Intention to tax those Lands, might well suppose they would readily agree to remove the Obscurity.

Before we go farther, let it be observ'd, That the main Design of the Proprietaries, in opposing this Act, was, to prevent their Estates being tax'd at all. But as they knew that the Doctrine of *Proprietary Exemption*, which they had endeavoured to enforce here, could not be supported there, they bent their whole Strength against the Act on other Principles to procure its Repeal, pretending great willingness to submit to an equitable Tax; but that the Assembly, out of mere Malice, because they had conscienciously quitted *Quakerism* for the Church! were wickedly determin'd to ruin them, to tax all their unsurvey'd Wilderness Lands, and at the highest Rates, and by that Means exempt themselves and the People, and throw the whole Burden of the War on the Proprietary Family.—How foreign these Charges were from the Truth, need not be told to any Man in *Pennsylvania*. And as the Proprietors knew, that the Hundred Thousand Pounds of Paper Money, struck for the Defence of their enormous Estates, with others, was actually issued, spread thro' the Country, and in the Hands of Thousands of poor People, who had given their Labor for it; how base, cruel, and inhuman it was, to endeavour, by a Repeal of the Act, to strike the Money dead in those Hands at one Blow, and reduce it all to Waste Paper, to the utter Confusion of all Trade and Dealings, and the Ruin of Multitudes, merely to avoid paying their own just Tax!—Words may be wanting to express,—but Minds will easily conceive,—and never without Abhorrence!

The second Amendment propos'd by their Lordships was, "That the located uncultivated Lands belonging to the Proprietaries shall not be assessed higher than the lowest Rate, at which any located uncultivated Lands belonging to the Inhabitants shall be assessed."—Had there been any Provision in the Act, that the Proprietaries Lands, and those of the People, of the same Value, should be taxed differently, the one high, and the other low, the Act might well have been call'd in this Particular, *fundamentally wrong and unjust*. But as there is no such Clause, this cannot be one of the Particulars on which the Charge is founded; but, like the first, is merely a Requisition to make the Act clear, by express Directions therein, that the Proprietaries Estate should not be, as they pretended to believe it would be,

tax'd higher in proportion to its Value, than the Estates of others.—As to their present Claim, founded on that Article, “that the *best and most valuable* of their Lands, should be tax'd no higher than the *worst and least valuable* of the People's,” it was not then thought of; they made no such Demand, nor did any one dream, that so iniquitous a Claim would ever be made by Men who had the least Pretence to the Characters of *Honorable* or *Honest*.

The third Particular was, “That all Lands not granted by the Proprietaries within Boroughs and Towns, be deemed located uncultivated Lands, and rated accordingly, and not as Lots.” The Clause in the Act that this relates to, is,

And whereas many valuable *Lots* of Ground within the City of *Philadelphia*, and the several Boroughs and Towns within this Province, remain unimproved; Be it enacted, &c. That *all* such unimproved *Lots* of Ground, within the City and Boroughs aforesaid, shall be rated and assessed, according to their Situation and Value, for and towards raising the Money hereby granted.

—The Reader will observe, that the Word is *all* unimproved Lots, and that *all* comprehends the Lots belonging to the People, as well as those of the Proprietary.—There were many of the former, and a Number belonging even to Members of the then Assembly; and considering the Value, the Tax must be proportionably as grievous to them, as the Proprietary's to him.—Is there among us a single Man, even a Proprietary Relation, Officer, or Dependant, so insensible of the Differences of Right and Wrong, and so confus'd in his Notions of just and unjust, as to think and say, that the Act in this Particular, was fundamentally *wrong* and *unjust*? I believe not one.—What then could their Lordships mean by the propos'd Amendment?—Their Meaning is easily explain'd. The Proprietaries have considerable Tracts of *Land* within the Bounds of Boroughs and Towns, that have not yet been divided into Lots: They pretended to believe, that by Virtue of this Clause, an imaginary Division would be made of those Lands into Lots, and an extravagant Value set on such imaginary Lots, greatly to their Prejudice:—It was answered, that no such Thing was intended by the Act; and that by *Lots*, was meant only such Ground as had been surveyed and divided into Lots,—and not the open undivided Lands.—If this only is intended, say their Lordships, then let the Act be amended, so as clearly to express what is intended. This is the full Amount of the third Particular.—How the Act

was understood here, is well known by the Execution of it, before the Dispute came on in *England*; and therefore before their Lordships Opinion on the Point could be given; of which full Proof shall presently be made.—In the mean Time it appears, that the Act was not *on this Account, fundamentally wrong and unjust.*

The fourth Particular is, “That the Governor’s Consent and Approbation be made necessary to every Issue and Application of the Money to be raised by Virtue of such Act.”—The Assembly intended this, and tho’ they had done it in the Act. The Words of the Clause being,

That [the Commissioners named] or the major Part of them, or of the Survivors of them, *with the Consent and Approbation* of the Governor or Commander in Chief of this Province, for the Time being, shall order and appoint the Disposition of the Monies arising by Virtue of this Act, for and towards paying and cloathing two Thousand seven Hundred effective Men, &c.

—It was understood here, that as the Power of disposing, was expressly to be *with the Consent and Approbation* of the Governor, the Commissioners had no Power to dispose of the Money *without* that Approbation: But their Lordships, jealous (as their Station requires) of this Prerogative of the Crown, and being better acquainted with the Force and Weakness of Law Expression, did not think the Clause explicit enough, unless the Words, *and not otherwise*, were added, or some other Words equivalent. This Particular therefore was no more, than another Requisition of greater Clearness and Precision; and by no Means a Foundation for the Charge of *fundamentally wrong and unjust.*

The fifth Particular was, “That Provincial Commissioners be named to hear and determine Appeals, brought on the Part of the Inhabitants as well as the Proprietaries.”—There was already subsisting a Provision for the Appointment of County Commissioners of Appeal, by whom the Act might be, and actually has been, as we shall presently shew, justly and impartially executed, with Regard to the Proprietaries; but Provincial Commissioners, appointed in the Act, it was thought might be of Use, in regulating and equalizing the Modes of Assessment of different Counties, where they were unequal; and, by affording a second Appeal, tend more to the Satisfaction both of the Proprietaries and the People.—This Particular was therefore a mere proposed Improvement of the Act, which

could not be, and was not, in that respect, denominated *fundamentally wrong and unjust*.

We have now gone thro' five of the six proposed Amendments, without discovering any Thing on which that Censure could be founded; but the sixth remains, which points at a Part of the Act, wherein we must candidly acknowlege there is something, that in their Lordships View of it, must justify their Judgment: The Words of the 6th Article are, "That the Payments by the Tenants to the Proprietaries of their Rents, shall be according to the Terms of their respective Grants, as if such Act had never been passed."—This relates to that Clause of the Act, by which the Paper Money was made a legal Tender in "Discharge of all Manner of Debts, Rents, Sum and of Sums of Money whatsoever, &c. at the Rates ascertained in the Act of Parliament, made in the sixth of Queen Anne."—From the great Injustice frequently done to Creditors, and complain'd of from the Colonies, by the vast Depreciation of Paper Bills, it was become a general fixed Principle with the Ministry, that such Bills, whose Value, tho' fixed in the Act, could not be kept fixed by the Act, ought not to be made a legal Tender in any Colony, at those Rates. The Parliament had before passed an Act to take that Tender away in the four *New-England* Colonies, and have since made the Act general. This was what their Lordships would therefore have proposed for the Amendment.—But it being represented, That the chief Support of the Credit of the Bills, was the legal Tender, and that without it they would become of no Value; it was allowed generally to remain, with an Exception to the Proprietaries Rents, where there was a special Contract for Payment in another Coin.—It cannot be denied, but that this was doing Justice to the Proprietaries, and that had the Requisition been in favour of all other Creditors also, the Justice had been equal, as being general. We do not therefore presume to impeach their Lordship's Judgment, that the Act, as it enforced the Acceptance of Bills for Money, at a Value which they had only nominally and not really, was in that Respect *fundamentally wrong and unjust*.—And yet we believe the Reader will not think the Assembly so much to blame, when he considers, That the making Paper Bills a legal Tender, had been the universal Mode in *America* for more than threescore Years. That there was scarce a Colony that had not practised that Mode, more or less.—That it had always been thought absolutely necessary in order to give the Bills a Credit, and thereby obtain from them the Uses of Money.—That the Inconveniencies were therefore submitted to, for the

Sake of the greater Conveniencies.—That Acts innumerable of the like Kind had been approved by the Crown.—And, that if the Assembly made the Bills a legal Tender at those Rates to the Proprietaries, they made them also a legal Tender to themselves, and all their Constituents, many of whom might suffer in their Rents, &c. as much, in proportion to their Estates, as the Proprietaries. But if he cannot on these Considerations, quite excuse the Assembly, what will he think of those *Honourable* Proprietaries, who when Paper Money was issued in their Colony, for the common Defence of their vast Estates, with those of the People, and who must therefore reap, at least, equal Advantages from those Bills with the People, could nevertheless *wish* to be exempted from their Share of the unavoidable Disadvantages.—Is there upon Earth a Man besides, with any Conception of what is honest, with any Notion of Honor, with the least Tincture in his Veins of the Gentleman, but would have blush'd at the Thought; but would have rejected with Disdain such undue Preference, if it had been offered him?—Much less would he have struggled for it, mov'd Heaven and Earth to obtain it, resolv'd to ruin Thousands of his Tenants by a Repeal of the Act rather than miss of it;* and enforce it afterwards by an audaciously wicked Instruction, forbidding Aids to his King, and exposing the Province to Destruction, unless it was complied with. And yet,—These are HONOURABLE Men.†

Here then we have had a full View of the Assembly's Injustice; about which there has been so much insolent Triumph! But let the Proprietaries and their discreet Deputies hereafter recollect and remember; that the same august Tribunal, which censured some of the Modes and Circumstances of that Act, did at the same Time establish and confirm the Grand Principle of the Act, viz. That the Proprietary Estate ought, with other Estates, to

* This would have been done, and the Money all sunk in the Hands of the People, if the Agents, *Benjamin Franklin* and *Robert Charles*, had not interposed, and voluntarily, without Authority from the Assembly so to do, but at their own Risque, undertaken that those Amendments should be made, or that they themselves would indemnify the Proprietaries from any Damages they might sustain for want thereof. An Action, which, as the Prefacer says in another Case, "Posterity perhaps, may find a Name for."

† It is not easy to guess from what Source our Proprietaries have drawn their Principles. Those who study Law and Justice as a Science, have establish'd it a Maxim in Equity. *Qui sentit commodum, sentire debet et onus*. {"He who receives a benefit ought to assume also responsibility for it."—Tr.} And so consistent is this with the *common* Sense of Mankind, that even our lowest untaught Coblers and Porters feel the Force of it in their own Maxim, (which *they* are *honest enough* never to dispute) *Touch Pot, touch Penny*.

be taxed:—And thereby did in Effect determine and pronounce, that the Opposition so long made in various Shapes, to that just Principle, by the Proprietaries, was *fundamentally* WRONG and UNJUST.—An Injustice, they were not, like the Assembly, under any Necessity of committing for the public Good; or any other Necessity but what was impos'd on them by those base Passions that act the Tyrant in bad Minds, their *Selfishness*, their *Pride*, and their *Avarice*.

I have frequently mentioned the equitable Intentions of the House, in those Parts of the Act that were suppos'd obscure, and how they were understood here. A clear Proof thereof is found, as I have already said, in the actual Execution of the Act; in the Execution of it before the Contest about it in *England*, and therefore before their Lordships Objections to it had a Being.—When the Report came over, and was laid before the House, one Year's Tax had been levied; and the Assembly, conscious that no Injustice had been intended to the Proprietaries, and willing to rectify it if any should appear, appointed a Committee of Members from the several Counties, to examine into the State of the Proprietaries Taxes thro' the Province, and nominated on that Committee, a Gentleman of known Attachment to the Proprietaries, and their Chief Justice, Mr. *Allen*, to the end that the strictest Enquiry might be made.—Their Report was as follows.—

We the Committee appointed to enquire into, and consider the State of the Proprietary Taxation thro' the several Counties, and report the same to the House, have, in pursuance of the said Appointment, carefully examined the Returns of Property, and compared them with the respective Assessments thereon made through the whole Province:—and find,

First, That no Part of the unsurveyed waste Lands, belonging to the Proprietaries, have, in any Instance, been included in the Estates taxed.

Secondly, That some of the located uncultivated Lands, belonging to the Proprietaries in several Counties, remain unassessed, and are not, in any County, assessed higher than the Lands under like Circumstances, belonging to the Inhabitants.

Thirdly, That all Lands, not granted by the Proprietaries, within Boroughs and Towns, remain untaxed, excepting in a few Instances, and in those they are rated as low as the Lands which are granted in the said Boroughs and Towns.

The whole of the Proprietary Tax of eighteen Pence in the Pound, amounts to	£. 566	4	10
And the Sum of the Tax on the Inhabitants for the same Year, amounts, thro' the several Counties, to	} 27,103	12	8

And it is the Opinion of your Committee, that there has not been *any Injustice* done to the Proprietaries, or *Attempts made* to rate or assess *any Part* of their Estates, *higher* than the Estates of the like Kind belonging to the Inhabitants, are rated and assessed;—but on the contrary, we find, that their Estates are rated, in *many Instances below* others.

Thomas Leech,

Joseph Fox.

Samuel Rhoads.

Abraham Chapman.

George Ashbridge.

Emanuel Carpenter.

John Blackburn.

William Allen.

The House communicated this Report to Governor *Hamilton*, when he afterwards press'd them to make the stipulated Act of Amendment; acquainting him at the same Time, that as in the Execution of the Act, no Injustice had hitherto been done to the Proprietary, so, by a Yearly Inspection of the Assessments, they would take Care that none should be done him; for that if any should appear, or the Governor could at any Time point out to them any that had been done, they would immediately rectify it; and therefore, as the Act was shortly to expire, they did not think the Amendments necessary.—Thus that Matter ended during that Administration.—And had his Successor, Governor PENN, permitted it still to sleep, we are of Opinion it had been more to the Honor of the Family, and of his own Discretion.—But he was pleas'd to found upon it a Claim manifestly unjust, and which he was totally destitute of Reason to support. A Claim, that the Proprietaries *best* and *most valuable* located uncultivated Lands should be taxed *no higher* than the *worst* and *least valuable* of those belonging to the Inhabitants: To enforce which, as he thought the Words of one of the Stipulations seem'd to give some Countenance to it, he insisted on using those very Words as sacred, from which he could “neither in *Decency* or in *Duty*,” deviate, tho' he had agreed to deviate from Words of the same Report, and therefore equally sacred, in every other Instance. A Conduct which will, as

the Prefacer says in Governor *Denny's* Case, forever disgrace the Annals of his Administration.*

Never did any Administration open with a more *promising* Prospect. He assur'd the People, in his first Speeches, of the Proprietaries paternal Regard for them, and their sincere Dispositions to do every Thing that might promote their Happiness. As the Proprietaries had been pleased to appoint a Son of the Family to the Government, it was thought not unlikely that there might be something in these Professions; for that they would probably chuse to have his Administration made easy and agreeable, and to that End might think it prudent to withdraw those harsh, disagreeable and unjust Instructions, with which most of his Predecessors had been hamper'd: The Assembly therefore believ'd fully, and rejoic'd sincerely.—They show'd the new Governor every Mark of Respect and Regard that was in their Power. They readily and chearfully went into every Thing he recommended to them. And when he and his Authority were insulted and indanger'd by a lawless murdering Mob, they and their Friends, took Arms at his Call, and form'd themselves round him for his Defence, and the Support of his Government.—But when it was found that those mischievous Instructions still subsisted, and were even farther extended; when the Governor began, unprovok'd, to send the House affronting Messages, seizing every imaginary Occasion of reflecting on their Conduct; when every other Symptom appear'd of fixt deep-rooted Family Malice, which could but a little while bear the unnatural Covering that had been thrown over it, what Wonder is it, if all the old Wounds broke out and bled afresh, if all the old Grievances, still unredress'd, were recollected; if Despair succeeded of any Peace with a Family, that could make *such Returns* to all their Overtures of Kindness?—And when, in the very Proprietary Council, compos'd of stanch Friends of the Family, and chosen for their Attachment to it, 'twas observ'd, that the *old Men*, (1. *Kings*, Chap. 12.) withdrew themselves, finding their Opinion slighted, and that all Measures were taken by the Advice of two or three *young Men* (one of whom too denies his Share in them) is it any Wonder, since like Causes produce like Effects, if the Assembly, notwithstanding all their

* For a fuller Account of this Dispute, the Reader is refer'd to the News-Papers and Votes of Assembly.

Veneration for the first Proprietor, should say, with the Children of *Israel* under the same Circumstances, *What Portion have we in DAVID, or Inheritance in the Son of JESSE: To your Tents, O Israel!*

Under these Circumstances, and a Conviction that while so many natural Sources of Difference subsisted between Proprietaries and People, no Harmony in Government could long subsist; without which, neither the Commands of the Crown could be executed, nor the public Good promoted; the House resum'd the Consideration of a Measure that had often been propos'd in former Assemblies; a Measure that every Proprietary Province in *America* had, from the same Causes, found themselves oblig'd to take, and had actually taken or were about to take; and a Measure that had happily succeeded, wherever it was taken; I mean the Recourse to an immediate Royal Government.

They therefore, after a thorough Debate, and making no less than twenty-five unanimous Resolves, expressing the many Grievances this Province had long labour'd under, thro' the Proprietary Government; came to the following Resolution, viz.

RESOLVED, *Nemine contradicente*,²

That this House will adjourn, in order to consult their Constituents, whether an humble Address should be drawn up, and transmitted to his Majesty, praying, that he would be graciously pleased to take the People of this Province under his immediate Protection and Government, by completing the Agreement heretofore made with the first Proprietary for the Sale of the Government to the Crown, or otherwise as to his Wisdom and Goodness shall seem meet.*

This they ordered to be made public, and it was published accordingly, in all the News Papers; the House then adjourn'd for no less then seven Weeks, to give their Constituents Time to consider the Matter, and themselves an Opportunity of taking their Opinion and Advice. Could any thing be more

2. ["With no one opposing," i.e., unanimously.—Tr.]

* These Words, "by completing the Agreement," &c. are omitted by the honest Prefacer, in his Account of the Resolve, that they might not interfere with his Insinuation of the Measure's being impracticable, "Have the Proprietors, by any Act of theirs, forfeited the least tittle of what was granted them by his Majesty's Royal Ancestors? Or can they be deprived of their Charter Rights without their Consent?" &c. Sensible, that these Questions are impertinent; if those Rights are already sold.

deliberate, more fair and open, or more respectful to the People that chose them?—During this Recess, the People in many Places, held little Meetings with each other, the Result of which was, that they would manifest their Sentiments to their Representatives, by petitioning the Crown directly of themselves, and requesting the Assembly to transmit and support those Petitions.—At the next Meeting, many of these Petitions were delivered to the House with that Request; they were signed by a very great* Number of the most substantial Inhabitants, and not the least Intimation was receiv'd by the Assembly from any other of their Constituents, that the Measure was disapproved, except in a Petition from an obscure Township in *Lancaster* County, to which there were about forty Names indeed, but all evidently signed by three Hands only.—What could the Assembly infer from this express'd Willingness of a Part, and Silence of the Rest; but that the Measure was universally agreeable? They accordingly resum'd the Consideration of it, and tho' a small, very small Opposition then appear'd to it in the House, yet as even that was founded, not on the Impropriety of the Thing, but on the suppos'd unsuitableness of the Time, or the Manner; and a Majority of nine tenths being still for it, a Petition was drawn agreeable to the former Resolve, and order'd to be transmitted to his Majesty.

But the Prefacer tells us, that these Petitioners for a Change were a "Number of *rash, ignorant, and inconsiderate* People," and generally of a *low*

* The Prefacer, with great Art, endeavours to represent this Number as insignificant.—He says the Petitioners were but 3500, and that the Province contains near THREE HUNDRED THOUSAND SOULS! His Reader is to imagine that TWO HUNDRED AND NINETY-SIX THOUSAND FIVE HUNDRED of them were apply'd to and refus'd to sign it.—The Truth is, that his Number of Souls is vastly exaggerated. The Dwelling Houses in the Province in 1752 did not exceed 20,000. Political Arithmeticians reckon generally but 5 Souls to a House, one House with another; and therefore, allowing for Houses since built, there are not probably more than an Hundred and ten Thousand Souls in the Province: That of these scarce 22,000 could with any Propriety be Petitioners.—And considering the scatter'd Settlement of the Province, the general Inattention of Mankind, especially in new Countries, to public Affairs; and the indefatigable Pains taken by the Proprietors new Allies, the *Presbyterian* Clergy of *Philadelphia*, (who wrote circular Letters to every Congregation in the County, to deter them from petitioning, by dutiful Intimations, that if we were *reduc'd* to a Royal Government it would be the "Ruin of the Province," 'tis a Wonder the Number (near a sixth Part) was so great as it was. But if there had been no such Petitions, it would not have been material to the Point. The Assembly went upon another Foundation. They had adjourn'd to consult their Constituents,—they return'd satisfy'd that the Measure was agreeable to them, and nothing appear'd to the contrary.

Rank. To be sure they were not of the Proprietary Officers, Dependants, or Expectants, and those are chiefly the People of *high Rank* among us;—but they were otherwise generally Men of the best Estates in the Province, and Men of Reputation. The Assembly who come from all Parts of the Country, and therefore may be suppos'd to know them at least as well as the Prefacer, have given that Testimony of them. But what is the Testimony of the Assembly, who in his Opinion, are equally *rash*, *ignorant*, and *inconsiderate* with the Petitioners?—And if his Judgment is right, how *imprudently* and contrary to their *Charter* have his THREE HUNDRED THOUSAND SOULS acted in their Elections of Assemblymen these twenty Years past; for the Charter requires them to chuse Men of *most Note for Virtue, Wisdom, and Ability!*

But these are Qualities engross'd, it seems, by the Proprietary Party.—For they say, “the *WISER* and *BETTER* Part of the Province had far different Notions of this Measure. They *considered*, that the Moment they put their Hands to these Petitions, they might be surrendering up their Birthright.”—I felicitate them on the *Honor* they have thus bestow'd upon themselves, on the *sincere* Compliments thus given and accepted, and on their having with such a noble Freedom, discarded the sniveling Pretence to Modesty, couch'd in that thread-bare Form of Words *Though we say it that should not say it*. But is it not surprising, that during the seven Week Recess of the Assembly, expressly to consult their Constituents on the Expediency of this Measure; and during the fourteen Days the House sat deliberating on it, after they met again; these their *Wisdoms* and *Betternesses* should never be so kind as to communicate the least Scrap of their *Prudence*, their *Knowledge*, or their *Consideration*, to their *rash*, *ignorant*, and *inconsiderate* Representatives?—Wisdom in the Mind is not, like Money in the Purse, diminish'd by Communication to others. They might have lighted up our farthing Candles for us, without lessening the Blaze of their own Flambeaux.—But they suffer'd our Representatives to go on in the Dark, till the fatal Deed was done, and the Petition sent to the King, praying him to take the Government of this Province into his immediate Care, whereby, if it succeeds, “our glorious Plan of public Liberty, and Charter Privileges is to be barter'd away,” and we are to be made Slaves forever!—Cruel Parsimony! to refuse the Charity of a little *Understanding*,—when GOD had given you so much,—and the Assembly begg'd it as an Alms!—O that you had but for once remember'd and observ'd the Counsel of that wise Poet, *Pope*, where he says,

*Be Niggards of Advice on no Pretence;
For the worst Avarice is that of Sense.*

In the Constitution of our Government, and in that of one more, there still remains a Particular Thing that none of the other *American* Governments have, *to wit*, the Appointment of a Governor by the Proprietors, instead of an Appointment by the Crown. This Particular in Government, has been found inconvenient, attended with Contentions and Confusions where-ever it existed, and has therefore been gradually taken away from Colony after Colony, and every where greatly to the Satisfaction and Happiness of the People. Our wise first Proprietor and Founder, was fully sensible of this, and being desirous of leaving his People happy, and preventing the Mischiefs that he foresaw must in time arise from that Circumstance, if it was continued, he determined to take it away, if possible, during his own Life-time. They accordingly entred into a Contract, for the Sale of the Proprietary Right of Government to the Crown, and actually received a Sum in Part of the Consideration.—As he found himself likely to die, before that Contract (and with it his Plan for the Happiness of his People) could be compleated; he carefully made it a Part of his last Will and Testament, devising the Right of the Government to two Noble Lords, in Trust that they should release it to the Crown. Unfortunately for us, this has never yet been done. And this is merely what the Assembly now desire to have done.—Surely he that form'd our Constitution, must have understood it.—If he had imagin'd that all our Privileges depended on the Proprietary Government, will any one suppose that he would himself have meditated the Change, that he would have taken such effectual Measures, as he thought them, to bring it about speedily, whether he should live or die?—Will any of those who now extol him so highly, charge him at the same time with the Baseness of endeavouring thus to defraud his People of all the Liberties and Privileges he had promised them, and by the most solemn Charters and Grants assur'd to them, when he engag'd them to assist him in the Settlement of his Province? Surely none can be so inconsistent! And yet this Proprietary Right of Governing or appointing a Governor, has, all of a sudden, chang'd its Nature; and the Preservation of it, become of so much Importance to the Welfare of the Province, that the Assembly's only Petitioning to have their venerable Founder's Will executed, and the Contract he entered into for the Good of his People completed, is still'd an

Attempt to violate the Constitution for which our Fathers planted a Wilderness; to barter away our glorious Plan of public Liberty and Charter Privileges; a risquing of the whole Constitution; an offering up our whole Charter Rights; a wanton sporting with Things sacred,

&c.—

Pleasant, surely it is, to hear the Proprietary Partizans, of all Men, bawling for the Constitution, and affecting a terrible concern for our Liberties and Privileges. They who have been, these twenty Years, cursing our Constitution, declaring that it was no Constitution, or worse than none; and that Things could never be well with us, 'till it was new-modell'd, and made exactly conformable to the *British* Constitution. They who have treated our distinguishing Privileges as so many Illegalities and Absurdities; who have solemnly declared in Print, that though such Privileges might be proper in the Infancy of a Colony, to encourage its Settlement, they became *unfit for it* in its grown State, and *ought to be taken away*:—They, who by numberless Falshoods, propagated with infinite Industry, in the Mother Country, attempted to procure an Act of Parliament for the actual depriving a very great Part of the People of their Privileges:—They too who have already depriv'd the whole People, of some of their most important Rights, and are daily endeavouring to deprive them of the rest! Are these become Patriots, and Advocates for our Constitution?—Wonderful Change! Astonishing Conversion!—Will the Wolves then protect the Sheep, if they can but persuade 'em to give up their Dogs?—Yes;—The Assembly would destroy all their own Rights, and those of the People; and the Proprietary Partizans are become the Champions for Liberty!—Let those who have *Faith*, now make Use of it: For if 'tis rightly defin'd, *the Evidence of Things not seen*, certainly never was there more Occasion for such Evidence, the Case being totally destitute of all other.—

It has been long observ'd, that Men are, with that Party, Angels or Demons, just as they happen to concur with or oppose their Measures. And I mention it for the Comfort of old Sinners, that in Politics, as well as in Religion, Repentance and Amendment, tho' late, shall obtain Forgiveness and procure Favour.—Witness the late Speaker, Mr. *Norris*, a steady and constant Opposer of all the Proprietary Encroachments, and who, for thirty Years past, they have been therefore continually abusing, allowing him no one Virtue or good Quality whatsoever;—but now, as he show'd

some Unwillingness to engage in this present Application to the Crown, he is become all at once the *faithful Servant*—but let me look at the Text, to avoid Mistakes—and indeed I was mistaken.—I thought it had been *faithful Servant of the Public*; but I find 'tis only—*of the House*. Well chosen, that Expression, and prudently guarded.—The former, from a Proprietary Pen, would have been Praise too much, only for disapproving the *Time* of the Application.—Could you, much respected Sir, go but a little farther; and disapprove the Application itself; could you but say, the Proprietary Government is a good one, and ought to be continued; then might all your political Offences be done away, and your scarlet Sins become as Snow and Wool; then might you end your Course with (Proprietary) Honor. P—— should preach your funeral Sermon, and S—— the Poisoner of other Characters, embalm your Memory.—But those Honors you will never receive; for with returning Health and Strength, you will be found in your old Post, firm for your Country.

There is Encouragement too for young Sinners. Mr. *Dickenson*, whose Speech our Prefacer has introduc'd to the World, tho' long hated by some, and disregarded by the rest of the Proprietary Faction, is at once, for the same Reason as in Mr. *Norris's* Case, become a *Sage* in the Law, and an *Oracle* in Matters relating to our Constitution. I shall not endeavour to pluck so much as a Leaf from these the young Gentleman's Laurels. I would only advise him carefully to preserve the Panegyrics with which they have adorn'd him: In time they may serve to console him, by balancing the Calumny they shall load him with, when he does not go *through* with them in all their Measures: He will not probably do the one, and they will then assuredly do the other.—There are Mouths that can blow hot as well as cold, and blast on your Brows the Bays their Hands have plac'd there.—*Experto crede Roberto*.³ Let but the Moon of Proprietary Favor, withdraw its Shine for a Moment, and that "*great Number of the principal Gentlemen of Philadelphia,*" who apply'd to you for the Copy of your Speech, shall immediately despise and desert you.—

Those *principal Gentlemen!* What a Pity it is that their Names were not given us in the Preface, together with their admirable Letter! We should then have known where to run for Advice, on all Occasions. We should have known who to chuse for our future Representatives. For undoubtedly,

3. ["Trust Robert who experienced it," a proverb.—Tr.]

these were they that are elsewhere called, "the WISER and BETTER Part of the Province."

None but their *Wisdoms*, could have known beforehand, that a Speech which they never heard, and a Copy of which they had never seen, but were then requesting to see, was "a *spirited Defence*," and "of our Charter Privileges;" and that "the Publication of it would be of great Utility, and give general Satisfaction."—No inferior Sagacity could discover, that the Appointment of a Governor by the Proprietor, was one of our "Charter Privileges;" and that those who oppos'd the Application for a Royal Government, were therefore *Patriot Members*, appearing *on the Side* of our Privileges and our Charter!

Utterly to confound the Assembly, and shew the Excellence of Proprietary Government, the Prefacer has extracted from their own Votes, the Praises they have from Time to Time bestow'd on the first Proprietor, in their Addresses to his Sons. And tho' Addresses are not generally the best Repositories of Historical Truth, we must not in this Instance, deny their Authority. That these Encomiums on the Father, tho' sincere, have occur'd so frequently, was owing, however, to two Causes; First, a vain Hope the Assemblies entertain'd, that the Father's Example, and the Honors done his Character, might influence the Conduct of the Sons. Secondly, for that in attempting to compliment the Sons on their own Merits, there was always found an extreme Scarcity of Matter.—Hence, *the Father, the honored and honorable Father*, was so often repeated, that the Sons themselves grew sick of it; and have been heard to say to each other with Disgust, when told that A. B. and C. were come to wait upon them with Addresses on some public Occasion, "*Then I suppose we shall hear more about our Father.*" So that, let me tell the Prefacer, who perhaps was unacquainted with this Anecdote, that if he hop'd to curry more Favor with the Family, by the Inscription he has fram'd for that great Man's Monument, he may find himself mistaken;—for,—there is too much in it of *our Father*.

If therefore, he would erect a Monument to the Sons, the Votes of Assembly, which are of such Credit with him, will furnish him with ample Materials for his Inscription.

To save him Trouble, I will essay a Sketch for him, in the Lapidary Stile, tho' mostly in the Expressions, and every where in the Sense and Spirit of the Assembly's Resolves and Messages.

Be this a Memorial
Of T—— and R—— P——,
P—— of P——
Who with Estates immense,
Almost beyond Computation,
When their own Province,
And the whole *British* Empire
Were engag'd in a bloody and most expensive War,
Begun for the Defence of those Estates,
Could yet meanly desire
To have those very Estates
Totally or Partially
Exempted from Taxation,
While their Fellow-Subjects all around them,
Groan'd,
Under the universal Burthen.—
To gain this Point,
They refus'd the necessary Laws
For the Defence of their People,
And suffer'd their Colony to welter in its Blood,
Rather than abate in the least
Of these their dishonest Pretensions.—
The Privileges granted by their Father
Wisely and benevolently
To encourage the first Settlers of the Province.
They,
Foolishly and cruelly,
Taking Advantage of public Distress,
Have extorted from the Posterity of those Settlers;
And are daily endeavouring to reduce them
To the most abject Slavery:
Tho' to the Virtue and Industry of those People
In improving their Country,
They owe all that they possess and enjoy.
A striking Instance
Of human Depravity and Ingratitude;
And an irrefragable Proof,
That Wisdom and Goodness

Do not descend with an Inheritance;
 But that ineffable Meanness
 May be connected with unbounded Fortune.*

What then avails it to the Honor of the present Proprietors, that our Founder, and their Father, gave us Privileges, if they, the Sons, will not permit us the Use of them, or forcibly rend them from us?—*David* may have been a Man after GOD's own Heart, and *Solomon* the wisest of Proprietors and Governors; but if *Rehoboam* will be a Tyrant and a ——, who can secure him the Affections of the People!—The Virtue and Merit of his Ancestors may be very great, but his Presumption in depending on those *alone*, may be much greater.—

I lamented a few Pages ago, that we were not acquainted with the Names of those *principal* Gentlemen the *wiser* and *better* Part of the Province. I now rejoice that we are likely some time or other to know them; for a Copy of a Petition to the King is now before me, which, from its similarity with their Letter, must be of their inditing, and will probably be recommended to the People, by their leading up the Signing.

On this Petition I shall take the Liberty of making a few Remarks, as they will save me the Necessity of following farther the Preface, the Sentiments of this and that being nearly the same.

It begins with a formal Quotation from the Petition, which they own they have not seen, and of Words that are not in it, and after relating very imperfectly and unfairly, the Fact relating to their Application for a Copy of it, which is of no great Importance; proceeds to set forth,

That—As we, and all your *American* Subjects must be governed by Persons authorized and approved by your Majesty, on the best Recommendation that can be obtained of them, we *cannot perceive* our Condition in this Respect to be *different* from our Fellow-Subjects around us, or that we are thereby less under your Majesty's particular Care and Protection, than they are, since there can be no Governors of this Province, without your Majesty's *immediate Approbation* and Authority.

—Such a Declaration from the *wiser* Part of the Province, is really a little surprizing. What? When Disputes concerning Matters of Property are

* Votes and Proceedings of the House of Representatives, 1754, *passim*. 1755, 1756, 1757, *passim*. 1758, 1759, 1760, 1761, 1762, 1763, 1764, *passim*.

daily arising between you and your Proprietaries, cannot your Wisdoms *perceive* the least *Difference*, between having the Judges of those Disputes appointed by a Royal Governor, who has no Interest in the Cause; and having them appointed by the Proprietaries themselves, the principal Parties against you, and *during their Pleasure* too? When Supplies are necessary to be rais'd for your Defence, can you perceive no Difference, between having a Royal Governor, free to promote his Majesty's Service, by a ready Assent to your Laws, and a Proprietary Governor, shackled by Instructions, forbidding him to give that Assent, unless some private Advantage is obtain'd, some Profit got, or unequal Exemption gain'd for their Estate, or some Privilege wrested from you? When Prerogative, that in other Governments is only used for the Good of the People, is here strained to the extreme, and used to their Prejudice, and the Proprietaries Benefit, can you *perceive* no *Difference*? When the direct and immediate Rays of Majesty, benignly and mildly shine on all around us, but are transmitted and thrown upon us thro' the Burning Glass of Proprietary Government, can your Sensibilities feel no Difference?—Shelter'd perhaps, in Proprietary Offices, or benum'd with Expectations, it may be you cannot.—But surely you might have known better than to tell his Majesty, “that there *can be* no Governors of this Province without his *immediate* Approbation.”—Don't you know, who know so much, that by our blessed Constitution, the Proprietors themselves, whenever they please, may govern us in Person, without such Approbation?

The Petition proceeds to tell his Majesty, “That the particular Mode of Government, which we enjoy under your Majesty—is held in the highest Estimation by Good Men of all Denominations among us, and hath brought Multitudes of industrious People from various Parts of the World,” &c.—Really! Can this be from Proprietary Partizans? That Constitution which they were forever censuring, as defective in a Legislative Council, defective in Government Powers, too popular in many of its Modes; is it now become so excellent?—Perhaps as they have been tinkering it these twenty Years, till they have stript it of some of its most valuable Privileges, and almost spoilt it, they now begin to like it. But then, it is not surely, this *present Constitution* that brought hither those Multitudes. They came before.—At least, it was not that Particular in our Constitution, the Proprietary Power of Appointing a Governor, which attracted them; that single Particular which alone is now in question; which our venerable Founder first, and now the Assembly, are endeavouring to change. As to the remaining valuable Part of our

Constitution, the Assembly have been equally full and strong in expressing their Regard for it, and perhaps stronger and fuller; for their Petition in that respect, is in the Nature of a *Petition of Right*, it lays Claim, tho' modestly and humbly, to those Privileges, on the Foundation of Royal Grants, on Laws confirmed by the Crown, and on *Justice and Equity*; as the Grants were the Consideration offer'd to induce them to settle, and which they have in a Manner purchas'd and paid for, by executing that Settlement without putting the Crown to any Expence.

Whoever would know what our Constitution was, when it was so much admir'd, let him peruse that elegant farewell Speech of Mr. *Hamilton*, Father of our late Governor, when as Speaker he took his Leave of the House, and of public Business, in 1739,—and then let him compare that Constitution with the present. The Power of appointing public Officers by the Representatives of the People, which he so much extols: *Where is it now?* Even the bare naming to the Governor in a Bill, a trivial Officer to receive a Light-house Duty, which could be consider'd as no more than a mere Recommendation, is, in a late Message, stil'd, "An Encroachment on the Prerogative of the Crown!"

The sole Power of raising and disposing of the Public Money, which, he says, was then lodged in the Assembly, that inestimable Privilege, *What is become of it?* Inch by Inch they have been wrested from us, in Times of public Distress, and the rest are going the same Way.—I remember to have seen, when Governor *Hamilton* was engag'd in a Dispute with the Assembly, on some of those Points, a Copy of that Speech, which then was intended to be reprinted, with a Dedication to that honorable Gentleman, and this Motto from *John Rogers's* Verses in the Primer.

*We send you here a little Book,
For you to look upon;
That you may see your Father's Face,
Now he is dead and gone.—*

Many a such *little Book* has been sent by our Assemblies to the present Proprietaries.—But they don't like to see their *Father's Face*; it puts their own *out of Countenance*.

The Petition proceeds to say,

That such Disagreements as have arisen in this Province, we have beheld with Sorrow, but as others around us are not exempted from the like

Misfortunes, *we can by no Means conceive them incident to the Nature of our Government*, which hath *often* been administred with remarkable Harmony: And your Majesty, before whom our late Disputes have been laid, can be at no Loss, in your great Wisdom, to discover whether they proceed from the above Cause, or should be ascribed to some others.

The Disagreements in question, are Proprietary Disagreements in Government, relating to Proprietary private Interests.—And are not the Royal Governments around us, exempt from these Misfortunes {?} Can you, really, Gentlemen, *by no Means conceive*, that Proprietary Government Disagreements, *are incident to the Nature of Proprietary Governments?* Can they in Nature be incident to any other Governments? If your *Wisdoms* are so hard to conceive, I am afraid they will never bring forth.—But then our Government “hath *often* been administred with remarkable Harmony.”

Very true; as *often* as the Assembly have been able and willing to purchase that Harmony, and pay for it, the Mode of which has already been shewn. And yet that Word *often* seems a little unluckily chosen: The Flame that is *often* put out, must be *as often* lit;—If our Government hath *often* been administred with remarkable Harmony, it hath *as often* been administred with remarkable Discord. One *often* is as numerous as the other.—And his “Majesty,” if he should take the Trouble of looking over our Disputes, to which the Petitioners, (to save themselves a little Pains, modestly and decently refer him) where will he, for twenty Years past, find any but Proprietary Disputes concerning Proprietary Interests, or Disputes that have been connected with, and arose from them?—

The Petition proceeds to assure his Majesty, That this Province (except from the Indian Ravages) enjoys the *most perfect internal Tranquility!*—Amazing!—What!—*the most perfect Tranquility!*—When there have been three atrocious Riots within a few Months!—When in two of them horrid Murthers were committed on twenty innocent Persons, and in the third, no less than one Hundred and forty like Murthers were meditated, and declar'd to be intended, with as many more as should be occasion'd by any Opposition.—When we know that these Rioters and Murderers, have none of them been punish'd, have never been prosecuted, have not even been apprehended! When we are frequently told, that they intend still to execute their Purposes, as soon as the Protection of the King's Forces is withdrawn—Is our Tranquility more perfect now, than it was between the first Riot and

the second, or between the second and the third?—And why “*except the Indian Ravages,*” if a little Intermission is to be denominated “the most perfect Tranquility?” for the *Indians* too have been quiet lately. Almost as well might Ships in an Engagement talk of the most perfect Tranquility between two Broad-sides.—But “a Spirit of Riot and Violence is foreign to the general Temper of the Inhabitants.”—I hope and believe it is;—the Assembly have said nothing to the contrary.—And yet, is there not too much of it?—Are there not Pamphlets continually written, and daily sold in our Streets, to justify and encourage it?—Are not the mad armed Mob in those Writings instigated to imbrue their Hands in the Blood of their Fellow Citizens;—by first applauding their Murder of the *Indians*, and then representing the Assembly and their Friends as worse than *Indians*, as having privately stirr’d up the *Indians* to murder the white People, and arm’d and rewarded them for that purpose?—LIES, Gentlemen, villainous as ever the Malice of Hell invented; and which, to do you Justice, not one of you believes,—tho’ you would have the Mob believe them.—

But your Petition proceeds to say, “That where such Disturbances have happened, they have been speedily quieted.”—By whom were they quieted?—The two first, if they can be said to be quieted, were quieted only by the Rioters themselves going home quietly, (that is without any Interruption) and remaining there till their next Insurrection, without any Pursuit, or Attempt to apprehend any of them:—And the third, was it quieted, or was the Mischief they intended prevented, or could it have been prevented, without the Aid of the King’s Troops march’d into the Province for that Purpose?—“The civil Powers have been supported.” In some sort. We all know how they were supported. But have they been fully supported? Has the Government sufficient Strength, even with all its Supports, to venture on the apprehending and Punishment of those notorious Offenders?—If it has not, why are you angry at those who would strengthen its Hands by a more immediate Royal Authority? If it has, why is not the Thing done?—Why will the Government, by its Conduct, strengthen the Suspicions, (groundless no doubt) that it has come to a private Understanding with those Murderers, and that Impunity for their past Crimes is to be the Reward of their future *political* Services?—O, but, says the Petition, “There are perhaps Cases in all Governments, where it may not be possible speedily to discover Offenders.”—Probably; but is there any Case in any Government where it is not possible to *endeavour* such a Discovery?—There may be Cases where

it is not safe to do it: And perhaps the best Thing our Government can say for itself, is, That that is our Case.—The only Objection to such an Apology must be, that it would justify that Part of the Assembly's Petition to the Crown which relates to the Weakness of our present Government.*

Still, if there is any Fault, it must be in the Assembly; for, says the Petition, "if the Executive Part of our Government should seem in any Case *too weak*, we conceive it is the Duty of the Assembly, and in their Power to strengthen it."—This *Weakness*, however, you have just deny'd; "Disturbances you say, have been speedily quieted, and the civil Powers supported,"—and thereby you have depriv'd your insinuated Charge against the Assembly of its only Support.—But is it not a Fact known to you all, that the Assembly did endeavour to strengthen the Hands of the Government? That at his Honour's Instance they prepar'd and pass'd in a few Hours, a Bill for extending hither the Act of Parliament for dispersing Rioters?—That they also pass'd and presented to him a Militia Bill, which he refus'd, unless Powers were thereby given him, over the Lives and Properties of the Inhabitants, which the public Good did not require, and which their Duty to their Constituents would not permit them to trust in the Hands of any Proprietary Governor?—You know the Points, Gentlemen. They have been made public. Would you have had your Representatives give up those Points? Do you intend to give them up when at the next Election you are made Assemblymen? If so; tell it us honestly beforehand, that we may know what we are to expect, when we are about to chuse you?—

I come now to the last Clause of your Petition, where, with the same wonderful Sagacity with which you in another Case discover'd the Excellency of a Speech you never heard, you undertake to characterize a Petition you own you never saw;—and venture to assure his Majesty that it is "exceeding grievous in its Nature; that it by no Means contains a proper Representation of the State of this Province; and is repugnant to the general Sense of his numerous and loyal Subjects in it." Are then his Majesty's "numerous and loyal Subjects" in this Province all as great Wizards as yourselves, and capable of knowing

* The Assembly being call'd upon by the Governor for their Advice on that Occasion; did in a Message, advise his sending for, and examining the Magistrates of Lancaster County and Borough, where the Murders were committed, in order to discover the Actors; but neither that, nor any of the other Measures recommended, were ever taken.—Proclamations indeed were published, but soon discontinu'd.

without seeing it, that a Petition is repugnant to their general Sense?—But the *Inconsistence* of your Petition, Gentlemen, is not so much to be wonder'd at; the Prayer of it is still more extraordinary, "We therefore most humbly pray, that your Majesty would be graciously pleased *wholly to disregard* the said Petition of the Assembly." What! without Enquiry! Without Examination! without a Hearing of what the Assembly might say in Support of it! "*wholly disregard*" the Petition of your Representatives in Assembly, accompany'd by other Petitions signed by Thousands of your Fellow-Subjects, as loyal, if not as *wise* and as *good* as yourselves!—Would you wish to see your great and amiable Prince, act a Part that could not become a Dey of *Algiers*?—Do you, who are *Americans*, pray for a *Precedent* of such Contempt, in the treatment of an *American* Assembly! Such "total *Disregard*" of their humble Applications to the Throne?—Surely your *Wisdoms* here have overshot yourselves.—But as Wisdom shews itself, not only in doing what is right, but in confessing and amending what is wrong, I recommend the latter particularly to your present Attention; being persuaded of this Consequence, That tho' you have been mad enough to sign such a Petition, you never will be Fools enough to present it.

There is one Thing mention'd in the Preface, which I find I omitted to take Notice of as I came along, the Refusal of the House to enter Mr. *Dickenson's* Protest on their Minutes: This is mention'd in such a Manner there, and in the News Papers, as to insinuate a Charge of some Partiality and Injustice in the Assembly.—But the Reasons were merely these, That tho' Protesting may be a Practice with the *Lords* of Parliament, there is no Instance of it in the House of Commons, whose Proceedings are the Model follow'd by the Assemblies of *America*; that there is no Precedent of it on our Votes, from the beginning of our present Constitution; and that the introducing such a Practice, would be attended with Inconveniences; as the Representatives in Assembly, are not, like the *Lords* in Parliament, unaccountable to any Constituents; and would therefore find it necessary for their own Justification, if the Reasons of the Minority for being *against* a Measure, were admitted in the Votes, to put there likewise the Reasons that induc'd the Majority to be *for* it. Whereby the Votes, which were intended only as a Register of Propositions and Determinations, would be fill'd with the Disputes of Members with Members; and the public Business be thereby greatly retarded, if ever brought to a period.

As that *Protest* was a mere Abstract of Mr. *DICKENSON'S* Speech, every Particular of it will be found answer'd in the following Speech of Mr. *GALLOWAY*, from which it is fit that I should no longer detain the Reader.—

Advertisement.

To introduce the following Speech to the Public, Some account of that to which it was an Answer, seems necessary.

During the Time of the several Debates respecting the Change of Government, Mr. Dickenson seldom attended, and was absent when the important one came on, which issued in the Resolve, to adjourn and consult the People. At the next Meeting several Motions were made to bring this Resolution to an Issue, and after great Deliberation, it was resolved by a Majority of 27 to 3, that a Committee should be appointed to bring in the Petition to his Majesty to resume the Powers of Government. But at none of these Debates and Resolutions, was Mr. Dickenson present, tho' he well knew, or at least had great Reason to expect this Business was in continual Agitation.

During this Time, and the Recess of the Assembly, Mr. Dickenson employed himself in collecting his Sentiments in Opposition to the Measure, and in forming his Thoughts into the best Order, and dressing them in the best Language his Abilities were capable of. And upon the first reading of the Petition, and not till then, had he in all this Time, entered into the Debate, or publicly deliver'd his Opinion respecting the intended Change.

After a Measure is resolved on in a House of Legislature, it is well known to be contrary to all Rule and Order, to object to the Measure; otherwise publick Business cou'd never be brought to an Issue. Members may speak to the Mode, but not object against the Thing resolved on. But this Rule, so necessary in public Transactions, was sacrificed either to Mr. Dickinson's Indolence in not attending, or to his Industry in forming his Speech. For he was permitted to object to the Design itself.

In the Debate on the first reading of the Petition, he attempted to deliver his Objections against the Measure, ore tenuis;⁴ But finding every thing he offer'd judiciously and sensibly refuted by several Members, he was obliged to retreat to his Speech in writing, which after a short Introductory Apology, he read in his place, in a Manner not the most deliberate.

This unparliamentary Mode of proceeding, and the Difficulty of Retaining in the Memory so long and elaborate a Performance, obliged, and indeed justified the Gentleman, the Author of the following Speech, in taking short Notes, from which, after Mr. Dickenson had concluded, he rose to answer the Objections

4. ["Word of mouth."]

offer'd against the Petition. But the Speaker being exceedingly indispos'd, the Debate was adjourn'd till next Day.

Before the Adjournment, Mr. Dickenson, was requested by several Members, and informed by the Speaker, that he ought to leave his Speech on the Table for the Perusal and Consideration of the House. But this he several Times evaded, alledging in Excuse, that it was too incorrect and indigested; altho' he was repeatedly informed, that none wou'd examine it with a View to make any critical Observations on the Stile or Method, but only to make themselves acquainted with the Substance. At length he was prevail'd on to promise in the most solemn Manner, that he would deliver it to Mr. Galloway that Evening. That Gentleman called on him at the Time appointed, but Mr. Dickenson continuing in the same Humour, declined delivering it. Nor did he give the Members an Opportunity of perusing it, until the Debate was over, and the Question called for, whether the Petition shou'd be transcribed for a third Reading. Which passed in the Affirmative by the Votes of all the Members who rose on the former Question. All that Mr. Dickenson had either said or read, not having the Success of altering the Opinion of a single Member.

Nor did the Speech then remain long upon the Table, for Mr. Dickenson immediately after, got it into his Hands again, and carried it out of the House. What has been done with it since, to whose Care and Correction it has been committed, and by whom, and with what Views it has been published, the Preface attending it sufficiently demonstrates.

However, since, the Art and Dress in which it now appears to the Public, very different from that in which it appeared in the House, renders it little less than necessary, that the Public shou'd know the Arguments and Reasons which prevailed on the Members to retain their former Resolution, of prosecuting the Petition to the Crown; the following Speech, in Substance the same that was offered by Mr. Galloway, in Answer to Mr. Dickenson, taken from his short Notes, and put into Order, is submitted to the Consideration of the Lovers and Supporters of public Liberty, Order, and good Government.

Mr. Galloway's Speech, &c.

MR. SPEAKER,

In this important Debate, I shall not take up the Time of the House in making large Protestations of my Sincerity, or that my Conduct is actuated by an ardent Desire to restore the almost expiring Liberties of my Country.

Shou'd any Person question those Points, I shall leave them to be determined by my past and present Actions, which will leave more weight for or against me, than all that I can say on the Occasion. Should those fail of demonstrating the rectitude of my Conduct, I am sensible, the most solemn Professions will not produce that Effect; and by avoiding them, I spare myself the Blush, and you the Pain that must arise from an Eulogy made by a Man on his own Actions. I therefore recommend it to the Gentleman whose long Performance I now rise to answer, to consider that a steady Uniformity of Conduct, in support of Public Liberty, wou'd have stood in no need of such Aids, and that a contrary Behaviour, with the Judicious and Impartial, will not receive the least Advantage from them. And it will also be but just in him to Reflect, that if any thing disagreeable to him, should fall from me in the Course of my Observations on what he has said, he ought to impute it to the manner in which he has treated a great Number of honest prudent Men, the long Supporters of the Rights of the People.

The Censure he has so liberally bestow'd on a very great Majority of the House, is too indecent to be passed over in Silence. When this important Affair had been fully considered and debated; viewed in all Lights, and fully determined by so great a Majority as nine Tenths in favor of the Measure, is it not surprising to hear our Conduct represented as flowing from a "Transport of Zeal and Resentment, and violent Passions."—I know of nothing that can justify so unbecoming a Charge. This House, Sir, has long submitted to Proprietary Injustice, and from a melancholy impelling Necessity, has given up many important Points of the Liberties of the People. They have seen one Privilege after another, sacrificed without the least Hopes of Recovery, and new Demands and Exactions every Day made. And at Length tired out with the continually increasing Mischiefs constantly flowing from an Union of great Wealth, with extensive Power; and after having in vain attempted every other Measure for saving their Country from Ruin, they have resolved to petition his Majesty to resume the Powers of Government into his own Royal Hands.

And certainly, Sir, this Resolution was far from being hasty or precipitate: The Measure had been often thought of and proposed by the same Members in preceding Assemblies. At the last Sitting, it was frequently moved, and then solemnly debated. And yet so coolly and deliberately did they proceed, that they would not absolutely determine on this important Point, without first adjourning to consult their Constituents. The Adjournment

was accordingly made for six Weeks; and we are now returned to these Seats, fully convinced that our Conduct is approved of by all the Friends of Liberty, and Lovers of Order and Government. Hence I conclude, that the Resolution of this House is not founded in Passion or Precipitation, but in cool Reflection, and solid Judgment; and that the Charge the Gentleman has made against it, is as groundless as it is indecent.

I own, Sir, all Passion and undue Attachment, of every Kind, should be banished from Public Councils. And that there are Passions which tho' they do not arise from "Resentment," yet are equally dangerous to the public Weal, and to which it has frequently fallen a Sacrifice. Such is the Passion of Ambition:—A restless Thirst after Promotion; a Fondness to serve the Purposes of Power, from an Expectation of being rewarded with Posts of Honor and Profit. These equally blind the Understanding, captivate the Judgment, and destroy the pure Operations of Reason. And I cannot but wish, the Gentleman was as free from these mischievous Passions, so frequently destructive of Public Liberty, as the Majority of this House is from those with which he has charged them with so little Respect and Reserve.

But Sir, I will proceed to the Merits of this Debate.—The Gentleman contends, That this is not the proper Time to petition for Relief from our Distress, by a Change of Governors. But agrees, if the Change can take Place with our Privileges preserved, "Let it take Place instantly." Thus confessing that a Change is necessary, and yet in a few Minutes after, he positively affirms our Privileges are "all safe now, and that we are in the full and peaceable Enjoyment of them." A Declaration of this Kind, Sir, from a Stranger to Proprietary Usurpations, wou'd have been scarcely excusable: Because a Man ought to be acquainted with Fact, before he positively determines on them. But in a Gentleman who has seen so many of our Rights fading and expiring under the baleful Influence of Proprietary Ambition and Interest, it is utterly unpardonable. There are but few, very few indeed, even of those who are most dependant on Proprietary Favor, but will acknowledge in private, where they dare to own what they think, that our Rights are deeply wounded by the Attempts of Power—But permit me to ask the Gentleman, if our Liberties are in such a State of perfect Security, why is a Change necessary at all? Why should it take place even now or hereafter?—I leave this Contradiction to him to reconcile.—I confess, Sir, I cannot do it.

It is a stale and common Device, where Men are destitute of Arguments to support an Opposition to a necessary Measure, to use all their Force in

persuading to put off and procrastinate. But, Sir, I am confident this Art will not succeed now; for all that has been said, has not tended to alter, but to confirm my Judgment, that now is the only proper Time to forward the Petition.

That there are

certain Periods, when Designs may be executed much more easily and advantageously, than at any other; That a strict Attention to every interesting Circumstance is necessary; And that we ought to wait until they have ripen'd into a favorable Conjunction;

I agree.—All this has been done by the Assemblies of this Province, who, like the Parliament of *England*, after having long opposed the most arbitrary Measures in vain, and essayed every domestic Expedient to restore the lost Liberties of their Country, found nothing would save her, but a Revolution.—We have often attempted to obtain Relief from Oppression, from the Proprietaries, but in vain.—They have forbid us even to address them.—They have refused to hear us.—We have opposed their Measures before the Privy-Council.—We have been but partially relieved, occasioned entirely by their Misrepresentations;—and now we find, from their increasing Interest, unless we can effect a Change at this Time, any future Attempt must be ineffectual.—We have considered every “Interesting Circumstance,” and find them all, “ripen'd up to this favorable Conjunction.” And in my Opinion, this is the only Time of petitioning with a Prospect of Success. My Reasons are,—The Proprietors, if they should incline to oppose this Change, (as it is not certain they will, since it is a Part of the Proposal, that a full Equivalent be made them) have not probably so great an Interest now to support their Pretensions as they have had heretofore, Death having removed two of their principal Friends in the P——y C——l: Then as to our being deprived of any of our Privileges in the Change, I apprehend, there is not the least Danger of it: The present Ministry, besides the Disposition to mild and equitable Measures which they have already manifested, will undoubtedly be very cautious how they give any Handle to a virulent Opposition, by so great an Act of Injustice, as the depriving a *free People* of those Privileges they have so dearly bought. Were they disposed to do it, they can only do it through the Parliament, which is composed in Part of that very Opposition: Their Prudence therefore, as well as their Justice, will prevent the Attempt.—Again, at this Time, the Nation has immense Tracts

of Territory to form into new Colonies: By an easy and expeditious Settlement of those Colonies, the Wealth and Commerce of the Nation will be increased and extended.—This can only be done by granting to the Settlers particular Privileges, and greater Liberties than the People of our Mother Country and of foreign Nations enjoy in their present State—Sound Reason undoubtedly will recommend this Policy. And should they even attempt to deprive of its Rights this Colony, which has so remarkably flourished, and now takes off such vast Quantities of *English* Manufactures, from no other Cause but her extensive Privileges;—it will require but little Discernment to perceive, how great a Damp such a Measure must give to all the Schemes for new Settlements, and how sensibly the true Interest and Welfare of the Nation will be affected.

This, Sir, is not an imaginary Conjecture:—It is founded on Reason, and on Experience. The Colony of *Barbados* had, in the Opinion of the ablest Council, forfeited her Charter Privileges—And yet upon this Policy only, her Privileges were preserved, as appears from the Extract read by a learned and worthy Member, from the *Life of Lord Clarendon*.*

But it is said, “Men of the highest Character, (if reports say true) are endeavouring to establish Proprietary Governments; and therefore probably may more readily incline to favor Proprietary Measures.”

I much doubt the Truth of this Report—I rather think Proprietary Governments are, by the Obstructions to his Majesty’s Service, and fatal Consequences to his Subjects, rendered so odious, that the Crown will chuse to retain the Government of the Territories granted, in its own Hands, whatever Liberties it may confer to promote the Settlements.—This certainly is the most probable Conjecture—founded on a positive Declaration of his Majesty’s Ministers. The Declaration was to this Effect;—“That his Majesty’s Royal Prerogatives were not to be trusted to the feeble Hands of

*“The Case being thus fully stated to the Lords, they considered seriously amongst themselves, what Advice they might reasonably give his Majesty. They were unanimously of Opinion, not to advise his Majesty to cause the Patent to be called in Question: For though they doubted not, upon the Opinion of his learned Council, that the same would be judged *void* and *illegal*; yet they did not think it a *seasonable Time*, when the Nation was so active and industrious in [establishing] foreign Plantations, that they should see a Charter or Patent questioned and avoided, after it had been so many Years allowed and countenanced, and under which the Colony hath so long flourished, and was almost grown to Perfection.”

private Individuals; who were ever ready to sacrifice them to their private Emolument.”

But, Sir, should this Report be true; would not common Prudence, or what is more powerful, private Interest, induce these Gentlemen to obtain as many Privileges for all Sects of People, as would safely tend to encourage the Settlement of the Land granted them? Wou'd they not consider, that the more Privileges they could publish to the World, the more People would flock to their new Country, and the sooner their Estate would become Valuable. This was the Policy of our first Proprietor. This enabled him to sell his Lands at twice as much as they are sold in any other Government. It was this that has so remarkably advanc'd, and so speedily perfected the Province we now represent.

Another Circumstance unites to make this Conjunction the most favourable: We have a Sovereign whom the Member himself allows, is as “just, benevolent and amiable a Prince, as Heaven ever granted in his Mercy to bless a People:” It is to him we petition: It is his Justice we implore, and his Virtue on which we rely for a Protection against the Oppression of his private Subjects. To him we have never applied before for Redress: And is he such a Cypher in the Government, that this important Transaction, in which the Rights of Thousands of his Loyal Subjects, are concerned, will not come to his Notice? Is he possessed of so much Justice and Benevolence, and will he permit such Injustice to be done us, without Interfering?—I cannot believe it.—He has not merited this Charge:—He has not appeared this Nothing in the Constitution:—He has enquired into the Aggrievances of the Subject:—He has redressed them:—And the Minister on whom he much relies is a Man of acknowledged Virtue and Morality. In short, he has hitherto, and will still hear and redress the Complaints of his Subjects upon every Principle of Justice and Reason. Will such a Father of his People, when we ask him to separate Power from Property; to take the Nomination of the Governor who is to rule his People into his Royal Hands, for the Delivery and Safety of that People; will he deprive them of their Liberties granted by his Royal Predecessors for a valuable Consideration? “Will he when we ask Bread give us a Stone? when we ask a Fish will he for a Fish give us a Serpent? or, If we ask an Egg, will he give us a Scorpion?”

What then are we to fear from such a Sovereign, and such a Minister?—When will the Period arrive, productive of such a Number of fortunate Circumstances for our Deliverance?—When will Proprietary Power and

Influence again receive such a Shock as to lose in a short Time two of its principal Pillars?—When are we again to expect such extensive Plans for the forming new Colonies and extending the *English* Dominions?—When will the Safety of our Privileges be so naturally supported by the Nation's Welfare?—and when (look History through,) can we promise ourselves so just, so good, and so virtuous a Sovereign, to do us Justice?—

After what I have said, how foreign must the Case of the D. of *Monmouth* appear to that of the present Assembly; and how much at a loss for Arguments must the Gentleman be, who is driven to such inapposite Instances to support his Cause?—That Duke being a Refugee in *Holland*, was made a Tool to the Art and Policy of others. He set up an idle Pretension to the Crown of JAMES II. and he landed with 80 private Gentlemen at *Lime*, at a Time when the King was supported in the warmest Manner by the Parliament, and no one single Circumstance appeared to promise him Success. In the Attempt he failed, and no wonder. More apposite Instances might be produced which happened near the same Period, to shew the Danger of Delays, from the Mischiefs that arose to the Nation, by the Parliament's *omitting* to seize the fortunate Time of restoring the lost Liberties of *England*: But these did not suit the Gentleman's Purpose.

At the End of the Civil War, the King was ready to secure the Liberties of the Nation, which then like the Liberties of *Pennsylvania* were near expiring: But the Art and Policy of wicked Men interfered and prevented—At the Time of the Restoration, CHA. II. would have complied with any Terms for preventing the Abuse of Power, and Settling the Constitution on a rational and lasting Foundation. But the *Presbyterians*, out of Hatred to the *Independants*, joined the *Royalists* in all their Measures of Power: This gave them such additional Strength, that instead of restoring the Liberties of their Country, they renewed and continued their former Tyranny. I hope, Sir, the same Sect in this Province, will not act the same indiscreet Part: That they will not attempt to sacrifice the Liberties of *Pennsylvania* to their private Animosity:—Or if they do, that the same fatal Effects will not attend their Actions: The Spirit of Liberty, if properly exerted, will be strong enough to support this Struggle for our Preservation.

But it seems, under these distressing Circumstances, when we have no prospect of enjoying either Security of Person or Property, the grand and important Objects of all Government, we ought patiently to wait until *Proprietary Influence* shall be at an End. Had the Gentleman, who makes this

Proposal, in the long Piece he has read in the House, offered the best Reason to shew when that lucky Period would happen, or that it will ever happen while Proprietary Power and Property are united; or that it will happen before our invaluable Liberties, and all that *Englishmen* hold in Esteem, will be "consumed, not in the Blaze of Royal Authority" as he asserts, but in the Sink of Proprietary Injustice and Ambition, he would have afforded some small Comfort to the expiring Liberties of *Pennsylvania*. But this he has not attempted, conscious of the Vanity and Folly of such an Attempt. Let us but consider, that the Experience of Ages, fully demonstrates Wealth to be the Parent of Power, the Nurse of Influence: And that an Increase in Wealth, will as naturally beget an Increase of Power and Influence, as an Increase of Velocity in the falling Stone will produce more certain Death.

Let us take a View of the Proprietary Estate, what it was fifty, what twenty Years ago, and what it is now, and we must be convinced, that nothing can prevent their being the richest Subjects in the *English* Nation: And therefore Subjects of the greatest Influence and Power, and more likely in future to oppose with Success, any Measures that may be taken against their Oppression. Are we to expect the same Cause will not produce the same Effect, and that Wealth, by some Magick Charm in future, will, instead of producing Power and Influence, bring forth its contraries? If not, how vain and chimerical is the Expectation that Proprietary Power and Influence will ever cease? As vain and chimerical as the Expectation of a future Messiah to the deluded *Jews*.

And as to the Royal and Ministerial Prejudices, we have heard them painted in a Light the most terrible and frightful to us, and the most irreverent and disrespectful to his Majesty: they are represented as so ineradicably fixt, that nothing can remove them; I own I entertain very different Sentiments of the Royal and Ministerial Justice. Will his Majesty and Ministry, upon a solemn Representation and Proof of Facts, refuse to lay aside Prejudices, which can be easily made appear to be founded on Proprietary Misrepresentations?—Will the Royal Ear be deaf to Truth? or will it not hear at all?—If we are heard, I am confident, nothing is more easy than to shew the Conduct of this House has been founded on the strictest Loyalty to his Majesty, and Regard for the People we represent; and that the Obstructions which His Service has heretofore met with, are entirely owing to Proprietary Oppression and Injustice. Our Proceedings will demonstrate, that the Assemblies of this Province have ever been the first to vote a Compliance

with his Majesty's Requisitions.—That the subsequent Obstructions to his Service have flowed from Proprietary Instructions, made in favor of their private Interest. That notwithstanding those Obstructions, in order to comply with the Royal Orders, the Rights of the People have been often wav'd, the Aids have been always granted, and even upon Terms abhorrent to common Justice. Upon these Facts being fully proved, the Opinion I have of the Royal Goodness and Virtue, will not permit me to doubt, but all Prejudices, if any now remain, will be easily overcome, and the Province restored to her former Credit.

Besides, when I consider the Province of *Pennsylvania* as the only Colony that has fully complied with the General's last Requisition, notwithstanding the unjust Opposition given to it on the Part of the Proprietary: That many have not complied in any Degree; some but in Part, none fully but this Assembly may Hope is not unreasonable, that former Prejudices will vanish, and our Conduct stand high in the Royal Esteem.

Should so great a Reflection be thrown on his Majesty and his Ministry, as to assert, they are thus irascible, thus blind to Justice and the Complaints of the Subject, in plain Terms; (for it has been very fully insinuated, that their present Prejudices, if any there be, cannot be overcome.)—I answer, Sir, if this cannot be done now, there is not the least Prospect that it ever can be done.—Every Day hereafter will bring on new Difficulties, and encrease the Power of Opposition—and to use the Gentleman's own Words, "It is not to be expected that our Success will be greater, when our Opponents will have more Dignity, more Power, and, as they will think, more Law on their Side."—This Consideration alone points out the propriety of the present Time.

Here, Sir, permit me to observe, the Gentleman entangles himself in another Contradiction. He first contends, this is not the proper Time to petition, because Proprietary Influence and Opposition, will at this Period, be too heavy for us; and then he confesses, we are not to expect more Success hereafter, because the Proprietaries "will have more Dignity, more Power, and, as they will think, more Law on their Side."

It is notorious, the late ministerial Censures, have not arisen from any unjust Conduct on our Parts—But entirely from Proprietary Misrepresentations. The Attachment of Human Nature to its private Interest is too obvious in the Course of human Actions to be denied—And the Degrees of this Attachment always encrease in proportion to the Wealth

possessed—*Crescit amor nummi quantum ipsa pecunia crescit.*⁵ This is not Speculation, but what the Experience of many Years plainly discovers with respect to the Proprietaries. From this Source ever will arise Proprietary Instructions, arbitrary and unjust.—A virtuous Legislature, I hope ever will fill these Seats, to the latest Ages. Their Virtue and Integrity will ever compel them to oppose Oppression. That Opposition will create Delays and Obstructions to his Majesty's Service, and the People's Welfare. And will Ambitious Men, grasping at arbitrary Power, in Case of any Dispute respecting those Obstructions, lay aside their Endeavours, in support of their own Actions, to misrepresent our Conduct? Will they forget the Arts of Deception? They certainly will not; but will exert them with more Ardor and Success, in proportion to their Increase of Wealth, which will serve as a Weapon of Influence to encrease our Discredit, and the Ministerial Displeasure. Hence, Sir, I have not the Vanity to hope, that if we cannot now succeed in removing the Prejudices occasioned by Proprietary Misrepresentations, we never shall see the Day, while the Powers of Government are united with immense Property, that Proprietary Influence or Ministerial Prejudices against us will cease. But I much fear a little Time will shew us in the ridiculous Light that *Horace* shews his Clown, "who meeting a River in his Road, sat down on the Bank, to wait till the Stream should pass him."

*Rusticus exspectat dum defluat amnis: at ille
Labitur; et labetur in omne volubilis aevum.*⁶

The Gentleman further proceeds in his Possibilities and Conjectures (for of them, and of his Doubts, his Piece is entirely composed) and has attempted to point out the Time when he wou'd advise the Prosecution of the Measure resolved on—The Time "*may* come (says he) when the Weight of this Government *may* grow too heavy for the Shoulder of a Subject; at least too heavy for a Woman or an Infant."—This House would have been obliged to him, had he pointed out when these *may-be's* will come to pass. And does he advise us then to submit to our present State of Thraldom and Insecurity, until the Government *may* grow too heavy for the Proprietaries?—Were I, with the Gentleman, obliged to use

5. ["Love of money increases as money itself increases."]

6. [(He who puts off the hour of living rightly is) "Like the clown who waits until the river runs dry: but it slips by and will slip by revolving through every age."]

such flimsey Arguments, for want of better, I might reply, this Time *may* never happen; and thus oppose Possibility with Possibility.—But Sir, I am not reduced to this sad Necessity:—I have evident Reasons to offer, why it will not happen.—Will not Proprietary Wealth and Influence daily increase with the Weight of the Government, in the same, if not a greater proportion?—The Weight of Government cannot be increased but by an additional Number of Inhabitants.—An Increase of People must necessarily accumulate the Proprietaries Revenues and Estate.—An Increase of Wealth will produce an Increase of Power and Influence; and these will consequently increase the Breadth of the Proprietaries Shoulders, and ever enable him the better to bear the Weight of Government, by procuring more Assistance and Support.

But “this Government *may* be too heavy at least for a Woman, or an Infant.” But how long are we to wait for these fortunate Periods—future Generations may expect them in vain—and what will become of all that the Good and Virtuous in the mean Time hold dear and valuable?—Mr. T. PENN *may* die—and what then? RICHARD is alive.—But he *may* die.—But has he no Heirs?—He has several of Age, full of Health and Vigor, and as likely to live as most Men. But they *may* all die, unmarried, and without Issue. Will not there yet remain the Children of T. PENN?—But they, and every of them, *may* also die without Issue; and in such Case, the Government must devolve on the Widow of some of them. Is this what the Gentleman means? for he has not explained himself. If I am wrong, ’tis his fault, not mine. And after all these glaring Improbabilities, scarcely Possibilities, shall happen, then it seems is the proper Time for a Change.

I confess I cannot discover the Force of this Mode of Reasoning; but perhaps his own Mode may convince the Gentleman, and therefore for once I will use it. Is it not more than probable this Woman *may* have as much, if not more, Art, Cunning, and Influence, than our present P——ies?—*May* she not marry a Person of equal Weight, and superior Distinction?—How then can this Period, should it ever arrive, be more proper than the present?—Proprietary Wealth and Influence will be increased, and therefore the Thing more difficult, and of Course the Time more improper:

But, Sir, if those Possibilities should not happen, we are to wait till all the Male part of the Proprietary Family arrived at Age, save one, shall die—And the Powers of Government shall devolve on an Infant.—I own, Sir, this Period seems as distant and improbable as the other. But when it arrives,

how is the Change to be effected. Here the Gentleman is again defective in Explanation. Is it to be by a violent Resumption on the part of the Crown, without the Consent of the Infant? for he cannot consent. If so, our Privileges will be lost in the Confusion and Violence, with the Government.—Is it to be done by a Suit in Chancery, to enforce a specific Performance of the subsisting Contract between the first Proprietor and the Crown?—A Court of Chancery cannot make a final Decree in any Case against an Infant, till he is of Age. Is it to be by a Parliamentary Enquiry, and an Act of the *British* Legislature, in Consequence of such Enquiry? If it is, the Rights of the People may be involved in the Enquiry, which the Mode intended by the House is calculated to avoid. Hence, Sir, it appears, that this Period of all others will be attended with most Difficulty to the Crown, and Danger to the Privileges we wish to have restored from the Bonds of Proprietary Captivity.

Again it is contended, “that the Proprietary Family *may* be so circumstanced, as to be willing to accept of such an Equivalent for the Government from the Crown, as the Crown may be willing to give.” What these Circumstances are, remains also a secret to be unfolded. I conclude, Sir, for I can think of no others, that they are, when the Government shall be become of ten Times greater Value than at present, and when the Estate of the Proprietary Family shall be increased in a Ten-fold proportion to what it is now. But can the Gentleman tell us, why they may not possibly be now willing to accept such an Equivalent?

At any of these Times, we are told,

this Province may plead the Cause of her Privileges with greater Freedom, and with greater Probability of Success, than at present.—The Royal Grant, the Charter founded upon it; the public Faith pledged to the Adventurers, &c. &c. may be all properly insisted on.

—I should be glad to learn, why these Things may not now be pleaded with equal Freedom and Success.—Will it be indecent to lay a true State of Facts before his Majesty and Ministry?—Will it be treasonable to inform them—That his Majesty’s Royal Predecessors, to encourage the Extension of their Dominions, granted certain Privileges to the first Adventurers. That those Privileges were enlarged by the first Proprietor.—That the Privileges thus enlarged, were ratified and confirmed by the Crown.—That the Royal Faith was pledged as a Security for the Enjoyment of them.—That

in Consequence of these Grants, his *British* Dominions have been greatly extended, and the *English* Nation benefited.—That notwithstanding all this, the Proprietaries and Sons of the first Grantee, actuated by Motives of private Interest only, and in Violation of the Royal Faith thus plighted, had so highly presumed, as arbitrarily to usurp and dissolve the most valuable of those Rights.—That these Things had created so great Disrespect and Contempt for a Proprietary Government, that there was no longer any Security under it; whence his Majesty's good Subjects were not only deprived of those invaluable Blessings so fully granted and confirmed to them, but that all Government was at an End, and the very Design of Society destroyed. And therefore, to intreat his Majesty to restore his good Subjects to their lost Liberties and Freedom thus arbitrarily usurped, by separating Proprietary Power from Property, and by resuming the Nomination of the Governor into his own Royal Hands, by enforcing a specific Performance of a Contract, now *bona fide* subsisting between him and the Proprietaries. This is a true State of the Facts, unperverted, and not misrepresented. And will this be, as the Member, has asserted, "precluding ourselves from every Office of decent Duty to the most excellent of Kings?" Will this be treating his Majesty with Irreverence and Disrespect?—This, or tantamount, has been done to the most absolute Monarch. Can a People give a more irrefragable demonstration of their Loyalty and Affection for their Sovereign, than to petition to be under his immediate Care, and to implore his immediate Protection? And can an Application like this, be disagreeable to his Majesty, or to his Ministry, so evidently for the Advantage of the Crown, and the good of its Subjects? No, Sir, There is not the least Danger or Probability of the Member's Prediction coming to pass—That all will be imputed to a "sudden Passion and Resentment against the Proprietors."

I should not, Sir, treat the Member with the Freedom he deserves, if I did not assert that he has wilfully and disengenuously misstated, in more Parts than one, the Ground and Cause of this Petition to the Crown. He has represented it as arising only from our differing with the Governor in Sentiments, on the Stipulation respecting the Proprietaries located and uncultivated Lands. And as if all we complained of was not of more Value than two or three Hundred Pounds per Annum, for a few Years.—Nothing can be more unfair and destitute of Candor:—And nothing more evident of the highest Inattention and Indiscretion, than to appeal to "our Resolves," so full of different Aggrievances, to support this Representation.

Though this Aggrievance, Sir, itself, is a Thing extremely unjust, and what a free People must with great Reluctance yield to; and yet was this all, I am confident this House would give up such a Sum, and an Hundred Fold added, to restore our Constituents to their lost Liberty. But this is not the Burthen of our Complaints, and our Oppressions.—They are Things that affect the very Existence of our Privileges and Safety. The very Resolves he appeals to, must, when they are considered, cover him with Confusion. 'Tis arbitrary Proprietary Instructions, inforced on our Governors, in manifest Violation of the Royal Grant, subversive of the Powers of Legislature, our first and most essential Privilege, we complain of. Instructions that prevent our shewing a chearful Obedience to the Royal Orders, and our Loyalty and Affection to the best of Sovereigns.—Instructions that prevent our affording that Protection to the People committed to our Care, which it is our Duty to give, and their Right to receive.—Instructions which prevent our passing any salutary Regulations for the Public Safety, or the People's Benefit.—To which should we submit in Part, we shall soon be obliged to give up the whole, and be reduced to the servile Condition of the Parliament of *Paris*, or of the worst of Slaves of the most absolute Monarch.

We further complain, That the Increase of public Houses, to an enormous Degree, merely to augment the Income of the Proprietaries Deputy, has corrupted the Morals of the People, to the great Scandal of Religion and Government;—has enervated and untimely destroyed Numbers of his Majesty's Subjects; whereby the People are diminished, and the Government weakened; and that all our reasonable Bills which have been presented to Proprietary Governors, for a Redress, have been continually refused, from Motives of private Interest and Proprietary Instructions.

That the Liberties and Properties of the People are render'd precarious, and dependant on the Will of the Proprietaries, by their insisting on the Nomination of the Judges, during their Pleasure, who are to determine all Causes between them and their Tenants, the good People of this Province.

That no Military Force can be obtained for the Protection of the Subject from internal Tumults, and Insurrections at Home, or from the common Enemy Abroad, but upon Terms the most arbitrary and unjust, that will surrender both the Lives and Properties of the People to the Will and Mercy of the Proprietaries and their Deputies.

These intolerable Mischiefs, with a Multitude of others well known to this House; all arising from the Nature of Proprietary Interest and

Government, are the true Causes of our Petition to the Crown. Mischiefs which are daily increasing, and will continue so to do, while Power and Property remain in the same Hands; and which will soon, unless speedily remedied, reduce this poor Province to a Condition infinitely worse than any of the Royal Governments in *America*, so much decried by the Gentleman, and the People to a State little better than absolute Slavery. In these Governments none of these Mischiefs exist. We find in them, a full Freedom and Power of Legislation—No Obstructions to his Majesty's Service, a perfect Administration of Justice, no legally established Source of Vice and Immorality, and a sufficient Protection against all Tumults, Insurrections, and Invasions.—Why then should we dread a Change, even supposing all his chimerical Fears should prove absolute Realities.

Let us suppose, says the Gentleman, that his Majesty will not accept of the Government, clogged, as it will be said, with Privileges inconsistent with the Royal Rights.—I cannot think with him, this Supposition is reasonable: But suppose it reasonable, the worst Consequence is, that we must then remain, where he would have us remain, yet longer in our present Situation; for the Crown cannot take our Privileges from us, without an Act of Parliament. But were it in his Majesty's Power, to deprive us of our Rights, He would certainly reflect, that those Privileges, whatever they are, were granted and ratify'd by his Royal Predecessors.—That they are the Purchase of the People, never yet forfeited—That it will be an Act of Injustice and Violation of the Royal Faith to resume them without the Assent of the Owners.—That such Resumption will deeply affect the Welfare of the Nation, and wise Policy of settling the extensive newly-acquired Dominions. And has his Majesty less Justice and Goodness of Heart, than his Royal Predecessors, who granted and confirmed these Privileges? Will he violate their Covenants and Acts, which remain in full Force and Virtue? Or has he less Wisdom, and will therefore damp the new Settlements intended of his now more than ever extensive Dominions, for the Sake of depriving an affectionate People of a few Privileges most solemnly granted and confirmed to them?

The Gentleman thinks "the Petitions from the People to the Crown, which have been laid before the House, can be regarded in no other Light than a Surrender of the Charter." I am at a Loss, Sir, to know what Idea he fixes to the Word *surrender*. It imports some Act of yielding up something we are in Possession of. But no Words of that Import are to be found in the

Petitions. The former Part of them mentions the Mischiefs and Aggrievances the People labour under in the present Form of Government, arising from the Nature of that Government. And in the Conclusion makes the very Design and End of petitioning, the Enjoyment of those "Privileges granted them by his Majesty's Royal Predecessors, freed from the Inconveniencies incident to Proprietary Governments;" and not a Word, nor even a Hint is contain'd in them, that the Petitioners would surrender, or even wave them.—Hence it appears, that the Petitions cannot be construed into a Surrender, by the most tortured Interpretation, and without violating the Words, the Sense, the very End and Design of them; and that this will be done, either by his Majesty or his Ministry, the Opinion I entertain of their Justice, forbids me to suppose. And therefore I shall leave this invidious Reflection on his Majesty and his Servants, to be nursed and propagated by the Gentleman who has so freely published it.

To answer particularly all the supposititious Reasons and conjectural Arguments that have been offered by the Gentleman, to prove that his Majesty and Ministry will act with Violence, and desert the Principles of Justice and Law, to take away our Rights without our Consent, would be taking up your Time very unnecessarily. These Reflections so groundlessly bestowed on them, with so little Decency and Reserve, must, in every loyal Breast, create Disgust against the Author, not a Fear of becoming his Majesty's immediate Subjects.—And as to the Ministry, whatever Opinion has been entertained of a former one, the present is composed of many different Members, who are now under the Influence of the best of Sovereigns.—We have made no Appeals to them—We have had no Experience of their Injustice.—But should they be regardless of Justice; should they incline to deprive us of our Liberties against our Consent, we have the Satisfaction to know, with indisputable Certainty, that they cannot, unless a *British* Parliament should ratify their Injustice.

Our Privileges do not depend on a Proprietary Charter—They are all confirmed by Laws of this Province; those Laws have received the Royal Approbation, and are become thereby of equal Solidity with an Act of Parliament, and therefore they cannot be repealed by any Power, but that of the King, Lords and Commons.

And have we not here, Sir, all the Security Reason can desire, that our Privileges, thus solemnly confirmed and never forfeited, will be preserved on a Change? I agree we have not, if we implicitly believe the prophetic

Conjectures of this Gentleman, "For," says he, "this Affair is laid before the Parliament, the Desires of the Ministry are insinuated, the Rights of the Crown vindicated, and an Act passes to deliver us *at once* from the Government of Proprietors and the Privileges we enjoy." Is not this an amazing Supposition, contradicted by Reason and Experience? Is not this a most indecent Reflection on a *British* Parliament?—I shudder at the Explanation; but it is necessary.—According to this Doctrine, Sir, the King, Lords, and Commons, are the servile Dupes of the Ministry. Without Consideration, without the least Reason, in an Instant, a Law passes the whole *British* Parliament, at the Desire of the Ministry, to blast our Liberties. The Royal Faith pledged to the Subject, is violated by Royalty itself,—and private Injustice is done by the wisest Legislature in the World, renowned for their Justice in all Nations.

A Supposition so invidious, so destructive of the public Reputation of the *British* Government, cannot gain Credit with the most Credulous. Many Instances might be produced, wherein that honorable Body, the House of Commons, have rejected the unjust Attempts of particular Ministers, on the Liberties of *America*. I will mention two,—In the Year 1718, influenced by Misrepresentations, there was an Attempt to inforce Royal Instructions on the Governors and Assemblies of the Colonies, as Laws; but the latter conceiving them inconsistent and destructive of their Powers of Legislation, did not pay that Regard to them that was required. Application was therefore made to the House of Commons, for a Law, to give them the same Force with an Act of Parliament.—But that Body, thought it extremely unjust, as it really was, to deprive *British* Subjects of those Privileges which had been granted to them, and under which they had settled—and rejected the Application.—In the Year 1748, the like Attempt was again made, and it met with the same Fate and Success. Thus, Sir, we see, a *British* House of Commons, the Guardians of *British* Liberties, have not been found on Experience, so lost to Justice and Public Faith, as has been represented.—And we have no Reason to believe they are now grown more Corrupt, or less Virtuous.

And, Sir, should an Application be made to Parliament, to new model our Constitution, when it is found that illegal Proprietary Instructions, disannulling the Powers of Legislation, contrary to the Privileges granted by the Royal Charter, is one of the Causes of our Petition.—That these Instructions have been the sole Impediments to his Majesty's Measures, and the Protection of his Colonies, will they not justify the Legislature that

opposed them?—Will they not countenance a Conduct so similar to their own?—Will they refuse enforcing the Instructions of the Crown, as a Thing illegal, unjust, and inconsistent with the Rights of the Freemen of *America*; and yet approve and enforce the Instructions of private Subjects, founded on an unjust Attachment to their own private Interest? The Absurdity, Sir, is too glaring to admit of a Supposition.

But further to paint out Royal and Ministerial Injustice, in the blackest Colours, and to aggravate the dreadful Consequences we are to expect from it, the Gentleman affirms, that “We find, during the late War, every Point, in which the Proprietaries thought fit to make any Opposition, decided against us.”—Here, Sir, the Gentleman has wandered widely from the Facts. In the Year 1759, the Time he alludes to, nineteen Acts, passed by this Legislature, were presented for the Royal Approbation; thirteen of them were confirmed, though five of the thirteen were warmly opposed by the Proprietaries, as inconsistent with the Royal Prerogatives.

They earnestly contended that the Nomination of Commissioners, in Supply Bills, to dispose of the public Money, was an Invasion of his “Majesty’s Prerogatives and the Power and Privileges vested in them by the Royal Charter;” and yet this important Point was determined in our Favor, though contrary to the Practice of Ages, in our Mother Country, where all the public Monies are disposed of by the Crown alone.

They opposed, for the same Reason, the Confirmation of the Law to prevent the Exportation of bad and unmerchantable Staves, &c. because their Deputy Governor had not the Nomination of the Officer to put the Act in Execution; and yet this Act was confirmed and approved by the Crown.

The Act to prevent the Exportation of unmerchantable Bread and Flour, was opposed on the same Principle, but with as little Success, on the Part of the Proprietaries.

These, with many other Points, too tedious to enumerate, were opposed with all the Proprietary Power and Influence, before the Ministry; and yet, Sir, the Assembly succeeded, and Justice was done the People of *Pennsylvania*. After these irrefragable Proofs of Royal and Ministerial Justice, if they should not succeed in prevailing on the Gentleman to alter his Sentiments and free Method of censuring them, I cannot doubt, but that they will at least wipe away these groundless Fears and frightful Apprehensions he has endeavoured to inculcate of the Loss of our Privileges by their unjust Measures.

I do not expect, upon a Change of Governors, that a perpetual Calm will ensue, or that no Contests will ever arise between the Ruler and the People.—That would be vain indeed; an Expectation contradicted by evident Experience and the very Nature of human Affairs. But, Sir, what I expect, and what every sensible Man must naturally foresee, is, that public Disputes will be very rare and uncommon. With what Ease and Expedition was the public Business, and his Majesty's important Service carried on, during the late War, in all the Royal Governments?—Not a Dispute or Murmur subsisted between the Governors and the Governed, in their several Legislatures. But in the two only Proprietary Governments, in *America*, Proprietary Contests were as constant and certain as the Meeting of their Legislatures. In one, his Majesty's Measures for the Protection of his Colonies, received little or no Assistance at all; in the other, it met with great and pernicious Obstructions. From whence does this Difference between Royal and Proprietary Governments spring?—From whence do these Mischiefs arise? I appeal, Sir, to the unbiassed and impartial, whether they do not proceed from the very Nature of Proprietary Governments.—In the former, the Ruler has no sinister Motive, no undue Biass to seduce his Attention from the public Weal, and the good of the People.—But in the latter, private Interest, like some restless Fiend, is always alive, is ever active: Active in perpetual Opposition to the true Interest of the Colony. Hence it is, that incessant Contentions must ever exist, until the Spirit of Liberty is worn out, and the People fatigued with Controversy and Oppression, shall servilely submit to the Will and Pleasure of the Proprietor. From these Mischiefs, not to be avoided under our present Form of Government, I hope to be one of the happy Instruments of relieving my Country, by the Petition for a Change: And of conducting my fellow Subjects to a secure Haven, where, tho' a Storm may once in an Age arise, they shall remain in Safety, nor dread the fatal Rocks of Proprietary private Interest, or Proprietary Influence.

Permit me next, Sir, to attend the Gentleman in his Remarks on our Privileges; on which Head I shall be brief—"We here enjoy (we are told) that best and greatest of all Rights, a perfect religious Freedom."—So do all Protestants in every Royal Government under his Majesty.

"Provincial Commissioners dispose of our public Money."—So they do in *New-York*, *New-Jersey*, *Virginia*, and *Carolina*; and so they may in every other Colony on the Continent.

“The Posts of Honor and Profit are unfetter’d with Oaths or Tests.”—The People of *Jersey* enjoy the same Privileges as to Oaths; and in my Opinion, the same might be obtained in every other Government, on a proper Application:—And as to a Test, except the usual Test required by Act of Parliament, and common to all the King’s Dominions, such a Thing is not known in *America*, unless imposed by the Legislature of any Colony.

“Those who are conscientiously scrupulous of taking an Oath, are admitted as Witnesses in criminal Cases.”—Where this Scruple is rare in proportion to the Number of Inhabitants, a Government may, without great Inconvenience, refuse to indulge it. But where so great a Part of the People as in *Pennsylvania*, are subject to it, Necessity will oblige a Government to allow an Affirmation, for its own Sake, if not for that of the Scrupulous, as otherwise Justice, one main End of Government, could not be obtained. I have never seen a Calculation, but I apprehend, the Numbers in this Province, scrupulous in this Point, may be justly computed one Third of the People: There being the People called *Quakers*, the *Moravians*, *Menonists*, *Dumplers*, and a great Number of the *Irish* and *Dutch* Presbyterians, who have those Doubts. Shou’d they be deprived of the Privilege of an Affirmation, in lieu of an Oath, in all Probability, one Offender out of three, in every Kind of Crime, would escape with Impunity, for want of Testimony to convict the Criminal. For should one of these People be robbed alone, or should he be robbed or murdered, in the presence of another of them, the Offender must Escape the Penalty of the Law, because the Witness cannot swear. The like Inconvenience to the Public must happen, where any other Person is murdered in their Presence; to the great Encouragement of Offenders, and the Obstruction of Justice.—Hence, Sir, there can be no Danger, that a Colony, thus circumstanced, will ever be deprived of this Privilege:—Common Policy, in the Administration of Justice, and the Safety of the People, in both Life and Property, forbid it.

“Our Legislation suffers no Checks from a Council, instituted in fancied Imitation of a House of Lords.” But, Sir, have we not a Council dependant on the Will and Pleasure of our Oppressors, infinitely more mischievous? And is it possible, that the Gentleman is so little acquainted with the pernicious Effects of Proprietary Instructions, which not only check, but destroy, the Powers of Legislation, and chain down the Discretion of both Branches so effectually, as to make them Cyphers in the Constitution? Instructions which render them the Resemblance of the *French* Parliament, with only the

Power of forming and registering their Master's Edicts—differing only in this imbittering Circumstance, that *they* are obliged to submit to the Edicts of Royalty, but *we* to those of private Men, no ways superior to us in Birth, Education, Merit, or Dignity.

“By the Right of Sitting on our own Adjournments, we are secure of meeting when the public Good requires it.” But, Sir, let me ask, what “Public Good,” what Service to our Country can we do, when Proprietary Instructions, and Proprietary private Interest, is to enslave our Judgments, and to rule in our Councils.—Has not long Experience taught us, that we must sit Month after Month, spending and wasting our Constituents Money, fruitless and ineffectual? In short, Sir, these Privileges of Legislature, with that of our annual Elections, of which the Gentleman so much boasts, are all swallowed up and sacrificed at the Shrine of Proprietary Instructions, and the Measures of Power. They are now, Sir, but *Ideal* Shadows, and chimerical Notions.

Under these unfortunate Circumstances, arising entirely from Proprietary Government, what Man that ever tasted of the Sweets of Liberty, that has the least Idea of Freedom remaining, can lay his Hand on his Heart, and dare whisper the Assertion, that we “peaceably and fully enjoy our Rights and Privileges.” Surely, Sir, no greater Mistake was ever affirmed, than that “they are safe now;” and no Truth more evident than that were we to lose all our Charter Privileges, and only enjoy those of the Royal Governments, our Situation then would be infinitely preferable to our present State.

But, Sir, we are told, some of these Privileges are contrary to the settled Prerogatives of the Crown, and therefore will be resumed on an Application for a Change.—I know of but one of them that is so, which is that of Sitting on our own Adjournments, without a Power in the Governor to prorogue or dissolve us; and I have already shewn that the King and Ministry cannot resume it without the Aid of Parliament, and, Sir, I am confident, their Justice and Policy will ever secure to us, Privileges which we have dearly bought and never forfeited, and which are as much our Right as the Money in our Pockets, or any other Property we enjoy.

Again, the Gentleman conjectures, that the Members of the established Church will be very active in this Affair, and will exert themselves to deprive the Dissenters of their religious Rights and Freedom.—For my Part I cheerfully confess, I entertain a very different Opinion of their Moderation and Benevolence.—Gratitude to that Church, which has so long held the

Helm of Power, which has had, without using them, so many Opportunities of oppressing the Dissenters, forbids me to entertain so malevolent an Idea of them.—Instead of oppressing them, they have, in many Instances, been extending their Rights and increasing their Privileges, ever since the Revolution.—In the Case of *Carolina*, when both Proprietaries and People petitioned for a Change, no such violent Measures were prosecuted, either by the King, the Ministry, the Parliament, or the Church of *England*.—His Majesty and Ministry, did not attempt to alter the Laws, or vary the Constitution.—The Matter was laid before the Parliament, and such was their Justice, which has been so much oppugned and traduced, that they did not make the least Alteration, but granted his Majesty the Sum required to purchase the Government and Soil.—Very similar were the Circumstances of that Government at that Time, to those of *Pennsylvania* now.—A Savage Enemy, united with the *Spaniards*, were invading their Frontiers, the People wanted Protection, and his Majesty's Service was obstructed by Proprietary Measures and Interests.—The Colony was settled principally by Persons of the established Church, more than sufficient to fill all the Offices of Government; and yet, Sir, so far was the Royal Justice, or Ministerial Designs, from depriving the Dissenters of their Liberties, that immediately on the Change, they repealed the only Law of the Province, imposing a Test on Dissenters, or that affected their Liberties.—After this so late an Instance of Royal and Ministerial Goodness, what have we to fear from our Petition?—Are we to be intimidated, and frighten'd from pursuing the only Measure that can save our Privileges, by such wild Conjectures, such imaginary Possibilities?

The Gentleman's Knowledge and Foresight, carries him still further.—For he not only undertakes to foretell the Actions, but speaks the very Words of the Parliament, when this Affair shall come before them. He intimates, that they will say, "Any Indulgencies shewn to the Colonies heretofore, were like the Indulgencies of *Parents* to their *Infants*. They ought to *cease* with that *tender Age*." Did they say or act in this Manner, on any of the antecedent Changes from Proprietary to Royal Governments.—A Charge this, full of the highest Indignity and Affront! And will that wise Body countenance such arrant Deception, such unparalleled Fraud?—They have not, they will not.—This is the second Time I have seen this Doctrine published in *Pennsylvania*. I hope I may never see it again. It never took its Origin, nor ever was thought of in our Mother Country. The Author of the *Brief State*, that common Enemy to the Liberties of *America*, built his

slavish Superstructure for depriving her of her Privileges upon this Principle. The Crown, Sir, in 1681, with this sole View, to settle this Colony, and to extend the Commerce of the Nation, granted to our Ancestors the Privileges we ought now to enjoy. Those good People left their Mother Country, and every social Connection, and with infinite Toil, Expence, and Danger, unassisted by the Crown, settled this remote Wilderness—To the great Increase of the national Commerce. And thus have fulfilled their Contract with the utmost Punctuality on their Parts. At first, Sir, our Privileges were of little Value; they could be scarcely exercised or enjoyed.—And now we are arrived at a Capacity to enjoy them, will our Mother Country retain the Benefit of our Labor, and deprive us of the Consideration?—Honor, Reason, Justice, Virtue, forbid it. Let me suppose, by Way of Illustration, That a Father sends his Son into a distant Country, to perform for him some essential Service: And he grants him a Consideration, which he is to have for the Performance. The Son performs the Service with great Toil and Danger, and at his own Expence. But when he should enjoy the Reward of his Fatigue—His Parent arbitrarily deprives him of the Consideration. What Words, Sir, shall we find in any Language, to describe the Idea of a Conduct so base and fraudulent?—And how groundless and affrontive must such an imputation be to a *British* Parliament?

Our Right to petition for a Change, calls next for my Consideration. This, Sir, it is contended, we “have no Right to do, without the *almost universal* Consent of the People, exprest in the plainest Manner.” This Position appears to me as strange as it is absurd. It is contradicted by the Experience and Practice of all Ages and Nations. There is scarcely one Government in the civilized World, that now retains its original Form. And I believe none, Sir, that has been changed by the expressed universal Consent of the People. Innumerable Instances might be adduced of this Truth, from antient and modern History; but a few from the latter may suffice. Was the glorious WILLIAM, the Deliverer of the *English* Nation from Bigotry, Superstition, and Slavery, vested with *British* Regality by the declared universal Assent of the People?—Was the Stadtholder elected without considerable Opposition in the States of *Holland*?—They were not.

This Province, Sir, was originally governed by a Governor, a Provincial Council of Seventy, and a House of Representatives, consisting of two Hundred. And in this Council the Governor had but a “treble Vote.”—This was our original Form of Government established in 1682, by the Proprietor and

Adventurers. And yet we find that in 1701, this Frame of Government was, after it had undergone various Changes, finally surrendered by six Parts in seven of the Assembly met, *without consulting their Constituents*, and our present Charter accepted. This Change then is either valid or it is not;—it was either made on good Authority, or it was not.—In either Case the Doctrine of universal Consent is absurd or mischievous.—If it is valid, then the Resolution of this House for a Change, assented to by nine Tenths of the Members met, must be valid also. If it is not valid, then all our Privileges, derived under our present Charter, so much boasted of by the Gentleman, vanish, being founded on no Authority, and we must recur to the old inconvenient and scarcely practicable Form of Government.

Besides, Sir, the Right in this House to petition for a Change, whenever they think it necessary for the Welfare of their Constituents, is founded on, and established by the very Terms of our present Charter. Six Parts in seven of the Assembly met, have Authority to *alter, change*, or diminish the Form and Effect thereof, without consulting or taking the Opinion of the People.

Further to expose the Absurdity of this Assertion; Arbitrary Power will ever have Numbers to support it; without this, Power could not become arbitrary. And should People oppressed, wait for this universal Assent, Changes never would happen, and their Slavery never end.—What is right and necessary for the Safety of the People, virtuous Men, entrusted with their Welfare, will ever pursue, tho' Millions and Mountains oppose.—*Salus Populi est suprema Lex.*⁷—Let this Principle, and this alone, freed and unshackled with any other Consideration, actuate our Conduct, and we shall ever secure a self-approving Conscience, which is of higher Estimation than the greatest Wealth, the most invaluable Jewels.

But, Sir, I should be glad to learn what is meant by this almost *universal Consent*.—Is it the Consent of two Thirds, nine Tenths, or of ninety-nine out of an Hundred of the People?—Where will this vague and indeterminate Rule end.—We have the Satisfaction to know that our Conduct is supported, and the Measure we are taking approved of, by a very great Majority of the People, and all the independant Lovers of Liberty; not merely from the Petitions to his Majesty, now before the House, but by our mixing among them, during our Recess, and various other Means of consulting their Inclinations.—It is to them we are accountable; and if we

7. ["The safety of the people is the highest law."]

have their Approbation, it is all we ought to expect; their Disapprobation is all we ought to fear.

Before I conclude, I will endeavour, Sir, to remove the "Surprize, Grief, and Terror," with which the *Form* of our intended Petition to the Crown has struck him. If, Sir, a true Representation of the uncommon Mischiefs which attend the Liberties of a free People, arising from the very Nature of Proprietary Governments.—If a true State of our present Confusion, both in and out of our public Councils—If a just Account of our present Insecurity of Life and Estate, given to the Crown, be a just Cause of Terror, then the Gentleman's Pannick is just. But, Sir, these Things I conceive are rather Causes of Joy than Fear.'Tis from hence we must hope to be relieved from our present unhappy Circumstances.

But we should not have informed his Majesty, "that *Pennsylvania* is a Scene of Confusion; that armed Mobs are marching from one Place to another," &c. And are not these Things true?—Armed Mobs, not one only, but three, in the Space of a few Months, have marched from Place to Place, broke open the public Gaol, and perpetrated with Impunity, the most horrid Murders in cool Blood—in the Face of the Magistracy, and defiance of the Government.—And to add to their Villainy, they came to the capital City, with the same black Design, determined, if we may judge from their Threats, to wreak their Vengeance not only on the *Indians*, but upon some of the Members of Government itself. Nor was the Government capable of defending itself, or the People under its Care. No, Sir, our present Safety, and for aught I know, our present Existence, is owing to the King's Troops, and a few brave Volunteers, the Friends of Liberty, of public Virtue, and of Government. And shall we be afraid to reveal such imminent Danger! Such extreme Distress! to the best of Kings?—And when such Confusion, such horrid Guilt, such heinous Offences, take Place in a dependant Colony, with Impunity; when the Government itself refuses or neglects, or is incapable to afford Redress, does it not become a matter of the highest Necessity and Wisdom? Is it not our indispensable Duty, to represent these Things in their true Light to the Crown, who alone can preserve us from such inexpressible Evils?

But, Sir, should we waive these Things, and draw our Position in a different Dress, can we annihilate the Messages between the Governor and Assembly? Can we withdraw the Governor's Proclamations? Can we hold the Hands of his Majesty's General, whose Aid we were obliged to accept,

from giving the Intelligence?—Can we stop the Mouths, and close the Eyes of all *England* and *America*, or prevail on his Majesty, or the Ministry, to bury in Oblivion what they have, e'er now, so often read and heard?—If we cannot do these Things, how vain and ridiculous must our Attempt be, to hide these Tumults and Murders from the Royal Knowledge, should it be thought prudential or useful? But, Sir, that cannot be; for the Assembly of *Carolina* represented their Government in the same State of Confusion, and want of Protection, in their Petition for a Change; and no ill, but very good Consequences attended it.

If the Gentleman has been struck with Terror at the Form of our Petition, I own, Sir, I am struck with more Amazement at his Conduct in endeavouring to palliate the horrid Murders committed by these Insurgents. I have heard him in this House, express himself with genuine Warmth and Indignation against them—I have heard him denominate these first of Crimes by their proper Names;—I have heard him paint them in their strongest Colours.—But he seems now afraid to call them *Crimes*, and adopts the soft and palliating Term, "*Folly*," He represents them as repenting Men, "convinced of their *Errors*," and the Conduct of the House as unbecoming, in calling them "armed Mobs," which he represents as "painting them in the strongest Colours." He wou'd persuade us to believe, "they have renounced all Thoughts of such wild Attempts for the future."—

Is it not astonishing, that a Gentleman, who so lately could paint these Offences in the most aggravated Light, should now soften them into nothing more than an Act of Folly: And should charge this House with Indecency, in describing with so much Moderation, a Set of Villains, who in Defiance of the Laws, the Magistracy, the Government, and Heaven itself, had murdered a Number of innocent Men, Women, and Children, in cool Blood: Who exulting and glorying in the Act—attempted to add to their Crime, by resolving to massacre a Hundred and fifty more, together with some of the best Men in the Government: For such was their Design, if we may rely on their own Declarations and Threats. What Wind has occasioned this sudden tack in the Gentleman's Conduct, I shall not precisely determine.—Thus much I will add, That it must be some erroneous Policy, not Reason or Virtue; for Murders of the highest Rank cannot be palliated on either of those Principles.

The first Riot in this Province, that I can recollect, was spirited up by the Tools of Power, to destroy the Freedom of Elections; the second by the

same Persons, to intimidate the House of Representatives into the arbitrary Measures of the Government; the third to murder and destroy innocent People, his Majesty's Allies, on their Settlements, under the Protection of the Government; the fourth, still more aggravated, to murder, in cool Blood, Men, Women and Children, under the immediate Care of the Magistracy, and in their Presence; and the fifth still more heinous and aggravated than all the others, to murder a Number of People under the immediate Eye of the Governor, and the Protection of his Majesty's Troops; nor were the Members of Government itself to have been free from the horrid Massacre, had not these Insurgents been stopped in their Career; not by any Power in the Government, for that was ineffectual, but by the King's Troops, and the voluntary Aid of the Citizens of *Philadelphia*.—Let us take a serious View of these Facts, and then determine what Reason we have to expect these dangerous Tumults are at an End.—Are not the Murderers still ranging the Country with Impunity?—Has the Government made the least Enquiry after the Criminals; lifted a Finger, or given an Order for their Punishment, tho' requested to do it by this House; and are not these Things the most evident Proofs of our Insecurity, and of the greatest Disrespect to a Proprietary Government, and that it has not either Power sufficient, or Inclination, to afford Protection to his Majesty's Subjects.

But, Sir, the Gentleman would persuade us to believe he is well acquainted with their Conduct, their Penitence, and their future Designs, and that they, by some uncommon Attonement, have wiped away the Guilt of their heinous Offences, and never intend to commit them more.

What Communication the Gentleman has with them, or what private Intelligence he has received of their Penitence, are yet unknown, as he has not communicated them. But Riots and Murders, Sir, when once begun, encouraged and supported by such Numbers as these have been, seldom cease, till the Offenders are punished, or their Designs succeed: But like the raging Flame, once kindled, will consume all before them, unless extinguished by some superior Force. And the daily Threats of these lawless People, with the infamous Pamphlets continually published, to justify and encourage them, do not demonstrate the least Intention in them to alter their Conduct, or the least Wish in their wicked Abettors, that they should do so.

“But (he says) that we shall furnish a Reason for settling a Military Establishment upon us, &c. by thus representing the Government in Confu-

sion.”—A Military Establishment is already, and will be more effectually established in the Colonies. This seems the determined unalterable Resolution of a *British* Parliament.—Nothing less will ever secure them Protection in their present disunited State. There is no Alternative between this Measure and a general Union, to insure us Protection against the foreign Invader. Such an Union has been already rejected, and such an one we shall now never enjoy: Our Superiors think it convenient to keep us in another State; and therefore we shall undoubtedly have this Measure, which has struck the Gentleman with so much Terror and Pannick, established, whether the Government is changed or not. The Question then arises, whether we had rather have a Military Establishment in a Government under the Crown, or the Proprietaries—Impartial Reason, free from Proprietary Attachment, will soon determine.—The Crown has no private Interest to promote; the public Good will be its great Object, and therefore will never make use of it to our Disadvantage. All the Inconveniency we shall suffer by being immediately under the Crown, will be a proportionable Part of the Aids to support the Troops. But the Proprietaries have great private Interest; an Idol to which they have been long sacrificing the public Weal, without Fear or Remorse. They will undoubtedly then endeavour to make use of the Military Men to serve that Interest, to dragoon the People into their Measures; the Measures of Slavery and Oppression.—Experience hath already convinced us of this Truth; the Conduct of the Government in the beginning of the late War, sufficiently proves it. Should the Military Power, in a Government under the Crown, misbehave, we should, upon complaint, be redressed.—No Person of Influence there, would find it their Interest to interfere in Support of them, contrary to the Rights of the People.—But if such a Power is made subservient to Proprietary Measures, will not the Principals in those Measures support that Power; and will not that Support ever prevent our obtaining Relief? Hence, Sir, it is clear, since we must have a military Power established in *America*; nay, since it is done already, it will be infinitely less mischievous to us, less fatal to our Liberties to become the immediate Subjects of his Majesty, than to remain under our present Government.

The Gentleman asserts, that “With unremitting Vigilance and undaunted Virtue, should a free People watch against the Encroachments of Power,” (meaning the Power of the Crown.) I agree, Sir, we ought to guard against the Encroachments of all Kind of Power. The Power of the Proprietaries,

as well as of the Crown.—The Extent of the latter we know; the Royal Government shews its Limits; they are known and confined; and rare it is, that any Attempts are made to extend them. But where Proprietary Power will terminate, where its Limits will be fixt, and its Encroachments end, is uncertain.—It has already been extended to a most dangerous Length, and our Liberties are daily consuming before it. And, Sir, I am fully persuaded, was the Gentleman a Friend to the Liberties of *Pennsylvania*, he would, with equal Zeal, have recommended this Vigilance and Virtue, to watch against, and remove the illegal Usurpations of Proprietary Tyranny.

Permit me, Sir, to answer a few Questions the Gentleman has put, by seriously asking him a few others.—“Have we not (says he) sufficiently felt the Effects of Royal Resentment?” Royal Resentment, Sir, indecently described by the Gentleman in such aggravated Colours, has been dispensed with Royal Moderation.—But why so much Rancour against the Royal Conduct? And why so tender of Proprietary Misrepresentations, Proprietary Hatred and Ill-will against the good People of this Province, the true Causes of the Royal Displeasure?—Here, Sir, if Justice took Place, would the Shafts and Darts of the Gentleman be pointed.—Here it would be just.—But let me ask, what ill Effects have flowed from the Royal Resentment?—What Liberties has it deprived us of?—What Privileges has it destroyed?—None. But, Sir, have we not felt the Iron Rod of Proprietary Instructions, and Proprietary private Interest, wounding and destroying the most essential Rights a People can enjoy?

“Is not the Authority of the Crown fully enough exerted over us?” I have seen no undue Exertions of the Royal Authority in this Province. But has not the private Authority of the Proprietaries, been so exerted, that the People have often wanted Protection, and Thousands been sacrificed to their Arbitrary Usurpations? If, Sir, the Gentleman was truly concerned for the Welfare of his Country, would he not be more concerned to remove the arbitrary Attempts of Proprietary Interest, instead of abusing the Authority of Royalty? From whence, tho’ we have received a fatherly Reproof, we have received no Injury:—He certainly wou’d.

To conclude, Sir, I have not heard one solid Argument drop from the Gentleman, to alter my Opinion. Nor do I believe his Eloquence has changed the Sentiments of one Member in the House.—We are too well acquainted with the Facility, and Security to our Privileges, with which this Measure may be carried into Execution. And therefore we have too great a

Regard for our Country to lay it aside. It has been often mentioned in this House, and sufficient Documents to prove it, have been laid on the Table, That Mr. PENN, the first Proprietor, conscious that the Powers of Government could not be always retained in his Family, actually made a Contract with the Crown, to resign them for a Sum of Money, of which he received Part. That this Contract still subsists in full Force.—That by this Contract, the equitable Right is, beyond Controversy, in the Crown,—And that his Majesty may readily obtain the legal Right, upon paying the Residue of the Money, by a Suit in Chancery, should the present Proprietaries have the Presumption in so plain a Case, to enter into a Contest with the King about it. Besides, Sir, I have seen the Opinion of some very great Men, his Majesty's Servants, and often near his Person, That the Powers of Government is an Interest that cannot be transfer'd or alien'd. If this Opinion be a good one, as I am clear it is, the Right of Government cannot be in our present Proprietaries, but in the elder Branch of their Family.—And further, It is certain, that the Proprietaries stand indebted to the Crown for one Moiety of the Rents, Issues, and Profits of the three lower Counties, Ordinary and Extraordinary, ever since the Year 1682, which, upon a moderate Calculation, must amount to fifty Thousand Pounds Sterling, clear of all Expences and Deductions. Under these Circumstances, will it not be the highest Presumption in the Proprietaries, to oppose the Royal Resumption of the Nomination of the Governor of this Province.—These are the Weapons which I am confident will be used for the Restoration of our Liberties, and for saving his Majesty's faithful Subjects in this Province, from that Thralldom and Bondage, which Proprietary Instructions, and private Interest, have imposed upon them.

With great Propriety, a Political Body has often been compared to a human Constitution. Let us suppose then, That a human Constitution is attacked by a violent Disease, the Effect whereof has nearly destroy'd the Powers of Life, and vital Motion, and Nature is no longer capable of struggling for Relief.—Is not this the Time to apply the Remedy? and would any but a Quack, wait in Hopes of some lucky Crisis, until the Disorder grew too powerful for Nature and Medicine? The Powers of Legislature truly resemble the Soul which animates and directs the Conduct and Behaviour of the political Institution. An upright Administration of Justice resembles the active Blood, which, by its pure and uninterrupted Course, preserves and supports its Health and Vigor. In these two vital Parts, with many others,

the Fever of Ambition and arbitrary Power, is, and has been continually raging with unremitting Violence. The Powers of Legislation are so check'd and controled, that they are almost annihilated—The Courts of Judicature are so dependant on Proprietary Influence, that wherever Proprietary Interest is in Question, the Stream of Justice becomes so turbid and thick, that it can no longer discharge its Duty, Security of Life and Estate is become an empty Name, and the Spirit of Liberty distress and worn out, by ineffectual Efforts for her Preservation, is verging fast to a Dissolution. Nothing but a Royal Medicine expeditiously administred, can possibly revive or restore her. And if such a Medicine can be obtained, shall we not even attempt to obtain it, before the midnight Gloom approaches, and fatal Death puts an End to our Struggles? This, Sir, is not an Aggravation of our Circumstances; it is the true and unfortunate State of *Pennsylvania*.

FINIS.

“An American” [Arthur Lee],
An Essay in Vindication
of the Continental Colonies of America
(London, 1764)



INCREASINGLY after the middle of the eighteenth century, some British people began to take a critical look at the African slave trade and the colonial societies that participated so heavily in that trade and depended so fully upon slave labor in their economies. One of the critics was Adam Smith, who in a short passage in his *Theory of Moral Sentiments* compared favorably the enslaved in Africa with the “sordid master[s]” they would serve in America, masters, he said, who were “the refuse of the jails of Europe, . . . wretches who possess the virtues neither of the countries to which they go, nor of those which they come from, and whose levity, brutality, and baseness, so justly expose them to the contempt of the vanquished.” As Arthur Lee, scion of a prominent Virginia family who was studying in England and would become a prolific pamphleteer in London during the decade following the Stamp Act crisis in 1765–66, reveals in this selection, such characterizations, increasingly common in Britain, were bitter pills for colonials who claimed the rights, liberties, and humanity of their British progenitors and craved social recognition within the larger British imperial world.

Colonial protests against these characterizations took many forms. In Lee’s case, he combined a defense of the humanity of slaveholders with a condemnation of slavery in general and a deep racism toward people of both African and—Smith having also criticized colonials for their treatment of American indigenes—Amerindian descent. Quoting at length from

various unfavorable reporters on the African character in both Africa and the Americas and admitting that slavery in the West Indies was harsh, Lee went on to provide short histories of those North American colonies from the Chesapeake south to the Carolinas in which slavery was extensive, before concluding with an analysis of the question of whether slavery ought to be abolished. Concerned to stress the respectable British social origins of "the founders of families which became afterwards eminent" in these colonies, to depict their inhabitants as "a humane, hospitable, and polished people," and to argue that the conditions of slave life in them was "far happier than that of the Scottish and Irish vulgar," Lee nevertheless took a critical view of the social effects and legal foundations of slavery, dismissing the conventional defense that Europeans could not undergo the hard work necessary to economic production in tropical climates and declaring that "the bondage we have imposed on the Africans" was "absolutely repugnant to justice," "highly inconsistent with civil policy," and "shocking to humanity." As an aside, Lee interestingly condemns metropolitan restrictions on Virginia commerce that subjected Virginians "to the arbitrary impositions of British merchants" and treated Virginians "not as the fellow-subjects, but as the servants of Britain." (J.P.G.)

AN
ESSAY
IN VINDICATION OF THE
CONTINENTAL COLONIES
OF
AMERICA,
FROM
A Censure of Mr ADAM SMITH,
in his Theory of Moral Sentiments.
With some Reflections on Slavery in general.
By an AMERICAN.

*Refellere sine iracundia, et refelli sine pertinacia, paratus sum.*¹
CIC. Tusc. Disp. lib. ii.

LONDON: Printed for the AUTHOR.
Sold by T. BECKET and P. A. DE HONDT, in the *Strand*.
MDCCLXIV.

1. ["I am prepared to disprove without irascibility and to be refuted without obstinacy." The quotation is from Cicero's *Tusculan Disputations* Book 2.5 and actually reads *et refellere sine pertinacia et refelli sine iracundia parati sumus*, meaning: "We are prepared to disprove without obstinacy and to be refuted without irascibility."—Tr.]

Advertisement.

Four years having now elapsed since the publication of Mr Smith's *Theory of moral sentiments*, the world may well be surprised, that the censure we are hereafter to refute, should have remained so long unanswered. For that reason, perhaps, this answer may be deemed somewhat late; but the author hopes, that the vindication of truth from misrepresentation; of innocence from unjust aspersion, though it be late, will never be unacceptable. The charge is general. It seems to aim at all the American colonies which employ the African slaves; and yet he will venture to assert, that it is not applicable to any one of them. The slaves in the French, Spanish, and Portuguese settlements are not treated with more, if with so much severity, as those of some of our colonies; nor do the inhabitants consist of the refuse of their respective countries. For the truth of this he appeals to their histories.* He flatters himself with having proved, in the following essay, that the charge is not applicable, with the least shadow of truth, to our continental colonies. In the West-India islands, it must be acknowledged that the slaves undergo a very severe labour; but could this authorise Mr Smith to reflect on the inhabitants, in such opprobrious terms? Could he justly infer from thence, that they were utterly destitute of every virtue, or abandoned to the influence of every infamous and detested vice? The Africans he might have exalted into heroes, however little they deserve that name, with less offence. Where the motive appears benevolent, we more easily pardon a trespass against truth. But was it necessary to this end that the Americans should be debased into monsters? that they should be treated with reproaches more rigorous than the severest justice, unmitigated by the least humanity, would utter against the most perfectly vicious? And here, though it relate not immediately to our subject, yet, as an American, the author may presume to offer a few remarks on what Mr Smith has related, concerning the American savages. The virtues with which he has endowed them, and the particular customs he has said to prevail among them, are not in the least conformable to our experience. We have ever found them perfidious to the last degree; actuated in all their wars by the most atrocious and ungovernable cruelty; of natures at once so cowardly and cruel, that

* See the account of America.

whilst they dare not ever face an enemy prepared, they will butcher him, if unguarded or defenceless, with the most ruthless barbarity. When their kings or chiefs visit us in the colonies, they are frequently accompanied by their wives and concubines;* so far are they from blushing at their female connections. They are not upon an equality, as it hath pleased Mr Smith to observe, but governed universally, as far as we know, by their kings or chiefs. His instances of magnanimity and fortitude, in sustaining the pains of torture and death with the most intrepid firmness, are applicable only to the Mexicans and Peruvians; such as the Spaniards first found them; for at present, even among them, this spirit is almost wholly extinguished. But surely Mr Smith cannot style these the savages of America. Whoever will read their history, may see how little they merit this indignity.

“The police of the Mexicans,” says Mr VOLTAIRE,† “was in every other respect,‡ prudent and humane? Astronomy was carried to as great a height among them as among the Egyptians. They had reduced war to a regular art. Their public treasury was managed with the greatest exactness.”

From his description of Mexico, it appears to have been at once the residence of gaiety, magnificence, police, and arts. “The city,” says he,

abounded with spacious and convenient houses, built of stone; noble squares, market-places, and shops full of the most curious pieces of workmanship, carved and engraved in gold and silver, rich vessels of painted porcelaine; cotton stuffs, and ornaments of feathers, which formed the most beautiful patterns, by the variety of their colours and shades. Near the great market-place stood a palace, where all disputes between the traders were decided in an expeditious manner, like those justice-courts of the consuls at Paris, which were first established by Charles IX. after the destruction of the empire of Mexico. Several palaces belonging to the Emperor Montezuma added to the magnificence of the city. One of them raised on columns of jasper, was set apart for containing the curiosities which minister only to pleasure; another was filled with offensive and defensive weapons, richly adorned with gold and precious stones; a third

* Commonly called their *squaws*.

† See Dr Smollet’s *Voltaire*, vol. 4. p. 202.

‡ Except in sacrificing prisoners to their gods. But if this should stamp them savages, what name shall we find for the Spaniards, who sacrificed those very people, with every circumstance of the most horrid barbarity, to the basest of all idols, the god of avarice?

was surrounded with spacious gardens, wholly destined to the raising of medicinal plants, which proper officers distributed to the sick, and gave an account of the success attending the use of them to the king. These physicians likewise kept a register of cases, after their manner, being unacquainted with writing. The other articles of magnificence only prove the progress of arts in that kingdom; this latter shews the progress of morality.*

Thus much being premised, the author now entreats the reader to proceed with candour to the perusal of the following sheets.

An Essay in Vindication of the Continental Colonies of America.

In the 316th page, 2d edition, of the *Theory of moral sentiments*, by Mr Smith, Professor of morality in the college of Glasgow, are these words:

There is not a negro from the coast of Africa, who does not, in this respect,† possess a degree of magnanimity, which the soul of his sordid master is scarce capable of conceiving. Fortune never exerted more cruelly her empire over mankind, than when she subjected those nations of heroes to the refuse of the jails of Europe, of wretches who possess the virtues neither of the countries which they go to, nor of those which they come from, and whose levity, brutality, and baseness, so justly expose them to the contempt of the vanquished.

That I may give my reader a just idea of the equity and humanity which could dictate this extraordinary paragraph, I must beg leave to lay before him two things. First, An authentic account of the African slaves, who are the objects of its praise and compassion; and, secondly, Of the American colonists, who are here the objects of as bitter an invective as ever fell from the tongue of man.

* See Dr Smollet's *Voltaire*, vol. 4. p. 200.

† In fortitude.

An Account of the Africans.

It is not to our purpose to give any account of the inhabitants of Africa in general, but of those parts only which furnish us with slaves, namely, of Negroland and Guinea.

We learn, from the most authentic accounts, that the negroes in Africa have just as much natural sagacity as fits them for very dextrous rogues.

They are so prone to lying, that they exercise this faculty on every occasion.* No contracts are sacred with them, for they break these whenever they have the least prospect of advantage, and sometimes out of mere wantonness. This genius prevails in all their compacts; as well domestic as national. It is on this account that their marriages are perpetually violated. They either expose their wives publicly for gain, or employ them as decoy-ducks for strangers, whom they, by that means, surprise and plunder.† In private life they are frequently guilty of the most horrid murders.‡ It is usual for one nation to fall upon another without either cause or warning, but as whim or villany shall prompt. In the field, they are without either discipline or courage.

“Their natural cowardice,” says Churchill, “is the reason that few men are killed in battle; for they are so extremely timorous, that as soon as ever they see a man fall by them, they betake themselves to their heels, and run home with all possible expedition.”§ The cruelty which is inseparable from cowardice, impels them, when victorious, to the most savage barbarities. They slaughter their vanquished or defenceless foes with the most unbounded fury: nor age, nor innocence, nor impotence is spared: one bloody and undistinguished massacre overwhelms them all. We read, with horror, of their sucking the blood of their enemies; of their ripping open the teeming womb, and dashing the infant against the stones, in view of the agonized mother. Some they dismember alive, and leave to groan out their miserable lives in helpless anguish. Blood and desolation attend their steps, devoting every thing that is defenceless.|| Thus do they endeavour to satiate their savage appetite for blood; an appetite that burns with implacable fury, and

* Churchill's collection, vol. 5. p. 236.

† *Ib.* p. 242.

‡ *Ibid.*, p. 236.

§ Churchill's collect. vol. 5. p. 294.

|| *Ib.* p. 236. 331.

urges them to the most horrid barbarities, in violation of every sentiment of justice, humanity, or magnanimity. At their burials they sacrifice slaves, and, what is horrible above all names of horror, they have a market on purpose to answer this diabolical demand.* Cruelty, cunning, perfidy, and cowardice, are their characteristics. In their trade with the Europeans they practise all manner of frauds. Their method of feeding is not one remove above absolute brutes; no degree of corruption will deter them from preying on whatever they find, and that in the most voracious and filthy manner.† Their religious worship is perfectly conformable to the universal depravity and barbarism of their natures. They are involved in the most gross idolatry, worshipping almost every thing, animate and inanimate, with the most stupid reverence.‡ To snakes of every kind they pay a constant worship, and they honour the devil with what may be truly termed *infernal rites*.§ But endless were the list of their barbarities. I have already recounted enough to shock the most common humanity; I shall therefore close the ungrateful subject with Baron Montesquieu's account of this people.

"The greatest part of the people on the coast of Africa," says he,

are savages and barbarians. The principal reason of this is, I believe, that the small countries capable of being inhabited, are separated from each other by large and almost uninhabitable tracts of land. They have gold in abundance, received immediately from the hand of Nature; but they are without industry or arts. Every civilized nation is therefore in a condition to traffic with them to advantage, by raising their esteem of things of no value, and receiving a very high price in return.||

To this I shall add the character which the author of the account of America gives them as slaves; an author who cannot be suspected of partiality. In his history of the Spanish settlements, he says, "The blacks here, as they are imported from Africa, have the same character as the blacks of our colonies, stubborn, hardy, of an ordinary understanding, and fitted for the gross slavery they endure." "Nothing," says he, in another place, "could excuse the slave-trade but the necessity we are under of peopling our colonies, and

* Churchill's collect. p. 285.

† Ibid. p. 255.

‡ See Harris's collection.

§ Ibid.

|| Spirit of laws, vol. 2. p. 22.

the consideration, that the slaves we buy were in the same condition in Africa, either hereditary, or taken in war. I know they are stubborn and untractable, and must be ruled with a rod of iron." It is this stubborn, stupid, and untractable disposition to which it hath pleased some to give the name of *magnanimity* and *heroism*.

——— O name!

O sacred name of *magnanimity* profan'd!

Magnanimity, according to Mr Hutcheson, is an elevation and firmness of soul, which no circumstances of fortune can move; aiming solely at moral excellence in all its conduct. The opposite extreme is pusillanimity, or cowardice, rendering a man useless and miserable.* Which of these characters is most applicable to the disposition of the negroes, I shall leave to the determination of the candid reader. Abandoned indeed, beyond all instance of depravation, must they be, whose stronger vices should justly expose them to the contempt of this people.

Of the Continental Colonies of America.

VIRGINIA, Maryland, and the Carolinas, are the chief and almost only colonies on the continent, which employ the African slaves. On these, then, the censure must fall heaviest, and from these only I shall endeavour to repel it.

Account of Virginia.

In the year 1584, Sir Walter Raleigh, attended by many persons of eminence, and many reputable merchants, with letters patent from her Majesty Queen Elisabeth, settled the first British colony in North America, and, in honour of his Queen, called it, in general, *Virginia*.

That settlement, however, was not what we now properly call *Virginia*. Innumerable losses had almost utterly destroyed the colony, notwithstanding the reinforcements sent from time to time, under Sir Thomas Gates, Sir Richard Grenville, Sir George Summers, and others; when the Lord Delaware, a nobleman of very uncommon virtues, arrived in the bay of Chesapeake, and, with his own men and the remainder of the former colony, established on that bay a settlement, which gave birth to the present colony

* Hutcheson's Ethics, p. 88.

of Virginia. The wisdom and care of this worthy Lord made the young colony prosper; and in this condition he left it under the governance of a son, who inherited his father's virtues. A council he had to assist him, composed of Sir Thomas Gates, Sir George Summers, Sir Ferdinand Wenman, the Honourable George Peircy, and Mr Newport.

Such was the settlement of Virginia, than which, perhaps, no colony had ever a nobler foundation. Her founders were distinguished, even in Britain, for rank, for fortune, and for abilities. Not urged by vice or want, they voluntarily exposed themselves to a thousand hardships, to extend the dominion of their country. They braved the dangers of an unknown sea and savage land, to enrich her commerce, and exalt her power. I know it will be said, their views were not so disinterested; they acted with the hope of promoting their own fortunes. Perhaps they might; yet this detracts not from their merit. That individual who best promotes the interest of the public with his own, is most laudable. The nature of man admits not of such disinterested action, and the nature of society seldom demands it; for the good of the whole is rarely to be separated from that of the individual.* Were such action to be the criterion of a good citizen, how few would stand the test? Does the merchant wind through the laborious and uncertain labyrinth of commerce for the public, or for his own emolument? does the warrior brave the field of death, or tempt the hideous wave, to serve his country or himself? It cannot therefore be denied, that the founders of this colony deserved the highest veneration and esteem of their country.

——— *Coelestes animae!*

*Nulla dies unquam memori vos eximet aevo!*²

And here I cannot help lamenting the unequal condition of their descendants the present inhabitants. Their manufacturing hands tied up; their commerce confined;† and their staple commodity oppressed with such intolerable exactions, that it yields to the labouring planter scarce one tenth of its original value. By these means they are subjected to the arbitrary impositions of the British merchants, who fix, like cankers, on their estates,

* We shall endeavour to demonstrate, says my Lord Shaftesbury, that to be well affected to the public interest and one's own, is not only consistent, but inseparable. *Characteristics*, vol. 2. p. 59.

2. ["Glorified spirits! No day will ever remove you from the memory of this age!"]

† See Postlethwayte's dictionary, art. *Tobacco*.

and utterly consume them. Every means that the most confined and puny policy can suggest, are employed to depress them, and prevent their growth! They are treated, not as the fellow-subjects, but as the servants of Britain. The French colonies were nourished and endeared to their mother-country by the most humane and gentle government;* whilst here the hardest discipline is used to check their growth, and alienate their affections from Britain. When shall we learn the virtues, and shun the vices of our enemies? Here let me thank, thank from my heart, the generous man,† who, despising the little, abject, selfish, coward politics of others, has remonstrated against these grievances in the colonies with equal humanity and truth. But solitary is the voice of universal benevolence, and like the notes of the dying swan, sweet, but unavailing.

I return to my subject. The colony continued to flourish and increase, though gradually, until the unfortunate reign of Charles I. when it received a considerable reinforcement in the depressed royalists, who, flying from the ruin that threatened them at home, took refuge in Virginia. This colony long resisted the efforts of Cromwell and the parliament to subdue them, nor was it vanquished at length but by stratagem; and it is said to have been the first which threw off the yoke, and proclaimed King Charles II.

Since that period the colony has received gradual increases by men from Britain, and other countries, who chose to seek their fortunes in a new and rising world. Before that time, in the year 1620, began a trade, the most unfortunate that could be devised, namely, the importation of African slaves, and, unhappily, it has to this day continued to increase.

In the reign of Charles II. an act passed for the transportation of convicts to the British plantations in America.‡ Virginia received her part of those who were transported. Amid such a number as are condemned, some will often be really innocent. Others, though guilty of the fault for which they suffer, may have been driven to it by the insupportable demands of want. For trespasses of this kind proceed oftener from necessity and indigence than from any wanton or ungovernable propensity to vice. When such criminals are transported to a country where there is little opportunity, and still

* See the account of America, vol. 2. p. 40. on the French policy with regard to their colonies.

† The author of the account of America.

‡ See Cay's abridgment, vol. 1. p. 532.

less necessity for stealing, it is not surprising that they reform, and become honest men. We cannot otherwise account for the extreme rarity of criminal executions in this colony. But such persons have been very rarely the founders of families which became afterwards eminent; there are certainly few, if any, in this colony, which can be traced from so mean an original.

The government of Virginia, at this time, is pretty exactly conformable to the constitution of England. A governor represents the King. The council is composed of twelve gentlemen, appointed by the King and council in England, and invested with the title of Honourable. The lower house consists of members elected by their respective counties. The counsellors preside at the general court, and each county has its peculiar court, in which justice is impartially administered. The established and very universally received religion, is that of the church of England. This colony distinguished itself in the late war, by contributing largely to its support in men and money; for the behaviour of her troops I appeal to the accounts of the campaigns in America.

I shall finish this account with the character of the inhabitants of this colony, given by a gentleman, whose veracity and knowledge cannot be questioned. "The inhabitants of Virginia are a cheerful, hospitable, and many of them a genteel, though somewhat vain and ostentatious people. They are, for the greater part, of the established church of England, nor until lately did they tolerate any other."*

"The same author, in speaking of the negroes, says, "These do not here stand in need of such recruits, as in the West Indies; they rather increase than diminish; a blessing derived from a more moderate labour, better food, and a more healthy climate."

I am sensible it is a common creed, that the negro slaves here are very barbarously treated: A creed that takes its rise from the reports of wretches, who frame falsehoods to catch the ear of vulgar credulity, or to gratify that strange propensity in some minds to calumny and misrepresentation. But no creed can be more ill founded, or more repugnant to truth. How it could ever have operated on a man of sense, as it seems to have done on Mr Smith, is to me really inconceivable. I have travelled through most parts of Scotland and Ireland; and I can safely assert, that the habitations of the negroes are palaces, and their living luxurious; when compared with those of the

* Account of America, vol. 2. p. 217.

peasants of either of these countries. There is, I confess, an inexpressible misery, to the generous mind, in the very idea of slavery; but abstracting this, the condition of those slaves is far happier than that of the Scotch or Irish vulgar.

Of Maryland.

LORD BALTIMORE, a Roman-Catholic nobleman, in the year 1632, obtained a patent from King Charles I. for a part of Virginia. Soon after he sent his brother, the Hon. Leonard Calvert, accompanied by a number of Roman-Catholic gentlemen, to settle the land so granted. This they executed, and, in honour of the Queen, called the colony *Maryland*. The uneasy situation of the Catholics in England, especially at a time when their religion was an object of public jealousy, as well as odium, made them frequently seek an asylum in this colony; where they lived in safety and happiness under a proprietor of their own persuasion. This Lord was not, however, so bigotted a Catholic, but that he made his religion listen to political motives. He, therefore, gave his assent to an act, permitting a free and unquestioned exercise of their religion to all who professed Christianity. Encouraged by this toleration, men of every denomination, who were uneasy in their circumstances, from whatever cause, pursued a happier fortune in Maryland. The colony, by these means, increased daily, and has, ever since, enjoyed a state of almost uninterrupted tranquillity. One revolution it has suffered, namely, that of having the religion of the church of England established in it.

The inhabitants of Maryland are in general richer than their neighbours of Virginia, because more attentive to merchandise, and to their own interests; but they are therefore less sumptuous, as well as less hospitable.

Carolina, North and South.

The first settlement in this country was made by the French, under the celebrated, but unfortunate, Admiral Chatillon. The inhuman tragedy of St Bartholomew, which cut off this illustrious man, destroyed also this settlement, the fate of which was grafted on his. The religious politics, which fatally engaged the French court at this period, diverted their attention from external objects, and therefore from the support of this colony. The country lay thus entirely neglected until the year 1663, when a proprietary, composed of the noblest personages in Britain was impowered to settle

there an English colony. This was executed upon a plan drawn up by the illustrious and learned Mr Locke. Its success, however, was not answerable to the brilliancy and wisdom of its foundation. Intestine broils had almost reduced it to ruin; when it was guarded from the destruction that hung over it, by the interposition of the British government. In 1728, the whole country was divided into the two separate districts of North and South. These were settled on the same establishment with Virginia and Maryland. The prosperity of the colony may be dated from this period; for since that time its inhabitants have continued to flourish, and are now both rich and happy; blessed with a very delightful country, and a prospering commerce. Charlestown is the chief town of note in either colony. "This," says the account of America,*

is one of the first in North America, for size, beauty, and traffic. The planters and merchants are rich and well-bred; the people are showy and expensive in their dress and way of living; so that every thing conspires to make this by much the liveliest and politest place, as it is one of the richest too in all America.

Having thus presented my reader with a true account of the African slaves, and of the colonies which chiefly employ them; I must entreat him to read, once more, Mr Smith's charge.

There is not a negro from the coast of Africa, who does not, in this respect, possess a degree of magnanimity, which the soul of his sordid master is scarce capable of conceiving. Fortune never exerted more cruelly her empire over mankind, than when she subjected those nations of heroes to the refuse of the jails of Europe, of wretches who possess the virtues neither of the countries which they go to, nor of those which they come from, and whose levity, brutality, and baseness, so justly expose them to the contempt of the vanquished.

We have seen that this his nation of heroes is a race the most detestable and vile that ever the earth produced. On the contrary, that the inhabitants of the colonies are descended from worthy ancestors, from whom he has not proved them to have degenerated, whilst others acknowledge them to be, at this period, a humane, hospitable, and polished people. Is it then to be

* Vol. 2. p. 258.

conceived, that the former could merit the title of a nation of heroes, or the latter the ignominy of being styled, the refuse of jails, inhuman, brutal, base? Could prejudice operate so strongly on a human mind, as to make it sacrifice to an ill-conceived resentment, every principle of justice and humanity? Should not his own interest have taught him to reflect, that calumny, unsupported by proof, affects those only who utter it. Can the mind of a man of sense, a philosopher, a moralist, be so strangely perverted? Prejudice is indeed a stain that will fasten on the best minds, yet that mind cannot surely be ranked among the best, wherein it sinks so deep as to produce such an outrageous trespass against truth.

The ingenious theory of morals has, very deservedly, gained the world's esteem; and I am sorry it should contain any thing so unworthy of its general character. I am sorry, because I admire it, and wish I could have esteemed its author. It strikes me indeed at once with astonishment and concern, that the same heart which could dictate the goodness of the one, should ever be debased with the malignity of the other.

As the question touching the encouragement or abolition of slavery, is of the utmost importance to the colonies I have here presumed to vindicate; I shall not, I hope, be blamed, if my zeal should prompt me further to offer a few remarks on this subject.

Life and liberty were both the gifts of GOD. In a state of nature they were both equally sacred. When the increase, and other necessities of men, made the establishment of societies requisite; it followed necessarily, that a portion of natural liberty should be sacrificed, to the more effectual preservation of the rest. This first subjected men to laws. The power of enacting these was lodged, by a majority of suffrages in each society, in a select number, denominated from thence *the legislative body*. Penal laws became soon necessary to the well-being of society; and were proportioned to the nature of offences. For atrocious crimes, a deprivation of life was the most general punishment. Now, as liberty was subjected to the same power which made life the atonement for certain crimes, that might certainly have been sacrificed for similar or different offences. In this view therefore the origin of slavery seems just and legal; whether it be equally political, is not the present question.* Let us now examine whether it may be lawful on any other foundation. Puffendorf admits two lawful causes

* The reader, if he pleases, may see it discussed in Montesquieu's spirit of laws, vol. 1.

of slavery, namely, consent and force.* But, with submission to so great authority, I cannot help thinking, that neither of these is founded in justice. The introduction of slavery into any society is a matter of very great importance; it cannot, then, be presumed, that such an innovation ought to be at the option of every individual; whose consent alone can, therefore, never constitute him a slave. But further, every member of society owes some obedience and duty for the protection and immunities he enjoys; nor can he refuse those, without renouncing these. Whoever then consents to be a slave, as he, by this act, yields all his duty and obedience to his master; is no longer entitled to any privileges or protection from society. A slave therefore of this kind would be constantly an outlaw. Force has never been esteemed sufficient authority for enslaving, except in the case of a conqueror and his captive: nor is it so here; since it is founded on a right which is itself unjust, I mean the power of inflicting death on a prisoner. I have Mr Hutcheson's authority for asserting, that conquerors have no right to murder captives in cold blood;† and it is plain from the nature of things, that they have no right to kill a prisoner, unless their own immediate safety absolutely requires it. When two men are in arms, they are both equally obnoxious, and may mutually destroy each other; but when one has laid down his arms, and submitted himself a prisoner, he ceases to be that dangerous person, and cannot justly be treated as such; nay more, he is in the place of one who has implored protection, which his adversary may, it is true, refuse him, or may confine him; but he cannot slay him, without violating the laws of justice and humanity: so that, unquestionably, all civilized nations concur in detesting the murder of prisoners in cold blood.‡ Grotius indeed thought very differently, when he said, *Nec tempore ullo excluditur potestas occidendi bello captos*;§³ an inhuman assertion, indeed, and more worthy an African savage than an European philosopher. He has adduced examples to confirm his opinion; but they are by no means conclusive. Even modern times may furnish some instances of captives put to death. That of Agincourt is remarkable: the situation of

* Vide book 6. p. 614.

† Moral philosophy, vol. 2. p. 210.

‡ Montesquieu's spirit of laws, vol. 1. p. 337.

§ De jure belli ac pacis, lib. 3. p. 689. {"On the Law of War and Peace."—Tr.} 3. ["Nor at any time is the power of killing those captured in war excluded."]

the victors there was certainly critical;* yet could it be thence concluded to be legal at all times? He undoubtedly founded his opinion more upon ancient dogmatism than upon ancient practice. For the truth of this, I appeal to the histories of Greece and Rome, in their more enlightened ages. The practice of barbarous nations, does not influence the question. It would be absurd, to draw the principles of justice from the practice of those, who owned no law but their own savage wills. No opinion can be of more weight than that of Baron Montesquieu, and it is clear here and pointed.

“From the right of killing,” says he,

politicians have drawn that of reducing to slavery; a consequence as ill grounded as the principle. There is no such right as reducing people to slavery, but when it becomes necessary to the preservation of the conquest. Preservation, but never servitude, is the end of conquest, though servitude may be sometimes a necessary means of preservation; even in that case it is contrary to the nature of things, that the slavery should be perpetual.†

In another place he has determined it to be expressly contrary, to both natural and civil law.‡

Our question relates solely to perpetual slavery; which appears to be unjust from any other origin, than the legislative power in each society.

To determine, then, whether the slavery imposed on the Africans be legal; we are only to examine on what it is founded. The most authentic accounts of Africa inform us, that the slaves we procure are such as have been taken in the wars of their native kings, and sold, as is their custom, to the European factors; or of such as have been trappanned into servitude by the Europeans, or by their own countrymen, who are allured to such wickedness by European bribes. As the former method is unjust, the latter is detestable; nor can any thing be more shocking to justice and humanity, than to encourage such barbarous tyranny, and such abominable craft.

* Vide Dr Smollet's history of England, vol. 4. p. 326. We have a far more lawless and cruel instance of this under the Marquis of Santa-Cruz, the Spanish general, who massacred the prisoners he took in an engagement with Don Antonio, his master's competitor for the throne of Portugal. See *Dr Smollet's Voltaire*, vol. 4. p. 304.

† Spirit of laws.

‡ Ibid. lib. 15. chap. 2.

The violation, however, of justice and humanity, though great, is not the only evil that attends this encouragement. Aristotle, long ago, declared, that slaves could have no virtue; but he knew not any who were so utterly devoid of any semblance of virtue as are the Africans; whose understandings are generally shallow, and their hearts cruel, vindictive, stubborn, base, and wicked. Whether this proceeds from a native baseness that fits their minds for all villany; or that they never receive the benefit of education, I shall not presume to determine. Slavery indeed, of every kind, admits of little cultivation, and must therefore be always an enemy to virtue and science,* which will be in danger wherever it prevails. Longinus, and with him many eminent men, have asserted, that even such a slavery as attends despotic government, is injurious, nay absolutely suppressive of all the noble exertions of the human mind. This they support by the example of many states, wherein the sciences flourished during their civil liberty, and were blasted immediately on the introduction of despotism. It must, however, be confessed, that modern times present many exceptions to this opinion; for we now see both arts and sciences attain the highest perfection under arbitrary governments.† Yet there can be no question but that the slavery of which we are treating must be injurious to science; since the minds of our slaves are never cultivated. The same reason will always render it unfavourable to trade and manufactures, which have ever flourished in free states. Commerce especially flies from oppression, and rests only under the wings of liberty.‡ If slavery then be necessarily an enemy to arts and sciences, good policy would surely direct us to suppress it. The danger too that threatens a state from the insurrections of slaves, furnishes a very strong argument against their admission. History, both ancient and modern, abounds with

* Slavery, says Longinus, may deservedly be called *the prison of the soul, and the public dungeon*. How great an evil it was in Homer's opinion, may be learned from the following lines:

Ἥμισυ γὰρ τ' ἀρετῆς ἀποαίνυται Ἐν ῥόπα Ζεὺς
Ἀνέρος, εἴτ' ἂν μιν κατὰ δούλιον ἤμαρ ἔλθῃσιν.

Odyssey, book 17, lines 322–23.

*Jove fix'd it certain, that whatever day
Makes man a slave, takes half his worth away.*

POPE.

† See this point ingeniously discussed in David Hume's *Essays*, vol. 1. p. 151.

‡ Montesquieu on commerce, *Spirit of laws*, vol. 2.

examples of the reality of this danger. The Helots* had nearly destroyed the Spartan government, which so long derided the assaults of other foes. Rome herself, even in the meridian of her power and glory, was on the brink of destruction from the slaves whom she despised. Our ears are every day shocked with the barbarities, which attend the insurrections of the slaves in the American islands. Should not these warn the continent? why should those colonies trust that they alone, of all the nations which have yet tried, will escape the miseries of such rebellions?† It is computed, that in the colony of Virginia the slaves exceed the freemen by more than one third; and that two or three thousand are yearly imported. Would not this be a fearful odds, should they ever be excited to rebellion? Much confidence may seem to arise from the native pusillanimity of this people, than whom the earth, I believe, never bore a more abject, coward race. But dastardly as they are, under an able leader, they may do much mischief; and as cowards are invariably cruel, should they ever be superior, not a shadow of mercy could be expected. History, in numberless instances, authorises this apprehension; and I remember, to this purpose, a remarkable saying of an experienced Athenian general, "That he would prefer an army of stags with a lion general, to an army of lions commanded by a stag."

"Slavery," says the illustrious Baron Montesquieu,

is in its own nature bad; it is neither useful to the master, nor to the slave. Not to the slave, because he can do nothing through a motive of virtue; not to the master, because, having an unlimited authority over his slaves, he insensibly accustoms himself to the want of all moral virtues, and, from thence, grows fierce, hasty, severe, choleric, voluptuous, and cruel.‡

Happily this prediction is not yet verified. But can there be a more urgent reason for suppressing slavery than the very danger of it? Can any curse be apprehended, worse than such a depravation? A depravation, at which humanity shudders, and reason stands appalled. I know it has been argued, that none but negro slaves could undergo the arduous toil of American culture; exposed or to the fervid heat of summer, or winter's piercing frost. But

* Plutarch's life of Cimon. Stanyan's Grecian history, vol. 1. p. 297.

† Baron Montesquieu is of opinion, that nothing more assimilates a man to a beast, than living among free men, himself a slave. Such people are the natural enemies to society, and their numbers must always be dangerous. *Spirit of laws*, vol. 1. p. 348.

‡ Spirit of laws.

this is all imaginary. The freeborn Briton, in many labours, sustains fatigues; that would make the pusillanimous heart of a slave, faint within him. Nor is this wonderful. The will should ever animate the deed; the will of a slave is never with his arm, whose nerves are therefore unstrung, and its vigour damped.

To sum up all, it is evident, that the bondage we have imposed on the Africans, is absolutely repugnant to justice. That it is highly inconsistent with civil policy; first, as it tends to suppress all improvements in arts and sciences; without which it is morally impossible that any nation should be happy or powerful. Secondly, as it may deprave the minds of the freemen; steeling their hearts against the laudable feelings of virtue and humanity. And, lastly, as it endangers the community by the destructive effects of civil commotions. Need I add to these, what every heart, which is not callous to all tender feelings, will readily suggest; that it is shocking to humanity, violative of every generous sentiment, abhorrent utterly from the Christian religion: for, as Montesquieu very justly observes, "we must suppose them not to be men, or a suspicion would follow, that we ourselves are not Christians." And here I must beg leave to repeat a former quotation, as it requires some remarks, which are most proper in this place. The ingenious author of the account of America says,*

Nothing indeed could at all excuse the slave-trade but the necessity we are under of peopling our colonies, and the consideration, that the slaves we buy were in the same condition in Africa, either hereditary, or taken in war.

There cannot be a more dangerous maxim, than that necessity is a plea for injustice. For who shall fix the degree of this necessity? What villain so atrocious, who may not urge this excuse; or, as Milton has happily expressed it,

——— *And with necessity,*
The tyrant's plea, excuse his dev'lish deed?

That our colonies want people, is a very weak argument for so inhuman a violation of justice; which, agreeable to Justinian, is *constans et perpetua voluntas, jus suum cuique tribuendi*.⁴

* Vol. 2. p. 128.

4. [(Justice is) "the constant and perpetual will to give to (each man his own due)."]

Nor is there more validity in the latter argument. Shall a civilized, a Christian nation, encourage slavery; because the barbarous, savage, lawless African hath done it? Monstrous thought! To what end do we profess a religion whose dictates we so flagrantly violate? Wherefore have we that pattern of goodness and humanity, if we refuse to follow it? How long shall we continue a practice; which policy rejects, justice condemns, and piety dissuades? Shall the Americans persist in a conduct, which cannot be justified; or persevere in oppression, from which their hearts must recoil? If the barbarous Africans shall continue to enslave each other, let the daemon Slavery remain among them, that their crime may include its own punishment. Let not Christians, by administering to their wickedness, confess their religion to be a useless refinement, their professions vain, and themselves as inhuman as the savages they detest.

I shall not presume to prescribe any method, by which they might better accomplish the purposes they mean to answer by slaves: but I observe it is the opinion of Mr Postlethwayte, that the colonies might be more advantageously peopled from Europe; and that it would be for the interest of the Europeans, to abolish the slave-trade; which, though profitable itself, is yet an insuperable bar to other more valuable improvements in Africa.*

Had Mr Smith, whose unmerited censure gave birth to this essay, instead of listening to the gratification of a slanderous prejudice, exerted his abilities, in dissuading the Europeans from such a barbarous trade; how great, how noble had been his deed!

How had he bless'd mankind, and rescu'd me.

FINIS.

* See his Commercial dictionary.

[Nicholas Bourke],
The Privileges of the Island
of Jamaica Vindicated
(London, 1766)



THE SECOND major constitutional crisis in Jamaica since the middle of the eighteenth century, the privilege controversy raged for more than eighteen months from December 1764 through the summer of 1766, brought legislative government in the island to a complete halt, and resulted in the attempted impeachment and eventual recall of Governor William Henry Lyttleton. The dispute arose when Lyttleton tried to enforce an ancient royal instruction forbidding governors to allow colonial legislators the conventional privileges of members of the House of Commons in Britain, privileges that the Jamaican Assembly had long exercised as a matter of course. Written by Nicholas Bourke, an Anglo-Irish lawyer who had migrated to Jamaica about 1740 and become a large landowner and prominent political leader, this pamphlet, which was published in Kingston in 1765 and republished in London in a somewhat fuller edition in 1766, presented the Jamaica Assembly's view in its quarrel with Lyttleton over the nature, extent, and origins of the parliamentary privileges of the Assembly. It is perhaps the most systematic exposition of settler West Indian political thought, indeed, one of the two or three most impressive expositions of early modern colonial British American political thought in general.

In a dazzling display of learning in English, Irish, and Jamaican constitutional, legal, and parliamentary history, Bourke laid out the traditional colonial case for the entitlement of British colonial settlers to the traditional

rights of Englishmen and argued that these included the privileges of the Assembly, which he argued were absolutely essential to provide the British "people of this Colony [with] that protection against arbitrary power, which nothing but a free and independent Assembly can give." Associating Lyttleton's position that whatever privileges the Assembly might have were merely "concessions from the crown" with "the absurd and slavish Doctrines of DIVINE and HEREDITARY RIGHT and PASSIVE OBEDIENCE and NON-RESISTANCE" championed by Stuart kings in seventeenth-century England, Bourke depicted Jamaican legislators as "men zealous for the constitution and liberties of their country" and compared them favorably to those "great men" in the English House of Commons who "stood forth at that critical period, in defence of the Constitution." To impose any "form of Government, repugnant to the English constitution" and incompatible with traditional English forms of governance, Bourke contended, would be to degrade Jamaica's settler population "from the rank of Englishmen, and" reduce them "to a condition of Slavery," a contention that struck deep resonance in a political society intimately acquainted with enslavement. (J.P.G.)

THE
PRIVILEGES
OF THE
Island of JAMAICA
VINDICATED;
WITH AN
IMPARTIAL NARRATIVE
OF THE LATE DISPUTE
BETWEEN THE
Governor and House of Representatives,
UPON THE CASE OF
Mr. OLYPHANT,
A Member of that House.

*Ego certe, quin cum ipsa re bellum geram; hoc est, cum regno, et imperiis extraordinariis, et dominatione, et potentia, quae supra leges esse velit. Epist Bruti ad Atticum.*¹

Jamaica Printed: London Reprinted,

For J. WILLIAMS, at No. 38, in Fleet Street; J. ALMON, in Piccadilly;
S. BLADON, in Pater-noster-row; and RICHARDSON and
URQUHART, at the Royal Exchange. 1766.
[Price Two-Shillings and Sixpence]

1. [(No situation of slavery will ever be so attractive) "that I would not wage war with the very principle itself, that is with kingship and capricious commands and tyranny and power that would wish to be above the laws. *The Letters of Brutus to Atticus.*"]

The Preface.

The following letter was not originally intended for the public, but for the satisfaction of a gentleman at whose request it was written; and whose knowledge of the subject made it unnecessary to dwell upon any circumstances, that did not immediately relate to the chancellor's right of discharging a commitment by the Assembly. As that gentleman has thought proper to commit it to the press, and the letter is by this means become the property of the public, it will not, it is presumed, be thought impertinent in a preface, to enlarge upon the steps that led to, and happened in consequence of that unlucky measure, which has occasioned all the contest between the governor and the people of Jamaica.

It is the common practice of men, who are engaged in the wrong side of a controversy, to keep as much as possible from the main question, and divert the attention of the public to some circumstance, to which it does not relate; especially, if they can fix upon one that is popular. This art has been very fully put in practice in the present controversy, as the honest endeavours of the assembly, to repel a most unpreceded and unconstitutional attack upon their jurisdiction, has been falsely and impudently represented, both here and in England, as a mean and scandalous attempt to screen their members, from the payment of their just debts, by assuming privileges, to which they are not entitled. A full and plain representation of facts, will be the best way of doing justice in this case, as it will place the conduct of the contending parties in their proper light, and enable the impartial world to form a right judgment of the controversy. Such a representation is here endeavoured to be given, and will, it is hoped, not be unacceptable to the reader.

The sessions of assembly which began the 17th of OCTOBER, 1764 was opened in the usual manner, with a speech from the governor; and never did there surely come together, an assembly better disposed to carry on the public business with dispatch and harmony, and support administration; for it will appear by their minutes, that they were, in the whole course of the session, as unanimous in raising the supplies, and doing all that his excellency recommended to them, as they were in defending the rights of the people when they were, towards the latter end of it, so unhappily invaded. Such was the general disposition to oblige the governor, that nothing was refused, which he asked; scarcely any thing omitted, which he seemed desirous of having done; insomuch that, although there had been many rumours

of dissatisfaction among the suitors of the court of chancery, for want of this court's being more frequently held; yet, the governor having in his speech thought proper to mention, how many causes he had dispatched, and how few there remained upon the list undetermined, the house would not enter into any examination of the facts, but took them upon the governor's word; and in their address to his speech, echoed back all the compliments and praise, that he could expect or wish for, from this part of it.

There was scarcely a debate, nor any thing that look'd like party in the house; and business was in great forwardness on the 8th of December, when a complaint was made of a breach of privilege, committed by Richard Thomas Wilson, a deputy marshal's deputy, in executing a writ on the coach-horses of John Olyphant, a member of the house; in consequence of which, he, and Pierce Cooke, and Lauchlan M'Neil (who appeared to be aiding and assisting in executing the said writ,) were, by order of the house, severally taken into custody for breach of privilege. The generality of the members were, indeed, sorry to see a matter of this kind brought before the house, especially so late in the season, as it would retard the progress of more important business, and protract the sessions. The case of a member's availing himself of this privilege, was very far from being favoured by the house; and it is a truth, that a very great majority of the members were against entertaining the matter, if they could with any justice have avoided it; insomuch, that they set themselves to enquire, whether the privilege in question was such, as every member had a constitutional right to. Upon this occasion, the ablest lawyers in the house were consulted, and many volumes of law books were brought in; from which it did appear, to the conviction of every man in the house, that the privilege, claimed by Mr. Olyphant, was a lawful and constitutional right; and if he insisted upon it, that it could not, with justice or propriety, be refused him. He did insist upon it. What could the house do? They ordered the delinquents into custody, but still without any asperity towards them, and with so little intention of using them with severity or harshness, that the house would most certainly have released them, upon the slightest concession: and Pierce Cooke, one of the parties and the plaintiff in the action, was told by several of the members, that he had only to petition (according to the forms, which the house prescribes, in the case of all those, who are in custody and not members) and set forth, that he did not intend to offend the house, and he would be discharged. This easy method of getting released was declined, and so low was

the assembly held, by the said Pierce Cooke and Laughlan M'Neil, that they did not attempt to make any application for their liberty to the house, but applied, in the first instance to the chancellor for an Habeas Corpus.

All courts of justice (even the meanest quarter sessions) have a power of committing for contempt, and it is a piece of decency generally observed among themselves, that no court will discharge a commitment by another for contempt, in the first instance, and where the party committed has not made application to the court, by which he was committed. It was not imagined, that the governor would attempt to degrade, below the meanest quarter sessions, an assembly, which had ever shewn themselves ready to support his administration and consult his honour. A man in his station, possessed of a very moderate share of spirit and good sense, might with great ease and dignity to himself, and only by consulting the respect due to the representatives of the people, have repressed the insolence of these men, and insured a continuance of that peace and harmony in the country, which had, till this unhappy period, distinguished his excellency's administration, if, when he was first applied to, he had signified to the delinquents, that it was their duty to go by petition to the house, and that their declining to do so was an insult upon the house, which he could not, and would not give any countenance to, it is hardly possible, that they would have persisted in their insolence. Unhappily another method was adopted. The governor, after having granted an Habeas Corpus,² did on the 18th of December prorogue the assembly until the next day; having first passed some of the bills, that were before him, and rejected others, particularly one of the money bills for subsisting the troops.

It appeared to the members, that this prorogation was made by the governor, to avoid his determining upon the commitment of these men; and it was therefore considered by them, as a tacit declaration of his power, as chancellor, to examine and discharge their commitments; and most certainly, as an encouragement to the delinquents, to persist in their insolence. The assembly found themselves, therefore, called upon by an indispensable duty, to assert their rights and vindicate their jurisdiction. It is part of the 26th of the standing rules of the house, that all persons in custody at the time

2. [Literally, "You have the body," i.e., a writ directing the sheriff that "you have the body" for confinement and are required to produce a charge in court to justify imprisonment.—Tr.]

of a prorogation, shall be taken into custody the next session, and that the speaker issue his warrant accordingly.

In compliance with this rule, when the house met on the 19th of December, Richard Thomas Wilson, Pierce Cook, and Lauchlan M'Neil, were again taken into custody, and in compliance with what they owed themselves and their country, the house came unanimously to several resolutions, declaratory of their legal rights and privileges, which the reader will see in the appendix; one of these only is inserted here, as it will shew the temper and moderation of the house, and how far they were from claiming privileges, inconsistent with justice or the rules of the constitution. It is this. Resolved, *Nem. Con.*³ *That no member of this house hath any privilege in regard to his goods and chattles, except such as are necessary for his accommodation, during his attendance on the house.*

After vindicating, in this calm, orderly and moderate manner, the constitution and authority of the house, they went with the utmost alacrity and dispatch into the public business, and were proceeding, with all possible application, to bring up the time that was lost by the prorogation, and restore matters to their former condition. Every man wished and hoped, that the delinquents would have come to a just sense of their disrespect to the Assembly; and a very great majority of the house would, in that case, have agreed to release them. But these men, encouraged by what had passed, persisted with the utmost contempt, in declining to make any application to the assembly; and again applied to the governor, as chancellor, for an Habeas Corpus, which was granted.

Very few in the assembly imagined, that the chancellor would venture upon so desperate a measure, as that of discharging a commitment by the assembly; no considering person could reasonably suppose, that a man of the governor's reputed understanding and calmness, would, upon mature deliberation, do an act, that must unavoidably force the assembly into measures, destructive of that harmony, which had till then so happily united their councils, in support of his administration.

Nothing could exceed the astonishment and concern of the assembly, when they were informed by their messenger, that the chancellor had released the prisoners. Hitherto, the assembly were only endeavouring to bring two private men, who had been guilty of a breach of privilege and

3. [*Nemine contradicente*: "With no one opposing," i.e., unanimously.—Tr.]

contempt of the house, to an acknowledgement of their offence, in the ordinary course of their JURISDICTION. They were NOW to defend themselves, against an attack made upon their JURISDICTION, which they could not submit to, without betraying their constituents, and giving up the only means they had, of supporting their own authority or protecting the people. They immediately resolved themselves into a committee of the whole house, to consider of the best means of defending their constitution, from the danger to which it was exposed; and they came to several resolutions, the last of which was, To remonstrate to his majesty, by address, against the arbitrary and illegal proceedings of the Ch—r, and to implore his protection. A committee was appointed to draw up this address, which would have been completed the next day; but before the house could meet, they were prorogued by Proclamation and afterwards dissolved.*

From what has been said, it will appear, how little foundation there is for charging the assembly, with contending only for a privilege from arrests; since it is evident, that they never had any contest with the governor, upon that subject.

There are two other charges brought, with as little foundation, against the gentlemen, who composed the majority of the late assemblies, which it will be proper to clear up and explain; the one is, that they refused to provide for the troops; and the other, that they did force the governor into the three dissolutions, which have followed this unhappy contest.

Against the first of these, the minutes of the assembly are appealed to, and the reader is desired to cast his eye over the extracts from those minutes, in the appendix to this work; from which it will appear, that, in the session, which preceded the first dissolution, the money bills were in as great forwardness, as could be expected. At the time of the dissolution, two of them had been twice read, and stood committed; and the third, which was, A BILL FOR RAISING SEVERAL SUMS OF MONEY, AND APPLYING THE SAME TO SEVERAL USES, FOR SUBSISTING FOR ONE YEAR THE OFFICERS AND SOLDIERS OF HIS MAJESTY'S 36th REGIMENT OF FOOT, had passed the assembly and Council, and was rejected by the governor; for what reason is best known to himself. It was an annual bill, and there were, it is true, some alterations made in it this year, which the governor, it is said, disliked, and which some gentlemen of the house for that

* VIDE APPENDIX.

reason, wished and endeavoured to get dropt: the third reading of the bill was therefore for some days postponed; but as the alterations were entirely in FAVOR of the soldiers, their wives and children, they were so popular, that those, who were desirous of having them dropt, found a great majority of the assembly determined to persist in them. There is no maxim better known or established in our constitution, than that the people by their representatives, have the sole right of raising and applying money in what proportions and in what modes they think proper; the other two branches of the legislature, having only a bare negative or affirmative, without any right of proposing or making alterations to a money bill. The governor could, therefore, have no constitutional right, of objecting to the aforesaid bill for subsisting the troops, and it is solely owing to him, that the soldiers were not provided for, in this sessions. It is owing to him too, that they were not provided for, by the last assembly, since it will appear that they were determined to give this a preference to all other business; but were dissolved, before they could proceed to any.

Nothing can be more unjust, than to charge the assemblies with having given occasion to these dissolutions; and this will appear, from a short review of their proceedings.

It has been shewn, that the first assembly was in the greatest harmony with the governor; that they had made a considerable progress in the Business of the sessions, and in raising the supplies; that they were called upon by a complaint of one of their members, to punish two men, who had violated the privileges of the house; and that, their proceedings, in this matter, were not in the spirit of oppression, but according to the forms of the house, and the ordinary course of their jurisdiction. This being the case, what call, what pretence had the governor to interfere, between the justice of the house and these delinquents? by declining all application to the assembly, and applying, in the first instance, to the chancellor for an Habeas Corpus, they added to their former transgression, the highest insolence and contempt, that could be offered to that body. It is the governor's duty to maintain the respect, that is due to each branch of the legislature: If the assembly were acting against these men oppressively, the governor, as the King's representative, had a constitutional power of interposing by a dissolution; but in no case had he, as chancellor, any right to judge of the commitments of the assembly, their's being a superior jurisdiction. This he ought to have known; there would have been dignity in his discouraging

the insolence of this application; there would have been justice and propriety in remanding the delinquents, as chancellor. The governor acted the reverse of all this; he took upon himself, as chancellor, to examine a commitment by the assembly and to discharge it, opening thereby, a door to future applications of this kind, and endeavouring, as much as in him lay, to bring the authority of that house into an unconstitutional dependence upon the court of chancery, and into contempt with the people. The assembly, reduced to the alternative either of betraying the people and giving up their defence, or of opposing the attack by every means, which they could constitutionally employ, were, as has been shewn, proceeding vigorously to vindicate their injured jurisdiction; they could not with dignity, proceed to any business, whilst this remained unvindicated, from such an unexampled violation thereof. They resolved, by address, to remonstrate to his majesty, against this arbitrary determination of the chancellor, and they were, as has been seen, prevented from the exercise of that common right of every subject, by a sudden dissolution.

A new assembly was called to meet in March 1765: And it is justice to the governor to say, that no undue arts or influence were employed in the Elections; but the people were left to a free choice. The consequence of this was, that the new assembly was composed, like the old, of men zealous for the constitution and liberties of their country. Upon their meeting, the speaker did think it incumbent upon him to ask for the usual privileges in a manner more specifick than ordinary, yet still in such, as was well warranted by parliamentary precedents; but tho' the terms in which the governors granted them, were doubtful and limited enough, to admit of exceptions in willing minds, so unwilling was the assembly to revive the business of privilege, that they acquiesced in silence, nor was there ever any attempt made, in this or the assembly, which was afterwards called to revive the subject or take the delinquents into custody. But the record of the chancellor's determination still remain'd, as a yoke about their necks, and they could not with dignity to themselves or justice to their constituents, proceed to any business, whilst that was suffered to remain. Hoping that time and reflection had brought the governor to a just sense of the injury he had done the constitution, and thinking it no way below the dignity of any man, to acknowledge errors, upon conviction, and make reparation for injuries; they addressed his excellency, setting forth the ill consequences of the determination in question, and desiring he would give orders for

having it expunged; and for this, the governor prorogued them forthwith, to a long day, and they were afterwards dissolved.

After an intermission of some months, another assembly was called, and much pains were taken and many arts tried, in the elections, to get such an one returned, as would answer certain purposes. It was asserted, with great confidence, during the elections, that his M—— in council had determined against us; and that, if a new assembly should adopt the maxims of the old, we should lose our legislature; and it was suggested to the people, that the members of the two last assemblies only meant to elude their creditors, and that the contest between the governor and them, was merely about a privilege from arrests. But all these unfair arts and these false and impertinent suggestions, were insufficient to mislead the people from their true interests and a very great majority was returned for this assembly, of men determined to support and vindicate the constitution. It is true, that the unhappy condition of the soldiers raised such a general compassion in the minds of men, that every member came determined to provide for the subsistence of the troops, and to give this a preference to all other business; it being a matter, for which the faith of the country stood engaged. In this disposition, the assembly met on the 13th of August; and Mr. Charles Price, jun. who was speaker of the two last assemblies, was unanimously chosen to preside in this.

After he was presented and approved of, he did think proper to decline asking for the usual privileges; and he was probably moved to do so, as well, from an indignation at the foul aspersions, which had been cast upon former assemblies, as to take away all occasions which any claim of privilege might give, to interrupt the public business. Motives, sure very laudable and becoming! After some embarrassment, which this visibly occasion'd, his excellency opened the sessions with a speech, wherein he recommended to the house to proceed to business; but before they could do so, and even before they left his presence, they were adjourned from 13th to the 15th of August.

In this interval, a paper, said to be a copy of the order or resolution of his M—— in council, before mentioned, was shewn to several of the members, by an officer of the crown, who yet refused to part with it, or give a copy of it; with what view, is not hard to guess. But this expedient did not probably answer its purpose, for on the 15th, the speaker had not taken the chair long, when the house was sent for up to attend the governor; there, to the astonishment of every one, his excellency, after putting the speaker in mind of his

having omitted to ask for the usual privileges, on the first day, demanded of him, whether he would then ask for them? to which he was answered in the negative. His excellency then put the same question a second time and the speaker said, I SHALL NOT. He might have added that he could not, or ought not; since it is most certain, that he could then do no act without the approbation and command of the house. If the governor had a mind to know the sense of the assembly upon the speaker's conduct, the regular way of coming to this knowledge was, by message to the house. It is amazing, that a man of Mr. L——'s experience in business, should take so irregular and unparliamentary a step. It is more so, that he should suddenly dissolve an assembly, so unanimously disposed to provide for the troops; only for a mere act of the speaker's, which the house neither consented to, nor avowed, and which they could not therefore, with any justice, be made answerable for. But so it happened; they were immediately, for this AVOWED reason, Dissolved; and the world is to judge, whether they gave any cause for this dissolution.

The reader will observe, that two assemblies were thus dissolved, for asserting their liberties and vindicating their violated jurisdiction; he will see, no doubt, with astonishment, a third dissolved, not for the same Reason, not for any act of their own, but because their speaker omitted asking for the usual privileges; even those privileges, which they had so often been reproached with meanly availing themselves of. There is an inconsistency in this part of the governor's conduct, very difficult to be accounted for; but an obstinate perseverance in error, will ever lead men into inconsistencies. Let it, for argument sake, be supposed, that the speaker was wrong; yet how could this affect the assembly? The custom of the speaker's asking for privilege, is a mere act of manners; an act of the speaker's own, upon which he can take no instructions from the house; for, after the choice of a speaker, the house, by the rules of parliament, can do no business, until he has been approved; after which, and not before, he is the mouth of the house, and can do no act, but by their command; and history informs us, that when Charles the 1st went into the house of commons, and demanded some questions of the speaker Mr. Lenthal, he answered upon his knees, that he had neither eyes to see, ears to hear, nor tongue to speak, save what he was commanded by the house. This will be further illustrated, by comparing the style, in which the speaker addressed himself to the king, when asking for privileges, with that, which he uses upon all occasions besides.

At all other times, the speaker delivers himself as *By command of the house, and in the name of all the commons of England*; but when he asks for privilege, he does it in the first person and as from himself (*I am a suiter to your majesty*) and upon such occasions, speakers in England have made it one of their requests, that no mistakes or *omission of theirs*, might be imputed as a fault to the house.

From this account of the proceedings of three assemblies, from the beginning of the contest in the first, until the dissolution of the last, the reader will, it is presumed, see, how their conduct has been misrepresented; and particularly, with how much malice and falsehood it has been alledged, that they were only contending with the governor, for an exemption from paying their debts. He will see, that they never had any contest with his excellency about a privilege from arrest; and that when, to avoid such a contest, the speaker declined asking for that privilege, the governor made it a cause for dissolving the last assembly; and he will also see, that their only contest with him has been, about his violating their undoubted jurisdiction. *This*, indeed, is the question, which at present divides the governor, from the people of this colony, and the reader will, it is presumed, see, in the following letter, of how much importance it is, to every individual in the community.

Concerning the Privileges, &c.

Dear SIR,

The unhappy difference between the Governor and Assembly, has already thrown the country into so much confusion, and may in its course have such Fatal consequences, that it demands the serious attention of every one, who has any property in Jamaica, or any connexion with it. You and I have frequently in conversation, discussed this subject. I have, since I saw you, considered it with all the attention in my power; and I will, since you desire it, give you, as fully and clearly as I can, my thoughts upon it.

It is needless in this place to give a detail of all those proceedings in Assembly, which led to the commitment of Pierce Cooke and Lauchlen M'Neil, as they have been fully and fairly stated, in an address to the freeholders, published in the *St. Jago Intelligencer*, since the dissolution of the last Assembly; and every one is possessed of them. I shall however for your satisfaction, annex at the end of this letter, a fair extract of them, from the

minutes of the Assembly. It will be sufficient here to say, that the House voted said Pierce Cooke and Lauchlen M'Neil guilty of a breach of privilege, for causing a writ to be executed upon the coach horses of Mr. Olyphant, one of their members, whilst the Assembly was sitting; that they were, by virtue of the speaker's warrant* taken into custody by the messenger of the House; and that they were released by the governor, as chancellor, on the return of a writ of *Habeas Corpus*, which he granted upon the statute of 31 Car. II. and that his determination thereon is made a record of the court of Chancery.

The Assembly consider their privileges, as derived to them from their Constituents; and that they are not concessions from the crown, but the right and inheritance of the people; they consider their jurisdiction, *in cases of privilege*, as complete in their own body, and in such cases, that no other court can have any right to controul their determinations, or discharge their commitments; and they therefore consider this act of the chancellor's, as a dangerous violation of their privileges, and such an encroachment upon their jurisdiction, as would, (if submitted to) strip them of all authority, and disable them from either supporting their own dignity or giving the people of this Colony that protection against arbitrary power, which nothing but a free and independent Assembly can give.

The question here, is not, whether the Assembly have done right or wrong, in ordering those men into custody, (for I hope to shew, that they are the only competent judges of their own privileges) it is, whether the governor, as chancellor, could legally discharge men upon an *Habeas Corpus*, who were committed by order of the Assembly, for a breach of privilege? but as their right of privilege is founded on a presumption, that the Assembly of this Island holds the same rank, in the system of its own constitution, as a British House of Commons does, in that of our mother country; I will first endeavour to shew, from the most authentick records and authorities, that the privileges and the jurisdiction in question, have ever been exercised and enjoyed by the House of Commons. The instances for my purpose, to be found in the Journals of the Commons, are innumerable; but I shall trouble you with a few only, which are leading cases, and of such authority, that they have ever since been admitted by the House of Commons, as governing precedents; and by all inferior courts, as rules to direct their conduct in such cases.

* For a copy of the warrant and decree, vide the end.

The first case I shall mention, happened in the time of Henry VIIIth, a time when, the Commons of England holding but an inconsiderable share of the land, the power of the House of Commons was no way comparable to what it is at this day. It is the case of George Ferrers, in 34 Henry VIIIth. and I shall give it you at large, as it is in the parliamentary history. It is taken from *Hollingshead*, one of our antient chroniclers, who is the more circumstantial about it, because (says he) as the case has been diversly reported, and is commonly alledged, as a precedent for the privilege of Parliament; he had endeavoured to learn the truth thereof, and to set forth all the circumstances at large, from those, who by their instructions, ought best to know and remember it.

The author tells us the member's name was

George Ferrers, Esq; a servant of the king, and elected a burgess for the town of Plymouth in Devonshire: that one day as he was going to the Parliament House, he was arrested by a process out of the king's bench, at the suit of one White for the sum of two hundred marks, for which he stood engaged as a surety for one Weldon of Salisbury, and carried to the Counter in Broad-Street. And that sir Thomas Moyle, knight, the speaker, being informed of this, acquainted the House with it, who forthwith ordered the serjeant at arms to repair to the said prison, and demand the prisoner.

The serjeant went immediately to the Counter; but the clerks and officers there, were so far from delivering the prisoner, that they forcibly resisted the serjeant, broke his mace, and knocked down his servant. During the squabble, the two sheriffs of London, Rowland Hill and Henry Suchcliff, came thither, to whom the serjeant complained of this abuse, and of them required the delivery of the imprisoned member; but they not only denied to deliver him, but treated the serjeant very contemptuously, and he was forced to return without him to the House.

The Commons, after some debate on the case, soon came to a resolution to send their serjeant to the sheriffs house, and require the delivery of the prisoner; but before the serjeant at arms came with the second message, the sheriffs had been told how heinously the matter was taken, and therefore they now delivered the prisoner to him without any hesitation; but the serjeant's orders went further: he charged the sheriffs to appear personally before the House at eight o'clock the next morning, and

bring with them the clerks of the Counter, and such other officers as were concerned in the affray.

The next day the sheriffs, &c. appeared at the bar of the House, where the speaker charged them with the contempt and misdemeanor, and commanded them to answer immediately without allowing them any council; though sir Roger Cholmely, recorder of London, and others of the city council offered to speak in the cause. In the end the sheriffs, and White the prosecutor were committed to the Tower, and the rest to Newgate; there they remained two days, and then on their own petition, and at the humble request of the lord mayor of London and other friends, they were discharged.

The same authority informs us that the king, being advertized of these proceedings, called before him the lord chancellor and his judges, with the speaker of the House of Commons, and several of the chief members of that House, to whom he declared his opinion to this effect.

He first commended their wisdom in maintaining the privileges of their House, which he would not have infringed in any point. He alledged that he, being the head of the Parliament, and attending in his own person on the business thereof, ought in reason to have privilege for himself and all his servants in attendance on him; so that if Ferrers had been no burgess, but only *his* servant; in respect of that, he ought to have privilege, as well as any other. For I understand, (says he) that you enjoy the same privilege, not only for yourselves, but even for your cooks and horse-keepers. My lord chancellor here present hath informed me, that when he was speaker of the lower house, the cook of the Temple was arrested in London on an execution upon the statute of staple; and, because the said cook served the speaker in that office, he was taken out of execution by the privilege of Parliament. Likewise the judges have informed us, that we at no time stand so high in our estate royal as in the time of Parliament; when we, as head, and you as members, are conjoined and knit together into one body politick: so that whatsoever injury is done or offered during that time against the meanest member of the House, is judged as done against our own person, and whole court of Parliament; the prerogative of which court, is so great, that, as our learned in the laws inform us, all acts and processes, coming out of any other inferior courts, must for that time cease, and give place to the highest.

And as touching the plaintiff in this cause, it was a great presumption in him, knowing our servant to be one of this House, and being warned of it before, still to prosecute this matter out of time; and therefore was well worthy to lose his debt, which I don't wish, and must commend your equity that, having lost it by law, you have restored the same against him that was his debtor; and if it be well considered, what an expence it hath been to ourself and you all, as well as loss of time, which should have been employed in affairs of our realm, to sit here near a fortnight, about this one private case; he may think himself better used than his desert. This I hope will be a good example to others to learn better manners, and not to attempt any thing against the privilege of this high court of Parliament, but to stay for a proper opportunity. This is my opinion; and if I err, I must refer myself to the judgment of our lord justices here present, and the other learned of the laws.

UPON WHICH SIR EDWARD MONTACUTE, LORD CHIEF JUSTICE, VERY GRAVELY GAVE HIS OPINION, CONFIRMING BY DIVERS REASONS ALL THAT THE KING HAD SAID; WHICH WAS ASSENTED TO BY ALL THE REST, NO ONE SPEAKING TO THE CONTRARY.

The next case I shall quote happened in the reign of JAMES Ist. when the absurd and slavish Doctrines of DIVINE and HEREDITARY RIGHT and PASSIVE OBEDIENCE and NON-RESISTANCE, were first broached: broached by that anointed Pedant, and, after the manner of courts, adopted by all his courtiers. To a King and a court, who carried the notions of kingly RIGHT and kingly POWER to such a blasphemous height, and set so little value on the liberties of the people, nothing could be more obnoxious than the House of Commons; and accordingly we find many instances of the affronts offered to that body.

The first day the House of Commons were sent for to attend that king, in the House of Lords, SIR HERBERT CROFTS, one of the members, coming up with others to hear the king's speech, had the door shut upon him, and one Bryan Tashe, a yeoman of the guard, violently repulsed sir Herbert, saying, GOODMAN, BURGESS YOU COME NOT HERE.

A book was written by the bishop of Bristol, which contained, what the House thought, some reflections upon their proceedings.

Sir Thomas Shirley, member for Stayning, had been committed prisoner to the Fleet, on an execution soon after his return, and before the Parliament met.

The king, in short claimed a right of having the returns of elections examined by his chancellor; and it became then, for the first time, a fashionable opinion, that the privileges of the Commons were only concessions of the crown, granted upon the speakers request, at the meeting of every new Parliament.

Luckily for posterity, the House of Commons were in no disposition to subscribe to such doctrines, to submit to affronts, or to yield up their privileges to the dictates of an undeserving monarch, or the attempts of a profligate court. The yeoman of the guard was obliged to ask pardon upon his knees, at the bar of the House, and to receive a reprimand from the speaker.

The bishop of Bristol, tho' a member of the House of Lords, was obliged to confess his error, and recant the offensive passages in his book.

The warden of the Fleet for taking sir Thomas Shirley, was sent to gaol; and not released, until he had first on his knees, at the bar of the House, confessed his error and asked pardon. The House did more; not content with making examples of these offenders, they have left to posterity a noble monument of their knowledge of the constitution, and of their virtue and spirit in resisting the attacks, that were made upon it. It is an apology from that House to king JAMES; in which, the rights and privileges of the Commons are asserted, in the most manly and spirited terms. The apology is too long to be inserted in this place, I will only transcribe from it some passages, that are apposite to my subject.

And contrarywise with all humble and due respect to your Majesty Our Sovereign Lord and Head, against those misinformations we most truly avouch.

First. That our Privileges and Liberties are our RIGHT and DUE INHERITANCE, no less than our very LANDS and GOODS.

Secondly. That our Privileges and Liberties cannot be withheld from us, denied, or impaired, but with apparent Wrong to the whole State of the Realm.

Thirdly. And that our making of request in the entrance of Parliament, to enjoy our Privilege, is an act only of manners, and doth weaken our Right no more than our suing to our King for our lands by petition; which form, though new and more decent, than the old by PRECIPE,⁴ yet the Subject's Right is no less new than old.

4. [Usually *precipe in capite*. A writ whereby the king orders that the sheriff command such action as a debt be paid or land given up to a demandant who claims to hold in chief the right of ownership of the property.—Tr.]

Fourthly. We avouch also, that our House is a COURT of RECORD; and so ever esteemed.

Fifthly. That there is not the highest standing court in this land, that ought to enter into competency, either for dignity or authority, with this high Court of Parliament; which with your Majesty's royal assent gives laws to other courts, but from other courts receives neither laws nor orders.

Sixthly, and lastly. We avouch that the HOUSE OF COMMONS is the sole proper Judge of Return of all such Writs, and of the Election of all such Members as belong unto it; without which the freedom of election were not intire:

And that the Chancery, though a standing court under your Majesty, be to send out those writs, and to receive the returns, and to preserve them; yet the same is done only for the use of the Parliament. *Over which neither the Chancery, nor any other court, ever had, or ought to have, any manner of Jurisdiction.*

It is impossible to read the history of the next reign, that of *Charles the First*, especially the 14 or 15 first years of it, without conceiving the highest reverence for the memory of those great men, who stood forth at that critical period, in defence of the Constitution. Never was there at any one time in the House of Commons, nor perhaps in any other Assembly, such a number of men, eminent for learning, for good sense, for virtue and courage, as appeared in the House of Commons, during the four first Parliaments of that unhappy Prince: and it is owing to the virtues and abilities of an *Elliot*, a *Cook*, a *Littleton*, a *Grenville*, a *Philips*, and many others recorded in the histories of those times, that the Subjects of Britain are not at this day as much enslaved as those of France and Spain. Upon all points of controversy about the Constitution, much respect and deference will ever be shewn to the sentiments and opinions, and much more to the determinations of those venerable patriots: and I will therefore, without any apology, give you the sentiments of some of them, upon the breach of privilege in *Mr. Rolls* case, in the 4th year of *Charles the Ist*, extracted from the Parliamentary History.

A complaint was made to the House of Commons by *Mr. Rolls*, a Member of the House, and a merchant, that his goods were seized by the officers of the customs; upon which the officers of the customs were sent for, and examined by the House.

Sir *John Elliot* said,

Three things are involved in this complaint:

- 1st. The Right of the particular gentleman.
- 2d. The Right of the Subject.
- 3d. The Right and Privilege of the House.

Let the committee consider of the two former; and for the violation of the Liberties of this House, let us not do less than our fathers. Was ever the information of a Member committed to a committee? Let us send for the parties.

Mr. *Daws*, one of the customers, being called in to answer the point of Privilege in taking Mr. *Rolls's* goods, being a Member of this House, said, he took Mr. *Rolls's* goods by virtue of a commission under the Great Seal, and other warrants remaining in the hands of Sir *John Elliot*; that he knew Mr. *Rolls* to be a *Parliament Man*; and that Mr. *Rolls* demanded his Privilege, but he did understand that this Privilege extended only to his *Person*, and not to his *Goods*, &c.

Sir *John Elliot*. The heartblood of the Common-wealth receiveth life from the Privilege of this House.

It was resolved by question, that this shall be presently taken into consideration, and being conceived a business of great consequence, it was resolved that the House shall be formed into a committee for the freedom of debate.

Mr. *Littleton* argued. All Privileges are allowed for the benefit of the Common-wealth. The Parliament's Privilege is above any other, and the Parliament *only* can decide Privilege of Parliament, and not any other court.

Sir *Robert Philips*. Thus you see how fast the Prerogative of the King doth intrench on the Liberty of the Subject, and how hardly it is recovered! He then cited many precedents, wherein the goods of a Member of Parliament were privileged from seizure in the Exchequer. In 12 *Eliz.* it was resolved in Parliament, that twenty days before, and twenty days afterwards was the time of Privilege.

And the committee of the whole house reported, that they took into consideration the violation of the Liberties of the house by the customers, and at last they resolved that a Member of the house ought to have Privilege of Person and Goods.

In these authorities, taken from the proceedings of Parliament, I have confined myself to the more antient ones, omitting purposely those of latter times; not because the modern journals do not furnish any, but because they occur so frequently, and are so well known, that I think it needless to trouble you with them. Scarcely a session passes without furnishing instances of one or both houses of Parliament, exercising the Power of committing for breach of Privilege, and of each house's judging of its own Privileges, without controul. Even in the very last sessions of Parliament, we find by the public papers, that a Peeress in her own right, having been arrested during the sitting of parliament, the house of Lords imprisoned all the parties concerned in bringing the action and executing the writ; and obliged them to pay all costs: And every one knows, that in this case, the Privileges of both houses are equal.

It is then clear, I think, from the constant declarations and proceedings of Parliament, that the house of Commons hath at all times enjoyed and exercised, the sole Right of judging of its own Privileges, and of punishing for breach of Privilege.

I will now shew you, by the most uncontroverted law authorities, and by the concurrent testimonies of the judges, and their declarations from the earliest ages of the English Constitution, down to our own time, that neither the court of Chancery, nor any court in Westminster-hall can, or ever did, presume to discharge a commitment by the house of Commons; and that, the judges in England have always held and declared themselves, incapable of giving judgment upon the Privileges of either house of Parliament, as being, *Extra Sphaeram activitatis*.⁵

Thomas Thorp being speaker of the house of Commons, 31 *Hen. VI.* was in time of prorogation Arrested and Imprisoned at the suit of *Richard, Duke of York*, upon a judgment obtained in the Exchequer.

The Commons, at the re-assembling of that Parliament, wanting their Speaker, sent up some of their Members to make complaint thereof to the King and Lords, and to desire their Speaker's release.

Upon this the Duke gives the Lords an account of the whole matter.

5. ["Outside its sphere of concern."]

Whereupon (saith the Parliament Roll) the Lords Spiritual and Temporal, not intending to impeach or hurt the Liberties, and Privileges of them that were common for the Commons of this land to this present Parliament, but equally after the course of law to minister justice, and to have knowledge what the law will say in that behalf.

Opened and declared to the justices the premises; and asked of them, whether the said Thomas should be delivered from prison, by force and virtue of the Privileges in Parliament or not?

To the which question the chief justice, in the name of all the justices, after *sad* communication and mature deliberations had among them, answered and said, that they ought not to answer to that question.

And then follows

The Judges recognition.

First. For it hath not been used before time that the Justices should in anywise determine the Privileges of this high Court of Parliament.

Second. For it is so high and mighty in its nature.

Third. That it may make law.

Fourth. And the determination and knowledge of that Privilege belongeth to the Lords of the Parliament and not to the Justices.

These several cognitions so materially weighty in themselves, being published and declared by all the Judges of England, and that before the Parliament, as a fixed and standing rule of law, and as a memorial to all posterity enrolled among the records of the said high Court of Parliament, *for ever to endure.*

And this declaration has, in all succeeding times, been of such weight and authority, that I will venture to assert, there is not *a single instance*, where the court of Chancery, or any inferior court, ever presumed to discharge a commitment of the house of Commons, for breach of Privilege. And it will appear, in the two following instances, where it was attempted, that, by the opinions of the most eminent lawyers, by the opinion of the lord keeper of England and all the judges, and by a solemn judgment of the court of king's bench, none of those courts *can discharge or take cognizance of*, the commitment of the house of commons.

The next case I shall mention, is taken from the debates in Parliament; a case, which has been extremely well remarked upon, in a pamphlet lately published, entitled, *A vindication of the proceedings of the Assembly*, &c. but

it is too apposite to be omitted here; especially as it was, I think, the first attempt made, since the above celebrated determination in Thorp's case, of drawing the jurisdiction and judgment of the house of Commons, *ad aliud examen*.⁶

In 1680. A motion was made in the house of Commons, in behalf of judge *Raymond*, that one *Sheridan*, in custody of the sergeant at arms, by order of the House, had applied for his *Habeas Corpus*, which the judge denied, *because he was committed by order of the House*, desiring the opinion of the house. Upon this occasion, sir *William Jones*, a member of the house, and as able a lawyer as any in England, asserted in the House;

That there is nothing in the *Habeas Corpus Act*,⁷ that doth reach, or can be intended to reach, to any commitment made by either house of Parliament. The preamble and all parts of the Act do confine the extent of the Act to cases bailable, and direct such courses for the execution of the Act as cannot be understood should relate to any commitment made by either house. A commitment of this house is always in the nature of a judgment, and the Act is only for cases bailable, which commitments upon judgment are not.

Here, then, is a judge, *refusing even to grant* a writ of habeas Corpus, for a commitment of the house of Commons, and this not above two years after the passing of the habeas Corpus Act; and, sir *William Jones* declaring to the house that, that Act was not intended, nor could not be understood to extend, to commitments by either house of Parliament. The opinions of these eminent lawyers are of great authority, from the characters and reputation of the men; but they receive much additional weight from a consideration of the time, in which they were given: for the law presumes, that the intention of an Act of Parliament is best known from those, who lived at or near the time, in which such Act passed. And you will accordingly find this authority, supported by the opinion of the lord-keeper, and all the judges in England, in the next case I am going to mention; that is, the celebrated case of the *Aylesbury* men.

6. ["To another jurisdiction."]

7. [*Habeas Corpus* is an ancient legal action strengthened by several acts, most notably of 1679.—Tr.]

As this was the first time, that the jurisdiction and the power of commitment of the house of Commons ever was made a question of in Westminster Hall; as the question in the course of it, brought on a contest between the house of Lords and the Commons; as it was discussed, both in Parliament and in Westminster Hall, by the ablest lawyers and the greatest men in England; and, as there was a solemn judgment upon it in the King's Bench, which is now a record and a standing rule, in all cases of the same kind; I will, with your leave, insert the case.

A complaint was made by the honourable house of Commons, that, since their last resolutions in the cause of Ashby and White, several actions had been brought by *J. Paty, J. Oviat, J. Peyton, H. Basse* and *D. Horne*, and prosecuted by *R. Mead* against the constables of Aylesbury, in breach of the privileges of that honourable house: whereupon they were pleased to order the matter of the said complaint to be heard at the bar of their house, and ordered the persons concerned to attend there, and appointed a day accordingly.

The parties appeared (all but Mead) when the witnesses were examined, and they severally called to the bar of the house, and then withdrew, and upon full hearing, the house were pleased to order their speaker to issue out warrants, for committing them (being taken into custody) to her Majesty's gaol of Newgate.

In the Michaelmas vacation 1704 they prayed an *Habeas Corpus* upon the statute 31. *Cha.* 2d; upon the return of which all the judges met, and advised whether they were bailable by that statute? who were unanimously of opinion, THAT THEY WERE NOT; and accordingly they were remanded. And in Hilary term following, they moved the court of queen's bench for an habeas corpus, by the common law, which was granted; upon the returns whereof the judges of the queen's bench desired the assistance of the rest of the judges whether they might be discharged? who were all of opinion, except the *Lord Chief Justice Holt*, that they ought to be remanded.

But, as it was argued in the queen's bench by counsel, and afterwards the judges delivered their opinions *SERIATIM*, I will, in order to shew the matter more clearly, extract such parts of the arguments of those judges, upon whose opinions the court founded its determination, as are applicable to the case in question here. I make no extracts from the arguments of lord chief

justice Holt, as his opinion in that case, is *not law*, having been over-ruled by his brethren, upon a consultation with all the judges of England.

Mr justice *Gould*, and Mr. justice *Powis* said, they would chiefly insist upon *Legem et Consuetudinem Parliamenti*;⁸ but they would first maintain the form of the warrant.

Objection. That this is a commitment by the speaker only; for that the warrant does not run, ordered by the knights citizens and burgesses in Parliament assembled, according to the precedent in my lord Shaftsbury's case, 1. Mod. 144.

Answered by the Judges.

That it is good, being according to their form; and that it must be presumed the speaker's warrant was by order of the house.

Objection. This commitment is for bringing their action at law, and for taking the due course of law.

Answer. What is privilege, but dispensing with the law? the generality of breaches of privilege are for taking the due course of law. If you go to scanning the words of a commitment, who knows not that most commitments, that would hold for such, do express the cause but shortly, and but just give a hint? and the law does presume that the higher courts do understand what they do, and therefore are not tied up to such strictness as inferior courts.

Objection. *Shall* the house of Commons take a despotick power to regulate how actions shall be brought, and what actions shall not be brought?

Answer. *Can* we suppose that high court would stop the progress of the common law of England? 'tis highly dishonourable to have such thoughts; and no body dares think so, or will presume to say so; and people would laugh at one that should say, the house of Commons will take away the liberties of the people.

There is no better way to determine the jurisdiction of either house of Parliament, than by usage and custom; as the bounds of parishes are. That there is no precedent or case, not so much as an opinion, yet cited, that the courts of Westminster-hall have a power to judge of the authority of the house of Commons; or that the orders and commitments of

8. ["The law and custom of Parliament."]

the house of Commons, can be discharged in Westminster hall; nor were they ever before attempted to be discharged here upon such a commitment by the house of Commons; which is a good argument, according to my lord Coke's rule, that we want power to do it. It would be impossible for us to judge of the privileges of the house of Commons; for there are no printed books of their privileges, nor is there any means, by which we can attain to the knowledge of them; but their customs and privileges are kept, as Arcanas, in the rolls and records of their own house; and their privileges depend altogether upon precedents in Parliament. They do judge it as a contempt and breach of their privileges; and who shall say nay? they are proper judges of the matter; and upon the return it appearing they were committed by the house of Commons, our jurisdiction ceases. So far Gould and Powis.

Mr. Justice POWELL, said,

That the Commons have a judicature, not by the common law; but do judge of breaches of privilege and contempts to their house, *secundum legem et consuetudinem Parliamenti*:⁹ 4 Inst. 23. and by this law these persons are committed, and now are brought to be discharged by the common law. The resolutions of the Commons upon the breach of privileges, is a judgment, and the commitment an execution of it, which cannot be controuled, for this would be to draw it *ad aliud examen*, and then the Commons would not be supreme judges of their own privileges.

That this court may keep other inferior courts within their jurisdiction, but not the house of Commons: for no prohibition was ever granted to that court, tho' they exceed jurisdiction. So if the house of Lords do exceed, or take cognizance of matters in the first instance; no prohibition would lie: for no inferior court can prohibit a superior; and no prohibition was moved here; nor could we have granted it; for the house of Commons is superior to all ordinary courts of law.

In the 4th Inst 50, it doth not belong to the judges to judge of any law, privileges, or customs of Parliament: for the laws, customs, and privileges of Parliament are better to be learned out of the rolls of Parliament and other records, and by precedents and continual experience, than can be expressed by any one man's pen.

9. ["According to the law and custom of Parliament."]

In 4 Inst. every court of justice hath laws and customs for its direction; some by the cammon-law, some by the civil and cannon-law, some by particular laws and customs so the high court of Parliament *Suis propriis legibus, et consuetudinibus subsistit*.¹⁰ that judges ought not to give any opinion of a matter of Parliament; because it is not to be decided by the common laws, but *secundum legem et consuetudinem Parlamenti*; and Coke says, *Ista lex ab omnibus est querenda, a multis ignorata, a paucis cognita*.¹¹ Now who shall judge this no breach of privilege; when the house of Commons, who are the proper judges of their own privileges, have adjudged it to be a breach of their privileges?

The judgment of the court, as it was made up, upon the roll by the directions of my lord chief justice Holt, was *Quia cognitio causae captionis et detentionis predict. Non pertinet ad curiam dominae reginae, ideo remittitur*.¹²

Which is as strong and conclusive against the jurisdiction of the courts in Westminster-hall, in cases of commitment by the house of Commons for breach of privilege, as words can make it. It has so much the force of a law with the judges in Westminster-hall, and is of such authority, that, in the case of the honorable Alexander Murray, committed by order of the house of Commons about 12 or fourteen years ago, (the only case of an habeas corpus asked for, on a commitment of the house of Commons, since the determination in that of the Aylesbury men) the cause of commitment return'd by the gaoler was only an order of the house of Commons, without any crime alledged; and the Judges said, *They could not question the authority of that House, or demand the cause of their commitment, or judge the same*; and therefore they refused to discharge the prisoner, and so remanded him.

Now, if we are to look for precedents from the mother country, to support our Chancellor's conduct, in the case in question here; you see, that all the precedents from thence are against him. Yet is it most surprising to

10. [(The Parliament) "subsists by its own laws and customs."]

11. ["That law is complained of by everyone, ignored by many, understood by few."]

12. ["Because the aforesaid decree pronounced concerning arrest and confinement does not fall within the jurisdiction of the court of our Ruler the Queen, therefore the matter is dropped."]

hear, with what confidence those, who are for giving up our Privileges, assert the justice and legality of the Chancellor's determination, without a single authority to support their assertion. But, nothing has surprized me more, than to hear grave men, and some who ought to know better, leaning upon the single opinion of Lord Chief Justice Holt, as on a sufficient authority; although they must know it is none, that it was over-ruled, and that the very reverse of his opinion was declared to be the law. To such shifts are men reduced, who have a bad cause to defend! But what will become of these antiprivilegiens, when even this twig, which they have laid hold of, and are forced to lean upon, is taken from them? If it can be shewn, that even Lord Chief Justice Holt's opinion, (which they consider of higher authority than that of all other judges, higher even than an adjudged case) is, in that part of the Aylesbury mens case, which mostly resembles ours, diametrically against them, and against our Chancellor's determination; will they be modest enough to give up the argument?

That it is so, will appear upon a review of that case. Every body knows, that the writ of Habeas Corpus is of two kinds. There is a writ of Habeas Corpus which the subject is entitled to by common law, and which is grantable only in Term time by the court; and, there is a writ of Habeas Corpus by the statute of 31 Car. II. which the Chancellor or any of the Judges is at all times to grant upon application. The latter is the only Habeas Corpus that a Chancellor can grant. Now the first application for an Habeas Corpus, in the above case of the Aylesbury men, was out of Term, *To the Lord Keeper of England*, upon the statute of 31 Car. II. This is therefore the application, which mostly resembles that which was made to the Chancellor here by Cooke and M'Neil; and it does, indeed most exactly resemble it. But the Lord Keeper of England, upon the return of the writ, thought the matter of such consequence, that he did not chuse to rely upon his own judgment, nor did he chuse to depend upon any help, which he could have from the arguments of the prisoners counsel (considering these, perhaps, as men whose duty it was to mislead him) but, he called to his assistance all the Judges of England, my Lord Holt one of them. All the Judges met, and after the most mature deliberation among themselves upon the question, whether the prisoners wereailable by that statute? declared it unanimously as their opinion, *THAT THEY WERE NOT*, and they were accordingly remanded.

I have before shewn it, to have been the opinion of Judge Raymond and Sir William Jones, very soon after the passing the Habeas Corpus act, that, that act did not reach the commitments by either house of Parliament. Here then, is that opinion established into law, by a solemn determination of the Lord Keeper and all the Judges of England in 1704.

By what authority then, or upon what precedents could the Chancellor, on an Habeas Corpus by the statute of 31 Car. II. discharge the commitment of the Assembly? He could find no precedents at home, he could find none here; for no Chancellor or Judge before him in this island, ever presumed to question the commitments of the Assembly, and much less to discharge them. Will it be asserted, that the Assembly of Jamaica have not the Privileges of the house of Commons? It is asserted; and the advocates for this doctrine go further, and say, that we have no Privilege, but what the King is pleased to allow us. I will endeavour to prove, that, if the Assembly have not the Privileges of the house of Commons, they have no Privileges; for that, *the King cannot by law grant them Privilege*. I will endeavour likewise to shew that, if the Assembly do not hold their Privileges upon the same independent terms with the house of Commons, the people of this colony have no defence against the assaults of arbitrary power, no security for their lives, their liberties, or their properties.

It is asserted, by those who argue against Privilege, that the King of Great-Britain, as being stiled *Lord* of Jamaica and the colonies, may give to his subjects in those colonies, what measure of Liberty, and what form of Government he pleases; an assertion most absurd, false, and wicked: These Colonies are not, like his Majesty's German dominions, the *Property* of our Sovereign. God forbid, they should ever become the Property of any King or potentate upon earth! They are part of the British empire, over the whole of which his Majesty presides as the head, and so stiled and declared in many British acts of Parliament. Their inhabitants are all British subjects, entitled to the laws of England, and to its Constitution, as their inheritance; possessing their Rights and Privileges, by as free and certain a tenure, as that, by which they hold their lands, as that, by which the King holds his crown. Never was it pretended, till now, that a British subject became a slave, or forfeited any of the Rights and Privileges of an Englishman, by settling in a British colony: Even in the reign of Charles II. when arbitrary power, under the shelter of unlimited Prerogative, was making large strides

over the land, there was no difference made, between the Rights and condition of subjects in the colonies, and those in England.

*There is a remarkable case in that reign, which sets the doctrine in a clear light. It was an action brought against a governor of Barbadoes, for some arbitrary proceedings against a gentleman there: the governor's proceedings could not, it seems, be justified by law, and he therefore pleaded his *Instructions*. After passing through the lower courts, the cause was brought by writ of error into the house of Lords; and in the pleadings of the lawyers, the Constitution of the colonies and the Rights of the colonists, are fully and finely set forth. It was argued, that the colonies could not be considered as conquered countries; since they were part of the English empire, settled entirely by Englishmen, who neither did nor could, forfeit any Right by settling in a colony: that, they had a right to the laws of England: that, the judges there were obliged to determine according to law: that *Instructions to a governor* could only be understood, as directions in matters of state and government; and could not be admitted in judicial determinations, without *Oppression and Injustice* to the subject. And this doctrine was so fully admitted, that it was not denied, even by the lawyers on the other side.

As a further proof, that this was the general sense of the nation in that reign, it is notorious, that one of the articles of impeachment, against the great Lord Chancellor Clarendon was, *That he had introduced an arbitrary Government into his Majesty's Plantations*: And it is one of the crimes for which that great minister and favourite was banished, by act of parliament; and that indeed, which, in the vindication he has left of himself, he has said least to palliate or justify.

But our Rights will best be understood, by a review of the Constitution of this colony; of its beginning and progress to this time. Every body knows, that Jamaica was conquered from the Spaniards by a fleet and army sent out by Cromwell, under the Command of Admiral *Penn* and General *Venables*. After the reduction of the island, the Spaniards either quitted it, or were all driven out; so that it remained inhabited only by the soldiers, who had conquered it; and it was governed of course by military laws, until some time after the restoration of Charles II. when the measure of making it an English settlement, by sending out a colony, was adopted. The King, in

* Cases in Parliament. Sir Richard Dutton, Plaintiff, versus R. Howell, &c.

order to induce his subjects to transport themselves and families hither, and become settlers, put out a proclamation, offering them many encouragements, and particularly, *That all children of any of our natural born subjects of England, to be born in Jamaica, shall from their respective births be reputed to be, and shall be, free denizens of England; and shall have the same Privileges to all intents and purposes, as our free born subjects of England.*

Nor could any thing less than this have been sufficient, to induce the free subjects of England to quit their country and friends, and settle themselves in a remote and inhospitable climate. In pursuance of the royal promise in this proclamation; and as soon as the colony was numerous and considerable enough, to make it an object for civil government, a civil government was instituted, the same which has subsisted in it ever since. The King could not give any other form of civil government or laws, than those of England; and accordingly we shall see, that the form of government here resembles that of England, as nearly as the condition of a dependent colony can be brought to resemble, that of its mother country, which is a great and independent empire.

Here, as in England, we have *Coroners, Constables, and Justices of the Peace*. We have a court of a *Common Pleas*, court of *Exchequer*, and a court of *King's Bench*: we have a court of *Chancery*, and we have a court of *Ordinary* for the probate of wills and granting administrations. The coroner is elected by the people, the constables are appointed by the justices of the peace, the justices of the peace and the judges of all the courts act by authority of the King's commission under the broad seal. The different orders of judicature here, then, are exactly like those in England, subsisting by the same authority, and instituted for the same purposes. There is the same resemblance preserved, in the forms of our legislature. It is composed of three estates, of which the governor (as representing the King) is head. Having no order of nobility here, the place of a house of Peers is supplied by a council of twelve gentlemen, appointed by the King, which, in the system of our legislature, forms the upper house. The lower house is composed, as in Britain, of the representatives of the people, elected by the freeholders; and these three bodies form a legislature which exercises the highest acts of legislation, for it raises money, and its laws extend to the life, liberty, and property of the subject, several having suffered death upon laws passed by our legislature, even before they have received the Royal assent. These three estates ought by the constitution, to be perfectly free in their deliberations, and perfectly

independent of each other. In their legislative capacities they are entitled to, and have ever enjoyed, the same Privileges with their respective bodies in the mother country, which they are intended to represent; and they do preserve, I believe, as nearly as they can, the same forms. But the two first branches cannot, from the nature of things, be made to resemble those they are supposed to stand for, as nearly as the Assembly does. For example; the King appears *personally* and in full Majesty at the head of his Parliament; his consent gives full life and duration to such bills as are offered to him by his Parliament; and he has in himself full power to approve or reject them. The Governor, though he represents the King in our legislature, yet acts by a delegated power, and exercises only such parts of the prerogative, as the King is pleased to intrust him with. Thus too, altho his consent is necessary here to the enacting laws, and his consent does give them full force while they last, yet, it can give them but a temporary existence, until the king's pleasure is known, it is from his majesty's consent that they receive their full life and duration. Our Governor is also bound to follow instructions, in his legislative capacity; and in this acts, indeed, but ministerially, and is not therefore, nor can, from the nature of things be independant.

The members of the *Council*, or upper house, do not hold their places as an inheritance, nor yet for life, but at pleasure, liable to be displaced upon any occasion by a Governor; and they have often been displaced upon very slight pretences. This body, then, is but a very imperfect representation of a house of Peers; and, because of the uncertain tenure, by which they hold their places, wants much of that independance, which is proper to every branch of the legislature in a free country. They want much too of the power of the upper house: but they have, perhaps, as great a share of it, as it would be safe to trust to so flux and dependant a body. In their legislative capacity however, they have a constitutional right to the privileges of Parliament; since in our constitution, their consent is necessary to the enacting of laws.

The *Assembly*, or lower-house, has an exact resemblance of that part of the British constitution, which it stands for here: It is, indeed, an epitome of the house of Commons. Called by the same authority, deriving its power from the same source, instituted for the same ends, and governed by the same forms; it will be difficult, I think, to find a reason, why it should not have the same privileges and the same powers, the same superiority over the courts of justice, and the same rank in the system of our little community, as the house of Commons has in that of Britain; especially since all the courts

of justice here are governed by the same laws, enjoy the same privileges, exercise the same powers, and hold the same rank with those, they respectively represent. Thus for example. The coroner, the justice of the peace, the judges of the court of King's Bench, Common Pleas and Exchequer, the chancellor and the ordinary, have all the power of committing for contempt. It is a power that every court has, as essentially necessary to its existence; for no court could subsist without it: Thus, the grand court can, and frequently does, privilege a juror from arrests; and will even discharge his horse, if taken in execution during his attendance upon the court; and the same court does frequently grant protections to men, during the sitting of the court. The court of Chancery doth often grant protections to the suitors of that court, I believe, for an indefinite time: and, if any officer were to execute a writ upon a person so protected, the court, which granted the protection, would most certainly commit the offender. Now if a person, so committed by the court of Chancery, was to apply to the grand court for an Habeas Corpus; and the court, upon the return of the Writ, were to discharge the prisoner, giving for reason, that they could find, neither in any Act of Parliament nor Act of Assembly, any thing to justify the commitment, and so record their judgment and reason: The court of Chancery would, I believe, consider this, as a violent attack upon its jurisdiction and authority, and resent it as such: and yet, I believe, the power of commitment by the Assembly for breach of privilege, is as well founded, in law at least, as the chancellor's; and, I will venture to say, it is founded upon as many Acts of Parliament and Acts of Assembly. But if the grand court should go further; and, as a reason say, the commitment was not warranted by any *instruction from the king*: the court of Chancery would, I believe, in this case also go further; the judges would be dismissed; there would, I make no doubt, be an information brought against them; and they would be taught, by the sentence of more upright judges, how criminal it is for any judge to suffer himself to be governed in his judicial determinations, by *instructions*, or by any other rule than the laws of the land.

It appears then, that the inferior courts do enjoy and exercise, without interruption, certain privileges; some of them, that of protecting men from writs of arrest or execution; and all of them, that of committing for contempt: Let us consider, by what tenure they hold these privileges, and from whence they are derived. Are they derived from the king, as concessions from the crown? by no means. The king has no power to grant such privileges; he

has no prerogative to protect any man from arrests, nor to commit any man to prison by his command; and this I will endeavour to shew.

Every man has a right by the constitution, to prosecute his debtor by an action at law; to sue out his writ of arrest, or execution, and take the body of his debtor, unless he pays the money. All privilege from arrest is therefore a dispensing with the law; and the generality of breaches of privilege are for taking the due course of the law; and so it was said by the judges, in the case of the Aylesbury men. Before the revolution the kings of the Stuart race, did often assert a right of dispensing with the law, and did attempt to do so: but this ill-founded claim was continually denied, and their arbitrary exertions of such a power, constantly and strictly opposed by Parliament. The frequent exertions of this and some other unconstitutional powers, were the cause of all the troubles of that obstinate, ill-fated family; and at last brought on their ruin, in the expulsion of James the II. at the revolution. By the very act, which excluded the male line of that family, and which, transferring the crown into another branch, settled it upon the prince and princess of Orange, it is declared that,

Whereas the late king James the II. by the assistance of divers evil-councillors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion and the laws and liberties of this kingdom, by assuming and exercising a power of dispensing with, and suspending laws, and the execution of laws, without the consent of Parliament, &c. The lords spiritual and temporal, and Commons, pursuant to their elections, being now assembled in a full and free representative of this Nation, do in the first place, (as their ancestors in the like case have usually done) for the vindicating and asserting their antient rights and liberties declare;

First,

That the pretended power of suspending laws, or execution of laws by regal authority without consent of Parliament is illegal.

Secondly, that the pretended power of dispensing with laws, or execution of laws by regal authority, as it hath been assumed and exercised of late is illegal.

In the 9th article it is said,

Ninth,

That the freedom of speech and debates, or proceedings in Parliament, ought not to be impeached or questioned in any court out of Parliament.

And in another place of the same act it is said,

And they do claim, demand, and insist upon, all and singular the premises, as their undoubted right and liberties.

Upon which I shall only observe, that this is not a new law, creating any new privilege in the people, or clipping the prerogative; but a solemn declaration and assertion of the people's rights, and what the law and constitution of England had ever been; and it cannot now be pretended, that by the constitution, as it was settled and declared at that glorious period, the revolution in 1688, the king hath any prerogative to dispense with laws. It follows, then, that privilege from arrest being a dispensing with the law, the king has no prerogative to grant privilege. The truth is, the king neither does, nor can grant privilege, any more than he can make law; but the constitution, which allows the subject a right in law of bringing an action against his debtor, and of arresting or taking his body, does in certain cases, and in favour of certain offices and services, dispense with this law. Hence, then, is derived the privilege, that has ever been enjoyed by the king's servants, and the two houses of Parliament, and hence, those privileges and powers of granting protections, which are exercised by the courts of justice.

The king, by his prerogative, has the sole right of convening a Parliament: but that Parliament being met, their privileges are their own. By the law of the land, when the king calls any person to his service, he cannot give him any privilege; he gives him only an office, in which, by law, he is entitled to privilege. The king by his prerogative, may appoint as many courts as he pleases; but they must be courts of law and trials by jury, that being the English constitution; for, the king cannot institute a new jurisdiction. The court of Chancery in England, exists only by custom, as every court of Conscience in England does, and I believe it will be found, that no court of Chancery ever was erected here, by law or otherwise; but the king, in his commission to the Governor, mentioned him as chancellor, and the Island, seeing the necessity of such a court, submitted to it. The court of ordinary is defective in its power, for it cannot enforce its orders. They are enforced in England, by ecclesiastical censures, which, I believe, the bishops would

not consent to trust a Governor with, and the king has not power to grant. Indeed the whole power of the Governor, as ordinary, seems to flow from a law of this Island; how otherwise he derives his power, whether by patent from the crown, I know not, but this demonstrates, how very cautious the crown was of exerting or extending its prerogatives, (in settling our constitution) even in those early days.

The judges commissions (as all commissions civil and military do) flow from the king; but he can neither amplify nor abridge their power or authority; nor prescribe to them their forms of proceeding, or their modes of administering justice. These are all chalked out to them by the law, and the antient usage of their respective courts, within the limits of which they are bound to move: and it would be criminal in a judge to suffer himself to be governed by *instructions* in judicial determinations, so criminal, that many judges have been censured and punished, and some in Richard the II'd's time, hanged for it.

As the king cannot confer privileges; so he has no prerogative of creating any new power, for imprisoning the subject, or abridging him of his liberty. A commitment, per *Mandatum domini regis*,¹³ is not good and must be discharged; because the king does not act in person, but hath committed all his power judicial, some to one court and some to another: so that no body is to be committed to Gaol by the king's special command: and *Hussey*, chief justice, in 1 Henry VII. fol. 4. saith, that sir John Markham told Edward the IV. he could not commit a man; because, if the king did wrong, the party could not have his action.

It is evident, then, that the power of commitment exercised by the two houses of Parliament, by the courts of justice, by the judges, magistrates, and all the officers concerned in the administration of justice, cannot be measured out to them by the king, in such portions as he thinks fit: It is a power with which they are invested by law, and is incident to their respective courts and offices.

In order to shew a nearer resemblance of our constitution here, to that of our mother country, and to bring the matter home to our subject, we will (if you please) review and compare the power of commitment, which is exercised by the different orders and powers of Government here, and in England. Here then, as in England, it has been already said, that every court

13. ["By order of our Lord, the King."]

of justice has a power of committing for contempt, a power, which seems to be inseparably annexed to every court, as essential to the support of its lawful authority. Here too, as in England, the commitments of the inferior courts may be examined, and discharged if irregular, by the court of king's bench, upon an *Habeas Corpus*, by the common law; and by the chancellor, or any of the judges, by the statute of 31 Charles II. But the commitments of the grand court, or court of Chancery, cannot be questioned, controuled or discharged, by any inferior jurisdiction: the inconsistency and absurdity of an inferior court's controuling a superior one, would not be endured in any other country, I believe, but this.

The law of England, ever jealous and careful of the liberty, as well as the life and property of the subject, supposing that a jurisdiction in these courts without some check or controul, or some power to watch over them, might be dangerous, and leave them at liberty to overflow their bounds, and in the end overwhelm the constitution, has wisely provided against this danger, by subjecting all their proceedings to the inspection of Parliament: And it is for this reason, the court of Parliament and each house of Parliament enjoys, in the order of the British government, a rank superior to every court of justice and a power over them: and, every court in the kingdom is amenable, and answerable for their conduct, to both or either of the houses of Parliament. It is for the security of the people therefore, in their lives, liberties and properties, that the two houses of Parliament have power over the courts of justice: and it is from motives of wisdom and public good, that the commitments of either house, (as I have shewn) are not to be questioned by any other jurisdiction. The house of Commons is the grand inquest of the nation; it is therefore, in a more especial manner, the duty of that house, to enquire into all abuses of power; and all public grievances, and to get them redressed.

It is indeed, from their representatives chiefly, that the people can hope for, or expect a candid enquiry into and thorough redress of grievances. The history of England gives us many instances of the corruption of judges and of their readiness, either from motives of corruption, or from a servile and criminal obedience to the dictates of a court, to pervert those laws to the destruction of liberty and property, which were intended for a nobler and better purpose, the security of both. But history also shews us the salutary effects of the superior power of the house of Commons; and that it has at all times stood in the gap against oppression. Many are the instances, which

occur in the English history, of judges brought to justice and to condign punishment, by the power of that house: some judges have been hanged, some banished, and some have been degraded, fined and imprisoned. In James the 1st's time, the great lord chancellor, Bacon, one of the greatest and wisest men the world ever saw, was yet so corrupt in the administration of justice, that he was impeached by the commons, and upon conviction, sentenced to be degraded from his dignity, fined, imprisoned and stript of the office he had abused. And so lately as the reign of George the 1st. the lord chancellor Macclesfield was, for the same crime, rendered incapable of his office, fined and imprisoned. Every man of candour, who has any knowledge of the history and of the laws and constitution of England, must own, that the power, the authority, and superiority over ministers and courts of justice, which the constitution gives to the house of commons, has been, and ever must be, the chief bulwark of the constitution; and, that without it, the life, liberty, and property of the subject would have no security against the oppression of ministers, and the corruption of judges.

This is the law and the constitution of England; the birthright and inheritance of every Briton, and the only form of government to which he can be made subject, without his consent. These are the rights, which our fathers brought with them to this Island: Rights, which no earthly power can divest us of, without our consent, whilst Great Britain continues a free and independant Kingdom, and her children retain any degree of love for the laws of England and for civil liberty.

To say, that our rights and possessions are secured to us by the laws of England, and yet at the same time, that we have no title to those powers and privileges, *without which they cannot* subsist, is downright impudent nonsense; it is mocking us with the sound of Liberty and Property, and robbing us of the substance.

If we are freemen, and not slaves, our liberties are as much our inheritance, as our lands. If our lives, liberties, and properties are not our inheritance, secured to us by the same laws, determined by the same jurisdictions, and fenced in and defended by the same constitution, as the wisdom of our ancestors found it necessary to establish, for the preservation of these blessings in our mother country; then, are the subjects of the Colonies, *not* freemen but slaves; not the free subjects, but the outcasts of Britain; possessing these invaluable blessings, only as tenants at will, the most uncertain and wretched of all tenures; and liable to be dispossessed, by the hand of power.

Lord chief justice Coke, (that oracle of law) being a member of the house of Commons, in the reign of Charles the Ist. said, in a conference with the Lords: "For a freeman to be a tenant *at will* of his liberty; I will never agree to it." It is a tenure not to be found in all Littleton. And there is certainly no other distinction between freedom and slavery, but that a freeman has his life, his liberty, and his property, secured to him by known laws, to which he has given his consent; and that he cannot be divested of any right, but by a judgment of a lawful court, and for breach of some law of the land: Whereas a slave holds every thing at the pleasure of his master, and has no law, but the will of his tyrant. Can there be a more slavish or infamous position, than, that we have no constitution in the Colonies, but what the king is pleased to give us? And is it possible, that, among a people who stile themselves Britons, men should be suffered or listened to with any patience, who have the effrontery to own maxims and to propagate doctrines, so subversive of every thing, that should be dear to a Briton! Were it possible to repress an honest indignation at the degeneracy of these men; It would be pleasant to consider the inconsistencies and contradictions they are led into in their arguments and endeavours to prove us slaves. For example. They will tell you gravely, that the subjects in the Colonies are freemen; that they hold their lands, their lives, and liberties, under the security of the laws of England; that they have a right to justice administered in the same forms, and by the same rules, as in England; and, that their courts, where justice is administered, derive their existence from the same source, have the same powers, and stand in the same degree of subordination to one another, as the courts of justice do in England. But they assert, that the representative body of the people, a court, by the laws of England, superior in rank, in power, and importance, to all those courts, is, in this Colony (by a strange inversion of the constitution) placed below them: that is in plain English: "You are freemen, entitled to all the rights and privileges of Englishmen, but your constitution wants the only sence, which in your mother country secures to the subject those invaluable blessings." Can there, in the name of God, any honest reason be given, why the order of things in this colony ought to be thus inverted? or why the representatives of the people should be so degraded in our constitution, from the rank which they hold in that of our mother country?

I am not so absurd as to say, or imagine, that the Assembly of this little Colony is any ways equal in dignity or extent of power to the house of

Commons. The house of Commons represent the people of a mighty kingdom, of which this Colony is but a part: The house of Commons have for their object the whole British Empire, its interests and connexions with all the world. Our Assembly acts in a much narrower field; its operations confined and circumscribed within the limits of this little community, extend not to any other part of the king's dominions; and its power, like that of all other bodies thro' the British Empire, is subordinate to that of a British Legislature, which is and must, in the nature of things, be supreme over all the British dominions. I contend not for an equality of the Colonies with the mother country; they are, and in the nature of things must be dependant upon it. But I contend for a right in the subjects of this and every Colony, to the laws of England; that this Colony has a constitution, and a form of Government, resembling as nearly, perhaps as possible, that of England: That it has enjoyed this constitution ever since civil Government was first established here; and that no form of Government, repugnant to the English constitution, can be imposed upon us against our consent, without actually degrading us from the rank of Englishmen, and reducing us to a condition of slavery. Upon this foundation, then, I do affirm, that the house of Assembly of Jamaica does, and must hold the same rank in our little system, as the house of Commons does, in that of our mother country; that the court of Chancery, and all the courts of justice stand in the same degree of subordination and inferiority to it, as those courts in England do to the house of Commons; that it is necessary for the public security, that this court should have a power to question the proceedings, repress the exorbitancies and restrain the excesses of all other courts; and that this power cannot be preserved, if the court of Chancery or any inferior court is allowed to examine or discharge the commitments, or controul the jurisdiction of the Assembly, in cases of privilege.

The wisdom and experience of our ancestors in England taught them, that it was necessary for the security of life, liberty, and property, that there should be a power somewhere in the constitution, to controul the courts of justice; and they did most wisely place the power of controuling them, where alone it could be securely placed, in the Parliament, in each house of Parliament, in *the people by their representatives*. What reason or justice is there in denying the people's representatives here, the same salutary power of controul? Is there less danger to be apprehended from the oppressions and injustice of those courts here, than in England? Is the Chancellor, are

the judges here likely to be more learned, more free, more independent, more virtuous, and less corrupt, than the lord high chancellor and the judges in England? Or, are the people less to be trusted with righting themselves, than those of England? I think none of these things will be asserted; I am sure they cannot be maintained. I think, the danger that would result to this country, from the want of such a power in the Assembly, still greater, undeniably greater than it would be in England, from the weakness of our condition, which, in many instances, admits not of a constitution, so perfect and so capable of giving public security.

Let me explain myself. It has been shewn before, that our Legislature here wants, in its two first branches (from the dependent condition of the Governor and council) a good deal of that freedom, which is necessary to the Legislature of a free country; and that on this account, our constitution is defective in point of Legislature; those two branches not preserving by any means, so near a resemblance to the parts of a British Legislature, which they stand for here, as the Assembly does. This is a defect in our constitution, which cannot, from the nature of things, be entirely remedied; for we can never expect the happiness of the King's personal presence amongst us, nor have we any class of men, distinguished from the people by inherent honours. But there are defects, *in point of judicature*, more important than these, and more dangerous to liberty; and which may and therefore, I hope, will one time or other be remedied. In England judges hold their places, *Quam diu se bene gesserint*:¹⁴ here they hold them upon the slippery and uncertain tenure of, *durante bene placito*:¹⁵ and they are put in and displaced at a Governor's pleasure. In England, the king cannot exercise a judicial office himself; for, tho' justice and judgment flow from him, yet he dispenses them by his ministers, and has committed all his judicial power to different courts. And it is highly necessary for his people's safety, that he should do so: for (as Montesquieu, who has investigated the nature of government, and seems to be perfectly master of the subject, says upon the constitution of England) there can be no liberty, where the judicature is not separated from the legislative and executive powers, his words are,

Il n'y a point encore de liberté, si la puissance de juger n'est pas séparée de la puissance législative; & de l'exécutrice. Si elle étoit jointe à la puissance

14. ["As long as they have conducted themselves well," i.e., good conduct.—Tr.]

15. ["Continuing at the pleasure of the king."]

législative, le pouvoir sur la vie & la liberté des citoyens seroit arbitraire; car le juge seroit législateur. Si elle étoit jointe à la puissance exécutrice, le juge pourroit avoir la force d'un oppresseur.

There is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

Here the Governor, who exercises the executive and a share of the legislative power, holds and exercises also, two of the most considerable judicial offices; for he is *Chancellor* and he is *Ordinary*: Jurisdictions, which, in the course of a very few years, bring the greatest share of the property of this country to his determinations. As judge of these courts, then, and by the influence he may acquire over those of all the others, the Governor is vested with a very unconstitutional power: a power, which puts the lives, liberties and properties of the King's subjects here, too much in his mercy; and, which would leave them no security for any thing, if the courts of justice, particularly those in which he presides, were not subject to the inspection of, and subordinate and amenable to, the representatives of the people, as they are in England.

I know of no power exercised by the house of Commons for redressing grievances, or bringing public offenders to justice, which the Assembly is incapable of. I know of none which it has not exercised at times, except that of impeachment; and this has been forborn, not from any incapacity in that body, but from a defect in the power of the council. An impeachment by the house of Commons in England, must be tried in the house of Lords; it being below the dignity of the Commons, to appear as prosecutors at the bar of any inferior court.

The council or upper house here, have no jurisdiction in criminal cases, and the Assembly being also above prosecuting in the inferior courts, do therefore not impeach, only because there is no judicature, which they can in this case with dignity resort to: But the Assemblies of Jamaica have always been used to enquire into the abuses and corruptions of office, the obstructions to public justice, and the complaints of subjects, oppressed by the hand of power, and to bring the offenders in such cases to justice. If an offender be in any station below the Governor, their custom has been, to lay

the evidences of his guilt before his excellency, and by address desire, he may be prosecuted and dismissed from the office he has abused. If the oppression comes from any of the courts or offices, which the Governor holds, they seek for redress by an application in the same manner to his Majesty; inso-much, that public officers and magistrates of all ranks, from the justice of the Peace, up to the chief justice, the members of his Majesty's council and the Governor, have at times been made to feel the weight of this authority, and to suffer for their excesses; so that, tho' the Assembly do not impeach, yet they exercise powers as constitutional, and every way as effectual, to protect the subject, and bring the guilty to punishment.

And I appeal to every man, who has any knowledge of the history and constitution of this Colony, whether the salutary and frequent exercises of these powers, have not been our main defence against oppression, and our best security against the ill effects of that formidable and unconstitutional share of power, which our Governors are armed with.

Our present Governor is said to possess, together with the most amiable private qualities, a great deal of learning, a very extensive knowledge of the constitution of Britain, long experience and habitudes in business, and very singular talents for government. I am ready to allow his excellency all the good qualities he possesses. If we could be always sure of good Governors, to contend for privileges were but vanity, perhaps, and folly. But, as the same God, who in his mercy gives wise and religious and just Governors, may also in his displeasure, and for our sins, permit hypocrites and tyrants to rule over us; we should not yield to any illegal or unconstitutional act of a good Governor, which may be drawn into precedent, and made an oppressive use of, in the time of a bad one.

Such, I think, was our Chancellor's late discharge of a commitment by the Assembly, as well as the record of his judgment upon that occasion: a record, which does avowedly subject the jurisdiction and power of commitment of that house, to the judgment of an inferior court, and which, if suffered to stand, most effectually disarms the Assembly, and consequently, leaves the people without any protection, against the oppression and injustice of courts, or the corruption, the rapaciousness and iniquity of future Governors. To illustrate this, give me leave to suppose a very possible case. Suppose the day arrived then, when our present Governor shall be recalled: Suppose his successor already in possession of his government; and suppose him, a man every way the reverse of this, poor, needy, and rapacious;

depending for his support upon some powerful minister; who, having subsisted him for the former part of his life, will be ready to support him in his government, against the complaint of any injured man, in order to prevent his becoming again a burthen upon him. Suppose him, in short, sent here to fill his bags, and perhaps, to execute the vengeance of a ministry upon this unhappy Colony, for having in some instances, opposed their will and pleasure.

He begins his administration with new modelling the courts of justice, and disposing them for a blind obedience to his will. He displaces the judges, and fills the bench with such men, as he can depend upon. He displaces the Attorney General, and puts a man in that office, exactly fitted for his purpose, and obsequious to his commands. Every thing thus prepared, the scene opens, and oppression of every kind, and from every quarter, is let loose upon the people. The patent officers, their deputies, and even their deputies' deputies, (for some time past very impatiently kept within bounds, by his majesty's gracious proclamation, by the integrity of the Governor, the power of the Assembly, and the justice of the courts) now resume their spirits: and (the Assembly disarmed, the tyrant bribed, the proclamation forgotten, the courts of justice secured, and all obstacles removed) they practice every kind of exaction with impunity; and like a torrent that has been for some time withheld, overflow the land, and leave every where marks of their rage and violence. In the courts of law, all is injustice and oppression; the guilty are screened from punishment by *nolle prosequi*;¹⁶ the innocent are harassed by informations; juries are packed, men are convicted of crimes not committed, and upon laws not violated; and obliged to give up a great part of their substance, in order to purchase a quiet enjoyment of the remainder; to purchase a temporary exemption from punishment, or to preserve a paltry existence.

But, bad and wretched as is the condition of the subject in these courts, it is worse as you go higher, *procul a Jove, procul a fulmine*.¹⁷ Take a view of the courts where the tyrant presides in person, and you will find that corruption, injustice, rapine and oppression, know no bounds, where judicature is uncontroled. Here, the law of the land is trampled upon, and instructions are brought to supply its place. Here, in violation of MAGNA CHARTA,

16. [Literally, "Do not proceed," i.e., an order to stop legal proceedings.—Tr.]

17. ["Far from Jupiter, far from the thunderbolt."]

justice is sold; it is delayed by an unreasonable protracting of causes; it is denied by discouraging appeals from the inferior courts, and refusing them in his own. Under these discouragements commerce languishes for some time, and then forsakes us: the merchants quit the country, and the ships do not frequent it; money is scarce; the planter's produce lies on his hands, an useless drug; and the necessaries of life and the implements of industry are furnished, upon the most exorbitant terms, exorbitant, in proportion to the uncertainty of payment.

In this extremity, what relief has the wretched subject? his Majesty's ears, it is true, are ever open to the complaints of his people, and his royal heart is graciously disposed to relieve them; but alas! how few of the wretched people will be capable of applying for this relief? some will be deterred by threats, and the dread of that unlimited power, which hangs over them: many more will absolutely be disabled by poverty; and the few, who may have this remedy within their reach, will be those who have been least oppressed, and who therefore least deserve compassion.

At last, the occasions of government, or perhaps an order from home, make it necessary to call an Assembly. Hope is the companion, and too often the only relief of the unhappy, who are ever prone to entertain it upon the slightest grounds. These wretched people then begin to flatter themselves with hopes of relief from their representatives; from that body, which was wont to shelter them against all oppression. Fondly imagining this circumstance to be a signal, and a forerunner of returning liberty, they joyfully hail the happy omen, and expect the meeting with eagerness and impatience. The Assembly met; the unhappy and oppressed people flock in crowds to their doors, the fathers of families, disconsolate widows, and helpless orphans, dispossessed of their properties, groaning under oppression, and covered with misery and want, present themselves at the bar; set forth their grievances, and in the most moving attitudes, and with all the pathetic eloquence of distress, implore the relief and protection of the house. The house receive their complaints, and vainly imagining themselves possessed of their privileges and antient powers, they (according to the practice of their ancestors) give the redress of these grievances the first place in their deliberations. They take the examinations of the injured, and summon the wicked instruments of oppression before them, in order to gain the fullest information about their oppressions; and, according to their duty, lay the facts before his Majesty, for redress. Here they are stopt, their dreams

vanish, the criminals refuse to appear before them, and the house is given to understand, that they were called together for the granting of money, and, that this (tho' the least and meanest end of their original institution) is now, the only power they have a right to exercise. In vain do they order the delinquents into custody; the chancellor, by virtue of the precedent before him, discharges them; and this odious record now appears to them in its proper shape, as a most dreadful instrument of tyranny and oppression.

This, my dear sir, is a picture of the miseries we are all liable to, if the court of Chancery is suffered to determine the privileges, and controul the jurisdiction of the Assembly. Do not think it overcharged: It is not drawn from the extravagant images of an active fancy; be assured it is taken from life; from what has already happened, and does now actually exist. If we are to give any credit to written accounts of voyagers, or to the evidence of those, who have been on the spot, it is a faithful representation of what our neighbours, the American Spaniards, do at this time endure. Nor is there an oppression, injustice or hardship in all the above catalogue, which that unhappy people have not at times been made to suffer; and all, from a power in their courts of justice, which has no constitutional, or effectual controul; for where the judicature of a country is without some constitutional check, sufficient to keep it within bounds, I defy any man to shew me, what security the people of such a country can have, for their lives, their liberties, or their properties. It is true that, were we base enough to part with our defence and give up the jurisdiction and privileges of the Assembly, it is not certain, it is perhaps not probable, that all the ill consequences I have enumerated, would at once flow from it, and be felt by the present generation, in their utmost severity. But it is probable that some, and possible that all of them might follow: And, whilst such a possibility remains, we are, to all intents and purposes, slaves, as much as the aforesaid unhappy Spaniards, or any other slaves. Our condition in that case, even tho' we do not actually suffer the same hardships, differing from theirs, only, as that of a slave who has an indulgent master, differs from his who has a cruel one; *for, it is the power which any man has of taking my life, liberty, or property without my consent, that constitutes and defines slavery.* You see, then, the importance of the present contest; and, of how much consequence it is, especially to us who are fixed to the soil; since every thing that an Englishman holds dear, is staked upon the issue of it.

In a contest, where the struggle is for *all*, it would be surprising to find any one so foolish, or so abandoned, as to contend for giving up the point; did not history (to humble the pride of man) shew us, that all ages, and all countries, have produced some so stupid, as to sell their birthright for a mess of pottage; so base and degenerate, as to court the yoke. And historical justice has in vain delivered these wretches down to posterity, as criminals, in the most odious colours; since the world still continues to produce such monsters. The number, indeed, of men amongst us, who contend for slavery, is, (thank God) small: and some of these, no one is sorry to find engaged against their country. They have, very happily and properly, listed in such a cause; since the immorality of their characters would disgrace a better. But there are others, on the same side, of a very different stamp, men, who wander not from the right way intentionally, but as having been misled. These, every good man is concerned for, and wishes to be reclaimed; since it is for the public good, that all honest men should think alike, and act together, in a matter of such public concern.

I think it impossible, such men should continue in their errors; if they would only take the trouble of examining by the light of their own reason, the arguments which are made use of to persuade, to frighten us out of our freedom; arguments, that affront our spirit, and insult our understandings. We are told, for instance, in the public papers, we are told it in private, that if the Assembly does not proceed to business, (their privileges unvindicated) we shall loose our Legislature. We are told further, that his Majesty in council has determined against us, and has given us to understand, that if we insist on our privileges, he shall be under a necessity of applying to his Parliament, to make laws for us. I have seen no such order of council; and the person, who is said to report, that there is such an one, deserves so little credit, that I will not believe it, before I have better authority. Till then I shall consider it as an impudent calumny, calculated for the dirty purpose of serving some turn, and tending to cast a reflection upon the justice of the most gracious and best of kings, upon the integrity of his ministers, and the lords of his Majesty's privy council, and upon the honour and independence of a British Parliament. If I do see such an order, I cannot resist demonstration, but I shall consider it as an abuse of his Majesty's name and authority, by his ministers, and such an attack upon the people of this Colony, as, if submitted to, or forced upon them, proclaims them slaves.

By the law of England the king can do no wrong, but the law supposes his ministers may; and they are accountable to their country for every wrong or oppressive act, that is done in his Majesty's name; and every individual, wronged by their act, has a right to complain, and to seek a lawful redress. We have a king upon the throne, as incapable, from the graciousness of his disposition and the natural goodness of his heart, of doing any wrong, as he is supposed by the law to be, in his political capacity; a king, who glories in being born a Briton. Every good subject ought; every subject in this Colony, I am sure, would shed the last drop of his blood, in defence of his Majesty's crown, and to preserve it in his royal line.

To his ministers every good subject owes respect, while they act in their several departments, for the public good. When they cease to do so; they forfeit all title to respect.

To a British Parliament, every subject throughout the British dominion, owes the highest respect and reverence, and to their laws obedience.

Resolutions of his Majesty in council, are not laws: and if they are against law, no subject is obliged to obey them. If such a resolution as is mentioned, were to be procured in the case of the meanest corporation in England; if condemned unheard, they were to be told, that, if they did not yield to the dictates of a minister, in a point of the last consequence to their freedom, his Majesty would apply to Parliament, in order to disfranchise them; what, do you think, would in this case, be the consequence? Do you think, the meanest corporation in England would submit to such an outrage? Or, would any minister be safe in committing it? I believe not. I believe, his Majesty would resent it, as an abuse of his name and authority: the Parliament would, I believe, consider it as a daring attempt to degrade them, from the glorious title of protectors of the British liberty, to the base purposes of oppression.

Unhappy Jamaica then! Is it so fallen, as to become of less consideration, than the meanest corporation in Britain? Have we deserved so ill of the nation, as to be thrown out of the protection of the laws, stript of our privileges, and left to the mercy of a ministry? I will never think so. Let us not think so ill of his Majesty and of his Parliament. They do not deserve it of us. Let us not think so desperately of ourselves, we do not deserve so ill of them.

The Assembly of Jamaica have made no violent, no oppressive use of their privileges. An attack was made on their privileges, as wanton, undeserved, and unprovoked, as it was irregular and dangerous to liberty. It is invidiously said, that a power in the Assembly of commitment without controul,

would be very dangerous to liberty. It is not pretended, that the Assembly have such a power without controul; there is no such thing in the English constitution. The courts of justice are controuled by one another, according to their different ranks: and the house of Commons, as their superior in rank, controuls them all. But the house of Commons is also subject to a constitutional controul, when they exceed their power or stretch it, to the purposes of oppression. If they oppress the people, the king has a power of sending them by a dissolution, back to the people; and those they have oppressed, will not again trust them with the power they have abused.

In our constitution, there is no such thing as a wrong without a remedy. But then you must apply to the proper jurisdiction. If you do not, you cannot expect a remedy. If a man, for instance, was to insist upon the officer of the crown's indicting his obligor in a bond, because he did not pay his obligation to the day; would he not be laughed at? Would any officer bring such an indictment? If a man, instead of indicting one for killing his brother, were to file a bill in Chancery; could he reasonably complain, if his bill was dismissed? If the obligee in the bond, or he who had lost his brother, had each of them applied to a proper jurisdiction, they would have been redressed. As they did not do so, could they reasonably arraign the justice of the government; or with any colour say they were denied justice? so if Cook and M'Neil chose to apply to the chancellor, in order to be released from a commitment of the Assembly; they applied to an incompetent jurisdiction; a jurisdiction that could not constitutionally release them; and altho' the Assembly had even committed them unjustly; yet they could not complain, if the Chancellor had remanded them; because they had a remedy, but would not apply to the proper place for it.

Thus you see, the attack in this instance was irregular and unconstitutional. It was wanton, because these men ought to have gone first by petition to the Assembly, where they would have been most certainly relieved. But this it seems, was too humiliating for men of their figure; and they disdained it.

It was unprovoked and undeserved; because the Assembly was going on with business in a regular course, and did not in this go out of their way; and because there never was nor ever will be, an Assembly better disposed to support administration.

If the Governor thought the Assembly were oppressing these men; yet, as *Chancellor*, he ought to have remanded them; tho' he might in this case have dissolved the Assembly, as Governor; and if he had done so, the privileges of the Assembly would not have been infringed, the men would have been

released, and he would not have exercised a power unconstitutional and dangerous to liberty, and would therefore have given no reasonable cause of Offence.

* The fate and condition of Ireland should be a document and warning to all the Colonies. Ireland, inhabited and possessed by the children of England and of those who conquered it, was once free. It is not so now. An artful Governor (Sir Edward Poinings) sent to them, perhaps, for that purpose, by Hen. VII. cheated them out of their liberties, that is, into an act of Parliament that fixed a yoke about the nation, which their posterity have ever since been groaning under the weight of; and the Irish enjoy at this day, less liberty than any other subjects in the British dominions. This could not have happened without their consent. Let any man look over the list of Pensions on the Irish establishment, published not long since, and he will see, what a milch-cow that unhappy kingdom, (with such a curb in its mouth) is to a British ministry.

It is this honourable badge which ministers have been long endeavouring to adorn the Colonies with. In Charles the II^d's time, the Earl of Carlisle was sent hither our Governor, and brought with him a body of laws, fashioned after those of Ireland, with *instructions* to get them passed here. But our ancestors rejected them with indignation; no threats could frighten, no bribes could corrupt, no arts or arguments could persuade them to consent to laws, that would enslave posterity; and therefore we are free.

The endeavours of successive ministers were continued for this purpose, until the year 1728, when King George the II^d gave his royal assent most graciously to an act, commonly called the Revenue Act, which put an end to the contest; for in that act it is declared,

That all such laws and statutes of England, as have been at any time, esteemed, introduced, used, accepted or received, as laws in this Island, shall be and are hereby declared to be and continue laws of this his Majesty's Island of Jamaica, *for ever*.

And his Majesty's consent to this law, which may be called our great Charter, was purchased by granting therein a perpetual revenue, to his Majesty and his successors. By this law, we are precisely entitled to all such laws of England, as have ever been used here. Now, our court of Assembly, as appears by their minutes, have ever governed themselves, and exerted their jurisdiction in cases of privilege, by the law of Parliament.

The law of Parliament has ever been allowed by all lawyers and judges, to be part of the law of England; I would therefore be glad to hear, by what quirk or subtilty it could be distinguished, in our case, as *no law of England*.

Have our ancestors, in the infancy of this Colony, in the arbitrary reigns of a Charles and a James, and when prerogative was unlimited, and liberty undefined, thus nobly withstood every attempt to enslave us? And shall the present generation, now when liberty is established, and prerogative limited, do less for posterity? God forbid! The conjuncture is, most certainly, critical; our danger great, and the power we have to contend with formidable. But the spirits of a brave People should rise, in proportion to their danger. It is the part of slaves, to submit to Oppression; it is the part of cowards to shrink at the appearance of danger. We are not slaves, we cannot be made so without our consent, as long as Great Britain is free. If we suffer ourselves to be frightened out of our liberties, we are cowards: if we give them up from any other motives, we are traitors; traitors to the present generation; traitors to posterity. But if, after having done our utmost, they should be wrested from us, by a stronger power; every man who has done his duty, will have the testimony of a good conscience for his comforter; and *mens sibi conscia recti*,¹⁸ the greatest comfort of a good man, will be ours. His Majesty, and every honest man in Britain will think the better of us, for shewing a manly resolution and constancy, in defence of our privileges. His Majesty will think the better of our loyalty, for our love of liberty; for his throne is founded on liberty, and it is his greatest glory to reign over a brave, a loyal, and a free People.

To conclude, we have received our liberties, as an inheritance from our fathers, and we are bound to transmit them to our children, unimpaired. If we do so, we shall do our duty; if we do otherwise, we shall act with the basest treachery and impiety: we shall deservedly incur the censure, the contempt, the abhorrence of all honest men, and entitle ourselves to the curses of posterity.

I am, &c.

Jamaica, August 10th, 1765.

FINIS.

18. [Literally, "A mind conscious of righteousness," i.e., a good conscience.—Tr.]

Appendix.

An Historical account of the establishment of
the Colony of Jamaica, Its Constitution, form of
Government, and progress from the Conquest thereof
by the English, until the year 1684.

Now First Published, From a manuscript of
undoubted authenticity.

1. After the conquest of Jamaica, part of the army being left for its security, and the protection of those who should be induced to settle and plant there; martial Law became the rule of their government, and was continued until the restoration of king Charles the second.

2. But his said majesty, graciously bending his thoughts and councils to promote the prosperity of this colony, soon resolved that the army should be disbanded, and that a civil government should be erected, under such known customs and laws, as would render the country agreeable to the inhabitants and beneficial to his kingdom.

3. Accordingly, Colonel Edward Doyley, by his majesty's commission under the great seal of England, dated the 8th of February 1660, was appointed governor of the island of Jamaica; and was directed to proceed forthwith to the electing of a council to consist of 12 persons, whereof the secretary of the said island was to be one; and the rest to be fairly and indifferently chosen by as many of the army, planters, and inhabitants, as by his best contrivance might be admitted; and with their consent, the said governor was impowered to act according to such just and reasonable customs, and constitutions, as were exercised and settled in his majesty's other colonies, or according to such other as upon mature deliberation should be held necessary, for the good government and security of the island; provided they were not repugnant to the laws of England.

4. In obedience to this commission, a council was elected by the country in the nature of their representatives; several municipal laws were enacted, civil officers were constituted, and provision made by a revenue act, to support the charge of the government, which was then computed at 1640l. per annum.

5. But the Spaniards frequently disturbing them in their new possessions, the army was still kept on foot; which preventing the increase of the colony,

and restraining the industry of the inhabitants, the planting and breeding of cattle during this governor's administration, were very little intended.

6. The first essay towards the establishing and settling of the government, proving therefore deficient, his majesty constituted the lord Windsor, governor of the island, and by his gracious proclamation of the 14th December, 1661 (which his lordship carried with him) granted great encouragement to the planters, and declared that all the children of his natural born subjects to be born in Jamaica, should be free denizens of England, and have the same privileges to all intents and purposes, as the free born subjects of England.

7. And, as his lordship's commission and instructions contained greater privileges, concessions and indulgences to the inhabitants, than those that were sent to his predecessors; so they were better calculated for the more effectual establishment of the government; by directing, that it should be *assimilated* to that of *this Kingdom*; and to this end he was empowered to appoint his council, and to call assemblies according to the custom of his majesty's other plantations, to make laws, which were to be in force for two years and no longer, unless confirmed by his majesty, and upon emergent necessities to levy money &c.

8. My lord Windsor, not enjoying his health, remained there but a few months: however, he settled the militia, and consequently disbanded the army.

9. Upon his departure, in October or November 1662, Sir Charles Lyttelton,* at that time chancellor of the island, succeeded in the government, and in October 1663, by advice of his council, called the first assembly, which consisted of 30 persons; and upon their meeting they enacted a body of laws, with an act for raising money for the publick uses wherein the *collection, disposal and accounting, was appointed by the assembly.*

10. In 1664, Sir Charles Lyttelton, left the government under the care and direction of the council, who chose Colonel Thomas Lynch president, 2500 of the inhabitants were then regimented, besides 4 or 500 more, dispersed in the country; and their provisions (as he asserted) infinitely increased.

11. This account was so acceptable to his majesty in council, that Sir Thomas Modyford was recalled from Barbadoes, and by commission under

* Grandfather to the late governor.

the 15th November 1664, was constituted governor of Jamaica, with power to erect judicatories, to call assemblies and with their consent, to *make, ordain and constitute, all manner of LAWS, STATUTES and ORDINANCES, and upon imminent occasions to LEVY MONEY* for the good and safety of the publick; which laws were to be, as near as might be, suitable and agreeing with the laws of England.

12. Accordingly in his first year he called an assembly, who enlarged and re-enacted the former laws, and these upon some assurances given him of his majesty's approbation, were continued in force during his government, which ended in the year 1670.

13. By the muster rolls of the militia, about this time, transmitted to the lords of the committee for trade, it appears, their number was 2720; and that the number of seamen in and about the island was, 2500; privateering being then the great business and concern of the island.

14. But an end being put to that trade, soon after the conclusion of the American treaty with Spain, and the government being confirmed by the new governor's (Sir Thomas Lynch) commission and instructions, the improvement of the island was industriously prosecuted and encouraged, and the planters encreased, by the constant accession of others, from all the several parts of his majesty's dominions.

15. An assembly was call'd soon after his arrival, by whom the laws that were passed and expired in the time of the preceding governor, were altered and enlarged; and in two years after, not being confirmed, they were again re-enacted and sent to England, for his majesty's royal approval.

16. My Lord Vaughan succeeded Sir Thomas Lynch in 1674, his commission named his counsellors, directed his calling assemblies to be chosen by the freeholders and planters, according to the custom and usage of Jamaica: who were to be deem'd the representatives of the people, to make laws as near as conveniently might be, agreeable to the laws and statutes of England; these laws to continue in force for two years, but none to be re-enacted, except upon very urgent occasions, and in no case more than once, except with his majesty's express consent.

17. His lordship immediately summoned an assembly, and passed all the laws that were then expired, which were sent to England to be confirmed or otherwise disposed of as his majesty should determine: but not being returned at the end of two years, another assembly was called, by whom all

the same laws were re-enacted except the revenue act, which was rejected by his lordship.

18. As my lord found the island in a flourishing condition, and that the people had been easy and well pleased under the mild and successful government of his predecessor, so by his indulgent, steady and impartial conduct, he greatly contributed to the increase, both of the strength and trade of the island.

19. By an account of the Militia sent home, not long after his departure, they were augmented to 4526; a greater number than they have ever since mustered.

20. And the planters exported, in the 4 years from the commencement of his government, very near three times as much sugar as they had exported, in the three and three quarters preceding years.

21. Nevertheless, this prosperous course was soon interrupted, for upon the examination of the laws then in force at Jamaica, such objections were raised by the lords of the committee for trade, that his majesty was pleased to reject some and direct the new modelling of the rest, which were to be sent back, that *they may be passed by the assembly after the manner in Ireland*, according to POYNINGS LAWS, to which rule they were to be bound for the future.

22. And the assembly having imprisoned one of their members, for several misdemeanors and breaches of orders of their house; the privileges they insisted on as natural and necessary to the representatives of that colony, which were *the same that the house of commons have in England*, were likewise controverted.

23. The aforesaid laws were accordingly returned to Jamaica in 1678, by the Earl of Carlisle their new governor, who on his arrival, called an assembly, in order to pass the same; but they being very much dissatisfied with this frame of government, and with their losing *their deliberative part in making and passing their laws*, REJECTED THEM.

24. The next year 1679, the said laws were again transmitted thither, under the broad seal of England, and tho his majesty was advised to furnish his governors and their council for the time to come with power to raise money, as had been practiced in their infant state, *if they did not comply with his royal commands*, YET THEY AGAIN REJECTED THEM.

25. It would be too tedious to enter into the arguments and reasons, that on the one hand were urged to oblige the assembly to comply; and on the

other, that were offered to support the necessity of re-establishing their late constitution.

26. However it must be observed, that on the 33d of June 1680, his majesty in council was pleased to order, that the following questions should be proposed to all the judges, *viz.*

27. Whether by his majesty's letter, proclamation, or commission, annexed, his majesty had excluded himself from the power of establishing laws in Jamaica? it being a conquered country, and all laws settled by authority there, being now expired.

What was reported hereupon by the judges doth not appear; neither is it material, since his majesty very graciously condescended, after hearing colonel Long and colonel Beeston (who were deputed by their colony to support their allegations) and the planters and Merchants then residing in London, by and with the advice of his most honourable privy council to determine in their favour; and accordingly by a new commission to the Earl of Carlisle, under the broad seal dated the 3d of November following, not only restored to the island their former government, and all privileges they had hitherto enjoyed, but enlarged them, and in consideration of the languishing state of the country, granted, that the quit-rents, &c. there arising to his majesty, should hereafter be appropriated and applied, to the use of the publick.

29. The Earl of Carlisle having left Jamaica during this debate, Sir Thomas Morgan, acted as lieutenant governor in his absence: his lordship declining to return, his majesty gave the island a further instance of his great favour and goodness, and in 1681 appointed Sir Thomas Lynch, governor, and impowered him, with the advice and consent of the *Assembly and Council*, to make such laws as should be conducive to his majesty's interest, and agreeable to them; accordingly in 1682, several new laws more passed by the *Governor, Council and Assembly*, whereof 28 on the 23d of February following, were approved and confirmed by his majesty, for seven years, and those with some others, that compleat the first volume now in print, on the 17th of April, 1684, were approved and confirmed by his majesty for twenty one years, and are still in force.

30. In this manner was the legislature of Jamaica at last happily settled, to the great satisfaction and encouragement of the inhabitants; and as this government was assimilated as near as possible to the government of

this their mother kingdom, so their assemblies were ALLOWED, AND ENJOYED, the same privileges that the house of commons possessed there.

31. And since my Lord Windsor, under whose commission assemblies were first established, were directed to do and execute all things according to such reasonable laws, customs and constitutions as should be settled, provided they were not repugnant to the laws of England, but agreeing thereunto as near as the condition of affairs would permit; and that the succeeding governors commissions are of the same import, as it cannot be doubted, it was absolutely necessary the assembly should have rule to go by; so it is submitted, whether the governors had it not in their power to prescribe this known rule to themselves, and to the assembly, and whether they could lay down a better.

32. Their opinions however both of the constitution and privileges of the assembly of Jamaica, will appear by what follows.

In the year 1669 Sir Thomas Modyford answers to the lords of the committee for trade, upon their enquiring how the legislature was settled.

33. That the legislative power of making and repealing laws, is settled in the governor as his majesty's commissioner; in his majesty's council, as representing the lords house; and in the assembly, composed of the representatives of the freeholders, two persons elected out of each parish, and these chosen as the commons of England, being an humble model of our high court of parliament. Each of the respective bodies enjoying a negative, as well as an affirmative vote.

34. The lord Vaughan, on a question that arose about the method of passing laws, declared to the assembly, that he should guide himself *according to the usage and custom of parliaments in England*.

35. The assembly, in an address to the earl of Carlisle upon the objections that were made against the imprisoning their members for misdemeanors, &c. say,

36. They hope it is justifiable, the king's governor having assured them that they have the power over their members which the house of commons have, and all speakers here praying and the governor granting, the usual petitions of speakers in England.

37. Sir Thomas Lynch, about the same time being called upon to give an account of the government of Jamaica, argues thus.

If the king's commissions have appointed assemblies, and if they have been constituted in all the colonies from their first establishment as a government, the most just and like this of England, then they hope that they alone of all the colonies, shall not be retrenched in any of the privileges, natural to such assembly; and upon the aforesaid design relating to the passing of their laws, he offers it as his opinion, that it was probable the assembly would reject the laws, and that it was possible, the council might join with the governor, to order those laws to be continued; but he verily believed that they would not continue the revenue bill, for that they thought peculiar to the assembly.

38. In said Sir Thomas Lynch's state Jamaica, which he transmitted to England in 1663, when he was placed the third time at the head of government, and after its reestablishment, he asserts.

That all the methods and proceedings of the assembly were conformable to those of English parliament, as much as so little a body may to so great a one.

And in another account he adds thus. The king, by his charter of government as commissioner has constituted assemblies, that are umbraes of an English parliament.

39. Neither were such concessions inconsistent with the antient nor the modern constitutions of colonies, for as Grotius observes, the Grecian colonies (which constituted particular common wealths) were to enjoy equal privileges and liberties with their mother cities; and those that were afterwards planted by the Romans, were models of that republic; notwithstanding they kept them in subjection and dependency; to which example, all the nations in Europe have in general, ever since respectively adhered.

40. From the whole therefore it's very apparent, by what rule the assemblies of Jamaica, were at first constituted and afterwards directed; and since neither the standing rules of that assembly, nor the privileges they enjoyed, were ever disallowed at home or opposed abroad, during the reign of king Charles the II^d, it was manifest upon what foundation they stood.

41. And it is humbly submitted whether any frame of government less perfect or less acceptable to the inhabitants, could have supported them under those terrible calamities and severe judgments, to which they have been since exposed, or have enabled them to sustain the losses and damages

they have suffered; and to surmount those difficulties, under which they have long laboured.

An extract from the *Votes* of the honorable house
of *Assembly of Jamaica*;

Relative to the commitment of *Thomas Willson*, *Pierce Cooke*, and *Lachlan M'Neil*, into custody of the Messenger, on the complaint of *John Olyphant*, Esq; a member of the house, for a breach of privilege; with the resolutions of the house thereon, and in consequence thereof.

Sabbati, 8 Die Decembris, 1764.¹⁹

Upon complaint made to this house, of a breach of privilege committed by Richard Thomas Willson, in executing a writ of venditioni exponas²⁰ on the coach-horses of John Olyphant, Esq; a member of this house, at the suit of Mr. Pierce Cooke.

Resolved, That the messenger attending this house, do apprehend the said Richard Thomas Willson, and other the persons concerned in executing the said writ, and bring him or them in custody, to answer his or their breach of privilege for the same.

Ordered, that Mr. Speaker sign a warrant for that purpose.

Jovis 13 Die Decembris, 1764²¹

The messenger being called in and asked by Mr. Speaker whether he had executed the warrant against Richard Thomas Willson, for a breach of privileges of this house, informed the house that he had, and had him then in custody.

Ordered, That the messenger do bring the said Richard Thomas Willson to the bar of the house to-morrow morning, to answer his breach of the privileges of this house.

19. ["On Saturday, the eighth day of December, 1764."]

20. [Literally, "You expose for sale," i.e., a writ directing the sheriff that "you expose for sale" the goods of a person found to be a debtor in court.—Tr.]

21. ["On Thursday, the thirteenth day of December, 1764."]

Veneris 14 Die Decembris, 1764.²²

Richard Thomas Willson according to order was brought to the bar of the house to answer his breach of privilege, in executing a writ of venditioni exponas on the coach horses of John Olyphant, Esq; a member of this house, and it appearing upon his examination that Mr. Pierce Cooke was assisting in the said execution.

Resolved, That Mr. Pierce Cooke in assisting the said Richard Thomas Willson in the execution of the said writ, is guilty of a breach of the privilege of this house.

Ordered, That the messenger of this house do apprehend the said Pierce Cooke, and bring him to the bar of this house to morrow morning, to answer his breach of the privileges of this house, and that Mr. Speaker sign a warrant for that purpose.

Ordered, That Richard Thomas Willson be remanded into the custody of the messenger.

Sabbati, 15 Die Decembris, 1764.²³

Resolved Nemine Contradicente, that it has appeared by the examination of Richard Thomas Willson, that Lachlan M'Neil, deputy Marshal, did direct him to execute a writ of venditioni exponas against John Olyphant, Esq; a member of this house.

Resolved Nemine Contradicente, that the said Lachlan M'Neil, has, by such direction been guilty of a breach of the privileges of this house.

Ordered, that the messenger of this house do apprehend the said Lachlan M'Neill and bring him to the bar of this house on Tuesday morning next, to answer his breach of the privileges of this house; and that Mr. speaker sign a warrant for that purpose.

Resolved Nemine Contradicente, that no member of this house during the continuance of this assembly have any privilege except for his person only, against any of his majesty's subjects, in any suit or proceeding in courts of law or equity for any longer time than the house shall be actually sitting for dispatch of business.

22. ["On Friday, the fourteenth day of December, 1764."]

23. ["On Saturday, the fifteenth day of December, 1764."]

Martis, 18 Die Decembris, 1764.²⁴

His excellency in his majesty's name, by and with the advice of his council, was pleased to prorogue the assembly until Wednesday the 19th day of December instant.

Mercurii 19 Die Decembris, 1764.²⁵

The house being met, according to prorogation, Mr. Chaloner Arcedeckne waited on his excellency, and acquainted him therewith.

A message from his excellency by the provost marshal, acquainting the house, his excellency, in his majesty's name, commanded the attendance of the house immediately in the council chamber; accordingly Mr. Speaker, with the house attended, and being returned, Mr. Speaker reported, they had attended his excellency, and that he was pleased to make them a speech, whereof Mr. Speaker said (to prevent mistakes) he had obtained a copy, which being read by the clerk, was ordered to be entered, and is as follows:

Mr. Speaker, and Gentlemen of the Assembly,

As I passed many acts during your late season, and the session of the year is so far advanced, I shall only recommend to you to grant the proper supplies for the support of government; and I hope you will avoid all unnecessary delays, as your presence in your respective districts as magistrates and military officers will be particularly beneficial at this juncture.

A motion was made, that an address be presented to his excellency for his speech at the opening of this sessions.

Ordered, that Mr. Long, Mr. Edwardes, and Mr. Attorney-General, be a committee to prepare and bring in the same.

And that his excellency's speech be referred to the said committee.

Resolved, that the rules of the last session be the standing rules of the house.

Resolved nemine contradicente, That every member of this house enjoy the privileges of his person against arrest and imprisonments, in such manner as has been heretofore used and accustomed.

Resolved nemine contradicente, That no member of this house have any privilege in cases of treason, felony, breach of the peace, or forcible entries, or forcible detainers.

24. ["On Tuesday, the eighteenth day of December, 1764."]

25. ["On Wednesday, the nineteenth day of December, 1764."]

Resolved nemine contradicente, that no member of this house hath any privilege in regard to his goods and chattels, except such as are necessary for his accommodation during his attendance on the house.

Resolved nemine contradicente, That no member of this house hath any privilege against payment of any aids, supplies or taxes, granted for the support of his majesty's government of this island, or of any parish duties.

Resolved nemine contradicente, That the reflecting upon the proceedings of this house, or any member thereof, for, or relating to the service therein, is a high violation of the rights and privileges of this house.

Resolved nemine contradicente, That the misrepresenting the proceedings of this house, is a breach of privilege and destructive of the freedom of this house.

Resolved nemine contradicente, That to assert that this house have no power of commitment but of their own members, tends to the subversion of the constitution of the house.

Resolved nemine contradicente, That no person committed for breach of privilege by order of this house, ought to be discharged during the session of assembly, but by order or warrant of this house.

Resolved nemine contradicente, That Richard Thomas Wilson, who was in custody of the messenger attending this house the last session of assembly, for a breach of the privileges of this house in executing a writ of venditioni exponas on the coach horses of John Olyphant, Esq; a member of this house, the house then sitting, and Mr. Pierce Cook, who was likewise in custody the last session of assembly, for directing the said Richard Thomas Wilson in the execution of the said writ, and Lachlan M'Neil, deputy-marshal, who was likewise in custody the last session of assembly, for directing the said Richard Thomas Wilson to execute the said writ, be again severally taken into the custody of the messenger, and that Mr. Speaker sign warrants for that purpose.

Resolved nemine contradicente, That Edward Bolt, Esq; messenger of this house, in having received and detained, and in receiving and detaining in custody any person or persons, committed by order of this house, shall have the assistance and protection of this house.

Ordered, That the above resolutions be printed in the public news papers.

Resolved, That all standing committees of the last session be revived.

A motion was made, that a committee be appointed to bring in a bill, for the better qualifications of persons elected to serve as members in any future assemblies of this island.

Ordered, That Mr. Attorney general, Mr. Arcedeckne, and Mr. Long, be a committee to prepare and bring in the same.

Resolved, That this house will immediately resolve itself into a committee on his excellency's speech.

The house according to order, resolved itself into a committee on his excellency's speech, and after some time spent therein Mr. Speaker resumed the chair, and Mr. Chief Justice from the committee, reported they had gone through the same, and had come to several resolutions, which they had directed him to report, when the house would be pleased to receive them.

Ordered, that the report be now made.

Then Mr. Chief Justice in his place read the resolutions, and delivered them in at the table, which being again severally read by the clerk, were agreed unto by the house, and are as follows:

1st. Resolved, It is the opinion of this committee, that a committee be appointed to bring in a bill to oblige the several inhabitants of this island, to provide themselves with a sufficient number of white men, white women or children, or pay certain sums of money in case they shall be deficient, and applying the same to several uses; to protect freeholders on the days of choosing church-wardens and vestry-men; and to ascertain who shall be deemed duly qualified to vote at such elections.

Ordered, That Mr. Chief-Justice, Mr. Redwood, and Mr. Taylor, be a committee to prepare and bring in the same.

2d. Resolved, It is the opinion of this committee, that a committee be appointed to bring in a bill, for laying a duty on all wines, rum and other spirituous liquors retailed within this island, and apply the same to several uses; and for laying a further tax on licences to be granted for the retailing of wine and other liquors.

Ordered that Mr. Attorney-General, Mr. Levingston, and Mr. Goulbourne, be a committee to prepare and bring in the same.

3d. Resolved, that it is the opinion of this committee that a committee be appointed to bring in a bill for raising several sums of money, and applying the same to several uses, for subsisting for one year the officers and soldiers of his majesty's 36th regiment of foot.

Ordered, That Mr. Long, Mr. Bourke, Mr. Provost, be a committee to prepare and bring in the same.

Mr. Chief Justice according to order, presented to the house a bill to oblige the several inhabitants of this island, to provide themselves with a

sufficient number of white men, white women or children, or pay certain sums of men in case they shall be deficient, and applying the same to several uses; to protect freeholders on the days of choosing churchwardens and vestry-men; and to ascertain who shall be deemed duly qualified to vote at such elections, which was received and read.

And ordered to be read a second time tomorrow morning.

Mr. Attorney-General according to order, presented the house a bill for laying a duty on all wines, rum and other spirituous liquors retailed within this island, and applying the same to several uses; and for laying a further tax on licences to be granted for the retailing of wine and other liquors, which was received and read.

And ordered to be read a second time tomorrow morning.

Mr. Long according to order, presented to the house a bill for raising several sums of money, and applying the same to several uses, for subsisting for one year the officers and soldiers of his majesty's 36th regiment of foot, which was received and read.

And ordered to be read a second time tomorrow morning.

Jovis 20 Die Decembris, 1764.²⁶

The messenger being called in and examined, informed the house that he had executed the warrants against Mr. Pierce Cooke and Lachlan M'Neil, and that he had been served with two writs of habeas corpus, signed by his excellency, as chancellor, to which he had made returns and had attended his excellency with the said Mr. Pierce Cooke and Lachlan M'Neil, and that his excellency as chancellor, had ordered him to bring them before him tomorrow morning at ten o'clock, when he ordered they should be heard by council, on the subject matter of their commitment.

Resolved, that Edward Bolt, Esq; Messenger of this house do keep the said Mr. Pierce Cooke and Lachlan M'Neil, in close custody.

Veneris 21 Die Decembris, 1764.²⁷

The messenger being called in and examined, informed the house, that he had carried Mr. Pierce Cooke and Lachlan M'Neil before his excellency, agreeable to his order of yesterday; and after his excellency had heard council

26. ["On Thursday, the twentieth day of December, 1764."]

27. ["On Friday the twenty-first day of December, 1764."]

in a court of chancery on the cause of commitment, his excellency as chancellor, had discharged them from his custody.

Resolved, That this house will immediately resolve itself into a committee of the whole house.

Then the house according to order resolved itself into a committee of the whole house; and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Chief-Justice from the committee reported they had come to some resolutions, of which they had directed him to make a report, when the house would be pleased to receive the same.

Ordered, that the report be now made.

Then Mr. Chief-Justice in his place, read the resolutions, and delivered them in at the table, and the first resolution being again read by the clerk, is as follows:

1st. Resolved, That it is the opinion of this committee, that his excellency William Henry Lyttelton, Esq; in taking upon himself as chancellor to determine against the privileges of this house, and to discharge Pierce Cooke and Lachlen M'Neil, who were committed to the custody of the messenger of this house, for a contempt and breach of the privilege of this house, has acted in an unjustifiable manner, and has been guilty of a flagrant breach, contempt and violation of the privileges of this house, and the liberties of the people.

A debate arising, and the question being put, it passed in the affirmative, yeas 18, noes 4.

The 2d, 3d, and 4th resolutions being again severally read by the clerk, were agreed unto by the house, and are as follows:

2d. Resolved *Nemine Contradicente*, That it is the opinion of this committee, that this house cannot with any dignity to itself or justice to the people, proceed to any other business, under such a violent and unexampled breach of its privileges.

3d. Resolved *nemine contradicente*, That it is the opinion of this committee, that this house will not proceed to any other business until it shall be right in its privileges, and has received ample reparation for the indignity that has been offered to this house.

4th. Resolved *nemine contradicente*, That it is the opinion of this committee, that Mr. Pierce Cooke and Lachlan M'Neil, be severally taken into and kept close in the custody of the messenger of this house, for a contempt and breach of the privileges of this house, and that Mr. Speaker do sign warrants for that purpose.

The 5th. resolution being again read by the clerk, is as follows;

5th. Resolved, That it is the opinion of this committee, that a committee be appointed to draw up an humble address to his majesty, most humbly representing, that the assemblies of this island have from the earliest establishment of civil government in this colony, enjoyed all the rights and privileges inherent in them as the representative body of the people; that among other rights and privileges derived to them, from the reason and nature of their election and constitution, and from the grace, grants and concessions of his majesty's royal predecessors, as well as from prescriptive right and custom, they have uninterruptedly enjoyed a privilege of freedom from arrests, both of persons and goods necessary for their accommodation, during their session, conformable to ancient usage and custom, except in cases of treason, felony, and breach of the peace, taxes or other monies due to his majesty, for the support of the government of this island: that without these privileges the intent of assembling for dispatch of the public business would be defeated, their attendance interrupted, their orders despised, and they themselves exposed to the most flagrant contempts and indignities, as being no more than the shadow of a body, having no power or authority whatsoever; and as they have enjoyed a continued and uninterrupted exercise of the right and jurisdiction of committing their own members, as well as others, guilty of any breach of their privileges so they esteem this right to be essential to their very being as a free assembly; that it is therefore a duty incumbent on us, to remonstrate to his majesty, that a writ of venditioni exponas, was lately executed upon the coach horses of one of our members during the sitting of the house, and that upon complaint made to the house, the persons concerned in injurious breach of our privileges, were committed into the custody of our messenger, that the persons so taken into custody, applied to, and obtained from his excellency William Henry Lyttelton, Esq; as chancellor, writs of habeas corpus; and his excellency in chancery, having heard the arguments of council at law, against the cause of the commitment, did take upon himself, in a most unprecedented manner, to determine against our privileges, to pronounce the commitment by the speaker's warrant illegal, and to order the parties to be discharged out of custody of our messenger, and that as nothing can so effectually contribute to render a people prosperous and happy, as a just conservation and support of their ancient and fundamental rights, franchises, jurisdiction and privileges; and

as we are fully persuaded that the happiness and welfare of his subjects are the chief objects of his majesty's care and attention, most humbly to beseech his majesty, that he will be graciously pleased to interpose his royal authority, and by restraining his excellency's arbitrary exercise of power as chancellor, protect us from such open and manifest violations, destructive of our rights, and subversive of our constitution, and most earnestly to implore his majesty in his royal goodness to grant us such other redress as to his majesty in his wisdom shall seem meet.

A debate arising, and the question being put, it passed in the affirmative yeas 19, noes 3.

Ordered, That Mr. Long, Mr. Bourke, Mr. Price, Mr. Dowell, and Mr. Edwardes be a committee to prepare and bring in the same.

Ordered, That the 1st, 2d, 3d and 4th of the above resolutions be printed in the public news papers.

N. B. *Early next morning the house was prorogued by proclamation and some time after dissolved.*

A Copy of the speaker's warrant, by which Mr. PIERCE COOKE was taken into the custody of the messenger of the assembly, and also a copy of the decree of his excellency the chancellor, by which he was released, and discharged, from the custody of the messenger. Jamaica, ss. Mercurii, 19th die Dec. 1764.²⁸

Whereas Mr. PIERCE COOKE was in custody the last session of assembly for a breach of the privileges of the house in assisting Richard Thomas Wilson in executing a writ of venditioni exponas on the coach horses of JOHN OLYPHANT, Esq; a member of the house.

These are therefore to will and require you to take into your custody the body of PIERCE COOKE, and him safely keep until he shall be discharged by order of the house, and for your so doing this shall be your warrant. Given under my hand and seal the day and year above written.

Charles Price, Junior, Speaker.

To Edward Bolt, Esq;
Messenger of the Assembly.

28. ["On Wednesday, the nineteenth day of December, 1764."]

At a high court of chancery held at the town of
St. Jago de la Vega, on Friday the 21st day of December, 1765.

Rex

v

Cooke

The body of PIERCE COOKE, Gentleman, being this day brought into court before *His excellency the chancellor*, by EDWARD BOLT, Esq; pursuant to the order of this honourable court made yesterday, upon the return of the writ of habeas corpus, issued under the seal of this court, tested the 20th day of December instant, directed to the said EDWARD BOLT returnable before his *excellency the chancellor* immediate; and upon hearing of what was alleged by council *on behalf of the said PIERCE COOKE* on the said return *his excellency the chancellor* was pleased to declare; that it did not appear to him *from the words of any act of parliament or of any act of the governor, council and assembly of this island, or of his majesty's commissions or INSTRUCTIONS to his excellency as governor of this island, or by any other means whatsoever*. That the commitment of the said PIERCE COOKE into the custody of the said EDWARD BOLT IS LEGAL. And *his excellency the chancellor* was therefore pleased to order, *adjudge and decree*, and it is hereby ordered, *adjudged and decreed*, that the said PIERCE COOKE BE, BY THE AUTHORITY OF THIS COURT, *released and discharged from the custody of the said EDWARD BOLT*.

Vera copia extur²⁹

Geo. Ramsay Reg. Cur. Can.³⁰

29. ["A true copy is executed."]

30. [Probably *Regis Curia Cancellaria*: "Chancery Court of the King." —Tr.]

[Robert Munford],
The Candidates; Or, The Humours
of a Virginia Election
[1770]



ONE OF THE MOST delightful analyses of the political culture of any colony in colonial British America is *The Candidates*, a didactic farce in three acts written about 1770 by Robert Munford, a member of the Virginia House of Burgesses for Mecklenberg County. In this play, which may never have been performed publicly in Virginia and seems to have remained unpublished until 1798, Munford sought both to satirize the “Humours of a Virginia Election” and to recall voters to the standards of earlier times, standards that may never have obtained but that had long been prescriptive in colonial British political life. In the play, five candidates vie for two seats in the legislature, and the voters initially seem to be most favorably disposed toward the three who themselves most “love[d] diversion”: Sir John Toddy, a likable sot from a decayed gentry family, as well as Strutabout and Smallhopes, a pair of ignorant and ostentatious social upstarts who seek to secure votes by keeping “the liquor . . . running.” When all the votes are counted, however, the freeholders have chosen the two obviously superior candidates: Worthy, a gentleman of unquestionable independence and distinction who would not stoop to court votes, and Wou’dbe, a sober and sensible “man of sense, and . . . larning.” By selecting people who had the social and intellectual qualifications to put the good of the whole above their own and local interests and to provide exemplary stewardship to the social order, the voters thus acted with the deference to their superiors that those superiors had always and everywhere recommended to them, albeit without universal success. (J.P.G.)

THE
CANDIDATES;
OR, THE
*HUMOURS OF A
VIRGINIA ELECTION*

A COMEDY,
IN THREE ACTS.

DRAMATIS PERSONAE.

Sir John Toddy,
Mr. Wou'dbe,
Mr. Strutabout,
Mr. Smallhopes, } Candidates for the office of
delegates to the general assembly.

Mr. Julip,
Capt. Paunch, } Gentlemen Justices.

Mr. Worthy, formerly a delegate, but now declines.

Guzzle,
Twist,
Stern,
Prize, } Freeholders.

Ralpho, Wou'dbe's servant.
Jack, a tool to Mr. Strutabout.
Ned, the same to Mr. Smallhopes.

Mrs. Guzzle,
Lucy Twist,
Catharine Stern,
Sarah Prize, } Freeholders' wives.

Freeholders, Country girls, &c.

Prologue

By a Friend.

Ladies and gentlemen, to-night you'll see
A bard delighting in satiric glee;
In merry scenes his biting tale unfold,
And high to Folly's eye the mirror hold:
Here eager candidates shall call for votes,
And bawling voters louder stretch their throats:
Here may you view, in groups diverting, join'd
The poor and wealthy rabble of mankind;

All who deserve the lash, the lash will find.
Here characters, whose names are now unknown,
Shall shine again, as in their spheres they shone;
While some may make malicious explanation,
And know them all still living in the nation.
If any present, say, fie, shameless bard!
Hast thou for decency no more regard
Than at thy betters, thus to make a stand,
And boldly point out meanness, contraband,
Depreciating the wisdom of the land?
Tho' such, the wond'rous sympathy of wits,
That every fool will wear the cap that fits,
I boldly answer, how could he mean you,
Who, when he wrote, about you nothing knew?
The state of things was such, in former times,
'Ere wicked kings were punish'd for their crimes:
When strove the candidates to gain their seats
Most heartily, with drinking bouts, and treats;
The meanest vices all the people stain'd,
And drunkenness, and monarchy both reign'd,
With such strong cause his anger to engage,
How could our Bard restrain satiric rage?
But, God forbid, its edge shou'd now apply,
Or on our race-field, when you cast an eye
You there a home-election—should espy.
Science and virtue, now are wider spread,
And crown with dignity, fair Freedom's head.
We only pray this satire ne'er be just,
Save when apply'd to other times, and trust
Its keenness only, a rememb'rancer,
And guard from future evils, may appear.
If, after this, objections should remain,
The motive's envy, consciousness disdain,
Or any thing, except the poet's want
Of sense, which no true publisher will grant.
Yet virtue is not in our story lost,
E'en then, Virginians could much virtue boast.
With plaudits, therefore, and free laughter own

Virginia's first and only comic son;
Ah! could the bard, rejoicing, raise his head
To hear his praise!—Alas! the bard is dead.

The Candidates, &c.

ACT I. SCENE I.

Mr. Wou'dbe's house.

Enter Wou'dbe with a news-paper in his hand.

Wou'dbe. I am very sorry our good old governor Botetourt has left us. He well deserved our friendship, when alive, and that we should for years to come, with gratitude, remember his mild and affable deportment. Well, our little world will soon be up, and very busy towards our next election. Must I again be subject to the humours of a fickle croud? Must I again resign my reason, and be nought but what each voter pleases? Must I cajole, fawn, and wheedle, for a place that brings so little profit?

Enter Ralpho.

Ralpho. Sir John Toddy is below, and if your honour is at leisure, would beg to speak to you.

Wou'dbe. My compliments to Sir John, and tell him, I shall be glad of his company. So—Sir John, some time ago, heard me say I was willing to resign my seat in the house to an abler person, and he comes modestly to accept of it.

Enter Sir John Toddy.

Sir John. Mr. Wou'dbe, your most obedient servant, sir; I am proud to find you well. I hope you are in good health, sir?

Wou'dbe. Very well, I am obliged to you, Sir John. Why, Sir John, you surely are practising the grimace and compliments you intend to make use of among the freeholders in the next election, and have introduced yourself to me with the self-same common-place expressions that we candidates adopt when we intend to wheedle a fellow out of his vote—I hope you have no scheme upon me, Sir John?

Sir John. No, sir, upon my honour, sir, it was punctually to know how your lady and family did, sir, 'pon honour, sir, it was.

Wou'dbe. You had better be more sparing of your honour at present, Sir John; for, if you are a candidate, whenever you make promises to the people that you can't comply with, you must say upon honour, otherwise they won't believe you.

Sir John. Upon honour, sir, I have no thought to set up for a candidate, unless you say the word.

Wou'dbe. Such condescension from you, Sir John, I have no reason to expect: you have my hearty consent to do as you please, and if the people choose you their Representative, I must accept of you as a colleague.

Sir John. As a colleague, Mr. Wou'dbe! I was thinking you did not intend to stand a poll, and my business, sir, was to get the favour of you to speak a good word for me among the people.

Wou'dbe. I hope you have no occasion for a trumpeter, Sir John? If you have, I'll speak a good word to you, and advise you to decline.

Sir John. Why, Mr. Wou'dbe, after you declin'd, I thought I was the next *fittestest* man in the county, and Mr. Wou'dbe, if you would be ungenerous, tho' you are a laughing man, you would tell me so.

Wou'dbe. It would be ungenerous indeed, Sir John, to tell you what the people could never be induced to believe. But I'll be ingenuous enough to tell you, Sir John, if you expect any assistance from me, you'll be disappointed, for I can't think you the *fittestest* man I know.

Sir John. Pray, sir, who do you know besides? Perhaps I may be thought as fit as your honour. But, sir, if you are for that, the hardest fend off; damn me, if I care a farthing for you; and so, your servant, sir.

[*Exit Sir John.*]

Wou'dbe. So, I have got the old knight, and his friend Guzzle, I suppose, against me, by speaking so freely; but their interest, I believe, has not weight enough among the people, for me to lose any thing, by making them my enemies. Indeed, the being intimate with such a fool as Sir John, might tend more to my discredit with them, for the people of Virginia have too much sense not to perceive how weak the head must be that is always filled with liquor. Ralpho!—

Enter Ralpho

Ralpho. Sir, what does your honour desire?

Wou'dbe. I'm going into my library, and if any gentleman calls, you may introduce him to me there.

Ralpho. Yes, sir. But, master, as election-times are coming, I wish you would remember a poor servant, a little.

Wou'dbe. What do you want?

Ralpho. Why, the last suit of clothes your honour gave me is quite worn out. Look here, (*shewing his elbows*) the insigns, (as I have heard your honour say, in one of your fine speeches) the insigns of faithful service. Now, methinks, as they that set up for burgesses, cut a dash, and have rare sport, why might not their servants have a little decreation?

Wou'dbe. I understand you, *Ralpho*, you wish to amuse yourself, and make a figure among the girls this Election, and since such a desire is natural to the young, and innocent if not carried to excess, I am willing to satisfy you; you may therefore, have the suit I pulled off yesterday, and accept this present as an evidence that I am pleased with your diligence and fidelity, and am ever ready to reward it. *[Exit Wou'dbe.*

Ralpho. God bless your honour! what a good master! who would not do every thing to give such a one pleasure? But, égad, it's time to think of my new clothes: I'll go and try them on. Gadso! this figure of mine is not reconsiderable in its delurements, and when I'm dressed out like a gentleman, the girls, I'm a thinking, will find me desistible. *[Exit.*

SCENE II.

*A porch of a tavern: a Court-house on one side,
and an high road behind.*

Captain Paunch, Ned, and several freeholders discovered.

Ned. Well, gentlemen, I suppose we are all going to the barbecue together.

Capt. Paunch. Indeed, sir, I can assure you, I have no such intention.

Ned. Not go to your friend *Wou'dbe's* treat! He's such a pretty fellow, and you like him so well, I wonder you won't go to drink his liquor.

Capt. P. Aye, aye, very strange: but your friends *Strutabout* and *Smallhopes*, I like so little as never to take a glass from them, because I shall never pay the price which is always expected for it, by voting against my conscience: I therefore don't go, to avoid being asked for what I won't give.

Ned. A very disteress [*sic*] motive, truly, but for the matter of that, you've not so much to boast of your friend *Wou'dbe*, if what I have been told of him is true; for I have heard say, he and the fine beast of a gentleman, *Sir John Toddy*, have joined interest. *Mr. Wou'dbe*, I was creditly 'formed,

was known for to say, he wouldn't serve for a burgess, unless Sir John was elected with him.

1st *Freeholder*. What's that you say, neighbor? has Mr. Wou'dbe and Sir John joined interest?

Ned. Yes, they have; and ant there a clever fellow for ye? a rare burgess you will have, when a fellow gets in, who will go drunk, and be a sleeping in the house! I wish people wouldn't pretend for to hold up their heads so high, who have such friends and associates. There's poor Mr. Smallhopes, who isn't as much attended to, is a very proper gentleman, and is no drunkard, and has no drunken companions.

1st *Freeholder*. I don't believe it. Mr. Wou'dbe's a cleverer man than that, and people ought to be ashamed to vent such slanders.

2d *Freeholder*. So I say: and as we are of one mind, let's go strait, and let Mr. Wou'dbe know it. *[Exeunt two Freeholders.*

3d *Freeholder*. If Mr. Wou'dbe did say it, I won't vote for him, that's sartain.

4th *Freeholder*. Are you sure of it, neighbour? *(To Ned.)*

Ned. Yes, I am sure of it: d'ye think I'd speak such a thing without having good authority?

4th *Freeholder*. I'm sorry for't; come neighbour, *(to the 3d Freeholder)* this is the worst news that I've heard for a long time.

[Exeunt 3d & 4th Freeholder.

5th *Freeholder*. I'm glad to hear it. Sir John Toddy is a clever open-hearted gentleman as I ever knew, one that wont turn his back upon a poor man, but will take a chearful cup with one as well as another, and it does honour to Mr. Wou'dbe to prefer such a one, to any of your whiffers who han't the heart to be generous, and yet despise poor folks. Huzza! for Mr. Wou'dbe and for Sir John Toddy.

6th *Freeholder*. I think so too, neighbour. Mr. Wou'dbe, I always thought, was a man of sense, and had larning, as they call it, but he did not love diversion enough, I like him the better for't. Huzza for Mr. Wou'dbe and Sir John Toddy.

Both. Huzza for Mr. Wou'dbe and Sir John Toddy. Wou'dbe and Toddy, for ever, boys! *[Exeunt.*

Capt. Paunch. The man that heard it is mistaken, for Mr. Wou'dbe never said it.

Ned. I'll lay you a bowl he did.

Capt. P. Done.

Ned. Done, sir, Oh! Jack Sly, Jack Sly.

Jack. (*without*) Halloa.

Enter Jack, saying, who call'd me? what's your business?

Ned. (*winking to Jack*). I have laid a bowl with the Captain here, that Mr. Wou'dbe did say, that he would not serve as a burgess, unless Sir John Toddy was elected with him.

Jack. I have heard as much, and more that's little to his credit. He has hurt us more than he'll do us good for one while. It's his doings our levies are so high.

Capt. P. Out upon you, if that's your proof, fetch the bowl. Why gentlemen, if I had a mind, I could say as much and more of the other candidates. But, gentlemen, 'tis not fair play: don't abuse our friend, and we'll let your's alone. Mr. Wou'dbe is a clever gentleman, and perhaps so are the rest: let every man vote as he pleases, and let's raise no stories to the prejudice of either.

Ned. Damn me, if I don't speak my mind. Wou'dbe shan't go if I can help it, by God, for I boldly say, Mr. Wou'dbe has done us more harm, than he will ever do us good, (*raising his voice very high*).

[Exeunt into the house.

Jack. So say I.

[Exit after him.

Capt. P. Go along: bawl your hearts out: nobody will mind you, I hope. Well, rejoice that Mr. Wou'dbe is determined still to serve us. If he does us no good, he will do us no harm. Mr. Strutabout would do very well if he was not such a coxcomb. As for Smallhopes, I'd as soon send to New-Market, for a burgess, as send him, and old Sir John loves tipple too well: egad, I'll give Wou'dbe my vote, and throw away the other. *[Exit.*

SCENE III.

Wou'dbe's house

Enter Wou'dbe, looking at a letter.

Wou'dbe. This note gives me information, that the people are much displeas'd with me for declaring in favour of Sir John Toddy. Who could propagate this report, I know not, but was not this abroad, something else would be reported, as prejudicial to my interest; I must take an opportunity of justifying myself in public.

Enter Ralpho.

Ralpho. Mr. Strutabout waits upon your honour.

Wou'dbe. Desire him to walk in.

Enter Mr. Strutabout.

Strutabout. Mr. Wou'dbe, your servant. Considering the business now in hand, I think you confine yourself too much at home. There are several little reports circulating to your disadvantage, and as a friend, I would advice you to shew yourself to the people, and endeavour to confute them.

Wou'dbe. I believe, sir, I am indebted to my brother candidates, for most of the reports that are propagated to my disadvantage, but I hope, Mr. Strutabout is a man of too much honour, to say anything in my absence, that he cannot make appear.

Strutabout. That you may depend on, sir. But there are some who are so intent upon taking your place, that they will stick at nothing to obtain their ends.

Wou'dbe. Are you in the secret, sir?

Strutabout. So far, sir, that I have had overtures from Mr. Smallhopes and his friends, to join my interest with their's, against you. This, I rejected with disdain, being conscious that you were the properest person to serve the county; but when Smallhopes told me, he intended to prejudice your interest by scatering a few stories among the people to your disadvantage, it raised my blood to such a pitch, that had he not promised me to be silent, I believe I should have chastised him for you myself.

Wou'dbe. If, sir, you were so far my friend, I am obliged to you: though whatever report he is the author of, will, I am certain, gain little credit with the people.

Strutabout. I believe so; and therefore, if you are willing, we'll join our interests together, and soon convince the fellow, that by attacking you he has injured himself.

Wou'dbe. So far from joining with you, or any body else, or endeavouring to procure a vote for you, I am determined never to ask a vote for myself, or receive one that is unduly obtained.

Enter Ralpho.

Ralpho. Master, rare news, here's our neighbour Guzzle, as drunk as ever Chief Justice Cornelius was upon the bench.

Wou'dbe. That's no news, Ralpho: but do you call it rare news, that a creature in the shape of man, and endued with the faculties of reason, should so far debase the workmanship of heaven, by making his carcase a receptacle for such pollution?

Ralpho. Master, you are hard upon neighbour Guzzle: our Justices gets drunk, and why not poor Guzzle? But sir, he wants to see you.

Wou'dbe. Tell him to come in. (*exit Ralpho*). All must be made welcome now.

Re-enter Ralpho and Guzzle, with an empty bottle.

Guzzle. Ha! Mr. *Wou'dbe*, how is it?

Wou'dbe. I'm something more in my senses than you, John, tho' not so sensible as you would have me, I suppose.

Guzzle. If I can make you sensible how much I want my bottle filled, and how much I shall love the contents, it's all the senses I desire you to have.

Ralpho. If I may be allowed to speak, neighbour *Guzzle*, you are wrong; his honour sits up for a burgess, and should have five senses at least.

Guzzle. Five senses! how, what five?

Ralpho. Why, neighbour, you know, eating, drinking, and sleeping are three; t'other two are best known to myself.

Wou'dbe. I'm sorry Mr. *Guzzle*, you are so ignorant of the necessary qualifications of a member of the house of burgesses.

Guzzle. Why, you old dog, I knew before *Ralpho* told me. To convince you, eating, drinking, and sleeping, are three; fighting and lying are t'others.

Wou'dbe. Why fighting and lying?

Guzzle. Why, because you are not fit for a burgess, unless you'll fight; suppose a man that values himself upon boxing, should stand in the lobby, ready cock'd and prim'd, and knock you down, and bung up both your eyes for a fortnight, you'd be ashamed to shew your face in the house, and be living at our expence all the time.

Wou'dbe. Why lying?

Guzzle. Because, when you have been at Williamsburg, for six or seven weeks, under pretence of serving your county, and come back, says I to you, what news? none at all, says you; what have you been about? says I,—says you—and so you must tell some damned lie, sooner than say you have been doing nothing.

Wou'dbe. No, *Guzzle*, I'll make it a point of duty to dispatch the business, and my study to promote the good of my county.

Guzzle. Yes, damn it, you all promise mighty fair, but the devil a bit do you perform; there's Strutabout, now, he'll promise to move mountains. He'll make the rivers navigable, and bring the tide over the tops of the hills, for a vote.

Strutabout. You may depend, Mr. Guzzle, I'll perform whatever I promise.

Guzzle. I don't believe it, damn me if I like you. *[looking angry.*

Wou'dbe. Don't be angry, John, let our actions hereafter be the test of our inclinations to serve you. *[Exit Strutabout.*

Guzzle. Agreed, Mr. Wou'dbe, but that fellow that slunk off just now, I've no opinion of.

Wou'dbe. *(Looking about)* what, is Mr. Strutabout gone? why, surely, Guzzle, you did not put him to flight?

Guzzle. I suppose I did, but no matter, *(holding up his bottle, and looking at it,)* my bottle never was so long a filling in this house, before; surely, there's a leak in the bottom, *(looks at it again).*

Wou'dbe. What have you got in your bottle, John, a lizard?

Guzzle. Yes, a very uncommon one, and I want a little rum put to it, to preserve it.

Wou'dbe. Hav'n't you one in your belly, John?

Guzzle. A dozen, I believe, by their twisting, when I mentioned the rum.

Wou'dbe. Would you have rum to preserve them, too?

Guzzle. Yes, yes, Mr. Wou'dbe, by all means; but, why so much talk about it, if you intend to do it, do it at once, man, for I am in a damnable hurry.

Wou'dbe. Do what? Who are to be burgesses, John?

Guzzle. Who are to be what? *(looking angry).*

Wou'dbe. Burgesses, who are you for?

Guzzle. For the first man that fills my bottle: so Mr. Wou'dbe, your servant. *[Exit Guzzle.*

Wou'dbe. Ralpho, go after him, and fill his bottle.

Ralpho. Master, we ought to be careful of the rum, else 'twill not hold out, *(aside)* it's always a feast or a famine with us; master has just got a little Jamaica for his own use, and now he must spill it, and spare it till there's not a drop left. *[Exit.*

Wou'dbe. *(pulling out his watch.)* 'Tis now the time a friend of mine has appointed for me to meet the freeholders at a barbecue; well, I find, in order to secure a seat in our august senate, 'tis necessary a man should either be a slave or a fool; a slave to the people, for the privilege of serving

them, and a fool himself, for thus begging a troublesome and expensive employment.

To sigh, while toddy-topping sots rejoice,
 To see you paying for their empty voice,
 From morn to night your humble head decline,
 To gain an honour that is justly thine,
 Intreat a fool, who's your's at this day's treat,
 And next another's, if another's meat,
 Is all the bliss a candidate acquires,
 In all his wishes, or his vain desires.

[Exit.

END OF THE FIRST ACT.

ACT II. SCENE I.

A race-field, a bullock, and several hogs barbecued.

*Twist, Stern, Prize, Lucy, Catharine, and Sarah,
 sitting on four fence rails.*

Twist. Well, gentlemen, what do you think of Mr. Strutabout and Mr. Smallhopes? it seems one of the old ones declines, and t'other, I believe, might as well, if what neighbour Sly says, is true.

Stern. Pray, gentlemen, what plausible objection have you against Mr. Wou'dbe? he's a clever civil gentleman as any, and as far as my poor weak capacity can go, he's a man of as good learning, and knows the punctilios of behaving himself, with the best of them.

Prize. Wou'dbe, for sartin, is a civil gentleman, but he can't speak his mind so boldly as Mr. Strutabout, and commend me to a man that will speak his mind freely;—I say.

Lucy. Well, commend me to Mr. Wou'dbe, I say,—I nately like the man; he's mighty good to all his poor neighbours, and when he comes into a poor body's house, he's so free and so funny, isn't he, old man? (*speaking to Twist*).

Twist. A little too free sometimes, faith; he was funny when he wanted to see the colour of your garters; wa'nt he?

Lucy. Oh! for shame, husband. Mr. Wou'dbe has no more harm about him, than a sucking babe; at least, if he has, I never saw it.

Twist. Nor felt it, I hope; but wife, you and I, you know, could never agree about burgesses.

Lucy. If the wives were to vote, I believe they would make a better choice than their husbands.

Twist. You'd be for the funniest—wouldn't you?

Lucy. Yes, faith; and the wittiest, and prettiest, and the wisest, and the best too; you are all for ugly except when you chose me.

Catharine. Well done, Lucy, you are right, girl. If we were all to speak to our old men as freely as you do, there would be better doings.

Stern. Perhaps not, Kate.

Catharine. I am sure there would; for if a clever gentleman, now-a-days, only gives a body a gingercake in a civil way, you are sullen for a week about it. Remember when Mr. Wou'dbe promised Molly a riband, and a pair of buckles, you would not let the poor girl have 'em: but you take toddy from him;—yes, and you'll drink a little too much, you know, Richard.

Stern. Well, it's none of our costs, if I do.

Catharine. Husband, you know Mr. Wou'dbe is a clever gentleman; he has been a good friend to us.

Stern. I agree to it, and can vote for him without your clash.

Sarah. I'll be bound when it comes to the pinch, they'll all vote for him: won't you old man? he stood for our George, when our neighbor refused us.

Prize. Mr. Wou'dbe's a man well enough in his neighbourhood, and he may have learning, as they say he has, but he don't shew it like Mr. Strutabout.

Enter Guzzle, and several freeholders.

Guzzle. Your servant, gentlemen, (*shakes hands all round*) we have got fine weather, thank God: how are crops with you? we are very dry in our parts.

Twist. We are very dry here; Mr. Guzzle, where's your friend Sir John, and Mr. Wou'dbe? they are to treat to-day, I hear.

Guzzle. I wish I could see it, but there are more treats besides their's; where's your friend Mr. Strutabout? I heard we were to have a treat from Small-hopes and him to-day.

Twist. Fine times, boys. Some of them had better keep their money; I'll vote for no man but to my liking.

Guzzle. If I may be so bold, pray, which way is your liking?

Twist. Not as your's is, I believe; but nobody shall know my mind till the day.

Guzzle. Very good, Mr. Twist; nobody, I hope, will put themselves to the trouble to ask.

Twist. You have taken the trouble already.

Guzzle. No harm, I hope, sir.

Twist. None at all, sir: Yonder comes Sir John, and quite sober, as I live.

Enter Sir John Toddy.

Sir John. Gentlemen and ladies, your servant, hah! my old friend Prize, how goes it? how does your wife and children do?

Sarah. At your service, sir. (*making a low courtsey.*)

Prize. How the devil come he to know me so well, and never spoke to me before in his life? (*aside.*)

Guzzle. (*whispering Sir John*) Dick Stern.

Sir John. Hah! Mr. Stern, I'm proud to see you; I hope your family are well; how many children? does the good woman keep to the old stroke?

Catharine. Yes, an't please your honour, I hope my lady's well, with your honour.

Sir John. At your service, madam.

Guzzle. (*whispering Sir John*) Roger Twist.

Sir John. Hah! Mr. Roger Twist! your servant, sir. I hope your wife and children are well.

Twist. There's my wife. I have no children, at your service.

Sir John. A pretty girl: why, Roger, if you don't do better, you must call an old fellow to your assistance.

Twist. I have enough to assist me, without applying to you, sir.

Sir John. No offence, I hope, sir; excuse my freedom.

Twist. None at all, sir; Mr. Wou'dbe is ready to befriend me in that way at any time.

Sir John. Not in earnest, I hope, sir; tho' he's a damn'd fellow, I believe.

Lucy. Why, Roger, if you talk at this rate, people will think you are jealous; for shame of yourself.

Twist. For shame of yourself, you mean.

Guzzle. A truce, a truce—here comes Mr. Wou'dbe.

Enter Mr. Wou'dbe.

Wou'dbe. Gentlemen, your servant. Why, Sir John, you have entered the list, it seems; and are determined to whip over the ground, if you are treated with a distance.

Sir John. I'm not to be distanc'd by you, or a dozen such.

Wou'dbe. There's nothing like courage upon these occasions; but you were out when you chose me to ride for you, Sir John.

Sir John. Let's have no more of your algebra, nor proverbs, here.

Guzzle. Come, gentlemen, you are both friends, I hope.

Wou'dbe. While Sir John confined himself to his bottle and dogs, and moved only in his little circle of pot-companions, I could be with him; but since his folly has induced him to offer himself a candidate for a place, for which he is not fit, I must say, I despise him. The people are of opinion, that I favour this undertaking of his; but I now declare, he is not the man I wish the people to elect.

Guzzle. Pray, sir, who gave you a right to choose for us?

Wou'dbe. I have no right to choose for you; but I have a right to give my opinion: especially when I am the supposed author of Sir John's folly.

Guzzle. Perhaps he's no greater fool than some others.

Wou'dbe. It would be ungrateful in you, Mr. Guzzle, not to speak in favour of Sir John; for you have stored away many gallons of his liquor in that belly of you's.

Guzzle. And he's the cleverer gentleman for it; is not he, neighbours?

1st Freeholder. For sartin; it's no disparagement to drink with a poor fellow.

2d Freeholder. No more it is, tho' some of the quality are mighty proud that way.

3d Freeholder. Mr. Wou'dbe shou'd'n't speak so freely against that.

Twist. Mr. Wou'dbe.

Wou'dbe. Sir.

Twist. We have heard a sartin report, that you and Sir John have joined interest.

Wou'dbe. Well; do you believe it?

Twist. Why, it don't look much like it now, Mr. Wou'dbe; but, mayhap, it's only a copy of your countenance.

Wou'dbe. You may put what construction you please upon my behaviour, gentlemen; but I assure you, it never was my intention to join with Sir John, or any one else.

Twist. Moreover, I've heard a 'sponsible man say, he could prove you were the cause of these new taxes.

Wou'dbe. Do you believe that too? or can you believe that it's in the power of any individual member to make a law himself? If a law is enacted that is

displeasing to the people, it has the concurrence of the whole legislative body, and my vote for, or against it, is of little consequence.

Guzzle. And what the devil good do you do then?

Wou'dbe. As much as I have abilities to do.

Guzzle. Suppose, Mr. Wou'dbe, we were to want you to get the price of rum lower'd—would you do it?

Wou'dbe. I could not.

Guzzle. Huzza for Sir John! he has promised to do it, huzza for Sir John!

Twist. Suppose, Mr. Wou'dbe, we should want this tax taken off—could you do it?

Wou'dbe. I could not.

Twist. Huzza for Mr. Strutabout! he's damn'd, if he don't. Huzza for Mr. Strutabout!

Stern. Suppose, Mr. Wou'dbe, we that live over the river, should want to come to church on this side, is it not very hard we should pay ferryage; when we pay as much to the church as you do?

Wou'dbe. Very hard.

Stern. Suppose we were to petition the assembly could you get us clear of that expence?

Wou'dbe. I believe it to be just; and make no doubt but it would pass into a law.

Stern. Will you do it?

Wou'dbe. I will endeavour to do it.

Stern. Huzza for Mr. Wou'dbe! Wou'dbe forever!

Prize. Why don't you burgesses, do something with the damn'd pickers?

If we have a hogshead of tobacco refused, away it goes to them; and after they have twisted up the best of it for their own use, and taken as much as will pay them for their trouble, the poor planter has little for his share.

Wou'dbe. There are great complaints against them; and I believe the assembly will take them under consideration.

Prize. Will you vote against them?

Wou'dbe. I will, if they deserve it.

Prize. Huzza for Mr. Wou'dbe! you shall go, old fellow; don't be afraid; I'll warrant it.

[*Exeunt severally; some huzzaing for Mr. Wou'dbe—some for Sir John—some for Mr. Strutabout.*]

SCENE II.

Another part of the field.

*Mr. Strutabout, Mr. Smallhopes, and a number
of freeholders round them.*

1st Freeholder. Huzza for Mr. Strutabout!

2d Freeholder. Huzza for Mr. Smallhopes!

3d Freeholder. Huzza for Mr. Smallhopes and Mr. Strutabout!

4th Freeholder. Huzza for Mr. Strutabout and Mr. Smallhopes!

[Exeunt, huzzaing.]

Enter Guzzle, drunk.

Guzzle. Huzza for Sir John Toddy, the cleverest gentleman—the finest gentleman that ever was (*hickuping.*)

Enter Mrs. Guzzle, drunk.

Mrs. Guzzle. Where's my drunken beast of a husband? (*hiccups*) Oh John Guzzle, Oh John Guzzle.

Guzzle. What the devil do you want?

Mrs. Guzzle. Why don't you go home, you drunken beast? Lord bless me, how the gingerbread has given me the hickup.

Guzzle. Why, Joan, you have made too—free with the bottle—I believe.

Mrs. Guzzle. I make free with the bottle—you drunken sot!—Well, well, the gingerbread has made me quite giddy.

Guzzle. Hold up, Joan, don't fall—(*Mrs. Guzzle falls.*) The devil, you will? Joan! Why woman, what's the matter? are you drunk?

Mrs. Guzzle. Drunk! you beast! No, quite sober; but very sick with eating gingerbread.

Guzzle. For shame, Joan get up—(*offers to help her up, and falls upon her.*)

Mrs. Guzzle. Oh Lord! John! you've almost killed me.

Guzzle. Not I—I'll get clear of you as fast as I can.

Mrs. Guzzle. Oh John, I shall die, I shall die.

Guzzle. Very well, you'll die a pleasant death, then.

Mrs. Guzzle. Oh Lord! how sick! how sick!

Guzzle. Oh Joan Guzzle! Oh Joan Guz-zle!—Why don't you go home, you drunken beast. Lord bless me, how the gingerbread has given me the hickup.

Mrs. Guzzle. Pray, my dear John, help me up.

Guzzle. Pray, my dear Joan, get sober first.

Mrs. Guzzle. Pray John, help me up.

Guzzle. Pray, Joan, go to sleep; and when I am as drunk as you, I'll come and take your place. Farewell, Joan. Huzza for Sir John Toddy!

[*Exit huzzaing.*]

Scene changes to another part of the field.

Strutabout, Smallhopes, and freeholders.

Strutabout. Gentlemen—I'm much obliged to you for your good intentions; I make no doubt but (with the assistance of my friend Mr. Smallhopes) I shall be able to do every thing you have requested. Your grievances shall be redress'd; and all your petitions heard.

Freeholders. Huzza for Mr. Strutabout and Mr. Smallhopes!

Enter Mr. Wou'dbe.

Wou'dbe. Gentlemen, your servant; you seem happy in a circle of your friends, I hope my company is not disagreeable.

Strutabout. It can't be very agreeable to those you have treated so ill.

Smallhopes. You have used me ill, and all this company, by God—

Wou'dbe. If I have, Gentlemen, I am sorry for it; but it never was my intention to treat any person ungentlely.

Smallhopes. You be damn'd; you're a turn-coat, by God.

Wou'dbe. Your abuse will never have any weight with me: neither do I regard your oaths or imprecations. In order to support a weak cause, you swear to what requires better proof than your assertions.

Smallhopes. Where's your friend, Sir John Toddy? he's a pretty fellow, an't he, and be damn'd to you; you recommend him to the people, don't you?

Wou'dbe. No, sir; I should be as blamable to recommend Sir John, as you, and your friend there (*pointing to Strutabout*) in recommending one another.

Strutabout. Sir, I am as capable of serving the people as yourself; and let me tell you, sir, my sole intention in offering myself is, that I may redress the many and heavy grievances you have imposed upon this poor county.

Wou'dbe. Poor, indeed, when you are believed, or when coxcombs and jockies can impose themselves upon it for men of learning.

1st Freeholder. Well, its no use; Mr. Wou'dbe is too hard for them both.

2d Freeholder. I think so too: why Strutabout! speak up, old fellow, or you'll lose ground.

Strutabout. I'll lay you fifty pounds I'm elected before you.

Wou'dbe. Betting will not determine it; and therefore I shall not lay.

Strutabout. I can lick you, *Wou'dbe.* (*beginning to strip.*)

Wou'dbe. You need not strip to do it; for you intend to do it with your tongue, I suppose.

Smallhopes. (*clapping Strutabout upon the back*) Well done *Strutabout*,—you can do it, by God. Don't be afraid, you shan't be hurt; damn me if you shall, (*strips.*)

Wou'dbe. What! Gentlemen, do they who aspire to the first posts in our county, and who have ambition to become legislators, and to take upon themselves part of the guidance of the state, submit their naked bodies to public view, as if they were malefactors; or, for some crimes, condemned to the whipping-post?

Smallhopes. Come on, damn ye; and don't preach your damn'd proverbs here.

Wou'dbe. Are the candidates to fight for their seats in the house of bur-gesses? If so, perhaps I may stand as good a chance to succeed, as you.

Smallhopes. I can lick you, by God. Come on, if you dare—(*capering about.*)

1st Freeholder. Up to him—I'll stand by you. (*to Wou'dbe.*)

2d Freeholder. They are not worth your notice, Mr. *Wou'dbe*; but if you have a mind to try yourself, I'll see fair play.

Wou'dbe. When I think they have sufficiently exposed themselves, I'll explain the opinion I have of them, with the end of my cane.

Smallhopes. Up to him, damn ye, (*pushing Strutabout.*)

Strutabout. You need not push me, I can fight without being pushed to it; fight yourself, if you are so fond of it. (*putting on his cloaths.*)

Smallhopes. Nay, if you are for that, and determined to be a coward, Mr. *Strutabout*, I can't help it; but damn me if I ever hack. (*putting on his cloaths.*)

Wou'dbe. So you are both scared, gentlemen, without a blow, or an angry look! ha, ha, ha! Well, gentlemen, you have escaped a good caning, and though you are not fit for bur-gesses, you'll make good soldiers; for you are excellent at a retreat.

1st Freeholder. Huzza for Mr. *Wou'dbe*!

2d Freeholder. Huzza for Mr. *Wou'dbe*!

Enter Guzzle.

Guzzle. Huzza for Sir John Toddy! Toddy (*hickups*) forever, boys!

Enter Sir John, drunk.

Guzzle. Here he comes—as fine [a] gentleman, tho’ I say it, as the best of them.

Sir John. So I am, John, as clever a fellow (*hickups*) as the famous Mr. Wou’dbe, tho’ I (*hickups*) say it.

Strutabout. There’s a pretty fellow to be a burgess, gentlemen: lord, what a drunken beast it is.

Sir John. What beast, pray? am I a beast?

Strutabout. Yes, Sir John, you are a beast, and you may take the name of what beast you please; so your servant, my dear.

[Exeunt Strutabout and Smallhopes.]

Wou’dbe. Except an ass, Sir John, for that he’s entitled to.

Sir John. Thank you, sir.

Wou’dbe. A friend in need, Sir John, as the proverb says, is a friend indeed.

Sir John. I thank you, I know you are my friend (*hickups*) Mr. Wou’dbe, if you’d speak your mind—I know you are.

Wou’dbe. How do you know it, Sir John?

Sir John. Did not you take my part just now, Mr. Wou’dbe? (*hickups*) I know it.

Wou’dbe. I shall always take your part, Sir John, when you are imposed upon by a greater scoundrel than yourself, and when you pretend to what you are not fit for, I shall always oppose you.

Sir John. Well, Mr. Wou’dbe, an’t I as *fitten* a (*hickups*) man as either of those?

Wou’dbe. More so, Sir John, for they are knaves, and you, Sir John, are an honest blockhead.

Sir John. Is that in my favour, or not, John? (*to Guzzle.*)

Guzzle. In your favour, by all means; for (*hickups*) he says you are honest. Huzza for Mr. Wou’dbe and the honest (*hickups*) Sir John Blockhead.

Enter Ralpho—gives a letter to Wou’dbe.

Wou’dbe. (*Reads*)—this is good news indeed.

1st Freeholder. Huzza for Mr. Wou’dbe!

2d Freeholder. Huzza for Mr. Wou’dbe!

Guzzle. Huzza for the honest Sir John Block—(*hickups*) head.

Wou’dbe. Silence, gentlemen, and I’ll read a letter to you, that (I don’t doubt) will give you great pleasure. (*he reads*) Sir, I have been informed that the scoundrels who opposed us last election (not content with my resignation) are endeavouring to undermine you in the good opinion of the people: It has

warmed my blood, and again call'd my thoughts from retirement; speak this to the people, and let them know I intend to stand a poll, &c. Your's affectionately.

WORTHY

Freeholders. Huzza for Mr. Wou'dbe and Mr. Worthy!

Sir John. Huzza for Mr. Worthy and Mr. Wou'dbe! (*hickups*) I'm not so fitten as they, and therefore gentlemen I recline. (*hickups*) Yes, gentlemen (*staggering about*) I will; for I am not (*hickups*) so fitten as they. (*falls*).

Guzzle. Huzza for the drunken Sir John Toddy. (*hickups*).

Sir John. Help me up John—do, John, help.

Guzzle. No, Sir John, stay, and I'll fetch my wife, Joan, and lay—her along side of you. [Exit.

Wou'dbe. Ralpho.

Ralpho. Sir.

Wou'dbe. Take care of Sir John, least any accident should befall him.

Ralpho. Yes, sir. [*Exeunt Wou'dbe and freeholders, huzzaing for Wou'dbe and Worthy.*

Enter Guzzle, with his wife in his arms.

Guzzle. Here, Sir John, here's my wife fast asleep, to keep you company, and as drunk as a sow. (*throws her upon Sir John, and returns to one side.*)

Sir John. Oh Lord! You've broke my bones.

Joan. (*waking*) John! John! (*punching Sir John*) get up; (*looking round, sees Sir John*) what have we here? Lord, what would our John give to know this? He would have reason to be jealous of me, then!

Enter Guzzle.

Guzzle. Well, Joan, are you sober?

Joan. (*getting up*) How came that man to be lying with me? Its some of your doings, I'm sure; that you may have an excuse to be jealous of me.

Guzzle. I want no excuse for that, child.

Joan. What brought him there?

Guzzle. The same that brought you, child; rum, sugar, and water.

Joan. Well, well, as I live, I thought it was you, and that we were in our own clean sweet bed. Lord! how I tremble for fear he should have done what you do, sometimes, John.

Guzzle. I never do any thing when I am drunk. Sir John and you have done more than that, I believe.

Joan. Don't be jealous, John; it will ruin us both.

Guzzle. I am very jealous of that.

Joan. If you are, I'll beat the cruel beast that is the cause of it, 'till he satisfies you I am innocent.

Guzzle. Don't, Joan, it will make me more jealous.

Joan. I will, I tell you I will. (*beats Sir John, who all the time cries murder, help, help!*)

Ralpho. Stop, madam, this gentleman is in my care; and you must not abuse him.

Mrs. Guzzle. I will, and you too, you rascal. (*beats him first, and then Sir John.*)

Ralpho. Peace, stop, madam, peace, peace.

Sir John. Oh lord! help, John, for God's sake, help.

Ralpho. Do as you please, madam, do as you please. (*runs off*).

Joan. (*beating Sir John*) I'll learn you to cuckold a man without letting his wife know it.

Sir John. Help, murder! help.

Guzzle. (*taking hold of Joan*) Stop, Joan, I'm satisfied—quite satisfied.

Joan. What fellow is it?

Guzzle. Sir John Toddy, our good friend; Oh, Joan, you should not have beat poor Sir John, he is as drunk as you and I were, Joan. Oh! poor Sir John. (*cries.*)

Joan. Good lack, why didn't you tell me? I would have struck you as soon as him, John. Don't be angry, good Sir John, I did not know you.

Sir John. It's well enough: help me out of the mire, neighbours, and I'll forget and forgive.

Guzzle. Yes, Sir John, and so we will. (*they help him up.*) Come, Sir John, let's go home, this is no place for us: come Joan.

[*Exeunt Guzzle and Joan, supporting Sir John.*]

SCENE III.

Another part of the field.
Enter Wou'dbe and Ralpho.

Wou'dbe. Where's Sir John?

Ralpho. In the hands of a woman, sir, and as I left him in such good hands, I thought there was no farther occasion for my attendance.

Wou'dbe. Are you sure he'll be taken care of?

Ralpho. Yes, the lady, an't please your honour, seemed devilish kind to him.

Wou'dbe. See that you have all ready; its high time we thought of going home, if we intend there to-night.

Ralpho. All shall be ready, sir.

[*Exit Ralpho.*]

Wou'dbe. Well, I've felt the pulse of all the leading men, and find they beat still for Worthy, and myself. Strutabout and Smallhopes fawn and cringe in so abject a manner, for the few votes they get, that I'm in hopes they'll be soon heartily despised.

The prudent candidate who hopes to rise,
 Néer deigns to hide it, in a mean disguise.
 Will, to his place, with moderation slide,
 And win his way, or not resist the tide.
 The fool, aspiring to bright honour's post,
 In noise, in shouts, and tumults oft, is lost.

[*Exit.*]

END OF THE SECOND ACT.

ACT III. SCENE I.

Wou'dbe's house.

Enter Wou'dbe and Worthy.

Wou'dbe. Nothing could have afforded me more pleasure than your letter; I read it to the people, and can with pleasure assure you, it gave them infinite satisfaction.

Worthy. My sole motive in declaring myself was to serve you, and if I am the means of your gaining your election with honour, I shall be satisfied.

Wou'dbe. You have always been extremely kind, sir, but I could not enjoy the success I promised myself, without your participation.

Worthy. I have little inclination to the service; you know my aversion to public life, Wou'dbe, and how little I have ever courted the people for the troublesome office they have hitherto imposed upon me.

Wou'dbe. I believe you enjoy as much domestic happiness as any person, and that your aversion to a public life proceeds from the pleasure you find at

home. But, sir, it surely is the duty of every man who has abilities to serve his country, to take up the burden, and bear it with patience.

Worthy. I know it is needless to argue with you upon this head: you are determined I shall serve with you, I find.

Wou'dbe. I am; and therefore let's take the properest methods to insure success.

Worthy. What would you propose?

Wou'dbe. Nothing more than for you to shew yourself to the people.

Worthy. I'll attend you where ever you please.

Wou'dbe. To-morrow being the day of election, I have invited most of the principal freeholders to breakfast with me, in their way to the court-house, I hope you'll favour us with your company.

Worthy. I will; till then, adieu. *[Exit Worthy.]*

Wou'dbe. I shall expect you. It would give me great pleasure if *Worthy* would be more anxious than he appears to be upon this occasion; conscious of his abilities and worth, he scorns to ask a vote for any person but me; well, I must turn the tables on him, and solicit as strongly in his favour.

*'Tis said self-interest is the secret aim,
Of those uniting under Friendship's name.
How true this maxim is, let others prove—
Myself I'd punish for the man I love.*

[Exit Wou'dbe.]

SCENE II.

Mr. Julip's House

Enter Captain Paunch and Mr. Julip.

Capt. Well, neighbour, I have come to see you on purpose to know how votes went at the treat yesterday.

Julip. I was not there; but I've seen neighbour *Guzzle* this morning, and he says, Sir John gives the matter up to Mr. *Worthy* and Mr. *Wou'dbe*.

Capt. Mr. *Worthy*! does he declare, huzza, my boys! well, I'm proud our county may choose two without being obliged to have one of those jackanapes at the head of it, faith: Who are you for now, neighbour?

Julip. I believe I shall vote for the two old ones, and tho' I said I was for Sir John, it was because I lik'd neither of the others; but since Mr. *Worthy* will serve us, why, to be sartin its our duty to send *Wou'dbe* and him.

Capt. Hah, faith, now you speak like a man; you are a man after my own heart: give me your hand.

Julip. Here it is, Wou'dbe and Worthy, I say.

Capt. Done, but who comes yonder? surely, it's not Mr. Worthy!'Tis, I declare.

Enter Mr. Worthy.

Worthy. Gentlemen, your servant, I hope your families are well.

Capt. At your service, sir.

Worthy. I need not, I suppose, gentlemen, inform you that I have entered the list with my old competitors, and have determined to stand a poll at the next election. If you were in the croud yesterday, my friend Wou'dbe, I doubt not, made a declaration of my intentions to the people.

Capt. We know it, thank heaven, Mr. Worthy, tho' neither of us were there: as I did not like some of the candidates I did not choose to be persecuted for a vote that I was resolved never to bestow upon them.

Julip. My rule is never to taste of a man's liquor unless I'm his friend, and therefore, I stay'd at home.

Worthy. Well, my honest friend, I am proud to find that you still preserve your usual independence. Is it possible Captain, that the people can be so misled, as to reject Wou'dbe, and elect Strutabout in his room?

Capt. You know, Mr. Worthy, how it is, as long as the liquor is running, so long they'll be Mr. Strutabout's friends, but when the day comes, I'm thinking it will be another case.

Worthy. I'm sorry, my countymen, for the sake of a little toddy, can be induced to behave in a manner so contradictory to the candour and integrity which always should prevail among mankind.

Capt. It's so, sir, you may depend upon it.

Julip. I'm thinking it is.

Worthy. Well, gentlemen, will you give me leave to ask you, how far you think my declaring will be of service to Mr. Wou'dbe?

Capt. Your declaring has already silenced Sir John Toddy; and I doubt not, but Strutabout and Smallhopes will lose many votes by it.

Worthy. Has Sir John declined? poor Sir John is a weak man, but he has more virtues to recommend him than either of the others.

Julip. So I think, Mr. Worthy, and I'll be so bold as to tell you that, had you not set up, Mr. Wou'dbe and Sir John should have had my vote.

Worthy. Was I a constituent, instead of a candidate, I should do the same.

Julip. Well, captain, you see I was not so much to blame.

Capt. Sir John may be honest, but he is no fitter for that place than myself.

Julip. Suppose he was not, if he was the best that offered to serve us, should not we choose him?

Worthy. Yes, surely: Well, my friends, I'm now on my way, to breakfast at Mr. Wou'dbe's, but I hope to meet you at the court-house today.

Both. Aye, aye, depend upon us. *[Exit Worthy.]*

Capt. Well, neighbour, I hope things now go on better; I like the present appearance.

Julip. So do I.

Capt. Do all you can, old fellow.

Julip. I will.

Capt. I hope you will, neighbour. I wish you well.

Julip. You the same. *[shake hands, and exeunt.]*

SCENE III.

Wou'dbe's house, a long breakfast table set out.

*Wou'dbe, Worthy, Capt. Paunch, Mr. Julip, Twist, Stern, Prize,
and other freeholders; several negroes go backwards and forwards,
bringing in the breakfast.*

1st Freeholder. Give us your hand, neighbour Worthy, I'm extremely glad to see thee with all my heart: So my heart of oak, you are willing to give your time and trouble once more to the service of your country.

Worthy. Your kindness does me honour, and if my labours be productive of good to my country, I shall deem myself fortunate.

2d Freeholder. Still the same sensible man I always thought him. Damn it, now if every county cou'd but send such a burgess, what a noble house we should have?

3d Freeholder. We shall have no polling now, but all will be for the same, I believe. Here's neighbour Twist, who was resolute for Strutabout, I don't doubt, will vote for Mr. Worthy and Mr. Wou'dbe.

Twist. Yes, that I will: what could I do better?

All. Aye, so will we all.

Wou'dbe. Gentlemen, for your forwardness in favour of my good friend Worthy, my sincere thanks are but a poor expression in the pleasure I feel. For my part, your esteem I shall always attribute more to his than my

- own desert. But come, let us sit down to breakfast, all is ready I believe; and you're heartily welcome to batchelors quarters. (*they all sit down to the table, he asks each of the company which they prefer, coffee, tea, or chocolate, and each chooses to his liking; he pours out, and the servants carry it around.*)
- Worthy. Gentlemen, will any of you have a part of this fine salt shad? (*they answer, yes, if you please; and he helps them.*)
- Capt. P. This warm toast and butter is very fine, and the shad gives it an excellent flavour.
- Mr. Julip. Boy, give me the spirit. This chocolate, me thinks, wants a little lacing to make it admirable. (*the servants bring it.*)
- Prize. Mr. Wou'dbe, do your fishing places succeed well this year?
- Wou'dbe. Better than they've been known for some seasons.
- Stern. I'm very glad of it: for then I can get my supply from you.
- Mr. Julip. Neighbour Stalk, how do crops stand with you?
- 1st Freeholder. Indifferently well, I thank you; how are you?
- Mr. Julip. Oh, very well! we crop it gloriously.
- Wou'dbe. You have not breakfasted yet, neighbour, give me leave to help you to another dish.
- 2d Freeholder. Thank ye, sir, but enough's as good as a feast.
- Capt. P. (*looking at his watch.*) I'm afraid we shall be late, they ought to have begun before now.
- Wou'dbe. Our horses are at the gate, and we have not far to go.
- Freeholders all. Very well, we've all breakfasted. (*they rise from table and the servants take away.*)
- 1st Freeholder. Come along, my friends, I long to see your triumph. Huzza for Wou'dbe and Worthy! [Exit huzzaing.]

SCENE IV.

The Court-house yard.

*The door open, and a number of freeholders seen
crouding within.*

- 1st Freeholder. (*to a freeholder coming out of the house*) How do votes go, neighbour? for Wou'dbe and Worthy?
- 2d Freeholder. Aye, aye, they're just come, and sit upon the bench, and yet all the votes are for them. 'Tis quite a hollow thing. The poll will be soon over. The People croud so much, and vote so fast, you can hardly turn around.

1st *Freeholder*. How do Strutabout and Smallhopes look? very doleful, I reckon.

2d *Freeholder*. Like a thief under the gallows.

3d *Freeholder*. There you must be mistaken, neighbour; for two can't be like one.

1st & 2d *Freeholders*. Ha, ha, ha,—a good joke, a good joke.

3d *Freeholder*. Not so good neither, when the subject made it so easy.

1st & 2d *Freeholders*. Better and better, ha, ha, ha. Huzza for Worthy and Wou'dbe! and confusion to Strutabout and Smallhopes.

Enter Guzzle.

Guzzle. Huzza for Wou'dbe and Worthy! and huzza for Sir John Toddy! tho' he reclines.

1st *Freeholder*. So Guzzle, your friend Sir John reclines, does he? I think he does right.

Guzzle. You think he does right! pray sir, what right have you to think about it? nobody but a fool would kick a fallen man lower.

1st *Freeholder*. Sir, I won't be called a fool by any man, I'll have you to know, sir.

Guzzle. Then you ought'nt to be one; but here's at ye, adrat ye, if ye're for a quarrel. Sir John Toddy would have stood a good chance, and I'll maintain it, come on, damn ye.

1st *Freeholder*. Oh! as for fighting, there I'm your servant; a drunkard is as bad to fight as a madman. (*runs off.*)

Guzzle. Houroa, houroa, you see no body so good at a battle as a staunch toper. The milksops are afraid of them to a man.

3d *Freeholder*. You knew he was a coward before you thought proper to attack him; if you think yourself so brave, try your hand upon me, and you'll find you're mistaken.

Guzzle. For the matter of that, I'm the best judge myself; good day, my dear, good day. Huzza, for Sir John Toddy. [*Exit.*]

3d *Freeholder*. How weak must Sir John be to be governed by such a wretch as Guzzle!

The Sheriff comes to the door, and says,

Gentlemen freeholders, come into court, and give your votes, or the poll will be closed.

Freeholders. We've all voted.

Sheriff. The poll's closed. Mr. Wou'dbe and Mr. Worthy are elected.

Freeholders without and within. Huzza—huzza! Wou'dbe and Worthy for ever, boys, bring 'em on, bring 'em on, Wou'dbe and Worthy for ever!

Enter Wou'dbe and Worthy, in two chairs, raised aloft by the freeholders.

Freeholders all.—Huzza, for Wou'dbe and Worthy—Huzza for Wou'dbe and Worthy—huzza, for Wou'dbe and Worthy!—(*they traverse the stage, and then set them down.*)

Worthy. Gentlemen, I'm much obliged to you for the signal proof you have given me to-day of your regard. You may depend upon it, that I shall endeavour faithfully to discharge the trust you have reposed in me.

Wou'dbe. I have not only, gentlemen, to return you my hearty thanks for the favours you have conferred upon me, but I beg leave also to thank you for shewing such regard to the merit of my friend. You have in that, shewn your judgment, and a spirit of independence becoming Virginians.

Capt. P. So we have Mr. Wou'dbe, we have done as we ought, we have elected the ablest, according to the writ.

Henceforth, let those who pray for wholesome laws,
And all well-wishers to their country's cause,
Like us refuse a coxcomb—choose a man—
Then let our senate blunder if it can.

[Exit omnes.

END OF THE CANDIDATES.

Anonymous,
Observations upon the Report
Made by the Board of Trade
against the Grenada Laws
(London, 1770)



SOON AFTER THE SIGNING of the Treaty of Paris in 1763, the British government created several new colonies in territories ceded to Britain after its success in the Seven Years' War, including two in Florida and four in the Ceded Islands of West Indies: Grenada, Dominica, St. Vincent, and Tobago. Although the official proclamation establishing these colonies invited settlers with the promise that they would there enjoy the traditional rights of Britons, including the right to legislative government in the manner of the older colonies, metropolitan officials fully intended, as they had done in the cases of other new colonies developed after 1750, to monitor the actions of the colonial assemblies to make sure that they did not acquire the wide authority exercised by the assemblies in most of the older colonies at the expense of the royal prerogative. This soon produced serious contentions within the new island colonies between metropolitan intentions and settler expectations, a development to which the anonymous author of this selection speaks directly in a stinging critique of the metropolitan rationale for recommending in 1768 the disallowance of several laws passed by the first assembly of Grenada to regulate the assembly, elections, courts, revenue collection, and militia, all on the grounds that those laws represented unconstitutional encroachments by the assembly upon the prerogatives of the Crown.

So far from being encroachments upon the prerogative, these laws, the author argued, were thoroughly consistent with both British constitutional traditions and the practices of all the older colonies and a violation of the terms offered by proclamation to new settlers in 1763. In response to the metropolitan argument that the authority in question, "by the principles of the constitution," was "vest[ed] in the king alone," he asked: "By the principles of what constitution? Not of England, because there are many acts of parliament that regulate these matters" and not by the constitutions of "the other colonies under his majesty's immediate government, because these points are all regulated there by their own particular laws." Rather, he declared, those principles derived solely from "the oppressive plan, which the ministers of state have for some time past adopted for their conduct towards his majesty's subjects in the colonies," a plan based on the argument "that the constitution of a colony . . . depend[ed] entirely upon the commission and instruction given in his majesty's name to the governor," a plan, he charged, that was redolent of the prerogative claims of the Stuart monarchs and that the ministers seemed to have contrived as a means to reserve to themselves "the most absolute power that has ever been assumed by the most despotick monarch over a people." He also condemned the ministers' insistence upon making French Catholic settlers eligible for election to the Grenada Assembly as contrary to existing practice throughout the Crown's dominions.

Thus engaged in "the voluptuous task of subduing the rights of" the Crown's "distant fellow subjects," London authorities, the writer explained, had lately made "rapid" progress "towards the suppression of the constitutional and covenanted privileges of his majesty's subjects in the new ceded islands." Although he acknowledged that the disunited and "helpless state" of the island colonies rendered them unable to offer much resistance to this effort, he warned that its continuation might provoke the continental colonies to a resistance that Britain might not be able to overcome. "The cause of Liberty is the cause of every Englishman, who deserves that name," he observed, "and there may some be found in such a contest, who would be prouder of being a member of the new, than the old state. Loyalty and freedom are as reconcilable to each other in America as in England." (J.P.G)

OBSERVATIONS

UPON THE

REPORT

MADE BY

The BOARD of TRADE

AGAINST

The GRENADA Laws.

LONDON: Printed for W. FLEXNEY,
opposite Gray's Inn Gate Holbourn.

1770.

Introduction.

The intangling the rights of the crown with those of the people, and pretending infringements of the one upon every common exercise or claim of the other, is a piece of ministerial fallacy, that, though stale in practice, and what ought to have been exploded at the Revolution, is yet ever attended with equal success. A minister, who is not possessed of the qualities necessary to constitute the character of a statesman, always grows pertinaciously zealous in the support (or rather extension) of *prerogative rights*; and, without abilities to discern their use and properties, or even knowledge to *distinguish* them, will be satisfied to recommend himself to his master, by an attachment to (what he conceives to be) that single object. A zeal for the immunities appendent to the *political* person, seldom fails to attract the regard of the *proper* person; and when a prince thinks he is expressing his approbation of the faithful services of his servant, he is, unknowingly, cherishing the greatest enemy to himself and his kingdom; for under the cloak of such an ardent attachment is concealed the dagger, which devotes equally to destruction, the king's honour and country's peace.

To complain to a sovereign of the oppressions of such an agent, is certainly not a prudent act, or one that promises relief; for a minister must know very little of the mechanical part of his occupation, to venture upon any acts of outrage against the privileges of his fellow subjects, before he has secured as much of the command of his master's ear, as is requisite to close it entirely against the clamours of the oppressed, or to persuade him, that their just remonstrances are but marks of sedition, and instances of disaffection and opposition to his royal person and authority.

This is an ordinary policy, and such as ministers in common use; but a minister for the American department, having greater opportunities of doing injuries, may discover other means of keeping them from the knowledge of the king. He might, at his first entering into office, resolve not to suffer any addresses, remonstrances, or petitions, to be presented to his majesty, which are not transmitted through the governor of the colony. By this precaution, he gives the governor an opportunity of suppressing them altogether, or sending them accompanied with his own remarks. The governor knowing his cue, will seldom be so *remiss*, as to make it necessary for the minister to appear in any other than a candid light; to whom nothing more need be left, than to represent matters as they are represented to him.

This *may be* done, and the minister for a while, indulge himself in the wanton display of finesse, and the voluptuous task of subduing the rights of his distant fellow subjects, and may plume himself on his chimerical security from his sovereign's indignation, for the frequent prostitution of his name and honour. But his prejudicing the royal mind, and shutting up one channel of information, are luckily the only safeguards such a character can have recourse to. Though the necessary avocations of a king, oblige him to a reliance on the representation of his ministers, yet the great council of the nation, will see, examine and judge, by their own senses; and as the Americans are virtually represented *there*, it can but follow, that their wrongs will always be virtually felt, and (it is to be hoped) *effectually* redressed.

Should it be otherwise, the islanders will have the alternative of remaining in those colonies under the yoke of absolute power, or of abandoning their habitations and possessions in search of liberty *else where*, but the inhabitants of the provinces on the continent will have another choice.

History furnishes us with many examples of states arising out of the exuberant branches of other states, by the operation only of fortuitous events, without the interposition of any human influence. A disunion of interests from the principle body, situation, intrinsic strength, consequence and resources, have produced such an effect; but when to these concomitant causes, persecution is added, there needs no prophetic spirit to foretell the certain event, nor any accidental occurrence to give it birth. Despair has been productive of as great exploits under less favourable circumstances.

Persecution raised the first settlement in America, persecution may raise a free and independent state there; and, whatever opinions may be formed to the contrary, the latter enterprize may be as easily effected as the first was.

It is thought, the power of Great Britain could *crush* America. This may prove a mistake; for even supposing the power of Great Britain was not to be reduced by the separation, the subduing two millions of souls, united in one interest, and struggling for what they hold dearer to them than their lives, is not an undertaking that seems so very certain of success. The inhabitants of America, on such an occasion, must be *united*, the people of England will as assuredly be *divided* as to the propriety and justice of the attempt. The cause of liberty is the cause of every Englishman, who deserves that name, and there may some be found in such a contest, who would be prouder of being a member of the new, than the old state. Loyalty and freedom are terms as reconcilable to each other in America as in England.

But no controversy of *this sort* need be dreaded from the islands, for their disunion of territory as islands, their helpless state, and their constant want of protection, must make it obvious to all, their struggles will *never* appear against the execution of any *legal* measures.

The progress which has been lately made towards the suppression of the constitutional and covenanted privileges of his majesty's subjects in the new ceded islands, has been so rapid, that the effects are publicly known in England before the effects. Discontents and disgusts are known to prevail in Granada, and some causes are assigned, sufficient, indeed, to account for them; but the original source, the foundation on which these arrangements have been formed, has not yet appeared. This therefore, is the import of the following sheets, for offering which to the public, the author thinks it unnecessary to apologize, as the *privilege* of complaining to them is among the very few not yet expressly taken away from his majesty's natural born subjects in those islands.

Observations.

As the meaning of the* acts of parliament, made for securing the rights and liberties of the subject, which declare the laws of England to be the birth-right of the people thereof, "and that all kings and queens coming to the crown can govern them by no other," has been so† explained away as to afford no benefit to his majesty's subjects in the colonies, the words, *People of England*, being defined to mean nothing more than English subjects *continuing in England*; and, as the king's coronation oath,‡ by which his majesty swears to govern the people according to law, indicates only the people *in England*, by the laws thereof, it becomes necessary to inquire, what were the acknowledged rights of the crown, in respect of distant countries, under the sovereignty of the kings of England, previous to the making these declaratory acts: and should a doctrine favourable to prerogative, and established

* 1 Will. and Mary, sess. 2. c. 2. 12 and 13 Will. III. c. 2. 13 Will. III. c. 6.

† In certain debates on the absolute power of the parliament of Great Britain to tax the colonies, and particularly by the argument of a noble —— skilled in the laws of England, and who therefore must be right.

‡ *viz.* "To govern the people of the kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same."

in a Stuart's reign, be found, to which the English subjects in the new ceded islands are satisfied to appeal, in their complaint of some late acts of government, a modern minister certainly cannot be displeased at the reference, nor wish his conduct examined by a better criterion. Such is the following doctrine, viz.* "The king has a right to establish what laws he pleases in conquered or ceded countries, or he may continue to govern them by such as prevailed there before the conquest or cession; nor (say the law books) do the laws of England take place until declared so by the king (being the conqueror) or his successors. But after such declaration is once made, the crown is ever after precluded from making a further alteration."

It seems, that it was by virtue of this prerogative right, thus inherent (as is said) in the crown, that, immediately after the last peace with France, there issued in his majesty's name† a proclamation, setting forth, that his majesty having taken into his royal consideration the extensive and valuable acquisitions in America, secured to the crown by the then late treaty of peace, and the benefits which would accrue to his majesty's subjects therefrom, in their commerce, manufactures, and navigation, had been graciously pleased to erect four distinct governments within them, those on the continent into three, and the islands‡ into a fourth government; then follows,

and as it will greatly contribute to the speedy settling our new government, that our loving subjects should be informed of our paternal care for the security of the liberty and property of those who are and shall become inhabitants thereof, we have thought fit to publish and declare, by this our proclamation, that we have in the letters patent under our great seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies, respectively, that, so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate§ government: we have also given power to our said governors, with the

* 7th Coke, Calvin's case.

† 7 Oct. 1763.

‡ Granada, the Granadines, St. Vincent, Dominica, and Tobago.

§ The West-India islands and the provinces in America called royal governments.

consent of our said councils, and the representatives of the people so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to our said colonies, may confide in our royal protection, for the enjoyment of the benefit of the laws of our realm of England; for which purpose, we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes as well criminal as civil, according to law and equity, and, as near as may be, agreeable to the laws of England; with liberty to all persons, who may think themselves aggrieved by the sentence of such courts in all civil cases, to appeal, under the usual limitations and restrictions, to Us, in our privy council.

By this proclamation it appears,* *that the laws of the realm of England* are given in their utmost plenitude to the acquired, or new ceded colonies, to be altered only in some points, where the circumstances of the colony made it necessary, by their own legislatures, formed and established upon the same principles as *the other colonies*, and under no other *restrictions or regulations than are there used*: And that the laws of England may *immediately* have their operation and full effect, proper powers are declared to be given to the respective governors, to constitute courts of justice for determining all causes, criminal as well as civil, according to *law and equity*. A great number of his majesty's natural born subjects, thus secured of a *full enjoyment of the benefit of the laws of England in Granada*, resorted to and became inhabitants of that island;

* By which are understood the common law, as it stands unaltered by the statute, and all general acts of parliament tending to secure to the subjects their civil and religious rights, or to regulate the police of the country. The revenue acts give way to such as are made for and confined to the colonies, falling under the distinction of *laws of trade and plantations*, which restrain the colonies from sending their produce and manufactures to any other market than, and impose duties upon every article as they are imported into Great Britain.

some purchasing* lands from the French, others trafficking; so that in a short time four fifths of the island fell into the possession of his majesty's English subjects, and a trade was established nearly as great, and as advantageous to Great Britain as what is carried on in any of his majesty's *other colonies*.

The commission given to the governor appointed by his majesty over Granada, and the other ceded islands, was nearly a copy of the commissions that had been ever given to the governors of Barbadoes, the Leeward islands, and the *other colonies*, which always contained the powers mentioned in the proclamation.

In a strict and proper attention to his majesty's declaration, and probably to his first-instructions, governor Melvil, a little time after his arrival in his government, proceeded (with the advice of his council) to issue writs for calling† a general assembly, which was soon after their meeting, upon some misunderstanding with the governor, dissolved, and another called. This last, proceeding to business, framed such bills as the state of the island, its *public peace and welfare*, made most necessary to be ordained immediately, and which were all formed, *as near as may be, agreeable to the laws of England*, and *after the usage of the other colonies*, where the same laws had passed, under similar circumstances. These bills, after receiving the concurrence of the council, and assent of the governor, were transmitted to his majesty, for his royal confirmation; but, being referred by the secretary of state, to the board of trade for their opinion, were, upon their report, rejected. How far the rejecting these laws was, or was not consistent with his majesty's proclamation, and the form of government established by it, is the inquisition designed by the succeeding observations offered on each part of their lordships report.

To the King's most Excellent Majesty.

May it please your Majesty.

The earl of Hillsborough, one of your majesty's principal secretaries of state, having transmitted to us a printed collection, properly

* Those purchases amount to about *l.* 200,000 sterling. Most of the sums which have been paid for these lands have been carried to France, or some French colony, by the former proprietors, who have all sworn allegiance to his majesty.

† The number of his majesty's subjects who resorted to Granada upon his majesty's proclamation, and had purchased lands, houses, &c. soon made such a measure practicable.

attested, of such laws as have been lately passed in your majesty's island of Granada, and having at the same time signified to us your majesty's commands, that we should, with all convenient dispatch, report to your majesty, in your privy council, our opinion upon such of these laws as relate to the establishment of legislature, the appointment of a treasurer, and the imposing duties and taxes, we have accordingly taken such of them as fall within the description into our consideration, together with some others, that appear to us to establish those fundamental constitutions by which the government of this island is for the future to be administered; and having examined these laws with all the attention due to so important a subject, we humbly beg leave to lay them before your majesty, accompanied with such observations as have occurred to us thereupon.

I. An act for regulating the elections of the general assembly of Granada and the Granadines, and for the better ascertaining the qualifications of the electors and elected.

The power of summoning and calling assemblies of the freeholders in your majesty's island of Granada, at such time, and in such manner, as shall be thought necessary and expedient, is by your majesty's commission under the great seal vested in your governor of that island; and the fixing the number of representatives, the places for which they shall be chosen, the qualifications under which they shall sit and vote, are matters, which by the principles of the constitution, and the rights inherent in your majesty, ought to be regulated by your majesty's sole authority, and therefore we humbly presume that your majesty will not hesitate to disallow this law, which assumes the direction of all the above regulations, and which evidently tends to give disgust and dissatisfaction to your majesty's new subjects, by obliging all members of the assembly to subscribe the declarations against transubstantiation; a test that is not (as we conceive) extended to the colonies by any act of parliament, and is a qualification, the enforcing of which is entirely left to your majesty's discretion.

Upon the first establishment of a regular form of government, in each of the colonies in America, "under his majesty's immediate government," upon the basis and principles of the constitution of England, it was found, that all the laws of England could not, from a difference of circumstances between the mother country and colony, operate so effectually in the latter, as to secure to his majesty's subjects resorting thither, their birth-right

and* confirmed emoluments, without some alterations of such as were not adapted to the state of the colony; it therefore became expedient for the respective legislatures to make these alterations,† or to pass new laws, varying from those excepted to, of England, as to form, though in no manner deviating from their spirit or intent; these municipal laws being accordingly made, were in themselves so apparently just and proper, that they were all confirmed by the crown, and are to this day in full force. And among them will be generally found acts *for regulating elections, for ascertaining the qualifications of candidates, settling their privileges, limiting the duration of assemblies, &c. &c.*

It is asserted, "that the ascertaining the qualifications of voters and representatives, &c. by law, are matters, which by the principles of the constitution," vest in the king alone. By the principles of what constitution? Not of England, because there are many acts of parliament which regulate these matters; and the members of the house of commons can only sit under the qualifications appointed by the statutes: It cannot be of the *other colonies under his majesty's immediate government*, because these points are all regulated there by their own particular laws, and under no other authority. Where then is the constitution alluded to, to be found? Or have their lordships discovered, that the king's prerogative has been infringed in England for three centuries past, and in the colonies for near a century, unnoticed before by either the sovereigns or their ministers?" which evidently tends {"} to give disgust to your majesty's new subjects." After the treaty of Utrecht, by which the part of the island of St. Christopher, theretofore under the dominion of the French king, ceded to Great Britain, the legislature of the

* Although the laws of England are not in force in conquered or ceded countries, (where a regular form of government has been established by the former sovereign) until the king pleases to declare them so, yet in new discovered countries, or such as are first settled or occupied by English subjects, before those of any other *Christian* prince, the laws of England are there immediately in force, without any declaration from the crown,—7th Coke, Calvin's case, Salk. 411. 666. P. Wms. Of the latter sort are most of the American colonies; therefore the charters, proclamations, and other compacts of the crown, concerning the rights of the inhabitants, can be (if not altogether superfluous) only *confirmations*.

† The colony having a power to make laws, our general laws may be altered by theirs in particulars. Salk. 411. 666.

English part of the island passed an* act, empowering the parishes of the new ceded divisions to send representatives to the general assembly. By this assembly law (as well as by a former, made upon the first establishment of a constitution in that island) the number of representatives were fixed, their qualifications ascertained, the duration of the assemblies limited, and the members particularly directed to take the oaths of parliament, and subscribe the Test, though many French families chose to remain in the island.

About three fourths of the inhabitants of Montserrat are Roman catholics, and much the greatest part of the lands in the island are possessed by persons of that persuasion, but being natural born subjects of his majesty, and descendents of Englishmen, they can have no other national bias or prejudice than what tends to the advantage of their country and king. Yet they never had, or pretended to have had a right to sit in the general assembly of the island; they have expressed no discontent at this exclusion. Why then this extraordinary fear of disgusting his majesty's new subjects in Granada? But, granting that such a disgust was to arise, it is no more than what must be excited in the breast of every man who professes a different religion from what is established by the laws of the country he inhabits, and what must have been much stronger felt by the English Roman catholics when the test act passed in England, than could by the new subjects in Granada upon the passing the act first alluded to in the report. By the definitive treaty of peace, his majesty's new subjects were to have "*the free exercise of their religion, as far as was consistent with the laws of England.*" If a further indulgence could have been given, why was it not expressed on that occasion as an incentive to the French settlers becoming subjects of the king, and that not only the powers with whom we had been at war, but all Europe might witness the partiality of our constitution and laws to foreign Roman catholics? and the approbation by the parliament of the treaty (if given) would have shown that the concession was concordant with both.

But the French inhabitants were satisfied to enjoy their property and religion under this restriction, in preference to the easy alternative permitted them by the treaty, which was, to sell their estates to any persons, being subjects of his majesty, and to depart with their effects wheresoever they pleased. Where then is this *new subject*, that would be so weak, or so

* The general assemblies of that island are yearly called and held under the authority of this law.

insolent, as to express his dislike to an act of the legislature conformable to the laws of England? and should there be such a daring disapprobation declared, can there be found a minister, so object as to be affected by it?

“A Test that is not (as we conceive) extended to the colonies by any act of parliament,” There is not a law of England, that is extended to Granada, by an act of parliament.* His majesty’s subjects *there* claim the *benefit of the laws of the realm of England*, (if not as their birthright) under his majesty’s proclamation; and the statutes concerning the Test are among the laws which were in force at that time.† It has always been a fixed principle, as well in the adjudications of the courts of justice in the colonies, and in the determinations upon appeals, to the king and council from those judgments, as by the sentences of the courts of Westminster, that no acts of parliament, made after‡ the settlement of (that is the establishment of a form of government in,) any of his majesty’s colonies, can affect them, unless they are particularly named; therefore the statutes of England, which appoint the state oaths and Test, being passed after the settlement of the different colonies, might not immediately, as indifferent laws, extend to *them*: yet as the very existence of the constitution of Great Britain, upon its present happy establishment, depends upon the support of the Protestant religion, and the driving from the councils and offices of the nation, all enemies to that persuasion; and as the coexistence of the constitution of the colonies, must of course, depend on the same grounds; and as the laws made for the purpose, are not

* The absolute right, which English subjects in the colonies, have to the benefit of the laws of England, is asserted in the strongest terms, by an act of the united assemblies of the four Leeward islands, in the following words, viz. “The common law of England, as far as it stands unaltered by any written laws of these islands, or by any act of parliament extending to these islands, is in force in each of the Charibbee islands, and is the certain rule whereby, the rights and properties of your majesty’s subjects, inhabiting these islands, are and ought to be determined, and that all customs or pretended customs or usages contradictory thereto are illegal, null and void.” 20 June, 1705.

† The statutes of treason are not, by any *act of parliament*, extended to the colonies any more than the Test, therefore a person the most disaffected to his majesty and his government, willing to sign the Test, may as well be admitted to take a seat in either branch of the legislature, or in a court of justice, upon having the oaths of allegiance and abjuration dispensed with in his favour, by an instruction to the governor, as may a French Roman catholic, upon taking these oaths, and not subscribing the Test. The same law that requires the one, demands the other, and it would be difficult to say which dispensation is the most unconstitutional or fatal.

‡ 3 Mod. 225. Salk. 510.

barely formed for the *regulation of the police* of the government, but to fix the government itself, it was reasonable for any sovereign, who possessed and held his crown upon such an establishment, to suppose, that the laws which were made to secure his right to the sovereignty of England, and the dominions thereto belonging, not only affected England, but the dominions thereto belonging; *accordingly* the governors of the colonies, appointed since the making these statutes, have been by their commissions and instructions required, to see that the members of the council and assembly took the oaths of allegiance, abjuration and supremacy, and subscribed the Test.

But it will be found that this instruction, was as conformable to the laws of the several colonies, as to the statutes of parliament; for the colonies have ever kept peace with England, in making the necessary ordinances for discouraging popery, and for supporting the Protestant religion and settlement. And by the laws passed in the respective colonies for regulating elections, it is either required in express terms, that the oaths of allegiance, abjuration, and supremacy, should be taken, and the declaration against transubstantiation signed by the representatives, or Roman catholicks are in other words excluded from sitting in the assembly.*

In order to encourage foreigners to resort to, and become resident in the colonies, an act of parliament was made in the thirteenth year of the reign of his late majesty, naturalizing all such foreigners as had resided, or would reside, in any of the colonies, for the space of seven years, without being absent two months at any one time, and that would, after such residence, (having previously received the sacrament, in some protestant, or reformed, congregation,) take the oaths appointed by the statutes of the 1st Geo. I. and sign the declaration there mentioned. By this act, it appears, in the first place, that the settlement of a colony, was not to be accomplished, at the sacrifice of the established principles of the British constitution, tho' under the authority of an act of parliament; and in the next, that, by the constitution of the colonies, no person could (by never so politic a plan) be made capable of holding offices, &c. but protestants.†

* There is not an English colony in America or the West-Indies, whether obtained by discovery, occupancy, conquest or cession, in which papists are not excluded by its own laws and usage from serving in the legislature.

† Previous to the passing the act of the 13 Geo. II. the same policy induced the legislature of Antigua to ordain a law, whereby any Protestant alien, desirous of becoming an inhabitant of the island, was allowed to take the state oaths and sign the Test, by which

“The enforcing of which is entirely left to your majesty’s discretion”: By which is to be inferred, nay is *declared*, that his majesty has reserved in his person, not only a power to ordain laws (penal laws too) for the colonies, but at pleasure to dispense* with them, or at any time, and upon any occasion, to suspend their execution. In short his majesty can do that in the colonies *by order*, which can be done only in England *by act of parliament*, viz. if his majesty pleases to extend the Test to America, he may do it by his order to his governor; if he chooses to dispense with it, or extend it to particular persons, and suspend its execution in respect of others, “it is left entirely at his majesty’s discretion.” Has his majesty this authority from the act that appoints the Test? If not, from whence is it derived? Is not the power here given as great as is necessary for the making, suspending of, or dispensing with, any other law whatsoever?

The power, given by the crown to the governor (in his commission) of calling assemblies, has been always delegated in the same manner, and in the same terms, to all the governors of *the other colonies*; yet it has never been before construed an authority to call assemblies, consisting of what number of members, and with what qualifications, and under what regulations he pleased. The particular laws and usage of every colony evince this, nor can their lordships show an example to the contrary, to support their position.

he became intitled to all the privileges of a natural born subject, except those of serving in the council or assembly, being a judge or justice of the peace. But the power of naturalizing under this act was to cease, whenever the number of naturalized persons amounted to one fourth of the inhabitants of the island.

* It is not to be supposed, that there are many Englishmen so little acquainted with the annals of their country, as not to know, that, upon the abdication of king James, the lords and commons, assembled at Westminster, presented to the prince and princess of Orange, with the crown of England, a declaration containing the rights they claimed as English subjects, and that at the same time the one was accepted, the other was confirmed. The declaration was immediately afterwards reduced to the form of, and passed as, an act of parliament. The following are the two first articles, viz. 1st. “The pretended power of suspending laws, or the execution of laws, by regal authority, without consent of parliament, is illegal. 2d. The pretended power of dispensing with laws, or the execution of laws, by regal authority, as hath been assumed, is illegal.” And it was further expressed, “that all officers and ministers whatsoever shall serve their majesties and their successors according to those rights in all times to come.” 1 Wil. and M. sess. 2. c. 2. If their lordships have adopted the opinion, that English subjects in the colonies are not intitled to the same privileges they claim in England, yet certainly they will not say, that the above act of parliament is not one of the general *laws of the realm of England* mentioned in his majesty’s proclamation.

His majesty has, by his royal proclamation or compact, declared, that general assemblies should be called in the manner and form of *the other colonies*, and there is not a clause in this law, which is not taken from some one act or another of those colonies; nor has the law any other tendency than to establish, in a constitutional way, the form of government engaged by his majesty.

II. An act to enable his excellency the captain general, and governor in chief, to associate to himself, as chancellor, the members of his majesty's council in this island, and to make the court of chancery, for the future, to consist of the said captain general, and governor in chief, or other person commanding for his majesty in the said island of Granada, and the members of his majesty's said council.

The establishment of the courts of justice, under all descriptions, is another right inherent in your majesty, in virtue of your royal prerogative: and according to uniform usage and practice, the governor of any of your majesty's colonies, being intrusted with the custody of your majesty's seal, becomes, in consequence thereof, invested with all the authorities of a chancellor; and as these authorities do, upon the absence of the chief governor, devolve upon the person succeeding in command, we humbly presume that there is no foundation to suppose, that any inconvenience could arise from the absence of the chief governor, which is the sole pretence for enacting this law, set forth in the preamble of it.

It is true indeed, that, in order to prevent the inconveniences which might arise from the powers being solely lodged in the commander in chief, whose necessary avocations to the other duties of his station might render his attention to this difficult and inconvenient, it has been thought adviseable, in other colonies, to associate with him the whole, or a certain number of your majesty's council, upon the plan adopted by this law; but we can by no means think, that such a supposed defect, or inconvenience, in the original institution of the office of chancellor, can warrant the doing that by an act of legislature there, which, upon a proper representation, might be legally and constitutionally established by commission from your majesty.

It does not appear that his majesty's right of establishing courts of justice, has been brought into question by this act. A form of government is to be established in this island upon the model of that of the other colonies, where courts of justice have been always held under the authority of their

own laws, so far as relate to the number of judges, the power, jurisdiction, and practice of the courts, matters that are always adapted to the circumstances of each particular colony, and best calculated for the administration of justice, upon the principles of the laws and courts of England: there is not a colony that has not such laws, nor is there a possibility of administering justice without them; a very little knowledge of the condition and state of the colonies, or a careful perusal of their statutes, will make this evident. In some cases, it has been found even necessary to establish courts peculiarly summary in practice, and of denominations different from any court known in England; as for instance, the *court merchants*, (which are appointed in the several islands, by their own legislatures,) giving transient traders an expeditious method of recovering their debts, and after a mode of practice differing from that of any court of England, and in a manner which might not probably strike the conceptions of the reporters, totally ignorant of the police or wants of the islands. In nothing does this deficiency in knowledge, of the new ceded islands appear stronger, than in the following assertion, viz. that there could be no foundation, "to suppose any inconvenience could arise from the absence of the chief governor, as the custody of his majesty's great seal, and all the authorities vested by it, devolves upon the person succeeding in command."

Granada is but one of four capital islands, which compose that government, and it is both necessary and usual for the governor in chief, to divide his time and attention among them, making a circuit each year; and whilst he is absent from either, the seals are *not* left with the next in command, but are carried with him for the use of the other islands; the court of chancery of course ambulates with his person. The inconveniences, which must follow such an establishment, may be easily conceived, are but too severely felt by suitors, and were what the general assembly of the Leeward islands took an early opportunity of remedying, by passing a* law to empower the lieutenant governor, or president of the council, of the several islands of St. Christopher, Antigua, Nevis, and Montserrat, to hold courts of chancery

* This law is become into disuse, and marked in the printed laws of the Leeward islands as obsolete, owing probably to the prevalence of some particular acts made in each island to the same effect, particularly in Antigua, whereby the members of the council, or a particular number of them, are associated to the governor, lieutenant governor, or president of the council, being in command of the island, in the same manner as was directed by the Granada act.

in the absence of the governor in chief. As to the inconveniences which may result from the power being lodged entirely in the commander in chief when upon the spot, they would not be very material to the country, so as, in his absence, suitors were not deprived of the court altogether, or obliged to travel after it; and if his majesty would allow of appeals for a less sum than 500*l.* sterling.

Can their lordships show an instance, where the associating members of the council with the governor, upon the plan adopted by this law, has been done in the colonies by any other authority, than an act of their own legislature?

III. An act to regulate, restrict, and direct the conduct of the publick treasurer of these islands, and to fix his salary.

IV. An act for appointing a treasurer for the island of Carrioucou, and for declaring rules and regulations for his conduct in that office.

V. An act for raising a sum of money to pay off the debts of these islands, and to answer the present exigencies of the public.

The right which your majesty has, independent of the assemblies of any of the colonies, to appoint such person or persons for securing and issuing public money, as your majesty shall think proper, is, we conceive, established upon undeniable principles, and we are warranted, by an express resolution of the house of commons, in saying, that any claim in a provincial house of assembly, to interfere in the nomination of such officer, is illegal, repugnant to the terms of your majesty's commission, and derogatory of the rights of the crown of Great Britain.

By your majesty's commission and instructions to your governor of Granada, it is expressly declared, that all public monies raised, or which shall be raised by any act hereafter to be made, within all or any of your majesty's said islands, be issued out by warrant of your said governor, by and with the advice and consent of your council, and not otherwise; and that in all laws and ordinances for levying money, or imposing fines, forfeitures or penalties, a clause be inserted, declaring, that the money, arising by the operation of the said law or ordinance, shall be accounted for unto your majesty in this kingdom, and to your commissioners of your treasury, or your high treasurer for the time being, and audited by your auditor general of your plantations, or his deputy.

By these laws which we now lay before your majesty, your majesty's right to appoint a treasurer is openly questioned, and the previous consent

of the assembly to such an appointment is established as a constitutional principle. No clauses are inserted by which public monies are directed to be accounted for to your majesty, or your commissioners of the treasury, or audited as the instruction prescribes: on the contrary, such accounts are to be examined, audited, and passed, by a committee, deriving their powers from no other authority than an act of the legislature of this island, and a previous application to, and consent of the assembly, made necessary for the issuing of all public monies out of the treasury.

From these provisions, your majesty will observe, that the newly instituted assembly in these islands have assumed to themselves powers and authorities inconsistent with your majesty's rights, and the spirit of the constitution; that they have not limited the supposed rights of raising money to the granting it to your majesty, to the appropriating to such services as they shall think necessary, and to the directing the mode in which it should be raised (which we humbly conceive are the only powers incident to that institution) but that they have extended their jurisdiction to matters, which, by the express terms of your majesty's commission and instructions, belong only to your majesty's courts and officers.

These however, may it please your majesty, are not the only objections which have occurred to those laws. By the act of appointing treasurers, these officers are, without any colour of reason, and in violation of the royal prerogative, excluded from sitting and voting in the house of assembly, and subjected to the disabilities and incapacities, restrictive of your majesty's just authority, of appointing them to any other office, or employ.

The assembly of Granada would have passed a bill upon the plan of the Barbadoes laws, reserving a negative in the appointment of a treasurer, but the governor signifying his resolution, not to give his assent to such a one, and it being seen, that it was not an *universal* practice in the colonies, the point was not only given up, but it was (probably with some degree of impropriety,) *declared*,* that the nomination of the treasurer should be in

* If this is an error, it is a common one; for in most of the assembly acts of the colonies, it is *declared*, that all writs shall issue by the governor; in the court laws, it is generally said, that the commissions of oyer and terminer shall be granted by the governor, and the same as to many other authorities that the governors have vested in them, without the authority of legislature. Most of the authorities delegated by the king to his governor, and mentioned in the commission, are made a part of one of the laws of New York.

the commander in chief, tho' with a different view from what their lordships conceive.*

If the governor, or any other person authorised to that purpose, being apparently interested in the welfare and prosperity of Granada, could and would inform himself of the exigences of the island, and lay his estimates before the assembly, the proper monies would, each year, be raised for the purposes; but according to the custom and usage of the colonies, particularly the islands, the governor never takes this burthen upon himself, nor is there any other person whose office it is to do this, therefore the assemblies are under the necessity of calculating those expences in a rough manner, and then raise their yearly taxes to an amount something beyond their estimates. It may, and does sometimes, so happen, that the fund raised so far exceeds the expences of the present, as to go a great way in defraying the charges of the ensuing year; at another time, it falls as far short; for many of the expences of government vary in their nature every year, nor can it be foreseen of what they will consist. This is more easily conceived by a person who has any knowledge of the state and police of the islands, than explained to the satisfaction of one totally ignorant of their condition. These charges arise by a variety of articles in the course of government, in the administration of justice, the execution of the laws of the colony, and by matters agreed upon by the legislative branches in resolutions not reduced to laws, and in the course of their common business; and as from the manner of raising the supplies, it can not be specified to what particular purposes they are to be appropriated, it is customary for all applications, by the creditors of the public, to be made to the commander of the island, council and assembly, by petitions; which being first lodged with the council, are sent by them to the assembly to be examined, which is done either by the whole house, or by a committee appointed for the purpose. If the account or demand, alluded

* About a century ago, there passed in the island of Antigua an act for establishing a public treasury, by which two treasurers were particularly named; but this law is become obsolete, and for many years past the nomination of the treasurer has been solely in the governor, tho' in a measure, subject to the approbation of the assembly, as they both appoint and take the security. This is the general mode of the rest of the *islands*, except Barbadoes; but there is hardly a colony on the *continent* whose legislature does not interfere in the nomination of this officer: by the Virginia laws, the treasurer is named in the body of the law, and at the same time, a power is *given* to the governor, of appointing collectors for receiving the duties, who are obliged to pay the same to the treasurer, and he is directed to account to the assembly only.

to by a petition, be found just, a message is sent from the assembly to the council, informing them, that upon inquiry into the merits of the petition of such a person, they find that such a sum is due to the petitioner, and that, in case the council are of the same opinion, they desire, that the council board would request the commander of the island, to issue an order for the payment of the same out of the public treasury; the council agreeing, the commander is accordingly applied to, and he issues his order. This is the only way the assembly has of *appropriating the monies* they raise; and by these means the governor is freed from the trouble of making estimates, examining accounts, &c. and by pursuing them, he leaves no room for an inquiry into his conduct concerning the public monies; he reserves his power of issuing the orders; but instead of doing this upon the demand of a creditor, he does it by the request of the council, and anticipates the scrutiny of the assembly, who at the end of the year, in examining the treasurer's accounts, have nothing to do, but to compare them with their own minutes, and pass them accordingly. The words excepted to in the act, viz. "that monies issuing out of the treasury, should be by order of the commander of the island, by and with the advice of the council and assembly," are the same as have always been used in money bills in the other islands, and are known to mean nothing more, than that the *application* should be according to the appointment of the council and assembly.*

If every money bill was to be rejected, which did not contain a clause, directing the public monies, raised for the support of the government of the island or colony, to be accounted for to his majesty's commissioners of the treasury, or audited as the instruction requires, their lordships would find cause to approve of a very few bills from the colonies. Have their lordships ever seen such a clause inserted in a colony money bill? If such an account to be made by the treasurer, as is mentioned in the report, is necessary and usual, why are not the *customary* means used to compel it? The treasurer is

* The public credit of the islands is not in so high estimation as to admit of the standing over of debts from one year to another, nor can that necessary preference to public work, &c. be procured and maintained but by ready payments, and, at times, by previous advances, which make the necessity of prepared funds the more absolute. When the exigences of the year have been greater than the resources, the treasurers in the old islands have been obliged to give their own personal securities, and short bills have been passed by the legislatures to counter-secure them until supplies could be raised; therefore, if the appropriation was not made in the manner mentioned in the Granada act, the assembly would be deprived of that power altogether.

an officer appointed by the representative of the king, to be continued or removed at his pleasure; if the accounts, required of him by the governor, are not duly made, why does he not displace him and nominate another more obedient? The assembly raise and appropriate their own money, and then see that the applications have been made according to their appointment; there ends their business. There is nothing contained in either of these acts, that has the least tendency to debar the king or his representative, from demanding the accounts described at any time, or from depriving the treasurer of his office, upon his refusal or delay. Why then is the assembly to make a requisition so much out of their province, and so particular? Had they done this, it is not improbable, but that it would have been assigned as a cause for rejecting the act, because *his majesty's right* to demand an account to be made to his majesty, his commissioners of the treasury, &c. *would thereby be openly questioned, and the previous consent of the assembly to such an account would be established as a constitutional principle*, as was objected to the *declaring* the right of appointment of a treasurer to be in the governor, with which he was invested without the interposition of the legislature. If it is a right inherent in his majesty to require and have these accounts, the requisition by law is both unnecessary and improper; if it is not, the king certainly would not *force* the legislature to a grant of that power. These acts are formed upon the established modes of the *other colonies*; therefore the new instituted assemblies of Granada, &c. have *not* "assumed to themselves powers and authorities inconsonant with his majesty's rights," tho' they may "have extended their jurisdiction to matters, which by the express terms of his majesty's commission and instruction" are said to "belong to his majesty's courts and officers"; for if even these rights were originally vested in the crown, his majesty has certainly parted with such as are not consistent with the laws and constitution of England, and as are not exercised in the other colonies; the only point then (with submission to their lordships) which ought to have been considered by them (and what their lordships did not seem in the least to attend to,) is whether the authorities assumed by the assembly, which are, the raising and applying their own monies, and examining (with the council) yearly the treasurer's accounts, in the only manner they can possibly exercise those authorities, be or be not consonant with the spirit of the constitution of England, and the custom and usage of the other colonies; their lordships would have found them entirely correspondent with both.

What can be more concordant with the oppressive plan, which the ministers of state have for some time past adopted for their conduct towards his majesty's subjects in the colonies, than reserving to themselves (under the pretence of preserving the rights of the crown) the most absolute power that has ever been assumed by the most despotick monarch over a people? What can more effectually tend to this despotism than an insinuation, that the constitution of a colony, and every establishment upon it, depend upon the commission and instruction given in his majesty's name to the governor, as the bare interfering in matters contrary to the tenor of either, is declared a sufficient cause to reject a law, without any other consideration. This principle is not only *insinuated* by the several parts of their lordships report, but it seems totally to influence the whole of it; and was plainly designed as a preparation for that fatal blow then meditating, and since given, to the constitution, by the admission (under no other authority than instructions given in his majesty's name to the governor,) of French Roman catholicks into the council, the assembly, and upon the bench, and naming them in the commission of the peace.*

If after a public and solemn establishment of the constitution and laws of England, by his majesty (according to his prerogative right) in a new ceded colony, with a view of engaging his natural born subjects to undertake and forward the settlement of it, the end being accomplished, a minister of state, regardless of the royal word, and in violation of the most sacred engagement that can subsist on earth, viz. between a prince and his subjects, and, in defiance of those laws, against the principles of the constitution, contrary to all precedent and custom, without even the pretence of necessity, dares, in his sovereign's name, to pursue a plan to the direct breach of that covenant, Where is the man in the colonies that can be for an hour secure in his property, his life or liberty? For a bare *order* shall controvert those principles, that law, and that tie on which the safety of the whole depends. Where is the law of England, or where is the custom or

* By a law of Granada, under which their several courts of law are held, for the determination of causes, both civil and criminal, the judges of the common pleas, (where all civil suits are to be tried,) are appointed by special commission from the governor; but every justice of the peace is a judge of the court of king's bench and sessions, where criminal causes only are tried: and by this law the judges of all the courts are directed and required to sign the Test. By this instruction therefore not only the execution of the laws of England, but a law of the island, already approved, is suspended.

usage of an English colony that warrants such a proceeding? On the other hand, are they not all infringed by it? To enter into any reasonings on the impropriety and absurdity of empowering a set of people to make statutes and laws upon the principles of a constitution they are strangers to, in a language they do not understand, associated with others to whom they are unintelligible; of appointing French judges to expound English laws in an English colony; French Papists, magistrates, to administer justice to English protestants, and to sit in judgment, not only in matters between one subject and another, but on trials between the crown and subject, for offences which concern their lives and liberty, where the laws are to be most minutely attended to, and construed (by persons who cannot even read them) in the most favourable manner for the accused, would be making a greater concession than is here meant; for the measure being in the first instance *unprecedented, unconstitutional, illegal, and arbitrary*, no argument upon the consequences, whether good or ill, can be admitted. If there are to be no confines set to the power of the crown, no laws to ascertain or compact to restrain it, the government *must* be absolute, and *may* be tyrannic. If there is a law which allows of this step, it would be some consolation to his majesty's subjects in the colonies, to have it pointed out to them, that they may be assured they are slaves *constitutionally*. Should it be asked, whether the certain, or even probable consequences of the admission of a very small proportion of French Roman catholicks into the different branches of legislature, a single judge upon the bench, and a few magistrates into the commission of the peace, must be the enslaving, not only the island of Granada, but every other colony? the answer is, the immediate consequences (tho' great yet) are not the material objection; the power that eludes the law in one instance, may act independent of it in another; in every other. There wants no greater power to admit into the legislature, a majority of French Roman catholicks than the few; for if *one* can be allowed to sit, the *council* and *assembly* may be composed entirely of them; and under the same principles and authority, the *governor* himself may be a French papist, so may every judge upon the bench, and every civil officer in the island; for where is the line to be drawn? There are no laws for securing the rights and liberty of the subject, than what are contained in that body, of which the laws against the admission of papists into the legislature, &c. are a part; nor is there an English colony where the subjects are more secured of their rights as such, than the English inhabitants

in the new ceded islands, as they are equally intitled to them by *birthright* and *compact*.

Men born in an absolute monarchy, accustomed all their lives to the yoke of oppression, and living in a part of the French dominions, where acts of tyranny are most frequently practised by their governors upon them, will not only be ever obedient to the hand of power, but be always ready instruments to reduce his majesty's natural born subjects to the same state: education and custom are a nature to them, and principles thus imbibed, are not easily worn off, or altered; nor would a designing minister wish they should, for so great an outrage against the constitution, would not have been committed in favour of the French catholics, if they were only qualified to do what might have been done in a *legal manner*, by hundreds of others more capable.

As to the violation of the royal prerogative, "in excluding the treasurers from sitting and voting in the assembly," If their lordships sight had not been confined altogether by *prerogative*, *commission*, and *instruction*, and they had looked a little into the laws and usage of the other colonies, they would have found, that there is not one of them in which the treasurer can sit and vote in their assembly, but the treasurers are no where excluded from being in the council, a branch of the legislature, that prerogative may place them in at any time, and no endeavours have been made in this act to prevent it: the assembly were better acquainted with the nature of the constitution, than to make such an attempt.

"And subjecting them to the disabilities and incapacities restrictive of your majesty's just authority, of appointing them to any other office or employ." Terrible sounding words these are, and a most heavy charge do they contain against his majesty's poor subjects in Granada, who very innocently thought, that as the duties of the office of treasurer could not be performed by one who occupied any other, which would either draw off or divide his attention, they might restrain him from accepting any other employ for the time. The great salary allowed the treasurer removes the objection of hardship upon the *man*, and was given in consideration of the disability. There is not a person willing to accept an office in Granada, who would not, in point of profit, prefer this, under these disabilities, to any other in the governor's gift. Is the restraint on the *crown*, in respect of a farther provision for one man already well provided for, a circumstance which ought to be weighed against the political interest of a country? And it is to be hoped, that it will

not often happen, that *one man only* can be found, in so large and populous an island, capable of serving the country in the different offices, and on whom alone his majesty or representative would be inclined to rely. It has been thought prudent in free states, to prohibit a plurality of places in one person; and there are statutes which make the holding of some offices incompatible with the exercise of others.

Their lordships might probably find, that there are such laws prevailing in England, and with a little farther inquiry, might have discovered, that the very restraint they complain of, is not unusual in the colonies. Where then was the prerogative established, that has been so egregiously violated? However, their preceding declarations are but indulgences to what follows:

VI. An act for establishing a militia for the defence of this island.

VII. An act, declaring what the several articles of military law shall consist of.

By an act of parliament, passed in the 13th year of king Charles the Second, it is expressly declared, that the sole supreme government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength, is, and by the laws of England, was, the undoubted right of the crown, and that both, or either of the houses of parliament, can not, nor ought to pretend to the same.

This we humbly apprehend, is a principle of the British constitution, not confined to this kingdom, but co-extensive with your majesty's authority, throughout your majesty's dominions, we are warranted in this opinion, by the application, in many instances, of this act of parliament to cases and laws, respecting the militia and military establishments in your majesty's colonies and plantations, and the military powers delegated to the governor in chief, by his commission under the great seal, are, we humbly conceive, consonant thereto.

By this commission, your majesty grants to your governor, by himself or his captains, and commanders by him to be authorized, full power and authority to levy, arm, muster, command, and employ whatsoever residing within the said islands and plantations, and, as occasion shall serve, them to march, embark, or transport, from one place or island to another, for the resisting, and withstanding all enemies, pirates and rebels, both at sea and land, and to transport such forces to any of the plantations in America, if necessity shall require, for defence of the same, against the

invasion or attempts of any of your majesty's enemies, pirates and rebels, if there shall be occasion to pursue and prosecute, in, or out of the limits of the said islands and plantations, or any of them, and, if it shall so please God, them to vanquish, apprehend and take, and being taken, according to law, to put to death, or keep and preserve alive at his discretion, and to execute martial law in the time of invasion, war, or other times, when by law it may be executed, and to do and execute all and every thing and things which to your captain general, or commander in chief, doth, or of right ought to belong.

By these laws, passed in your majesty's island of Granada, the concurrence of the council, as a branch of the legislature, is made necessary to the establishment of a militia, and that of both houses to the putting martial law in force; and in other cases, in which the authority of the chief governor alone ought to operate, he is restrained from acting without the advice and consent of a council of war, composed of the officers of the militia only, and his majesty's subjects, who are compelled to serve in the militia, are, during such service, subjected to rules of discipline more severe, and liable to punishments far more sanguinary, than those which have been at any time adopted in this kingdom.

From what we have stated in respect to the laws now humbly submitted to your majesty's consideration, we trust they will appear to your majesty to be not only repugnant to the constitution which your majesty has thought fit to establish in your island of Granada, but also derogatory of your majesty's just rights and authority. It is our duty however, in justice to your majesty's governor, to observe, that many of the provisions of these laws, are not without example. Some of them appear, by the law books of Barbadoes and the Leeward islands, to have been adopted in the first institution of government in those islands, and since confirmed here, which may have induced your majesty's governor, as well as from a similarity of circumstances, as from an attention to the terms on which the French inhabitants surrendered the island, to follow these precedents; a circumstance, which, however it may in some degree excuse the governor's conduct, cannot, we conceive, afford any argument for the allowance of regulations in their nature unwarrantable and unconstitutional, or be admitted as a justification for his passing these laws, without first transmitting them in the form of bills, or without having inserted therein clauses suspending the execution, untill your majesty's pleasure shall be known.

All which is most humbly submitted,

C—,

S— J—,

W— F—,

E— E—,

J— R—,

T— R—.

W—ll, *March 4, 1768.*

This, we humbly apprehend, is a principle of the British constitution, not confined to this kingdom.

This strong adherence to the principles of the British constitution, is certainly the best method of securing to his majesty's subjects in Granada their civil rights; therefore, nothing could be more pleasing to them, than to have their acts proved by such a standard, their errors or deviations from those principles pointed out, and their mistaken ardour checked upon so happy a basis. It is then granted, that the statute of the 13th of king Charles the Second, extends alike with every other declaration and ascertainment of the prerogative of the crown to all the colonies, although they be not particularly named; and it is also allowed, that this power generally is delegated to his majesty's governor. But, says the report, the powers delegated to the governor, are, that he himself, or persons authorized by him, may at his discretion, inlist every man in his government without distinction, and transport the inhabitants of the one island to any other, or to any of the plantations in America, if necessity shall require; that is, if the governor thinks it requisite.

This it seems is the authority declared in the crown, by the statute of the 13th of king Charles the Second, as what may be exercised in this kingdom, but it being "a principle of the British constitution, not confined to England, is co-extensive with his majesty's authority throughout his dominions," and is particularly expressed in his majesty's commission to his governor. If such a construction can possibly be put upon the declaratory part of that act of parliament, so contrary to its meaning, tenor, and express words, where are the most salutary laws that cannot be perverted to the basest purposes, and probably made to sanctify the very acts of tyranny they were formed to prevent?

Although there seems a general uniformity of principle in the whole of their lordships report, yet there certainly is something wanting in that part of it, where they mention the governor's power of forcing the inhabitants to enlist, and transporting them at discretion, which is, the means to be used in case of their refusal to be enlisted and transported. If their lordships had but added, that in case of such refusal, it was in the governor's power to hang them up at their own doors, the uniformity would have been uninterrupted; but as it would be a great pity, that so glorious a work should be rendered incomplete, by so trifling an omission, it must be supposed that this remedy was implied under the expressed authorities.

In fact, these powers comprised in the governor's commission, are expressed in the commissions of his majesty's governors of his *other colonies*, (a circumstance that their lordships might probably not have been acquainted with) and were never before considered as meaning any thing more than (as the words import) a power of enlisting such as were *inclined* to enter into his majesty's service, upon the emergencies there particularly specified, and which can never be exercised, but where the legislatures of the colonies will raise a fund for the purpose, as was done in some of the Leeward islands, and in Barbadoes, in the course of the last war, with a view of assisting his majesty's arms at the sieges of Martinico, Guadeloupe, &c. and in the colonies on the continent.

"The concurrence of the council, as a branch of the legislature, is made necessary to the establishment of a militia." Yes, and the concurrence of the assembly likewise; for the constitution their lordships would establish, is so new, that they must not expect a precedent in any part of his majesty's dominions to support it; for in which of the colonies, or of what other part of the British dominions is there established a militia, but by the law of the country?

The manner and solemnity of putting martial law in force, are taken from the laws of the other islands, under the same circumstances; and is done whensoever the island is in danger from an apprehended insurrection of the slaves. This is a species of danger, that the inhabitants must always be guarded against, and therefore a proper object of attention for the legislature; nor can the putting martial law in force upon an apprehension, or as a preventative, be too restrictive, as on that occasion, there is not a free man in the island, who is not both in arms, and subject to the penalties of that law.

As the officers, who are to compose the council of war, are supposed to be men of the best rank in the colony, and best qualified to assist the governor in such a department, it has ever been the custom of other colonies, to refer to the governor, assisted by such a council, the ascertainment under what circumstances or tokens of *immediate* danger, whether from a foreign or internal enemy, a general alarm may be made; what the signs of the alarm; the manner of extending it throughout the island; of discharging it; the signals to be used in respect of the number and situation of the enemy; the places of rendezvous, &c. &c. The alarm guns being once fired, or other signs given, marshal law is in force, the militia assembles, and the governor has every power over them, which is declared to be in the crown by the statute of the 13th of king Charles the Second, (though not according to their lordships interpretation of it) nor can the alarm be discharged, but by order of the governor alone.

His majesty's subjects, who are compelled to serve in the militia, are *not*, during such service, subjected to rules of discipline, more, or even so, severe, as their lordships would make them by their report; for the law alluded to gives the governor no authority to force the inhabitants to enlist and to transport them at pleasure, to other colonies, nor were they even liable to punishments more sanguinary, than those adopted in England. The rules of discipline complained of, are the same as prevail in the other colonies, and which are formed after the articles of war. There needs be no fear, that the legislature of a country would inflict too severe and unnecessary punishments, when each member is as much, and as often subject to them himself, as the meanest freeman in the colony.

The laws of his majesty's several islands, for establishing the militia, and for declaring, as well of what articles military law shall consist, as on what occasion, and by what authorities, the same shall be put in force, bear a near resemblance one to the other, varying nothing in spirit or substance, but a little in some establishments and regulations, where a difference of circumstances and situation made it necessary; and the two acts last observed upon by their lordships, are copied almost verbatim from the laws of the same title of Antigua, an island not less remarked for having a well disciplined militia, than for the regularity of its government, and the good disposition of its police.

Their lordships having observed in their report, "that many of the provisions of these laws are not without example," and that "some of them

appear by the law books of Barbadoes, and the Leeward islands, to have been adopted in the first institution of government in those islands"; and that the governor was induced to pass these laws, "from a similarity of circumstances": and it being known (as may be seen from the law books) that every clause, in the acts reported upon, is taken from some law of his majesty's *other colonies, under his immediate government*, let it be judged, whether "they are repugnant to the spirit of the constitution, which his majesty has thought fit to establish in the island of Granada, and derogatory of his majesty's just rights and authority," or not?

As soon as the above report was made, the governor in chief was directed to prorogue the general assemblies of the several islands within his government, until farther orders; which was accordingly done from time to time for the space of five or six months, when a new set of instructions arrived,* with a *law*, (in the form of a proclamation,) for regulating elections, fixing the number of assembly men, and ascertaining the qualifications of the candidates and voters, under which (the respective assemblies being then desolved) new writs were issued for calling new assemblies.

Such a sanction, as this report, being procured, its precious obligations were to be turned to proper advantages; the ministers new instructions were *accordingly* formed from them, and a dispensing order was (expressly contrary to the governor's commission) there given in respect of the Test act, under which the French Roman catholicks are to be admitted into the two branches of the legislature and into the judicial offices of Granada.

Before the prorogations took place, an assembly act, taken from a law (of that title) of St. Christophers, which is constructed upon the statutes of England, and also an act, to empower the commander of the island of St. Vincent, assisted by a particular number of the council, to hold courts of chancery in the absence of the chief governor,† passed the council and assembly of that island, but the governor, upon hearing of the report, thought himself obliged to reject them.

This report now hangs in terror over the heads of his majesty's natural born subjects in the new ceded islands, and is not to be deviated from by

* About the latter end of April last.

† The governor in chief is not in the course of the year above three weeks at St. Vincent.

either of the legislatures, under the peril of having every bill rejected, which has the least repugnancy to it.

What then is their constitution? And how many of the immunities of British subjects, which were confirmed (or supposing, *given*) to them by his majesty's proclamation or compact, have they now left? The public may judge.

FINIS.

John Gardiner,
The Argument or Speech
of John Gardiner, Esquire
(St. Christopher, 1770)



COLONIAL ASSEMBLIES continued to find their authority and status under attack not merely from London authorities but from individuals within the colonies who protested an assembly's right to deprive them of their individual rights to British freedom. Selection 54 provides an example of such protests during the 1750s, and this selection represents still another, arising in St. Kitts after the Assembly had imprisoned and then expelled seven of its members who had walked out of the Assembly in protest against its efforts to exclude councilors from voting for representatives. John Gardiner, a prominent local lawyer who had grown up in Boston and then studied at the Inner Temple in London, acted as attorney for the imprisoned assemblymen, and the Assembly then ordered him arrested for contempt of its authority. Far from surrendering meekly to the Assembly, however, Gardiner used his legal learning to challenge the Assembly's authority to imprison individuals in a speech before the Court of King's Bench in Basseterre, the capital of the colony. Gardiner subsequently expanded and published this speech.

Charging that he had been imprisoned on the basis of "the most arbitrary and unconstitutional Doctrines" and declaring that he would not "tamely sit by, or patiently submit to this Iron Yoke of Oppressions," Gardiner used his knowledge of English and St. Kitts law and history to argue that only a court of record had authority to imprison under the English law,

thereby denying that the St. Kitts Assembly had any “*Power to commit* for any Offence whatever,” that the speaker had no right to issue warrants for arrest, that the conventional colonial analogy between colonial assemblies and the British House of Commons was ludicrous, and that the Assembly’s exercise of “this Power of Commitment” was “an Usurpation upon, an high Infringement of, the Rights and Liberties of the Subject.” To the Assembly’s claim that it “was superior in Power to any and every Court of Law” in the colony, Gardiner answered that in England, even the king was bound by law. To its claim that “the Assembly of Saint Christopher was vested with, and intitled to, the Laws and Privileges of Parliament,” he replied that that “little, trifling, twopenny, pretended-corporate Charter Assembly of Saint Christopher’s” was more akin to the governing bodies of English corporations such as the city of London than to the House of Commons, that its authority derived entirely from the royal instructions, only dated back to the Assembly’s creation in 1706, and was entirely regulated by an act of 1727 that gave it no power of commitment. Finding only a single incident of the Assembly’s prior use of its commitment powers in its entire history, Gardiner denied that one precedent was sufficient to establish such an authority on the basis of custom. Indeed, citing the recent determinations in Britain over the use of general warrants, a case in which he had been involved, he argued that unconstitutional procedures could not be justified, no matter how long they had been in place. Whatever privileges the Assembly might have, he suggested, merely applied to matters of “Personal Privilege” during actual sittings of the Assembly and derived, not from any inherent rights, but entirely from royal instructions. (J.P.G)

THE
ARGUMENT
OR
SPEECH
OF

John Gardiner, Esquire,
Barrister at Law,

Who stood committed by the pretended Assembly
of this Island, for a pretended Contempt.

Delivered in the Court of King's Bench and Common Pleas,
on Tuesday the 10th Day of April last, upon the Matter of
HIS OWN Habeas Corpus,¹ and wherein our Sovereign
Lord the KING was Party-Agent, Plaintiff, or Prosecutor,
and Henry Berkeley, Esq. Deputy Provost Marshal, was
Defendant.

Every Oppression against Law, by Colour of any usurped
Authority, is a Kinde of Destruction, for, Quando aliquid
prohibetur, prohibetur & omne, per quod devenitur ad illud:²
And it is the worst Oppression, that is done by Colour of Justice.
2dInst. 48. upon *aliquo modo destruat*,³ in the 29th Chapter of
MAGNA CHARTA.

St. CHRISTOPHER: Printed and Sold by THOMAS HOWE,
at his Office in Church Street, BASSETERRE. 1770.
Price to SUBSCRIBERS 16s. 6d.

1. [Literally, "You have the body," i.e., a writ directing the sheriff that "you have the body" for confinement and are required to produce a charge in court to justify imprisonment.—Tr.]

2. ["When anything is prohibited, it and everything through which it is achieved is prohibited."]

3. [(No man . . .) "shall be in any way ruined." (*Magna Carta*).—Tr.]

To The Public.

The Publication of the Argument I made in April Court last, upon the Illegality of a Commitment by a St. Christopher Assembly, is in consequence of the Request of several Friends, whom I shall ever be happy to gratify with any and every Thing within my Power. At the Time of my delivering the Argument, there was a pretty numerous Audience in Court, the greatest Part of whom, I am informed, seemed satisfied with the Reasons I then offered for my Discharge. The Argument, as now published, may not be *verbatim* the same as delivered in Court, though I believe it is substantially the same, except what relates to the History of the Assembly of this Island, which I was not then so well acquainted with as I have since been. It was intended at first to publish the Argument only, and nothing more; but, upon Consideration, it was found necessary to publish, by way of Introduction to the Argument, the Manner of executing the Arrest, to set forth also the curious Warrant by which I have been so many Weeks detained in this Gaol, and to give to the World the Substance of the Argument of the Gentleman (a *quondam*⁴ Friend, and very old Acquaintance and Co-Student) who warmly opposed my Discharge. For my own Part, I am now, if possible, more fully convinced than ever, that the Powers usurped by the present pretended Assembly are totally unjustifiable and illegal. Whether my Argument will prove sufficient to satisfy the Judgment of the Public in this Matter, I know not; but, till a Determination from the Courts of Law in England, or from his Majesty in Council, contradicts the same, I shall think the same as unanswerable as it has hitherto been.—If there be any Expressions in the following Publication, which, to some Gentlemen, may seem too harsh, and to favour too strongly of Passion and a Spirit of imbittered Resentment, I hope that the deep Injury I have received, and the consequent Distraction and Distress that has been introduced into my Family, and into my public and private Affairs, by that Act of tyrannical Insolence, which now keeps me confined in this unhealthy Prison, in this unhealthy Climate, will prove a sufficient Apology for

J. GARDINER.

Basseterre Prison, June 12, 1770.

4. ["Former."]

The Introduction.

Upon Wednesday the 4th Day of April last, while on a Visit to Dr. Edwardes, Mr. Gardiner was taken into Custody by Mr. *St. John*, the Serjeant at Arms of the House of Assembly.—As soon as Mr. *St. John* came into the House, Mr. Gardiner accosted him, “So, Mr. *St. John*, I suppose you are come for me?” The Serjeant answered, “Yes, Sir—You are my Prisoner.”—Mr. Gardiner then demanded of Mr. *St. John* a Sight and Copy of the Warrant, or Authority, by which Mr. *St. John* then pretended to arrest him. The Serjeant returned for Answer, that *he could not shew his Warrant*;^{*} that he had been blamed by the House for shewing the Warrant by Virtue of which he took the Seven Members in October last: But that he could assure Mr. Gardiner, that he was then acting in Obedience to the Commands, and by Virtue of the Authority, of the House. Mr. Gardiner then asked him, where he must go, or what he intended to do with him? The Serjeant replied, That Mr. Gardiner must go with him to the Marshal. Mr. Gardiner said he was ready; and that the sooner they went the better. In their Way they stopt at Mr. Kirkpatrick’s, where the Prisoner begged Leave to send for his Pistols, and informed the Serjeant that he intended *him* no Harm; but that, if he met with any of the Assembly, he hoped the Serjeant would leave the Legality of the Commitment to the Prisoner and such Assemblyman; for that he was determined to dispute the same, if it could be done without involving in the Dispute an innocent Man. The Serjeant complied with the Request—The Pistols were brought, and put into the Pockets of the Prisoner: But good Luck prevented the Prisoner from then meeting with any Assemblyman, and he was afterwards safely conducted, by the Serjeant, to the Marshal, to whom the Pistols were delivered. The Serjeant then delivered the Prisoner to the Marshal, and, at the same Time, the following *illegal* Warrant.

Saint Christophers,

By the Honourable JOHN FAHIE, Speaker of the Assembly of the Island of Saint Christopher, sitting in the Town of Basseterre, in the said Island, this Thirtieth Day of March, 1770; Whereas the said House of Assembly have this Day Resolved, That John Gardiner, Barrister at Law, is guilty of the highest Contempt of the Authority, Dignity, and Justice

^{*} The Order not to shew, or give a Copy of, his Warrant, was of a Piece with all their other Acts of Tyranny, Insolence, and Ignorance.

of the said Assembly, and of the most outrageous Violation of the known Privileges thereof, established and acknowledged ever since the first Institution of Assemblies; And that he, for the said Offence, be committed to the Common Gaol of this Island, there to remain *during the Pleasure of the said House*: And whereas the said Assembly have this Day Ordered, That Mr. Speaker should issue his Warrant to the Provost Marshal of this Island, or his lawful Deputy, authorizing and commanding him to receive into his Custody the Body of the said John Gardiner, and him confine in the Common Gaol of this Island, there to remain during the Pleasure of the said House: These are therefore, in Pursuance, and by Virtue, of the said Resolution and Order, this Day made, to authorize and command you, the said Provost Marshal of this Island, or your lawful Deputy, to receive into your Custody the Body of John Gardiner, and him confine in the Common Gaol of this Island; there to remain during the Pleasure of the said House of Assembly, and for so doing this shall be your sufficient Warrant. Given under my Hand and Seal, at the Time, and at the Place above mentioned.

JOHN (L. S.) FAHIE, Speaker.

Directed,

To the Provost Marshal of the Island of Saint Christopher, or his lawful Deputy.

Mr. Gardiner, with all convenient Speed, brought his Habeas Corpus before his Excellency our Chancellor, who remanded him.—Thoroughly discontented with the Determination* of *Mr. Chancellor Woodley*, he afterwards, on the 10th of April, being Court Day, sued out another Habeas Corpus, returnable before the Court of King's Bench and Common Pleas; upon which he was soon brought up.—As soon as he was brought into Court he moved in Person, That the Marshal might make his Return, and that the same might be read and filed; after which he moved, That a written Paper, then tendered, might be read and filed, and that, for the Reasons contained in that Paper, he might be discharged. The following is a true Copy of that written Paper.

* Mr. Woodley's Behaviour to the Prisoner will be a Subject of Enquiry in England, how, and in what Manner, Time will disclose.

St. Christopher, *to wit.*

In His Majesty's Court of King's Bench
and Common Pleas.

Upon the Matter of Habeas Corpus.

Our Sovereign Lord the King and Henry Berkeley, Esquire.

Reasons humbly offered to the Court of our said Lord the King here, by John Gardiner, Esquire, the Prisoner, why he should now be discharged from his Imprisonment, the said John Gardiner being committed by virtue of a Warrant under the Hand and Seal of the Honourable John Fahle, Esquire, the Speaker of the Assembly of this Island, and which Warrant is set forth in the Return to the Writ of Habeas Corpus, filed in this Cause.

1st. For that the said Assembly claim to be a Branch of the Legislature of this Island by virtue of the *Royal Charter*, in which it is presumed no Power of Commitment is given either expressly or specially to the said House, or to the Speaker thereof, to grant any Warrant, and therefore that, by virtue of the *same Charter*, neither the same House, nor the Speaker thereof, have such Power to commit or to grant any Warrant.

2dly. For that the King himself cannot imprison any Man. That if the King, in Person, should command an Officer, or any other Person, to imprison a Man, the Officer, or Person, acting in Obedience to such Command, or Order, would be liable to be punished not only by Indictment for the Assault and Breach of the Peace, but would also be liable to answer in Damages to the Party aggrieved, in an Action of Trespass, Assault, and False Imprisonment: And for that the Assembly of St. Christopher is not superior, as is presumed, in Power or Authority to his Majesty.

3dly. For that none but *Courts of Record* can fine or *imprison*; and for that the Assembly of this Island, as is presumed, is no Court of Record.

4thly. For that the Legislature of this Island; in the Year 1711, by no Means thought the said House of Assembly vested with such Power, as, by an Act, or Law, passed in the same Year, by the same Legislature, intituled, "An Act for preserving the Freedom of Elections, and appointing who shall be deemed Freeholders, and be capable of electing, or being elected, Representatives"; it is, among other Things, enacted, That certain Persons, for certain Offences, mentioned in the said Act, shall be examined before the Assembly for the Time being, who are thereby impowered to examine upon Oath any Person or Persons, and to send for Papers and Records, &c. And by Section 11. in

the same Act, "Whoever shall refuse to deliver such Papers, shall be committed to Gaol, till he deliver the same, by *Warrant* under the Hand and Seal of any *Justice of the Peace*, directed to the Provost Marshal of this Island, or his lawful Deputy, &c."

5thly. For that if the same House have such Power to commit, and the Speaker thereof to issue a Warrant, yet that, after the same House have been (as the present now are) prevented from meeting again till the Day appointed by his Excellency the General for that Purpose; during all such Time all Privileges of the same House must cease: For the Act of Adjournment being an Act of Prerogative, exercised by his Excellency the General, and not the Act of either House, is tantamount to, and must operate, for this Purpose at least, as, a Prorogation at home.

6thly. For that his Majesty, in his Royal Instructions to the Captain General of the Southern Charribbee Islands, has, among others, given him the following Instruction, *to wit*.

And whereas the Members of several Assemblies of the Plantations have frequently assumed to themselves Privileges no-ways belonging to them, especially of being *protected from Suits at Law*, during the Term they remain of the Assembly, to the great Prejudice of their Creditors, and the Obstruction of Justice: And some Assemblies have presumed to adjourn themselves at Pleasure, without Leave from our Governor first obtained; and others have taken upon themselves the sole Framing of Money Bills, refusing to let the Council alter or amend the same, all which Practices are very detrimental to our Prerogative: If, therefore, you find that the Members of the Assembly or Assemblies of our said Islands insist upon any of the said Privileges, you are to signify to them, That you do not allow any *Protection* to any of the Members of the Council and Assembly, further than in their Persons, and that *only during the Sitting* of the Assembly; and that you do not allow them to adjourn themselves otherwise than *de Die in Diem*,⁵ except Sundays and Holidays, without Leave from you, or the Commander in Chief for the Time being. It is also our further Pleasure, that the Council have the same Power of framing Money Bills as the Assembly.

A similar Instruction to which, it is most humbly apprehended, is given to all his Majesty's Governors in America, by which Instruction it manifestly appears, that it is his Majesty's Intention that no Privilege whatever,

5. ["From day to day."]

but mere Personal Privilege, and that only during the actual Sitting of the respective Assemblies, shall be allowed or permitted.

7thly. For that the Warrant of Commitment in this Cause is totally informal, illegal, and contradictory to the known Laws of Great Britain, and the Island of Saint Christopher; all which is humbly submitted to this Honourable Court.

J. GARDINER.

Which being read, the same was refused to be filed. Whereupon Mr. Stanley attempted an Answer to those Reasons, and to shew Cause why the Prisoner should not be discharged, in a pretty long Speech, the Substance whereof was as follows:

That the King governed in St. Christopher *de Jure Gentium*,⁶ by which he meant, as he afterwards explained himself, by *Right of Conquest*.—That the King had a Power to create a Legislature in the Island, and to give such Powers to each Branch of such Legislature as he thought fit.—That the King, by his Royal Charter,* had given the Assembly Powers similar to the Powers claimed by the House of Commons of Great Britain.—That the Assembly, on the Day of their first Meeting, claimed a Confirmation of all their Privileges from the King's Representative the General; one of which was the Privilege of imprisoning: And that his Excellency then granted and confirmed all those Privileges, so claimed, to the Speaker, who, in the Name of the House, then made the claim.—That without a Power of Commitment it would be impossible for the House of Assembly to do Business, as without it the solemn Debates and Business of the House would be liable to constant Interruption from the Insolence of any Russians who might think proper to break in upon the House.—That the House of Assembly is superior in Power to any and every Court of Law, and that its determinations are not controulable, or to be enquired into, by any inferior Court.—That the Courts of Law in England never pretended to meddle with the Resolutions of the Houses, or to call in question the Law or Determination of Parliament.—That the Assembly of Saint Christopher was vested with, and intitled to, the Laws and Privileges of Parliament.—That the Law and

6. ["On the Law of Nations."]

* No such Thing: There never was any Charter granted to St. Christopher. They held their first Legislature by virtue of a Royal Instruction to the then Commander in Chief. The present Legislature of that Island exist, and are regulated, by an Act of the Island, made in the Year 1727.

the Houses of Parliament were above the Courts and Judges of the Common Law, and that the Judges could not meddle therewith no more than they could with an *Admiralty Cause*, which was out of their Jurisdiction.— That the Warrant of Commitment in this Case was not to be judged upon by the Common Law of the Land, but is only determinable by the Law of Parliament; and that similar Warrants had been issued by both Houses of Parliament in England, particularly in the Case of the Earl of Shaftsbury: And therefore that the Prisoner must be remanded.

To which Mr. Gardiner made the following Reply.

The Argument or Speech of John Gardiner, Esquire, Barrister at Law.

May it Please your Honours,

When I was brought into Court by the Marshal, I did not intend to have said more than to pray that my written Reasons might be read and filed, and that I might be discharged; but as your Honours have not thought proper to gratify me with filing those Reasons, and as Mr. Stanley has attempted to force upon us the most arbitrary and unconstitutional Doctrines, I shall now hope to be indulged with the Liberty of giving him a full Answer, and to insist and prove, by legal Argument, that I ought to be discharged from my present oppressive and illegal Imprisonment.— And here I must beg Leave to repeat what I said the other Day in the Court of Chancery,

That, during my present Situation, I hope no one will insult me with bemoaning my Fate, or pitying my Condition, as the Laws of my Country will give me ample Redress if injured:—If I am not injured, but suffer a just and a legal Punishment, I deserve no Pity, I have no Claim to Commiseration.—The Man who obstinately persists in Error, is by no Means a proper Object of Compassion.

Having said thus much, I shall now contend,

First, That the House of Assembly of this Island have no Power to commit for any Offence whatever, nor hath the Speaker of the same House a Right to issue a Warrant.

Secondly, That if the Assembly of this Island have such Power, and the Speaker thereof such Right, the same can result only from Privilege, and that, by the Interposition of *Prerogative*, exercised by his Excellency the General, in the late *Adjournment*, the Privileges of the House ceased, and were suspended from the Moment of that Adjournment.

Lastly, That if the Privileges of the House did not cease, and were not suspended by that Act of Prerogative, but that the same now exist; yet, that the Warrant of Commitment in this Case is informal and against Law, and therefore that, there appearing no legal Authority for the Marshal to detain me, I ought to be immediately discharged.

First, then, I am to contend, That the House of Assembly of this Island have no Power to commit for any Offence whatever, nor hath the Speaker of the same House a Right to issue a Warrant.

Whatever Man, or Body of Men, claim or exercise any particular or exclusive Powers or Privileges, such Man, or Body of Men, must, when legally called upon, shew by what Authority, or by what Right, they claim such Powers, and derive such Privileges.—By the Constitution of England, every Subject has a Right to the free Exercise of his Liberty, which he may not be deprived of, or restrained from, by any Person or Persons whatever, unless he has been guilty of some Offence or Crime—been guilty of the Breach of some known Law or Laws. The same Constitution that thus guards the Liberty of an English Subject, has also intrusted the Execution of those known Laws to the Judges, who are bound to judge, decide, and determine, according to the same known Laws, and who, *in general*, can do no more than *declare* what Punishment the Law inflicts upon an Offender, for a particular Crime. To punish the Offender, however, it is necessary that such Offender be first convicted of a Crime known to the Laws, by his Peers, a Jury of honest impartial Men, bound by the Obligation of an Oath, to find and give a true Verdict; after which Conviction, the Law, by the Judges, who are the Mouth of the Law, pronounces Sentence. There is, however, *One Case* in which the Judges themselves, without the Interposition or Medium of a Jury, can both *convict* and *punish*, and that is in the Case of a *Contempt of the Court*, and this the Law has determined to be inseparably incident to all *Courts of Record*, for none but *Courts of Record* can fine or imprison, as appears in Beecher's Case 8. Report 60. where it is said *Nulla Curia quae Recordum non habet, potest imponere finem, neque aliq' mandare carceri, quia*

*ista spectant tantummodo ad Curias de Record.*⁷ The King is the Fountain of all Justice; he can create* new Courts at this Day, if he pleases, and appoint Judges therein: But when he has created such Courts, and appointed such Judges, those Judges must determine according to the *known Laws* of the Land, and cannot determine *arbitrarily*, or according to their own Will, or according to the Pleasure of the Prince.—The Assembly of Saint Christopher's are a Part, the lowest Branch, of the Legislature of this Island, and claim their existence and all their Powers and Privileges from the King, who, *it is said*, has granted to them a *Charter* of Incorporation. But, I confess, I cannot find this Charter, nor do I know the Man that has seen it; I have been pretty diligent in searching the Records of the Island for it, but my Search has been to no Purpose.

If the Assembly claim any exclusive Privileges, or any special and particular Powers from Charter, it is incumbent upon them to produce their Charter, that the Court before whom the claim is made, may see that the Charter hath duly issued, according to all the necessary Ceremonies and Solemnities directed and required by Law; That in such Charter the Powers and Privileges claimed, are specifically and clearly expressed and granted; and that the Court may be enabled to judge of the Legality or Illegality of the Powers so granted; for, if no Charter is produced, if no such Powers and Privileges are expressed therein; if the Great Seal be wanting; if there be any Erasure, Interlineation, or Defect in the same; or, finally, if the Powers and Privileges granted and given therein and thereby are *illegal*, the Claim will be unsupported, and at their Peril they will execute such Powers, and insist upon such Privileges. I will, for Argument Sake, however, now admit, that the King has granted to them a Charter of Incorporation, and that in such Charter he hath given the Assembly, in express Terms, an arbitrary Power to imprison whom they please, for what they please; but then I must at the same Time insist, that the King *is deceived in his Grant*; that the same is absolutely void, and that those who dare to execute such Powers will be adjudged Trespassers.—It is well known that the King himself is not above the Law, but is as much bound by the[†] Law as any of his Subjects are; for

7. ["No court that does not possess a record is able to impose a fine or to order anyone to be imprisoned, because those actions pertain only to courts of record."]

* Vid. *Jentleman's Case*, 6 Report.

† Vid. Blackstone's Commentaries, vol. i. p. 233, 234. Bracton, lib. i. cap. viii. §. 5. *Ipse autem Rex non debet esse sub homine, sed sub Deo & sub Lege, quia Lex facit Regem.*

the Law, speaking in the Person of the King, declares *id possumus quod Jure possumus*.⁸ It is also as well known, that the King cannot in Person imprison, nor can an Imprisonment by his Command be justified; for the Books will shew us Instances of Persons imprisoned* *per Mandatum Domini Regis*,⁹ being discharged by the Courts of Justice, when brought before them by Writs of *Habeas Corpus*. To set the Absurdity of the present Claim in the fullest and strongest Light; suppose the King should, by Charter or Patent, grant me the Liberty, and give me, in the most express Terms, a Power to enter into the Woods of A. (my Fellow Subject) and there to cut, and carry away, Wood; or to enter into the Park or Paddock of another Fellow Subject, and there to kill, and carry away, what Venison I pleased, or other Thing I could find; such[†] Grant would undoubtedly be void: And although the same was given by Royal Grant, the Charter or Patent would not protect me from Actions of Trespass or Trover, brought by the Owners of the Woods, or Proprietors of the Venison, for entering into their several Freeholds, or for carrying away the Wood when severed, &c. or the Venison.—But notwithstanding such Royal Grant, Charter, or Patent, the Law would compel me to make to each a Reparation and Compensation in

Attribuat igitur Rex Legi quod Lex attribuat ei, videlicet, Dominationem & Potestatem, non est enim Rex ubi dominatur Voluntas & non Lex. {"The king himself moreover ought not to be under the authority of a man but under God and the law because the law makes him king. Therefore let the king ascribe to the law what the law ascribes to him, namely absolute rule and power, for there is not a king where will and not law rules."—Tr.} Lib. ii. cap. xvi. *Rex autem habet superiorem, Deum, s. Item Legem, per quam factus est Rex.* {"The king has a higher authority, namely God, likewise the law by which he has been made king."—Tr.} Lib. iii. cap. ix. §. 3. *Nibil enim aliud potest Rex in Terris, cum sit Dei Minister & Vicarius, nisi id solum quod de Jure potest.* {"For the king is able to do nothing else on earth, since he is the minister and vicar of God, except that alone which he is able to do by law."—Tr.} And afterwards, in the same Chapter, *Item nihil tam proprium est Imperii, quam Legibus vivere, & majus Imperio est, Legibus submittere principatum, & merito debet retribuere Legi, quia Lex tribuit ei, facit enim Lex quod ipse sit Rex.* {"Likewise nothing is so appropriate to a ruler than to live by laws and there is no greater principle for a ruler than that the commander-in-chief submit to laws and he ought deservedly to grant to the law what the law grants to him for it is the law that makes him king."—Tr.} It is well known that BRACTON wrote so long ago as in the latter Part of the Reign of Henry the Third.

8. ["We are able to do that which we are able to do by law."]

* And see 16 Car. 1. c. 10. § 8.

9. ["By order of our Lord, the King."]

† 2 Inst. 35, 36, upon xxi. cap. Magna Charta.

Damages for the Injury done. If the King, then, cannot, by* *any* Grant, give me a Power over the *Property* of my Fellow Subjects, surely he cannot give me a Power over their *Liberties*, which are much more precious and valuable in the Eye of the Law than any Property whatever. It being proved that the King himself hath no Power to imprison, it will be an Absurdity to say that any one can claim a Power to imprison from the King's Charter, Grant, or Patent, for *Nemo potest dare quod non habet*.¹⁰ But it may be said, Cannot the King create *Courts of Record*? Cannot the King appoint Judges in those Courts? and will not such Judges have a Power to imprison? I readily admit that the King can create Courts of Record; that he can appoint Judges in those Courts; and that those Judges will have a Power to imprison: But then I say, it is not the King that gives, but the Law or the Constitution that attaches and annexes to such Courts the Power of imprisoning. To prove that it is the Law or the Constitution that annexes or attaches this Power of Imprisonment to Courts of Record, let us suppose the King should, by Patent or Charter, create a Court of Record, and should, by a Proviso or otherwise, in the same Charter, afterwards declare, That the Judges of such Court, although of Record, should have no Power to imprison, would such be a legal Proviso, Restriction, and Prohibition? Doubtless it would not; for as the Law has declared it to be inseparably incident to Courts of Record to fine and imprison, the King cannot prevent or deprive the Judges of Record of the Power of imprisoning, by any after Exception, Restriction, or Prohibition whatever: Nor can the King create or erect a Court contrary to Law, more than the Subject can create an Estate contrary to Law. Supposing, then, that the King has incorporated the Assembly of Saint Christophers by a Royal Charter, for the Purpose of Legislation within the Island; yet, not having created them a Court of Record, he could not grant to, or invest them with, a Power of imprisoning, nor can they use or justify the Exercise of the same, merely in Right of their Legislative Capacity; for it is a Power that the King (the pretended Grantor) from whom they claim, and who is the Head of the Supreme Legislature, cannot himself *legally* claim, assume, or exercise.

* Vid. 2 Inst. 54. where Lord Coke tells us that a Commission was made under the GREAT SEAL, to take I. N. (*a notorious Fellow*) and to seize his Lands and Goods: This was resolved to be against the Law of the Land, unless he had been indicted, or appealed by the Party, or by other due Process of Law.

10. ["No one is able to bestow what he does not possess."]

It may be said, however, by some high-soaring Genius, That the *Assembly* of Saint Christopher's is a *Court of Record*. But I shall beg Leave to give the strongest Negative to that Assertion, let it come from whom it may; for they cannot administer an Oath; they cannot hold Plea of any Sort; they cannot give Judgment upon, or decide, a Matter of Right between Parties, nor can they issue an Execution. But we are told, in an Wholesale Way, that the Legislature of this Island is analogous to the Legislature of the Mother Country; that the Houses of Parliament constantly exercise the Right and Power of committing for Contempts, and that such Right cannot be disputed. The Power and Authority of the Two August Houses of Parliament I shall not at present dispute, nor the Legality of their Commitments; it is out of the present Case. I dispute only the Legality of a Commitment by a Saint Christopher Assembly. The House of Peers is a Court, the most supreme Court, of the Nation, and is of Record: It is that Court which can annul, alter, and amend the Decrees of the High Court of Chancery, and which can correct the Errors of the King's Bench and Exchequer Chamber, and from the Lords there lies no further Appeal. Being a Court of Record, doubtless they have an unquestionable Power of imprisoning. The Power of the House of Commons, indeed, is not so well known, nor so clearly defined. But the Commons have immemorially and constantly claimed and exercised the Power of imprisoning, and the Courts of Law have ever, during the Session of Parliament, refused to liberate any Person committed by the Commons. But the Claim of Equality with the House of Commons, insisted upon by and for our Assembly, is a Claim more than most indecent; it is a Claim of Insolence and Arrogance, not warranted by Reason or the Nature of Things. That august House the House of Commons of Great Britain is a Branch of the supreme Legislature, whose first Period of Existence is beyond the Traces of History, is unknown to the most inquisitive Antiquarian, is unknown to the wisest, the most learned Enquirer: Even the unrivalled *Montesquieu* confesses himself ignorant of that Period. He *imagines* that the glorious Fabric of the British Constitution was founded in the Woods: Or, in other Words, that it was introduced into Britain by the Saxons, who first came over and settled in the Isle of Thanet, about the Year 420. These Saxons were known to have been a Branch of the antient Visigoths, one of the Northern conquering Nations, who over-ran and destroyed the Roman Empire.—The House of Commons are, as I said before, an independant Branch of the supreme Legislature; they derive not

their Existence, they claim not their Privileges, *ex gratia*,¹¹ from the King or his Ministers: They derive the same from as high a Source as the Kings of Great Britain hold the Crown, from the Constitution itself. The House of Commons have often entered into Treaty with Majesty, and have compelled the Kings of England to do their Duty, to execute Justice in Mercy, and to make the Laws of the Land the Rule of their Actions. The House of Commons, with the other Branches of the supreme Legislature, can annihilate the Legislature of this Island in an Instant, and can regulate the whole British Empire. Let us now enquire into the History and Original of the Assembly of Saint Christopher's. Let us see if any, and what, reasonable Analogy can be established; if there be any Similarity, or if any Line of Comparison can be justly drawn between our Assembly and the illustrious House we have been speaking of, the House of Commons of Great Britain. In the latter Part of the Reign of that weak and pusillanimous Prince, that Royal Coxcomb and pedantick Trifler, *James the First*, the English made a Lodgment, and began their first Settlement in this Island, and much about the same* Time the French landed, and took Possession of the Basseterre and Capisterre Quarters, which afterwards so divided and separated the Eastern and Western Settlements of the English, that the Communication was thereby entirely cut off between the two, except by Sea, or by a dangerous Road over the Mountains, which, at this Day, is scarcely passable. The Government of the English Parts of the Island seems to have remained, if not wholly neglected, not much attended to, during the enthusiastick, distracted, bloody Reign of the uxorious, priest-led, dissembling, *first Charles*; the dissipated, prodigal, licentious, and profligate Reign of *Charles the Second*; and during that tyrannical, prerogative, bigotted Reign of the *second James*, the last Male Monarch of the Stuart Line, that disgraces the Annals of English History. If the Government of the Island was not totally neglected during those Reigns, the only Form that seems to have subsisted, was that of a Governor and Council; a Form of Government similar to what is now known in *Anguilla*, *Spanish Town*, and *Tortola* (the *Virgin Islands*) which are dependent upon this Government, and whose Officers have been generally appointed by the Commander in Chief of the Leeward Charribbee Islands.

11. ["From grace," i.e., favor.—Tr.]

* Tradition says they landed upon the different Parts of the Island upon the same Day. Vid. Naval History of Great Britain.

There is, however, so little Notice taken of the Island, during that Period, by Historians, and so little to be gained from the Records now in the Secretary's Office, that nothing can be said of the same with any tolerable Certainty. But we find that soon after the Æra of the glorious Revolution, a Captain General, Governor, and Commander in Chief was appointed to the Command of all the Leeward Islands, and that a Legislature for the whole sat at Nevis, which Legislature consisted of Deputies or Representatives from all the Islands within the Government, of their Majesties Council for the Leeward Charribbee Islands, and of his Excellency General Coddington, the* Commander in Chief. No Particular Island within the Government seems then to have had a separate or exclusive Legislature; and when a separate Legislature for each Island was attempted by the general Legislature in 1701, we find the same was rejected by Order of the Queen in Council, dated May 17, 1703. It seems most probable that sometime in the Year 1706, at which Time the General Legislature of all the Leeward Charribbee Islands ceased, by the French† Conquest of *Nevis* (which before that Period had been the Seat of Government under the English) that a separate Legislature took Place in the several Islands of *Saint Christopher* and *Antigua*, and that a like separate Legislature also afterwards took Place in *Nevis*, as soon as it returned to its old Masters the English. But in what Manner, or by what Authority, whether by a Royal Instruction to the Commander in Chief, or how otherwise, such several Legislatures commenced or were first created, I confess myself at a Loss to determine; and all that I can find of the Government in 1705 is, that John Johnson was Chief Governor, Mr. Lambert Lieutenant Governor, and that the last Act of the General Legislature was passed in that Year. However, that no such Thing as a legal Assembly could exist in the Island in the Year 1703, is most certain, for in that Year the Order of the Queen in Council, just mentioned, prohibited the same. In 1688, the French conquered the whole Island, but in August, 1690, the

* Before the Conquest of *Nevis*, the Captain General was generally distinguished by the Appellation of Chief Governor and Governor in Chief, in Contradistinction, I suppose, to the Deputy Governors of the several Islands, one of which (*Montserrat*) has a Deputy Governor at this Day.

† The following original Pass and Permit fell into my Hands lately:

Il est parmis au Sieur Guillaume Stivrđ, avec sa Femme est Enfans, d'aller dans sa Maison & y rester d'Essance à asoun François de lui quieter,—à Neve, ce 7me Avril, 1706.

D'IBBERVILLE.

English re-conquered the same; which afterwards, by the Treaty of Utrecht, in 1713, was ceded to the Crown of Great Britain, and the same has ever since remained a Part of the British Dominions. In 1711 an Act was passed in the then Legislature of this Island, which Legislature must have been established after the Year 1703, for the Cause just mentioned; which Act is intituled "An Act for preserving the Freedom of Elections; and appointing who shall be deemed Freeholders, and be capable of electing, or being elected, Representatives." Which Act afterwards received the Royal Approbation, and thereby bound the Crown, and operated to secure a Legislature to the Island in as strong and effectual a Manner as a Royal Charter of Incorporation could have done. Before the making of that Act, the Legislature here seem to have held their Right of Legislation by a very precarious Tenure, by nothing more than a Royal Instruction to the Commander in Chief, to permit the several Parishes and Districts to send Representatives, who, with the Governor and Council, might enact Laws and Ordinances for the good Government of the Island; which Instruction was, from the Nature of it, revocable at the Will of the Prince, and subject to the Controul of the Minister, who, in former Times, mostly governed the Royal Will, in regard to the Affairs of America. This Mode of permitting a Legislature at the Will of the King is in Use in some Islands within the Government at this Day; it is in Use in *Montserrat*, the Legislature of which depends solely upon a Royal Instruction to the Commander in Chief; and I have been informed that the present Legislature of *Antigua* stands not upon a more stable Foundation than the Legislature of *Montserrat*. The Act of 1711, which first established a permanent Legislature in this Island, was afterwards repealed by the Act of 1727; which last Act is now in Force, and is not only the Act, or Instrument, by which the present Legislature is secured to the Island, but is the only Authority by which the Assembly can now legally pretend to sit, and do Business, by which they exist, and from which they can claim any Privilege.

This Act of 1727, is intituled

An Act to enable the several Parts of this Island, formerly belonging to the French, to chuse and send Representatives to serve in the Assemblies for this Island; to declare and ascertain the Number of Representatives for the whole Island, what Number each Parish shall elect, and the several Qualifications of the Electors and Candidates; to secure the Freedom of

Elections: And for repealing an Act of this Island, (dated the thirteenth Day of November, One thousand Seven hundred and Eleven) intituled, An Act for preserving the Freedom of Election, and appointing who shall be deemed Freeholders, and be capable of electing, or being elected, Representatives.

If the Assembly exist and derive their Powers, Authority, and Privileges from that Act, I say they can claim no Powers, no Authority, no Privileges, out of, but must confine themselves to such as are expressed—are specified in, that Act. That Act does not give the House any Power to imprison, nor does it constitute the Assembly a Court of Record, and therefore, if they have a Power to imprison, they have it elsewhere than from that Act. The Assembly of Saint Christopher's (I mean a *legal** Assembly) it is admitted, however, have some Power, and are of some Consequence; they have a Power, with the Consent of the Council and his Majesty's Substitute, the Commander in Chief, to make Laws, which, under certain Restrictions, can bind the Individuals of this Island. The *City of London* is certainly of as much Consequence to the British Empire as this Island can be, and is to the full as valuable; and the Legislature or Corporation of that great City, is of as much Importance as the Legislature of this Island: For the Legislature of this Island have a Power to make Laws which will bind only about Three thousand of the King's Subjects, but the Legislature of London can make Bye Laws which will bind more than as many Hundred thousands.—The *City of London* is a *Part of the Kingdom* of Great Britain, and the Corporation thereof consists of Lord Mayor, Aldermen, and Common Council, who have a Power of Legislation, and can make Bye-Laws, which will bind the Members of the Corporation, the Citizens and Inhabitants; but their Bye-Laws bind not, affect not, the *City of Westminster*, the *Borough of Southwark*, the *County of Middlesex*, or any other *Part of the Kingdom*: So the *Island of Saint Christopher* is a *Part of the Government* of the *Leeward Charribbee Islands*, and within the *Island of Saint Christopher* there is a Legislature, which can bind the Inhabitants of the *Island*; but the Bye-Laws of *Saint Christopher* affect not, bind not, *Nevis*, *Montserrat*, *Antigua*, or any

* It would have long since been known, whether the present is a *legal* Assembly or not, but they have prevented the Courts from permitting any Action to be tried, in which the Question of Legality or Illegality could come into Judgment: However it is hoped SUPERIOR POWERS will soon controul their Injustice and Oppression.

other Island within this Government. Neither the Corporate Legislature of London, nor the Legislature of any other Corporation in the Kingdom of Great Britain, can make a Bye Law that contradicts the Spirit of, or militates with, the Law of England, neither can the Legislature of Saint Christopher's make such a Bye Law, but the Supreme Legislature can alter and amend the Law as it sees proper.—For instance, the Laws of Trade, and the Navigation Act, can be altered, changed, amended or totally repealed by the Supreme Legislature. But those Laws cannot be meddled with by a Saint Christopher Assembly, or by any Corporate Legislature within the Kingdom of Great Britain. The Common Council of London, I believe, never dreamt that they had a Power of committing for Contempts; and I believe neither *Sir James Hodges* nor any other Officer of theirs, would dare to issue a Warrant for a Contempt to them.

After this shall we pretend to draw a Comparison between the Assembly of this Island and House of Commons of Great Britain? Is there any stronger Analogy existing between the two, more than there is between the House of Commons and any Corporation Legislature in Great Britain? For my Part, I am forced here to repeat what I said in the Court of Chancery the other Day,

That I should think myself as highly criminal in transferring my Reverence and Veneration from that illustrious Body, the House of Commons of Great Britain, to the little, trifling, twopenny, pretended-corporate Charter Assembly of Saint Christopher's, as I should think myself criminal in transferring my Allegiance from his Majesty, my lawful Sovereign, to his fleeting Substitute, *that* faint* Type, that* wretched* Shadow of Royalty*, his Excellency *General Woodley*.

The Assembly, then, have no Power of imprisoning given to them by the Act of 1727, they were never incorporated by Charter, or if they had been incorporated, the King could not have given them this Power, and they have no better Claim or Pretensions to an Equality with the House of Commons of Great Britain, than any Corporate Legislature within the Kingdom of Great Britain. By what other Means, or in what other Way, then, can they, or do they, claim this Power of committing? Why they

* The Words printed in Italick, with Asterisms, were not spoken in the Court of Chancery.

pretend that they have PRESCRIPTION for it; for that, in the Year 1744, a dastardly Wretch, one *Buchannan*, tamely submitted to an Imprisonment by the then Assembly; that the Assembly in 1744 having imprisoned *him*, is a Proof that the Assembly had *then* a Right to imprison, and, if the Assembly had *then* a Right to imprison, they have never forfeited that Right, they are still invested with the Power of Commitment; in other Words: That in 1744, the Assembly were guilty of an absurd Act of Tyranny, and therefore, that, in 1770, the Assembly have a Power to be equally as absurd, and equally as tyrannical. To justify a prescriptive Right or Usage, it ought to be founded in Reason; the Usage ought likewise to have been immemorial, constant, and uniform. Littleton, in his Tenures, Sect. 170. says, *Consuetudo ex certa Causa rationabili usitata privat Communem Legem*;¹² upon which Lord Coke thus comments, *Consuetudo contra Rationem introducta potius Usurpatio quam Consuetudo appellari debet*. Co. Lit. 133.¹³ If any bad or unreasonable Usage could have made a legal Prescriptive Right, the Usage of granting Warrants by the Secretaries of State would have been good. I had the Honour to be concerned for Mr. WILKES, Mr. BEARDMORE, Mr. ENTICK, Mr. LEACH, and for all the Masters and Journeymen Printers, and others, who were taken into Custody, under the Warrants of the Secretaries of State, in the Year 1763. In the Course of the Tryals of the several Actions of Trespass and false Imprisonment, brought by the several Persons who were so taken into Custody, particularly in the Cause of WILKES and WOOD, it was given in Evidence and proved, that from the earliest Days of the Revolution, to the Year 1763, a constant, uninterrupted, Usage had obtained in the Offices of the several Secretaries of State, of granting Warrants, and directing them to the King's Messengers to be executed; and Books of Entries of a great Number of Such Warrants (I believe 150 or 160) were produced from the Secretaries Offices, among which were some almost as curious as the present Warrant; one, I think, was directing the Messengers *to take up certain Persons for illegal Practices*: And it was said, that a Person taken up upon the Secretary of State's Warrant, had been bailed by the Court of King's Bench, in the Time of Lord Chief Justice HOLT, and that the Court made no Objection

12. ["Custom based on a certain reasonable cause supplants the common law."]

13. ["A custom introduced contrary to law ought to be called a usurpation rather than a custom."]

to the Warrant, or to the Authority of the Secretary of State. But that righteous and most uncorrupt Judge, LORD CAMDEN, directed the Jury to pay no Regard to such an illegal Usage or Custom. He told them that the Law knew of no such Magistrate as a Secretary of State; that the Warrant was illegal; that the highest Courts of Law and the first Magistrates could not grant such illegal Warrants; *a fortiori*, no inferior Magistrate could grant such a Warrant, and therefore that the Officers (the Messengers) were Trespassers, and ought to be punished for executing such Warrants; that as to the Warrant's having been constantly submitted to, it proved nothing; that the Persons who were the Objects of those Warrants, were generally poor Wretches, who, conscious of their Guilt, were afraid to contend with Power, or dispute the Authority of the Officer that committed; that the Case in which Lord Chief Justice HOLT, and the Judges of the King's Bench bailed a Person committed by the Secretary of State's Warrant also proved nothing, for that he must suppose that no Objection being made to the Magistrate who granted the Warrant, or to the Form of the Warrant, that the same passed *sub Silentio*.¹⁴—The Court only considering the *Offence* with which the Prisoner was charged, and finding it *bailable*, they therefore bailed him of course—My LORD CAMDEN's Determination, by Means of the several Bills of Exceptions, was afterwards examined in the Court of King's Bench, where the Judges were unanimous, and the Judgment for the several Plaintiffs was affirmed, and Administration did not chuse to push the Matter any further by a Writ of Error in the House of Lords—Here, then, was an Usage, which began long before there was any Assembly in this Island, and which, had for so long a Time, uniformly and invariably, not in one Instance, but in a Multitude of Instances been regularly kept up, followed, and practiced; but which, not having any *legal Original*, could not be justified, but was thus solemnly determined to be *illegal*,* to be an Usurpation upon the Liberties of the Subject. Heavy Damages have been given, not only against the great Offender the Secretary of State, but also against the Officers who executed the several Warrants, and no Secretary of State has since been hardy enough to issue his

14. Literally, "Under silence," i.e., without notice taken, thus implying consent.—Tr.]

* *Quod ab initio non valet Tractu Temporis non convalescit*. And *Malus Usus abolendus est*. {"That which is not valid at the beginning does not become valid with the passage of time. And, A bad practice must be abolished."—Tr.}

Warrant; but has contentedly resigned his Pretensions to* *Sir John Fielding*, and the *known Magistrates* of the Law. If the Secretary of State could not justify the granting a Warrant,† and imprisoning, when he had so many Precedents, and so long an Usage to plead for him, can the Speaker of our Assembly claim to be justified from the *single Instance of Buchannan*, and that too, of so modern a Date as 1744? Surely he cannot. But if we attend to the Act of 1711, which is now repealed by the Act of 1727, we shall find that the Legislature of this Island had not, at the Time of making that Act, in 1711, the most remote or distant Thought or Apprehension of a Power of Commitment being lodged with, or that the same was incident to, the Assembly, or that the Speaker of the Assembly had a Power to grant a Warrant; for by that Act a Power is given to the House to examine upon Oath, and to send for Persons and Papers; and it enacts, in the Eleventh Section, That if any Person refuses to deliver any Papers, &c. required, such Person shall be committed by *Warrant under the Hand and Seal of a Justice of Peace, &c.* If the House had a Power to commit for a Contempt, and the Speaker a Right to grant a Warrant, before the making the Act in 1711, *cui bono*¹⁵ is the Offender directed by that Act to be committed by a *Warrant under the Hand and Seal of a Justice of Peace*? Surely to refuse to deliver a necessary Paper for the Inspection or Information of the House, when demanded, is a Contempt, and for which Contempt they might have imprisoned, if they had had a Power of Commitment vested in them. And if the Speaker had, at that Time, a Power to issue a Warrant *quatenus*¹⁶ Speaker, it was *actum agere*¹⁷ to direct the Offender to be committed by any

* Soon after the Trial of the first Printers Causes, a violent Dispute happened at LORD HALIFAX'S Table, between the *Count de Guerchy* (Ambassador from France) and the *Chevalier D'Eon*, which obliged MY LORD to send for SIR JOHN FIELDING to keep the Peace!

† *Sir John Philipps* having been made a Privy Counsellor, thought he could not requite his Patron, *Lord Bute*, better than by attempting to establish Tyranny by Act of Parliament. *Sir John Philipps* therefore, attempted to bring into the House of Commons a Bill for the Purposes of enabling the Secretaries of State to grant such Warrants, and to execute such Powers, as they formerly had usurped and claimed: But the indignant Contempt of the whole House brought the poor Baronet not to a speedy Sense of his Folly; and the Children of Despotism have taken Warning by Sir John's Disgrace, and have never made another Attempt of the same Kind.

15. ["As a benefit to whom."]

16. ["As, since he is."]

17. ["To do a thing already done."]

other Magistrate. But as the other Side seem afraid to trust entirely to legal Argument, I am now told by them that the King governs here *Jure Gentium*.¹⁸ I confess I do not understand what is meant by the King's governing here *Jure Gentium*, unless by it be meant by Right of Conquest; for the *Jus Gentium* is a Law either express or implied, which is the universal Rule of Right between different independent States, an Infraction of which Law by any one State, amounts to a Declaration of War against the State which is injured by such Infraction.—I say the King governs in Saint Christopher's *Jure Coronae*;¹⁹ for great Part of the Island, as I before observed, was at first settled by the English, and, although the French got a Footing in, and claimed, the South and North Parts of the same, yet, in the latter End of King William's Time, the English conquered the whole, and expelled the French, and by the Treaty of Utrecht the whole was ceded to the Crown of Great Britain. The Island has ever since remained in the Possession of British Subjects, and has since been constantly subject to, been annexed to, the Crown of Great Britain. The common Law of England is in Force within the Island, and the King, his Substitutes, and all others, are as much bound by that Law here, as they are bound by the same Law at home. A Child born here of free Parents is undoubtedly a natural-born Subject, is intitled to an equal Protection with the rest of its Fellow Subjects, and owes the like Allegiance to his Majesty as I do. Should Business, or any other lawful Occasion, oblige me to quit Great Britain, and settle here, merely because I cross the Atlantic, and reside here, do I forfeit the Rights of a British Subject? Am I not still intitled to the same Liberties, the same Privileges, which, as a British Subject, I enjoyed at home?—But the Position is too absurd to deserve a serious* Answer. I shall therefore proceed to my second Head of Argument.

That if the Assembly of this Island have such Power, and the Speaker thereof such Right, the same can result only from Privilege, and that, by the Interposition of *Prerogative*, exercised by his Excellency the General in the late *Adjournment*, the Privileges of the House ceased and were suspended from the Moment of that Adjournment.

18. ["By the law of nations."]

19. ["By the law of the crown."]

* *Stultum est absurdas Opiniones accuratius refellere.* {"It is foolish to refute absurd opinions so accurately."—Tr.}

We must, under this Head of Argument, suppose and admit (for Argument Sake only, however) that our Assembly is invested with, and intitled to, *some Part* of the Law and Privileges of Parliament, which Privileges are suffered and permitted only to prevent the public Business of the Nation from being impeded or interrupted; these Privileges, however, being derogatory to the Common Law, ought to be construed strictly. All the Privileges of Parliament, but Personal Privilege, cease at the End of the Session, when the Parliament is *prorogued* by the King, when the Royal Prerogative interposes, and prevents the sitting of the Houses. An* *Adjournment*, in England, is no more than a Continuance of the Session from one Day to another, and this is done by the *Authority of each House seperately* every Day, and sometimes for a Fortnight or a Month together as at Christmas or Easter, or upon other particular Occasions. But the *Adjournment of one House is no Adjournment of the other House*. A *Prorogation* is the Continuance of the Parliament from one *Session* to another, as an *Adjournment* is a Continuance of the Session from *Day to Day*. This is done by the Royal Authority, expressed either by the Lord Chancellor, in his Majesty's Presence, or by Commission from the Crown, or frequently by Proclamation.

Both Houses are necessarily prorogued at the same Time; it not being a Prorogation of the House of Lords or Commons, but of the Parliament. The Assembly of St. Christopher's has *never been prorogued* in my Time; and I am told there never has been but one Prorogation of an Assembly of this Island in the Memory of Man, and that was in *General Matthew's* Time; but at each Meeting the Assembly and Council are *adjourned* by the General, or Commander in Chief for the Time being. The Act of *Adjournment* here, is not the Act of *either House*, but an Act of *Prerogative*, exercised by his Majesty's Representative, the General: Both Houses are adjourned at the *same Time*, by the *same Authority*, and are, by such Adjournment, restrained from meeting again till the Day appointed by the General, and such Adjournment is analogous to, and operates, for the Purposes of Privilege at least, as a Prorogation at home. The only Difference between an *Adjournment here* and a *Prorogation at home*, is, that by a *Prorogation at home* the Session, and *all*† *Business* of the Session, is at an End; so that if any

* Vid. Blackstone's Commentaries, vol. i. p. 186.

† There is one Exception, however, and that is in case of a Writ of Error in Parliament, which is retained, notwithstanding the Prorogation of the Parliament.

Bills were depending in the House at the Time of Prorogation, such Bills fall to the Ground, and cannot be taken any further Notice of, unless in a future Session they are brought in *de novo*:²⁰ But by an *Adjournment here*, the Business continues, as to Bills depending in the House, and they may be proceeded on at any future adjourned Day, during the Existence of the Assembly; though between the intermediate Days of Adjournment here, except in the single Instance of a Bill depending, Business is as much at a Stand, and the Privileges at an End, as between the Days of Prorogation and the Days of meeting at home. If there be any Doubt, however, that the Privileges here, (whatever they are) cease from the Moment of the Adjournment, the Marshal will inform your Honours, that as soon as the House has been adjourned, and the Members have come out, their Bodies have been taken upon Executions, and *they* never complained, nor did the Assembly ever dare to call the Officer to an Account for the same; for they well knew that the *Personal Privileges* claimed here, exist only during the *Hours of actual Sitting*. Can it be, then contended, with the least Shew of Propriety, that the House have a Power or Privilege of committing, or continuing in Custody, after the Moment of Adjournment? at a Time when they have no Power, no Privilege to protect their own Members, or to prevent their being carried to, and confined in, Gaol? In other Words, when the Individuals are in Prison, can any, or all, of those Individuals have or exercise a Power over the Liberties of their Fellow Subjects, to continue them in Custody during *their Pleasure*—to continue others in Prison when they themselves are imprisoned, and thereby restrained from meeting the Assembly?—But what is this *Pleasure* which they are so overweeningly fond of insisting upon, and contending for?—At best, it is a Pleasure that is not within the Controul of *their own Will*, but is subject to the Will and Direction of another: For the Times of permitting them to come together, to sit, or to do Business, is solely in the Power of the Commander in Chief, who *adjourns* them as *he* thinks proper, during *his own Will*, and according to *his own Pleasure*.

If, notwithstanding this, they are to be considered as sitting, and intitled to the Privilege of continuing any Person in Custody during the intermediate Times of the several *Adjournments*, which are sometimes once a Fortnight, sometimes once a Month, generally longer, they will be armed with a dreadful Power, with a tremendous Privilege indeed!—The *Sessions of Parliament*

20. ["Anew."]

continue generally for three, sometimes four, Months, *Prorogation*, however, then puts an End to all *their* Privileges but Personal Privilege, and a Man committed by either House of Parliament, is sure to be discharged whenever the Parliament is prorogued; but *here*, there is *no Prorogation*; the *Assembly* is elected for twelve Months, and if the *Prerogative Act of Adjournment* puts not an End to the Privileges of our Assembly, and the most unusual Act of Prorogation ensues not, then the *Pleasure* of the House, notwithstanding the repeated Acts of Adjournment by Prerogative, notwithstanding the frequent Controul of that Pleasure by such Acts of Adjournment, continues the whole Year.—If this can be supported, then a Man committed by a* *Montserrat* or an *Antigua Assembly*, must continue in Prison during Life, for any Thing the Assembly of either of those Islands may please to call a Contempt; for Instance, for saying that either of those *Assemblies is not the House of Commons of Great Britain*. The Assembly of either of those Islands may first resolve this to be a Contempt, and then they may order the *Offender*, as they will stile him, to be closely confined during their *Pleasure*, that is, for *Life*. The Power of Commitment by the Assembly, so warmly contended for, is by no Means so necessary to the Being of the House, as Mr. *Stanley* has pretended; for should any Russians attempt to break in upon them, and disturb their Debates and Consultations, the Power of the ordinary Magistrate will prove fully sufficient to chastise the Offender. In the Case of a Breach of the Peace, any private Subject can justify laying Hands upon the Offender, and keeping him in Custody, till the Heat of Passion is over: Besides, there never was an Assembly in which some *Justice of the Peace*, (*a Magistrate known to the Law*) was not a Member, who could legally grant a Warrant, and commit for *any* Breach of the Peace: However, supposing there was not any such Magistrate present, yet, as a private Subject could justify imprisoning any Offender who was[†] breaking the King's Peace, the Serjeant at Arms, by Order of the House, or of himself, might seize the Offender, and deliver him over to the civil Magistrate, who could then commit him till he found Sureties, and entered into a Recognizance to appear and answer, &c. and most assuredly, if the Offender should be convicted upon an Indictment for *this* Offence, and for so outrageous a Breach of the Peace, the Courts of Justice would not let him off for a small Fine, or with a trifling Punishment,

* The Assemblies of these two Islands are perennial.

† Vid. 2 Inst. 52.

but would lay on him an heavy Fine, a grievous Punishment. And where the ordinary Courts are sufficiently enabled to prevent or redress a Grievance, *new Courts*, especially of a *summary Jurisdiction*, ought not to be multiplied, created, or countenanced. So that the *Argumentum ab Inconvenienti*,²¹ made Use of to support the Right and Power of Commitment in the Assembly, and of the Speaker, here falls to the Ground; for as the ordinary Magistrate is sufficiently enabled to punish *all* Rioters and Disturbers of the Peace, the Power of Commitment claimed by the Assembly, from that Argument, the *Argumentum ab Inconvenienti*, will be found no way necessary. It is a dangerous Power to trust in the Hands of passionate, malicious, revengeful, ignorant, unlearned, and unlettered Men,* who often compose the Majority of *our* Assemblies. It hath been, and it may be, abused, perverted, and prostituted, to the most infamous Purposes, to the Purposes of Tyranny, Cruelty and Oppression. It can never answer any good End or Purpose but what may be more effectually, more constitutionally, produced and answered by the known Civil Magistrate. And, as I just observed, unnecessary Jurisdictions are not to be multiplied, and if of a *summary Kind*, which affect too nearly the personal Liberty of the Subject, are not to be encouraged; for the *personal Liberty* of the Subject is the next Object of Attention of the Law of England, after *personal Security*, and, according to Doctor Blackstone,

Personal Liberty is a Right strictly natural, which the Laws of England have never abridged without sufficient Cause; and that it cannot ever be abridged at the mere *Discretion* of the Magistrate, without the *explicit*

21. ["Argument from inconvenience."]

* The Person who, in the present pretended Assembly, seconded the Motion for committing the seven Members in November last, is, in my Opinion, of this Number; I am told, that, after he found I had brought the several Actions of Trespass and false Imprisonment, for the six surviving late imprisoned and expelled Members, he repeatedly declared he would never sit in that House if the Author was not committed, What dreadful Consequences would have ensued if he had deserted the Public! What a Loss would the Public have sustained in being deprived of the consummate Abilities, Advice and Labours of a Man, who is so exceedingly illiterate, as not to know how to spell even the Monosyllables ONE or THERE. I have now in my Possession a Letter under his own Hand, in which he says he "*shall be in Town UN day In the Next week And THER Will, &c.*" The whole Letter consists of four Lines only, in which there are six Words falsely spelled; but I beg Pardon—I am afraid I shall again be adjudged, by this Lack-Learning pretended House, to "be guilty of the highest Contempt of the Authority, DIGNITY, and Justice of the House, and of the most outrageous Violation of its known Privileges, &c."

Permission of the Laws. That by the GREAT CHARTER no Freeman shall be taken or imprisoned, but by the *lawful Judgment* of his Equals, or by the Law of the Land. And many subsequent old Statutes expressly direct, that no Man shall be taken or imprisoned by Suggestion or Petition to the KING, or his Council, unless it be by *legal Indictment*, or the *Process of the Common Law*.

And the same reverend, learned, and most judicious Author observes, That

Of great Importance to the Public is the Preservation of this Personal Liberty; for if once it were left in the Power of any, the highest, Magistrate to *imprison arbitrarily* whomever he or his Officers thought proper (as in France it is daily practiced by the Crown) there would soon be an End of all other Rights and Immunities. Some have thought (says he) that unjust Attacks even upon Life or Property, at the *arbitrary Will* of the Magistrate, are less dangerous to the Commonwealth, than such as are made upon the *personal Liberty* of the Subject. To bereave a Man of Life, or by Violence to confiscate his Estate, without Accusation or Trial, would be so gross and notorious an Act of Despotism, as must at once convey the Alarm of Tyranny throughout the whole Kingdom. But Confinement of the Person, by secretly hurrying him to Gaol, where his Sufferings are unknown or forgotten, is a less public, a less striking, and, therefore, a more dangerous Engine of *arbitrary Government*.

I now proceed to my third and last Head of Argument:

That if the Privileges of the House did not cease, and were not suspended, by *that Act of Prerogative*, but that the same now exist, yet the Warrant in this Case is informal, and against Law, and therefore that, there appearing no legal Authority for the Marshal to detain me, I ought to be immediately discharged.

Every Warrant ought to be issued by a *legal Officer*, or Magistrate, who hath Power to commit; should set forth the Name of the Offender, that one Man may not be taken for another; ought to specify and set forth the Offence with such Precision, that the Prisoner may not only know what he is charged with, and be thereby enabled to prepare for his Defence, and to answer the Charge, but that the Judges and Courts of Law, before whom the Prisoner may be brought by *Habeas Corpus*, may be enabled to judge of

his Offence, and to remand, bail, or discharge him: And if it is a *Mittimus*,²² in Nature of an Execution, it ought to set forth, with Certainty and Precision, the Quantity and the Degree of Punishment which the Law adjudges the Prisoner to suffer; likewise every Warrant should have a legal* Conclusion, *to wit*, That the Offender be detained, &c. until delivered by Law, or by Order of Law, or by due Course of Law. The Warrant also should be directed to, and executed by, a *known legal* Officer. How far the present Warrant comes up to this Description, every one that has heard it read can judge. The present Warrant has been issued by the Speaker of the Assembly, an Officer or Magistrate never heard of in the Law, not to be met with in the Books; it does not set forth the Offence with any Certainty, for it only charges *by Recital* that I am guilty of the highest Contempt of the Authority, DIGNITY, and *Justice* of the Assembly, and of the most outrageous Violation of the known Privileges thereof, established and known since the first Institution of Assemblies. Most assuredly here is no Offence set forth with such Certainty as to enable your Honours to judge whether I have been guilty of *any Crime, any Offence*, against the Laws of my Country. The Act of Contempt, whatever it is, is not specified, and, for any Thing that appears upon the Face of the Warrant, it might have been for (what I know it to be) *doing my Duty in the Way of my Profession*, paying a just Attention, a due Regard, to the Obligations of Conscience, and to my Oath of Office as an Attorney of this Court. The Cause of Commitment not being sufficiently set forth, the Court are bound to discharge, as in the Cases where a Man was committed for *manifold Contumacy to the High Commission Court*, and another for *insolent Behaviour and Words at the Council Table*, &c. Hawk. P. C. Book 2. Chap. 16. Sect. 16.—The *Time of Imprisonment* set forth and ordered by the present illegal Warrant of Commitment is also *indefinite*. It directs the Marshal to keep me in Prison *during the Pleasure* of this pretended House of Assembly, which is a Time, or Period, that no one but the *General* can take upon himself to determine, or certainly fix. If the present pretended Assembly are *permitted by the General* to meet on the Morrow, they may, of themselves, *then* determine this Pleasure; but if, on the Morrow, or at any future Time, they are prorogued or dissolved by

22. [Literally, "We (the king) send," i.e., a writ directing the imprisonment of a person, an arrest warrant.—Tr.]

* 2 Inst. 52.

the General, *their Pleasure* will then be determined by another, and without their Privy or Consent; or if, instead of proroguing or dissolving, our Governor should adjourn them from Time to Time, without permitting them to come together, and to do Business, the Time of my Confinement, by the *Pleasure of the House* being thus suspended, must continue uncertain, till the happy Period arrives, in the which, it is to be hoped, most of the *important* Individuals of this high and mighty pretended House will drop into their original State of Obscurity. All Punishment ought to be proportionate to the Offence or Crime, and if for a Misdemeanor, should, in the Words of *Magna Charta*, be* *Salvo contenmento suo*,²³ and the Warrant, or Order, for Punishment ought to specify the Crime, and to set forth the Nature, Degree, or Quantity, of the Punishment with such Precision, that the Judges may be enabled to determine according to Law, in case of Dispute, whether the Punishment be legal or illegal, proper or improper. I have been snatched up (by premeditated Design, I believe) from my Business (*Contentemento meo*)²⁴ by which I am to support myself and my Family, before the *second*† *Court Day* of the Year; and, in all Probability, unless I am delivered by the Law, shall continue in Gaol till the Time of Law Business

* *MAGNA CHARTA*, cap. xiv. *Liber Homo non amerietur pro parvo Delicto, nisi secundum Modum illius Delicti, & pro magno Delicto secundum magnitudinem Delicti, salvo Contentemento suo.* {"A free man shall not be punished for a small offence except in the appropriate measure for the wrongdoing; and for a great wrong he shall be punished in a manner appropriate to the size of the crime with his means of support intact."—Tr.}

23. ["With his own means of support intact."]

24. ["My means of support."]

† In St. Christopher's, by an Act of the Island, the Courts open, and all Law Business commences, in March, the second Tuesday of which is the first Court Day for the Year, and the Courts shut, and all Law Business ends here in August, the second Tuesday of which Month is the last Court Day for the Year, after which Month no Execution, &c. can issue. I apprehend the Reason of this is owing to the Crop, which begins, or comes in, generally about February, and is mostly over and shipped off by August; during which Time Debtors are supposed to have wherewith to satisfy and pay their Creditors. The Law-dispensing *MAGI* compelled my Attendance upon them at every Meeting from the 22d of November last till the 30th of March, without doing any Thing whatever against me. However, upon the 30th of March I was called in, and justified myself in having brought the Actions against the Deputy Provost Marshal and the Serjeant at Arms. I was desired to withdraw—then received a Message that I might go where I pleased, and that they would consider of the Matter. Soon after I left *the House*, they passed their *humane, charitable*, and *legal* Order against me, and directed the Warrants to issue; which, for Reasons best known to themselves, were kept up till the 4th of April.

for the Year is over.—Should the Court of Quarter Sessions in England order a Man to suffer a *Capital Punishment* for a Contempt, would not the Court of King's Bench in England, immediately upon Application, quash such illegal Order? and if a Warrant should issue for the *Execution** of such Offender, for *that Offence*, would not the same Court of King's Bench grant a *Supersedeas*?²⁵ I am sure they would; and I am as sure that the Judges† of that Court, with the noble Lord who presides and is at their Head, (whose astonishing Abilities amaze even Men of Learning and Genius) would smile severe Contempt upon the impotent Folly and Insolence of that‡ Resolution, which declares the HOUSE OF ASSEMBLY here to be ABOVE ANY AND EVERY COURT OF LAW.

The present Warrant is also illegal, in that it hath no *lawful Conclusion*,—*to wit*, To be kept till I be delivered by Law, or by Order of Law, or by due Course of Law.—The Speaker, by omitting in his Warrant this *lawful Conclusion*, attempts effectually to prove what Mr. Stanley contends for,—That the Assembly are above any and every Court of Law,—that is, *That the Assembly are above the Law*; for the present Warrant having no such *legal Conclusion*, is an emphatic Declaration, That the Law shall not be executed, shall not interfere between the House and their Prisoner;—That the Marshal shall keep me in the common Gaol during *the Pleasure* of the House, *in Spite of the Law!* Indeed the Marshal hath obeyed the King's Writ of *Habeas Corpus*, by Means of which I am now in this Court; but as the *Pleasure* of the House for my Confinement in Gaol has not yet been changed or altered, nor

* The Prison where I am now confined, is situate in the most unhealthy Part of *Basse-terre*, which is the most unhealthy Part of the Island of St. Christopher, about three Quarters of a Mile to Leeward of stagnant Ponds, or Pools, of Water. The fatal Consequences which attended the Imprisonment of my old Friend and Co-Student Mr. BRYAN, the latter End of the last Year, in this Prison, is well known, whose Death, in the then Opinion of his Physicians, as I understood them, was owing to his Confinement. His Physicians were MORGAN, CLIFTON, and COLLINS, who repeatedly declared, that they believed, that if he had not been imprisoned, he would have been now living!

25. [Literally, "You shall stay," i.e., a writ commanding "you shall stay" the proceedings at law.—Tr.]

† It is more than probable that the Proceedings of ALL OUR OPPRESSORS may appear before that learned and reverend Tribunal: And see the Case, *REX vers. COWLE*. Trin. 32 & 33 GEO. 2. reported in 2d Burrows, 834. and particularly p. 855, 856, & 861, 862, 863.

‡ See the mild, legal, and constitutional Votes and Resolutions published in Thibou's Paper of the 30th of December last.

hath the pretended Assembly been consulted upon the present Occasion, I know not whether their HIGH MIGHTINESSES may not commit *him* for *this* Contempt of their superior Authority, and for having done HIS DUTY, as they committed *me* for doing MY DUTY. However, it is by no Means surprising to me to see a Set of Men, who have, by a solemn Resolution,* *dispensed with a positive Law*, or Institution (whereof they are convicted by the printed Opinion of their favourite Lawyer, Mr.† *Attorney General*) attempt now to disturb the Course of the Common Law, and to say Justice shall not be done—the Law shall not be executed!

Mr. St. John, *the Serjeant at Arms of the Assembly*, an Officer utterly unknown to the Law, as little noticed in the Books as his Commander, Mr. Speaker (as I apprehended him) by the Direction and Order of this manly, this humane, this righteous, this DIGNIFIED, this Justice-loving and Justice-dispensing pretended Assembly, refused to let me see, or to give to me a Copy of the Warrant, by which he first arrested me, and, in Compliance with the Directions of which, he afterwards delivered me over to the Marshal.—When I pressed him to let me see, and take a Copy of, the Warrant, he told me he had been blamed by the House for shewing, and giving a Copy of, the Warrant of Commitment, by which he took the Seven Members in October last. This Behaviour and Conduct is repugnant to Reason, contrary to every Principle of Law, Justice, and Humanity, and can proceed from nothing but a Spirit of the lowest Malice, the most dastardly Cruelty, the most tyrannical Oppression. If the Warrant could bear the Day, why was I denied a Copy, or Sight, of it? It is probable they began to doubt their Power and Authority; they were conscious, perhaps, of their Inexperience, and of their Inability to draw a Warrant; or, having begun wrong, they were too mulish to turn to the Right, too proud to confess their Ignorance, and too self-conceited to attend to Instruction. The present Case is not out of the Jurisdiction of this Court, nor is it to be compared to an *Admiralty Cause*; for the present is a Commitment by a pretended summary Jurisdiction existing and residing, and, for a pretended Offence committed, within the *Body of the Island*: Whereas Causes which are the proper Subjects of the

* In striking off the Names of the Members of his Majesty's Council, (Persons duly qualified, and who had an undoubted RIGHT to vote, pursuant to the Act of 1727) from the Polls taken at the late Election of Representatives.

† THOMAS WARNER, Esq.

Admiralty Jurisdiction, arise upon the High Seas (*super Altum Mâre*) and not on Shore, or within Low-Water Mark.—Should the Court of Admiralty, however, exceed the Bounds of their Jurisdiction, and commit for an Offence, which happened, or arose, *within the Body of the Island*, doubtless this Court has a Power, and would execute it, and would enquire into, and determine upon, such a Commitment. For this Court is invested with, and may execute here, all the Powers which the Court of King's Bench is invested with, or can execute, at home.

Having thus gone through my Argument, and proved, I hope to the Satisfaction of every one, that the Assembly of this Island have no *Power to commit* for any Offence whatever, nor hath the Speaker of the same House a Right to issue a Warrant; that no such Power or Right hath been given to them by any Act of the Island, nor granted to them by Charter; and that if it had been granted them by Charter, such Grant would have been *ipso facto** void; that there is no greater Analogy subsisting between our Assembly and

* It is ridiculous enough to hear the present pretended Assembly acknowledge, that whatever Power they have is granted to them by the KING, and at the same Time, to hear and see them claim and insist upon Powers which the King himself most confessedly hath not; such, for Instance, as ordering the Judges and Courts of Law to discontinue, with Costs, all such Actions as they do not chuse should be tried.—We shewed before, in the Notes, from BRACTON, who wrote so long ago as in the Time of Henry III. what the Law then was in regard to the King; to which I shall now beg Leave to add, from the same Author,

Exercere igitur debet Rex Potestatem Juris, sicut Dei Vicarius & Minister in Terra, quia illa Potestas solius Dei est, Potestas autem Injuriae Diaboli et non Dei, & cujus horum Opera fecerit Rex, ejus Minister erit, cujus Opera fecerit. Igitur dum facit Justitiam, Vicarius est Regis aeterni, Minister autem Diaboli, dum declinet ad Injuriam. Dicitur enim Rex à benè regendo, & non à regnando, quia Rex est dum benè regit, Tyrannus dum Populum sibi creditum violenta opprimit Dominatione. Temperet igitur Potentiam suam per Legem, quae Fraenum est Potentiae quòd secundùm Leges vivat, quòd hoc sanxit Lex humana, quòd Leges suum ligent Latorem, & alibi in eadem, digna Vox Majestate regnantis est Legibus.

Bracton, lib. iii. cap. ix. §. 3. fol. 107. {"Therefore the king ought to exercise the power of law as the vicar and minister of God on earth, since that power belongs to God alone; moreover the power of injustice belongs to the devil if the king should turn aside to injustice. For he is said to be king from ruling well not merely from reigning because he is king as long as he rules well, but he is tyrant if he oppresses the nation entrusted to him by violent domination. Let him moderate therefore his power through law which is the curb of power that he may live in accord with the laws since human law has established that the laws bind their own maker and elsewhere in the same authorities is the motto

the House of Commons of Great Britain, than there is subsisting between that illustrious House and any Corporate Legislature in Great Britain; and that their exercising this Power of Commitment is an Usurpation upon, an high Infringement and Violation of, the Rights and Liberties of the Subject; that if, however, it should be determined that the Assembly here have a Power of Commitment, and the Speaker a Right to grant or issue a Warrant, yet that, by the *Prerogative Act of Adjournment* by the General, the Privileges of the Assembly were, for this Purpose at least, suspended; and, lastly, that the Warrant in this Case is totally illegal and informal; I hope that your Honours will think yourselves bound to discharge me from this cruel, this most arbitrary, Imprisonment, as *your Honours well know*, that if even a Doubt arises with you on *any Part* of my Argument, either as to the Power of the Assembly, the Suspension of Privilege, or the Informality of the Warrant, that you are bound to incline to the favourable Side, the Side of LIBERTY, remembering that *Angliae Jura in omni Casu Libertati dant favorem*. And that* *Impius & crudelis judicandus qui Libertati non favet*.²⁶

Your Honours are his Majesty's *Judges of the Law* in this Island; you are the *Medium* thro' which the Justice of the Crown is to flow to the Subject; you are bound by Oath that you will not delay nor deny Justice to any Person, but will determine every Thing without Prejudice, Interest, or† Affection; you are to judge of, and to determine by, the‡ Common and Statute Laws in Force within this Island, and you can take Cognizance of no Offence or Crime but what is known to, is described by, those Laws.—Those Laws know not the pretended Crime with which I am now charged; those Laws acknowledge not the pretended summary Jurisdiction of this

worthy of the majesty of ruling: that certainly the chief-in-command admits he is bound by the laws."—Tr.}

* *Fortescue. De Laudibus*. {"On Praise" (of the Laws of England).—Tr.}

26. ["The laws of England favor liberty in every case" (And that) "Who does not favor liberty must be judged impious and cruel."]

† Vid. the Judges Oath prescribed by the Court Act, No. 59. in the Laws of St. Christopher's, p. 48.

‡ The LAW, and the LAW only, in ENGLAND, is the supreme Arbiter of every Man's LIFE, LIBERTY, and PROPERTY, which LAW depends not upon the arbitrary Will of any Judge, but is fixed, permanent, and *unchangeable*, unless by Authority of Parliament. 1 Blackstone's Commentaries, 141, 142, and *Si{illeg.}* JURE *discedas vagus eris & erunt Omnia Omnibus incerta*. Co. Litt. 227. {"If you should stray from the law you will be capricious and all things will be uncertain to all men."—Tr.}

pretended Assembly; and those Laws direct my Discharge: Your Honours, I humbly think, cannot admit that there is any Power but GOD superior to those Laws; and I am persuaded that your Honours will not attempt to support, but will, to the utmost, discourage any and every pretended *summary Jurisdiction* which those Laws know not.

All *summary Jurisdictions* are odious to the Law, are contrary as well to the *Letter* as to the *Spirit* of the GREAT-CHARTER, and whenever they are pleaded, or claimed, they ought to be construed strictly, and to be watched with the most jealous Eye.—The pretended Jurisdiction now claimed by the present pretended Assembly, is of as extraordinary a Nature and Kind as any summary Jurisdiction ever known, heard of, or contended for: They claim an *Arbitrary Power* of creating Offences, of declaring any and every Thing to be an Offence as they please; they claim a Power of arresting any and every Fellow Subject *ad libitum*,²⁷ and committing him or them to any Prison, there to remain *during their Pleasure*; they claim a Power of directing their Speaker to make a *sealed Order*, which they call a Warrant, similar to which, not even the High Court of King's Bench in England, with all its Powers, can legally grant or issue; they claim, in the Words of their printed Resolutions, to be *above any, and every, Court of Law*; to be far beyond the Reach of Justice, far above the Controul, above the direction of the Laws of the Land; and, to compleat the whole, they have this Day claimed a Power of *directing* the King's Courts of Justice, and have, by their* *Mandate*, ordered your Honours to deny Justice to the King's Subjects, against the Consent of the Plaintiffs to discontinue several Actions now at Issue, and to punish those Plaintiffs in Costs, for† daring to apply to the Laws of their Country for

27. ["At pleasure."]

* The Speaker of our pretended Assembly wrote two Letters [to] the Chief Justice, in nature of a Mandate, to discontinue the Actions with Costs.

† When a Letter was written by the SPEAKER of the HOUSE OF COMMONS to the Judges of the King's Bench, in ENGLAND, to stay Proceedings against a privileged Person, they *rejected* it as contrary to their *Oath* of Office. i. Blackstone's Comment. 166. and Vid. the Authorities there referred to. See also the same Book, p. 141. where it is said,

That a third subordinate Right of every Englishman is that of applying to the Courts of Justice for Redress of Injuries. Since the Law is in England the supreme Arbiter of every Man's Life, Liberty, and Property, Courts of Justice must at all Times be open to the Subject, and the Law be duly administered therein. The emphatical Words of *Magna Charta*, spoken in the Person of the King, who in Judgment of Law (says Sir Edward Coke) is ever present, and repeating them in all his Courts, are these; *Nulli vendemus, nulli negabimus, aut differemus Rectum vel*

Redress.—Whether these Claims will be permitted, will be endured, I know not: We who have known the Sweets of legal British Liberty, cannot, we will not, tamely sit by, or patiently submit to this Iron Yoke of Oppression; we are resolved, we are determined, to apply elsewhere, and, if it should be necessary, even to the HIGHEST POWERS OF THE BRITISH EMPIRE; in the mean Time, we shall impatiently wait the Determination of the first Courts of Law in England, which we hope will soon be had upon this Point. And if, after all, we shall be found wrong, in opposing this Monster of Tyranny; if it shall be finally determined that our Liberties, our Properties, are subject to the *arbitrary* Directions and Disposal of *any*, and that we are to be governed by other than the KNOWN* LAWS OF THE LAND, we will quit this Island, and fix our Habitations elsewhere (the Loss, perhaps, will not be great, will not be much felt!) we will seek some other Country: If none other can be found, an Arbitrary State, where the *Will of the Prince is the Law of the Land*; for surely it is far better, it is far nobler, to submit to the Commands of one absolute MONARCH, than to the insolent despotic Orders and Directions of a Number of ignorant, malicious, unfeeling, little, contemptable, Tyrants; and, if we must Perish, it is more noble, far more honourable, to fall by a Lion, than submit to be thus gnawed to Death by Rats.

FINIS.

Justitiam: {"We shall sell to no one, we shall deny to no one or shall we delay right or justice."—Tr.} And therefore every Subject, continues the same learned Author, for Injury done to him *in Bonis, in Terris, vel Persona*, {"In goods, in property or person."—Tr.} by any other Subject, be he ecclesiastical or temporal, without any Exception, may take his Remedy by the Course of Law, and have Justice and Right for the Injury done to him, freely without Sale, fully without any Denial, and speedily without Delay.

And in 2 Inst. 56. NULLI NEGABIMUS, AUT DIFFEREMUS, &c.

These Words (says Lord Coke) have been excellently expounded by latter Acts of Parliament that by no Means Common Right, or COMMON LAW, should be disturbed, or delayed, no, though it be commanded under the GREAT SEAL, or Privy Seal, Order, Writ, LETTERS, Message, or Commandment whatever, either from the KING, or *any other*; and that the Justices shall proceed as if no such Writs, Letters, Order, Message, or other Commandment were come to them.

How gloriously have the present pretended Assembly of this Island attempted to trample MAGNA CHARTA, the Common Law, *Sir Edward Coke*, and *Judge Blackstone* under Foot! "*We ne'er shall look upon their Like again!*"

* *Ubi Leges sunt vagae & incertae ibi nulla Libertas*. {"Where laws are doubtful and uncertain, in that place there is no liberty."—Tr.}

“A Freeman” [John J. Zubly],
Calm and Respectful Thoughts
on the Negative of the Crown
(Savannah, 1772)



ANOTHER INSTANCE of the Crown's denial of privileges to the assembly of a relatively new colony occurred in Georgia in 1771–72, when Governor James Wright vetoed the Georgia Assembly's choice of speaker, Noble Wymerly Jones, whom the Assembly had re-elected after a new election, almost certainly because Wright regarded Jones as a ringleader in resistance to British policy after the Stamp Act and as an exponent of extending the authority of the Assembly over the colony's financial affairs. When the Assembly would not back down, Wright dissolved it, a scenario that was repeated the following year while Wright was in London and James Habersham was acting governor. The controversy was concluded only when Jones voluntarily declined to serve, and the Assembly chose Archibald Bulloch in his place. This incident inspired a newspaper exchange over whether a governor had the authority to reject an assembly's choice as speaker, a practice that had been exceedingly rare in either British or colonial history. Responding to those who argued in favor of the governor's authority, John Z. Zubly, a Swiss immigrant who was minister of the Presbyterian church in Savannah, published this pamphlet in which he took the reader through the details of the British experience of the House of Commons's establishing its right to an independent choice of speaker in order to raise questions about whether a Georgia governor could deny the Georgia Assembly such a right.

After describing the nature and duties of the speakership and reviewing the British experience, Zubly expressed strong doubts about “whether the Crown has a constitutional right to set aside and reject a Speaker chosen by the Representatives of the people.” Without the right to choose its own speaker, Zubly reasoned, a legislature could “be controuled and annulled” by a governor and could not “be conceived free and independent in their deliberations.” In such a situation, he explained, the legislature’s principal officer would be “under the very favour and influence of that very power” that the legislature had a duty to “restrain within its proper bounds,” which, Zubly declared, was “the principal object of the Representatives of a free people.” In response to the argument made by Wright’s supporters that the royal instructions gave the governor such a power, Zubly argued that English people were, by inheritance and natural right, “entitled to English laws, which I suppose implies Legislation any where and every where in the British dominions,” a right that was “prior to any charter or instructions to a Governor.” If, moreover, the Crown gave an instruction to his governor that was “derogatory to the right of a subject,” such an instrument might be binding upon a governor but not “upon a British subject.” As this controversy reveals, even after the Stamp Act crisis had made Parliament’s colonial authority the principal subject of debate between the colonies and the metropolis, the extent of the Crown’s prerogative powers remained a live issue in colonial political life. (J.P.G.)

CALM AND
RESPECTFUL THOUGHTS
on the NEGATIVE
of the CROWN on a SPEAKER
chosen and presented by the
REPRESENTATIVES of the PEOPLE:
Occasioned by some PUBLICATIONS
in the GEORGIA GAZETTE,
of *May* and *June* 1772,
wherein the late ASSEMBLY of that PROVINCE
is charged with encroaching
on the RIGHTS of the CROWN.
BY A FREEMAN.

Pro Rege & Patria semper. Buckingham's Epitaph.¹

1. ["For king and country always."]

It is a remark of a very considerable writer of our own,

that it cannot be improper to canvass any constitutional question when decency is observed, and nothing advanced but on the credit of the best authorities, because in a British country every man ought to be acquainted with the laws by which his liberty and property are insured.

Under the shelter of this observation some remarks have been ventured abroad, which I humbly apprehend have been rather condemned with severity, and replied to with personal reflections, than canvassed or answered with calmness or strength of argument. As the subject however has been formally dropt by one of the writers, I should not now take pen in hand could the other have been satisfied to enjoy his victory, without continuing to load the late Assembly with reflections, which I will not say are designed, but appear to have a tendency to set this province in the worst light at home, and to render the late Representatives as odious as possible in this province. My design is to take off the odium which is cast upon this province as though it meant to invade the Prerogative of the Crown. If the late Representatives have acted contrary to the sense of their Constituents they will doubtless be marked for it at a next election; if the majority of inhabitants should think the Crown has not a right of rejection, let their arguments be first considered before they are accused of a design of encroaching on the Prerogative.

I will own my obligations; the most light I received in this controversy has been from that very writer, and, upon the most mature consideration, I must own the right he contends for appears to me more problematical than ever. I will however still leave this right as I found it (I always wished it should remain unagitated) undetermined and undecided, but I hope I am not too sanguine to flatter myself that those that read what may make against it will be convinced they that hold the negative may still be honest men, and good and loyal subjects, whether in a private character, or as the Representatives of a free and loyal people. I design to mention some arguments which persuade me this negative is not clearly established, and I shall take so much notice of the arguments brought in support of it to examine whether they really prove what is intended.

It may not be improper first to lay down a few general principles which are universally allowed. It is agreed on all sides that the existence of a House of Commons is now as necessary and essential to our Constitution as the existence of a King and House of Lords. It is agreed that the Commons

being the Representatives of the people the people ought to chuse them, the King and Lords must not interfere in the choice, and any one duly chosen, and not by law incapacitated, the election cannot be set aside. It is agreed that the Crown must call the House, issue writs of election, and may adjourn, prorogue, or dissolve the House, but to reign without Parliament is contrary to the Constitution; to dissolve wantonly, and without cause, is not against the Constitution, but it seems an improper use of a very legal power. The design of a House of Commons is to be a check on the Prerogative, and to watch over the rights of the people. Prerogative is placed in the Crown that the people may not encroach on the rights of the Crown. By the wisdom of the Constitution every branch of the Legislature forms a mutual check upon the other, the people are a check upon the Nobility, and the Nobility upon the people, while the King is a check upon both, and his executive power is again checked and kept within due bounds by the two Houses, through the privilege they have of enquiring into, impeaching, and punishing the conduct of the King's evil Counsellors. The House of Commons is to consult for the good of the nation, and all monies give to the King are given only by the Commons; whatever is necessary for this purpose is their undeniable privilege, for, unless they may freely consult, and do that for which they are called together and constituted a House, the very purposes of their meeting must be defeated. I suppose therefore it will not be denied, as the Crown calls the Commons together for national purposes, the Commons so met must have a right or privilege to every thing that appears necessary to answer the purposes for which they are called and met together. This I take the true idea of the privileges of the House, and as the House cannot subsist nor act properly without them, to deny or curtail these privileges is attempting the abolition of the House itself, and of course destroying the Constitution. The fairest way therefore to judge of any claim of either branch of the Legislature is to consider the effect it may have on the other branches, and whatever clasheth with any known right or privilege of either King or any of the two Houses cannot be constitutional, whatever would prevent the Crown in the execution of those laws made by the Legislative cannot be supported, and if the Crown has any power that may restrain freedom of debate, or abridge the liberty of giving and granting in the House of Commons, or impede them in business, otherwise than by adjournment, prorogation, or dissolution, I cannot see how the House may be conceived free and independent in their deliberations.

I believe few men will deny any of these principles; let them be kept in constant view when we enquire into the question whether the Crown has a right to reject a Speaker duly chosen and presented for approbation.

The House of Commons must have a Speaker. All Assemblies met for consultation have found it necessary to place one over themselves to keep up order and regulate their debates; if 500 men were all to speak at once, and none have authority to call them to order, the voice of wisdom must be lost in noise, and prudent counsel swallowed up in confusion. Formerly both Houses are said to have had but one Speaker between them, but as both Houses became more distinct, and the Commons more important, they of course had a Speaker of their own, who is so necessary that ordinarily they do no business without him.

This Speaker they must either chuse themselves, or he must be placed over them by the Crown. "The Speaker of the House of Lords is the Lord Chancellor or Keeper of the Great Seal, or any other Appointed by the King's Commission; and if none be so appointed, the House of Lords (it is said) may elect"; *Blackstone*, vol. 1. p. 181. The Speaker of the House of Commons is chosen by the House, but must be approved of by the King, *ibid.* "It is true the Commons are to chuse their Speaker," *Coke*. How far the King's approbation is necessary is the question in dispute, but all agree that the Commons must chuse their Speaker, and it seems the choice is of more importance than presentation or approbation, because without choice there can be no such thing as either.

The Speaker chosen ought to be a person properly qualified. If every Member of Parliament ought to be independent and uninfluenced by any views of honour or interest but the public good, the Speaker ought to be so much more. He ought to be equally well acquainted with the privileges of the House and the rights of Prerogative, and of sufficient fortitude to act consistent with both on every occasion, neither courting popularity by disputing the just rights of the Crown, nor have an eye to gain or promotion by betraying any right of the subject. *The election of any Member to be Speaker is a solemn declaration of the House that they judge him the man best qualified for that business.* I believe it seldom, if ever, happened, that a Member was chosen Speaker the first time of his serving as a Member. A person is usually pitched upon who, from long experience, is well acquainted with the privileges and proceedings of the House, and of whose abilities also the House have had long and sufficient experience. The Speaker has been called

a servant of the House, and as the King has an undoubted right to chuse, and must be the best judge of his own servants, so the Commons are best acquainted with the character of every Member of their House, and thereby best able to judge who is the fittest for any particular business that may be assigned.

The Speaker sits in the House, not in the name or as a Commissioner of the King, but though his seat is a little raised as a Member upon a par with the rest, chosen and appointed by themselves; not to do any business for the King, but their business, to be their mouth, regulate their debates, and execute their orders; neither is he to have "eyes to see, or ears to hear, but as directed by the House."

It is not denied by any that the Commons must chuse, nor that their choice ought to be free, and it has been allowed that they are not obliged to chuse a person nominated or recommended by the Crown, supposing the Crown should think proper to recommend or make such a nomination, but as it has always been customary to present the Speaker so chosen to the King for approbation, it is hence concluded that the King may set aside the choice of his Commons, and reject a Speaker so presented. If the want of such a right of rejection had any apparent tendency to render some other absolute rights of the King more precarious, or to endanger his Crown or the Constitution, the King ought undoubtedly to have it, for he ought to have his right, and every thing that may legally secure it; if the exercise of that right, though not necessary to the King, might add to his greater dignity, and in no case whatever bring any danger to the subject, I would in mere decency make a compliment of it to the King; but if it should appear that the claim and exercise of that right had even a distant tendency to hurt the subject, and wound the Constitution, I would then wish that the King had and insisted to have all the just rights of his Royal Prerogative, and no more.

That I may treat the question in the most inoffensive manner, I declare that I mean not to write against the right claimed by the Crown; I only propose some doubts which I shall be glad to see cleared up, and with pleasure will I join all my fellow loyal subjects to acquiesce in any claim that may appear the constitutional right of the Crown.

As it is agreed on all hands the Commons must chuse their Speaker, in the very nature of things it seems implied that he whom they chose ought to be considered as Speaker. Whom are they to chuse? A Speaker. By whose authority are they to chuse him? By the King's command, and as the

Representatives of the people; if, after having thus received the King's command, and sitting as the Representatives of the people, they have chosen a man to be Speaker, the person so chosen is not what they chose him, it will be equally difficult to assert what it seems just as difficult to deny, that they made a choice, or that they had not authority to make the choice they actually have made.

It has been allowed "that the Commons may freely chuse whom they please for their Speaker," but asserted, "that the Crown, for its own preservation, has a right to reject an improper person," (*Georgia Gazette*, June 10.) By an improper person here must be understood one whom the Commons thought proper, but who is thought improper by the Crown. Now let any one ask himself whether he should think he enjoyed the right of freely chusing whomsoever he pleased for his own servant if another had the right to put a negative on the servant he had actually chosen, under pretence of being improper for the service of him by whom chosen, and thereby deprive him of his service at pleasure. To talk of a free choice, which yet may be controuled and annulled by another, seems inconsistent with the very nature of choice, and at most it can only be called a freedom to chuse upon condition that another do not invalidate the choice; if the person chosen be equally acceptable to him that chuses and to him that must approve, it matters very little by whom such a choice is made; but if acceptable and necessary only to those by whom the choice was made, I cannot see what their choice avails if it may be set aside at pleasure by another, perhaps too it might be set aside for that very reason because the person chosen is suspected of being more in the interest of those by whom he is chosen than may be consistent with the designs of him by whom he is rejected.

Those that chuse a Speaker to do the business of the House have first been chosen themselves to do the business of the nation; they are not met by their own authority, nor to do their own business, nor the King's business, but the business of the nation; they cannot debate the concerns of the nation without a Speaker to direct and regulate their debates; but it is of infinite concern to the nation that no man mislead, restrain, or impede their debates; a Speaker might do all this, and were he to do it to serve the Crown, it would be in vain to look to the Crown for relief, he would be a dead weight to them, and they unable to help themselves; it seems therefore that the choice of a Speaker by the Representatives should be as free and final as the choice of the people of the Representatives who are to chuse the Speaker.

The sitting of the Commons, though called by the King's writ; the privileges of the House, though prayed for of the King; the freedom of debate; are all matter of right, and not of favour; the very design of the House of Commons is to prevent too extensive or an undue influence of the Crown; if any proceedings of the House become matters of favour of the Crown, what becomes of the intrinsic right and authority of the Commons? A Speaker was excepted against, because, "if the King always should accept a person pitched upon by the House, then it would be no great favour to be chosen a Speaker." Here the exception against a Speaker was however sweetened with a reason being given; but if the Speaker holds his place, not by the choice of the Representatives, but by the favour of the Crown, it is then evident that the principal man in the House of Commons holds his place under the favour and influence of that very power to prevent whose too powerful influence, and restrain it within its proper bounds, is, or ought to be, the principal object of the Representatives of a free people.

The whole of the law and custom of Parliament has its original from this one maxim, that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged, in that House to which it relates, and not elsewhere, *Blackstone Com.* 1. 163.

In consequence of this the Commons may judge void the elections of Members already sitting, and declare those duly elected, who have not been returned so by the proper Officer; and it would seem strange if they, who have a right to judge of every election in the kingdom, should not have a right to chuse their own Speaker, if they were judges who is properly elected a Representative of the whole nation, and yet liable to have a negative put on a choice made by themselves of their own servant. The House of Commons have an undoubted right by their own act, and without any concurrence or interfering of the Crown, to expell any of their Members, the Speaker not excepted, for misbehaviour, the reason of which seems to be, as the Crown is not supposed to interfere in elections, neither ought it in expulsions; but if the Speaker holds his place by the King's favour and approbation, so as without that he is not Speaker "*pleno jure*,"² it would seem strange that the Commons should have a right to drive a man by their sole authority from a post where they never could have placed him without the King's command

2. ["With full right."]

and favour. To depose a man from a post which he could not hold, nor be chosen to, but with the King's approbation, seems to be a greater power than to chuse their Officer without the King's approbation.

If the King has a right to reject a Speaker chosen, he must hold that right either in virtue of some act of Parliament, or it must be a part of his Royal Prerogative; the former was never asserted, the latter is the subject in question.

Upon a supposition the King had a clear constitutional right to nominate, or even impose a Speaker, as soon as the House meets, that right seems clearly given up, by his ordering or giving the House leave to chuse a Speaker themselves. As it is said even the Lords may elect, unless the King appoints a Speaker for them, it seems clearly to follow that the King requiring the Commons to chuse, he means that the person by them chosen shall actually be Speaker, for they are not commanded to make choice of one or more persons of whom the King may chuse one, but simply and absolutely to chuse a Speaker for themselves. That the King does not interfere in the choice of a Prolocutor of the Law vocation, which has been called a Parliament in miniature, I conclude, because when Dr. Jane was preferred to Dr. Tillotson, King William did not reject, though certainly not as agreeable to the King's principles, as that excellent man Dr. Tillotson; and as elections are to be made, according to Coke, *sine prece*, without prayer or gift, so he observes they ought also to be made *sine praecepto*, without the King's command by writ or otherwise, and he saith an act for that purpose was a close and prudent salve, not only for that sore, but for all other in like case, and is but an act declaratory of the ancient law and custom of Parliament.

If we would argue from facts, but one instance has been produced where the choice of the Commons was excepted against, and none whatever where the Commons submitted to a rejection; but the case of Sir Edward Seymour will come in more fully hereafter. It is difficult to conceive how the House may preserve freedom in debate if they are not at liberty to chuse the person by whom these debates are to be directed. That they may chuse any man whom the King shall approve is in reality saying they may chuse no man but whom the King approves, and that would seem perfectly equivalent to they have no right to chuse any man but whom the King chuseth; the King will not approve of any person but who he is morally sure will enter into all his measures; if by any means, whether by influence, nomination, choice, refusal of approbation of any other, the King gets a man of such a cast in the chair

of the House of Commons, the King then has so far the direction, and a most powerful influence over the whole House.* It is only in behalf of such a Speaker that it can be the Crown's interest to contend. Such a Speaker, under pretence of calling to order, may interrupt the freedom of debate, and stop an enquiry into any mal practice or escape; by a sham sickness, or his absence from the House, an offender may escape; but, supposing the Crown should reject a Speaker, on account of his being too popular, or having too great an influence in the House, it would not only be treating the body of Representatives as men that are not able to judge for themselves, but it is apparent that the power of rejecting a man because he is popular and disagreeable to the Crown is as dangerous a power in the hands of a bad ruler as can well be imagined.

When a Speaker is presented to a King for approbation the King must either be willing that all things should continue and proceed according to the known Laws and Constitution of the land, or he must have contrary views; in the former case he can hardly have any motive or cause to reject any person that is presented, the Speaker alone can make no alteration, and if the Commons should attempt any thing against the Crown a dissolution would legally ensue; but should a ruler intend to make any alteration in the laws, a Speaker might be a proper instrument in his hand for that purpose. The King it should seem can have no reason or motive to reject any Speaker, but on a suspicion of his having a stronger bias to the popular side than to the just Royal Prerogative; but besides, that the King, in case of rejecting such a one, must also harbour very hard thoughts of his Commons, it is easily seen what such a power might lead to. Of a wise and good Prince

* That a Speaker may impede the business of the House in favour of arbitrary measures of the Crown we have a striking instance in the Parliament 1673; the Commons remonstrated against the marriage of the Duke of York with a Papist, which has been productive of so much mischief to the nation. "To cut short these agreeable attacks, the King resolved to prorogue the Parliament, and with that intent came unexpectedly to the House of Peers, and sent the Usher to summon the Commons. It happened that the Speaker and the Usher nearly met at the door of the House, but the Speaker being within, some of the Members suddenly shut the door and cried, *To the chair, to the chair*; while others cried, *The black rod is at the door*. The Speaker was hurried to the chair, and the following motions were instantly made—The alliance with France is a grievance—Evil Counsellors about the King are a grievance—There was a general cry, *To the question, to the question* but (behold now the benefit of a Speaker agreeable to Charles II.) the Usher knocking violently at the door, *the Speaker leapt from the chair*, and the Parliament being prorogued give the Duke leisure to consummate his marriage." *Rapin*.

nothing is to be apprehended, but against wicked or weak Princes, or rather pernicious and evil Counsellors, the people can never be too much upon their guard.

It is not to be supposed, when a Speaker is presented, his character and principles can be unknown to the King's Ministers, but supposing they were, I cannot see how that should be any ground for rejection; if he is known to be a fit tool the right of rejection will be immaterial, he will be sure not to be rejected; if known to be a man zealous for the just rights and liberties of the nation, a patriot Prince can have no thought to reject such an one; and that an arbitrary Sovereign, who will not reject a man of a contrary stamp, should have a right to reject the only man that is fittest to oppose him and serve the nation, I think a very dangerous part of the Prerogative, and I am at a perfect loss how to reconcile such a power with the spirit and design of the Constitution of a free people.

These considerations I must own strongly influence me to doubt whether the Crown has a constitutional right to set aside and reject a Speaker chosen by the Representatives of the people. It is but fair, however, to hear what has been said in support of this right, and I do not mean that the arguments in favour of it should lose any of their force in my hands, I mean to represent them in all their weight, and as to these arguments and my remarks *valeant quantum valere possunt*, let them go as far as they may.

Two writers have appeared among us in favour of this claim of the Prerogative; what Neuter advanced, like his signature, is nothing neither here nor there; but, as he talks of a contagious political delirium, I am much afraid he has been in the neighborhood of the contagion, however I wish him well over.

I intend to consider every argument of G. B. *si per gama dextra defendi potuissent hac vice defensa fuissent*.³ I dare say what books and arguments in this cause are not found with him will in vain be looked for any where else in this province.

Two passages have been quoted from Coke in support of this negative; Coke saith: "*The Commons shall present their Speaker in the Upper House to the King, who shall disable himself, and in most humble manner intreat the King to command them to chuse a more sufficient man.*" From this passage it is said

3. ["If the citadels of Troy were able to be defended by a right hand, they would have been defended by this one."]

to appear that the new Speaker in the face of the whole House of Commons admits a power of rejection in the Crown; but is not this rather a large conclusion from small premises? Does not the Speaker's intreaty that the King would order a fitter man to be chosen savour as much of compliment as any thing else? Does it not at least look as much like compliment as like an acknowledgment of the right of rejection? However, if this proves any such right, the argument I conceive must stand thus: The Speaker is to disable himself (i.e. plead his inability) and intreat the King to command the Commons to chuse a fitter man; therefore (because he pleads his inability, and wisheth a fitter man may be chosen) the Crown has a clear right to put a negative on any man the Commons shall chuse as their Speaker. I despair to convince that man of any thing, except what he himself pleaseth, who can be convinced by such an argument. Coke also saith:

It is true the Commons are to chuse, but seeing that after their choice the King may refuse him, for avoiding of expence and time, and contestation, the use is, (as in the congé d'eslier of a Bishop) that the King doth name a discreet and learned man, whom the Commons elect, but without their election no Speaker can be appointed for them.

The only expression in this passage that may be construed in support of his claim is, that the King *may* refuse. It has been observed that all this may mean no more than that the King may do it though he has no constitutional right so to do; and to this it has been answered, that Coke declares what he writes is grounded upon the authority and reason of books, rolls of Parliament, and judicial records, and that to make any objection against it is to make objections not against Coke, but (forsooth) against the Constitution itself; but as no book, authority, reason, parliamentary roll, or judicial record, has been produced older than this passage, I apprehend all this, notwithstanding what Coke saith with regard to the King's *may* may be bare narrative still, and no legal declaration of what the King may legally do; and I am the more inclined to doubt this matter, because I find Coke does not always speak like a Legislator, or one that declares the law; in this case, e.g. he saith every Member of the House being a Counsellor, he should have three properties of the elephant—that he has no gall—that he is inflexible and cannot bow—and that he is of ripe and most perfect memory. Now this seems a very good simile, but that any law declares a Member of Parliament should be like an elephant I still doubt, though I think all that write and

act in publick ought to be without gall, and all Legislators inflexibly right. I don't know when Coke wrote, but should any writer now assert, while the Parliament sits, the King has as much authority in the choice of their Speaker as in the election of a Bishop by *cong e d'eslier*, he would hardly be in any danger of receiving the thanks of the House; but perhaps these things may better suit the meridian of Georgia, and, great as the authority is, I presume it is no treason to say that the Constitution is now better understood than even a Coke explained it in the days of the Stuarts; and yet after all he expressly saith, though he seems to begin rather abruptly: True it is the Commons must chuse their own Speaker, and he cannot be appointed for them. All that was thought law in the days of Coke has not been thought so since.*

I am really surprised at the stress that has been laid on the case of Sir Edward Seymour, rejected by Charles II. in 1679. It has been said, "he was rejected," "the King never gave the matter up," "prorogued the House for a few days," "that the House dropt the matter, which it seems they had mistaken," "and proceeded to the choice of another person," (See *Georgia Gazette* for April 29, 1772:.) And again, (*Georgia Gazette* for May 13) "that the King asserted the right of nomination," "rejected one Speaker and nominated another," and, N. B. because, "the House declined to chuse him prorogued them," "that the House did not assert their right but chused Gregory," "and did not shew a want of publick spirit by impeding publick business, had they done so it is supposed Charles would have dissolved them, lest they should serve him the same trick that had been served his father: And again, (*Georgia Gazette* May 29) "that in the next session they repaired their mistake, and chose a different person." Now, whoever puts all this together will naturally conclude, that the Commons chose a Speaker disagreeable

* Sir Edward Coke, the great oracle of the English law, had not only concurred with all other Lawyers in favour of this Prerogative of dispensing power, but seems even to believe it so inherent to the Crown that an act of Parliament itself could not abolish it, because from the law of nature the King has a right to the service of all his subjects. *Hume's Hist. of England*, vi. 394. On this principle Papists may be made Counsellors in Grenada, and why not in England? and men of known loyalty and approved abilities may be rejected as Speakers. I dare say, however contemptibly G. B. may speak of those that do not understand an ambiguous passage of Coke as he does, he will never set his name to any proposition that with Coke declares the dispensing power legal. The Revolution, as Hume justly observes, having put an end to these disputes, the acquisition of real liberty shewed the danger of the subsistence of such a Prerogative.

to the King, whom the King rejected; that, on their not rescinding their choice, the King insisted on his having such a right, and never gave it up, but prorogued them for some days, and that then they dropt the matter, repaired their mistake, gave up their claim so far that now "it can't be said to be undecided," chose another person, and so all was well, the King's right established, and whoever now thinks and saith otherwise is a fiery Republican, and as bad (or nearly) as the Long Parliament. I do not mean to criticize upon this account given by an author of whom it has been said "that he writes unsoured by party, and with an apparent view to give candid information"; but I advise the reader next to peruse a different account given by two authors who have never been deemed partial, and who at least cannot be said to be influenced by our Georgia disputes.

Thus Rapin:

The Parliament began with a warm dispute between the King and the Commons about the choice of a Speaker. The Commons having chosen Mr. Edward Seymour, the King, who knew Seymour was a particular enemy of the Earl of Danby, refused his approbation, and ordered the Commons to proceed to a new choice. The House was extremely displeased with this refusal, alledging, that it was never known that a person should be excepted against, and no reason given, and *that the thing itself of preventing a Speaker to the King was but a bare compliment*. The King, on his side, insisted on the approbation or refusal of a Speaker when presented to him as a branch of his Prerogative. During a six days dispute, the Commons made several representations to the King, to which he gave very short answers. At last, as the Commons would not desist from what they thought their right, the King went to the Parliament, and prorogued it from the 13th to the 15th, that is, for one day's interval between the two sessions. The Parliament meeting the 15th, the King ordered the Commons to proceed to the choice of a Speaker; then, to avoid a revival of the dispute, they chose Mr. William Gregory, Serjeant at Law, who was approved by the King, *Rapin*, vol. 2 p. 703.

The account given in the Parliamentary Debates is still fuller:

The Chancellor, by the King's commands, ordered the House of Commons to proceed to the choice of a Speaker, who was to be presented to the King the next day, and being returned to their House, Colonel Birch did nominate and recommend the Right Honourable Edward Seymour,

Knight of the Shire for the county of Devon, Treasurer of the Navy, one of his Majesty's most Honourable Privy-Council, and Speaker of the last Parliament: Being a person acceptable to the King, and one who for his great integrity, ability, and long experience in the employment, was the fittest person for so great a trust. And Mr. Seymour being unanimously called upon to the chair, was conducted thither by Sir Thomas Lee, Sir Thomas Whitmore, and divers other members, and being there placed, he made a gratulatory speech to the House for their great kindness and affection towards him, in their unanimous choice of him: But still he desired the House that they would proceed to a new election, "For the long sittings of the late Parliament had so impaired his health, that he doubted he should not be well able to undergo the service of the House as would be expected from him:" But the House not admitting of any excuse, confirmed their choice, upon which *he desired leave*, "That he might intercede with his Majesty, that he would be pleased to discharge him of the duty."

But it appears, that he need not have been so urgent; for the King and the Earl of Danby taking this choice to be an ill presage, that this Parliament would begin where the last ended, were resolved not to approve of it: And as soon as he appeared to be presented, the Lord Chancellor stood up, and said,

That if his Majesty should always accept a person pitcht upon by the House of Commons, then it would be no great favour to be chosen a Speaker; and therefore his Majesty, being the best judge of persons and things, thought fit to except against Mr. Seymour, as being fitly qualified for other services and employments, without giving any reason to the persons chusing or the persons chosen.

And therefore he ordered them to fix upon some other person by tomorrow morning, to be presented to the King for his approbation. The Commons immediately returned back to their own House, where Sir John Ernly stood up and acquainted them, "He had orders from his Majesty to recommend Sir Thomas Meers to them to be their Speaker, as a person well known in the method and practice of Parliaments, and a person that he thought would be very acceptable and serviceable to them." But the House in a great heat cried out, *No, no!* and fell into a warm debate. Mr. Sacheverell said,

It was never known that a person should be excepted against, and no reason at all given, and therefore concluded, that it was done purposely to gratify some particular persons. Mr. Williams said for above a hundred years, it had not been known that a Speaker presented was ever excepted against; and the thing itself of presenting him to the King, as he humbly conceived, was but a bare compliment. Sir Thomas Clarges alledged, that there were Parliaments long before there were speakers chosen, and afterwards, for the ease of the House among themselves, they pitched upon a Speaker.—All our lives and liberties are preserved by this House, therefore we are to preserve the liberties of it. Mr. Garraway objected, if Mr. Seymour be rejected and no reason given, pray who must chuse a Speaker, the King or we? It is plain not we?—Sir Thomas Lee said, we address'd ourselves to his Majesty the last Parliament, as fearing his person to be in danger, but we received no answer at all in a whole week; we were immediately prorogued unexpectedly; and a little after dissolved, as unexpectedly: and I suppose, the same persons that gave that advice, gave this also.

Others concluded, that all this was only for a bone of contention, fearing they should agree, and so called to adjourn, which was soon agreed to.

These heats were so much the greater, because they reasonably supposed that it was all occasioned by the Earl of Danby; whose power was not wholly at an end; and between whom and Mr. Seymour there was a particular resentment. However, the first thing resolved on the next day, being Saturday, was,

That an humble application be made to the King, to acquaint his Majesty, that the matter yesterday delivered by the Lord Chancellor, relating to the Speaker, is of so great importance, that this House cannot immediately come to a resolution therein: And therefore do humbly desire his Majesty, that he will graciously be pleased, to grant some further time for this House to take the matter into consideration.

And they ordered the Chancellor of the dutchy, the Lord Cavendish, the Lord Russel, and Sir Henry Capel, immediately to attend his Majesty with this vote. Being returned in a short time, the Lord Russel acquainted the House, That they had attended his Majesty, who was sitting in Council; and that his Majesty, as soon as he was informed they were to wait upon him from the House immediately came out, and received them with great

chearfulness and kindness: And having delivered their message, his Majesty retired to the Council-Chamber, and coming out again, was pleased to return the following answer by word of mouth, which they had reduced to writing:

Gentlemen,

I have considered of your message, and do consent to a further time, which I appoint to be on Tuesday next, unless you shall find some expedient in the mean time; for as I would not have my *prerogative* intrenched upon, so I would not do any thing against the privileges of the House.

Upon the said Tuesday they drew up this humble Representation.

We your Majesty's most dutiful and loyal subjects, the Commons in this present Parliament assembled, do with all obedience return your Majesty most hearty thanks for the favourable reception, and gracious answer your Majesty was pleased to return to our late message; wherein your Majesty was pleased, not only to *allow us longer time*, to deliberate of what was delivered to us by the Lord Chancellor, relating to the choice of a Speaker, but likewise to express so great a care *not to infringe our privileges*. And we desire your Majesty to believe no subjects ever had a more tender regard, than ourselves, to the rights of your Majesty, and your Royal Prerogative; which we shall always acknowledge to be vested in the Crown, for the benefit and protection of your people. And therefore for the clearing all doubts that may arise in your Royal mind, upon this occasion now before us, we crave leave humbly to represent unto your Majesty, That it is the undoubted right of the Commons to have the free election of one of their Members to be their Speaker, and to perform the service of the House: And that the Speaker so elected, and presented according to custom, hath by the constant practice of all former ages, been continued Speaker and executed that employment, unless such persons have been excused for some corporal disease, which has been alledged, either by themselves, or some others in their behalf, in full Parliament. According to this usage, Mr. Edward Seymour was unanimously chosen, upon the consideration of his great ability and sufficiency for that place, of which we had large experience in the last Parliament, and was presented by us to your Majesty, as a person we conceived, would be most acceptable to your Majesty's Royal judgment. This being the true state of the case, we do in all humility lay it before your Majesty's view; hoping that your Majesty,

upon due consideration of former precedents, will rest satisfied with our proceedings, and will think fit not to deprive us of so necessary a Member, by employing him in any other service; but to give us such a gracious answer, as your Majesty, and your Royal predecessors, have always done heretofore upon the like occasions; that so we may, without more loss of time, proceed to the dispatch of those important affairs, for which we were called hither: Wherein we doubt not but we shall so behave ourselves, as to give an ample testimony to the whole world of our duty and affection to your Majesty's service, and of our care of the peace and prosperity of your kingdoms.

To this Representation the King immediately gave this short answer:

Gentlemen,

All this is but loss of time; and therefore I desire you to go back again, and do as I have directed you.

This giving no satisfaction to the House, the next day, March 12th, the Commons, after a warm debate, drew up this following Address:

Most Gracious Sovereign.

Whereas by the gracious answer your Majesty was pleased to give to our first message in Council, whereby your Majesty was pleased to declare a resolution, *not to infringe our just rights and privileges*, we your Majesty's most dutiful and loyal Commons were encouraged to make an humble representation to your Majesty upon the choice of our Speaker, which on Tuesday last was presented by some of our Members: We do, with great trouble and infinite sorrow, find by the report made to us by those Members, at their return, that your Majesty was pleased to give us an immediate answer to the same, without taking any further consideration; which we are persuaded, if your Majesty had done, what we then offered to your Majesty would so far have prevailed upon your Royal judgment, as to have given your Majesty satisfaction in the reasonableness of our desire; and preserved us in your Majesty's favourable opinion of our proceedings. And since we do humbly conceive, that the occasion of this question hath arisen from your Majesty's not being truly informed of the state of the case; we humbly beseech your Majesty to take the said representation into your further consideration, and give us such a gracious answer, that we may be put in a capacity to manifest our readiness to enter into these

consultations which necessarily tend to the preservation and welfare of your Majesty and your kingdoms.

Upon reading this address to the King, he immediately gave this quick and sharp return: *Gentlemen, I will send you an answer to-morrow.* Accordingly, as he had often done before upon great difficulties, he resolved to put an end to the dispute; and on the next morning, being Thursday the 13th of March, he came to the House of Peers, and sending for the Commons, he immediately prorogued the Parliament till Saturday following, after the Commons had sat without a Speaker but six days. And thus the King found a way to gain his point, but with very little advantage to his own business and affairs.

On the appointed day, March 15th, his Majesty came to the House of Peers in his Royal robes, and the House of Commons attending, his Majesty was pleased to put both Houses in mind of what he said to them at the opening of the Parliament: And then the Lord Chancellor, by the King's command, directed the Commons to return to their House, and to proceed to the choice of a Speaker. And being returned, the Lord Russel put the House in mind of the King's commands, and immediately recommended William Gregory Sergeant at law, *as a person, for his great learning and integrity, fit for the employment.* And Mr. Sergeant Gregory being unanimously called upon to the chair, he in a short speech modestly excused himself, and desired of the House, that another might be nominated; but no excuse being admitted, he was formally conducted to the chair, by his two intimate friends, the Lord Russel and the Lord Cavendish, and there confirmed in the place.

"On the Monday following, he was presented by the Commons to the King, in the House of Lords, who without hesitation approved of the choice."*

* Sir Edward Seymour having so often been mentioned in this debate, it may not be amiss to take some notice of his character as drawn by Burnet, and of his behaviour as Speaker. In pride he had neither shame nor decency: He was violent against the Court till he forced himself into good posts: He knew the House, and every man in it, so well, that by looking about he could tell the fate of any question: He was the most assuming Speaker that ever sat in the chair: If any thing was put when the Court party was not well gathered together, he would have held the House from doing any thing by a wilful mistaking or misstating the question: by that he gave time to those who were appointed for that mercenary work to go about and gather in all their party, and he would discern

I shall not make many remarks on these accounts, but I cannot forbear observing that the only instance where a Speaker appears rejected by the Crown was in the reign of a Stuart, when there was a settled design against the religion and liberties of the nation, which is far from being a presumption favourable to such a claim; even then the King does not reject *ex plenitudine potestatis*,⁴ but assigns *as a reason* that Sir Edward Seymour was proper for other services; and yet the Commons tell the King, that to chuse their Speaker without being deprived of their choice is their undoubted right. When Charles recommended another as one who he thought would be very acceptable and serviceable to them, they cried, No, no, and never would nor did chuse him; the King wisheth then to find an expedient, did not insist on his nomination, but prorogued them for a single day, which was plainly done to compromise the matter; when they met again, he recommended nobody, but Lord Russel, who afterwards fell a martyr to liberty, nominated Gregory, who was unanimously chosen, and formally conducted to the chair, and there confirmed in the place, and Monday after the King approved of him without hesitation. Burnet, in his memoirs, expressly saith

when they had got the majority, and then he would very fairly state the question when he was sure to carry it. It is most likely that in favour of such a man the Court party would exert all their influence to get him chosen, and very improbable that being chosen the Commons would so strenuously have opposed his rejection, if they had not thought it illegal and a dangerous precedent, but from this very instance it appears to demonstration how essential it is to the regularity, freedom, and just issue of national debates, that no such Speaker should by any means be obtruded, or one of a contrary stamp be rejected. The Commons maintained their claim as long as they were suffered to continue, and till a prorogation put an end to all their proceedings. At the next session they might be the more unwilling to revive their former choice because they could easily fix upon a better man, Gregory was then chosen, and in the two succeeding Parliaments that very Williams who had asserted that the presenting the Speaker to the King was a bare compliment; the King did not shew any resentment, but approved of him without hesitation. The true reason of Seymour's rejection, who had been Speaker before, was this: The Earl of Danby expected to be prosecuted for things done by the King's order; the King, in order to secure him, granted him a pardon in a very illegal manner; Seymour was looked upon as Danby's enemy, and it was thought too dangerous that upon this occasion he should be Speaker; hence the King rather excused himself for not admitting than harshly rejected him; and thus it appears that this rejection was made with a manifest view to obstruct publick justice, and as the right of rejection was never claimed nor contended for but upon this single occasion, it does not seem to derive any merit from the only instance when it was pleaded.

4. ["From the fullness of his power," i.e., arbitrarily.—Tr.]

the point was settled, that the right of electing was in the House, and that the confirmation was a thing of course.

The argument, that if the King has no right to reject he may be under a necessity of admitting disagreeable persons into his presence, as persons may be chosen disaffected to his Majesty's person and government, of which Wilkes being made Sheriff is given as an example, I cannot think of any great strength. I suppose the law calls no man disaffected who takes the oaths prescribed by law, and if any should be personally disagreeable to the King there is no necessity for his coming into his presence. Wilkes I believe never did, but I conceive the Constitution disables no man to serve his country in any place not in the gift of the Crown merely because he may be disagreeable to the King. The same Parliament that chose Seymour deputed Lord Russel to the King, who never was a friend to the King's measures, and yet Charles had more grace than to receive him otherwise than politely. The right of rejecting a disagreeable person can be of no manner of service to the Crown, unless it may be exercised as often as a disagreeable person is chosen. Supposing the case to happen, it can hardly be expected that a House so ill disposed as to chuse a disagreeable person at first would become so good-natured, by the affront of a rejection, as to chuse a person more agreeable in a second election; or, supposing elections were repeated till the Commons gave way and chose a person perfectly agreeable to the Crown, what must be the natural consequence to the people? it can be no other than an express introduction of a Member would have to represent the King. The Speaker is not the King's Representative, but if the Crown insists none shall be Speaker but one that will obey the orders, or, which may be just the same, is agreeable to the King, he might as well; in that case the King would have an Officer in the House, introduced, not by bribery and corruption, but by refusing to approve any other, and he might have the casting vote in a place where he ought to have no vote at all.

That to present a Speaker for approbation implies a right of rejection has been alledged with greater shew; but that it is the Commons choice, and not the King's approbation, that constitutes the Speaker, seems very plain, because he is placed in the chair immediately after the election, and sometimes acts as such some days before he is presented and approved of by the King. It would be very indecent to vest him in the office, and place him in the chair, if after all the King's negative might set aside the choice; and I would apply here what Sir R. Atkins saith with regard to a form observed at the same time when the Speaker is presented, "*That humble and modest way*

of the people's addressing their Sovereign,—for granting privileges," (of which the right to chuse and have a Speaker seems necessarily one) "*shews great reverence and becomes the majesty of the Prince to be addressed to: but let it not be made an argument that either the laws thereupon made, or the privileges allowed, are precarious, and merely a favour, or may be refused them of right.*" There are many presentations in law which allow not of rejection. The usual privileges, without which the House cannot act nor subsist, must be asked for; but as this is a petition, not of favour, but of right, so it seems the approbation of a Speaker is as much so. If the Constitution requires some applications to the King it also obliges the Crown never to put a negative on some applications. The new Speaker humbly *prays* for the privileges of the House, but should any Prince be so ill advised as to look upon that application as a matter which he may refuse, he might perhaps be informed that such a refusal implied no less than a breach of the original contract between him and his people, and that in this case it would be in vain to say that the power of giving (or approving) also implies a power of refusing.

It has been said that this claim of the Crown was but once denied by Parliament; I believe it was always denied; but it might as well have been said it was but once claimed by the Crown. Some weight is laid on the circumstance that a Speaker was recommended as acceptable to the King, but it seems the King also recommended a man as one whom he supposed very acceptable to Parliament. When a superior recommends to an inferior it is no argument that those to whom he recommends have not a final choice. That a person (*caeteris paribus*)⁵ is acceptable to the King may be no improper recommendation to or motive with his electors.

To establish this claim of the Crown, it has been observed, that Speakers have been disallowed, like Sir John Popham; but the case amounts to no more than his excuse was admitted; formerly every Speaker begged leave of the House that he might excuse himself to the King; this request of leave seems rather a proof that the election of the House is looked upon as final than otherwise, and Popham, though his excuse must have been very good, appears the only instance in which it was admitted, and cannot be of much weight against so many instances where no excuse was allowed. It is very certain the King did not approve Seymour, but it is not less so that, in order to get rid of the choice, he was obliged to prorogue the House, and that all he gained is, that the commons did not revive the dispute. The acquiescing of the Representatives

5. ["With other things being equal."]

of New England under a negative put on their choice is entirely owing to the tenor of their charter, and I am still of opinion that what rights the King reserved to himself in that charter are not such as are the undoubted prerogative of the Crown, but such as every Assembly or Parliament has a just claim to where the contrary is not expressly stipulated by charter.

It has been advanced, that "*when the King gave the Commons leave to chuse a speaker he reserved to himself the right of rejecting a Speaker that might be disagreeable to him, and that there was a compact between the King and Commons for that purpose.*" This would be a strong argument indeed; but when and where was that compact made? What author or historian speaks of it? What authority is cited in proof of it? "*Why it is natural to conclude,*" but is it not as natural to conclude that, because no traces of any such compact are to be found, and that the Commons always regularly chose their own Speaker, and that not even an attempt was ever made to reject him, but in the case of Sir Edward Seymour, and that then the King never made any mention of such an original compact, but submitted to have his own nomination treated with a negative, and approved of one chosen in opposition to his own former recommendation, that therefore no such compact ever existed? And as this country is very "scarce of books," I am clearly of opinion *that book is not on this side of the water where this compact stands upon record, but if a copy, or direction where this compact may be found, is left with the Printer, it shall be duly acknowledged, and, if the owner chuses it, a promise given that his name shall not be mentioned.*

I ought to take notice of one argument more, (*Georgia Gazette June 24:*) "*If the Massachusetts-Bay hold their provincial Legislation under charter, do not we in this province hold it under his Majesty's commission and instruction to his Representative? And if that charter has reserved the power of negation upon their choice of a Speaker, will not the commissions and instructions to the Governor of this province have the same effect!*" I conceive a very great difference between his Majesty's instructions and charters; an Englishman I should think entitled to English laws, which I suppose implies Legislation any where and every where in the British dominions; that this right is prior to any charter or instruction, and is held not by instructions to a Governor, but is his natural right, which nothing but outlawry can deprive him of. Whatever is not law cannot be binding upon a British subject, and I suppose no man will say that, because the King has an undoubted right to instruct his servants, that therefore he has also a right to give instructions

contrary to the Constitution, or derogatory of the right of the subject; such an instruction a Governor might look upon as a law to himself, but it is only the King can do no wrong, and the reason is plain, because the King can do nothing against law or the Constitution.

It has been said that a Speaker may have an undue influence to the prejudice of the Crown; but he can *have* no undue influence as Speaker before he is really such, and it *cannot* appear that he has any undue influence before he has actually entered on his office, and in this case the Crown is sufficiently guarded by its indisputable negative on every act of Legislature, and of dissolution whenever it shall be thought necessary. By this also it would seem as if the Crown had a right to reject a Speaker actually approved of whenever his influence should become disagreeable, which doctrine I believe is entirely new, perhaps not free from danger.

The Assembly of this province sometimes consisted only of 19 Members; 9 then made a House, and 5 a majority; as the number of Representatives increased it was thought necessary that the number to constitute a House should be increased in proportion; 19 now make a House, and 10 a majority, to do any business relating to the province. The remark that the strenuous advocate of the right of negative makes upon this alteration is this: "Such resolutions (which by the way were unanimous) could be made with no other view than the putting it in the power of a few leading men to impede the publick business by a secession whenever they pleased; which remark, as I suppose it had not been made had any Assembly subsisted, so every reader will judge with what justice and temper it was made. That he wishes 5 men might have the power rather than 10 is self-evident, and that 1 man may more easily influence 4 or 5 than 9 or 10 need not be doubted.

I shall conclude with a citation from a debate in the House of Lords in 1675:

The Lords plainly spoke out, That men had been, might and were likely to be, in either House, too much for the King, as they called it, and that whoever did endeavour to give more power to the King than the law and Constitution had given,—might justly be said to do too much for the King, and to be corrupted in his judgment by the prospect of advantages and rewards, though when it is considered that every deviation of the Crown towards absolute power lessens the King in the love and affections of his people,—a wise Prince will not think it a service done him.

“A Planter” [Edward Long],
Candid Reflections upon the Judgement on
What Is Commonly Called the Negroe-Cause
(London, 1772)



WITH THE exception of Arthur Lee's 1764 pamphlet (see Selection 66), the infrequent attacks on the colonial system of chattel slavery elicited relatively little response from colonial protagonists. But this general silence on the relationship between settler self-conception as freeborn Britons and the massive employment of slavery in many colonies and its legal toleration in them all was broken in 1772 in the wake of the Somerset Case. The decision of the Court of King's Bench at Westminster to free the slave Somerset, while it applied to Somerset only, had wide implications for the integrity of the slave system as it had developed in the colonies. The key protests, two of which are published here (see Selections 65 and 73), came from West Indians resident in Britain, among them the Jamaican Edward Long, scion of an old Jamaica settler family, who had been a member of the Jamaica Assembly and a longtime resident of the colony and was on the verge of publishing a three-volume history of Jamaica.

Reaffirming and extending all the conventional arguments British people had used to justify the enslavement of people in the colonies, including prior enslavement, racial and cultural inferiority, climate, and profitability, Long was principally concerned to examine how far “the late judicial sentence may be consistent with the spirit of *English law*” and “compatible with the spirit of *English commerce*.” He did not deny that English law favored “liberty,” but he argued that slavery represented an extension of the ancient

English institution of villeinage that, long after it had disappeared in the metropolis, had “sprung up in the remoter parts of the English dominion, the *American plantations*,” where it had been introduced and sustained to meet the demands for labor and commerce of the sort that had previously “extinguished it in the mother state.” From the beginning, Long observed, the slave trade had “esteemed Negroe labourers merely a commodity, . . . fit objects of purchase and sale, transferable like any other goods and chattels.” Supported by many acts of the British Parliament, which he recited in detail, this idea had been adopted by slaveholders, who always “conceived their right of property *to have and to hold*, acquired by purchase, inheritance or grant, to be as strong, just, legal, indefeasible, and compleat” as that of any Englishman to any of his property in any part of the world. Because slaves were property, Long contended, they had no more right to the protections of English freedom than had ancient English villeins, to whom, he took pains to show, Magna Charta did not apply. At the same time, he wrote, British slaveholders, as “natural-born subjects of the realm,” were “rightfully and lawfully entitled to equal protection, and in the fullest extent, with respect to their goods.” Their property rights, he thus suggested, required the continued denial of freedom to slaves.

If this was an undesirable condition for a country that prided itself on being a beacon of liberty in an otherwise unfree world, and if he hoped that commerce would eventually render slavery obsolete, much as it already had done with English villeinage, Long repeatedly reminded his British readers of the complicity of metropolitan Britain in the slave trade and the colonial slave system. “The whole nation,” he declared, “may be said [to be] in some way or other interested in the advantages drawn from this trade, and to participate a benefit from the sweat of the Negroe’s brow.” (J.P.G.)

CANDID REFLECTIONS
Upon the JUDGEMENT
lately awarded by
THE COURT OF KING'S BENCH,
IN
WESTMINSTER-HALL,
On what is commonly called
THE NEGROE-CAUSE,
BY A PLANTER.

*"Misera est servitus ubi jus est vagum aut incognitum."*¹

LONDON:
Printed for T. LOWNDES, N^o 77, Fleet-Street
M DCC LXXII.
Price One Shilling and Six Pence.

1. ["Unhappy is the slavery where the law is vague or unknown."]

Advertisement.

The invention of printing (if I mistake not) has been ascribed to a *soldier*, of gunpowder to a *priest*; perhaps the longitude may be discovered by a *taylor*; but the art of *washing the Black-a-moor white* was happily reserved for a *lawyer*: the thing that *Solomon* thought impossible when he said, "Can the *Æthiop* change his skin?" What the wise *Æsop* esteemed a prodigy in nature; has, in the present wonder-working age, ceased any longer to be *miraculous*. Already has the fame of this stupendous transfiguration occasioned some few *Caboceroes* here to almost *jump out of their skins* for joy. The name of **** M—— shall henceforth become more popular among all the *Quacoes* and *Quashebas* of *America*, than that of patriot *Wilkes* once was among the porter-swilling swains of *St. Giles*.—But hold; as I am about to engage in a conference with divers grave sages of the law, it becomes me to be serious:—with all bounden humility, therefore, I receive the cup of this new *specific lotion* from their hands, and with much diffidence prepare myself to examine if its ingredients and concomitants are such, as that it may safely be administered at this time without impairing the healths of our dear mother country and her children, of whom I profess myself to be one; yielding to none other of the family in filial duty and obedience, though less distinguished (perhaps) by maternal favour, as being

A PLANTER.

Candid Reflections, &c.

Sect. I.

The cause of *Somerset* a *Negroe*, lately adjudged upon in the Court of *King's Bench*, was so far from giving any disgust to the *West India Planters* residing in this kingdom, that they were all along desirous of having it brought to a solemn issue; in order that a question of so much importance to them, might be finally settled upon clear principles of law. It is true, they would have received much greater satisfaction, if the learned Lord, who pronounced the judgement of the Court, had expatiated more amply on the grounds whereon it stood; because, as it seems to differ so widely from the sentiments of some other men of unquestioned ability and skill in the law, who formerly exercised judicial offices with the highest reputation for their

knowledge, a more precise and full explication appeared requisite, to destroy the force of such great authorities. Lord Mansfield seemed to owe such a liberal discussion, not more to the character of his predecessors on the Bench, than to the expectations of the public, who were deeply interested in the event of the cause: but his Lordship thought the point, though hitherto involved in doubt, so extremely clear and plain, as to demand no aid of reasoning to make it as obvious to the people in general as it was to himself. Yet his Lordship might have reflected, that every man is not blest with such distinct and quick apprehension, such brilliant endowments of genius, as distinguish him. The unlearned Planter is still left in ignorance of the reasons upon which his Lordship's judgement proceeded. It would be presumption in an obscure writer, to deny that this determination is built on sound law; I shall only endeavour to point out some of the many inconveniences which may result from the now established doctrine of our Law-courts, in respect to Negroes accidentally coming into the kingdom; to mention some of the reasons which have led the Planters to suppose, that their Negroes were not entitled to a remedy by *Habeas Corpus*² in the unlimited sense now declared; to shew that they are not culpable for having in several instances sought to repossess their fugitive slaves; and, lastly, to demonstrate the necessity there now is for the interposition of *Parliament*, not to overthrow, but to regulate this law *dictum*, and render it more conformable to the principles of British commerce. A nation supported wholly by its trade, cannot long continue to flourish if the laws of her commerce are set at variance with her municipal laws. The necessities attendant upon the former must either counteract the operation of the latter, or they must be so reconciled with one another as to prevent the vital existence of either from being destroyed. The condition of *villinage* in England was not abolished by any positive statute, but grew into desuetude by the gradual extension of our national commerce, and the introduction of wealth and independance, by this means, among the inferior orders of the people. On the decline of *villinage* within the realm, a species of it sprang up in the remoter parts of the English dominion, the *American plantations*; clearly introduced by the very same enlarged commerce which had extinguished it in the mother

2. [Literally, "You have the body," i.e., a writ directing the sheriff that "you have the body" for confinement and are required to produce a charge in court to justify imprisonment.—Tr.]

state. In these colonies it has, through an inevitable necessity, been sustained and continued; because it could not be laid aside without absolute loss of great part of that trade, and of those national emoluments, the prospect of which first gave birth to it. As our trade esteemed Negroe labourers merely a commodity, or *chose* in merchandize, so the parliament of Great Britain has uniformly adhered to the same idea; and hence the planters were naturally induced to frame their colony acts and customs agreeable to this, which may be termed the *national sense*, and deemed their Negroes to be fit objects of purchase and sale, transferrable like any other goods or chattels: they conceived their right of property *to have and to hold*, acquired by purchase, inheritance, or grant, to be as strong, just, legal, indefeasible, and compleat, as that of any other British merchant over the goods in his warehouse. Finding this to be consentaneous to the national opinion, implied in sundry acts of parliament, they could not entertain a notion that their Negroes, who are by those statutes expressly declared *merchandize*, should, by a strained construction and refinement of other statutes by the courts of law, be proclaimed *subjects of the realm*, and held entitled to all the rights, liberties, and privileges of natural, or free-born subjects. At the utmost they supposed, that the Law-courts would place this class of men in no higher degree of franchise than was allowed under *Magna Charta*, and the subsequent statutes passed in confirmation of this Great Charter to *villeins*.

In ancient times were many efforts made towards liberty; but they were only struggles between the prince and his wealthier subjects, without any respect to the inferior class. The *Magna Charta*, extorted* from King *John* in *Runne Mead*, was merely an accommodation with the barons, clergy, and freed burghs, that is, the *liberi homines*:³ the king says, "We have granted and given to all the *freemen of our realm*, for us and our heirs for ever, these liberties underwritten; to hold to them and their heirs, against us and our Heirs, for ever." Here is a plain *designatio personae*:⁴ the king grants all the liberties enumerated in this charter, and confirmed by subsequent statutes, to the *freemen of his realm*, in contradistinction to *villeins*, or those who were *unfreed*. *Voltaire* well observes on this statute, that mention is made in it of the *freemen*

* Blackstone's Com. vol. i. p. 123.

3. ["Free men."]

4. [Literally, "The designation of a person," i.e., the description of a person as a party in a legal document such as a contract.—Tr.]

of England, a melancholy proof that all were not so; and by the *thirty-second* article it appears, that even these *freemen* owed service to their lords; a liberty which was not many removes from slavery. The statute *25th Edward III. cap. iv.* is an exposition on *Magna Charta*, and thus describes its grants:

Whereas it is contained in the Grand Charter of the franchises of England, that none shall be imprisoned, nor put out of his freehold, nor free custom, unless it be by *the law of the land*; it is enacted, that *none* shall be taken by petition or suggestion made to our lord the king, or his council, *unless* it be by indictment, or presentment of his good and lawful people of the same neighbourhood in which such deed shall be done, in due manner, or by *process made by writ original at the common law*.

The *Lex Terrae*⁵ mentioned in the Great Charter, is here expressly defined, and explained to be the writ of *Habeas Corpus* by common law, to which Villeins as well as Freemen were entitled, as I shall hereafter shew. The statute of *twentieth* of this Prince, declares, "That *every man* may be free to sue for and defend his right in the king's courts, and elsewhere, *according to law*." And the statute *twenty-eighth*, "That *no man of what state or condition that he be*, shall be put out of land, or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought to answer by *due process of law*."

This king confirmed *Magna Charta* no less than ten different times; yet the condition of Villenage in the kingdom still remained much the same as before, and in point of severity not at all mitigated. A statute passed in his *twenty-fifth* year directs, "That Villenage may be pleaded, and the body of a Villein be seized by his lord, though a *libertate probanda*⁶ be depending." Another enacts, that, "If a labourer or servant shall flee to any city or town, the chief officer thereof shall, upon request, deliver him up to his master." A third, that, "If they depart from their masters' service into another country, they shall be burned on the forehead with the letter *F*." These afford a sufficient proof of the severe bondage then existing, and that neither *Magna Charta*, nor these several statutes reiterating or confirming it, respected the class of people called Villeins, any further than to protect them in the

5. ["Law of the land."]

6. [Literally, "Liberty about to be approved," that is, a writ directing the sheriff to bring before the court the case of a defendant who claims to be a free man against the assertion of another party to the contrary.—Tr.]

enjoyment of the only right almost that they had by the *Lex Terrae*, or common law, that of not being detained in prison *without some cause shewn*. These several statutes of *Edward III.* relative to the liberties of the subject, conferred no new ones, but only declared and recorded the sovereign's assent to what they anciently enjoyed; so far, and no farther, were Villeins within their purview. In this sense they were understood and expounded by *Sir Edward Coke*, *Mr. Noy*, *Mr. Selden*, *Mr. Pym*, and others, the greatest lawyers and patriots of their age, who contended so successfully to obtain a fresh confirmation of them in 1628 from *Charles the First*, and which he reluctantly granted in answer to the Commons *petition of right* in that year. *Sir E. Coke*, at the conference with the House of Lords upon this subject, observes, that *King Edward revived* these antient laws, but did not *give* them. The same celebrated lawyer, in the debates which then arose in the Lower House, has pointed out the distinction between the *freemen* the particular objects of these statutes, and the *villeins*, or slaves, who derived no other advantage from them than what has been mentioned. "Whosoever is a bondman," says he,

may be imprisoned upon will and pleasure. No man can be imprisoned upon will and pleasure but he that is a Bondman and Villein. For imprisonment and bondage are *propria quarto modo*⁷ to Villeins. If *freemen* of England might be imprisoned at the will and pleasure of the king, or by his commandment, then were they in a worse case than Bondmen or Villeins; for the lord of a Villein cannot command another to imprison his Villein *without cause*, as of *disobedience*, or *refusing to serve*; as it is agreed in the year books.

And he cited two authorities; the first was *7th Edw. III.* A prior had commanded one to imprison his Villein; the judges were ready to bail him, till the prior gave his reason, *that he refused to be bailiff of his manor*; and this satisfied the judges. The second case was *33d Edw. III.* occurring many years subsequent to the statutes of confirmation before cited: it was of an abbot, who commanded one to take and detain his Villein; but the cause being demanded, he answered, because *he refused, being thereunto required, to drive*

7. [Literally, "Matters appropriate to the fourth mode." A formal term of logic, in this case, describing what is characteristic but not essential to an individual or group such as laughter to human beings.—Tr.]

his cattle; and this was deemed a good cause. *Ergo*, says Sir Edward Coke, *freemen* imprisoned without cause shewn, are in worse case than *Villeins*, who must have cause shewn why they are imprisoned. Mr. *Creswel*, a member of the House of Commons at this time, observed, that the *common law* favoured the liberty not only of *freemen*, but even of the persons of *bondmen* and *villeins*, who have no right of property either in lands or goods, as *freemen* have; and therefore, by *common law*, a lord could not maim his *Villein*; nay, if he commanded another to beat his *Villein*, and he did so, the *Villein* should have his action of battery against such person for it. The Commons, in their petition of right before mentioned, set forth; that, "Whereas by the Great Charter it is enacted, that no *freeman* may be taken or imprisoned, &c." And by Stat. 28th *Edw.* III. it was enacted,

that *no man*, of what estate or condition soever that he be, shall be put out of his lands or tenements, or taken, or imprisoned, &c. without *due process of law*; nevertheless, against the tenor of these and other good laws and statutes of the realm, *divers subjects* had of late been imprisoned, without any Cause shewn, &c.

To the same effect is the resolution of the House, whereon their petition was grounded; viz.

Resolved, that no *freeman* ought to be committed, or detained in prison, or otherwise restrained, by command of the king, or the privy council, or any other, unless *some cause* of the commitment, detainer, or restraint, be expressed; for which, *by law*, he ought to be committed, detained, or restrained.

These are all so many concurrent testimonies to prove,

That *freemen* were alone the chief objects of these statutes; that the remedy sought for by them was, that the subject might not be imprisoned, or detained, without some cause expressed.

That neither *Magna Charta*, nor the statutes of confirmation, impeached the power which a master exercised, of imprisoning his *Villein*; but, on the contrary, that other statutes were passed contemporary with the latter, to aid and enforce this power.

That they only confirmed (if in any thing) the Provision which the *Villein* held under the law of the land, and which ordered, that his body might not be kept in a lingering, rigorous, and cruel confinement in prison, there

tabescere et macescere,⁸ whereby the state would be deprived of all benefit from his personal labour.

That the Villein's process at law obliged the master to produce, before a competent judge, the *cause* of such Imprisonment; to the intent, that the body of the Villein might be discharged, if no cause appeared sufficient to justify the detainer; or *remanded*, if the cause was satisfactory and legal.

That, although the common law so far favoured a Villein, as to allow him an *Habeas Corpus cum causa*,⁹ yet, when the cause of imprisonment appeared, on return of the writ, to be a *refusal to obey and do service to his master*, he was remanded back to confinement; and this refusal to serve, was held by the judges a *legal cause* of caption and detention; and that he had no further remedy, *by law*, against the claim of his master to his personal services.

The statute of *Habeas Corpus*, passed in the reign of *Charles the Second*, must be taken collectively with those preceding statutes, which it was meant to confirm anew; it makes the deliverance upon bail more immediate and certain than it was before, by the process at common law. The letter, spirit, and intention of this, as of the former, were to prevent illegal imprisonment; or, in other words, an imprisonment *without some cause shewn and expressed*. The *twelfth* section, which applies more particularly to the case now under consideration, expressly says, "And for preventing illegal imprisonments in prisons beyond seas." These are the governing words of the clause, and clearly explain the nature of the remedy afterwards given, and to what persons. The enacting words of the clause follow;

That *no subject of this realm*, who is an inhabitant of England, Wales, or Berwick, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, or parts beyond sea, within the king's dominions; and every such imprisonment is hereby adjudged illegal, and the party injured may have an action of false imprisonment in any of his majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner, or transported, *contrary to the true meaning of this act*.

8. ["To waste away and degenerate."]

9. [Literally, "That you have the body with a stated cause," i.e., for detainment to be presented in court.—Tr.]

Although the laws affecting Villeins remained unrepealed, yet there was no necessity for this statute to apply itself expressly to the *freemen* of the kingdom, as in the preceding statutes had been the case; for at the time when it passed, there were no Englishmen within the realm in a state of Villenage, properly so called: But as there is no reason to believe, that Negroe-slaves belonging to our Plantations, were then considered as *subjects of the realm of England*; so it does by no means clearly appear, that they were within its purview; and therefore, we may venture to coincide with Mr. Justice Powel, “that the law takes no notice of a *Negroe*”; that is to say, this class of people were neither meant, nor intended, in any of the general laws of the realm, made for the benefit of its genuine and natural-born subjects. The Planter, therefore, deducing his conclusions from this principle, seemed warranted in supposing, that a Negroe-slave coming from one of our colonies into this kingdom, could be entitled under the before-recited laws and statutes; if to any, to no other privilege or remedy than were formerly assigned here to a similar class of inhabitants; and though, perhaps, vested, by the spirit of our common and statute law, with a right to his *Habeas Corpus cum causá*, yet neitherailable nor deliverable, if the cause returned should be, *his refusal to serve his Planter-master*, in any lawful employment.

Sect. II.

The nature of the West India climate, and the impossibility of clearing and cultivating the soil there, by any other than Negroe labourers, as it was first the occasion of employing them, so it must ever remain, as long as our colonies exist; because, this natural necessity is not to be cured by any alternative. Some writers have affirmed, that the sugar islands were first cultivated by white men, who shewed no unfitness for labour there, before Negroe-slaves were introduced; but these authors deal in reveries, and seem entirely ignorant both of the subject and the climate they treat upon. According to *Ligon's* account, the English, who first settled at *Barbadoes* about the year 1625, found the woods so thick, most of the trees so large and massive, that they were unable to clear the ground of them; by which means, he says, that *twenty years* afterwards he found potatoes, maize, and bonavists, planted between the boughs, lying along upon the surface. Potatoes, corn, and pulse, were all they were able to plant for subsistence; and these, with the wild hogs they occasionally slew, *served only to keep life and soul together*. The only

produce they could cultivate, for export, was, tobacco; which (probably for want of sufficiently cleaning the ground) turned out so worthless as to yield no profit at the English market. The prolific quality of the land, then fresh and unimpaired, made some little amends for want of adequate culture; or otherwise, they would, in all likelihood, have been destitute of any vegetable crops for their support: yet fewer hands were at that time required to cultivate the soil than afterwards; for, on their first forming their sugar estates, one hundred Negroes could manage the largest plantation in the island. Nothing effectual was done, towards a profitable settlement of the island, until after the introduction of Negroes; by whose better capacity for field labour, it became so thriving, that, in 1646, it contained twenty thousand whites, and the blacks amounted to a far greater number.* The judicious *Linde*, speaking from his own experience, remarks,

that there are some services of such a nature as cannot well be performed in hot and unhealthy countries by Europeans, without imminent danger of their health and lives. The first is, that of *cutting down woods, or clearing the ground from trees, shrubs, &c.*

In proof of this assertion he gives several instances; some of which, I shall take the liberty to repeat after him.

At the conclusion of the late peace, the captain of a ship of war went ashore at the island of *Dominica*, with twelve of his men, to cut down the wood, and to clear a piece of ground, which he intended to have purchased; but, in a few days, sickness obliged them to desist from this dangerous work; the captain, and eleven out of his twelve assistants, being seized with violent fevers, of which several died. The *Ludlow-Castle*, a ship of war of forty guns, in a late voyage to the coast of *Guiney*, lost twenty-five of her men at *Sierra Leon*, who were employed in cutting wood for the ship. When the *Lion*, *Spence*, and some other ships of war, were employed at *Port Antonio*, in *Jamaica*, in clearing *Navy-Island* of wood, in order to erect store-houses for the squadron on that station, the men, while cutting it down, were seized with a fever and delirium. The phrenzy attacked a man so suddenly, and with so much fury, that with his hatchet, if not prevented, he would have cut to pieces the persons who stood near him; and those who were seized in this manner, and were left

* Davies.

to remain on shore, either died, or suffered a dangerous fit of sickness.
This is an occupation,

says the same author,

which has often proved destructive to Europeans in those climates, and in which they ought never to be employed, especially in the rainy season; there being numberless instances of white persons, when cutting down the woods at that season, who have been taken ill in the morning, and died at night.

He adds (although he is no advocate for slavery) "that, if the purchasing of Negroes on the coast of *Guiney* can be justified, it must be from the *absolute necessity* there is for employing them, instead of white persons, in such services as these." To the foregoing I may venture to subjoin another history, the truth of which is well known to many gentlemen of *Jamaica*. I mean the case of the *Palatines*; several of whom having come over not many years ago, to settle there, under the encouragements granted by the assembly of that island, had tracts of wood-land assigned them; but, for want of Negroes, were utterly incapable of clearing it from the trees, and perished for the most part in the attempt. If this example, among others which my memory furnishes, is disregarded, due credit, I hope, will be given to the preceding relations published by Mr. *Linde*, an evidence wholly disinterested in the issue of this question. If our seamen, who are the hardiest of our common people, and the most inured to the change of climate, are so unequal to the task, much less adapted to it are others of the lower class in England, or those who might be most likely to hire themselves out to Plantation service: I have only mentioned the felling of trees in the West Indies (some of which are several feet in diameter, and so hard as to shiver the best-tempered axe,) in order to the forming of new settlements; but the labour of breaking up, and hoeing the ground, in the manner proper for cane-planting, and under a full exposure to the sun, is no less impracticable to Europeans, whether seasoned or unseasoned to the climate. Slave-holding might perhaps be very well discontinued in every province of the North American continent, situated to the North of the *Carolinas*. The custom of introducing Negroes in the Northern Colonies, to perform their field-work, has rendered the labour of the white inhabitants extremely dear. This high rate has given cause to their continuing the employment of Negroes there, whose labour is no further necessary than as it is cheaper. This will probably

terminate of itself, whenever the white inhabitants shall be so multiplied, by their natural progress of increase, as to allow a suitable abundance of them for all employments. But in the *southern* continental province, and in the sugar islands, this practice cannot be laid aside, so long as we persist in the cultivation of them, for the purposes of trade; because, it is impossible to cultivate them with European labourers; and because, the white inhabitants, I presume, can never increase there by propagation in sufficient numbers. The natives, or Creoles, are the only whites who can be supposed, by those acquainted with these climates, to be capable of being brought by long habit and use, to the laborious occupations of husbandry, and forming new settlements with their own hands: But, unless families in general were poorer, hindered by their necessities from removing to Europe, and confined to their native spot, there to breed and multiply, no adequate number could be reasonably expected. In *Jamaica* alone, we should require twenty times the number of white inhabitants we now have there. A long series of time must pass away before such a stock of native whites could be acquired, by the ordinary course of increase; even if we should suppose that they married regularly, and doubled their number, like the North Americans, once in every *twenty* or *twenty-two* years, it would require near one hundred years to furnish the complement; and then we must further suppose, great part of the whole number so very indigent, as to be obliged to toil hard for a subsistence; and to prefer the labour of clearing wood-land and digging the earth to any other. If the labouring people, in any commercial country, are in proportion to the rest of the inhabitants as *four to one*, we should require a very large stock, to furnish a constant and sufficient number of Plantation labourers; indeed many more than we could hope to gain by natural propagation, since it is not probable that they could by any means be brought to encrease, grow up, and thrive, in the like rapid manner as we observe of the North Americans. Most certain it is, that, without the introduction of Negroe slaves, Great Britain would have been able to settle no one profitable colony in *America*. If therefore, following what has been rightly called the *Utopian* system of *Georgia*, which brought that settlement to nothing, we should inhibit the further prosecution of our *African* trade for labourers, such a measure would probably, if not infallibly, be attended with the hasty decline of our most valuable colonies in the West, and a loss of all the important advantages now gained from their cultivation. A barbarity might be perhaps the more immediate consequence of such a prohibition; and of

such a nature, as deservedly to excite horror in the mind of every humane *Briton*; I mean, the practice which must then be fallen upon, of employing white labourers, when Negroes could no longer be procured, to keep up the number answerable to our cultivation; an employment in which thousands and ten thousands of our countrymen might perish miserably, without producing one single benefit to the mother country. Before we entered into the *African* slave trade, our first settlers had no other than these hired servants, who proved unequal to the task, and might literally be said to exhaust themselves in digging their own graves. It was a complaint in the administration of Colonel *D'oyley*, long before the establishment of sugar works in *Jamaica*, that the officers of his army harrassed and destroyed the common soldiers (though well seasoned to the climate) by employing them as field labourers. This utter inaptitude of Europeans to such occupations in hot climates, and the impossibility of supplying them with white labourers from any other source than Europe, leave no room for questioning, but that we must either abandon all these settlements, ruin many thousands of our fellow subjects, and resign our fortune into the hands of foreign powers, differing from us in sentiments; or we must conduct them, as hitherto we have successfully done, by the labour of Negroes; whose constitutions being by nature and the Divine Will appropriated to these climates, they are evidently the fittest for such employments there.

Sect. III.

The *Portuguese* were the first among the states of *Europe*, who opened a trade with the natives on the western coast of *Africa* for slaves, in order to procure hands sufficient for cultivating their *American* plantations. The epoch of this trade is fixed so early as 1443. The *Spaniards* and *Dutch* were the next that engaged in it. In the year 1553, three *English* ships traded to the coast for gold, and one only returned home safe. In the following years some other voyages were made; but the trade was neither considerable nor advantageous, with a country producing so few articles of commerce, or capable of taking off so little produce of other nations. Mr. *John Hawkins* fitted out three ships in the reign of queen *Elizabeth*, anno 1562; and, having learned that Negroes were a very good commodity at *St. Domingo*, he sailed to the coast of *Guiney*, took in a number of them, which he sold at that island to the *Spaniards*, received in return hides, sugar, ginger, and

pearls, and made a prosperous voyage. This success, it is probable, encouraged other adventurers; but the trade was very inconsiderable, till a demand for slaves was created by our West India plantations, and the southern provinces of North America. In 1620, a Dutch vessel brought *twenty* Negroes to *Virginia*, the first that were introduced into that colony. In *Barbadoes* they were probably employed about the year 1625, or 1626, a year or two after its first ingression by the English. When Captain *Jobson* was at the *Gambia* in 1621, the inhabitants brought some female slaves to sell, which he refused, alledging, "that this sort of trade was not used by the English"; for the Dutch, at this time, supplied the English settlements with what they wanted. In 1585 and 1588, queen *Elizabeth* granted two patents, to a body of rich merchants; the one for an exclusive trade to the coast of *Barbary*, the other for that of *Guiney*, between the rivers *Senegal* and *Gambia*. The same merchants, by a third patent, in 1592, extended their rights from the river *Nagenez* to the south of *Sierra Leon*. In 1618, king *James I.* granted a new charter to Sir *Robert Rich*, and others. In 1631 another was granted by *Charles I.* But all these companies, either from a deficiency of their capital, or ignorance in the management of this trade, successively fell to nothing. The *Rump Parliament*, in 1651, granted a new charter; and this, although not more fortunate than the preceding, gave some interruption to the Dutch, who had hitherto almost engrossed the whole business of supplying the English American plantations; but in 1662, these were so much cultivated and improved, the demand for Negroe labourers so greatly increased, and the advantages of the trade so well understood, in consequence of the Act of Navigation, which excluded the Dutch, and other foreign shipping, from trading to our colonies, that, for the better supplying of them with Negroes, *Charles II.* incorporated a new company; at the head of which were the duke of *York*, and many persons of the first rank and distinction. This company undertook to furnish 3000 Negroes annually. But their affairs were so disarranged by heavy losses, sustained in our war with *Holland*, that in 1672, another corporation was instituted, called the *Royal African Company*, which subsisted for many years afterwards. To this Company the king, the duke of *York*, and many of the nobility subscribed, so as to make their capital 111,000 *l.* It appeared, that, soon after their establishment, they exported, of home manufacture, to the value of 7000 *l.* yearly; and that they abundantly supplied our American colonies with Negroes, at a very easy rate. The trade continuing to flourish, it was found, after some

years had elapsed, during which, great progress had been made in establishing factories along the coast, that it was extremely practicable, not only to keep our American colonies well provided with Negroes, but to furnish an annual number to foreigners; and that many advantages might be reaped to the nation from this more extensive scheme. Accordingly, in 1689, (1st *William and Mary*) a convention was entered into with *Spain*, for supplying the Spanish West Indies with Negroes, by the way of *Jamaica*. In the year 1698 (9th and 10th *William III.*) the parliament took this trade under their consideration, and passed an act for regulating it. This act states the trade to *Africa*, "as highly beneficial to the kingdom, and to the colonies and plantations thereon depending"; it provides for the erection of forts and castles on the coast, for better preservation, and carrying it on; and repeals the duty of 10 *l. per cent. ad valorem* on Negroes, (which private traders had been used to pay to the African Company for permission to trade) "that the price of them should not be too much enhanced to the planter purchasers." In 1709 and 1711 (8th and 9th of *Anne*) the House of Commons voted some further provisions in respect to the better security of this trade; and in 1712, the Company's affairs being much in disorder, an act was passed for ratifying the composition they had entered into with their creditors. On this occasion were several resolutions of the House of Commons, which testify the great importance of this trade, for supplying our sugar and other American colonies with Negroes; *viz.*

That the trade ought to be open to all the king's subjects. That forts and settlements on the coast are necessary. That contracts and alliances are necessary to be made with the natives, in order that our plantations may be supplied with sufficient Negroes, at reasonable rates.

The Parliament likewise voted, that the trade should be exempted from all burthens, and that the Crown should be at the yearly charge of 10,000 *l.* for maintaining forts.

In consequence of these provisions, the trade revived; insomuch that, by the treaty of *Utrecht*, 1713, a contract was formed, for introducing into the Spanish West Indies, no less than 4800 Negroes annually, for thirty years to come. In 1726, 13 *George I.* the South Sea company struck out a project, for taking in Negroes at *Madagascar*, to be sold at *Buenos Ayres*; and, for this purpose, the Parliament passed an act, reciting, "that the transportation of Negroes from that island might become a very beneficial branch of trade to

the kingdom." And whereas, by the stat. 9th and 10th *William III.* for setting the trade to the *East Indies*, it is provided,

that all the *goods, wares, merchandizes, and commodities*, laden in any ship bound from the *East Indies*, or parts within the limits of the *East India Company's* trade, should be brought, *without breaking bulk*, to some port of *England* or *Wales*, and there be unladen, and put on land;

and by another stat. of 6th of queen *Anne*,

that, in default of bringing such *goods, wares, &c.* to some port in *Great Britain*, all such *goods, wares, &c.* or the value thereof, should be forfeited; and *forasmuch as*, the taking in of *Negroes* within the limits of the said united *Company's* trade, and delivering the same at *Buenos Ayres*, without bringing them to *England* and *Wales*, may be construed to be, *breaking of bulk*, within the meaning of the said acts of parliament, or one of them. Be it therefore enacted, &c.

The same act restricted the *Company* to four annual ships, which were to carry out nothing but necessary provisions for the crew, and for the transportation of *Negroes*. It was about this time that the *Company* just mentioned employed upwards of thirty vessels, besides their annual ships, in the transport of slaves to the *Spanish West Indies*, and in making returns for the same. And in 1748 it was asserted, that, by means of the *Assiento*, no less than 300,000 *l.* in *British manufactures* was annually exported by the carrying on of this trade; upon which a profit was gained to the nation of near *cent. per cent.* It was therefore with much regret, that, by reason of the jealousies of the *Spanish court*, and the many impediments they were continually throwing in the way, *Great Britain* found herself obliged to resign this contract, when the peace of *Aix la Chapelle* took place, in 1750. In this year, upon surrender of the *Royal African Company's* charter, the *Parliament* passed an act, which, after mentioning the advantages resulting to *Great Britain* from the *African* trade, vests all the forts, factories, castles, canoemen, castle slaves, and all other the property of the late *Company* in *Africa*, in a new corporation of merchants: It enacts, that any of his Majesty's subjects trading to *Africa*, may erect warehouses for security of their goods and slaves; that no master of any ship shall, by force or fraud, carry away any *Negro* native of the country, or commit any violence to the prejudice of the trade, under the penalty of 100 *l.* for every such offence. In 1752, another act

was passed, for making compensation to the *Royal African Company*, for their charter, lands, forts, castles, *slaves*, military stores, and all their *other* estate, *property*, and *effects* whatsoever, and to *vest* the same in the new Company. Annexed to this statute is a schedule, containing an inventory of those effects, among which are expressly enumerated, *six hundred and ninety-four slaves*, consisting of tradesmen, canoemen, labourers, women and their children: All these the Parliament of *Great Britain* purchased from the *Royal African Company*, and reinvested them by this statute in the new Company. Things continued in this state until the 5th of his present Majesty, 1765; when another statute was enacted, by which all the lands, forts, *slaves*, and other effects by former acts put into possession of the *African Company*, were taken out of their hands, and vested in the Crown. The trade was laid open; and it was declared *lawful* for all his Majesty's subjects, without preference or distinction, to trade and traffic to and from any of the ports and places on the coast of *Africa*, thereby vested in the crown, without any restraint, except as therein mentioned, and except that it shall not be lawful for any of the officers or servants employed by the committee of the said Company, to export *Negroes* from *Africa* upon *their own accounts*. From the summary deduction I have given, it appears, that the Negroe slave trade has been prosecuted by the English, either by private persons, by chartered or other Companies, for upwards of two centuries past. In this series, it has received the confirmation of our Kings, and our Parliaments; has been a fundamental article in treaties solemnly ratified with other nations; and, in short, has been stamped with the consent of the whole kingdom; not only because the consent of the whole Parliament is taken to be *every one's consent*, but as the whole body of the people have in some degree or other been benefited by the advantages which it has ultimately produced. And, although some persons have thought fit to question the right of property acquired by the British planters in the slaves they have purchased; yet it is manifest, that the British Legislature has not only declared the existence of that right of property, by the several statutes which I have cited; but has in particular, by one of them, put this matter beyond all doubt, by becoming themselves the *purchasers* of Negroe slaves. Thus, a principle countenanced and ratified by Parliament, by our treaties, so long an usage, and the spirit of our commerce, seems to stand incontestably built upon, and agreeable to, the general sense of the people, and the laws of the kingdom. I shall further prove this by still later statutes.

For the more easy recovery of debts in his Majesty's American colonies, it is enacted, *per* 5th George II. 1732, That,

houses, lands, *Negroes*, and *other hereditaments*, and *real estates*, shall be liable to, and chargeable with, all just debts, *duties*, and demands, of what nature or kind soever, owing to *his Majesty*, or any of his subjects; and shall be *assets* for the satisfaction thereof, in like manner as real estates are, by the laws of *England*, liable to the satisfaction of debts due by bond or other speciality; and shall be subject to the like remedies, proceedings, and process, in any court of law or equity in the plantations, for seizing, extending, *selling*, or *disposing*, of any such houses, lands, *Negroes*, and other hereditaments, &c. and *in like manner as personal estates*.

This statute, which is calculated to favour all the British merchants trading to the plantations, and to advance the commerce of this kingdom with them, gives these remedies against the planter debtor, expressly making *Negroes* not only *choses in action*, but liable to be seized, levied on, and sold, as chattels and moveables. It gives an interest and property to every British creditor, whether King or subject, in and over our plantation *Negroes*; declaring them amenable to the Sovereign for his duties of revenue, and to the subject for commercial dues. It declares *Negroes* to be the same in the hands of the owner, as lands, houses, hereditaments, or other real estate, and liable to be taken in execution, and transferred by sale, in the same manner as personal things. If this statute is to be cited against the owner so far as it directs the mode and enforces the act of payment, it surely must be understood *pari passu*¹⁰ in favour of his holding a *legal* right of property in the person and services of his *Negro*: otherwise it takes from him what is not his, to give to others who cannot *legally* possess it. If the statute justifies and compels a *sale*, it must be held *à fortiori* to defend the *purchasor*: if it has given a power to buy, it gives likewise of course a power to hold, possess, enjoy, transfer, and alienate: if under this statute a merchant-creditor, or other British subject, is fully warranted to take *Negroes* in payment of their just debts, or to buy them when seized in execution, the *purchasor* is clearly to be defended by this law in his title of property and possession; otherwise the statute is illusive, and fraudulent against the fair *purchasor*; but *quando lex aliquid alicui concedit, concedere videtur et id, sine quo res ipsa non esse*

10. [Literally, "With an equal step," i.e., for a similar reason.—Tr.]

*potest.*¹¹ Indeed, we may resort to the original purchase made in *Africa* by British subjects; which having been in pursuance of the encouragement and sanction expressed in our statute law, authorizing the buying of Negroes there by contract with the natives, and the transportation and sale of them to the planters, the legislative or national faith is thereby pledged to defend and support the purchasers, who have paid a valuable consideration to this kingdom for what they bought from her merchants. By stat. 6th Geo. III. 1766, Negroes are allowed to be exported from *Dominica* and *Jamaica*, "as articles of merchandize for sale to any foreign colony in *America*"; and this without any distinction of *African* Negroes, or Negroes born in the colony. In this statute, they are classed with other enumerated goods; and a duty is imposed, payable to the revenue of *Great Britain*, of £.1. 10s. *per head* on every Negroe exported from those two islands, or imported into *Dominica*. This, and all other laws relative to our West India settlements and their productions, tend to evince the idea of Parliament before spoken of: for there would be neither articles of produce nor manufacture obtained from them without the labour of Negroe slaves. Of this the Legislature appears to have been fully sensible; and these laws therefore, unless they confirm the planter's right of slaveholding, are utterly useless, unmeaning, and repugnant in themselves; absurd in every view, and highly iniquitous with respect to the Planter purchaser. Our statute law then, having in such variety of examples declared Negroes to be a *commodity*, and the absolute property of the purchaser, it is preposterous to say, that, by the presumptive construction of any former statute, Negroe slaves emigrating from our plantations into this kingdom are to be deemed *free subjects of the realm*. The statutes are the best comments upon each other's true sense and meaning; they abhor duplicity, and must not be construed to repugn each other, unless where they declare this contrariety in express words. The Parliament gives the law to the Court of *King's Bench*, and to all other Courts of the kingdom; but does not receive the law from them. If the opinions of our lawyers in favour of a Negroe's personal independance are to preponderate against these established authorities of the Legislature, we can judge no other of all these statutes, than that they are so many snares to entrap the unwary purchasers of Negroes; holding out illusive sanctions on the one hand, for supporting

11. ["When the law grants something to someone it grants that matter and also that without which the matter itself is not able to exist."]

their claim of property; and on the other, forcibly depriving them of that property: in short, rendering their property merely *ideal*.

Sect. IV.

It has been asserted,

that as soon as a Negroe slave comes into *England*, he becomes *free*; and that, if the Legislature had ever intended to countenance the continuing a property in this kingdom in the services of Negroes, who were slaves in the colony from whence they came, a particular exception would have been inserted in the statute law in favour of this practice.

But the laws of the kingdom, having in no case prohibited the colony planter from bringing his slave hither, or from continuing his claim to the services of the slave after he is brought, seem rather tacitly to justify his claim. *Blackstone* says, "That the law of *England* will protect the Negroe in the enjoyment of his person, his liberty, and his property; yet with regard to any right which the master may have acquired to his perpetual services, it will remain unaltered." The import of this distinction, I must own, I cannot well comprehend; nor how the master can exercise a right of perpetual service, without restraining the Negroe of his personal liberty, his power of locomotion, or of removing his person wheresoever his inclination may direct. An alien, in the construction of our English law, is not properly under the King's protection, (*ad fidem regis*)¹² so as to have the full benefit of the laws of *England*, until he is enfranchised by act of Parliament: it is true, he may receive a partial benefit in virtue of the King's patent of denization; but without these, he is so far from being in capacity to enjoy any thing in *England*, that he and his goods (it has been held) may be seized to the King's use. Negroes born out of the realm, and who were neither born nor made natural subjects of it, fall under this predicament. The stat. 13th Geo. II. enacts, That all foreigners, who shall live seven years or more in any of our *American* plantations, and not be absent therefrom more than two months at any one time, shall, on taking the oaths, be deemed *natural-born subjects*, as if they had been born here. The words of the act are, "all persons born out of the ligeance of His Majesty"; which, without much refinement of a lawyer, may be affirmed to

12. ["To the allegiance of the king."]

mean, a *Guiney* Negroe, an *Ægyptian*, a *Hottentot*, or a *Samoeide*, as well as a *French* or *Dutchman*. But did any man ever conceive, that *Guiney* Negroes were included within the meaning of this act? Can any lawyer be so absurd as to declare, that the Legislature meant to include them? Yet, I doubt not the time may come, when this act shall have acquired a little the rust of age, that the tenor and purport of it shall be solemnly adjudged, in some grave Law-court, to make *Guiney* Negroes, *Ægyptians*, *Hottentots*, and *Samoeides*, the true and natural-born subjects of the realm of *England*. The nature of enfranchisement in this kingdom proves convincingly, that before an alien can be converted into a *subject of the realm*, in its strict sense, he must obtain the consent of the whole nation, testified by the Parliament; or, if admitted to partial subjection, he must have the King's immediate adoption, evidenced under the Great Seal of the kingdom. But a Negroe slave landing here from the colonies is not a denizen by charter, or patent, nor a naturalized subject by birth, or act of the Parliament. He cannot therefore be considered as in the same rank, or entitled to the same personal immunities, the same liberties and privileges, as his Majesty's naturalized and denizen subjects; much less as a free, natural-born Englishman. He is not in the like state of subjection, he cannot have claim to the like kind of protection. He has removed, it is true, so far beyond reach of the colony laws, that, for any crime committed in *England*, he must be tried and punished according to the laws of *England*, not of the colony. But the services due to his master form a question of civil right; concerning which, he ought to be tried in *England*, according to the laws and customs of the colony where that right originated; as mercantile questions are every day judged, not by the rules of common law, but by the custom and usage of merchants. It is held, that a man may be sent over to *Ireland* for a crime there committed; and justices of peace in *England* may commit a person offending against the *Irish* law, in order to his being sent over. The judges also of *England* are considered as proper expositors of the *Irish* laws. Surely the laws of the colonies are as much to be respected here as the *Irish* laws: the countries are alike dependancies on *Great Britain*, members of the empire, and endowed with legislatures of their own; the principle is equally applicable to both: the matter which has thrown an intricacy upon this question is, that some have supposed a Negroe, slave or freed, to be favoured by the law of *England* in the full as extensively as any English subjects. Judging of them in this light, we perceive the law of *England* inconsistent with itself; there appears a direct collision between

one part and another: for as the tenor and terms of sundry statutes seem to warrant and confirm the master's private and perpetual claim of property in the services of his Negroe, so other statutes, in their *strained* construction, have been thought to militate against the exercise of such a claim, over any man, black or white, inhabiting within this realm. How are we to decide in this case? It is plain, the Negroe was not in contemplation of the laws last mentioned; it is as clear, that the other laws have declared his services a *commodity*, and set them up to public sale: the equitable rule in this case might be, to consider the nation at large as one party, the master of the Negroe as the other; and then the question would be resolvable into the simple idea of the established rights between a seller and a buyer. Good faith requires in this case that the party selling must never impeach his own right to sell, for that is pre-supposed ere he forms his contract; but justice rigidly demands, that, having received a valuable consideration from the party buying, he is for ever after bound to ratify this contract, to defend the purchasor's title, and maintain him in quiet possession. If the general law of *England* is so generous as to compliment every colony Negroe, deserting from his owner and setting foot in the kingdom, with instant release from all obligation of service to his master, it ought likewise to be *just*; and, having some respect to its own sanctions, under which the planter made his purchase, and expected to gain a property in such Negroe's services, having some recollection also of the *value received*, it ought to recompence him for the loss he is compelled to sustain.

Admitting the *African* trade to be ever so diabolical, or the means by which the Negroe's body was first obtained ever so unfair, no blame can deservedly rest on the planter, who is ignorant of the means, and innocent of the guilt. That trade, as I have already shewn, has been carried on by this nation from time immemorial. King, Lords, and Commons, have shared in its profits, and concurred in various laws for supporting, regulating, and firmly establishing it. Some of these laws declare to the subject, that he holds a right of property in the Negroes he buys; others tell him, that Negroes are chattels, saleable and convertable like any other goods, for payment of dues to the revenue, or other debts; that they are to be held as *money* in the hands of a planter debtor, and received as *money* by his creditor. Large sums are granted every year by Parliament, for maintaining forts and garrisons, and making alliances with the native slave-merchants in *Africa*, for advancement of this traffic, to the express intent that the planter may be constantly and

cheaply supplied: vast emoluments are also drawn, as well by the mercantile and manufacturing subjects resident in *Great Britain*, and their dependants, as by the national treasury, from the profits gained on the sale of Negroes to the West India planter, and from the produce of their labour. Thus the whole nation may be said to be in some way or other interested in the advantages drawn from this trade, and to participate a benefit from the sweat of the Negro's brow.

If the original contract in *Africa* for this Negro's services was illegitimate or unfair, or if no colour of a contract subsisted, this surely is a point to be settled between the Negro and the party who sold him there without any right so to do; or else between the Negro and that government which by law permitted it's merchants to buy him of one who had no right to sell. But the planter respects no one in this case except the British merchant; who, under the authority and encouragement of the laws, having brought the Negro to market *overt*, the contract is openly made between these two. If the planter has bought a *freeman* instead of a perpetual servant, he is defrauded; for he paid his money under sanction of the laws, and purchased what the laws will in another place arbitrarily deprive him of. If the property spoken of is not to be secured to him by the laws which permit and invite him to buy it, then is there neither faith, justice, nor equity in them; they are no better than empty illusions, snares to the industrious subject, and eminently reproachful to the nation. Something more, however, than the pretended magical touch of the *English air* seems requisite, to divest him of what has been so solemnly guarantied by the consent of the nation in Parliament; for, when he made the purchase, he was not apprised of those mysterious and invisible emanations of *English liberty*, which were to make the bargain void, and, like the *presto* of a juggler, turn his gold into counters.

By stat. 14 *Edw. III.* it is enacted, "That all merchants, *denizens*, and foreigners, except enemies, may, without lett, safely come into the realm of *England* with their *goods* and *merchandizes*, and safely tarry, and safely return." This is further and more amply confirmed by the stat. 5th *Rich. II.* in these words:

It is accorded and assented in the Parliament, that all manner of merchant strangers, of whatsoever nation or country they be, being of the amity of the King and of his realm, shall be welcome, and freely may come within the realm of *England*, and elsewhere within the King's power, as well within franchise as without, and there to be conversant to

merchandize, and tarry as long as them liketh, as those whom our said Lord the King by the tenor hereof taketh into his protection and safeguard, with their *goods*, *merchandizes*, and *all manner of familiars*; and for so much the king willet and commandeth, that they and every of them be well, friendly, and merchant-like intreated and demeaned, in all parts within his said realm and power, with their merchandizes and all manner of goods, and suffer to go and come, and into their proper country peaceably to return, without disturbance or impeachment of any.

So far as *cliens* are not restrained of this extensive license to introduce their wares and negotiate here, by the subsequent statutes of trade, these ancient acts are still unrepealed; and what I conclude from them is, that considering our colony Negroes as *goods* and articles of *merchandize*, in which sense the statute laws of the realm, as well as the colony laws, esteemed them, the planters possessed of this merchandize, the importation of which into the kingdom is not yet prohibited by any law, appear warrantable, not only in bringing it hither, but in holding it while here, and in peaceably returning with it; for if these laws have granted liberty of ingress and egress, and defended the goods of merchants and denizens resorting to it, surely the Planters, who are natural-born subjects of the realm, are rightfully and lawfully entitled to equal protection, and in the fullest extent, with respect to their goods.

But if this claim of property in *Great Britain* be really offensive to the constitution of the kingdom, and injurious to its welfare, it seems at least not improper that, for the sake of commerce, and in justice to the planter, an effective law should be passed by Parliament, forbidding him to introduce his Negroes within the realm, under penalty of forfeiting that claim; for nothing less than a *positive law* can prove to every subject's conviction, that a Negroe-slave is entitled to the rights of an Englishman, on the instant of his inhaling the air of *England*. Our law, I grant, favours liberty, and rather endures a particular mischief than a general inconvenience; but as the latter is most likely to ensue from this national breach of faith, and repugnancy to the main principles of commerce, it merits attention, that equal justice should be dispensed to the planter purchasor; so that, in being liberal to the Negroe, no wrong nor damage should be done to an useful subject, who has, at least, an equal pretension to be favoured by the laws of his country, and to some indemnity for the deprivation of what those laws assured him was his right. It is no less just than honourable, that the state, which has

received his *money*, should make him some requital, and by a fair purchase, rather than I know what strange efficacy of the *English air*, redeem his Negroe from bondage. Such a measure would confirm the freed man in perpetual enjoyment of the boon bestowed upon him, by superseding all future claim of his master, in any other part of the British dominions. The very idea of such a local emancipation is ridiculous; since what better right has a planter to reclaim a fugitive Negroe in the colony than in *Britain*? The laws of *meum* and *tuum*¹³ are alike in both; and, as *Englishmen*, it is the same as if the lands of both were in one continuity. If a statute should openly avow, what some of our law interpreters have taken upon them to assert, the planters abroad would then know the certain consequence of bringing Negroes with them into *Britain*, and conduct themselves accordingly; it is due to them and to all others concerned in the plantation trade, that a point so essential should be explained by Parliament; or, should the nation incline to purchase the Negroe's freedom, it would not be less equitable. In former times, English Villeins, for the most part, gained their freedom by paying a value in money for it to their lords;—thus Edw. III. in the *twelfth* year of his reign, in consideration of certain fines paid for the same, manumitted three men born on his manor of *Brustwyck*. And Queen Elizabeth, in the *sixteenth* of her reign, appointed commissioners to compound with all the persons in a slavish condition, born on her manors, in *Cornwall*, *Devon*, *Somerset*, and *Gloucester*, for their manumission, and for enjoying their lands, tenements, and goods, as *freemen*. Mr. *Blackstone* judiciously remarks, “so great is the regard of our law for *private property*, that it will not authorize the least violation of it; no, not even for the *general good of the whole community*”; and he instances the case of laying out a new road through the lands of a private person,

which cannot be made against the owner's consent, except by the interposition of the Legislature; which, however, when it does interpose, does not absolutely strip the subject of his property in an arbitrary manner; but gives him a full indemnification and equivalent for the injury thereby sustained. The public in this case is considered as an individual treating with an individual for an exchange; and all that the

13. [Literally, “Mine and thine,” i.e., property issues.—Tr.]

Legislature does, is to oblige the owner to alienate his possessions for a reasonable price.*

If such be the honest procedure of the British Legislature in other cases, we may hope to see it further exemplified in the case of every suffering *Planter*.

Sect. V.

We must agree with those who have declared, that the public good of this kingdom requires that some restraint should be laid on the unnatural increase of *blacks* imported into it. At the same time it cannot be denied, but that the owners of Negroes, brought hither upon motives of absolute necessity, for want of other attendants in the voyage, have frequently endeavoured to send them back, and have as often been defeated, by the quirks of Negroe solicitors, and the extra-judicial opinions of some lawyers. The truth is, the Legislature, having never taken into consideration this claim of the planter over his slave, when brought within the realm, have not expressed any means by which he may continue the exercise of that claim. A Negroe running away from his master here is not by statute declared liable to imprisonment for any such offence. Advantaging themselves of this silence, they have always, by the advice of their solicitor, applied for a *Habeas Corpus*, and have been thereupon set at liberty of course, the judges not interesting themselves so far in favour of *private property* as to expound the statute in the manner the exposition was formerly made in respect to *Villeins*; that is, to *re-commit*, when the cause returned upon the writ appeared to be a *refusal to serve their master*. Hence, we perceive, one principal reason of their increase in the kingdom; which having a constant intercourse with her colonies, there must needs be frequent emigrations of planters, merchants, and others, from some or other of them, who pass into *Britain* on account of health, or of business, or to settle themselves at home; and come attended by Negroe domestics, as it is not practicable to get any others. Upon arriving in *London*, these servants soon grow acquainted with a knot of blacks, who, having eloped from their respective owners at different times, repose themselves here in ease and indolence, and endeavour to strengthen their party, by seducing as many of

* Comment. vol. i. p. 135.

these strangers into the association as they can work to their purpose. Not unfrequently, they fall into the company of vicious white servants, and abandoned prostitutes of the town; and thus are quickly debauched in their morals, instructed in the science of domestic knavery, fleeced of their money, and driven to commit some theft or misdemeanour, which makes them ashamed or afraid to return to their master. But, after this desertion, they do not continue long unemployed; the same zealous friends and low pettifoggers, who drew them from their late master, find means, by the *register-offices* and other channels, to procure them a place in some family; and herein lies a capital part of the grievance. Many persons of rank and fortune entertain these fugitives on the footing of other servants, and often in preference to them, to the very great injury of the owner; who having paid a sum to the state for his Negroe, his services are as much the owner's property, and a part of his fortune, as the estate of the person harbouring him is that person's. This is a loss to the colonies, as well as to the mother country. In the colony their services might have proved beneficial to both; but in *Britain* we find them a dissolute, idle, profligate crew, retained in families more for ostentation than any *laudable* use. Several who have not been corrupted by too long a stay here, some particularly who have left wives and children behind, return very willingly; the major part of those who remain are of the most worthless sort; they care not what becomes of their foreign wife or child, but very soon intermarry here, and fix themselves for as long as they can find support; but when the prospect of an easy subsistence fails, they make no scruple to abandon their new wife and mulatto progeny to the care of the parish, and betake themselves to the colony, where they are sure, at least, of not starving. The lower class of women in *England*, are remarkably fond of the blacks, for reasons too brutal to mention; they would connect themselves with horses and asses, if the laws permitted them. By these ladies they generally have a numerous brood. Thus, in the course of a few generations more, the English blood will become so contaminated with this mixture, and from the chances, the ups and downs of life, this alloy may spread so extensively, as even to reach the middle, and then the higher orders of the people, till the whole nation resembles the *Portuguese* and *Moriscos* in complexion of skin and baseness of mind. This is a venomous and dangerous ulcer, that threatens to disperse its malignancy far and wide, until every family catches infection from it. In *France*, I am informed, no Negroe slave can be brought from the

colonies to make any stay, except to be bound apprentice to some handicraft; at the expirations of the indentures, they must be returned to their proper colony; and as all such apprentices are young when first bound, and are bred up afterwards under the eye of an active, sober artificer, their morals may be preserved untainted, and other evil consequences prevented. The *French* have shewn much sagacity and great attention to the true interest of their American colonies, in this and many other regulations affecting them, not unworthy of being copied by other great trading nations. If these runaway gentry in *England* are invested with English rights in that absolute sense which most of their advocates assert, it will be no surprising thing, if some among them should, by a fortunate ticket in the lottery, or other means, be able to purchase the legal qualification, and obtain seats in the *British parliament*. It is certain, their complexion will be no disqualification, and that a £. 20,000. prize will overcome those scruples which some of our rotten boroughs might otherwise pretend against a Negroe representative. The possibility of this event, or of their becoming landholders in the kingdom, is not to be denied. Let us then consider, how far this unrestrained introduction of them among us is either politic, expedient, or useful—In the first place, they are incapable of adding any thing to the general support and improvement of the kingdom; for few, if any, of them have the requisite knowledge for gaining a livelihood by industrious courses. They are neither husbandmen, manufacturers, nor artificers. They have neither strength of constitution, inclination, or skill, to perform the common drudgeries of husbandry in this climate and country. They apply themselves therefore to domestic service, in which they earn little more than their food and cloathing, except what they may happen to acquire by accident of fortune, by benevolence, or petty larcenies, at which they are remarkably acute and dextrous. They are neither so hardy, intelligent, or useful in menial employments as our white servants: One reason which weighs with some persons who retain them is, that they are glad to serve for less wages; a belly-ful and a life of sloth being their *summum bonum*.¹⁴ Admitting that there are only three thousand of them now in *Great Britain*, and that their diet, cloathing, washing, physic, and all other charges of maintenance, cost, one with another, £. 30. *per annum*, there is £. 90,000. annually expended in this kingdom for their subsistance; and there are likewise three thousand white

14. ["The greatest good."]

subjects left to seek their bread in some other way, of whom no small number may be supposed, upon this exclusion from families, to fall into means of living injurious to the community, or to become chargeable to their parishes. The offspring of these Negroes, a *linsey-woolsey* race, acquire no credit to the people of *Britain*, and but little strength; for, by the inability of their father to maintain and bring them up at his own cost, they must needs grow burthensome to the public. There has never existed any complaint of a scarcity of white servants in this country; but, on the other hand, our laws for the suppression of beggars and vagabonds uniformly concur, in giving power to justices, to compel persons having no visible way of livelihood, and their children, to enter into domestic service, that they may not become public nuisances. The multiplication of Negroe domestics tends therefore, in a very signal degree, to defeat the wise and good purposes of these laws, since it excludes an equal number of poor white natives from that bread to which they are entitled by a prior claim, and turns them adrift to seek it by what other methods they can devise, *per fas vel nefas*.¹⁵

The shoals of beggars, which overspread the streets in all our populous towns, cities, and even our villages, to the dishonour of this nation, the extravagant sums levied annually for support of our poor, amounting by some calculations to 2,500,000 *l.* and their amazing increase of late years, all indicate too clearly, that we are overburthened with an enormous number of very poor, distressed white subjects; who, for want of some employment suited to their ability, are thus thrown, as a rent-charge, upon the industrious class of our people. Upon enquiry among the labouring part, it will be found, that much of the poor's rate is appropriated to the maintenance of supernumerary children, who might be capable of earning a support, and ceasing to be objects of this tax, if they could gain employment in families, as domestic or menial servants. But the swarms of needy dependants continually pouring in, from the foreign states around us, together with the *renegado blacks* from our plantations, debar our own poor from access into families for their livelihood. Since then there is so much reason to complain of inundations from *France*, as well as from the extreme parts of *Great Britain* and *Ireland*, there can be no argument alledged, that will prove the expediency, policy, or utility, of encouraging the importation of Negroe domestics; and, if they are not necessary here in that capacity, for

15. ["By fair or foul."]

which alone they seem at all qualified, they cannot be deemed, in any view, as a needful or valuable accession to the people of *England*. The kingdom gains nothing by their residence in it; but, it is certain, loses, as well as the plantations, very considerably. It has been reckoned, that every man in the plantations gives employment to *six* at home. If these Negroes, before they quitted their colony, found employment each for *one* industrious subject in *England*, (which I believe is very short of the fact) here is a loss of employment to three thousand inhabitants at home; which, being added to the 3000 before mentioned, who are supposed excluded from domestic service by these interlopers, make the number of such unemployed white subjects *six thousand*. Moreover, the absence of a great part of these runaways must be replaced in the colony families by an equal number of other Negroes, drawn from their estates, and by this means there is a diminution caused of those hands, which, from the very nature of their former employ in works of agriculture, are the most beneficial to the commerce and manufactures of the mother country.

The Negroe advocates (whose scurrilous writings are sent abroad with no other design than to vilify the planters, and turn a worthless rabble of their clients loose in this kingdom, to it's manifest hurt and disgrace, and the discouragement of it's colonies, where a property in their service is unavoidably necessary) lament, "that if the West India owner is suffered to exercise a power of sending his Negroe out of *England*, back to the plantation, such a practice might be productive of *Villenage* here." To prevent a revival of which odious system, they would have every Negroe renegade protected against his master's claim, and permitted to nestle here. But surely, if every owner had been allowed, or required by law, to reclaim, and send back his fugitive, the revival of *Villenage* would have been much less probable; because, no *unfreed* Negroes would then have remained to become the subjects of it. *Villenage* is more likely to ensue, from this restraint put upon the re-exportation of them, and by the encouragement given to every vagabond Negroe to desert from his master's service in the colonies, and take refuge here in a life of vicious idleness. It is evidently not the planter's fault, that the nation already begins to be embrowned with the African tint. In 1729, when it was supposed by many persons that Negroe slaves became entitled to their freedom, either by baptism, or by their landing on the British shore; the planters, that they might not offend against the laws of the realm, by reclaiming their fugitive slaves here, were desirous of having this point ascertained; and accordingly

applied to the then Attorney and Solicitor General, two gentlemen of the first eminence in their profession, for their opinions; who declared, That, under the laws of this kingdom, the Negroe slave did, neither by baptism, nor by coming into *Great Britain*, acquire any title to his freedom. And Lord *Hardwicke*, many years afterwards, when Lord Chancellor, recognized and maintained this opinion, which he had given under his hand when Attorney General. But, as some other great Lawyers have adopted a different judgement upon this question, I shall here contrast a few of them, in order to shew their incongruity.

Lord Chief Justice Holt.

As soon as a Negroe comes into *England*, he becomes *Free*. A man may be a *Villein* in *England*, but not a *Slave*.*

Lord Chief Justice Mansfield, to this effect.

That the laws of *Great Britain* do not authorize a master to reclaim his fugitive slave, confine, or transport him out of the kingdom. In other words; that a Negroe slave, coming from the colonies into *Great Britain*, becomes, *ipso facto*, *Free*.

E contra:

Mr. Justice Powell.

The *Laws of England* take no notice of a Negroe.

Mr. Attorney General York.

A Negroe slave, coming from the West Indies to *Great Britain* with his master, does not become *Free*. His master's property and right in him are not thereby determined or varied; and his master may *legally* compel him to return again to the plantations.

* His Lordship's distinction seems rather laughable. A planter would be glad to know wherein a Negroe slave differs from the English *Villein*, except in being far better provided and taken care of, and *essentially* happier in every respect? *Vide Cowell*, who says, that they were *slaves*, and *used as such*; and *kinder usage made them insolent*.

Mr. Solicitor General Talbot.

The same.

Lord Chancellor Hardwicke.

That a notion prevailed, that if a Negroe slave came into *Great Britain*, he thereby became emancipated; but there was no foundation *in law* for such a notion.

A point, upon which these great oracles of the law have published such opposite sentiments, seems as far as ever from being established upon the solid ground of absolute precision. The planters of course have been left as much puzzled by this *Delphic* ambiguity, as the sages themselves appear to have been, in forming their judgements upon the subject. The matter having been confounded in this grand uncertainty, it is not to their discredit, that they framed their conduct to the opinion of *the time being*; or, having as good judicial authority on the one side for claiming a property in their Negroe, as they had on the other for fearing to trespass against the laws of the kingdom, their interest naturally inclined them to follow that judgement which was favourable to the claim, and to reject the other that denied it; and no man, who candidly poises these venerable authorities in both scales, can blame the planters for pursuing the recovery of their imagined right; after these learned men, who were best acquainted with the laws of the kingdom, had thus solemnly vouched, as much in their favour as against them. A West India gentleman, not long since, engaged the commander of an outward-bound ship to carry back a female Negroe belonging to him, who, soon after her arrival in *England*, had got herself privately married. The captain received her on board; but the husband took out an *Habeas Corpus*, and she was discharged from the voyage. The then Attorney General, who had been consulted by the husband, gave his opinion,

That the master might have an interest by *contract* in the service of his female slave, but *no property* in her person, *by the laws of this country*, and therefore no authority to direct the captain to carry her away. That the husband had a right by marriage, according to the laws of this country, to that relation; and that the master, *having no property in her person*, could lose none by her marriage.

This doctrine mows down at once every act of Parliament for supporting the trade with *Africa*, and promoting the establishment of American

plantations. It affirms, that the planters contract with the African merchant, as well as the merchants contract with the African natives, are mere nullities; and that he has been egregiously duped by the nation out of his purchase-money. It maintains, that Negroe slave-holding is inconsistent with the laws of *England*; and if it be so, this plain conclusion follows, *viz.* that every colony law which has been enacted touching this supposed property, whether by securing it to the planter, by making it deviseable in last wills, inheritable by his heirs, liable as assets for payment of his debts, subject to mortgage or other grants and alienations, are entirely void and null in themselves, to every intent and purpose, *as being repugnant to the laws of England*. And as the judicial authorities of the courts at *Westminster Hall* have ever given the rule of judgement to the courts in our colonies, it is now certain, that the judges in our colonies (if they act with consistency) must adopt the *dicta* of the courts at home, and think themselves as much bound to do so in this case, as in every other. Opinions of this new structure not only tend to confirm every fugitive Negroe already here in a determination to remain in the kingdom as long as he lives, but operate as a direct invitation to *three hundred thousand blacks*, now scattered over our different colonies, to mutiny, and transport themselves by every means into this land of *Canaan*, where, by only swallowing one single mouthful of British air, they may enter upon the rights of *free-born Britons*, and sleep in peace beneath the sacred shield of *Magna Charta* and the *Habeas Corpus*. There is no doubt, but the welcome tidings will no sooner become generally diffused, than numbers of the more profligate, lazy, and disaffected among them, will miss no opportunity of stealing across the *Atlantic*. Opportunities will not fail them; for, although our plantation laws impose a penalty on captains of ships carrying off Negroes; yet these laws, like many others, are ill observed, and frequently violated. Any Negroe, who is able by pilferage, or his own industrious acquisitions, to muster up five or six pounds, will be no disagreeable passenger to a captain, who does not intend loading again at the same colony, or who fears not a discovery. The states around us must laugh at such doctrines, which set our judges and our laws at open variance with each other, and have a positive tendency to annihilate that branch of commerce, which is one of the best props of our national independence. Nothing less is demanded by the Negroe advocates, than a total sacrifice of our *African trade* and *American possessions*, to their fantastic idea of *English liberty*. In the present state of *Great Britain*, and in what will most probably be

her future situation, this sacrifice, instead of serving the cause of her liberty, may eventually plunge her once more into Villenage; by disarming her of the best security against it, and degrading her into the tributary province of some potent neighbour; who is blest with more wisdom in this age of refinement, than to strip himself naked, and embrace *Slavery*, that others may be set *Free*! I can fervently wish, with the advocates, that all mankind were free, if they might be the happier, and that none might abuse the blessing. But, since things are otherwise ordained, it would be best perhaps to remain content with our respective shares of just freedom, and not disturb the public peace and right order with such visionary projects of equal, universal liberty, as may in the end be productive of *universal licentiousness*.

The news of this law decision, which has granted redemption from colony bondage, must, I think, be very speedily conveyed to the planters resident abroad, by their correspondents here, who will think it friendly to send it as a caution against bringing their Negroes within the pale of this kingdom. To the Negroes it will be industriously proclaimed by their brethren here, who will doubtless take care to advise them, that their master's pretended claim to their service is insubstantial, neither founded on, nor supported by, the laws of *Great Britain*. The sable host will joyfully listen to this new and acceptable counsel. The inference formed in their minds perhaps will be, that, the laws of *Britain* having renounced the idea of their vassalage, they are retained in it by no other obligation than the laws of the colony, and an exertion of illegal force over them by their masters. This reflection naturally inspires disobedience to laws enacted contrary to the will of the mother state, to laws now placed in the odious light of tyranny and oppression; next follows resistance against the authority usurped over their persons; an authority not tolerated by the kingdom, to whose laws (a very small portion of sense may instruct them) the laws of the subject and dependant colony ought to be assimilated. What the consequences may be, I know not. We may expect every evil that can ensue, from a spirit of mutiny, and impatience under servitude, once kindled universally among them. Let the authors of this doctrine be answerable for all the bloodshed which it naturally tends to occasion! Yet we must hope that the wisdom of Parliament will incline it to justify it's own acts; and that it will apply timely remedies to the prevention of any extensive mischief likely to happen, checking the ferment of this law poison, by a suitable and seasonable antidote. I see not any inconvenience that would have arisen to this kingdom, if, whilst our lawyers acknowledged

the children born here after the introduction of their Negroe mother to be free, and natural-born subjects of the realm, they had declared the *parent* to continue still in a state of propriety and subordination to the planter owner; unless it can be proved, that, by stripping the planter of his *money* and estate, *unius dampnum utilitate publicâ rependitur*.¹⁶

Sect. VI.

I should have brought my argument to a period with the last section, but for the deference I owe to the benevolent sentiments of some moderate and well-intentioned persons, who have reasoned after this manner:

Admitting that the present circumstances of *Great Britain* make it absolutely necessary that she should have and maintain *American colonies*; and granting that the soil in the hotter climates cannot be usefully cultivated with other than Negroe labourers; what objection can the planter have to put them precisely on the same footing as our labourers in *England*? Since, if all were freed, they might still be hired, as in *England*; and surely a voluntary service is to be preferred before an exacted and slavish obedience.

I readily agree, that, if the consequence deduced were practicable, no rational planter would object to this general emancipation. But we must not too hastily frame conclusions from what we observe in the climate and country of *England*, and apply them to other countries and other climates, where natural causes arise, which form invincible obstacles to such an assimilation in practice, however plausible the idea may be in theory. A planter would as soon expect to hear that sugar-canes and pine-apples flourished the year round, in open air, upon *Hounslow Heath*, as that the Negroes when freed could be brought into the like necessity or disposition to hire themselves for plantation labour, which the climate and soil of *England* have enforced upon its lower class of inhabitants. But I shall enquire more largely how far a general enfranchisement of our colony Negroes would be likely to tend, either to the benefit of themselves, of the plantations, or of the British trade, navigation, and commerce: the sure consequence of such an emancipation would be, first, the total abolition of sugar-making, and all other our *West India* produce. It would be impossible to compel the Negroes, thus enfeoffed

16. ["The injury of one man is compensated by the public benefit."]

with absolute freedom, to relish that due subordination which prevails in this kingdom over the labouring poor. For want then of a superiority of whites to oblige them to work, they would soon find themselves so independent, and so much their own masters, as to renounce the controul of any laws enacted to force them. If we may judge of the uniform disposition of the Blacks already made free in our southern colonies (and this is no bad rule), not one of them would be voluntarily brought to gain a livelihood by *field labour*; because he could earn sufficient by other means to satisfy all his natural wants, with little or no fatigue. Idleness, it has been well observed, is the sure consequence of cheap and easy living; and none will labour, who have the means of idleness in their power: it is from this cause that no state ever yet made a considerable figure in commerce, where the necessaries of life could be obtained with little labour.* A person must be very little versed in the knowledge of human nature, to suppose, that mankind would labour from any other motive than *sheer necessity*; or that the poor would labour at all in any country, if they could gather all their necessaries from the next tree; or whether they would even take pains to climb that tree, provided they could get at their necessaries any easier way. The operations of human nature are much the same in all countries. All love ease, but all are not equally industrious. Neither the Negroes of *Africa*, nor the *Indians of America*, regard manufactures. If labour is so repugnant to the inclinations of mankind in general, it is doubly so to a Negroe in the *West Indies*; for his natural sloth and pride, together with the warmth of a climate requiring little if any cloathing, the amazing fecundity of the soil, and plentiful increase of materials for food, obtained with small pains, would always conspire to make him despise and reject the cultivation of a planter's lands, even though invited to it by wages far exceeding what a planter could afford to give; and as white persons are not able to perform such labour in that climate, nor (if able) could be procured in sufficient numbers, the white inhabitants must necessarily be driven to abandon their settlements, or be content to stay there, cloath themselves with cotton (the natural growth of the soil), and subsist on such stock and provisions as their own personal industry might

* If a soil be vastly rich, situated in a warm climate, and naturally watered, the productions of the earth will be almost spontaneous. This will make the inhabitants lazy, and laziness is the greatest of all obstacles to labour and industry; manufactures will never flourish in such a country.

Stuart's Political Oeconomy.

enable them to procure. In either case, there must be an end to all valuable intercourse with *Great Britain*, who could profit nothing from a banditti of lazy, lawless, Negroes, living in a state of nature, nor from an inconsiderable remnant of white subjects, unable to do more than provide themselves with a mere support of existence from day to day, nor from an extensive territory of wild and uncultivated woodland. Instead of being, as they now are, a collection of useful and industrious people, giving employment and sustenance to many thousand inhabitants of the mother country, causing an annual demand for every variety of her fabrics and manufactures, animating her artists, enriching her merchants and traders, encreasing the public revenues, augmenting her mariners, and extending her navigation; they would rapidly degenerate into indolent and miserable vagabonds, nuisances to the rest of mankind, unprofitable to themselves: they would no longer benefit the Sovereign by contributing to his subsidies and supporting his dignity, nor the landholders in payment of rents, nor merchants by the least expence for cloathing or implements of husbandry, nor manufacturers for any of their necessaries, nor the society in general by the most insignificant service. The true wealth and greatness of a nation are not upheld solely by the multitude of its people, but by their being civilized, industrious, and constantly well employed; without these improvements, what would otherwise become no small part of its real wealth, is turned into a real burthen and grievance. It is the cultivation of arts and industrious pursuits, the embellishments of life, that make man mild and sociable to man; without these, we find him a licentious and intractable savage. By so great a change as I have ventured to delineate in the system of our national commerce, the whole kingdom must be inevitably affected: the many thousands dependant for support on the plantation trade, would probably be reduced to the utmost distress for want of employment, merchants and mariners would decrease, rents fail, interest rise, the revenues fall short, taxes augment and become more severe upon the British landholder, and we must be under an annual tribute to foreign states for those materials and commodities, necessary to us, now no longer supplied from our own colonies. The plantation blacks, consisting of various tribes, or their descendants, envenomed against each other by those bitter and hereditary feuds which mark their character, would soon divide into parties and factions; and at length indulge this innate rancour by every species of outrage and hostility, in a perpetual state of warfare; resembling what has prevailed from time immemorial between the petty states of

Africa, or the *Indian* nations of *North America*. Thus distracted with unceasing quarrels, and occupied either in offensive or defensive war, they must necessarily be reduced to an erratic, unsettled life, and have no leisure for the drudgeries of agriculture; these would probably be left to their women, as is the custom in *Africa*; the latter might till the earth for a temporary provision of corn and roots, whilst the men employed themselves in defending their possessions, or making incursions upon their neighbours. If I am suspected of having misrepresented the Negro's appetite for sloth, let the following be offered as a very practicable and easy test of the truth of my positions: let but an act of Parliament be passed which shall place all the renegado Negroes now in *Britain* in the same condition here as our poor day-labourers are restricted to; let them be constrained to hard labour, in proportion to their strength, like them, for *fourteen pence* a day, from sun-rise to sun-set, for only one twelvemonth; and I will engage, there is not one of them, after the year's fair trial, but will most chearfully accept the alternative of being transported back to his colony, rather than continue in *Britain* upon such terms. I am induced to believe, that every dispassionate man, acquainted either with the temper of our colony Negroes, or the nature of the tropical climates and countries, will not hesitate to pronounce, that the scheme of a general emancipation is absurd, and likely to be productive of no real benefit either to the Negroes or to the nation; but, on the contrary, that it promises to entail the most incurable mischiefs upon both.

The advantages derived to this kingdom from her plantations, and principally by means of Negroe labour, are so well known and understood, that it is superfluous for me to expatiate upon them; but the more important they are, the greater will be the degradation it must suffer from the loss of them. This loss would still be further aggravated, should the commerce of *America* be monopolized by foreigners, from whom we must then be obliged to purchase many of the materials for perfecting our manufactures upon their own terms, or cease to be a manufacturing nation. Little indeed of this branch of business would be left for *us* to follow; and even this little might not long continue. Foreigners would raise their prices upon us in exact proportion to our necessities, a circumstance of which all trading states take advantage. In the end, we must entirely throw them up to these foreigners, after being supplanted at every market. If we had no sugar colonies of our own, it is reasonable to think that, as long as any money or commodities remained in the nation, for bringing sugar into it for consumption,

so long should we continue to import it; in confirmation of this, we need only recur to what happened here in times past, and before we had any such plantations of our own. Sugar was an article of consumption long before we possessed a foot of land in *America*; and although some have called it a luxury, yet it appears, that our forefathers esteemed it one of the necessaries of life. In that very old treatise, entitled, "*The policy of keeping the sea*," the author, inveighing against the *useless things* brought by the Venetians from the Indies, adds, "that they furnished but very few of the necessaries of life, except *sugar*." We should not sustain, however, the loss of sugar alone, but of the very groundworks of many capital manufactures and trades which our Indian settlements now furnish. The failure of our *West India* trade would of course be followed by a great diminution in that of the *East Indies*, not only in the article of tea, that principal consumer of sugar, the duties and customs upon which form no mean figure in the revenue account; but in china and other wares and merchandizes from thence, so largely in demand of our *West India* settlements. These are considerations which seem to merit the notice of all our pretended reformers of the age; who, under a cloak of furious zeal in the cause of religion and liberty, do all they can to throw down those essential pillars, commerce, trade, and navigation, upon which alone must depend their own enjoyment of any freedom, civil or religious. These main supports being once struck away, there may be no human means of preventing this kingdom from dwindling into an appendage to some foreign and more powerful state, or its inhabitants from relapsing into that extreme of wretched poverty, savage ignorance, and vassalage, from which trade and navigation not many centuries ago redeemed them. "That trade," says *Voltaire*, "which has enriched the English, contributed to make them *free*"; as the enlargement of our commerce so vastly increased the value of our lands, as well as our general riches, it is no less certain and self-evident, that any sensible decrease of it would sink the value of rents and lands, in a similar proportion. Our cities and manufacturing towns, which now consume such immense quantities of the product of our lands, being then depopulated, our farms will thereby be deserted, and, perhaps, even the entire rents might in time be insufficient to support the numberless poor then destitute of employment. In which lamentable situation, it is no exaggeration to affirm, that the landed interest would be more sensibly affected than even the merchants, traders, and manufacturers themselves; seeing the latter could (at the worst) and doubtless *would*, mostly remove to other countries, whilst

the former must necessarily stick to their lands, which would then find but very few purchasers, and at very low rates. The bare *possibility* of so sad a declension ought to keep us perpetually watchful; more especially as almost every nation in *Europe* is at this time earnestly striving to rival us, either in our staple manufactures, our fisheries, our plantations, or our naval power.* The deplorable figure this kingdom would make may be conjectured, by taking a retrospect of what it was before manufactures and commerce gained any considerable footing here. We are at present rich, powerful, respectable, and in such credit, that some foreigners prefer our funds to any other; but should our trade, the stream on which these blessings are wafted to us, be diverted into another channel, we should soon sink into poverty. We have already lost many lucrative branches. The French, for example, have gained from us the valuable part of our commerce with *Turkey*, *Spain*, and *Italy*. We have not as yet sensibly felt these losses, sustained as we have been by an immense trade with our *American colonies*; but other states, the French in particular, have increased in opulence and power by our losses.† The plain deduction from the whole is, that our principal resource, as an independent nation (being now, from various causes, centered in the flourishing condition of our *American dominions*) we cannot too highly prize, or too carefully avoid discouraging, any branch of traffic that is conducive to their growth and prosperity, unless we mean to give up our *last stake*, and so render ourselves one of the most despicable powers in all *Europe*.

To conclude: I hope, while I am pleading the cause of the injured *planters*, I shall not be misunderstood to stand forth a champion for *slavery*. I am no stranger to the import of the word; but am satisfied in my own mind, that our colony Negroes do not feel those hardships under their servitude, which have *here* been usually and undistinguishingly attributed to that vague term. As a friend to mankind, I sincerely wish that useful class to enjoy freedom, in a *reasonable extent*; as a friend to my country, I cannot wish them set loose into that latitude of emancipation, which threatens injury to both. How far the late judicial sentence may be consistent with the spirit of *English law*, I will not take upon me to determine; sure I am, that it cannot be made compatible with the spirit of *English commerce*.

* Anderson.

† Essay on Trade.

Postscript.

When this pamphlet went to the press, I had not seen a late publication, entitled, "Considerations on the Negroe cause commonly so called, &c.;" but, having since perused that work, I observed that it is illustrated with several arguments similar to what I have ventured to advance, particularly on the idea of a *legal property* vested in the planter-owner by the laws of *Great Britain*; and I cannot but rejoice to find my sentiments confirmed by the opinion of one who seems to be a candid and sensible writer. He was probably among the audience at the *Court of King's Bench*, when the case of *Somerset* was argued: This was an advantage I could not possess, as being at a great distance from the capital. He says, "that it was in representation, if not in proof, before the court, that there were already *fifteen thousand* Negroes in *England*." My reader, I hope, will excuse my having stated their number so low as *three thousand*; this I did from a want of information on that head, as well as from an unwillingness to commit any thing like exaggeration; but, if the fact mentioned by that writer is true, or near the truth, it will add a very considerable strength and weight to the conclusions I have drawn from the great and increasing number of these people in the kingdom. The reader may therefore, if he pleases, alter the *three thousand* to *fifteen thousand* in the proper place, and deduce accordingly.

FINIS.

Samuel Estwick,
Considerations on the Negroe Cause
(London, 1773)



SAMUEL ESTWICK, the author of this pamphlet, was closely connected to Barbados and referred to himself as assistant agent for that colony. Estwick, whose pamphlet went through two editions, the second and longer of which is reprinted here, independently made a similar case to that presented by Edward Long in Selection 72. He displayed at even greater length the same racial attitudes and the same justifications for slavery, drew the same parallels between medieval English villeinage and colonial slavery, and emphasized the complicity of the British government and Britons in general in the entire slave system, a system, he admitted, that was “inconsistent with the principles of the constitution of this country.”

To an even greater extent than Long, however, Estwick expressed colonial resentment at the charges of inhumanity and barbarism levied against colonial planters during the hearings of the Somerset trial and in the wider anti-slavery literature then beginning to appear in Britain. Like Long, Estwick did not regard colonial slavery and the slave trade merely as colonial aberrations in an otherwise free British world. Whatever was “the state and condition of Negroes” in the colonies, declared Estwick, responsibility “for it . . . [was] therefore a British and not [simply] an American question; as well it might be, since, if I may be allowed to reason chymically upon this occasion, whatever property America may have in its drugs, it is Great Britain that receives the essential oyl extracted from them.” Because the home islands had been so deeply involved in both the slave trade and

slavery, it seemed to Estwick, as well as Long, profoundly hypocritical for the metropolitan English to suggest that “English feelings were to revolt at American punishments,” and he emphatically denied that America afforded “that scene of barbarity,” which “misrepresentations would have painted upon it.” (J.P.G.)

CONSIDERATIONS
ON THE
NEGROE CAUSE
COMMONLY SO CALLED,
ADDRESSED TO
THE RIGHT HONOURABLE
LORD MANSFIELD,
LORD CHIEF JUSTICE
of the COURT of KING'S BENCH, &c.
By SAMUEL ESTWICK, A. M.
Assistant Agent for the Island of BARBADOS.

THE SECOND EDITION.

LONDON,
Printed for J. DODSLEY, in Pall-Mall.
MDCCLXXIII.

Advertisement to the Reader.

The first Edition of the following Considerations on the Negroe Cause was written with haste, and published in a hurry. The hope of seeing some much abler pen than mine engaged in the discussion of so important a question, and yet seemingly so little understood, withheld me from the undertaking; till disappointment made it the resolution of an hour, and want of time the effect of a few days attention only. It was evident that whatever was to be suggested on the subject, should be known antecedently to the legal decision of the Case: but led on by the expectation of the more useful endeavours of others, already was the Term, in which judgment was to be given, treading closely on my heels, without my having taken one single step in advance of the design. Thus circumstanced, such dispatch became necessary as could not fail to produce errors, imputable both to me and the printer. Whilst one part of the pamphlet was printing, the other was preparing for the press: but even this expedition had not its desired effect. The Judgment was beforehand with the Publication: whereby the Considerations themselves were deprived of their object, and I, in some measure, foiled in my purpose. Upon finding however that the very grounds of my argument (to wit, the opinions of the Lord Chancellors Hardwicke and Talbot) were the subjects of *due attention* to the Court, and that the determination rested on this particular Case *only*, from circumstances of insufficiency arising out of the return made to the writ of Habeas Corpus,¹ I was induced to suffer this performance to make its appearance to the public eye, though, like Hamlet's Ghost, with all its imperfections on its head.

Being now called upon for a second Edition, I have carefully corrected the errors of the first, so far as they were perceivable to me. I have considerably enlarged the work itself. I have inserted several notes, in some of which the principles of the late published argument of Mr. Hargrave, and the argument itself, as applied to the merits of this question, are *shortly* examined, though (with what is offered in the text) it is to be presumed, *fully* refuted.

Supposing also that the judgment of the Court of King's Bench in this case might be no improper addition, I have, from the most authentic copy I

1. [A writ directing the sheriff that literally, "you have the body" for confinement and are required to produce a charge in court to justify imprisonment.—Tr.]

was able to procure, prefixed it herewith: taking the liberty at the same time of making a few occasional remarks thereupon.

The following *is said* to be the substance of Lord Mansfield's speech in the case of Somerset and Knowles: "We pay due attention to the opinion of Sir Philip Yorke and Mr. Talbot in the year 1729, by which they pledged themselves to the British Planters for the legal consequences of bringing Negroe-slaves into this kingdom, or their being baptized;" which opinion was repeated and recognized by Lord Hardwicke, sitting as Chancellour, on the 19th of October 1749, to the following effect: He said, "that Trover would lay for a Negroe-slave: that a notion prevailed, that if a slave came into England, or became a Christian, he thereby became emancipated; but there was no foundation in law for such a notion: that when he and Lord Talbot were Attorney and Solicitor General, this notion of a slave becoming free by being baptized prevailed so strongly, that the planters industriously prevented their becoming Christians: upon which their opinion was taken; and upon their best consideration they were both clearly of opinion, that a slave did not in the least alter his situation or state towards his Master or Owner, either by being christened, or coming to England: that though the statute of Charles II. had abolished tenure so far, that no man could be a *Villein regardant*;² yet if he would acknowledge himself a *Villein* engrossed in any Court of Record, he knew of no way by which he could be entitled to his freedom, without the consent of his Master. We feel the force of the inconveniences and consequences that will follow the decision of this question: yet all of us are so clearly of one opinion upon the *only* question before us, that we think we ought to give judgment without adjourning the matter to be argued before all the judges, as usual in the Habeas Corpus, and as we at first intimated an intention of doing in this case. The only question then is, *Is the cause returned sufficient for the remanding him? If not*, he must be discharged. The Cause returned is, the *slave* absented himself and departed from his master's service, and refused to return and serve him during his stay in England; whereupon, by his master's orders, he was put on board the ship by force, and there detained in secure custody, to be carried out of the kingdom and sold. So high an act of dominion must derive its authority, if any such it has, from the law of the kingdom *where* executed. A foreigner cannot be imprisoned *here* on the authority of any law existing in his own

2. ["A serf."]

country. The power of a master over his servant is different in all countries, more or less limited or extensive; the exercise of it therefore must always be regulated by the laws of the place where exercised. The state of slavery is of such a nature, that it is incapable of being now introduced by Courts of Justice upon mere reasoning, or inferences from any principles natural or political; it must take its rise from positive law; the origin of it can in no country or age be traced back to any other source. Immemorial usage preserves the memory of positive law long after all traces of the occasion, reason, authority, and time of its introduction, are lost; and in a Case so odious as the condition of slaves must be, taken strictly, the power claimed by this return was never in use here: no master ever was allowed here to take a slave by force to be sold abroad because he had deserted from his service, or for any other reason whatever; we cannot say, *the Cause set forth by this return* is allowed or approved of by the laws of this kingdom, and therefore the man must be discharged."

I must confess, I have been greatly puzzled in endeavouring to reconcile this judgement with this state of it, and with my comprehension.

"We pay due attention to the opinion of Sir Philip York and Mr. Talbot," are the words of the Noble Lord who delivered the judgment of the Court; and yet this judgment is, in operation and effect, directly subversive of this opinion. Now I must take for granted that this opinion would not have been cited, especially in so affirmative a manner, if it had had nothing at all to do with the Case then before the Court: because such citation would have been unmeaning and unnecessary. This being admitted, it follows; that the law laid down in this opinion was either the law of the Case, or it was not. If it were the law of the Case, the judgment would have been governed by that law, and consequently contrary to what it is. If it were not the law of the Case, in order to shew what the law is, and that the law and the judgment might correspond with each other, as cause and effect, it would seem, *ex necessitate rei*,³ that the doctrine advanced in this opinion should have been set aside by the superior force of legal argumentation and authority. But the reasoning upon the judgment stands thus: In the Premises this opinion is cited as authority; then, without any middle term denying that authority, the conclusion is, by the judgment, that it is no authority at all. Under these problematical circumstances the only solution possible to me was, that there

3. ["From the necessity of the matter."]

might be two decisions intentionally contained under one judgment: that is to say, that the opinion of Sir Philip York and Mr. Talbot, was the law upon the general merits of the question; and that this judgment of the Court was the law upon this particular state of it. Thus for instance: if the return made to the writ of Habeas Corpus in this Case had denied the lawfulness of the writ itself, and Mr. Steuart had claimed Somerset upon the ground only of being his commercial property; then the opinion of Sir Philip York and Mr. Talbot had operated as law and authority: but as the return had admitted the right of slavery, and Mr. Steuart had claimed Somerset as his slave, there being no laws of slavery now *in use* in this country, either for Negroes, or for any other species of the human being, the judgment of the court was, *from the insufficiency of the Cause returned*, the law of this Case.

But no sooner had this reconciliation taken place in my mind, than another perplexity arose in its stead. In the recital of the opinion recognized by Lord Hardwicke sitting as Chancellour, it is made to conclude thus: "that though the Statute of Charles II. had abolished Tenure so far that no man could be a *Villein regardant*, yet if he would acknowledge himself a Villein ingrossed in any Court of Record, he knew of no way by which he could be entitled to his freedom without the consent of his master."

Now, by connecting this latter with the former part of the opinion, in the manner that it is done, it appears, as if Lord Hardwicke meant to declare, that the state or situation of Negroes towards their masters or owners arose out of, and was founded upon, the remains of the antient laws of villenage in this country. That Lord Hardwicke might have said what is here stated, in order to shew (by way of illustration of the Case upon which he was then arguing) that even an Englishman might still become a slave in this country, *if he pleased*, I cannot deny: but with any intention to prove that the condition of Negroes proceeded from, and was the same with, the condition of villeins, is, I must assert, either the mistake of the person from whose notes this speech was taken, or the intention of him to puzzle and perplex the Case: for it is manifestly impossible that the Court could have put so much self-contradiction and ignorance of the law in the mouth of so wise and so great a lawyer. His Lordship says, "that Trover will lie for a Negroe slave." Now can any thing be more expressive of the law and condition of Negroes than this is? What the nature of an action of Trover is, and what kind of property is required in a plaintiff to maintain such an action, every Tyro of the law must be acquainted with. Would his Lordship have said that Trover

would lie for a villein? Every Tyro of the law knows that it would not. But if a Negroe and a villein were governed by the same laws, Trover would lie for a villein. His Lordship's own words therefore, and not this combination of them, are the best comment upon his meaning; and he in me, *non tali auxilio eget, &c.*⁴ It is enough that I have given the clew; the reader will unravel it himself.

I have now only a short word or two more to add, in address to the Reader; relying, from my own consciousness, upon his candour, that whatever errors of the head he may discover, he will impute nothing that is wrong to the dictates of my heart. It is not the want of humanity, it is not the want of feeling, but the possession of both, with the love of truth, that has given birth to these Considerations. My motives have been, to shew that America does not afford that scene of barbarity, which misrepresentation would have painted upon it: that cruelties and distress are to be found in much greater excess even in this elysium of liberty: that whatever is the state and condition of Negroes, it is Great Britain and not America that is responsible for it: that this therefore is a British, and not an American question; as well it might be, since, if I may be allowed to reason chymically upon this occasion, whatever property America may have in its drugs, it is Great Britain that receives the essential oyl extracted from them. These have been my views. I neither meant to condemn or approve the state and condition of Negroes. I have appealed to the law: if the traffic made of them be as agreeable to right reason as it is according to law, I am glad of it; if it be not, let state necessities justify state tricks. But I meant an apology for, and not a panegyrick upon, myself.

Considerations on the Negroe Cause, &c.

MY LORD,

Being, both by birth and fortune, connected with one of the Islands in America, I was led, somewhat interestedly as your Lordship may suppose, to attend to the arguments that were lately offered in the Court of King's Bench, in the Case of Somerset the Negroe *versus* Knowles and others. It was a new case, said to be full of concern to America; and it had engrossed

4. ["Not such aid does the hour require."]

much of general expectation. My object therefore was that of information: but, without meaning to lessen the labours, or depreciate the merits of the learned counsel concerned therein, I must confess, that the lights thrown on the case did by no means appear to me as, on either side, decisive of the point in question.^[a] It is true that a vast and extensive variety of reading was shewn and discovered: the profoundest depths of learning and science were fathomed and explored: lawgivers, philosophers, civilians, from all historic

[a]. The late publication of Mr. Hargrave's argument, as one of Somerset's counsel, gives me the satisfaction of seeing in the whole, what I had before the opportunity of hearing only in part. I confess I know not which most to admire, the labour of this Gentleman's researches, or the ingenuity with which his collected materials are systematized and disposed. It is a history, perhaps the most compleat that is, of the rise, progress, decline, and general state of slavery; and, whilst it does as much honour to his humanity as to his understanding, will serve as a light to enlighten the footsteps of posterity, should a revival of the laws of Villenage be ever attempted in this country: but, having said this, I must recur to my former opinion, that, learned as his arguments are in general, in this particular case they are founded on false and mistaken principles, and are totally inapplicable to the merits of the present question. His first principle or point is, (vid. p. 12.) that "whatever Mr. Steuart's Right may be, it springs out of the condition of slavery; and accordingly, says he, the return *fairly* admits slavery to be the *sole* foundation of Mr. Steuart's Claim." Thus, with a *Petitio Principii*, {Literally, "A begging of the premise," i.e., begging the question.—Tr.} which neither is, can, or will be admitted, and upon a manifest error in the return made to the writ of Habeas Corpus, does the argument of Mr. Hargrave commence, rest, and depend. If the return, instead of admitting, there being no law to countenance such admission, had relinquished the right, and denied the claim, of slavery: if it had set forth, that Mr. Steuart was the *bona fide* purchaser of Somerset in the legal course of trade: that he had bought him out of a ship's cargoe from Africa, together with some elephants teeth, wax, leather, and other commodities of that country, for which he paid his money, or otherwise gave in exchange the manufactures of this country: that he had brought him here as an article of commerce with his other goods, under the sanction of the laws of trade: that he meant to export him hence, under the same protection, with his other property, in order to be sold for his better advantage in one of the English Colonies in America: that a writ of *Habeas Corpus* might as well issue on account of his elephant teeth, his wax, his leather, and his other commodities of that country, as on account of his Negroe, they being expressly under the same predicament of law, and so forth: I say, under such circumstances, and upon such a return, what would become of this stately pile of elaborate argument?

High-built, like Babel's tower, to magnify the fall! Must not the lawyers seek new ground to build upon? Must not the Court lose that error of insufficiency, which now supports its only right of Judgment?

Note, Although this argument of Mr. Hargrave is said to have been delivered in the particular Case of Somerset *a Negroe*, yet it is meant and intended as a course of reasoning upon the general question of the state and condition of *Negroes*.

existence, were brought to light and examined: the examples, definitions, and opinions, which Moses, Aristotle, Justinian, Grotius, Pufendorff, and the rest, had given of slavery, were cited, explained, and enlarged upon: the edicts and regulations of French, Spanish, German, Flemish, and Dutch police on this head were mentioned and produced. But, my Lord, with all due deference and submission, may I ask, how applicable was this antiquated and foreign doctrine to the case then under your Lordship's contemplation? The politics of Aristotle are not the rules of the Court of King's Bench; *neither is Roman jurisprudence the law of that court*. As a display of general knowledge, it had with me, as it must have had with every one present, its great abundance of merit and commendation; and I had followed the learned gentlemen, with the highest pleasure, in their travels and pursuits abroad in search of matter of illustration, if the case had been brought home with them at last, and rested on its own native ground and foundation. But herein, my Lord, I found myself unsatisfied and disappointed: for how the question remained with your Lordship as a point of law for the judgment of the Court, I own, I was unable to comprehend, or to learn. It is therefore, my Lord, that I now take the liberty to offer the following Considerations to your Lordship's notice and observance; trusting to the importance of the subject, and to your wonted candour, for my apology and pardon in the attempt.

I have read, my Lord, to distinguish, and have been ever taught to know, that the Lord Chief Justice of the Court of King's Bench is the great and first expounder of the laws of this Realm; great and first in dignity and in office; in your Lordship's person, great and first professedly in capacity also. Of these laws then, my Lord, I have apprehended that there are but two kinds, however sub-divided into sorts or species: the unwritten, or common law, of which judicial decisions are the evidence: or the written or statute law, otherwise called acts of parliament. Now, my Lord, so far as the case is referrible to either of these establishments, so far it lies before the Court, and falls under the cognizance of your Lordship. This is the source of enquiry leading to your judgment and determination; and all without the circle of this, I conceive to be inapposite and eccentric. The first question then, that would seem to arise on this position, is, *What is the common law of the land respecting the case in issue, considered as a case of slavery?* It was said, I remember, by one of the counsel, that the present state of slavery among Negroes was totally different from the ancient condition of

villenage; that it was a new species of slavery utterly unknown to the common law of England.^[b] In this opinion I readily coincide, and agree with the learned gentleman. The next question is, What do acts of parliament say on this head? I believe it must be said for them, that they are, enactively, if I may be allowed the expression, silent. If this be so; then, the conclusion will operate in the nature of a plea to the jurisdiction of your Lordship's Court. If the case be unknown to the common law, and acts of parliament are silent thereupon, what basis must your Lordship's judgment take? Where there is no law, there can be no remedy. If the common law be defective, it is the business of acts of parliament to supply the defects: but until those defects are supplied; *sub judice lis est*,⁵ and the matter must remain undetermined. Your Lordship may however tell me, that, where positive law is wanting, whereupon to ground the decisions of a Court, recourse may be had to the maxims and principles of law, to the spirit of the constitution. The result of this, my Lord, at best, is but matter of opinion; besides, cases founded on the self-same principles will often have very different determinations, according to the difference of circumstances, and the alteration or change of times. Thus, if it had even been an original maxim of the common law, that

[b]. It is said in Mr. Hargrave's argument, p. 23, "such was the expiring state of domestic slavery in Europe at the commencement of the 16th century, when the discovery of America and of the Western and Eastern coasts of Africa, gave occasion to the introduction of a new species of slavery." If the arguer had said *a new species of traffic*, instead of a new species of slavery, he had expressed the real matter of fact; seeing that the law by which this concern is regulated, considers it in no other light or view whatever. For this reason too, it cannot be enumerated among the several species of slavery that he has mentioned, and taken notice of; each distinct species having its distinct laws, appropriated thereto distinctly, as the laws of slavery. Among the Portuguese and Spaniards, I have been given to understand, that Negroes are, and have ever been considered, as with the English, matter of Property, and articles of commerce in the common course of traffic; and were so estimated by the French, untill the refined age of Lewis XIV. gave rise to a new institution of law, under the title of the *Code noir*, for the particular government of Negroes in their American colonies. It were to be wished that a fit and proper digest of this sort could take place with us: but, I fear, the difficulty (which arises not so much from the subject, as from the means of introduction) will prevent the execution of any such plan. From the unlimited power of the Crown of France, when laws are made, it is easy to enforce an obedience to them: from the limited power of our monarchy, such obedience is not to be exacted. Each English colony has a legislature of its own; and although they all agree in the framing of laws not repugnant to the laws of England, yet they all widely differ among themselves in the mode and practice of those laws.

5. ["The case is before the judge."]

slavery was incompatible with the frame and constitution of this country, yet it does not therefore follow, that occasions have not since arisen to combat with this principle, and to justify particular conclusions differing from these general premises. For instance, my Lord, the impressing of seamen, is an idea as heterogeneous to the nature and essence of this government, as slavery painted on the blackest ground can be. It is slavery itself, in its very definition; and what signifies the name, says Hudibras, since the thing is the same? But the indispensableness of the measure has nevertheless (to continue the metaphor) given colour to the practice, and it is now seen in another light and view. But to return: If your Lordship should be of opinion, for opinion it must be, if there is no positive law to ground your judgment upon, that Negroes in this country are free, I will place in opposition to this, the opinions of the late Lord Chancellor Hardwicke, and his predecessor the Lord Chancellor Talbot, to wit, that Negroes in this country are not free. Your Lordship perceives, that I take your opinion upon supposition only; the other opinions are well-known facts. To search then for the grounds of your opinion, without the certainty of its being so, would be now premature and unnecessary: but, knowing the opinions of these two great oracles of law, it is of necessity to conclude, that they had the most sufficient foundation for them, seeing that it is allowed on every hand, that no opinion was ever given in any case whatever with greater solemnity, or more deliberation, than these were. Now, my Lord, to investigate the reasons of these opinions, is one way, perhaps, to arrive at the truth: but to follow men like these, in their researches, is a procedure fitted only to abilities such as your Lordship's are. As conjecture however is open to all, though positive knowledge is but the gift of a few; I shall therefore venture to suggest what might in part have led the ideas of these great and wise men to the conclusion which they have drawn, namely, that Negroes in this country do not become free. I have before stated, my Lord, and have agreed with one of the learned counsel, that the condition of slavery among Negroes is unknown to the common law of this land: that it is a new species of slavery, which has arisen within, and not beyond, the memory of man, as is necessary to the descriptive quality of this kind of law; and, therefore, being not under the comprehension, it cannot be within the absolute provision of it, however reduceable thereto it may be made, by analogy, implication, or construction. I have said too, that acts of parliament are silent on this head. I have repeated what I had before stated and said, in order to draw this inference:

that although the slavery of Negroes is unknown to the common law of this country, and acts of parliament are silent thereupon; yet *the right* which Mr. Steuart claims in the Negroe, Somerset, is a *right* given him by act of parliament.

I must then apprise your Lordship, that from this instant it is my intention to drop the term Slavery, at least as a term in argument with me. It is an odious word, that engendered this law-suit, and now feeds and supports it with the fuel of heated passions and imaginations. Instead therefore of such prejudiced and unpopular ground, whereupon the case has hitherto been made to stand, I shall take the liberty to remove its situation, to change its point of view, and to rest it on the land of *commercial Property*; from whence, perhaps, it will be seen, not only in a less offensive light, but where also it may find a foundation more solid and substantial for its support.

It is matter of course, my Lord, to say, that you are well acquainted with all the acts of parliament relative to the Royal African Company of England, from its establishment by charter in the reign of Charles the Second down to the present time.^[c] Now, my Lord, the end of this company was trade: the object of that trade Negroes, as the preamble to the act of the 23d of Geo. II. c. 31. thus expressly declares:

Whereas the trade to and from Africa is very advantageous to Great-Britain, and necessary for supplying the plantations and colonies thereunto belonging with a sufficient number of Negroes, at reasonable rates, it is therefore enacted, &c. &c.

[c]. I have referred to this period of the Negroe-trade to Africa, because Acts of Parliament go no farther back in confirmation of it; but its commencement was of much earlier date. It began in this country about the middle of the 15th century, and was carried on by means of letters patent obtained by individual traders for their private emolument, until the growth of the English plantations in America, in the next century, made it an object of such importance, as not only to render the establishment of a company necessary, but of such profit, as to engage even crowned heads to be concerned therein. The first charter was granted in the year 1661, in favour of the Duke of York; but being revoked by consent of parties, it was renewed in the year 1663, with more ample privileges than the former. The principal adventurers here, were Queen Catharine of Portugal, Mary Queen of France, the Duke of York, Henrietta Maria Duchess of Orleans, Prince Rupert, and others of the Court. Thus upon the ground of an exclusive Right was this trade continued, till, by the vast increase of the colonies, it became, in the beginning of the present century, a weight too heavy for the support of prerogative; and so falling under the protection of Parliament, was made, as it now is, a free, open, and national concern.

Whatever then, my Lord, is matter of trade, your Lordship knows, must be matter of property. The idea of the one is necessarily involved in the other. But, my Lord, these acts have not been content with this general construction: they have gone farther, and have themselves set the mark and stamp of property upon Negroes. Whether, my Lord, the Legislature is justifiable herein, or whether it has authority by the laws of nature to do this, is not for me to determine. It is, perhaps, a right, like many other civil rights, established by power, and maintained by force: but this is matter of speculation for the speculative. I here contend only, that the fact is as I have stated it to be; and as it will appear by the statute of the 25th of Geo. II. c. 40.

which was made for the application of a sum of money therein mentioned, granted to his Majesty, for making compensation and satisfaction to the Royal African company of England, for their charter, lands, forts, castles, slaves, military stores, and all other their effects whatsoever; and to vest the lands, forts, castles, slaves, military stores, and *all other their effects*, in the company of merchants trading to Africa;

and wherein it is enacted, that

the Royal African company of England, from and after the tenth day of April one thousand seven hundred and fifty-two, shall be, and they are hereby, absolutely divested of and from their said charter, lands, forts, castles, and military stores, *canoe-men*, *castle-slaves*, and all *other their estate, property, and effects* whatsoever; and that all and every the British forts, lands, castles, settlements, and factories, on the coast of Africa, beginning at Port Sally, and extending from thence to the Cape of Good Hope inclusive, which were granted to the said company by the said charter, or which have been since erected or purchased by the said company; and all other the regions, countries, dominions, territories, continents, coasts, ports, bays, rivers, and places, lying and being within the aforesaid limits, and the islands near adjoining to those coasts, and comprehended within the limits described by the said charter; and which now are, or at any time heretofore have been, in the possession of, or claimed by, the said royal African company of England, together with the cannon and other military stores, *canoe-men*, *castle-slaves*, at and belonging to the said forts, castles, settlements, and factories, particularly mentioned and set forth in the first schedule to this act annexed (such stores as have been made use of in the service of the forts, and such *canoe-men and slaves* as may have

died since the taking of the said survey, only excepted); and also all contracts and agreements made by or for, or on the behalf of, the said royal African company, with any of the kings, princes, or natives, of any of the countries or places on the said coasts; and *all other the property, estate, and effects* whatsoever, of the said royal African company, shall, from and after the said tenth day of April one thousand seven hundred and fifty-two, *be vested in*, and the same and every of them are and is hereby *fully and absolutely vested in the said corporation*, called and known by the name of "The company of merchants trading to Africa," and their successors, freed and absolutely discharged of and from all claims and demands of the said royal African company of England, and their creditors, and every of them, and of all and every person or persons claiming under them, or any or either of them.

Here, my Lord, the *legal nature* of Negroes, if I may so speak, is fully established and clearly ascertained, by act of parliament. Your Lordship perceives, that they are *in hoc verbo*⁶ declared to be property, and are vested as goods and chattels, and as other effects are, in owners prescribed for them. If it is observed, my Lord, that the term Slave is made use of, and recognized by this act of parliament; it is answered, not relatively so, as to a state of slavery, but descriptively only of such things as shall be deemed the property and effects of this company. The statute, my Lord, of the 5th of His present Majesty, ch. xlv. enacts, that such parts of Africa as were ceded by the last treaty of Paris, together with the goods, slaves, and other effects thereunto belonging, and which were, by a former act, vested in the company of merchants trading to Africa, shall now become the property of the Crown; so that the King, as well as this corporation of merchants, are, by the law of the land, possessed, and are now the actual and rightful owners, of a very considerable number of Negroes, under the afore-mentioned description, of canoe-men, castle-slaves, women, children, carpenters, and other artificers, particularly set forth in schedules annexed to the afore-mentioned acts. It is also enacted, "that the trade to Africa shall be free and open to all His Majesty's subjects, without preference or distinction"; and it is further provided, "that these acts shall be taken and deemed as public acts, and shall be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without specially pleading the same." Thus far, my Lord, do acts

6. ["In this pronouncement."]

of parliament extend in the confirmation and establishment of this trade to Africa. I shall now beg leave to cite one statute more, in order unquestionably to prove what the sense of the Legislature of this country is, with respect to the state and condition of Negroes. This statute, my Lord, is the 5th of Geo. II. c. 7th, wherein (it being made for the more easy recovery of debts in His Majesty's plantations and colonies in America) it is enacted

that, from and after the twenty-ninth day of September one thousand seven hundred and thirty-two, the houses, lands, *Negroes*, and other hereditaments and real estates, situate or being within any of the said plantations, belonging to any person indebted, shall be liable to, and chargeable with, all just debts, duties, and demands, of what nature or kind soever, owing by any such person to His Majesty, or any of his subjects, and shall and may be assets for the satisfaction thereof, in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond or other specialty, and shall be subject to the like remedies, proceedings, and process, in any court of law or equity, in any of the said plantations respectively, for seizing, extending, selling, or disposing, of any such houses, lands, *Negroes*, and other hereditaments, and real estates, towards the satisfaction of such debts, duties, and demands, in like manner as personal estates in any of the said plantations respectively are seized, extended, sold, or disposed of, for the satisfaction of such debts.

Herein then, my Lord, is not to be found even the trace of an idea of slavery considered as such by Parliament, among Negroes: but, on the contrary, what their legal state and condition is, is conceived and expressed in terms so plain and clear, so explicit and precise, that the most sceptical cannot doubt the meaning, nor the most simple fail to understand it. They are, as houses, lands, hereditaments, and real estate, assets; and, in like manner as personal estate, to be disposed of, for the payment of debts due to the King and his subjects.

Upon this state and exposition then, my Lord, of these several statutes, it would seem that I am well warranted, by their authority, in my idea, that the right which Mr. Steuart claims in the *Negroe Somerset*, is a right given him by act of parliament; and confirmed in my proposition, that this is a case of property.

But, my Lord, in order fully to establish this doctrine, it may perhaps be expected, that I should not only shew what the law is, but that I should

prove also what the law is not; and this must necessarily lead me to reason somewhat more closely on the subject.

I am aware it may be objected, my Lord, that property in Negroes so vested, is a property created in Africa for the use and purpose of the colonies in America: from whence a question will be deduced, Whether Negroes are property in England?

It appears, my Lord, that a trade is opened, with the sanction, and now under the protection of parliament, between the subjects of Great Britain and the natives or inhabitants of Africa. The medium of this trade on the one hand are, manufactures, goods, wares, and other merchandize; on the other, captive Negroes, or slaves; which, for these commodities, are given in barter and exchange. It will be allowed, I presume, my Lord, that these British traders, or merchants, have an absolute property in their merchandize; to truck and to traffic with this merchandize is the legal institution of the trade: it will be absurd then to deny, that they have not an equal interest in the thing received, as they had in the thing given. To avoid this dilemma then, the objection recurs; that, in Africa they may have an interest, in America they may have the same, in Europe they have none: but assertion without proof, is argument without weight. Where is the law that has drawn this line of distinction? Is there any act of parliament, or clause of an act of parliament, that has fixed and described the zones or climates wherein property in Negroes may be held, or where it may not be held? Until I am better informed, my Lord, I must take for granted, that no such law exists; and if no such law does exist, the manifest conclusion is, that where property is once legally vested, it must legally remain; until altered or extinguished by some power coequal to that which gave it.^[d]

[d]. Mr. Hargrave says, in his argument, p. 67. "Another objection will be, that there are English acts of parliament, which give a sanction to the slavery of Negroes; and therefore that it is now lawful, whatever it might be antecedently to those statutes. The statutes in favour of this objection are the 5th of George II. ch. 7, which makes Negroes in America liable to all debts, simple contract as well as specialty, and the statutes regulating the African trade, particularly the 23 Geo. II. ch. 31, which in the preamble recites that the trade to Africa is advantageous to Great Britain, and necessary for supplying its colonies with Negroes. But the utmost which can be said of these statutes is, that they impliedly authorize the slavery of Negroes in America; and it would be a strange thing to say, that permitting slavery there, includes a permission of slavery here. By an unhappy concurrence of circumstances, the slavery of Negroes is thought to have become necessary in America; and therefore in America our Legislature has permitted the slavery

But as it may perhaps be to the purpose, my Lord, to try the force and effect of these acts of trade referred to, I will, with your Lordship's indulgence, state a case or two, whereby their operation in this country might be felt and perceived.

Suppose, my Lord, that a fleet of merchant ships belonging to the African company, containing twenty thousand Negroes on board (more or less, it is of no matter), bound from Africa to America, should, by strange, contrary, and adverse winds, be driven and wrecked upon the coast of England; that the ships were lost and destroyed, but that the Negroes had been landed in safety on this shore of freedom: would the African company, my Lord, be justified and entitled to re-ship these Negroes in other vessels, to the end that they might be conveyed to their destined ports in America? Or, would the pure air of this country, as has been insisted on, set them, with caps of liberty on their heads, free and at large; thereby robbing, for so I must call it, these merchants of their property to the amount of one million of money, at the allowance, and on the moderate computation, of fifty pounds price for each individual Negroe? In this kingdom of commerce, my Lord, where the rights of merchants are so well distinguished, and the laws of trade are so minutely known, I should presume that the case would not admit of a question. Of what use would the charter of this company be to them, if the laws protective of that charter should be found inadequate and ineffectual to the maintenance and security of their property? But again: it has been observed,

of Negroes. But the slavery of Negroes is unnecessary in England, and therefore the Legislature has not extended the permission of it to England; and not having done so, how can this Court be warranted to make such an extension?" Now this is the very assertion without proof that I have complained of above, and have there fully answered: but, in truth, the best answer it can receive, is its own futility. Why did not Mr. Hargrave, instead of his *ipse dixit*, {"He himself said."—Tr.} produce authorities to set aside this objection? He is on other occasions not sparing of proofs and citations. But what is his *ipse dixit*? It is this:

The Legislature has permitted the slavery of Negroes in America:
 But the slavery of Negroes is unnecessary in England:
Ergo, the Legislature has not extended the permission of it to England.

This is his mode of reasoning, and these are his very words, which, when examined syllogistically, shew, if I have not forgotten my Logic, that they are as little conformable to rule, as to matter of fact. But, the fact is, Mr. Hargrave has found this objection a stumbling block in his way, and therefore, nimbly leaping over it himself, has left it to trip up the heels of his followers.

my Lord, that by the statute of the 5th of George III. ch. xlv. a number of canoe-men, and other Negroes, in Africa, were vested in the Crown. Now, by canoe-men, I suppose, my Lord, are meant, African sailors. Suppose then, that one hundred, for example, of these sailors should, by some contrivance or other, find their way into England; would the King, my Lord, have authority to remand them to their place of duty? or, would writs of Habeas Corpus, in despite of this act of parliament, protect them here; thereby determining the right of the Crown in them? The case, my Lord, speaks and determines for itself. Wherein then, my Lord, differs the case of Mr. Steuart from these? Their importance is greater, but the principle throughout is the same. I believe it is not denied that Mr. Steuart was the *bona fide* purchaser of Somerset, in the legal course of trade. I do not apprehend that any evidence was offered to shew that he had stolen him, or that he came by him otherwise surreptitiously. If my memory does not fail me, the property was proved, by affidavit, before your Lordship; or it was stated in the return made to the Writ of Habeas Corpus; but in either way it is of no concern, since the title-deeds are not now before the Court as the objects of Litigation.^[e]

Here then, my Lord, without farther disquisition, I might venture to rest the defence of Mr. Steuart, and therein the law of the case itself. The reasoning, perhaps, may be said to be new, and it is opinion only of my own that supports the doctrine: but, I trust, that, upon examination, it will be found

[e]. With respect to the statute of the 5th of Geo. II. c. 7. there are not wanting frequent instances of its having been enforced in this country; particularly in a case of the noted Rice: who, forging a Letter of Attorney with intent to defraud the Bank of England of a considerable sum of money, fled to France, was delivered up by that Court, and afterwards hanged at Tyburn. It seems, upon his absconding, a commission of Bankruptcy was awarded against him; and the Commissioners, as I am credibly informed, under this very Act of Parliament here mentioned, sold a Negroe of his in the city of London, as his property, and among his other goods and chattels, for the satisfaction of the creditors. But this act does not require cases for its confirmation, neither is it the place where executed that I contend for: it is *the vesting the property*, without proviso or condition, that surmounts all objection. Suppose I had purchased a Negroe in the Island of Barbados, or in any other part of America, that had been extended there at the suit of the King for a debt due to him, and had brought this Negroe with me to England: would Mr. Hargrave, or any other lawyer, say, that a writ of Habeas Corpus, or any other writ whatsoever *not founded on the verdict of a jury*, could dispossess me of a property, which I held under the sense, letter, and spirit of an Act of Parliament? Can any implication of law operate against the express words and meaning of a law? And would it not be *reductio ad absurdum* to argue thus?

to be not therefore the less conclusive. However, as I am upon the subject, it may not be amiss that I should pursue it somewhat farther; and, by extending the chain of enquiry, strengthen and enforce the arguments that have been already offered and applied. It was said, by one of the plaintiff's counsel, that municipal laws were binding only in the state wherein they were made; that, as soon as a member of that state was out of it, they ceased to have their influence on him; and the laws of nature of course succeeded to him. As a general proposition, my Lord, this might have had its admission; but even as such, it is not without its exception. I think I have the most classical authority of the law to say otherwise. For instance, allegiance, which is the duty that every subject owes to the sovereign, or sovereignty, of that particular state to which he belongs, is a municipal law; and yet, neither time, place, nor circumstance, can alter, forfeit, or cancel, the obligation. An Englishman (says Judge Blackstone),^[f] who removes to France or to China, owes the same allegiance to the King of England there as at home, and twenty years hence as well as now. But, my Lord, with regard to the particular application of this proposition, when the gentleman endeavoured to make a distinction between the laws of the colonies and the laws of England, in my apprehension he was extremely mistaken. I fancy the relationship and dependency of the children colonies on their mother country did not occur to his mind. The circumstance of their having internal laws of their own, by no means argues a difference in those laws, independent of the laws of England. As well might it be said, that the laws of England are not the laws of the county of Kent, because by the custom of gavelkind they differ from the general laws in the disposition of estates; and so of Borough-English, and wherever in this kingdom particular customs are to be found or met with. But, my Lord, it is not only a first and leading principle of legislation in the colonies, arising out of their original grants and charters, and enforced by the royal instructions given to commanders in chief there; but it is also enacted by the statute of the 7th and 8th of William III. ch. 22. "that no law, usage, or custom, shall be made or received in the plantations, repugnant to the laws of England": so that, by these restrictions, the very *leges loci*⁷ (wherein, from situation, from climate, and from other circumstances, one might naturally suppose some difference) are forced as much as may be to a conformity with

[f]. Vide Blackstone's Commentaries, vol. i. p. 369.

7. ["Laws of the place," i.e., local laws.]

the constitution and laws of this country; and to prevent even the accident of a contrary occurrence, your Lordship knows, that there is a counsellour appointed to the board of trade here, whose especial business it is, to examine all the colony acts, and thereupon to make his report, if necessary, antecedent to the royal confirmation of them. If property, therefore, in Negroes, was repugnant to the law of England, it could not be the law of America: for (besides the reasons already assigned) by the same statute wherever this repugnancy is, there the law is *ipso facto* null and void. But, my Lord, I will further endeavour to elucidate this matter, by begging a question or two, by way of case in point. Let it be admitted, my Lord, that a colony of English had embarked from hence, in order to establish settlements for themselves in some one of the late ceded islands in the West Indies, and that they were arrived, it may be said, in the island, *where English troops, trampling on the laws of God and man, are slaughtering even to extirpation a guiltless race of Caribs, the aborigines of the country. I mean the island of St. Vincent, an island under the tutelage of a Saint too!* Suppose then, that, upon their arrival there, the Legislature of that country had taken it into their heads to pass an act similar to the 25th of Geo. II. ch. 40. already referred to, thereby vesting these people as property, in certain owners allotted to them: I should be glad to know, my Lord, whether this act could possibly have operated as a law, and whether it was not, *eo instanti*,⁸ upon its being enacted, destitute and void of all force, validity, and effect? Your Lordship's answer doubtless would be, that this act must have been its own executioner, that it was *felo de se*.⁹ Why then, my Lord, does not the principle directive of this conclusion on the case of the colony of English, determine likewise on the case of the Negroes? If an act of an American plantation making property of a colony of English there, is nullified *ab initio*¹⁰ from its being enacted, why is not an act making property of a colony of Africans susceptible of the same nullity? The reason, my Lord, is twofold: first, because in the one act, such a law is not only repugnant to, but absolutely subversive of, the laws of England: secondly, because in the other act, such a law is not only consistent with, but founded on, the laws of England: and this, my Lord, proves to mathematical demonstration, that the colony laws are not only in general dependent

8. ["At that instant, immediately."]

9. [Literally, "A felon of himself" i.e., a suicide.]

10. ["From the beginning."]

on the laws of England, but, in particular instances, owe their origin and source to them: so that, as the refracted rays of light, diverging from one point through a prism, may be concentrated in the same focus; in like manner may these laws, notwithstanding their number and variety, be collected and disposed of in one common system or digest, as parts of the same whole. From what therefore I have here suggested, my Lord, I mean to conclude generally, that the right and property, not only of Mr. Steuart in his Negroe Somerset, but of every subject of Great Britain in his Negroe or Negroes, either in the colonies or elsewhere, is a right and property founded in him by the law of this land; that the royal grants, letters patent, and charters, for and of the African trade and company, confirmed and established by acts of Parliament, are the foundation whereupon all the laws of the colonies, respecting their Negroes, are built; and that, without such sanction, those laws could never have been made. For, my Lord, it is evident that the colonies could not have had power of themselves to institute this trade to Africa; neither have they the means to support it. Without this trade then to Africa, no Negroes could have been imported to them; and if they had had no Negroes among them, they had needed no laws appertaining to Negroes.^[g]

But, my Lord, it may be urged, that although the laws of England may make property of Negroes, they do not make slaves of them. I should imagine that, although an individual, I might answer individually for every

[g]. Mr. Hargrave further says, in his argument, p. 67, and 68, "The slavery of Negroes being admitted to be lawful *now* in America, however questionable its *first* introduction there might be, it may be urged that the *lex loci* {"Law of the place"—Tr.} ought to prevail, and that the master's property in the Negroe as a slave having had a lawful commencement in America, cannot be justly varied by bringing him into England." This is one among other objections raised by Mr. Hargrave in order to receive his answer. Now as to the doubt expressed here, namely, "however questionable its first introduction there might be," the right of granting letters patent, and of erecting corporations for the purposes of trade, being the undoubted prerogative of the king as arbiter of the commerce of his dominions; the lawfulness of this trade to Africa is no more to be questioned whilst it was carried on under this direction, than it is to be questioned now it is under the controul of parliament. It was before constitutionally legal, it is now parliamentary so: but the answer to the objection itself is as little satisfactory as the doubt is. Here a most unnatural distinction is aimed at between the colony laws in America, and the laws of their mother country: putting the *lex loci* of these colonies upon the same footing with the *lex loci* of Russia or Prussia, or any other foreign country: whereas the *lex loci* of the colonies is founded on the *lex loci* of England, and is, *in totidem verbis* {"In so many words."—Tr.}, the same, as has been made to appear.

American subject of the King, that they do not desire any greater interest in their Negroes than that of property. It is self-sufficient to answer all their purposes, and to produce all that great good which this nation experiences therefrom. It is a supposition of inhumanity, I hope, inapplicable to these people, that they should wish to make slaves of their Negroes, merely for the sake of slavery; and if it should appear, that there is no such law existing in America, as the law of slavery, considered as such, I should infer that the contrary presumption was fittest to be entertained and received. The law respecting Negroes there, my Lord, is the law of property, consentaneous to the law of England. By this law they are made real estate, for the purpose of descent, and goods and chattels *quoad*¹¹ the payment of debts. This is the original and fundamental law concerning Negroes. I do not remember ever to have seen the word Slavery made use of, in any law, of any colony, in America. I admit that Negroes are there termed slaves: but I will tell your Lordship why. In the criminal law, where they become necessarily the objects of punishment, it is essential that they should have some descriptive name or title given to them. It is for this reason, therefore, that they are there, and there only, so called. As they had been already defined to be property, as Negroes, it could not be said that, if property should strike his master, property shall be punished; but it is said, that if a slave should strike his master, this slave shall be punished accordingly. Now in the antient law of England, my Lord, when slavery was part of the constitution, your Lordship knows, that not only the villein was described, but the law of villenage or bondage was also known and laid down. In the laws of America, the slave is made mention of, for the reason assigned; but the law of slavery, however impliedly, is no where expressly to be found.

But here, my Lord, I must beg leave to make a short digression, intentionally to wipe off an imputation, which by one of the plaintiff's counsel was thrown on the owners and possessors of Negroes in America. In the course of his pleading, he took occasion to draw a horrid and a frightful picture of the barbarity, and cruelties, that were exercised on these beings in the colonies; and concluded with hoping, that such practices would for ever remain forbidden to this country. Your Lordship knows, that wherever order is, there discipline must ensue. Like as cause and effect, they are inseparable one from the other. Now it is not to be presumed, that an hundred thousand Negroes

11. ["With respect to."]

are to be held in obedience to ten or fifteen thousand owners (for this perhaps may be found to be near the average) without some means or methods, which, from their accidental application, might so generally operate on their fears, as to produce the end required. It is so in the case of the navy; it is so in the army of every country in the known world. A soldier would not put himself in the front of a battle, to run the risque of being shot through the head, if he did not know that this would be the certain consequence of his desertion. The fear of the latter gives him courage to engage in the former: or, how otherwise could fifty officers, perhaps, command a regiment of a thousand men? But, my Lord, the design of this gentleman's groupe of figures, was to induce a belief in the Court, that English feelings were to revolt at American punishments. As martial law is not the law of Westminster-hall, it is likely that he has not studied it: but, living in this country, I cannot suppose him a stranger to the effects of it. Who have not been eye-witnesses to the hundreds of stripes that have been given to soldiers on the parade of St. James's? I saw once, my Lord, two sailors [who were perhaps impressed men too] under the sentence of receiving five hundred lashes each, flogged on their naked backs along the sides of thirty-four men of war, lying at anchor in the harbour of Spithead. Was such a punishment ever known to have been inflicted on any Negroe in the American plantations? No, my Lord: the laws of every colony forbid it: but a stronger law than these prevents it, the law of self-interest. Negroes are the riches of those who possess them. Land, without their aid and assistance, in order to cultivation, is useless, and of no value. If their healths are impaired, their labour is lost, and profit ceases. If their lives are destroyed, their places must be supplied with more difficulty, and at a much greater expence, than is commonly supposed. The good consequence of which, my Lord, is, that the state of Negroes, *caeteris paribus*,¹² in America, is preferable, nay infinitely more desirable, than the condition of the poorer sort of people residing even in this boasted happy isle. I will not say, my Lord, that this is a rule without an exception. There are madmen in all parts of the world, who, as such, act diametrically opposite to their interest. Such there are in America: but your Lordship sees, that the observation is founded on reason; and I can assure your Lordship, that it is the effect of general experience. But, my Lord, I cannot quit this subject without making all due allowance for the learned counsel's zeal for his client, and for the warmth of his

12. ["With other things being equal."]

youth, which probably might have hurried him into this ill-grounded and uncalled-for reproach. It was ill-grounded, as, I hope, I have proved: it was uncalled-for, because not necessary to the question; and could no otherwise have been applied or received, than as mere *argumenta ad passiones*:¹³ which, however admissable to the ears of a jury, to the distinguishing eye of a court, never fail to carry with them their own impropriety. But in justice to the gentleman, in other respects, I am called upon to say, that it was with infinite pleasure I perceived those rays of genius and abilities in him, which promise to shine forth so conspicuously, to the ornament of this country, and to the honour of Barbados, his native island, in America.

I come now, my Lord, to say, that I hope it will not be imputed to me as vanity, that I have ventured to suggest what might in part have led the ideas of those great and wise men, the Lord Chancellours Talbot and Hardwicke, to the conclusion which they have drawn, namely, that Negroes in this country do not become free. I was encouraged in the undertaking, by the greatness of their authority. I was enlightned in the pursuit, by the evidence of their opinion. I thought myself justified in resting their chief reasons and motives on the principles of property; and I will produce the opinion itself, as the warrant of my justification:

We are of opinion, That a slave, by coming from the West-Indies, either with or without his master, to Great-Britain or Ireland, doth not become free; and that his master's *property* or *right* in him is not thereby determined or varied; and baptism doth not bestow freedom on him, nor make any alteration in his temporal condition in these kingdoms: We are also of opinion, that the master may *legally* compel him to return to the plantations.^[b]

P. YORK.
C. TALBOT.

Jan. 24, 1729.

Upon this opinion, my Lord, I shall make no other remark, than that right and property seem to be the obvious ground and foundation of it, or the hinges whereupon the whole is made to hang and to turn.

13. ["Argument appealing to the passions."]

[b]. This opinion was repeated by Lord Hardwick, sitting as Chancellour, twenty years after it had been given, with additional assurances, and under the fullest conviction of its strict conformity to the law.

But, my Lord, I will now admit, that what is held to be law, is at variance with this opinion. It is laid down “that a Slave or Negroe, the instant he lands in England, becomes a freeman”; that is, “the law will protect him in the enjoyment of his person and his property; yet with regard to any right which the master may have acquired to the perpetual service of John or Thomas, this will remain exactly in the same state as before.” The interpreters of this law, my Lord, may be *right* in point of *reason*; but, I submit it, that they are *wrong* in point of *law*.^[i] The case is this, my Lord: seeing that Negroes are human creatures, it would seemingly follow that they should be allowed the privileges of their nature, which, in this country particularly, are in part the enjoyment of person and property. Now, from hence a relation is inferred, that has not the least colour of existence in law. A Negroe is looked upon to be the servant of his master; but by what authority is the relation of *servant* and *master* created? Not by the authority of the law, however it may be by the evidence of reason. By the law, the relation is, as *Negroe* and *Owner*: he is made matter of trade; he is an article of commerce, he is said to be property; he is goods, chattels, and effects, vestable and vested in his owner. This, my Lord, is the law of England, however contradictory to, or subversive of, the law of reason.^[k]

Now as to the fact of property in Negroes, without exception to this kingdom or limitation to other countries, I am supported in opinion by the authority of the learned Judge Blackstone; though he ascribes the rise of this property to a source very different from me. In the chapter, of Title to things personal by occupancy, he says,

As in the goods of the enemy, so also in his person, a man may acquire a sort of qualified property, by taking him a prisoner in war, at least till his ransom be paid. And this doctrine seems to have been extended to

[i]. It is said, *Lex est summa ratio* {“Law is the highest form of reason.”—Tr.}. I am sorry that so excellent a rule of law should admit of contradiction; and I wish that this was the only instance of an exception: but, let it be considered, whether our Game laws, our Marriage acts, and, for the most part, the penal laws of this country, *cum multis aliis quae &c.* {“With many other things that,” i.e., it would be lengthy to write, or “and so on.”—Tr.} are not contrary both to reason and nature.

[k]. “It is laid down,” says Judge Blackstone, “that acts of parliament contrary to reason are void: but if the parliament will positively enact a thing to be done which is *unreasonable*, I know of no power that can controul it.”

Negroe servants, who are purchased when captives, of the nations with whom they are at war, and continue therefore in some degree the *property of their masters* (he should have rather said *owners*) *who buy them*.

Here then he refers to the law of nations, for the establishment of that which I appeal to the law of England for. Now, although the law of nations might have been a good ground to rest the municipal law of this country upon, and might have served as a preamble to, or reason for, an act of parliament; yet it is not within my conception, how, in such an internal concern as this is, the law of nations could have been the law itself. For example, if in the return to the writ of Habeas Corpus in this case, it had been set forth, that Negroe servants are purchased when captives of the nations with whom they are at war, and therefore the *law of nations* gives their masters a property in their persons; would your Lordship have thought this a *lawful* plea for the remanding of Somerset? If not, your Lordship finds that the fact of property is admitted by the learned Judge, without the proper foundation of law to support it. But he proceeds to say, "though, *accurately speaking*, that property consists rather in the perpetual service, than in the body or person of the captives." *Accurately speaking*, my Lord, I join issue with the learned Judge: but, *legally speaking*, the law is as he had stated it to be. Those who speak accurately reason from the real nature of Negroes, and draw their conclusions from thence: the Lords Talbot and Hardwicke spoke legally, and drew their opinions from the fountain-head of law. Besides, my Lord, I conceive it to be impossible that the law should be as these interpreters or reporters have made it to be; because the result of it is plain inconsistency, and positive absurdity. If Somerset is protected by the law of England in the enjoyment of his person and property, how, in appeal to common sense, can Mr. Steuart's right in him remain exactly in the same state as before? "Yes, it may be said, he has a right to the perpetual service of him; for this is no more than the same state of subjection for life, which every apprentice submits to for the space of seven years, or sometimes for a longer time." But by what mode or method does Mr. Steuart acquire this perpetual right to his service? There is no indenture of apprenticeship on the part of Somerset to him: there is no written contract of any sort or kind whatever, there is no parole agreement between them, to enforce this right of service. How is it to be maintained then? If by the purchase of him, property is the offspring of purchase; and, as such, Mr. Steuart claims him. If he is not his property,

he has otherwise no right in him, nor to his services; and, again, if he is his property, who shall disseise him thereof?

As I began, my Lord, with making a distinction between slavery and property, and have persisted in their legal difference relatively to the state and condition of Negroes, some farther explanation on this point may perhaps be looked for and required of me. I am sensible it may objectively be said, that in every kind of slavery there is an included degree of property, more or less limited or extended; and that this kind of property therefore in Negroes is but an accumulated degree of slavery: so that the distinction I have made is a distinction without a difference, and a mere contentiousness about words. Now, although I admit the truth of this objection in part, I must deny, in the whole, its application to the principles of my argument. Slavery, my Lord, is that state of subjection, which mankind, by force or otherwise, acquire *the one over the other*. In every society therefore where this state of subjection prevails, the object and subject of those laws necessary for the regulation thereof are, what? *human nature itself*. Let it be considered then whether *human nature* is either the object or subject of the laws of England, respecting the state and condition of Negroes. I beg leave, my Lord, to assert, that the appeal I have already made to those laws maintains the contrary matter of fact, with the undeniable proof of self-evidence. But, my Lord, it may again be urged, that authority, however respectable, is not the test of truth; and therefore, says the disputant, shew me the reason, the *Cur*, the *Quare*, the *Quamobrem*,¹⁴ of these laws. To this, my Lord, in the language and postulate of the Greek Philosopher, I reply; that, as matter of fact is the $\Delta\omicron\varsigma\ \pi\omicron\tilde{\omega}\ \sigma\tilde{\omega}$ ¹⁵ of my argument, beyond this, it is not incumbent on me to extend my enquiries. However, my Lord, as a research of this nature is perhaps founded upon no impertinent or unmeaning curiosity, so the suggestions even of fancy and imagination may not be here undeserving your Lordship's attention. It being evidently the will, it is to be presumed, till the contrary appears, that it was the effect also of the wisdom of parliament, that Negroes under the law should not be considered as human beings; and therefore I am led to surmise that this determination of the Legislature might have arisen from one or the other of two motives or considerations:

14. ["Why . . . wherefore . . . for what reason?"]

15. [Literally, "Grant me ground . . .," i.e., Grant me a premise, and I shall move the world. (Archimedes)—Tr.]

the one *physical*, the other *political*. With respect then to the physical motive, your Lordship need not be told how much the origin of Negroes, the cause of that remarkable difference in complexion from the rest of mankind, and the woolly covering of their heads so similar to the fleece of sheep, have puzzled and perplexed the Naturalists of all countries for ages past. It was a subject of the deepest reflection to the great and learned Mr. Boyle; and what could engage his divine abilities, without satisfaction either to himself or others, is likely to remain among those *arcana*¹⁶ of nature that are not to be revealed to human understanding. But, although these phaenomena in nature are not to be accounted for, and therefore admit of no principle of law inferible from them; yet their very incomprehensibleness, when compared with other circumstances more known and better understood, may serve to this end, as so many lesser weights in the scales of greater probability. Now, my Lord, it is an opinion *universally* received, that human nature is *universally* the same: but I should apprehend that this was a proposition rather taken for granted, than admitted to be proved; for although the proper study of mankind is man, and therefore the universality of such an opinion is *prima facie* evidence of its truth; yet, it is to be observed, that, of all other studies, the science of man has been least of all cultivated and improved. Man only, who examines all Nature else, stands unexamined by himself. If we look into the vegetable and mineral kingdoms of this world, we shall perceive a scrutiny made in them the most nice, accurate, and comprehensive; we shall find these grand divisions of nature arranged in classes, orders, kinds, and sorts: we shall contemplate systems morally perfect. If we take a view of the animal kingdom below ourselves, we shall be witnesses there also of the same order, regularity, and perfection. Why then is human nature exempt from this disquisition and arrangement? Are men afraid to turn their eyes upon themselves, lest they behold themselves in the mirror of truth? Or is it pride, or vanity, that causes this neglect? Yes, men would be angels, angels would be gods, says Mr. Pope;^[l] and yet man, as Doctor Lister observes,^[m] is as very a quadruped as any animal on earth; and whose actions are most of them resolvable into instinct, notwithstanding the principles which custom and education have superinduced. Of other animals

16. ["Secret things, mysteries."]

[l]. Vid. his Essay on Man.

[m]. Vid. his Journ. to Paris.

then, it is well known, there are many kinds, each kind having its proper species subordinate thereto: but man is one kind of animal, and yet, without distinction of species, *universally the same*. Does not this seem to break in upon and unlink that great chain of Heaven, which in due gradation joins and unites the whole with all its parts? May it not be more perfective of the system to say, that human nature is a class, comprehending an order of beings, of which man is the genus, divided into distinct and separate species of men? All other species of the animal kingdom have their marks of distinction: why should man be universally indiscriminate one to the other?

The great Mr. Locke says,^[n] that reason is supposed to make the characteristic difference between man and beasts: but, what is the characteristic that distinguishes man from man? That there may and should be such a distinction, I have already endeavoured to shew; and I am apt to think that this is a question not without its answer. The learned Doctor Hutchinson^[o] has demonstrated the existence of a *moral sense* in, and peculiar to, human nature; which as it serves essentially to distinguish man from beasts, and to raise him from the tenth to the ten thousandth link of the chain, so is it, in my humble apprehension, an evident criterion of the specific difference between man and man. Now Mr. Locke, speaking of reason as that faculty whereby man is distinguished from beasts, says, that beasts have reason in common with men; in which however he is to be understood, that beasts possess the faculty, and in some measure have the use, of reason; but man's superiority over beasts consists in the power of exerting that faculty, and in the compound ratio of its exertion. As beasts therefore have the faculty of reason, and it is the exertion in degree of that faculty (particularly in obtaining abstract ideas) that creates the great difference between man and beasts: so by the same parity of reasoning, the *moral sense* being a faculty of the human mind common to all men, the capacity of perceiving moral relations, the power of exercising that faculty, and the compound ratio of its exercise, is that which makes the grand difference and distinction between man and man. All nature, my Lord, which is the art of God, is wisely fitted and adapted to that use and purpose for which it was ordained; and the same observation is to be made even in the art of man. A flea is not less perfect than an elephant because of its size: neither is the cup that holds a

[n]. Vid. his Essay on Human Understanding.

[o]. Vid. his Moral Philosophy.

pint less compleat than the vessel that contains an hundred gallons; when both are full, the end for which both were designed is answered and fulfilled. The use then to be made of this doctrine, my Lord, is, that as experience, observation, and experiment, are the foundations upon which all speculative philosophy is raised; so, from experience and observation, I judge that the truth of this hypothesis may be very clearly proved and demonstrated. Now, in order to this, it is necessary to have recourse to the histories of nations: to read, to examine, and compare them, one with the other. To observe the moral improvements had by them, to remark the social virtues that prevail; and this will bring me to the accounts that have been given of Negroes (for histories they have none of their own) and consequently back to the subject of this address to your Lordship. But, my Lord, forbearing to trouble your Lordship with a detail of these accounts, I shall, referring them to your Lordship's memory, content myself with the bare mention of a few facts only.^[p]

[p]. In looking into Mr. Hume's Essays, particularly the one of *national characters* (which I had never seen till after the above argument was finished) I was made happy to observe the ideas of so ingenious a writer corresponding with my own: but as we differ in some respects, and much of what I have suggested has been not at all taken notice of by him, I shall beg leave to insert here what he has said upon the subject. "There is, says he, some reason to think, that all nations, which live beyond the polar circles or betwixt the tropics, are *inferior to the rest of the species*, and are *utterly incapable* of all the higher attainments of the human mind." Upon which he has the following note: "I am apt to suspect the Negroes, and in general all the other *species* of men (for there are four or five different *kinds*) to be naturally inferior to the whites."

Now I do not apprehend, that, in order to have different *species* of men, it is at all necessary to have four or five different *kinds*. I infer, that there is but *one genus* or *kind* of man (under the term *mankind*) subordinate to which there are several *sorts* or *species* of men, differing from each other upon the principle that I have assigned; and,

If one will do
What need of two?

Besides, it is seemingly a less systematical arrangement. But he proceeds to say, "There never was a civilized nation of any other complexion than white, nor even any individual eminent either in action or speculation. No ingenious manufactures amongst them, no arts, no sciences. On the other hand, the most rude and barbarous of the whites, such as the antient Germans, or the present Tartars, have still something eminent about them, in their valour, form of government, or some other particular. Such a uniform and constant difference could not happen, in so many countries and ages, if nature had not made an original distinction betwixt these breeds of men. Not to mention our colonies, there are Negroe slaves dispersed all over Europe, of which none ever discovered any symptoms of

Mr. Guthrie, in his account of Africa from the tropic of Cancer to the Cape of Good Hope, says, "The history of this continent is little known, and probably affords no materials which deserve to render it more so. We know from the antients, who sailed a considerable way round the coasts, that the inhabitants were in *the same rude situation* near 2000 years ago in which they are in at present; that is, they had *nothing of humanity* about them *but the form*. This may either be accounted for by supposing, that nature has placed some insuperable barrier between the natives of this division of Africa and the inhabitants of Europe; or that the former, being so long accustomed to a savage manner of life, and degenerating from one age to another, at length became altogether incapable of making any progress in civility or science. It is very *certain* that all the attempts of the Europeans, particularly of the Dutch at the Cape of Good Hope, have been hitherto ineffectual for making the least impression on these savage mortals, or giving them the least inclination or even idea of the European manner of life."

All other writers on this subject agree in these relations, or furnish others similar to them: nor have I been able to find one author, by whom I could discover that there was any sort of plan or system of morality conceived by these tribes of Africa, or practised among them. Their barbarity to their children debases their nature even below that of brutes. Their cruelty to their aged parents is of a kin to this. They have a religion, it is true; but it is a religion which seems the effect only of outward impressions, and in which neither the head nor the heart have any concern. They have laws founded on principles, which plainly prove the defective use of the *moral sense*, as appears in this instance among the rest. Their Judges are judges

ingenuity; though low people without education will start up among us, and distinguish themselves in every profession. In Jamaica indeed they talk of one Negroe as a man of parts and learning; but, 'tis likely he is admired for very slender accomplishments, like a parrot who speaks a few words plainly." Thus Mr. Hume marks the difference betwixt the several species of men, by their natural capacity or incapacity of exerting in degree the rational powers, or faculties of the understanding; which is the distinction that Mr. Locke makes between man and brutes. I distinguish man from man by *the moral sense* or moral powers; and although a Negroe is found, in Jamaica or elsewhere, ever so sensible and acute; yet if he is incapable of moral sensations, or perceives them only as beasts do simple ideas, without the power of combination, in order to use (which I verily believe to be the case); it is a mark that distinguishes him from the man who feels and is capable of these moral sensations, who knows their application and the purposes of them, as sufficiently, as he himself is distinguished from the highest species of brutes.

and executioners at one and the same time. When a criminal is condemned by them, the Chief Justice first strikes him with a club, and then all the rest of the Judges fall upon him, and drub him to death; and neither this, nor any other of their customs, can time make any alteration in, nor precept nor example amend. Indeed, if it were otherwise, it would perhaps be unnatural: for the Ethiopian cannot change his skin, nor the Leopard his spots. From this then, my Lord, I infer, that the measure of these beings may be as compleat, as that of any other race of mortals; filling up that space in life beyond the bounds of which they are not capable of passing; differing from other men, not in *kind*, but in *species*; and verifying that unerring truth of Mr. Pope, that

Order is heaven's first law; and this confest,
Some are, and must be, greater than the rest:

The application of what has been said, is, that the Legislature, perceiving the *corporeal* as well as *intellectual* differences of Negroes from other people, knowing the irreclaimable savageness of their manners, and of course supposing that they were an inferior race of people, the conclusion was, to follow the commercial genius of this country, in enacting that they should be considered and distinguished (as they are) as articles of its trade and commerce only.^[q]

Thus, my Lord, borne on the wings of Fancy, and led by Imagination's wily train, have I ventured in untrodden paths to trespass on philosophic ground; to which offence, however, pleading guilty at your Lordship's bar, I

[q]. There are two cases referred to in Mr. Hargrave's argument, (p. 52. and p. 54.) which are not only fully explanatory of the above principles, but support the opinion of the Lord Chancellours, Hardwick, and Talbot; and are in direct proof of the whole of my argument. The cases I allude to, are those of Butts and Penny, and Gelly against Cleve. The first was an action of *Trover* for 10 Negroes; and there was a special verdict, &c. The Court held, that *Negroes being usually bought and sold amongst Merchants, and being infidels*, there might be a property in them sufficient to maintain the action. In the second case, the Court is said to have held, that *Trover* will lie for a Negroe boy, because *Negroes are Heathens*; and therefore a man may have property in them; and the Court without averment will take notice, that they are *Heathens*. Now upon two judicial determinations are the very reasons of my argument held and alledged. *Negroes are infidels: Negroes are Heathens*: of course unpossessed of those religious and moral truths, which the Gospel impresses upon all minds capable of receiving them; and therefore the law, regarding the inferior state of their nature, has considered them merely as *property bought and sold among merchants*.

submit to the justice of your sentence, whatever your Lordship's judgment may be.

Having discussed, my Lord, the physical motive, which, as it is apprehended, might have occasioned the civil existence, if I may so say, of Negroes in this kingdom; the political consideration proposed comes next in the order of enquiry. It must be observed, my Lord, that if the cause already assigned is the real cause, whatever is to be advanced on this head, is useless and superfluous. Both causes cannot be true at one and the same time. They are meant and must be received in the alternative; or as the two strings of Nimrod's bow, of which if either failed, the other supplied the want; and of whom Mr. Pope thus speaks:

Bold Nimrod first the savage chace began,
A mighty Hunter, and his *game* was *man*.

Now the physical motive supposes a difference of species among men, and an inferiority of that species in Negroes: whereas the political consideration, on the other hand, infers an universal sameness in human nature; that is to say, in fact, that Englishmen are Negroes, and Negroes are Englishmen, to all *natural* intents and purposes. For what signifies the black skin, and the flat nose, as the great Baron Montesquieu would insinuate?^[r] And yet methinks, if the Baron had had a black skin, and a flat nose, the world never would have had the benefit of his *Esprit des Loix*. Upon this ground then, the question that arises is, what could have given rise to this degradation and debasement of human nature? If these our fellow-creatures were instruments necessary for the colonizing of America, and to this end compulsory laws were expedient also, why were these laws not made suitable and suited to their nature? Why were Negroes ordained a *mortuum vadum*, instead of a *vivum vadum*,¹⁷ (so to speak for comparison sake) to those under whose dominion they came? Might not the laws of villenage have been revived *quoad* them? Might not other laws of slavery have been enacted for their government?

[r]. Vid. his Spirit of Laws, vol. I, p. 341.

17. [*Mortuum vadum*: literally, "a dead pledge." A security for a loan where the estate of the borrower is pledged to repay the debt in the case of default.—Tr. *Vivum vadum*: literally, "a living pledge." A security in which the borrower hands over his estate to a lender until the loan is repaid out of the profits from the estate which continually pays off the debt.—Tr.]

Here is it then that policy, which is the object of my discovery, must have intervened. Now the planting of the colonies opening with the 16th century, and consequently commencing nearly with the reign of James I. it appears, that during the reigns of this race of kings, their cultivation and improvement were so rapidly had, that, from a state of infancy, before the end of the reign of Charles II, they had grown up and increased to the vigour of manhood. It is in this period of history, therefore, my Lord, that I am to search for, and to trace, the cause of this allotted condition of Negroes: but, as it cannot be expected that I should here enter into the particulars of these times, so neither is it necessary to my purpose. A single incontrovertible observation will serve to rest the whole of what I have to offer on this subject; and which is this: that from the *alpha* of the reign of James I, to the *omega* of the reign of James II, *to enslave*, was the fixed principle and uniform plan of government. This then at once accounts for the toleration of a measure, so inconsistent with the principles of the constitution of this country: but the reason upon which the measure was grounded is not so immediately obvious. From things that are more known, things that are less known must be deduced. Now it is a maxim in politics, that to obtain an end, direct means are not always to be pursued, or rather that *indirect* means are allowed to be practised; and this will lead me to mention two questions that have been already stated. Why were not the laws of villenage enforced? or why were not other laws of slavery enacted for the government of these people? The answer is plain; these were edged tools, which the complexion of the times would not suffer the use of. Enough was the plan of government exposed, though hid under the cloak of religion. Such a step would have left it naked, and without a covering. Policy therefore prevented that which the jealousy of the people would have forbidden. In vain would have been the argument, that these laws were intended for operation in the new world of America. *Ever to begin at the extremes* is a well-known rule in the art of attaining to despotism. The more distant the design, the deeper laid is the scheme, and the more sure in its consequences. As in the body natural, even so is it in the body politic. The disease that lays hold of the toe, often finds its way to the heart. Gradual encroachments by imperceptible movements are the most dangerous symptoms. They call off attention to remedies, and lull suspicion to sleep. But may all lovers of liberty ever have their eyes open and awake to this despotic process! He that would tyrannise in America or abroad, awaits only the opportunity of becoming a tyrant at Home; but

thank God, my Lord, the present times with us, of all others, give least occasion for any apprehensions of this sort. But to return. Instead then of that Demon Slavery being called in to preside over Negroes, Trade, the guardian angel of England, was made the ruler of them. This I attribute to policy; which, however seemingly more constitutional, was not less favourable to the ruling principle of the Crown. I have already admitted, that to erect corporations, and to grant Letters Patent for the purposes of trade, are in the Crown its undoubted prerogative; but, considering Negroes as human creatures, and upon a level with ourselves, I submit it to your Lordship, that the Crown had no right to make slaves of them; whatever the uncontrollable power of an act of parliament might do: and yet Charles the Second, by his Charter only to the Duke of York, *enslaved* whole nations of these people. The apology, I apprehend, for this, my Lord, will be; that neither this Charter, nor any other Grant, have ever conceived Negroes in this light and view; as, relation being thereunto had, will more fully appear.^[s] If so, my Lord, two things come out in proof: *presumptively*, that the Crown had no right of itself to make slaves of Negroes, or it would, in those days at least, have exerted it; *positively*, by these authorities themselves, that Negroes are not considered as slaves under the idea of slavery, but merely as matter of commercial property, and articles of the trade of this country.

If now, my Lord, I have supported the doctrine which I took upon me to evince, and have satisfactorily shewn, that property is the gift of action in this case, thereby proving that Mr. Steuart may of course legally compel Somerset to return to the Plantations, I shall leave its decision to your Lordship, on a quotation of your own words: "It is not my business to alter the law, or to make it, but to find the law."

It remains then only to observe, my Lord, that if Somerset is the legal property of Steuart, he, Somerset, cannot legally be entitled to the writ which he has sued out in aid of relief. The writ of Habeas Corpus is a writ of right given to the subjects of the Crown of England, for the security of their liberties. If Somerset can fall under this predicament and description,

[s]. See also the Assiento, or Contract made with the South Sea Company for supplying the Spaniards with Negroes by treaty of commerce between Great Britain and Spain, in the year 1713–14; wherein they are considered as dutyable commodities, and named merely as matters of merchandize; and if thus conceived of at this time, and on so solemn an occasion as a Treaty of Peace, by what new law or magic is it that they are now become the subjects of the Crown of England, and intituled to the benefit of the Habeas Corpus?

he is open to the benefits that may arise therefrom; but if the law has already fixed the *fiat*¹⁸ of property on him, I apprehend it a legal exception to the writ, and his right is foreclosed thereby.

Having said thus much, my Lord, on one side of the question, I do not mean to conceal my sentiments on the other. My aim is, to establish the truth: my wish, that what is right should be done. Whatever then is here the result of my reflections, to obtain the end I propose, is necessary to your Lordship's information.

When this matter, therefore, was first in agitation, it stated itself thus generally to my comprehension: that as it was a case which existing for two centuries and upwards, and never receiving finally any judicial determination, it had better remain in the situation it was. It compared itself to me with some cases of royal prerogative, and of parliamentary privilege, which were excellent in theory, but subject to inconvenience in practice; and whose best and safest law was that of suspense: but, my Lord, when I found that the case was to be argued, and the judgement of the Court of King's Bench taken thereupon, my hopes were, that, if it was possible to counteract the law of the land, the decision would be in favour of the Negroe: for although the knowledge of their being free might spirit them up to insurrections in America, yet it would put a stop to their importation here by their owners, and they would be more usefully kept and employed in the colonies to which they belonged. On the contrary determination too, my Lord, it being solemnly adjudged that Negroes in this country were not free, I foresaw that this fatal consequence might follow: that the trade from Africa to America would be diverted from Africa to England; and Negroes, in process of time, would be sold in Smithfield market, as horses and cattle now are. Each farmer would have his Negroe to drive his plough, each manufacturer his slave under his own controul; and America that was conquered in Germany, as was the saying of a very great man, would become America ruined in England.

A great deal, my Lord, was urged by the learned counsel, of the edicts of France, relative to Negroes: but it does not occur to my memory that this, among the rest, was taken notice of. It may be, that I am misinformed with respect to the fact; but I will tell your Lordship how I came by it. I have

18. [Literally, "Let it be done," i.e., legal fact of a condition that is the result of an order from a magistrate or judge.—Tr.]

been myself, my Lord, a traveller through every province of France, and during my tour I never had opportunity of seeing more than two Noirs (or Blacks) as they are there called; one of which was at Marseilles, the other at Bourdeaux, the two chief ports of trade with the American colonies of that kingdom. Knowing therefore the intercourse with, and observing the fewness of these people, I was led to enquire into the reason of it; when I was informed, that there was an absolute edict of the present King of France, prohibiting the importation of them into that country, upon this political idea, that otherwise the race of Frenchmen would, in time to come, be changed. Greater much, my Lord, is the reason in this country to apprehend this event. It was in representation, if not in proof, to your Lordship, that there were already fifteen thousand Negroes in England; and scarce is there a street in London that does not give many examples of that, which, with much less reason, had alarmed the fears of France. Upon the whole, then, my Lord, let America and England look up to your Lordship, as the man qualified to draw the line of propriety between them. To this end, let a Bill originate in the House of Lords, under your Lordship's formation: let slavery, so far as property is such in Negroes, be held in America: let the importation of them be prohibited to this country, with such other regulations and provisions as your Lordship shall see fit to take place. Some centuries back, slavery was the law, and slaves the objects of that law, as I observed before, in this kingdom: but civilization has extinguished the existence of both. When America shall be what England is, some yet undiscovered land will become what America is. In short, my Lord, by this act you will preserve the race of Britons from stain and contamination; and you will rightly confine a property to those colonies, upon whose prosperity and welfare the independent being of this country rests. I am,

My LORD, Your Lordship's most obedient, and most devoted humble servant,
SAMUEL ESTWICK.

Portman-Square, Dec. 10, 1772.

A Member of the Assembly [John Day],
An Essay on the Present State
of the Province of Nova-Scotia
[Halifax, 1774]



FOR YEARS after its establishment in 1749, Nova Scotia presented a classic case of a provincial polity dominated by a small oligarchy of influential settlers. Long attributed to John Day, a Halifax merchant and sometime representative in the Nova Scotia Assembly who took the lead in pressing for legislative control over the budget in the mid-1760s, this pamphlet was an election document intended to encourage Nova Scotia voters to join with newly appointed governor Francis Legge in taking measures to break the power of this oligarchy and bring the colony out of the languishing state that had characterized it in the decade following the Seven Years' War.

To this end, Day sought "to trace the Cause of our present Misfortunes," for which he found "that the Form of our Government has been the sole Cause." In a "short historical Narrative of the Government of this Colony," Day explained how the government had moved from being "an undigested synthetic System of civil and military Laws and Regulations" for much of its first decade to a government dominated by a Council composed mainly of officeholders with government salaries who, after the creation of the Assembly in 1758, "brandished the shield of Prerogative to ward off Attacks against their own Mal-Administration" and soon, in collaboration with Charles Lawrence, the colony's first governor, adopted "a System of Corruption," buying off assembly leaders with offices. "History," he declared, "cannot furnish . . . an Example of so new, and so poor a Country being

so completely Corrupt." This "aristocratic Junto" thenceforth proceeded to dominate the government, bringing down one governor and controlling the legislature, with the result that government came to be "considered not as the parental Protector of the Rights of Individuals and the faithful Steward of the Public Property," but "rather as a Junto of cunning and wicked Men, whose Views extend no further than their own private Emolument, and who further the Distresses of the Community in order to promote a slavish Dependance on themselves." The insecurity of personal property, the lack of legislative oversight of public revenues, and the inefficiency of the courts were the principal areas that Day identified that needed reform. But, he suggested, reform was only possible if voters sent a different kind of representative to the Assembly. Under its "present Mode of Election," he complained, the "*House of Assembly* . . . cannot be called the Delegates of the People," because "the Majority" had "been chose and managed by the Council, by Excise Officers, and other Placemen." "Thus circumstanced," he observed, "it is not to be wondered at, that the real Good of the Province has never been attended to." (J.P.G.)

AN
ESSAY
ON THE
PRESENT STATE
OF THE
PROVINCE
OF
NOVA-SCOTIA,

With some Strictures on the Measures
pursued by Government from its first
Settlement by the English in the Year, 1749.

The Cause of every political Evil incident to Countries may be found in their Forms of Government, to complain that the best Laws are often ineffectual oweing to the Want of Virtue in the People is mistaking a Consequence for a Cause, for no good Law can ever have its due Force where Government is corrupt, and the Want of Virtue in the Individuals of a Community is ever the melancholly Consequence of the same.

Lampreade.

That Form of Government where the Avenues to Corruption are not effectually guarded is the worst Sort of Tyranny.

Marchmont Nedham.

Men of real Fortitude, Integrity, and Ability when united have saved States and preserved the Freedom of their Country, nay, it has often happened that a single Man possessed of Vigilance, Activity and Zeal has rendered abortive the Combinations of Faction and prevented the Ruin of the State.

Algernon Sydney.

It would be tiresome to my Readers and Foreign to my Intention to enter into a minute and Geographical Description of this Country. The Object which I have in view is to trace the Cause of our present Misfortunes, and if possible to promote an Attention to the public Good in future.

This Province has vast natural Advantages and though in a commercial Light it may not be in as much esteem as the Soils and Climate which produce Tobacco, Sugar, Tea, and Indigo; yet if we estimate the Consequence a Country by the Fertility of the Soil for the Production of the Necessaries of Life, the Province of *Nova-Scotia* may justly hold the first Place of any in *America*.

Surrounded almost by the Sea, intersected at convenient Distances by navigable Rivers, abounding with safe and commodious Harbours, renders the Transportation of Produce easy and cheap.

A valuable Fishery fills her Seas and Rivers, which might be a present Relief and Advantage to new Settlers, and a Field for Commerce when the Number of Inhabitants and a Superfluity of the Necessaries of Life make such Scheme eligible.

The Air is salutary for Man and Beast, no Province in *America* is equal to it, intermitent Disorders, and glandular Obstructions are here unknown, and I believe there are as few Premature Deaths in Proportion to the Numbers who pay the Debt of Nature, as in any Part of the World. It must however be allowed, that Seditaries with relaxed Fibres and chronick Affections, find this Climate much too severe for them; but well-fed and laborious Husbandmen, preserve Health and Vigour to an extreme old Age.

Notwithstanding these natural Advantages the first Adventurers might have sunk under the Weight and Difficulty of the Settlement, had they been exposed to the same Hardships with the first Emigrants to every other Province in *America*, were they to have waited for Support until they had cleared the Lands and raised Bread, they must have been ruined by the Expence, or perished for want of Food, were the necessaries which their Wants might require to have been furnished from *England*, or from a distant Country. The Loss of a single Ship might have destroyed their Hopes; were the Expence of Government, and the Administration of Justice, to have been defrayed by the then indigent Inhabitants, it must have been neglected for Want of Support, and probably they might have fallen a Sacrifice to domestic Strife and Anarchy, and become an easy Prey to their savage Neighbours.

How fortunately different was the Fate of the Settlers in this Province, the expelled, unhappy, (and much to be pitied) *French* Neutrals surrendered to them their well cultivated Fields, and dyked Meadows to the Quantity of several Hundred Thousand Acres; every necessary which they could want or desire was wafted to their Doors from the Neighbouring Provinces, the Parliament of *Great-Britain* granted large Sums for the Support of this Country from its first Settlement, and still continues to pay Salaries to almost every necessary Officer of Government: favored with such extraordinary Advantages, unvisited by War, Pestilence or Famine, to depopulate or impoverish.—A Stranger to our Situation might be led to suppose this Province at the present Period to be in a flourishing State,—How different the Scene! How dreary and melancholly the Prospect! We see the Lands ill cultivated, and unimproved, the Husbandman dispirited, the labouring Poor flying to the Continent in every Vessel.—Every Scheme to bring Settlers into the Country becoming abortive. A Depravity of Manners, a Contempt of the Laws, and a Want of Confidence in Government universally prevailing. Our provincial Debt including what is upon Interest is not less than Twenty Six Thousand Pounds. Our Debt to the Crown for Quit Rents about Seven Thousand Pounds. And the Debts of Individuals to the Inhabitants of other Countries not less than Fifty Thousand Sterling. A gloomy Reflection this must be, in a Country where the current Coin does not Amount to Twelve Hundred Pounds, where landed Property would not sell for a fourth Part of the Cost of its Improvement, where the Fishery is become ruinous to every Person who carries it on, and where no Trade exists except that of Distiling and selling Spirits, to the Destruction of the Health and Morals of the labouring Poor, and the soldiery and seamen quartered here. Those who are mostly interested in the Prosperity of the Country, are become chagrined and refuse their Attendance in *General-Assembly*, when chosen. Government is considered not as the parental Protector of the Rights of Individuals and the faithful Steward of the Public Property: But rather as a Junto of cunning and wicked Men, whose Views extend no further than their own private Emolument, and who further the Distresses of the Community in order to promote a slavish Dependance on themselves. The Individual once brought to consider Government in this Light is easily led to avail himself of its consequent Weakness, to gratify his ruling Passion with Impunity, to this Disposition we owe the many Acts of exorbitant Usury and Oppression committed in this Province, to this Disposition we

owe the open avowed and boasted Acts of illicit Trade and Frauds committed in the Revenue against this Government, and so depraved are the Morals of the People; that they easily pardon and approve almost any crime, provided the Perpetrator may have been influenced to the Commission of it by Views of Interest, that this is a just and impartial State of this Province, and the Disposition of its Inhabitants, I appeal to every candid Man who has taken the Pains to inform himself.

This naturally leads to an Enquiry into the Cause of these Misfortunes, we cannot be long at a Loss to determine that the Form of our Government has been the sole Cause; and tho' Men of no reading and little Reflection generally charge all Misfortunes and political disasters to the proximate Instruments, by which they were brought about, yet to a philosophic Eye they will appear only as Machines propelled to the Commission of Crimes by a corrupt Form of Government, operating on the human Passions: The truth of this Observation will be shewn in the following short historical Narrative of the Government of this Country.

From the Year 1749, in which Governor *Cornwallis* arrived from *England* with the first Settlers, untill the Year 1758, when the first HOUSE OF ASSEMBLY was called, the Form of Government was similar to that which generally prevails in Garrison Towns out of *England*; the Governor and his Council made Resolutions or Arrets which had the Force of Laws, for regulating the Police and raising a Revenue, and the Laws of *England* were referred to in Matters relating to Property or Trial for Offences, it was in Fact an undigested synthetic System of civil and military Laws and Regulations, which often betrayed Government into Measures that might be esteem'd arbitrary, without their intending it.* But except in one Instance, I could never find, that during this Period, any Act of Oppression was really committed. The several Governors, *Cornwallis*, *Hopson*, and *Lawrence*, were Men of great Humanity and Disinterestedness. The trifling Revenue then raised, was applied to useful and humane Purposes, and tended to the public Good.

On the Commencement of last War in the Year, 1755, *Halifax* became a Place of Arms, its Vicinity to *Louisbourg*, and the River *St. Lawrence* added to the goodness of its Harbour, induced the Government in *England* to appoint it as a Rendezvous for the intended Expeditions to *Cape-Breton* and

* *Hoffman's Trial.*

Canada: A numerous military and naval Force occasioned the Circulation of a great deal of Money in the Town, many Individuals became opulent from this Cause, and emerging from their quondam Obscurity, resented the Neglect with which they had been formerly treated by their military Governors, and the Officers under them.

To be of Consequence in the Line of Government, they found it would be necessary to have the Form of it changed; they were seconded in this Wish by a great Majority of the Inhabitants, who felt some Inconvenience, and feared more, from the absolute Government which then prevailed: The Servants of the Crown dreaded the Revolutions which such a Change might bring about, and both Parties appealed to the King and Board of Trade. In the Year, 1758, there came Orders from *England* to call an *Assembly*, and to establish a Form of Government as near as possible to that of *New-York*.

The first *Assembly* was called in October, 1758; and was principally composed of the Persons who were most active to bring about this Change of Government. In the beginning they made some feeble Attempts to establish useful Regulations. The Council opposed almost every Measure adopted by the *Assembly*, mutual Distrust, and Contests about Prerogative, Privileges, and trifling Punctilio's took up a great Part of this Sessions.

It was exceedingly unfortunate, that the united Legislature did not at this Time establish some Method, or Order in the Detail of Government; and particularly in the Revenue Department; to seek for the Cause of this Omission we must enquire into the Principles which actuated the several Branches of the Legislature.

At this Period Mr. *Lawrence* was Governor, he had lately met with some Mortifications in his military Hopes; and in his Capacity as Governor, he now found himself foiled by Men of whose Genius and Understanding he had the most contemptible Opinion. The War had occasioned this Province to be better known than formerly, the Emoluments of Governors were esteemed more than they really were. Mr. *Lawrence* was aware that Complaints against him however groundless, or frivolous might be made use of to effect his Dismission by well supported *Government Seekers*. Mr. *Lawrence* could not boast of powerful Family Connexions; and conscious of his Situation, it influenced his Conduct in Government to temporize with the discontented.

The Members of his Majesty's Council were chiefly composed of Persons who held Offices and received Salaries from Government, they considered

themselves as envied by the Demagogues in the *Assembly*, and as every Regulation proposed by the *Assembly* affected one or other of them in their official Capacities, they were unanimous in Opposition, and brandished the shield of Prerogative to ward off the Attacks against their own Mal-Administrations, they were not more tenacious of the Inquests of the *House of Assembly*, than they were of the Enquiries of each other. Each Counsellor in Office esteemed himself accountable only to the Governor, and violently resented the least Attempt in any of his Brethren in Office to controul him; so that it may really be said, that each Member of that Honorable Board did that, which was right in his own Eyes. They saw with Pleasure the Power and Consequence of Legislative Councils in other King's Governments, which cannot so justly be called an intermediate Branch of Legislature between the Prerogative and the People, as an aristocratic Junto who chuse and direct the *Assembly's* and command the Representatives of their Sovereign.

The Council of *Nova-Scotia* urged Mr. *Lawrence* to concur with their Measures as absolutely necessary to both their Safeties, ignorant of the Principles of civil Government, and influenced by the Contempt which military Men too generally entertain of civil Institutions, he was taught to believe that *Assemblies* were inimicable to the Ease and Safety of Governors.

In describing the *House of Assembly*, I am under a necessity of dividing them into two Classes; one I shall call the Leaders, and the other the Led. The former were stimulated to Resentment both against Governor and Council, for the *hauteur* with which they had been formerly treated, influenced by Ambition, they wished to share the Offices of Government with the Council, and greedy of handling the public Money, they wantonly proposed Schemes to dissipate it: and laid the Foundation of the present Debt, and Misfortunes which have fallen on the Province. The Led were mere Machines who did as they were directed. There might be some Men of virtuous Principles among them, but alas! their Abilities were very inadequate to the great Purposes of fixing the Form of Government and framing influencing Laws, to support it. It was particularly unfortunate, that the major Part of the Members of *Assembly* did not look upon this Province as their Home; they rather esteemed it as a Country where they were to continue but for a short time to improve their Fortunes.

The *Assembly* wearied out with fruitless Attempt, to limit the absolute Power of the Officers of the Crown, at last determined to apply Home for Relief. A List of Grievances and a Petition to the King were committed

to the Care of one of their own Body, to lay at the Foot of the Throne. This Gentleman *prudently* made his Advantage of the trust reposed in him, and delivered them to Governor *Lawrence*, upon a Promise of being recommended by him for some lucrative Employment in Government, which he afterwards got together with a Seat at the Council Board.

Mr. *Lawrence* now adopting a System of Corruption, bought off the Leaders of the Opposition; some were gratified with Revenue Collections: tho' to make Room for these new Converts, two old Servants of Government were displaced without even the Imputation of a Fault, others were employed to erect public Buildings, and some few were recommended to fill up the first Vacancies in the Council; the Acts passed during Mr. *Lawrence's* Administration; if we except those relating to the Revenue and the appropriation of it, were merely Copies of the *English* penal Laws. Our Legislature adopted the most exceptionable Severities of these Acts against which every humane Man must bear Testimony. Those relating to Property and Law Proceedings were feeble and inexplicit, and the subsequent Acts made to amend and explain them, were confused, ineffectual and many of them absurd, and 'though the public Good and the Prerogative of the Crown, was always the argumentative Object of their Contests; yet the judicious Eye could plainly observe, that the whole Legislature was influenced by the vilest, as well as the meanest Passions of the human Heart.

A System of Corruption once commenced encreases the Necessity of continuing it, and multiplies the Objects to be gratified: the Truth of this Axiom, Mr. *Lawrence* soon found verified, he was forced to use his personal Interest with the Members of *Assembly* to get Acts passed to gratify those he feared, and those who passed these Acts were gratified in their turn by Bounties on sundry Articles which they raised, Works which they intended to carry on, or to enable others who owed them Money to pay them by their Demands on Government, even the personal Enemies of Mr. *Lawrence* were shocked, to see the Representative of their Sovereign, forced to such humiliating Concessions, to prevent a Misrepresentation of his Conduct, and to avoid a Dismission for Crimes of which he was innocent, he was forced on the Commission of Real Ones.

The public Good was soon openly disavowed, political Integrity insulted, and the watch Word of Government was to make the most of it. History cannot furnish us with an Example of so new, and so poor a Country being so completely Corrupt.

Mr. *Lawrence* died suddenly in *October*, 1760, universally regretted by all who were personally intimate with him, and every unprejudiced Person must allow, that he was possessed of a good Heart. The Misfortunes which he was instrumental in bringing on this Province arose from Timidity, his Want of Interest, and his Ignorance of civil Government, he had certainly a difficult Task to execute, and it required uncommon Abilities and Experience to establish a good Form of Government in a new Country.

Jonathan Belcher, Esq; Chief Justice of the Province and premier Counsellor, succeeded to the Command on the Death of Mr. *Lawrence*, and shortly after was appointed Lieutenant Governor; several of the Leaders of former Assemblies were by this Time translated into the Council, their Opulence aided by this Accession of Rank, and above all the known Disposition of ambitious Men to injure those who oppose their political Schemes, enabled them to fill up the Assembly with their own Creatures: Success is ever followed with Confidence, and in political Transactions with Ambition. During the Government of Mr. *Lawrence* they aimed no higher than to procure Advantages to themselves and Dependants; but now becoming the Nobility of the Country they extended their views to get Possession of the Government.

The parliamentary Grant was at this Time greatly diminished and many Sources of Assistance, which Mr. *Lawrence* had at Command were cut off; the Conquest of *Canada* was completed, the greater Part of the Land and Sea Forces were sent to the Southern Provinces, and the Circulation of Money consequently much lessened. The expensive and ruinous Projects begun in Mr. *Lawrence's* Administration had drained the Treasury, and left the Province greatly in Debt; the Creditors of Government became clamorous. The Disappointment of Individuals produced Murmurings against the Lieutenant Governor, and it was industriously propagated among the Inhabitants that his Representations had been the Cause of this new System of Oeconomy adopted at Home.

Unable to gratify the Avarice of Individuals with Money or Employments, he substituted Honors in the Room of them and prostituted the Commissions of Peace and Militia on many ill qualified People which gained him no Friends, but rendered these Offices ever after contemptible.

Mr. *Belcher* having refused his Assent to a Renewal of the Asylum Law, the Persons principally affected by this Measure became outrageous, and inlisted under the Banners of those who sought his Dismission. An Asylum

Law which might protect the Person of an unfortunate Debtor, from the Cruelty of an inexorable Creditor was certainly just and humane. But the Law proposed, guarded also the Goods, Chattels and Estates of all Debtors, who had arrived in the Province prior to *August*, 1762. It is surprizing that a Law which was a direct Outrage against moral Justice and Impartiality should meet with so many Advocates. The *Assembly* appointed an Agent in *England*, to represent their Grievances; who fully answered their Hopes by effecting Mr. *Belcher's* Dismission, which took Place some Time in the Summer, 1763, and he was further rendered incapable ever to succeed to the Command again.

It was Mr. *Belcher's* Misfortune to be in the Command at a Time, when two Gentlemen in this Province of some Opulence, extensive Connections and *much political Ingenuity*, had each of them Views of supplanting him: when several Officers of Rank and Family in *Britain* were soliciting for Governments, when the sudden Change in the Circumstances of Individuals in this Country, rendered them discontented. And at a Time when some Men of good Interest; But sordid Principles, could find their Account in traducing him; as a necessary prelude to the depriving him of his just Perquisites.

Against so powerful an Opposition it was scarcely possible he could be successful, some Defects no doubt were on his Side; Errors in Temper might possibly subject him to be the Dupe of those who sought to undo him. His Disgrace and the Success of some other Governors has left this Lesson to Mankind; *that {it} is safer to be unjust in a certain Degree than to be ungracious.*

Mr. *Belcher's* Administration begun with an Act for the better Observation of the Lord's Day; which as it was too severe has seldom been put in Force. The Act to prevent the Small Pox being brought into the Province, was weak impolitic and inhuman, and may *One Day* be the Means of depopulating this Country. The Act for inspecting our staple Exports is a good Law. But never faithfully executed, the Inspectors *if honest* are never supported, and Gentlemen of Weight and Influence will hold none but lucrative Offices. The Act for the Relief of insolvent Debtors, has some Merit, but is notwithstanding partial, and in some Cases imperfect. The Poor Laws were merely Copies of the *English* Poor Laws and worse can hardly be.

These and the Revenue Laws were the principal Acts passed during Mr. *Belcher's* Command, he did recommend sumptuary Regulations, but the

Leaders would suffer no Act to pass that he should recommend; or which might do Honor to his Administration.

Mr. *Wilmot* assumed the Command in the latter End of the End of the Summer, 1763. The extravagant and fulsome Adulation, which was paid him in the Addresses on his Arrival were disgusting, and they debased themselves below human Nature, in Proportion, as they exalted him above it; this Folly was pardonable had it ended here. But the Faction added some Hundreds to the Province Debt in giving an inelegant and expensive Entertainment on the Occasion; where some Men of low breeding indulged the Rancour of their Hearts in ungenerous Triumphs at Mr. *Belcher's* Downfall.

Mr. *Wilmot* was a near Relation to Lord Halifax, (who was then Minister) he had spent his whole Life in the Army, and was totally unacquainted with every part of civil Government; *except where his Emoluments were concerned*. He was Master of his Temper, of a polite Address, all the Exteriors of good Breeding. His Constitution greatly impaired, and his private Fortune far from being affluent. The Severity of the Climate ill agreed with Mr. *Wilmot's* Health, which made him desirous of, returning to *England*: and his straitened Circumstances induced him to look out for a Successor in Government, with whom he might make an advantageous Bargain.

The Place of Lieutenant Governor, with a certainty of the Command, was an alluring Object to several in the Council. Mr. *Wilmot*, settled the Preliminaries with one Gentleman, but afterwards meeting with a better Offer from another; he deceived and disappointed the first. This Measure was not finally completed till after the Death of Mr. *Wilmot*, owing to the Envy of two of the Competitors, one of them secretly and the other openly, stuck at no Calumny, Falshood, or Misrepresentation to defeat the Plans of their more successful Rival.

The Leaders in the Council during Mr. *Wilmot's* Administration supported the Necessity of a provincial Debt, as a salutary Measure, and necessary *as they said*, to promote Industry, and a proper Dependance on Government; they multiplied unnecessary Offices for the same Reason, they defended the uncontrollable Power of Governors. Each hoping either to enjoy the Command in future, or to make his Acquiescence with those in Command advantageous to himself. The *Assembly's* Agent in *England*, got by this Time most of his Friends into the Council, and the *Assembly*, who during Mr. *Belcher's* Command, was made use of to controul and insult him were now acquainted, that they had no other Privilege, and were intitled

to none except, that of chusing the Mode of collecting the Sums which the Governor and Council might require. Some few Individuals in the *Assembly* requested an Examination into the State of the provincial Debt, and an Inspection into the Claims of the pretended Creditors of Government, and required that the Treasurer, and other public Officers might give Security, for the faithful Execution of their Offices.

Their Requisitions were treated with Insult, and the Members who were most active in promoting them, were stigmatized with the hard Epithets of being factious and impudent. The *Assembly* principally composed of the Creatures of the Council, and Collectors of the Revenue readily concurred with the Council to issue £ 20,000. Government Security, bearing an Interest of Six *per Cent.* to Discharge certain Debts of Government, *as they were told.* For they were even denied the Privilege of examining into the Validity of the Claims.

On the Death of Mr. *Wilmot*, which happened in the Summer, 176 , the Command devolved on Mr. *Green*, who was Treasurer of the Province, and during whose Administration nothing material was transacted.

Lieutenant Governor, *Francklin*, succeeded him, and to do Justice, I believe he wished to bring the Detail of Duty in Government to some Degree of Order, and to promote the Prosperity of the Province, to effect such desirable Changes, it required great Abilities, capital Interest, Independance in Circumstances, and a Deprivation of Attachments, and Prejudices. He had no Opportunity to carry any Measures of Consequence into Execution, as Lord *William Campbell* arrived in the Province shortly after, and tho' during Lord *William's* Absence on different Occasions; the Lieutenant Governor presided; yet probably from the Consideration of having only a temporary Command he attempted nothing out of the ordinary Course.

Lord *William Campbell* was Governor from *October, 1767, to October, 1773*, the major Part of which he resided in the Province, his great Interest, and Family Connections rendered him invulnerable against the Attacks of any Person ambitiously inclined in this Country, the Council fully sensible of his powerful Support, adopted an abject Submission to his Commands: and a slavish Fear of offending him extended from them to the *Assembly*. Our provincial Debt was increased during this Reign as much as the Credit of the Province would admit. The Treasurer's Accounts remained unaudited. The Collectors of Excise uncontroled, paid only what Money they

pleased, and retained large acknowledged Ballances in their Hands with Impunity.

It was not probable, that a plan of Government, which should establish Method and Controul, would be proposed by a Council and *Assembly* principally made up of Officers of Government: neither was it likely, that an uninfluencing Mode of Election could take place, where the nominal Members of *Assembly* were sensible, that they procured their Places by undue Influence.

A Plan of Reformation must ever come from a Governor, who if possessed of good Understanding, strict political Integrity, (both in regard to himself and others) a Capacity for Business, and well supported at home may effect this much to be desired End; why Lord *William* never made the Attempt may be accounted for without the gift of Divination.

The disagreeable, but necessary Task, was left for, and I trust will be executed by his Lordship's Successor, Mr. *Legge*, who arrived here in October, 1773, his past Endeavours demand the Thanks of every Person really interested in the Prosperity of this Country: and the Approbation of his Sovereign, must ever be the Consequence of promoting the Happiness of his Subjects.

This short Historical Narrative is intended to give the Reader an Idea of the Principles, which actuated the Legislature of this Province, during the several Administrations, in which I have not touched on the most exceptionable, (and in my Opinion criminal) Transactions which were carried into Execution; had I mentioned them in their order in the Narrative, I must have been under the Necessity of naming Individuals which is contrary to my Intention, as I wish to expose Measures, not Men: the Enemies of the Province no doubt may be traced without much difficulty, this I cannot help. I write with a View to the public Good, and cannot dispense with relating some Transactions of Government, where the natural, as well, as civil Rights of the Community have been infringed, general invective against Injustice and Oppression, can be of little Use, and only leads to a dangerous hatred and Contempt of all Government; but the Enormity of particular Actions may strike the legislative Reader with more force than a general Declamation, and influence him to apply Remedies to prevent the like in future.

I shall begin with some Observations on the insecurity of real Property in this Province, the several Governors with the Consent of Council

gave Grants of Land to Individuals on certain Conditions of Improvement, and payment of Quit-Rents; some of the Conditions of Improvement were impracticable, and repugnant to the Nature of the Soil, others amounted to a prohibition by the Expence necessary to fulfil them, these Conditions greatly alarmed the Candidates for Land, but their Apprehensions were quieted by the several Governors and the Members of his Majesty's Council, who informed them, that the Conditions of Settlement were directed by the Board of Trade who unacquainted with the Nature and Circumstances of the Province, had erred in their Intentions, but that they expected those impracticable Conditions would shortly be remitted in consequence of Representations, which they had made, and they further informed the Grantees that if they should regularly pay the Quit Rents, when due, no Notice would be taken of the other Omissions, justly observing, that the Quit Rent would be a sufficient Tax to oblige Grantees to improve their Lands, to make them valuable to answer the Expence, and that the King who was the kind Father of his People would never require Impossibilities of them, the Propriety and Reasonableness of these Arguments were apparent. Grantees, trusted to the Justice and Humanity of their Sovereign, and as far as their Abilities would admit they proceeded to till the Earth and to raise the Necessaries of Life.

Notwithstanding all this, have we not seen the Estates of Individuals torn from them on the pretence of not having fulfilled the Conditions of the Settlement? have we not seen those very Lands granted the next Day to the Domestics of that Governor who ordered their Escheatment? did these new Grantees improve their Lands? No, they sold them immediately, and put the Money in their Pockets: Let us enquire further, who the Lands were taken from? I answer, from two Subaltern Officers on half pay, who had spent their best Days in the Service of their Country, and that on the most disagreeable of all Services, now worn out with Age and Infirmities, and weighed down with large Families: unable to comply with all the Terms of the Grant, they had however been at as much Expence as their Abilities would admit of: Had their Expences been repaid them, it would have shewn some Humanity; I cannot find, that the Council opposed this Measure: I fear they did not dare to do it, tho' it must have hurt every humane Man to see two old Officers of near Forty Years service, deprived of the little Compensation granted them by his Majesty, to gratify a Groom and a Musician.

I would ask my Reader, does he know any one Grant in the Province, but might be vacated on the same Principles? I know there is not one. Can

we be assured, that at a future Day, a Governor may not be appointed over us, in embarrassed Circumstances, of an expensive Disposition, void of the Principles of Justice and Humanity, and conscious of being well supported with Family Interest at Home. The best improved Estates in this Country may then be escheated, to repair the injuries done at Almacks or the Groom Porters, the lesser Estates to pay the Wages of Domestic.

When Avarice, Luxury, Want, and powerful Interest, are combined, in one Individual, and he a Governor; unrestrained by Laws, fearless of and commanding a dependant Council, the Subject has no Security for Life, Liberty, or Property. It is in vain to invite Inhabitants from other Countries, while those who are already here, are made to hold their Tenure with uncertainty. And whilst the Fruits of Industry and the Security of Property are precarious, the wretched Inhabitant must tremble at the Prospect of a numerous Family. Here I have given you an alarming Instance, of an Infringement of private Property. The Barriers to defend the public Property is not more secure, have we not seen a Tract of Land granted in the most solemn Manner to Trustees for the public Service taken away from them, to gratify a Governor, have we not found some of these Trustees themselves assenting to this Measure, and receiving a part of the Land as a Reward? *These Things were not done in a Corner.*

The public Revenue has not been better protected than other property, what availed it to raise Taxes? When Governors with the Consent of their obedient Council have disposed of it without the Concurrence of the *House of Assembly*, and in some Instances in direct Opposition to the Laws, which they themselves had assented to. Officers of Government have frequently, when discontented with the Stipends allowed them by Law found their desires gratified by personal Applications to Governors, I believe it would not be difficult to prove, that some Governors have been themselves interested in such Transactions, the Author would not speak with the Precision he does, if he had not the Proofs in his Power.

An impartial State of the Revenue Accounts of this Province, would be the severest Satire, that could be wrote against this Government, *that is*, if Want of Method, and Want of Political Honesty may be thought Criminal.

The impartial, cheap, and expeditious Determination of Causes, relating to Property in the Courts of Judicature may be said to be the Criterion of a well regulated Community. The Impartiality of our Judges *as far as human Frailty and the precarious Tenure of their Offices would admit*, we may hope,

has not been infringed, but for my Part I shall ever look on my Property as insecure untill they have Salaries decently sufficient. And I could further wish, that our Judges might always be sent from England, to guard against the influence of Family Interest and Connections. The cheap Administration of Justice will take Place, when the united Legislature shall endeavour the general Good in preference to private Interest. The expeditious Administration of Justice under our present Circumstances, might possibly open a Door to Cruelty and Oppression; but strict Justice and Expedition in Determination might be easily reconciled with the strictest Rules of Humanity: did it not interfere with the Emoluments of Law Practitioners, and the powerful Influence of commercial Monopolizers.

A Measure of this nature would be highly advantageous both to Trade, and the landed Interest.

Unhappily the most simple, the easiest, yet the wisest Laws, that wait only for the Nod of the Legislator, to diffuse through Nations, Wealth, Power; and Felicity; Laws, which would be regarded by future Generations with eternal Gratitude, are either unknown, or rejected. A restless and trifling Spirit, the timid Prudence of the present Moment, a Distrust and Aversion to the most useful Novelties, possess the Minds of those who are impowered, to regulate the Actions of Mankind.

MARQUIS BECCARIA.

At present the Courts of Law are seldom troubled on mere Matters of Property, except where the Parties are stimulated by personal Resentment, to gratify which they persecute each other sometimes in the Courts untill wearied out by the Expence, they finally determine their Differences by Arbitration.

The Practitioners in the Law do boast, that they have done this Province much Service; in rendering Suits at Law expensive: and have thereby prevented numberless Actions. That they have prevented many Actions, I verily believe, but it does not follow, that such preventions have been useful to the Community; the poor Man may submit to Injury, rather than face certain Ruin in seeking for Redress: But the Expence of Law Proceedings can never deter the Rich and Powerful from persecuting.

To look back on the several Administrations in this Province, we find, that where Governors have been Men of Interest and Family; and at the same Time, needy, weak or avaricious, they have leaped the Mounds of

Right themselves, and dared not oppose the like practices in others; where Governors, intended well, but were supposed to want powerful Interest in *Britain*; the Consequences to the Province were nearly the same, they were obliged to conciliate the Support of the most powerful Faction here, to counteract the Machinations of the ambitious Individuals, who were ready to supplant them.

Respecting our Council, I have to observe, that the Distance of this Province from *England*, and the little knowledge, which the Members of the Board of Trade can have of the Individuals of this Country, must ever subject this Province to have the Council composed either of the Tools of Faction, recommended by an Agent through the Mediation of some Clerk in Office, or the favorites of Governors, who have neither Property or Interest in the welfare of this Country, and who only seek Places at that Board to intitle them to plunder this miserable Country.

The *House of Assembly* under the present Mode of Election, and other Disadvantages, which they labor under cannot be called the Delegates of the People, hitherto the Majority have been chose and managed by the Council, by Excise Officers, and other Placemen, thus circumstanced it is not to be wondered at, that the real Good of the Province has never been attended to.

To you who are interested in the Welfare of the Province, who have laid out your all in Land, who cannot fly away to enjoy the Blessings of a more happy Constitution. To you I address myself, and in particular to such of you, who may be Members of the *House of Assembly*, I exhort you, to an Attention to the public Good, by that Duty you owe to yourselves, your Children and Posterity in general. Let no partial or selfish Motives influence your Conduct, be not led aside by Sophistry or the low Cunning of Managers, if you cannot succeed here, depend on it, you have a good King, who will not shut his Ears against your reasonable Complaints, he will readily concur with your Desires to promote the due Administration of Justice; he is disposed to protect and oblige you, to redress your Grievances, and to further the real Interests of his Subjects in the distant Corner of the Globe. And I do most sincerely believe that nothing will be wanting on the part of the Governor to second your reasonable Wishes and promote the good Intentions of his Royal Master.

A MEMBER OF ASSEMBLY.

Anonymous,
Considerations on the Imposition
of 4½ Per Cent; Collected on Grenada,
Without Grant of Parliament
(London, 1774)



THE ASSEMBLIES of Barbados and the four Leeward Islands of Antigua, Montserrat, Nevis, and St. Christopher all during the Restoration era granted permanent revenues to the Crown consisting of duties of 4½ percent of exports. In 1763–64, early in the process of creating colonies in the four ceded islands of Dominica, Granada, St. Vincent, and Tobago, Crown officials extended the same duty to the four new colonies by virtue of the Crown's prerogative powers and without the consent of local institutions. Residents of the Ceded Islands long resented this example of taxation without consent, and in the early 1770s, Alexander Campbell, a planter in Grenada, brought suit against one of the collectors, whose name was Hall, in metropolitan courts before Chief Justice Mansfield. This pamphlet represented an effort to alert London readers to the stakes in this case and perhaps to put pressure on Mansfield to bring it to issue.

According to the anonymous author, the case of Campbell vs. Hall could scarcely have been more important. "Indeed, since the cause of ship money," he wrote, "no point of equal consequence has ever been brought before any British court of judicature for decision, nor will the liberties of Britain be much less affected by the determination," the central question being, as he phrased it, "*Whether the king by his prerogative is, or is not, absolute master of the property of his subjects in the colonies, with a right to dispose of the whole, or*

any part thereof, at his arbitrary will and pleasure?" Arguing that the tax was contrary not just to British practice but to the Crown's own proclamation of 1763 guaranteeing Ceded Island settlers all the traditional rights and laws of British people and furthermore to the precedents in Barbados and the Leeward Islands, in which the tax had been established by consent of the provincial legislatures, he pointed out that it deprived the settlers of a "valuable" benefit they derived from English laws, namely "the right of exemption from being arbitrarily taxed under pretence of prerogative royal." Was it wise, he asked, to have "one law for British subjects at home, and another in the British dominions abroad?" If the crown could, by its sole authority, impose taxes in the new West Indian colonies, he warned, it could do so throughout its exterior dominions, potentially rendering the crown independent of Parliament for funds and paving the way for arbitrary government in Britain itself. In his view, "when British arms conquered any country, the common law of the land was always supposed to accompany them. If it does not," he added, "I am sure our conquests must be fatal indeed, and when we think we are vanquishing our enemies, we are only forging fetters for ourselves and our posterity."

As an important sidebar, the author worried over Mansfield's dispensing with a jury in the case, which he thought might topple "that noble bulwark of English liberty—a *trial by jury* . . . from its foundation" and open the door for totally dispensing with "*that most constitutional of all determinations*, the verdict of a jury," and the establishment of a judicial tyranny under the influence of prerogative. Notably, in contrast to most colonials in this crucial year of 1774, this author seems not to have objected to the imposition of such a tax by the British Parliament. Later in the year Mansfield ruled against the Crown and prerogative taxation in the colonies in his decision. (J.P.G.)

CONSIDERATIONS
ON THE
IMPOSITION of 4½ PER CENT.
COLLECTED ON
GRENADA,
AND THE
SOUTHERN CHARIBBEE ISLANDS,
BY
Virtue of His MAJESTY'S LETTERS PATENT,
Under Pretence of the
PREROGATIVE ROYAL,
WITHOUT
GRANT OF PARLIAMENT.

Are these Things so?

LONDON: Printed for J. ALMON,
opposite *Burlington-House* in *Piccadilly*.

1774.

[Price One Shilling.]

To The Right Honourable The Earl of
Dartmouth, One of His Majesty's
Principal Secretaries of State.

MY LORD,

I take the Liberty of addressing the following Sheets to your Lordship, for two Reasons;—the one is, because the Matters they treat of have a peculiar Claim to your Consideration, from the high and important Station, which your Lordship so worthily fills.—The other, that your Lordship's known Integrity and Honour, give me the strongest possible Confidence, that if you find the Facts to be as I have stated them, the Inhabitants and Proprietors of the ceded Islands, may be assured your Lordship will make a Point of representing them in their true Light to his MAJESTY; which will be sufficient to insure effectual Redress.

I have the honour to be, with great Respect,

MY LORD, *Your Lordship's Most obedient humble Servant,*

THE AUTHOR.

Considerations, &c.

As the time is now approaching in which the case of Campbell and Hall, ought to be argued and *adjudged* in the Court of King's-Bench, it will not be improper to call the public attention towards it, as it is a matter of the utmost importance. Indeed, since the cause of ship money, no point of equal consequence has ever been brought before any British court of judicature for decision; nor will the liberties of Britain be much less affected by the determination, as the question is simply this,—*Whether the king by his prerogative is, or is not, absolute master of the property of his subjects in the colonies, with a right to dispose of the whole, or any part thereof, at his arbitrary will and pleasure?*

That such is the importance of the point now in dispute will appear from the following state of the case.

An action was some time since brought by Alexander Campbell, Esq; a planter at Grenada, against Mr. Hall, a collector of the customs, for the recovery of the value of certain sugars, received by him there, under pretence they were due to the crown by virtue of his Majesty's letters patent, which

imposed a duty of 4½ *per cent.* on all the commodities, the growth of, and exported from that, and the other ceded islands—the legality of this tax, thus imposed without authority of parliament was the matter to be tried!

Upon this cause coming on to be heard, before a very respectable special jury of merchants and a numerous auditory, whose property was to be affected by the decision, Lord Chief Justice Mansfield, (who as a judge, I should have supposed ought to have been ignorant of the merits of the cause he was to try until he heard it) at the very beginning of the trial directed the jury to find a special verdict, informing them, that the matter could not be decided by them, it being a question of law, which must be left to the determination of the court. I do not pretend to be a lawyer, but a man must be void of common sense, not to see that if such a mode of proceeding is allowed, that noble bulwark of English liberty—a *trial by jury*, totters from its foundation. If the jury, at the judge's direction are obliged to find a special verdict, may it not be feared that such direction will too often be given when the king's interest is concerned—and will they not by that means have the power of determining every question between the crown and the subject!—

That the jury who knew not what the merits of the cause were, should consent to such a verdict, did not astonish me: but that the plaintiff's council should agree thereto, is what I could by no means comprehend; nor am I at all satisfied with the reasons which have been since given for their acquiescence.

A verdict in favour of the plaintiff, (say they) would not have determined the general question, but only the particular case, *viz.* that the collector had no right to take the identical sugars for which that action was brought—but that as the king's officers would continue to collect the like duties, the inhabitants would not be relieved from the oppression they complain of, except in such single instances as might happen from meeting a collector in England at a time when some one might be furnished with proofs that such *illegal* duty had been exacted.

What is this but saying, that the King will not submit a cause wherein his interest is concerned to the *legal* decision of a jury? An assertion, which, I think tends more to his Majesty's dishonour than any thing that has been falsely suggested hitherto by disappointed faction, and, if true, ought more to alarm us, than any other act of administration whatsoever: for under pretence that the point before the jury contains matter of law which they

cannot judge of, may they not at pleasure be rendered useless?—And I take upon me to assert, with all deference and respect to the abilities of Lord Chief Justice Mansfield, that a question can hardly come before a jury wherein there is less legal difficulty, or upon which they can be more competent to determine.—Was any thing more necessary in the present case than that they should be able to read the following clause inserted in the declaration of rights;—a condition under which King William and his successors have hitherto enjoyed the crown of these realms!

The levying money to, or for the use of the crown, by pretence of prerogative, or without grant of parliament, for longer time, or in any other manner than the same is or shall be granted, *is illegal*.

Is it necessary *now* to leave it to the judges to determine whether that declaration of the whole legislature is law? Is it a point of law, whether the levying the $4\frac{1}{2}$ *per cent.* on all the commodities of the growth or produce of the ceded islands, is with or without grant of parliament? Surely the latter is a matter of fact, of which any man of common sense may judge with as much precision, as if he had all the cases cited in Viner's abridgement by heart. And that the tax is levied solely under pretence of the prerogative royal, is also a matter of fact, which plainly appears from the letters patent themselves.

It is therefore obvious to every one, that the difficulty of deciding the legal merits of the question was not the reason why Lord Mansfield directed the jury to find a special verdict:—nor if such difficulty had, in his opinion existed, ought that to have induced him to decline permitting the merits of the cause to have been heard, that the legal doubts might have appeared to the satisfaction of all the parties concerned: the jury too would then have been able to have determined whether they had any such doubts; and if they had not, but had found a general verdict for the plaintiff, we should have known, whether we have any minister in this kingdom hardy enough to have advised the king to continue an exaction, which had been declared illegal by *that most constitutional of all determinations*, the verdict of a jury!—What would have been the consequence if he had done so, I leave to the judgment of every man.

I am aware it may be asked me, what necessity there was for the planter to bring his action to be tried by an English jury? Are not the collectors of the customs amenable to the courts of judicature in America; and are not

trials by jury as much the right of the British colonists as of their fellow subjects in Great Britain? Is there one law for British subjects at home, and another in the British dominions abroad?—It is to be wished these questions could be answered as they ought.* But a short narrative of what has already passed in one of the ceded islands will be the best answer to them.

The legality of this tax was contested with the crown in the island of St. Vincent's, by Richard Otley, Esq; in the year 1767, who brought an action of trover against the collector there, for seizing his sugars for the payment of the above-mentioned tax of 4½ *per cent.* and on 15 March 1768 the cause came on to be tried, when a special verdict was found by the jury, subject to the opinion of the court of Common Pleas in the said island. On the 25th June 1768 the court gave judgment in favour of the plaintiff; the defendant thereupon brought a writ of error on the aforesaid judgment in the Court of Errors there, and the judgment so given was affirmed—From these judgments the collector appealed to his Majesty in council, which appeal has never since been prosecuted.

Mr. Otley indeed came over to England with that intent, but has *been prevailed on* to drop the prosecution.

It will be right to inform the reader that it is held for law, throughout the West Indies, that in all causes tried in any of the common law courts there, if either party insist on a special verdict, the jury are bound to find one; as a foundation for an appeal to a superior jurisdiction; from whence lays a further appeal to the King in council.

From this state of facts it is evident the planter has no chance of having his right decided by a *jury* in the West Indies. An appeal is the certain consequence of a suit brought against a collector there, and the expence of such appeal few people, who have estates to settle, can bear; and, amongst the few who can, they will probably be so connected, with *Receivers-General, Governors, or Collectors*, that means may easily be found to prevent their prosecuting the matter to a final decision. The only chance then of redress which was left, was by a trial before an English jury;—this chance the planter is now in danger of being deprived of, by Lord M——'s inducing the jury to bring

* By a late determination of the privy council we are given to understand, that British subjects may be deprived of their lands, without any legal process, at the will of the governor and council, upon suggestion that they have not complied with the terms of their original grants.

in a special verdict, without an hearing, by which means the merits of the cause are endeavoured to be kept from the knowledge of the public; and in the mean time it is much to be feared that the determination will be procrastinated, until the plaintiff, wearied with delay and expence, intimidated by threats, or induced by promises, may be forced, frightened, or allured to drop the prosecution of the suit, in case it should not first *abate* by his death.

It shall be my task, however, to lay the particulars of this important question before the public, and I doubt not but I shall be able to shew that the levying this tax is contrary to law or equity, and, if submitted to, will probably tend to the subversion of the liberties of every British subject in the colonies.

By the letters patent of the 20th June 1764, as a reason for levying this tax, it is recited that

a certain impost or custom of four pounds and a half in specie for every 100 lb. weight of the commodities of the growth and produce of the island of Barbadoes, and of the Leeward Caribbee Islands in America, shipped off from the same, *or any of them*, is paid and payable to the King, his heirs and successors; and that as the island of Grenada was conquered by his Majesty during the late war, and had been ceded and secured to him by the then late treaty of peace,—It was reasonable and expedient, and of importance to his Majesty's *other sugar islands*, that the like duty should take place in his Majesty's said island of Grenada;—his Majesty did think fit, and his royal will and pleasure was, and he did by the said letters patent, *by virtue of his prerogative royal*, order, direct, and appoint, that an impost or custom of $4\frac{1}{2}$ *per cent.* in specie shall be, from and after the 29th September next ensuing the date of the said presents, raised and paid to his Majesty, his heirs and successors, for and upon all dead commodities of the growth or produce of his said island of Grenada, &c. under such* *penalties and forfeitures* as the said impost is and may now be collected, paid and levied in his Majesty's said island of Barbadoes, and his said Leeward Islands.

Would not any person suppose, from the above recitals, that this duty of $4\frac{1}{2}$ *per cent.* was paid and payable upon the exportation of the commodities of the growth of *all* the sugar islands—nothing however is less true in

* Thus we see a tax is not only imposed, but even penalties and forfeitures inflicted by virtue of the prerogative royal.

fact—no duty of 4½ *per cent.* is payable for goods shipped from and of the growth of Tortola and Anegada, which are part of the Leeward Caribbee Islands, under the government of Sir Ralph Payne—nor for any goods shipped from Jamaica, the principal sugar island belonging to the crown, nor on any commodities the growth of, or exported from Providence, or any of the Bahama Islands: and what is still more in point, it is not now paid or payable in any island, but by virtue of an act of the representatives of the people, neither was such act passed but upon a good and valuable consideration—what that consideration was I shall shew in the next place;—and as Barbadoes is particularly cited as the precedent, in the letters patent, I shall trouble the public with the history of this impost in that island; by which it will appear, that it was there the price paid to the crown for the absolute purchase of the fee simple of the lands.—That I may not take up more of the reader's time than is absolutely necessary to put this matter in a clear light, I shall only state the facts as briefly as possible, referring them for further particulars to the laws of Barbadoes, and Lord Clarendon's History of his own Life, here related.

The island of Barbadoes was granted by King James I. to the Earl of Carlisle and his heirs for ever, who granted 10,000 acres to Marmaduke Royden, ——— Farmer, and sundry other people, who went over there, and planted the same, at considerable expence. The said Earl also sent a governor and people there, and enjoyed it to his death, and, by his will, settled it for the payment of his debts, which were very great.

About 1647, the Earl of Carlisle, son and heir of the former Earl, made a lease of the island to Lord Willoughby of Parham for twenty-one years, who was to account with Lord Carlisle for a moiety of the profits which should arise out of the said plantation, and retain the remainder to his own use; who was likewise to receive his Majesty's commission appointing him governor of the said islands.

But before this agreement could be well executed, the island was reduced to the obedience of the parliament, and of Cromwell, and a governor appointed by them, Lord Willoughby being sent back to England.

During the continuance of the civil wars, many people, to avoid their fatal effects, had emigrated, with their families and fortunes, to that island, and settled upon the vacant lands, without any grants or titles either from the crown or the proprietor, and had, in a course of years,

brought their plantations to great perfection, to the mutual advantage of themselves and the mother country.

At the restoration, Lord Willoughby, who had still eight or nine years to come of his lease, applied to the King and Lord Carlisle, claiming from the latter the benefit of his agreement during the remainder of his term, and desiring the King to renew his commission as governor of Barbadoes, to strengthen his authority, which he had then reason to think would be disputed;—for the inhabitants who, as before-mentioned, had settled on the vacant lands, began now to apprehend that they must depend upon the good will of the Earl of Carlisle and Lord Willoughby for the enjoyment of their estates—“all these men joined in petitioning the King for his protection, and that they might not be oppressed by these two Lords.”—They alledged, “that they were the King’s subjects, and had repaired thither as to a desolate place, and by their industry obtained a livelihood there, and that if they were then left to those Lords to ransom themselves and compound for their estates, they must leave the country; and the plantation would be destroyed, which yielded his Majesty so good a revenue: that they could defend themselves against the Earl of Carlisle’s title, if his Majesty did not countenance it by a new grant of the government to the Lord Willoughby: and therefore they were suitors to his Majesty, that he would not destroy them by that countenance.”

During this contention the Earl of Carlisle died, having first devised his interest in the island of Barbadoes to Lord Kinnoul, and the planters positively insisted, “that the charter granted to the Earl of Carlisle was void in point of law, and prayed they might have leave to prosecute the repeal of it in his Majesty’s name, and at their own charge, and offered to consent to an imposition of so much in the hundred as would raise a very considerable sum of money, to be paid to his Majesty for the confirmation of their titles.”

Upon considering the several circumstances of the case, his Majesty thought proper to refer the consideration of the validity and legality of the patent to his council at law, who reported that the patent was void— but upon his Majesty referring the whole matter to the Lords of Council, they were unanimously of opinion, not to advise his Majesty to cause the patent to be called in question, but to make such allowance and compensation to Lord Kinnoul as should induce him to procure the patent to be brought in and surrendered.

This course was accordingly taken, and the patent surrendered.

Lord Willoughby, in consequence of these arrangements, was sent over governor, and the assembly of Barbadoes granted a tax of 4½ *per cent.* to his Majesty for the purposes in the act mentioned, and *for a confirmation of their titles*, agreeable to the promises made by their agents on that behalf: but it happened that the proprietors of the 10,000 acres before-mentioned could not be prevailed on by any means to consent to such tax on their estates; for those gentlemen alledged, that they were satisfied with the title they had under Lord Carlisle's patent, and were ready to defend themselves, at law, against the crown or any person who disputed it.

And such was the justice of their case as to prevent the bill's passing, until a proviso was inserted therein to except the said 10,000 acres from the payment of the said tax—and a proviso was also at the same time inserted, that no confirmation of the titles to that tract of land was thereby given. And it is remarkable that, to the present hour, there is no authority or colour for levying the tax or duty of 4½ *per cent.* on that tract of land in Barbadoes, consisting of 10,000 acres, formerly called by the name of the Merchant Adventurers Land.

It would be natural to conclude, upon reading the letters patent of the 20th June 1764, that the tax of 4½ *per cent.* therein mentioned was levied by virtue of the prerogative royal, but it is well worthy observation, that even in the arbitrary reign of Charles the Second, such an exertion of prerogative was not so much as thought of, but, on the contrary, Lord Willoughby was directed to make what haste he could to Barbadoes,

and to call an assembly, to the end that such an imposition might be agreed upon to be paid to his Majesty as should be reasonable, *in consideration of the great benefit they had already, and should still enjoy, in being continued and secured in their several plantations*, in which as yet they were as it were but *tenants at will*, having no other pretence of right but the possession: and therefore that these merchants and planters, who had petitioned the King, should, according to their obligation and promise made by them to his Majesty, use all their credit with those in the island, that the imposition might arise to such a proportion, that the revenue might answer the ends proposed.

This account of Lord Clarendon would have been sufficient to have shewn what I have before asserted, that this duty of 4½ *per cent.* was the

price paid by the inhabitants of Barbadoes for the purchase of their lands, had no other evidence of it existed; but the clause in the act of assembly which imposed it, exempting those lands which were held by another title from payment of the like duty, makes the matter clear to a demonstration. Is it possible to believe that a minister, upon such a precedent, could advise the King, by virtue of his prerogative royal, to levy $4\frac{1}{2}$ per cent. on the possessions of his subjects in the ceded islands?

Mr. Grenville, under whose administration this imposition was laid, could not be ignorant of these facts; and though it is insinuated in the letters patent, that this tax was laid in the ceded islands, in order to put them on an equality with the other sugar islands, he was well aware such a pretence was too weak to establish such a burthen; he must have known that neither Jamaica, Anegada, or Tortola paid it, and that when an attempt was made in 1717 to impose such a tax on those islands, by virtue of the royal prerogative, the then Attorney General (afterwards Lord Lechmere) being consulted, honestly replied, That the person who should advise his Majesty to such a step, would be guilty of high treason. These facts being so notorious, it was impossible the ministers could be ignorant of them, and I doubt not, it was for this reason we find the letters patent imposing this tax, prefaced with, "Whereas the island of Grenada was *conquered by us* during the late war, &c." intending thereby to support those pretensions of equality and expedience which they knew must, on the strictest examination, appear to be false, by insinuating that his Majesty has a power of imposing what laws he pleases on such countries as may be conquered by his subjects.—To dispute this doctrine is not my present purpose, because whether true or false, it is not applicable to the point in question, and I shall therefore content myself with shewing, that if his Majesty had any such right, he long since waved and surrendered it, not only to such individuals as have settled in the ceded islands, but also to the public of Great Britain.

On the 7th of October, 1763, his Majesty published his royal proclamation, wherein

after reciting that by the treaty of peace his Majesty had acquired sundry lands and islands in America, and had thought proper by his letters patent of the 14th of March, 1763, to erect them into the several governments therein particularly described, and had appointed governors over the same, with directions that so soon as the state and condition of the said colonies should permit, a council and assembly should be appointed

and called— “for the purpose of making laws for the public peace, welfare, and good government of the said colonies, and of the people and inhabitants, as near as might be agreeable to the laws of England, and under such regulations and restrictions as are used in the other colonies; and in the mean time, and until such assemblies could be called as aforesaid, *All persons inhabiting or resorting to his Majesty’s said colonies might confide in his royal protection for the enjoyment of the benefit of the laws of his realm of England;* for which purposes his Majesty had given power under his great seal to the governors of the said colonies respectively, to erect and constitute courts of judicature and public justice within the said colonies, for the hearing and determining all causes, as well criminal as civil, according to law and equity, and as near as might be agreeable to the laws of England, with liberty to all persons who should think themselves aggrieved by the sentences of such courts, in all civil cases, to appeal to *his Majesty* in his privy council.”

By the treaty of peace, the French inhabitants of the Island of Grenada who chose to quit it, had liberty to dispose of their possessions, provided they were sold to British subjects; under the sanction of which permission, and of the above proclamation, Mr. Campbell purchased the estates (4½ per cent. of the produce of which have annually been exacted from him since the year 1765) confiding in his Majesty’s royal assurances *for the enjoyment of the benefit of the laws of his realm of England:* the most valuable of which benefits is the right of exemption from being arbitrarily taxed under pretence of prerogative royal.

If therefore his Majesty had any right to lay a tax on the inhabitants of Grenada as a conquered country, he most certainly gave it up by the proclamation of the 7th of October, 1763, and by the preceding one of the 14th of March, 1763, which gave the persons inhabiting, or resorting to the said island, the privileges of British subjects. If after assurances so solemnly given by his Majesty’s royal proclamation, his Majesty’s subjects in Grenada and the other ceded islands are to be treated as a conquered people, and as such remain liable to be stripped of their property under the pretence of prerogative, what security have they that, when at any time hereafter it may seem “reasonable and expedient” to his Majesty or his Ministers, (for its importance to the other sugar islands will always exist) an additional 4½ per cent. or any other proportion may not by new letters patent be levied on them—and it must be an addition to their misery to see themselves

tantalized with the appearance of "courts of judicature and public justice, for the hearing and determining all causes as near as may be agreeable to the laws of England," when the liberty of appeal, which was intended to be for their benefit, is perverted to the purpose of preventing the possibility of legal redress. For the collector who receives the tax in question, not for the benefit of the public or himself, but for the King's own use, without account, appeals—to whom? to his Majesty himself!—who is to judge whether he chuses to exact the tax or not.

But even if such a right did exist; why was it so long before it was exercised? Why were British subjects encouraged to purchase lands from the French inhabitants, upon a supposition that no such tax was to be paid. In consequence of which they were induced to give much more for the estates than they were worth, when liable to such a deduction. Tythe taken in kind, from the plowed land in England, is reckoned equal to a fifth part of the crop, deducting the rent and the expences of tillage; yet that tythe is taken upon the crop being severed from the ground. The lands in the West Indies are cultivated at more than three times the expence of those in England, and the King exacts near a twentieth part of the commodities after they are manufactured. The ignorance therefore of the British subjects that they were liable to such a tax, induced them to give at least 20 *per cent.* more for their lands purchased from the French than they were worth. The delay therefore of exercising this right, if it really did exist, was such an injury to individuals as ought to have prevented it altogether, even though no such assurances as those contained in the letters patent of the 7th of October, 1763, had ever been given.

There is one circumstance in which the letters patent, establishing this tax at Grenada, differs from those which impose it in the other islands.—It at the same time directs the continuance of a poll tax on all Negro slaves, which was paid under the French government. This tax the generality of the inhabitants refused to pay; in consequence of which various prosecutions were commenced, but his Majesty's servants wisely declined bringing them to a decision, nor have any late attempts been made to inforce the collecting it. The inforcing the letters patent respecting the collection of the $4\frac{1}{2}$ *per cent.* and not in the other instance, may appear strange and inconsistent, until the matter is explained.—The reason is, that in order to compel the payment of the poll tax, a suit must be instituted against the party refusing to pay it, and should a verdict be given in favour of the defendant (which, if any regard be had to the law of the land, must be the case) and the King,

in the name of his Receiver General, appeal; the tax could not be collected, *pendente lite*;¹ but, in the other instance, no person is permitted to ship his commodities until the 4½ *per cent.* duty is first paid, which duty he is put to the trouble and expence of a suit to recover back; and though he should obtain a judgment in all the courts of law in the West Indies—the King, in the person of the collector of the customs, appeals to himself; and in the mean time continues to exact the payment of the duties as before: and, if the goods should be shipped without such payment, both ship and goods would be seized, and liable to be libelled in the Court of Admiralty, to the ruin of the voyage, and perhaps of the owners; and therefore no master of a ship will run the hazard of taking the goods aboard under such circumstances, until the duty is first paid.

This mode of proceeding is so barefacedly iniquitous, as to require no comment. Those courts of judicature, which we had reason to hope, from his Majesty's gracious declarations, were to be instituted for protection, are by these means instruments of oppression.

Surely if they were not, when judgment is obtained in them, and his Majesty's servants think proper to appeal on his behalf—they should be directed to discontinue that conduct which such courts have adjudged to be unjust, at least until such judgment is reversed by a superior authority. But it is apparent from what has happened in the case of Mr. Otley, that a legal decision is not wished for. This tax is necessary, because it is the most eligible fund on which to grant pensions, and therefore must be supported *per fas aut nefas*.²

Had the King a legal title to impose this tax on Grenada, as a conquered territory, which will hardly be allowed, is it possible to believe he had the like title to tax the island of Tobago? The letters patent which impose the like duty in that island, are prefaced with the same declaration of its "having been conquered by his Majesty during the late war."

I should be glad to know who was the magnanimous general that commanded at the attack, or what ships were employed to conduct the forces destined for the reduction of this island of Tobago, on which there was not a single inhabitant. I should not be displeased to read the history of

——— *their fierce bustles*
With periwinckles, prawns, and muscles.

1. [Literally, "With the suit pending," i.e., during litigation.]

2. ["By fair means or foul."]

the only enemies they could find to encounter. This island has incontestably belonged to the crown of Great Britain for more than a century, and was granted by Charles the First to William Earl of Pembroke in 1628,—who not taking possession of it, it was afterwards, 17 November, 1664, granted by Charles II. to James Duke of Courland, under the acknowledgment of providing a forty-gun ship, compleatly armed and equipped, to assist the king or his successors whenever he should be engaged in war with any other King, Prince, or state (except only the King of Poland.) This island, by the failure of the succession of the house of Kettler, as Dukes of Courland, indubitably reverted again to the crown of Great Britain, and was, long before the late war, included in the commission of the Governor of Barbadoes, as well as the islands of Dominica and St. Vincent's, which commission, *quoad haec*,³ was necessarily obliged to be revoked before Governor Melville's commission, which bears date 9th April 1764, could take place.

Whatever reason there may be to call Grenada, or even Dominica and St. Vincent's, on which there were some inhabitants, conquered countries; yet to found any claim to this duty from Tobago, as a conquered island, is too absurd to require any answer. But the fact is—this pretended prerogative was never thought of, until long after the assurances given in his Majesty's letters patent of 7th October 1763.—For on 26th March 1764, his Majesty published other letters patent, wherein he says,

that having thought fit to declare to his parliament his gracious intention of reserving to the public use whatever sums should be produced by the sale of lands belonging to him in the *ceded* “[not conquered]” islands, he by that proclamation, and by the instructions to the commissioners in said letters patent mentioned, impowers the said commissioners to sell and dispose of the said lands, under and subject to such rents, reservations, and conditions, as are therein particularly expressed and declared.

Under the assurances contained in this proclamation, that they should be intitled to hold any lands they might purchase upon the terms and conditions therein mentioned, many people embarked themselves and their fortunes for the West Indies, nor had they the least intimation such terms were to be changed, till long afterwards; for although, on the 20th of June following, letters patent imposing the said duty did pass the seal; yet such letters

3. [“With respect to these matters.”]

patent were not published in the usual manner in the London Gazette, and consequently very few of the parties concerned were acquainted therewith. But a rumour that such duty was intended to be imposed, being spread abroad in the West Indies, previous to the sale of lands in the island of St. Vincent, the commissioners for the sale of those lands did so much apprehend that the sales would be thereby injured, and people be prevented from becoming purchasers, that they took particular pains to contradict it, declaring, as the fact really was, that they had received no instructions to alter or change the terms and conditions on which they were before directed to sell them; and my memory much fails me if Sir William Young, Bart. the first commissioner, did not write and publish a letter in the Antigua Gazette, to induce people to believe that they were not to be subjected to that tax.—If I am mistaken, I beg that Gentleman, who is now in England, to set me right, as I do not wish to deceive or mislead.

But supposing the letters patent of the 20th of June, 1764, to have been made as public as possible, their notoriety would not make them less illegal, although I doubt not but it was their *illegality* which prevented the publication of them in the London Gazette.

It is by some people insisted indeed, that as the land belonged to his Majesty, as lord of the soil, he had a right to lay what imposition on it he thought proper, before it was sold or otherwise disposed of.—That he had a right to take the rents, issues, and profits thereof, I do not dispute, but he possessed that right in common with any other land-holder, but no longer enjoyed it than while he had possession of the land: and I dare any lawyer to say, that the King has a right, by his prerogative, to lay any tax or duty on any inhabitant or lessee of any of his demesne lands in England, or any other part of his dominions.—He may indeed lease or dispose of such lands under such covenants, reservations, conditions, and rents as he thinks proper, but has not, by law, the power of raising one single penny by way of tax, aid, or benevolence, “without grant of parliament, or for longer time, or in any other manner, than the same is or shall be granted.” I therefore hesitate not to assert, that the letters patent of the 20th June, levying the tax complained of, in the island of Tobago, would have been contrary to law, and of no validity, even although his Majesty had not given the lands to the public, which by his declaration to parliament, repeated in his letters patent of the 20th March, 1764, he had engaged to do.—But such monies being given to the public as before mentioned, the taxing the

commodities of the growth of the islands to the amount of $4\frac{1}{2}$ per cent. is virtually retracting his promise made to the public, which he cannot do without forfeiting his royal word. The lands themselves belonged to the public by virtue of that promise; for no one will deny, but that, by a grant of the profits of land, the land itself is conveyed; so it follows, that reserving a *quit rent*, or any other part of the profits, is in fact retaining such proportion of the land itself, as the value of the rent or annual sum amounts to, or, which is the same thing, it renders the land worth so much less to the purchaser. The lands in Tobago did not, upon an average, sell for more than 2 *l. per acre*; but as it requires at least 50 *l. per acre* to settle lands in the West Indies, $4\frac{1}{2}$ per cent. upon the commodities of such land is an addition to the price of 125 per cent. per acre: and therefore, if the purchasers gave no more than 40 *s.* upon a supposition such duty was to be exacted of them, the public will receive less than a moiety of what it might otherwise be supposed the land would have sold for.—If (which is the real state of the case) the purchaser bought the lands on a perfect conviction that no such tax could legally be demanded of him, should it now continue to be arbitrarily exacted, he will be forced to pay more than double the price at which he agreed to purchase the lands.—If therefore there still remains any doubt with respect to the illegality of the imposition, it is clear that, if it is at all due, it would be due to the public, and not to his Majesty.—I recollect but one other point of view in which this matter may be placed.—It may be suggested, that notwithstanding the letters patent of the 14th March, 7th October 1763, and 26th March 1764, those of the 20th June 1764 having passed prior to any of the sales, and while the land was the King's; though such letters patent cannot legally, and consistent with law and the constitution, intitle his Majesty to levy the $4\frac{1}{2}$ per cent. thereby imposed as a tax or duty, yet that they may and ought to operate so as to intitle his Majesty to receive it as a condition or reserved rent, under and subject to which the land was sold. But neither will this argument avail, if the tax of $4\frac{1}{2}$ per cent. should be considered as a rent reserved; neither his Majesty nor the public can now have the least colour of right to receive it, as the grants by which the lands appear to have been conveyed to the several purchasers expressly convey the same, together with all *rents, issues, profits, commodities, &c.* to the same belonging or appertaining, upon such terms, and subject only to such *quit rents, conditions, and reservations*, as are contained in the said grants, which terms and conditions were published and proclaimed to the

persons present at each respective sale of lands, by order of the commissioners, and were the same with those mentioned in the letters patent of the 26th March 1764, no other terms or conditions whatsoever relative to the payment of any duty, or otherwise, being mentioned at such sale.

But allowing, for a moment, that the letters patent of the 20th June, 1764, did virtually revoke those before-mentioned of 14th March, 7th October, 1763, and 26th March, 1764, which fixed and established a legal constitution for the *ceded* islands, it must also be granted that the said letters patent of the 20th June, 1764, were not only virtually, but actually revoked by subsequent ones, bearing date 9th February, 1765, appointing Hugh Graeme, Esq; one of the commissioners for disposing of the said lands, *pursuant to the instructions* before given the said commissioner. By these instructions, which are thus renewed by the said letters patent of the 9th February, 1765, and recited in the grants of the land to each purchaser, the lands were directed to be, and actually have been conveyed to the respective purchasers, their heirs and assigns, for ever, subject only to the conditions expressed in the said grant, of which this tax is not one: nay, the very pretence of equality under which it is suggested to be reasonable and expedient, and of importance to the *other* sugar colonies, that the like duties should take place in the *ceded* islands, is false in fact. I have before mentioned those islands, the inhabitants of which do not pay the tax, and have shewn that those which do, or at least those of the island of Barbadoes, not only imposed it on themselves by act of assembly, but that such imposition was the price paid for the fee simple of the lands, at a time when they were settled and cultivated so as to be of great value: whereas the lands in the *ceded* islands have not only been sold for the utmost value that could be obtained for the same, but are also burthened with an heavy tax of 6 *d.* sterling per acre, which none of the other islands are liable to, and are also subject besides to the other expensive and difficult conditions mentioned in the grant, which the owners of lands in the other islands are not bound to perform.

Thus, without paying the 4½ *per cent.* the purchasers of land in the *ceded* islands are obliged to bear burthens unknown in the other islands, but which they endeavour to support with patience, as they were the terms under which they purchased;—though it would surely be more consistent with good policy to assist the purchasers in the settlement of their estates, by applying the price of their lands, and the quit rents, in making roads, and erecting such public edifices as are most wanted, than by creating duties

which are clearly illegal, to add to those difficulties which too many will find unsurmountable. I think, from what has been said, I am justified in concluding, that in every point of view whatsoever, the levying the duty of $4\frac{1}{2}$ per cent. is inconsistent with law and equity, and contrary to the constitution, as well as to sound policy.

I shall leave it to abler pens to confute the pretension now set up of his Majesty's having a right to levy taxes in a conquered country, by virtue of his prerogative royal. I always have been taught to think, that when the British arms conquered any country, the common law of the land always was supposed to accompany them. If it does not, I am sure our conquests must be fatal indeed, and when we think we are vanquishing our enemies, we are only forging fetters for ourselves and our posterity. In the case of the West India islands, this prerogative is exercised, after a constitution has been given them by his Majesty's royal proclamation.—If such exertion of the prerogative is legal, I shall, before long, expect to see it exercised on the two Florida's, and probably on some other parts of America.—As to Canada, which has yet had no constitution given to it, if this doctrine prevails, it lies at the King's mercy;—and what a miserable situation are the inhabitants of those countries, as well as of the East Indies in, if, at any time hereafter, a future bad minister to a future bad king, shall think proper to levy taxes on them. If the infatuated inhabitants of Great Britain shall acquiesce in this claim of power, and suffer their fellow-subjects and countrymen in the colonies to be thus arbitrarily taxed at the will of the King, they will too late find, how little able they will be to defend their own liberties, if they should hereafter be invaded.—The great security we at present have, is the right of being taxed only by our representatives; but if once it is in his Majesty's power to raise taxes on the British dominions abroad, by virtue of his prerogative royal, that right will be rendered very precarious: $4\frac{1}{2}$ per cent. on the produce of Bengal alone, would amount to a sufficient sum, without grant of parliament, to pay and maintain armies, by whose assistance, *if any future King should think fit*, neither the representatives nor the people would have any thing left to grant.

FINIS.

Index

Symbols, letters, and “n” followed by a number indicate footnotes.

- Abel (biblical figure), 611
- abolition of slavery/antislavery
movement, 297, 1134–45, 1161–62,
1933–34, 1947–53, 2149. *See also* slaves
and slavery
- absolute power, 244–46, 401–2, 604–5,
1988
- Acadians, 1580
- Achilles, 1566*
- Acosta, Josephus, 608, 613
- Act of Settlement (1701), 645, 1659,
1671, 1988–89
- Actaeon, 422
- Acts (biblical book): 4, 70; 7, 420; 19,
605; 22:25, 658*
- acts of Parliament affecting colonies:
debts from colonies, statute for
recovery of, 1050, 1055–71; on
executions issuing from courts
of law in Barbados, 1075–86;
publisher’s preface to Blenman’s
treatise, 1051–52; *Remarks on Several
Acts of Parliament* (London, 1742),
1049–1116; rum, requirement to land
and warehouse before payment of
excise on, 1049, 1086–96; sugar trade,
statute for securing and encouraging,
1049, 1071–75; transfer of English
law to colonies, 1050. *See also* 4½
percent duty; *specific statutes*
- Acts of Trade and Navigation: in
Barbados, 122, 215, 221; Harrison on
governance and, 237; Penn on, 36, 58,
59; proprietary government and, 279,
532–37
- Adam (biblical figure), 105, 162, 163
- Addington, Isaac, 173, 177
- Addison, Joseph, 355, 1088–89, 1197,
1206–7, 1208, 1217
- An Address to His Excellency Sir Charles
Hardy* (William Livingston, New
York, 1755), 1541–54
- adultery, divorce proceedings due to, 1350
- Aelius Laetus, 79
- Aeneid* (Virgil), 601, 1307, 1480, 1509n39,
1566*
- Aeschylus, 72
- Aesculapius, 443, 445
- Aesop, 2152
- African Americans. *See* slaves and
slavery
- African character, views on, 1934, 1936,
1939–41, 1946–47, 1950, 1953, 2176–79,
2185–88
- Agincourt, Battle of, 1948–49
- Aix La Chapelle, Treaty of (1750), 1378,
1380, 2166
- Albany Plan for union of continental
colonies (1754). *See* union of
continental colonies
- Albermarle, George, Duke of, 635
- alcohol. *See* liquor; rum
- Alderson [Anderson], Simon, 894, 911,
913, 931

- Alexander, Mr. (New Jersey), 1170–71
- Alexander, Colonel (Antigua), 318, 321
- Alexander, James, 834, 838, 853, 855, 860, 868
- Alfred the Great (Anglo-Saxon king), 1668
- The Allegations Against Proprietary Government Considered* (William Penn, 1701), 279–86
- Allen, Chief Justice (Pennsylvania), 1883
- Allen, John, 191
- Allen, Justice (New Jersey), 1173
- Allen, William, 1884
- Alleyne, Abel, 470
- Alleyne, John, 470
- Allin, Elizabeth, 1745
- Allin, Hudson, 1741
- Allin, William, 1741
- Almon, J., 1957, 2251
- Alricks, Peter, 1179
- Ambler, Richard, 1741
- Ambrose of Milan, 77, 79–80
- “An American” (Benjamin Harrison). See Harrison, Benjamin, *An Essay Upon the Government* . . .
- “An American” (Arthur Lee), *An Essay in Vindication of the Continental Colonies of America* (London, 1764), 1933–53, 2149. See also slaves and slavery
- American colonial political writings. See political writings of colonial British America
- American Indians. See Native Americans
- American Magazine*, “Remarks on the Maryland Government and Constitution” (1741), 1021–48. See also upper house in Maryland government and constitution
- Americanus, *Letter to the Freeholders and Other Inhabitants of the Massachusetts-Bay* (Newport, 1739), 875–86
- Amherst, Sir Jeffery, 1683, 1684, 1685, 1686, 1702
- Amicus Republicae, *Trade and Commerce Inculcated* (Boston, 1731), 677–724. See also regulation of trade and commerce for flourishing commonwealth
- Amphictiones, Court of, 272
- Anabaptists, 68, 1402
- Anderson, Joseph, 896, 903, 917–20, 922, 924, 927
- Anderson, on naval power, 2190*
- Anderson [Alderson], Simon, 894, 911, 913, 931
- Anderson’s Reports*, 667*, 826
- Andreas, Bernard, 442, 443, 447
- Andreas, Mrs., 443–44, 446
- Andrews, Charles M., xvii
- Andrews, John, Sr., 158–60
- Androboros: A Biographical Farce in Three Acts* (Robert Hunter; New York, 1714), 355–93; apotheosis (third act), 381–93; consistory (second act), 370–81; dedication to Don. Com. Fiz., 358–60; dramatis personae, 348; first play published in colonial English America, 355; as political satire aimed at New York Assembly, 355–56; senate (first act), 360–70
- Andros[se], Sir Edmund (governor, Massachusetts colony), 47, 49, 54, 58, 59, 68, 514, 595. See also Boston uprising
- Anegada, 2257, 2260
- Anglicanism. See Church of England
- Anglo-Saxons, 20–21, 1027, 2099
- Anguilla, 1073, 1097, 2100
- Annales* (Tacitus), 78, 632
- Anne (queen of England), 472, 478, 503, 565, 638, 665, 1168, 1617, 1685, 2165, 2166
- Anonymous. See specific titles or publications for items by anonymous authors

- An Answer to an Invidious Pamphlet, Intituled, A Brief State of the Province of Pennsylvania* (London, 1755), 1421–76. *See also* Pennsylvania, proprietary government in
- Anthony, Elizabeth, 837
- The Antidote* (James Logan, 1725), 573–93
- Antigonus, 668
- Antigua, xix, 1049, 1058, 1061, 1074, 1096, 1097, 2066–67†, 2069, 2072*, 2101, 2103. *See also* 4½ percent duty; Parke, Daniel, assassination of
- Antigua Gazette*, 2265
- Antiochus (biblical ruler), 85
- anti-prerogative movement in Massachusetts assembly, 485–86
- antislavery movement/abolition of slavery, 297, 1134–45, 1161–62, 1933–34, 1947–53, 2149. *See also* slaves and slavery
- Apology* (Justin Martyr), 192
- Apology* (Tertullian), 79, 192
- Appian, 668
- Appleton, John, 157, 158, 159, 160
- Appleton, Major, 182
- Appleton, Samuel, 161
- arbitrary power. *See* absolute power; divine right of kings, doctrine of; rule of law
- Arcedeckne, Chaloner, 2015, 2017
- Archdale, John, 637, 1606–7
- Archelaus, 668
- Archer, Amy, 1745
- Archer, Sir Robert, 1669
- Archer, Thomas, 1742
- Archimedes, 220n15
- Arents, Jacob, 1182
- The Argument or Speech of John Gardiner, Esquire* (St. Christopher, 1770), 2085–2121. *See also* St. Christopher's (St. Kitt's) assembly's power of imprisonment, denied
- Arguments Offer'd to the Right Honourable the Lords Commissioners* (Montague, 1701), 195–214. *See also* Montague, John
- Arians and Arianism, 80, 419
- Ariovistus, 668
- aristocracy: ancient concept distinguished from British hereditary aristocracy, 1031–35; Nova Scotia, oligarchical control of, 2231–32, 2235–36; South Carolina's proprietary government attempting to establish, 502, 538, 635–37, 1589, 1596; upper house in Maryland and threat of establishing hereditary, 1022, 1036–37
- Aristotle, 60, 72, 86, 600, 2108*, 2202
- Armistead, Elliston, 1742
- Armistead, Robert Booth, 1744
- Ars Poetica* (Horace), 601, 1524n58
- Artabanus the Persian, 87
- Artaxerxes, 70
- Ashbridge, George, 1884
- assemblies, colonial. *See* legislative power; *specific colonies*
- Asylum Law protecting debtors in Nova Scotia, 2240–41
- Athanasius (saint), 460
- Athens and Athenians, 632, 668, 1032–34, 1041, 1276, 1567*, 1951
- Atkins, Sir R., 2144–45
- Atkinson, Theodore, 1382
- attainder, bills of, 547
- Atticus, 1482, 1957
- Attwood, William, 831, 832, 833
- Augustine (saint), 72, 76, 80, 81; *De civitate Dei*, 75; *Epistolae*, 88
- Augustus Caesar (Roman emperor), 1194, 1224, 1499
- Ayon [Ayan], Michael, 317–20, 321–22, 330, 332, 336, 338, 339, 342
- Babel, Tower of, 1519
- Baber, Mr., 408

- Bacchides, 83
- Bacon, Sir Francis, 1133, 1159, 1663, 1798*, 1992
- Bacon's Rebellion (1676) in Virginia, 1266, 1801
- Bahamas, xviii, xix, 947, 2257
- Baillie, Mr., 433
- Bailyn, Bernard, xvi
- Baker, William, 1568*, 1743
- Bakers Chronicle, 34
- Balaam's Ass, 188
- Baladine, Captain, 1475–76
- balance of trade, 686, 707, 957–58, 974
- balance/separation of powers, 209–10, 605, 772–92, 846–48, 1273–76, 1694*, 1714–15, 1994–2000
- Baldwin, A., 217, 298
- Baldwin, Messrs. (printers), 1137
- Baldwin, Samuel, 1183
- Ballard, Robert, 1741
- Baltimore, Lord, 273, 295, 649, 650, 1945
- Banbury, John, 894, 911, 913, 931
- Banbury cheese, 1810, 1821
- banishment. *See* exile or banishment
- banks and banking, 715–22, 963–65, 967, 975
- baptism of slaves, consequences of, 309, 2180–81, 2197, 2217
- Baptist, Edward, 1743
- Baptist, John, 1743
- Barbados: advantages to England of prosperous Barbados, 139–45; Blenman, Jonathan, *Remarks on Several Acts of Parliament* (London, 1742), 1049–1116 (*See also* acts of Parliament affecting colonies); charter privileges in, 1906; currency in, 947, 952, 970; debt recovery in, 1058–62, 1065–67; dispute with governor over disbursement of public funds, 1278–83; ecclesiastical jurisdiction in, 467–68; economic prosperity and judicial administration, links between, 215–16, 221–25; Estwick, Samuel, *Considerations on the Negroe Cause* (London, 1773), 2191, 2193–2230; executions issuing from courts of law in, 1075–86; exhaustion of soil in, 1363; fortifications of, 994–98, 1108, 1109; freemen and white servants, difficulties employing, 128, 131; Grenada compared, 2061, 2071, 2072*, 2083; Hodge, Thomas, *Plantation Justice* (London, 1701), 215–25; importation of English goods by, 140; Littleton, Edward, *The Groans of the Plantations* (London, 1689), 115–46; militia in Barbados, difficulties maintaining, 128, 132–33; native commodities, Barbadian production of, 144–45; number of documents related to, xix; poll tax on slaves, 1109; poor state of judicial system in, 215, 217–21; “projectors,” villainy of, 115–16, 124, 125, 127, 128, 131, 134–39, 146; relationship between England and, 115–16, 118, 124, 128, 129–31, 134–37, 143–44, 145–46; salaries not allowed to judges, 219; slaves and slavery in, 120, 121–23, 128, 132, 133, 2159–60, 2164; yearly presents of money to governors, 221. *See also* 4½ percent duty; Byng, Robert (governor of Barbados), vindication of; Lowther, Robert (governor of Barbados); sugar and sugar trade
- Barbuda, 1097
- Barclay, Lord, 1177
- Barham, Benjamin, 1744
- Barham, Elizabeth, 1744
- Barkl[e]y, *contra Monarchomach.*, 84
- Barnes, Abraham, 1383
- Barnes, John, 920, 921
- Barron, Michael, 1179

- Bartram [Bestram, Bertram], William, 894, 911, 913, 931
- bastard child, fine for having, in North Carolina, 903, 922
- Bath, John, Earl of, 637
- Baxter, Elizabeth, 837
- Baxter, James, 837
- Baxter, Thomas, *A Letter from a Gentleman at Barbados to His Friend* (London, 1740), 979–1004. *See also* Byng, Robert (governor of Barbados), vindication of
- Bayard, Colonel, 203, 205
- Bayl[e]y, David, 894, 911, 913, 930
- Beardmore, Mr., 2105
- Beaufort, Henry (cardinal), 754
- Beaulieu, Captain, 320
- Bebricii, 71
- Beccaria, Marquis, 2247
- Becker, Christopher, 919
- Becket, T. (printer), 1935
- Beckford, Peter, 385, 410, 415, 454, 455
- Beckford, Richard, 1480
- Beckford, William, 1460, 1480
- Bedford, Duke of, 1149
- Bedwell, Robert, 45
- Beeston, Colonel, 2010
- Belcher, Jonathan (governor of Massachusetts), 875, 876
- Belcher, Jonathan (lieutenant governor of Nova Scotia), 2240–42
- Belknap, Chief Justice, 777, 1665
- Bell. Catilin.* (Sallust), 1857*
- Bell. Jugurth.* (Sallust), 1837, 1862*
- Bellomont, Richard, earl of (governor of New York), 195–96, 213, 766
- Benjamin Horton* (vessel), 348
- Bennine [Bonnin(e)], Gousse, 318–20, 321–22, 338, 341, 342
- Bentley, Mr., 471
- Berkeley, Henry, 2091
- Berkley, Lord John, 635
- Berkley, Sir William, 635
- Bermuda, xvii, xix, 54, 939, 947
- Bernard, Francis (governor of Massachusetts), 1679–80, 1687, 1692, 1700–1703. *See also* Otis, James, *A Vindication . . .*
- Berry, David, 927
- Bertram [Bestram, Bartram], William, 894, 911, 913, 931
- Beverly, Lenox, 171
- Bevon, J., 326
- Bezor, John, 44
- Bible: Fowle, Daniel, lack of access to Scriptures while imprisoned, 1571; self-defense allowed by, 1008, 1013–18. *See also specific books*
- Bignal* (vessel), 405
- Bigot, Roger, Earl of Norfolk and Suffolk, 31, 33–34
- Biles, William, 44
- Bill of Rights, English, 1671, 2067*
- Birch, Colonel, 2137
- Bishop, Benony, 44
- Bishop, James, 97
- Bithynians, 668
- Blackal[l], Abraham, 894, 911, 913, 930
- Blackburn, John, 1884
- black people. *See* slaves and slavery
- Blackstone, William, *Commentaries*, xii, 2096†, 2109*, 2112–13, 2120–21†, 2128, 2131, 2154*, 2175–76, 2212, 2218[k]
- Bladon, S., 1423, 1957
- Blair, Dr., 445–46
- Blaithwaite, Mr., 153
- Blake, Joseph (governor of Carolina), 637
- Blake, Nicholas, 415–16, 417, 427
- Bland, Richard: Camm, John, *Observations on Colonel Bland's Letter to the Reverend John Camm* (1763), 1780, 1782, 1784, 1787, 1814–30; in Camm, John, *A Single and Distinct View of the Act, Vulgarly Entitled, The Two-Penny Act* (John Camm;

- Bland, Richard (*continued*)
 Annapolis, 1763), 1737, 1739, 1740, 1749, 1754–62, 1764, 1770–73; *The Colonel Dismounted: Or the Rector Vindicated* (writing as Common Sense; Williamsburg, 1764), 1777–1833; *A Letter to the Clergy of Virginia* (Williamsburg, 1760), 1637–57, 1784, 1786, 1792, 1809, 1811, 1821, 1829; Letter to John Camm in *Virginia Gazette* (1763), 1808–13; mock dialogue between Bland and Carter, 1781–1807. *See also* Two-penny Acts
- Blanstone, John, 44
- Blenman, Jonathan: in Baxter, Thomas, *A Letter from a Gentleman at Barbados to His Friend* (London, 1740), 979, 980, 982–83; *Remarks on Several Acts of Parliament* (London, 1742), 1049–1116 (*See also* acts of Parliament affecting colonies)
- Blount, John, 891, 894, 911, 912, 913, 930
- Board of Trade: explanatory charter for Massachusetts, 486; Nova Scotia, lack of knowledge of, 2248; *Observations upon the Report Made by the Board of Trade against the Grenada Laws* (London, 1770), 2053–84 (*See also* Grenada); proprietary governments, proposals to annul, 279, 280, 509; tobacco traders' memorial about paper money in Virginia sent to, 1613–36; Two-penny Acts, letter of Bishop of London regarding, 1637–38, 1640–42, 1787
- Bohon, Humphry, Earl of Hereford and Essex, 31, 33
- Bollan, William, 1723, 1725, 1735
- Bolt, Edward, 2016, 2018, 2021–22
- Boman, Henry, 45
- Bond, Justice, 175
- Boniface, William, 31, 33
- Bonnel, Justice (New Jersey), 1173
- Bonnin[e] [Bennine], Gousse, 318–20, 321–22, 338, 341, 342
- Booth, Anthony, 896, 904, 924
- Booth, George, 1745
- Booth, John, 319
- Bordman, Captain, 1691
- Boston Gazette*, 551, 554, 559–60
- Boston uprising (April 1689):
 arguments against justifications for revolt, 51–69; Christian dominion over heathen lands, viewpoints regarding, 163, 187–88; on colonists' rights as English subjects, 147, 188–91; commission given to Andros, anger over, 183; on contract between settlers and Crown, 147, 189–91; Dominion of New England ended by, 47, 147, 195; dominions of the Crown rather than Empire of England, on colonies properly regarded as, 54–59; Dummer's account of, 513–15; extortion charges against Andros and others, 179–83; French, suspicions of Andros's collusion with, 183–86; on futility of war against crown, 91–92; Glorious Revolution, Boston uprising compared to, 147, 151, 192; Glorious Revolution, efforts to suppress news of, 153–55; on illegal taxation, 156, 186–87, 189–90; on jury tampering, 157, 179; letter to Gershom Bulkeley from "a friend in the Bay" regarding, 109–12; liberty, laws made destructive to, 155–56; on Native Americans encouraged in war with colonists, 171–79, 183; Palmer, John, *The Present State of New England* (Boston, 1689), attacking, 47–93; on property rights violations, 161–71; on purchase rather than conquest of land from Native Americans, 147, 162, 164, 167, 187; Rawson, Edward, *The*

- Revolution in New England Justified* (1691), defending, 147–93; Rawson's pamphlet, as response to Palmer's, 147, 149–53, 158, 161, 165–66, 173, 180–81, 186–89, 191–92; reasons for, 47–51; on right of resistance, 191–93; right of resistance denied by, 50, 68–69, 70–91; on severe punishments inflicted on those opposing arbitrary proceedings, 156–61
- Boude, John, 896, 903, 922
- Bould, George, 894, 910, 913, 930
- boundaries of colonies, Albany Plan, proposals for, 1382
- Bourke, Nicholas: as Jamaica assemblyman, 2017, 2021; *The Privileges of the Island of Jamaica Vindicated* (London, 1766), xv, 1955–2022 (See also privilege controversy in Jamaica)
- Bouveroon, Mr., 1328
- Bowdoin, James, 1688, 1689, 1723
- Bower, John, 1746
- Bowes, Charles, 318–20, 321–22, 330, 339
- Boydell, Mr., 556
- Boyden, James, 33
- Boyle, Mr., 1267, 2221
- Bracton, Henry, *Laws and Customs of England*, 754, 756, 774–75, 803(b), 2096–97†, 2118–19*
- Bracy, Robert, 44
- Bracy, Thomas, 44
- Braddock, General, 1585, 1619
- Bradford, Andrew, 1021
- Bradford, William, 3, 96, 745, 1837
- Bradley, Mr., 837
- Bradstreet, Captain, 182
- Braham, Jemima, 1741
- Bramley, George, 1339
- Bramley, John (alias John Goat), 1328, 1353
- brandy, French, 1087, 1089, 1091, 1093
- Brattle, William, 1688, 1689
- Brazil, 57, 143, 145, 518, 608, 613
- Breen, T. H., xvi
- bribery. See corruption
- Brice, William, 894, 911, 913, 931
- Bridger, John, 485, 490, 496
- Bridgin, Samuel, 895, 896, 897, 905–7, 925–27
- A Brief State of the Province of Pennsylvania* (William Smith; London, 1755), 1399–1419. See also Pennsylvania, proprietary government in
- Brigstock, Mr., 634
- Brinckloe, John, 296
- Brinklaer, John, 45
- Brinkstone, Andrew, 44
- Briscoe, John, 837
- Bristol (vessel), 435
- British constitution. See constitution, English
- British Crown. See Crown, English
- British Parliament. See Parliament, British
- Britton, 754
- Broadstreete, Mr., 96, 113–14
- Brodie, William, 1744
- Brodrick, William, 395, 410, 415, 422, 426–27, 439, 457, 461. See also Hamilton triumvirate in Jamaica
- Brown, Clifton, 927
- Brown, Daniel, 45
- Brown, John, 894, 911, 913, 931
- Brown[e], Thomas, 175–77
- Brownl. Rep.*, 1085
- Bruce, Sarah, 1745
- Brunning, Joseph, 148
- Brutus (assassin of Julius Caesar), 111, 240, 632, 1957
- Bryan, Mr. (St. Christopher), 2116*
- Bryan, John, 902, 912, 915–17, 922
- Bryan, Margaret, 320, 341
- Bryan, Martha, 1742
- Bryan, Thomas, 894, 911, 913, 931

- Buchan, Earl of (formerly Lord Cardross), 637
- Buchanan, Mr., 2105, 2107
- Buck, Nathaniel, 1741
- Buckingham's epitaph, 2125
- Buckler, Elizabeth, 1745
- Bulkeley, Gershom, *The People's Right to Election* (1689), 95–114; letter from Bulkeley arguing against resumption of Connecticut charter, 97–109; letter from Thomas Gr[e]aves to James Russell against resumption of Connecticut Charter, in answer to Mr. Broadstreete and others, 113–14; letter to Bulkeley from “a friend in the Bay” on Boston uprising (1689), 109–12; *Will and Doom, Or the Miseries of Connecticut by and under an Usurped and Arbitrary Power* (1692), xix–xx
- Bulkley, John: on agreement between ancient mythology and sacred history, 599–601; on art of writing, 598–99; biographical information, 595; natural law espoused by, 596, 603–5, 607; *The Necessity of Religion in Societies* (1713), 595; political views of, 603–5; “Preface” in Roger Wolcott's *Poetical Meditations* (New London, 1725), 595–627; *The Usefulness of Reveal'd Religion, to Preserve and Improve that which is Natural* (1730), 595; on Wolcott as great man and accomplished poet, 602–3. *See also* Mohegan Indians' dispute with Connecticut over ownership of hunting grounds
- Bullard, Mr., 471
- Bulloch, Archibald, 2123
- Burcher, John, 1743
- Burfort, Ambrose, 1745
- Burges, Daniel, 1143
- Burke, Mr., 471
- Burnet, Bishop Gilbert, 790, 2142–43*, 2143–44
- Burnet, William, 853, 855
- Burrell, Henry, 326
- Burril[1], John, 166–68
- Burroughs, Thomas, 1746
- Burt, Matthew, 1744
- Burt, Philip, 1743
- Burt, Samuel, 198–201
- Burwell, Carter, 1741
- Burwell, James, 1741
- Burwell, Robert, 1746
- Bute, Lord, 2107†
- Butler, Joseph, 1559
- Byam, Edward, 324
- Byam, William, 324, 326
- Byng, Robert (governor of Barbados), vindication of, 979; address of 8th July 1740 given to Byng, 998–99; arrival and reception of Byng in Barbados, 984–88; Baxter, Thomas, *A Letter from a Gentleman at Barbados to His Friend* (London, 1740), 979–1004; blackening of character of, 1003; Blenman, Jonathan, and, 979, 980, 982–83; deaths of Byng and Peers, 979, 999–1001, 1108–9; Howe, Lord (former governor of Barbados), and, 979, 984, 985, 986–89, 1002; militia and, 994–98, 1002; moneys provided to governor and, 988–92; Peers, Henry, dispute with, 979–80, 983–97, 1001; personal and public appreciation of Byng, 1001–3; Spain, declaration of war with, 992–94
- Cabot, Sebastian, 57, 634, 1264, 1377
- Cain (biblical figure), 608, 611
- Cairns, Sir Alexander, 434
- Calahorn, Robert, 896, 904, 922, 923
- Caldom, John, 922, 923
- Caligula (Roman emperor), 1194

- Calm and Respectful Thoughts on the Negative of the Crown* (John J. Zubly, writing as "A Freeman"; Savannah, 1772), 2123–47. *See also* Georgia
- Calvinists, 595, 1472
- Camden, Lord, 2106
- Camm, John: in Bland's critique of Camm's pamphlet, 1777, 1778, 1780, 1808, 1813; disappointments and dispreferments suffered by, 1796–97; Letter from Richard Bland in *Virginia Gazette* (1763), 1808–13; memorial presented to Bishop of London by, 1637, 1638, 1643, 1763–66, 1787, 1793–95, 1830–33; nonresidence, Camm accused of violating statutes against, 1810, 1818–21; *Observations on Colonel Bland's Letter to the Reverend John Camm* (1763), 1780, 1782, 1784, 1787, 1814–30; *A Single and Distinct View of the Act, Vulgarly Entitled, The Two-Penny Act* (Annapolis, 1763), 1638, 1737–75, 1787†, 1807*, 1810, 1811, 1820, 1821. *See also* Two-penny Acts
- Camp, Nathaniel, 1183
- Campbell, Alexander, 2249, 2252, 2261
- Campbell, Archibald and Mary, 837
- Campbell, Lord William (governor of Nova Scotia), 2243–44
- Canada: Albany Plan (1754) of union of continental colonies and, 1378, 1379; conquest by British, 2240, 2268; defense of New Englanders from French and Indian attacks from, 523–27; expeditions against, 940, 944, 959, 1327, 1431–32, 1451, 1685, 1687, 2237; Germans of Pennsylvania and French of, 1470; New York and Canada, proposal to halt trade between, 1290–91; St. Lawrence River, French settlement along, 234–35. *See also* Newfoundland; Nova Scotia
- Candid Reflections upon the Judgement on What is Commonly Called the Negroe-Cause* (Edward Long, writing as "A Planter"; London, 1772), 2149–91, 2193, 2194. *See also* slaves and slavery
- The Candidates; Or, The Humours of a Virginia Election* (Robert Munford; 1770), 2023–52
- Candish, Sir W., 835–36
- cannibals, Native Americans denoted as, 1097
- Capel, Sir Henry, 2139
- capital punishment: of judges, 777–78, 1669; Smith, William (chief justice of North Carolina), malfeasance of, 900–901, 918–20
- Cardross, Lord (later Earl of Buchan), 637
- Care, Henry, *English Liberties; or, The Free-born Subjects Inheritance*, 3, 670n1, 1556, 1575
- Carey, Richard, 323, 324
- Carib Indians, genocide of, 2213
- Carlisle, Earl of (governor of Jamaica), 1098–1101, 2004, 2009, 2010, 2011, 2257–59
- Carlisle, Frank, 321
- Carolina: charter, 499, 501–7, 635, 641; climate, geography, and history of, 633–39; D'Avenant's claims about and lack of knowledge of, 230, 231, 232, 240; French in, 506–7, 634, 639, 1945; government of, 273, 634–38; history of settlement of, 1945–46; judicial system in, 635; juries chosen by lot in, 538, 636, 899; laws and legislation in, 635–36; leniency attributed to Crown government in, 1859, 1923; Native Americans of, 634; piracy in, 506; property rights of settlers in, 506; relations between colonies, 256; religion in, 501–3;

- Carolina (*continued*)
 separation into North and South Carolina, 1946; silk making in, 131; slaves and slavery in, 1945–46; South Sea Company, efforts to sell Carolina to (1720), 630; Spain and, 633–34, 647–48; Yamasee War (1715), 499, 505–6, 521, 528, 644. *See also* North Carolina; South Carolina
- Caron [Carrow], Jacob, 894, 911, 913, 930
- Caron, John, 894, 911, 913, 930
- Carpenter, Emmanuel, 1884
- Carruthers, Mr., 894, 910, 913, 930
- Carter, Charles, 1742
- Carter, Landon: Bland on Carter and Two-penny Acts, 1777, 1808, 1810; Camm on Carter and Two-penny Acts, 1739, 1740, 1748–50, 1751, 1753, 1754, 1770–72; free school erected by, 1810; *A Letter from a Gentleman in Virginia to the Merchants of Great Britain* (London, 1754), 1301–22 (*See also* pistole fee controversy); *A Letter to a Gentleman in London, from Virginia* (Williamsburg, 1759), 1613–36 (*See also* paper money); mock dialogue between Bland and Carter, 1781–1807; pamphlet on Two-penny Acts, 1638, 1738
- Carter, Richard, 471, 473–74
- Carteret, Lord, 512
- Carteret, Sir George, 635, 1177
- Carteret, James, 636
- Carteret, Philip, 1177, 1179
- Carthage and Carthaginians, 668, 1041, 1264, 1276
- Cary, Colonel, 1752
- Cary, William, 1745
- Casart, Mons., 1332
- case law: equity courts, on power to establish, 749–51; on extension of English laws to colonies, 650, 660, 666, 667, 671nn2–5, 673*, 675; on 4½ percent duty, 2249, 2252–55, 2263
- case law decisions: *Abbot of Strata Marcella*, case of, 821; *Argenton* against *Westover* and *Lucas*, 1084; *Ashby* and *White* case, 1978; *Aylesbury Men* case, 660n3, 1977–81, 1982; *Bayliff's* and *Burgesses* of *Bewdley*, *Queen* against, 1085; *Blankard* against *Goldy*, 1060–61; *Bridgin* against *Fullwood*, 896; *Butts* and *Penny*, 2225[q]; *Calvin's* case, 55, 667, 1730, 2059*, 2063*; *Campbell v. Hall*, 2249–50, 2252–2255; *Earl of Clarendon's* case, 764; *Earl of Derby's* case, 751, 828; *Elizabeth Anthony v. John Lemountes*, *Archibald Campbell*, and *Mary his wife*, 837; *Elizabeth Baxter v. James Baxter*, 837; *Galdy's* case, 1492; *Gelly* against *Cleve*, 2225[q]; *Hitchcock's* case, 28; *Holmes's* case, 28; *Jentleman's* case, 2096*; *John Briscoe v. George Monthomerie*, 837; *John de Marshall's* case, 28; *Kett's* case, 577–79; *Keziah Glover v. James Baxter*, 837; *Lane v. Cotton*, 579; *Lord Buckhurst's* case, 671n3; *Lord Macclesfield's* case, 821; *Martin's* case against *Marshal* and *Key*, 748, 826; *Mayor of York's* case, 828; *Oliver* against *Collins*, 1084–85; *Parker's* case, 564; *Per[r]ot's* case, 750, 825; *Prince's* case, 20; *Prior of Sheills* case, 673*; *Reniger* and *Fogasa* case, 673*; *Rex v. Cowle*, 2116†; *Rice's* case, 2211[e]; *Riggs v. Home, Admr. and Montr.*, 837; *Samuel Heath, King v.*, 833–34; *Savill's* case, 840; *Scott* and *York, King v.*, 836; *Shaftesbury's* case, 1979, 2094; *Sir Josiah Child* and *Sands* case, 537*; *Skeat* and *Oxenbridge*, case of, 1084; *Somerset the Negroe v. Knowles* and others, 2149, 2152–53, 2191, 2196–2230, 2200; *Suttons Hospital*

- case, 64; *Sydenham, al. Stuyvesant, v. Ger. Stuyvesant*, 838; *Tresilian and Brember*, case of, 1226, 1248, 1249; *Under-Sheriff's case*, 564, 577; *Van Dam, King v.*, 837; *William Penn's case*, 280, 287; *Wright and French, King v.*, 832–33. *See also specific case reporters*
- The Case of Capt. George Frye* (London, 1754), 1323–57. *See also* Frye, George
- Cassiodorus, 87
- Cassius (assassin of Julius Caesar), 79
- Casteen, Mr. (Frenchman), 183
- Castelaw, James, 894, 908, 911, 913, 929, 930
- Castle William (Boston), 525, 1702
- Catharine (queen of Portugal), 2205[c]
- Catholicism: *American Magazine* on threat of, 1021; Carolina's lack of, 633, 1600; on Christian rights to heathen lands, 163, 187–88, 518–19; English fears related to, 48, 50, 51–52, 66, 68–69, 105–6, 151, 1194; of German inhabitants of Pennsylvania, 1406, 1412, 1415, 1470–72; in Grenada, 2054, 2064–66, 2075, 2136*; Hamilton triumvirate in Jamaica and, 406, 418–19, 422; legislature, exclusion from, 2066*; Maryland, settlement of, 1945; on Montserrat, 1324, 1330–32, 2064; Native American given book with picture of Virgin Mary, 172, 174; New York and, 1548; Romish inquisitors, detractors of Two-penny Acts compared to, 1657, 1754, 1769, 1809, 1815, 1817, 1818, 1827; Swiss suspected of, 646; Test Act, 2064–67, 2083; tolerated in Pennsylvania, 1406, 1412, 1415, 1441–43; in Virginia, 247
- Catiline, 1163, 1857*
- Cato, 601, 651, 666*, 1528
- Cato's Letter* (Thomas Gordon and John Trenchard), 875, 878
- Catton, Mary, 1744
- Cavendish, Lord, 2139, 2142
- Cay's abridgment, 1943†
- Ceded Islands: English law, colonists subject to, 2250; 4½ percent duty in, 2249–68 (*See also* 4½ percent duty); legislative power in, 2053–54, 2058; proclamation on, 2059–60. *See also* Dominica; Grenada; St. Vincent; Tobago
- Cerdo Gloucesteriensis, 358
- Cerealis, 668
- Chambers, John, 1382
- Chambers, William, 1329, 1330
- Champion, Orlando, 896
- Chancellor of England, power of, 780–84
- Chancery Court in England, 751–59, 824, 825
- Chandler, John, 1382
- Chandler, Major, 488
- Chapman, Abraham, 1884
- Chapman, Ann, 1742
- Chapman, John, 1741
- Characteristics* (Earl of Shaftesbury), 1942*
- charity: increasing number of Negroes in Britain and, 2179; paper money and charity funds, 949–50, 973–75; Two-penny Acts and, 1740–50
- Charles I (king of England), 513, 561, 663, 787, 1100, 1101, 1200, 1265, 1546, 1666, 1669, 1801, 1943, 1945, 1966, 1973–74, 1993, 2100, 2156, 2164, 2264
- Charles II (king of England), 37, 98, 123, 188, 264, 396, 400, 442, 448, 501, 513, 563, 634, 641, 1097, 1101, 1165, 1176, 1311, 1317, 1442, 1489, 1592, 1593, 1666, 1801, 1802, 1908, 1943, 1983–84, 2004, 2012, 2100, 2136–46, 2158, 2164, 2227, 2228, 2259, 2264
- Charles IX (king of France), 634, 1937
- Charles XII (king of Sweden), 938

- Charles, Kemp, 1744
- Charles, Robert, 1838, 1882*
- Charta de Foresta* (Charter of the Forest): Penn on, 21, 22; sentence of clergy against breakers of, 31; text of, 29–30
- Charta Libertatum* (Charter of Liberties): Penn on, 21; sentence of clergy against breakers of, 31; text of, 29–30
- charters, colonial. *See* proprietary government, *and under specific colonies*
- Chatillon, Admiral, 1945
- Chauncy, Charles, 595
- Cheever, Captain, 1690
- Cherokees, 1619
- Chester, court of equity before chamberlain of, 760, 826, 827
- Chester, Edward, 329–31
- Chester, Mrs. Edward, 331
- Chew, Samuel, *The Speech of Samuel Chew, Esq.* (Philadelphia, 1741), 1005–20. *See also* self-defense
- Child, Sir Josiah, 243, 537*
- Chisman, Henry, 1743
- Chisman, John, Jr., 1743
- Cholmely, Sir Roger, 1970
- Christiana (queen of Sweden), 290
- Christianity. *See* religion; *specific denominations*
- Church of England: Baltimore family's conversion to, 649; Barbados, ecclesiastical jurisdiction in, 467–68; Boston uprising (1689) and, 60, 66, 68, 150; establishment in Virginia, 247–48, 263, 1637; establishment of, in England, 1027–28; in Magna C[h]arta, 8; maintenance of clergy in Virginia (*See* Two-penny Acts); in Pennsylvania, 288, 295, 1858, 1922–23; petition of 1755 asking for more liberal provisions for clergy in Virginia, 1645–46
- Churchill's collection, 1939, 1940*
- Cicero, 1041, 1043, 1482, 1635–36, 1639; *Divinatio against Q. Caecilius*, 1054; *Institutes*, 745; *Oration for Cluentius*, 78; *Philippics*, 73; *Tusculan Disputations*, 1935
- Cinna (Roman consul), 439
- Cinque Ports, equity courts of, 760, 826
- Civil War (British), xvii, 255, 401, 634, 1201, 1728, 1908, 2136*, 2257
- Clap, Colonel, 1690
- Clarendon, Edward Hyde, 1st Earl of (Lord Chancellor and proprietor of Carolina), 635, 641, 1099, 1906*, 1984, 2257, 2259
- Clarendon, Edward Hyde, 3rd Earl of (governor of New York), 355
- Clarges, Sir Thomas, 2139
- Clark, Mr. (of Plymouth, and Clarks Island, Massachusetts), 65
- Clark, M. (Barbados), 117
- Clark, William (Pennsylvania), 44
- Clarke, Mr. (New York), 860
- Claudius (Roman emperor), 79, 668
- clayed sugar, 127, 1105
- Clayton, William, 44
- Clement of Alexandria, 78, 79
- Clements, Captain, 168–69
- Clifton, Dr., 2116*
- Clinton, George (governor of New York), 1550, 1552
- Clodius Albinus, 79
- clot and tret, 252
- Clows, John, 44
- Cochran, Archibald, 320
- Cockburn, William, 438–39
- Cocket, Mary, 1744
- Cocks, James, 186
- Codrington, William, 324
- Coffin, Mr., 488
- coins and coinage. *See* currency
- Coke, Sir Edward, *Institutes of the Laws of England* and *Reports*: on charter

- governments, 515, 537; on conference of commons with their constituents, 1294; on conquest, 1798†, 2059*, 2063*; convicted and removed from office under James I, 1669; on custom and common law, 1083, 2105, 2121*; on English liberty, 100, 1993; equity courts, power to establish, and, 748, 750–53, 754, 758, 760, 764, 778, 783–84, 821, 823–24, 825, 828, 830, 839–40; on extensions of English law, 654, 672(*b*); on freemen and villeins, 2157; on Magna C[h]arta, 20, 22, 29, 56, 57, 1195, 1491, 1493–94, 1500, 2156; on naturalization, 1730; pamphleteers referring to, xii, xiv; Penn, William, citing, 3, 20, 22, 29; on power to imprison, 2098*; on right of House of Commons to choose speaker, 2128, 2134–36; Spanish Town, Jamaica, defense against removal of capital to Kingston, and, 1491, 1493–94, 1498, 1500, 1515, 1522
- Colden, Cadwallader, 834, 855, 860, 868
- Coleman, William, 182
- Coleton, James (governor of Carolina), 637
- Coleton, Sir John, 635
- Coligny, Admiral Gaspard de, 634
- Collins, Dr., 2116*
- The Colonel Dismounted: Or the Rector Vindicated* (Richard Bland, writing as Common Sense; Williamsburg, 1764), 1777–1833. *See also* Two-penny Acts
- Colongs, Sarah, 341
- colonial assemblies. *See* legislative power; *specific colonies*
- colonial British American political writings. *See* political writings of colonial British America
- colonies: purpose of, and dependence on mother-country, 1264; relations between, 251, 255–56, 260, 270–72. *See also* independence of colonies; union of continental colonies
- Columbus, Christopher, 1264
- Commentaries* (Blackstone), xii, 2096†, 2109*, 2112–13, 2120–21†, 2128, 2131, 2154*, 2175–76, 2212, 2218[*k*]
- commerce and trade. *See* economic, financial, and commercial issues
- commissions of judges and authority of courts, 829–31
- commitment powers of legislative bodies. *See* privilege controversy in Jamaica; St. Christopher's (St. Kitt's) assembly's power of imprisonment, denied
- Commodus (Roman emperor), 79
- common law: constitution, English, customary origins of, 809–10, 818–19; Dulany's summary of, 653–56, 660–66, 675; equity courts, power to establish, 767–72, 809–10, 816–25, 828–31, 839, 852–53; on freemen and villeins, 2157; natural law and, 847; Spanish Town, Jamaica, arguments against removal of capital to Kingston from, 1494–99, 1529–30
- Common Sense (Richard Bland), *The Colonel Dismounted: Or the Rector Vindicated* (Williamsburg, 1764), 1777–1833. *See also* Two-penny Acts
- Common Sense no. 65, 1045(*k*)
- companies for trade, 713–15, 719
- Company of Adventurers (Virginia), 250, 1265, 1317, 1800
- The Compleat Clerk*, 842
- Conant, Joshua[h], 185–86
- Condict, John, 1183
- Congregational/Independent Protestantism (Dissenters), 49, 68, 150, 247, 248, 257, 513, 584, 1027, 1645, 1809, 1908, 1922–23

- Connecticut: Albany Plan meeting (1754) and, 1374, 1382, 1383; in Boston uprising, 514; Bulkeley, Gershom, *Will and Doom, Or the Miseries of Connecticut by and under an Usurped and Arbitrary Power* (1692), xix–xx; charter of, 95, 513; currency in, 943, 952, 965; general assembly for all colonies, Harrison's proposal regarding, 271, 272; government by the people in (See Bulkeley, Gershom, *The People's Right to Election* (1689)); illegal taxation, under Dominion of New England, 156, 189–90; number of documents associated with, xix; Parke, Daniel (governor of Leeward Island colonies), accusations against, 322–24, 327–28, 329–37. See also Dummer, Jeremiah, *A Defence of the New-England Charters*; Mohegan Indians' dispute with Connecticut over ownership of hunting grounds
- Conner, Andrew, 896, 904, 923
- conquest: Boston uprising (April 1689) and purchase rather than conquest of land from Native Americans, 147, 162, 164, 167, 187; Canadian conquest by British, 2240, 2268; Coke on, 1798†, 2059*, 2063*; 4½ percent duty imposed on Ceded Islands and, 2250, 2256, 2260–61, 2263–64, 2268; Jamaica, British conquest of, 1984–85; Maryland assembly's claim to benefit of English law against proprietors and, 649, 666–69; Nevis, French conquest of, 2101; Norman Conquest, 21, 1027, 1199; slavery, historical development and justifications of, 1948–49, 2149; war, right of, 1139–43
- Considerations on the Imposition of 4½ Per Cent; Collected on Grenada, Without Grant of Parliament* (London, 1774), 2249–68. See also 4½ percent duty
- Considerations on the Negroe Cause* (Samuel Estwick; London, 1773), 2191, 2193–2230. See also slaves and slavery
- constitution, English: Americanus, *Letter to the Freeholders and Other Inhabitants of the Massachusetts-Bay* on, 879, 880; Bulkeley, John, praising, 603, 605; customary origins of, 809–10, 818–19, 839; ecclesiastical jurisdiction on Barbados and, 468; equity courts, power to establish, and, 772–73, 809, 818–19, 828, 829, 839, 846; governor's right to veto speaker of Massachusetts assembly and, 489; Grenada subject to, 2080, 2083–84; Kennedy, Archibald, on, 1271, 1273, 1274, 1276, 1277; mixed monarchy established by, 879, 1022, 1026–32, 1221–22, 1270; New York, Robert Hunter's efforts to cover public expenses in, 353; as original contract between the people and their rulers, 1185, 1195; privilege controversy in Jamaica and, 1956, 1992; Protestantism, dependence on, 2065; rights of liberty and property enshrined in, 8; separation of legislative and executive powers by, 209; St. Christopher's (St. Kitt's) assembly's power of imprisonment and, 2095, 2100; tobacco tax, Maryland assembly's authority to delegate power to levy, 1185, 1186, 1188–90, 1193, 1195, 1196, 1198, 1206, 1208–10, 1213, 1215, 1217, 1218, 1220–25, 1227–31, 1234–39, 1251, 1253–57, 1259–60; Two-penny Acts and, 1737–38, 1764–66, 1777, 1778, 1785, 1789, 1797–1800, 1802–5, 1807; union of continental colonies viewed as

- contrary to Magna C[h]arta and, 1372, 1388, 1391, 1393
- constitution, imperial, indeterminate nature of, 396, 400
- constitutions, colonial: Harrison on need for single colonial constitution, 228, 242, 243, 246–47; in Jamaica, 1984–88, 1994; Kennedy, Archibald, on growing power of colonial assemblies and, 1261, 1277, 1278; in Maryland (See upper house in Maryland government and constitution); in New York, 1278; in Pennsylvania, 1022, 1031, 1869, 1890, 1916–17; in South Carolina (See upper house in South Carolina government and constitution). See also charter, *under specific colonies*
- contempt, judgments of, 105, 1960, 1962, 2019, 2085, 2089–90
- contracts, as medium of exchange, 974 *contra Monarchomach*. (Barkl[e]y), 84
- convicts transported to America, 268–70, 1943–44
- Cook, Lord. See Coke, Sir Edward
- Cook, Michael, 1183
- Cook, Mr. (Member of Parliament), 1973
- Cooke, Elisha, Mr. *Cooke's Just and Seasonable Vindication* (Boston, 1720), 485–98; right of assembly to choose speaker, 485–86, 488–90, 492–98; Maine woods, right to harvest timber in, 485, 486, 490–92, 496–97
- Cook[e], Pierce, 1959–61, 1967, 1968, 1982, 2013–15, 2018, 2019, 2021, 2022
- Cook[e], Thomas, 316–17, 337
- Cooper, M., 1361
- Cooper, T., 1054
- Corbett, Charles, 1133
- 1 Corinthians 13:2, 1739
- Cornbury, Lord (governor of New Jersey), 351, 352, 1023*, 1168
- Cornwallis, General (governor of Nova Scotia), 2236
- corporation, government likened to, 1271–72
- Corpus Juris Civilis*, 1496
- corruption: Dummer's defense of proprietary government and problem of, 544–45; 4½ percent duty and, 1109–11; governors, anticorruption measures proposed for, 274–75; of Hamilton triumvirate in Jamaica, 395, 404–62 (See also Hamilton triumvirate in Jamaica); of Lowther government in Barbados, 463, 470–478 (See also Lowther, Robert); on Nova Scotia government, 2239; patronage leading to, 876, 881–86. See also extortion
- Corsica, 1264
- Cortes, Christopher, 1744
- Corwin, Jonathan, 168
- Cosby, Anne, 1745
- Cosby, James, 1743
- Cosby, Sarah, 1745
- Cosby, William (governor of New York), 743
- Cotton, John, 1735
- counsel, right to, 1563n
- Courland, James, Duke of, 2264
- Court of Augmentations of the Revenues of the Crown of England, 760
- The Court Register, and Statesman's Remembrancer* (1733), 844
- courts generally. See justice and judicial system
- Coventon, Richard, 1746
- Cox, Sir Charles, 469, 470, 476
- Crabb, Lawrence, 324
- Craggs, Mr., 469
- Craghan, George, 1436
- Cranston, Samuel, and R. Ward, A *Vindication of the Governour and*

- Cranston, Samuel, and R. Ward (*continued*)
Government of His Majesty's Colony of Rhode-Island (Newport, 1721), 551–60
- Craven [Cravin], James, 894, 906, 910, 913, 925, 930
- Craven, Lord William, 635
- credit: banks of credit, 715–22, 963–65; defined, 687; discounted bills of credit, 699–702; diverting creditors and debtors from raising value of merchandise, 702–4; importance of, 686; insensibility of discredit, 955–56; long credit, due to paper money, 954; scarcity of currency leading to decrease in value of, 697–99, 706–7; value of currency used for medium of trade liable to sink below its credit, 687–91. *See also* debt; interest rates
- Creswel[l], Mr. (Member of Parliament), 655n2, 2157
- Critognatus the Gaul, 669
- Croesus, son of, 549
- Crofts, Sir Herbert, 1971
- Croizat, Sieur, 542
- Croke, Sir George, 789–90
- Crompton's Jurisdiction of Courts*, 835, 840
- Cromwell, Oliver, 1487, 1754, 1783, 1943, 1984, 2257
- Crosby, William, 896, 907, 927–28
- Cross, Edward, 1742
- Crow, Mr. (governor of Barbados), 477–78
- Crown, English: charter governments granted by, 515; contract between settlers and, 147, 189–91; divine right of kings, doctrine of, 1259–60; dominions of the Crown rather than Empire of England, on colonies properly regarded as, 54–59; equity courts, lack of power to erect, 748–61, 814; government of colonies proposed to be annexed to, 273–74; Grenada, prerogative rights of Crown asserted in, 2053–54, 2056, 2058–59, 2077, 2082–84; interests not served by forfeiture of charters, 543–46; Kennedy, Archibald, Crown authority and royal prerogative supported by, 1261, 1272–73, 1277–78; lack of acquaintance with true state of plantations, 261–62, 275–78; more absolute power of king in plantations than in England, 244–46; oath taken by, 6–7, 762, 774, 1175, 1259, 2058; privilege versus right to rule, 1259–60; proposal that all lands be confirmed by, 264; proprietary governments' relationship to, 281; St. Kitt's assembly established by will of, 2102. *See also* Pennsylvania, debate over petition for royal government in; *specific monarchs by name*
- Crump, Nathaniel, 319
- Cuba, 1511, 1685, 1686
- Cudjoe, Captain (“Negro Chief” in Jamaica), 1535*
- Cummings, Sir Alexander, 954
- Cunningham, Patrick, 329
- Curaçao, 142, 293
- currency: contracts, as medium of exchange, 974; exchange rates, 947; export of specie, controls on, 712; labor, value of currency/commodities proportionate to, 687–89; list of currency denominations in British American colonies, 939–47; proposals for rectifying problems of, 961–67; running cash, importance of availability of, 251–52, 685–86, 705; scarcity of currency, disadvantages of, 251–52, 685–86; standards, 251–52, 266–67, 961, 969–70; trading for silver and gold, 705–10, 935; undervaluing of currency and overvaluing of merchandise, 687,

- 691–93; universal currency and regulation of trade and commerce, 684–85; value of currency used for medium of trade liable to sink below its credit, 687–91. *See also* paper money; silver; *specific colonies*
- Currency Act (1764), 1613
- Curtis, John, 45
- Curtis, Joseph, 176, 177
- Curtius, 87
- Cushing, Thomas, 1691, 1723
- Cyclops, 71
- Cyril of Alexandria, 89
- Cyrus the Persian, 1566*
- Danby, Earl of, 2137, 2138, 2139, 2143*
- Danforth, Mr., 1688
- Daniel, Earle, 1338, 1339
- Daniel, Edward, 1328
- Daniel, Major, 637
- Daniel, Nicholas, 1328
- Dantforth, Thomas, 178
- D’Anvers, Caleb, 1499
- D’Anville, Duke, 1380
- Darby, John, 44
- Darius (Persian ruler), 85
- Dark, Samuel, 45
- Dartmouth, Earl of, 2252
- D’Avenant, Charles, “Discourse on the Plantation Trade,” 227
- Davers, Sir Robert, 469, 470
- David (biblical king), 84–87, 721, 1894
- David (Native American), 172, 173
- Davis, Mr. (Virginia), 1752
- Davis, Captain (Massachusetts), 168
- Davis, Edward (North Carolina), 925
- Davis, John (Connecticut), 348
- Davis, John (Virginia), 1746
- Davis [Davies], Sir John, *Irish Reports*, 769, 816, 820, 847, 851
- Daws, Mr., 1974
- Dawson, Mr. (North Carolina), 895
- Dawson, Dr. (Virginia), 1649
- Dawson, John (North Carolina), 901–2, 920–22, 929
- Day, John (writing as “A Member of the Assembly”), *An Essay on the Present State of the Province of Nova-Scotia* (Halifax, 1774), 2231–48. *See also* Nova Scotia
- death penalty. *See* capital punishment
- debt: executions issuing from courts of law in Barbados, 1075–86; insensibility of discredit, 955–56; Lowther, Robert (governor of Barbados), public debts purchased by, 471, 475, 477, 479; Montserrat, requirement to give notice of embarkation on, 1333–34; Nova Scotia, debtor laws in, 2240–41; paper money and, 948, 954, 960, 972–73; recovery of, from colonies, 1050, 1055–71; scarcity of currency leading to, 694–95; slaves as chattels for payment of, 1069–70, 1082, 2168; tobacco traders’ concerns about paper money in Virginia and, 1613–36; usury, paper money viewed as means of preventing, 956. *See also* credit; interest rates
- De civitate Dei* (Augustine), 75
- Dedman, Philip, 1742
- A Defence of the New England Charters* (Dummer; Boston, 1721), xv, 509–50. *See also* Dummer, Jeremiah
- defense of inhabitants: Albany Plan (1754) for union of continental colonies originally intended for planning of, 1371, 1373–77; Dummer’s refutation of New England proprietors’ neglect of, 520–28; Pennsylvania, funding defense against French incursions into, 1399, 1402, 1405–7, 1421–22, 1426–27, 1429–36, 1440–41; privilege controversy in Jamaica and rejection

- defense of inhabitants (*continued*)
of money bills for subsisting troops, 1960, 1962–63, 1965, 2017–18; South Carolina proprietors charged with neglecting, 505–7, 642; Spanish Town (St. Jago de la Vega), removal of capital of Jamaica to Kingston from, 1505–11, 1518–22; willingness of Quakers to fund defensive activities, 1463–64, 1475–76. *See also* militia; self-defense
- Defiance* (vessel), 439
- De Gorgues, Mr., 634
- De Hondt, P. A., 1935
- De Jure Belli ac Pacis* (*Rights of War and Peace*, Grotius; 1625), 47, 70, 302, 657, 667†, 1948
- de jure/jus gentium* (law of nations), 187, 2093, 2108
- Delamaine, Mr., 425
- De Lancey, James (lieutenant governor of New York), 836–37, 1382
- de Laudibus Legum Angliae* (Sir John Fortescue), 778(*h*), 778(*i*), 779(*l*), 1556, 2119*
- Delaware (as lower counties of Pennsylvania): Act of Union (1682) with Pennsylvania, 287; Chew, Samuel, *The Speech of Samuel Chew, Esq.* (Philadelphia, 1741), 1005–20 (*See also* self-defense); number of documents associated with, xix; resentment of proprietary government and Quaker elites, 287, 288, 292, 295–96
- Delaware, Lord, 1941–42
- Dellius, Godfrey, 196, 201–2, 203, 205
- Demoracin [de Morassin], Jean, 481, 482, 484
- Demosthenes, 1043
- Denmark: Africa, trade with, 122; sugar trade and, 1074; surrender of liberties to king in, 1849
- Dennis, James and Mary, 182
- Denny (governor of Pennsylvania), 1838, 1872, 1874, 1875–77, 1885
- De Peyster, Abraham, 831, 832, 833
- depreciation: of paper money, 934, 937, 938–39, 947–49, 955, 976–78; of silver, 937, 950–52
- De prerogativa Regis*, 840
- Dereham, Richard, 433, 435
- Dereham, Sir Thomas, 433
- De Ruyter, Admiral, 142
- Desiado, 476
- Deuteronomy: 1:16–17, 1661; 8:11, 72; 15:12, 1143; 17:14, 72
- Dew, Katharine, 922
- Dewberry, Mr., 1353
- Dewit, George, 337
- A Dialogue* (Sir William Gooch, writing as “A Sincere Lover of Virginia”; Williamsburg, 1732), 725–41
- Diana (deity), 242
- D’Ibberville, 527–28, 2101†
- Dickenson, Arthur, 1741
- Dickinson, John, *A Speech, Delivered in the House of Assembly of the Province of Pennsylvania* (Philadelphia, 1764), xv, 1835–67, 1869, 1870, 1871, 1872, 1891, 1900–1904, 1901. *See also* Pennsylvania, debate over petition for royal government in
- Dickson, Nicholas, 1743
- Digges, Dudley, 1742
- Digges, Edward, 1741
- Digges, William, 1752
- Diligence* (vessel), 185
- Dinwiddie, Robert (governor of Virginia), 1301, 1302, 1303, 1305, 1306–7, 1619, 1758–59, 1796. *See also* pistole fee controversy
- Diogenes, 1569
- Dion Cassius, 77
- A Discourse Concerning the Currencies of the British Plantations in America* (William Douglass; Boston, 1740), 933–78. *See also* paper money

- “Discourse on the Plantation Trade” (D’Avenant), 227
- Discourse on the Rolls*, 827–28
- discovery of New World, 1264
- Dissenters (Independent/Congregational Protestantism), 49, 68, 150, 247, 248, 257, 513, 584, 1027, 1645, 1809, 1908, 1922–23
- Divinatio against Q. Caecilius* (Cicero), 1054
- divine right of kings, doctrine of, 604, 1036, 1142, 1260, 1270, 1956, 1971
- divorce proceedings due to adultery, 1350
- Dixon, Haldenby, 1745
- Dobbs, Arthur (governor of North Carolina), 1327
- Doctor and Student*, 768–69, 803(b), 822–23, 828
- Dodderidge, Justice, 751
- Dodsley, J., 2195
- Dominica [Dominico], 476, 554, 2053, 2059†, 2160, 2169, 2249, 2264
- Dominion of New England (1685–89), xiii, xix, 47, 279, 530–31; Boston uprising of April 1689 against (See Boston uprising); *Quo Warranto*, writ of, 101, 149, 183, 189, 190, 283, 513–14, 548
- Domitian (Roman emperor), 79
- Donaldson, John, 296
- Donavan, Darby, 329
- Don Quixote, references to, 1338, 1431, 1597, 1781, 1818
- Dorrel, William, 417
- Dorset, Earl of, 631
- double dealing, 1850
- Douglas, Dr., 1432
- Douglas [Dowglas], Robert, 433, 435
- Douglass, William: biographical information, 933; *A Discourse Concerning the Currencies of the British Plantations in America* (Boston, 1740), 933–78 (See also paper money); postscript to *A Discourse* responding to *An Enquiry, &c in Favour of Paper Currencies*, 967–78; *A Summary, Historical and Political, of the First Planting, Progressive Improvements, and Present State of the British Settlements in North America* (1748), 933
- Dowell, Mr., 2021
- Downs, Mr., 471
- Dowsing, Everard, 1742
- Doyley, Edward (governor of Jamaica), 2006, 2163
- Draco, 87
- dramatic works: Gooch, Sir William (writing as “A Sincere Lover of Virginia”), *A Dialogue* (Williamsburg, 1732), on tobacco inspection in Virginia, 725–41; Hunter, Robert, *Androboros: A Biographical Farce in Three Acts* (New York, 1714), 355–93; mock dialogue between Richard Bland and Landon Carter on the Two-penny Acts, 1781–1807; Munford, Robert, *The Candidates; Or, The Humours of a Virginia Election* (1770), 2023–52; slaves and slavery, dialogue between planter and militia officer regarding, 1137–38, 1148–64. See also *Androboros*
- Drue, Mr., 1036
- Drummer, Mr., 491, 496
- Dry, William, 926–27
- Dryden, John, 1557, 1559
- Duchy of Lancaster, Court of Equity of, 759
- Duckenfield, Mr., 896
- Dudley, Colonel (governor of Massachusetts), 488, 489
- Dudley, Edmund, 124, 134, 151, 778, 791
- Dudley, Joseph, 152, 159, 160, 165, 176

- Dudley, William, 895, 896, 897, 907, 927–28
- due process of law: Dulany on, 662; Fowle, Daniel, imprisoned for suspected publication of *The Monster of Monsters*, 1555–78; Smith, William (chief justice of North Carolina), failing to allow for, 902
- Dulany, Daniel, *The Right of the Inhabitants of Maryland, to the Benefit of English Laws* (1728), xv, 649–75. See also Maryland assembly's claim to benefit of English law against proprietors
- Dummer, Jeremiah, *A Defence of the New-England Charters* (Boston, 1721), xv, 509–50; arbitrary power exercised by charter governments, refuted, 528–31; benefits to England from colonies, 509, 516–18, 541–42, 546; Board of Trade's efforts to annul charters of proprietary governments, in response to, 509; on Boston uprising (April 1689), 513–15; Carteret, Lord, address to, 512; Chauncey's appreciation of, 595; colonies included in, 513; Crown, charters granted by, 515; Crown's interest not served by forfeiture of charters, 543–46; disenfranchisement of charter colonies with act of parliament as inconsistent with justice, 546–50; disregard of Acts of Trade and Navigation, refuted, 532–37; governors, concerns about scope of authority given to, 544–46; growing strength and potential independence of colonies, refuted, 540–43; on judicial system, 529–30; laws repugnant to laws of Great Britain, refuted, 537–40; Native Americans, claim that land was purchased from, 510, 519; neglect of defense of inhabitants, refuted, 520–28; no forfeiture of charters due to mismanagement, 519–43; public economy, regulation of charters viewed as part of, 548; right of charter governments to their charters, 515–19; settlement of colonies, charter privileges as repayment for, 509–10, 516, 519
- Dunbabin, Daniel, 895, 897, 926
- Dunciad* (Pope), 1203, 1247
- Dunford, Anne, 1745
- Dunford, John, 1745
- Dungan, Thomas (governor of New York), 180, 190, 354
- Dunlap, W., 1871
- Dupray, John, 434
- Durham, chancery court in, 826, 827
- Dusaussay, Mrs., 332
- Dutch. See Holland
- Dutch West-India Company, 1072
- Dutton, 123
- Dyer, Michael, 1336, 1341
- Dyett, William, 1339, 1343, 1348, 1352, 1354, 1355, 1357
- earthquakes, 411, 1485, 1510, 1533, 1535, 1538
- Ecclesiastes: 5:10, 429; 9:11, 429; 10:16, 441
- economic, financial, and commercial issues: acts of parliament related to plantation trade, 265–66; balance of trade, 686, 707, 957–58, 974; banks and banking, 715–22, 963–65, 967, 975; benefits to England from colonies, 144–45, 509, 516–18, 541–42, 546; colonies, purpose of, 1264; commodities and provisions produced by colonies, 144–45, 230–32; grievances and remedies for colonies relating to trade, 250–54, 265–68; judicial administration and

- economic prosperity, links between, 215–16, 221–25; liquor consumption in Massachusetts, consequences of excise tax on, 1296; Lowther's interference with, 470, 471, 476, 477, 479–84; Native Americans, trading with, 234–36, 240, 241, 499, 1124, 1291, 1381, 1384; New York and Canada, proposal to halt trade between, 1290–91; proprietary government, financial reasons for annulling, 285–86; Rhode Island, control of ship seizures in, 551–60; rivalry, economic, between England and colonies, 230–31, 233, 237, 243, 540–43; ship seizures in New York for trifling offenses, 345, 346–50; silk making in Carolina, 131; slavery compatible with English spirit of commerce, 2149–50, 2172–76, 2190; Virginia, British restrictions on commerce of, 1934, 1942–43. *See also* Acts of Trade and Navigation; currency; piracy, privateering, and illegal trade; power of the purse; public revenues and expenses; regulation of trade and commerce for flourishing commonwealth; sugar and sugar trade; tobacco and tobacco trade
- Edes & Gill (Boston printers), 1681
- Edinburgh, University of, 933
- Edward I (king of England), 3, 8, 29, 33, 54, 756, 786, 1668–69
- Edward II (king of England), 753
- Edward III (king of England), 752, 753, 755, 756, 824, 825, 1669, 2155–56, 2175
- Edward IV (king of England), 754, 827, 1990
- Edward VI (king of England), 27, 835, 937
- Edwardes, Dr. (St. Kitt's), 2089
- Edwardes, Mr. (Jamaica), 2015, 2021
- Edwards, John, 920–21
- Egremont, Lord, 1685
- Egyptians, 2171
- Eldred, Samuel, Jr., 173–74
- elections and electioneering, 875, 878, 882–86, 2023–52, 2062–68, 2231
- Elegies* (Ovid), 440
- Eliab (biblical prophet), 721
- Elizabeth I (queen of England), 518, 519, 749–50, 1209, 1265, 1727–28, 1941, 2163, 2164, 2175
- Elliot, Sir Gilbert, 433, 435
- Elliot, Sir John, 1973, 1974
- Empson, Richard, 124, 134, 151, 778, 791
- Endecott, Joseph (governor of Massachusetts), 1268
- English constitution. *See* constitution, English
- English Crown. *See* Crown, English
- English language: periodicals and newspapers in languages other than, 1417–18, 1466–67, 1475; proposal to induce Germans in Pennsylvania to learn, 1417, 1473, 1474–75
- English law, colonists subject to: in Ceded Islands, 2250; equity court, power to establish, and, 762–65, 793–94, 809, 811–12, 816, 818, 819; in Georgia, 1118, 1125, 1127; in Grenada, 2065*, 2080, 2083–84, 2260–61; Jamaica Revenue Act (1728) and, 1478, 1490–95, 1528, 2004; Kennedy, Archibald, on Crown authority and royal prerogative, 1261, 1272–73; Maryland governor entrusted with interpretation and application of, 1039; privilege controversy in Jamaica and, 1992, 2004–5; slaves coming into Britain, status of, 2170–76, 2181–85, 2209–14, 2218; speaker, right of assembly to choose, 2145–47; as subjects of British Crown, 147, 188–91, 653, 656–69, 1490, 1730; tobacco tax,

English law (*continued*)

- Maryland assembly's authority to delegate power to levy, 1218; transfer of English law to colonies, process of, 1050; Two-penny Acts and, 1798–99. *See also* Maryland assembly's claim to benefit of English law against proprietors
- English Liberties*; or, *The Free-born Subjects Inheritance* (Care), 3, 670n1, 1556, 1575
- English Parliament. *See* Parliament, British
- English right, liberty as. *See* liberty, as English right
- ens rationis*, corporations viewed as, 520
- Entick, Mr., 2105
- Epicureans, 600
- Epistles* (Pliny the Younger), 668, 1562
- Epistolae* (Augustine), 88
- equality of all men: as natural law, 604, 661, 1693–94; in state of nature, 608, 674, 1138
- equity courts, power to establish: case law on, 749–51; circumstances in New York leading to dispute over, 743, 746–47; commissions of judges and, 829–31; common law and, 767–72, 809–10, 816–25, 828–31, 839, 852–53; constitution, English, and, 772–73, 809, 818–19, 828, 829, 839, 846; Crown's lack of power to erect equity courts in England, 748–61, 814; English courts, evidence as to establishment of, 751–60, 820–29, 839–45; English law, colonists and colonies covered by, 762–65, 793–94, 809, 811–12, 816, 818, 819; governor's lack of power to erect equity court in New York without legislative consent, 748, 761–72; liberty, as English right, and, 744, 746, 763, 765, 793, 845–46; Murray, Joseph, *Mr. Murray's Opinion Relating to the Courts of Justice in the Colony of New York* (New York, 1734), xv, 743, 809–53; necessity, as reason for establishing equity courts, 785–87; New York, equity courts previously erected in, 765–68, 831–39; New York General Assembly resolutions regarding, 848–51, 853–68; opinions of noted legal writers on, 748–49; parliamentary control, arguments regarding, 748–61, 809, 812–16, 839–42, 853; petitions related to, 811–12, 848–52; reasons for requirement of legislative approval, 772–807; separation/balance of powers and, 772–92, 846–48; Smith, William, *Mr. Smith's Opinion Humbly Offered to the General Assembly of the Colony of New-York* (1734), xv, 743–807; special importance of New York equity court being established by act of assembly, 787–92, 831, 843–45; statute law in England on, 751–61, 811–13; Supreme Court and, 780, 787, 794–806, 809, 816, 845, 851
- Erving, Captain John, 1688, 1689
- Esau (biblical figure), 305
- escheat brokerage in Jamaica, 411–17, 424–33, 442–43, 446–50
- An Essay Concerning Slavery* (Edward Trelawney; London, 1746), 1131–64. *See also* slaves and slavery
- An Essay in Vindication of the Continental Colonies of America* (Arthur Lee, writing as "An American"; London, 1764), 1933–53. *See also* slaves and slavery
- Essay on Human Understanding* (Locke), 2222, 2224[p]
- Essay on Man* (Pope), 2221
- An Essay on the Government of the Colonies* (Archibald Kennedy; New

- York, 1752), xv, 1261–92. *See also* Kennedy, Archibald
- An Essay on the Present State of the Province of Nova-Scotia* (John Day, writing as “A Member of the Assembly”; Halifax, 1774), 2231–48. *See also* Nova Scotia
- An Essay Upon the Government of the English Plantations on the Continent of America* (Benjamin Harrison, London, 1701), xiv–xv, 227–78. *See also* Harrison, Benjamin, *An Essay Upon the Government . . .*
- Essay upon Ways and Means*, 243, 256–60
- Essenes, 87
- Estwick, Samuel, *Considerations on the Negroe Cause* (London, 1773), 2191, 2193–2230. *See also* slaves and slavery
- Etheldred (king of England), 752
- Eton College, 406
- Euclid, 60
- Euripides, 72
- Eutherius, 90
- Evans, Colonel (governor of Pennsylvania), 564, 570, 581, 583, 587, 1459
- Evans, William, 1744
- Everard, Sir Richard (governor of North Carolina), 907
- Everard, Sir Richard (son of governor, in North Carolina House of Burgesses), 892–98, 907–8, 910–14, 931
- The Excellent Privilege of Liberty and Property* (Penn; Philadelphia, 1687), 3–45. *See also* Penn, William, *The Excellent Privilege . . .*
- Exchequer Court in England, 759, 839–45
- excise taxes: collectors, protests on jailing of, 196, 198–201; on liquor consumption in Massachusetts, 1293–99; origins of, 1296; rum, requirement to land and warehouse before payment of excise on, 1049, 1086–96
- executive power: governor and council’s requisition of funds from Treasury as exercise of, 1714–15; Locke on, 1694*; separation/balance of powers, 209–10, 605, 772–92, 846–48, 1273–76, 1694*, 1714–15, 1994–2000. *See also* governors
- exile or banishment: convicts transported to America, 268–70, 1943–44; of judges to Ireland, 1669; Magna C[h]arta on, 23, 24–25; small offenders, proposal to send to colonies, 268–70
- Exodus: 2, 420; 21:2, 1143; 22:3, 1139; 22:28, 86
- extortion: Andros, Sir Edmund, and others, extortion charges against, 179–83; scarcity of currency leading to, 696–97; Smith, William (chief justice of North Carolina), accused of, 902–7, 914–17, 922–28
- “extravagant” grants of land, 205–10
- Exuperius (saint), 90
- Fabius Maximus, 668
- Fable of the Bees* (Mandeville), 1699
- Fahie [Fahle], John L. S., 2089, 2090, 2091
- false/frivolous lawsuits: New Jersey proprietary claims and actions, defended, 1170–71; Smith, William (chief justice of North Carolina), accused of, 907–8
- families, government within, 1277–78
- Farell, James, 1330–31
- Farewell [Farwell], George, 152, 153, 159, 165
- Fa[r]rel[l], Patrick, 1337, 1339, 1353
- Federalist*, xi

- Fenner, Arthur, 173–74
- Ferdinand, Prince of Brunswick, 1685
- Ferrers, George, 1969–71
- Ferrers, John (John de Ferraris), 33, 34
- Fielding, Sir John, 2107
- Filmer, Sir Robert, 1693–95*, 1778, 1800
- financial matters. *See* economic, financial, and commercial issues
- Finch, Sir John, 1666
- fine or improved sugar, 127, 1105–6
- Fitch, James, 97
- Fitch, Thomas (governor of Connecticut), 1374
- Fitzherbert, *Natura Brevium*, 1515
- Fitzwater, Thomas, 44
- Five/Six Nations (Iroquois Confederacy), 195, 196, 524, 1373, 1375, 1378, 1381, 1436
- Flaceus, 90
- Fleming, Gilbert (lieutenant governor of Leeward Islands), 1327, 1328
- Fleta*, 752, 754, 776n5
- Fletcher, Benjamin (governor of New York), 195–96, 287
- Fletcher, William, 44
- Fleury, Cardinal, 937, 938
- Flexney, W., 2055
- Florence, excise taxes in, 1296
- Florida: as British colony, 2053, 2268; Native Americans of, 608, 613; as Spanish colony, 505, 507; St. Augustine, 505, 638, 946, 1123, 1161, 1686
- Flucker, Mr., 1686
- Fones, John, 173–74
- Forbes, Mr., 476–77
- Forster, Robert (North Carolina), 896
- Forster, Sir Robert (English judge), 1669
- Fort Duquesne, 1586
- Fort William-Henry (Pemaquid Fort), 67, 110, 523–24
- Fortescue, Sir John, *de Laudibus Legum Angliae*, 778(*i*), 778(*h*), 779(*l*), 1556, 2119*
- Foster, John, 417
- 4½ percent duty: Blenman, Jonathan, *Remarks on Several Acts of Parliament* (London, 1742), 1049–50, 1096–1116; case law on, 2249, 2252–55, 2263; conquest, right of, 2250, 2256, 2260–61, 2263–64, 2268; *Considerations on the Imposition of 4½ Per Cent; Collected on Grenada, Without Grant of Parliament* (London, 1774), 2249–68; as contrary to law or equity, 2254, 2256; corruption associated with, 1109–11; defined, 1096–97; historical circumstances of, 1097–1100; intentions of, 1100–1101; jury trial of case involving, 2250, 2253–55; legislative approval in Barbados, 2259; method of levying, 1102–7, 1110–11; money given to governors and, 1100, 1103, 1109, 1111, 1287; as price paid to Crown for fee simple purchase of lands in Barbados, 1098–1101, 2257–60; proposal to apply whole amount to uses of local government, 1111–16; reasons for levying, 2256–59; sugar and sugar trade, 1105–7, 2256–57, 2260; as taxation of Ceded Islands without consent, 2249–50, 2253, 2254, 2260–68; use of, 1101–2, 1107–9
- Fowle, Daniel, *A Total Eclipse of Liberty* (Boston, 1755), xv, 1555–78
- Fowle, Daniel, wife of (L.F.), 1555, 1557, 1567, 1567–68*, 1572, 1574–75
- Fowle, Zachariah (brother of Daniel), 1555, 1563n, 1564
- Fox, Joseph, 1884
- France: Africa, trade with, 122; banks in, 716; Boston uprising (1689) and, 50, 51, 67–68, 69, 110, 183–86; brandy from, 1087, 1089, 1091, 1093; in Carolina, 506–7, 634, 639, 1945;

- colonies of, 234–36, 274, 542–43, 545, 1377–81 (*See also* Canada); credit in, 719; defense of inhabitants, Dummer's refutation of New England proprietors' neglect of, 520–21, 526–28; depopulation in, 143; Dutch, war with, 142–43; England, French migrating to, 2179; excise taxes in, 1296; German population of Pennsylvania and, 1406, 1411–18, 1470–72; Jamaica, French connections of Hamilton triumvirate in, 406–7; Leeward Islands and, 313; Lowther's illegal trade with French colonies, 463, 476, 479; Native Americans and, 195–96, 234–35, 506–7, 543, 1097, 1288, 1373, 1374, 1378–82, 1410, 1413, 1438; Nevis, conquest of, 2101; Newfoundland, invasion of, 1683–84; paper money in, 938, 967; parliament in, 881, 1921; Pennsylvania, anti-proprietary explanation of true cause of incursions into, 1436–37; Pennsylvania, funding defense against French in, 1399, 1402, 1405–7, 1421–22, 1426–27, 1429–36, 1440–41; Pennsylvania's involvement in war with, 561; proprietary government, wars with France and calls for end to, 279; rights, people's lack of, 6, 128; silver, value of, 937; slavery, practice of, 1147, 1150, 1161, 1936, 2203[b], 2229–30; slaves not allowed to be brought into, 2177–78; sugar plantations of, 518, 1116, 1363, 1366; sugar trade and, 1072, 1074; union of continental colonies as defense against, 1371–82, 1393; war with, 1019, 1097, 1371, 1373–81, 1399, 1402, 1405–7, 1431–41, 2101–2
- Francis I (king of France), 783
- Franklin (lieutenant governor of Nova Scotia), 2243
- Franklin, Benjamin, 1007, 1021, 1261, 1377, 1383, 1838, 1841, 1869, 1882*
- Frearon, Thomas (writing as Veridicus), *The Merchants, Factors, and Agents Residing at Kingston, Complainants, Against the Inhabitants of Spanish-Town* (London, 1755), 1477–1539. *See also* Spanish Town (St. Jago de la Vega), removal of capital of Jamaica to Kingston from
- freedom. *See* liberty
- Freeman, Charles, 1746
- A Freeman (John J. Zubly), *Calm and Respectful Thoughts on the Negative of the Crown* (Savannah, 1772), 2123–47. *See also* Georgia
- Freeman, Joseph, 1745
- French, George, 317–20, 321–22, 339, 341–42
- French, Lucia, 320–21, 339, 341
- French, Thomas, 159, 160
- French & Indian War (Seven Years' War), xviii, xix, xx, 1371, 1399, 1613, 1638, 1685, 1723, 1724, 1729, 2053, 2059, 2231
- French Protestants, 66, 141, 882
- frivolous/false lawsuits: New Jersey proprietary claims and actions, defended, 1170–71; Smith, William (chief justice of North Carolina), accused of, 907–8
- Frugum* (vessel), 185
- Frye, Edward (brother of George), 1334, 1336
- Frye, George, *The Case of Capt. George Frye* (London, 1754), 1323–57; appeal of, 1323; articles of impeachment against, 1323, 1340–44; assembly's answer to Frye's responses, 1349; on assembly's right to impeach, 1324, 1349–51; charges against Frye, 1323, 1332–40; conviction of, 1323; evidence offered in support of complaints,

- Frye, George (*continued*)
 1352–55; high crimes and misdemeanors, Frye's crimes not rising to level of, 1323–24, 1351–52, 1355–57; Montserrat council, appointment of, 1327–30; prior life and career of Frye, 1326–27; Protestant/Catholic friction on Montserrat and, 1324, 1330–32; responses of Frye to charges, 1344–49; Turkish Basha, Frye referred to as, 1324, 1337, 1347
- Fuller, Captain, 1532
- Fuller, Rose (chief justice of Jamaica), 1538–39
- Ful[]wood, Thomas, 896, 905, 906
- Galdy, Lewis, 434
- Gale, Isaac, 416
- Gallio, 1534
- Galloway, Joseph: *A Letter to the People of Pennsylvania* (Philadelphia, 1760), 1659–77 (*See also* judicial tenure during good behavior); *The Speech of Joseph Galloway, delivered in the House of Assembly, of the Province of Pennsylvania* (Philadelphia, 1764), 1869–1932 (*See also* Pennsylvania, debate over petition for royal government in)
- the Gambia, 2164
- Gamble, George, 316, 319, 324, 335–36
- Gardiner, John, *The Argument or Speech of John Gardiner, Esquire* (St. Christopher, 1770), 2085–2121. *See also* St. Christopher's (St. Kitt's) assembly's power of imprisonment
- Gardiner, William, 894, 911, 913, 931
- Garraway, Mr., 2139
- Garton, Captain, 766
- Gates, Sir Thomas, 1265, 1941, 1942
- Gauls, 667–69
- Gawdy, 826
- general assembly of all colonies, Harrison's proposal for, 271–72
- Genesis: 1:28, 611; 4:12, 608
- George I (king of England), 496, 498, 646, 1594, 1992, 2164
- George II (king of England), 906, 918, 925, 926, 1340, 1538, 2004, 2170, 2205, 2206, 2208
- George III (king of England), 2169, 2211
- Georgia: currency in, 947; English law, colonists subject to, 1118, 1125, 1127; judicial system in, 1127, 1128; land tenure in, 1120–22; liberty, as English right, in, 1117, 1125; Native Americans in, 1124, 1128; number of documents related to, xix; public funds, demand for accounting of, 1118, 1125, 1127–28; rum, prohibition on importation of, 1124; settlement of, 1119; slaves and slavery in, 1117, 1122–24; speaker, power of governor to reject assembly's choice of, 2123–24, 2145–47 (*See also* speaker of House of Commons, right of British Parliament to choose); Stephens, Thomas, *The Hard Case of the Distressed People of Georgia* (London, 1742), 1117–29; Trustee mismanagement of, 1117, 1119–24, 1125–29; Trustee power to make laws in, 1125; Utopian system in, 2162; Zubly, John J. (writing as "A Freeman"), *Calm and Respectful Thoughts on the Negative of the Crown* (Savannah, 1772), 2123–47
- Georgia Gazette*, 2125, 2130, 2136, 2146
- German population of Pennsylvania and proprietary government, 1400, 1402, 1405, 1406, 1411–18, 1443, 1466–75
- Germanic tribes, 667
- Gerriss, S., 511
- Getuli, 71
- Gibbons, Anne, 1744
- Gibbons, John, 1742

- Gibbons, Thomas, 1742
 Gibbs, Thomas, 1743, 1744
 Gibson, John, 179
 Gibson, Mary, 427
 Gideon (biblical figure), 1862
 Gilbert, Mr., 837
 Gill, William, 1746
 Gillegan, Mr., 476
 Glanvill, Edmund, 1744
 Glanvil[1], Ranulf de, 754
 Glorious Revolution (1688), xiii–xiv, xvii, 147, 151, 153–55, 195, 345, 1200, 1260, 1548, 1659, 1671, 1988, 1989, 2067*, 2101
 Glover, Keziah, 837
 Goa, city of (India), 136
 Goat, John (alias for John Bramley), 1328, 1353
 God. *See* religion
Godbolt's Reports, 828
 Godwin, Elizabeth, 1741
 Godwin, John, 1741
 Godwin, John, Sr., 1741
 Godwin, Robert, 1742
 gold, trading for, 705–10
 Goldthwait, Captain, 1691
 Gooch, Sir William (governor of Virginia): *A Dialogue* (writing as “A Sincere Lover of Virginia”; Williamsburg, 1732), 725–41; Dinwiddie’s arrival in Virginia compared, 1306
 Goodenow, John, Sr., 175–77
 Goodhue, William, Jr., 158–60, 182
 Goolsley, Martha, 1744
 Gordon, Mr., 476
 Gordon, Thomas, xii; *Cato's Letter* (with John Trenchard), 875, 878
 Gordon, William, *A Representation of the Miserable State of Barbadoes* (London, 1719), 463–84
 Gortz, Baron, 937, 938, 967
 Goths, 667, 668, 1027
 Goulbourne, Mr., 2017
 Gould, Justice, 1979
 governance issues: corporation, government likened to, 1271–72; families, government within, 1277–78; internal versus external government of colonies, 1777–78, 1799–1807; land tax proposed to support government and officers of Crown, 1288–92; Locke on, 1693–95*; mixed monarchy or government, 879, 1022, 1031–32, 1221–22, 1270; in Nova Scotia, 2231–48 (*See also* Nova Scotia); Otis, James, on, 1694–96; paper money, civil government affected negatively by, 953–54, 972; self-defense as matter of, 1018–20; suspending clauses, 1723–36; three types of government, 1030–32. *See* Crown, English; Harrison, Benjamin, *An Essay Upon the Government . . .*; Kennedy, Archibald, *An Essay on the Government of the Colonies*; proprietary government; regulation of trade and commerce for flourishing commonwealth; upper house in Maryland government and constitution; upper house in South Carolina government and constitution
 governors: anticorruption measures, 274–75; charter privileges to be distinguished from instructions given by, 875–76, 879–80; as chief justices of supreme courts, 261, 264; equity court, power to erect, 748, 761–72 (*See also* equity courts, power to establish); for good of people, not people for good of, 1694–95; grievances and remedies relating to, 260–61, 272–75; instructions to, power of, 1984; Kennedy, Archibald, on, 1273–74; Maryland governor,

- governors (*continued*)
 powers of, 1037–39; militia, control of, 474; patronage used by, 876, 881–86; Penn family's ability to control, in Pennsylvania, 561–71, 573–93; scope of authority given to, concerns about, 196, 396, 402–4, 464, 474, 544–46, 875–76, 879–86; speaker chosen by assembly, power to reject, 485–86, 488–90, 492–98, 2123–24; upper legislative houses naturally aligning with, 1021–22, 1023, 1037. *See also* money given to governors; *specific governors by name*
- Governour, Abraham, 862
- Gracchi, 171
- Graeme, Hugh, 2267
- Graham, James, 152, 153, 161, 165, 169–70, 176, 180–81
- grammatical nitpicking, 1192–93, 1250
- Granada. *See* Grenada
- Granadines [Grenadines], 2059‡
- Gratian, 79, 81
- Graves, John, 428
- Graves, Joseph, 174–77
- Graves, Mary, 174–75
- Gray, Mr., 1688
- Great Lakes, 1378
- Gr[e]aves, Thomas, 96, 113–14
- Greece, classical, 599, 601, 632, 668, 1034, 1137, 1275, 1726, 1949, 2012. *See also* Athens and Athenians; Spartans
- Green, Mr. (editor of *Maryland Gazette*), 1185–1260. *See also* tobacco tax, Maryland assembly's authority to delegate power to levy
- Green, Mr. (governor of Nova Scotia), 2243
- Green, Jonas, 1739, 1820
- Green, L., 597
- Green, T., 935
- Green and Skipwith (judges under Edward III), 1669
- Greene, Jack P., xvi
- Greene, William (governor of Rhode Island), 1373, 1386, 1396
- Gregory I the Great (pope), 80
- Gregory Nazianzen, 80
- Gregory, William, 2137, 2142, 2143
- Grenada: as British colony, 2053; Catholics in, 2054, 2064–66, 2075, 2136*; *Considerations on the Imposition of 4½ Per Cent; Collected on Grenada, Without Grant of Parliament* (London, 1774), 2249–68 (*See also* 4½ percent duty); elections, regulation of, 2062–68; English law, colonists subject to, 2065*, 2080, 2083–84, 2260–61; judicial courts in, 2068–70, 2075*; legislative government, right to, 2053–54, 2059–61; liberty, as English right, in, 2054, 2058, 2062–63, 2065*; liberty of conscience in, 2064; militia and martial law in, 2078–82; ministerial mismanagement in, 2056–57; number of documents associated with, xix; *Observations upon the Report Made by the Board of Trade against the Grenada Laws* (London, 1770), 2053–84; prerogative rights of Crown asserted in, 2053–54, 2056, 2058–59, 2077, 2082–84; proclamation on Ceded Islands, 2059–60; public revenues and expenses of, 2070–78; rejection of laws passed by first Grenada assembly, 2061–63
- Grenadines [Granadines], 2059‡
- Grenville, Sir Richard, 1941, 1973, 2260
- Griffiths, R., 1401
- Grimston, Sir Harbottle, 790
- The Groans of Jamaica* (Spence and Mackenzie; London, 1714), 395–462. *See also* Hamilton triumvirate in Jamaica

- The Groans of the Plantations* (Littleton; London, 1689), 115–46. *See also* Barbados; sugar and sugar trade
- Grotius, Hugo, 129, 656, 2012, 2202; *De Jure Belli ac Pacis* (*Rights of War and Peace*, 1625), 47, 70, 302, 657, 667 $\frac{1}{2}$, 1948
- Growt, John, Sr., 175–77
- Guadeloupe, 297, 299, 304
- Guatemala, 1161
- Guest, William, 44
- Guinea: rum trade with, 1092; slaves obtained from, 121–23, 1163, 1503, 2161, 2163–64, 2171
- Gulliver's Travels* (Swift), 1810
- Gundimore, Mr., 434
- Gustavus Adolphus (king of Sweden), 290
- Guthrie, Mr., 2224
- Gygles, Daniel, 184, 186
- Habeas Corpus*: Act of 1628 regarding, 655, 664, 2158–59; Boston uprising (1689) and, 49, 61–62, 157, 159; Dummer on Dominion of New England and, 530; Magna C[h]arta chapter 29 on, 26; Marten, Sir Henry, on judges eluding effects of (1603), 1043; privilege controversy in Jamaica and, 1960, 1961, 1963, 1968, 1977, 1978, 1981, 1982–83, 1987, 1991; slaves' entitlement to, 2153, 2158–59, 2176, 2182, 2197, 2199, 2211, 2228–29; St. Christopher's (St. Kitt's) assembly's power of imprisonment and, 2087, 2090–94, 2097, 2113, 2116; villeins' entitlement to, 2155, 2158
- Habersham, James (acting governor of Georgia), 2123
- Hack, John, 1744
- Haggot, Mr., 471
- Haige, William, 44
- Hale, Sir Matthew, 675, 749, 820, 822, 1272
- Halifax, Lord, 2107*
- Hall (collector of 4½ percent duty), 2249, 2252
- Hall, Robert, 45
- Hallett, William, 766
- Halliwell, Richard, 296
- Hamilton, Archibald (attorney, North Carolina), 917, 922, 928, 929
- Hamilton, Lord Archibald (governor of Jamaica), 395–96, 410, 421, 430–32, 436–37, 460. *See also* Hamilton triumvirate in Jamaica
- Hamilton, Duke of, 434
- Hamilton, James (governor of Pennsylvania), 1408–9, 1445–46, 1447, 1452–53, 1455, 1459, 1875, 1884, 1896
- Hamilton, John, 324, 326
- Hamilton, Patrick, 434, 435
- Hamilton triumvirate in Jamaica: appeal from governor's judgment, limitations on, 403–4; Assembly, actions of, 395, 409–10; Brodrick, William, 395, 410, 415, 422, 426–27, 439, 457, 461; character of inhabitants of Jamaica and, 400–401; corruption of, 395, 404–62; embargo on ships, 395, 405, 454; escheat brokerage of, 411–17, 424–33, 442–43, 446–50; flattery and sycophancy of, 440–42; gentlemen disappointed in service to Hamilton, 433–39; Hamilton, Lord Archibald (governor of Jamaica), 395–96, 410, 421, 430–32, 436–37, 460; indeterminate nature of imperial constitution and, 396; judicial corruption by, 459–61; letter of grievances (6 October 1712), 405–62; MacKenzie's experience as Hamilton's secretary, 395–96, 430–33, 435–39, 444–46; medical iniquities and malfeasance of, 443–46; preface, 398–405; prizes,

- Hamilton triumvirate in Jamaica
 (*continued*)
 duties payable for, 454–59; public records, loss of, 411–12; religious profanity and lewd behavior of, 406, 417–23, 426, 436, 437–38; remedies for frustrating, 447–48, 449–54; Rigby, Richard, 395, 404–12, 415, 418–19, 420, 424, 425, 428, 434, 436, 437, 439, 447, 451–53, 455, 461–62; rise of, 406–11; on rule of law versus unlimited absolute government, 401–2; on scope of authority given to colonial governors, 396, 402–4; Spence, James, and Roderick MacKenzie, *The Groans of Jamaica* (London, 1714), 395–462; Stewart [Stuart], John, 395, 404, 415, 418, 424–26, 433–34, 443–46, 461
- Hancock, Thomas, 1689
- Handasyd[e] (governor of Jamaica), 412, 415, 434, 458
- Hanham, Thomas, 1265
- Hankey, Sir Joseph, 1327
- Hannis, Joseph, 915
- Hannis, Major, 476
- Hanseatic towns, 239
- Hansford, Catharine, 1745
- Hansford, Charles, Jr., 1742
- Hansford, Charles, Sr., 1744
- Hansford, Edward, Jr., 1745
- Hanson, Francis, 1485
- The Hard Case of the Distressed People of Georgia* (Thomas Stephens; London, 1742), 1117–29. *See also* Georgia
- Harding, John, 44
- Hardwicke, Lord, 2181, 2182, 2196, 2197, 2199, 2204, 2217, 2219, 2225[q]
- Hardy, Sir Charles (governor of New York), 1541–54
- Hargrave, Mr., 2201[a], 2203[b], 2209–10[d], 2211[e], 2214[g], 2225[q]
- Harison, Mr., 853
- Harman, Casparus, 44
- Harnet, Cornelius, 895, 897
- Harold Godwineson (king of England), 21
- Harrington, James, xii, 1021, 1038†, 1159
- Harris, Serjeant, 1535*
- Harris, William, 1744
- Harrison, Benjamin (writing as “An American”), *An Essay Upon the Government of the English Plantations on the Continent of America* (London, 1701), xiv–xv, 227–78; constitution, on colonies’ need for, 228, 242, 243, 246–47; Crown, government of colonies proposed to be annexed to, 273–74; on D’Avenant’s tract and its lack of knowledge of America, 227, 230–41; on economic rivalry between England and colonies, 230–31, 233, 237, 243; *Essay upon Ways and Means*, remarks on, 243, 256–60; on French colonies and Indian relations, 234–36; general assembly of all colonies, proposal for, 271–72; on governors of colonies, 260–61, 272–75; on judicial systems, 250; on king’s lack of acquaintance with true state of plantations, 261–62, 275–78; on laws and legislative systems, 248–50, 263–65; on more absolute power of king in plantations than in England, 244–46; on need for good governance in colonies, 237–41, 242–43; on number of colonies in America, 230–35; on parliament and colonial government, 228; population, concerns regarding, 254–55, 268–70; on problematic nature of current plantation governments, 244; on property rights, 257–59, 264–65; on relations between colonies, 251, 255–56, 260, 270–72; on religion and liberty of conscience, 247–48;

- representation in England of state
 of the plantations, 274, 275–78;
 small offenders, proposal to send to
 colonies, 268–70; on trade, 250–54,
 265–68; on trading with Native
 Americans, 234–36, 240, 241
- Harrison, James, 44
 Harrison, Robert, 1746
 Harrison, Samuel, 1183
 Harrison, Thomas, 1246
 Harris's collection, 1940†
 Hart, John, 44
 Harvard College, 509, 595
 Harven [Harvey], Mary, 320–21, 341
 Harvey, John, 1743
 Hassold, Frederick, 44
 Hastings, Elizabeth, 330
 Hastings, John, 44
 Hathorn[e] [Hatherne], John, 163, 164,
 168, 172, 185, 186
 Havannah, Reduction of the (1762),
 1685, 1686
 Hawkins, John, 2163
 Hay, John, 1745
 Hayne, John, 1339
 Heath, Samuel, 833–34
 Heath, Sir Robert, 1666
 Heathcote, Caleb, 205
 Helmes, Israel, 1179
 Helots, 1951
 Henchman, D., 511
 Henry I (king of England), 21
 Henry II (king of England), 55, 756
 Henry III (king of England), 8, 21, 31,
 55, 56, 756, 782, 1199, 1498, 1522
 Henry IV (king of England), 755, 757,
 824, 840
 Henry V (king of England), 754, 757–58,
 824, 825, 840, 1225
 Henry VI (king of England), 24,
 754, 758
 Henry VII (king of England), 57, 151,
 791, 1264, 2004
- Henry VIII (king of England), 754, 758,
 835, 1159, 1234, 1236, 1377, 1969–71
 Henry IV (king of France), 882
 Hercules, 1547
Hercules Oeteus (Seneca), 425
 Heritage, William, 892, 912, 916
 Herod, 72
 Herodian, 83
 Herring, Nathaniel, 413–15, 416, 427
 Hesiod, 601
 Hett, Sarah, 862
 Heyfield, Peter, 333
 Hezekiah (biblical ruler), 191
 Hicks, Colonel, 854
 Hicks, Thomas, 766
 Hide, Sir Robert, 1669
 Higginson, John, 161–63
 Hill, Benjamin, 891, 894, 910, 911, 913, 930
 Hill, General, 527
 Hill, Hansford, 1746
 Hill, John, 44
 Hill, Rowland, 1969
 Hill, Samuel, 1744
 Hilliard, Phillip, 186
 Hillyard, John, 44
 Hilsborough, Earl of, 2061
 Hinckley, Mr., 181
 Hispaniola, 554
Hispaniola expedition, 290
History (Tacitus), 78
History of England (Hume), 2136*
History of England (Smollet), 1949*
History of Rome (Livy), 1041
 Hitcham, Sergeant, 826
 Hobart, Sir Henry, and *Hobart's*
Reports, 564, 577, 581, 748–49, 760,
 772, 787, 826
 Hobbard [Hubbard], Thomas, 1562,
 1568*, 1574, 1688, 1689
 Hobday, Richard, 1743
 Hodge, Thomas, *Plantation Justice*
 (London, 1701), 215–25. *See also*
 Barbados

- Hodges, Sir James, 2104
- Hodgson, John, 891, 910, 913
- Holdbrook, John, 924, 929
- Holderness, Earl of, 1373, 1375, 1376, 1387, 1397
- Holland: Africa, trade with, 122; banks in, 716, 967, 971; Barbados, sugar trade with, 121; colonies of, 57, 142–43, 234, 541; Duke of Monmouth in, 1908; excise taxes in, 1296; flourishing due to commerce of, 682; France, war with, 142–43; illegal trade with, 293; New York, Dutch control of, 234, 290; New York, mixed Dutch and English heritage in, 1541, 1546, 1548, 1552; paper money of, 711; Pennsylvania, Dutch in, 287, 290; regulation of markets in, 700; silver, value of, 937; slavery, practice of, 1147, 2163, 2164; South Africa, Dutch settlement in, 2224; stadtholdership erected in, 1849, 1924; sugar plantations, 518; sugar trade and, 1072, 1074; war with, 2164
- Hollinsworth, Valentine, 44
- Holloway, John, 869
- Holme, Thomas, 44
- Holt, Sir John, and *Holt's Reports*, 564, 578, 579, 660n2, 666†, 1798‡, 1978–79, 1981, 1982, 2105, 2106, 2181
- Holt, William, 1746
- Homer, 71, 87, 1482, 1566*; *Iliad*, 601; *Odyssey*, 1950*
- Honourable Society for Propagation of the Gospel in Foreign Parts, 467
- Honywood, Mr., 1327
- Hooker, Mr., 613
- Hooker, Savage, 1746
- Hope Hood (Native American), 177–78
- Hopkins, Stephen: at Albany Plan meeting (1754), 1373, 1382; letter opposing Albany Plan, charged with attempting to prevent sending of, 1391, 1396–98; *A True Representation of the Plan Formed at Albany, for Uniting All the British Northern Colonies* (Newport, 1755), 1371–89 (See also union of continental colonies)
- Hopson (governor of Nova Scotia), 2236
- Horace, 1229, 1250, 1252, 1319, 1479, 1510*, 1517, 1779; *Ars Poetica*, 601, 1524n58
- Horne, D., 1978
- Horsmanden, Mr., 837
- Hottentots, 2171
- Hovey, John, 182
- How, Thomas, 178–79
- Howard, Lord, of Effingham (governor of Virginia), 1307, 1311, 1317
- Howard, Martin, 1373, 1382
- Howe, Lady, 985, 986
- Howe, Lord (governor of Barbados), 979, 984, 985, 986–89, 1002
- Howe, Thomas, 2087
- Howell, William, 45
- Hubbard [Hobbad], Thomas, 1562, 1568*, 1574, 1688, 1689
- Hubert de Burgh, 21–22, 1491
- Hudibras, 2204
- Hull, Mr., 1463–64
- human beings, status of Negroes as, 2218, 2220–28
- human sacrifice, 1937‡, 1939
- Hume, David, xii, 1950†, 2223[*p*]; *History of England*, 2136*
- Hume, Doctor (Jamaica), 426
- Humphreys, Major, 167
- Hunter, Colonel, 1752
- Hunter, John, 1742
- Hunter, Robert (governor of New York): five-year revenue bill, 355; Kennedy, Archibald, and, 1261; Mulford, Samuel, speech to New York Assembly, on Hunter's schemes

- to cover public expenses, 345–54;
 permanent revenue, charged with
 establishing, 345, 355; as political
 satirist, 355–56 (See also *Androboros*)
- Hunter, Thomas, 894, 910, 930
- Hunter, William, 1614, 1639
- hurricanes, 120, 133, 405, 406, 411, 1510,
 1531, 1532–33, 1535, 1538, 1827
- Hussey, Chief Justice, 1990
- Hussey, James, 1353
- Hutcheson, Francis, xii, 1941, 1948, 2222
- Hutchinson, Thomas, 1382, 1723
- Hutchison, Jedediah, 333, 334
- Hutchison, Thomas (lieutenant governor
 of Massachusetts), 1688, 1689
- Hyde, Edward (provost marshal of
 Jamaica, later governor of North
 Carolina), 407
- Hyde, Edward, 1st Earl of Clarendon
 (Lord Chancellor and proprietor of
 Carolina), 635, 641, 1099, 1906*, 1984,
 2257, 2259
- Hyde, Edward, 3rd Earl of Clarendon
 (governor of New York), 355
- Hyde, John, 1744
- Hydra and Hydra's teeth, 1159–60, 1294,
 1299, 1305, 1547
- Hyneman, Charles, xi, xviii
- Iamblicus [Jamblichus], 77
- Ignatius (saint), 460
- Iliad* (Homer), 601
- Iliad* (Pope tr.), 1797*
- illegal trade. See piracy, privateering, and
 illegal trade
- illegitimate child, fine for having, in
 North Carolina, 903, 922
- Illinois (Indians), 543
- impeachment: of Clarendon, Lord
 Chancellor, 1984; of Logan, James,
 1845*; of Lyttleton, William
 (governor of Jamaica), 1955; Smith,
 William (chief justice of North
 Carolina), articles of complaint
 against sometimes regarded as
 articles of, 887–88. See also Frye,
 George
- imprisonment: assembly's power of
 (See St. Christopher's [St. Kitt's]
 assembly's power of imprisonment,
 denied); of Fowle, Daniel, on
 suspicion of printing *The Monster of
 Monsters*, injustice and inhumanity
 of, 1555–78; unhealthy conditions of,
 1569–72, 2116*
- improved or fine sugar, 127, 1105–6
- Ince, James Matt, 1743
- Incitatus (horse of Emperor Caligula,
 made a senator), 1194
- Indemnity and Oblivion, Act for
 (Antigua, 1668), 1097–98
- independence of colonies: Dummer's
 refutation of possibility of, 540–43;
 persecution possibly leading to, 2057;
 power of Great Britain against unity
 of colonies, 2057–58
- Independent Reflector* (newspaper),
 1550
- Independent/Congregational
 Protestantism (Dissenters), 49, 68,
 150, 247, 248, 257, 513, 584, 1027, 1645,
 1809, 1908, 1922–23
- India, xix, 136, 251, 541
- Indians. See Native Americans
- Ingelo, Richard, 44
- Institutes* (Cicero), 745
- Institutes* (Wood), 749, 779(m), 830, 842
- Institutes of the Laws of England* (Coke).
 See Coke, Sir Edward, *Institutes of the
 Laws of England* and *Reports*
- Institutions* (Justinian), 1038, 1479, 1496,
 1497, 1515, 2202
- interest rates: scarcity of currency
 leading to increase in, 695–96; usury,
 paper money viewed as means of
 preventing, 956

- intrusion, writs of, and Boston uprising (1689), 50, 63–64, 153, 164
- Ireland: absentee landlords in, 1362; banishment to, 1669; Barbados compared, 137–38, 141; beef exported to Barbados from, 140; under dominion of Crown rather than Empire of England, 47, 55–56, 188, 189; enforcement of Irish laws in England, 2171; England, Irish migrating to, 2179; English law not extended to, 666; Jamaica compared, 1162, 2004, 2009; James II and, 1042; parliamentary bills regarding property in, 548; rum imported into, 1071–72; slave life compared with common people of, 1934, 1944–45; South Carolina compared, 1594
- Irish, William, 1328, 1329
- Irish Reports* (Sir John Davis [Davies]), 769, 816, 820, 847, 851
- Iron Maiden, 1537
- Irons, Simon, 45
- Iroquois Confederacy (Five/Six Nations), 195, 196, 524, 1373, 1375, 1378, 1381, 1436
- Irwin, Elizabeth, 1745
- Isaiah: 3:4, 5, 441; 3:12, 441; 5:20, 440–41; 5:23, 441; self-defense and, 1013–14
- ius naturale*. See natural law
- ius/de jure gentium* (law of nations), 187, 2093, 2108
- J. N., *The Liberty and Property of British Subjects Asserted* (London, 1726), 629–49. See also South Carolina's proprietary government
- J. W., *A Letter from a Gentleman in Nova Scotia, To a Person of Distinction on the Continent* (London, 1756), 1579–87
- Jacobites, 406, 646, 880, 1194, 1340
- Jacobs's Law Dictionary*, 830, 842, 844
- Jamaica: *An Act for introducing of White People in this Island*, 1365; Assembly, 395; British conquest of, 1984–85; constitution, review of, 1984–88; currency in, 947; documents associated with, xix; earthquake (1692), 411; fire (1702), Port Royal destroyed by, 411; 4½ percent duty not paid by, 2260; 4½ percent duty, not subject to, 1097; historical account of establishment as British colony, 2006–13; hoarding of undeveloped land in, 1359–69; hurricanes in, 405, 406, 411; Jewish settlement in, 442, 448–49, 1533; judicial tenure act, 1659; *A Letter from a Merchant at Jamaica to a Member of Parliament in London* (London, 1709), 297–311; Long, Edward (writing as “A Planter”), *Candid Reflections upon the Judgement on What is Commonly Called the Negroe-Cause* (London, 1772), 2149–91, 2193, 2194; martial law imposed in, 405; militia in, 2008, 2009; Montserrat council compared to assembly of, 1350; naturalization of children of English subjects born in, 1490, 1985, 2007; naturalization of foreign settlers in, 442, 448–49; New England's military assistance to, 527; poll tax on slaves in, 1144; power of assembly, government's desire to control, 1477; public revenue and expenses in, 1112–15; religion in, governor's control over, 402–3; Revenue Act (1728), 1478, 1490–95, 1528, 2004; Spain, war with, 1366; settler liberties aggressively defended by assembly of, 1478; *A Short Account of the Interest and Conduct of the Jamaica Planters* (London,

- 1754), 1359–69; slaves and slavery on, 2161, 2162, 2165, 2169; Trelawney, Edward, *An Essay Concerning Slavery* (London, 1746), 1131–64. See also Hamilton triumvirate in Jamaica; Kingston, Jamaica; privilege controversy in Jamaica; *specific entries at Spanish Town*
- Jamaica Gazette*, 1539
- Jamblicus [Iamblichus], 77
- James I (king of England), 250, 519, 783, 1028, 1040–41, 1378, 1669, 1730, 1800, 1801, 1971–73, 1992, 2100, 2164, 2227, 2257
- James II: as Duke of York, 38, 287, 345, 812, 1168, 1176, 1177, 1180, 1548, 2164, 2205[c]; as king of England, xiii, 47, 53, 123, 147, 151, 153, 166, 184, 188, 353, 787, 790, 1028, 1042, 1200, 1235, 1259–60, 1666–67, 1669, 1671, 1908, 1988, 2067*, 2100, 2227
- James (apostle), 1016
- James, Edward, 459
- Jameson, David, 1743
- Jane, Dr., 2132
- Jansen, Jan, 1179
- Janus (deity), 456
- Jefferies, Judge, 1666
- Jehu (biblical figure), 428
- Jenkins, Mr., 424–25
- the Jerseys. See *New Jersey*
- Jesuits and Jesuitical behavior, 406, 418–19, 1406, 1412, 1471, 1808
- Jews and Judaism: Jamaica, Jewish settlement in, 442, 448–49, 1533; Levites, 1036; pejorative use of, 642, 1152, 1338, 1533–34; on right of resistance, 72–73, 75, 82, 83, 84–87; under Romans, 668; Sanhedrin, 82, 668
- Jeżgowa, Peter, 1179
- Joab (biblical ruler), 86
- Job, 133
- John (king of England), 21, 55, 56, 1199, 2154
- John Chrysostom, 75, 87
- John of Gaunt, Duke of Lancaster, 754, 1198
- John Goat (alias for John Bramley), 1328, 1353
- John James (Native American), 172–73, 175
- Johnson, John (governor of St. Kitts), 2101
- Johnson, Mr. (Massachusetts), 167
- Johnson, Sir Nathaniel (governor of Carolina), 637
- Johnson, Robert (governor of South Carolina), 954, 1593, 1594
- Johnson, William (Massachusetts), 169, 170, 175
- Johnson, William (New York), 1382
- Johnston, Gabriel (governor of North Carolina), 887, 888, 898, 929
- Jonathan (biblical figure), 84
- Jones, Allen, 1746
- Jones, Captain, 426
- Jones, Colonel, 338
- Jones, Noble Wymberly, 2123
- Jones, Samuel, 1744
- Jones, Thomas (attorney, North Carolina), 896, 924
- Jones, Thomas (Trustee employee, Georgia), 1127
- Jones, Sir Thomas, 790, 1666
- Jones, William, 97
- Jones, Sir William, 188, 1977, 1983
- Joseph (Native American), 172, 173–74
- Joseph (Old Testament figure), 1536
- Josephus, 86, 1033
- Joshua 1:18, 72
- Jotham (biblical figure), 109
- Journey to Paris* (Dr. Lister), 2221
- judicial tenure during good behavior: Act of Settlement of 1701 providing for, 1659, 1671–72; as ancient English

- judicial tenure during good behavior
(continued)
 right, 1659, 1662, 1667–69, 1675–77;
 colonial legislatures passing judicial
 tenure acts, 1659, 1672; colonial
 tradition of, 1669–70; Galloway,
 Joseph, *A Letter to the People of
 Pennsylvania* (Philadelphia, 1760),
 1659–77; independent judiciary,
 importance of, 1659–60, 1662–67;
 intended to be extended to colonies,
 1659, 1672; objections to, answered,
 1672–73; proprietary governments
 and, 1659–60, 1672, 1673–76
- Julian the Apostate (Roman emperor),
 80, 86
- Julius Caesar, 79, III, 240, 668, II63, 1566*
- Juniatta settlement (on Ohio River),
 burning of, 1427, 1434
- Jupiter (Jove; deity), 81, 545, 617, 1950*,
 1998
- juries and jury trials: Boston uprising
 (1689) and, 49, 50, 61, 62, 157, 179;
 checks and balances, subject to,
 778–79; Fowle, Daniel, on freedom
 of the press and, 1556; in Grenada
 case against 4½ percent duty, 2250,
 2253–55; lot, juries chosen in Carolina
 by, 538, 636, 899; Magna C[h]arta
 chapter 29 on, 16, 22–29; oaths taken
 by, 778–79, 899–900, 917–18; rights
 of liberty and property, as evidence
 of, 7; Smith, William (chief justice
 of North Carolina), accused of
 tampering with, 899–900, 901–2,
 917–18, 920–22; Spanish Town (St.
 Jago de la Vega), removal of capital of
 Jamaica to Kingston from, 1518
- jus/de jure gentium* (law of nations), 187,
 2093, 2108
- jus naturale*. See natural law
- justice and judicial system: capital
 punishment of judges betraying
 their trust, 777–78; in Carolina's
 Fundamental Constitutions, 635;
 commissions of judges and authority
 of courts, 829–31; contempt,
 judgments of, 105, 1960, 1962, 2019,
 2085, 2089–90; continual usage,
 power of, 1083–86; delegation of
 power to levy tax to county courts
 (See tobacco tax, Maryland assembly's
 authority to delegate power to
 levy); disenfranchisement of charter
 colonies with act of parliament as
 inconsistent with justice, 546–50;
 in Dummer's defense of New
 England charter governments,
 529–30; English courts, evidence as
 to establishment of, 751–60, 820–29;
 in Georgia, 1127, 1128; governors as
 supreme court chief justices, 261,
 264; in Grenada, 2068–70, 2075*;
 grievances and remedies relating to,
 250; Hamilton triumvirate, judicial
 corruption in Jamaica under, 459–61;
 Hodge, Thomas, *Plantation Justice*
 (London, 1701), 215–25; Lowther's
 perversion of, 463, 471, 475, 478,
 479; Magna C[h]arta chapter 29
 on prohibition on sale or deferral
 of justice, 16, 27; New Jersey, claims
 regarding likelihood of fair and
 impartial hearing in, 1173, 1182–83;
 in Nova Scotia, 1583, 2246–47; oath
 to uphold law taken by English
 judges, 6; Parke, Daniel, accusations
 of subversion of Antiguan judiciary
 by, 327, 332; separation/balance
 of powers, 209–10, 605, 772–92,
 846–48, 1273–76, 1694*, 1714–15,
 1994–2000; Spanish Town (St. Jago
 de la Vega), removal of capital of
 Jamaica to Kingston from, 1486–87,
 1512–18, 1525–28; speeches made by
 judges to grand juries at opening

- of sessions, 1005; subordination of jurisdiction within, 779–80; upper house in Maryland government and constitution and, 1040–47. *See also* equity courts, power to establish; judicial tenure during good behavior; juries and jury trials; Smith, William (chief justice of North Carolina), articles of complaint against
- Justinian (Roman emperor), *Institutions*, 1038, 1479, 1496, 1497, 1515, 2202
- Justin Martyr, 78; *Apology*, 192
- Juvenal, *Satires*, 423, 440, 1578
- Kay, Mr. (Virginia), 1648
- Kay, Nathaniel, 560
- Keck, M., 577
- Keilway's Reports, 814
- Keith, Sir William (governor of Pennsylvania), 561–62, 573, 574, 1404, 1428, 1458
- Kelly, James, 896, 903, 922
- Kemp, John (cardinal), 754
- Kennedy, Mr. (New York), 853, 855, 860
- Kennedy, Archibald, on advantages of colonial situation, 1276–77; Crown authority and royal prerogative supported by, 1261, 1272–73, 1277–78; on English constitution, 1271, 1273, 1274, 1276; on English discoveries and settlement in New World, 1264–65; *An Essay on the Government of the Colonies* (New York, 1752), xv, 1261–92; on governors, 1273–74; land tax to support government and officers of Crown proposed, 1288–90; Massachusetts, history of government of, 1265, 1266–68; Native Americans, on cultivating good relations with, 1261, 1288, 1290; power of colonial assemblies decried, 1261–62, 1266, 1268, 1274–76, 1278–88, 1291–92; on power of the purse, 1278–88; on purpose of civil government in colonies, 1269–74; on purpose of colonies and their dependence on mother-country, 1264; Virginia, history of government of, 1265–66
- Kenoul, Earl of, 1098, 1099, 1101
- Kent, Charles, 459
- Kerby [Kirby], Thomas, 319, 320, 321–22, 340, 341, 342
- Kerley, Henry, 178–79
- Kett, Charles, 577–79, 654
- Kett, Elizabeth, 577–78
- Kettler family, 2264
- Kieth, James, 895
- King, Mr., 471
- King George* (vessel), 1688, 1689, 1690, 1706–7, 1714, 1717
- King William's War, 1463
- kings, English. *See* Crown, English; *specific rulers by name*
- 1 Kings 12, 1885
- 2 Kings 18:7, 191
- King's College (now Columbia University), New York, 1541, 1549–54
- Kingston, Jamaica: removal of capital of Jamaica to (*See* Spanish Town [St. Jago de la Vega], removal of capital of Jamaica to Kingston from); sickly nature of, 1488–89, 1520–30
- Kinnoul, Lord, 2258
- Kinsman, Robert, 158–61
- Kipshaven, John, 44
- Kirby [Kerby], Thomas, 319, 320, 321–22, 340, 341, 342
- Kirkland, Robert, 895
- Kirkpatrick, Mr., 2089
- Kneeland, S., 511
- Knelland, S., 935
- Knight, James, 459
- Knowles, Charles (governor of Jamaica), 1477, 1519, 1538, 1539

- Kupius, Anna-Williamina-Bernarda, 443–44, 446, 447, 448, 449
- Kupius, William, 442–43, 447, 448
- Kyrle, Sir Richard (governor of Carolina), 637
- labor and industry: origin of property rights in, 596, 607–10, 613, 617–20, 625, 626; trade and commerce requiring and generating, 682–84; value of currency/commodities proportionate to, 687–89
- Lacedemonians (Spartans), 668, 1033–34, 1041, 1047–48, 1151, 1275, 1951
- Lactantius, 88–89
- Laevinus (Roman consul), 77
- Lambert, Mr. (English Master in Chancery), 754
- Lambert, Mr. (lieutenant governor of St. Kitts), 2101
- Lambuscado* (vessel), 184, 185, 186
- Lampreade, Mr., 2233
- land banks, 963–64
- Langford, John, 184–85
- Lansa, Francis, 480, 481
- La pierre (alias for Isaac Tenna), 1179
- Larimore, Captain, 527
- Larkin, Thomas, 176
- Lassel[1]s, Henry, 480, 482–83
- Laud, Archbishop, 1645, 1754, 1809, 1815, 1817
- Laudoner, Lewis, 634
- Law, Mr., 938, 963, 967
- law, rule of. *See* rule of law
- law of nations (*jus/de jure gentium*), 187, 2093, 2108
- Lawrence [Laurence], Alice, 321, 339, 340
- Lawrence, Charles (governor of Nova Scotia), 2231, 2236–40
- Laws and Customs of England* (Bracton), 754, 756, 774–75, 803(b), 2096–97†, 2118–19*
- Leach, Mr., 2105
- Leary, Mr., 894, 911, 913, 930
- Lechmere, Lord, 2260
- Leder, Lawrence H., xvi
- Lee, Arthur (writing as “An American”), *An Essay in Vindication of the Continental Colonies of America* (London, 1764), 1933–53, 2149. *See also* slaves and slavery
- Lee, Sir Thomas, 2138, 2139
- Leech, Thomas, 1873, 1884
- Le Ffaburn De la Barr*, 1097
- Leeward Islands: acts of Parliament affecting, 1049, 1072–74, 1104; currency of, 947; Frye, George, complaints against, 1327, 1333; governor appointing officers on St. Kitt’s, 2100; Grenada compared, 2061, 2065*, 2069, 2083; Jamaica and, 1363; Kennedy, Archibald, on government of, 1287. *See also* Antigua; 4½ percent duty; Monserrat; Nevis; Parke, Daniel, assassination of; St. Christopher
- The Legal Jurisdiction of the Chancery stated*, 756–57
- Legge, Mr. (governor of Nova Scotia), 2244
- legislative power: Americanus, *Letter to the Freeholders and Other Inhabitants of the Massachusetts-Bay* on, 875, 879–86; in Carolina’s Fundamental Constitutions, 635–36; Catholic exclusion and Protestant inclusion, 2066; in Ceded Islands, 2053–54, 2058; *ex Gratis Regia*, colonial legislative authority viewed as deriving solely from, 1590–91, 1597–1612; Grenada’s right to legislative government, 2053–54, 2059–61; grievances and remedies relating to laws and legislative systems in colonies, 248–50; growing

- power of colonial assemblies,
 Archibald Kennedy decrying,
 1261–62, 1266, 1268, 1274–76, 1278–88,
 1291–92; impeachment, George
 Frye on colonial assembly's right
 of, 1324, 1349–51; liberty as English
 right, colonial legislative authority
 viewed as deriving from, 1590; Lloyd,
 David, *A Vindication of the Legislative
 Power* (1725), on Pennsylvania,
 561–71; Locke on, 1693–94*; Logan,
 James, *The Antidote* (1725), on
 Pennsylvania, 573–93; Maryland
 assembly's claim to benefit of English
 law against proprietors and, 673–74;
 in Nova Scotia, 1582–83, 1584;
 Pennsylvania, debate over petition
 for royal government in, 1835, 1838,
 1848, 1859, 1872, 1877–86, 1914–16;
 proprietary party in Pennsylvania
 and (See Pennsylvania, proprietary
 government in); separation/
 balance of powers, 209–10, 605,
 772–92, 846–48, 1273–76, 1694*,
 1714–15, 1994–2000; speaker
 chosen by assembly, governor's
 power to reject, 485–86, 488–90,
 492–98, 2123–24; sums paid out
 to assemblymen, 1288. See also
 equity courts, power to establish;
 pistole fee controversy; power of
 the purse; privilege controversy in
 Jamaica; St. Christopher's (St. Kitt's)
 assembly's power of imprisonment,
 denied; upper house in Maryland
 government and constitution; upper
 house in South Carolina government
 and constitution
- Lehmane, Philip, 44
 Leiden, University of, 933
 Lemountes, John, 837
 Lenoir, Isaac, 483
 Lenthal, Mr., 1966
- Lester, Frances, 1744
 Lester, John, Jr., 1745
 Lester, John, Sr., 1742
 Lester, Whitehead, 1743
*A Letter from a Gentleman at Barbados
 to His Friend* (Thomas Baxter;
 London, 1740), 979–1004. See also
 Byng, Robert (governor of
 Barbados), vindication of
*A Letter from a Gentleman in Nova
 Scotia, To a Person of Distinction on
 the Continent* (J. W.; London, 1756),
 1579–87
*A Letter from a Gentleman in Virginia
 to the Merchants of Great Britain*
 (Landon Carter; London, 1754),
 1301–22. See also pistole fee
 controversy
*A Letter from a Merchant at Jamaica to
 a Member of Parliament in London*
 (London, 1709), 297–311. See also
 slaves and slavery
*A Letter to a Gentleman in London,
 from Virginia* (Landon Carter;
 Williamsburg, 1759), 1613–36. See also
 paper money
A Letter to the Clergy of Virginia
 (Richard Bland; Williamsburg,
 1760), 1637–57, 1784, 1786, 1792, 1809,
 1811, 1821, 1829. See also Two-penny
 Acts
*Letter to the Freeholders and Other
 Inhabitants of the Massachusetts-
 Bay* (Americanus; Newport, 1739),
 875–86
A Letter to the People of Pennsylvania
 (Joseph Galloway; Philadelphia,
 1760), 1659–77. See also judicial
 tenure during good behavior
 Levingston, Mr. (Jamaica), 2017
 Levingsworth, John, 179
 Levites, 1036
 Leviticus 25:47, 1139

- Lewis, Henry, 45
- Lewis, Mary, 1743
- Lewis kings of France. *See specific entries at Louis*
- Lex Constitutionis*, 843
- lex talionis*, 1785
- Lex Terrae*, 2155–56
- Leyden, University of, 509
- liberty: under government, defined, 1693*; reconcilability of loyalty and, 2057; speech, freedom of, Nova Scotia's lack of, 1579, 1583; in state of nature, 1947. *See also* liberty, as English right; liberty of conscience; press, freedom of
- liberty, as English right, xii–xiv; Americanus, *Letter to the Freeholders and Other Inhabitants of the Massachusetts-Bay* on, 875, 878, 880–81; characterization of American slaveholders and, 1933; equity courts, power to establish, 744, 746, 763, 765, 793, 845–46; excise tax on liquor consumption in Massachusetts decried as violation of, 1293, 1294–95; foundations of, 6–8, 540; Fowle, Daniel, imprisoned for suspected publication of *The Monster of Monsters*, 1555–78; in Georgia, 1117, 1125; governors of colonies, concerns about prerogatives of, 196; Greek and Roman notions of liberty, 632–33; in Grenada, 2054, 2058, 2062–63, 2065*; history of English conflicts generally centering on, 1199–1200; judicial tenure during good behavior as part of, 1659, 1662, 1667–69, 1675–77; legislative authority in colonies viewed as deriving from, 1590; Littleton, *Groans of the Plantations*, on, 116; Maryland assembly's claim to benefit of English law against proprietors and, 653, 659–60, 661, 665, 670–71; in New York, 1541, 1546–48; in Nova Scotia, 1579–87; paper money perverting, 954; pistole fee controversy and, 1315; privilege controversy in Jamaica and, 1955–56, 1992–93, 2000–2005; Rawson on Andros making laws destructive to, 155–56; slavery, incongruity with practice of, 297, 1131–32, 1147–48, 2149, 2150, 2174, 2193; South Carolinians' assertion of, 499–500, 503–4, 632–33, 640; St. Christopher's (St. Kitt's) assembly's power of imprisonment and, 2095, 2098, 2108, 2112–13, 2119; suspending clauses and, 1725–28; tobacco tax, Maryland assembly's authority to delegate power to levy, 1187, 1188, 1192, 1195–96, 1198–1202, 1213, 1218–20, 1222, 1226, 1228, 1235, 1249, 1255–58, 1260; Two-penny Acts and, 1798–99; Virginia, British restrictions on commerce of, 1934. *See also* Penn, William, *The Excellent Privilege of Liberty and Property*
- The Liberty and Property of British Subjects Asserted* (J. N.; London, 1726), 629–49. *See also* South Carolina's proprietary government, efforts to overthrow
- liberty of conscience: Dissenters in Virginia and, 1645, 1646, 1809, 1817–18; in Grenada, 2064; grievances of colonies relating to, 247–48, 262–63; in Massachusetts, 1730; in New York, 1542, 1548–54; in Pennsylvania, 1441–43, 1857–59, 1921, 1922–23; for Protestants under British rule, 1920; in South Carolina, 1600
- Liddell, George, 326
- Lidget, Lt. Col. Charles, 64–65, 165, 168
- Lightfoot, Armistead, 1743
- Lightfoot, Mrs., 1741

- Ligon, Mr., 2159
- Lilly, John, *Abridgment*, 749, 777(d), 777(a), 779(k), 826, 840
- Limehouse, Richard, Jr., 1746
- Linde, Mr., 2160, 2161
- Linton, Bernard, 465
- liquor: French brandy, 1087, 1089, 1091, 1093; Indian affairs, liquor tax proposed to raise funds for, 1290; Massachusetts, excise tax on liquor consumption, 1293–99. *See also* rum
- Lister, Dr., *Journey to Paris*, 2221
- Littleton (legal writer), 772, 839, 1993
- Littleton (Member of Parliament), 1973, 1974
- Littleton, Commodore, 432
- Littleton, Edward, *The Groans of the Plantations* (London, 1689), 115–46. *See also* Barbados; sugar
- Livingston, Philip, 860
- Livingston, William, *An Address to His Excellency Sir Charles Hardy* (New York, 1755), 1541–54
- Livy, 77, 78; *History of Rome*, 1041
- Lloyd, Colonel Richard, 412, 441, 442, 458
- Lloyd, David: Logan, James, and, 561–62, 565, 567, 570, 573–74, 575, 576–80, 582–89; *A Vindication of the Legislative Power* (1725), 561–71, 575
- Locke, John, xii, 596, 604, 609, 611, 659–60, 967, 1021, 1022, 1035, 1042–43, 1137, 1140, 1185–86, 1257–58, 1559, 1946; *Essay on Human Understanding*, 2222, 2224[p]; *Two Treatises of Government*, 196, 2111, 1025*, 1028*, 1224–25, 1693–95*
- Logan, James: *The Antidote* (1725), 573–93; on defectiveness of Pennsylvania's constitution, 1022; impeachment of, 1845*; Lloyd, David, and, 561–62, 565, 567, 570, 573–74, 575, 576–80, 582–89; *Memorial*, 562, 563, 569, 570, 573
- Lombards, 80
- London: corporation of, St. Kitt's assembly compared to, 2103–4; Court of Equity of Mayor of, 759, 826
- London, Bishop of: Camm, John, memorial presented by, 1637, 1638, 1643, 1763–66, 1787, 1793–95, 1830–33; letter to Board of Trade on Two-penny Acts, 1637–38, 1640–42, 1787
- London Gazette*, 2265
- Long, Mr. (Jamaica), 2015, 2017, 2018, 2021
- Long, Colonel, 2010
- Long, Edward (writing as "A Planter"), *Candid Reflections upon the Judgement on What is Commonly Called the Negroe-Cause* (London, 1772), 2149–91, 2193, 2194. *See also* slaves and slavery
- Long, Joshua, 894, 911, 913, 930
- Long Parliament (1640–60), 2137
- Longinus, 1950
- Loowick [Lovick], Thomas, 894, 910, 913, 930
- Louis XIII (king of France), 938
- Louis XIV (king of France), 151, 184, 542, 938, 2203[b]
- Louisiana, French colonization of, 235, 274, 542–43
- Louther [Lowther], Thomas, 894, 911, 913, 930
- Lovick [Loowick], Thomas, 894, 910, 913, 930
- Lovit, Richard, 924–28
- Lowe, Colonel Henry, 428, 437, 441, 442
- Lowndes, T., 2151
- Lowther, Robert (governor of Barbados): articles of complaint against, 461, 479–84; Assembly, interference with, 471–73, 474; corruption of government of, 463,

- Lowther, Robert (*continued*)
 470–78; dismissal of, 464; extortion of chief officeholders, 463, 470, 471, 476–77; French colonies, illegal trade with, 463, 476, 479; Gordon, William, *A Representation of the Miserable State of Barbadoes* (London, 1719), 463–84; grand jury address in support of, 464, 466–69; justice, perversion of, 463, 471, 475, 478, 479; Kennedy, Archibald, on, 1273; militia, control of, 474, 475–76, 479; money given by Assembly to, 470, 473; petition for recall, 463; prominent Barbadians, statement of, 464, 466–70; property rights, violations of, 475; public debts purchased by, 471, 475, 477, 479; reasons for previous failure to speak out against, 477–78; representation against, 470–78; retaliation against those opposed to him, 476–77; rule of law, contempt for, 463; scope of authority given to governors, concerns about, 464, 474; seizure of vessels by, 470, 471, 477, 480–84; sisters-in-law of, 468; tax revenues, appropriation of, 474–75; trade, interference with, 476, 477, 479
- Lowther [Louther], Thomas, 894, 911, 913, 930
- loyalty and freedom, reconcilability of, 2057
- Lucan, 1498
- Lucas, Augustus, 555
- Lucas, Robert, 44
- Lucius Phillippus, 1636
- Lucullus, 668
- Ludlow, G., 854
- Ludlow-Castle* (vessel), 2160
- Ludwell (governor of Carolina), 637
- Luther, Edward, 1329, 1330
- Lutherans, 1472
- Lutz, Donald, xi, xviii
- Lycurgus, 1033
- Lynch, Sir Thomas (governor of Jamaica), 2007, 2008, 2010, 2011–12
- Lynde, Joseph, 164–65
- Lynde, Judge, 1688
- Lyndon, Ensign, 320
- Lysimachus, 78
- Lyttelton, Sir Charles (governor of Jamaica), 2007
- Lyttleton [Lyttelton], William (governor of Jamaica), 1955, 1956, 2019, 2020. *See also* privilege controversy in Jamaica
- Mabson, Arthur, 894, 908–9, 911, 913, 929, 930
- Maccabees, 84, 85, 87
- 1 Maccabees 9:43, 44, 45, 83
- Macclesfield, Lord Chancellor, 1351, 1992
- Mace, Peter, 1744
- Machiavelli, Niccolo, *The Prince*, and Machiavellianism, 407, 420, 439, 453, 1021, 1040
- MacKenzie [Mackenzie], Roderick: death of son of, 436–37; medical treatment of legs of, 444–46; as secretary to Lord Archibald Hamilton, 395–96, 430–33, 435–39; Spence, James, and Roderick MacKenzie, *The Groans of Jamaica* (London, 1714), 395–462 (*See also* Hamilton triumvirate in Jamaica)
- Mackie, William, 896
- Mac Kinnen [Mckenny], Daniel, 320, 340
- Mac Mahon, Margaret, 320–21, 339, 341
- MacMullen, Thomas, 435
- Macrinus, 82
- Madagascar, 251, 2165
- Madeira, 143
- Madocowandos Sister (Native American), 171

- Magna C[h]arta: Bill of Rights called second Magna C[h]arta, 1671; Boston uprising (1689) and, 49, 50, 58, 61, 66, 159; cancellation of public bills regarded as violation of, 972; chapter 9 (on liberties and customs of towns and cities), 11, 22; chapter 29 (right to jury trial and prohibition on selling or deferring justice), 16, 22–29, 662, 1175; cited by pamphleteers, xxiii; colonies and, 58, 188, 764; constitution, English, as original contract between the people and their rulers prior to, 1195; ecclesiastical jurisdiction on Barbados and, 468; equity courts, power to establish, and, 764, 803(b); excise collectors, appeal of act imprisoning, 200; historical background, 20–22, 1199–1200; House of Lords acknowledged by, 1027; Ireland, held not to extend to, 56; Jamaica Revenue Act (1728) as modern version of, 1478, 1490–95, 1528; judges illegally discharging grand jury (1648) and, 1043; Maryland assembly's claim to benefit of English law against proprietors and, 662, 673; Maryland governor entrusted with interpretation and application of, 1039; monopolies against, 24, 1500; names for, 20; New Jersey proprietary documents compared to, 1168; no laws allowed which are inconsistent with, 540; Penn's commentary on, 3, 20–29; privilege controversy in Jamaica and, 1998–99; sentence or curse of bishops against breakers of, 31–32; Smith, William (chief justice of North Carolina), failing to follow precepts of, 901–2; St. Christopher's (St. Kitt's) assembly's power of imprisonment and, 2087, 2097†, 2115, 2121*; text of, 8–20; tobacco tax, Maryland assembly's authority to delegate power to levy, and, 1199–1200, 1229; union of continental colonies decried as contrary to, 1391, 1393; on unlawful imprisonment and due process of law, 1575–76; villeins, not applicable to, 2150, 2154–55
- Mahomet (Mohegan Indian), 614
- Maine: French in, 1378–79; right to harvest timber in, 485, 486, 490–92, 496–97
- Maitland, Alexander, 1744
- Majery, Benjamin, 185
- Mandeville, Bernard, *Fable of the Bees*, 1699
- Manning, Mr. and Mrs. (Jamaica), divorce proceedings due to adultery, 1350
- Mansfield, Edward, 1746
- Mansfield, John, 1746
- Mansfield, Thomas, 1746
- Mansfield, William Murray, 1st Earl of, Chief Justice, 2153, 2181, 2195, 2249, 2250, 2252–55
- Manwood, Sir Roger, 1084
- Maquas Indians, 172, 173
- Marathon, battle of, 632
- March, Mr., 419
- Margaret of Salem* (vessel), 184, 186
- Mark Antony, 72, 83
- Markham, Sir John, 1990
- Markham, William, 44
- Marlborough, Earl of, 1098, 1101
- Marsden, Rufus, 895, 897, 925–26
- Marshal, Joseph, 435
- Marten, Sir Henry, 1043
- martial law: in Grenada, 2078–82; in Jamaica, 405; in Nova Scotia, 1579–1689, 2236–37; Pennsylvania debate

- martial law (*continued*)
 over petition for royal government
 and, 1866, 1928–29; in South
 Carolina, 1600
- Martin, Elinor, 322, 339
- Martin, James, 1746
- Martin, Robert, 1745
- Martin, William, 326
- Martinique, 476, 1116
- Mary I (queen of England), 835
- Mary II (queen of England), 95, 113, 114,
 147, 150, 155, 192, 1729, 1988, 2067*, 2165
- Mary (queen of France), 2205[c]
- Maryland: Albany Plan meeting (1754)
 and, 1374–75, 1383, 1392; currency
 in, 946; D’Avenant’s claims about
 and lack of knowledge of, 230, 231,
 232, 238, 239, 240; establishment of
 religion in, 1209; general assembly
 for all colonies, Harrison’s proposal
 regarding, 271, 272; government of,
 273, 288, 295; hospitality of natives
 of, 1205; legislative council in, 582;
 Native Americans of, 667, 669;
 number of documents associated
 with, xix; relations between
 colonies, 256; salaries of clergy of,
 in tobacco, 1751; slaves and slavery
 in, 1945; trade, grievances relating
 to, 251, 252–54. *See also* tobacco
 tax, Maryland assembly’s authority
 to delegate power to levy; upper
 house in Maryland government and
 constitution
- Maryland assembly’s claim to benefit
 of English law against proprietors:
 as British subjects loyal to Crown,
 653, 656–69; case law on extension
 of English laws, 650, 660, 666, 667,
 671nn2–5, 673*, 675; by charter,
 653, 669–75; conquered people,
 colonists not to be regarded as, 649,
 666–69; Dulany, Daniel, *The Right*
of the Inhabitants of Maryland, to the
Benefit of English Laws (1728), xv,
 649–75; on English common law and
 statute law, 653–56, 660–66, 675;
 legislative power in Maryland and,
 673–74; liberty, as English right, 653,
 659–60, 661, 665, 670–71; Magna
 C[h]arta and, 662, 673; settlement of
 colonies, protection of English law as
 repayment for, 649, 656
- Maryland Gazette* (1748) articles on
 authority to delegate levy of tobacco
 tax, xv, 1185–1260. *See* tobacco tax,
 Maryland assembly’s authority to
 delegate power to levy
- Massachusetts: Albany meeting (1754)
 and, 1374, 1382, 1383; *Americanus*,
Letter to the Freeholders and Other
Inhabitants of the Massachusetts-
Bay (Newport, 1739), 875–86;
 anti-prerogative movement in,
 485–86 (*See also* Cooke, Elisha);
 bills of cost taxed to be paid in
 bills of the new tenor, 884; charter,
 49–54, 58, 513, 1703–4, 1729–32,
 1734, 1735; Corporation of the
 Massachusetts Bay in New-England,
 54; currency in, 884, 940–41, 951,
 954, 962; dispute with governor over
 disbursement of public funds, 1283–
 84; excise tax on liquor consumption,
 1293–99; explanatory charter, 486;
 general assembly for all colonies,
 Harrison’s proposal regarding,
 271, 272; governor’s salary, debate
 over when to pay, 1287; Kennedy,
 Archibald, historical account
 given by, 1265, 1266–68; liberty
 of conscience in, 1730; number of
 documents associated with, xix;
 speaker, right of assembly to choose,
 485–86, 488–90, 492–98, 2145–47;
The Voice of the People (Boston,

- 1754), 1293–99. *See also* Boston uprising; Dummer, Jeremiah, *A Defence of the New-England Charters*
- Massachusetts House of Representatives: “Instructions to Jasper Mauduit” (June 15, 1762) on suspending clauses, xx, 1723–36; *The Monster of Monsters*, Daniel Fowle imprisoned on suspicion of printing, 1555–78. *See also* Otis, James, *A Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts-Bay*
- Mather, Mr., 50, 65, 66
- Mathews, General (Montserrat), 1327–28, 1331
- Mauduit, Jasper, xx, 1723–36
- Mauritius (saint), 89
- Maximianus (Roman emperor), 89
- Maximus (Roman emperor), 80
- Mazarin, Cardinal, 938
- McClary, John, 1744
- Mckenny [Mac Kinnen], Daniel, 320, 340
- Mead, R., 1978
- Mebeux, John, 434
- medical iniquities and malfeasance, in Jamaica, 443–46
- Meers, Sir Thomas, 2138
- Melanda, Peter, 634
- Melling, Mr., 427
- Melvil (governor of Grenada), 2061
- A Member of the Assembly (John Day), *An Essay on the Present State of the Province of Nova-Scotia* (Halifax, 1774), 2231–48. *See also* Nova Scotia
- Mennonites in Pennsylvania, 1415, 1471–72, 1921
- Menzies, John, 551–60
- The Merchants, Factors, and Agents Residing at Kingston, Complainants, Against the Inhabitants of Spanish-Town* (Thomas Frearon, writing as Veridicus; London, 1755), 1477–1539. *See also* Spanish Town (St. Jago de la Vega), removal of capital of Jamaica to Kingston from
- Merick, Mr., 443
- Mero, Mr., 185
- Metamorphoses* (Ovid), 425, 599–601, 1305
- Methodists, 1292
- Mexico and Mexicans, 1937–38
- Micah (biblical book), on self-defense, 1013
- Middleton, Captain, 1327
- Midianites, 1862
- Miles, Samuel, 45
- military expenditures, paper money intended primarily for, 1613, 1619–21
- military government. *See* martial law
- militia: Byng, Robert (governor of Barbados), and, 994–98, 1002; governors’ control of, 474; in Grenada, 2078–82; in Jamaica, 2008, 2009; Lowther’s management of, 474, 475–76, 479; Pennsylvania militia law, supposed Quaker resistance to, 1407, 1413, 1443–44, 1458; Quakers avoiding service in, 263; representatives, militiamen as, 883–84; slave security and, 1136, 1137–38; in Spanish Town, Jamaica, 1520–22; sugar duties and difficulties maintaining, in Barbados, 128, 132–33. *See also* defense of inhabitants
- Mills, Charles, 1743
- Mills, James, 1742
- Milton, John, 1559; *Paradise Lost*, 1784
- Milward, George, 326
- Mirror*, 754, 776n5
- miscegenation, fears of, 2177, 2180
- Missett, Garnet, 1332
- Mississippi River, French colonization along, 235, 274, 542–43
- Mitchel, William, 1746

- Mitchell, Abraham, 928
- Mitchell, James, 1741
- mittimus* or warrant, Magna C[h]arta
chapter 29 on, 26–27
- mixed monarchy or government, 879,
1022, 1031–32, 1221–22, 1270
- M'Neil, La[u]chlan, 1959–61, 1967, 1968,
1982, 2013–15, 2018, 2019
- Modyford, Sir Thomas (governor of
Jamaica), 2007–8, 2011
- Mohammed, 420
- Mohawks (Mahaques), 51, 195–96,
201–13, 1289
- Mohegan Indians' dispute with
Connecticut over ownership of
hunting grounds: Bulkley, John,
"Preface" in Roger Wolcott's
Poetical Meditations (New London,
1725), 595–627; civil society,
arguments based on supposition
of Mohegans having, 607, 613–17,
619, 620, 625–26; English right to
enter and appropriate land, 596,
626; impossibility of establishing
Mohegan title to lands, 620–24;
labor, origin of property rights in,
596, 607–10, 613, 617–20, 625, 626;
native right, arguments against, 605–7,
616, 619–20, 621, 626–27; state of
nature, Mohegans viewed as people
in, 607–10, 613, 617–20, 624–25
- molasses, 348–49, 942, 1071–73, 1124,
1503. *See also* rum; sugar and sugar
trade
- Molestone, Alexander, 44
- Molesworth, Lord, 1042*
- Moll, John, 44
- Mompesson, Judge, 564
- monarchy, English. *See* Crown, English;
specific rulers by name
- money given to governors: acting
governor's claim on, 743; Dinwiddie
compared to Gooch, in Virginia,
1306; 4½ percent duty and, 1100,
1103, 1109, 1111, 1287; for Howe
versus Byng, in Barbados, 988–92;
Hunter, Robert, Samuel Mulford on
salary provided for, 354; Kennedy,
Archibald, on Crown arrangements
for, 1285–87; Lowther, money given
by Barbados Assembly to, 470,
473; in Massachusetts, 486, 743,
1711; Montague, John, on grants to
New York governor and lieutenant
governor, 213–14; in Pennsylvania,
570, 587, 1429–30, 1872–77; Two-
penny Acts in Virginia, governor
receiving no funds at passage of,
1766–67; yearly presents to governors
by Barbados assembly, 221
- monkey's urine, old maiden lady in
Montserrat accused of consuming,
1338, 1352
- Monmouth, Duke of, 1849, 1908
- monopolies: colonies as form of, 1264;
Kingston, Jamaica, and potential
establishment of outports, 1534,
1536, 1539; against Magna C[h]arta,
24, 1500; on Negro slaves, 122–23
- The Monster of Monsters*, Daniel Fowle
imprisoned on suspicion of printing,
1555–78
- Montacute, Sir Edward, 1971
- Montague [Mo[u]ntague], Sir James,
453
- Montague, John, *Arguments Offer'd
to the Right Honourable the Lords
Commissioners* (1701), 195–214; excise
collectors, on jailing of, 196, 198–201;
on grant of moneys to New York
governor and lieutenant governor,
213–14; on liberty, as English right,
196; on overturning grants of
Mohawk land to colonists, 195–96,
201–13; on removal of minister from
his post, 196, 201–2

- Montesquieu, Charles Louis de
 Secondat, Baron de la Brede et de,
 xii, 1556, 1952, 1995–96, 2099; *The
 Spirit of the Laws*, 1574, 1940, 1947*,
 1948‡, 1949, 1950‡, 1951, 2226
- Montgomerie, John (governor of New
 York), 743, 763
- Montgomery, John (member,
 Pennsylvania assembly), 1840,
 1841–42
- Montgomery, John (North Carolina
 attorney general), 894, 911, 913,
 921–23, 929, 931
- Monthomerie, George, 837
- Montserrat, xix, 323, 325, 406, 439, 1096,
 1330, 2064, 2069, 2101*, 2102, 2103,
 2249. *See also* 4½ percent duty; Frye,
 George
- Moody, Mary, 1744
- Moody, William, 1742
- Moore, Augustine, 1743
- Moore, Jacob, 175, 176, 177
- Moor[e], James (governor of Carolina),
 637, 1593, 1594
- Moore, Joseph, 176
- Moore, Maurice: activities in House of
 Burgesses mentioned in narrative,
 892, 894, 911, 912, 913, 924, 930; *A
 True and Faithful Narrative of the
 Proceedings of the House of Burgesses of
 North Carolina* (Williamsburg, 1740),
 887–932 (*See also* Smith, William
 (chief justice of North Carolina),
 articles of complaint against)
- Moravians in Pennsylvania, 1415, 1471–
 72, 1921
- Morce, David, 1742
- Moreland, Mildred, 1745
- Moreland, Young, 1743
- Moreton, Joseph (governor of
 Carolina), 637
- Morgan, Dr., 2116*
- Morgan, Edward, 470
- Morgan, Jacob, 316, 317
- Morgan, Sir Thomas (lieutenant
 governor of Jamaica), 2010
- Morphew, John, 326
- Morphy, Thomas, 895
- Morris, Bethia, 1745
- Morris, Frederick, 833, 868
- Morris, Lewis, 836–37
- Morris, Lewis, Jr., 853, 855, 860,
 861, 868
- Morris, Mr. (New Jersey), 1170–71
- Morris, Robert Hunter (governor of
 Pennsylvania), 1409, 1425, 1443, 1452,
 1453–58, 1462
- Morriss, Thomas, 324
- Morseo, Don Gulielmo, 418–19
- Morson, Mr., 1354
- Morton, Charles, 179
- Morton, William, 296
- Moscós, Lewis, 634
- Moses (biblical figure), 420, 2202
- Mosquito Shore, 1161
- mosquitoes, 444
- Moss, Benjamin, Jr., 1744
- Moss, Benjamin, Sr., 1742
- Moss, Elizabeth, 1742
- Moss, James, 1742
- Moss, Mary, 1742
- Moss, William, 1742
- Moss, William, Jr., 1742
- Mo[u]nntague, Sir James, 453
- Mountfort, Joseph, 1742
- Moville, Mr., 639
- Moxis Wife (Native American), 171
- Moyle, Sir Thomas, 1969
- Mr. Cooke's Just and Seasonable
 Vindication* (Boston, 1720), 485–98.
See also Cooke, Elisha
- Mr. Murray's Opinion Relating to the
 Courts of Justice in the Colony of New
 York* (Joseph Murray; New York,
 1734), xv, 743, 809–68. *See also* equity
 courts, power to establish

- Mr. Nevill's *Speech to the House of Representatives of the Colony of New-Jersey* (Samuel Nevill, in *New York Weekly Post Boy*; May 19, 1746), 1165–84. See also New Jersey proprietary claims and actions, defended
- Mr. Smith's *Opinion Humbly Offered to the General Assembly of the Colony of New-York* (William Smith; 1734), xv, 743–807. See also equity courts, power to establish
- Mulford, Samuel, *Samuel Mulford's Speech to the Assembly at New York* (New York, 1714), 345–54
- Munford, Robert, *The Candidates; Or, The Humours of a Virginia Election* (1770), 2023–52
- Murray, Alexander, 1981
- Murray, Andrew, 321
- Murray, Joseph: at Albany Plan meeting (1754), 1382; *Mr. Murray's Opinion Relating to the Courts of Justice in the Colony of New York* (New York, 1734), xv, 743, 809–68 (See also equity courts, power to establish)
- Muscovado sugar, 118, 119, 120, 124, 125, 126, 1106
- Musgrove, William, 1329, 1330, 1353
- Nahantick Indians, 621
- Nanfan, John, 213
- Narvesi, Pamphilio, 633
- Native Americans: Albany Plan meeting (1754) and, 1373–82, 1381, 1382, 1384; *American Magazine* on religion of, 1021; Boston uprising (1689) and, 50, 51, 64, 66–67, 171–79, 183; cannibals, denoted as, 1097; in Carolina, 634; character, views on, 1933, 1936–37; Christian dominion over heathen lands, viewpoints regarding, 163, 187–88, 518–19; claims that lands were purchased from, 147, 162, 164, 167, 187, 196, 203, 204–5, 280, 284–85, 288, 290–91, 510, 519, 1165, 1168–69, 1177–80; defense of inhabitants, Dummer's refutation of New England proprietors' neglect of, 520–28; in Florida, 608, 613; French and, 195–96, 234–35, 506–7, 543, 1097, 1288, 1373, 1374, 1378–82, 1410, 1413, 1438; genocide of, 2213; in Georgia, 1124, 1128; Kennedy, Archibald, on cultivating good relations with, 1261, 1288, 1290; of Maryland, 667, 669; native right to lands, arguments regarding, 605–7, 616, 619–20, 621, 626–27, 1179–80; New York act overturning grants of Mohawk land to colonists, protest against, 195–96, 201–13; in Pennsylvania, 1410, 1462–63; Pennsylvania plans to build strong house on the Ohio, resistance to, 1436–37; Pequot War, 596; rum, plied with, 1381; Spanish, misused by, 521, 1147, 1162; trading with, 234–36, 240, 241, 499, 1124, 1291, 1381, 1384; treatment of, by colonists, 521–22; in Virginia, 236–37, 258, 634; work week of, 683; Yamasee War (1715), 499, 505–6, 521, 528, 644. See also Mohegan Indians' dispute with Connecticut over ownership of hunting grounds; *specific nations and tribes*
- native right to lands, arguments regarding, 605–7, 616, 619–20, 621, 626–27, 1179–80
- Natura Brevium* (Fitzherbert), 1515
- natural law (*jus naturale*): Boston uprising against Dominion of New England and, 187; defined, 1011–12; equality of all men under, 604, 661, 1693–94; equity courts, power to establish, and, 847; Maryland

- assembly's claim to benefit of English law and, 661; Mohegan Indians' dispute with Connecticut over ownership of hunting grounds and, 596, 603–5, 607, 620, 625; religion and, 1008–12, 1018; rights and liberties under, 1725–28; self-defense and, 1008–13; slavery in opposition to, 1138–43; Spanish Town, Jamaica, arguments against removal of capital to Kingston from, 1478, 1489, 1532
- naturalization: of aliens, 1727, 2170–72; of children born of free parents in St. Christopher's, 2108; of children of English subjects born in Jamaica, 1490, 1985, 2007; Coke on, 1730; of foreign settlers in Jamaica, 442, 448–49
- Navigation Acts. *See* Acts of Trade and Navigation
- Nebuchadnezzar [Nebuchadonosor] (Babylonian ruler), 85
- The Necessity of Religion in Societies* (John Bulkley; 1713), 595
- Nedham, Marchmont, 2233
- Negroes. *See* slaves and slavery
- Nehemiah (prophet), 70, 192
- Nelson, Frances, 1741
- Nelson, T., 1741
- Nelson, William, 1741
- Netherlands. *See* Holland
- Neuter, Mr., 2134
- Nevill, Samuel, *Mr. Nevill's Speech to the House of Representatives of the Colony of New-Jersey* (*New York Weekly Post Boy*; May 19, 1746), 1165–84. *See also* New Jersey proprietary claims and actions, defended
- Nevin, William, 316
- Nevis, xix, 527–28, 1096, 2069, 2101, 2103, 2249. *See also* 4½ percent duty
- New England: Amicus Republicae, *Trade and Commerce Inculcated* (Boston, 1731), 677–724 (*See also* regulation of trade and commerce for flourishing commonwealth); charters of, 509–50 (*See also* Dummer, Jeremiah, *A Defence of the New-England Charters*); D'Avenant's claims about and lack of knowledge of, 230, 231, 232; general assembly for all colonies, Harrison's proposal regarding, 272; government of, 273; paper money in, 705–10, 933–34, 952–53, 955, 1446, 1448, 1459, 1613; regulation of trade and commerce for flourishing commonwealth: Amicus Republicae, *Trade and Commerce Inculcated* (Boston, 1731), 677–724; religion and liberty of conscience in, 247; trade and commerce compared to New York, 719; United Colonies of New England, 522. *See also* Dominion of New England
- New England's Faction Discovered* (Anonymous), 150, 172
- New Hampshire: Albany Plan meeting (1754) and, 1379, 1382, 1383; boundaries of, 492; under Crown government, 513; currency in, 940, 954, 966; number of documents associated with, xix; woods, harvesting of trees in, 491, 492, 524. *See also* Dummer, Jeremiah, *A Defence of the New England Charters*
- New Jersey (the Jerseys; New Jerseys): Albany Plan meeting (1754) and, 1383; Crown's assumption of control of, 1165, 1168; currency in, 944–45, 948; East Jersey and West Jersey, as separate polities, 1165; general assembly for all colonies, Harrison's proposal regarding, 271, 272; government of, 273; governor's revenue bill, dispute over, 1287; judicial tenure act, 1659; leniency

- New Jersey (*continued*)
 attributed to Crown government
 in, 1859–61; mixed free settlement
 and proprietary land grants in, 1165;
 number of documents associated
 with, xix; Quakers in, 1859, 1860;
 trade, grievances relating to, 251
- New Jersey proprietary claims and
 actions, defended: anti-proprietary
 petitions, answering, 1165–66,
 1167, 1176; England, submission of
 petitions to, 1171, 1174, 1182–83; fair
 and impartial hearing in New Jersey,
 claims regarding likelihood of, 1173,
 1182–83; false/frivolous lawsuits
 brought by proprietors, 1170–71;
 historical claims of petitioners,
 1176–80; incendiary persons
 supporting petitioners, 1173–74;
 indemnity for past misconduct
 sought by petitioners, 1174–75;
 Native Americans, settlers' claims to
 have bought land from, 1165, 1168–69,
 1177–80; Nevill, Samuel, *Mr. Nevill's
 Speech to the House of Representatives
 of the Colony of New-Jersey* (*New
 York Weekly Post Boy*; May 19,
 1746), 1165–84; Nevill's speech on
 second reading of petition of rioters'
 committee, 1176–85; Nevill's speech
 on second reading of petition of
 settlers, 1167–76; oppressive and
 fraudulent dealings, claims of, 1172–
 73, 1180–82; quit-rents demanded of
 persons with patents, 1170; surveying,
 improvement, and sale of land by
 proprietors, 1169–70; violent and
 unlawful resistance of settlers, 1165–
 66, 1171–72, 1175–76, 1181; writs and
 processes, petitioners seeking delay
 or dismissal of, 1175
- New York: Albany Plan meeting (1754)
 and, 1377, 1382, 1383; Assembly of,
 345, 355–56; banks in, 716; Boston
 uprising against Dominion of
 New England (1689) and, 49, 60,
 181; Canada, proposal to halt trade
 between Albany and, 1290–91;
 change from proprietary to royal
 colony, 345; constitution of, 1278;
 currency in, 944, 948; D'Avenant's
 claims about and lack of knowledge
 of, 239, 240; Dutch control of, 234,
 290; general assembly for all colonies,
 Harrison's proposal regarding,
 271–72; gubernatorial authority and
 laws of, 2071*; judicial tenure act,
 1659; King's College (now Columbia
 University), potential religious
 affiliation of, 1541, 1549–54; land tax
 proposed to support government and
 officers of Crown, 1288–90; liberty,
 as English right, in, 1541, 1546–48;
 liberty of conscience in, 1542,
 1548–54; Livingston, William, *An
 Address to His Excellency Sir Charles
 Hardy* (New York, 1755), 1541–54;
 mixed Dutch and English heritage
 in, 1541, 1546, 1548, 1552; Mulford,
 Samuel, *Samuel Mulford's Speech
 to the Assembly at New York* (New
 York, 1714), 345–54; New England
 complaints about Indian attacks
 from territory of, 524; New England
 trade and commerce compared to,
 719; number of documents associated
 with, xix; public expenses, Robert
 Hunter's efforts to cover, 345–54;
 Quakers in, 1860(*a*); religion
 and liberty of conscience in, 247;
 sugar trade and, 1073; Supreme
 Court of, 794–806, 851; trade,
 grievances relating to, 251. *See also*
 equity courts, power to establish;
 Kennedy, Archibald, *An Essay on
 the Government of the Colonies*;

- Montague, John, *Arguments Offer'd to the Right Honourable the Lords Commissioners*
New York Gazette, 1424
New York Weekly Post Boy, May 19, 1746; Samuel Nevill, *Mr. Nevill's Speech to the House of Representatives of the Colony of New-Jersey*, 1165–84. See also New Jersey proprietary claims and actions, defended
- Newfoundland: currency in, 939; French invasion of, 1683–84, 1687
- Newport, Mr., 1942
- Newsam, Mr., 443
- Nicholls, Richard, 1176, 1177
- Nicholson, Captain, 179
- Nicholson, Colonel, 527
- Nic[h]olson, Francis (governor of Carolina), 646, 1593, 1601
- Nicholson, Francis (governor of New York), 355
- Nihil Dicit* (contempt), judgment of, 105
- Nisbett, Joseph, 1744
- Noah (biblical figure), 162, 163
- nobility. See aristocracy
- Nonpareil* (vessel), 1595
- non-resistance, doctrine of. See right of resistance
- Norman Conquest, 21, 1027, 1199
- Norris, Isaac, 1383
- Norris, John, 629
- Norris, Mr. (speaker of the house, Pennsylvania), 1840, 1890–91
- Norris, William, 430–32
- North Carolina: Albany meeting (1754) and, 1383; currency in, 946; currency standards in, 961; D'Avenant's claims about and lack of knowledge of, 239; general assembly for all colonies, Harrison's proposal regarding, 271; judicial tenure act, 1659; number of documents relating to, xix; piracy in, 506; religion and liberty of conscience in, 248; separation from South Carolina, 1946; slaves and slavery in, 1945–46. See also Smith, William (chief justice of North Carolina), articles of complaint against
- North of England, court of equity in, 761
- Northey, Sir Edward, 451
- north-west passage, 1327
- Norton, Benjamin, 554
- Norton, Sir D., 577
- Norton, John, 1741
- Norwood, J., 326
- Nova Scotia: assembly of, 2237, 2238–39, 2242–44, 2248; corruption of government in, 2239; council, power of, 2231–32, 2237–38, 2240, 2242–44, 2248; currency in, 939–40; Day, John (writing as “A Member of the Assembly”), *An Essay on the Present State of the Province of Nova-Scotia* (Halifax, 1774), 2231–48; debtor laws in, 2240–41; description of, 2234; expeditions against Canada and, 527, 941; French and, 1378, 1687–88; historical account of government in, 2236–44; J. W., *A Letter from a Gentleman in Nova Scotia, To a Person of Distinction on the Continent* (London, 1756), 1579–87; judicial courts in, 2246–47; martial law in, 1579–1689, 2236–37; number of documents associated with, xix; oligarchical control of, 2231–32, 2235–36; property and property rights in, 2244–47; public revenues and expenses in, 2242–44, 2246; settlement of, 2234–35; smallpox, act to prevent, 2241
- Noxon, Thomas, 1020
- Noy, Mr., 2156
- Numbers (biblical book): 11:12, 16, 68; 22:30, 188; 35:31, 33, 315
- Nye, Philip, 150

- oaths and oath-taking: affirmation
versus, 257, 1474, 1921; coronation
oath of kings and queens of
England, 6–7, 762, 774, 1175, 1259,
2058; excise collectors, appeal of act
imprisoning, 198–201; for Grenada
assemblymen, 2064; juries, oaths
taken by, 778–79, 899–900, 917–18;
jury members required to take oath,
49, 50, 61, 62, 899–900; Mennonites
and Quakers opposing, 1415;
Pennsylvania assemblymen, oaths of
allegiance proposed for, 1416, 1474;
Pennsylvania's freedom from, 1857,
1860, 1921; rule of law, kings' and
judges' oath to uphold, 6–7; Smith,
William (chief justice of North
Carolina), failing to take, 900
- Observations upon the Report Made
by the Board of Trade against the
Grenada Laws* (London, 1770),
2053–84. *See also* Grenada
- Odyssey* (Homer), 1950*
- Ogden, Mr., 1171, 1174
- Ogle, Sir Chaloner, 1326, 1345
- Oglethorp, Richard (Antigua), 317–20,
321–22, 338–39
- Oglethorpe, General (Georgia), 1122, 1127
- Ohio, Philadelphia traders in, 1291
- Oliver, Andrew, 1689, 1736
- Olyphant, John, 1957, 1959, 1968, 2013,
2014, 2021, 2106
- Onondago Indians, 1379–80
- Optatus Melevitanus, 86
- Oration for Cluentius* (Cicero), 78
- Orders of the High Court of Chancery*, 843
- Orkney, Earl of, 435
- Orleans, Henrietta Maria, Duchess of,
2205[c]
- Ormond, Duke and Duchess of, 434
- oronoco tobacco variety, 725
- Orpheus and Orphic writings, 601
- Orton, Ann, 1745
- Osborne, Sir Danvers (governor of
New York), 1375–76
- Osborne, John, 1689
- Osborne, Mother, 1499
- Osgood, Herbert Levi, xvii
- Osgood, John and Christopher, 182
- Otis, James, *A Vindication of
the Conduct of the House of
Representatives of the Province of
the Massachusetts-Bay* (Boston,
1762), 1679–1721; advisement of
house by governor of requisition
of funds, 1683–84; agreement of
assembly with purpose of requisition,
1684–87; disrespect to Crown, house
refutation of governor's accusation
of, 1691–1700; executive power of
government, refutation of requisition
as, 1714–15; limitations on governor
and council's power to issue Treasury
funds, asserted, 1703–7, 1709–21;
power of governor and council
to issue money out of Treasury,
asserted, 1679–80, 1700–1703; right
of assembly to remonstrate with
governor, 1715–17; on severity of
requisition as violation of assembly's
rights, 1717–19; taxation as house
responsibility, governor's acceptance
of, 1700–1701, 1707–9; uneasiness
of house with requisition of funds
without knowledge of house, 1679,
1688–91; warrants, significance of
form of, 1709
- Otis, James, as member of
Massachusetts House of
Representatives, 1690, 1691, 1703
- Otley, Richard, 2255, 2263
- Otter* (vessel), 1475
- Otto, Bastian, 316, 337
- Otto Byar [Buer], John, 316, 322, 330
- The Over-Hearer* (periodical paper),
1782*

- Oviat, J., 1978
- Ovid: *Elegies*, 440; *Metamorphoses*, 425, 599–601, 1305
- Owaneco (Mohegan Indian), 614
- Oxford (vessel), 471, 474
- pacifism: of Mennonites, 1415; of Quakers, 1005, 1006, 1019–20, 1406–7, 1463, 1858
- Page, Dr., 444
- Paget, Lord, 1202, 1206
- Paine, John, 348
- Palmer, John, *The Present State of New England* (Boston, 1689), 47–93.
See also Boston uprising
- Panegyrick* (Pliny the Younger), 82
- paper money: *American Magazine* on, 1021; bills of cost taxed to be paid in bills of the new tenor, 884; British government conniving at American use of, 933–34, 948–49; Carter, Landon, *A Letter to a Gentleman in London, from Virginia* (Williamsburg, 1759), 1613–36; as commodity, 971; Currency Act (1764), 1613; debt and, 948; depreciation, problem of, 934, 937, 938–39, 947–49, 955, 976–78; disadvantages of, 949–56; Douglass, William, *A Discourse Concerning the Currencies of the British Plantations in America* (Boston, 1740), 933–78; in Europe, 711–12, 938, 967; list of currency denominations in British American colonies, 939–47; military expenditures, intended primarily for, 1613, 1619–21; in New England, 705–10, 933–34, 952–53, 955, 1446, 1448, 1459, 1613; parliamentary prohibition of, 934, 963, 965, 966, 1446, 1448, 1459, 1613; in Pennsylvania, 561, 562, 573, 574, 1407–10, 1444–60; Pennsylvania assembly's terms for funding defense of colony unacceptable to proprietary government, 1407–10, 1444–60; popular arguments in favor of, 956–61, 967–78; preferability of paper bills to coined money, 710–12; proposals for rectifying problems due to, 961–67; proposals to use, 561, 562, 573, 574, 705–10, 933–34; public appearance of prosperity and, 958–59; scarcity of coin and, 934, 959–60; silver, bills payable in, 937, 968–69; silver depreciation due to, 950–52; tobacco trade and, 1613–36; use in American colonies, 933–34, 938–48; in Virginia, 1613–36
- Paper Project, 638
- Paradise Lost* (Milton), 1784
- Paris, Ferd-John, 1481
- Paris, Matthew, 21
- Paris, Treaty of (1763), xix, 2053
- Paris, University of, 933
- Parish, Edward, 1746
- Parke, Daniel (governor of Leeward Island colonies), assassination of: account of Lieutenant Governor and Council of Antigua regarding (24 August 1710), 323–24; accusations against character of Parke, 322–24, 327–28, 329–37; address of Lieutenant Governor and Council to Crown (6 April 1710) on, 324–26, 337; battle between assemblymen and governor's forces (7 December 1710), 313, 318–20, 327–28, 334–36; biographical information, 313; depositions on events leading up to (August 1708, December 1709, and June 1710), 316–17; depositions on events of (5–7 December 1710), 317–23; judiciary subverted by Parke, 327, 332; laws of Antigua dismissed by Parke, 327, 332; money made out

- Parke, Daniel (*continued*)
 of prosecution of, 461; sexually suspect behavior attributed to Parke, 331–32; *Some Instances of the Oppression and Male Administration of Col. Parke* (1713), attacking Parke, 327–44; *Truth Brought to Life* (London, 1713), defending Parke, 313–26; *Truth Brought to Life* (London, 1713), response of *Some Instances* (1713) to, 327, 337–43; wounding, abuse, and death of Parke, 320–22, 336, 341
- Parker, J., 1263
- Parker, Moses, 173
- Parker, Richard, 229
- Parks, W., 651
- Parks, William, 727, 869, 870
- Parliament, British: Barbados planters' lack of representation in, 136; colonial government and, 228; colonial judicial systems never reformed by, 216; courts, arguments over parliamentary establishment of, 748–61, 809, 812–16, 839–42, 853; disenfranchisement of charter colonies with act of parliament as inconsistent with justice, 546–50; hoarding of undeveloped land in Jamaica, jurisdiction over, 1359–69; House of Lords, 1022, 1026–32, 1034–36, 1359, 1363–64, 1589, 1590, 1594, 1596, 1857, 1921, 2147; Jamaica absentees in, 1360, 1363, 1367; Long Parliament (1640–1660), 2137; paper money prohibition, 934, 963, 965, 966, 1446, 1448, 1459, 1613; patronage, Walpole's use of, 876; Pennsylvania liberties under royal government, protection of, 1836, 1861–62, 1870, 1905–6, 1917–19; plantation trade, acts related to, 265–66; rights of liberty and property, as evidence of, 7; Rump Parliament (1651), 2164; senate, in Hunter's *Androboros*, 360–70; St. Kitt's assembly, compared, 2086, 2100–2104, 2118–19; statute law made by, 653–54 (*See also* statute law). *See also* acts of Parliament affecting colonies; privilege controversy in Jamaica; speaker of House of Commons, right of British Parliament to choose
- parliament, French, 881, 1921
- Parmenides, 601
- Parmiter, John, 175, 176, 177
- parrot's dung, old maiden lady in
 Montserrat accused of consuming, 1338, 1352
- Partridge, Oliver, 1382
- Paterson, Sir Hugh, 433
- Paterson, Robert, 433, 435
- patronage, warnings against, 876, 881–86
- Paty, J., 1978
- Paul (saint), 73, 74, 78, 80, 82, 106, 605, 658, 1015–16, 1271, 1299, 1571, 1572, 1791
- Payne, Sir Ralph (governor of Leeward Islands), 2257
- Payne, Stephen, 326
- Paynter, Mr., 319
- Pearl* (vessel), 1595
- Pearson, John, 1746
- Peers, Colonel, 476
- Peers, Henry (speaker, Barbados Assembly), 979–80, 983–97, 1001
- Peirce, George, 1942
- Pemaquid Fort (Fort William-Henry), 67, 110, 523–24
- Pembroke, William, Earl of, 2264
- Pendilton, Thomas, 894, 910, 913, 930
- Penn, Admiral, 1984
- Penn, John (governor of Pennsylvania), 1383, 1842–43, 1884
- Penn, Richard, 1835, 1912
- Penn, T., 1912

- Penn, William: address of assembly of lower counties to (1701), 288, 295–96; *The Allegations Against Proprietary Government Considered* (1701), 279–86; assembly, origins of power of, 1400; biographical information, 3; *Case of William Penn* (1701), 280, 287; charter granted to, 562, 563–71, 1844–45; death of, 1404; in English law and liberties tradition, xiii; as founder of Pennsylvania, xix, 3, 1442, 1459, 1475; judicial tenure during good behavior under, 1670; Lloyd, David, and, 561; Pennsylvania petition for royal government and, 1843–45, 1889, 1930; Quaker elites and, 279, 287; *Reflections on the Printed Case of William Penn, Esq.* (1702), in a letter from Some Gentlemen of Pennsylvania, 280, 287–96
- Penn, William, *The Excellent Privilege of Liberty and Property* (Philadelphia, 1687), 3–45; confirmation of *Charta Libertatum* and *Charta de Foresta*, 29–30; de Tallegeo non Concendendo, 32–34; foundations of British rights of liberty and property, 6–8; Magna C[h]arta, commentary on, 20–29; Magna C[h]arta, sentence or curse of bishops against breakers of, 31–32; Magna C[h]arta, text of, 8–20; Pennsylvania, abstract of patent granted to William Penn for, 34–37; Pennsylvania, frame of government for, 37–45; proprietary government of, efforts to annul, 279–86; sentence of clergy against breakers of charters, 31
- Penn, Sir William (father of William Penn), 37, 290, 294
- Penn family's authority in Pennsylvania: Dickinson on, 1857–58; Galloway on, 1874–75, 1912–14; immediately after death of William Penn, 1404; Lloyd on, 561–71; Logan on, 573–93
- Pennent, Mr., 446–47
- Pennsylvania: abstract of patent granted to William Penn for, 34–37; Act of Union (1682) of lower counties with colony, 287; Albany Plan meeting (1754) and, 1383; Catholicism tolerated in, 1406, 1412, 1415, 1441–43; charter granted to William Penn, 562, 563–71, 1844–45; Charter of Privileges (1701), 561; Chew, Samuel, *The Speech of Samuel Chew, Esq.* (Philadelphia, 1741), 1005–20 (See also self-defense); Church of England in, 288, 295, 1858, 1922–23; constitution of, 1022, 1031; Council compared to upper house in Maryland, 1022, 1024–26; currency in, 945–46; D'Avenant's claims about and lack of knowledge of, 230, 231, 232, 238; dress of assembly of lower counties to Penn (1701), 288, 295–96; founded by William Penn, xix, 3, 1442, 1459, 1475; frame of government for, 37–45; French, involvement in war with, 561; Galloway, Joseph, *A Letter to the People of Pennsylvania* (Philadelphia, 1760), 1659–77 (See also judicial tenure during good behavior); general assembly for all colonies, Harrison's proposal regarding, 271, 272; government of, 273, 1402; judicial tenure act, 1659; liberty of conscience in, 1441–43, 1857–59, 1921, 1922–23; Lloyd, David, *A Vindication of the Legislative Power* (1725), 561–71; lower counties of (See Delaware); money given to governors in, 570, 587, 1429–30, 1872–77; Native Americans in, 1410, 1462–63;

Pennsylvania (*continued*)

- number of documents associated with, xiii; oaths and oath-taking in, 257, 1474, 1921; Ohio, Philadelphia traders in, 1291; paper money in, 561, 562, 573, 574, 1407–10, 1444–60; population of, 1839, 1887*; portrayed as uninhabited wilderness before Penn's arrival, 284, 287–88, 290; Quaker settlement of, 3, 247, 291, 1402–3; relations between colonies, 256; religion, grievances pertaining to, 247; trade, grievances relating to, 251
- Pennsylvania, debate over petition for royal government in: alternative proposal to petition for royal judgment on specific disagreements between proprietors and assembly, 1862–63; anti-proprietary party intending appeal to Crown, 1424; calls for Crown control, 1422; constitution of Pennsylvania and, 1869, 1890, 1916–17; counter-petition, 1894–1900; Dickinson, John, *A Speech, Delivered in the House of Assembly of the Province of Pennsylvania* (Philadelphia, 1764), against, xv, 1835–67, 1869, 1870, 1871, 1872, 1891, 1900–1904; encroachments of power, guarding against, 1866, 1929–30; events leading up to, 1835, 1838–47, 1872–1900; existing authority of Crown and, 1865, 1930; form and terms of petition, reviewed, 1865–66, 1926–29; Galloway, Joseph, *The Speech of Joseph Galloway, delivered in the House of Assembly, of the Province of Pennsylvania* (Philadelphia, 1764), in favor of, 1869–1932; leniency of Crown government, arguments based on, 1859–61, 1923–24; liberties peculiar to Pennsylvania and, 1835–36, 1844–46, 1852–59, 1890, 1905–10, 1919–23; martial law as consequence of, 1866, 1928–29; money given to governors to purchase assent to laws, 1874–77; parliamentary protection of privileges and, 1836, 1861–62, 1870, 1905–6, 1917–19; Penn, John, address to, 1842–43; Penn, William, and, 1843–45, 1889, 1930; Penn family's authority and, 1857–58, 1874–75, 1912–14; problematic nature of proprietary government, 1869–70; proprietary dislike of Pennsylvania constitution, 1869, 1890; public revenues and expenses, control of, 1920; public support for, 1839, 1863–65, 1886–88, 1924–26; right of assembly to petition, 1864, 1924–26; royal resentment, fears of incurring, 1865, 1930; scene of confusion and anarchy, state of Pennsylvania presented as, 1865–66, 1926–29; servants of people of Pennsylvania, importance of acting as, 1863–65; taxation and legislative issues leading to, 1835, 1838, 1848, 1859, 1872, 1877–86, 1914–16; timing and methodology of, 1848–54, 1904–6, 1910–14
- Pennsylvania, proprietary government in: accused of attempting to usurp assembly's money powers, 1421–22, 1426–28, 1460–61, 1462, 1464–66; *The Allegations Against Proprietary Government Considered* (Penn, 1701), 279–86; *An Answer to an Invidious Pamphlet, Intituled, A Brief State of the Province of Pennsylvania* (London, 1755), against, 1421–76; assembly, concerns with power of, 1400, 1404–5; Catholicism, toleration of, 1406, 1412, 1415, 1441–43; Crown, anti-proprietary party intending appeal to, 1424; failure of proprietors

- to purchase frontier lands, 1438–39;
 French incursions, anti-proprietary
 explanation of true cause of, 1436–37;
 French incursions, concerns over
 funding defense against, 1399, 1402,
 1405–7, 1421–22, 1426–27, 1429–36,
 1440–41; German population and,
 1400, 1402, 1405, 1406, 1411–18,
 1443, 1466–75; Juniatta settlement,
 burning of, 1427, 1434; Mennonites
 and Moravians, 1415, 1471–72; militia
 law, supposed Quaker resistance to,
 1407, 1413, 1443–44, 1458; Native
 Americans, funds to construct fort
 for, 1462–63; paper money terms
 of assembly for funding defense of
 colony unacceptable to, 1407–10,
 1444–60; popular government,
 concerns with, 1400, 1403–4; power
 of the purse asserted as longstanding
 right of the assembly, 1421–22, 1426,
 1428–30; proposals to curb power of
 assembly against, 1416–18, 1474–76;
 Quakers and, 1399–1400, 1402–3,
 1406–7, 1409, 1411–12, 1414–16, 1421,
 1428, 1429, 1432–33, 1435, 1437–38,
 1440–45, 1448, 1458, 1459, 1461,
 1463–71, 1473–76; *Reflections on
 the Printed Case of William Penn,
 Esq.* (1702), in a letter from Some
 Gentlemen of Pennsylvania, 280,
 287–96; Smith, William, *A Brief
 State of the Province of Pennsylvania*
 (London, 1755), supporting, 1399–
 1419; taxation issues, 1835, 1838, 1848,
 1859; unacceptable terms upon which
 assembly offered defense funding,
 1399, 1407–10; Virginia and war
 with French, 1406, 1408, 1436–40;
 willingness of Quakers to fund
 defensive activities, 1463–64, 1475–76
Pennsylvania Gazette, 1424, 1441, 1443,
 1447*, 1450*, 1462
- the people, government by. See popular
 sovereignty; right of resistance
The People's Right to Election (Gershom
 Bulkeley; 1689), 95–114. See also
 Bulkeley, Gershom, *The People's Right
 to Election*
- pepper, 1090
 Pepper, Martha, 1745
 Pequot Indians, 621
 Pequot War, 596
 Pericles, 76
 Perrie, Edward, 317
 Perrie, John, 338
 Per[r]ot, John, 750, 825
 Persian Tales, 1147
 Persius, 1479
 Pertinax, 82
 Peru, 608, 613, 1937
 Pescod, Thomas, 1742
 Peter (saint), 78, 80, 84, 87–88, 1271
 1 Peter (First Epistle of Peter): 2:13,
 1271; 2:17–19, 78; 4:12–16, 88
 Peteres, Luycas, 1179
 Peters, Francis, 1745
 Peters, Gilbert, 185
 Peters, Richard, 1383
 Petition of Right (1628), 655, 663, 764,
 1229, 1513, 1896, 2156, 2157
 Petty, Edward, 348
 Petty, James and Joseph, 348
 Peyton, Benjamin, 891–94, 896,
 910, 913
 Peyton, J., 1978
 Philadelphia, Common Council for
 City of, 1038
Philippics (Cicero), 73
 Philipps, Sir John, 2107†
 Philips, Aaron, 1741
 Philips, Sir Robert, 1973, 1974
 Philipse, Frederick, 836–38, 861, 862
 Phillips, Johan, 1723
 Philoletes (Samuel Ward), *A Short
 Reply to Mr. Stephen Hopkins's*

- Philolethes (*continued*)
Vindication (Newport, 1755), 1391–98.
 See also union of continental colonies
- Philo-Musaeus, 1278
- Philopolites (pseudonym for William Penn), 6
- Phipps, Sir William, 526
- Phips, Joseph, 45
- Pierson, Jonathan, 1183
- Pieterse, Adam, 296
- Piggott, John, 319–20, 322, 336
- Pilate, 80, 1015
- Pilgrim, Mr., 467
- Pilkington, Seth, 915
- Pindar, Thomas, 470
- piracy, privateering, and illegal trade:
 in Carolinas, 506; French privateers threatening New England fishing fleet, 1679, 1683–84, 1687–90, 1701–2, 1706; grievances and remedies of colonies regarding, 251, 257, 267–68; Lowther's illegal trade with French colonies, 463; proprietary government and, 279, 281–83, 292–93; Rhode Island, actions of vice admiralty court in, 554, 556
- Pisistratus, 632
- pistole fee controversy: address to Crown regarding, 1316–22; arrival of Dinwiddie in Virginia, 1301, 1306–7; Carter, Landon, *A Letter from a Gentleman in Virginia to the Merchants of Great Britain* (London, 1754), 1301–22; land grant practices in Virginia and, 1307, 1317–19; on legal basis for colonial liberty and representative government, 1302–3, 1309–10; liberty, as English right, and, 1315; method used to demand fee, objections to, 1319–21; protests of Burgesses and responses of governor, 1308–9, 1310–14; resolutions of Burgesses regarding, 1314–16; retroactivity of fee, objections to, 1321–22; traditional principle of legislative consent, fee violating, 1301, 1302, 1309–10
- Pitkin, William, 1374, 1382
- Pittome, James, 166
- Pitts, Robert, 895
- Plantation Justice* (Hodge; London, 1701), 215–25. See also Barbados
- A Planter (Edward Long), *Candid Reflections upon the Judgement on What is Commonly Called the Negroe-Cause* (London, 1772), 2149–91, 2193, 2194. See also slaves and slavery
- Platea, battle of, 632
- Plato, 71, 74, 75, 77, 599, 1566*, 1567†, 1682n1
- Plautianus, 79
- Pliny the Younger: *Epistles*, 668, 1562; *Panegyric*, 82
- Plowden's Commentaries*, 835–36, 840
- Plutarch, *Lives*, 87, 1951*
- Poetical Meditations* (Roger Wolcott; New London, 1725), Bulkley's "Preface" to. See Bulkley, John; Mohegan Indians' dispute with Connecticut over ownership of hunting grounds
- Poinings, Sir Edward, 2004, 2009
- Poland, king of, 2264
- Political Testament* (Cardinal Richelieu), 1699
- political writings of colonial British America (1687–1774), xi–xx; criteria for selecting, xvi–xx; editorial conventions, xxi–xxii; English dedication to liberty and rule of law, xii–xiv (See also liberty, as English right; rule of law); European and British political writers influencing, xi–xii; geographic coverage, xviii–xix; international circulation of, xiv; issues and events stimulating, xiii–xv;

- obscurity of pre-1764 materials, xi–xii, xv–xvi; publishing and printing of, xii, xviii, xix; time period covered, xvii, xviii; translations of Latin and other foreign language passages, xxi, xxiii
- Polybius, 668
- Pompey, 668
- Pomponius Secundus, 1562
- Pope, Alexander, 1559, 1681, 1714, 1784, 1888–89, 1950*, 2226; *Dunciad*, 1203, 1247; *Essay on Man*, 2221; *Iliad*, 1797*
- Popham, Sir John, 826, 2145
- popular sovereignty: Bulkeley, Gershom, arguing against, 95, 97–109; Bulkley, John, on, 605; constitution, English, as original contract between the people and their rulers, 1185, 1195; Lloyd's arguments for, in Pennsylvania, 562, 567; Locke on, 1025*, 1028*, 1035; proprietary party in Pennsylvania concerned with, 1400, 1403–4; tobacco tax, Maryland assembly's authority to delegate power to levy, 1185–86, 1195, 1238, 1239; unelected upper houses violating doctrine of, 1022, 1037, 1041–42
- population: in Carolina (1726), 638; concerns regarding, 141–43, 233, 254–55, 268–70, 294–95, 1365; France, depopulation in, 143; German population of Pennsylvania and proprietary government, 1400, 1402, 1405, 1406, 1411–18, 1443, 1466–75; of Pennsylvania, 1839, 1887*; security and rebellion fears arising from proportion of freeman to slaves, 1131, 1134, 1135–36, 1141–42, 1144, 1145, 1150–53, 1156–60, 1532, 1950–51; of St. Jago versus Kingston (Jamaica), 1521*
- Portugal, 57, 136, 143, 145, 517, 518, 1936, 2163, 2203[b]. See also Brazil
- Poscennius Niger, 79
- Postlethwayte, *Commercial Dictionary*, 1942†, 1953
- Postman*, 465
- Potter, Edward, 1742
- Powel, John, 900–901
- Powell, Justice, 1980, 2159, 2181
- Powell, Seymour, 1743
- Powell, William, 1742
- power of the purse: delegation of authority to levy tax and, 1209, 1220, 1236; Kennedy, Archibald, on, 1278–88; proprietary government in Pennsylvania and legislative right to, 1421–22, 1426, 1428–30. See also Otis, James, *A Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts-Bay*
- Powis, Justice, 1979
- The Practising Attorney, or The Lawyers Office*, 842–43
- Presbyterians, 68, 1143, 1402, 1887*, 1908, 1921, 2123
- The Present State of Great Britain*, 1035*
- The Present State of New England* (Palmer; Boston, 1689). See Palmer, John
- press, freedom of: Fowle, Daniel, imprisoned for suspected publication of *The Monster of Monsters*, 1555–78; periodicals and newspapers in languages other than English, in Pennsylvania, 1417–18, 1466–67, 1475; printers' causes, trials of (1763), 2105–7; Royalle [Royle], Joseph, refusing to print tract that might offend Virginia House of Burgesses, 1738, 1770–73
- Price, Charles, Jr., 1965, 2021
- price of goods: paper money and rise in, 956–57; regulation of, 709–10, 712, 718
- The Prince* (Machiavelli), and Machiavellianism, 407, 420, 439, 453, 1021, 1040

- prison. *See* imprisonment
- privateering. *See* piracy, privateering, and illegal trade
- privilege controversy in Jamaica:
 arguments against Jamaica assembly holding parliamentary privileges, refuted, 1983–90; assembly in Jamaica holding same privileges as British Parliament within its own constitutional system, 1968, 1993–94; Bourke, Nicholas, *The Privileges of the Island of Jamaica Vindicated* (London, 1766), xv, 1955–2022; British courts not presuming to discharge commitment by House of Commons, 1975–83; British House of Commons, privileges enjoyed by, 1968–75; constitution, English, and, 1956, 1992; constitution of Jamaica and, 1984–88, 1994; defined, 1955; English law, colonists subject to, 1992, 2004–5; *Habeas Corpus* and, 1960, 1961, 1963, 1968, 1977, 1978, 1981, 1982–83, 1987, 1991; historical account of establishment of Jamaica as British colony and, 2006–13; liberty, as English right, and, 1955–56, 1992–93, 2000–2005; money bills for subsisting troops, rejection of, 1960, 1962–63, 1965, 2017–18; power of commitment in Britain and Jamaica compared, 1990–92; precipitating events, 1958–67, 2013–22; right of resistance and, 1956, 1971, 2001–4; separation/balance of powers and, 1994–2000; slavery comparisons, 1956, 2000–2001
- The Privileges of the Island of Jamaica Vindicated* (Nicholas Bourke; London, 1766), xv, 1955–2022. *See also* privilege controversy in Jamaica
- prizes in Jamaica, duties payable for, 454–59
- property and property rights: *American Magazine* on land speculation, 1021; Boston uprising (1689) and, 50, 64–65, 161–71; British foundations of, 6–8; Crown, proposal that all lands be confirmed by, 264; escheat brokerage in Jamaica, 411–17, 424–33, 442–43, 446–50; “extravagant” grants of land, 205–10; fee imposed in Virginia for signing and sealing land patents (*See* pistole fee controversy); 4½ percent duty as price paid to Crown for fee simple purchase of lands in Barbados, 1098–1101, 2257–60; Georgia, land tenure in, 1120–22; hoarding of undeveloped land, in Jamaica, 1359–69; labor, origin of property rights in, 596, 607–10, 613, 617–20, 625, 626; land tax proposed to support government and officers of Crown, 1288–90; large land grants, Albany Plan proposals regarding, 1381, 1382; Lowther’s violations of, 475; Magna C[h]arta on, 22, 23–24, 25; Maine woods, right to harvest timber in, 485, 486, 490–92, 496–97; mixed free settlement and proprietary land grants in New Jersey, 1165; Native Americans, Albany Plan proposals for future purchases of land from, 1381, 1382, 1384; Native Americans, claims that lands were purchased from, 147, 162, 164, 167, 187, 196, 203, 204–5, 280, 284–85, 288, 290–91, 1165, 1168–69, 1177–80; native right to lands, arguments regarding, 605–7, 616, 619–20, 621, 626–27, 1179–80; New York state acts overturning grants of Mohawk land to colonists, 195–96, 201–13; in Nova Scotia, 2244–47; proprietary government, proposals to annul, 283–85; self-defense and,

- 1005–6, 1009; of settlers in South Carolina, 506; slaves, as property, 1069–70, 1082, 2150, 2154, 2167–70, 2172–74, 2205–9, 2214–15, 2217–22; tenants, security of, 264–65; tithing and, 1028; Virginia, system of land grants in, 257–58. *See also* Mohegan Indians' dispute with Connecticut over ownership of hunting grounds; Penn, William, *The Excellent Privilege of Liberty and Property*
- proprietary exemption, doctrine of, 1878
- proprietary government: Board of Trade's attempts to dissolve charters of, 279, 280, 509; *ens rationis*, corporations viewed as, 520; judicial tenure during good behavior and, 1659–60, 1672, 1673–76; mixed free settlement and proprietary land grants in New Jersey, 1165; Penn William, *The Allegations Against Proprietary Government Considered* (1701), 279–86; piracy and illegal trade, relationship to, 279, 281–83, 292–93; public economy, regulation of charters viewed as part of, 548; *Reflections on the Printed Case of William Penn, Esq.* (1702), in a letter from Some Gentlemen of Pennsylvania, 280, 287–96; relationship to Crown, 281. *See also* Dummer, Jeremiah, *A Defence of the New-England Charters*; Maryland assembly's claim to benefit of English law against proprietors; New Jersey proprietary claims and actions, defended; Pennsylvania, debate over petition for royal government in; Pennsylvania, proprietary government in; South Carolina, proprietary government in
- Protestantism: British constitution viewed as dependent on, 2065; on Christian dominion over heathen lands, 163, 187–88, 518–19; fears of Catholic threat to, 48, 50, 51–52, 66, 68–69, 105–6, 151, 1194; French Protestants, 66, 141, 882; Germans in Pennsylvania, proposal of Protestant instruction for, 1406, 1413–14, 1417, 1473; Jesuitical behavior of some Protestants in Jamaica, 418; legislative power and, 2066; liberty of conscience under British rule, 1920; Montserrat, religious friction on, 1324, 1330–32; people's right of self-government, arguments against, 105–7; right of resistance, arguments against, 69, 91; union of true Protestant principles opposed to Albany Plan union, 1391, 1393. *See also specific denominations and sects*
- Proverbs (biblical book): 1:15, 429; 11:4, 429; 17:23, 459; 18:16, 462; 19:4, 459; 20:21, 429; 22:10, 397; 25:25, 440; 25:28, 440; 27:5, 397; 28:4, 397; 28:20, 429
- Provoost, William, 860
- public revenues and expenses: Barbados assembly's dispute with governor over disbursement of public funds, 1278–83; Georgia, demand for accounting of public funds in, 1118, 1125, 1127–28; in Grenada, 2070–78; Hunter, Robert (governor of New York): Mulford, Samuel, speech to New York Assembly, on Hunter's schemes to cover public expenses, 345–54; in Jamaica, 1112–15; Kennedy, Archibald, on arrangements regarding, 1284–88; Lowther, Robert (governor of Barbados), public debts purchased by, 471, 475, 477, 479; Massachusetts assembly's dispute with governor over disbursement of public funds, 1283–84; New York,

- public revenues and expenses (*continued*)
 Robert Hunter's efforts to cover
 public expenses in, 345–54, 355;
 in Nova Scotia, 2242–44, 2246;
 Pennsylvania, debate over petition
 for royal government in, 1920;
 Pennsylvania, efforts to fund defense
 against French in, 1399, 1402, 1405–7,
 1421–22; power of the purse, 1209,
 1220, 1236, 1278–88, 1421–22; privilege
 controversy in Jamaica and rejection
 of money bills for subsisting troops,
 1960, 1962–63, 1965
- public works, 722–24, 960
- Publius Quinctius, 1635
- Puff[en]dorf, Samuel, *Law of Nature
 and Nations*, 656–57, 1137, 1142,
 1947–48, 2202
- Pugh, Philus, 908
- purse, power of, 1209, 1220, 1236, 1278–88
- Pym, Mr., 2156
- Pythagoras, 599
- Quakers: lower counties of
 Pennsylvania, resentment of Quaker
 elites by, 287, 288, 292; militia
 service, avoiding, 263; in New Jersey,
 1859, 1860; in New York, 1860(a);
 pacifism of, 1005, 1006, 1019–20,
 1406–7, 1463, 1858; Penn and
 Quaker elites, 279, 287; proprietary
 government in Pennsylvania, dispute
 with, 1399–1400, 1402–3, 1406–7,
 1409, 1411–12, 1414–16, 1421, 1428,
 1429, 1432–33, 1435, 1437–38, 1440–
 45, 1448, 1458, 1459, 1461, 1463–71,
 1473–76; settlement of Pennsylvania
 and, 3, 247, 291, 1402–3; in Virginia,
 248
- Quarry (governor of Carolina), 637
- Quary, Robert, 287
- Quebec. *See* Canada
- Quilter, Joseph, 182
- Quinebaug Indians, 621
- Quintilian, 86–87
- Quo Warranto*, writ of, 101, 149, 183, 189,
 190, 283, 513–14, 548
- race and racism. *See* Native Americans;
 slaves and slavery; *specific ethnic
 groups*
- Raleigh, Sir Walter, 518, 1265, 1941
- Ramsay, George, 2022
- Randolph, Edward, 65–66, 152, 159, 167,
 179, 180–81, 190
- Randolph, Sir John, *The Speech of
 Sir John Randolph, upon His Being
 Elected Speaker of the House of
 Burgesses* (Williamsburg, 1734),
 869–73
- Randolph, Peyton, 1301, 1316, 1741
- Rapin, Paul de, 782, 790, 2137
- Rawson, Edward, *The Revolution in
 New England Justified* (1691), 147–93.
See also Boston uprising
- Raymond, Judge, 1977, 1983
- Read, Thomas, 173
- Redwood, Mr., 2017
- Reed, John, 1539
- Reflections on the Printed Case of
 William Penn, Esq.* (1702), in a
 letter from Some Gentlemen of
 Pennsylvania, 280, 287–96
- regulation of trade and commerce for
 flourishing commonwealth: *Amicus
 Republicae, Trade and Commerce
 Inculcated* (Boston, 1731), 677–724;
 balance of trade, 686, 707; banks
 of credit, 715–22; companies for
 trade, 713–15, 719; discounted bills of
 credit, 699–702; diverting creditors
 and debtors from raising value of
 merchandise, 702–4; export of
 specie, controls on, 712; free and
 liberal commerce, concept of, 677,
 682; fruitful countries without

- good regulations and policies, 684; integrity of persons charged with, 712–13, 717; labor, value of currency/commodities proportionate to, 687–89; labor and industry generated by trade, 682–84; necessity of commerce for human flourishing, 677, 680–82; paper money, proposal to introduce, 705–10; preferability of paper bills to coined money, 710–12; price regulation, 709–10, 712, 718; principles or maxims of, 684–86; public works, role of, 722–24; running cash, importance of availability of, 251–52, 685–86, 705; scarcity of money, disadvantages of, 692–99; trading for silver and gold, 705–10; undervaluing of money and overvaluing of merchandise, problem of, 687, 691–93; value of money used for medium of trade liable to sink below its credit, problem of, 687–91
- Rehoboam (biblical ruler), 1894
- Reid, Olivia, 427–28
- Relf, William, 894, 911, 913
- religion: agreement between ancient mythology and sacred history, Bulkley on, 599–601; baptism of slaves, consequences of, 309, 2180–81, 2197, 2217; ecclesiastical jurisdiction in Barbados, 467–68; establishment of, in England, 1027–28; establishment of, in Maryland, 1209; establishment of, in Virginia, 247–48, 263, 1637; governor's control over religion in Jamaica, 402–3; Hamilton triumvirate in Jamaica, suspect views on religion of, 406, 417–23, 437–38; heathen lands, views on Christian dominion over, 163, 187–88, 518–19; King's College (now Columbia University), potential religious affiliation of, 1541, 1549–54; labor and industry generated by, 683; of Native Americans, 1021; natural law and, 1008–12, 1018; Negroes, viewed as heathens and infidels, 2225[*q*]; requiring all people to practice some form of, 263; slavery in opposition to, 1138–43; in South Carolina, 501–3; tithes and tithing, 1027–28, 1036, 1741–48; Two-penny Acts allowing payment of Virginia clergy's salary in money instead of tobacco (See Two-penny Acts); upper houses, Lords Spiritual in, 1027–28, 1036. *See also* Catholicism; liberty of conscience; Protestantism; *specific denominations and sects*
- religious toleration. *See also* liberty of conscience
- Remarks on Several Acts of Parliament* (Jonathan Blenman; London, 1742), 1049–1116. *See also* acts of Parliament affecting colonies
- “Remarks on the Maryland Government and Constitution” (*American Magazine*; 1741), 1021–48. *See also* upper house in Maryland government and constitution
- Reports* (Coke). *See* Coke, Sir Edward, *Institutes of the Laws of England and Reports*
- representation: Americanus, *Letter to the Freeholders and Other Inhabitants of the Massachusetts-Bay* on, 879–86; Barbados planters' lack of representation in parliament, 136; Carter, Landon, on legal basis for, 1302–3, 1309–10; in England, on state of the plantations, 274, 275–78; general assembly of all colonies, Harrison's proposal for, 271–72; in Nova Scotia, 1584; Randolph, Sir John, on, 873. *See also* popular sovereignty; tobacco tax, Maryland

- representation (*continued*)
 assembly's authority to delegate
 power to levy; *specific colonies*
- A Representation of the Miserable State of Barbadoes* (Gordon; London, 1719), 463–84. *See also* Lowther, Robert
- resistance, right of. *See* right of resistance
- Restoration, xiii, 396, 400, 1590, 1908, 2258
- Reverdy, Peter, 184
- The Revolution in New England Justified* (Edward Rawson; 1691), 147–93.
See also Boston uprising
- Reynolds, Thomas, 1741
- Rhoads, Samuel, 1884
- Rhode Island: Albany Plan meeting (1754) and, 1373, 1375–77, 1382, 1383, 1386–87, 1388–89, 1394–95; in Boston uprising, 514; charter, 513; commodities and provisions furnished by, 230, 231, 232; control of ship seizures in, 551–60; Cranston, Samuel, and R. Ward, *A Vindication of the Governour and Government of His Majesty's Colony of Rhode-Island* (Newport, 1721), 551–60; currency in, 941–43, 951, 954, 961, 964; general assembly for all colonies, Harrison's proposal regarding, 271, 272; Hopkins, Stephen, *A True Representation of the Plan Formed at Albany, for Uniting All the British Northern Colonies* (Newport, 1755), defending, 1371–89; number of documents associated with, xix; paper currency debate and, 934; ship seizures in New York for trifling offenses, 348–49. *See also* Dummer, Jeremiah, *A Defence of the New-England Charters*
- Ribaut, John, 634
- Rich, Sir Robert, 2164
- Richard I Lionheart (king of England), 21, 769
- Richard II (king of England), 25, 752, 753, 757, 777, 788, 824, 825, 1198, 1226, 1249, 1664–66, 1669, 1990
- Richard de Burg, 56
- Richard, Earl of Cornwall, 31
- Richard, Duke of York (reign of Henry VI), 1975
- Richardson, John, 44
- Richardson, Joseph, 1840
- Richardson and Urquart (printers), 1957
- Richelieu, Cardinal, 938; *Political Testament*, 1699
- Riddel, George, 1742
- Rider, Sir Dudley, 1409, 1452
- Rigby, Mr. (Montserrat), 1352
- Rigby, Richard (North Carolina House of Burgesses), 894, 910, 913, 930
- Rigby, Richard (secretary and provost marshal of Jamaica), 395, 404–12, 415, 418–19, 420, 424, 425, 428, 434, 436, 437, 439, 447, 451–53, 455, 461–62. *See also* Hamilton triumvirate in Jamaica
- right, law as, 28–29
- right of resistance: Bulkeley, John, on, 604–5; in cases of inevitable necessity, 83–91; commands of princes contradicting natural or divine law, 70–71; in independent versus dependent governments, 1025*; by inferior magistrates against superiors, 80–83; Locke on, 1025*; Palmer's arguments against, on Boston uprising of 1689, 50, 68–69, 70–91; passive resistance, 71, 151, 1260, 1956, 1971; privilege controversy in Jamaica and, 1956, 1971, 2001–4; Rawson's arguments for, on Boston uprising of 1689, 191–93; against superiors, 71–80; Tories on, 1260
- The Right of the Inhabitants of Maryland, to the Benefit of English*

- Laws* (Daniel Dulany; 1728), xv, 649–75. *See also* Maryland assembly's claim to benefit of English law against proprietors
- Rights of War and Peace* (*De Jure Belli ac Pacis*, Grotius; 1625), 47, 70, 302, 657, 667#, 1948
- Ripley, Peter, 171
- rivalry and competition between
 England and colonies: Dummer on proprietary government addressing, 540–43; Harrison on governance addressing, 230–31, 233, 237, 243
- Roberts, Anthony, 1746
- Roberts, Captain George (North Carolina), 915
- Rober[t]s, George (North Carolina House of Burgesses), 894, 910, 913, 930
- Roberts, J., 631, 981
- Roberts, John, 1744
- Roberts (pirate), 554
- Robinson, Anthony, 1743
- Robinson, Sir Thomas, 1376–77, 1397, 1398
- Rochester, Earl of, 1355
- Rodeney, William, 296
- Rogers, James, 348
- Rogers, John, 1894
- Rogers, William Adduston, 1743
- Rolls, Mr., 1973–74
- Roll's Reports*, 671n2
- Roman Catholicism. *See* Catholicism
- Roman republic, empire, and laws, 137, 142, 544–45, 632, 658, 667–69, 881, 1038, 1041, 1042, 1137, 1142, 1194, 1224, 1234, 1275, 1276, 1495–99, 1949, 2012, 2202
- Romans 13 (biblical book), 73, 82
- Romer, Captain, 525
- Rookby, Joseph, 316
- Rookesby, George, 1333–34, 1342, 1346, 1353, 1355, 1357
- Ropes, Mr., 1688
- Rose (vessel), 183
- Rosengrave, Daniel, 318–20, 321–22, 339
- Rossiter, Clinton, xvi
- Rotchford, Dennis, 45
- Rowen, Thomas, 925, 926
- Roxburgh, Duke of, 433
- Royal, Brigadier, 1688
- Royal African Company, 2164–67, 2205–7
- royal government. *See* Crown, English
- royal governors. *See* governors
- Royalle [Royle], Joseph, 1738, 1770–73, 1779, 1783
- Royden, Marmaduke, 2257
- Ruggles, Timothy, 1736
- rule of law: Carolina's Fundamental Constitutions, 635–36; continual usage, power of, 1083–86; due process of law, 662; Dummer's refutation of arbitrary power exercised by New England charter governments, 528–31; Dummer's refutation of repugnant laws of New England charter governments, 537–40; foundations and basis of, 6–8; grievances and remedies relating to laws and legislative systems in colonies, 248–50; kings' and judges' oath to uphold, 6–7; Lloyd, David, *A Vindication of the Legislative Power* (1725), 561–71; Lowther's contempt for, 463; Magna C[h]arta chapter 29 on, 26, 28–29; Smith, William (chief justice of North Carolina), accused of subverting, 899; South Carolina proprietors charged with neglecting, 503–4; statute law and common law in England, 653–56, 660–66, 675; unlimited absolute government versus, 401–2. *See also* English law, colonists subject to; legislative power
- rum: French brandy and, 1087, 1089, 1091, 1093; Georgia's prohibition

- rum (*continued*)
 on importation of, 1124; Ireland,
 imported into, 1071–72; Native
 Americans plied with, 1381;
 requirement to land and warehouse
 before payment of excise on, 1049,
 1086–96. *See also* molasses; sugar and
 sugar trade
- Rump Parliament (1651), 2164
- Rupert, Prince of the Rhine, 2205[c]
- Rushworth's Collections* (1627), 655n2
- Russel, Joseph, 1563n
- Russel, Lord, 2139, 2142, 2143, 2144
- Russel[1], James, 96, 113, 114, 164, 166,
 168–69
- Russell, Mr. (Massachusetts House of
 Representatives), 1686
- Rutter [Rutler], John, Jr., 174, 177
- Ryleys placita Parliamentaria*, 786
- Ryswick, Peace of, 526
- Sabines, 668
- Sabinus, 1515
- Sacheverell, Mr., 2138–39
- Salamanca, University of, 418
- Salamis, battle of, 632
- Salkeld's Reports*, 564, 577, 579, 660n2,
 666†, 776n5, 1081, 1498, 2063*, 2063†,
 2065‡
- Sallust, 71, 72, 511, 550; *Bell. Catilin.*,
 1857*; *Bell. Jugurth.*, 1837, 1862*
- Salstonstal, Nathaniel, 182
- Samoyeds, 2171
- Sampson (biblical figure), 1560
- Samuel (prophet), 82
- 1 Samuel (biblical book): 8:11, 72; 15:30,
 82; 26:9, 86
- Samuel Mulford's Speech to the Assembly at
 New York* (New York, 1714), 345–54
- Sanballat, 192
- Sandeford, Colonel, 476
- Sandoz, Ellis, xvii
- Sanhedrin, 82, 668
- Santa-Cruz, Marquis of, 1949*
- Sardinia, 1264
- Satires* (Juvenal), 423, 440, 1578
- Satterwhite, Martha, 1744
- Säuer (German printer in
 Pennsylvania), 1411, 1466–67,
 1469–70
- Saul (biblical king), 82, 84, 721
- Saunders, Isaac, 1840, 1841–42
- Savelle, Max, xvi
- Sawyer, Mr., 331
- Saxons (Anglo-Saxons), 20–21, 1027,
 2099
- Sayle, William (governor of Carolina),
 636
- Scarborough [Scarbrow], Macrora, 894,
 910, 913, 930
- Sclater, Sacheverell, 1745
- Scot, Edward, 926
- Scotch-Irish, 425
- Scotland: Barbados and, 143–44;
 Carolina, Scottish settlement in, 637;
 fishing trade in, 121; illegal trade with,
 293; pejorative use of Scotch, 1194,
 1340, 1352; slave life compared with
 common people of, 1934, 1944–45;
 subject to Empire rather than Crown
 of England, 57
- Scroggs, Chief Justice, 1043–44
- Seawall, Samuel, 166
- Seawall, Stephen, 163, 164
- Sebaltri, 80
- Second Hawkins's Pleas of the Crown*,
 844
- Selden, John, 752, 755, 771–72, 782–83,
 2156
- self-defense: biblical authority for, 1008,
 1013–18; Chew, Samuel, *The Speech
 of Samuel Chew, Esq.* (Philadelphia,
 1741), 1005–20; governance and,
 1018–20; natural law, consistent
 with, 1008–13; property rights and,
 1005–6, 1009; Quaker pacifism and,

- 1005, 1006, 1019–20, 1463; religion and natural law, consistency of, 1008–12, 1018
- Selwyn, Major General (governor and captain general of Jamaica), 441–42
- Seneca, 72, 668; *Hercules Oeteus*, 425
- Seneca Indians, 1380
- Senegal, 2164
- Sentlow, Sir W., 835
- separation/balance of powers, 209–10, 605, 772–92, 846–48, 1273–76, 1694*, 1714–15, 1994–2000
- Septimius Severus (Roman emperor), 79
- Sergeant, Andrew, 182
- settlement of colonies, repayment for: contract between settlers and Crown, 147, 189–91; Maryland colonists' right to benefit of English law, 649–50; New England charter rights as, 509–10, 516, 519
- Seven Years' War (French & Indian War), xviii, xix, xx, 1371, 1399, 1613, 1638, 1685, 1723, 1724, 1729, 2053, 2059, 2231
- sexual impropriety: bastard child, fine for having, in North Carolina, 903, 922; Frye, George, accused of lewd life and conversation, 1342, 1347, 1353; Hamilton triumvirate in Jamaica, religious profanity and lewd behavior of, 406, 417–23, 426, 435; incest, brother-sister, on Montserrat, 1330–31; indecent exposure, on Montserrat, 1323, 1332–33, 1348; Lowther, Robert, sisters-in-law of, 468; Manning, Mr. and Mrs. (Jamaica), divorce proceedings due to adultery, 1350; of Parke, Daniel, in Antigua, 331–32
- Seymour, Sir Edward, 2132, 2136–46
- Shaftesbury, Anthony Ashley-Cooper, 1st Earl of, 538, 635, 1042–43, 1784, 1979, 2094; *Characteristics*, 1942*
- Shakespeare, William, 1559
- Sharp, Mr. (Barbados), 472
- Sharpe, Horatio (governor of Maryland), 1374–75, 1392
- Sharpe, William (Barbados), 481, 482
- Shaw, James, 1329, 1330
- Shelley (illegal trader), 251
- Shepard, Jeremiah, 166–68
- Sherburne, Henry, 1382
- Sheridan, Mr., 1977
- Sherlock, James, 152, 153, 166
- Shield, Robert, 1743
- Shimei (biblical figure), 86
- ship-money, 561, 789, 1045, 1204, 1214, 1236, 1666, 1671, 2249, 2252
- Shirley, Sir Thomas, 1971, 1972
- Shirley, William (governor of Massachusetts), 875, 876, 1374, 1405, 1431
- A Short Account of the Interest and Conduct of the Jamaica Planters* (London, 1754), 1359–69
- A Short Reply to Mr. Stephen Hopkins's Vindication* (Samuel Ward, writing as Philoletes; Newport, 1755), 1391–98. See also union of continental colonies
- Shrimpton, Samuel, 164, 166, 169, 531
- Shurt, Mr., 180
- Shute, Samuel (governor of Massachusetts), 485, 486, 551, 552, 554, 557
- Sibylline Oracles, 1277
- Sierra Leone, 2160, 2164
- silk-making in Carolina, 131
- silver: credit upon a silver fund, as means of solving currency problem, 964–65; depreciation of, 937, 950–52; as medium of exchange, 936–37, 970, 978; paper money payable in, 937, 968–69; trading for, 705–10, 935
- Silvester, Nathaniel, 348
- Simcock, John, 44
- Simpson, William, 1612

- Simsore, William, 45
- A Sincere Lover of Virginia (Sir William Gooch), *A Dialogue* (Williamsburg, 1732), 725–41
- Sinclair, Samuel, 894, 911, 913, 931
- A Single and Distinct View of the Act, Vulgarly Entitled, The Two-Penny Act* (John Camm; Annapolis, 1763), 1638, 1737–75, 1787†, 1807*, 1810, 1811, 1820, 1821. *See also* Two-penny Acts
- Singleton, Richard, 1745
- Sinking Fund, 1149
- Sirach, son of (ben Sira), 1482
- Six/Five Nations (Iroquois Confederacy), 195, 196, 524, 1373, 1375, 1378, 1381, 1436
- Skeen, Mr., 471
- Skerrat, Walter, 1352
- Skipwith and Green (judges under Edward III), 1669
- slaves and slavery: African character, views on, 1934, 1936, 1939–41, 1946–47, 1950, 1953, 2176–79, 2185–88; anti-slavery/abolition movement, 297, 1134–45, 1161–62, 1933–34, 1947–53, 2149; baptism of slaves, consequences of, 309, 2180–81, 2197, 2217; Britain, concerns about increasing number of Negroes in, 2176–80, 2183–84, 2191, 2229–30; Britain, status of slaves coming into, 2170–76, 2181–85, 2209–14, 2218; British complicity in, 2150, 2172–73, 2193–94, 2200, 2214, 2227–28; British laborers and, 2179–80, 2185–90; characterizations of American slaveholders, resentment of, 1933, 1934, 1936, 1938, 2215–17; climate and labor requirements in colonies leading to, 2159–63; commerce, compatibility with English spirit of, 2149–50, 2172–76, 2190; custom of servitude, 302–3, 305–8; debts, slaves as chattels for payment of, 1069–70, 1082, 2168; defense of character of American slaveholders, 1933, 1934, 1944, 1945, 1946–47; dialogue between planter and militia officer regarding, 1137–38, 1148–64; Estwick, Samuel, *Considerations on the Negroe Cause* (London, 1773), 2191, 2193–2230; excessive punishment of slaves, 301–2; further importation of slaves to Jamaica, proposal to forbid, 1131, 1146–47; *Habeas Corpus*, slaves' entitlement to, 2153, 2158–59, 2176, 2182, 2197, 2199, 2211, 2228–29; historical development and justifications of, 1948–49, 2149, 2159–70, 2205[c]; human beings, status of Negroes as, 2218, 2220–28; ill usage of valuable labor, 303–4, 308–11; incongruity of English passion for liberty with, 297, 1131–32, 1147–48, 2149, 2150, 2174, 2193; injustice and inhumanity of slavery, letter on, 299–304; Irish and Scottish common people, slave life compared to, 1934, 1944–45; judicial tenure at ruler's pleasure viewed as form of, 1676, 1677; Lee, Arthur (writing as "An American"), *An Essay in Vindication of the Continental Colonies of America* (London, 1764), 1933–53; *A Letter from a Merchant at Jamaica to a Member of Parliament in London* (London, 1709), 297–311; Lowther's restrictions on pursuit of runaway or stolen slaves, 476; militia and, 1136, 1137–38; miscegenation, fears of, 2177, 2180; as moral issue, 1131–32, 1135, 1138–43; Native Americans enslaved by Spanish, 1147, 1162; naturalization of aliens, law regarding, 1727, 2170–72; new species of slavery distinct from

- historical precedents, Negro chattel slavery viewed as, 2203; in northern versus southern continental colonies, 2161–62; physical abuse of slaves, 299, 300–301, 1152–53; A Planter (Edward Long), *Candid Reflections upon the Judgement on What is Commonly Called the Negroe-Cause* (London, 1772), 2149–91, 2193, 2194; poll tax on slaves, 1109, 1144, 2262–63; privilege controversy in Jamaica and, 1956, 2000–2001; as property, 1069–70, 1082, 2150, 2154, 2167–70, 2172–74, 2205–9, 2214–15, 2217–22; racism, condemnation of slavery combined with, 1933–34; regulatory proposals, 1143–64; security and rebellion fears arising from proportion of freeman to slaves, 1131, 1134, 1135–36, 1141–42, 1144, 1145, 1150–53, 1156–60, 1532, 1950–51; separation of couples and families, 299–300; Smith, Adam, *Theory of Moral Sentiments*, on, 1933, 1935, 1936–37, 1938, 1944, 1946, 1953; *Somerset* case, 2149, 2152–53, 2191, 2196–2230; South Carolina proprietors compared to slavers, 630, 642–43; “A Speech made by a Black of Gardaloupe, at the Funeral of a Fellow-Negro,” 304–11; subjects of British Crown, slaves as, 2159, 2170–76; sugar duties in Barbados and, 120, 121–23, 128, 132, 133; trades and house work, proposal to prohibit slaves in, 1134, 1153–56, 1160–61; Trelawney, Edward, *An Essay Concerning Slavery* (London, 1746), 1131–64; trover, actions of, for recovery of slaves, 2197, 2199–2200, 2225[*q*]; unpeopled Spanish Town as potential haunt for runaway slaves, 1532; villeinage, as extension of English institution of, 2149–50, 2153–59, 2175, 2176, 2180, 2181, 2193, 2197, 2199–2200, 2201[*a*], 2203, 2215, 2226, 2227; war, right of, 1139–43. *See also specific colonies and countries*
- Slingsby, Mr., 471
- Sloan, William (alias Semple), 1339
- smallpox, Nova Scotia act to prevent, 2241
- Smith (governor of Carolina), 637
- Smith, Adam, *Theory of Moral Sentiments*, 1933, 1935, 1936–37, 1938, 1944, 1946, 1953
- Smith, Agnes, 1741
- Smith, Henry, 322
- Smith, John, 165
- Smith, Lawrence, 1741
- Smith, Major, 169
- Smith, Richard, 766
- Smith, Robert, 1741
- Smith, Thomas (governor of Carolina), 637
- Smith, William (New York lawyer): at Albany Plan meeting (1754), 1382; arguments mentioned by Joseph Murray, 812, 817, 850, 852; as attorney, 837, 838, 850, 862; *Mr. Smith's Opinion Humbly Offered to the General Assembly of the Colony of New-York* (1734), xv, 743–807 (*See also equity courts, power to establish*)
- Smith, William (chief justice of North Carolina), articles of complaint against: dissolution of previous assembly, 890–92; House left open for debate, 912; impeachment, sometimes regarded as articles of, 887–88; lists of persons and documents required as evidence, 895–96; Moore, Maurice, *A True and Faithful Narrative of the Proceedings of the House of Burgesses of North Carolina* (Williamsburg, 1740), 887–932; motion to debate, 910–12;

- Smith, William (*continued*)
 preparation of articles, time allowed for, 892–95; presentation and reading of 17 articles, 898–910; presentation of evidence and debate, 912–30; rejection of proofs, 930–31; temperament and personality of Smith, accusations against, 98–99, 929–30; warrants issued, 896–98
- Smith, William (Pennsylvania minister), *A Brief State of the Province of Pennsylvania* (London, 1755), 1399–1419. *See also* Pennsylvania, proprietary government in
- Smithers, John, 895, 897
- Smithwick, Edmund, 894, 911, 913, 931
- Smollet, Tobias: *History of England*, 1949*; *Voltaire*, 1937†, 1938*, 1949*
 smuggling. *See* piracy, privateering, and illegal trade
- Snead, Robert, 427
- Socrates, 422, 632, 1566*, 1567–68†, 1682n1
- Sodom and Gomorrah, 684
- soldiers, quartering of, and Boston uprising (April 1689), 49, 59
- Solomon (biblical ruler), 428, 440, 459, 462, 681, 713, 1482, 1499, 1782, 1894, 2152
- Solon, 632, 1561
- Some Instances of the Oppression and Male Administration of Col. Parke* (1713), 327–44. *See also* Parke, Daniel, assassination of
- Somerset (slave), judicial decision to free, 2149, 2152–53, 2191, 2196–2230. *See also* slaves and slavery
- Songhurst, Johnathan, 44
- Sophocles, 72
- Sorbonne (Paris), 418
- Soto, Ferdinando, 633–34
- South Carolina: Albany meeting (1754) and, 1383; banks in, 716; climate, geography, and history of, 633–39; currency in, 946–47, 953–54, 961, 972, 974; general assembly for all colonies, Harrison's proposal regarding, 271; judicial tenure act, 1659; number of documents associated with, xix; separation from North Carolina, 1946; slaves and slavery in, 1945–46. *See also* Carolina; upper house in South Carolina government and constitution
- South Carolina, proprietary government in: aristocracy, attempt to establish, 502, 538, 635–37, 1589, 1596; charter of, 1592–93; Crown, surrender of title by proprietors to, 1589–90, 1593; defense of inhabitants, charged with neglecting, 505–7, 642; ecclesiastical jurisdiction, issues related to, 501–3; Fundamental Constitutions, 635, 637; history, climate, and geography of Carolina, 634–39; J. N., *The Liberty and Property of British Subjects Asserted* (London, 1726), 629–49; legislative powers under proprietors, 1589–90; letter from assemblyman on, 639–48; liberty, as English right, assertion of, 499–500, 503–4, 632–33, 640; paper currency and, 953–54; rule of law, charged with neglecting, 503–4; slavers, proprietors compared to, 630, 642–43; *A True State of the Case between the Inhabitants of South Carolina, and the Lords Proprietors of That Province* (London, 1720), 499–507; Yamasee War (1715), 499, 505–6, 521, 528, 644
- South Carolina Gazette*, Letters of Thomas Wright and William Wragg (May 13 and June 5, 1756), 1589–1612. *See also* upper house in South Carolina government and constitution
- South Sea Company, 630, 1146, 2165, 2228[s]

- South Seas, colonies with boundaries extending to, 1382
- Southack, Captain, 348
- Southwell, Edward, 480, 484
- Southwell [Sothel], Seth (governor of Carolina), 637
- Southworth, John, 45
- Spain: Byng, Robert (governor of Barbados), and declaration of war with, 992–94; Carolina and, 633–34, 647–48; colonies of, 57, 142, 163, 187–88, 234, 545, 2000; credit in, 719; discovery of New World, 1264; English profits through trade with, 517; in Florida, 505, 507; Jamaica and, 1984–85, 2006–7, 2008; Native Americans misused by, 521, 1147, 1162; silver, value of, 937; slavery, practice of, 1147, 1161, 1936, 1937†, 2163, 2165, 2203[b], 2228[s]; war with, 507, 992–94, 1019, 1021, 1108, 1326, 1366, 1405, 1430, 1433–34, 1466, 1475–1576, 1667, 1685
- Spanish Town (St. Jago de la Vega), Jamaica: 4½ percent duty, not subject to, 1097; escheat brokerage in, 450; militia of, 1520–22; St. Kitt's compared, 2100
- Spanish Town (St. Jago de la Vega), removal of capital of Jamaica to Kingston from: advantages of St. Jago as capital, 1485, 1489; common or customary law, Spanish Town as seat of government by, 1494–99, 1529–30; complainants' petition (for removal), examination of, 1499–1528; courts held at St. Jago, 1486–87, 1512–18, 1525–28; declining state of trade, refutation of petition's remarks on, 1502–5; dedication of Frearon pamphlet to William and Richard Beckford, 1480–82; defensibility of Kingston versus St. Jago, 1505–11, 1518–22; editor's preface to Frearon pamphlet, 1483–84; equal rights of Spanish Town residents as Kingston denizens, 1530–31; Frearon, Thomas (writing as Veridicus), *The Merchants, Factors, and Agents Residing at Kingston, Complainants, Against the Inhabitants of Spanish-Town* (London, 1755), 1477–1539; history of settlement of government of Jamaica at St. Jago, 1484–90; hurricane dangers at Kingston, 1532–33; innovation, concern about, 1535–38; neighboring settlements, encouragement of, 1531, 1532; obligations of masters of vessels to wait upon governor, 1511–12; observations regarding, 1528–38; out-ports, concern about opening of, 1534, 1536, 1539; population of St. Jago versus Kingston, 1521*; prayer of petition, examined, 1526–28; records kept at St. Jago, 1485–87, 1522–26, 1527–28; respondents' case (against removal), presentation of, 1484–1501; restraint of governor to reside at St. Jago, 1526; Revenue Act (1728) as Magna C[h]arta of Jamaica entitling residents to benefits of English law, 1478, 1490–95, 1528; sickly nature of Kingston, 1488–89, 1520–30; supporting documents, 1538–39; title and introduction of petition for removal, 1501–2; transients, Kingstonites described as, 1478, 1494, 1500, 1507, 1527, 1532; unpeopled Spanish Town, dangers of, 1532; value of property in Spanish Town versus Kingston, 1531
- Sparta and Spartans (Lacedaemonians), 668, 1033–34, 1041, 1047–48, 1151, 1275, 1951

- speaker chosen by assembly, power of governor to reject, 485–86, 488–90, 492–98, 2123–24, 2145–47
- speaker of House of Commons, right of British Parliament to choose, 2123–24, 2126–47; approbation of Crown regarding, 2128, 2129, 2130, 2132–46; business of nation, House engaged in, 2130; Crown, speaker not representing, 2129; general agreement regarding, 2126–30; necessity of House having speaker, 2128; qualifications of speaker, 2128–29; right and authority of House, 2131–32; Seymour, Sir Edward, rejected as speaker by Charles II, 2132, 2136–46
- specie. *See* currency
- speech, freedom of, Nova Scotia's lack of, 1579, 1583
- A Speech, Delivered in the House of Assembly of the Province of Pennsylvania* (John Dickinson; Philadelphia, 1764), xv, 1835–67, 1869, 1870, 1871, 1872, 1891, 1900–1904. *See also* Pennsylvania, debate over petition for royal government in
- The Speech of Joseph Galloway, delivered in the House of Assembly, of the Province of Pennsylvania* (Philadelphia, 1764), 1869–1932. *See also* Pennsylvania, debate over petition for royal government in
- The Speech of Samuel Chew, Esq.* (Philadelphia, 1741), 1005–20. *See also* self-defense
- The Speech of Sir John Randolph, upon His Being Elected Speaker of the House of Burgesses* (Williamsburg, 1734), 869–73
- Spelman, Sir Henry, 755–56, 782–83, 785–86
- Spence, James, and Roderick MacKenzie, *The Groans of Jamaica* (London, 1714), 395–462. *See also* Hamilton triumvirate in Jamaica
- The Spirit of the Laws* (Montesquieu), 1574, 1940, 1947*, 1948†, 1949, 1950‡, 1951, 2226
- St. Augustine, Florida, 505, 638, 946, 1123, 1161, 1686
- St. Christopher's (St. Kitt's): acts of Parliament affecting, 1074, 1096; charter, lack of, 2093*; Frye, George, complaints against, 1333–34, 1336, 1342, 1346, 1352, 1353, 1357; Grenada compared, 2069, 2083; historical account of settlement and establishment of, 2100–2103; legal business, calendar for, 2115†; number of documents associated with, xix. *See also* 4½ percent duty
- St. Christopher's (St. Kitt's) assembly's power of imprisonment, denied: assemblymen imprisoned and expelled for exiting assembly in protest, 2085, 2112*; British Parliament and St. Kitt's assembly compared, 2086, 2100–2104, 2118–19; constitution, English, 2095, 2100; Gardiner, John, *The Argument or Speech of John Gardiner, Esquire* (St. Christopher, 1770), 2085–2121; *Habeas Corpus* and, 2087, 2090–94, 2097, 2113, 2116; illegality of warrant issued, 2089–90, 2095, 2113–18, 2119; imprisonment of Gardiner for defending assemblymen, 2085, 2088–91, 2112*; liberty, as English right, 2095, 2098, 2108, 2112–13, 2119; Magna C[h]arta and, 2087, 2097†, 2115; no power of assembly to commit or issue warrant, 2094, 2095–2108, 2118; prerogative, assembly's powers only by interposition of, 2095, 2108–13, 2119; warrant ordering arrest of Gardiner, 2089–90

- St. Clair, Lord, 433
- St. Clair, David, 433, 436–37
- St. Clair, Patrick, 433–34
- St. Clair, Sir Robert, 433
- St. Domingo, 418, 2163
- St. Jago de la Vega. *See specific entries at Spanish Town*
- St. Jago *Intelligencer*, 1967
- St. John, Mr., 2089, 2117
- St. Kitt's. *See specific entries at St. Christopher's*
- St. Lewis [*Louis*] (vessel), 477, 480–84
- St. Lo, Captain, 432
- St. Lucia, 476
- St. Omers, University of, 418
- St. Vincent, 476, 2053, 2059†, 2083, 2213, 2249, 2255, 2264, 2265
- Stafford, John, 427
- Stamp Act crisis (1765–66), 1679, 1933, 2123, 2124
- Stanhope, Jonathan, 175, 176, 177
- Stanley, Mr., 2093, 2116
- Stanyan's Grecian history, 1951*
- Star Chamber, Court of, 663–64, 783
- Starkey, John, 894, 911, 913, 922, 931
- state of nature: in England after
 abdication of James II, 1029, 1042;
 equality of all men in, 608, 674, 1138;
 life and liberty in, 1947; Mohegan
 Indians' dispute with Connecticut
 over ownership of hunting grounds,
 607–10, 613, 617–20, 624–25;
 Negroes believed to live in, 2187; self-
 defense and, 1010
- statute law: Dulany's summary of,
 653–56, 660–66, 675; on equity
 courts, 751–61, 811–13. *See also* acts of
 Parliament affecting colonies; *specific
 statutes*
- Steele, Richard, 355
- Stephen (king of England), 21, 756
- Stephens, Thomas, *The Hard Case
 of the Distressed People of Georgia*
 (London, 1742), 1117–29. *See also*
 Georgia
- Stephens, William, 1117
- Steuart, Mr., 2199, 2201[*a*], 2205, 2211,
 2214, 2228
- Stevenson, William, 1743
- Stewart [Stuart], John, 395, 404, 415,
 418, 424–26, 433–34, 443–46, 461.
See also Hamilton triumvirate in
 Jamaica
- Stith, Griffin, 1742
- Stoddard, Richard, 427
- Stoughton, Judge, 159, 160, 165, 176
- Stroud, Joseph, Jr., 1746
- Stroud, William, 1746
- Stuart, John. *See* Stewart
- Stuyvesant, Ger., 838
- subjects of British Crown, colonists
 as, 147, 188–91, 653, 656–69,
 1490, 1730
- Suchcliff, Henry, 1969
- sugar and sugar trade: American
 plantations, duties on sugar shipped
 to, 120; casualties associated with
 sugar production, 133–34; clayed
 sugar, 127, 1105; debts from colonies,
 recovery of, 1056, 1070; Denmark
 and, 1074; Dutch sugar plantations,
 518; duties on, 115, 118–21, 123–29,
 138; estates and lands, effects of
 sugar duties on, 125–26, 128–29, 130;
 exhaustion of soil and, 1363; fine
 or improved sugar, 127, 1105–6; 4½
 percent duty and, 1105–7, 2256–57,
 2260; French, trading with, 1072,
 1074; French sugar plantations,
 518, 1116, 1363, 1366; hoarding of
 undeveloped land, in Jamaica,
 1359–69; Holland, trading with,
 1072, 1074; judicial administration
 affecting, 222–23; molasses, 348–49,
 942, 1071–73, 1124, 1503; Muscovado
 sugar, 118, 119, 120, 124, 125, 126, 1106;

- sugar and sugar trade (*continued*)
 New England's role in Island
 production of, 517–18; Northern
 colonies and, 1071–75; production
 and transportation expenses, 119–20,
 131–34, 222–23; shipping restrictions
 on sugar, 121, 127; statute for securing
 and encouraging, 1049, 1071–75;
 white sugar, 118, 120, 123, 125, 126.
See also rum
- Summers, Sir George, 1941, 1942
- Sumner, James, 894, 910, 913, 930
- Sunderland, Lord, 478
- superiors, offending, 1698–99
- Supreme Court, and power to establish
 equity court, 780, 787, 794–806, 809,
 816, 845, 851
- Suriname, 142, 290
- suspending clauses: Massachusetts House
 of Representatives, “Instructions to
 Jasper Mauduit” (June 15, 1762), xx,
 1723–36; Two-penny Acts claimed to
 alter existing law confirmed by Crown,
 1637, 1652–56, 1737–38, 1789–91, 1797
- Sutton, Joseph, 894, 911, 913, 931
- Sutton, Mr., 474
- Swann, John, 894, 924, 931
- Swann, Samuel, 892, 894, 896, 897, 910,
 913, 914, 930
- swearing. *See* oaths and oath-taking
- Sweden: Africa, trade with, 122; banks in,
 716; credit in, 719; paper money in, 938,
 967; Pennsylvania, Swedish settlement
 in, 287, 290; silver, value of, 937
- Sweeple, Elizabeth, 321, 339, 341
- sweet-scented tobacco variety, 725
- Swift, Jonathan, 355, 1036*, 1739;
Gulliver's Travels, 1810
- Swimmer, Anthony, 443
- Swintee, Mary, 430
- Swiss/Switzers/Switzerland, 640, 646,
 648
- Swymmer, Mr., 447
- Sydney, Algernon, 2233
- Sylla, 75
- Synesius, 83
- Tabb, Edmund, 1742
- Taber, Mr., 420–21
- Tacitus, 72, 75, 85, 668, 1198, 1592, 1849;
Annales, 78, 632; *History*, 78
- Talbot, C., 2181, 2196, 2197, 2198, 2199,
 2204, 2217, 2219, 2225[*q*]
- Tallegeo non Concendendo statute,
 32–34
- Tanner, Captain, 64
- Tantalus, 1315
- Tarquins (kings of Rome), 1041
- Tart, Joseph, 894, 910, 913, 930
- Tashe, Bryan, 1971
- Tasker, Benjamin, Jr., 1383
- taxation: Andros, accusations of
 illegal taxation against, 156, 186–87,
 189–90; bills of cost taxed to be
 paid in bills of the new tenor, in
 Massachusetts, 884; excise collectors,
 protests on jailing of, 196, 198–201;
 governors, moneys for, 1287; Indian
 affairs, liquor tax proposed to raise
 funds for, 1290; land tax proposed
 to support government and
 officers of Crown, 1288–90; liquor
 consumption in Massachusetts,
 excise tax on, 1293–99; Lowther's
 appropriation of revenues from,
 474–75; in Nova Scotia, 1579, 1583;
 Pennsylvania, debate over petition
 for royal government in, 1835, 1838,
 1848, 1859, 1872, 1877–86, 1914–16;
 prizes in Jamaica, duties payable for,
 454–59; rum, requirement to land
 and warehouse before payment of
 excise on, 1049, 1086–96; slaves, poll
 tax on, 1109, 1144, 2262–63; sugar
 duties, 115, 118–21, 123–28; tobacco
 duties, 252–54, 268; without consent,

- 2249–50, 2253, 2254, 2260–68.
 See also excise taxes; 4½ percent duty;
 pistole fee controversy; tobacco tax,
 Maryland assembly's authority to
 delegate power to levy; Two-penny
 Acts
- Taylor, Mr. (Jamaica), 2017
- Taylor, Captain (Massachusetts), 1691
- Taylor, Christopher, 44
- Ten Commandments, 363
- Tenham, John, 1741
- Tenna, Isaac (alias La pierre), 1179
- Terence, 78, 575, 1138
- Tertullian, 88; *Apology*, 79, 192
- Test Act, 2064–67, 2083
- Thatch (pirate), 506
- Thebean Legion, 89–91
- Theopompus (king of Sparta), 1047–48
- Theory of Moral Sentiments* (Adam
 Smith), 1933, 1935, 1936–37, 1938,
 1944, 1946, 1953
- Thersites, 1797
- Thibou's Paper, 2116†
- Thomas, George (governor of Leeward
 Islands, formerly governor of
 Pennsylvania), 1323, 1337, 1340, 1348,
 1351, 1352, 1353, 1354, 1357, 1405, 1430,
 1446–47, 1448, 1450, 1455, 1457, 1458,
 1466, 1873
- Thomas, Hillsman, 1746
- Thomas, Solomon (Native American),
 172, 174
- Thomas and Mary of Salem* (vessel),
 185, 186
- Thompson, Richard, 459
- Thompson, Sir William, 533
- Thorp, Thomas, 1975–77
- Thucydides, 76, 1207
- Thurloe, Secretary, 1487
- Tillotson, Dr., 2132
- tithes and tithing, 1027–28, 1036,
 1741–48
- Titus (New Testament figure), 106
- Titus, Colonel, 1044
- tobacco and tobacco trade: on
 Barbados, 2160; bulk tobacco,
 act against importation of, 254;
 duties on, 252–54, 268; inspection
 requirements in Virginia, 725–41;
 paper money, concerns about,
 1613, 1615–19; running tobacco in
 England, 254; short crops of 1755
 and 1758 in Virginia, 1637, 1638,
 1650–51, 1654, 1750–52, 1785, 1811–13,
 1816–17, 1828–30; sweet-scented and
 oronoco tobacco varieties, 725; tax
 on exported tobacco for support
 of governor in Virginia, 725–41;
 Two-penny Acts allowing payment
 of Virginia clergy's salary in money
 instead of tobacco (See Two-penny
 Acts)
- tobacco tax, Maryland assembly's
 authority to delegate power to
 levy, 1185–1260; act of assembly
 empowering county courts to levy
 tax, 1216–17, 1241–42; "Americano-
 Britannus," against, 1185–86, 1202–7,
 1247–60; "Anonymous," on clause
 empowering commissioners of
 county courts to levy tax, 1241–44;
 constitutionality of, 1185, 1186,
 1188–90, 1193, 1195, 1196, 1198, 1206,
 1208–10, 1213, 1215, 1217, 1218, 1220–25,
 1227–31, 1234–39, 1251, 1253–57,
 1259–60; English law, colonists
 subject to, 1218; "A Freeholder,"
 against, 1185, 1187–97, 1207–15;
 liberty, as English right, and, 1187,
 1188, 1192, 1195–96, 1198–1202, 1213,
 1218–20, 1222, 1226, 1228, 1235,
 1249, 1255–58, 1260; *Maryland
 Gazette* (1748) articles on, xv,
 1185–1260; "A Native of Maryland,"
 supporting, 1186, 1197–1202, 1215–17,
 1224–38, 1244–47; "Philanthropos,"

- tobacco tax (*continued*)
 supporting, 1186, 1217–24, 1238–41;
 popular sovereignty and, 1185–86,
 1195, 1238, 1239
- Tobago, 142, 476, 2053, 2059†, 2249,
 2264
- Tomlinson, John, 322
- Tom Thumb, 971
- Tories, 355, 1042*, 1260
- Tortola, 1073, 2100, 2257, 2260
- A Total Eclipse of Liberty* (Daniel Fowle;
 Boston, 1755), xv, 1555–78
- Trade Acts. *See* Acts of Trade and
 Navigation
- trade and commerce. *See* economic,
 financial, and commercial issues
- Trade and Commerce Inculcated*
 (Amicus Republicae; Boston, 1731),
 677–724. *See also* regulation of
 trade and commerce for flourishing
 commonwealth
- Trajan (Roman emperor), 82
- transportation of convicts to America,
 268–70, 1943–44
- Trant, Philip, 342
- Treat, Robert, 191
- treaties. *See specific treaties, e.g.* Paris,
 Treaty of
- Trelawney, Edward (governor of
 Jamaica): difficulties reaching
 Jamaica, 1367; *An Essay Concerning
 Slavery* (London, 1746), 1131–64
 (*See also* slaves and slavery); militia
 of Spanish Town and, 1520; slave
 rebellions in Jamaica and, 1535*
- Trenchard, John, xii, 1039; *Cato's Letter*
 (with Thomas Gordon), 875, 878
- Trent, Robert, 97, 109
- Tresilian, Chief Justice, 1669
- Trotter, James, 901–2, 920, 921, 923, 929
- Trotter, Thomas, 1745
- trover, actions of, 2097, 2197, 2199–2200,
 2225[*q*], 2255
- A True and Faithful Narrative of the
 Proceedings of the House of Burgesses
 of North Carolina* (Maurice Moore;
 Williamsburg, 1740), 887–932.
See also Smith, William (chief justice
 of North Carolina), articles of
 complaint against
- A True Representation of the Plan
 Formed at Albany, for Uniting All the
 British Northern Colonies* (Stephen
 Hopkins; Newport, 1755), 1371–89.
See also union of continental colonies
- A True State of the Case between the
 Inhabitants of South Carolina, and the
 Lords Proprietors of That Province*
 (London, 1720), 499–507
- Truth Brought to Life* (London, 1713),
 313–26, 327, 337–43. *See also* Parke,
 Daniel, assassination of
- Tucker, Colonel, 1759
- Tucker, John, 919
- Tunnelif, William, 895
- Tuomar, Mary, 1745
- Turel, Daniel, 169–70
- Turks and Turkey, 50, 1324, 1337, 1347,
 1456, 1708, 1778, 1803, 1814, 2190
- Turner, Sarah, 444
- Tusculan Disputations* (Cicero), 1935
- Twelve Tables, Laws of, 1234
- Two-penny Acts: altering existing
 law confirmed by Crown without
 suspending clause, 1637, 1652–56,
 1737–38, 1789–91, 1797, 1814; Bishop
 of London's letter to Board of
 Trade, against, 1637–38, 1640–42,
 1787; Bland, Richard, *A Letter to the
 Clergy of Virginia* (Williamsburg,
 1760), defending, 1637–57, 1784, 1786,
 1792, 1809, 1811, 1821, 1829; Bland,
 Richard, Letter to John Camm, in
Virginia Gazette (1763), 1808–13;
 Bland, Richard (writing as Common
 Sense), *The Colonel Dismounted: Or*

- the Rector Vindicated* (Williamsburg, 1764), 1777–1833; Camm, John, disappointments and dispreferments suffered by, 1796–97; Camm, John, in Bland's critique of Camm's pamphlet, 1777, 1778, 1780, 1808, 1813; Camm, John, *Observations on Colonel Bland's Letter to the Reverend John Camm* (1763), 1780, 1782, 1784, 1787, 1814–30; Camm, John, *A Single and Distinct View of the Act, Vulgarly Entitled, The Two-Penny Act* (Annapolis, 1763), attacking, 1638, 1737–75, 1787†, 1807*, 1810, 1811, 1820, 1821; Carter, Landon, Bland on, 1777, 1808, 1810; Carter, Landon, Camm on, 1739, 1740, 1748–50, 1751, 1753, 1754, 1770–72; Carter, Landon, pamphlet of, 1638, 1738; charity in parish of York-Hampton and, 1740–50; constitutional issues related to, 1737–38, 1764–66, 1777, 1778, 1785, 1789, 1797–1800, 1802–5, 1807; disgrace to ministry, clergy recounted as, 1646, 1649; Dissenters in Virginia, disagreements about, 1645, 1646, 1809, 1817–18; English law and English liberties, colonists entitled to, 1798–99; as evidence of desire to lessen influence of Crown and maintenance of clergy, 1644–45, 1785–86, 1790–91; governor receiving no funds at passage of, 1766–67; internal versus external government of colonies and, 1777–78, 1799–1807; memorial presented to Bishop of London by John Camm, against, 1637, 1638, 1643, 1763–66, 1787, 1793–95, 1830–33; mock dialogue between Bland and Carter, 1781–1807; as necessity in dealing with pressing situation, 1638, 1655, 1756–58, 1789–91, 1805–6; nonresidence, Camm accused of violating statutes against, 1810, 1818–21; patronage of ecclesiastical appointments in local vestries instead of governor, 1638, 1647–50, 1762; petition of 1755 asking for more liberal provisions for clergy, 1645–46, 1759–61; Romish inquisitors, detractors compared to, 1657, 1754, 1769, 1809, 1815, 1817, 1818, 1827; Royalle [Royle], Joseph, refusal to print Camm's tract, 1738, 1770–73; salaries of ministers, effect of Act on, 1740; salaries of ministers, inadequacy of, 1752–54; *salus populi est suprema lex*, 1655, 1739, 1755–56, 1816; short tobacco crops of 1755 and 1758 leading to, 1637, 1638, 1650–51, 1654, 1750–52, 1785, 1811–13, 1816–17, 1828–30; text of, 1773–75
- Two Treatises of Government* (Locke), 196, 211n1, 1025*, 1028*, 1224–25, 1693–95*
- Tyler, Royal[l], 1555, 1563n, 1564, 1565, 1686, 1690, 1703, 1723
- Tyler, Wat, 1198–99, 1206
- Tyrus, city of, 681–82
- Ulysses, 1538, 1566*
- union of continental colonies:
 boundaries of colonies, Albany Plan proposals for, 1382; documents relating to purpose of Albany meeting, 1373–77; draught of representation for Albany Plan, 1377–82; French, as defense against, 1371–82, 1393; Harrison, Benjamin, proposing general assembly of all colonies, 271–72; Hopkins, Stephen, *A True Representation of the Plan Formed at Albany, for Uniting All the British Northern Colonies* (Newport, 1755), defending, 1371–89; Kennedy, Archibald, calling for, 1261; letter opposing plan, prevention of sending

- union of continental colonies (*continued*)
 to London of, 1391, 1396–98; Magna C[h]arta and constitution, viewed as contrary to, 1372, 1388, 1391, 1393; Native Americans as focus of Albany Plan, 1373–82, 1384; specific plan of union drawn up at Albany, 1382–86; vindication of Albany meeting's focus on, 1386–89; Ward, Samuel (writing as Philoletes), *A Short Reply to Mr. Stephen Hopkins's Vindication* (Newport, 1755), attacking, 1391–98
- United Colonies of New England, 522
- United Provinces. *See* Holland
- upper house in Maryland government and constitution: ancient concept of aristocracy distinguished from British hereditary aristocracy, 1031–35; believed to parallel English constitutional structure, 1022, 1026–32; English House of Lords and, 1022, 1026–32, 1034–36; governor, powers of, in Maryland, 1037–39; governor, upper house inevitably aligned with, 1021–22, 1023, 1037; judicial system and, 1040–47; King's Council in the colonies compared, 1023–24; Lords Spiritual in upper houses, 1027–28, 1036; as Machiavellian scheme, 1040; Pennsylvania Council compared, 1022, 1024–26; popular sovereignty, violating doctrine of, 1022, 1037, 1041–42; "Remarks on the Maryland Government and Constitution" (*American Magazine*; 1741), 1021–48; threat of establishment of aristocracy and, 1022, 1036–37
- upper house in South Carolina government and constitution: *South Carolina Gazette*, Letters of Thomas Wright and William Wragg to (May 13 and June 5, 1756), 1589–1612; Wragg's assertion of colonial legislative authority deriving entirely *ex Grátis Regia* and legitimacy of Council as upper house, 1590–91, 1597–1612; Wright's rejection of Council as proper legislative power, 1589–90, 1592–97
- urine, old maiden lady in Montserrat accused of consuming, 1338, 1352
- The Usefulness of Reveald Religion, to Preserve and Improve that which is Natural* (John Bulkley; 1730), 595
- Usher, John, 158, 159, 169
- usury, paper money viewed as means of preventing, 956
- Uti possidetis*, 1497–99
- Utopian system in Georgia, 2162
- Utrecht, Treaty of (1713), 506, 1291, 1378, 1380, 1685, 2063, 2102, 2165
- Utrecht, University of, 509, 933
- Valens (Roman emperor), 89
- Valentinus (Roman emperor), 79
- Valerius, 71
- Van Dam, Rip, 743, 837, 850, 853, 860
- Van Horne, Abraham, 853, 860
- Vaquez de Ayllon, 633
- Vaughan, Lord (governor of Jamaica), 2008, 2010
- Vaughan, Sir John, and *Vaughan's Reports*, 67, 660n1, 814
- Venables, General, 1984
- Venice: banks in, 716, 967, 971; excise taxes in, 1296; paper money of, 711–12
- Venus (deity), 76
- Verhoof, Cornelius, 45
- Veridicus (Thomas Frearon), *The Merchants, Factors, and Agents Residing at Kingston, Complainants, Against the Inhabitants of Spanish-Town* (London, 1755), 1477–1539. *See also* Spanish Town (St. Jago de la Vega), removal of capital of Jamaica to Kingston from

- Verulam, Lord, 1529–30
- villainage, slavery as extension of
 English institution of: Estwick, Samuel, on, 2193, 2197, 2199–2200, 2201[a], 2203, 2215, 2226, 2227; Long, Edward, on, 2149–50, 2153–59, 2175, 2176, 2180, 2181
- A *Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts-Bay* (James Otis; Boston, 1762), 1679–1721. *See also* Otis, James, A *Vindication* . . .
- A *Vindication of the Governour and Government of His Majesty's Colony of Rhode-Island* (Cranston and Ward; Newport, 1721), 551–60
- A *Vindication of the Legislative Power* (David Lloyd; 1725), 561–71, 575
- Viner's abridgment, 2254
- Virgil, *Aeneid*, 601, 1307, 1480, 1509n39, 1566*
- Virginia: Albany meeting (1754) and, 1383; Bacon's Rebellion (1676), 1266, 1801; British restrictions on commerce of, 1934, 1942–43; Carolina, settlement of, 634; charter, 264, 273, 1800–1802; Church of England established in, 247–48, 263, 1637; currency in, 946; D'Avenant's claims about and lack of knowledge of, 232, 236–37, 238n3, 239, 240; Dissenters in, 1645, 1646, 1809, 1817–18; French, war with, 1406, 1408, 1436–40; general assembly for all colonies, Harrison's proposal regarding, 271, 272; Gooch, Sir William (writing as "A Sincere Lover of Virginia"), *A Dialogue* (Williamsburg, 1732), on tobacco inspection, 725–41; history of settlement of, 1942–43; Kennedy, Archibald, on history of government of, 1265–66; land grants in, 257–59; laws and legislative system, grievances relating to, 250; Lee, Arthur (writing as "An American"), *An Essay in Vindication of the Continental Colonies of America* (London, 1764), 1933–53; Munford, Robert, *The Candidates; Or, The Humours of a Virginia Election* (1770), 2023–52; Native Americans of, 236–37, 258, 634; Nova Scotia government intended to be modeled on, 1582–83; number of documents associated with, xix; original government by company, 250, 273, 719, 1265, 1800; paper money in, 1613–36; quit-rents in, 257–58; relations between colonies, 256; religion and liberty of conscience in, 247–48; slaves and slavery in, 1941–45, 2164; *The Speech of Sir John Randolph, upon His Being Elected Speaker of the House of Burgesses* (Williamsburg, 1734), 869–73; suspension of execution of change in law until receipt of formal approval, 1301; tobacco tax to support governor, 1287; trade, grievances relating to, 251, 252–54; treasurer in, 2072*. *See also* Harrison, Benjamin; pistol fee controversy; Two-penny Acts
- Virginia Gazette*, 1782, 1795, 1814
- Virgin Islands, xviii, xix, 1072, 2100
- The Voice of the People* (Boston, 1754), 1293–99
- Voltaire, 1937–38, 2154
- Voltaire (Smollet), 1937+, 1938*, 1949*
- vows. *See* oaths and oath-taking
- Vreelandt, Michael, 1183
- Wade, Martha, 1743
- Wade, Robert, 44
- Wade, Thomas, 1743

- Wager, Sir Charles, 1463–64
- Wagstaff, Basil, 1743
- Wagstaff, John, 1742
- Walcot, Roger, Jr., 1374
- Wales: British colonies compared to, 54, 131, 188, 189; Court of Equity, 760; form of judicial proceedings in, 1084
- Walker, Admiral, 432, 527
- Walker, Benjamin, 1329, 1330, 1335–36, 1352
- Walker, John, 296
- Walker, Mr. (Barbados), 474, 479
- Walker, Mr. (New England), 168
- Walker, Mr. (North Carolina), 915
- Walker, William, 470
- Waller, Mr., 672
- Walln, Nicholas, 44
- Walmsley, 826
- Walpole, Sir Robert, 876, 1149, 1293, 1294
- Walso, Cornelius, Sr., 173
- Walter, John, 470, 476
- Walter, Captain Robert, 831, 832, 833, 853, 855, 868
- Walter, Thomas, 595
- Walters, Evans, 1354
- Walton, Colonel, 527
- Walton, Mr. (North Carolina House of Burgesses), 894, 910, 913, 930
- Wanton, John, 560
- war: labor and industry generated by, 683; paper money intended primarily for military expenditures, 1613, 1619–21; right of, 1139–43. *See also* defense of inhabitants; martial law; militia; self-defense; *specific wars, battles, and enemies*
- Ward, Obadiah, 176
- Ward, R., and Samuel Cranston, *A Vindication of the Governour and Government of His Majesty's Colony of Rhode-Island* (Newport, 1721), 551–60
- Ward, Samuel (writing as Philoletes), *A Short Reply to Mr. Stephen Hopkins's Vindication* (Newport, 1755), attacking, 1391–98. *See also* union of continental colonies
- Ward, Thomas, 1397
- Wardell, Eliakim, 1179
- Warner, Edward, 45, 1873
- Warner, Thomas, 2117+
- warrant or *mittimus*, Magna C[h]arta chapter 29 on, 26–27
- Warrel, Mr., 837
- Warren, John, Earl, 31, 33
- Warren, Sir Peter, 1432
- Warrington, Mr., 1752
- Washington, George, 1408, 1410, 1451, 1462
- The Watch-Tower* (weekly paper), 1543, 1554
- Waterman (Native American), 172, 173
- Waterman, Mr., 467
- Watkins, Giles, 316
- Watkins, Samuel, 319, 320, 321, 340
- Watson, Luke, 44
- Watts, Samuel, 1689
- Wattson, Luke, Jr., 296
- Weare, Meshec, 1382
- Webb, Mr., 1570
- Webbe, John, 1021
- Weiser, Conrad, 1436
- Weldon of Salisbury, 1969
- Wells, Samuel, 1382
- Wendell, Jacob, 1689
- Wenman, Sir Ferdinand, 1942
- Wentworth, General, 1326
- West, John, 152, 153, 161, 164, 168, 180–81
- West, Joseph (governor of Carolina), 637
- Wheatly, Benjamin, 895, 897
- Wheeler, Nathaniel, 1183
- Whigs, 355, 1042*
- Whiston, Mr., 419
- Whitchurch, James, 425
- White, Michael, 1337, 1338, 1339, 1347–48, 1353, 1354

- White, Thomas, 1746
- Whitefieldians, 1292
- Whitehall Evening Post*, 465
- Whitemore, Sir Thomas, 2138
- white sugar, 118, 120, 123, 125, 126
- Whitlock, *Memoirs*, 789–90
- Whitwell, Francis, 44
- Wibird, Richard, 1382
- Wickham, Samuel, 317
- Wildboar, Shadrach, 157
- Wilkes, John, 2152
- Wilkes, Mr., 2105
- Wilkins, W., 511
- Wilks, Mansell Nathaniel, 1334–37, 1339, 1341–42, 1345, 1346, 1347, 1352, 1353, 1355, 1356
- Will and Doom, Or the Miseries of Connecticut by and under an Usurped and Arbitrary Power* (Gershom Bulkeley, 1692), xix–xx
- Willard, Mr., 488, 489
- Willes, Lord Chief Justice, 1326*
- William I the Conqueror (king of England), 21, 756
- William II Rufus (king of England), 21
- William III of Orange (king of England), 69, 95, 113, 114, 147, 150, 154, 155, 184, 192, 514, 515, 533, 535, 537, 539, 544, 787, 880, 1028*, 1195*, 1307, 1311, 1316, 1317, 1715, 1729, 1849, 1924, 1988, 2067*, 2132, 2165, 2212, 2254
- Williams, Benjamin, 44
- Williams, Elisha, 1374, 1382
- Williams, J. (printer), 1957
- Williams, James, 44
- Williams, Mr. (British House of Commons), 2139, 2143*
- Willis, Edward, 169–70
- Willoughby, Lord Francis, of Parham, 1098, 1099, 2257–59
- Willson, Ebenezer, 198–201
- Wilmot (governor of Nova Scotia), 2242–43
- Wil[]son, Richard Thomas, 1959, 1961, 2013, 2016, 2021
- Wilson, George, 1745
- Wilson, William, 915, 916
- Wiltshire, John, 468
- Wiltshire, Richard, 468
- Winch, Justice, 751
- Windsor, Lord (governor of Jamaica), 2007, 2011
- Wingate's Maxims*, 671nn3–4
- Winnington, Sir Francis, 1044–45
- Winslow, General, 1686
- Winslow, John, 154–55
- Winthrop, John, Jr., 596
- Winthrop, Mr., 1267
- Wise, John, 157, 158–60
- Wiswall, Mr., 170
- Witt, Mr., 1686, 1690
- Wolcot[t], Roger, Jr., 1374, 1382
- Wolcott, Roger, *Poetical Meditations* (New London, 1725), Bulkeley's "Preface" to. See Bulkeley, John; Mohegan Indians' dispute with Connecticut over ownership of hunting grounds
- Wolsey, Thomas (Cardinal), 754
- Wood, Mr. (printer), 2105
- Wood, *Institutes*, 749, 779(m), 830, 842
- Wood, Gabriel, 172
- Wood, Joseph, 45
- Wood, William, 1485
- Woodley, General/Chancellor, 2090, 2104
- Woodward, Samuel, 1333–34, 1346
- Woodward, Thomas, 1346
- Woollaston (author), 1137, 1142
- Wootton, John, 1744
- Wootton, Joseph, 1746
- Wootton, Thomas, 1743
- Wormeley, John, 1741
- Worsley, Colonel (governor of Barbados), 1103, 1109
- Worthington, John, 1382
- Worthington, Richard, 317–20, 321–22

- Wragg, William, and Thomas Wright,
*Letters to the South Carolina
 Gazette* (May 13 and June 5, 1756),
 1589–1612. *See also* upper house in
 South Carolina government and
 constitution
- Wray, Sir Christopher, 750
- Wright, Dudley, 1745
- Wright, Edward, 1743
- Wright, James (governor of Georgia),
 2123, 2124
- Wright, Thomas, and William Wragg,
*Letters to the South Carolina
 Gazette* (May 13 and June 5, 1756),
 1589–1612. *See also* upper house in
 South Carolina government and
 constitution
- Wyer, Mr., 1570
- Wyke, George, 1328, 1329, 1353
- Wynne, John, 1741
- Xantippe, 1567†
- Xenophanes, 601
- Xenophon, 77, 632
- Yale College, 509, 595, 743
- Yamasee War (1715), 499, 505–6, 521,
 528, 644
- Yardly, William, 44
- Yeamans, John, 324
- Yeates, Jasper, 296
- Yeatman, Charles, 1746
- Yeatman, Dickeson, 1745
- Yeomans, Sir John (governor of
 Carolina), 636, 637
- Yirush, Craig, xvi
- York[e], Sir Philip, 2181, 2197, 2198,
 2199
- Young, Mr., 1567, 1572, 1574
- Young, Peter, 924
- Young, Sir William, 2265
- Zenger (German printer in New York),
 1469–70
- Zeno, 78
- Zubly, John J. (writing as “A Freeman”),
*Calm and Respectful Thoughts on the
 Negative of the Crown* (Savannah,
 1772), 2123–47. *See also* Georgia

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