The Excellent Priviledge of

LIBERTY & PROPERTY

BEING THE

BIRTH-RIGHT


CONTAINING

I. Magna Charta, with a learned Comment upon it.

II. The Confirmation of the Charters of the Liberties of England and of the Forrest, made in the 35th year of Edward the First.

III. A Statute made the 34 Edw. i: commonly called De Tullageo non Concedendo; wherein all Fundamental Laws, Liberties and Customs are confirmed. With a Comment upon it.

IV. An abstract of the Patent granted by the King to William Penn and his Heirs and Assigns for the Province of Pennsylvania.

V. And Lastly, The Charter of Liberties granted by the said William Penn to the Free-men and Inhabitants of the Province of Pennsylvania and Territories thereunto annexed, In America.

Major Hereditas venit unicum; nostrum a Jure & Legibus, quam a Parentibus.
To the Reader.

It may reasonably be supposed that we shall find in this part of the world, many men, both old and young, that are strangers, in a great measure, to the true understanding of that estimable Inheritance that every Free-born Subject of England is by Birth-right, I mean that unparallel’d Privilege of Liberty and Property, beyond all the Nations in the world beside; and it is to wish that all men and rightly understand their own happiness therefore, in pursuance of which I do here present thee with that antient Garland, the Fundamental Laws of England, beset with many precious Privileges of Liberty and Property, by which every man that is a Subject to the Crown of England, may understand what is his Right, and how to preserve it from unjust and unreasonable men: whereby appears the eminent Care, Wisdom and Industry of our Progenitors in providing for themselves and Posterity so good a Fortress that is able to repel the Lull, Pride and Power of the Noble, as well as Ignorance of the Ignoble; it being that excellent and discreet Ballance that gives every man his own proportion, which cannot be taken from him, nor be dispossessed of his Life, Liberty or Estate, but by the Tryal and Judgment of Twelve of his Equals, or Law of the Land, upon the penalty of the bitter Curses of the whole People; so great was the zeal of our Predecessors for the preservation of these
To the READER.

These Fundamental Liberties (contained in these Charters) from encroachment, that they employed all their Policy and Religious Obligations to secure them entire and inviolable, albeit the contrary hath often been endeavoured, yet providence hitherto hath preserved them as a Blessing to the English Subjects.

The chief end of the publication hereof is for the information and understanding (what is their native Right and Inheritance) of such who may not have leisure from their Plantations to read large Volumes; And beside, I know this Country is not furnished with Law-Books; & this being the Root from whence all our wholesome English Laws spring, and indeed the Line by which they must be squared, I have ventured to make it publick, hoping it may be of use and service to many Free-men, Planters and Inhabitants in this Country, to whom it is sent and recommended, wishing it may raise up Noble Resolutions in all the Freemenholders in these new Colonies, not to give away any thing of Liberty and Property that at present they do, (or of right as Loyal English Subjects, ought to) enjoy, but take up the good Example of our Ancestors, and understand, that it is easier to part with or give away great Privileges, but hard to be gained, if once lost. And therefore all depends upon our prudent Care and Actings to preserve and lay sure Foundations for our selves and the Posterity of our Loyns.

Philopolites.
INTRODUCTION

In France, and other Nations, the mere Will of the Prince is Law, his Word takes off any man's Head, imposes Taxes, or seizes any man's Estate, when, how and as often as he lists; and if one be accused, or but so much as suspected of any Crime, he may either presently Execute him, or Banish, or Imprison him at pleasure; or if he will be so gracious as to proceed by form of their Laws, if any two Villains will but swear against the poor Party, his Life is gone; nay, if there be no witness, yet he may be put on the Rack, the Tortures whereof make many an innocent Person confess himself guilty, and then with seeming Justice is executed. But,

In England, the Law is both the measure and the bound of every Subject's Duty and Allegiance, each man having a fixed Fundamental Right born with him, as to Freedom of his Person and Property in his Estate, which he cannot be deprived of, but either by his Consent, or some Crime, for which the Law has imposed such a penalty or forfeiture. For all our Kings take a solemn Oath (1.) At their Coronation, To observe & cause the Laws to be kept: (2.) All our Judges take an Oath, wherein among other parts they swear, To do equal Law and Right to all the King's Subjects, Rich and Poor, and not to delay any person of common Right for the Letters of the King, or of any other Person, or for any other cause:
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cause: Therefore faith Fortescue, (who was first chief justice, and afterwards L. Chancellor to K. Henry 6.) in his Book de Laudibus Legum Angliae, cap. 9. Non potest Rex Anglia, &c. - The King of England cannot alter nor change the Laws of his Realm at his pleasure; For why, he governeth his people by Power not only Royal, but also Politick: If his Power over them were only Regal, then he might change the Laws of his Realm, and change his Subjects with Tallax and otherBurthens, without their consent: but from this much differeth the Power of a King whose Government is Politick; for he can neither change Laws without the consent of his Subjects, nor yse charge them with Impositions against their wills.

With which accords Brathen, a learned Judge & Law-Author, in the Reign of K. Henry the 3d, laying, Rex in Regno suo superiores habet Deum & Legem; i.e. The King in his Realm hath two superiors, God and the Law; for he is under the Directive, tho' not Co-ercive Power of the Law.

'Tis true, the Law it self affirms, The King can do no wrong, which proceeds not only from a presumption, that no 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 K. in 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.

This
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This original happy Frame of Government is truly and properly call’d an English mans Liberty, a Privilege not exempt from the Law, but to be freed in Person & Estate from Arbitrary Violence and Oppression. A Future Inheritance (as I judge Cook) is deriv’d to every one of us from our Laws rather than from our Parents; For without the former, what would the latter signify? And this Birth-right of English-men shines most conspicuously in two things:

1. PARLIAMENTS.
2. JURIES.

By the First the Subject has a share by his chosen Representatives in the Legislature (or Law-making) Power; for no new Laws bind the People of England, but such as are by common consent agreed on in that great Council.

By the Second, he has a share in the Executive part of the Law, no Causes being tryed, nor any man adjudged to loose Life, Member or Estate, but upon the Verdict of his Peers or Equals his Neighbours, and of his own Condition: These two grand Pillars of English Liberty, are the Fundamental usual Privileges, whereby we have been, and are preserv’d more free and happy than any other People in the World, and (we trust) shall ever continue so: For whoever shall design to impair, pervert or undermine either of these, do strike at the very Constitution of our Government, and ought to be prosecuted and punished with the utmost Zeal and Rigour. To cut down the Banks
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Let in the Sea, or to poison all the Springs and Rivers in the Kingdom, could not be a greater Mischief; for this would only affect the present Age, but the other will Ruin and enslave all our Posterity.

But beside these Paramount Privileges which the English are estated in by the Original Constitution of their Government, there are others more particularly declared and expressed in divers Acts of Parliament too large to be inserted in this place.