



*“tis to be fear’d that Liberty, once lost,
 is lost forever”*

Jeremiah Dummer

A Defence of the New-England Charters

1721_EXCERPTS

When a parent revokes a privilege from a child, a loud “No fair!” is the likely response, especially if the privilege involves the child’s sphere of autonomy, and especially if the child thinks the privilege is a birthright. Think of four likely arguments — *You promised. I have done nothing wrong. It won’t help me grow up. It’s not fair.* These are the arguments put forth in 1721 by clergyman and lawyer Jeremiah Dummer to oppose Parliament’s revoking the original New England charters — the documents that established the colonies’ rights and privileges, including local governance¹ — and imposing closer imperial authority over the colonies. His appeal was successful.

... I have put together my Thoughts on the Subject, which for Method’s sake I have dispos’d under the following Heads:

1st, I shall endeavor to show that the Charter Governments have a good and undoubted Right to their respective Charters.

2dly, That they have not forfeited them by any Misgovernment or Maladministration.

3dly, That if they had, it would not be the Interest of the Crown to accept the Forfeitures. And,

4thly, I shall make some Observations upon the extraordinary Method of Proceeding against the Charters by a Bill in Parliament.

1st Proposition:
That the Charter Governments had a good and undoubted Right to their respective Charters.

... WHAT I have said amounts to this:

THAT *New England* receiv’d her Charters on this express Condition: of settling Colonies for the Benefit of the Crown:

THAT she was at a vast Expense, and through Incredible Difficulties accomplish’d the Work even beyond what was ever hop’d or expected.

And then the Conclusion that I would draw from these Premises is this, THAT to strip the Country [colonies] of their Charters after the Service has been so successfully perform’d, is abhorrent from all from all Reason, Equity and Justice. . . .

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¹ “These [original] Charters . . . had Power . . . to call General Assemblies, to make Laws, so as they were not repugnant to the Laws of England, to assess the Freemen, to constitute all Civil Officers, to array the Inhabitants in warlike Posture, and use the Martial Law, when occasion requir’d.” [p. 2]

. . . Could they have imagin'd this [that the charters might be revoked], could they have foreseen that their Privileges were such *transitory things* as to last no longer than their Work should be done, and their settlements completed, they had never engag'd² in so hazardous and difficult an Enterprise. . . .

2^d Proposition:

That these Governments have by no Misbehaviour forfeited their Charters.

The first Charge in the Bill [in Parliament] is that they have *neglected the Defense of the Inhabitants*. . . . But now, if I shall prove that these Governments, especially the *Massachusetts* and *Connecticut*, have in all past Times defended the Inhabitants both by Sea and Land, as well against the *French* and *Indian* Enemy. . . if I shall prove that they have frequently carry'd offensive Arms into the French Territories . . . and that all this was done at their own vast Expense; then I hope New England will stand fairly acquitted of this suppos'd Crime of *Neglecting to defend the Inhabitants*, and be allow'd not only irreprehensible in this response, but to have highly merited of the Crown and Nation. . . .³

The other charge in the Bill is *That they have exercis'd arbitrary Power*. . . . The Charter Governments are celebrated for their excellent Laws and mild Administration, for the Security of Liberty and Property, for the Encouragement of Virtue and Suppression of Vice, for the promoting Letters [learning] by erecting Free-Schools and Colleges, and, in one Word, for everything that can make a People happy and prosperous.

Dummer similarly refutes two other charges in the bill: that the New England colonies violated the Acts of Trade and Navigation, and that they passed laws not in accord to ("repugnant to") British Law. he proceeds to the fifth charge.

There is one Thing more I have heard often urg'd against the Charter Colonies . . . 'Tis said, *that their Numbers and Wealth join'd to their great Distance from Britain will give them an Opportunity in the Course of some Years to throw off their Dependence on the Nation, and declare themselves a free State, if not curb'd in Time by being made entirely subject to the Crown*. Whereas in Truth there's nobody tho' but little acquainted with these or any of the *Northern* Plantations who does not know and confess that their Poverty and the declining State of their Trade is so great at present that there's far more Danger of their sinking, without some extraordinary Support from the Crown, than of their ever revolting from it. So that I may say without being ludicrous that it would be more absurd to place two of His Majesty's Beef Eaters to watch an Infant in the Cradle that it don't rise and cut its Father's Throat, than to guard these weak Infant Colonies to prevent their shaking off the *British* Yoke. Besides, they are so distinct from one another in their Forms of Government, in their Religious Rites, in their Emulation of Trade, and consequently in their Affections, that they can never be suppos'd to unite in so dangerous an Enterprise. It is for this Reason I have often wondered to hear some Great Men profess their Belief of the Feasibleness of it, and the Probability of its some Time or other actually coming to pass, who yet with the same Breath advise that all the Governments on the Continent be form'd into one, by being brought under one Vice-Roy, and into one Assembly. For surely if we in earnest believ'd that there was or would be hereafter a Disposition in the Provinces to Rebel and declare themselves Independent, it would be good Policy to keep them disunited; because if it were possible they could contrive so wild and rash an Undertaking, yet they would not be hardy enough to put it in Execution, unless they could first strengthen themselves by a Confederacy of all the Parts. . . .

. . . I have shown before that [the colonies] are many ways of great Use and Advantage to the Crown, to which I add that they will be more so than ever in a few Years, to strengthen the *British* Empire in *America* against the formidable Settlement of *Louisiana*, which for some Years past has been carry'd on by the *French* with great Expense, and with the utmost Vigour and Application. . . 'Tis easy then to see that the *French* will be hereby enabled to draw a Line and in Time have a Chain of Towns on the Back of all our Colonies from the Borders of the *Cape-Breton* to the western most part of *Carolina*. And what

² would never have engaged.

³ not only blamefree, but deserving praise and acknowledgment.

Briton can consider this without being in Pain for the Fate of our Provinces in future Times? Especially since we know that the *Illinois* and other Warlike *Indian* Nations lie near *French*, and for many Reasons, which it would be too much a Digression to recount here, are devoted to their Interest, and by consequence ready at all Times to join their Forces in any Attempt against us. . . .

3^d Proposition:

That it is not the Interest of the Crown to resume the Charters forfeited.

. . . The only Interest of the People [in the colonies] is to thrive and flourish in their Trade, which is the true Interest of the Crown and Nation, because they reap the Profit of it. . . . The Trade of a young Plantation [colony] is like a tender Plant & should be cherish'd with the fondest Care; but if instead of that, it meets with the rough had of oppression, it will soon die. The proper Nursery for this Plant is a free Government, where the Laws are sacred, Property secure, & Justice not only impartially but expeditiously distributed. . . . As this is evident, so is it that whatever injures the Trade of the Plantations must in

Proportion affect *Great Britain*, the Source and Center of their Commerce . . . The Blow then may strike the Colonies first, but it comes Home at last and falls heaviest on ourselves. . . .

THE Sum of my Argument is That the Benefit which *Great Britain* receives from the Plantations arises from their Commerce: That Oppression is the most opposite Thing in the World to Commerce, and the most destructive Enemy it can have: That Governours have in all Times, and in all Countries, been too much inclin'd to oppress: And consequently, it cannot be the Interest of the Nation to increase their Power and lessen the Liberties of the People. . . .

4th Proposition:

That it seems inconsistent with Justice to Disfranchise the Charter Colonies by an Act of Parliament.

. . . It is a most sacred and unalterable Rule of Justice, and has ever been so esteem'd by all the civiliz'd Nations of the World, that no Person be depriv'd of Life, Liberty or Estate [wealth], or anything he possesses, till he has had Time and Opportunity to make his Defense. And if the Matter in Judgment be of great Value, dearly paid for and long enjoy'd, it adds much to the Weight of the Argument and aggravates the Injury in depriving the Possessors unheard. Now this is the Case of the Charter Governments. How great the Purchase Consideration was has been before said; but how valuable the Charters themselves are can never be said, Liberty being inestimable. And for the Time they have enjoy'd them, were they not on Record, it would be what the Civilians call *Immemorial*, one of them being above Fourscore Years standing. It seems

therefore a Severity without a Precedent that a People who have the Misfortune of being a Thousand Leagues distant from their Sovereign, a Misfortune great enough in itself, should UNSUMMON'D, UNHEARD, IN ONE DAY be depriv'd of all their valuable Privileges, which they and their Fathers have enjoy'd for a Hundred Years. It's true, the Legislative Power is absolute and unaccountable, and King, Lords and Commons may do what they please; but the Question here is not about *Power*, but *Right*: *And shall not the Supreme Judicature of all the Nation do right?* One may say that what the Parliament can't do justly, they can't do at all. *In maximis minima est licentia.*⁴ The higher the Power is, the greater Caution is to be used in the Execution of it, because the Sufferer is helpless and without Resort.

. . . To conclude, what *these Governments* desire of their Superiors at home is that they may not be judg'd and condemn'd unheard. And I cannot but flatter myself they will obtain it, whether I consider the Reasonableness of the Demand itself, or the celebrated Justice and Lenity [leniency] of his Majesty's Government, or the Importance of the Thing in Question to the provinces concern'd. I mention this last Particular, being sure they would reckon the Loss of their Privileges a greater Calamity, than if their Houses were all in Flames at once. Nor can they be justly blam'd, the one being a reparable Evil, but the other irreparable. Burnt Houses may rise again out of the Ashes, and even more Beautiful than before, but 'tis to be fear'd that Liberty *once lost, is lost for ever.*

⁴ In the greatest power is the smallest license [Latin].