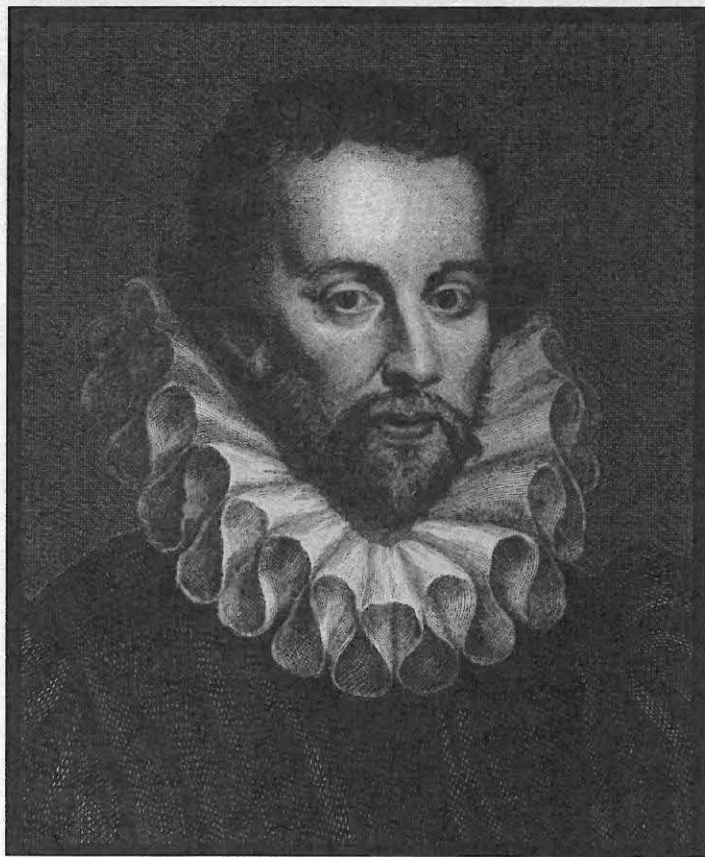


THE SELECTED
WRITINGS OF
Sir Edward Coke



VOLUME II

EDITED BY STEVE SHEPPARD

e or Right.
ice or Right.
ice or Right.
ly understood, we shall proceed in order
declared, and interpreted. 1. By authority
By precedent.

be taken, or imprisoned."

ended herein.

is) restrained of liberty, by petition, or
council,*¹⁰ unlesse it be by indictment, or
en, where such deeds be done. This branch,
have been notably explained by divers su-
quoted in the margent.

c.
ids, tenements, goods, and chattells shall
s, contrary to this great Charter, and the
all be disseised of his lands, or tenements,
attells, contrary to the Law of the Land.
he town of C. that if the Tenant cease by
ter into the freehold of the Tenant, and
ed of the arrerages, and it was adjudged a
and, to enter into a mans freehold in that

poration of Diers within London, power
any cloth died with Logwood,¹⁴ that the
is adjudged, that this Charter concerning

ca. 8. 38. E. 3. ca. 9. 42. E. 3. ca. 3. 17. R. 2. cap. 6. Rot.
&c. lib. 10. fol. 74. in case del Marshalsea.
f Magna Charta, and other Statutes are cited, *nota bene*.
ct. 5. E. 3. cap. 9. 25. E. 3. cap. 4.

ogwood (an expensive American tree yielding black dye.)
s.

the forfeiture, was against the Law of the Land, and this Statute: For no for-
feiture can grow by Letters Patents.

No man ought to be put from his livelihood without answer.

3. No man outlawed, that is, barred to have the benefit of the Law. Vide
for the word, the first part of the *Institutes*.¹⁶

Note to this word *utlagetur*,¹⁷ these words, *Nisi per legem terrae*,¹⁸ do refer.

"of his . . . Liberties."

This word, *libertates*, liberties, hath three significations:

1. First, as it hath been said, it signifieth the Laws of the Realme, in which
respect this Charter is called, *Charta libertatum*.

2. It signifieth the freedoms, that the Subjects of England have;¹⁹ for ex-
ample, the Company of the Merchant Tailors of England, having power by
their Charter to make ordinances, made an ordinance, that every brother of
the same Society should put the one half of his clothes to be dressed by some
Clothworker free of the same Company, upon pain to forfeit r. s. &c. and it
was adjudged that this ordinance was against Law, because it was against the
Liberty of the Subject, for every Subject hath freedom to put his clothes to
be dressed by whom he will, & *sic de similibus*.²⁰ And so it is, if such or the
like graunt had been made by his Letters Patents.

3. Liberties signifieth the franchises, and privileges, which the Subjects
have of the gift of the King, as the goods, and Chattels of felons, outlaws,
and the like, or which the Subject claim by prescription, as wreck, waife, straie,
and the like.

So likewise, and for the same reason, if a graunt be made to any man, to
have the sole making of Cards, or the sole dealing with any other trade, that
graunt is against the liberty, and freedom of the Subject, that before did, or
lawfully might have used that trade, and consequently against this great Char-
ter.²¹

16. 2. & 3. Ph. et Mar. Dier. 114, 115.

17. [*Ed.*: be outlawed.]

18. [*Ed.*: Unless by the law of the land.]

19. Tr. 41. Eliz. Coram Rege. Rot. 91. in trñs int. Davenant & Hurdes.

20. [*Ed.*: and likewise of similar cases:]

21. Tr. 44. Eliz. Coram Regé. lib. 11. fol. 84. 85. &c. Edw. Darcies case.



Jefferson

Autobiography
Notes on the State of Virginia
Public and Private Papers
Addresses Letters

commission and insurance, we are to pay freight for it to Great Britain, and freight for it back again, for the purpose of supporting not men, but machines, in the island of Great Britain. In the same spirit of equal and impartial legislation is to be viewed the act of parliament,* passed in the 5th year of the same reign, by which American lands are made subject to the demands of British creditors, while their own lands were still continued unanswerable for their debts; from which one of these conclusions must necessarily follow, either that justice is not the same in America as in Britain, or else that the British parliament pay less regard to it here than there. But that we do not point out to his majesty the injustice of these acts, with intent to rest on that principle the cause of their nullity; but to shew that experience confirms the propriety of those political principles which exempt us from the jurisdiction of the British parliament. The true ground on which we declare these acts void is, that the British parliament has no right to exercise authority over us.

That these exercises of usurped power have not been confined to instances alone, in which themselves were interested, but they have also intermeddled with the regulation of the internal affairs of the colonies. The act of the 9th of Anne for establishing a post office in America seems to have had little connection with British convenience, except that of accommodating his majesty's ministers and favourites with the sale of a lucrative and easy office.

That thus have we hastened through the reigns which preceded his majesty's, during which the violations of our right were less alarming, because repeated at more distant intervals than that rapid and bold succession of injuries which is likely to distinguish the present from all other periods of American story. Scarcely have our minds been able to emerge from the astonishment into which one stroke of parliamentary thunder has involved us, before another more heavy, and more alarming, is fallen on us. Single acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions, begun at a distinguished period, and pursued unalterably through every change of ministers, too plainly prove a deliberate and systematical plan of reducing us to slavery.

*5. G. 270.

A black and white portrait of Benjamin Franklin, showing him from the chest up, wearing a dark coat and a white cravat. He is looking slightly to the right of the viewer.

Franklin

Essays, Articles, Bagatelles, and Letters
Poor Richard's Almanack
Autobiography

Portugal, but must take them loaded with all the expences of a voyage of one thousand leagues round about, being to be landed first in England to be re-shipped for America; expences amounting, in war time, at least to thirty per cent. more than otherwise they would have been charged with, and all this, merely that a few Portugal Merchants in London might gain a commission on those goods passing through their hands.—Portugal Merchants, by the bye, who can complain loudly of the smallest hardships laid on their trade by foreigners, and yet even the last year could oppose with all their influence the giving ease to their fellow-subjects under so heavy an oppression—That on a frivolous complaint of a few Virginia Merchants, nine Colonies were restrained from making paper money, though become absolutely necessary to their internal commerce, from the constant remittance of their gold and silver to Britain.—But not only the interest of a particular body of Merchants, the interest of any small body of British Tradesmen or Artificers, has been found, they say, to out-weigh that of all the King's subjects in the Colonies.

There cannot be a stronger natural right than that of a man's making the best profit he can of the natural produce of his lands, provided he does not thereby injure the State in general. Iron is to be found every where in America, and beaver furs are the natural produce of that country. Hats, and nails, and steel, are wanted there as well as here. It is of no importance to the common welfare of the Empire, whether a subject gets his living by making hats on this or that side of the water; yet the Hatters of England have prevailed so far as to obtain an act in their own favour, restraining that manufacture in America, in order to oblige the Americans to send their beaver to England to be manufactured, and purchase back the hats loaded with the charges of a double transportation. In the same manner have a few Nail-makers, and still a smaller number of Steel-makers (perhaps there are not half a dozen of these in England) prevailed totally to forbid, by an act of Parliament, the erecting of slitting-mills and steel-furnaces in America, that the Americans may be obliged to take nails for their buildings, and steel for their tools from these artificers under the same disadvantages. Added to these, the Americans remembered the act authorizing the most cruel

well exhausted, & then I discovered it; when I began to be considered a little more by my Brother's Acquaintance, and in a manner that did not quite please him, as he thought, probably with reason, that it tended to make me too vain. And perhaps this might be one Occasion of the Differences that we began to have about this Time. Tho' a Brother, he considered himself as my Master, & me as his Apprentice; and accordingly expected the same Services from me as he would from another; while I thought he demean'd me too much in some he requir'd of me, who from a Brother expected more Indulgence. Our Disputes were often brought before our Father, and I fancy I was either generally in the right, or else a better Pleader, because the Judgment was generally in my favour: But my Brother was passionate & had often beaten me, which I took extremely amiss; * and thinking my Apprenticeship very tedious, I was continually wishing for some Opportunity of shortening it, which at length offered in a manner unexpected.

One of the Pieces in our News-Paper, on some political Point which I have now forgotten, gave Offence to the Assembly. He was taken up, censur'd and imprison'd for a Month by the Speaker's Warrant, I suppose because he would not discover his Author. I too was taken up & examin'd before the Council; but tho' I did not give them any Satisfaction, they contented themselves with admonishing me, and dismiss'd me; considering me perhaps as an Apprentice who was bound to keep his Master's Secrets. During my Brother's Confinement, which I resented a good deal, notwithstanding our private Differences, I had the Management of the Paper, and I made bold to give our Rulers some Rubs in it, which my Brother took very kindly, while others began to consider me in an unfavourable Light, as a young Genius that had a Turn for Libelling & Satyr. My Brother's Discharge was accompany'd with an Order of the House, (a very odd one) *that James Franklin should no longer print the Paper called the New England Courant*. There was a Consultation held in our Printing House among his Friends what he should do in this

*I fancy his harsh & tyrannical Treatment of me, might be a means of impressing me with that Aversion to arbitrary Power that has stuck to me thro' my whole Life.

Case. Some propos'd to evade the Order by changing the Name of the Paper; but my Brother seeing Inconveniences in that, it was finally concluded on as a better Way, to let it be printed for the future under the Name of *Benjamin Franklin*. And to avoid the Censure of the Assembly that might fall on him, as still printing it by his Apprentice, the Contrivance was, that my old Indenture should be return'd to me with a full Discharge on the Back of it, to be shown on Occasion; but to secure to him the Benefit of my Service I was to sign new Indentures for the Remainder of the Term, w^{ch} were to be kept private. A very flimsy Scheme it was, but however it was immediately executed, and the Paper went on accordingly under my Name for several Months. At length a fresh Difference arising between my Brother and me, I took upon me to assert my Freedom, presuming that he would not venture to produce the new Indentures. It was not fair in me to take this Advantage, and this I therefore reckon one of the first Errata of my Life: But the Unfairness of it weigh'd little with me, when under the Impressions of Resentment, for the Blows his Passion too often urg'd him to bestow upon me. Tho' He was otherwise not an ill-natur'd Man: Perhaps I was too saucy & provoking. —

When he found I would leave him, he took care to prevent my getting Employment in any other Printing-House of the Town, by going round & speaking to every Master, who accordingly refus'd to give me Work. I then thought of going to New York as the nearest Place where there was a Printer: and I was the rather inclin'd to leave Boston, when I reflected that I had already made my self a little obnoxious, to the governing Party; & from the arbitrary Proceedings of the Assembly in my Brother's Case it was likely I might if I stay'd soon bring my self into Scrapes; and farther that my indiscrete Disputations about Religion began to make me pointed at with Horror by good People, as an Infidel or Atheist; I determin'd on the Point: but my Father now siding with my Brother, I was sensible that if I attempted to go openly, Means would be used to prevent me. My Friend Collins therefore undertook to manage a little for me. He agreed with the Captain of a New York Sloop for my Passage, under the Notion of my being a young Acquaintance of his that had got a naughty

Girl with Child, whose Friends would compel me to marry her, and therefore I could not appear or come away publicly. So I sold some of my Books to raise a little Money, Was taken on board privately, and as we had a fair Wind, in three Days I found my self in New York near 300 Miles from home, a Boy of but 17, without the least Recommendation to or Knowledge of any Person in the Place, and with very little Money in my Pocket. —

My Inclinations for the Sea, were by this time worne out, or I might now have gratify'd them. — But having a Trade, & supposing my self a pretty good Workman, I offer'd my Service to the Printer of the Place, old Mr W^m Bradford. — He could give me no Employment, having little to do, and Help enough already: But, says he, my Son at Philadelphia has lately lost his principal Hand, Aquila Rose, by Death. If you go thither I believe he may employ you. — Philadelphia was 100 Miles farther. I set out, however, in a Boat for Amboy; leaving my Chest and Things to follow me round by Sea. In crossing the Bay we met with a Squall that tore our rotten Sails to pieces, prevented our getting into the Kill, and drove us upon Long Island. In our Way a drunken Dutchman, who was a Passenger too, fell over board; when he was sinking I reach'd thro' the Water to his shock Pate & drew him up so that we got him in again. — His Ducking sober'd him a little, & he went to sleep, taking first out of his Pocket a Book which he desir'd I would dry for him. It prov'd to be my old favourite Author Bunyan's Pilgrim's Progress in Dutch, finely printed on good Paper with copper Cuts, a Dress better than I had ever seen it wear in its own Language. I have since found that it has been translated into most of the Languages of Europe, and suppose it has been more generally read than any other Book except perhaps the Bible. — Honest John was the first that I know of who mix'd Narration & Dialogue, a Method of Writing very engaging to the Reader, who in the most interesting Parts finds himself as it were brought into the Company, & present at the Discourse. De foe in his Cruso, his Moll Flanders, Religious Courtship, Family Instructor, & other Pieces, has imitated it with Success. And Richardson has done the same in his Pamela, &c. —

When we drew near the Island we found it was at a Place

where there could be no Landing, there being a great Surff on the stony Beach. So we dropt Anchor & swung round towards the Shore. Some People came down to the Water Edge & hallow'd to us, as we did to them. But the Wind was so high & the Surff so loud, that we could not hear so as to understand each other. There were Canoes on the Shore, & we made Signs & hallow'd that they should fetch us, but they either did not understand us, or thought it impracticable. So they went away, and Night coming on, we had no Remedy but to wait till the Wind should abate, and in the mean time the Boatman & I concluded to sleep if we could, and so crouded into the Scuttle with the Dutchman who was still wet, and the Spray beating over the Head of our Boat, leak'd thro' to us, so that we were soon almost as wet as he. In this Manner we lay all Night with very little Rest. But the Wind abating the next Day, we made a Shift to reach Amboy before Night, having been 30 Hours on the Water without Victuals, or any Drink but a Bottle of filthy Rum:—The Water we sail'd on being salt.—

In the Evening I found my self very feverish, & went ill to Bed. But having read somewhere that cold Water drank plentifully was good for a Fever, I follow'd the Prescription, sweat plentifully most of the Night, my Fever left me, and in the Morning crossing the Ferry, proceeded on my Journey, on foot, having 50 Miles to Burlington, where I was told I should find Boats that would carry me the rest of the Way to Philadelphia.

It rain'd very hard all the Day, I was thoroughly soak'd, and by Noon a good deal tir'd, so I stopt at a poor Inn, where I staid all Night, beginning now to wish I had never left home. I cut so miserable a Figure too, that I found by the Questions ask'd me I was suspected to be some runaway Servant, and in danger of being taken up on that Suspicion.—However I proceeded the next Day, and got in the Evening to an Inn within 8 or 10 Miles of Burlington, kept by one Dr Brown.—

He entred into Conversation with me while I took some Refreshment, and finding I had read a little, became very sociable and friendly. Our Acquaintance continu'd as long as he liv'd. He had been, I imagine, an itinerant Doctor, for there

was no Town in England, or Country in Europe, of which he could not give a very particular Account. He had some Letters, & was ingenious, but much of an Unbeliever, & wickedly undertook some Years after to travesty the Bible in doggrel Verse as Cotton had done Virgil. — By this means he set many of the Facts in a very ridiculous Light, & might have hurt weak minds if his Work had been publish'd:—but it never was.—At his House I lay that Night, and the next Morning reach'd Burlington.—But had the Mortification to find that the regular Boats were gone, a little before my coming, and no other expected to go till Tuesday, this being Saturday. Wherefore I return'd to an old Woman in the Town of whom I had bought Gingerbread to eat on the Water, & ask'd her Advice; she invited me to lodge at her House till a Passage by Water should offer; & being tired with my foot Travelling, I accepted the Invitation. She understanding I was a Printer, would have had me stay at that Town & follow my Business, being ignorant of the Stock necessary to begin with. She was very hospitable, gave me a Dinner of Ox Cheek with great Goodwill, accepting only of a Pot of Ale in return. And I tho't my self fix'd till Tuesday should come. However walking in the Evening by the Side of the River a Boat came by, which I found was going towards Philadelphia, with several People in her. They took me in, and as there was no Wind, we row'd all the Way; and about Midnight not having yet seen the City, some of the Company were confident we must have pass'd it, and would row no farther, the others knew not where we were, so we put towards the Shore, got into a Creek, landed near an old Fence with the Rails of which we made a Fire, the Night being cold, in October, and there we remain'd till Daylight. Then one of the Company knew the Place to be Cooper's Creek a little above Philadelphia, which we saw as soon as we got out of the Creek, and arriv'd there about 8 or 9 a Clock, on the Sunday morning, and landed at the Market street Wharff.—

I have been the more particular in this Description of my Journey, & shall be so of my first Entry into that City, that you may in your Mind compare such unlikely Beginning with the Figure I have since made there. I was in my working Dress, my best Cloaths being to come round by Sea. I was

dirty from my Journey; my Pockets were stuff'd out with Shirts & Stockings; I knew no Soul, nor where to look for Lodging. I was fatigu'd with Travelling, Rowing & Want of Rest. I was very hungry, and my whole Stock of Cash consisted of a Dutch Dollar and about a Shilling in Copper. The latter I gave the People of the Boat for my Passage, who at first refus'd it on Acc^t of my Rowing; but I insisted on their taking it, a Man being sometimes more generous when he has but a little Money than when he has plenty, perhaps thro' Fear of being thought to have but little. Then I walk'd up the Street, gazing about, till near the Market House I met a Boy with Bread. I had made many a Meal on Bread, & inquiring where he got it, I went immediately to the Baker's he directed me to in second Street; and ask'd for Bisket, intending such as we had in Boston, but they it seems were not made in Philadelphia, then I ask'd for a threepenny Loaf, and was told they had none such: so not considering or knowing the Difference of Money & the greater Cheapness nor the Names of his Bread, I bad him give me three pennyworth of any sort. He gave me accordingly three great Puffy Rolls. I was surpriz'd at the Quantity, but took it, and having no Room in my Pockets, walk'd off, with a Roll under each Arm, & eating the other. Thus I went up Market Street as far as fourth Street, passing by the Door of Mr Read, my future Wife's Father, when she standing at the Door saw me, & thought I made as I certainly did a most awkward ridiculous Appearance. Then I turn'd and went down Chestnut Street and part of Walnut Street, eating my Roll all the Way, and coming round found my self again at Market street Wharff, near the Boat I came in, to which I went for a Draught of the River Water, and being fill'd with one of my Rolls, gave the other two to a Woman & her Child that came down the River in the Boat with us and were waiting to go farther. Thus refresh'd I walk'd again up the Street, which by this time had many clean dress'd People in it who were all walking the same Way; I join'd them, and thereby was led into the great Meeting House of the Quakers near the Market. I sat down among them, and after looking round a while & hearing nothing said, being very drowzy thro' Labour & want of Rest the preceding Night, I fell fast asleep, and continu'd so till the

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Collected
Works
of
James
Wilson



VOLUME II

Edited by Kermit L. Hall and Mark David Hall

of my Lord Coke, that, at the common law, no man can be prohibited from exercising his industry in any lawful occupation; for the law hates idleness, the mother of all evil, and especially in young men, who, in their youth, which is their seed time, ought to learn lawful trades and sciences, which are profitable to the commonwealth, and of which they themselves may reap the harvest in their future years. Besides; the common law abhors all monopolies, which forbid any from working in any lawful trade. If he who undertakes to work is unskilful, his ignorance is his sufficient punishment; for "quilibet quaerit in qualibet arte peritos;"¹⁴ and if, in performing his work, he injures his employer, the law has provided an action to recover damages for the injury done.^s To every monopoly, we are told by the same book in another place,^t there are three inseparable incidents against the commonwealth. 1. The price of the commodity is raised. 2. The quality of the commodity is debased. 3. Those who formerly maintained themselves and their families by the same profession or trade, are impoverished, and reduced to a state of beggary and idleness.

Besides apprentices, and those to whom the name of servant is appropriated in the language of common life, the relation of servant is extended, by the language and by many of the rules of the law, to others in a superior ministerial capacity—to bailiffs, to stewards, to agents, to factors, to attornies, and to the masters of vessels considered in their relation to the owners of them.^u

Of many acts of the servant, the master is entitled to receive the advantage: of many others, he is obliged to suffer or to compensate for the injury. In each series of cases—it would be, here, improper to attempt an enumeration of particulars—In each series of cases, the principle is the same. Whatever is done by the servant, in the usual course of his business, is presumed, and fairly presumed, to be done by the command, or the authority, tacit or express, of the master; whatever is done by the master's command, is considered, and justly considered, as done by the master in person: "Qui facit per alium, facit per se."¹⁵

14. Experts are sought in my occupation.

s. 11. Rep. 53. b. 54.

t. Id. 86. b.

u. 3. Bac. 544.

15. He who acts through another, acts by or for himself.

51
IMPERFECT SOLUTION

STATES AND THE MAKING OF
AMERICAN CONSTITUTIONAL LAW



JEFFREY S. SUTTON

**Reasons to Think Anew About State Courts as Guardians
of Individual Rights and State Constitutions as Sources
of Those Rights**

State courts have authority to construe their own constitutional provisions however they wish. Nothing compels the state courts to imitate federal interpretations of the liberty and property guarantees in the U.S. Constitution when it comes to the rights guarantees found in their own constitutions, even guarantees that match the federal ones letter for letter. As long as a state court's interpretation of its own constitution does not violate a federal requirement, it will stand, and, better than that, it will be impervious to challenge in the U.S. Supreme Court.³¹

So why might a state court grant relief under its state constitution when the federal court rejected a request for relief in construing similar or even identical language in the U.S. Constitution? The first answer is that it can. Our federal system gives state courts the final say over the meaning of their own constitutions. As a matter of power, the fifty-one highest courts in the system may *each* come to different conclusions about the meaning of, say, due process in their own jurisdictions.

The second answer is better. As a matter of reason, there often are sound grounds for interpreting the two sets of guarantees differently. State constitutional law not only gives the client two chances to win, but in many cases it also will give the client a better chance to win. Imagine two judges who are identical twins. They are the same in every relevant respect, save one: The first sibling sits on the U.S. Supreme Court, while the other one sits on the New Jersey Supreme Court. My submission is that, all else being equal, a lawyer for an individual-liberties claimant should have an easier time convincing the twin who sits on a state supreme court to rule the client's way than convincing the twin who sits on the U.S. Supreme Court to do the same.

The U.S. Supreme Court faces several disadvantages relative to the state courts when it comes to defining constitutional rights and crafting constitutional remedies. Because the Supreme Court must announce rights and remedies for fifty States, one national government, and over 320 million people, it is more constrained than a state supreme court faced with an issue affecting one State and, say, twelve million people. Legal commentators talk about liberal and conservative judges, but all