

**NJS Presents****Museums, Archives, Artifacts, and Documents****In this Issue:*****Tax Protest Document 1676:******The First in a Long History of New Jersey Protests Against Taxes*****By Maxine N. Lurie****DOI: <http://dx.doi.org/10.14713/njs.v4i1.108>**

*The document at the end of this brief introduction was purchased by Special Collections and University Archives, Rutgers University Libraries in 2013.<sup>1</sup> Attributed to William Penn, it is a protest against customs duties collected by New York authorities from the early English Quaker settlers of West Jersey. As such it is the earliest known tax protest in New Jersey, but its real importance lies in the arguments used in the document. It is remarkable that this has survived. After a brief introduction providing context about the history behind the protest, a transcription is provided, followed by a reproduction of the original document.*

**Background**

In 1664 Charles II granted New York to his brother the Duke of York, who then granted part of this proprietorship to Lord John Berkeley and Sir George Carteret (who had been friends and supporters during the English Civil War). Berkeley sold his half of New Jersey to John Fenwick in trust for Edward Byllynge in 1674, and this sale was the basis for the Quaker dominated West Jersey proprietary group that followed.<sup>2</sup> In 1675 Fenwick led the first colonists to Salem, and

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<sup>1</sup> The author is grateful for assistance of Ronald Becker, Albert King, Dermot Quinn, J. William Frost, Jean Soderlund, and Frederick Booth. The use of red font in the transcription indicates words that so far have proved too difficult to decipher.

<sup>2</sup> For a brief history of the New Jersey proprietors see: Maxine N. Lurie, "New Jersey: The Unique Proprietary," *Pennsylvania Magazine of History and Biography* 111 (1987) 76-97, reprinted in *A New Jersey Anthology* (New Brunswick: Rutgers University Press, 2010).

he was soon followed by other Quakers who also settled further north along the Delaware River. When the Governor of New York refused to recognize their right to govern West Jersey, and insisted on collecting a customs tax there, William Penn and other Quaker leaders objected.<sup>3</sup> At the same time New England settlers in Long Island protested the right of the Duke's government to collect taxes there, because there was no representative assembly in New York, and the tax that had been imposed by local government officials had expired.<sup>4</sup> The basis of these objections was that Englishmen could not be taxed without their consent – as is repeatedly stated in the document that follows.

It is interesting that part of this document (probably from a copy) was reprinted by Samuel Smith in his *History of New Jersey* in 1765. This was the first history of the colony, and appeared at the time of the Stamp Act Crisis when colonists were again using similar arguments to protest taxes imposed without their consent, this time by Parliament. It is also important to note that both the *Concessions and Agreements of New Jersey* of 1664/1665 provided by Berkeley and Carteret,<sup>5</sup> and the *Concessions and Agreements of West New Jersey* of 1676/1677,<sup>6</sup> made provisions for local governments whose consent was necessary for taxes to be imposed.

In the 1660s and 1670s the dispute over the control of New Jersey's government, and with it the right to tax, resulted in the arrest of John Fenwick (West Jersey) and Philip Carteret (East Jersey) by the governor of New York on the ground that they were illegally acting as governors in

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<sup>3</sup> On William Penn's initial involvement in West Jersey see Mary Maples Dunn, Richard Dunn et al eds., *The Papers of William Penn, 1644-1679* v.1 (Philadelphia: University of Pennsylvania Press, 1981) 383-421.

<sup>4</sup> Robert C. Richie, *The Duke's Province: A Study of New York Politics and Society, 1664-1691* (Chapel Hill: University of North Carolina Press, 1977). Long Islanders protested as early as 1666, but the real crisis came in 1680 while Governor Edmund Andros was in England.

<sup>5</sup> Concessions and Agreement of the Lords Proprietors of the Province of New-Jersey, in Aaron Leaming and Jacob Spicer, *The Grants, Concessions, and Original Constitutions of the Province of New-Jersey 1664/1665* (Philadelphia, 1752; 1881 reprint) 12-26; and Julian P. Boyd, ed. *Fundamental Laws and Constitutions of New Jersey* (Princeton, N.J. D. Van Nostrand, 1964) 51-65.

<sup>6</sup> Concessions and Agreements of the Proprietors, Freeholders, and Inhabitants of the Province of West New-Jersey, 1676/1677 in Leaming and Spicer, 382-411; Boyd, 71-104.

their respective provinces.<sup>7</sup> The quarrel arose because the New Jersey grant came from the Duke of York and not directly from the King, and the argument was made by English authorities that only the king could grant the right to govern.<sup>8</sup> Governor Edmund Andros's efforts to control the Jerseys, and collected taxes there, did not make him popular in the colonies. At the same time the Catholic Duke faced difficulties in England, and agreed to submit the dispute to arbitration in England. In 1680 Judge William Jones ruled that the proprietors of the Jerseys were entitled to the rights of government, and the Duke then provided a new grant resolving the dispute, at least for a time.<sup>9</sup> However, the English government revived the arguments after 1698, trying to require ships to stop in New York to pay customs. The issue was resolved when the proprietors surrendered their claims to government, both Jerseys were consolidated, and placed under royal authority in 1702.

This document protesting the tax is credited to William Penn, but the handwriting is probably that of a clerk rather than his, a common practice. The legal language used here could be Penn's as he did have some training in the law, and authored numerous pamphlets advocating freedom of conscience, and objecting to the treatment of Quakers in England who insisted on practicing their religion in violation of English legislation.<sup>10</sup> Many, including Penn himself, were jailed as a result. Or, the legal citations could be the effort of Quaker lawyers with whom he was

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<sup>7</sup> Mary Lou Lustig, *The Imperial Executive in America: Sir Edmund Andros, 1637-1714* (Madison, N.J.: Fairleigh Dickinson University Press, 2002).

<sup>8</sup> For discussions of the dispute see John Pomfret, *The Province of West New Jersey, 1609-1702: A History of the Origins of an American Colony* (Princeton: Princeton University Press, 1956) especially 106-109, 111-113; Mary Maples Dunn, Richard Dunn et al eds., *The Papers of William Penn, 1680-1684 v.2* (Philadelphia: University of Pennsylvania Press, 1982) 23-25, 117n.9; J.M. Sosin, *English America and the Restoration Monarchy of Charles II: Transatlantic Politics, Commerce, and Kinship* (Lincoln: University Press of Nebraska, 1980) 231-243.

<sup>9</sup> Duke of York's Grant for the Soil and Government of West New Jersey, August 6, 1680, Leaming and Spicer, 412-419.

<sup>10</sup> The format of the document, with its arguments divided into sections, and the citations of English laws, is similar to the pamphlets he wrote in the 1670s (cited below). In addition, in the use of Latin quotes the Protest resembles sources he used in early religious tracts; see: Hugh Barbour, "The Young Controversialist," in Richard S. Dunn and Mary Maples Dunn eds., *The World of William Penn* (Philadelphia: University of Pennsylvania Press, 1986) 22.

acquainted. There are several possibilities. The protest refers to a list of English laws, but also notes Magna Carta and the Petition of Right as justification for the objections to the tax. In his arguments for religious liberty Penn, as in the document here, frequently cited those laws and history to prove his points.<sup>11</sup> He argued that there was a difference between fundamental laws, ancient and “immutable” that is for all times, and superficial ones passed for convenience that were “temporary” and “alterable.” Those conveying rights were fundamental.<sup>12</sup> In his pamphlet *The People’s Ancient and Just Liberties* (1670) Penn noted that he had referenced “some of those Maxims of Law, dearer to our Ancestors then life, *Because they are the defence [sic] of the Lives and Liberties of the people of England.*” He cited Magna Carta, “the Great Charter; *Great*, not for its Bulk, but the Priviledges [sic] in it: as from a spacious Root, that so many fruitful Branches of the Law of England springs.”<sup>13</sup> Finally, in addition to legal and historical citations, the document examined here drew on notions of equity and fairness, as well as appealing to the self-interested need of a ruler for support.

Penn and the Quakers involved in this protest cited Magna Carta, the Petition of Right, and a string of English laws, as part of an “ancient” constitution set in stone. Modern historians have

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<sup>11</sup> Mary Maples Dunn, *William Penn: Politics and Conscience* (Princeton: Princeton University Press, 1967) 44-72; Alexander Mazzaferro, “John Winthrop, William Penn, and Colonial Political Science,” Worlds of William Penn, Rutgers University Conference, November 19-20, 2015, unpublished paper. Dunn sees Penn’s use of history as conservative, while Mazzaferro argues it was innovative, but they agree that using history was important to him.

<sup>12</sup> For the documents in which Penn makes these arguments see Andrew R. Murphy ed., *Political Writings of William Penn* (Indianapolis: Liberty Fund, 2002); and in particular William Penn, Jr., *The Great Case of Liberty of Conscience...* (1670) Early English Books Online [EEBO]; Penn, *The People’s Ancient and Just Liberties Asserted, in the Trial of William Penn and William Mead...* (1670; 1682 reprint) EEBO; and Penn, *England’s Present Interest Considered...* (1675) EEBO. Special Collections and University Archives at Rutgers University Libraries has copies of *The People’s Ancient and Just Liberties Asserted...* (1670) F152.2 P412P X; and *England’s Present Interest Considered* bound in *Quaker Tracts, 1675-1685 BX7730.Q1*.

<sup>13</sup> Quote from *The People’s Ancient and Just Liberties*, 37. Italics for emphasis are in the original. Penn credits “Cook” and his *Institutes* for this, referring to Sir Edward Coke’s *Institutes of the Laws of England*, four volumes compiled in the early seventeenth-century. In this particular pamphlet Penn defended the independence of juries and freedom of conscience, and included numerous citations from history and law.

portrayed a far more complex history of the documents.<sup>14</sup> But the issues and arguments discussed in the document resonated with Samuel Smith in 1765. These include whether there are fundamental constitutional principles above government, as well as whether there is an unchanging required right to consent to taxes for them to be imposed, matters still of concern in the 21<sup>st</sup> century.

### **Document<sup>15</sup> Transcription<sup>16</sup>**

On outside:

The Case of New Jersey stated by William Penn to the Duke's Commissioners about the 5 per cent when the first settlers came.<sup>17</sup>

Document:<sup>18</sup>

To those of the Duke's Commissioners whom he has ordered to hear, and make reports to him concerning the customs Demanded in New West Jersey in America by his Governor of New York.<sup>19</sup>

1<sup>st</sup> The King has granted to the Duke of York a tract of Land in America, consisting of several Indian countries, with such powers and authorities as are requisite to make Laws, and to govern and preserve the territory when planted.<sup>20</sup> But with this restriction twice expressed, and several

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<sup>14</sup> For a discussion see John G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957).

<sup>15</sup> Autographed manuscript, attributed to William Penn 1644-1718, 5 pages (12 ¼ x 7 ¾ in), MC 1439. Special Collections and University Archives, Rutgers University Libraries.

<sup>16</sup> Transcription note: to enhance readability spelling and punctuation have been modernized. Unfortunately, parts of the document proved very difficult to read: a combination of the handwriting, faded ink, use of abbreviations, occasional use of Latin, and missing pieces of the paper.

<sup>17</sup> Note in pencil on the first page of the document says 1668, but that is not possible as it is well before William Penn was involved in New Jersey. This statement on the outside says "when settlers first came," which was 1676 or 1677. This is when the Quaker settlers began arriving in West Jersey, and the later date makes sense.

<sup>18</sup> Samuel Smith's *History of New Jersey* (1765) 117-124, contains a transcription of about 80-85% of the document. He skipped the section with much Latin and with the numerous legal references. Also while there is a close match between what he quotes and this document, they are not exactly the same. Yet in a few instances, where the original is torn or impossible to read, his transcription proved helpful. Smith does not cite his source, and it may well have been a later copy. He dates his document as 1680, so perhaps it was a copy from when the arguments were used again. This is the timing of the Jones Decision in England that did, at least for a time, resolve the issue of the customs. Pomfret, 107, quotes a brief passage from Smith's transcription and credits it to the resident West Jersey proprietors in 1680 (using Smith's dating), not to William Penn.

<sup>19</sup> Edmund Andros.

<sup>20</sup> King Charles II to the Duke of York, March 12, 1664, Leaming and Spicer, 3-8.

times reserved too, viz: *So always as these statutes ordinances and proceedings be not contrary, but as near as may be agreeable to the Laws statutes and government of this our Realm of England.* In another place thus, *And further it may be lawful for our Dearest Brother, his Heirs and Assigns, by these presents, to make, ordain, and establish all manner of orders, Laws, directions, instruments, and forms of Government, and Magistrates fit and necessary for the territory aforesaid, but still with the limitation so always as the same be not contrary to the laws and statutes of this our Realm of England, but as near as may be agreeable thereunto.*

<sup>21y</sup> The Duke of York by virtue of this grant from the King to him, for a competent sum of money paid by the Lord John Berkeley and Sir George Carteret, granted and sold to them a tract of Land called now by the name of New Cesearia or New Jersey.<sup>21</sup> And that in as ample manner now as it was granted by the King to the Duke.<sup>22</sup>

Thus then we came to buy that moiety<sup>23</sup> which belonged to Lord Berkeley for a valuable consideration. And in the conveyance<sup>24</sup> he made us [torn, “powers”<sup>25</sup>] of government are expressly granted, for that only could have induced us to buy it, and the reason is plain. Because to all prudent men the government of any place is more inviting than the soil. For what is good Land without good laws, the better, the worse. And if we could not assure people of an easy and free, and safe Government both with respect to their spiritual and worldly property; that is an uninterrupted liberty of conscience, and an inviolable possession of their civil rights and freedoms, by a Just and wise Government, a mere wilderness could be no encouragement. For it were a

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<sup>21</sup> Duke of York's Release to John Lord Berkeley and Sir George Carteret, June 24, 1664, Leaming and Spicer, 8-11.

<sup>22</sup> The right to the government is assumed in this document, but part of the dispute in the colonies. Pomfret, 67 and elsewhere argues none of the New Jersey proprietors were ever clearly given title to the government, but Berkeley and Carteret just as clearly exercised it -- initially without challenge. As the document states, the Quaker purchasers in both West and East Jersey assumed they had bought it.

<sup>23</sup> Half.

<sup>24</sup> Bill of sale from Berkeley to John Fenwick in trust for Edward Byllynge.

<sup>25</sup> Suggested word from Smith.

madness, to leave a free, good and improved county to plant in a wilderness, and there adventure many thousands of pounds to give an absolute title to another person to tax us at will and pleasure. This single consideration, we hope, will excuse our desire of the government; not asserted for the sake of power but safety, and that not only for ourselves, but others that the plantation might be encouraged.

3<sup>ly</sup> The Lord Berkeley and Sir George Carteret considering how much freedom invites, that they might encourage people to transport themselves into those parts, made and divulge certain concessions,<sup>26</sup> containing a model of Government. Upon these several went, and are there planted. The country was thus possessed, and the said Government uninterruptedly administered by the said Lord Berkeley and Sir George Carteret or their Deputy for several years, during which time no custom was demanded.

4<sup>ly</sup> We dealt with the Lord John Berkeley upon the sight of these Concessions, and the presumption, that neither he nor Sir George Carteret would attempt to act anything that they had not power to do, much less that they, or either of them, would pretend to sell a power they never had, since that would not only be a cheat to the people that dealt with them for it, but an high affront to the Duke.

5<sup>ly</sup> The Moiety of Nova Caesarea or New Jersey thus bought of the said Lord Berkeley, we disposed of part of our interest to several hundreds of people, honest and industrious. These transport themselves, and with them such household stuff and tools as are requisite for planters to have. They land at Delaware Bay, the bounds of the country we bought; the passage God and nature made to it. At their arrival they are saluted with a demand of customs of 5 percent, and that not as the goods may be there worth, but according to the invoice as they cost before shipped

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<sup>26</sup> Concessions of 1664 Boyd, 51-65; Leaming and Spicer, 12-26.

in England. Nor did they take them as they came but at picked and chose, with some severe language to boot. This is our grievance, and for this we made our application to have speedy redress, not as a burden only, with respect to the Quantum or the way levying it, or any circumstances made hard by the irregularity of the officers, but as a wrong. For we complain of a wrong done us, and ask yet with modesty, *Quo Jure?*<sup>27</sup> Tell us the title, by what right or law, are we thus assessed; that may a little mitigate our pains ----- Your answer, hitherto hath been this: That it was a conquered country, and that the King being the conqueror, he has power to make Laws, raise money, etc and that this power *Jure* [“*Regale*”<sup>28</sup>],<sup>29</sup> the King has vested in the Duke: and by that right and sovereignty the Duke demands that customs we complain of. But suppose the King were an absolute conqueror in the case depending, doth his power extend equally over his own English people, as over the conquered? Are not they some of the letters that make up the words conquered? Did Alexander conquer alone, or Caesar beat by himself? No. Shall their armies of country men and Natives, lie at the same mercy as the vanquished; and be exposed to the same will and power with their captured enemies? The Norman Duke, more a conqueror of England, by his subjection to our laws and pretense to a title by them, than of heraldry by his arms, used not the companions of his victory so ill.<sup>30</sup> Natural rights, and humane prudence, oppose such doctrine all the world over. For what is it but to say, that people free by law under their Prince at home, are at his mercy in the plantations abroad, and why? Because he’s a conqueror there, but still at the hazard of the lives of his own people, and at the cost, and charge of the public. We could say more, but choose to let this drop. – But our case is got better

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<sup>27</sup> Literally by what right.

<sup>28</sup> Suggested word from Smith.

<sup>29</sup> Royal law.

<sup>30</sup> In *England’s Present Interest Considered*, 8, Penn argued that William the Conqueror “quitting all Claim by Conquest...became a King by Leave.”

yet. For the King's grant to the Duke of York is plainly restrictive to the Law and Government of England, and that more than once, as is before expressed. Now the constitution and Government of England, as we humbly conceive is so far from countenancing any such Authority, as it made a fundamental in our constitution and government that the King of England cannot justly take his subjects goods without their consent. This needs no more to be proved, than a principle.<sup>31</sup> This *Jus Indeigene*,<sup>32</sup> an home born right, declared to be law by diverse statutes, as in the great Charter<sup>33</sup> of Ch:29, and 34 Ed: 3. Ch:2 again 25 Ed. in Ch.7.<sup>34</sup> Upon this were many of said parliament's complaints grounded, but particularly that the same Kings reign, as is delivered By Matthew Westminister<sup>35</sup> in these words:<sup>36</sup> Ne Rex de ea [torn, te?] talagia usurparet et voluntaris sup[er] his indortes exactions de catero [torn, Quah?] in irritum wrocant Dit. It: Saville<sup>37</sup> sfracsort 1601 and in the writ of publication sent out into all parts in the 26 of Ed after that statute of the 25 again to our point. Consedentes quod customen illem volatos alimo sine volunte we Commune assendo non capismu mom scac: In 26: Ed : And in that notable statute 34 Ed. 1 ch there are these words: No tallies or aids shall be levied by us or our Heirs in our Realm without the good will and assent of our Arch Bishops, Earls, [torn, Barons?], Knights, Burgesses and other free men of this land. To this very purpose that of the 5: of Ed: 2: and 14, which gives a

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<sup>31</sup> As noted in the introduction Penn and the other Quaker West Jersey proprietors believed that England had an unchanging constitution, containing ancient and fundamental laws. See also: *Papers of William Penn*, v.1, 388, 409n.9, 410n.15.

<sup>32</sup> Law of the natives.

<sup>33</sup> Reference is to Magna Carta. Document in George Burton Adams and H. Morse Stephens, *Select Documents of English Constitutional History* (New York: Macmillan Co., 1929) 42-52. The standard scholarly discussion is J.C. Holt, *Magna Carta*, 3<sup>rd</sup> ed. (Cambridge, U.K.: Cambridge University Press, 2015); for a recent popular work evaluating the history of the document see Dan Jones, *Magna Carta: The Birth of Liberty* (Viking, 2015).

<sup>34</sup> Reference is to the 34 year of Edward II and so on; Penn used the same format in his 1670s pamphlets, and cited the same laws.

<sup>35</sup> Matthew Westminister, supposed author of a Latin text that may instead have been composed by a series of monks in the thirteenth century.

<sup>36</sup> Here Smith, 120 n. x, notes the manuscript he was using was "defaced." He does not include the section that follows.

<sup>37</sup> Saville probably a reference to a prominent judge and councilor of the period.

discharge to all new impositions and customs, and this is the reason rendered for it because now [torn, imposed?].

Assent do baronige and in the 14 Ed: 3 st 2 and: The King doth grant by way of charter to the prelates, early Barons, Commons, Burgesses and merchants, that they be not from henceforth charged to make any aid or sustain charge if it be not by the common consent of the prelates, [Earls?], Barons and other great men and commons of the Realm and that in Parliament.

Likewise in the 25: of the same King is declared, that no person thenceforth should be compelled to make any loans to the King against his will, because such loans were against reason and the franchises of the Land 25 Ed: 3 Quot Parl [Quote Parliament?] and by other law of this Realm, it is provided that none should be charged by any charge or imposition, no, though it were under that soft and courteous name of benevolence nor by any such like charge 21 Ed.:, mem, 6:11 R:2.9 11, R. 3.2. [torn] and lastly as a Summary of all of this nature the Petition of Right<sup>38</sup> comes in to our defense. Viz: that it's a fundamental part of the Government and right of this people, not to pay any tax, imposition, loan or charge, whatsoever without their consent car.3 Petition of Right eminently confirmed by the 16 of the same King. Ch 14. We say nothing of those times as early as the Saxons or the Norman Duke, and his immediate successors, but this case is as plain then.<sup>39</sup>

By all which has been alleged, we hope the point of our claim is put out of all doubt, and it will be thought fit to withdraw the custom now exacted in New Jersey. For without the Duke's Governor taxes away our goods without our consent, which is declared by law to be against Law; or else his Authority must be supposed to have the authority of a Law, to allow the property of

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<sup>38</sup> The Petition of Right was written by Parliament and ratified by Charles I on June 7, 1628, after a dispute about financing the then war. Petition of Right in *Select Documents of English Constitutional History*, 339-342.

<sup>39</sup> In *England's Present Interest Considered*, 6-24, Penn did note "English Rights, in the British, Saxon, and Norman Times."

the subject's goods, which is also against Law. For either there is no Law to give us a right to anything and nothing we have is our own, or that Rule is valid Quod meum est sine facto mihi arterious four non posses. This maxim contradicted the Jus publicum Reigns<sup>40</sup> is [subverted?] that fundamental Law of property delivered up, the balance of our state broke and in fine all counsollary and Parliamentary legislation seems to be in danger if not lost. Some may think this is paring close upon the King: and that contrary principles advance the Kings power and prerogative. But before they determine so far in disfavor of us, they must forget the [veneration?] that is due to the Judgment of our learned Lawyers Bracton<sup>41</sup> and Fortescue<sup>42</sup> Ron est saith Bracton, wrb be Dominator lex non voluntary Brac lib. [torn]. And Fortescue tells us non potest Anglo ad libbitum logos mum Reyno Suo. Here followed a great deal more Latin which is quotations out of Fortescue, which being taken in short hand I could not truly transcribe as I question whether some above be truly done and therefore shall here pass it.

So that he makes it the power of making and imposing laws to be convertible et coincident that is concomitantly that one is not without the other, but that both rests in the same hands.<sup>43</sup> To give up this<sup>44</sup> is to change the government. To sell, or rather resign ourselves to the will of another and that for nothing. For under favor we buy nothing of the Duke if not the right of an undisturbed colonizing, and that as Englishmen with no diminution, but expectation of some increase of those freedoms and privileges enjoyed in our own country: for the soils is none of his, tiz the Natives by the Justus Gentium, by the Law of Nations. And it would be an ill Argument to convert to Christianity, to expel instead of purchasing them out of those countries.

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<sup>40</sup> Public rule.

<sup>41</sup> Henry Bracton (1210-1268). English judge and author of *Bracton de Legibus Et Consuetudinibus Angliae* (On the Laws and Customs of England).

<sup>42</sup> Sir John Fortescue (c.1394-c.1480) Chief Justice of the King's Bench of England. Author of *De Laudibus legume Angliae* (Commendations of the Laws of England c. 1543).

<sup>43</sup> Smith, 120, picks up again here.

<sup>44</sup> Smith's text includes "(the power of making laws)".

If then the country be theirs, it's not the Duke's, he cannot sell it. Then what have we bought? We are yet unanswered in this point. And beseech you to do it with all due regard to the great honor and Justice of the Duke.

If it be not the right of colonizing there, which way have we our bargain? That pay an arbitrary custom neither known to the Laws of England nor the settled constitution of New York and those other plantations. To continue this point we humbly say, that we have not lost any part of our liberty by leaving our country; for we leave not our King nor Government by quitting our soil, but we transplant to a place given by the same King, with express limitation to erect no polity contrary to the same established government, but as near as may be to it; and this variation is allowed but for the sake of emergencies, and that latitude bounded with those words (*for the good of the adventurer and planter*), which that exaction of custom can never be, in that it not only varies to the discouragement and prejudice of the planter, but contradicts his native laws, rights, and liberties. And lays a foundation for another sort of Government than that which was only known to his fathers, unto the Just defense of which he is engaged by nature and municipal Laws. So far in point of Law.

We shall now insist upon the equity of our case.

1<sup>st</sup> This very tax of 5 percent is a thing not to be found in the Duke's conveyances but an after business; a very surprise to the planter, and such a one as could they have foreseen, they would sooner have taken up in any other plantation in America.

In the next place

2<sup>ly</sup> New Jersey never paid custom before the last peace,<sup>45</sup> And that peace reinvests every proprietor by articles. Now we bought it when free, since which time this imposition is born,

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<sup>45</sup> With the Dutch in 1674. The Dutch reconquered New Netherland in 1673, but it then soon returned to English rule with the Treaty of Westminster.

must we be subjected to the payment of one tax of greater value than the country? This in plain [Torn, "English"<sup>46</sup>] is under another name paying for the same thing twice over. Nay had the soil been purchased of the Indians by those of whom we bought it and given us, it had been dearly accepted upon this condition, and with this encumbrance. But it was bought by us, and that for a valuable consideration here, and is now purchased again of the Natives there too, this makes our case extreme hard and we pray relief.

<sup>3</sup>ly Custom in all governments in the world is laid upon trade, but this upon planting, had we brought commodities to those parts to sell, made profit out of you and returned to the advantages of traders, there had been some color of pretense for this exaction. But to require and force a custom from persons for coming to their property, their own terra firma, their habitations, in short, for coming home, it's without a parallel.

This is paying custom not for trading but landing, not for merchandizing but planting. In very deed for hazarding. For there we go, carry ["over"<sup>47</sup>] our families and estates, adventure both for the improvement of a wilderness not only told we must pay hereafter out of our gains and improvements but must pay out of our poor stock and principle (put into goods) 5 in the 100 and not as they are there worth, but as they here cost, and this for coming to plant. So that the plain English of the tragedy is this - We twice buy this moiety of West Jersey, first of the Lord Berkeley and next of the Natives and what for? The better to mortgage ourselves and posterity to the Duke's governors. And give them a title to our persons and estates that had never any before. But pray consider can there be a house without a bottom, or a plantation before a people? If not can there be custom before a trade? This much for the equitable part of our plea. The next and last is the prudential. We do offer several things in point of prudence why the Duke should desist

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<sup>46</sup> Suggested word from Smith.

<sup>47</sup> Suggested word from Smith.

from this exaction. First, there can be no benefit to a Prince in America. There can be no trade without a people. There will be no people where there is no encouragement, nor can there be any encouragement where people has not greater privileges by going than staying, for if their condition be not meliorated, they will never forgo the comfort of their kindred, they must leave behind them, nor forsake their Native country, run the hazard of the seas, nor lastly expose themselves to the wants and difficulties of a wilderness. But on the contrary they have less privileges there than at home. This every way is to worse themselves to govern [or “go”?<sup>48</sup>] for they do not only pay custom here for going, but there for arriving, which is not done many other plantation, even when our men go to merchandize and not to plant, which is our case. Besides there is no end of this power; for since we are by this precedent excluded our English right of common assent to taxes, what security have we of anything we possess? We can call nothing our own but are tenants at will, not only for the soils but for all our personal estates we carry, and the sweat of our brows to improve them at our own hazard only.<sup>49</sup> This is to transplant not from good to better, but from good to bad. This sort of conduct has destroyed government, but never raised one to any new greatness, nor now will in the Dukes territory’s whilst so many countries equally good in soil and air surround it with greater freedom and security.<sup>50</sup> Whereas if the Duke please to make all planters easy and safe in their liberty and property, such a just and free Government will drain other places, encourage persons to transplant into his country and their disbursement will soon be at an end. His revenues with satisfaction to the people, presently visibly [torn, “augmented”<sup>51</sup>]. Next this encouragement shipping and seamen, which not only

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<sup>48</sup> Suggested word from Smith.

<sup>49</sup> Previous two sentences are slightly different in Smith.

<sup>50</sup> A few settlers, discouraged by the lack of title to the government and by the customs duties, apparently did think of going to another colony. Pomfret, 107-108.

<sup>51</sup> Suggested word from Smith.

labor of abundance of idle people, but our native growth and manufactories, and the export of them; and import of the product of those plantations, in a little time overflow and advance the revenue of the crown. Virginia and Barbados are proofs undeniable in the case.

Lastly, the Duke's circumstances, and the peoples jealousies considered, we humbly submit it, if there can be any in their opinion a greater evidence of a design to introduce an unlimited Government than both to exact such an uninterminated Tax from English planters, and to continue it after so many repeated complaints? And on the contrary, if there can be anything so happy to the Duke's present affairs as the opportunity he hath to free that country with his own hands, and to make us all owners of our liberty to his favor and Justice. So will Englishmen here know what to hope for by the [torn, "justice"<sup>52</sup>] and kindness he showed to English men there, and all men to be shown the just [torn, "model of his government"<sup>53</sup>] in New York, to be the scheme and Draught in little of his administration of old England at large, if the crown should ever devolve upon his head. The conclusion is this: that for all those reasons in Law, equity, and prudence alleged you would please to second our request to the Duke that like himself he would void this taxation, and put this country in such an English and free condition, that he may be as well-loved and honored as feared by all inhabitants of his territory, that being great in their affections he may be Great by their industries, which will yield him that wealth, that parent of power, that he may be as great a Prince by property as by title.<sup>54</sup>

### **Document Manuscript<sup>55</sup>**

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<sup>52</sup> Suggested word from Smith.

<sup>53</sup> Suggested word from Smith.

<sup>54</sup> Smith, 124, then quotes a letter from Samuel Jennings, October 17, 1680, sent from New Jersey and reporting that his ship had arrived and the custom had not been collected. Subsequently the Duke and then Charles II confirmed the proprietors' rights to their governments and lands. See Duke of York's Release, and Letter of the King, Leaming and Spicer, 141-152.

<sup>55</sup> Document scanned by Tara Maharjan, Special Collections and University Archives, Rutgers University Libraries.

His wife of Oron  
Johan, sister of  
Mittens, born to the  
D<sup>r</sup> Dominickson  
about the 5<sup>th</sup> of March  
the first letter came

N<sup>o</sup>

about 1668

To those of the Dukes, Commissioners, whom he has ordered  
to hear & make reports to him concerning the customs  
demanded in these his Majesty's Colonies by his Letters  
of these your's.

11. The King has granted to J. D. of M. a tract of land in America consisting  
of several Indian Countries, with full power & authority, as well as  
- quiet to make laws, & to govern & please the said territory, when please  
- is. But with this restriction, viz. expressly & by statute, order, or  
- to, viz. soe always, as the said statutes, ordinances, & proceedings be not  
- contrary but as near as may be agreeable to the laws, statutes, & Govern-  
- ment of this Kingdom of England. In another place thus, And  
- further it may be lawfull for our Dear Brother his Heires and  
- Officers by their Letters, to make, ordaine & establish all manner of  
- Indian laws, Instructions, Instructions, & forms of Government & Magistrate  
- fit & necessary for the said territory aforesaid. But still with this limitation  
- soe always, as the same be not contrary to the laws, & statutes, of  
- this Kingdom of England. but as near as may be agreeable thereto.

21 The Duke of York by Letters of this grant from the King to him, gave  
a competent sum of money paid by the L<sup>d</sup>. John Berkeley, & S<sup>r</sup>. Geo.  
Berkeley granted & sold to them a tract of Land called now by the  
name of New Carolina or New Jersey, And that in as ample man-  
- ner as it was granted by the K. to the D.

Thus then we come to say that moiety which belonged to L<sup>d</sup>. Berkeley  
for a well known consideration. And in the said Letters of this  
- our & Government's are expressly granted, for that only could have induced  
- us to buy it, & the reason is plain, Because to all prudent men the Go-  
- vernment of any place is more interesting than the soils. For what is  
- good land without good laws, the better the worse. And if we would  
- not assure people of an easy & free & safe Government. Both with respect to  
- their spirituall & worldly liberty, that is an uninterrupted Liberty of  
- conscience, & an inalienable possession of their civil rights & freedoms,  
- by a just & wise Government. Christian wildnesses would be not encourag-  
- ing. For it were a madness, to have a free, good & prosperous country  
- to plant in a wilderness, & there advertise many thousands of people  
- to give an absolute title to another person to tax us at will & to assure  
- their single consciences no hope will result or desire of the Go-  
- vernment. not affected for the sake of power but justice, & that not on-  
- ly for or before, but others, that the plantation might be encouraged.

37 The L<sup>d</sup>. Berkeley, & S<sup>r</sup>. Geo. Berkeley, considering how much freedom in-  
- vites that they might encourage people to transport themselves into  
- that part, made a divinely intentioned resolution, containing a model  
- of Government, upon that several point, & our these plants. The Govern-  
- ment was thus proposed, to the said Government, which was happily approved  
- by the L<sup>d</sup>. Berkeley, & S<sup>r</sup>. Geo. Berkeley, or their deputy, for several  
- years, during which time no customs was demanded.

46 I dealt with the L<sup>d</sup>. John Berkeley, upon the sight of these Consider-  
- ations, & the presumption, that neither he nor S<sup>r</sup>. Geo. Berkeley would  
- attempt to do any thing that they had not power to do, much less if  
- they or either of them would pretend to sell a power they never had  
- first that would not only be a hurt to the people that dealt with them,  
- for it, but an high affront to the Dukes.

5. The Majesty of New Spain or New France, thus bought of the said  
Barbets, we dispose of it of or in respect to several hundreds of people  
honest & industrious. They transport themselves, with their families  
hold stuff & tools, as are requisite for planters to have, they land at  
Islewards Bay the bounds of the country, we bought the passage God's  
nature made to it. At their arrival they are saluted with a demand  
of Customs of 5<sup>l</sup> 6<sup>s</sup> 8<sup>d</sup>, and that not as the goods may be there  
worth but according to the invoice as the gold before shipped in England  
now did they take them as they came but at pill & theft, with some fines  
congruous to boot. This is our grievance, as for this we made a supplica-  
tion to her Majesty, as well as a burden only, with respect to the  
quantity or the way of carrying it, or any inconvenience, made hard by  
the irregularity of Officers, but as a wrong, for we complain of a  
wrong done us, and after yet with ourselves, Jus Juris. & all the  
title, by what ~~law~~ right or law, and not thus used; that may a little miti-  
gate or pain? — Ye & Justice, like to hath been this.

That it was a Conquerors Country, & that the King being the Con-  
queror, he has power to make laws, raise money, & that this power  
Jus Regale, the King useth in the D. & by that right & sovereignty  
the D. demands that Customs we complain of.

But, suppose the King were an absolute Conqueror, in the case depending  
both his power extend equally over his own & other people, as over the  
Conquerors? Has not they some of the latter that make up the words  
Conquerors? Did Alexander conquer alone, or as far but by himself's  
God; shall their armies of Conquerors, men & Nations, cry at the same man-  
ner as the Conqueror? & be exposed to the same will & power in  
Captivity & Slavery? The Roman Duke, now a conqueror of England  
by his subjection to our laws, & persons to a title by them, then of  
Rome by his arms, used not the companions of his victory for it  
naturall right & humane pleasures, opposite such Dominion, all the  
world over. For what is it but to say, that people first by law under-  
taken against at home, and at his mercy in plantations abroad, and  
why should he's a conqueror there, but still at the hazard of the law  
of his own people, & at the cost & charge of the public, as we would say  
now, but that is at this day. — But to give is not all yet. For  
the Kings grants to the D. of words is plainly restrictive to the laws  
& Government of England, & that more than once, as is before express'd,  
& now the Constitution & Government of England, as we humbly conceive, as  
far from countervailing any just Authority, as it needs a flow-  
ment in its constitution & government. That the King of England  
cannot take justly, take his subjects goods, without their consent. It  
needs no more to be proved, than a principle? Quis Juris Imperium, an her  
own right Ireland is to law by Divers Statutes, as in the great Charter  
Ch. 29. & 34. Ed. 3. Ch. 2. again 25. Ed. 3. Ch. 4. upon this were many of the  
parliament complaints grounded, but especially that of the same Kings  
relaxia usurpant et voluntaria supbia in divers occasions, de excessu Regis  
Arbitrium hinc rursus Ed. 1. Statute Henry 3. 101. in the word of pub-  
lication And out into all parts in the 26. of Ed. 1. after that Statute of the 25.  
against the same point. Constituti quod nullo modo illam velatit aliam sine  
lance nisi Comune apud, non Scimus Mem. Stat. in 26. Ed.  
And in that notable Statute 34. Ed. 1. the third and these words, Hoc

How talays or aid shall be levied by us or our Heires in our Realm  
without the good will & assent of our Arch Bishops, Bishops, Barons,  
Knights, Burgesses & other free men of this Land, to this very purpose  
that of the 16. of Ed. 2. c. 12. which gives a Discharge to all men, knights  
-& vassals, & this is the reason why we do not give our assent  
to the 14. Ed. 2. c. 12. the R. took notice  
by way of Charter to the prelates, Bishops, Barons, Knights, Burgesses &  
Men, that they be not from henceforth charged to make any aid or  
subsidy charge if it be not by the common consent of the prelates,  
Bishops, Barons & other great men & members of the Realm and  
that in Parliament.

Also in the 25. of the first King of  
Ireland, that no person thenceforth should be compelled to make  
any loan to the King yet his will, Bishops, knights were assent  
for & the franchises of the Land 25. Ed. 3. last. par. and by Statute  
of this Realm, it is granted that none should be charged by any ways or im-  
position, nor, though it were under that soft & courteous name of bene-  
volence nor by any just title charge 21. Ed. 1. mem. 16. 11. R. 2. 9. 11. R. 3. 2.  
And lastly as a summary of all of this nature the petition of right sent in  
to our Sovereign, viz. that it is a fundamentall part of the Governour & right  
of this people, not to pay any tax imposition loan or charge whatsoever  
without their consent in a 3. petition of right sent in by the  
by the 16. of the first King. the 14. Ed. 2. says nothing of those times as early  
as the Saxons or the Norman Duke, & his immediate successors, but the text  
is as plain then.

By all which has been said already, we hope the point of our Claims, is  
put out of all doubt, & it will be thought fit to withdraw the questions  
now treated in these papers. For since the Duke, Governour takes away our  
goods without or without which is doubtless by law to be aqt. law; or else the  
Authority must be supposed to have the authority of a law, to alter the  
property of the fact, the good, which is also aqt. law. For since there is  
no law to give us a right to any thing & nothing we have in our own  
that field is valid, sed non est nisi factis in actu, nisi factis in actu, nisi  
this maxim notwithstanding, the true publicum begins in separation, that founda-  
mentall law of property divided up, the Gallies & parts be & in fine  
all our Kingdom & Parliament, Legislation seems to be in danger if not  
left.

Some may think this is placing the power upon the King: and that  
contrary principles advanced the Kings power & prerogative. But before  
they determine too far in favour of us, they must forget the concession  
that is due to the judgment of the learned Lawyers Broughton & Fortescue,  
Fox of South Broughton, the Dominator Rex non voluntarie bene Brat.  
Ad. 1. or. and Fortescue tells us non potest Angli ad libertatem Regni  
Regno suo, how followed a great deal more Latin which is quotations of  
Fortescue which brings in our first Lord & would not truly maintain, as justice  
is that the power seems to be truly done & that power shall be payable.

So that to make the power of making & imposing laws to be convertible  
at some times if it is voluntarily that one is not without the other, but yet  
both as in the same hands. to give up this is to change the government. to sell  
or assign resign or give to the will of another & that for nothing  
for under that no by nothing of the Duke if not the right of an  
disfranchised colonizing & that as English men with no demerit but ex-  
tation of some interest of those persons & privileges enjoyed in our own  
Country. for the sake of none of his, by the Nation by the just Gen-  
eral, by the law of Nations. And it would be an ill argument to pretend to  
extinguish to expell instead of pushing them out of these country.

If then the countries be theirs; it is not the Duke's, he cannot sell it, & knoweth  
how we bought; we are yet unanimous in this point, and desire you to do  
it with all due regard to the great honor & justice of the Duke  
if it be not the right of selling them, which way have we or bargain  
that pay an arbitrary custom without known to the laws of England  
nor the settled constitution of the Colonies & those other plantations.  
To condemn this point; we humbly say, that we have not lost any part  
of our Liberty, of bearing or country; for we have not sold King nor Governor  
- out of quitting or soils, but we have plant to a plain gain by the same thing  
with express limitation to such not policy contrary to the same  
settled government. But as near as may be to it, & the variation is allowed  
but for the sake of immutability, and that latitude bounded with these  
words, for the good of the adventure & planter, which that variation  
of custom can never be, in that it not only varies to the disservice  
- and prejudice of the planter but contrary to his Native laws, rights and  
liberty. And lays a foundation for another sort of Government than  
which was only known to his Subjects, unto the just defence of which  
he is engaged by nature & Municipal laws. So far in point of law.

23  
We shall now insist upon the equity of a duty.  
The duty tax of 5 p cent is nothing more to be found in the Duke's colonies  
but an oppressive burden; a way foreign to the planter, and such one as  
could they have foreseen they would sooner have taken up in any other  
plantation in America. In the next place  
24  
We are first, never paid custom before the last pass, and that paid as  
- much over as price of articles. Now we bought it with free price  
which time this imposition is born, must we be subjected to the payment  
of one tax of another value than the country? & then planters  
is under name paying for the same thing twice over. nay had the price  
been marked of the Indians by those of whom we bought it as given us  
it had been doubly applied upon the condition & with this misburden.  
But it was bought of us, & that for a valuable consideration and, & more  
perhaps again of the Native than too, this makes, or casts a tax upon  
our private life.

25  
We are now, in my world is laid upon trade, but this upon plant  
ing, had we bought commodities to those parts to sell, mind quite out of you &  
would is the advantage of traders, those had been some sale of plants for  
this taxation. As to your & your a custom from you, for coming to  
their profits, their own & extra firma, their habitation, in short, for  
winning home, its without a parallel.  
This is paying upon not for trading but landing, not for merchandise  
but planting, in any case for hazardous. For there we get our own  
families, & others, adventure both for the improvement of a nation  
not only sold us must pay for what out of their goods & improvement  
must pay out of our poor stock, & principle (put into goods) 5 in the 100  
as well as they, and their worth but at the same time, & this for coming to plant  
so that the plain English of the tragedy is this. We must buy this Major  
of their first, first of the 100 Barrels, & next of the Native & what for?  
The latter is mortgage or lease & possession to the Duke's Governor, and give  
them a title to our goods, & others, that had never any before. — But pray  
consider rather to a house without a bottom or a plantation before a private  
if not run them to a custom before a trade & this must for the equitable part of  
plant. As next & last in the presidential, no do other private thing, in point of  
private

Prudens why, the D. should desist from this exaction first there can be no  
- brought to a firm in America. There can be no trade with a people, who  
will be no people <sup>without</sup> the D. nor can there be any encouragement  
- whose people has not greater privileges, by going than staying, for if their  
- condition be not meliorated, they will never leave the comfort of their  
- = dead, they must bare behind them, nor forsake their habit countries, nor  
- the hazard of the sea, nor castly expose themselves to the want & diffi-  
- = ties of a wilderness. But on the contrary they have by privileges <sup>that</sup> the  
- ~~are~~ at home, in every way to woult themselves to god, for they do not only  
- enjoy customs law for going, but those for arriving, which is not done many  
- other plantations since either or, nor god to merchants & not to plant, with  
- is or less. Besides there is no end of this power, for this is not by this page  
- sent to hold the English right of common as to taxes, what fourth, hand  
- us of any thing we possess, no in full nothing we own but are bound at  
- will, not only for the soils but for all our personal effects, no more, or the  
- end of or laws, to improve them at our own hazard only. This is not  
- plant nor from good to better, but from good to bad. This sort of conduct  
- has destroyed government. But never raised ours to any true greatness, nor us  
- will in the Dutch territories, whilst for many countries equally good in  
- soils & air flourish, it with greater freedom & security. We know  
- if the D. please to make all planters safe & safe in their liberty & property  
- such a just & good Government, will draw other plants, & increase from the  
- transplant into his country, & his ~~discovery~~ will soon be at an end  
- his ~~own~~ with satisfaction to the people, & plenty, visibly augmen-  
- tate this encouragement. Shipping & Barren which not only ~~is~~ of abundance  
- of his people but of native manufactures & the export of them & the  
- ~~not~~ ~~at~~ ~~them~~ import of the ~~and~~ of the ~~plants~~ in a little time  
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Lastly the Dutch, Connecticut, & the people, jealous of our power, we humbly  
- submit it, if there can be any in their opinion a greater burden of a  
- design to introduce an unlimitid Governmt. than both to exact such an  
- unreasonable tax from English planters, & to continue it after for many  
- as yet, & complaints? And on the contrary if there can be any thing so  
- happy to the Dutch, present affairs as the opportunity he hath to give that coun-  
- try with his own hands, & to make us all guests of our liberty to his favor  
- & justice. so as will English men but know what to hope for by this  
- & prudens, he speaks to English men there, and all men take the <sup>same</sup> wisdom  
- ~~of~~ ~~the~~ ~~in~~ ~~the~~ ~~year~~ ~~that~~ ~~is~~ ~~to~~ ~~be~~ ~~the~~ ~~system~~ ~~of~~ ~~draught~~ ~~in~~ ~~the~~ ~~of~~ ~~his~~ ~~ad-~~  
- ministration of old England at large, if the Crown should ever divert  
- upon his head. The resolution is this; that for all these reasons in law  
- equity, & prudens already, you would please to stand or request to that  
- that let himself be would void this taxation, & put the country in such an  
- English & free condition, that it may be as well loved, & honored, as parts  
- by all the inhabitants of his territory, that being great in their affections, he  
- may be great by their industry, which will yield him up us all up parts of  
- power that he may be as great a prince by property, as by title.

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