

**THE ENGLISH
CONSTITUTION IN THE
REIGN OF KING
CHARLES THE SECOND**

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The English Constitution in the Reign of King Charles the Second by Andrew Amos

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ANDREW AMOS

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THE ENGLISH CONSTITUTION

IN

THE REIGN

OF

KING CHARLES THE SECOND.

BY

ANDREW AMOS, ESQ.

DOWNING PROFESSOR OF LAW IN THE UNIVERSITY OF CAMBRIDGE,
AND LATE MEMBER OF THE SUPREME COUNCIL OF INDIA.

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TABLE OF CONTENTS.

	PAGE
INTRODUCTORY CHAPTER	1
CHAPTER II.	
THE SOVEREIGN.	
(1) The King can do no wrong	11
(2) Dispensing and Suspending Powers	19
(3) Proclamations	24
(4) State Offences :—	
(a) High Treason	29
(b) Sedition	37
(5) State Oaths and Declarations	39
CHAPTER III.	
PARLIAMENT.	
(1) The holding of Parliament	45
(2) Impeachments	54
(3) Miscellaneous Matters relative to Parliament	60
(a) Constitution of Parliament	61
(b) Wages of Members	66
(c) Speaker	67
(d) Supply	69
(e) Publication of Votes and Debates	73
(f) Privilege	74
(g) Order of Business	80
CHAPTER IV.	
THE ESTABLISHED CHURCH.	
Act of Uniformity, and Comprehension of Sects	85
CHAPTER V.	
LIBERTY OF CONSCIENCE.	
(1) Religious Penalties. Papists. Dissenters. Quakers. Jews	107
(2) Religious Disabilities	134
(a) Corporation Act	135
(b) Test Act	145
(c) Parliamentary Test	155
(3) Opinions in the era of Charles II. on the subject of Religious Toleration	168

CHAPTER VI.

LIBERTY OF THE PERSON.

	PAGE
(1) Writ of Habeas Corpus	170
(2) Miscellaneous safeguards of personal liberty. (Excessive Bail. Enlargement of the power of bailing. General Warrants.)	203
(3) Removal of the Poor	205

CHAPTER VII.

LIBERTY OF PROPERTY.

(1) Feudal Tenures	208
(a) Wardship	209
(b) Corruption of Blood, Escheat and Forfeiture	212
(c) Miscellaneous Incidents of feudal tenures, (Mortmain, Copyholds. Exemption of land from Debts.)	221
(2) Purveyance	ib.
(3) Statutory Penalties	223
(4) Crown Rights in Property. (Hereditary Domains. Hereditary Taxes. Forest Laws. Royal Mines. <i>Nullum Tempus</i> Act. Seizure of Papers.)	228

CHAPTER VIII.

LIBERTY OF THE PRESS.

(1) Censorship	238
(2) Penalties for Writings	248

CHAPTER IX.

PROCEDURE IN PROSECUTIONS FOR STATE OFFENCES.

(1) Trials of Peers	259
(2) Judges	261
(3) Juries	264
(a) Constitution of Juries	265
(b) Immunity of Juries	273
(x) Fines for Verdicts	274
(y) Attaint	280
(4) Counsel and Attornies	282
(5) Witnesses, (Unsworn Witnesses for a Prisoner. Compulsory attendance of Witnesses. Two Witnesses in Treason. Accomplices. Disqualified Witnesses. Restoration of Competency. Supporting Witnesses for the Crown. Browbeating a Prisoner's Witnesses. Interrogations of Prisoner.)	289
(6) Rules of Practice	301
(a) Conferences	ib.
(b) Adjournment and Postponement of Trials	303
(c) Denial of Copies of Indictments	307
(d) Outlawry	309
(e) Evidence	311

THE ENGLISH CONSTITUTION

IN THE

REIGN OF CHARLES THE SECOND.

INTRODUCTORY CHAPTER.

SIR WILLIAM BLACKSTONE, in the peroration of his Commentaries, thus expresses himself concerning the English Constitution in the reign of King Charles the Second.

“Immediately upon the restoration of King Charles the Second the principal remaining grievance, the doctrine and consequences of military tenures, was taken away and abolished, except in the instance of corruption of inheritable blood, upon attainder of treason and felony. And though the monarch, in whose person the regal government was restored, and with it our ancient constitution, deserves no commendation from posterity, yet, in his reign, (wicked, sanguinary, and turbulent as it was,) the concurrence of happy circumstances was such, that from thence we may date not only the re-establishment of our Church and Monarchy, but also the complete restitution of English liberty, for the first time since its total abolition at the conquest. For therein not only these slavish tenures, the badge of foreign dominion, with all their oppressive appendages, were removed from incumbering the estates of the subject; but also an additional security of his person from imprisonment was obtained, by that great bulwark of our constitution, the *habeas corpus* act. These two statutes, with regard to our property and persons, form a second *Magna Charta*, as beneficial and effectual as that of Running-Mead. That only pruned the luxuriances of the feudal system; but the statute of Charles the Second

extirpated all its slaveries; except perhaps in copyhold tenure; and there also they are now in great measure enervated by gradual custom, and the interposition of our courts of justice. *Magna Charta* only, in general terms, declared, that no man shall be imprisoned contrary to law: the *habeas corpus* act points him out effectual means, as well to release himself, though committed even by the king in council, as to punish all those who shall thus unconstitutionally misuse him.

“To these I may add the abolition of the prerogatives of purveyance and pre-emption; the statute for holding triennial parliaments; the test and corporation acts, which secure both our civil and religious liberties; the abolition of the writ *de heretico comburendo*; the statute of frauds and perjuries, a great and necessary security to private property; the statute for distribution of intestates' estates, and that of amendments and *jeofails*, which cut off those superfluous niceties which so long had disgraced our courts; together with many other wholesome Acts that were passed in this reign, for the benefit of navigation and the improvement of foreign commerce: and the whole, when we likewise consider the freedom from taxes and armies which the subject then enjoyed, will be sufficient to demonstrate this truth, ‘that the constitution of England had arrived to its full vigour, and the true balance between liberty and prerogative was happily established by *law*, in the reign of king Charles the Second.’

“It is far from my intention to palliate or defend many very iniquitous proceedings, *contrary to all law*, in that reign. What seems incontestable is this; that *by the law*, as it then stood, (notwithstanding some invidious, nay dangerous, branches of the prerogative have since been lopped off, and the rest more clearly defined,) the people had as large a portion of real liberty, as is consistent with a state of society; and sufficient power, residing in their own hands, to assert and preserve that liberty, if invaded by the royal prerogative; for which I need but appeal to the catastrophe of the next reign.”

Sir William Blackstone subjoins, in a note, "The point of time at which I would chuse to fix this theoretical perfection of our public law is in the year 1679; after the *habeas corpus* Act was passed, and that for licensing the press had expired; though the years which immediately followed it were times of great *practical* oppression."

Mr Fox, in the Introduction to his History of the reign of James the Second, adopts Blackstone's remarks, building on them a superstructure of political reflections.

"The reign of Charles the Second forms one of the most singular, as well as of the most important periods of history. It is the era of good laws and bad government. The abolition of the Court of Wards, the repeal of the Writ De Hæretico Comburendo, the Triennial Parliament Bill, the establishment of the rights of the House of Commons in regard to impeachment, the expiration of the License Act, and above all, the glorious statute of Habeas Corpus, have therefore induced a modern writer of great eminence to fix the year 1679 as the period at which our constitution had arrived at its greatest theoretical perfection; but he owns, in a short note upon the passage alluded to, that the times immediately following were times of great practical oppression. What a field for meditation does this short observation, from such a man, furnish! What reflections does it not suggest to a thinking mind, upon the inefficacy of human laws, and the imperfection of human constitutions! We are called from the contemplation of the progress of our constitution, and our attention fixed with the most minute accuracy to a particular point, when it is said to have risen to its utmost perfection. Here we are then at the best moment of the best constitution that ever human wisdom framed. What follows? A time of oppression and misery, not arising from external or accidental causes, such as war, pestilence, or famine, nor even from any such alteration of the laws as might be supposed to impair this boasted perfection, but from a corrupt and wicked administration,