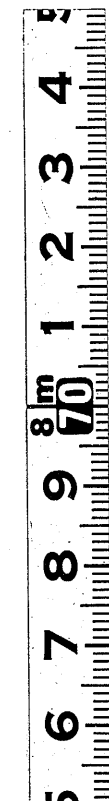


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EXTRACTS
FROM
LORD CHATHAM, BURKE,
JUNIUS, &c.

TO WHICH ARE PREFIXED

REMARKS

ON THE

POWER OF COMMITMENT, IN CASES OF LIBEL,

RECENTLY CLAIMED BY

The House of Commons.

ΟΙ ΒΙΗ ΕΙΝ ΑΤΟΡΗ, ΕΚΟΛΙΑΣ ΚΡΙΝΩΣΙ ΘΕΜΙΤΑΕ,
ΕΚ ΔΕ ΔΙΚΗΝ ΕΛΑΣΩΣΙ, ΘΕΩΝ ΟΠΙΝ ΟΥΚ ΑΛΕΓΟΝΤΕΣ.
Hom. Il. II. 397.

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1810.

W. Flint, Printer, Old Bailey.

"Now as to matters criminal, whether capital or not, they are determinable by the *common law*, and *not otherwise*. And in affirmation of that law were the statutes of Magna Charta, cap. 29. 5 Ed. 3. cap. 9; 25 Ed. 3. cap. 4; 29 Ed. 3. cap. 3; 27 Ed. 3. cap. 17; 38 Ed. 3. cap. 9; and 40 Ed. 3. cap. 3,—the effect of which is that no man shall be put out of his lands or tenements, or be *imprisoned* by any suggestion, unless it be by *indictment* or *presentment* of lawful men, or by *process at common law*."—Hale's History of the Common Law.

"It is not my business to enquire, whether the English *actually enjoy* this liberty or not; it is sufficient for my purpose that it is established by their laws."—Montesquieu.

the voice of faction shall be hushed in the oblivious silence of the grave;—when the public characters of the departed shall be only censured for their vices, and only estimated for their virtues;—the name of Burdett shall be associated with that proud list which consecrates a Hampden, a Sydney, a Russell, and a Fox, to the eternal gratitude of their admiring country.

PREFACE.

IN offering this little pamphlet to the public, it is my wish to detain them as shortly as possible by any prefatory remarks of my own. The observations and doctrines of the great men, quoted in the following pages, appear to me so complete and irresistible, as to leave little more for us to do than fairly to extract, and justly to appreciate the value of their maxims.

That causes of complaint and consequent discontents exist at this moment among the great body of the people, few, I believe, not personally interested in their continuance,

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will be found hardy enough to deny ; and it must be a subject of regret and alarm, that our rulers, whilst so loud in their clamours against the one, should appear on every occasion such pertinacious and bigoted advocates of the other. Under a government established upon principles like ours, every man has a right to watch the administration of justice : to sift narrowly all acts of the king or his ministers ;—to point out the abuses and corruptions of parliament, and to spread an alarm among the people, whenever an attack is either made or meditated against the public liberties.—This right can be limited by no *certain* rules, but must ever be governed by the *particular* occasion. Suppose, (for example) that corruption should be reduced into a system, and with equal impudence and profligacy be avowed ;—suppose, that parliament, by places and pensions bestowed on individuals, should become as subservient to

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the nod of a minister, as the senate of Rome to the freedmen of their emperors ;—suppose, that an House of Commons should assume *privileges*, and establish *principles*, subversive of the rights of their fellow subjects, and of the laws of the land ;—suppose, lastly, that an attempt should, in any case, be made to supersede, or wrest from the people, that support of our personal independence,—that great security of our lives, our fortunes and our liberties,—the trial by jury. In such times perhaps even a moderate man might applaud as an effort of patriot virtue, that remonstrance, which among common occurrences, might justly be deemed the offspring of madness and sedition. Let any one, for a moment, suppose himself in such a situation,—entertaining the strongest conviction of the existence and destructive tendency of such execrable abuses ; and let him in candour say, whether absolute moderation is under such circumstances altogether natural ; whether a total absence of all

passion and vehemence might not be justly considered a servile sacrifice to the cool arithmetic of the head, of every patriot and nobler feeling of the heart.

Throughout the whole of the events which have recently agitated the metropolis, it is still a subject of consolation, that however much there may have been to lament, there remains nothing at present to fear, from the irritation of popular feelings. Nothing, either of systematic disaffection, or revolutionary spirit has been manifested in any one instance. If, too, in any case, a degree of popular ferment and indignation can be overlooked, I think it may be so in the present.—Taught from their infancy, by the very laws and principles of the constitution itself,—by the almost uninterrupted experience and the universal assent of all ages, to consider the regulated administration of justice as a thing essential to individual security, and connected with the very existence of a free

and popular government,—anticipating with the loss of the one, the inevitable destruction of the other, the English may, of all people, be most readily excused in manifesting a jealousy at (what they may deem) an innovation, or an excess of grateful love and admiration for (what may appear to them) the maintenance, of their parental and hereditary institutions. *“It must needs be that offences come; but woe unto that man by whom the offence cometh.”*

For this is not a question of such insignificance, as many interested and artful persons would lead us to believe. It is of no less magnitude than this: whether our personal security is to depend on the known and defined laws of the land, and the judgment of our peers, or upon the variable and arbitrary will of individuals!—It is a necessity, perhaps, much to be lamented, that we must admit into the black catalogue of crimes, actions in their nature *uncertain*; but woe be to the nation, where the pu-

nishment of such actions is entrusted to the uncontrouled caprice of any single man or body of men. Montesquieu observes, that, if the crime of *high treason* be indeterminate, this alone is sufficient to make the government degenerate into arbitrary power. Our laws, to guard against oppression from the magistrate, will not suffer even a jury to judge of this crime without the positive testimony of two witnesses. Libelling is likewise an offence, in the suppression of which, men, invested with power, have a *peculiar* and a *personal* interest. Yet, what can be less settled than the common notion of libel? Shall we exempt this crime alone from the ordinary mode of trial? Shall this be the single offence in which the subject shall not be entitled to the judgment of his peers?

While trial by jury subsists in its proper vigour, and criminal judicature thereby remains with the great body of the nation, no avenue will be open to oppression. The interest

of the state may be sacrificed by ministers with impunity, but the great body of the people will be free. Openly to destroy this noble privilege, might exceed even the strength of parliament, to undermine it by secret art their best abilities have been frequently exercised. Should an attempt of this kind, in the case of libels, be once successful, no greater advantage can be given to future attacks. In vain might our rights be defined by the clearest laws, unless the spirit of liberty be preserved to command their execution.

That every court must be protected and upholden in the performance of its duties, no one appears disposed to question or deny. We readily invest our representatives with every privilege and authority, which is requisite either for the security of their persons, or for the furtherance of their proceedings, and in doing so, we only more effectually support our own dignity and independence. But that we should have

armed them with weapons of offensive war against our liberties—that we should have prodigally degraded ourselves into eleemosynary dependents for a precarious pittance on *their* moderation and indulgence, is an assertion which will only find credit among the outrageous maniacs of St. Luke's, or the courteous sycophants of St. Cloud.—Whatever be the privileges of the House of Commons, I cannot but consider them as trusts delegated by and subordinate to the interests of—their constituents; to be exercised *for*, and not possibly *against*, the liberties of the people. “The House of Commons can never be a controul on the other parts of government, unless they are themselves controuled *by* their constituents.”* And it has been well observed by Montesquieu, that “where the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because the same monarch or senate may then enact tyrannical laws to execute them in a tyrannical man-

* Burke.

ner;—and again, there can be no liberty if the judiciary power be not separated from the legislative and executive. Were it united with the legislative, the life and liberty of the subject would be exposed to arbitrary controul, for the judge would then be legislator: were it joined to the executive power, the judge might act with violence and oppression.”—If the assumption, then, of a discretionary jurisdiction by the House of Commons, in cases of a libel, be once thoroughly established, every legitimate function of that body is immediately perverted—the glorious efforts of our ancestors have been vain—and instead of a single tyrant we have only submitted ourselves to the severer yoke of five hundred.

Much has been said by the advocates of this power about precedent, and for this purpose the very worst periods of our history have been ransacked with almost inconceivable ardour, for justifications of present, by examples of the past. But precedents, however nu-

merous, can weigh nothing *in opposition* to principle; and was every disregarded or unpunished act at once to operate as a sanction to similar ones, there are few crimes, I fear, so detestable as not to be able to find somewhere a counterpart, and, consequently, by the doctrine of those gentlemen, an absolution.—The oppression of princes—the usurpation of nobles—the alternate licentiousness and servility of the people—torture—ship-money—rebellion—passive obedience, and general warrants have been all defended, in their day, by the authority of precedent; and perhaps the time may not be so far distant, when the examples and impunity of such beings as Mr. Perceval and Lord Castlereagh may be insisted on as unanswerable arguments in favour of every delinquency which political corruption may hereafter engender. From such examples, however, we cannot learn, and on such foundations we should disdain to reason. But there exists in the present case, I rejoice to assert, no evidence of any

such uniform rule of parliamentary practice; and surely a great constitutional question is not to be decided by extreme and abstract cases, in *contradiction* to fundamental principle and law. Though the exercise of this power by the House of Commons, in any former period of our history, may have been occasionally connived at, or even encouraged by the people, still, (contrasting the varying circumstances both of time and situation,) I can by no means admit it into a rule for our obedience to future exactions. On the contrary, upon the same great principle, which, during the encroaching despotism of the Stuarts, induced our ancestors to strengthen the protecting arm of their representatives, would I now resist every usurpation of privilege on the part of the present House of Commons. The contest was then at issue between the overwhelming prerogative of the crown, and the constitutional and inherent rights of the people; and it is not surprising that the faithful representatives of the latter

(strongly sympathizing, as they did, in popular sentiment and inclination) should have been overlooked in a temporary assumption of authority, by which their constituents were themselves ultimately to benefit. The fate of Mr. Hampden, too, in the famous case of ship-money, had shewn the folly of expecting a just interpretation of the laws from men* wholly dependent for their existence upon the arbitrary pleasure of their adversary. But, because our ancestors deemed some *extraordinary* measures necessary for the preservation of public liberty against the encroachments of Royal Prerogative, can any one quote such examples, as arguments for submission in the present contest—"in a contest between our representatives and ourselves, when nothing can be put into their scale which is not taken from ours ;"† and when at length the emancipated hands of legal justice are stretched forth for the re-

* The commissions of the judges were then "*Durante bene placito*."

† Burke.

dress of private grievance, and the support of public security?

That the conduct of Mr. Jones may have been reprehensible, and justly obnoxious to the even hand of law, is not here disputed ;—but to prove that the personal safety of any member has been *endangered*, or his independence *intimidated*—that any *obstruction* has been thrown upon the proceedings, or any *indignity* on the character of this branch of the legislature by the publication in question, has exceeded even the labour and ingenuity of our whole legal cabinet. Where then are we to look for a justification of their summary proceedings ?—not certainly in the necessity of the case ; for nothing of the kind seems ever to have been pretended. It was at most a private grievance, for which the regular courts of justice afforded at all times an adequate redress. Still less can any one assert that the dignity of the House was to be exalted by the visitation of undefined

and even questionable power on an obscure and unresisting individual.

The late proceeding of the House of Commons, then, appears (to say the least of it) to have been very much calculated to excite popular ferment and dissatisfaction; in as much as it was an *unnecessary* exertion of power; in as much as it was in contradiction of many statutes; more particularly of that great bulwark of English liberty, Magna Charta, which, alike regarding every member of society, from the haughty noble down to the lowly peasant, has proclaimed in words (worthy of record on tablets of gold, and never to be obliterated whilst a vestige of the Constitution remains) that *no man shall be imprisoned or destroyed but by the lawful judgment of his peers, or by the law of the land*. To the enjoyment of this noble privilege may we refer our long security and happiness at home, and our grandeur and dignity abroad,—to the want of it may be ascribed the

degradation of surrounding nations, whose liberties have successively fallen beneath the galling yoke of foreign conquest, or decayed under the corroding venom of internal corruption. But THIS has been our earthly refuge from one generation to another;—it has enabled us alike to survive the iron despotism of the Tudors, and to overcome the insidious encroachments of the House of Stuart,—to weather the fierce storms of civil discord, and to linger out the long night of feudal oppression;—to silence the stern voice of overbearing prerogative, and to resist the secret tides of undermining influence;—It has been a purifying fire to us in the midst of temptation, and a beacon light through the gloomy paths of religious bigotry and arbitrary power:—And must we relinquish this glorious privilege?

Can any power (let me ask) be more unfit than that now claimed by the House of Commons under the title of “*privilege*,” to be exercised by a popular and legislative body,

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—more open to abuse from individual caprice and partiality,—or more capable, in the hands of a weak and corrupt administration, of being perverted into a mere engine of discretionary vengeance and intimidation?

But, perhaps, we are to have a faithful promise from the gentlemen of the House of Commons that it shall be on no occasion, abused;—that it shall be exercised invariably for our advantage; and we may even, forsooth, be upbraided with *unnaturally* withholding so trifling a mark of *merited* confidence and respect,* &c. &c. &c. To such puny reasoners the freeholders of Great Britain would, I doubt not, reply, that, “the government of England is a government of law. We betray

* One would imagine that some of the “learned” gentlemen of the House of Commons had studied special pleading under the famous serjeant Rolfe. His arguments (on behalf of a chancellor of Oxford, who claimed cognizance of an action brought against himself) are so curious, that, for the benefit of those who may not have had the

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ourselves, we contradict the spirit of our laws, and we shake the whole system of English jurisprudence, whenever we entrust a discretionary power over the life, liberty, or fortune of the subject to any man or set of men, whatsoever, upon a presumption that it will not be abused.*”

For “constant experience (as it has been observed by another enlightened writer) shews that every man invested with power, is apt to abuse it;—he pushes on till he comes to some-

advantages of our legal cabinet, it is not perhaps amiss to transcribe them. “*Jes vous dirai un fable. En aucun temps fuit un pape, et avoit fait un grand offence, et les cardinals vindrent a luy, et disoyent a luy; “peccasti” et il dit, “Judica me;” et ils disoyent, “non possumus, quia caput es ecclesie; judica te ipsum:” et l’apostol dit, “judico me cremari;” et fuit combustus; et apres fuit un saint. Et in ceo cas il fuit son juge demene, et issent n’est pas inconvenient, que un home soit juge demene.*”—The reader, perhaps, not being a good Catholic may have little faith in the infallibility of popes and judges; and however great the respect he may entertain for the honourable house, may think with the vulgar, that the best way to preserve a man’s honesty, is not to lay him under violent temptations to sin.

* Junius.

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thing that limits him."† While the existence of the Star Chamber left any part of the administration of justice in the uncontrouled hands of a few, it became, as might have been naturally expected, a yoke of iron on the necks of the many. All liberal science and manly freedom was suppressed, and our ancestors, ignorant of government and irritated by injuries, rushed through the horrors of civil war into military despotism.

If, therefore, the conduct of the House of Commons shall be proved to have been not only above measure intemperate and severe, but in violation of every principle of free government, no language can too indignantly arraign it, and Sir Francis Burdett is fully justified,—nay is eminently entitled to the warmest gratitude of his fellow subjects, for having resisted and held up to the finger of public scorn and animadversion such an illegal usurpation. But even supposing (as some are known to do) that the

† Montesquieu.

Hon. Baronet was in error, and that the House of Commons had only asserted a just and necessary privilege, for the preservation of its dignity and for the furtherance of its proceedings,—I must still maintain, that it may be nevertheless an open subject of discussion; and that every member may fairly state his own opinions and conduct upon it to his constituents and to the whole nation. The examples of Sir George Savile, Mr. Fox, and all the greatest characters that have adorned this country, have ever sanctioned it;—and it will only cease with the existence of the House of Commons as a popular and independent branch of the legislature. But whatever cause we might have of regret, there was nothing certainly to *astonish* us, in the late proceedings of the House of Commons. The recent and uniform conduct of that body on all important occasions might have taught every one to anticipate such a determination. Those men, who on all occasions had laboured to introduce and perpetuate every *unnatural* dis-

tion of society—whose efforts had been uniformly directed towards the separation of the Catholic from the Protestant, and of the Citizen from the Soldier, might have been naturally expected to oppose every attempt at reviving the latent connection between the constituent and his representative. It was in vain, therefore, that Sir S. Romilly, Mr. Whitbread, and Mr. Grattan, at the head of a few *remaining whigs*,* rallied around the assailed ark of the constitution;—and appealed against the inexpediency, as well as protested against the

* Though I am far from subscribing to Mr. Cobbett's promiscuous censure of the "outs," I cannot, without the deepest regret, observe instances in which the sacred authority of Mr. Fox has been perverted to sanction doctrines and measures which his whole life was devoted to disprove and counteract. Among the members and supporters of the late administration may be found, I am convinced, as many spotless and constitutional characters as this country could ever at one time boast of, and however I may differ with them on *some* points, I cannot but feel the most lively gratitude towards them on *others*. For I do *not* collect their principles from the hasty and intemperate sallies of some of their supporters (men, who though *Tories* in heart have reared their fortunes on *Whig* interest,) but from those bles-

injustice, of perverting a *defensive* privilege into an *offensive* power. Their generous efforts were in vain! With the events that followed we are also equally acquainted. Sir Francis Burdett, whilst he yields a willing deference and support to the acknowledged laws and institutions of his country, has equally considered it, as the duty of a good subject, ever to resist what he believes to be an illegal usurpation of power.

Nor can his opposition be said to have been in vain; for in thus bringing the executory powers of the House of Commons to the test, he has satisfactorily demonstrated to the world, that a court "having no stronger weapon than its mace, and no better officer than its serjeant at arms, which it can command of its own proper

sings which their short career enabled them to diffuse to the farthest parts of the empire. I never will forget that to them we are indebted for the removal of that blot from our national character the SLAVE TRADE; I never will forget what they *did* do for the army, and what (but for the artifices of the most contemptible faction that ever wriggled itself into notice) they *would* have done for Ireland.

authority" was never designed for the support of peace and subordination, or for the purpose of enforcing the execution of the law. He has been enabled, moreover, to make out the strongest of all possible cases for the decision of the *regular* courts in Westminster. From the moment in which the military were first called in to enforce the warrant of the Speaker, the House of Commons may be said to have confessed their own incapacity, and to have virtually resigned their vaunted privileges into the hands of the executive.*

In reviewing the whole proceedings of the House of Commons on all important occasions, during the present and preceding sessions of parliament, one would imagine that the eyes of every thinking and unbiassed man, must be more than ever awakened

* The conduct of our legal cabinet on this occasion reminds me of the mice in *Æsop's Fables*, who though all unanimous for the *plan* of putting a bell round the neck of that arch-enemy of their pilferings, the Cat, displayed equal unanimity in declining the task of its *execution*.

to the imperious necessity of REFORM. The tide of corruption is now rolling in, and nothing less than the fullest exertion of those powers with which the constitution has invested us, can resist its overwhelming impetuosity. The remedy of our evils, however, is in our own power;—it is simple, safe, and honourable;—consisting neither in idle speculations, nor in dangerous experiments, but IN A RECURRENCE TO THE GENUINE PRINCIPLES OF THE CONSTITUTION, BY A FREE AND EQUAL REPRESENTATION OF THE PEOPLE.

For him, who has stood foremost in this good cause;—who has ever shewn himself alike the friend of the oppressed, and the enemy of the oppressor;—who may be truly said to be suffering "not for his crimes but for his virtues," the feeble tribute of anonymous approbation can no more enhance his character, than the hireling envy of his foes can be supposed to detract from it. But I have been led into these observations, by having

seen principles ascribed to Sir Francis Burdett, which are no where to be found either in his words or actions, and which are inconsistent with, and contradicted by, the whole tenor of his public and private life. Like the retreating party in a sham fight, which has been thrust forward merely to be discomfited; or bearing a still nearer resemblance, perhaps, to the "buckram" assailants of Sir John Falstaff, the most monstrous doctrines have been attributed to him, to afford (I suppose) his ingenious accusers an opportunity of displaying their superior ability in refuting, or their exalted patriotism and loyalty in reprobating them.—Happily, however for the best interests of society, and for the important cause of truth and virtue, their attempts have been too awkward, while their designs are too glaring, to impose upon the most superficial observer.—But even (though I should very reluctantly suspect my countrymen of ingratitude) should his glory not be of this generation, impartial posterity will do homage to his virtues. When

EXTRACTS

From Mr. Burke's "Thoughts on the Cause of the Present Discontents."

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"NATIONS are governed by the same methods, and on the same principles, by which an individual without authority is often able to govern those who are his equals or his superiors;—by a knowledge of their temper, and by a judicious management of it;—I mean when public affairs are steadily and quietly conducted; not when government is nothing but a continued scuffle between the magistrate and the multitude; in which sometimes the one, and sometimes the other is uppermost; in which they alternately yield and prevail, in a series of contemptible victories, and scandalous submissions. * * *

Nobody, I believe, will consider it merely as the lan-

guage of spleen and dissatisfaction, if I say, that there is something particularly alarming in the present conjuncture. That government is at once dreaded and contemned; that the laws are despoiled of all their respected and salutary terrors; that their inaction is a subject of ridicule, and their exertion of abhorrence; that rank and office and title, and all the solemn plausibilities of the world, have lost their reverence and effect; that our foreign politics are as much deranged as our domestic œconomy; that our dependencies are slackened in their affection, and loosened from their obedience; that we know neither how to yield nor how to enforce; that hardly any thing above or below, abroad or at home, is sound and entire; but that disconnexion and confusion, in offices, in parties, in families, in parliament, in the nation, prevail beyond the disorders of any former time; these are facts universally admitted and lamented. * * * *

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I hear it sometimes asserted that a steady perseverance in the present measures, and a rigorous punishment of those who oppose them, will in course of time infallibly put an end to these disorders. But this, in my opinion, is said without much observation of our present

disposition, and without any knowledge at all of the general nature of mankind. Particular punishments are the cure for accidental distempers in the state; they inflame rather than allay those heats which arise from the settled mismanagement of the government, or from a natural ill disposition in the people. It is of the utmost moment not to make mistakes in the use of strong measures: and firmness is then only a virtue when it accompanies the most perfect wisdom. In truth, inconstancy is a sort of natural corrective of folly and ignorance.

“ I am not one of those who think that the people are never in the wrong. But I do say, that in all disputes between them and their rulers, the presumption is *at least* upon a par in favour of the people. Experience may, perhaps, justify me in going further. Where popular discontents have been very prevalent; it may well be affirmed and supported, that there has been generally found something amiss in the constitution or in the conduct of government. **THE PEOPLE HAVE NO INTEREST IN DISORDER.** When they do wrong, it is their error and not their crime. But with the governing part of the state, it is far otherwise. They certainly may act ill by design

as well as by mistake. "*Les revolutions qui arrivent dans les grands etats ne sont point un effet, du hazard, ni du caprice des peuples. Rien ne revolte les grands d'un Royaume comme un government foible et derangé. Pour la populace, ce n'est jamais par envie d'attaquer q'elle se souleve, mais par impatience de souffrir.*"* These are the words of a great man; of a minister of state; and a zealous assérter of monarchy.

"Upon a supposition, therefore, that in the opening of the cause, the presumptions stand equally balanced between the parties, there seems sufficient ground to entitle any person to a fair hearing, who attempts some other scheme beside that easy one which is fashionable in some fashionable companies, to account for the present discontents.—It is not to be argued that we endure no grievance because our grievances are not of the same sort with those under which we laboured formerly; not precisely those we bore from the Tudors, or vindicated on the Stuarts. A great change has taken place in the affairs of this country.

* The revolutions which take place in great states are never an effect of chance, or of caprice of the people. Nothing causes the discontent of the great, so much as a feeble and disordered government. For the populace,—it is never through a desire of attacking that they revolt, but through an impatience of suffering. SWIFT.

For in the silent lapse of events as material alterations have been insensibly brought about in the policy and character of governments and nations, as those which have been marked by the tumult of public revolutions.

"It is very rare indeed for men to be wrong in their feelings concerning public misconduct; as rare to be right in their speculations upon the cause of it. I have constantly observed, that the generality of people are fifty years, at least, behind hand in their politicks. There are but very few, who are capable of comparing and digesting what passes before their eyes at different times and occasions, so as to form the whole into a distinct system. But we are very uncorrupt and tolerably enlightened judges of the transactions of past ages; where no passions deceive, and where the whole train of circumstances, *from the trifling cause to the tragical event*, is set in an orderly series before us. FEW ARE THE PARTIZANS OF DEPARTED TYRANNY; and to be a whig on the business of *an hundred years ago* is very consistent with every advantage of present servility. This retrospective wisdom, and historical patriotism, are things of wonder.

ful convenience, and serve admirably to reconcile the old quarrel between speculation and practice.— Many a stern republican, after gorging himself with a full feast of admiration of the Grecian commonwealths, and of our true Saxon constitution, and discharging all the splendid bile of his virtuous indignation on king John and king James, sits down perfectly satisfied to the coarsest work and the homeliest job of the day he lives in. I believe there was no professed admirer of Henry the eighth among the instruments of the last king James; nor in the court of Henry the eighth, was there, I dare say, to be found a single advocate for the favourites of Richard the second.

“No complaisance to our court, or to our age, can make me believe nature so changed, but that public liberty will be among us, as among our ancestors, obnoxious to some person or other; and that opportunities will be furnished, for attempting at least, some alteration to the prejudice of our constitution. These attempts will naturally vary in their mode, according to times and circumstances. For ambition, though it has ever the same general views, has not at all times the same means, nor the same particular objects. A great deal of the furniture of ancient tyranny is worn to rags;

the rest is entirely out of fashion. Besides, there are few statesmen so very clumsy and awkward in their business as to fall into the identical snare which has proved fatal to their predecessors.

“When an arbitrary imposition is attempted upon the subject, undoubtedly it will not bear on its forehead the name of *ship-money*. There is no danger that an extension of the *forest laws* should be the chosen mode of oppression in this age. And when we hear any instance of ministerial rapacity, to the prejudice of the rights of private life, it will certainly not be the exaction of two hundred pullets from a woman of fashion, for leave to lie with her own husband.*

“Every age has its own manners and its politics dependent upon them; and the same attempts will not be made against a constitution fully formed and matured, that were used to destroy it in the cradle, or to resist its growth during its infancy.

“Against the being of parliament I am satisfied no designs have been ever entertained since the revolution. Every one must perceive that it is strongly the interest of the court to have some second cause interposed be-

* See Maddox's History of the Exchequer.

tween the ministers and the people. The gentlemen of the House of Commons have an interest equally strong in sustaining the part of that intermediate cause. However they may hire out the *usufruct* of their voices, they never will part with the *fee and inheritance*.

"Accordingly those who have been of the most known devotion to the will and pleasure of the court, have at the same time been the most forward in asserting an high authority in the House of Commons. When they knew who were to use that authority, and how it was to be employed, they thought it never could be carried too far. It must be always the wish of an unconstitutional statesman, that an House of Commons who are entirely dependent upon him, should have every right of the people dependent upon their pleasure. It was soon discovered that the forms of a free, and the ends of an arbitrary government were things not altogether incompatible.

"The power of the crown, almost dead and rotten as prerogative, has grown up anew, with much more strength and far less odium under the name of influence. An influence which operated without noise and without violence; an influence which converted the very antagonist into the instrument of power; which contained in itself a perpetual principle of

growth and renovation; and which the distresses and the prosperity of the country equally tended to augment, was an admirable substitute for a prerogative, that, being only the offspring of antiquated prejudices had moulded in its original stamina an irresistible principal of decay and dissolution. * * * *

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It is not more the duty than it is the interest of a prince to aim at giving tranquillity to his government. But those who advise him may have an interest in disorder and confusion. If the opinion of the people is against them, they will naturally wish that it should have no prevalence. Here it is that the people must, on their part, shew themselves sensible of their own value. Their whole importance, in the first instance, and afterwards their whole freedom is at stake. Their freedom cannot long survive their importance. Here it is that the natural strength of the kingdom, the great peers, the leading landed gentlemen, the opulent merchants and manufacturers, the substantial yeomanry, must interpose, to rescue their prince, themselves, and their posterity.

We are at present at issue upon this point. We are in the great crisis of this contention; and the part which men take, one way or other, will serve to dis-

criminate their characters and their principles. Until the matter is decided, the country will remain in its present confusion. For while a system is attempted entirely repugnant to the genius of the people, and not conformable to the plan of their government, every thing must necessarily be disordered for a time, until this system destroys the constitution, or the constitution gets the better of this system.

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The House of Commons was supposed originally to be *no part of the standing government of this country*. It was considered as a *controul*, issuing *immediately* from the people, and speedily to be resolved into the mass from whence it arose. In this respect it was in the higher part of government what juries are in the lower. The capacity of a magistrate being transitory, and that of a citizen permanent, the latter capacity, it was hoped, would of course preponderate in all discussions, not only between the people and the standing authority of the crown, but between the people and the fleeting authority of the House of Commons itself. It was hoped that being of a middle nature between subject and government, they would feel with a more

tender and nearer interest every thing that concerned the people, than the other remoter and more permanent parts of legislature.

Whatever alterations time, and the necessary accommodation of business, may have introduced, this character can never be sustained, unless the House of Commons shall be made to bear some stamp of the actual disposition of the people at large. It would (among public misfortunes) be an evil more natural and tolerable, that the House of Commons should be infected with every epidemical phrensy of the people, as this would indicate some consanguinity, some sympathy of nature with their constituents, than that they should in all cases be wholly untouched by the opinions and feelings of the people out of doors. *By this want of sympathy they would cease to be an House of Commons.*

For it is not the derivation of the power of that House from the people, which makes it in a distinct sense their representative. The king is the representative of the people; so are the lords; so are the judges. They all are trustees for the people as well as the Commons; because no power is given for the sole sake of the holder; and although government certainly is an institution of divine authority, yet its forms, and the

persons who administer it, all originate from the people.

A popular origin cannot therefore be the characteristic distinction of a popular representative. This belongs equally to all parts of government, and in all forms. The virtue, spirit, and essence of an House of Commons consists in its being the express image of the feelings of the nation.

It was not instituted to be a controul upon the people, *as of late it has been taught by a doctrine of the most pernicious tendency.* It was designed as a controul for the people. Other institutions have been formed for the purpose of checking popular excesses; and they are, I apprehend, fully adequate to their object. If not, they ought to be made so. The House of Commons, *as it was never intended for the support of peace and subordination,* is miserably appointed for that service; *having no stronger weapon than its mace, and no better officer than its Serjeant at Arms, which it can command of its own proper authority.* A vigilant and jealous eye over executory and judicial magistracy; an anxious care of public money; an openness, approaching towards facility, to public complaint; these seem to be the true characteristics of an House of Commons. But an addressing

House of Commons, and a petitioning nation; an House of Commons full of confidence, when the nation is plunged in despair: in the *utmost harmony* with ministers, whom the people regard with the *utmost abhorrence*; Who vote thanks, when the public opinion calls upon them for impeachments! who are eager to grant, when the general voice demands account; who in all disputes between the people and administration, presume against the people; who punish their disorders, but refuse even to enquire into the provocations to them; this is an unnatural, a monstrous state of things in this constitution. Such an assembly may be a great, wise, awful senate; but it is not to any popular purpose an House of Commons. This change from an immediate state of procuration and delegation to a course of acting as from original power, is the way in which all popular magistracies have been *perverted* from their purposes. It is, indeed, their greatest and sometimes their incurable corruption. * * *

They who will not conform their conduct to the public good, and cannot support it by the prerogative of the crown, have adopted a new plan. They have totally abandoned the shattered and old-fashioned for-

gress of prerogative; and made a lodgment in the strong hold of parliament itself. *If they have any evil design to which there is no ordinary legal power commensurate, they bring it into parliament. In parliament the whole is executed from the beginning to the end. In parliament the power of obtaining their object is absolute; and the safety in the proceeding perfect; no rules to confine, no after reckonings to terrify.* Parliament cannot, with any great propriety punish others, for things in which they themselves have been accomplices. Thus the controul of parliament upon the executory power is lost; because parliament is made to partake in every considerable act of government. *Impeachment, that great guardian of the purity of the constitution, is in danger of being lost, even to the idea of it.*

If the authority of parliament supports itself, the credit of every act of government which they contrive, is saved; but if the act be so very odious that the whole strength of parliament is insufficient to recommend it, then parliament is itself discredited; and this discredit increases more and more that indifference to the constitution, which it is the constant aim of its enemies, by their abuse of parliamentary powers, to render general among the people! **WHENEVER PARLIAMENT**

IS PERSUADED TO ASSUME THE OFFICES OF THE EXECUTIVE GOVERNMENT, IT WILL LOSE ALL THE CONFIDENCE, LOVE, AND VENERATION, WHICH IT HAS EVER ENJOYED WHILST IT WAS SUPPOSED THE CORRECTIVE AND CONTROUL OF THE ACTING POWERS OF THE STATE. This would be the event, though its conduct in such a perversion of its functions should be tolerably just and moderate; but if it should be iniquitous, violent, full of passion, and full of faction, it would be considered as the most intolerable of all the modes of tyranny.

The point to be gained by the cabal was this; that a precedent should be established tending to shew, *that the favour of the people was not so sure a road as the favour of the court, even to popular honours and popular trusts.* A strenuous resistance to every appearance of lawless power; a spirit of independence carried to some degree of enthusiasm; an inquisitive character to discover, and a bold one to display, every corruption and every error of government; these are the qualities which recommend a man to a seat in the House of Commons, in open and popular elections! An indolent and submissive disposition; a disposition to think cha-

ritably of *all* the actions of men *in power*, and to live in a *mutual* intercourse of favours with them; an inclination rather to countenance a *strong* use of authority, than to bear any sort of licentiousness on the part of the people; these are unfavourable qualities in an open election for members of parliament.

The instinct which carries the people towards the choice of the *former*, is justified by reason; because a man of such character, even in its exorbitancies, does not directly contradict the purposes of a trust, *the end of which is a controul of power*. The *latter* character, even when it is *not* in its extreme, will execute this trust but very imperfectly; and if deviating to the least excess, will certainly frustrate instead of forwarding the purposes of a controul on government.

But this principle is not only changed, but reversed. * Whilst any errors committed in the *support* of power, were left to the law, with every advantage of favourable construction, of mitigation, and finally of pardon; all excesses on the *side* of liberty, or in pursuit of popular favour, or in *defence* of popular rights and privileges, were not only to be punished by the rigour of the known law, but by a *discretionary* proceeding, which

* See the case of Mr. Reeves!

brought on *the loss of the popular object itself*. Popularity was to be rendered, if not directly penal, at least highly dangerous. * * * *

Not that I would encourage popular disorder, or any disorder. But I would leave such offences to the law, to be punished in measure and proportion. The laws of this country are for the most part constituted, and wisely so, for the general ends of government, rather than for the preservation of our particular liberties. Whatever, therefore, is done in support of liberty, by persons not in public trust, or not acting merely in that trust, is liable to be more or less out of the ordinary course of the law; and the law itself is sufficient to animadvert upon it with great severity. Nothing indeed can hinder that severe letter from crushing us, except the temperaments it may receive from a trial by jury. But if the habit prevails of *going beyond the law*, and superseding this judicature, of carrying offences, real or supposed, into the legislative bodies who shall establish themselves into *Courts of Criminal Equity* (so the *Star Chamber* has been called by Lord Bacon,) all the evils of the *Star Chamber* are revived! A large and

liberal construction in ascertaining offences, and a discretionary power in punishing them, is the idea of *criminal equity*; which is in truth a *monster in jurisprudence*. It signifies nothing whether a court for this purpose be a committee of council, or an House of Commons, or an House of Lords; the liberty of the subject will be equally subverted by it. The true end and purpose of that House of Parliament, which entertains such a jurisdiction, will be destroyed by it. * *

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The whole of their usurpation is established upon this method of arguing. We do not *make* laws. No; we do not contend for the power. We only *declare* law; and as we are a tribunal both competent and supreme, what we declare to be law, becomes law, although it should not have been so before. Thus the circumstance of having no *appeal* from their jurisdiction is made to imply that they have no *rule* in the exercise of it; the judgment does not derive its validity from its conformity to the law; but preposterously the law is made to attend on the judgment; and the rule of the judgment is no other than—the *occasional will of the House*! An arbitrary discretion leads; legality fol-

lows; which is just the very nature and description of a legislative act.

This claim in their hands was no barren theory. It was pursued into its utmost consequences; and a dangerous principle has begot a correspondent practice.

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The people have indeed been told, that this discretionary power is vested in hands that they may trust, and who will be sure not to abuse it to their prejudice. Until I find something in this argument differing from that on which every mode of despotism has been defended, I shall not be inclined to pay it any great compliment. * * * * *

It were a folly well deserving servitude for its punishment, to be full of confidence, where the laws are full of distrust: and to give to an House of Commons, arrogating to its sole resolution the most harsh and odious part of legislative authority, that degree of submission which is due only to the legislature itself.

When the House of Commons, in an endeavour to obtain new advantages, at the expence of the other orders of the state, for the benefit of the *Commons at large*, have pursued strong measures; if it were not just, it

was at least natural, that the constitunets should connive at all their proceedings; because we were ourselves ultimately to profit. But when this submission is urged to us, in a contest between the representatives and ourselves, and where nothing can be put into their scale, which is not taken from ours, they fancy us to be children, when they tell us they are our representatives, our own flesh and blood, and that all the stripes they give us are for our good. The *very desire* of that body to have such a trust *contrary* to law reposed in them, shews that they are *not worthy* of it. They certainly will abuse it; because all men possessed of an *uncontrolled, discretionary* power, leading to aggrandizement and profit of their own body, have always abused it: and I see no particular sanctity in *our* times, that is at all likely, by a miraculous operation, to overrule the course of nature.

But we must purposely shut our eyes if we consider this matter merely as a contest between the House of Commons and the electors. The true contest is between the electors of the kingdom and the crown; the crown acting by an *instrumental* House of Commons. It is precisely the same, whether the ministers of the crown can disqualify by a dependent House of Com-

mons, or by a dependent court of *star chamber*, or by a dependent court of King's Bench. If once members of parliament can be practically convinced, that they do not depend on the affection or opinion of the people for their political being, they will give themselves over, without even an appearance of reserve, to the influence of the court.

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In the situation in which we stand, with an immense revenue, an enormous debt, mighty establishments, government itself a great banker, and a great merchant, I see no other way for the preservation of a decent attention to public interest in the representatives, but *the interposition of the people itself*, whenever it shall appear, by some flagrant and notorious act, by some capital innovation, that these representatives are going to overleap the fences of the law, and to introduce an arbitrary power. This interposition is a most unpleasant remedy. But, if it be a legal remedy, it is intended on some occasion to be used; to be used then only, when it is evident that nothing else can hold the constitution to its true principles.

The distempers of monarchy were the great subject of apprehension and redress, in the last century; in

this, the distempers of parliament. It is not in parliament alone that the remedy for parliamentary disorders can be compleated; hardly indeed can it begin there. Until a confidence in government is re-established, the people, ought to be excited to a more strict and detailed attention of the conduct of their representatives. Standards, for judging more systematically upon their conduct, ought to be settled in the meetings of counties and corporations. *Frequent and correct lists of the votes in all important questions ought to be procured.*

By such means something may be done. By such means it may appear who those are, that, by an indiscriminate support of all administrations, have totally banished all integrity and confidence out of public proceedings; have confounded the best men with the worst; and weakened and dissolved, instead of strengthening and compacting, the general frame of government. If any person is more concerned for government and order, than for the liberties of his country; even he is equally concerned to put an end to this course of indiscriminate support. It is this blind and undistinguishing support, that feeds the spring of those very disorders, by which he is frighted into the arms of the faction which contains in itself the source of all dis-

orders, by enfeebling all the visible and regular authority of the state. The distemper is increased by his injudicious and preposterous endeavours, or pretences for the cure of it. * * * *

The laws themselves will not be respected, when those who execute them are despised! * *

Parliamentary support comes and goes with office, totally regardless of the man, or the merit. Is government strengthened? it grows weaker and weaker. The popular torrent gains upon it every hour. Let us learn from our experience. It is not support that is wanting to government but reformation. When ministry rests upon a public opinion, it is not indeed built upon a rock of adamant; it has however some stability. But when it stands upon private humour, its structure, is of stubble, and its foundation is of quick-sand. I repeat it again—He who supports every administration, subverts all government. * * *

Above all the people will endeavour to keep the House of Commons from assuming a character which does not belong to it. They will endeavour to keep that House,

for its existence, for its powers, and its privileges, as independent of every other, and as dependent upon themselves as possible. This servitude is to an House of Commons (like obedience to the Divine law) "perfect freedom." For if they once quit this natural, rational, and liberal obedience, *having deserted the only proper foundation of their power*, they must seek a support in an abject and unnatural dependence somewhere else. When, through the medium of this just connexion with their constituents, the genuine dignity of the House of Commons is restored, it will begin to think of casting from it, with scorn, as badges of servility, all the false ornaments of illegal power with which it has been for some time disgraced. It will begin to think of its old office of controul. It will not suffer that last of evils to predominate in the country; men without popular confidence, public opinion, natural connexions or mutual trust, invested with all the powers of government.

EXTRACTS

From Speeches of the great Earl Chatham, on the Subject of the Middlesex Election, Mr. Wilkes, &c.

* The constitution of this country has been openly invaded in fact; and I have heard, with horror and astonishment, that very invasion defended upon principle. *What is this mysterious power undefined by law, unknown to the subject, which we must not approach without awe, nor speak of without reverence, which no man may question, and to which all men must submit?* My Lords, I thought the slavish doctrine of passive obedience had long since been exploded: and, when our kings were obliged to confess that their title to the crown, and the rule of their government, had no other foundation than the known laws of the land, I never expected to hear a *divine right*, or a *divine infallibility*, attributed to any

* An amendment to the Address, on Jan. 9th, 1770.

other branch of the legislature. My Lords, I beg to be understood; no man respects the House of Commons more than I do, or would contend more strenuously than I would to preserve them their just and legal authority. Within the bounds prescribed by the constitution, that authority is necessary to the well being of the people; beyond that line every exertion of power is arbitrary, is illegal: it threatens tyranny to the people, and destruction to the state. Power without right is the most odious and detestable object that can be offered to the human imagination: it is not only pernicious to those who are subject to it, but tends to its own destruction. It was what my noble friend (Lord Egttleton) has truly described it, "*Res detestabilis et caduca*. My Lords, I acknowledge the just power, and reverence the constitution of the House of Commons. *It is for their own sakes that I would prevent their assuming a power which the constitution has denied them, lest, by grasping at an authority they have no right to, they should forfeit that which they legally possess.* My Lords, I affirm that they have betrayed their constituents, and violated the constitution. Under pretence of declaring the law, they have *made* a law, and united in the *same* persons the office of legislator and of judge,

I shall endeavour to adhere strictly to the noble Lord's doctrine (Lord Mansfield,) which is indeed impossible to mistake, so far as my memory will permit me to preserve his expressions. He seems fond of the word jurisdiction; and I confess, with the force and effect which he has given it, it is a word of copious meaning and wonderful extent. If his lordship's doctrine be well founded, we must renounce all those political maxims by which our understandings have hitherto been directed, and even the first elements of learning taught us in our schools when we were school-boys. My Lords, we knew that jurisdiction was nothing more than *jus dicere*; we knew that *legem facere* and *legem dicere* were powers clearly distinguished from each other in the nature of things, and wisely separated by the wisdom of the English constitution; but now, it seems, we must adopt a new system of thinking. The House of Commons, we are told, have a supreme jurisdiction, and there is no appeal from their sentence; and that wherever they are competent judges, their decision must be received and submitted to, as *ipso facto*, the law of the land. My Lords, I am a plain man, and have been brought up in a religious reverence for the original simplicity of the laws of England. By what sophistry they have been perverted, by what ar-

tifices they have been involved in obscurity, is not for me to explain. The principles, however, of the English laws are still sufficiently clear: they are founded in reason, and are the master-piece of the human understanding; but it is *in the text* that I would look for a direction to my judgment; not in the commentaries of modern professors. The noble Lord assures us, that he knows not in what code the law of parliament is to be found; that the House of Commons, when they act as judges, have no law to direct them but their own wisdom; that their decision is law; and if they determine wrong the subject has no appeal but to Heaven. What then, my Lords, are all the generous efforts of our ancestors, are all those glorious contentions, by which they meant to secure to themselves, and to transmit to their posterity, a known law, a certain rule of living, reduced to this conclusion, *that instead of the arbitrary power of a King, we must submit to the arbitrary power of an House of Commons?* If this be true, what benefit do we derive from the exchange? Tyranny, my Lords, is detestable in every shape; but in none so formidable as when it is assumed and exercised by a number of tyrants. But, my Lords, this is *not* the fact, this is *not* the constitution; we have a law of parliament, we

have a code in which every honest man may find it. We have Magna Charta, we have the Statute Book, and the Bill of Rights.

If a case should arise, unknown to these great authorities, we have still that plain English reason left, which is the foundation of all our English jurisprudence. That reason tells us, that every judicial court, and every political society, must be vested with those powers and privileges which are *necessary* for performing the office to which they are appointed. It tells us [also, that no court of justice can have a power *inconsistent with or paramount to, the known laws of the land*: that the people, when they choose their representatives, never mean to convey to them a power of invading the rights, or trampling upon the liberties of those whom they represent. What security would they have for their rights, if once they admitted that a court of judicature might determine every question that came before it, not by any known, positive law, but by the vague, undeterminate, arbitrary rule, of what the noble lord is pleased to call *the wisdom of the court*? With respect to the decision of the courts of justice, I am far from denying them their due weight and authority; yet

placing them in the most respectable view, I still consider them, not as law, but as an evidence of the law; and before they can arrive even at that degree of authority, it must appear, that they are founded in, and confirmed by reason: that they are supported by precedents taken from *good* and *moderate* times; that they do *not contradict* any positive law; that they are submitted to without reluctance, by the people; that they are unquestioned by the legislature (which is equivalent to a tacit confirmation); and what, in my judgment, is by far the most important, that they *do not violate* the spirit of the constitution. My Lords, this is not a vague or loose expression: we all know what the constitution is; we all know, that the first principle of it is, that the subject shall not be governed by the *arbitrium* of any one man, or body of men (less than the whole legislature), but by certain laws, to which he has virtually given his consent, which are open to him to examine, and not beyond his ability to understand.

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My Lords, I think, that history has not done justice to their (our ancestors) conduct, when they obtained from their sovereign that great acknowledgment of national rights contained in Magna Charta: they did

not confine it to themselves alone, but delivered it as a common blessing to the whole people. They did not say, 'These are the rights of the great barons, or these are the rights of the great prelates: No, my lords; they said, in the simple Latin of the times, *nullus liber homo*, and provided as carefully for the meanest subject as for the greatest. These are uncouth words, and sound but poorly in the ears of scholars; neither are they addressed to the criticism of scholars, but to the hearts of free men. These three words, *nullus liber homo*, have a meaning which interests us all; they deserve to be remembered,—they deserve to be inculcated in our minds,—they are worth all the classics. Let us not, then, degenerate from the glorious example of our ancestors. Those iron barons (for so I may call them when compared with the silken barons of modern days), were the guardians of the people: yet *their* virtues, my lords, were never engaged in a question of such importance as the present. A breach has been made in the constitution—the battlements are dismantled,—the citadel is open to the first invader—the walls totter—the constitution is not tenable.—What remains then, but for us to stand foremost in the breach, to repair it, or perish in it?

Great pains have been taken to alarm us with the consequences of a difference between two Houses of Parliament. That the House of Commons will resent our presuming to take notice of their proceedings, that they will resent our daring to advise the crown, and never forgive us for attempting to save the state. My Lords, I am sensible of the importance and difficulty of this great crisis : at a moment such as this, we are called upon to our duty, without dreading the resentment of any man. But if apprehensions of this kind are to affect us, let us consider which we ought to respect most—the representative, or the collective body of the people. My Lords, five hundred gentlemen are not ten millions; and if we must have a contention, let us take care to have the English nation on our side.

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It is possible, my Lords, that the enquiry I speak of may lead us to advise his Majesty to dissolve the present parliament; nor have I any doubt of our right to give that advice, if we should think it necessary. His Majesty will then determine whether he will yield to the united petitions of the people of England, or maintain the House of Commons in the exercise of a legislative power, which heretofore abolished the House of

Lords, and overturned the monarchy. I willingly acquit the present House of Commons of having actually formed so detestable a design; but they cannot themselves foresee to what excesses they may be carried hereafter: and for my own part, I should be sorry to trust to their future moderation. *Unlimited power is apt to corrupt the minds of those who possess it*; and this I know, my Lords, that *where law ends, tyranny begins*.

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* My Lords, I need not look abroad for grievances. The grand capital mischief is fixed at home. It corrupts the very foundation of our political existence, and preys upon the vitals of the state. The constitution has been grossly violated. The constitution at this moment stands violated. Until that wound be healed, until the grievance be redressed, it is in vain to recommend union to parliament; in vain to promote concord among the people. If we mean seriously to unite the nation within itself, we must convince them that their complaints are regarded, that their enquiries shall be redressed. On *that* foundation I would take the lead in recommending peace and harmony to the people.

* On the Marquis of Rockingham's motion for an enquiry into the state of the nation, Jan. 22nd, 1770.

On any other I would never wish to see them united again. If the breach in the constitution be effectually repaired, the people will of themselves return to a state of tranquillity. If not, *may discord prevail for ever.* I know to what point this doctrine and this language will appear directed. But I feel the principles of an Englishman, and I utter them without apprehension or reserve. The crisis is indeed alarming; so much the more does it require a prudent relaxation on the part of government. If the King's servants will not permit a constitutional question to be decided on, according to the forms, and on the principles of the constitution, it must then be decided in some other manner; and rather than it should be given up, rather than the nation should surrender their birth-right to a despotic minister, I hope, my Lords, old as I am, *I shall see the question brought to issue, and fairly tried between the people and the government.* My Lords, this is not the language of faction; let it be tried by that criterion by which alone we can distinguish what is factious from what is not—by the principles of the English constitution. I have been bred up in these principles; and I know, that when the liberty of the subject is invaded,

and all redress denied him, resistance is justified. If I had a doubt upon the matter I should follow the example set us by the most reverend bench, with whom I believe it is a maxim, when any doubt in point of faith arises, or any question of controversy is started, to appeal at once to the greatest source and evidence of our religion—I mean the Holy Bible. The constitution has its political bible, by which, if it be fairly consulted, every political question may, and ought to be determined. *Magna Charta*, the Petition of Rights, and the Bill of Rights, form that code which I call *the Bible of the English constitution.* Had some of his Majesty's unhappy predecessors trusted less to the comments of their ministers, had they been better read in the text itself, the glorious revolution would have remained only possible in theory, and would not now have existed upon record a formidable example to their successors.

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Whoever understands the theory of the English constitution, and will compare it with the fact, must see at once how widely they differ. We must reconcile them to each other, if we wish to save the liberties of this country; we must reduce our political practice as nearly as

possible to our principles. The constitution intended that there should be *a permanent relation between the constituent and representative body of the people*. Will anym an affirm, that as the House of Commons is now formed, that relation is in any degree preserved?

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* He (Lord Chatham) condemned the conduct of the House of Commons in terms of asperity. He denominated the vote of that House, which made Colonel Luttrell representative for Middlesex, a gross invasion of the rights of election—a dangerous violation of the English constitution—a treacherous surrender of the invaluable privilege of a freehold, and a corrupt sacrifice of their own honour. They had stript the statute book of its brightest ornaments to gild the wings not of prerogative, but of unprincipled faction and lawless domination. To gratify the resentments of some individuals, the laws had been despised, trampled upon, and destroyed—those laws which had been made by the stern virtue of their ancestors, the iron barons of old, to whom we were indebted for all

* On the decision of the House of Commons on the Middlesex Election, Feb. 2d 1770.

the blessings of our present constitution: to whose virtue and whose blood, to whose spirit in the hour of contest, and to whose tenderness in the triumph of victory, the silken barons of this day owe their honors and their seats, and both Houses of Parliament owe their continuance. These measures, he said, made a part of that unhappy system, which had been formed in the present reign, with a view to *new-model* the constitution, as well as the government. These measures originated, he would not say with His Majesty's knowledge, but in his Majesty's councils. The Commons had slavishly obeyed the commands of his Majesty's servants, and had thereby exhibited, and proved, to the conviction of every man, what might have been only matter of suspicion before, *that ministers held a corrupt influence in parliament*; it was demonstrable, it was indisputable. It was therefore particularly necessary for their lordships, at this critical and alarming period, so full of jealousy and apprehension, to step forwards, and oppose themselves, on the one hand, to the justly incensed, and perhaps speedy intemperate, rage of the people; and on the other, to the criminal and malignant conduct of his Majesty's ministers; that they

might prevent licentiousness on the one side, and depredation on the other. Their lordships were the constitutional barrier between the extremes of liberty and prerogative.

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*Extract from JUNIUS.**

The persons, who, till within these few years, have been most distinguished by their zeal for high church and prerogative, are now, it seems, the great assertors of the privileges of the House of Commons. This sudden alteration of their sentiments or language, carries with it a suspicious appearance. When I hear the undefined privileges of the popular branch of the legislature exalted by tories and jacobites, at the expence of those strict rights which are known to the subject and limited by the laws, I cannot but suspect that some mischievous scheme is in agitation, to destroy both law and

* Letter XLIV. addressed to the Printer of the Public Advertiser, April 22nd 1771.

privilege, by opposing them to each other. They, who have uniformly denied the power of the *whole* legislature to alter the descent of the crown, and whose ancestors, in rebellion against his Majesty's family, have defended that doctrine at the hazard of their lives, now tell us, that privilege of parliament is the only rule of right, and the chief security of the public freedom. I fear, sir, that, while forms remain, there has been some material change in the substance of our constitution. The opinions of these men were too absurd to be so easily renounced. Liberal minds are open to conviction; liberal doctrines are capable of improvement. There are proselytes from atheism, but none from superstition. If their present professions were sincere, I think, they could not but be highly offended at seeing a question concerning parliamentary privilege, unnecessarily started at a season, so unfavorable to the House of Commons, and by so very mean and insignificant a person as * * * * They knew that the present House of Commons, having commenced hostilities with the people, and degraded the authority of the laws by their own example, were likely enough to be resisted *per fas et nefas*. If they were really friends to privilege, they would

have thought the question of right too dangerous to be hazarded at this season, and, without the formality of a convention, would have left it undecided.

I have been silent hitherto though not *from that shameful indifference about the interests of society, which too many of us profess, and call moderation.* I confess that I felt the prejudices of my education in favour of a House of Commons still hanging about me. I thought that a question between law and privilege could never be brought to a formal decision without inconvenience to the public service, or a manifest diminution of legal liberty; that it ought, therefore, to be carefully avoided; and when I saw that the violence of the House of Commons had carried them too far to retreat, I determined not to deliver a hasty opinion upon a matter of so much delicacy and importance.

The state of things is much altered in this country since it was necessary to protect our representatives *against* the direct power of the crown. We have nothing to apprehend from prerogative, but every thing from undue influence. *Formerly* it was the interest of the people, that the privileges of parliament should be left unlimited and undefined. *At present*, it is not only

their interest, but I hold it to be essentially necessary to the preservation of the constitution, that the privileges of parliament should be strictly ascertained, and confined within the narrowest bounds the nature of their institution will admit of. Upon the same principle on which I would have resisted prerogative in the last century, I now resist privilege. It is indifferent to me whether the crown, by its own immediate act, imposes new, and dispenses with old, laws, or whether the same arbitrary power produces the same effects through the medium of the House of Commons. *We trusted our representatives with privileges for their own defence and ours, we cannot hinder their desertion, but we can prevent their carrying over their arms to the service of the enemy.* It will be said, that I begin with endeavouring [to reduce the argument concerning privilege to a mere question of convenience; that I deny, at one moment, what I would allow at another; and that to resist the power of a prostituted House of Commons, may establish a precedent injurious to all future parliaments. To this, I answer generally, that human affairs are in no instance governed by strict positive right. If change of circumstances were to have no weight in directing our con-

duct and opinions, the mutual intercourse of mankind would be nothing more than a contention between positive and equitable right. Society would be a state of war, and law itself would be injustice. On this general ground, it is highly reasonable, that the degree of our submission to privileges which have never been defined by any positive law, should be considered as a question of convenience, and proportioned to the confidence we repose in the integrity of our representatives. As to the injury we may do to any future and more respectable House of Commons, I own I am not now sanguine enough to expect a more plentiful harvest of parliamentary virtue in one year than in another.—Our political climate is severely altered; and, without dwelling upon the depravity of modern times, I think no reasonable man will expect, that, as human nature is constituted, the enormous influence of the crown should cease to prevail over the virtue of individuals. The mischief lies too deep to be cured by any remedy less than some great convulsion, which may either carry back the constitution to its original principles, or utterly destroy it. I do not doubt that, in the first session after the next election, some popular measures may be adopted. The present House of

Commons have injured themselves by a too early and public profession of their principles; and if a strain of prostitution which had no example, were within the reach of emulation, it might be imprudent to hazard the experiment too soon. But, after all, sir, it is very immaterial whether an House of Commons shall preserve their virtue for a week, a month, or a year.—The influence which makes a septennial parliament dependant on the pleasure of the crown, has a permanent operation, and cannot fail of success. My premises, I know, will be denied in argument; but every man's conscience tells him they are true. It remains, then, to be considered, whether *it be for the interest of the people, that privilege of parliament** (which in respect to the purposes for which it has hitherto been acquiesced under, is merely nominal) *should be contracted with-*

* The necessity of securing the House of Commons against the king's power, so that no interruption might be given either to the attendance of the members in parliament, or to the freedom of debate, was the foundation of parliamentary privilege: and we may observe, in all the addresses of new appointed speakers to the sovereign, the utmost privilege they demand, is *liberty of speech*, and *freedom from arrests*. The very word privilege means no more than *immunity*, or *a safeguard to the party who possesses it*, and can never be construed into an *active power of invading the rights of others*.

in some certain limits, or whether the subject shall be left at the mercy of a power, arbitrary upon the face of it, and notoriously under the direction of the crown.

I do not mean to decline the question of *right*; on the contrary, Sir, I join issue with the advocates for privilege, and affirm, that, "excepting the cases wherein the " House of Commons are a court of judicature, to which " from the nature of their office, a coercive power must " belong, and excepting such contempts as *immediately* " *interrupt their proceedings, they have no legal authority to* " *imprison any man for any supposed violation of privilege* " *whatsoever.*" It is not pretended that privilege, as now claimed, has ever been defined or confirmed by statute; neither can it be said, with any colour of truth, to be a part of the common law of England, which had grown into prescription long before we knew any thing of the existence of a House of Commons. As for the law of Parliament, it is only another name for the privilege in question, and since the power of creating new privileges has been formally renounced by both Houses, since there is no code in which we can study the law of parliament, we have but one way left to make ourselves acquainted with it; that is, to compare the nature of the institution of a House of Commons with

the facts upon record. To establish a claim of privilege in either House, and to distinguish original right from usurpation, it must appear that it is *indispensably necessary for the performance of the duty they are employed in*, and also that it has been uniformly allowed. From the first part of this description it follows clearly that, whatever privilege does of right belong to the present House of Commons, did equally belong to the first assembly of their predecessors; was as completely vested in them, and might have been exercised in the same extent. From the second we must infer, that privileges, which for several centuries were not only never allowed, but never even claimed by the House of Commons must be founded upon usurpation. The constitutional duties of a House of Commons are not very complicated, nor mysterious. They are to propose or assent to wholesome laws, for the benefit of the nation. They are to grant the necessary aids to the king; petition for the redress of grievances; and prosecute treason or high crimes against the state. If unlimited privilege be necessary to the performance of these duties, we have reason to conclude, that for many centuries after the institution of the House of Commons, they were never performed. I am not bound to prove a negative; but

I appeal to the English history, when I affirm, that, with the exceptions already stated, which yet I might safely relinquish, there is no precedent from the year 1265 to the death of Queen Elizabeth, of the House of Commons having imprisoned any man, (not a member of their house), for contempt or breach of privilege. In the most flagrant cases, and when their acknowledged privileges were most grossly violated, *the poor Commons*, as they then stiled themselves, never took the power of punishment in their own hands. They either sought redress, by petition to the king, or, what is more remarkable, applied for justice to the House of Lords; and, when satisfaction was denied them, or delayed, their only remedy was to refuse proceeding upon the king's business. So little conception had our ancestors of the monstrous doctrines now maintained concerning privilege, that, in the reign of Elizabeth, even liberty of speech, the vital principle of a deliberate assembly, was restrained by the Queen's authority to a simple *aye* or *no*, and this restriction, though imposed upon three successive parliaments,* was never once disputed by the House of Commons.

* In the years 1593, 1597, and 1601.

I know there are many precedents of arbitrary commitments for contempt; but, besides that they are of too modern a date to warrant a presumption that such a power was originally vested in the House of Commons, *fact* alone does not constitute *right*. If it does, *general warrants were lawful*. An ordinance of the two houses, has a force equal to law, and the criminal jurisdiction, assumed by the commons in 1621, in the case of Edward Lloyd, is a good precedent to warrant the like proceedings against any man who shall unadvisedly mention the folly of a king, or the ambition of a princess. The truth is, Sir, that the greatest and most exceptionable part of the privileges now contended for, were introduced and asserted by a House of Commons, which abolished both monarchy and peerage, and whose proceedings, although they ended in one glorious act of substantial justice, could no way be reconciled to the forms of the constitution. Their successors profited by the example, and confirmed their power by a moderate or popular use of it. Thus it grew by degrees, from a notorious innovation at one period, to be tacitly admitted as a privilege of parliament at another.

If, however, it could be proved, from considerations of necessity or convenience, that an unlimited power of

commitment ought to be entrusted to the House of Commons, and that, *in fact*, they have exercised it without opposition, still in contemplation of law, the presumption is strongly against them. It is a leading maxim of the laws of England, (and, without it, all laws are nugatory), that there is *no right without a remedy*, nor any legal power without a legal course to carry it into effect. Let the power now in question be tried by this rule. The speaker issues his warrant of attachment. The party attached either resists force with force, or appeals to a magistrate, who declares the warrant illegal, and discharges the prisoner. Does the law provide no legal means for enforcing a legal warrant? Is there no regular proceeding pointed out in our law books, to assert and vindicate the authority of so high a court as the House of Commons? The question is answered directly by the fact; *their unlawful commands are resisted, and they have no remedy*. The imprisonment of their own members is revenge indeed; but it is no assertion of the privilege they contend for.* The

* Upon their own principles they should have committed Mr. Wilkes who had been guilty of a greater offence than even the Lord Mayor or Alderman Oliver. But, after repeatedly ordering him to attend they at last adjourned beyond the day appointed for his attendance, and by this mean, pitiful evasion, gave up the point.

whole proceeding stops; and there they stand, ashamed to retreat, and unable to advance. Sir, these ignorant men should be informed that the execution of the laws of England, is not left in this uncertain defenceless condition. If the process of the courts of Westminster shall be resisted, they have *a direct course to enforce submission*. The court of King's Bench commands the Sheriff to raise the *posse comitatus*: the courts of Chancery and Exchequer issue a *Writ of Rebellion*; which must also be supported, if necessary, by the power of the country. To whom will our representatives direct their writ of rebellion? The Guards, I doubt not, are willing enough to be employed, but they know nothing of the doctrine of writs, and may think it necessary to wait for a letter from Lord Barrington.

It may now be objected to me, that my arguments prove too much; for that certainly there may be instances of contempt and insult to the House of Commons, which do not fall within my own exceptions, yet in regard to the dignity of the house, ought not to pass unpunished. Be it so. The courts of criminal jurisdiction are open to prosecutions, which the Attorney General may commence by information or indictment. A libel tending to asperse or vilify the House of Com-

mons, or any of their members may be as severely punished in the court of King's Bench as a libel upon the king. Mr. De Grey thought so when he drew up the information of my letter to his Majesty, or he had no meaning in charging it to be a scandalous libel upon the House of Commons. In my opinion, *they would consult their real dignity much better, by appealing to the laws, when they are offended, than by violating the first principle of natural justice, which forbids us to be judges, when we are parties to the cause.**

I do not mean to pursue them through the remainder of their proceedings. In their first resolutions, it is possible they might have been deceived by ill considered precedents. For the rest there is no colour of palliation or excuse. They have advised the king to resume a power of dispensing with the laws by royal

“ * If it be demanded, in case a subject should be committed by either house for a matter manifestly out of their jurisdiction, What remedy can he have? I answer, that it cannot well be imagined, that the law which favours nothing more than the liberty of the subject, should give us a remedy against commitments by the king himself, appearing to be illegal, and yet give us no manner of redress against a commitment by our fellow subjects, equally appearing to be unwarranted. But as this is a case which I am persuaded, will never happen, it seems needless overnicely to examine it.” *Hawkins, ii. 111.*

N. B. He was a good Lawyer, but no Prophet.

proclamation; and kings we see are ready enough to follow such advice. By mere violence, and without the shadow of right, they have expunged the record of a judicial proceeding.* Nothing remained but to attribute to their own vote a power of stopping the whole distribution of criminal and civil justice.

The public virtues of the chief magistrate have long since ceased to be in question. But it is said, that he has private good qualities; and I myself have been ready to acknowledge them. They are now brought to the test. If he loves his people, he will dissolve a parliament, *which they can never confide nor respect.* If he has any regard for his own honour he will disdain to be any longer connected with such abandoned prostitution. But if it were conceivable, that a king of this country had lost all sense of personal honor, and all concern for the welfare of his subjects, I confess, sir, I should be contented to renounce the forms of the constitution once more, if there were no other way to obtain substantial justice for the people.† JUNIUS.

* Lord Chatham very properly called this the act of a Mob, not of a Senate.

† When Mr. Wilkes was to be punished, they made no scruple about the privileges of parliament; and although it was well known as any matter of public record and uninterrupted custom could be,

EXTRACTS

From Lord Clarendon.

* * * * *

"It is not to be believed how many sober, well-minded people, who were real lovers of the peace of the kingdom, were imposed upon, and had their understanding confounded, and their wills perverted, by the

that the members of either house are privileged, except in case of treason, felony, or breach of peace, they declared without hesitation, that privilege of parliament did not extend to the case of a seditious libel, and undoubtedly they would have done the same if Mr. Wilkes had been prosecuted for any other misdemeanor whatsoever. The ministry are, of a sudden, grown wonderfully careful of privileges, which their predecessors were as ready to invade. The known laws of the land, the rights of the subject, the sanctity of charters, and the reverence due to our magistrates, must all give way, without question or resistance to a privilege of which no man knows either the origin or the extent. The House of Commons judge of their own privileges without appeal; they may take offence at the most innocent action, and imprison the person who offends them during their arbitrary will and pleasure. The party has no remedy, he cannot appeal from their jurisdiction, and if he questions the privilege he is supposed to have violated, it becomes an aggravation of his offence. Surely this doctrine is not to be found in Magna Charta. If it be admitted without limitation, we are the slaves of the House of Commons, and through them we are the slaves of the King and his ministers.

mere mention of *privilege of parliament*: which instead of the plain and intelligible notion of it, was, by the dexterity of some men, rendered such a mystery, as could only be explained by themselves, and intended as far as they found necessary for their occasions, and was to be acknowledged a good reason for any thing, that no other reason could be given for. We are, say they, and have always been confessed, the only judges of our privileges, and whatsoever we declare to be our privileges, are such: otherwise whosoever determines that it is not so, makes himself judge of that whereof the cognizance belongs only to us. And this sophistical riddle perplexed many, who, notwithstanding the desperate consequence they saw must result from such logic, taking the first proposition for true, which *being rightly understood*, is so, have not been able to wind themselves out of the labyrinth of the conclusion. I say, the proposition rightly understood, they are the only judges of their own privileges: that is, of those privileges *which the law hath declared to be their own*; but there can be no privilege of which the law doth not take notice, and which is not pleadable by and at law. But that their being judges of their privileges,

should qualify them to *make* new privileges, or that their judgment should *create* them such, as it was a doctrine never before heard of, so it could not but produce all those monstrous effects we have seen."

EXTRACT

*From the humble Representation and Address of the Right Hon. the Lords Spiritual and Temporal, in Parliament assembled, presented to her Majesty the 14th Day of March, 1704.**

"We your Majesty's most dutiful and loyal subjects, the Lords spiritual and temporal in parliament assembled, are under an unavoidable necessity of making our humble application to your Majesty, upon an occasion which, as it is very grievous to us, so we fear it may be uneasy to your Majesty; but the proceedings of the House of Commons, in relation to five burgesses of the town of Aylesbury, John Paty, John Oviat, John

* Anno, 3 Annæ 1704.

Paton, Henry Basse, and Daniel Horne, have been so very extraordinary, that the consequences of such proceedings may prove so fatal to the properties and liberties of the people of England; and so directly tend to the interruption of the course of justice, to the eluding the judicature of parliament, and to the diminution of your royal prerogative, that we cannot answer it to your Majesty, to the kingdom, and to ourselves, without setting them before you in due light.

One Matthew Ashby, a burgess of the borough of Aylesbury, brought an action upon the case at common law, against the constables of the town of Aylesbury (being the proper officers to return members to serve in parliament for that place) for having by contrivance, fraudulently and maliciously hindered him to give his vote at an election. In this action a verdict was found for him; but judgment was given against him in your Majesty's court of Queen's Bench, which was reversed upon a writ of error brought in parliament, where he obtained judgment to recover his damages for the injury, and afterwards had execution upon that judgment.

The five persons above-named being burgesses of the same borough, and having (as they conceived) had the

like wrong done to them by the constables there, and supposing the law to be equally open to all Englishmen, did severally commence and prosecute actions against those officers, in order to recover their damages. And for so doing they were sent for to the bar of the House of Commons, and committed prisoners to Newgate, the 5th day of December last, during the pleasure of the House of Commons, as having acted contrary to the declaration, in contempt of the jurisdiction, and in breach of the privileges of that House.

These proceedings are wholly new and unprecedented. It is the birth-right of every Englishman, who apprehends himself to be injured, to seek for redress in your Majesty's courts of justice: and if there *can* be any power that can controul this right, and can prescribe when he shall, and when he shall not be allowed the benefit of the laws, he *ceases* to be a freeman, and his liberty and property are *precarious*. The crown lays claim to no such power; and we are sure the law has trusted no such authority with any subjects whatsoever.

This method does introduce an uncertainty and confusion never before known in England. The most

arbitrary governments cannot shew more direct instances of partiality and oppression.

It was never yet heard (when there was a House of Lords in being, and a King or Queen upon the throne) that the House of Commons alone claimed a power, by any *declaration* of theirs to alter the law, or to restrain the people of England from taking the benefit of it; nor have their declarations any such authority as to oblige men to submit to them at the peril of their liberty. If they have such a power in any case they may apply it to all cases as they please; for when the law is no longer the measure, will and pleasure will be the only rule.

The certainty of our laws is that which makes the chief felicity of Englishmen: but if the House of Commons can alter the laws by their declarations, we shall have no longer reason to boast of that part of our constitution.

It seems very necessary it should be known upon what rule this pretence is grounded, that the people of England may be at a certainty, and see some limits set to the claims of privilege.

* * * *

Liberty of person is, of all rights, the most valuable; and of which, above all other things, the law of England is most tender, and has guarded with the greatest care, having provided writs of several kinds, for the relief of men restrained of their liberty, upon any pretence, or by any power whatsoever; that so in every case they may have some place to resort to, where an account may be taken of the reason and manner of the imprisonment: and the subject may find a proper relief according to his case.

No crime whatsoever does put an Englishman into so miserable a condition, that he may not endeavour in the methods of law, to obtain his liberty; that he may not by his friends and agents, sue out an *habeas corpus* and have the assistance of solicitors and counsel, to plead his cause before the court where he is to be brought.

* * * *

The court is bound by the law to assign him counsel, if there be occasion, and to give judgment upon his case, as it stands upon the return of the *habeas corpus*, and to remand, discharge, or bail the prisoner, as the

cause of his commitment appears there sufficient or insufficient in law; and if what is alleged as the cause of imprisonment, appears to be no crime in law, it is not the authority of those who made the commitment, that can excuse that court for remanding the prisoner.

This is the law of England: but according to these resolutions of the House of Commons, if a man has the unhappiness (through ignorance or mistake) to do an act which shall be voted a breach of privilege, he becomes in a worse condition than any felon or traitor.

* * * *

The House of Commons have, in former ages, shewn a great and steady concern for the freedom of the persons of their fellow-subjects; and upon their petitions many excellent laws have been made to protect their liberty against all unlawful restraints by any authority, even that of the crown: but now it is insisted that their own imprisonments are out of the reach of those laws, and their legality not to be examined.

In the third year of the reign of your royal grandfather, the House of Commons made a noble stand for the English liberties, and shewed by undeniable evidence that the causes of the imprisonment must be expressed in all cases, that so it might appear upon the return of

the *habeas corpus*, whether they were sufficient in point of law.

It could not then have been imagined, that the successors of those men would ever have pretended to an arbitrary and unlimited power of depriving their fellow-subjects of their liberties, or to vote it to be criminal, even so much as to enquire into the validity of their commitments.

* * * *

If the commitments of the House of Commons are examinable in no other place, then, no man in England, how innocent soever, is secure of his liberty longer than the House of Commons pleases. * *

It has been held an undeniable maxim, that whoever executes an illegal command, to the prejudice of his fellow-subjects, must be answerable for it to the party aggrieved. Let it be supposed, then, that an action of false imprisonment was brought against the *Serjeant of the House of Commons*, and that the defendant justifies his taking the plaintiff into custody, by virtue of a warrant of that House, and it appears upon the face of that warrant, that the cause of the commitment was no crime in law, and the plaintiff demurs, what must the judges do in such a case? Will it be possible for them to avoid examining into

the commitment, and so giving judgment one way or the other? Or can it be pretended that a writ of error may not be brought upon such a judgment? And is not the court before which the writ of error is brought, under a necessity to do justice thereupon as the law requires?

* * * *

It has been always held the undoubted prerogative of the crown, to have an account of the reason why any subject is deprived of his liberty; and it has ever been allowed, that by the known common law it is the right of every subject, under restraint, upon demand, to have his writ of *habeas corpus*, and thereupon to be brought before some proper court, where it may be examined, whether he be detained for a lawful cause: and the statutes made in the reign of your royal grandfather, and your royal uncle, have enacted, that in all cases, writs of *habeas corpus* be granted and obeyed, by the respective officers, upon great penalties. But these votes import a direct repeal of these laws, as to all persons committed by the House of Commons. It is no longer worth disputing, whether a person committed by them, though for a fact which appears to be both lawful and necessary, may be delivered by any court; for by this new law he shall never be brought thither,

and the Serjeant is not only warranted, but commanded
openly to condemn your Majesty's royal writs of habeas
corpus, brought upon the act of 31 Charles II. which
is an invasion of your prerogative, never before heard
of in England,* &c. &c.

* * * *

N. B. *The parliament was immediately prorogued, and
the men, consequently, set at liberty.*

* Vide Chandler's Debates, Vol. 2, and 3.