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A  
**VINDICATION**  
OF THE  
**Rights and Privileges**  
OF THE  
Right HONOURABLE  
**The House of Lords.**

Wherein a late DISCOURSE  
ENTITLED,  
*A Vindication of the Rights of the Commons of England*  
Is CONSIDER'D.

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*Beati Pacifici.*

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VINDICATION  
 OF THE  
 RIGHTS AND PRIVILEGES  
 OF THE  
 RIGHT HONOURABLE  
 THE HOUSE OF LORDS  
 IN PARLIAMENT ASSEMBLED  
 BY JOHN HENRY  
 ESQ. OF THE BARR

A  
**VINDICATION**  
 OF THE  
**Rights and Privileges**  
 OF THE  
 Right HONOURABLE  
**The House of Lords.**

**M**AN; the Perfection of the Creation, was not only made a Citizen or Inhabitant of this World, but Lord Paramount over all Creatures that have a Being within the Circle of the Terrestrial Globe; a Dignity conferr'd upon him by the Supreme Governor of Heaven and Earth, which extends not only over Irrational Creatures, but has constituted a Superiority and Authority to reside in some peculiar Members of the Creation, over others of the same Species; least *All aspiring to an Equality of Power and Privileges, should turn the World into a Chaos of Confusion.*

Superiority and Subordination, are the Ligaments of Government; which duly preserv'd in their Natural and Legal Distances, will Regulate affairs of State, by the sound Principles of *Solid Reason, Mature Deliberations, and Profound Judgment*; whereas a *Parity of Jurisdiction* will Totter the State, Amuse the People with Self-Interested Councils, Wavering Opinions, and make the Well-being of a Kingdom, depend upon *Uncertain Fate, and the Caprichio's of Unsteddy Fortune*; which at length must necessarily plunge the State into an *Ocean of Distractions, Misery, and Infelicity.*

The Conservation of a Kingdom or State in *Peace, Prosperity and Unity, and the Knowledge of Governing Discreetly and Regularly, to compass those Blessed Ends, are Rays of Favour and Goodness, issuing from a Wise and Almighty Essence.*

*Est Deus in nobis, agitante calescimus Illo;  
 Spiritus hic Sacrae lumina mentis habet.*

B

Which

Which renders it more especially the Duty of those that preside at the *Helm*, to surmount the Title of *meer* Men, by endeavouring after such a Measure of Understanding, as flies a more Sublime and Noble Pitch, than Humanity can otherwise attain to; for by this means, *Great Men* will not only surpass others of lesser Quality, but will live after the Dictates of those Divine Monitors in their Bosoms, which ought to have the Supremacy in all their Cogitations and Actions, viz. *The steady Belief of a Deity, and a Conformity to the Precepts of Religion and the Laws of Reason.* These will render 'em truly *Wise, Just, and Courageous*, and add a Nobler Distinguishing Allay to their Understandings, than others of equal Title can boast of: who for want of these Qualifications, are so deeply Immerg'd in sense, as renders them unserviceable to their Country, by a celebrated Maxim; *That those who slight the great Concern of Eternity, will little regard the Temporal Well-being of their Country.* Such Men by indulging corrupted Nature, and abdicating their Reasons, *Facie tantum Homines sunt, non Animo*, have not only the external Aspect of Men, but are destitute of those Noble and Illustrious Habits as qualify other Men for Government.

'Tis the *English* Nobility of the forementioned Character, that knowing themselves Honourably Born, of Plentiful Estates in their Country, and that owe their Original to *Virtue*, that can never be suspected of *Ill Intentions* against their Native Soil, where their Parents, Relations, Friends, and Tenants reside, and must be possess'd by their Heirs and Successors. And tho they are tender of their Rights and Privileges, as *the Supreme Court of Judicature in England, from which there is no Appeal*, and are zealous in maintaining them: Cannot, I say, without the greatest breach of Duty and Charity imaginable, be supposed to Act against the valuable Interest of *England* in General; but on the contrary, are the *Pillars* that support the Nations Welfare and Grandeur, and their *Estates* in conjunction with others, that Defend our Coasts from the *Insults* and Depredations of our Enemies.

These are the *English* Nobles, which being Adorn'd with their own Virtues, as well as with those of their Ancestors, Merit, Esteem, Preferment, Trust, Honour and Fame, above all others that would stand in competition with them, in the Administration of Publick Affairs, for they are Armour of Proof against all Innovations, and whatever might reflect Injuries upon our happy Constitution of *King, Lords, and Commons*, either Obliquely or Directly;

----- *Quod nec Jovis Ira nec Ignis,  
Nec poterit Ferrum, nec edax abolere vetustas.*

And by their Prudent Consultations and Resolutions, are the *Nestors* and *Ulysses*, that secure their Country against the repeated Designs of our Neighbours, that would be reputed *Ajaxes* and *Achilles*.

Their

Their Lordships have been also equally Zealous in demanding and maintaining the Rights of the People at Home; as may be seen in all the Traces of the *Barons Wars*, when our Kings would have erected a *Despotick* Authority, and Enslav'd the People under the Arbitrary Power of the Reigning Monarchs; if they had not been brought to *Reason*, by the Opposition that was made against them by the *Lords, Earls, and Barons*.

And it is no less observable in Justice to the Honourable House of *Peers*, that when a Factious Crew of *Republicans*, that scandalously call'd themselves a *House of Commons*, confederated, by the Exclusion of more worthy Members, into a Wicked and Execrable Design, of Investing themselves with an Absolute and Arbitrary Power, to the Destruction of the *Monarchy*, and *Enslaving* their Fellow Subjects; they could not accomplish their Ends, till they had violently and by *Arm'd Force* hinder'd the House of *Lords* from sitting, and Voted them Dangerous and Useless.

Again, the inconsiderable number of *Lords*, that engaged in the Design of promoting and carrying on a Bloody and Ruinous Civil War in this Kingdom, and the many that shew'd their Abhorrence of it, and Zeal in settling the Kingdom upon its Ancient and Venerable Basis of *King, Lords, and Commons*, is a sufficient Argument and an invincible Evidence, that the Right Honourable the House of Lords, notwithstanding all their *Losses*, and the *Provocations* they had from the Adverse Party, were yet always firm and immoveable, in the Preservation of the *Rights* of the *People*, and our *Legal* Constitution.

But since the design of this brief Discourse is not to Aggravate Mistakes, Create Jealousies, or Widen Breaches, but to pacifie the unhappy Differences between two of the Branches of our *Legislative* Powers, from whose happy Concord, mutual Union, and Amicable Correspondence in the common Interest of the Kingdom, we only can expect a durable Tranquility, and on the contrary, from whose unseasonable Jars and Disagreements, we must live under the dismal Sense of approaching Ruin. I shall summarily Discourse the Excellency of our Constitution in general, and then proceed to the Branches that compose the whole Establishment, which has been as often as truly call'd, *The Glory and Happiness of England, and the Admiration or Envy of all the World.* Now,

To the End that *Rights* being adjusted, either by convincing Eager or ill advis'd Parties of their Mistakes, or by persuading Good Men that have the same common Interest, of the necessity of suffering Circumstantial and lighter Matters, to sleep at this Juncture, and for their own and our Preservation, to espouse Affairs of the greatest Consequence and Importance: By which Address, each Constellation moving amicably in their proper Stations, without reflecting unkind Aspects upon one another, Heaven, in answer to the Prayers and Endeavours of all Good Men,

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Men, may bless us with a salubrious Air, a healthful and vigorous Body Politick, Minds united in Peace and Concord, which will infallibly produce Fair Weather; and a happy issue of *Parliamentary Proceedings* in England.

Those Wise and Courageous Men that first reduced Mankind into some kind of tolerable Order, by associating and assembling them into Cities, who before like *Savages* ranged over Woods, and dispersedly inhabited Defarts, without the Knowledge of Government or Laws, first obtained the Title of *Kings*; but some of them, in time, and by excess of Power, degenerating into *Tyrants*, produ'd *Commonwealths*, and both by ill management and straining their Authorities, produced that Maxim, *That Monarchy leaves Men no Liberty; and a Commonwealth no Quiet.* But we in *England* have embraced the Golden Mean; our Laws take away from the Monarch the Power of *doing Hurt*, and yet leave him enough to Govern and Protect us: We take from the other, the *Parity*, the Confusion, the Animosity, and the Licence, and yet reserve a due Care of such a *Liberty* as consists with Men's *Allegiance*.

Our Government has much the stronger Byass towards *Monarchy*, which, when it falls into good hands, has so great an Advantage above all other Forms, that they look out of Countenance when they are set in competition with it. Here our King and Kingdom are (or ought to be) one Creatur'd, not to be separated in their Politick Capacity; his Throne is supported by Love as well as Power; the Laws of the Kingdom when stedfastly adhered to, are the sparkling Jewels that Illustrate his *Crown*, and he has as much Dignity, Superiority and Command, as a Wise and Good Prince can desire to have. So happy is our Constitution, that Dominion and Liberty are so well reconciled, that it gives the Prince the glorious Power of Commanding *Freemen*, and the Subject the Satisfaction of seeing the Power so well lodg'd, that their *Liberties* are secure.

In the early days of *Monarchy*, Kings seeing they were but single Persons, as long-sighted and handed as they are said to be, soon found themselves unable to transact all the Affairs of their Kingdoms in their own Persons; besides, being sometimes seduced from the Conduct of *Reason* and *Policy*, by yielding to their own Affections, they found themselves under a necessity of serving themselves by the assistance of other Heads, and Hands, and therefore chose Grave, Sober, Discreet and Vertuous Persons to help them sustain the Weight of Government, and lessen their Cares and Troubles, by imparting their Power into other hands. Thus *Romulus* the first King of the *Romans*, chose a hundred *Senators* to assist him in his Government, who, out of respect to their grey Heads, and great Understandings, were called *Patres*. *Theopompus*, King of *Sparta*, constituted the *Ephori*, and invested them with eminent Authority. After the same manner acted *Lycurgus*, *Solon* and *Thucycides*; and as Nations multiplied in *Europe* so we find the *Germans* have their *Dyets*, the *Danes* and *Swedes* their *Riicks Dachs*, the *Spaniards* their *Cortes*, the *French* have, or ought to have their Assembly of the *Three Estates*, and we

*of the Right Honourable the House of Lords.* 5

we in *England* our *Parliament*, or according to the old *Norman French*, *An Assembly* where all the Members should sincerely and discreetly *Parle la Ment* freely speak their minds for the good of the Kingdom in general.

The Institution of this Illustrious Assembly in *England* is as ancient as the *Britains*, who call'd their *Commune Concilium*, or *Parliament Hyr-ythen*, because their Laws were Ordain'd in it. Under the Government of the *Saxons* who made themselves Masters of the *British Nation*, they had their *Wittena Gemots*, or *Parliaments*, as now phrased, wherein they made Laws, and managed the great Affairs of the Kingdom, according to the plat-form of their Ancestors. I pass over the *Danish* Government because I cannot find there were any great Mutations, either of the Councils or Laws of the *English Nation*. *William* the First, tho' he got the Imperial Crown of *England*, and introduced several Arbitrary Laws, as *New Tenures*, &c. yet was not *England* so intirely subdu'd, but that they made Claims against the King himself, which they could not have done but by virtue of their Ancient Rights, which that King durst not utterly abolish. Under *William* the Second the *English* obtained their Ancient Rights, by siding with him against the *Normans*. *William* being dead, *Henry* the First granted the *English* all their Rights and Privileges by Charter. And tho' in those days all Affairs were transacted By the King, and the *Magnatis Angliæ Peers*, yet it must be granted, that the *Commons* have had a Right to sit, and were Convocated to *Parliaments*, as an Essential Branch of them, in the most early days of our *Saxon* Ancestors, tho' the Records being destroyed by Age, or ill Purposes, the precise time of their first being Summoned cannot be exactly computed.

It must also be remembred, that the *Magnates* or *Peers* of the Kingdom, had always a Primacy of Order and Jurisdiction; and being in Right of their Births and the Laws of the Land, Invested with a *Judicial Authority*, from which Court there is no Appeal, have always in their proceedings, as a Court of Judicature, took care to preserve a right Understanding between the King and the People, that no blame might be imputed to the King; who can do no wrong: Nor no Injury be done to the People, who ought to suffer none. Their Lordships in these Proceedings, Act upon Honour, are not bound up by Oaths, are both Judge and Jury, Uncontrolable, and therefore with Respect to the *Worthy Vindicator* of the Rights of the *Commons*, cannot be liable to the Check of any other Branch of the Supreme Authority; for their Lordships act in these Matters according to their own Great Judgments and Discretions, from whose Determinations there is no Appeal.

The House of Commons being a numerous Body, the Representatives of the People, and another great Council within themselves, have the Power of Impeaching and Prosecuting Evil Ministers, and other great Offenders; and the Lords never denied them the Exercise of this Power; but still have entirely reserv'd to themselves the Power of Judging whether the Impeachments of the Commons be well grounded, and whether from the Proof they make, the Accused Persons are Guilty or not Guilty of the Charge

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Charge, either in the whole or in part; and by their own Authority, according to their great Wisdoms, either Acquit or Condemn the Persons Accused. Which, with submission, I think decides the Controversy about Preliminaries.

To keep the Balance of Power Equal and in its due Poise, that one Branch of it may not Encroach upon the other, there is a Power lodged in the Lords, to determine, in relation to their own Privileges, whether the matter complained of be an Encroachment or not; for the Decisive Power must be lodged some where; it cannot be in the Complainants, for that would make them Judges in their own Cause; and therefore must reside in the House of Lords, who, as a Court of Judicature, may take notice of the minutest Circumstance, as Time, Place, Order, Decency, Encroachments, or Innovations, as tending to the Common Safety, by preventing Parity in Powers, Disorder and Confusion, which would otherwise extend *ad infinitum*, in Debates *Pro and Con*, about the matter controverted between the two Houses.

On the 14th of March, in the 18 Eliz., the House of Lords disapproving the Proceedings of the House of Commons in the Lord Sturton Bill, and among other things, *That the House of Commons did not use that Reverence to them as they ought to do, which concerned the Lords in point of Honour, and being reported by the Committee to the Commons, Sir Anthony Mildmay, by Commission from the Commons, told the Lords at the next Conference, That they were very sorry their Lordships had conceived such an opinion of the House, as tho they had forgot their Duty to them; praying their Lordships to believe, that the House of Commons did not want consideration of the Superiority of their Estates, in respect of their Honourable Calling, which they did acknowledge with all humbleness; protesting that they would yield unto their Lordships all Dutiful Reverence, so far as it was not prejudicial to the Liberties of their House, which becometh them to leave to their Posterities, in the same freedom they have received them. By which submissive and modest Answer the Lords were satisfied, and the Honour and Rights of both Houses Amicably Preserved; which method if it were as strictly observed, as by all good Men it is earnestly desired, it would allay unnecessary Heats, prevent Animosities, and put an end to Parties and Factions, which by endeavouring to Divide the two Houses, open a way to the French to accomplish their Ends over us.*

This Course, I say, by creating a right Understanding between the two Houses, which is equally their own Interests, as well as of the Whole Kingdom, would render the Nation *Insurmountable*, and is worthy the most Serious and Pious Considerations and Resolutions of both Houses, more especially in this Juncture of Affairs; for since both Houses Agree in the *Main*, the *Publick Good*, and seem to contend which of them shall most contribute to that Blessed End; *it must needs be nothing but Mistakes and Misapprehensions that keeps them at variance, or a Bone thrown among them from the other side of the Water, to enflame Differences, who for many years have laid it down as a certain Maxim among*

*of the Right Honourable the House of Lords.* 7

among them, *That England is a strong Body that can never be destroyed but by it self, which, by an English Interpretation, is by a Division among the Powers, that can only under an Almighty Providence, secure us; and is now attempted by all the Subtle, Nefarious, and Treacherous Artifices of our Domestick and Foreign Enemies.*

To prescribe the Methods for a Reconciliation, between two such Wise and Judicious Assemblies, otherwise than by our Prayers to God and them to effect it, would be an unpardonable Presumption in a Man of my weak capacity, and therefore shall only beg leave to tell the World a short but very significant Story.

Two Great and Good Men having been set at difference, and forc'd upon Law Suits, but by Ill Acquaintance and Neighbours, to the prejudice of their Estates and Families; One of them taking a *Prudent Neighbour* with him, went to his Antagonist, and propos'd Terms of Agreement; the other as generously offer'd to stand to his Award, and so they were immediately Reconciled; upon which the latter said to the Third Person, am not I a *Good Man* in agreeing upon Terms propos'd by my Adversary? Yes, reply'd the Indifferent Person, you have shew'd your self a good Man by such a Generous Condescension: *But he is certainly the Wisest and Best Man, that first offer'd Terms of Accommodation* Stiffness enrages, but Prudence dissolves angry Mistakes.

January 19, in the Parliament began the 19th of Elizabeth, several Members of the House of Commons were sent with a Message to the Lords, to receive satisfaction from them touching an Innovation lately begun, as 'twas said, in that House, *viz. That an Answer to a Message from the Commons was given by the Lord Keeper, sitting his Place, and all the Lords keeping their Places, and not going down to the Bar, as usually was their custom.* Upon a long Debate, it was Resolv'd by the Lords, That it was the Order and Usage of the House, when any Bills or Messages are brought from the Commons to the Lords, the Lord Keeper and the rest of the Lords, are to rise from their Places and go down to the Bar, to meet such as come from the Commons, and in that place to receive their Message and Bills; but on the contrary, when any Answer was to be delivered in the Name of the House, to such Knights, Citizens, and Burgeses, as came from the House of Commons, the said Knights, Citizens and Burgeses, standing at the lower End of the House, without the Bar, the Lord Keeper is to deliver the Lords Answer, sitting in his Place, with his Head covered, and all the Lords keeping their Places: And the Lord Archbishop, Lord Treasurer, Lord North, and Lord Buckhurst, who were Seniors of that House, affirming this to be the Antient Custom. the Commons were satisfied.

This you see was a Pure Mistake in the Commons, without any Design of encroaching upon the Privileges or Custom of the House of Lords, who, they thought, made Innovations upon them; but the Mistake being Rectified by the Lords, they Amicably dropt their Pretensions: Which will always have the same Effect, where Persons only Propose and Debate *purely to receive satisfaction*, and not to keep up a Controversie

trouversie to humor a Malecontented Faction, that have some Private Interests of their own to serve, which others that unadvisedly run with the Herd, are utter strangers to, and would desert them, if they were Privy to the Secret.

The Power of *Judicature* belonging to the House of Lords, is seen chiefly in their *Jurisdiction* upon *Writs of Error*, and their Judgment of Offences, as well *Capital* as not *Capital*, which they give to any publick Mischief in the State. Of these Judgments of such Offences, many Examples of former Times are to be found in the *Records of Parliament*, but none more apposite to our present purpose, than that of Mr. *Thomas Thorpe*, who was not only a *Member* but *Speaker* of the Honourable House of *Commons*, whose Case followeth.

Friday the 15th of *February*, in the 31 *Henry VI.* it was Opened and Declared to the Lords *Spiritual* and *Temporal*, who were then in the *Parliament-Chamber*, by the *Counsel* of the *Duke of York*; that whereas *Thomas Thorpe*, on *Monday* the first day of *August*, came into the Place of the *Bishop of Durham*, and then and there took away certain Goods and Cattle of the said *Dukes*, against his Will and Licence; the *Duke* took his Action by Bill, in *Michaels Term* last past, against the said *Thomas*, in the Court of *Exchequer*; to which Bill the said *Thomas* appeared, and was by a Jury found Guilty of the *Trespass*, to the Damage and Cost of 1010 Pounds, and was committed to the *Fleet*. Thereupon it was humbly prayed, on behalf of the *Duke*, that since all this was done out of *Parliament time*, that the said *Thomas* might not be Released, by virtue of *Privilege of Parliament*, till the *Duke* be satisfied his Costs and Damages.

The Lords unwilling to prejudice the Liberties and Privileges of the House of *Commons*, but desirous to Administer Justice according to *Law*, enquired of the *Judges* whether the *Speaker* ought to be delivered from Prison by virtue of his *Privilege*, or not? To which, after Consultation, the *Chief Justice*, in the name of the rest, said, that they ought not to Answer that Question; because it was already determin'd in *Parliament*, that the *Judges* should not intermeddle in the *Privileges of Parliament*; However by a *Writ of Superfedeas* of *Privilege of Parliament*, of which the *High Court of Lords* had only *Cognizance* he might be detained. Upon which it was Judg'd by the Lords *Spiritual* and *Temporal*, that the *Speaker* should remain in Prison, his *Privilege notwithstanding*. Whereupon by the Command of the *Lords*, the House of *Commons* being now Assembled, they were made acquainted with these Proceedings, and that they should Elect another *Speaker* in the place of Mr. *Thorpe*, with all Godly hast and speed, that the matter for which the *King* called this *Parliament*, might have a good and effectual Conclusion and End; to which the House of *Commons* agreed, and in his place chose Mr. *Thomas Carleton* their *Speaker*, who was approv'd by the *King*.

This

This is a clear Conviction of the Unanimous Agreement in ancient Times, between the three Branches of the Supreme Power, the Body Politick of the Kingdom, without any unnecessary Clamours or Bickerings, about particular Privileges, which is but like one's *Limb* Jarring with the rest, which may procure the dissolution, never the strengthening of the whole. Here a Subject complains of Injury he was like to suffer by the Privilege of a *Great Commoner*; the Lords interpose by their *Judicial Authority*; the *King* confirms their Judgment, by Issuing out a *Writ* for the choice of a *New Speaker*; and the House of *Commons* affirm the Proceedings of the other two Branches, by complying with their Orders. The good Effect of which Exemplary Agreement, and the readiness also of the Lords to comply with the *Commons* in any thing tending to the *Publick Good*, was also particularly Conspicuous in the late *Act* for Abolishing those *Privileges* of both Houses of *Parliament*; which, however Reasonable at their first Institution, came by degrees to be the Scandal of those that enjoy'd them, and the unupportable Grievance of all others.

Common Experience has too amply convinc'd the World; that *Great Ministers of State*, or, as the old word was, *Minions*, did always poison the Minds of *Kings* with a Notion of a *Despotal Power*, inherent in them as *Sovereign Princes*; *Quod Principi placuit Lex esto*; not for the Honour or Good of the *Crown*, which can only be steady upon the *Monarchs Brows*, by a strict observation and conformity to the *Laws*, but for their particular Advantages in heaping up Riches, or that they might *Reign* themselves, and be *Sovereigns* over their *Masters*. To Rectifie these Abuses, and Punishing the Offenders, who has been more Vigilant than the *House of Lords*, even against their own Members, when the Notoriety and Proof of the Facts were as Evident as the Accusation Importunate: Which shewing their Justice in the *Executive Part* of their Authority, as well as their *Judicial Power* in *Capital Offences*: I shall exhibit some Examples of both.

And this I the rather do, to shew the Ancient Methods of Proceeding in Cases of *Impeachment*, and with how much Ease and Unanimity each House of *Parliament* then preserved their own Rights, without Jarring about adjusting *Preliminaries*, or flying into dangerous and unnatural Heats, about such Petty Circumstances, as *Time*, *Place*, &c. to the defeating the great End of *Trying the Issue*; which is equally the Interest and Desires of both Houses, and makes it worth a Diligent Inquisition, whether the Obstructions they encounter don't originally proceed from such *Ill Men out of Doors*, as wish well to neither *King*, *Lords*, nor *Commons*, but to serve themselves, or some Interest behind the *Curtain*, would Ruin the best Constitution in the World.

*Rotulo Parlimenti Anno 10 R. 2. M. 4. 5.* In this *Parliament* all the *Commons* with one accord, and in one Assembly, came before the *King*, *Prelats*, and *Temporal Lords*, in the *Parliament-Chamber*, and there by *Word of Mouth*, grievously complained against *Michael de la Pool*, *Earl of Suffolk*

D

*Suffolk*

*Suffolk*, late Chancellor of England, and put in Articles of Impeachment against him afterwards, Importing, that he being Chancellor, and by Oath of Office obliged to promote the King's Interest, which is the Common Good, without Respect to his Oath, or the King's great Necessity, had purchased several Lands of the King, at under Rates: Neglected the great Affairs of the Kingdom; Converted a Subsidy to other Uses than for which it was appropriated by the King, and Lords of Parliament, with many other High Crimes and Misdemeanors, of which the Commons demanded Judgment of the House of Lords. In which I observe, that the Commons had the Privilege *Accusare & Petere Judicium*, the King *Assentire*, and the Lords only did *Judicare*; and therefore by a natural Consequence, it ought to be granted indisputably, that the Lords having the Sole Power of Judicature, have the same Right in Ordering all Circumstantials conducing to that great End, Giving Judgment; which I only offer Argumentatively, not Dogmatically; but submit, as in all other things, to better Judgments.

That the Judgment belongs only to the Lords, appears 7 *Henry 4.* in the Case of the Earl of *Northumberland*, where, upon an endeavour to add others as Judges in that High Court, the Lords made Protestation, That the Judgment belonged to them only. Which is further confirmed by the Protestation of the Commons. 1 *Hen 7.* which excludes them. However, to shew there were early designs to Encroach upon the Authority of the Lords by degrees, on *Monday, Nov. 3.* the Commons made a Declaration to the King, that no Record in Parliament should be made against the Commons, that they are or shall be Parties to any Judgment given, or hereafter to be given in Parliament.

Unto which it was then answered by the *Archbishop of Canterbury*, by the King's Command, That the Commons are only Petitioners, not Demands, and that the King and the Lords have ever had, and of Right ought to have the Judgment in Parliament; in manner as the Commons had declared, saving in Statutes to be made, in granting Subsidies and the like; tho' for what is done for the common profit of the Realm, the King will have especially their Advice and Assent: And that this Order should be held and kept at all times to come.

This Excludes the Commons from Right to Judgment: But whereas it is said, that Judgments in Parliament belong only to the King and Lords, that is to be understood only of the King's Assent, as appears by the Replication of the Lords, in 2. *Hen. 5.* which was thus:

In the Parliament at *Leicester*, 11 *Hen. V.* Numb, 11. *Thomas Earl of Salisbury* petitioneth to Reverse a Judgment in Parliament, against *John Earl of Salisbury* his Father, in 11. *Hen. IV.* and one of the Errors Assigned was, That the Judgment was not given by the King, but by the Temporal Lords only; but the whole matter being legally Debated, first by the King's Council Learned in the Laws, and after that in full Parliament, it was adjudged, that the King being always presumed to be in Parliament, as the Head of that Illustrious Body, the Judgment was

*Bona*

*Bona & Justa & Legalia, & ea pro hujusmodi ex abundantia decreverunt & adjudicaverunt.*

Out of the last recited Precedent of the 11 *Hen. V.* may be observed, that the Temporal Lords, by the King's Assent, may give Judgment in Capital Crimes, and that the Temporal Lords are the sole Judges; but in High Crimes and Misdemeanors the Lords Spiritual and Temporal are equal Judges, and the King's Assent is not necessary. And for this Reason it was, as King *Charles I.* learnedly expresses it, That the Lords were entrusted with a Judicatory Power, that they might be a Skreen between the Prince and the People, to assist each against the Encroachments of the others, and by such Judgments to perform that Law which ought to be the Rule of every Branch of the Supreme Power.

When the Commons in 10 *R. II.* Impeached the Lord Chancellor, they were present at his Answer; often reply'd and enforc'd his Oath against him; but where the Commons only Complain, and do neither Impeach the Party by Word of Mouth in open House, nor in Writing, nor demand to be present at the Tryal; in these Cases it is in the Election of the Lords, whether the Commons shall be present or not? Nay farther, as an Instance of the Superior Power of the Lords in Impeachments and Tryals. In the Case of *Alice Peirce*, in the 10 *R. II.* tho' the Commons Impeached her by Word of Mouth in the Lords Chamber, the Lords, for Reasons best known to themselves, and for which they were not accountable to any other Real or pretended Jurisdiction, Deferred her Tryal till the Commons were Adjourn'd. By which it appears, that the time for Tryals for Offenders, is to be appointed by the House of Lords; and if to procrastinate the Time and create Delays injurious to the Honours and Affairs of the Persons Impeached, it be objected, that the Time or Place is inconvenient for the Prosecutors: With Due respect to the ingenious Sir *H. M.* their Lordships are the Proper Judges of the Reasons given to Delay Justice, and if they think them insufficient may Proceed to Judgment: For as their Sentence is Irrevocable, so the methods their Lordships prescribe, in Order to do Justice, are Uncontrolable; for otherwise they cannot answer the end for which their Powers were Established; To do Justice without Delay or Partiality.

*Lionel Cranfeild*, Earl of *Middlesex*, who was made Lord Treasurer of England by King *James I.* was Impeached of High Crimes and Misdemeanors, by the House of Commons of the 21 and 22 of that King: In which Impeachment all things proceeded Regularly between the Prosecutors, the Impeached, and the Lords that were Judges, till upon mature Deliberations the cause was ripe for Judgment; and then, as appears *Ex Journali Domus Procerum*, a Message was sent from the Lords to the Commons, by Mr. Serjeant *Crew*, and Mr. Attorney General, viz.

That the Lords are now ready to give Judgment against the Lord Treasurer, if they with their Speaker will come and demand the same.

It was answer'd, They will attend presently.

The

The Lords being all in their Robes, the Lord Treasurer was brought to the Bar by the Gentleman Usher and the Serjeant at Arms; his Lordship made *low obeysance, and kneeled*, till the *Lord Keeper* willed him to stand up.

The Commons with their Speaker came, and the Serjeant attending the *Speaker*, presently put down his *Mace*, and the Speaker in the name of the House of Commons, and of all the Commons of *England*, deliver'd himself to this effect.

*The Knights, Citizens, and Burgesses, in this Parliament Assembled, heretofore transmitted to your Lordships an Impeachment of several Offences against the Right Honourable Lionel Earl of Middlesex, Lord High Treasurer of England, for Bribery, Extortion, Oppressions, and other grievous Misdemeanors committed by his Lordship. And now the Commons by me their Speaker demand Judgment against him for the same.*

The Lord Keeper answered. The High Court of Parliament doth adjudge, that *Lionel Earl of Middlesex*, now Lord Treasurer of *England*, shall lose all his Offices that he holds in this Kingdom, and shall be made for ever incapable of any Office, Place, or Employment, in the State and Commonwealth; that he shall be Imprisoned in the *Tower of London*, during the Kings Pleasure. That he shall pay to our Sovereign Lord the King, the *Fine* of 50000*l.* That he shall never sit more in *Parliament*, and that he shall never come within the Verge of the Court.

May 24. 1624. Ordered, That the King's Council draw a Bill and present it to the House, to make the Lands of the Earl of *Middlesex* liable unto his Debts, unto the *Fine* to the King, unto Accounts to the King hereafter, and to make Restitution to such as he had wronged, as shall be allowed of by the House.

Here you see the great Care that was taken for the common Safety; the Commons exercised their Power of *Impeaching* and *Prosecuting*; the Lords exercised their Power of *Judicature*; the People were Relieved from intolerable Oppression; those that were wrong'd, had *Restitution* made them, and the King was well rid of an Evil *Minister*, whose Mismanagement reflected *Blame* upon the King's Conduct, and all this done without any kind of Jarring between the two Houses.

And yet the Offender was very *Rich*; had many Friends at Court, had an opportunity by the great Post he filled, to make a considerable Interest every where; and from the Caution that was given by the Lord *Bacon*, viz. *THAT a PARLIAMENT WOULD COME*, did not neglect to provide against a Storm. He had great Alliance, a numerous Kindred, the King's Ear and Assurance of his Favour; notwithstanding all which, we see no *Artifices* employ'd to elude the Law, no *Stumbling-blocks* thrown in the way of Justice, no unnecessary *Disputes* raised about

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Circumstantials, to delay or disappoint the *Trial*; or if there were, the Prudence and Integrity both of *Prosecutors* and *Judges*, render'd all such attempts ineffectual, and at length made the Offendor's Punishment proportionable to his Crimes.

Now why all things Run so Smoothly and Regularly; where in all probability, a powerful opposition, or an Artificial Puzling and Perplexing the Cause, Corrupting Evidences, and Bribing those that would take them, was to be expected, may easily be collected from these Considerations?

First, because the *Lords* who were the *Judges* of the Facts, were Men of Honour, Justice, Wisdom, and Integrity, who would not be imposed upon by the subtle Arts of a *Faction* Party; nor allured by any Temptation, to Scandalize their own *Bearings*, by acting against the Interest of their Country, either in *Acquitting the Nocent* or *Condemning the Innocent*, but like the *Judge of all the World*, would do Right.

Secondly, because the House of Commons, who were *Impeachers* and *Prosecutors*, had nothing in view but Redressing Grievances, in punishing an Evil Minister: They had no *Piques* or *Revenge*s to serve; their Aims were honest without any allay of Self-Interest, or by Justling him out of a *Fatt Employment*, to step into it themselves, which would be thought a more effectual Method to accomplish that sinister End, than that prescrib'd by the *Vindicator* of the Commons, viz. to *Resign their Offices to purchase the satisfaction of being without one, and the Honour of Suffering for their Country.*

Thirdly, They did not *Impeach* the Lord Treasurer *Blindfold*, upon uncertain Report, or with insufficient Matter, and after finding him *Innocent*, studied by little Arts and Evasions, to blind the World and drop the *Prosecution*; but looking upon him as a Criminal Offendor, prosecuted vigorously, as people do that would be thought to be in earnest; for otherwise they had laid themselves under the vehement Suspicion of acting Weakly or Wickedly; which would have been but very indifferent recommendations to a new *Election*, when that *Parliament* arriv'd to its period.

But if by the Corruption of Men's Morals, things should be carry'd directly contrary to the practice of our Ancestors, and of Right Reason and Justice; and that the Right of *Impeachment* in the Commons, should be extended to make the Right of *Judicature* in the Lords (by shifts, evasions, and needless *Disputes*) impracticable as often as they please; then is the Rights of the Subject utterly destroyed, they can have no remedy against an Evil Ministry, and all things must unavoidably run into Confusion. To prevent which, our Constitution has lodged a Power in the *Lords*, to Bound and Limit all Jurisdictions that are Inferiour to their own, that they may not interfere with theirs, to frustrate the end of their Establishment; and this *Superiority* must take place, by all the *Maxims* of Law and Reason in the World; for where there are distinct

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Powers



Powers, in relation to the same End, there is a necessity for Order and Justice sake, that the lesser Power submit to the greater, or else unnecessary and trifling Disputes might be perpetrated to the Worlds End: And 'tis this Over-Ruling or Decisive Power in the Lords, that exalts them to such a high Degree in the Esteem of the People; because in all Impeachments of the Commons, the Lords are to be their Judges, who by several Examples in a few years last past, have preserv'd several Persons and Families from utter Infamy and Ruin, only by checking the fatal Consequence of a Heat began and continued with more Passion than Reason in another place.

A Man prefers a Bill of Indictment against his Neighbour, in the Court of Kings-Bench, for a Misdemeanor, and requires *he may give sufficient Security to abide the Judgment of that Court*, and then lets the matter sleep; he has served his End in scandalizing his Neighbour, and will proceed no farther. The Person Indicted being conscious of his own *innocency* and the *Malice* of his Adversary, and withal finding this Indictment tending to his Disreputation and the loss of his Trade, moves the Judges, that in Justice to him, and Honour of the Court, he may either be *Tried* or *Acquitted*: Which the Court immediately, and in course, will make a *Rule* for.

Now would it not look very *odly*, that the *Prosecutor* should assign for Reasons to keep the Indictment a Foot, *That he is full of Business, and not at leisure to prosecute; or that the Place or Time appointed by the Judges, is inconvenient?* Can any Man that has his Reason about him, forbear to think but that the *Prosecutor* knows the Person he has accused is Innocent, and only makes use of these *shifts* to keep himself from being exposed?

Can any Man that is not qualified to believe *Transubstantiation*, offer such violence to his Reason, or reflect so much dishonour upon the Court, as to imagine the Court before whom the matter lies, and who are proper Judges of it, and of all things relating to it, will admit this *Trifling* with the Court? No, *but on the contrary, having allowed the Prosecutor a reasonable time, and he not complying with it, will dismiss the Indictment?*

In Answer to this, Sir *Humphry Mackworth* is pleas'd to tell us, *That the Supream Court of Parliament has a greater Latitude than Inferiour Courts, and is not tied up to such strict Rules as they are: And truly this Evasion was all that Learned, Modest, and Worthy Gentleman had to say in that matter; for if he had waded farther, and been more particular in his Answer to that Objection, he might have eclips'd the Reputation he has so justly merited in all sorts of Learning, which he wisely foresaw, and therefore would not dwell upon so Plain and Equitable a Comparison, which the meanest Capacity might be a Judge of.*

I will not deny but that the High Court of Parliament has a more extensive Jurisdiction, and is not tied up to the Formalities and strict Rules

Rules of inferior Courts; but I know Sir *Humphrey* will grant me, *that the Highest Courts in the World, nay of Heaven; are circumscribed within the Bounds of Reason and Justice, and that the Higher the Court of Parliament is, the greater obligation lies upon it to proceed agreeably to those sacred Principles; because they are examples to Inferiour Courts, who will be apt to take the liberty (while Men are but Men, and subject to Failings) to copy after such Ill Presidents, if any should happen; and think themselves Justified into wandering in By-paths, while they but imitate the Examples of their Superiors.*

*Thomas Cromwel*, Earl of *Essex*, was Attainted by Parliament of High Treason, and yet never called to Answer, *Rot. Parl. 32 Hen. 8.* yet without questioning the Authority of Parliaments, or the validity of the *Attainder*; it was said of the manner of Proceeding, *Auferat obli-vio, si potest; si non, utcunque Silentiam tegat*; for the more High a Court is, the more Just and Honourable it ought to be in proceeding, and to give Example in inferior Courts. And this I find was the Opinion of all the Judges in the Case above-mentioned, tho' that *Arbitrary Prince* carryed it against them. *Coke's Instit. Vol. 3. Par. 4. pag. 37.* Now tho' I will not say that keeping Men under Impeachments for High Crimes and Misdemeanors, without bringing them to a Tryal, is Equivalent to Attainting Men without Hearing, yet the too long Delaying Tryals after Impeachments, is of Ill Example; and to this I have the Authority of a House of Lords.

The next thing I shall observe, is, that the *Vindicator* in taking notice of the Duty of *Ministers of State*, and that they often give ill Advice to their Sovereigns, falls very heavy, by palpable, tho' not direct Words, upon the late Lord Chancellor, in Justification of the Charge against him by the *House of Commons*, and therein begins with the first Article; *That he knowing the most apparent evil Consequences, as well as Injustice of the Treaty of Partition, did not according to the Duty of his Place, and his Oath of Office, endeavour to obstruct it; but did advise his Majesty to enter into the said Treaty, &c.*

Now since I am of no Party, but that of Law and Reason, I will not intermeddle with *Parliamentary Affairs*, or in the least concern my self with the Transactions of that Illustrious Assembly, but only Answer Sir *Humphrey Mackworth*, as to the Reasonable part of things, and as a *Private Gentleman*, I take leave humbly to acquaint him, that nothing ought to be taken for granted, to any Man's Disparagement or Dishonour, till it be sufficiently proved; for if bare Accusations rendred Men Guilty, the most Innocent Person in the World could not escape censure. 'Tis true, the Commons have impeached that noble Lord, but Impeachments are so far from being Convictions, that they are no Proofs. How often have the House of Commons, in all Ages, been misinformed, and proceeding upon Accusations that others have informed falsely, have met with severe Reflections, as well as Disappointments; besides, by the Maxims of the Antients, we are obliged to judge Charitably of all Men, till proof sets us right. Till which time there is much more Reason to credit his Lordships

ships *Negative* than an unproved *Affirmative*, unless we knew the Witnesses: For his Lordship has averr'd,

That he was never acquainted with the *Treaty of Partition*, or the Design of it, or any other Matter relating to it, at any other time, nor in any other manner, before he was told it was Concluded and Signed. And in relation to other Charges upon him on the same Head, his Lordship Answers, That by his Majesties express Command, he did send full Powers under the Broad Seal of *England*, for Negotiating the said Treaty, with Blanks for his Majesties Commissioners Names; which he humbly conceives, and is advised, was a sufficient *Warrant* for him to pass that Commission, it being prepared in usual Form of Commissions of full Powers, with Blanks for the Commissioners Names, according to his Majesties Directions. And having also his Majesties Command, that the said *Treaty should be kept secret*, he did not communicate it to the rest of the Lords Justices, or his Majesties Privy-Council; which besides he conceiv'd was unnecessary to be done, in regard his Majesty had then by his Commissioners perfected the said Treaty; so that the same could not be Altered. *Which is a direct and plain Answer, and relieves Sir H. M. from his Astonishment.*

That he did pass several Grants to divers Persons, of several Lands belonging to his Majesty, in right of his Crown of *England*; but saith, *before any of them came to the Great Seal, the same were regularly Passed through the proper Offices, and brought with them sufficient Warrants for the Great Seal*: And conceives and is advised, that being required by his Majesty by Warrant to pass the same, he ought so to do; but denies that he ever Advised, Promoted, or Procured any Grant to be made to any Person whatsoever, of any Forfeited Estate in *Ireland*, or did procure any Act or Bill prepared for Confirming any such Grant in the *Parliament of Ireland*; but that what Bills of this Nature, were remitted under the *Great Seal of England*, to be passed into Laws in *Ireland*, the same were first Approved and Passed in the *Privy-Council of England*, and being so approved, were by Order of Council sent to him, who was by the said Order required to affix the Broad Seal thereto.

That he did, besides the Profits and Perquisites of his Office, receive from the King an Annual Pension and Allowance of Four Thousand Pounds, being the like Pension that had been allowed to several of his Predecessors; but denies that he did *Beg, or use any means to procure any Grant whatsoever from his Majesty, for his own Benefit, &c.* but that what he Possesses in that kind, he received from his Majesties Bounty; and he humbly conceives it was lawful for him to accept the same.

I have thus briefly mentioned his Lordships Answer, to shew the World what little cause Sir *Humphrey* had to Harangue against a Person of his Lordships Honour and Integrity, while matters were only *pendente lite*, and nothing proved against him, tho' his Lordship and the *House of Lords* have very earnestly desired it. If the *Vindicator* should object, that he named no Person; I answer, *he had better have done it*; for every Reader knows

knows who he means, and without question if he had named him, he would have thought himself obliged to have treated that Noble Peer with more Respect than he hath done, by expatiating in Generals, and amuzing Men with pretended Crimes, where to this day there is nothing proved, and peradventure will never be attempted.

No sort of Good Men, are offended with the House of Commons, in exercising their Right of *Impeaching*, that Truth might come to Light, and noisy Clamors be either confirm'd or silenc'd for ever; but no Men of Birth or Education will commend or approve of a Private Gentleman's heaping frightful Consequences upon upon an unconvicted Man of Quality, on naked Suppositions and Possibilities. The matter has been before the Proper Judges, who have declared him *Not Guilty*; and after that it was unkindly done to raise New Heats against him, by raking in Embers where Water ought to have been thrown to have extinguished them for ever. I presume Sir *Humphrey* was no Evidence against his Lordship, and therefore as a *Commoner* ought not to have been a *Judge*: But things will for ever run in this Channel, while too much Zeal, or Prejudice forms the Harangue, without consulting the *Understanding*.

Farther, in Discourfing the Security of the Publick, from the Establishment and Use of the King's Councils, this *Worthy Member* is pleased for the Information of the Ignorant World, to tell us, *That the Privy-Council is called Concilium Regis Privatum, & Concilium Regis Secretum; that they are Partes Corporis Regis; that they are to keep Secret the Kings Councils, and to advise the King in all things to the best of their skill, for the Universal Good of the King and his Land; that it is an Error to determine matters of the Highest Importance, without advising with any of the Established Councils; that the Happiness and Prosperity of England hath hitherto been preserved, by the Constitution of the Government, and that 'tis a Maxim in Law, Ignorantia Juris non excusat.*

All wonderful Discoveries, which he puts into *Italick*, that they might not escape the Readers particular observation. It would be the highest Ingratitude in the World, to bury these Superfine Politick Notions in the shades of Oblivion, without owing the Knowledge of them to the *Worthy Vindicator*: And 'tis a thousand pities while his hand was in, and the good-natur'd and Learned Fit was upon him, that he had no farther obliged his Dear Countrymen, by telling them *that these Privy-Councillors, these Great Statesmen, did wear Cloaths, and Eat, and Drink, and Sleep, like the rest of the Creation.*

In the next place the *Vindicator* proceeds to Discourse the Powers in the Lords and Commons upon Impeachments, which is the only part that answers his Title, and can be called a *Vindication of the Rights of the Commons*; for all the rest, nay and that too, is such a confused Heap of Extraneous Interlocutory Positions, Maxims, and voluntary affected Abberations from his main design, (if there be any such thing as a Design in his whole Book) that it is impossible to trace him in

any kind of tolerable Order or Method, without running it into the same unpardonable Fault that he is so manifestly Guilty of in every page of his *Vindication*, I mean patching up a Pamphlet with *Useless Tautologies, Unnecessary and continued Repetitions of the same matter, and Tedious long-winded Digressions*, enough to Nauseate any Reader, and transport an Answerer into Harsh Reflections, if the Respect due to his Person and Quality, did not more confine me within the Rules of Decency, than the Merits of his *Vindication*. I will not say the Gentleman is fond of his own Notions, unless it be for their *Antiquity*, that he repeats them so often; but this I dare affirm, that they are offensive to every indifferent Reader: and therefore am of Opinion, that the Worthy Member took this Course, only for the Interest of the Bookseller, to swell into a Volume, that the *Grubstreet* Printers might not Pyrate upon his Copy, and sell his two Shillings Book for a Penny; for otherwise all that he has said in *Forty*, might with greater Reputation to the Author and Satisfaction to the Reader, have been comprehended in *Six Pages*; but *Lean Subjects* are always *Larded with Words*, to make them have the better *Gusto*.

I agree with this Gentleman, *That 'tis the great Security of the People and the Government, that the Judgment on Impeachments is of Right lodged in the Lords, who have the Power of Impeaching also, if they please*; for I find that sometimes the *Commons* have been Defective in that affair, and that those Defects have for the Publick Good been supplied by the *Lords*; as in that notorious Case of *Richard Lyons*, Merchant of *London*, who in the 50 year *Ed. 3. Numb. 15. 16.* was Impeached by the *Commons* of several Misdemeanors; as of Defrauding the King and his Liege People, by Covin made between him and some of the *Privy-Council* of the then King, for their own Profit and Advantage.

But the many Extortions and Villanies were set down by the *Commons* in such General Terms, that the Offender took Exceptions against the Generality of the Charge, and the Exceptions were allowed: However, the *Lords* in their great Wisdoms would not reject the Impeachment, but supplied the Defects thereof, by Granting Commissions to make a particular Enquiry into the matters so Generally Charged: And after the Return of those Commissions, by their single Authority, without consulting the *Commons* about the Methods and Formalities to be observed about his Tryal; Sentenc'd the Criminal to Imprisonment, to make Fine and Ransom at the King's Pleasure, to lose his Freedom of the City of *London*, never to bear any Office, nor approach the Council or the King's House, and that all his Lands and Tenements, Goods and Chattels, should be seized in the Kings Hands.

By which it is observable, the Power of the *Lords* in *Impeachments* as well as *Judicature*, and that their adding Weight to the *Commons* Impeachment, which was defective in Law, the Offender was brought to condign Punishment.

I Also

I also accord with him in another Paragraph, wherein he is pleased to say, *That the Rights of Impeachment in the Commons, must not be construed to enable them to make the Right of Judicature in the Lords impracticable when they please: Nor that the Right of Judicature in the Lords, should be extended so far as to enable the Lords to make the Rights of Impeachment in the Commons impracticable when they think fit; but that both the Powers should admit such a Limitation and Construction, in the Nature and Exercise thereof, that they may consist together for the Common Good, and be able to attain the End for which they were established.*

Nothing can be more or better said toward obtaining a perfect Reconciliation between both Houses, the great Thing that employs the good Wishes of all Honest and Thoughtful Men in the whole Kingdom, than what Sir *Humphrey* has advanc'd in the precedent Paragraph; tho' I cannot forbear observing, that he so twists both the Powers together, that he seems to confound their Distinct Jurisdictions, by making their Powers Inseparable in every minute circumstance, as if the *Lords* had not the Superiority of Determining, when any such Disputes arose between them: which cannot be allowed him, for Reasons that will be shew'd anon.

Nor may I omit, that he also very artfully Insinuates and promotes the Belief of a Prejudicate Opinion, *that the Lords had a Design to encroach upon or infringe the Rights of the Commons, in the matter of Impeachments*, tho' it be directly contrary to their Lordships express Words; who in their Message to the *Commons* on the 30 of *May, 1701.* are pleased to say, *that they do not controvert what Right the Commons may have of Impeaching in General Terms, if they please.* These two Veins running through the Whole Mine of his elaborate Discourse, he Smelts and Refines them to his own Advantage, to make it Pass upon the Credulous World; that the *Lords* were Aggressors in the Disputes between them, by endeavouring to deprive the *Commons* of the Right of *Impeaching*: Which I take to be a great Error in his Pen, or a Defect in his Memory, in not rightly stating their Case, before he suffered his Will to commit it to publick View and Censure; as will appear by the following Check upon that unkind Reflection.

For what Court of *Judicature* in the World can shew such Examples of Moderation, and a Prudent Circumspection, in avoiding all occasions of Offence, as their Lordships have done in the whole Course of their Proceedings about *Impeachments*; which I humbly beg leave to take a curiosity View of, for the Conviction of our *Worthy Knight*, and all others that either promote or are deluded into that erroneous Opinion.

The *Commons* having Impeached four Lords of Parliament, and Addressed his Majesty to Banish them from his Councils and Presence for ever. The *Lords* also Addressed his Majesty, *that he would be pleased not to pass any Censure upon them, until they were tryed upon the same Impeachments, and Judgment be given according to the Usage of Parliament, and the Laws of the Land*; and which were in the Right, according to the old Maxim; That

That every Man is presumed to be Innocent, till he is legally Convicted of a Crime, I leave wiser Heads than mine to determine.

The House of Commons having Impeached four Noble Peers, on the 15th of April, 1701. and not having sent up Articles against them all, on the 15th of May, 1701. their Lordships thought themselves obliged to put them in mind, *That as yet no particular Articles have been exhibited against the Lords, which after Impeachments have been so long depending, is due in Justice to the Persons concerned, and agreeable to the methods of Parliament in such Cases.* What could be more Justly, Modestly, and Affectionately expressed, in relation to the Accused and the Accusers? *It was only putting them in mind.* The same Message was sent by the House of Lords to the House of Commons, on behalf of two Lords against whom no Articles were exhibited, on the 20th of May following; and an Answer fully as Modest and Reasonable, was returned to the first, by the Commons to the Lords, on Monday the 19th of May, 1701. *That Articles were preparing, and in a short time their House would send them up.* Here was no sign of a disagreement between the two Houses, nor would it ever have happen'd, if the *Kindle Coals without Doors* had not blown up Sparks that would have died of themselves, into unnecessary Heats.

These were the first steps used between the Houses, in which there is not one word that tends towards the Lords encroachment upon the Rights of the Commons in Impeachments, or of the Commons suspecting the Lords had any such design; and therefore I cannot but admire, that the *Vindicator* should take so much pains to Insinuate it; for that must be the meaning of his Suggesting a Power might arise in the Lords, to defeat the Right of the Commons in Impeachments, and his *Dreading* the Right of Levying Money might be defeated also; or else all the Discourse on that Head signifies nothing.

But the *Vindicator's* uncouth and falacious way of Arguing in Generals, wherein he sees every body, and no body sees him, and directly points at Men and Things to their Reproach, and yet cannot be charged with it, while he wilders himself and his Reader in Generals, he thinks will bring himself off from the suspicion of reflecting upon the Lords; and therefore has already provided himself an *Asylum* which he has recourse to for shelter almost in every Page; and tho he treats of Transactions now on Foot, and of Persons under a present Denomination, yet must, he thinks, be excused, because he says, *he is not arguing what any House of Lords will do, but what they may do hereafter.* So when he is pleased to give a slanting blow against the *King's Prerogative*, he must, forsooth, be understood, by way of *Prevention*, that 'tis not meant against his present Majesty, but against *Bad Kings that may come hereafter.* I confess this is a subtle and secure way of Talking, but whether it is decent and becoming the Character of a true *English Gentleman*, to do the Nation a present Mischief, by keeping up Feuds and Animosities, in order to prevent *Dangers in Futurity*, I leave to his most serious Consideration.

Not

Not that I would be thought to derogate from the Honour and Integrity of Sir *Humphrey Mackworth*, by any thing I have said on this particular; but, with due submission, to enquire of him, Whether this be the way to effect a Reconciliation, by making *Gaps* for the entrance of *New Heats*? Whether this be a time to mince *Atoms*, and *split Hairs*; to Raise Fears and Jealousies about *Encroachments*, and to coin nice Distinction to Divide a Kingdom, while our Enemies are watching for that Advantage to destroy it? Certainly as the Affairs of *England* are now Circumstantiated, it stands more in need of *Emolients* than *Corrosives* of a *Grave*, not a *Throne* for Quarrels; of Good Men to compose our Differences, and not of *stiff* Men, that insisting upon *Niceties* and *Punctilio's*, obstruct the Process of such Weighty Affairs, as tend to preserve our Nation and Religion from the Jaws that are gaping to Devour them; who clap their Hands at our *Divisions* and cry *So, so would we have it.*

Next after wasting ten Paragraphs about *Writs of Error, Impeachments, at the King's suit, and Tryals out of Parliament*, which are all long since handled by *Selden* and *Pettyt*, from whom he has transcribed his Notions, the *Vindicator* comes to intimate, for he says nothing directly; *that in order to the Tryals of the Impeached Lords, no day ought to be appointed by their Lordships for the Tryals, without some previous Signification from the Commons to their Lordships, of their being ready to proceed; for appointing a time for the bringing in the Articles of Impeachment, and of time and place for Tryal, is not necessarily implied in the Power of Judicature, or inseparably annexed to it, but is a Collateral Power which may or may not belong solely to the Judge, as the nature of the Case does require.*

This Assertion of Sir *Humphrey's* destroys it self by its own uncertainty, as well as for other Reasons; for after he has positively denied the Lords have the Power of appointing *Time* and *Place* for *Tryals*, he says, *'tis a Collateral Power, and it either may or may not solely belong to them;* but tells us not, as he ought to have done, in order to gain his Points, in what Cases they may, and in what Cases they may not exercise that Authority, nor indeed could he, for his own Quoted Law and Reason is irresistably against his Pretension. -- *Quando Lex aliquid concedit, concedere videtur & id, sine quo, res ipsa non potest.* When Law, when sound Reason, when the Constitution of a Government, gives a Right or Power to one Branch of the Legislative Authority, to Judge and determine in the Highest and most Material part, in relation to Tryals on Impeachment, it gives every thing necessary to support that Power, or the great End, which is *Giving Judgment*, may be defeated. Besides it would confound all Judicial Proceedings, and the People could never obtain their Rights, if every Court of *Justice* had not an uncontrollable Power to Order and Direct the Circumstances and matters of Form, that can have no Influence to the prejudice of *Justice*, after such a manner, and at such a time as they shall Judge fit, and where the same are not settled by a positive Rule; for otherwise nothing could ensue but *Endless Disputes, unnecessary Competitions, Confusion, and every evil Work.* Every *Inferior Court* has such a Jurisdiction, and it would be the greatest Absurdity in the World, to affirm, that the *Supreme Court of Judicature in England* (from which there is no Appeal) has it not. But,

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To confirm his private Opinion, against these known and till now uncontroverted Maxims of *Law and Reason*, the *Vindicator* falls again to Supposing; (the only shelter and Topick to Amuse, where Proof is wanting) and at such a Rate too, as could never have been expected in *Print*, from a man of Sir *Humphrey's* Parts and Probity; for he says, *if the Lords upon all Impeachments have an Absolute Power belonging to their Judicature, of appointing Time and Place for Tryal of an Impeachment, and may proceed both to Tryal and Judgment, without any regard to the Commons, whether they are Ready, and do Concur or Not: Have not the Lords then a Power to make the Right of Impeachment in the Commons impracticable, when they think fit? May not the Lords either appoint a Time so short, that the Commons can't possibly be ready; or a Time so long, that Justice shall never be done? and may not the Place appointed be so distant, or so very inconvenient to the Commons, that they shall not be able to attend the Prosecution of the said Tryal with Effect?*

*May it not be supposed to be possible, that the Lords may appoint the next day to bring in Articles? May they not appoint the following day for the Tryal to be had at Truro in Cornwall, where neither the Commons nor the Witnesses can attend; or else, the Lords may appoint the Tryal to be had Twenty or Forty Years after, by which time all the Prosecutors and Witnesses may be in their Graves, and the Nation undone by an Evil Ministry. All this is possible to be done, tho' not probable; but a Wise Constitution of Government provides even against Possibilities as far as may be, where the Common Safety is at stake.*

Omitting all Pleasantry and Ridicule, that some Men would employ upon these repeated Provocations, I beg Sir *Humphrey's* Licence to acquaint him, That *Suppositions* not grounded upon *Ill and Foolish* things done already, which might warrant a Man to suppose that *Worse* and more *Ridiculous* Things would follow; are *direct and egregious Scandals upon the Honours and Integrity of Noble Men, that never gave occasion for them*: And to Argue from *Possibilities to Facts*, without any probability of their happening, deserves a more severe Return than I am willing to give, tho' when one considers that they are offered against the *Noble Lords in Parliament*, 'tis a great mortification to one that admires their *Moderations, Sagacities, and Justice*, to forbear it. What one step have the *House of Lords* made to give colour for these extravagant *Surmises*? in what one Instance have they neglected the *Care and Safety of their Country*; but, it may be, this is Sir *Humphry Mackworth's* Way of Asserting and Maintaining the *Just Rights and Judicature* of their Lordships, by supposing *Improbabilities*; and then, I hope, he will give me leave to remind him, *That if he has not varied from his Intentions, he has sufficiently waded from the Rules of Decency in the Execution.*

There is but one thing in his whole Bundle of *Suppositions*, that deserves an Answer, and that is, That 'twas possible the *Lords* might appoint a Time for the *Tryals*, before the *Commons* were prepared to *Prosecute*, which the *Lords* not being privy to the *Commons* Transactions in that *Affair* might do unawares; tho' I am very confident, if the *Commons* had assigned that as a Reason of their delay, their *Lordships* would have given them Satisfaction in it; for by any thing that appears in their whole Management of that *Affair*, their *Lordships* never intended to surprise the *Commons*.

And indeed with what shew of Reason can they be suspected to have any such Design? Are not their *Lordships* as much concerned that the Nation should not be wronged, as the *Commons* are? Did they not defer the *Tryals* from day to day, that the *Commons* might be ready? Did not their *Lordships* give the *Commons* notice of their Resolutions to Try the *Impeached Lords*? And did they not repeat those Notices, and desire the *Commons* to appear at the *Tryals*, till the *Commons* had made it impossible to send them any more Messages, by *Adjourning* their House? Now he that consults the *Journals* of either House, will find, in my weak Opinion, that the Time appointed by the *Lords* was not so short but that the *Commons* might have been Ready, or at least have given their *Lordships* their *Reasons* why they could not: Nor so long as *Twenty or Forty Years*, to carry the *Dispute* into the other World. The *Place* was *Westminster-Hall*, which is somewhat nearer the *House of Commons* than *Truro* in *Cornwal*.

Does the *Vindicator* believe the *Common Safety* lies at Stake at this Juncture, then certainly 'tis the *Common Interest* now more than ever, not to entertain disputes about Powers when we are in danger of losing them all; but to employ their utmost

most Abilities to accommodate differences between the two Houses of Parliament which are the *Sinews, Nerves and Soul* of the Kingdom, and endeavour to procure that happy Union, in their *Councils and Affections*, that his Majesty has often told them, *will contribute to our Safety at Home and our being considerable Abroad.*

No Man in his Right mind can believe, but that all the endeavours of both Houses of Parliament in the main, are to promote the *Publick Good*; their unanimous concurrence in all Acts of this Session to that purpose, are undeniable Proofs of it, and therefore setting them at variance or keeping up Feuds between them on any pretence whatsoever, is laying the Ax to the Root of the Constitution, which should be every Mans care to preserve. Forms in Proceedings are but the necessary Attendants on Power, but Peace and Unity between the two Houses are essential Requisites to our Well-being, are to be preferred before all other things in the World. Ceremonials may be omitted, Circumstantials may be laid aside, and disputes tho' necessary in their kind may be adjourned to other times, without prejudice to the Kingdom; and therefore ought to give way and not disturb the Peace of the Kingdom; and how it would become every Wise Head to labour in this *Affair*, I leave to Sir *Humphry's* more fedate humor.

To uphold his Cause, the *Vindicator* further advanceth, that when a Debate shall at any time arise between the two Houses, that concerns the Right of all Impeachments whatsoever, and consequently the common Safety of the King and People; then the Commons ought not to proceed to Tryal till that matter be first determined; notwithstanding they have plain and positive Proof against the Person Impeached, or that he had actually confessed many of the Articles of Impeachment, which alone were sufficient to found a Judgment against him; for otherwise it may so happen that the whole Justice of the Nation may be obstructed and Defeated by proceedings of the like nature. This was the Resolutions of the Commons in the Case of the five Popish Lords whom no Person can think they were unwilling to bring to a Tryal, or that they made use of such pretences only to cover an Affected Delay in the Prosecution.

Here the *Vindicator* runs again into this Old Mistake, and would persuade the Nation, that the Difference between the two Houses was about the Right of Impeachments which as has been said before, the *Lords* never Controverted, and therefore it looks like an ill delign in the *Vindicator* to promote the belief of that Story by his often repeating it. The difference is about the Right of appointing Time and Place and of a Committee to settle Preliminaries in order to a Trial, but he thought those Circumstances were too inconsiderable things to differ about, and therefore laies it upon something that would make a greater noise, viz. the Right of Impeaching.

Well then, since Sir *Humphry* has allowed in several places of his *Vindication*, that appointing Time and Place are but Circumstances, and not essentially tho' formally necessary to the great end Giving Judgment; is it not strange he should assert that the Commons ought not to proceed to Judgment till that matter be first determined. So that if the Nation be Abused, Cheated and reduced to the last Extremity by the Avarice, Corruption and Mismanagement of evil Ministers; yet the Right of the Commons in Impeachments shall be Defeated, the Judicial Power of the Lords Disappointed, and Criminals escape with Impunity, and all upon the Nicety of Adjusting Preliminaries, but whether such a Resolution can compensate the ill Consequences of it; or whether this fine Show of the *Vindicator's* be worth the Candle, *coram Judice lis est.*

As to a Committee of both Houses to settle the Preliminaries their Lordships could not agree to it, because they could not find that ever such a Committee was appointed on occasion of Impeachments for *Misdemeanors*, and therefore thought themselves obliged to be cautious in admitting any thing New in matters relating to their Lordships Judicature. For tho' such a Committee was agreed to upon the Impeachment of the Earl of *Danby* and the five Popish Lords for High Treason; yet Sir *Humphry* has little reason to insist upon that Precedent; for that was in a Case of High Treason, not *Misdemeanors*; and after much time spent at that Committee, the Disputes were so far from being Adjusted, that they only occasion'd an Abrupt Conclusion of a Session of Parliament.

Now for a full and Conclusive Answer to all the rest of Sir *Humphry's* Allegations in his *Vindication*, let him be pleas'd to read the Message sent to the House of Commons from the House of Lords; and if he will not receive his Satisfaction from that, I will not pretend to give him one.

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24 *A Vindication of the Rights and Prerogatives*

The Lords in Answer to the Message of the House of Commons of the 17th Instant say, the only true way of determining which of the two Houses has acted with the greatest Sincerity, in order to bring the Impeached Lords to their Trials, is to look back upon the Respective Proceedings.

The Lords do not well understand what the Commons mean by that Resentment which they speak of in their Message. Their Lordships own *the House of Commons have a Right of Impeaching*: And the Lords have the undoubted Power of doing Justice upon those Impeachments, by bringing them to Trial, and Condemning or Acquitting the Parties in a Reasonable time. This Power is derived to them from their Ancestors, which they will not suffer to be wrested from them by any Pretences whatsoever.

Their Lordships cannot but wonder, that the Commons should not have proposed a Committee of both Houses *much sooner*, if they thought it so necessary for the bringing on of the Trials; no mention being made of such a Committee from the first of *April* to the first of *June*, altho' during that interval their Delays were frequently complained of by the House of Lords.

The manner in which the Commons demand the Committee, the Lords look upon as a direct *Infringing* their Judicature; and therefore as there never was a Committee of both Houses demanded by the Lords in Case of any Impeachment for High Crimes and Misdemeanors; so their Lordships do insist, that they will make no *New Precedent* upon this Occasion. Many Impeachments for Misdemeanors have in all times been determined without such a Committee: And if now the Commons think fit, by any unprecedented Demand, to form an *Excuse* for not prosecuting their Impeachments, it is demonstrable where the Obstruction lies.

As to the Preliminaries which the Commons mention in Particular, as proper to be settled at such a Committee, they have received the Resolutions of the House of Lords therein, by their Message of the twelfth Instant; from which (being matters entirely belonging to their Judicatory) their Lordships cannot depart.

As to the last *pretence* the Commons would make for the delaying of the Trials, from some Expressions which fell from the Lord *Haversham* at the free Conference, at which Offence was taken, their Lordships will only observe. That they have omitted nothing which might give the Commons reasonable Satisfaction of their purpose to do them Justice in that matter; so far as is consistent with doing Justice to that Lord; and also to preserve a good Correspondence with them; as appears by the several Steps they have taken.

Secondly, That this business has no relation to the Trials of the Impeached Lords; and therefore their Lordships cannot imagine why the Commons should make Satisfaction and Reparation against the Lord *Haversham* a necessary condition for their going on with the Trials, and at the same time find no difficulty in proceeding in other business. *And now if Sir Humpry in his Replication, will or can make a direct Answer to these Reasons in Vindication of the Proceedings of the Lords, erit mihi manus Apollo.*

To conclude, the Vindicator says, and all the Good Subjects of *England* Agree to it; that 'tis the Interest of All to live in Peace and Union; to which I beg his leave to subjoin, that Woful Experience has taught us, that nothing ever succeeded well in this Nation, when there was any Clashing or Unhappy difference, either 1. Between the King and both Houses of *Parliament*; for that has several times been the sad occasion of Bloody Wars in *England*; and has even run the whole Kingdom upon the Brink of Ruin. 2dly, When there was no good Correspondence between the Lords and Commons; as in the Example of the Kingdom of *Denmark*, which in four days time; by thinking to abate the Power of the Lords, chang'd from an *Aristocracy* to an *Absolute Monarchy*, and where the Commons have since experienc'd, that the little Finger of an *Absolute Prince*, is heavier than the Loins of many Nobles. 3dly, When the Commons were at variance among themselves, for that is *Dividing a House against it self* in the literal Sense, which cannot long subsist under such dangerous Symptoms of approaching Ruin; From all which Ominous prefaces of Mischiefs to a Nation. *Good Lord Deliver us*

FINIS.