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### **The Works of George Lord Lyttleton**

**Lyttelton, George <Lord>**

**London, 1774**

Four Speeches in Parliament.

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SERVUS TULLIUS

Unhappy father! unhappy king! what a detestable thing is  
absolute monarchy, when even the virtues of Marcus Antonius  
could not hinder it from being destructive to his family, and  
pernicious to his country, any longer than the period of his  
own life. But how happy is that kingdom, in which a limited  
monarchy presides over a free people, who are not at the  
mercy of such evils, and who are not exposed to the arbitrary  
power against the danger of which a monarch as such as had a  
reliance, as it would be for a ship to cast anchor on a rock, in  
order to escape from the agitation of a storm.

F O U R

S P E E C H E S

I N

P A R L I A M E N T.

Printed from Manuscripts of the late Lord LYTTTELTON, commu-  
nicated by WILLIAM HENRY LYTTTELTON, Esq.

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F O U R

Mr. PITT: Speech upon the Scotch Bill, Anno 1747.

MR. SPEAKER

IF it could ever be possible, that any bill of great national consequence, especially one in which not only the national interest, but many particular interests are also concerned, should pass through the House without a debate, I should have thought this would have been justly, because it was never more universally called for by the voice of the nation, none has ever undergone a longer and deeper consideration, before it came into the House, or been considered by able men, or with a more accurate and candid regard to any material objections. However, notwithstanding these circumstances, I did expect that in the course of some difference of opinion would happen about particular parts of it, and indeed I expected that there might be an affair of so serious a nature, as not to be too hastily and fleetly examined; and because if there were any objections to the bill, I sincerely desire they may be made; but as I did not expect, I am extremely surpris'd, that it should be oppos'd upon the same; that it should be oppos'd as a breach of the Union; and my concern is equal to my surpris'd. Next to the breaking the Union, I hardly know a greater misfortune that can befall the united kingdom, than to have it suggest'd that it is broke, and to have that suggestion prevail in the minds of the people of Scotland. It is a suggestion in which the friends of Scotland and England will find their account, the friends can not; and, as I think it entirely groundless, I do most heartily give and lament that it has ever received any countenance

## Mr. LYTTTELTON's Speech upon the Scotch Bill, Anno 1747.

Mr. SPEAKER,

IF it could ever be probable that any bill of great national consequence, especially one, in which not only the national interest, but many particular interests are also concerned, should pass through the house without a debate, I should have thought this would have done so; because none was ever more universally called for by the voice of the nation, none has ever undergone a longer and deeper consideration, before it came into the house, or been considered by abler men, or with a more attentive and candid regard to any material objections. However, Sir, notwithstanding these circumstances, I did expect that in the committee some difference of opinion would happen about particular parts of it, and indeed I rather wished that there might, because an affair of so serious a nature cannot be too carefully and strictly examined; and because, if there are any faults in the bill, I sincerely desire they may be mended; but, Sir, I did not expect, I am extremely surprized, that it should be opposed upon the *Principle*; that it should be opposed as a breach of the Union; and my concern is equal to my surprize. Next to the breaking the Union, I hardly know a greater misfortune that can befall the united kingdom, than to have it suggested that it is broke, and to have that suggestion prevail in the minds of the people of Scotland. It is a suggestion in which the enemies of Scotland and England will find their account, the friends cannot; and, as I think it intirely groundless, I do most heartily grieve and lament, that it has ever received any countenance

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here. God be thanked, they who are at the head of the law in Scotland have other notions upon this matter.

In the return made by the court of session to the house of lords concerning the heretable jurisdictions, this is the manner in which they express their sense upon that point: "These jurisdictions, by the treaty of Union, are secured to the proprietors as rights of property, and therefore cannot, *without due satisfaction made to the owners*, be taken from them." If therefore due satisfaction be made to the owners, it is the opinion of the lords of the session, that these jurisdictions may be taken away, without any infringement of the treaty of Union; and that is the principle upon which this bill intirely proceeds: no jurisdictions are taken away by it, without due satisfaction made to the owners; where then is the wrong? where is the violation of the *pacta conventa* between the two nations? Sir, I have considered the treaty of Union with all the attention and care that I possibly could, startled by the objections made by some persons, for whose judgement and love to their country, I have the highest regard and respect: but I protest, that, after the strictest examination, there does not remain in my mind the least apprehension, or shadow of doubt, that it can be infringed by our passing this bill. The eighteenth and twentieth article are all that relate to the matter before you; by the eighteenth a distinction is made between the laws that concern public right, policy, and civil government, and those that concern private rights: the first are declared to be alterable by parliament, the latter not, except it be for the evident utility of the people of Scotland. Now, Sir, not to insist on any difference between the laws that concern private rights and private rights, but allowing this article extends alike to the securing of both from being altered by parliament; yet still the exception contained in the same article, "that it may be done for the evident utility of the subjects in Scotland," is fully sufficient, according to my understanding,

derstanding, to vindicate this alteration from being an infringement of the treaty of union. Nor can any distinction be made between this sort of property, and any other existing in Scotland, but that the public is more affected by this, than by any other. As to the twentieth article, the intention and purport of it appears to me to be plainly this, "that whereas these jurisdictions and superiorities are of a mixed nature, and might well be supposed to *concern policy and civil government*, and so to be alterable by parliament, even without compensation made to the owners, they were declared by this article to be *rights of property*, in order to put them upon the same foot with other *private rights*; and to secure an equivalent to the proprietors, in case they should be afterwards taken away by the wisdom of parliament; a case that was easy to be foreseen, because the inconvenience and evil arising from these jurisdictions, had been pointed out more than once, even by parliament, before the Union; and because till this is done, I will venture to say, the scheme of the Union, in all the beneficial purposes of it, will not be intirely and fully compleated. In the very words of this article a power of making this alteration is clearly implied. *The heretable jurisdictions and superiorities are there reserved to the owners thereof, as rights of property*; but, in what manner? Why *in the same manner as they were then enjoyed by the laws of Scotland*. Now, Sir, by the laws of Scotland, could not the Scotch parliament, before the Union, have altered this property, as well as all other property, upon due compensation made to the owners, for the good of the public? They certainly could; and therefore subject to the same power of alteration, by parliament, they are declared to be now held and enjoyed. If the treaty of Union had established a property that could not be subject to such alteration upon such grounds, it must at the same time have established a maxim fundamentally contrary to the first principle of all civil society, and intirely destructive

destructive to it; this most preposterous maxim, *that the good of the public ought to give way to private advantage*. But such an absurdity cannot be charged upon the legislators of two such wise nations as England and Scotland. Indeed, Sir, in no state upon the face of the earth, ever was there a property, or ever can there be any, which may not be altered or taken away, upon proper amends made to the proprietors, for the good of the whole. Even the property of our kings themselves has not been exempt from this general rule. The wardship of those who held of the crown, that is, of all the nobility and gentry of England, was a property fixed in our kings, even from the time of William the Conqueror; it was an hereditary, lucrative right of the crown; and yet for the good of the people, because it was thought to be hurtful to them, the parliament took it away upon an equivalent paid to the crown. Did any man ever suppose that this act of parliament was an injustice, or any breach of the original compact between the king and the people, a compact as binding and inviolable as the *pacta conventa*, of the Union itself? Was it ever considered, I say, as a violation of that, or as any affront to the royal dignity? No, it was never so thought of by the most zealous assertor of the rights of the crown. What! then, is the property of the barons of Scotland of a more sacred nature, or is their honour more tender, than that of the king? Give me leave to observe to you, that this right of wardship was taken away in the very first year of king Charles the Second's government, before he had made any ill use of those powers: but, as the powers themselves were judged to be hurtful, it was not considered in whose hands they were lodged, nor what use was made of them at that particular time. The wisdom of parliament looked to futurity, and thought it expedient to buy off, and to abrogate this ancient, undoubted, hereditary right of the crown, not from any complaint of a present abuse of it, but because it had been abused  
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in former times, and might be again. Sir, it is said these jurisdictions were not any cause of the late rebellion in Scotland, for that the proprietors of them were all firm and loyal on the side of the government: that is a fact which I believe may be controverted; but I will not dispute it, because, if it be not universally true, it is certainly so with regard to the far greater part; the far greater part were, without question, firmly and zealously attached to the government, and I think they deserve the highest returns of honour and gratitude from their king and their country. No man can detest more than I do the false, seditious, and scandalous libels, breathed from the malignant spirit of Jacobitism, under the mask of zeal for the government, which have imputed to them, or to the Scotch nation in general, any disloyalty or disaffection. Certain I am, that nothing can be further from the true intent and meaning of this bill, than to throw any colour of blame on their conduct. It is a bill of prevention, and not of punishment; a bill of general policy, that does not aim at particular persons, but considers the whole, considers past times, and future, as well as the present. Sir, if I am rightly informed, in the year 1715, all these jurisdictions were not on the side of the government, the weight of many of them was felt very dangerously on the side of rebellion; I admit that, in general, it was otherwise now: but to argue from thence against this bill, would be to reason upon very short views. If there be in the nature of these jurisdictions, as I am strongly convinced that there are, any such powers as are inconsistent with the good order of government, inconsistent with that sound policy which carries the majesty and justice of the crown into every part of the state, and presents to the eye of the subject no other object for his obedience, no other executive power, no other fountain of justice, except the king; if there be any thing in these regalities, superiorities, and jurisdictions, or in the authority usurped and exercised in imitation of these by



the chiefs of the clans, which contradicts this great principle of that constitution under which we are so happy to live, which in any degree interposes itself between the crown and the people, between the head of the commonwealth and the members, however the influence of such irregular powers may have been used on the present occasion, there is in the powers themselves a root of danger, which it becomes the prudence and foresight of a wise legislature not to allow to remain: Sir, it should be plucked up, not with a violent hand, but with a firm and a determined one. Of this I am sure, that it is more for the honour of government, more for the welfare and safety of the people, to see effects in their causes, and to destroy the seeds of future commotions, than to wait till they come to that fatal maturity, which at the same time that it renders the evil more plain and apparent, may wholly disable you from effecting the cure. I remember a fine panegyric made by my lord Bacon, upon the laws of Henry the Seventh. "His laws (says he) were deep and not vulgar, not made upon the spur of a present expediency, but with providence for the future." All these admirable words may with great justice and truth be applied to the bill, now under your consideration. It is a law that is *deep* and not *vulgar*: it is not made upon the meer *spur of a present expediency*, on account of the late rebellion alone, or for the purposes of this present year, but *with providence for the future*. I may also add, as my lord Bacon does, *after the example of ancient times*. It was the policy of king Henry the Seventh, one of the ablest princes that ever sat on the English throne, to break the power of the barons, and free the people from the yoke of it as much as he possibly could: to the consequential effects of that policy rightly pursued by his successors, upon the foundations which he had laid, is owing the trade, the wealth, and the liberty that the English nation enjoys at this day. Sir, I have heard with no little wonder an imagination thrown  
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out by some honourable gentlemen zealous for liberty, as if the purchasing these jurisdictions and superiorities out of the hands of the present possessors, and the restoring them back again to the crown, would be detrimental to public freedom. Sir, I have thought, and read, a good deal upon the nature of government; and, from the result of that application, I think I may venture to lay it down as a maxim, that in every kingdom, where any great powers, especially of judicature, are lodged in particular subjects, independently of the crown, it is for the good of the people that they should be taken out of those hands and lodged in the crown. The contest in that case is not, as these honourable persons seem to apprehend, between the crown on the one side, and the people on the other, but between the crown and the people united together in one common cause against the interest of those, in whom such powers are vested, which is an interest distinct from both, and hurtful to both: in other words, it is not a dispute between liberty and prerogative; but between oppression and government. This is so true, that in no one of the many Gothic constitutions established in Europe, did ever the people attain to any considerable share, either of wealth, or power, or freedom, till they were emancipated from such jurisdictions, and till all the powers of the great feudal lords, those petty tyrants, too potent for subjects, too weak for sovereigns; who were strong enough to oppress, but not strong enough to protect; till all their powers were entirely absorbed in the more beneficial and salutary power of the crown. Indeed, Sir, in every limited monarchy, that is, in a free government which has a king at the head of it, the power of the crown, when acting properly within its due bounds, restrained and confined by law and by parliament, is the power of the whole commonwealth.—It is not an interest set up in the king in contradiction to that of his people; no, the power of the crown is only a name for the executive part of the government; it

is the *vigour and energy* of the whole state that acts in these cases, though, in the style and language of the law, it be called the act of the crown. This is particularly true in matters of judicature, and the administration of justice: *That* is a power, which it is so much the interest of the whole commonwealth to place in the crown, that when a king divests himself of it, or gives up any part of it, he so far withdraws the protection he owes to his subjects, and loosens the bond of their allegiance. *Will you not bear my cause?* (said a suitor for justice to Philip of Macedon) *why then you are not my king.* Philip allowed the force of his reasoning, and confirmed him his subject by hearing his cause. If he had referred him to a great lord, to an hereditary judge, the man would have taken that lord for his king.—It is in the dispensing of justice, in the protecting of right, and redressing of wrongs, that the royal authority best appears to the subject. It is in that view of it, that it excites his veneration and love; and when any part of the people do not see their sovereign in that awful character, they are apt to forget him and turn their eyes another way. Therefore the wisdom of our constitution has made all jurisdiction immediately flow from the crown: Sir, extend that wisdom to Scotland; let none be exercised in the most distant corner of these regal dominions, at least in matters of any important regard and concernment, and where unformountable difficulties do not prevent an alteration; let no jurisdiction, I say, be exercised, otherwise than in the name of the king, and by virtue of his commission alone. This is an eternal maxim of policy: it is not taken up from any sudden heat or resentment, but upon cool and mature deliberation.—I hope it will not be laid down, because of any sudden heat or resentment arising against it, without a just or reasonable cause. Such resentment cannot be lasting: time and experience will overcome it; but the great benefits, that will arise from this bill, if it shall pass into a law, the good influence that

that it will have over the whole British state, will last, I hope, to the latest posterity. Can there be any thing more advantageous to the subject in Scotland, can there be a better or happier fruit of the Union, than an entire communication of the generous, free, and noble plan of the law of England, in the room of those servile tenures and customs, which deform the system of government there; and, by the effects that they have over that part of the people which is least civilized and most prone to disorder, disturb the peace, and endanger the safety of the whole constitution? When this is done, when these thorns are once rooted up, the way will be open to many other improvements, to the introduction of arts, of manufactures, of industry, of all the virtues and sweets of civil life, even in the wildest parts of that country. But all these blessings must be the gifts of good government: before you can hope to make those people good subjects or useful to you in any respect, you must first shew them whose subjects they are; before they can be mended by the instructions of government, they must be protected by the power and care of it; authority and justice must take the lead in this great work of reformation; discipline, peace, and civility, will follow after.

Sir, the matter before you is of so very extensive a nature, it might be shewn to you in so many lights of general policy, so many authorities might be alledged in support of it, out of all histories, ancient and modern, and from the best and most famous writers upon the laws of nature and nations, that I should weary your patience, which has already indulged me too long, if I were to say half that occurs to me upon this subject. I have purposely avoided the considering any objections made to particular parts of the bill; that will be better done in the committee; it is not proper to do it here. I hope that it will not be necessary to say any thing more, in order to shew what this bill is not; that it is not a breach of the Union, that it is not an act of injustice, that it is not

an infliction of penalties on the innocent and well-deserving. Allow me just to sum up, in a very few words, what I think that it is. It is a bill to secure and perfect the Union; to carry the justice of the king into every part of the united kingdom, and, together with that royal justice, a more settled peace, a more regular order, a surer protection, a closer and stronger bond of allegiance; to put an end to all those dependencies that combine men together, not as the subjects of the same king, or fellow-citizens of the same state, but as the followers of particular lords, and which create an awe, and an influence, alike incompatible either with liberty or government: this, I apprehend, will be done by this bill; and when you do this, you do at the same time by a necessary consequence strengthen the whole constitution, strengthen the crown on his majesty's head, strengthen the establishment in his royal family, and make the cause of the pretender more desperate. For this is most certain, that all irregularities and disorders in government, all deviations from the rule of true policy, and from the true genius of the constitution, naturally tend to disturbances, naturally tend to a change of the government, and will sooner or later produce or assist one, if they are not prevented by timely precaution.

This is the object, this is the sole intent of a bill, against which such unfortunate, and let me say such unreasonable, prejudices have been conceived. I cannot better commend the policy of it, than in the words of a great lawyer, and a great statesman, Sir John Davies, in his excellent book upon the State of the Kingdom of Ireland, a book that has been lately reprinted, and well deserves to be read and considered by every gentleman here upon this occasion: his words are these: "There can never be concord or unity in any one kingdom, but where there is but one king, one allegiance, and one law."

Speech

Speech on the MUTINY Bill, and more particularly on the Clause concerning Half-Pay Officers, Anno Domini 1751.

Mr. SPEAKER,

THIS bill has been considered, and I am glad that it has, with all the attention, that a house of parliament ought to give to so important a subject. Some material alterations have been made in it, material at least to prevent misconstructions; and I see with concern how necessary that caution is now become. Misconstructions, Mr. Speaker, and misrepresentations, are epidemical in this country. What the consequence of them might be to our future tranquillity I should tremble to think, if I did not rely on a maxim, which I hold equally certain in publick or private life, that *truth is great, and will prevail.*

But, Sir, after so much has been done in the committee to mend this bill, I should not have expected a debate on the report two days together, especially upon a point so thoroughly canvast as the half-pay has been, and which apparently lies in a very narrow compass! But there is so fruitful a genius in the honourable gentlemen on the other side of the house, that nothing can exhaust it; not to mention another quality in some of those gentlemen, which is of no less use to the purpose of prolonging debates, a certain happy forgetfulness of what has been said in answer to arguments maintained by them, and a delightful inward conviction, which I very much envy, that whatever they say is (to use the expression of a noble lord on the floor) *undeniable irresistible truth*, and that all who differ from them *are sunk in a stupid insensibility*, out of which it is necessary to draw them, if possible, by frequent repetitions.

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One observation has struck me through the whole course of these debates, that the more candour has been shewn in amending the bill, the more unexceptionable it has been made—the higher the spirit of opposition against it has seemed to rise. What one should naturally infer from thence; how far such a conduct can be supposed to proceed from the genuine spirit of liberty, clear of all other motives less respectable and less pure, the house will judge: I shall only say, that, I believe, an opposition so carried on cannot have any great weight, either within the walls, or without.

The great point, which has been the subject of so much eager altercation, this terrible clause, about which such alarms have been given; alarms that have spread from the army to the navy, as if it threatened no less than the enslaving of both; is in truth no more than saying, that an officer is an officer, and not a meer civil man; that he who receives the king's pay, cannot be supposed to be out of his service; and that he who is in the king's service, may be commanded to serve him when occasion requires, and cannot be wholly exempt from that military discipline, which the necessity of the service demands. These are all the propositions contained in this clause; and which of these can be denied? It is supposing a government to be out of its senses, to suppose it could give half-pay to officers in the manner we give it, if you do not consider it as a retainer, and as an obligation to serve: for had it been given purely and simply as a reward for past services, it would then have been given only to veterans, or such officers as had eminent merit to plead. Is this the case? We know the contrary: we know it is given to many, who, in the meritorious sense of the word, have not *served* at all. It must be therefore considered as an *obligation to serve*, not an *exemption from service*, in the general purpose and view with which it was given. But, if it be not *a total exemption from service*; then allow me to say, there can be nothing more absurd, than to suppose there is a  
*total*

*total exemption from discipline, where there is not a total exemption from service.*

Indeed, Sir, there are some parts of military discipline, from which an officer, when in half-pay, will be exempt, not by any discharge from the service, but by his situation. They cannot have the same operation upon one living retired at his own house in the country, as upon one doing duty in a camp, or a garrison; nor would they have it any more, though he were in full pay, so long as he remained in that retreat: but, so far as discipline can operate upon him in such a situation, it certainly does; because he is an officer, because he still retains his commission, by which he was first subjected to discipline, and not only receives the wages of the government, not only retains the rank he had, but may be promoted from the degree of a colonel to that of a field-marshal. While he has all these emoluments derived from the service, is it not reasonable, is it not fitting, that he should be bound by its laws? where is the hardship of this, where is the injustice, where is the servitude? It is to me unaccountable, that an officer should complain of the loss of freedom, of being reduced to the condition of a slave and a janissary; because, while he receives but half-pay, he still continues subject to the same law, acting upon him in a much less degree; to the same law, I say, which he is willing to live under, in its utmost extent, when he is in full-pay. Is not this in effect to declare, that the difference between freedom and slavery may be made up and compensated to him by the difference between full-pay and half-pay? But the officers of our army have more generous sentiments. Though this induction be fairly and necessarily drawn from this way of talking, it is a consequence they do not attend to when they so talk. If the military law of this country be such a tyranny, as some honourable gentlemen, in the hyperboles of their eloquence, and flame of their zeal, against this bill, have represented it here, no man who values his liberty would ever submit to it for the



fake of full-pay, any more than of half-pay; no, not for a day, or an hour. But, if it be really as consistent with freedom, as the nature of things can admit; as consistent with freedom, as the military law of the freest commonwealths has ever been; if it be such, that men of the highest spirit and noblest minds, such as the officers of our army now are, need not be afraid, or ashamed, to live under it when in full-pay; how the same law should make them slaves, merely because they are reduced to half-pay, I do not comprehend. We may therefore conclude, that half-pay or full-pay can create no distinction in relation to discipline, and to the obedience that an officer indispensably owes to *lawful* commands. As to any vexatious, injurious, or grievous commands, I do not understand that an officer in half-pay is not as well guarded against the danger of those, as one in full-pay. It is the constant inspection and superintendency of parliament over every branch of the administration, that is the great guard and security to every man in this kingdom against any grievous abuse of the execution of power, either in civil or military affairs. If this security fails, if we no longer trust to it, we are undone.

All power may be abused: but does it follow from thence, that any *necessary* power must be taken away? If that reasoning holds, it is not the perfection, but the dissolution, of government, it is not freedom, but anarchy, which must be the end of our debates.

Sir, permit me to say, it is wisdom in a government not to tie itself down from the occasional exercise of certain powers, which yet it will not desire, or think proper to use, except in very extraordinary cases, such as, probably, may never happen so long as the apprehension of those powers remains, but might become frequent, and dangerous to the state, if that apprehension were removed.

Many imaginary cases of a hard and unwarrantable use of such powers, very affecting indeed, but very improbable, have been suggested

suggested as arguments against this bill; and they may do very well to fill up a pamphlet, and inflame a coffee-house: but, in a house of parliament, among wise and considerate men, they can make no great impression; because, in reality, they prove nothing, or prove too much: for either the army itself will not be in a temper to do and suffer such things, or, unquestionably, any legal restraints to prevent them will be ineffectual and vain.

Sir, I entirely agree with the honourable gentlemen over the way in a maxim they have laid down, and insisted upon much, through the whole course of these debates, that, if our army should be under bad government, our civil constitution would be in a very precarious and dangerous state. I think it would, and for that very reason I am a friend to this bill. But I can by no means allow, either that officers in half-pay are no part of the army, or that the army is under bad government; because the law by which it is governed, and must be governed, or cease to be an army, is not, contrary to the nature and reason of things, so *mild* a law, or quite so well guarded, in every respect, against the danger of abuse, as our civil constitution. It is sufficient if you bring it as near as you can to the model of *that*, and take care (as you have done) to prevent it from acting in opposition to *that*, by declaring the obedience, which it requires from those who are under its authority, not to be due to any other than *lawful* commands. Nor do I in the least apprehend, that the system of discipline established in this bill should frighten any one gentleman of virtue and spirit out of the service, when I consider *who* and *what* the officers are, that have given their opinions in support of it, during the time it has been so deliberately and carefully discussed in this house. I cannot desire a more sufficient security against any fears of that kind, on which so much stress has been laid by the honourable gentleman who began this debate, and by the noble lord who spoke last.

As to any ministerial influence over the officers of our army to be derived from this bill, though we have heard so much

talk of it upon this occasion, I protest to you, Sir, I cannot see the least reason, or colour of reason, to suspect any such thing. Ministerial influence over the army can only arise from powers lodged in the crown, with which it is evident this bill has nothing to do, the power of promoting officers, and the power of cashiering them at the pleasure of the king, without any form of trial. The interposition of a court martial, as regulated by this bill, is an impediment thrown in the way of a minister, who should desire to make an ill use of the latter of these powers; and must therefore be regarded as a further security given to the officers against any such influence, so far as the operation of this bill can extend.

Sir, these are the lights in which the question now before you appears to me, stript of all those disguises in which false apprehensions have dressed it up; false apprehensions that have unaccountably been carried so far, as to suppose this most necessary bill, without which a standing army could not be restrained from destroying itself, or every thing else, calculated to serve bad designs (I know not what, nor of whom) against the liberty of this country. Sir, permit me to say, it is by relaxing discipline, not by enforcing it, that those who have bad designs to carry on by an army must always proceed. When they desire to leap over the fences of law, they must throw the reins loose upon the horses neck, instead of checking or curbing him with a stricter hand. Liberty and discipline, liberty and government, are much nearer allied, and much more compatible the one with the other (whatever some may think) than liberty and licentiousness. Look in history, and you will find it universally true, that the freest states have been strictest in their military discipline; and the best men in those states have always exacted it with the greatest severity.

Good laws, says Machiavel, must be maintained by good arms, and good arms by good discipline. It is a very just maxim, which no government should forget. Late experience has shewn us, that, if we had not had good arms and good discipline,

discipline, our good laws would have been lost. A very different system of laws, both civil and military, would have been dictated to us by *Highland legislators*, and renegado Englishmen, *drest in their liveries*\*. It is to this army, it is to this discipline, of which such terrors are conceived, that we owe our deliverance from slavery in its most abject and loathsome form. Therefore, the maintaining this discipline, the not suffering it to be relaxed and corrupted in time of peace, is essentially necessary to the safety of the whole constitution; and they who are friends to the one, will be friends to the other.

The noble lord who spoke last has made mention of *the peace*, and supposed the goodness of it to be an argument against the necessity of many parts of this bill. Sir, no man rejoices more than I do in the peace—I think it has snatched us from the brink of a precipice, which was just ready to sink under our feet. But, that it has freed us from all danger I cannot flatter myself, I will not flatter any body else, so much as to say. It has removed danger to some distance: but there is still in our whole political state, with respect to foreign powers, great cause for apprehension. We must not fall asleep under the shade of this peace: if we do, that sleep may end in death.

*In pace, ut sapiens, aptabit idonea bello* is a very excellent rule, to which our government has not always enough attended. I hope we shall not be negligent of it now, more especially with regard to the discipline of our army, which must be preserved in its vigour, if we desire that the army should be able to serve us against our foreign enemies, or would not have it become itself the most dangerous enemy to our domestic peace and tranquillity.

\* This alludes to the fashion, taken up at this time by all the Jacobites in England, of wearing Scotch plaids for their waistcoats, as a party distinction.

Speech on the Repeal of the Act called the Jew Bill, in the  
Year 1753.

Mr. SPEAKER,

I See no occasion to enter at present into the merits of the bill we past the last session for the naturalization of Jews; because I am convinced, that in the present temper of the nation, not a single foreign Jew will think it expedient to take any benefit of that act; and therefore, the repealing of it is giving up nothing. I assented to it last year in hopes it might induce some wealthy Jews to come and settle among us: in that light I saw enough utility in it, to make me incline rather to approve than dislike it; but, that any man alive could be zealous, either for or against it, I confess I had no idea. What affects our religion, is indeed of the highest and most serious importance. God forbid we should be ever indifferent about *that*! but, I thought *this* had no more to do with religion than any turnpike act we past in that session; and, after all the divinity that has been preached on the subject, I think so still.

Resolution and steadiness are excellent qualities; but, it is the application of them upon which their value depends. A wise government, Mr. Speaker, will know where to yield, as well as where to resist; and, there is no surer mark of littleness of mind in an administration, than obstinacy in trifles. Public wisdom on some occasions must condescend to give way to popular folly, especially in a free country, where the humour of the people must be considered as attentively, as the humour of a king in an absolute monarchy. Under both forms of government a prudent and honest ministry will indulge a *small folly*, and will resist a *great one*. Not to vouch-  
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safe now and then a kind indulgence to the former, would discover an ignorance of human nature: not to resist the latter at all times, would be meanness and servility.

Sir, I look on the bill we are at present debating, not as a sacrifice made to popularity (for it sacrifices nothing); but as a prudent regard to some consequences arising from the nature of the clamour raised against the late act for naturalizing Jews, which seem to require a particular consideration.

It has been hitherto the rare and envied felicity of his majesty's reign, that his subjects have enjoyed such a settled tranquillity, such a freedom from any angry religious disputes, as is not to be paralleled in any former times. The true Christian spirit of moderation, of charity, of universal benevolence, has prevailed in the people, has prevailed in the clergy of all ranks and degrees, instead of those narrow principles, those bigoted prejudices, that furious, that implacable, that ignorant zeal, which had often done so much hurt both to the church and the state. But from the ill-understood, insignificant act of parliament you are now moved to repeal, occasion has been taken to deprive us of this inestimable advantage. It is a pretence to disturb the peace of the church, to infuse idle fears into the minds of the people, and make religion itself an engine of sedition. It behoves the piety, as well as the wisdom of parliament, to disappoint those endeavours. Sir, the very worst mischief that can be done to religion, is to pervert it to the purposes of faction. Heaven and hell are not more distant than the benevolent spirit of the gospel, and the malignant spirit of party. The most impious wars ever made were those called *holy wars*. He, who hates another man for not being a Christian, is himself *not a Christian*. Christianity, Sir, breathes *love*, and *peace*, and *good will to man*. A temper conformable to the dictates of that holy religion has lately distinguished this nation; and a glorious distinction it was! But there is latent, at all times, in the minds of the  
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vulgar, a spark of enthusiasm; which, if blown by the breath of a party, may, even when it seems quite extinguished, be suddenly revived and raised to a flame. The act of last session for naturalizing of Jews, has very unexpectedly administered fuel to feed that flame. To what a height it may rise, if it should continue much longer, one cannot easily tell; but, take away the fuel, and it will die of itself.

Something that fell from my honourable friend who spoke last, makes it proper for me to add one argument more in order to shew the expediency of passing this bill.

It is the misfortune of all the Roman Catholic countries, that there the church and the state, the civil power and the hierarchy, have separate interests; and are continually at variance one with the other. It is our happiness, that here they form but one system. While this harmony lasts, whatever hurts the church, hurts the state: whatever weakens the credit of the governours of the church, takes away from the civil power a part of its strength, and shakes the whole constitution.

Sir, I trust and believe, that, by speedily passing this bill, we shall silence that obloquy, which has so unjustly been cast upon our reverend prelates (some of the most respectable that ever adorned our church), for the part they took in the act which this repeals. And it greatly imports the whole community, that they should not lose that respect, which is so justly due to them, by a popular clamour kept up in opposition to a measure of no importance in itself. But if the departing from that measure should not remove the prejudice so maliciously raised, I am certain that no further step you can take will be able to remove it; and therefore, I hope you will stop here. This appears to be a reasonable and safe condescension, by which nobody will be hurt; but all beyond this, would be dangerous weakness in government. It might open a door to the wildest enthusiasm, and to the most mischievous attacks

attacks of political disaffection working upon that enthusiasm. If you encourage and authorise it to fall on the synagogue, it will go from thence to the meeting-house, and in the end to the palace. But let us be careful to check its further progress. The more zealous we are to support Christianity, the more vigilant should we be in maintaining toleration. If we bring back persecution, we bring back the anti-christian spirit of popery; and when the spirit is here, the whole system will soon follow. Toleration is the basis of all public quiet. It is a character of freedom given to the mind, more valuable, I think, than that which secures our persons and estates. Indeed, they are inseparably connected together: for, where the mind is not free, where the conscience is enthralled, there is no freedom. Spiritual tyranny puts on the galling chains; but civil tyranny is called in, to rivet and fix them. We see it in Spain, and many other countries; we have formerly both seen and felt it in England. By the blessings of God, we are now delivered from all kinds of oppression. Let us take care, that they may never return.

The bill before us, I am sure, is not persecution. It only puts every body in that situation where every body was easy. It is a gentle, a prudent, and a moderate measure; tending to quiet and settle the minds of men, which have been unhappily disturbed, without any necessity; and therefore, I give it my most hearty concurrence.

N. B. The act for naturalizing Jews gave no greater privileges to any Jew settling here, than are at present enjoyed by the son of a Jew, *born in England*; and much less than have been given to them, *since the dispersion*, by many other nations.

Speech



Speech in the House of Lords, concerning Privilege of Parliament, in the year 1763.

“ Resolved by the commons in parliament, that privilege of parliament  
 “ does not extend to the case of writing and publishing seditious  
 “ libels, nor ought to be allowed to obstruct the ordinary course of  
 “ the laws in the speedy and effectual prosecution of so heinous and  
 “ dangerous an offence.”

MY LORDS,

AFTER what has been said, with so much weight and authority, by a noble and learned lord, who presides in the highest court of judicature in this kingdom, with such distinguished abilities, it would be impertinent and vain for me, in speaking upon this question, to argue from precedents or constructions of law, and to tell your lordships that *publick and seditious libels are breaches of the peace, and much higher breaches of it, in the eye of the law, than forcible entries or forcible detainers*; in which cases the house of commons has declared, by a resolution in the year 1697, *that no member of that house hath any privilege*. Nor need I observe to your Lordships, that the standing order of this house, made in the year 1624, has not been and cannot possibly be understood by your lordships, *as a compleat definition of all exceptions to privilege*; because, since the making of that order, and before the statute by which forgery was declared to be felony, this house ordered Mr. John Ward to be prosecuted for forgery, without any regard to his privilege, though they knew him to be a member of the lower house of parliament; and because a subsequent standing order, of the 8th of June, 1757, specifies another exception, not exprest in the former. Both these instances are  
 decisive

decisive of the opinion of this house on the question now before you, with regard to the law and usage of parliament: but I shall only beg leave to trouble your lordships with a few observations on the consequences of such an extensive construction of privilege, as is contended for by some lords, from whom I am extremely sorry to differ, but from whom I must differ on this occasion, or from all the notions I have formed of that constitution, which I am bound to maintain.

My lords, all privileges are subordinate to the great laws of society, to the good order, the peace, and the safety of the state. The noble duke who spoke last has told your lordships very truly, that this, which is now under your consideration, was not given as a favour to the members of parliament, for their own sakes; but as a guard, which the constitution has set over their persons and necessary attendance, for the security of that duty they owe to the publick. From the intention and end of this privilege, the nature and limitations of it may be reasonably inferred. It must not be exercised to the grievous inconvenience and detriment of the publick: it must not obstruct the publick justice: it must not endanger the publick safety. Anarchy, my lords, is not liberty, no more than despotism is government: but true liberty and legal government are inseparably connected: what is adverse to the one, is adverse to the other. The legal power of government in a well-constituted state, is the guardian of all privileges, charters, and rights: but this guardian must be unable to execute its great trust, if it is not itself supported by that respect and that reverence which is due to it from those to whom it gives protection. What respect, my lords, or what reverence, can be preserved to any government, where sedition may plead privilege to stop the hands of publick justice; and where crimes of the most malignant and dangerous nature, crimes which shake the very foundations of the publick tranquillity, may claim the protec-

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tion of a house of parliament, to let them go on unrestrained? can it be possible that a parliamentary sanction and authority should ever be given to a notion so repugnant to the purpose for which parliaments were established, to the *salus populi*, the supreme object and end of all government?

The many evils that must attend such a construction of privilege are apparent and dreadful! What is the remedy for those evils? The remedy, we are told, may be properly and safely obtained from either house of parliament, the privilege of which is a bar to all other relief: the justice of the kingdom will be only stopt till the next meeting of parliament (perhaps for six or seven months). As soon as ever it meets, complaint may be made to your lordships, or to the house of commons; and then right will be done. How, my lords, will right be done? It is the doctrine of the commons, *that no member can be compelled to wave his privilege*:—what, if he will not wave it? what if, conscious of guilt and apprehensive of punishment, he skulks behind his privilege, and holds it up as a shield between him and justice? Why then he may be expelled; and after such expulsion he may be prosecuted by the king, without offence to the liberty and independence of parliament.

Is not this, my lords, to declare, that every member of parliament, *while he continues a member*, though he be guilty of perjury, of misprision of felony, of misprision of treason, though he spreads sedition from one end of the kingdom to the other, is absolutely exempt from the justice of the crown? Such an exemption is most abhorrent from the whole spirit and genius of our constitution. It is the worst solecism in politicks: it is setting up a kingdom within a kingdom. Something like it I remember to have been claimed by the clergy in the darkest ages of ignorance and Popish superstition. They said, their persons were privileged: no process from the king's courts ought to go out against them: but, if any clergyman was accused

cused of any heinous misdemeanour, application might be made to the spiritual court; *there* the cause might be tried; and, if that court found him guilty, he would be deprived of his orders; after which, being no member of their sacred body, the justice of the kingdom might take hold of him; but not before.

This proposition appeared so monstrous, that even those times would not bear it; and yet, my lords, it may perhaps be thought more excusable to suffer a number of criminals to be out of the reach of public justice, from false notions of piety and a respect for religion in the persons of its ministers, than where it might be imagined that a partiality for ourselves occasioned the exemption.

I will not repeat to your lordships the black catalogue of crimes, and the great multitude of criminals, that you have been told by a noble and learned lord would be comprehended within this construction of privilege, if it should be established. With regard to all these the king would in effect be dethroned: he would *bear the sword in vain*; he would be *no terror to evil-doers*; his hands would be tied, till your lordships, or the lower house of parliament, or the convocation, if the offender should belong to their body, would be pleased to unbind them. Is this, my lords, the law and constitution of England, the first maxim of which is, *that all justice flows from the crown*? The king is sworn to do justice, impartial and equal justice. He is the vicegerent of that God *to whom vengeance belongs*. What power upon earth can intercept or delay that righteous vengeance? what power upon earth can have any right, any privilege, to interpose itself between him and the performance of his oath, which is an essential part of the duty he owes to his people? By the constitution of England, *allegiance is tied to protection*: if you deprive the subjects of the benefit of the *royal protection*, you *dissolve their allegiance*.

With respect to that particular species of crimes which is immediately under your consideration, I will venture to say, that felony itself is in no degree so alarming, so pernicious to the publick, as some *seditious libels*. They respect nothing; they spare nothing: the crown, the legislature, public order, morality, the Divine Majesty itself, is not exempt from their insults. Permit me, my lords, to paint to you in a very few words the present condition of this country, with relation to what is called *the liberty of the press*. If a foreigner were to take his ideas of England from the printed libels on both sides, he would think we had no government, no law, no God. I will spare your lordships the contemplation of so frightful a picture in its full length and dimensions, and confine myself to two points, which I think more especially demand your attention.

There are two advantages upon which our publick welfare and strength particularly depend; both of which these wicked libellers have most diligently and maliciously endeavoured to destroy: I mean the Union of the two kingdoms of England and Scotland; and that extinction of party spirit, the bane of all publick spirit, I say, my lords, that extinction of party spirit, which crowned with happiness and with glory the latter years of our late most gracious sovereign, and the beginning of his present majesty's most auspicious, most benignant, and most prosperous reign. Of these inestimable blessings these execrable writings have attempted to deprive us: they have breathed a spirit of discord, which, if great care be not taken to stop the further progress of it, will avenge the enemies of this country of all the evils they have suffered from that invincible force and energy, which a very different spirit, a spirit of union and concord, enabled us to exert. What can be imagined more injurious, more fatal to our happiness, than weekly and daily libels, sent all over the kingdom, which  
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have a strong and manifest tendency to break those ties of mutual interest and mutual affection, which bind and knit us together; and to raise animosities, jealousies, deadly feuds, civil wars, between the two nations? If the detected authors of such writings, by being members of parliament, (a circumstance which in reality much enhances their guilt), may go on with full security, in open defiance of all law and legal authority, to inflame the wounds they have made, to infuse into them new venom, till they are rendered incurable; if this indeed be *English liberty*, then, I am sure, our constitution will be *felo de se*, and wants no enemy but itself to bring it to destruction.

But we ought to be very careful of the privileges of parliament.—Alas, my lords, in that total anarchy, in that dissolution of all government, which this unbounded licentiousness must necessarily produce, will parliament be secure? When a city is set on fire, if nothing is done to extinguish, or stop the conflagration, will the flames respect the senate-house any more than the palace? Great apprehensions are conceived, if your lordships should agree to this resolution, of a terrible abuse of their power in the ministers of the crown, by wantonly and maliciously imprisoning members of either house of parliament, for innocent writings. Many answers may be given to those apprehensions: I shall only insist upon one.—The administration of justice, and the execution of laws, are, by the constitution of our government, entrusted to the crown and its officers; but, entrusted under checks beneficial to liberty, beneficial to justice. Of all those checks, the most effectual is the superintendance of parliament, which is as formidable to the highest magistrate, as it is to the lowest; to the secretary of state, as to the justice of peace. And the terror of this must operate in a particular manner, where the privileges of the parliament itself are concerned. In a bailable case, as this is, the confinement must  
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be presently ended: at the first sitting of the parliament, the house must know and judge of the reasons of the commitment: if they are not sufficient, immediate vengeance will fall on the head of the minister, who has injured the house in the person of its member. Thus, my lords, both the government and our liberty are as safe as the imperfection of human policy will allow them to be. But if you change this wise system; if you take the executive power from the crown, and place it in either house of parliament; what check, what controul, will then remain?—An arbitrary power will be *there*, which is no where else in our government; an arbitrary power without appeal.

I therefore hope, that your lordships will not differ from the commons in this resolution: but, at the same time, I respect and venerate the principle, upon which the opposition to it is founded; a principle of jealous caution not to do any thing that may hurt the independence of parliament, which is so important to the security of the whole commonwealth. Such a caution is very commendable, and the zeal excited by it meritorious, even where it is mistaken. I congratulate your lordships, I congratulate the whole nation, on that zeal being so warm in the breasts of young noblemen, who have spoken so ably and so eloquently in this debate. But, in order to preserve the independence of parliament against any future violations on the part of the crown, it will be necessary to preserve the reputation of parliament in the minds of the people, and the love of it in their hearts. How, my lords, can this be done, if they find it an obstacle to that equal justice, which is their birth-right and their safety?

Upon the whole, I am confident, your lordships will on no account depart from that maxim, which is the corner-stone of all government; *that justice should have its course without stop, or impediment. Jus, fas, lex potentissima sint*: This, my lords,

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is the very soul and essence of freedom. Obstruct this, and you immediately open a door to all violence and confusion, to all the iniquity and all the cruelties of private revenge, to the destruction of private peace, the dissolution of publick order, and in the end to an unlimited and despotic authority, which we must be forced to submit to, as a remedy against such intolerable evils. *The dominion of law is the dominion of liberty.* Privilege against law, in matters of high concernment to the public, is oppression, is tyranny, wheresoever it exists.



ON PRIVILEGE OF PARLIAMENTS

It is not for the sake of freedom. Obedience is not  
for the sake of a law to all nations and countries, to  
the inquiry and all the qualities of private persons, to the  
distinction of private persons, the distinction of public order,  
and in the end to an unlimited and despotic authority, which  
is not to be feared to be abused, and thereby to be abused  
in the end. The doctrine of law is the doctrine of liberty,  
privilege against law, in matters of high consequence to the  
public is opposite, is contrary, whatever it calls.

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