

THE  
CORDIAL

OF

Mr. David Jenkins

OR HIS

REPLY

To H. P. Barrester of *Lincolnes-Inne*,

ANSWERED.

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L O N D O N :

Printed for *Robert Bostock*, dwelling in *Pauls*  
Church-yard, at the signe of the Kings  
Head. 1647.

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THE  
COROLLARY  
OF  
Mr. David Jennings  
ON HIS  
REPLY  
TO H. P. BUNGER OF BRISTOL  
ANSWERED



LONDON:  
Printed for Robert Taylor, dwelling in York  
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1747.



## Master JENKINS his R E P L Y Answered.

**A**ll the Papers which *M J.* weekly almost publishes (to slander and condemne the Parliament of Rebellion, Perjury, Oppression, Corruption, &c.) his maine artifice, and that which most infects the people, is, his blending and confounding things together, which are in nature different, and by all meanes ought to be discriminated. In three things especially his want of ingenuity is most obvyous, and his not distinguishing most advantageous to him. For, first, He puts no difference betwixt that latitude of power which is due to a just King in just things, and when he pursues the true interrest of his people; and that power which consists in doing wrong. And yet nothing is more notorious then this, that the Kings of *England* have vast Prerogatives in doing good, but none at all to do any man, much lesse the whole State, harme. Secondly, He distinguishes not betwixt those actions of the Subject which are done in times of necessity, and upon extraordinary extre-

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extremities; and those which are done in ordinary times, when there is no speciall emergent cause to inforce them. Thirdly, He compares not the smaller matters of the Law with the weightier, but attributes to both alike; nay, when both cannot consist or take place at the same time, he makes the weightier Law give way to that which is of lesse consequence, and may be reckoned, *inter apices juris*. The Law will admit of a private mischief rather than a publike inconvenienc; as nature will suffer this particular quantity of water contrary to its owne propensity to be violented and rapt upwards, rather than that any vacuity should be in the universe. But *M. J.* sometimes will indure publike mischief, rather than private inconveniences; he will rather allow that *Salus Populi* shall be opposed, then such or such a branch of Prerogative, or the propriety of the Subject should be strained. Law is not so dull a study as some men would have it, nor are its bounds restrained to the ordinary actions and pleas of *J. a Nokes* and *J. a Stiles*, about a carve of ground, &c. no; the profession is farre more noble, and as its *basis*, is reason improved with Logick, so its *pyramis* is policy crowned with History and Philosophy. That Lawyer therefore that will argue upon this high subject, which *M. J.* now undertakes, ought to roote himself deeper, before he begins to build up his argument, and to take notice of these premisses:

I. That all men who are qualified, and exalted to beare rule in a spheare above other men, are so dignified and differenced by some Commission; which Commission must be granted by man immediately,

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or else by God extraordinarily, and immediately.

2. That in this age (which knowes of no Oracles, or miracles remaining) God does not immediately, and otherwise then by the same providence (as rules in other humane affaires) either designe the persons, or distinguish the Prerogative of any Kings or Potentates. God is not said more properly to promote to the Crowne of *England* *Edward* the fourth, then *Henry* the sixth; nor to make a King of *France* more unlimitable then a King of *England*: These things are left to men, the same providence of God attending them, as attends other matters. Yea, the Scripture is most cleare in this, that when God by immediate and extraordinary orders from heaven did interpose in designing *Saul* to the Throne of *Israel*, yet he did it by lottery, and did it so, that *Saul* might be said elected, and constituted by the people, as well as designed by God. And indeed since all Princes, whether hereditary, or elective, whether more absolute, or more conditionate, whether inthroned by just Title, or by tortion, and meere force, have Commissions equally from Heaven: How can we thinke that Heaven acts immediately alike in all? since *Cyrus* is as well Gods anoynted in those Provinces which he wins by the sword, as in those which come to him by descent; and the French King is as truly Gods Vicegerent now in *France*, as *Charles* (whom he has intruded upon) is in *England*; and since the King of *Spaine*, by speciall Law of Heaven, can claime no larger supremacy in *Castile*, then in *Burgundy*, in *Naples*, then in *Arragon*; what an unreasonable thing is it, to ascribe all these devolutions of rule, and variations

of power to the immediate hand of God, which changes not, rather then to the acts of men, which are seldome permanent?

3. That if we will suppose that Princes Commissions are all immediately drawne and signed by God, yet we cannot suppose that Gods Commission ever inabled any man to do injury; his charge to all Kings is contrary, and does inhibite all insolence in comportment, nay even all elation of heart. And for man, (so far as Princes are inaugurated upon earth) we see by experience they all almost have their visible Territories, and Boundaries set to them; and it were most unnaturall if the intendment of all humane Lawes should not referre to the safety of the people.

4. That if any obscurity or ambiguity be in other Lawes, yet in the Lawes of *England* there is none at all. All our Books proclaime our Nation to be a free Nation, and our Kings to be limited from doing any wrong. And because there may be dispute about the interpretation of these generalls, therefore particulars are deduced out of them, and our Lawes do not onely declare us free, but wherein our freedome consists; nor do they binde the King from wrong, but specifie withall, what is wrong to the Subject. If the King arbitrarily change our Lawes, raise Subsidies, impose Taxes, imprison our bodies, deny, delay, or sell justice to us; this is declared to be wrong, and inconsistent with our freedome. And if any question arise about our Charters, the King himself cannot interpret, or sit as Judge, he is in all cases taken to be a party, and so incompetent to sit as Judge. His sworne Judges are to do right betwixt him and  
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the Subject out of Parliament, and the two Estates are to do right above the Judges, if need be, in Parliament. And in case of any perplexity or doubt, the liberty and safety of the people is to be preferred before the Prerogative of the King; and all interpretations must rather favour that interest which is generall, then that which is particular. And for the Military power of *England*, as the King ought not to use any other then the naturall Liege people of *England* in his Warres; so neither can he presse the people of *England* to serve in his Warres at discretion. If the Warre be forraigne, or against a forraigne power, the Parliament ought to be consulted in it; but if force be to be used against Subiects, that force is to be meere sub-servient to Law, and whether it be to execute ordinary Judgements, or to suppress Riots, or Insurrections (how dangerous or great soever) the Sheriffe, and other ordinary Officers of Justice ought to be employed in the businesse, and those which are so employed are to be directed solely by the Judges and Courts of the Land in Speeding Law, and not at all by any extrajudiciall command of the King in opposition to Law: If these things were not so, the King of *England* could not be restrained from doing wrong, our Kings would be above all Law, and the Law could have no power above them, and if our Kings were above Lawes, and not restrainable thereby from doing wrong, the people of *England* were not a free people, but as remedlesse Slaves, as the Grand Signiors Vassells are. Our Lawes provide against servitude in us, but that were vaine if they did not provide also for efficacy in themselves, in so  
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much as Lawes, if the King were above them, and so might alter them at pleasure, or interpret them according to his owne sence, or could execute, or not execute at discretion by being sole Master of the sword, would be no better then Cobwebs to us.

By the light which reflects from these fundamentalls premised, we shall now the better view and examine that which Mr. *Jenkins* replies to the eight particulars of *H. P.*

In the first particular the question is, Whether the House of Commons have power to examine a Delinquent or no, Mr *Jenkins* holds the negative upon this ground, that they have neither the Kings Writ, Patent, nor Commission for it. It was answered, That they did both sit and act by the Kings Writ, and something greater then the Kings Writ. Mr *Jenkins* not being able to deny that the Parliament was summoned by the Kings Writ, and that it is continued still by an Act passed since, onely quarrells at the Act of continuance, pretending that the Act by which this Parliament is continued agrees not with the Act passed lately for a Trienniall Parliament, nor with that for an Annuall Parliament, passed in *Edw.* the thirds time, as also that it is mischievous, otherwise by Protections, Priviledges, &c. Is not this to quarrell with the King and both Houses? Is not this to tell us that Mr. *Jenkins* is wiser then all the three Estates, though joyned together? The King, the Lords, and Commons judged that this Act did agree with the other two, yet Mr. *Jenkins* judges contrary. The King, the Lords, and Commons judged the advantage of this Act to be greater then any inconveni-  
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ences, Mr. *Jenkins* is of another minde. Our Bookes have a Rule, That no man ought to be wiser then Law; Mr. *Jenkins* exempts himselfe out of this Rule; but in the next place, whatsoever the three Estates may doe, yet Mr. *Jenkins* tells us, that the two Houses make no Court, nor Body Corporate, nor Parliament without the King, no more then a man remains a man without a head; Here is the mistake, Mr. *Jenkins* thinks the King is a head to the Parliament *simpliciter*, or *phisicè*, whereas he is so but *secundum quid*, or *metaphoricè*, for if he were such a head to the Politick Body, as the true head is to the naturall Body, the body could have no subsistence without him; but experience in our case teaches us the contrary, and we can easily calculate that if the whole Royall Line should be spent, and the Crowne Escheat sitting a Parliament, the Lords and Commons would remaine a living Parliament, and be the supream power of the Kingdome without a King: Also if this should happen out of Parliament, the Lords joyning with the chosen representants of the whole Kingdome would be equally as competent (if not more) for all Acts of Majesty, and supream dominion as now they are in Parliament. Mr. *Jenkins* must needs also know, that there are some Acts of Parliament yet of force in this Land, which by the Lords and Commons were carried and consummated, not onely without but even against the King; but I forbear to draw Censure upon my selfe by citing them; and whereas it was objected, That the Parliament was in a meaner condition then other inferiour Courts, if the Kings meere discretion could so make

their deliberations voyd and vaine. Mr. *Jenkins* replies, That this is most true and just, for as much as in other Courts the King can neither judge nor controle; but in the Court of Parliament (*quoad Act's*) the King is both Judge and Controller. And why cannot the King judge and controle in the ordinary Courts? because there they have the Kings power committed to them by Patent, and as they are sworn to doe right, so the King is sworne not to interrupt or frustrate them. Thus:

1 We see the Kings Patent to a few men is more vigorous, then the most honourable Writ of the Law is when it is directed from the King to all the Peeres, and Commons of the Land abetted besides with for-mall Statutes.

2 We see an Oath taken from the Judges is of more vaw then the faith and loyalty of the whole people.

3 We see the King by his Coronation Oath is stronglier obliged not to obstruct Justice in private cases; depending before lower Courts, then the generall safety and welfare of the people in that Tres-hault Counsell, which is so honourable that none ought to thinke ignobly of it.

4 We must grant, that Mr. *Jenkins* can better tell what the Law is in this point then both Houses.

5 Whereas an Argument *Ab inconvenienti* was valid in Law before, now an Argument drawne from the safety and liberty of the whole State, and from the end of all Law is made rediculous by Mr. *Jenkins*; for he which grants we are borne to liberty and safety as our right, yet grants no meanes to attaine to  
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that right, nor remedy to recover it, except the Kings Grace, and even then the Grand Scignours Subjects have their Masters grace and discretion to depend upon as well as we.

Thus is our state like a goodly Ship, exquisitely decord, strongly man'd, and abundantly riggd with all kinde of Tackling; and so built for agility in faire weather, that nothing in that respect can be added to her perfection; yet still she is so moulded by these kinde of Royalists, that the least foule weather oversets her. We have excellent Lawes to secure our proprieties against the Crowne; we have excellent Priviledges in Parliaments to secure our Lawes against the Judges, and other Ministers of the Crowne; and yet neverthelesse the Parliament it self is so discontinuable, dissolvable, and controllable by the Crown, that our all which depends upon it, has nothing in the last place, to make it self good to us, but the favour of the Crowne.

Thus may our Lawes and Priviledges, in which there is acknowledged to be a directive, but no co-active force over the King, be compared to an imaginary Mathematicall Line in the heavens, but not to any fence or circumvallation upon the earth: Well may they informe the King what we ought to enjoy, as the Lawes of God and nature without them do to all other Nations; But they can never assure us what we shall enjoy. And therefore I wonder why the Royalists should so much extoll the rare Constitution of this Kingdom, when besides some other flowers of the Crowne, they ascribe to the King such a negative voyce in Parliament, as is sufficient alone

to destroy all that is granted us in all things else. But to returne to our Reply.

'Tis maintained next, that whatsoever power is in both Houses, yet there is no power in the House of Commons to examine at all, because the House of Commons cannot administer an Oath; and examination without Oath is a meere communication, and rejected as unprofitable in Law.

One reason why the House of Commons cannot examine upon Oath, is because it is no Court; and it appears to be no Court, because it has no power of tryall, nor ever practised any such power, by Bill, Indictment, Information, Plaints, or Originall. And for the Lord *Cookes* Relation, that the House of Commons have imposed Fines, and imprisoned men in Queene *Elizabeths* time, and since; He saies these are but late, and a few matters of fact, and a *facto ad jus* is no good argument. Here we see though the greatest plea against the House of Commons is the non-use of any such power, yet when the non-user is proved, then 'tis objected, That it is but of late times, and illustrated but by a few presidents.

A second reason against the House of Commons being a Court, is because it has neither the Kings Parent, nor any Statute nor common usuage to make it so. The House of Lords is acknowledged to be a Court of Record to many purposes, partly because the King sits there, and partly because there is cleere Law for their Priviledges; but the House of Commons is excepted against (as not within these reasons.) The truth is, both Houses are but one Court, and one Councill, and the time has been when they  
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have both sate in one place together ; and there may be good reason given why they may sit severall, and have their priviledges kept distinct ; and why the Lords should be more active in some matters of judgement, where the whole Commonalties interest is not touched : But this is no prooffe, That what the Lords act by themselves, receives no influence from the House of Commons ; Or that the House of Peeres is of more value in the eye of the Law, or has any greater jurisdiction by the Law, then the Representative Body of the whole State. As for the Kings sitting in the House of Lords, there is but little moment in that, in regard that he sits not there to judge, or to debate ; but onely to propose and consent. And there is no Law to debarre him from the like in the Commons House ; and so it was when both Houses sate together, and still is when they meet together. And secondly, whereas some Patent, Statute, or Usage, is demanded from the House of Commons, in maintenance of their judiciall power, This we say is unreasonable : Nay, if any Patent, Statute, or Usage, could be produced for preferrence of the Peerage before all the Knights, Gentlemen, and Commons of *England* in this point ; that were rather to be rejected, as most unjust and unnaturall. A third reason is brought against the House of Commons out of the Writ of Summons, forasmuch as in that Writ, the King resolves, consults, and treats with his Peeres, *super ardua regni*, but the Commons are called *ad faciendum & consentiendum in iis qua ibidem de communi concilio ordinari contigerint*. These words of the Writ, though they are generall, and in

some things ambiguous, yet they are no more disadvantageous to the Commons, then to the Lords or King. But if words are to be interpreted by the practise of Parliaments, and by the tenour of all our other Lawes, we shall finde that the Kings part is to propose and consent, but not to debate; that the Lords part is to propose, debate, and consent in some things, but not in all: that the Commons part is to propose debate, and consent in all. And this appeares by the raising of Treasure, the grand concernment of the Kingdom, called justly, *Ornamentum pacis & firmamentum belli* and in this, though the King and Lords may propose & consent, yet none but the Commons may propose, debate, and consent. From reasoning Mr *Jenkins* now betakes himself to rayling, and tells both Lords and Commons, that whatsoever their Writ meant, they act now quite contrary; for by their Writ they were required to treat and consult with the King, concerning the King, the defence of the Kingdome, and the Church; whereas they first imprison the King, next arme the Kingdome for themselves against the King, and lastly demolish the Church by abolishing Bishops, Deanes, &c.

For the first, the King left them unconstrained, and deserted *Westminster*, whether they were summoned to attend him, and after tooke Armes to dissolve them; but those Armes being now broken, the Parliament keeps him from raising new broyles, but so farre are they from refusing to treat with him, that they prepare Propositions for him, and reject no messages or Letters that come from him; neither is the Kings restraint properly to be called imprisonment,

ment being much different therefrom, both for the manner and for the end of it; the manner of it is ingenuous, and accompanied with many accommodations, which thousands of other Free-men, nay Gentlemen of *England* cannot attaine too; and for his Attendants, they are truly his Servants, and as ob-servant in all Offices compatible with the peace of the Kingdome as ever he had any. The end of his restraint also is not to incommode him in any degree, there is nothing aymed at in it but to preserve the Kingdome from new disturbance, till he appears fully reconciled, and to preserve him from drawing prejudice upon himselfe. For the second, since 'tis not for the Kingdoms damage, nor the King, that future Commotions be suppressed; the Lords and Commons could no way better satisfy the intent of their Summons, then by suppressing Commotions by the same posture of defence as they now are in. I could wish also, that Mr. *Jenkins* would understand, that as the Kingdome is called the Kings, so the King is called the Kingdoms; and that propriety which the Kingdome has in the King, is more tenderly to be expounded then that which the King has in the Kingdome. For the third, that the word Church should onely be applyed to Church-men, or the word Church-men to Bishops, Deanes, &c. is more then the Law teaches: and if the businesse be studded well 'twill not be found a thing impossible, as Master *Jenkins* supposes for the Parliament to abolish Bishops, Deanes, &c. and yet to advance Church-men, or to take away some of the excessive Grandour of Church-men without any destruction to the Church.

Thus much of Mr. *Jenkins* Reply to the first particular, I come now to his second, where he takes it ill, that in cases of pardons the King should be thought to be vertyually in the two Houses, for as much as that power he sayes remains solely in the King, and therefore cannot rest at all in the two Houses.

That the power of pardoning Delinquents is so in the King solely, as that he cannot derive the same to the Pailliament as he does his other power is not proved by Mr. *Jenkins*, nor can it be possibly proved, and that the King does not derive the same ( as he does his other ) is as farre from being proved also; for doubtlesse in all Acts of Oblivion, the two Houses convey an additionall vigor, and so make the Acts more vertuous then the Kings meere Act could doe, and therefore this new vigour which is conveyed by the Houses, if it be not that which is derived from the King, as Mr. *Jenkins* Tenets deny, then it flowes naturally and originally from the two Houses; and what can Mr. *Jenkins* cause gaine by this? But sayes Mr. *Jenkin*, The King is a Prisoner, and so having no power but what is divested by his imprisonment, the power of the Houses is usurped by themselves, and not derived by the King. The block which Mr. *Jenkins* here stumbles at is this; He thinks an imprisoned King has no power at all, or remains indeed no King, but this is not absolutely true of all Kings imprisoned, for as our case is, either imprisonment is something more then that which our King suffers, or else imprisonment as to some Acts may stand with freedome as to other Acts. I have toucht upon this  
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subject already. But let Master *Tenkins* bee as bitter as he pleases in his censures and reproches, 'tis not intended by the two Houses that the King should be disabled from doing any acts of justice and piety, 'tis only from raising new Forces, and begetting new concussions, that this new guard desires to prevent him. Master *Tenkins* next sayes, that the King may revoke and discharge his Commissions at pleasure, but what of this? the question is, whether or no the King may frustrate and elude his Commissions; and this Master *Tenkins* speakes not directly to. Wee need not quarrell therefore further about this, we will grant to Master *Tenkins* that Parliaments may be justly determined and dissolved by our King, provided he will grant to us that the same may be justly frustrated or eluded. But Master *Tenkins* stomacks much at our calling the two Houses a Parliament, and censures it in us as a great delusion, although we know well that nothing is more common in speech, then to say that the King calls his Parliaments, writes to his Parliaments, dissolves his Parliaments, &c. The King must be taken abstracted from that which he calls, writes to, and dissolves, or else wee must consider him calling himselfe, writing to himselfe, dissolving himselfe, which cannot be without absurdity. Besides, when we speake of the great Councell of the Kingdome, we meane the Parliament abstracted from the King, forasmuch as the King in Parliament does not so properly give as receive Counsell, and why we may not aswell call the two Houses a Parliament, as the great Councell, treshault Court, or mickle-gemot of the King and Kingdome, I cannot devise. The Law sayes the King cannot be absent from his Parli-

ament; this must be meant authoritatively, not personally, for divers of our Kings have been in *France* sitting Parliaments here, and yet even they were politically present, though physically absent, as Master *Ienkins* himselfe must needs grant. Now if the Parliament be the Kings Court or Councell, and such a Court or Councell as he cannot virtually bee absent from, though in person he be often distant, and at some time must not be otherwise, how can it be maintained by Master *Ienkins* that the two Houses are not the Parliament? Another objection of Master *Ienkins* against the two Houses is, that they were deserted by divers of their own Members, who in considerable numbers went to the King at *Oxford*; but this is no other objection then might be made against the Husband, when the wife elopes and withdraws from his bed; shall that party which remains constant, and attends duly at the place assigned in the summons for transacting of that business which was specified in the summons, suffer for that parties sake which proved i constant, and neither observed the place nor business of the writ by which it was convened? sure this is most unreasonable; doubtlesse when the King cald these uncertaine members *mungrels*, who together with their whole faction would neither be cordially true to Religion and Liberty at *London*, nor totally consent to subvert them at *Oxford*, hee had more reason on his side then Master *Ienkins* has, who disparages those that kept their stations because of the defection of their *mungrell*-brethren. In the last place Master *Ienkins* though he confesses that the common Law did alwayes restrain our Kings from all tallages & subsidies but by consent in Parliament, as doth  
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appeare by *Magna Charta*; yet he sayes this is no consequence, because the King cannot take the subjects goods at pleasure, therefore the Commons have a concurrent power with the King in Parliament; indeed this consequence is ill-framed, but in its right forme it appears thus; if the Commons in Parliament have that great power to raise treasure out of the whole Kingdome, which the King has not out of Parliament, then they must deduce this power from themselves, or those whom they represent, and not from the King, who cannot give that which he has not in himselfe; but so it is that the Commons have this power, *Ergo*. If *Mr. Jenkins* will answer this hee shall befriend my intellect. The last objection which Master *Jenkins* makes against this concurrent power of the Commons in granting subsidies is this, that Parliaments may be held, and be complete Parliaments without subsidies, and hereupon he tels us that former Parliaments rarely granted any unlesse in time of forrain Warres; and *Q. Eliz.* refused a subsidie granted, & *K. Ia.* in his first year had none granted him. Is there any solidity in this objection? I appeal to all ingenuous men, Parliaments may be without subsidies, *Ergo* the granting of subsidies is no act of power in Parliaments; or thus, giving of subsidies is an Act of power in Parl. but since at some time it may be disused and intermitted, or a power that at some-times is not reduced into acts, therefore it is no power, or not inherent in the people, but onely derivative from the King. Let Master *Jenkins* apply his owne words to himselfe here, for certainly hee ought to make a conscience of blinding the people with such untrue colours to the ruine of King and Kingdome.

3. The third particular now offers it selfe in order,

and here Master *Tenkens* his reply ought to prove that if the two Houses had a Parliamentary power in themselves, they needed not send Propositions to the King, but instead of opposing this ( which was the only thing made good by his answerer ) he diverts his force to oppose the equity and justice of the Propositions sent to his Majesty. This is not to reply to his Answerer, but to satisfy his owne peevish disposition; yet since hee may abuse the people aswell when he railes as when he argues something must be returned in answer to him. After he has magisterially condemn'd the Propositions in general as being contrary to law, he vouchsafes at last thus particularly to interrogate us: Have the two Houses a strict right to lay upon the people what taxes they judge meet, have they power to pardon all Treasons, &c. *subintelligitur* without the Kings consent? We answer they have not any such ordinary power; but if the Kingdomes safety lye upon it, and the King will not concurre in saving the Kingdome in an ordinary way, they may have recourse to extraordinary meanes for the saving of it: ordinarily the people may not take up Armes, but in case of extraordinary invasion by forrain or domestick force they may justifie taking up of Arms, and when War it selfe is justifiable, all the necessary concomitants and expedients of a politick war are justifiable. Nature has confined water to a descending course, yet not by such a rigid Law, but that for the necessary subvention of the whole Fabrick, and for the avoiding of that vacuity which Nature more abhors then the dispensation, or temporary suspension of such, or such a particular inferiour Law, this ponderous element may forsake its ordinary course, and mount upwards.

wards. In a Village where houses stand scatter'd and remote, 'tis not lawfull for me to demolish this house, because that which stands next it is all of a flame, but in a Citie this is lawfull where the houses are so conjoynd, that the flame of one house may extend it selfe to the consuming or indangering of a whole street or more. It is not generally lawfull for me to judge my neighbour unheard, or to execute my neighbour unjudged: Yet if I find my neighbour ingaged in such a Treason as *Faulx* was, and ready with his Match to give fire to such a Traine of Powder as he had layd, and have no other meanes to prevent him, I may runne upon him with my Sword, and make my selfe both his Judge and Executioner. Now if Master *Jenkins* will say, that such extraordinary acts as these are warranted by Law, I shall cōply with him, yet I conceive tis not upon any particular Law, but upon the generall law of publick safetie that these warrants are grounded upon; & if I am not mistaken, tis rather policy, then Law, that admits of such strange deviations from the common practice and rule of Law. But sayes Master *Jenkins*, these propositions cannot passe into Statutes but by the Kings concurrence, and has not the King a free power to assent, or dissent in those things which must receive their being from his concurrence? Or is the seeking of the Kings concurrence nothing but a meer Complement? We answer, The King has a power to assent and dissent: yet without any impeachment of his libertie, he may, nay he must, assent to such Bills as are for the publicke good, and to dissent from such as are tending to the publicke detriment; the reason is, because the free choice of the King is to receive its determination from without from

the matter of the Bills, not from within, or from the propension of his owne will: for the will enjoyes a more perfect libertie when it is attracted, and as it were necessitated by that object which is good, then when it is left to its owne equilibrious motions, and so wavers indifferently betwixt good and evill. If it be said, that in the choice of that which is good, the King cannot so well satisfie his own judgement by the advise or reason of other men, as by that which is dictated to him by his owne breast: It must be answered, first, in the grand concernments of the Kingdome, wherein the King has not so great a share as the people has, tis more just that the reason of two Estates be satisfied, then his. Secondly, in cases where the King is severally interess'd, his particular interests ought to succumbe and give a preference to the generall. Thirdly, either the matter in debate is intricate, and admits of doubts, or not; If there be doubt in it, then the King ought not to oppose his single judgement, or rather opinion to the resolution of the Highest Court and Councell of the Kingdome: If there be no doubt in it, (an accident sure very rare, that the Lords and Representants of a whole State should judge a thing to be advantagious, when the King knowes it certainly to be disadvantageous) then the King is to consider whither the matter in question be necessary or expedient, if it be expedient onely, then the King ought not to contest about it, forasmuch as that contestation may be more inexpedient for the State then his concession. But if it be necessary (as the cause of true Religion, &c.) where the King being Orthodox, knowes his Subjects to be blinded with Idolatry or Herefie, and cannot without sin give his Royall assent

assent to such irreligious Bills, as they present; then as it were impious in him to signe them, so it is outrageous in him to disturbe the publicke peace about them. The reason of this is, because Politicians guide themselves rather by the calculation of what is probable then what is possible onely, and therefore though it be possible that a King with one eye should see more then a Parliament with many, yet since this is not probable, there is scarce any State but chuses rather to be swayd by the counsells of many then by the counsell of one, and where the counsell of one claimes a prevalence above the counsells of many, 'tis not obey'd without great reluctance commonly, and publicke disturbance. Besides, if one mans eyes perchance see more then the eyes of many (as is very rare, though not impossible) yet tis very strange that that one mans discovery should not open the eyes of other standers by without force, in respect that light is a thing lovely to all, and ready to be imbraced upon the least glimpse of it, and a very little thereof being let in through a narrow cranny, may make all that is contained in a very wide roome visible. And if one man possibly in things indifferent should see more then many, yet tis very neere to an impossibilitie, that one man should apprehend truth more then many, where that one man has more prejudice against the truth by selfe-interests, then the many. And who can doubt, but that Princes, as Princes, are more drawne by the byas of selfe-interests against that which is the good of the communitie, then that Court which is not onely by the vertue of representation, but even naturally also in some degree the communitie it selfe? The root sends juice and nourishment to the branches, but

expects none backe from them; and the fathers love has a strong ascent towards the fruit of his body, but weake and virtuellesse is the descent of that juice which falls from the branches to the root, or of that love which the sonne refunds upon his progenitors; and even so it is in the relative Offices of Prince and Subject, the Prince lookes lesse tenderly upon the people as being his root or parent, whilst yet the people lookes more tenderly upon the Prince, as its owne stemme and issue. Hence it is, that all States are accounted more or lesse slavish, as their Princes are more or lesse arbitrary in their supreme counsells; and all men are accounted more or lesse miserable, as they are more or lesse slavish. What became of *Rome*, and of the whole world that was subject to *Rome*, after it was once yoked by the *Casars*, who might arbitrarily wave the advice of the Senate, & consult with Slaves, Eunuchs, Women, Panders, &c. or what brought us to all our late bloody catastrophes, but the discountenance and detestation of Parliaments? Aske the Lord *Digby* himselfe, and even his Speeches made in Parliament since *November 1640.* will informe us, that there were many causes of our miseries, but the cause of all those causes was the abandoning and disgusting of Parliaments: Sure the Lord *Digby* may passe as an Authentick testimony for our side, and yet even the Lord *Digby*, before he turn'd Courtier, had the ingenuitie to resent this Kingdomes servilitie, when a woman of a false religion, hostile nation, and adverse affection, together with her Jesuiticall traine, had more predominance in our publicke affaires then the two Estates assembled in Parliament. But Master *tenkins* will still say, that the King is assisted

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with his Judges, and other Counsell both Spirituall and Temporall, and that the House of Commons in some debates may be divided unto two or three oddes voyces; and therefore why may not the King so assisted be better advised then those two or three oddes voyces? This is an old objection, and seemes plausible, but is easily answered: For 1. It is very unequall that a few Counsellours whom the King chuses should be prefer'd before many whom the Kingdom chuses, in those matters which import the Kingdome, more then the King. 2. If the Kings Councell in the House of Peers were equally to be valued with the House of Commons, yet still so long as it is left arbitrary to the King to follow their advice, or not, the Kingdome is in the condition as *Turky* is, where the Grand Signior is left onely to consult with himselfe or any of his Concubines or Eunuchs. And lastly, there can be no lower or baser degree of slavery imagin'd, then for a Nation to be subjected to a Lord that is so absolute in the highest results of State, as that he may use no Counsell, or make choyce of what Counsell he pleases.

4. I hast now to the fourth particular, where *M. Jenkins* affirms againe, that the two Houses do separate the Kings power from his Person as the *Spencers* did, and from thence frame the same three condemned conclusions as they did. The separation of his Person from his power is proved, partly by imprisonment of his Person, and partly by usurping all his power; for *M. Jenkins* tells us, that the two Houses counterfeit a Seale of their owne, and thereby seal Writs, make Judges, settle Courts, and this is done contrary to the Kings consent, not declared onely by Letters, Ministers, and word of mouth, but by his true great Seale of *England*.

It is here, 1. To be noted, that *M. Jenkins* himselfe does now distinguish betwixt that which the King declares by word of mouth personally; And by Letters and Ministers extrajudicially; and that which he declares legally by his Writs, and judicially by the great Seale: and this is a plaine confession,

that the Kings Person may urge one thing, and his Office another; that his personall command may be unjust and not to be obeyed, at the same time that his regall command may be just, and necessarily must exact obedience. It is to be noted 2. That the reason alledged, why the Kings commands in this warre are legall and just, not personall and unjust, is, because they were authoriz'd and fortified with the true great Seale: and what is this but to proclaime, 1. That the great Seale of *England* is solely at the Kings dispose, to be imployed according to his meere discretion: 2. That the meere annexion of the great Seal makes any Act of the Kings legall and authenticall: 3. That *M. Jenkins* is better able to judge of the two great Seales which is the true one, then the two Houses of Parliament? When *M. Jenkins* will be as learned in proving, as he is audacious in presuming, these new quaint poynts, we shall know what to answer; In the meane time we will expatiate no further then his discourse leads us. As for imprisonment of the Kings Person, we have answer'd to that already, and forasmuch as the keeping Chaplaines from him is objected, we answer thereunto, that not Chaplaines, but such and such Chaplaines, *viz.* such as the State judges Incendiaries, are deny'd, and there is no more injustice in restraining such Incendiaries then in restraining Commanders and Armes. Now to parallell the Houses with the *Spencers*, *M. Jenkins* sayes, that they having declared his Majestie to have broken his trust touching the government of his people, they have raysed Armes to take him, they have taken and imprison'd him, they governe themselves, they make Lawes, impose Taxes, make Judges, Sheriffs, and take upon them *Omnia insignia Majestatis*; and is not this sayes, he to remove the King for misdemeanours, to reforme *per aspertee*, to governe in aide of him, the three conclusions of the *Spencers*? *M. Jenkins* here, as if he had abjured all ingenuitie, confounds diverse things which he knowes to be exceeding different in nature. For 1. He takes no notice whether the force which has  
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bin used by the Parliament be offensive, or defensive; and yet none can be ignorant, how many things may be justified in a defendant which cannot by the offendant. 2. He distinguishes not betwixt that force of the defendant, which aimes only at a temporary securance against the Assaylant, & that which proposes to it self vindication or reparation by the total removall, or destruction of the Assaylant. He knows well, that the *Spencers* aimed at a totall dethronization of their Master, whilst the Parliament aimes at nothing but beating down that Sword which was drawn against them. 2. That the *Spencers* intended to levy offensive Arms, for reforming that in their Master *per asportee*, which was not so dangerous to their persons and lives, as that which has bin contrived and enterprised against this Parliament, for not onely a partie of 300 Armed men to seize and teare five principall Members out of the House, (and by consequence to menace all that retained any freedome in them) but Armies were solicited to attempt against this Parliament before they thought of any force; and this is far above those provocations which were pretended by the two *Spencers*. 3. The *Spencers*, by pretext of governing in aide of the King, intended to oppresse all the Nobility, Gentry, Communaltie of the Land, but this is impossible to be suspected in a Parliament, which consists of the choice; and are a considerable part of all these.

5. The 5. particular now offers it selfe, wherein Mr. *Ienkins* maintaines that every King of *England*, and only the King in *England* can grant pardons, and that in all cases; and for this he cites *Stanfords* pleas 99. It was not, nor is denied to Mr. *Ienkins* that the Kings of *England* have power to pardon delinquencies, so farre as themselves are parties suffering. But the question is whether the Kings of *England* onely can, and alwayes can pardon delinquencies; and whatsoever Master *Ienkins* thinkes, the authorities of *Stanford* and *Dier* are not full to prove the affirmative; and certainly if it were *proprium quarto*

*modo* for the Kings of England to pardon in all cases, it were very unproper, for generall acts of indemnity to be passed by all three estates, *frustra fit per plura, quod fieri potest per pauciora*; if one of the estates be sufficient; to what purpose doe the other 2 concurre? Secondly, all remedy by appeale would be cut off from subjects. For either my appeale must make void the Kings pardon, or if the Kings pardon be not void in this case, and as to this murder committed, my appeale must be dismissed. It had been candid in Mr. *Jenkins* if he would have replied something to this objection about appeales, for now it may be supposed he replied nothing therein, because he could reply nothing to the purpose; besides, if the Kings pardon cannot frustrat my appeale (as Mr. *Jenkins* knowes well it cannot) why should the same destroy the remedy and justice that is due to a whole state? Treason may be committed against the State as well as against the King, even as murder may damnifie me as well as the King, and shall it be held lesse contrary to justice that the State should be deprived of its remedy by the Kings pardon, then that I should? Good Mr. *Jenkins* policy is not to be superseded by Law, but Law is to be improved by policie: and as in quiet times and private cases 'tis safer to follow Law then Policy, so in times of troubles, and in affairs of generall and great concernment, 'tis safer to observe Policy then Law. The same may be said of not pardoning, for doubtlesse the King has as much latitude to refuse, as to grant pardon, yet when his power in either may be mischievous, his power in both must submit to reason of State, and Law is not violated, but better improved when true reason of State takes place above it.

6. I am now to proceed to the sixth particular, where Mr. *Jenkins* will not indure that the King shall be said to retain the right or habit of governing, at the same time when he is said not to be actually in a condition to govern; he intimates that the Law makes no such distinction, & infers *ubi lex non distinguit*,

*non est distinguendum*: by this it should seem it is not allowable that a Lawyer should make use of any distinctions, for which he has not some book authority, though the difference of things be never so pregnant. A miserable confinement to Lawyers, and sure 4 or 500 years past if Lawyers had been so confined, wee had now left us no prints of any distinctions at all. All other Schollars besides Lawyers, nay all Lawyers that are not meer Lawyers, (I meane by meer Lawyers, such as have made no improvement of their reason by Logick, Policie, and other humane literature) are of a contrary opinion, and hold it more true, *qui bene distinguit, bene docet*. But what a ridiculous thing is this, because *Hen. 6.* lying in his cradle not able to speak, write, read, or do any act of power, has a right to governe, therefore I must grant hee is in a condition to governe, for feare of distinguishing when the Law does not distinguish? so of *Edw. 2.* and *Ri. 2.* because they had a right to the Crown, in that moment of time when they abdicated the same, and pronounced themselves unfit to governe, therefore I am obliged to believe that they were not abdicated nor made unfit for government. Next Mr. *Jenkins* likes not this distinction that the King is not barred simply from returning to his Parliament though he be barred *secundum quid*, that is from returning unreconciled or armed against his Parliament, hee professes that he and the whole City knowes the contrary; how the City should know the Parliaments intentions so exquisitly, or Mr. *Jenkins* be assur'd of the Cities knowledge so infallably I cannot imagine; but I wish Mr. *Jenkins* which takes upon him to be a Priest as well as a Lawyer by vertue of *Iustinians* Commission, were such a Priest indeed, as that we might expect nothing but knowledge and truth from his lips.

7. The seventh particular comes now in order, where Mr. *Jenkins* puts us in minde of the oath of Supremacy, taken by all members of the House at their first sitting, and askes *H. P.* why he stiles the King Supreme governour in all all causes and

over all persons, &c. and leaves out onely Supreme? surely not to detract any thing from the Kings celsitude, but because the word seemed superfluous; for he that swears the King to be Supreme over all persons, swears him to be only Supreme over all persons, inasmuch as there cannot be more Supreme persons over all then one; but away with these frivolous logomachies. The argument runs thus, If the King be only Supreme governour in all causes, then in Parliament causes, if over all persons, then over both Houses, and if so, then how is he become a prisoner, and how doe the Houses Act by vertue of their prisoners writ? It was answered before that the King is granted to be Supreme or only Supreme over all persons, but yet still *et in iuris*, and not beyond the Law, nor beyond that community for which and by which the Laws themselves were made. The Duke of *Venice* ( the like may be said also of all elective conditionate Kings and Potentates ) has no person in any cause whatsoever superior, or equal to him : yet he has his bounds set him by the Law ; and as the Law is above him whom it bounds, so that power which can make, and alter Law in *Venice*, is above the Law it selfe. *M. Jenkins* himselfe confesses that the King is not above the Law, nor above the safety of the people ; but in regard that the King is Supreme in all causes, aswell Parliamentary as other, and over all persons, aswell the Lords and Commons in Parliament as others, *M. Jenkins* supposes there is no other Judge of the Law, & safety of the people but the K. but this is not to be admitted by us, because we know wel that whosoever is the Supreme judge of the Law, if not directly, yet he is consequentially above all Laws, and whosoever is above all Law cannot bee restrained by the safety of the people, though the most sublime of all Laws. Wherefore if this be admitted true of our King, that he is Supreme Judge of Law, then it must follow that the Subject of *England* has no more assurance of Law or safety then what is founded onely in the Kings breast, and discretion. For the Kings

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being a prisoner that has been already answered, and indeed it is more truly said that his hands are held and disweaponed, then that his feet are fettered, or his head undiadem'd. Then for the Parliaments acting by the Kings writ, there ought to be some mistakes cleared therein also; for we doe grant that the writ is the Kings, the Great Seale is the Kings, that Officer which has the Custodie thereof is the Kings, the People are the Kings; but we doe not grant that any of these are so the Kings, as that they are not the Kingdomes also in a more eminent degree: for as the Husband is the Wifes truly, but not so eminently as the Wife is the Husbands, so the Kingdome is the Kings, and the King is the Kingdomes, yet the Kingdomes interest and relation far is more valuable and sublime.

8. The last particular now offers it selfe in the close of all, and here *M. Jenkins* does not deny expressly that many things may be good in Law notwithstanding that some formalities, or those things which we terme *apices Iuris* are wanting; for doubtlesse where 2 Laws are and both cannot be fulfilled, the lesse important Law though it be more particular must give way to the more important Law, though more generall. *ex. gr.* when the King dies, by the common Law in force, Parl. cease, all judges, Sheriffs & Officers not absolutely necessary &c. return to a privat condition, and so remaine till new Commissions obtained: but if the new King happen to be beyond sea, as at the death of *Hen. 3.* so that new Commissions cannot be immediately granted, and thereupon the greater Law of publick safety is brought into competition with the Law of an inferiour nature, a new seal may be made, new Judges, new Officers may be created, and either a former Parl. may be continued, or a new one sumond, and all necessary points of complete administration may be expedited as in probality they were before the arrivall of *Ed. 1.* God did not make any particular dispensation his shew-bread might be eaten by common persons if in distresse, or the golden vessells of his Temple aliend when the City was

to be redeemed from the insolence and rapines of a prevailing Enemy, the generall Law of necessity was sufficient to warrant both the one and the other, but I will presse this no further since *M. Jenkins* alledges nothing to shew why a Parl. which cannot deliver it selfe by an Act, may not use meanes to deliver it selfe by an Ordinance. I will not insist further hereupon. But instead of disputing, *M. Jenkins* seems to jeere us for setting up Excise, raising Armes, Taxing the people, imprisoning the King, abolishing the Common Prayer Book, selling Church-Lands, &c. and in an irony he concludes, that all these are in order to publick justice and safetie. *M. Jenkins* here leaves us upon uncertainties, whether he condemnes our Cause because it required such props, or onely these props because they assisted us in promoting so bad a cause. If he allow of the ends, but not of the meanes, if he allow we may defend the Lawes and safetie of the State, but not by Armes, or if he allow of Armes but not of Taxes, &c. He must renounce a rule naturall as well as logicall, *Qui dat finem, dat media conducentia ad finem*; If he allow of the meanes, but not as conducing to such an end, upon presumption that our Lawes, and the State were not indanger'd, or if he prove that they may not be defended, he takes upon him more then is due; for his part is to plead, not to judge, and answers might be given to his pleading, but nothing can be said to his judging.

I conclude therefore with the *L. Cookes* Sensure of Treason as *M. Jenkins* does, and am of the same opinion, that Treason ever produces fatall and finall destruction to the offender, and never attaines to its desired ends; and wish that all men for this Cause would serve God, honour the King, and have no company with the Seditious. Yet let me adde this, we have neighbours now in the *Netherlands*, that lately have revolted from their Master, and yet prosper and flourish beyond all in *Europe*; the justice of their revolt may be questioned by some, but I for divers reasons do not question it, & one amongst the rest is this of the *L. Cookes*, because I think an act meerly treasonable cannot prosper.