

# A Briefe Discourse Concerning the Powers of the Peeres and Comons of Parliament, in point of Judicature

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Written by a Learned Antiquerie, at the request of a Peere of this Realme

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Sir, to give you as short an account of your desires as I can, I must crave leave to lay you as a ground, the frame of first modell of this state.

When after the period of the Saxon time, Harold has lifted himselfe into the Royall Seat; the Great men, to whom but lately hee was no more then equall either in fortune or power, disdaining this Act, of arrogancy, called in William then Duke of Normandy, a Prince more active then any in these Western parts, and renowned for many victories he had fortunately achieved against the French King, then the most potent Monarch in Europe.

This Duke led along with him to this worke of glory, many of the younger sons of the best families of Normandy, Picardy and Flanders, who as undertakers, accompanied the undertaking of this fortunate man.

The Usurper slaine, and the Crowne by warre gained, to secure certaine to his posterity, what he had so suddenly gotten, he shared out his purchase retaining in each County a portion to support the Dignity Sovereigne, which was stiled *Demenia Regni*; now the ancient *Demeanes*, and assigning to others his adventurers such portions as suited to their quality and expence, retaining to himselfe dependancy of their personall service, except such Lands as in free Almes were the portion of the Church, these were stiled *Barones Regis*, the Kings immediate Freeholders, for the word *Baro* imported then no more.

As the King to these, so these to their followers subdivided part of their shares into Knights fees, and their Tennants were called *Barones Comites*, or the like; for we finde, as in the Kings Writ in their Writs *Baronibus suis & Francois & Anglois*, the soveraigne gifts, for the most part extending to whole Counties or Hundreds, an Earle being Lord of the one, and a Baron of the inferiour donations to Lords of Town-ships or Mannors.

As thus the Land, so was all course of Judicature divided even from the meanest to the highest portion, each severall had his Court of Law, preserving still the Mannor of our Ancestours the Saxons, who *jura per pages reddebant*; and these are still tearmed Court-Barons, or the Freeholders Court, twelve usually in number, who with the Thame or chiefe Lord were Judges.

The Hundred was next, where the Hundredut or Aldermanus Lord of the Hundred, with the chiefe Lord of each Townshippe within their lymits judged; Gods people observed this forme in the publike *Centurconis & decam Judicabant plebem omni tempore*.

The County or Generale placitum was the next, this was so to supply the defect, or remedy the corruption of the inferior, *Ubi Curiae Dominorum probantur desecisse, pertinet ad vice comitem Provinciarum*; the Judges here were *Comites, vice comites & Barones Comitatus qui liberas in hoterras habenant*.

The last & supreme, & proper to our question, was generale placitum aupud London universalis Synodus in Charters of the Conquerour, *Capitalis curia by Glanvile, Magnum & Commune consilium coram Rege et magnatibus suis*.

In the Rolles of Henry the 3. It is not stative, but summoned by Proclamation, *Edicitur generale placitum apud London, saith the Booke of Abingdon, whether Epium Duces principes, Satrapae Rectores, & Causidici ex omni parte confluerunt ad istam curiam, saith Glanvile: Causes were*

referred, Propter aliquam dubitationem quae Emergit in comitata, cum Comitatus nescit disudicare. Thus did Ethelweld Bishop of Winchester transferre his suit against Leostine, from the County ad genrale placitu, in the time of King Etheldred, Queene Edgine against Goda; from the County appealed to King Etheldred at London. congregatis principibus & sapaientibus Angliae, a suit between the Bishops of Winchester and Durham in the time of Saint Edward, Coram Episcopis & principibus Regni in presentia Regis ventilate & finita. In the tenth yeere of the Conquerour, Episcopi, Comites & Barones Regni potestate adversis provinciis aduniversalem Synodum pro causis audiendis & tractadis Convocati, saith the Book of Westminster. And this continued all along in the succeeding Kings raigne, untill towards the end of Henry the third.

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As this great Court or Councell consisting of the King and Barons, ruled the great affaires of State and controlled all inferiour Courts, so were ther certaine Officers, whose transcendent power seemed to bee set to bound in the execution of Princes wills, as the Steward, Constable, and Marshall fixed upon Families in fee for many ages: They as Tribunes of the people, or ex plori among the Athenians, growne by unmanly courage fearefull to the Monarchy, fell at the feete and mercy of the King, when the daring Earle of Leicester was slaine at Evesham.

This chance and the deare experience Hen. the 3. himselfe had made at the Parliament at Oxford in the 40 yeare of his raigne, and the memory of the many straights his Father was driven unto, especially at Runny-mead neare Stanes, brought this King wisely to beginne what his sucessour fortunately finished, in lessoning the strength and power of his great Lords; and this was wrought by searching into the Regality they had usurped over their peculiar Soveraignes, whereby they were as the Booke of Saint Albans termeth them. Quot Dominum tot Tiranni. And by the weakning that hand of power which they carried in the Parliaments by commanding the service of amny Knights, Citizens, and Burgesses to that great Councell.

Now began the frequent sending of Writs to the Commons, that assent not onely used in money, charge, and making Lawes, for before all ordinances passed by the King and Peeres, but their consent in judgements of all natures whether civill or criminall: In prooffe whereof I will produce some few succeeding Presidents out of Record.

When Adamor that proud Prelate of Winchester the Kings halfe brother had grieved the State by his daring power, he was exiled by joynt sentence of the King, the Lords & Commons, and this appeareth expressly by the Letter sent to Pope Alexander the fourth, expostulting a revocation of him from banishment, because he was a Church man, and so not subject to any censure, in this the anser is, Si Dominus Rex & Regni majores hoc vellent, meaning his revocation, Communitas tamen ipsius ingressum in Angliam, iam nullatamus sustineret. The Peeres subsigne this Answer with their names and Petrus de Mounford vice totius Communitatis, as speaker or proctor of the commons.

For by that stile Sir John Tiptose, Prolocutor, affirmeth under his Armes the Deed of Intaile of the Crowne by King Henry the 4 in the 8 year of his raigne for all the Commons.

The banishment of the two Spencers in the 15 of Edward the second, Prelait Comites & Barones et les autres Peere de la terre & Communes de Roialme give consent and sentence to the revocation and reversement of the former sentence the Lords and Commons accord, and so it is expressed in the Roll.

In the first of Edw. the 3 when Elizabeth the widdow of Sir John de Burgo complained in Parliament, that Hugh Spencer the yonger, Robert Boldock and William Cliffe his instruments had by duresse forced her to make a Writing to the King, whereby shee was despoiled of all her inheritance, sentence is give for her in these words. Pur ceo quo avis est all Evesques Counts & Barones & authres grandes & a tout Cominalte de la terre, que le dit escript est fait contre ley, & tout manere de raison si suist le dit escript per agard del Parliam. dampue elloques al livre a la dit Eliz.

In An. 4 Edw. 3 it appeareth by a Letter to the Pope, that to the sentence given against the Earle of Kent, the Commons were parties as well as the Lords & Peeres, for the King directed their proceedings in these words, Comitibus, Magnatibus, Baronibus, & aliis de communitate dicti Regni ad Parlamentum illud congregatis injunximus ut super his discernere & judicarent quod rationi et justitiae, conveniret, habere prae oculis, solum Deum qui cum concordii unanimi sententia tanquam

reum criminis laesae majestatis morti adjudicarent esus sententia, etc.

When in the 50 yeere of Ed 3 the Lords had pronounced the sentence against Richard Lions, otherwise then the Commons agreed they appealed to the King, and had redresse, and the sentence entred to their desires.

When in the first yeere of Richard the second, William Weston and John Jennings were arraigned in Parliament for surrendring certaine Forts of the Kings, the Commons were parties to the sentence against them given, as appeareth by a memorandum annexed to that Record. In the first of Hen the 4 although the Commons referre by protestation, the pronouncing of the sentence of deposition against King Rich. the 2 unto the Lords, yet are they equally interested in it, as it appeareth by the Record, for there are made Proctors of Commissioners for the whole Parliament, one B. one Abbot, one E. one Baron, & 2 Knights, Gray and Erpingham for the Commons, and to inferre that because the Lords pronounced the sentence, the point of judgement should be onely theirs, were as absurd as to conclude, that no authority was best in any other Commissioner of Oyer and Terminer then in the person of that man solely that speaketh the sentence.

In 2 Hen. 5 the Petition of the Commons importeth no less then a right they had to act and assent to all things in Parliament, and so it is answered by the King; and had not the adjournall Roll of the higher house been left to the sole entry of the Clarke of the upper House, who, either out of the neglect to observe due forme, or out of purpose to obscure the Commons right & to flatter the power of those he immediately served, there would have bin frequent examples of al times to cleer this doubt, and to preserve a just interest to the Common-wealth, and how conveniently it suites with Monarchy to maintaine this formed, lest others of that well framed body knit under one head, should swell too great and monstrous. It may sooner groane under the weight of an Aristocracie as it once did, then under Democracie which it never yet either felt or fear'd.

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