The Opening of the Impeachment of
Robert Harley, Earl of Oxford, June to
September 1715: The ‘Memorandum’
of William Wake, Bishop of Lincoln

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I

On 30 July, Robert Harley, 1st earl of Oxford, was dismissed from his office of lord treasurer
(in effect ‘prime minister’)¹ by Queen Anne, and replaced by a ‘safer pair of hands’ in the
shape of the duke of Shrewsbury, whose promotion was designed to ensure the succession of
the protestant house of Hanover to the British throne.² Two days later on 1 August, the queen
herself died, and in mid-September George I landed at Greenwich to claim his inheritance.
A year later, in July 1715 Oxford was impeached before the house of lords by the house of
commons for high treason and high crimes and misdemeanours. Oxford was impeached by
the body, the Commons, in which he had been one of the dominant politicians from the mid-1690s
to his promotion to the peerage in May 1711, and had been Speaker of the Commons from 1701
to 1705.

Oxford’s fall from grace was shared by Lord Bolingbroke (secretary of state, 1710 to 31
August 1714), the duke of Ormond (commander-in-chief of the British forces on the Continent,
1712-14) and the earl of Strafford (chief British negotiator of the treaty of Utrecht), all of whom
were impeached between July and September 1715. These prominent politicians in the largely
tory ministry of 1710 to 1714 had been tainted with the accusation of jacobitism (support of
the exile Old Pretender, catholic son of the late king James II), though some with more reason
than others, who had fallen foul of the whig opposition to the ministry and the parliamentary
sanctioned heir-in-waiting, the elector of Hanover. The impeachments were little more than a
politically motivated revenge for the years of frustration inflicted on the whigs by the 1710-14
ministry and the hatred by the new king for those whom he regarded as having put his claim
to the British throne in jeopardy. None of the impeachments were to succeed: Bolingbroke
and Ormond fled to France to avoid proceedings (Bolingbroke was eventually pardoned and
returned to Britain in 1722, while Ormond died in exile in 1745); the proceedings against

The ‘memorandum’ (see the Appendix below) is reproduced by kind permission of the Governing Body of
Christ Church, Oxford. I would like to thank Dr Stuart Handley of the 1660-1715 house of lords section of
the History of Parliament for providing me with a transcript of the ‘memorandum’, Dr Robin Eagles for drawing
my attention to the 6th earl of Wigtown’s newsletters in the Bodleian Library, and the journal’s reader for saving
me from errors.

¹ See Geoffrey Holmes, British Politics in the Age of Anne, revised edn (London, 1987), pp. 440-2, Appendix
C, ‘Robert Harley, Earl of Oxford, as “Prime Minister”’.

² Henry St John, Viscount Bolingbroke, secretary of state and supporter of the jacobite claimant to the British
throne, James Francis Edward Stuart, son of James II, and known as the Old Pretender, had hoped to succeed
Oxford, but the whig junto had, in the privy council, engineered the appointment of the whig-inclined duke
of Shrewsbury as lord treasurer (who was the last person to hold this position since after his resignation in
October 1714 the office has been held in commission). See Henry Snyder, ‘The Last Days of Queen Anne: The
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Strafford were eventually dropped, while Oxford was acquitted from all charges in July 1717.\(^3\) However, Oxford’s two years’ incarceration in the Tower of London permanently damaged his fragile health, and probably was a reason for his death in 1724.

Impeachment was a process whereby the house of commons drew up articles on which to try an individual for treason and other high crimes, while the trial took place in Westminster Hall in the presence of the house of lords, with the member of the Lords voting on the guilt or otherwise of the accused.

The historian is fortunate to have a ‘memorandum’ of the opening weeks of the impeachment of Oxford, Bolingbroke, Ormond and Strafford, drawn up by William Wake, then bishop of Lincoln and a member of the house of lords. Wake, who previously had been dean of Exeter until 1705, was shortly to be raised to the archbishopric of Canterbury (1716 to 1737). His ‘memorandum’ not only recorded some of the proceeding in the house of lords, but has left us evidence of his personal feelings towards the impeachments and his position as a bishop in the trials as well as towards the accused, whom he regarded as guilty of the crimes of which they were accused, but whom in the final stage he could not vote guilty as bishops were not allowed to vote on a question which involved the death penalty. The only historian to previously use the ‘memorandum’ was Norman Sykes in his two-volume biography, who understandably concentrated on a discussion of Wake’s inner feelings and the struggle he had with his conscience – what Sykes described as Wake’s ‘conscientious scruples and apprehensions’. No use was made by Sykes of Wake’s recorded proceedings of the impeachments. He concluded that it was ‘of particular importance that Wake should have set forth in such fullness and detail the grounds of his actions’.\(^4\)

II

The impeachment of Lord Oxford and the others formally started in the house of commons on 10 June 1715, when the House resolved to impeach Oxford and Bolingbroke, and referred the case to the committee of secrecy.\(^5\) Earlier, following an address to the king of 5 April to release any papers on the peace to be placed before the Commons, on 9 April the Commons had ordered that the papers concerning the negotiations at Utrecht (consisting of twenty-one volumes, plus three small books) to be sent to the committee of secrecy. The committee to consist of twenty-one MPs was then balloted for on the 11th. Two days later the House reported the names of the twenty-one elected (interestingly, Lord Coningsby was only just elected to the committee, being the last MP to gain sufficient votes). May was spent by the committee on examining the vast amount of papers produced by the address to the king.\(^6\) Even so, on 15 June, the committee was ordered to examine the papers of Matthew Prior and Thomas Harley (which would have delayed matters). On 22 June the Commons passed a motion to impeach the earl of Strafford.\(^7\)

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\(^5\) The Journals of the House of Commons [hereafter cited as CJ], xviii, 166.

\(^6\) On 1 June, William Shippen (1673-1743), MP Saltash 1713-15, Newton 1715-43, one of the leading tory/jacobite MPs, thought that the committee of secrecy ‘had satt 2 months, and done nothing from whence he Concluded the late ministry [of Lord Oxford’s] wer Blamable in nothing’. This elicited a response from ‘Mr Boscowon Comptroler [of the royal household] [who] Replyed that the Committee was Resolved to apply to the House to morrow, for appointing a day to make their Report. … Mr Walpole seconded him with the bloodyest speech he ever made.’ National Library of Scotland [hereafter cited as NLS], Wodrow Papers, Wod. Lett. Qu. ix, f. 114: Thomas Smith, MP Glasgow Burghs, 1 June [1715]. Thomas Smith’s letters give one of the best accounts there is of the progress of the impeachments through the house of commons.

\(^7\) CJ, xviii, 58-9, 171, 183.
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By 7 July, the committee had finished its job, and the chairman, Robert Walpole, reported from the committee that the sixteen articles of impeachment for Oxford were compiled and were then read to the Commons by Walpole ‘and was six hours in reading’. The following day a clerk of the House completed a second reading of the article, begun the day before. The House then voted by 280 to 125 on the first article, and a further two votes on amendments to other articles were carried by 247 to 131 and 247 to 127. The House agreed to engrossing the articles on 9 July, and Lord Coningsby was ordered to deliver the article to the House of Lords, which he did on the 11th, with a request that Oxford be committed to the custody of the black rod.

III

The impeachment of Oxford in the Commons was strongly supported by the earl’s old antagonist and whig rival in Herefordshire politics, Thomas, Lord Coningsby, MP for Leominster from 1679 to 1716, who lived at Hampton Court in central Herefordshire, while Oxford lived at Brampton Bryan in the north of the county, up against the Shropshire border. (Coningsby had been created Baron Coningsby of Clanbrassil in the Irish peerage in 1692 and was able to sit in the English – later British – house of commons. He was elevated to the British peerage with a barony in 1716 – when he ceased to be an MP – and an earldom in 1719.) Described in his History of Parliament biography as ‘one of the most vindictive critics of the outgoing Tory ministry, and especially Robert Harley, now Earl of Oxford. … He referred to the Harleys as “the author of all our miseries”’. Coningsby was considered ‘the true picture of a Court Whig; greedy, unscrupulous and probably corrupt. Accustomed to fawn on the powerful and bully the powerless, … he also acquired a pack of enemies, many of them political opponents who had run foul of his notorious ill-temper … Lord Coningsby’s greatest enemy was himself’. No doubt Coningsby made the most of this opportunity to attack Oxford, and kick his rival when he was down. But he found willing accomplices in the Commons, which passed the bill of impeachment by 280 to 125.

Coningsby carried the articles of impeachment up to the House of Lords on 9 July, and stood at the bar of the House, no doubt relishing the discomfort of Oxford who sat to his right on the earls’ bench. (Coningsby’s hubris was eventually followed by his own nemesis when in 1720-21 he himself spent some time in the Tower over ‘reflections made upon the lord chancellor in connection with litigation of the manor of Marden in Herefordshire’).
IV

On 9 July the proceedings of the house of lords began on the impeachments of Bolingbroke and Oxford, starting with Oxford, though, as Wake notes, this was contrary to the usual procedure which would have started with the junior peer, Bolingbroke. Wake surmised that this unusual procedure was because ‘the E[arl] of Oxford is present to stand his trial [indeed Oxford had been in the House that day], while the other is gone away. And therefore they were willing to have this opportunity to make a full proof of the crimes of which they impeached them’. Also Oxford was the most high profile of those impeached and to secure his conviction would ease the conviction of the others.

On 9 July, when the sixteen articles of impeachment against Oxford were read, 142 lords are listed as attending in the Lords Journals, and in the three divisions on that day 138, 135 and 133 lords voted, with 135 voting in the division to commit Oxford to the Tower on 12 July. No proxies were called for in any of these votes. In fact very few proxies were available to be used as so many members attended in person. This was an abnormally high attendance of the Lords, particularly so late in the parliamentary season. The parliamentary year of 1715 was abnormal: the session opened on 15 March (normally parliament opened in November or December) and ran uninterrupted by prorogations until 26 June 1715. This length of a session with late sittings into September was unprecedented and shows, if nothing else did, the importance placed on and the interest in the impeachments, and in the perceived necessity of the sitting parliament to bolster the protestant succession. Normally recent sessions ended by mid-July at the latest, and often in Anne’s reign by April or May when lords returned to their country estates and bishops to their dioceses to conduct business and to avoid the often stifling and unhealthy atmosphere of the chamber and of the City itself. The death of Anne had necessitated the reconvening of parliament between 1 and 25 August (the house of lords sat on seven days) but attendance was usually low and little work was done; the lowest attendance on 20 August was 26 with the highest of 89 on the 5th. By the levels set in the recent past, parliamentary attendance by peers and bishops remained relatively high throughout the impeachment proceedings into September: 110 on 11 July (Oxford brought from custody to the bar of the House), 135 on the 12th (Oxford requested copies of the articles against him), 89 on the 18th and 2 August (further articles of impeachment brought to the Lords from the Commons), 92 on the 8th (articles of impeachment against Ormond read), 69 on the 20th (Oxford granted further time to answer the articles), 62 on the 27th (again Oxford granted further time), 59 on 2 September, 79 on the 3rd (Oxford’s answer to the article against him), 49 on the 20th (the Commons’ replication to Oxford’s answers), and 60 on the 21st. Even though overall attendance figures dropped in August and September from the initial highs in July, there was a clear connexion between important developments in the impeachments and an increased attendance in August. Yet, despite the importance of the impeachment, the siren call of the country estate proved too strong for some peers used to quitting Westminster in the summer. Proxies from mid- to late July increased, but most were voided by the presence of the peer or bishop later in July or in August. Only nine of the thirty registered after 13 July were not voided by mid-September. In August forty-four further proxies were registered, of which twenty-five ran beyond 15 September. Seven proxies were registered in September, of which only one was cancelled by attendance in the same month.

16 LJ, xx, 97.
17 LJ, xx, 97-8.
18 HMC, Lords MSS, new ser., xii, 195-6.
19 On 9 July only those of Thanet (dated 14 May), Coventry (27 June), Stawell (27 June), and the bishop of Salisbury (7 July) had been registered. Two had been voided by the presence of the lords on the 9th: Devonshire (5 April) and Orkney (18 June). By 12 July one more had been registered. Grantham (9 July) and one more voided, Stawell. Parliamentary Archives [hereafter cited as PA], HL/PO/IO/13/7: proxy book vii.
20 LJ, xx, 3-14 passim. Wake sat on two days at the end, and Oxford on six.
21 PA, HJ/PO/IO/13/7. The House only sat a further five times between 21 Sept. 1715 and 9 Jan. 1716: LJ, xx, 234-42.
Bishop Wake was an intermittent attender of the Lords in 1715 before his ‘memorandum’ started on 9 July. On the fifty days the House sat from 5 March, Wake attended on only twenty-three occasions from his first sitting on 21 March. Oxford first sat on 11 April, and in the following forty-three sitting days he attended on twenty-seven occasions. Wake’s ‘memorandum’ covers the seventeen days on which Oxford’s impeachment (plus those of Bolingbroke, Ormond and Strafford) appeared before the house of lords, and Wake attended the House on thirteen of those days, according to his diary, or eleven days according to the presence list, compiled by the clerks of the House, and entered into the Lords journal at the beginning of each day’s sitting.

The discrepancy between the official recording of attendances in the journals and the private recording in diaries or correspondence has been written about. The record compiled by an individual is to be preferred to that compiled by a clerk, who was faced with a disruptive House when the attenders were recorded at the beginning of a day’s sitting, though some who had been omitted and some corrections were occasionally added later in the day. Thus Wake’s record of the opening proceeding of Oxford’s impeachment, though partial, can be taken as as accurate an account of the proceedings in the House as can be expected.

The trial of Lord Oxford dragged on for a further two years, during which time there was little progress with the proceedings, the whig government being quite content to leave Oxford ‘rotting’ in the Tower, out of harm’s way (a time in which Oxford’s health seriously declined). Oxford was saved in the summer of 1717 by the schism of the ruling whig party. The faction led by Robert Walpole and Viscount Townshend split away from the ruling majority led by the ‘prime minister’, the 3rd earl of Sunderland and the 1st earl Stanhope. The tories and the sympathizers of Oxford among the whigs saw and took their chance to ‘spring’ Oxford from prison. This case was reopened and Oxford was acquitted of the charges against him in Westminster Hall on 1 July 1717. Wake, as archbishop of Canterbury, played his part. In May Oxford had considered him to be a ‘doubtful con’. On 24 June, on a division to start proceeding with the treason articles, Wake ‘went out’ of the chamber (that is abstained), possibly because of his feelings over voting in a division which might eventually lead to the death penalty. However, by 1 July when a division was taken for or against Oxford’s acquittal, Wake voted in favour of Oxford.

22 LJ, xx, 21-97 passim.
23 Lambeth Palace Library, MS. 1770, ff. 159-62 [hereafter cited as Wake’s diary]: Wake’s diary, 8 July-3 Sept. 1715.
24 LJ, xx, 97-222 passim.
27 Before Hansard, ed. Clyve Jones (forthcoming) (essays on the private recording of parliamentary debates before the arrival of ‘Hansard’ in the early 19th century).

Source: Christ Church, Oxford, Wake MS. xix, ff. 1-6.

[f. 1] Being resolved, by God’s assistance, to review every step I take with relation to the impeachments now going on against several of the great Lords of the House of Peers, 29 I am now to begin with what was done yesterday [9 July 1715]. 30 I tarried in the House till about twelve a clock; 31 and then being almost quite weary and faint, I left the House sitting; and after having taken a little refreshment went straight to bed; being in no condition to think of anything at that time, but to [?]revive my own strength, and, if possible, to fit myself for the service of this day [Sunday 10 July]. 32

I am now alone, and by God’s blessing in a condition to recollect what was done in the House; and also though I hope, and am resolved, through the divine assistance, not to do anything in which I am not well satisfied that I ought to do it; yet least I should be mistaken and on a sudden take any wrong measure, I will make the review as soon as I can; that so no time to set my conscience right with God, if anything I shall chance to vote amiss.

And here first, I thank God, I have so little to answer for as to the impeachments themselves, that I can surely say it is a very sensible concern to me that there has been any occasion given for any such procedure. I cannot deny but that in my judgement I do think (as I always did while those affairs were transacting) that the late ministry in many ways acted against the interest of the nation, and the religion and liberties of it. That they exposed us to the utmost dangers, and that had they continued but a little longer in power, the Pretender 33 would have infallibly come in upon us, and what might have been the consequences of that, as I have often thought heretofore, so it [?]ever amazes me now to think.

I cannot but hope that as far as her late Majesty 34 was concerned in those measures, she was misled, if not betrayed, by those about her. It being otherwise very hard to think, how a

29 Robert Harley, 1st earl of Oxford and Earl Mortimer; Henry, 1st Viscount Bolingbroke; James Butler, 2nd duke of Ormond; and Thomas Wentworth, 3rd earl of Strafford. Two commoners, Matthew Prior and Thomas Harley (Oxford’s cousin), both diplomats involved in the peace of Utrecht, were also arrested on 9 June and confined to their homes on Duke Street. They were questioned by the committee of secrecy. Prior refused to incriminate Oxford and was then confined in the home of the serjeant-at-arms of the house of commons for more than a year, unable to receive guests without the permission of the Commons’ Speaker, and was forbidden to write to or receive letters from friends. He was released on 26 June 1716 when parliament was prorogued. He was omitted, along with Harley and Oxford, from an Act of Grace in July 1717, which granted pardons to others. ODNB, xiv, 420.

30 On 9 July 1715 the Commons impeachment of Oxford was presented to the house of Lords. See LJ, xx, 99-111. Wake was present, LJ, xx, 97; Wake’s diary, f. 159: ‘July 9 … I went to the House, … Lord Oxford Impeached … came home at 12 at night. Left the H[ouse] sitting’.

31 I.e., midnight. Late sittings in both Houses were not uncommon during the debates on Oxford’s impeachment. The Commons’ debate on 8 July had started at ‘11 in the forenoon’, while on 9 July after Wake left, the Lords continued debating until ‘three next morning’: Bodleian Library, MS. Eng. hist. c.1039, f. 13-14: newsletters sent to the Earl of Wigtown: 9, 12 July 1715.

32 10 July.

33 The Catholic James Edward Stuart, the ‘Old Pretender’, heir to the late King James II (d. 1701), whose followers (the jacobites) rose in rebellion in 1715. The pretender was the ‘natural’ heir to the British crown, but had been removed from the succession by the 1701 Act of Settlement which made the nearest protestant, the Electress Sophia of Hanover, heir to the throne. She died a few weeks before Queen Anne, so Sophia’s son, the elector of Hanover, succeeded as King George I.

34 Queen Anne, who had died 1 August 1714.
Queen could not only suffer such oaths to be taken, and such abjurations made, by her subjects as she did; but could herself make such declarations (many of them from the throne, and to her Parliament) as she continually did, of her adherence to the Protestant Succession, if she all the while resolved to set it aside in favour of the Popish Pretender. So that I must therefore think the late Queen, what upon this supposition she once said of herself, to be "the vilest of women"; she took all the measures that were lately pursued with an express desire to bring us to this wretched state. Or I must in justice to her, be the more animated against those, who not only sought to bring us into such dangers; but abused the honour and weakness of her Majesty, to serve purposes, as we ought to hope, and thus must have known, were the farthest from her intention and inclinations.

But still, tho[ugh] I have all along had a very ill opinion not only of the measure of the latter part of her Majesty's reign, but of those who advised and executed them; yet in having pleased Almighty God of his great goodness to deliver us once more out of danger, by taking away the Queen at such a critical juncture, and in such a manner, as left it not in their power to bring in the Pretender upon us; I could have been content to have let their faults die with their interest; and to have seen them as much despised and hated by all the true lovers of their country, their constitution, and religion, as they deserved, and as one might have hoped they should have been.

They resolved they would not leave it in the power of government to show this much clemency to them. What they could not effect by their interest in the late Queen, much less by their imposing on his present Majesty, they seemed resolved to do by a tumultuary management of the people. And as much as I desired their ease and security, yet at last convinced myself, that it was necessary that some notice should be taken of their proceedings.

But here again my good nature recurred; and perhaps too far biassed my judgement. Whether I was right or not, I cannot tell; but so it is, that I could never think it, either for his Majesty's or the kingdom's service, to impeach them of high Treason. To high crimes and misdemeanours I could readily agree, and I hoped, and therefore wished, that their prosecution [f. 2] might have stopped there. The H[ouse] of Commons have gone further. Whether in this they have judged aright, time must show. But as his Majesty is a most merciful Prince, and the English nation not very much either used or inclined to brutality, so I still continue to think, that had they not obliged the King to begin more for his honour, and the public good, and I could almost yet wish that they might be disappointed in this part of the prosecution.

It is now about a month ago, that the Commons resolved to impeach the Lord Bolingbroke and the E[arl] of Oxford of High Treason, and other high crimes and misdemeanours. On Tuesday, the 8th [July] instant, the articles were brought in against the latter of these, and being settled by the House, there were yesterday brought up to the Lords, by the Lord Coningsby, and the Lords desired, and demanded, to sequester the unfortunate Lord from his place in

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35. The source for this quotation has not been found, and seems, given Anne's character, a little unlikely. Wake could be recalling a personal conversation or correspondence. It is somewhat ironic that Sarah, duchess of Marlborough (the queen's confidant, who subsequently fell out of favour), used the same phrase of herself in her memoirs published in 1744.

36. I.e., Oxford impeached for high treason.

37. The last impeachments before 1715 (which failed) were of three whig junto lords in 1701: Lord Somers, Lord Halifax and the earl of Portland.

38. On 10 June the house of commons resolved to impeach the earl of Oxford, and ordered the committee of secrecy to draw up the articles of impeachment and to prepare evidence against Oxford and Bolingbroke and by a vote of 160 to 280 that the report be adjourned until 17 June. CJ, xviii, 166.

39. On 7 July, Robert Walpole, the chairman of the committee of secrecy, reported to the Commons and read the articles of impeachment of Lord Oxford. The next day, the articles were amended and completed, and on the 9th Lord Coningsby was ordered to carry the articles to the house of lords. CJ, xviii, 205-20.

40. Henry St John, 1st Viscount Bolingbroke (1678-1751) cr. 1712; attainted 10 Sept. 1715; restored (though in blood only, which restored his title and property, but not his seat in the House of Lords) 31 May 1725.
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Parliament, and to commit him to confinement in order to his trial.

How they came to alter their method, and begin with this Lord [of Oxford], rather than the Lord Bolingbroke, I cannot tell; unless it were that the E[arl] of Oxford is present to stand his trial, while the other is gone away.41 And therefore they were willing to have this opportunity to make a full proof of the crimes of which they impeached them, and so show how little the persons accused could say to set aside the charge which was brought against them.

It was 5 a clock when the impeachment was brought. My Lord Ferrers42 began a very strange motion, to hinder the articles from being presently read; and to have a day appointed to enter upon the consideration of them;43 for which there never was any precedent in any impeachment made by the H[ouse] of Commons of any peer, in any of our records; or if there was, both sides were so unhappy as to miss of them.

This debate lasted above two hours; and was at last ended by my Lord Harcourt44 freely confessing that he thought the articles of impeachment must be read; and then it would be the proper time to consider how the House should afterwards proceed upon them. The articles were read, without any further opposition, being xvi in number, and it was nine a clock before this was finished.

The articles being read, a long debate followed, whether to proceed immediately to consider what was to [?]be further done upon them (it was as to the taking, or not, of the Lord into custody); or whether to defer it till Monday morning.45 It was two hours, or more, before this could be brought to a question; which was at last to this effect: ‘that this House will proceed upon Monday morning next to consider further what is to be done upon these articles’: 52 voted for this; 86 against it;46 so the resolution was to proceed presently, at about 11 a clock at night, upon the articles. I was with the majority, and that for this reason; that this had always been the practice; and in an impeachment of such great moment no delay ought to be made in the first step to justice; vizt the securing of the person, in order to his appearance, and answering to the crimes of which he was impeached. And it could not be denied but that all our precedents in such sort of impeachments went this way.

The difficulty was scarce over, before the Lord Ferrers moved another: two of the xvi articles against the noble Lord were for High Treason. In impeachments of High Treason the person accused is of course to be committed to safe custody. And the Commons had been so careful as to specify the overt acts upon which they grounded their charge of High Treason against him. Here therefore there was no room for an exception, unless the acts were not particularly enough set forth for his Lordship to be able distinctly to answer to them; which was answered by more

41 Bolingbroke had fled to France on 27 Mar. 1715: ODNB, xlvii, 621. According to Oxford’s brother, Bolingbroke was ‘prevailed upon to quit the kingdom in disguise’: HMC, Portland MSS, v, 663: Edward ‘Auditor’ Harley’s ‘memoirs’.
42 Robert Shirley (d. 1717), cr. Earl Ferrers 1711.
43 See LJ, xx, 111, for the question of whether to consider the impeachment on Monday next (11 July), which was carried in the negative, followed by a protest signed by 47 lords, including nine bishops (but not Wake): LJ, xx, 111. One of the bishops, Nathaniel Crew, bishop of Durham (since 1674), signed as Lord Crew: he sat as both a bishop and as 3rd Baron Crew of Stene, a peerage to which he had succeeded in 1697. In business in the Lords he tended to act as a peer rather than a bishop (though he would have sat on the bishops’ bench in the House and was listed as present in the journals of the House as a bishop). On one occasion his title ‘Crew’ was added to bishop of Durham in the clerk’s marginal annotation next to the presence list in the journal (PA, HL/PO/JO/5/1: manuscript minutes, 10 Oct. 1667). Bishops and barons had the same level of precedence in the Lords, though Crew as bishop of Durham was second in line of the precedence of bishops after London.
44 Simon Harcourt (1661-1727), cr. Baron Harcourt 1711; lord chancellor 1713-14.
45 11 July 1715.
46 The official figures for this division, the third on 9 July, as recorded in the minutes of the house of lords, on whether to commit Oxford to the custody of black rod, was 81 content and 52 not content. See Divisions in the House of Lords: An Analytical List, 1685 to 1857, compiled by J. C. Sainty and D. Dewar, House of Lords Record Office Occasional Publication, 2 (London, 1976).
than one Lord, tho[ugh] by one especially, the Lord Islay.\textsuperscript{47} My Lord Ferrers therefore desired that the twelve judges might be sent for, at 11 a clock at night, to deliver their opinions whether the matters contained in those two articles did, by our law, amount to High Treason.\textsuperscript{48} This was contended to by one of our own bench, who spoke exceeding well for his friend and made the most of the Earl of Clarendon’s case,\textsuperscript{49} the only precedent in which it appears that the judges had been advised with before the trial to deliver their opinions, whether the matters objected to his Lordship came to High Treason, or no.

[f. 3] The case was this: the Earl of Bristol\textsuperscript{50} in the H[ouse] of Lords impeached the E[arl] of Clarendon, then Lord Chancellor, and chief minister, of High Treason; and named certain facts to support his appeal against him. By the favour of the Court, time was obtained and two questions put to the judges. One, whether one Lord could impeach another, before the H[ouse] of Lords; the other, whether the matters on which the Lord Bristol charged the Lord Chancellor with treason did come up to such a charge; and the judges declared both in the negative; and the House agreed with them.

The Earl of Nottingham\textsuperscript{51} answered this precedent, in my opinion, very well. That in this case here was no impeachment from the House of Commons, but one Lord appealed against another. That the proper time for hearing the judges (whom all sides agreed, when it should be proper, to hear) to this question, whether the matters alleged against the E[arl] of Oxford in those two articles did amount to treason, or no, would be when it came to be considered in the course of the trial: when the Earl would have his counsel to plead against them and the Commons their managers to answer their plea; and then the judges upon a full hearing of both sides, must deliver their judgment in the case. At present all that was necessary was for the Lords to consider whether they carried such an appearance as to induce the House to do what was demanded of them by the Commons; namely, to take the Lord into custody, in order to his being tried upon the impeachment. However another question hereupon was put; ‘whether the judges should be now, previously to the trial, heard or no’, and carried, for hearing them, as before, 52 against it 84.\textsuperscript{52} I was here also with the majority, as thinking that the judges should not be called to deliver their opinion suddenly in a matter of this moment; and that in the trial they would not only be informed by the pleading on both sides, but be directed by the particular proofs that would be brought of the facts upon which this heinous charge is founded, and would also have leisure, in the mean time duly to consider of those articles, and so be able with the better judgment to deliver their opinions upon them.

This question being over, the next debate must be of course what to do with the Lord accused. His Lordship spoke himself, with great assurance of his innocency. I pray God he may be able to prove it as clearly as he confidently affirmed it. It was now twelve a clock. I was quite tired and faint; and to say the truth was afraid the question would be for committing the Earl to the Tower, which I had no mind to have done in a hurry, at that time of night; tho[ugh] I could not blame those who should have voted for it. My desire was that he should only be taken into the custody of Black Rod,\textsuperscript{53} till these articles might be fully, and clearly discussed; and so be shown to arise upon the appearance of them, as might suffice to justify the Lords, and even to require them in justice, to commit the noble Lords, as the Commons had demanded of them. However, here I resolved to

\textsuperscript{47} Archibald Campbell (1682-1761), earl of Ilay, younger brother and eventual successor of John Campbell, 2nd duke of Argyll.
\textsuperscript{48} See \textit{LJ}, xx, 111. The question was carried in the negative. There was a protest against this vote signed by forty-six lords, including nine bishops (not including Wake).
\textsuperscript{49} Edward Hyde (1632-1674), cr. 1st earl of Clarendon 1661. As lord chancellor, he was impeached himself and fled to France in 1666.
\textsuperscript{50} John Digby (1634-1698), 3rd earl of Bristol.
\textsuperscript{51} Daniel Finch, 2nd earl of Nottingham.
\textsuperscript{52} Sir William Oldes (black rod). [The lieutenant of the Tower was a Mr Compton: HMC, \textit{Portland MSS}, v, 666.]
\textsuperscript{53} The question of whether Oxford be taken into the custody of the black rod was carried in the affirmative. It was followed by a protest of forty-eight lords, including the same nine bishops as before. \textit{LJ}, xx, 112.
leave the House; and whilst I had but any scruple about his Lordship’s commitment to the Tower, not to vote for it: so I came away before any question as to this matter was proposed; and I do not well know, at this time what was further done in this matter.\textsuperscript{54}

The case is of the highest moment. On the one side, the honour and life of a great Lord is concerned. On the other, the safety of the nation; public justice due to the Commons; and in them, to the whole people of Britain; the honour of her late Majesty, and perhaps the security of the present King, are at stake. God grant that justice was done, and mercy shown, as far [?as] is consistent with justice. For myself, by the help of God I will do nothing but with a clear conviction; and I heartily bless God, that even upon such a conviction, my vote can never be given to deprive any person of his life;\textsuperscript{55} tho[ugh] I should think him never so much worthy to lose it.

Monday 11 July [1715]\textsuperscript{56}
God be pleased, the matter went to the House after I left it, as I had all along wished it should.

[f. 4]
Tuesday 12 July [1715]\textsuperscript{57}
Yesterday [11 July] the H[ouse] of Lords ordered the E[arl] of Oxford to be brought this day to the Bar of the House. Before he was admitted, a long, and very needless debate arose,\textsuperscript{58} whether when he was called in my Lord Chancellor\textsuperscript{59} should acquaint him ‘that the Lords had agreed to commit him to the Tower of London, till he should be delivered thence by due course of law’. A great deal was said, and some things exceedingly provoking upon this occasion. The Lord Ferrers reflected with great freedom upon the proceedings of the House on Saturday.\textsuperscript{60} And being stopped by the E[arl] of Sunderland\textsuperscript{61} denied that he intended any reflection. He might as well have denied that he was speaking. The E[arl] of Anglesey\textsuperscript{62} went further, and having worked himself up into a height of passion, as he commonly does, among other things told the House of the riot and tumults,\textsuperscript{63} the marks of the people’s dissatisfaction, over all the kingdom; went on and either said, or wished (I cannot certainly remember which of the two) that these proceedings (he meant upon these impeachments) did not ‘make the sceptre tremble in the King’s hand’. This was presumptuous with a witness. And being called upon by two noble peers

\textsuperscript{54} These figures are correct, but the manuscript minutes of the Lords give this as the second division on 9 July.

\textsuperscript{55} The procedure of voting in the house of lords prevented bishops voting in legal cases which involved the death penalty, in acknowledgment of the medieval custom that clerics could not shed blood.

\textsuperscript{56} Wake was not recorded as present (\textit{LJ}, xx, 112; cf. Wake diary, f. 160: ‘July 11 To the House’).

\textsuperscript{57} Wake was recorded as present (\textit{LJ}, xx, 112; Wake diary, ‘July 12 … I went to the House’).

\textsuperscript{58} For another account of this debate, with more speakers than given by Wake, see HMC, \textit{Portland MSS}, v, 513: Thomas Salt to his father, 12 July 1715. Salt lists Anglesey, ‘Souththerland’ (i.e., Sutherland), Roxburgh, Cholmondeley and Argyll.

\textsuperscript{59} William Cowper (c.1665-1723), cr. Baron Cowper 1706, Earl Cowper 1718, lord chancellor 1707-10, 1714-18.

\textsuperscript{60} 9 July (\textit{LJ}, xx, 118).

\textsuperscript{61} Charles Spencer (c.1674-1722), succ. 3rd earl of Sunderland 1702, lord lieutenant of Ireland 1714-15, lord privy seal 31 Aug. 1715-16.

\textsuperscript{62} Arthur Annesley (d. 1737), succ. 5th earl of Anglesey 1710.

\textsuperscript{63} The ‘riots’ in London might be better described as outbreaks of public disorder, usually in support of Oxford, but the government may have seen them in a different light: Edward ‘Auditor’ Harley, Oxford’s brother, recorded in his ‘memoirs’ that on 9 July when Oxford travelled from the house of lords to his home in St James’s he was followed ‘with the huzzas of the people. These so terrified K[ing] G[eorge] that he left his supper in great confusion’. There were other demonstrations of popular support for and some against Oxford: e.g., when he was transferred to the Tower from his home, ‘Black Rod, … being apprehensive that in the Strand, Fleet Street, &c., there was a great concourse of people who intended to either rescue him or insult the Black Rod, he prevailed upon him to go through Smithfield privately to the Tower’: HMC, \textit{Portland MSS}, v, 665, 666.
to explain what he meant by it, he was pleased to turn it off upon his fears, and concerns, for
the King’s safety; and to decline, in very strong terms, his own detestation of all such riots and
tumults and his zeal for the person and government of his present Majesty. The majority of the
House accepted this for satisfaction, tho[ugh] my Lord had added ‘that he was in very good
health to go to the Tower; and the Lords might send him thither as soon as they pleased’. The
occasion for which expression was that he had alleged in favour of the E[arl] of Oxford that
he was in a state of health to be sent thither. The result of all this needless debate was that the
Lords should agree to commit him to the Tower; but, upon his request, should in consideration
of his present state of health, respite his being carried thither for such reasonable time as should
be thought proper by the House.

This was agreed to, and indeed was all in justice could be done for him. Yet even this was
put to the question, and carried by 81 against (I think) 55. So unreasonably was everything
contested on the one side; and so reasonably asked on the other! My Lord being now called
in, and acquainted with the order of the House for his commitment; and that now was his
time to make any requests, or to say anything he had to offer, to the House; made the usual
petitions for a copy of the impeachments; for a solicitor; for a counsel; for time to put in his
answer; for further time, if any new articles should be brought up against him. All which were
liberally allowed by the Lords, who gave him a ‘month’s time to put in his answer’. And lastly,
he desired ‘a very few days respite, in consideration of his present pain and illness, from the
Tower’; which was also granted and his commitment respited till Saturday next.

An[d] now what could be more fair, more honourable, and indulgent, than the proceedings
of the House in all this? I bless God hitherto, I have not the least scruple upon my mind. I think
mercy and favour, have rather prevailed, than strict justice, much less than rigour, tho[ugh] I
must needs own that those who appeared on this unfortunate Lord’s side, did all they could to
provoke the House even to an undue severity. What shall I say to this? What must I think of it?
Do they really wish the House should proceed with more heartiness against him? Would they be
content to ruin this unhappy Lord provided they might thereby raise the heat in the nation against
the Parliament, and have some colour to traduce their proceedings, as having more of passion
and warmth, than of equity and candour in them? To suppose this would seem uncharitable, and
what should move them thus to provoke a great majority, in those little circumstantials, contrary
to the known method of parliamentary proceedings, can hardly otherwise be accounted for.


Being indisposed with a cold, I was absent from the House when some motions were made. And
a petition presented, in favour of this unhappy Lord.68 He had requested not only 3 persons to
be assigned him as his solicitor, but the liberty of copying all manners of papers, words etc. in
any office, which he should think needful in order to his defence. This request came very late

64 A newsletter agreed with Wake’s figures (Bodleian Library, MS. Eng. hist. c.1039, f. 14), but the official
figures were 80 content and 55 not content (the only division of 12 July: Divisions in the House of Lords,
comp. Sainty and Dewar).
65 In his petition of 2 Aug. 1715 (received 3 August) Oxford asked to be allowed five counsels: ‘Mr Serjt
Comins [John Comyns (c.1667-1740), MP Malden 1701-8, 1710-20, May 1715, 1722-6, serjeant-at-law
1705, counsel to the prince of Wales: HPC 1690-175, iii, 669-71], Mr Serjt Darnell, Sir Constantine Phipps,
Pere Williams Esq, Doctor Hinchman’. These are not listed in LJ but in the main papers deposited with the
Lords: PA, HL/PO/JO/1627/3901, f. 479. These were all distinguished lawyers, Phipps having been lord
chancellor of Ireland, 1710-14.
66 16 July.
67 LJ, xx, 164 confirms Wake’s absence; while Wake’s diary states: ‘Aug 13 … Then to the House’.
68 Nottingham reported from the committee on the precedents for Oxford’s petition (LJ, xx, 164-5),
considering that the time allowed him to put in his answer expired, as I take it, within 2 days. The Lords ordered a committee to search for precedents in the like cases; and my Lord Nottingham this day made report of them.\textsuperscript{69} None came up to his pretentions. The nearest was the E[arl] of Bristol’s, and that was examined far from being a parallel.\textsuperscript{70} However the Lords allowed him to take copies of anything that passed in the Treasury during the time he was commissioner of the Treasury or Lord High Treasurer of G[r]eat Britain;\textsuperscript{71} of all records, and particularly of all treaties in which he could have been any way concerned. As to all other papers, if any were wanting, they were to be produced upon the trial, as occasion should require.

Aug[ust] 18 [1715]\textsuperscript{72}

The Committee of the Whole House sat upon the bills of attainder against Lord Bolingbroke and the D[juke] of Ormonde.\textsuperscript{73} The only thing here contended for was an enlargement of time; for which the Duchess petitioned the Lords, by a petition presented to the House by the Duke of Devonshire.\textsuperscript{74}

Lord Abingdon\textsuperscript{75} would have had it regulated by the parallel of proceedings in case of outlawry. The Bishop of R[ochester]\textsuperscript{76} by the case of the Earl of Clarendon and the Stat[ute] of

\textsuperscript{69} Harley had been chancellor of the exchequer 1710-14, and lord treasurer 1711-14.
\textsuperscript{70} John Digby (1586-1653), cr. 1st earl of Bristol in 1662, was in 1626 sent to the Tower of London for trying to impeach the duke of Buckingham, king Charles I’s favourite. Bristol was released and went into retirement for several years.
\textsuperscript{71} LJ, xx, 165.
\textsuperscript{72} Wake’s diary, f. 161: 18 Aug., ‘I went to the k[in]gs Court and spoke to Messrs Bernstorf and Bothmar [German ministers to George I]. Had a L[etter] by Order of the Princesse [of Wales] to be at the House, … I went to the H[ouse]’. George, prince of Wales, had attended most of the days when the Lords dealt with Oxford’s impeachment and later those of Bolingbroke, Ormond and Strafford. On many of these occasions when the prince attended, Bishop Wake also attended (but not on all of them). Why did Caroline, princess of Wales (for whom Wake acted as religious adviser), specifically ask Wake to attend the Lords on 18 August, which was the day that the bills of attainder against Bolingbroke and Ormond were debated (see below, p. 12)? Perhaps she acted on behalf of the prince of Wales, who knew the princess had some influence over Wake. It was possible that there would be divisions on the 18th (though in the end there were none). Did the prince and princess of Wales want Wake in the House to vote as he had done earlier against Oxford to indicate that the Waleses supported the impeachments and attainders of Bolingbroke and Ormond? Did the princess want a second account of the parliamentary proceeding, one which was perhaps more accurate than one conveyed by the prince, who was likely to be less informed on such proceedings than Wake would have been? Did the prince want to discuss the impeachments with Wake away from the court and King George I? Relations between the prince and his father were strained, and in 1716 a quarrel between the prince and the duke of Newcastle at the christening of one of the prince’s children led to a complete break between the king and the prince, with the prince setting up a rival court at Leicester House. Wake openly sided with the prince of Wales, and the king forbade him attending the king’s court.
\textsuperscript{73} Duchess of Ormond (d. 1733), Lady Mary Somerset, first surviving daughter of 1st duke of Beaufort, was Ormond’s second wife, whom he married in 1685.
\textsuperscript{74} William Cavendish (c. 1673-1729), succ. 2nd duke of Devonshire 1707, lord steward 1707-10, 1714-16 (he was Ormond’s cousin, his mother being a sister of Ormond’s father).
\textsuperscript{75} Montague Bertie (d. 1743), succ. 1699 as 2nd earl of Abingdon.
\textsuperscript{76} Francis Atterbury (d.1732), bishop of Rochester (1713-23), impeached in 1723 for involvement in a jacobite plot, was deprived of his see and sent into exile.
Attainder against 3 traitors 17 Car. 2 c [17 Car II = 1665].

The Lords chose rather to direct themselves by the case of the Duke of Leeds, who had but one week allowed him; whereas here was somewhat above 3 months. In which the Duke might very well come from Paris, and surrender himself to the Gentleman Usher of the Black Rod, or the Lieutenant of the Tower, in order to the undergoing his trial and thereby avoid the danger of attainder. In the meanwhile, against bills themselves, no exception at all was made; which were to oblige the 2 lords to surrender themselves prisoners, as before, in order to their answering to the Commons impeachment by 10 September, or else to be adjudged guilty and suffer as traitors.

The Committee sitting passed both bills without amendment, or any exceptions of either side, since they had found before in the House that more would not be allowed. And yet, when the bill against the Duke of Ormond came to be passed (for against the other there was no struggle made) they divided the House, and voted against the whole bill 23, for the passing of it 59.

I was among those latter; not out of any ill will to the Duke, God is my witness! But because I thought it my duty so to vote

The case I take to be this. The unfortunate Duke is impeached by the Commons of High Treason. His impeachment has been brought up to the Lords, and stands upon record in their House. After the vote of the House of Commons to impeach him, and while the articles are preparing against him, the Duke steals privately out of the kingdom; flees away from justice; and so renders any proceedings against him in a judiciary way impracticable. This not only implies a guilt, but in the eye of the law, carries the construction of it. However, to oblige him to return, and abide his trial, a bill is passed by which he is allowed a competent time to return to the realm; to surrender himself, and doing this, to have all the benefits of a fair and legal trial. If he refuses to return then the presumption of the law to be made a sentence; and the impeached criminal thus declining his trial, to be sentenced as guilty. What is there in all this but what is highly just and reasonable? If the Duke returns; if he put himself upon his trial, the bill has its first end and his Grace suffer nothing by it. If he will not stand his trial, but keep out of the way of justice, and even go on to commit fresh treasons with the King’s enemies abroad, instead of acquitting himself of the treason he is charged with before his peers at home, what can be more just than that the law should proceed against him as contumacious; and sentence passed as if he were confessedly guilty? This is the other end of the bill, to prevent a failure of justice; and every member of the House of Lords who owes justice as well to his country, as to the Duke, is I think in conscience obliged to do what in them lies, to see

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77 ‘Act for attainting Thomas Dolman Joseph Bampfield and Thomas Scott of High –Treason if they render not themselves by a day’ was passed on 30 Oct. 1665 when parliament was sitting in Oxford. The three had to ‘render’ themselves to the authorities by 1 Feb. 1666 (CJ, viii, 621-3). For Bampfield (an agent for the Dutch), and Scott (son of a regicide and himself a plotter) see ODNB, iii, 630; xlix, 480. The relevance of this act may be that Bolingbroke and Ormond (for whom see below n. 79), both of whom had fled from England, were given time to return to face charges, which if they failed to do they would be condemned by acts of attainder. I thank Paul Seaward for identifying this act for me.

78 Thomas Osborne (1632-1712), cr. earl of Danby 1679, accused by the house of commons of high reason and imprisoned in the Tower for five years until 1684. He was cr. duke of Leeds in 1694.

79 Ormond had fled to France 21 July 1715 (Oxford on several occasions had tried to persuade Ormond not to flee: HMC, Portland MSS, v, 667). He was attainted on 20 Aug. and his estates and Scottish honours were forfeited (JJ, xx, 155-7, 176). He died at Avignon in 1745, having lived there since 1732; previously he had spent time in the service of the king of Spain. When Bolingbroke was allowed to return to England in 1725, Ormond refused a similar offer (see HMC, Egmont Diary, I, 208).

80 By an act of attainder, parliament declared a person guilty, which saved the process of impeachment which might fail. Attainders, besides pronouncing the death penalty, also caused the family to forfeit their senior title and possibly their estates.

81 This division was taken on 18 Aug. 1715. Wake’s voting figures are correct.
The Opening of the Impeachment of Robert Harley, Earl of Oxford, June to September 1715:
The ‘Memorandum’ of William Wake, Bishop of Lincoln

right done to the one, as well to the other. If the Duke (in short) is attainted by this bill, it is his
own fault. He may prevent it if he will; whereas if this bill were not passed, justice cannot be
executed; but the great man, by them charged with the highest crime in justice, out of power to
be called to any account for it.

Sept[ember] 1 [1715]82
The articles of impeachment for high crimes and misdemeanours were brought up from the
Commons against the E[arl] of Strafford,83 [who] was not present but came afterwards in about
the middle of the debate.84 All was agreed without a division; and the Earl allowed the benefit
of all the papers and words which he desired, as far as it was in the Lords power to grant him.
All sides seemed content with what was resolved.

Sept[ember] 3 [1715]85
The E[arl] of Oxford not being well enough to come himself to the Bar of the House sent his
answer to the articles exhibited against him by one of his solicitors. Mr Taylor.86 They were
received and read;87 took up more than 2 hours and half in the reading. A Committee appointed
to inspect the Journals,88 and report to the House what has been usually the next step taken in
the proceedings of this kind.89

82 Wake was not listed as present in LJ, xx, 191, but Wake’s diary, f. 162: recorded on ‘Sept 1 … I went … to
the House’.
83 Earl of Strafford’s six articles of impeachment presented and read (LJ, xx, 192-7: 1 Sept.).
84 LJ, xx, 101: listed as present.
85 Wake was present on this day (LJ, xx, 199); Wake’s diary, f. 162: ‘Sept 3. … I went to the House, we had a
long Session’.
86 Joseph Taylor according to the Lords journal (LJ, xx, 198).
87 LJ, xx, 192. Oxford’s physician, Dr Mead, was questioned by the House as to Oxford’s health (p. 198).
88 The committee consisted of eighteen members, including one bishop (Rochester).
89 See LJ, xx, 222-3: the lord president, Lord Nottingham, reported from the committee on 5 September, citing
sixteen precedents ranging from 1626 (the duke of Buckingham) to 1709 (Dr Henry Sacheverell). The Lords
then decided to have a copy of Oxford’s answers made and that it be sent to the house of commons.