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THE FIRST EDITION OF BLACKSTONE'S
COMMENTARIES

CHARLES MCCAMIC*

During the campaigns of Philip of Macedon, the story goes that a soldier had been condemned to death, and that his wife interceded with Philip for his life. Intercession was refused, and the wife exclaimed she would appeal. Philip of Macedon was the last resort. "To whom," he amusedly inquired. "From Philip Drunk to Philip Sober," cried the wife. So it is now proposed to appeal from Sir William Blackstone, the author of the Commentaries on the Laws of England, to Sir William Blackstone, the author of the Commentaries on the Laws of England.

The incident treated here developed out of the contest of the British Government against John Wilkes. Wilkes, it will be remembered, was a member in his early life of the famous "Hell Fire" Club of London. This Club was composed largely of the leading roués of the day, and many of the practices of the members have been the subject of most severe comment. This Club got its name in a characteristic fashion. Some of the members poured the undrunk wine on one of the waiters, and then set him on fire. But that was not the limit of their practices. One of the members, Wilkes, is accused on pretty strong evidence of having written and published on his own private printing press, merely for the entertainment of the members, a parody on Pope's "Essay on Man." This parody was known as the "Essay on Woman." This has the reputation of being (to use an expression from a book catalogue) one of the "most libidinous" volumes ever published in the world. A copy of it fell into the hands of the agents of the government. It is not the purpose of the present paper to relate the bribery by which the government obtained the copy. This is a story in itself, too long for present limits, but remember, however, that the copy was so obtained.

This publication was not the least of Wilkes' troubles, for

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he was also publishing a private sheet known as the North Briton. Number after number of this paper appeared, and person after person was attacked, and held up to ridicule and scorn. Finally, the famous Number 45 appeared, and this paper contained the statement that "the honour of the hour" was "sunk even to prostitution." More comments were construed as an attack upon the King. Wilkes was a Member of Parliament at this time, April 23, 1763.

As an answer to this attack, an ill-advised movement was made, and that was to issue a "general warrant." A general warrant was one authorizing an arrest without naming the person to be arrested. There is not even a "John Doe" named in such a warrant. This particular general warrant authorized the arrest of "the authors, printers and publishers of a seditious and treasonable paper entitled 'The North Briton No. 45.'" The word "treasonable" was inserted in the warrant because Wilkes was a Member of Parliament, and with that word in the warrant, it was thought, he could not plead his privilege from arrest as a Member of Parliament. Wilkes was arrested under the warrant, and committed to the Tower of London, from which, however, he was very shortly after released on a habeas corpus. This proceeding spelled the doom of general warrants. In America, especially, the abolition of the general warrant was greatly hailed and Wilkes became very popular there, the Colonists regarding his fight against the Government as in part their own. "Wilkes and Liberty" became a famous cry of this day. But Wilkes pursued the matter, and recovered a verdict against Lord Halifax for 4000 pounds for the unlawful arrest.

"Wilkes and Liberty" became a famous cry not only in England, but in American colonies as well, and the ensuing struggle of Wilkes with the English government had much to do with hastening the advent of liberty in the Colonies. The files of American newspapers published in 1764 and again in 1768-1769 show what a deep interest was taken in America in the struggle of Wilkes. The spirit that was flamed in England into "Wilkes and Liberty" then crossed the Atlantic and the American Revolution was greatly precipitated. Recrossing the Atlantic its fires burned deep in the succeeding French Revolution. Wilkes'

brother-in-law, George Hayley, had a business connection in Boston, and it is thought that many of the American happenings were through this source communicated to Wilkes where his name was the subject of frequent toasts and many a child was baptised "John Wilkes."

Early in January, 1764, Wilkes was actually expelled from the House of Parliament for writing and printing the obnoxious No. 45 of *The North Briton*.

One of the persons whom Wilkes had offended in *The North Briton* was Hogarth, the engraver, in No. 17, and the habeas corpus of Wilkes gave the artist the occasion for his revenge. Hogarth was nothing loath for he got out one of the most famous of his etchings, which shows Wilkes as we visualize him today. It contains the Numbers 17 and 45 of *The North Briton*, and shows John Wilkes, with "a leering face, a flat nose, a twisted jaw, a swivel eye and in every detail of the engraving showing in the features expressions of spiteful mockery, perfidy and craft."

Coming back now to the knowledge that the government had obtained by bribery a copy of the "*Essay on Woman*"—defeated in its efforts to imprison Wilkes, he, nevertheless, had been expelled from the Commons, and he was yet to face double libel suits in the Court of King's Bench for writing and printing "*The North Briton No. 45,*" and the "*Essay on Woman.*"

Wilkes, however, fled to Paris, where he remained for four years. During this hegira, failing to be present to respond to a court judgment in the libel suit, Wilkes was declared an outlaw. In 1768 he returned to London, and was served with a writ to execute the sentence of outlawry—a *capias utlegatum*, and he was again committed to prison, this time to the King's Bench. In Boston a committee was raised known as the "Committee of the Sons of Liberty" and letters were addressed by it to John Wilkes and sent to the King's Bench prison. In South Carolina the popular enthusiasm took the form of raising a fund of 1500 pounds to help pay the debts of Wilkes. In Pennsylvania we have the city Wilkes-Barre.

In the ensuing appeals, the outlawry was reversed, on June 8, 1768, but the verdicts obtained against him for libel were affirmed, and for publishing the "*Essay on Woman,*"

he was sentenced to pay a fine of 500 pounds, suffer 12 months' imprisonment, find two securities for his good behavior for 7 years of 500 pounds each, and himself 1000 pounds. An effort was made on the appeal, unsuccessfully, to have the court say that all the evidence against Wilkes had been illegally obtained under a general warrant. His imprisonment ended April 17, 1770, and a few months before that date came the verdict for 4000 pounds in his suit against Lord Halifax. On the day his imprisonment ended celebrations of the event were held both in England and in America, and in Boston his health was toasted as "the illustrious martyr to liberty."

Pending these court troubles of Wilkes, he offered himself as a candidate for the House of Commons, and was elected three times, and as many times expelled on the ground that since he had been expelled in 1764, he was, therefore, incapable of sitting in the House of Commons. Great excitement prevailed; feeling ran high, and during it, with much eclat, Wilkes was made a Free Mason. The vote on the fourth election to the House of Parliament to fill the vacancy caused by the expulsion was, Wilkes 1143, and Colonel Luttrell 296. The action of the House of Commons was reviewed in the House of Lords where Lord Chatham presented a bill "for reversing the adjudications of the House of Commons, whereby John Wilkes, Esq., has been judged incapable of being elected a member to serve in the present Parliament." In the argument Lord Chatham said:

"Here are 1143 legal sworn freeholders who vote a gentleman their member of Parliament against 296 who oppose him. With this apparent majority he comes to take his seat so given him by the laws and constitution of his country. But what do the House of Commons? Why, they shut the door in his face, and by a new state arithmetic, make 296 a greater number than 1143. Is not this, my lords, flying in the face of all law and freedom?"

Lord Mansfield replied for the Government. Wilkes was an outlaw, and the argument proceeded:

"Mr. Wilkes was a nobody in the eyes of the law, therefore Colonel Luttrell had no opposition."

The Wilkes bill was rejected by a large majority.

Dr. William Blackstone now enters into the picture. He also was a Member of Parliament, where he took part in the debates against Wilkes, and in the course thereof he said he considered that Wilkes should be expelled because he published the "Essay on Woman," and having once been expelled from the House of Commons, in 1764, he was incapable of again entering it as a Member.

In the Book of Job is found the expression: "Oh that mine adversary had written a book." Dr. Blackstone had done so. He had been the law lecturer at Oxford since 1753, and the first edition of the now famous Commentaries appeared in four volumes—at different times between 1765 and 1769.

These Wilkes proceedings in Parliament were taking place, in 1769, the first volume of the Commentaries had appeared in 1765, and in that book Dr. Blackstone had, unfortunately for his position in the debate, listed the disqualifications for membership in the House of Commons.

When Dr. Blackstone had ended his argument against Wilkes, George Grenville rose, and quietly read from Blackstone's Commentaries, first edition, volume 1, page 169, the following:

"Our second point is the qualifications of persons to be elected members of the House of Commons. This depends upon the law and customs of Parliament and the statutes referred to in the margin, and from these it appears:

1. That they must not be aliens born, or minors.
2. That they must not be any of the twelve judges, because they sit in the lord's house, nor of the clergy, for they sit in the convocation; nor persons, attainted of treason or felony, for they are unfit to sit anywhere."

Then he listed other disqualifications, but *nowhere* did Dr. Blackstone list a *prior expulsion* as a disqualification.

Then Blackstone proceeded:

"But subject to these restrictions and disqualifications every subject of the realm is *eligible of common right*."

The account is that Dr. Blackstone was greatly upset by the Grenville remarks. The occasion was too good to let

pass without the usual pamphleteering of the day, and Blackstone was vigorously attacked in a number of them published during the controversy. They were so rabid that he was driven with some heat to reply, and, after attacking Grenville, made the point that he had said in his Commentaries:

“The qualification of persons to be elected depends upon the law and customs of Parliament and certain statutes referred to in the margin.”

(See his pamphlet, “A Letter to the Author of the Question” stated (1769), page 13.)

Junius in his letters also took up the attack against Dr. Blackstone. (See letters of July 29, Aug. 8, 14, 1769.) These letters of Junius are too long to be quoted here, but the nature of the heat of the controversy may be gathered from a quotation or two:

“You are a lawyer Sir, and know better than I do, upon what particular occasions a talent for misrepresentation may be fairly exerted.

“Your next insinuation * * conveys a sneer as little worthy of the gravity of your character as it is useless to your defence.

“The quotation from your Commentaries is a matter of record. It can be neither altered by your friends, nor misrepresented by your enemies; and I am willing to take your own word for what you have said in the House of Commons. If there is a real difference between what you have written and what you have spoken, you confess that your book ought to be the standard.

“The truth about the matter is evidently this: Doctor Blackstone, while he was speaking in the House of Commons, never once thought of his Commentaries, until the contradiction was unexpectedly urged, and stared him in the face. Instead of defending himself upon the spot, he sunk under the charge, in an agony of confusion and despair. It is well known that there was a pause of some minutes in the House, from an expectation that the Doctor would say something in his own defence, but it seems, his faculties were too much overpowered to think of those subtleties and refinements, which have since occurred to him.”

The *Encyclopedia Britannica* refers to this attack of “Junius” upon Blackstone and says: “This circumstance probably

strengthened the aversion he professed to parliamentary attendance," "where" he said "amidst the rage of contending parties, a man of moderation must expect to meet with no quarter from any side."

Dr. Samuel Johnson, who had formerly attacked the Government and was then a pensioner of the Government, was brought into the pamphlet bombardment that took place during these times of public excitement, and the result was his "False Alarm." This is termed by Mrs. Thrale "his first and favorite pamphlet," and in it he argued that the claim of the Wilkites that his expulsion was violative of the right of election was a false alarm. It was published in 1770. One author—Horace Bleackly—in his *Life of John Wilkes* (p. 226) says of this pamphlet: "the rhetoric * * is its most admirable feature." Boswell says of this effort of Johnson "even his vast powers were inadequate to cope with constitutional truth and reason, and his argument failed of effect" (Hill 2, p. 111). Among the arguments of Dr. Johnson will be found such as these: "A member of the House cannot be cited for his conduct in Parliament before any other court; and therefore if the House cannot punish him he may attack with impunity the rights of the people and the title of the King * *." "If the Commons have only the power of dismissing for a few days the man whom his constituents can immediately send back, if they can expel but cannot exclude, they have nothing more than nominal authority, to which perhaps obedience may never be paid * * ." "The Commons cannot make laws, they can only pass resolutions, which like all resolutions, are of force only to those that make them, and to those only while they are willing to observe them."

Wilkes himself answered, anonymously, the "False Alarm" in "A Letter to Samuel Johnson, L.L.D." the title page of which contained six lines from Johnson's *London*, apropos a pensioner and his part:

"Qui nigrum in candida vertunt, Juv. Sat. 3."

"Here let those reign whom Pensions can incite
To vote a Patriot black, a Courtier white;
Explain their Country's dear-bought rights away,
And plead for Pirates in the Face of Day;
With Slavish Tenents taint our poison'd Youth,

And lend a Lie The Confidence of Truth!"

"Dr. Samuel Johnson's Imitation."

The answer of Wilkes was very personal, savage and abusive in its comments and begins:

"Sir. Without hesitation or apology, I address myself to you, as the undoubted author of the ministerial rhapsody that has been so industriously circulated under the title of the "*False Alarm*." You have ambitiously declared yourself the spitter forth of that effusion of servility and bombast. You *could not* have been concealed.—Whilst the tenents it spreads abroad might have directed us to you, as to a probable source, the strain in which they are delivered marks you decisively * * . Your original sentiments concerning placemen and pensioners are as notorious to the world as your inveteracy against the Scotch. You have at length, it seems, discovered *worth and dignity* in the former; and are so perfectly reconciled to the latter, as to have deviated (in spite of nature) into an *attempt at humor* in their defence, holding out to public ridicule the unwieldy exhibition of the gambols of a colossus!—But the merits of Lord Bute are superabundant; and let me add, his discernment is not of the meanest; by a well-placed *pension of three hundred pounds a year* he has expiated his own sins and those of his country. Yet, surely, if it be upon such terms that you are become a *pensioner*, it were far better to return back to that poor but honest state, you and the miserable *Savage*, (note, the unfortunate Mr. Richard Savage) on default of the pittance that should have secured your quarters at the Club, were contented—in the *open air*—to growl at the *moon*, and Whigs, and Walpole, and the House of Brunswick."

Dr. Blackstone afterwards published a later edition of his Commentaries, and then for the first time he included a previous expulsion among the causes of disqualifications.

Dr. Blackstone was probably wrong in his position. However that may be, it is certain today we do not believe that a previous expulsion would per se disqualify one from holding a seat in an elective body, especially so where each body operates under a constitutional provision in effect reading that each House should be the judge of the qualifications of its own members.

The effect was that Wilkes, the demagogue, had triumphed. Expelled from the House of Commons, yet with

amazing political success, he later became Lord Mayor of London. Not only that, but on December 2, 1774, he again took his seat as a Member of the House of Commons.

In that body in 1775, he delivered a number of set speeches, carefully prepared and learned by rote—on the efforts of the Government against the American Colonists. In his speeches he used such language as this:

“A successful resistance, is a revolution, not a rebellion. Rebellion indeed, appears on the back of a flying enemy, but revolution flames on the breast-plate of the victorious warrior. Who can tell, sir, whether in consequence of this day's violent and mad address to his Majesty the scabbard may not be thrown away by them as well as by us; and should success attend them, whether in a few years the independent Americans may not celebrate the glorious era of the revolution of 1775, as we do that of 1688. The generous efforts of our forefathers for freedom Heaven crowned with success or their noble blood had dyed our scaffolds like that of Scottish traitors and rebels, and the period of our history which does us most honour would have been deemed a rebellion against the lawful authority of the prince, not a resistance authorized by all the laws of God and man, not the expulsion of a tyrant * * .

“I call the war with our brethren in America an unjust, felonious war, because the primary cause and confessed origin of it is to attempt to take their money from them without their consent, contrary to the fundamental rights of all mankind, and those great fundamental principles of the English constitution for which Hampden bled * * .

“We are fighting for the subjection, the unconditional submission of a country infinitely more extended than our own, of which every day increases the wealth, the national strength, the population. Should we not succeed, it will be a loss never enough to be deplored, a bosom friendship soured to hate and resentment * * success, final success, seems to me not equivocal, not uncertain, but impossible. However we may differ among ourselves, they are perfectly united. On this side the Atlantic party-rage unhappily divides us, but one soul animates the vast northern continent of America, the general congress and each provincial assembly.”

At another time, in the course of an attack upon the Minister he said:

“The Americans will dispute every inch of territory

with you, every narrow pass, every strong defile, every Thermopylae, every Bunker's Hill. A train of most unfortunate events will probably ensue, and the power of recruiting, perhaps subsisting, your weakened forces, at such a distance, be lost."

With all this Wilkes and the Government affected a reconciliation, and before the death of King George III Wilkes became one of his supporters.

When Wilkes and Dr. Johnson later dined together, Boswell in his Life tells us that Johnson asked him (perhaps thinking of his statement in the "False Alarm"): "Sure sir, you don't think a resolution of the House of Commons equal to the law of the land." Wilkes, no doubt with his four-year exile in mind, replied, "God forbid, sir."

It is also said that it was the custom of Wilkes' friends at their banquets to propose and drink the toast, "The first edition of Dr. Blackstone's Commentaries on the Laws of England," with great emphasis on *the first*.

Both of these editions of Blackstone with the different views of the author on the right to sit as a member in an elective house were available for use in the American colonies before the Revolutionary War. It is said that the effect of Blackstone's Commentaries on the cause of liberty can hardly be estimated. During one of the debates in Parliament on the rights of the Americans, Edmund Burke, the friend of America, said: "I hear that they have sold nearly as many Blackstone's Commentaries in America as in England."

There was published recently a review of a new work by Lord Birkenhead on "Fourteen English Judges." In this review the statement was made that Lord Birkenhead regarded Blackstone as "a graceful, though not profoundly learned expositor of the Common Law."

Blackstone though made the first successful effort to reduce to a comprehensible form the Common Law of England. One may read Bacon, Coke or Littleton, yet these all make very heavy weather when Blackstone is read in contrast. He may not have been a great judge, but as the first practical compiler of the Common Law, his reputation will outlive those of his critics.

The words added by Dr. Blackstone after the edition of 1769 appear after the word "though" in this language:

"But, subject to these standing restrictions and disqualifications, every subject of the realm is eligible of common right: though there are instances wherein persons in particular circumstances have forfeited that common right, and have been declared ineligible for that parliament by vote of the house of commons, or forever by an act of the legislature."