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REFLECTIONS

ON THE

CASE OF MR. WILKES.

[PRICE ONE SHILLING.]

R E F L E C T I O N S

O N T H E

Cafe of Mr. Wilkes,

A N D O N T H E

R I G H T of the P E O P L E

To E L E C T their own

R E P R E S E N T A T I V E S.

To which is added,

The Cafe of Mr. Walpole.

L O N D O N:

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REFLECTIONS
ON THE
RIGHT of the PEOPLE
TO
Elect their own Representatives.

IT is impossible to behold, with Indifference and Unconcern, the present critical Situation of public Affairs. When the most profligate Venality and Corruption spread themselves through all Ranks and Departments of the State, and a Mixture of Weakness and Oppression characterises every Measure of Administration, the most dangerous Discontents, and ungovernable Licentiousness among the People, are the natural, the necessary Consequences.

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Such Disorders, if not speedily redressed, can terminate in nothing less than the Destruction of the Commonwealth. The licentious Spirit of the People, if uncontrouled, must produce a total Subversion of all Order and Government: but should that Spirit, however dangerous, be crushed without a full Redress of all the Grievances so justly complained of, every Spark of Liberty must be for ever extinguished, which would be an Evil, if possible, still worse than Anarchy itself. Whatever wears even the Appearance of Oppression, will always give Birth to Licentiousness among a free People; and the only just, the only effectual Method to suppress the one, is by redressing the other.

The primary and most important Duty of an Englishman, is to support by all possible Means the invaluable Constitution of his Country. 'Tis that, in which the Greatness, the Security, the Happiness of this Nation wholly consists. 'Tis that which has rendered this
fortunate

fortunate Island, for so many Ages, the
Admiration and Envy of the World.

This glorious Constitution took its
first Rise among the fierce unconquered
Nations of the North. Those brave
Barbarians, blest with Freedom were
(in my Apprehensions) happier far in their
barren Soil, and inhospitable Climate,
in the Midst of continual Dangers and
Fatigues, than were the polished
but degenerate Sons of Rome, during
the mildest Periods of their Despotism,
rioting in Ease and Luxury, under the
propitious Skies, and in the fertile Plains
of Italy.

Liberty is unquestionably the greatest
Good which the infinite Benevolence of
Heaven can bestow on Man : without it,
all other Blessings are precarious in the
Enjoyment, and consequently trifling
in their Value. This inestimable Trea-
sure is the Birth-right of the happy Na-
tives of this Island handed down to them,
through a long Succession of Ancestors
with continual Encrease and Improve-
ments. The Name of it is in the
Mouth of every Englishman, but few

are sufficiently apprised in what Part of the Constiution it really consists.

Excellent as our Laws are, though they are deservedly stiled the Perfection of human Reason, yet we must look still farther than them, for the true Foundation of our Liberty.

In every Government, of whatever Kind, from a Despotism to a Democracy, there must exist somewhere or other, a Power superior to the Laws, namely the Power which makes those Laws, and from which they derive their Authority. The Freedom therefore of any Country wholly depends upon the Hands in which the supreme legislative Power is lodged; and the Liberty of a Nation is exactly proportioned to the Share the Body of the People have in the Legislature, and the Checks placed by the Constitution on the executive Power. That State is truly free, where the People are governed by Laws, which they have a Share in making, and to the Validity of which their Consent is essentially necessary. And that Country

try is absolutely and totally enslaved, where one single Law can be made or repealed without the Interposition or Consent of the People.

Let us apply these Principles to the Question, in what the Liberty of England consists.

Is it in *Magna Charta*, the Bill of Rights, the *Habeas Corpus Act*, or any of the other numerous and excellent Laws in Favour of the Rights and Liberties of the People? Or is it in all these taken together? Clearly not; for those Laws may all be repealed in a single Day, by the same Power that made them. In what then does it consist? It consists in the Right of the People to chuse Representatives, and in the Right of those Representatives (in Conjunction with the two other Branches of the Legislature) to make, repeal, and alter the Laws by which the People are to be governed; to inspect into the due and faithful Execution of those Laws; and to call the Ministers through whom the King exercises his executive power, to
a strict

a strict and severe Account, for every Neglect or Abuse in the Discharge of heir important Trust.

This, in a few Words, comprises the whole of *English* Liberty; and it is solely to these great constitutional Rights that we owe the superior Excellence of the Laws, under the Government of which we have so long been a flourishing and happy People. While these Rights remain inviolate, no single Act of Oppression, no particular Grievance whatsoever need alarm the People, for they have (by Means of them) the legal constitutional Power of Redress in their own Hands. But the Moment either the Rights of the Representatives when elected, or the People in electing them, are infringed, there is an End at once of Security and Liberty, the boasted Laws in Favour of the Subject, may be, at one Stroke, or by Degrees, repealed, and the despairing People left without any Means of Redress but what are given by the immutable Laws of Nature to all Mankind.

Of these Rights, as that of free Election in the People is the first in Order, so is it in Importance, and it is indeed the Corner-Stone of the whole Constitution. For of what Avail to the People are the Powers and Rights of any Set of Men, if those Men cease to be their Representatives, which they clearly do whenever the Freedom of Elections is invaded by the Hand of Power. God forbid that we should ever see such an Invasion openly and successfully made. I am persuaded we never shall. But yet there are some Circumstances in the present State of Affairs, which call for the most serious Attention both of the People at large, and their Representatives.

The late Proceedings in a great northern County are of a Nature which, if supported by the higher Powers, tends to the total Subversion of the Constitution and Liberties of this Country, as appears from the Principles above laid down. For when a Sheriff takes upon him to return one Person as the Representative of a County, when the free Choice of that Country had pitched
upon

upon another, such a Return, if received and approved of, does most effectually rob the People of the Right of chusing their own Representatives.

There are Rumors also in Regard to another Election, which have much attracted the public Attention. It is more than whispered, that there is an Intention in some Persons (whose Councils have but too much Influence in the Affairs of this Country) to expel from the House a Gentleman chosen to be the Representative of one of the greatest Counties in the Kingdom, by a most uncommon Majority of the Freeholders of that County, and to force upon those Freeholders a Representative whom they had but just before thought proper to reject. Whether those Freeholders acted right or wrong in electing the one, and rejecting the other of those Gentlemen, is totally immaterial: The Constitution certainly gave them a Right to do as they have done, and does as certainly give them a Right to be represented by the Person they have thought proper to chuse for that Purpose, and by no other.

These

These two Affairs have spread a general Alarm and Discontent through the whole Kingdom, but I am persuaded that such Alarm will turn out to be without Foundation. Thank Heaven the Persons who have espoused such Measures, and avowed such Intentions, have not, in themselves, the Power effectually to compleat them. In this Assurance I rest satisfied, for I neither can, nor will believe that a Set of Gentlemen on whom the People of *England* have just conferred the greatest possible Obligation, by chusing them from amongst all others, to be entrusted with the Protection of their Rights and Liberties, will immediately exert the Power thus conferred on them, to rob their Constituents of the most valuable Privilege they possess, the Right of chusing their own Representatives. I say I neither can nor will believe this: But when the Creatures of the Favourite, and his Administration have dared openly to avow such Intentions, it becomes the Duty of every *Englishman* to oppose them, by all legal and constitutional

C Means

Means. Our Representatives have it in their Power effectually to oppose them, and that Power I have no Doubt they will properly exert. But the People have it also in their Power legally to contribute to the same End.

Our gracious Sovereign, *if his Eyes were opened* by the unanimous Representations of his loyal Subjects, I am persuaded, would never countenance, or lend the sacred Sanction of his Authority to such Measures. And the united Voice of a free and spirited People, would be a Check upon all other Persons, whatever their Inclinations might be.

Instructions to Representatives, Petitions to Parliament, Addresses to the Throne itself, when offered with proper Deference and decent Submission, are all legal, all constitutional ; and such Means have often conveyed the Sense of the People to their Superiors, in so effectual a Manner as to obtain a full Redress of Grievances, and prevent a numerous Train of impending Evils.

These

These are Means which the Constitution of this Country has left in the Hands of every Man to express his Sense of public Affairs ; and these are the most proper, nay, the only Means by which (in a well-regulated Government) the People should seek for a Redress of their Grievances, and not by riotous and tumultuous Assemblies, or an ill-judged and ineffectual Opposition to the Power of the Laws.

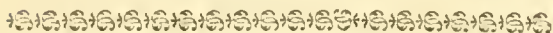
The Editor having been favoured by another Hand with the following curious Paper, thought he could not do better, than subjoin to it these well-written and constitutional Remarks.

THE
C A S E
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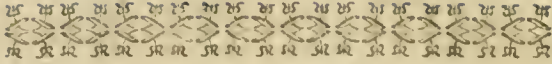
MR. WALPOLE,

Afterwards Sir ROBERT WALPOLE,
And EARL of ORFORD ;

Respecting his Re-election for the Bo-
rough of LYNN in 1712, after he had
been expelled the *House of Commons*.



MOST People are well acquainted with
the Case of Mr. Walpole, so far as
relates to his having been expelled the
House of Commons, upon the Charge of a
Breach of Trust while Secretary at War,
by the corrupt Influence of the Jacobite
Ministers in the Reign of the weak Queen
Anne : but as very few know what pas-
sed afterwards, upon Mr. Walpole's be-
ing re-elected, it will not be improper to
reprint the Account of that Transaction
verbatim, from the Copy published in
1712, which is in very few Hands.



A

LETTER, &c.

S I R,

“ I Need not observe to you, that there was not the least Objection made to the Merits of the Election, the Disproportion in the Numbers upon the Poll was so great, that all the Engagements made to Mr. *Taylor*, to bring him in, right or wrong, were dropped and given up.

The great Endeavours, and indirect Practices, that were used to prevent Mr. *Walpole's* being chose again, are worth the Notice: I need not tell you from what Corner the Expence was supplied; was I but to name the Gentleman

tleman that was sent down upon this Occasion, you would immediately conclude, that he travelled *Carriage paid*, unless a sudden Fit of Generosity came upon him, and his Good-Will to Mr. *Walpole* prevailed with him to exert more against him, than ever he had the Heart to do for himself; such a particular Obligation Mr. *Walpole* must be sensible of, and I dare answer for him he will never forget.

As I think the whole Proceeding against Mr. *Walpole* is far from being any Discredit to him, so it must be thought a particular Honour done him, to see his Country still retain the same good Opinion of him, and that so considerable a *Corporation* had Virtue and Resolution enough, to do his injured Character Justice, and return him, in Opposition to Power, Corruption, Party-Malice, and the united Strength of all
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the *Non-jurors*, *Non-abjurors*, and concealed *Jacobites* of the Country, countenanced by *Court-Emissaries*, *Half Receivers General*, and *Itinerant Justices of the Peace*.

But being elected, and returned a Member to serve in Parliament, according to the Law of the Land, and the Law of Parliament was not sufficient to secure Mr. *Walpole* his Seat in the *House of Commons*, he that was before expelled, in the Manner you have heard, for the same Reasons was not to be admitted to sit upon any Account; to expel him again in express Words, would have looked a little too harsh; but to declare him incapable, amounted to the same Thing, and served the Purpose just as well.

But, before I enter upon the main Argument, give me Leave to observe,
that

that here not only the Right of the Member elected, but the Rights and Privileges of the Electors, are nearly concerned; for, next to the Disfranchising of a *Corporation*, and taking from them entirely the Power of electing, to seclude or expel, without just Cause, such Members, duly qualified, as they have thought fit to elect, is an Invasion and Violence offered to the fundamental and invaluable Privilege of choosing their own *Representatives*. I am sensible the *House of Commons* has often taken upon them and exercised the Power of expelling Members, which has been submitted to, because 'tis hard to tell how or where to find Redress; but I will venture to affirm, that no Member, whose Right of Sitting is undoubted, and not controverted, can legally lose or forfeit that Right upon Account of any Act or Offence done or committed by him in any

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other

other Capacity but that of a Member. A Man may certainly, *quatenus Member*, offend in many Instances, so as to deserve Expulsion, but I shall be sorry to see the Practice of expelling upon any other Account made familiar to a *House of Commons*; that Method of *Weeding out* such as shall be disagreeable to a Majority, and rendered so by the Insinuations of a *Ministry*, may give a *Designing Ministry* a Power in Parliament dangerous to the Liberty of the People, may enable them to impose the grossest Falsities upon an *ignorant Representative*, may facilitate the passing scandalous *Misrepresentations*, when such shall be necessary to support the Cause, may bring Parliaments into a general Disesteem, when it shall be seen too late, that their Resolutions were not founded upon Facts, nor supported by Truth, and may end at last in the utter Subversion of our Constitution;

for

for who can doubt if a *House of Commons* can ever be worked up to vote Expulsions and Incapacities at the Will and Direction of a *Ministry*, that an *ill Ministry*, will ever suffer themselves to be troubled with such as are able and will presume to explain, perhaps expose, or even debate against their Measures; that if this Practice shall ever prevail, a Man will be no longer in Danger of losing only a Place or Employment at Court, for not complying, but his Place in *Parliament* must follow, that too will become precarious, and be held only, *durante bene placito*, at the Will and Pleasure of an arbitrary *Ministry*.

I come now to consider the main Question, whether Mr. *Walpole* was, at the Time of his Election, incapable of being elected a Member to serve in Parliament; and if he was capable,

how far a second Expulsion was just and reasonable.

The Incapacity must arise either from the Tenor and Words of the *Writ*, or from Mr. *Walpole's* being a Prisoner in the *Tower*, or from his having been expelled *the House*.

The Words in the *Precept* from which the Objection is taken, are, *In loco prædicti, &c. alium Burgensem eligi facere, &c.* But in this Objection there can be no Weight; for the same Person being re-elected, is as much another Burgess as any other Person would be. Besides, in all Vacancies, during the Continuance of a Parliament, or in Case of an Election being made void upon any Account whatsoever, the Words of the *Precept* are always the same; and yet there are innumerable Instances where the same Person has
been

been again elected, and returned upon the Vacancy of himself, and admitted to be duly elected and returned without any Dispute or Controversy.

Nor is there any more Ground to say, that being a Prisoner in the *Tower* renders a Man incapable of being elected; whatever subjects a Man to an Incapacity of being elected, does equally subject him to an Incapacity of continuing a Member, although duly elected before: As a *Commissioner of the Customs or Excise* is made by the Law incapable of being elected, so any Member of Parliament accepting of those or any other disqualifying Office, is thereby rendered immediately incapable of sitting and voting in Parliament, and his Election is, *ipso facto*, void. By the same Rule, if a Commitment by the *House of Commons* renders

renders a Man incapable of being elected, it likewise renders him incapable of continuing a Member, and then the Commitment of a Member is in itself an Expulsion, and all Votes of Expulsion, after a Commitment, are utterly unnecessary and superfluous ; but as it is most notorious that a Commitment is not in itself an Expulsion, and that many Members have continued a whole Sessions under Confinement, and afterwards sat again in the same Parliament, it necessarily follows, that Mr. *Walpole's* Imprisonment did not render him incapable of being elected, and in Consequence, he being duly and indisputably elected, had an undoubted Right to sit and vote in this Parliament, as soon as his Imprisonment should be determined ; and 'tis unreasonable to suppose that an Imprisonment should make an Incapacity for the whole Parliament, when the Imprisonment itself does necessarily

cessarily determine with the present Session.

The single Question then is, Whether an Expulsion necessarily implies an Incapacity of being elected again into the same Parliament?

All Incapacities must arise either from some known Law or Statute, or from the Usage and Custom of Parliament, which is the Law of Parliament. That there is any express Law or Statute, will not be pretended; 'tis then to be considered, how far this Pretence can be supported by Precedents; And in this Case it seems sufficient to insist, that there can be no Precedent given, where an Expulsion has been construed an Incapacity, unless it was at the same Time made Part of the Sentence, and declared expressly to extend so far; so that if it be a known Rule, than no Subject can incur any Penalty, or lose
or

or forfeit any Right, Privilege, or Property, without the Authority of some Law, or Usage, and Custom, where that is the only Law, it will follow, that an Expulsion ought not to be deemed an Incapacity, if no one Instance can be given where it has been so judged by Parliament.

And as it is necessary to shew, that a bare Expulsion has of itself been construed an Incapacity, so it may very justly be inferred, an Incapacity having in some Cases been expressly inserted, and made Part of the Sentence, that, where it is omitted, 'tis not to be supposed that 'tis necessarily implied, because it would be needless at any Time to express and declare what of itself must be thought a necessary Consequence.

And

And here I cannot omit taking Notice of a Doctrine which I heard advanced, I mean, *The Doctrine of Intendments*. I have heard of *Innuendos* in former Reigns, and heard it always exploded as the first Instance of Tyranny and Oppression, that Men should be argued to be guilty of Crimes by Construction, and suffer for the supposed Meaning of the Law, where they had offended against no express Law; but I never heard till now, that not only the Law, but that a *Sentence and Judgment did mean or intend*, or was to be supposed to *mean or intend* more than it really expressed. If this is Law, in what a precarious State and Condition are the Lives and Properties of the Subject? If it shall ever be thought after Judgment passed and executed, that the Sentence did not express enough, shall any Man suffer farther beyond the express Words of a Sentence according to

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such Meanings or *Intendments* as Art and Ingenuity shall be able to put upon it? Such Doctrines had been proper for those Times and that Reign which made the *Revolution* necessary, but I hope will never prevail until the *Revolution* is entirely set aside, and we come to be openly told, that the *Protestant Succession intended* what no body yet dreamt of; and that the Exclusion of all Papists did *not intend* the Exclusion of any Body that shall call himself a Protestant.

No Man will deny but that to be made incapable of being elected, is a further, and an additional Punishment to the being expelled; how then can it be thought just, when *the House* had proceeded to censure and punish as far as they thought the Nature of the Crime required (and no body I believe thinks there was any Mercy or Lenity shewn

shewn in the present Case) to add to their former Punishment the further Severity of declaring Mr. *Walpole* incapable of being elected, which at that time, if they had thought it reasonable, had been proper, and in their Power to do? but to make such a Declaration afterwards, is to expel him again, and to inflict another Punishment for the same Crime for which he must be thought to have suffered already very severely and beyond all Precedent.

Will any Man say, that *the House* might not without contradicting one Word of the Judgment passed upon Mr. *Walpole*, or without the Breach of any Law, Usage, or Custom of Parliament, have admitted Mr. *Walpole* upon his new Election? If so, I will venture to affirm, that they ought to admit any Man whom they legally may, and not to admit a Man to the Enjoyment of a legal Right, is, what

Power for a Time may support, but nothing can justify.

If no Law or Usage makes Expulsion an Incapacity, nothing but a Declaration of Parliament can do it; which having not been made previous to the Election, there could be no Incapacity at the Time of the Election; and such a Declaration subsequent to the Election, is, in other Words, a second Expulsion.

The Honour of *the House* is no Way concerned in admitting a Member upon a new Election whom they had before expelled, unless they were themselves the Electors. They are the sole Judges who are duly and legally elected, but the *Corporations* have the sole Power of determining who are fit and proper Persons to be elected, under such Qualifications and Restrictions as the Law directs.

I will

I will trouble you with no more Reasons and Arguments, but shortly touch upon all the Precedents that seem at all to affect the present case.

The Case of Mr. *Sloan* is the only Precedent that has been pretended to, but does not come up to the present Question; *The House* resolved, ‘ That Mr. *Sloan* in treating the Corporation of *Thetford*, had been guilty of a Breach of the Act of Parliament, for preventing Expences in Elections;’ and thereupon the Election was void, and a new Writ was issued; and Mr. *Sloan* being again elected, the Question was upon the Construction of the Act of Parliament, how far the treating at the first Election was to be supposed to influence the second Election; and the Resolution that he was not capable to serve in Parliament, is not general, but confined to the Borough of *Thetford*; So
that

that Mr. *Sloan* was neither expelled, nor declared incapable of sitting in that Parliament, as having been expelled, but only not capable of serving for that *Borough*, which he had corrupted, and where the former Treating might be supposed still to operate, but he might have been chosen in any other *Borough*, and sat in that Parliament even after the last Resolution, and by Consequence was under no such Incapacity as is now contended for.

The Resolution in Mr. *Hall's* Case, in Queen *ELIZABETH's* Time, was,
 ‘ That *Arthur Hall* should be presently
 ‘ removed, severed, and cutoff from be-
 ‘ ing any longer a Member of this House
 ‘ during the Continuance of this present
 ‘ Parliament.’ Which Sentence in our
 modern Language, is not only an Ex-
 pulsion, but a Prohibition to his being
 again chosen into that Parliament;
 which is declaring him incapable, and
 making

making the Incapacity Part of the Sentence and Punishment.

Mr. *Wollaston* was expelled, re-elected, and sat in the same Parliament unmolested; and the Distinction that is made upon the Cause of his Expulsion, does not alter the Case, for 'tis the Sentence and Judgment of the House, if any Thing, and not the Crime or Occasion, that makes the Incapacity; and either every Man that is expelled is thereby made incapable, or no Man.

Sir *Robert Sawyer* was likewise expelled, and re-elected immediately after the Sentence of Expulsion was passed, in the Vacancy occasioned by his own Expulsion.

These Considerations prevailed with me to be of Opinion, that if Mr. *Walpole* was to be tried by the Law of the
Land,

Land, or by the Law and Usage of Parliament, or by any known Rules of Reason and Justice, there was no Foundation to declare, that he was incapable of being elected a Member to serve in this present Parliament; and I am afraid that if his Case comes to be thoroughly considered, it will be thought an Hardship of the first Impression, that for a slight Offence, proved by no direct Evidence, vindicated by *positive Evidence upon Oath*, a Gentleman should be censured in the strongest Terms, imprisoned, and expelled the House, and afterwards expelled again.

F I N I S.

