EDMUND BURKE

THE WORKS OF THE RIGHT HONOURABLE EDMUND BURKE, VOL. 07 (OF 12)

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Burke E.

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Содержание

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FRAGMENTS AND NOTES OF SPEECHES

During the period of Mr. Burke's Parliamentary labors, some alterations in the Acts of Uniformity, and the repeal of the Test and Corporation Acts, were agitated at various times in the House of Commons. It appears from the state of his manuscript papers, that he had designed to publish some of the Speeches which he delivered in those discussions, and with that view had preserved the following Fragments and detached Notes, which are now given to the public with as much order and connection as their imperfect condition renders them capable of receiving. The Speeches on the Middlesex Election, on shortening the Duration of Parliaments, on the Reform of the Representation in Parliament, on the Bill for explaining the Power of Juries in Prosecutions for libels, and on the Repeal of the Marriage Act, were found in the same imperfect state.

SPEECH
ON
THE ACTS OF UNIFORMITY
FEBRUARY 6, 1772

NOTE

The following Speech was occasioned by a petition to the House of Commons from certain clergymen of the Church of England, and certain of the two professions of Civil Law and Physic, and others, praying to be relieved from subscription to the Thirty-Nine Articles, as required by the Acts of Uniformity. The persona associated for this purpose were distinguished at the time by the name of "The Feathers Tavern Association," from the place where their meetings were usually held. Their petition was presented on the 6th of February, 1772; and on a motion that it should be brought up, the same was negatived on a division, in which Mr. Burke voted in the majority, by 217 against 71.

SPEECH

Mr. Speaker,—I should not trouble the House upon this question, if I could at all acquiesce in many of the arguments, or justify the vote I shall give upon several of the reasons which have been urged in favor of it. I should, indeed, be very much concerned, if I were thought to be influenced to that vote by those arguments.

In particular, I do most exceedingly condemn all such arguments as involve any kind of reflection on the personal character of the gentlemen who have brought in a petition so decent in the style of it, and so constitutional in the mode. Besides the unimpeachable integrity and piety of many of the promoters of this petition, which render those aspersions as idle as they are unjust, such a way of treating the subject can have no other effect than to turn the attention of the House from the merits of the petition, the only thing properly before us, and which we are sufficiently competent to decide upon, to the motives of the petitioners, which belong exclusively to the Great Searcher of Hearts.

We all know that those who loll at their ease in high dignities, whether of the Church or of the State, are commonly averse to all reformation. It is hard to persuade them that there can be anything amiss in establishments which by feeling experience they find to be so very comfortable. It is as true, that, from the same selfish motives, those who are struggling upwards are apt to find everything wrong and out of order. These are truths upon one side and on the other; and neither on the one side or the other in argument are they worth a single farthing. I wish, therefore, so much had not been said upon these ill-chosen, and worse than ill-chosen, these very invidious topics.

I wish still more that the dissensions and animosities which had slept for a century had not been just now most unseasonably revived. But if we must be driven, whether we will or not, to recollect these unhappy transactions, let our memory be complete and equitable, let us recollect the whole of them together. If the Dissenters, as an honorable gentleman has described them, have formerly risen from a "whining, canting, snivelling generation," to be a body dreadful and ruinous to all our establishments, let him call to mind the follies, the violences, the outrages, and persecutions, that conjured up, very blamably, but very naturally, that same spirit of retaliation. Let him recollect, along with the injuries, the services which Dissenters have done to our Church and to our State. If they have once destroyed, more than once they have saved them. This is but common justice, which they and all mankind have a right to.

There are, Mr. Speaker, besides these prejudices and animosities, which I would have wholly removed from the debate, things more regularly and argumentatively urged against the petition, which, however, do not at all appear to me conclusive.

First, two honorable gentlemen, one near me, the other, I think, on the other side of the House, assert, that, if you alter her symbols, you destroy the being of the Church of England. This, for the sake of the liberty of that Church, I must absolutely deny. The Church, like every body corporate, may alter her laws without changing her identity. As an independent church, professing fallibility, she has claimed a right of acting without the consent of any other; as a church, she claims, and has always exercised, a right of reforming whatever appeared amiss in her doctrine, her discipline, or her rites. She did so, when she shook off the Papal supremacy in the reign of Henry the Eighth, which was an act of the body of the English Church, as well as of the State (I don't inquire how obtained). She did so, when she twice changed the Liturgy in the reign of King Edward, when she then established Articles, which were themselves a variation from former professions. She did so, when she cut off three articles from her original forty-two, and reduced them to the present thirty-nine; and she certainly would not lose her corporate identity, nor subvert her fundamental principles, though she were to leave ten of the thirty-nine which remain out of any future confession of her faith. She would limit her corporate powers, on the contrary, and she would oppose her fundamental principles, if she were to deny herself the prudential exercise of such capacity of reformation. This, therefore, can be no objection to your receiving the petition.

In the next place, Sir, I am clear, that the Act of Union, reciting and ratifying one Scotch and one English act of Parliament, has not rendered any change whatsoever in our Church impossible, but by a dissolution of the union between the two kingdoms.

The honorable gentleman who has last touched upon that point has not gone quite so far as the gentlemen who first insisted upon it. However, as none of them wholly abandon that post, it will not be safe to leave it behind me unattacked. I believe no one will wish their interpretation of that act to be considered as authentic. What shall we think of the wisdom (to say nothing of the competence) of that legislature which should ordain to itself such a fundamental law, at its outset, as to disable itself from executing its own functions,—which should prevent it from making any further laws, however wanted, and that, too, on the most interesting subject that belongs to human society, and where she most frequently wants its interposition,—which should fix those fundamental laws that are forever to prevent it from adapting itself to its opinions, however clear, or to its own necessities, however urgent? Such an act, Mr. Speaker, would forever put the Church out of its own power; it certainly would put it far above the State, and erect it into that species of independency which it has been the great principle of our policy to prevent.

The act never meant, I am sure, any such unnatural restraint on the joint legislature it was then forming. History shows us what it meant, and all that it could mean with any degree of common sense.

In the reign of Charles the First a violent and ill-considered attempt was made unjustly to establish the platform of the government and the rites of the Church of England in Scotland, contrary to the genius and desires of far the majority of that nation. This usurpation excited a most mutinous spirit in that country. It produced that shocking fanatical Covenant (I mean the Covenant of '36) for forcing their ideas of religion on England, and indeed on all mankind. This became the occasion, at length, of other covenants, and of a Scotch army marching into England to fulfil them; and the Parliament of England (for its own purposes) adopted their scheme, took their last covenant, and destroyed the Church of England. The Parliament, in their ordinance of 1648, expressly assign their desire of conforming to the Church of Scotland as a motive for their alteration.

To prevent such violent enterprises on the one side or on the other, since each Church was going to be disarmed of a legislature wholly and peculiarly affected to it, and lest this new uniformity in the State should be urged as a reason and ground of ecclesiastical uniformity, the Act of Union provided that presbytery should continue the Scotch, as episcopacy the English establishment, and

that this separate and mutually independent Church-government was to be considered as a part of the Union, without aiming at putting the regulation within each Church out of its own power, without putting both Churches out of the power of the State. It could not mean to forbid us to set anything ecclesiastical in order, but at the expense of tearing up all foundations, and forfeiting the inestimable benefits (for inestimable they are) which we derive from the happy union of the two kingdoms. To suppose otherwise is to suppose that the act intended we could not meddle at all with the Church, but we must as a preliminary destroy the State.

Well, then, Sir, this is, I hope, satisfactory. The Act of Union does not stand in our way. But, Sir, gentlemen think we are not competent to the reformation desired, chiefly from our want of theological learning. If we were the legal assembly....

If ever there was anything to which, from reason, nature, habit, and principle, I am totally averse, it is persecution for conscientious difference in opinion. If these gentlemen complained justly of any compulsion upon them on that article, I would hardly wait for their petitions; as soon as I knew the evil, I would haste to the cure; I would even run before their complaints.

I will not enter into the abstract merits of our Articles and Liturgy. Perhaps there are some things in them which one would wish had not been there. They are not without the marks and characters of human frailty.

But it is not human frailty and imperfection, and even a considerable degree of them, that becomes a ground for your alteration; for by no alteration will you get rid of those errors, however you may delight yourselves in varying to infinity the fashion of them. But the ground for a legislative alteration of a legal establishment is this, and this only,—that you find the inclinations of the majority of the people, concurring with your own sense of the intolerable nature of the abuse, are in favor of a change.

If this be the case in the present instance, certainly you ought to make the alteration that is proposed, to satisfy your own consciences, and to give content to your people. But if you have no evidence of this nature, it ill becomes your gravity, on the petition of a few gentlemen, to listen to anything that tends to shake one of the capital pillars of the state, and alarm the body of your people upon that one ground, in which every hope and fear, every interest, passion, prejudice, everything which can affect the human breast, are all involved together. If you make this a season for religious alterations, depend upon it, you will soon find it a season of religious tumults and religious wars.

These gentlemen complain of hardship. No considerable number shows discontent; but, in order to give satisfaction to any number of respectable men, who come in so decent and constitutional a mode before us, let us examine a little what that hardship is. They want to be preferred clergymen in the Church of England as by law established; but their consciences will not suffer them to conform to the doctrines and practices of that Church: that is, they want to be teachers in a church to which they do not belong; and it is an odd sort of hardship. They want to receive the emoluments appropriated for teaching one set of doctrines, whilst they are teaching another. A church, in any legal sense, is only a certain system of religious doctrines and practices fixed and ascertained by some law,—by the difference of which laws different churches (as different commonwealths) are made in various parts of the world; and the establishment is a tax laid by the same sovereign authority for payment of those who so teach and so practise: for no legislature was ever so absurd as to tax its people to support men for teaching and acting as they please, but by some prescribed rule.

The hardship amounts to this,—that the people of England are not taxed two shillings in the pound to pay them for teaching, as divine truths, their own particular fancies. For the state has so taxed the people; and by way of relieving these gentlemen, it would be a cruel hardship on the people to be compelled to pay, from the sweat of their brow, the most heavy of all taxes to men, to condemn as heretical the doctrines which they repute to be orthodox, and to reprobate as superstitious the practices which they use as pious and holy. If a man leaves by will an establishment for preaching, such as Boyle's Lectures, or for charity sermons, or funeral sermons, shall any one complain of an

hardship, because he has an excellent sermon upon matrimony, or on the martyrdom of King Charles, or on the Restoration, which I, the trustee of the establishment, will not pay him for preaching?—S. Jenyns, Origin of Evil.—Such is the hardship which they complain of under the present Church establishment, that they have not the power of taxing the people of England for the maintenance of their private opinions.

The laws of toleration provide for every real grievance that these gentlemen can rationally complain of Are they hindered from professing their belief of what they think to be truth? If they do not like the Establishment, there are an hundred different modes of Dissent in which they may teach. But even if they are so unfortunately circumstanced that of all that variety none will please them, they have free liberty to assemble a congregation of their own; and if any persons think their fancies (they may be brilliant imaginations) worth paying for, they are at liberty to maintain them as their clergy: nothing hinders it. But if they cannot get an hundred people together who will pay for their reading a liturgy after their form, with what face can they insist upon the nation's conforming to their ideas, for no other visible purpose than the enabling them to receive with a good conscience the tenth part of the produce of your lands?

Therefore, beforehand, the Constitution has thought proper to take a security that the tax raised on the people shall be applied only to those who profess such doctrines and follow such a mode of worship as the legislature, representing the people, has thought most agreeable to their general sense,—binding, as usual, the minority, not to an assent to the doctrines, but to a payment of the tax.

But how do you ease and relieve? How do you know, that, in making a new door into the Church for these gentlemen, you do not drive ten times their number out of it? Supposing the contents and not-contents strictly equal in numbers and consequence, the possession, to avoid disturbance, ought to carry it. You displease all the clergy of England now actually in office, for the chance of obliging a score or two, perhaps, of gentlemen, who are, or want to be, beneficed clergymen: and do you oblige? Alter your Liturgy,—will it please all even, of those who wish, an alteration? will they agree in what ought to be altered? And after it is altered to the mind of every one, you are no further advanced than if you had not taken a single step; because a large body of men will then say you ought to have no liturgy at all: and then these men, who now complain so bitterly that they are shut out, will themselves bar the door against thousands of others. Dissent, not satisfied with toleration, is not conscience, but ambition.

You altered the Liturgy for the Directory. This was settled by a set of most learned divines and learned laymen: Selden sat amongst them. Did this please? It was considered upon both sides as a most unchristian imposition. Well, at the Restoration they rejected the Directory, and reformed the Common Prayer,—which, by the way, had been three times reformed before. Were they then contented? Two thousand (or some great number) of clergy resigned their livings in one day rather than read it: and truly, rather than raise that second idol, I should have adhered to the Directory, as I now adhere to the Common Prayer. Nor can you content other men's conscience, real or pretended, by any concessions: follow your own; seek peace and ensue it. You have no symptoms of discontent in the people to their Establishment. The churches are too small for their congregations. The livings are too few for their candidates. The spirit of religious controversy has slackened by the nature of things: by act you may revive it. I will not enter into the question, how much truth is preferable to peace. Perhaps truth may be far better. But as we have scarcely ever the same certainty in the one that we have in the other, I would, unless the truth were evident indeed, hold fast to peace, which has in her company charity, the highest of the virtues.

This business appears in two points of view: 1st, Whether it is a matter of grievance; 2nd, Whether it is within our province to redress it with propriety and prudence. Whether it comes properly before us on a petition upon matter of grievance I would not inquire too curiously. I know, technically speaking, that nothing agreeable to law can be considered as a grievance. But an over-attention to the rules of any act does sometimes defeat the ends of it; and I think it does so in this Parliamentary

act, as much at least as in any other. I know many gentlemen think that the very essence of liberty consists in being governed according to law, as if grievances had nothing real and intrinsic; but I cannot be of that opinion. Grievances may subsist by law. Nay, I do not know whether any grievance can be considered as intolerable, until it is established and sanctified by law. If the Act of Toleration were not perfect, if there were a complaint of it, I would gladly consent to amend it. But when I heard a complaint of a pressure on religious liberty, to my astonishment I find that there was no complaint whatsoever of the insufficiency of the act of King William, nor any attempt to make it more sufficient. The matter, therefore, does not concern toleration, but establishment; and it is not the rights of private conscience that are in question, but the propriety of the terms which are proposed by law as a title to public emoluments: so that the complaint is not, that there is not toleration of diversity in opinion, but that diversity in opinion is not rewarded by bishoprics, rectories, and collegiate stalls. When gentlemen complain of the subscription as matter of grievance, the complaint arises from confounding private judgment, whose rights are anterior to law, and the qualifications which the law creates for its own magistracies, whether civil or religious. To take away from men their lives, their liberty, or their property, those things for the protection of which society was introduced, is great hardship and intolerable tyranny; but to annex any condition you please to benefits artificially created is the most just, natural, and proper thing in the world. When *e nova* you form an arbitrary benefit, an advantage, preëminence, or emolument, not by Nature, but institution, you order and modify it with all the power of a creator over his creature. Such benefits of institution are royalty, nobility, priesthood, all of which you may limit to birth; you might prescribe even shape and stature. The Jewish priesthood was hereditary. Founders' kinsmen have a preference in the election of fellows in many colleges of our universities: the qualifications at All Souls are, that they should be *optime nati, bene vestiti, mediocriter docti*.

By contending for liberty in the candidate for orders, you take away the liberty of the elector, which is the people, that is, the state. If they can choose, they may assign a reason for their choice; if they can assign a reason, they may do it in writing, and prescribe it as a condition; they may transfer their authority to their representatives, and enable them to exercise the same. In all human institutions, a great part, almost all regulations, are made from the mere necessity of the case, let the theoretical merits of the question be what they will. For nothing happened at the Reformation but what will happen in all such revolutions. When tyranny is extreme, and abuses of government intolerable, men resort to the rights of Nature to shake it off. When they have done so, the very same principle of necessity of human affairs to establish some other authority, which shall preserve the order of this new institution, must be obeyed, until they grow intolerable; and you shall not be suffered to plead original liberty against such an institution. See Holland, Switzerland.

If you will have religion publicly practised and publicly taught, you must have a power to say what that religion will be which you will protect and encourage, and to distinguish it by such marks and characteristics as you in your wisdom shall think fit. As I said before, your determination may be unwise in this as in other matters; but it cannot be unjust, hard, or oppressive, or contrary to the liberty of any man, or in the least degree exceeding your province. It is, therefore, as a grievance, fairly none at all,—nothing but what is essential, not only to the order, but to the liberty, of the whole community.

The petitioners are so sensible of the force of these arguments, that they do admit of one subscription,—that is, to the Scripture. I shall not consider how forcibly this argument militates with their whole principle against subscription as an usurpation on the rights of Providence: I content myself with submitting to the consideration of the House, that, if that rule were once established, it must have some authority to enforce the obedience; because, you well know, a law without a sanction will be ridiculous. Somebody must sit in judgment on his conformity; he must judge on the charge; if he judges, he must ordain execution. These things are necessary consequences one of the other; and then, this judgment is an equal and a superior violation of private judgment; the right of private judgment is violated in a much greater degree than it can be by any previous subscription. You come

round again to subscription, as the best and easiest method; men must judge of his doctrine, and judge definitively: so that either his test is nugatory, or men must first or last prescribe his public interpretation of it.

If the Church be, as Mr. Locke defines it, *a voluntary society*, &c., then it is essential to this voluntary society to exclude from her voluntary society any member she thinks fit, or to oppose the entrance of any upon such conditions as she thinks proper. For, otherwise, it would be a voluntary society acting contrary to her will, which is a contradiction in terms. And this is Mr. Locke's opinion, the advocate for the largest scheme of ecclesiastical and civil toleration to Protestants (for to Papists he allows no toleration at all).

They dispute only the extent of the subscription; they therefore tacitly admit the equity of the principle itself. Here they do not resort to the original rights of Nature, because it is manifest that those rights give as large a power of controverting every part of Scripture, or even the authority of the whole, as they do to the controverting any articles whatsoever. When a man requires you to sign an assent to Scripture, he requires you to assent to a doctrine as contrary to your natural understanding, and to your rights of free inquiry, as those who require your conformity to any one article whatsoever.

The subscription to Scripture is the most astonishing idea I ever heard, and will amount to just nothing at all. Gentlemen so acute have not, that I have heard, ever thought of answering a plain, obvious question: What is that Scripture to which they are content to subscribe? They do not think that a book becomes of divine authority because it is bound in blue morocco, and is printed by John Baskett and his assigns. The Bible is a vast collection of different treatises: a man who holds the divine authority of one may consider the other as merely human. What is his Canon? The Jewish? St. Jerome's? that of the Thirty-Nine Articles? Luther's? There are some who reject the Canticles; others, six of the Epistles; the Apocalypse has been suspected even as heretical, and was doubted of for many ages, and by many great men. As these narrow the Canon, others have enlarged it by admitting St. Barnabas's Epistles, the Apostolic Constitutions, to say nothing of many other Gospels. Therefore, to ascertain. Scripture, you must have one article more; and you must define what that Scripture is which, you mean to teach. There are, I believe, very few who, when Scripture is so ascertained, do not see the absolute necessity of knowing what general doctrine a man draws from it, before he is sent down authorized by the state to teach, it as pure doctrine, and receive a tenth of the produce of our lands.

The Scripture is no one summary of doctrines regularly digested, in which, a man could not mistake his way. It is a most venerable, but most multifarious, collection of the records of the divine economy: a collection of an infinite variety,—of cosmogony, theology, history, prophecy, psalmody, morality, apologue, allegory, legislation, ethics, carried through different books, by different authors, at different ages, for different ends and purposes. It is necessary to sort out what is intended for example, what only as narrative,—what to be understood literally, what figuratively,—where one precept is to be controlled and modified by another,—what is used directly, and what only as an argument *ad hominem*,—what is temporary, and what of perpetual obligation,—what appropriated to one state and to one set of men, and what the general duty of all Christians. If we do not get some security for this, we not only permit, but we actually pay for, all the dangerous fanaticism which, can be produced to corrupt our people, and to derange the public worship of the country. We owe the best we can (not infallibility, but prudence) to the subject,—first sound doctrine, then ability to use it.

SPEECH
ON
A BILL FOR THE RELIEF OF PROTESTANT DISSENTERS.
MARCH 17, 1773

NOTE

This speech is given partly from the manuscript papers of Mr. Burke, and partly from a very imperfect short-hand note taken at the time by a member of the House of Commons. The bill under discussion was opposed by petitions from several congregations calling themselves "Protestant Dissenters," who appear to have been principally composed of the people who are generally known under the denomination of "Methodists," and particularly by a petition from a congregation of that description residing in the town of Chatham.

SPEECH

I assure you, Sir, that the honorable gentleman who spoke last but one need not be in the least fear that I should make a war of particles upon his opinion, whether the Church of England *should, would*, or *ought* to be alarmed. I am very clear that this House has no one reason in the world to think she is alarmed by the bill brought before you. It is something extraordinary that the only symptom of alarm in the Church of England should appear in the petition of some Dissenters, with whom, I believe very few in this House are yet acquainted, and of whom you know no more than that you are assured by the honorable gentleman that they are not Mahometans. Of the Church we know they are not, by the name that they assume. They are, then, Dissenters. The first symptom of an alarm, comes from some Dissenters assembled round the lines of Chatham: these lines become the security of the Church of England! The honorable gentleman, in speaking of the lines of Chatham, tells us that they serve not only for the security of the wooden walls of England, but for the defence of the Church of England. I suspect the wooden walls of England secure the lines of Chatham, rather than the lines of Chatham secure the wooden walls of England.

Sir, the Church of England, if only defended by this miserable petition upon your table, must, I am afraid, upon the principles of true fortification, be soon destroyed. But, fortunately, her walls, bulwarks, and bastions are constructed of other materials than of stubble and straw,—are built up with the strong and stable matter of the gospel of liberty, and founded on a true, constitutional, legal establishment. But, Sir, she has other securities: she has the security of her own doctrines; she has the security of the piety, the sanctity, of her own professors, —their learning is a bulwark to defend her; she has the security of the two universities, not shook in any single battlement, in any single pinnacle.

But the honorable gentleman has mentioned, indeed, principles which astonish me rather more than ever. The honorable gentleman thinks that the Dissenters enjoy a large share of liberty under a connivance; and he thinks that the establishing toleration by law is an attack upon Christianity.

The first of these is a contradiction in terms. Liberty under a connivance! Connivance is a relaxation from slavery, not a definition of liberty. What is connivance, but a state under which all slaves live? If I was to describe slavery, I would say, with those who *hate* it, it is living under will, not under law; if as it is stated by its advocates, I would say, that, like earthquakes, like thunder, or other wars the elements make upon mankind, it happens rarely, it occasionally comes now and then upon people, who, upon ordinary occasions, enjoy the same legal government of liberty. Take it under the description of those who would soften those features, the state of slavery and connivance

is the same thing. If the liberty enjoyed be a liberty not of toleration, but of connivance, the only question is, whether establishing such by law is an attack upon Christianity. Toleration an attack upon Christianity! What, then! are we come to this pass, to suppose that nothing can support Christianity but the principles of persecution? Is that, then, the idea of establishment? Is it, then, the idea of Christianity itself, that it ought to have establishments, that it ought to have laws against Dissenters, but the breach of which laws is to be connived at? What a picture of toleration! what a picture of laws, of establishments! what a picture of religious and civil liberty! I am persuaded the honorable gentleman, does not see it in this light. But these very terms become the strongest reasons for my support of the bill: for I am persuaded that toleration, so far from being an attack upon Christianity, becomes the best and surest support that possibly can be given, to it. The Christian religion itself arose without establishment,—it arose even without toleration; and whilst its own principles were not tolerated, it conquered all the powers of darkness, it conquered all the powers of the world. The moment it began to depart from these principles, it converted the establishment into tyranny; it subverted its foundations from that very hour. Zealous as I am for the principle of an establishment, so just an abhorrence do I conceive against whatever may shake it. I know nothing but the supposed necessity of persecution that can make an establishment disgusting. I would have toleration a part of establishment, as a principle favorable to Christianity, and as a part of Christianity.

All seem agreed that the law, as it stands, inflicting penalties on all-religious teachers and on schoolmasters who do not sign the Thirty-Nine Articles of Religion, ought not to be executed. We are all agreed that *the law is not good*: for that, I presume, is undoubtedly the idea of a law that ought not to be executed. The question, therefore, is, whether in a well-constituted commonwealth, which we desire ours to be thought, and I trust intend that it should be, whether in such a commonwealth it is wise to retain those laws which it is not proper to execute. A penal law not ordinarily put in execution seems to me to be a very absurd and a very dangerous thing. For if its principle be right, if the object of its prohibitions and penalties be a real evil, then you do in effect permit that very evil, which not only the reason of the thing, but your very law, declares ought not to be permitted; and thus it reflects exceedingly on the wisdom, and consequently derogates not a little from the authority, of a legislature who can at once forbid and suffer, and in the same breath promulgate penalty and indemnity to the same persons and for the very same actions. But if the object of the law be no moral or political evil, then you ought not to hold even a terror to those whom you ought certainly not to punish: for if it is not right to hurt, it is neither right nor wise to menace. Such laws, therefore, as they must be defective either in justice or wisdom or both, so they cannot exist without a considerable degree of danger. Take them which way you will, they are pressed with ugly alternatives.

1st. All penal laws are either upon popular prosecution, or on the part of the crown. Now if they may be roused from their sleep, whenever a minister thinks proper, as instruments of oppression, then they put vast bodies of men into a state of slavery and court dependence; since their liberty of conscience and their power of executing their functions depend entirely on his will. I would have no man derive his means of continuing any function, or his being restrained from it, but from the laws only: they should be his only superior and sovereign lords.

2nd. They put statesmen and magistrates into an habit of playing fast and loose with the laws, straining or relaxing them as may best suit their political purposes,—and in that light tend to corrupt the executive power through all its offices.

3rd. If they are taken up on popular actions, their operation in that light also is exceedingly evil. They become the instruments of private malice, private avarice, and not of public regulation; they nourish the worst of men to the prejudice of the best, punishing tender consciences, and rewarding informers.

Shall we, as the honorable gentleman tells us we may with perfect security, trust to the manners of the age? I am well pleased with the general manners of the times; but the desultory execution of penal laws, the thing I condemn, does not depend on the manners of the times. I would, however, have

the laws tuned in unison with the manners. Very dissonant are a gentle country and cruel laws; very dissonant, that your reason is furious, but your passions moderate, and that you are always equitable except in your courts of justice.

I will beg leave to state to the House one argument which has been much relied upon: that the Dissenters are not unanimous upon this business; that many persons are alarmed; that it will create a disunion among the Dissenters.

When any Dissenters, or any body of people, come here with a petition, it is not the number of people, but the reasonableness of the request, that should weigh with the House. A body of Dissenters come to this House, and say, "Tolerate us: we desire neither the parochial advantage of tithes, nor dignities, nor the stalls of your cathedrals: no! let the venerable orders of the hierarchy exist with all their advantages." And shall I tell them, "I reject your just and reasonable petition, not because it shakes the Church, but because there are others, while you lie grovelling upon the earth, that will kick and bite you"? Judge which of these descriptions of men comes with a fair request: that which says, "Sir, I desire liberty for my own, because I trespass on no man's conscience,"—or the other, which says, "I desire that these men should not be suffered to act according to their consciences, though I am tolerated to act according to mine. But I sign a body of Articles, which is my title to toleration; I sign no more, because more are against my conscience. But I desire that you will not tolerate these men, because they will not go so far as I, though I desire to be tolerated, who will not go as far as you. No, imprison them, if they come within five miles of a corporate town, because they do not believe what I do in point of doctrines." Shall I not say to these men, *Arrangez-vous, canaille?* You, who are not the predominant power, will not give to others the relaxation under which you are yourself suffered to live. I have as high an opinion of the doctrines of the Church as you. I receive them implicitly, or I put my own explanation on them, or take that which seems to me to come best recommended by authority. There are those of the Dissenters who think more rigidly of the doctrine of the Articles relative to Predestination than others do. They sign the Article relative to it *ex animo*, and literally. Others allow a latitude of construction. These two parties are in the Church, as well as among the Dissenters; yet in the Church we live quietly under the same roof. I do not see why, as long as Providence gives us no further light into this great mystery, we should not leave things as the Divine Wisdom has left them. But suppose all these things to me to be clear, (which Providence, however, seems to have left obscure,) yet, whilst Dissenters claim a toleration in things which, seeming clear to me, are obscure to them, without entering into the merit of the Articles, with what face can these men say, "Tolerate us, but do not tolerate them"? Toleration is good for all, or it is good for none.

The discussion this day is not between establishment on one hand and toleration on the other, but between those who, being tolerated themselves, refuse toleration to others. That power should be puffed up with pride, that authority should degenerate into rigor, if not laudable, is but too natural. But this proceeding of theirs is much beyond the usual allowance to human weakness: it not only is shocking to our reason, but it provokes our indignation. *Quid domini facient, audent cum talia fures?* It is not the proud prelate thundering in his Commission Court, but a pack of manumitted slaves, with the lash of the beadle flagrant on their backs, and their legs still galled with their fetters, that would drive their brethren into that prison-house from whence they have just been permitted to escape. If, instead of puzzling themselves in the depths of the Divine counsels, they would turn, to the mild morality of the Gospel, they would read their own condemnation:—"O thou wicked servant, I forgave thee all that debt because thou desiredst me: shouldest not thou also have compassion on thy fellow-servant, even as I had pity on thee?"

In my opinion, Sir, a magistrate, whenever he goes to put any restraint upon religious freedom, can only do it upon this ground,—that the person dissenting does not dissent from the scruples of ill-informed conscience, but from a party ground of dissension, in order to raise a faction in the state. We give, with regard to rites and ceremonies, an indulgence to tender consciences. But if dissent is at all punished in any country, if at all it can be punished upon any pretence, it is upon a presumption, not

that a man is supposed to differ conscientiously from the establishment, but that he resists truth for the sake of faction,—that he abets diversity of opinions in religion to distract the state, and to destroy the peace of his country. This is the only plausible,—for there is no true ground of persecution. As the laws stand, therefore, let us see how we have thought fit to act.

If there is any one thing within the competency of a magistrate with regard to religion, it is this: that he has a right to direct the exterior ceremonies of religion; that, whilst interior religion is within the jurisdiction of God alone, the external part, bodily action, is within the province of the chief governor. Hooker, and all the great lights of the Church, have constantly argued this to be a part within the province of the civil magistrate. But look at the Act of Toleration of William and Mary: there you will see the civil magistrate has not only dispensed with those things which are more particularly within his province, with those things which faction might be supposed to take up for the sake of making visible and external divisions and raising a standard of revolt, but has also from sound politic considerations relaxed on those points which are confessedly without his province.

The honorable gentleman, speaking of the heathens, certainly could not mean to recommend anything that is derived from that impure source. But he has praised the tolerating spirit of the heathens. Well! but the honorable gentleman will recollect that heathens, that polytheists, must permit a number of divinities. It is the very essence of its constitution. But was it ever heard that polytheism tolerated a dissent from a polytheistic establishment,—the belief of one God only? Never! never! Sir, they constantly carried on persecution against that doctrine. I will not give heathens the glory of a doctrine which I consider the best part of Christianity. The honorable gentleman must recollect the Roman law, that was clearly against the introduction of any foreign rites in matters of religion. You have it at large in Livy, how they persecuted in the first introduction the rites of Bacchus; and even before Christ, to say nothing of their subsequent persecutions, they persecuted the Druids and others. Heathenism, therefore, as in other respects erroneous, was erroneous in point of persecution. I do not say every heathen who persecuted was therefore an impious man: I only say he was mistaken, as such a man is now. But, says the honorable gentleman, they did not persecute Epicureans. No: the Epicureans had no quarrel with their religious establishment, nor desired any religion for themselves. It would have been very extraordinary, if irreligious heathens had desired either a religious establishment or toleration. But, says the honorable gentleman, the Epicureans entered, as others, into the temples. They did so; they defied all subscription; they defied all sorts of conformity; there was no subscription to which they were not ready to set their hands, no ceremonies they refused to practise; they made it a principle of their irreligion outwardly to conform to any religion. These atheists eluded all that you could do: so will all freethinkers forever. Then you suffer, or the weakness of your law has suffered, those great dangerous animals to escape notice, whilst you have nets that entangle the poor fluttering silken wings of a tender conscience.

The honorable gentleman insists much upon this circumstance of objection,—namely, the division amongst the Dissenters. Why, Sir, the Dissenters, by the nature of the term, are open to have a division among themselves. They are Dissenters because they differ from the Church of England: not that they agree among themselves. There are Presbyterians, there are Independents,—some that do not agree to infant baptism, others that do not agree to the baptism of adults, or any baptism. All these are, however, tolerated under the acts of King William, and subsequent acts; and their diversity of sentiments with one another did not and could not furnish an argument against their toleration, when their difference with ourselves furnished none.

But, says the honorable gentleman, if you suffer them to go on, they will shake the fundamental principles of Christianity. Let it be considered, that this argument goes as strongly against connivance, which you allow, as against toleration, which you reject. The gentleman sets out with a principle of perfect liberty, or, as he describes it, connivance. But, for fear of dangerous opinions, you leave it in your power to vex a man who has not held any one dangerous opinion whatsoever. If one man is a professed atheist, another man the best Christian, but dissents from two of the Thirty-Nine Articles,

I may let escape the atheist, because I know him to be an atheist, because I am, perhaps, so inclined myself, and because I may connive where I think proper; but the conscientious Dissenter, on account of his attachment to that general religion which perhaps I hate, I shall take care to punish, because I may punish when I think proper. Therefore, connivance being an engine of private malice or private favor, not of good government,—an engine which totally fails of suppressing atheism, but oppresses conscience,—I say that principle becomes, not serviceable, but dangerous to Christianity; that it is not toleration, but contrary to it, even contrary to peace; that the penal system to which it belongs is a dangerous principle in the economy either of religion or government. The honorable gentleman (and in him I comprehend all those who oppose the bill) bestowed in support of their side of the question as much argument as it could bear, and much more of learning and decoration than it deserved. He thinks connivance consistent, but legal toleration inconsistent, with the interests of Christianity. Perhaps I would go as far as that honorable gentleman, if I thought toleration inconsistent with those interests. God forbid! I may be mistaken, but I take toleration to be a part of religion. I do not know which I would sacrifice: I would keep them both: it is not necessary I should sacrifice either. I do not like the idea of tolerating the doctrines of Epicurus: but nothing in the world propagates them so much as the oppression of the poor, of the honest and candid disciples of the religion we profess in common,—I mean revealed religion; nothing sooner makes them take a short cut out of the bondage of sectarian vexation into open and direct infidelity than tormenting men for every difference. My opinion is, that, in establishing the Christian religion wherever you find it, curiosity or research is its best security; and in this way a man is a great deal better justified in saying, Tolerate all kinds of consciences, than in imitating the heathens, whom the honorable gentleman quotes, in tolerating those who have none. I am not over-fond of calling for the secular arm upon these misguided or misguiding men; but if ever it ought to be raised, it ought surely to be raised against these very men, not against others, whose liberty of religion you make a pretext for proceedings which drive them into the bondage of impiety. What figure do I make in saying, I do not attack the works of these atheistical writers, but I will keep a rod hanging over the conscientious man, their bitterest enemy, because these atheists may take advantage of the liberty of their foes to introduce irreligion? The best book that ever, perhaps, has been written against these people is that in which the author has collected in a body the whole of the infidel code, and has brought the writers into one body to cut them all off together. This was done by a Dissenter, who never did subscribe the Thirty-Nine Articles,—Dr. Leland. But if, after all this, danger is to be apprehended, if you are really fearful that Christianity will indirectly suffer by this liberty, you have my free consent: go directly, and by the straight way, and not by a circuit in which, in your road you may destroy your friends; point your arms against these men who do the mischief you fear promoting; point your arms against men who, not contented with endeavoring to turn your eyes from the blaze and effulgence of light by which life and immortality is so gloriously demonstrated by the Gospel, would even extinguish that faint glimmering of Nature, that only comfort supplied to ignorant man before this great illumination, —them, who, by attacking even the possibility of all revelation, arraign all the dispensations of Providence to man. These are the wicked Dissenters you ought to fear; these are the people against whom you ought to aim the shaft of the law; these are the men to whom, arrayed in all the terrors of government, I would say, You shall not degrade us into brutes! These men, these factious men, as the honorable gentleman properly called them, are the just objects of vengeance, not the conscientious Dissenter,—these men, who would take away whatever ennobles the rank or consoles the misfortunes of human nature, by breaking off that connection of observances, of affections, of hopes and fears, which bind us to the Divinity, and constitute the glorious and distinguishing prerogative of humanity, that of being a religious creature: against these I would have the laws rise in all their majesty of terrors, to fulminate such vain and impious wretches, and to awe them into impotence by the only dread they can fear or believe, to learn that eternal lesson, *Discite justitiam moniti, et non temnere Divos*!

At the same time that I would cut up the very root of atheism, I would respect all conscience,—all conscience that is really such, and which perhaps its very tenderness proves to be sincere. I wish to see the Established Church of England great and powerful; I wish to see her foundations laid low and deep, that she may crush the giant powers of rebellious darkness; I would have her head raised up to that heaven to which she conducts us. I would have her open wide her hospitable gates by a noble and liberal comprehension, but I would have no breaches in her wall; I would have her cherish all those who are within, and pity all those who are without; I would have her a common blessing to the world, an example, if not an instructor, to those who have not the happiness to belong to her; I would have her give a lesson of peace to mankind, that a vexed and wandering generation might be taught to seek for repose and toleration in the maternal bosom of Christian charity, and not in the harlot lap of infidelity and indifference. Nothing has driven people more into that house of seduction than the mutual hatred of Christian congregations. Long may we enjoy our church under a learned and edifying episcopacy! But episcopacy may fail, and religion exist. The most horrid and cruel blow that can be offered to civil society is through atheism. Do not promote diversity; when you have it, bear it; have as many sorts of religion as you find in your country; there is a reasonable worship in them all. The others, the infidels, are outlaws of the constitution, not of this country, but of the human race. They are never, never to be supported, never to be tolerated. Under the systematic attacks of these people, I see some of the props of good government already begin to fail; I see propagated principles which will not leave to religion even a toleration. I see myself sinking every day under the attacks of these wretched people. How shall I arm myself against them? By uniting all those in affection, who are united in the belief of the great principles of the Godhead that made and sustains the world. They who hold revelation give double assurance to their country. Even the man who does not hold revelation, yet who wishes that it were proved to him, who observes a pious silence with regard to it, such a man, though not a Christian, is governed by religious principles. Let him be tolerated in this country. Let it be but a serious religion, natural or revealed, take what you can get. Cherish, blow up the slightest spark: one day it may be a pure and holy flame. By this proceeding you form an alliance offensive and defensive against those great ministers of darkness in the world who are endeavoring to shake all the works of God established in order and beauty.

Perhaps I am carried too far; but it is in the road into which the honorable gentleman has led me. The honorable gentleman would have us fight this confederacy of the powers of darkness with the single arm of the Church of England,—would have us not only fight against infidelity, but fight at the same time with all the faith in the world except our own. In the moment we make a front against the common enemy, we have to combat with all those who are the natural friends of our cause. Strong as we are, we are not equal to this. The cause of the Church of England is included in that of religion, not that of religion in the Church of England. I will stand up at all times for the rights of conscience, as it is such,—not for its particular modes against its general principles. One may be right, another mistaken; but if I have more strength than my brother, it shall be employed to support, not to oppress his weakness; if I have more light, it shall be used to guide, not to dazzle him....

SPEECH ON A MOTION MADE IN THE HOUSE OF COMMONS BY THE RIGHT HON. C.J. FOX, MAY 11, 1793, FOR LEAVE TO BRING IN A BILL TO REPEAL AND ALTER CERTAIN ACTS RESPECTING RELIGIOUS OPINIONS, UPON THE OCCASION OF A PETITION OF THE UNITARIAN SOCIETY

I never govern myself, no rational man ever did govern himself, by abstractions and universals. I do not put abstract ideas wholly out of any question; because I well know that under that name I should dismiss principles, and that without the guide and light of sound, well-understood principles, all reasonings in politics, as in everything else, would be only a confused jumble of particular facts and details, without the means of drawing out any sort of theoretical or practical conclusion. A statesman differs from a professor in an university: the latter has only the general view of society; the former, the statesman, has a number of circumstances to combine with those general ideas, and to take into his consideration. Circumstances are infinite, are infinitely combined, are variable and transient: he who does not take them into consideration is not erroneous, but stark mad; *dat operam ut cum ratione insaniat*; he is metaphysically mad. A statesman, never losing sight of principles, is to be guided by circumstances; and judging contrary to the exigencies of the moment, he may ruin his country forever.

I go on this ground,—that government, representing the society, has a general superintending control over all the actions and over all the publicly propagated doctrines of men, without which it never could provide adequately for all the wants of society: but then it is to use this power with an equitable discretion, the only bond of sovereign authority. For it is not, perhaps, so much by the assumption of unlawful powers as by the unwise or unwarrantable use of those which are most legal, that governments oppose their true end and object: for there is such a thing as tyranny, as well as usurpation. You can hardly state to me a case to which legislature is the most confessedly competent, in which, if the rules of benignity and prudence are not observed, the most mischievous and oppressive things may not be done. So that, after all, it is a moral and virtuous discretion, and not any abstract theory of right, which keeps governments faithful to their ends. Crude, unconnected truths are in the world of practice what falsehoods are in theory. A reasonable, prudent, provident, and moderate coercion may be a means of preventing acts of extreme ferocity and rigor: for by propagating excessive and extravagant doctrines, such extravagant disorders take place as require the most perilous and fierce corrections to oppose them.

It is not morally true that we are bound to establish in every country that form of religion which in *our* minds is most agreeable to truth, and conduces most to the eternal happiness of mankind. In the same manner, it is not true that we are, against the conviction of our own judgment, to establish a system of opinions and practices directly contrary to those ends, only because some majority of the people, told by the head, may prefer it. No conscientious man would willingly establish what he knew to be false and mischievous in religion, or in anything else. No wise man, on the contrary, would tyrannically set up his own sense so as to reprobate that of the great prevailing body of the community, and pay no regard to the established opinions and prejudices of mankind, or refuse to

them the means of securing a religious instruction suitable to these prejudices. A great deal depends on the state in which you find men....

An alliance between Church and State in a Christian commonwealth is, in my opinion, an idle and a fanciful speculation. An alliance is between two things that are in their nature distinct and independent, such as between two sovereign states. But in a Christian commonwealth the Church and the State are one and the, same thing, being different integral parts of the same whole. For the Church has been always divided into two parts, the clergy and the laity,—of which the laity is as much an essential integral part, and has as much its duties and privileges, as the clerical member, and in the rule, order, and government of the Church has its share. Religion is so far, in my opinion, from being out of the province or the duty of a Christian magistrate, that it is, and it ought to be, not only his care, but the principal thing in his care; because it is one of the great bonds of human society, and its object the supreme good, the ultimate end and object of man himself. The magistrate, who is a man, and charged with the concerns of men, and to whom very specially nothing human is remote and indifferent, has a right and a duty to watch over it with an unceasing vigilance, to protect, to promote, to forward it by every rational, just, and prudent means. It is principally his duty to prevent the abuses which grow out of every strong and efficient principle that actuates the human mind. As religion is one of the bonds of society, he ought not to suffer it to be made the pretext of destroying its peace, order, liberty, and its security. Above all, he ought strictly to look to it, when men begin to form new combinations, to be distinguished by new names, and especially when they mingle a political system with their religious opinions, true or false, plausible or implausible.

It is the interest, and it is the duty, and because it is the interest and the duty, it is the right of government to attend much to opinions; because, as opinions soon combine with passions, even when they do not produce them, they have much influence on actions. Factions are formed upon opinions, which factions become in effect bodies corporate in the state; nay, factions generate opinions, in order to become a centre of union, and to furnish watchwords to parties; and this may make it expedient for government to forbid things in themselves innocent and neutral. I am not fond of defining with precision what the ultimate rights of the sovereign supreme power, in providing for the safety of the commonwealth, may be, or may not extend to. It will signify very little what my notions or what their own notions on the subject may be; because, according to the exigence, they will take, in fact, the steps which seem to them necessary for the preservation of the whole: for as self-preservation in individuals is the first law of Nature, the same will prevail in societies, who will, right or wrong, make that an object paramount to all other rights whatsoever. There are ways and means by which a good man would not even save the commonwealth.... All things founded on the idea of danger ought in a great degree to be temporary. All policy is very suspicious that sacrifices any part to the ideal good of the whole. The object of the state is (as far as may be) the happiness of the whole. Whatever makes multitudes of men utterly miserable can never answer that object; indeed, it contradicts it wholly and entirely; and the happiness or misery of mankind, estimated by their feelings and sentiments, and not by any theories of their rights, is, and ought to be, the standard for the conduct of legislators towards the people. This naturally and necessarily conducts us to the peculiar and characteristic situation of a people, and to a knowledge of their opinions, prejudices, habits, and all the circumstances that diversify and color life. The first question a good statesman would ask himself, therefore, would be, How and in what circumstances do you find the society? and to act upon them.

To the other laws relating to other sects I have nothing to say: I only look to the petition which has given rise to this proceeding. I confine myself to that, because in my opinion its merits have little or no relation to that of the other laws which the right honorable gentleman has with so much ability blended with it. With the Catholics, with the Presbyterians, with the Anabaptists, with the Independents, with the Quakers, I have nothing at all to do. They are in *possession*,—a great title in all human affairs. The tenor and spirit of our laws, whether they were restraining or whether they were relaxing, have hitherto taken another course. The spirit of our laws has applied their penalty or

their relief to the supposed abuse to be repressed or the grievance to be relieved; and the provision for a Catholic and a Quaker has been totally different, according to his exigence: you did not give a Catholic liberty to be freed from an oath, or a Quaker power of saying mass with impunity. You have done this, because you never have laid it down as an universal proposition, as a maxim, that nothing relative to religion was your concern, but the direct contrary; and therefore you have always examined whether there was a grievance. It has been so at all times: the legislature, whether right or wrong, went no other way to work but by circumstances, times, and necessities. My mind marches the same road; my school is the practice and usage of Parliament.

Old religious factions are volcanoes burnt out; on the lava and ashes and squalid scoriæ of old eruptions grow the peaceful olive, the cheering vine, and the sustaining corn. Such was the first, such the second condition of Vesuvius. But when a now fire bursts out, a face of desolations comes on, not to be rectified in ages. Therefore, when men come before us, and rise up like an exhalation from the ground, they come in a questionable shape, and we must *exorcise* them, and try whether their intents be wicked or charitable, whether they bring airs from heaven or blasts from hell. This is the first time that our records of Parliament have heard, or our experience or history given us an account of any religious congregation or association known by the name which these petitioners have assumed. We are now to see by what people, of what character, and under what temporary circumstances, this business is brought before you. We are to see whether there be any and what mixture of political dogmas and political practices with their religious tenets, of what nature they are, and how far they are at present practically separable from them. This faction (the authors of the petition) are not confined to a *theological* sect, but are also a *political* faction. 1st, As theological, we are to show that they do not aim at the quiet enjoyment of their own liberty, but are *associated* for the express purpose of proselytism. In proof of this first proposition, read their primary association. 2nd, That their purpose of proselytism is to collect a multitude sufficient by force and violence to overturn the Church. In proof of the second proposition, see the letter of Priestley to Mr. Pitt, and extracts from his works. 3rd, That the designs against the Church are concurrent with a design to subvert the State. In proof of the third proposition, read the advertisement of the Unitarian Society for celebrating the 14th of July. 4th, On what *model* they intend to build,—that it is the *French*. In proof of the fourth proposition, read the correspondence of the Revolution Society with the clubs of France, read Priestley's adherence to their opinions. 5th, What the *French* is with regard to religious toleration, and with regard to, 1. Religion,—2. Civil happiness,—3. Virtue, order, and real liberty,—4. Commercial opulence,—5. National defence. In proof of the fifth proposition, read the representation of the French minister of the Home Department, and the report of the committee upon it.

Formerly, when the superiority of two parties contending for dogmas and an establishment was the question, we knew in such a contest the whole of the evil. We knew, for instance, that Calvinism would prevail according to the Westminster Catechism with regard to *tenets*. We knew that Presbytery would prevail in *church government*. But we do not know what opinions would prevail, if the present Dissenters should become masters. They will not tell us their present opinions; and one principle of modern Dissent is, not to discover them. Next, as their religion, is in a continual fluctuation, and is so by principle and in profession, it is impossible for us to know what it will be. If religion only related to the individual, and was a question between God and the conscience, it would not be wise, nor in my opinion equitable, for human authority to step in. But when religion is embodied into faction, and factions have objects to pursue, it will and must, more or less, become a question of power between them. If even, when embodied into congregations, they limited their principle to their own congregations, and were satisfied themselves to abstain from what they thought unlawful, it would be cruel, in my opinion, to molest them in that tenet, and a consequent practice. But we know that they not only entertain these opinions, but entertain them with a zeal for propagating them by force, and employing the power of law and place to destroy establishments, if ever they should come to power sufficient to effect their purpose: that is, in other words, they declare they would persecute the heads

of our Church; and the question is, whether you should keep them within the bounds of toleration, or subject yourself to their persecution.

A bad and very censurable practice it is to warp doubtful and ambiguous expressions to a perverted sense, which makes the charge not the crime of others, but the construction of your own malice; nor is it allowed to draw conclusions from allowed premises, which those who lay down the premises utterly deny, and disown as their conclusions. For this, though it may possibly be good logic, cannot by any possibility whatsoever be a fair or charitable representation of any man or any set of men. It may show the erroneous nature of principles, but it argues nothing as to dispositions and intentions. Far be such a mode from me! A mean and unworthy jealousy it would be to do anything upon, the mere speculative apprehension of what men will do. But let us pass by *our* opinions concerning the danger of the Church. What do the gentlemen themselves think of that danger? They from, whom the danger is apprehended, what do they declare to be their own designs? What do they conceive to be their own forces? And what do they proclaim to be their means? Their designs they declare to be to destroy the Established Church; and not to set up a new one of their own. See Priestley. If they should find the State stick to the Church, the question is, whether they love the constitution in *State* so well as that they would not destroy the constitution of the State in order to destroy that of the Church. Most certainly they do not.

The foundations on which obedience to governments is founded are not to be constantly discussed. That we are here supposes the discussion already made and the dispute settled. We must assume the rights of what represents the public to control the individual, to make his will and his acts to submit to their will, until some intolerable grievance shall make us know that it does not answer its end, and will submit neither to reformation nor restraint. Otherwise we should dispute all the points of morality, before we can punish a murderer, robber, and adulterer; we should analyze all society. Dangers by being despised grow great; so they do by absurd provision against them. *Stulti est dixisse, Non putâram*. Whether an early discovery of evil designs, an early declaration, and an early precaution against them be more wise than to stifle all inquiry about them, for fear they should declare themselves more early than otherwise they would, and therefore precipitate the evil,—all this depends on the reality of the danger. Is it only an unbookish jealousy, as Shakspeare calls it? It is a question of fact. Does a design against the Constitution of this country exist? If it does, and if it is carried on with increasing vigor and activity by a restless faction, and if it receives countenance by the most ardent and enthusiastic applauses of its object in the great council of this kingdom, by men of the first parts which this kingdom produces, perhaps by the first it has ever produced, can I think that there is no danger? If there be danger, must there be no precaution at all against it? If you ask whether I think the danger urgent and immediate, I answer, Thank God, I do not. The body of the people is yet sound, the Constitution is in their hearts, while wicked men are endeavoring to put another into their heads. But if I see the very same beginnings which have commonly ended in great calamities, I ought to act as if they might produce the very same effects. Early and provident fear is the mother of safety; because in that state of things the mind is firm and collected, and the judgment unembarrassed. But when the fear and the evil feared come on together, and press at once upon us, deliberation itself is ruinous, which saves upon all other occasions; because, when perils are instant, it delays decision: the man is in a flutter, and in a hurry, and his judgment is gone,—as the judgment of the deposed King of France and his ministers was gone, if the latter did not premeditately betray him. He was just come from his usual amusement of hunting, when the head of the column of treason and assassination was arrived at his house. Let not the king, let not the Prince of Wales, be surprised in this manner. Let not both Houses of Parliament be led in triumph along with him, and have law dictated to them, by the Constitutional, the Revolution, and the Unitarian Societies. These insect reptiles, whilst they go on only caballing and toasting, only fill us with disgust; if they get above their natural size, and increase the quantity whilst they keep the quality of their venom, they become objects of the greatest terror. A spider in his natural size is only a spider, ugly and loathsome; and his flimsy net is only fit for catching

flies. But, good God! suppose a spider as large as an ox, and that he spread cables about us, all the wilds of Africa would not produce anything so dreadful:—

Quale portentum neque militaris
Daunia in latis alit esculetis,
Nec Jubæ tellus generat, leonum
Arida nutrix.

Think of them who dare menace in the way they do in their present state, what would they do, if they had power commensurate to their malice? God forbid I ever should have a despotic master! —but if I must, my choice is made. I will have Louis the Sixteenth rather than Monsieur Bailly, or Brissot, or Chabot,—rather George the Third, or George the Fourth, than. Dr. Priestley, or Dr. Kippis,—persons who would not load a tyrannous power by the poisoned taunts of a vulgar, low-bred insolence. I hope we have still spirit enough to keep us from the one or the other. The contumelies of tyranny are the worst parts of it.

But if the danger be existing in reality, and silently maturing itself to our destruction, what! is it not better to take *treason* unprepared than that *treason* should come by surprise upon us and take us unprepared? If we must have a conflict, let us have it with all our forces fresh about us, with our government in full function and full strength, our troops uncorrupted, our revenues in the legal hands, our arsenals filled and possessed by government,—and not wait till the conspirators met to commemorate the 14th of July shall seize on the Tower of London and the magazines it contains, murder the governor, and the mayor of London, seize upon the king's person, drive out the House of Lords, occupy your gallery, and thence, as from an high tribunal, dictate to you. The degree of danger is not only from the circumstances which threaten, but from the value of the objects which are threatened. A small danger menacing an inestimable object is of more importance than the greatest perils which regard one that is indifferent to us. The whole question of the danger depends upon facts. The first fact is, whether those who sway in France at present confine themselves to the regulation of their internal affairs,—or whether upon system they nourish cabals in all other countries, to extend their power by producing revolutions similar to their own. 2. The next is, whether we have any cabals formed or forming within these kingdoms, to coöperate with them for the destruction of our Constitution. On the solution of these two questions, joined with our opinion of the value of the object to be affected by their machinations, the justness of our alarm and the necessity of our vigilance must depend. Every private conspiracy, every open attack upon the laws, is dangerous. One robbery is an alarm to all property; else I am sure we exceed measure in our punishment. As robberies increase in number and audacity, the alarm increases. These wretches are at war with us upon principle. They hold this government to be an usurpation. See the language of the Department.

The whole question is on the *reality* of the danger. Is it such a danger as would justify that fear *qui cadere potest in hominem constantem et non metuentem*? This is the fear which the principles of jurisprudence declare to be a lawful and justifiable fear. When a man threatens my life openly and publicly, I may demand from him securities of the peace. When every act of a man's life manifests such a design stronger than by words, even though he does not make such a declaration, I am justified in being on my guard. They are of opinion that they are already one fifth of the kingdom. If so, their force is naturally not contemptible. To say that in all contests the decision will of course be in favor of the greater number is by no means true in fact. For, first, the greater number is generally composed of men of sluggish tempers, slow to act, and unwilling to attempt, and, by being in possession, are so disposed to peace that they are unwilling to take early and vigorous measures for their defence, and they are almost always caught unprepared:—

Nec coïere pares: alter vergentibus annis

In senium, longoque togæ tranquillior usu.
Dedidicit jam pace ducem;…
Nec reparare novas vires, multumque priori
Credere fortunæ: stat magni nominis umbra.[1]

A smaller number, more expedite, awakened, active, vigorous, and courageous, who make amends for what they want in weight by their superabundance of velocity, will create an acting power of the greatest possible strength. When men are furiously and fanatically fond of an object, they will prefer it, as is well known, to their own peace, to their own property, and to their own lives: and can there be a doubt, in such a case, that they would prefer it to the peace of their country? Is it to be doubted, that, if they have not strength enough at home, they will call in foreign force to aid them?

Would you deny them *what is reasonable*, for fear they should? Certainly not. It would be barbarous to pretend to look into the minds of men. I would go further: it would not be just even to trace consequences from principles which, though evident to me, were denied by them. Let them disband as a faction, and let them act as individuals, and when I see them with no other views than to enjoy their own conscience in peace, I, for one, shall most cheerfully vote for their relief.

A tender conscience, of all things, ought to be tenderly handled; for if you do not, you injure not only the conscience, but the whole moral frame and constitution is injured, recurring at times to remorse, and seeking refuge only in making the conscience callous. But the conscience of faction,—the conscience of sedition,—the conscience of conspiracy, war, and confusion....

Whether anything be proper to be denied, which is right in itself, because it may lead to the demand of others which it is improper to grant? Abstractedly speaking, there can be no doubt that this question ought to be decided in the negative. But as no moral questions are ever abstract questions, this, before I judge upon any abstract proposition, must be embodied in circumstances; for, since things are right or wrong, morally speaking, only by their relation and connection with other things, this very question of what it is politically right to grant depends upon this relation to its effects. It is the direct office of wisdom to look to the consequences of the acts we do: if it be not this, it is worth nothing, it is out of place and of function, and a downright fool is as capable of government as Charles Fox. A man desires a sword: why should he be refused? A sword is a means of defence, and defence is the natural right of man,—nay, the first of all his rights, and which comprehends them all. But if I know that the sword desired is to be employed to cut my own throat, common sense, and my own self-defence, dictate to me to keep out of his hands this natural right of the sword. But whether this denial be wise or foolish, just or unjust, prudent or cowardly, depends entirely on the state of the man's means. A man may have very ill dispositions, and yet be so very weak as to make all precaution foolish. See whether this be the case of these Dissenters, as to their designs, as to their means, numbers, activity, zeal, foreign assistance.

The first question, to be decided, when we talk of the Church's being in danger from any particular measure, is, whether the danger to the Church is a public evil: for to those who think that the national Church Establishment is itself a national grievance, to desire them to forward or to resist any measure, upon account of its conducing to the safety of the Church or averting its danger, would be to the last degree absurd. If you have reason to think thus of it, take the reformation instantly into your own hands, whilst you are yet cool, and can do it in measure and proportion, and not under the influence of election tests and popular fury. But here I assume that by far the greater number of those who compose the House are of opinion that this national Church Establishment is a great national benefit, a great public blessing, and that its existence or its non-existence of course is a thing by no means indifferent to the public welfare: then to them its danger or its safety must enter deeply into every question which has a relation to it. It is not because ungrounded alarms have been

[1] Lucan, I. 129 to 135.

given that there never can exist a real danger: perhaps the worst effect of an ungrounded alarm is to make people insensible to the approach of a real peril. Quakerism is strict, methodical, in its nature highly aristocratical, and so regular that it has brought the whole community to the condition of one family; but it does not actually interfere with the government. The principle of your petitioners is no passive conscientious dissent, on account of an over-scrupulous habit of mind: the dissent on their part is fundamental, goes to the very root; and it is at issue not upon this rite or that ceremony, on this or that school opinion, but upon this one question of an Establishment, as unchristian, unlawful, contrary to the Gospel and to natural right, Popish and idolatrous. These are the principles violently and fanatically held and pursued,—taught to their children, who are sworn at the altar like Hannibal. The war is with the Establishment itself,—no quarter, no compromise. As a party, they are infinitely mischievous: see the declarations of Priestley and Price,—declarations, you will say, of *hot* men. Likely enough: but who are the *cool* men who have disclaimed them? Not one,—no, not one. Which of them has ever told you that they do not mean to *destroy the Church*, if ever it should be in their power? Which of them has told you that this would not be the first and favorite use of any power they should get? Not one,—no, not one. Declarations of hot men! The danger is thence, that they are under the *conduct* of hot men: *falsos in amore odia non fingere*.

They say they are well affected to the State, and mean only to destroy the Church. If this be the utmost of their meaning, you must first consider whether you wish your Church Establishment to be destroyed. If you do, you had much better do it now in temper, in a grave, moderate, and parliamentary way. But if you think otherwise, and that you think it to be an invaluable blessing, a way fully sufficient to nourish a manly, rational, solid, and at the same time humble piety,—if you find it well fitted to the frame and pattern of your civil constitution,—if you find it a barrier against fanaticism, infidelity, and atheism,—if you find that it furnishes support to the human mind in the afflictions and distresses of the world, consolation in sickness, pain, poverty, and death,—if it dignifies our nature with the hope of immortality, leaves inquiry free, whilst it preserves an authority to teach, where authority only can teach, *communia altaria, æque ac patriam, diligite, colite, fovete*.

In the discussion of this subject which took place in the year 1790, Mr. Burke declared his intention, in case the motion for repealing the Test Acts had been agreed to, of proposing to substitute the following test in the room of what was intended to be repealed:—

"I, *A.B.*, do, in the presence of God, sincerely profess and believe that a religious establishment in this state is not contrary to the law of God, or disagreeable to the law of Nature, or to the true principles of the Christian religion, or that it is noxious to the community; and I do sincerely promise and engage, before God, that I never will, by any conspiracy, contrivance, or political device whatever, attempt, or abet others in any attempt, to subvert the constitution of the Church of England, as the same is now by law established, and that I will not employ any power or influence which I may derive from any office corporate, or any other office which I hold or shall hold under his Majesty, his heirs and successors, to destroy and subvert the same, or to cause members to be elected into any corporation or into Parliament, give my vote in the election of any member or members of Parliament, or into any office, for or on account of their attachment to any other or different religious opinions or establishments, or with any hope that they may promote the same to the prejudice of the Established Church, but will dutifully and peaceably content myself with my private liberty of conscience, as the same is allowed by law. So help me God."

SPEECH
ON
THE MOTION MADE IN THE HOUSE OF COMMONS, FEBRUARY 7, 1771, RELATIVE TO THE MIDDLESEX ELECTION

NOTE

The motion supported in the following Speech, which was for leave to bring in a bill to ascertain the rights of the electors in respect to the eligibility of persons to serve in Parliament, was rejected by a majority of 167 against 103.

SPEECH

In every complicated constitution (and every free constitution is complicated) cases will arise when the several orders of the state will clash with one another, and disputes will arise about the limits of their several rights and privileges. It may be almost impossible to reconcile them....

Carry the principle on by which you expelled Mr. Wilkes, there is not a man in the House, hardly a man in the nation, who may not be disqualified. That this House should have no power of expulsion is an hard saying: that this House should have a general discretionary power of disqualification is a dangerous saying. That the people should not choose their own representative is a saying that shakes the Constitution: that this House should name the representative is a saying which, followed by practice, subverts the Constitution. They have the right of electing; you have a right of expelling: they of choosing; you of judging, and only of judging, of the choice. What bounds shall be set to the freedom of that choice? Their right is prior to ours: we all originate there. They are the mortal enemies of the House of Commons who would persuade them to think or to act as if they were a self-originated magistracy, independent of the people, and unconnected with their opinions and feelings. Under a pretence of exalting the dignity, they undermine the very foundations of this House. When the question is asked *here*, What disturbs the people? whence all this clamor? we apply to the Treasury bench, and they tell us it is from the efforts of libellers, and the wickedness of the people: a worn-out ministerial pretence. If abroad the people are deceived by popular, within we are deluded by ministerial cant.

The question amounts to this: Whether you mean to be a legal tribunal, or an arbitrary and despotic assembly? I see and I feel the delicacy and difficulty of the ground upon which we stand in this question. I could wish, indeed, that they who advise the crown had not left Parliament in this very ungraceful distress, in which they can neither retract with dignity nor persist with justice. Another Parliament might have satisfied the people without lowering themselves. But our situation is not in our own choice: our conduct in that situation is all that is in our own option. The substance of the question is, to put bounds to your own power by the rules and principles of law. This is, I am sensible, a difficult thing to the corrupt, grasping, and ambitious part of human nature. But the very difficulty argues and enforces the necessity of it. First, because the greater the power, the more dangerous the abuse. Since the Revolution, at least, the power of the nation has all flowed with a full tide into the House of Commons. Secondly, because the House of Commons, as it is the most powerful, is the most corruptible part of the whole Constitution. Our public wounds cannot be concealed; to be cured, they

must be laid open. The public does think we are a corrupt body. In our *legislative capacity*, we are, in most instances, esteemed a very wise body; in our judicial, we have no credit, no character at all. Our judgments stink in the nostrils of the people. They think us to be not only without virtue, but without shame. Therefore the greatness of our power, and the great and just opinion of our corruptibility and our corruption, render it necessary to fix some bound, to plant some landmark, which we are never to exceed. This is what the bill proposes.

First, on this head, I lay it down as a fundamental rule in the law and Constitution of this country, that this House has not by itself alone a legislative authority in any case whatsoever. I know that the contrary was the doctrine of the usurping House of Commons, which threw down the fences and bulwarks of law, which annihilated first the lords, then the crown, then its constituents. But the first thing that was done on the restoration of the Constitution was to settle this point. Secondly, I lay it down as a rule, that the power of occasional incapacitation, on discretionary grounds, is a legislative power. In order to establish this principle, if it should not be sufficiently proved by being stated, tell me what are the criteria, the characteristics, by which you distinguish between a legislative and a juridical act. It will be necessary to state, shortly, the difference between a legislative and a juridical act.

A legislative act has no reference to any rule but these two,—original justice, and discretionary application. Therefore it can give rights,—rights where no rights existed before; and it can take away rights where they were before established. For the law, which binds all others, does not and cannot bind the law-maker: he, and he alone, is above the law. But a judge, a person exercising a judicial capacity, is neither to apply to original justice nor to a discretionary application of it. He goes to justice and discretion only at second hand, and through the medium of some superiors. He is to work neither upon his opinion of the one nor of the other, but upon a fixed rule, of which he has not the making, but singly and solely the *application* to the case.

The power assumed by the House neither is nor can be judicial power exercised according to known law. The properties of law are, first, that it should be known; secondly, that it should be fixed, and not occasional. First, this power cannot be according to the first property of law; because no man does or can know it, nor do you yourselves know upon what grounds you will vote the incapacity of any man. No man in Westminster Hall, or in any court upon earth, will say that is law, upon which, if a man going to his counsel should say to him, "What is my tenure in law of this estate?" he would answer, "Truly, Sir, I know not; the court has no rule but its own discretion; they will determine." It is not a fixed law; because you profess you vary it according to the occasion, exercise it according to your discretion, no man can call for it as a right. It is argued, that the incapacity is not originally voted, but a consequence of a power of expulsion. But if you expel, not upon legal, but upon arbitrary, that is, upon discretionary grounds, and the incapacity is *ex vi termini* and inclusively comprehended in the expulsion, is not the incapacity voted in the expulsion? Are they not convertible terms? And if incapacity is voted to be inherent in expulsion, if expulsion be arbitrary, incapacity is arbitrary also. I have therefore shown that the power of incapacitation is a legislative power; I have shown that legislative power does not belong to the House of Commons; and therefore it follows that the House of Commons has not a power of incapacitation.

I know not the origin of the House of Commons, but am very sure that it did not create itself; the electors were prior to the elected, whose rights originated either from the people at large, or from some other form of legislature, which never could intend for the chosen a power of superseding the choosers.

If you have not a power of declaring an incapacity simply by the mere act of declaring it, it is evident to the most ordinary reason you cannot have a right of expulsion, inferring, or rather including, an incapacity. For as the law, when it gives any direct right, gives also as necessary incidents all the means of acquiring the possession of that right, so, where it does not give a right directly, it refuses all the means by which such a right may by any mediums be exercised, or in effect be indirectly acquired. Else it is very obvious that the intention of the law in refusing that right might be entirely frustrated,

and the whole power of the legislature baffled. If there be no certain, invariable rule of eligibility, it were better to get simplicity, if certainty is not to be had, and to resolve all the franchises of the subject into this one short proposition,—the will and pleasure of the House of Commons.

The argument drawn from the courts of law applying the principles of law to new cases as they emerge is altogether frivolous, inapplicable, and arises from a total ignorance of the bounds between civil and criminal jurisdiction, and of the separate maxims that govern these two provinces of law, that are eternally separate. Undoubtedly the courts of law, where a new case comes before them, as they do every hour, then, that there may be no defect in justice, call in similar principles, and the example of the nearest determination, and do everything to draw the law to as near a conformity to general equity and right reason as they can bring it with its being a fixed principle. *Boni judicis est ampliare justitiam*,—that is, to make open and liberal justice. But in criminal matters this parity of reason and these analogies ever have been and ever ought to be shunned.

Whatever is incident to a court of judicature is necessary to the House of Commons as judging in elections. But a power of making incapacities is not necessary to a court of judicature: therefore a power of making incapacities is not necessary to the House of Commons.

Incapacity, declared by whatever authority, stands upon two principles: first, an incapacity arising from the supposed incongruity of two duties in the commonwealth; secondly, an incapacity arising from unfitness by infirmity of nature or the criminality of conduct. As to the first class of incapacities, they have no *hardship* annexed to them. The persons so incapacitated are paid by one dignity for what they abandon in another, and for the most part the situation arises from their own choice. But as to the second, arising from an unfitness not fixed by Nature, but superinduced by some positive acts, or arising from honorable motives, such as an occasional personal disability, of all things it ought to be defined by the fixed rule of law, what Lord Coke calls the golden metwand of the law, and not by the crooked cord of discretion. Whatever is general is better borne. We take our common lot with men of the same description. But to be selected and marked out by a particular brand of unworthiness among our fellow-citizens is a lot of all others the hardest to be borne, and consequently is of all others that act winch ought only to be trusted to the legislature, as not only *legislative* in its nature, but of all parts of legislature the most odious. The question is over, if this is shown not to be a legislative act.

But what is very usual and natural is, to corrupt judicature into legislature. On this point it is proper to inquire whether a court of judicature which decides without appeal has it as a necessary incident of such judicature, that whatever it decides is *de jure* law. Nobody will, I hope, assert this; because the direct consequence would be the entire extinction of the difference between true and false judgments. For if the judgment makes the law, and not the law directs the judgment, it is impossible there should be such a thing as an illegal judgment given.

But instead of standing upon this ground, they introduce another question wholly foreign to it: Whether it ought not to be submitted to as if it were law? And then the question is,—By the Constitution of this country, what degree of submission is due to the authoritative acts of a limited power? This question of submission, determine it how you please, has nothing to do in this discussion and in this House. Here it is not, how long the people are bound to tolerate the illegality of our judgments, but whether we have a right to substitute our occasional opinion in the place of law, so as to deprive the citizen of his franchise....

SPEECH ON A BILL FOR SHORTENING THE DURATION OF PARLIAMENTS. MAY 8, 1780

It is always to be lamented, when men are driven to search into the foundations of the commonwealth. It is certainly necessary to resort to the theory of your government, whenever you propose any alteration in the frame of it,—whether that alteration means the revival of some former antiquated and forsaken constitution of state, or the introduction of some new improvement in the commonwealth. The object of our deliberation is, to promote the good purposes for which elections have been instituted, and to prevent their inconveniences. If we thought frequent elections attended with no inconvenience, or with but a trifling inconvenience, the strong overruling principle of the Constitution would sweep us like a torrent towards them. But your remedy is to be suited to your disease, your present disease, and to your whole disease. That man thinks much too highly, and therefore he thinks weakly and delusively, of any contrivance of human wisdom, who believes that it can make any sort of approach to perfection. There is not, there never was, a principle of government under heaven, that does not, in the very pursuit of the good it proposes, naturally and inevitably lead into some inconvenience which makes it absolutely necessary to counterwork and weaken the application of that first principle itself, and to abandon something of the extent of the advantage you proposed by it, in order to prevent also the inconveniences which have arisen from the instrument of all the good you had in view.

To govern according to the sense and agreeably to the interests of the people is a great and glorious object of government. This object cannot be obtained but through the medium of popular election; and popular election is a mighty evil. It is such and so great an evil, that, though there are few nations whose monarchs were not originally elective, very few are now elected. They are the distempers of elections that have destroyed all free states. To cure these distempers is difficult, if not impossible; the only thing, therefore, left to save the commonwealth is, to prevent their return too frequently. The objects in view are, to have Parliaments as frequent as they can be without distracting them in the prosecution of public business: on one hand, to secure their dependence upon the people; on the other, to give them that quiet in their minds and that ease in their fortunes as to enable them to perform the most arduous and most painful duty in the world with spirit, with efficiency, with independency, and with experience, as real public counsellors, not as the canvassers at a perpetual election. It is wise to compass as many good ends as possibly you can, and, seeing there are inconveniences on both sides, with benefits on both, to give up a part of the benefit to soften the inconvenience. The perfect cure is impracticable; because the disorder is dear to those from whom alone the cure can possibly be derived. The utmost to be done is to palliate, to mitigate, to respite, to put off the evil day of the Constitution to its latest possible hour,—and may it be a very late one!

This bill, I fear, would precipitate one of two consequences,—I know not which most likely, or which most dangerous: either that the crown, by its constant, stated power, influence, and revenue, would wear out all opposition in elections, or that a violent and furious popular spirit would arise. I must see, to satisfy me, the remedies; I must see, from their operation in the cure of the old evil, and in the cure of those new evils which are inseparable from all remedies, how they balance each other, and what is the total result. The excellence of mathematics and metaphysics is, to have but one thing before you; but he forms the best judgment in all moral disquisitions who has the greatest number

and variety of considerations in one view before him, and can take them in with the best possible consideration of the middle results of all.

We of the opposition, who are not friends to the bill, give this pledge at least of our integrity and sincerity to the people,—that in our situation of systematic opposition to the present ministers, in which all our hope of rendering it effectual depends upon popular interest and favor, we will not flatter them by a surrender of our uninfluenced judgment and opinion; we give a security, that, if ever we should be in another situation, no flattery to any other sort of power and influence would induce us to act against the true interests of the people.

All are agreed that Parliaments should not be perpetual; the only question is, What is the most convenient time for their duration?—on which there are three opinions. We are agreed, too, that the term ought not to be chosen most likely in its operation to spread corruption, and to augment the already overgrown influence of the crown. On these principles I mean to debate the question. It is easy to pretend a zeal for liberty. Those who think themselves not likely to be incumbered with the performance of their promises, either from their known inability or total indifference about the performance, never fail to entertain the most lofty ideas. They are certainly the most specious; and they cost them neither reflection to frame, nor pains to modify, nor management to support. The task is of another nature to those who mean to promise nothing that it is not in their intention, or may possibly be in their power to perform,—to those who are bound and principled no more to delude the understandings than to violate the liberty of their fellow-subjects. Faithful watchmen we ought to be over the rights and privileges of the people. But our duty, if we are qualified for it as we ought, is to give them information, and not to receive it from them: we are not to go to school to them, to learn the principles of law and government. In doing so, we should not dutifully serve, but we should basely and scandalously betray the people, who are not capable of this service by nature, nor in any instance called to it by the Constitution. I reverentially look up to the opinion of the people, and with an awe that is almost superstitious. I should be ashamed to show my face before them, if I changed my ground as they cried up or cried down men or things or opinions,—if I wavered and shifted about with every change, and joined in it or opposed as best answered any low interest or passion,—if I held them up hopes which I knew I never intended, or promised what I well knew I could not perform. Of all these things they are perfect sovereign judges without appeal; but as to the detail of particular measures, or to any general schemes of policy, they have neither enough of speculation in the closet nor of experience in business to decide upon it. They can well see whether we are tools of a court or their honest servants. Of that they can well judge,—and I wish that they always exercised their judgment; but of the particular merits of a measure I have other standards....

That the frequency of elections proposed by this bill has a tendency to increase the power and consideration of the electors, not lessen corruptibility, I do most readily allow: so far it is desirable. This is what it has: I will tell you now what it has not. 1st. It has no sort of tendency to increase their integrity and public spirit, unless an increase of power has an operation upon voters in elections, that it has in no other situation in the world, and upon no other part of mankind. 2nd. This bill has no tendency to limit the quantity of influence in the crown, to render its operation more difficult, or to counteract that operation which it cannot prevent in any way whatsoever. It has its full weight, its full range, and its uncontrolled operation on the electors exactly as it had before. 3rd. Nor, thirdly, does it abate the interest or inclination of ministers to apply that influence to the electors: on the contrary, it renders it much more necessary to them, if they seek to have a majority in Parliament, to increase the means of that influence, and redouble their diligence, and to sharpen dexterity in the application. The whole effect of the bill is, therefore, the removing the application of some part of the influence from the elected to the electors, and further to strengthen and extend a court interest already great and powerful in boroughs: here to fix their magazines and places of arms, and thus to make them the principal, not the secondary, theatre of their manœuvres for securing a determined majority in Parliament.

I believe nobody will deny that the electors are corruptible. They are men,—it is saying nothing worse of them; many of them are but ill informed in their minds, many feeble in their circumstances, easily overreached, easily seduced. If they are many, the wages of corruption are the lower; and would to God it were not rather a contemptible and hypocritical adulation than a charitable sentiment, to say that there is already no debauchery, no corruption, no bribery, no perjury, no blind fury and interested faction among the electors in many parts of this kingdom!—nor is it surprising, or at all blamable, in that class of private men, when they see their neighbors aggrandized, and themselves poor and virtuous without that *éclat* or dignity which attends men in higher situations.

But admit it were true that the great mass of the electors were too vast an object for court influence to grasp or extend to, and that in despair they must abandon it; he must be very ignorant of the state of every popular interest, who does not know that in all the corporations, all the open boroughs, indeed in every district of the kingdom, there is some leading man, some agitator, some wealthy merchant or considerable manufacturer, some active attorney, some popular preacher, some money-lender, *&c., &c.,* who is followed by the whole flock. This is the style of all free countries.

Multum in Fabiâ valet hic, valet ille Velinâ;
Cuilibet hic fasces dabit, eripietque curule.

These spirits, each of which informs and governs his own little orb, are neither so many, nor so little powerful, nor so incorruptible, but that a minister may, as he does frequently, find means of gaining them, and through, them all their followers. To establish, therefore, a very general influence among electors will no more be found an impracticable project than to gain an undue influence over members of Parliament. Therefore I am apprehensive that this bill, though it shifts the place of the disorder, does by no means relieve the Constitution. I went through almost every contested election in the beginning of this Parliament, and acted as a manager in very many of them; by which, though as at a school of pretty severe and rugged discipline, I came to have some degree of instruction concerning the means by which Parliamentary interests are in general procured and supported.

Theory, I know, would suppose that every general election is to the representative a day of judgment, in which he appears before his constituents to account for the use of the talent with which they intrusted him, and for the improvement he has made of it for the public advantage. It would be so, if every corruptible representative were to find an enlightened and incorruptible constituent. But the practice and knowledge of the world will not suffer us to be ignorant that the Constitution on paper is one thing, and in fact and experience is another. We must know that the candidate, instead of trusting at his election to the testimony of his behavior in Parliament, must bring the testimony of a large sum of money, the capacity of liberal expense in entertainments, the power of serving and obliging the rulers of corporations, of winning over the popular leaders of political clubs, associations, and neighborhoods. It is ten thousand times more necessary to show himself a man of power than a man of integrity, in almost all the elections with which I have been acquainted. Elections, therefore, become a matter of heavy expense; and if contests are frequent, to many they will become a matter of an expense totally ruinous, which no fortunes can bear, but least of all the landed fortunes, incumbered as they often, indeed as they mostly are, with debts, with portions, with jointures, and tied up in the hands of the possessor by the limitations of settlement. It is a material, it is in my opinion a lasting consideration, in all the questions concerning election. Let no one think the charges of elections a trivial matter.

The charge, therefore, of elections ought never to be lost sight of in a question concerning their frequency; because the grand object you seek is independence. Independence of mind will ever be more or less influenced by independence of fortune; and if every three years the exhausting sluices of entertainments, drinkings, open houses, to say nothing of bribery, are to be periodically drawn up and renewed,—if government favors, for which now, in some shape or other, the whole race of men

are candidates, are to be called for upon every occasion, I see that private fortunes will be washed away, and every, even to the least, trace of independence borne down by the torrent. I do not seriously think this Constitution, even to the wrecks of it, could survive five triennial elections. If you are to fight the battle, you must put on the armor of the ministry, you must call in the public to the aid of private money. The expense of the last election has been computed (and I am persuaded that it has not been overrated) at 1,500,000*l.*,—three shillings in the pound more in [than?] the land-tax. About the close of the last Parliament and the beginning of this, several agents for boroughs went about, and I remember well that it was in every one of their mouths, "Sir, your election will cost you three thousand pounds, if you are independent; but if the ministry supports you, it may be done for two, and perhaps for less." And, indeed, the thing spoke itself. Where a living was to be got for one, a commission in the army for another, a lift in the navy for a third, and custom-house offices scattered about without measure or number, who doubts but money may be saved? The Treasury may even add money: but, indeed, it is superfluous. A gentleman of two thousand a year, who meets another of the same fortune, fights with equal arms; but if to one of the candidates you add a thousand a year in places for himself, and a power of giving away as much among others, one must, or there is no truth in arithmetical demonstration, ruin his adversary, if he is to meet him and to fight with him every third year. It will be said I do not allow for the operation of character: but I do; and I know it will have its weight in most elections,—perhaps it may be decisive in some; but there are few in which it will prevent great expenses. The destruction of independent fortunes will be the consequence on the part of the candidate. What will be the consequence of triennial corruption, triennial drunkenness, triennial idleness, triennial lawsuits, litigations, prosecutions, triennial frenzy,—of society dissolved, industry interrupted, ruined,—of those personal hatreds that will never be suffered to soften, those animosities and feuds which will be rendered immortal, those quarrels which are never to be appeased, —morals vitiated and gangrened to the vitals? I think no stable and useful advantages were ever made by the money got at elections by the voter, but all he gets is doubly lost to the public: it is money given to diminish the general stock of the community, which is in the industry of the subject. I am sure that it is a good while before he or his family settle again to their business. Their heads will never cool; the temptations of elections will be forever glittering before their eyes. They will all grow politicians; every one, quitting his business, will choose to enrich himself by his vote. They will all take the gauging-rod; new places will be made for them; they will run to the custom-house quay; their looms and ploughs will be deserted.

So was Rome destroyed by the disorders of continual elections, though those of Rome were sober disorders. They had nothing but faction, bribery, bread, and stage-plays, to debauch them: we have the inflammation of liquor superadded, a fury hotter than any of them. There the contest was only between citizen and citizen: here you have the contests of ambitious citizens of one side supported by the crown to oppose to the efforts (let it be so) of private and unsupported ambition on the other. Yet Rome was destroyed by the frequency and charge of elections, and the monstrous expense of an unremitted courtship to the people. I think, therefore, the independent candidate and elector may each be destroyed by it, the whole body of the community be an infinite sufferer, and a vicious ministry the only gainer.

Gentlemen, I know, feel the weight of this argument; they agree, that this would be the consequence of more frequent elections, if things were to continue as they are. But they think the greatness and frequency of the evil would itself be, a remedy for it,—that, sitting but for a short time, the member would not find it worth while to make such vast expenses, while the fear of their constituents will hold them the more effectually to their duty.

To this I answer, that experience is full against them. This is no new thing; we have had triennial Parliaments; at no period of time were seats more eagerly contested. The expenses of elections ran higher, taking the state of all charges, than they do now. The expense of entertainments was such, that an act, equally, severe and ineffectual, was made against it; every monument of the time bears

witness of the expense, and most of the acts against corruption in elections were then made; all the writers talked of it and lamented it. Will any one think that a corporation will be contented with a bowl of punch or a piece of beef the less, because elections are every three, instead of every seven years? Will they change their wine for ale, because they are to get more ale three years hence? Don't think it. Will they make fewer demands for the advantages o£ patronage in favors and offices, because their member is brought more under their power? We have not only our own historical experience in England upon this subject, but we have the experience coexisting with us in Ireland, where, since their Parliament has been shortened, the expense of elections has been so far from being lowered, that it has been very near doubled. Formerly they sat for the king's life; the ordinary charge of a seat in Parliament was then fifteen hundred pounds. They now sit eight years, four sessions; it is now twenty-five hundred pounds, and upwards. The spirit of *emulation* has also been extremely increased, and all who are acquainted with the tone of that country have no doubt that the spirit is still growing, that new candidates will take the field, that the contests will be more violent, and the expenses of elections larger than ever.

It never can be otherwise. A seat in this House, for good purposes, for bad purposes, for no purposes at all, (except the mere consideration derived from being concerned in the public counsels,) will ever be a first-rate object of ambition in England. Ambition is no exact calculator. Avarice itself does not calculate strictly, when it games. One thing is certain,—that in this political game the great lottery of power is that into which men will purchase with millions of chances against them. In Turkey, where the place, where the fortune, where the head itself are so insecure that scarcely any have died in their beds for ages, so that the bowstring is the natural death of bashaws, yet in no country is power and distinction (precarious enough, God knows, in all) sought for with such boundless avidity,—as if the value of place was enhanced by the danger and insecurity of its tenure. Nothing will ever make a seat in this House not an object of desire to numbers by any means or at any charge, but the depriving it of all power and all dignity. This would do it. This is the true and only nostrum for that purpose. But an House of Commons without power and without dignity, either in itself or in its members, is no House of Commons for the purposes of this Constitution.

But they will be afraid to act ill, if they know that the day of their account is always near. I wish it were true; but it is not: here again we have experience, and experience is against us. The distemper of this age is a poverty of spirit and of genius: it is trifling, it is futile, worse than ignorant, superficially taught, with the politics and morals of girls at a boarding-school rather than of men and statesmen: but it is not yet desperately wicked, or so scandalously venal as in former times. Did not a triennial Parliament give up the national dignity, approve the peace of Utrecht, and almost give up everything else, in taking every step to defeat the Protestant succession? Was not the Constitution saved by those who had no election at all to go to, the Lords, because the court applied to electors, and by various means carried them from their true interests, so that the Tory ministry had a majority without an application to a single member? Now as to the conduct of the members, it was then far from pure and independent. Bribery was infinitely more flagrant. A predecessor of yours, Mr. Speaker, put the question of his own expulsion for bribery. Sir William Musgrave was a wise man, a grave man, an independent man, a man of good fortune and good family; however, he carried on, while in opposition, a traffic, a shameful traffic, with the ministry. Bishop Burnet knew of six thousand pounds which he had received at one payment. I believe the payment of sums in hard money, plain, naked bribery, is rare amongst us. It was then far from uncommon.

A triennial was near ruining, a septennial Parliament saved your Constitution; nor, perhaps, have you ever known a more flourishing period, for the union of national prosperity, dignity, and liberty, than the sixty years you have passed under that constitution of Parliament.

The shortness of time in which they are to reap the profits of iniquity is far from checking the avidity of corrupt men; it renders them infinitely more ravenous. They rush violently and precipitately on their object; they lose all regard to decorum. The moments of profits are precious; never are men

so wicked as during a general mortality. It was so in the great plague at Athens, every symptom of which (and this its worse symptom amongst the rest) is so finely related by a great historian of antiquity. It was so in the plague of London in 1665. It appears in soldiers, sailors, &c. Whoever would contrive to render the life of man much shorter than it is would, I am satisfied, find the surest receipt for increasing the wickedness of our nature.

Thus, in my opinion, the shortness of a triennial sitting would have the following ill effects: It would make the member more shamelessly and shockingly corrupt; it would increase his dependence on those who could best support him at his election; it would wrack and tear to pieces the fortunes of those who stood upon their own fortunes and their private interest; it would make the electors infinitely more venal; and it would make the whole body of the people, who are, whether they have votes or not, concerned in elections, more lawless, more idle, more debauched; it would utterly destroy the sobriety, the industry, the integrity, the simplicity of all the people, and undermine, I am much afraid, the deepest and best-laid foundations of the commonwealth.

Those who have spoken and written upon this subject without doors do not so much deny the probable existence of these inconveniences in their measure as they trust for their prevention to remedies of various sorts which they propose. First, a place bill. But if this will not do, as they fear it will not, then, they say, We will have a rotation, and a certain number of you shall be rendered incapable of being elected for ten years. Then for the electors, they shall ballot. The members of Parliament also shall decide by ballot. A fifth project is the change of the present legal representation of the kingdom. On all this I shall observe, that it will be very unsuitable to your wisdom to adopt the project of a bill to which there are objections insuperable by anything in the bill itself, upon the hope that those objections may be removed by subsequent projects, every one of which is full of difficulties of its own, and which are all of them very essential alterations in the Constitution. This seems very irregular and unusual. If anything should make this a very doubtful measure, what can make it more so than that in the opinion of its advocates it would aggravate all our old inconveniences in such a manner as to require a total alteration in the Constitution of the kingdom? If the remedies are proper in triennial, they will not be less so in septennial elections. Let us try them first,—see how the House relishes them,—see how they will operate in the nation,—and then, having felt your way, and prepared against these inconveniences....

The honorable gentleman sees that I respect the principle upon which he goes, as well as his intentions and his abilities. He will believe that I do not differ from him wantonly and on trivial grounds. He is very sure that it was not his embracing one way which determined me to take the other. *I* have not in newspapers, to derogate from his fair fame with the nation, printed the first rude sketch of his bill with ungenerous and invidious comments. *I* have not, in conversations industriously circulated about the town, and talked on the benches of this House, attributed his conduct to motives low and unworthy, and as groundless as they are injurious. *I* do not affect to be frightened with this proposition, as if some hideous spectre had started from hell, which was to be sent back again by every form of exorcism and every kind of incantation. *I* invoke no Acheron to overwhelm him in the whirlpools of its muddy gulf. *I* do not tell the respectable mover and seconder, by a perversion of their sense and expressions, that their proposition halts between the ridiculous and the dangerous. *I* am not one of those who start up, three at a time, and fall upon and strike at him with so much eagerness that our daggers hack one another in his sides. My honorable friend has not brought down a spirited imp of chivalry to win the first achievement and blazon of arms on his milk-white shield in a field listed against him,—nor brought out the generous offspring of lions, and said to them,—"Not against that side of the forest! beware of that!—here is the prey, where you are to fasten your paws!"—and seasoning his unpractised jaws with blood, tell him,—"This is the milk for which you are to thirst hereafter!" *We* furnish at his expense no holiday,—nor suspend hell, that a crafty Ixion may have rest from his wheel,—nor give the common adversary (if he be a common adversary) reason to say,—"I would have put in my word to oppose, but the eagerness of your allies in your social war was such

that I could not break in upon you." I hope he sees and feels, and that every member sees and feels along with him, the difference between amicable dissent and civil discord.

SPEECH ON A MOTION MADE IN THE HOUSE OF COMMONS, MAY 7, 1782, FOR A COMMITTEE TO INQUIRE INTO THE STATE OF THE REPRESENTATION OF THE COMMONS IN PARLIAMENT

Mr. Speaker,—We have now discovered, at the close of the eighteenth century, that the Constitution of England, which for a series of ages had been the proud distinction of this country, always the admiration and sometimes the envy of the wise and learned in every other nation,—we have discovered that this boasted Constitution, in the most boasted part of it, is a gross imposition upon the understanding of mankind, an insult to their feelings, and acting by contrivances destructive to the best and most valuable interests of the people. Our political architects have taken a survey of the fabric of the British Constitution. It is singular that they report nothing against the crown, nothing against the lords: but in the House of Commons everything is unsound; it is ruinous in every part; it is infested by the dry rot, and ready to tumble about our ears without their immediate help. You know by the faults they find what are their ideas of the alteration. As all government stands upon opinion, they know that the way utterly to destroy it is to remove that opinion, to take away all reverence, all confidence from it; and then, at the first blast of public discontent and popular tumult, it tumbles to the ground.

In considering this question, they who oppose it oppose it on different grounds. One is in the nature of a previous question: that some alterations may be expedient, but that this is not the time for making them. The other is, that no essential alterations are at all wanting, and that neither *now* nor at *any* time is it prudent or safe to be meddling with the fundamental principles and ancient tried usages of our Constitution,—that our representation is as nearly perfect as the necessary imperfection of human affairs and of human creatures will suffer it to be,—and that it is a subject of prudent and honest use and thankful enjoyment, and not of captious criticism and rash experiment.

On the other side there are two parties, who proceed on two grounds, in my opinion, as they state them, utterly irreconcilable. The one is juridical, the other political. The one is in the nature of a claim of right, on the supposed rights of man as man: this party desire the decision of a suit. The other ground, as far as I can divine what it directly means, is, that the representation is not so politically framed as to answer the theory of its institution. As to the claim of *right*, the meanest petitioner, the most gross and ignorant, is as good as the best: in some respects his claim is more favorable, on account of his ignorance; his weakness, his poverty, and distress only add to his titles; he sues *in forma pauperis*; he ought to be a favorite of the court. But when the *other* ground is taken, when the question is political, when a new constitution is to be made on a sound theory of government, then the presumptuous pride of didactic ignorance is to be excluded from the counsel in this high and arduous matter, which often bids defiance to the experience of the wisest. The first claims a personal representation; the latter rejects it with scorn and fervor. The language of the first party is plain and intelligible; they who plead an absolute right cannot be satisfied with anything short of personal representation, because all *natural* rights must be the rights of individuals, as by *nature* there is no such thing as politic or corporate personality: all these ideas are mere fictions of law, they are creatures of voluntary institution; men as men are individuals, and nothing else. They, therefore, who reject the principle of natural and personal representation are essentially and eternally at variance with those who claim it. As to the first sort of reformers, it is ridiculous to talk to them of

the British Constitution upon any or upon all of its bases: for they lay it down, that every man ought to govern, himself, and that, where he cannot go, himself, he must send his representative; that all other government is usurpation, and is so far from having a claim to our obedience, it is not only our right, but our duty, to resist it. Nine tenths of the reformers argue thus,—that is, on the natural right.

It is impossible not to make some reflection on the nature of this claim, or avoid a comparison between the extent of the principle and the present object of the demand. If this claim be founded, it is clear to what it goes. The House of Commons, in that light, undoubtedly, is no representative of the people, as a collection of individuals. Nobody pretends it, nobody can justify such an assertion. When you come to examine into this claim of right, founded on the right of self-government in each individual, you find the thing demanded infinitely short of the principle of the demand. What! *one third* only of the legislature, and of the government no share at all? What sort of treaty of partition is this for those who have an inherent right to the whole? Give them all they ask, and your grant is still a cheat: for how comes only a third to be their younger-children's fortune in this settlement? How came they neither to have the choice of kings, or lords, or judges, or generals, or admirals, or bishops, or priests, or ministers, or justices of peace? Why, what have you to answer in favor of the prior rights of the crown and peerage but this: Our Constitution is a prescriptive constitution; it is a constitution whose sole authority is, that it has existed time out of mind? It is settled in these *two* portions against one, legislatively,—and in the whole of the judicature, the whole of the federal capacity, of the executive, the prudential, and the financial administration, in one alone. Nor was your House of Lords and the prerogatives of the crown settled on any adjudication in favor of natural rights: for they could never be so partitioned. Your king, your lords, your judges, your juries, grand and little, all are prescriptive; and what proves it is the disputes, not yet concluded, and never near becoming so, when any of them first originated. Prescription is the most solid of all titles, not only to property, but, which is to secure that property, to government. They harmonize with each other, and give mutual aid to one another. It is accompanied with another ground of authority in the constitution of the human mind, presumption. It is a presumption in favor of any settled scheme of government against any untried project, that a nation has long existed and flourished under it. It is a better presumption even of the *choice* of a nation,—far better than any sudden and temporary arrangement by actual election. Because a nation is not an idea only of local extent and individual momentary aggregation, but it is an idea of continuity which extends in time as well as in numbers and in space. And this is a choice not of one day or one set of people, not a tumultuary and giddy choice; it is a deliberate election of ages and of generations; it is a constitution, made by what is ten thousand times better than choice; it is made by the peculiar circumstances, occasions, tempers, dispositions, and moral, civil, and social habitudes of the people, which, disclose themselves only in a long space of time. It is a vestment which accommodates itself to the body. Nor is prescription of government formed upon blind, unmeaning prejudices. For man is a most unwise and a most wise being. The individual is foolish; the multitude, for the moment, is foolish, when they act without deliberation; but the species is wise, and, when time is given to it, as a species, it almost always acts right.

The reason for the crown as it is, for the lords as they are, is my reason for the commons as they are, the electors as they are. Now if the crown, and the lords, and the judicatures are all prescriptive, so is the House of Commons of the very same origin, and of no other. We and our electors have their powers and privileges both made and circumscribed by prescription, as much to the full as the other parts; and as such we have always claimed them, and on no other title. The House of Commons is a legislative body corporate by prescription, not made upon any given theory, but existing prescriptively, —just like the rest. This proscription has made it essentially what it is, an aggregate collection of three parts, knights, citizens, burgesses. The question is, whether this has been always so, since the House of Commons has taken its present shape and circumstances, and has been an essential operative part of the Constitution,—which, I take it, it has been for at least five hundred years.

This I resolve to myself in the affirmative: and then another question arises:—Whether this House stands firm upon its ancient foundations, and is not, by time and accidents, so declined from its perpendicular as to want the hand of the wise and experienced architects of the day to set it upright again, and to prop and buttress it up for duration;—whether it continues true to the principles upon which it has hitherto stood;—whether this be *de facto* the constitution of the House of Commons, as it has been since the time that the House of Commons has without dispute become a necessary and an efficient part of the British Constitution. To ask whether a thing which has always been the same stands to its usual principle seems to me to be perfectly absurd: for how do you know the principles, but from the construction? and if that remains the same, the principles remain the same. It is true that to say your Constitution is what it has been is no sufficient defence for those who say it is a bad constitution. It is an answer to those who say that it is a degenerate constitution. To those who say it is a bad one, I answer, Look to its effects. In all moral machinery, the moral results are its test.

On what grounds do we go to restore our Constitution to what it has been at some given period, or to reform and reconstruct it upon principles more conformable to a sound theory of government? A prescriptive government, such as ours, never was the work of any legislator, never was made upon any foregone theory. It seems to me a preposterous way of reasoning, and a perfect confusion of ideas, to take the theories which learned and speculative men have made from that government, and then, supposing it made on those theories which were made from it, to accuse the government as not corresponding with them. I do not vilify theory and speculation: no, because that would be to vilify reason itself, *Neque decipitur ratio, neque decipit unquam*. No,—whenever I speak against theory, I mean always a weak, erroneous, fallacious, unfounded, or imperfect theory; and one of the ways of discovering that it is a false theory is by comparing it with practice. This is the true touchstone of all theories which regard man and the affairs of men,—Does it suit his nature in general?—does it suit his nature as modified by his habits?

The more frequently this affair is discussed, the stronger the case appears to the sense and the feelings of mankind. I have no more doubt than I entertain of my existence, that this very thing, which is stated as an horrible thing, is the means of the preservation of our Constitution whilst it lasts, —of curing it of many of the disorders which, attending every species of institution, would attend the principle of an exact local representation, or a representation on the principle of numbers. If you reject personal representation, you are pushed upon expedience; and, then what they wish us to do is, to prefer their speculations on that subject to the happy experience of this country, of a growing liberty and a growing prosperity for five hundred years. Whatever respect I have for their talents, this, for one, I will not do. Then what is the standard of expedience? Expedience is that which is good for the community, and good for every individual in it. Now this expedience is the *desideratum*, to be sought either without the experience of means or with that experience. If without, as in case of the fabrication of a new commonwealth, I will hear the learned arguing what promises to be expedient; but if we are to judge of a commonwealth actually existing, the first thing I inquire is, What has been *found* expedient or inexpedient? And I will not take their *promise* rather than the *performance* of the Constitution.

But no, this was not the cause of the discontents. I went through most of the northern parts,—the Yorkshire election was then raging; the year before, through most of the western counties,—Bath, Bristol, Gloucester: not one word, either in the towns or country, on the subject of representation; much on the receipt tax, something on Mr. Fox's ambition; much greater apprehension of danger from thence than from want of representation. One would think that the ballast of the ship was shifted with us, and that our Constitution had the gunwale under water. But can you fairly and distinctly point out what one evil or grievance has happened which you can refer to the representative not following the opinion of his constituents? What one symptom do we find of this inequality? But it is not an arithmetical inequality with which we ought to trouble ourselves. If there be a moral, a political equality, this is the *desideratum* in our Constitution, and in every constitution in the world.

Moral inequality is as between places and between classes. Now, I ask, what advantage do you find that the places which abound in representation possess over others in which it is more scanty, in security for freedom, in security for justice, or in any one of those means of procuring temporal prosperity and eternal happiness the ends for which society was formed? Are the local interests of Cornwall and Wiltshire, for instance, their roads, canals, their prisons, their police, better than Yorkshire, Warwickshire, or Staffordshire? Warwick has members: is Warwick or Stafford more opulent, happy, or free than Newcastle, or than Birmingham? Is Wiltshire the pampered favorite, whilst Yorkshire, like the child of the bondwoman, is turned out to the desert? This is like the unhappy persons who live, if they can be said to live, in the statical chair,—who are ever feeling their pulse, and who do not judge of health by the aptitude of the body to perform its functions, but by their ideas of what ought to be the true balance between the several secretions. Is a committee of Cornwall, &c., thronged, and the others deserted? No. You have an equal representation, because you have men equally interested in the prosperity of the whole, who are involved in the general interest and the general sympathy; and, perhaps, these places furnishing a superfluity of public agents and administrators, (whether in strictness they are representatives or not I do not mean to inquire, but they are agents and administrators,) they will stand clearer of local interests, passions, prejudices, and cabals than the others, and therefore preserve the balance of the parts, and with a more general view and a more steady hand than the rest....

In every political proposal we must not leave out of the question the political views and object of the proposer; and these we discover, not by what he says, but by the principles he lays down. "I mean," says he, "a moderate and temperate reform: that is, I mean to do as little good as possible." If the Constitution be what you represent it, and there be no danger in the change, you do wrong not to make the reform commensurate to the abuse. Fine reformer, indeed! generous donor! What is the cause of this parsimony of the liberty which you dole out to the people? Why all this limitation in giving blessings and benefits to mankind? You admit that there is an extreme in liberty, which may be infinitely noxious to those who are to receive it, and which in the end will leave them no liberty at all. I think so, too. They know it, and they feel it. The question is, then, What is the standard of that extreme? What that gentleman, and the associations, or some parts of their phalanxes, think proper? Then our liberties are in their pleasure; it depends on their arbitrary will how far I shall be free. I will have none of that freedom. If, therefore, the standard of moderation be sought for, I will seek for it. Where? Not in their fancies, nor in my own: I will seek for it where I know it is to be found,—in the Constitution I actually enjoy. Here it says to an encroaching prerogative,—"Your sceptre has its length; you cannot add an hair to your head, or a gem to your crown, but what an eternal law has given to it." Here it says to an overweening peerage,—"Your pride finds banks that it cannot overflow": here to a tumultuous and giddy people,—"There is a bound to the raging of the sea." Our Constitution is like our island, which uses and restrains its subject sea; in vain the waves roar. In that Constitution, I know, and exultingly I feel, both that I am free, and that I am not free dangerously to myself or to others. I know that no power on earth, acting as I ought to do, can touch my life, my liberty, or my property. I have that inward and dignified consciousness of my own security and independence, which constitutes, and is the only thing which, does constitute, the proud and comfortable sentiment of freedom in the human breast. I know, too, and I bless God for, my safe mediocrity: I know, that, if I possessed all the talents of the gentlemen on the side of the House I sit, and on the other, I cannot, by royal favor, or by popular delusion, or by oligarchical cabal, elevate myself above a certain very limited point, so as to endanger my own fall, or the ruin of my country. I know there is an order that keeps things fast in their place: it is made to us, and we are made to it. Why not ask another wife, other children, another body, another mind?

The great object of most of these reformers is, to prepare the destruction of the Constitution, by disgracing and discrediting the House of Commons. For they think, (prudently, in my opinion,) that, if they can persuade the nation that the House of Commons is so constituted as not to secure the

public liberty, not to have a proper connection with the public interests, so constituted as not either actually or virtually to be the representative of the people, it will be easy to prove that a government composed of a monarchy, an oligarchy chosen by the crown, and such a House of Commons, whatever good can be in such a system, can by no means be a system of free government.

The Constitution of England is never to have a quietus; it is to be continually vilified, attacked, reproached, resisted; instead of being the hope and sure anchor in all storms, instead of being the means of redress to all grievances, itself is the grand grievance of the nation, our shame instead of our glory. If the only specific plan proposed, individual personal representation, is directly rejected by the person who is looked on as the great support of this business, then the only way of considering it is a question of convenience. An honorable gentleman prefers the individual to the present. He therefore himself sees no middle term whatsoever, and therefore prefers, of what he sees, the individual: this is the only thing distinct and sensible that has been advocated. He has, then, a scheme, which is the individual representation,—he is not at a loss, not inconsistent,—which scheme the other right honorable gentleman reprobates. Now what does this go to, but to lead directly to anarchy? For to discredit the only government which he either possesses or can project, what is this but to destroy all government? and this is anarchy. My right honorable friend, in supporting this motion, disgraces his friends and justifies his enemies in order to blacken the Constitution of his country, even of that House of Commons which supported him. There is a difference between a moral or political exposure of a public evil relative to the administration of government, whether in men or systems, and a declaration of defects, real or supposed, in the fundamental constitution of your country. The first may be cured in the individual by the motives of religion, virtue, honor, fear, shame, or interest. Men may be made to abandon also false systems, by exposing their absurdity or mischievous tendency to their own better thoughts, or to the contempt or indignation of the public; and after all, if they should exist, and exist uncorrected, they only disgrace individuals as fugitive opinions. But it is quite otherwise with the frame and constitution of the state: if that is disgraced, patriotism is destroyed in its very source. No man has ever willingly obeyed, much less was desirous of defending with his blood, a mischievous and absurd scheme of government. Our first, our dearest, most comprehensive relation, our country, is gone.

It suggests melancholy reflections, in consequence of the strange course we have long held, that we are now no longer quarrelling about the character, or about the conduct of men, or the tenor of measures, but we are grown out of humor with the English Constitution itself: this is become the object of the animosity of Englishmen. This Constitution in former days used to be the admiration and the envy of the world: it was the pattern for politicians, the theme of the eloquent, the meditation of the philosopher, in every part of the world. As to Englishmen, it was their pride, their consolation. By it they lived, for it they were ready to die. Its defects, if it had any, were partly covered by partiality, and partly borne by prudence. Now all its excellencies are forgot, its faults are now forcibly dragged into day, exaggerated by every artifice of representation. It is despised and rejected of men, and every device and invention of ingenuity or idleness set up in opposition or in preference to it. It is to this humor, and it is to the measures growing out of it, that I set myself (I hope not alone) in the most determined opposition. Never before did we at any time in this country meet upon the theory of our frame of government, to sit in judgment on the Constitution of our country, to call it as a delinquent before us, and to accuse it of every defect and every vice,—to see whether it, an object of our veneration, even our adoration, did or did not accord with a preconceived scheme in the minds of certain gentlemen. Cast your eyes on the journals of Parliament. It is for fear of losing the inestimable treasure we have that I do not venture to game it out of my hands for the vain hope of improving it. I look with filial reverence on the Constitution of my country, and never will cut it in pieces, and put it into the kettle of any magician, in order to boil it, with the puddle of their compounds, into youth and vigor. On the contrary, I will drive away such pretenders; I will nurse its venerable age, and with lenient arts extend a parent's breath.

SPEECH
ON
A MOTION, MADE BY THE RIGHT HON. WILLIAM DOWDESWELL, MARCH 7, 1771, FOR LEAVE TO BRING IN A BILL FOR EXPLAINING THE POWERS OF JURIES IN PROSECUTIONS FOR LIBELS. TOGETHER WITH A LETTER IN VINDICATION OF THAT MEASURE, AND A COPY OF THE PROPOSED BILL

I have always understood that a superintendence over the doctrines as well as the proceedings of the courts of justice was a principal object of the constitution of this House,—that you were to watch at once over the lawyer and the law,—that there should be an orthodox faith, as well as proper works: and I have always looked with a degree of reverence and admiration on this mode of superintendence. For, being totally disengaged from the detail of juridical practice, we come something perhaps the better qualified, and certainly much the better disposed, to assert the genuine principle of the laws, in which we can, as a body, have no other than an enlarged and a public interest. We have no common cause of a professional attachment or professional emulations to bias our minds; we have no foregone opinions which from obstinacy and false point of honor we think ourselves at all events obliged to support. So that, with our own minds perfectly disengaged from the exercise, we may superintend the execution of the national justice, which from this circumstance is better secured to the people than in any other country under heaven it can be. As our situation puts us in a proper condition, our power enables us to execute this trust. We may, when we see cause of complaint, administer a remedy: it is in our choice by an address to remove an improper judge, by impeachment before the peers to pursue to destruction a corrupt judge, or by bill to assert, to explain, to enforce, or to reform the law, just as the occasion and necessity of the case shall guide us. We stand in a situation very honorable to ourselves and very useful to our country, if we do not abuse or abandon the trust that is placed in us.

The question now before you is upon the power of juries in prosecuting for libels. There are four opinions:—1. That the doctrine as held by the courts is proper and constitutional, and therefore should not be altered; 2. That it is neither proper nor constitutional, but that it will be rendered worse by your interference; 3. That it is wrong, but that the only remedy is a bill of retrospect; 4. The opinion of those who bring in the bill, that the thing is wrong, but that it is enough to direct the judgment of the court in future.

The bill brought in is for the purpose of asserting and securing a great object in the juridical constitution of this kingdom, which, from a long series of practices and opinions in our judges, has *in one point*, and in one very essential point, deviated from the true principle.

It is the very ancient privilege of the people of England, that they shall be tried, except in the known exceptions, not by judges appointed by the crown, but by their own fellow-subjects, the peers of that county court at which they owe their suit and service; and out of this principle the trial by juries has grown. This principle has not, that I can find, been contested in any case by any authority whatsoever; but there is one case in which, without directly contesting the principle, the

whole substance, energy, and virtue of the privilege is taken out of it,—that is, in the case of a trial by indictment or information for a libel. The doctrine in that case, laid down by several judges, amounts to this: that the jury have no competence, where a libel is alleged, except to find the gross corporeal facts of the writing and the publication, together with the identity of the things and persons to which it refers; but that the intent and the tendency of the work, in which intent and tendency the whole criminality consists, is the sole and exclusive province of the judge. Thus having reduced the jury to the cognizance of facts not in themselves presumptively criminal, but actions neutral and indifferent, the whole matter in which the subject has any concern or interest is taken out of the hands of the jury: and if the jury take more upon themselves, what they so take is contrary to their duty; it is no *moral*, but a merely *natural* power,—the same by which they may do any other improper act, the same by which they may even prejudice themselves with regard to any other part of the issue before them. Such is the matter, as it now stands in possession of your highest criminal courts, handed down to them from very respectable legal ancestors. If this can once be established in this case, the application in principle to other cases will be easy, and the practice will run upon a descent, until the progress of an encroaching jurisdiction (for it is in its nature to encroach, when once it has passed its limits) coming to confine the juries, case after case, to the corporeal fact, and to that alone, and excluding the intention of mind, the only source of merit and demerit, of reward or punishment, juries become a dead letter in the Constitution.

For which reason it is high time to take this matter into the consideration of Parliament: and for that purpose it will be necessary to examine, first, whether there is anything in the peculiar nature of this crime that makes it necessary to exclude the jury from considering the intention in it, more than in others. So far from it, that I take it to be much less so from the analogy of other criminal cases, where no such restraint is ordinarily put upon them. The act of homicide is *primâ facie* criminal; the intention is afterwards to appear, for the jury to acquit or condemn. In burglary do they insist that the jury have nothing to do but to find the taking of goods, and that, if they do, they must necessarily find the party guilty, and leave the rest to the judge, and that they have nothing to do with the word *felonicè* in the indictment?

The next point is, to consider it as a question of constitutional policy: that is, whether the decision of the question of libel ought to be left to the judges as a presumption of law, rather than to the jury as matter of popular judgment,—as the malice in the case of murder, the felony in the case of stealing. If the intent and tendency are not matters within the province of popular judgment, but legal and technical conclusions formed upon general principles of law, let us see what they are. Certainly they are most unfavorable, indeed totally adverse, to the Constitution of this country.

Here we must have recourse to analogies; for we cannot argue on ruled cases one way or the other. See the history. The old books, deficient in general in crown cases, furnish us with little on this head. As to the crime, in the very early Saxon law I see an offence of this species, called folk-leasing, made a capital offence, but no very precise definition of the crime, and no trial at all. See the statute of 3rd Edward I. cap. 84. The law of libels could not have arrived at a very early period in this country. It is no wonder that we find no vestige of any constitution from authority, or of any deductions from legal science, in our old books and records, upon that subject. The statute of *Scandalum Magnatum* is the oldest that I know, and this goes but a little way in this sort of learning. Libelling is not the crime of an illiterate people. When they were thought no mean clerks who could read and write, when he who could read and write was presumptively a person in holy orders, libels could not be general or dangerous; and scandals merely *oral* could *spread* little and must *perish* soon. It is writing, it is printing more emphatically, that imps calumny with those eagle-wings on which, as the poet says, "immortal slanders fly." By the press they spread, they last, they leave the sting in the wound. Printing was not known in England much earlier than the reign of Henry the Seventh, and in the third year of that reign the court of Star-Chamber was established. The press and its enemy are nearly coeval. As no positive law against libels existed, they fell under the indefinite class of misdemeanors. For the trial of

misdemeanors that court was instituted. Their tendency to produce riots and disorders was a main part of the charge, and was laid in order to give the court jurisdiction chiefly against libels. The offence was new. Learning of their own upon the subject they had none; and they were obliged to resort to the only emporium where it was to be had, the Roman law. After the Star-Chamber was abolished in the 10th of Charles I., its authority indeed ceased, but its maxims subsisted and survived it. The spirit of the Star-Chamber has transmigrated and lived again; and Westminster Hall was obliged to borrow from the Star-Chamber, for the same reasons as the Star-Chamber had borrowed from the Roman Forum, because they had no law, statute, or tradition of their own. Thus the Roman law took possession of our courts,—I mean its doctrine, not its sanctions: the severity of capital punishment was omitted, all the rest remained. The grounds of these laws are just and equitable. Undoubtedly the good fame of every man ought to be under the protection of the laws, as well as his life and liberty and property. Good fame is an outwork that defends them all and renders them all valuable. The law forbids you to revenge; when it ties up the hands of some, it ought to restrain the tongues of others. The good fame of government is the same; it ought not to be traduced. This is necessary in all government; and if opinion be support, what takes away this destroys that support: but the liberty of the press is necessary to this government.

The wisdom, however, of government is of more importance than the laws. I should study the temper of the people, before I ventured on actions of this kind. I would consider the whole of the prosecution of a libel of such importance as Junius, as one piece, as one consistent plan of operations: and I would contrive it so, that, if I were defeated, I should not be disgraced,—that even my victory should not be more ignominious than my defeat; I would so manage, that the lowest in the predicament of guilt should not be the only one in punishment. I would not inform against the mere vender of a collection of pamphlets. I would not put him to trial first, if I could possibly avoid it. I would rather stand the consequences of my first error than carry it to a judgment that must disgrace my prosecution or the court. We ought to examine these things in a manner which becomes ourselves, and becomes the object of the inquiry,—not to examine into the most important consideration which can come before us with minds heated with prejudice and filled with passions, with vain popular opinions and humors, and, when we propose to examine into the justice of others, to be unjust ourselves.

An inquiry is wished, as the most effectual way of putting an end to the clamors and libels which are the disorder and disgrace of the times. For people remain quiet, they sleep secure, when they imagine that the vigilant eye of a censorial magistrate watches over all the proceedings of judicature, and that the sacred fire of an eternal constitutional jealousy, which, is the guardian of liberty, law, and justice, is alive night and day, and burning in this House. But when the magistrate gives up his office and his duty, the people assume it, and they inquire too much and too irreverently, because they think their representatives do not inquire at all.

We have in a libel, 1st, the writing; 2nd, the communication, called by the lawyers the publication; 3rd, the application to persons and facts; 4th, the intent and tendency; 5th, the matter,—diminution of fame. The law presumptions on all these are in the communication. No intent can make a defamatory publication good, nothing can make it have a good tendency; truth is not pleadable. Taken *juridically*, the foundation of these law presumptions is not unjust; taken *constitutionally*, they are ruinous, and tend to the total suppression of all publication. If juries are confined to the fact, no writing which censures, however justly or however temperately, the conduct of administration, can be unpunished. Therefore, if the intent and tendency be left to the judge, as legal conclusions growing from the fact, you may depend upon it you can have no public discussion of a public measure; which is a point which even those who are most offended with the licentiousness of the press (and it is very exorbitant, very provoking) will hardly contend for.

So far as to the first opinion,—that the doctrine is right, and needs no alteration. 2nd. The next is, that it is wrong, but that we are not in a condition to help it. I admit it is true that there are cases of a nature so delicate and complicated that an act of Parliament on the subject may become a matter

of great difficulty. It sometimes cannot define with exactness, because the subject-matter will not bear an exact definition. It may seem to *take away* everything which it does not positively *establish*, and this might be inconvenient; or it may seem, *vice versâ*, to *establish* everything which it does not *expressly take away*. It may be more advisable to leave such matters to the enlightened discretion of a judge, awed by a censorial House of Commons. But then it rests upon those who object to a legislative interposition to prove these inconveniences in the particular case before them. For it would be a most dangerous, as it is a most idle and most groundless conceit, to assume as a general principle, that the rights and liberties of the subject are impaired by the care and attention of the legislature to secure them. If so, very ill would the purchase of Magna Charta have merited the deluge of blood which was shed in order to have the body of English privileges defined by a positive written law. This charter, the inestimable monument of English freedom, so long the boast and glory of this nation, would have been at once an instrument of our servitude and a monument of our folly, if this principle were true. The thirty-four confirmations would have been only so many repetitions of their absurdity, so many new links in the chain, and so many invalidations of their right.

You cannot open your statute-book without seeing positive provisions relative to every right of the subject. This business of juries is the subject of not fewer than a dozen. To suppose that juries are something innate in the Constitution of Great Britain, that they have jumped, like Minerva, out of the head of Jove in complete armor, is a weak fancy, supported neither by precedent nor by reason. Whatever is most ancient and venerable in our Constitution, royal prerogative, privileges of Parliament, rights of elections, authority of courts, juries, must have been modelled according to the occasion. I spare your patience, and I pay a compliment to your understanding, in not attempting to prove that anything so elaborate and artificial as a jury was not the work of *chance*, but a matter of institution, brought to its present state by the joint efforts of legislative authority and juridical prudence. It need not be ashamed of being (what in many parts of it, at least, it is) the offspring of an act of Parliament, unless it is a shame for our laws to be the results of our legislature. Juries, which sensitively shrink from the rude touch of Parliamentary remedy, have been the subject of not fewer than, I think, forty-three acts of Parliament, in which they have been changed with all the authority of a creator over its creature, from Magna Charta to the great alterations which were made in the 29th of George II.

To talk of this matter in any other way is to turn a rational principle into an idle and vulgar superstition,—like the antiquary, Dr. Woodward, who trembled to have his shield scoured, for fear it should be discovered to be no better than an old pot-lid. This species of tenderness to a jury puts me in mind of a gentleman of good condition, who had been reduced to great poverty and distress: application was made to some rich fellows in his neighborhood to give him some assistance; but they begged to be excused, for fear of affronting a person of his high birth; and so the poor gentleman was left to starve, out of pure respect to the antiquity of his family. From this principle has arisen an opinion, that I find current amongst gentlemen, that this distemper ought to be left to cure itself:—that the judges, having been well exposed, and something terrified on account of these clamors, will entirely change, if not very much relax from their rigor;—if the present race should not change, that the chances of succession may put other more constitutional judges in their place;—lastly, if neither should happen, yet that the spirit of an English jury will always be sufficient for the vindication of its own rights, and will not suffer itself to be overborne by the bench. I confess that I totally dissent from all these opinions. These suppositions become the strongest reasons with me to evince the necessity of some clear and positive settlement of this question of contested jurisdiction. If judges are so full of levity, so full of timidity, if they are influenced by such mean and unworthy passions that a popular clamor is sufficient to shake the resolution they build upon the solid basis of a legal principle, I would endeavor to fix that mercury by a positive law. If to please an administration the judges can go one way to-day, and to please the crowd they can go another to-morrow, if they will oscillate backward and

forward between power and popularity, it is high time to fix the law in such a manner as to resemble, as it ought, the great Author of all law, in whom there is no variableness nor shadow of turning.

As to their succession I have just the same opinion. I would not leave it to the chances of promotion, or to the characters of lawyers, what the law of the land, what the rights of juries, or what the liberty of the press should be. My law should not depend upon the fluctuation of the closet or the complexion of men. Whether a black-haired man or a fair-haired man presided in the Court of King's Bench, I would have the law the same; the same, whether he was born *in domo regnatrice* and sucked from his infancy the milk of courts, or was nurtured in the rugged discipline of a popular opposition. This law of court cabal and of party, this *mens quædam nullo perturbata affectu*, this law of complexion, ought not to be endured for a moment in a country whose being depends upon the certainty, clearness, and stability of institutions.

Now I come to the last substitute for the proposed bill,—the spirit of juries operating their own jurisdiction. This I confess I think the worst of all, for the same reasons on which I objected to the others,—and for other weighty reasons besides, which are separate and distinct. First, because juries, being taken at random out of a mass of men infinitely large, must be of characters as various as the body they arise from is large in its extent. If the judges differ in their complexions, much more will a jury. A timid jury will give way to an awful judge delivering oracularly the law, and charging them on their oaths, and putting it home to their consciences to beware of judging, where the law had given them no competence. We know that they will do so, they have done so in an hundred instances. A respectable member of your own House, no vulgar man, tells you, that, on the authority of a judge, he found a man guilty in whom at the same time he could find no guilt. But supposing them full of knowledge and full of manly confidence in themselves, how will their knowledge or their confidence inform or inspirit others? They give no reason for their verdict, they can but condemn or acquit; and no man can tell the motives on which they have acquitted or condemned. So that this hope of the power of juries to assert their own jurisdiction must be a principle blind, as being without reason, and as changeable as the complexion of men and the temper of the times.

But, after all, is it fit that this dishonorable contention between the court and juries should subsist any longer? On what principle is it that a jury [juror?] refuses to be directed by the court as to his *competence*? Whether a libel or no libel be a question of law or of fact may be doubtful; but a question of jurisdiction and competence is certainly a question of law: on this the court ought undoubtedly to judge, and to judge solely and exclusively. If they judge wrong from excusable error, you ought to correct it, as to-day it is proposed, by an explanatory bill,—or if by corruption, by bill of *penalties* declaratory, and by punishment. What does a juror say to a judge, when he refuses his opinion upon a question of judicature? "You are so corrupt, that I should consider myself a partaker of your crime, were I to be guided by your opinion"; or, "You are so grossly ignorant, that I, fresh from my hounds, from my plough, my counter, or my loom, am fit to direct you in your own profession." This is an unfitting, it is a dangerous state of things. The spirit of any sort of men is not a fit *rule* for deciding on the bounds of their jurisdiction: first, because it is different in different men, and even different in the same at different times, and can never become the proper directing line of law; next, because it is not reason, but feeling, and, when once it is irritated, it is not apt to confine itself within its proper limits. If it becomes not difference in opinion upon law, but a trial of spirit between parties, our courts of law are no longer the temple of justice, but the amphitheatre for gladiators. No,—God forbid! Juries ought to take their law from the bench only; but it is *our* business that they should hear nothing from the bench but what is agreeable to the principles of the Constitution. The jury are to hear the judge: the judge is to hear the law, where it speaks plain; where it does not, he is to hear the legislature. As I do not think these opinions of the judges to be agreeable to those principles, I wish to take the only method in which they can or ought to be corrected,—by bill.

Next, my opinion is, that it ought to be rather by a bill for removing controversies than by a bill in the state of manifest and express declaration and in words *de præterito*. I do this upon reasons

of equity and constitutional policy. I do not want to censure the present judges. I think them to be excused for their error. Ignorance is no excuse for a judge; it is changing the nature of his crime; it is not absolving. It must be such error as a wise and conscientious judge may possibly fall into, and must arise from one or both these causes:—1. A plausible principle of law; 2. The precedents of respectable authorities, and in good times. In the first, the principle of law, that the judge is to decide on law, the jury to decide on fact, is an ancient and venerable principle and maxim of the law; and if supported in this application by precedents of good times and of good men, the judge, if wrong, ought to be corrected,—he ought not to be reproved or to be disgraced, or the authority or respect to your tribunals to be impaired. In cases in which declaratory bills have been made, where by violence and corruption some fundamental part of the Constitution has been struck at, where they would damn the principle, censure the persons, and annul the acts,—but where the law has been by the accident of human frailty depraved or in a particular instance misunderstood, where you neither mean to rescind the acts nor to censure the persons, in such cases you have taken the explanatory mode, and, without condemning what is done, you direct the future judgment of the court.

All bills for the reformation of the law must be according to the subject-matter, the circumstances, and the occasion, and are of four kinds:—1. Either the law is totally wanting, and then a new enacting statute must be made to supply that want; or, 2. it is *defective*, then a new law must be made to enforce it; 3. or it is opposed by power or fraud, and then an act must be made to declare it; 4. or it is rendered doubtful and controverted, and then a law must be made to explain it. These must be applied according to the exigence of the case: one is just as good as another of them. Miserable indeed would be the resources, poor and unfurnished the stores and magazines of legislation, if we were bound up to a little narrow form, and not able to frame our acts of Parliament according to every disposition of our own minds and to every possible emergency of the commonwealth,—to make them declaratory, enforcing, explanatory, repealing, just in what mode or in what degree we please.

Those who think that the judges living and dead are to be condemned, that your tribunals of justice are to be dishonored, that their acts and judgments on this business are to be rescinded,—they will undoubtedly vote against this bill, and for another sort.

I am not of the opinion of those gentlemen who are against disturbing the public repose: I like a clamor, whenever there is an abuse. The fire-bell at midnight disturbs your sleep, but it keeps you from being burned in your bed. The hue-and-cry alarms the county, but it preserves all the property of the province. All these clamors aim at *redress*. But a clamor made merely for the purpose of rendering the people discontented with their situation, without an endeavor to give them a practical remedy, is indeed one of the worst acts of sedition.

I have read and heard much upon the conduct of our courts in the business of libels. I was extremely willing to enter into, and very free to act as facts should turn out on that inquiry, aiming constantly at remedy as the end of all clamor, all debate, all writing, and all inquiry; for which reason I did embrace, and do now with joy, this method of giving quiet to the courts, jurisdiction to juries, liberty to the press, and satisfaction to the people. I thank my friends for what they have done; I hope the public will one day reap the benefit of their pious and judicious endeavors. They have now sown the seed; I hope they will live to see the flourishing harvest. Their bill is sown in weakness; it will, I trust, be reaped in power. And then, however, we shall have reason to apply to them what my Lord Coke says was an aphorism continually in the mouth of a great sage of the law,—"Blessed be not the complaining tongue, but *blessed be the amending hand*."

LETTER

ON

MR. DOWDESWELL'S BILL FOR EXPLAINING THE POWERS OF JURIES IN PROSECUTIONS FOR LIBELS.[2]

An improper and injurious account of the bill brought into the House of Commons by Mr. Dowdeswell has lately appeared in one of the public papers. I am not at all surprised at it, as I am not a stranger to the views and politics of those who have caused it to be inserted.

Mr. Dowdeswell did not *bring in an enacting bill to give to juries*, as the account expresses it, *a power to try law and fact in matter of libel*. Mr. Dowdeswell brought in a bill to put an end to those doubts and controversies upon that subject which have unhappily distracted our courts, to the great detriment of the public, and to the great dishonor of the national justice.

That it is the province of the jury, in informations and indictments for libels, to try nothing more than the fact of the composing and of the publishing averments and innuendoes is a doctrine held at present by all the judges of the King's Bench, probably by most of the judges of the kingdom. The same doctrine has been held pretty uniformly since the Revolution; and it prevails more or less with the jury, according to the degree of respect with which they are disposed to receive the opinions of the bench.

This doctrine, which, when it prevails, tends to annihilate the benefit of trial by jury, and when it is rejected by juries, tends to weaken and disgrace the authority of the judge, is not a doctrine proper for an English judicature. For the sake both of judge and jury, the controversy ought to be quieted, and the law ought to be settled in a manner clear, definitive, and constitutional, by the only authority competent to it, the authority of the legislature.

Mr. Dowdeswell's bill was brought in for that purpose. It *gives* to the jury no *new* powers; but, after reciting the doubts and controversies, (which nobody denies actually to subsist,) and after stating, that, if juries are not reputed competent to try the whole matter, the benefit of trial by jury will be of none or imperfect effect, it enacts, not that the jury *shall* have the *power*, but that they shall be *held and reputed in law and right competent* to try the whole matter laid in the information. The bill is directing to the judges concerning the opinion in law which they are known to hold upon this subject,—and does not in the least imply that the jury were to derive a new right and power from that bill, if it should have passed into an act of Parliament. The implication is directly the contrary, and is as strongly conveyed as it is possible for those to do who state a doubt and controversy without charging with criminality those persons who so doubted and so controverted.

Such a style is frequent in acts of this nature, and is that only which is suited to the occasion. An insidious use has been made of the words *enact* and *declare*, as if they were formal and operative words of force to distinguish different species of laws producing different effects. Nothing is more groundless; and I am persuaded no lawyer will stand to such an assertion. The gentlemen who say that a bill ought to have been brought in upon the principle and in the style of the Petition of Right and Declaration of Right ought to consider how far the circumstances are the same in the two cases, and how far they are prepared to go the whole lengths of the reason of those remarkable laws. Mr.

[2] The manuscript from which this Letter is taken is in Mr. Burke's own handwriting, but it does not appear to whom it was addressed, nor is there any date affixed to it. It has been thought proper to insert it here, as being connected with the subject of the foregoing Speech.

Dowdeswell and his friends are of opinion that the circumstances are not the same, and that therefore the bill ought not to be the same.

It has been always disagreeable to the persons who compose that connection to engage wantonly in a paper war, especially with gentlemen for whom they have an esteem, and who seem to agree with them in the great grounds of their public conduct; but they can never consent to purchase any assistance from any persons by the forfeiture of their own reputation. They respect public opinion; and therefore, whenever they shall be called upon, they are ready to meet their adversaries, as soon as they please, before the tribunal of the public, and there to justify the constitutional nature and tendency, the propriety, the prudence, and the policy of their bill. They are equally ready to explain and to justify all their proceedings in the conduct of it,—equally ready to defend their resolution to make it one object (if ever they should have the power) in a plan of public reformation.

Your correspondent ought to have been satisfied with the assistance which his friends have lent to administration in defeating that bill. He ought not to make a feeble endeavor (I dare say, much to the displeasure of those friends) to disgrace the gentleman who brought it in. A measure proposed by Mr. Dowdeswell, seconded by Sir George Savile, and supported by their friends, will stand fair with the public, even though it should have been opposed by that list of names (respectable names, I admit) which have been printed with so much parade and ostentation in your papers.

It is not true that Mr. Burke spoke in praise of Lord Mansfield. If he had found anything in Lord Mansfield praiseworthy, I fancy he is not disposed to make an apology to anybody for doing justice. Your correspondent's reason for asserting it is visible enough; and it is altogether in the strain of other misrepresentations. That gentlemen spoke decently of the judges, and he did no more; most of the gentlemen who debated, on both sides, held the same language; and nobody will think their zeal the less warm, or the less effectual, because it is not attended with scurrility and virulence.

LIBEL BILL

Whereas doubts and controversies have arisen at various times concerning the right of jurors to try the whole matter laid in indictments and informations for seditious and other libels; and whereas trial by juries would be of none or imperfect effect, if the jurors were not held to be competent to try the whole matter aforesaid: for settling and clearing such doubts and controversies, and for securing to the subject the effectual and complete benefit of trial by juries in such indictments and informations,

Be it enacted, &c., That jurors duly impanelled and sworn to try the issue between the king and the defendant upon any indictment or information for a seditious libel, or a libel under any other denomination or description, shall be held and reputed competent, to all intents and purposes, in law and in right, to try every part of the matter laid or charged in said indictment or information, comprehending the criminal intention of the defendant, and the evil tendency of the libel charged, as well as the mere fact of the publication thereof, and the application by innuendo of blanks, initial letters, pictures, and other devices; any opinion, question, ambiguity, or doubt to the contrary notwithstanding.

SPEECH
ON
A BILL FOR THE REPEAL OF THE MARRIAGE ACT.
JUNE 15, 1781

This act [*the Marriage Act*] stands upon *two* principles: one, that the power of marrying without consent of parents should not take place till twenty-one years of age; the other, that all marriages should be *public*.

The proposition of the honorable mover goes to the first; and undoubtedly his motives are fair and honorable; and even, in that measure by which he would take away paternal power, he is influenced to it by filial piety; and he is led into it by a natural, and to him inevitable, but real mistake,—that the ordinary race of mankind advance as fast towards maturity of judgment and understanding as he does.

The question is not now, whether the law ought to acknowledge and protect such a state of life as minority, nor whether the continuance which is fixed for that state be not improperly prolonged in the law of England. Neither of these in general are questioned. The only question, is, whether matrimony is to be taken out of the general rule, and whether the minors of both sexes, without the consent of their parents, ought to have a capacity of contracting the matrimonial, whilst they have not the capacity of contracting any other engagement. Now it appears to me very clear that they ought not. It is a great mistake to think that mere *animal* propagation is the sole end of matrimony. Matrimony is instituted not only for the propagation of men, but for their nutrition, their education, their establishment, and for the answering of all the purposes of a rational and moral being; and it is not the duty of the community to consider alone of how many, but how useful citizens it shall be composed.

It is most certain that men are well qualified for propagation long before they are sufficiently qualified even by bodily strength, much less by mental prudence, and by acquired skill in trades and professions, for the maintenance of a family. Therefore to enable and authorize any man to introduce citizens into the commonwealth, before a rational security can be given that he may provide for them and educate them as citizens ought to be provided for and educated, is totally incongruous with the whole order of society. Nay, it is fundamentally unjust; for a man that breeds a family without competent means of maintenance incumbers other men with his children, and disables them so far from maintaining their own. The improvident marriage of one man becomes a tax upon the orderly and regular marriage of all the rest. Therefore those laws are wisely constituted that give a man the use of all his faculties at one time, that they may be mutually subservient, aiding and assisting to each other: that the time of his completing his bodily strength, the time of mental discretion, the time of his having learned his trade, and the time at which he has the disposition of his fortune, should be likewise the time in which he is permitted to introduce citizens into the state, and to charge the community with their maintenance. To give a man a family during his apprenticeship, whilst his very labor belongs to another,—to give him a family, when you do not give him a fortune to maintain it,—to give him a family before he can contract any one of those engagements without which no business can be carried on, would be to burden the state with families without any security for their maintenance. When parents themselves marry their children, they become in some sort security to prevent the ill consequences. You have this security in parental consent; the state takes its security in the knowledge of human nature. Parents ordinarily consider little the passion of their children and their present gratification. Don't fear the power of a father: it is kind to passion to give it time to cool. But their censures sometimes make me smile,—sometimes, for I am very infirm, make me angry: *sæpe bilem, sæpe jocum movent.*

It gives me pain to differ on this occasion from many, if not most, of those whom I honor and esteem. To suffer the grave animadversion and censorial rebuke of the honorable gentleman who made the motion, of him whose good-nature and good sense the House look upon with a particular partiality, whose approbation would have been one of the highest objects of my ambition,—this hurts me. It is said the Marriage Act is aristocratic. I am accused, I am told abroad, of being a man of aristocratic principles. If by aristocracy they mean the peers, I have no vulgar admiration, nor any vulgar antipathy towards them; I hold their order in cold and decent respect. I hold them to be of an absolute necessity in the Constitution; but I think they are only good when kept within their proper bounds. I trust, whenever there has been a dispute between these Houses, the part I have taken has not been equivocal. If by the aristocracy (which, indeed, comes nearer to the point) they mean an adherence to the rich and powerful against the poor and weak, this would, indeed, be a very extraordinary part. I have incurred the odium of gentlemen in this House for not paying sufficient regard to men of ample property. When, indeed, the smallest rights of the poorest people in the kingdom are in question, I would set my face against any act of pride and power countenanced by the highest that are in it; and if it should come to the last extremity, and to a contest of blood,—God forbid! God forbid!—my part is taken: I would take my fate with the poor and low and feeble. But if these people came to turn their liberty into a cloak for maliciousness, and to seek a privilege of exemption, not from power, but from the rules of morality and virtuous discipline, then I would join my hand to make them feel the force which a few united in a good cause have over a multitude of the profligate and ferocious.

Конец ознакомительного фрагмента.