Wilkesworld

Winston Schoonover

"Gentler days have somehow dimmed our passion for liberty."—Horace Rumpole

"If any man grant me ten minutes with his wife or mistress I can and will win the woman."
—John Wilkes

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Two days after the Lorenzo Pound-Dinero the Profit case ended, Wilkes and I, still basking in the glow of that most satisfying acquittal, received a telegram from the Commissioner of Elections:

RE: WILKES-THROCKTON ELECTION RECOUNT

SIR: INVESTIGATION HAS REVEALED YOUR NOMINATING PAPERS WERE NOT IN ORDER AS PETITIONS DID NOT CONTAIN SUFFICIENT NUMBER OF QUALIFIED VOTERS. RECOUNT UNNECESSARY. YOU LOSE. SORRY.

VICTOR LUNKO
NEW YORK ELECTION COMMISSIONER

Wilkes stared at the yellow paper rectangle in stony silence. I said, "Jesus, you must have won by a huge margin. Too many votes for the mob to phony up, eh?"

Wilkes sighed. He raised his head from the telegram and walked zombie-like to the window where he looked to the street below. "If this had happened to The Great One, the people wouldn't have stood for it. They'd be down there right now screaming their heads off, ready to go to the barricades. They'd bring this goddamn city to its knees. They'd kick the holy crap outta . . ."

His voice trailed off into barely audible mumbling, then nothing. He bit his lip and continued staring down on Broadway.

The Great One

Dear reader, you probably don't know to whom my friend referred when he spoke of The Great One. This was my friend's most famous ancester, John Wilkes of London. He probably means nothing to you. If so, it is a profound deprivation, a void which I will try to fill. So important to the cause of liberty, American and English, was The Great One that early Americans named their towns (e.g., Wilkes-Barre, Wilkesboro) and children after him, a practice that continued until 1865 when the son of Mr. and Mrs. Booth assassinated the President of the United States.

How could history have so forgotten the man who inspired our Founding Fathers, who was a major force behind the Revolution, and whose courageous resistance to a king formed the foundation for our Bill of Rights?[1] Wilkes, The Great One, supported American independence in Parliament, a position which did not endear him to those in power. When the awesome might of arbitrary power sought him out, he never flinched. He lived up to his motto—"be as impudent as you can"—in his opposition to the King and his corrupt government. "I love my King so well," he said, "I hope never to see another."

I suppose that in an age when people have difficulty remembering the names of their elected representatives, they can be forgiven their lack of familiarity with The Great One. But what a pity. Admitting my bias, I say Wilkes is the most colorful political character of the last two centuries.

Two tarantulas

I know The Great One's life pretty well. The first day I started work for my friend Wilkes, he pointed to his shelf of biographies of The Great One[2] and said, "In this office,

[1] David Hutchison, in his *The Foundations of the Constitution* (NJ Univ Bks, 1975, p 275) says Wilkes' cases against the government were one of the four major sources behind the adoption of the Fourth Amendment prohibition against illegal search. See also *Constitution of the United States of America: Analysis and Interpretation* (Lib of Cong, 1973, pp1041-1043).

[2] The best of the early ones is Horace Bleackley's published in 1917 (London: Bodley Head). There are two fairly recent biographies: one in 1974 by Louis Kronenberger, and a more satisfactory one by Audrey May Williamson of the same year (London: Allen & Unwin). My favorite of the bunch is that of Raymond Postgate (NY, Vanguard) first printed in 1929 and updated in 1956. His title, *That Devil Wilkes*, comes from the famous quotation of King George III expressing his exasperation with The Great One. Unless otherwise cited, all the material for this piece derives from these books.

we protect a man's liberty. These books will tell you what it's all about. Read 'em."

I did. I found the similarities of character between my friend and The Great One startling: both were usually jolly, sometimes impudent, always wily, most times witty, never corruptible in their work and their causes (and often the opposite in their personal lives). They were clones separated by the long arch of time. Each was hated by the powerful, and it was that hatred which made them stand out like two tarantulas on an angelfood cake.

The Great One was born just outside of London in 1727. The son of a wealthy distiller, he was fortunate to receive a good education at Leyden in Holland where he gained a taste for booze, banter and women. After graduation, he was quite the rakish young gentleman. Edward Gibbon found in him "inexhaustible spirits, infinite wit and humor, and a great deal of knowledge." But like the ancient Rome Gibbon knew so well, Wilkes was "a thorough profligate in principle as in practice . . . his life stained with every vice and his conversation full of blasphemy and bawdy." In other words, Gibbon "scarcely ever met with a better companion." It was impossible to dislike him.

The Monks

In the late 1750s, young Wilkes joined a secret fraternal order of aristocratic rakes called the Medmenham Monks. The Monks dedicated themselves to drunken ritual fornication with volunteer female "sacrifices." There were 12 official members, the 12 Apostles, in the order, but on invitation visitors were welcome to join in the rollicking good times.

One of the Apostles was the Earl of Sandwich, who quickly befriended The Great One. Like so many of the high born of the day, Sandwich was given to all the vices, his most passionate being cards. So fanatically attached to the game was he that he would refuse to leave the table to eat for fear of missing a hand. Instead, he would order a slab of meat put between two pieces of bread which he would consume while playing. In this manner, the Earl of Sandwich, Apostle of the Monks of Medmenham, made his name a household word.

The founder of the Monks was Sir Francis Dashwood. Other members included Wilkes' good friends Thomas Potter and poet Charles Churchill. Together with illustrious visitors like the artist William Hogarth, they worked at perfecting their drunken orgies into the ultimate sensual experience.

Wilkes at the time was a member of Parliament. Many of the Monks were in or just out of government. Sandwich, for example, was appointed ambassador to Spain and received the following congratulatory note from his fellow Monk, John Wilkes: "Make all your thrusts at women . . . first carry the breastwork, then take the demi-lune and at last plant your victorious standard in the citadel of every fair Donna." Sandwich did not need encouragement. He jested in turn, "Wilkes, you will die of a pox or on the gallows." Wilkes responded, "That depends, my lord, on whether I embrace your principles or your mistress."

North Briton

No man was quicker with his wit or his instrument than The Great One, but neither of these were to make him famous or important—that took the misapplied power of a king. Wilkes had no particular party allegiance at the time King George III took power in 1760, but he was on the best of terms with those politicians who were out of power, particularly Lord Temple who lent him large sums of money. Temple was related to Grenville and Pitt, who came to oppose George III despite serving him as his First Minister for short periods of time. They encouraged Wilkes to write and publish attacks on the King and his policies.

Thus was born the anonymously authored, wicked little pamphlet known as the North Briton[3] which for the year of 1762–63 viciously lampooned the King's negotiations to end the Seven Years War (1756–63). It also insinuated that the King was an imbecile and suggested that the King's best friend and First Minister, the Scot John Stuart, was regularly plowing the King's mom!

The cumulative effect of the North Briton's ridiculing the government had its impact. In the royal quarters, initial shock and disgust ripened into a malicious conspiracy to crush its author. Young George III and his ministers set about to get the author of that seditious rag, and their number-one suspect was none other than John Wilkes, MP from Aylesbury. True to character, The Great One gave George and company the event to inspire his legal liquidation.

Number 45

On April 23, 1763, Wilkes wrote and published North Briton No. 45, a blistering accusation of national betrayal by the King's ministers for the give-away Treaty of Paris which ended the war with France. For the King, this was the last straw and the trigger for quick action. A general warrant of arrest, the most famous in history, was issued against the "authors, printers and publishers" of No. 45. Armed with this odious weapon, the King's messengers swept out one night and arrested 48 persons, many being dragged from their beds by the King's men.

When Wilkes was confronted with the warrant, his response was true to his motto of eternal impudence: "Why serve it on me?" he asked. "There are no names on it. Why not the Lord Chancellor, or the Secre-

[3] The name North Briton was itself a parody. Scotland had only recently been domesticated and united with England, and the Scots were still much hated in the south. Wilkes abused them as much as anyone and chose the title for that purpose. Ironically, Wilkes was a friend of the famous Scot, Boswell, Johnson's great biographer, and never tired of needling him about his heritage. E.g., Boswell: "At least in Scotland you can't be arrested for debt unless the creditor swears that the debtor is about to flee the country." Wilkes: "That, I should think, may be safely sworn of all the Scotch nation." (Boswell, *Life of Johnson* (Chi: Benton, 1952) p321).

taries of State, or John Stuart, or my next door neighbor?"

Wilkes was taken to the Tower. While there, the King's men broke into his home, ransacked it, and took every piece of paper in the place in search of evidence connecting The Great One with No. 45.

Some things never change.

A hit with the mob

The uproar from this massive abuse of legal process would cost the government dearly. News of Wilkes' arrest made him a hero overnight both in England and the Colonies. London mobs, Wilkes' constituency, took to the streets and screamed "Wilkes and Liberty" everywhere, and according to Ben Franklin's eye-witness account, painted the number 45 on every house and carriage within 15 miles of the city.

Attention now focused on the courts. To completely finish Wilkes for sedition, the King planned a nice, speedy prosecution in his royal courts. It was a huge miscalculation rivaling the best of history's bloopers. George not only lost in the courts, but Wilkes' cases became legal landmarks against arbitrary state power. Wilkes and the No. 45 generated four cases which outlawed general warrants and formed the basis for modern search and seizure law. Leading American cases still cite them as the explanation for the adoption of the Fourth Amendment to the U.S. Constitution.[4]

Humble servant

The cases did not just happen. Wilkes had to press them and, at the time, he could hardly have been optimistic about his chances in the King's courts. His plan was to keep up the enormous public pressure against the warrants and the government in hopes that it might influence his cases. Toward this end, on release from the Tower, he immediately sought out a magistrate and demanded a search warrant be issued against Lord Halifax and others who were responsible for issuing the general warrant. The magistrate said, "That'll be denied."

Wilkes then wrote Halifax a letter which The Great One published so his supporters could revel in his impudence:

Your Lordship,

My house has been robbed and I am informed that the stolen goods are in your possession. I therefore insist that you do forthwith return them to

Your humble servant,
John Wilkes

Of course the letter failed to get him his possessions, but it did keep Wilkes and his cause in the public view. Wilkes next struck with suits against Halifax and another government official named Wood. From the latter, a London jury promptly awarded The Great One 1,000 pounds. From Halifax, in a much delayed trial, the jury awarded a king's ransom—4,000 pounds!

Outraged at the insolence of Wilkes' reaction to his arrest, the embarrassing jury verdicts, and the elimination of general warrants as a tool of oppression, the King and his minions plotted a two-pronged counterattack, a classic double envelopment: first, a charge of criminal libel and sedition for Wilkes' North Briton No. 45; second—well, that deserves some explanation.

Essay on Women

Wilkes' connection with a poem, a "blasphemous obscenity" called Essay on Women, formed prong two of the royal attack. Wilkes most assuredly did not write the poem, that honor going to his Medmenham Monk friend Thomas Potter. All The Great One did was have 12 copies made, one for each of the 12 Apostles of Medmenham. None of them were delivered. Thus in the legal sense, he never published the

[4] The seminal American case on the Fourth Amendment is *Boyd v U.S.* (1886) 116 U.S. 616. There, Justice Bradley said that every American statesman considered Wilkes' case as "the true and ultimate expression of constitutional law, and it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment" (at 627). Wilkes' cases are still cited in the leading opinions in the area. See *Warden v Hayden* (1967) 387 U.S. 294, 311-312 (Fortas, J, conc); *Stanford v Texas* (1965) 379 U.S. 476, 483; *Marcus v Property Search Warrant* (1961) 367 U.S. 717, 728; *Draper v U.S.* (1959) 358 U.S. 307, 316-316 (Douglas, J, disst).

poem; he just had a few copies made and had them lying around the house.

Somehow the King's men learned of the Essay and bribed an employee of Wilkes to obtain a copy. They couldn't have been more delighted with what they recovered. The poem was "authored" by the Bishop of Gloucester and was introduced by a fine drawing depicting a penis. The good bishop felt libeled by the attribution and, as he was a member of the House of Lords, was convinced to bring the matter up there on the same day the House of Commons considered the No. 45 and the charge of sedition.

Ham Sandwich

A king's move to crush a lowly citizen has a way of chilling friendships, and Wilkes' buddies peeled off as fast as their clothes at an orgy. Most galling was the astonishing defection of Sandwich, who volunteered to take the lead in the attack in the House of Lords. He began by a dramatic reading of the entire poem:

> Awake, my Fanny, leave all meaner things;
> This morn shall prove what rapture swiving brings!
> Let us (since life can little more supply
> Than just a few good fucks, and then we die)
> Expatiate free o'er that loved scene of man,
> A mighty maze, for mighty pricks to scan; . . .

And so on. For those who knew the dissolute Sandwich, the Monk of infamous Medmenham, this was a ridiculous scene. Even Sir Francis Dashwood, another defector from Wilkes, said this was "the first time I heard the Devil fulminate against sin." On and on read the Earl of Sandwich, refusing to stop amid the cries of "Enough!" from other hypocrites in the House. At last he finished and the Lords, their ears still burning, quickly voted the poem a criminally obscene libel.[5]

Back in Commons

Wilkes' reaction to the Lords was to accuse them of the libel, seeing as how they stole the poem from his closet and published it in their proceedings. As for himself, The Great One bore no shame over a harmless satire on intercourse. Intercourse, he said, is very good for you; it can "renew the mind. I wrote my best North Briton in bed with Betsy Green."

The same day the Lords condemned him, the Commons voted 273 to 111 that No. 45 was a "false, scandalous and malicious libel." In one dreadful day, George and his government succeeded in getting two condemnations of Wilkes and set the stage for trials before their man, the Lord Chief Justice Mansfield. Of him it was said, "He had a great head, but no heart."

Vacation abroad

Quite reasonably fearing conviction and life imprisonment, Wilkes exercised acute discretion and took a vacation in Paris—a holiday which was to last four years, see him abandoned by most friends (but never that most loyal constituency, the mobs of London), convicted in absentia in Mansfield's court, expelled from Parliament, and declared an outlaw.

Being an outlaw was no small matter. Wilkes was declared legally dead (the law read, "If he does not appear in court, he shall be outlawed by the coroners of the county"). In early times outlaws could be shot on sight, but by Wilkes' time, the status was not quite so deadly. Of course there were 175 capital crimes in England at the time, so most outlaws ended up before the hangman anyway even if they survived arrest. In any event, Wilkes was now outside the law and return to England would be dangerous.

Wilkes spent his exile in Paris and Italy consorting with numerous fair maidens, scrambling for money, and unsuccessfully attempting to arrange a royal pardon. By February of 1768, The Great One was so far in debt that he feared spending the rest of his days in the Bastille. If he was to rot in jail, he thought, it might as well be an English jail. He sailed home.

Return of the prodigal son

Upon arrival in London, Wilkes the outlaw audaciously announced his candidacy for Parliament—a seat in the city was up in just a few days. Much to his joy, his return met with great approval from his loyal supporters and the mobs rose again to demonstrate on his behalf. Unfortunately, popular tumult does not buy the votes of freeholders already bought. Wilkes finished dead last in a field of five.

Undaunted, The Great One announced he would now run for a seat in Middlesex. His friend Lord Temple gave him property there to make it legal, but no one seriously thought he had a chance after the drubbing he had just received.

Why didn't the King and company simply arrest Wilkes as an outlaw, you ask. Two reasons: first, the arrest would have guaranteed him a martyr's victory at the polls; and second, there was a fear in the royal mind that an arrest would ignite a revolution. It was thought best to let the voters embarrass Wilkes and then the King could put the cuffs on him.

Royal upset

The voters of Middlesex did not oblige their King. On March 26, 1768, Wilkes stunned all England and was elected MP from County Middlesex. The King went into apoplexy. This was impossible! That

[5] According to Albert Gerber in *Sex, Pornography, and Justice* (NY: Lyle Stuart, 1965), Wilkes' case of the Essay on Women "furnishes the clue to the reason for the modern doctrine of obscene literature" (p 70). The rejection of Wilkes' argument that he never published the poem and thus could not be liable was radically unsound since the essence of obscenity was thought to be publication. That is the law today (see *Stanley v Georgia* (1969) 394 U.S. 557), and Wilkes' poem "acted as the stimulus for the entire modern theory of legal obscenity." (Gerber at 71).

devil Wilkes back in the Parliament from which he had been expelled! Wilkes back to hector the King with his liberty nonsense, or that garbage about spreading the vote to the masses, or corruption in government, or worse, to give in to those equally impudent Americans! No! He must be expelled again and then taken care of in the courts. Said George, this plan "is a measure whereon my Crown almost depends."

Riding the crest of popular feeling, Wilkes decided to steal a march on his foes and turn himself in on the outlawry. This set the stage for another history-making confrontation in court, this time between Wilkes and Lord Mansfield. The stakes were high: if the outlawry held, Wilkes was a goner and could spend the rest of his days in the Tower. If so, there was danger of a full-scale rebellion.

The scene on June 8, 1768 was tense. A howling mob filled the court in support of The Great One. Mansfield was roughed up on his way to court by some Wilkites (as they called themselves). Amid cheers, Wilkes' lawyer made numerous arguments challenging the outlawry. Mansfield listened closely and said, "That'll be denied, counsel." Then he made a most courageous speech on judicial independence. Noting the many threats of violence received if he found against Wilkes, he said:

Various terrors

> But here let me pause. It is fit to take some notice of the various terrors hung out; the numerous crowds which have attended and now attend in and about the hall . . . and the tumults which have shamefully insulted all order and government. Audacious addresses in print dictate to us, from those they call the people, the judgment to be given now, and afterwards upon the conviction. Reasons of policy are urged, from danger to the kingdom, by commotions and general confusion. Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are vain. Unless we

have been able to find an error, which will bear us out, to reverse the outlawry, it must be affirmed. The constition does not allow reasons of state to influence our judgments: God forbid it should! We must not regard political consequences, how formidable so ever they might be: if rebellion was the certain consequence we are bound to say *fiat justitia ruat caelum* [let justice be done though the heavens fall].

Mansfield then made his ruling among the ruffians. All of Wilkes' arguments were meritless, but as a member of the world's finest judiciary, he had a duty to examine for other errors perhaps overlooked by counsel. And whatdyaknow! The Lord Chief Justice found a humdinger of a goof. It seems that the writ of outlawry read "at the County Court for the County of Middlesex." Idiots! Any first-year law student would have known that the only proper wording was "at the County Court *of Middlesex* for the County of Middlesex." For this egregious error, Wilkes' outlawry was a nullity, said the judge. Case dismissed.

Mansfield was cheered by the gallery and the country was saved a bloody rebellion. Ah, the independence of the judiciary!

Go to jail

Mansfield's well-timed decision didn't save The Great One completely. He still had several misdemeanor convictions garnered while in Europe to resolve, and another King's Bench judge gave him 20 months in the slammer. Wilkes was carted off to the King's Bench prison, a penitentiary for the rich and more of a town than jail. There, he had unlimited visits from political supporters, lady friends, and as MP from Middlesex, a chance to speak out on the most pressing issue of the day—his liberty.

In Parliament, the King moved for Wilkes' expulsion through the Solicitor General, William Blackstone, renowned author of the famous *Commentaries on the Law of England*. Grenville, former First Minister, rose to challenge Blackstone's assertion that Parliament had the right to turn out an otherwise lawfully elected MP. If Parliament could determine who could not sit, he said, it was dictating who could, and with the King's party in control, such power could be used to dominate the representative assembly. Grenville then read from the authoritative text on the law and noted that nothing in it supported Blackstone's argument for expulsion.

Struck by thunder

Grenville then identified his source: "I have the pleasure of reading from that most estimable text by the learned Professor Blackstone, the *Commentaries*." In silent agony and confusion, Blackstone sunk to his seat while loud guffaws rang out through the chamber. There could be no response to impeachment by such an eminent authority as himself.

Later, after recovering his wits, Blackstone wrote an amendment to the *Commentaries* so that Wilkes' expulsion could be lawfully justified. This led to the classic toast to Blackstone—"To the first edition!"

With the Commons dominated by King's men, it would take more than the humiliation of Blackstone for Wilkes to win the day, no matter how proper his position. In another blow to liberty, the House voted to expel Wilkes. Once again, the effort to crush Wilkes inspired the mobs to rise in his support. The right to representative government seemed at stake as the voters in Middlesex voted for an MP to replace The Great One. They promptly elected "that devil Wilkes." The very next day, February 17, 1769, the House expelled Wilkes again. The day after that, the voters returned Wilkes again. The following day, the House expelled him again. It seemed the sequence could continue forever.

But the King would have none of it. The government decided to run their own man against Wilkes (who was enjoying all this from prison). The man to receive the royal backing was Colonel Luttrell. It was no contest. Final tally: Wilkes 1,143; Luttrell 209.

Less is more

Not to be deterred in ridding themselves of The Great One, the King's men now moved a bill in the Commons to seat Luttrell under the argument that since Wilkes had been expelled, he could not run. Therefore, Luttrell was the only candidate elected. The King knew that even though he might be unable to buy enough votes in Middlesex, there were enough honest politicians[6] on the payroll to ensure victory in the House of Commons. For this important vote, said Edmund Burke, the King's men "whipped"[7] in their lackeys from all parts of England to make sure no further embarrassment would occur. It didn't. Luttrell was seated.

At this new government outrage, all England seemed to rise in protest. Petitions demanding Wilkes' Middlesex seat be restored came in from everywhere. They were ignored, the royalists considering them the work of "an ignorant multitude, incapable of judging." As one King's man put it, Wilkes was supported by "the scum of the earth."

Such was the ruling mentality in our glorious mother country on the eve of the American Revolution. No wonder the Americans identified closely with The Great One's cause during the turbulent 60s. His battles in England—arbitrary search and seizure, freedom of speech and petition, the right of representative government—were also theirs. In prison, his struggle with Parliament raging, Wilkes met secretly with emissaries from the rebellious Colonies. □

[6] This was an age when an honest politician was described as, "One who when bought, stays bought."

[7] This is the first use of the term. Today, leaders in our representative assemblies are still called "whips."

Next: Wilkes inspires the American Revolution

Wilkesworld

Winston Schoonover

Last issue, Winston Schoonover began an account of the life and times of The Great One: John Wilkes of London, an 18th century politician, publisher and troublemaker whose epic battles with the British crown, in Parliament and before the bar, laid the foundation for our Bill of Rights. He is the most famous, although perhaps not most respectable ancestor of John Wilkes of New York and Redlands, subject of Wilkesworld.

The Great One is pictured above in an engraving by his sometime friend and colleague William Hogarth. Their friendship ended when Wilkes satirized him as nothing more than a "house painter."

"Isn't it odd, Mr. Wilkes, that I was born on January 1st?"

"Not at all. Only you could have been conceived on April the 1st."

□

"I honor the King and respect the people, but many things acquired by the favor of either one are in my account objects not worth ambition. I wish popularity; but it is that popularity which follows not that which is run after; it is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this occasion to gain the huzzas of thousands, or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right though it should draw on me the whole artillery of libels —all that falsehood and malice can invent, or the credulity of a deluded populace can swallow."
—Lord Mansfield on reversing John Wilkes' outlawry[1]

□

It was 1770. Wilkes was in prison. In a span of two months, he had been expelled from Parliament three times. His supporters, the mobs of London, rioted at each new outrage to freedom. From all over the country, petitions were sent to London protesting Wilkes' expulsions. Unrest permeated every quarter of England and the nation appeared on the eve of a rebellion. Across the Atlantic, a rebellion *was* in the works over the same issues for which Wilkes suffered his persecution: freedom of speech, freedom from arbitrary search, and the right to representation in Parliament.[2]

For Wilkes, things were just about perfect. He was the most popular man in England and the most popular Englishman in America. Edmund Burke observed at the time that the more the King hounded Wilkes, the more popular he became: "If he was to be hanged, he would be made King of England."

To test his popular support, Wilkes ran for alderman of London while still in prison. This important position combined the offices of city councilman and magistrate. It would offer an ideal first step on a ladder of vindication. He won easily and was soon able to use his new office to check a government attack on the press.

The Parliament papers case

In keeping with its people-be-damned attitude, Parliament had for many years made it illegal for the newspapers to print its debates — heaven forbid that a constituent become aware of an MP's babblings in the House of Commons! By the middle of the 18th century, however, a few brave publishers began unlawfully printing the debates. This of course provoked the King and the legislature into a royal overreaction; they set about prosecuting the printers. For their first target, the government chose the Middlesex Journal, as if to repay that county for its insolence in making the outlaw Wilkes its MP.

The journal's publisher was ordered to appear before the House of Commons. He graciously declined and the House responded by issuing a proclamation offering a handsome reward for his arrest. This prompted an ungrateful employee of the publisher to arrest his boss and take him to the local magistrate; but fortune smiled on

[1] Marke, *Vignettes of Legal History* (Rothman 1977), p 199.

[2] "Many Americans first took up radical ideas while defending John Wilkes, participating vicariously in his ordeal through their agents, friendly travelers, or the London press." G. Wills, *Inventing America: Jefferson's Declaration of Independence* (Doubleday 1978), p 45.

Wilkes' expulsions from Parliament hit a particularly sensitive nerve in the Colonies since the Americans were constantly protesting their own lack of representation. Patrick Henry's reaction to Wilkes' struggle with Parliament was typical. As his biographer notes, "Whatever Wilkes' failings, Henry . . . and most Virginians could only conclude that he was deprived of the seat in Parliament to which the Middlesex electors had legally returned him. The bitter animosity of King and ministers to him was a gross flaunting of the popular will. . . ." R.D. Meade, *Patrick Henry: Patriot in the Making* (J.B. Lippincott 1957) p 274.

the publisher for who should be sitting as judge that day but John Wilkes, fresh from prison.

Justice strikes

The irony of the confrontation was almost too much—Wilkes sitting in judgment of a Parliament arrest order![3] He heard the case with the solemnity due the occasion, and ruled. As for the employee's request to take the publisher into custody, Wilkes said, "That'll be denied." Parliament's arrest order, he said, was wholly illegal, an outrage against the English nation; therefore, the only true question before the court was whether the employee was guilty of assaulting an Englishman.

Wilkes ruled in the affirmative and bound the hapless servant over, but not before adding a further insult to Parliament. Although the arrest was illegal, the employee had carried out the terms to earn Parliament's reward; thus he was entitled to every penny Parliament offered for the arrest. So ruled Alderman John Wilkes. He was back.

Commona my house

On cue, the House reacted to Wilkes' insult by quick, decisive, stupid action. It sent its own messengers into the City to seize the publishers of the debates and bring them physically before the House to receive their deserts. Within hours, one of these men entered the home of one of the publishers, Mr. J. Miller of the Evening Post. As the man grabbed Miller to make the pinch, the editor screamed bloody murder and a constable, waiting just outside the house, came to the rescue. The messenger said he was there on a mission from Parliament. Miller, recalling Wilkes' recent ruling, demanded his arrest for assault. The constable escorted both to Wilkes who, with the Lord Mayor and Alderman Oliver, decided to sit in solemn judgment on yet another act of Parliament.

After dutifully hearing the evidence, the three men made their ruling. The arrest order of Parliament was wholly illegal. The messenger was thus guilty of assaulting an Englishmen. He was ordered to jail.

When news of this hit Parliament, the royal MPs went wild. Wilkes again! Imagine it. Wilkes, the outlaw, the thrice-expelled MP, the jailbird, throwing a messenger of Parliament into the slammer after declaring a Parliamentary arrest order unconstitutional! It was too much. Parliament could not stand silent in the face of such an affront. It ordered Wilkes, Oliver and the Lord Mayor to appear before the House.

The Grate Ones

Wilkes wrote (and of course published) his response to Parliament. He would be more than happy to appear before the House, he said, but only when invited back as the rightful representative of County Middlesex. Until then, he wouldn't go near the place.

The Lord Mayor and Alderman Oliver, after conferring with Wilkes, decided to attend in order to loudly denounce the illegal warrants issued to nab the printers and publishers of House debates. Their words grated on raw royalist nerves. When they finished, they were summarily thrown into the Tower.

Once again, the House acted rashly and stupidly. To throw the Lord Mayor of London and a city alderman into the Tower was a monstrous attack on the City. It was as if the national government said "Screw you, London." The city took to the streets in protest.[4]

Tower power

The jailing of the Lord Mayor and Alderman Oliver soon became a daily humiliation for the government. The London City Council voted its thanks to the two martyrs and promised to foot the bill for their food and upkeep in the Tower. Cities throughout the nation wrote supporting declarations, and prominent leaders of the opposition party made regular, highly public pilgrimages to the Tower to congratulate the heroic prisoners. The resulting anti-Parliament feeling in the country could hardly have been greater.

Sensing the ridiculousness of the situation, the House gave up trying to fight Wilkes and adjourned. This automatically freed the heroes of the Tower. It also marked the last time Parliament attempted to punish the publication of its debates. It was a smashing victory for Wilkes and friends.

In the aftermath, William Pitt summed up the results of the confrontation. Wilkes owed all his importance, he said, to the foolish actions of Parliament. They had made Wilkes "a person of the greatest

[3] It was the general warrant of arrest which in 1763 had propelled Wilkes into prominence. As a litigant, he successfully challenged the warrants in the courts. Now, a decade later, he was to rule on the legality of a Parliamentary arrest decree. He expressed the rationale of his decision to Dr. Johnson in answer to the latter's question, "Surely, sir, you don't think a resolution of the House of Commons equal to the law of the land?" Wilkes replied, "God forbid, sir!" Boswell, *The Life of Samuel Johnson* (Chicago: Benton 1952), p 475.

[4] As with all of Wilkes' escapades, this issue of the freedom of the press was followed closely in America. John Adams wrote in his diary on hearing of the jailing of the Mayor and Oliver:

"This Day arrived Hall from London with News of the Commitment of the Mayor and Mr. Alderman Oliver to the Tower, by the House of Commons. I read this Morning in the English Papers and the Political Register for April, all the Proceedings against the Printers Thompson and Wheble, and vs. the Mayor and Alderman Wilks, and Oliver. What the Consequence will be, of these Movements, it is not easy to foresee or Conjecture. A Struggle, a Battle, so serious and determined, between two such Bodies as the House and the City, must produce Confusion and Carnage, without the most delicate Management, on both sides, or the most uncommon Concurrence of Accidents." L.H. Butterfield (Ed), *The Adams Papers* (Belknap 1961), Vol 2, p 13.

consequence in the kingdom; they had made him an Alderman of the City of London, and representative of the County of Middlesex; and now they would make him Sheriff, and in due course, Lord Mayor."

Sheriff Wilkes

Pitt's prophecy proved itself in short time. In 1771, Wilkes ran for Sheriff of London and won easily, although not without opposition. On the way to the polls, one detractor stopped him to say, "I'd rather vote for the Devil than you." The Great One shot back, "And if your friend is not standing?"

If it were possible, Wilkes' popularity increased within the City because of his reforms as Sheriff. He stopped the military from attending executions, made admission to Old Bailey free, and ended the practice of trying prisoners in chains. "No man in England ought to be compelled to plead in chains," he said. "Every person at so critical a moment ought to be without any bodily pain or restraint, that the mind may be perfectly free to deliberate on its most interesting and awful concerns in so alarming a situation."

He also protested the incredible number of inferior crimes punishable by hanging, but this situation had to wait until the next century to see measurable change. Wilkes was able to put to good use the harsh state of the law, however. When a notorious defendant on trial for treason challenged The Great One to a duel, he wrote (and published) his response: "I do not think it my business to cut the throat of every desperado that may be tired of his life; but as Sheriff I may have an opportunity of attending you in my civil capacity, in which case . . . you will have *no ground* to complain of my endeavors to serve you."

Lazarus

From outlaw facing life in the slammer in 1769 to Alderman and Sheriff of London just two years later, The Great One had truly made a miraculous return to political life. But his triumph was not yet complete. In 1772 and 1773, Wilkes ran for Lord Mayor and polled more votes than any competitor. This permitted the City Council to choose the mayor from among the top two vote-getters, and twice Wilkes was denied the office. Wilkes' loyal constituents rioted on each occasion.[5] In 1774, he won the popular vote again, and this time there could be no denying him; he was lawfully elected Mayor of London.

Wilkes was a good alderman, sheriff and mayor, but he would never be satisfied with his achievements until he reversed the ultimate constitutional transgression by Parliament — his expulsions of 1769. He set about righting this wrong. On October 29, 1774, he ran for his seat in Middlesex County and was elected easily. No surprise there. The question was how the King and his merry band of Parliamentary toadies would react. Would they put up the same fight of five years before to keep Wilkes out of the national assembly? Would another constitutional crisis result?

All's well . . .

It is a testament to the totality of Wilkes' resurrection that no one uttered the slightest challenge when he attended his first day of Parliament. Perhaps the King believed that with his civic positions, Wilkes had changed. After all, many a rabblerouser had become a responsible statesman after a few years in office. Such thoughts perished the instant Wilkes made his first speech. The Great One moved that the anniversary of the beheading of King Charles I be made an annual holiday. He went on to demand shorter Parliaments, more equal representation, the repeal of all repressive laws against America, and the repudiation of Parliament's unlawful expulsion of MP John Wilkes in 1769.

So much for the responsible statesman.

Wilkes represented Middlesex from 1774 until his retirement in 1790. Each year he moved the House to repudiate the expulsions of 1769. Finally, in 1782 Parliament agreed and passed his resolution. Like all things Wilkes did, the action was to have reverberations in America although this one took a lot longer to be noticed.

A distant echo

When James Madison wrote his contribution to The Federalist to explain why the Constitution should be adopted, he discussed the issue of the power of Congress to expel duly elected members and, with Wilkes' success of 1782 in mind, he wrote that the Constitution conferred no such power to either legislative body. For almost

[5] Wilkes' popularity was so great that any attack on him brought out the mobs in protest. Benjamin Franklin was there to watch them rise a number of times. Here's how he described a typical Wilkes riot:

> "The residence of the king, is now a daily scene of lawless riot and confusion. Mobs patrolling the streets at noonday, some knocking all down that will not roar for Wilkes and liberty; courts of justice afraid to give judgment against him; coal-heavers and porters pulling down the houses of coal merchants that refuse to give them more wages; sawyers destroying sawmills; sailors unrigging all the outward-bound ships and suffering none to sail till merchants agree to raise their pay; watermen destroying private boats and threatening bridges; soldiers firing among the mobs and killing men, women, and children; which seems only to have produced a universal sullenness that looks like a great black cloud coming on, ready to burst in a general tempest. What the event will be God only knows. But some punishment seems preparing for a people who are ungratefully abusing the best constitution and the best king any nation was ever blessed with, intent on nothing but luxury, licentiousness, power, places, pensions, and plunder." C. Van Doren, *Benjamin Franklin* (Viking 1952), p 381.

Just a few years later, as one of the drafters and signers of the Declaration of Independence, Franklin would call that same king "a prince whose character is . . . marked by every act which may define a tyrant; [he is] unfit to be the ruler of a free people."

two hundred years, no one tested Madison's Wilkesian interpretation. Until *Powell v McCormick* (1969) 395 U.S. 486.

In 1966, Congressman Adam Clayton Powell was accused by the House of Representatives of stealing House funds and making fraudulent reports to cover up the theft. Powell had the impudence of Wilkes and thus attracted much dislike, so much so that he was expelled. He sued, saying — like all litigious Americans — that he'd take his case to the Supreme Court. And so he did.

Chief Justice Earl Warren wrote the opinion. He searched for controlling American precedent, but found none. He did find, however, Madison's argument (which he deemed based on Wilkes' victory of 1782) that the duly elected could not be ejected under the U.S. Constitution. This, said the Chief Justice, was what the framers intended and John Wilkes thus can be credited for saving Adam Clayton Powell's seat. So to speak.

War breaks out

With the possible exception of Edmund Burke, no one spoke out in Parliament with more passion and firmness in support of the American Revolution than The Great One. He used every conceivable argument. He appealed to the English sense of fairness and justice. The Americans were Englishmen fighting for English rights, he said. He argued that the nation now birthing would soon be a giant too powerful for the most powerful nation on earth to conquer: "We are fighting for the subjection, the unconditional submission of a country infinitely more extended than our own, which every day increases in wealth, national strength, and population. . . . The idea of the conquest of that immense continent is as romantic as it is unjust."

Wilkes called Sam Adams and John Hancock "true patriots" while lambasting

Englishmen like Dr. Johnson for taking pensions from the government to write propaganda in favor of the war.[6] He said of the great lexicographer that the word "liberty is as ridiculous in his mouth as religion is in mine."

Wilkes' unabashed support of the American Revolution cost him dearly with his loyal and reliable constituents — the merchants, the middle class, and most of all, the common people who made up the mobs. The English victories in the early years of the war brought much popular support for the government from the masses. Everybody loves a winner. So The Great One's support for the Colonies, condemned as treasonous by the government, ate away at his constituency.

Draft resister

As Lord Mayor of London, Wilkes took a great personal risk in acting on his opposition to the war. He kept up his vocal support of the Americans. "If liberty is to be saved," he said, "it will be only by our American brethren." He also used his office to stop the Royal Navy's "pressing" in London. This was the way the Navy took enlistments: kidnapping men off the streets and forcing their service at sea for years. To Wilkes, it was another example of an outrageous misuse of government power compounded by the destination of these unfortunate men — off to put down a revolution which a true Englishman should have supported.

If the American war put Wilkes' popularity on the slide, his support of legislation eliminating repressive anti-Catholic measures wiped out the bulk of it. By 1778, the war had started to go badly for the Brits and times were extremely difficult for the average worker. Legislation aimed at easing anti-Catholic laws thus came at a bad time since it was perceived as sure to harm the suffering Protestant majority.

Protestant ethics

In 1780, Lord George Gordon went to Parliament to demand the repeal of the bill giving relief to the Catholics. Accompanied by an unusually ugly mob, his speech whipped up such a fury that it sparked a terrible riot which soon spread throughout the city. Within hours, dozens of fires were blazing.

We don't know what went through The Great One's mind at the time. In all the days when the mobs rose for his causes, there was never any of the widespread mean violence which typified this uprising. Hundreds of people were killed; scores of homes, including his own, were torched; shops and government buildings were systematically destroyed. The entire city was in danger of destruction. All in the name of religious hatred.

To the barricades

Wilkes tried to get the Sheriff to call out a posse, but got nowhere. So he took his own action. Gathering a band of volunteers, he headed to the financial district where the rioting and burning now centered. He ordered defensive positions taken in front of the Bank of England and waited for the rioters' attack. How odd it must have seemed to The Great One to be defending a symbol of the established order he had fought for so many years. Now he was about to fire on his constituency, men gone wild with fear and loathing over their pathetic plight.

At midnight they struck. Wilkes fired on them. By his own account, he killed several men. The shots also killed Wilkes as a political figure of any consequence. For the next 17 years of his life he was, as he put it, an "extinct volcano."

The years following the Gordon Riots for Wilkes were not all that bad, though. He was no longer center stage playing the lead in roles which shaped the face of liberty as we know it today, but he still supported reformist causes, enjoyed drink, women and a good time, and was as impudent in his gray years as in his days as a Monk of Medmenham.[7]

Viva Wilkes!

My study of the 18th century Wilkes taught me how precious the liberty we now enjoy is, how difficult it is to achieve, and how easily it could all slip away. It taught me how one courageous human being could stand up to forces much larger than himself and prevail, all because of that one factor which so often makes the difference between personal annhilation and victory.

Shithouse luck.

Studying the life of The Great One also gave me a new appreciation for my friend, who in so many ways resembles his incredible ancestor. History may have forgotten The Great One,[8] but he lives today in the flesh and spirit of my friend John Wilkes. □

[6] Wilkes and Johnson exchanged some of history's best insults, but none is better than the one inspired by Dr. Johnson's great dictionary. In the first edition, Johnson said the letter H "seldom, perhaps never begins any but the first syllable." Such an obvious gaffe by so great a man could not escape the attention of John Wilkes. He wrote a magazine piece noting that "the author of this observation must be a man of quick appre-hension, and a most compre-hensive genius."

For years Johnson did nothing about his blooper or Wilkes' jibe. Finally, when the third edition of the dictionary was published, he took care of both. He changed the entry on the letter H to note that it "sometimes begins middle or final syllables in words compounded, [e.g.] a block-head." (Boswell, n 3 supra at p 83.)

[7] Thus, at a party held for the Prince of Wales, a dissolute youth too eager to seize his father's throne, Wilkes made a comment which seemed favorable to the King. This was quite extraordinary coming from The Great One's lips, and the Prince asked him, "Since when have you liked kings, Mr. Wilkes?" The reply: "Since I had the pleasure of your Royal Highness' acquaintance!"

[8] Not all historians have ignored The Great One. He takes his rightful place in the multi-volume *The World's Greatest Events* (Collier 1943), Vol 5 (1688-1792), p 213.