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THOUGHTS

ON LICENSING

PUBLIC ALE-HOUSES.

0317

T H O U G H T S

O N T H E

G R E A T C I R C U M S P E C T I O N

N E C E S S A R Y I N L I C E N S I N G

P U B L I C A L E - H O U S E S .

Submitted to the Consideration of the Gentlemen acting in the Commission of the Peace throughout England.

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BY A JUSTICE OF THE PEACE.

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L O N D O N :

Printed for J. JOHNSON, No. 72, St. Paul's Church-Yard.

1776.

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## THOUGHTS, &c.

GENTLEMEN,

**T**HE commission under which we act, and the powers with which we are intrusted, by a variety of Acts of Parliament, seem no less to point out to us, and require from us the prevention of the rise and progress of vice, than the detection and punishment of the most daring and complicated impieties. This idea is, indeed, inseparable from the principles of good government, and should in its operation be the primary object of the Magistrate. It extends itself to all offences, however classed in respect to their Magnitude and Consequence, or to the persons affected by them. To be active in the punishment,

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nishment, and indolent in the prevention of vice, would, in effect, be to make the laws a mere system of penal jurisprudence, instead of a rule of action; and would shew an inclination to prove the expediency of all penal statutes, *only* by the number of convictions: on the score of propriety and consistency, such a conduct may be likened to an attempt to stop a cataract of water, by opening additional springs into the basin from whence it's streams are supplied.

While I wish to draw your attention to the studious and vigilant prevention of all overt and public irregularities, I do not presume to take to myself the office of instructor. My purpose is barely to remind, not to inform, much less to dictate; and I hope the sentiments of one Magistrate, upon a subject which has immediate relation to the common duty of his office, and which he is persuaded is a necessary and very important part of it, may be delivered with freedom, without giving just occasion of offence to another.

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That once noble, and stupendous fabric, the British Constitution, has received repeated shocks, which affect it's foundations; but it suffers by none of them more than by the inroads and depredations of vice. Hence the civil power is called upon for it's aid, and it particularly becomes the duty of every order of magistracy to be watchful of the steps of vice, and determined to impede and break their rapid course: and though it is not in our united power to say unto our state, "live for ever," we may, and we ought to contribute the full measure of our assistance towards securing for it, or rather, perhaps, restoring to it, under the blessing of God, a prospect of length of days, and an healthful old age.

Vice, profaneness, and immorality, in all their varied shapes, most frequently take their rise from small, and almost imperceptible beginnings. Corrupt as we are by nature, murder and robbery are seldom, if ever, the first outsets of the unhappy wretch who commits them. He has learned, in

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some school of vice, the lessons and the habits which lead to idleness, and to a desperate fortune: the reflection becomes insupportable; the continued expence exceeds the proportion of his means for it's maintenance; he will not take shame to himself, and return to his religious duties, and to honest industry, without a miracle was wrought in his favor. In this most distressful, and generally fatal dilemma, hangs his mind, inclining to that way which leadeth to destruction; and here we may frequently date the commencement of those practices which are closed only by a premature and disgraceful death.

Neither should I neglect to mention eth frequent riots and disturbances in villages, as well as greater towns, or the frequent and gross profanation of the Lord's Day. Both of these owe their rise, generally speaking, to an unnecessary and ill-timed assembling at a public house; and, unfortunately, the profits gained by the host increase according to the intoxication of the guests.

guests. Laws are indeed provided for the punishment of both these offences; but I am insisting that the duty of the Magistrate extends to the prevention of them. In the former cases the laws are oftentimes eluded, by the darkness of the night, and the general concern of the whole company in the mischief which is done. And the neglect of parish officers, or their ignorance of their duty, suffer the laws provided against the profanation of the Lord's Day from having their operation or effect.

For the source of all these ills we must look into the societies of drunkards, and gamesters, and idlers, and enter into those houses wherein they are harboured, and wherein the unsuspecting and unwary passenger is invited. And as I have now in view those of the lowest order, and of the most suspected credit and general contagion, we must go into our numerous public Ale-houses. The cause and the effect equally correspond, in what is vulgarly called the great world; the effect is, not unfrequently,

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the commission of offences of the first magnitude ; offences which are not within our cognizance, and sometimes, alas ! not within the reach of the laws under the dispensation of our superiors.

Forgive me then, Gentlemen, if, with the sole view to the public's good, and to our own honor, I beg leave to call your attention to that part of our duty which respects the allowance and regulation of these nurseries and seminaries of distress and wretchedness, of vice and felonies. To that part of our duty, wherein the design and sense of the Legislature is clear and express; but wherein also much is left without restraint to the discretion of the Magistrate.

For the accommodation of travellers and strangers, these public Alehouses are useful and necessary : they are sometimes very convenient for the assembling of certain public meetings, and the transaction of certain public business. Beyond these few instances the use of them does not extend,  
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and, consequently, all beyond these cases we must call the abuse of their original design. And here the moderate and dispassionate interposition of the Magistrate becomes necessary.

In order to a just and impartial determination, in an application for the licensing of a public Alehouse, we should, in the first instance, pay all due attention to the character of the candidate for our favor. In this matter the law has expressly provided and directed, as an indispensable requisite, (*except in cities and towns corporate\**) that kind

\* This exception stands in the statute of 26 Geo. II. c. 31. upon the supposition of the near neighbourhood of the Magistrate with the proposed victualler, and of his better, or personal knowledge of his character, and of the occasion for such house. The certificate of the person's *good fame, and sober life and conversation*, is, however, absolutely necessary in counties at large : in *cities and towns corporate*, it may, properly speaking, be said to be optional in the Magistrate ; for an inability to produce such certificate would argue something very like an unfitness to be licensed, unless, indeed, the  
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kind of certificate in his behalf, which, to us, must be the best evidence of his well deserving. How far these certificates may be

bane of party squabbles could be discovered to have unjustly influenced the refusal. What the Legislature further requires of the Magistrate is, that the licences to keep common Inns, or Ale-houses, be granted only by *Justices who act in the division where the proposed licensed person dwells*, and that at a certain time, of which due notice is to be given. And these precautions were taken, as the same act sets forth, to prevent *the many inconveniencies which had arisen from persons being licensed to keep Inns and common Ale-houses, by Justices who lived remote from the places of abode of such persons, and might not thereby be truly informed of the occasion or want of such houses, or the characters of the persons applying to keep the same.* And it may be generally observed, that the law leaves the Justices at their absolute discretion, in granting a licence to a new person; nor will a *mandamus* lie against them for any refusal, unless they have been influenced by partiality, malice, or corruption. (See the case of the King against Young and Pitts, E. 31 G. II.) Agreeably, therefore, to the spirit of that part of the act which I have recited, it is a very good and safe rule, at a general meeting of Justices for an extensive division or district, particularly to consult the opinion and judgment of those Gentlemen, in whose neighbourhood the person proposed to be licensed more immediately lives.

be surreptitiously obtained, or given to persons unworthy of them, as matter of mere form, or from a false principle of good neighbourhood, becomes a consideration of a different nature, though not entirely undeserving of enquiry. In general they may merit a favorable construction, unless, indeed, a Magistrate can, from his own positive knowledge aver the contrary; and, in that case, it becomes his duty to contravene such formal testimonial.

The next consideration is, what occasion there may be for such Alehouse in the place proposed? and this enquiry should be made, without respect either to the person applying for it, or to the sponors for his character. It should be well considered, how far the accommodation of the public in general, or the circumstances of that particular township, require it, or make it necessary. If the parish is small, there may not be occasion for any Alehouse; or, if the Parish is only of common extent, and there should be one already established, there may be no occasion

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occasion for a second; and if no particular great road should lie through such village or parish, one public Alehouse should seem to be fully sufficient for every good or useful purpose. Where such road does pass through a parish, it becomes a reasonable enquiry, in order to a right judgment, to examine into it's distance from the next Public-house lying upon the same road; as also into the distance between the market towns, which are usually considered as the extent of such road.

It is sometimes urged, that if such additional public Ale-house should afterwards be irregularly or disorderly managed, the remedy is always at hand; but the usual test of such irregularity and disorder is generally nothing short of outrages: an house established, is never suppressed upon the single idea of it's being a nest of idleness, and as dispersing it's flow and silent, but sure poison among the people. And I must further remark, that whatever may be the offence of the publican, there are so many more difficulties in the

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the way of *putting down* one of these houses, than there are in the way of refusing their establishment, that every argument against such new licensing ought to be allowed it's full force, before they receive our fiat.

In order to the suppression of a public Ale-house, convictions must precede; and their distant situation from the superintendance of the Magistrate, and the difficulty of getting information, may, for some time, baffle, if not defeat his vigilance. And to this let me add, that it is far more painful and distressing to an humane man, to cut off that source of a family's bread, to which they have long been habituated to trust, than it is to the same person to withhold his consent that the head of such family should first turn himself out of his accustomed line of life, into the too probable sottish idleness of a publican. The labor of this man's hands is frequently lost to his family and the public; and seldom does the sending him back to his former occupation, restore to him his wonted will or power for honest labor.

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It has also been offered, as a plea for granting a licence to a distressed individual, that it will keep him from being chargeable to the parish: and this plea is not only advanced by the expectant pauper, who may readily be supposed desirous of altering the mode of his dependence, but it has even been brought as a conclusive argument by the other inhabitants of the parish. What is this but saying, We would rather spend five times the money at the public Ale-house, (and from our own families, many of whom are in equal want of it) out of which the publican will receive his profit, than pay our separate inconsiderable shares to a reasonable maintenance for him in sobriety and honesty. The religion of this argument is as much as to say, We will make our charity subservient to our pleasure and drunkenness. The œconomy of it wishes to prove, that one shilling is equivalent to five: and the policy of it aims to convince us, that many paupers are more easily maintained than one.

Some persons, from an *official* course of thinking and judging, plead the advancement

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ment of the King's revenue, in the stamp-duties, the duties on malt, hops, &c. This argument can only be supported on the stale pretence, that private vices are public benefits; and they might as well say, that "if all the inhabitants had the plague the nation would be healthy, and if they were all beggars the nation would be rich."

But, Gentlemen, need I seriously ask, was this the end for which we were put into the Commission of the Peace? Was it for this purpose we were appointed the guardians and conservators of the public welfare? It is, moreover, an ill compliment paid to the King, to suppose that he, who is the sovereign guardian of the state, should wish his people to be drunken and idle, (to say the least) with a view to the increase of his revenue. It is an ill compliment to the Legislature, who have enacted so many salutary laws for the punishment of vice, and to that end (considering a certain number of public Ale-houses as necessary evils) have thrown so many cautionary impediments in

the way of an indiscriminate increase of these schools and receptacles of vice. It is an ill compliment to ourselves, seeing the intention of our commission, and the letter and spirit of those laws which are to direct and rule our conduct, to suppose that we have so far forgotten our duty to God, to our King, and to our country, and all respect to our own oaths, as to imagine that we would deliberately frustrate the whole scheme and use of our office and appointment.

If the justly boasted forms and model of our Constitution, or that liberty which is supposed to be enjoyed in consequence of them, are worth preserving, it becomes the duty of every good Magistrate and Citizen to stem that torrent which must finally overwhelm the liberties of this country; and to stop or lessen this torrent, he must either cut off the source, or confine within narrower bounds the swelling waters. It is a maxim of high authority in politics, that a people must be debauched, profligate, and vicious in their manners, before they can be

be enslaved. The present peculiar circumstances of this empire and its government, and the prevailing fashion of the age in which we live, will more than overbalance the prescribed forms of our constitution under a relaxed execution. The exertion of public virtue can alone avert the threatened deluge, overspreading all that is dear to us as Britons; and as we are placed in a situation to superintend the public peace, and therewith the morals of the people, and may be apprised of the principal sources of all rapacious vice, it will redound deserved honor upon us to look diligently to the opportunities which lie in our way, and to the talents committed to our care.

The commission we bear we derive immediately from the Crown, but as a diamond receives its lustre from the degree of its water and its polish, so shall we receive additional honor from an uniform integrity and readiness in the equal distribution of justice, and from a manly vigilance in the prevention of all evil practices. Neither  
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need I be backward to say, that our King and our Country will be under considerable obligation to us; nor is the voice of the people entirely unwilling to acknowledge the debt. But the conscioufness of our own usefulness will not fail abundantly to recompense us for our time and trouble, and the reproaches of those who will revile us, only because they hate virtue, and whose fair word would injure us more essentially in the estimation of all good men.

T H E E N D.

*Handwritten signature or scribble*