

Erskine May, Vol. II, Chapter IX, pp. 330-339

The Libel Laws and the Press, to 1811

Political agitation, in its accustomed forms of public meetings and association, was now checked for several years,(1)—and freedom of discussion in the press continued to be [331] restrained by merciless persecution. But the activity of the press was not abated. It was often at issue with the government; and the records of our courts present too many examples of the license of the one, and the rigours of the other. Who can read without pain the trials of Mr. Gilbert Wakefield and his publishers, in 1799? On one side we see an eminent scholar dissuading the people, in an inflammatory pamphlet, from repelling an invasion of our shores: on the other, we find publishers held criminally responsible for the publication of a libel, though ignorant of its contents; and the misguided author punished with two years' imprisonment in Dorchester gaol,—a punishment which proved little short of a sentence of death.(2) Who can peruse without indignation the trial of the conductors of the 'Courier,' in the same year, for a libel upon the Emperor of Russia,(3) in which the pusillanimous doctrine was laid down from the Bench, that public writers were to be punished, not for their [332] guilt, but from fear of the displeasure of foreign powers.(4)

Libels on Napoleon

From such a case, it is refreshing to turn to worthier principles of freedom, and independence of foreign dictation. However often liberty may have been invaded, it has ever formed the basis of our laws. When the First Consul, during the peace of Amiens, demanded that liberty of the press in England should be placed under restraints not recognised by the constitution, he was thus answered by the British government: 'His Majesty neither can nor will, in consequence of any representation or menace from a foreign power, make any concession which may be in the smallest degree dangerous to the liberty of the press, as secured by the constitution of this country. This liberty is justly dear to every British subject: the constitution admits of no previous restraints upon publications of any description: but there exist judicatures wholly independent of the executive, capable of taking cognisance of such publications as the law deems to be criminal; and which are bound to inflict the punishment the delinquents may deserve. These judicatures may investigate and punish not only libels against the government and magistracy of this kingdom, but, as has been repeatedly experienced, of publications defamatory of those in [333] whose hands the administration of foreign governments is placed. Our government neither has, nor wants, any other protection than what the laws of the country afford; and though they are willing and ready to give to every foreign government all the protection against offences of this nature, which the principle of their laws and constitution will admit, they never can consent to new-model their laws, or to change their constitution, to gratify the wishes of any foreign power.'

But without any departure from the law of England, the libeller of a foreign power could be arraigned; and this correspondence was followed by the memorable trial of Jean Peltier. Mr. Mackintosh, in his eloquent and masterly defence of the defendant,(5) dreaded this prosecution 'as the first of a long series of conflicts between the greatest power in the world, and the only free press remaining in Europe;' and maintained, by admirable arguments and illustrations, the impolicy of restraining the free discussion of questions of foreign policy, and the character and conduct of foreign princes, as affecting the interest of this country. The genius of his advocate did not [334] save Peltier from a verdict of guilty: but as hostilities

with France were soon renewed, he was not called up for judgment. Meanwhile the First Consul had continued to express his irritation at the English newspapers, between which and the newspapers of France a warm controversy was raging; and finding that they could not be repressed by law, he desired that the government should at least restrain those newspapers which were supposed to be under its influence. But here again he was met by explanations concerning the independence of English editors, which he found it difficult to comprehend; and no sooner was war declared, than all the newspapers joined in a chorus of vituperation against Napoleon Bonaparte, without any fears of the attorney-general.

Cobbett's Trials

In following the history of the press, we now approach names familiar in our own time. William Cobbett having outraged the republican feelings of America by his loyalty, now provoked the loyal sentiments of England by his radicalism. His strong good sense, his vigorous English style, and the bold independence of his opinions, soon obtained for his 'Political Register' a wide popularity. But the unmeasured terms in which he assailed the conduct and measures of the government exposed him to frequent prosecutions. In 1804, he suffered for the publication of two letters from an Irish judge, ridiculing Lord Hardwicke, Lord [335] Redesdale, and the Irish executive.(6) Ridicule being held to be no less an offence than graver obloquy, Cobbett was fined; and Mr. Justice Johnson, the author of the libels, retired from the bench with a pension.

In 1809, another libel brought upon Cobbett a severer punishment. Some soldiers in a regiment of militia having been flogged, under a guard of the German legion, Cobbett seized the occasion for inveighing at once against foreign mercenaries and military flogging. He was indicted for a libel upon the German legion; and being found guilty, was sentenced to two years' imprisonment, a fine of £1,000, and to give security for £3,000, to keep the peace for seven years. The printer of the Register, and two persons who had sold it, were also punished for the publication of this libel. The extreme severity of Cobbett's sentence excited a general sympathy in his favour, and indignation at the administration of the libel laws.(7)

Other Cases

Another similar case illustrates the grave perils of the law of libel. In 1811, Messrs. John and Leigh Hunt were prosecuted for the re-publication of a spirited article against [336] military flogging from the 'Stamford News.' They were defended by the vigour and eloquence of Mr. Brougham, and were acquitted.

Yet a few days afterwards, John Drakard, the printer of the 'Stamford News,' though defended by the same able advocate, was convicted at Lincoln for the publication of this very article. Lord Ellenborough had laid it down that 'it is competent for all the subjects of his Majesty, freely but temperately to discuss, through the medium of the press, every question connected with public policy.' But on the trial of Drakard, Baron Wood expressed opinions fatal to the liberty of the press. 'It is said that we have a right to discuss the acts of our legislature. This would be a large permission indeed. Is there, gentlemen, to be a power in the people to counteract the acts of the Parliament; and is the libeller to come and make the people dissatisfied with the government under which he lives? This is not to be permitted to any man, —it is unconstitutional and seditious.' Such doctrines were already repugnant to the law: but a conviction obtained by their assertion from the bench, proves by how frail a thread the liberty of the press was then upheld.

The last three years before the regency were marked by unusual activity, as well as rigour, in the administration of the libel laws. Informations were multiplied; and the attorney-general was armed with a new power of holding the accused to bail.(8)

Progress of the Press

[337] It is now time again to review the progress of the press, during this long period of trial and repression. Every excess and indiscretion had been severely visited: controversial license had often been confounded with malignant libel: but the severities of the law had not subdued the influence of the press. Its freedom was often invaded: but its conductors were ever ready to vindicate their rights with a noble courage and persistence. Its character was constantly improving. The rapidity with which intelligence of all the incidents of the war was collected,—in anticipation of official sources,—increased the public appetite for news: its powerful criticisms upon military operations, and foreign and domestic policy, raised its reputation for judgment and capacity. Higher intellects, attracted to its service, were able to guide and instruct public opinion. Sunday newspapers were beginning to occupy a place in the periodical press,—destined to future eminence,—and attempts to repress them, on the grounds of religion and morality, had failed.(9) But in the press, as in society, there were many grades; and a considerable class of newspapers were still wanting in the sobriety, and honesty of purpose necessary to maintain the permanent influence of [338] political literature. They were intemperate, and too often slanderous.(10) A lower class of papers, clandestinely circulated in evasion of the stamp laws, went far to justify reproaches upon the religion and decency of the press. The ruling classes had long been at war with the press; and its vices kept alive their jealousies and prejudice. They looked upon it as a noxious weed, to be rooted out, rather than a plant of rare excellence, to be trained to a higher cultivation. Holding public writers in low esteem,—as instruments of party rancour,—they failed to recognise their transcendent services to truth and knowledge.(11)

But all parties, whether regarding the press with jealousy or favour, were ready to acknowledge its extraordinary influence in affairs of state. 'Give me,' [339] said Mr. Sheridan, 'but the liberty of the press, and I will give the minister a venal House of Peers,—I will give him a corrupt and servile House of Commons,—I will give him the full swing of the patronage of office,—I will give him the whole host of ministerial influence,—I will give him all the power that place can confer upon him to purchase submission, and overawe resistance; and yet, armed with the liberty of the press, I will go forth to meet him undismayed: I will attack the mighty fabric he has reared, with that mightier engine: I will shake down from its height corruption, and lay it beneath the ruins of the abuses it was meant to shelter.'

Footnotes.

1. In Scotland. 'as a body to be deferred to, no public existed.'—Cockburn's Mem., 88. See also *Ibid.*, 282, 302, 376.
2. £5,000 was subscribed for him, but he died a fortnight after his release. Mr. Fox, writing March 1st, 1799, to Mr. Gilbert Wakefield, says:—'The liberty of the press I consider as virtually destroyed by the proceedings against Johnson and Jordan; and what has happened to you I cannot but lament, therefore, the more, as the sufferings of a man whom I esteem, in a cause that is no more'—Fox Mem., iv. 337.—And again on June 9th:—'Nothing could exceed the concern I felt at the extreme severity (for such it appears to me) of the sentence pronounced against you.'—*Ibid.*, 339.
3. This libel was as follows:—'The Emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency. He has now passed an edict prohibiting the exportation of timber, deals, etc. In consequence of this ill-timed law, upwards of one hundred sail of vessels are likely to return to this kingdom without freights.'
4. Lord Kenyon said:—'When these papers went to Russia and held up this great sovereign as being a tyrant and ridiculous over Europe, it might tend to his calling for satisfaction as a national affront, if it passed unrebated by our government and our courts of justice.' Trial of Vint, Ross, and Perry: St Tr., xxvii. 627; Starkie's Law of

Libel, ii. 217.

5. The Attorney-General (Spencer Perceval) spoke of it as 'one of the most splendid displays of eloquence he ever had occasion to hear;' and Lord Ellenborough termed it 'eloquence almost unparalleled.'
6. There was far more of ridicule than invective. Lord Hardwicke was termed 'a very eminent sheep-feeder from Cambridgeshire' with 'a wooden head;' and Lord Redesdale 'a very able and strong-built chancery pleader from Lincoln's Inn.'
7. Sydney Smith, in a letter to Lady Holland, Feb. 11th, 1810, said: 'Who would have mutinied for Cobbett's libel? or who would have risen up against the German soldiers? and how easily might he have been answered? He deserved some punishment; but to shut a man up in gaol for two years for such an offence is most atrocious.'—Sydney Smith's Mem., ii. 86.
8. From 1808 to 1811, forty-two informations were filed, of which twenty-six were brought to trial. Lords' Deb. on Lord Holland's motion, March 4th, 1811; Hans. Deb., 1st Ser., xix. 140; Commons' Deb. on Lord Folkestone's motion, March 28th, 1811; Ibid., 548; Ann. Reg., 1811, p. 142; Romilly's Life, ii. 380; Horner's Life, ii. 139.
9. In 1799 Lord Belgrave, in concert with Mr. Wilberforce, brought in a bill for that purpose, which was lost on the second reading. Its loss was attributed by its promoters to the fact that three out of the four Sunday newspapers supported the government. Parl. Hist., xxxiv. 1006; Life of Wilberforce, ii. 424.
10. In his defence of John and Leigh Hunt, in 1811, Mr. Brougham gave a highly-coloured sketch of the licentiousness of the press: 'There is not only no personage so important or exalted,—for of that I do not complain,—but no person so humble, harmless, and retired, as to escape the defamation which is daily and hourly poured forth by the venal crew, to gratify the idle curiosity, or still less excusable malignity; to mark out, for the indulgence of that propensity, individuals retiring into the privacy of domestic life; to hunt them down and drag them forth as a laughing stock to the vulgar, has become, in our days, with some men, the road even to popularity; but with multitudes the means of earning a base subsistence.'—St. Tr., xxxi. 380.
11. In 1808, the benchers of Lincoln's Inn passed a bye-law, excluding all persons who had written for hire, in the daily papers, from being called to the bar. The other Inns of Court refused to accede to such a proposition. On the 23rd March 1809, Mr. Sheridan presented a petition complaining of this bye-law, which was generally condemned in debate, and it was soon afterwards rescinded by the benchers.—Lord Colchester's Diary, ii. 240. In 1810, Mr. Windham spoke of the reporters as having amongst them 'bankrupts, lottery-office keepers, footmen, and decayed tradesmen.' And he understood the conductors of the press to be 'a set of men who would give in to the corrupt misrepresentation of opposite sides.'—Hans. Deb., 1st Ser., xv. 330.

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