

Erskine May, Vol. III, Chapter XI, pp. 39-49

Spies and Informers

Next in importance to personal freedom is immunity from suspicions, and jealous observation. Men may be without restraints upon their liberty: they may pass to and fro at pleasure: but if their steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators,—who shall say that they are free? Nothing is more revolting to Englishmen than the espionage which forms part of the administrative system of continental despotisms. It haunts men like an evil genius, chills [40] their gaiety, restrains their wit, casts a shadow over their friendships, and blights their domestic hearth. The freedom of a country may be measured by its immunity from this baleful agency.(1) Rulers who distrust their own people, must govern in a spirit of absolutism; and suspected subjects will be ever sensible of their bondage.

Our own countrymen have been comparatively exempt from this hateful interference with their moral freedom. Yet we find many traces of a system repugnant to the liberal policy of our laws. In 1764, we see spies following Wilkes everywhere, dogging his steps like shadows, and reporting every movement of himself and his friends to the secretaries of state. Nothing was too insignificant for the curiosity of these exalted magistrates. Every visit he paid or received throughout the day was noted: the persons he chanced to encounter in the streets were not overlooked: it was known where he dined, or went to church, and at what hour he returned home at night.

In the state trials of 1794, we discover spies and informers in the witness-box, who had been active members of political societies, sharing their councils, and encouraging, if not prompting, their criminal extravagance. And throughout that period [41] of dread and suspicion, society was everywhere infested with espionage.

Post-War Cases

Again, in 1817, government spies were deeply compromised in the turbulence and sedition of that period. Castle, a spy of infamous character, having uttered the most seditious language, and incited the people to arm, proved in the witness-box the very crimes he had himself prompted and encouraged. Another spy, named Oliver, proceeded into the disturbed districts, in the character of a London delegate, and remained for many weeks amongst the deluded operatives, every where instigating them to rise and arm. He encouraged them with hopes that in the event of a rising, they would be assisted by 150,000 men in the metropolis; and thrusting himself into their society, he concealed the craft of the spy, under the disguise of a traitorous conspirator. Before he undertook this shameful mission, he was in communication with Lord Sidmouth; and throughout his mischievous progress was corresponding with the government or its agents. Lord Sidmouth himself is above the suspicion of having connived at the use of covert incitements to treason. The spies whom he employed had sought him out and offered their services in the detection of crime; and, being responsible for the public peace, he had thought it [42] necessary to secure information of the intended movements of dangerous bodies of men. But Oliver's activity was so conspicuous as seriously to compromise the government. Immediately after the outbreak in Derbyshire, his conduct was indignantly reprobated in both Houses;(2) and after the outrages, in which he had been an accomplice, had been judicially investigated, his proceedings received a still more merciless exposure in Parliament.(3) There is little doubt that Oliver did more to disturb the public peace by his malign influence, than to protect it, by timely information to the government. The agent was

mischievous, and his principals could not wholly escape the blame of his misdeeds. Their base instrument, in his coarse zeal for his employers, brought discredit upon the means they had taken, in good faith, for preventing disorders. To the severity of repressive measures, and a rigorous administration of the law, was added the reproach of a secret alliance between the executive and a wretch who had at once tempted and betrayed his unhappy victims.

The relations between the government and its informers are of extreme delicacy. Not to profit by timely information were a crime: but to retain in government pay, and to reward spies and informers, who consort with [43] conspirators as their sworn accomplices, and encourage while they betray them in their crimes, is a practice for which no plea can be offered. No government, indeed, can be supposed to have expressly instructed its spies to instigate the perpetration of crime: but to be unsuspected, every spy must be zealous in the cause which he pretends to have espoused; and his zeal in a criminal enterprise is a direct encouragement of crime. So odious is the character of a spy, that his ignominy is shared by his employers, against whom public feeling has never failed to pronounce itself, in proportion to the infamy of the agent, and the complicity of those whom he served.

Three years later, the conduct of a spy named Edwards, in connection with the Cato Street Conspiracy, attracted unusual obloquy. For months he had been at once an active conspirator and the paid agent of the government; prompting crimes, and betraying his accomplices. Thistlewood had long been planning the assassination of the ministers; and Edwards had urged him to attempt that monstrous crime, the consummation of which his treachery prevented. He had himself suggested other crimes, no less atrocious. He had counselled a murderous outrage upon the House of Commons; and had distributed hand grenades among his wretched associates, in order to tempt them to deeds of violence. The conspirators were [44] justly hung: the devilish spy was hidden and rewarded. Infamy so great and criminal in a spy had never yet been exposed: but the frightfulness of the crime which his information had prevented, and the desperate character of the men who had plotted it, saved ministers from much of the odium that had attached to their connection with Oliver. They had saved themselves from assassination; and could they be blamed for having discovered and prevented the bloody design? The crime had been plotted in darkness and secrecy, and countermined by the cunning and treachery of an accomplice. That it had not been consummated, was due to the very agency which hostile critics sought to condemn. But if ministers escaped censure, the iniquity of the spy-system was illustrated in its most revolting aspects.

Again, in 1833, complaint was made that the police had been concerned in equivocal practices, too much resembling the treachery of spies: but a parliamentary inquiry elicited little more than the misconduct of a single policeman, who was dismissed from the force. And the organisation of a well-qualified body of detective police has at once facilitated the prevention and discovery of crime, and averted the worst evils incident to the employment of spies.

Opening of Letters

Akin to the use of spies, to watch and betray the acts of men, is the intrusion of government into the confidence of private letters, [45] entrusted to the Post-office. The state having assumed a monopoly in the transmission of letters on behalf of the people, its agents could not pry into their secrets without a flagrant breach of trust, which scarcely any necessity could justify. For the detection of crimes dangerous to the state, or society, a power of opening letters was, indeed, reserved to the secretary of state. But for many years, ministers or their subordinate officers appear to have had no scruples in obtaining information, through the Post-office, not only of plots and conspiracies, but of the opinions and projects of their political opponents. Curiosity more often prompted this vexatious intrusion than motives of public policy.

The political correspondence of the reign of George III. affords conclusive evidence that the practice of opening the letters of public men at the Post-office, was known to be general. We find statesmen of all parties alluding to the practice, without reserve or hesitation, and entrusting their letters to private hands whenever their communications were confidential.(4)

[46] Traces of this discreditable practice, so far as it ministered to idle or malignant curiosity, have disappeared since the early part of the present century. From that period, the general correspondence of the country, through the Post-office, has been inviolable. But for purposes of police and diplomacy,—to thwart conspiracies at home, or hostile combinations abroad,—the secretary of state has continued, until our own time, to issue warrants for opening the letters of persons suspected of crimes, or of designs injurious to the state. This power, sanctioned by long usage, and by many statutes, had been continually exercised for two centuries. But it had passed without observation until 1844, when a petition was presented to the House of Commons from four persons,—of whom the notorious Joseph Mazzini was one,—complaining that their letters had been detained at the Post-office, broken open, and read. Sir James Graham, the secretary of state, denied that the [47] letters of three of these persons had been opened: but avowed that the letters of one of them had been detained and opened by his warrant, issued under the authority of a statute. Never had any avowal, from a minister, encountered so general a tumult of disapprobation. Even Lord Sidmouth's spy-system had escaped more lightly. The public were ignorant of the law, though renewed seventy years before,(5)—and wholly unconscious of the practice which it sanctioned. Having believed in the security of the Post-office, they now dreaded the betrayal of all secrecy and confidence. A general system of espionage being suspected, was condemned with just indignation.

Five-and-twenty years earlier, a minister,—secure of a parliamentary majority,—having haughtily defended his own conduct, would have been content to refuse further inquiry, and brave public opinion. And in this instance, inquiry was at first successfully resisted: but a few days later, Sir James Graham adopted a course, at once significant of the times, and of his own confidence in the integrity and good faith with which he had discharged a hateful duty. He proposed the appointment of a secret committee, to investigate the law in regard to the opening of letters, and the mode in which it had been exercised.(6) A similar [48] committee was also appointed in the House of Lords. These committees were constituted of the most eminent and impartial men to be found in Parliament; and their inquiries, while eliciting startling revelations as to the practice, entirely vindicated the personal conduct of Sir James Graham. It appeared that foreign letters had, in early times, been constantly searched to detect correspondence with Rome, and other foreign powers: that by orders of both Houses, during the Long Parliament, foreign mails had been searched; and that Cromwell's Postage Act expressly authorised the opening of letters, in order 'to discover and prevent dangerous and wicked designs against the peace and welfare of the commonwealth.' Charles II. had interdicted, by proclamation, the opening of any letters, except by warrant from the secretary of state. By an act of the 9th Anne, the secretary of state first received statutory power to issue warrants for the opening of letters; and this authority had been continued by several later statutes for the regulation of the Post-office. In 1783, a similar power had been entrusted to the Lord Lieutenant of Ireland. In 1722, several letters of Bishop Atterbury having been opened, copies were produced in evidence against him, on the bill of pains and penalties. During the rebellion of 1745, and at other periods of public danger, letters had been extensively opened. Nor were warrants restricted to the detection of crimes or practices dangerous to the state. They had been constantly issued for the discovery of forgery and [49] other offences, on the application of the parties concerned in the apprehension of offenders. Since the commencement of this century, they had not exceeded an annual average of eight. They had been issued by successive secretaries of state, of every party, and except in periods of unusual disturbance, in about the same annual numbers. The public and private correspondence of the country, both foreign and domestic, practically enjoyed complete security. A power so rarely exercised could not have materially advanced the ends of justice.

At the same time, if it were wholly withdrawn, the Post-office would become the privileged medium of criminal correspondence. No amendment of the law was recommended; and the secretary of state retains his accustomed authority. But no one can doubt that, if used at all, it will be reserved for extreme occasions, when the safety of the state demands the utmost vigilance of its guardians.

Footnotes.

1. Montesquieu speaks of informers as 'un genre d'hommes funeste.'—Liv. vi. ch. 8. And of spies, he says: 'Faut-il des espions dans la monarchie? ce n'est pas la pratique ordinaire des bons princes.' Liv. xii. ch. 23. And again: 'L'espionnage seroit peut-être tolérable s'il pouvoit être exercé par d'honnêtes gens: mais l'infamie nécessaire de la personne peut faire juger de l'infamie de la chose.'—Ibid.
2. 6th and 23rd June, 1817; Hans. Deb., 1st Ser., xxxvi. 1016, 1111.
3. St. Tr., xxxii. 755. et seq.; 11th Feb., 1818 : Hans Deb., xxxvii. 338: Speeches of Lord Milton, Mr. Bennet; Feb. 19th, and March 5th: (Lords), Ibid., 1522. 802.
4. From a great number of examples, the following may be selected:—

Lord Hardwicke, writing in 1762 to Lord Rockingham of the Duke of Devonshire's spirited letter to the Duke of Newcastle, said: 'Which his grace judged very rightly in sending by the common post, and trusting to their curiosity.'—Rockingham Mem., i. 157.

Mr. Hans Stanley writing to Mr Grenville, Oct. 14th, 1765, says: 'Though this letter contains nothing of consequence, I chuse to send it by a private hand, observing that all my correspondence is opened in a very awkward and bungling manner, which I intimate in case you should chuse to write anything which you would not have publick.'—Grenville Papers, iii.99. Again Mr. Whately, writing to Mr Grenville. June 4th. 1768, says: 'I may have some things to say which I would not tell the postmaster, and for that reason have chosen this manner of conveyance.'—Ibid., iv. 299.

Lord Temple, writing to Mr. Beresford, Oct. 23rd, 1783, says: 'The shameful liberties taken with my letters, both sent and received (for even the speaker's letter to me had been opened) make me cautious on politics.'—Beresford Correspondence, i. 243.

Mr. Pitt, writing to Lady Chatham, Nov. 11th, 1783, said: 'I am afraid it will not be easy for me, by the post, to be anything else than a fashionable correspondent, for I believe the fashion which prevails, of opening almost every letter that is sent, makes it almost impossible to write anything worth reading.'—Lord Stanhope's Life of Pitt, i. 136.

Lord Melville, writing to Mr. Pitt, April 3rd, 1804, said: 'I shall continue to address you through Alexander Hope's conveyance, as I remember our friend Bathurst very strongly hinted to me last year, to beware of the Post-office, when you and I had occasion to correspond on critical points, or in critical times.'—Ibid., iv. 145; see also Currie's Life, ii. 160; Stephens' Mem. of Horne Tooke, ii. 118; Court and Cab. of George III., iii. 265, etc.
5. Post-office Act, 1837, 1 Vict. c. 33, s. 25.
6. July 2nd, as an amendment to another motion of Mr. Duncombe; Hans. Deb., 3rd Ser. lxxvi. 212.

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