



ON THE SEDITION BILL

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I OBSERVED in my last, in the introductory remarks to the quotation from Mr. Erskine, that it might soon become necessary even in this country to understand something of the doctrine of Libel. I might have said that the time was now come, for the SEDITION LAW of 1798 has introduced among us all the principles of the English courts on the subject of Libel. We are indeed permitted to give in evidence here, the truth of any *fact* advanced, but *opinions* on the motives and conduct of our Rulers (for that is now the fashionable phrase) are still obnoxious, to indictment under that act; and the most ignorant, bigoted and subservient men of a district, may be selected to decide upon the motives and tendency of the most finished composition of the most elegant writer, the most profound politician, the most worthy and best-intentioned citizen of the country; they may find him guilty of what they cannot understand, and a court of justice appointed by the President, whose own conduct may be the subject of stricture, has the power of condemnation in fine and imprisonment, for a publication that may be most praise worthy in its motives, and most beneficial in its effects. To this state are we *now* reduced. However absurd and injurious to the country the laws of an influenced majority of Congress may be—however arbitrary and unconstitutional may be the acts of a President—any publication that may *directly or indirectly* tend to criminate the motives of such persons, is now punishable under that act; nor can any writer in future expose the conduct of arbitrary power, nor can any

citizen speak of it however notorious, but under the reasonable apprehension of loss of liberty and loss of property. Much as this question has been discussed, it is impossible that any reprobation of the tendency of such a law can be ill-timed; nor do I think the public at large are at this moment aware of the mischievous importance of it.

I certainly am among those who think that the Congress had no right whatever to make any such Law. The Constitution of the United States prohibits them from making *any law abridging the freedom of speech or of the press*. Does this law *extend* the freedom of Speech or of the Press? Evidently not. Does it not inflict pains and penalties unknown before on the freedom of speech and of the press? Certainly it does. Where is the use of a constitution if the *plain meaning* of words is not to be the guide? I see no limitation whatever of the powers of Congress in that constitution that may not be explained away quite as easily as the case in question. One Federal Judge (whose arguments on this occasion have been adopted), has surprized the legal world by stating the common law of England to be part of the law of the United States!¹ Although in no part of that constitution is there one syllable to authorize the adoption of it. But as the case stands, whether the law be obligatory or not under the Federal constitution, that instrument has now received a legislative construction, to which, however mischievous in its tendency, the people must submit till it can be constitutionally altered.—I wish that alteration to take place: I wish every future candidate for Congress, may be required to vote against the continuance of this law: and therefore I take the liberty of calling the attention of my readers to the subject.

1. Of the numerous objections to this law, the first and prominent is, that it has been enacted in defiance of the plain and obvious meaning of the words of the constitution; such a meaning as a person of common understanding, as the public for whose benefit it was framed, would certainly put upon it.

¹ At the time of writing this, I had no suspicion that the strange opinion of Judge Peters would have been sanctioned by the stranger opinion of Judge Ellsworth.

2. That it has opened a door for explaining away every other part of the constitution in the same manner, should a future Congress and President think it expedient to try the experiment.

3. That a public fact relating to the officers of government may be sufficiently notorious to be believed by all the world, while it may be next to impossible for a private citizen to adduce strict and legal proofs of it: proofs of this nature must in all cases be so difficult and expensive, as to deter a prudent man from stating any such fact, however important to the public in its consequences. In all such cases it ought at least to have been left to a jury whether the notoriety of the fact was sufficient to authorize the writer or speaker to argue upon it as true.

4. That still more difficulty attaches to an indictment for *opinion*. Who can prove an opinion to be true? Where is the infallible criterion of speculative truth? How are we to get at truth, how has it ever been attained, but by free discussion? Under this law, twelve ignorant men in one county may cause a fellow-citizen to be imprisoned, for what juries in every other county might dismiss him with praise! This is indeed an excellent foundation for the glorious uncertainty of the law.

But why not combat argument by argument, fact by fact, opinion by opinion? Brutality and ignorance may use the *argumentum baculum*[†] and break a man's head who differs in sentiment; but surely it does not become the Congress of "the most enlightened nation upon earth," to assume those characters, and to punish reasoning by fine and imprisonment.

5. That we have adopted by this law, the well known expedient of all bad governments to protect themselves. Those who dread investigation will prevent it if they can. The iron hand of power in every despotic government bears hard upon the patriot author—Faction, Sedition, Demagogue, Anarchy, Disorganizer—these are cant terms in use in every nation whose rulers are aggrandizing themselves at the expence of the people. Those who are but slightly

[†] "An appeal to force."

read in European politics know the origin, and the use of these words; and the insidious purposes to which they are applied. I have no scruple to say that whenever the partizans of any government bring them into play, it is high time for the people to enquire whether there is not some hidden reason for their introduction.

6. That it is impossible for us to exercise our right of electing or re-electing with propriety, if we are denied the right of investigating the characters of public men.

7. Another objection to this bill is, the indelicate situation in which it places most of the parties concerned in it. The President and the Congress make a law to abridge the freedom of investigating their own public conduct! a citizen is not only prohibited from ascribing any obvious motives to them directly, but to say any thing that *indirectly* tends to criminate them! In God's name where is the end of this? What will, or rather what will not amount to a *tendency* to an *indirect* crimination? I solemnly declare that I sit down to write with a single, honest view to the instruction of my fellow-citizens on points of importance, whereon I may have bestowed more thought than they—to expose the tendency of measures without deciding on the motives that may have produced them.—I have examined also these papers with a legal eye; but in vain: I see no defence in upright intentions against the tendencies of discussion, and constructive criminality.—

Again: Suppose an indictment against an author for an indirect attempt to criminate the motives of the President. This comes before Judges *appointed by the President*; the Juries are selected by the Marshal of the Court, *who holds his office during pleasure*. Add to this the declared, well known predilection of our present President for those persons only who approve his measures and principles; and his determination, as it is understood, to exclude from office all others; and then let the public judge whether a bias both in the Court and the Jury may not reasonably be apprehended on such a prosecution? And whether there would be much difficulty for legal ingenuity to strain the expressions of a well-meant, honest performance, into something like indirect criminality?

Fellow-citizens, whatever may be the motives of those who enacted it, this law seems pregnant with danger to the public interest and the principles of republican freedom. Think well, before you vote in future for those who were prominent in supporting it.

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