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A RIGHT TO CRITICIZE



In 1735 came the first great battle over freedom of the press in America. Two years earlier, John Peter Zenger, publisher of the outspoken *New-York Weekly Journal*, began printing articles satirizing corruption and highhandedness in the administration of William Cosby, the new royal governor of New York, and he also distributed song sheets praising those who would “boldly despise the haughty knaves who keep us in awe.” In 1734 Cosby arranged for Zenger to be arrested, charged with seditious libel, and thrown in prison. He also ordered copies of the *New-York Weekly Journal* burned in public. When Zenger’s case came before the court in 1735, Andrew Hamilton, a prominent Philadelphian who was the most skillful lawyer in America, agreed to defend him. According to English law, a printed attack on a public official, even if true, was considered libelous; and the judge ruled that the fact that Zenger had criticized the New York governor was enough to convict him. But Hamilton argued that no one should be punished for telling the truth; Zenger, he pointed out, had told the truth and should not be convicted of libel. In “a free government,” he insisted, the rulers should “not be able to stop the people’s mouths when they feel themselves oppressed.” Liberty, he added, is the “only bulwark against lawless power.” Hamilton was so eloquent in his plea that in the end the jury voted “not guilty” and spectators in the courtroom cheered the verdict.

After his release, Zenger printed a complete account of the trial in his paper (some of which appears below) and also arranged to have it printed separately as a pamphlet. The report of the trial aroused great interest in Britain as well as in America and went through many editions. Hamilton’s plea to the jury on behalf of “speaking and writing the truth” was one of the landmarks in the struggle for a free press in America. Though other royal judges did not accept the principle enunciated by Hamilton, the decision in the Zenger case did set an important precedent against judicial tyranny in libel suits. Gouverneur Morris, a statesman and diplomat from New York, called it “the morning star of that liberty which subsequently revolutionized America.”

8. What happy effects of temperance, prudence, of moderation, or of any other virtue?
9. Have you or any of your acquaintance been lately sick or wounded? If so, what remedies were used, and what were their effects?
10. Whom do you know that are shortly going on voyages or journeys, if one should have occasion to send by them?
11. Do you think of anything at present, in which the Junto may be serviceable to *mankind*, to their country, to their friends, or to themselves?
12. Hath any deserving stranger arrived in town since last meeting, that you have heard of?; and what have you heard or observed of his character or merits?; and whether, think you, it lies in the power of the Junto to oblige him, or encourage him as he deserves?
13. Do you know of any deserving young beginner lately set up, whom it lies in the power of the Junto anyway to encourage?
14. Have you lately observed any defect in the laws of your *country*, of which it would be proper to move the legislature for an amendment?; or do you know of any beneficial law that is wanting?
15. Have you lately observed any encroachment on the just liberties of the people?
16. Hath anybody attacked your reputation lately?; and what can the Junto do towards securing it?
17. Is there any man whose friendship you want, and which the Junto, or any of them, can procure for you?
18. Have you lately heard any member's character attacked, and how have you defended it?
19. Hath any man injured you, from whom it is in the power of the Junto to procure redress?
20. In what manner can the Junto or any of them, assist you in any of your honorable designs?
21. Have you any weighty affair on hand in which you think the advice of the Junto may be of service?
22. What benefits have you lately received from any man not present?
23. Is there any difficulty in matters of opinion, of justice, and injustice, which you would gladly have discussed at this time?
24. Do you see anything amiss in the present customs or proceedings of the Junto, which might be amended?

Zenger did not speak on his own behalf during the trial. But he had planned, if found guilty, to make a speech reminding the jurors that he and his parents had “fled from a country where oppression, tyranny, and arbitrary power had ruined almost all the people.” Zenger, who was born in Germany in 1697, came to America, along with many other German immigrants, when he was twelve years old and was indentured to William Bradford, “the pioneer printer of the middle colonies.” In 1726 he set up a printing shop of his own, publishing tracts and pamphlets mainly of a religious nature, and in 1730 he published the first arithmetic text in New York. A few years after his famous trial he became public printer for the colony of New York and a little later for New Jersey as well. He died in 1746.

Andrew Hamilton, a well-known Philadelphia lawyer who waived his fee in the Zenger case, was born in Scotland in 1676. Trained in the law in Britain, Hamilton came to Virginia in about 1700, worked as a schoolmaster and plantation steward, and married a wealthy widow who introduced him to important imperial officials. He moved to Philadelphia in 1716, became attorney-general of Pennsylvania within a year while maintaining a private legal practice, and served as speaker of the Pennsylvania assembly from 1729 to 1739. He referred in an assembly speech to “liberty, the love of which as it first drew me to, so it constantly prevailed on me to reside in this Province.” His performance in the Zenger trial made Hamilton famous on both sides of the Atlantic. He was also an amateur architect, helping design and construct the provincial state house that would soon become Independence Hall. He died in Philadelphia in 1741.

Questions to Consider. In the following exchange between the prosecuting attorney and Hamilton, Zenger’s lawyer, why did Hamilton place such emphasis on the word *false*? What complaint did he make about his effort to present evidence to the court on behalf of his client? What did he mean by saying that “the suppression of evidence ought always to be taken for the strongest evidence”? Why did he think Zenger’s case was so important? Do you consider his final appeal to the jury a convincing one?



John Peter Zenger’s Libel Trial (1735)

Mr. Attorney. . . . The case before the court is whether Mr. Zenger is guilty of libeling His Excellency the Governor of New York, and indeed the whole administration of the government. Mr. Hamilton has confessed the printing and publishing, and I think nothing is plainer than that the words in the

information [indictment] are scandalous, and tend to sedition, and to disquiet the minds of the people of this province. And if such papers are not libels, I think it may be said there can be no such thing as a libel.

Mr. Hamilton. May it please Your Honor, I cannot agree with Mr. Attorney. For though I freely acknowledge that there are such things as libels, yet I must insist, at the same time, that what my client is charged with is not a libel. And I observed just now that Mr. Attorney, in defining a libel, made use of the words "scandalous, seditious, and tend to disquiet the people." But (whether with design or not I will not say) he omitted the word "false."

Mr. Attorney. I think I did not omit the word "false." But it has been said already that it may be a libel, notwithstanding it may be true.

Mr. Hamilton. In this I must still differ with Mr. Attorney; for I depend upon it, we are to be tried upon this information now before the court and jury, and to which we have pleaded not guilty, and by it we are charged with printing and publishing a certain false, malicious, seditious, and scandalous libel. This word "false" must have some meaning, or else how came it there? . . .

Mr. Chief Justice. You cannot be admitted, Mr. Hamilton, to give the truth of a libel in evidence. A libel is not to be justified; for it is nevertheless a libel that it is true. . . .

Mr. Hamilton. I thank Your Honor. Then, gentlemen of the jury, it is to you we must now appeal, for witnesses, to the truth of the facts we have offered, and are denied the liberty to prove. And let it not seem strange that I apply myself to you in this manner. I am warranted so to do both by law and reason.

The law supposes you to be summoned out of the neighborhood where the fact [crime] is alleged to be committed; and the reason of your being taken out of the neighborhood is because you are supposed to have the best knowledge of the fact that is to be tried. And were you to find a verdict against my client, you must take upon you to say the papers referred to in the information, and which we acknowledge we printed and published, are false, scandalous, and seditious. But of this I can have no apprehension. You are citizens of New York; you are really what the law supposes you to be, honest and lawful men. And, according to my brief, the facts which we offer to prove were not committed in a corner; they are notoriously known to be true; and therefore in your justice lies our safety. And as we are denied the liberty of giving evidence to prove the truth of what we have published, I will beg leave to lay it down, as a standing rule in such cases, that the suppressing of evidence ought always to be taken for the strongest evidence; and I hope it will have weight with you. . . .

I hope to be pardoned, sir, for my zeal upon this occasion. It is an old and wise caution that when our neighbor's house is on fire, we ought to take care of our own. For though, blessed be God, I live in a government [Penn-



The trial of John Peter Zenger. This tapestry depicts the New York courtroom in August 1735, when a jury acquitted the printer of a charge of libel. Crown officers and attorneys wore white-powdered wigs, as officials did in England, to emphasize their authority. Since imperial bureaucrats such as these not only were distant geographically from the real center of British power in London but also had to deal with obstreperous colonials such as Zenger, they may have taken even more care than their counterparts at home to keep their wigs white and imposing as symbols of British authority. (The Metropolitan Museum of Art, A Bicentennial Gift to America from a Grateful Armenian-American People, 1978)

sylvania] where liberty is well understood, and freely enjoyed, yet experience has shown us all (I'm sure it has to me) that a bad precedent in one government is soon set up for an authority in another. And therefore I cannot but think it mine, and every honest man's duty, that (while we pay all due obedience to men in authority) we ought at the same time to be upon our guard

against power, wherever we apprehend that it may affect ourselves or our fellow subjects.

I am truly very unequal to such an undertaking on many accounts. And you see I labor under the weight of many years, and am borne down with great infirmities of body. Yet old and weak as I am, I should think it my duty, if required, to go to the utmost part of the land, where my service could be of any use, in assist—to quench the flame of prosecutions upon informations, set on foot by the government, to deprive a people of the right of remonstrating (and complaining too) of the arbitrary attempts of men in power. Men who injure and oppress the people under their administration provoke them to cry out and complain; and then make that very complaint the foundation for new oppressions and prosecutions. I wish I could say there were no instances of this kind.

But to conclude. The question before the court and you, gentlemen of the jury, is not of small nor private concern. It is not the cause of a poor printer, nor of New York alone, which you are now trying. No! It may, in its consequence, affect every freeman that lives under a British government on the main[land] of America. It is the best cause. It is the cause of liberty. And I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery will bless and honor you, as men who have baffled the attempt of tyranny, and, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that to which nature and the laws of our country have given us a right—the liberty both of exposing and opposing arbitrary power (in these parts of the world, at least) by speaking and writing truth. . . .