

A mere handful of weekly newspapers, in the closing decades of the Eighteenth Century, helped rouse the American colonies of Great Britain to flaming resentment at the arbitrary acts of the British ministry, then fanned that resentment into rebellion, shaped it toward Revolution, turned it to a demand for Independence, and joined statesmen in building a new nation.

If they were the collaborators of patriots and politicians in these great tasks, they were the chief architects of one aspect of the new nation they helped to build. That nation's concept of freedom of the press was in large part their own especial handiwork.

They derived these concepts which went far beyond those propounded in England by Blackstone and Fox from the experience in making a revolution. They had gained, in their struggle, a truer understanding of the inseparable relationship between a free society and a free press than that possessed by any other people. That conception, so far in advance of their own time, and so little understood in many portions of the world now, two centuries later, is their unique and distinctive bequest to American society.

They understood very well that if a society is to have freedom of the press, it must allow (1) access to information; (2) the right to print without prior restraint; (3) the right to print without sanguinary reprisal for publication alleged to be wrongful; (4) the right of access to the means of publication; and (5) the right to distribute printed material.



~~It was a right, which by the establishment of a secret government~~  
~~was a right to be maintained~~

The right to get information about their own government was a continuing colonial effort. The notion that secrecy should envelop even legislative bodies had a long tradition in England, and it attended colonial governments to this hemisphere. The English House of Commons, in the 16th Century, closed its proceedings to protect members from the reprisals of the monarch. In the 17th Century the House habitually concluded enactments by warning that only the parliamentary printer was to publish any of its proceedings. Parliament did not relinquish this secrecy until the Wilkes case in 1771.

As late as 1725, the Massachusetts Council (May 13, 1725) passed an order to the effect that "the printers of the newspapers in Boston be ordered upon their peril not to insert in their prints anything of public affairs of this province relating to the war without the order of government". Assemblies generally met in secret. Slowly, a different view took over in the colonies. By 1747, the New York General Assembly had passed this declaration:

"Resolved that it is the undoubted right of the people of this colony to know the proceedings of their representatives in General Assembly and that any attempt to prevent their proceedings being printed or published is a violation of the rights and liberties of the people of this colony".

The proceedings of the Massachusetts General Court were opened to the public on June 3, 1766, so citizens might hear the debates, on the motion of James Otis. Samuel Adams had written



in the PUBLIC ADVERTISER of Boston, at a very early period :

"Whoever acquaints us that we have no right to examine into the conduct of those who, though they derive their power from us to serve the common interests, make use of it to impoverish and ruin us, is in a degree a rebel--to the undoubted rights and liberties of the people". (Wells, SAMUEL ADAMS, Vol. 1, Page 17)

The struggle for access to government proceedings was always lively in Massachusetts, but sharpened as revolution approached. When the Massachusetts Council received Governor Francis Bernard's plan for quartering British troops, in 1768, the Council headed by James Bowdoin, in spite of the Governor's wishes, made the plans public. The Governor said "no civilized Government upon earth" could function when its intimate deliberations were "cavassed by Tavern politicians and censured by News Paper Libellers".

In 1769 Governor Bernard's confidential letters to the British ministry were printed by the Boston Gazette and the Evening Post, creating such indignation in Boston that he sailed for England on August 1, 1769, never to return.

In ~~xxxxxxx~~ 1773, Governor Thomas Hutchinson's confidential letters to Thomas Whatley, former undersecretary of treasury in Grenville's ministry, were revealed to a closed session of the Massachusetts Assembly, under an injunction that they were not to be published. Benjamin Franklin had obtained them from a source never divulged to this day. He sent them to the Speaker of the Massachusetts House on Dec. 2, 1772, with instructions that they were not to be copied, but shown only to the Committee of Correspondence and some specified persons. The package reached Boston in March 1773. Rumours about them circulated quickly. Sam



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Adams had them read aloud to the whole House. The Massachusetts Spy, on June 3, wrote of "amazing discoveries" in the letters. By June 15, all restraints broke down and Edes and Gill of the Boston Gazette printed the incriminating letters in pamphlet form. They destroyed ~~xxxx~~ Hutchinson as the Bernard Letters had destroyed the earlier governor, for they disclosed that he had advocated secretly measures prejudicial to the freedoms of the citizens of Massachusetts. Hutchinson complained that the letters had been selected and edited to damage him and he was stoutly defended by some, but ~~he~~ did not survive the odium that the disclosed correspondence heaped upon him. (THE ORDEAL OF THOMAS HUTCHINSON, Bernard ~~xx~~ Bailyn, p 221).

The printers who had hammered at the doors of colonial assemblies and sought access to the proceedings of Governor's Councils, persisted in their effort to find out about the transactions of their own government, after the American Revolution. State after state provided for the access to legislative proceedings. The government at Washington opened the Congress, formally, in 1801. The present day expansion of the "people's right to know" grows from the beginnings made by small weekly newspapers in the closing decades of the 18th Century.

Government's right to prior restraint was accepted in the colonies, as it had been accepted in England. The Massachusetts General Court in October 1662 passed the first formal act of censorship of the press in the following terms: "for the prevention of irregularities and abuse to the authority of this country by the printing presse, it is ordered that henceforth no copie shall be printed but by the allowance, first had and



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Mitchell, until this Court shall take further order therein".

(Clyde Duniway, FREEDOM OF THE PRESS IN MASSACHUSETTS, p 41).

The American colonists rapidly shed such restraints. After 1765, they invoked William Blackstone, whose commentaries had the widest legal currency in the colonies. By the time the government was established under the United States Constitution, if there was one settled principle about the press, it was that prior restraint was improper. At the height of Federalist attacks on the press, in the John Adams administration, the most extreme Federalist senators disavowed any intention to impose prior restraint. They had, by that time, come to the view that press freedom meant only immunity to prior restraint.

The precarious position of a press without access to the physical means of publication was borne in upon American newspapers and students of the press by the plight of the press from the start of the American Revolution. The English Common Press, staple printing apparatus of the period, could be obtained only in England. The repairs for it had to be purchased in England. There were few type-founders, no type designers. Paper was scarce--so scarce that Washington's tents at Morristown went to make paper after the continental army wintered there. Keeping printing plants going, physically, challenged American printers. There is an amazing story of Benjamin Franklin making a timely visit in Worcester and helping repair Isaiah Thomas's failing common press. This was a case of scarcity induced by natural conditions. But society has had to learn that access to printing materials can be induced by bureaucracies and governments that wish to suppress information and inhibit opinion--which is what happened in Argentina in the years



Paron. Deferred duties on newspaper were used to close La Prensa, for example. The people's access to the means of publication no longer can be fulfilled by the simple availability of raw materials of publishing. That access to the raw material of opinion, to factual information, to the means of voicing opinion, should not be obstructed is a principle not as easily made effective under modern condition. But the anxiety to provide access underlies the statutes creating the Federal Communications Commission. An increasingly sensitive Federal attitude toward monopoly of the press also reflects a certain nervous realization that the principle grows more difficult to implement. But the impress of the colonial experience remains. Modern American law-makers would be extremely cautious about imposing any restraints on access by printers to the raw materials of publication. And they would be nervous about press measures exhibiting an indifference to deliberate the exclusion of any segment of public opinion from the columns of newspapers or the channels of the electronic media.

Reprisal for publication disliked by authority was a common place in the whole colonial experience. The most celebrated case in the American experience was that of Peter Zenger who was acquitted of libeling Governor William Cosby after Andrew Hamilton's brilliant defense. But the Zenger case by no means put an end to governmental reprisal. In Massachusetts, Governors Bernard and Hutchinson were repeatedly induced to seek legal reprisal for publication they disliked. Printers were accustomed to this kind of intervention. It was a commonplace of their trade. As the tension grew between the people and the royal governors, however, newspapers got the courage and the strength to make a popular resistance that the governments were reluctant to defy.



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Reprisal outside the law and in spite of the law is something else, but the Colonial experience gave Americans a familiarity with that, too. Printers like John Mein, of the Boston Chronicle, experienced the inhibiting effect of lawless reprisal for unwelcome printed utterance. Mein outraged whig opinion in Boston by his attacks on "patriots" who had secretly violated non-impertation agreements. The windows of his shop were dauged and broken. His personal safety was threatend. He went about armed. Finally, a mob attacked him on the street. In terror of his life, he fled to a ship in the harbor and went to England. His strong loyalist paper suspended publication on June 25, 1770. The press of James Rivington, loyalist editor of THE NEW YORK GAZETTER, was demolished and his type was carried away by a mob in 1775, and Rivington fled to England. The Massachusetts Gazette and Boston News Letter, another loyalist paper published in Boston while the British Occupation lasted but thereafter suspended, but no violence was visited upon Margaret Draper.

Much as the patriot newspapers spoke of freedom of the press, the clash of hostile opinion did not persist into the Revolutionary War period. The patriot editors ~~frequently~~ did not waste much sympathy on the Tory press.

Nevertheless, the violence visited upon them, and upon newspapers which dissented from prevailing opinion in subsequent periods of history, took its place in American history as nothing to be applauded and may have had a curious obverse effect as an example of suppression, by extra-legal means.

The importance to press freedom of the right to distribute was very forcefully impressed on this country by another experience of the revolutionary period. Postal service in the American colonies had reached a high level of efficiency in 1764. Mail moved three times a week between Philadelphia and New York, and the Royal Postoffice system, under Benjamin Franklin as Deputy Postmaster General, was both effective and profitable. As the struggle for Independence proceeded the patriot press became increasingly annoyed by the postal establishment. The British system was suspected of interfering with the delivery of patriot newspapers and of ~~with~~ opening mail. The BOSTON GAZETTE and the MASSACHUSETTS SPY both decried interference with the distribution of their papers. The NEW YORK JOURNAL and the PENNSYLVANIA JOURNAL protested the refusal of the mail service to handle their paper. William Goddard, editor of the MARYLAND JOURNAL and the PENNSYLVANIA CHRONICLE in February 1774 commenced the organization of a colonial postal system. On July 26, 1775, the Continental Congress took over the system Goddard had set up and made Benjamin Franklin the postmaster general. On Christmas Day, 1775, British postal headquarters in New York cancelled all deliveries and left the field.

The principle of unobstructed postal service was thus born before the country was born. It has not always been respected. It was rudely interrupted by Southern postmasters in the days before the Civil War when abolitionist journals were destroyed. It has been disregarded on other occasions. But, thanks to the experience of patriot printers who called forth a new postal service, there is in our society no sanction for intervention with the mails for ideological and political reasons.



The weekly press of the American colonies was certainly not even dimly aware of forming a coherent and related doctrine of freedom of the press. They proceeded pragmatically to its principles as successive challenges arose. Their doctrine of press freedom got no world-wide welcome from contemporary society. It was no more welcome than other theories of liberty that emerged in the struggle for Independence.

The world climate of opinion was very well described by one American patriot, Reverend Samuel Williams, Salem, Massachusetts, in his DISCOURSE ON THE LOVE OF OUR COUNTRY, in 1775. Williams said:

"Throughout the whole continent of Asia people are reduced to such a degree of abusement and degradation that the very idea of liberty is unknown among them. In Africa, scarce any human beings are to be found but barbarians, tyrants, and slaves: all equally remote from the true dignity of human nature and from a well-regulated state of society. Nor is Europe free from the curse. Most of her nations are forced to drink deep of the bitter cup. And in those in which freedom seem to have been established, the vital flame is going out. Two kingdoms, those of Sweden and Poland, have been betrayed and enslaved in the course of one year. The free towns of Germany can remain free no longer than their potent neighbors shall please to let them. Holland has got the forms if she has lost the spirit of a free country. Switzerland alone is in the full and safe possession of her freedom."

These were times as inhospitable to freedom--and especially to press freedom--as our own. ~~XXXXXXXXXXXX~~ Few countries in Asia could alter this gloomy estimate by their present plight, made more melancholy by the decline of liberty in Vietnam, Laos, Cambodia, Thailand, and



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by the suppression of the press in India. The ~~UN~~ United Nations Educational, ~~Scientific and Cultural~~ and Social Council, meeting in Nairobi in October confronted and affronted liberal world opinion with a proposed convention calling for governmental control of the foreign press of all countries. In the United States, access to information about local, state, and federal systems of criminal justice have been obstructed by measures in Congress and in the States, inspired by the desire to preserve privacy. Access to judicial proceedings, regarded as unassailable in this country, has been obstructed by an unprecedented degree in the name of impartial justice.

The small weekly newspapers of the Eighteenth Century American colonies did not <sup>forever</sup> fasten freedom of the press, or any other freedom, upon the institutions of the world; but they demonstrated its efficacy as a revolutionary force, its indispensability as an element in a really free society, and its compatibility with orderly government.

The press was not free in many countries then. It is not free in many countries now. Two hundred years of the American experience with press freedom, however, have made suspect political systems that deny press freedom. A handful of weekly newspapers, printed on the hand-operated English Common Press, launched an experiment in freedom of the press on this continent 200 years ago, so successful in the furtherance of human liberty in every society where it has been imitated, that no arbitrary government would dare commence the suppression of any human freedom without extinguishing this freedom first.