

# LETTERS TO THE EDITOR

## Group Libel

EDITOR'S NOTE: Approximately 200 letters were received on the editorial proposal for "Group Libel" legislation. [SRL, February 1]. These included letters from public figures who were sent copies of the editorial. The general tide of comment ran against the proposal.

SIR: Your editorial on "Group Libel" [SRL, February 1] opens up tremendously interesting avenues of thought and action. The same idea has been germinating in my mind with respect to a nation which goes to war. I believe that as an important factor in the elimination of war, every nation wishing to join in that objective should declare, in its constitution or as a part of its laws, the non-use of war. This has been done by MacArthur in the Japanese constitution. Then it would be understood that if anyone were training or preparing for war or taking a part in war, he would be a criminal in the eyes of the world and according to the laws of his own country. That puts an individual on notice.

That brings me to the point I want to make regarding the thought-provoking idea of yours. It would make each "joiner" more particular in what he joins, and would not make it so easy to form more groups such as those to which you refer in your article.

BERNARD M. BARUCH.

New York, N. Y.

SIR: You raise a most interesting question and you propose a very interesting answer. I would not be prepared to comment upon the latter without far more contemplation. But I certainly agree with your basic thesis. It is of course a tragic anomaly that "free speech" should be used by those who prostitute it; and that our anxiety to protect "free speech" should provide these prostitutes with immunity. But I think your Jeffersonian quotations (which could be multiplied ad infinitum) are a complete warning that we dare not give ourselves a license to restrict "free speech" in our defense of it no matter how nobly meditated our motives may be.

The day inevitably would come when our own precedent would be used against us. There either is or isn't "free speech." The fact remains that there should be means for holding those who abuse "free speech" to a stricter accountability for their sins. I confess I do not know the answer. You may be interested in knowing that I posed one phase of this question to a recent Michigan gathering.

Your idea of "group libel" is well worthy of exploration. But like every other departure from the basic rule, it must be carefully weighed lest the harm outbalance the good.

ARTHUR H. VANDENBERG.

United States Senate,  
Washington, D. C.



THROUGH HISTORY WITH J. WESLEY SMITH

"What's the name of that beanpole debating Stephen Douglas?"

SIR: I am quite certain that any law creating a "group libel" would be undesirable. As a civil wrong for which damages would be the remedy, it would be practically a dead letter; there would be few or no cases in which the plaintiff could prove that he had been actually damaged. A jury might indeed give what in other actions for defamation are called "punitive" damages; but these are not damages at all but penalties, and are really a disguised way of punishing the wrongdoer to the profit of the person alleged to be the victim. The law is indeed so settled, but for myself I should be glad to see punitive damages abolished everywhere; and certainly they should not be extended. If anything of the kind you suggest is to be done, it ought to be by way of criminal libel; and that too I should be against.

It is quite true that the kind of defamation you have in mind has that tendency to promote disorder which has been the conventional justification for all criminal libel; yet, if one thinks through the working of such prosecutions in practice, I should suppose that their effect would be rather to exacerbate than to assuage the feelings which lie behind the defamation of groups. The verdict of a jury—even assuming that it was possible to have a really impartial trial, which it would not be—would not satisfy those who sided with the losers, and would only serve further to arouse the fanaticism of those who sided with the winners; and the trials themselves would be occasions for violent propaganda on both sides that would fan the flames. The passions which lie at the root of such utterances do not have their basis in evidence, and will not yield to it; and any issues capable

of being presented in a court which do depend on evidence would have to go back far into history and be quite beyond the grasp of a jury of men and women unskilled in such inquiries.

There is no remedy for the evil, but the slow advance of the spirit of tolerance; and I believe that the suppression of intolerance always tends to make it more bitter. This is a result most unsatisfactory to ardent natures, and it may be wrong; I can only tell you what I believe.

Judge, LEARNED HAND.  
United States Court of Appeals,  
New York, N. Y.

SIR: Your suggestion for a group libel law interests me very much, although I can see some tremendous difficulties in drafting the necessary legislation and I am inclined to believe it is a subject which is largely reserved for the States, rather than the Federal Government.

JOSEPH H. BALL.  
United States Senate,  
Washington, D. C.

SIR: Group libel is, as you clearly indicate, a very difficult problem but I believe that it is a good thing to bring it out into the open.

Some time ago I wrote an article entitled "From Seditious Libel to Freedom of Press." In that article I referred to the subject of group libel and said as follows:

Cases have held that the state may punish through "disorderly conduct" statutes, which do not provide for trial by jury, for offensive speech of such a character as to constitute, particularly in connec-

tion with the conduct of the offender, a breach of the peace, or serious danger thereof.

The balancing of our desire for free speech and trial by jury against our wish to maintain order and eradicate racial and religious intolerance is a most delicate task. A difficult problem is presented by the type of agitation, in public places, which is calculated to incite religious or racial hatred. In such cases there is generally more than the spoken or written word which is objectionable. There is the conduct of the speaker, the place he has chosen for his speech, and his direct incitement to lawlessness.

However, caution must be used even where there appears to be an abuse of the right of free speech which tends to a breach of the peace and involves an utter disregard of a Constitutional mandate as sacred as that of free speech itself. In the City of New York, for example, consideration might be given to the question as to whether it would be better policy not to have the case disposed of by a single judge, but rather to resort to the Court of Special Sessions presided over by three justices.

It has been urged that an offensive attack upon a race or a religion is as much outside the pale of freedom of speech as is any public obscenity. Perhaps the disorderly conduct statutes should be amended to prohibit, specifically, offensive attacks upon any race or religion, and consideration might well be given to the advisability of broadening the definition of criminal libel to cover attacks upon a race or a religion. It may be difficult to draw such a statute that will stand the test of constitutionality. But as Mr. Justice Frankfurter recently said: "Free speech is not so absolute or irrational a conception as to imply paralysis of the means for effective protection of all the freedoms secured by the Bill of Rights."

BERNARD L. SHIENTAG.

Justice, Supreme Court of the  
State of New York,  
New York, N. Y.

SIR: Group libel may be successful in some cases but it will not be successful in all. I think the best of all stories to illustrate the point is the one given me as a youngster by my own Sunday school teacher who was trying to show us that we should not kill birds. Birds were man's friends, but my teacher always ended his lesson by calling our attention to the fact that when it came to sparrows it was different. He taught us plainly that it was all right to kill the "damn" sparrows. Never was a man quite so wrong as he, but all during my youthful generation my teacher's ideas prevailed; we went on killing the "damn" sparrows.

I am afraid that there will always be groups and groups. Those that are not able to defend themselves will not be helped by group libel. How can they? I think no matter how long you dwell on the subject of liberty and then attempt to discover some rights under liberty's banner and then attempt to protect those rights, that they will all fall by the wayside unless, in some way or another, the great lesson that there is no right even in a government of law unless connected

with right are responsibility and duty. That is the lesson that must some way or another be taught.

Jefferson felt that liberty was so good for man that man, himself, would discover that lesson. Liberty without proper education always has and always will fail. A trained citizenry, therefore, is the key to liberty's guarantee. If you analyze those elements in our society whose actions are backed by hate, you will discover that they have always opposed universal free schools where equal educational opportunities for all are guaranteed. In other words it is our fear of idealism and idealistic democracy that makes it impossible for us to gain real liberty.

Forgive me for writing so much. I am wondering how a group like the one to which I belong could ever remedy wrongs inflicted upon our fathers and grandfathers in any other way than through proper teaching of the truth. I believe before you will get real liberty you have got to not only know how to love your neighbor but to appreciate him. That is an awful task.

If our major press would attempt to stress the idea of its duty and responsibility to the public in return for the freedom which it is guaranteed, I am pretty sure that we would have freedom of speech in no time. But if I can judge from what I read every day, the press is only interested in protecting its rights. Never does it sense an obligation to be right. You see, that is probably where we have failed. Jefferson thought, of course, that the press, since it was guaranteed freedom, would be an educational medium but no education is worth while unless the whole truth is taught.

ELBERT D. THOMAS.

United States Senate,  
Washington, D. C.

SIR: The problem you are trying to solve is an important and difficult one. Your suggested solution, although somewhat original, is basically the same as the solutions offered for all our problems—more laws and additional legal remedies.

Almost every "progressive" and "liberal" doctrine is based upon further governmental restrictions of liberty because of social and economic conditions which we ourselves have created by our own man-made system of civilization. Which, as Lewis Carroll might say, makes everything "complexer and complexer." And the further mixed up we got the louder are the cheers for the passage of legislation which gets us further mixed.

Within the last year and a half I



have startled audiences (sometimes composed largely of members of what we call "minority groups") by telling them there are no such things as rights of minorities. I ask them to examine the Constitution of the United States and tell me if anywhere in that document they find mention of any such things.

What they will find is just what was intended to be there—rights of individuals. I plead with them to stop talking in terms of minorities and minority groups; I ask them to talk and think in terms of individual American citizens. If any actual right is violated it is the right of an American citizen—not the right of "a member of a minority," even though it may have been violated by someone who may do so just because the one whose right has been violated belongs to a minority group; I have told them that they have confused the reason for the violation with the right violated, and that by their very reference to themselves as minority or special groups or classes, by this very segregation of themselves, they are only making more and more acute and bitter the consciousness of something which the Constitution did its very best to eliminate. Instead of quenching the fire, they are adding fuel.

And now you suggest that we go further and recognize by legislation not only the legitimate existence of classes, groups, and sets but afford them some kind of legalistic remedy *eo nomine*. And by that one further step we will add to class consciousness, whether it be because of birth, religion, or economic status or what-not. And out of the legal fights that will ensue still further class antagonisms and hatreds will grow.

What about us Congressmen? Is there a group or a minority in the United States that has been more libeled and maligned than Congress, as such? What do you propose we do about that?

Before I came to Congress I did quite a little writing. During the days of the New Deal I wrote some articles and one book, the book about four or five years ago. No magazine editor wanted them. I only offered the book to one or two publishers, but they were so patently frightened by both the title and the content it was almost funny. The title was "The Hypocrisy of Democracy." The content was in essence a defense of the Constitution. But "liberalism" was popular, "democracy" was our idol. And now we are wondering what happened to us.

You are engaged in the very profession which can do the most good in solving this problem—the education of the American public to true fundamentals. Yet you propose legislation of a novel and, to my mind at least, dangerous type. May I refer you to Conwell's "Acres of Diamonds"?

You are the best protectors of liberty. I know that a magazine is run to make money and not as a crusade. But unless editors begin to risk something for liberty just as men have suffered and died for it, do not think that it will be saved by fascinating formulas such as your editorial suggests.

FRANK A. MATHEWS, JR.

House of Representatives,  
Washington, D. C.

# He Made a Footnote to History

THE ABBÉ EDGEWORTH. By M. V. Woodgate. New York: Longmans, Green & Co. 1946. 262 pp. \$2.50.

Reviewed by PADRAIC COLUM

WHO was the Abbé Edgeworth? Most people will remember another Edgeworth, Maria, when they hear the name, and they will not be astray in connecting the novelist and writer of moral tales with the abbé, for Henry Essex Edgeworth and Maria were second cousins. Maria, socially, owed a great deal to her cousin when she was on the Continent, but she does not mention him in her letters: the reason was that the abbé belonged to the Catholic branch of the family, had a brother living on a small estate in Ireland, and, as at the time no Catholic could have a title to property, the mention of an abbé would have been dangerous.

But Henry Essex Edgeworth has his own place in history, or at least in a footnote to history. Some readers will have heard of the Irish priest who administered the last sacraments to Louis XVI, and standing beside the guillotine said, "Son of Saint Louis arise!" The apostrophe was invented for him: the Abbé Edgeworth was the least theatrical of men.

The Abbé Edgeworth is a man we wonder at and admire, not for any achievement of his own—the part he took in historical happenings was forced upon him—but for his integrity and his willingness to put himself at the service of others. He was that rare person—a genuine priest. If one thinks of his story as that of a man called by chance—but he felt it was by Providence—to a dangerous and tedious service and giving himself disinterestedly, one will be moved by it.

Educated in the Irish College of Toulouse, Edgeworth was living usefully and happily in Paris with a sister as the Revolution developed. His parishioners were people of the slums and he served them faithfully. After an illness he was put in charge of the English and Irish in Paris—there were more Irish in Paris then than at any time since, soldiers of the old Irish Brigade, their families, and students. He was sent for by Madame Elizabeth who, like her brother, the king, and his queen and the young princess, were prisoners at the time. It was a call to danger, but the abbé went in and out of the Tuileries unharmed. Madame Elizabeth desired him to take a letter to her brother who was then in Scotland, a letter which he was not to write down but



to commit to memory. And then, the king having been sentenced to execution, he was asked to give him the last consolations of his religion.

The scenes with Louis XVI, that simple and pious family man who should have been an artisan, were told by the abbé in his letters in a literal way that is very moving. After the execution he went unharmed and unnoticed through the crowd like a man taken care of by Providence.

The part of his life that made the most demand on his spirit began after that memorable happening. He escaped from France at the height of the Revolution and reached England, where Pitt offered him a pension which he declined. He then went to Scotland and delivered the message which had been entrusted to him. And now it was possible for him to visit the family that he had not been with since childhood.

But it was not to be so swiftly dispatched; then and there Edgeworth was given one of those errands that consume the rest of a man's day. "He was never to return to England. He would never see Ireland again or even France. Germany, Russia, Poland, they were to be in turn his home." He went to a king in exile, to a person whom nobody wanted.

The court was exiled from their place of exile. The emperor of Russia offered them a refuge in the Baltic provinces. "The journey was most terrible and the abbé was never to forget it. It took thirty-one days and the cold was intense on all of them. . . . The roads, when they were not snow-bound, were made almost impassable by mud." When they reached this new refuge Edgeworth was made chaplain and almoner to the court. "His fate was sealed now, and bound

forever with that of his royal master, and no life could have been more sterile and more dreary than the one now offered him . . . here there was no one with whom he could have any spiritual contact, and he had, besides, little outlet for his gifts, which were rare. The success of his missions to the Emperor Paul I must have comforted him a little. "For the Czar was so deeply impressed by him that he knelt before him and implored his blessing." He gave the abbé something substantial to remember him by—his portrait set in diamonds, and a yearly pension of five hundred rubles. But the pension must have got lost in the political and military shuffle, for when his little property in Ireland disappeared, he was left destitute.

In the meantime the court had been ordered out of Russia. Their next refuge was Warsaw. Napoleon offered the king an indemnity on condition that he make a formal abdication; he refused, the abbé being consulted by him. The poverty of the royal household increased, and this added a burden to his almoner's life.

The situation became worse and worse for Louis XVIII and his adherents. Napoleon got himself proclaimed Emperor and the Pope recognized the usurper. This must have seemed catastrophic to Edgeworth. And with it, while the court was back in the gloom of Lithuania, came a private disaster. Through the mismanagement of an agent his property in Ireland was lost to him. He writes of this as a "doom" and "fatal." The one resource that was constant in all the shifts of exile, the resource that made him independent among the dependents on the royal bounty, was taken away from him. And he had an old aunt in Paris and a servant who had come with the family from Ireland to support.

We are glad that we have the record of the triumph of the abbé's goodness over his bitterness. "For some minutes I had not the courage to open it," the delinquent agent wrote of the letter he received from him. "The tender, affectionate, and forgiving language . . . has wrung my very soul."

Abbé Edgeworth died from jail-fever caught from attending French prisoners of war. The king wrote his epitaph in Latin on the stone that stands above his grave in Lithuania. "The Abbé Edgeworth" is the story of a strange pilgrimage, and it is told very simply and directly by Miss Woodgate, who is an authority on the personages of the late Bourbon entourage. It is a story well worth reading for it puts us in contact with a rare human being, a man whose goodness was integral.