Should those days once more return, when the people of America, united as they once were united, shall make merit the measure of their approbation and confidence, we may hope for a constant succession of patriots and heroes. But should our country be rent by factions, and the merit of the man be estimated by the zeal of the partizan, irreparable will be the loss of those few men who, having once been esteemed by all, might again have acquired the confidence of all and saved their country in an hour of peril by their talents and virtues.

**"So stream the sorrows that embalm the brave;**
**The tears which virtue sheds on glory's grave."**

# SIR JAMES MACKINTOSH

SIR JAMES MACKINTOSH, Scottish philosopher, statesman, historian, and publicist, was born at Aldourie, near Inverness, Scotland, Oct. 24, 1765, and died at London, May 30, 1832. After graduating at King's College, Aberdeen, he studied both medicine and law at Edinburgh, and for a time practiced the latter, gaining a high reputation at the London Bar for his eloquent defence of the French refugee, Peltier, who, at the instance of the French government, was in 1803 tried for libelling the First Consul (see appended Speech). In the following year he was knighted and given the post of recorder at Bombay, with a judgeship in the vice-admiralty court in India, returning to England in 1812. He then entered Parliament, in the interest of the Whig party, but while there did not add greatly to his reputation, and in 1818 he became professor of law and general politics in the East India Company's College at Haileybury. Here he interested himself as an historian of the Revolution in England, and as a writer on the "Progress of Ethical Philosophy." He also wrote a work designed as a reply to Burke's condemnation of the French Revolution, entitled "Vindiciæ Gallicæ," one of the three works of his which may be said to have permanent value. He was lacking in genius, though cultured and dispassionate as a writer, while as an orator his eloquence is diffuse rather than brilliant. In 1830, he was appointed commissioner for the affairs of India under the Whig administration of that era, but died two years later.

## ON THE TRIAL OF JEAN PELTIER

[In 1802 Mr. Peltier founded a French newspaper in London, called "L'Ambigu," and put on the frontispiece the figure of a sphinx (emblematic of mystery), with a head which strikingly resembled that of Bonaparte, wearing a crown. Its pages were filled with instances of the despotism of the First Consul, some violent and some ridiculous, and it was characterized, on the whole, by great bitterness, while one of the numbers directly hinted at the assassination of Bonaparte.

These things gave so much annoyance to Bonaparte that he actually demanded that the English government send Peltier out of the kingdom; and when this was refused he insisted, as France was then at peace with England, that Mr. Peltier should be prosecuted by the English attorney-general for "a libel on a friendly government!" upon which subject the laws of England were strict even to severity.]

GENTLEMEN OF THE JURY,— The time is now come for me to address you in behalf of the unfortunate gentleman who is the defendant on this record.

I must begin with observing that though I know myself too well to ascribe to anything but to the kindness and good nature of my learned friend, the Attorney General, the unmerited praises which he has been pleased to bestow on me, yet, I will venture to say, he has done me no more than justice in supposing that in this place and on this occasion, where I exercise the functions of an inferior minister of justice,—an inferior minister, indeed, but a minister of justice still,—I am incapable of lending myself to the passions of any client, and that I will not make the proceedings of this court subservient to any political purpose. Whatever is respected by the laws and government of my country shall in this place be respected by me. In considering matters that deeply interest the quiet, the safety, and the liberty of all mankind, it is impossible for me not to feel warmly and strongly; but I shall make an effort to control my feelings, however painful that effort may be, and where I cannot speak out but at the risk of offending either sincerity or prudence I shall labor to contain myself and be silent.

I cannot but feel, gentlemen, how much I stand in need of your favorable attention and indulgence. The charge which I have to defend is surrounded with the most invidious topics of discussion; but they are not of my seeking. The case and the topics which are inseparable from it are brought here by the prosecutor. Here I find them, and here it is my duty to deal with them as the interests of Mr. Peltier seem to me to require. He, by his choice and confidence, has cast on me a very arduous duty which I could not decline and which I can still less betray. He has a right to expect from me a faithful, a zealous, and a fearless defence; and this his just expectation, according to the measure of my humble abilities, shall be fulfilled.



I have said a fearless defence. Perhaps that word was unnecessary in the place where I now stand. Intrepidity in the discharge of professional duty is so common a quality at the English bar that it has, thank God, long ceased to be a matter of boast or praise. If it had been otherwise, gentlemen, if the bar could have been silenced or overawed by power, I may presume to say that an English jury would not this day have been met to administer justice. Perhaps I need scarce say that my defence shall be fearless in a place where fear never entered any heart but that of a criminal. But you will pardon me for having said so much when you consider who the real parties before you are.

Gentlemen, the real prosecutor is the master of the greatest empire the civilized world ever saw. The defendant is a defenceless, proscribed exile. He is a French Royalist, who fled from his country in the autumn of 1792, at the period of that memorable and awful emigration when all the proprietors and magistrates of the greatest civilized country of Europe were driven from their homes by the daggers of assassins; when our shores were covered, as with the wreck of a great tempest, with old men, and women, and children, and ministers of religion, who fled from the ferocity of their countrymen as before an army of invading barbarians.

The greatest part of these unfortunate exiles—of those, I mean, who have been spared by the sword, who have survived the effect of pestilential climates or broken hearts—have been since permitted to revisit their country. Though despoiled of their all, they have eagerly embraced even the sad privilege of being suffered to die in their native land.

Even this miserable indulgence was to be purchased by compliances, by declarations of allegiance to the new government, which some of these suffering Royalists deemed incompatible with their consciences, with their dearest attachments, and their most sacred duties. Among these last is Mr. Peltier. I do not presume to blame those who submitted, and I trust you will not judge harshly of those who refused. You will not think unfavorably of a man who stands before you as the voluntary victim of his loyalty and honor. If a revolution (which God avert) were to drive us into exile and to cast us on a foreign shore, we should expect, at least, to be pardoned by generous men for stubborn loyalty and unseasonable fidelity to the laws and government of our fathers.

This unfortunate gentleman had devoted a great part of his life to literature. It was the amusement and ornament of his better days. Since his own ruin and the desolation of his country he has been compelled to employ it as a means of support. For the last ten years he has been engaged in a variety of publications of considerable importance; but since the peace he has desisted from serious political discussion and confined himself to the obscure journal which is now before you, the least calculated, surely, of any publication that ever issued from the press, to rouse the alarms of the most jealous government; which will not be read in England because it is not written in our language; which cannot be read in France because its entry into that country is prohibited by a power whose mandates are not very supinely enforced nor often evaded with impunity; which can have no other object than that of amusing the companions of the author's principles and misfortunes, by pleasantries and sarcasms on their victorious enemies.

There is, indeed, gentlemen, one remarkable circumstance



in this unfortunate publication; it is the only, or almost the only journal which still dares to espouse the cause of that royal and illustrious family which but fourteen years ago was flattered by every press and guarded by every tribunal in Europe. Even the court in which we are met affords an example of the vicissitudes of their fortune. My learned friend has reminded you that the last prosecution tried in this place at the instance of a French government was for a libel on that magnanimous princess who has since been butchered in sight of her palace.

I do not make these observations with any purpose of questioning the general principles which have been laid down by my learned friend. I must admit his right to bring before you those who libel any government recognized by his Majesty and at peace with the British empire. I admit that whether such a government be of yesterday or a thousand years old, whether it be a crude and bloody usurpation or the most ancient, just, and paternal authority upon earth, we are here equally bound, by his Majesty's recognition, to protect it against libellous attacks. I admit that if, during our usurpation, Lord Clarendon had published his history at Paris, or the Marquess of Montrose his verses on the murder of his sovereign, or Mr. Crowley his "Discourse on Cromwell's Government," and if the English ambassador had complained, the President De Molí, or any other of the great magistrates who then adorned the Parliament of Paris, however reluctantly, painfully, and indignantly, might have been compelled to have condemned these illustrious men to the punishment of libellers. I say this only for the sake of bespeaking a favorable attention, from your generosity and compassion, to what will be feebly urged in behalf of my unfortunate client, who has sacrificed his fortune, his hopes, his connections, his country,

to his conscience; who seems marked out for destruction in this his last asylum.

That he still enjoys the security of this asylum, that he has not been sacrificed to the resentment of his powerful enemies, is perhaps owing to the firmness of the king's government. If that be the fact, gentlemen; if his Majesty's ministers have resisted applications to expel this unfortunate gentleman from England, I should publicly thank them for their firmness if it were not unseemly and improper to suppose that they could have acted otherwise — to thank an English government for not violating the most sacred duties of hospitality; for not bringing indelible disgrace on their country.

But be that as it may, gentlemen, he now comes before you perfectly satisfied that an English jury is the most refreshing prospect that the eye of accused innocence ever met in a human tribunal; and he feels with me the most fervent gratitude to the Protector of empires that, surrounded as we are with the ruins of principalities and powers, we still continue to meet together, after the manner of our fathers, to administer justice in this her ancient sanctuary.

There is another point of view in which this case seems to me to merit your most serious attention. I consider it as the first of a long series of conflicts between the greatest power in the world and the only free press remaining in Europe. No man living is more thoroughly convinced than I am that my learned friend, Mr. Attorney General, will never degrade his excellent character; that he will never disgrace his high magistracy by mean compliances, by an immoderate and unconscientious exercise of power; yet I am convinced, by circumstances, which I shall now abstain from discussing, that I am to consider this as the first of a long series of conflicts between the greatest power in the world and the only free press now remaining in Europe.



Gentlemen, this distinction of the English press is new; it is a proud and melancholy distinction. Before the great earthquake of the French Revolution had swallowed up all the asylums of free discussion on the Continent, we enjoyed that privilege indeed more fully than others; but we did not enjoy it exclusively. In great monarchies the press has always been considered as too formidable an engine to be entrusted to unlicensed individuals.

But in other continental countries, either by the laws of the state or by long habits of liberality and toleration in magistrates, a liberty of discussion has been enjoyed perhaps sufficient for most useful purposes. It existed, in fact, where it was not protected by law; and the wise and generous connivance of governments was daily more and more secured by the growing civilization of their subjects. In Holland, in Switzerland, in the imperial towns of Germany, the press was either legally or practically free. Holland and Switzerland are no more; and since the commencement of this prosecution fifty imperial towns have been erased from the list of independent states by one dash of the pen. Three or four still preserve a precarious and trembling existence. I will not say by what compliances they must purchase its continuance. I will not insult the feebleness of states whose unmerited fall I do most bitterly deplore.

These governments were in many respects one of the most interesting parts of the ancient system of Europe. Unfortunately for the repose of mankind, great states are compelled, by regard to their own safety, to consider the military spirit and martial habits of their people as one of the main objects of their policy. Frequent hostilities seem almost the neces-

sary condition of their greatness; and without being great they cannot long remain safe. Smaller states, exempted from this cruel necessity — a hard condition of greatness, a bitter satire on human nature — devoted themselves to the arts of peace, to the cultivation of literature, and the improvement of reason. They became places of refuge for free and fearless discussion; they were the impartial spectators and judges of the various contests of ambition which from time to time disturbed the quiet of the world.

They thus became peculiarly qualified to be the organs of that public opinion which converted Europe into a great republic with laws which mitigated though they could not extinguish ambition, and with moral tribunals to which even the most despotic sovereigns were amenable. If wars of aggrandizement were undertaken. their authors were arraigned in the face of Europe.

If acts of internal tyranny were perpetrated, they resounded from a thousand presses throughout all civilized countries. Princes on whose will there were no legal checks thus found a moral restraint which the most powerful of them could not brave with absolute impunity. They acted before a vast audience to whose applause or condemnation they could not be utterly indifferent. The very constitution of human nature, the unalterable laws of the mind of man, against which all rebellion is fruitless, subjected the proudest tyrants to this control. No elevation of power, no depravity however consummate, no innocence however spotless, can render man wholly independent of the praise or blame of his fellow men.

These governments were in other respects one of the most beautiful and interesting parts of our ancient system. The perfect security of such inconsiderable and feeble states, their undisturbed tranquillity amid the wars and conquests that surrounded them, attested, beyond any other part of the European system, the moderation, the justice, the civilization to which Christian Europe had reached in modern times.



Their weakness was protected only by the habitual reverence for justice which during a long series of ages had grown up in Christendom. This was the only fortification which defended them against those mighty monarchs to whom they offered so easy a prey. And till the French Revolution this was sufficient.

Consider, for instance, the situation of the Republic of Geneva. Think of her defenceless position, in the very jaws of France; but think also of her undisturbed security, of her profound quiet, of the brilliant success with which she applied to industry and literature while Louis XIV was pouring his myriads into Italy before her gates. Call to mind, if ages crowded into years have not effaced them from your memory, that happy period when we scarcely dreamed more of the subjugation of the feeblest republic of Europe than of the conquest of her mightiest empire; and tell me if you can imagine a spectacle more beautiful to the moral eye, or a more striking proof of progress in the noblest principles of true civilization.

These feeble states — these monuments of the justice of Europe — the asylum of peace, of industry, and of literature — the organs of public reason — the refuge of oppressed innocence and persecuted truth, have perished with those ancient principles which were their sole guardians and protectors. They have been swallowed up by that fearful convulsion which has shaken the uttermost corners of the earth. They are destroyed and gone forever.

One asylum of free discussion is still inviolate. There is still one spot in Europe where man can freely exercise his

reason on the most important concerns of society, where he can boldly publish his judgment on the acts of the proudest and most powerful tyrants. The press of England is still free. It is guarded by the free constitution of our forefathers. It is guarded by the hearts and arms of Englishmen, and I trust I may venture to say that if it be to fall it will fall only under the ruins of the British empire.

It is an awful consideration, gentlemen. Every other monument of European liberty has perished. That ancient fabric which has been gradually reared by the wisdom and virtue of our fathers still stands. It stands, thanks be to God! solid and entire; but it stands alone, and it stands amid ruins.

In these extraordinary circumstances I repeat that I must consider this as the first of a long series of conflicts between the greatest power in the world and the only free press remaining in Europe. And I trust that you will consider yourselves as the advanced guard of liberty, as having this day to fight the first battle of free discussion against the most formidable enemy that it ever encountered. You will therefore excuse me if, on so important an occasion, I remind you, at more length than is usual, of those general principles of law and policy on this subject which have been handed down to us by our ancestors.

Those who slowly built up the fabric of our laws never attempted anything so absurd as to define, by any precise rule, the obscure and shifting boundaries which divide libel from history or discussion. It is a subject which, from its nature, admits neither rules nor definitions. The same words may be perfectly innocent in one case and most mischievous and libellous in another. A change of circumstances, often apparently slight, is sufficient to make the whole difference.



These changes, which may be as numerous as the variety of human intentions and conditions, can never be foreseen nor comprehended under any legal definitions, and the framers of our law have never attempted to subject them to such definitions. They left such ridiculous attempts to those who call themselves philosophers, but who have, in fact, proved themselves most grossly and stupidly ignorant of that philosophy which is conversant with human affairs.

The principles of the law of England on the subject of political libel are few and simple, and they are necessarily so broad that without an habitually mild administration of justice they might encroach materially on the liberty of political discussion. Every publication which is intended to vilify either our own government or the government of any foreign state in amity with this kingdom is, by the law of England, a libel. To protect political discussion from the danger to which it would be exposed by these wide principles, if they were severely and literally enforced, our ancestors trusted to various securities—some growing out of the law and constitution, and others arising from the character of those public officers whom the constitution had formed, and to whom its administration is committed.

They trusted, in the first place, to the moderation of the legal officers of the Crown, educated in the maxims and imbued with the spirit of a free government, controlled by the superintending power of Parliament, and peculiarly watched in all political prosecutions by the reasonable and wholesome jealousy of their fellow subjects. And I am bound to admit that, since the glorious era of the revolution [1688], making due allowance for the frailities, the faults, and the occasional vices of men, they have, upon the whole, not been disappointed.

I know that in the hands of my learned friend that trust will never be abused. But, above all, they confided in the moderation and good sense of juries, popular in their origin, popular in their feelings, popular in their very prejudices, taken from the mass of the people, and immediately returning to that mass again. By these checks and temperaments they hoped that they should sufficiently repress malignant libels without endangering that freedom of inquiry which is the first security of a free state.

They knew that the offence of a political libel is of a very peculiar nature and differing in the most important particulars from all other crimes. In all other cases the most severe execution of law can only spread terror among the guilty; but in political libels it inspires even the innocent with fear. This striking peculiarity arises from the same circumstances which make it impossible to define the limits of libel and innocent discussion; which make it impossible for a man of the purest and most honorable mind to be always perfectly certain whether he be within the territory of fair argument and honest narrative, or whether he may not have unwittingly overstepped the faint and varying line which bounds them.

But, gentlemen, I will go further. This is the only offence where severe and frequent punishments not only intimidate the innocent, but deter men from the most meritorious acts and from rendering the most important services to their country. They indispose and disqualify men for the discharge of the most sacred duties which they owe to mankind. To inform the public on the conduct of those who administer public affairs requires courage and conscious security. It is always an invidious and obnoxious office; but it is often the most necessary of all public duties. If it is not done boldly it



cannot be done effectually, and it is not from writers trembling under the uplifted scourge that we are to hope for it.

There are other matters, gentlemen, to which I am desirous of particularly calling your attention. These are the circumstances in the condition of this country which have induced our ancestors, at all times, to handle with more than ordinary tenderness that branch of the liberty of discussion which is applied to the conduct of foreign states. The relation of this kingdom to the commonwealth of Europe is so peculiar that no history, I think, furnishes a parallel to it.

From the moment in which we abandoned all projects of Continental aggrandizement we could have no interest respecting the state of the Continent but the interests of national safety and of commercial prosperity. The paramount interest of every state—that which comprehends every other—is security. And the security of Great Britain requires nothing on the Continent but the uniform observance of justice. It requires nothing but the inviolability of ancient boundaries and the sacredness of ancient possessions, which, on these subjects, is but another form of words for justice. A nation which is herself shut out from the possibility of Continental aggrandizement can have no interest but that of preventing such aggrandizement in others. We can have no interest of safety but the preventing of those encroachments which, by their immediate effects or by their example, may be dangerous to ourselves. We can have no interest or ambition respecting the Continent. So that neither our real nor even our apparent interest can ever be at variance with justice.

As to commercial prosperity, it is indeed a secondary, but it is still a very important branch of our national interests, and it requires nothing on the continent of Europe but the main-