

In that awful moment of a nation's travail, of the last gasp of tyranny and the first breath of freedom, how pregnant is the example! The press extinguished, the people enslaved, and the prince undone. As the advocate of society, therefore—of peace—of domestic liberty—and the lasting union of the two countries—I conjure you to guard the liberty of the press, that great sentinel of the state, that grand detector of public imposture; guard it because, when it sinks, there sinks with it in one common grave the liberty of the subject and the security of the Crown.

Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain analogous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm to accuse was to convict. The danger looked larger to the public eye from the misty region through which it was surveyed. We measure inaccessible heights by the shadows which they project, where the lowness and the distance of the light form the length of the shade.

There is a sort of aspiring and adventurous credulity which disdains assenting to obvious truths and delights in catching at the improbability of circumstances as its best ground of faith. To what other cause, gentlemen, can you ascribe that, in the wise, the reflecting, and the philosophic nation of Great Britain, a printer has been found guilty of a libel for publishing those resolutions to which the present minister of that kingdom had actually subscribed his name?

To what other cause can you ascribe, what in my mind is

still more astonishing, in such a country as Scotland, a nation cast in the happy medium between the spiritless acquiescence of submissive poverty and the sturdy credulity of pampered wealth; cool and ardent, adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse; from the deep and scrutinizing researches of her Hume, to the sweet and simple, but not the less sublime and pathetic morality of her Burns—how, from the bosom of a country like that, genius and character and talents should be banished to a distant, barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy for twice the period that ordinary calculation gives to the continuance of human life? But I will not further press any idea that is painful to me and I am sure must be painful to you. I will only say you have now an example of which neither England nor Scotland had the advantage. You have the example of the panic, the infatuation, and the contrition of both. It is now for you to decide whether you will profit by their experience of idle panic and idle regret, or whether you merely prefer to palliate a servile imitation of their frailty by a paltry affectation of their repentance. It is now for you to show that you are not carried away by the same hectic delusions to acts of which no tears can wash away the consequences or the indelible reproach.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured; let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney-General has cited himself, I mean that of the trial of Lambert in England, is there a topic of

invective against constituted authorities, is there a topic of abuse against every department of British government that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted, and acquitted by an English jury?

See, too, what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade. And saying this, let me not be misunderstood; it is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist; yet I cannot but say that the movers of this prosecution have forced that question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any infomer ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney-General that nothing can be more criminal than an attempt to work a change in the government by armed force, and I entreat that the court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe or to overturn the government. But I put my client's case upon another ground. If he was led into an opinion of grievances where there were none; if he thought there ought to be a reform where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God before whom the accuser, the accused, and the

judge must appear together; that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen, Mr. Attorney-General has said that Mr. Rowan did by this publication (supposing it to be his) recommend, under the name of equality, a general, indiscriminate assumption of public rule by every the meanest person in the state. Low as we are in point of public information, there is not, I believe, any man, who thinks for a moment, that does not know that all which the great body of the people of any country can have from any government is a fair encouragement to their industry and protection for the fruits of their labor. And there is scarcely any man, I believe, who does not know that if a people could become so silly as to abandon their stations in society under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment or any such desperate assumption? I will read the words which relate to that subject: "By liberty we never understood unlimited freedom, nor by equality the levelling of property or destruction of subordination."

I ask you with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments the very reverse of what his words avow; and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained or, if you do adopt an arbitrary principle of imputing to him your meaning instead of his own, what publication can be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced in a court acting on the principles of the British constitution.

In the bitterness of reproach it was said, "Out of thine own mouth will I condemn thee." From the severity of justice I

demand no more. See if, in the words that have been spoken, you can find matter to acquit or to condemn.

“By liberty we never understood unlimited freedom, nor by equality the levelling of property or the destruction of subordination. This is a calumny invented by that faction or that gang which misrepresents the King to the people, and the people to the King; traduces one half of the nation to cajole the other; and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland.”

Here you find that meaning disclaimed as a calumny which is artfully imputed as a crime.

I say, therefore, gentlemen of the jury, as to the four parts into which the publication must be divided, I answer thus: It calls upon the Volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist; the high character, the known moderation, the approved loyalty of that venerable institution; the similarity of the circumstances between the period at which they are summoned to take arms and that in which they have been called upon to reassume them. Upon this simple ground, gentlemen, you will decide whether this part of the publication was libellous and criminal or not.

As to reform, I could wish to have said nothing upon it. I believe I have said enough. If he thought the state required it, he acted like an honest man. For the rectitude of the opinion he was not answerable. He discharged his duty in telling the country that he thought so.

As to the emancipation of the Catholics I cannot but say that Mr. Attorney-General did very wisely in keeping clear of that. Yet, gentlemen, I need not tell you how important a figure it was intended to make upon the scene, though, from

unlucky accidents, it has become necessary to expunge it during the rehearsal.

Of the concluding part of this publication, the convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could, perhaps, scarcely be expected. It is, however, with pleasure I feel I am drawing to a close, and that only one question remains, to which I beg your attention.

Whatever, gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you to decide upon; namely, whether, in point of fact, this publication be imputable to Mr. Rowan or not; whether he did publish it or not. And two witnesses are called to that fact, one of the name of Lyster and the other of the name of Morton. You must have observed that Morton gave no evidence upon which that paper could even have been read; he produced no paper; he identified no paper; so that in point of law there was no evidence to be given to a jury; and therefore it turns entirely upon the evidence of the other witness. He has stated that he went to a public meeting in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you.

I know you are well acquainted with the fact that the credit of every witness must be considered by and rest with the jury. They are the sovereign judges of that circumstance; and I will not insult your feelings by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty or property or character of your fellow citizens. Under what circumstances does this evidence come

before you? The witness says he has got a commission in the army, by the interest of a lady, from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers, to make an indorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he took it with no such view.

There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I know not. I know not the man; but his credit is impeached. Mr. Blake was called; he said he knew him. I asked him, "Do you think, sir, that Mr. Lyster is or is not a man deserving credit upon his oath?" If you find a verdict of conviction it can be only upon the credit of Mr. Lyster. What said Mr. Blake? Did he tell you that he believed he was a man to be believed upon his oath? He did not attempt to say that he was. The best he could say was that he would hesitate. Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster? If you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But if you do not know him you must take his credit from an unimpeached witness, swearing that he would hesitate to believe him.

In my mind there is a circumstance of the strongest nature that came out from Lyster on the table. I am aware that a very respectable man, if impeached by surprise, may not be ready prepared to repel a wanton calumny by contrary testimony. But was Lyster unapprised of this attack upon him? What said he? "I knew that you had Blake to examine against me. You have brought him here for that purpose."

He knew the very witness that was to be produced against him; he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smyth? "From my knowledge of him I would not believe him upon his oath."

[Mr. Attorney-General: I beg pardon, but I must set Mr. Curran right. Mr. Lyster said he heard Blake would be here, but not in time to prepare himself.]

But what said Mrs. Hatchell? Was the production of that witness a surprise upon Mr. Lyster? her cross-examination shows the fact to be the contrary. The learned counsel, you see, was perfectly apprised of a chain of private circumstances to which he pointed his questions. Did he know these circumstances by inspiration? No; they could come only from Lyster himself. I insist, therefore, the gentleman knew his character was to be impeached; his counsel knew it; and not a single witness has been produced to support it. Then consider, gentlemen, upon what ground you can find a verdict of conviction against my client when the only witness produced to the fact of publication is impeached without even an attempt to defend his character. Many hundreds, he said, were at that meeting; why not produce one of them to swear to the fact of such a meeting? One he has ventured to name; but he was certainly very safe in naming a person who, he has told you, is not in the kingdom and could not, therefore, be called to confront him.

Gentlemen, let me suggest another observation or two. If still you have any doubt as to the guilt or innocence of the defendant, give me leave to suggest to you what circumstances you ought to consider in order to found your verdict. You should consider the character of the person accused, and in this your task is easy. I will venture to say there is not a man

in this nation more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many, but still more so by that extraordinary sympathy for human affliction which, I am sorry to think, he shares with so small a number.

There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings. That you do not see his honest and manly figure, with uncovered head soliciting for their relief, searching the frozen heart of charity for every string that can be touched by compassion, and urging the force of every argument and every motive save that which his modesty suppresses: the authority of his own generous example. Or, if you see him not there, you may trace his steps to the private abode of disease and famine and despair; the messenger of Heaven, bearing with him food, and medicine, and consolation.

Are these the materials of which anarchy and public rapine are to be formed? Is this the man on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man likely to apostatize from every principle that can bind him to the state, his birth, his property, his education, his character, and his children?

Let me tell you, gentlemen of the jury, if you agree with his prosecutors in thinking that there ought to be a sacrifice of such a man, on such an occasion, and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame; for where could the hireling be found to fling contumely or ingratitude

at his head, whose private distress he had not labored to alleviate, or whose public condition he had not labored to improve.

I cannot, however, avoid averting to a circumstance that distinguishes the case of Mr. Rowan from that of a late sacrifice in a neighboring kingdom. The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their infatuation. The more merciful spirit of our law deprives you of that consolation. His sufferings must remain forever before your eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society.

The man will be weighed against the charge, the witness, and the sentence; and impartial justice will demand, why has an Irish jury done this deed? The moment he ceases to be regarded as a criminal, he becomes of necessity an accuser. And, let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage [the pillory] which guilt alone can render infamous, let me tell you he will not be like a little statue upon a mighty pedestal, diminishing by elevation.

But he will stand a striking and imposing object upon a monument which, if it does not, and it cannot, record the atrocity of his crime, must record the atrocity of his conviction. And upon this subject credit me when I say that I am still more anxious for you than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice, which the law of England allows, but which ours refuses, collected in that box by a person certainly

no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial jury.

Feeling this, as I am persuaded you do, you cannot be surprised however you may be distressed at the mournful presage with which an anxious public is led to fear the worst from your possible determination. But I will not, for the justice and honor of our common country, suffer my mind to be borne away by such melancholy anticipations. I will not relinquish the confidence that this day will be the period of his sufferings; and, however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family and the wishes of his country. But if, which Heaven forbid, it hath still been unfortunately determined that, because he has not bent to power and authority, because he would not bow down before the golden calf and worship it, he is to be bound and cast into the furnace; I do trust in God that there is a redeeming spirit in the constitution which will be seen to walk with the sufferer through the flames and to preserve him unhurt by the conflagration.

## JAMES MADISON



JAMES MADISON, fourth President of the United States (1809-17), was born at Port Conway, Va., March 16, 1751, and died at Montpelier, Va., June 28, 1836. In 1771, he graduated from Princeton College, and read diligently for a while at his home in Virginia. Here he became absorbed in the great question of the time, the impending struggle for independence, and also took a lively interest in church matters and the subject of religious toleration. In 1776, he was returned a delegate of the Virginia Convention and Assembly, and in the following year was chosen a member of the Council of State, after which he took his seat (March, 1780) in the Continental Congress, and there came into note by his opposition to the issue of paper money by the State. After the peace with England, he was for two years a member of the Virginia Legislature, and there spoke and wrote against State support being given to the Anglican Church. At the national convention which met at Philadelphia in May, 1787, he was one of the chief framers of the Constitution of the United States, and in 1789 took his seat in the Federal House of Representatives and there led the anti-Federalist party and was an able contributor to "The Federalist." During John Adams's ministry he was in retirement, though he drew up the Virginia Resolution of 1798, condemning the Alien and Sedition Laws of Adams's administration, and returned to public life when Jefferson became President. In the latter's cabinet he was given the post of Secretary of State, which he filled throughout the Jeffersonian administration, and in March, 1809, was chosen that statesman's successor in the presidency. The chief feature of Madison's period of office was the War of 1812, happily terminated by the Treaty of Ghent, two years later. On retiring from the presidency he took up his residence at Montpelier, Va., where he died in his eighty-fifth year, amid universal respect paid to his unsullied memory. His many manuscripts have been published in the "Madison Papers," and in his collected "Letters and Other Writings."