

Erskine May, Vol. III, Chapter XI, pp. 49-59

Protection of Foreigners

Nothing has served so much to raise, in other states, the estimation of British liberty, as the protection which our laws afford to foreigners. Our earlier history, indeed, discloses many popular jealousies of strangers settling in this country. But to foreign merchants special consideration was shown by Magna Charta; and whatever the policy of the state, or the feelings of the people, at later periods, aliens have generally enjoyed the same personal liberty as British subjects, and complete protection from the jealousies and [50] vengeance of foreign powers. It has been a proud distinction for England to afford an inviolable asylum to men of every rank and condition, seeking refuge on her shores, from persecution and danger in their own lands. England was a sanctuary to the Flemish refugees driven forth by the cruelties of Alva; to the Protestant refugees who fled from the persecutions of Louis XIV.; and to the Catholic nobles and priests who sought refuge from the bloody guillotine of revolutionary France. All exiles from their own country—whether they fled from despotism or democracy,—whether they were kings discrowned, or humble citizens in danger,—have looked to England as their home. Such refugees were safe from the dangers which they had escaped. No solicitation or menace from their own government could disturb their right of asylum; and they were equally free from molestation by the municipal laws of England. The crown indeed had claimed the right of ordering aliens to withdraw from the realm: but this prerogative had not been exercised since the reign of Elizabeth.(1) From that period,—through civil wars and revolutions, a disputed succession, and treasonable plots against the state, no foreigners had been disturbed. If guilty of crimes, they were punished: but otherwise enjoyed the full protection of the law.

Alien Act 1793

It was not until 1793, that a departure from this generous policy was deemed necessary, in the interests of the state. The revolution in France had driven hosts of political refugees to [51] our shores.(2) They were pitied, and would be welcome. But among the foreigners claiming our hospitality, Jacobin emissaries were suspected of conspiring, with democratic associations in England, to overthrow the government. To guard against the machinations of such men, ministers sought extraordinary powers for the supervision of aliens, and, if necessary, for their removal from the realm. Whether this latter power may be exercised by the crown, or had fallen into desuetude, became a subject of controversy: but however that might be, the provisions of the Alien Bill, now proposed, far exceeded the limits of any ancient prerogative. An account was to be taken of all foreigners arriving at the several ports, who were to bring no arms or ammunition: they were not to travel without passports: the secretary of state might remove any suspected alien out of the realm; and all aliens might be directed to reside in such districts as were deemed necessary for public security, where they would be registered, and required to give up their arms. Such restraints upon foreigners were novel, and wholly inconsistent with the free and liberal spirit with which they had been hitherto entertained. Marked with extreme jealousy and rigour, they could only be justified by the extraordinary exigency of the times. They were, indeed, equivalent to a suspension of the Habeas Corpus Act, and demanded proofs of public danger no less conclusive. In opposition to the measure, it was said [52] that there was no evidence of the presence of dangerous aliens: that discretionary power to be entrusted to the executive might be abused; and that it formed part of the policy of ministers to foment the public apprehensions. But the right of the state, on sufficient grounds, to take such precautions, could not be disputed. The bill was to continue in

force for one year only, and was passed without difficulty.

So urgent was deemed the danger of free intercourse with the continent at this period, that even British subjects were made liable to unprecedented restraints, by the Traitorous Correspondence Bill.

The Alien Bill was renewed from time to time; and throughout the year foreigners continued under strict surveillance, When peace was at length restored, government relaxed the more stringent provisions of the war alien bills; and proposed measures better suited to a time of peace. This was done in 1802, and again in 1814. But, in 1816, when public tranquillity prevailed throughout Europe, the propriety of continuing such measures, even in a modified form, was strenuously contested.

Again, in 1818, opposition no less resolute was offered to the renewal of the Alien Bill. Ministers were urged to revert to the liberal policy of former times, and not to insist [53] further upon jealous restrictions and invidious powers. The hardships which foreigners might suffer from sudden banishment were especially dwelt upon. Men who had made England their home,—bound to it by domestic ties and affections, and carrying on trade under protection of its laws,—were liable, without proof of crime, on secret information, and by a clandestine procedure, to one of the gravest punishments. This power, however, was rarely exercised, and in a few years was surrendered.(3) During the political convulsions of the continent in 1848, the executive again received authority, for a limited time, to remove any foreigners who might be dangerous to the peace of the country: (4) but it was not put in force in a single instance. The law has still required the registration of aliens: but its execution has fallen more and more into disuse. The confidence of our policy, and the prodigious intercourse developed by facilities of communication and the demands of commerce, have practically restored to foreigners that entire freedom which they enjoyed before the French Revolution.

Naturalisation

The improved feeling of Parliament in regard to foreigners was marked in 1844 by Mr. Hutt's wise and liberal measure for the naturalisation of aliens.(5) Confidence succeeded to jealousy; and the legislature, instead of devising [54] impediments and restraints, offered welcome and citizenship.

French Refugees

While the law had provided for the removal of aliens, it was for the safety of England,—not for the satisfaction of other states. The right of asylum was as inviolable as ever. It was not for foreign governments to dictate to England the conditions on which aliens under her protection should be treated. Of this principle, the events of 1802 offered a remarkable illustration, During the short peace succeeding the treaty of Amiens, Napoleon, First Consul of the French Republic, demanded that our government should 'remove out of the British dominions all the French princes and their adherents, together with the bishops and other individuals, whose political principles and conduct must necessarily occasion great jealousy to the French Government.'

To this demand Lord Hawkesbury replied, his Majesty 'certainly expects that all foreigners who may reside within his dominions should not only hold a conduct conformable to the laws of the country, but should abstain from all acts which may be hostile to the government of any country, with which his Majesty may be at peace. As long, however, as they conduct themselves according to these principles, his Majesty would feel it inconsistent with his dignity, with his honour, and with the common laws of hospitality, to deprive them of [55] that protection which individuals, resident in his dominions, can only forfeit by their own misconduct.'

Still more decidedly were these demands reiterated. It was demanded, 1st. That more effectual

measures should be adopted for the suppression of seditious publications. 2nd. That certain persons named should be sent out of Jersey. 3rd. 'That the former bishops of Arras and St. Pol de Leon, and all those who, like them, under the pretext of religion, seek to raise disturbances in the interior of France, shall likewise be sent away.' 4th. That Georges and his adherents shall be transported to Canada. 5th. That the princes of the House of Bourbon be recommended to repair to Warsaw, the residence of the head of their family. 6th. That French emigrants, wearing orders and decorations of the ancient government of France, should be required to leave England. These demands assumed to be based upon a construction of the recent treaty of Amiens; and effect was expected to be given to them, under the provisions of the Alien Act. These representations were frankly and boldly met. For the repression of seditious writings, our government would entertain no measure but an appeal to the courts of law. (6) To apply the Alien Act in aid of the law of libel, and to send foreign writers out of the country, [56] because they were obnoxious, not to our own government, but to another, was not to be listened to.

The removal of other French emigrants, and especially of the princes of the House of Bourbon, was refused, and every argument and precedent adduced in support of the demand refuted. The emigrants in Jersey had already removed, of their own accord; and the bishops would be required to leave England if it could be proved that they had been distributing papers on the coast of France, in order to disturb the government: but sufficient proof of this charge must be given. As regards M. Georges, who had been concerned in circulating papers hostile to the government in France, his Majesty agreed to remove him from our European dominions. The king refused to withdraw the rights of hospitality from the French princes, unless it could be proved that they were attempting to disturb the peace between the two countries. He also declined to adopt the harsh measures which had been demanded against refugees who continued to wear French decorations.

The ground here taken has been since maintained. It is not enough that the presence or acts of a foreigner may be displeasing to a foreign power. If that rule were accepted, where would be the right of asylum? The refugee would be followed by the vengeance of his own government, and driven forth from the home he had chosen, in a free country. On this point, [57] Englishmen have been chivalrously sensitive. Having undertaken to protect the stranger, they have resented any menace to him, as an insult to themselves. Disaffection to the rulers of his own country is natural to a refugee: his banishment attests it. Poles hated Russia: Hungarians and Italians were hostile to Austria: French Royalists spurned the republic and the first empire: Charles X. and Louis Napoleon were disaffected to Louis-Philippe, King of the French: legitimists and Orleanists alike abhorred the French republic of 1848, and the revived empire of 1852. But all were safe under the broad shield of England. Every political sentiment, every discussion short of libel, enjoyed freedom. Every act not prohibited by law, —however distasteful to other states,—was entitled to protection. Nay more: large numbers of refugees, obnoxious to their own rulers, were maintained by the liberality of the English government.

The Orsini Case

This generosity has sometimes been abused by aliens, who, under cover of our laws, have plotted against friendly states. There are acts, indeed, which the laws could only have tolerated by an oversight; and in this category was that of conspiracy to assassinate the sovereign of a friendly state. The horrible conspiracy of Orsini, in 1858, had been plotted in England. Not countermined by espionage, nor checked by jealous restraints on personal liberty, it had been matured in safety; and its more overt acts had afterwards escaped the vigilance of the police in France. The crime was [58] execrated: but how could its secret conception have been prevented? So far our laws were blameless. The government of France, however, in the excitement of recent danger, angrily remonstrated against the alleged impunity of assassins in

this country.(7) Englishmen repudiated, with just indignation, any tolerance of murder. Yet on one point were our laws at fault. Orsini's desperate crime was unexampled; planned in England, it had been executed beyond the limits of British jurisdiction; it was doubtful if his confederates could be brought to justice; and certain that they would escape without adequate punishment. Ministers, believing it due, no less to France than to the vindication of our own laws, that this anomaly should be corrected, proposed a measure, with that object, to Parliament. But the Commons, resenting imputations upon this country, which had not yet been repelled; and jealous of the apparent dictation of France, under which they were called upon to legislate, refused to entertain the bill.(8) A powerful ministry was struck down; and a rupture hazarded with the Emperor of the French. Yet to the measure itself, apart from the circumstances under which it was offered, no valid objection could be raised; and three years later, its provisions were silently admitted to a place in our revised criminal laws.(9)

Extradition

A just protection of political refugees is not [59] incompatible with the surrender of criminals. All nations have a common interest in the punishment of heinous crimes; and upon this principle, England entered into extradition treaties with France, and the United States of America, for mutually delivering up to justice persons charged with murder, piracy, arson, or forgery, committed within the jurisdiction of either of the contracting states.(10) England offers no asylum to such criminals; and her own jurisdiction has been vastly extended over offenders escaping from justice. It is a wise policy,—conducive to the comity of civilised nations.

Footnotes.

1. Viz., in 1571, 1574, and 1575.
2. In Dec. 1792, it appeared that 8,000 had emigrated to England.—Parl. Hist., xxx. 147.
3. In 1826: 5 Geo. IV c. 37; Hans. Deb., 2nd Ser., x. 1376.
4. 11 and 12 Vict. c. 20.
5. Naturalisation Act 1844, 7 and 8 Vict. c. 66; 10 and 11 Vict. c.83.
6. See supra, Vol. II. p. 332.
7. Despatch of Count Walewski, Jan. 20th, 1858.
8. Conspiracy to Murder Bill, 1858; Mr. Milner Gibson's amendment on second reading. —Hans. Deb., 3rd Ser., cxlviii. 1742, etc.
9. 24 and 25 Vict. c. 100, s. 4.
10. Treaty with France, 1843, confirmed by 6 and 7 Vict c. 75; treaty with United States, 1842. confirmed by 6 and 7 Vict. c. 76. Provisions to the same effect had been comprised in the treaty of Amiens; and also in a treaty with the United States in 1794. —Phillimore, Int. Law, i. 427; Hans. Deb., 3rd Ser., lxx. 1325; lxxi. 564. In 1862, after the period of this history, the like arrangement was made with Denmark; 25 and 26 Vict. c. 70. In 1864, a similar treaty was entered into with Prussia, but not confirmed by Parliament; Hans. Deb., 25th and 27th July. See also The Extradition Act, 1870.

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