The Zenger Case Revisited: Satire, Sedition and Political Debate in Eighteenth Century America

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THE ZENGER CASE REVISITED
Satire, Sedition and Political Debate in Eighteenth Century America

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On 4 August 1734 Governor William Cosby of New York, stung by a series of satirical attacks that had appeared in John Peter Zenger's *New York Weekly Journal*, brought the printer to trial for publishing a seditious libel. Zenger's attorney conceded at the outset that his client had done the printing; by most existing legal precedent the fact of publication was all that the jury was to consider, and the judges, who could be expected to side with the governor, were to determine the libelousness of the content. But in this case the attorney for the printer went on to argue that the precedent was in fact not binding; the jury, not the judge, should consider the content of the attacks as well as the act of publication and should acquit his client if the articles were based on truth. The jury agreed: after a brief recess they returned with a verdict of "not guilty." As a result of the trial, a rapacious governor was momentarily humbled and a powerful defense lawyer turned into a popular hero; the story of the trial came to be written up by the defense in a way that has made it grist for popular history ever since.

But does it provide anything more than a good story? Recent writers have said a regretful "No." Preoccupied with the search for a binding legal precedent, they have found in the case nothing more than an inconclusive partisan confrontation. It did not produce across-the-board freedom of the press (nor did any of Zenger's advocates argue that this was a good thing.) It did not change the English definition of a free press or of libel. It did not even affect the outcome of the upcoming election. Stephen Botein called its "celebrity as a landmark case" no longer justified, and thought the case "nothing more than a matter of historical accident" (Botein 11). Leonard Levy thought that "Zenger's acquital had little if any appreciable effect upon the freedom of the press in New York or elsewhere in the colonies (Levy 1985, 37, 45; see also Levy 1960)," and Stanley Katz agreed: the trial "did not directly further the development either of political liberty or of freedom of the press in America" (Katz 34). James Morton Smith, studying the press for a later period, found the issues addressed in the Zenger

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case still unsettled by the last decade of the eighteenth century (Smith, esp. chap. 18). A gloomy set of verdicts to be sure.

But are these nay-sayers really correct? If they are, how do we explain the explosive growth of satirical attacks on various colonial governments in the decades immediately after the case was settled? Before the trial the only political satires that could be safely printed were those written by imperial officials themselves, governors and proprietary representatives, in particular.[1] In the years between the trial and the Stamp Act, by contrast, over two dozen political satires appeared in print, virtually all of them in opposition to established governments and imperial officials. Fables, parodied speeches and proclamations, mock addresses, lethal thrusts masquerading as praise appeared in pamphlets, broadsides, poets' corners, advertisements, news items, and the like; of all the printers of these items only one was prosecuted (even his charges were dropped).[2] Our futile search for binding precedents, it would seem, has made us miss what the Zenger trial really did accomplish: it made possible the dynamic growth of political expression in the colonies by making it relatively safe for American writers to publish political humor—particularly satire—critical of men in office.

Before the Zenger case there was no agreed upon procedure for trying a political satirist for seditious libel in either England or America. Americans had never tried such a case; English precedents were inconsistent though of late they had been tending to go against printers. In two English trials less than a decade before Zenger's, the guilt or innocence of accused printers had been left to judges who labeled virtually all humorous attacks on the government threats to political stability and hence seditious libels. After Zenger's acquittal, by contrast, American courts generally left determination of guilt or innocence to juries likely to see such satire as a useful correction to political transgressions and hence to excuse the printers: public officials, be they royal governors or locally elected legislators, were, loath to prosecute cases they could not win.

But there was more to it even than that. After the trial, any politician was a fool to take a satirist to court. The Zenger case lay at the crossroads of literature and law. It revealed that the press and the courts together could produce a kind of double trial, not only for the satirist, but also for the public official he satirized. Satire isolated, tried, condemned and pilloried the objects of its attack by showing that they had violated community norms. If the targeted official then decided to charge the satirist with libel, the satirist would defend himself by arguing that he had portrayed community values as everyone understood them, and the official's behavior exactly as everyone saw him, so the official's reputation itself would be on trial again. And if, like the Zenger jury, the jurors believed the truth of the charges, the governor, not the printer, would be convicted in the court

of public opinion. Zenger's *Journal* used satire to mock the governor and his supporters; Zenger's lawyers used it to mock the prosecuting attorney.[3] Since satire tried people by laughter, Zenger's case was in effect a trial of a trial in which the defense attorney used satire to defend satirists. A "style" of courtroom performance intersected with a style of journalism; a vision of the newspaper world where humorists ridiculed men in power before a public audience intersected with a vision of the courtroom functioning the same way. Above all, the *Journal* and the trial revealed that satire could focus the values of an American provincial community, make clear that a politician had not respected them, and show that laughter was the gentlest way of belittling and isolating him and even of turning him out. The trial was, therefore, an essential step in legitimizing the emerging opposition in a fledgling political democracy. It could, indeed, be a landmark without its verdict determining the legal outcome of any further trials.

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The outline of the trial and the events leading up to it is reasonably clear (allowing for the fact that the only first hand account we have of the court proceedings is that by James Alexander, a Zenger patron, which we can supplement with a few letters of contemporaries and issues of the *Journal*, and acknowledging also that this evidence does not go very far in answering some obvious questions, such as how the jurors actually arrived at their decision).[4]

The *Journal*, which had first appeared in November 1733, was essentially the mouthpiece of two of the governor's leading political opponents, James Alexander and Lewis Morris, bent on revenge for Cosby's dismissal of Morris from his position as Chief Justice of the colony. The idea of an opposition paper in the colonies was not entirely new when the *Journal* began production. A decade earlier James Franklin's *New England Courant* had jibed satirically at Massachusetts officialdom until Franklin himself had been jailed and forced to apologize. But the *Courant* had been as much a literary journal as newspaper, its direct concerns were far more with the smallpox inoculation than with politics, and it had lost its punch when Franklin was jailed (Clark 136, 127, 137, 177; Tourtellot 256–57). The *Journal* took up where the *Courant* had left off. It attacked Cosby in a variety of ways, mixing long solemn passages and shorter quotes from a leading London opposition journal, the *Independent Reflector*, with partisan reports of domestic affairs, articles purporting to be about neighboring colonies but in fact raising questions about New York, songs and satirical poems about the fickleness of government support and even more satirical mock advertisements containing thinly disguised descriptions of the governor or his supporters. The serious tracts took up the bulk of the columns but the

satirical pieces were funnier and far harder for the governor to respond to; significantly the four issues ordered by the Governor to be burnt all contained particularly witty satirical ads or poems.

The humorous contributions that worried the government so much emerged in the colonies from a satirical style of political attack that had been developing in the Anglo-American world, particularly on the English side, over the first quarter of the eighteenth century. The earlier works of Dryden and Shaftesbury fueled an explosion of English satirical literature which was at its greatest from the late 1720s to the late 1750s, peaking in the years when Zenger's *Journal* appeared. The extraordinary group of English satirists writing then included Pope, Gay, Swift, Bolingbroke, Pulteney, and enough other interested authors to raise the number of pamphlets about satire from twelve in the 1720s to sixty-one in the 1730s.

The appearance of a generation of great satirists, all of whom opposed Walpole's administration, was hardly fortuitous: it correlated exactly with a change in English law about censorship of the press. In the seventeenth century satirical attacks on the government were likely to be headed off before they were printed, by licensing acts in England and the colonies which required government approval before writings could be published. In 1695, however, Parliament refused to renew the English Licensing Act and similar acts were subsequently relaxed in the various colonies; publications were no longer censored before they were published but were subject to prosecution—generally for libel—once they had appeared. This meant two things: first, rather than attempting to decide the subversiveness of material before it was printed the government now waited to assess its effect on the public. Second, if the criticisms of the government were to be effective and at the same time avoid prosecution, they must be carefully disguised, packaged as innocent humor whose intent to attack the government could not be proven in court.

How did one banter against the government and get away with it? The satirists developed a bag of techniques which made it extremely difficult to prove beyond legal doubt just who or what they were talking about. They got at their subjects by suggestion rather than direct identification, using methods suggested by Jonathan Swift. "First, never to print a man's name out at length; but as I do that of Mr. St   le. . . Secondly, by putting cases; thirdly by insinuation; fourthly by celebrating the actions of others, who acted directly contrary to the persons we would reflect on; fifthly, by nicknames . . . which everybody can tell how to apply" (see Spector 6–7).[5] They wrote histories of past events or societies or governments which could pass for generalized commentaries on humanity but in fact were thinly disguised descriptions of current parallels. They created fictionalized accounts of travels abroad to countries that strikingly resembled their own, or fictionalized commentaries of travelers from abroad. They described

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animal behavior when they were really referring to people or, following the guidelines Swift had drawn up to help writers avoid legal prosecution, they identified people with only the first and last letters of their names. The *Journal* picked up on these disguises: one of Hamilton's earliest points in Zenger's defense was "I own, when I read the Information I had not the art to find out that the Governour was the Person meant in every Period of that Newspaper" (*Case and Tryal* 19).

Free to publish political attacks without censorship, but constrained to disguise those attacks in order to avoid prosecution once their works had appeared in print, writers made the most of satirical techniques to attack political figures, especially unpopular ministers like Sir Robert Walpole and his associates. They came to regard satire as a substitute for law, as a way to reveal the public crimes of men they could not reach through the courts. "Where law cannot extend its awe and authority, satire wields the scourge of disgrace" (Stevens 100), they wrote; it "shake[s] the writer beyond the reach of law" (Harte 1). Through ridicule satirists tried public figures in a court of public opinion, assured their conviction by laughter and sentenced them to the pillory of public scorn: getting people to laugh at a public official could disgrace him almost as badly as condemnation by a court of law.

It is the publickness of the laughter that is important here, its effectiveness in what Michael Warner calls the "public sphere of print discourse" (Warner 57; see also Burke 270 and Gilreath). Satire's object was to hold its victim up to public scorn by poking fun at him: it "intentionally humiliated" (Ingram 51), and in so doing it flattered the intelligence of readers who were able to recognize both the person targeted and the behavior that provoked the attack. The community of citizens judged for themselves whether a writing was "valid" (and therefore, in the case of satire, funny) or not. Satire temporarily bonded its readers in laughter, thereby isolating its victim further. Since it shrank people through mockery it was particularly useful in reducing 'great men" to disposable size.

For both public officials and their opposition, satire offered a gamble. For a critic of the government to print satire was risky, but for the government to take the satirist to court for libel was even more so. The printer/author took the chance that his publication might be shut down or his voice silenced during or after a libel trial if the publisher could find no one to pay his costs or take his place while he was in jail. The defendants/satirists were further handicapped at the trial by the fact that judges, appointed by the same royal authority as the targeted officials, and in some cases dependent on those officials for influence at court, generally decided the libellousness of works in question and juries generally representing readers were left only to decide if the publications originated in the shop of the accused printer.

So the political satirist faced possible prosecution, in a trial where he might not be whole heartedly supported even by those who shared his political views. On the other hand, publications marked for government prosecution sold especially well (printers actually made extra copies of pamphlets or journal issues they expected to be the object of government attack); being prosecuted was itself a measure of success (the government would not go after something beneath its notice), and the printer's conviction in court was not likely to reduce the damage already done to the public official satirized. Printing satire was a risk, but probably one worth taking.

The satirist had to gamble on publication; his victim had to gamble on taking the author to court, and for the politician who found himself the butt of satire, the risks involved in bringing his critic to trial were even greater. At the onset he ran into the skillful satirists' obfuscation of his subject. It was very hard to prove in a court of law that a satirist intended more than simple fun or at most a general lament for the vices of the times. More serious, his charge would probably be seditious libel but the courts had never determined exactly what seditious libel really was. At Zenger's trial the Attorney General explained the standard definition: "scandal as is expressed in a scoffing and ironical manner . . . a taunting manner . . . in a strain of ridicule . . . [tending] to a Breach of Public Peace" (*Case and Tryal* 26). (Zenger had been charged with publishing a "false, malicious, seditious, and scandalous libel.") In *DeLibellis Famosas*, a Star Chamber Case of 1606, libel was defined simply as "defamation, tending to expose another to public hatred, contempt or ridicule" and at the time of Zenger's case, the definition was still in effect.

The main difficulty in this definition besides its vagueness is that it contained virtually nothing to distinguish it from legitimate satire. Contemporaries recognized this, and used the terms interchangeably. A number of contemporaries tried to develop their own distinctions. In particular, they argued that libel was based on falsehood whereas satire could not be effective unless it was perceived as being largely based on truth. Readers do not laugh very hard at a description whose real subject they cannot recognize and they do not laugh at all at a description so distorted it is grotesque. Truth, argued Shaftesbury, was the innocent man's best defense against satirical attack (Shaftesbury 61). But the courts had been very erratic in approaching the question of truth. In *DeLibellis Famosas*, in 1606 the court had reversed previous rulings which had based conviction on the falseness of the argument, and the 1606 definition was still in effect when Zenger was tried. But even this interpretation was not always observed. Libel was a Star Chamber doctrine, which had been very incompletely adapted to Common Law when the Star Chamber was abolished early in the English Civil Wars. At the end of the seventeenth century and the beginning of the

eighteenth, truth was increasingly allowed as a defense. In Fuller's Case, early in the eighteenth century, for example, the Chief Justice had actually instructed the defendent to prove the truth of his case. But in 1729 and 1731 the pendulum swung back, first in the trial of the publisher of *Mist's Journal*, then in the trial of the *Craftsman's* printer (Holdsworth 10: 674; Cooper 61–62, 73–74; Siebert 380–82). In both cases the jury was not allowed to consider the truth behind the cited writings; indeed, it was argued, if there was truth behind the satirical exposures the satire could be all the more dangerous. Where, anyway, did one draw the line between the satirist's lesser distortions and exaggerations, and actual falsehood?

Besides this, the suer would not find making the distinction between truth and falsehood to his own advantage because by claiming that a writer had defamed his character he was implicitly admitting that he found his own character recognizable in the writer's description and admitting, too, that general readers found his character in need of reform. By suing, the targeted public official implicitly gave substance to an author's defense of truth; and to Cato's defense of satires that "Guilty men alone fear them" (*Cato's Letters* 4: 298). The distinction between truth and falsehood was hardly one he would want to emphasize.

Since, then, contemporaries were unclear about the distinction between libel and legitimate satire, legal decisions ended up being made on an *ad hoc* basis. But who made the definition each time? Was it the victim (the judge, speaking for the targeted official) healing his wounds, the author knowing his original intent, or the reader/hearer (the jury) responding to the humor? The answer was not obvious.

A 1696 English Act provided that judges should be appointed for life. Had this act applied to the American colonies, Zenger's lawyers might have had less reason to press the jury to make the full decision. The act did not apply to the American colonies, however, many of whom continued to have judges removable at the governor's pleasure, so the question whether a jury should be able to judge the content of an alleged libel as well as the fact of its publication was more contentious there. But in the colonies the greater likelihood of facing a judge who owed his appointment to the crown or the crown's representative was offset by the likelihood that most defendants would be allowed the use of an attorney.

The role and function of defense attorneys developed unevenly over the eighteenth century, varying from court to court, even judge to judge. Initially defense attorneys were employed mainly to help their clients collect and interrogate witnesses; then on occasional cases they began to pull the arguments together in a concluding address to the judge or jury. Over the eighteenth century attorneys progressively assumed those functions; their role in the courts went from marginal to pivotal and they focused more and more attention upon themselves. Counsellors came to eclipse their own

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clients in trial importance and on occasion even "to cost the judges their commanding role in the procedure and thereby to make the jury much more dangerous" (Bender 176). By the last decades of the century though lawyers as a whole were still distrusted, some of the most successful defense lawyers (and Zenger's lawyer was certainly one), were becoming immensely popular, "something like folk heroes" (Roeber 228); and the famous defense attorney was lionized "as a virtuoso performer whose words and exploits were to be savored" (Cohen 29).

The skillful defense attorney could use his popularity to provide not only popular sympathy for his client, but also popular interest in the particular issues his client was addressing. When the issues involved in a trial were controversial and when defense and prosecuting attorneys were credible performers, a trial could become a forum for major public debate, a "dramatic dialogue in which the parties are principals and the neighbors act as chorus and audience" (Hoffer 56).[6] Adversarial trials provided, as Daniel Cohen has noted, "a natural framework for the expression of various tensions and conflicts" (Cohen 30). When a case involved "the social and political legitimacy of a particular law, the constitutional structure of the state, or the specific behaviors of public leaders, its implications were visible far beyond the courtroom and the public's opinion was an essential barometer in measuring and determining social and political legitimacy." When popular interest was aroused the trial as display of royal justice could quickly give way to the trial itself as satirical performance, and its potential audience move from judge, jury, and courtroom spectators to the public at large. So bringing a satirist to trial actually could increase his audience considerably (see Baer 113).

By the time of Lewis Morris' quarrel with Governor Cosby, then, English satirists were already realizing the immense damage their writings could inflict on public figures in and out of government. In Cosby, who became New York's chief executive in 1732, Morris and Alexander soon perceived an inept but nevertheless dangerous imitation of the English satirists' favorite target, Sir Robert Walpole. Cosby lacked both Walpole's resources and his political savvy, but soon after he fell out with the two New Yorkers he sought to use what powers he had to undermine them and their political circle. He counted on the colony's one newspaper, the *New York Gazette*, publishing only hostile accounts of them because its publisher was indebted to Cosby for government contracts. He arbitrarily dismissed Morris from his post as Chief Justice of the colony's Supreme Court because as governor, Cosby had authority to appoint judges "on good behavior." He refused to call a new election for the New York legislature and thus kept in session an assembly at least marginally compliant, and when Morris himself ran in a by-election Cosby prevailed on the local sheriff to disqualify some of his supporters. When significant issues came

before the council he failed to notify Morris' councillors of the meetings (Bonomi). As Morris and Alexander saw it, in Cosby's administration, like Walpole's, "the persecuting spirit" was certainly in a fair way to ". . . raise the bantering one."

The techniques of the satirical attack were familiar to Morris, a frequent traveler to England, a reader of English literature, and a "fringe" member of one of the circles of London satirists. Well before the dispute with Cosby erupted in New York, Morris and his associates had already read *The Craftsman*, a contemporary English journal full of satirical attacks on Sir Robert Walpole, they had followed the editor's two trials for libel (at one of which "an honest jury" had refused to convict) and they were almost certainly aware of the voluminous pamphlet arguments, 1728–30, over the libellousness of particular articles in the journal and again in 1732–33 against Walpole's proposed excise on wine and tobacco. They had had a chance to see *The Beggar's Opera*, which was being performed in the colonies, and to read Pope's *Dunciad* which was already published there.

Morris's group had also written some satire of their own. Morris's early patron and mentor in New York politics had been Robert Hunter, governor of the province from 1709 to 1720 and friend of Swift, Addison, Steele, and Defoe. Hunter was a satirist himself; his play *Androboros* had satirized the imbecility of the New York legislators the governor had to deal with in the Assembly. Another protégé of Hunter's, William Livingston, had written "A Satyr on the Times" and Morris himself had composed "The Mock Monarch, or Kingdom of the Apes" satirizing another governor and his cronies (the same ones who ended up supporting Cosby) as a group of apes (see Shields 1990, 138–41; 155–59). To the New York writers, as to their English contemporaries, "the talent of satyr [should] be made use of to restrain men, by the fear of shame, from immoral actions which do or do not fall under the cognizance of the law."[7] "If an overgrown criminal . . . cannot immediately be come at by ordinary Justice," argued Zenger's writers, "let him yet receive the lash of satire."[8]

Besides *Androboros*, none of the New York satires had been published, however; like a good many American satires before 1730 (see, for example, William Byrd's *Dividing Line* or Ebenezer Cook's *Sotweed Factor*) they were not meant for publication though a number of them circulated in manuscript among readers in clubs and taverns. Occasional satires had been published in various colonies but the printers never brought to trial. Some escaped because they ridiculed particular groups—perhaps even dominant political groups—in colonial society but did not go after the government itself. (John Wise's *The Church's Quarrel Espoused* [Tyler 93–96] or *A Friendly Debate, or a Dialogue Between Rusticus and Academicus*,[9] both Boston publications, come to mind here.) Others were left untouched because they had been written by representatives of the gov-

ernment themselves (Robert Hunter's *Androboros*, for example, or James Logan's *A More Just Vindication* satirizing Governor Keith of Pennsylvania in 1726).[10] The one outstanding example of a satirist prosecuted for his writing was that of James Franklin, publisher of the *New England Courant*, but his charge was not clear. In one place it was listed as seditious libel; in another, simply as an "affront" to government (Tourtellot 395–402; Dunway 98–100; Thomas 1, 111). So the legal status of satire directed against the government had not yet been determined in the colonies by the time of the Morris–Cosby encounter.

Thus the very publication of Zenger's *New York Weekly Journal* was an adventurous step, "submitting [its charges] to the judgement of the whole world by the press.[11] It attacked the governor and his cronies with techniques picked up from English models, particularly the *Craftsman*. It began, in Cosby's words, "to sworm [sic] with the most virulent libels; scurrilous and abusive pamphlets published against the ministry . . . in England were revived and reprinted here, with such alternations as served to incense and enrage the people against the Governour . . ." (Cosby 1734, 6: 21). Following Swift's advice "never to print a man's name at length" the *Journal* identified Cosby as C—— C——y ("the *New York Gazette* endeavours to persuade the world that the author of *Felix Guess*, etc. meant a side stroke at C—— C——y; but why that, I pray?"}[12] It emphasized that the initial "C has always proved unhappy . . . [remember] Coot and Cornbury in New York . . . what has once been may be again."[13] {This hit home: even the governor's wife said "she was very sorry the letter C should prove so pernicious to this government."}[14]

One of the *Journal's* best known devices was identifying human actions with animal behaviors: "A Large Spaniel (Frances Harrison, one of Cosby's clique} of about Five Foot Ten Inches high, has lately strayed from his kennel . . ."[15] "A monkey of the larger sort (Philipse, another crony) has lately broken his chain, and run into the country."[16] The Governor himself was presented as an aging lion, aware of his diminishing strength.[17]

Identifying particular humans as animals was stock satirical technique; somewhat less widely used were the Journal's suggestive phrases, rhetorical questions, and even whole compositions lifted from contemporary English satirists. Compare, for example, the *Craftsman* of August, 1727, "I should be glad to have the following queries resolved . . ."[18] with the *Journal's* "I should be glad to be satisfied in the following points . . ."[19] or *Cato's* letters, referring to a description the authors gave of Cicero and Brutus, "I know no present characters or story that will fit theirs" (Cato, vol. 26). and the *Journal's* "I know . . . there is no reason to conclude the author meant any other persons than those he mentioned unless there is such a . . . sameness in character that it suits the present as well as the absent person.[20]

Morris, Alexander, and their group were clearly familiar also with the

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contemporary English debate about the relation of satire to libel. Virtually from the *Journal's* first appearance they appear to have been daring the government to call their satires libelous and bring them to trial on the charges. As early as 28 January 1733, under "Domestic Affairs" they argued in the *Journal* that "Laws against Libeling . . . may soon be shown to you and all men to be weak, and have neither Law nor Reason for their Foundation."[21] In issue after issue the *Journal* discussed what libel was and was not and argued that only a jury (representing the reading public) was capable of determining the libelousness of a given publication (Warner 33, 55).

Zenger's supporters argued that the paper simply was a vehicle for satire; Cosby called it "full of false and scandalous libels" (Smith 2: 19; Cosby 1734, 6: 5). When did a satire become a libel? The authors hooked right into the English debate. The only clear instance, according to the *Journal*, was when it contained (a) demonstrably false statements against (b) a little known private individual who had no public reputation to protect him. A libel was defined in the courts simply as a "malicious defamation", malicious defaming itself being "falsely to take away from a man his good name" (Katz 150). But to be a libel, a writing . . . must descend to particulars, and individuals."[22]

Like their English contemporaries the Governor's opponents argued that a successful satire could not be libelous almost by definition. For a satire to succeed, it had to be directed at a public figure whose shortcomings were well enough known that readers could recognize some truth in the charges.[23] No one would be interested in a satirical attack on a person he had never heard of. If a false statement was directed against a virtuous and respected public servant, no one would believe it so the satire would fail.[24] At the same time if a satirical attack on "the vices of the age" was so general that readers could not identify the particular target, the satire would be useless, and not very funny anyway.[25] The master satirist concealed any direct identification of his subject that would convict him of libel in a court of law but developed indirect thrusts that were accurate enough to identify his target to the reading public.

If the very success of a satire demonstrated that readers accepted its general truthfulness, then a jury representing the public readership of a community would never find it false. Again and again the *Journal* reiterated this: "Every man may judge for himself whether [the] facts are true or not."[26] This meant of course, that the libellousness of a satirical writing must be determined not by a judge but by a jury "twelve good men and true," men returned from "the vicinage."[27] Cosby initially responded to the *Journal*'s attacks by trying to build up the *New York Gazette* as a counterweight on the Government's side. The *Gazette* called attention to "several things in Zenger's *Journal* which he has published as Matters of Fact though they were notorious falsehoods"[28] and particularly attacked

the *Journal*'s assumption that readers were capable of judging the accuracy of what they read: "Why should the darling press be thus allowed / To midwife scandal to the brainless crowd."[29] When the *Gazette* failed to win away *Journal* readership Cosby, like his contemporaries in the English government, found himself in the uneasy position of having to decide whether to bring the publisher to trial. Despite Cosby's attempts to argue that "writers of seditious libels (like Morris) tell the world they speak the sentiments of the people" when they don't, the success of the *Journal* showed that its attacks on the governor were largely perceived as being based on truth and that he himself therefore was seen by the public to have faults of character in need of reform. Like Walpole and his colleagues he realized that if he prosecuted the publisher for libeling him, he came close to admitting that he recognized himself in the writings; if he did not prosecute, Morris and Alexander would bait him more and more outrageously.[30]

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In the end, Cosby prosecuted. The trial itself now shifted the political audience from the reader to the jury and the spectators, and showed how telling a device satire could be in the courtroom. The satirical victim—in this case, the governor—found himself on trial again, along with the printer Zenger.

At Zenger's trial the Attorney General himself served as prosecutor; the defense employed Andrew Hamilton, prominent Philadelphia lawyer and political leader. There is considerable evidence that the leading figures were aware of the trial's potential to publicize the attack on the governor beyond the *Journal's* readership. As the Governor's representative, Attorney General Bradley was clearly trying to minimize the trial's potential. We may gauge the prosecution's efforts to minimize the case's dramatic effect by looking first at the theatre—a very small room—in which the trial played. (Compare this with, for example, the Sacheverell trial of 1709/10 which the English government had wanted to publicize; that trial was held in an amphitheatre built in Westminster Hall and large enough to accommodate nearly 2,000 people; see Landau 46 and Hariman 1, 12.) We should note also that the government's insistence that the jury consider only whether Zenger was the actual publisher or not had the value from their standpoint of focusing the trial on a dull issue which would not catch the public's eye.

Bradley was trying to dispose of the case as quietly as possible. We must be careful in evaluating Bradley's own performance, because we have his speeches and responses only from Alexander's hostile account of the trial printed the following year. But Alexander had no particular incentive to minimize Bradley's oratory; rather the opposite, if he were trying to show that Hamilton had a worthy gladiatorial opponent. Two features in Alexander's account suggest that the Attorney General was trying to flatten his

own role as prosecutor in order to contain Hamilton's flair as defense attorney for turning trials into satiric theatre. First, Bradley seems deliberately to have avoided any effort at the dramatic appeal we know he could handle well. His notes that have survived from other trials indicate both that he had on other occasions planned his performance in some detail (Goebel and Naughton 621) and that he was a speaker of considerable ability rather than the adequate but uninspired figure who comes across in the account of Zenger's trial.

Second, Bradley seems almost deliberately to have avoided developing several rather powerful arguments he could have made had satire not been the principal issue of the trial. He could not develop at length the argument that satiric criticism undermined the popular respect and voluntary cooperation that were essential for a fledgling government almost totally devoid of police power. Chief Justice Holt had given Bradley an opening in his instructions to an English jury of 1707 which Bradley quoted and then dropped, "If people should not be called to account for possessing the people with an ill opinion of the government, no government can exist" (Swift, *Examiner* #39, qtd. in Bell 179). Had Bradley developed this he would have walked right into the satirist's defense: far from undercutting the ties of a young community, satire reinforces them by highlighting the shared values and pouring ridicule on public officials whose behavior defies them.

Bradley cited a standard government argument that aggrieved people should seek redress through legal action, not public appeals and in the courts, not the press. But the satirists had already made clear their response to this, and Hamilton took it up: most colonists did not have access to such legal redress, and one of the very purposes of satire was to censure "great abuses . . . which cannot be legally punished" (Swift again; Kernan 152). So Bradley could not do much with this either.

Nor could Bradley do more than mention the respect owed a governor as representative of the King. Hamilton was ready with the satirist's rejoinder here: one of the values New Yorkers shared was love of the King. If the misbehavior of a King's representative—in case case the governor—undermined that love, the miscreant should be turned out of the community. The satirist encouraged this in the gentlest way, not by violence but by laughter. In sort, while Bradley was personally capable of replying to Hamilton with an emotive speech of his own, there were few appeals he could safely make in this particular trial.

On the defense side the star character, the satiric voice, was not the defendant, Zenger, but the defense attorney, Hamilton. (Zenger never testified in his own defense, a silence which was unusual at the time, though it became increasingly common later in the century.) Once on the floor Hamilton admitted Zenger's responsibility for the *Journal's* actual print-

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ing, hoping to rob the Attorney General of a cut-and-dried case. He then made clear his intention to approach the trial as a forum for public debate and an occasion to further isolate the governor from the community: ". . . from the Extraordinary Appearance of people of all Conditions which I observe in court upon this occasion," he argued, "I have reason to think, that those in the Administration have by this Prosecution something more in view, and that the people believe they have a good deal more at stake, than I apprehended . . ." (*Case and Tryal* 19).[31]

Then having tried unsuccessfully to lure the Attorney General into a debate on the truth behind the *Journal* attacks, Hamilton deftly argued that the truthfulness of a writing—an indeed, whether its authors *meant* to tell the truth—was matter of interpretation. It's "meaning" could be best assessed by the readers for whom it was written, and in this case the twelve jurors could stand for the reading public, the "rhetorical community" the author had in mind (Kern 21; Burns 14; Booth 49–50). They were representatives of their neighbors, he said again and again, "persons summoned out of the neighborhood" to "put their neighbors upon their guard against the craft . . . of men in authority" to "defend the liberty or property of . . . neighbors", to lay "a noble foundation for securing . . . liberty . . . to ourselves, our posterity, and our neighbors" (*Case and Tryal* 20, 21, 25, 28, 29, 39).

Why did he use the term "neighbors" so often? Because neighbors may have witnessed particular events the satirist was talking about, but more importantly, because they could tell whether the behaviors of the public figures the satirist ridiculed actually did violate the norms of the community. Protection of liberty and property, safety of fellow subjects, the right to protest, the love of the king, honesty, respect for justice: all these are communal values Hamilton expressly mentioned (*Case and Tryal* 20, 23, 25, 28, 34). "Community" is a little vague here: in Hamilton's language it could stand for New York, the empire, all right-thinking people. It stands for a world view, which Hamilton managed to identify with the neighborhood as the satirist does with his readers. It is entirely rational to assume that a community must share some values in order to hang together, but once accepted the values become matters defended emotionally as "natural," taken for granted (Booth 33). Hamilton argued this point repeatedly: when the governor violated norms of "common sense" it was surprising," "monstrous," astonishing," "strange," "a sad case," and any honest man had the right to complain about it (*Case and Tryal* 19, 20, 22, 28, 29).

The establishment of the author's rhetorical community was absolutely key to Hamilton's point that the jury, not the judge, should decide whether a writing was better described as satire or libel. The Attorney General had left Hamilton an opening to argue that "breach of the peace" should be

determined only by the readers of satire, not by its alledged victims, when he himself used two different meanings of the term. On the one hand, libel threatened to disturb the peace "by provoking the Parties injured, their Friends and Families, to Acts of Revenge", but on the other hand the *Journal* articles also were libelous because they "tend [ed.] . . . to disquiet the Minds of the People of this Province" (*Case and Tryal* 14, 18, 26). Who was provoked, the victim or the reader? This ambiguity let Hamilton point out that it was the arbitrary acts of the governor that set people upon examining and enquiring into power"; the writings simply made the people (hence the jurors) sensible of the "sufferings of their fellow subjects" (*Case and Tryal* 28). The people of England had been similarly aroused by writings against Charles I's arbitrary government; it was the people, not the King's advisers, who were inspired to break the peace in a noble cause.

The reasoning here was pretty circular, but it worked. Only members of a community—the rhetorical public—could decide whether a satirical writing could inspire their fellow members to acts of revenge which disturbed the peace. But this community had already been defined by the satirist himself to leave the accused public figures out.

By this point Hamilton had already made three things clear: he looked on the trial as a public debate, he had distinguished sedition from satire by the truthfulness of the latter, and he left the interpretation of truth not to the victim but to the readers—the jury—whom he hoped to identify with the larger neighborhood, the "People of All Conditions" who showed up in the courtroom. He now clarified further the difficulty of calling satire, "seditious libel." "If a libel is understood in the large and unlimited sense urged by Mr. Attorney, there is scarce a writing I know that may not be called a libel or scarce any person safe from being called to account as a libeller . . . when must [a man] laugh, so as to be secure from being taken up as a libeller?" (*Case and Tryal* 20, 37, 40).

What was more memorable and more imitable than his central argument, however, was his peroration. He began this with a masterful portrayal of himself as (again) a "neighbor", a fellow colonist with whom jurors could either sympathize or identify and whose arguments and political values they could therefore accept. Turning what might have been a handicap (the fact that he was an outsider, from Philadelphia) into an asset, Hamilton explained that he had come as a matter of duty, because "his neighbor's house [was] on fire": "a bad Precedent in one Government is soon set up for an authority in another." He moved on to adopt the satirist's mask, the persona of the venerable advocate for the people, used (sometimes almost verbatim) in later state trials: "I am truly unequal to such an undertaking on many accounts. And you see I labor under the weight of many years (in his fifties, at the prime of his career, able to make

a sudden trip up from a town forty miles away) and I am borne down with great infirmities of body; yet old and weak as I am, I should think it my duty, if required, to go to the utmost part of the land."[32]

His style, moreover, relied on satiric humor as well as sympathy . . . "there may be a good Reason why Men should take the same care, to make an honest and upright Conduct a Fence and Security against the Injury of unruly Tongues." (Hamilton was explaining why the Governor's lack of such upright conduct merited Zenger's "unruly" attack.) "Were some Persons to go thro' the Streets of New York now-a-days, and read a Part of the Bible, if it was not known to be such, Mr. Attorney, with the help of his Innuendos, would easily turn it into a libel." (Hamilton was attacking the Attorney General's loose definition of libel in the charge against Zenger.) Hamilton then went through selected verses of Isaiah, mocking so successfully the way the Attorney General would turn them into libel by using innuendo that Bradley had to concede that Hamilton "had made himself and the People very merry" (*Case and Tryal* 20, 37, 40). In the end, the jury took very little time in acquitting the printer.

So, how do we view the trial? There can be little doubt that the verdict did deter future colonial office holders from charging unfriendly satirists with libel. Men in political authority were loath to face the public humiliation that a verdict of acquittal would bring. No longer could they rely on the determination of judges beholden to themselves. After Zenger's trial they were likely to face a jury which accepted full responsibility for deciding the guilt or innocence of a printer, on the assumption that if libels threatened the peace they did so by inspiring new readers (jurors) to protest, not their targets (office holders, including judges) to seek revenge. Reports of the trial and outcome were immediately sent "Abroad through the World" ("Remarks on Zenger's Trial"). "Remarks on the trial" were collected first in Barbados, London, and Philadelphia, then "plentifully dispersed through out the colonies," prompting at least a three way debate in the presses of New York, Philadelphia, and Barbados.[33] Accounts of Zenger's case reappeared in New York again in the late 1730s, in both New York and London in the 1760s, and in the English press in 1784.

No governor successfully undertook such a public trial again, and most of them did not even try. The proprietary governor of Pennsylvania suffered in silence when Ben Franklin lampooned him for not putting down the Paxton Boys in 1764 (Franklin 55–76). Governor Fauquier of Virginia instructed a grand jury to "punish the Licentiousness of the Press" by indicting Robert Boling for a libel against the colony's General Court in the summer of 1766; the jury refused, and less than six months later when Boling published *A Satire on the Times* against Fauquier and his advisers, there was nothing the governor could do about it (Lemay). Jonathan

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Belcher, Governor of Massachusetts and a Mason, had to put up with Joseph Greene's satirical attack on his own participation in Masonic rituals (Shields 1987, 109–26, esp. 112–15). Governor Dinwiddie of Virginia suffered the viciously satiric Dinwiddiance which circulated in manuscript during his administration[34] and Governor Hutchinson was utterly unable to bring his critics to trial in Massachusetts (Levy 65).

But note: "office holders" included legislators as well as governors, and though assemblies were growing increasingly aggressive in going after printers who challenged their legislative authority, even assemblymen became skittish about accusing a satirist of libel after the Zenger trial. The only publisher of satire so charged was Daniel Fowle of Boston for printing *Monster of Monsters*, an attack on the proposed Massachusetts excise in 1754. *Monster* may well have been charged because the author was the only satirist after 1734 to say (in a postscript to the pamphlet) that his story was pure fiction and did not purport to be based on truth (Thumb); in any event the legislature did not pursue Fowle's punishment ("public sympathy being with Fowle," it was argued, "the House dropped its charges"; Levy 34) and later gave back the examination cost it had initially charged him. Significantly, other publishers who offended legislators were charged with contempt, not libel, and even in the tense decades before the Revolution the political satirists on both sides remained unscathed (Granger, esp. 1–8; Nelson 10–12).

As important as the arguments that Zenger's trial introduced was the style of political satire that both the *Journal* writers and attorneys took up initially from contemporary English writers opposed to the government of Sir Robert Walpole. Colonial writers had certainly been aware of the marvelous adaptability of Augustan satire before the trial, but the Zenger case highlighted its usefulness for colonial America. After Zenger, the rhetoric and imagery the English satirists had directed against government corruption in general and Walpole's Excise Proposal in particular were to appear again and again as models for American writers throughout the century." *Monster of Monsters*, the Massachusetts anti-excise pamphlet we have just noted, drew from four anti-excise pamphlets in 1732 (Boyer 340–44); Pope, a consistent critic of Walpole, was at least in part behind the laughter at Governors Belcher, Dinwiddie, and even Fauquier (see, for example, Davis 21–22); Later on Charles Churchill's venomous stings of George III and Lord Bute featured in the Paxton Boys' (Olson)[35] attacks on Quaker legislators, Goldsmith's writings were an early model for Federalist attacks on Jefferson (Dowling, chap. 2). From the *Journal* at least through Joseph Dennie's *The Port Folio*, when American political writers laughed at their government they were thinking of the way the English laughed at theirs.

Through ridicule and laughter the trial showed satire could create its own public (Ziff 46), communities of listeners or readers brought together by the literary indictment of any figure the successful satirist targeted. Since satire tried people by laughter, Zenger's case was in effect a trial of a trial in which the defense attorney used satire to defend satirists. A "style" of courtroom performance intersected with a style of journalism; a vision of the newspaper world where adversaries debated before a public audience intersected with a vision of the courtroom functioning the same way. The Zenger trial could, indeed, be a landmark without its verdict determining the legal outcome of any further trials.

Neither the use of the press or the use of the courts as adversarial forums was entirely new in the 1730s, nor was the use of a bitingly effective satirical style by both journalists and jurists. But the Zenger trial did mark one of the earliest occasions on which all three coalesced, mutually enhancing each other. The combination was potent. It made the colonial world a little safer for satirists and political opposition, a little less safe for unpopular imperial officials. It added dynamic potential to the political trial and helped constitute the "public" as part of political debate, and the intersection it marked remained for the rest of the century.

NOTES

1. See Robert Hunter's *Androboros* (New York, 1714) in Walter Meserve and William Reardon, *Satiric Comedies* 1–40.) and the four satirical pamphlets published by James Logan and Gov. William Keith in their 1724–5 controversy in Pennsylvania (Alison Olson, "Pennsylvania Satire Before the Stamp Act." *Pennsylvania History*, Forthcoming.

2. The charges were against *Monster of Monsters*, published in 1754 in Massachusetts.

3. For a discussion of juries as representative of colonial society see J. R. Pole, "Reflections on American Law and the American Revolution" and the responses to it by Peter Charles Hoffer, Bruce Mann, and James Henretta and James Rice in *The William and Mary Quarterly* (1993). William Smith wrote that Zenger's lawyers defended the truth behind the Journal's allegations by the press, at clubs and other meetings for private conversation, "and considering the inflamed state of a small country, consisting at that time of less than a thousand freeholders qualified for jurors, it was easy to let every man perfectly into the full merits of the defence" (Kammen 2: 19).

4. For the fullest accounts see Paul Finkelman, "Politics, The Press, and the Law: The Trial of John Peter Zenger" in Belknap 25–44; Katz, *Brief Narrative*; and Buranelli, esp. 50ff.

5. Swift's advice is from "The Importance of the Guardian Considered" in *The Prose Works of Jonathan Swift, D.B.* V 297. For a general discussion of satirists and the law see Lawrence Hanson, *Government and the Press*, 1695–1763, 7–35.

6. "The success of a play depends in part on the dramatist'persuading the audience to take a particular standpoint, to adopt certain standards by which a chorus and characters can be judged as good or bad . . . The spectator judges" (Burns 231).

7. *New York Weekly Journal*, 19 November 1733.
8. *New York Weekly Journal*, 12 November 1733.
9. Boston, 1722. Evans 2386.
10. Evans 2759.
11. *New York Weekly Journal*, 4 February 1733.
12. *New York Weekly Journal*, 21 January 1733.
13. *New York Weekly Journal*, 4 December 1733.
14. John DeWitt to [Morris], 2 January 1733/4. Rutherford Papers III, NYHS.
15. *New York Weekly Journal*, 26 November 1733.
16. *New York Weekly Journal*, 10 December 1733.
17. *New York Weekly Journal*, 14 January 1733.
18. Aug. 28, 1727, *The Craftsman*, #60 (Lord Bolingbroke 23).
19. *New York Weekly Journal*, 17 December 1783.
20. *New York Weekly Journal*, 11 February 1733.
21. *New York Weekly Journal*, 28 January 1733.
22. The argument that a satire can be truthful and still be a libel "only holds true as to private and personal failings; and it is quite otherwise when the crimes of men come to affect the publick." *New York Weekly Journal*, 25 February 1733.
23. ". . . the entertainment rises in proportion to the familiarity of the known haters" (Ramsay 81). But see also: "For general Satire will all Vices fit and ev'ry fool or knave will think he's hit" (*The Satirist: In Imitation of the Fourth Satire of The First Book of Horace* 11).
24. ". . . if Comedy and Satire Poems are:

> . . . as some say that they to Libels tend
> I'll only see if justly they offend" (*The Satirist* 11)

". . . if the actions clamoured at be thought just, then those who transacted them will never be afraid of submitting them to the judgment of the whole world by the Press." *New York Weekly Journal*, 4 February 1733.
25. "The essence of the satiric procedure is attack, and the attack launched impartially against everyone is no attack at all" (Rosenheim 29).
26. *New York Weekly Journal*, 12 November 1733.
27. *New York Weekly Journal*, 18 February 1733, 28 July 1735. (Copied from *The Craftsman of Jan. 1, 1731–2*.)
28. *New York Gazette*, 3–10 June 1734.
29. *New York Gazette*, 14 April 1735.
30. "The best way to prevent libels, is not to deserve them . . . the more notice is taken of them, the more they are published. Guilty men alone fear them . . ." (Cato 3: 298).

"The Facts exposed are not to be believed, because said or published; but it draws People's Attention . . . that everyone may judge for himself whether those facts are true or not" (*New York Weekly Journal*, 12 November 1733).
31. For Hamilton's appeal through language, see Ellen Mosen James, "Decoding the Zenger Trial: Andrew Hamilton's Fraudful Dexterity". Compare this with the *Journal's* account "the most numerous auditory of people . . . that ever were seen in that place at once . . ." (18 August 1735).
32. Compare this with Thomas Erskine's peroration in the trial of Thomas Hardy. I" am sinking under fatigue and weakness. I am at this moment scarcely able to stand up whilst I am speaking to you, deprived as I have been, for nights together, of everything that deserves the name of rest, repose, or comfort (Wharam 170).
33. *Barbados Gazette*, 10 August 1737, in *Caribbeana*.

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34. R. A. Brock, ed., *Collections of the Virginia Historical Society I, #481*. The author was possibly Hugh Mercer.

35. See Dunbar, ed. *Paxton Papers*, *passim*, for the most notable Paxton satires.

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