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Civil Imprisonment: Slavery

Revenue Laws and Crown Debtors

[25] The personal liberty of British subjects has further suffered from rigours and abuses of the law. The supervision necessary for the collection of taxes,—and especially of the excise,—has been frequently observed upon, as a restraint upon the natural freedom of the subject. The visits of revenue officers, throughout the processes of manufacture,—the summary procedure by which penalties are enforced,—and the encouragement given to informers, have been among the most popular arguments against duties of excise.(1) The repeal of many of these duties, under an improved fiscal policy, has contributed as well to the liberties of the people, as to their material welfare.

But restraints and vexations were not the worst incident of the revenue laws. An onerous and complicated system of taxation involved numerous breaches of the law. Many were punished with fines, which, if not paid, were followed by imprisonment. It was right that the law should be vindicated: but while other offences escaped with limited terms of imprisonment, the luckless debtors of the crown, if too poor to pay their fees and costs, might suffer imprisonment for life. Even when the legislature at length took pity upon other debtors, this class of prisoners were excepted from its merciful care.(2) But they have since shared in the milder policy of our laws; and [26] have received ample indulgence from the Treasury and the Court of Exchequer.(3)

Contempt of Parliament

While Parliament continued to wield its power of commitment capriciously and vindictively —not in vindication of its own just authority, but for the punishment of libels, and other offences cognisable by the law,—it was scarcely less dangerous than those arbitrary acts of prerogative which the law had already condemned, as repugnant to liberty Its abuses, however, survived but for a few years after the accession of George III.(4)

Contempt of Court

But another power, of like character, continued to impose—and still occasionally permits—the most cruel restraints upon personal liberty. A court of equity can only enforce obedience to its authority, by imprisonment. If obedience be refused, commitment for contempt must follow. The authority of the court would otherwise be defied, and its jurisdiction rendered nugatory. But out of this necessary judicial process, grew up gross abuses and oppression. Ordinary offences are purged by certain terms of imprisonment; men suffer punishment and are free again. And, on this principle, persons committed for disrespect or other contempt to the court itself, were released after a reasonable time, upon their apology and submission. But no such mercy was shown to those who failed to obey the decrees of the court, in any suit. Their [27] imprisonment was indefinite, if not perpetual. Their contempt was only to be purged by obedience,—perhaps wholly beyond their power. For such prisoners there was no relief but death. Some persisted in their contempt from obstinacy, sullenness, and litigious hate: but many suffered for no offence but ignorance and poverty. Humble suitors, dragged into court by richer litigants, were sometimes too poor to obtain professional advice, or even to procure copies of the bills filed against them. Lord Eldon himself, to his honour be it said, had charitably assisted such men to put in answers in his own court. Others, again, unable to

pay money and costs decreed against them, suffered imprisonment for life. This latter class, however, at length became entitled to relief as insolvent debtors.(5) But the complaints of other wretched men, to whom the law brought no relief, were often heard. In 1817, Mr. Bennet, in presenting a petition from one of these prisoners, thus stated his own experience: 'Last year,' he said, 'Thomas Williams had been in confinement for thirty-one years by an order of the Court of Chancery. He had visited him in his wretched house of bondage, where he had found him sinking under all the miseries that can afflict humanity, and on the following day he died. At this time,' he added, 'there were in the same prison with the petitioner, a woman who had been in confinement twenty-eight years, and two other persons [28] who had been there seventeen years.'(6) In the next year, Mr. Bennet presented another petition from prisoners confined for contempt of court, complaining that nothing had been done to relieve them, though they had followed all the instructions of their lawyers. The petitioners had witnessed the death of six persons, in the same condition as themselves, one of whom had been confined four, another eighteen, and another thirty-four years.

In 1820, Lord Althorp presented another petition, and among the petitioners was a woman, eighty-one years old, who had been imprisoned for thirty-one years. In the eight years preceding 1820, twenty prisoners had died while under confinement for contempt, some of whom had been in prison for upwards of thirty years. Even so late as 1866, Lord St. Leonards presented a petition complaining of continued hardships upon prisoners for contempt; and a statement of the Lord Chancellor revealed the difficulty and painfulness of such cases. 'A man who had been confined in the early days of Lord Eldon's Chancellorship for refusing to disclose certain facts, remained in prison, obstinately declining to make any statement upon the subject, until his death a few months ago.'(7)

[29] Doubtless the peculiar jurisdiction of courts of equity has caused this extraordinary rigour in the punishment of contempts: but justice and a respect for personal liberty alike require that punishment should be meted out according to the gravity of the offence. The Court of Queen's Bench upholds its dignity by commitments for a fixed period; and may not the Court of Chancery be content with the like punishment for disobedience, however gross and culpable?

Arrest on Mesne Process

Every restraint on public liberty hitherto noticed has been permitted either to the executive government, in the interests of the state, or to courts of justice, in the exercise of a necessary jurisdiction. Individual rights have been held subordinate to the public good; and on that ground, even questionable practices admitted of justification. But the law further permitted, and society long tolerated, the most grievous and wanton restraints, imposed by one subject upon another, for which no such justification is to be found. The law of debtor and creditor, until a comparatively recent period, was a scandal to a civilised country. For the smallest claim, any man was liable to be arrested, on mesne process, before legal proof of the debt. He might be torn from his family, like a malefactor, at any time of day or night,—and detained until bail was given; and in default of bail, imprisoned until the debt was paid. Many of these arrests were wanton and vexatious; and writs were issued with a [30] facility and looseness which placed the liberty of every man,—suddenly and without notice,—at the mercy of anyone who claimed payment of a debt. A debtor, however honest and solvent, was liable to arrest. The demand might even be false and fraudulent: but the pretended creditor, on making oath of the debt, was armed with this terrible process of the law.(8) The wretched defendant might lie in prison for several months before his cause was heard; when, even if the action was discontinued, or the debt disproved, he could not obtain his discharge without further proceedings, often too costly for a poor debtor, already deprived of his livelihood by imprisonment. No longer even a debtor,—he could not shake off his bonds.

Slowly and with reluctance, did Parliament address itself to the correction of this monstrous abuse. In the reign of George I. arrests on mesne process, issuing out of the superior courts,

were limited to sums exceeding £10: but it was not until 1779, that the same limit was imposed on the process of inferior jurisdictions. This sum was afterwards raised to £15, and in 1827 to £20. In that year 1,100 persons were confined, in the prisons of the metropolis alone, on mesne process.(9) The total abolition of arrests on mesne process was frequently advocated, but it was not until 1838 that it was at length accomplished. Provision was [31] made for securing absconding debtors: but the old process for the recovery of debt, in ordinary cases, which had wrought so many acts of oppression, was abolished. While this vindictive remedy was denied, the creditor's lands were, for the first time, allowed to be taken in satisfaction of a debt; and extended facilities were afterwards afforded for the recovery of small claims, by the establishment of county courts.

Imprisonment for Debt

The law of arrest was reckless of liberty—the law of execution for debt was one of savage barbarity. A creditor is entitled to every protection and remedy, which the law can reasonably give. All the debtor's property should be his: and frauds by which he has been wronged should be punished as criminal. But the remedies of English law against the property of a debtor were strangely inadequate,—its main security being the body of the debtor. This became the property of the creditor, until the debt was paid. The ancients allowed a creditor to seize his debtor, and hold him in slavery. It was a cruel practice, condemned by the most enlightened lawgivers:(10) but it was more rational and humane than the law of England. By servitude a man might work out his debt: by imprisonment, restitution was made impossible. A man was torn from his trade and industry, and [32] buried in a dungeon: the debtor perished, hut the creditor was unpaid. The penalty of an unpaid debt, however small, was imprisonment for life. A trader within the operation of the bankrupt laws might obtain his discharge, on giving up all his property but for an insolvent debtor there was no possibility of relief, but charity or the rare indulgence of his creditor. His body being the property of his creditor, the law could not interfere. He might become insane, or dangerously sick: but the court was unable to give him liberty. We read with horror of a woman dying in the Devon County Gaol, after an imprisonment of forty-five years, for a debt of £19.

While the law thus trifled with the liberty of debtors, it took no thought of their wretched fate, after the prison-door had closed upon them. The traditions of the debtors' prison are but too familiar to us all. The horrors of the Fleet and the Marshalsea were laid bare in 1729. The poor debtors were found crowded together on the 'common side,'—covered with filth and vermin, and suffered to die, without pity, of hunger and gaol fever. Nor did they suffer from neglect alone. They had committed no crime: yet were they at the mercy of brutal gaolers, who loaded them with irons, and racked them with tortures. No attempt was made to distinguish the fraudulent from the unfortunate debtor. The rich rogue,—able, but unwilling to pay his debts,—might riot in luxury and [33] debauchery, while his poor, unlucky fellow-prisoner was left to starve and rot on the 'common side.'(11)

The worst iniquities of prison life were abated by the active benevolence of John Howard; and poor debtors found some protection, in common with felons, from the brutality of gaolers. But otherwise their sufferings were without mitigation. The law had made no provision for supplying indigent prisoners with necessary food, bed-clothes, or other covering;(12) and it was proved, in 1792, that many died of actual want, being without the commonest necessaries of life.(13)

The first systematic relief was given to insolvent debtors, by the benevolence of the Thatched House Society, in 1772. In twenty years, this noble body released from prison 12,590 honest and unfortunate debtors; and so trifling were the debts for which these prisoners had suffered confinement, that their freedom was obtained at an expense of forty-five shillings a head. Many were discharged merely on payment of the gaol fees, for which alone they were detained in prison: others on payment of costs, the original debts having long since been

discharged.(14)

[34] The monstrous evils and abuses of imprisonment for debt, and the sufferings of prisoners, were fully exposed, in an able report to the House of Commons drawn by Mr. Grey in 1792. But for several years, these evils received little correction. In 1815 the prisons were still over-crowded, and their wretched inmates left without allowance of food, fuel, bedding, or medical attendance. Complaints were still heard of their perishing of cold and hunger.(15)

Special acts had been passed, from time to time, since the reign of Anne,(16) for the relief of insolvents: but they were of temporary and partial operation. Overcrowded prisons had been sometimes thinned: but the rigours and abuses of the laws affecting debtors were unchanged; and thousands of insolvents still languished in prison. In 1760, a remedial measure of more general operation was passed, but was soon afterwards repealed. Provision was also made for the release of poor debtors in certain cases: but it was not until 1813 that insolvents were placed under the jurisdiction of a court, and entitled to seek their discharge on rendering a true account of all their debts and property.(17) A distinction was at length recognised between poverty and crime. This [35] great remedial law restored liberty to crowds of wretched debtors. In the next thirteen years upwards of 50,000 were set free. Thirty years later, its beneficent principles were further extended, when debtors were not only released from confinement, but able to claim protection to their liberty, on giving up all their goods.(18) And at length, in 1861, the law attained its fullest development, in the liberal measure of Sir R. Bethell: when fraudulent debt was dealt with as a crime, and imprisonment of common debtors was repudiated.(19) Nor did the enlightened charity of the legislature rest here. Debtors already in confinement were not left to seek their liberation: but were set free by the officers of the Court of Bankruptcy. Some had grown familiar with their prison walls, and having lost all fellowship with the outer world, clung to their miserable cells, as to a home. (20) They were led forth gently, and restored to a life that had become strange to them; and their untenanted dungeons were condemned to destruction.

Slavery in England

The free soil of England has, for ages, been relieved from the reproach of slavery. The ancient condition of villenage expired about the commencement of the seventeenth century; and no other form of slavery was recognised [36] by our laws. In the colonies, however, it was legalised by statute;(21) and it was long before the rights of a colonial slave, in the mother country, were ascertained. Lord Holt, indeed, had pronounced an opinion that, 'as soon as a negro comes into England, he becomes free;' and Mr. Justice Powell had affirmed that 'the law takes no notice of a negro.' But these just opinions were not confirmed by express adjudication until the celebrated case of James Sommersett in 1771. This negro having been brought to England by his owner, Mr. Stewart, left that gentleman's service, and refused to return to it. Mr. Stewart had him seized and placed in irons, on board a ship then lying in the Thames, and about to sail for Jamaica,—where he intended to sell his mutinous slave. But while the negro was still lying on board, he was brought before the Court of King's Bench by habeas corpus. The question was now fully discussed, more particularly in a most learned and able argument by Mr.Hargrave; and at length, in June 1772, Lord Mansfield pronounced the opinion of the Court, that slavery in England was illegal, and that the negro must be set free. (22)

It was a righteous judgment: but scarcely worthy of the extravagant commendation bestowed upon it, at that time and since. This boasted law, as declared by Lord Mansfield, was already [37] recognised in France, Holland, and some other European countries; and as yet England had shown no symptoms of compassion for the negro beyond her own shores.

Slavery in Scotland

In Scotland, negro slaves continued to be sold as chattels, until late in the last century.(23) It was not until 1766, that the lawfulness of negro slavery was questioned. In that year, however, a negro who had been brought to Scotland claimed his liberty of his master, Robert Sheddan, who had put him on board ship to return to Virginia. But before his claim could be decided, the poor negro died. But for this sad incident, a Scotch court would first have had the credit of setting the negro free on British soil. Four years after the case of Sommersett, the law of Scotland was settled. Mr. Wedderburn had brought with him to Scotland, as his personal servant, a negro named Knight, who continued several years in his service, and married in that country. But, at length, he claimed his freedom. The sheriff being appealed to, held 'that the state of slavery is not recognised by the laws of this kingdom.' The case being brought before the Court of Session, it was adjudged that the master had no right to the negro's service, nor to send him out of the country without his consent.

[38] The negro in Scotland was now assured of freedom: but, startling as it may sound, the slavery of native Scotchmen continued to he recognised, in that country, to the very end of last century. The colliers and salters were unquestionably slaves. They were bound to continue their service during their lives, were fixed to their places of employment, and sold with the works to which they belonged. So completely did the law of Scotland regard them as a distinct class, not entitled to the same liberties as their fellow-subjects, that they were excepted from the Scotch Habeas Corpus Act of 1701. Nor had their slavery the excuse of being a remnant of the ancient feudal state of villenage, which had expired before coal-mines were yet worked in Scotland. But being paid high wages, and having peculiar skill, their employers had originally contrived to bind them to serve for a term of years, or for life; and such service at length became a recognised custom. In 1775 their condition attracted the notice of the legislature, and an act was passed for their relief.(24) Its preamble stated that 'many colliers and salters are in a state of slavery and bondage;' and that their emancipation 'would remove the reproach of allowing such a state of servitude to exist in a free country.' But so deeply rooted was this hateful custom, that Parliament did not venture to condemn it as illegal. It was provided that colliers [39] and salters commencing work after the 1st of July 1775, should not become slaves; and that those already in a state of slavery might obtain their freedom in seven years, if under twenty-one years of age; in ten years, if under thirty-five. To avail themselves of this enfranchisement, however, they were obliged to obtain a decree of the Sheriff's Court; and these poor ignorant slaves, generally in debt to their masters, were rarely in a condition to press their claims to freedom. Hence the act was practically inoperative. But at length, in 1799, their freedom was absolutely established by law.(25)

The last vestige of slavery was now effaced from the soil of Britain: but not until the land had been resounding for years with outcries against the African slave trade. Seven years later that odious traffic was condemned; and at length colonial slavery itself,—so long encouraged and protected by the legislature,—gave way before the enlightened philanthropy of another generation.

Footnotes.

1. Adam Smith, speaking of the frequent visits and odious examination of the tax-gatherers, says; 'Dealers have no respite from the continual visits and examination of the excise officers.'—Book v. ch. 2.—Blackstone says; 'The rigour, and arbitrary proceedings of excise laws, seem hardly compatible with the temper of a free nation.'—Comm., i. 308 (Kerr's ed.).
2. 53 Geo. III. c. 102, s. 51.
3. 7 Geo. IV. c. 57 s. 74; 1 and 2 Vict. c. 110, s. 103, 104.
4. Supra, Chap. VII.; and see Townsend's Mem. of the House of Commons, passim.
5. 49 Geo. III. c. 6; 53 Geo. III. c. 102, s. 47; Hans. Deb., 2nd Ser., xiv. 1178.

6. 6th May, 1817; Hans. Deb., 1st Ser., xxxvi. 158. Mr. Bennet had made a statement on the same subject in 1816; Ibid., xxxiv. 1099.
7. Hans. Deb., 3rd Ser., cxlii. 1570. In another recent case, a lad was committed for refusing to discontinue his addresses to a ward of the court, and died in prison.
8. An executor might even obtain an arrest on swearing to his belief of a debt. Report, 1792, Com. Journ., xlvii. 640.
9. Hans. Deb., 2nd Ser., xvii. 386. The number in England amounted to 3,662.
10. Solon renounced it, finding examples amongst the Egyptians.—Plutarch's Life of Solon; Diod. Sic., lib. i. part 2, ch. 3; Montesquieu, livr. xii. Ch. 21. It was abolished in Rome, A.D. 428, when the true principle was thus defined—'Bona debitoris, non corpus obnoxium esset.'—Livy, lib. 8; Montesquieu, livr. xx. ch. 14.
11. Rep. 1792, Com. Journ., xlvii. 652; Vicar of Wakefield. ch. xxv.-xxviii.
12. Report, 1792. Com. Journ., xlvii. 641. The only exception was under the act 32 Geo. II. c. 28, of very partial operation, under which the detaining creditor is forced to allow the debtor 4d. a day; and such was the cold cruelty of creditors, that many a debtor confined for sums under 20s., was detained at their expense, which soon exceeded the amount of the debt.—Ibid., 644, 650. This allowance was raised to 3s. 6d. a week by 37 Geo. III. c. 85.
13. Ibid., 651.
14. Report, 1792, Com. Journ., xlvii. 648.
15. 7th March, 1816, Hans. Deb., 1st Ser., xxx. 39; Commons' Report on King's Bench, Fleet. and Marshalsea Prisons, 1816. The King's Bench, calculated to hold 220 prisoners, had 600; the Fleet, estimated to hold 200, had 769.
16. 1 Anne, st. i. c. 25.
17. Insolvent Debtors Act 1813, 53 Geo. III. c. 102. Hans. Deb., 1st Ser., xxvi. 301, etc.
18. Protection Acts, 5 and 6 Vict. c. 96; 7 and 8 Vict. c. 96.
19. Bankruptcy Act, 24 and 25 Vict. c. 134, s. 221.
20. In January, 1862, John Miller was removed from the Queen's Bench Prison, having been there since 1814.—Times, Jan 23rd. 1862.
21. 10 Will. III. c. 26; 5 Geo. II. c. 7; 32 Geo. II. c. 31.
22. Case of James Sommersett, St. Tr., xx. 1; Lofft's Rep., 1.
23. Chambers' Domestic Annals of Scotland, iii. 453. On the 2nd May, 1722, an advertisement appeared in the Edinburgh Evening Courant, announcing that a stolen negro had been found, who would be sold to pay expenses, unless claimed within two weeks. Ibid.
24. 15 Geo. III. c. 28.
25. 39 Geo. III. c. 56.

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