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The 'Spirit of Independence' in Benjamin Constant's Thoughts on a Free Press

Bryan Garsten

What, indeed, is the outcome of all attacks made on freedom of the pen? They embitter against the government all those writers possessed of that spirit of independence inseparable from talent, who are forced to have recourse to indirect and perfidious allusions. They necessitate the circulation of clandestine and therefore all the more dangerous texts. They feed the public greed for anecdotes, personal remarks, and seditious principles. They give calumny the appearance, always an interesting one, of courage. In sum, they attach far too much importance to the works about to be proscribed.¹

A key moment in the debates about censorship and freedom of press in France occurred in 1814–1815, when the restoration of the monarchy raised fundamental constitutional questions. The first Treaty of Paris, which ended the fighting of the Napoleonic Wars in the spring of 1814, restored the Bourbon monarch Louis XVIII to the throne but required him to provide the French people with a constitution or 'charter'. Granted to the people in early June of that year, the royal Charter included as its eighth clause a statement that indicated the wariness with which freedom of the press was endorsed, even by people who favoured it: 'Frenchmen have the right to publish and to have printed their opinions, while conforming with the laws, which are necessary to restrain abuses of that liberty.'

In spite of the cautionary language about 'abuses', the immediate effect of the statement was to initiate a period of new openness, in contrast with the strict restrictions that Napoleon had instituted. A host of new political journals sprung up right away, and debate about the Charter was energetic during that summer. By the fall, however, the monarchy began to fear 'abuses' and by October it had issued a set of more restrictive censorship laws, so that any

pamphlet less than twenty pages long now required prior approval by censors before it could be printed. The next spring, Napoleon marched back onto the scene and regained power during the famous 'Hundred Days' until his more decisive military defeat at Waterloo in June 1815, which was followed by a second Treaty of Paris. In the aftermath of that episode, the (again) restored monarchy of Louis XVIII issued an even more restrictive set of censorship laws designed to restrain public opinion from the kind of mistakes that were thought to have prepared the ground for the recent turn against the king.

During this year of intense debate about press freedoms, and the years of reflection that followed as the issue continued to be discussed, liberals of all stripes shared a strong endorsement of freedom of the press in principle. They differed among themselves, however, on the question of exactly when the principle should be turned into law, what form such a law should take and what the ultimate purpose of a free press was. In this brief essay, I highlight the distinctiveness of Benjamin Constant's position on these questions, in 1815 and in his earlier *Principles of Politics*, from which the chapter's opening quotation is drawn (106). I contrast Constant's position with two alternatives: the position articulated at roughly the same time by François Guizot and, more briefly, the position elaborated a bit later by Alexis de Tocqueville. The distinctiveness I mean to emphasize is the value that Constant placed on individuality and therefore on the practice of political disputation among individuals. Unlike Guizot and Tocqueville, Constant did not subordinate individuality and contestation to a process of finding a shared public reason for all nor did he understand its usefulness primarily as a spark to associational life and joint social action.

Guizot, a so-called 'doctrinaire' who would later take significant posts in government, wrote a pamphlet in 1814 endorsing freedom of the press but insisting that its application must always depend upon circumstances and, in particular, upon the readiness of the French people to wield the freedom responsibly. He began the pamphlet with arguments friendly to increasing freedoms. He argued that the French mood was at that moment better prepared for such freedom than it had been during the height of the revolutionary period. The French were tired of controversy, he noted, suspicious of passions in politics and thirsty not for new ideals but for effective, peaceful government. The public could hardly be less susceptible to the enthusiasms of demagoguery than in this moment of exhaustion after the Revolution and Napoleon's imperial ideology. 'The time of dreams has passed', wrote Guizot: 'We speak of nothing but moderation ... We mistrust eloquence and enthusiasm; anything that takes such a tone inspires in advance an unfavourable prejudice. We are disposed to regard

vehemence as the language of error, and a man who tries to move the passions, to seize the imagination, obtains little trust.² Given this general exhaustion, he argued, freedom of the press would not be likely to result in dangerous crusades against the government.

At the same time, Guizot thought that the public had become too suspicious of government. Napoleon had dissolved any sense of trust citizens might once have had for the institutions. Napoleonic propaganda had accustomed the public to dismissing as euphemisms all that appeared in the press; it had neutered the power of the newspapers and journals and therefore stood in the way of the development of public enlightenment and reason that such publications should encourage. As a consequence, the public could hardly conceive of the love of country, and the willingness to make personal sacrifices for the nation, that France would need if it was going to escape Napoleon's legacy and rebuild itself into a sustainable constitutional monarchy. A mere change of regime would not be enough to tie the people to the government or produce trust in it, Guizot remarked; the people would need to be persuaded, and a free press was crucial to producing such persuasion or trust.

Even at this moment, decades before Guizot ascended to high posts within government during the years leading up to 1848, he demonstrated his affinity for ruling and his tendency to take the ruler's point of view. At the end of the pamphlet, when he summarized his argument in a peroration, he returned to this point, noting that only a properly functioning free press would make it possible for the people to 'make common cause with' the government.³

If that was the purpose of press freedoms, then their implementation had to be carefully regulated so as to ensure that abuses did not override benefits. Thus Guizot, noting deficiencies in the current state of public opinion and the press, endorsed a temporary regime of censorship in his 1814 pamphlet. He aimed to restrain and moderate the censorship by suggesting that no single censor should have exclusive dominion over any set of texts but instead should only be empowered to recommend 'suspension' of publication to a committee. The judgements of that committee would in turn be overseen by a rotating set of senators and representatives who could, every five years, request changes in the censorship regime to reflect the evolution of the French public.

Guizot envisioned a gradual move toward greater freedom of the press, as society became better educated, better accustomed to distinguishing among the many arguments and facts they would hear from the press, and better able to disregard harmful speech. To unleash full freedom of the press prematurely, however, would in his view have been rash. In language similar to the Charter's

concern about 'abuses' of press freedom, Guizot was willing to speak of the harmful effects of 'the licence of the press' and to recommend that liberty be tried gently (*doucement*).⁴ He acknowledged that the censorship regime he was content to accept might delay the publication of important truths, but he argued that such delay was no great loss, if the truths were lasting ones: 'A few pamphlets suppressed. A few passions reduced to silence. I don't see anything terribly regrettable,' he remarked, calling such delays merely an 'inconvenience'.⁵ His judgements were based on his view that the purpose of a free press was to contribute to the long-term development of a public opinion unified in its enlightenment.

Benjamin Constant, like Guizot, was an opponent of Napoleon (except during his infamous about-face during the Hundred Days, when Constant agreed to help draft a Constitution for Napoleon in the hope that he could institutionalize liberal freedoms). Like Guizot, Constant hoped for a constitutional system protective of liberty; both admired the English settlement of 1688 and hoped for something similar in France. Thus it is striking that Constant argued for a different position: full freedom from censorship and prior restraint, for all publications, no matter how short. Some of Constant's arguments were quite practical. He pointed out that eliminating certain periodicals would require sealing the borders of France against journals brought from outside, invasively searching people as they entered the country; the circulation of printed materials across Europe was by then a fact of life, and France could not ignore the circulatory quality of public opinion. He also noticed that delays in publication such as the ones that Guizot accepted were not without consequence, since they would tend to deprive legislators of all the benefits that public debate about potential laws could provide during the period of considering and amending those laws. And he remarked on the absurdity of allowing only works over a certain number of pages to be printed without prior restraint, since the effect would simply be to encourage people with one thought 'to clog it with a heap of useless explanations, or of idle and irrelevant digressions', simply to put themselves over the page qualification for uncensored publication.⁶

Constant also pointed to another set of damaging consequences that a regime of prior censorship and licensing would tend to produce: when the government had the power to interfere with the publication of an article but did not actually do so, readers would assume that the government positively supported the sentiments expressed in it. The net result of the intertwining of government with editorial decisions would therefore be to deprive the

journals of the independence that was the source of their legitimacy: 'That a man may be trusted when he says any thing, we must know that he had the power of saying the reverse, if such had been his opinion,' wrote Constant. 'Unanimity always suggests an unfavourable suspicion, and with reason: for in important and complicated questions, there never was unanimity without slavery.'⁷ In describing the unanimity of a censored public opinion as a form of 'slavery', Constant indicated how much he valued the back and forth of political controversy and debate. In this argument we can begin to see the ways in which his understanding of the function of a free press differed from Guizot's.

While Guizot hoped a free press would help produce, over time, a public opinion unified around 'truth, reason and justice', thus giving to representative government the legitimacy that came with public reasoning, Constant emphasized to a much greater degree the importance of suspicion and disagreement, and the legitimacy that came with transparency, surveillance and contestation. He thought a public sphere full of debating journals would produce citizens who were more accustomed to sorting through a messy world of conflicting opinions and even conflicting facts, who would learn to judge for themselves and to take the opinions of editorialists with a grain of salt. The proliferation of political opinions, like the proliferation of religious sects which Constant also endorsed, would have the effect of casting individuals back on the resources of their private judgement and the associated 'spirit of independence'. Lucien Jaume has described the contrast between Guizot and Constant on this point as indicative of two broad strains of post-revolutionary liberalism in France.⁸

Constant had viewed freedom of thought and expression this way at least since 1806, when he penned the original draft of *Principles of Politics*, his major work of political theory. There he had claimed that the need for a free press arose particularly in large, modern states in which citizens, living far away from one another, would not otherwise share any common understandings or even a common set of facts. Citing a well-known episode from Livy's history of Rome, Constant turned freedom of the press into part of his familiar thesis about the distinctiveness of modern politics, in comparison to the ancient world:

Collatinus could expose Lucretia's body in the public square in Rome and everybody was apprised of the outrage done to him. The plebeian debtor could show his indignant fellow citizens the wounds inflicted on him by the greedy patrician, his usurious creditor. In our era, however, the vastness of states is an

obstacle to this kind of protest. Limited injustices always remain unknown to almost all the inhabitants in our huge countries. (110–111)

Without a shared public forum, freedom of the press to some extent took the place of political rights (121). A free press did not fully eliminate the distance between individuals that the scale of modern politics produced, but it provided those individuals with common materials necessary to make judgements about matters of shared concern.

When Constant argued that ‘the question of press freedom is ... the general one about the development of the human mind’ (112), he did not primarily mean the development of a shared sense of reasonability. Instead, he was concerned with the conditions under which individuals could fully develop their personal capacities. Citing an intellectual torpor that he thought had accompanied press restrictions in parts of Europe and in China, he argued that curbs on intellectual debate would infect all areas of human achievement, since, as he put it, ‘All men’s faculties go together’ (121). He elaborated, nature’s ‘design was that all our faculties should be in intimate liaison and that none should be subject to limitation without the others feeling the effect. Independent thinking is as vital, even to lighter literature, science, and the arts, as air is to physical life’ (119).

Constant concluded his discussion by observing that limitations on the expression of thought would turn the most ambitious and important individuals against the state. Noting that ‘nature will not be stopped from giving birth to men of talent and their active side will, indeed, have to be exercised’ (124), Constant predicted that if free expression were stifled, such men would find themselves either turned into opponents of the regime or diverted into the ‘egotism’ of private accumulation. Constant insisted that such brilliant types had a ‘right’ to express themselves in political activity because ‘celebrity, renown, and glory are the human race’s patrimony. It does not belong to a few men to rob their equals of them. It is not permitted to them to make life wither by depriving it of what gives it its brilliance’ (124). In his pamphlets *The Spirit of Conquest* and *Usurpation*, issued in 1813 just before the Bourbons’ (first) restoration, Constant reproduced these passages in a chapter titled ‘The effects of arbitrary power upon intellectual progress,’ turning them into an indictment of Napoleon for stifling brilliant figures. Presumably he had in mind examples such as Germaine de Stael, whose work Napoleon had ordered burned, or Constant himself, who had been punished with exile.⁹ His arguments built a romantic appreciation of individual talent and genius into the case for representative government, constitutionalism and the free press.

Behind Constant's approach to the issue was not merely a certain romanticism about talented individuals but also a conviction that public opinion could not be marshalled and dominated by institutions without corrupting its essential character as a circulating and independent force. He thought that opinions would lose their power if harnessed by governing institutions, just as religious opinions did. Indeed, the fundamental dynamic driving the whole human history of religions, on his elaborate account, was a tendency for opinions to grow stale and stagnant once institutionalized, and eventually to break free from institutional fetters and take on new life. Constant's account of public opinion had the same structure. Both public opinion and religious sentiment were most vital when left free and open to the private judgement of individuals, on his view; newspapers and journals were valuable insofar as they facilitated that judgement.¹⁰

Constant's fundamentally individualistic approach to public opinion can therefore also be contrasted with the remarks that Alexis de Tocqueville made on newspapers some years later. While in the first volume of *Democracy in America* Tocqueville had offered a qualified defence of press freedom similar to the one advanced by other liberals, he offered a more distinctive argument in the second volume. He noticed there that newspapers functioned not only or even primarily as a means of communication among all citizens at once but as the linkage among particular groups of citizens who shared an interest in certain issues, localities or interests, but who were separated by geography or, more fundamentally, by the withdrawal into private life, the *individualism*, that democratic societies tended to produce. Given the dispersed nature of modern democratic citizenship, he concluded that 'if there were no newspapers there would almost never be common action'.¹¹ Newspapers, he argued, were necessary to create associations, those crucial intermediate bodies that Tocqueville thought saved society from its otherwise anonymous, vast, formless and passive homogeneity. Newspapers brought individuals together and so helped to give society its structure, coherence and agency.

Guizot, then, saw public opinion as a resource for the state, while Tocqueville linked public opinion to the art of association outside the state. Compared with both perspectives, Constant's arguments stand out for their emphasis on the individual and his talents. Whether that emphasis on individuality would lead to a corrosive individualism, as Tocqueville feared it might, was a problem that liberals at the time were only beginning to grapple with and arguably one they still have not fully sorted out.