1. INTRODUCTION

On February 20th, 1664, John Twyn was arraigned at the Old Bailey and found guilty of High Treason. The Lord Chief Justice, Sir Robert Hyde, informed him of the judgment deemed appropriate for such a crime, that ‘you be

‘led back to prison, and ... thence drawn ... to a place of execution, and there you shall be hanged by the neck; and being alive shall be cut down, and your privy members shall be cut off, your entrails shall be taken out of your body, and you living, the same to be burnt before your eyes: your head will be cut off, your body ... divided into four quarters, and your head and quarters to be disposed of at the pleasure of the King’s majesty’.

Twyn’s crime was felt to be so heinous, that when he appealed to the judge for mercy, Hyde retorted that he ‘would not intercede for his own Father in this case’.

Such a punishment was far from unique in seventeenth century England. After the Restoration of the monarchy in 1660, Charles II used it brutally to re-inscribe his royal power and authority upon the bodies of those of his subjects he blamed for the murder of his father. Yet when these kingkillers – these regicides – were brought to trial, they weren’t indicted for killing Charles I. They were prosecuted instead under a Treason Statute dating from 1352: the execution of Charles I was merely proof of their treason, which was ‘to compass, and Imagine the death of the king’. Their crime, was a crime of the imagination, in which the mere countenancing the idea of regicide must be punished by death. In 1664, Hyde believed that John Twyn, too, ‘did imagine and intend the death of his King’. And yet Twyn was no regicide – he was just a printer. Proof of his treason, was that he had printed a book calling on people to execute judgment upon their rulers. His execution was as extreme as censorship could get.

1. Leveson and the seventeenth century

The past few years have been something of a boom time for those of us interested in the history and mechanics of seventeenth-century censorship. It started in July 2011, when David Cameron commissioned the Leveson enquiry – both to look into ‘the culture, practices and ethics of’ a press industry which had grown accustomed to taking exorbitant liberties, and to suggest a regulatory framework to stop further wrongdoing. The press responded almost immediately; warning of the impact that curtailing their liberty might have on our democratic society, cautioning against the return to a system of state regulation last seen with the Licensing Act of 1662.

Since Leveson published his report, this Licensing Act – a piece of repressive legislation designed by a fragile government to stymie their opposition –has been at the forefront of pleas for a greater historical understanding of the vital role that the press has played in this nation’s political life. We should not so readily turn back to the dark days of the late-seventeenth century, we are told: days in which, Leveson himself claimed, in his report’s ‘brief history of press freedom’, ‘the press was governed under a licensing system which suppressed all but official publications’. Rather we should celebrate the 300 glorious years of press freedom that have been enjoyed since that act lapsed in 1695.

At the heart of our contemporary debates over press regulation is a mischaracterisation both of how censorship worked in the seventeenth century, and, well, how censorship works. Through these dark days of the seventeenth century, on into the apparent light of the eighteenth, the press was neither the sole victim of censorship, nor was the licensing act the only means to censor it. The Lord Chamberlain regulated the stage, the law of slander the spoken word – what with stamp tax, increasingly proscriptive libel laws, the blasphemy act of 1698 there has never been a shortage of measures to bring the press into line, licensing or not. It’s a continuum, from press-specific regulation, to broader attempts to define what is acceptable to write, to speak, to think.

The principal misconception about the Licensing Act – the one that is used above all others by contemporary advocates of press freedom, one that is vital to the press’s self-image today - is this notion that prepublication licensing meant that ‘nothing’ was published without official sanction. In fact, fewer than 50% of the books published whilst the Act was in place were licensed. And the Restoration government rarely pursued the authors and printers of the other 50% - there were few compelling reasons to hunt down the author of, say, an unlicensed gardening manual. Recent estimates claim that less half a per cent of the total number of books published in the late seventeenth century – licensed or not – were of any interest to government censors.

Of course, the government did retain the means, and – at times – the wherewithal, to censor. So, if press censorship in the seventeenth-century lacked the totalitarian remit that is so readily foisted upon it in twenty-first century discussions of regulation, then it is worth properly exploring how it worked, why it existed, more properly to inform current debates. Because censorship isn’t really about quantity. To be successful, effective, then all you really need to do is create a climate in which nobody wants, or dares, to circulate the books that you wish to stop, to say the things you don’t want to hear. To put it another way – to get your point across, you only need to execute one printer. And this is where the story of John Twyn comes in.

Restoration England was a peculiarly nervous place in which to live. For all the characterisations of him as a ‘merry monarch’, Charles II felt radically insecure in his newly reacquired power. English political culture lived in the shadow of its immediate revolutionary past: ‘late Experience’, the ‘sad Experience’ of the civil wars and republican experimentation became determining features of policy – as did a determination that it would not happen again. Ardent loyalists to Charles II argued that the ‘exorbitant Liberty of the Press’ had been one of the chief factors in bringing his father to the scaffold. It was imperative, therefore – for the security of the government, for the safety of the nation, no less – that the press be brought to heel.

As well the Licensing Act of 1662, the government appointed a ‘surveyor of the press’ – one Roger L’Estrange – with a warrant to seek out seditious publications. At five o’clock in the morning on October 7th, 1663, he knocked on the door to Twyn’s printshop. After a half-hour delay, he was finally allowed in to search it. He found, ‘thrown down the back stairs’, a number of freshly printed sheets of a pamphlet containing arguments so incendiary that they could not even be read out in court on the day of Twyn’s trial. Those that ‘execute justice’ upon the ‘bloody tyrant’ Charles II, argued Twyn’s treatise, ‘would not go unrewarded by God’.

Except – it was only ‘Twyn’s’ treatise in so much that he printed it. The author still hasn’t been identified. In order to prove that he had committed treason – that he’d imagined the death of the king - all Twyn’s court had to do was prove that he’d read it. If they could prove he’d printed it, he must have proof-read it; if he’d proof-read it he must have read it; and if he’d read it he could not but have known it to be treasonable. There were times in his defence when Twyn veered dangerously close to the ‘Internet Service Provider defence’ – the ‘Twitter defence’ – that he was some ideologically-neutral platform enabling people to publish, but shouldn’t be held responsible for what they chose to publish through him. The court gave it the shortest of shrifts. With no author in sight, the authorities were more than happy to hang, draw and quarter the messenger, the better ‘to manifest the insufferable Liberties of the presse, and the necessity of bringing it into better Order’ with ‘necessary severity’.

But what has Twyn’s grisly fate got to do with press regulation today? Why should we let our policy decisions and arguments be informed by the execution of a penurious printer from 350 years ago? Calls to ‘learn from history’ can be as crass as they are common. On the face of it, the extremity of Twyn’s punishment makes journalists’ fears of rolling back 300 years of press freedom look somewhat fatuous, tedious even. After all, no-one – I think; I hope – is seriously suggesting we disembowel Ian Hislop. And a critical press is such an established feature of the political landscape that it is as often courted by the government as it is censured.

But not always: In the wake of several recent scandals concerning the press’s conduct – chief amongst them I suppose WikiLeaks and the Edward Snowden revelations – it’s become apparent that one of the key battlegrounds in contemporary debates over press freedom is ‘information’ - the right to publish that which will hold the government to account. It creates an obvious distinction between the seventeenth-century material we’ve been looking at and the key concern of 21st century journalism. Twyn was executed for an idea, imagining the death of a king – not how accurately he suggested doing it. The distinction troubles me – not, I hasten to add, because it suggests that 21st century journalism is bereft of ideas, simply that, in Britain at least, it takes the right to be partisan, to have competing ideas, for granted. It’s not, seemingly, something we need to fight for anymore.

The fight which remains is over which ideas are allowed to compete: David Miranda was detained in an airport for nine hours longer that he’d have liked – as a terrorist – on the basis that information he might be carrying on behalf of a journalist might be used to promote ‘a political or ideological cause’. At stake, therefore, is not just who can access this information, but how it is used, how it can be understood.

In an impassioned and at times thoughtful address to the Conservative party conference in September, Theresa May reassured her audience that the threat of Islamic radicalisation would never triumph over our British values – before proposing a broadcast ban to secure British people’s right to ‘Free speech’. It is a paradox as tortuous as Leveson’s claim that the only way to sustain a free and independent press is by regulating it through government legislation.

This is exactly why our understanding of a figure like Twyn is so important: because if we are indeed to learn from history, then we should at least endeavour to get that history right. The press’s invocations of a menacing monolithic state licensing system enacted in 1662 fed their way into the ‘brief history of press freedom’ buried within the Leveson report. Crucially, it’s a misunderstanding used by both sides of the debate: \_nobody\_ wants to return to the ‘dark days’ of seventeenth-century prepublication licensing. What Leveson proposed, and what the Royal Charter is supposed to facilitate, is something much more ‘light touch’. But if your historical understanding is such that you fixate upon just one piece of legislation and you misdraw the parameters and effect of that one piece, it is quite easy by comparison to present as a ‘light touch’ something which is nothing of the sort. Clearly, the threat of being hauled before a regulatory panel and fined is a less compelling threat than that of being executed. But it’s still a threat. Similarly, it doesn’t matter how far into the distance the ‘statutory backstop’ of the Royal Charter recedes, it is still there – that, after all, is the purpose of a backstop. For all the reassurances that a government wouldn’t in ‘practice’ seek to control the editorial content of the press, what the Royal Charter proposes is the establishment of an institutional mechanism whereby it could. And were it not to, there are always further measures which might be used: antiterrrorism legislation, for instance, or the Regulation of Investigatory Powers Act – whose use and abuse by the Police, in relation to journalists, has only recently come to light.

Contemporary advocates of press freedom insist it can be regulated simply through the enforcement of existing laws. If it has done anything wrong, then the full weight of the law should be brought to bear on it. Miranda’s arrest, Twyn’s execution for Treason, suggest just how fraught the relation of the press with those existing laws can be. The Licensing Act and the Royal Charter need to be understood in the context of the other measures being used around them. They need too to be understood as symptoms of a much broader underlying impulse to censor. Because censorship isn’t simply about the mechanisms put in place to stop something being said. It concerns the political climate created around those mechanisms, and a social climate which seeks to determine what is, and what isn’t, acceptable to publish: not just controlling content, but controlling meaning, how that content is to be interpreted. What get censored, even as we worry about information, are ideas.