Publishers and Lawyers

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In the Romantic period, publishers frequently needed guidance on legal problems. These problems ranged from concerns in most kinds of commerce, such as leasing a place of business, to concerns in the book trade, such as questions of copyright or libel. The success of "respectable" booksellers like Longman, Hurst, Rees, Orme, and Brown or John Murray depended upon owning and protecting their exclusive rights to literary properties. Although Murray faced three civil actions for libel, all involving articles in the *Quarterly Review*, and he was convicted of criminal libel in 1829, most of his legal activity concerned matters related to copyright. Murray, like Longman, was advised by Sharon Turner (1768-1847), who was an attorney and solicitor as well as the author of a distinguished *History of the Anglo-Saxons* (1799-1805). Technically, an "attorney" was licensed to work in common law and a "solicitor" was licensed to work in equity, but almost all attorneys were solicitors and almost all solicitors were attorneys, and early-19th century practice was to employ the terms interchangeably. Turner's work with Murray can be reconstructed from the 120 letters he (or by his son and business partner Alfred) wrote to Murray in the John Murray Archive, now housed at the National Library of Scotland. (Smiles or Isaac have summarized or quoted a few of the letters). I have been studying this correspondence for the book I am writing, titled *Lord Byron on Trial: Literature and the Law in the Romantic Period,* which explores the relationship between written expression and legal inhibitions and reveals the uncoordinated, inconsistent, and often contradictory manner in which these inhibitions functioned.

Much of a legal advisor's work predicted the consequences of a prospective course of action. Because Turner was an attorney, not a barrister, his predictions were more tentative than if he were a member of the bar, and he and Murray repeatedly needed the insight that could be supplied by a man who attended the courts in Westminster Hall day after day. Sometimes Turner needed the opinion of a barrister who practiced in courts of common law; sometimes, the opinion of a barrister who practiced in courts of equity. In courts of law, such as the Court of King's Bench, a plaintiff might pursue an action for damage. Courts of equity, such as the Court of Chancery, were the only courts that could compel strict performance (and thus might force someone to fulfill a contract) or could issue an injunction prohibiting an act (and thus might order someone not to sell a book). The practice of equity in this period was dominated by Lord Eldon, the conservative statesman and lawyer who served as Lord Chancellor from 1801 to 1806 and again from 1807 to 1827. Not only did equity and law wield different weapons but also they often acted upon different principles. In 1827, author Thomas Crofton Croker tried to back out of an agreement to supply a book to Murray, and the agreement had never been formalized. Turner informed Croker's attorney that although Murray was powerless in common law because the author had not assigned him the copyright, the Court of Chancery would nonetheless issue an injunction because of the promises made in Croker's letters (Turner to Goulburn, June 16, 1827). Before Murray published George Birkbeck, Henry Adcock, and James Adcock's *The Steam-Engine Theoretically and Practically Displayed* (1827), he needed to be certain that the authors were free from earlier obligations to another publisher. Turner consulted two barristers, one practicing in equity, the other in law, and he reported back to Murray that while Lancelot Shadwell "thinks you are safe in Equity," nonetheless "Mr Bayley perceives some danger at the Common Law [. . .]" (Turner to Murray, July 8, 1826, Ms. 41210). Publishers needed predictions on what courts would do, yet even the most well-founded predictions were tentative and unreliable. For example, while Shadwell was an authority on the proclivities Eldon displayed while sitting in the Court of Chancery, he could not know if the Chancellor were likely to be influenced by a recent discussion in the Cabinet, or if Eldon had heard rumors concerning a matter before it was brought before him.

At times Murray had to go to court to suppress unauthorized editions of works to which he owned the copyright. Like any other respectable publisher, he was vulnerable to these piracies because they were so cheap. For example, the two piracies of Byron's *Cain* he attempted to suppress in 1822 cost two shillings and one shilling sixpence, while his volume that contained *Cain, Sardanapalus,* and *The Two Foscari* sold for fifteen shillings. Publishers of piracies could be sued for damages in courts of common law, but this remedy was inadequate, as everyone recognized; far better to prevent the injury by stopping sale of the piracy. Because fighting infringement was thus, in practice, a matter for Chancery, Turner solicited an opinion in 1814 from a prominent equity specialist, John Bell, as to whether Byron had relinquished the copyright of *English Bards and Scotch Reviewers* (1809) (Bell concluded he had not). Questions that involved literary property could be murky, and publishers often were uncertain who owned the copyright to a work, which portions of a work were copyrighted, and how much and what kind of reproduction of a copyrighted work constituted infringement (the rules of "fair use" or "fair dealing" were in their infancy).

Murray's longest, most expensive war over literary property was waged over Maria Rundell's *A New System of Domestic Cookery: Formed upon Principles of Economy, and Adapted to the Use of Private Families.* The author gave her work to Murray as a gift, and he published it late in 1805. However, when the first copyright term expired, in 1819, Rundell told Murray to stop selling *Domestic Cookery,* saying she planned a new edition with another publisher, from which she would benefit ("Rundell v. Murray" 868-69). When Murray testified in 1818 before a parliamentary committee, he estimated that only "about one in a hundred" books would "retain any value of copyright" after fourteen years (*Minutes* 64). Both Murray and Rundell knew *Domestic Cookery* was one of those rare books (it was reprinted as late as 1893). Murray did not own the copyright, but he could and did argue that he had been given permission to publish the work, with no restrictions. Murray and Rundell each were granted injunctions restraining the other, and then, in November, 1821, Eldon dissolved the injunction against Murray ("Rundell v. Murray" 869-70). At this point, Rundell, who had arranged for Longman to put out a new edition, commenced an action at law against Murray (Turner to Murray, December 20, 1821, Ms. 41046). In 1823, Murray and Rundell reached a settlement, in which she sold all her rights to him for £2,100. He paid the same amount for this eighteen-year-old book that he had paid Byron in 1817 for Canto III of *Childe Harold's Pilgrimage, The Prisoner of Chillon,* and other poems (*Domestic Cookery* indenture, *Childe Harold* indenture; see Isaac for a detailed account of the conflict between Murray and Rundell).

When fighting infringements of his Byron copyrights, Murray had mixed results. In 1823, Eldon suppressed a piracy of *Beppo* ("Murray v. Dugdale"), though the year before Eldon declined to suppress a piracy of *Cain* (see below). Because the copyright statute did not restrict performance rights, Eldon permitted *Marino Faliero* to be staged at Drury Lane over Murray's and Byron's objections ("Injunction," "Murray and another"). Murray was the plaintiff in these cases because he owned *Beppo, Cain,* and *Marino Faliero,* but on three occasions he went to Chancery in Byron's name. Twice the proceedings involved early Byron works that Murray had not published: in 1816, he was granted an injunction preventing James Cawthorne from continuing to sell *English Bards and Scotch Reviewers,* and, in 1820, he succeeded in suppressing Sherwin's unauthorized edition of *Hours of Idleness* (*Byron v. Cawthorne* bill; Turner, letter to Cawthorne; "Lord Byron v. Sherwin"). In November, 1816, Murray went to the Chancellor to complain of poems that were being misrepresented as Byron's work. James Johnston had advertized *Lord Byron's Pilgrimage to the Holy Land, To which is added the Poem of the Tempest,* and in one advertisement he claimed to have purchased these works from the poet for 500 guineas. Eldon granted the injunction because Johnston declined to swear that Byron was indeed the author ("Byron v. Johnston," "Byron v. Johnson [*sic*]," "Byron v. Johnston" bill). In this instance, Murray did not aim to protect his exclusive right to a work he owned, as was normally the case when a publisher asked for the Chancellor's help; instead, he wished to advertise that no one but he published the most popular poet of the age, and to keep spurious poems off the market so they could not detract from the sales of his genuine Byron works. Publishers could resort to the law simply to prove that the works they sold were as valuable as they asserted them to be, and value often depended upon the author's identity. In 1823, John Hunt intended to sue for libel after *Blackwood's* claimed that *The Age of Bronze,* the Byron poem Hunt had just published, was not really Byron's (Hunt to Byron, June 17, 1823). Just as Murray needed to show that he alone published Byron, Hunt needed to show that the noble poet had left Murray. In effect, Hunt needed to convince the reading public that he was not another Johnston.

Murray's and Turner's lives were more complicated because Eldon believed that injunctions were not justified if the literary works in question might be seditious, blasphemous, obscene, or defamatory. In 1802, he denied an injunction that the satirical poet John Wolcot ("Peter Pindar") sought against his former publisher, and part of Eldon's rationale was that he was uncertain that the poems involved were not libelous ("Walcot [*sic*] v. Walker" 1). In March, 1817, the noted barrister Sir Samuel Romilly successfully argued on behalf of a pirate publisher that Robert Southey's play *Wat Tyler* was unworthy of an injunction. Eldon acknowledged the paradox that, by refusing the injunction, he would help disseminate a play that might be seditious, but he observed that his court had no criminal jurisdiction and could consider the case only as a question of property ("Southey v. Sherwood" 1008).

In 1819, unauthorized editions of the first two cantos of *Don Juan* appeared soon after the work was first published. Unlike Southey, who wished for *Wat Tyler* to disappear and be forgotten, Murray needed to make money selling *Don Juan,* the copyright of which had cost him £1,680 (*Don Juan* indenture). It was not certain that Eldon's earlier decisions on Peter Pindar's poems and *Wat Tyler* ruled out an injunction for *Don Juan.* Turner consulted four Chancery barristers, and while R. G. Loraine and John Bell doubted Eldon would issue an injunction or thought he would dissolve it if the application were contested, Lancelot Shadwell and William Horne did not foresee a problem. On November 2, Bell wrote in a formal opinion that he thought Eldon would refuse because of "the general nature of the subject," "the warmth of description in some parts," and the "scriptural allusions in other [parts]" (Bell, opinion; for Loraine's pessimism, see Turner to Murray, October 21, 1819, Ms. 41209). However, Turner soon informed Murray that Shadwell, who had "gone thro the book with more attention than Mr Bell had time to do," was convinced Eldon would grant and maintain the injunction (Turner to Murray, November 12, 1819, Ms. 41209). Shadwell "repeated to me several times that as far as it was possible to foresee an event he co^{d} not doubt of this." His reasoning was that "the passages are not more amatory than those of many books of which the Copyright was never doubted" (so much for Bell's concerns about the "warmth of description"). Furthermore, in Shadwell's view, "one Great tendency of the book was not an unfair one—it was to show in Don Juan's ultimate Character the ill effect of that injudicious maternal education which Don Juan is represented as having received & which had operated injuriously upon his mind." Shadwell's confidence had weight because it was unexpected. His "general opinions" were "not favorable" to Byron, and his taste was "highly moral." Moreover, he had thought Eldon was correct to deny an injunction for *Wat Tyler.* "My own opinion has been always that of doubt," Turner wrote, "[y]et Shadwells [*sic*] confidence makes me doubt my doubt" (Turner to Murray, [November 1819], Ms. 41209). At a consultation on November 16, Turner and Murray learned that Horne agreed with Shadwell (Murray, *Letters* 301).

Murray conveyed all the barristers' opinions to Byron, quoting from Bell and Shadwell, and where Shadwell remarked that *Don Juan* appeared to be designed to reveal how the protagonist's education damaged his "ultimate Character," Murray inserted "Mark that" after the word "ultimate," thereby hinting to Byron that subsequent cantos needed to bear out Shadwell's interpretation (Murray to Byron, November 14, 1819, Murray, *Letters* 297). Murray never discovered whether Bell or Shadwell was correct, because he decided against pursuing an injunction after he learned that his affidavit would have to name the author of this anonymous poem.

The myth that an injunction was sought and granted apparently originates in Samuel Smiles's *A Publisher and His Friends* (1891) (Smiles 1: 408). Byron worried that acknowledging authorship might hurt his claim to custody of his daughter Ada, and he also thought that his name alone would provoke Eldon to deny the injunction. Byron assured Murray that Eldon would say no, "were it only that my name is in the record" (Byron, *Letters* 6: 252), though Byron was wrong here: the Court of Chancery had already suppressed Cawthorne's and Johnston's publications though in each case Byron was named as the plaintiff, and in 1823 Eldon granted an injunction for *Beppo.* In 1823 the Vice Chancellor, Sir John Leach, granted an injunction for Cantos VI-VIII, but he dissolved it after the publisher of the piracy involved, William Dugdale, persuaded him that *Don Juan. Cantos VI.—VII.—and VIII.* was so immoral, and encouraged such "dangerous revolutionary principles," that Eldon's rulings meant the book could not be defended by a court of equity ("Lord Byron v. Dugdale" August 9 (quotation from 2), "Lord Byron v. Dugdale" August 11).

Late in 1821, Murray published the volume containing *Sardanapalus, The Two Foscari,* and *Cain.* Piracies of *Cain* soon appeared. Murray and Turner suspected that Murray might be indicted for blasphemy by one of the private prosecution societies, such as the Society for the Suppression of Vice or the Constitutional Association for Opposing the Progress of Disloyal and Seditious Principles. If Murray did not pursue an injunction, he would appear to concede that *Cain* was criminal. Turner observed that "nothing is so likely to provoke a Society to an Indictm^{t} as letting these Men Go on in this piracy" (Turner to Murray, January 31, 1822, Ms. 41210). In case Murray was prosecuted, Turner took the precaution of retaining the services of John Copley, the Solicitor General, who had represented Murray when Francis Macirone sued for libel in 1819; meanwhile, Turner prepared to go to Chancery.

Murray's chances appeared good. Shadwell and the other Chancery barrister Turner consulted, George Spence, had each read *Cain* earlier, and neither discerned anything offensive (Turner to Murray, January 31, 1822, Ms. 41210). Turner read *Cain* before it was published, and although he believed some passages should be omitted, his reason was simply that they might hurt sales—in contrast, he was dubious about *Don Juan* from the first (Turner to Murray, October 24, 1821, Ms. 41209; October 21, 1819, Ms. 41209). Initially, Turner proposed that Shadwell discuss *Cain* with Eldon in the Chancellor's private chambers, so that if Eldon were not persuaded, the public and the pirates would not know. Turner also suggested that Shadwell should state the best arguments against an injunction before explaining why one ought to be given. If the pirates later moved to dissolve the injunction, they would fail because Eldon would have heard their reasoning already (Turner to Murray, January 30, 1822, Ms. 41210). When Turner conferred with Shadwell, however, the barrister thought these tactics were unnecessary, and might even hurt. He believed Eldon would grant the injunction, and wanted Eldon to grant it in public (Turner to Murray, January 31, 1822, Ms. 41210). Nevertheless, when Shadwell moved for the injunction, Eldon responded that "he had reason to believe, from what he had heard, that it was of a nature to preclude his interference in protecting the plaintiff's property" ("Murray v. Benbow," February 8). A few days later, having read *Cain,* Eldon said that "All I am now called upon to say is, whether I entertain a reasonable doubt on the character of the book; and I trust I shall not be considered unreasonable when I say I do entertain such a doubt" ("Murray v. Benbow," February 13). The plaintiff's next step, Eldon indicated, would be to pursue an action at common law, but Murray did not do so.

Turner represented Murray, not Murray's authors. While he admired Byron's genius, he regretted the poet's skepticism and misanthropy, and, when discussing the first two cantos of *Don Juan,* Turner wrote that, "If I co^{d}, I wo^{d} suppress it altogether in every form—but it can only do more mischief to let cheap editions be circulated" (Turner to Murray, [November 1819] , Ms. 41209). He would prefer for Murray to bury *Don Juan* as Southey tried to bury *Wat Tyler,* though the best he could propose was keeping Byron's poem out of the hands of the common people, who could not afford Murray's quartos and octavos. In 1819, Turner thought Murray would benefit if Byron's works were condemned publicly because Byron would have to accept smaller sums from Murray and make his poetry less transgressive. After Loraine indicated that Eldon would refuse an injunction for *Don Juan,* Turner suggested that Murray take advantage of the dilemma in order to ensure that Byron would "write less objectionably," as Murray desired, and perhaps "to induce him to return you part of the £1625"—that is, part of the money Murray had paid for *Don Juan.* Turner speculated that if

Eldon dissolved an injunction for *Don Juan*, "that will show L B that he must expect no more Copyright Money for such things—& that they are too bad for law to uphold—Will not this affect his mind & purify his pen?" Turner then proposed showing Byron that Murray's copyright was vulnerable without Eldon's actually declaring it such: Turner asked what would occur if he "laid the Case separately before 3 of our ablest Counsel & They concurred in as many opinions that it co^{d} not be supported." The three men's opinions might have the right effects on the poet, but without public humiliation (Turner to Murray, October 21, 1819, Ms. 41209).

Turner warned Murray when prospective publications appeared likely to lead to libel proceedings against him. In 1816, he advised against distributing Byron's satirical poem "A Sketch from Private Life," although the publisher had already taken the precaution of limiting the print run to fifty copies, and he had omitted even the printer's name (Turner to Murray, April 3, 1816, Ms. 41209; Dyer 73-74). Legal responsibility for a libel belonged to "the author," the printer," "the publisher," and "every circulater" (Turner to Murray, April 3, 1816), though in practice the publisher and printer most often bore the brunt. Turner's worries about "A Sketch from Private Life" were well-founded, and indeed Murray might well have been prosecuted or sued if Lady Byron had not decided that the poem was best passed over in silence (Dyer 74). A month later, Turner proposed that Murray get a barrister's opinion before publishing one of Richard Brinsley Sheridan's speeches condemning Warren Hastings (Turner to Murray, May 14, 1816, Ms. 41209). Hastings' trial had concluded twenty-eight years earlier, but he had been acquitted, and he was still alive in 1816 and thus could sue if Sheridan's aspersions were published out of context. Murray became the London publisher of *Blackwood's Edinburgh Magazine* in 1818, and he and Turner were worried because he might be held liable for the defamatory observations in which that periodical specialized. In March, 1819, Turner suggested that Blackwood should give Murray a bond of indemnity in case he was sued (Turner to Murray, March 13, 1819, Ms. 42988). Murray withdrew from *Blackwood's*, and the January, 1819, issue was the last bearing his name (Murray, *Letters* 307 n7).

Even a vigilant publisher would eventually find himself a defendant. In 1829, in his only criminal trial, Murray was convicted for an aspersion on two men that was made in George Wilson Bridges's *The Annals of Jamaica* (1827-28) (see *Report*). Murray would have needed unusual diligence in order to have remained safe: the libelous statements were almost buried in *The Annals of Jamaica*, although, fortunately, the prosecutors desired only to be vindicated, not to punish Murray, and his fine was only a shilling. Despite how abrasive the *Quarterly Review* could be, it had been appearing for ten years before provoking a libel action, in 1819, and it did not face another until two cases in 1825 (*Blackwood's*, in contrast, was continually being sued). The editor, publisher, or legal advisor for a major quarterly had to bear in mind two legal principles. First, the truth of an assertion was (and is) a sufficient defense in any civil libel action (pleading truth was termed pleading "justification"). Second, criticism of published books enjoyed special latitude, and in such a case, the verdict would be for the defendant, unless the plaintiff demonstrated that the supposed libel went beyond certain boundaries. When the travel writer, Sir John Carr, sued publishers Hood and Sharpe in 1808, the presiding judge, Lord Ellenborough, told the jury that they must find for the defendants if the alleged libel, in a parody of Carr titled *My Pocket-Book*, were "a criticism of the work of this author, and of the author himself, as far as he is connected with the work only"; on the other hand, the jury must find for the plaintiff if the libel were "written against this author, as a man, and unconnected with his work" (*Libel* 29; see also "Carr v. Hood"). Because the *Quarterly* reviewed recent books, the publisher needed to consider whether articles could be defended by invoking Ellenborough's principle.

In each of Murrays' three libel actions, a *Quarterly* article had accused the plaintiff of shameful conduct, not simply bad writing or poor thinking; however, Francis Macirone's 1819 suit turned upon a different question than the other two. Macirone sought £10,000 damages because a *Quarterly* article accused him of behaving so duplicitously during and after the Hundred Days that he deserved to be hanged. (The figure of $10,000 is mentioned in Turner to Murray, May 28, 1819, Ms. 41209.) The article was a review of a book by Sir Robert Wilson, but it drew upon Macirone's *A Sketch of the Military and Political Power of Buonaparte in the Year 1817, With Interesting Facts Relating to the Death of Joachim Murat.* Murray's lead counsel, Copley, argued that the accusation was a fair interpretation of Macirone's own account of his behavior, and the jury found for Murray even before the judge summarized the evidence. They evidently agreed with Copley that the statements of which Macirone complained were "a fair criticism on his work, and comment on his actions, as they appeared therein detailed" ("Macironi [*sic*] v. Murray"). In fact, Macirone's counsel had played into the defense's hands by reading from the book (Turner to Murray, December 11, 1819, Ms. 41209). Ellenborough's observations in *Carr v. Hood* had been ambiguous: an author had no case if he were ridiculed or condemned only because of how he wrote or thought, but what if he were ridiculed or condemned because of his decisions and actions that he recounted? This circumstance was at the center of *Macirone v. Murray,* and when Macirone's counsel moved for a new trial the following January, the four judges of the King's Bench took the law to be that someone could accuse an author of disreputable acts with impunity, as long as he relied solely upon the book in supporting the accusations, and the accusations were reasonable deductions from the text ("Macerone [*sic*] v. Murray").

In 1825, however, Murray lost twice: in *Browne v. Murray* (tried in May), he was obliged to pay £250 damages, and in *Buckingham v. Murray* (July), he paid £50. James Hamilton Browne, formerly a British official in the Ionian Islands, had not even written a book; he was criticized in a review of William Goodisson's *An Historical and Biographical Essay upon the Islands of Corfu, Leucadia, Cephalonia, Ithaca, and Zante.* The *Quarterly* article on James Silk Buckingham's *Travels in Palestine,* which accused the author of plagiarism and other offenses, made use of information from people who accompanied Buckingham in the East, and so Ellenborough's dictum in *Carr v. Hood* would not apply. In these two cases, Murray had to plead justification, and his lawyers needed to convince the jury that the assertions in the supposed libels were entirely true. Browne prevailed because the article claimed that he had conveyed confidential "documents" to an Opposition politician, but the depositions indicated Browne may have sent only "information" ("Browne v. Murray"). Two of Murray's counsels, Copley and James Parke, had foreseen that the case was doomed for this reason (Turner to Murray, May 30, 1825, Ms. 41210). Buckingham's counsel, James Scarlett, told the jury that he "had always understood that a reviewer, in publishing a criticism on a work, had no right to introduce into it any private slander for the purpose of making an attack on the character of the author, of which the materials could not be found in the work itself" ("Buckingham v. Murray"). Whereas Copley had been able, six years before, to vindicate criticism of Macirone's conduct by referring to the work itself, he could not do so here, and evidently he and his colleagues simply did not have witnesses who could vindicate all the charges. As soon as the prosecution finished presenting its case, Murray's counsel conceded and agreed to damages of £50.

Turner's response to the 1825 cases was to deduce rules of thumb that would help Murray in the future. In July, when Buckingham's suit was about to reach trial, Turner reminded Murray that the publisher had never been sued "for Articles written in a bona fide criticism on the books reviewed, however severe." On the contrary, "It is only on those which others have, for their own individual resentment & purposes, composed & of which they have made your review the conveying instrument, that you have been in any danger." Turner extrapolated "a clear rule of conduct": "avoid all individual attacks that go beyond the book" (Turner to Murray, July 1, 1825, Ms. 41210). Legal pressures might have transformed the *Quarterly* into a compendium of book reviews, rather than the journal of political and intellectual life that it had always been.

Of course, a publisher could be a victim of libel, not only a libeler. Thomas Medwin's *Journal of the Conversations of Lord Byron: Noted During a Residence with His Lordship at Pisa, in the Years 1821 and 1822* was published by Henry Colburn in autumn, 1824, a few months after Byron's death. In this book, the poet was quoted making disparaging remarks about Murray's business practices. At one point, Medwin's Byron accused Murray of surreptitiously inserting into the assignment of copyright for *Sardanapalus, The Two Foscari,* and *Cain* a clause that obliged Byron to offer all his future compositions to Murray (Medwin 171). Murray contemplated a lawsuit, and Turner solicited an opinion from barrister James Parke (who was later to serve as one of Murray's counsel in the Browne and Buckingham trials). Parke agreed that the book was libelous, Turner reported, "[b]ut as Medwin is not the actual speaker a Jury wo[d] not give much damages." Anticipating the responses of juries was essential. After Browne's victory, Turner commented that Murray's prospects in Buckingham's lawsuit would improve if the trial were delayed because potential jurors then would have time to forget reading newspaper accounts of the Browne trial (Turner to Murray, June 16, 1825, Ms. 41210).

Turner proposed an alternative strategy: "Perhaps if Colburn wo[d] suppress it or the next Edit[n] that it may not go down to posterity that wo[d] be the best thing—& if he were told that Park [*sic*] thought it libelous he wo[d] most likely consent to do so." Their goal should be to stop the sale of the book, and Colburn would cooperate if he learned that Parke judged it to be libelous, though he might resist if he knew the same barrister had said the damages would be too small for the lawsuit to be worth Murray's expense or trouble. Turner recommended "a real Vindication of yourself from Lord B's correspond[ce]" (Turner to Murray, October 30, 1824, Ms. 41210), and Murray responded to Medwin in the *Gentleman's Magazine* in November, 1824. Murray noted, for example, that in the indenture assigning him the copyright of the three plays, "no such clause is to be found" as the clause Medwin described; the indenture "was signed in London"; and "the signature of Capt. Medwin is not affixed" (Medwin 172). The indenture survives, and Murray described it accurately (*Sardanapalus* indenture).

What were Turner's predispositions? He was a political and cultural conservative, but clearly he was also motivated by practical conservatism. He apparently believed a lawyer ought to lean toward caution. When a book might be accused of blasphemy, sedition, or defamation, Turner was more pessimistic than the barristers, even the Tory barristers. In April, 1823, Turner advised Longmans that because Thomas Moore's forthcoming *Fables for the Holy Alliance* "tend[ed] to bring monarchy into contempt," the book might be indicted at the behest of the Constitutional Association. The publishers, "full of panic," wanted Moore to make changes, which he refused to do. However, the prominent barrister Thomas Denman was asked to examine the book, and while he did not promise that no one would prosecute, he predicted that the case would be laughed out of the court (Moore 2: 629-31). Only Shadwell's arguments, authority, and persistence persuaded Turner that Eldon might protect *Don Juan.* Turner's worries about the Constitutional Association or Lord Eldon also may have been influenced by his distaste for invective such as when, in 1809, he tried to dissuade Murray from publishing Walter Scott's review of Sir John Carr's *Caledonian Sketches.* The publisher did not need to fear being taken to court, thanks in part to Lord Ellenborough, whose pronouncements the year before, ironically, had concerned a parody of Carr's *The Stranger in Ireland.* Yet Turner assured Murray that "to make an Individual ridiculous merely because he has written a foolish if it be a harmless book is not I think justifiable on any moral principle." Because *Caledonian Sketches* was harmless, there was no good reason to inflict pain on its author: "if as you say it will hurt his Mind, for Gods sake Omit the Article" (Turner to Murray, February 13, 1809, Ms. 41209). Scott's review appeared in the *Quarterly* as planned.

One element missing from most accounts of restrictions on expression, of conflicts over literary property, or of the relations between these two forces, is the strategizing in which authors, publishers, lawyers, and government officials engaged, out of the public eye. Publishers' strategizing had to take into account not only the current state of the law but also practical considerations like the tactics of rival publishers and the proclivities of individual judges. Legal considerations shaped decisions about which books were published, which formats were chosen, how the books were priced, and how they were marketed. Works Cited

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