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The worst case scenario

British libel law means our press is vulnerable and the wealthy are shielded from criticism

Geoffrey Wheatcroft

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For years journalists have grumbled about the libel laws and no one has listened, but when a distant legislature passes a law of its own to counteract the intolerable effects of the British courts then it's time to take notice. The most startling recent legal story comes not from the high court but from Albany, where the New York state legislature has introduced the starkly named Libel Terrorism Prevention Act, intended specifically to guard writers and publishers outside British jurisdiction from the terrors of English libel law.

In recent decades, "libel tourism" has become a lucrative trade for London lawyers. Foreign celebrities turn up to sue British papers or US magazines with insignificant British circulations. The late Telly Savalas was one of the first, winning an action here that he couldn't even have begun in the US. Roman Polanski was allowed to give evidence from France to London by video link when he sued Vanity Fair, a New York magazine. Since he's wanted in California, he couldn't set foot in London for fear of being extradited.

But what has brought this to a head are several even more grotesque cases. The powerful Saudi businessman Sheikh Kalid bin Mahfouz sued over a book by two Americans which alleged he was associated with the funding of Islamic militants: hence the lurid name of the New York law. Only a few copies were sold in the UK, but damages were paid and the remaining copies were pulped.

Our libel law has always been heavily weighted in favour of the plaintiff. Unlike the defendant in a criminal case or other civil suits - or in a US libel action - he is assumed to be in the wrong, and must prove that "the words complained of" are true. Under "no win, no fee", the plaintiff is gambling someone else's money, while the defendant is on a hiding to nothing. "True as to fact or fair as to comment" are the classic defences, but fair comment is subjective, and any attempt to justify or prove truth can be held to aggravate the gravity of the libel. And a defendant is at the mercy of the caprice of juries and the malice of judges.

Many years ago, after Evelyn Waugh had won large damages from the Daily Express, he shrewdly told a friend that the millions of readers of the Express secretly detested the paper and were glad of any chance to punish it. That helps explain the half-million damages awarded against a tabloid by Jeffrey Archer - one of a long line who have won actions by plain lying.

Following the case brought by Albert Reynolds, the former Irish prime minister, there is now a partial defence of public interest. But our media have nothing like the protection that the US press has been afforded since the New York Times won the Sullivan case in 1964. Any American public figure bringing an action now has to prove that what was written was not only untrue but published maliciously and recklessly.

In Britain, we now have the worst of all worlds. Obscure people are hounded by the gutter press, but the libel laws shield "malefactors of great wealth"

from criticism and make our courts a playground for the international rich. The Reynolds rule, like so many recent checks on an oppressive state, came from judges rather than parliament, but it really is time for comprehensive legislation, a new Fox's Libel Act.

This would provide a statutory defence of public interest. It would remove the burden of proof from the defendant. It would end the nonsense of a person from one foreign country suing in London a person from another over something published in a third country. And better still, it would assimilate libel to slander, where the plaintiff must show actual material damage suffered.

The only trouble is that laws have to be passed by parliament. And there are few people keener on using and abusing the libel courts than politicians.

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