



## Notre Dame Law Review

Volume 2 | Issue 1

Article 4

11-1-1926

# James Fenimore Cooper and His Critics

Clarence J. Ruddy

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>

 Part of the [Law Commons](#)

### Recommended Citation

Clarence J. Ruddy, *James Fenimore Cooper and His Critics*, 2 Notre Dame L. Rev. 13 (1926).

Available at: <http://scholarship.law.nd.edu/ndlr/vol2/iss1/4>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

## JAMES FENIMORE COOPER AND HIS CRITICS

In all the history of the world, there never has been written a book which has pleased everyone. The tastes of men are so variable that unanimity of opinion is impossible. The popular mind, despite the contentions of demagogues, is notable for its lack of literary discrimination, and with few exceptions the more widely a book is accepted, the more it is frowned upon by the comparatively small number who recognize the shallowness of the sugary love story and the impossibility of the blood-curdling mystery tale. By the same token, because the uneducated man is incapable of appreciating the subtler processes of the mind, and cannot grasp the intangible and internal psychological reactions, a work acclaimed by the literati is seldom universally liked. Perhaps the only book ever written that in any manner compromises the credulity of the poor intellect and the wisdom of the trained intellect is the Bible; and even against that, there are the atheists.

Thus it is, that the profession of criticism was born. Men whose tastes are adapted to a study of literature have developed the ability to read critically, and by attuning their likes and dislikes to various classes of readers, are enabled to predict how cleverly a certain book is written, how successful it will be, and so forth. As each work is published, it is perused carefully by persons who are deemed capable judges of quality, and whose decisions are regarded with respect. There are exceptions to this rule, of course; occasionally the more a book is abused by the critics, the more it is liked by the populace. But not often. Generally praise by a reviewer means the success of the work.

But suppose a new book is disapproved by a competent critic, obviously, its sale will never be great. The critic is usually considered a worthy judge, and his dictum is usually respected. A tremendous power is his; upon the verdict of a William Lyon Phelps is suspended the fate of many an aspiring author. If Mr. Phelps is disgusted with a new novel, his readers feel that they too, will be disgusted—and the noncomplimentary copies will be left on the shelves. But suppose that Phelps—

or any other critic, for that matter—is more than disgusted with a new book; suppose that to him the book is astonishingly immoral, and can have been written only by a depraved, dissolute derelict? What can the critic say now? Can he give vent freely to his thoughts, and broadcast the opinion that the book is obscene? Or must he swallow his anger and murmur inanely about an “odd” book?

Upon the answers to just such questions as these lawyers have argued, courts have pondered, authors have cursed, and critics have gone bankrupt. For the law is jealous of power, and realizes that it can easily be abused. Because a reviewer of books often holds their success or failure within his grasp, a careful watch must be kept on him lest his grasp be perverted into a death-embrace. The law of libel is poised above him, ready to paralyse his hands, should he be so insensible to the rights of others as to kill the prospects of an author. It is with this shadow over him at all times that the critic reads and reviews; it is not surprising that occasionally he wonders where this freedom of the press is that he hears about. Truly, his lot would be unbearable were it not for one thing; from a study of the past actions of the vulture, he may draw inferences for use in the future, and can easily learn how much latitude he will be allowed. The law of libel has been functioning as long as the common law has been in existence, and its actions have always been consistent. What is libel one day is libel the next; the principles do not change.

An interesting study of just how far a critic may go in criticizing a book he considers bad is to be found in the experiences of James Fenimore Cooper with the critics. It is no exaggeration to say that there never has been a writer who was so cordially loathed as Cooper. This although his first books were immense popular successes, and everyone, critics and populace alike, rejoiced that he chose the “American Scene” for his setting. The most enthusiastic hailed him as the American Scott. Later, however, his popularity waned, and his journey to Europe, where he made painfully frank revelations of the Americans’ lack of culture to the supercilious French, made him many enemies, so that when he finally returned to the United States

he found himself virtually ostracized. Each book he subsequently published was eagerly pounced upon by his adverse critics, and for a period of about seven years contempt was poured upon him, rich and undiluted. If "J. Fenimore" had been a timid man, he would have hied himself away to the wilderness and there died of humiliation and shame. But he was unfamiliar with timidity as a ten year old boy is with Greek, and he did not even shed a tear. What he did do, on the contrary, was to sue every single one of the offending newspapers for libel—and he won the majority of his suits. To list the defendants of the suits in which Cooper was plaintiff would be to name all of the papers in the state of New York. Horace Greeley was sued, and learned something new about what not to do in journalism. All of the others, too, were made to answer for their indiscretions, and soon the critics of the State of New York gathered it was not safe to curse J. Fenimore Cooper, at least not on paper. Henceforth, their denunciations would be oral, and in a locked room, with none to hear.

Each case of Cooper and his critics is well worth studying, both as a dictionary of invective and a source of the law of libel. Only the most important and the most theatrical will be treated here. Each is an entity and stands apart from all of the others, yet all illustrate the same principle: the freedom of the press does not serve as a justification to blacken a man's character. For instance there was the case of *Cooper v. Barber*, 24 Wend.105, 14 N. Y. Com. Law Rep. 548: in this case the defendant, who was the owner of the "Otsego Republican", had reprinted from "The Chenango Telegraph" this comment on a difficulty Cooper was having over some of his property claimed by the public. "J. Fenimore Cooper. This gentleman, not satisfied with having drawn upon his head universal contempt from abroad has done the same thing to himself in Cooperstown, where he resides." The offending paper soon realized its error, and in an attempt to ward off the inevitable suit for libel, published the usual retraction stereotyped and kept on file by all "yellow sheets", and unctuously declared that the article in controversy had been published from good motives, and no harm had been intended. Such a retraction was not sufficient to deter Cooper, however, and Barber was unceremoniously summoned into court. The court

held that the retraction did not justify the libel, and that as an attempt to justify is no justification at all, the verdict must be for Cooper. This suit evidently taught Barber to be more discreet, for he is never again sued by the "object of contempt".

The suit against Horace Greely and his associates, Mr. McElrath, reported in 1 Denio 347 is illustrative of the fact that epigrams, however pleasing they may be to the ear, are not safe to use, if they are at the expense of a man's reputation. "The New York Tribune" had evidently been in fear of being sued by the maligned author, for one day published in a querulous tone an editorial, professing to wonder why Cooper was so angry. It declared that it entertained no "sort of ill feeling toward Mr. Cooper, but such as his conduct in the case seemed to excite. We have at all times stood ready to publish cheerfully any correction he might wish to send us. He chooses to send none, but a suit for libel instead. So be it then—walk in Mr. Sheriff. There is one comfort to sustain us under this terrible dispensation. Mr. Cooper will have to bring his action somewhere. He will not like to bring it in New York, for we are known here, nor in Otsego for he is known there." Greely's "comfort" was short-lived, for the problem of where to bring his suit bothered Mr. Cooper not at all; in fact, he sued the Tribune immediately, claiming that the very imputation that he could not sue in his own county was libel, as tending to show he was in bad repute. But the defendants urged that Cooper *was* in bad repute, and truth justified their circulating such fact, even if it did establish the plaintiff's evil character. In defense of their position, the defendants contended that the plaintiff did live in Otsego county, that he was therefore known there, and being so known had acquired "the reputation of a proud, captious, censorious, arbitrary, dogmatical, malicious, illiberal, revengeful and litigious man, wherefore the plaintiff was in bad repute in the said county of Otsego". This statement is not quoted as being a cause for libel in itself, although if published it most certainly would be—but is here reprinted to show how intense was the hatred of Cooper at this time (1854). Since it was uttered in the sanctity of pleadings, it was consequently privileged. In due time, a substantial judgment was awarded to this litigious man; and the final outcome would seem to indicate that Greely spoke a

little hastily when he averred that J. Fenimore did not dare to bring a suit.

But by far the most dramatic of all of Cooper's difficulties was with Mr. William L. Stone, the owner of the "Commercial Advertiser". Properly to appreciate this case, it is necessary to understand in a broader way just how Mr. Cooper was rated by his critics. By this time (1840) the universal hatred of Cooper was well established. The critics all despised him; the most charitable observation that any reviewer made about him was in the *North American Review*. Commenting on "Homeward Bound" the critic gloomily states: "Nothing redeems it from utter and deplorable dullness." But the majority called his books by much worse names than that. In fact, so unpopular had Cooper become with the critics that after 1837 or thereabouts he stopped sending free books to them. If his harping critics wanted to discover new causes for hatred they would have to do it at their own expense; the abused author was heartily tired of gratuitously furnishing the material which would assuredly be used to inflict his own literary death. His resolve not to send complimentary copies to the critics, was not effectual in stopping the reviews, however, and they still persisted, as vitriolic as ever. Cooper's unwillingness to present free copies served only to aggravate the vicious critics, and gave them new cause for vituperation.

Most of the criticisms directed against Cooper's earlier books were to the effect that they were laborious and dull. Always, however, the reviewers were looking for something more grievous than technical errors, and upon the appearance of the "History of the Navy of the United States of America" their search was rewarded. In this book Cooper had given most of the credit for the Lake Erie victories to a Captain Elliot, a subordinate officer popularly, although mistakenly, believed to be somewhat of a traitor: Commodore Perry was slighted, and when mentioned at all in the "History", was given but casual attention. These facts were sufficient for the critics. They all suddenly discovered a latent patriotism, and all rushed to the defense of their maligned Commodore. All of the reviews were caustic, but the one by the employee of Stone was the most caustic of all. This anonymous writer prefaced his article with the pithy

remark that since the author had not seen fit to give him a free copy, he was forced to buy one, since the book was of such importance that a review was essential. Then, after severely rebuking Cooper for his lack of charity, he summarized the opinion of the author, which he had formed from earlier books, and frankly confessed a prejudice against him. "But", he continued, "with all our experience with the waywardness, inconsistency, and love of paradox which had distinguished the author of "Home as Found" we could hardly persuade ourselves that he had become so utterly regardless of justice as a man, so callous to the perceptions of good taste as a writer, so insensible to his obligations and responsibility as a historian, and so reckless of his character as a public candidate for literary distinction and immortal fame, as to forego and disregard the opportunity of retrieving in some degree the reputation and standing which he must have been conscious as having lost. We were certainly not prepared to find that the infatuation of vanity or the madness of passion could lead him to pervert such an opportunity to the low and paltry purpose of bolstering up the character of a political partisan, an official sycophant, and to degrade the name and object of history in a work claiming by its title to be national in its design by salving the wounded feelings of an individual who, from the time of the transaction referred to by his apologist, has been regarded as one doing at best but doubtful credit to his profession." Cooper sued for libel.

The defendant demurred to Cooper's declaration, and contended that even if the fact of publication of such a review were proved, there still would not be sufficient facts to find a verdict for Cooper. The demurrer was overruled (24 Wend. 434), and it was held, that if Cooper presented his facts, and proved them, he would obtain judgment in his favor. The plaintiff did not go further, however, and at the request of Stone, agreed to submit the case to a board of arbitrators, who would pass upon the fairness of Cooper's treatment of Elliot and Perry as well as the propriety of the defendant's criticism. After long arguments by Cooper and his nephew, opposed by able counsel, the board found that Cooper was wronged, and assessed \$300.00 damages, allowing sixty days for payment. The defendant was furious, and cursed at the bargain he himself had suggested.

Days passed and as the award did not seem to be forthcoming, Cooper began to get nervous. News of his anxiety must have reached his defamer, for there soon appeared in the defendant's newspaper this editorial: "Mr. J. Fenimore Cooper need not be so fidgety in his anxiety to finger the cash to be paid by us toward his support. It will be forthcoming on the last day allowed by the award, but we are not disposed to allow him to put it into Wall-street for shaving purposes before that period. There will be no locksmith necessary to get at the ready." . . . Whereupon the aforesaid J. Fenimore Cooper promptly sued Stone once more. He contended that the word "shave" means "to fleece, to trim", and that the only interpretation that could be given to the obnoxious sentence in which that word was used was that Cooper intended to use the money due him as capital for a gambling transaction, and was therefore immoral. His definition of "shave" was not adopted by the court, however, and it was held in 2 Denio. 293, that although "shave is sometimes used to denote obtaining money by oppression or extortion, it also means to buy notes at less than their face value." So in one respect, at least, the tactless Mr. Stone was vindicated, and he was saved the embarrassment of having another sum added to his debt to the unpopular author.

This partial judicial sanction of harsh criticism served to revive the hopes of angry journalists who had lately begun to despair, and the editors again dared to impart their maledictions to paper: After more libel suits, however, the revelers discovered that they had misinterpreted the Stone case, finally decided it was not safe to test the laws of libel with Cooper as plaintiff, and proceeded to discard all of the choice epithets they had been so long in acquiring. Gradually, book reviews became less bombastic, until now the editors do not even avail themselves of the latitude allowed them. It has been known that a man bitten by a tiger will later avoid even a cat.

C. J. R.