

Theatre in Europe: a documentary history

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# Romantic and Revolutionary theatre, 1789–1860

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# I *Theatre, the law and management practices*

## THEATRES AND THE LAW

The period 1789–1843 was characterized by debates, often heated, over the rights enjoyed by patent theatres – Drury Lane and Covent Garden (and to a lesser extent, the Haymarket in London and the Theatres Royal in the provinces) – to monopolize the performances of legitimate plays and the limit placed on the number of theatres within the City of Westminster. Debates also took place over the question whether the state had the power to control the theatrical repertoire through the office of the Examiner of Plays, and over the prerogative of dramatists to exercise control over their own works through adequate copyright protection.<sup>1</sup>

The Enabling Act of 1788 had empowered magistrates to grant licences for the performance of certain kinds of entertainments within a twenty-mile radius of London and Westminster, and for the ‘legitimate’ drama in theatres situated outside that area, for a period not exceeding sixty days.<sup>2</sup> In addition, specific legislation could give letters patent to provincial cities,<sup>3</sup> while the Lord Chamberlain maintained absolute control over the City of Westminster. Not only was this administration cumbersome but it also privileged the holders of letters patent. Already proprietors of minor theatres had felt the pressure of the law in the eighteenth century: the Royalty Theatre had been forced to close, and an act to allow the Sadler’s Wells Theatre to extend the terms of its licence was defeated. Both involved advocacy on behalf of patent rights by R. B. Sheridan, who was both a part-owner of Drury Lane and a Member of Parliament.<sup>4</sup>

As the populations of the major centres, especially London, began to increase, the monopoly of legitimate drama exercised by the patent theatres and their resolute opposition to enlarging the number of licensed theatres permitted to perform this drama became irksome to entrepreneurs less interested in the preservation of a ‘national drama’ than in making money. Such prerogatives also appeared to be out of touch with an audience increasingly assertive in its demands for the democratization of entertainment. The struggle to free the stage in London intensified in the period after 1808, which saw the destruction by fire of both the patent theatres in the first decade of the nineteenth century.

The period to 1830 was marked by prosecutions and memorials to the Lord Chamberlain launched by the patent theatres, with particular assaults on the Olympic and Sans Pareil Theatres [5]. At the same time, the period saw an erosion of patent authority, both through the success of the minors in catering for a neighbourhood clientèle by using the ‘illegitimate’ forms of entertainment and through the absorption of those same forms into the repertoire of the patent theatres themselves, thereby making their claims to dramatic exclusiveness

irrelevant. The minutes of evidence of the Select Committee on Dramatic Literature and its final report [9, 10] demonstrated in 1832 that it was no longer in the best interests of the drama to make it the sole responsibility of a few theatre managers, who had in any case saddled themselves with huge financial liabilities.

The passing of the Theatre Regulation Act in 1843 [17], though it centralized the power of theatre licensing by placing it entirely within the jurisdiction of the Lord Chamberlain, did remove the legislative confusions that had been inherited from the eighteenth century and dissolved the separation between 'major' and 'minor', 'legitimate' and 'illegitimate'.

In 1832 the Select Committee had also discussed censorship and the position of the playwright within an emerging theatre industry. In the first half of the century the real irritation caused by the Lord Chamberlain's Examiner of Plays was not so much his interference in excising irreligious, immoral or unpatriotic references, but rather his insistence on examining the scripts well in advance and in charging what were regarded as extortionate fees [6, 14]. This was particularly trying when managers were jostling for patrons, and were often called upon to make rapid changes in programme in cases where entertainments had met with a hostile reception. As far as the playwrights were concerned, the decline in the fortunes of the patent theatres, particularly in the 1820s, the huge salaries paid to stars by managers in their desperate efforts to stave off bankruptcy by offering glittering attractions, and the growth in the number of theatres after 1812, all contributed to insecurity and exploitation.<sup>5</sup> Moreover, the absence of any protection from dramatic piracy or of any control over their own property made the profession of the playwright extremely difficult to justify [12].<sup>6</sup>

<sup>1</sup> For a brief summary of the situation bridging the eighteenth and nineteenth centuries, see *The Revels history of drama in English*, vol. VI (London: Methuen, 1975), pp. 40–4.

<sup>2</sup> See David Thomas and Arnold Hare, *Restoration and Georgian England, 1660–1788* (Cambridge: Cambridge University Press, 1989), no. 193.

<sup>3</sup> Newcastle had been granted one in 1787 and others would soon follow: Bath, 1797; Chester, 1798; Bristol, 1799; Kingston upon Hull and York, 1803; Liverpool, Birmingham and Margate, 1807; Edinburgh, 1809. See Watson Nicholson, *The struggle for a free stage in London* (London: Constable, 1906; reprinted New York: Blom, 1966), p. 139.

<sup>4</sup> See Thomas and Hare, *Restoration and Georgian England*, no. 191.

<sup>5</sup> See James Boaden, *Memoirs of the life of John Philip Kemble, Esq.* (London: Longman, 1825), vol. II, p. 74 and J. R. Stephens, *The censorship of English drama, 1824–1901* (Cambridge: Cambridge University Press, 1980) pp. 25–50.

<sup>6</sup> See Stephens, *Censorship*, pp. 84–96.

## THE MONOPOLY QUESTION

After the destruction of Covent Garden in 1808 the argument for another theatre, which had been put forward at the time of the Royalty Theatre submission in 1788, surfaced again. It was raised in the Privy Council on 16 March 1810. The petition, however, was denied on 14 April.<sup>1</sup>

<sup>1</sup> See Nicholson, *Struggle for a free stage*, pp. 192–224 for a full account of these proceedings and Sheridan's implacable opposition.

## I The arguments for a third theatre, 1810

W. C. Oulton, *A history of the theatres of London* (London: Martin & Bain, 1818), vol. 1 (Drury Lane, 16 March 1810), p. 183

Sanguine expectations were still entertained of having a third winter theatre, calculated for *hearing* and *seeing*; the prices of admission to be the same as those of the summer theatre on the Haymarket. The application, however, before the *second* theatre was rebuilt, was certainly premature and injudicious [ . . . ]

[ . . . ] Mr Warren, as leading counsel for the petitioners, addressed their lordships (Master of the Rolls, the Attorney General and members of the Privy Council). He contended that the patents, granted to the present theatres, did not go to the exclusion of another; and allowing, for a moment, that they did, it was, in his opinion, doubtful whether the prerogative of the crown could be borne out in granting a monopoly. Monopolies in trade had been declared unlawful: and in amusements, according to the letters of the law, they were also void, the moment the places became the source of trade and profit. The petitions which had been laid before their lordships, from the patentees of the established theatres, denied the necessity of a third theatre, and stated that they had not made more than 6 per cent of their principal. That might be; but there was a question, whether mismanagement had not caused it? This was yet to be proved. It was also urged that his clients had taken advantage of the two unfortunate fires which had taken place; this he denied, and their lordships might be sensible of it, when they reflected on the great increase of the population in London. When those patents were granted, there were not half the inhabitants that are at present to fill them. At certain periods of the year, there was a great increase of strangers in the city, which Covent-garden theatre, as it now is, and Drury-lane theatre, rebuilt, in its greatest magnitude and pomp, could *not* contain. Their argument was, that they have *enlarged their theatres as the population had increased*. Be it so. But their lordships would recollect, while they widened the area of their theatres, they *prevented the public from being entertained*; they put them at such a distance from the stage, that the countenance of the performer could not be discerned, without he distorted the muscles of his face to that degree, that, to those nearer the stage, it appeared ludicrous; the same with the voice; it was so strained, that nature was forgotten. he wished their lordships not to consider the petition of his clients, as theirs alone, but *that of the public*. There were *one million* of persons, in and about this metropolis, who visited theatres; and could it be supposed, that two were sufficient to contain them? It was contended, in the petitions, that even those were not always filled: this was not the fact, for they were filled to more than an overflow, when the entertainments were worthy of the attendance of the public. The application of his clients was for a charter, which, in his opinion, would not give them an advantage over the other theatres, by their being an incorporated body. It was not a corporation for speculation; £200,000 had been subscribed, which would be laid out in the building and decorations; this would always be a sufficient security. It was stated, that it

would put the subscribers in a better situation than those of the existing theatres, as it relieved them from personal responsibility. This argument, in his opinion, was nugatory; for, by the charter, the incorporated body would be responsible, instead of a single personal security.

The failure to have a third theatre approved in London brought the monopoly situation into sharp focus. The article that follows concentrates on the evasions employed by minor theatres to circumvent the law, the exposure of audiences to inferior entertainments as a consequence, and the dangers that audiences incurred as a result of being forced to travel long distances.

## **2 An early attack against the patent theatres' monopoly, 1813**

J. Lawrence (ed.), *Pamphleteer*, 2 (1813), pp. 382–5

In 1787, John Palmer was threatened by Messrs. Harris, Linley, and Colman, with a prosecution, should he act regular dramas on his newly erected Royalty theatre; and even when it was open for musical and pantomimical performances, an information was laid against Delpini for only crying out 'Roast Beef', while acting the part of clown [. . .]

It is an undecided point, whether theatres improve the morality of a nation; the legislator, however, may be content if they contribute not to deprave it: but it is decided, that good plays might improve the national taste. Why, therefore, when a number of minor theatres are opened, are they prevented from acting the legitimate productions of the best dramatists? Is the legislature afraid of improving the taste of the people? The Surry [*sic*] theatre has, in the opinion of many judges, just the dimensions that a theatre ought to have, and even that of Tottenham Court Road, and the Sans-souci must be magnificent edifices compared to those, on which Shakespeare's works were first performed. But in order to favor [*sic*] the monopolists, the minor theatres are confined to melo-dramas. All unjust regulations will be evaded. Even the lower classes of people have too much taste to relish the farrago of nonsense, to which the liberality of Mr Harris and colleagues would confine them. Some plays of a higher order have been brought forward at the minor theatres; but at the end of a few sentences the harpsichord is sounded, to the surprise of the stranger, who perhaps conceives that the instrument has been touched by accident; and this manoeuvre is practised, that the piece may come under the denomination of a melo-drama [. . .]

These little theatres are more adapted to the representation of many regular dramas, particularly of the *pieces bourgeoises*, than the cathedral theatre of Covent Garden; and as the manager there has shown such a predilection for the Brute Creation, the public would not lose, were he to exchange patents with Astley, whose rights, by the bye, he seems to have infringed. Let the works of Rowe and Otway, Farquhar and Goldsmith, be performed at the Royal Circus, and horses and

elephants keep possession of Covent Garden:<sup>1</sup> the size of both theatres recommends the exchange [. . .]

The moralists, who judge that more theatres for the regular drama would be productive of vice, consent that the minor theatres should exhibit burlettas, rope-dancers, and dancing dogs; as if the young apprentice would be less affected by the allurements of a courtesan, during the feats of a tumbler, than during the performance of George Barnwell.

Beside, though the lobby of each of the great theatres is a focus of vice; youth and inexperience, who cannot have thrown aside a sense of decency, are less exposed to temptation there, than in their walk home to a distant quarter of the metropolis. Could every inhabitant here, as at Paris, find a theatre in his own district, the danger of seduction would be of shorter duration.

<sup>1</sup> This refers to the revival of Colman's *Blue Beard* at Covent Garden, chiefly noted for the employment of an equestrian troop of horses.

### 3 **The effects of the patent monopoly on playwriting, 1812**

'Theatrical correspondence', *Examiner* (December 1812), p. 602

If the stage were free, a Dramatist might follow the bent of his genius. He would introduce the characters that his judgment or fancy should prompt; and it would be the interest of the manager to procure performers qualified to do them justice. Whereas now the dramatist is reduced not only to consider the pretensions, the vanity, the abilities of the Actors and Actresses, but their age and corpulency. He must take their measure as well as the stage tailor.

If the Stage were free, every Manager would endeavour to induce an Author of talent to give him the preference; whereas now an Author must go cap in hand to solicit the favour of a Manager; and should he succeed in this, some Actor or Actress may think that the part destined for them would not exhibit them to advantage, and may refuse to co-operate. Few Authors of rank, of liberal sentiment or independent fortune, would enter a green-room cabal. Hence the degeneracy of our Drama. Scenes of high life have been pourtrayed [*sic*] by individuals, who have had little intercourse with good company, and genteel comedy has given place to buffoonery and brogue.

#### THE LEGAL POSITION OF A MINOR THEATRE

The Sans Pareil was built by John Scott and opened in 1806. In 1819 it would be renamed the Adelphi [76a].



#### 4 **Licence issued to the Sans Pareil, 1817**

PRO LC7/10, fo. 60

I do hereby give Leave and Licence unto John Scott esquire to have performed for his benefit, Burlettas, Music and Dancing with Spectacles and Pantomime at his Theatre situated between Heathcock Court and Bullen Court in the Strand within the Liberties of Westminster from Michaelmas next to Easter 1818[.] Given under my Hand and Seal this 10th day of July 1817[.] In the 57th year of His Majesty's Reign.

(signed) Ingram Hereford  
Chamberlain

#### 5 **Memorial to the Lord Chamberlain by the patent theatres, 1818**

PRO LC7/4, part 1<sup>1</sup>

The joint Memorial of the Proprietors of the two Theatres of Drury Lane and Covent Garden to His Majesty's Lord Chamberlain the Most Noble the Marquis of Hereford against the infringement and abuse of the Licenses [*sic*] of the Proprietors of the Olympic and Sans Pareil Theatres

My Lord,

Engaged as your memorialists are in the arduous duties of managing and supporting the interests of their large and immensely expensive Establishments, Your Lordship may be assured that they would not willingly, or without cause, take up your Lordship's time, by again urging their well founded complaints, against the Proprietors of the Olympic and Sans Pareil Theatres, acting under the Lord Chamberlain's License [*sic*] [. . .]

With [. . .] the Evidence they can produce that the regular Drama is now nightly performing at the above mentioned Theatres, your Lordship must excuse the alarm of the Proprietors of the two Patent Theatres, who, at once, see their long dreaded fears realized and who find their long established Patent rights destroyed, upon the faith of which, a million of money has been of late years embarked in their two Theatres [. . .]

The memorialists then complain about Lord Dartmouth,<sup>2</sup> the Lord Chamberlain's predecessor and his indiscriminate licensing.

[. . .] Your Lordship may, perhaps, feel averse to alter any act of your immediate Predecessor, but even Lord Dartmouth himself would have been the first to put a stop to such daring infringement of his Licenses [*sic*]. His Lordship never contemplated, that when he granted Mr Astley a License [*sic*] for the Olympic to keep his Horses from the time of the Closing to the Opening of his Amphitheatre that he was

granting a License [*sic*] to play such a Trajedy [*sic*] as Fazio,<sup>3</sup> nor did he think, when he granted a License [*sic*] to Mr Scott, for his daughter Miss Scott, to perform in Burlettas, that he was granting him a power of engaging a regular Company of Comedians to perform whatever pieces they may chuse [*sic*]; for thus (as we find) the term, *Burletta*, is now construed at these Theatres. But it can easily be proved, that *Burletta* is distinguished from Tragedy, Comedy, Opera, Farce, etc. by its being a *piece in verse, accompanied by Music*; for example, the pieces of the Dragon of Wantley, Midas, The Golden Pippin, Poor Vulcan [. . .] are *Burlettas* and totally different from the Pieces acted at these Theatres, which are neither more or less than pieces of the Regular Drama [. . .] It can be proved by Evidence [. . .] that a sum upon average exceeding £130, is nightly taken at their doors, the whole, or the greatest part of which is taken from the doors of the two Patent Theatres [. . .] It may be thought a hard case that these Theatres should be suppressed, after their Proprietors have laid out money in enlarging them. *The Great increase in their size, since the Olympic and Sans Pareil Theatres were first Licensed, is one of the chief points complained of, and your Memorialists suffer in the exact ratio to that increase* [. . .]

<sup>1</sup> Accompanying this document are further statements in evidence as well as Elliston's correspondence beginning 12 April 1818. See also LC1/letterbook B, fo. 93.

<sup>2</sup> Lord Dartmouth had been Lord Chamberlain from 1804 to 1810. See Nicholson, *Struggle for a free stage*, pp. 164–74.

<sup>3</sup> Though Henry Milman's tragedy had been performed at Covent Garden (5 February 1818), it had already appeared under the title *The Italian Wife* at the Surrey in 1816.

## THE ROLE OF THE EXAMINER

George Colman succeeded John Larpent as Examiner in 1824. It was his venality and self-righteous puritanism that offended those opposed to censorship.<sup>1</sup>

<sup>1</sup> See Stephens, *Censorship*, pp. 22–5.

## 6 George Colman exercises his authority as Examiner

'The Drama', *British and Foreign Review*, 2 (1836), p. 381

### (a) A circular to theatre managers on licensing irregularities, 1826

14th November 1826. Brompton Square  
SIR, – I am directed by the Lord Chamberlain to remark to you, and other managers of all the theatres under his control, within the city and liberties of Westminster, that upon various occasions besides upon benefit nights, at most of the theatres above mentioned, certain songs, duets, and other productions, have been of late interpolated, and made part of the evening's entertainments, without the licences for such performances which is there required.

I am also directed to refer you to the Act of Parliament which declares, that such *unlicensed* performances render you liable to heavy fines, and to the forfeiture of the grant by which you open your theatre.

I am further instructed to apprise [*sic*] you, that, if the present intimation be disregarded in the aforesaid theatres, it will occasion a recourse to measures which the Lord Chamberlain has hitherto forborne to adopt.

Finally, I am desired to state, that all, or any part of, vocal music, recitations, and dialogues, which may have been sung, repeated, printed, or have obtained publicity, in other places,\* are still new to the aforesaid theatres, on their first introduction there; and, when so introduced, must be previously licensed, like other such novelties, by the Lord Chamberlain.

I have the honour to be,  
Sir,  
Your obedient servant,  
G. Colman.

\* By 'other places' are meant places *out of* the Lord Chamberlain's jurisdiction;— and most licences granted by him, for performances in other places *within it* (as in Bath, York, etc.), are not sufficient for those theatres in Westminster, and its liberties, which are not empowered to act the *whole range of the Drama*. Theatres limited in the nature of their entertainments (as the English Opera House, and the Adelphi and Olympic Theatres) must of course abide by the restrictive specifications contained in their annual licence. G. C.

### (b) The censor at work

[...] Please to omit the following underlined words in representing the Opera called, 'Not for me', etc.<sup>1</sup>

—Damme if I do.'

'As you please; only don't swear; all holy and profane words are prohibited, even on the stage, now-a-days.'

'Vivid. The Heavens forbid!

'Vivid.—damn it, if I ain't stammering.'

*Mem.* Miss Virulent exclaims occasionally, 'Merciful Powers!' which expression, if it do not mean something palpably different from the Powers of God and Heaven, ought to be omitted.

G. Colman  
20th June, 1828.

<sup>1</sup> Note to the manager of the Lyceum after examining the script of *Not for Me; or, the New Apple of Discord*, a ballad opera adapted from the French. The play opened on 23 August 1828.

The agreement between the three patent theatres and the Lord Chamberlain's office shows that there could be bad feeling and a sense of unjust competition even between those theatres that enjoyed a London monopoly. The Haymarket was particularly affected when extensions to the length of the winter theatre seasons encroached on its summer season, thereby preventing actors from working there.

## 7 **An agreement on the dates of opening by the three major London theatres, 1826**

Covent Garden Theatre Letterbook of H. Robertson 1823–49, BM Add. MSS 29643

Regulations relating to the Theatres Royal Drury Lane and Covent Garden and the Little Theatre in the Haymarket.

Lord Chamberlain's Office  
June 19 1826

The little Theatre to open on the 15th of June and to close the 15th October 1827 and to have three months free of competition, the Winter Theatres being closed from the 1st of July to the 1st of October of the same year.

The Winter Theatres shall not restrain their Actors from Acting at the Haymarket Theatre between the 1st of July and the 1st of October 1827.

Montrose

We the undersigned do hereby agree to the above arrangement without prejudice to the Patent rights of the Theatres Royal Drury Lane and Covent Garden.

Stephen Price, Lessee of the T. R. Drury Lane  
C. Kemble for self and the other Proprietors of  
T. R. Covent Garden.

## 8 **The monopoly retards cultural development in the greatly enlarged London, 1832**

Covent Garden Theatre Letterbook of H. Robertson 1823–49, BM Add. MSS 29643

In the largest and most cultivated metropolis of Europe, where the population is calculated at a million and a quarter,— where, at least, there are an hundred thousand well educated adults whose pursuits are entirely those of pleasure, or literature and the arts,— where the elegant, the learned and the talented of the whole empire congregate,— where the mass of people are eagerly seeking knowledge, and daily progressing in intelligence,— where there are societies, institutions, and means of all kinds for the dissemination of knowledge, and the enlargement and elevation of the intellect, there are Two theatres, (which having no means,) are empowered to perform the regular and reasonable Drama — and 17 or 18 others,<sup>1</sup> (which are suitably constructed for it), where nothing but Tom foolery—Farce—Sing song—Dancing—and Dumb show, can be exhibited. This admirable contrivance for the degradation of society is further assisted by the two theatres, where the regular Drama may, but cannot be properly performed, being situated close together, at the farthest possible distance from the circle of respectable suburbs where the most intelligent and best educated portions of society reside,— the Regent's Park and the Clapham Road — Kensington and Stratford — are a tolerable two hours journey

from either of these emporiums of the regular Sock and Buskin, whilst at the Minor Theatre, so conveniently constructed, and well situated for the performance of regular plays, nothing but pieces tending to degrade still more the minds of the people, may be performed. The anomaly is perfectly ridiculous [. . .]

<sup>1</sup> There were in fact twenty theatres operating throughout the greater London area in 1832, including the patent theatres. See H. Barton Baker, *History of the London stage, 1576–1903* (London: Allen, 1889), vol. 1, pp. x–xiv.

## THE SELECT COMMITTEE AND ITS REPORT

The Select Committee of the House of Commons was convened as a direct result of a petition to Parliament initiated by Bulwer-Lytton in May 1832. It sought to investigate not only the viability of the theatrical monopoly but also matters relating to authorship rights.<sup>1</sup>

<sup>1</sup> The vigorous debate can also be found in [Leigh Hunt], ‘The play-goer’, ‘The question between the great and the minor theatres’, *Tatler* (22 Dec. 1831), p. 595, and ‘The minor theatres’, *Examiner* (December 1822), pp. 9–10.

## 9 The Select Committee examines some of the monopoly issues, 1832

*British parliamentary papers, stage and theatre 1*, introduced by M. L. Norstedt (Dublin: Irish University Press, 1968), pp. 24, 155, 132

### (a) J. Payne Collier describes the benefits of theatrical free trade

279. [. . .] The effect upon the public would be, that they would visit those theatres where they would hear the best plays acted in the best way, according to my opinion, in smaller theatres than those that are now erected. I am of the opinion also that the licensing of smaller theatres would not at all deteriorate the school of acting; for I do not think that we have at present any means of fairly judging of the manner in which the school of acting is affected by the minor theatres [. . .] There are no good actors at the minor theatres at present, inasmuch as they are always acting under the apprehension of a prosecution; and they have never acted with that degree of encouragement which they probably would receive from the public if they were allowed to act plays without control, except such control as they might be under from the licencer [*sic*] [. . .] I think the consequence of allowing plays to be acted at the minor theatres would, in the first instance, be the ruin of a number of speculators; but that would be the case in any branch of trade that was opened immediately [. . .] but that evil would ere long correct itself [. . .] It would afford great encouragement to authors to write plays, if the state of the law regarding authorship were also altered.

**(b) Morris, lessee of the Haymarket, assesses the effects of the taste for German and French operas**

2760. What do you conceive the damage to be to your theatre in consequence of these performances? [. . .] – The receipts at the Haymarket are experiencing very great depression at present from various causes; first of all, I think from the German and French operas. Under the old understanding between the patent theatres, Covent Garden and Drury Lane, and the Haymarket and the Italian Opera, it was settled by His Majesty and the Lord Chamberlain, that nothing more than an Italian opera on Tuesday and an Italian opera on Saturday should be permitted, with the exception of about four benefits, which generally came on Thursdays, given to their two leading singers and dancers; but now it is open every night. Monday night there is Robert le Diable; Tuesday night, the Italian opera; Wednesday night, the German opera, and so on every night in the week [. . .]

2764. Which would you prefer being put down, the minor theatres or the fine representations?– They are equally prejudicial; the German plays and the French plays certainly have been frequented by persons in a higher class of society; that affects the boxes, but I do not think it affects the pit and gallery so much as the representations at the minor theatres; the pit and gallery are most excessively affected by the minor theatres playing the regular drama.

**(c) Macready comments on the effects of deregulation on the acting profession**

2340. [. . .] I feel it is much easier to act in a small theatre than in a large one, and I should say that for merely domestic scenes and for simple dialogue, where there is nothing of pomp or circumstance attending it, I should prefer a small theatre; but for Shakspeare's plays, I should think very few of them can be found which can have due effect given to them in a small theatre.

2341. Should you consider that the Haymarket would be large enough to allow a fair acting of Shakspeare's plays?– I speak from having seen Kean act in the Haymarket. In scenes where only two persons have been upon the stage, I have lost myself to the size of the theatre, but when a great number have occupied the stage, I have felt the want of space, and too great proximity of the performers to me.

2342. Supposing the legitimate drama were to be allowed to the small theatres, would it not appear that, if the public generally shared in your opinion, the large theatres would not be much injured, because, as they would perform Shakspeare's plays better than the small theatres could do, they would not be injured by that competition?– [. . .] they would offer so many markets for talent, that they would take those as nightly auxiliaries that ought to be stationary actors in large theatres, in order to make an efficient regular company, which never could be the case if we had opportunities of going for large sums of money to the small theatres; it would be better for us, but I think it would be for the loss of the public, inasmuch as there

would be a great many plays tolerably done, but it would be almost impossible to congregate an efficient company in any one theatre.

2350. Do you think that if the large theatres were able by large capital to get better companies, that the public would so encourage those theatres that the others would not be able to flourish?— I think that small theatres would proceed upon the plan of engaging the best actors as auxiliaries; they would be able to pay them for a fortnight or a month's engagement much more than a large theatre could pay them for the season, which is the way they now engage them [. . .]

The deliberations of the Select Committee resulted in the report that they presented on 2 August 1832. Bulwer-Lytton followed this by introducing a bill that would have implemented the committee's recommendations. Though it was passed by the House of Commons it was defeated in the House of Lords (2 August 1833).<sup>1</sup>

<sup>1</sup> The composition of the committee was twenty-four, including Edward Bulwer-Lytton as chairman, radical and liberal politicians such as Thomas Slingsby Duncombe, Henry Lytton and Richard Lalor Sheil, and conservative politicians such as Viscount Porchester and Lord John Russell. What many of them had in common was an interest in playwriting.

## 10 Report of the Select Committee, 1832

*British parliamentary papers*, pp. 3–6

In examining the state of the Laws affecting the interests and exhibition of the Drama, Your Committee find that a considerable decline, both in the Literature of the Stage, and the taste of the Public for Theatrical Performances, is generally conceded. Among the causes of this decline, in addition to those which have been alleged, and which are out of the province of the Legislature to control, such as the prevailing fashion of late dinner hours, the absence of Royal encouragement, and the supposed indisposition of some Religious Sects to countenance Theatrical Exhibitions, Your Committee are of opinion, that the uncertain administration of the Laws, the slender encouragement afforded to Literary Talent to devote its labours towards the Stage, and the want of a better legal regulation as regards the number and distribution of Theatres, are to be mainly considered.

2. In respect to the Licensing of Theatres, Your Committee are of opinion, that the Laws would be rendered more clear and effectual by confining the sole power and authority to license Theatres throughout the Metropolis (as well as in places of Royal Residence) to the Lord Chamberlain; and that his – the sole – jurisdiction, should be extended twenty miles round London (that being the point at which Magistrates now have the power of licensing Theatres for the legitimate Drama). And as Your Committee believe that the interests of the Drama will be considerably advanced by the natural consequences of a fair competition in its Representation, they recommend that the Lord Chamberlain should continue a Licence to all the Theatres licensed at present, whether by himself or by the Magistrates. Your Committee are also of opinion, partly from the difficulty of defining, by clear and legal

distinctions, 'the Legitimate Drama', and principally from the propriety of giving a full opening as well to the higher as to the more humble orders of Dramatic Talent, that the Proprietors and Managers of the said Theatres should be allowed to exhibit such plays as have received or shall receive the sanction of the Censor.

3. Your Committee believe that the number of Theatres thus licensed (although they might be more conveniently distributed) would suffice for the accommodation of the Public, in the present state of feeling towards Theatrical Performances, and also for the general advantages of competition; at the same time, as Theatres are intended for the amusement of the Public, so Your Committee are of opinion that the Public should have a voice in the number of Theatres to be allowed. And Your Committee would therefore respectfully submit to the House, that if a Requisition, signed by a majority of the Resident Householders in any large or populous Parish or District, be presented to the Chamberlain, praying for his Licence to a new Theatre in the said Parish or District, the Chamberlain should be bound to comply with the Public wish. Your Committee are of opinion, that all abuse in the exercise of the Licence thus granted, would be effectually prevented, by leaving to the Chamberlain the power of applying to the Home Department for the summary suppression of any Theatre which may notoriously have outraged the conditions of its License [*sic*], or the rules of Public decorum.

4. Your Committee would also recommend, that the Chamberlain should possess the same power for the summary suppression of any Theatre, exhibiting any sort of Dramatic Representation without the sanction of his Licence; considering, that as the Public can procure the Licence if it approve the Theatre, so any Theatre not licensed would probably not be less opposed to the desire of the Public than to the provisions of the Law.

5. With respect to the Licensing of Plays, Your Committee would advise, in order to give full weight to the responsibility of the situation, that it should be clearly understood that the office of the Censor is held at the discretion of the Lord Chamberlain, whose duty it would be to remove him, should there be any just ground for dissatisfaction as to the exercise of his functions. Your Committee would recommend some revision in the present system of Fees to the Censor, so (for instance) that the Licence of a Song and the Licence of a Play may not be indiscriminately subjected to the same charge; and this revision is yet more desirable, in order to ascertain whether, in consequence of the greater number of Plays which, by the alterations proposed by Your Committee, would be brought under the control of the Censor, some abatement in the Fees charged for each night might not be reasonably made, without lessening the present Income of the Licencer [*sic*].

6. In respect to the exclusive privileges claimed by the two Metropolitan Theatres of Drury Lane and Covent Garden, it appears manifest that such privileges have neither preserved the dignity of the Drama, nor, by the present Administration of the Laws, been of much advantage to the Proprietors of the Theatres themselves. And Your Committee, while bound to acknowledge that a very large sum has been invested in these Theatres, on a belief of the continuation of their legal monopoly of



exhibiting the Legitimate Drama, which sum, but for that belief, would probably not have been hazarded, are nevertheless of opinion, that the alterations they propose are not likely to place the Proprietors of the said Theatres in a worse pecuniary condition than the condition confessed to under the existing system.

7. In regard to Dramatic Literature, it appears manifest that an Author at present is subjected to indefensible hardship and injustice; and the disparity of protection afforded to the labours of the Dramatic Writer, when compared even with that granted to Authors in any other branch of Letters, seems alone sufficient to divert the ambition of eminent and successful Writers from that department of intellectual exertion. Your Committee, therefore, earnestly recommend that the Author of a Play should possess the same legal rights, and enjoy the same legal protection, as the Author of any other literary production; and that his Performance should not be legally exhibited at any Theatre, Metropolitan or Provincial, without his express and formal consent.

8. By the regulations and amendments thus proposed in the existing system, Your Committee are of opinion that the Drama will be freed from many present disadvantages, and left to the fair experiment of Public support. In regard to Actors, it is allowed, even by those Performers whose Evidence favours the existing Monopoly, that the more general exhibition of the regular Drama would afford new schools and opportunities for their art. In regard to Authors, it is probable that a greater variety of Theatres at which to present, or for which to adapt, their Plays, and a greater security in the profits derived from their success, will give new encouragement to their ambition, and, perhaps (if a play is never acted without producing some emolument to its Writer) may direct their attention to the more durable, as being also the more lucrative, classes of Dramatic Literature; while, as regards the Public, equally benefited by these advantages, it is probable that the ordinary consequences of Competition, freed from the possibility of licentiousness by the confirmed control and authority of the Chamberlain, will afford convenience in the number and situation of Theatres, and cheap and good Entertainment in the Performances usually exhibited.

July 1832.

#### PLAYWRIGHTS AND THE LAW

Planché<sup>1</sup> recounts how he was approached by a provincial manager for the rights to *Charles XII*, which he had written for Drury Lane and which had been performed there on 11 November 1828. The subsequent negotiations and the failure of the manager to pay for the rights led to agitation on behalf of dramatic authors at the Select Committee on Dramatic Literature.

<sup>1</sup> James Robinson Planché (1796–1880), a prolific writer of plays, also produced the first history of British costume and is credited with introducing the genre of extravaganza to the English stage. Much of his best work was done with Madame Vestris, notably at the Olympic Theatre from 1831 to 1839 [51a, 51b, 184a, 184b, 188, 198].

## II The need for copyright protection, 1828

J. R. Planché, *Recollections and reflections* (London: Tinsley, 1872), vol. 1, pp. 148–9

The piece not being printed and published, which, at that period, would have entitled any manager to perform it without the author's permission, Mr Murray, of the Theatre Royal, Edinburgh, wrote to inquire upon what terms I would allow him to produce it. I named the very moderate sum of ten pounds, which he admitted I was perfectly justified in asking, but declined paying, on the plea that since the introduction of half-price in the provinces, the expenses attendant on the production of afterpieces was barely covered by the receipt they brought. This was all very well; but Mr Murray had the dishonesty to obtain surreptitiously a MS copy of the piece, and the effrontery, in the face of the above excuse, to produce the piece, without my permission, at *whole price* leaving me to my remedy. I did not bring an action against him, but I asked Poole, Kenny [*sic*], Lunn, Peake, and some others of the working dramatists of the day to dine with me in Brompton Crescent and talk the matter over; and it was agreed that steps should be immediately taken to obtain the protection of an Act of Parliament.

The arguments in the Select Committee report addressing the position of dramatic authors did bear fruit. The Honourable George Lamb, who had been a member of the Select Committee, introduced a bill that was passionately supported by Bulwer-Lytton. Though the bill recognized the difference between published works and performance, those who benefited principally were publishers rather than authors.<sup>1</sup>

<sup>1</sup> See Stephens, *Censorship*, pp. 90–5. Stephens maintains that this was the first and only Copyright Act specifically to try to recognize the special problems of the playwright and the crucial difference between the publication of a literary work and a dramatic performance (p. 91).

## 12 The Dramatic Copyright Bill, 1833

3 William IV cap. XV. *Collection of the public general statutes passed in the third and fourth years of the reign of HM King William IV* (London: Eyre & Strahan, 1833), p. 138<sup>1</sup>

Whereas by an Act passed in the Fifty-fourth Year of the Reign of his late Majesty King George the Third, intituled *An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns*, it was amongst other things provided and enacted, that from and after the passing of the said Act the Author of any Book or Books composed, and not printed or published, or which should thereafter be composed and printed and published, and his Assignee or Assigns, should have the sole Liberty of printing and reprinting such Book or Books for the full term of Twenty-eight Years, to commence from the Day of first publishing the same, and also, if the Author should be living at the End of that Period, for the Residue of his natural Life: And whereas it is expedient to extend the Provisions of the said Act; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present

Parliament assembled, and by the Authority of the same, That from and after the passing of this Act the Author of any Tragedy, Comedy, Play, Opera, Farce, or any other Dramatic Piece or Entertainment, composed, and not printed and published by the Author thereof or his Assignee, or which hereafter shall be composed, and not printed or published by the Author thereof or his Assignee, or the Assignee of such Author, shall have as his own Property the sole Liberty of representing, or causing to be represented, at any Place or Places of Dramatic Entertainment whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, in the Isles of *Man*, *Jersey*, and *Guernsey*, or in any Part of the *British* Dominions, any such Production as aforesaid, not printed and published by the Author thereof or his Assignee, and shall be deemed and taken to be the Proprietor thereof; and that the Author of any such Production, printed and published within Ten Years before the passing of this Act by the Author thereof or his Assignee, or which shall hereafter be so printed and published, or the Assignee of such Author, shall, from the Time of passing this Act, or from the time of such Publication respectively, until the End of Twenty-eight Years from the Day of such first Publication of the same, and also, if the Author or Authors, or the Survivor of the Authors, shall be living at the End of that Period, during the Residue of his natural Life, have as his own Property the sole Liberty of representing, or causing to be represented, the same at any such Place of Dramatic Entertainment as aforesaid, and shall be deemed and taken to be the Proprietor thereof: Provided nevertheless, that nothing in this Act contained shall prejudice, alter, or affect the Right or Authority of any Person to represent or cause to be represented, at any Place or Places of Dramatic Entertainment whatsoever, any such Production as aforesaid, in all Cases in which the Author thereof or his Assignee shall, previously to the passing of this Act, have given his Consent to or authorized such Representation, but that such sole Liberty of the Author or his Assignee shall be subject to such Right or Authority.

II. And be it further enacted, That if any Person shall, during the Continuance of such sole Liberty as aforesaid, contrary to the Intent of this Act, or Right of the Author or his Assignee, represent, or cause to be represented, without the Consent in Writing of the Author or other Proprietor first had and obtained, at any Place of Dramatic Entertainment within the Limits aforesaid, any such Production as aforesaid, or any Part thereof, every such Offender shall be liable for each and every such Representation to the Payment of an Amount not less than Forty Shillings, or to the full Amount of the Benefit or Advantage arising from such Representation, or the Injury or Loss sustained by the Plaintiff therefrom, whichever shall be the greater Damages, to the Author or other Proprietor of such Production so represented contrary to the true Intent and Meaning of this Act, to be recovered, together with Double Costs of Suit, by such Author or other Proprietors, in any Court having Jurisdiction in such Cases in that Part of the said United Kingdom or of the *British* Dominions in which the Offence shall be committed; and in every such Proceeding where the sole Liberty of such Author or his Assignee as aforesaid shall be subject to such Right or Authority as aforesaid, it shall be sufficient for

the Plaintiff to state that he has such sole Liberty, without stating the same to be subject to such Right or Authority, or otherwise mentioning the same.

III. Provided nevertheless, and be it further enacted, That all Actions or Proceedings for any Offence or Injury that shall be committed against this Act shall be brought, sued, and commenced within Twelve Calendar Months next after such Offence committed, or else the same shall be void and of no effect.

IV. And be it further enacted, That whenever Authors, Persons, Offenders, or others are spoken of in this Act in the Singular Number or in the Masculine Gender, the same shall extend to any Number of Persons and to either Sex.

<sup>1</sup> Formally it was an act to amend the Laws Relating to Dramatic Literary Property.

### 13 **The Lord Chamberlain considers the question of theatrical fees, 1836**

A. Bunn, *The stage, both before and behind the curtain* (3 vols., London: Bentley, 1840), vol. II, p. 181<sup>1</sup>

#### FEE ON LICENSING THEATRICAL ENTERTAINMENTS

This is a fee of 2l 2s for every play, song, or other theatrical entertainment licensed under the provisions of the Act of the 10th George II, c. 28, by the Lord Chamberlain, previously to public representation. It is payable by the managers of the several theatres within the jurisdiction of the Lord Chamberlain, to the examiner of theatrical entertainments, and produced in the year 1835 the sum of 291l 18s.

The payment of this fee appears to have existed for nearly a century; and it was stated to us by the late Mr Colman, that although he considered himself clearly entitled to the fee of 2l 2s for every song or short piece licensed, as well as for every play however long, yet in practice he had sometimes only charged one fee upon several new songs licensed upon the occasion of a performer's benefit, and had relinquished his fee altogether in some special cases.

The fee is not charged for a song which is written in, and forms part of any play or opera; nor is it paid in cases where the license [*sic*] is refused by the Lord Chamberlain.

We are of the opinion that fees of this nature may with propriety be continued, provided their amount is commensurate with the labour and responsibility cast upon the examiner, and not, as at present, remaining an unvarying fee of 2l 2s upon every occasion, whether the new production be short or long – a system which, in its operation, presses unduly and heavily upon the managers of those theatres at which new pieces of one and two acts are frequently produced under the sanction of the Lord Chamberlain's license [*sic*]. In this view of the subject we are fully borne out by the opinion of the Select Committee of the House of Commons on dramatic literature, whose report to that House, in the month of July 1832, upon the subject of the fees on licenses [*sic*], was as follows: 'Your Committee would recommend some revision in the present system of fees to the censor, so (for instance) that the

license of a song, and the license [*sic*] of a play, may not be indiscriminately subject to the same charge.'

Having fully considered this subject, we are induced to recommend to your Majesty's consideration, that the following would be a fair and proper scale of fees, to be in future payable to the examiner upon licensing all theatrical entertainments, namely –

For a License [ <i>sic</i> ] for every Dramatic piece of three or more acts	£2 0 0
For a License [ <i>sic</i> ] for every Dramatic piece of one or two acts, or for a Pantomime containing prose or poetry	1 0 0
For a License [ <i>sic</i> ] for a Song, Address, Prologue or Epilogue	0 5 0

The death of Mr Colman having caused a vacancy in the appointment of examiner, the Lord Chamberlain has stated that his successor has been appointed, with a distinct understanding that the scale of fees would be subject to revision. We consider that the scale proposed by us will afford a fair and adequate remuneration for the office, provided the salary now payable under your Majesty's warrant is increased to the extent of about 50l per annum.

<sup>1</sup> Bunn quotes the report that the Lord Chamberlain issued on 28 December 1836.

#### LEGAL INCONSISTENCIES AND EVASIONS

Makeshift theatrical venues flourished, especially in more densely packed areas of London, in this case north of Oxford Street. Many were erected in the courtyards of inns or inside warehouses. The repertoire largely consisted of cut-down versions of popular melodramas, comic songs and dances.<sup>1</sup>

<sup>1</sup> See Henry Mayhew's description of a Smithfield penny gaff in the 1850s in *London labour and the London poor* (London: Griffon, 1864), vol. 1, pp. 42–4.

### 14 The prosecution of an unlicensed penny gaff, 1838

*Times* (10 March 1838), p. 7<sup>1</sup>

HATTON-GARDEN.—For some time past numerous complaints have been made to the magistrates of this office of two penny theatres, the one in Mortimer-market, Tottenham-court-road, and the other in a field adjacent to Bagnigge-wells-road, where gangs of young thieves nightly assembled. On Wednesday last several of the inhabitants of Mortimer-market, attended at the office to complain of the former establishment [. . .] Inspector Jenkins, and a body of constables of E division, proceeded to the theatre, and captured the manager, performers, and musicians, and the whole of them were yesterday brought to the office and placed at the bar [. . .]

The prisoners gave their names, Edward Ewyn, manager, Ann Green, Eliza Cambell, Maria Lewis, Henry Woodford, John Jones, Joseph Burrows, John Smith,

John Dennis, James Pillar, John Golden, and James Brierly. The prisoners, some of whom were attired in their theatrical habiliments, with their countenances painted, made a very grotesque appearance.

Duke [from the District Office] being sworn stated, that in consequence of a warrant, on Thursday night last, about 9 o'clock, he proceeded with other officers to a penny theatre in Mortimer-market, St Pancras, where he found the whole of the prisoners, some of whom were engaged in performing their parts, whilst Ewyn, the manager, was employed taking money at the doors, and the woman Green was acting as check-taker. Cambell and Lewes [*sic*] were enacting their parts upon the stage, and Joseph Burrows was in his theatrical dress between them, with his face painted, and wearing a huge pair of mustachios. John Pillar was in a temporary orchestra with a large violoncello, scraping away most melo-dramatically, whilst the players were endeavouring to humour the sounds, and to suit their action to the word, and the word to the action; and just at that part of the performance where Burrows had to exclaim, 'The officers of justice are coming', witness and his brother officers rushed upon the stage and apprehended the whole of them.

Mr ROGERS.— What description of audience was there?

Duke.— A ragged dirty set, principally consisting of boys and girls; two of them were barefooted, and had scarce a rag to cover them, and did not seem to have been washed for a month. The theatre was of the most wretched description: there was a temporary stage, and bits of scenery. The boys said they were errand boys and servants. Brierly and Smith said, they were country actors out of engagements, and had visited the place out of curiosity.

Mr Mallett.— Had they an inscription, that they were 'Licensed pursuant to Act of Parliament?'

Duke.— They had not. On the gates was written up, 'for the evening's performance, the "Spectre of the Grave"; after which a comic song by Mr Ewyn; to conclude with "The Key of the Little Door"'. They found various theatrical dresses and other properties, with stars, swords, etc., now produced.

Bayliss proved having paid 1d for admission. He paid the money to the woman Green. Ewyn was at the door, and he confessed that he was the manager. He took him into custody, and subsequently he apprehended Lewis and Cambell, at the back of the stage, in their theatrical dresses.

Mr ROGERS.— Have you got 'the Spectre of the Grave' here?

Inspector Jenkins— No, your worship, he vanished. The other male performers were dressed in sandals and armour, with their helmets up.

Hall and the other officers corroborated the above evidence. Several inhabitants of Mortimer-market proved that they were every night alarmed by firing of guns, alarms of 'fire', clashing of swords, the most boisterous ranting and shrieks from the voices of the ladies of the *corps dramatique*, and the place was a perfect nuisance to the neighbourhood.

The owner of the place stated, that on the 24th of January he let the place to a person named Summers, for chair-making, when it was turned into a theatre.

Ewyn said, he had engaged with Summers to divide the profits of the theatrical speculation. Summers agreed to take the place, and he (Ewyn) to provide the scenery and wardrobe; 'and proud I am to say, that I have conducted the consarn [*sic*] respectably, which some of the neighbours can testify. "This is the head and front of my offending—no more."

Inspector Jenkins said that about a month ago he called on Ewyns [*sic*], and cautioned him, but he said that the magistrates had nothing to do with the matter.

Mr ROGERS, addressing the prisoners, said that they had received a warning which they did not heed. He should not now order them to find bail, but would discharge them, and if they dared to repeat their performances after this admonition, he would grant a warrant for their apprehension, and every one of them should find bail or be committed. They had held out temptation to the children of poor persons, some of whom, it appeared, were without shoes and nearly naked, who robbed their parents or others for the purpose of procuring the penny for admission. He would order their paraphernalia to be restored to them, but on condition that they would remove their fittings up and desist from any future performances.

Ewyns.— You must give me time to take down the seats and decorations.

Mr ROGERS.— You must take them down this day.

Ewin [*sic*] (with a start).— What! This day! Impossible!

Mr ROGERS directed Inspector Jones to see the mandate obeyed, which he promised to do.

<sup>1</sup> See also *Era* (27 January 1839), p. 209, for a further arrest in the New Cut near Marsh-gate. Not all prosecutions were successful: see the minutes of evidence of the Select Committee in 1832, questions 3490–517.

The odd situation occasioned by the prohibition of all but sacred concerts on Wednesdays and Fridays in Lent, which applied to theatres within the City of Westminster, demonstrated yet again the irrelevance of the distinction between the major and the minor theatres.

## 15 The patent theatres suffer under the legal prohibition of Lenten performances

### (a) Planché remembers the anomalous Lenten restrictions

Planché, *Recollections and reflections*, vol. II, p. 75

Lent arrived, and the theatres in the parish of St Paul, Covent Garden, were rigorously restricted from the performance of a moral or poetical play on Wednesdays or Fridays during that period; but a theatre that happened to be on the other side of Oxford Street or of Waterloo Bridge was unaffected by this prohibition, and though the manager of the Adelphi might not dream of playing the whole of one of the