

Lives of the great advocates: Thomas Erskine

David Walbank KC pays tribute to Thomas Erskine, 'the invincible orator & undaunted patriot'



© Robert Kewley / Alamy Stock Photo

In this new series, I will be examining the careers of some of the most famous barristers in English legal history, their sensational trials and their extraordinary lives out of court and outside the law.

I begin with Thomas Erskine (1750-1823). Although born into the Scottish nobility, he grew up in straitened circumstances. It was, however, a time when young men of talent and ambition could quickly make a name for themselves. Erskine had both in abundance. From his earliest years, young Thomas displayed a preternatural self-confidence and it must be acknowledged that his shining qualities were to some extent marred by an almost comical conceit. Indeed, in his maturity he would come to be caricatured as 'Baron Ego'. Given his zeal to be a great man, Erskine would doubtless have preferred, had his father's means allowed, to be educated at public school and university. Instead, he went to sea as a midshipman and then purchased a commission in the army and was soon cutting a dash in the literary salons of London. So it was that he came to have a walk on part in Boswell's *Life of Dr Johnson*, where he is described as 'a young officer ... who talked with a vivacity, fluency and precision so uncommon that he attracted particular attention. He proved to be the Honourable Thomas Erskine, youngest brother to the Earl of Buchan, who has since risen into such brilliant reputation at the Bar in Westminster Hall'.

A stroke of luck

This was an early recognition of his eloquence. All he needed was that peculiar concatenation of events that was so often, in the case of the great advocates, the gateway to a glittering career. After his call to the Bar, fate took a hand. Erskine attended a dinner at which he launched into a powerful tirade against the First Lord of the Admiralty, Lord Sandwich, who had encouraged his placemen to bring criminal libel proceedings against one Captain Baillie. As lieutenant-governor of the Greenwich Hospital, Captain Baillie had uncovered venality and graft and had petitioned the Lords of the Admiralty for an inquiry, even publishing an exposé of the corrupt practices. It was a pure stroke of luck that, quite unbeknownst to Erskine, one

of those listening with rapt attention was none other than the captain himself, who immediately proceeded to instruct the tyro barrister as the most junior member of his defence team.

At the trial itself, Erskine seized his moment. After dreary and interminable speeches by the more senior defence counsel, this novice barrister rose to his feet and was soon reprimanded by the greatest judge of the age, Lord Mansfield, for his criticisms of Lord Sandwich, who was not actually a party to the proceedings. Far from backing down, Erskine delivered one of the most excoriating denunciations ever heard in an English court:

'I will not give up even my small share of the honour of repelling and of exposing so odious a prosecution ... He has placed these men in the front of the battle, in hopes to escape under their shelter, but I will not join in battle with them; their vices, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with me. I will drag him to light who is the dark mover behind this scene of iniquity ... If he continues to protect the prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience that crowd this court, if he keeps this injured man suspended, or dares to turn that suspension into a removal, I shall then not scruple to declare him an accomplice in their guilt, a shameless oppressor, a disgrace to his rank, and a traitor to his trust.'

Unsurprisingly, Erskine's advocacy won the day in a first youthful blossoming of the talent that eventually cast him as one of the noblest ever defenders of trial by jury, the independence of the Bar and the liberties of Englishmen.

Independence & integrity

He combined moral courage with blazing powers of oratory—described by one contemporary as 'breathing celestial fire'. When Thomas Paine was prosecuted for seditious libel in the second part of his *Rights of Man*, Erskine was retained for the defence and, having come under enormous pressure

to refuse the brief on behalf of a man seen by many as a dangerous radical, he addressed the jury on the role of the independent barrister:

'I will for ever, at all hazards, assert the dignity, independence and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence ... If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of, perhaps, a mistaken opinion into the scale against the accused ...'

In the House of Commons, he became a trusted ally of his fellow Whig MPs—the statesman, Charles James Fox, the political philosopher, Edmund Burke and the playwright, Richard Brinsley Sheridan—and he was briefly Lord Chancellor in the Ministry of All the Talents. But it was in the courtroom that Erskine shone. Dr John Hostettler, in his superb book, *Thomas Erskine and Trial by Jury*, called him 'the brightest ornament the English Bar has ever known'. His greatest triumphs were the State Trials of 1794. At the time of The Terror in Paris, Pitt the Younger feared a copycat revolution in these islands and, repenting of his youthful dalliance with liberty and democracy, was the prime mover behind a succession of oppressive government prosecutions. This is the background against which the last word must go to Erskine's obituarist:

'His sword and buckler protected justice and freedom and defended by him, the government found, in the meanest individual whom they attacked, the tongue of Cicero and the soul of Hampden, an invincible orator and an undaunted patriot.'

NLJ

David Walbank KC is a member of Red Lion Chambers (redlionchambers.co.uk). He specialises in defending charges of white-collar crime. [NewLawJournal.co.uk](http://NewlawJournal.co.uk)