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THE ENFORCEMENT OF THE ALIEN AND SEDITION LAWS

BY

FRANK M. ANDERSON

Reprinted from the Annual Report of the American Historical Association
for 1912, pages 113-126



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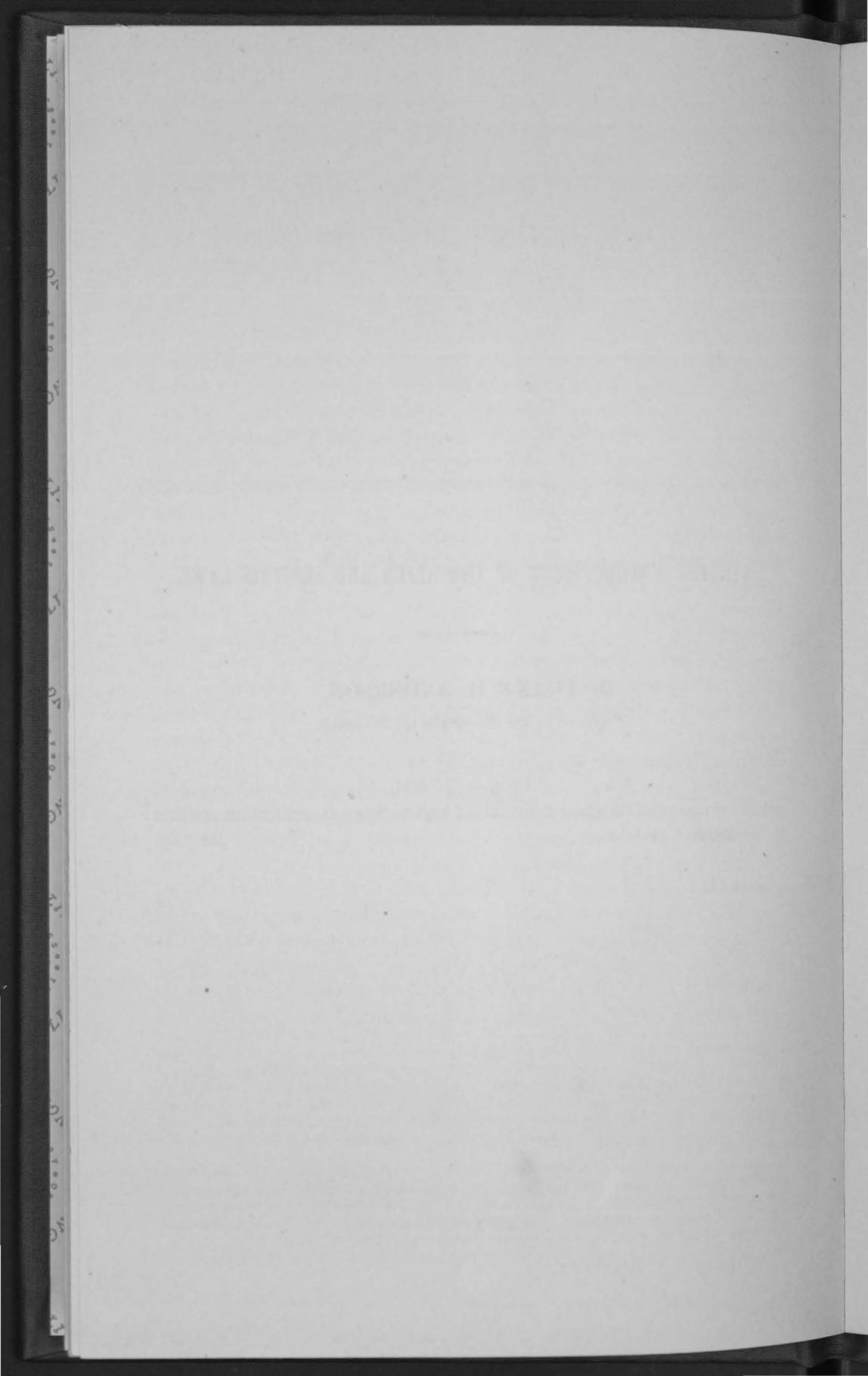
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VII. THE ENFORCEMENT OF THE ALIEN AND SEDITION LAWS.

By FRANK M. ANDERSON,
Professor in the University of Minnesota.



THE ENFORCEMENT OF THE ALIEN AND SEDITION LAWS.

By FRANK MALOY ANDERSON.

In the summer of 1798, when the outbreak of war with France was daily expected, the Federalist majority in Congress hastily passed the famous alien and sedition laws. Designed to afford the President of the United States an effective weapon against what was deemed an especially pernicious and dangerous form of domestic opposition in time of war, they are now best remembered for the part they are presumed to have played in bringing about the defeat of the Federalists in the election of 1800. As the Federalists never recovered from that disaster, it is, I think, a little surprising that one does not find anywhere a close and detailed study upon either the genesis of the alien and sedition laws or upon the manner in which they were enforced. The purpose of this paper is to deal with the latter point, making use of contemporaneous materials brought together from widely scattered sources. The main reliance has been upon the newspapers,¹ but the Pickering and Jefferson papers and the archives of the Department of State at Washington and of the Federal circuit court at Boston have furnished some important materials.

As it is impossible in a 20-minute paper to trace in detail the entire effort at the enforcement of the alien and sedition laws, I shall confine myself to a concise statement of the conclusions to which my study has led upon a few points of prime importance.

First as to the alien law. John Adams, writing to Jefferson in 1813, asserted that he had not applied the alien law in a single instance.² This statement, I believe, was at least technically correct.³ Yet it should not be supposed that the alien law was entirely devoid of effect nor that the administration refrained entirely and on principle from making use of it. There are indications, if not proofs, that a

¹ There are few complete files for any of the newspapers of the period in which the alien and sedition laws were in force. Most of the papers which have been preserved are to be found in volumes of miscellaneous newspapers, often containing only a few numbers of any given paper. The Ebeling collection in the library of Harvard University is the largest and most valuable. The collections of the Wisconsin Historical Society, the Boston Athenaeum, and the Library of Congress contain a considerable number. Several other libraries, especially those in Boston and New York, have a few each.

² Adams, "Writings," X, 42.

³ Adams nevertheless expressed to Pickering on August 1, 1799, a willingness that the alien law should be used against Duane of the Aurora. Adams to Pickering, Adams, "Writings," IX, 5. Pickering did not make any use of the permission, probably because Duane claimed to be of American birth and because a prosecution under the sedition law had already been started against him. Aurora, July 31, 1799, Harvard University Library; Pickering to Adams, August 1, 1799, Adams, "Writings," IX, 7.

considerable number of aliens, anticipating the enforcement of the law, left the country on account of it.¹ Moreover, in at least one instance, that of John D. Burk, author of the well-known history of Virginia, the administration made use of the alien law, in connection with a prosecution for sedition, to drive from the country, as it supposed, an obnoxious alien. In still another instance, that of Gen. Victor Collot, the administration decided to expel him, and it would seem failed to do so only because of his opportune departure from the United States.

Burk a few years before had become involved in the political troubles in Ireland and had fled to America to avoid arrest for sedition.² At the time of the passage of the alien law he was one of the editors of the *Time Piece*, a vigorous semiweekly Republican paper in New York City, which was reported about to become a daily.³ Soon after the law was passed Burk published an article in which he rather more than insinuated that a letter of Gerry to Adams, recently communicated to Congress, was garbled and that certain passages were a forgery.⁴ Timothy Pickering, Secretary of State, at once wrote to the United States district attorney, calling attention to the article and to a report in another paper of some seditious remarks said to have been made by Burk. "If Burke be an Alien," said Pickering, "no man is a fitter object for the operation of the Alien Act. . . . Altho' Burke should prove to be an Alien, it may be expedient to punish him for his libels, before he is sent away."⁵ The district attorney, however, had begun a prosecution for libel before the receipt of Pickering's letter.⁶ An indictment was returned against Burk, but the case never came to trial, an agreement having been made that Burk should leave the United States.⁷ It appears, however, from a letter of Burk to Jefferson, written in 1801, that Burk did not leave, but went into hiding until after the expiration of the alien and sedition laws and the change of administration once more made it safe for him to appear in public.⁸

¹ A large number of French refugees from the West Indies were in the United States when the alien law was passed. Létombe, the French consul general, over a year earlier, in a dispatch to the Directory estimated the number at 20,000 to 25,000. Archives Nationales, AF III, 64. Other estimates are even higher. The archives of the Department of State at Washington contain abundant evidence that directly after the passage of the alien law large numbers of these French refugees left the United States. See especially "Domestic Letters," XI, July 2, 1798, to June 29, 1799. Although the going of most of these can be fully accounted for on other grounds, there are indications that with some of them apprehension on account of the alien law was a factor in bringing about their departure.

² John Burk, "History of the Late War in Ireland" (Philadelphia, 1799), 43-50. New York Public Library.

³ The *Commercial Advertiser* (New York), reprinted in the *Gazette of the United States* (Philadelphia), June 13, 1798. Boston Public Library.

⁴ The article is in the *Time Piece* of July 2, 1798. Wisconsin Historical Society.

⁵ Unpublished letter, Pickering to Richard Harison, July 7, 1798, in Pickering Papers, XXXVII, 315.

⁶ The *Commercial Advertiser* (New York), July 6, 1798. Boston Athenaeum. Dr. James Smith, associate editor of the *Time Piece*, was also arrested.

⁷ Unpublished letter, Pickering to Richard Harison, January 1, 1799, in Pickering Papers, XXXVII, 381.

⁸ Unpublished letter, Jefferson Papers, second series, VII, 33, Library of Congress. The letter is undated, but Jefferson's reply ("Writings," VIII, 65-66, Ford ed.) indicates that it was written in May or June, 1801.

Gen. Collot was in America during the Revolution as an officer in Rochambeau's army.¹ In 1792 he was appointed governor of Guadeloupe, arriving there in February of 1793. In that island he led a stormy career, finally surrendering it to the English on April 20, 1794, under a capitulation which enabled him to go to the United States as a prisoner of war on parole.² In the spring of 1796, Adet, the French minister to the United States, commissioned him to go upon a trip to the western part of the United States and to Louisiana.³ Ostensibly the only object of the enterprise was to gather information.⁴ Whether his mission had any other immediate purpose and what use was to be made of the information the documentary evidence does not disclose. It was, of course, but natural that Adams and his advisers, who speedily learned of the project, should become deeply suspicious. Instructions were sent to St. Clair, Governor of the Northwest Territory, to keep close watch upon Collot.⁵ At Fort Massac he was arrested but was permitted to proceed under escort as long as he remained in the territory of the United States.⁶ After an extensive tour, which he afterwards wrote up in his "Voyage dans l'Amérique Septentrionale," he returned to Philadelphia in January, 1797.⁷ Late that year Pickering received a report that Collot was connected with a French project for the seizure of Louisiana and the western portion of the United States.⁸ Pickering, whether he fully believed the report or not, was thoroughly convinced that Collot was a dangerous character, and about the date of the alien law was keeping close track of his movements. In October, 1798, Pickering suggested to Adams that Collot and two other Frenchmen, if they could be found, should be sent away under the alien law, and sent some printed forms to be used for the purpose.⁹ Adams signed the documents, authorizing that they should be filled out for the three men mentioned.¹⁰ Picker-

¹ Collot, "Voyage dans l'Amérique," I, 1 (Paris, 1826). Internal evidence (I, 2) shows that this work was written as early as 1803.

² Collot's own version of his career in Guadeloupe is in his "Précis des Événemens qui se sont passés à la Guadeloupe" (Philadelphia, 1795). Bib. Nat. Lk² 74. The version of his enemies, which contradicts that of Collot at almost every material point, may be found in several pamphlets published at Paris in November, 1794. Arch. Nat. AD VII, 21. Professor F. J. Turner in the Atlantic Monthly, XCIII, 811-812, gives a brief account of Collot's journey in the West. The evidence is cited in American Historical Review, X, 272-273.

³ Adet to Collot, 24 Ventose, Year IV (March 14, 1796), Collot, "Voyage dans l'Amérique," I, vii. Adet to Minister of Foreign Relations, 3 Messidor, year IV (June 21, 1796), "Annual Report" of the Amer. Hist. Assoc., 1903, II, 928-929.

⁴ Ibid.

⁵ McHenry to St. Clair, May, 1796, "St. Clair Papers," II, 395-396.

⁶ Collot, "Voyage dans l'Amérique," I, 270-272.

⁷ Létombe to Delacroix, 30 Messidor, year V (July 18, 1797), "Annual Report" of the Amer. Hist. Assoc., 1903, II, 1048-1049.

⁸ Unpublished letter, J. J. Ulrich to Pickering, November 29, 1797, in Pickering Papers, XXI, 368.

⁹ Unpublished letters, Pickering to Adams, October 4 and 11, 1798, in Pickering Papers, IX, 426, 453-454.

¹⁰ Adams to Pickering, October 16, 1798, Adams, "Writings," VIII, 606-607. In the Pickering Papers, LIV, 1, there is a printed form of a warrant of arrest under the alien act. It is signed by Adams, but is not otherwise filled out. Probably it is one of the three mentioned in Adams's letter.

ing, however, did not have Collot arrested for fear that his arrest might interfere with the search for other suspects.¹ In June, 1799, there was a report in the newspapers that Collot was about to leave the country.² He did not go at once, and on August 1 Pickering again suggested that the alien law should be used against him.³ Adams again consented,⁴ but before the consent was given Collot had left Philadelphia and soon afterwards took his departure from the United States.⁵ It is a perfectly safe inference, I think, from the silence of the archives of the Department of State, the Pickering Papers, and Collot's own writings, that he was not sent away under the alien law.

The sedition law bears date of July 14, 1798. It is a notable fact, but hitherto I believe generally overlooked, that prosecutions for seditious libel against the Federal Government or its officers actually began prior to the passage of the sedition law, and that several of the cases usually alluded to as sedition law cases were prosecuted under the common law or partly under the common law and partly under the sedition law. This procedure seems to have been based upon the doctrine laid down by Judge Peters in April, 1798, in the case of *United States v. Worrall*,⁶ that there was a common law of the United States, from which the Federal courts acquired a jurisdiction over crimes in addition to that bestowed by the Federal statutes, a doctrine which at that time had numerous supporters among Federalists, though denied by some,⁷ and was among the strong centralizing tendencies which alarmed the Republican leaders and probably the country as well.⁸ The earliest of these cases appears to have been that of Benjamin F. Bache, of the *Aurora*, who was arrested at Philadelphia on June 26, 1798, for "sundry publications and republications" of an earlier date, which were alleged to be libels upon the Executive department of the

¹ Unpublished letter, Pickering to Adams, August 1, 1799, in Pickering Papers, XI, 524-527.

² *Gazette of the United States* (Philadelphia), June 21, 1799. Boston Public Library.

³ Adams, "Writings," IX, 6-7.

⁴ Adams to Pickering, August 13, 1799, Adams, "Writings," IX, 14.

⁵ The unpublished correspondence between Pickering and Elisha Boudinot during August, 1799, shows that Collot was then residing at Newark, closely watched by Pickering, who was contemplating his arrest. See Pickering Papers, XXV, 84, 85, 102, 115, 116; XI, 607.

⁶ 2 Dallas, 384-396.

⁷ Chief Justice Ellsworth enunciated this doctrine in a charge to a South Carolina grand jury in 1799. *Carolina Gazette* (Charleston), May 16, 1799. Harvard University Library. Justice Chase in the *Worrall* case expressed dissent.

⁸ Among the numerous evidences of the opposition of the Republicans to this doctrine may be cited the article signed "Aristogiton," copied from the *Examiner* (Richmond) by Greenleaf's *New Daily Advertiser*, November 2 and 4, 1799 (Wisconsin Historical Society), a series of articles signed "Hortensius" in the *Aurora* during 1800, and two sets of resolutions passed in 1800 by the Virginia Legislature. See Tucker's "Blackstone," I, Appendix, 438-439, and the manuscript journal of the House of Delegates, December 15, 1800 (Virginia State Library). In 1812 the Supreme Court in the case of *United States v. Hudson and Goodwin* (7 Cranch, 32-34) decided that the doctrine was untenable. The whole history of the effort to secure recognition for the doctrine deserves careful study as an example of the extreme centralizing doctrines which in the early years of the Federal Government had powerful advocacy.

United States Government.¹ Other cases of the sort were those of two irreverent citizens of Trenton who were tried and punished for some light remarks in regard to President Adams,² and that of Anthony Haswell, the editor of the leading Republican paper of Vermont, for the publication of the advertisement of a lottery formed for the purpose of raising the amount of Matthew Lyon's fine and for some remarks in regard to the employment of Tories of a sort not to be appreciated by Federalists.³

From the accounts of the alien and sedition laws in many histories one is likely to get the impression that, having been enacted in a moment of panic, their enforcement was afterwards neglected by the administration and that such prosecutions as occurred were due wholly to the initiative of subordinate Federal officials.⁴ Such an impression is not correct. There is no evidence to show that President Adams ever personally interested himself in the enforcement of either law. But Pickering, his Secretary of State, the Federal judges quite generally, especially Justice Chase, and the Federal district attorneys and marshals were by no means inattentive to the enforcement of the sedition law. Pickering, despite his tremendous activity in other matters, was the most energetic of all. His correspondence shows that he scanned the columns of numerous Republican newspapers to detect possible material for sedition cases, and that he wrote to several, at least, of the district attorneys instructing them to be vigilant for the same purpose in their localities.⁵ It also shows him receiving letters which called his attention to possible occasions for sedition prosecutions, and that in several instances he specifically directed prosecutions to be begun.⁶ The justices of the Supreme Court in charges to grand juries called attention to the sedition law and in some instances at least gave strong intimations that the jury ought to bring in indictments.⁷ Chase was the most active in this

¹ Gazette of the United States (Philadelphia), June 27, 1798. Harvard University Library. The Aurora (Philadelphia), June 27, 1798. Library of Congress. It looks much as if the case against Bache, with its attendant possibility, that the case might fail because there was no Federal statute on the subject of seditious libels, was a considerable factor in bringing about the passage of the sedition law.

² The Federalist (Trenton), April 8, 1799, Harvard University Library; The Argus (New York), October 12, 1799, *ibid.*; The Oracle of the Day (Portsmouth, N. H.), October 26, 1799, *ibid.* The latter article is reprinted from a Trenton paper, probably The Federalist of October 8, 1799.

³ Wharton, "State Trials," 684-687. The Vergennes Gazette, May 15, 1800, reprinted in the Albany Gazette, May 22, 1800. Wisconsin Historical Society. Vermont Gazette, May, 1800, reprinted in the Albany Register, May 30, 1800. *Ibid.*

⁴ This impression seems to rest chiefly upon a statement made by Adams in 1815. See Adams to James Lloyd, February 11, 1815, Adams, "Writings," X, 118.

⁵ Unpublished letters, Pickering to Zebulon Hollingsworth, August 12, 1799; to Thomas Nelson, August 14, 1799; to Richard Harison, August 12, 1799; to William Rawle, September 20, 1799; in Pickering Papers, XI, 599, 603-604, 611-612; XII, 82-83.

⁶ Pickering to Adams, August 1, 1799; Adams, "Writings," IX, 7, and unpublished letters; Pickering to Rawle, July 5 and 24, 1799; John B. Walton, December 23, 1799; and January 19, 1800; Pickering to Richard Harison, June 28, 1798; in Pickering Papers, VIII, 604; XI, 390, 486, 495; XII, 82; XXV, 321-322; XXVI, 16.

⁷ Iredell's charge to the grand jury at Philadelphia, April 11, 1799, is typical. McRee, Iredell, II, 551-570.

matter. The indictment against Callender came in that way, and Chase apparently tried at both Baltimore and Wilmington to secure similar action against the local Republican papers.¹ As the result of what may be characterized, considering the conditions of the day, as a fairly systematic effort to enforce the sedition law, proceedings were begun or attempted against one or more persons, usually the editors of Republican newspapers, in each of the States, except New Hampshire and Rhode Island, where there were few Republicans, and in the States of the far South and West.

How many instances were there of arrest, trial, and conviction or acquittal under the sedition law or for seditious libel under the common law of the United States doctrine? Information on these points must come largely from the newspapers. For many of the newspapers of the time no files have been preserved. Those which remain are incomplete and so widely scattered that some part of the newspaper material is almost certain to be overlooked. The nearly universal newspaper practice of the day, whereby newspapers furnished their news of other than local happenings by reprinting articles verbatim from other papers, nevertheless, enables an investigator by fairly extensive research to approximate the results of an exhaustive investigation. Great difficulty arises from the meagerness and conflicting character of the reports. Arrests for sedition under State laws are sometimes hard to distinguish from those under Federal law. I have made a special effort to discover every possible instance and to avoid confusing Federal and State cases. There appear to have been about 24 or 25 persons arrested. At least 15, and probably several more, were indicted. Only 10, or possibly 11, cases came to trial.² In 10 the accused were pronounced guilty. The eleventh case may have been an acquittal, but the report of it is entirely unconfirmed.³

Since limitations of time preclude an account of the various trials, a classification of the cases in which indictments were returned may be of service to show the character of the prosecutions. They may be said to fall into four classes. The first includes the proceedings aimed at the leading Republican newspapers of the country. There were at that time four papers which, because they were located at strategic points and were edited with considerable ability, and had a relatively large circulation, stood in a separate class as regards

¹ The American (Baltimore), June 4, 1800, reprinted in the City Gazette and Daily Advertiser (Charleston), June 20, 1800. Harvard University Library. The Wilmington Mirror quoted in the Aurora (Philadelphia), July 7, 1800.

² Thomas Adams, of the Independent Chronicle (Boston), and Benjamin F. Bache, of the Aurora (Philadelphia), died while the cases against them were pending. The cases against Mrs. Ann Greenleaf and Jedediah Peck were nolle. Several cases against William Duane, of the Aurora, were pending when Jefferson became President. They were dropped. For eight or nine cases no information can be obtained beyond the fact of arrest for sedition.

³ The Connecticut Gazette (New London), May 21, 1800, in its report of the Haswell trial said: "Doctor Shaw, of Castleton, was likewise tried for sedition, and acquitted." Harvard University Library.

power and influence, the other Republican papers consisting largely of articles reprinted from these four. They were the *Aurora* (Philadelphia), the *Examiner* (Richmond), the *Argus* (New York), and the *Independent Chronicle* (Boston). Could these or any one of them be silenced, a hard blow would be dealt the Republican party. That all four were attacked¹ through their proprietors, editors, or chief writers, and that the *Aurora*, the ablest, boldest, and most influential of the four, was repeatedly attacked was probably in large measure responsible for the belief among Republicans that a real effort was being made to silence the Republican press.

The second class consists of proceedings aimed at minor Republican papers. There were at least four such cases. Allusion has already been made to those against Burk, of the *Time Piece* (New York), and Haswell, of the *Vermont Gazette*. William Durrell, of the *Register* (Mount Pleasant, N. Y.), and Charles Holt, of the *Bee* (New London, Conn.), were convicted and sentenced to both fine and imprisonment.² It is again noticeable that at least three of these papers were abler and bolder than most of the Republican papers, many of which about that time were decidedly colorless.

A third class was of cases not primarily against the press, but against individuals of considerable national or local importance. Those against Matthew Lyon, the Vermont congressman, and Dr. Thomas Cooper are among the best known of the sedition-law cases and for that reason may be passed over. That against Jedediah Peck, a member of the New York Legislature, is not so well known. It is said to have been instigated by Judge William Cooper, the Federalist congressman from the district in which Peck lived, and to have been based upon a petition which Peck circulated asking Congress to repeal the sedition law.³ The prosecution was finally dropped, partly at any rate from considerations of political prudence, but not until Peck had been subjected to a good deal of annoyance.⁴

The fourth class consists of cases against insignificant persons, whose acts it is hard to believe could have been of any serious im-

¹ The case against Callender was virtually directed against the *Examiner*.

² Durrell was sentenced to four months in prison and a fine of \$50 for reprinting an article from the *New Windsor Gazette*. He served only a small part of his sentence, being the only sedition-law culprit pardoned by Adams. The *Time Piece* (New York), August 6, 1798, quoting the *Mount Pleasant Register*; unpublished letters, Pickering to Harison, June 28, 1798, and April 22, 1800; Harison to Pickering, April 10, 1800; in Pickering Papers, VIII, 604; XIII, 406; XXVI, 77-78; archives of the Department of State, Adams to Pickering, April 21, 1800, Miscellaneous Letters, 1800, and book of "Pardons and Remissions," No. I, pp. 31-32. Holt was sentenced to three months in prison and a fine of \$200. The *Connecticut Journal* (New Haven), April 24, 1800. Harvard University Library. His offense, as recited in the indictment, was the publication of an article containing some caustic comment upon the moral character and influence of the Army and ascribing its enlistment to the ambition of Adams. The *Bee*, May 21, 1800. Library of Congress.

³ Hammond, "Political History of New York," I, 131-132 (third ed., 1845). Hammond wrote many years later, but probably had personal knowledge of the case, as he was living in the vicinity at the time of Peck's arrest.

⁴ Unpublished letters, Richard Harison to Pickering, April 10, 1800; Pickering to Harison, April 22, 1800, in Pickering Papers, XXVI, 77-78; XIII, 406; and Adams to Pickering, April 21, 1800, in the archives of the Department of State, Miscellaneous Letters, 1800.

port. That there should have been any such cases shows the panicky feeling which prevailed among the Federalists of the time and illustrates the possibilities of oppression which lay in the sedition law. The most typical are two closely connected cases which occurred in Massachusetts. Both cases, probably on account of the insignificance of the individuals concerned, seem to have been overlooked hitherto, though there are materials in the newspapers and the archives of the circuit court and of the Department of State for a more exact description of these cases than for almost any of the sedition-law trials. A brief account of them may, therefore, be of interest.

In October, 1798, there was erected at Dedham a liberty pole with an inscription upon it in these words: "No Stamp Act, no Sedition, no Alien Bills, no Land Tax: downfall to the Tyrants of America, peace and retirement to the President, long live the Vice-President and the Minority; may moral virtue be the basis of civil government."¹ The erection of this pole seems to have greatly alarmed the Federalists of the neighborhood. A few days later the United States marshal, with the assistance of some citizens from neighboring towns, arrested Benjamin Fairbanks, who had taken a hand in the erection of the pole. He was taken to Boston and bound over to the next session of the Federal circuit court.² The *Columbian Centinel* pointed to his release on bail as proof of "the leniency of the Federal administration," remarking that "in 1786 he would have been committed to close gaol."³

The examination of Fairbanks appears to have disclosed the fact that the erection of the liberty pole had been brought about by David Brown, whom Fisher Ames described at Fairbanks's trial as a "wandering apostle of sedition," but apparently Brown could not be found at the time. In March of the next year, however, he was arrested at Andover. At the time of his arrest he had upon him a number of manuscripts which, together with his share in the erection of the Dedham liberty pole, became the basis of the sedition case against him. His bail was fixed at \$4,000; being unable to furnish it he was taken to the jail in Salem.⁴

Indictments were found against Fairbanks and Brown at the June session of the United States circuit court and the cases were tried immediately, Justice Chase presiding.⁵ At first both decided to stand

¹ The *Independent Chronicle* (Boston), November 8, 1798. Wisconsin Historical Society. The indictment against David Brown (see below) gives the same form for this label, except that it omits the last clause.

² *Columbian Centinel* (Boston), November 7 and 10, 1798. Harvard University Library.

³ November 10, 1798.

⁴ *Columbian Centinel* (Boston), March 27, 1799. Harvard University Library. *Salem Gazette*, March 27, 1799. Massachusetts State Library.

⁵ The account of these trials, unless some other authority is cited, is drawn from the report in the *Independent Chronicle* (Boston), June 13-17 and 17-20, 1799. Harvard University Library. The reports in the other Boston papers confirm but do not add anything.

trial, but afterwards changed their minds and pleaded guilty. Fairbanks presented a paper to the court in which he freely confessed his fault, stated that he had been present at the erection of the pole, but had been misled and had not known "how serious an offence it was." He protested that he was now "fully sensible" of his offense and in the future would try to conduct himself as a good citizen. His plea for a mitigation of penalty was supported by Fisher Ames, who declined to act as his counsel, but consented to make an appeal for clemency. According to Ames, who despite his rôle on this occasion is not likely to have been unduly partial to his client, Fairbanks was of unblemished reputation, a man of substance, a former selectman of Dedham, and a zealous patriot during the Revolution. These pleas appear to have been effective, for Justice Chase imposed a sentence of six hours in prison, \$5 fine and costs—the only really lenient sentence in any of the sedition-law convictions.

No leniency was shown to Brown. It appears that he was a man of 40 to 50 years of age, a native of Connecticut, and a laboring man. He had been a soldier during the Revolution. Later he had wandered about a good deal, claiming to have been in foreign countries and in most of the States of the Union. During the two preceding years, according to his own statement, he had been much engaged in preaching and writing politics and had been in or had information in regard to 80 Massachusetts towns. Justice Chase tried to induce Brown to reveal the names of the persons who had prompted or aided him and to get from him a list of the subscribers to an intended edition of his writings, but Brown refused to make either disclosure. He requested that his punishment should be wholly by imprisonment, and not by fine, but Chase after examining several witnesses "that the degree of his guilt might be ascertained" sentenced him to pay a fine of \$400 and to go to prison for 18 months.

That Brown, though probably a man of considerable natural ability and of some reading, was semiilliterate, is abundantly shown by the extracts from his writings which were recited in the indictment.¹ A few samples will illustrate both their substance and their style.

Upon the subject of the sale of the western lands, he said:

They have sold the lands by fraud and without any power derived from the people to justify them in their conduct. Here is the one thousand out of the five millions that receive all the benefit of public property and all the rest no share in it. But now if they want to settle their sons they must give 10 dollars instead of ten cents to those gentlemen that the legislature have made rich and made themselves rich also. Indeed all our administration is as fast approaching to Lords and Commons as possible—that a few men should possess the whole Country and the rest be tenants to the others.

¹ Unpublished document in the archives of the United States circuit court at Boston.

He denounced the general policy pursued by the United States, charging that the few were controlling the Government in their own interest and to the detriment of the masses.

What a sad dilemma do we find! for our own constitution has not been formed but ten or twelve years and the history of ages has not produced so great a declination of administration, and so great a tyranny in so short a period: for there is not an instance wherein the property of the Union is concerned but what the leaders of Government have ingroc'd the whole to themselves, and five hundred out of the union of five millions receive all the benefit of public property and live upon the ruins of the rest of the Community. Yet we sit still and see our fellow Citizens crossing into a State of abject slavery and do nothing to retrieve ourselves. . . . The language of Government is reverence to the constitution, let the constitution be ever so corruptly administered, if it takes all their property with lives to support it, for the sake of one hundred out of the Union of five millions by teaching that a few men were cloth'd by God to govern in Church and State, and that the rest were made for the express purpose to see how miserable he could make them both in things of time and futurity. . . . there all [always] has been an actual struggle between the laboring part of the community and those lazy rascals that have invented every means that the Devil has put into their heads to destroy the labouring part of the Community and those that we have chose to act as public servants, act more like the enthusiastic ravings of mad men than the servants of the people and are determined to carry their own measures by the point of the bayonet.

The portion which perhaps most particularly alarmed Massachusetts Federalists was in these words:

Those that are for enslaving the people need not flatter themselves that they have gained their points for in eighty towns . . . in Massachusetts there is a number in each who have stood out against the land tax and manner of collecting and would not give in. . . . Seven eighths of the people are opposed to the measures of tyrants to enslave them: and Congress need not flatter themselves that they can carry their measures, for I never knew a Government supported long after the confidence of the people was lost, for the people are the Government . . . notwithstanding all the petitions and remonstrances to Congress they take no notice of it—and if they do not get a redress of their grievances by petitioning for it, they will finally break out like the burning mountain of Etna, and will have an unconditional redress of their grievances.

It is, I think, pretty evident from these extracts that Brown, while a crude, semiilliterate fanatic, was something of a thinker and had some ideas of democracy and social justice which were somewhat in advance of his day.

Severity against Brown did not stop with the imposition of a sentence which was more severe than that against any other person convicted under the sedition law. In July, 1800, after having been

in jail 16 months, including the period while awaiting trial, he addressed a petition to President Adams, who was then at Quincy, asking for a pardon, but it was refused.¹ The term for which he was sentenced was up in December, 1800, but he was not released, as he could not pay the \$400 fine and costs. On February 5, 1801, he addressed a second and very pathetic petition to Adams, setting forth the long period he had been in jail and that on account of his poverty there was no prospect that he would ever be released, unless the fine should be remitted.² Shortly after Jefferson became president, a third petition was sent. That petition was not necessary, for Jefferson had already granted a full pardon.³ Brown thus actually remained in prison fully two years and was altogether the most grievous sufferer from the penalties of the sedition law. All the circumstances of the case point to the conclusion that the exceptional severity against Brown was due to a fear of the possible effect of his political activity. This inference is converted almost into certainty by the character of some of the comments of the Federalist papers.⁴

Did time permit I should include something upon the nature of the offenses punished under the sedition law, the personal history of the culprits, the treatment meted out to them, and the effect of the enforcement of the law upon public opinion. But I am forced to close with merely a few observations upon the fairness of the trials.

Charges of unfairness were numerous. They turned chiefly upon the alleged packing of the juries, the construction of the law by the courts, and the general deportment of the judges at the trials.⁵

Were the juries packed? It is evident from the tone of the replies made to the judges' charges by the grand juries which found the indictments that they were composed preponderantly, if not exclusively, of Federalists.⁶ As to the trial juries little definite information can be obtained, except as to the Callender jury. In that instance the jury was certainly drawn in a manner which went far toward

¹ Unpublished document in the archives of the Department of State. The indorsements upon the petition show that it went to Adams at Quincy and that he forwarded it to the Department of State. See also an unpublished letter, Adams to Pickering, June 19, 1800, in *Miscellaneous Letters*, 1800.

² Unpublished document in the archives of the Department of State.

³ Unpublished document in the archives of the Department of State. "Pardons and Remissions," I, 43-44. The pardon was dated March 12, 1801.

⁴ The Salem Gazette, March 29, 1799, contained an election appeal signed "A Federal Watchman." It declared "that there is now on foot a plan of the Jacobins, which they are pursuing everywhere with the most indefatigable industry to have a majority in our next Legislature who will favour the views of France, and the Virginia and Kentucky resolutions calculated to that object. Already one *Brown* is now in our jail, committed for seditious conduct to accomplish such purposes; and from most respectable authority I am assured the plan is assiduously pursuing by the disorganizing agents in every county in the commonwealth, and there is much fear they will in many instances accomplish their ends."

⁵ Typical charges of unfairness may be found in *The Bee* (New London), November 28, 1798, and Jefferson to Edmund Pendleton, April 19, 1800, "Mass. Hist. Soc. Collections," seventh series, I, 76. Lyon at his trial charged that the jury was packed, asserting that the jurors had been summoned from towns which were hostile to him. *Albany Gazette*, October 19, 1798. Boston Public Library. Lyon to S. T. Mason, October 14, 1798, McLaughlin, "Matthew Lyon," 343.

⁶ A typical reply is that of the grand jury which indicted Lyon, *Rutland Herald*, October 15, 1798.

justifying the charge of packing.¹ In the cases of Matthew Lyon, Anthony Haswell, and possibly of Dr. Cooper, the juries could scarcely be called impartial, though the evidence is not sufficient to sustain the charge that they were deliberately packed.

Charges of unfair construction of the law by the courts had to do chiefly with two matters: (1) The question of the constitutionality of the sedition law; (2) the construction to be placed upon the provision permitting the truth of the alleged libel to be offered as a valid defense. Upon the first of these questions all of the presiding judges, except possibly Justice Washington, had pronounced in advance of the trials in charges to grand juries. Although they did not altogether refuse to permit discussion of that point, the reports of the trials make it abundantly clear that their minds were made up and that practically no consideration was given to the arguments against the constitutionality of the law. The value of the provision permitting the truth of the alleged libel to be offered as a valid defense depended, of course, upon the construction put upon it by the courts. By refusing to distinguish between fact and opinion and by requiring that every item in every allegation should be fully proved the courts would deprive the provision of all value as a protection for the accused. This is exactly what was done.²

The deportment of the judges, Chase excepted, seems to have been substantially correct, though doubtless their manner was not altogether devoid of bias against the defendants. Chase's conduct in the Callender trial, and possibly in that of Cooper also, was bad enough to warrant the charge that the defendant was not given a fair chance to present his side of the case.³

¹ See the evidence offered at the Chase impeachment trial, "Annals of Congress," 8 Cong., 2 sess., pp. 195, 201, 219, and *passim*. The charge was made that Chase instructed the marshal that no Democrat should be put upon the panel. The evidence does not sustain that charge, but does show that Chase admitted to the jury a man who confessed to a strong bias against Callender and virtually prevented the defense from exercising any right of challenge.

² Rulings which had that effect were exhibited most clearly in the Haswell and Callender cases. See for the Haswell case the Albany Register, May 21, 1800. Wisconsin Historical Society. For the Callender case see Wharton, "State Trials," 695, 707-708.

³ Wharton, "State Trials," 688-721; the Examiner (Richmond), reprinted in the Aurora (Philadelphia), June 13-27, 1800. Harvard University Library. Testimony at the Chase impeachment trial, "Annals of Congress," 8 Cong., 2 sess., *passim*.

