

The Sedition Act of 1798

Sedition Act of 1798 – a brief history of arrests, indictments, mistreatment & abuse

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Introduction

In 1798 the Alien and Sedition Acts were signed into law by President John Adams in response to fears of an impending war with France. These acts, consisting of four laws passed by the Federalist-controlled Congress, increased the residency requirement for American citizenship from five to 14 years, authorized the president to imprison or deport aliens considered "dangerous to the peace and safety of the United States" and restricted speech critical of the government. While the Federalists, led by Alexander Hamilton and Adams, argued that these laws were passed to protect the United States from foreign invaders and propagandists, Democratic-Republicans, led by Thomas Jefferson and James Madison, saw the Alien and Sedition Acts as a direct threat to individual liberty and the First Amendment by a tyrannical government.

The Alien and Sedition Acts were fiercely debated in the press, which was overtly partisan at the time. Many editors of Democratic-Republican-sponsored newspapers vehemently opposed the new laws, in particular the Sedition Act, which made speaking openly against the government a crime of libel punishable by fine and even prison time. Federalists sought to quell dissent by prosecuting those who violated the Sedition Act to the fullest extent of the law.

Accounts vary about the number of arrests and indictments that occurred as a result of the passage of the Sedition Act of 1798. Most scholars cite 25 arrests and at least 17 verifiable indictments – 14 under the Sedition Act and three under common law. Ten indictments went to trial, all resulting in convictions.¹ Because these laws were designed to silence and weaken the Democratic-Republican Party, most of the victims of the sedition prosecutions were Democratic-Republican journalists who openly criticized Adams' presidency and the Federalists.² All but one of the indicted individuals – James Callender, from Thomas Jefferson's home state of Virginia – were from the Federalist-dominated New England and Middle Atlantic states.³ Symbolically enough, Callender's sentence ended on March 3, 1801, the day the Sedition Act expired.⁴

The following list provides a brief look into the challenges that each of these citizens faced during this contentious era in American history. It is important to note that this list includes cases of sedition that were tried both in federal court and under common law. In cases tried under common law, acts of sedition were far easier to prove because truth could not be used as a defense. The prosecution simply had to prove that the offending action was libelous.

William Durrell

William Durrell had the distinction of being the first editor arrested after the enactment of the Sedition Act and was the only Democratic-Republican pardoned for his offensive remarks.⁵ As publisher and editor of the *Mount Pleasant Register*, an obscure upstate New York weekly, Durrell reprinted a paragraph from a June 5, 1798, article originally published in the *New Windsor (Conn.) Gazette* that was critical of President John Adams. Secretary of State Timothy Pickering marked the offending passage and instructed the government prosecutor to determine whether the paragraph was libelous. Although these instructions were written more than two weeks before the Sedition Act became law, Durrell was not arrested until July 17, three days after Adams signed the act. Durrell was taken into custody and then released on \$4,000 bail. On Sept. 5, 1798, Durrell pleaded not guilty before the United States Circuit Court, but it was not until fall 1799 that he was formally indicted for publishing the "false scandalous malicious and defamatory [sic] Libel of and concerning John Adams."⁶ Because his critical remarks appeared in print before

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passage of the Sedition Act, Durrell was charged under the common-law doctrine of seditious libels rather than under the 1798 act. Under common-law practice, the truth of the critical remarks could not be offered as a defense. Therefore, the jury simply had to decide whether Durrell had published critical opinions.⁷

For nearly two years the looming threat of a trial led Durrell to discontinue the publication of his weekly journal and reduced him to poverty even before his indictment. In an attempt to avoid jail time Durrell argued for clemency, stating that because he had been out of business a jail sentence would deprive his family of their sole source of support – the labor of his hands. A judge sentenced him to four months in jail and a \$50 fine. He was to remain in prison until the fine was paid and was ordered to post \$2,000 in security for his good behavior for two years.⁸ A day after he began his sentence, New York District Attorney Richard Harison wrote to Pickering that Durrell “appears to be very poor at present, has a large family to maintain, and has a considerable Time since (he) discontinued his news paper.”⁹ Harison urged Pickering to consider a pardon for Durrell and having been sufficiently impressed with Harison’s argument, President Adams granted a partial pardon on April 22, 1800, directing Pickering to release Durrell from “all the Sentence, except what relates to the Security for future good Behaviour.”¹⁰ After serving less than two weeks of his four-month sentence, Durrell became the only person convicted of sedition to be released from fine and imprisonment by a presidential pardon.¹¹

Benjamin Franklin Bache

As editor of the *General Advertiser* in Philadelphia, also known as the *Aurora*, Benjamin Franklin Bache supported Thomas Jefferson’s Democratic-Republican party and was the main target of Federalists and the Sedition Act. Federalists sent “committees of surveillance” to spy on Bache.¹² The *Aurora* was threatened with strict postal controls and advertisers were intimidated in an effort to force the newspaper to cease publication.¹³ Bache and his wife, Peggy, six months pregnant with her fourth child, received death threats¹⁴ and their home was vandalized by an angry drunken mob who Bache claimed had dined with President Adams the same day.¹⁵

In 1798, when political passions ran highest, Bache was physically assaulted twice, first by Abel Humphreys, son of a shipbuilder, while visiting a Philadelphia shipyard,¹⁶ and later that year when John Ward Fenno, son of the editor of the chief Federalist broadside, the *Gazette of the United States*, attacked Bache for accusing his father of being a British agent.¹⁷ Fenno bit Bache’s knuckle, but Bache pinned Fenno to the wall and beat him over the head with a cane until spectators succeeded in separating the two.¹⁸ Even before the Sedition Act became law, Bache called the legislation an “unconstitutional exercise of power”¹⁹ and suffered dearly for his opinions. Bache was arrested under common law on June 26, 1798 and charged with “libeling the President & the Executive Government, in a manner tending to excite sedition, and opposition to the laws, by sundry publications and republications.”²⁰ However, before Bache could be brought to trial, he died of yellow fever on Sept. 10, 1798.²¹

Thomas and Abijah Adams

As editor of the *Boston Independent Chronicle*, Thomas Adams was a constant opponent of President John Adams. In 1797, the *Chronicle*, along with other Republican papers, criticized Adams for his buildup to war with France and questioned the salary of the president and his son, John Quincy Adams, who served as a diplomatic representative of the United States.²² In response, Massachusetts Federalists began a campaign of political pressure and social ostracism against Thomas Adams and the *Chronicle*. On July 4, 1798, during a Federalist picnic celebrating Independence Day, copies of the *Chronicle* were burned in a public display of opposition to the Democratic-Republican newspaper once called “a libel on government, on truth and decency.”²³ Adams was expelled from the New Relief Fire Society of Cambridge on the

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grounds that he had disgraced the “American character” through his writings and that “a Jacobin, at this day, should not be admitted into the company of honest men.”²⁴ Federalists called Adams “a flaming minister of anarchy” and condemned the *Chronicle* as the “treasonable engine” through which the Democratic-Republican Party operated.²⁵

Adams, however, was not intimidated. He continued his criticism of the Federalists by lashing out at the Alien and Sedition Acts, asserting that under the pretexts of order and submission the Federalists created a system of laws that were openly hostile to the spirit of freedom.²⁶ His repeated condemnation of the Federalist administration made Thomas Adams a prime target under the Sedition Act. Arraigned on Oct. 23, 1798, before a federal Circuit Court in Boston, he pleaded not guilty to a charge of “sundry libelous and seditious publications ... tending to defame the government of the United States.” He was released on bail and ordered to stand trial in June 1799.²⁷

On Feb. 28, 1799, while his federal indictment was still pending, Adams and his older brother, Abijah, bookkeeper for the *Chronicle*, were indicted under Massachusetts common law for libeling the members of the Massachusetts General Court.²⁸ Abijah Adams went to trial on March 1, 1799, on the charge of seditious libel on the state legislature, but Thomas Adams escaped punishment due to a prolonged illness that was too serious to allow him to appear in court. Abijah Adams was found guilty of publishing libel. He was sentenced to 30 days in county jail and was ordered to pay a \$500 surety bond as security that he would not commit a similar offense for one year.²⁹

The pressure of his brother’s sedition trial and his own health problems eventually forced Thomas Adams to sell the *Chronicle* on May 2, 1799, less than a week after Abijah’s release.³⁰ Just one week later, on May 13, 1799, Thomas Adams died. Democratic-Republican newspapers reporting Adams’ death wrote that he remained defiant to the end, stating that “he ever expressed his warm attachment to the liberties of his country” with his dying breath.³¹ Federalists were not so magnanimous. Upon learning of Adams’ death, Massachusetts Federalist Harrison Gray Otis wrote that Adams had been “finally arrested, not by the Marshal of the district, but by that grim messenger whose mandate strikes terror to the heart of the false and malicious libeler.”³²

William Duane

William Duane, Benjamin Franklin Bache's successor at the *Aurora*, was arrested under the Sedition Act for his support of the Democratic-Republican Party and for his criticism of the Federalists in the election campaign of 1800.

Born in America in 1760 to an Irish couple who had recently immigrated to America, Duane found that his heritage became political fodder for his opponents. In an effort to suppress the *Aurora*, Federalists challenged Duane’s citizenship and attempted to have him deported. On July 24, 1799, Secretary of State Timothy Pickering wrote to President John Adams saying that Duane “pretends he is an American citizen, saying that he was born in Vermont, but was when a child, taken back with his parents to Ireland, where he was educated.” Pickering claimed that since Duane left America before the Revolution and returned only recently, he was actually a British subject who might be banished from the United States under terms of the Alien Act.³³

Duane was arrested and charged with “deliberately procuring an assembly of people with the determination of subverting the government of the United States” after soliciting signatures on a petition to repeal the Alien Friends Act, one of the three laws collectively known as the Alien Acts.³⁴ After only 30 minutes of deliberation, a jury acquitted Duane of all charges. A month later, 30 members of Philadelphia’s volunteer cavalry dragged Duane from the *Aurora*’s office and beat and whipped him until he was unconscious.³⁵ For his acerbic writings and influence in the Democratic-Republican party, the Federalists made Duane a chief target of persecution. Between 1798 and 1801, he was indicted under the federal Sedition Act and tried in a state court for “riot and assault.” He was prosecuted and forced into hiding for breaching the legislative privileges of

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the U.S. Senate, sued several times for libel, and brutally beaten by a gang of Federalist soldiers, among other troubles.³⁶

Judah P. Spooner

In October 1798, the Democratic-Republican newspapers *Boston Independent Chronicle* and *Vermont Gazette* chronicled the arrest and indictment of Judah P. Spooner, a printer from Fairhaven, Vt., who was reportedly charged with sedition after publishing a letter written in 1798 by Vermont Rep. Matthew Lyon that was harshly critical of President Adams and his administration.³⁷ In his letter published in *Spooner's Vermont Journal*, Rep. Lyon wrote that under President Adams "every consideration of the public welfare" was "swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice."³⁸

Although Democratic-Republican newspapers reported Spooner's arrest and indictment, historians disagree over the accuracy of these stories. James Morton Smith notes in his book, *Freedom's Fetters*, that while newspapers reported indictments against Spooner, Anthony Haswell, editor of the *Vermont Gazette*, and James Lyon, Matthew Lyon's son, there seems to be no basis for these reports.³⁹ It is unclear from the secondary literature on the subject whether or not Spooner was actually charged with sedition. However, it is clear that Haswell and Matthew Lyon did face sedition charges.

Matthew Lyon

Rep. Matthew Lyon of Vermont, a former printer who had come to the United States from Ireland as an indentured servant, was a fierce Anti-Federalist whose bitter political feuds with the state's ruling Federalists became legendary. Lyon saw the struggle between republicanism and monarchy as the fundamental issue of his time, professing a deep faith in the common man.⁴⁰ During the political campaigns for his congressional seat, Lyon openly challenged the national leader of the Federalist Party, Secretary of the Treasury Alexander Hamilton, accusing him of "screwing the hard-earnings out of the poor people's pockets" to enable government to "vie with European Courts in frivolous gaudy appearances."⁴¹ In Congress, Lyon's Federalist colleagues mocked his ethnicity and Irish accent during House debates, and in social life treated him as "a meer [sic] beast and the fool of the play."⁴² On Jan. 30, 1798, after weeks of ridicule, Lyon lost his temper and spat in the face of Connecticut Congressman Roger Griswold after he made a disparaging remark about Lyon's military record during the Revolutionary War.⁴³ After this incident, the Federalist majority in Congress attempted to have Lyon removed from the House, but failed to acquire the two-thirds majority necessary for expulsion. Griswold then retaliated, attacking Lyon directly in front of the Speaker's chair, savagely beating him with a hickory walking stick as Federalists members of Congress looked on with approval.⁴⁴

Lyon became known in the halls of Congress as "the spitting beast," and the "wild Irishman" whose coarse and bombastic manner made him a frequent target of abuse.⁴⁵ His political enemies called him "a seditious foreigner" and accused him of having French loyalties at a time when the United States was preparing for war with France.⁴⁶ During his re-election campaign, on June 20, 1798, 24 days before the passage of the Sedition Act, Lyon wrote a vigorous reply to his Federalist opponents, suggesting that President Adams was engaged in a "continual grasp for power," having "an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice."⁴⁷ He was indicted for sedition on Oct. 5, 1798, and arrested the next day, fined \$1,000 and sentenced to four months in prison.⁴⁸ The Philadelphia *Aurora* observed that Lyon "had the honour of being the first victim of a law framed directly in the teeth of the Constitution of this federal republic."⁴⁹ For the first time in American history, a candidate for Congress was forced to conduct his election campaign from a federal prison.⁵⁰ Despite these Federalist efforts to suppress his campaign and his rhetoric, Lyon was re-elected to Congress by an overwhelming

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majority.⁵¹ He was released from prison on Feb. 9, 1799, and was met with a triumphant parade, with supporters declaring him a “martyr to the cause of Liberty and the Rights of Man.”⁵²

Anthony Haswell

Anthony Haswell was the postmaster general of Vermont and editor of the *Vermont Gazette*, a Democratic-Republican journal in the heart of Federalist New England.⁵³ A vigorous critic of John Adams, Haswell opposed the Alien and Sedition Acts, publishing a subtle piece of criticism in the Aug. 18, 1798, *Gazette* in which the Sedition Act was printed directly below the Fifth and Sixth Amendments to the Constitution, contrasting the personal liberty guarantees of two documents.⁵⁴ Three weeks later, Haswell reported that Federalist sympathizers threatened him with prosecution under the Sedition Act, with tarring and feathering, and even with having his house pulled down.⁵⁵ After Congressman Matthew Lyon’s arrest and indictment under the Sedition Act, Haswell viewed Lyon’s trial as an attack on American liberty and democratic principles, condemning it as a “persecution” rather than a prosecution.⁵⁶

Haswell became Lyon’s most ardent supporter, writing editorials in the *Gazette* in support of Lyon and condemning his Federalist accusers. When Lyon was sentenced and fined for violating the Sedition Act, Haswell opened the *Gazette* to advertisements signed by Lyon’s friends urging the purchase of tickets in a lottery to raise money for his “ransom.”⁵⁷ In the same issue, Haswell reprinted a paragraph from the Philadelphia *Aurora*, attacking the Adams administration for its dismissal of officeholders for their political principles and accusing Adams of appointing British sympathizers to public office.⁵⁸ When Lyon was released from jail, Haswell headed the welcoming committee for Lyon and made a speech congratulating the congressman upon his escape “from the fangs of merciless power.”⁵⁹

On Oct. 8, 1799, Haswell was arrested by two deputy marshals on a writ containing no specifics of the charge against him. The writ merely directed that he be brought before the Circuit Court of the United States “then and there to answer unto an indictment pending in said Court which was presented against him by the Grand Jurors.”⁶⁰ When he appeared before Associate justice William Cushing of the U.S. Supreme Court on Oct. 9, 1799, Haswell learned that he was charged with a “false malicious wicked and seditious libel” against the government of the United States. The first count was based on the assertions in the lottery advertisement and the second on the paragraph about Adams appointing Tories to office.⁶¹ Although Haswell willingly admitted publishing the items, he pleaded not guilty to the charge of sedition. His trial took place in April 1800, the delay allowing the prosecution to call Secretary of War James McHenry and General William Darke of the Virginia militia to testify to rebut the Tory charge.⁶² A jury found Haswell guilty, sentenced him to two months in jail and fined him \$200.⁶³ When Haswell completed his sentence and emerged from his jail cell, he received a hero’s welcome. A band struck up “Yankee Doodle,” cannons roared, and a crowd of nearly 2,000 cheered.⁶⁴

Dr. Shaw of Castleton, Vt.

In another Vermont case, newspaper reports in 1799 and 1800 chronicled the arrest, trial and acquittal of a Dr. Shaw of Castleton. Dr. Shaw has the distinction of being the only victim of the Sedition Act who was not fined or imprisoned.⁶⁵

James Bell

The July 30, 1798, edition of *The Independent Chronicle* reported the arrest of James Bell in Carlisle, Pa., for “treasonable expressions.”⁶⁶ Nothing further is known about this incident.

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Dr. John Tyler

In a letter from Charles Peale Polk to James Madison dated June 20, 1800, Polk wrote of the attempted prosecution of a Dr. John Tyler in which he says, "You will see by our proceedings that Doct. John Tyler is the republican candidate as Elector. He has written a few letters to doubtful characters, one has been so ungentlemanly as to give up the letter; the Leading Friends of Order have published it with such comments as their malice suggested, and forwarded it to the Gen. government in hopes to have the Doc prosecuted under the Sedition Law; but nothing can be more temperate, to be decided; and we hope to make such use of this infamy, as will ultimately serve the republican cause."⁶⁷ No further information could be found on this case.

Rev. John C. Ogden

Shortly after the arrest of Congressman Matthew Lyon of Vermont on a sedition charge in 1798, several thousand Vermonters signed a petition asking President Adams to pardon Lyon. If Lyon were pardoned, the petitioners declared, the president would merit "the thanks, the prayers, and the praises of millions."⁶⁸ Rev. John C. Ogden presented this petition to Adams, who promptly refused it on the grounds that "penitence must precede pardon," further warning Ogden that his "interference in this business will prevent your receiving any favours from me."⁶⁹ For his role in seeking Lyon's release from prison, Rev. Ogden was arrested and thrown into prison for four months at the instigation of Adams' Secretary of the Treasury, Oliver Wolcott.⁷⁰ Wolcott jailed Ogden under the guise that he owed \$200 on an old debt, but the Philadelphia *Aurora* suspected that this action was politically motivated.⁷¹ When Ogden was finally released from jail, a crowd of soldiers hounded him out of town as a "damned Democrat." Not until a group of "respectable gentlemen" rode to the rescue was he permitted to go on his way unmolested.⁷²

Thomas Cooper

In April 1800, Thomas Cooper, a prominent lawyer and newspaper editor of the Northumberland, Pa., *Gazette*, was indicted, prosecuted, and convicted of violating the Sedition Act after he published a broadside that was sharply critical of President Adams. In part, Cooper's essay was a reaction to an anonymous article about himself that accused him of hypocrisy and unreasonableness in his comments concerning the Adams administration.⁷³

In an essay published in the *Gazette*, Cooper stated that Adams was a "power-mad despot" and an enemy "of the rights of man."⁷⁴ Shortly thereafter, the anonymous letter appeared in the Oct. 26, 1799, issue of the Reading, Pa., *Weekly Advertiser* inquiring whether the Thomas Cooper who had recently criticized the Adams administration was the same Thomas Cooper who in 1797 had applied for a government appointment as an agent of American Claims. The *Advertiser* article implied that Cooper was acting out of revenge for not gaining the appointment.⁷⁵

Cooper saw this anonymous publication as an underhanded effort by the Adams administration to impugn his integrity and credibility. In reaction, he published a piece in which he set out to explain to the public why he had applied for a government position, followed by a scathing critique of Adams.⁷⁶ Specifically, Cooper's essay laid out his objections to the Alien and Sedition Acts and to Adams' increase in the size of the army and navy. For publishing these statements, Cooper was charged under the Sedition Act "with having published a false, scandalous and malicious attack on the character of the President of the United States, with an intent to excite the hatred and contempt of the people of this country against the man of their choice."⁷⁷

During his sedition trial, Cooper defended his writings line by line in order to prove that his statements were not false. However, using the truth as a defense could not save Cooper from conviction. On April 24, 1800, Thomas Cooper was sentenced to six months in a federal prison and assessed a \$400 fine. When his term of imprisonment expired, he was to post a \$2,000

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surety bond for good behavior.⁷⁸ Imprisonment did not silence Cooper, however. Only a week after he was sentenced, he published an account of his trial in which he asked the public to consider whether those responsible for his confinement merited reelection. He declared that the lesson of his conviction was that, under the Federalist administration, citizens should “hold their tongues, and restrain their pens, on the subject of politics.”⁷⁹

James Thomson Callender

Described literally and figuratively as the most venomous of the Democratic-Republican journalists, James Thomson Callender was a Scotsman who had been expelled from England in 1792 for publishing *The Political Progress of Great Britain*, a work highly critical of the British government.⁸⁰ When he arrived in the United States he turned his attention to prominent Federalists. Callender is perhaps best known for exposing an affair between Alexander Hamilton and Mrs. Maria Reynolds in 1797 and, five years later, accusing Thomas Jefferson of having an affair with his slave Sally Hemings.⁸¹ (Callender, originally a supporter of Jefferson, turned against him after he was denied a position as postmaster in Jefferson’s administration.) His trial for sedition, however, has come to be regarded as the most important of all the cases brought under the Sedition Act of 1798.⁸²

As the Alien and Sedition Acts were making their way through Congress, Callender feared that he would soon become the target of attack. To avoid the Alien Act, he became a naturalized citizen.⁸³ When his friend and colleague Benjamin Franklin Bache was arrested the day before President Adams signed the Sedition Act into law, a Federalist paper in Philadelphia announced that “Envoy Callender left this city on a tour to the westward – destination unknown.”⁸⁴ He fled to Virginia, where he refrained from writing for several months for fear of his safety. But as the Sedition Act grew increasingly unpopular, Callender decided to resume his political writings. In 1799 he joined the staff of the South’s leading Democratic-Republican newspaper, the *Richmond Examiner*, where he renewed his criticism of the Adams administration.⁸⁵ While working for the *Examiner*, Callender compiled material for his best-known pamphlet, *The Prospect before Us*, an electioneering booklet advocating the elevation of Thomas Jefferson to the presidency.⁸⁶ In it, Callender described the administration of John Adams as “one continued tempest of malignant passions. As President he has never opened his lips, or lifted his pen without threatening and scolding; the grand object of his administration has been to exasperate the rage of contending parties, to calumniate and destroy every man who differs from his opinions.”⁸⁷ Callender accused Adams of contriving “a French war, an American navy, a large standing army, an additional load of taxes, and all the other symptoms and consequences of debt and despotism.” He concluded by offering a choice: “between Adams, war and beggary, and Jefferson, peace and competency.”⁸⁸

After a Federalist informant sent Supreme Court Justice Samuel Chase a copy of *The Prospect before Us*, Callender was promptly arrested and indicted under the Sedition Act.⁸⁹ In his defense, Callender’s lawyers argued that the Sedition Act was unconstitutional, but Justice Chase disagreed, reaffirming his decision in the prosecution of Thomas Cooper, sentencing Callender to nine months in jail and a \$200 fine.⁹⁰ Imprisonment, however, did not temper Callender’s opinions of the Federalist government. While in jail, Callender wrote the second volume of *The Prospect before Us*, and intensified his verbal assault on Adams. He described Adams as a “repulsive pedant, a gross hypocrite, and an unprincipled oppressor.”

“He is,” Callender continued, “one of the most egregious fools upon the continent.”⁹¹ Callender also attacked Justice Chase, calling him “the most detestable and detested rascal in the state of Maryland.”⁹² When Chase wrote Callender in reply that he planned to beat him after his release from prison, Callender vowed, “[I]n case of attack, I’ll shoot him.”⁹³ Though their duel was never consummated, Callender ultimately had the last laugh when his sentence ended on March 3, 1801, the day the Sedition Act expired.⁹⁴

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David Brown and Benjamin Fairbanks – the ‘liberty pole’ cases

One of the practices of the Revolutionary era that the Democratic-Republicans revived during the Adams administration was that of erecting “liberty poles” in protest against government actions they thought tyrannical. The use of liberty poles dates to around 1765. The Sons of Liberty, a group organized by Samuel Adams to protest British taxes, rallied in town squares around tall poles on which they flew their flag. The idea quickly spread throughout the Colonies. Many towns erected such poles, which were often more than 100 feet tall, as a symbol of resistance to the British.⁹⁵ During the Adams administration, the revival of this practice became especially prevalent in New England and the Mid-Atlantic states, causing a stir among the Federalists. Apprehensive that these “wooden gods of Sedition” would become the rallying points for disruptive forces and lead to insurrections, Federalists called on authorities to cut them down.⁹⁶ Only in Dedham, Mass., however, did the raising of a liberty pole lead to prosecutions and convictions under the Sedition Act.

David Brown, an itinerant radical who wandered from town to town preaching the evils of the Federalist government, arrived in Dedham in October 1798.⁹⁷ Leading a group of local Democratic-Republicans, Brown erected a liberty pole. Affixed to the pole was a placard reading, “No Stamp Act, No Sedition Act, No Alien Bills, No Land Tax, downfall to the Tyrants of America; peace and retirement to the President; Long Live the Vice-President.”⁹⁸ Responding to fears that liberty poles would incite dissent against the government, a mob of Federalists chopped down the Dedham pole and instituted an all-out search for Brown. He was eventually found and arrested, indicted for sedition and tried in June 1799. Although Brown pleaded guilty, the judge in the case insisted on hearing all the prosecution’s witnesses in order to make out a full case against “the wandering apostle of sedition.” He then demanded that Brown disclose the names of all those who had aided him or subscribed to his writings. Brown refused. Furious at this contumacy, the judge sentenced Brown to 18 months in prison and fined him \$450 – the most severe sentence imposed on any offender under the Sedition Act.⁹⁹

Benjamin Fairbanks, a wealthy farmer and a Democratic-Republican, was indicted with Brown as an accessory in erecting the liberty pole. Like Brown, Fairbanks pleaded guilty and threw himself on the mercy of the court. He admitted that he was present at the raising of the Dedham liberty pole, but testified that he was unaware “how heinous an offence it was” and pledged to be on his best behavior in the future. Presiding over the case, Supreme Court Justice Samuel Chase was sufficiently impressed with Fairbanks’ contrition, letting him off with a light sentence of imprisonment for six hours and a fine of \$5, plus court costs.¹⁰⁰

Though Brown and Fairbanks were the only people tried and convicted under the sedition law for raising liberty poles, several others suffered abuse at the hands of the Federalist-backed military. In Reading, Pa., in 1799, between 13 and 17 government-backed militiamen rode into town on horseback with swords drawn, terrorizing several families. Among those confronted by the militia were Jacob Gossin, John Strohecker, Randolph Sample and Isaac Fether. On April 3, 1799, the Philadelphia *Aurora* published the accounts of these four men and their encounters with the troops who were sent in from Lancaster to destroy the liberty poles.

Gossin reported that the troops seized his workers and threatened to kill him and his wife if he did not remove his liberty pole. During the confrontation, Gossin’s wife became sick after being frightened by the troops, and one of his children was kicked and thrown to the ground. The troops then took Gossin’s axe and chopped down the liberty pole on his property. Strohecker said the Lancaster troops entered his home while he was having dinner and took several poles belonging to his boats. Strohecker told the *Aurora* that his children had earlier used the poles to erect a flag as a form of amusement. Fearing for his family’s safety, Strohecker had instructed his children to take down the poles and place them in the house. There they were discovered by the troops, who took the poles and destroyed them in front of Strohecker and his children. According to Strohecker, the troops returned later that day with swords drawn, “cursing and swearing most profanely and violently,” and took more poles along with several rudders.

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Sample also told the *Aurora* that the Lancaster troops surrounded him with swords drawn and forced him to cut down his liberty pole. And Fether reported that the troops smashed a window to his home and drew their swords on him and his pregnant wife, threatening them with death if he did not chop down the liberty pole on his property.¹⁰¹

In another incident, the Lancaster troops were ordered to take down a liberty pole erected on a farm located about three miles from Reading. When the troops arrived they were surprised to find about 100 men guarding the pole at gunpoint. The troops retreated and later returned a second time with reinforcements. Now outnumbered, the riflemen guarding the liberty pole scattered and the troops moved in, cutting down the pole. After this incident, Jacob Schnyder, editor and publisher of the *Reading Eagle*, published an account of the confrontation that was not favorable to the troops. After that, according to Schnyder, five Lancaster soldiers came to his printing office and assaulted him, dragging him across the street and whipping him six times with a cowhide.¹⁰²

Liberty poles incited several other confrontations between those in favor of the Federalist government and those opposed to it. In July 1798, in Newburgh, N.Y., an angry mob assembled to take down a liberty pole erected in protest of the Federalist government.¹⁰³ In December 1798, a Philadelphia brickmaker named Lankford Heron was removed from his home and brought before the town alderman, accused of “damning the President” by having a liberty pole on his property.¹⁰⁴ In January 1799 several people in Blockley, Pa., erected a liberty pole with a red and white pennant flying at its head and a board nailed to it with the inscription “HEED YOUR LIBERTY, 1799.” After a crowd dispersed, a few offended citizens sympathetic toward the Federalist government removed the pole.¹⁰⁵

Luther Baldwin

In perhaps the most humorous instance in which the Sedition Act was applied, Luther Baldwin and two of his drinking buddies were indicted for speaking “seditious words tending to defame the President and Government of the United States” after Baldwin was overheard in a tavern wishing, in not-so-tempered words, death upon President John Adams.

The incident occurred in July 1798. Adams was passing through Newark, N.J., on his way to his summer retreat in Quincy, Mass. Newark celebrated Adams’ arrival with a full parade and 16-cannon salute.¹⁰⁶ While observing the festivities, Baldwin’s drinking companion was overheard saying, “There goes the President and they are firing at his a__.”¹⁰⁷ The Newark *Centinel of Freedom* newspaper reported that Baldwin, “a little merry,” said in reply that “he did not care if they fired thro’ his a__.”¹⁰⁸ Two months after these unguarded remarks, Baldwin and two of his tavern cronies, Brown Clark and a person identified only as Lespenard, were indicted on charges of sedition.¹⁰⁹ On Oct. 3, 1798, Lespenard pleaded not guilty, but later changed his plea to guilty and was fined \$40 along with court costs. Baldwin and Clark pleaded not guilty, but also later changed their pleas to guilty. Baldwin was fined \$150; Clark \$50. Both men were committed to a federal jail until the fines and court fees were paid.¹¹⁰

Charles Holt

Charles Holt, editor of the Democratic-Republican journal New London *Bee*, was indicted in October 1799 as “a wicked, malicious, seditious and ill-disposed person ... greatly disaffected to the government of the United States” and charged with sedition after writing an article in the *Bee* critical of Alexander Hamilton and the standing army he commanded.¹¹¹

The *Bee* had the misfortune of being the most active Democratic-Republican journal in Connecticut, the most Federalist of all the states.¹¹² Holt’s two main sources of advertising revenue, merchants and the government, were predominantly Federalists who refused to subsidize the *Bee*’s strong anti-Federalist views. They also both worked to restrict the size of

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Holt's subscription base and readership, declaring to New London's tradesmen and laborers that they would "employ no man that takes the *Bee*."¹¹³

In the months between his arrest and trial, Holt's journal became even more partisan. He began to publish a regular roster of Sedition Act defendants all over the country, pointedly appending it to a list of British journalists victimized by repression in their country. This commitment continued after Holt's release and changed the course of his life. He became an active participant in the electoral process by tracking and lauding Republican electoral successes and by printing a biography of Thomas Jefferson in an effort to alleviate fears about Jefferson's alleged atheism and libertinism. These and other publications made Holt's *Bee* the most influential and effective Democratic-Republican journal in the nation.¹¹⁴

During Holt's trial in April 1800, the crowds gathered to witness the hearings became so large that it was necessary to adjourn to a meetinghouse to accommodate spectators.¹¹⁵ Holt pleaded not guilty, resting his defense upon the unconstitutionality of the Sedition Act and his innocence of any evil intent in publishing the alleged libel. He had published, he said, only "moral arguments against the vices and abuses of military establishments, and an army confessedly useless, and subsequently abolished."¹¹⁶ The judge in the case, however, disagreed. Justice Bushrod Washington upheld the constitutionality of the Sedition Act and pronounced Holt's publication as seditious libel. Holt was sentenced to six months in jail and fined \$200. The *Bee* suspended publication for a few weeks following Holt's sentence, but with the aid of new capital Holt resumed his editorial duties from his prison cell.¹¹⁷

Harry Crosswell

Most of the victims of seditious libel prosecutions were Democratic-Republican journalists who were critical of the Federalists. But after Thomas Jefferson became president in 1801, one Federalist in particular became the target of sedition prosecution himself. The most celebrated libel case involving a Federalist was that of Harry Crosswell, editor of a Federalist newspaper, *The Wasp*, published in Hudson, N.Y. Crosswell was indicted by local authorities in 1803 for republishing comments from the *New York Evening Post* that accused Thomas Jefferson of having paid James Callender, a Richmond editor, to slander George Washington and other Federalist leaders in his newspaper.¹¹⁸

In his appeal of the conviction to the New York Supreme Court, Crosswell was defended by Alexander Hamilton. In a famous brief, Hamilton argued that freedom of the press consisted in the right to print the truth, if with good motives and for justifiable ends, even if this truth reflected on "the government, magistracy or individuals." Although the court sustained the conviction, the New York Legislature incorporated Hamilton's position into law in 1805. It defined libel law until 1964, when *New York Times Co. v. Sullivan* expanded the protection of the press.¹¹⁹

Jedediah Peck

In September 1799 Jedediah Peck, a member of the New York General Assembly from Oswego County, was charged with sedition and arrested after he began collecting signatures on a petition demanding that the Alien and Sedition Acts be repealed.¹²⁰ Condemning the Alien and Sedition Acts as "a Series of Evils equally diffusive and calamitous, equally general and destructive," Peck's petition made the case that these congressional actions were unconstitutional and predicted that they would lead to a foreign war and a divided people.¹²¹

In the opinion of Judge William Cooper, then a Federalist congressman, the mere circulation of Peck's petition was seditious. Cooper inserted an advertisement in the local newspaper bluntly warning his constituents that persons circulating the petition were liable to two years in federal prison and a \$2,000 fine. A grand jury recommended action, indicting Peck under the new sedition law. The indictment accused Peck of circulating "with Force and Arms" a false,

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scandalous, and malicious petition to Congress in “open violation of law... and against the Peace and dignity of the United States.”¹²²

Public sentiment, however, was on Peck’s side. The Democratic-Republican press reported that Peck was “taken from his home at midnight, manacled, and dragged from his home,” a story which generated much sympathy from the general public.¹²³ As news of his arrest circulated, crowds gathered to witness him being transported to prison. The onlookers cheered for Peck, hailing him as a hero, and protesters demanded an end to unjust legislation and to the terms of the Federalists in government who had supported it.¹²⁴

Peck’s trial was scheduled for April 1800, the month in which he was up for re-election. During the months leading up to his trial date, Peck continued to represent his constituents in the New York General Assembly, gathering support for his cause. Charges against Peck were eventually dropped when Federalists began to fear that his conviction would only strengthen his popularity. Indeed, their fears were realized when Peck won his election by a landslide.¹²⁵

David Frothingham and Ann Greenleaf

The New York *Argus* newspaper was the leading Democratic-Republican journal in New York City. Established and edited by Thomas Greenleaf, who like his Democratic-Republican counterpart Benjamin Bache of the Philadelphia *Aurora* died of yellow fever in 1798, the *Argus* became a target of the Federalists when on Nov. 6, 1799, the paper under the leadership of Greenleaf’s widow, Mrs. Ann Greenleaf, reprinted an article that had appeared in several Democratic-Republican journals. The article featured an extract from a Philadelphia letter charging that Alexander Hamilton planned to purchase the Philadelphia *Aurora* in an effort to suppress it.¹²⁶ The day the *Argus* reprinted this story, Hamilton called it to the attention of the attorney general of New York, Cadwallader D. Colden, and urged him to prosecute Mrs. Greenleaf and the paper’s foreman, David Frothingham, for seditious libel.

Frothingham was arrested on Nov. 9, 1799, and placed on bail pending a trial.¹²⁷ On Nov. 21, Frothingham was tried before a New York court under the state’s common-law doctrine of libel. As New York’s constitution contained no guarantee of freedom of speech or of the press until 1821, Frothingham’s conviction of libel at the state level was far more likely.¹²⁸ Frothingham pleaded not guilty to the indictment, which charged him with publishing a libel designed “to injure the name and reputation of General Hamilton, to expose him to public hatred and contempt, and to cause it to be believed that he was opposed to the Republican Government of the United States.”¹²⁹ On Dec. 3, Frothingham was sentenced to four months of imprisonment and fined \$100. He was to remain in jail until the fine was paid. Moreover, he would not be released until he posted a \$2,000 bond as a guarantee of his good behavior for two years after his sentence expired.¹³⁰

Frothingham’s prosecution was part of a twofold effort by the Federalists to suppress the *Argus*. Mrs. Greenleaf was also indicted for sedition in 1799 and over the next two years became the subject of a relentless legal assault by the Federalists, forcing her to sell the *Argus* and its rural companion paper, the *Patriotic Register*.¹³¹ Her sedition trial was set for April 1800, but by then Mrs. Greenleaf no longer owned the *Argus* and could not repeat her paper’s attacks on the Federalist administration. In a letter to Secretary of State Timothy Pickering, New York District Attorney Richard Harison urged Pickering to drop the sedition charges. Pickering laid Harison’s letter before President Adams, who agreed to drop the prosecution against Mrs. Greenleaf.¹³²

John Daly Burk

Born in Ireland in 1775, John Daly Burk was a journalist and playwright who came to the United States in 1796 as a political refugee. Early in his career he outraged the authorities of the University of Dublin, who expelled him on charges of deism and republicanism for publishing

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articles in the *Dublin Evening Post* supporting people opposed to the Crown.¹³³ A short time later, Burk fled Ireland to avoid arrest for a sedition prosecution after participating in an attempt to rescue a political prisoner being led to execution.¹³⁴ British soldiers chased Burk into a Dublin bookshop, where he charmed a Miss Daly, escaped with her clothing as a disguise, and adopted "Daly" as his middle name to express eternal gratitude.¹³⁵ (It is unclear from accounts how Miss Daly made her way home in a disrobed state.)

Burk began his new life in America as editor of the Boston daily newspaper *The Polar Star and Boston Daily Advertiser*, but when that business venture failed in 1797 he moved to New York to become a playwright. By 1798, however, Burk returned to journalism as editor of the *New York Time Piece*, where he became an advocate of the Democratic-Republican Party.¹³⁶ Burk's *Time Piece* was strongly opposed to a war with France and held President John Adams responsible for the impending conflict.¹³⁷ In his paper, Burk accused Adams of deliberately falsifying Elbridge Gerry's diplomatic letter to Congress "to promote certain ends in this country" after diplomatic negotiations between the U.S. and French governments fell apart. In the same issue, Burk questioned the sedition bill before Congress by asking if it was "Sedition to say the President is incorrect in a part of History?"¹³⁸

Soon after this article was published, Secretary of State Timothy Pickering instructed Richard Harison, the U.S. district attorney for New York, to ascertain Burk's citizenship status. "If Burke [sic] be an alien," he wrote, "no man is a fitter object for the operation of the alien act."¹³⁹ Federalists also undertook a whispering campaign as a means of discrediting Burk. An anonymous letter penned under the pseudonym "Themistocles" charged that the writer had overheard Burk rejoice at the report of a French invasion of Ireland and express the hope that an invasion of America would follow so that "every scoundrel in favour of this government would be put to the guillotine."¹⁴⁰ Burk denied the charge, but together with the articles he had written in the *Time Piece*, this accusation gave the government a case to pursue sedition charges against him.¹⁴¹

On July 6, 1798, Burk was arrested by two U.S. marshals on a warrant signed by President Adams, charging him with seditious libel.¹⁴² At the same time, his business partner, James Smith, was also taken into custody, but the charge against him was only for libel. Each posted \$2,000 bail and trial was set for the next meeting of the Federal Circuit Court in October.¹⁴³ Though Smith quickly distanced himself from Burk by promising subscribers of the *Time Piece* that "no libelous or inflammatory [sic] matter shall be inserted in that paper, in future,"¹⁴⁴ Burk continued his assault on the Sedition Act. When the outspoken Federalist Noah Webster defended the statute as "the fruit of opposition," the *Time Piece* replied that the British government had given the same excuse for abridging the rights of Colonial subjects.¹⁴⁵

Smith and Burk dissolved their partnership in August 1798 and by September the *Time Piece* had ceased to exist.¹⁴⁶ In 1799 Burk offered to settle his sedition case out of court, knowing that an alien would have little chance of receiving an acquittal. He sought permission to leave the country in exchange for a dismissal of the case and a release from his bail recognizance. Adams accepted Burk's offer and instructed District Attorney Harison to keep tabs on Burk's whereabouts.¹⁴⁷ Burk, however, eluded Harison and went back on his offer to leave the country. Instead he went to Virginia, where he took an assumed name and disappeared in the obscurity of the academic profession by serving as "Principal of a College" in Virginia.¹⁴⁸

John S. Lillie and John Vinal

In 1802 a Massachusetts court indicted John S. Lillie, editor of the *Boston Constitutional Telegraph*, for alleged seditious libels in an anonymous article written by a contributor, John Vinal, "Esq." Lillie and Vinal were both tried, but whereas Lillie spent three months in prison, Vinal was acquitted for insufficient evidence.¹⁴⁹

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Conrad Fahnestock and Benjamin Moyer

In August 1799, Conrad Fahnestock and Benjamin Moyer, co-editors of the *Harrisburger Morgenrothe* newspaper in Harrisburg, Pa., were charged and arrested for publishing seditious statements against the laws and the government of the United States. Fahnestock and Moyer posted bail for their appearance before the federal circuit court in Philadelphia, but there was no indication that the two men were ever tried in court.¹⁵⁰

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² Smith, 385.

³ Smith, 185-187.

⁴ Ibid.

⁵ Ibid., 385.

⁶ Ibid., 386.

⁷ Ibid., 386-387.

⁸ Ibid., 388.

⁹ Ibid., 389.

¹⁰ Ibid.

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¹³ Smith, 192.

¹⁴ Rosenfeld, 103; 173.

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²² Smith, 248.

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²³ Smith, 249-250; Miller, 120.

²⁴ Miller, 120; Rosenfeld, 196.

²⁵ Smith, 251.

²⁶ Smith, 250; Rosenfeld, 197.

²⁷ Smith, 252.

²⁸ Smith, 253; Miller, 121.

²⁹ Smith, 254.

³⁰ Smith, 255.

³¹ Miller, 121.

³² Smith, 255.

³³ Rosenfeld, 664; Smith, 173.

³⁴ Smith 278-280; Rosenfeld, 584-585. The Alien Acts consisted of the Naturalization Act, the Alien Enemies Act and the Alien Friends Act.

³⁵ Stone, 65; Rosenfeld, 631-637.

³⁶ Pasley, 189.

³⁷ Smith, 185, 229; Stone, 20, 49; Rosenfeld, 708, 713, 869.

³⁸ Stone, 20.

³⁹ Smith, 229, see footnote 22.

⁴⁰ Stone, 18.

⁴¹ Ibid.

⁴² Pasley, 110.

⁴³ Pasley, 110; Smith, 223.

⁴⁴ Rosenfeld, 11-13; Pasley, 110.

⁴⁵ Smith, 223-224; Stone, 18.

⁴⁶ Smith, 226, 228.

⁴⁷ Smith, 226; Rosenfeld, 526-527.

⁴⁸ Smith, 229; Rosenfeld, 526.

⁴⁹ Rosenfeld, 526.

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⁵⁰ Smith, 238.

⁵¹ Ibid., 241.

⁵² Ibid., 246.

⁵³ Stone, 63.

⁵⁴ Smith, 360.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Miller, 124.

⁵⁸ Smith, 361.

⁵⁹ Miller, 124.

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⁶² Ibid., 365.

⁶³ Miller, 125.

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⁷³ John Osborne, "Cooper's Account of the Trial of Thomas Cooper." Accessed online Jan. 10, 2007, at <http://deila.dickinson.edu/theirownwords/context/0017.htm>.

⁷⁴ Stone, 54-56; Smith, 309; Miller, 203.

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⁷⁶ Stone, 54-56.

⁷⁷ Ibid.

⁷⁸ Smith, 328.

⁷⁹ Stone, 60.

⁸⁰ Stone, 61; Burns, 305; Smith, 335; Miller, 211.

⁸¹ Burns, 307, 384-385.

⁸² Smith, 335.

⁸³ Ibid., 337.

⁸⁴ Ibid.

⁸⁵ Ibid., 338.

⁸⁶ Ibid., 339.

⁸⁷ Stone, 61-62; Miller, 216; Smith, 339.

⁸⁸ Stone, 62; Smith, 340.

⁸⁹ Stone, 62; Miller, 217.

⁹⁰ Stone, 62.

⁹¹ Smith, 358.

⁹² Smith, 357.

⁹³ Stone, 62-63; Smith, 357.

⁹⁴ Smith, 187.

⁹⁵ Stone, 46; Smith, 257.

⁹⁶ Smith, 257.

⁹⁷ Stone, 64; Smith, 258.

⁹⁸ Stone, 64.

⁹⁹ Stone, 64; Miller, 119.

¹⁰⁰ Miller, 119-120.

¹⁰¹ Rosenfeld, 615-616.

¹⁰² Ibid., 620-621.

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¹⁰³ Ibid., 199.

¹⁰⁴ Ibid., 551.

¹⁰⁵ Ibid., 579-580.

¹⁰⁶ Smith, 270.

¹⁰⁷ Miller, 113; Smith, 271.

¹⁰⁸ Smith, 271.

¹⁰⁹ Miller, 113; Smith, 271.

¹¹⁰ Smith, 271.

¹¹¹ Miller, 127-129.

¹¹² Smith, 373.

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¹¹⁵ Miller, 129.

¹¹⁶ Ibid.

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¹²⁰ Burns, 361; Smith, 390, 394.

¹²¹ Smith 393.

¹²² Ibid., 394.

¹²³ Ibid., 395.

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¹²⁶ Smith, 400-401.

¹²⁷ Ibid., 403.

¹²⁸ Ibid., 406.

¹²⁹ Ibid.

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¹³⁰ Ibid., 414.

¹³¹ Ibid.

¹³² Ibid., 415.

¹³³ Ibid., 205.

¹³⁴ Ibid.

¹³⁵ Rosenfeld, 40-41.

¹³⁶ Smith, 207.

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¹³⁸ Miller, 98; Smith, 210.

¹³⁹ Miller, 99; Smith 211.

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¹⁴⁴ Smith, 215.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid., 216.

¹⁴⁷ Ibid., 217.

¹⁴⁸ Miller, 102; Smith, 218.

¹⁴⁹ Pasley, 141.

¹⁵⁰ Smith, 185; Rosenfeld, 690.