


The “seditious” article at the center of *People v. Croswell*

THE  WASP.

By Robert Rusticoat, Esquire.

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\*HOLT says, the burden of the Federal song is, that Mr. Jefferson paid Callender for writing against the late administration. This is wholly false. The charge is explicitly this:—Jefferson paid Callender for calling Washington a traitor, a robber, and a perjurer—For calling Adams, a hoary headed incendiary; and for most grossly slandering the private characters of men, who, he well knew were virtuous. These charges, not a democratic editor has yet dared, or ever will dare to meet in an open manly discussion.\*

## David Hume, Of the Liberty of the Press

1742

Nothing is more apt to surprise a foreigner than the extreme liberty which we enjoy in this country of communicating whatever we please to the public and of openly censuring every measure entered into by the king or his ministers. If the administration resolve upon war, it is affirmed that, either willfully or ignorantly, they mistake the interests of the nation; and that peace, in the present situation of affairs, is infinitely preferable. If the passion of the ministers lie toward peace, our political writers breathe nothing but war and devastation, and represent the specific conduct of the government as mean and pusillanimous. As this liberty is not indulged in any other government, either republican or monarchical--in Holland and Venice more than in France or Spain--it may very naturally give occasion to the question: *How it happens that Great Britain alone enjoys this peculiar privilege?* And whether the unlimited exercise of this liberty be advantageous or prejudicial to the public.

The reason why the laws indulge us in such a liberty seems to be derived from our mixed form of government, which is neither wholly monarchical nor wholly republican. It will be found, if I mistake not, a true observation in politics that the two extremes in government, liberty and slavery, commonly approach nearest to each other; and that, as you depart from the extremes and mix a little of monarchy with liberty, the government becomes always the more free, and on the other hand, when you mix a little of liberty with monarchy, the yoke becomes always the more grievous and intolerable. In a government, such as that of France, which is absolute and where law, custom, and religion concur, all of them, to make the people fully satisfied with their condition, the monarch cannot entertain any *jealousy* against his subjects and therefore is apt to indulge

them in great *liberties*, both of speech and action. In a government altogether republican, such as that of Holland, where there is no magistrate so eminent as to give *jealousy* to the state, there is no danger in entrusting the magistrates with large discretionary powers; and though many advantages result from such powers, in preserving peace and order, yet they lay a considerable restraint on men's actions and make every private citizen pay a great respect to the government. Thus it seems evident that the two extremes of absolute monarchy and of a republic approach near to each other in some material circumstances. In the *first* the magistrate has no jealousy of the people, in the *second* the people have none of the magistrate; which want of jealousy begets a mutual confidence and trust in both cases and produces a species of liberty in monarchies and of arbitrary power in republics. . . .

[A]s the republican part of the government prevails in England, though with a great mixture of monarchy, it is obliged, for its own preservation, to maintain a watchful *jealousy* over the magistrates, to remove all discretionary powers, and to secure everyone's life and fortune by general and inflexible laws. No action must be deemed a crime but what the law has plainly determined to be such; no crime must be imputed to a man but from a legal proof before his judges, and even these judges must be his fellow subjects, who are obliged by their own interest to have a watchful eye over the encroachments and violence of the ministers. From these causes it proceeds that there is as much liberty, and even perhaps licentiousness, in Great Britain as there were formerly slavery and tyranny in Rome.

These principles account for the great liberty of the press in these kingdoms beyond what is indulged in any other government. It is apprehended that arbitrary power would steal in

upon us were we not careful to prevent its progress and were there not an easy method of conveying the alarm from one end of the kingdom to the other. The spirit of the people must frequently be roused in order to curb the ambition of the court, and the dread of rousing this spirit must be employed to prevent that ambition. Nothing so effectual to this purpose as the liberty of the press, by which all the learning, wit, and genius of the nation may be employed on the side of freedom and everyone be animated to its defense. As long, therefore, as the republican part of our government can maintain itself against the monarchical, it will naturally be careful to keep the press open, as of importance to its own preservation.

Since, therefore, the liberty of the press is so essential to the support of our mixed government, this sufficiently decides the second question: *Whether this liberty be advantageous or prejudicial*, there being nothing of greater importance in every state than the preservation of the ancient government, especially if it be a free one. But I would fain go a step further and assert that such a liberty is attended with so few inconveniences that it may be claimed as the common right of mankind and ought to be indulged them almost in every government except the ecclesiastical, to which, indeed, it would be fatal. We need not dread from this liberty any such ill consequences as followed from the harangues of the popular demagogues of Athens and tribunes of Rome. A man reads a book or pamphlet alone and coolly. There is none present from whom he can catch the passion by contagion. He is not hurried away by the force and energy of action. And should he be wrought up to never so seditious a humor, there is no violent resolution presented to him by which he can immediately vent his passion. The liberty of the press, therefore, however abused, can scarce ever excite popular tumults or rebellion. And as to

those murmurs or secret discontents it may occasion, it is better they should get vent in words, that they may come to the knowledge of the magistrate before it be too late, in order to his providing a remedy against them. Mankind, it is true, have always a greater propension to believe what is said to the disadvantage of their governors than the contrary; but this inclination is inseparable from them whether they have liberty or not. A whisper may fly as quick and be as pernicious as a pamphlet. Nay, it will be more pernicious where men are not accustomed to think freely or distinguish betwixt truth and falsehood. . . .

**Thomas Jefferson to Edward Carrington**

16 Jan. 1787 *Papers 11:48--49*

The tumults in America I expected would have produced in Europe an unfavorable opinion of our political state. But it has not. On the contrary, the small effect of those tumults seems to have given more confidence in the firmness of our governments. The interposition of the people themselves on the side of government has had a great effect on the opinion here. I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them. I am convinced that those societies (as the Indians) which live without government enjoy in their general mass an infinitely greater degree of happiness than those who live under European governments. Among the former, public opinion is in the place of law, and restrains morals as powerfully as laws ever did any where. Among the latter, under pretence of governing they have divided their nations into two classes, wolves and sheep. I do not exaggerate. This is a true picture of Europe. Cherish therefore the spirit of our

people, and keep alive their attention. Do not be too severe upon their errors, but reclaim them by enlightening them. If once they become inattentive to the public affairs, you and I, and Congress, and Assemblies, judges and governors shall all become wolves. It seems to be the law of our general nature, in spite of individual exceptions; and experience declares that man is the only animal which devours his own kind, for I can apply no milder term to the governments of Europe, and to the general prey of the rich on the poor.

**Prosecution's Argument, made by Mr. George Caines:**

"A libel is punishable criminally, not, as has been urged, on account of the *intent* of the party, for that is no ingredient of the crime, but because its is a breach of the peace, or has a tendency to be a breach. Now is not that which constitutes a breach of the peace a matter of law?"

...

"In entering into civil communities, men agree to give up a portion of what is termed their natural liberty. They consent to cease to avenge by their own hands, and leave chastisement to the arm of the law. If thus the hand is restricted from punishing, is it to be supposed the tongue is to be let loose to provoke? Let it be recollected, that the spirit which lifts the one, moves the other. Abuse is only the substitute of force. It is the effort of him who dares not strike. When the laws have bound up the hands of a man, when he is unable to vent his rage, or gratify his malice by acts and deeds, he flies to words and reproach. The disposition which leads to one, is the same which prompts to the other. Calumny and slander, propagating injurious reports, whether true or false, keep alive the seeds of anger, provoke to violence, create the ferment, and excite those passions, which terminate in open violence, and acts of personal hostility.

"It is to prevent these, that the mild and peaceful spirit of the common law punishes the spreading any injurious report, by writing or printing, and, as civil society is one of the ends of our nature, the common law, like that, has our peace and preservation for its object... For where law ends, tyranny begins."



**Defense's Argument (made by Mr. William Van Ness):**

The trial "necessarily draws into discussion, the question, whether, by our law, truth can be libel--to shew [sic] that it *cannot*, I rely on the following authorities and reasons.

- I. The ancient British Statutes; which were in affirmance of the common law.
- II. All the ancient precedents, of indictments and informations, charge the matters to be libelous, among other things, to be *false*.
- III. The Court never will give the public prosecutor leave to file an information for libel, unless accompanied by an affidavit, to shew, that the publication is false.
- IV. To publish truth cannot be libelous in any country having a free and elective form of government.

...

"Among the privileges secure to us by the Constitution, that of electing all public officers is the most important. Our Constitution is representative throughout, and every public agent is responsible to the people, either directly, or indirectly. In order to the due exercise of the elective franchise, free inquiry is indispensably necessary; but if the vices and corruptions of those in power, can be shielded from public animadversion, by the terrors of a despot, and arbitrary principle of the modern law...the rights of election is a mere nothing. It is the worst of curses. because, under the supposed sanction of public opinion, the greatest enormities and oppressions are practiced. If therefore it be criminal to publish the malconduct of our rulers, if it be libelous to expose their depravity and want of every moral qualification for office, it were better at once to declare, that the right of the people to choose their rulers shall be abrogated. The people are more interested in having the vices of their agents made known, than their virtues; the former

are always attempted to be concealed, the latter speak for themselves and ever-will become public. It is clearly to be demonstrated, that, if the doctrine be once established, that truth is a libel, there is an end to the liberty of the press."

### **Alexander Hamilton's Argument for the Defense:**

“Two great questions had arisen in this cause: Can the Truth be given in evidence? Are the jury to judge of the intent and of the law?”

“The first might be more embarrassing; the second was clear.

“The Liberty of the Press consists in publishing with impunity Truth with good motives, and for justifiable ends, whether it related to men or measures. To discuss measures without reference to men was impracticable. Why examine measures but to prove them bad, and to expose their pernicious authors, so that the people might correct the evil by removing the men? There was no other way to preserve liberty and bring down a tyrannical faction. If this right be not permitted to exist in vigor and in exertion, good men would become silent. Corruption and tyranny would go on, step by step, in usurpation, until at last nothing that is worth speaking, or writing, or acting for, would be left in our Country.

“But he did not mean to be regarded as the advocate of a press wholly without control. He reprobated the novel, the visionary, the pestilential doctrine of an un-checked Press; and ill-fated would be our country, if this doctrine were to prevail. It would encourage vice, compel the virtuous to retire, destroy confidence, and confound the innocent with the guilty. Single drops of water constantly falling may wear out adamant. The best character of our country, he to whom it was most indebted, and who is now removed beyond the reach of calumny, felt its corrosive effects...No, I do not contend for this terrible liberty of the Press; but I do contend for the right of publishing Truth with good motives, for justifiable ends, although the censure may light upon the Government, the magistracy, or individuals.

“The check upon the Press ought to be deposited, not in a permanent body of magistrates, as the Court, but in an occasional fluctuating body, the Jury, who are selected by lot. Judges might be tempted to enter into the views of Government, and to extend, by arbitrary constructions, the law of libel. In the theory of our Government, the Executive and Legislative departments are operated upon by one influence, and act in one course by means of popular elections. How, then, are our Judges to be independent How can they withstand the combined force of the other departments? The Judiciary is less independent here than in England; and therefore we have the more reason and a stronger necessity to cling to the trial by Jury, as our greatest protection.

“Men in elevated stations are not to be implicitly trusted. The experience of mankind teaches us that persons have often arrived at power by means of flattery and hypocrisy, but instead of continuing to be humble lovers of the people have become their most deadly persecutors....

“The right of giving the truth in evidence in cases of Libel is all important to the liberties of the people. Truth is an ingredient in the eternal order of things, in judging the equality of acts.”

**Indictment of Croswell, by Chief Justice Morgan Lewis'**

"It is presented that Harry Croswell, late of the city of Hudson, in the County aforesaid, Printer, being a malicious and seditious man, and of a depraved mind and wicked and diabolical disposition, and also deceitfully, wickedly and maliciously devising, contriving and intending Thomas Jefferson, Esquire, President of the United States of America, to detract from, scandalize, traduce and vilify, and to represent him, the said Thomas Jefferson, as unworthy of the confidence, respect and attachment of the People of the said United States, and to alienate and withdraw from the said Thomas Jefferson, Esquire, President as aforesaid, the obedience, fidelity and allegiance of the citizens of the state of New York, and also of the United States, and wickedly and seditiously to disturb the Peace and tranquility as well of the People of the State of New York, as of the United States; and also to bring the said Thomas Jefferson, Esquire, (as much as in him the said Croswell lay) into great hatred, contempt and disgrace, not only with the People of the State of New York, and the said People of the United States of America, but also with the Citizens and Subjects of other Nations; and for that purpose, the said Harry Croswell did...wickedly, maliciously and seditiously print and publish, and cause and procure to be printed and published, a certain scandalous, malicious and seditious libel, in a certain paper or publication entitled 'The Wasp,' containing therein, among other things, certain scandalous, malicious, inflammatory and seditious matters, of and concerning the said Thomas Jefferson, Esquire, then and yet being President of the United States of America, that is to say, in one part thereof, according to the tenor and effect following, that is to say, "Jefferson (the said Thomas Jefferson, Esquire, meaning,) paid Callender (meaning one James Thompson Callender) for calling Washington (meaning George Washington,

Esquire, deceased, late President of the said United states), a Traitor, a Robber, and a perjurer, for calling Adams (meaning John Adams, Esquire, late President of the said United Sates) a hoary headed incendiary, and for most grossly slandering the Private Characters of Men who he (meaning the said Thomass Jefferson) well knew to be virtuous," to the great scandal and infamy of the said Thomas Jefferson, Esquire, President of the United States, to the contempt of the People of the State of New York, in open violation of the laws of the said State, to the evil example of all others, in like case offending, and against the Peace of the People of the State of New York, and their Dignity." (Document found in Goebel, Jr., *Law Practice of Alexander Hamilton*, vol. 1)



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Freedom of the Press and the Alien and Sedition Laws: A Reappraisal

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time, however, whether it knew it or not, the nation had in effect decided that there should be freedom for antislavery speech everywhere, which means that it had decided that either slavery would end in the South or the nation would be sundered. The divided house could no longer stand.

## VI. THE LIBERALIZING OF THE LAW

Harry Crosswell was the printer and, under a pseudonym, the editor of *The Wasp*, a Federalist newspaper published in the Republican state of New York. Shortly after Jefferson and his party had been swept into national office on their platform of save the Republic and states' rights, Crosswell, in print, accused Jefferson of paying James Callender for "calling Washington a traitor, a robber, and a perjurer [and] for calling Adams a hoary-headed incendiary." He went on to say that no "democratic editor has yet dared, or ever will dare, to meet [these charges] in an open and manly discussion." He was probably right as to the editors—for Jefferson had indeed supported Callender with money—but if he expected the Republicans, who had so recently inveighed against the national Sedition Law, to remain indifferent to what was being said about them, he was quickly disabused. An indictment was brought against him in the New York courts charging him with libeling Thomas Jefferson. Crosswell, the indictment ran, "being a malicious and seditious man, of a depraved mind and wicked and diabolical disposition [intended with his words] to detract from, scandalize, traduce, vilify, and to represent him, the said Thomas Jefferson, as unworthy of the confidence, respect, and attachment of the people of the said United States, and to alienate and withdraw from the said Thomas Jefferson . . . the obedience, fidelity, and allegiance of the citizens of the state of New York, and also of the said United States; and wickedly and maliciously to disturb the peace."<sup>141</sup>

At the trial Crosswell sought the right to call witnesses on his behalf in order to prove the truth of the accusations he had made against Jefferson, but the trial judge denied him this. The truth or falsity of the words constituting the alleged libel was irrelevant,

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<sup>141</sup> *People v. Crosswell*, 3 Johns. 336, 337 (N.Y. 1804). The best history of this litigation is in 1 GOEBEL, *THE LAW PRACTICE OF ALEXANDER HAMILTON: DOCUMENTS AND COMMENTARIES* 775-806 (1964).



the judge ruled, as was Croswell's intent in publishing them. This left the jury with the task of determining merely whether Croswell was indeed responsible for publishing the words and, secondly, of determining the truth of the "innuendoes"—that is to say, whether the construction put upon the published words by the prosecuting attorney was fair and acceptable. Thus, the common law of libel as understood by the state of New York was in important respects less liberal than the national Sedition Law, which permitted truth as a defense and, following Fox's Libel Act in Britain, permitted the jury "to determine the law and the fact, under the direction of the court, as in other cases." Under such conditions, and with a Republican judge presiding, it is not remarkable that Croswell was convicted. But he was not content to leave the matter there, and with the assistance of two of the leading Federalists in the country, his case was to assume a significance extending far into the future.

He petitioned for a new trial and, when this was denied as a matter of course, filed an appeal with the state supreme court. His principal defense attorney was Alexander Hamilton, and the court before which Hamilton argued included James Kent, later to become famous as Chancellor Kent and, after his retirement from the chancery bench, as the author of the extremely influential *Commentaries on American Law*. Kent's opinion in the case, built squarely and solidly on the arguments provided by Hamilton, may be said to constitute the foundation on which the American law of freedom of the press was subsequently built. This despite the fact that Kent's opinion was not controlling because the court, with only four of its five judges sitting, was evenly divided and Croswell's conviction was undisturbed.

It is striking that Hamilton should have agreed to be of counsel. The matter could have been treated and disposed of as a simple case of defamatory libel, not an issue that called for the advocacy of one of the country's leading statesmen. Instead, Hamilton, and later Kent, treated it as one of seditious libel—the victim of the alleged libel was not simply "Thomas Jefferson, Esq.," but the President of the United States. It would be foolish to deny that Hamilton's passions were probably involved. As every schoolboy knows, he and Jefferson were not friends, but this fact does not suffice to explain the considerable attention he devoted to the case and what Thomas Reed Powell once called "the wide range of [his]

advocacy."<sup>142</sup> Croswell, Jefferson's enemy and accused libeler, and therefore at least a nominal supporter of Hamilton, could have been defended without raising the larger question of the true meaning of free speech and press under a republican constitution. Criminal libel it indubitably was—the case began with a prosecution by the state—but it did not have to become seditious libel.

The precise question raised by the motion for a new trial was whether the trial judge had erred in denying Croswell the opportunity to prove the truth of his allegedly defamatory statements and in confining the jury to determining the fact of publication. Both Hamilton and Kent, of course, argued that he had, but their interpretation of the English precedents is not persuasive, and the reader is left with the impression that Chief Justice Lewis, who filed an opinion denying the motion, is on sounder legal grounds when, for example, he insisted that Fox's Libel Act, which in 1792 settled the question of the role of the jury in English trials, was not, as Hamilton said it was, declaratory of the English law (and therefore a common law rule in New York), but was instead a revision of the law. In fact, although in form declaratory, "it was in substance a momentous change in the law of libel."<sup>143</sup> No more compelling is Hamilton's statement that the rule that truth is no defense in a libel action derives from a "polluted source," the Court of Star Chamber. Whatever its source, it had been firmly embraced by the common law. The question could not be answered to the satisfaction of the friends of republican government by a review of the legal authorities.

The chief of these authorities, Blackstone, had recently said that freedom of the press consisted in the right to publish without a censor's imprimatur but being liable to subsequent trial and punishment for abuses of this privilege. A law embodying this understanding of freedom of the press is surely to be preferred to a licensing system, wherein nothing is publishable except that which satisfies "the hasty view of an unlearned licenser," as Milton put it. Blackstone was surely justified in looking upon the expiration in 1694

<sup>142</sup> POWELL, *Kent's Contributions to Constitutional Law*, 14 COLUM. ALUM. NEWS 373 (1923). Another element accounting for Hamilton's interest was that one of his outspoken antagonists, Charles Holt, editor of the *New England Bee*, who had been convicted of libeling Hamilton, was an enemy of Croswell. See Forkosch, *Freedom of the Press: Croswell's Case*, 33 FORD. L. REV. 418 (1965).

<sup>143</sup> PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 470 (1948).

of the last of the English licensing acts and the subsequent development of a body of common law with respect to the matters formerly governed by these acts as a movement in the right direction. But it was not sufficient. He published his eleventh and last edition of his *Commentaries* in 1791, eight years after Lord Mansfield had handed down the decision in the *Dean of St. Asaph's Case*,<sup>144</sup> and not many friends of republican government (although the two judges opposed to Kent in *Croswell* were exceptions) could be content with the law of that case. Especially in the trial of a seditious libel, of what benefit is the privilege to publish without the prior consent of a censor, if a judge, rather than a jury, determines whether the words are libelous? The more so if the law, as Blackstone said, is that the essence of a libel consists in its tendency to cause a "breach of the public peace" and, therefore, the question of its truth or falsity and the intent with which it was published are irrelevant in the trial. Whether Blackstone's common-law understanding of freedom of the press is, then, compatible with republican government will depend on the mode of the trial and the understanding of an abuse, or, in Blackstone's own terms, on what is understood to constitute an "improper, mischievous, or illegal publication."<sup>145</sup>

By refusing to regard *Croswell's* case as a mere matter of defamatory libel, Hamilton and Kent reached the larger issue of freedom in a republican regime. By rejecting the authority of Blackstone, they themselves became the authorities in America. To both of them—for Kent accepted Hamilton's formulation without alteration or addition—the liberty of the press "consisted in publishing with impunity, truth with good motives, and for justifiable ends, whether it related to men or to measures."<sup>146</sup> This became the basis of the law in almost every American jurisdiction.

This new law was not libertarian in the modern sense—neither Hamilton nor Kent advocated a law that would permit everyone to say anything at any, or almost any, time<sup>147</sup>—but it was surely more consonant with republican government, both because it permitted

<sup>144</sup> 21 St.Tr. 847 (K.B. 1783). The case is discussed at length in 2 STEPHEN, *HISTORY OF THE CRIMINAL LAW* 330-43 (1883).

<sup>145</sup> 4 BLACKSTONE'S COMMENTARIES \*811.

<sup>146</sup> 3 Johns. at 352, 393-94.

<sup>147</sup> Hamilton "reprobated the novel, the visionary, the pestilential doctrine of an unchecked press. . . . [This] would encourage vice, compel the virtuous to retire, destroy confidence, and confound the innocent with the guilty." *Id.* at 352.

truth as a defense in a trial of public or seditious libels, when it was published with good motives and for justifiable ends, and because it enlarged the role of the jury in the determination of the intent and tendency of the publication. In all criminal law, Hamilton argued, the intent constitutes the crime—homicide is not, of itself, murder. Whether intent and tendency are viewed as questions of fact, as Hamilton argued, or of law, or of a “compound of law and fact,” as Kent put it, what is important in the law of criminal and especially of seditious libel is that the determination of malice and tendency not be entrusted solely to the judges who, as Hamilton said and as history confirms, “might be tempted to enter into the views of government.”<sup>148</sup>

A role for the jury does not by itself assure impartial trials—the experience under the Sedition Law was sufficient to prove this. But it would seem to be a prerequisite in criminal trials of what is alleged to be seditious behavior. The government must be able “to control the governed,” as Madison said in *Federalist* No. 51, and the law, including the law limiting the freedom of the press, is one of the means, and in a republic the most appropriate means, of doing this. But the government must also be obliged “to control itself,” or to be controlled, and the requirement that the “trial of all crimes except in cases of impeachment shall be by jury” is recognition of this necessity, especially in the absence of a truly

<sup>148</sup> It was precisely this, notably in those trials conducted before Judge Samuel Chase, that had made the Sedition Law cases notorious in their time and infamous in the annals of American criminal trials. Nor does the relevance of the example of Chase end with his conduct on the bench. There is evidence in Hamilton's defense of *Croswell* that he had Chase and the subsequent events provoked by Chase's conduct very much in mind as he reflected on the freedom of the press and the trials for its abuse. At the beginning of the year of *Croswell*'s trial the House of Representatives had appointed a committee “to enquire into the judicial conduct of Samuel Chase,” and two months later the House voted the impeachment by a strictly partisan vote of 73 to 32. He was to be acquitted in the Senate the following year, but the issue was pending and still in doubt during the *Croswell* appeal. Since it was common knowledge that if the Republicans succeeded in removing Chase from the federal bench they would then proceed against other Federalist judges, a fair-minded man was entitled to be apprehensive for the future of an independent judiciary in America. Hence Hamilton, in what seems an obvious reference to these events, said in his closing argument in *Croswell*'s case that he feared that “any political tenet or indiscretion might be made a crime or pretext to impeach, convict and remove from office, the judges of the federal courts.” 3 Johns. at 358. Chase was an extreme Federalist and the Sedition Law trials he conducted were travesties of justice. But it is extremely doubtful that his removal and replacement by a Republican judge would have buttressed the independence of the judiciary.

independent judiciary. Hamilton in *Federalist* No. 83 was not prepared to say whether jury trials were more to be esteemed "as a defense against the oppressions of an hereditary monarch, than as a barrier to the tyranny of popular magistrates in a popular government," but essential they were. It is worth our attention to notice that while it was Jefferson who was responsible for the fact that the trials of seditious and other criminal libels would take place in state courts, it was Hamilton who was responsible for reforming the procedure in those state trials to make it conform more fully to the principles of republican government and, not accidentally, the federal Constitution.<sup>149</sup>

No less essential is the other major element in the law derived from the work of Hamilton and Kent in *Croswell's* case: the right to offer in evidence the truth of the allegedly libelous words. The rule of the greater the truth, the greater the libel, or the more modest version in Chief Justice Lewis' opinion in *Croswell* that "truth may be as dangerous to society as falsehood," is not unreasonable in a hereditary monarchy, or in any regime that, in Burke's words, finds its "sole authority" in the fact that "it has existed time out of mind." Speaking truth there may indeed be destructive of law and government, because the regime does not rest on true principles as such, but on historical principles. The American constitutions, on the other hand, both the national and the states', were understood to rest on the laws of nature, on the self-evident truth that all men are created equal with respect to the natural rights of life, liberty, and the pursuit of happiness. Government is instituted among men to secure these rights and derives its just powers from the consent of the governed. No man is naturally exalted over another, and public officers hold their temporarily exalted stations only at the pleasure of their fellow citizens. The speaking of the truth concerning men and measures and, indeed, the very basis of the regime, cannot usually be "dangerous to society." Which means that the English law of libel, evolving in a different system, based on differ-

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<sup>149</sup> Kent's conclusion on this point was stated as follows: ". . . that upon every indictment or information for a libel, where the defendant puts himself upon the country, by a plea of not guilty, the jury have a right to judge, not only of the fact of the publication, and the truth of the *innuendoes*, but of the intent and tendency of the paper, and whether it be a libel or not; and, in short, of 'the matter put in issue upon such indictment or information.'" 3 Johns. at 376-77, quoting from Fox's Libel Act, 32 Geo. III, c. 60 (1792).

ent principles, had to be reformed before it could be accepted in America. In Hamilton's words, "truth is [not only] a material ingredient in the evidence of intent," and must therefore be admissible on procedural grounds, but is "all-important to the liberties of the people [and] an ingredient in the eternal order of things."<sup>150</sup> He hoped to see the common law "applied to the United States," and his version of the common law, whatever the case with the English version, required the rule that the defendant be permitted to prove the truth of his allegedly libelous words. The common law was "principally the application of natural law to the state and condition of society," and without adherence to its principles "the constitution would be frittered away or borne down by factions, (the evil geni, the pests of republics)."<sup>151</sup> Thus, the natural law dictated the form of the Constitution and, through the vehicle of the common law, the manner in which government was to be administered under it: all men were to be free to publish opinions on public men and measures—the provisions respecting freedom of the press guaranteed this—but their publications were not to be maliciously false. The truth, or true principles, was to be the standard of political life.

A distinction drawn by Kent in his opinion serves to illustrate this role of truth. "There can be no doubt," he said, "that it is competent for the defendant to rebut the presumption of malice, drawn from the fact of publication; and it is consonant to the general theory of evidence, and the dictates of justice, that the defendant should be allowed to avail himself of every fact and circumstance that may serve to repel that presumption."<sup>152</sup>

And what can be a more important circumstance than the truth of the charge, to determine the goodness of the motive in making it, if it be a charge against the competency or purity of a character in public trust, or of a candidate for public favor, or a charge of actions in which the community have an interest, and are deeply concerned? To shut out wholly the inquiry into the truth of the accusation, is to abridge essentially the means of defence. It is to weaken the arm of the defendant, and to convict him, by means of a presumption, which he might easily destroy by proof that the charge was true, and that, considering the nature of the accusation, the circumstances and the time under which it was made, and the situation of the person implicated, his motive could have been

<sup>150</sup> 3 Johns. at 358.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Id.* at 377.

no other than a pure and disinterested regard for the public welfare.<sup>153</sup>

The conduct of public men must be measured by the highest standards of probity and their character by models of virtue and purity, and any published accusation of a failure on their part, measured by these standards and models, will not be punished under the law. On the contrary, it can be said that just as republican government requires public men of the highest character, it requires a press to point to the derelictions, which is to say that it requires a law that condones accusations of derelictions. But the law, being reasonable, will not presume that everyone must live according to these strict standards. Hence, the presumption of malicious intent in a libel of a *private* person cannot be rebutted by a showing of the truth of the charge—or in Kent's words, "this doctrine will not go to tolerate libels upon private character"—because no public good is served by revelations of the derelictions of private persons, the public being neither injured by these private vices nor otherwise concerned with them.<sup>154</sup> But that "falsehood is a material ingredient in a public libel" is a doctrine, Kent insisted, that even the English courts had occasionally admitted and that had taken firmer root in America. It is, he concluded, "the vital support of the liberty of the press."<sup>155</sup> Certainly it became firmly rooted after the advocacy of Hamilton and Kent.

It is important to remark, however, in order to compare what are today held to be the true principles of the liberty of the press in a democratic polity with the original understanding, that Hamilton and Kent did not advocate that truth, even in a trial of a public libel, be a complete defense. The malicious intent in a libel of a public person can be rebutted by a showing of the truth of the charges, but just as "this doctrine will not go to tolerate libels upon private character," the showing of the truth will not alone justify "the circulation of charges for seditious and wicked ends."<sup>156</sup> The truth, even in a republican polity, can be employed for "seditious and

<sup>153</sup> *Id.* at 377–78.

<sup>154</sup> *Id.* at 379.

<sup>155</sup> *Ibid.*

<sup>156</sup> *Id.* at 378. Under *New York Times v. Sullivan*, 376 U.S. 254, 280–81 (1964), not only is truth a defense, because recovery depends on "actual malice" defined as "knowledge that [the statement] was false" or was made "with reckless disregard of whether it was false or not," but it is unnecessary for the defendant to prove truth so long as the victim cannot show that the defamatory statement was made with "actual malice."

wicked ends." Hence the bill that was introduced in the State Assembly one year after *Croswell* by William Van Ness, who had been on the *Croswell* brief with Hamilton. It was unanimously enacted by both houses of the legislature, and in 1821 became part of the free speech and press section of the state constitution. The bill made it proper for the defendant in the trial of a criminal libel to give in evidence the truth of the matter charged as libelous, provided it be shown in the trial that the words were "published with good motives and for justifiable ends."<sup>157</sup>

Thus, the law of criminal libel was changed in two respects as a result of the *Croswell* case. The jury's role was enlarged significantly beyond the mere determination of the fact of publication and the truth of the innuendoes to embrace as well the determination of the criminality of the words. Second, the truth, provided good motives and justifiable ends could be shown, would be permitted in evidence to rebut the presumption of malice and, therefore, to acquit the defendant of the libel. Put differently, the law with respect to malice was changed and the jury would thereafter play a major role in the application of the law. That this requirement that even the truth be spoken with good motives and justifiable ends was not retained inadvertently is proved by an event in the legislature. In April, 1804, shortly before the opinions in the case were delivered, the legislature enacted a bill providing, in effect, that truth be a complete defense in the trial of a public libel; but the Council of Revision (which was composed of the governor and two judges of the Supreme Court and which could be overruled only by a two-thirds majority in both houses of the legislature) returned it, objecting that the proposed law "made no distinction between libels circulated from good motives and justifiable ends, and such as were circulated for seditious and wicked purposes, or to gratify individual malice or revenge."<sup>158</sup> Upon consideration of these objections in the

<sup>157</sup> N.Y. Sess. Laws (1805) ch. 90; New York State Constitution of 1821, Art. 7, § 8. The constitutional provision read: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to curtail, or restrain the liberty of speech, or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous, is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

<sup>158</sup> 3 Johns. at 411.



assembly, the bill "lost by a large majority." It was only two months later that this same assembly, along with the Senate, adopted the Van Ness–Hamilton–Kent bill unanimously.

*People v. Croswell* began as an episode in the Alien and Sedition controversy. Croswell had accused Jefferson of paying Callender, a victim of the Sedition Law, to vilify Washington and Adams. But whereas the Sedition Law had provoked nullification and even disunion sentiments in Virginia, the indictment and trial of Croswell provoked the most thoughtful consideration of the meaning of freedom of speech and press that Americans had, to that time, ever engaged in. What began as a party matter ended in the unanimous adoption of a provision embodying the principles of the arch Federalists Alexander Hamilton and James Kent. That these principles can truly be said to have embodied the considered opinion of Americans on the meaning of the freedom of speech and press is proved by the extent to which Kent's opinion in *Croswell* was cited in the future, not only in New York, but in states throughout the Union. Speech and press were to be free, republican government required it; but not everything said or published will go unpunished—the privilege might be abused. A jury of twelve peers will determine when it is abused.<sup>159</sup>

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<sup>159</sup> Mr. Justice Jackson, in *Beauharnais v. Illinois*, 343 U.S. 250, 295, 297 (1952), after reciting the history of the *Croswell* case, "the leading state case," and the influence of Hamilton and Kent, concluded that it "would not be an exaggeration to say that, basically, this provision of the New York Constitution states the common sense of American criminal libel law. Twenty-four States of the Union whose Constitutions were framed later substantially adopted it."

*Jeffrey L. Pasley*

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“THE TYRANNY  
OF PRINTERS”

*Newspaper Politics in the Early  
American Republic*



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*University Press of Virginia*

*Charlottesville and London*

leading characteristic of the colonial press was its close and subordinate relationship with local (as opposed to imperial) political elites.<sup>17</sup>

THE AMERICAN REVOLUTION AND THE  
BEGINNINGS OF PARTISANSHIP

Newspapers came into their own as a political weapon during the controversies preceding the American Revolution. It was a matter of consensus, then as now, that Patriot newspapers were one of the most important factors in turning American public opinion against Great Britain.<sup>18</sup> The years between 1760 and the outbreak of the Revolutionary War saw the number of newspapers in the colonies more than double. This was more than a demographic coincidence. Over the period, the newspaper press was expanding nearly twice as fast as the population. Moreover, as shown in appendix I, chart 1, the number of newspapers shot up during each individual crisis: from twenty-two to twenty-seven during 1763–65 (the Stamp and Sugar Acts), from twenty-eight to thirty-two during 1767–69 (the Townshend Acts), and from thirty-five to forty-two during the final crisis of 1773–75.

This was only the first of many historical moments over the next half century when the American press quickly expanded in response to political turmoil. A chart of the press's growth (see appendix I, chart 2) shows massive upward spikes during the tumultuous Confederation period of the 1780s and the party conflict of the 1790s. A calculation and comparison of the growth rates of the press and the population (chart 4) shows newspapers reproducing four times faster than human beings during those decades. The beginnings of newspaper politics, the integration of the press and political activism that would dominate the nineteenth century, can thus be traced to the resistance movement of the 1760s.

The impetus toward sustained partisanship came not from printers but from rebellious gentlemen eager to use the press for their own political purposes. Among other things, the Revolution was the seizure of power by a native-born elite crowded out of the colonies' top leadership positions. This "natural," local, untitled aristocracy made the press the most reliable and powerful weapon in its arsenal. As Richard Buel has argued, Patriot leaders "saw [the press] primarily as an instrument by which the mass of the people"—or their self-appointed spokesmen—"might seek to compensate for some of the disadvantages they labored under" in the eternal struggle between aggressive executive power and the rights of the people

as embodied in a legislative assembly.<sup>19</sup> More specifically, they saw the press as the means by which political leaders could enlist their constituents' support for resistance to Great Britain. It was assumed that there would be no conflict between the views of the mass of the people and those of their representatives, once the people were properly informed and proselytized in print. It was in these terms in which the Continental Congress recommended liberty of the press to the "inhabitants of Quebec" in 1774: "The last right we shall mention, regards the freedom of the press. The importance of this consists . . . in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honorable and just modes of conducting affairs." This statement reflected a naive Enlightenment faith in the power of "correct" information to change minds and shape events in the direction of progress, but embedded within the idea of "promoting union" was a harder-edged political lesson: that printing (and newspapers especially) could help organize, standardize, and spread a political movement's ideas across large numbers of people and places.<sup>20</sup>

Such a weapon was too powerful to be allowed to fall into enemy hands. Despite their libertarian rhetoric, American resistance leaders proved unwilling to tolerate opposition from the press. Since press freedom existed for the purpose of protecting liberty, they reasoned, there should be no freedom for a press that opposed liberty. Some of the most skilled and articulate printers and publishers refused to join the resistance, and a few even became active opponents. Such insubordination was dealt with harshly, as in the case of the Boston publisher John Mein. A feistier-than-normal publication, Mein's *Boston Chronicle* exposed secret violations of the nonimportation agreement by leading Patriot merchants such as John Hancock, even publishing cargo manifests as proof of the charges. Mob violence eventually forced Mein to flee to the British, but Hancock managed to exact long-distance revenge by purchasing a £2,000 debt of Mein's and having the printer thrown into debtor's prison in England. During the war, the Loyalist press was mobbed, prosecuted, or confiscated out of existence when the British army was not around to protect it. Loyalist publishers fled for their lives when they were not banished outright.<sup>21</sup>

If Patriot gentlemen used the press as their political instrument, they also used it in some measure to conceal their own agency in the pre-Revolutionary upheavals. Almost all partisan essays were written anonymously;

many were signed with the names of classical heroes or invented characters such as the “Farmer in Pennsylvania” portrayed by the wealthy, sophisticated lawyer John Dickinson. Anonymous and pseudonymous writing were traditional practices in the press by this time, but they served the resistance movement in more directly political ways. Unidentified writing helped preserve the impression that newspaper essays and pamphlets were spontaneous expressions of American public opinion, and it camouflaged the sheer extent of the efforts of such prolific writers as Samuel Adams.

Though Revolutionary political culture sanctioned zealous industry in the common cause, disclosing the real identities of newspaper writers might have made the Revolutionary agitation appear to be the illegitimate machinations of a handful of conspirators. Anonymity also helped work around basic tensions in American Revolutionary ideology. As Michael Warner has argued, the central premises of the new nation’s emerging constitutional republicanism—that politics and government could be separated from personal social relations, and that their operations could be supervised by a rational, critical “public” and controlled by rules that were neutral regarding the status of individual persons (“a government of laws, not men”)—demanded and depended for their legitimacy on a political arena in which specific persons were absent. Printed political debate in newspapers and pamphlets provided such a depersonalized arena, what political theorists and historians have called a “public sphere.”

Partly through the typical anonymity and pseudonymity of contributions to it, the eighteenth-century public sphere allowed a handful of white, male, genteel political activists to speak in the guise of the supervising “public,” or to put it more prosaically, to assume the role of the “people” without calling attention to the great social and cultural distance between most political writers and the plebeian majority of the population.<sup>22</sup>

Anonymity also shielded from reprisal those gentleman Revolutionaries who had social or professional position to lose if they appeared too active against the British or performed badly on the public stage. A gentleman had a carefully built “character” that could be damaged by a poor performance, while an artisan was a much humbler man with no such standing to lose. Thus a printer could be a convenient surrogate for a gentleman, keeping the onus of criticism away from the actual author. Such considerations had motivated the colonial leaders who had spoken through the medium of John Peter Zenger, and they definitely entered the minds of many American resistance leaders in the 1760s and 1770s.

A good example of this desire for political camouflage occurred be-

tween Dr. Benjamin Rush and the former staymaker and tax collector Thomas Paine, when the latter was still an obscure recent immigrant. In 1775 Rush was “preparing an address to the inhabitants of the colonies” on the necessity of independence and of bringing “the war to a speedy and successful issue.” Yet the Philadelphia society doctor “hesitated” and “shuddered at . . . the consequence of its not being well received.” Rush had become acquainted with Paine from frequenting Robert Aitken’s political bookstore, where the new arrival was working. Rush made Paine a proposal, asking him “what he thought of writing a pamphlet upon [Rush’s subject]. I suggested to him that he had nothing to fear from the popular odium to which such a publication might expose him, for he could live anywhere, but that my profession and connections, which tied me to Philadelphia, where a great majority of the citizens and some of my friends were hostile to a separation of our country from Great Britain, forbade me to come forward as a pioneer in that important controversy.” Paine agreed and immediately began work on the pamphlet, for which the doctor eventually suggested the title *Common Sense*.<sup>23</sup> Such partisan indirection—a respectable gentleman recruiting a mouthpiece from the ranks of the less respectable—would be a perennial theme in subsequent American political history.

Though several made names for themselves as heroes of the Revolution, printers as a group remained stubbornly traditional throughout the Revolutionary era, rarely straying far or willingly from their deferential habits and basically commercial orientation. Many printers were initially spurred to resistance by the Stamp Act, a direct threat to their business interests. Yet even that provocation was insufficient for others, and most went back to relative impartiality once the crisis was over. In the end, market forces were more effective in creating Revolutionary printers than Revolutionary politics was.

For instance, in 1771 the Boston printer Isaiah Thomas opened his *Massachusetts Spy* to both parties in the ongoing controversy even though he personally supported the resistance. Thomas switched the paper over to active “support of the whig interest” only after it became clear that impartiality was hurting his business. Loyalists had canceled their subscriptions to protest his printing pro-resistance articles along with those supporting their own views. At some point, most other American printers came to similar realizations that conversion to zealous patriotism was the most prudent and profitable course. It was impossible to please both Whigs and

Loyalists, and those publishers who followed the old policy of neutrality for too long risked not only losing customers, but being ostracized from their communities and harassed by mobs and local authorities.<sup>24</sup>

In addition, printers were sometimes given positive incentives to publish for the Whig cause. William Rind founded the second *Virginia Gazette* at the behest, and with the pecuniary encouragement, of Thomas Jefferson and other opponents of the royal government. "Until the beginning of our revolutionary disputes, we had but one press, and that having the whole business of the government, . . . nothing disagreeable to the governor could ever be got into it," Jefferson remembered. Therefore, he and his fellow Whigs in the House of Burgesses promised Rind the legislative printing contracts and thus "procured" him to move from Maryland and publish a "free paper" in Virginia. Here press freedom was defined only as free access for a particular group of politicians. Rind's was a common experience. Government printing contracts had always been one of the most reliable and sought-after sources of profit in the trade, and Revolutionary printers were quick to secure the printing concessions of the new Revolutionary governments.<sup>25</sup>

Once they did become partisan, few Revolutionary printers wrote much political material for their papers. They served the cause by "editing" in the literal sense: publishing the writings of local gentlemen and selecting public documents and items from other papers that made the Whig case. (In some cases, even the editing was done by someone other than the printer.) Their papers were more conduits for Revolutionary rhetoric than initiators of it. As one scholar of the Revolutionary press has written, perhaps unwittingly taking an eighteenth-century gentleman's view of printers' mental capacities, "Although editorials were nonexistent, their place was more than taken by the contributions of others far more intelligent than the editors."<sup>26</sup>

Perhaps the only consistently partisan printers in the pre-Revolutionary press corps were Benjamin Edes and John Gill of the *Boston Gazette*. They were also the printers most directly involved in the anti-British agitations. Their careers illustrate the new possibilities, as well as the ultimate limits, of the printers' role in the Revolution. Longtime printers for the local and provincial governments, Edes and Gill had grown as wealthy and respected as was usually possible for working printers. Edes held several petty local offices such as constable, scavenger, and clerk of the market in the early 1760s and was a member of the Ancient and Honorable

Artillery Company. Though evidently a man of some political fervor, Edes practiced the colonial printer's habitual deference toward the local authorities who provided so much of his business. Reprimanded by the Boston selectmen for publishing some too-speculative theological pamphlets in 1757, Edes apologized for offending and promised "to take more care for the future, & publish nothing that should give any uneasiness to any Persons whatever."<sup>27</sup>

During the political crises over the Sugar and Stamp Acts, the *Boston Gazette* followed its customer base into active opposition. The Boston campaign against the British ministry was financed and fomented by merchants with interests at stake. Several of them, including John Hancock and Benjamin Church, also happened to be longtime *Gazette* advertisers. Edes is reputed to have been a member of the "Loyall Nine" who controlled the Sons of Liberty. It seems doubtful that he was truly such a ringleader, but at the very least, the printer was a junior partner of Samuel Adams in the ground-level management of the movement. Certainly, Edes was present at meetings of the group's brain trust and involved in many of its activities.

The fiery political matter that filled the *Boston Gazette* came from a constellation of Boston Revolutionary leaders, including Samuel Adams, John Adams, James Otis, Josiah Quincy Jr., and Joseph Warren. These same men and their allies provided Edes and Gill with all the protection they needed from the vengeance of the royal government. When an article of Warren's finally goaded Governor Frances Bernard into prosecuting the editors for seditious libel, the *Gazette's* writers, in their capacities as attorneys, local officials, and politicians, saw to it that both the General Court and a grand jury refused to cooperate. In an arrangement that presaged the later integration of newspapers and political groups, the *Gazette* office provided a headquarters of sorts for the Patriot leadership; for a time, Edes and Gill published the paper from rooms above Josiah Quincy's law office. John Adams remembered a Sunday night in 1769 spent with Otis, Sam Adams, and others, "preparing for the next day's newspaper . . . cooking up paragraphs, articles, occurrences, &c., working the political engine." According to one legend, the perpetrators of the Boston Tea Party gathered at Edes's house before setting off on their mission.<sup>28</sup>

It was widely agreed after the Revolution that, in the words of Edes's competitor Thomas, "no publisher of a newspaper felt a greater interest in the establishment of . . . independence . . . than Benjamin Edes; and no



newspaper was more instrumental in bringing forward this important event than *The Boston Gazette*." Yet it seems clear that Edes conceived of himself as the Patriot leaders' loyal auxiliary rather than as a leader himself. In 1797, hearkening back to his glory days, Edes praised himself primarily for maintaining Adams's "political engine" rather than driving it: "Did you, my fellow-citizens, ever find the Boston Gazette deficient . . . ? Did an OTIS at that time seek in vain to declare his principles through this channel? . . . No, fellow-citizens, the Gazette of Edes & Gill, was always subservient to the cause of Freedom."<sup>29</sup>

Benjamin Edes's career after the 1760s is instructive. The editor's illustrious Boston cohorts became generals and statesmen, but no such high stations were proffered to Edes. Even so, the printer was unwilling to give up his new vocation as a Revolutionary politician. When war broke out, Edes fled to Watertown, a wanted man, but continued to publish a makeshift *Gazette*. Later, back in Boston, he kept the paper going during a long decline, as old contributors died, retired, or deserted the *Gazette* for larger political arenas. Edes took over much of the writing himself, and his newspaper more frequently gave voice to the divergent views and interests of his own artisan class. To the horror of old political friends following the conservative trend of postwar Massachusetts politics, Edes opposed the Federal Constitution and, later, the administrations of George Washington and former *Gazette* writer John Adams.<sup>30</sup>

Edes's newfound independence arose from the bitterness of his experience during and after the Revolution. Like many other artisans and farmers, Edes had nearly been ruined by the economic fluctuations arising from the war. He had amassed a small fortune in increasingly worthless paper money and Continental debt certificates paid to him by Patriot customers, and like many others, he apparently sold off his securities to speculators, at a fraction of their value, to meet immediate needs. The destruction of his wealth in this manner made Edes a bitter critic of the Hamiltonian financial system: "conscious . . . that I have served my country with faithfulness, and the most disinterested zeal, I cannot but observe with regret, that thousands have become enriched by a *base speculation* on those services which have impoverished me and many others." Edes's subscription list dwindled from a high of 2,000 before the Revolution to a few hundred in the mid-1790s, as (at least in the minds of political opponents) the *Gazette* abandoned "that soberness and dignity, that might have rendered its old age useful and respectable." The *Gazette* and the Edes

family alike moved into progressively shabbier quarters until by 1801 Edes was reduced to printing shop bills with worn-out type in a room above a tinsmith's shop. A younger printer, Joseph Buckingham, found the old man setting type himself, while an elderly daughter worked the press. "The singular sight of a woman, *beating and pulling* at the press, together with the aspect of destitution, that pervaded the whole apartment, presented a scene" that remained horribly vivid in Buckingham's memory fifty years later.<sup>31</sup>

SERVING THE FOUNDERS: PRINTERS AND  
NEWSPAPERS AFTER THE REVOLUTION

Edes was unusual among the Revolutionary printers in maintaining his political activity for so long after the war. Once the war ended, the pressure to display zealous patriotism was relieved, and most Revolutionary printers who had not died or retired sank back into their old commercialism and relative neutrality. Isaiah Thomas changed the motto of his *Massachusetts Spy* (now published in Worcester) from the warlike "The noble efforts of a Virtuous, Free, and United People shall extirpate Tyranny" to the impartial "Knowledge of the World is essentially necessary for every Man" and shifted focus to the commercial publishing ventures that eventually made him a wealthy man.<sup>32</sup>

The younger printers who came into the business during and after the war showed the partisanizing effects of the conflict upon the trade, yet they still hewed as close to traditional policies as they could. Printers such as George Goodwin, who took over the Hartford *Connecticut Courant* in 1778, or Benjamin Russell, an apprentice of Thomas's who founded the Boston *Columbian Centinel* in 1784, were more forthright in their opinions than their colonial predecessors had been, but they settled into the role of reliable auxiliaries to the victorious Whig establishment, which was growing steadily more disenchanted with the democratic, localistic political fervor the Revolution had unleashed.<sup>33</sup>

In places where the Revolutionaries were more divided than Massachusetts, a somewhat more freewheeling press appeared. When the Bostonian Ebenezer Hazard visited Philadelphia in 1782, opponents and defenders of the state's radical Constitution of 1776 were locked in a savage struggle that often involved personal defamation of the leaders on both sides. Hazard wrote back home in disgust: "The papers of this place have become the most indecent publications of the kind I have ever met with.

They are now the receptacles of obscenity and filth, the vehicles of scandal, and the instruments of the most infamous abuse.”<sup>34</sup> This was true only by contrast with the Boston press. There were only two really partisan papers in Philadelphia, Francis Bailey’s *Freeman’s Journal*, favored by the Constitutionalists, and Colonel Eleazer Oswald’s *Independent Gazetteer*, backed by the anti-Constitution forces. Most editors of this period kept the traditional low profile, allowing their politician-sponsors to slug it out under pen names.<sup>35</sup>

On the whole, then, both printers and politicians tried to continue their long relationship after the Revolution. Now that the people had replaced the British king as the source of sovereignty, the press became even more vital. American political leaders expected that newspapers that had once been instruments of resistance would now be tools of governance. The press was seen as the most important means available of managing or manufacturing public opinion, the legitimating force behind the new governments. Thomas Jefferson explained this principle in 1787, giving his advice on how Shays’ Rebellion might have been prevented:

The people are the only censors of their governors; and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our government being the opinion of the people, the first object should be to keep that right.<sup>36</sup>

Jefferson failed to acknowledge the tension, or saw none, between his plan of keeping the people fully informed and the underlying goal of keeping public opinion “right.” As long as “right” information was transmitted, Jefferson believed, public opinion would always reach the desired conclusion.

Leaders of other nations felt less sanguine and took aggressive measures to actively guide or check public opinion. The British government had for decades, even in peacetime, used prosecution, restrictive licensing, bribery, public subsidies, and other forms of “influence” to control the flow of information on government affairs and to assure the authorities a public voice that would constantly support, explain, and apologize for their actions. In the mid-seventeenth century, it became standard practice for whoever happened to hold power in London to contract for one or more

official government organs. With the Printing Act of 1662, the restored Stuart monarchy sharply limited the supply of printed matter and closely regulated its content, establishing a government monopoly on domestic political news. As mouthpieces, the Stuarts initially employed newsbooks and later the first official government publications in the larger newspaper format, the *Oxford Gazette* and its successor, the *London Gazette*.<sup>37</sup>

The government monopoly ended when the Printing Act lapsed in 1695, but succeeding governments devised more complex (but only slightly more subtle) methods of maintaining their influence over the press, beginning with the stamp tax imposed in 1712. The system of press management most familiar to eighteenth-century Americans was developed by the ministry of Sir Robert Walpole in the 1720s and 1730s. Following the lead of opposition noblemen who had established such newspapers as *The Craftsman* and the *London Evening Post* to pillory his ministry, Walpole began an aggressive campaign of enlisting newspapers in the government's defense. Newspapers were subsidized through direct payments, government purchase of copies, and free postage, while the services of individual journalists were purchased with appointments, sinecures, and noble titles. In some cases, opposition writers were paid to keep silent. There was even a special fund for the purpose of influencing the press, from which £50,000 was disbursed between 1731 and 1741. By these methods, Walpole kept at least four London newspapers under almost direct government control and exerted a lesser degree of influence over many others. The ministry could not completely suppress the dissemination of news and opposition political comment, but many important opposition voices were neutralized. No less a figure than Thomas Gordon, coauthor of *Cato's Letters* and *The Independent Whig*, switched from violent opposition to support of the Walpole ministry after he was appointed a commissioner of wine licenses.<sup>38</sup>

Regarding Walpolean corruption as a great threat to liberty and being avid followers of the British opposition press, the American Revolutionaries had little desire to re-create the mother country's "hireling" press. As it turned out, there was no need to bother. The leaders of the campaign for a stronger central government in the late 1780s found the press almost as reliable without the need of a purchase price. The American press monolithically supported the Federal Convention of 1787. Few newspapers protested the conclave's secrecy, and most heaped sycophantic praise on the great "characters" who made up the body. Many newspapers carried

advance recommendations that whatever document was produced should be accepted. Though scattered articles critical of the convention were written, they were seldom reprinted in other papers. Numerous pro-convention articles, on the other hand, received nationwide exposure.<sup>39</sup>

In the ratification campaign that followed the convention, the federalists overwhelmingly dominated the press, with only twelve of the ninety-two periodicals published during the ratification debate admitting any significant number of antifederalist articles. The pro-Constitution forces loaded the other eighty publications with an immense mass of verbiage. James Madison and Alexander Hamilton's "Federalist" essays, written as part of this newspaper campaign, made up only a tiny fraction of the output. Newspaper editors themselves were mostly the passive recipients of these writings.<sup>40</sup>

In some states, such as Connecticut and New Hampshire, there was virtually no ratification "debate" at all, so one-sided was the material that filled the newspapers. The editors of both Hartford papers, the *Connecticut Courant* and the *American Mercury*, eventually found themselves at pains to deny that they were "under the direction of certain men, who exclude everything written against the new Constitution." Claiming that they had maintained the "liberty of the press" to all, George Goodwin and Elisha Babcock issued a joint statement contending that no antifederal pieces had been submitted to them and invited writers on that side to come forward. In the next few weeks, a few token opposing viewpoints were heard, but they were usually couched in highly deferential terms.<sup>41</sup>

The federalists showed themselves to be remarkably intolerant of contradiction in the press despite the opposition's journalistic weakness. The ill temper with which antifederalist writings were received showed the Revolutionary gentry's profound discomfort with airing its political differences in front of the people.<sup>42</sup> While proponents of the new system of government could not silence its critics outright, they made it clear that they regarded newspaper criticism as unwelcome, badly intended, and probably illegitimate. Many federalists saw the Constitution as a cause in which all right-thinking and well-meaning people ought to be united and suspected the motives of any who refused to join. One Pennsylvania federalist condemned those who had opposed the "noble struggle which the brave and virtuous have been . . . making to establish a new frame of government." The writer accused the antifederalists of failing to publicly avow their writings and reasoned from this premise that they were "con-

scious of the wickedness of their proceedings—that their cause is that of the devil—and of it they are truly ashamed.” This reasoning was fallacious, of course, because virtually all political essays in the period were published anonymously, though real identities were often widely known in local elite circles.<sup>43</sup>

The same feelings prompted a widespread attempt to flush out anti-federalists by inducing printers to break with tradition and identify the authors of anonymous political essays. A Massachusetts paper had announced such a policy, and “Galba” in Philadelphia suggested a modification under which only antifederalists would be required to leave their names. The “patriotic gentleman” who wrote in favor of the Constitution should not “be exposed to the malevolence of those wretches who pretend to find fault with it,” while the latter ought to “be justly exposed to the contempt and indignation of their fellow citizens, as enemies and traitors to their country.”

In Georgia, an elaborate “literary register” was proposed, where writers would leave their names so that readers could find out who the “designing, specious demagogues” writing the antifederal articles were. Belying the supposed openness and egalitarianism of the “public sphere” of printed debate, the proposer of the register showed a strong interest in discovering the social status of political writers, intending to judge arguments not by their own merits but according to the stature of the person who made them. He suspected that a recent article against the Constitution had been written either by a foreigner or by some uneducated person whose mind had been “only cultivated in a drilling squad or behind the counter of a dram shop” and “ought rather to be employed in the manufactures than in the politics of his country.”

None of the proposals were carried out, probably because they seemed to confirm antifederalist warnings about the Constitution’s counterrevolutionary tendencies. Yet the fact that they were made at all suggests the unhappiness of at least some former leaders of the Revolution with the idea that the press might now sometimes be used against them. The antifederalists correctly compared the proposals to expose and shame antifederal writers to the “tar and feathers” applied to Tory journalists in previous years.<sup>44</sup>

The pro-Constitution forces never escalated to the measures that Whigs had taken against Loyalists during the Revolution, but steps were taken to silence the Constitution’s critics. The one act of violence was an

attack on Thomas Greenleaf's *New-York Journal*, which seems to have been spurred as much by an inadvertent insult to the pottery trade as by politics. Yet Greenleaf believed he was being pressured by federalists for giving their opponents an outlet, and he promptly lowered his paper's tone, with apologies, after the incident. More commonly, the federalists employed quieter measures, such as having subscriptions and advertisements withdrawn from papers that published antifederalist writings or even those that merely seemed doubtful in their political complexion. In Philadelphia, for instance, a young lawyer-editor from Jamaica named Alexander Dallas was fired from his position at the *Pennsylvania Herald*, following federalist complaints and boycotts, not for criticizing the Constitution, but for too accurately reporting the speeches on both sides in the Pennsylvania ratifying convention.<sup>45</sup>

A long record of subservience did not stop the Revolutionary printers from carrying an exalted self-image out of their experience.<sup>46</sup> The years after 1788 made their true place in the scheme of things much clearer. Instead of the power and honors that accrued to the lawyers, clergymen, and military officers who participated in the Revolution, most of the Revolutionary printers became forgotten men. There were no printers among the pantheon of Revolutionary heroes and statesmen who filled the First Congress. Successful forays into nonpolitical publishing allowed some of the veteran printers to avoid the penury of Benjamin Edes, but none retained their old political influence. Though they were proud to have served in the Revolution, it is doubtful that prosperous veterans such as Isaiah Thomas wanted or expected any very different aftermath. They were printers, not politicians, after all, and planned to remain so.

What did come as a shock to men like Thomas was the steady decline in the reputation and social position of their trade after the Revolution. This occurred partly because of a trend toward functional specialization in the commercial publishing industry, in which the entrepreneurial act of selecting and editing material became increasingly separate from the physical process of printing. Journeyman printers found it more and more difficult to meet their traditional goal of owning their own printing office. The trade became identified ever more firmly with its manual labor aspects, as the intellectual activities associated with publishing were taken over by educated editors and entrepreneurs who soon gained exclusive use of the title "publisher."

Some of the first successful commercial publishers were former print-

ers, but by the 1830s or so, this possibility had been largely foreclosed. The vast majority of apprentices and journeymen could expect to spend their lives as wage laborers. The most striking evidence of these trends was the appearance of a rudimentary labor movement among journeyman printers as early as 1778 in New York and 1786 in Philadelphia. Formal "Typographical Societies" were formed in New York in 1795 and Philadelphia in 1802, and from there spread to many other cities. In the 1830s one organization of printers tried to convince its brethren to refuse to work for editors, publishers, and other nonprinters, who were held to be merely "speculating on the labor of printers."<sup>47</sup>

In the face of these economic changes in the commercial printing trade, the more eminent of the traditional printers turned to scholarship and a kind of nostalgia later in life. Isaiah Thomas published his *History of Printing* in 1810 and founded the American Antiquarian Society in 1812, in large part to preserve and memorialize the legacy of the colonial and Revolutionary printers. He and Joseph T. Buckingham, who wrote a kind of sequel to Thomas's history, were clearly commemorating what they saw as the good old days of the American printing trade.<sup>48</sup>

Yet, despite the melancholia of the aging Revolutionary printers, the printers' period of greatest political and cultural influence still lay ahead. During the 1790s, newspapermen would fight on the front lines, doing as much as any group to secure the right of American citizens to peacefully change their government and to implement the democratic promise of the early days of the American Revolution. Why would the traditional printers not claim this honor as well?

The answer is that both the printing trade and journalism began to split and specialize during the 1790s. Probably most printers retained their commercial and mechanical orientation, but some began to focus on publishing books and others on newspapers. The newspaper business in turn came to be divided between the profit-seeking traditionalists, serving up foreign news and commercial information to merchants, and others who specialized (or came to specialize) in political journals.<sup>49</sup>

Younger men, and new kinds of men, took up the newspaper business during the Federalist-Republican struggle, especially on the Republican side. These new journalists lacked or lost the trade-oriented attitude and life goals of the colonial and Revolutionary printers. They did not (or came not to) conceive of themselves as mere tradesmen whose primary goal was to earn a respectable economic "competency" to pass on to their



children.<sup>50</sup> Not only did they fail to shy away from political controversies, they came to find their trade's chief attraction in politics. In short, many printers became professional politicians, or more precisely, political communicators by trade, working in a new sector of the publishing industry devoted to and subsisting on partisan politics.

Political publishing offered an escape route from the industrializing tendencies at work in the commercial sector of the trade. Especially in the smaller cities and towns, political newspapers would be published mostly out of traditional small-scale printing offices until well after the Civil War. In the world of political publishing, many poor boys with "bookish inclinations" could begin as apprentices and find their way not only to learning, but also to political influence, without the necessity of retiring into gentility like Franklin.

The emergence of this political publishing sector was directly linked to the creation of the new government and the new political structures and forces that it called into being. The political arena was now a national one, with results and requirements for which few Americans were prepared. Chief among these were the partisan divisions that quickly appeared in the First Congress, divisions that would soon develop into nascent national political parties. The needs and effects of those parties would eventually transform many American editors and their papers into actual working parts of the political system. The editors would in turn transform the system itself. As their brother printers slipped back into the category of "mechanics" or hewed to the trade's traditional ideal of impartiality and commercialism, the Republican journalists of the 1790s would become the mechanics of the American party system, the forerunners of the political spokesmen, manipulators, and operatives who would dominate American politics evermore.

This tortuous process began with the emergence of the first national partisan editors, whose Philadelphia newspapers became associated with the party divisions that coalesced in Congress over the competing blueprints of Alexander Hamilton and Thomas Jefferson for the national future.