



*“Seditious Libel” on Trial,  
Political Dissent on the Record:  
An Account of the Trial of Thomas  
Cooper as Campaign Literature*

THOMAS COOPER (1759–1839)<sup>1</sup> was one of several individuals the Federalists targeted for indictment and prosecution under the 1798 Sedition Act. An Oxford-educated radical reformer and philosopher, an accomplished lawyer, journalist, and pamphleteer, and later in life a well-known teacher, scientist, judge, and college administrator, Cooper settled at Northumberland, Pennsylvania, in 1794 after emigrating from England in the distinguished company of Dr. Joseph Priestley. For several years he resided quietly in Pennsylvania’s backcountry, distanced from regional and national hubs of political discourse, and he shrewdly refrained from partisan entanglements. Beginning in 1799, however,

<sup>1</sup> While Dumas Malone’s *The Public Life of Thomas Cooper, 1783–1839* (New Haven, CT, 1926) remains the most comprehensive Cooper biography, other biographical sketches of Cooper include: H. M. Ellis, “Thomas Cooper—A Survey of His Life,” *South Atlantic Quarterly* 19 (1920): 24–41, and, more recently, Stephen L. Newman, “Thomas Cooper, 1759–1839: The Political Essays of a Bourgeois Ideologue,” *Journal of Southern Studies* 24 (1985): 295–305; Lawrence Beaton, “Back Country Politics and Culture: A Letter from Thomas Cooper to Joseph Clay,” *Pennsylvania Magazine of History and Biography* 120 (1996): 107–17; and *Dictionary of National Biography* and *American National Biography*.

Cooper's associations with two Republican newspapers—the Northumberland *Gazette* and the Philadelphia *Aurora*—and the publication of the first edition of his *Political Essays* signaled his emergence from obscurity. His political reporting and pamphleteering made him a major actor in the 1800 presidential election, earning him powerful allies and enemies among state and national elites.

In a short preface to *An Account of the Trial of Thomas Cooper* (1800), which purported to be a comprehensive textual record of its author's indictment and conviction under the Sedition Act, Thomas Cooper began a sustained rhetorical attack against his political enemies. He explained that, "The Citizens of this Country may learn some useful lessons from this trial; and principally, that if they mean to consult their own peace and quiet, they will hold their tongues, and restrain their pens, on the subject of politics: at least during the continuance of the Sedition Law; a Law, which I do not think 'the powers that be,' will incline to abolish."<sup>2</sup> The *Account* is fascinating not only because it exposed the manner in which a Federalist judiciary enforced the sedition laws against its Republican opponents, but also because it revealed Thomas Cooper's willingness to exploit his own arrest for political gain. In all likelihood, Cooper published the annotated account of his trial not to salvage his own reputation, but rather to imbue his persecution with political significance. He declared in one footnote, "I PRINT THIS TRIAL NOW, not merely to vindicate my own character, but to open the eyes of the public to the tendency of measures countenanced by Mr. Adams, and to the strange doctrines advanced by his adherents, so that the people may be informed *against the next election*."<sup>3</sup>

Cooper, anticipating the November 1800 presidential election and well aware that conviction under the Sedition Act was a virtual certainty from the moment charges were filed, seems to have viewed his trial as a political and publishing opportunity; in the *Account*, he utilized the public forum the courtroom afforded him by drawing out the trial for as long as possible and by attracting intense media scrutiny. The trial unfolded in the midst of a heated presidential campaign, and in the *Account* there is

<sup>2</sup> Thomas Cooper, *An Account of the Trial of Thomas Cooper, of Northumberland; On a Charge of Libel against the President of the United States* (Philadelphia, 1800), 2. Francis Wharton, *State Trials of the United States during the Administrations of Washington and Adams* (1849; repr. New York, 1970), 659–81, records Cooper's trial according to the text of the *Account*, but Wharton omits Cooper's footnotes and appends biographical and legal endnotes. All italics and capital letters that appear within direct quotations are Cooper's.

<sup>3</sup> Cooper, *Account*, 46.

a sense among the courtroom participants that the political stakes were high. High-ranking Federalists attended the proceedings: Timothy Pickering, President John Adams’s secretary of state (he actually sat on the bench with the judges), Congressman Robert Goodloe Harper (who had authored the section of the Sedition Act that Cooper was said to have violated), several senators, and four members of the president’s cabinet.<sup>4</sup> Federalist and Republican journalists alike sought to turn the resulting spectacle to political advantage, and the judges, prosecutor, and defendant all strove to appear as nonpartisan as possible while accusing their enemies of partisanship. Cooper’s strategy ensured an ample supply of material and fueled the intense public interest that would make his stand-alone *Account* of the trial commercially and politically viable.

Cooper’s May 1, 1800, preface to the *Account*—pointedly datelined from the “Prison of Philadelphia”—made no effort to hide his interest in politics. Cooper skillfully framed the upcoming election as a referendum on the Sedition Act and on American citizens’ right to engage in political debate rather than as a contest between two political parties and their ideologies. Cooper, careful to situate himself above the partisan fray, “dare[d] not state the conclusions” that the trial produced but that “must force themselves with melancholy conviction” on readers’ minds.<sup>5</sup> He encouraged his readers to attribute his circumspectness to an honest citizen’s understandable fear of incurring additional sedition charges, when in fact his reticence was a part of a nonpartisan ethos he adopted for political purposes. Cooper concluded his preface by framing the *Account* as a chronicle of his martyrdom in the service of constitutional values to which Federalists—referred to only as “the powers that be”—were opposed. He asked his readers, “is [the trial] a fair specimen of the freedom you expected to derive, from the adoption of the Federal Constitution? And whether the Men who can sanction these proceedings, are fit objects of re-election?”<sup>6</sup>

The provisions of the Sedition Act, signed into law by President Adams on July 14, 1798, with a sunset clause asserting its expiration on March 3, 1801 (the end of Adams’s term of office), assured Cooper’s eventual conviction.<sup>7</sup> The act proscribed as seditious any “false, scan-

<sup>4</sup> James Morton Smith, “President John Adams, Thomas Cooper, and Sedition: A Case Study in Suppression,” *Mississippi Valley Historical Review* 42 (1955): 452.

<sup>5</sup> Cooper, *Account*, 2.

<sup>6</sup> *Ibid.*

<sup>7</sup> John Chester Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston, 1951), 70.

dalous, and malicious” writings or speeches directed against the government, the president, or Congress “with intent to defame . . . or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the people of the United States.”<sup>8</sup> In effect, the Sedition Act defined all hostile political speech as punishable conduct. Secretary of State Timothy Pickering even declared that to doubt or criticize the law’s wisdom constituted seditious conduct as well, effectively conflating speech with conduct. Pickering claimed that, “They who complain of legal provisions for punishing intentional defamation and lies, as bridling the liberty of speech and of the press, may with equal propriety complain against laws made for punishing assault and murder, as restraints upon the freedom of men’s actions.”<sup>9</sup>

Federalists justified this seemingly oppressive expansion of federal power by asserting that it codified European common law libel statutes that had always been in effect in the United States and over which the federal government had always enjoyed jurisdiction. They argued that the act constituted an advance in civil liberties because it allowed for a “truth defense,” but in practice such rhetoric proved hypocritical. The linkage with European common law allowed the Federalists to dispense entirely with the question of intent in calculating guilt; instead, the sole criterion for guilt became the writing’s tendency to effect seditious ends. Thomas Cooper’s guilt eventually rested not on his intent at the time he wrote objectionable passages, but rather on the seditious effect that his writing allegedly tended to produce. Cooper’s trial demonstrated that any unproved charges made against a government official could be ruled malicious by dint of their alleged untruthfulness, effectively shifting the burden of proof onto the unlucky defendant by requiring him to prove the “truth” of his seditious allegations.

Thomas Cooper’s was one of several cases Federalists brought against proprietors, editors, and writers associated with leading Republican newspapers during the spring of 1800. Federalists and Republicans alike viewed newspapers as indispensable ideological conduits, and several scholars have previously commented on the extent to which Federalists identified the Republican press as a serious political threat and, later, as a

<sup>8</sup> James Morton Smith, *Freedom’s Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca, NY, 1956), 442.

<sup>9</sup> Timothy Pickering to P. Johnston, Sept. 29, 1798, in *Gazette of the United States*, Oct. 9, 1798. One Sedition Act defendant, Jedidiah Peck, was actually charged under the Sedition Act for denouncing it.

principal reason for Jefferson’s electoral victory in 1800.<sup>10</sup> Pickering, a fiercely partisan Federalist, shrewdly scrutinized and zealously prosecuted four Republican newspapers—the Boston *Independent Chronicle*, the New York *Argus*, the Richmond *Examiner*, and the Philadelphia *Aurora*—that boasted wide circulation, competent stewardship, and thus uncommon power and influence.<sup>11</sup> All four were eventually convicted of seditious libel.<sup>12</sup> The *Aurora* in particular seems to have been Pickering’s cause célèbre, probably because it circulated far outside Pennsylvania and saw many of its articles reprinted in other Republican newspapers.<sup>13</sup> One of the first targets of a seditious libel lawsuit was *Aurora* editor Benjamin Franklin Bache, arrested in late June 1798 under the common law libel statute for what Pickering characterized as “sundry [previous] publications and republications.”<sup>14</sup> He later brought a suit against Bache’s successor, William Duane.

Cooper marked himself for eventual prosecution during his tenure as editor of the Sunbury and Northumberland *Gazette* (April 20–June 29, 1799). In his fanciful yet fiery farewell editorial, he supposed himself to be the president of the United States and outlined steps that he would take to achieve the hypothetical goal of consolidating executive power. Among stratagems such as restricting the liberty of the press, Cooper declared that his primary weapon would be a law against sedition and libel that could be turned against his political opponents in order to suppress dissent. The *Aurora* reprinted his editorial on July 12, 1799, and Cooper later included it in the 1799 and 1800 editions of his *Political Essays*. Republicans even reprinted it as a handbill titled *Address to the People of Northampton* and circulated it widely during the Pennsylvania gubernatorial campaign of 1799, in which Republican Thomas McKean crushed Federalist incumbent James Ross in a 2,997–637 victory.<sup>15</sup>

<sup>10</sup> See Smith, *Freedom’s Fetters*; Michael Durey, “Thomas Paine’s Apostles: Radical Émigrés and the Triumph of Jeffersonian Republicanism,” *William and Mary Quarterly*, 3rd ser., 44 (1987): 683–84; and more recently, Walt Brown, *John Adams and the American Press: Politics and Journalism at the Birth of the Republic* (Jefferson, NC, 1995).

<sup>11</sup> Frank Maloy Anderson, “The Enforcement of the Alien and Sedition Laws,” *Annual Report of the American Historical Association for the Year 1912* (Washington, DC, 1914), 119–21.

<sup>12</sup> Smith, *Freedom’s Fetters*, 186.

<sup>13</sup> Durey, “Thomas Paine’s Apostles,” 683.

<sup>14</sup> Quoted in Anderson, “Enforcement of the Alien and Sedition Laws,” 118.

<sup>15</sup> See Malone, *Public Life of Thomas Cooper*, 103–4; Miller, *Crisis in Freedom*, 203; and Smith, *Freedom’s Fetters*, 308–9, for more background on the contentious 1799 Pennsylvania gubernatorial campaign.

The *Aurora* reprint of Cooper's editorial found its way to the desk of President Adams after Charles Hall, a Sunbury Federalist and Adams appointee, brought the editorial to Pickering's attention and recounted what he regarded to be its unfortunate influence within his locale during the gubernatorial election. Convinced that Cooper sought to influence the following year's presidential election, and fearing the editorial's potential impact on the wide readership of the *Aurora*, Hall suggested that Pickering insert a prepared Federalist rebuttal into another Philadelphia paper. Pickering not only adopted Hall's suggestion, he also exhorted Hall to reprint his response in pamphlet form and promised to reimburse him for the expense. Pickering then forwarded Hall's information and the *Aurora* reprint of the editorial to President Adams, who condemned Cooper's piece as seditious. Adams said, "As far as it alludes to me, I despise it; but I have no doubt it is a libel against the whole government, and as such ought to be prosecuted."<sup>16</sup>

Pickering did not immediately indict Cooper for the editorial. Instead, an anonymous "True American" (probably Hall, with Pickering's blessing) rebutted Cooper's editorial in the *Gazette of the United States* (October 23, 1799) by defending the president's policies. A harsher response to Cooper then appeared in the *Reading Weekly Advertiser* (October 26), in which the anonymous author used privileged information to malign Cooper's political motives. James Morton Smith speculates that Pickering either wrote or helped to write the second letter as well, and I tend to agree.<sup>17</sup> Pickering might have hoped to prevent Cooper from becoming a Republican martyr and sought to politically discredit him in advance of an indictment, as the *Weekly Advertiser* piece dispensed with the paradigms of Republican-Federalist Party conflict and instead attacked Cooper's personal integrity.

The anonymous author of the *Weekly Advertiser* essay wondered if the Thomas Cooper who wrote the Northumberland editorial was the same man whom Dr. Priestley had asked President Adams to appoint to an office in 1797; if so, the author argued, then Cooper was not to be trusted by either political party. The author interpreted the contents of Priestley's August 12, 1797, letter to Adams on Cooper's behalf, as well as Cooper's attached note, as proof of the latter's moral bankruptcy. Cooper, the author alleged, wrote against President Adams not as a principled

<sup>16</sup> Smith, *Freedom's Fetters*, 311.

<sup>17</sup> *Ibid.*, 313.

critic, but rather as an avaricious, unsuccessful office seeker motivated by revenge. The author, anxious to undermine Cooper's credibility with the Republican Party, suggested that the note to Adams exposed Cooper's zealotry and political pliability. He observed that, "In his letter he informs the President that although (he Thomas Cooper) had been called a Democrat, . . . his real political sentiments are such as would be agreeable to the President and government of the United States, or expressions to that effect."<sup>18</sup> The author asked why Cooper, a Republican whom one would expect to loathe English influence within America, would want the president to appoint him, an Englishman, to a public office over an American. Finally, the author posited that President Adams's rejection motivated Cooper to compose the Northumberland editorial. The author closed his essay by daring Cooper and Priestley to respond to his charges, clearly hopeful that one or both would sink to his level and perhaps utter further seditious libels that could be used against them.

Cooper felt compelled to answer the offending piece, even though there appears to have been little evidence within either letter to justify the anonymous author's allegations.<sup>19</sup> Priestley's letter openly admitted their Republican sympathies and made no apology for them, and Cooper's note never implied that his political principles were pliable; he merely expressed the hope that they would not prove as significant an obstacle to his application as they appeared. "It is still possible," he wrote, "[that] I may suppose more weight in the [political] objections than they will be found to deserve."<sup>20</sup> Cooper, however, understood that the author's explanation of his motivations for criticizing President Adams was, on its surface, quite believable and that the attack could damage his personal and political reputation. A response was thus not long in coming, as he published a handbill responding to the attack on November 2, 1799, for which the government would later successfully prosecute him under the Sedition Act. The full text of the offending handbill, which included the *Reading Weekly* attack, the Cooper and Priestley letters, and Cooper's "seditious" response to the attack, comprised the first part of Cooper's *Account*.

<sup>18</sup> Cooper, *Account*, 4.

<sup>19</sup> Other evidence, however, would seem to reinforce the impression that Cooper was an equal-opportunity office seeker. In a letter dated January 9, 1800, Vice President Jefferson asked Governor McKean to "take care of" Cooper. Quoted in Beaton, "Back Country Politics and Culture," 110. Cooper's own defense of his conduct, if taken at face value, accounts for his willingness to petition either party for a government position.

<sup>20</sup> Cooper, *Account*, 6.



In his handbill, Cooper wasted no time confirming his authorship of the Northumberland editorial, and he denied his attacker's allegations, writing, "Yes; I am the Thomas Cooper, alluded to; luckily possessed of more accurate information than the malignant writer of that paragraph."<sup>21</sup> In his own recounting of the events surrounding his application to President Adams, Cooper replied to the accusations of partisanship. He depicted himself as a modest, honest American (i.e. not English, as his assailant alleged) seeking to support his family and serve the public and as a man of political beliefs and personal values but not of partisan hackery. He told his readers that he sought appointment to an office only at the behest of a friend who urged him to fulfill "the duty I owed my family to better my situation by every means in my power" and that "being an American I should not object to any office under *this* government, if I could fairly obtain it . . . . This is a duty incumbent on every prudent man who has a family to raise."<sup>22</sup> Cooper also noted that he had exhorted Priestley "to take care that Mr. Adams should not mistake my politics" in his letter of support.<sup>23</sup> In short, Cooper argued that he was neither the disgruntled applicant nor the unprincipled partisan hack that his attacker alleged, explaining that, "Two years elapsed from the date of those letters before I wrote any thing on the politics of this country."<sup>24</sup> Cooper then deftly turned his adversary's reverence for party loyalty on its head. While his opponent concluded that Cooper lacked political principles because he was a Republican willing to serve under a Federalist administration, Cooper responded by stating that party loyalty should never be allowed to take precedence over good governance. He suggested that "if Mr. Adams meant to be the ruler of a nation, instead of the leader of a party, he would be glad of an opportunity to exhibit such an instance of liberal conduct."<sup>25</sup>

The concluding paragraph of Cooper's handbill provided William Rawle, Philadelphia's district attorney, with ample grounds for prosecuting him under the Sedition Act. Cooper further justified his application to Adams by contending that the administration had not yet embarked on the unhappy course of criminalizing political dissent:

<sup>21</sup> Ibid., 4.

<sup>22</sup> Ibid., 4-5.

<sup>23</sup> Ibid., 5.

<sup>24</sup> Ibid., 6.

<sup>25</sup> Ibid., 5.



*At that time he had just entered into office; he was hardly in the infancy of political mistake: even those who doubted his capacity, thought well of his intentions . . . he had not yet sanctioned the abolition of trial by jury in the alien law, or entrenched his public character behind the legal barriers of the sedition law. Nor were we yet saddled with the expence of a permanent navy, or threatened under his auspices with the existence of a standing army. Our credit was not yet reduced so low as to borrow money at 8 per cent in time of peace.*<sup>26</sup>

Cooper probably intended to compare his willingness to apply to Adams during the first year or so of the administration, when it had been relatively nonpartisan, with his later reluctance to serve Adams once the administration had assumed more partisan overtones. Most, however, would have interpreted Cooper's statement as a stinging rebuke. In addition, Cooper criticized Adams's interference in the "*melancholy case of Jonathan Robbins*," a U.S. citizen forcibly impressed by the British navy and later accused of murder, whom President Adams had willingly surrendered to "*the mock trial of a British court martial*." It is "*A case little known*," Cooper admitted, but also a case "[about] *which the people ought to be fully apprized before the election, and they shall be*." Cooper declared that "most assuredly had these transactions taken place in August 1797, The President Adams would not have been troubled by any request from THOMAS COOPER."<sup>27</sup>

Cooper's subsequent defiance of the Senate in the spring of 1800 aroused sufficient anger among prominent Federalists to bring about his indictment and prosecution. When William Duane, Bache's successor as editor of the *Aurora* since November 1, 1798, found himself the target of the Senate's wrath after publishing a secret Federalist electoral reform bill designed to control the outcome of the upcoming presidential election, he unofficially engaged Cooper as a legal advisor.<sup>28</sup> The Senate informed Duane that he had violated its privilege by publishing unfinished legislation and demanded his presence at a hearing, but it refused to hear from his defense counsel save for "in excuse and extenuation of his offense."<sup>29</sup> In effect, the Senate had rendered the task of defending Duane impossi-

<sup>26</sup> Ibid., 6–7.

<sup>27</sup> Ibid., 7.

<sup>28</sup> Smith, *Freedom's Fetters*, 296. For a detailed explanation of the provisions of the secret electoral reform bill being advanced by James Ross (the Federalist governor of Pennsylvania whom Thomas McKean had just defeated in November 1799), see Smith, *Freedom's Fetters*, 289.

<sup>29</sup> Quoted in Smith, *Freedom's Fetters*, 296.

ble; the resolution permitting Cooper's appearance as counsel forbade him from attempting to prove the truth of Duane's allegations (which would constitute a valid defense against prosecution under the Sedition Act) or challenging the constitutionality of the Senate's attempt to enforce a law independently. Cooper refused to serve under such circumstances, writing to Duane, "I will not degrade myself by submitting to appear before the senate with *their gag in my mouth*."<sup>30</sup> Cooper's blunt disdain for the Senate provoked a swift response: Rawle had him arrested for seditious libel on April 9, 1800, citing the November 2, 1799, handbill as the offending item.<sup>31</sup>

Cooper's *Account* provided a full transcript of his trial, and it revealed that political, rather than legal, concerns remained foremost in his mind; indeed, the fact that he arranged for a personal transcript of the trial to be produced also suggests that he was thinking beyond the immediate proceedings. Cooper appeared to have delayed the progress of his trial for as long as possible in order to harass his oppressors and maintain an open forum in which he could advance the political goal of unseating Federalists in the 1800 election.

The *Account* also thoroughly undermined all parties' pretensions of nonpartisanship: the defendant, the prosecutor, and even the judges, well aware of the trial's rising media profile and political stakes, bitterly debated questions of political import alongside questions of procedure, revealing themselves to be committed ideologues who were unwilling to concede a single point to their opponents. Such revelations, as poorly as they reflected on Cooper, cast his Federalist judges and prosecutor in a far harsher light given their offices' demand for at least some measure of impartiality. Judge Samuel Chase and District Attorney Rawle in particular seemed to be political appointees willing to protect the Federalist government employing them at all costs. Their objective throughout the trial was to make an example out of Cooper so as to silence other Republicans. Rawle declared to the court, "It was a sense of public duty that called for this prosecution. It was necessary that an example should be made to deter others from misleading the people by such false and defamatory publications."<sup>32</sup>

In the first days of the trial, Cooper elicited consternation from the

<sup>30</sup> Thomas Cooper to William Duane, Mar. 25, 1800, in *Philadelphia Aurora*, Mar. 27, 1800.

<sup>31</sup> Smith, *Freedom's Fetters*, 316.

<sup>32</sup> Cooper, *Account*, 15.

court when he subpoenaed testimony from President Adams and other high-ranking government officials.<sup>33</sup> Judge Chase promptly (and predictably) denied the presidential subpoena, asserting that the president could not be compelled to appear. In the process, however, Chase betrayed the belief in the presidency's special status that had justified the Sedition Act for so many Federalists, saying, "Shall you bring the President on such a prosecution, into this court to prove your charges? to ask him, *did* you do so and so? *were* you guilty of maladministration? Sir, this cannot be permitted."<sup>34</sup> Chase clearly found the prospect of subjecting President Adams to cross-examination by his political opponents unpalatable, and he was not about to grant the defendant license to skewer any other Federalists on the witness stand either.<sup>35</sup>

Cooper protested Adams's exemption from subpoena by arguing that no provision in the Constitution rendered the president above or outside the law:

Before I determined on applying for this subpoena, I examined (as it was my duty to do) the Constitution of the United States, to discover if any privilege of exemption from this process was given to the President by the Constitution: I could find none . . . [I]t is not in the power of this court to supply what [the Constitution] has omitted . . . Nor in a country such as this, do I see why this exemption should be granted to one man and not to another.<sup>36</sup>

Cooper's protestations also identified what he believed was an inconsistency within the Sedition Act that compromised the accused's due process rights: in conflating libel against the president with sedition and the president with the government, the court was able to prosecute Cooper for criticizing the president while simultaneously denying his right to face his

<sup>33</sup> Interestingly, Cooper never called any of his subpoenaed government witnesses to the stand. He probably issued so many subpoenas merely as a delaying tactic. He subpoenaed Adams for the political reasons cited above. He also may have done so in order to subject them to his political arguments, since several witnesses whose testimony he allegedly sought regarding the Jonathan Robbins case were in attendance as he proceeded with his defense. Cooper, however, declared himself "too much exhausted to go into any verbal testimony." Cooper, *Account*, 31.

<sup>34</sup> Cooper, *Account*, 10.

<sup>35</sup> Lest we unfairly condemn Chase for his partisanship at that moment, it is instructive to note that the same Republicans who howled in protest at Chase's refusal to put Adams on the stand would later howl at Judge Marshall for subpoenaing Thomas Jefferson in the Burr trial. James Morton Smith notes that Marshall's reasoning closely paralleled Cooper's. Smith, *Freedom's Fetters*, 317n.

<sup>36</sup> Cooper, *Account*, 9–10.

accuser. Cooper believed that the president was not only his accuser, but also the cause for his alleged libel. "The publication for which I am indicted," he argued, "is not a voluntary effusion, it was forced from me—I was compelled to write it in vindication of my own character, grossly and falsely attacked in consequence of a disclosure on the part of the President, of what I cannot but deem private correspondence."<sup>37</sup>

Judge Chase ruled that Cooper was "mistaken in supposing the prosecutor of this indictment [was] the President of the United States," declaring instead that the United States was prosecuting the case on Adams's behalf. He explained that, "It is at the suit of the United States you are indicted, for publishing a false scandalous and malicious libel, with intent to defame the President of the United States."<sup>38</sup> Later, however, Judge Chase forbade the testimony of two character witnesses on opposite grounds, noting that, "If this prosecution were for a crime against the United States, you might give evidence to your character and shew that you have always been a good citizen, but this is an indictment for a libel against the President, where your general character is not in question."<sup>39</sup> Chase thus framed Cooper's seditious libel as a crime against the United States because doing so allowed the court to prevent Cooper from facing his accuser. He later defined it as a crime against President Adams because it permitted the court to suppress elements of Cooper's defense.

Despite Cooper's many complaints as to the manner in which the court handled his subpoenas, it is unlikely that he expected any other outcome. Even though Cooper wrote at one point, "I did not expect . . . that any objection would have been made to issuing this process to procure the attendance of the president,"<sup>40</sup> Cooper probably submitted the subpoenas knowing that they would be denied and did so in order to score political points. It is difficult to believe that he would naively expect the president who had signed the Sedition Act into law to submit himself to his political opponents for questioning. He knew the clash over a presidential subpoena promised to generate a political circus in the courtroom that would make for compelling reading.

Cooper could only dream of embarrassing the president and other

<sup>37</sup> *Ibid.*, 10.

<sup>38</sup> *Ibid.*, 13.

<sup>39</sup> *Ibid.*, 35.

<sup>40</sup> *Ibid.*, 9.

Federalist officials on the witness stand, but the court's refusal to enforce his subpoenas publicly reinforced the image of Adams as an imperial president and suggested collusion between the executive and judicial branches. Judges Chase and Peters appeared in the *Account* as willing instruments of the administration, not as impartial adjudicators. They stonewalled each of Cooper's subpoenas, employing a series of bureaucratic dodges designed to paint Cooper as a mere rabble-rouser and keep the trial as uneventful as possible. Chase demanded a properly formatted affidavit from Cooper that named the requested witnesses and justified their attendance. Yet, upon receiving the requested document, Peters denied the court's authority to compel testimony from anyone in the first place. He observed, "If the gentlemen will voluntarily appear, it is well; if not, we cannot compel them."<sup>41</sup>

The subpoena episode was also significant because it exposed the Sedition Act's carefully inscribed flaws. When Chase argued that the president's testimony would consist of politically opinionated interpretations of the recent past that could be neither proved nor disproved, he inadvertently admitted the impossibility of extracting truth from political opinion. Any arguments Cooper could offer in his own defense would also be politically opinionated interpretations of events that, like the president's testimony, could neither be proved nor disproved. According to the Sedition Act, however, Cooper's only defense against prosecution for "seditious libel" was to establish the veracity of his political opinions! With the burden of proving the unprovable resting on his shoulders, there was little doubt as to his eventual fate.<sup>42</sup>

Cooper's subsequent disagreement with District Attorney Rawle over the legal and textual authority of reprinted presidential addresses confirmed that the truth defense written into the Sedition Act was a trap designed to shift the burden of proof away from the prosecution and onto the defendant. Rawle, like Chase, sought to mire the trial in petty legalities wherever possible in order to minimize Cooper's opportunities for politicking. He undermined Cooper's case procedurally by questioning his use of newspaper copies of President Adams's speeches. He argued

<sup>41</sup> *Ibid.*, 14.

<sup>42</sup> The Sedition Act provided for a truth defense, which stated that those accused of sedition could defend themselves by proving the truth of their allegations. It stipulated, "That if any person shall be prosecuted under this act, for writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give evidence in his defence, the truth of the matter contained in the publication charged as a libel." Sedition Act, *U.S. Statutes at Large* 1 (1798): 596–97.

that, "it is impossible for me to be certain whether inaccuracy in some instances or design in others, may not have rendered the printed accounts unfaithful transcripts of the originals."<sup>43</sup> Rawle informed Cooper that "the evidence necessary for [his] defense must be adduced in the usual and legal form," and he sent Cooper on a frantic but futile quest to procure official copies of presidential speeches.

Unsurprisingly, however, neither the president nor the secretary of state provided Cooper with the official documents necessary for his defense. Judge Chase responded by remonstrating Cooper for leveling seditious allegations without official documents at his disposal, and he then declared that Cooper had no right to use such documents in the first place. He told Cooper, "If in making those assertions you relied on the public papers it was at your own risk; and it was your own fault not to have had authentic copies. You think that you have a right to obtain official copies of what may be necessary for your Defence, [but] you are greatly mistaken . . . I see no reason why the proper officers should give copies."<sup>44</sup>

Rawle and Chase's machinations hobbled Cooper's defense; the two men used their legal authority to control what information was admissible as evidence within the courtroom, and in doing so they set an evidentiary burden that Cooper could not possibly meet. They established a rarefied sphere of "truth" to which only the government enjoyed access. During the trial, Cooper complained that imposing such a high evidentiary standard on political speech threatened to destroy the free exchange of ideas that democracy requires. "Indeed if the opinion that fell from the court this morning be accurate, that no man should hazard an assertion but upon sufficient and legal evidence, and if documents from the public offices in proof of notorious facts are required as such evidence, then are the mouths of the people compleatly shut up on every question of public conduct or public character," he argued.<sup>45</sup> Later, while presenting his defense, Cooper decried the ridiculous lengths to which he had to go to "prove" what to him were "notorious" truths, such as Adams's support for a standing army and navy or his willingness to borrow money at an exorbitant 8 percent interest:

<sup>43</sup> Cooper, *Account*, 11.

<sup>44</sup> *Ibid.*, 13.

<sup>45</sup> *Ibid.*, 21.

Gentlemen, I do contend that this is not like a trial on a matter of property, where every technical objection to evidence is admissible. That evidence which does in fact, and ought in reason, to decide your political conduct . . . is the kind of evidence which ought to decide mine; and it is unreasonable in my opinion on a political trial to require any other; or to harass a defendant by putting him to the enormous trouble and expence of travelling from one end of the Continent to the other, to bring forward legal evidence of a fact which nobody doubts beforehand. I do contend, Gentlemen of the jury, that there are, and may be certain facts of public politics sufficiently notorious to obviate the necessity of legal proof, and whose notoriety, is itself a matter of fact, which may in all cases be safely left to a Jury to judge of.<sup>46</sup>

In spite of the evidentiary standards imposed on him by the court, Cooper managed to enter all sorts of material into evidence and thereby prolonged the trial. "I cannot help thinking it a fair and reasonable position," he argued, "that a defendant in such a case as this should be permitted to offer to the jury any evidence that appears to him a sufficient ground for his assertion, and let them decide on its credibility."<sup>47</sup> After a short exchange in which the justices patronized Cooper for serving as his own counsel, Judge Chase magnanimously ruled, "You may read any thing and every thing you please."<sup>48</sup> Presumably Chase thought the request an innocuous one, since "unofficial" documents could not have any legal bearing on the jury's verdict. In granting Cooper free reign to introduce unofficial documents, however, Chase aided Cooper in making his case—not a legal case to the court, but rather a political case to the courtroom audience and the future readers of his *Account*.

Since the prosecution only had to prove that Cooper authored the handbill and that the handbill effected seditious ends, Rawle presented a short case. In addition to Cooper's own declaration of authorship, Rawle called John Buyers to the stand; he testified that Cooper had admitted his authorship verbally during a conversation.<sup>49</sup> Rawle asserted that Cooper's handbill defamed the president. He then read the text of the Sedition Act and the offending passages from Cooper's handbill and closed his case. Interestingly, Cooper asked only one question of Buyers during the cross-examination: "Had not you and I been in the habit of frequently joking

<sup>46</sup> Ibid., 34.

<sup>47</sup> Ibid., 21.

<sup>48</sup> Ibid., 22.

<sup>49</sup> Malone, *Public Life of Thomas Cooper*, 123.



each other upon political subjects?" Buyers answered in the affirmative: "O yes—very often."<sup>50</sup>

Cooper's question is key to understanding his entire approach to the trial because he cared little about proving his innocence. No defense would have prevented his conviction given the construction of the Sedition Act. Thus, Cooper instead used his trial to illuminate the very real ideological divisions in American political discourse that the act aimed to suppress. His opening defense statement recognized the nation's partisan divide, as Cooper stated, "*Gentlemen of the Jury*, you, and all who hear me, well know, that this country is divided, and almost equally divided, into two grand parties."<sup>51</sup> While Judge Chase later instructed the jury to base its verdict on the questions of Cooper's authorship and malicious intent, Cooper addressed neither question. Instead, he delivered a passionate defense of Americans' right to discuss, and even criticize, their elected officials:

*Gentlemen of the Jury*, I acknowledge as freely as any of you can, the necessity of a certain degree of confidence in the executive Government of the country. But this confidence ought not to be unlimited, and need not be paid up in advance; let it be claimed by the evidence of benefits conferred, of measures that compell approbation, of conduct irreproachable.—It cannot be exacted by the guarded provisions of Sedition Laws, by attacks on the Freedom of the Press, by prosecutions, pains, and penalties on those which boldly express the truth, or who may honestly and innocently err in their political sentiments. . . . Nor do I see how the people can exercise on rational grounds their elective franchise, if perfect freedom of discussion of public characters be not allowed.<sup>52</sup>

Cooper assumed the air of a nonpartisan, principled critic of an unconstitutional law while insinuating that Federalists were hostile to fundamental democratic processes. He artfully alluded to the upcoming election when he warned his audience that Federalists' intolerance of dissent threatened to undermine voters' collective right to make informed electoral choices. The same principles Federalists used to suppress speech against the incumbent party, he suggested, could eventually be used to suppress the opposition's votes.

<sup>50</sup> Cooper, *Account*, 17.

<sup>51</sup> *Ibid.*, 18.

<sup>52</sup> *Ibid.*, 18–19.

Cooper proceeded from his preamble to recount the events that occasioned his seditious handbill. He defended its contents, arguing that it “is not a voluntary, but an involuntary publication . . . originated not from motives of turbulence and malice, but from self-defence.”<sup>53</sup> He once again attacked the Federalists’ belief that the office of the president was separate from the people and above the laws. The president, he suggested, was not the blameless victim his supporters made him out to be. Cooper argued that, “from some disclosure on [Adams’s] part has been founded the base and cowardly slander which dragged me in the first instance before the public in vindication of my moral and political character.”<sup>54</sup> Indeed, Adams’s countercharge took the form of a personal attack that ignored Cooper’s ideas as previously forwarded in his original Northumberland editorial. Cooper exhorted his audience to ask itself if the president deserved special legal protections that permitted such behavior. “Is a plain citizen encircled at once by the mysterious attribute of political infallibility the instant he mounts the presidential chair?” he asked. “I know that in England the king can do no wrong, but I did not know that the President of the United States had the same attribute.”<sup>55</sup>

Cooper defended his statement “*that even those who doubted [Adams’s] capacity doubted his intentions*”<sup>56</sup> by attacking the Federalists’ redefinition of political speech as treasonous conduct. Under what circumstances, Cooper wondered, did political speech become treasonous conduct punishable by the Sedition Act? The act selectively redefined certain kinds of political speech as punishable conduct. “Suppose I had said that there were some who did not give [Adams] credit for capacity sufficient for the office he holds, is that a crime?” he asked.<sup>57</sup> And why was voting, which was also political speech that expressed doubt or lack thereof in the president or another elected official, not proscribed by the Sedition Act? Cooper observed, “But those who voted for his opponent must have believed Mr. Adams of inferior capacity to that gentleman. . . . If it be a crime thus to have thought and thus to have spoken, I fear I shall continue in this respect incorrigible.”<sup>58</sup>

<sup>53</sup> Ibid., 20.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., 21.

With regard to Adams's support for a standing army and navy, Cooper linked the president's militarism with despotism—essentially heaping libel upon libel—but he justified his assertion by citing George Washington's own distrust of standing armies. He quoted from Washington's Farewell Address, in which the departing president noted, "overgrown military establishments . . . are to be regarded as particularly hostile to republican liberty."<sup>59</sup> In allying his political dissent with sentiments expressed by George Washington, who was already a canonical national figure by 1800, Cooper provided himself some political cover and undercut the Federalists' claim that his opinions were unpatriotic and seditious. Cooper concluded his defense by reminding the jury that, "if the assertions I have made are true, whatever the motives of them may be, you cannot find me guilty."<sup>60</sup> At the same time, however, he feared that the high evidentiary burden imposed on political dissenters—even dissenters who shared George Washington's opinions—was likely to suppress "all political discussion in promiscuous society" and "establish a perfect despotism over the press."<sup>61</sup>

District Attorney Rawle delivered the prosecution's closing arguments after Cooper finished presenting his defense, and his initial remarks indicate that he perceived Cooper's political intent. Cooper, he told the jury, evinced "a settled design to persuade the public that the President of the United States is not fit for the high office he bears."<sup>62</sup> He depicted Cooper as merely another partisan Republican who would bitterly oppose the president regardless of his policies, as "No conduct of the President however wise, no motives however pure, could screen him from the attacks of party spirit."<sup>63</sup> He rebutted Cooper's pretense of nonpartisanship by branding him a Republican operator seeking to politicize a matter of justice. He shrewdly observed that Cooper cared little about convincing the jury of the truthfulness of his allegations, wanting instead to turn his trial into a political spectacle that reflected badly on the president. Rawle concluded, "I cannot but observe from the whole tenor of his present argument, as well as from his publication, that his object is not so much to convince you Gentlemen of the Jury, that his assertions are true, as to

<sup>59</sup> Ibid., 24.

<sup>60</sup> Ibid., 35.

<sup>61</sup> Ibid., 34.

<sup>62</sup> Ibid., 36.

<sup>63</sup> Ibid., 41.

cast an unmerited reflection on the general character and conduct of the President."<sup>64</sup>

What was most interesting about Rawle's closing remarks, however, was that he took it upon himself to defend President Adams against Cooper's charges. One of Cooper's political goals during the trial was to expose the court's partisanship, and Rawle willingly obliged him by arguing against the "notorious facts" of Cooper's handbill. Rawle noted that Cooper selectively interpreted extracts and passages from President Adams's speeches in an effort to misconstrue his sentiments, just as Cooper had alleged that the court and his anonymous attacker had done to him. Rawle explained, "I cannot however forbear to remark with how little propriety the defendant has complained of passages being selected from his publication for indictment without the context as he calls it, when his whole defence rests upon passages thus picked out, to suit the unfair and malicious purposes of his defence."<sup>65</sup>

In any conventional court case, an evidentiary stalemate would favor the defendant; here, however, the supposedly generous truth defense within the Sedition Act, which Rawle ironically described as "a liberality of defence . . . unknown I believe in any other Country,"<sup>66</sup> reversed the burden of proof. By creating a situation in which Cooper's evidence was no more "truthful" than that of his prosecutors, Rawle accomplished all he needed to do in order to secure Cooper's conviction.

Judge Chase's highly prejudicial instructions to the jury comprised the last part of Thomas Cooper's trial. Like Rawle's closing remarks, Chase's instructions exposed his partisanship. After summarizing the charge against Cooper and explaining the criteria that would determine his innocence or guilt, Chase dropped any pretense of impartiality by essentially rearguing the prosecution's case. He provided his own interpretation of the "facts" of the case and, ironically, took particular offense at Cooper's insinuations that the judiciary was a mere appendage of the executive. "Suffer your courts of Judicature to be destroyed," Chase declared, "there is an end to your liberty."<sup>67</sup>

Chase argued for Cooper's guilt by emphasizing the Republican sympathies that influenced his libel. He even added material to the

<sup>64</sup> *Ibid.*, 36.

<sup>65</sup> *Ibid.*, 38.

<sup>66</sup> *Ibid.*, 35.

<sup>67</sup> *Ibid.*, 45.

prosecution's case, electing to bring to the jury's attention "a little circumstance" involving the Jonathan Robbins case, "which the attorney-general in his observations to you omitted to state"—namely that Cooper's desire to inform citizens of the details of the trial before the coming election exposed him as a partisan rabble-rouser. Chase surmised that Cooper sought "to arouse the people against the President so as to influence their minds against him on the next election" and believed that Cooper's partisan goal amounted to the "improper motives" or "bad intent" that should result in a guilty verdict.<sup>68</sup> He condemned Cooper's offending handbill on similar grounds, ascribing political motivations to Cooper's words that rendered him untrustworthy. "This publication," he declared, "is evidently intended to mislead the ignorant, and inflame their minds against the President, and to influence their votes on the next election."<sup>69</sup> While Chase and Rawle presented their Federalist posturing as a nonpartisan, patriotic defense of America's government, they depicted Cooper's Republican viewpoint as partisan discourse that was hostile to organized government.

The most revealing part of Judge Chase's instructions was his shockingly honest summary of the evidentiary burden that rested upon the defendant as a result of the Sedition Act's truth defense provision. He left no doubt that, in the case of an evidentiary stalemate, the defendant would lose. He explained that, "the Traverser in his defence must prove every charge he has made to be true; he must prove it to the marrow. If he asserts three things, and proves but one, he fails—If he proves but two, he fails in his defence, for he must prove the whole of his assertions to be true."<sup>70</sup> If the defendant failed to prove the truth of every charge he made, the jury would then have to determine if his charges were malicious or not. In practice, of course, the defendant had already lost once he entered the courtroom. Cooper, for instance, labored under a daunting evidentiary burden that made proving even the most notorious of assertions impossible. And since the Sedition Act itself conflated libel with sedition, any "untrue" accusation against a government official was threatening and malicious *prima facie*. By regaling the jury with legal interpretations of political debates, Chase essentially bullied the jury into finding Cooper guilty.

<sup>68</sup> *Ibid.*, 46.

<sup>69</sup> *Ibid.*, 49.

<sup>70</sup> *Ibid.*

Judge Chase did not have the last word in the *Account*, however. Cooper appended copious footnotes to the judge's instructions that challenged his reasoning, and he also printed the text of a letter to the judge that further questioned the various procedural rulings Chase had made during the trial. Cooper mocked Chase's cavalier use of evidence, pointing out that the judge argued for Cooper's guilt by merely identifying individual statements that, to Chase's way of thinking, tended to undermine citizens' confidence in government and were thus seditious. "Throughout the whole of Mr. Rawle's reply and the Judge's charge," Cooper observed, "a number of political and other facts are taken for granted *upon the ground of notoriety*, of which not a particle of evidence appeared on the trial."<sup>71</sup> In addition, Chase's decision that Cooper's statement doubting Adams's capacity was tantamount to libel because "it was meant to carry a sting" elicited an angry footnote from Cooper that denounced Chase's ill-conceived conflation of speech with conduct. Cooper stated that, "This is the first time the public have been informed, that it is a crime to doubt the capacity of a president. . . . I hope I shall have an opportunity of voting again."<sup>72</sup> By the court's logic, then, voting against an incumbent would also be tantamount to expressing doubt in someone's capacity and would be a criminal offense.

The jury delivered a guilty verdict against Thomas Cooper, and on April 24, 1800, Judge Chase sentenced him to six months' imprisonment. Chase once again insinuated that Cooper was a party man and declared his intention to impose a prodigiously high fine given Cooper's likely connection to a party apparatus willing to pay his bills. Cooper replied indignantly, claiming, "the insinuations of the court are ill unfounded." Judge Richard Peters, who had remained silent during most of the trial, shrewdly observed, "we ought to avoid any oppression."<sup>73</sup> Although Chase, Rawle, Pickering, and other Federalists clearly sought to make an example of Cooper, Peters wisely reminded Chase that they risked losing the political battle being waged within the courtroom if they imposed a seemingly oppressive fine upon a defendant already anxious to cast himself as a political martyr. Chase ultimately fined Cooper four hundred dollars. When Cooper completed his prison sentence (which he did on October 8), he also had to post a two thousand-dollar bond for good

<sup>71</sup> Ibid., 47.

<sup>72</sup> Ibid., 44.

<sup>73</sup> Ibid., 52.

behavior.<sup>74</sup>

The trial's verdict was unsurprising, especially to Cooper; Federalists had accused him of seditious libel against the president during a time of undeclared war and paranoia in which, to the Federalists at least, partisanship seemed a luxury the country could not afford. The *Account*, meanwhile, portrayed partisanship as a distasteful but unavoidable part of the democratic process. Cooper left it to the reader to compare his own partisanship—that of a man exercising his constitutional right to free speech—to the partisanship of his political opponents, supposedly impartial prosecutors and judges who used the powers of the government and the courts to silence dissent. Although Federalist newspapers such as the *Philadelphia Gazette* gleefully reported on Cooper's misfortune during the spring and summer of 1800, Joseph Priestley regarded the trial as a crippling political blow to the Federalists. Cooper's Republican allies seem to have agreed, as he was toasted at Jefferson's inauguration.<sup>75</sup> The 1800 election vindicated Thomas Cooper and other Republicans whom Federalists had targeted for prosecution under the Sedition Act, while the Federalists suffered a political defeat from which the party would never recover.

Later in life, however, Cooper became a somewhat disreputable character. He served as a judge from 1804 to 1811, but while on the bench he recanted his earlier belief in the need for constitutional reform of the Senate—a position that, in due course, isolated him from Republicans. The Pennsylvania legislature successfully petitioned the governor to remove him from office for allegedly practicing the same kinds of judicial impropriety of which he himself had once been a victim.<sup>76</sup> After teaching

<sup>74</sup> Smith, *Freedom's Fetters*, 328, 331. Interestingly, Smith writes in "President John Adams, Thomas Cooper, and Sedition: A Case Study in Suppression," *Mississippi Valley Historical Review* 42 (1955): 461–62, that Cooper served a sentence in "federal prison," even though federal penitentiaries did not exist in 1800. People convicted of federal crimes at this time would serve their sentences in a local or state prison. Strangely, however, there seems to be no record of Cooper's imprisonment. His name appears nowhere in the Sentence Docket in 1800, nor in either the Convict's Docket or the Prisoners for Trial Docket for the year. The Sentence Docket exhibits an atypically large gap between April 12 and May 26, so perhaps the lack of an entry for Cooper's imprisonment is part of a larger failure in record-keeping during those weeks. In any event, it remains impossible to confirm that Cooper served his sentence in the Walnut Street Jail, although it is the most reasonable conclusion. Philadelphia City Archives.

<sup>75</sup> Malone, *Public Life of Thomas Cooper*, 149.

<sup>76</sup> The Pennsylvania legislature's charges ranged from the serious to the petty; it accused him of, among other things, imprisoning a Quaker for not removing his hat in court, asking questions of a defendant that would have required him to incriminate himself, communicating secretly with juries during trials, and verbally abusing lawyers, witnesses, and defendants. See Michael Kent Curtis, *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History* (Durham, NC, 2000), 91.



chemistry for several years at Carlisle (now Dickinson) College and then the University of Pennsylvania, Cooper moved to South Carolina in 1820 to teach at South Carolina College; there, he would repudiate many of the Republican principles that he had once championed. He rejected Jefferson's natural rights philosophy, concluded that all men were *not* created equal as asserted in the Declaration of Independence, voiced his opposition to universal suffrage, and became a strong supporter of slavery.<sup>77</sup> Cooper's radical transformation ultimately lent credence to his opponents' contention that, far from being a nonpartisan defender of democracy, he had all along been a political opportunist whose only guiding principle had been self-advancement.

Regardless of his later politics, Thomas Cooper's *Account* comprised the centerpiece of a larger body of subversive political writing that successfully incited Americans against the Sedition Act, and the blow-by-blow depiction of its author's political martyrdom lent the text a singular moral authority. Such writings effected orderly regime change and restored the free discussion of political ideas that, although central to our contemporary notion of a democratic society, the Sedition Act had been designed systematically to repress. Cooper either showed his true political colors or experienced a genuine ideological change of heart later in his life, but in 1800 he doubtless viewed the Republicans' watershed victory over Federalism as an electoral acquittal and a validation of his personal sacrifice.

*University of Delaware*

FORREST K. LEHMAN

<sup>77</sup> Ibid.