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## Book Review: The Free Press Crisis of 1800: Thomas Cooper's Trial for Seditious Libel

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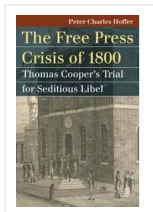
# Law and Politics Book Review

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## THE FREE PRESS CRISIS OF 1800: THOMAS COOPER'S TRIAL FOR SEDITIOUS LIBEL



by Peter Charles Hoffer. Lawrence: University Press of Kansas, 2011. 168 pages. Cloth. \$34.95. ISBN: 9780700617647. Paper. \$16.95. ISBN: 9780700617654.

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When Federalist John Adams was elected president in 1796, his party and Thomas Jefferson's Republicans were deeply divided on both domestic and foreign policy issues. In the continuing European hostilities, for example, Republicans sentimentally and philosophically leaned toward the French, while the Federalists benefited from strong economic ties with Britain. Both European powers harassed the new American nation, but the Federalists controlled all three branches of government and had reached a *modus vivendi* with England. By 1798, partly because of clumsy French diplomatic intrigues, and partly because the Hamilton wing of the party willed it, the Federalists in Congress eagerly anticipated war with France.

In the wake of that expectation, the Federalist Congress enacted four statutes known collectively today as the Alien and Sedition Acts. One of them, The Sedition Act, levied a fine of up to \$2,000 and imposed imprisonment for as long as two years on anyone convicted of writing, publishing, or speaking anything "false, scandalous, and malicious" against the U.S. government, the president or either house of Congress, or "to excite against them the hatred of the good people of the United States..."; or of entering into unlawful combinations to oppose the execution of national laws, or aiding or attempting "any insurrection, riot, unlawful assembly, or combination."

The principal target of the Act was the Republican newspaper press, which not only maintained a steady drumbeat of criticism against President Adams and his policies, but also promised to become a formidable political weapon in the election of 1800. The Act was vigorously enforced by Secretary of State Timothy Pickering. At least twenty-five persons, including the leading Republican editors, were arrested; from fourteen indictments under the Act, eleven Republicans were tried, convicted and jailed, eight of whom edited newspapers. All federal prosecutors were Federalists, as were all of the presiding judges. Juries were chosen by federal marshals, all of whom were also Federalists. No Federalist was ever charged under the Act.

One of the Republican editors convicted under the Act was Thomas Cooper, the relatively insignificant editor of the *SUNBURY AND NORTHUMBERLAND GAZETTE* and the focus of Peter Charles Hoffer's latest

book. Hoffer, Distinguished Research Professor of History at the University of Georgia, has published this accessible case history as part of the University Press of Kansas's *Landmark Law Cases* [\*487] & *American Society* series, which he co-edits.

It is something of a stretch to call the Cooper trial a "landmark law case." It resulted in no appellate decision - indeed, it was not much of a trial - and thus had no effect on the evolution of American law. Hoffer himself admits that his story of the Sedition Act trials should have been about Benjamin Franklin Bache, grandson of Benjamin Franklin and publisher of *PHILADELPHIA AURORA*. Bache was the first and most influential casualty of the Federalists' animus toward Republican editors; even before the Sedition Act was enacted, Bache was arrested and charged with libeling President Adams and the government but died of yellow fever before he could be tried.

Other notable Republicans who were victimized by the Act were Matthew Lyon, John Daly Burk, James Thomson Callender, Anthony Haswell, David Brown, William Duane, Charles Holt, Abijah Adams, and Luther Baldwin - several of whom were more important or more interesting than Cooper. But Cooper presciently had a verbatim account made of his trial, and Hoffer makes splendid use of that transcript, quoting where effective, interpreting the language where necessary, and contextualizing the entire affair.

Cooper was an English émigré who had supported the French Revolution and greatly admired the writings of Thomas Payne. He practiced law in Pennsylvania to support his family, and at one point, even asked President Adams for a judicial appointment. Hoffer ascribes Cooper's downfall to a trap set by Pickering, who attacked Cooper as a hypocrite in an anonymous screed published in John Fenno's *Federalist GAZETTE OF THE UNITED STATES*. Cooper responded with an ill-conceived attack on Adams that invited prosecution under the Sedition Act.

Hoffer devotes less than one-third of the book to Cooper's trial, but those pages comprise Hoffer's most original and valuable contribution to the literature of early First Amendment jurisprudence. Cooper may not have been the most important Republican convicted under the Sedition Act, and the trial may not have been the most exciting. (Justice Samuel Chase, whom John Marshall's biographer called a "holy terror" as a trial judge, seems uncharacteristically reasonable as one of Cooper's presiding judges.) But this step-by-step account of a sedition trial from start to finish is nevertheless a very useful and welcome addition to the literature of First Amendment jurisprudence.

The availability of a trial transcript allows Hoffer to recount, in the actors' own words, the skirmishes over procedure and evidence that marked the preliminary stage of the trial. His account makes clear the political nature of the prosecutor's charges, the judges' trial rulings, and, as well, Cooper's attempt at a defense. Of course, there was no legal defense to be mounted; no witness could testify to the factual truth of Cooper's published opinions, as the Act and court demanded. The trial itself consisted solely of Cooper's futile plea to an all-Federalist jury. Cooper was convicted and spent six months in prison. [\*488]

Most of Hoffer's book covers events leading up to the Cooper trial and, to a lesser extent, its historical legacy. The narrative begins with the well-known trial of John Peter Zenger and briskly sweeps through the drafting of the First Amendment, the Jay Treaty and the evolution of parties, the election of 1796, war fever, the Otis-Gallatin debate over the Alien and Sedition Acts, and reaction in the form of Jefferson's Kentucky and Madison's Virginia resolutions. One could quibble that Hoffer pays rather disproportionate attention to the latter, while the ratification struggle gets short shrift, but he has his reasons.

Hoffer's emphasis on the Kentucky and Virginia resolutions foreshadows one theme of his post-trial narrative: the nullification doctrine of John C. Calhoun as the resolutions' successor and as precursor to secession. Hoffer does not go so far as to claim that the roots of the Civil War lie in the Alien and Sedition Acts, so the extended discussion in this concise history seems something of a distraction. Much more salient is Hoffer's brief summary of the Acts' reprises in the anti-abolitionist gag rule, Lincoln's persecution of the Copperheads, and the World War I and Red Scare sedition laws of 1918 and 1940, respectively. Not to be overlooked is Hoffer's brief reference to the Patriot Acts in his preface.

There are, of course, more detailed accounts of the historical and jurisprudential record before and after the Cooper trial, and Hoffer's narrative adds relatively little to that record. This in turn may prompt one to ask, for whom is this book written? While First Amendment scholars will certainly appreciate the Cooper trial details and Hoffer's insights on the sedition trials' role in the electoral politics of the day, they may find two-thirds of the book largely unenlightening. Students or lay readers, by contrast, may find the trial story itself anticlimactic, perhaps even boring. But if the story of the last few years of the Eighteenth Century is new to them, they will not find a better introduction anywhere.

For either reader, then, Hoffer's book is due a prominent place among First Amendment case histories. That genre begins with James Alexander's account, self-serving as it may be, of the John Peter Zenger trial, to which Hoffer devotes considerable ink. Practitioners include master story-tellers Fred Friendly and Tony Lewis, whose MINNESOTA RAG and MAKE NO LAW document NEAR v. MINNESOTA and NEW YORK TIMES v. SULLVAN, respectively. These authors, and other lawyers, journalists, and scholars, disinterested and otherwise, provide the details that give life to constitutional jurisprudence.

The best of these books offer useful essays on the times and events that led up to each case, as well as its consequences for law, journalism, and history. Hoffer's slim volume does both of these well, in addition to providing a unique look at one of eleven seditious libel trials that form an important, if lamentable, precedent for the better known cases that followed. Hoffer closes with the warning that "the liberties we cherish are not always proof against power and partisanship" and the admonition that this "lesson must be taught to each generation of Americans, especially those who apply and interpret [\*489] our laws." Surely, this book will help us accomplish that task.

#### REFERENCES:

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