The Voluntaryist

Whole Number 86 *"If one takes care of the means, the end will take care of itself."* **June 1997**

Is "Taxation Is Theft" A Seditious Statement?

A Short History of Governmental Criticism in the Early United States

By Carl Watner

Introduction

In August 1996, I received a press release regarding the imprisonment and legal appeal of the organizers of the Hickory (North Carolina) Patriots, a private organization which opposes the federal income tax. The defendants, Robert Clarkson, Vernon Rubel, and Dr. Herbert Fleshner, were convicted (Federal Case No. 94-5933, originating in the United States District Court for the Western District of North Carolina, Statesville Division) on October 5, 1994 of violating the provisions of Section 371 of Title 18 of the United States Code of laws. According to the Bill of Indictment the three defendants "did knowingly, willfully and unlawfully conspire, ... to defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department ...." The indictment stated that these activities primarily consisted of public meetings where 1) the constitutionality of the 16th Amendment was called into question, 2) instructions were given to individuals how to file W-4 forms with increased exemptions, and 3) conclusions were reached that the income tax laws do not pertain to wages and salaries (and that, therefore, working people are not required to file income tax returns). The meetings were attended by undercover IRS agents, who later replayed tapes of the meetings to the jury.

In October 1995, Clarkson appealed his conviction to the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. At the original trial, the IRS labelled Clarkson as a leader in the tax protest movement. Clarkson freely admitted that he and his co-defendants had organized public meetings where he had openly challenged the constitutionality of the income tax. However, he claimed that his rights to do so were protected under the First Amendment to the Constitution ("Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."). The trial court judge would not allow any First Amendment issues to be raised and sentenced Clarkson to 57 months of imprisonment.

As the editor, publisher, and chief contributor to THE VOLUNTARYIST, the Clarkson case hit me squarely between the eyes. Could I be charged with a similar crime? Unlike Clarkson, I am not concerned with the constitutionality of the income tax laws. I oppose taxation and all political statutes on moral grounds. Stealing is wrong; taxation is a form of stealing; therefore taxes are wrong regardless of what the government says or does. (See the accompanying article, "On Keeping Your Own: Taxation Is Theft!".) It is not so far fetched to imagine that someday, on the basis of my published writings, I might be charged with impeding the collection of government revenues.

Furthermore, much of what I have written and published during the last decade and a half of THE VOLUNTARYIST has been highly critical of the government of the United States. In "If This Be Treason, Make the Most of It!" (Whole No. 30, February 1988), I addressed the treasonous and seditious nature of my writings. If sedition be defined as anything that tends to disturb the tranquility of the State and which might lead to its subversion, then clearly the educational and instructional efforts of THE VOLUNTARYIST, even though they be nonviolent, are seditious because their intent is to weaken the grasp of statism over the minds of individuals in this country and every other country in the world.

My outlook since that time has not changed, and what I wrote bears repeating:

> We oppose not only specific states (such as the United States), but the very concept of the nation-state itself. Without the State there would be no compulsory institution to betray. One is not accused of treason when one quits Ford Motor Co. and goes to work for General Motors. But it is generally considered treasonous to renounce one's citizenship (as when one attempts to become a naturalized citizen of a country that your country is at war with) because allegiance to the State was historically deemed perpetual and immutable.
>
> Since voluntaryists look upon the State as a criminal institution, we believe that we owe it no allegiance. Since we view the U.S. Constitution as "a covenant with death, an agreement with hell," as William Lloyd Garrison put it, we accept no duty to uphold it or abide by it. Since the State is a thief we owe it no respect. The State is an invasive institution per se, that claims sovereign jurisdiction over a given geographical area and which derives its support from compulsory levies, known as taxation. The invasive trait of the State "persists regardless of who occupies [the] positions of power in the State or what their individual purposes may be." This insight leads us to view the State and

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On Keeping Your Own: Taxation Is Theft!

By Carl Watner

There are essentially two types of people that prey on other peoples' property. There are your everyday thieves or criminals who pick pockets, embezzle, or burglarize, and then there are your government bureaucrats (whether local, state, or federal) who are responsible for the collection of tax revenues and enforcement of political regulations. The bureaucrat may not carry a gun himself or enforce his threats against you, but he will get a judge to direct a policeman, state trooper, reservist, soldier, or federal marshal to seize your property in the event you chose to disobey his or the judge's directives. Both the highwayman and the government enforcers do the same thing: they take your property without your consent. The only difference is that the government agent acts under the guise of the law or the Constitution while the burglar does not. The difference, if there actually is any, brings to mind Lysander Spooner's passage from NO TREASON:

> The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a "protector," and that he takes men's money against their will, merely to enable him to "protect" those infatuated travellers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection.... Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful "sovereign," on account of the "protection" he affords you. He does not keep "protecting" you, by commanding you to bow down and serve him; ... by robbing you of more money...; and by branding you as a rebel, a traitor, and an enemy to your country, ... if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impostures, and insults, and villainies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave. [NO TREASON NO. VI, (Section) III, 1870]

The highwayman claims no legitimacy in his assaults against you. The judge, the marshal, the gun-toting sheriff, and politician all claim that their depredations against you are legal, constitutional, and by due process of law.

Most advocates of taxation justify their view that "taxation is 'not' theft" by referring to some form of "tacit" consent that each person incurs by the mere act of living in society. This amounts to the claim that if you live here, in the United States, your presence indicates that you have agreed to be taxed! Some people may agree with this line of thinking, but there are some who refuse to be brainwashed by such State propaganda. The State has no right to determine the conditions under which we live. It is true that there are costs expended in protecting one's property, but taxation, as a means of financing "government protection," is self-contradictory. To resort to compulsion to protect us from the violence of others is self-defeating and illogical. Some people may not want the protection; others may be able to provide it more cheaply by doing it themselves; and others may choose to associate with non-governmental protection agencies to furnish the amount and kind of protection they desire. What justification is there for compelling a man to accept a product he doesn't want, or didn't order, or would prefer not to have? And then jailing him when he refuses to pay the bill?

The whole premise of government taxation is essentially the idea that you and your property belong to the State. You are a slave of the State. Whatever the government allows you to keep or accumulate is simply attributable to its generosity. It is not yours by right. The contrarian view, on the other hand, maintains that the State is a criminal institution; and that the State accumulates its resources and wealth only by stealing from each member of the community. Consequently, failing to file a tax return, or "cheating" on one's tax return is simply a case of outwitting the criminals and keeping your own property. How could anyone object to you hiding your jewels so that a common thief couldn't find them? How could anyone object to you holding on to your wealth so that the government couldn't seize it? The answer in both cases is the same. Neither the common thief nor the government have any right to your wealth, and therefore neither should object to your actions to prevent them from seizing all or part of it.

What the government calls tax evasion, either not paying your taxes or paying less than it claims, is simply a person's way of saying, "No!" or "Enough is

enough!" Such actions are one way of protecting your property from government thieves and reducing the amounts the government steals from you. The tax evader is usually looked upon as a cheat, but is this really the case? No! The cheaters are those who deceive others into believing that they "owe" taxes to the government. These are the people who are trying to cheat the rest of us out of our rightfully earned property! The tax evader is simply trying to outwit a criminal government by keeping what belongs to him. It is his money. It was honestly earned. He is fully justified in keeping it out of the clutches of both the thief and the tax man! ▽

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> its minions as a criminal gang engaged in a common criminal enterprise—namely, the attempt to dominate, oppress, coercively monopolize, despoil, and rule over all the people and property in a given geographic area.

In short, the fundamental purpose of every State is conquest, and the United States government, even in its earliest days, has never departed from this norm. As I have pointed out in many historical articles in THE VOLUNTARYIST, the American Revolution, and the State apparatus that took control over the American colonies after independence was declared from Great Britain were not libertarian enterprises. The American revolutionaries and the Founding Fathers violated the rights of peaceful civilians during the war against British rule. They continued to levy compulsory taxes during the revolution and under the rule of the U.S. Constitution. They suppressed rebellion and secession. Their stand on slavery was unlibertarian. Hardly any time passed at all after the adoption of the Constitution before governmental policies were adopted which violated both the spirit and the actual wording of the document. So while the Americans might have rebelled against (what they considered) the abuses of George III, they did not reject his right or the right of some other government to rule and maintain its conquest over a subject population. "Far from wishing to overthrow the authority of government," their intent was to establish a new government which they could control. Instead of disbanding political government for the American people, the American Revolution only resulted in the swapping of one State for another.

The Alien and Sedition Laws

The likelihood that I might be charged with impeding government operations or sedition is even greater when one views the history of sedition laws in the United States. At least twice in American history (the late 1790s, and World War I) these laws have been responsible for the suppression of criticism of the government and the imprisonment or deportation of those antagonistic to the government and its policies. What is even more noteworthy is that the first occurrence happened less than ten years after the adoption of the Constitution. In an effort to support these charges and flesh out the history of sedition in the early days of the United States, the remainder of this article will be devoted to a review of the Alien and Sedition laws of 1798.

In order to comprehend the reasons for this legislation, it is necessary to understand the geo-political situation in America and Europe at the time. George Washington, President, and John Adams, Vice-President, began their second term of office in 1793; with Adams succeeding to the Presidency in March 1797. The commercial treaty concluded with England in November 1794, by John Jay, had disrupted Franco-American relations since France regarded it as evidence of a pro-British policy. Members of Adams' Federalist party feared a French invasion. French privateers in the Caribbean preyed on American commerce. The French Directory attempted to extort money from three American commissioners when they were sent to Paris to negotiate a peaceful settlement of differences between the two countries. The "X Y Z despatches" created a storm of criticism in the United States, which led President Adams to adopt a policy of armed neutrality toward France, even though it was expected that France would declare war against the United States.

All these events conspired to serve as "a starting point for spirited measures that would strengthen the federal government." A navy department was created, separate from the army; the Marine Corps was revived, and naval frigates and warships were outfitted and purchased. Congress authorized the enlistment of 10,000 men in the army; Washington and Hamilton were appointed as generals to command the new army; and a gunners' school was begun at West Point, which was to become home of the United States Military Academy. Adams hoped to protect American commerce, but hoped to avoid war and did so by sending a new minister to France who concluded a commercial convention between the two countries in September 1800. Meanwhile, in the congressional elections of 1798-1799, the Federalists obtained a majority of the seats in the House and Senate. The Republicans, led by vice-president Thomas Jefferson, were tagged as Jacobins and discredited because of their support of France. Numerous European radicals who had fled from England, France, and Ireland were already in the United States. "By French consular estimates, there were 25,000 French refugees in the United States in 1798." The Federalist fear of a French invasion and the possibility of these foreigners engaging in treasonous activities against the United States resulted in the passage of legislation against these aliens and other critics of the government.

Commonly referred to as the Alien and Sedition Laws, there were actually four statutes passed during the summer of 1798. The Naturalization Act (Statutes at Large, I, 566-569; signed into law on June 18, 1798) was the earliest piece of Federalist legislation and was designed to deprive foreign-born citizens of the privi-

lege of becoming officeholders and engaging in political activity. Under this law, a foreign-born resident of the United States had to prove that he had lived in the United States fourteen years before he could become a naturalized citizen. Five of those years must have been spent in the state or territory where he was being naturalized and at least five years before his citizenship could be granted, he must have declared his intentions of becoming a citizen. The Naturalization Act extended by nine years (as compared to the previous law) the time that foreigners had to wait before they could become citizens. The intent of the law was to reduce the foreign influence in American politics and resulted in questioning the bona fides of the Republican leader in the House of Representatives, foreign-born Albert Gallatin.

The second law known as the Alien Friends Act was actually titled "An Act concerning Aliens," (Statutes at Large, I, 570-572) and was signed by President John Adams on June 25,1798. This was a temporary peacetime measure, which expired at the end of Adams' second term of office. It delegated to the president extraordinary powers over aliens: "[I]t shall be lawful for the President of the United States at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable ground to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order." Aliens ordered to depart could protest their expulsion and if a Presidentially-appointed commissioner found they held no threat to the interests of the United States, they could be granted a license to remain within the United States. Penalties for failure to depart the country when ordered and not having obtained a license consisted of a maximum of three years imprisonment and denial of United States citizenship in the future. Many Southerners opposed this legislation because they believed that the President could use his authority to deport their slaves by labelling them undesirable aliens. Adams never did this and only grudgingly exercised his powers under the law: the only warrants of expulsion signed were in the case of two Irish journalists. However, the law's intention was fulfilled because "over a-dozen shiploads of Frenchmen left the country in anticipation of trouble."

The third law passed by the Federalist Congress and approved by President Adams on July 6, 1798, was titled "An Act respecting Alien Enemies" (Statutes at Large, I, 577-578). It had no expiration date, was only applicable during hostilities, and could have served as the model for the interment legislation affecting some Japanese-Americans during World War II. This statute authorized the apprehension, restraint, and or removal of all non-naturalized residents whose country of allegiance had declared war or committed predatory incursions against the United States. Both the President and federal and state courts of criminal jurisdiction were empowered to regulate and oversee the behavior of enemy aliens allowed to remain in the United States during a military crisis. The President was empowered to declare that a state of emergency existed, under which these powers might be exercised.

The Sedition Act was the real crown jewel of Federalist policy. Formally titled, "An act in addition to the act, entitled 'An Act for the punishment of certain crimes against the United States.'," it was approved July 14, 1798 (Statutes at Large, I, 596-597). Its primary purpose was to make seditious libel a federal crime, which could then be used to stifle Republican criticism of the Adams administration. The Federalists justified this legislation on the grounds of self-preservation. Under the Constitution, the federal courts lacked jurisdiction to try conspiracies against the government or seditious libel without specific statutory authority. Therefore, these activities needed to be made federal crimes, even though they could already be prosecuted at the state level under the common law. The pertinent portions of the law bear repeating:

> Sec. 1. That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, ..., or to impede the operation of any law of the United States, ..., he or they shall be deemed guilty of a high misdemeanor, and on conviction before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; ....
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> Sec. 2. That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either House of the said Congress, or the said President, or to bring them, or either or any of them, into contempt or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, ..., or to resist, oppose, or defeat any such law or act, ..., then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.
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> Sec. 3. That if any person shall be prosecuted under this act, for the writing or publishing of any libel aforesaid, it shall be lawful for the defendant, ..., to give [in] evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the

jury who shall try the cause, shall have the right to determine the law and the fact, under the direction of the court, as in other cases.

Sec. 4. That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer....

In examining the Sedition Law, it should be observed that it did not outlaw the advocacy of the violent or forceful overthrow of the federal government. This had been provided for in the Treason Law of 1790. Under the common law of England, which had been adopted by the thirteen American states, there was a distinction between treason (acting against the government) and sedition (writing or speaking out against the government). During the 1700s, sedition had come to mean stirring up disaffection against the king, his ministers, or the established institutions of government, even though such words or deeds were not accompanied by or conducive to open violence. The Federalists were trying to get around the very exacting requirements of treason set forth in the Constitution "by creating crimes similar to treason and then imprisoning men for speeches and writing deemed disloyal." (Weyl, 8) The test of the criminality of such utterances was whether or not they tended to blame or castigate the government and its officials for their policies. It was a presumption of the common law that whosoever engaged in sedition intended to bring the government into disrepute and intended to overthrow the State. Under the common law, the truth of the libel or the criticism of the government was no defense. It was the provocation and intention, not the truth or falsity of what was said or written, which was being punished.

The states were not bound by the constraints of the First Amendment. In fact, the Federalists argued that the Sedition Law only allowed the federal government to do what the states could already do. The Sedition Law "spelled out the common law meaning of the First Amendment. Rather than abridging freedom of speech and of the press, the law would merely stifle its licentiousness." (Smith, 139) Nor did the law alter the time-honored common law definition of sedition. Jefferson and his Republican supporters viewed the issue as one of states' rights versus federal authority, rather than questioning the propriety of defining sedition as a crime. They believed that restraints upon the press should be imposed by the states, rather than the federal government. Even though the Kentucky and Virginia Resolutions of 1798 and 1799, authored by Jefferson and Madison, declared these federal laws "null and void," their reasoning was never intended to be applied to seditious libel at the state level.

The "Sedition Mongers"

The Federalists were so anxious to bring their critics to the bar of law, that they did not even wait for the passage of the federal Sedition Law to begin the prosecution of their opponents. Two weeks before the Alien Friends law was signed, Benjamin Franklin Bache of the Philadelphia newspaper, the AURORA, was indicted and charged with "having libelled the President and the government in a manner tending to excite sedition and opposition to the laws." Once the Sedition Law was passed, the Federalist enforcement machinery was responsible for at least fourteen indictments under the new law. Most of the prosecutions involved political opponents or editors of anti-Federalist newspapers. Congressman Matthew Lyon of Vermont was the first victim of the statute. He was sentenced to four months in jail and fined $1000 for, among other things, referring to President Adams' "continual grasp for power." During his imprisonment, he became the first candidate for Congress in American history to conduct his campaign from a federal prison, and he was eventually re-elected in a runoff vote. Jedidiah Peck, a member of the New York State Legislature, whose indictment was eventually dropped, was charged with circulating a petition asking Congress to repeal the Alien and Sedition Laws. The attempt to suppress seditious criticism actually ran counter to the intentions of the Federalists, because the more they persecuted their opponents, the more they publicized the opposition's opinions in public.

David Brown, known as "that wandering apostle of sedition," received the stiffest sentence of anyone prosecuted under the Sedition law. Convicted of "sowing sedition in the interior of the country" by helping to erect a liberty pole with the inscription: "No Stamp Act, no Sedition, no Alien Bills, no Land Tax: downfall to the tyrants in America, peace and retirement to the President," in Dedham, Massachusetts, he was sentenced to eighteen months in federal prison and a fine of $ 480. Brown, a Connecticut Yankee, had travelled all over New England preaching his subversive ideas. His sentiments were recorded in the MASSACHUSETTS MERCURY and PORCUPINE'S GAZETTE of June 21, 1799: "all government was a conspiracy of the few against the many, a device to squeeze wealth out of farmers and artisans for the benefit of the rich and powerful. 'The occupation of government is to plunder and steal,' he declared; and the Federal government of the United States seemed to him to be doing a superlative job. It imposed taxes in order to enrich speculators; the majority of Congress had been corrupted, ...; it was, in short, 'a tyrannic association of about five hundred out of five millions' to engross 'all the benefits of public property and live upon the ruins of the rest of the community'."

Another vocal critic of the Administration was Thomas Callender, a journalist and author, who had fled from Scotland when he was charged with sedition there. In the United States, both in Philadelphia, PA and Petersburg, VA, his pamphleteering and writings marked him as a target of the Adams administration. Supreme Court Justice Samuel Chase, who presided at his trial, was quoted in a Richmond newspaper as saying that besides silencing Callender, the primary purpose of prosecuting him "was to demonstrate that the laws of the United States could be enforced in the Old Dominion." In THE PROSPECT BEFORE US, a political pamphlet published in January 1800, and which served as the impetus for his indictment, Callender described government as an evil "contrivance of human villainy.

Every government, he maintained, was corrupt; office holders were thieves and villains and 'the object of every government always had been, and always will be, to squeeze from the bulk of the people as much money as they can get'." The RICHMOND EXAMINER described Callender's view of the government of the United States as a "conspiracy against the welfare of the people." (Miller, 212) Callender was ultimately found guilty of sedition, and sentenced "to nine months in jail, assessed a $200 fine, and bound ... over on a $1,200 bond to good behavior for two years." He was to remain in jail until his fine was paid and his security posted. (Smith, 356)

Supreme Court Justice Samuel Chase also presided at the April 1800 trial of Thomas Cooper, who the Federalists listed as one of the top three Republican "scribblers." During this trial, Cooper had the audacity to attempt to subpoena President Adams, but Chase prohibited the clerk of the court from issuing the order. Cooper argued that "the Constitution contained no statement which exempts the president from court process." Chase believed that Adams could not be compelled to appear, nor placed on the stand and asked if he were guilty of maladministration. Chase ruled that Cooper's request was not only improper, but "very indecent." Cooper was convicted, sentenced to six months in federal prison, assessed a $ 400 fine, and ordered to post a $ 2,000 surety bond for his good behavior upon the expiration of his imprisonment. The most interesting thing about the Cooper trial was Justice Chase's charge to the jury because it helps explain why the Federalists believed they needed a sedition law:

> Since ours is a government founded on the opinions and confidence of the people, ... if a man attempts to destroy the confidence of the people in their officers, their supreme magistrate, and their legislature, he effectually saps the foundation of the government. A republican government can only be destroyed in two ways; the introduction of luxury, or the licentiousness of the press. (Smith, 324-325)

Poisoning the Minds of the People

During the Congressional arguments over the Sedition Law, its Federalist defenders stated that governments that depend upon public support "must take measure to ensure that [they] enjoyed a favorable press." They also pointed out that no government could be secure in power unless criticism of the government could be punished. To the Federalists, curbing licentiousness of the press under the Sedition Law was not an abridgement of the First Amendment because no prior restraints on speech or writing were being imposed. Those who chose to criticize the administration had the right to do so, but had to suffer the consequences if they libelled elected officials or engaged in sedition. To those in power, the First Amendment meant that Congress should make no law abridging freedom of speech and the press unless Congress became the recipient of undue or harsh criticisms. (As one Twentieth Century commentator put it, "The First Amendment ... means just about this: Congress shall make no law abridging freedom of speech and the press, unless Congress does make a law abridging freedom of speech and the press.") (Chafee, 65) Samuel Dana, one of the Federalist House of Congress members from Connecticut, argued as much during the debates over the Alien and Sedition Laws: "There is one power inherent and common in every form of Government.... The power of preserving itself ... implies the necessary power of making all laws which are proper for this purpose." (Smith, 71) Harrison Gray Otis, a Massachusetts Federalist stated on the floor of the House of Representatives, that "Every independent Government has a right to preserve and defend itself against injuries and outrages which endanger its existence.... The government could not function 'if sedition for opposing its laws, and libels against its officers, itself, and its proceedings, [we]re to pass unpunished'." (Smith, 132)

After the expiration of the Sedition Law in 1801, there was no more federal legislation criminalizing seditious practices until World War I. During the Civil War, President Lincoln simply violated the Constitution with "emergency measures." Despite the censorship of all telegraphic communications, and the closing of anti-administration newspapers, and the jailing of their editors, the only pertinent federal legislation passed during the Civil War was a statute of 1861, which punished conspiracy "to overthrow, put down, or to destroy by force the Government of the United States" or to forcibly hinder the execution of any federal law. Another statute of 1867 punished conspiracy to commit an offense against the government with any overt act. Such overt acts might consist of force, or actions which might otherwise be innocent, such as speech or writing. These statutes were eventually codified as Sections 371 and 2384 of Title 18 of the United States Code. (Clarkson was convicted of violating Section 371 in 1994. Certainly the Civil War authors of this legislation never dreamed it would be used to jail 20th Century tax protesters.)

Another example of how old laws can be applied to new circumstances can be found in the case of a Georgia statute. Although many states enacted sedition laws during World War I, Georgia did not need to because it already had one on the books, dating back before the Civil War. According to Sec. 4214 of the Georgia Code of laws of 1861, "anybody who attempted by speech or writing, to excite an insurrection of slaves," was to be punished by death. After Georgia's defeat in the Civil War, the legislature left the law on the books, but deleted the reference to slaves (Ga. Code Ann., 1933, Section 26-902: "Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection.") No one was ever prosecuted under the law, until the 1930s, when Angelo Herndon, a Communist, was charged with stirring up sedition among his black brethren in Atlanta.

In order to counter the threat of anarchism, communism, and the Industrial Workers of the World after World War I, more than ten states passed their own sedition laws. Most of these laws applied, not to criminal acts, but to speech, assembly, and association that

appeared dangerous to the authorities. As one historian described them: "They had three characteristics in common: severe penalties, broad and loose definitions of the crime, and a return to the 18th Century English conception of sedition as language which threatened the power or prestige of the government." (Biddle, 19) A Montana statute applied to any language "calculated to incite or inflame resistance to any duly constituted federal or state authority." The Nebraska law of 1918 even punished concealment of knowledge that sedition had been committed! The New Jersey law of 1918, "later amended after a portion had been declared unconstitutional, defined as criminal any attempt to incite hostility or opposition to government; membership in a society formed to advocate this hostility or opposition; and letting or hiring a building or room to a society or meeting advocating this hostility or opposition."

During the World War I era, both the states and federal government were active in countering sedition. Under the terms of the federal Sedition Act of May 16, 1918 (40 Stat. 555) it became a crime to utter, print, write, or publish "any disloyal, profane, scurrilous, or abusive language or language intended to cause contempt, scorn, contumely, or disrepute as regards the form of government of the United States or the Constitution of the United States; or the flag; or the armed forces of the United States." It was also made unlawful to engage in "any language intended to incite resistance to the United States...." Another new offense included in the act was "saying or doing anything with intent to obstruct the sales of United States bonds." Violations of the laws made the perpetrator subject to twenty years imprisonment, or ten thousand dollars fine, or both. Although not enacted, Senator McKellar in 1920, offered an amendment to the law to make it "a felony to entertain the belief in no government or to hold membership in an organization disbelieving in all forms of government." As one historian concluded, "No legislation remotely approaching this in its infringements of the rights of freedom of speech and press had existed in this country since the famous Alien and Sedition Acts of 1798. (Summers, 80)

Sapping the Foundations of Government

In observing the long sweep of history, it becomes readily apparent that political governments have always suppressed criticism of those in power. Irving Brant calls this "a grim tradition," because "for hundreds of years" men and women have been killed, or "fined, whipped, pilloried, imprisoned, and had their ears cut off for speech and writings offensive to government or society." Why is this so? Why has every political government that has ever existed found itself at odds with the freedom of individuals to speak their minds openly and without fear of the consequences? As I noted in my article, "Beyond The First Amendment," (Whole No. 25) the answer is bound up in the basic issue of how States govern. Nikolai Lenin hinted at the answer to this question, in a speech he delivered in Moscow in 1920:

> Why should freedom of speech and freedom of the press be allowed? Why should a government which is doing what it believes to be right allow itself to be criticized ? It would not allow opposition by lethal weapons. Ideas are much more fatal things than guns. Why should a man be allowed to buy a printing press and disseminate pernicious opinions calculated to embarrass the government?

Lenin's point that ideas are more lethal than weapons is the insight upon which all political control is based. State hegemony and the ability to command obedience actually grow out of ideas. It is ideology, not force or its threat, which causes most people to obey. That is why governments are so concerned about the unrestricted exposure of their people to a wide variety of ideas, particularly to those ideas which question its legitimacy. It would be suicide for a State to stand idle while it was being criticized and its power base was being undercut. If the State is to remain in control, it can never reconcile itself to unrestrained freedom of the press. Whether the State is trying to retain its legitimacy or fight for its life, as in time of war, it must generally control what the people think. Public schooling is one of the major means the State uses to accomplish this. Another is by legislating the criminal boundaries of what is and what is not acceptable criticism.

The loss to individuals resulting from these infringements on their speech and writing can only be measured in years imprisoned, fines paid, and punishments suffered. But the real loss to society can never be ascertained because there is no way to calculate the value of ideas stifled, never uttered, or lost. The State's forceful suppression of some ideas clearly inhibits the voicing of others. How many people have refrained from calling taxation "theft" because of the threat of government prosecution? The number will never be known. However, one thing is for sure: early American history clearly demonstrates that the statement "taxation is theft" is a very seditious one. ▽

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The More Things Change, The More They Remain the Same

"No form of electronic media has grown as fast as the Internet and [it] has grown precisely because it isn't regulated." IRS Commissioner Margaret Milner Richardson is concerned that the Internet is attracting tax dodgers by offering anonymity and electronic money. She recently cited a World Wide Web advertisement offering a book that included information on how to protect one's self from IRS assessments. "Mrs. Richardson's reaction: 'I almost take that personally.... How would you like to be responsible for administering tax laws and have to read those ads over breakfast?'"

—THE WALL ST. JOURNAL, October 1 (p. B1) and October 2 (p. A1), 1996.

"Does Free Speech Produce Truth?"

The harm to truth from suppression does not come merely from the inability of the public to hear what the particular men would say, who are imprisoned or driven from their jobs. Very often they are loud- mouthed, unattractive men whose evidence and ideas are rather worthless. One of the evils of suppression is that such, persistent trouble-makers are the only men with sufficient courage and energy to conflict with the law, so that freedom of speech becomes identified with unscrupulous pamphleteers and ranting soapbox orators. Consequently, it is widely assumed that the loss to the world of thought has been very small. But the governmental attack on the loud-mouthed few frightens a multitude of cautious and sensitive men, who do not dare to imperil their wives and children. It upsets their tranquility, which is essential to productive writing. We cannot know what is lost through the effect of repression on them, because it is not prosecuted but simply left unsaid. The agitator's contest is waged on behalf of these thoughtful men as well as for his own sake, and, if he wins, the gain to truth will usually come more from their writing than from his.

Freedom creates an atmosphere of happiness and mastery of one's work of thinking and writing, which is very favorable to the attainment of truth.

—Zechariah Chafee, Jr.,
THE BLESSINGS OF LIBERTY (1956), p. 113.

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