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Contempt by Publication: Historical Perspectives and Nineteenth-Century Congressional Review

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The concept of contempt by publication represented the intersection of two conflicting values during Nineteenth-Century America – an independent judicial system and an independent press. Judges recognized the contempt authority as a tool to protect the integrity of the court and anyone who came before it, and many of them used this tool against newspaper publishers. Publishers, however, considered contempt by publication to be an infringement upon free press rights and civil liberties. Historians have addressed the topic through various perspectives, and though there has been considerable uniformity concerning the actions that triggered contempt by publication, there have been significant disagreements among scholars regarding the use of the contempt authority to punish out-of-court publications. Similar arguments were on display during the Nineteenth Century's most significant Congressional debate concerning America's guaranteed press freedoms and a judge's established powers of contempt.

Luke Lawless had landed in hot water. It was 1826, and he had anonymously written an essay criticizing a recent decision by Judge James Peck of the U.S. District Court for Missouri. The essay, published in April by the *Missouri Advocate and St. Louis Enquirer*, so incensed Judge Peck that he summoned the newspaper's editor to court, demanded to know the author's identity, and in short order convicted Lawless of contempt.[1] Unsatisfied with his fate, Lawless took his case all the way to the U.S. Congress, where lawmakers had to consider which was the greater right – the right to publish freely on judicial matters or the right of the judiciary to protect itself.

This case is important because it had the potential to threaten the core of Nineteenth-Century American tradition. The concept of contempt by publication represented the intersection of two conflicting values – an independent judicial system and an independent press. Judges recognized the contempt authority as a tool to protect the integrity of the court and anyone who came before it, and many of them used this tool against newspaper publishers and writers. Publishers and writers, however, considered contempt by publication to be an infringement upon free press rights and civil liberties. This matter represented more than a mere intersection of values. It was a legal landscape where some of the basic tenets of American democracy were tested against each other.

Contempt by publication received a significant amount of review in state and federal courts from the late Eighteenth Century through the first half of the Twentieth Century. Dozens of decisions established competing standards regarding a journalist's ability to report and comment on judicial proceedings, and the number of cases suggests this matter was important enough to judges and journalists to warrant significant examination. When the issue finally came before Congress in 1830, lawmakers expressed support for maintaining a free press in America while also expressing hesitation to set any kind of precedent that would suggest the erosion of an independent judiciary. Lawmakers sought to strike a balance between both.

Historical Perspectives of Contempt by Publication

Direct contempt and constructive contempt were the two general types of contempt power employed during this era. Direct contempt covered actions that occurred in the courtroom itself.[2] Constructive contempt (also called indirect or implied contempt) covered incidents that occurred outside of the courtroom, such as newspaper publications. There is considerable uniformity among scholars concerning the actions that triggered contempt by publication. Legal scholar Joel Prentiss Bishop described it this way:

> Any publication, whether by parties or strangers, which concerns a case pending in court, and has a tendency to prejudice the public concerning its merits, or to corrupt the administration of justice; or which reflects on the tribunal or its proceedings, or on the parties, the jurors, the witnesses, or the counsel; may be visited as a contempt.[3]

William Hale, who researched legal issues and the media, considered it to be "well-established law that any one who thus intrudes himself on the due and orderly administration of justice is guilty of contempt of court and may be called before the court and subjected to summary punishment."[4] Constitutional scholar Donald Gillmor used the following passage to explain the process:

> On the appointed day, the hapless editor, having sworn affidavits explaining, excusing or justifying the publication in question, appears in court and through his counsel offers the most abject apologies or attempts to show by argument that no contempt has, in fact, been committed. If the court disagrees, the editor goes to jail and remains there until he can convince the court that he has learned his lesson. Or the court can impose a fine; or both a fine and imprisonment. If the court is convinced that no contempt has been

committed, the editor is discharged.[5]

The chance of receiving some degree of punishment was great. The judge had sole authority to level a charge of contempt, determine guilt or innocence, and administer punishment, if necessary. There was no trial or jury, and the sentence usually was carried out immediately.

Scholars have debated three major questions concerning the judiciary's contempt power: was it an inherent component of the legal system? Did America's Founding Fathers intend for America's judiciary to wield such power? Was contempt necessary to protect the judicial process, or was it an unchecked power that threatened an individual's civil liberties? Consider first the historical nature of the contempt authority. "Contempt of Court (*contemptus curiae*) has been a recognized phrase in English law from the twelfth century to the present time," wrote Sir John Fox, a historian of British law. The legal development of contempt continued "until by the fourteenth century the principles upon which punishment was inflicted to restrain … acts which tend to obstruct the course of justice, had become firmly established."[6] Historian Stephen Krause wrote that early contempt law was based in the common law.[7] Perhaps the most influential authority on contempt law was English legal scholar Sir William Blackstone. He published his authoritative *Commentaries on the Laws of England* in 1769 and ascribed an immemorial nature to contempt, calling it as old as the laws themselves.[8] He concluded that "the process by attachment in general appears to be extremely ancient" and by "long and immemorial usage" had become the law of England.[9] Blackstone's *Commentaries* helped solidify the contempt power's place among judicial privileges and sanctioned its use to enforce the will of the court.

There have been other scholars who supported Blackstone's assertion of the contempt power's innate existence within the law. "What is the source of this inherent power to punish for contempt?" legal scholar Edward Dangel asked. "The power of contempt was never given to the court by the people, by constitutional delegation or otherwise, nor did it

come from the early Common Law."[10] Enforcement of legal discipline "is inherent in the administration of justice," wrote Frank Thayer, a media law specialist. "Without some means of enforcing their judgments, decrees, or orders, courts would be powerless."[11] Thayer suggested there is ample historical support for the theory that courts have an inherent power to punish for out-of-court contempts.[12] Robert Jones, also a media law scholar, concluded the court's power to punish for contempt "originated in its inherent right to discipline those individuals whose unseemly behavior inside the court room tended to interfere with the orderly conduct of business … or to prejudice a jury…." It was a natural next step, he believed, "for the court to punish those whose unseemly behavior outside the court room tended to constitute an interruption or interference."[13] Perhaps the greatest proponents of the inherent nature of contempt were the courts themselves. "Cases in England and the United States which treat the contempt power all assume that the order of society's affairs dictates that this power is inherent in the very nature of governmental bodies," legal historian Ronald Goldfarb wrote, "and that all individuals figuratively sacrifice some portion of their civil liberties to this needed expedient when they adopt their social contract."[14] Numerous decisions concluded that courts had what legal scholar Harold Sullivan described as "an 'inherent' or 'super-statutory right' of almost mystical origin and indispensable necessity…."[15]

Other scholars have disagreed that the use of the contempt power to punish actions away from the courtroom was a natural component of judicial authority. Press historian Edward Gerald described the idea as "fictitious."[16] Fredrick Seaton Siebert, who studied both American and English press issues, noted that "studies in this field have disclosed that the remedy in these cases was unknown to the common law before the seventeenth century."[17] He was referring specifically to research by Sir John Fox. While examining English cases of contempt by publication, Fox discovered what seemed to be a modern interpretation for using the contempt power to punish publications. He noted the following:

> In *Re Read and Huggonson and the St. James's Evening Post* (1742, 2 Atk. 469) Lord Hardwicke, in deciding that it was a contempt to libel persons in connexion [sic] with a cause in Chancery to which they were parties, referred to 'scandalizing the Court' as one form of contempt….[18]

Fox concluded that "Lord Hardwicke does not here refer to the jurisdiction to punish libels summarily as contempts as firmly established, but rather seems to treat the point as a new one."[19] As historian Zechariah Chafee, Jr., noted, the Blackstonian theory of contempt's immemorial nature "dies hard, but it ought to be knocked on the head once for all."[20]

Blackstone's legal theory was practically unassailable for a time, and that contributed to a serious debate about whether America's Founding Fathers intended for the country's judicial branch to exercise the contempt power. By the end of the Eighteenth Century, contempt was so firmly established as an inherent power that legal historian Herman Pritchett suggested America's framers believed it was unnecessary to write it into the Constitution.[21] "Although the Constitution itself does not mention the contempt power," Gerald concurred, "it has been developed in this country as necessary and proper to carrying on the judicial power."[22] However, Chafee – and others – believed America's founding fathers intended the First Amendment to overthrow the English common law – including judicial contempt – as formulated by Blackstone.[23] Nelles and King argued that

> if freedom was a fact of American life as well as an ornament of patriotic declamation, a discretionary power of judges to annex society at large to the judicial precincts and curtail outside expressions of human interests because such expressions might affect a pending law suit was more than inexpedient. It was impossible.[24]

Nelles and King considered this "supposed English common law power" as inapplicable to American conditions.[25] Thomas Cooley, the renowned legal scholar and justice of the

Michigan Supreme Court, conceded that press freedom "does not imply complete exemption from responsibility for every thing a citizen may say or publish…."[26] However, he argued that "the mere exemption from previous restraints cannot be all that is secured by the constitutional provisions," and he concluded that the idea of press liberty would be rendered a mockery if anyone could freely publish his views but was subject to punishment for it afterward.[27] "A man who may be whipped and jailed for what he says or prints," historian Leonard Levy wrote, "is not likely to feel free to express his opinions even if he does not need a government license to do so."[28] The framers of the Constitution sought to move away from this definition, according to Levy, and chose to adopt a broader legal standard, one that would allow "rasping, corrosive, and offensive discussions on all topics of public interest."[29] After much debate, the framers crafted the First Amendment to create a constitutional guarantee of press freedom in the United States. Levy was not convinced, however, that the framers intended to protect the press from all forms of government intervention. Read literally, the First Amendment prohibited Congress from abridging the freedom of the press, but it did not necessarily limit the entire federal government, thus creating the possibility that the executive and judicial branches would be able to restrict press freedoms.[30] The First Amendment was considered applicable to the federal government only; states vested their free press guarantees in their own constitutions. This, and the existing common law, left enough room for the power of judicial contempt to grow and flourish in America's judicial systems.

The third major scholastic argument concerns the conflict between contempt as a tool to protect the administration of justice from an overzealous press and contempt as a tool of suppression. "No court of justice could accomplish the objects of its existence unless it could in some way preserve order, and enforce its mandates and decrees," Joel Prentiss Bishop wrote. As far as he was concerned, the only effectual method a court had of accomplishing these goals was through the contempt process, which was "incident to every

judicial tribunal, derived from its very constitution, without any express statutory aid."[31] In fact, there were times, according to Robert Jones, when "many such rulings are provoked by an intemperate attitude of the newspaper involved."[32] Zechariah Chafee, Jr., believed the administration of justice "can easily be warped by improper publications in the press."[33] He even suggested that editors and publishers had only themselves to blame. Early American newspapers were "unscrupulous vehicles of political partisanship," he wrote. "Judges refused to become targets for the streams of abuse they saw constantly directed against legislators and officeholders."[34] The press, according to one view, displayed a tendency to be a bit of a brat. "Freedom of the press is an ungrateful child," Harold Sullivan observed. "All that it is, and all that it may ever hope to be in this country, it owes to the courts."[35] He was concerned about the idea of trial by newspaper, which occurred when the press tried and convicted a defendant in the court of public opinion. "Trial by Newspaper," he was certain, "would be stopped dead in its tracks the very moment the Judiciary awakens and becomes more interested in vindicating the majesty of the law and protecting its great constitutional guarantees."[36] Contempt by publication was not about freedom of the press, Sullivan argued. "The real freedom involved is the freedom of the courts – freedom to function without damaging interference by the press, which cannot be justified on any ground of interest involved on the part of the press," he wrote.[37] In the eyes of Nineteenth Century jurists, according to Timothy Gleason, "the institutional press all too often practiced 'trial by newspaper,' and judges refused to give up their power to exercise some control over the press's [sic] treatment of the legal process."[38]

The contempt power was supposed to involve an intricate balance of authority and restraint. "One of the most delicate tests of all comes when the courts have to weigh their own integrity against the rights of others as expressed in the Constitution," Edward Gerald argued. "Such an occasion arises when a newspaper criticizes a court and is required to answer charges of interference with the

processes of justice."[39] Gerald, as have others who have studied contempt by publication, also recognized another problem. "The high purpose for which the contempt power allegedly was conceived and for which it is applied is not always discernible," he wrote.[40] He accused judges of using the power arbitrarily, and "just where the curative power is to be applied has been the bone of contention since time immemorial."[41] He criticized the procedure for violating the spirit of American civil liberties, particularly because the judge essentially presided over his own case without a jury. "The general agreement that a judge does not need the advice of a jury in maintaining order in his own courtroom," he wrote, "has been allowed to excuse the real wrong involved in handling indirect contempt without a jury."[42] Edward Dangel considered this practice to be a direct threat to freedom. "The fact that the courts act as the accusers, the prosecutors, and the judges," he suggested, "creates a situation fraught with danger."[43] Dangel even accused America's judicial system of operating under a double standard, arguing that great latitude is given for criticism of the other two branches of government. "If the legislature attempted to exert a power of contempt for criticism during its deliberations, the courts would lend protection to the public and safeguard this right to criticize," he argued. "If the President attempted to stifle criticism he would be labeled a dictator. Yet the judiciary insists that no such right exists as to itself."[44]

The judicial branch has been persistently criticized for viewing itself as unassailable. The true reason for extending contempt by publication charges to editors and publishers, legal scholar Henry Schofield wrote, was that "scandalized judges do not like to meet their critics face to face before a jury on the footing of the … 'qualified privilege' to publish defamatory falsehood on matters of public concern with good motives, for justifiable ends." The qualified privilege to criticize authority apparently was "good enough for other people's officers, but not for judges."[45] He flatly rejected contempt by publication and criticized it "as re-establishing the jurisdiction of the Star Chamber in violation of the constitutional right of liberty of

the press and the constitutional right of trial by jury in criminal cases."[46] The proceeding for contempt "is definitely a control of the press," wrote press law scholar Frank Thayer. "When the claim of freedom of the press comes into conflict with the contempt power, the former may emerge from the contest second best."[47] That was especially true when considering direct contempt. However, for indirect, or out-of-court, contempt, "the conflict between freedom of the press and the orderly administration of justice becomes more difficult to resolve." The push and pull between the two powers "has shown now one, now the other in the ascendancy."[48]

There is one other debate scholars have recognized. It involves the struggle between the judicial and legislative branches over which one of them controls the contempt authority. Both branches of government have expressed competing perspectives concerning the ability to limit a judge's contempt power. The increasing frequency of contempt citations caused serious concerns among members of the legislative branches of government during the early years of the Nineteenth Century, and lawmakers began to respond to the potential constitutional crisis. "Public opinion demanded a greater respect for the young American press than that shown in England," wrote Ronald Goldfarb, and "several states enacted statutes confining the summary power of contempt to official misconduct of court officers, disobedience of process, and misbehavior in the presence of the court which obstructs the administration of justice…."[49] In 1809, Pennsylvania passed the first statute that limited a judge's contempt power. The law confined judges' summary contempt power to punishment of direct contempts and explicitly removed judicial power of contempt by publication.[50] After a series of cases in New York, that state passed similar restrictions in 1829. Donald Gillmor wrote that the reaction against the English common law method of dealing with constructive contempt reached its zenith in the impeachment trial of Judge James Peck before the United States Senate in 1830 and 1831.[51] As a result, Congress established a geographic restriction on the use of contempt, limiting punishment

to contempts committed in and around the courtroom.

Peck-Lawless Dispute

The Nineteenth Century's most significant Congressional debate concerning America's guaranteed press freedoms and a judge's established powers of contempt resulted from an incident in Missouri. James Peck, judge of the U.S. District Court for Missouri, was among the first judges to issue a ruling concerning disputed Spanish land claims in his region.[52] As a result, he was asked to publish it publicly, which he did on March 30, 1826, in the *Missouri Republican*. A little more than a week later on April 8, the *Missouri Advocate and St. Louis Enquirer* printed a critical response to Peck's ruling.[53] The author, "considering the opinion so published to be a fair subject of examination to every citizen who feels himself interested in, or aggrieved by its operation," included eighteen different points of disagreement with Peck's ruling. It was signed anonymously as "A Citizen."[54]

When Peck opened the new court term on April 20, he demanded that Stephen Foreman, the editor and publisher of the *Missouri Advocate and St. Louis Enquirer*, appear in court the next day to argue why he should not be held in contempt for publishing a false statement that tended "to bring odium on the court, and to impair the confidence of the public in the purity of its decisions."[55] Attorney Luke Lawless, who had represented the clients Peck had ruled against in the land claims case, also represented Foreman at his contempt hearing. Determining that no argument apparently would sway the judge, Lawless gave Foreman permission to reveal to the judge that it was Lawless himself who had written the article.[56] He wrote the criticisms after the case was over and saw no threat to the judicial process, but the ruling had been appealed, and Peck considered the case still active. He dismissed the editor and ordered Lawless to show "why an attachment should not be issued against him for the false and malicious statements" which Judge Peck considered to be detrimental to his court and the administration of justice in general.[57]

In the case of *United States v. Luke E. Lawless*, Peck did not accept any of Lawless' arguments,

and Peck declared him guilty of contempt. He handed down the following decision on April 21, 1826:

> The defendant in this case having refused to answer interrogatories, and having persisted in the contempt, it is ordered, adjudged, and considered, that the said defendant be committed to prison for twenty-four hours, and that he be suspended from practising [sic] as an attorney or counselor at law in this court, for eighteen calendar months from this day.[58]

Lawless spent only about five hours in jail before being released on a legal technicality. There was no judicial seal or signature on his commitment papers.[59] He was still incensed about his suspension from practice, though, which he believed was an abuse of the judge's power. It also threatened Lawless' livelihood and the legal interests of his many clients. In December 1826, John Scott, a U.S. Representative from Missouri, presented the House with a request that Lawless had written the previous September.[60] It ended with the following paragraph:

> Wherefore, and inasmuch as the said James H. Peck has not only outraged and oppressed your petitioner as an individual citizen, but, in your petitioner's person, has violated the most sacred and undoubted rights of the inhabitants of these United States, namely, the liberty of speech and of the press, and the right of trial by jury, your petitioner prays that the conduct and proceedings in this behalf, of said Judge Peck, may be inquired into by your honorable body, and such decision made thereon as to your wisdom and justice shall seem proper.[61]

Various other issues delayed action on the request, but Lawless was persistent. More than three years passed before Congress began considering whether Judge Peck should be impeached for his actions against Lawless.

Congress Debates Press Freedoms and Judicial Power

The U.S. House of Representatives considered the impeachment question in early April 1830. Congressman Clement Clay urged caution when

considering the matter in which "a great officer had been accused of a great offence [sic]." When a private individual accused a high officer of the government, Clay asked, must he be impeached at once? One "should hesitate much, before he could subscribe to such an opinion," he said.[62] Clay suggested that the House proceed very carefully. Following that suggestion, Congressman Spencer Pettis offered a resolution that Judge Peck be allowed to explain before House members anything he wished regarding the charges filed against him.[63]

The resolution prompted considerable debate. Congressman William Ellsworth of Connecticut said he had trouble with the issue because "it was a grave thing to put a judicial officer of this Government to his trial for his character, his office, his subsistence, and, in a word, for all that is dear to humanity…." He also recognized Judge Peck as having the full authority of the federal government behind him, a position that Ellsworth believed required considerable restraint. Peck, said Ellsworth, stripped Lawless of his profession, clothed him with shame, and incarcerated him "in a felon's dungeon, the place of disgrace and infamy." Ellsworth had tried to view the case with impartiality, he said, but having heard Lawless' account, he decided if the facts substantiated the testimony, Peck did indeed deserve to be impeached. Furthermore, Ellsworth had read the published accounts that launched the legal inquisition and found "nothing that looked in the least like a contempt of court, or an impeachment of the integrity or character of the presiding officer…." The U.S. House was in crisis, he said, because "it must decide whether it would sanction the arrest and imprisonment of an individual by a judge for commenting on one of his opinions."[64] Have the days of the Star Chamber returned, Ellsworth asked? He posed the following scenario:

> Shall it be declared to the American people, that, after a judge has given his opinion, and dismissed the cause, he may arrest a citizen, drag him before his tribunal, and say to him, you have written strictures on my opinion, which I consider derogatory to me, and I, therefore, send you to prison, and take away your

livelihood for eighteen months.[65]

Error in judgment was not an impeachable offense, Ellsworth said, but "wicked conduct and a wicked motive are." Judge Peck had used "judicial thunder to demonstrate that … he was not to be contradicted or reviewed," and unless it was shown that Peck had such authority, Ellsworth was prepared to impeach him.[66]

Congressman J.W. Huntington, an attorney from Connecticut, considered the issue before the House as one of deep interest to the nation. However, he disagreed with the effort to impeach Judge Peck and expressed hope that his position would not be interpreted as "favoring judicial tyranny, the worst of all tyranny…." He raised the following question: was Peck justified in his reactions concerning the behavior of Lawless? "It may be assumed as a correct, legal proposition," Huntington said, "that any publication, the object and design of which is to corrupt the fountains of justice … is a contempt." Such contempts, he argued, are "punishable by fine and imprisonment, and, in case of an attorney, by suspension from practice."[67] Huntington also challenged his fellow lawmakers, asking them if they really believed Judge Peck assumed authority that he did not rightfully possess. "The committee has been told, over and over, in a style the most warm and animated, that his conduct was arbitrary, oppressive, unconstitutional," he said, "calculated to destroy the liberty of the press…." Such rhetoric should be toned down, Huntington suggested, but there was no one in the House who would not decry any attempt to suppress "the legitimate freedom of the press." Huntington expressed hope that America's courts would never be held so sacred that their decisions could not be the subject of fair and temperate criticism. "The moment you curtail the freedom of the press," he said, "you destroy liberty."[68]

Even though he claimed to guard such freedoms, Huntington declared that he also was "greatly opposed to the licentiousness of the press." He would not, he said, allow it "to bring down upon a court the vengeance of the public, and thus affect the great and vital interests of justice, and the peace

and well being of society."[69] He questioned Lawless' motives for writing the article, dismissing others' claims that Lawless simply wanted to protect his clients from a bad decision. "It is impossible his motives could have been such as gentlemen suppose," Huntington said. "Charity believeth all things, and covereth a multitude of sins; but charity herself can have no room here." It was the "obvious tendency of the publication" to affect the administration of the court or those who were to become jurors and witnesses, he said, and Lawless' article was subject to the law of contempt.[70] Huntington, it appeared, would cast his vote against impeachment.

Congressman Buchanan's Analysis

As chairman of the House Committee on the Judiciary and author of the report concerning the case against Judge Peck, Congressman James Buchanan – who later became the nation's fifteenth president in 1857 – addressed the Peck-Lawless affair on the floor of the U.S. House. The "dearest rights of the people of our country" were hanging in the balance against "those of a citizen occupying a high and responsible judicial office." The offense being considered was "the illegal, arbitrary, and oppressive conduct" of Peck toward Lawless, "a citizen of the United States." Buchanan began to break down the components of the case. "Intention," he said, "is necessary to constitute guilt," but because one cannot search the heart of a man, one is left to form judgments based on his actions. Buchanan described himself as "one of the last men in this House, or in this country," to seek to interfere with the constitutional independence of the judiciary – the "great bulwark of our rights and liberties…." It was fit and proper, however, to make an example of a judge who forgot what he owed "to the liberties of the people" and violated those rights by "arbitrary and oppressive conduct."[71] It was Buchanan's conviction that Peck was guilty of such conduct, and he offered an extended review of the court case that brought the issue to the attention of Congress.

He questioned whether Lawless did anything to offend Peck, saying Lawless "argued the case in the most respectful language." Lawless also argued, according to Buchanan, that the

newspaper article that offended Judge Peck "was neither contemptuous nor libelous; and that, if even it were libelous, the editor was protected from summary punishment by the guarantees of the constitution." Buchanan recounted witness testimony of how Peck gradually lost his temper with Lawless and would not allow him to argue that the article was not a contempt. Peck "had determined it to be a contempt," Buchanan said, "and his will was the law."[72] Not able to follow that line of argument, Lawless contended that even if the article was contemptuous, it should be tried in a different manner. That argument, said Buchanan, also was in vain.

It was the concluding scene, according to Buchanan, that "displays the evil intention – the improper motives of the Judge, in the clearest light." Judge Peck, who was nearly blind and unable to read the article himself, requested that it be read by the district attorney, and Peck followed each paragraph with his own commentaries. Instead of acting in the "calm, dignified, and impartial manner which becomes a judge upon all occasions," Buchanan suggested that Peck was "heated, acrimonious, and severe." After keeping quiet for two to three hours, Lawless arose and left the courthouse to attend to another case. "Could you," Buchanan asked, "… have sat silently and patiently, and heard the Judge for two or three hours uttering every odious epithet against you…?" Buchanan reminded House members that Lawless was sentenced to twenty-four hours in prison and suspended from his law practice for eighteen months. By the arbitrary mandate of Judge Peck, Lawless was "not only deprived of his personal liberty but of the means of supporting himself and his family."[73] Buchanan said that he found it difficult to believe there was no malice or evil intent on the part of Judge Peck, and he said he knew of no such case bearing any parallel to this one.

Buchanan concluded by stating what he believed to be the law regarding contempts of court. There were two kinds of contempts in England – direct and constructive. The power to punish direct contempts, he said, had to exist in every court because "without such power, they could not proceed with their business." Direct contempts included

misbehaviors that were committed in the courtroom and tended to obstruct the administration of justice. Constructive contempts, however, included actions that the judge believed were prejudicial even though they were committed away from the courtroom, such as publishing a newspaper. This class of contempt, Buchanan said, was "of a very different character, and, under a free Government, will ever be viewed with jealousy and suspicion."[74] The trial of such contempts deprives a citizen of a jury and allows the injured to be both "the judge and the avenger of his own wrongs."[75] Under this arrangement, he said, the judge becomes the accuser and is able to both try and punish the offender at his own discretion. Such authority includes levying as "heavy a fine and as long an imprisonment as he may think proper," Buchanan said. "Is not this a power in its nature revolting to every freeman?" He considered the simultaneous authority to accuse, try, and convict to be a tremendous – and dangerous – power to give any man. If indeed this power did exist in the judiciary, Buchanan suggested it existed without appeal. "The principle is well settled, that in cases of commitment for contempt the injured party has no redress," he said. "He must endure the penalty, without the possibility of having his case reviewed by any other judicial tribunal."[76] Buchanan even accused Peck's actions of violating the First Amendment. "The constitution declares that Congress shall make no law abridging the freedom of the press; but Judge Peck punishes the exercise of this freedom," he said. If lawmakers sanctioned such activity, Buchanan argued, "the constitution, the right of trial by jury, and the liberty of the press, are nothing better than trite topics."[77]

Decision to Impeach Judge Peck

The U.S. House went into a committee of the whole on April 23, 1830, to discuss the impeachment of Judge Peck.[78] Congressman Everett began discussing the issue by stating that he could not vote for the impeachment resolution because he did not believe Peck should be impeached.[79] He believed there was proof of the judge's good intentions, and Everett had "looked in vain in the evidence for proof of evil intent." Therefore,

Everett concluded, Peck should not be treated severely for a first offense because he was "already punished sufficiently by these proceedings."[80] Everett proposed to soften the language used to describe Peck's actions and offered the following for consideration:

> That though, on the evidence now before it, this House does not approve of the conduct of James H. Peck, judge of the district court of the United States for the district of Missouri, in his proceeding by attachment against Luke E. Lawless, for alleged contempt of the said court; yet there is not sufficient evidence of evil intent, to authorize the House to impeach the said judge of high misdemeanors in office.[81]

Congressman Storrs objected to the proposed change, calling it "an appeal to the sympathy of the House."[82] As far as he was concerned, Peck had violated Lawless' personal rights by throwing him into jail and had usurped a "jurisdiction which the Judge did not possess." It was the violation of Lawless' rights "which justified impeachment." The amendment, after a few slight changes, was defeated. William Ellsworth then took the floor to support the impeachment resolution. As a member of the Judiciary Committee, he "had given the subject full examination, and had come to the opinion that this impeachment should take place."[83] After more discussion in favor of and against the resolution, the House committee of the whole adjourned without reaching a final decision.

House members, on April 24, 1830, proposed a resolution that Peck, "Judge of the District Court of the United States for the District of Missouri, be impeached of high misdemeanors in office."[84] It was approved 123 to 49. One week later, the House adopted an article of impeachment against Peck. It stated in part:

> James H. Peck … unmindful of the solemn duties of his station … with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless, under color of law … arbitrarily, oppressively, and unjustly … arrested, imprisoned, and

> brought into the said court … Luke Edward Lawless [who] was … thereupon suspended from practising [sic] as such attorney … and immediately committed to the common prison in the said city of St. Louis, to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the People of the United States.[85]

The House then cast ballots and elected James Buchanan of Pennsylvania, Henry R. Storrs of New York, George McDuffie of South Carolina, Ambrose Spencer of New York, and Charles A. Wickliffe of Kentucky as impeachment managers. A few days later on May 4, 1830, the U.S. Senate received "the article of impeachment agreed to by this House…."[86]

Peck's Initial Response

Judge Peck submitted his responses to the charges through his counsel, William Wirt, on May 11, 1830. Concerning the accusation that he overstepped his bounds when he declared Lawless' article a contempt of court, Peck claimed that the publication did indeed constitute a contempt because it "misrepresented, distorted, and discolored" his opinion.[87] The article, he said, also exposed the court to public scandal and prejudiced other matters still pending in court. Therefore, "the court was supported and justified by the highest authority, and did not act unjustly, arbitrarily, and oppressively, towards the party who stood convicted of the publication.…" Peck claimed to be "influenced solely by a conscientious sense of public duty…."[88] Having made these statements, he said he could not possibly provide adequate answers concerning the matter unless he was given another two weeks to prepare. Lawmakers agreed to his request.

The Senate heard Peck's prepared responses on May 25, 1830.[89] Peck explained that he believed Lawless' article questioning his judicial decision was a contempt of court because it misrepresented the opinion of the court. Lawless, as an attorney familiar with the issue, must have known and understood the court's opinion, he said, so he believed that the published

"misrepresentations were wilfully [sic], wantonly, and maliciously made." There were also other land claims still awaiting judicial review, Peck said, and "the immediate tendency and object of the publication were to prejudice the public mind with regard to these claims" and "disturb and interrupt the due and regular administration of justice." Peck said these were the primary reasons why he considered Lawless' publication to be a contempt of court. Despite his impeachment, Peck said he believed he was "justified by the Constitution and laws of the land in so considering and adjudging it, and in punishing it as a contempt, by the summary process of attachment, in the manner in which it was punished."[90] He sought to assure lawmakers that his actions were "dictated by the purest sense of official duty; were warranted and justified by the Constitution and known laws of the land; and were free from all feelings, designs, and intention, on his part, wrongfully, arbitrarily, and unjustly, to oppress, imprison, or otherwise to injure the said Luke E. Lawless…."[91]

Peck then proceeded to examine at length what he considered to be eighteen misrepresentations in Lawless' article. "That a man of sufficient discrimination … could have accumulated such a mass of misrepresentation through innocent mistake, was, and still is, in the opinion of this respondent," he said, "utterly incredible." He questioned why one would issue such a publication if not to "enlighten the public by a rational discussion of an important subject." Peck believed there was no such discussion, only a "naked, sheer misrepresentation from beginning to end."[92] It was designed to "bring this court into open contempt and scandal" and to fill potential jurors with "a load of preconceived prejudice against the Judge, as to indispose them to receive with respect any instruction, even on points of law, which might be given from the bench…."[93]

Furthermore, Peck said that he was not convinced by Lawless' arguments that the First Amendment protected the publication. According to Peck, Lawless claimed that the article was a correct representation of Peck's opinion and that Lawless was "exercising the rights of an American citizen." To punish him would be "an invasion of the

liberty of the press, and of the right of trial by jury," Lawless had argued.[94] Peck had disagreed, ordering Lawless to spend a day in jail and suspending his law license for a year-and-a-half. Peck denied that he handed down a wrong and unjust punishment. Instead, he said he was motivated "by the purest sense of what he deemed a high official duty," saying that he still believed his actions were "well warranted and supported in every step by the Constitution and laws of the land…."[95] Peck had established the groundwork to defend himself and, in a larger sense, America's entire judiciary.

What promised to be a highly charged debate of historical importance came to an abrupt halt when Congress simply ran out of time to discuss it and adjourned. Peck, Lawless, and the rest of the nation would have to wait about seven months before the trial would continue. The *Saturday Evening Post* noted the delay with one sentence: "The trial of Judge Peck, of Missouri, under the impeachment by the House of Representatives, is postponed to the next session of Congress."[96] Peck's impeachment trial would not resume until December 1830.

Impeachment Trial Resumes

Congressman George McDuffie, who served as a House manager for the impeachment in the Senate, opened the case for the prosecution on December 20. Arguing that Peck had violated the nation's constitutional principles, he hoped to convince senators that Peck was "guilty of an illegal and tyrannical usurpation of power."[97] It was generally recognized, McDuffie said, that courts had exerted authority over their jurisdiction "by punishing for contempts committed within and against it." However, he contended, the power to punish for contempt was "a high criminal power" that was "the most dangerous that could be enforced." Such power could not be used to disfranchise citizens or deprive them of liberty and livelihood, he said. America's courts, therefore, "had no power to punish for contempt, further than their own self-preservation required." McDuffie recognized that it was necessary at times to protect the administration of justice by punishing direct outrages upon the court. Such rights to punish were inherent in these cases. "But," McDuffie asked, "how far did it extend?" He

blamed the infiltration of concepts and ideas from the British judiciary, "which were utterly incompatible with liberty."[98] He entered the following argument that was to be used in other contempt cases throughout the Nineteenth Century:

> What was the case of the respondent? He was not in court; he was not in the actual administration of justice, when the publication of Mr. Lawless was made…. The judgment of the court had been rendered six months before the publication. The decree had been entered. There was an end to the judicial functions of the judge as to that case.[99]

In essence, McDuffie said, Peck had claimed for himself a power to punish "a citizen for contempt, in daring to question the infallibility of his opinion." This was a power denied to the Senate, the House of Representatives, and even the president. "He claimed a power to make the law," McDuffie argued, "and punish under it, at the same moment. This was the most infamous and tyrannical of the whole tissue of usurpations."[100] Furthermore, the Judicial Act of 1789 limited contempt punishments to fine and imprisonment. Judge Peck, however, also had chosen to disfranchise Lawless by barring him from legal practice for a year-and-a-half. "Such a power," McDuffie declared, "was never claimed before by any tribunal in the civilized world."[101] He suggested the following legal principle: reproachful words toward a judge could be immediately finable by the court; but a man "could not be punished for words said against a judge not in the actual execution of his official duties."[102]

Having finished presenting the case to the Senate, McDuffie offered some remarks on "the danger, the real, great, and alarming danger" of the precedent that would be established if Judge Peck were not punished for his actions. Peck had "violated the liberty of the press in the most dangerous form," he said.[103] He said that Peck even defended "his tyrannical conduct" by claiming "demagogues, slanderers, and libelers" used the idea of press freedom to justify their anti-government behavior. McDuffie extolled the virtues of press

freedom and its importance to personal liberty, saying that "if any functionary ought to be held responsible to the press, which was the organ, the only true organ, of the people, it was the judges…."[104] Concluding his remarks, McDuffie urged lawmakers to protect the liberty of the press by making the following appeal:

> It must appear much better, in the view of every statesman, to suffer the most unjust libels to be published in the newspapers, and to let their poisoned arrows recoil upon themselves, than to suppress the liberty of the press. But what was the liberty of Mr. Lawless, according to the practical doctrine of Judge Peck? It was the liberty of being sent to prison, incarcerated with common felons, and deprived of the means of his subsistence, for respectfully differing in opinion with the judge.[105]

Defending Judge Peck

Attorney Jonathan Meredith addressed the Senate court of impeachment on Peck's behalf on January 5, 1831. He began the defense of Peck by noting that the judge was accused of disparaging public justice and subverting "the liberties of the people of the United States." Meredith urged lawmakers to consider the issue carefully. "The surest safeguard of the liberties of the people," he argued, "was to be found in the firm and independent administration of justice…."[106] Peck considered Lawless' article "to be a gross and palpable misrepresentation of his opinion, calculated to bring his court into disrespect…." So Peck did what he was given legal authority to do – "he proceeded to attach and punish its author for the contempt." Lawless was given ample opportunity, said Meredith, to explain himself to the judge, but he did not admit to his error. Meredith also argued that Peck was influenced "by a sense of official obligation and duty," not by the "wilful [sic], malicious, and arbitrary motive and intention imputed to him in the article of impeachment."[107] Peck saw in Lawless' article a grave misrepresentation that was "calculated to bring ridicule and contempt upon the court" and "break down the court by the force of public opinion." Peck's

actions were justified, Meredith argued, by the inherent contempt power of the courts, "a power which, although sometimes questioned, had remained untouched in every political struggle that had taken place."[108] Judicial contempt, he said, was sanctioned by American precedents and had been practiced at every judicial level in the country. Meredith, having finished his remarks in Peck's defense, then left the judge's fate in the hands of the U.S. Senate.

The Peck-Lawless Legacy

Atkinson's Saturday Evening Post noted the conclusion of the impeachment trial with a single paragraph.[109] "After having occupied almost the entire attention of the Senate since the session commenced," the article stated, "and after the expenditure of an immense deal of money, the trial is at length concluded by an acquittal of the Judge." There were twenty-two "not guilty" votes and twenty-one "guilty," which did not meet the two-thirds majority required of the Senate to convict him. Peck was promptly acquitted, and the court of impeachment adjourned.

The Senate had given Judge Peck, and in a sense the entire federal judicial system, a tentative victory. However, the implications of Peck's actions continued to resonate within the chambers of Congress, and lawmakers in the U.S. House almost immediately began considering ways to restrict use of the judicial contempt power. Congressman Joseph Draper proposed a resolution asking the House Committee on the Judiciary to "inquire into the expediency of defining by statute all offences [sic] which may be punished as contempts of the courts of the United States." He was specifically concerned about the issue of fair comment and criticism. "If the object of a publication be to convince the public at large that any particular proposition agitated here is correct," he asked, "is it not competent for any citizen to call in question the correctness of such an opinion? Surely it is."[110] If this reasoning applied to Congress, Draper reasoned, it should apply to all branches of government, as well.

Draper recognized that it would be a difficult task to determine what exactly would constitute a contempt of court.

However, he believed that Congress could decide "many cases which are not contempts." They would include opinions expressed after a court decision had been made final. The law, Draper argued, "ought to be so clear, that every individual may … know whether … he acts within the law or not" and whether his personal liberty may be at stake.[111] The House granted Draper's request to consider the issue.

A week later, Congressman Buchanan submitted a bill that specifically addressed the judiciary's contempt power. His proposal placed a geographic limitation on judges who would use contempt to maintain order. It stated the following:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court, shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.[112]

Congress approved the geographic restriction on federal contempt authority less than a month later on March 2, 1831.[113] Federal judges were obligated to follow the letter of the law, and it was hoped that state courts would be willing to follow the spirit of the law, as well.

Conclusion

Before the Senate held Peck's impeachment trial, Congressman Michael Hoffman remarked that the proceedings would become a noted part of America's history.[114] The congressmen who considered the Peck-Lawless dispute recognized a potential crisis was looming between two American values – freedom of the press and a strong, independent judiciary. The

country was founded on a tradition that included press freedom and the right to criticize those in authority. America also prized its judicial system, which was designed to work independently while keeping a check on other branches of government. These values were debated in the dispute between Peck and Lawless. As the congressional record suggests, the issue was of grave concern for lawmakers. As a result, Congress attempted to achieve a compromise by restricting the use of contempt powers to events occurring in the immediate environs of the court. Under this arrangement, publishers would still be able to comment on court proceedings without the fear of reprisal, and judges would retain their unquestioned authority to maintain decorum within their courtrooms.

It appeared that the episode between Luke Lawless and Judge James Peck had created the momentum that was necessary to maintain a restricted contempt power for the judiciary. The dispute brought contempt by publication to the forefront of America's political, legal, and social consciousness. The federal contempt statute effectively ended contempt by publication actions within the federal court system. It also highlighted the similar efforts of state legislatures, which had begun passing their own statutes that restricted state courts' ability to use the contempt authority. Nine states had already approved such laws by the time the issue reached Congress – Pennsylvania, Louisiana, New York, South Carolina, Kentucky, Connecticut, Illinois, Mississippi, and Florida. By the beginning of the Civil War, fourteen other states had approved contempt statutes. Seven of them modeled their laws on the 1831 federal statute – Virginia, Tennessee, Ohio, Alabama, Georgia, North Carolina, and Maryland. The remaining seven – Missouri, Arkansas, Indiana, Iowa, Minnesota, Michigan, and Wisconsin – copied New York's contempt statute.[115]

The series of apparent victories for the nation's press lasted but a short while. By the mid-1850s, judicial compliance with restrictive contempt statutes began to erode. This American interpretation of the contempt power, according to Edward Gerald, "withered during the Civil

War, and in its place arose the doctrine that any publication was contemptuous which was held to have a reasonable tendency to interfere with the processes of justice."[116] In fact, judges were loath to submit their authority to legislative oversight. Frank Thayer suggested that the independence of the courts to protect their own interests was well ingrained in judicial thought. "Even in states where there is a strict definition of what constitutes contempt," he wrote, "it would seem that under special circumstances there is precedent for the court's considering its inherent power above the legislative enactment."[117] Another perspective recognized the contempt doctrine as always superior to any statutory restriction, as the following passage suggests:

> This doctrine has been asserted in all its rigor by the courts. It is founded upon the principle that this power is coeval with the existence of the courts, and as necessary as the right of self-protection … and is necessary to maintain its dignity if not its very existence. *It exists independently of statutes*.[118]

However, the geographic limits Congress approved in 1831 ultimately won out. In the 1941 case of *Nye v. United States*, the U.S. Supreme Court ruled the Congressional Act of March 2, 1831, significantly restricted the federal judiciary's contempt authority to within the physical proximity of the court.[119] Later that year, the Supreme Court sought to clarify the circumstances under which the use of contempt would be acceptable to impair an individual's free press rights. In the case of *Bridges v. California*, the court carved out an exception to the geographic limitations on contempt.[120] When certain circumstances made it clear that reporting on a judicial proceeding posed a clear and present danger to the government or society, the Supreme Court determined that the publication could be blocked legally.

Historians of Nineteenth Century press litigation have focused a significant amount of attention on libel law, but contempt by publication has been largely understudied. The efforts of Nineteenth Century newspaper publishers and editors to expand

their press freedoms in the face of considerable judicial oversight should be recognized as an important component of the development of American press law. They faced a legal minefield when they published reports or commentaries on the judicial process. When they rankled judges, they suffered stiff financial penalties and incarceration for their actions. However, their trials, both literal and figurative, contributed significantly to securing the modern journalist's ability to report on the American judiciary fully and freely.

Notes

[1] *Journal of the House of Representatives of the United States of America, 1829-1830* (May 1, 1830), 592-94.
[2] Frank Thayer, *Legal Control of the Press: Concerning Libel, Privacy, Contempt, Copyright, Regulation of Advertising and Postal Laws*, 4th ed. (Brooklyn, New York: The Foundation Press, Inc., 1962), 545.
[3] Joel Prentiss Bishop, *Commentaries on the Criminal Law*, 4th ed., 2 vols. (Boston: Little, Brown and Company, 1868), 2: 150-51.
[4] William G. Hale, *The Law of the Press: Text, Statutes, and Cases* (St. Paul, Minn.: West Publishing Co., 1923), 256.
[5] Donald M. Gillmor, *Free Press and Fair Trial* (Washington, D.C.: Public Affairs Press, 1966), 160.
[6] Sir John C. Fox, *The History of Contempt of Court: The Form of Trial and the Mode of Punishment* (Oxford: Clarendon Press, 1927; reprint ed., London: Professional Books Limited, 1972), 1.
[7] Stephen J. Krause, "Punishing the Press: Using Contempt of Court to Secure the Right to a Fair Trial," 76 *Boston University Law Review* 537 (June 1996): 539.
[8] William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769, Of Public Wrongs* (1769), 4 vols. (Chicago: The University of Chicago Press, 1979), 4: 282.
[9] Ibid., 285.
[10] Edward M. Dangel, *National Lawyers' Manual: Contempt* (Boston: National Lawyers' Manual Company, 1939), 19c.
[11] Thayer, *Legal Control of the Press: Concerning Libel, Privacy, Contempt, Copyright, Regulation of Advertising and Postal Laws*, 543.
[12] Ibid., 545-46.
[13] Robert W. Jones, *The Law of Journalism* (Washington, D.C.: Washington Law Book Co., 1940), 184.
[14] Ronald L. Goldfarb, *The Contempt Power* (New York: Columbia University Press, 1963), 2.
[15] Harold W. Sullivan, *Contempts by Publication: The Law of Trial by Newspaper*, 3rd ed. (Littleton, Colorado: Fred B. Rothman & Co., 1980), 172.

[16] J. Edward Gerald, *The Press and the Constitution, 1931-1947* (Minneapolis: University of Minnesota Press, 1948), 6.
[17] Fredrick Seaton Siebert, *The Rights and Privileges of the Press* (New York: Appleton-Century-Crofts, 1934), footnote 3, 283-84.
[18] John Charles Fox, "The King v. Almon," 24 *Law Quarterly Review* 184 (1908): 189.
[19] Ibid., 189-90.
[20] Zechariah Chafee, Jr., *Free Speech in the United States* (Cambridge, Mass.: Harvard University Press, 1967), 9.
[21] C. Herman Pritchett, *Constitutional Law of the Federal System* (Englewood Cliffs, New Jersey: Prentice-Hall, 1984), 190.
[22] Gerald, *The Press and the Constitution, 1931-1947*, 29.
[23] David M. Rabban, *Free Speech in Its Forgotten Years* (New York: Cambridge University Press, 1997), 5.
[24] Walter Nelles and Carol Weiss King, "Contempt by Publication in the United States: Since the Federal Contempt Statute," 28 *Columbia Law Review* 525 (1928): 533.
[25] Ibid.
[26] Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union*, 7th ed. (Boston: Little, Brown, and Company, 1903), 603.
[27] Ibid., 603-04.
[28]Leonard Levy, *Emergence of a Free Press* (New York: Oxford University Press, 1985), 13.
[29]Ibid., 272.
[30]Ibid., 274-75.
[31] Bishop, *Commentaries on the Criminal Law*, 142.
[32] Jones, *The Law of Journalism*, 203.
[33] Zechariah Chafee, Jr., *Government and Mass Communications: A Report from the Commission on Freedom of the Press* (Hamden, Conn.: Archon Books, 1965), 384.
[34] Ibid., 432.
[35] Sullivan, *Contempts by Publication: The Law of Trial by Newspaper*, vii.
[36] Ibid., ix.
[37] Ibid., 144.
[38] Timothy W. Gleason, *The Watchdog Concept: The Press and the Courts in Nineteenth-Century America* (Ames, Iowa: Iowa State University Press, 1990), 97.
[39] Gerald, *The Press and the Constitution, 1931-1947*, 5.
[40] Ibid., 29.
[41] Ibid., 35.
[42] Ibid., 30-31.
[43] Dangel, *National Lawyers' Manual: Contempt*, Preface.
[44] Ibid., 19c.
[45] Henry Schofield, *Essays on Constitutional Law and Equity and Other Subjects*, 2 vols. (Union, New Jersey: The Lawbook Exchange, Ltd., 2002), 2: 563.
[46] Ibid., 559-60.
[47] Thayer, *Legal Control of the Press: Concerning Libel, Privacy, Contempt, Copyright, Regulation of Advertising and Postal Laws*, 550.

[48] Ibid., 554.
[49] Goldfarb, *The Contempt Power*, 90.
[50] Gleason, *The Watchdog Concept*, 85.
[51] Gillmor, *Free Press and Fair Trial*, 143.
[52] *Journal of the Senate of the United States of America, 1789-1873* (May 25, 1830), 251-254, reproduced in A Century of Lawmaking for a New Nation: U.S Congressional Documents and Debates, 1774-1873, http://memory.loc.gov/ammem/amlaw/lawhome.html. All journal and debate register citations come from this online source.
[53] *Journal of the House of Representatives of the United States of America, 1829-1830* (May 1, 1830), 592.
[54] Ibid., 593-594.
[55] Arthur J. Stansbury, *Report of the Trial of James H. Peck, Judge of the United States District Court for the District of Missouri* (Boston, 1833; reprint ed., New York: Da Capo Press, 1972), 2.
[56] Ibid., 2-3.
[57] Ibid., 3.
[58] Ibid., 4.
[59] Ibid., 5.
[60] Ibid., 1.
[61] Ibid., 5.
[62] *Gales & Seaton's Register of Debates in Congress*, House of Representatives (April 5, 1830), 737.
[63] Ibid., (April 7, 1830), 746.
[64] Ibid.
[65] Ibid., 746-747.
[66] Ibid., 747.
[67] Ibid., 750.
[68] Ibid., 751.
[69] Ibid.
[70] Ibid., 752.
[71] *Gales & Seaton's Register of Debates in Congress*, House of Representatives (April 21, 1830), 1.
[72] Ibid., 3.
[73] Ibid.
[74] Ibid.
[75] Ibid., 3-4.
[76] Ibid., 4.
[77] Ibid., 5.
[78] *Gales & Seaton's Register of Debates in Congress*, House of Representatives (April 23, 1830), 814.
[79] Ibid. There were two congressmen with the last name of Everett serving in the U.S. House of Representatives – Edward Everett and Horace Everett. Because the recorded debate refers only to "Mr. Everett," it is not clear which congressman was speaking. The author was unable to determine the correct identity of the speaker.
[80] Ibid.
[81] Ibid.

[82] Ibid. Yet again, there were two congressmen with the last name of Storrs serving in the U.S. House of Representatives – Henry Storrs and William Storrs. Henry Storrs of New York was later elected as a House Manager for the impeachment, but the record here is not clear about which congressman was speaking.
[83] Ibid., 815.
[84] *Journal of the House of Representatives of the United States, 1829-1830*, 565-566.
[85] Ibid., (May 1, 1830), 592-595.
[86] *Gales & Seaton's Register of Debates in Congress*, House of Representatives (May 4, 1830), 872.
[87] *Journal of the Senate of the United States of America, 1789-1873* (May 11, 1830), 245.
[88] Ibid., 246.
[89] Ibid., (May 25, 1830), 251.
[90] Ibid., 253.
[91] Ibid., 254.
[92] Ibid., 277.
[93] Ibid., 278.
[94] Ibid.
[95] Ibid., 279.
[96] "Epitome of the Times," *Saturday Evening Post*, May 22, 1830, 2, reproduced in American Periodicals Series Online 1740-1900, http://proquest.umi.com/pqdweb?DBId=5197&LASTSRCHMODE=1&RQT=575.
[97] *Gales & Seaton's Register of Debates in Congress*, U.S. Senate (Dec. 20, 1830), 9.
[98] Ibid., 10.
[99] Ibid.
[100] Ibid., 11.
[101] Ibid., 12.
[102] Ibid., 13.
[103] Ibid., 16.
[104] Ibid., 17.
[105] Ibid., 18.
[106] *Gales & Seaton's Register of Debates in Congress*, U.S. Senate (Jan. 5, 1831), 25.
[107] Ibid., 26.
[108] Ibid., 27.
[109] "Congress," *Atkinson's Saturday Evening Post*, Feb. 5, 1831, 3, reproduced in American Periodicals Series Online 1740-1900.
[110] *Gales & Seaton's Register of Debates in Congress*, House of Representatives (Feb. 1, 1831), 560.
[111] Ibid., 561.
[112] H.R. 620, *Bills and Resolutions, House of Representatives, 21st Congress, 2nd Session*, Feb. 10, 1831.
[113] Act of Mar. 2, 1831, chap. 99, 4 Stat. 487.
[114] *Gales & Seaton's Register of Debates in Congress*, House of Representatives (Dec. 20, 1830), 377.
[115] Walter Nelles and Carol Weiss King, "Contempt by Publication in the United States: Since the Federal Contempt Statute," 28 *Columbia Law Review* 525 (1928): 533. See footnote 30 for a thorough list of state legislative actions regarding contempt and how they related to

the federal contempt statute. See the Appendix on page 554 for even more explanation of state contempt statutes.

[116] Gerald, *The Press and the Constitution, 1931-1947*, 41.

[117] Thayer, *Legal Control of the Press: Concerning Libel, Privacy, Contempt, Copyright, Regulation of Advertising and Postal Laws*, 547-48.

[118] Dangel, *National Lawyers' Manual: Contempt*, 19b.

[119] *Nye v. United States*, 1941 U.S. LEXIS 1206.

[120] *Bridges v. California*, 1941 U.S. LEXIS 1084.