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THE DISFRANCHISEMENT OF AN AMERICAN PATRIOT

BY

Arthur H. Brown, Jr.

A thesis submitted as partial requirement
for a Bachelor of Arts Degree in History.

PLEDGE

On my honour as a gentleman, I have received no aid in writing this thesis other than the works cited, and I have faithfully tabulated all of my references; to the best of my knowledge I have not plagiarized any material nor have I broken any of the rules governing the writing of term papers and theses.

Arthur H. Brown, Jr.
Arthur H. Brown, Jr.

INTRODUCTION

Two years ago this coming August I was fortunate enough to acquire the manuscript around which this treatise is built. When I acquired it I was of the opinion that it was in Jefferson's own hand-writing. However, upon investigation I have discovered that although the body of the letter greatly resembles Jefferson's hand, the signature is not his. Therefore, the most plausible explanation is that this is a contemporary copy of a letter which Jefferson wrote. It was customary in Jefferson's day to have several scribes whose sole duty was to copy letters. This may be such a copy. Or, it may be a court record copy. There was no way of tracing its origin from the person who possessed it prior to my purchase, but there is still a possibility that somewhere in the files and records of Jefferson's correspondence there exists the original. Mr. Van Schreeven, the Virginia State Library Archivist, is of the opinion that this is the only copy in existence. There is no record of such a case in the printed lists of Jefferson's manuscripts, but there are hundreds of uncatalogued

Jeffersonian papers and the original may be among these.

In writing an historical analysis of this case I have tried to use the specified historical approach. What few facts were available I have tried to track down and draw logical conclusions. Much of what I have said is of a contraversial nature, and in such things as the young man's background I have had to go upon what seemed to be the circumstances, rather than what they really were.

In reading this paper I would respectfully suggest that the enclosed photostat copy of the manuscript be read first. No difficulty will be found if the pages are read as they are numbered. Since the letter was written on both sides of the vellum the pages appear in a one and four, two and three, order.

I have not tried to deal generally with the larger field of disfranchise^{ment}, nor with expatriation, but rather with one man's life as it was influenced by the Revolution. I am not sure that I have succeeded in writing a worthy treatise, but I do know that I have enjoyed tracing the life and fortunes of this unnamed patriot.

Respectfully submitted:

Arthur H. Brown, Jr.

The aftermath of war, with its untold sufferings and its many readjustments, has caused men to do many things which otherwise they would not consider. War changes men and their ways; indeed, war turns all that is normal and sane into chaos and confusion. While the struggle is on men think of nothing other than the final victory, but when at last the peace does come, then the great tasks of reconstruction begin. And often after a great effort has been made to achieve victory men become tired and all that they fought for is forgotten in the confusion that follows triumph.

As it is in any war, so was it in America at the close of the Revolutionary War. In a day when this great nation has grown to be a magnificent empire it is difficult for us to project ourselves into the past. We cannot conceive of an America that was split into thirteen separate segments, each as a principality unto itself. Yet such was the case when the war finally came to a close. The colonies were neither united nor were they eager to oppose each other. There was jealousy and distrust among the states, and no national policy existed which would cover the hundreds of varieties of difficulties which naturally follow in the wake of such a conflict. In these circumstances it is not difficult for us to see that men's

lives were in a turmoil and confusion. Many Americans who had been sympathetic with the cause of the Crown were now in a position which was both embarrassing and perilous. During the war many loyalists had found refuge behind the British lines and in British-occupied towns and cities, but now the cause was lost and these loyal subjects were looked upon by the various colonies as traitors and as being unworthy of the new republic. John Adams has estimated their number to have been one million or about a third of the total population of the colonies.¹ This may or may not have been an accurate figure, but the estimate itself proves that there was a serious problem to be solved.

The Treaty of Paris guaranteed loyalists the right to reside in the Colonies for twelve months in an effort to ^erecover their property,² but this arrangement was grossly violated by war-inspired patriots. Because of the treatment afforded them during the war and afterward, between fifty and eighty thousands of loyalists left the country,³ and this will always remain a blot on the history of our country. There are many arguments which can be offered both pro and con as to whether the acts were justifiable, but it is quite reasonable to believe that such depredations and persecutions as the loyalists suffered were the result of the anti-British fury that

1. Funk and Wagnalls New Standard Encyclopedia, V. XVII, p. 432

2. Morison and Commager, The Growth of the American Republic, 1763-1865, p. 148.

3. Ibid, p. 149.

swept the country during and immediately after the war.

The loyalists were not the only victims of the war. There were scores of individual Americans who had been compelled by the British to serve both in England's army and navy. These were usually men who were avowed rebels whom the British used to replace her sadly depleted ranks. After the peace treaty was signed many of these individuals found that their citizenship had been deprived because of their past actions. Strange as it may seem, and yet perfectly understandable in the light of the unsettled times, the new republic had no nationality laws whatsoever. Not until 1790 did Congress set up a law which standardized the laws of citizenship.⁴ This caused a great amount of difficulty, for each colony had had its own laws relative to citizenship and the franchise, and therefore no one ruling could be used. Thus, these disfranchised Americans were compelled to make whatever adjustments possible in order to regain their state citizenship.

And thus we come to the subject of my treatise. One finds no end of trouble in endeavouring to write about an individual about whom he knows little or nothing, and this is the case with regard to my subject.

4. Flournoy, Jr., R.W., and Hudson, Manley O., A Collect-
of Nationality Laws, p. 573.

His identity is unknown, and thus far I have been unable to locate any record of the case in question. Under usual circumstances, when a manuscript was addressed the name of the addressee was inscribed on the back of the last page, and then folded and sealed. However, in this case, the authorities to whom I submitted the manuscript suggested that this was in all probability a secretaries' copy which the author either had made for his own files or for the subsequent court record, if any. And that, of course, would account for its not having an address.

The fact that the addressee is unknown does not hamper the subject of the letter, for the facts are presented in such a way that the whole case is spread before any inquiring reader. There are, however, several matters which need clarification.

In the first place this young man, whom I shall hereafter refer to as X, was only one of any number of students who sought education in Europe before the beginning of the 19th Century. This was not due to a lack of educational facilities in the Colonies as much as it was from the prevailing custom. There were several medical schools in America before the Revolution, and also some well-know universities, but, nonetheless, it seemed that Europe was the seat of all higher learning,

and students who wished to specialize went abroad, even as they do today. We have no right to hazard a guess, but one might suppose that this X was of a wealthy family, for foreign education in colonial times was not an opportunity that was easily obtained otherwise. Whatever may have been his circumstances, from the information given by Jefferson in the letter, X was dependent upon funds from his people in Virginia. When the war broke out all commercial intercourse ceased and the colonial funds invested in England were naturally frozen, as ^{British funds} ~~they~~ were in America. Trade between the two belligerents was at a stand-still, and X was among those who found themselves in a precarious position.

What events followed in the young surgeon's life were the result of his being left penniless by the war conditions. Whoever his friends were, they were indeed generous, for apparently they aided him in no mean manner. In noting that X was aided by those who knew him it is well that we remember that the war was exceedingly unpopular among many sections of England, for the ties that bound the colonies to the mother country were many, and the prospect of brother fighting brother was unpopular, to say the least. The fact that George was compelled to hire mercenaries from the German Hesse states speaks for the general attitude of the English people toward the war.⁵

5. Morison and Commager, op. cit., p. 85.

Jefferson goes on to review the facts concerning X's movements during the year 1776 and through the Spring of 1777. There were at the time no apparent restrictions on the lives of resident enemy aliens (colonial Americans) in England. "Prior to the World War a practice had developed which permitted alien enemies, subject to good behaviour, to remain unmolested in the State of residence, or for a certain length of time after the outbreak of war, within which they might return to their own country. It was doubtless the prevalence of such good behaviour that led to the custom, and gave rise to treaties which fortified it. This was due to the fact that slow means of transportation and communication had rendered it difficult to the alien enemy to aid his country while remaining within the territory of its foe. Thus he was deemed innocuous and his plight a pitiable one."⁶ And indeed it was a pitiable situation for the surgeon. What followed was the only course possible, if X was to gain passage to America at all. He might well have remained in England for the duration of the struggle, but it is understandable that he desired to return and join his family and friends. His action might have been rash from certain viewpoints, but being a Colonial American his patriotism and zeal are not without the bounds of reason. All other means having been

6. Hyde, Charles Cheney, International Law, Vol. II, p. 228.

exhausted X turned to the only door remaining open to him, that of his profession. Being an American in a belligerent country, and being a novice in his profession, it was natural for him to seek out a place where experience was not required and where his qualifications were acceptable. At the time the British navy was far from an efficient organization, and its officers, conditions, and striking power were at a low ebb.⁷ And the exigencies of war made it necessary for England to accept whatever she could get in the way of man-power and ability. Jefferson does not refer in any way to X's entrance into the navy, nor the surrounding circumstances, but in all probability he had no difficulty in doing so. The significant point lies in the fact that his action was voluntary. "No requirement of international law forbids a belligerent to enroll aliens in its armed forces, even though enrollment may demand of them the taking of an oath of allegiance to the belligerent sovereign, and may be deemed then to be productive of expatriation by the State previously claiming them as nationals.⁸..... A State engaged in war is not deemed to be free to compel nationals of the enemy to take part in military operations against their own

7. Morison and Commager, op. cit., p. 104.

8. My own underlines. A.B.

country, even though they were in the service of the former before the outbreak of the conflict." Although⁹ the law just cited was not formulated until the next century the circumstances were the same and this principle was apparently followed.

What transpired in the course of X's career as a navy surgeon is clearly and concisely stated by the author of the letter. There is no need to expand on conditions as they then existed, except to note that when X arrived at Charlestown he endeavoured to buy his way out of the navy. At the time of his entrance into the service of England's forces it was the custom to sell commissions in the army and navy, and it was also possible to obtain a substitute to take over an unexpired term of service. This privilege of paying for a substitution was an obvious evil, but it was not discontinued until the middle of the next century, when the experience of the United States during the draft crisis showed it to be an impractical plan.¹⁰

Following the surgeon's path as he made his way to the British lines in Virginia, it is significant¹¹

9. Hyde, Charles Cheney, op. cit., p. 295.

10. Funk and Wagnalls, op. cit., Vol. VII, p. 201.

11. Ibid, pp. 316, 317.

to remember that he had made every effort to gain his freedom through the legal channels, and that these efforts were in vain. What happened to his petition for permission to pass through the British lines is only a matter that we can conjecture about. Any of a number of reasons may have caused his detainment with Cornwallis, but it is reasonable to suppose that because of the nature of his case he was detained to serve as a field surgeon. It is highly unlikely that had his superiors known his reason for returning to his home that they would have permitted it. And from what Jefferson says there is no reason to suppose that X did not tell them.

With respect to Governor Wilson, as I have previously noted, the matter of safe-conduct and citizenship depended upon the particular temper of the individual colonies, and apparently there was no drawback here as far as the Governor was concerned, seeing that the young man was not subject to exchange. However, in view of the letter of inquiry which X had written to Mr. Jefferson, it is quite certain that he had lost his citizenship and that the passport merely insured his safe conduct and vouched for his character. There is no record of any acts being drawn up in the early part of 1783 relative to such cases as X's,

but under the record of October, 1793, there is an enactment which begins: "Be it therefore enacted, that all persons having accepted a military commission from the United States, or any of them, or who having taken the oath of fidelity to any of the United States, or who having been natives of, or residents in any of the United States, on the nineteenth day of April, in the year one thousand and seven hundred and seventy-five, have at any time during the late war voluntarily joined themselves to the fleets or armies of the king of Great Britain, and have borne arms against the United States, or any of them, within their territories or on their coasts,....." ¹² The act goes on to describe said participants and denies them the right of repatriation. In the case of X, the letter by Jefferson was dated July, 1783, and this law was not passed until October of that year. The real and basic question upon which this whole matter of repatriation rests is whether X's action as a surgeon under the British forces was an act of treason and war. Jefferson states that there was some action on an agreement to place surgeons on an equal basis with chaplains as far as the rules of war were concerned. But there is no record of this, and

12. Hening, William Waller, The Statutes at Large; being a collection of all the Laws of Virginia, from the First Session of the Legislature in the year 1619, Vol. X, Chapt. 8, pp. 324 and 325.

so this case can only be judged in the larger sense of the law.

The term expatriation has several meanings and connotations. In one sense, "expatriation is emigration, with an intention to settle permanently abroad. Each case, therefore, must depend on its own circumstances. The fact of removal and the intention ought to be distinctly proved."¹³ In another sense it is banishment or exile. Neither of these actually took place in the case of the surgeon, but rather he had lost his active citizenship while still a resident in this country, that is he had been disfranchised. When he wrote Jefferson concerning his case we can surmise from Jefferson's reply that X inquired as to what grounds were the basis of such action. In replying Jefferson makes it plain that this is another case in which the individual circumstances are paramount, and that X's case will have to be judged according to the way in which the said circumstances meet the law. If the surgeon had found himself under circumstances that were similar in later years he would in all probability have been able to regain his citizenship by taking the oath of allegiance to the United States as laid down by the naturalization laws,¹⁴ for ample provisions were

13. Lowell, Jr., John, Review of a Treatise on Expatriation, quoting George Hay, n.p.

14. Hyde, Charles Cheney, op. cit., Vol. I, p. 676.

made by Congress ~~in~~ later ~~years~~^{on}. But at this time (1783) no such provisions were in existence, and X had to depend upon the disposition of Virginia in the matter. In the latter part of his letter Jefferson implies a personal friendship with his correspondent, and it was only natural that X should have turned to him in his great need. Jefferson's influence was vast, and if anyone could help, he could.

It is unfortunate that there is no way of learning who X was, or what became of him. In the light of what Jefferson states X was innocent of any crime against his country. This is Jefferson's opinion as a lawyer, and it carries great weight. But it does not prove that X was exonerated of the charge.

At any rate, whoever and whatever this young man was, his history and subsequent fortunes prove one major premise, that much that the American Colonies did after the war was harsh and wrong. Many were the unfortunate victims of circumstance, and many suffered who were in reality innocent of any crime. But such are the fortunes of war. It would not be just to condemn the states for their actions, for these involved and individual cases point out how vast was the maze of complexities and difficulties that faced

the leaders of the new nation.

In looking back upon those dark days of uncertainty and vascillation we cannot help but marvel at the great results which were obtained under such adverse difficulties. When we come to realize that here was a new nation arising out of chaos, poverty, and revolution, we cannot censure it for the individual failures that it made. It is true that many loyalists were made to suffer unjustly; it is true that many Americans were given no justice whatever. But in a larger sense the individual was sacrificed for the greater good of the whole. It was so then, and it is so now, for even as I write these lines men are sacrificing their individual good that the greater good might prevail.

This is the story of an unknown patriot.....a man whose zeal for freedom cost him his rights as an American. But all of the humiliation and difficulties he may have suffered were wiped away by the words of Thomas Jefferson: "On the Principles of general law then I think your conduct was justifiable:....."

BIBLIOGRAPHY

- Flournoy, Jr., Richard W., and Hudson, Manley O.,
Editors, A Collection of Nationality Laws of Various
Countries as Contained in Constitutions, Statutes,
and Treaties. Oxford University Press, New York, 1929.
- Funk and Wagnalls New Standard Encyclopedia, Funk and
Wagnalls Company, New York, 1937.
- Hening, William Waller, The Statutes at Large; being
a collection of all the Laws of Virginia, from the
First Session of the Legislature in the year 1619.
George Cochran, 1822.
- Hyde, Charles Cheney, International Law Chiefly as
Interpreted and Applied by the United States. Two Vols.
Little, Brown, and Company, Boston, 1922.
- Lowell, Jr., John, Review of a Treatise on Expatriation,
Russell, Cutler, and Company, Boston, 1814.
- Morison, Samuel E., and Commager, Henry S., The Growth
of the American Republic, Volume One, Oxford University
Press, New York, 1940.